



# The Courts

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# Common Law Courts

- ❖ **“The judicial power is the power to hear those matters which affect life, liberty or property of the Citizens of the State.”**  
Sapulpa v Land, 101 Okla. 22, 223 Pac. 640, 35 A.L.R. 872

# Common Law Courts

- ❖ **"The very meaning of 'sovereignty' is that the decree of the sovereign makes law."** American Banana Co. v. United Fruit Co., 29 S.Ct. 511, 513, 213 U.S. 347, 53 L.Ed. 826, 19 Ann.Cas. 1047.

# Common Law Courts

❖ **"and because it brings into action, and enforces this great and glorious principle, that the people are the sovereign of this country, and consequently that fellow citizens and joint sovereigns cannot be degraded by appearing with each other in their own courts to have their controversies determined."** Chisolm v Georgia 2 Dall. 440

# Courts

- ❖ **COURT.** The person and suit of the sovereign; the place where the sovereign sojourns with his regal retinue, wherever that may be. Black's Law Dictionary, 5th Edition, page 318.
- ❖ **COURT.** An agency of the sovereign created by it directly or indirectly under its authority, consisting of one or more officers, established and maintained for the purpose of hearing and determining issues of law and fact regarding legal rights and alleged violations thereof, and of applying the sanctions of the law, authorized to exercise its powers in the course of law at times and places previously determined by lawful authority. *Isbill v. Stovall*, Tex.Civ.App., 92 S.W.2d 1067, 1070; Black's Law Dictionary, 4th Edition, page 425 <sup>5</sup>

# Superior Courts

- **"COURTS. A Court, Curia." The king's palace, or mansion; but more especially the place where justice is judicially administered. Co. Lit. 58. The superior courts are those at West minster; and of courts, some are of record, and some not; which are accounted base courts, in respect of the rest. A court of record is that court which hath power to hold plea, according to the course of the common law, of real, personal, and mixed actions, where the debt or damage is 40#. or above ; as the King's Bench, Common Pleas, Sec. Tomlins 1835 Law Dictionary [emphasis added],**

# Courts Not of Record

- **A court not of record is where it cannot hold plea of debt or damages amounting to 40s., but of pleas under that sum: or where the proceedings are not according to the course of the common law, nor inrolled, as the county-court, and the court-baron, &c. 1 Inst. 117- 260: 4 Rep. 52 : 2 Rol. Ahr. 574. See Record. Tomlins 1835 Law Dictionary [emphasis added],**

# Courts of Record

- **Every court of record is the king's court, in right of his crown and dignity, though his subjects have the benefit of it ;[i.e. it acts on the authority of the sovereign] and therefore no other court hath authority to fine and imprison: so that the very erection of a new jurisdiction, with power of fine or imprisonment, makes it instantly a court of record. Salt. 200: 12 Mod. 388: Finch. L. 231. The free use of all courts of record and not of record is to be granted to the people : the leet and toun are the king's courts, and of record. 2 Danv. 25Q. The rolls of the superior courts of record are of such authority, that no proof will be admitted against them; and these records are only triable by themselves. 3 Inst. 71.”**

Tomlins 1835 Law Dictionary [emphasis added],



# 2 types of courts

- **Superior Courts**
  - **General jurisdiction**
- **Inferior Courts**
  - **Limited Jurisdiction**

# Inferior Courts – Superior Courts

- **“Also nothing shall be intended to be within the jurisdiction of an inferior court, but what is expressly so alleged : and if part of the cause arises within the inferior jurisdiction, and part thereof without it, the inferior court ought not to hold plea. 1 Lev. 104: 2 Rep. 16. See tit Abatement, I. 1. An inferior court, not of record, cannot impose a fine, or imprison: but the courts of record at Westminster may fine, imprison, and amerce. 1 1 Rep. 43.; The king, being the supreme magistrate of the kingdom, and intrusted with the executive power of the law, all courts, superior or inferior, ought to derive their authority from the crown ; Staundf. 54; ” 1835 Tomlins Law Dictionary, [emphasis added]**

# Inferior Court – Superior Court

- **though the king himself cannot now, as anciently, sit in judgment in any court upon civil causes, nor upon indictments, because there he is one of the parties to the suit. 2 Hawk. P. C. c. 1. § 1, 2. The king hath committed all his power judicial to one court or the other. 4 Inst. 71. And by stat. 52 H. 3. c. 1. it is enacted, that all persons shall receive justice in the king's courts, and none take any distress, &c. of his own authority, without award of the king's courts. It is said the customs, precedents, and common judicial proceedings of a court, are a law to that court 1835 Tomlins Law Dictionary, [emphasis added]**

# Jurisdictions

- Admiralty
- Equity
- Common Law

# Martial Law Statutes

- Alberta Judicature Act Section 15  
**“In all matters in which there is any conflict or variance between the rules of equity and common law with reference to the same matter, the rules of equity prevail.”**

# Admiralty Jurisdiction

- **“The admiralty from the highest antiquity has exercised a very extensive criminal jurisdiction.”**  
United States v. Flores, 289 U.S. 137, 139.
- **“Admiralty courts have a jurisdiction over contracts and torts and other special cases.”**  
Waring v. Clark, 5 How. 441, 454-464; Genessee Chief v. Fitzhugh, 12 How. 443, 454. United States v. Flores, 289 U.S. 137, 137, 142. (1933).

# Informations

- **“Informations are filed in the court of exchequer for forfeiture, upon seizure of property, for breach of laws of revenue, impost, navigation, and trade.”**  
(Admiralty, Commerce) Kent's  
Commentaries, Lecture XVII

# Information

- An information is a written accusation of a crime, made by a U.S. Attorney, which permits the government to prosecute an individual without benefit of a grand jury indictment. An indictment is required in any case where a person is being charged with an "infamous crime." The Supreme Court ruled in *Makin v. United States*, 117 U.S. 348 that any crime for which the punishment is imprisonment is an "infamous crime." In short, prosecutions by Information have long been a means of political suppression and intimidation.



# Information

- **"The use of (information) has a long history, For example, in the reign of Henry VII", ..a very oppressive use was made of them for something more than a century, so as to continually harass and shamefully enrich the crown." Blackstone, 4 BL. Comm 310.**

# Information

- **"The oppressive use of this mode of prosecution by Information occasioned struggles to procure a declaration of its illegality." People v. Sponsler, 46 N.W. 450,**

# Representation

- The right to be represented exists ONLY in a military court room. 10 USC § 838(a)(1)
- **“(1)The accused has the right to be represented in his defense before a general or special court-martial or at an investigation under section 832 of this title (article 32) as provided in this subsection.”**

# Admiralty & Civil Law

- **"And the forms and modes of proceedings in causes of equity, and of admiralty, and maritime jurisdiction, shall be according to the civil law."**  
Wayman and another v. Southard and another, 10 Wall 1, p. 317.

# Admiralty

- **"Brown, Vol. 2, 100, lays down the rule in these terms: 'The general rule, however, at present, is, that the admiralty acts only in rem, and that no person can be subject to that jurisdiction but by his consent, expressed by his entering into a stipulation.'"** Ramsey v. Allegrie, 12 Wall 611, p. 409.

# Admiralty

- **"In Kreble's Reports, p. 500, quoted by Brown, it is expressly said, that without a stipulation, the admiralty has no jurisdiction at all over the person."**  
Ramsey v. Allegrie, 12 Wall 611, p. 410.  
[emphasis added]

# Admiralty

- **"It is well known that in civil cases, in courts of equity and admiralty, juries do not intervene, and that courts of equity use the trial by jury only in extraordinary cases to inform the conscience of the court."** Parsons v. Bedford, et al, 3 Pet 433, 479.

# Admiralty Law

- **“There must be uniformity in maritime law; the principles of maritime laws are applicable to commercial law, and therefore, there must be uniformity in the commercial law.”** Swift v. Tyson, 16 Pet 1, (1842)



# Civil Law

- **“"Civil Law," "Roman Law," and "Roman Civil Law" are convertible phrases, meaning the same system of jurisprudence. That rule of action which every particular nation, commonwealth, or city has established peculiarly for itself; more properly called "municipal" law, to distinguish it from the "law of nature," and from international law. See Bowyer, Mod. Civil Law, 19; Sevier v. Riley, 189 Cal. 170, 244 P. 323, 325” Black's Law Dictionary, Rev. 4th Ed.**

# Martial Law

- **“Admiralty Law. The terms "admiralty" and "maritime" law are virtually synonymous.”**

*Black's Law Dictionary 6th Ed.  
1990*

# Martial Law

- **“Civil Law, that rule of action which every particular nation, commonwealth or city has established peculiarly for itself, more properly distinguished by the name of municipal law.”** The Dictionary of English Law, Sweet and Maxwell Ltd., London, 1959.

# Martial Law Court

- **"The technical niceties of the common law are not regarded. . . .", 1 R.C.L. 31, p. 422. "A jury does not figure, ordinarily, in the trial of an admiralty suit. . . the verdict of the jury merely advisory, and may be disregarded by the court." 1 R.C.L. 40, p. 432. "[The] rules of practice may be altered whenever found to be inconvenient or likely to embarrass the business of the court." 1 R.C.L. 32, p. 423. "A court of admiralty. . . acts upon equitable principles." 1 R.C.L. 17, p. 416. "A libel of information [accusation] does not require all the technical precision of an indictment at common law. If the allegations describe the offense, it is all that is necessary; and if it is founded upon a statute, it is sufficient if it pursues the words of the law." *The Emily v. The Caroline*, 9 Wheat.**

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# What happened?

- **“EQUITY. In the early history of the law, the sense affixed to this word was exceedingly vague and uncertain. This was owing, in part, to the fact, that the chancellors of those days were either statesmen or ecclesiastics, perhaps not very scrupulous in the exercise of power. It was then asserted that equity was bounded by no certain limits or rules, and that it was alone controlled by conscience and natural justice. 3 Bl. Com. 43-3, 440, 441.”** Bouvier’s Law Dictionary 1856 Edition

What happened?

- **“EQUITY, COURT OF. A court of equity is one which administers justice, where there are no legal rights, or legal rights, but courts of law do not afford a complete, remedy, and where the complainant has also an equitable right.”** Bouvier’s Law Dictionary 1856 Edition

# What happened?

- **“Equity, 4. The system of law or body of principles originating in the English Court of Chancery and superseding the common and statute law (together called “law” in the narrow sense) when the two conflict <in appealing to the equity of the court, she was appealing to the “King’s conscience”>.” Black’s Law Dictionary 7<sup>th</sup> Edition**

# What happened?

- **“LACHES laches (lach-iz). [Law French “remissness; slackness”]**
  - 1. Unreasonable delay in pursuing a right or claim — almost always an equitable one — in a way that prejudices the party against whom relief is sought. — Also termed sleeping on rights.**
  - 2. The equitable doctrine by which a court denies relief to a claimant who has unreasonably delayed in asserting the claim, when that delay has prejudiced the party against whom relief is sought. Cf. LIMITATION(3). [Cases: Equity 67. C.J.S. Equity §§ 128–132.]“The doctrine of laches ... is an instance of the exercise of the reserved power of equity to withhold relief otherwise regularly given where in the particular case the granting of such relief would be unfair or unjust.” William F. Walsh, A Treatise on Equity 472 (1930).” Black’s Law Dictionary 8<sup>th</sup> Edition, page 2553-2554**



# Administrative Hearings

- **“When enforcing mere statutes, judges of all courts do not act judicially” (and thus are not protected by “qualified” or “limited immunity,” - SEE: Owen v. City, 445 U.S. 662; Bothke v. Terry, 713 F2d 1404)**

# Administrative Hearings

- **“...where any state proceeds against a private individual in a judicial forum it is well settled that the state, county, municipality, etc. waives any immunity to counters, cross claims and complaints, by direct or collateral means regarding the matters involved.”** Luckenback v. The Thekla, 295 F 1020, 226 Us 328; Lyders v. Lund, 32 F2d 308;

# Administrative Hearings

- **“When acting to enforce a statute and its subsequent amendments to the present date, the judge of the municipal court is acting as an administrative officer and not in a judicial capacity; courts administering or enforcing statutes do not act judicially, but merely ministerially....but merely act as an extension as an agent for the involved agency -- but only in a “ministerial” and not a “discretionary capacity...”** Thompson v. Smith, 154 S.E. 579, 583; Keller v. P.E., 261 US 428; F.R.C. v. G.E., 281 U.S. 464.

# Administrative Hearings

- **"Ministerial officers are incompetent to receive grants of judicial power from the legislature, their acts in attempting to exercise such powers are necessarily nullities"** Burns v. Sup., Ct., SF, 140 Cal. 1.

# Administrative Hearings

- **“It is a fundamental right of a party to have a neutral and detached judge preside over the judicial proceedings.”**  
Ward v Village of Monroeville, 409 U.S. 57, 61-62, 93 S.Ct 80, 83, 34 L.Ed. 2d 267 (1972); Tumey v Ohio, 273 U.S. 510, 5209, 47 S. Ct. 437, 440, 71 L.Ed. 749 (1927)

# Administrative Hearings

- **Immunity for judges does not extend to acts which are clearly outside of their jurisdiction.**  
Bauers v. Heisel, C.A. N.J. 1966, 361 F.2d 581, Cert. Den. 87 S.Ct. 1367, 386 U.S. 1021, 18 L.Ed. 2d 457 (see also Muller v. Wachtel, D.C.N.Y. 1972, 345 F.Supp. 160; Rhodes v. Houston, D.C. Nebr. 1962, 202 F.Supp. 624 affirmed 309 F.2d 959, Cert. den 83 St. 724, 372 U.S. 909, 9 L.Ed. 719, Cert. Den 83 S.Ct. 1282, 383 U.S. 971, 16 L.Ed. 2nd 311, Motion denied 285 F.Supp. 546).

# Administrative Hearings

- **“Libel, in the Spiritual Court. If upon a Libel for any Ecclesiastical Matter, the Defendant make a Surmise in B. R. to have a Prohibition, and such Surmise be insufficient, the other Party may shew it to the Court, and me Judges will discharge it. 1 Leon 10. 128. This Libel used in Ecclesiastical Proceedings, consists of three Parts. I. The major Proposition, which shews a just Cause of the Petition. 2. The Narration or minor Proposition. 3. The Conclusion, or conclusive Petition, which conjoins both Propositions, &c....”** Jacob A New Law Dictionary, 1750, [emphasis added],

# Administrative Hearings

- **“LIBEL, practice. A libel has been defined to be "the plaintiff's petition or allegation, made and exhibited in a judicial process, with some solemnity of law;" it is also, said to be "a short and well ordered writing, setting forth in a clear manner, as well to the judge as to the defendant, the plaintiff's or accuser's intention in judgment." It is a written statement by a plaintiff, of his cause of action, and of the relief he seeks to obtain in a suit. Law's Eccl. Law, 147; Ayl. Par. 346; Shelf. on M. & D. 506; Dunf Adm. Pr. 111; Betts. Pr. 17; Proct. Pr. h. t.; 2 Chit. Pr. 487, 533.”** Bouvier’s Law Dictionary 1856 Edition, page 686 [emphasis added],



# Administrative Hearings

- **“IMPOSTORS, religious. Those who falsely pretend an extraordinary commission from heaven; or terrify and abuse the people with false denunciations of judgments. The are punishable by the temporal courts with fine, imprisonment, and infamous corporal punishment. 1 *Hawk. P. C. c. 5.*” Tomlin’s Law Dictionary, 1835, Volume 1, [emphasis added],**

# Administrative Hearings

- **“IMPOSTORS, religious. Those who falsely pretend an extraordinary commission from heaven; or terrify and abuse the people with false denunciations of judgments, are punishable by the temporal courts with fine, imprisonment, and infamous corporal punishment. 1 *Hawk. P. C. c. 7. 4 Black 62*”** William’s Law Dictionary, 1816, [emphasis added],

# Administrative Hearings

- **“IMPOSTORS in religion, are such as falsely pretend an extraordinary commission from heaven, or terrify and abuse the people with false denunciations of judgments. They are punishable by fine, imprisonment, and infamous corporal punishment. 1 *Haw.* 7. And by the statute 9 *G.2.c.5.* all persons who pretend to use any kind of witchcraft, forcery, incantment, or conjuration; or undertake to tell fortunes; or pretend, from their skill in the occult sciences, to find out, goods that have been stolen; shall be imprisoned for a year, and once in every quarter of that year be set on the pillory.”** Burn A New Law Dictionary 1792, page 376

# Administrative Hearings

- **“impostor. One who pretends to be someone else to deceive others, esp. to receive the benefits of a negotiable instrument. — Also spelled imposter. [Cases: Banks and Banking 147; Bills and Notes 201, 279. C.J.S. Banks and Banking §§ 415–416; Bills and Notes; Letters of Credit §§ 29, 150–151.]” Black’s Law Dictionary 8th Edition, page 2210 [emphasis added],**

# Capitis Deminutio

- **“Capitis deminutio is the destruction of the ‘caput’ or legal personality. Capitis deminutio, so to speak, wipes out the former individual and puts a new one in his place, and between the old and the new individual there is, legally speaking, nothing in common. A juristic personality may be thus destroyed in one of three ways: (1) by loss of the status libertatis. This is the capitis deminutio maxima; (2) by loss of the status civitatis. This is the capitis deminutio media (magna); (3) by severance from the agnatic family. This entails capitis deminutio minima.” Rudolph Sohm, *The Institutes: A Textbook of the History and System of Roman Private Law* 178–79 (James Crawford Ledlie trans., 3d ed. 1907).**
- **capitis deminutio maxima (kap-i-tis dem-i-n[y]oo-shee-oh mak-sim<<schwa>>). [Latin “maximum reduction of status”] Roman law. The diminution of a person's legal status as a result of being reduced to slavery.” Black’s Law Dictionary 8th Edition, page 629**

# Capitus Deminutio

- **“CAPITIS DIMINUTIO. In Roman law. A diminishing or abridgment of personality; a loss or curtailment of a man's *status* or aggregate of legal attributes and qualifications.**
- **CAPITIS DIMINUTIO MAXIMA. The highest or most comprehensive loss of *status*. This occurred when a man's condition was changed from one of freedom to one of bondage, when he became a slave. It swept away with it all rights of citizenship and all family rights.” Black’s Law Dictionary 4th Edition, page 264 [emphasis added]**

# Jurisdiction

- There are 2 kinds of jurisdiction
  - in rem
  - in personam
- **“§ 2. In rem.-With regard to their conclusive effect, judgments are of two kinds, *in rem* and *in personam*.”** Rapalje A Dictionary of American & English Law, Volume 1, 1883 Edition, page 694

# in rem Jurisdiction

- “§ 2. In rem.-....A judgment *in Personam* is an adjudication pronounced upon the status of some particular subject-matter by a tribunal having competent authority for that purpose. Such an adjudication being a solemn declaration, from the proper and accredited quarter, that the status of the thing adjudicated upon is as declared, it concludes all persons from saying that the status of the thing or person adjudicated upon was not such as declared by the adjudication.” Rapalje A Dictionary of American & English Law, Volume 1, 1883 Edition, page 694



# in personam jurisdiction

- “§ 3. In personam, or inter partes. A judgment in *personam* is more accurately called a judgment *inter partes*, for an adjudication upon the status of a particular person (as in the cases mentioned above) is as much a judgment *in rem* as an adjudication on the status of a thing. (2 Sm. Lead. Cas. 784 *d seq.*) Judgments in *personam* are those which bind only those who are parties or privies to them; as in an ordinary action of contract or tort, where a judgment given against A, cannot be binding on B, unless he or someone under whom he claims was party to it. *Id.* 788.” Rapalje A Dictionary of American & English Law, Volume 1, 1883 Edition, page 694

# Non-Suit

- **“§ 8. Judgment of non-suit is where the plaintiff fails to appear on the trial, or throws up the action (see NON-SUIT); like a judgment by default, it may be set aside on such terms as the court thinks fit. See also DISCONTINUANCE.”**

Rapalje A Dictionary of American & English Law, Volume 1, 1883 Edition, page 694

# Removal

- **“§ 17. Removal and enforcement of judgments.-A judgment may, in some cases, be enforced in other courts than that in which it was originally given; thus, a judgment of a county court or other inferior court may, in certain cases, be removed (in England) into the High Court of Justice, (and in some States, *e. g.* New York,) such judgment becomes, when docketed, for purposes of enforcement, the judgment of the Supreme Court or Court of Common Pleas. and execution may be issued as if it had been a judgment of the higher court.”** Rapalje A Dictionary of American & English Law, Volume 1, 1883 Edition, page 694

# Divorce Court is Admiralty

- **“IN PERSONAM-IN REM.- § 3. Judgments.-So a judgment or decree is said to be *in rem* when it binds third persons; such is the sentence of a Court of Admiralty on a question of prize, or a decree of nullity or dissolution of marriage, (2 Sm. Lead. Cas. 699 j Castrique fl. Imrie, L. R. 4 H. L. 414; *Bee* JUDGMENT,) or a decree of a court in a foreign country as to the status of a person domiciled there. Doglioni". Crispin, L. R. 1 H. L. 801.”** Rapalje A Dictionary of American & English Law, Volume 1, 1883 Edition, page 639

# Summary

- **"When injustice becomes law, then resistance becomes duty."** Thomas Jefferson