FIRST JUDICIAL DISTRICT OF THE STATE OF COLORADO Division 8 100 Jefferson County Parkway Golden, Colorado 80401	▲Court Use Only▲
PEOPLE OF THE STATE OF COLORADO – *Purported Plaintiff* v. **STEVE DOUGLAS GARTIN** – *Alleged Defendant*	Case Number: **04CR2541** Division 8 CourtRoom: 520
Defendant by First Secured Party, in Propria Persona, under protest: Steve Douglas, Gartin P.O. Box 70185 Albuquerque, NM 87197 Email: sheriffsteve@justice.com CellPhone: 720-404-1812	

NOTICE OF FOREIGN LAW

Standing:

Steve Douglas Gartin, is *First Secured Party for the above captioned* "Defendant" spelled in all capital letters to denote a Strawman Transmitting Utility, *designated in this secret and undisclosed lawform as* STEVEN DOUGLAS GARTIN. Secured Party priority interest is legally established and unrefuted by official record: U.C.C. # SDG9112000-SA on file with the Colorado Secretary of STATE.

First Secured Party appears, Non-voluntarily, by **Special Visit** in propria persona by the Doctrine of Necessity; under credible threat of assault and incarceration by heavily armed Police, under duress induced by numerous forcible imprisonments based upon an unbroken chain of groundless and frivolous charges, *including this instant matter*, and coercion compelled by threat of economic damages and forcible imprisonment or death by Police due to the slanderous entry in the NCIC/CCIC database recorded by the Colorado State Attorney General's Office Investigator Gary Clyman.

Jurisdiction:

First Secured Party is C*hild of* יהוה (YHVH-the EverLiving God), a sovereign Inhabitant of the California Republic, currently sojourning in New Mexico and claims all Rights secured by the 1849 California Constitution, the New Mexico Constitution, the Treaty of Hildago, the Colorado Constitution, as well as the Original Jurisdiction Constitution for the united States of America, and the Common Law and hereby provides Notice of Foreign Law in good faith accordance with your colorable codes.

[C.R.S. 24-12-101. Form of oath. Whenever any person is required to take an oath before he enters upon the discharge of any office, position, or business or on any other lawful occasion, it is lawful for any person employed to administer the oath to administer it in the following form: The person swearing, with his hand uplifted, shall swear "**by the everliving God**".]

First Secured Party has squarely Challenged Jurisdiction at each and every Special Appearance under threat, duress and coercion and continues to protest the court's unjustified seizure of jurisdiction sans appellate record and without due process of law or adherence to constitutional or statutory mandates.

Special Appearance

First Secured Party has never knowingly, deliberately nor intentionally joindered with this Court of Un-Disclosed Jurisdiction. Any and all interaction with the First Colorado STATE Judicial District, Inc. has been under threat, duress and coercion. At no time has either the "Defendant" nor its First Secured Party volunteered into or in any manner contracted with the First Judical District, Inc. to adjudicate any aspect of the matter known in un-disclosed legal fiction as 04CR2541.

Terms & Definitions

It is required by your colorable **Colorado Revised Statutes,** *a legal fiction*, **at §13-25-106** that notice be given when a party intends to rely upon **Foreign Law**, to-wit: (1) Every court of this state shall take judicial notice of the common law and statutes of every state, territory, and other jurisdiction of the United States. People v. Swain, 43 Colo.App. 343, 607 P.2d 396 (1979).

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C.R.S § 2-4-211 Common Law of England.

The common law of England so far as the same is applicable and of a general nature, and all acts and statutes of the British parliament, made in aid of or to supply the defects of the common law prior to the fourth year of James the First, excepting the second section of the sixth chapter of forty-third Elizabeth, the eighth chapter of thirteenth Elizabeth, and the ninth chapter of thirty-seventy Henry the Eighth, and which are of a general nature, and not local to that kingdom, shall be the rule of decision, and shall be considered as of full force until repealed by legislative authority.

The provision for application of the common law is still in force in this state. Vogts v. Guerrette, 142, Colo. 527, 351 P.2d 851 (1960).

And originally, it applied to criminal cases only, but, as adopted by the general assembly, it embraces civil as well as criminal matters. Brown v. Challis, 23 Colo. 145, 46 P.679 (1896).

So with the exceptions specified, the common law of England, as found in the reports of cased decided since A.D. 1607, and unaffected by subsequent acts of parliament, as well as of those decided before that year, constitutes the rule of decision in the state. Chilcott v. Hart, 23 Colo. 40, 45P.391 (1896); Herr v. Johnson, 11 Colo.393, 18 P.342 (1888).

Hence, the common law and acts of parliament in aid thereof prior to the designated time, are a part of the law of this state. Denver Jobbers' Ass.n v. People ex rel. Dickson, 21 Colo.App. 326, 122 P.404 (1912).

However, it was only the public laws of the mother country and those of a general nature which were adopted. People ex rel. Thomas v. Goddard, 8 colo.432, 7 P.301 (1885).

When the courts of Colorado came into existence by constitutional creation they took common law powers except where the constitution otherwise provided. People ex rel. Attorney General v. News-Times Publishing Co., 35 Colo.253, 84 P. 912 (1906), Herr v. Johnson, 11 Colo.393, 18 P.342 (1888); Chilcott v. Hart, 23 Colo. 40, 45P.391 (1896); Herr v. Johnson, 11 Colo.393, 18 P.342 (1888); Teller v. Hill 18 Colo.App.509, 72 P.811 (1903).

And it is true, that where the constitution, code, and statute controlling the proceeding are silent as to the mode of trial, it will be in accord with the usage and practice prevailing before the adoption of the constitution, code, or statute. Clough v. Clough, 10 Colo.App. 433, 51 P.513 (1897), aff'd, 27 Colo. 97, 59 P.736 (1899); Huston v. Wadsworth, 5 Colo. 213 (1880).

But in case there is no previous usage or practice, the proceedings including the mode of trial would come within the provisions of the statue declaring that the common law of England, so far as applicable, shall be the rule of decision and be considered as of full force. Clough v. Clough, 10 Colo.App. 433, 51 P.513 (1897), aff'd, 27 Colo. 97, 59 P.736 (1899); Huston v. Wadsworth, 5 Colo. 213 (1880).

And where the law of another state becomes material and there has been no evidence offered concerning it, the Colorado courts will presume that the general principles of the common law prevail there the same as in this state. Sullivan v. German Nat'l Bank, 18 Colo.App. 99, 70 P.162 (1902).

And because the constitution does not forbid the creation of new rights, or the abolition of old ones recognized by the common law, to attain a permissible legislative object. Vogts v. Guerrette, 142 colo. 527, 351 P.2d 851 (1960).

There has been material change in the common law as it existed in the year 1607. Vogts v. Guerrette, 142 Colo. 527, 351 P.2d 851 (1960).

Because the common law is not a fixed and changeless code for the government of human conduct. Vogts v. Guerrette, 142 colo. 527, 351 P.2d 851 (1960).

And its applicability depends to a large extent upon existing conditions and circumstances at any given time. Vogts v. Guerrette, 142 colo. 527, 351 P.2d 851 (1960)

Many terms have developed usages among those who ply the trade of the barrister, lawyer or modern attorney, that are not common to the People. Therefore, in a **good faith** effort to **clarify and agree** upon the definitions utilized before the Honorable Court in the above titled matter, the **common usages** of the following words and legal concepts are presented, with their **common definitions**. The Prosecution has refused to offer alternate definitions to any of the following words, they have had notice and **grace** and have failed to offer alternatives or the definitions contained herein, so without further notice from the Prosecution, the Defense will presume that the following definitions will control the usages of those words and phrases in this instant matter, and such **definitions will be tendered to the jury**.

CONSTITUTION: The fundamental and organic law of a nation or state, establishing the conception, character, and organization of its government, as well as prescribing the extent of its sovereign power and the manner of its exercise.

CONSTITUTIONAL LAW: The body of law deriving from the Constitution and dealing primarily with governmental powers, civil rights, and civil liberties.

Source of Law: Something (such as a constitution, treaty, statute, or custom) that provides authority for legislation and for judicial decisions; a point of origin for law or legal analysis.

Admiralty

A court which has a very extensive jurisdiction of maritime causes, civil and criminal, controversies arising out of acts done upon or relating to the sea, and questions of prize. Also, the system of jurisprudence relating to and growing out of the jurisdiction and practice the admiralty courts.

Sovereign:

A person, body, or state vested with independent and supreme authority.

Inhabitant: One who resides actually and permanently in a given place, and has his domicile there. A more fixed and permanent above than a mere resident, and importing privileges and duties to which a mere resident could not claim.

Without the United States: Outside of the Jurisdiction of the corporate entity known in legal fiction as, THE UNITED STATES, and all political subdivisions. Foreign. See 28 U.S.C. § 1746

Bill of Particulars

In common law practice. In practice. A written statement or specification of the particulars of the demand for which an action at law is brought, or of a defendant's set-off against such demand, (including dates, sums, and items in detail,) furnished by one of the parties to the other, either voluntarily or in compliance with a judge's order for that purpose. 1 Tidd, Pr. 596-600; 2 Archb.Pr. 221; Ferguson v. Ashbell, 53 Tex. 250; Baldwin v. Gregg, 13 Metc. (Mass.) 255.

First Secured party: First in line, first in time interest in property obtained pursuant to a security agreement.

Strawman: A "front"; a third party who is put up in name only to take part in a transaction. Nominal party to a transaction; one who acts as an agent for another for the purpose of taking title to real property and executing whatever documents and instruments the principal may direct respecting the property. Person who purchases property for another to conceal identity of real purchaser, or to accomplish some purpose otherwise not allowed.

Men of Straw

Men who used in former days to ply about courts of law, so called from their manner of making known their occupation (i.e., by a straw in one their shoes.) recognized by the name of "straw-shoes." An advocate or lawyer who wanted a convenient witness knew by these signs where to meet with one, and the colloquy between the parties was brief. "Don't you remember?" said the advocate; to which the ready answer was, "To be sure I do." "Then come into court and swear it." And straw-shoes went into court and swore. Athens abounded in straw-shoes. Quart. Rev. vol. 33, p. 344.

Stramineus homo: A man of straw, one of no substance, put forward as bail or surety.

Person: A statutory term that may include labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers. Scope and delineation of term is necessary for determining those to whom Fourteenth Amendment of Constitution affords protection since this Amendment expressly applies to "person." JEFFERSON COUNTY is a "person" pursuant to 42 U.S.C. § 1983. (See 01-ES-1145 10th Federal Judicial District)

FOREIGN IMMUNITY: The immunity of a foreign sovereign, its agencies or instrumentalities, from suit in United States courts. Federal court jurisdiction is limited to claims falling within one of the enumerated exceptions to the Foreign Sovereign Immunities Act of 1976.

FOREIGN JURISDICTION: Any jurisdiction foreign to that of the forum: e.g. of a sister state or another country.

FOREIGN LAWS: The laws of a foreign country, or of a sister state. In conflicts of law, the legal principles of jurisprudence which are part of the law of a sister state or nation.

COLOR: An appearance, semblance, or simulacrum, as distinguished from that which is real. Hence, a deceptive appearance; a plausible, assumed exterior, concealing a lack of reality; a disguise of pretext.

COLORABLE: That which is in appearance only, and not in reality, what it purports to be, hence counterfeit, feigned, having the appearance of truth.

COLOR OF AUTHORITY: That semblance or presumption of authority sustaining the acts of a public officer which is derived from his apparent title to the office of from a writ of other process in his hands apparently valid and regular.

COLOR OF OFFICE: Pretense of official right to do act made by one who has no such right. Kiker v. Pinson, 120 Ga.App. 784, 172 S.E.2d 333, 334. An act under color of office is an act of an officer who claims authority to do the act by reason of his office when the office does not confer on him any such authority. Maryland Cas, Co. v. McCormack, Ky., 488 S.W.2d. 347, 352.

COLOR OF LAW: The appearance or semblance, without the substance, of legal right. Misuse of power, possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state, is action taken under "color of state law." Atkins v. Lanning D.C.Okla., 415 F.Supp. 186, 188.

JUDICIAL KNOWLEDGE: Knowledge of that which is so notorious that everybody, including judges, knows it, and hence need not be proved. Ex parte Ferguson, 112 Tex.Cr.R. 152 , 15 S.W.2d 650, 652.

JUDICIAL NOTICE: The Act by which a court, in conducting a trial, or framing its decision, will, of its own motion or on request of a party, and without the production of evidence, recognize the existence and truth of certain facts, having a bearing on the controversy at bar, which, from their nature, are not properly the subject of testimony, or which are universally regarded as established by common notoriety, e.g., the laws of the state, international law, historical events, the Constitution and course of nature, main geographical features, etc. The cognizance of certain facts which judges and jurors may properly take and act upon without proof, because they already know them. Such notice excuses party having burden of establishing fact from necessity of producing formal proof. Hutchinson v. State, Ind., 477 N.E.2d 850, 854.

JURISDICTIONAL

Pertaining or relating to jurisdiction; conferring jurisdiction; showing or disclosing jurisdiction; defining or limiting jurisdiction; essential to jurisdiction.

COMMON KNOWLEDGE: Refers to what court may declare applicable to action without necessity of proof. It is knowledge that every intelligent person has, and includes matters of learning, experience, history, and facts of which judicial notice may be taken. Shelly v. Chilton's Adm'r 236 Ky. 221, 32 S.W.2d 974, 977.

Mens Rea

A guilty mind; a guilty or wrongful purpose; a criminal intent. Guilty knowledge and willfulness. United States v. Greenbaum, C.C.A.N.J., 138 F.2d 437, 438

Mens Legis

The mind of the law; that is, the purpose, spirit, or intention of a law of the law generally.

Ex Turpi Causa Non Oritur Actio

Out of a base [illegal, or immoral] consideration, an action does [can] not arise. 1 Selw. N.P. 63; Broom, Max. 730 732; Story, Ag § 195. No disgraceful matter can ground an action. Eidson v. Maddox, 195 Ga. 641, 24 S.E. 2d 895, 897.

Esquire

In English law. A title of dignity next above gentleman, and below knight. Also a title of office given to sheriffs, serjeants, and barristers at law, justices of the peace, and others. 1 Bll.Comm. 406; 3 Steph.Comm. 15, note; Tomlins. On the use of this term in American law, particularly as applied to justices of the peace and other inferior judicial officers, see Christian v. Ashley County, 24 Ark. 151; Com. V. Vance, 15 Serg. & R., Pa., 37.

Jural: Pertaining to natural or positive right, or to the doctrines of rights and obligation; as "jural relations." Of or pertaining to jurisprudence; juristic; juridical. Recognized or sanctioned by positive law; embraced within, or covered by, the rules and enactments of positive law. Founded in law; organized upon the basis of a fundamental law, and existing for the recognition and protection of rights.

Common Law: As distinguished from statutory 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. **California Civil Code §22.2**, provides that the "common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in all courts of this State."

Domicile: A person's legal home. That place where a man has his true, fixed, and permanent home and principal establishment, and to which whenever is is absent he has the intention of returning. Smith v. Smith, 206 Pa.Super. 310, 213 A.2d 94. "Residence" signifies living in particular locality while "domicile" means living in that locality with intent to make it a fixed and permanent home. Schreiner v. Schreiner, Tex.Civ.App., 502 S.W.2d 840, 842. For the purpose of federal diversity jurisdiction, "citizenship" and "domicile" are synonymous. Hendry v. Masonite Corp., C.A.Miss., 455 F2d 955.

Domestic: Pertaining, belonging, or relating to a home, a domicile, or to the place of birth, origin, creation, or transaction.

Terrorism: "Act of terrorism" means an activity that involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the Unites States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; and appears to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion, or (iii) to affect the conduct of a government by assassination or kidnapping. 18 U.S.C.A. §3077.

Patriot: A person who loves and loyally or zealously supports his own country.

Libel: A method of defamation expressed by print, writing, picture, or signs. In its most general sense, any publication that is injurious to the reputation of another. A false and unprivileged publication in writing of

defamatory material. Bright v. Los Angeles Unified School Dist., 51 Cal.App.3d 852, 124 Cal.Rptr. 598, 604. A maliciously written or printed publication which tends to blacked a person's reputation or to expose him to public hatred, contempt, or ridicule, or to injure him in his business or profession. Corabi v. Curtis Pub.Co., 441 Pa. 432, 273 A.2d 899, 904.

Aliunde

From another source; from elsewhere; from outside. Evidence aliunde. Evidence from outside, from another source. In certain cases a written instrument may be explained by evidence aliundo, that is, by evidence drawn from sources exterior to the instrument itself, e.g., the testimony of a witness to conversations, admissions, or preliminary negotiations.

At Law

According to law; by, for, or in law; particularly in distinction from that which is done in or according to equity; or in titles such as sergeant at law, barrister at law, attorney or counselor at law. Hooker v. Nichols, 116 N..C. 157, 21 S.E. 208.

Attorney

In the most general sense this term denotes an agent or substitute, or one who is appointed and authorized to act in the place of stead of another. Nardi v. Poinsatte, D.C.Ind., 46 F.2d 347, 348. An agent, or one acting on behalf of another. Sherts v. Fulton Nat. aoLcaster, 342 Pa. 337, 21 A.2d 18.

Pettifogger

A lawyer who is employed in a small or mean business, or who carries on a disreputable business by unprincipled or dishonorable means.

Shyster

A trickish knave; one who carries on any business, especially a legal business, in a dishonest way. Gribble v. Press Co., 34 Minn. 343, 25 N.W. 710; Nolan v. Standard Pub. Co., 67 Mont. 212, 216 P. 571, 574. An unscrupulous practitioner who disgraces his profession by doing mean work, and resorts to sharp practice to do it. Bailey v. Kalamazoo Pub. Co., 40 Mich. 251

Pettifogging Shyster

This "combination" of epithets every lawyer and citizen knows belongs to none but unscrupulous practitioners who disgrace their profession by doing mean work, and resort to sharp practice to do it." Bailey v. Kalamazoo Pub.Co., 40 Mich. 251, 256

Attorney in Fact

A private attorney authorized by another to act in his place and stead, either for some particular purpose, as to do a particular act, or for the transaction of business in general, not of a legal character. This authority is conferred by an instrument in writing, called a "letter of attorney," or more commonly a "power of attorney," Treat v. Tolman, C.C.AN.Y., 113 F. 893, 51 C.C.A. 522; Massachusetts Bonding & Insurance Co. v. Bankers' Surety Co., 96 Ind.App. 250, 179 N.E. 329, 334.

> The above noted common American English definitions are a matter of common knowledge and application and are found defined in Webster's Dictionary, Black's Law Dictionary and the Colorado Revised Statutes.
>
> Following commonly understood definitions are found in Bouvier's Law Dictionary.

CONTRACT.

This term, in its more extensive sense, includes **every description of agreement**, or obligation, whereby one party becomes bound to another to pay a sum of money, or to do or omit to do a certain act; or, a contract is an act which contains a perfect obligation. In its more confined sense, it is an agreement between two or more persons, concerning something to be, done, whereby both parties are bound to each other, *or one is bound to the other. 1 Pow. Contr. 6; Civ. Code of Lo. art. 1754; Code Civ. 1101; Poth. Oblig. pt. i. c. 1, S. 1, Sec. 1; Blackstone, (2 Comm. 442,) defines it to be an agreement, upon a sufficient consideration, to do or not to do a particular thing. A contract has also been defined to be a compact between two or more persons. 6 Cranch, R. 136.

2. Contracts are divided into **express** or **implied**. An express contract is one where the terms of the agreement are openly uttered and avowed at the time of making, as to pay a stated price for certain goods. 2 Bl. Com. 443.

3. **Express contracts** are of three sorts

1. BI parol, or in writing, as contradistinguished from specialties.
2. By specialty or under seal.
3. Of record.

4.-1. **A parol contract** is defined to be a bargain or voluntary agreement made, either orally or in writing not under, seal, upon a good consideration, between two or more persons capable of contracting, to, do a lawful act, or to omit to do something, the performance whereof is not enjoined by law. 1 Com. Contr. 2 Chit. Contr. 2.

5. From this definition it appears, that to constitute a sufficient parol agreement, there must be,
1st. The **reciprocal or mutual assent of two or more persons competent to contract**. Every agreement ought to be so certain and complete, that each party may have an action upon it; and the agreement would be incomplete if either party withheld his assent to any of its terms. Peake's R. 227; 3 T. R. 653; 1 B. & A. 681 1 Pick. R. 278.

The agreement must, in general, be **obligatory on both parties**, or it binds neither. To this rule there are, however, some exceptions, as in the case of an infant's contract. He may always sue, though he cannot be sued, on his contract. Stra. 937. See other instances; 6 East, 307; 3 Taunt. 169; 5 Taunt. 788; 3 B. & C. 232.

6.-2nd. There must be **a good and valid consideration**, motive or inducement to make the promise, upon which a party is charged, for this is of the very essence of a contract under seal, and must exist, although the contract be reduced to writing. 7 T. R. 350, note (a); 2 Bl. Coin. 444. See this Dict. Consideration; Fonb. Tr. Eq. 335, n. (a) Chit. Bills. 68.

7.-3rd. There must be **a thing to be done**, which is not forbidden; or a thing to be omitted, the performance of which is not enjoined by law. A fraudulent or immoral contract, or one contrary to public policy is void Chit. Contr. 215, 217, 222: and it is also void if contrary to a statute. Id. 228 to 250; 1 Binn. 118; 4 Dall. 298 4 Yeates, 24, 84; 6 Binn. 321; 4 Serg & Rawle, 159; 4 Dall. 269; 1 Binn. 110 2 Browne's R. 48. As to contracts which are void for want of a compliance with the statutes of frauds, see Frauds, Statute of.

8.-2. The second kind of express contracts are specialties, or those which are made under seal, as deeds, bonds, and the like; they are not merely written, but delivered over by the party bound. The solemnity and deliberation with which, on account of the ceremonies to be observed, a deed or bond is presumed to be entered into, attach to it an importance and character which do not belong to a simple contract. In the case of a specially, no consideration is necessary to give it validity, even in a court of equity. Plowd. 308; 7 T. R. 477; 4 B. & A. 652; 3 T. R. 438; 3 Bingh. 111, 112; 1 Fonb. Eq, 342, note When, a contract by specialty has been changed by a parol agreement, the whole of it becomes a parol contract. 2 Watts, 451; 9 Pick. 298; see 13 Wend. 71.

9.-3. The highest kind of express contracts are those of record, such as judgments, recognizances of bail, and in England, statutes merchant and staple, and other securities of the same nature, cutered into with the intervention of some public authority. 2 Bl. Com. 465. See Authentic Facts.

10. Implied contracts are such as reason and justice dictates, and which, therefore, the law presumes every man undertakes to perform; as if a man employs another to do any business for him, or perform any work, the **law implies that the former contracted or undertook to pay the latter as much as his labor is worth**; see Quantum merwit; or **if one takes up goods from a tradesman, without any agreement of price, the law concludes that he contracts to pay their value**. 2 Bl. Com. 443. See Quantum valebant; Assumpsit. Com. Dig. Action upon the case upon assumpsit, A 1; Id. Agreement.

11. By the laws of Louisiana, when considered as to the obligation of the parties, contracts are either unilateral or reciprocal. When the party to whom the engagement is made, makes no express agreement on his part, the contract is called unilateral, even in cases where the law attaches certain obligations to his acceptance. Civ.

Code of Lo. art. 1758. A loan for use, and a loan of money, are of this kind. Poth. Ob. P. 1, c. 1, s. 1, art. 2. A reciprocal contract is where the parties expressly enter into mutual engagements such as sale, hire, and the like. Id.

12. Contracts, considered in relation to their substance, are either commutative or independent, principal or accessory.

13. **Commutative contracts**, are those in which what is done, given or promised by one party, is considered as equivalent to, or in consideration of what is done, given or promised by the other. Civ. Code of Lo. art. 1761.

14. Independent contracts are those in which the mutual acts or promises have no relation to each other, either as equivalents or as considerations. Id. art. 1762.

15. A principal contract is one entered into by both parties, on their accounts, or in the several qualities they assume.

16. An accessory contract is made for assuring the performance of a prior contract, either by the same parties or by others, such as suretyship, mortgage, and pledges. Id. art. 1764. Poth. Obl. p. 1, c. 1, s. 1, art. 2, n. 14.

17. Contracts, considered in relation to the motive for. making them, are either **gratuitous** or onerous. **To be gratuitous**, the object of a contract must be to **benefit the person with whom it is made**, without any profit or advantage, received or promised, as a consideration for it. It is not, however, the less gratuitous, if it proceed either from gratitude for a benefit before received, or from the hope of receiving one hereafter, although such benefits be of a pecuniary nature. Id. art. 1766. Any thing given or promised, as a consideration for the engagement or gift; any service, interest, or condition, imposed on what is given or promised, although unequal to it in value, makes a contract **onerous** in its nature. Id. art. 1767.

Onerous Cause, civil law., A valuable consideration.

Onerous Contract, civil law. One made for a consideration given or promised, however small. Civ. Code of Lo. art. 1767.

Onerous Gift, civil law.

The gift of a thing subject to certain charges which the giver has imposed on the donee. Poth. h.t.

18. Considered in relation to their effects, contracts are either certain or hazardous. A contract is certain, when the thing to be done is supposed to depend on the will of the party, or when, in the usual course of events, it must happen in the manner stipulated. It is hazardous, when the performance of that which is one of its objects, depends on an uncertain event. Id. art. 1769.

19. Pothier, in his excellent treatise on Obligations, p. 1, c. 1, s. 1, art. 2, divides contracts under the five following heads:

20.-1. Into **reciprocal** and unilateral.

21.-2. Into consensual, or those which are formed by the mere consent of the parties, such as sale, hiring and mandate; and those in which it is necessary there should be **something more than mere consent, such as loan of money, deposit or pledge, which from their nature require a delivery of the thing**, (rei); whence they are called real contracts. See Real Contracts.

22.-3. Into first, **contracts of mutual interest**, which are such as are entered into for the reciprocal interest and utility of each of the parties, as sales exchange, **partnership**, and the like.

23.-2d. Contracts of beneficence, which are those by which only one of the contracting parties is benefited, as loans, deposit and mandate. 3d. **Mixed contracts, which are those by which one of the parties confers a benefit on the other, receiving something of inferior value in return**, such as a donation subject to a charge,

24.-4. Into principal and accessory.

25.-5. Into those which are subjected by the civil law to certain rules and forms, and **those which are regulated by mere natural justice**. See, generally, as to contracts, Bouv. Inst. Index, h.t.; Chitty on Contracts; Comyn on Contracts; Newland on Contracts; Com. Dig. titles Abatement, E 12, F 8; Admiralty, E 10, 11; Action upon the Case upon Assumpsit; Agreement; Bargain and Sale; Baron and Feme, Q; Condition; Dett, A 8, 9; Enfant, B 5; Idiot, D 1 Merchant, E 1; Pleader, 2 W, 11, 43; Trade D 3; War, B 2; Bac. Abr. tit. Agreement; Id. Assumpsit; Condition; Obligation; Vin. Abr. Condition; Contracts and Agreements; Covenants; Vendor, Vendee; Supp. to Ves. jr. vol. 2, p. 260, 295, 376, 441; Yelv. 47; 4 Ves. jr., 497, 671; Archb. Civ. Pl. 22; Code Civ. L. 3, tit. 3 to 18; Pothier's Tr. of Obligations Sugden on Vendors and Purchasers; Story's excellent treatise on Bailments; Jones on

Bailments; Toullier, Droit Civil Francais, tomes 6 et 7; Ham. Parties to Actions, Ch. 1; Chit. Pr. Index, h.t.; and the articles Agreement; Apportionment; Appropriation; Assent; Assignment; Assumpsit; Attestation; Bailment; Bargain and sale; Bidder; Bilateral contract; Bill of Exchange; Buyer; Commodate; Condition; Consensual contract; Conjunctive; Consummation; Construction; Contracto of benevolence; Covenant; Cumulative contracts; Debt; Deed; Delegation. Delivery; Discharge Of a contract; Disjunctive; Equity of a redemption; Exchange; Guaranty; Impairing the obligation of contracts; Insurance; Interested contracts; Item; Misrepresentation; Mortgage; Mixed contract; Negociorum gestor; Novation; Obligation; Pactum constitutae, pecuniae; Partners; Partnership; Pledge; Promise; Purchaser; Quasi contract; Representation; Sale; Seller; Settlement; Simple contract; Synallagmatic contract; Subrogation; Title; Unilateral contract.

Agreement, contract.

The consent of two or more persons concurring, respecting the transmission of some property, right or benefit, with a view of contracting an obligation. Bac. Ab. h.t.; Com. Dig. h.t.; Vin. Ab. h.t.;Plowd. 17; 1 Com. Contr. 2; 5 East's R. 16. It will be proper to consider, 1, the requisites of an agreement; 2, the kinds of agreements; 3, how they are annulled.

2.-1. To render an agreement complete six things must concur; there must be,
1, a person able to contract;
2, a person able to be contracted with;
3, a thing to be contracted for;
4, a lawful consideration, or quid pro quo;
5, words to express the agreement;
6, the assent of the contracting parties. Plowd. 161; Co. Litt. 35, b.

3.-2. As to their form, agreements are of two kinds;
1, by parol, or, in writing, as contradistinguished from specialties;
2, by specialty, or under seal.

In relation to their performance, agreements are executed or executory.

An agreement is said to be executed when two or more persons make over their respective rights in a thing to one another, and thereby **change the property therein**, either presently and at once, or at a future time, upon some event that shall give it full effect, without either party trusting to the other; as where things are bought, paid for and delivered.

Executory agreements, in the ordinary acceptation of the term, are such contracts as rest on articles, memorandums, **parol promises**, or **undertakings**, and the like, to be performed in future, or which are entered into **preparatory to more solemn and formal alienations of property**. Powell on Cont.

Agreements are also conditional and unconditional. They are conditional when some condition must be fulfilled before they can have full effect; they are **unconditional when there is no condition attached**;

4.-3. Agreements are annulled or rendered of no effect, first, by the acts of the parties, as, by payment; release - accord and satisfaction; rescission, which is express or implied; 1 Watts & Serg. 442; defeasance; by novation: secondly, by the acts of the law, as, confusion; merger; lapse of time; death, as when a man who has bound himself to teach an apprentice, dies; extinction of the thing which is the subject of the contract, as, when the agreement is to deliver a certain horse and before the time of delivery he dies. See Discharge of a Contract.

5. The writing or instrument containing an agreement is also called an agreement, and sometimes articles of agreement.(q.v.)

6. It is proper, to remark that there is much difference between an agreement and articles of agreement which are only evidence of it. **From the moment that the parties have given their consent, the agreement or contract is formed**, and, whether it can be proved or not, it has not less the quality to bind both contracting parties. A want of proof does not make it null, because that proof may be supplied aliunde, and the moment it is obtained, the contract may be enforced.

Aliunde. From another place; evidence given aliunde, as, when a will contains an ambiguity, in some cases, in order to ascertain the meaning of the testator, evidence aliunde will be received.

7. Again, the agreement may be null, as when it was obtained by fraud, duress, and the like; and the articles of agreement may be good, as far as the form is concerned. Vide Contract. Deed; Guaranty; Parties to Contracts.

ACCEPTANCE, contracts. An agreement to receive something which has been offered.

2. **To complete the contract, the acceptance must be absolute and past recall**, 10 Pick. 826; 1 Pick. 278; and communicated to the party making the offer at the time and place appointed. 4. Wheat. R. 225; 6 Wend. 103.

3. In many cases acceptance of a thing waives the right which the party receiving before had; as, for example, the **acceptance of rent after notice to quit**, in general waives the notice. See Co. Litt. 211, b; Id. 215, a.; and Notice to quit.

4. The acceptance may be express, as when it is openly declared by the party to be bound by it; or implied, as where the party acts as if he had accepted. *The offer, and acceptance must be in some medium understood by, both parties; it may be language, symbolical, oral or written*. For example, persons deaf and dumb may contract by symbolical or written language. At auction sales, the contract, generally symbolical; a nod, a wink, or some other sign by one party, imports that he makes an offer, and knocking down a hammer by the other, that he agrees to it. 3 D. & E. 148. This subject is further considered under the articles Assent and Offer, (q v.)

5. Acceptance of a bill of exchange the act by which the drawee or other person evinces his assent or intention to comply with and be bound by, the request contained in a bill of exchange to pay the same; or in other words, it is an engagement to pay the bill when due. 4 East, 72. It will be proper to consider, 1, by whom the acceptance ought to be made; 2, the time when it is to be made; 3, the form of the acceptance; 4, its extent or effect.

6.-1. The acceptance must be made by the drawee himself, or by one authorized by him. On the presentment of a bill, the holder has a right to insist upon such an acceptance by the drawee as will subject him at all events to the payment of the bill, according to its tenor; consequently such drawee must have capacity to contract, and to bind himself to pay the amount of the bill, or it, may be treated as dishonored. Marius, 22. See 2 Ad. & EH. N. S. 16, 17.

7.-2. As to the time when, a bill ought to be accepted, it may be before the bill is drawn; in this case it must be in writing; 3 Mass. 1; or it may be after it is drawn; when the bill is presented, the drawee must accept the bill within twenty-four hours after presentment, or it should be treated as dishonored. Chit. Bills, 212. 217. On the refusal to accept, even within the twenty-four hours, it should be protested. Chit. Bills, 217. The acceptance may be made after the bill is drawn, and before it becomes due or after the time appointed for payment 1 H. Bl. 313; 2 Green, R. 339 ; and even after refusal to accept so as to bind the acceptor.

8. The acceptance may also be made supra protest, which is the acceptance of the bill, after protest for non-acceptance by the drawee, for the honor of the drawer, or a particular endorser. When a bill has been accepted supra protest for the honor of one party to the bill, it may be accepted supra protest, by another individual, for the honor of another. Beawes, tit. Bills of Exchange, pl. 52; 5 Campb. R. 447.

9.-3. As to the form of the acceptance, it is clearly established it may be in writing on the bill itself, or on another paper, 4 East, 91; or it may be verbal, 4 East, 67; 10 John. 207; 3 Mass. 1; or it may be expressed or implied.

10. An express acceptance is an agreement in direct and express terms to pay a bill of exchange, either by the party on whom it is drawn, or by some other person, for the honor of some of the parties. It is Usually in the words accepted or accepts, but other express words showing an engagement to pay the bill will be equally binding.

11. An implied acceptance is an agreement to pay a bill, not by direct and express terms, but by any acts of the party from which an express agreement may be fairly inferred. For example, if the drawee writes "seen," "presented," or any, other thing upon it, (as the day on which it becomes due,) this, unless explained by other circumstances, will constitute an acceptance.

12.-4. An acceptance in regard to its extent and effect, may be either absolute, conditional, or partial.

13. An absolute acceptance is a positive engagement to pay the bill according to its tenor, and is usually made by writing on the bill "accepted," and subscribing the drawee's name; or by merely writing his name either at the bottom or across the bill. Comb. 401; Vin. Ab. Bills of Exchange, L 4; Bayl. 77; Chit. Bills, 226 to 228. But in order to bind another than the drawee, it is requisite his name should appear. Bayl. 78.

14. A conditional acceptance is one which will subject the drawee or acceptor to the payment of the money on a contingency, Bayl. 83, 4, 5; Chit. Bills, 234; Holt's C. N. P. 182; 5 Taunt, 344; 1 Marsh. 186. The holder is not bound to receive such an acceptance, but if he do receive it he must observe its terms. 4 M.& S. 466; 2 W. C. C. R. 485; 1 Campb. 425.

15. A partial acceptance varies from the tenor of the bill, as where it is made to pay part of the sum for which the bill is drawn, 1 Stra. 214; 2 Wash. C. C. R. 485; or to pay at a different time, Molloy, b. 2, c. 10, s. 20; or place, 4. M.& S. 462.

OFFER, contracts. A proposition to do a thing.

2. An offer ought to contain a right, if accepted, of compelling the fulfillment of the contract, and this right when not expressed, is always implied.

3. By virtue of his natural liberty, a man may change his will at any time, if it is not to the injury of another; he may, therefore, revoke or recall his offers, at any time before they have been accepted; and, in order to deprive him of this right, the offer must have been accepted on the terms in which it was made. 10 Ves. 438; 2 C. & P. 553.

4. Any qualification of, or departure from those terms, invalidates the offer, unless the same be agreed to by the party who made it. 4 Wheat. R. 225; 3 John. R. 534; 7 John. 470; 6 Wend. 103.

5. When the offer has been made, the party is presumed to be willing to enter into the contract for the time limited, and, if the time be not fixed by the offer, then until it be expressly revoked, or rendered nugatory by a contrary presumption. 6 Wend. 103. See 8 S. & R. 243; 1 Pick. 278; 10 Pick. 326; 12 John. 190; 9 Porter, 605; 1 Bell's Com. 326, 5th ed.; Poth. Vente, n. 32; 1 Bouv. Inst. n. 577, et seq.; and see Acceptance of contracts; Assent; Bid.

VERBAL. Parol; by word of mouth; as **verbal agreement**; verbal evidence. Not in writing.

PAROL. More properly parole. A French word, which means literally, word or speech. It is used to distinguish contracts which are made **verbally** or in writing not under seal, which are called, parol. contracts, from those which are under seal which bear the name of deeds or specialties (q.v.) 1 Chit. Contr. 1; 7 Term. R. 3 0 351, n.; 3 Johns. Cas. 60; 1 Chit. Pl. 88. It is proper to remark that when a contract is made under seal, and afterwards it is modified verbally, it becomes wholly a parol contract. 2 Watts, 451; 9 Pick. 298; 13 Wend. 71.

2. Pleadings are frequently denominated the parol. In some instances the term parol is used to denote the entire pleadings in a cause as when in an action brought against an infant heir, on an obligation of his ancestors, he prays that the parol may demur, i. e., the pleadings may be stayed, till he shall attain full age. 3 Bl. Com. 300; 4 East, 485 1 Hoffm. R. 178. See a form of a plea in abatement, praying that the parol may demur, in 1 Wentw. Pl. 43; and 2 Chit. Pl. 520. But a devisee cannot pray the parol to demur. 4 East, 485.

3. **Parol evidence is evidence verbally delivered by a witness**. As to the cases when such evidence will be received or rejected, vide Stark, Ev. pt. 4, p. 995 to 1055; 1 Phil. Ev. 466, c. 10, s. 1; Sugd. Vend. 97.

FICTION OF LAW. The assumption that a certain thing is true, and which gives to a person or thing, <u>a quality which is not natural to it</u>, and establishes, consequently, a certain disposition, which, *without the fiction, would be* **repugnant to reason and to truth**.

It is an order of things which does not exist, but which the law prescribe; or authorizes it differs from presumption, because **it establishes as true, something which is false**; whereas presumption supplies the proof of something true. Dalloz, Dict. h.t. See 1 Toull. 171, n. 203; 2 Toull. 217, n. 203; 11 Toull. 11, n. 10, note 2; Ferguson, Moral Philosophy, part 5, c. 10, s. 3 Burgess on Insolvency, 139, 140; Report of the Revisers of the Civil Code of Pennsylvania, March 1, 1832, p. 8.

2. The law never feigns what is impossible fictum est id quod factum non est sed fieri potuit. Fiction is like art; it imitates nature, but never disfigures it, it aids truth, but it ought never to destroy it. It may well suppose that what was possible, but which is not, exists; but it will never feign that what was impossible, actually is. D'Aguesseau, Oeuvres, tome iv. page 427, 47e Plaidoyer.

3. Fictions were invented by the Roman praetors, who, not possessing the power to abrogate the law, were nevertheless willing to derogate from it, under the pretence of doing equity. Fiction is the resource of weakness, which, in order to obtain its object, assumes as a fact, what is known to be contrary to truth: when the legislator desires to accomplish his object, he need not feign, he commands. Fictions of law owe their origin to the legislative usurpations of the bench. 4 Benth. Ev. 300.

4. It is said that every fiction must be framed according to the rules of law, and that every legal fiction must have equity for its object. 10 Co. 42; 10 Price's R. 154; Cowp. 177. To prevent, their evil effects, they are not allowed to be carried further than the reasons which introduced them necessarily require. 1 Lill. Ab. 610; Hawk. 320; Best on Pres. Sec. 20.

5. **The law abounds in fictions**. That an estate is in abeyance; the doctrine of remitter, by which a party who has been disseised of his freehold, and afterwards acquires a defective title, is remitted to his former good title; that one thing done today, is considered as done, at a preceding time by the doctrine of relation; that,

because one thing is proved, another shall be presumed to be true, which is the case in all presumptions; that the heir, executor, and administrator stand by representation, in the place of the deceased are all fictions of law. "Our various introduction of John Doe and Richard Roe," says Mr. Evans, (Poth. on Ob. by Evans, vol. n. p. 43,) "our solemn process upon disseisin by Hugh Hunt; our casually losing and finding a ship (which never was in Europe) in the parish of St. Mary Le Bow, in the ward of Cheap; our trying the validity of a will by an imaginary, wager of five pounds; our imagining and compassing the king's death, by giving information which may defeat an attack upon an enemy's settlement in the antipodes our charge of picking a pocket, or forging a bill with force and arms; of neglecting to repair a bridge, against the peace of our lord the king, his crown and dignity are circumstances, which, looked at by themselves, would convey an impression of no very favorable nature, with respect to the wisdom of our jurisprudence." Vide 13 Vin. Ab. 209; Merl. Rep. h.t.; Dane's Ab. Index, h.t.; and Rey, des Inst. de I'Angl. tome 2, p. 219, where he severely cesures these fictions as absurd and useless.

RES JUDICATA, practice. The decision of a legal or equitable issue, by a court of competent jurisdiction.

2. It is a general principle that such decision is binding and conclusive upon all other courts of concurrent power. This principle pervades not only our own, but all other systems of jurisprudence, and has become a rule of universal law, founded on the soundest policy. If, therefore, Paul sue Peter to recover the amount due to him upon a bond and on the trial the plaintiff fails to prove the due execution of the bond by Peter, in consequence of which a verdict is rendered for the defendant, and judgment is entered thereupon, this judgment, till reversed on error, is conclusive upon the parties, and Paul cannot recover in a subsequent suit, although he may then be able to prove the due execution of the bond by Peter, and that the money is due to him, for, to use the language of the civilians, res judicata facit ex albo nigrum, ex nigro album, ex curvo redum, ex recto curvum.

3. The constitution of the United States and the amendments to it declare, that no fact, once tried by a jury, shall be otherwise re-examinable in any court of the United States than **according to the rules of the common law.** 3 Pet. 433; Dig. 44, 2; and Voet, Ibid; Kaime's Equity, vol. 2, p. 367; 1 Johns. Ch. R. 95; 2 M. R. 142; 3 M. R. 623; 4 M. R. 313, 456, 481; 5 M. R. 282, 465; 9 M. R. 38; 11 M. R. 607; 6 N. S. 292; 5 N. S. 664; 1 L. R. 318; 8 L. R. 187; 11 L. R. 517. Toullier, Droit Civil Francais, vol. 10, No. 65 to 259.

4. But in order to make a matter res judicata there must be a concurrence of the four conditions following, namely: 1. Identity in the thing sued for. 2. Identity of the cause of action; if, for example, I have claimed a right of way over Blackacre, and a final judgment has been rendered against me, and afterwards I purchase Blackacre, this first decision shall not be a bar to my recovery, when I sue as owner of the land, and not for an easement over it, which I claimed as a right appurtenant to My land Whiteacre. 3. Identity of persons and of parties to the action; this rule is a necessary consequence of the rule of natural justice: ne inauditus condemnetur. 4. Identity of the quality in the persons for or against whom the claim is made; for example, an action by Peter to recover a horse, and a final judgment against him, is no bar to an action by Peter, administrator of Paul, to recover the same horse. Vide, Things adjudged.

RES, PROPERTY:. Things. The terms "Res," "Bona," "Biens," used by jurists who have written in the Latin and French languages, are intended to include movable or personal, as well as immovable or real property. 1 Burge, Confl. of Laws, 19. See Biens; Bona; Things.

In RE

In the affair; in the matter of; concerning; re. This is the usual method of entitling a judicial proceeding in which there are not adversary parties, but merely some *res* concerning which judicial action is to be taken, such as a bankrupt's estate, an estate in the
probate court, a proposed public highway, etc. It is also sometimes used as a designation of a proceeding where one party makes an application on his own behalf, but such proceedings are more usually entitled "*Ex parte*_____."

Representation of Persons;

A fiction of the law, the effect of which is to put the representative in the place, degree, or right of the person represented.

2. The heir represents his ancestor. Bac. Abr. Heir and Ancestor, A. The devisee, his testator; the executor, his testator; the administrator, his intestate; the successor in corporations, his predecessor. And generally speaking they

are entitled to the rights of the persons whom they represent, and bound to fulfill the duties and obligations, which were binding upon themin those characters.

3. Representation was unknown to the Romans, and was invented by the commentators and doctors of the civil law. Toull. Dr. Civ. Fr. liv. 3, t. 1, c. 3, n. 180. Vide Ayl. Pand. 397; Dall. Diet. mot Succession, art. 4, Sec. 2.

REMITTOR, contracts. A person who makes a remittance to another.

REMEDY. The means employed to enforce a right or redress an injury.

2. The importance of selecting a proper remedy is made strikingly evident by the following statement. "Recently a common law barrister, very eminent for his legal attainments, sound opinions, and great practice, advised that there was no remedy whatever against a married woman, who, having a considerable separate estate, had joined with her husband in a promissory note for X2500, for a debt of her husband, because he was of opinion that the contract of a married woman is absolutely void, and referred to a decision to that effect, viz. Marshall v. Rutton, 8 T. R. 545, he not knowing, or forgetting, that in equity, under such circumstances, payment might have been enforced out of the separate estate. And afterwards, a very eminent equity counsel, equally erroneously advised, in the same case, that the remedy was only in equity, although it appeared upon the face of the case, as then stated, that, after the death of her husband, the wife had promised to pay, in consideration of forbearance, and upon which promise she might have been arrested and sued at law. If the common law counsel had properly advised proceedings in equity, or if the equity counsel had advised proceedings by arrest at law, upon the promise, after the death of the husband, the whole debt would have been paid. But, upon this latter opinion, a bill in chancery was filed, and so much time elapsed before decree, that a great part of the property was dissipated, and the wife escaped with the residue into France, and the creditor thus wholly lost his debt, which would have been recovered, if the proper proceedings had been adopted in the first or even second instance. This is one of the very numerous cases almost daily occurring, illustrative of the consequences of the want of, at least, a general knowledge of every branch of law."

3. Remedies may be considered in relation to 1. The enforcement of contracts. 2. The redress of torts or injuries.

4.-Sec. 1. The remedies for the enforcement of contracts are generally by action. The form of these depend upon the nature of the contract. They will be briefly considered, each separately.

5.-1. The breach of parol or simple contracts, whether **verbal** or **written**, **express** or **implied**, for the payment of money, or for the performance or omission of any other act, is **remediable by action of assumpsit**. (q, v.) This is the proper remedy, therefore, to recover money lent, paid, and had and received to the use of the plaintiff; and in some cases though the money have been received tortiously or by duress of, the person or goods, it may be recovered in this form of action, as, in that case, the law implies a contract. 2 Ld. Raym. 1216; 2 Bl. R. 827; 3 Wils. R. 304; 2 T. R. 144; 3 Johns. R. 183. This action is also the proper remedy upon wagers, feigned issues, and awards when the submission is not by deed, and to recover money due on foreign judgments; 4 T. R. 493; 3 East, R. 221; 11 East, R; 124; and on by-laws. 1 B. & P. 98.

6.-2. To recover money due and unpaid upon legal liabilities, Hob. 206; or upon simple contracts either express or implied, whether verbal or written, and upon contracts under seal or of record, Bull. N. P. 167; Com. Dig. Debt, A 9; and on statutes by a party grieved, or by a common informer, whenever the demand is for a sum certain, or is capable of being readily reduced to a certainty; 7 Mass. R. 202; 3 Mass. R. 309, 310; the remedy is by action of debt. Vide Debt.

7.-3. When a covenantee, has sustained damages in consequence of the non-performance of a promise under seal, whether such promise be contained in a deed poll, indenture, or whether it be express or implied by law from the terms of the deed; or whether the damages be liquidated or unliquidated, the proper remedy is by action of covenant. Vide Covenant.

8.-4. For the detention of a chattel, which the party obtained by virtue of a contract, as a bailment, or by some other lawful means, as by finding, the. owner, may in general support an action of detinue, (q.v.) and replevin; (q.v.) or when he has converted the property to his own use, trover and conversion. (q.v.)

9.-Sec. 2. Remedies for the redress of injuries. These remedies are either public, by indictment, when the injury to the individual or to his property affects the public; or private, when the tort is only injurious to the individual.

10. There are three kinds of remedies, namely,

1. The preventive.

2. That which seeks for a compensation.
3. That which has for its object punishment.

11.-1. The preventive, or removing, or abating remedies, are those which may be by acts of the party aggrieved, or by the intervention of legal proceedings; as, in the case of injuries to the. person, or to personal or real property, defence, resistance, recaption, abatement of nuisance, and surety of the peace, or injunction in equity and perhaps some others.

12.-2. Remedies for compensation are those which may he either by the acts of the party aggrieved, or summarily before justices, or by arbitration, or action, or suit at law or in equity.

13.-3. Remedies which have for their object punishments, or compensation and punishments, are either summary proceedings before magistrates, or indictment, etc. The party injured in many cases of private injuries, which are also a public offence, as, batteries and libels, may have both remedies, a public indictment for the criminal offence, and a civil action for the private wrong. When the law gives several remedies, the party entitled to them may select that best calculated to answer his ends. Vide 2 Atk. 344; 4 Johns. Ch. R. 140; 6 Johns. Ch. Rep. 78; 2 Conn. R. 353; 10 Johns. R. 481; 9 Serg. & Rawle, 302. In felony and some other cases, the private injury is so far merged in the public crime that no action can be maintained for it, at least until after the public prosecution shall have been ended. Vide Civil remedy.

14. It will be proper to consider, 1. The private remedies, as, they seek the prevention of offences, compensation for committing them, and the punishment of their authors. 2. The public remedies, which have for their object protection and punishment.

15.-1. **Private remedies**. When the right invaded and the injury committed are merely private, no one has a right to interfere or seek a remedy except the party immediately injured and his professional advisers. But **when the remedy is even nominally public, and prosecuted in the name of the commonwealth, any one may institute the proceedings, although not privately injured**. 1 Salk. 174; 1 Atk. 221; 8 M. & S. 71.

16. Private remedies are, 1, By the act of the party, or by legal proceedings to prevent the commission or repetition of an injury, or to remove it; or, 2. They are to recover compensation for the injury which has been committed.

17.-1. The preventive and removing remedies are principally of two descriptions, namely,
1st. Those by the act of the party himself, or of certain relations or third persons permitted by law to interfere, as with respect to the person, by self-defence, resistance, escape, rescue, and even prison breaking, when the **imprisonment is clearly illegal**; or in case of personal property, by resistance or recaption; or in case of real property, resistance or turning a trespasser out of his house or off his land, even with force; 1 Saund. 81, 140, note 4; or by apprehending a wrong-doer, or by reentry and regaining possession, taking care not to commit a forcible entry, or a breach of the peace; or, in case of nuisances, public or private, by abatement; vide Abatement of nuisances; or remedies by distress, (q.v.) or by set off or retainer. See, as to remedies by act of the parties, 1 Dane's Ab. c. 2, p. 130.

18.-2. When the injury is complete or continuing, the remedies to obtain compensation are either specific or in damages. These are summary before justices of the peace or others; or formal, either by action or suit in courts of law or equity, or in the admiralty courts. As an example of summary proceedings may be mentioned the manner of regaining possession by applying to magistrates against forcible entry and detainer, where the statutes authorize the proceedings. Formal proceedings are instituted when certain rights have been invaded. If the injury affect a legal right, then the remedy is in general by action in a court of law; but if an equitable right, or if it can be better investigated in a court of equity,' then the remedy is by bill. Vide Chancery.

19.-2. Public remedies. These may be divided into such as are intended to prevent crimes, and those where the object is to punish them. 1. The preventive remedies may be exercised without any warrant either by a constable, (q.v.) or other officer, or even by a private citizen. Persons in the act of committing a felony or a broach of the peace may arrested by any one. Vide Arrest. A public nuisance may be abated without any other warrant or authority than that given by the law. Vide Nuisance. 2. The proceedings intended as a punishment for offences, are either summary, vide Conviction; or by indictment. (q.v.)

20. Remedies are specific and cumulative; the former are those which can alone be applied to restore a right or punish a crime; for example, where a statute makes unlawful what was lawful before, and gives a particular remedy, that is specific and must be pursued, and no other. Cro. Jac. 644; 1 Salk. 4 5; 2 Burr. 803. But when an offence was antecedently punishable by a common law proceeding, as by indictment, and a statute prescribes a particular remedy, there such particular remedy is cumulative, and proceedings may be had at common law or

under the statute. 1 Saund. 134, n. 4. Vide Bac. Ab. Actions in general, B; Bouv. Inst. Index, h.t.; Actions; Arrest; Civil remedy; Election of Actions.

RELATOR. A rehearser or teller; one who, by leave of court, brings an information in the nature of a quo warranto.

2. At common law, strictly speaking, no such person as a relator to an information is known; he being a creature of the statute 9 Anne, c. 20.

3. In this country, even where no statute similar to that of Anne prevails, informations are allowed to be filed by private persons desirous to try their rights, **in the name of the attorney general**, and these are commonly called relators; though no judgment for costs can be rendered for or against them. 2 Dall. 112; 5 Mass. 231; 15 Serg. & Rawle, 127; 3 Serg. & Rawle, 52; Ang. on Corp. 470. In chancery the relator is responsible for costs. 4 Bouv. Inst. n. 4022.

REGULAR AND IRREGULAR PROCESS. Regular process is that which has been lawfully issued by a court or magistrate, having competent jurisdiction. **Irregular process** is that which has been **illegally issued**.

2. When the process is regular, and the defendant has been damnified, as in the case of a malicious arrest, his remedy is by an action on the case, and not trespass: when it is irregular, the remedy is by action of trespass.

3. **If the process be wholly illegal** or misapplied as to the person intended to be arrested, without regard to any question of fact, or whether innocent or guilty, or the existence of any debt, then **the party imprisoned may legally resist the arrest and imprisonment**, and may escape, be rescued, or even break prison; but if the process and imprisonment were in form legal, each of these acts would be punishable, however innocent the defendant might be, for he ought to submit to legal process, and obtain his release by due course of law. 1 Chit. Pr. 637; 5 East, R. 304, 308; S. C. 1 Smitt's Rep. 555; 6 T. R. 234; Foster, C. L. 312; 2 Wils. 47; 1 East, P. C. 310 Hawk. B. 2, c. 19, s. 1, 2.

4. When a party has been arrested on process which has afterwards been set aside for irregularity, he may bring an action of trespass and recover damages as well against the attorney who issued it, as the party, though such process will justify the officer who executed it. 8 Adolph. & Ell. 449; S. C. 35 E. C. L. R. 433; 15 East, R. 615, note c; 1 Stra. 509; 2 W. Bl. Rep., 845; 2 Conn. R. 700; 9 Conn. 141; 11 Mass. 500; 6 Greenl. 421; 3 Gill & John. 377; 1 Bailey, R. 441; 2 Litt. 234; 3 S. & R. 139 12 John. 257 3 Wils. 376; and vide Malicious Prosecution.

IN PROPRIA PERSONA. In his own person; himself; as the defendant appeared in propria persona; the plaintiff argued the cause in propria persona.

IMPAIRING THE OBLIGATION OF CONTRACTS. The Constitution of the United States, art. 1, s. 9, cl. 1, declares that no state shall "pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts."

2. Contracts, when considered in relation to their effects, are executed, that is, by transfer of the possession of the thing contracted for; or they are executory, which gives only a right of action for the subject of the contract. **Contracts are also express or implied**. The constitution makes no distinction between one class of contracts and the other. 6 Cranch, 135; 7 Cranch, 164.

3. The obligation of a contract here spoken of is a legal, not a mere moral obligation; it is the law which binds the party to perform his undertaking. The obligation does not inhere or subsist in the contract itself, proprio vigore, but in the law applicable to the contract. 4 Wheat. R. 197; 12 Wheat. R. 318; and. this law is not the universal law of nations, but it is the law of the state where the contract is made. 12 Wheat. R. 213. **Any law which enlarges, abridges, or in any manner changes the intention of the parties, resulting from the stipulations in the contract, necessarily impairs it.** 12 Wheat. 256; Id. 327; 3 Wash. C. C. Rep. 319; 8 Wheat. 84; 4 Wheat. 197.

4. The constitution forbids the states to pass any law impairing the obligation of contracts, but there is nothing in that instrument which prohibits Congress from passing such a law. Pet. C. C. R. 322. Vide, generally, Story on the Const. Sec. 1368 to 1891 Serg. Const. Law, 356; Rawle on the Const. h.t.; Dane's Ab. Index, h.t.; 10 Am. Jur. 273-297.

SOVEREIGN. A chief ruler with supreme power; one possessing sovereignty. (q.v.) It is also applied to a king or other magistrate with limited powers.

2. In the United States the sovereignty resides in the body of the people. Vide Rutherf. Inst. 282.

AMBASSADOR, international law. A public minister sent abroad by some sovereign state or prince, with a legal commission and authority to transact business on behalf of his country with the government to which he is sent. He is a minister of the highest rank, and represents the person of his sovereign.

2. The United States have always been represented by ministers plenipotentiary, never having sent a person of the rank of an, ambassador in the diplomatic sense. 1 Kent's Com. 39, n.

3. **Ambassadors, when acknowledged as such, are exempted, absolutely from all allegiance, and from all responsibility to the laws**. If, however, they should be so regardless of their duty, and of the object of their privilege, as to insult or openly to attack the laws of the government, their functions may be suspended by a refusal to treat with them, or application can be made to their own sovereign for their recall, or they may be dismissed, and required to depart within a reasonable time. **By fiction of law**, an ambassador is considered as if he were out of the territory of the foreign power; and it is an implied agreement among nations, that the ambassador, while he resides in the foreign state, shall be considered as a member of his own country, and the *government he represents has exclusive cognizance of his conduct, and control of his person*. The attendants of the ambassador are attached to his person, and the effects in his use are under his protection and privilege, and, generally, equally exempt from foreign jurisdiction.

4. Ambassadors are ordinary or extraordinary. The former designation is exclusively applied to those sent on permanent missions; the latter, to those employed on particular or extraordinary occasions, or residing at a foreign court for an indeterminate period. Vattel, Droit des Gens, 1. 4, c. 6, Sec. 70-79.

5. The act of Congress of April 30th, 1790, s. 25, makes void any writ or process sued forth or prosecuted against any ambassador authorized and received by the president of the United States, or any domestic servant of such ambassador; and the 25th section of the same act, punishes any person who shall sue forth or prosecute such writ or process, and all attorneys and soliciters prosecuting or soliciting in such case, and all officers executing such writ or process, with an imprisonment not exceeding three years, and a fine at the discretion of the court. The act provides that citizens or inhabitants of the United States who were indebted when they went into the service of an ambassador, shall not be protected as to such debt; and it requires also that the names of such servants shall be registered in the office of the secretary of state. The 16th section imposes the like punishment on any person offering violence to the person of an ambassador or other minister. P Vide 1 Kent, Com. 14, 38, 182; Rutherf. Inst. b. 2, c. 9; Vatt. b. 4, c. 8, s. 113; 2 Wash. C. C. R. 435; Ayl. Pand. 245; 1 Bl. Com. 253; Bac. Ab. h.t.; 2 Vin. Ab. 286; Grot. lib. 2, c. 8, 1, 3; 1 Whart. Dig. 382; 2 Id. 314; Dig. l. 50, t. 7; Code I. 10, t. 63, l. 4; Bouv. Inst. Index, h.t.

MINISTER, INTERNATIONAL LAW.

This is the general name given to public functionaries who represent their country abroad, such as ambassadors, (q.v.) envoys, (q.v.) and residents. (q.v.) A custom of recent origin has introduced a new kind of ministers, without any particular determination of character; these are simply called ministers, to indicate that they are invested with the general character of a sovereign's mandatories, without any particular assignment of rank or character.

2. The minister represents his government in a vague and indeterminate manner, which cannot be equal to the first degree; and he possesses all the rights essential to a public minister.

3. There are also ministers plenipotentiary, who, as they possess full powers, are of much greater distinction than simple ministers. These also, are without any particular attribution of rank and character, but by custom are now placed immediately below the ambassador, or on a level with the envoy extraordinary. Vattel, liv. 4, c. 6, Sec. 74; Kent, Com. 38; Merl. Repert. h.t. sect. 1, n. 4.

4. Formerly no distinction was made in the different classes of public ministers, but the modern usage of Europe introduced some distinctions in this respect, which, on account of a want of precision, became the source of controversy. To obviate these, the congress of Vienna, and that of Aix la Chapelle, put an end to these disputes by classing ministers as follows:

1. Ambassadors, and papal legates or nuncios.
2. Envoys, ministers, or others accredited to sovereigns, (aupres des souverains).
3. Ministers resident, accredited to sovereigns.

4. Charges d'Affaires, accredited to the minister of foreign affairs. Recez du Congres de Vienne, du 19 Mars, 1815; Protocol du Congres d' Aix la Chapelle, du 21 Novembre, 1818; Wheat, Intern. Law, pt. 3, c. Sec. 6.

RESIDENT, international law. **A minister**, according to diplomatic language, of a third order, less in dignity than an ambassador, or an **envoy**. This term formerly related only to the continuance of the minister's stay, but now it is confined to ministers of this class.

2. The resident does not represent the prince's person in his dignity, but only his affairs. His representation is in reality of the same nature as that of the envoy; hence he is often termed, as well as the envoy, a minister of the second order, thus distinguishing only two classes of public ministers, the former consisting of ambassadors who are invested with the representative character in preeminence, the latter comprising all other ministers, who do not possess that exalted character. This is the most necessary distinction, and indeed the only essential one. Vattel liv. 4, c. 6, 73.

RESIDENT, PERSONS. A person coming into a place with intention to establish his domicil or permanent residence, and who in consequence actually remains there. Time is not so essential as the intent, executed by making or beginning an actual establishment, though it be abandoned in a longer, or shorter period. See 6 Hall's Law Journ. 68; 3 Hagg. Eccl. R. 373; 20 John. 211 2 Pet. Ad. R. 450; 2 Scamm. R. 377.

ENVOY, international law. In diplomatic language, an envoy is a minister of the second rank, on whom his sovereign or government has conferred a degree of dignity and respectability, which, without being on a level with an ambassador, immediately follows, and among ministers, yields the preeminence to him alone.

2. Envoys are either ordinary or extraordinary; by custom the latter is held in greater consideration. Vattel, liv. 4, c. 6, Sec. 72.

BENCH WARRANT, crim. law. The name of a process sometimes given to an attachment issued by order of a criminal court, against an individual for some contempt, or for the purpose of arresting a person accused; the **latter is seldom granted unless when a true bill has been found**.

COLLUSION, fraud. An agreement between two or more persons, **to defraud a person of his rights by the forms of law**, or to obtain an object forbidden by law; as, for example, where the husband and wife collude to obtain a divorce for a cause not authorized by law. It is nearly synonymous with covin. (q.v.)

2. **Collusion and fraud of every kind vitiate all acts which are infected with them**, **and render them void**. Vide Shelf. on Mar. & Div. 416, 450; 3 Hagg. Eccl. R. 130, 133; 2 Greenl. Ev. Sec. 51; Bousq. Dict. de Dr. mot Abordage.

DISTRICT OF COLUMBIA. The name of a district of country, ten miles square, situate between the states of Maryland and Virginia, over which the national government has exclusive jurisdiction. By the constitution, congress may " exercise exclusive jurisdiction in all cases whatsoever, over such district, not exceeding ten miles square, as may, by, cession of particular states, and the acceptance of congress, become the seat of government of the United States." In pursuance of this authority, the states of Maryland and Virginia, ceded to the United States, a small territory on the banks of the Potomac, and congress, by the Act of July 16, 1790, accepted the same for the permanent seat of the government of the United States. The act provides for the removal of the seat of government from the city of Philadelphia to the District of Columbia, on the first Monday of December, 1800. It is also provided, that the laws of the state, within such district, shall not be affected by the acceptance, until the time fixed for the removal of the government thereto, and until congress shall otherwise by law provide.

2. It seems that the District of Columbia, and the territorial districts of the United States, are not states within the meaning of the constitution, and of the judiciary act, so as to enable a citizen thereof to sue a citizen of one of the states in the federal courts. 2 Cranch, 445; 1 Wheat, 91.

3. By the Act of July 11, 1846, congress retroceded the county of Alexandria, part of the District of Columbia, to the state of Virginia.

DISTRICT. A certain portion of the country, separated from the rest for some special purposes. The United States are divided into judicial districts, in each of which is established a district court; they are also divided into election districts; collection districts, etc.

ALLEGIANCE. The tie which binds the citizen to the government, **in return** for the protection which the government affords him.

2. It is natural, acquired, or local. Natural allegiance is such as is due from all men born within the United States; acquired allegiance is that which is due by a naturalized citizen. It has never been decided whether a citizen can, by expatriation, divest himself absolutely of that character. 2 Cranch, 64; 1 Peters' C. C. Rep. 159; 7 Wheat. R. 283; 9 Mass. R. 461. Infants cannot assume allegiance, (4 Bin. 49) although they enlist in the army of the United States. 5 Bin. 429.

3. It seems, however, that he cannot renounce his allegiance to the United States without the permission of the government, to be declared by law. But for commercial purposes he may acquire the rights of a citizen of another country, and the **place of his domicil determines the character of a party** as to trade. 1 Kent, Com. 71; Com. Rep. 677; 2 Kent, Com. 42.

4. Local allegiance is that which is due from an alien, while resident in the United States, for the protection which the government affords him. 1 Bl. Com. 366, 372; Com. Dig. h.t; Dane's Ab. Index, h.t.; 1 East, P.C. 49 to 57.

Additional Definitions follow, which, absent objection by the Prosecution, will control the usage of terms in this matter:

WAIVER., The relinquishment or refusal to accept of a right.

2. In practice it is required of every one to take advantage of his rights at a proper time and, neglecting to do so, will be considered as a waiver. If, for example, a defendant who has been misnamed in the writ and declaration, pleads over, he cannot afterwards take advantage of the error by pleading in abatement, for his plea amounts to a waiver.

3. In seeking for a remedy the party injured may, in some instances, waive a part of his right, and sue for another; for example, when the defendant has committed a trespass on the property of the plaintiff, by taking it away, and afterwards he sells it, the injured party may waive the trespass, and bring an action of assumpsit for the recovery of the money thus received by the defendant. 1 Chit. Pl. 90.

4. In contracts, if, after knowledge of a supposed fraud, surprise or mistake, a party performs the agreement in part, he will be considered as having waived the objection. 1 Bro. Parl. Cas. 289.

5. It is a rule of the civil law, consonant with reason, that any one may renounce or waive that which has been established in his favor: Regula est juris antique omnes licentiam habere his quae pro se introducta sunt, renunciare. Code 2, 3, 29. As to what will amount to a waiver of a forfeiture, see 1 Conn. R. 79; 7 Conn. R. 45; 1 Jo Cas. 125; 8 Pick. 292; 2 N. H, Rep. 120 163; 14 Wend. 419; 1 Ham. R. 21. Vide Verdict.

MISTAKE, contracts.

An error committed in relation to some matter of fact affecting the rights of one of the parties to a contract.

2. Mistakes in making a contract are distinguished ordinarily into, first, mistakes as to the motive; secondly, mistakes as to the person, with whom the contract is made; thirdly, as to the subject matter of the contract; and, lastly, mistakes of fact and of law. See Story, Eq. Jur. Sec. 110; Bouv. Inst. Index, h.t.; Ignorance; Motive.

3. In general, courts of equity will correct and rectify all mistakes in deeds and contracts founded on good consideration. 1 Ves. 317; 2 Atk. 203; Mitf. Pl. 116; 4 Vin. Ab. 277; 13 Vin. Ab. 41; 18 E. Com. Law Reps. 14; 8 Com. Digest, 75; Madd. Ch. Prac. Index, h.t.; 1 Story on Eq. ch. 5, p. 121; Jeremy's Eq. Jurisd. B. 3, part 2, p. 358. See article Surprise.

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4. As to mistakes in the names of legatees, see 1 Rop. Leg. 131; Domat, l. 4, t. 2, s. 1, n. 22. As to mistakes made in practice, and as to the propriety or impropriety of taking advantage of them, see Chitt. Pr. Index, h.t. As to mistakes of law in relation to contracts, see 23 Am. Jur. 146 to 166.

UNCONSTITUTIONAL. That which is contrary to the constitution.
2. When an act of the legislature is repugnant or contrary to the constitution, it is, ipso facto, void. 2 Pet. R. 522; 12 Wheat. 270; 3 Dall. 286; 4 Dall. 18.
3. The courts have the power, and it is their duty, when an act is unconstitutional, to declare it to be so; but this will not be done except in a clear case and, as an additional guard against error, the supreme court of the United States refuses to take up a case involving constitutional questions, when the court is not full. 9 Pet. 85. Vide 6 Cranch, 128; 1 Binn. 419; 5 Binn. 355; 2 Penna 184; 3 S. & R. 169; 7 Pick. 466; 13 Pick. 60; 2 Yeates, 493; 1 Virg. Cas. 20; 1 Blackf. 206 6 Rand. 245 1 Murph. 58; Harper, 385 1 Breese, 209 Pr. Dee. 64, 89; 1 Rep. Cons. Ct. 267 1 Car. Law Repos. 246 4 Munr. 43; 5 Hayw. 271; 1 Cowen, 550; 1 South. 192; 2 South. 466; 7 N H. Rep. 65, 66; 1 Chip, 237, 257; 10 Conn. 522; 7 Gill & John. 7; 2 Litt. 90; 3 Desaus. 476.

In this matter of legal fiction, the Defense has tendered **Notice of Foreign Law** to the Honorable Court and to the Prosecution and intends to rely upon the Constitutions of the united States of America, the California Republic, the state of Colorado, the state of New Mexico and the foundational Common Law which supports the ideal of Due Process of Law which is synonymous with the “Law of the Land.”

IPSO FACTO. By the fact itself.

2. This phrase is frequently employed to convey the idea that something which has been done contrary to law is void. For example, if a married man, during the life of his wife, of which he had knowledge, should marry another woman, the latter marriage would be void ipso facto; that is, on that fact being proved, the second marriage would be declared void ab initio.

TO QUASH, practice. To overthrow or annul.
2. When proceedings are clearly irregular and void the courts will quash them, both in civil and criminal cases: for example, when the array is clearly irregular, as if the jurors have been selected by persons not authorized by law, it will be quashed. 3 Bouv. Inst. n. 3342.
3. In criminal cases, when an indictment is so defective that no judgment can be given upon it, should the defendant be convicted, the court, upon application, will in general quash it; as if it have no jurisdiction of the offence charged, or when the matter charged is not indictable. 1 Burr. 516, 548; Andr. 226. When the application to quash is made on the part of the defendant, the court generally refuses to quash the indictment when it appears some enormous crime has been committed. Com. Dig. Indictment, H; Wils. 325; 1 Salk. 372; 3 T. R. 621; 6 Mod. 42; 3 Burr. 1841; 5 Mod. 13; Bac. Abr. Indictment, K. When the application is made on the part of the prosecution, the indictment will be quashed whenever it is defective so that the defendant cannot be convicted, and the prosecution appears to be bona fide. If the prosecution be instituted by the attorney general, he may, in some states, enter a nolle prosequi, which has the same effect. 1 Dougl. 239, 240. The application should be made before plea pleaded; Leach, 11; 4 St. Tr. 232; 1 Hale, 35; Fost. 231; and before the defendant’s recognizance has been forfeited. 1 Salk. 380. Vide Cassetur Breve.

All Participation with this undefined inferior tribunal is specifically Not Voluntary, but in response to **official extortion** under Color of Authority and under proven and credible Threat of murder by STATE and FEDERAL police agents, Duress induced by unlawful imprisonment and Coercion compelled by threat of economic damage by an association in fact known as the Colorado First Judicial District in conspiracy and collusion with the Colorado State Attorney General, the Colorado Alternate Defense Counsel and the Federal Bureau of Investigation’s Joint Terrorism Task Force, as defined by the Hobbs Act, Colorado Organized Crime Act and the Federal Racketeer Influenced Corrupt Organization statutes.

The Defense, by and through the **non-voluntary** participation of the **First Secured Party res**pectfully apprises the **court** and the **Moving Party** of the Defense's intention to rely upon the laws of foreign and superior jurisdictions. Defense additionally specifically reserves all statutory, Constitutional and unalienable Rights and does not waive any right or privilege to challenge any aspect of the irregular, un-authorized Vindictive, Malicious, Retaliatory and Selective prosecution encaptioned above in some undefined jurisdiction contrary to the Sixth Amendment to the Constitution for the united States of America and Article 16 of the Colorado Constitution.

First Secured Party maintains and defends the Superior and Positive Law embodied in the Torah, given in Covenant to the Children of Israel by the Creator **יהוה** YHVH, the Everliving God, and staunchly denies any unilateral or cohesion contract that may by any erroneous presumption or assumption of the court be imagined to create any jurisdictional nexus into whatever undefined and unconfirmed secret tribunal in which this inferior court may be empanelled. Additionally, First Secured Party demands that this secret tribunal openly state its lawform and foundation of law as well as the Cause and Nature of the charges brought against the Secured Property of this First Secured Party as is required by Constitution and statute.

First Secured Party for the ALL CAPITAL LETTER "Defendant" in this undefined court has found no legitimate jurisdictional nexus which could possibly confer lawful jurisdiction upon Margie Enquist, *Esquire ~ a title of nobility in legal fiction* conferred by a foreign power, to-wit: the British Accreditation Regency, to adjudicate any controversy concerning Corporate 14th Amendment "PERSONS" such as the PEOPLE OF THE STATE OF COLORADO, an unregistered legal fiction, and a Child of the Everliving God , **יהוה** a sovereign free-born Inhabitant of the California Republic. First Secured Party answers to a higher Power and a Superior Jurisdiction, to-wit: The Supreme Judge, **יהוה (Y H V H) .**

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

United States Constitution: Article III.

Sect. 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated time, receive for their services a compensation which shall not be diminished during their continuance in office.

Sect. 2.. **The judicial power shall extend to all cases, in law and equity**, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of **admiralty and maritime jurisdiction**; to *controversies to which the United States shall be a party*; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming

lands under grants of different States, and between a State or the citizens thereof, and foreign states, citizens, or subjects.

Margie Enquist, *Esquire's* court has been duly notified that First Secured Party has squarely, consistently and vocally challenged her court's secret and undefined jurisdiction. It is a well established fact that the Moving Party must affirmatively confirm and define lawful jurisdiction, when challenged.

Dennis Hall, *Esquire*, a named Defendant in Federal R.I.C.O. action #01-ES-1145, has failed to rise to minimal standards of professional performance as the representative of the fictional corporate PEOPLE OF THE STATE OF COLORADO, *contradistinguished from the People of the state of Colorado*, ostensibly the "moving party," as required by Rule 11 and the Codes of Professional Responsibility, or "Ethical Rules."

Where jurisdiction is denied and squarely challenged, jurisdiction cannot be assumed to exist "sub silentio" but must be proven. Hagans v. Laving, 415 U.S. 528, 533, n. 5; Monell v. N.Y., 436 U.S. 633. Mere "good faith" assertions of power and authority (jurisdiction) have been abolished. Owen v. Indiana, 445 U.S. 622; Butz v. Economou, 438 U.S. 478; Bivens v. 6 unknown agents, 403 U.S. 388.

Therefore, *without any affirmative jurisdictional definition*, First Secured Party must presume that the court's jurisdiction is secretly defined by the deliberate choice of the court's trappings, to-wit: the Executive Flags, *denoted by the Gold Fringe*, indicating a Prize and Booty tribunal operating in Admiralty/Maritime legal fiction, *perhaps under the rubric of the Commerce Clause*, to which no jurisdiction can conceivably attach to the First Secured Party as a Child of the Everliving God, יהוה. Nor does any contractual nexus exist in Commerce or legal fiction that binds the Strawman "Defendant" denoted by ALL CAPITAL letters, into any such legal fiction. No contractual nexus has been alleged, nor proven, that would confer upon any inferior tribunal with IN RE admiralty/maritime legal fiction jurisdiction over any such RES. Nor does Dennis Hall, Esquire have a legal security interest in the unregistered legal fiction entitled PEOPLE OF THE STATE OF COLORADO on file with the Colorado Secretary of State, U.C.C. Division. It must be, therefore, presumed that the court is proceeding sans jurisdiction.

In good faith, Sunday, November 13, 2005

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Non-voluntary ~ Under Threat, Duress & Coercion ~ All Rights Reserved
Steve Douglas, Gartin – *First Secured Party in Interest* - In Propria Persona
P.O. Box 70185
Albuquerque, NM 87197

Certificate of Service by United States Postal Service, Inc.

I hereby certify that on 14 November, 2005,
a true and correct copy of the foregoing **Notice of Foreign Law** was placed in the U.S. Mail addressed to the following parties:

First Judicial District
Division 8
100 Jefferson County Parkway
Golden, Colorado 80401

Dennis Hall, Esquire
Jefferson County District Attorney
500 Jefferson County Parkway
Golden, Colorado 80401