

Trusts & Estates

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Case Management Lessons From 'The Art of War' Part 3: Substance and Application (Continued)

BY TIMOTHY S. MIDURA & COLLEEN L. SAHLAS

This is the third and final article in a three-part series of articles which extrapolates case management lessons from military principles taught in *The Art of War* by Sun Tzu. We hope to inspire you to think creatively, strategically, and tactically in your case planning and implementation (whether litigation, administration, business or everyday) with timely adaptation as circumstances change.

This article is not purporting the idea of lawyering as war. Rather, we discussed in part one the concept of being peacemakers over war-makers. Because conflict is inevitable and unavoidable, developing conflict and case management skills are paramount in our profession. The chief end of the Art of War and its principles is the avoidance of war, the promotion of peace, and the best interests of the people. It is important to be knowledgeable and conversant in the Rules of Professional Conduct and also be true to your personal morals and ethics

In part one, we introduced the main themes, defined pertinent terms and asked fundamental questions found in *The Art of War*. In part two, we delved into the first six chapters of the Art of War and its principles which provide relevant, case management

applications.

Now, let's cover the final seven chapters.

CHAPTER VII -- Maneuvering Engaging the Force, Military Combat, and Military Maneuvers

The chapter on Maneuvering explores avoiding direct conflict with the enemy when he is ready, at advantage, and in position of strength. Figure out how to turn the devious into direct and misfortune into gain. Dissimulation or deception is an element to success. Maneuvering requires the artifice of deviation or "sleight of hand."

- **Use experts to best advise you in unfamiliar matters.** In unfamiliar territory local guides are necessary to turn natural advantages. Seek advice from others. Maneuvering requires analyzing the pros and cons of inherent compromises and choosing the best advantage.
- **Emphasize the quality of your tactic.** Whether conducting procedure, research, drafting a brief, etc., do it well.
- **Reward your "troops."** Well-rewarded resources will self-energize and create necessary vitality.
- **Ponder and deliberate before you make a move.** Look before you leap. Avoid being baited.
- **Constantly evaluate the circumstances to best derive your tactics and strategies.** Consider your advantages and the other's disadvantages, and then capitalize on them.
- **Using economically or prudently conserving one's own strength includes:** (1) being near the goal when the enemy is still far; (2) being at ease while the enemy is still toiling and struggling; and (3) being well fed while the enemy is hungry. Then take advantage of your upper hand.
- **Do not choose a battle that directly confronts the ready strength of the other side.** Do not fight a battle known to be lost before it begins. Be informed of the spirit, moods, attitudes, and state of affairs of the enemy. Time your attacks when he is mentally, emotionally, and physically least prepared.
- **Permit a graceful exit for your opponent which saves your own resources but still results**

in your victory. What is a good and acceptable marginal return of victory? In the enemy's defeat, leave an "out" for them. The enemy will be less averse to losing if they can "save face." Look for a win that does not necessarily mean destruction for the enemy. This may otherwise result in a desperate defense that may be more costly for you.

CHAPTER VIII -- Variation of Tactics

The Nine Variations, Nine Changes, Variations and Adaptability

The chapter on Variation of Tactics explores flexibility in responses to different and changing circumstances. Sun Tzu said: The art of war recognizes nine varieties of ground: (1) Dispersive ground; (2) facile ground; (3) contentious ground; (4) open ground; (5) ground of intersecting highways; (6) serious ground; (7) difficult ground; (8) hemmed-in ground; and (9) desperate ground.

- Always evaluate and adjust tactics and strategies. A variety of circumstances occur and drive different tactics. Plans must adjust and vary to circumstances.
- Even the sovereign should not be obeyed if defeat will most certainly result. There are tactics and strategies that are inappropriate in certain situations. Accordingly, when a client's instructions are wrong, refuse to follow them.
- **When there are particular difficulties, be vigilant for "outs."** Difficulties require additional vigilance so advantages may be seized and misfortune averted.
- **Attempt to weaken the opponent by dividing his/her team and allied parties.** Pick at and pick off enemy allies based on varying effective tactics.
- **Do not merely hope that your client and stance will not be challenged.** Be prepared to have a solid defense when and if you are challenged. Do not rely on the likelihood or

chance of the enemy not coming or attacking, but instead on one's own readiness to receive him/her by having made one's position unassailable.

- **Avoid the five (5) sins of a General:** (1) recklessness, that leads to destruction; (2) cowardice, that leads to capture; (3) hasty temper, that can be provoked by insults; (4) delicacy of honor, that is sensitive to shame; and (5) over-solicitude for troops, that exposes to worry and trouble.

CHAPTER IX -- The Army on the March

Moving the Force, Maneuvering the Army, Movement and Development of Troops

The chapter on The Army on the March explores how varying terrain effects movements and responses to these situations. It also explores evaluating the dispositions and intentions of the enemy.

- **Anticipate and prepare your response to circumstances that will favor the enemy.** If there are hiding places, don't ignore them or leave them untended to your detriment.
- **Gather intelligence about your opponent's plans, strengths, weaknesses, and dispositions.** Study your enemy and his/her surroundings for signs of his/her strengths, weaknesses, and dispositions. Beware of dissimulation.
- **Analyze factors which might bring an effective "win," such as:** (1) your opponent having a "weakly funded war chest" or weakness of spirit; (2) tactics against your opponent such as a blast of discovery, motions, or demands at an inconvenient time; and (3) holding out a settlement offer after several blasts against your opponent.

CHAPTER X -- Terrain

Situational Positioning, Configurations of Terrain

The chapter on Terrain explores various kinds of terrain and natural aspects of resistance, advantages.

- **Understand the natural and inherent circumstances and their ramifications and then adapt.** A general must: (1) estimate the enemy; (2) control his/her own forces; (3) calculate the difficulties; and (4) make calculated use of natural circumstances.
- **Have a proper, balanced, and effective team. Organize and communicate.**
- Victory will be assured if you: (1) know the enemy, (2) know yourself, and (3) know the circumstances. Constantly evaluate, and timely adapt to, the totality of one's self, one's opponent, inherent strengths and weaknesses, and natural circumstances.
- **Evaluate which venues, processes, and procedures place your client in a more advantageous position.** Now, do the same for your opponent. How can you maneuver to your advantage and your opponent's disadvantage? Know the terrain and know it better than the enemy. Study the advantages and disadvantages of the terrain to be traversed. Capitalize on the choice terrain and minimize arduous terrain for your client. Facilitate the opposite for the enemy. Choose the battle place and time. Adapt strategy and tactics. Then, establish your client in the superior position and the enemy in a detrimental position.

CHAPTER XI -- The Nine Situations

Nine Terrains, The Nine Battlegrounds

The chapter on The Nine Situations explores common terrains and how to adapt to them.

- Different circumstances require different strategies and tactics.
- Give the opponent a way out for victory that is less costly for yourself.
- Seek to unite allies and create synergy through commonalities.

- Be an analyst of human nature as well as circumstances.
- Use expert consultants to reduce the perils of the unfamiliar and unknowns.
- Persist in pressing your opponent and seeking advantage and forcing his/her mistakes.
- Once assigned the case, then take control.
- Do not lose your advantages. Capitalize on them. Decisively fight battles in your time and way, otherwise delay and reposition. Don't agree to requested delays that serve the interests of your opponent but not you.

CHAPTER XII -- The Attack by Fire

The Fiery Attack, Incendiary Attacks, Attacking with Fire

The chapter on The Attack by Fire explores the ways and considerations of using fire and also perspectives of good leadership.

- **Fire is a potent form of attack which can backfire on you.** Use of fire can be unbridled, coordinated, and/or contained. Fire in a fireplace can be contained, controlled, and beneficial as they generate heat and light. Forest fires are wild, unpredictable, and catastrophic. Use more potent forms of attack in a highly strategic manner. Be ready to use potent attacks in their proper time and season. Be heedful and cautious to avoid unnecessary losses. Have an overall plan with facilitated resources.
- **Only engage for reasons of true advantage, gain, or absolute necessity.** Do not move unless there is advantage, something to be

gained, or the position is critical.

- **Personal emotions must be disregarded.** Listen to counsel and be cautious. It is not good to engage merely for self-gratification, pride, or resentment on your part or your client's part. Anger and vexation dissipate, but a kingdom destroyed is not restored and dead are not brought back to life.

CHAPTER XIII -- The Use of Spies

The Use of Intelligence, Employing Spies, Intelligence and Espionage

The chapter on The Use of Spies explores the importance of intelligence sources.

- At war, the end goal of spying is knowledge of the enemy. **One cannot afford to remain ignorant of the enemy's condition. Foreknowledge enables effective strike and victory.** Spies can be used to gather intelligence but also to disseminate controlled information intended to manipulate the enemy.
- **Gathering intelligence on the opponent's situation and disposition is critically important** for the development and adaptation of strategies and tactics.
- Determining how to cultivate necessary information will depend on available resources intelligence and ethical boundaries.

Remember that one's opponents may not adhere to the same moral standards or ethical boundaries as you. Protect your own information, plans and positions.

SUMMARY LESSONS:

Have a proper purpose to the case. Do not fight a losing cause.

- **Count the cost before acting. Inventory and order the required**

resources needed to win. Devise a plan.

- No one profits from prolonged battles. Preserve resources and avoid situations which will deplete them.
- Disguise your plan. Use secrecy and hide your "playbook," so to speak.
- Do your due diligence. Knowledge and discovery of the facts are the key to victory. Know the enemy, know yourself and your client. Utilize experts in unknown areas.
- **Continually re-evaluate and adjust tactics and strategies.**
- **Do not fight solely out of emotion.**
- The best defense is a good defense.
- The best method of fighting is not to fight at all.

The chief end of the principles in *The Art of War* is the avoidance of war, the promotion of peace, and the best interests of the people. These same principles can also determine whether your trusts and estates case management skills will lead to success or failure in a particular matter.■

Timothy S. Midura, C.P.A., J.D., LL.M., is an attorney and director with the firm Huck Bouma, P.C. His specialties include: estate planning, estate and trust administration, conflicted estate matters, and not-for-profit organizations. Tim can be reached at tmidura@HuckBouma.com

Colleen L. Sahlas a law partner at The Law Offices of Hoy & Sahlas, LLC, in Oak Brook, Illinois, and has focused her practice in estate planning, decedent's estates, real estate, and business since 2000. She serves on the Illinois State Bar Association's Trusts and Estates Council and is managing editor of its newsletter. Colleen can be reached at Colleen@hoyweb.com