

What is a “Trifle” Anyway?

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TABLE OF CONTENTS

I. INTRODUCTION	315
II. BACKGROUND	316
III. ANALYSIS	322
A. <i>Maxims</i>	322
B. <i>Cases</i>	324
1. De Minimis—Where Applicable	324
2. De Minimis—When Not Applicable	330
a. Land/Property	330
b. Constitutional Rights	331
c. Class Actions	333
d. Crimes	334
e. Government Regulations	335
f. Fiduciary Responsibilities	339
g. Debts	340
IV. CONCLUSION	340

I. INTRODUCTION

Have you ever heard of the word “trifle”? According to Webster’s Dictionary, a trifle is “something of very little value or importance.”¹ The Oxford English Dictionary defines “trifle” as “a thing of no moment; a trivial, paltry, or insignificant affair.”² Thus, a trifle is something of minor consequence which could easily be overlooked. Nevertheless, trifles continue to play a very important role in American jurisprudence. The word appears in dozens of cases in state and federal law journals, from Florida’s Third District Court of Appeals³ to the United States Supreme Court.⁴

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1. WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2443 (1993).

2. 18 THE OXFORD ENGLISH DICTIONARY 522 (2d ed. 1989).

3. See generally *Baston v. State*, 436 So. 2d 1092 (Fla. Dist. Ct. App. 1983).

4. See generally *Wis. Dept. of Revenue v. William Wrigley, Jr., Co.*, 505 U.S. 214, 231-35 (1992).

The legal definition of the word “trifle” is virtually the same as its colloquial counterpart. In law, the word “trifle” originates from the Latin term “de minimis non curat lex,”⁵ which is commonly referred to as “the law does not concern itself with trifles”⁶ or “(of a fact or thing) so insignificant that a court may overlook it in deciding an issue or case.”⁷ Some courts and commentators have turned the translation of “de minimis non curat lex” into more of an art form, thus providing a different perspective on the standard transliteration. The following examples represent a few of these: “[T]he law does not care for trifles”⁸; “the law does not concern itself with trifles”⁹; “[e]quity will not concern itself with trifles”¹⁰; “[t]he law disregards trifles”¹¹; “the law cares not for small things”¹²; “the law does not bother about trifles”¹³; and “the law pays no attention to trifles.”¹⁴ One court has even misspelled the root term “de minimis” as “de minimus.”¹⁵ It becomes obvious that, despite a lack of agreement on semantics, most adjudicators agree as to the term’s general meaning.

II. BACKGROUND

The legal meaning of the word “trifle” or “de minimis” has its roots in medieval England and the days of kings and chancellors. In fact, chancellors are most frequently credited with contributing towards development of the “de minimis” principle as we know it today.¹⁶ “Equity, chancery, and the chancellor have a complex history intertwined with England’s political, economic, and

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5. 27A AM JUR. 2D *Equity* § 118 (1996).
 6. *See id.*
 7. BLACK’S LAW DICTIONARY 443 (7th ed. 1999).
 8. *Campbell v. Sheahan*, No. 94-C-2937, 1998 WL 25188, at *8 (N.D. Ill. Jan. 9, 1998), *aff’d*, 234 F.3d 1272 (7th Cir. 2000) (table).
 9. *Ringgold v. Black Entm’t Television, Inc.*, 126 F.3d 70, 74 (2d Cir. 1997).
 10. 55 N.Y. JUR. 2D *Equity* § 105 (1986).
 11. CAL. CIV. CODE § 3533 (West 1997).
 12. *Porter v. Rushing*, 65 F. Supp. 759, 760 (W.D. Ark.), *rev’d*, 157 F.2d 263 (8th Cir. 1946).
 13. *Denison W. Twenty-Fifth St. Improvement Co. v. Great Atl. & Pac. Tea Co.*, 69 N.E.2d 79, 80 (Ohio Ct. App. 1946).
 14. *Swicegood v. Feezell*, 196 S.W.2d 713, 716 (Tenn. Ct. App. 1946).
 15. *See Sivak v. State*, 950 P.2d 257, 261 (Idaho Ct. App. 1997).
 16. *See generally* W.S. HOLDSWORTH, SOURCES AND LITERATURE OF ENGLISH LAW 191 (Bernard D. Reams, Jr. ed., William S. Hein & Co. 1983) (1925); *In re Hallet’s Estate*, Court of Appeal, 1879 (13 Ch. D. 696, 710), *reprinted in* ROSCOE POUND & THEODORE F. T. PLUCKNETT, READINGS ON THE HISTORY AND SYSTEM OF THE COMMON LAW 217-18 (3d ed. 1927) (noting that it was the chancellors who first invented the rules of equity).

social history as well as its judicial and legal history."¹⁷

In early English history, if one party wanted to bring a complaint against another party, he would present their case before the King's Royal Courts.¹⁸ However, if the dispute could not be resolved by having one side reimburse the other for damages, or if the party seeking the remedy could somehow not obtain relief from the courts¹⁹ (either the law was too rigid or just inadequate²⁰), one would have to directly petition the king or the King's Select Council to request a specific action.²¹

By the end of the fifteenth century, petitions to the king and his council became too numerous and burdensome to administer, so the king was compelled to give up some of the responsibility for adjudicating the petitions to his chancellor.²² The chancellor was generally regarded as the king's chief political advisor²³ and usually occupied a senior position in the church.²⁴ His position

17. H. Brent McKnight, *How Shall We Then Reason? The Historical Setting of Equity*, 45 MERCER L. REV. 919, 924 (1994).

18. Theoretically, all the royal courts operated in the name of the king and the judges were all royal appointees. Some of the kings would occasionally sit in judicial matters. 1 FREDERICK POLLOCK & FREDERIC WILLIAM MAITLAND, *THE HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARD I*, at 194 (photo. reprint 1982) (2d ed. 1899).

19. These courts consisted of the Courts of Common Pleas, King's Bench, and Exchequer. *Id.* at 190.

20. See 1 JOHN NORTON POMEROY, *A TREATISE ON EQUITY JURISPRUDENCE* §§ 30-36 (4th ed. 1918); see also WILLIAM F. WALSH, *OUTLINES OF THE HISTORY OF ENGLISH AND AMERICAN LAW* 197 (1924).

21. The kings were the "fountains of justice." D. M. KERLY, *AN HISTORICAL SKETCH OF THE EQUITABLE JURISDICTION OF THE COURT OF CHANCERY* 13 (Cambridge Univ. Press 1890). "And let no one apply to the king in any suit, unless he at home may not be worthy of law or cannot obtain law. If the law be too heavy, let him seek a mitigation of it from the king . . ." *Secular Ordinance of Edgar* (959-975), Cap. 2, reprinted in POUND & PLUCKNETT, *supra* note 16, at 194; see also 1 POLLOCK & MAITLAND, *supra* note 18, at 197.

22. See 1 WILLIAM HOLDSWORTH, *A HISTORY OF ENGLISH LAW* 194 (A. L. Goodhart & H. G. Hanbury eds., 1903). Professor Maitland suggested that the chancellor developed his judicial office and powers because the sheer volume of petitions to the king and council made for laborious reading. F. W. MAITLAND, *EQUITY ALSO THE FORMS OF ACTION AT COMMON LAW: TWO COURSES OF LECTURES* 3-4 (A. H. Chaytor & W. J. Whittaker eds., photo. reprint 1984) (1929); see also WALSH, *supra* note 20, at 197. "By ordinance of the 8th year of Edward I, it was provided that petitions to the Council which touched the great seal or involved matters of grace should come first to the chancellor." *Id.* Other historians note perhaps more accurately that the chancellor acted in conjunction with and at the direction of the King's Council throughout most of the fourteenth and fifteenth centuries. 35 SELDEN SOCIETY, *SELECT CASES BEFORE THE KING'S COUNCIL 1243-1482*, at xxiv-xxv (I. S. Leadam & J. F. Baldwin eds., 1918).

23. THEODORE F. T. PLUCKNETT, *A CONCISE HISTORY OF THE COMMON LAW* 164 (5th ed. 1956).

24. M. M. KNAPPEN, *CONSTITUTIONAL AND LEGAL HISTORY OF ENGLAND* 34 (photo. reprint 1987) (1942). Early chancellors were ecclesiastics "for none else were then capable

was similar to that of the king's secretary of state for all departments in that he kept the King's Great Seal used to stamp all of the king's official documents²⁵ and oversaw the great mass of writing that had to be done in the king's name.²⁶

Many scholars mark the date of the proclamation by King Edward III in 1349²⁷ as the establishment of the chancellor as a judge of equity.²⁸ However, much debate remains concerning the accuracy of this date.²⁹ For the English

of an office so conversant in writings." 3 WILLIAM BLACKSTONE, COMMENTARIES *47.

In the fifteenth century the only nonclerical chancellors were Thomas Beaufort, knight and later first earl of Dorset and first duke of Exeter (chancellor 1410-11) and Richard Neville, earl of Salisbury (chancellor 1454-55). In the fourteenth century there were considerably more chancellors who were not clergy: Robert Bouchier, knight (chancellor 1340-41); Robert Parving, knight (chancellor 1341-43); Robert Sadington, knight and former chief baron of the Exchequer (chancellor 1343-45); Robert Thorpe, knight and former CJC (chancellor 1371-72); John Knyvet, knight and former CJK (chancellor 1372-77); Richard Scrope, lord Scrope of Bolton (1378-80, 1381-82); Michael de la Pole, knight, first earl of Suffolk (chancellor 1383-86). In total, however, these seven men held the office for less than sixteen years. In the sixteenth century Thomas More (chancellor 1529-32) looms large as the first of what would be, by and large, lay and often common-law incumbents of the office. Episcopal Chancellors did reappear during Mary's brief reign.

Timothy S. Haskett, *The Medieval English Court of Chancery*, 14 LAW AND HIST. REV. 245, 247 n.6 (1996) (citing HANDBOOK OF BRITISH CHRONOLOGY 86-87 (E. B. Fryde et al. eds., 3d ed. 1986)).

25. 1 HOLDSWORTH, *supra* note 22, at 396. Holdsworth describes the chancellor's broad functions by quoting Jeremy Bentham's critical summary: He was

(1) a single judge controlling in civil matters the several jurisdictions of the twelve great judges. (2) A necessary member of the Cabinet, the chief and most constant advisor of the king in all matters of law. (3) The perpetual president of the highest of the two houses of legislature. (4) The absolute proprietor of a prodigious mass of ecclesiastical patronage. (5) The competitor of the Minister for almost the whole patronage of the law. (6) The Keeper of the Great Seal; a transcendent, multifarious, and indefinable office. (7) The possessor of a multitude of heterogeneous scraps of power, too various to be enumerated.

Id. at 397.

26. MAITLAND, *supra* note 22, at 3; *see also* PLUCKNETT, *supra* note 23, at 164.

27. For a recent view that the 1349 proclamation was a turning point in the development of the Court of Chancery, see ROBERT C. PALMER, *ENGLISH LAW IN THE AGE OF THE BLACK DEATH, 1348-1381*, at 107-10 (1993). Palmer states that "[t]he proclamation of 1349 began a tradition of chancery activity that resulted in the chancellor's court of conscience." *Id.* at 109. "It seems clear that the Chancellor had and exercised judicial functions of his own as early as the reign of Richard II if not Edward III." 10 SELDEN SOCIETY, *SELECT CASES IN CHANCERY A.D. 1364 TO 1471*, at xix (William Paley Baildon ed., London, Bernard Quaritch 1896).

28. As more claimants sought equitable relief from the chancellor, the chancery developed into a distinct judicial system with its own staff and procedures. 1 HOLDSWORTH, *supra* note 22, at 395-405.

29. 1 POLLOCK & MAITLAND, *supra* note 18, at 190; *see also* 1 POMEROY, *supra* note

historian, Milsom, "Nothing in the history of English institutions is so obscure as the rise of . . . the court of the chancery."³⁰

Delegating authority to the chancellor was a gradual process by which the chancery evolved from a purely administrative function to one that was judicial.³¹ At first, the chancellor did not sit as the sole judge in chancery; frequently members of the King's Select Council or common law judges sat with him.³² As the fifteenth century progressed, however, the chancellor increasingly delivered decrees on his own.³³ By the middle of the fifteenth century, petitions were no longer directed to the king,³⁴ but rather addressed to the chancellor.³⁵ "There is nothing in the institutional history of England more remarkable than the development of the office of the chancellor."³⁶ This development was "a mysterious transformation" whereby a purely administrative office "grasped judicial functions" and eventually became a great court.³⁷ The chancery court's popularity among litigants soon made it the fourth major court at Westminster³⁸ and the dual system of law and equity, which would become typical of Anglo-American law, was born.³⁹

As the volume of petitions grew, the chancellor had to develop a faster method for resolving his increasing legal caseload.⁴⁰ He turned to a device known as a writ of subpoena.⁴¹ The subpoena ordered the party charged with the complaint and named in the petition to personally appear before the chancery on a specific date to be questioned and made to respond to each

20, § 33. "The commencement of this practice cannot be fixed with any precision." *Id.*

30. S. F. C. MILSOM, *HISTORICAL FOUNDATIONS OF THE COMMON LAW* 74 (1969).

31. PLUCKNETT, *supra* note 23, at 686.

32. WALSH, *supra* note 20, at 198.

33. 10 SELDEN SOCIETY, *supra* note 27, at xvi-xxi; *see also* WALSH, *supra* note 20, at 198.

34. "A suit to the extraordinary jurisdiction of the court of chancery, on behalf of a subject merely, is commenced by preferring a bill, in the nature of a petition, to the lord chancellor . . ." MITFORD, *PLEADINGS IN CHANCERY* 6 (2d ed. 1787), *reprinted in* POUND & PLUCKNETT, *supra* note 16, at 195.

35. 1 POLLOCK & MAITLAND, *supra* note 18, at 197; *see also* J.B. Post, *Equitable Resorts Before 1450*, in *LAW, LITIGANTS AND THE LEGAL PROFESSION* 69-71 (E.W. Ives & A.H. Manchester eds., 1983).

36. JAMES FOSDICK BALDWIN, *THE KING'S COUNCIL IN ENGLAND DURING THE MIDDLE AGES* 236 (1913).

37. *Id.* at 237.

38. David W. Raack, *A History of Injunctions in England Before 1700*, 61 *IND. L.J.* 539, 554 (1986).

39. *See* WILLIAM HOLDSWORTH, *SOME MAKERS OF ENGLISH LAW* 93 (Bernard D. Reams, Jr. ed., photo. reprint 1983) (1938); *see also* PALMER, *supra* note 27, at 107.

40. J. H. BAKER, *AN INTRODUCTION TO ENGLISH LEGAL HISTORY* 46-47 (1971).

41. ROSCOE POUND, *INTERPRETATIONS OF LEGAL HISTORY* 102 (photo. reprint 1986) (1923).

allegation.⁴² In the beginning, the subpoena only required the personal appearance of the defendant.⁴³ Later, the subpoena was adapted to require the defendant to produce documents as well.⁴⁴

Soon, the chancellor grew accustomed to relying on these written interrogatories⁴⁵ and depositions rather than supervising lengthy trials.⁴⁶ He decided cases without a jury because selecting jurors from the litigants' locality would inconvenience both the jurors and the chancellor.⁴⁷

Upon deciding a case, orders were issued by the chancellor to make the party charged perform or refrain from engaging in certain acts.⁴⁸ The chancellor's orders were personal in nature; for example, he could not restore land, but he could punish a party in the form of imprisonment for not restoring the land himself.⁴⁹

Moreover, the chancellor decided his cases on the basis of equity and fairness,⁵⁰ rather than on technical compliance with writs and pleadings.⁵¹ The source of the substantive law applied by the chancellor was the king's own conscience,⁵² and he based his decisions on principles of honesty, equity, conscience,⁵³ and good faith.⁵⁴ As a result, the chancellor's court soon became

42. BAKER, *supra* note 40, at 41.

43. Morton Gitelman, *The Separation of Law and Equity and the Arkansas Chancery Courts: Historical Anomalies and Political Realities*, 17 U. ARK. LITTLE ROCK L.J. 215, 220 (1995).

44. *Id.*

45. "As to the mode of trial. This is by interrogatories administered to the witnesses, upon which their depositions are taken in writing" 3 WILLIAM BLACKSTONE, COMMENTARIES *436, reprinted in POUND & PLUCKNETT, *supra* note 16, at 215.

46. See WALSH, *supra* note 20, at 474-75; Note, *The Right to a Nonjury Trial*, 74 HARV. L. REV. 1176, 1180-81 (1961).

47. Note, *supra* note 46, at 1180-81.

48. Stephen N. Subrin, *How Equity Conquered Common Law: The Federal Rules of Civil Procedure in Historical Perspective*, 135 U. PA. L. REV. 909, 919 (1987).

49. Anthony Scott & Georgina Coustalin, *The Evolution of Water Rights*, 35 NAT. RESOURCES J. 821, 847 n.37 (1995); see also MAITLAND, EQUITY 6-11, reprinted in POUND & PLUCKNETT, *supra* note 16, at 208, 212.

50. DAVID LIEBERMAN, THE PROVINCE OF LEGISLATION DETERMINED 76-77 (1989).

51. GEORGE GLEASON BOGERT & GEORGE TAYLOR BOGART, THE LAW OF TRUSTS AND TRUSTEES § 3, at 22 (2d ed. 1984); see also MAITLAND, EQUITY 6-11, reprinted in POUND & PLUCKNETT, *supra* note 16, at 208, 210. "They [the chancellors,] had not considered themselves strictly bound by precedent." *Id.* at 210.

52. 3 WILLIAM BLACKSTONE, COMMENTARIES *47.

53. 1 JOHN NORTON POMEROY, A TREATISE ON EQUITY JURISPRUDENCE § 35, at 38-39 (4th ed. 1918).

54. 1 GEORGE SPENCE, THE EQUITABLE JURISDICTION OF THE COURT OF CHANCERY 407-08 (R.H. Helmholtz & Bernard D. Reams, Jr. eds., photo. reprint 1981) (1846).

known as the Court of Conscience⁵⁵ and it became the "authority of the chancellor to *do equity* in a particular situation."⁵⁶

In addition to following the dictates of conscience, early chancellors were also learned scholars: "that he should be acquainted with canon law and Roman law, as well as with the common law of England, was very desirable."⁵⁷ As an ecclesiastic, the chancellor was also trained in the recognized sources of universal law, church teachings and moral theology.⁵⁸ Therefore, it was natural for the chancellor to apply these concepts to cases decided under his judicial capacity. As Blackstone's successor, Sir Robert Chambers argued in his law lectures, it was the chancellor's duty "to protect the weak against the strong, and the simple against the cunning."⁵⁹ The chancellor exercised discretion freely, flexibly, and with special concern for the poor.⁶⁰

However as righteous and fair the chancellor intended to be, his orders were nevertheless widely discretionary.⁶¹ Medieval chancellors "decided cases without much reference to any written authority."⁶² "[E]ach chancellor assumed a considerable liberty of deciding causes according to his own notions of right and wrong."⁶³

About 350 years ago, English legal scholar John Selden highlighted the chancellor's seemingly unrestricted exercise of discretion.⁶⁴ Selden, in his celebrated work *The Table-Talk*, whimsically remarked that he found the law as unpredictable as a "Chancellor's Foot," a reference to the judicial discretion which the chancellors exercised at the end of the fifteenth century:

Equity is a Roguish thing, for law we have a measure, know what to trust to, Equity is according to the Conscience of him that is Chancellor, and as that is larger or narrower, so is Equity. 'Tis all one as if they should make the Standard for the measure, we call [a Foot] a Chancellor's Foot, what an uncertain Measure would this be? One Chancellor has a long Foot, another

55. Subrin, *supra* note 48, at 919.

56. Sprague v. Ticonic Nat'l Bank, 307 U.S. 161, 166 (1939) (emphasis added).

57. F. W. MAITLAND, THE CONSTITUTIONAL HISTORY OF ENGLAND 222 (photo. reprint 1965) (1908).

58. HOLDSWORTH, *supra* note 39, at 92-93.

59. 2 ROBERT CHAMBERS, A COURSE OF LECTURES ON THE ENGLISH LAW 1767-1773, at 241 (Thomas M. Curley ed., 1986).

60. MELVILLE MADISON BIGELOW, HISTORY OF PROCEDURE IN ENGLAND: FROM THE NORMAN CONQUEST 72 n.1 (Boston, Little, Brown, and Co., 1880).

61. The equity administered was "loose and liberal, large and vague." HOLDSWORTH, *supra* note 39, at 93.

62. MAITLAND, *supra* note 22, at 9.

63. MAITLAND, *supra* note 57, at 225; *see also* 1 HOLDSWORTH, *supra* note 22, at 467-68; WALSH, *supra* note 20, at 476.

64. JOHN SELDEN, THE TABLE-TALK 64 (The Legal Classics Library 1989) (1847).

a short Foot, a Third an indifferent Foot: 'Tis the same thing in the Chancellor's Conscience.⁶⁵

The equity power of the English chancery court system was given to the United States' federal courts by the Judiciary Act of 1789.⁶⁶ However, over the second half of the nineteenth century and the early twentieth century, a merger of law and equity was effected on both the state and federal level.⁶⁷ As a result, most American courts are now considered as having a "blended jurisdiction."⁶⁸

III. ANALYSIS

A. *Maxims*

The Court of Chancery, described above, formulated a number of "maxims" to help steer its legal decision making in resolving royal disputes. In general, "A MAXIM is the embodiment of a general truth in the shape of a familiar adage."⁶⁹ Some familiar nonlegal maxims include, "[d]on't kick a man when he's down[.]" . . . [h]onesty is the best policy,"⁷⁰ "out of sight, out of mind," and "absence makes the heart grow fonder." Since the range of circumstances to which a maxim may apply is unspecified, there may be more than one result, and there may be contradictory maxims. For example, children are told not only that "haste makes waste," but also to "strike while the iron is hot."⁷¹ "[M]axims are seldom further proved; their relevance is seldom

65. *Id.*

66. See Act of Sept. 24, 1789, ch. 20, 1 Stat. 73, 82-83.

67. By the early nineteenth century, the Court of Chancery had become more organized, procedures were standardized, cases were recorded, and a body of principles developed. A DICTIONARY OF LAW 146-47 (Elizabeth A. Martin ed., 3d ed. 1994). By the late nineteenth century, the existence of separate courts with separate remedies came to be viewed as a deficiency in the administration of English law, and reforms were introduced to fix the problem. See *id.* at 147. The Judicature Acts of 1873-1875 abolished the Court of Chancery and a single court system, the High Court of Justice, was created to administer both equity and common law. *Id.*

68. Beth Neu, *Family Law—Visitation—Wisconsin Brings Child Visitation out of the Closet by Granting Standing to Nonparents in Custody of H.S.H.-K.*, 533 N.W.2d 419 (Wis.), *cert. denied*, 116 S. Ct. 475 (1995), 37 S. TEX. L. REV. 911, 952 n.76 (1996).

69. GEORGE TUCKER BISPHAM, *THE PRINCIPLES OF EQUITY: A TREATISE ON THE SYSTEM OF JUSTICE ADMINISTERED IN COURTS OF CHANCERY* § 16, at 24 (11th ed., Baker, Voorhis & Co. 1931) (1874).

70. Catharine Cookson, *Of Monsters Unleashed: A Modest Beginning to a Casuistry of Cloning*, 32 VAL. U. L. REV. 419, 421 n.5 (1998) (quoting ALBERT R. JONSEN & STEPHEN TOULMIN, *THE ABUSE OF CASUISTRY: A HISTORY OF MORAL REASONING* 253, 296 (1988)).

71. James Gordley, *Legal Reasoning: An Introduction*, 72 CAL. L. REV. 138, 160 (1984).

explicitly demonstrated; yet they play an important role in the development of a moral argument."⁷²

The legal maxims developed by the Court of Chancery were more judicially oriented and are referred to as "maxims of equity."⁷³ Maxims of equity are short statements or rules of thumb.⁷⁴ They derive from a collection of general propositions and "salty sayings" drawn from Latin, Norman-French, English, Anglo-Saxon formal logic, medieval philosophy, the Bible, and even from common experience.⁷⁵ "Some of them are indeed general principles, some look more like particular rules, many of them can be viewed as both rule and principle and some fit into neither category."⁷⁶ In one of the most oft-quoted statements on maxims of equity, historian John Norton Pomeroy notes, "They are not the practical and final doctrines or rules which determine the equitable rights and duties of individual persons . . . [but] are rather the fruitful germs from which these doctrines and rules have grown by a process of natural evolution."⁷⁷ The wording of maxims was never standardized and their number is not entirely certain.⁷⁸

Some examples of maxims of equity include: "equity delights in amicable adjustments; a court of equity ought to do, or delights in doing, justice completely, and not by halves; and a court of equity will not do or require the doing of a vain, useless, or futile thing."⁷⁹ Perhaps the best known of all the maxims of equity is "de minimis non curat lex," meaning "the law does not concern itself with trifles."⁸⁰

The function of the "de minimis" doctrine (as it is frequently cited) is to place "outside the scope of legal relief the sorts of intangible injuries, normally small and invariably difficult to measure, that must be accepted as the price of living in society."⁸¹ The maxim signifies "that mere trifles and technicalities must yield to practical common sense and substantial justice"⁸² so as "to prevent expensive and mischievous litigation, which can result in no real benefit

72. JONSEN & TOULMIN, *supra* note 70, at 253.

73. 34 TEX. JUR. 3D *Equity* § 18 (1984).

74. Kevin C. Kennedy, *Equitable Remedies and Principled Discretion: The Michigan Experience*, 74 U. DET. MERCY L. REV. 609, 616-17 (1997).

75. Dr. J. Stanley McQuade, *Ancient Legal Maxims and Modern Human Rights*, 18 CAMPBELL L. REV. 75, 76, 82 (1996).

76. *Id.* at 83.

77. 1 POMEROY, *supra* note 53, § 361, at 671.

78. See BISPHAM, *supra* note 69, §§ 16-27, at 24-36.

79. 27A AM. JUR. 2D *Equity* § 118, at 599 (1996) (citations omitted).

80. *Id.*

81. *Id.*

82. *Goulding v. Ferrell*, 117 N.W. 1046, 1046 (Minn. 1908).

to complainant, but which may occasion delay and injury to other suitors.”⁸³

B. Cases

1. De Minimis—Where Applicable

The de minimis doctrine has been applied in a wide variety of cases including contract, tort, civil, and criminal matters. Therefore, it is difficult to identify or categorize specific facts or circumstances upon which the de minimis maxim has been deemed appropriate. However, the policy reasons behind the courts' invocation of the maxim is generally the same—to save on judicial resources and prevent the system from getting bogged down with trifling or inconsequential matters. The following cases illustrate the wide acceptance of the de minimis maxim as identified in some whimsical and entertaining fact patterns.

In *Deutsch v. United States*,⁸⁴ Melvin P. Deutsch, an inmate at the federal correctional institution in Minersville, Pennsylvania alleged that a correctional officer removed pens from Deutsch's locker and did not return them.⁸⁵ Deutsch sought damages in the amount of \$4.20, which represented the value of the pens as well as attorneys' fees, costs and interest from the date of filing the complaint.⁸⁶ The district court held that the relief Deutsch sought was a “trifle” and not worthy of adjudication.⁸⁷

In *Altman v. Hurst*,⁸⁸ Police Chief Hurst of Hickory Hills, Illinois became upset with a police sergeant by the name of Altman.⁸⁹ Hurst suspected that Altman encouraged another officer to appeal her suspension from the force, so Hurst reassigned Altman to foot patrol duty and rescheduled his vacation time.⁹⁰ Altman sought damages for violations of his constitutional rights, alleging that he had a longstanding agreement to receive his annual vacation in April.⁹¹ The court stated that Altman did not deserve a hearing on the matter because his loss (change in vacation) was de minimis.⁹² “While the rescheduling

83. *Schlichtman v. N.J. Highway Auth.*, 579 A.2d 1275, 1279 (N.J. Super. Ct. Law Div. 1990).

84. No. Civ. A. 95-1728, 1995 WL 136959, at *1 (E.D. Pa. March 29, 1995), *aff'd*, 67 F.3d 1080 (3d Cir. 1995).

85. *Id.*

86. *Id.*

87. *Deutsch v. United States*, 67 F.3d 1080, 1082 (3d Cir. 1995).

88. 734 F.2d 1240 (7th Cir. 1984) (per curiam).

89. *Id.* at 1241.

90. *Id.*

91. *Id.* at 1241-42.

92. *Id.* at 1242.

may have inconvenienced him and defeated an expectation interest, such is not the stuff of constitutional torts."⁹³

In *Williams v. Boles*,⁹⁴ Melvin Williams, an inmate of the Statesville, Illinois correctional facility alleged that he was injured as a result of unprovoked attacks by prison guards.⁹⁵ In discussing the severity of injury necessary for one to substantiate a claim for damages, Judge Easterbrook noted, "The injury must be more than trifling—an allegation that a guard curled his lip at Williams without notice" would not provide a basis for him to bring a complaint.⁹⁶

In *Schlichtman v. New Jersey Highway Authority*,⁹⁷ a motorist complained that a roll of toll tokens he bought inadvertently contained a slug and filed a lawsuit demanding \$20.35 in damages.⁹⁸ The court found that the claim was "not meritorious," but "vexatious and harassing."⁹⁹ "The loss that plaintiff will have to bear as a result of the dismissal of this count is one of any number of trifling inconveniences that we all commonly encounter in our daily lives."¹⁰⁰

In *Raymon v. Alvord Independent School District*,¹⁰¹ Roberta Raymon, a high school student, was penalized for an unexcused absence from class by the deduction of three points from her six weeks algebra grade which subsequently dropped her overall grade point average from 95.478 to 95.413.¹⁰² Raymon's parents brought an action for damages alleging that the penalty imposed was a violation of her rights under the Fifth and Fourteenth Amendments.¹⁰³ The court of appeals considered the case a trifling claim and dismissed it.¹⁰⁴

In *B. Westergaard & Company v. United States*,¹⁰⁵ the plaintiff imported canned fish balls, fish cakes, meat balls and meat cakes into the United States which contained a small amount of potato flour to hold the ingredients together during the preliminary cooking process.¹⁰⁶ The government contended that since potato flour is a vegetable under the Tariff Act of 1922, the merchandise should

93. *Altman*, 734 F.2d at 1242.

94. 841 F.2d 181 (7th Cir. 1988).

95. *Id.* at 182.

96. *Id.* at 183.

97. 579 A.2d 1275 (N.J. Super. Ct. Law Div. 1990).

98. *Id.* at 1276-77.

99. *Id.* at 1280.

100. *Id.* at 1280-81.

101. 639 F.2d 257 (5th Cir. 1981).

102. *Id.* at 257.

103. *Id.*

104. *Id.*

105. 19 C.C.P.A. 299 (C.C.P.A. 1932).

106. *Id.* at 299-301.

be taxed at a higher duty rate.¹⁰⁷ On appeal, the court ruled that the amount of potato flour involved was insufficient (*de minimis*) to give the cakes and balls the character of a vegetable.¹⁰⁸

In the case of *Lowenstein v. McLaughlin*,¹⁰⁹ a motorist was convicted in district court for leaving the scene of a car accident.¹¹⁰ In the five months it took the court to notify the registrar of motor vehicles to have the motorist's license suspended, the motorist was acquitted of all charges.¹¹¹ Unfortunately, the registrar was not informed of the acquittal, so the motorist was forced to visit the motor vehicle office to clear his record.¹¹² The registrar retained the motorist's license for one or two hours while it investigated his case.¹¹³ The motorist brought a civil action against the registrar for the unlawful surrender of his driver's license.¹¹⁴ The court stated that "The inconvenience which plaintiff experienced for not more than two hours on June 9, 1967 presents a classic situation for the application of the ancient legal maxim *de minimis non curat lex*."¹¹⁵

In the case of *Protestants & Other Americans United for Separation of Church & State v. O'Brien*,¹¹⁶ the plaintiffs tried to stop the postmaster general from issuing a commemorative Christmas postage stamp portraying a painting of the Madonna.¹¹⁷ The plaintiffs claimed that the likeness of the Madonna was a religious symbol commonly associated with the Roman Catholic Church and violated the First Amendment.¹¹⁸ Apart from the other legal issues involved in the case, the court stated: "[a] dispute over the image on a postage stamp seems hardly of sufficient magnitude to occupy the time and attention of the courts. This matter, standing alone, is within the scope of the maxim '*de minimis non curat lex*.'"¹¹⁹

In *Rose v. State*,¹²⁰ the plaintiff alleged that access to his home had been impaired as a result of construction of an underpass in front of his property.¹²¹

107. *Id.* at 302.

108. *Id.* at 303-04.

109. 295 F. Supp. 638 (D. Mass. 1969).

110. *Id.* at 639.

111. *Id.*

112. *Id.*

113. *Id.*

114. *Lowenstein*, 295 F. Supp. at 638-39.

115. *Id.* at 640.

116. 272 F. Supp. 712 (D.D.C. 1967).

117. *Id.* at 713.

118. *Id.*

119. *Id.*

120. 105 P.2d 302 (Cal. 1940), *vacated by* 123 P.2d 505 (Cal. 1942).

121. *Id.* at 304-05.

The trial court ordered the state to pay damages to the plaintiff.¹²² On appeal, the state argued that damages were mistakenly based on the plaintiff's 120-foot frontage on Jackson Street, when in fact, the frontage was only 118 feet as indicated by various maps.¹²³ On appeal, the court stated that even if such a "discrepancy did exist, it is so infinitesimal as to come within the rule of de minimus."¹²⁴

In *State v. Nevens*,¹²⁵ Mr. Nevens and his wife, after eating lunch at the Cornucopia Buffet in the Golden Nugget in Atlantic City, decided to leave the buffet with several pieces of fruit and eat them outside for dessert.¹²⁶ Mr. Nevens was later stopped on the boardwalk by hotel security guards and charged with theft of two bananas, an orange, an apple and a pear.¹²⁷ The court held that Nevens was not stockpiling food since he did not attempt to take enough food to satisfy one additional meal for either himself or his wife¹²⁸ and characterized the entire infraction as de minimis.¹²⁹

In *State v. Smith*,¹³⁰ the defendant was charged with shoplifting three pieces of bazooka bubble gum valued at \$.15 from a "7-11" convenience store.¹³¹ The defendant moved for a dismissal of his prosecution based upon the "de minimis" doctrine.¹³² The court noted that "[i]n the milieu of bubble gum pilferage the only cases more trivial were those involving two pieces or one"¹³³ and subsequently dismissed the case.¹³⁴

In *State v. McCann*,¹³⁵ Officer Bob Prieksat watched Clifford McCann pick up a can from the fishing dock, shake it, and throw it back onto the rocks.¹³⁶ McCann was charged with littering.¹³⁷ McCann defended his actions by alleging that the can was already on the dock, and that he merely moved it because it hindered his fishing.¹³⁸ The court concluded that "the [present] charge is based

122. *Id.* at 305.

123. *Id.* at 315.

124. *Id.*

125. 485 A.2d 345 (N.J. Super. Ct. Law Div. 1984).

126. *Id.* at 346.

127. *Id.*

128. *Id.* at 347.

129. *Id.* at 347-48.

130. 480 A.2d 236 (N.J. Super. Ct. Law Div. 1984).

131. *Id.* at 237.

132. *Id.*

133. *Id.* at 240.

134. *Id.* at 240-41.

135. 354 N.W.2d 202 (S.D. 1984).

136. *Id.* at 203.

137. *Id.*

138. *Id.*

on acts too trifling to warrant judicial condemnation."¹³⁹

In *Fenske Printing, Inc. v. Brinkman*,¹⁴⁰ the director of purchasing and printing for South Dakota's Bureau of Administration invited bids for several items of print work.¹⁴¹ The general specifications required bidders to submit samples of colored paper stock in "Goldenrod" and "Blue" in fifty-pound weight or the bid would be automatically rejected.¹⁴² The winning bidder included a fifty pound weight sample of "Goldenrod" paper and a seventy pound weight sample of "Blue" paper along with the notation "This color but 50 pound weight."¹⁴³ The losing bidder charged that the winning bidder did not comply with the proper bid specifications and, therefore, should have been rejected.¹⁴⁴ In determining that the winning bid was a valid one, a concurring justice stated, "Slight and insignificant imperfections or deviations may be 'overlooked, on the principle of de minimis non curat lex.'"¹⁴⁵

In the case of *People v. Feldman*,¹⁴⁶ the police charged the defendant with littering for dropping two matches used to light a cigarette on the sidewalk.¹⁴⁷ The court dismissed the charge concluding that it was "based on acts too trifling to warrant judicial condemnation."¹⁴⁸

Some state legislatures have enacted statutes to identify those situations where the judiciary may invoke the de minimis doctrine. For instance, the Hawaii Penal Code states in part:

Section 702-236 De minimis infractions. (1) The court may dismiss a prosecution if, having regard to the nature of the conduct alleged and the nature of the attendant circumstances, it finds that the defendant's conduct:

- (a) Was within a customary license or tolerance, which was not expressly refused by the person whose interest was infringed and which is not inconsistent with the purpose of the law defining the offense; or
- (b) Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an

139. *Id.* at 204 (quoting *People v. Feldman*, 342 N.Y.S.2d 956, 962 (N.Y. Crim. Ct. 1973)).

140. 349 N.W.2d 47 (S.D. 1984).

141. *Id.* at 47.

142. *Id.*

143. *Id.* at 48.

144. *Id.*

145. *Fenske Printing, Inc.*, 349 N.W. 2d at 48-49 (quoting *Cassino v. Yacevich*, 27 N.Y.S.2d 95, 98 (N.Y. App. Div. 1941)).

146. 342 N.Y.S.2d 956 (N.Y. Crim. Ct. 1973).

147. *Id.* at 961.

148. *Id.* at 962.

extent *too trivial* to warrant the condemnation of conviction
¹⁴⁹

The New Jersey Code of Criminal Justice has a similar provision:

Section 2C:2-11. De minimis infractions

The assignment judge may dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the defendant's conduct:

- a. Was within a customary license or tolerance, neither expressly negated by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense;
- b. Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent *too trivial* to warrant the condemnation of conviction¹⁵⁰

The Pennsylvania Consolidated Statutes state:

Section 312. De minimis infractions

(a) General rule.—The court shall dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the conduct of the defendant:

- (1) was within a customary license or tolerance, neither expressly negated by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense;
- (2) did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent *too trivial* to warrant the condemnation of conviction¹⁵¹

Even federal regulations make use of the de minimis doctrine, as evidenced by Chapter 18 of the Employment Retirement Income Security Act (“ERISA”).

[Section] 1389. De minimis rule

(a) Reduction of unfunded vested benefits allocable to employer withdrawn from plan

Except in the case of a plan amended under subsection (b) of this section, the amount of the unfunded vested benefits allocable under section 1391 of this title to an employer who withdraws from a plan shall be reduced by the smaller of—

149. HAW. REV. STAT. § 702-236 (1993) (emphasis added).

150. N.J. STAT. ANN. § 2C:2-11 (West 1995) (emphasis added).

151. 18 PA. CONS. STAT. ANN. § 312 (West 1998) (emphasis added).

- (1) 3/4 of 1 percent of the plan's unfunded vested obligations (determined as of the end of the plan year ending before the date of withdrawal), or
- (2) \$50,000, reduced by the amount, if any, by which the unfunded vested benefits allowable to the employer, determined without regard to this subsection, exceeds \$100,000.¹⁵²

2. De Minimis—When Not Applicable

The real controversy surrounding the de minimis doctrine is determining the circumstances upon which the court has deemed the maxim inappropriate. Some of the policy reasons behind the courts' refusal to invoke the de minimis doctrine include the operation of fairness, the protection of one's rights and property interests even when only slightly threatened, and strict enforcement of the law. This Article will now discuss some examples of these situations: land/property, constitutional rights, class actions, crimes, government regulations, fiduciary relationships, and debts.

a. Land/Property

Trespass is defined as an "unlawful act committed against the person or property of another."¹⁵³ Some courts state that the "de minimis" maxim is not applicable in cases of trespass, regardless of how minor the interference. "The right to maintain an action for the value of property, however small, of which the owner is wrongfully deprived, is never denied."¹⁵⁴

In *Hessel v. O'Hearn*,¹⁵⁵ fourteen Wisconsin police officers searched Hessel's premises for evidence of illegal gambling.¹⁵⁶ The Hessels claimed, among other things, that the officers stole three cans of soda.¹⁵⁷ "Officer Soblewski, admitted in disciplinary proceedings arising out of the search that he had drunk a can of the Hessels' soda pop," the value of which was under a dollar.¹⁵⁸ The court noted, "It would be a strange doctrine that theft is permissible so long as the amount taken is small—that police who conduct searches can with impunity steal, say, \$10 of the owner's property, but not

152. 29 U.S.C. § 1389 (1994).

153. BLACK'S LAW DICTIONARY 1508 (7th ed. 1999).

154. *Wartman v. Swindell*, 25 A. 356, 357 (N.J. 1892).

155. 977 F.2d 299 (7th Cir. 1992).

156. *Id.* at 301.

157. *Id.*

158. *Id.* at 302.

more."¹⁵⁹ As a result, the court held that "this maxim [de minimis] is never applied to the positive and wrongful invasion of another's property."¹⁶⁰

In *Yeakel v. Driscoll*,¹⁶¹ an opposite conclusion resulted.¹⁶² In *Yeakel*, a new firewall constructed by the defendant between a double home accidentally encroached onto the plaintiff's property by several inches.¹⁶³ The court held that removal or relocation of the firewall, even if it was possible, would not help the plaintiff and would be a hardship on the defendant, and removal was not ordered.¹⁶⁴ However, the dissent, relying on an earlier case, argued that a defendant has "no right at law or in equity . . . to occupy land that does not belong to them and we do not see how the court . . . could have done otherwise than recognize and act upon this principle."¹⁶⁵

The Arkansas court in *Leffingwell v. Glendenning*¹⁶⁶ aptly noted the differing views on trespass and the de minimis maxim when they stated, "[The] *de minimis non curat lex* doctrine does not apply to real property, although the rule is different in some states."¹⁶⁷ The court noted that some other courts have held that "if the encroachment is unintentional, [or] of no inconvenience to the adverse party, and the invasion is relatively insignificant, the protesting [party] will be" limited to damages only and not removal of the encroachment.¹⁶⁸ Factors such as mistake, triviality of damage, and the cost of compensating for the trespass in relationship to the degree of injury may also be considered by the court before making a determination on the issue.¹⁶⁹

b. Constitutional Rights

The protection of an individual's constitutional rights is another area of the law wherein the courts disagree on the subject of the applicability of the de minimis doctrine. Some courts hold that constitutional rights are so sacred in our system of justice that they can never be compromised, regardless of how

159. *Id.* at 303.

160. *Hessel*, 977 F.2d at 303 (quoting Max L. Veech & Charles R. Moon, *De Minimis Non Curat Lex*, 45 MICH. L. REV. 537, 550 (1947)).

161. 467 A.2d 1342 (Pa. Super. Ct. 1983).

162. *Id.* at 1344.

163. *Id.* at 1343.

164. *Id.* at 1344.

165. *Id.* at 1345 (Brosky, J., dissenting) (quoting *Pile v. Pedrick*, 31 A. 647, 647 (Pa. 1895)).

166. 238 S.W.2d 942 (Ark. 1951).

167. *Id.* at 943.

168. *Id.*

169. *Id.*

small the deprivation. In the case of *Lewis v. Woods*,¹⁷⁰ a prisoner complained that his constitutional rights were violated when prison officials took away a radio, valued at \$51.95, and an amplifier, valued at \$24.95, from a fellow inmate to whom he had loaned them.¹⁷¹ The district court dismissed the complaint on grounds that the property loss was *de minimis*.¹⁷² The court of appeals also denied the property claim (for different reasons i.e. the prisoners failed to allege facts in their pleadings to establish a deprivation of property without due process).¹⁷³ It stated, however, "A violation of constitutional rights is never *de minimis*."¹⁷⁴ The court explained "By making deprivation of such [constitutional] rights actionable . . . the law recognizes the importance to organized society that those rights be scrupulously observed."¹⁷⁵

A similar result came about in *Pullman Co. v. Dudley*.¹⁷⁶ In *Pullman*, a widow was accompanying her husband's remains on a train bound for Wichita Falls when she (without the dead body) was mistakenly transferred to a train headed to Dallas.¹⁷⁷ The body reached its destination on schedule, but she did not arrive until three or four hours later.¹⁷⁸ In oral argument, the railroad company acknowledged that the widow suffered some injury by mistakenly being put on a circuitous route.¹⁷⁹ However, they argued that her damages were *de minimis* and she should therefore receive nothing.¹⁸⁰ On the contrary, the court stated that the *de minimis* maxim "is not applicable . . . if a substantial right has been violated,"¹⁸¹ as was the case of the widow under the United States Transportation Act.¹⁸²

In *Bart v. Telford*,¹⁸³ Mary Bart, an employee of the city of Springfield, Illinois, claimed an infringement of her First Amendment right to freedom of speech when she was forced to take a leave of absence from her work while running for city mayor.¹⁸⁴ Although the court denied that Ms. Bart had a

170. 848 F.2d 649 (5th Cir. 1988).

171. *Id.* at 650.

172. *Id.* at 650-51.

173. *Id.* at 652.

174. *Id.* at 651.

175. *Lewis*, 848 F.2d at 651 (alteration in original) (quoting *Carey v. Phipps*, 435 U.S. 247, 266 (1978)).

176. 77 S.W.2d 592, 595 (Tex. Civ. App. 1934).

177. *Id.* at 593.

178. *Id.*

179. *Id.* at 595.

180. *Id.*

181. *Pullman*, 77 S.W.2d at 595.

182. *See id.* at 593.

183. 677 F.2d 622 (7th Cir. 1982).

184. *Id.* at 623-24.

constitutional right to run for public office,¹⁸⁵ it did concede that "since there is no justification for harassing people for exercising their constitutional rights [the harassment] need not be great in order to be actionable."¹⁸⁶ Thus, a de minimis standard may be applicable in similar types of situations.

In *Hessel v. O'Hearn*,¹⁸⁷ the Seventh Circuit Court of Appeals succinctly summed up the de minimis doctrine and constitutional rights and noted that any violation of substantive constitutional rights—such as the right to freedom of speech, or the right to be free from unreasonable searches and seizures—entitles a prevailing plaintiff to at least nominal damages.¹⁸⁸ Thus, the court intimated that even the smallest of intrusions are actionable.¹⁸⁹

c. Class Actions

The de minimis doctrine also plays an interesting role in class action lawsuits:

The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries¹⁹⁰

Put another way, the class action provides "for vindicating claims which, taken individually, are too small to justify legal action but which are of significant size if taken as a group."¹⁹¹ Thus, potential de minimis recoveries can be overcome by consolidation.

Notwithstanding that support, a class action lawsuit to recover minor individual damages was not successful in the case of *Harris v. Time, Inc.*¹⁹² In *Harris*, the plaintiff claimed Time tricked him by offering a free cheap plastic calculator watch just for opening a piece of junk mail.¹⁹³ The plaintiff claimed that he was deceived by the sales pitch to open the junk letter, which required a subscription to the magazine to receive the free watch.¹⁹⁴ The court commented:

185. *Id.* at 624.

186. *Id.* at 625.

187. 977 F.2d 299 (7th Cir. 1992).

188. *Id.* at 301-02.

189. *Id.* at 304.

190. *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997).

191. *Escott v. Barchris Constr. Co.*, 340 F.2d 731, 733 (2d Cir. 1965).

192. 237 Cal. Rptr. 584, 585 (Cal. Ct. App. 1987).

193. *Id.* at 585-86.

194. *Id.* at 586.

Although most of us, while murmuring an appropriate expletive, would have simply thrown away the mailer, and some might have stood on principle and filed an action in small claims court to obtain the calculator watch, [the plaintiff] did something a little different: he launched a \$15,000,000 [class action] lawsuit in San Francisco Superior Court.¹⁹⁵

The lawsuit was for a breach of contract.¹⁹⁶ The court then dismissed the case based on the *de minimis* maxim noting the lawsuit was an “absurd waste of the resources of this court, the superior court, the public interest law firm handling the case and the citizens of California whose taxes fund our judicial system.”¹⁹⁷

d. Crimes

In the area of criminal justice, there also exist inconsistencies amongst members of the judiciary concerning the use of the *de minimis* doctrine. “Historically, the maxim has been applied only to civil matters”¹⁹⁸ In accordance with those traditions, some modern courts have refused to apply the *de minimis* standard for cases involving criminal activity based on the rationale: there is no excuse for committing even the smallest of wrongs. For example, a Seventh Circuit Court stated,

The law does not excuse crimes or torts merely because the harm inflicted is small. You are not privileged to kill a person because he has only one minute to live, or to steal a penny from a Rockefeller. The size of the loss is relevant sometimes to jurisdiction, often to punishment, and always to damages, but rarely if ever to the existence of a legal wrong.¹⁹⁹

....
[S]uch doctrines [*de minimis*]. . . have little if any application to deliberate wrongs.²⁰⁰

In the case of *Commonwealth v. Moses*,²⁰¹ the defendant punched and then robbed a ten-year-old boy of his candy money (\$.35) in a north Philadelphia grocery store.²⁰² The defendant argued for dismissal since his conduct amounted to no more than a *de minimis* infraction.²⁰³ The court held that while “thirty-five

195. *Id.*

196. *Id.* at 585.

197. *Harris*, 237 Cal. Rptr. at 589.

198. *State v. Brown*, 458 A.2d 165, 169 (N.J. Super. Ct. Law Div. 1983).

199. *Hessel v. O'Hearn*, 977 F.2d 299, 303 (7th Cir. 1992).

200. *Id.* at 304.

201. 504 A.2d 330 (Pa. Super. Ct. 1986).

202. *Id.* at 331-32.

203. *Id.* at 332.

cents may seem a trifling amount to support a robbery conviction . . . the economic success of criminal activity is not the sole criterion of its criminality.”²⁰⁴ The court found the defendant guilty and sentenced him to one and one-half to three years of imprisonment.²⁰⁵

Another rationale for abandoning the de minimis doctrine in criminal cases was identified by the court in *United States v. Grubb*.²⁰⁶ In *Grubb*, the defendant was accused of attempting to slice his wrists for purposes of avoiding military service, which was a violation of Article 134 of the Uniform Code of Military Justice.²⁰⁷ In his concurrence, Judge Gingly stated,

regardless of how trivial may be the act of the accused or how trivial may be the material damage to the state or the individual concerned from a particular act, the damage or detriment from violation of the *principle*, because of which the act (trivial as it may be) is denounced as a crime, is fundamentally important: one violation of the principle may be the precedent for others and far reaching social evils may flow from trivial acts which violate the principle upon which the particular crime is predicated.²⁰⁸

e. Government Regulations

With regards to government regulations and the de minimis principle, courts have been inconsistent in adhering to federal, state and local precepts. Some jurisdictions strictly follow the regulatory intent of the political branches that created such rules, while others dispense with the exactness of regulations, and craft de minimis standards to fit the particular circumstances.

The Fair Labor Standards Act of 1938²⁰⁹ makes it unlawful for those engaged in the production of goods sold through interstate commerce to employ anyone in violation of overtime and minimum wage requirements.²¹⁰ In *Mabee v. White Plains Publishing Co.*,²¹¹ a publisher with a daily newspaper circulation of 9,000-11,000, argued that they should be exempt from the Act because they regularly shipped only forty-five copies (½ of 1 percent) of their newspapers to out-of-state subscribers—an insubstantial amount.²¹² The Supreme Court held that when Congress passed the Act, they made no

204. *Id.*

205. *Id.* at 331.

206. 6 C.M.R. 550 (A.F.B.R. 1952).

207. *Id.* at 555.

208. *Id.* at 562 (Gingery, J., concurring in part and dissenting in part).

209. See 29 U.S.C. §§ 201-219 (1994).

210. See 29 U.S.C. § 215(a)(1); see also 29 U.S.C. §§ 206, 207, 214.

211. 327 U.S. 178 (1946).

212. *Id.* at 180-81.

distinction on the basis of volume of business, thus the *de minimis* maxim had no applicability.²¹³

In *Wirtz v. Durham Sandwich Co.*,²¹⁴ the defendant was a corporation which was engaged in the manufacture, sale and distribution of sandwiches, cakes, pies, pastries and similar items to lunch counters and drug stores.²¹⁵ Carl Davis, who was employed by the defendant, spent about a half hour per week out of his work week of fifty-nine and one-half hours unloading and storing out-of-state shipments of goods.²¹⁶ The company argued that Durham was not engaged in interstate "commerce," and therefore not covered by the Fair Labor Standards Act.²¹⁷ The district court and later court of appeals held that the doctrine of *de minimis* was not applicable since the services performed were regular, continuous and essential to the movement of goods in commerce.²¹⁸

Occupational safety concerns was the issue in *Turner Communications Corp. v. Occupational Safety and Health Review Commission*.²¹⁹ In *Turner*, four employees of an outdoor sign business were changing a roadway sign when an Occupational Health and Safety Administration ("OSHA") officer cited them for not complying with proper federal safety standards.²²⁰ Among the many infractions noted, the employees were using a ladder more than twenty feet in length (estimated to be at least twenty-three feet long) which was in violation of 29 C.F.R. section 1926.450(a)(5).²²¹ The company argued that the violation of this rule "was *de minimis* and that it had no knowledge that this particular ladder exceeded twenty feet."²²² The administrative law judge held that a fall from a twenty-three foot ladder could result in serious injury and OSHA's allowance of *de minimis* safety violations would be unacceptable.²²³

In *United States v. Undetermined Quantities of Various Articles of Device Consisting in Whole or in Part of Proplast II or Proplast HA*,²²⁴ the United States brought an *in rem* forfeiture action pursuant to the Federal Food, Drug, and Cosmetic Act seizing medical devices because they were not made in conformity with Good Manufacturing Practice regulations.²²⁵ The district court

213. *Id.* at 181-82.

214. 367 F.2d 810 (4th Cir. 1966).

215. *Id.* at 811.

216. *Id.* at 812.

217. *Id.* at 811.

218. *Id.* at 812.

219. 612 F.2d 941, 944 (5th Cir. 1980).

220. *Id.* at 943.

221. *Id.*

222. *Id.* at 944.

223. *Id.* at 944-45.

224. 800 F. Supp. 499 (S.D. Tex. 1992).

225. *Id.* at 500.

held that the de minimis doctrine, which sometimes mitigates against the harsh results of strictly applying the Food and Drug Administration's tight regulations, did not apply in this case because the subject matter of the seizure was medical implant devices rather than food and required tighter standards to be enforced.²²⁶

Compare that result with the case of *United States v. General Foods Corp.*,²²⁷ where the government alleged that frozen french-style green beans were processed under conditions as to present a reasonable possibility that they could have become contaminated with filth in violation of the applicable section of the Federal Food, Drug, and Cosmetic Act.²²⁸ Even though mold was found in a sampling of the beans, the court held that the amount was de minimis and would not constitute a violation of the Act.²²⁹ A subsequent later court explained that the de minimis exception to enforcement of the Food, Drug, and Cosmetic Act allows a court to overlook small quantities of filth "especially in circumstances where no applicable [industry guideline] is in effect and there is no evidence that that quantity found is avoidable through the use of good manufacturing practice, taking into account the state of the industry."²³⁰

The law is full of cases where the court has abandoned the de minimis maxim in interpreting the tax code and taken a strict view concerning tax obligations and excessive assessments. The latter point was illustrated in the case of *Green v. McGrew*,²³¹ which involved the sale of real estate.²³² The amount of delinquent penalty and tax due at the time of sale was \$42.92, however, a penalty of six cents was erroneously added to a prior penalty, making the total \$43.00.²³³ The court invalidated the sale noting that "there is no satisfactory standard for determining what . . . should be regarded as a very small sum; and the taxpayer should be strictly protected from all exactions, however small, in excess of what the government, by due, legal processes, has imposed upon him as his share of the public burden."²³⁴

One of the most famous de minimis cases in the area of tariff regulations was *Varsity Watch Co. v. United States*.²³⁵ Paragraph 367(f) of the Tariff Act

226. *Id.* at 503.

227. 446 F. Supp. 740 (N.D.N.Y.), *aff'd*, 591 F.2d 1332 (1978) (table decision).

228. *Id.* at 743-44.

229. *Id.* at 754.

230. *Clover Leaf Dairy v. State*, 948 P.2d 1164, 1171 (Mont. 1997) (alteration in original) (quoting *General Foods Corp.*, 446 F. Supp. at 746).

231. 72 N.E. 1049 (Ind. Ct. App. 1905).

232. *Id.* at 1049.

233. *Id.* at 1050.

234. *Id.* at 1052.

235. 34 C.C.P.A. 155 (C.C.P.A. 1947).

of 1930 puts a higher duty rate on those items which are plated with gold.²³⁶ The merchandise in this case consisted of wrist-watch cases made of a very cheap metal.²³⁷ A slight quantity of gold amounting to less than one and one-half thousandths of one inch in thickness was added to the watch bezel by a process of electrolytic deposition for the purpose of imparting a gold appearance.²³⁸

The plaintiff invoked the rule of *de minimis non curat lex* and contended, that in light of the insignificant quantity of gold involved, the importation should be treated for classification purposes as if it contained no gold at all.²³⁹ The court held otherwise, stating that the *de minimis* rule was not applicable in such a matter because "Congress intended . . . to put the higher rate of duty upon those cases which were in part of gold, no matter how small."²⁴⁰

In the area of social security and retirement planning, strict adherence to regulations was the case in *McGlocklin v. Chater*²⁴¹ where the claimant was denied disability coverage because she was \$1.00 under the annual earnings required by regulation to qualify to receive benefits.²⁴² Unfortunately for the claimant, the law drew bright lines for determining eligibility and the court lacked the authority to disregard such regulations.²⁴³ Thus, the court was unable to apply the *de minimis* rule to override the claimant's miniscule shortcoming in income.²⁴⁴

Sometimes strict reading of a regulation goes too far, especially when harsh penalties are imposed for seemingly inconsequential acts. "Zero Tolerance" is a term which dictates that all infractions, however minor, will be punished and is frequently mentioned in connection with drugs, weapons, and harassment.²⁴⁵ The policy upholds a rigid and absolute standard which refuses to take into account particular circumstances of a given situation wherein even a *de minimis* violation is considered unacceptable.²⁴⁶ The following high profile cases, which have recently been publicized in the news, illustrate this policy, which sometimes appears to border on the absurd in its compliance.

236. *Id.* at 156.

237. *Id.* at 157.

238. *Id.*

239. *Id.* at 161.

240. *Varsity Watch Co.*, 34 C.C.P.A. at 163.

241. 948 F. Supp. 589 (W.D. Va. 1996).

242. *Id.* at 590.

243. *See id.* at 592.

244. *Id.*

245. Zero Tolerance = Zero Common Sense = Zero Justice, at <http://www.crossmyt.com/hc/zerotol/zero-tol.html> (last visited Feb. 11, 2002).

246. *See id.*

As reported by the Amarillo-Globe News, Colin Dunlap, a DuPont Junior High School student, was suspended for three days under the school's anti-drug policy for failing to get his cough lozenges cleared by the school's office before offering them to another classmate.²⁴⁷ "There has to be zero tolerance for kids not following the procedures in our attempts to protect them from something harmful," Principal Forest Mann said.²⁴⁸

In a similar story, five-year-old Ryan Hudson was suspended from his kindergarten class for bringing a beeper to school and showing it to his classmates.²⁴⁹ School rules expressly forbid students from bringing pagers into school.²⁵⁰ As CNN reported, Ryan's suspension was "the latest in a series of disciplinary actions—for seemingly minor violations—based on a nationwide trend for schools to adopt 'zero tolerance' policies on drugs and weapons."²⁵¹

f. Fiduciary Responsibilities

The de minimis doctrine has also been found to be inapplicable in situations when one is placed in a position of trust, such as a fiduciary,²⁵² whose responsibility cannot be compromised under any circumstances.²⁵³ In *Sorin v. Shahmoon Industries, Inc.*,²⁵⁴ officers of a corporation were accused of misappropriating company funds by engaging in stock purchase agreements.²⁵⁵ The court stated, "The duty of a fiduciary does not extend only to major matters or substantial amounts over which he has control. It extends to the last penny with which he is entrusted."²⁵⁶ "A fiduciary must account for the funds

247. *Student Suspended for Giving Cough Drop*, AMARILLO GLOBE-NEWS, Nov. 14, 1997, at 3.

248. *Id.*

249. CNN Interactive, *Kindergartner Suspended for Bringing Beeper to School*, at <http://www.cnn.com/US/9610/29/briefs/beeper/index.html> (Oct. 29, 1996).

250. *Id.*

251. *Id.*

252. A fiduciary duty is

[a] duty of utmost good faith, trust, confidence, and candor owed by a fiduciary (such as a lawyer or corporate officer) to the beneficiary (such as a lawyer's client or a shareholder); a duty to act with the highest degree of honesty and loyalty toward another person and in the best interests of the other person (such as the duty that one partner owes to another).

BLACK'S LAW DICTIONARY 523 (7th ed. 1999).

253. "The term [fiduciary] . . . means . . . a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires." *Id.*

254. 220 N.Y.S.2d 760 (N.Y. Sup. Ct. 1961).

255. *Id.* at 766.

256. *Id.* at 779.

entrusted to his care—and that means ‘all of such funds’, not ‘some’ or even ‘most’ of them.”²⁵⁷ Accordingly, the *de minimis* doctrine does not apply to fiduciary responsibilities.

g. Debts

Money and contracts were the issues in the case of *Kennedy v. Gramling*.²⁵⁸ *Kennedy* involved an acceptance of an offer to buy a house.²⁵⁹ The defendant buyer sent a letter to the plaintiff seller offering \$3,800 for the house and distinctly declaring, “I would not give more.”²⁶⁰ The plaintiff seller replied, “I will accept your offer of three thousand eight hundred dollars; this is to be clear of expense of titles, etc.”²⁶¹ The court recognized, “[T]he difference between the amount offered and the amount agreed to be accepted is small, but that cannot affect the question [of whether there was a meeting of the minds].”²⁶² The court concluded that no valid contract existed, stating that “[t]he maxim, *de minimis non curat lex*, has no application to money demands.”²⁶³

IV. CONCLUSION

“Ancient doctrines have survived in legal forums where they make common sense, serve the public at large, and at the same time do not disserve the ends of justice”²⁶⁴ This general principle has been illustrated in this Article regarding the enduring legacy of the legal maxim, “*de minimis non curat lex*,” the law cares not for trifles. However, as this Article has pointed out, courts still disagree as to exactly when and under what circumstances the doctrine applies. Sometimes the *de minimis* maxim has been disregarded by the courts merely by the need to “establish a right of a permanent and valuable nature.”²⁶⁵ Another view takes the position that the court should consider the relationship between the amount of the actionable wrong to the amount of harm caused before deciding whether a *de minimis* situation exists.²⁶⁶

257. *Id.*

258. 11 S.E. 1081, 1081 (S.C. 1890).

259. *Id.* at 1081.

260. *Id.* at 1082.

261. *Id.*

262. *Id.* at 1088.

263. *Kennedy*, 11 S.E. at 1088.

264. *Schlichtman v. N.J. Highway Auth.*, 579 A.2d 1275, 1279 (N.J. Super. Ct. Law Div. 1990).

265. *Id.*

266. *See Hessel v. O'Hearn*, 977 F.2d 299, 303-04 (7th Cir. 1992).

In conclusion, perhaps the *State v. Park*²⁶⁷ court said it best when they identified the relationship between discretion and the de minimis doctrine: “The disposition of a case, whether civil or criminal, by the application of the maxim ‘*de minimis non curat lex*’ is an exercise of judicial power, and nothing else.”²⁶⁸

267. 525 P.2d 586 (Haw. 1974).

268. *Id.* at 592.

