

A Super Unconventional Legal Analysis

JAMES DAILY & RYAN DAVIDSON, THE LAW OF SUPERHEROES (Penguin Grp. (USA) Inc. eds., 2012).

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“If Superman was a police officer, he probably couldn’t use his X-ray vision to locate [] drug stashes. Or, at least, any evidence obtained using X-ray vision in the absence of a warrant or justification for a warrantless search would be inadmissible.”¹

“The Law of Superheroes” was created and coauthored by two practicing attorneys, James Daily and Ryan Davidson,² who take the reader on a joyride through the DC and Marvel Universes, encountering and analyzing hypothetical legal issues along the way. Readers should be concerned not with the veracity of the legal analysis, nor quibble about the intricacies of American jurisprudence. Instead, in a legal world dominated by the blasé, appreciate this unconventional, light-hearted approach to exploring the law.

Daily and Davidson are both licensed to practice law; Missouri for the former, Indiana and Pennsylvania for the latter.³ Daily earned his Juris Doctor degree from the Washington University in St. Louis School of Law in 2008, and then gained employment thereafter at the

¹ See JAMES DAILY & RYAN DAVIDSON, THE LAW OF SUPERHEROES 98 (Penguin Grp. (USA) Inc. eds., 2012) (epitomizing the types of legal analyses present in this work).

² See *id.* at iii (introducing the authors and recognizing their legal backgrounds).

³ See *id.* (identifying the states in which the authors can legally practice).

University's Center for Empirical Research in the Law.⁴ Similarly, Davidson endeavored in the study of law at Notre Dame Law School in 2009, and now runs his own private practice.⁵ Aside from their passion for law, the authors' also share a zest and zeal for comics, which ultimately lead Daily to create, and both to coauthor their blog, Law and the Multiverse.⁶ Like the premise of this book, Law and the Multiverse takes the same approach to exploring legal issues through superhero-centric hypothetical situations.⁷ In fact, the authors' inspiration for this book actually grew out of the mounting popularity for their blog, which was essentially the predecessor project.⁸

"The Law of Superheroes" does not strictly adhere to the area of technology law, although much of the subject matter does deal with technological advancements due to the character of superheroes, and the nature of their futuristic attributes. With that being said, practice areas covered stretch from intellectual property law in the case of Batman's gadgets,⁹ to constitutional law with regards to the civil rights of "mutants" like the X-Men.¹⁰ Aside from these very narrowed topics, this book discusses a different major practice area in each chapter, ranging from criminal law in chapter two, to business law in chapter seven.¹¹

⁴ See *About, L. & THE MULTIVERSE*, archived at perma.cc/465K-FBWT, (last visited Feb. 5, 2016) (describing Daily's background and current employment situation).

⁵ See *id.* (detailing Davidson's educational history and professional experience).

⁶ See DAILY & DAVIDSON, *supra* note 1, at iii, xi (explaining a basis for the authors' interest in comics).

⁷ See *About*, *supra* note 4 (introducing the purpose of the authors' blog and comparing it to that the book).

⁸ See DAILY & DAVIDSON, *supra* note 1, at iii (attributing the inception of this book to the success of the blog).

⁹ See DAILY & DAVIDSON, *supra* note 1, at 196-201 (discussing whether Batman could patent his gadgets). Although this topic falls under the heading of intellectual property law, and more specifically patent law, the gadgets themselves could still be characterized as "technology." *Id.*

¹⁰ See DAILY & DAVIDSON, *supra* note 1, at 23-31 (debating whether the X-Men should be afforded constitutional protections). The dominant argument is that X-Men with "gene mutations" should be granted strict scrutiny and thus shielded by the Equal Protection Clause of the Fourteenth Amendment. *Id.* at 23-25.

¹¹ See DAILY & DAVIDSON, *supra* note 1, at ix (outlining the major practice areas in the book). Additionally, constitutional law is outlined in chapter one; evidence in chapter three; criminal procedure in chapter four; tort law in chapter five; contracts in chapter six; administrative law in chapter eight; intellectual property in chapter nine; travel and immigration in chapter ten; immigration law in chapter eleven; immortality, alter-egos, and resurrection in chapter twelve, and non-human intelligences in chapter thirteen. *Id.* at ix-x.

Again, this work is not intended to be a substantive examination of real-world legal issues, but rather a “little side project”¹² assembled by self-proclaimed “comic book nerds.”¹³ The legal arguments made are not the crux of this book’s relevance. Instead, this work exists as a pleasurable, easy read for people whose interests intersect at law and comics. That is not to say that the contentions made throughout are inaccurate or unsubstantiated, as much of the legal analysis is concise and supported by precedent case law. In fact, in the introduction, the authors make it a point to suggest that legal knowledge is not necessary to read and enjoy this work.¹⁴ This assertion is supported by a “legal sources and citations” section following the book’s introduction, and preceding chapter one, where the authors take a few pages to explain the use of footnotes, the formatting of *Bluebook* citations, and even the use of “*Id.*”¹⁵ Finally, in typical lawyerly fashion, the authors include a disclaimer just to solidify the point that “[n]othing in [their] book constitutes legal advice,” and the legal analysis “should not be relied upon in real-world legal situations.”¹⁶

As alluded to earlier, this book is preferable for readers with converging interests in superhero comics and the law. However, the authors underestimate the level of comic book story knowledge necessary to fully understand the hypothetical situations discussed therein. Similarly, the authors downplay the requisite amount of legal knowledge a person would need to appreciate the legal discussions taking place. In actuality, contrary to what the authors may suggest, this book is really best suited for readers who have expansive knowledge in both of the aforementioned areas. For example, although the layman generally understands the concept of

¹² See DAILY & DAVIDSON, *supra* note 1, at 289 (representing how the authors depict this work).

¹³ See DAILY & DAVIDSON, *supra* note 1, at xi (exemplifying how the authors characterize themselves).

¹⁴ See DAILY & DAVIDSON, *supra* note 1, at xi (inferring that laymen as well as legal scholars can read and understand this book). The authors suggest that if someone has an interest in the hypothetical questions posed in the introductory section, or “if they just sound awesome,” then this book will be entertaining. *Id.*

¹⁵ See DAILY & DAVIDSON, *supra* note 1, at xv-xvii (explaining the functionality of legal citations).

¹⁶ See DAILY & DAVIDSON, *supra* note 1, at xiii (releasing the authors from liability, and asserting copyright and trademark rights of Marvel Characters, Inc. and DC Comics, Inc.).

murder, when discussing the validity of the conviction of Nyssa Raatko's murder of Ra's al Ghul and her subsequent stay at Arkham Asylum after Ra's al Ghul is resurrected, it would behoove the reader to have expansive knowledge of the DC universe.¹⁷ Likewise, without cursory knowledge of how governmental administrations function as a part of a local, state, or federal regulatory system, a reader is unlikely to understand the relationship between Superman and the Internal Revenue Service (IRS), and the tax implications of gifting thousands of dollars worth of diamonds to Lana Lang.¹⁸ With that being said, the authors do a commendable job of giving brief legal explanations before delving into legal complexities, so that a reader unseasoned in law can easily comprehend and enjoy the discussions.

Judging by the playful vibe of the front cover art, one would be mistaken in thinking this book skimps on the breadth of legal analysis. Given the authors' legal backgrounds and current professional experience, it should not come as a surprise that their legal explanations are thoroughly teased out. For instance, to substantiate their claim that obtaining evidence through the use of Superman's X-ray vision without a warrant to do so violates of the Fourth Amendment of the Constitution, the authors cite the seminal case of *Kyllo v. United States*, 553 U.S. 27 (2001), where the United States Supreme Court held that using thermal imaging technology to detect the presence of a marijuana growing operation without a warrant is unconstitutional.¹⁹ Analogizing this farfetched situation to precedent case law is just one example of how this book uses hypothetical scenarios to explore, explain, and then expand upon existing law.

¹⁷ See DAILY & DAVIDSON, *supra* note 1, at 58-61 (observing a difficulty in appreciating a specific discussion without extensive comic book knowledge).

¹⁸ See DAILY & DAVIDSON, *supra* note 1, at 190-93 (questioning a layman's ability to grasp the complexity of tax law without knowledge of administrative law).

¹⁹ See DAILY & DAVIDSON, *supra* note 1, at 97-99 (showing how actual case law can be used in discussing hypothetical situations).

Ultimately, “The Law of Superheroes” is a fresh take on an industry dominated by the mundane. The amount of legal knowledge required to follow the discussions is about equivalent to the amount of comic book knowledge required; both of which demand an above average familiarity with the topics. However, these are not absolute necessities. A legal scholar with little to no superhero knowledge, and a comic book enthusiast with little to no legal knowledge could both make it through the book, and even have a pleasant read, but one without the other will likely leave a reader with something to be desired. As a law student with no superhero knowledge aside from mainstream movie titles, I struggled at times to follow some of the more sophisticated comic book references. Most of the time I was able to make reasonable inferences from the context of the sentences, but there is no doubt that the discussions will be more entertaining for someone with a passion for old school comics and the law alike. In sum, “The Law of Superheroes” is nothing more than a fun read reserved for spare time, but with legitimate legal analyses contained throughout, there is enough substance to keep the legal scholar entertained so long as he or she is also a comic book nerd at heart.