



Unified Common-law Grand Jury of Southern Africa
Southern Africa chapter of the committee in support of the
International Tribunal for Natural Justice

www.itnj.org

www.giftotruth.wordpress.com/faqs/

www.itnjcommittee.org

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Nomocracy = Rule of Law

3rd revised edition December 2015

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administrator: **Unified Common Law Grand Jury of Southern Africa**
aka **Unified Grand Jury ZA**, hereinafter **UZA**,
1st people's courts, forums, oversight committees and tribunals,

Towards: *"A government of all the people, by all the people, for all the people."* - T. Parker.

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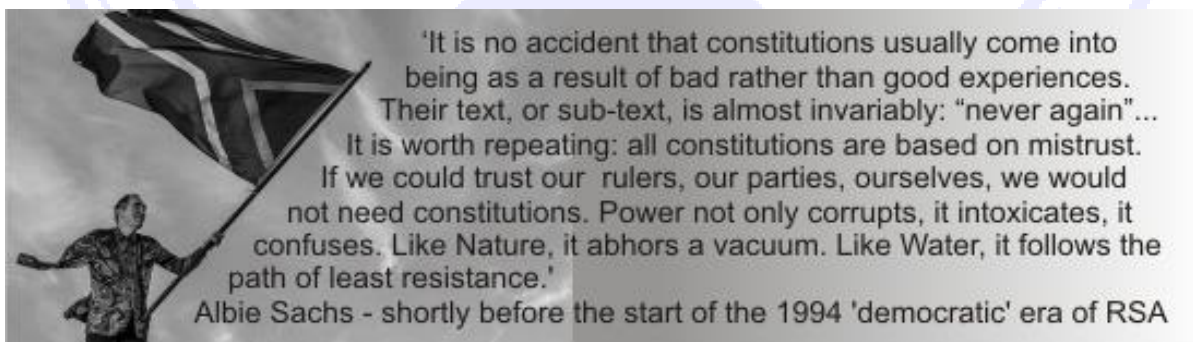
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UZA is recognized as the **SA Chapter** of the **ITNJ committee** in support of the
International Tribunal for Natural Justice (ITNJ):

<https://itnjcommittee.org/about-us/chapter/southern-africa/>

ITNJ: <http://www.itnj.org>

Support: <http://www.itnjcommittee.org>



Everything in South Africa is about **CONTRACTS** and it is our burden as Africans to ensure our public servants make government perform honourably; to be specific and to prohibit them from changing the meaning of common words, which is referred to in their circle of friends as: "legalese!"

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Interestingly, the 1893 Dictionary of Arts and Literature – Encyclopedia Britannica definition of the word “LEGAL” is: **“THE UNDOING OF GOD’S LAW.”**

Introducing UZA:

UZA is the first people’s courts, forums, oversight committees and tribunals under original living jurisdiction since mercantile law of the sea came onto the land of Southern Africa which was when Bartholomew Dias made a land claim in 1488 when he planted the stone crosses around Southern Africa on behalf of the Pope and the Hapsburg crown of Portugal and Spain.

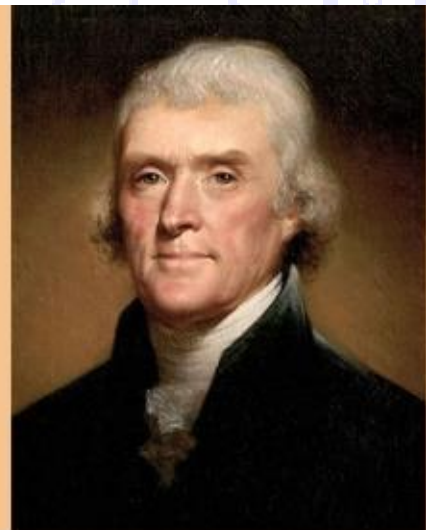
Chapter Profile:

The judiciary, as a separate and independent branch of government, **SHOULD BE** providing fair and accessible justice services that protect the rights of people, preserve community welfare and inspire real public confidence. **INSTEAD, THERE CURRENTLY IS NO CONFIDENCE IN THE SYSTEM!**

We currently do not have a lawful Republic, a common wealth of all people, equally which is based on the **will of we, the people**; only a living re-public form of government based on the will of the people with a **lawful Bill of Rights** at centre stage as the supreme law, can create a win-win for all people. Within this framework communities can exercise their right to self-governance and self-determination.

“The two enemies of the people are criminals and government, so let us tie the second down with the chains of the constitution so the second will not become the legalized version of the first.”

– Thomas Jefferson



The need for Judicial Activism:

"As a society increases in size, sophistication and technology, the body of laws which is required to control that society also increases in size, scope and complexity. With this growth, the law directly affects more and more facets of individual behavior, creating an expanding need for legal services on the part of the individual members of the society. . . . As legal guidance in social and commercial behavior increasingly becomes necessary, there will come a concurrent demand from the layman that such guidance be made available to him. This demand will not come from those who are able to employ the best of legal talent, nor

from those who can obtain legal assistance at little or no cost. It will come from the large 'forgotten middle income class,' who can neither afford to pay proportionately large fees nor qualify for ultra-low-cost services.

The legal profession must recognize this inevitable demand and consider methods whereby it can be satisfied. If the profession fails to provide such methods, the laity will."

[Comment, Providing Legal Services for the Middle Class in Civil Matters: The Problem, the Duty and a Solution, 26 U.Pitt.L.Rev. 811, 811-12 (1965).] [emphasis added]

"The issue is not whether we shall do something or do nothing. The demand for ordinary everyday legal justice is so great and the moral nature of the demand is so strong that the issue has become whether we devise, maintain, and support suitable agencies able to satisfy the demand or, by our own default, force the government to take over the job, supplant us, and ultimately dominate us." [Smith, Legal Service Offices for Persons of Moderate Means, 1949 Wis.L.Rev. 416, 418 (1949).][emphasis added]

"Since Baxter and Wiechers wrote their text books on South African administrative law in 1984 and 1985 respectively, the underpinnings of the South African state have been changed fundamentally by the interim Constitution and the final Constitution. In particular, the constitutional system has changed, from one based on parliamentary sovereignty, to one in which the Constitution is supreme. Section 7(2) provides that the 'state must respect, protect, promote and fulfill the rights in the Bill of Rights' contained in Chapter 2 of the Constitution, and s8(1) provides that the Bill of Rights 'applies to all law and binds the legislature, the executive, the judiciary, and all organs of state'. Section 8(2) allows for the Bill of Rights to bind natural or juristic persons who are not organs of state in certain circumstances." - Judge C. Plaskett – *The fundamental right to just administration in the democratic South Africa*; pg. 16

Vision Statement of UZA:

We believe that in order to properly heal the divisions of the past, we are morally and ethically obligated to address the prevalent wrongs of economic and judicial apartheid which abrogate people's already established natural Creator-given rights. We believe that only trial by jury courts wherein all people are deemed equally accountable as peers and wherein court proceedings are in a living, natural law jurisdiction, be it common-law, customary law or oral tradition, have any jurisdiction over the natural man.

Therefore, every community has the unalienable right to establish and participate in its own court decision-making processes at natural law which is superior in all cases to man-made laws.

Mission of UZA:

- We assist, counsel, educate, train and give guidance to people and communities wishing to establish and participate in their own people's courts, forums, oversight committees and or tribunals by their own custom and free-will choice.
- We negotiate peaceful and positive conflict resolution between disputing parties or states to create a win-win for all people;

- The values that the **people's courts** hold enshrines the rights of all people of Southern Africa and affirms the people's values of dignity, equality, freedom and justice by the rule of law and therefore reflects the unique and pivotal role that the people's courts play in the cultural, social and economic life of we, the people as the living body of the living states and as a living commonwealth which represents the will of we, the people and functions with full participation by the people, for the people and of the people so as to ensure our constitutional rights are upheld.

Court of Record:

To this end, on the 10th Day of November 2013, **UZA** was decreed into session before 8 witnesses at Noordhoek, Cape Peninsula on the land of Southern Africa as a **court of record** where the **law of the case** is living natural law: common law (as opposed to civil enacted common law), customary law and oral tradition by free-will choice of the affected people and as the law of place (lex loci) gives guidance.

5 Requirements to be a Court of Record:

1. Keeps Record of proceedings according to the common-law;
2. Acts and judicial proceedings are enrolled or recorded for a perpetual memory and testimony;
3. A judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it;
4. Power to find or imprison for contempt;
5. Court Seal;

Everyone should be able to comprehend the law:

You will discover herein that ACT/STATUTE are not "law" and that semantic deceit is employed to garner a semblance of fraudulent consent under the colour of law.

PLAIN-LANGUAGE MOVEMENT. 1. The loosely organized campaign to encourage legal writers and business writers to write clearly and concisely — without legalese — while preserving accuracy and precision. 2. The body of persons involved in this campaign.

LEGALESE. (lee-g<<schwa>>-leez). The jargon characteristically used by lawyers, esp. in legal documents <the partner chided the associate about the rampant legalese in the draft sublease>. See PLAIN-LANGUAGE MOVEMENT. [Black's Law 8th Edition]

The following is really all the "**Law**" that we need to live by:

One Sacred Universal Law - "Do no harm, cause no loss"

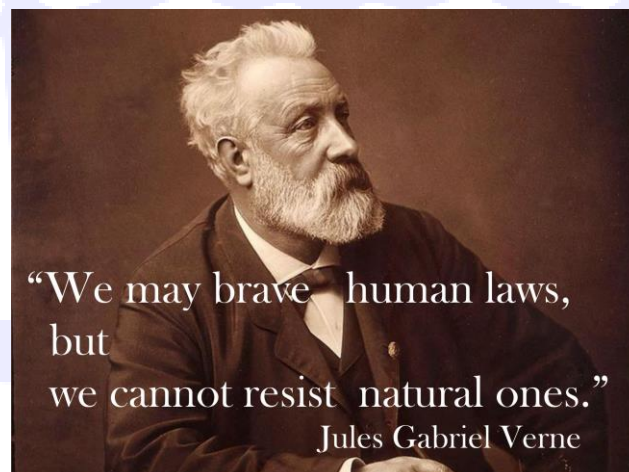
Five Ethics - Truth, Integrity, Accountability, Responsibility, Transparency.

Why is Law so important to We, the People?

There are ancient proverbs and established principles that have been carried orally and written in some cases since the beginning of mankind... some are so old that we do not know exactly where they originated; these established principles in law have already confirmed our unalienable rights to life, liberty and justice; the 'powers that were' have gradually started changing some meanings as well as removing others in order to erode these already established rights and hoping that we would be dumbed down ... and forget...

Lest we or our children forget:

The following are important terms, rulings, maxims, common-law court procedure etc. for your education and for perpetual memory so that the future generations NEVER AGAIN need to endure what the last few generations have had to. This is in honour of those who have made sacrifices in the name of Freedom, Rights & Justice for all people, equally. An injury to one is an injury to all.



"You don't know how an apple tastes until you taste it. You don't know what a fish tastes like until you eat it. You don't know how it is to be a woman unless you are one. You don't know what it means to have a baby until you have one. So it is with the natural laws.

An example: the natural law of forgiveness says, if you hate someone, pray for the person to be blessed with happiness, joy and all the blessings of the Great Spirit. You will not know about this law unless you do it. The natural law says love others as you love yourself. If you hate yourself or feel guilty in some area of yourself, you will tend to judge and condemn your neighbour.

You cannot give away what you don't have. You teach your children by your example, not by your words. **The natural laws are written in our hearts.**

Great Spirit, teach me how to look into my heart."

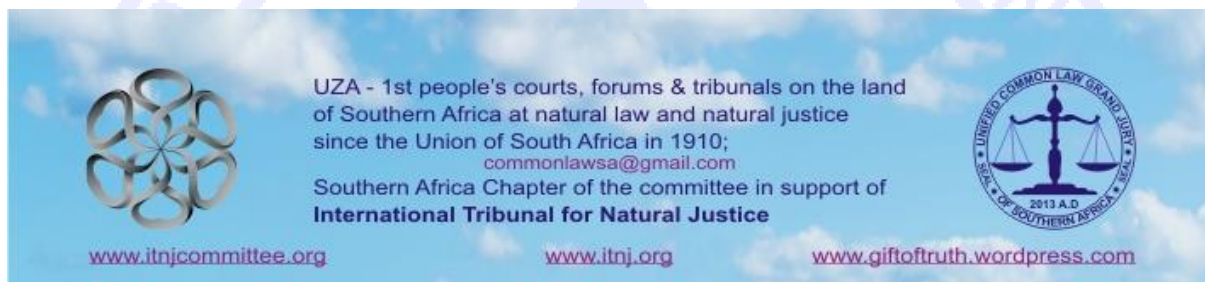
White Bison's Philosophy

Educational and Source Material Links:

What you see here is 5 years of full-time research which now equals over 15 000 man hours, not adding the 1 000s of hours by people whose research we used.

Black's Law 4th Edition, 1968 has been invaluable; all herein definitions are from Black's 4th unless specified otherwise; this manual is for commonly used legal or lawful definitions. You will discover that there are civil and common-law definitions which oppose at times hence the reason to comprehend the difference between legalese and common English;

Giftoftruth United:



The banner features a blue background with a white cloud pattern. On the left is a logo of interlocking rings. In the center, text reads: "UZA - 1st people's courts, forums & tribunals on the land of Southern Africa at natural law and natural justice since the Union of South Africa in 1910; commonlawsa@gmail.com Southern Africa Chapter of the committee in support of International Tribunal for Natural Justice". On the right is the seal of the University of the Free State, Southern Africa, featuring a scale of justice and the text "UNIVERSITY OF THE FREE STATE, SOUTHERN AFRICA 2013 A.D.". Below the text are three website URLs: www.itnjcommittee.org, www.itnj.org, and www.giftoftruth.wordpress.com.

All research material regarding the law and your rights is posted on various pages of www.giftoftruth.wordpress.com

The best place to start is at our FAQs page for all navigational links to the pages at: <http://www.giftoftruth.wordpress.com/faqs/>

Manuals:

Pdf manuals which were used as source material and interpreted, correlated and translated to Southern Africa as a Republic under constitutional supremacy that again protects us from criminals:

<https://www.giftoftruth.wordpress.com/manuals/>

International Tribunal for Natural Justice:

There is more information on common-law and Natural Law at the **International Tribunal for Natural Justice** (ITNJ) page: <http://www.itnj.org>

If one scrolls down the menu bar and open the **common-law** page:

- Origin of common-law
- Evolution to common-law
- Full text of Commentaries on the Laws of England Volume I to IV, by Sir William Blackstone, considered an expert in the field;
- Natural law

Important deception/remedy documents to read from the same page:

- 1789 Judiciary Act - An act to establish Judicial Courts of USA
- 1794 Jay Treaty - of Amity, Commerce, and Navigation between Crown & USA
- 1798 An Act Respecting Alien Enemies We are enemies in the field
- 1863 Lieber code, general order 100 Instructions for armies in field
- 1983 Credit River Decision Foreclosures null & void

Other Sites:

www.nationallibertyalliance.org (download mp3 audio common-law lectures)

www.1215.org (more documentation)

www.i-uv.com (oppt foreclosure campaign)

<http://scannedretina.com> (hosting comments by Judge Anna von Reitz)

All **Annexures** referred to herein are posted at:

<http://www.giftoftruth.wordpress.com/annexures/>

All definitions are from **Black's Law Dictionary 4th edition unless specified otherwise;**

“So great moreover is the regard of the law for private property, that it will not authorize the least violation; no, not even for the general good of the whole community.” - William Blackstone; Commentaries on the Laws of England

Evidence of Fraud:

“The problem isn't just the judicial system running hopelessly amok. It's the fact that all these “governments” are actually nothing but privately owned and operated “governmental services corporations” being run by international banking cartels that have operated under conditions of secrecy and deceit to co-opt lawful government and instigate a vast web of fraud and criminality throughout the world.

It's not just the Federal United States. It's the “government” of the UK, CANADA, FRANCE, GERMANY, AUSTRALIA, JAPAN..... all fakes.

The truth has come out finally and conclusively. There are so many people to thank for that, it beggars description....but the rats have been fully and absolutely exposed. The criminality of the banking system has been fully documented by **The Paradigm Project**— Heather Tucci-Jaref and others. A few American lawyers remained true to the American cause and a few DOD employees did too, and they all did their actual jobs. As a result, the bankers are caught, dead in the water.

And the fraud is at an end, no longer something that can be suppressed and contained by filthy politicians and bankers meeting in secret.

The rats in DC are in a bad position, and more and more of them are realizing it. 177 nations worldwide have recognized that the “Federal United States” has acted as a criminal syndicate and that it has been operating in a form and in a way forbidden by its charter and the treaty and trust documents allowing its existence, that it has not faithfully “represented” the Continental United States and the American People, but has instead been misusing and abusing Americans at home and then also misusing American resources including Armed Forces as Bullies against other countries, fomenting war for profit, and engaging in every kind of vice and war profiteering in “target countries.”

While we Americans have been kept ignorant and clueless by the perpetrators of these fraud schemes (all of which are easily recognized classic bunko schemes merely executed on an unimaginably large scale) what I would most like to share with the rest of the world at this point is that the American People — the People of the Continental United States as opposed to some elements operating the Federal United States — are good people, moral people, peace-loving, hard-working, God-fearing people. We were lied to, bullied, purposefully deceived, taxed to death, deprived of basic rights guaranteed by our actual Constitution, press-ganged into the international jurisdiction of the sea, and defrauded of our labor and our actual property assets. We suffered along with the rest of the world.

Those responsible include the Crown Corporation and its agencies and subsidiaries, the government of the Inner City of London aka WESTMINSTER, the Lord Mayor, the Lords of the Admiralty, the British Monarch dba ELIZABETH II, IMF, FEDERAL RESERVE, THE UNITED STATES OF AMERICA, INC., and so on. Please note that the British Monarch is the American International Trustee on the High Seas and Inland Waterways and that all the abuse we have suffered and which the rest of the world has endured, too, has been caused by British mismanagement and war-mongering for profit.

The other thing I would like the world to know is that many American government officials, even members of Congress, were kept in the dark. This entire criminal scheme was designed to be operated by just a few at the top.” – Judge Anna von Reitz

<http://nesaranews.blogspot.co.za/2015/12/here-is-article-from-judge-anna-that-we.html?m=1>

“All B.A.R. Associations are ‘Foreign Union’ and members are all working in collusion with Israel; the British Empire; the Vatican; the Rothschild and Rockefeller Banking Empires; Congress and the Elite to undermine the world. All attorneys at law are ‘Agents of a Foreign Power’ who swear allegiance to that Foreign Power [i.e.] The Queen of England. Currently, ALL recognized courts are commercially controlled by the British Accreditation Regency (BAR) using maritime law courts where fraudulent commercial contracts are enforced on the people which violate our in-a-lien-able rights in every way possible.” - From Judge Dale

(retired American) - The Great American Adventure; download this and other educational manuals from: <http://giftoftruth.wordpress.com/manuals/>

America: “According to the Articles of Confederation, the phrase: “We the People” is defined to mean, “We the Delegates,” which refers only to the politicians and not the public, which proves again that: “The Constitution of the United States of America,” was never intended to protect or serve the American public. There are several early administrative court rulings, which confirm this same conclusion, for those of you who require something more than common sense and my educated opinion or observations.” - From Judge Dale (retired American): *The Great American Adventure*; Download this manual and others that led us down this path of discovery and remembering from <http://giftoftruth.wordpress.com/manuals/>

Comment by uza: Our findings are also that the **REPUBLIC OF SOUTH AFRICA** is part of a privately owned federal government and our ‘persons’ are legal fictions ‘registered’ as the assets; All substantiating evidence and research is now to be found at: <http://giftoftruth.wordpress.com/annexures/>
Final and clear proof of fraud by the banksters at:
<http://giftoftruth.wordpress.com/whistleblowers/>

The law does not protect those that slumber on their rights;



**Albie Sachs – The Strange Alchemy between Life and Law
– retired Constitutional Judge and father of the bill of rights:**

**“Just as nature abhors
a vacuum, so does the
Constitution,
completely.”**

UZA comment:

**there is a vacuum and that vacuum is natural law,
the living law of the land, international common law,
customary law and oral traditions: the spirit of the law.**

South African Law:

The following is a summary of what the 'legal' BAR experts have to say regarding South African Law. Keep in mind when they refer to common law, they are referring to enacted Roman-Dutch CIVIL "common-law" which is still mercantile law of the sea which only applies to legal fictions. The **law of the land** is all established principles NOT written into legislative ACTs or STATUTE. Herein lays the deception:

Republic VS **DEMOCRACY**

This is how an OLIGARCHY creates the illusion of 'government' 'ownership', domination and control by "press-gang"ing us from the **Law of the Land ... into the ... LAW OF THE SEA**

Law of the Land = un-enacted Law
Living law, customs, maxims etc.
People = flesh & blood living souls
Issue, offspring, biological property
Public policy by common law
Superior Jurisdiction = Law of Land
The People Protected by Bill of Rights
Sentence Case: Capitis diminutio MAXIMA
You = People (plural); a People (singular)
a living soul: I reside in my body
Republic = Commonwealth of all people
Judges = oathed/affirmed arbitrators
Peace Officers oathed to the people.
Vote = Recorded by Referendum
Referendum = by, for, and of the people
Commonwealth held in trust for we: natural heirs
We, the people are the natural Creditors
Courts, forums, tribunals = Trial by jury

ENACTED ACTS/STATUTE/CODE
applies only to 'EMPLOYEES'
CITIZENS=LEGAL FICTIONS
CHILD/SON/DAUGHTER
PUBLIC POLICY = BY STATUTE
DEFN:ACT = LIMITED SERVITUDE
CITIZENS=BODY OF CONSTITUTION
ALL CAPITALS - CORPORATIONS
YOU = PERSON = LEGAL FICTION
'YOUR' PERSON RESIDES IN:
FED DEMOCRACY = MOB RULE
JUDGES = EXEC ADMIN
LAW ENFORCEMENT OFFICERS
VOTER REGISTRATION
REGISTRATION = THE CROWN
'OWNERSHIP' = OLIGARCHY
CITIZENS ARE DEBTORS
ALL COURTS = COMMERCIAL

"No provision in our Constitution ought to be dearer to man than that which protects the rights of conscience against the enterprises of the civil authority." - T. Jefferson



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"South Africa has a 'hybrid' or 'mixed' legal system, formed by interweaving of a number of distinct legal traditions: a civil law system inherited from the Dutch, a common law system inherited from the British, and a customary law system inherited from indigenous Africans

(often termed African Customary Law, of which there are many variations depending on the tribal origin). These traditions have had a complex interrelationship, with the English influence most apparent in procedural aspects of the legal system and methods of adjudication, and the Roman-Dutch influence most visible in its **substantive private law**. As a general rule, **South Africa follows English law in both criminal** and civil procedure, company law, **constitutional law and the law of evidence**; while Roman-Dutch common law is followed in the South African contract law, law of delict (tort), law of persons, law of things, family law, etc. With the commencement in 1994 of the interim Constitution, and in 1997 its replacement, the final Constitution, another strand has been added to this weave.”

Sources of South African Law

South Africa's law is sourced from (1) statutory law made by the legislative body (the most important of which is of course the Constitution), (2) **common law (this includes the Roman-Dutch 'old authorities' and judicial precedent gleaned from case law)**, (3) African customary law, and (4) foreign and international law. Note that Custom, and Legal scholarship are not in themselves sources of law, although they inform the interpretation and application of law.

Sources of law that are binding or authoritative must be followed by judges in making decisions, while persuasive sources are not binding on their decisions. The authoritative effect of a source for a particular decision depends on the type of source, the position of the judge in the hierarchy of courts, and the other sources that are relevant to the question at hand.

Refer to **[Annexure – THE LAW SYSTEM OF SOUTH AFRICA](http://giftoftruth.wordpress.com/annexures/)**
<http://giftoftruth.wordpress.com/annexures/>

Constitution:

The Constitution of South Africa Act, 1996 (published as Act No. 108 of 1996) which governs and applies to all law and conduct within the territory of South Africa. **Any law or conduct which contravenes the provisions of the Constitution is invalid and therefore illegal.**

Customary international law

ss 232. Customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

Application of international law

ss. 233. When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.

Self-determination

235. The right of the South African people as a whole to self-determination, as manifested in this Constitution, does not preclude, within the framework of this right, recognition of the notion of the right of self-determination of any community sharing a common cultural and

language heritage, within a territorial entity in the Republic or in any other way, determined by national legislation.

Statutory law

Statutory law is the codified part of the South African Law. These laws are contained in Acts and By laws, and various pieces of subordinate legislation, which is passed by the legislature of South Africa (Parliament).

Common Law Precedent

Not all law is contained in Acts passed by Parliament. Much of South African law is based on common law, and there is a great reliance on Common Law in South Africa. The development of the Common Law of South Africa is made possible by the fact that the South African courts follow the system of **legal precedent or stare decisis**. This enables a higher court to develop the law in such a way that it becomes a precedent for lower courts to follow. As law is not an empirical science, it cannot be expected of Parliament or any other legislative body to be able to presuppose all possible scenarios of life and enact relevant laws to cater for them. This is why South African Law places a great emphasis on the Higher courts to develop the law through their decisions, which become precedents and as such become law which is also known as case law.

Roman-Dutch law

(Dutch: Rooms-Hollands recht, Afrikaans: Romeins-Hollandse reg) is a casuistic (judge-made) legal system based on Roman law as applied in the Netherlands in the 17th and 18th centuries. As such, it is a variety of the European continental civil law or ius commune. While Roman-Dutch law was superseded by Napoleonic codal law in the Netherlands proper as early as the beginning of the 19th century, Roman-Dutch law is still applied by the courts of South Africa (and its neighbours Lesotho, Swaziland, Namibia, Botswana and Zimbabwe), Guyana, Indonesia, East Timor, and Sri Lanka. It was largely drawn upon by Scots law. It also had some negligible impact on New York state, especially in introducing the office of prosecutor (schout). [Reinhard Zimmermann: The Law of Obligations. Cape Town 1990. Reprinted Muenchen, Cape Town 1992, ISBN 3-406-37246-5.]

Roman-Dutch authorities

It follows that if one's task is to research the provisions of a particular law applicable in South Africa, one should consult the codified legislation, case law and failing this, one can follow the originating sources, i.e. English Law or Roman-Dutch Law (also known as "the Old Authorities") as the case may be. Any application of such a source must be lawful within the context of the Constitution and the spirit in which it was written.

Court System in South Africa

There is a hierarchy of courts, consisting of Magistrates Courts, High Courts, a Supreme Court of Appeal, the highest authority in non-Constitutional matters, and a Constitutional Court, which is the highest authority in constitutional matters. The Constitutional Court has final authority to decide whether an issue is a Constitutional one.

History of South African law

May 31 1910 until 1961

From the "union" of the Cape Colony, Natal, Transvaal and Orange Free State in 1910 as a dominion within the British Empire called the Union of South Africa, and prior to the formation of the same territory as the Republic of South Africa in 1961, much of English law

was incorporated into or formed the basis of South African law. It and the Roman-Dutch Law which held sway prior to this period forms the bedrock to which South Africa even now turns in its search for clarity in its law, and where there is a vacuum in its law.

April 6 1652 until 1910

From the 6 April 1652 landing of the Dutch in the Cape of Good Hope, the spread of the Roman-Dutch legal system and its legislation and laws took increasing hold, holding sway until the Union of South Africa as a dominion of the British Empire was formed on 31 May 1910. Even after this and to date, wherever British law does not stand, Roman-Dutch law forms the bedrock to which South Africa turns in its search for clarity in its law.

Prior to April 6 1652

With no written history, and the failure of the successive Dutch, British and Apartheid regimes to record the laws of pre-colonial southern Africa, there is a dearth of information about these laws. However, the current South African legal regime recognises the importance of these and no doubt over time, traditional indigenous law will more and more flavour South African legislation and other law as it emerges, and in doing so will reveal its colours to researchers such as historians and anthropologists.

Du Bois, F (ed) "Wille's Principles of South African Law" 9th ed. Cape Town, Juta & Co, 2007. Zimmermann, Reinhard and Visser, Daniel P. (1996) Southern Cross: Civil Law and Common Law in South Africa Clarendon Press, Oxford, ISBN 0198260873 ; Joubert, W. A. et al. (2004) The Law of South Africa LexisNexis Butterworths, Durban, South Africa, ISBN 0409004480 ;

Old authorities

I. Treatises. The numerous works of the Dutch jurists, written in Dutch and Latin at various dates from the sixteenth to the nineteenth centuries, **are cited to-day as authoritative statements of the law with which they deal. A modern text-book has no such authority.** The rules therein expressed are merely opinions which Counsel in addressing the Court may, if he pleases, incorporate in his argument, but which have no independent claim to attention, however eminent their author. The works of the older writers, on the contrary, have a weight comparable to that of the decisions of the Courts, or of the limited number of 'books of authority' in English Law. They are authentic statements of the law itself, and, as such, hold their ground until shown to be wrong. Of course the opinions of these writers are very often at variance amongst themselves or bear an archaic stamp. In such event the Courts will adopt the view which is supported by authority or most consonant with reason; or will decline to follow any, if all of the competing doctrines seem to be out of harmony with the conditions of modern life; or, again, will take a rule of the old law, and explain or modify it in the sense demanded by convenience. [For a bibliography of Roman-Dutch law books see The Commercial Laws of the World, vol. xv—South Africa—pp. 14 ff.]

Generally speaking the older the dictionary is the more likely the true legal meaning of the word. Newer dictionaries tend to be skewed by legalese to reflect the policies of the powers-that-be rather than the law.

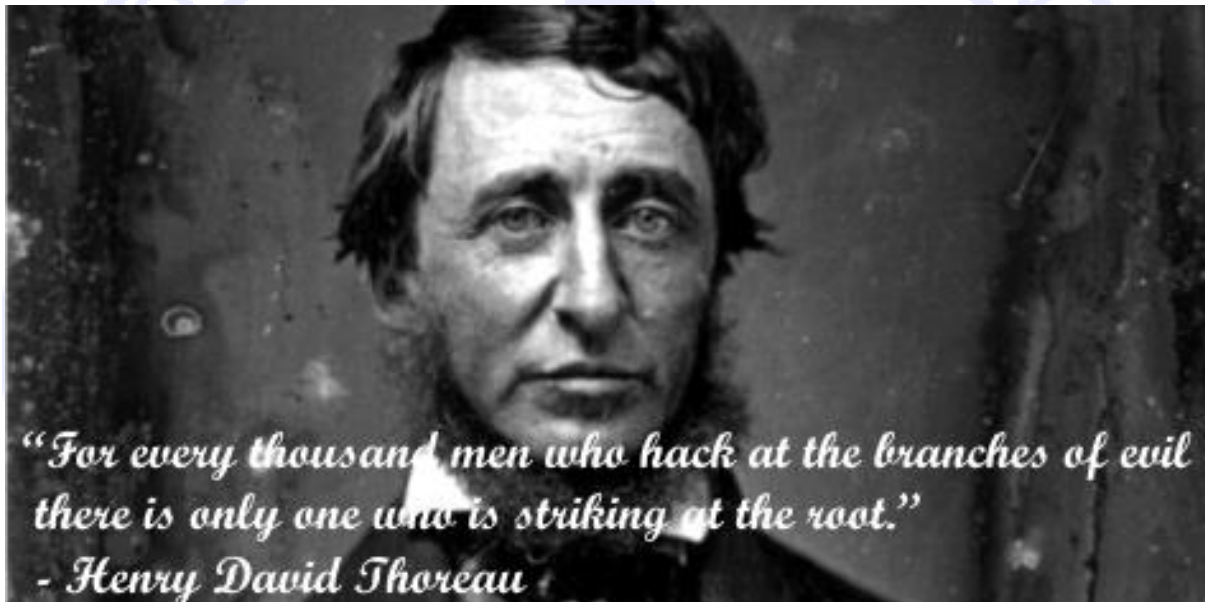
For an extreme example of a dictionary that has succumbed to such pressure, see www.dictionary.law.com

For all common law definitions herein refer to **Black's Law Dictionary 4th Edition** and earlier.

Sovereignty:

SUPREME COURT RULING – NO CORPORATE JURISDICTION OVER THE NATURAL MAN

Supreme Court of the United States 1795, “Inasmuch as every government is an artificial person, an abstraction, and a creature of the mind only, a government can interface only with other artificial persons. The imaginary, having neither actuality nor substance, is foreclosed from creating and attaining parity with the tangible. The legal manifestation of this is that no government, as well as any law, agency, aspect, court, etc. can concern itself with anything other than corporate, artificial persons and the contracts between them.” S.C.R. 1795, (3 U.S. 54; 1 L.Ed. 57; 3 Dall. 54)



A landmark case regarding citizenship in general was decided in:

Hale v. Henkel, 201 U.S. 43, 74 (1906):

“The individual (State Citizen) may stand upon his constitutional rights as a Citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State or his neighbours to divulge his business, or open his doors to an investigation, so far as it may tend to incriminate him. He owes no such duty to the State, since he receives nothing there from beyond the protection of his life and property.

His rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process (civil) of law, and in accordance with the constitution. Among his rights are refusal to incriminate myself, and the immunity of himself and his property from arrest or seizure except under warrant of law. He owes nothing to the public so long he does not trespass upon their rights.”

The court further declared in *Hale v. Henkel*, supra, 74-75 regarding U.S. citizens which includes all “Corporate Citizens”: “Upon the other hand, the corporation is a creature of the state. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to the laws of the State and limitations of its charter. Its powers are limited by law. It can make no contract not authorized by its charter.

Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation. There is a reserved right in the legislature to investigate its contracts and find out whether it has exceeded its powers.

It would be a strange anomaly to hold that a State, having chartered a corporation to make use of certain franchises, could not in the exercise of its sovereignty, inquire how these franchises had been employed, and whether they had been abused, and demand the production of the corporate books and papers for that purpose.”

“The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; but the individual’s rights to live and own property are natural rights for the enjoyment of which an excise cannot be imposed.” - Oregon Supreme Court, *Redfield v. Fisher*, 292, P. 813, 819 (1930).

The Key To Understanding Sovereignty:

From Judge Anna:

“**The key to understanding sovereignty** is the fact that the servant is always the master. Always. In order to rule, you have to serve.

Thus, you rule when you serve others and accept unpleasant duties. Sovereignty is not glamorous, does not involve lording it over anyone, and isn’t easy. Think of Jesus washing His Disciple’s feet. Sovereignty has a ton of duties and very few perks— but the absolutely stunning gift of sovereignty is the freedom to never lie about anything to anyone.

Our nation like ourselves has forgotten what it means to be sovereign, and has lapsed into careless and forgetful dependency upon the very persons and institutions that have undermined and betrayed it from the start— foreign banks, commercial con artists, defense contractors, purveyors of vice, dishonest trustees, and the greedy, immoral, endlessly incompetent Congress.

We are so ignorant that we claim foreign flags as ours, put up with harassment from our employees, allow foreign city states to set up shop on our shores, let communists set the curriculum in our schools, and live as Thomas Jefferson feared— as virtual slaves in the land of our Forefathers.”

<http://scannedretina.com/2015/08/26/judge-anna-not-only-are-there-no-free-lunches-there-are-also-no-free-rides-obligations-and-duties-too/>

Sir William Blackstone, an authority on common law stated the following:

“However, as it is impossible for the whole race of mankind to be united in one great society, they must necessarily divide into many, and form separate states, commonwealths, and nations, entirely independent of each other, and yet liable to a mutual intercourse. Hence arises a third kind of law to regulate this mutual intercourse, called “the law of nations,” which, as none of these states will acknowledge a superiority in the other, cannot be dictated by any, but depends entirely upon the rules of natural law, or upon mutual compacts, treaties, leagues, and agreements between these several communities: in the construction also of which compacts we have no other rule to resort to, but the law of nature; being the only one to which all the communities are equally subject; and therefore the civil law(c) very justly observes, that quod naturalis ratio inter omnes homines constituit, vocatur jus gentium.” [Sir

William Blackstone, Commentaries on the Law of England in Four Books, Vol. 1[1753]

INTRODUCTION: OF THE STUDY OF NATURE AND EXTENT OF THE LAWS OF ENGLAND, SECTION 1: ON THE STUDY OF THE LAW] [extract]

QUOD NATURALIS RATIO INTER OMNES HOMINES CONSTITUIT, VOCATUR JUS GENTIUM. That which natural reason has established among all men is called the "law of nations." 1 Bl.Comm. 43; Dig. 1, 1, 9; Inst. 1, 2, 1.

INDEPENDENCE. The state or condition of being free from dependence, subjection, or control. A state of perfect irresponsibility. Political independence is the attribute of a nation or state which is entirely autonomous, and not subject to the government, control, or dictation of any exterior power.

PEERS. In feudal law. The vassals of a lord who sat in his court as judges of their co-vassals, and were called "peers," as being each other's equals, or of the same condition. The nobility of Great Britain, being the lords temporal having seats in parliament, and including dukes, marquises, earls, viscounts, and barons.

Equals; those who are a man's equals in rank and station; thus "trial by a jury of his peers" means trial by jury of citizens. In re Grilli, 110 Misc. 45, 179 N.Y.S. 795, 797. For "judgment of his peers," see Judgment.

SOVEREIGN. A chief ruler with sovereign power; one possessing *sovereignty*, (*q. v.*) It is also applied to a king or other magistrate with limited powers. In the United States the sovereignty resides in the body of the people. Vide. Rutherf. Inst. 282.

SOVEREIGNTY, is the union and exercise of all human power possessed in a state; it is a combination of all power; it is the power to do everything within a state without

accountability; to make laws, to execute and apply them; to impose and collect taxes and to levy contributions; to make war or peace; to form treaties of alliance or of commerce with foreign nations, and the like. Story on the Const. § 207 **Abstractedly, sovereignty resides in the body of the nation and belongs to the people.** But these powers are generally decided by delegation. When analysed, sovereignty is naturally divided into three great powers; namely, the legislative, the executive and the judiciary; the first is the power to make new laws and to correct and repeal the old; the second is the power to execute the laws, both at home and abroad; and the last is the power to apply the laws to the particular facts; to judge the disputes which arise among citizens, and to punish crimes. Strictly speaking, in our republican forms of government, the absolute sovereignty of the nation is in the people of the nation, (q. v.); and the residuary sovereignty of each state, not granted to any of its public functionaries, is in the people of the state, (q. v.) 2 Dall. 471; and vide, generally, 2 Dall. 433, 455; 3 Dall. 93; 1 Story, Const. § 208; 1 Toull. N. 20; Merl. Réper. h.t. – 1843 Bouvier's Law dictionary vol 2.

STATE, government. This word is used in various senses. In its most enlarged sense, it signifies a self-sufficient body of persons united together in one community for the defense of their rights and to do right and justice to foreigners. In this sense, the state means the whole people united into one body politic, (q. v.); and the state, and the people of the state, are equivalent expressions. 1 Pet. Cond. Rep. 37 to 39; 3 Dall. 93; 2 Dall. 425; 2 Wilson's Lect. 120; Dane's Appx. § 50, p. 63; 1 Story, Const. § 361.

n. A people permanently occupying a fixed territory bound together by common-law habits and custom into one body politic exercising, through the medium of an organized government, independent sovereignty and control over all persons and things within its boundaries, capable of making war and peace and of entering into international relations with other communities of the globe. *United States v. Kusche*, D.C.Cal., 56 F. Supp. 201, 207, 208.

The organization of social life which exercises sovereign power in behalf of the people. *Delany v. Moraitis*, C.C.A.Md., 136 F. 2d 129, 130.

One of the component commonwealths or – States of the United States of America. The term is sometimes applied also to governmental agencies authorized by state, such as municipal corporations. *George v. City of Portland*, 114 Or. 418, 235 P. 681, 683, 39 A.L.R. 341.

The people of a state, in their collective capacity, considered as the party wronged by a criminal deed; the public; as in the title of a cause, "The State vs. A. B."

The section of territory occupied by one of the United States.

The circumstances or condition of a being or thing at a given time.

State v. Inich, 55 Mont. 1, 173 P. 230, 234.

Further authority of "we, the people"

The 1215 Magna Carta

§52 Title. DUTY OF THE GRAND JURY; “If anyone’s unalienable rights have been violated, or removed, without a legal sentence of their (“We the People” Supreme Rulers), named Peers, from their lands, home, liberties or lawful right, “We the People” Supreme Rulers [the twenty-five] shall straightway restore them. And if a dispute shall arise concerning this matter it shall be settled according to the judgment of “We the People” Supreme Rulers, [the twenty-five] Grand Jurors, the sureties of the peace.” 06/15/1215

1628 Petition of Right

Historical Document Petition of Right (1628) - A statement of parliamentary grievances addressed to Charles I of England.

“The Petition exhibited to his Majesty by the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, concerning divers Rights and Liberties of the Subjects, with the King’s Majesty’s royal answer thereunto in full Parliament. To the King’s Most Excellent Majesty, Humbly show unto our Sovereign Lord the King, the Lords Spiritual and Temporal, and Commons in Parliament assembles, that whereas it is declared and enacted by a statute made in the time of the reign of King Edward I, commonly called Statutum de Tallagio non Concedendo, that no tallage or aid shall be laid or levied by the king or his heirs in this realm, without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other the freemen of the commonalty of this realm;...”

Cestui Que Vie Act 1666

An Act for Redresse of Inconveniencies by want of Proove of the Deceases of Persons beyond the Seas or absenting themselves, upon whose Lives Estates doe depend.

XI Recital that Cestui que vies have gone beyond Sea, and that Reversioners cannot find out whether they are alive or dead.

Whereas diverse Lords of Mannours and others have granted Estates by Lease for one or more life or lives, or else for yeares determinable upon one or more life or lives And it hath often happened that such person or persons for whose life or lives such Estates have beene granted have gone beyond the Seas or soe absented themselves for many yeares that the Lessors and Reversioners cannot finde out whether such person or persons be alive or dead by reason whereof such Lessors and Reversioners have beene held out of possession of their Tenements for many yeares after all the lives upon which such Estates depend are dead in regard that the Lessors and Reversioners when they have brought Actions for the recovery of their Tenements have beene putt upon it to prove the death of their Tennants when it is almost impossible for them to discover the same, For remedy of which mischeife soe frequently happening to such Lessors or Reversioners.

1679 Habeas Corpus Act

An act for the better securing the liberty of the subject, and for prevention of imprisonments beyond the seas.

WHEREAS great delays have been used by sheriffs, gaolers and other officers, to whose custody, any of the King's subjects have been committed for criminal or supposed criminal matters, in making returns of writs of habeas corpus to them directed, by standing out an alias and pluries habeas corpus, and sometimes more, and by other shifts to avoid their yielding obedience to such writs, contrary to their duty and the known laws of the land, whereby many of the King's subjects have been and hereafter may be long detained in prison, in such cases where by law they are bailable, to their great charges and vexation.

English Bill of Rights 1689

An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown

Whereas the Lords Spiritual and Temporal and Commons assembled at Westminster, lawfully, fully and freely representing all the estates of the people of this realm, did upon the thirteenth day of February in the year of our Lord one thousand six hundred eighty-eight [old style date] present unto their Majesties, then called and known by the names and style of William and Mary, prince and princess of Orange, being present in their proper persons, a certain declaration in writing made by the said Lords and Commons in the words following, viz.:

Whereas the late King James the Second, by the assistance of divers evil counsellors, judges and ministers employed by him, did endeavour to subvert and extirpate the Protestant religion and the laws and liberties of this kingdom;

1955 Freedom Charter

“The people of South Africa, declare for all our country and the world to know: That South Africa belongs to all who live in it, black and white, and that no government can justly claim authority unless it is based on the will of the People; that our people have been robbed of their birth-right to land, liberty and peace by a form of government founded on injustice and inequality; that our country will never be prosperous or free until all our people live in brotherhood, enjoying equal rights and opportunities;...”

Declaration of the Rights of Man

The first draft of the Bill of Rights, enacted and re-venued into the CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA NO. 108 OF 1996, written by Albie Sachs, was aptly named Declaration of the Rights of Man.

To this end some of the people as we, the people have decreed a **Court of Record** into session on 2013.11.10 at Noordhoek, Cape Peninsula on the land of Southern Africa, formally recorded as **Common Law Grand Jury of Southern Africa** aka **Unified Grand Jury ZA** aka **uza** where the Law of the Case of this people's court is the **law of the land** representing a mix of international common law, natural law, tribal and customary law, including oral tradition and represented by this superior jurisdiction **court of record**.

Maxim of Law: “The law does not protect him who slumbers on his rights”

UZA has been decreed by the sovereigns of our Sovereign land of Southern Africa to promote and develop common, natural, customary and tribal law and people's courts; In addition, we arbitrate between disputing parties, especially in matters of land ownership between people of communities and the people acting on behalf of corporations.

Everyone ought to be able to apply the law and comprehend it in plain language. Currently statutes, codes and acts use legalese which sounds like English, but is deceptively different. The plain language movement supports comprehension of words in order to avoid entrapment.

The common use of the afore-mentioned will create a new system of case law for community self-governance at the one common natural law of:

“Do no harm, cause no loss and do not impede the freedoms of others.”

We apply the five ethics of:

Truth, Integrity, Accountability, Responsibility, Transparency.

To advance comprehension of and respect for the rule of people's law, the principle of lawfulness and that no people are beyond the law, no matter their capacity;

most significant above all others in that it recognizes the supremacy of the Golden Rule, the same teaching ascribed to Jesus Christ and the intimate connection to the Rule of Law, that all are subject to the rule of law, no one is above the law.

The Facts

Common Law is the beginning of all Law and in its perfection is the absence of all Law and in today's society it is known as PUBLIC POLICY.

Common Law, in simple terms, is the will of the people and will manifest itself in separate cases as people so rule with their conscience and a sense of fair play.

Common Law is a Law that is Common to all People.

Common Law is Common Sense and is the Law of the Creator God of this Universe-Do unto others as you would have them do unto you.

Common Law supersedes all Law and is Superior in all Cases to Statutory Law, Codified Law, Rules and Regulations.

Common Law establishes Constitutions as all Power is inherent in the People.

Common Law establishes, through the Constitution, all restrictions on the government.

Constitutions never give the government power for legislating People.

Government only has the power to legislate the workings of the different functions of the various departments to allow the people Life, Freedom, and the Pursuit of Happiness.

Constitutions can never establish Common Law for then all Power would not be vested in the People, but would be in the Constitution and it is only a piece of paper, and the People's right to address grievances or to amend, change, or address any problem could not be.

The Creator God created man, man (with help) created government, government created CORPORATIONS. The Creator rules over man, man rules over government, and government rules over CORPORATIONS.

Governments are mere pieces of paper to be altered and changed to the whim of the People. CORPORATIONS are mere pieces of paper that government can change and alter at their whim.

The Creator is Superior over Man, government, and CORPORATIONS.

Man is superior to government and CORPORATIONS.

If man says they do not exist-they do not exist.

Common Law: a Law common to all People; the Will of the People; PUBLIC POLICY;

First Comprehension:

You have the choice; you can choose to be either:

A. a People as per the Pre-amble of the Constitution and the Bill of Rights as the supreme law;

OR

B. a 'citizen': a legal fiction with rights and duties as an employee of the PTY (Ltd), REPUBLIC OF SOUTH AFRICA as per the body of the constitution.

You can say for what purposes you choose to reserve your rights as a people, but as a 'citizen' you have no rights, all you have is 'privileges granted by the government'.

They never say you have no rights. These privileges are packaged into civil rights of which a citizen is subject. All statutes are municipal law. The Bill of Rights has nothing to do with citizens, it is for the People.

I can be a sovereign for some purposes and just because I failed to reserve my sovereignty, it does not mean I waived it.

NB: IF YOU DO NOT KNOW THE DIFFERENCE BETWEEN 'PEOPLE' AND 'CITIZEN' THEN:

Go to www.NationalLibertyAlliance.com for Common Law Lectures and www.1215.org for documents. This is the sovereign grail.

For further education go to www.giftotruth.wordpress.com/your-rights/ and read all pages below the banner. Download and read all the Common Law Manuals to get a better grasp on how we got here.

People:

1. Living Souls.
2. Are subject to the pre-amble of the Constitution; Bill of Rights;
3. Part of a Republic, a commonwealth.

‘Citizens’:

1. Fictions
2. Are subject to the body of the Constitution.
3. Part of a Democracy, mob rule.

You, as a people (it’s correct to call yourself ‘a people’, singular) can decide when you want to be deemed a citizen or not, and when it is restricted to the contract in question.

Preamble of the Constitution:

*“We, the people of South Africa,
Recognise the injustices of our past;
Honour those who suffered for justice and freedom in our land;
Respect those who have worked to build and develop our country; and
Believe that South Africa belongs to all who live in it, united in our diversity.
We therefore, through our freely elected representatives, adopt this Constitution as the
supreme law of the Republic so as to -
Heal the divisions of the past and establish a society based on democratic values, social
justice and fundamental human rights;
Lay the foundations for a democratic and open society in which government is based on the
will of the people and every citizen is equally protected by law;
Improve the quality of life of all citizens and free the potential of each person; and
Build a united and democratic South Africa able to take its rightful place as a sovereign state
in the family of nations.
May God protect our people.
Nkosi Sikelel’ iAfrika. Morena boloka setjhaba sa heso.
God seën Suid-Afrika. God bless South Africa.
Mudzimu fhatutshedza Afurika. Hosi katekisa Afrika.”*

And it’s not God’s job to protect the People when we can protect ourselves.

The Bill of Rights

It is the duty of all courts of the land of southern africa, all subject to the Bill of Rights as the supreme law of the land, to develop the common law of the land in accordance with the spirit, purport or objects of the Bill of Rights rule. 39(2) and do not do so is procedurally unfair and in consequence renders any order or judgment null and void.

People of the State do not yield their sovereignty to agencies of the state. Because this is a Republic, we do not yield our sovereignty: “The power to do everything in a state without accountability”.

However, there is a limit. The only protection of a Sovereign vs Sovereign is a Jury.

The accountability a jury of peers ARE members of the peerage i.e. sovereigns. Slaves are not part of the peerage; Civics is for the peerage.

Common Law Maxim: **"The Decree of the sovereign makes the law"**;

This is very important to take note of; to date, the 1955 Freedom Charter is the only document which has been decreed by the people; time for a new one?

COURT. International Law; The person and suite of the sovereign;

V. Custom. This is in every country a source of law. We mention it here more particularly because, as observed above, it is through custom that the Roman Law found its way into Holland, and it is as custom that it continues to exist in the Roman-Dutch Colonies. Without attempting a bibliography of the jus civile we may perhaps be allowed to recommend the student to supply himself with the Mommsen-Krüger edition of the Corpus Juris. For a law lexicon he will consult the older works of Calvin[48] or Vicat[49] or Heumann's Hand-Lexicon,[50] or the exhaustive Vocabularium jurisprudentiae in course of publication under the auspices of the Savigny Foundation.

[\[http://en.wikisource.org/w/index.php?title=An Introduction to Roman-Dutch Law/General Introduction&oldid=4487574\]](http://en.wikisource.org/w/index.php?title=An_Introduction_to_Roman-Dutch_Law/General_Introduction&oldid=4487574)

DECREE. In Practice - The judgment of a court of equity or admiralty, answering for most purposes to the judgment of a court of common law. A decree in equity is a sentence or order of the

court, pronounced on hearing and understanding all the points in issue, and determining the rights of all the parties to the suit, according to equity and good conscience.

Daniell, Ch.Pr. 986; Wooster v. Handy, C.C.N.Y., 23 F. 49, 56; Motion Picture Patents Co. v. Universal Film Mfg. Co., D.C., N.Y., 232 F. 263, 265; Bull v. International Power Co., 84 N.J.Eq. 209, 93 A. 86, 88; Alford v. Leonard, 88 Fla. 532, 102 So. 885, 890.

It is a declaration of the court announcing the legal consequences of the facts found.

Robertson v. Talmadge, Tex.Civ.App., 174 S.W. 627, 629.

A decree, as distinguished from an order, is final, and is made at the hearing of the cause, whereas an order is interlocutory, and is made on motion or petition. Wherever an order may, in a certain event resulting from the direction contained in the order, lead to the termination of the suit in like manner as a decree made at the hearing, it is called a "decretal order." Brown.

A judgment at law, as distinguished from a decree in equity, was either simply for the plaintiff or for the defendant. There could be no qualifications or modifications.

But such a judgment does not always touch the true justice of the cause or put the parties in the position they ought to occupy. This result was attained by the decree of a court of equity

which could be so moulded, or the execution of which could be so controlled and suspended, that the relative duties and rights of the parties could be secured and enforced. Bisph.Eq. § 7.

The words "judgment" and "decree," however, are often used synonymously; *Finnell v. Finnell*, 113 Okl. 269, 230 P. 912, 913;

especially now that the Codes have abolished the distinction between law and equity; *Henderson v. Arkansas*, 71 Okl. 253, 176 P. 751, 753.

But of the two terms, "judgment" is the more comprehensive, and includes "decree." *Coleman v. Los Angeles County*, 180 Cal. 714, 182 P. 440, 441.

Decision of an administrative board though based on facts adduced on a hearing, *Dal Maso v. Board of Com'rs of Prince George's County*, 182 Md. 200, 34 A.2d 464, 466,

Or rescript from reviewing court are not decrees. *City of Boston v. Santosuosso*, 308 Mass. 189, 31 N.E.2d 564, 568.

Classification

Decrees in equity are either final or interlocutory. A final decree is one which fully and finally disposes of the whole litigation, determining all questions raised by the case, and leaving nothing that requires further judicial action.

Sawyer v. White, 125 Me. 206, 132 A. 421, 422; *Draper Corporation v. Stafford Co.*, C.C.A.Mass., 255 F. 554, 555; *Burgin v. Sugg*, 210 Ala. 142, 97 So. 216, 2177

An interlocutory decree is a provisional or preliminary decree, which is not final and does not determine the suit, but directs some further proceedings preparatory to the final decree. It is a decree pronounced for the purpose of ascertaining matter of law or fact preparatory to a final decree.

1 Barb. Ch. Pr. 326, 327; *Wooster v. Handy*, C.C. N.Y., 23 F. 49, 56; *Beebe v. Russell*, 19 How. 283, 15 L.Ed. 668; *Cornely v. Marckwald*, 131 U.S. 159, 9 S.Ct. 744, 33 L.Ed. 117.

Where something more than the ministerial execution of the decree as rendered is left to be done, the decree is interlocutory, and not final, even though it settles the equities of the bill. *Lodge v. Twell*, 135 U.S. 232, 10 S.Ct. 745, 34 L.Ed. 153.. The difficulty of exact definition is mentioned in *McGourkey v. Ry. Co.*, 146 U.S. 536, 13 S.Ct. 170, 36 L.Ed. 1079. See, also, *Keystone Manganese & Iron Co. v. Martin*, 132 U. S. 91, 10 S.Ct. 32, 33 L.Ed. 275; *Leyhe v. McNamara*, Tex.Com.App., 243 S.W. 1074, 1076.

In French Law

Certain acts of the Legislature or of the sovereign which have the force of law are called "decrees"; as the Berlin and Milan decrees.

In Scotch Law

A final judgment or sentence of court by which the question at issue between the parties is decided. 498

Consent decree.

One entered by consent of the parties; it is not properly a judicial sentence, but is in the nature of a solemn contract or agreement of the parties, made under the sanction of the court, and in effect an admission by them that the decree is a just determination of their rights upon the real facts of the case, if such facts had been proved.

Allen v. Richardson, 9 Rich.Eq., S.C., 53; Schmidt v. Mining Co., 28 Or. 9, 40 P. 1014, 52 Am. St.Rep. 759; Hodgson v. Vroom, C.C.A.N.Y., 266 F. 267, 268; Barnes v. American Fertilizer Co., 144 Va. 692, 130 S.E. 902, 911.

It binds only the consenting parties; Myllius v. Smith, 53 W.Va. 173, 44 S.E. 542;

and is not binding upon the court; Ex parte Loung June, D.C.N.Y., 160 F 251, 259.

Parties thereto must be competent to contract. Consaer v. Wisniewski, 293 Ill.App 529, 13 N.E.2d 93, 94.

A common law court is a jury court and you the sovereign decree the law. Therefore, you can convene a Common Law Grand Jury if a Judge has judged incorrectly against you.

The Common Law Grand Jury system is currently the only court of the People, for the People, by the People.

Currently, brother-thomas is acting as interim administrator until this system is commonly accepted and in proper use again.

Relevant definitions From Black's Law Dictionary 4th Edition:

Definition of **ADMINISTRATOR**: in the most usual sense of the word, is a person to whom letters of administration, that is, an authority to administer the estate of a deceased person, have been granted by the proper court. A representative of limited authority, whose duties are to collect assets of estate, pay its debts, and distribute residue to those entitled.

Smith v. White's Estate, 108 Vt. 473, 188 A. 901, 904.

A technical trustee.

In re Watkins' Estate, Vt., 41 A.2d 180, 188.

One can also get someone else to represent you in a court who is not an attorney at law, but a private attorney in fact. The **Power of Attorney** document gives you that right; **Notice of Understanding & Claim of Right & Intent** declares who you are. Complete and file the relevant documents for pre-emptive defensive action and file it with the master of your high court. (<http://giftoftruth.wordpress.com/express-trusts>)

Definition of **PRIVATE**: Affecting or belonging to private individuals, as distinct from the public generally. Not official; not clothed with office.

People v. Powell, 280 Mich. 699, 274 N.W. 372, 373, 111 A.L. R. 721.

Definition of **ATTORNEY**: In the most general sense this term denotes an agent or substitute, or one who is appointed and authorized to act in the place or stead of another.

Nardi v. Poinatte, D.C.Ind., 46 F.2d 347, 348.

An agent, or one acting on behalf of another.

Sherts v. Fulton Nat. Bank of Lancaster, 342 Pa. 337, 21 A.2d 18.

Definition of Power of attorney: Commonly meant the instrument by which authority of one person to act in place and stead of another as attorney in fact is set forth.

In re Katz' Estate, 274 N.Y.S. 202, 152 Misc. 757.

Definition of IN FACT: Actual, real; as distinguished from implied or inferred. Resulting from the acts of parties, instead of from the act or intendment of law.

Also read 34 of the bill of rights below

The Bill of Rights

The **bill of rights** protects the rights of “we, the people”

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA NO. 108 OF 1996,

CHAPTER 2 of the BILL OF RIGHTS states:

8. Application.--(1) The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.

(3) When applying a provision of the Bill of Rights to a natural or juristic person in (a) in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and

(b) may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36 (1).

32. Access to information.-

- (1) Everyone has the right of access to-
- (a) any information held by the state; and
 - (b) any information that is held by another person and that is required for the exercise or protection of any rights.
- (2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

33. Just administrative action.-

- (1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
- (2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
- (3) National legislation must be enacted to give effect to these rights and must-
- (a) provide for the review of administrative action by a court or, where appropriate,
 - (b) impose a duty on the state to give effect to the rights in subsections (1) and (2); an independent and impartial tribunal; and
 - (c) promote an efficient administration.

34. Access to courts.-Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

38. Enforcement of rights.-Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are-

- (a) anyone acting in their own interest;
- (b) anyone acting on behalf of another person who cannot act in their own name;
- (c) anyone acting as a member of, or in the interest of, a group or class of persons;
- (d) anyone acting in the public interest; and
- (e) an association acting in the interest of its members.

39. Interpretation of Bill of Rights.-

- (2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.
- (3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.

When In Court:

When a civil court is in session and you get called to the front then you have the prerogative to convene a Common Law court into session too. Now you have 2 courts in one room. The Judge will more than likely try to distract you with an interruption. Beware !!! Expect it.

The very first thing to do is do suspend the judge: “Objection your honour, it is my wish to properly make my opening statement for the record.” Then proceed:

Example of opening line:

“FOR THE RECORD, I brother thomas, a people, hereby decree this COURT OF RECORD where the Law of the Case is International Common Law, in session.”

“I am not here to discuss the case, but there are unusual things which have come up. I am here to conduct business as officer of a superior court. I have been appointed as a special master of a superior court and observing the proceedings and I now declare the court in session. There are some International Common Law issues here.

“I have been appointed as special master of this Court of Record and I am here today to observe the proceedings in this master and I am here and now declare this Court of Record open and in session. It is the wish of this Court of Record that the High/Regional/Magistrate’s/(or other) Court release jurisdiction in this matter until such time as the issues in the Superior Court of Record is settled.”

He might submit or he might say Common Law has no standing in this court; say:

“Miranda vs Arizona: “Where substantive rights are concerned, there shall be no rule making.”

The trap is the judge will ask you what you want. “I do not want anything, I am merely here to correct a mistake.” Or “ I am not here to answer questions or to do business”;

TAKE NOTE: Don’t argue; this creates an adhesion contract;

The state is not responsible for the citizens, they hold no liability. However, when the state gets involved, such as in a court case, they now have liability.

We don’t mind the state gets involved as a third party if they are taking liability.

Cicero:

“A few men live by reason, most live by experience, the remainder live by necessity, and the animals live by nature.”

Special Master – no limit on any power the sovereign grants him;

In South African courts it is known as a Private Attorney in Fact;

Please produce an **INVOICE** as a basic contract to settle this matter.

(Go to <http://giftoftruth.wordpress.com/bills-of-exchange/> for templates) OR

CONDITIONAL ACCEPTANCE

I CONDITIONALLY ACCEPT YOUR OFFER ON STIPULATION THE PLAINTIFF DEMONSTRATES GOOD FAITH BY PRODUCING THE ORIGINAL BILL OF EXCHANGE (THE CAUSE OF ACTION), DRAWN BY THE PLAINTIFF'S ACCOUNT (_____ ATTORNEYS) THAT SET OFF, CONTRACTED AND SETTLED THE ORIGINAL DEBT AND ON PROOF OF CLAIM THAT SUCH ORIGINAL DOCUMENT DOES NOT MAKE YOUR OFFER MOOT.

THIS QUALIFIED ACCEPTANCE HAS BEEN MADE WITHIN 72 HOURS CUSTOMARILY ALLOWED UNDER INTERNATIONAL PRIVATE COMMERCIAL LAW.

By: (your signature)

ALL RIGHTS RESERVED.

WITHOUT PREJUDICE UCC 1 -308

Even an ORDER of the court can be indorsed.

The presumption is **“I am whatever I say I am.”** It’s their responsibility to prove up that you are not one of the people. They must **Prove up their Claim** or **Cease & Desist**.

If they say, but you have a driver’s licence and a social security and ID I will say: “Okay, how does that make me not one of the people?” It’s their responsibility to provide proof.

If they say it’s in the contract “Where does it say that in the contract?”

For a valid contract to have been entered into, there are 8 elements:

“At contract law, these eight elements are essential to the creation of a contract:

- 1) *Offer*
- 2) *Acceptance*
- 3) *Intention*
- 4) *Sufficient and equal consideration,*
- 5) *Mental and lawful capacity to contract,*
- 6) *Legality of purpose,*
- 7) *Gave genuine consent (knowingly, willingly and voluntarily)*

8) *Certainty of terms and conditions.*”

AND if the other party knows something that you don't know
AND he knows that you don't know
AND he fails to disclose it to you, it's fraud.

Without prejudice UCC 1-207

I am not engaged in commerce in any way.

Establish from the outset that: “This is a COURT OF RECORD.” Very NB

The government only exists because of my granting the authority.

The preamble of the Constitution is where you choose are you going:

Either,

a) in the constitution as a ‘citizen’

OR

B) outside the Constitution as one of the people, owners of the country.

You are the only one who knows what your rights are:

“My rights are what I, in my own sovereign capacity, by my own prerogative, decide what they are.” The very essence of sovereignty is that the sovereign makes the law.

In our system of common law you are entitled to call a jury. It's your job to judge the law.

Decree in your law-making; a jury is the stabilizer in our common law.

We do not need statutes we just need common sense.

The **LAW OF THE CASE** is very important.

“The **Law of the case** is Common Law and is decreed by the sovereign.” This needs to be in the opening line when appearing in court.

More on the Law of the Case in the definitions.

Citizen is a Trojan horse. Are you born or naturalised and subject to the jurisdiction? I am one of the People. Are you a pre-amble people? YES. Sovereign is a master, citizen is slave to the Constitution.

Educate the judge, he will ask you, you then okay it or object.

“I object, I don't really wish it that way. I wish it some other way.”

DULY is a very important word.

Definition of ‘Duly’: whatever it is that both satisfies the statutory and common law. It opens the way for them to enforce their statutes if you use the word ‘Duly’.

If asked questions: "I do not handle questions in court. We are not here to do business."

OR "It's in the **claim of right and court order**".

After the court then type up the Order vacating Judges decision. Templates to the **claim of right** is on <http://giftoftruth.wordpress.com/express-trusts/bills-of-exchange/>

The Judge cannot make decisions. He is in your home. You are the court.

People are not subject to the jurisdiction. You can decide when you want to be deemed a citizen or not as it is restricted to the contract in question.

The Bill of Rights

People of the State do not yield their sovereignty to agencies of the state.

Because this is a Republic, we do not yield our sovereignty: "The power to do everything in a state without accountability:

However, there is a limit: The only protection of a Sovereign vs Sovereign is a Jury.

The accountability a jury of peers ARE members of the peerage ie. Sovereigns.

Slaves are not part of the peerage.

Civics is for the peerage.

The Decree of the sovereign makes the law

You can say for what purposes you choose to reserve your rights as a people, but as a 'citizen' you have no rights, all you have is 'privileges granted by the government'.

They never say you have no rights. These privileges are packaged into civil rights of which a citizen is subject. All statutes are municipal law. The Bill of Rights has nothing to do with citizens, it is for the People.

I can be a sovereign for some purposes and just because I failed to reserve my sovereignty, it does not mean I waived it.

Common-law cheat. The obtaining of money or property by means of a false token, symbol or device; this being the definition of a cheat or "cheating at common law".

Black's Law Dictionary Fifth Edition

COURT OF RECORD

Stay in a court of record.

"I am one of the people and in this court of record complaint of:..... has been filed."

"Court proceedings are held for the solemn purpose of endeavoring to ascertain the truth which is the sine qua non of a fair trial. Over the centuries Anglo-American courts have devised careful safeguards by rule and otherwise to protect and facilitate the performance of this high function. ... We have always held that the atmosphere essential to the preservation

of a fair trial—the most fundamental of all freedoms—must be maintained at all costs." *Estes v. State of Texas*, 381 U.S. 532, 540, 14 L.Ed.2d 543, 549, 85 S.Ct. 1628, 1631-32 (1965), rehearing denied, 382 U.S. 875, 15 L.Ed.2d 118, 86 S.Ct. 18 (1965).

COURT OF RECORD: (Black's Law 4th Edition)

A suit in a court of record is "commenced", so as to save suit from bar of statute of limitations, when the petition is filed, even though process is not issued until the period of limitation has run, since plaintiff has done all he can toward commencement of the suit. Mo.St. Ann. § 724, p. 940. *City of St. Louis v. Miller*, 235 Mo. App. 987, 145 S. W.2d 504, 505.

5 Requirements to be a Court of Record:

1. Keeps Record of proceedings according to the Common Law;
2. Acts and judicial proceedings are enrolled or recorded for a perpetual memory and testimony;
3. A judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it;
4. Power to find or imprison for contempt;
5. Court Seal;

If the court in question does not grant you a Court of Record, the obvious thing to do is file a Counter-Claim because they went beyond their jurisdiction. Only a Court of Record is authorised. With a Court of Record there has to be an injured party. You are entitled to a jury of peers.

Court of record - From Wikipedia, the free encyclopaedia

In common law jurisdictions, a court of record is a trial court in which a court clerk or a court reporter takes down a record of proceedings. That written record (and all other evidence) is preserved at least long enough for all appeals to be exhausted, or for some further period of time provided by law (for example, in some states, death penalty statutes provide that all evidence must be preserved for an extended period of time). Most courts of record have rules of procedure and therefore they require that most parties be represented by counsel lawyers (specifically, attorneys holding a license to practice law) before the specific tribunal. In contrast, in courts not of record, oral proceedings are not recorded, and the judge makes his or her decision based on memory. In most "not of record" proceedings, the parties can and usually do appear personally, without lawyers. For example, most small claims courts, traffic courts, a justice court presided over by a Justice of the Peace, many administrative tribunals that make initial governmental administrative decisions such as government benefit determinations, and the like are not courts of record.

In many states, statutes provide that the power to fine or imprison lies only with courts of record.

"Of record" and "not of record" are two polar extremes of a spectrum, and there is a transition zone between. For example, in proceedings before executive branch agencies of the United States federal government, fully formal proceedings of record are governed by the "formal

adjudication" or "on the record" provisions of 5 U.S.C. §§ 554, 556, and 557, while informal proceedings or "not on the record" proceedings are governed by § 555. However, many proceedings have intermediate character, with some "of record" characteristics but not others. In some classes of cases, after a determination by an inferior tribunal not of record, a party may take a first level appeal to a tribunal that is of record.

NOTE: A Common Law Court IS A COURT OF RECORD with a JURY!

In most cases, this first level appeal is "trial de novo" (or a 'hearing de novo'), in a tribunal of record. This is not an appeal, as such, but a new proceeding which completely supersedes the result of the prior trial.

Definition of **Court**: *International Law - The person and suite of the sovereign*; Black's Law 4th Edition.

The Sovereign decrees the Law. Maxim: "The Law does not entertain trifles."

When a Court makes a Judgement, when the judge used his/her discretion he can exercise it. But if he has no jurisdiction, it is not allowed. When he makes a decision, he is outside the court and if the clerk accepts the judgement. It's not an error in judgement, it's an error in procedure.

1. Writ of error coram nobis
2. Judicial Notice – means that the court takes notice of something eg. Take notice of the English language, the law, the court record. This stands on its own without proof. They are there. This is what the court will consider when arriving at a decision.
3. Judicial Cognizance is one notch higher. When the court takes cognizance of a matter, It is mandatory on the Judge and has to be compatible with the decision.

Classification

Courts may be classified and divided according to several methods, the following being the more usual:

Courts of record and courts not of record. The former being those whose acts and judicial proceedings are enrolled, or recorded, for a perpetual memory and testimony, and which have power to fine or imprison for contempt. Error lies to their judgments, and they generally possess a seal.

Courts not of record are those of inferior dignity, which have no power to fine or imprison, and in which the proceedings are not enrolled or recorded.

3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton, 52 Cal. 225; Erwin v. U. S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205, 117 N.E. 229, 231.

A "**court of record**" is a judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it, and proceeding according to the course of common law, its acts and proceedings being enrolled for a perpetual memorial.

Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc., Mass., 171, per Shaw, C. J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689.

Courts may be at the same time of record for some purposes and not of record for others. Lester v. Redmond, 6 Hill, N.Y., 590; Ex parte Gladhill, 8 Metc., Mass., 168.

Superior and inferior courts. The former being courts of general original jurisdiction in the first instance, and which exercise a control or supervision over a system of lower courts, either by appeal, error, or *certiorari*; the latter being courts of small or restricted jurisdiction, and subject to the review or correction of higher courts. Sometimes the former term is used to denote a particular group or system of courts of high powers, and all others are called "inferior courts."

To constitute a court a superior court as to any class of actions, within the common-law meaning of that term, its jurisdiction of such actions must be unconditional, so that the only thing requisite to enable the court to take cognizance of them is the acquisition of jurisdiction of the persons of the parties.

Simons v. De Bare, 4 Bosw., N.Y., 547.

An inferior court is a court whose judgments or decrees can be reviewed, on appeal or writ of error, by a higher tribunal, whether that tribunal be the circuit or supreme court.

Nugent v. State, 18 Ala. 521.

Civil and criminal courts. The former being such as are established for the adjudication of controversies between subject and subject, or the ascertainment, enforcement, and redress of private rights; the latter, such as are charged with the administration of the criminal laws, and the punishment of wrongs to the public.

Equity courts and law courts. The former being such as possesses the jurisdiction of a chancellor, apply the rules and principles of chancery law, and follow the procedure in equity; the latter, such as have no equitable powers, but administer justice according to the rules and practice of the common law.

As to the division of courts according to their *jurisdiction*, see Jurisdiction.

As to several names or kinds of courts not specifically described in the titles immediately following, see Arches Court, Appellate, Circuit Courts, Consistory Courts, County,

Customary Court-Baron, Ecclesiastical Courts, Federal Courts, Forest Courts, High Commission Court, Instance Court, Justice Court, Judiciary Court, Legislative Courts, Maritime Court, Mayor's Court, Moot Court, Municipal Court, Orphans' Court, Police Court, Prerogative Court, Prize Court, Probate Court, Superior Courts, Supreme Court, and Surrogate's Court.

Court above, court below. In appellate practice, the "court above" is the one to which a cause is removed for review, whether by appeal, writ of error, or certiorari; while the "court below" is the one from which the case is removed.

Going v. Schnell, 6 Ohio Dec. 933.

Under statute providing that recognizances shall be "of record", the term means of record in the sense that it is taken by inferior tribunals-that they have been taken and certified to the clerk of the court of record and by him recorded.

King v. State, 18 Neb. 375, 25 N.W. 519.

Common pleas. The name of a court of record having general original jurisdiction in civil suits.

COMMON HUMANITY DOCTRINE. Where a passenger becomes sick or is injured while en route, carrier owes duty under "common humanity doctrine" to render to passenger such reasonable care and attention as common humanity would dictate. Alabama Great S. R. Co. v. Taylor, 190 Miss. 69, 199 So. 310, 312.

Common law crimes

Such crimes as are punishable by the force of the common law, as distinguished from crimes created by statute. Wilkins v. U. S., C.C.A.Pa., 96 F. 837, 37 C.C.A. 588; In re Greene, C.C.Ohio, 52 F. 111. These decisions (and many others) hold that there are no common-law crimes against the United States.

CANONS OF JUDICIAL ETHICS:

* With Amendments to January 1, 1968

Ancient Precedents. - Black's Law Dictionary 4th Edition

"Judges ought to remember that their office is *jus dicere* not *jus dare*; to interpret law, and not to make law, or give law."

"And I charged your judges at that time, saying Hear the causes between your brethren, and judge righteously between every man and his brother, and the stranger that is with him."

"Ye shall not respect persons in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man; for the judgment is God's; and the cause that is too hard for you, bring it unto me, and I will hear it"—
Deuteronomy, I, 16-17.

"Thou shalt not wrest judgment; thou shalt not respect persons, neither take a gift; for a gift doth blind the eyes of the wise, and pervert the words of the righteous."—Deuteronomy, XVI, 19.

"We will not make any justiciaries, constables, sheriffs or bailiffs, but from those who understand the law of the realm and are well disposed to observe it."
— Magna Charta, XLV.

"The place of justice is a hallowed place; and therefore not only the Bench, but the foot pare and precincts and purpose thereof ought to be preserved without scandal and corruption." —
Bacon's Essay "Of Judicature."

"Should a judge in the most subordinate jurisdiction be deficient in the knowledge of the law, it would reflect infinite contempt upon himself, and disgrace upon those who employ him. And yet the consequence of his ignorance is comparatively very trifling and small: his judgment may be examined, and his errors rectified, by other courts. But how much more serious and affecting is the case of a superior judge, if without any skill in the laws he will boldly venture to decide a question upon which the welfare and subsistence of whole families may depend! where the chance of his judging right, or wrong, is barely equal; and where, if he chances to judge wrong, he does an injury of the most alarming nature, an injury without possibility of redress." [Sir William Blackstone; Commentaries on the Law of England in Four Books, Vol. 1[1753] Section 1; ON THE STUDY OF LAW, para. 5.]

On Oaths And Solemn Affirmations:

Oath. Any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully. *Vaughn v. State*, 146 Tex.Cr.R. 586, 177 S.W.2d 59, 60.

An affirmation of truth of a statement, which renders one willfully asserting untrue statements punishable for perjury. U. S. v. Klink, D.C.Wyo., 3 F. Supp. 208, 210.

An outward pledge by the person taking it that his attestation or promise is made under an immediate sense of responsibility to God. Morrow v. State, 140 Neb. 592, 300 N.W. 843, 845.

A solemn appeal to the Supreme Being in attestation of the truth of some statement. State v. Jones, 28 Idaho 428, 154 P. 378, 381; Tyler, Oaths 15.

An external pledge or asseveration, made in verification of statements made, or to be made, coupled with an appeal to a sacred or venerated object, in evidence of the serious and reverent state of mind of the party, or with an invocation to a supreme being to witness the words of the party, and to visit him with punishment if they be false. June v. School Dist. No. 11, Southfield Tp., 283 Mich. 533, 278 N.W. 676, 677, 116 A.L. R. 581.

In its broadest sense, the term is used to include all forms of attestation by which a party signifies that he is bound in conscience to perform the act faithfully and truly. In a more restricted sense, it excludes all those forms of attestation or promise which are not accompanied by an imprecation. The term has been variously defined: as, "a solemn invocation of the vengeance of the Deity upon the witness if he do not declare the whole truth, so far as he knows it," 1 Stark.Ev. 22; or, "a religious asseveration by which a person renounces the mercy and Imprecates the vengeance of Heaven if he do not speak the truth," 1 Leach 430: or, as "a religious act by which the party invokes God not only to witness the truth and sincerity of his promise, but also to avenge his imposture or violated faith, or, in other words, to punish his perjury if he shall be guilty of it," 10 Toullier, n. 343; Puffendorff, b. 4, c. 2, § 4. The essential idea of an oath would seem to be, however, that of a recognition of God's authority by the party taking it, and an undertaking to accomplish the transaction to which it refers as required by his laws.

See Kissing the Book.

Comment by uza: As most of us **do not** believe in a vengeful Creator, we cannot oath ourselves, neither can we acknowledge a commissioner of oaths; instead we use a commissioner of truth;
(When you oath yourself, you are unaware of the real truth and automatically become an unreliable witness in their court)

However, we are willing to make the following:

Statement of Truth:

The deponents do not believe in a vengeful Creator and therefore they cannot make oath on themselves; however the deponents acknowledge that:

*they know and comprehend the contents of this declaration by their own hand;
they have no objection to declaring their whole truth as far as they know it;
they consider their statement of truth as far as they know it to be binding on their conscience;
without prejudice; all right reserved.*

Dated on the land of Southern Africa this ____ day of _____, 2014.

Oath of the Justices of RSA:

Schedule 2. Oath or solemn affirmation of Judicial Officers

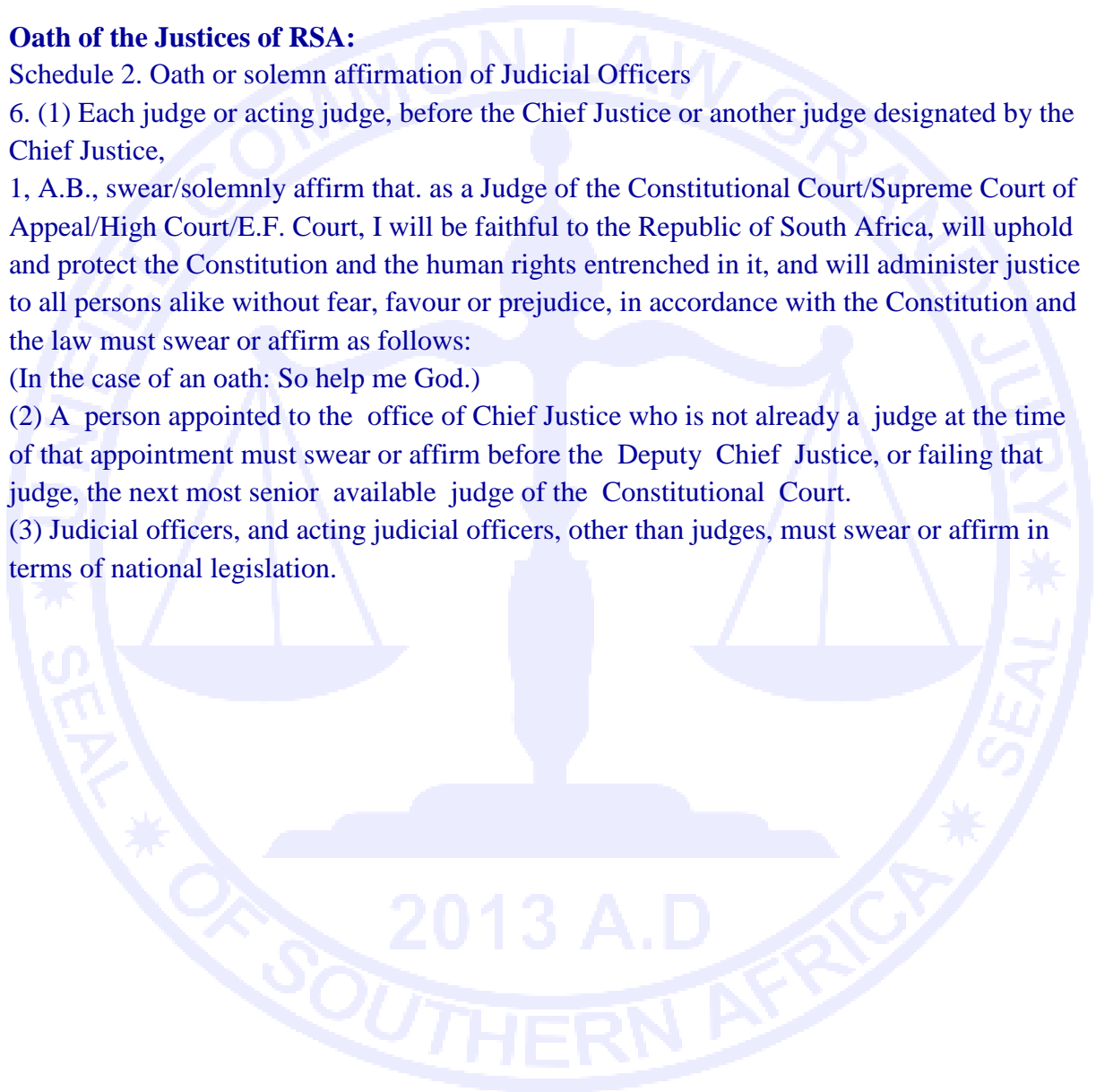
6. (1) Each judge or acting judge, before the Chief Justice or another judge designated by the Chief Justice,

1, A.B., swear/solemnly affirm that. as a Judge of the Constitutional Court/Supreme Court of Appeal/High Court/E.F. Court, I will be faithful to the Republic of South Africa, will uphold and protect the Constitution and the human rights entrenched in it, and will administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law must swear or affirm as follows:

(In the case of an oath: So help me God.)

(2) A person appointed to the office of Chief Justice who is not already a judge at the time of that appointment must swear or affirm before the Deputy Chief Justice, or failing that judge, the next most senior available judge of the Constitutional Court.

(3) Judicial officers, and acting judicial officers, other than judges, must swear or affirm in terms of national legislation.



Key Definitions:

REPUBLIC: A commonwealth; that form of government in which the administration of affairs is open to all the citizens. In another sense, it signifies the state, independently of its form of government. 1 Toullier 28 and n., 202, note; State v. Harris, 2 Bailey (S.C.) 599; Co.Litt. 303. In this sense it is used by Ben Jonson.

Those that by their deeds make it known,
Whose dignity they do sustain;
And life, state, glory, all they gain,
Count the *Republic's*, not their own.

Vide *Body Politic; Nation; State. REPUBLICAN GOVERNMENT.* A government in the republican form; a government of the people; it is usually put in opposition to a monarchical or aristocratic government. The fourth section of the fourth article of the constitution, directs that "the United States shall guaranty to every state in the Union a republican form of government." The form of government is to be *guarantied*, which supposes a form already *established*. And this is the republican form of government the United States have undertaken to protect. See Story, Const. § 1807. Penhallow v. Doane's Administraters (3 U.S. 54; 1 L.Ed. 57; 3 Dall. 54),

OF. A term denoting that from which anything proceeds; indicating origin, source, descent, and the like; as, he is of a race of kings; he is of noble blood. Stone v. Riggs, 43 Okl. 209, 142 P. 298, 299.

Associated with or connected with, usually in some causal relation, efficient, material, formal, or final. Harlan v. Industrial Accident Commission, 194 Cal. 352, 228 P. 654, 657.

The word has been held equivalent to after, 10 L.J.Q.B. 10;

at, or belonging to, Davis v. State, 38 Ohio St. 506; in possession of, Bell County v. Hines, Tex.Civ.App., 219 S.W. 556, 557; Stokes v. Great Southern Lumber Co., D.C.Miss., 21 F.2d 185, 186;

manufactured by, 2 Bing. N.C. 668; by, Hannum v. Kingsley, 107 Mass. 355;

residing at, Porter v. Miller, 3 Wend. (N.Y.) 329; 8 A. & E. 232; from, State v. Wong Fong, 75 Mont. 81, 241P. 1072, 1074;

in, Kellogg v. Ford, 70 Or. 213, 139 P. 751, 752.

People (Page: 1063)

Peo"ple (?), n. [OE. peple, people, OF. pueple, F. peuple, fr. L. populus. Cf. Populage, Public, Pueblo.]

1. The body of persons who compose a community, tribe, nation, or race; an aggregate of individuals forming a whole; a community; a nation.

Unto him shall the gathering of the people be. Gen. xlix. 10.

A government of all the people, by all the people, for all the people. T. Parker. [emphasis added]

Commonwealth. The public or common wealth or welfare. This cannot be regarded as a technical term of public law, though often used in political science. It generally designates, when so employed, a republican frame of government, — one in which the welfare and rights of the entire mass of people are the main consideration, rather than the privileges of a class or the will of a monarch; or it may designate the body of citizens living under such a government.

Sometimes it may denote the corporate entity, or the government, of a jural society (or state) possessing powers of self-government in respect of its immediate concerns, but forming an integral part of a larger government, (or nation.) *State v. Lambert*, 28 S.E. 930, 44 W.Va. 308.

In this latter sense, it is the official title of several of the United States (as Pennsylvania, Massachusetts, Virginia, and Kentucky), and would be appropriate to them all. In the former sense, the word was used to designate the English government during the protectorate of Cromwell. See *Government*; *Nation*; *State*. [emphasis added]

COMMON LAW. As distinguished from the Roman law, the modern civil law, the canon law, and other systems, the common law is that body of law and juristic theory which was originated, developed, and formulated and is administered in England, and has obtained among most of the states and peoples of Anglo-Saxon stock. *Lux v. Haggin*, 69 Cal. 255, 10 P. 674.

As distinguished from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England.

1 Kent, Comm. 492. *Western Union Tel. Co. v. Call Pub. Co.*, 21 S.Ct. 561, 181 U.S. 92, 45 L.Ed. 765; *Barry v. Port Jervis*, 72 N.Y.S. 104, 64 App. Div. 268; *U. S. v. Miller*, D.C.Wash., 236 F. 798, 800.

As distinguished from equity law, it is a body of rules and principles, written or unwritten, which are of fixed and immutable authority, and which must be applied to controversies rigorously and in their entirety, and cannot be modified to suit the peculiarities of a specific case, or colored by any judicial discretion, and which rests confessedly upon custom or statute, as distinguished from any claim to ethical superiority. *Klever v. Seawall*, C.C.A.Ohio, 65 F. 395, 12 C.C.A. 661.

In a wider sense than any of the foregoing, the "common law" may designate all that part of the positive law, juristic theory, and ancient custom of any state or nation which is of general and universal application, thus marking off special or local rules or customs.

For "Federal Common Law," see that title. As a compound adjective "common-law" is understood as contrasted with or opposed to "statutory," and sometimes also to "equitable" or to "criminal." See examples below.

COMMON-LAW JURISDICTION. Jurisdiction of a court to try and decide such cases as were cognizable by the courts of law under the English common law; the jurisdiction of those courts which exercise their judicial powers according to the course of the common law. U. S. v. Power, 27 Fed.Cas. 607.

CUSTOMARY. According to custom or usage; founded on, or growing out of, or dependent on, a custom (q. v.); ordinary; usual; common.

Kent v. Town of Patterson, 80 Misc.Rep. 560, 141 N.Y.S. 932, 933; Montgomery v. O'Donnell, 178 Iowa 588, 159 N.W. 1025, 1026; Woods v. Postal Telegraph-Cable Co., 205 Ala. 236, 87 So. 681, 686, 27 A.L.R. 834.

DEMOCRACY, *government*, is that form of government in which the sovereign power is exercised by the people in a body, as was the practice in some of the states of Ancient Greece; the term *representative democracy* has been given to a republican government like that of the United States. 1843 Bouvier's Law Dictionary vol.1, 446

DEMOCRACY is loosely used of governments in which the sovereign powers are exercised by all the people or, a large number of them, or specifically, in modern use, of a representative government where there is equality of rights without hereditary or arbitrary differences in rank or privilege; and is distinguished from aristocracy. * * *

In modern representative democracies, as the United States and France, though the governing body, that is, the electorate, is a minority of the total population, the principle on which the government is based is popular sovereignty, which distinguishes them from aristocracies. Webster's New Int.Dict.

LAW OF NATIONS. See INTERNATIONAL LAW;

INTERNATIONAL LAW. The law which regulates the intercourse of nations; the law of nations. 1 Kent, Comm. 1, 4. The customary law which determines the rights and regulates the intercourse of independent states in peace and war. 1 Wildm. Int. Law, 1.

Public international law is the body of rules which control the conduct of independent states in their relations with each other.

Private international law is that branch of municipal law which determines before the courts of what nation a particular action or suit should be brought, and by the law of what nation it should be determined.

ACTUS. In the civil law, an act or action. Non tantum verbis, sed etiam actu; not only by words, but also by act. Dig. 46, 8. 5. A species of right of way, consisting in the right of driving cattle, or a carriage, over the land subject to the servitude. Inst.. 2, 3, pr.

It is sometimes translated a "road," and included the kind of way termed "iter," or path. Lord Coke, who adopts the term "actus" from Bracton, defines it a foot and horse way, vulgarly called "pack and prime way;" but distinguishes it from a cart-way. Co.Litt. 56a; Boyden v. Achenbach, 79 N.C. 539.

In old English law, an act of parliament; a statute. 8 Coke 40.

A distinction, however, was sometimes made between actus and statutum. Actus parliamenti was an act made by the lords and commons; and it became statutum, when it received the king's consent. Barring.Obs.St. 46, note b. 54

STATUTE, n. An act of the legislature declaring, commanding, or prohibiting something; a particular law enacted and established by the will of the legislative department of government; the written will of the legislature, solemnly expressed according to the forms necessary to constitute it the law of the state. Federal Trust Co. v. East Hartford Fire Dist., C.C.A.Conn., 283 F. 95, 98; In re Van Tassel's Will, 119 Misc. 478, 196 N.Y.S. 491, 494; Washington v. Dowling, 92 Fla. 601, 109 So. 588, 591.

This word is used to designate the written law in contradistinction to the unwritten law.

Foster v. Brown, 199 Ga. 444, 34 S.E.2d 530, 535. See Common Law.

Comment: STATUTES are ACTS which are merely limited servitude jurisdiction rights for legal fictions residing within other legal fictions and have no power over the living who can only reside within their body;

Actus curiae neminem gravabit. An act of the court shall prejudice no man. Jenk.Cent. 118. Where a delay in an action is the act of the court, neither party shall suffer for it.

Actus Del nemini est damnosus. The act of God is hurtful to no one. 2 Inst. 287. That is, a person cannot be prejudiced or held responsible for an accident occurring without his fault and attributable to the "act of God." See Act of God.

Actus Del nemini facit injuriam. The act of God does injury to no one. 2 Bl.Comm. 122. A thing which is inevitable by the act of God, which no industry can avoid, nor policy prevent, will not be construed to the prejudice of any person in whom there was no laches. Broom, Max. 230.

Actus inceptus, cujus perfectio pendet ex voluntate partium, revocari potest; si autem pendet ex voluntate testiae persona., vel ex contingenti, revocari non potest. An act already begun, the completion of which depends on the will of the parties, may be revoked; but if it depend on the will of a third person, or on a contingency, it cannot be revoked. Bac.Max. reg. 20.

Actus judicarius coram non iudice irritus habetur, de ministeriali autem a quocunque provenit ratum esto. A judicial act by a judge without jurisdiction is void; but a ministerial act, from whomsoever proceeding, may be ratified. Lofft, 458.

Actus legis nemini est damnosus. The act of the law is hurtful to no one. An act in law shall prejudice no man. 2 Inst. 287.

Actus legis nemini facit injuriam. The act of the law does injury to no one. 5 Coke, 116.

Actus legitimi non recipiunt modum. Acts required to be done by law do not admit of qualification. Hob. 153; Branch, Princ.

Actus me invito factus non est meus actus. An act done by me, against my will, is not my act. Branch, Princ.

Actus non facit reum, nisi mens sit rea. An act does not make [the doer of it] guilty, unless the mind be guilty; that is, unless the intention be criminal. 3 Inst. 107. The intent and the act must both concur to constitute the crime. Lord Kenyon, C. J., 7 Term 514; Broom, Max. 306.

Actus repugnus non potest in esse produci. A repugnant act cannot be brought into being, i. e., cannot be made effectual. Plowd. 355.

Actus servi in its quibus opera ejus communiter adhibita est, actus domini habetur. The act of a servant in those things in which he is usually employed, is considered the act of his master. Lofft, 227.

VIA. Lat. Way, road.

In the civil law. Way; a road; a right of way.

The right of walking, riding, and driving over another's land. Inst. 2, 3, pr. A species of rural servitude, which included iter (a footpath) and actus, (a driftway.)

In old English law. A way; a public road; a foot, horse, and cart way. Co. Litt. 56a.

DRIFTWAY. A road or way over which cattle are driven. Selw.N.P. 1037; Woolr.Ways 1; 2 Hilliard, Abr.Prop. 33; Smith v. Ladd, 41 Me. 314; Swensen v. Marino, 306 Mass. 582, 29 N.E.2d 15, 18, 130 A.L.R. 763.

VIA ANTIQUA VIA EST TUTA. The old way is the safe way. Manning v. Manning's Ex'rs, 1 Johns. Ch. (N.Y.) 527, 530.

VIA PUBLICA. In the civil law. A public way or road, the land itself belonging to the public. Dig. 43, 8, 2, 21.

VIA REGIA. In English law. The king's highway for all men. Co.Litt. 56a. The highway or common road, called "the king's" highway, because authorized by him and under his protection, Cowell.

VIA TRITA EST TUTISSIMA. The trodden path is the safest. Broom, Max. 134; 10 Coke, 142.

FURTHER DEFINITIONS:

ADDUCE. To present, bring forward, offer, introduce. Used particularly with reference to evidence. Tuttle v. Story County, 56 Iowa 316, 9 N.W. 292.

AFFIDAVIT. A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath. Cox v. Stern, 170 Ill. 442, 48 N.E. 906, 62 Am.St.Rep. 385; Hays v. Loomis, 84 Ill. 18. A statement or declaration reduced to writing, and sworn to or affirmed before some officer who has authority to administer an oath or affirmation. Shelton v. Berry, 19 Tex. 154, 70 Am.Dec. 326, and In re Breidt, 84 N.J.Eq. 222, 94 A. 214, 216.

A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath. June v. School Dist. No. 11, Southfield Tp., 283 Mich. 533, 278 N.W. 676, 677, 116 A.L.R. 581.

Any voluntary ex parte statement reduced to writing and sworn to or affirmed before some person legally authorized to administer oath or affirmation, made without notice to adverse party and without opportunity to cross-examine. Kirk v. Hartlieb, 193 Ark. 37, 97 S.W.2d 434, 435, 436.

The word sometimes includes "depositions."

U. S. v. Kaplan, D.C.Ga., 286 F. 963, 970.

"Affidavits" are of two kinds; those which serve as evidence to advise the court in the decision of some preliminary issue or determination of some substantial right, and those which merely serve to invoke the judicial power.

Worthen v. State, 189 Ala. 395, 66 So. 686, 688.

AFFIDAVIT OF DEFENSE. An affidavit stating that the defendant has a good defense to the plaintiff's action on the merits. The statements required in such an affidavit vary considerably in the different states where they are required. Called also an affidavit of merits (q. v.), as in Massachusetts.

AFFIDAVIT OF DEMAND. "Affidavit of demand" filed under Code section to obtain judgment for want of affidavit of defense held not equivalent of "declaration." Penn Central Light & Power Co. v. Central Eastern Power Co., 6 W. W.Harr. 74, 171 A. 332.

AFFIDAVIT OF MERITS. One setting forth that the defendant has a meritorious defense (substantial and not technical) and stating the facts constituting the same. Palmer v. Rogers, 70 Iowa 381, 30 N.W. 645. Represents that, on the substantial facts of the case, justice is with the affiant. Wendel v. Wendel, 58 S.D. 438, 236 N.W. 468, 469.

AFFIDAVIT OF SERVICE. An affidavit intended to certify the service of a writ, notice, or other document.

AFFIDAVIT TO HOLD TO BAIL. An affidavit required in many cases before the defendant in a civil action may be arrested. Such an affidavit must contain a statement, clearly and

certainly expressed, by someone acquainted with the fact, of an indebtedness from the defendant to the plaintiff, and must show a distinct cause of action;

1 Chit.P1. 165.

ASSETS. The word, though more generally used to denote everything which comes to the representatives of a deceased person, yet is by no means confined to that use, but has come to signify everything which can be made available for the payment of debts, whether belonging to the estate of a deceased person or not. Hence we speak of the assets of a bank or other monied corporation, the assets of an insolvent debtor, and the assets of an individual or private co-partnership; and we always use this word when we speak of the means which a party has, as compared with his liabilities or debts. *Pelican v. Rock Falls*, 81 Wis. 428, 51 N.W. 871.

BREACH. The breaking or violating of a law, right, or duty, either by commission or omission. This name is sometimes given to that part of the declaration which alleges the violation of the defendant's promise or duty, immediately preceding the ad damnum clause. Expenditure by administrator of proceeds of policy pending appeal from award of proceeds to administrator as "breach" of obligation of faithful administration. *State ex rel. and to Use of Gnekow v. United States Fidelity & Guaranty Co.*, 349 Mo. 528, 163 S.W.2d 86, 90.

BREACH OF CLOSE. The unlawful or unwarrantable entry on another person's soil, land, or close. 3 Bl.Comm. 209.

BREACH OF CONTRACT. Failure, without legal excuse, to perform any promise which forms the whole or part of a contract. *Friedman v. Katzner*, 139 Md. 195, 114 A. 884, 886. Prevention or hindrance by party to contract of any occurrence or performance requisite under the contract for the creation or continuance of a right in favor of the other party or the discharge of a duty by him. *Sharp v. Williams*, 141 Fla. 1, 192 So. 476, 480.

Unequivocal, distinct and absolute refusal to perform agreement. *R. T. Clark & Co. v. Miller*, 154 Miss. 233, 122 So. 475, 481.

Violation of obligation. *Russell v. Stephens*, 191 Wash. 314, 71 P.2d 30,

Anticipatory Breach

A breach committed before there is a present duty of performance, and is the outcome of words evincing intention to refuse performance in the future. *King Features Syndicate v. Valley Broadcasting Co.*, D.C.Tex., 42 F.Supp. 107, 108.

Acquiescence by other party as necessary, *Cerruti v. Burdick*, 130 Conn. 284, 33 A.2d 333, 335. Clear and unequivocal, renunciation of contract and refusal to perform as essential, *Kimel v. Missouri State Life Ins. Co.*, C.C.A. Kan., 71 F.2d 921, 923.

Party to contract putting it out of his power to perform as breach, *Assembly, Inc., v. Giller*,

134 Misc. 657, 236 N.Y.S. 308, 313.

Positive statement that promisor will not or cannot substantially perform contractual duties as breach, *Hawkinson v. Johnston*, C.C.A. Mo., 122 F.2d 724, 729, 730.

Bankruptcy as "anticipatory breach", *In re Robertson*, D.C.Ark., 41 F.Supp. 665, 668.

Doctrine is that party denying liability destroys contract so far as able. *Pollack v. Pollack*, Tex.Com.App., 46 S.W. 2d 292, 293.

Continuing Breach

Such breach occurs where the state of affairs, or the specific act, constituting the breach, endures for a considerable period of time, or is repeated at short intervals.

Constructive Breach

Such breach takes place when the party bound to perform disables himself from performance by some act, or declares, before the time comes, that he will not perform. *Jordan v. Madsen*, 69 Utah, 112, 252 P. 570, 573; *The Adamello*, D.C.Va., 19 F.2d 388, 389.

BREACH OF COVENANT. The non-performance of any covenant agreed to be performed, or the doing of any act covenanted not to be done. *Holthouse*.

BREACH OF DUTY. In a general sense, any violation or omission of a legal or moral duty. More particularly, the neglect or failure to fulfill in a just and proper manner the duties of an office or fiduciary employment. Every violation by a trustee of a duty which equity lays upon him, whether willful and fraudulent, or done through negligence or arising through mere oversight or forgetfulness, is a breach of duty. *Hivick v. Hemme*, 118 Okl. 167, 247 P. 692, 693.

BREACH OF POUND. The breaking any pound or place where cattle or, goods distrained are deposited, in order to take them back. 3 Bl.Comm. 146.

BREACH OF PRISON. The offense of actually and forcibly breaking a prison or, gaol, with intent to escape. 4 Chit.Bl. 130, notes; 4 Steph. Comm. 255.

The escape from custody of a person lawfully arrested on criminal process.

BREACH OF PRIVILEGE. An act or default in violation of the privilege of either house of parliament, of congress, or of a state legislature.

BREACH OF PROMISE. Violation of a promise; 'chiefly used as an elliptical expression for "breach of promise of marriage."

BREACH OF THE PEACE. A violation or disturbance of the public tranquillity and order. The offense of breaking or disturbing the public peace by any riotous, forcible, or unlawful proceeding. 4 Bl.Comm. 142, et seq.; *People v. Bartz*, 53 Mich. 493, 19 N.W. 161.

"Breach of the peace" is a generic term, *State v. Reichman*, 135 Tenn. 653, 188 S.W. 225, 228, Ann.Cas.1918B, 889, and includes all violations of public peace or order and acts

tending to a disturbance thereof, *City of St. Louis v. Slupsky*, 254 Mo. 309, 162 S.W. 155, 157, 49 L.R. A.,N.S., 919. One who commits a breach of the peace is guilty of disorderly conduct, but not all disorderly conduct is necessarily a "breach of the peace." *Garvin v. City of Waynesboro*, 15 Ga.App. 633, 84 S.E. 90, 91; *City of Seattle v. Franklin*, 191 Wash. 297, 70 P.2d 1049, 1051.

A constructive breach of the peace is an unlawful act which, though wanting the elements of actual violence or injury to any person, is yet inconsistent with the peaceable and orderly conduct of society. An apprehended breach of the peace is caused by the conduct of a man who threatens another with violence or physical injury, or who goes about in public with dangerous and unusual weapons in a threatening or alarming manner, or who publishes an aggravated libel upon another, etc.

BREACH OF TRUST. Any act done by a trustee contrary to the terms of his trust, or in excess of his authority and to the detriment of the trust; or the wrongful omission by a trustee of any act required of him by the terms of the trust. Also the wrongful misappropriation by a trustee of any fund or property which had been lawfully committed to him in a fiduciary character. Every violation by a trustee of a duty which equity lays upon him, whether willful and fraudulent, or done through negligence, or arising through mere oversight and forgetfulness, is a "breach of trust."

The term, therefore, includes every omission and commission in carrying out the trust according to its terms, of care and diligence in protecting and investing the trust property, and of using perfect good faith. *H. B. Cartwright & Bro. v. United States Bank & Trust Co.*, 23 N.M. 82, 167 P. 436, 453.

A violation by the trustee of any duty which he owes to the beneficiary. *Bruun v. Hanson*, C.C.A.Idaho, 103 F.2d 685, 699.

BREACH OF TRUST WITH FRAUDULENT INTENT. Larceny after trust. *State v. Owings*, 205 S.C. 314, 31 S.E.2d 906, 907.

FOR "Fraud In Contract" – Definitions: go to page 79;

CHARGE, n. An incumbrance, lien, or claim; a burden or load; an obligation or duty; a liability; an accusation. *Darling v. Rogers*, 22 Wend. (N. Y.) 491. Custody. *Randazzo v. U. S.*, C.C.A.Mo., 300 F. 794, 797; *In re Boulware's Will*, 258 N.Y.S. 522, 144 Misc. 235. Price. *Aiken Mills v. United States*, D.C.S.C., 53 F.Supp. 524, 526. Rate. *Borough of Mechanicsburg v. Valley Rys.*, 109 Pa. Super. 48, 165 A. 541, 542. Conversion' of electrical energy into chemical energy within a cell or storage battery. *Elliott Works v. Frisk*, D.C.Iowa, 58 F.2d 820, 822.

In Common-law Practice

The final address by judge to jury before verdict, in which he sums up the case, and instructs jury as to the rules of law which apply to its various issues, and which they must observe. The

term also applies to the address of court to grand jury, in which the latter are instructed as to their duties.

In Contracts

An obligation. Com.Dig. "Rent," c. 6; 2 Ball & B. 223; Termes de la Ley. An undertaking to keep the custody of another person's goods. State v. Clark, 86 Me. 194, 29 A. 984.

In Criminal Law

An accusation or oral charge. People v. Ross, 235 Mich. 433, 209 N.W. 663, 666; Haggard v. First Nat. Bank of Mandan, 72 N.D. 434, 8 N.W.2d 5, 9. A formal complaint, information, or indictment. People v. Lepori, 35 Cal.App. 60, 169 P. 692, 694. A count. State v. Thornton, 142 La. 797, 77 So. 634, 636; State v. Pucketty, 39 N.M. 511, 50 P.2d 964, 965. Accused or arraigned. Code Cr.Proc. § 57. People v. Hickox, 10 N.Y.S.2d 318, 320, 170 Misc. 354.

In Equity Pleading

An allegation in the bill of matters which disprove or avoid a defense which it is alleged the defendant is supposed to pretend or intend to set up. Story, Eq.P1. § 31; Cooper, Eq.P1. 11; 1 Dan.Ch.Pr. 372, 1883, n.; 11 Ves.Ch. 574.

In Equity Practice

A written statement presented to a master in chancery by a party of the items with which the opposite party should be debited or should account for, or of the claim of the party making it. A charge may embrace the whole liabilities of the accounting party. Hoff.Mast. 36.

In Scotch Law

The command of the king's letters to perform some act; as a charge to enter heir. Also a messenger's execution, requiring a person to obey the order of the king's letters; as a charge on letters of horning, or a charge against a superior. Bell.

In the Law of Wills

A responsibility or liability imposed by the testator upon a devisee personally, or upon the land devised. Potter v. Gardner, 12 Wheat. 498, 6 L. Ed. 706; Boal v. Metropolitan Museum of Art of City of New York, C.C.A.N.Y., 298 F. **894, 908.**

A pecuniary burden. In re Clark's Will, 37 N.Y.S.2d 522, 523, 179 Misc. 75.

A devise for beneficial enjoyment of devisee subject to payment of a sum of money or performance of a particular duty. Howells State Bank v. Pont, 113 Neb. 181, 202 N.W. 457, 459.

General Charge

The charge or instruction of the court to the jury upon the case, as a whole, or upon its general features and characteristics.

Public Charge

A person whom it is necessary to support at public expense by reason of poverty, insanity and poverty, disease and poverty, or idiocy and poverty. Wallis v. U. S., ex rel.

Mannara, C.C.A.N.Y., 273 F. 509, 511. As used in Immigration Act Feb. 5, 1917, § 19, 8 U.S.C.A. § 155, one who produces a money charge on, or an expense to, the public for support and care. Ex parte Kichmiriantz, D.C.Cal., 283 F. 697, 698.

As so used, the term is not limited to paupers or those liable to become such, but includes those who will not undertake honest pursuits, or who are likely to become

periodically the inmates of prisons. *Ex parte Horn*, D.C. Wash., 292 F. 455, 457. But see *Ng Fung Ho v. White*, C.C.A.Cal., 266 F. 765, 769.

Special Charge

A charge or instruction given by the court to the jury, upon some particular point or question involved in the case, and usually in response to counsel's request for such instruction.

CHARGE AND DISCHARGE. Under former equity practice, in taking an account before a master, a written statement of items for which plaintiff asked credit and a counter-statement, exhibiting claims or demands defendant held against plaintiff.

COGNIZANCE. Jurisdiction, or the exercise of jurisdiction, or power to try and determine causes; judicial examination of a matter, or power and authority to make it. *Clarion County v. Hospital*, 111 Pa. 339, 3 A. 97.*

Judicial notice or knowledge; the judicial hearing of a cause; acknowledgment; confession; recognition.

Claim of cognizance or of conusance. See Claim of Cognizance or of Conusance.

Judicial cognizance. See Judicial.

JUDICIAL. Belonging to the office of a judge; as judicial authority.

Relating to or connected with the administration of justice; as a judicial officer.

COLOR OF LAW. The appearance or semblance, without the substance, of legal right.

State v. Brechler, 185 Wis. 599, 202 N.W. 144, 148.

COMPRISE. To comprehend; include; contain; embrace; cover. *Hoskins Mfg. Co. v.*

General Electric Co., D.C.Ill., 212 F. 422, 428.

Criminal act A term which is equivalent to crime; or is sometimes used with a slight softening or glossing of the meaning, or as importing a possible question of the legal guilt of the deed. The intentional violation of statute designed to protect human life is criminal act.

State v. Agnew, 202 N.C. 755, 164 S.E. 578, 579.

DE JURE, by right. **Vide** *De facto*.

E. O. E. Errors and omissions excepted. *Vernon Metal & Produce Co. v. Joseph Joseph & Bros. Co.*, 212 App.Div. 358, 209 N.Y.S. 6, 11.

EX CAUSA, L. Lat. By title.

Ex turpi causa non oritur actio. From a dishonourable cause, an action does not arise.

INALIENABLE. Not subject to alienation; the characteristic of those things which cannot be

bought or sold or transferred from one person to another, such as rivers and public highways, and certain personal rights; e. g., liberty.

INSTANCE. In pleading and practice. Solicitation, properly of an earnest or urgent kind. An act is often said to be done at a party's "special instance and request." *Miller v. Mutual Grocery Co.*, 214 Ala. 62, 106 So. 396.

"Instance" does not imply the same degree of obligation to obey as does "command." *Feore v. Trammel*, 213 Ala. 293, 104 So. 808, 813.

In the civil and French law. A general term, designating all sorts of actions and judicial demands. Dig. 44, 7, 58.

In ecclesiastical law. Causes of instance are those proceeded in at the solicitation of some party, as opposed to causes of office, which run in the name of the judge. *Hallifax*, Civil Law, p. 156.

In Scotch law. That which may be insisted on at one diet or course of probation. *Wharton*.

Last clear chance. The "last clear chance doctrine" is that a party who has last clear chance to avoid damage or injury to another is liable. *Johnston v. Brewer*, 40 Cal.App.2d 583, 105 P.2d 365, 367; *Miami Beach Ry. Co. v. Dohme*, 131 Fla. 171, 179 So. 166, 169; *Virginia Electric & Power Co. v. Whitehurst*, 175 Va. 339, 8 S.E.2d 296, 299;

that negligence of party having last opportunity of avoiding accident is sole proximate cause of injury, *Malfetano v. United Electric Rys. Co.*, 58 R.I. 129, 191 A. 491, 498; *Gregory v. Maine Cent. R. Co.*, 317 Miss. 636, 59 N.E.2d 471, 476, 159 A.L.R. 714; that if one has opportunity of avoiding injuring another he must at his peril exercise the opportunity.

Ferran v. Southern Pac. Co., 3 Cal. 2d 350, 44 P.2d 533, 534.

It places liability upon him who commits the last proximate negligent act.

Davis v. Cuesta, 146 Fla. 471, 1 So.2d 475, 476.

The doctrine is inapplicable unless injured party was guilty of negligence, *Yellow Cab Corporation of Abingdon v. Henderson*, 178 Va. 207, 16 S.E.2d 389, 393; *Washam v. Peerless Automatic Staple Mach. Co.*, 45 Cal.App.2d 174, 113 P.2d 724, 728;

and unless injured person is in an apparently helpless condition, *Battle v. Southern Ry. Co.*, 223 N.C. 395, 26 S.E.2d 859.

The doctrine means that an injured party may recover, notwithstanding negligence: if defendant could have avoided injury after discovering or knowing of peril, *Sprinkle v.*

Davis, C.C.A.Va., 111 F.2d 925, 928, 128 A.L.R. 1101; *Weddle v. Virginian Ry. Co.*, 125 W.Va. 41, 22 S.E.2d 698, 701; *Jones v. Yuma Motor Freight Terminal*, 45 Cal.App.2d 497, 114 P.2d 438, 439, 440; *Shea v. Pilette*, 108 Vt. 446, 189 A.

154, 158, 109 A.L.R. 933, *Stelter v. Northern Pac. Ry. Co.*, 71 N.D. 214, 299 N.W. 310, 313, 314;

if injuring party, seeing or knowing or aware of peril, fails to use ordinary or due care and thereby causes injury, *Underhill v. Peterson*, 110 Cal.App. 221, 293 P. 861, 864; *Groves v. Webster City*, 222 Iowa 849, 270 N.W. 329, 332; *Caplan v. Arndt*, 123

Conn. 585, 196 A. 631, 633, 119 A.L.R. 1037; *Kurn v. Mc-Coy*, 187 Okl. 210, 102 P.2d 177;

if injury might have been avoided by exercise of reasonable care by defendant, *Harstick v. Beckenhauer*, 143 Neb. 179, 8 N.W.2d 834, 837; *General Exchange Ins. Corporation v. Carp*, La.App., 176 So. 145, 147; *Kelley Furniture Co. v. Washington Ry. & Electric Co.*, 64 App.D.C. 215, 76 F.2d 985; *Srogi v. New York Cent. R. Co.*, 247 App.Div. 95, 286 N.Y.S. 215; *Mullins v. Cincinnati, N. & C. Ry. Co.*, 253 Ky. 156, 68 S.W.2d 790; *Lovett v. Sandersville R. Co.*, 72 Ga.App. 692, 34 S.E.2d

664, 666;

if, with knowledge of peril to plaintiff or plaintiff's property, another acts or omits to act and injury results, *Parsons v. Berry*, 130 Neb. 264, 264 N.W. 742, 744.

The doctrine implies thought, appreciation, mental direction, and a lapse of sufficient time to effectually act upon impulse to save another from injury, *Colwell v. Nygaard*, 8 Wash.2d 462, 112 P.2d 838, 845; *Merchants' Transp. Co. v. Daniel*, 109 Fla. 496, 149 So. 401, 403;

Or proof of circumstances which will put the one charged on implied notice of the situation, *Schoen v. Western Union Telegraph Co.*, C.C.A.Fla., 135 F.2d 967, 968.

The doctrine imposes duty upon a party to exercise ordinary care in avoiding injury to another who has negligently placed himself in a situation of danger, *Morris v. Seashore Transp. Co.*, 208 N.C. 807, 182 S.E. 487,

duty to act when helpless peril is known and duty to exercise vigilance to discover helpless peril, if duty of vigilance exists toward class of which one in peril is member, *Leinbach v. Pickwick Greyhound Lines*, 138 Kan. 50, 23 P. 2d 449, 92 A.L.R. 1.

The doctrine is limited, according to some decisions, to cases in which defendant actually discovered person injured and his peril. *Walker v. East St. Louis & Suburban Ry. Co.*, C.C.A.Mo., 25 F.2d 579, 580, *Gauthier v. Foote*, La. App., 12 So.2d 9, 11; or in which defendant had actual knowledge of plaintiff's peril or inability to extricate himself. *Sarkise v. Boston & M. R. R.*, 88 N.H. 178, 186 A. 332, 334.

But other decisions hold that the doctrine applies if defendant, aware of plaintiff's peril or unaware of it only through carelessness, has later opportunity than plaintiff to avert the accident, *Cheek v. Thompson*, D.C.La., 28 F. Supp. 391, 394; *Linde Air Products Co. v. Cameron*, C.C.A. W.Va., 82 F.2d 22, 24;

or if defendant knew or could or should have known of peril, *Arthur v. Rose*, 289 Ky. 402, 158 S.W.2d 652, 653, 654; *Ward v. City Fuel Oil Co.*, 147 Fla. 320, 2 So.2d 586, 587; *Smith v. Pacific Greyhound Corporation*, 139 Cal.App. 696, 35 P.2d 169, 172;

or if defendant saw or discovered or should have seen or discovered the danger, *Young v. Thompson*, La.App., 189 So. 487, 489, 490, 491; *Hartman v. Dyer*, 298 Ky. 173, 182 S.W.2d 646, 647; *Evansville Container Corporation v. McDonald*, C.C.A.

Tenn., 132 F.2d 80, 85; *Harry v. Thompson*, Mo.App., 166 S. W.2d 795, 798; or if injuring party was aware of peril or by reasonable care should have known of danger, *Gardini v. Arakelian*, 18 Cal.App.2d 424, 64 P.2d 181, 184;

or if peril is realized by defendant or through culpable carelessness he is oblivious to it, *Pedigo v. Osborne*, 279 Ky. 85, 129 S. W.2d 996, 999; *Johnson v. Southwestern Engineering Co.*, 41 Cal.App.2d 623, 107 P.2d 417, 418.

The doctrine is predicated, according to some decisions, upon the theory that negligence of injured party has ceased. *Baltimore & O. R. Co. v. Joseph*, C.C.A.Ohio, 112 F.2d 518, 521,

522; Cohen v. Smith, 26 Ohio App. 32, 159 N. E. 329, 333; Claggett v. Phillips Petroleum Co., 150 Kan. 191, 92 P.2d 52, 57; Becker v. Blum, 142 Fla. 60, 194 So. 275, 276.

Other decisions hold that, although plaintiff's negligence continued until accident he may recover if the defendant, after knowing of plaintiff's danger, or by exercise of ordinary care could have known, could have avoided injury by ordinary care, McLeod v. Charleston Laundry Co., 106 W.Va. 361, 145 S.E. 756, 757; Newbern v. Leary, 215 N.C. 134, 1 S.E.2d 384, 389, 393; Young v. Thompson, La.App., 189 So. 487, 489, 490, 491;

that the doctrine applies where plaintiff's negligence continues up to time of injury, if defendant actually sees the peril, or if plaintiff's negligence has terminated and defendant should have seen it.

Chadwick v. Ek, .1 Wash.2d 117, 95 P.2d 398, 404;

that the doctrine applies where negligence of defendant with actual knowledge of situation stands over against continuing negligence of plaintiff without actual knowledge of situation, Black's Law Dictionary Revised 4th Ed.-65

FIDES SERVANDA EST; SIMPLICITAS JURIS GENTIUM PRAEVALEAT. Faith must be kept; the simplicity of the law of nations must prevail. A rule applied to bills of exchange as a sort of sacred instruments. 3 Burrows, 1672; Story, Bills, § 15.

HOSTILE. Having the character of an enemy; standing in the relation of an enemy. 1 Kent, Comm. c. 4.

HOSTILITY. In the law of nations. A state of open war. "At the breaking out of hostility." An act of open war. "When hostilities have commenced." 1 Kent, Comm. 56, 60. A hostile character. "Hostility may attach only to the person." 1 Kent, Comm. 56.

INNS OF COURT. These are certain private un-incorporated associations, in the nature of collegiate houses, located in London, and invested with the exclusive privilege of calling men to the bar; that is, conferring the rank or degree of a barrister. They were founded probably about the beginning of the fourteenth century. The principal Inns of Court are the Inner Temple, Middle Temple, Lincoln's Inn, and Gray's Inn. (The two former originally belonged to the Knights Templar; the two latter to the earls of Lincoln and Gray respectively.) These bodies now have a "common council of legal education," for giving lectures and holding examinations. The inns of chancery, distinguishable from the foregoing, but generally classed with them under the general name, are the buildings known as "Clifford's Inn," "Clement's Inn," "New Inn," "Staples' Inn," and "Barnard's Inn." They were formerly a sort of collegiate houses in which law students learned the elements of law before being admitted into the inns of court, but they have long ceased to occupy that position.

MERCANTILE LAW. An expression substantially equivalent to the law-merchant or commercial law; It designates the system of rules, customs, and usages generally recognized and adopted by merchants and traders, and which, either in its simplicity or as modified by

common law or statutes, constitutes the law for the regulation of their transactions and the solution of their controversies.

LEX LOCI. The law of the place. This may be of several descriptions but, in general, *lex loci* is only used for *lex loci contractus*. The "*lex loci*" furnishes the standard of conduct, *Russ v. Atlantic Coast Line R. Co.*, 220 N. C. 715, 18 S.E.2d 130, 131;

it governs as to all matters going to the basis of the right of action itself, *State of Maryland, for Use of Joynes, v. Coard*, 175 Va. 571, 9 S.E.2d 454, 458.

The substantive rights of parties to action are governed by "*lex loci*" or law of place where rights were acquired or liabilities incurred. *Sullivan v. McFetridge, Sup.*, 55 N. Y.S.2d 511, 516; *Gray v. Blight, C.C.A.Colo.*, 112 F.2d 696,

LEX FORI. The law of the forum, or court; that is, the positive law of the state, country, or jurisdiction of whose judicial system the court where the suit is brought or remedy sought is an integral part. 2 Kent, Comm. 462.

"Remedies upon contracts and their incidents are regulated and pursued according to the law of the place where the action is instituted, and the *lex loci* has no application."

2 Kent, Comm. 462. "The remedies are to be governed by the laws of the country where the suit is brought; or, as it is compendiously expressed, by the *lex fori*." *Bank of United States v. Donnally*, 8 Pet. 361, 372, 8 L. Ed. 974. "So far as the law affects the remedy, the *lex fori*, the law of the place where that remedy is sought, must govern. But, so far as the law of the construction, the legal operation and effect, of the contract, is concerned, it is governed by the law of the place where the contract is made." *Warren v. Copelin*, 4 Mete. (Mass.) 594, 597.

The *lex fori*, or law of jurisdiction in which relief is sought controls as to all matters pertaining to remedial as distinguished from substantive rights. *Shimonek v. Tillman*, 150 Okl. 177, 1 P.2d 154, 156; *Sullivan v. McFetridge, Sup.*, 55 N.Y.S.2d 511, 516. See *Lex Loci Contractus*.

Misjoinder of actions is the joining several demands which the law does not permit to be joined, to enforce by one proceeding several distinct, substantive rights of recovery. Gould, Pl. c. 4, § 98; Archb. Civ. Pl. 61; Dane, Abr.

In equity, it is the joinder of different and distinct claims against one defendant; *Adams, Eq.* 309; 7 Sim. 241; *Newland v. Rogers*, 3 Barb. Ch., N.Y., 432.

NOVEL DISSEISIN. See Assise of Novel Disseisin.

ONEROUS. A contract, lease, share, or other right is said to be "onerous" when the obligations attaching to it counter-balance or exceed the advantage to be derived from it, either absolutely or with reference to the particular possessor. Sweet.

As used in the civil law and in the systems derived from it, (French, Scotch, Spanish, Mexican,) the term also means based upon, supported by, or relating to a good and valuable consideration, i. e., one which imposes a burden or charge in return for the benefit conferred.

ONEROUS CAUSE. In Scotch law. A good and legal consideration.

ONEROUS CONTRACT. See Contract.

ONEROUS DEED. In Scotch law. A deed given for a valuable consideration. Bell.

ONEROUS GIFT. A gift made subject to certain charges imposed by the donor on the donee.

ONEROUS TITLE. A title acquired by the giving of a valuable consideration, as the payment of money or rendition of services or the performance of conditions or assumption or discharge of liens or charges. *Scott v. Ward*, 13 Cal. 458; *Kircher v. Murray*, C.C.Tex., 54 F. 617; *Noe v. Card*, 14 Cal. 576; Civ.Code La. 1900, art. 3556.

SEPARATISTS. Seceders from the Church of England. They, like Quakers, solemnly affirm, instead of taking the usual oath, before they give evidence.

SUBJECT-MATTER. The subject, or matter presented for consideration; the thing in dispute; the right which one party claims as against the other, as the right to divorce; of ejectment; to recover money; to have foreclosure.

Flower Hospital v. Hart, 178 Okl. 447, 62 P.2d 1248, 1252.

Nature of cause of action, and of relief sought.

Moffatt v. Cassimus, 238 Ala. 99, 190 So. 299, 300.

JUDGE DE FACTO. One who holds and exercises the office of a judge under color of lawful authority and by a title valid on its face, though he has not full right to the office, as where he was appointed under an unconstitutional statute, or by an usurper of the appointing power, or has not taken the oath of office. *State v. Miller*, 111 Mo. 542, 20 S.W. 243; *Walcott v. Wells*, 21 Nev. 47, 24 P. 367, 9 L.R.A. 59, 37 Am.St.Rep. 478; *Dredla v. Baache*, 60 Neb. 655, 83 N.W. 916; *Caldwell v. Barrett*, 71 Ark. 310, 74 S.W. 748.

In Missouri, a special judge is a "judge de facto". *State ex rel. McGaughey v. Grayston*, 349 Mo. 700, 163 S.W.2d 335, 337.

JURISDICTION. It is the authority, capacity, power or right to act, *Campbell v. City of Plymouth*, 293 Mich. 84, 291 N.W. 231, 232;

PEREMPTORY. Imperative; absolute; conclusive; positive; not admitting of question, delay, or reconsideration. Positive; final; 'decisive; not admitting of any alternative. Self-determined; arbitrary; not requiring any cause to be shown.

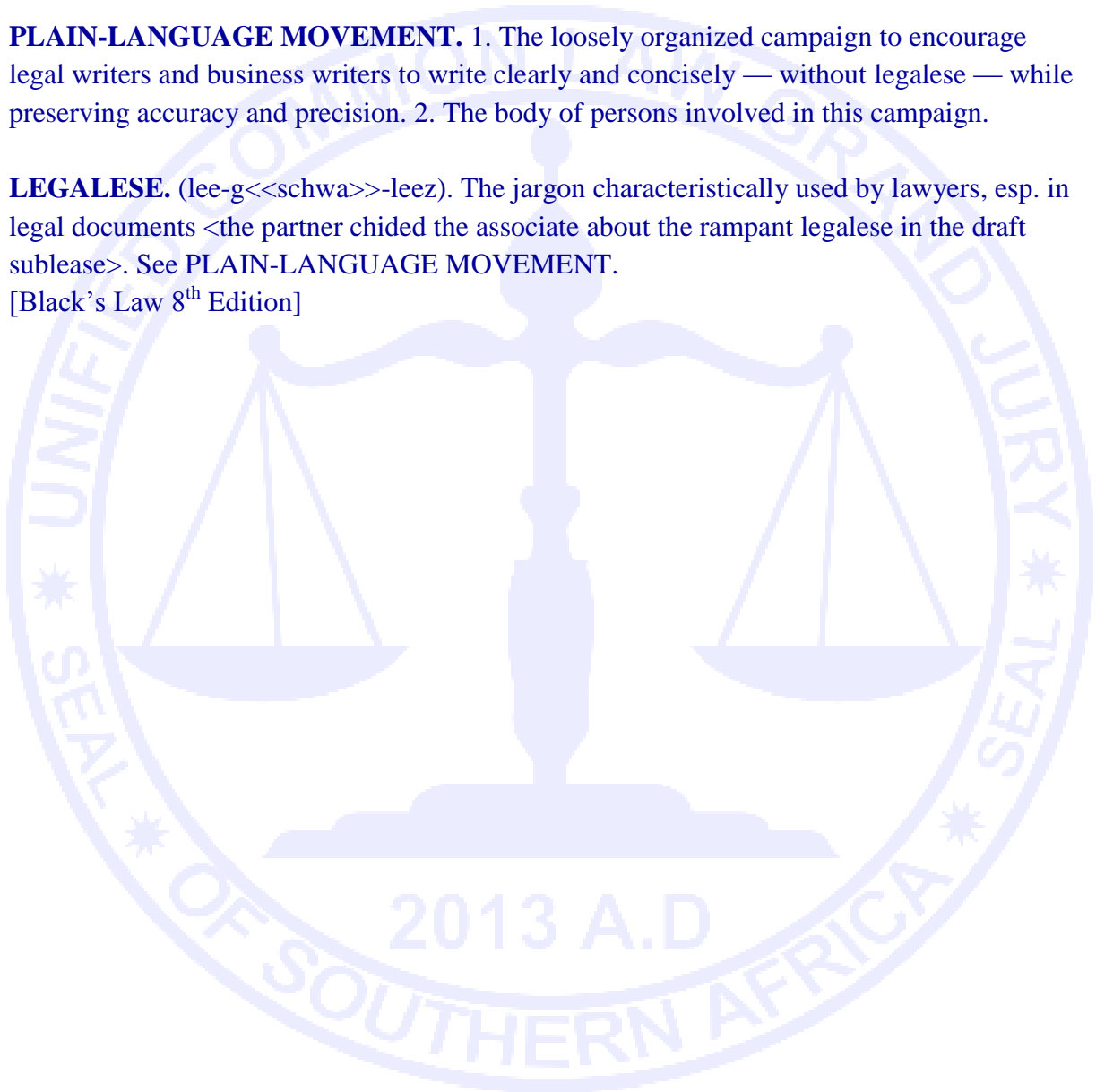
Wolfe v. State, 147 Tex.Cr.R. 62, 178 S.W.Zd 274, 279.

As to peremptory "Challenge," "Defense," "Instruction," "Mandamus," "Nonsuit," "Plea," and "Writ," see those titles.

PLAIN-LANGUAGE MOVEMENT. 1. The loosely organized campaign to encourage legal writers and business writers to write clearly and concisely — without legalese — while preserving accuracy and precision. 2. The body of persons involved in this campaign.

LEGALESE. (lee-g<<schwa>>-leez). The jargon characteristically used by lawyers, esp. in legal documents <the partner chided the associate about the rampant legalese in the draft sublease>. See PLAIN-LANGUAGE MOVEMENT.

[Black's Law 8th Edition]



Original Writs:

PREROGATIVE WRITS. In English law, the name is given to certain judicial writs issued by the courts only upon proper cause shown, never as a mere matter of right, the theory being that they involve a direct interference by the government with the liberty and property of the subject, and therefore are justified only as an exercise of the extraordinary power (prerogative) of the crown. In America, a theory has sometimes been advanced that these writs should issue only in cases *publici juris* and those affecting the sovereignty of the state, or its franchises or prerogatives, or the liberties of the people. But their issuance is now generally regulated by statute, and the use of the term "prerogative," in describing them, amounts only to a reference to their origin and history. These writs are the writs of mandamus, procedendo, prohibition, quo warranto, habeas corpus, and certiorari. Click v. Click, 98 W. Va. 419, 127 S.E. 194, 195.

The true distinction between public and private corporations is that the former are organized for governmental purposes, the latter not. The term "public" has sometimes been applied to corporations of which the government owned the entire stock, as in the case of a state bank. But bearing in mind that "public" is here equivalent to "political," it will be apparent that this is a misnomer. Again the fact that the business or operations of a corporation may directly and very extensively affect the general public (as in the case of a railroad company or a bank or an insurance company) is no reason for calling it a public corporation. If organized by private persons for their own advantage,—or even if organized for the benefit of the public generally, as in the case of a free public hospital or other charitable institution,—it is none the less a private corporation, if it does not possess governmental powers or functions. The uses may in a sense be called "public," but the corporation is "private," as much so as if the franchises were vested in a single person. *Dartmouth College v. Woodward*, 4 Wheat. 562, 4 L.Ed. 629; *Ten Eyok v. Canal Co.*, 18 N.J.Law, 204, 37 Am.Dec. 233.

It is to be observed, however, that those corporations which serve the public or contribute to the comfort and convenience of the general public, though owned and managed by private interests, are now (and quite appropriately) denominated "public-service corporations." See *infra*. Another distinction between public and private corporations is that the former are not voluntary associations (as the latter are) and that there is no contractual relation between the government and a public corporation or between the individuals who compose it. *Mor.Priv.Corp.* § 3; *Goodwin v. East Hartford*, 70 Conn. 18, 38 A. 876.

Original Writs

A RESCRIPTIS VALET ARGUMENTUM. An argument from rescripts [i. e. original writs in the register] is valid. *Co.Litt.* 11 a.

ACCEDAS AD CURIAM. (Lat. That you go to court.) An original writ out of chancery directed to the sheriff, for the purpose of removing a replevin suit from a Court Baron or a hundred court to one of the superior courts of law. It directs the sheriff to go to the lower

court, and enrol the proceedings and send up the record. See Fitzh. Nat. Brev. 18; Dy. 169; 3 Bl. Comm. 34.

ACTION ON THE CASE. A species of personal action of very extensive application, otherwise called "trespass on the case," or simply "case," from the circumstance of the plaintiff's whole case or cause of complaint being set forth at length in the original writ by which formerly it was always commenced. 3 Bl. Comm. 122. Wallace v. Wilmington & N. R. Co., 8 Houst. (Del.) 529, 18 A. 818.

In its most comprehensive signification it includes assumpsit as well as an action in form ex delicto; at present when it is mentioned it is usually understood to mean an action in form ex delicto. **It is founded on the common law or upon acts of Parliament, and lies generally to recover damages for torts not committed with force, actual or implied; or having been occasioned by force where the matter affected was not tangible, or the injury was not immediate but consequential;** or where the interest in the property was only in reversion, in all of which cases trespass is not sustainable; 1 Chit.P1. 132.

In the progress of judicial contestation it was discovered that there was a mass of tortious wrongs unattended by direct and immediate force, or where the force, though direct, was not expended on an existing right of present enjoyment, for which the then known forms of action furnished no redress. The action on the case was instituted to meet this want. And wrongs which will maintain an action on the case are frequently committed in the non-observance of duties, which are but the implication of contract obligation, duties of requisite skill, fidelity, diligence, and a proper regard for the rights of others, implied in every obligation to serve another.

If the cause of action arises from a breach of promise, the action is "ex contractu"; **but if the cause of action arises from a breach of duty growing out of the contract, it is in form ex delicto and case.** When there is a contract, either express or implied, from which a common-law duty results, an action on the case lies for the breach of that duty. Bently-Beale, Inc. v. Wesson Oil & Snowdrift Sales Co., 231 Ala. 562, 165 So. 830, 832. See Assumpsit.

AD QUOD DAMNUM. The name of a writ formerly issuing from the English chancery, commanding the sheriff to make inquiry "to what damage" a specified act, if done, will tend. It is a writ which ought to be sued before the king grants certain liberties, as a fair, market, or such like, which may be prejudicial to others, and thereby it should be inquired whether it will be a prejudice to grant them, and to whom it will be prejudicial, and what prejudice 'will come thereby. Termes de la Ley.

There is also another writ of ad quod damnum, if any one will turn a common highway and lay out another way as beneficial. Termes de la Ley.

The writ of ad quod damnum is a common-law writ, in the nature of an original writ, issued by the prothonotary, and in condemnation proceedings is returnable to and subject to confirmation of the Superior Court. Elbert v. Scott, Del., 5 Boyce 1, 90 A. 587.

ATTACHMENT. The act or process of taking, apprehending, or seizing persons or property, by virtue of a writ, summons, or other judicial order, and bringing the same into the custody of the law; used either for the purpose of bringing a person before the court, of acquiring jurisdiction over the property seized, to compel an appearance, to furnish security for debt or costs, or to arrest a fund in the hands of a third person who may become liable to pay it over. Also the writ or other process for the accomplishment of the purposes above enumerated, this being the more common use of the word. A remedy ancillary to an action by which plaintiff is enabled to acquire a lien upon property or effects of defendant for satisfaction of judgment which plaintiff may obtain. *First Nat. Bank & Trust Co. of Vermillion v. Kirby*, 62 S.D. 489, 253 N.W. 616; *Lipscomb v. Rankin*, Tex.Civ.App., 139 S.W.2d 367, 369.

Though sometimes called an ancillary or auxiliary proceeding, it is in all essential respects, a suit. *Farmers State Bank of Lexington v. Lemmer*, 130 Neb. 211, 264 N.W. 415, 416.

The purpose is to take defendant's property into legal custody, so that it may be applied on defendant's debt to plaintiff when established. *John Deere Plow Co. of St. Louis v. L. D. Jennings, Inc.*, 203 S.C. 426, 27 S.E.2d 571, 572; *Union Bank & Trust Co. v. Edwards*, 281 Ky. 693, 137 23. W.2d 344, 348.

At common law, "attachment" was procedure whereby sheriff was, commanded to attach a defendant who, after Black's Law Dictionary Revised 4th Ed.-11 being personally served, disobeyed original writ of summons, by keeping certain of his goods which he would forfeit if he did not appear, or by making him find securities who would be amerced if he continued his nonappearance, and, if after such attachment he still neglected to appear, he would not only forfeit this security, but was compellable by a writ of *distringas infinite*. *Grimmett v. Barnwell*, 184 Ga. 461, 192 S.E. 191, 194, 116 A.L.R. 257.

Execution and attachment distinguished. See Execution.

Persons

A writ issued by a court of record, commanding the sheriff to bring before it a person who has been guilty of contempt of court, either in neglect or abuse of its process or of subordinate powers. 3 Bl.Comm. 280; 4 Bl.Comm. 283; *Commonwealth v. Shecter*, 250 Pa. 282, 95 A. 468, 470.

Property

A species of mesne process, by which a writ is issued at the institution or during the progress of an action, commanding the sheriff to seize the property, rights, credits, or effects of the defendant to be held as security for the satisfaction of such judgment as the plaintiff may recover. It is principally used against absconding, concealed, or fraudulent debtors. *U. S. Capsule Co. v. Isaacs*, 23 Ind.App. 533, 55 N.E. 832.

To Give Jurisdiction

Where the defendant is a non-resident, or beyond the territorial jurisdiction of the court, his goods or land within the territory may be seized upon process of attachment; whereby he will be compelled to enter an appearance, or the court acquires jurisdiction so far as to dispose of the property attached. This is sometimes called "foreign attachment." *Megee v. Beirne*, 39 Pa.

50; *Bray v. McClury*, 55 Mo. 128. In such a case, the proceeding becomes in substance one in rem against the attached property. *St. John v. Parsons*, 54 Ohio App. 420, 7 N.E.2d 1013, 1014.

Domestic and Foreign

In some jurisdictions it is common to give the name "domestic attachment" to one issuing against a resident debtor, (upon the special ground of fraud, intention to abscond, etc.,) and to designate an attachment against a non-resident, or his property, as "foreign." *Longwell v. Hartwell*, 30 A. 495, 164 Pa. 533; *David E. Kennedy, Inc. v. Schleindl*, 290 Pa. 38, 137 A. 815, 816, 53 A.L.R. 1020.

But the term "foreign attachment" more properly belongs to the process otherwise familiarly known as "garnishment." It was a peculiar and ancient remedy open to creditors within the jurisdiction of the city of London, by which they were enabled to satisfy their own debts by attaching or seizing the money or goods of the debtor in the hands of a third person within the jurisdiction of the city. *Welsh v. Blackwell*, 14 N.J.Law, 346.

This power and process survive in modern law, in all common-law jurisdictions, and are variously denominated. "garnishment," "trustee process," or "factorizing." *Raiguel v. McConnell*, 25 Pa. 362, 363. A "foreign attachment" is a mesne process issued to compel a foreign debtor to appear to the suit of his creditor, while "attachment execution" is a final process issued for the purpose of enforcing a judgment already obtained. *Williams v. Ricca*, 324 Pa. 33, 187 A. 722, 723.

ATTACHMENT EXECUTION. A name given in some states to a process of garnishment for the satisfaction of a judgment. As to the judgment debtor it is an execution; but as to the garnishee it is an original process—a summons commanding him to appear and show cause, if any he has, why the judgment should not be levied on the goods and effects of the defendant in his hands. *Sniderman v. Nerone*, 7 A.2d 496, 499, 136 Pa.Super. 381.

ATTACHMENT OF PRIVILEGE. In English law.

A process by which a man, by virtue of his privilege, calls another to litigate in that court to which he himself belongs, and who has the privilege to answer there. A writ issued to apprehend a person in a privileged place. *Termes de la Ley*.

ATTACHMENT OF THE FOREST. One of the three courts formerly held in forests. The highest court was called "justice in eyre's seat;" the middle, the "swainmote;" and the lowest, the "attachment." *Manwood*, 90, 99.

CERTIORARI. Lat. (To be informed of, to be made certain in regard to.) The name of a writ of review or inquiry. *Leonard v. Willcox*, 101 Vt. 195, 142 A. 762, 766; *Nissen v. International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America*, 229 Iowa 1028, 295 N.W. 858.

Certiorari Is an appellate proceeding for re-examination of action of inferior tribunal or as auxiliary process to enable appellate court to obtain further information in pending cause, *Shapleigh Hardware Co. v. Brumfield*, 159 Miss. 175, 130 So. 98.

A writ directed only to an inferior tribunal, *Stewart v. Johnston*, C.C.A.Cal., 97 F.2d 548. It is a discretionary writ, *Lennon v. School Dist. No. 11, Greer County*, 189 Okl. 37, 113 P.2d 382, 384.

Issued only for good cause on showing negating laches in prosecuting appeal, *In re Snelgrove*, 208 N.C. 670, 182 S.E. 335, 336.

It is available for review of official, judicial or quasi judicial actions. *State v. Canfield*, 166 Minn. 414, 208 N.W. 181; *People ex rel. Elmore v. Allman*, 382 Ill. 156, 46 N.E.2d 974, 975. It brings into superior court the record of the administrative or inferior judicial tribunal for inspection, *Murphy v. Cuesta, Rey & Co.*, 381 Ill. 162, 45 N.E.2d 26, 28.

It lies as a substitute for an appeal, *Pue v. Hood*, 222 N.C. 310, 22 S.E.2d 896, 898. To correct errors of law, *Dube v. Mayor of City of Fall River*, 308 Mass. 12, 30 N.E.2d 817, 818; to restrain excesses of jurisdiction, *Stacy v. Mayor of City of Haverhill*, 317 Mass. 188, 57 N.E.2d 564.

To review erroneous or unwarranted acts or proceedings, *State ex rel. Allen v. Rose*, 123 Fla. 544, 167 So. 21, 24.

To review questions of law, *Public Welfare Commission v. Civil Service Commission*, 289 Mich. 101, 286 N.W. 173, 175.

Where circumstances are so exceptional that an immediate review is in interest of justice, *Vingi v. Read*, 68 R.I. 484, 29 A.2d 637, 639;

where judgment is a miscarriage of justice or will result in substantial injury to legal rights, *Goodkind v. Wolkowsky*, 151 Fla. 62, 9 So.2d 553, 562;

or where applicant for writ lost right of appeal through no fault of his own, *McCain v. Collins*, 204 Ark. 521, 164 S.W.2d 448, 451.

It lies to determine whether inferior tribunal acted within or abused or exceeded jurisdiction, *Brundage v. O' Berry*, 101 Fla. 320, 134 So. 520, 521; *Pierce v. Green*, 229 Iowa 22, 294 N.W. 237, 253, 131 A.L.R. 335;

or proceeded illegally, *Board of Zoning Appeals of City of Indianapolis v. Waintrup*, 99 Ind.App. 576, 193 N.E. 701, 705;

or proceeded regularly, *In re Revocation of Restaurant Liquor License No. R-8981, Issued to John Mami*, 144 Pa.Super. 285, 19 A.2d 549, 552;

or whether judgment is prejudicial and materially harmful, *Jacksonville American Pub. Co. v. Jacksonville Paper Co.*, 143 Fla. 835, 197 So. 672, 674.

It performs the office of the common-law writ of error, *Berry v. Recorder's Court of Town of West Orange*, 124 N.J.L. 385, 11 A.2d 743, 745.

Limited review only is involved in the writ, *Brundage v. O'Berry*, 101 Fla. 320, 134 So. 520, 521. Quashal of record or proceeding is the only relief available, *State ex rel. St. Louis County v. Evans*, 346 Mo. 209, 139 S.W.2d 967, 969.

Originally, and in English practice, an original writ commanding judges or officers of inferior courts to certify or to return records or proceedings in a cause for judicial review of their action. *Jacob; Ashworth v. Hatcher*, 98 W.Va. 323, 128 S.E. 93.

For other common-law definitions, see F. N. B. 554 A; Bac.Abr. 162, 168, citing 4 Burr. 2244; In re Dance, 2 N. D. 184, 49 N.W. 733, 33 Am.St.Rep. 768.

In Florida the writs of "certiorari" in use are the common-law writs, the statutory writ to review judgments of civil courts of record, the rule certiorari to review interlocutory appeals in equity, the rule certiorari for supplying omitted parts of records on appeals or writs of error, and writs of certiorari issued to review quasi judicial judgments or orders of quasi judicial bodies or officers. Kilgore v. Bird, 149 Fla. 570, 6 So.2d 541, 544, 545.

In Massachusetts it is a writ by the supreme judicial court commanding inferior tribunal to certify and return its records in a particular case that any errors or irregularities which appear in the proceedings may be corrected. Pub.St.Mass.1882, p. 1288; Coolidge v. Bruce, 249 Mass. 465, 144 N.E. 397.

In Texas, the ordinary office of writ of "certiorari" is to perfect the record on appeal. Rev.St.1925, art. 932. Zamora v. Garza, Tex.Civ.App., 117 S.W.2d 165.

In some states the writ has been abolished by statute so far as the common-law name is concerned, **but the remedy is preserved under the new name of "writ of review"**; Southwestern Telegraph & Telephone Co. v. Robinson, Tex., 1 C.C.A. 91, 48 F. 771.

CERTIORARI, BILL OF. In English chancery practice. An original bill praying relief. It was filed for the purpose of removing a suit pending in some inferior court of equity into the court of chancery, on account of some alleged incompetency or inconvenience.

PROCESS. A series of actions, motions, or occurrences; progressive act or transaction; continuous operation; method, mode or operation, whereby a result or effect is produced; normal or actual course of procedure; regular proceeding, as, the process of vegetation or decomposition; a chemical process; processes of nature. Sokol v. Stein Fur Dyeing Co., 216 App.Div. 573, 216 N.Y.S. 167, 169; Kelley v. Coe, App.D.C., 99 F.2d 435, 441.

Practice

This word is generally defined to be the means of compelling the defendant in an action to appear in court; Gondas v. Gondas, 99 N.J.Eq. 473, 134 A. 615, 618;

or a means whereby a court compels a compliance with its demands. Frank Adam Electric Co. v. Witman, 16 Ga.App. 574, 85 S.E. 819, 820. Stevens v. Associated Mortg. Co. of New Jersey, 107 N.J.Eq. 297, 152 A. 461, 462. And when actions were commenced by original writ, instead of, as at present, by writ of summons, the method of compelling the defendant to appear was by what was termed "original process," being founded on the original writ, and so called also to distinguish it from "mesne" or "intermediate" process, which was some writ or process which issued during the progress of the suit. The word "process," however, as now commonly understood, signifies those formal instruments called "writs."

The word "process" is in common-law practice frequently applied to the writ of summons, which is the instrument now in use for commencing personal actions. Farmers' Implement Co. of Hallock, Minn., v. Sandberg, 132 Minn. 389, 157 N.W. 642.

But in its more comprehensive signification it includes not only the writ of summons, but all other writs which may be issued during the progress of an action. Those writs which are used to carry the judgments of the courts into effect, and which are termed "writs of execution" are also commonly denominated "final process," because they usually issue at the end of a suit. *Anderson v. Dewey*, 91 Conn. 510, 100 A. 99, 100.

A writ, summons, or order issued in a judicial proceeding to acquire jurisdiction of a person or his property, to expedite the cause or enforce the judgment. *Royal Exchange Assurance of London v. Bennettsville & C. R. Co.*, 95 S.C. 375, 79 S.E. 104, 105.

A writ or summons issued in the course of judicial proceedings. *Radovich v. French*, 36 Nev. 341, 135 P. 920, 921.

The term in statutes may be used with the meaning of procedure. *Safford v. United States*, C.C.A.N.Y., 252 F. 471, 472.

In the practice of the English Irregular process. Sometimes defined to mean process absolutely void, and not merely erroneous and voidable; but that term is usually applied to all process not issued in strict conformity with the law, whether the defect appears upon the face of the process, or by reference to extrinsic facts, and whether such defects render the process absolutely void or only voidable. And see *Bryan v. Congdon*, 86 F. 221, 29 C.C.A. 670.

Void process. Such as was issued without power in the court to award it, or which the court had not acquired jurisdiction to issue in the particular case, or which fails in some material respect to comply with the requisite form of legal process. *Bryan v. Congdon*, C.C.A.Kan., 86 F. 221, 223, 29 C.C.A. 670.

Mesne . process. As distinguished from final process, this signifies any writ or process issued between the commencement of the action and the suing out of execution. 3 Bla.Comm. 279. This is substantially the meaning of the term as used in admiralty rule 1 (29 S.Ct. xxxix; 28 U.S.C.A. §§ 2071, 2073), providing that no mesne process shall issue until the libel shall be filed in the clerk's office. *The City of Philadelphia*, D.C.Pa., 263 F. 234, 235.

"Mesne" in this connection may be defined as intermediate; intervening; the middle between two extremes. *L. N. Dantzler Lumber Co. v. Texas & P. Ry. Co.*, 119 Miss. 328, 80 So. 770, 775, 49 A.L.R. 1669. Mesne process includes the writ of summons, (although that is now the usual commencement of actions,) because anciently that was preceded by the original writ. The writ of *capias ad respondendum* was called "mesne" to distinguish it, on the one hand, from the original process by which a suit was formerly commenced; and, on the other, from the final process of execution. *Birmingham Dry Goods Co. v. Bledsoe*, 21 So. 403, 113 Ala. 418.

Original process. That by which a judicial proceeding is instituted; process to compel the appearance of the defendant. Distinguished from "mesne" process, which issues, during the progress of a suit, for some subordinate or collateral purpose; and from "final" process, which is process of execution. *Appeal of Hotchkiss*, 32 Conn. 353.

Judicial writs. In English practice. The *capias* and all other writs subsequent to the original writ not issuing out of chancery, but from the court to which the original was returnable. Being grounded on what had passed in that court in consequence of the sheriff's return, they were called judicial writs, in contradistinction to the writs issued out of chancery, which were called original writs. 3 Bl.Comm. 282.

Such writs as issue under the private seal of the courts, and not under the great seal of England, and are tested or witnessed, not in the king's name, but in the name of the chief judge of the court out of which they issue. The word "judicial" is used in contradistinction to "original;" original writs being such as issue out of chancery under the great seal, and are witnessed in the king's name. See 3 Bl. Comm. 282. *Pullman's Palace-Car Co. v. Washburn*, C.C.Mass., 66 F. 792.

Original writ. In English practice. An original writ was the process formerly in use for the commencement of personal actions. It was a mandatory letter from the king, issuing out of chancery, sealed with the great seal, and directed to the sheriff of the county wherein the injury was committed, or was supposed to have been committed, requiring him to command the wrong-doer or accused party either to do justice to the plaintiff or else to appear in court and answer the accusation against him. This writ is now disused, the writ of summons being the process prescribed by the uniformity of process act for commencing personal actions; and under the judicature act, 1873, all suits, even in the court of chancery, are to be commenced by such writs of summons. *Brown. Patent writ.*
In old practice, an open writ; one not closed or sealed up.

Peremptory writ. An original writ, called from the words of the writ a "si to fecerit securum," and which directed the sheriff to cause the defendant to appear in court without any option given him, provided the plaintiff gave the sheriff security effectually to prosecute his claim. The writ was very occasionally in use, and only where nothing was specifically demanded, but only a satisfaction in general; as in the case of writs of trespass on the case, wherein no debt or other specific thing was sued for, but only damages to be assessed by a jury. *Brown.*

Prerogative writs. Those issued by the exercise of the extraordinary power of the crown (the court, in modern practice) on proper cause shown; namely, the writs of *procedendo*, *mandamus*, *prohibition*, *quo warranto*, *habeas corpus*, and *certiorari*.

WRIT OF ASSISTANCE. The name of a writ which issues from the court of chancery, in aid of the execution of a judgment at law, to put the complainant into possession of lands adjudged to him, when the sheriff cannot execute the judgment. *Emerick v. Miller*, Ind.App., 62 N.E. 285; *Hagerman v. Heltzel*, 21 Wash. 444, 58 R 580; *Marblehead Land Co. v. Los Angeles County*, D.C. Cal., 276 F. 305.

A form of process issued by an equity court to transfer the possession of lands, title or possession to which it has previously adjudicated, as a means of enforcing its decree, and performs the same office in a suit in equity as an execution in an action at law. *Burney v. Lee*, 57 Ariz. 41, 110 P.2d 554, 556. Its office is confined to lend aid to original equity jurisdiction, and the writ cannot be employed as a substitute for other common-law or statutory actions. *Patterson v. McKay*, 202 Ark. 241, 150 S.W.2d 196.

It is essentially a mandatory injunction, effect of which is to bring about a change in the possession of realty—it dispossesses the occupant and gives possession to one adjudged entitled thereto by the court. *Dusbabek v. Local Building & Loan Ass'n*, 178 Okl. 592, 63 P.2d 756, 759.

A "writ of assistance" is equivalent to the writ of *habere facias possessionem* at law, and issues as of course without notice, so far as the parties to the record are concerned, when necessary to execute a decree. *Gardner v. Duncan*, 104 Miss. 477, 61 So. 545, 546.

While the office of both a writ of assistance and a writ of possession is to put the party entitled thereto into the possession of property, the former issues from equity and the latter from law. *Southern State Bank v. Leverette*, 187 N.C. 743, 123 S.E. 68, 70.

An ancient writ issuing out of the exchequer. *Moz. & W.* A writ issuing from the court of exchequer to the sheriff commanding him to be in aid of the king's tenants by knight's service, or the king's collectors, debtors, or accountants, to enforce payment of their own dues, in order to enable them to pay their own dues to the king. 1 *Madox*, Hist. Exch. 675.

WRIT OF ASSOCIATION. In English practice. A writ whereby certain persons (usually the clerk of assize and his subordinate officers) are directed to associate themselves with the justices and serjeants; and they are required to admit the said persons into their society in order to take the assizes. 3 *Bl.Comm.* 59.

WRIT OF ATTACHMENT. A writ employed to enforce obedience to an order or judgment of the court. It may take the form of commanding the sheriff to attach the disobedient party and to have him before the court to answer his contempt. *Smith*, Act. 176.

Extraordinary Remedies:

The writs of mandamus, quo warranto, habeas corpus, and some others are sometimes called "extraordinary remedies," in contradistinction to the ordinary remedy by action. Receivership is also said to be an "extraordinary remedy." *Prudential Securities Co. v. Three Forks, H. & M. V. R. Co.*, 49 Mont. 567, 144 P. 158, 159.

Information in the nature of a quo warranto. A proceeding against the usurper of a franchise or office. *Jarman v. Mason*, 102 Okl. 278, 229 P. 459, 460. See Quo Warranto.

MANDAMUS. Lat. We command. This is the name of a writ (formerly a high prerogative writ) which issues from a court of superior jurisdiction, and is directed to a private or municipal corporation, or any of its officers, or to an executive, administrative or judicial officer, or to an inferior court, commanding the performance of a particular act therein specified, and belonging to his or their public, official, or ministerial duty, or directing the restoration of the complainant to rights or privileges of which he has been illegally deprived. *Lahiff v. St. Joseph, etc., Soc.*, 76 Conn. 648, 57 A. 692, 65 L.R.A. 92, 100 Am.St.Rep. 1012. The action of mandamus is one, brought in a court of competent jurisdiction, to obtain an order of such court commanding an inferior tribunal, board, corporation, or person to do or not to do an act the performance or omission of which the law enjoins as a duty resulting from an office, trust, or station. Where discretion is left to the inferior tribunal or person, the mandamus, can only compel it to act, but cannot control such discretion. Rev.Code Iowa, 1880, § 3373 (Code 1931, § 12440).

Writ of "mandamus" is summary writ issued from court of competent jurisdiction to command performance of specific duty which relator is entitled to have performed. *People v. Nelson*, 346 Ill. 247, 178 N.E. 485, 487.

It is legal, not equitable, remedy, and, when issued, is an inflexible peremptory command to do a particular thing. *State ex rel. Onion v. Supreme Temple Pythian Sisters*, 227 Mo.App. 557, 54 S.W.2d 468, 469.

The writ of mandamus is either peremptory or alternative, according as it requires the defendant absolutely to obey its behest, or gives him an opportunity to show cause to the contrary. It is the usual practice to issue the alternative writ first. This commands the defendant to do the particular act, or else to appear and show cause against it at a day named. If he neglects to obey the writ, and either makes default in his appearance or fails to show good cause against the application, the peremptory mandamus issues, which commands him absolutely and without qualification to do the act.

QUO WARRANTO. In old English practice. A writ, in the nature of a writ of right for the king, against him who claimed or usurped any office, franchise, or liberty, to inquire by what authority he supported his claim, in order to determine the right. It lay also in case of non-user, or long neglect of a franchise, or misuser or abuse of it; being a writ commanding the defendant to show by what warrant he exercises such a franchise, having never had any grant of it, or having forfeited it by neglect or abuse. 3Bl.Comm. 262

In England, and quite generally throughout the United States, this writ has given place to an "information in the nature of a quo warranto," which, though in form a criminal proceeding, is in effect a civil remedy similar to the old writ, and is the method now usually employed for trying the title to a corporate or other franchise, or to a public or corporate office. *Ames v. Kansas*, 111 U.S. 449, 4 S.Ct. 437, 28 L.Ed. 482; *People v. Londoner*, 13 Colo. 303, 22 P. 764, 6 L.R.A. 444;

An extraordinary proceeding, prerogative in nature, addressed to preventing a continued exercise of authority unlawfully asserted. *Johnson v. Manhattan Ry. Co.*, N.Y., 53 S.Ct. 721, 289 U.S. 479, 77 L.Ed. 1331.

It is intended to prevent exercise of powers that are not conferred by law, and is not ordinarily available to regulate the manner of exercising such powers. *State ex rel. Johnson v. Conservative Savings & Loan Ass'n*, 143 Neb. 805, 11 N.W.2d 89, 92, 93.

A recital, account, narrative of facts; information given. Thus, suits by quo warranto are entitled "on the relation of" a private person, who is called the "relator." But in this connection the word seems also to involve the idea of the suggestion, instigation, or instance of the relator.

In Old English Law

The name of an original writ, and the action founded on it, which lay to recover damages for any injury committed deceitfully, either in the name of another, (as by bringing an action in another's name, and then suffering a nonsuit, whereby the plaintiff became liable to costs,) or by a fraudulent warranty of goods, or other personal injury committed contrary to good faith and honesty.

Reg.Orig. 112-116; *Fitzh.Nat.Brev.* 95, E, 98.

Also the name of a judicial writ which formerly lay to recover lands which had been lost by default by the tenant in a real action, in consequence of his not having been summoned by the sheriff, or by the collusion of his attorney. *Rosc.Real*

Act. 136; 3 *B1.Comm.* 166.

MORAL EVIDENCE. As opposed to "mathematical" or "demonstrative" evidence, this term denotes that kind of evidence which, without developing an absolute and necessary certainty, generates a high degree of probability or persuasive force. It is founded upon analogy or induction, experience of the ordinary course of nature or the sequence of events, and the testimony of men.

MORATORIUM. A term designating suspension of all or of certain legal remedies against debtors, sometimes authorized by law during financial distress. *Brown v. State Nat. Bank of Shawnee*, 133 Okl. 173, 271 P. 833, 834.

A period of permissive or obligatory delay; specifically, a period during which an obligor has a legal right to delay meeting an obligation. *State ex rel. Jensen Livestock Co.*

v. Hyslop, 111 Mont. 122, 107 P.2d 1088, 1092.

PRECEDENT. An adjudged case or decision of a court of justice, considered as furnishing an example or authority for an identical or similar case afterwards arising or a similar question of law. It means that a principle of law actually presented to a court of authority for consideration and determination has, after due consideration, been declared to serve as a rule for future guidance in the same or analogous cases, but matters which merely lurk in the record and are not directly advanced or expressly decided are not precedents. *Empire Square Realty Co. v. Chase Nat. Bank of City of New York*, 43 N.Y.S.2d 470, 473, 181 Misc. 752; *Kvos, Inc. v. Associated Press*, 299 U.S. 269, 279, 57 S.Ct. 197, 81 L. Ed. 183.

A draught of a conveyance, settlement, will, pleading, bill, or other legal instrument, which is considered worthy to serve as a pattern for future instruments of the same nature.

PRESENTMENT.

Criminal Practice

The written notice taken by a grand jury of any offense, from their own knowledge or observation, without any bill of indictment laid before them at the suit of the government. 4 Bl. Comm. 301; *Bennett v. Kalamazoo Circuit Judge*, 183 Mich. 200, 150 N.W. 141, 142, Ann.Cas.1916E, 223.

Presentments are also made in courts-leet and courts-baron, before the stewards. Steph. Comm. 644.

The writing which contains the accusation so presented by a grand jury. *U. S. v. Hill*, 1 Brock. 156, Fed.Cas.No.-15,364.

In an extended sense, the term includes not only presentments properly so called, but also inquisitions of office and indictments found by a grand jury. 2 Hawk. Pl. Cr. c. 25, § 1.

An informal statement in writing, by the grand jury, representing to the court that a public offense has been committed which is triable in the county, and that there is reasonable ground for believing that a particular individual named or described therein has committed it. *Eason v. State*, 11 Ark. 482; *State v. Kiefer*, 90 Md. 165, 44 A. 1043.

An accusation of crime, made by a grand jury from their own knowledge or from evidence furnished them by witnesses or by one or more of their members. In re Report of Grand Jury of Baltimore City, 152 Md. 616, 137 A. 370, 372.

The difference between a presentment and an inquisition is this : that the former is found by a grand jury authorized to inquire of offenses generally, whereas the latter is an accusation found by a jury specially returned to inquire concerning the particular offense. 2 Hawk.Pl.Cr. c. 25, § 6.

An indictment differs from a presentment in that the former must be indorsed "A true bill," followed by the signature of the grand jury foreman; a presentment is to be signed by all the grand jurors, and hence does not have to be indorsed "A true bill." *Martin v. State*, 127 Tenn. 324, 155 S.W. 129, 130.

The distinction between a special presentment and a bill of indictment, even under the old practice, was very thin; and in Georgia even this distinction has been abolished in practice for many years. The solicitor is not now required to frame any indictment on a special

presentment, but the special presentment of the grand jury is returned into court, and upon it the defendant is arraigned and tried.

It has the same force and effect as a bill of indictment. The only formal difference between the two is that a prosecutor prefers a bill of indictment, and a special presentment has no prosecutor, but, in theory, originates with the grand jury (*Progress Club v. State*, 12 Ga.App. 174, 76 S.E. 1029, 1030). Even this difference between a bill of indictment and a special presentment no longer exists, and the finding of the grand jury is prepared by the solicitor-general and called a bill of indictment, or a special presentment, at his will. *Head v. State*, 32 Ga.App. 331, 123 S.E.

QUOD INCONSULTO FECIMUS, CONSULTIUS REVOCEMUS. Jenk.Cent. 116.

What we have done without due consideration, upon better consideration we may revoke.

QUOD NATURALIS RATIO INTER OMNES HOMINES CONSTITUIT, VOCATUR JUS GENTIUM. That which natural reason has established among all men is called the "law of nations." 1 Bl.Comm. 43; Dig. 1, 1, 9; Inst. 1, 2, 1.

REBUT. In pleading and evidence. To defeat or take away the effect of something. Sweet. When a plaintiff in an action produces evidence which raises a presumption of the defendant's liability, and the defendant adduces evidence which shows that the presumption is ill-founded, he is said to "rebut it." Sweet.

In the old law of real property, to repel or bar a claim. Co. Litt. 365a; *Termes de la Ley*.

Thus, when a person was sued for land which had been warranted to him by the plaintiff or his ancestor, and he pleaded the warranty as a defense to the action, this was called a "rebutter." Co.Litt. 365a; *Termes de la Ley*.

REBUTTAL. The introduction of rebutting evidence; the showing that statement of witnesses as to what occurred is not true; the stage of a trial at which such evidence may be introduced; also the rebutting evidence itself. *Lux v. Haggin*, 69 Cal. 255, 10 P. 674. *State v. Monroe*, 205 La. 285, 17 So.2d 331, 332.

RECOGNIZANCE. An obligation of record, entered into before some court of record, or magistrate duly authorized, with condition to do some particular act; as to appear at the assizes, or criminal court, to keep the peace, to pay a debt, or the like. It resembles a bond, but differs from it in being an acknowledgment of a former debt upon record.

2 Bl.Comm. 341; *Albrecht v. State*, 132 Md. 150, 103 A. 443, 444; *Modern Finance Co. v. Martin*, 311 Mass. 509, 42 N.E.2d 533, 534.

REPRESENTATIVE. One who represents or stands in the place of another. *Lee v. Dill*, 39 Barb. (N.Y.) 520; *Staples v. Lewis*, 71 Conn. 288, 41 A. 815.

REVIEW. To re-examine judicially. A reconsideration; second view or examination; revision; consideration for purposes of correction. Used especially of the examination of a

cause by an appellate court; and of a second investigation of a proposed public road by a jury of viewers.

Swan v. Justices of Superior Court, 222 Mass. 542, 111 N.E. 386, 389; State v. Griffiths, 137 Wash. 448, 242 P. 969, 970.

In the practice of several of the states, a species of bail bond or security, given by the prisoner either on being bound over for trial or on his taking an appeal.

REVISION. A re-examination or careful reading over for correction or improvement. State Road Commission of West Virginia v. West Virginia Bridge Commission, 112 W.Va. 514, 166 S.E. 11, 13.

SIGNATURE. The act of putting down a man's name at the end of an instrument to attest its validity, the name thus written. A "signature" may be written by hand, printed, stamped, typewritten, engraved, photographed, or cut from one instrument and attached to another, and a signature lithographed on an instrument by a party is sufficient for the purpose of signing it; it being immaterial with what kind of instrument a signature is made. Smith v. Greenville County, 188 S.C. 349, 199 S.E. 416, 419. Maricopa County v. Osborn, 60 Ariz. 290, 136 P.2d 270, 274.

And whatever mark, symbol, or device one may choose to employ as representative of himself is sufficient. Griffith v. Bonawitz, 73 Neb. 622, 103 N.W. 327, 339.

SUBJECT-MATTER. The subject, or matter presented for consideration; the thing in dispute; the right which one party claims as against the other, as the right to divorce; of ejectment; to recover money; to have foreclosure. Flower Hospital v. Hart, 178 Okl. 447, 62 P.2d 1248, 1252.

Nature of cause of action, and of relief sought. Moffatt v. Cassimus, 238 Ala. 99, 190 So. 299, 300.

JURISDICTION. The word is a term of large and comprehensive import, and embraces every kind of judicial action. Federal Land Bank of Louisville, Ky., v. Crombie, 258 Ky. 383, 80 S.W.2d 39, 40; McGowin v. McGowin, 122 Fla. 394, 165 So. 274, 275, 276. ...

It is the power of him who has the right of judging', Gliptis v. Fifteen Oil Co., 204 La. 896, 16 So.2d 471, 477;

the power of judicatories and courts, McGowin v. MCGowin, 122 Fla. 394, 165 So. 274, 275, 276; •Arganbright v. Good, 46 Cal.App.2d Supp. 877, 116 P.2d 186; Shaffer v. Bank, 201 N.C. 415, 160 S.E. 481, 482.

It is power conferred by the Constitution or by law, Corby v. Dooley, 313 Ill. App. 509, 40 N.E.2d 581, 584; National Life Co. v. Rice, 140 Tex. 315, 167 S.W.2d 1021, 1024; State ex rel. Andrews v. Superior Court of Maricopa County, 39 Ariz. 242, 5 P. 2d 192, 194.

It is of three kinds, of the subject-matter, of the person, and to render particular judgment which was given. City of Phcenix v. Rodgers, 44 Ariz. 40, 34 P.2d 385, 388.

SUPERSEDEAS. In Practice. The name of a writ containing a command to stay the proceedings at law. A suspension of the power of a trial court to issue an execution on judgment appealed from, or, if writ of execution has issued, it is a prohibition emanating from court of appeal against execution of writ. *Stewart v. Hurt*, 9 Cal.2d 39, 68 P.2d 726, 727.

An auxiliary process designed to supersede enforcement of trial court's judgment brought up for review, and its application is limited to the judgment from which an appeal is taken. *Mascot Pictures Corporation v. Municipal Court of City of Los Angeles*, 3 Cal.App.2d 559, 40 P.2d 272.

Originally it was a writ directed to an officer, commanding him to desist from enforcing the execution of another writ which he was about to execute, or which might come in his hands. In modern times the term is often used synonymously with a "stay of proceedings," and is employed to designate the effect of an act or proceeding which of itself suspends the enforcement of a judgment. *Dulin v. Coal Co.*, 98 Cal. 306, 33 P. 123.

ULTRA. Lat. Beyond; outside of; in excess of.

Damages Ultra

Damages beyond a sum paid into court.

Ultra Mare

Beyond sea. One of the old essoins or excuses for not appearing in court at the return of process. Bract. fol. 338.

Ultra Reprises

After deduction of drawbacks; in excess of deductions or expenses.

Ultra Vires

The modern technical designation, in the law of corporations, of acts beyond the scope of the powers of a corporation, as defined by its charter or act of incorporation. *State ex rel. v. Holston Trust Co.*, 168 Tenn. 546, 79 S.W.2d 1012, 1016.

The term has a broad application and includes not only acts prohibited by the charter, but acts which are in excess of powers granted and not prohibited. *State ex rel. Supreme Temple of Pythian Sisters v. Cook*, 234 Mo.App. 898, 136 S.W.2d

142, 146, and generally applied either when a corporation has no power whatever to do an act, or when the corporation has the power but exercises it irregularly. *People ex rel. Barrett v. Bank of Peoria*, 295 Ill.App. 543, 15 N.E.2d 333, 335. Act is "ultra vires" when corporation is without authority to perform it under any circumstances or for any purpose. *Orlando Orange Groves Co. v. Hale*, 107 Fla. 304, 144 So. 674, 676.

By doctrine of "ultra vires" a contract made by a corporation beyond the scope of its corporate powers is unlawful. *Community Federal Sav. & Loan Ass'n of Independence, Mo., v. Fields*, C.C.A.Mo., 128 F.2d 705, 708.

While the phrase "ultra vires" has been used to designate, not only acts beyond the express and implied powers of a corporation, but also acts contrary to public policy or contrary to

some express statute prohibiting them, the latter class of acts is now termed illegal, and the "ultra vires" confined to the former class. In re Grand Union Co., C.C.A.N.Y., 219 F. 353, 363; Staacke v. Routledge, 111 Tex. 489, 241 S.W. 994, 998; Pennsylvania H. Co. v. Minis, 120 Md. 461, 496, 87 A. 1062, 1072.

UNALIENABLE. Inalienable; incapable of being aliened, that is, sold and transferred. Black's Law 4th edition, 1693.

USURP. To seize and hold any office by force, and without right; applied to seizure of office, place, functions, powers, rights, etc. State ex rel. Scanes v. Babb, 124 W.Va. 428, 20 S.E.2d 683, 686.

USURPATION. The unlawful assumption of the use of property which belongs to another; an interruption or the disturbing a man in his right and possession. Tomlins. The unlawful seizure or assumption of sovereign power; the assumption of government or supreme power by force or illegally, in derogation of the constitution and of the rights of the lawful ruler. "Usurpation" for which writ of prohibition may be granted involves attempted exercise of power not possessed by inferior officer. Ex parte Wilkinson, 220 Ala. 529, 126 So. 102, 104.

USURPATION OF FRANCHISE OR OFFICE. The unjustly intruding upon or exercising any office, franchise, or liberty belonging to another. See, also, Usurpation. "Usurpation" of public office authorizing quo warranto action under statute may be with or without forcible seizure of office and prerogatives thereof, and may consist of mere unauthorized assumption and exercise of power in performing duties of office upon claim of right thereto. State ex rel. Kirk v. Wheatley, 133 Ohio St. 164, 12 N.E.2d 491, 493.

USURPED POWER. In insurance. An invasion from abroad, or an internal rebellion, where armies are drawn up against each other, when the laws are silent, and when the firing of towns becomes unavoidable. These words cannot mean the power of a common mob. 2 Marsh.Ins. 791.

USURPER. One who assumes the right of government by force, contrary to and in violation of the constitution of the country. Toul, Droit. Civ. n. 32.

USURPER OF A PUBLIC OFFICE. One who either intrudes into a vacant office or ousts the incumbent without any color of title. Neal v. Parker, 200 Ark. 10, 139 S.W.2d 41, 44. One who intrudes on office and assumes to exercise its functions without legal title or color of right thereto.

Alleger v. School Dist. No. 16, Newton County;Mo.App., 142 S.W.2d 660, 663; State ex rel. Cityof Republic v. Smith, 345 Mo. 1158, 139 S.W.2d 1713

USURY

929, 933. Any person attempting to fill pretended office attempted to be created by an unconstitutional law. *Bodcaw Lumber Co. of Louisiana v. Jordan*, La.App., 14 So.2d 98, 101.

USURY

Modern Law

An illegal contract for a loan or forbearance of money, goods, or things in action, by which illegal interest is reserved, or agreed to be reserved or taken. *Midland Loan Finance Co. v. Lorentz*, 209 Minn. 278, 296 N.W. 911, 914, 915.

An unconscionable and exorbitant rate or amount of interest. *Heilos v. State Land Co.*, 113 N.J.Eq. 239, 166 A. 330, 332.

An unlawful contract upon the loan of money, to receive the same again with exorbitant increase. 4 Bl.Comm. 156.

The reserving and taking, or contracting to reserve and take, either directly or by indirection, a greater sum for the use of money than the lawful interest. See *Henry v. Bank of Salina*, 5 Hill. (N.Y.) 528; *Inre Elmore Cotton Mills (D.C.)* 217 F. 810, 814.

See, also, Usurious Contract.

"Usury" does not depend on question whether the lender actually gets more than the legal rate of interest or not;

but on whether there was a purpose in his mind to make more than legal interest for the use of money, and whether, by the terms of the transaction, and the means used to effect the loan, he may by its enforcement be enabled to get more than the legal rate. *American Nat. Ins. Co. v. Schenck*, Tex.Civ.App., 85 S.W.2d 833, 837.

A profit greater than the lawful rate of interest, intentionally exacted as a bonus, for the forbearance of an existing indebtedness or a loan of money, imposed upon the necessities of the borrower in a transaction where the money is to be returned at all events. *Monk v. Goldstein*, 172 N.C. 516, 90 S.E. 519, 520; *Anderson v. Beadle*, 35 N.M. 654, 5 P.2d 528, 529.

Old English Law

Interest of money; increase for the loan of money; a reward for the use of money. 2 Bl.Comm. 454.

The taking of any compensation whatever for the use of money. *Marshall v. Beeler*, 104 Kan. 32, 178 P. 245, 246; *Schlesinger v. State*, 195 Wis. 366, 218 N.W. 440, 442, 57 A.L.R. 352.

WEIGHT OF EVIDENCE. The balance of preponderance of evidence; the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other.

The "**weight**" or "**preponderance of proof**" is a phrase constantly used, the meaning of which is well understood and easily defined. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds,

they shall find the greater amount of credible evidence sustains the issue which is to be established before them. *Haskins v. Haskins*, 9 Gray, Mass., 393.

Weight is not a question of mathematics, but depends on its effect in inducing belief. It often happens that an uncorroborated witness may tell a story so natural and reasonable, and in manner so sincere and honest, as to command belief, though contradicted by others.

Braunschweiger v. Waits, 179 Pa. 47, 36 A. 155, 156.

"**Weight of proof**" means greater amount of credible evidence and is synonymous with "preponderance of proof." Haskins v. Haskins, 75 Mass. (9 Gray) 390, 393. For a contrary holding, see Shinn v. Tucker, 37 Ark. 580, 588. See, also, Preponderance.

WILLS ACT. In England. The statute 32 Hen. VIII. c. 1, passed in 1540, by which persons seized in fee-simple of lands holden in socage tenure were enabled to devise the same at their will and pleasure, except to bodies corporate; and those who held estates by the tenure of chivalry were enabled to devise two-third parts thereof.

Also, the statute 7 Wm. IV. & 1 Vict. c. 26, passed in 1837, and also called "Lord Langdale's Act." This act permits of the disposition by will of every kind of interest in real and personal estate, and provides that all wills, whether of real or of personal estate, shall be attested by two witnesses, and that such attestation shall be sufficient.

Other important alterations are effected by this statute in the law of wills. Mozley & Whiteley.

WISH. Eager desire; longing; expression of desire; a thing desired; an object of desire. Noice v. Schnell, 101 N.J.Eq. 252, 137 A. 582, 589, 52 A.L. R. 965.

As used in wills, it is sometimes merely directory or precatory; Colonial Trust Co. v.

Brown, 105 Conn. 261, 135 A. 555, 563; Schill v. Schill, 101 N.J.Eq. 482, 138 A. 530, 531;

and sometimes mandatory; Strout v. Strout, 117 Me. 357, 104 A. 577, 578;

being equivalent to "will," Tzeses v. Tenez Const. Co., 97 N.J.Eq. 501, 128 A. 388,

or to "give" or "devise," Brown v. Brown, 180 N.C. 433, 104 S.E. 889, 890.

WITNESS, v. To subscribe one's name to a deed, will, or other document, for the purpose of attesting its authenticity, and proving its execution, if required, by bearing witness thereto.

To see the execution of, as an instrument, and subscribe it for the purpose of establishing its authenticity. In re Harter's Estate, 229 Iowa 238, 294 N.W. 357, 360, 362.

WITNESS, n. In general, one who, being present, personally sees or perceives a thing; a beholder, spectator, or eyewitness. In re Harter's Estate, 229 Iowa 238, 294 N.W. 357, 362.

One who testifies to what he has seen, heard, or otherwise observed. Wigginton v. Order of United Commercial Travelers of America, C.C.A.Ind., 126 F.2d 659, 666.

A person whose declaration under oath (or affirmation) is received as evidence for any purpose, whether such declaration be made on oral examination or by deposition or affidavit. Code Civ.Proc.Cal. § 1878.

A person attesting genuineness of signature to document by adding his signature. In re Gorrell's Estate, 19 N.J.Misc. 168, 19 A.2d 334, 335.

One who is called upon to be present at a transaction, as a wedding, or the making of a will, that he may thereafter, if necessary, testify to the transaction.

Accused, by availing himself of statute providing that accused shall be a competent witness at his own request but not otherwise, assumes position of "witness". *State v. McKinnon*, 223 N.C. 160, 25 S.E.2d 606, 609; *State v. Auston*, 223 N. C. 203, 25 S.E.2d 613, 614.

Adverse witness. A witness whose mind discloses a bias hostile to the party examining him. *Brown*; *Greenough v. Eccles*, 5 C.B.(N.S.) 801.

Attesting witness. See Attestation.

Competent witness. See Competent.

Credible witness. See Credible.

Expert witnesses. See Expert Witnesses.

Hostile witness. See that title.

Prosecuting witness. See that title.

Subscribing witness. See that title.

Swift witness. See that title.

Witness to will. One who has attested the will by subscribing his name thereto. In re *Johnson's Will*, 175 Wis. 1, 183 N.W. 888, 889.

WITNESS AGAINST HIMSELF. The federal constitutional provision that no person shall be compelled in any criminal case, to be a "witness against himself" must be applied in a broad spirit to secure to citizen immunity from self-accusation and provision applies to all proceedings wherein defendant is acting as a witness in any investigation that requires him to give testimony that might tend to show him guilty of crime.

U.S.C.A.Const. Amend. 5. *United States v. Goodner*, D.C.Colo., 35 F.Supp. 286, 290.

COMMISSIONER. A person to whom a commission is directed by the government or a court. *State v. Banking Co.*, 14 N.J.L. 437; In re *Canter*, 81 N.Y.S. 338, 40 Misc. 126.

WRIT OF ERROR. A writ issued from a court of appellate jurisdiction, directed to the judge or judges of a court of record, requiring them to remit to the appellate court the record of an action before them, in which a final judgment has been entered, in order that examination may be made of certain errors alleged to have been committed, and that the judgment may be reversed, corrected, or affirmed, as the case may require.

Siegelschiffer v. Penn Mut. Life Ins. Co., C.C.A.N.Y., 248 F. 226, 228; *Ward v. Williams*, 270 Ill. 547, 110 N.E. 821, 823; *Board of County Com'rs of Harford County v. Jay*, 122 Md. 324, 89 A. 715, 717.

It is brought for supposed error in law apparent on record and takes case to higher tribunal, which affirms or reverses. *Chambers v. State*, 117 Fla. 642, 158 So. 153.

It is commencement of new suit to set aside judgment, and is not continuation of suit to which it relates. *Winchester v. Winn*, 225 Mo.App. 288, 29 S.W.2d 188, 190.

And unless abolished by statute, is writ of right applicable to all cases in which jurisdiction is exercised according to course of common law, but is inapplicable to cases not known to or in derogation of common law, unless otherwise provided by statute. *Freeport Motor Casualty Co. v. Madden*, 354 Ill. 329, 188 N.E. 415, 416.

WRIT OF ERROR CORAM NOBIS. A common law writ, the purpose of which is to correct a judgment in the same court in which it was rendered, on the ground of error of fact. *Washington v. State*, 92 Fla. 740, 110 So. 259, 262; *People v. Black*, 89 Cal.App. 225, 264 P. 346;

for which the statute provides no other remedy, which fact did not appear of record, *Ernst v. State*, 181 Wis. 155, 1785 193 N.W. 978;

or was unknown to the court when judgment was pronounced, and which, if known, would have prevented the judgment, and which was unknown, and could not have been known to the party by the exercise of reasonable diligence in time to have been otherwise presented to the court, unless he was prevented from so presenting them by duress, fear, or other sufficient cause,

Nickels v. State, 86 Fla. 208, 98 So. 502, 504; *Smulski v. H. Feinberg Furniture Co.*, Del.Super., 193 A. 585, 587;

as where judgment is rendered against a party after his death, or an infant not properly represented by guardian, or a feme covert where common-law disability still exists, or where some defect exists in the process or the execution thereof. *Schneider v. Schneider*, Mo.App., 273 S.W. 1081, 1083; 1 Saund. 101; *Steph.P1. *119*; *Day v. Hamburgh*, 1 Browne, Pa. 75.

An ordinary "writ of error" is brought for a supposed error in law apparent on the record, and takes the case to a higher tribunal where the question is to be decided and the judgment, sentence or decree is to be affirmed or reversed, while the "**writ of error coram nobis**" is brought for an alleged error in fact not appearing on the record and lies to the same court in order that it may correct the error, which it is presumed would not have been committed had the fact been brought to the court's notice in the first instance. *State v. Wagner*, 232 Wis. 138, 286 N.W. 544, 545.

At common law in England, it issued from the Court of King's Bench to a judgment of that court. Its principal aim is to afford the court in which an action was tried an opportunity to correct its own record with reference to a vital fact not known when the judgment was rendered.

Lamb v. State, 91 Fla. 396, 107 So. 535, 537, 538; *Rhodes v. State*, 199 Ind. 183, 156 N.E. 389, 392.

It is also said that at common law it lay to correct purely ministerial errors of the officers of the court.

Cramer v. Illinois Commercial Men's Ass'n, 260 Ill. 516, 103 N.E. 459, 461.

WRIT OF ERROR CORAM VOBIS. This writ, at the English common law, is distinguished from "**writ of error coram nobis**," in that the former issued from the Court of King's Bench to a judgment of the Court of Common Pleas, whereas the latter issued from the Court of King's Bench to a judgment of that court. Lamb v. State, 107 So. 535, 537, 91 Fla. 396.

WRIT OF EXECUTION. A writ to put in Three the judgment or decree of a court.

MANDAMUS. Lat. We command. This is the name of a writ (formerly a high prerogative writ) which issues from a court of superior jurisdiction, and is directed to a private or municipal corporation, or any of its officers, or to an executive, administrative or judicial officer, or to an inferior court, commanding the performance of a particular act therein specified, and belonging to his or their public, official, or ministerial duty, or directing the restoration of the complainant to rights or privileges of which he has been illegally deprived. Lahiff v. St. Joseph, etc., Soc., 76 Conn. 648, 57 A. 692, 65 L.R.A. 92, 100 Am.St.Rep. 1012.

The action of mandamus is one, brought in a court of competent jurisdiction, to obtain an order of such court commanding an inferior tribunal, board, corporation, or person to do or not to do an act the performance or omission of which the law enjoins as a duty resulting from an office, trust, or station. Where discretion is left to the inferior tribunal or person, the mandamus, can only compel it to act, but cannot control such discretion. Rev.Code Iowa, 1880, § 3373 (Code 1931, § 12440).

Writ of "mandamus" is summary writ issued from court of competent jurisdiction to command performance of specific duty which relator is entitled to have performed. People v. Nelson, 346 Ill. 247, 178 N.E. 485, 487.

It is legal, not equitable, remedy, and, when issued, is an inflexible peremptory command to do a particular thing.

State ex rel. Onion v. Supreme Temple Pythian Sisters, 227 Mo.App. 557, 54 S.W.2d 468, 469.

The **writ of mandamus** is either **peremptory** or **alternative**, according as it requires the defendant absolutely to obey its behest, or gives him an opportunity to show cause to the contrary. It is the usual practice to issue the alternative writ first. This commands the defendant to do the particular act, or else to appear and show cause against it at a day named. If he neglects to obey the writ, and either makes default in his appearance or fails to show good cause against the application, the peremptory mandamus issues, which commands him absolutely and without qualification to do the act.

Debt of record. A debt which appears to be due by the evidence of a court of record, as by a judgment or recognizance.

2 B1.Comm. 465.

Fraud in Contract – Definitions:

Maxims:

Truth as a valid statement of reality is sovereign in commerce;

An un-rebutted affidavit stands as truth in commerce;

An affidavit must be re-butted point-for-point;

An un-rebutted affidavit is acted upon as the judgment in commerce;

And that a rejection of a contract constitutes a complete rebuttal;

And whereas,

NOTICE TO PRINCIPLE IS NOTICE TO AGENT AND NOTICE TO AGENT IS NOTICE TO PRINCIPLE;

ADOPT. To accept, appropriate, choose, or select;

to make that one's own (property or act) which was not so originally. To adopt a route for the transportation of the mail means to take the steps necessary to cause the mail to be transported over that route. Rhodes v. U. S., Dev.Ct.C1.

47. To adopt a contract is to accept it as binding, notwithstanding some defect which entitles the party to repudiate it. Thus, when a person affirms a voidable contract, or ratifies a contract made by his agent beyond his authority, he is sometimes said to adopt it. Sweet. Strictly, however, the word "adopt" should be used to apply to void transactions, while the word "ratify" should be limited to the final approval of a voidable transaction by one who theretofore had the optional right to relieve himself from its obligations. United German Silver Co. v. Bronson, 92 Conn. 266, 102 A. 647, 648.

"Adoption" of a contract by one not a party thereto is of the nature of a novation. Edwards v. Heralds of Liberty, 263 Pa. 548, 107 A. 324, 326. See Affirm.

DISAFFIRMANCE. The repudiation of a former transaction. The refusal by one who has the legal power to refuse, (as in the case of a voidable contract,) to abide by his former acts, or accept the legal consequences of them. It may either be "express" (in words) or "implied" from acts inconsistent with a recognition of validity of former transaction. Ryan v. Morrison, 40 Okl. 49, 135 P. 1049, 1050.

VOIDABLE CONTRACT. One which is void as to wrongdoer but not void as to wronged party, unless he elects to so treat it. *Depner v. Joseph Zukin Blouses*, 13 Cal.App.2d 124, 56 P.2d 574, 575. See, also, Void.

ACTIONABLE FRAUD. Deception practiced in order to induce another to part with property or surrender some legal right; a false representation made with an intention to deceive; may be committed by stating what is known to be false or by professing knowledge of the truth of a statement which is false, but in either case, the essential ingredient is a falsehood uttered with intent to deceive. *Sawyer v. Prickett*, 19 Wall. 146, 22 L. Ed. 105.

To constitute "actionable fraud," it must appear that defendant made a material representation; that it was false ; that when he made it he knew it was false,- or made it recklessly without any knowledge of its truth and as a positive assertion ; that he made it with intention that it should be acted on by plaintiff ; that plaintiff acted in reliance on it; and that plaintiff thereby suffered injury. *Blair v. McCool*, 136 Or. 139, 295 P. 950, 952. Essential elements are representation, falsity, scienter, .deception, and injury. *Cobb v. Cobb*, 211 N.C. 146, 189 S.E. 479, 482.

ACTIONABLE MISREPRESENTATION. A false statement respecting a fact material to the contract and which is influential in procuring it. *Wise v. Fuller*, 29 N.J.Eq. 257.

ACTIONABLE NEGLIGENCE. The breach or nonperformance of a legal duty, through neglect or carelessness, resulting in damage or injury to another. *Fidelity & Casualty Co. v. Cutts*, 95 Me. 162, 49 Atl. 673.

It is failure of duty, omission of something which ought to have been done, or doing of something which ought not to have been done, or which reasonable man, guided by considerations which ordinarily regulate conduct of human affairs, would or would not do. *Goff v. Emde*, 32 Ohio App. 216, 167 N.E. 699, 700.

Essential elements are failure to exercise due care, injury, or damage, and proximate cause. *Rountree v. Fountain*, 203 N.C. 381, 166 S.E. 329, 330.

BAD FAITH. The opposite of "good faith," generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive.

State v. Griffin, 100 S.C. 331, 84 S.E. 876, 877; *Penn Mut. L. Ins. Co. v. Mechanics' Savings Bank & Trust Co.*, C.C.A.Tenn., 73 F. 653, 19 C.C.A. 316, 38 L.R.A. 33, 70; *Spiegel v. Beacon Participations*, 297 Mass. 398, 8 N.E.2d 895, 907.

BAD MOTIVE. Intentionally doing a wrongful act knowing at the time that it is wrongful. *Luhmann v. Schaefer*, Mo.App., 142 S.W.2d 1088, 1090; *Davis v. Nash Central Motors*, Mo.App., 332 S.W. 2d 475, 480.

BLACKMAIL. In one of its original meanings, this term denoted a tribute paid by English dwellers along the Scottish border to influential chieftains' of Scotland, as a condition of securing immunity from raids of marauders and border thieves.

Also, rents payable in cattle, grain, work, and the like. Such rents were called "blackmail," (*reditus nigri*.) in distinction from white rents, (*blanche firmes*.) which were rents paid in silver.

See Black rents.

The extortion of money by threats or overtures towards criminal prosecution or the destruction of a man's reputation or social standing. In common parlance, the term is equivalent to and synonymous with, "extortion,"—the exaction of money, either for the performance of a duty, the prevention of an injury, or the exercise of an influence. It supposes the service to be unlawful, and the payment involuntary. Not infrequently it is extorted by threats, or by operating upon the fears or the credulity, or by promises to conceal, or offers to expose, the weaknesses, the follies, or the crimes of the victim. *Mitchell v. Sharon*, C.C.Cal., 51 F. 424; *In re Mills*, 104 Wash. 278, 176 P. 556, 562. "Blackmail" has a broader meaning than the New York statutory crime of blackmail, and denotes extortion in any mode by means of intimidation, as the extortion of money by threats of accusation or exposure, or of unfavorable criticism in the press. *Guenther v. Ridgway Co.*, 156 N.Y.S. 534, 535, 170 App. Div. 725.

CHEAT, v. To deceive and defraud. *State v. Mastin*, 277 Mo. 495, 211 S.W. 15, 18; *Moore v. State*, 92 Ind.App. 150, 168 N.E. 202, 203.

It necessarily implies a fraudulent intent. *Clolinger v. Callahan*, 204 Ky. 33, 263 S.W. 700, 702.

The words "cheat and defraud" usually mean to induce a person to part with the possession of property by reason of intentionally false representations relied and acted upon by such person to his harm. *Antonio Pepe Co. v. Apuzzo*, 98 Conn. 807, 120 A. 681, 682;

They include not only the crime of false pretenses, but also all civil frauds. *Hinshaw v. State*, 188 Ind. 147, 122 N.E. 418, 419.

They include all tricks, devices, artifices, or deceptions used to deprive another of property or other right. *State v. Parker*, 114 Conn. 354, 158 A. 797, 800.

CHEAT, n. Swindling; defrauding. "Deceitful practices in defrauding or endeavoring to defraud another of his known right, by some willful device, contrary to the plain rules of common honesty." *Hawk.P.C. b. 2, c. 23, § 1.*

"The fraudulent obtaining the property of another by any deceitful and illegal practice or token (short of felony) which affects or may affect the public." *Steph.Crim. Law*, 93.

Cheats, punishable at common law, are such cheats (not amounting to felony) as are effected by deceitful or illegal symbols or tokens which may affect the public at large, and against which common prudence could not have guarded. 2 *Whart.Crim.Law*, § 1116; 2 *East, P.C.* 818; *Von Mumm v. Frash*, C.C.N.Y., 56 F. 836; *State v. Parker*, 43 N.H. 85.

CHEATERS, or ESCHEATORS, were officers appointed to look after the king's escheats, a duty which gave them great opportunities of fraud and oppression, and in consequence many complaints were made of their misconduct. Hence it seems that a cheater came to signify a fraudulent person, and thence the verb to cheat was derived. Wharton.

COLORABLE TRANSACTION. One presenting an appearance which does not correspond with the reality, and, ordinarily, an appearance intended to conceal or to deceive. *Osborn v. Osborn*, 102 Kan. 890, 172 P. 23, 24.

CONCEALMENT. A withholding of something which one knows and which one, in duty, is bound to reveal. *Dolcater v. Manufacturers & Traders Trust Co.*, D.C.N.Y., 25 F.Supp. 637, 641; *Strauss v. Dubuque Fire & Marine Ins. Co. of Dubuque, Iowa*, 132 Cal.App. 283, 22 P.2d 582.

The terms "misrepresentation" and "concealment" have a known and definite meaning in the law of insurance.

Misrepresentation is the statement of something as fact which is untrue in fact, and which the assured states, knowing it to be not true, with an intent to deceive the underwriter, or which he states positively as true, without knowing it to be true, and which has a tendency to mislead, such fact in either case being material to the risk.

Concealment is the designed and intentional withholding of any fact material to the risk, which the assured, in honesty and good faith, ought to communicate to the underwriter; mere silence on the part of the assured, especially as to some matter of fact which he does not consider it important for the underwriter to know, is not to be considered as such concealment. If the fact so untruly stated or purposely suppressed is not material, that is, if the knowledge or ignorance of it would not naturally influence the judgment of the underwriter in making the contract, or in estimating the degree and character of the risk, or in fixing the rate of the premium, it is not a "misrepresentation" or "concealment," within the clause of the conditions annexed to policies. *Daniels v. Insurance Co.*, 12 Cush. (Mass.) 416, 59 Am.Dec. 192; *Sun Ins. Office, Limited, of London v. Mallick*, 160 Md. 71, 153 A. 35, 43.

CONCEALMENT MAY BE BASIS OF ESTOPPEL, *Lo Bue v. Porazzo*, 48 Cal.App.2d 82, 119 P.2d 346, 348.

Elements 'of such estoppel are concealment of material facts with knowledge thereof, ignorance thereof on part of person to whom representations are made, or from whom facts are concealed, intention that such person shall act thereon, and action induced thereby on his part. *Rhoads v. Rhoads, Mo.*, 119 S.W.2d 247, 152; *Rosser v. Texas Co.*, 173 Okl. 309, 48 P. 2d 327, 330.

The doctrine of "estoppel by concealment and suppression" applies only where there has been reduction to practice of invention. *Bogoslowsky*

DECEIT. A fraudulent and cheating misrepresentation, artifice, or device, used by one or more persons to deceive and trick another, who is ignorant of the true facts, to the prejudice and damage of the party imposed upon. *People v. Chadwick*, 143 Cal. 116, 76 P. 884; *French v. Vining*, 102 Mass. 132, 3 Am. Rep. 440; *In re Post*, 54 Hun, 634, 7 N.Y.S. 438.

A fraudulent misrepresentation or contrivance, by which one man deceives another, who has no means of detecting the fraud, to the injury and damage of the latter.

A subtle trick or device, whereunto may be referred all manner of craft and collusion used to deceive and defraud another by any means whatsoever, which hath no other or more proper name than deceit to distinguish the offense. [West Symb. § 68]; *Jacob*.

A "deceit" is either: (1) The suggestion, as a fact, of that which is not true, by one who does not believe it to be true; (2) the assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true; (3) the suppression of a fact, by one who is bound to disclose it, or who gives information of other acts which are likely to mislead for want of communication of that fact; or (4) a promise, made without any intention of performing it. *Civ.Code Cal.* § 1710; *iv.Code S.D.* § 1293 (*Comp.Laws 1929*, § 797).

To constitute "deceit," the statement must be untrue, made with knowledge of its falsity or with reckless and conscious ignorance thereof, especially if parties are not on equal terms, made with intent that plaintiff act thereon or in a manner apparently fitted to induce him to act thereon, - and plaintiff must act in reliance on the statement in the manner contemplated, or manifestly probable, to his injury. *Corley Co. v. Griggs*, 192 N.C. 171, 134 S.E. 406, 407; *Pain v. Kiel*, C.C.A.Mo., 288 F. 527, 529. See, also, *Crossman v. Bacon & Robinson Co.*, 119 Me. 105, 109 A. 487, 489; *Alpine v. Friend Bros.*, 244 Mass. 164, 138 N.E. 553, 554; *Hood v. Wood*, 61 Okl. 294, 161 P. 210, 213.

The essential elements of "deceit" are representation, falsity, scienter, deception, and injury. *Ochs v. Woods*, 221 N.Y. 335, 117 N.E. 305, 306.

In Old English Law

The name of an original writ, and the action founded on it, which lay to recover damages for any injury committed deceitfully, either in the name of another, (as by bringing an action in another's name, and then suffering a nonsuit, whereby the plaintiff became liable to costs,) or by a fraudulent warranty of goods, or other personal injury committed contrary to good faith and honesty.

Reg.Orig. 112-116; *Fitzh.Nat.Brev.* 95, E, 98.

Also the name of a judicial writ which formerly lay to recover lands which had been lost by default by the tenant in a real action, in consequence of his not having been summoned by the sheriff, or by the collusion of his attorney. *Rosc.Real Act.* 136; 3 B1.Comm. 166.

In General

Deceitful plea. A sham plea; one alleging as facts things which are obviously false on the face of the plea. *Gray v. Gidiere*, 4 Strob., S.C., 443.

DECEPTION. The act of deceiving; intentional misleading by falsehood spoken or acted. Smith v. State, 13 Ala.App. 399, 69 So. 402, 403.

DECEPTIONE. A writ that lieth properly against him that deceitfully doth anything in the name of another, for one that receiveth damage or hurt thereby. It is either original or judicial. Fitzh. N.B.

Deceptis non decipientibus, jura subveniunt. The laws help persons who are deceived, not those deceiving. Tray. Lat. Max. 149.

Decipi quam fallere est tutius. It is safer to be deceived than to deceive. Lofft, 396.

FALSE PRETENSES. Designed misrepresentation of existing fact or condition whereby person obtains another's money or goods. People v. Gould, 363 Ill. 348, 2 N.E.2d 324.

Elements of offense include actual fraud, State v. Nuser, 199 Minn. 315, 271 N.W. 811, 812; State v. Mayer, 196 N.C. 454, 146 S.E. 64, 65;

assertion of a present or past fact, Slaughter v. Commonwealth, 222 Ky. 225, 300 S.W. 619, 621, 56 A.L.R. 1209; State v. Nuser, 199 Minn. 315, 271 N.W. 811, 812,

falsity of representation, State v. Mayer, 196 N.C. 454, 146 S.E. 64, 65; People v. Leaverton, 107 Cal. App. 51, 289 P. 890, 892;

intent to cheat and defraud. Commonwealth v. Campbell, 116 Pa.Super. 180, 176 A. 246, 250; State v. Johnson, 195 N.C. 506, 142 S.E. 775, 776;

knowledge of the falsity, fraud. Couch v. State, 31 Ala.App. 586, 20 So.2d 57, 58; Dennis v. Thomson, 240 Ky. 727, 43 S.W.2d 18, 25;

obtaining of property or something of value. State v. Johnson, 195 N.C. 506, 142 S.E. 775, 776; Couch v. State, 31 Ala.App. 586, 20 So.2d 57, 58;

perpetration of fraud by means of such false pretenses, State v. Hintz, 200 Wis. 636, 229 N.W. 54, 55;

reliance on representation, State v. Howley, 220 N.C. 113, 16 S.E.2d 705, 708, 709;

use of pretenses or false representations, Dennis v. Thomson, 240 Ky. 727, 43 S.W.2d 18, 25; State v. Mayer, 196 N.C. 454, 146 S.E. 64, 65.

Other definitions of "false pretenses" include:

False representation of existing fact or condition by which a party obtains property of another, People ex rel. Courtney v. Sullivan, 363 Ill. 34, 1 N.E.2d 206, 208;

False representation of existing fact, whether by oral or written words or conduct, calculated to deceive, intended to deceive, and does in fact deceive, whereby one person obtains value from another without compensation, Commonwealth v. Johnson, 312 Pa. 140, 167 A. 344, 345, 89 A.L.R. 333; State v. Alick, 62 S.D. 220, 252 N.W. 644;

false representation of existing or past fact calculated to induce confidence on part of one to whom representation is made, and accompanied by or blended with a promise to do something in future, State v. Parkinson, 181 Wash. 69, 41 P.2d 1095, 1097;

false representation of existing fact, made with knowledge of falsity, with intent that party to whom it is made should act upon it, and acted upon by such party to his detriment. Griffith v. State, 93 Ohio St. 294, 112 N.E. 1017, 1018; State v. Hathaway, 168 Wis. 518, 170 N.W. 654, 656; State v. Whitney, 43 Idaho, 745, 254 P. 525, 526; Smith v. State, 74 Fla. 594, 77 So. 274, 276;

false representation of past or existing fact, made with knowledge of falsity, with intent to deceive and defraud, and which is adapted to deceive person to whom made, State v. Alick, 62 S.D. 220, 252 N.W. 644;

false representations and statements, made with a fraudulent design to obtain money, goods, wares, or merchandise, with intent to cheat, 2 Bouv. Inst. no. 2308;

false statement made with knowledge of its falsity, which is intended to deceive, and which in fact does deceive, and injury results, Morris Plan Bank of Richmond v. Henderson, D.C.N.C., 57 F.2d 326, 327;

fraudulent representation of fact by one who knows it not to be true as is adapted to induce person to whom made to part with something of value, Fisher v. State, 161 Ark. 586, 256 S.W. 858, 860; State v. Tanner, 22 N.M. 493, 164 P. 821, 822, L.R.A.1917E, 849; State v. Luff, 1 Boyce (Del.) 152, 74 A. 1079, 1080; State v. Barr, 63 Idaho 59, 117 P.2d 282, 286;

misrepresentation of past fact, knowingly made to induce another to part with his property, People v. Martin, 372 Ill. 484, 24 N.E.2d 380, 381, 382;

misstatement of fact, Carr v. State, 60 Ga.App. 590, 4 S.E.2d 500, 501;

Representation of some fact or circumstance, calculated to mislead or deceive, which is not true, State v. Grant, 86 Iowa 216, 53 N.W. 120; Commonwealth v. McKnight, 289 Mass. 530, 195 N.E. 499, 506.

A "false pretense" must be as to an existing or past fact.

State v. Neal, 350 Mo. 1002, 169 S.W.2d 686, 689; Commonwealth v. Becker, 151 Pa.Super. 169, 30 A.2d 195, 197.

A pretense is the holding out or offering to others something false and feigned. This may be done either by words or actions, which amount to false representations. In fact, false representations are inseparable from the idea of a pretense. Without a representation which is false there can be no pretense. State v. Joaquin, 43 Iowa, 132.

Gist of offense of "obtaining money by false pretenses" is the fraud and deception by the perpetrator, his motive, and the result-the fact that a person was deceived and defrauded. Frazier v. Commonwealth, 291 Ky. 467, 165 S.W.2d 33, 34.

Giving of worthless check is, in itself,

"false pretense". State v. Augustine, 114 W.Va. 143, 171 S.E. 111, 113; Laird v. Employers Liability Assur. Corporation, Limited, of London, England, 2 Terry 216, 18 A.2d 861, 862.

In "false pretenses" owner intends to part with his property in 'money or chattel but it is obtained from him by fraud. People v. Santora, 51 Cal.App.2d 707, 125 P.2d 606, 608.

One distinction between "embezzlement" and "false pretenses" is that in the former case the defendant does not have title to the property, while in the latter, he has. State v. Serkau, 128 Conn. 153, 20 A.2d 725, 727.

FALSE REPRESENTATION. A representation which is untrue, willfully made to deceive another to his injury. See, also, Deceit and Fraud.

A deceitful representation, or one contrary to the fact, made knowingly and with the design and effect of inducing the other party to enter into the contract to which it relates; a declaration of present intention, false when made, to perform act in future, Pease & Elliman v. Wegeman, 223 App.Div. 682, 229 N.Y.S. 398, 400;

a representation known to be false by person making it, or made without knowledge as a positive statement of known fact upon which another relied and acted, Platte Valley Bank v. Lemke, 141 Neb. 218, 3 N.W.2d 396, 399;

a representation of what is true, which nevertheless creates an impression which is false. Newark Trust Co. v. Lackawanna Inv. Co., 88 N.J.Eq. 541, 103 A. 168, 169; McClellan v. Tobin, Ind., 219 Ind. 563, 39 N.E.2d 772, 774;

an assertion of knowledge which in fact one does not have, Tone v. Halsey, Stuart & Co., 286 Ill.App. 169, 3 N.E.2d 142, 147;

an assertion of something as true which one does not know to be true, Hargrove v. Henderson, 108 Cal.App. 667, 292 P. 148;

Such representations as will deceive persons of ordinary prudence. Union Central Life Ins. Co. v. Kerron, 128 Or. 70, 264 P. 453, 455; Holmberg v. Prudential Savings & Loan Ass'n, 130 Or. 1, 278 P. 943, 945.

A "false representation" may arise from any conduct capable of being turned into a statement of fact. Bundesen v. Lewis, 291 Ill.App. 83, 9 N.E.2d 327, 334.

A "false representation" may be made scienter, so as to afford a right of action in damages, in any of the following ways : (1) With actual knowledge of its falsity; (2) without knowledge either of its truth or falsity; or (3) under circumstances in which the person making it ought to have known if he did not know of its falsity. Horton v. Tyree, 104 W.Va. 238, 139 S.E. 737, 738; Sebastian County Bank v. Gann, 121 Ark. 145, 180 S.W. 754, 755.

A false representation, within Bankruptcy Act not affected by discharge, must involve moral turpitude or intentional wrong. Hisey v. Lewis-Gale Hospital, D.C.Va., 27 F.Supp. 20, 23.

False statements although future in form may be "false representations" of existing facts and conditions. National Theatre Supply Co. v. Rigney, Mo.App., 130 S.W.2d 258, 263.

To maintain an action for damages for "false representation," the plaintiff, in substance, must allege and must prove by a preponderance of the evidence the following elements:

(1) What representation was made; (2) that it was false; (3) that the defendant knew it was false, or else made it without knowledge as a positive statement of known fact; (4) that the plaintiff believed the representation to be true; (5) that the plaintiff relied on and acted upon the representation; (6) that the plaintiff was thereby injured; and (7) the amount of the damages.

Peterson v. Schaberg, 116 Neb. 346, 217 N.W. 586, 587.

FALSUS IN UNO, FALSUS IN OMNIBUS. False in one thing, false in everything.

Commonwealth v. Billings, 97 Mass. 406; Mercer v. Wright, 3 Wis. 645; State v. Williams, 47 N.C. 257; Dawson v. Bertolini, 70 R.I. 325, 38 A.2d 765, 768.

The doctrine means that, if testimony of a witness on a material issue is willfully false and given with an intention to deceive, jury may disregard all the witness' testimony.

Hargrave v. Stockloss, 127 N.J.L. 262, 21 A.2d 820, 823.

The maxim deals only with weight of evidence, Metropolitan Life Ins. Co. v. Wright, 190 Miss. 53, 199 So. 289, 290.

It does not relieve jury from passing on credibility of the whole testimony of a false swearing witness or excuse jury from weighing the whole testimony. State v. Willard,

346 Mo. 773, 142 S.W.2d 1046, 1052.

It is a mere rule of evidence affirming a rebuttable presumption of fact, under which the jury must consider all the evidence of the witness, other than that which is found to be false, and it is their duty to give effect to so much of it, if any, as is relieved from the presumption against it and found to be true. *Levine Bros. v. Mantell*, 90 W.Va. 166, 111 S.E. 501, 504; *Shecil v. United States*, C.C.A.Wis., 226 F. 184, 187.

It is not a rule of law and false statement, *State v. Sturchio*, 127 N.J.L. 366, 22 A.2d 235, 237. It is not a rule of the law of evidence, but is merely an aid in weighing and sifting of evidence. *Dawson v. Bertolini*, 70 R.I. 325, 38 A.2d 765, 768.

It is particularly applied to the testimony of a witness who, if he is shown to have sworn falsely in one detail, may be considered unworthy of belief as to all the rest of his evidence. *Grimes v. State*, 63 Ala. 168; *Wilson v. Coulter*, 51 N.Y.S. 804, 29 App. Div. 85; *White v. Disher*, 67 Cal. 402, 7 P. 826.

The rule is merely permissive and not mandatory. *Bankers' Health & Life Ins. Co. v. Nichols*, 44 Ga.App. 536, 162 S.E. 161.

Where a party is clearly shown to have embezzled one article of property, it is a ground of presumption that he may have embezzled others also. *The Boston*, 1 Sumn. 328, 356, Fed.Cas.No.1,673;

FRAUD. An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right; a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. *Brainerd Dispatch Newspaper Co. v. Crow Wing County*, 196 Minn. 194, 264 N.W. 779, 780.

Any kind of artifice employed by one person to deceive another. *Goldstein v. Equitable Life Assur. Soc. of U. S.*, 160 Misc. 364, 289 N.Y.S. 1064, 1067.

A generic term, embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated. *Johnson v. McDonald*, 170 Okl. 117, 39 P.2d 150.

"Bad faith" and "fraud" are synonymous, and also synonyms of dishonesty, infidelity, faithlessness, perfidy, unfairness, etc. *Joiner v. Joiner*, Tex.Civ.App., 87 S.W. 2d 903, 914, 915.

It consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. *Maher v. Hibernia Ins. Co.*, 67 N.Y. 292; *Alexander v. Church*, 53 Conn. 561, 4 A. 103; *Studer v. Bleistein*, 115 N.Y. 316, 22 N.E. 243, 7 L.R.A. 702; *McNair v. Southern States Finance Co.*, 191 N.C. 710, 133 S.E. 85, 88.

It comprises all acts, omissions, and concealments involving a breach of a legal or equitable duty and resulting in damage to another. *Coppo v. Coppo*, 163 Misc. 249, 297 N.Y.S. 744, 750.

And includes anything calculated to deceive, whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or by silence, by word of mouth, or by look or gesture.

People v. Gilmore, 345 Ill. 28, 177 N.E. 710, 717.

Fraud, as applied to contracts, is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. Civil Code La. art. 1847. *Strauss v. Insurance Co. of North America*, 157 La. 661, 102 So. 861, 865; *Jesse French Piano & Organ Co. v. Gibbon*, Tex.Civ.App., 180 S. W. 1185, 1187.

Fraud, in the sense of a court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another. 1 Story, Eq.Jur. § 187; *Howard v. West Jersey & S. S. R. Co.*, 102 N.J.Eq. 517, 141 A. 755, 757.

Fraud is either actual or constructive. Actual fraud consists in deceit, artifice, trick, design, some direct and active operation of the mind ; it includes cases of the intentional and successful employment of any cunning, deception, or artifice used to circumvent or cheat another; it is something said, done, or omitted by a person with the design of perpetrating what he knows to be a cheat or deception. Constructive fraud consists in any act of commission or omission contrary to legal or equitable duty, trust, or confidence justly reposed, which is contrary to good conscience and operates to the injury of another. Or, as otherwise defined, it is an act, statement or omission which operates as a virtual fraud on an individual, or which, if generally permitted, would be prejudicial to the public welfare, and yet may have been unconnected with any selfish or evil design. Or, according to Story, constructive frauds are such acts or contracts as, though not originating in any actual evil design or contrivance to perpetrate a positive fraud or injury upon other persons, are

yet, by their tendency to deceive or mislead other persons, or to violate private or public confidence, or to impair or injure the public interests, deemed equally reprehensible with actual fraud. 1 Story, Eq.Jur. § 258. Code Ga.1882, § 3173 (Civ.Code 1910, § 4622) ; People v. Kelly, 35 Barb., N.Y., 457; Jackson v. Jackson, 47 Ga. 99; Massachusetts Ben. L. Ass'n v. Robinson, 104 Ga. 256, 30 S.E. 918, 42 L.R. A. 261; Allen v. United States Fidelity & Guaranty Co., 269 Ill. 234, 109 N.E. 1035, 1038.

Fraud is also classified as fraud in fact and fraud in law. The former is actual, positive, intentional fraud. Fraud disclosed by matters of fact, as distinguished from constructive fraud or fraud in law. McKibbin v. Martin, 64 Pa. 356, 3 Am.Rep. 588; Cook v. Burnham, 3 Kan.App. 27, 44 P. 447.

Fraud in law is fraud in contemplation of law; fraud implied or inferred by law; fraud made out by construction of law, as distinguished from fraud found by a jury from matter of fact; constructive fraud (q. v.). See 2 Kent, Comm. 512-532; Delaney v. Valentine, 154 N.Y. 692, 49 N.E. 65; Lovato v. Catron, 20 N.M. 168, 148 P. 490, 492, L.R.A.1915E, 451; Furst & Thomas v. Merritt, 190 N.C. 397, 130 S.E. 40, 43.

Fraud is also said to be legal or positive. The former is fraud made out by legal construction or inference, or the same thing as constructive fraud. Newell v. Wagness, 1 N. D. 62, 44 N.W. 1014.

Positive fraud is the same thing as actual fraud. Douthitt v. Applegate, 33 Kan. 395, 6 P. 575, 52 Am.Rep. 533; Nocatee Fruit Co. v. Fosgate, C.C.A. Fla., 12 F.2d 250, 252.

Actionable fraud. See Actionable.

Extrinsic or collateral fraud justifying equitable relief against a judgment or decree means some intentional act or conduct by which the prevailing party has prevented the unsuccessful party from having a fair submission of the controversy. Farley v. Davis, 10 Wash.2d 62, 116 P.2d 263, 268.

Pious fraud is a subterfuge or evasion considered morally justifiable on account of the ends sought to be promoted; particularly applied to an evasion or disregard of the laws in the interests of religion or religious institutions, such as circumventing the statutes of mortmain.

Statute of Frauds. This is the common designation of a very celebrated English statute, (29 Car. II. c. 3,) passed in 1677, and which has been adopted, in a more or less modified form, in nearly all of the United States. Its chief characteristic is the provision that no suit or action shall be maintained on certain classes of contracts or engagements unless there shall be a note or memorandum thereof in writing signed by the party to be charged or by his authorized agent. Its object was to close the door to the numerous frauds and perjuries. It is more fully named as the "statute of frauds and perjuries." Smith v. Morton, 70 Okl. 157, 173 P. 520, 521; Housley v. Strawn Merchandise Co., Tex.Com.App., 291 S.W. 864, 867; Norman v. Bullock

County Bank, 187 Ala. 33, 65 So. 371, 372; Garber v. Goldstein, 92 Conn. 226, 102 A. 605, 606.

FRAUD IN TREATY. Arises where a person is induced by some fraudulent representation or pretense to execute the very instrument intended to be executed but under a misrepresentation as to the contents thereof. Meyers v. Murphy, 181 Md. 98, 28 A.2d 861, 862.

FRAUD ORDER. A name given to orders issued by the postmaster general, under Rev.St. §§ 3929, 4041, 39 U.S.C.A. §§ 259, 732, for preventing the use of the mails as an agency for conducting schemes for obtaining money or property by means of false or fraudulent pretences, etc.

They are not restricted to schemes which lack all the elements of legitimate business, but the statute applies "when a business, even if otherwise legitimate, is systematically and designedly conducted upon the plan of inducing its patrons by means of false representations to part with their money in the belief that they are purchasing something different from, superior to, and worth more than, what is actually sold;" Harris v. Rosenberger, Mo., 145 F. 449, 16 C.C.A. 225, 13 L.R.A.,N.S., 762.

The fraud order is issued to the postmaster of the office through which the person affected by it receives his mail. It forbids the post-master to pay any postal money order to the specified person, and instructs the postmaster to return all letters to the senders if practicable, or if not, to the dead letter office, stamped in either case with the word "fraudulent." The method of testing the validity of the fraud order is to apply to the federal court for an injunction to restrain the postmaster from executing it. The decision of the postmaster-general is not the exercise of a judicial function; if he exceeds his jurisdiction, the party injured may have relief in equity; Degge v. Hitchcock, 229 U.S. 162, 33 S.Ct. 639, 57 L. Ed. 1135.

LEX EST TUTISSIMA CASSIS; SUB CINPEO LEGIS NEMO DECIPITUR.

Law is the safest helmet; under the shield of the law no one is deceived. 2 Inst. 56.

MISDESCRIPTION. An error or falsity in the description of the subject-matter of a contract which deceives one of the parties to his injury, or is misleading in a material or substantial point.

MISREPRESENTATION. Any manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts. A. P. Landis, Inc., v. Mellinger, 116 Pa.Super. 167, 175 A. 745, 746.

An untrue statement of fact. An incorrect or false representation. That which, if accepted, leads the mind to an apprehension of a condition other and different from that which exists. Colloquially it is understood to mean a statement made to deceive or mislead. Haigh v. White Way Laundry Co., 164 Iowa 143, 145 N.W. 473, 474, 50

L.R.A.,N.S., 1091; Zackwik v. Hanover Fire Ins. Co., Mo. App., 225 S.W. 135, 138.

In a limited sense, an intentional false statement respecting a matter of fact, made by one of the parties to a contract, which is material to the contract and influential in producing it. Wise v. Fuller, 29 N.J.Eq. 262; Hicks v. Wynn, 137 Va. 186, 119 S.E. 133, 135.

A "misrepresentation," which justifies the rescission of a contract, is a false statement of a substantive fact, or any conduct which leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead. Rhodes v. Uhl, 189 Iowa 408, 178 N.W. 394, 400.

Misrepresentation such as will amount to false pretense is not confined to mere oral misstatements of fact but includes distribution of printed matter, or a course of conduct, manifestly intended to deceive as to conditions actually existing. Commonwealth v. Dougherty, 84 Pa.Super. Ct. 319, 321.

False or fraudulent misrepresentation is a representation contrary to the fact, made by a person with a knowledge of its falsehood, and being the cause of the other party's entering into the contract. 6 Clark & F. 232.

Negligent misrepresentation is a false representation made by a person who has no reasonable grounds for believing it to be true, though he does not know that it is untrue, or even believes it to be true. L.R. 4 H.L. 79.

Innocent misrepresentation occurs where the person making the representation had reasonable grounds for believing it to be true. L.R. 2 Q.B. 580.

Insurance law. A statement of something as a fact which is untrue and material to the risk, and which assured states knowing it to be untrue and with intent to deceive, or which insured states positively as true, not knowing it to be true, and which has a tendency to mislead. Lawson v. Southwestern Voluntary Ass'n, 168 Va. 294, 191 S. E. 648, 649.

Material misrepresentation. In insurance law, one that would influence a prudent insurer in determining whether or not to accept the risk, or in fixing the amount of the premium in the event of such acceptance. Sovereign Camp, W. O. W., v. Parker, 36 Ga.App. 695, 138 S.E. 86, 87. MISSA. Lat. The mass.

UNCONSCIONABLE BARGAIN. All unconscionable bargain or contract is one which no man in his senses, not under delusion, would make, on the one hand, and which no fair and honest man would accept, on the other. Hume v. U. S., 10 S.Ct. 134, 132 U.S. 406, 33 L.Ed. 393; Edler v. Frazier, 174 Iowa 46, 156 N.W. 182, 187; Hall v. Wingate, 159 Ga. 630, 126 S.E. 796, 813; 2 Ves. 125; 4 Bouv. Inst. n. 3848.

UNCONSCIONABLE CONDUCT. Conduct that is monstrously harsh and shocking

to the conscience. Domus Realty Corporation v. 3440 Realty Co., 179 Misc. 749, 40 N.Y.S.2d 69, 73.



Law of the Case:

The decision, judgment, opinion or rulings on former appeal or writ of error become "law of the case."

Massachusetts Bonding & Insurance Co. v. Bankers' Surety Co., 96 Ind.App. 250, 179 N.E. 329, 332; City of Shreveport v. Kansas City Southern Ry. Co., 193 La. 277, 190 So. 404, 406; Nolan v. Nolan's Adm'rs, 234 Ky. 50, 27 S.W.2d 408, 409; Machenheimer v. Falknor, 151 Wash. 447, 276 P. 297, 298; Tressler Coal Min. Co. v. Klefeld, 125 W.Va. 301, 24 S.E.2d 98, 100;

so, too, a holding of an appellate court on writ of certiorari.

Goodkind v. Wolkowsky, 147 Fla. 415, 2 Scii2d 723, 725; Atlantic Coast Line R. Co. v. Sperry Flour Co., 63 Ga.App. 611, 11 S.E.2d 809, 811;

binding on subsequent appeal or writ of error.

George v. Atlanta & C. A. L. Ry. Co., 210 N.C. 58, 185 S.E. 431, 432; Elliott v. Moffet, Tex.Civ.App., 165 S.W.2d 911, 912, 913; Moran v. Leconv Smokeless Coal Co., 124 W.Va. 54, 18 S.E.2d 808, 813; Hill v. Chappel Bros. of Montana, 97 Mont. 305, 33 P.2d 819, 820;

or on subsequent proceedings or trials in trial court,

Oliver v. Muncy, 271 Ky. 15, 111 S.W.2d 392, 393; Sarson v. Mueller, 105 N.J.L. 212, 143 A. 428; State of Kansas ex rel. Beck v. Occidental Life Ins. Co., C.C.A.Kan., 95 F.2d 935, 936;

or in subsequent suit between same parties,

Oglethorpe University v. City of Atlanta, 180 Ga. 152, 178 s.a 156.

The doctrine expresses practice of courts generally to refuse to reopen what has been decided.

White v. Higgins, C.C.A.Mass., 116 F.2d 312, 317, 318; Perkins v. Vermont Hydro-Electric Corporation, 106 Vt. 367, 177 A. 631, 653; Fleming v. Campbell, 148 Kan. 516, 83 P.2d 708, 709;

it expresses the rule that final judgment of highest court is final determination of parties' rights.

Atchison, T. & S. F. Ry. Co. v. Railroad Commission of California, 209 Cal. 460, 288 P. 775, 779.

The doctrine has reference to decisions on legal questions and principles of law announced.

Haynes Drilling Co. v. Indian Territory Illuminating Oil Co., 185 Okl. 122, 90 P.2d 639, 640;

and does not embrace questions of fact or decisions on questions of fact.

McNeely v. Connell, 87 Cal. App. 87, 261 P. 754, 755.

(But see holding that the decision of appellate court on facts proved becomes "law of the case". Cauldwell-Wingate Co. v. State, Ct.C1., 31 N.Y.S.2d 211, 213).

The doctrine includes all errors relied on for reversal, whether mentioned in court's opinion or not, and all errors lurking in record on first appeal, which might have been, but were not, expressly relied on,

Sowers v. Coleman, 223 Ky. 633, 4 S.W.2d 731,

(but see holding that doctrine does not extend to facts or points of law which might have been but were not presented and determined on prior appeal,

Steelduct Co. v. Henger-Seltzer Co., Cal., 26 Cal.2d 634, 160 P.2d 804, 809) ;

all matters, issues or questions actually decided on former appeal.

Fleming v. Buerkli, 164 Wash. 136, 1 P.2d 915;

all questions involved in judgment,

Helper State Bank v. Crus, 95 Utah 320, 81 P.2d 359, 361, 363;

all questions involved on former appeal. Whether or not expressly mentioned in opinion, unless expressly reserved,

Martin v. Commonwealth, 265 Ky. 292, 96 S.W.2d 1011;

all questions open expressly or by necessary implication decided on former appeal, Brown v. Brotherhood of Railroad Trainmen, 186 Okl. 275, 97 P.2d 62; Miller v.

Sisters of St. Francis, 5 Wash.2d 204, 105 P.2d 32, 33; Kuhns v. Live Stock Nat. Bank of Omaha, 138 Neb. 797, 295 N.W. 818, 819, 820;

decision on sufficiency of evidence.

Wells v. Lloyd, 21 Cal.2d 452, 132 P.2d 471, 474;

Every applicable proposition of law actually applied to facts and pleadings involved, Union Central Life Ins. Co. v. Trundle, 65 Ga.App. 553, 15 S.E.2d 909, 913;

only facts appearing in original opinion,

Timm v. McCartney, 30 Cal.App.2d 241, 85 P.2d 920, 922;

points presented on former appeal,

IEtna Life Ins. Co. v. Wharton, C.C.A.Ark., 63 F.2d 378, 379; City of Sedalia ex rel. and to Use of Ferguson v. Shell Petroleum Corporation, C.C.A.Mo., 81 F.2d 193, 196, 106 A.L.R. 1327;

ruling on point distinctly made on former appeal,

People v. Marshall, 209 Cal. 540, 289 P. 629, 631:

statements in opinion on former appeal, if necessary to decision of questions presented,
Miller Cattle Co. v. Francis, Ariz., 298 P. 631, 632.

It bars further adjudication in identical proceeding or on same or substantially identical facts or identical question,

In re Norman's Estate, 161 Or. 450, 88 P.2d 977, 987.

The doctrine is generally deemed applicable whether former determination is right or wrong.
Wells v. Lloyd, 21 Cal.2d 452, 132 P.2d 471, 474.

But some cases hold that doctrine is inapplicable where prior decision is unsound, or incorrect

Standard Oil Co. of California v. Johnson, 56 Cal. App.2d 411, 132 P.2d 910, 913; Atchison T. & S. F. Ry. Co. v. Ballard, C.C.A.Tex., 108 F.2d 768, 772;

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principles were announced or mistake of fact was made on first appeal.

National Match Co. v. Empire Storage & Ice Co., 227 Mo.App. 1115, 58 S.W.2d 797; Morris v. E. I. Du Pont De Nemours & Co., 346 Mo. 126, 139 S.W.2d 984, 986, 129 A.L.R. 352.

The doctrine may be invoked unless evidence differs substantially,

Chicago, St. P., M. & O. Ry. Co. v. Kulp, C.C.A. Minn., 102 F.2d 352, 354, 133 A.L.R. 1445; City of Louisville v. Redmon, 282 Ky. 1, 137 S.W.2d 350, 351; New York Life Ins. Co. v. Golightly, C.C.A.Ark., 94 F.2d 316, 319;

new pleadings and new evidence adduced on subsequent trial call for different judgment,
Maze v. Bennett, 117 W.Va. 165, 184 S.E. 564, 565;

there has been a material change in record,

Reynolds v. Virginian Ry. Co., 117 W.Va. 359, 185 S.E. 568, 569;

there has been a substantial change in issues or evidence,

Royal Collieries Co. v. Wells, 244 Ky. 303, 50 S.W.2d 948, 949.

It may be invoked where evidence or facts on subsequent appeal or subsequent trial is substantially the same,

American Railway Express Co. v. Cole, 185 Ark. 532, 48 S.W.2d 223; State v. Loveless, 62 Nev. 312, 150 P.2d 1015, 1016, 1018; Clark v. Los Angeles & Salt Lake R. Co., 73 Utah, 486, 275 P. 582, 584; New York Life Ins. Co. v. Ittner, 62

Ga.App. 31, 8 S.E.2d 582, 586; Amerada Petroleum Corporation v. Elliff, 171 Okl. 38, 41 P.2d 850.

General principle of law is declared as applicable to the facts of the case,
Creason v. Harding, 344 Mo. 452, 126 S.W.2d 1179, 1183;

pleadings and evidence were substantially the same,
Lober v. Kansas City, 339 Mo. 1087, 100 S.W.2d 267, 268;

Questions of law and fact are the same.
Helper State Bank v. Crus, 95 Utah 320, 81 P.2d 359, 361, 363;

record is substantially identical with that in prior proceeding,
Louisville Trust Co. v. National Bank of Kentucky, C.C.A.Ky., 102 F.2d 137, 139; City of
San Antonio v. McKenzie Const. Co., Tex.Civ.App., 138 S.W.2d 568, 576; Stuart C. Irby Co.
v. Smith, 205 Ark. 183, 168 S.W.2d 618, 619, 620.

The effect of "law of the case" is limited to court of co-ordinate jurisdiction.
Walker v. Gerli, 12 N.Y.S.2d 942, 944, 257 App.Div. 249.

Where appeal is not pursued, decision of intermediate court is the "law of the case". State ex
rel. Anderson Motor Service Co. v. Public Service Commission, 234 Mo.
App. 470, 134 S.W.2d 1069, 1075.

"Law of the case" may signify, or be constituted by, other matters or things.
It has been held that "law of the case" may include, or be constituted by an agreement of
arbitration,
Acme Cut Stone Co. v. New Center Development Corporation, 281 Mich. 32, 274 N.W. 700,
706, 112 A.L.R. 865;

allegation of complaint where not challenged below.
Coulter v. Pomeroy, 38 N.Y.S.2d 22, 23, 265 App.Div. 51;

answer to certified question,
City of Brunswick v. King, 65 Ga.App. 44, 14 S.E.2d 760, 763;

findings of fact or of law by an auditor unless excepted to,
Brothers and Sisters of Charity v. Renfroe, 57 Ga.App. 646, 196 S.E. 135;

finding on first hearing affirmed on appeal.
Stonega Coke & Coal Co. v. Price, C.C.A. W.Va., 116 F.2d 618, 621;

grant of temporary injunction and continuance by Appellate Division,
Walker Memorial Baptist Church v. Saunders, 17 N.Y.S.2d 842, 847, 173 Misc.
455; holding in case not appealed from, Schul v. Clapp, 154 Kan. 372, 118 P.2d 570, 573;

intention of testator as expressed in will,

Clauss v. Rohde, 133 N.J.Eq. 105, 30 A.2d 695;

judgment which remains unreversed or to which no exception has been taken, Palmer v. Jackson, 188 Ga. 336, 4 S.E.2d 28, 30;

mandates of Supreme Court,

People ex rel. McLaren v. DeBoice, 377 Ill. 634, 37 N.E.2d 337, 340;

order not appealed,

Foley v. Equitable Life Assur. Soc. Of the United States, 33 N.Y.S.2d 917, 918, 263 App.Div. 605; Long v. Carolina Baking Co., 193 S.C. 225, 8 S.E.2d 326, 330, 331;

order of trial court requiring amendment to petition,

Martin v. Mayer, 63 Ga.App. 387, 11 S.E.2d 218, 226;

order requiring judgment debtor to make monthly payments on judgment,

Ryan v. Edgerton, 30 N.Y.S.2d 941, 942, 177 Misc. 421;

order that case automatically stand dismissed unless plaintiff amends petition,

Smith v. Atlanta Gas-Light Co., 181 Ga. 479, 182 S.E. 603;

ordinance admitted by parties to be in force and to be accurately pleaded, with defendant reserving only the question of admissibility.

Pane v. Wieland. 137 Ohio St. 198, 28 N.E.2d 583, 585;

plaintiffs' theory where adopted by trial justice,

Ferrier v. City of White Plains, 28 N.Y.S.2d 218, 220, 262 App. Div. 94;

portion of decree not appealed,

Dawson County Irr. Co. v. Stuart, 142 Neb. 428, 8 N.W.2d 507, 508;

prior decision of another judge of same court,

United States Industrial Chemicals v. Carbide & Carbon Chemicals Corporation, D.C.N.Y., 52 F.Supp. 164, 165;

referee's conclusions where no exceptions taken,

Cooper v. Baxley, 194 S.C.270, 9 S.E.2d 721, 722;

ruling upon demurrer,

Sanik v. Shryock Realty Co., 156 Kan. 641, 135 P.2d 545, 548; . Darling stores Corporation v. Beatus, 197 Ga. 125, 28 S.E.2d 124, 126; Wilkinson v. Wilkinson, 192 S.C. 497, 7 S.E.2d 447, 449, 450;

ruling of trial court as to applicable statute,
Beck v. Baird, 238 Wis. 624, 300 N.W. 752, 754;

ruling of trial court to which no exception is taken,
Perkins v. Vermont Hydro-Electric Corporation, 106 Vt. 367, 177 A. 631, 654;

ruling on motions to dismiss,
Pathe Exchange v. International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada, Local No. 306, D.C.N.Y., 3 F.Supp. 63, 64;

ruling striking amendments to answer,
Ford v. Jones, 66 Ga.App. 238, 17 S.E.2d 756, 757;

stipulation,
Mann v. R. Simpson & Co., 286 N.Y. 450, 36 N.E.2d 658, 662;

theory acquiesced in by parties and court,
Cote v. Boise, 111 Vt. 343, 16 A.2d 175, 177.

Instructions are the "law of the case."
Douglas v. Manfree Realty Corporation, 263 App.Div. 998, 33 N.Y.S.2d 423, 424; Selfe v. Fuller, 179 Va. 30, 18 S.E.2d 254, 256;

whether right or wrong,
Rogers v. Jefferson, 223 Iowa 718, 272 N.W. 532, 533; McClelland v. Interstate Transit Lines, 142 Neb. 439, 6 N.W.2d 384, 391; Buckin v. Long Island R. Co., 286 N.Y. 146, 36 N.E.2d 88, 89.

It has been held that instructions are the "law of the case" where appealing defendant accepted instructions as correct,
Etna Life Ins. Co. v. McAdoo, C.C.A.Ark., 115 F.2d 369, 370;

approved on former appeal and given at second trial,
Whitehead v. Stith, 279 Ky. 556, 131 S.W.2d 455, 460;

instruction given on first trial is corrected to meet criticism made by Court of Appeals,
Waddle v. Williams, 294 Ky. 66, 170 S.W.2d 886, 888.

Instruction is unappealed from,
Stephenson v. W. R. Grimshaw Co., 148 Kan. 466, 83 P.2d 655, 656;
instructions not challenged in any manner or in any particular,
Madison v. Hood, 207 Iowa 495, 223 N.W. 178, 179;

no exception is made and they are not assigned as error,
New York Life Ins. Co. v. Stone, C.C.A.Mass., 80 F.2d 614, 616; • Codd v. New York Underwriters Ins. Co., 19 Wash.2d 671, 144 P.2d 234, 237;

no exceptions are taken,
Miller v. Mohr, 198 Wash. 619, 89 P.2d 807, 814; Chancellor v. Hines Motor Supply Co., 104 Mont. 603, 69 P.2d 764, 769; Johnson v. Narragansett Filling Stations, R.I., 148 A. 901;

no instructions are requested nor exceptions taken,
U. S. v. Hossmann, C.C.A. Mo., 84 F.2d 808, 810;

no objections are made,
Brown v. Waltrip, 167 Va. 293, 189 S.E. 342, 343; Kovaniemi v. Sherman, 192 Minn. 395, 256 N.W. 661; Pankey v. First Nat. Bank, 40 N.M. 270, 58 P.2d 1186, 1188;

only exception pressed before Supreme Court was exception to denial of motion for new trial based on usual grounds,
Couture v. Industrial Trust Co., 66 R.I. 395, 19 A.2d 772, 775.

An instruction excepted to by plaintiff is "law of the case" for purpose of trial only.
Klimaszewski v. Herrick, 32 N.Y. S.2d 441, 442, 263 App.Div. 235.

An instruction given at request of defendant is "law of the case" on defendant's appeal.
Wood Towing Corporation v. West, 181 Va. 151, 23 S.E.2d 789, 791.

Oral charge of court and special charges given at request of parties constitute "law of case".
Franklin Fire Ins. Co. v. Slaton, 240 Ala. 560, 700 So. 564, 566.

Portion of charge to which no exception was made became the "law of the case." Morrison v. Bitting, 60 R.I. 325, 198 A. 355, 359.

LAW OF THE LAND. *Due process of law (q. v.). By the law of the land is most clearly intended the general law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial.*

Dupuy v. Tedora, 204 La. 560, 15 So.2d 886, 891.

The meaning is that every citizen shall hold his life, liberty, property, and immunities under the protection of general rules which govern society.

Rich Hill Coal Co. v. Brashore, 334 Pa. 449, 7 A.2d 302, 316; In re Stobie's Estate, 30 Cal.App.2d 525, 86 P.2d 883, 885.

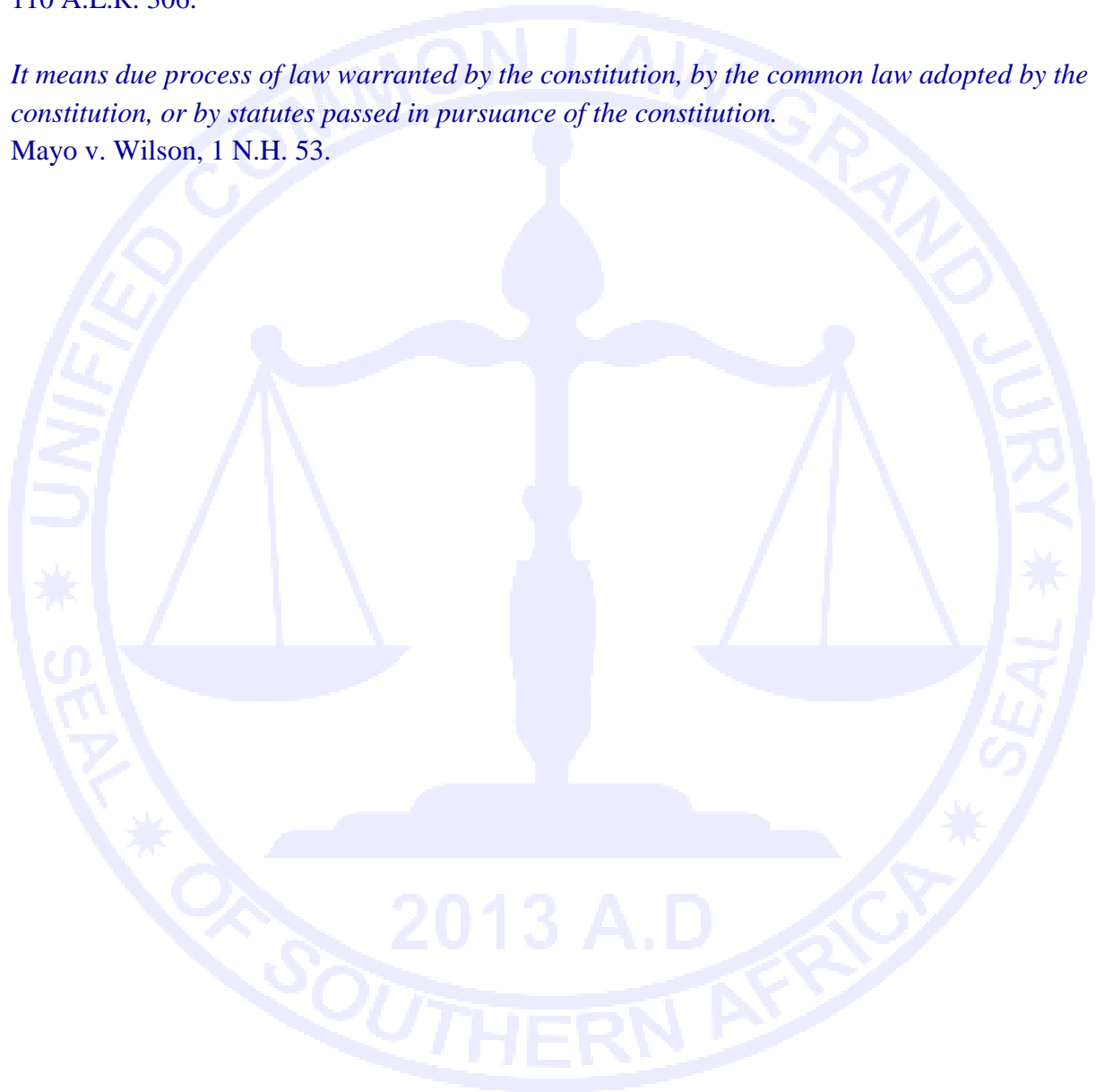
Everything which may pass under the form of an enactment is not the law of the land.
Sedg.St. & Const.Law, (2d Ed.) 475.

When first used in Magna Charta, the phrase probably meant the established law of the kingdom, in opposition to the civil or Roman law. It is now generally regarded as meaning general public laws binding on all members of the community.

Janes v. Reynolds, 2 Tex. 251; Beasley v. Cunningham, 171 Tenn. 334, 103 S.W.2d 18, 20, 110 A.L.R. 306.

It means due process of law warranted by the constitution, by the common law adopted by the constitution, or by statutes passed in pursuance of the constitution.

Mayo v. Wilson, 1 N.H. 53.



Charter of the Forest:

The Charter of the Forest has fallen into disuse; here are some definitions:

AFFOREST. To convert land into a forest in the legal sense of the word.

AFFORESTATION. The turning of a part of a country into forest or woodland or subjecting it to forest law, q. v.

ARRENT. In old English law. To let or demise at a fixed rent. Particularly used with reference to the public domain or crown lands; as where a license was granted to inclose land in a forest with a low hedge and a ditch, under a yearly rent, or where an encroachment, originally a purpresture, was allowed to remain on the fixing and payment of a suitable compensation to the public for its maintenance.

ARTICULI SUPER CHARTAS. Articles upon the charters. The title of a statute passed in the twenty-eighth year of Edward I. st. 3, confirming or enlarging many particulars in Magna Charta, and the Charta de Foresta, and appointing a method for enforcing the observance of them, and for the punishment of offenders. 2 Reeve, Hist. Eng.Law, 103, 233.

ASSART. In English law. The offense committed in the forest, by pulling up the trees by the roots that are thickets and coverts for deer, and making the ground plain as arable land. It differs from waste, in that waste is the cutting down of coverts which may grow again, whereas assart is the plucking them up by the roots and utterly destroying them, so that they can never afterward grow. This is not an offense if done with license to convert forest into tillage ground. Consult Manwood's Forest Laws, pt. I, p. 171. Wharton.
See Essarter.

ASSISA DE FORESTA. Assise of the forest; a statute concerning orders to be observed in the royal forests.

BLOODY HAND. In forest law. The having the hands or other parts bloody, which, in a person caught trespassing in the forest against venison, was one of the four kinds of circumstantial evidence of his having killed deer, although he was not found in the act of chasing or hunting. Manwood.

BOW-BEARER. An under-officer of the forest, whose duty it was to oversee and true inquisition make, as well of sworn men as unsworn, in every bailiwick of the forest; and of all manner of trespasses done, either to vert or venison, and cause them to be presented, without any concealment, in the next court of attachment, etc. Crompt. Jur. 201.

CASTELLAIN. In old English law. The lord, owner, or captain of a castle; the constable of a fortified house; a person having the custody of one of the crown mansions; an officer of the forest.

Charta De Foresta

A collection of the laws of the forest, made in the 9th Century by Henry III, and said to have been originally a part of Magna Charta.

The charta de foresta was called the Great Charter of the woodland population, nobles, barons, freemen, and slaves, loyally granted by Henry III. early in his reign (A.D.1217). Inderwick, King's Peace 159; Stubb's Charters 847. There is a difference of opinion as to the original charter of the forest similar to that which exists respecting the true and original Magna Carta (q. v.), and for the same reason, viz., that both required repeated confirmation by the kings, despite their supposed inviolability. This justifies the remark of recent historians as to the great charter that "this theoretical sanctity and this practical insecurity are Shared with 'the Great Charter of Liberties' by the Charter of the Forest which was issued in 1217." 1 Poll. & Maitl. 158.

It is asserted with great positiveness by Inderwick that no forest charter was ever granted by King John, but that Henry III. issued the charter of 1217 (which he puts in the third year of the reign, which, however, only commenced Oct. 28, 1216), in pursuance of the promises of his father; and Lord Coke, referring to it as a charter on which the lives and liberties of the woodland population depended, says that it was confirmed at least thirty times between the death of John and that of Henry V. ; 4 Co. Inst. 303.

Webster, under the title Magna Charta, says that the name is applied to the charter granted in the 9th Hen. III. and confirmed by Edw. I. Prof. Maitland, in speaking of Magna Carta, refers to "the sister-charter which defined the forest law" as one of the four documents which, at the death of Henry III., comprised the written law of England.

1 Soc. England 410. Edward I. in 1297 confirmed "the charter made by the common consent of all the realm in the time of Henry III. to be kept in every point without breach." Inderwick, King's Peace 160; Stubb's Charters 486.

The Century Dictionary refers to this latter charter of Edw. I. as the Charter of the Forest; but it was, as already shown, only a confirmation of it, and a comparison of the authorities leaves little if any doubt that the date was as above stated and the history as here given. Its provisions may be found in Stubb's Charters and they are summarized by Inderwick, in his work above cited.

CHARTIE LIBERTATUM. The charters (grants) of liberties. These are Magna Charta and Charta de Foresta.

Charter of the Forest - See Charts de foresta.

Charter Rolls

Ancient English records of royal charters, granted between the years 1199 and 1516.

CONSTITUTIONS OF THE FOREST. See Charta de Foresta.

CONSUECUDINES. In old English law. Customs.

Thus, consuetudines et assisa forestce, the customs and assise of the forest.

COURT OF JUSTICE SEAT. In English law.

The principal of the forest courts. Called also Court of the Chief Justice in Eyre (q. v.).'

COURT OF SWEINMOTE (spelled, also, Swainmote, Swain-gemote; Saxon, swang, an attendant, a freeholder, and mote or gemote, a meeting).

One of the old forest courts, held before the verderers, as judges, by the steward, thrice in every year,—the sweins or freeholders within the forest composing the jury. This court had jurisdiction to inquire into grievances and oppressions committed by the officers of the forest, and also to receive and try presentments certified from the court of attachments, certifying the cause, in turn, under the seals of the jury, in case of conviction, to the court of justice seat for the rendition of judgment. Cowell; 3 Bla. Corn. 71, 72; 3 Steph. Corn. 317, n. See Inderwick, King's Peace 150;

Forest Laws.

COURT OF THE CHIEF JUSTICE IN EYRE. The highest of the courts of the forest, held every three years, by the chief justice, to inquire of purprestures or encroachments, assarts, or cultivation of forest land, claims to franchises, parks, warrens, and vineyards in the forest, as well as claims of the hundred, claims to the goods of felons found in the forest, and any other civil questions that might arise within the forest limits.

But it had no criminal jurisdiction, except of offenses against the forest laws. It was called also the court of justice seat. Inderwick, King's Peace.

Since the Restoration the forest laws have fallen into disuse. The office was abolished in 1817.

COURTS OF THE FOREST. Courts held for the enforcement of the forest laws. Inderwick, King's Peace. See Forest Courts.

DISAFFOREST. To restore to their former condition lands which have been turned into forests. To remove from the operation of the forest laws. 2 Bl.Comm. 416.

DISPENSATION. An exemption from some laws; a permission to do something forbidden; an allowance to omit something commanded; the canonistic name for a license. Sweeney v. Independent Order of Foresters, 190 App.Div. 787, 181 N.Y.S. 4, 5.

ESCAPIO QUIETUS. In old English law. Delivered from that punishment which by the laws of the forest lay upon those whose beasts were found upon forbidden land. Jacob.

FALSE CLAIM, in the forest law, was where a man claimed more than his due, and was amerced and punished for the same. Manw. c. 25; Tomlins.

FORATHE. In forest law, one who could make oath, i. e., bear witness for another. Cowell; Spelman.

FOREST. A tract of land covered with trees and one usually of considerable extent. Forest Preserve Dist. of Cook County v. Jirsa, 336 Ill. 624, 168 N.E. 690, 691.

In old English law, a certain territory of wooded ground and fruitful pastures, privileged for wild beasts and fowls of forest, chase, and warren, to rest and abide in the safe protection of the prince for his princely delight and pleasure, having a peculiar court and officers. Manw. For. Laws, c. 1, no. 1; Termes de la Ley; 1 Bl.Comm. 289.

A royal hunting-ground which lost its peculiar character with the extinction of its courts, or when the franchise passed into the hands of a subject. Spelman; Cowell.

The word is also used to signify a franchise or right, being the right of keeping, for the purpose of hunting, the wild beasts and fowls of forest, chase, park, and warren, in a territory or precinct of woody ground or pasture set apart for the purpose. 1 Steph.Comm. 665.

FOREST COURTS. In English law. Courts instituted for the government of the king's forest in different parts of the kingdom and for the punishment of all injuries done to the king's deer or venison, to the vert or greensward, and to the covert in which such deer were lodged. They consisted of the courts of attachments, of regard, of sweinmote, and of justice-seat; but in later times these courts are no longer held. 3 Bl. Comm. 71.

FOREST LAW. The system or body of old law relating to the royal forests.

FORESTAGE. A duty or tribute payable to the king's foresters. Cowell.

FORESTAGIUM. A duty or tribute payable to the king's foresters. Cowell.

FORTY-DAYS COURT. In old English forest law, the court of attachment in forests, or woodmote court.

GRUARII. The principal officers of a forest.

INTER REGALIA. In English law. Among the things belonging to the sovereign. Among these are rights of salmon fishing, mines of gold and silver, forests, forfeitures, casualties of superiority, etc., which are called "regalia minora," and may be conveyed to a subject. The regalia majora include the several branches of the royal prerogative, which are inseparable from the person of the sovereign. Tray. Lat. Max.

JUSTICE SEAT. In English law. The principal court of the forest, held before the chief justice in eyre, or chief itinerant judge or his deputy; to hear and determine all trespasses within the forest, and all claims of franchises, liberties, and privileges, and all pleas and causes whatsoever therein arising. 3 Bl. Comm. 72; 4 Inst. 291; 3 Steph. Comm. 440.

JUSTICES OF THE BENCH. The justices of the court of common bench or common pleas.

JUSTICES OF THE FOREST. In old English. law. Officers who had jurisdiction over all offenses committed within the forest against vert or venison. The court wherein these justices sat and determined such causes was called the "justice seat of the forest." They were also sometimes called the "justices in eyre of the forest." Brown.

JUSTICES OF THE HUNDRED. Hundredors; lords of the hundreds; they who had the jurisdiction of hundreds and held the hundred courts.

JUSTICES OF THE JEWS. Justices appointed by Richard I. to carry into effect the laws and orders which he had made for regulating the money contracts of the Jews. Brown.

KEEPER OF THE FOREST. In old English law. An officer (called also chief warden of the forest) who had the principal government of all things relating to the forest, and the control of all officers belonging to the same. Cowell; Blount.

MAGNA CHARTA. The great charter.

The name of a charter (or constitutional enactment) granted by King John of England to the barons, at Runnymede, on June 15, 1215, and afterwards, with some alterations, confirmed in parliament by Henry III. and Edward

I. This charter is justly regarded as the foundation of English constitutional liberty. Among its thirty-eight chapters are found provisions for regulating the administration of justice, defining the temporal and ecclesiastical jurisdictions, securing the personal liberty of the subject and his rights of property, and the limits of taxation, and for preserving the liberties and privileges of the church.

Magna Charta is so called, partly to distinguish it from the Charta de Foresta, which was granted about the same time, and partly by reason of its own transcendent importance.

MAGNA CHARTA ET CHARTA DE FORESTA SONT APPELES LES "DEUX GRANDES CHARTERS." 2 Inst. 570. Magna Charta and the Charter of the Forest are called the "two great charters."

MAGNA CULPA. Great fault; gross negligence.

PUDZELD. In old English law. Supposed to be a corruption of the Saxon "wudgeld," (woodgeld,) a freedom from payment of money for taking wood in any forest. Co. Litt. 233a.

PURLIEU. In English law. A space of land near a royal forest, which, being severed from it, was made purlieu; that is pure or free from the forest laws.

PUTURE. In old English law. A custom claimed by keepers in forests, and sometimes by bailiffs of hundreds, to take man's meat, horse's meat, and dog's meat of the tenants and inhabitants within the perambulation of the forest, hundred, etc.

The land subject to this custom was called "terra putura." Others, who call it "pulture," explain it as a demand in general; and derive it from the monks, who, before they were admitted, pulsabant, knocked at the gates for several days together. 4 Inst. 307; Cowell.

RANGER. In forest law. A sworn officer of the forest, whose office chiefly consists in three points: To walk daily through his charge to see, hear, and inquire as well of trespasses as trespassers in his bailiwick; to drive the beasts of the forest, both of venery and chace, out of the deafforested into the forested lands; and to present all trespassers of the forest at the next courts holden for the forest. Cowell.

RAPE OF THE FOREST. In old English law. Trespass committed in a forest by violence. Cowell.

REAFFORESTED. Where a deafforested forest is again made a forest. 20 Car. II. c. 3.

REGARD OF THE FOREST. In old English law. The oversight or inspection of it, or the office and province of the regarder, who is to go through the whole forest, and every bailiwick in it, before the holding of the sessions of the forest, or justiceseat, to see and inquire after trespassers, and for the survey of dogs. Manwood.

REGARDER OF A FOREST. An ancient officer of the forest, whose duty it was to take a view of the forest hunts, and to inquire concerning trespasses, offenses, etc. Manwood.

REPOSITION OF THE FOREST. In old English law. An act whereby certain forest grounds, being made purlieu upon view, were by a second view laid to the forest again, put back into the forest. Manwood; Cowell.

REVE. In old English law. The bailiff of a franchise or manor; an officer in parishes within forests, who marks the commonable cattle. Cowell.

SWEIN. In old English law. A freeman or freeholder within the forest.

SWEINMOTE. In forest law. A court holden before the verderors, as judges, by the steward of the sweinmote, thrice in every year, the sweins or freeholders within the forest composing the jury. Its principal jurisdiction was—First, to inquire into the oppressions and grievances committed by the officers of the forest; and, secondly, to 'receive and try presentments certified from the court of attachments in offenses against vert and venison. 3 BL Comm. 72.

TERRA PUTURA. Land in forests, held by the tenure of furnishing food to the keepers therein. 4 Inst. 307.

TRISTRIS. In old forest law. A freedom from the duty of attending the lord of a forest when

engaged in the chase. Spelman.

VASTUM FORESTIE VEL BOSCI. In old records. Waste of a forest or wood. That part of a forest or wood wherein the trees and underwood were so destroyed that it lay in a manner waste and barren. Paroch. Antiq, 351, 497; Cowell.

VERDERER, or VERDEROR. An officer of the king's forest, who is sworn to maintain and keep the assizes of the forest, and to view, receive, and enroll the attachments and presentments of all manner of trespasses of vert and venison in the forest. Manw. c. 6, § 5.

VERT. Everything bearing green leaves in a forest. Manwood, For. Law 146.

VICOUNTIEL, or VICONTIEL. Anything that belongs to the sheriffs, as vicontiel writs, e., such as are triable in the sheriff's court. As to vicontiel rents, see St. 3 & 4 Wm. IV. c. 99, §§ 12, 13, which places them under the management of the commissioners of the woods and forests. Cowell.

VIRIDARIO ELIGENDO. A writ for choice of a verderer in the forest. Reg. Orig. 177.

VISITOR OF MANNERS. The regarder's office in the forest. Manw. i. 195.

WALKERS. Foresters who have the care of a certain space of ground assigned to them. Cowell.

WINTER HEYNING. The season between 11th November and 23d April, which is excepted from the liberty of commoning in certain forests. St. 23 Car. II. c. 3.

WOOD-GELD. In old English law. Money paid for the liberty of taking wood in a forest. Cowell. Immunity from such payment. Spelman.

WOOD-MOTE. In forest law. The old name of the court of attachments; otherwise called the "Forty-Days Court." Cowell; 3 Bl.Comm. 71.

WOODS. A forest; land covered with a large and thick collection of natural forest trees. The old books say that a grant of "all his woods" (omnes boscos suos) will pass the land, as well as the trees growing upon it. Co.Litt. 4b. See Averitt v. Murrell, 49 N.C. 323; Hall v. Cranford, 50 N.C. 3; Achenbach v. Johnston, 84 N.C. 264.

WOODWARDS. Officers of the forest, whose duty consists in looking after the wood and vert and venison, and preventing offenses relating to the same. Manw. 189.

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T. Parker.

