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### Comprehensive Study of "The Law of the Land" Part VI: Article 6 & 7

Sunday - May 18, 2014 / 1 p.m. — 3 p.m.

Blog Talk: *Mhhs—Eyes Wide Open*

Chat Room OR Call In: 347 945-5899

### Definitions For Review:

**Debt(s)** - A sum of money due by certain and express agreement; as by bond for aeterminate sum, a bill or note, a special bargain, or a rent reserved on a lease, where the amount is fixed and specific, and does not depend upon any subsequent valuation to settle it. *3 Bl.Comm. 154; Hagar v. Reclamation Dist., 111 U.S. 701, 4 S.Ct. 663, 28 L.Ed. 569; Neilson v. Title Guaranty & Surety Co., 101 Or. 262, 199 P. 948, 951; Shultz v. Ritterbusch, 38 Okl. 478, 134 P. 961, 968; W. S. Tyler Co. v. Deutsche Dampfschiffahrts Gesellschaft Hansa, Bremen, Germany, D.C.Ohio, 276 F. 134, 136.*

An unconditional promise to pay a fixed sum at a specified time. *Lowery v. Fuller, 221 Mo.App. 495, 281 S.W. 968, 972.* A contractual obligation to pay in the future for considerations received in the present. *Lesser v. Warren Borough, 237 Pa. 501, 85 A. 839, 841, 43 L.R.A.,N.S., 839.* The word "debt" carries with it the requirement of certainty, the foundation of promise by express contract, and necessarily implies legality. *Clinton Mining & Mineral Co. v. Beacon, C.C.A.Pa., 266 F. 621, 622, 14 A.L.R. 263.* The word "debt," in the definition of a mortgage as a hypothecation or pledge of property as security for a debt, means a duty or obligation to pay, for the enforcement of which an action lies. *Stollenwerck v. Marks & Gayle, 188 Ala. 587, 65 So. 1024, 1027, Ann.Cas.1917C, 981; Gibson v. Hopkins, 80 W.Va. 756, 93 S.E. 826, 827.* Standing alone, the word "debt" is applicable to a sum of money which has been promised at a future day, as to a sum of money now due and payable. To distinguish between the two, it may be said of the former that it is a debt owing, and of the latter that it is a debt due. A sum of money which is certainly and in

all events payable is a debt, without regard to the fact whether it be payable now or at a future time. A sum payable upon a contingency, however, is not a debt, or does not become a debt until the contingency has happened. *People v. Arguello, 37 Cal. 524.*

A sum of money arising upon a contract, express or implied. *Kimpton v. Bronson, 45 Barb. N.Y., 618; Johnson v. Garner, D.C.Nev., 233 F. 756, 767.* Also, the obligation to pay a sum certain; *Indian Refining Co. v. Taylor, 195 Ind. 223, 143 N.E. 682, 689;* or a sum which may be ascertained by simple mathematical calculation from known facts; *H. G. Kilbourne Co. v. Standard Stamp Affixer Co., 216 Mass. 118, 103 N.E. 469, 470;* regardless of whether the liability arises by contract or is implied or imposed by law; *State v. Latham, 136 Tenn. 30, 188 S.W. 534, 535; Lindstrom v. Spicher, 53 N.D. 195, 205 N.W. 231, 233, 41 A.L.R. 968.*

A "debt" is a specified sum of money owing to one person from another, including not only the obligation of the debtor to pay, but the right of the creditor to receive and enforce payment. *Angola Brick & Tile Co. v. Millgrove School Tp., Steuben County, 73 Ind.App. 557, 127 N.E. 855, 856; Dewey v. Denson, 31 Ga.App. 352, 120 S.E. 805, 807.*

A fixed and certain obligation to pay money or some other valuable thing or things, either in the present or in the future. *Burke v. Boulder Milling & Elevator Co., 77 Colo. 230, 235 P. 574, 575.* In a still more general sense, that which is due from one person to another, whether money, goods, or services. *Holman v. Hollis, 94 Fla. 614, 114 So. 254, 255; State v. State Board of Examiners, 74 Mont. 1, 238 P. 316, 323.*

A "debt" is an obligation arising otherwise than by sentence by a court for a breach of the public peace or for crime. *Ruggles v. State, 120 Md. 553, 87 A. 1080, 1084.*

In a broad sense, any duty to respond to another in money, labor, or service; it

may even mean a moral or honorary obligation, unenforceable by legal action. *U. S. Sugar Equalization Board v. P. De Ronde & Co., C.C.A.Del., 7 F.2d 981, 984.*

Also, sometimes, an aggregate of separate debts, or the total sum of the existing claims against a person or company. Thus we speak of the "national debt," the "bonded debt" of a corporation, etc. The word "debt" has no fixed legal meaning; *Electric Reduction Co. v. Lewellyn, C.C.A.Pa., 11 F.2d 493, 494;* but takes shades of meaning from the occasion of its use . and color from accompanying words; *Morrow v. Hayes, 226 Mich. 301, 197 N.W. 554, 555.*

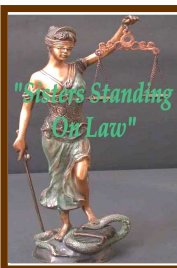
The word is of large import, including not only debts by specialty, and debts of record, or judgments (*Liberty Mut. Ins. Co. v. Johnson Shipyards Corporation, C.C.A.N.Y., 6 F.2d 752, 755; Schooley v. Schooley, 184 Iowa 835, 169 N. W. 56, 57, 11 A.L.R. 110; Bronson v. Syverson, 88 Wash. 264, 152 P. 1039, 1040, L.R.A.1916B, 993; Rosenberg v. Rosenberg, 152 Md. 49, 135 A. 840*), but also obligations arising under simple contract, to a very wide extent; and in its popular sense includes all that is due to a man under any form of obligation or promise. *McCrea v. First Nat. Bank, 162 Minn. 455, 203 N.W.290; Etna Ins. Co. v. Robertson, 126 Miss. 387, 88 So. 883, 890.*

### Synonyms

The term "demand" is of much broader import than "debt," and embraces rights of action belonging to the debtor beyond those which could appropriately be called "debts." In this respect the term "demand" is one of very extensive import. *In re Denny, 2 Hill, N.Y., 223.* Nevertheless, "debt" may be synonymous with "claim"; *In re Littleton's Estate, 223 N.Y.S. 470, 479, 129 Misc. 845;* and may include any kind of a just demand. *Goldberg v. Parker, 87 Conn. 99, 87 A. 555, 557, 46 L.R.A.,N.S., 1097, Ann.Cas.1914C, 1059.*

The word dues is equivalent to "debts," or that which is owing and has a contractual significance. *State v. Mortgage Security Co., 154 Minn. 453, 192 N.W. 348, 350.*

"Debt" is not exactly synonymous with "duty." A debt is a legal liability 'to pay a specific sum of money; a duty is a legal obligation to perform some act. *Allen v. Dickson, Minor, Ala., 120. "Obligation" is a broader term than "debt." Bovee v.*



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*Boyle*, 25 *Colo.App.* 165, 136 P. 467, 469. Every obligation is not a debt, though every debt is an obligation. *Lindstrom v. Spicher*, 53 N.D. 195, 205 N.W. 231, 233, 41 A.L.R. 968; *In re Moorehead's Estate*, 289 Pa. 542, 137 A. 802, 806, 52 A.L.R. 1251.

The words "debt" and "liability" are not necessarily synonymous. As applied to the pecuniary relations of parties, liability is a term of broader significance than debt. *Coulter Dry Goods Co. v. Wentworth*, 171 Cal. 500, 153 P. 939, 940. Liability is responsibility; the state of one who is bound in law and justice to do something which may be enforced by action. This liability may arise from contracts either express or implied, or in consequence of torts committed. *McElfresh v. Kirkendall*, 36 Iowa 226.

"Liability" ordinarily means an obligation which may or may not ripen into a debt. *Irving Bank-Columbia Trust Co. v. New York Rys. Co.*, D.C.N.Y., 292 F. 429, 433. Yet "debt" may sometimes include various kinds of liabilities. See *Allen v. Cosmopolitan Trust Co.*, 247 Mass. 334, 142 N. E. 100, 103; *Carroll v. Bowling*, 151 Md. 59, 133 A. 851, 854.

### **In General**

**Active debt.** One due to a person. Used in the civil law. Ancestral debt. One of an ancestor which the law compels the heir to pay. *Watkins v. Holman*, 16 Pet. 25, 10 L.Ed. 873; *A. & E. Encyc.*

**Engagement(s)** - In French law. A contract. The obligation arising from a *quasi* contract.

The terms "obligation" and "engagement" are said to be synonymous, (*17 Toullier, no. 1;*) but the Code seems specially to apply the term "engagement" to those obligations which the law imposes on a man without the intervention of. Any contract, either on the part of the obligor or the

obligee, (*article 1370.*) An engagement to do or omit to do something amounts to a promise. *Rue v. Rue*, 21 N.J.Law, 369.

**In English practice.** The term has been appropriated to denote a contract entered into by a married woman with the intention of binding or charging her separate estate, or, with stricter accuracy, a promise which in the case of a person *sui juris* would be a contract, but in the case of a married woman is not a contract, because she cannot bind herself personally, even in equity. Her engagements, therefore, merely operate as dispositions or appointments *pro tanto* of her separate estate. Sweet. Under statute rendering national bank stockholders liable to assessment in order to discharge an "engagement" of the bank, the quoted word includes all pecuniary liabilities and obligations of the bank. *Oppenheimer v. Harriman Nat. Bank & Trust Co. of City of New York, N.Y.*, 57 S.Ct. 719, 723, 301 U.S. 206, 81 L.Ed. 1042.

**Adoption** - The taking and receiving as one's own that to which he bore no prior relation, colorable or otherwise. *Davies v. Lahann, C.C.A.N.M.*, 145 F.2d 656, 659. The act of one who takes another's child into his own family, treating him as his own, and giving him all the rights and duties of his own child. See *In re Chambers' Estate*, 183 N.Y.S. 526, 528, 112 Misc. 551. *sin* manner provided by and with consequences specified in statute. *Fisher v. Robison*, 329 Pa. 305, 198 A. 81, 82. A. juridical act creating between two persons certain relations, purely civil, of paternity and filiation. *6 Demol. § 1; Grimes v. Grimes*, 207 N.C. 778, 178 S.E. 573. The relation thereby created is a statutory status, not a contractual relation. *Caruso v. Caruso*, 13 N.Y.S.2d 239, 241, 175 Misc. 290. Though legal adoption may

confer on person adopted rights of actual relationship of child, simple "adoption" extends only to his treatment as member of the household. *Shepherd v. Sovereign Camp, W.O.W.*, 166 Va. 488, 186 S.E. 113, 116. See, also, Adopt. Adoption, properly speaking, refers only to persons who are strangers in blood, *In re Lund's Estate, Cal.App.*, 148 P.2d 709, 711. And is not synonymous with "legitimation," which refers to persons of the same blood. *Blythe v. Ayres*, 96 Cal. 532, 31 P. 915, 19 L.R.A. 40. But this distinction is not always observed. *In re Presly's Estate*, 113 Okl. 160, 240 P. 89, 90. It is a relationship artificially created by statute. *Borner v. Larson*, 70 N. D. 313, 293 N.W. 836, 839.

**Constitution** — The organic and fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers. A charter of government deriving its whole authority from the governed. *Fairhope Single Tax Corporation v. Melville*, 193 Ala. 289, 69 So. 466, 470. See, also, *Browne v. City of New York*, 213 App. Div. 206, 211 N.Y.S. 306.

In a more general sense, any fundamental or important law or edict; as the Novel Constitutions of Justinian; the Constitutions of Clarendon.

**In American law.** The written instrument agreed upon by the people of the Union or of a particular state, as the absolute rule of action and decision for all departments and officers of the government in respect to all the points covered by it, which must control until it shall be changed by the authority which established it, and in opposition to which any act or ordinance of any such department or officer is null and void. *Cooley, Const. Lim. 3.*

**Confederation** — A league or compact for mutual support, particularly of princes, nations, or states.



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Such was the colonial government during the Revolution.

**Pursuance** — A following after or following out; line in accordance with or by reason of something; conformable; in accordance; agreeably, conformably; a carrying out or with effect, the act of executing; that which is pursuant; consequence; acting or done in consequence or in prosecution of anything; hence, agreeable. *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362, 366.

**Treaty(ies)** — International Law - A compact made between two or more independent nations with a view to the public welfare. *Louis Wolf & Co. v. United States*, Cust. & Pat.App., 107 F.2d 819, 827; *United States v. Belmont*, N.Y., 57 S.Ct. 758, 761, 301 U.S. 324, 81 L. Ed. 1134.

An agreement, league, or contract between two or more nations or sovereigns, formally signed by commissioners properly authorized, and solemnly ratified by the several sovereigns or the supreme power of each state. *Edye v. Robertson*, 5 S.Ct. 247, 112 U.S. 580, 28 L.Ed. 798; *Ex parte Ortiz*, C.C.Minn., 100 F. 962; *Charlton v. Kelly*, 33 S.Ct. 945, 954, 29 S.Ct. 447, 57 L.Ed. 1274, 46 L.R.A., N.S., 397.

A "treaty" is not only a law but also a contract between two nations and must, if possible, be so construed as to give full force and effect to all its parts. *United States v. Reid*, C.C.A.Or., 73 F.2d 153, 155. Personal treaties relate exclusively to the persons of the contracting sovereigns, such as family alliances, and treaties guaranteeing the throne to a particular sovereign and his family. As they relate to the persons, they expire of course on the death of the sovereign or the extinction of his family. With the advent of constitutional government in Europe these treaties have lost their importance. Real treaties relate solely to the subject-matters of the convention, independently of the persons of the contracting parties, and continue to

bind the state, although there may be changes in its constitution or in the persons of its rulers. *Boyd's Wheat. Int. Law* § 29.

### Private Law

The discussion of terms which immediately precedes the conclusion of a contract or other transaction. A warranty on the sale of goods, to be valid, must be made during the "treaty" preceding the sale. *Chit. Cont.* 419; *Sweet*.

**Authority** — Permission. *People v. Howard*, 31 Cal.App. 358, 160 P. 697, 701. Control over, jurisdiction. *State v. Home Brewing Co. of Indianapolis*, 182 Ind. 75, 105 N.E. 909, 916. Often synonymous with power. *State v. District Court of Eighth Judicial Dist. in and for Natrona County*, 33 Wyo. 281, 238 P. 545, 548. The power delegated by a principal to his agent. *Clark v. Griffin*, 95 N.J.Law, 508, 113 A. 234, 235. The lawful delegation of power by one person to another. *Rucks-Brandt Const. Co. v. Price*, 165 Okl. 178, 23 P.2d 690, 692. Power of agent to affect legal relations of principal by acts done in accordance with principal's manifestations of consent to agent. *In re Fitzpatrick's Estate*, Sur., 17 N.Y.S.2d 280, 288.

**Shall** — As used in statutes, contracts, or the like, this word is generally imperative or mandatory. *McDunn v. Roundy*, 191 Iowa, 976, 181 N. W. 453, 454; *Bay State St. Ry. Co. v. City of Woburn*, 232 Mass. 201, 122 N.E. 268; *U. S. v. Two Hundred and Sixty-Seven Twenty-Dollar Gold Pieces*, D.C.Wash., 255 F. 217, 218; *Baer v. Gore*, 79 W.Va. 50, 90 S.E. 530, 531, L.R.A.1917B, 723.

In common or ordinary parlance, and in its ordinary signification, the term "shall" is a word of command, and one which has always or which must be given a compulsory meaning; as denoting obligation. It has a peremptory meaning, and it is generally imperative or mandatory. It has the invariable sig-

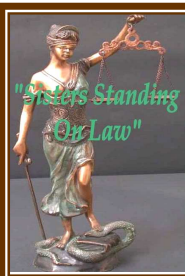
nificance of excluding the idea of discretion, and has the significance of operating to impose a duty which may be enforced, particularly if public policy is in favor of this meaning, or when addressed to public officials, or where a public interest is involved, or where the public or persons have rights which ought to be exercised or enforced, unless a contrary intent appears. *People v. O'Rourke*, 124 Cal. App. 752, 13 P.2d 989, 992.

But it may be construed as merely permissive or directory, (as equivalent to "may,") to carry out the legislative intention and in cases where no right or benefit to any one depends on its being taken in the imperative sense, and where no public or private right is impaired by its interpretation in the other sense. *Spaulding & Kimball v. Etna Chemical Co.*, 98 Vt. 169, 126 A. 588, 589; *Wisdom v. Board of Sup'rs of Polk County*, 236 Iowa 669, 19 N.W.2d 602, 607, 608. Also, as against the government, it is to be construed as "may," unless a contrary intention is manifest. *Cairo & Fulton R. Co. v. Hecht*, 95 U.S. 170, 24 L.Ed. 423. Although the word usually denotes an obligation, it also implies an element of futurity. *Cunningham v. Long*, 125 Me. 494, 135 A. 198, 200; *Hemsley v. McKim*, 119 Md. 431, 87 A. 506, 511.

**Bound** — As an adjective, denotes the condition of being constrained by the obligations of a bond or a covenant.

**Contrary** — Against; opposed or in opposition to; in conflict with.

**Ratification** — In a broad sense, the confirmation of a previous act done either by the party himself or by another; confirmation of a voidable act. *Story*, Ag. §§ 250, 251; 2 Kent, Comm. 237; *Norton v. Shelby County*, 6 S.Ct. 1121, 118 U.S. 425, 30 L.Ed. 178; *Gallup v. Fox*, 30 A. 756, 64 Conn. 491. The affirmation by a person of a prior act which did not bind him, but which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by him. *Goldfarb v. Reicher*, 112 N.J.L. 413, 171 A. 149, 151; The adoption by one, as binding upon himself, of an act done in such relations that he may claim it as done for his benefit, although done under such circumstances as would not bind him except for his subsequent assent. *Samstag & Hilder Bros. v. Ottenheimer & Weil*, 90 Conn.



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475, 97 A. 865, 867; It is equivalent to a previous authorization and relates back to time when act ratified was done, except where intervening rights of third persons are concerned. *Petray v. First Nat. Bank*, 92 Cal.App. 86, 267 P. 711, 713.

In the law of principal and agent, the adoption and confirmation by one person with knowledge of all material facts, of an act or contract performed or entered into in his behalf by another who at the time assumed without authority to act as his agent. *Maryland Casualty Co. v. First State Bank of Dewar*, 101 Okl. 71, 223 P. 701, 705; *Gould v. Maine Farmers' Mut. Fire Ins. Co.*, 114 Me. 416, 96 A. 732, 734, L.R.A.1917A, 604. Ratification of transaction involves same elements Its making of new contract, and understanding of material facts necessary to an intelligent assent is essential to "ratification." *State ex rel. Robertson v. Johnson County Bank*, 18 Tenn.App. 232, 74 S.W.2d 1084, 1087. Essence of "ratification" by principal of act of agent is manifestation of mental determination by principal to affirm the act, and this may be manifested by written word or by spoken word or by conduct, or may be inferred from known circumstances and principal's acts in relation there- to. *Miller v. Chatsworth Say. Bank*, 203 Iowa, 411, 212 N.W. 722, 724.

To constitute ratification of voidable contract the act relied on must be performed with full knowledge of its consequences and with an express intention of ratifying what is known to be voidable. *Coe v. Moon*, 260 Ill. 76, 102 N.E. 1074, 1076; *Fletcher v. A. W. Koch Co.*, Tex.Civ.App., 189 S.W. 501, 503.

**Conventions** — In English law. An extraordinary assembly of the houses of lords and commons, without the assent or summons of the sovereign. It can only be justified *ex necessitate rei*, as the parliament which restored Charles II., and that which disposed of

the crown and kingdom to William and Mary. Wharton. Also the name of an old writ that lay for the breach of a covenant. In Roman law. An agreement between parties; a pact. A convention was a mutual engagement between two persons, possessing all the subjective requisites of a contract, but which did not give rise to an action, nor receive the sanction of the law, as bearing an "obligation," until the objective requisite of a solemn ceremonial, (such as *stipulatio*) was supplied. In other words, convention was the informal agreement of the parties, which formed the basis of a contract, and which became a contract when the external formalities were superimposed. *See Maine, Anc. Law*, 313. "The division of conventions into contracts and pacts was important in the Roman law. The former were such conventions as already, by the older civil law, founded an obligation and action; all the other conventions were termed 'pacts.' These generally did not produce an actionable obligation. Actionability was subsequently given to several pacts, whereby they received the same power and efficacy that contracts received." *Mackeld.Rom.Law*, § 395. In legislation. An assembly of delegates or representatives chosen by the people for special and extraordinary legislative purposes, such as the framing or revision of a state constitution. Also an assembly of delegates chosen by a political party, or by the party organization in a larger or smaller territory, to nominate candidates for an approaching election. In *re Opinion of the Justices*, 132 Me. 491, 167 A. 176, 179.

In public and international law. A pact or agreement between states or nations in the nature of a treaty; usually applied (a) to agreements or arrangements preliminary to a formal treaty or to serve as its basis, or (b) international agreements for the regulation of matters of common interest but not coming within the sphere of politics or commercial inter-

course, such as international postage or the protection of submarine cables. *U. S. v. Hunter*, C.C.Mo., 21 F. 615.

**Sufficient** — Adequate, enough, as much as may be necessary, equal or fit for end proposed, and that which may be necessary to accomplish an object. *Brittain v. Industrial Commission of Ohio*, 95 Ohio St. 391, 115 N.E. 110; *Galveston, H. & S. A. Ry. Co. v. Enderle*, Tex.Civ.App., 170 S.W. 276, 277; *Commissioners of Sinking Fund of Louisville v. Anderson*, D.C.Ky., 20 F.Supp. 217, 220. Of such quality, number, force, or value as to serve a need or purpose. *Nissen v. Miller*, 44 N.M. 487, 105 P.2d 324, 326. As to sufficient "Consideration" see that title.

**Establishment**— ESTABLISHMENT, ETABLISSEMENT. An ordinance or statute. Especially used of those ordinances or statutes passed in the reign of *Edw. I.* 2 Inst. 156; *Britt. c. 21*.

*Etablissement* is also used to denote the settlement of dower by the husband upon his wife. *Britt. c. 102. Institution*, place where conducted and equipment; industrial plant and appurtenances; place of business and fixtures; residence with grounds, furniture, equipage, etc. *State v. Scullin-Gallagher Iron & Steel Co.*, 268 Mo. 178, 186 S.W. 1007, 1008, Ann.Cas.1918E, 620; *Benjamin Rose Institute v. Myers*, 92 Ohio St. 252, 110 N.E. 924, 927, L.R.A. 1916D, 1170; *Walling v. American Stores Co.*, C.C.A.Pa., 133 F.2d 840, 844; *Continental Baking Co. v. Campbell*, 176 Okl. 218, 55 P.2d 114, 116. In a narrow sense, "to bring into being, create, build, set up, etc." *Gunnar v. Town of Montezuma*, 229 Iowa 734, 294 N.W. 895, 897.

**Unanimous** — To say that a proposition was adopted by a "unanimous" vote does not always mean that every one present voted for the proposition, but it may, and generally does, mean, when a viva voce vote is taken, that no one voted in the negative. *State v. Stephens*, 195 Mo.App. 34, 189 S.W. 630, 631.

**Consent** — A concurrence of wills. Voluntarily yielding the will to the proposition of another; ac-



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quiescence or compliance therewith. *Twin Ports Oil Co. v. Pure Oil Co., D.C.Minn., 26 F.Supp. 366, 371.* Agreement; the act or result of coming into harmony or accord. *Glantz v. Gabel, 66 Mont. 134, 212 P. 858, 860.* Consent is an act of reason, accompanied with deliberation, the mind weighing as in a balance the good or evil on each side. *1 Story, Eq.Jur. § 222; Lervick v. White Top Cabs, La.App., 10 So.2d 67, 73.* It means voluntary agreement by a person in the possession and exercise of sufficient mentality to make an intelligent choice to do something proposed by another. *People v. Kangisser, 44 Cal. App. 345, 186 P. 388, 389.* It supposes a physical power to act, a moral power of acting, and a serious, determined, and free use of these powers. *Fonblanque, Eq. b. 1, c. 2, s. 1; New Jersey Mfrs' Casualty Ins. Co., 148 A. 790, 791, 106 N.J.L. 238.* Consent is implied in every agreement. It is an act unclouded by fraud, duress, or sometimes even mistake. *Heine v. Wright, 76 Cal.App. 338, 244 P. 955, 956.* There is a difference between consenting and submitting. Every consent involves a submission; but a mere submission does not necessarily involve consent. *9 Car. & P. 722.* "Consent" is an active acquiescence as distinguished from "assent," meaning a silent acquiescence. *People v. Lowe, 205 N.Y.S. 77, 78, 209 App.Div. 498.* "Consent" means an active circumstance of concurrence; "assent" is a passive act of concurrence before another does the act charged. *Perryman v. State, 63 Ga.App. 819, 12 S.E.2d 388, 390.* But the two terms may be used interchangeably. *Bartlett v. Sundin, 169 N.Y.S. 391, 393, 182 App.Div. 117.* "Consent" is sometimes synonymous merely with "waiver." *Dahlquist v. Denver & R. G. R. Co., 52 Utah, 438, 174 P. 833, 844.* See, also, *Seegmiller v. Day, C.C.A.Ill., 249 F. 177, 178; Toledo Fence & Post Co. v.*

*Lyons, C.C.A.Ohio, 290 F. 637, 640.*

As used in the law of rape "consent" means consent of the will, and submission under the influence of fear or terror cannot amount to real consent. *Hallmark v. State, 22 Okl. Cr. 422, 212 P. 322, 328.* There must be an exercise of intelligence based on knowledge of its significance and moral quality and there must be a choice between resistance and assent. *State v. Schwab, 109 Ohio St. 532, 143 N. E. 29, 31.* And if woman resists to the point where further resistance would be useless or until her resistance is overcome by force or violence, submission thereafter is not "consent". *People v. McIlvain, 130 P.2d 131, 135, 55 Cal. App.2d 322.*

**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.

**Subscribed** — Literally to write underneath, as one's name; sub, under; scribere, to write; or, to write below a documentary statement, and in its popular meaning is usually limited to a signature at the end of a printed or written instrument. *Corporation Commission of North Carolina v. Wilkinson, 201 N.C. 344, 160 S.E. 292, 294. In re Arcowsky's Will, 171 Misc. 41, 11 N.Y.S.2d 853, 854.* Also to agree in writing to furnish money or its equivalent. *Jefferson County Farm Bureau v. Sherman, 208 Iowa 614, 226 N.W. 182, 185.*

## Reminder Notes for Future Classes:

**State** - 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. Black's Law Dictionary 4<sup>th</sup> Edition

### Parties to the Constitution – United States:

1. **Moors** – Supreme Authority, and
2. **Union [United] States of America** – Europeans, the People adopted into the Nation.

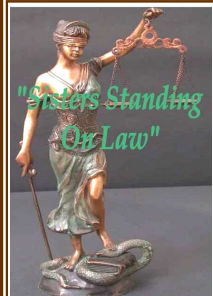
**Status** – The etymology of the word **state** comes from the latin "Status" – stare – to stand; Status – manner of standing, attitude, position, carriage, manner, dress, apparel; and other senses.

All **legislative powers** herein granted shall be vested in a **Congress of the United States** - Moors, which shall **consist-[stands together with]** of a **Senate and House of Representatives** – [members elected from the Union States]

### The 3 Great Departments of Government:

- ♦ **Legislative** – pass law – this is appropriate if you comprehend that the Moors make up the United States and only the sovereign of the land can make any laws.
- ♦ **Executive** – approve and execute the laws that have been passed.
- ♦ **Judicial** – expound and enforce the laws that have been passed.

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	<p><b>Class #12— Page 6 of 7</b> Comprehensive Study of The Law of the Land <b>Part VI: Article 6 &amp; 7</b> <b>Sunday May 18, 2014 1—3 p.m.</b> Blog Talk: <i>MHHS Eyes Wide Open</i> <b>Chat Room OR Call In: 347 945-5899</b></p>
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## 9 Lawful Questions:

1. What shall be valid against the United States?
2. Is there a secondary party that these things are also valid against?
3. Who is the United States?
4. The Constitution refers to the laws of the United States, and to all treaties made, or which shall be made. Under er whose authority can they be made only?
  - Who does that exclude from this activity/power?
  - What are all the treaties made under the authority of the United States as of the American Constitution 1791?
5. What is the Supreme Law of the Land?
  - How are they implemented?
6. Who is bound to the Supreme Law of the Land?
7. How are they bound?
8. What is the one thing that shall never be required as a qualification to any office or public trust under the United States?
  - What do you think a religious test is today?
  - And who is it being forced on?

## Group Discussion Question

9. “Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth. In Witness whereof We have hereunto subscribed our Names,” What do you think “the Independence of the United States of America the Twelfth” means specifically the “Twelfth”? Who is the party named in this section?
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### Supreme Law for Review:

**Section 1.2** This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.”

**Section 1.3** The Senators and Representatives before mentioned, and the members of the several state legislature, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

### Concluding Lawful Perspective:

"The Constitution of these United States is the supreme law of the land. Any law that is repugnant to the constitution is null and void of law." **Marbury v. Madison, 5 US 137**

Note: Any judge who does not comply with his oath to the Constitution of the United States wars against that Constitution and engages in acts in violation of the supreme law of the land. The judge is engaged in acts of treason. **Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401 (1958)**

### Next Class:

An Analysis of “The Spirit of the Supreme Law of the Land” Part VI – 1<sup>st</sup> Bill of Rights of the American Constitution 1791.

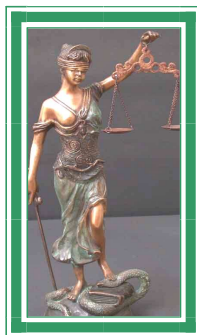
### Hint:

**A Case Law Support:** A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution and that a flat license tax here involves restraints in advance the constitutional liberties of Press and Religion and inevitably tends to suppress their existence. That the ordinance is non-discriminatory and that is applies also to peddlers of wares and merchandise is immaterial. The liberties granted by the first amendment are and in a preferred position. Since the privilege in question is guaranteed by the Federal Constitution and exist independently of the states authority , the inquiry as to whether the state has given something for which it cannot ask a return, is irrelevant. No state may convert any secured liberty into a privilege and issue a license and a fee for it" **Murdock v. Penn. 319 US 105:(1943)**

"Loss of First Amendment Freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." **Elrod v. Burns, 427 U.S. 347; 6 S. Ct. 2673; 49 L. Ed. 2d (1976)**

## Sistars Standing On Law

### Syllabus Topics for next Thirteen Months



Part 1 —Preamble	Part 7 — Bill of Right I
Part 2 —Article I	Part 8— Bill of Right II & III
Part 3 —Article II	Part 9 — Bill of Right IV
Part 4 —Article III	Part 10 — Bill Right V
Part 5 — Article IV & V	Part 11 — Bill of Right VI
Part 6 —Article VI & VII	Part 12 — Bill of Right VII & VIII
	Part 13 — Bill of Right IX & X

**This Series contains a total of 13 Classes and the first class began on December 15th, 2013, our 7th overall broadcast on Mhhs-Eyes Wides Open Blog Talk “Sistars Standing On Law” .**