

# BREAKING THE PRACTICE AREA BARRIER

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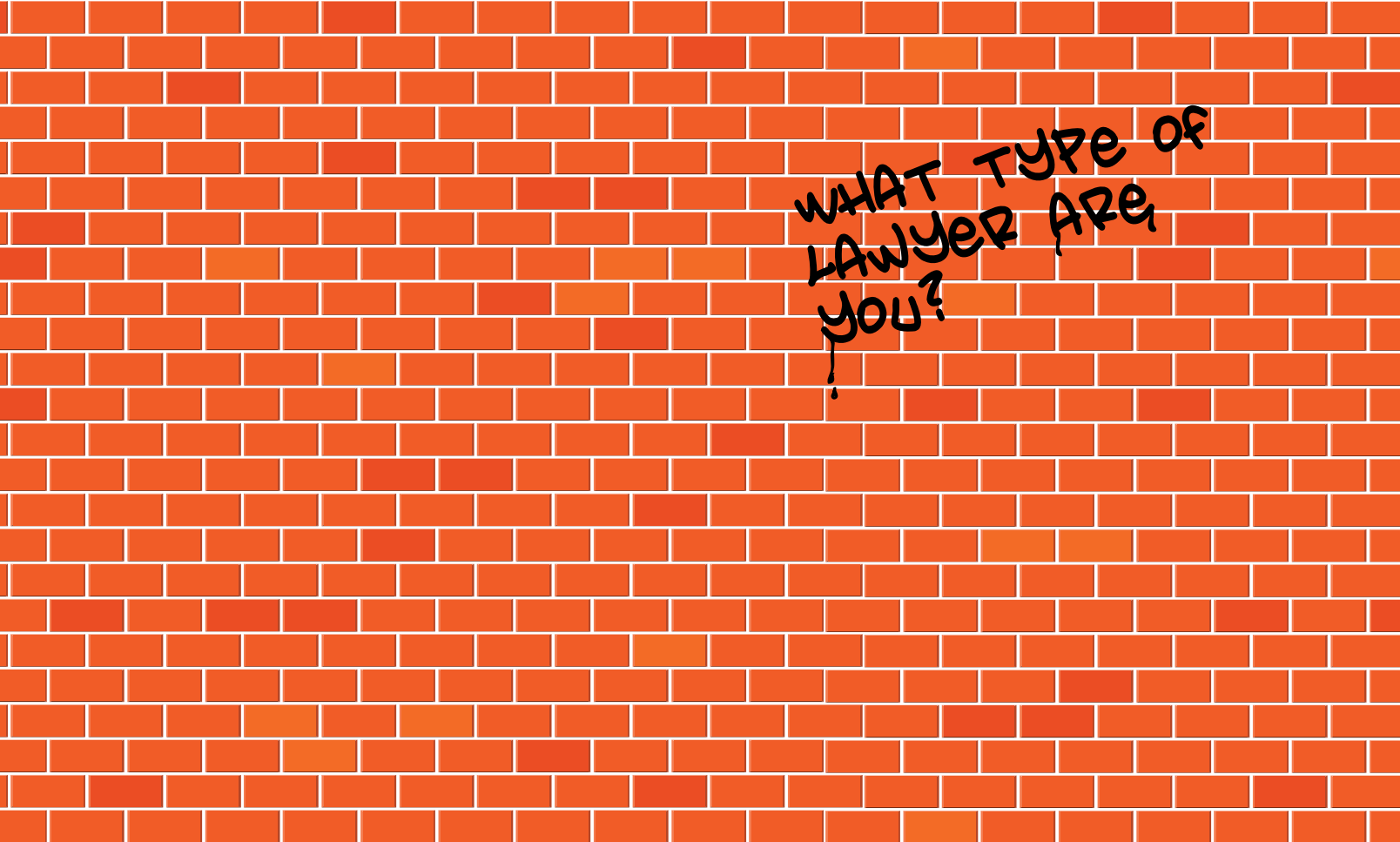
**W**hen I introduce myself to others as a lawyer, the first question is often, “What *type* of lawyer are you?” The question is sensible. The day-to-day work of a lawyer can vary tremendously, depending on his or her specialization. And consequently, the legal world divides attorneys into an intricate taxonomy, from the most general groupings to subspecialties in particular practice areas. This classification-based view of the legal profession, though, can pigeonhole lawyers, when in reality some of the barriers between practice areas are semipermeable.

## CIVIL AND CRIMINAL APPEALS: NOT AS DIFFERENT AS YOU THINK

Take the perceived dichotomy between civil and criminal appeals. Although lawyers are often classified as practicing

one or the other, civil and criminal appellate law share many basic principles. Appellants are limited to errors that appear in the record. Forfeiture further narrows cognizable issues—to the chagrin of civil and criminal appellants alike. Both civil and criminal appeals often use the same standards of review as a prism through which to view trial court rulings. Both also employ a single evidence code and identical canons of statutory construction. The same features of both types of trials—motions *in limine* and jury instructions—often provide the best fodder for appellate issues.

Moreover, the skills that make a great appellate attorney are the same regardless of whether the appeal is of a civil or criminal nature. Appellate lawyers need keen attention to detail when reviewing the record. Strong legal research abilities are also a must. And there is a premium for top-notch analytical reasoning. Finally, a great appellate lawyer must be an outstanding writer to distill nuanced legal principles into clear and persuasive prose.



WHAT TYPE OF  
LAWYER ARE  
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So the main difference between civil and criminal appeals is not principle- or skill-based, but rather knowledge-based. Yet even this difference is somewhat overstated. To be sure, civil and criminal appellate law procedures are governed by different portions of the California Rules of Court. The deviations of procedure are pronounced, though, mostly because of the default similarities. It would not take long for a civil appellate lawyer to realize that the grace period for filing a late opening brief in a criminal appeal is thirty days, instead of the fifteen days to which he or she is accustomed.

A more substantial hurdle, however, is what could be called structural or peripheral knowledge. Both civil and criminal appellate law have their own seminal cases that, over time, have created distinctive legal frameworks. A lawyer's understanding of this framework becomes critical at two junctures in the appellate process. First, when the lawyer reviews the record, this understanding helps identify viable appellate issues. Second, when the lawyer

analyzes and writes about these issues, it provides useful context about how to frame arguments for the appellate justices. An appellate lawyer who does not grasp the underlying structure might be able to understand the narrow question precisely at issue, but not understand how it affects the big picture.

The barrier between civil and criminal appellate law, then, is (somewhat) illusory. Both share many basic principles. And both reward the same skills from lawyers. But their distinctive, underlying structures isolate each from the other to some extent. In fact, this semipermeable barrier is exemplified by how the State Bar of California treats appellate specialists in these respective areas. There are separate civil and criminal appellate specialty exams, which quiz lawyers on arcane questions of procedure within each field. But for lawyers who pass either of these two tests, there is only a single, unified appellate specialist certification. Two roads lead to the same destination.

## THE LESSON FOR SOLO AND SMALL FIRM LAWYERS: MEASURED GROWTH INTO NEW LEGAL AREAS

This closer-than-expected relationship between civil and criminal appellate law provides a takeaway for all lawyers, but particularly for solo practitioners and small firms. Without full-service practices, entrepreneurial lawyers often ask themselves whether to stay niche or to tackle new practice areas. The possible incentives for the latter course are apparent: a more diverse client base and an interesting variety of legal work. In addition, as with the significant overlap between criminal and civil appellate law described above, specialties with different labels can actually be similar enough to make the expansion worthwhile. But before leaping headfirst, there are some significant caveats to keep in mind.

The first consideration is that some areas of the law, including immigration and tax law, are particularly insular. In the appellate law example above, both civil and criminal appeals have distinctive underlying structures. But on the whole, a skilled lawyer can overcome this hurdle through diligent research. By contrast, some areas of the law require such a substantial, critical mass of specialized knowledge that they become legal islands. For instance, both immigration and tax law require knowledge of byzantine administrative regimes that rely on ever-changing policy positions. Moreover, these specialties do not operate in a linear fashion, where a conscientious newcomer can winnow down where to find the answer to a pressing question. Rather, the answer might depend on so many factors—or rely on practical know-how—that significant experience is essential.

The second factor is the limiting force of public perception. Even if a lawyer has the ability to expand into a new area of the law, potential clients aren't easily convinced. It is much easier to persuade someone based on experience, a tangible trait, than an amorphous quality such as the transferability of skills. This skepticism is why lawyers

often expand their practices based on the ad hoc needs of existing clients, rather than as a planned strategy.

Accordingly, lawyers should not be reluctant to expand their practices, but should do so prudently. As an initial matter, one-time legal problems in unfamiliar areas should be referred to competent counsel. It's not worth learning a new area of the law for a single client. But lawyers can thoughtfully explore legal subjects that are adjacent to their current practices. In deciding whether a new legal area is adjacent, a lawyer should consider the overlap of legal principles and skills between it and the lawyer's current practice area. With ample overlap, a lawyer should immerse him- or herself in the new area. The Bar Association of San Francisco CLEs and section memberships provide a good starting point. Specialty associations and mentorships can also give invaluable support for delving into new legal terrain.

As the legal world becomes increasingly complicated, it's natural for lawyers to hunker down into a particular niche. But the same market and technological forces that drive specialization also empower nimble attorneys to add diversity—and income—to their practices. The semipermeable nature of barriers between legal practice areas presents an opportunity to those willing to push the envelope in strategic ways.

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