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Comprehensive Study of "The Law of the Land"

## Part X: Amendment 5

Sunday, September 21, 2014 / 1 p.m. — 3 p.m.

Blog Talk: *Mhhs—Eyes Wide Open*

Chat Room OR Call In: 347 945-5899

### Definitions For Review:

#### Capital – n.

The word may have different meanings when used in different connections. Commissioner of Corporations and *Taxation v. Filoon*, 310 Mass. 374, 38 N.E.2d 693, 699, 700, 705. It may mean : actual property or estate, *People v. Com'rs of Taxes*, 23 N.Y. 192; *State ex rel. Corinne Realty Co. v. Becker*, 320 Mo. 908, 8 S.W.2d 970, 972. Aggregate of property, *Southern Package Corporation v. State Tax Commission*, 195 Miss. 864, 15 So.2d 436; all capital invested plus surplus or undivided profits, *W. A. Gordon & Co. v. Lines*, D.C.La., 25 F.2d 894, 895; amount, or value, of property up to par value of paid up issued shares or stated value of no-par shares, *Randall v. Bailey*, 23 N.Y.S.2d 173, 182; assets, *Pace v. Pace Bros. Co.*, 91 Utah, 149, 63 R2d 590, 591. *Capital stock*, *Security State Bank v. Breen*, 277 N.W. 497, 500, 65 S.D. 640; condemnation award, In re *Wacht's Estate*, 32 N.Y.S.2d 871, 903, 904; contributions by partners, *M. & C. Creditors Corporation v. Pratt*, 17 N.Y.S.2d 240, 258, 259, 172 Misc. 695. Dividends earned before creation of trust, *Hubley's Guardian Ad Litem v. Wolfe*, 259 Ky. 574, 82 S.W.2d 830, 834, 101 A.L.R. 1359; dividends received by trustee stockholder in liquidation of corporation, *Anderson v. Bean*, 272 Mass. 432, 172 N.E. 647, 651, 72 A.L.R. 959; extraordinary dividends paid on reducing value of stock, In re *Sears' Will*, 26 N.Y.S.2d 912, 915, 176 Misc. 242. *Fund*, *Civ.Code*, art. 148. *French v. Wolf*, 181 La. 733, 160 So. 396, *Webb v. Armistead*, C.C.Va., 26 F. 70; gain from sale of realty, *United States v. National City Bank of New York*, D.C.N.Y., 21 F.Supp. 791, 794; means contributed by share owners, *Parkinson v. State Bank of Millard County*, 84 Utah, 278, 35 P.2d 814, 820, 94 A.L.R. 1112; money invested at interest; money required of partners by agreement, *M. & C. Creditors Corporation v. Pratt*, 17 N.Y.S.2d 240, 258, 259, 172 Misc. 695; money which one adventures in an undertaking; paid-up issued shares of stock, *Newfield v. Stieglitz*, D.C.N.Y., 47 262 F.Supp. 885, 886; place where legislative department

holds its sessions and where chief offices of the executive are located; political and governmental metropolis; preferred stock received as dividend, *Burns v. Hines*, 298 Ill.App. 563, 19 N.E.2d 382, 392; principal sum of a fund of money; proceeds of sale or exchange of capital of trust property, In re *Clarke's Will*, 204 Minn. 574, 284 N.W. 876, 879; property, *Putnam v. U. S.*, C.C.A.Mass., 149 F.2d 721, 726; repayment of a debt, *Philadelphia Nat. Bank v. Rothensies*, D.C.Pa., 43 F.Supp. 923, 925; seat of government; stock dividends, *Gray v. Hemenway*, 268 Mass. 515, 168 N.E. 102, 103; subscribed, paid-up capital, *Child v. Ogden State Bank*, 81 Utah, 464, 20 P.2d 599, 607, 88 A.L.R. 1284; sum formed when profits apportioned to building and loan association shares coalesce with dues paid, In re *Sixth Ward Building & Loan Ass'n of Newark*, 134 N.J.Eq. 98, 34 A.2d 292, 295; sum total of corporate stock, *Haggard v. Lexington Utilities Co.*, 260 Ky. 261, 84 S.W.2d 84, 87; surplus used as capital, *Feeders' Supply Co. v. Commissioner of Internal Revenue*, C.C.A.8, 31 F.2d 274, 278; unamortized debt discount and expense, *State Tax Commission v. Mississippi Power & Light Co.*, 194 Miss. 260, 11 So.2d 828, 829. In political economy, that portion of the produce of industry existing in a country, which may be made directly available, either for the support of human existence, or the facilitating of production. The term does not embrace temporary loans. *Bailey v. Clark*, 21 Wall. 286, 22 L.Ed. 651. But see *Bridgewater Mfg. Co. v. Funkhouser*, 115 Va. 476, 79 S.E. 1074, 1075. Income is the fruit of capital; capital is the source of income. *Carter v. Rector*, 88 Okl. 12, 210 P. 1035, 1037.

As to what is moneyed capital in a federal act respecting state taxation of national bank stock, see *First Nat. Bank v. Chapman*, 173 U.S. 214, 19 S.Ct. 407, 43 L.Ed. 669.

**CAPITAL**, *adj.* Affecting or relating to the head or life of a person; entailing the ultimate penalty. Principal; leading; chief; as "capital burgess." 10 Mod. 100.

#### Capital Assets

All capital invested plus surplus or undivided profits. *Williams v. McGowan*,

D.C.N.Y., 58 F. Supp. 692, 694, 695; Assets of a permanent or fixed nature or employed in carrying on business or trade. *Rathborne v. Collector of Revenue*, 196 La. 795, 200 So. 149, 153, 154; goodwill, *Williams v. McGowan*, D.C.N.Y., 58 F.Supp. 692, 694, 695, *Commissioner of Internal Revenue v. Shapiro*, C.C.A.6, 125 F.2d 532, 535, 536; property acquired and held for profit or investment for more than two years. *Sommers v. Commissioner of Internal Revenue*, C.C.A.10, 63 F.2d 551, 553; title to property held for profit. *Jones' Estate v. Commissioner of Internal Revenue*, C.C.A.Tex., 127 F.2d 231, 232. Capital Case or Crime One in or for which death penalty may, but need not necessarily, be inflicted, *Lee v. State*, 31 Ala.App. 91, 13 So.2d 583, 587. Capital Expenditure Cost of construction made with expectation of existence for an indefinite period, *E. W. Edwards & Son v. Clarke*, D.C.N.Y., 29 F.Supp. 671, 672, 673-, expenditure in nature of an investment for the future, *Marin Union Junior College Dist. v. Gwinn*, 106 Cal.App. 12, 288 P. 799, 800.

#### Capital Gains

Additions to principal, *Holcombe v. Ginn*, 296 Mass. 415, 6 N.E.2d 351, 108 A.L.R. 1134; gains from sale of capital assets in excess of appraisal values or costs, In re *Talbot's Will*, 170 Misc. 138, 9 N.Y.S.2d 806, 810.

#### Capital Impairment

Reduction of assets of corporation below aggregate of outstanding shares of capital stock. *Ashman v. Miller*, C.C.A.Mich., 101 F.2d 85, 90.

#### Capital Increase

An increase not attributable to earnings. In re *Lueders' Estate*, 337 Pa. 155, 10 A.2d 415, 417.

#### Capital Investment

Acquisition price of a "capital asset", *Commissioner of Internal Revenue v. Rowan Drilling Co.*, C.C.A.Tex., .130 F.2d 62, 64, 65; capital stock, surplus and undivided profits, *O'Connor v. Bankers Trust Co.*, 159 Misc. 920, 289 N.Y.S. 252, 276; money spent to increase an asset. *Peerless Stages v. Commissioner of Internal Revenue*, C.C.A.9, 125 F.2d 869, 871.

#### Capital Outlay

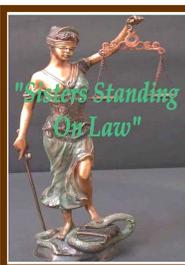
Money expended in 'acquiring, equipping, and promoting an enterprise. *Rideout v. Eich*, 105 Cal.App. 597, 288 P. 450, 454.

#### Capital Punishment

Punishment of death. *Ex parte Herndon*, 18 Okl.Cr. 68, 192 P. 820, 19 A.L.R. 804, *State v. Johnston*, 83 Wash, 1, 144 P. 944, 945.

#### Capital Recovery

Collection of charged-off bad debt where



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reserve account system is used. National *Bank of Tulsa v. Oklahoma Tax Commission, Okl., 145 P.2d 768, 771, 772,*

#### Capital Stock

The term has various meanings. It may mean: amount fixed by charter to be subscribed and paid in or secured to be paid in by shareholders. *State ex rel. Corinne Realty Co. v. Becker, 320 Mo. 908, 8 S.W.2d 970, 971.* Amount of stock that corporation may issue. *Schwemer v. Fry, 212 Wis. 88, 249 N.W. 62, 90 A.L.R. 308;* amount subscribed, contributed or secured to be paid in. *Haggard v. Lexington Utilities Co., 260 Ky. 261, 84 S.W. 2d 84, 87; Person v. Board of State Tax Com'rs, 184 N.C. 499, 115 S.E. 336, 346;* capital, *Central Illinois Public Service Co. v. Swartz, 284 Ill. 108, 119 N.E. 990, 992; Louisville & N. R. Co. v. Bosworth, D.C.Ky., 209 F. 380, 411,* corporate assets or property, *Bates v. Daley's Inc., 5 Cal. App.2d 95, 42 P.2d 706, 709;* evidence of rights in property.

*Southern Package Corporation v. State Tax Commission, 195 Miss. 864, 15 So.2d 436;* fund employed in carrying on business or enterprise, *Chicago, M., St. P. & P. R. v. Harmon, 89 Mont. 1, 295 P. 762, 769;* liability of the corporation to its shareholders, after creditors' claims have been liquidated, *Department of Treasury of Indiana v. Crowder, 214 Ind. 252, 15 N.E.2c1 89, 91;* valuation of the corporation as a business enterprise, *Commonwealth v. Columbia Gas & Electric Corporation, 336 Pa. 209, 8 A.2d 404, 410.*

#### Capital Stock Tax

Tax on privilege of doing business, *Wisconsin Cent. Ry. Co. v. U. S., Ct.C1., 41 F.2d 870, 885, 263*

#### Capital Surplus

Property paid into corporation by shareholders in excess of capital stock liability. Commissioner of Corporations and *Taxation v. Filoon, 310 Mass. 374, 38 N.E.2d 693, 699, 700.*

**Criminal-** *n.* One who has committed a criminal offense; one who has been legally convicted of a crime; one ad-

judged guilty of crime. *Molineux v. Collins, 177 N.Y. 395, 69 N.E. 727, 65 L.R. A. 104.* Synonymous with word "crook." *Weiner v. Leviton, 230 App.Div. 312, 244 N.Y.S. 176, 178.*

**CRIMINAL, adj.** That which pertains to or is connected with the law of crimes, or the administration of penal justice, or which relates to or has the character of crime. *Charleston v. Beller, 45 W.Va. 44, 30 S.E. 152; Van Riper v. Constitutional Government League, 1 Wash.2d 635, 96 P.2d 588, 591, 125 A.L.R. 1100.* The word is defined as of the nature of or involving a crime; more generally, of the nature of a grave offense; wicked. *Van Riper v. Constitutional government League, 1 Wash.2d 635, 96 P.2d 588, 591, 125 A.L.R. 1100.*

#### 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.*

#### Criminal Action

The proceeding by which a party charged with a public offense is accused and brought to trial and punishment is known as a "criminal action." *Pen.Code Cal. § 683.* A criminal action is (1) an action prosecuted by the state as a party, against a person charged with a public offense, for the punishment thereof; (2) an action prosecuted by the state, at the instance of an individual, to prevent an apprehended crime, against his person or property. *Code N.C. 1883, § 129, C.S. § 395.*

#### Criminal Assault and Battery

An accused may be guilty of a "criminal assault and battery" if he intentionally does an act which by reason of its wanton and grossly negligent character exposes another to personal injury and in fact causes injury. *State v. Linville, 150 Kan. 617, 95 P.2d 332, 334.*

#### Criminal Case

An action, suit, or cause instituted to pun-

ish an infraction of the criminal laws. *State v. Smalls, 11 S.C. 279; People v. Iron Co., 201 Ill. 236, 66 N. E. 349; Wilburn v. State, 140 Ga. 138, 78 S.E. 819, 820; Hankamer v. Templin, 143 Tex. 572, 187- S. W.2d 549, 550.* The phrase has various meanings according to context and purpose of constitutional provision or statute. *Ex parte Tahbel, 46 Cal. App. 755, 189 P. 804, 806; Childs v. City of Birmingham, 19 Ala.App. 71, 94 So. 790; Barnett v.. Atlanta, 109 Ga. 166, 34 S.E. 322.*

#### Criminal Charge

An accusation of crime, formulated in a written complaint, information, or indictment, and taking shape in a prosecution. *U. S. v. Patterson, 150 U.S. 65, 14 S.Ct. 20, 37 L.Ed. 999; Eason v. State, 11 Ark. 482; People v. Ross, 235 Mich. 433, 209 N.W. 663, 666.*

Criminal contempt proceeding "Criminal contempt proceedings" are brought to preserve the power and vindicate the dignity and integrity of the court and to punish for disobedience of its orders. *O'Malley v. United States, C.C.A.Mo., 128 F.2d 676, 683.*

#### Criminal Court

One where criminal cases are tried and determined, not one where civil cases are tried, or persons charged with criminal offenses are held for action by proper authority. *Hobart v. First Criminal Judicial Dist. of Court of Bergen Coun-V, 10 N.J.Misc. 723, 160 A. 674, 675.*

#### Criminal Information

A criminal suit brought, without interposition of a grand jury, by the proper officer of the king or state. *Cole, Cr.Inf.; 4 Bla.Com. 398.*

#### Criminal Instrumentality Rule

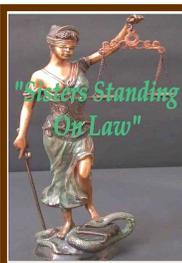
Where the wrong is accomplished by a crime, the crime and not the negligent act of the party which made it possible is the "proximate cause". *Foutch v. Alexandria Bank & Trust Co., 177 Tenn. 348, 149 S.W.2d 76, 85.*

#### Criminal Intent

The intent to commit a crime; malice, as evidenced by a criminal act; an intent to deprive or defraud the true owner of his property. *People v. Borden's Condensed Milk Co., 165 App.Div. 711, 151 N.Y.S. 547, 549; State v. Howard, 162 La. 719, 111 So. 72, 76.*

#### Criminal Malversation

A broad category of corrupt official practices. *Jimenez v. Aristeguieta, C.A.Fla., 311 F.2d 547, 562.*



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#### Criminal Motive

"Criminal motive" is the inducement, existing in the minds of persons, causing them to intend, and afterward to commit, crime. *State v. Richardson*, 197 Wash. 157, 84 P.2d 699, 703.

#### Criminal Procedure

The method pointed out by law for the apprehension, trial, or prosecution, and fixing the punishment, of those persons who have broken or violated, or are supposed to have broken or violated, the laws prescribed for the regulation of the conduct of the people of the community, and who have thereby laid themselves liable to fine or imprisonment or other punishment. 4 Amer. & Eng. Enc. Law, 730.

#### Criminal Proceeding

One instituted and conducted for the purpose either of preventing the commission of crime, or for fixing the guilt of a crime already committed and punishing the offender; as distinguished from a "civil" proceeding, which is for the redress of a private injury. *Mossev v. United States*, C.C.A. N.Y., 266 F. 18, 22, 11 A.L.R. 1261. Strictly, a "criminal proceeding" means some step taken before a court against some person or persons charged with some violation of the criminal law. *McGoldrick v. Downs*, 184 Misc. 168, 53 N.Y.S.2d 333, 336.

#### Criminal Process

Process which issues to compel a person to answer for a crime or misdemeanor. *Mowlan v. State*, 197 Ind. 517, 151 N.E. 416, 417. Also process issued to aid in the detection or suppression of crime, such as search warrants—the primary purpose of the search being to obtain evidence for use in a criminal prosecution. *Sugar Valley Land Co. v. Johnson*, 17 Ala.App. 409, 85 So. 871, 874.

#### Criminal Prosecution

An action or proceeding instituted in a proper court on behalf of the public, for the purpose of securing the conviction and punishment of one accused of crime. *Harger v. Thomas*, 44 Pa. 128, 84 Am.Dec. 422; *Ex parte Pepper*, 185 Ala. 284, 64 So. 112, 113; *State v. District Court of Fifth Judicial Dist. in and for Madison County*, 53 Mont. 350, 165 P.

294, 296; *McGoldrick v. Downs*, 184 Misc. 168, 53 N.Y.S.2d 333, 336. A prosecution in a court of justice, in name of the Government, against one or more individuals accused of crime. *United States v. Safeway Stores, Tex.*, C.C.A.Kan., 140 F.2d 834, 839.

**Compensation-** Indemnification; payment of damages; making amends; making whole; giving an equivalent or substitute of equal value; that which is necessary to restore an injured party to his former position; consideration or price of a privilege purchased; equivalent in money for a loss sustained; equivalent given for property taken or for an injury done to another; giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; recompense in value; recompense or reward for some loss, injury, or service, especially when it is given by statute; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or satisfaction for injury or damage of every description; that return which is given for something else. An act which a court orders to be done, or money which a court or other tribunal orders to be paid, by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person damaged may receive equal value for his loss, or be made whole in respect of his injury. *Railroad Co. v. Denman*, 10 Minn. 280 (Gil. 208) ; *Hughson Condensed Milk Co. v. State Board of Equalization*, 23 Cal.App.2d 281, 73 P.2d 290, 292.

"Compensation" is a misleading term, and is used merely for lack of a word more nearly expressing the thought of the law which permits recovery for an imponderable and intangible thing for which there is no money equivalent. *Stutsman v. Des Moines City Ry. Co.*, 180 Iowa, 524, 163 N.W. 580, 585.

The word "compensation," as used in Workmen's Compensation Acts, means the money relief afforded an injured employee or his dependents according to the scale established and for the persons designated in the act, and not the compensatory damages recoverable in an action at law for a wrong done or a con-

tract broken. *Christensen v. Morse Dry Dock & Repair Co.*, 214 N.Y.S. 732, 740, 216 App. Div. 274.

As used in Workmen's Compensation Acts, "compensation" is distinguishable from "benefits" ; the former applying to an allowance where the employee is only injured, and the latter applying in case of death. *Terry v. General Electric Co.*, 232 N.Y. 120, 133 N.E. 373, 374. The term "compensation" may include ftlneral benefits. *Donoho v. Atlantic Basin Iron Works*, 206 N.Y.S. 494, 495, 210 App. Div. 535. But see *Barber v. Estey Organ Co.*, 100 Vt. 72, 135 A. 1, 2; *Industrial Commission v. Hammond*, 77 Colo. 414, 236 P. 1006, 1008.

Also that equivalent in money which is paid to the owners and occupiers of lands taken or injuriously affected by the exercise of the power of eminent domain. Louisiana and *F. Plank Road Co. v. Pickett*, 25 Mo. 535, 539; *Oregon Short Line R. Co. v. Fox*, 28 Utah 311, 78 P. 800, 801.

In the constitutional provision for "just compensation" for property taken under the power of eminent domain, this term means a payment in money. Any benefit to the remaining property of the owner, arising from public works for which a part has been taken, cannot be considered as compensation. *Railroad Co. v. Burkett*, 42 Ala. 83. As compared with consideration and damages, compensation, in its most careful use, seems to be between them.

Consideration is amends for something given by consent, or by the owner's choice. Damages is amends exacted from a wrong-doer for a tort. Compensation is amends for something which was taken without the owner's choice, yet without commission of a tort. Thus, one should say, consideration for land sold; compensation for land taken for a railway; damages for a trespass. But such distinctions are not uniform. Land damages is a common expression for compensation for lands taken for public use. Abbott.

"Compensation" is distinguishable from "damages," inasmuch as the former may mean the sum which will remunerate an owner for land actually taken, while the latter signifies an allowance made for injury to the residue: but such distinction is not ordinarily observed. *Faulkner v. City of Nashville*, 154 Tenn. 145, 285 S.W. 39, 43. The remuneration or wages given to an employee or, especially, to an officer. Salary, pay, or emolument. *Christopherson v. Reeves*, 44 S' .D. 634, 184 N.W. 1015, 1019; *Higgins v. Glenn*, 65



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*Utah, 406, 237 P. 513, 515.*

The ordinary meaning of the term "compensation," as applied to officers, is remuneration, in whatever form it may be given, whether it be salaries and fees, or both combined. *State v. Bland, 91 Kan. 160, 136 P. 947, 949.* It is broad enough to include other remuneration for official services; *State ex rel. Emmons v. Farmer, 271 Mo. 306, 196 S. W. 1106, 1108;* such as mileage or traveling expenses *Leckenby v. Post Printing & Publishing Co., 65 Colo. 443, 176 P. 490, 492;* and also the repayment of amounts expended. Compare, however, *People v. Chapman, 225 N.Y. 700, 122 N.E. 240;* *McCoy v. Handlin, 35 S.D. 487, 153 N.W. 361, 371, L.R.A.1915E, 858, Ann.Cas.1917A, 1046.* But the term is not necessarily synonymous with "salary." See *People v. Wemple, 115 N.Y. 302, 22 N.E. 272;* *Com. v. Carter, 21 Ky.L.Rep. 1509, 55 S.W. 701;* *Crawford County v. Lindsay, 11 Ill.App. 261;* *Kilgore v. People, 76 Ill. 548.*

A "reasonable compensation" is that which will fairly compensate the laborer when the character of the work and the effectiveness and ability entering into the service are considered. *Chapman v. A. H. Averill Machinery Co., 28 Idaho, 121, 152 P. 573, 575.* Compensation is not synonymous with "pension," which is ordinarily a gratuity from the government or some of its subordinate agencies in recognition of, but not in payment for, past services. *Dickey v. Jackson, 181 Iowa 1155, 165 N.W. 387, 389.*

The Civil, Scotch, and French Law Recoupment; set-off. The meeting of two debts due by two parties, where the debtor in the one debt is the creditor in the other; that is to say, where one person is both debtor and creditor to another, and therefore, to the extent of what is due to him, claims allowance out of the sum that he is due. *Bell; 1 Kames, Eq. 395, 396.*

In order for "compensation" to take place, the two debts must exist simultaneously and have as their object the payment of a sum of money or a certain

quantity of consumable things of one and the same kind, and the debts must be equally liquidated and demandable. *Blanchard v. Bank of Morgan City & Trust Co., La.App., 185 So. 120, 122.* Compensation is of three kinds,—legal, or by operation of law; compensation by way of exception; and by reconviction. *Stewart v. Harper, 16 La. Ann. 181;* *Blanchard v. Cole, 8 La. 158; 8 Dig. 16, 2; Code, 4, 31; Inst. 4, 6, 30;* *Burge, Suret. b. 2, c. 6, p. 181; La.Civ. Code, arts. 2203-2208 (Civ.Code, arts. 2207-2211).*

**Deprived**— To take. The term has this meaning in a constitutional provision that no person shall be "deprived of his property" without due process of law, and denotes a taking altogether, a seizure, a direct appropriation, dispossession of the owner. *Brown v. City of Atlanta, 167 Ga. 416, 145 S.E. 855, 857.* It connotes want of consent. *Sandel v. State, 104 S.E. 567, 571, 115 S.C. 168, 13 A.L.R. 1268.*

**Grand Jury**— A jury of inquiry who are summoned and returned by the sheriff to each session of the criminal courts, and whose duty is to receive complaints and accusations in criminal cases, hear the evidence adduced on the part of the state, and find bills of indictment in cases where they are satisfied a trial ought to be had. They are first sworn, and instructed by the court. This is called a "grand jury" because it comprises a greater number of jurors than the ordinary trial jury or "petit jury." At common law, a grand jury consisted of not less than twelve nor more than twenty-three men, and this is still the rule in many of the states, though in some the number is otherwise fixed by statute; thus in Oregon and Utah, the grand jury is composed of seven men; in South Dakota, not less than six nor more than eight; in Texas, twelve; in Idaho, sixteen; in Washington, twelve to seventeen; in North Dakota, sixteen to twenty-three; in California, nineteen; in New Mexico, twenty-one. See *Ex parte Bain, 121 U.S. 1, 7 S.Ct. 781, 30 L. Ed. 849; In re Gardiner, 64 N.Y.S. 760, 31 Misc. 364; Finley v. State, 61 Ala. 204;*

*People v. Duff, 65 How.Prac., N.Y., 365; English v. State, 31 Fla. 340, 12 So. 689; Jones v. McClaughry, 169 Iowa, 281, 151 N.W. 210, 216.*

**Indictment** — An accusation in writing found and presented by a grand jury, legally convoked and sworn, to the court in which it is impaneled, charging that a person therein named has done some act, or been guilty of some omission, which, by law, is a public offense, punishable on indictment. *Kennedy v. State, 86 Tex.Cr.R. 450, 216 S.W. 1086; State v. Engler, 217 Iowa 138, 251 N.W. 88.*

A presentment differs from an indictment in that it is an accusation made by a grand jury of their own motion, either upon their own observation and knowledge, or upon evidence before them; while an indictment is preferred at the suit of the government, and is usually framed in the first instance by the prosecuting officer of the government, and by him laid before, the grand jury, to be found or ignored. An information resembles in its form and substance an indictment, but is filed at the mere discretion of the proper law officer of the government, without the intervention or approval of a grand jury, and an affidavit is a charge made and preferred by an individual. *2 Story, Const. §§ 1784, 1786; People v. Foster, 198 Cal. 112, 243 P. 667, 670.*

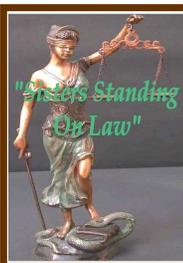
In Scotch law. The form of process by which a criminal is brought to trial at the instance of the lord advocate. Where a private party is a principal prosecutor, he brings his charge in what is termed the "form of criminal letters."

#### Joint Indictment

When several offenders are joined in the same indictment, as when principals in the first and second degree, and accessories before and after the fact, are all joined in the same indictment. *2 Hale, P.C. 173; Brown.*

**INDICTMENT DE FELONY EST CONTRA PACEM DOMINI REGIS, ORONAM ET DIGNITATEM SUAM, IN GENERE ET NON IN INDIVIDUO; QUIA IN ANGLIA NON EST INTERREGNUM.** *Jenk. Cent. 205.* Indictment for felony is against the peace of our lord the king, his crown and dignity in general, and not against his individual person; because in England there is no interregnum.

**Infamous**— Shameful or disgraceful. *Stevens v. Wilber, 136 Or. 599, 300 P. 329, 330.*



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#### Infamous Crime

A crime which entails infamy upon one who has committed it. *Butler v. Wentworth*, 84 Me. 25, 24 A. 456, 17 L.R.A. 764. The term "infamous" e., without fame or good report—was applied at common law to certain crimes, upon the conviction of which a person became incompetent to testify as a witness, upon the theory that a person would not commit so heinous a crime unless he was so depraved as to be unworthy of credit.

These crimes are treason, felony, and the *crimen Nisi*. Abbott. A crime punishable by imprisonment in the state prison or penitentiary, with or without hard labor, is an infamous crime, within the provision of the fifth amendment of the constitution that "no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury." *Mackin v. U. S.*, 117 U.S. 348, 6 S.Ct. 777, 29 L. Ed. 909; *Brede v. Powers*, 263 U.S. 4, 44 S.Ct. 8, 68 L.Ed. 132. It is not the character of the crime but the nature of the punishment which renders the crime "infamous." *Weeks v. United States*, C.C.A.N.Y., 216 F. 292, 298, L.R.A. 1915B, 651. But see *Drazen v. New Haven Taxicab Co.*, 95 Conn. 500, 111 A. 861, 864. Whether an offense is infamous depends on the punishment which may be imposed therefor, not on the punishment which was imposed. *United States v. Moreland*, 258 U.S. 433, 42 S.Ct. 368, 370, 66 L.Ed. 700; *De Jianne v. U. S.*, C.C.A.N.J., 282 F. 737, 740; *Le Clair v. White*, 117 Me. 335, 104 A. 516, 517. Under the constitution of Rhode Island, a crime, to be "infamous," must come within the "*crimen falsi*," such as forgery, perjury, subornation of perjury, offenses affecting the public administration of justice, or such as would affect civil or political rights, disqualifying or rendering a person incompetent to be a witness or juror. *State v. Bussay*, 38 R.I. 454, 96 A. 337, 339. By the Revised Statutes of New York the term "infamous crime," when used in any statute, is directed to be construed as including every offense punishable with death or by imprisonment in a state prison, and no other.

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.

## 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.

## 7 Lawful Questions:

1. What is the first order as it relates to the People of the 5<sup>th</sup> Bill of Rights?
2. Does this happen prior to arrest pursuant to the 5<sup>th</sup> Bill of Rights?
3. What must be obtained prior to any action?
4. Are there any exceptions to the initial procedures of the 5<sup>th</sup> Bill of Rights ?
5. Can anyone be charged with the same crime twice?
  - What is that called?
6. What is it that the People cannot be compelled to do in any criminal case?
  - Give an example of how the people are compelled to do this today?
7. Is there any deprivations that can be imposed on the People pursuant to the 5<sup>th</sup> Bill of Right ?
  - What is protected?
  - Give an example of something that is protected?
  - What might you call that which is protected?

### Group Discussion Question

The purpose of the 4<sup>th</sup> Bill of Rights is to secure People from who and overall assure them of what?

### Supreme Laws for Review:

"The Court is to protect against encroachment of constitutionality or secured liberty. It is equivalent to a compulsory production of papers, to make the non - production of them a confession of the allegations which is pretended they will prove. The seizure of compensatory production of a man's private papers to be used in evidence against him is equivalent to compelling him to be a witness against himself, violation of the fifth amendment, and in a prosecution for a crime, penalty or forfeiture is equally within the prohibition of the fifth amendment." *Boyd v. United States* 116 USR 616

"The Fifth Amendment provides that no person shall be compelled in any criminal case to be a witness against himself. The Amendment not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings." *Lefkowitz v. Turley*, 94 S.Ct. 316, 414 U.S. 70 (1973).

"...where the Fifth Amendment privilege against self-incrimination is involved ... this court has always construed its protection to ensure that an individual is not compelled to produce evidence which later may be used against him as an accused in a criminal action... The protection does not merely encompass evidence which may lead to criminal conviction, but includes information which would furnish a link in the chain of evidence that could lead to prosecution, as well as evidence which an individual reasonably believes could be used against him in a criminal prosecution." *Hoffman v. United States*, 341 U.S. 479, 486, 71 S.Ct. 814, 95 L.Ed. 1, 18(1951)

"The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without the due process of law under the Fifth Amendment" *Kent v. Dulles*, 357 U.S. 116, 125, 78 S.Ct. 1113, 1118 (1958).



## Class #16 — Page 6 of 6

Comprehensive Study of  
The Law of the Land

### Part X: Amendment 5

Sunday September 21st 1—3 p.m.  
Blog Talk: *MHHS Eyes Wide Open*

Chat Room OR Call In: 347 945-5899

### Concluding Lawful Perspective:

"In the absence of other effective measures, the following procedures to safeguard the fifth amendment privileges must be observed. The person in custody must prior to interrogation be clearly informed that he has a right to remain silent and that anything he says will be used against him in a court of law. He must be clearly informed that he has a right to consult with a lawyer, to have a lawyer with him during interrogation and that if he is indigent, a lawyer will be appointed to represent him. If the individual indicates prior to and during questioning that he wishes to remain silent, the interrogation must cease. If he states that he wants an attorney, the questioning must cease until an attorney is present. Where an interrogation is conducted without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his constitutional consul right. Where the individual answers some questions during interrogation or cuts the interrogation, he has not waived his privilege and may invoke his right to remain silent thereafter. The warnings require that the waver needed our, in the absence of a fully effective equivalent perquisites to the admission or admissibility of any statement, inculpability or exculpability made by the defendant. The limitations on the interrogation presses required for the protection of the individual's constitutional rights should not cause an undue interference the proper system of law enforcement as demonstrated by the procedures of the FBI and the safeguards afforded to other jurisdictions. In each of these cases the statements were obtained under circumstances that did not meet constitutional standards for protection of the privilege against self incrimination." "Where rights secured by the constitution are involved, there can be no rule or law making or legislation which would abrogate or abolish them." *Miranda v. Arizona* 384 US 436.

### Next Class:

An Analysis of "The Spirit of the Supreme Law of the Land" Part IX —6th Bill of Rights of the American Constitution 1791.

### Hint:

"The practice of law cannot be licensed by any state/ State." *Schware v. Board of Examiners, United State Reports* 353 U.S. pages 238, 239.

Part I —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