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Comprehensive Study of "The Law of the Land"

Part XII: Amendment 7 & 8

Sunday, November 23rd, 2014 / 1 p.m. — 3 p.m.

Blog Talk: *Mhhs—Eyes Wide Open*

Chat Room OR Call In: 347 945-5899

Definitions For Review:

Bail – *v.* To procure the release of a person from legal custody, by undertaking that he shall appear at the time and place designated and submit himself to the jurisdiction and judgment of the court. To deliver the defendant to persons who, in the manner prescribed by law, become security for his appearance in court. To set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and a place certain, which security is called "bail," because the party arrested or imprisoned is delivered into the hands of those who bind themselves for his forthcoming, (that is, become bail for his due appearance when required,) in order that he may be safely protected from prison. *Wharton. Stafford v. State, 10 Tex.App. 49.*

To procure release of one charged with an offense by insuring his future attendance in court and compelling him to remain within jurisdiction of court. *Manning v. State ex rel. Williams, 190 Okl. 65, 120 P.2d 980, 981.*

The object of "bail" in civil cases is either directly or indirectly to secure payment of a debt or performance of other civil duties, while in criminal cases object is to secure appearance of principal before the court when his presence is needed. *Johnson v. Shaffer, 64 Ohio App. 236, 28 N.E.2d 765, 767.* In its more ancient signification, the word includes the delivery of property, real or personal, by one person to another.

BAIL, n. The surety or sureties who procure the release of a person

under arrest, by becoming responsible for his appearance at the time and place designated. Those persons who become sureties for the appearance of the defendant in court.

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 amongst 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.*

As distinguished from ecclesiastical law, it is the system of jurisprudence administered by the purely secular tribunals.

As concerns its force and authority in the United States, the phrase designates that portion of the common law of England (including such acts of parliament as were applicable) which had been adopted and was in force here at the time of the Revolution. This, so far as it has not since been expressly abrogated, is recognized as an organic part of the jurisprudence of most of the United States. *Industrial Acceptance Corporation v. Webb, Mo.App., 287 S.W. 657, 660.*

The "common law" of England, which is the rule of decision in all courts of Montana, in so far as it is not repugnant to the Constitution of the United States or the Constitution or laws of that state, means that body of jurisprudence as applied and modified by the courts of this country up to the time it was adopted in Montana. *Herrin v. Sutherland, 74 Mont. 587, 241 P. 328, 330, 42 A.L.R. 937. See, also, Norvell-Wilder Hardware Co. v. McCamey, Tex. Civ.App., 290 S.W. 772, 773; Fletcher v. Los Angeles Trust & Savings Bank, 182 Cal. 177, 187 P. 425, 427.* The common law of England, adopted by Pol. Code Cal. § 4468, does not refer solely to the *lex non scripta*, the common law unmodified by statute, but contemplates the whole body of jurisprudence as it stood, influenced by statute at the time when the Code section was adopted, and also embraces equity. *Martin v. Superior Court of California in and for Alameda County, 176 Cal. 289, 168 P. 135, 136, L.R.A.1918B, 313.*

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 cus-

tom of any state or nation which is of general and universal application, thus marking off special or local rules or customs.

Excessive – Greater than what is usual or proper; overmuch; a general term for what goes beyond just measure or amount. *Austin St. Ry. Co. v. Oldham, Tex.Civ.App., 109 S.W.2d 235, 237.*

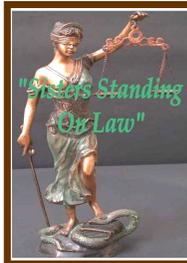
Tending to or marked by excess, which is the quality or state of exceeding the proper or reasonable limit or measure. *Railway Co. v. Johnston, 106 Ga. 130, 32 S.E. 78; Morrow v. Missouri Gas & Electric Service Co., 315 Mo. 367, 286 S.W. 106, 111.*

EXCESSIVE BAIL. Bail in a sum more than will be reasonably sufficient to prevent evasion of the law by flight or concealment; bail which is per se unreasonably great and clearly disproportionate to the offense involved, or shown to be so by the special circumstances of the particular case. *In re Losasso, 15 Colo. 163, 24 P. 1080, 10 L.R.A. 847; Ex parte Ryan, 44 Cal. 558.*

The denial of bail is not necessarily "excessive bail", although such denial may be in a particular case the equivalent of excessive bail. *People ex rel. Shapiro v. Keeper 'of City Prison, Tombs, New York County, 265 App.Div. 474, 39 N.Y.S.2d 526, 531.*

Fines - v. To impose a pecuniary punishment or mulct. To sentence a person convicted of an offense to pay a penalty in money. *Goodman v. Durant B. & L. Ass'n, 71 Miss. 310, 14 So. 146; State v. Belle, 92 Iowa 258, 60 N.W. 525.*

FINE, n. A sum of money paid at the end, to make an end of a transaction, suit, or prosecution; mulct; penalty. *Railroad Co. v. State, 22 Kan. 15; Sunderland Bros. Co. v. Chicago, B. & I. R. Co., 104 Neb. 319, 177 N.W. 156, 157.* A forfeit or forfeiture. *Keinath, Schuster & Hudson v. Reed, 18 N.M. 358,*



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137 P. 841, 844; Bryant v. Rich's Grill, 216 Mass. 344, 103 N.E. 925, 927, Ann.Cas.1915B, 869.

A fine is so called because it puts an end not only to the suit thus commenced, but also to all other suits and controversies concerning the same matter. The party who parted with the land, by acknowledging the right of the other, was said to levy the fine, and was called the "cognizor" or "conusor," while the party who recovered or received the estate was termed the "cognizee" or "conusee," and the fine was said to be levied to him.

The terms "jury" and "trial by jury," as used in the constitution, mean twelve competent men, disinterested and impartial, not of kin, nor personal dependents of either of the parties, having their homes within the jurisdictional limits of the court, drawn and selected by officers free from all bias in favor of or against either party, duly impaneled and sworn to render a true verdict according to the law and the evidence. *State v. McClear, 11 Nev. 39; H. Wagman & Co. v. Schafer Motor Freight Service, 4 N.Y.S.2d 526, 529, 167 Misc. 681.*

Jury - The terms "jury" and "trial by jury," as used in the constitution, mean twelve competent men, disinterested and impartial, not of kin, nor personal dependents of either of the parties, having their homes within the jurisdictional limits of the court, drawn and selected by officers free from all bias in favor of or against either party, duly impaneled and sworn to render a true verdict according to the law and the evidence. *State v. McClear, 11 Nev. 39;*

H. Wagman & Co. v. Schafer Motor Freight Service, 4 N.Y.S.2d 526, 529, 167 Misc. 681.

Preservavtion [ed] - Keeping safe from harm; avoiding injury, destruction, or decay. This term always presupposes a real or existing danger. *State ex rel. Pollock v. Becker, 289 Mo. 660, 233 S.W. 641, 649.* It is not creation, but the saving of that which already exists, and implies the continuance of what previously existed. *McKeon v. Central Stamping Co., C.C.A.N.J., 264 F. 385, 387.*

Reexamined - An examination of a witness after a cross-examination, upon matters arising out of such cross-examination.

Suits - Old English Law - The witnesses or followers of the plaintiff. *3 Bl. Comm. 295. See Secta.* Old books mention the word in many connections which are now disused, at least, in the United States. Thus, "suit" was used of following any one, or in the sense of pursuit; as in the phrase "making fresh suit." It was also used of a petition to the king or lord. "Suit of court" was the attendance which a tenant owed at the court of his lord. "Suit covenant" and "suit custom" seem to have signified a right to one's attendance, or one's obligation to attend, at the lord's court, founded upon a known covenant, or an immemorial usage or practice of ancestors. "Suit regal" was attendance at the sheriff's tourn or leet, (his court.) "Suit of the king's peace" was pursuing an offender, one charged with breach of the peace, while "suithold" was a tenure in consideration of certain services to the superior lord. Abbott.

Modern Law

A generic term, of comprehensive signification, and applies to any proceeding by one person or persons against another or others in a court of justice in which the plaintiff pursues, in such court, the remedy which the law affords him for the redress of an injury or the enforcement of a right, whether at law or in equity. *See Kohl v. U. S.*, 91 U.S. 375, 23 L.Ed. 449; *Weston v. Charleston*, 2 Pet. 464, 7 L.Ed. 481; *Syracuse Plaster Co. v. Agostini Bros. Bldg. Corporation*, 169 Misc. 564, 7 N.Y.S.2d 897. It is, however, seldom applied to a criminal prosecution. And it is sometimes restricted to the designation of a proceeding in equity, to distinguish such proceeding from an action at law. *Patterson v. Standard Accident Ins. Co.*, 178 Mich. 288, 144 N.W. 491, 492, 51 L.R.A., N.S., 583. For "Ancillary" suit and suit "In Rem" see those titles.

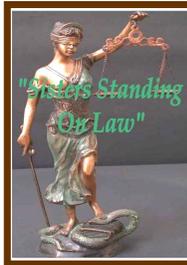
Trial - A judicial examination, in accordance with law of the land, of a cause, either civil or criminal, of the issues between the parties, whether of law or fact, before a court that has jurisdiction over it. *People v. Vitale*, 364 Ill. 589, 5 N.E. 2d 474, 475. *Gulf, C. & S. F. Ry. Co. v. Muse*, 109 Tex. 352, 207 S.W. 897, 899, 4 A.L.R. 613; *State v. Dubray*, 121 Kan. 886, 250 P. 316, 319; *Photo Cines Co. v. American Film Mfg. Co.*, 190 Ill.App. 124, 128. For purpose of determining such issue. *City of Pasadena v. Superior Court in and for Los Angeles County*, 212 Cal. 309, 298 P. 968, 970; *State ex rel. Stokes v. Second Judicial Dist. Court, in and for Washoe County*, 55 Nev. 115, 127 P.2d 534.

It includes all proceedings from time when issue is joined, or,

more usually, when parties are called to try their case in court, to time of its final determination. *Molen v. Denning & Clark Livestock Co.*, 56 Idaho 57, 50 P.2d 9, 11.

And in its strict definition, the word "trial" in criminal procedure means the proceedings in open court after the pleadings are finished and the prosecution is otherwise ready, down to and including the rendition of the verdict. *Thomas v. Mills*, 117 Ohio St. 114, 157 N.E. 488, 489, 54 A. L.R. 1220.

A generic term, of comprehensive signification, and applies to any proceeding by one person or persons against another or others in a court of justice in which the plaintiff pursues, in such court, the remedy which the law affords him for the redress of an injury or the enforcement of a right, whether at law or in equity. *See Kohl v. U. S.*, 91 U.S. 375, 23 L.Ed. 449; *Weston v. Charleston*, 2 Pet. 464, 7 L.Ed. 481; *Syracuse Plaster Co. v. Agostini Bros. Bldg. Corporation*, 169 Misc. 564, 7 N.Y.S.2d 897. It is, however, seldom applied to a criminal prosecution. And it is sometimes restricted to the designation of a proceeding in equity, to distinguish such proceeding from an action at law. *Patterson v. Standard Accident Ins. Co.*, 178 Mich. 288, 144 N.W. 491, 492, 51 L.R.A., N.S., 583. For "Ancillary" suit and suit "In Rem" see those titles.



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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 4th 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 type of suits are referred to in the 7th Bill of Rights?
 - Who does this apply to?
 - Can the 7th Bill of Right apply to cases other than common law?
2. What is the amount in controversy?
3. What shall be preserved once the amount in controversy has been exceeded?
4. Once invoked, can the issue be redressed in another court?
 - What is this called?
 - What shall not be required of a being?
5. What else shall not be imposed?

Group Discussion Question:

6. In the 7th Bill of Right where it says “and no fact tried by a jury, shall otherwise be reexamined in any court of the United States, than according to the rules of the common law.” What are the “rules of the common law”?

Supreme Laws for Review:

We reiterate our previously expressed view that characterizing the relief sought is “[m]ore important” than finding a precisely analogous common-law cause of action in determining whether the Seventh Amendment guarantees a jury trial. **Curtis v. Loether**, [415 U.S., at 196](#). [6](#) [481 U.S. 412, 422]

While federal judges may comment upon the evidence, the right to a jury trial means that the judge must make clear to the jurors that such remarks are advisory only and that the jury is the final determiner of all factual questions. **Quercia v. United States**, [289 U.S. 466](#) (1933).

It may be a violation of defendant's rights to structure the trial process so as effectively to encourage him “needlessly” to waive or to penalize the decision to go to the jury, but the standards here are unclear. Compare **United States v. Jackson**, [390 U.S. 570](#) (1968)

As with other waivers, this one must be by the express and intelligent consent of the defendant. A waiver of jury trial must also be with the consent of the prosecution and the sanction of the court. A refusal by either the prosecution or the court to defendant's request for consent to waive denies him no right since he then gets what the Constitution guarantees, a jury trial. **Singer v. United States**, [380 U.S. 24](#) (1965) the Court in **Ludwig v. Massachusetts**, [427 U.S. 618](#) (1976), approved a state two-tier system under which persons accused of certain crimes must be tried in the first instance in the lower tier without a jury and if convicted may appeal to the second tier for a trial de novo by jury. Applying a due process standard, the Court, in an opinion by Justice Blackmun, found that neither the imposition of additional financial costs upon a defendant, nor the imposition of increased



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psychological and physical hardships of two trials, nor the potential of a harsher sentence on the second trial impermissibly burdened the right to a jury trial.

The U.S. Supreme Court found “that a defendant's bail cannot be set higher than an amount that is reasonably likely to ensure the defendant's presence at the trial.” Chief Justice Vinson summed up the Constitutional issue by stating: “It is not denied that bail for each petitioner has been fixed in a sum much higher than that usually imposed for offenses with like penalties and yet there has been no factual showing to justify such action in this case...Such conduct would inject into our own system of government the very principles of totalitarianism which Congress was seeking to guard against in passing the statute under which petitioners have been indicted.” [111](#) **Stack v. Boyle**, 342 U.S. 1 (1951).

Concluding Lawful Perspective:

“The guaranty of trial by jury contained in the Constitution was intended for a state of war, as well as a state of peace, and is equally binding upon rulers and people at all times and under all circumstances.” [Ex parte Milligan](#), 71

Next Class:

An Analysis of “The Spirit of the Supreme Law of the Land” Part XIII –9th & 10th Bill of Rights of the American Constitution 1791.

Hint:

“When we consider the nature and the theory of our institutions of government, the principles on which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power.” [Yick Wo v. Hopkins](#), [118 US 356](#) (1885)

Sisters Standing On Law 13 Month Syllabus Topics

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