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For the M-I-C-K-E-Y Mouse Courts

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Basic flow of a lawsuit

Complaints and Pleadings

Allegations made by the plaintiff and the demand for relief, based on facts, firsthand witnesses accounts, and laws in support of their rights.

DA, ADA, PROSECUTOR, PLAINTIFF must state cause of action in the pleadings, facts, laws, liability and damages from a breach of duty or obligation

Flurry of Motions

Defendant tries to avoid answering Complaint by filing a "flurry of motions". In order to avoid answering the complaint as a defendant, file a Motion to Strike, Motion to Dismiss or Motion for More Definite Statement.

Flurry of Motions
Motion to Strike
Motion to Dismiss
Motion for More Definite Statement
Motion to Compel Discovery
Motion for Extension of Time
Motion for Reconsideration (Re-hearing)
Motion to Show Cause
Motion for Summary Judgement
Motion to Suppress
Motion for Change of Venue
Motion for Continuance

5 tools for Discovery

1. Requests for Admissions
2. Request for Production
3. Interrogatories
4. Depositions
5. Subpoenas

Plaintiff and Defendant both use discovery tools at all times prior to trial to get evidence that will tend to prove their own allegations and undermine those of their opponent.

Answers and Affirmative Defense

Defendant responds to each allegation in the complaint and further alleges facts and law affirming their defense.

Answers and Affirmative Defense
Examples of affirmative defenses include: Contributory negligence, which reduces a defendant's civil liability when the plaintiff's own negligence contributed to the plaintiff's injury.

Trial

If both parties cannot come to an agreement and settle out of court or win with a pre-trial motion, a trial date is set.

The formal setting for the Plaintiff and Defendant to present evidence and legal argument for a judge or jury's decision

U.S. Department of Justice Steps in the Federal Criminal Process.
American Bar Assoc. (know your enemy too) How Court Works.
Cornell Law School Wex Legal Dictionary
Forum provided by Dr. Fredrick Graves, How To Win In Court.

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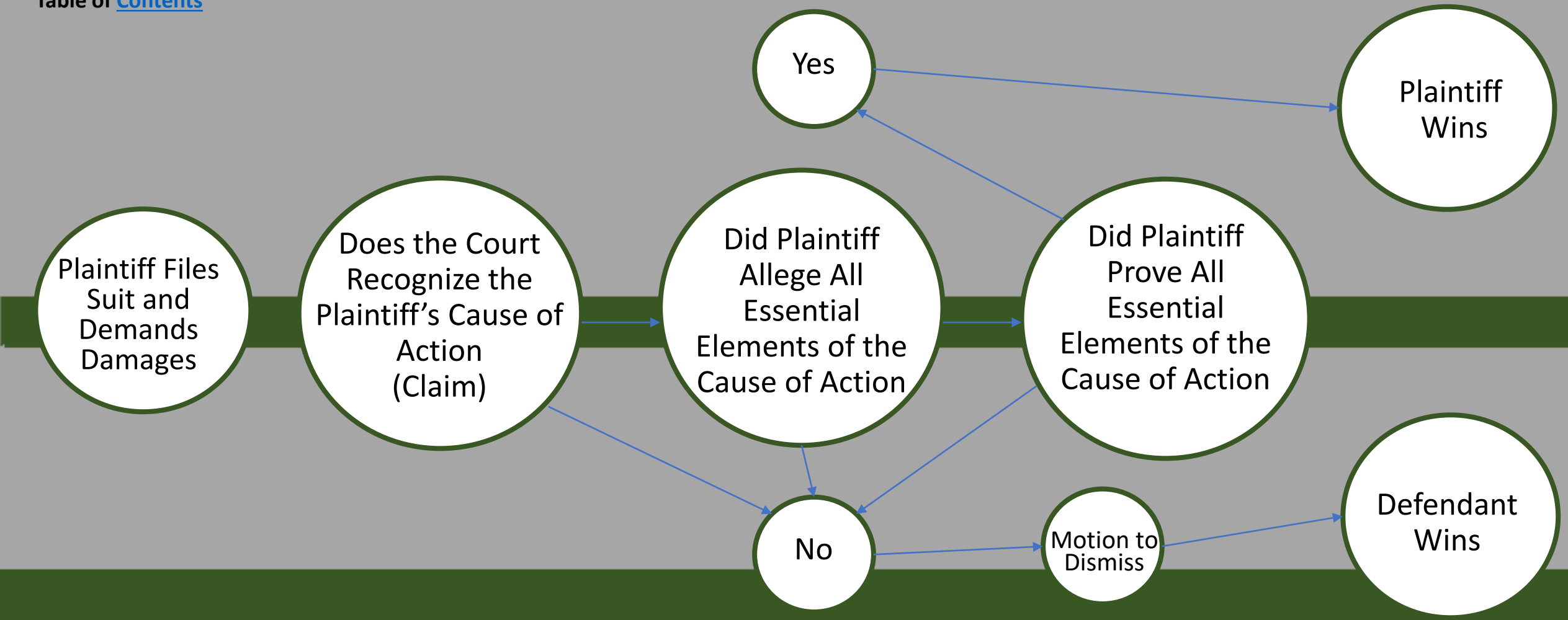

Ingredients for a win

U.S. Department of Justice Steps in the Federal Criminal Process.
American Bar Assoc. (know your enemy too) How Court Works.
Cornell Law School Wex Legal Dictionary

Ref: US Constitution

Ref: Virginia Constitution

Ref: Vail Law Affirmative Defenses

Ref: Vail Law Risk Management Checklist

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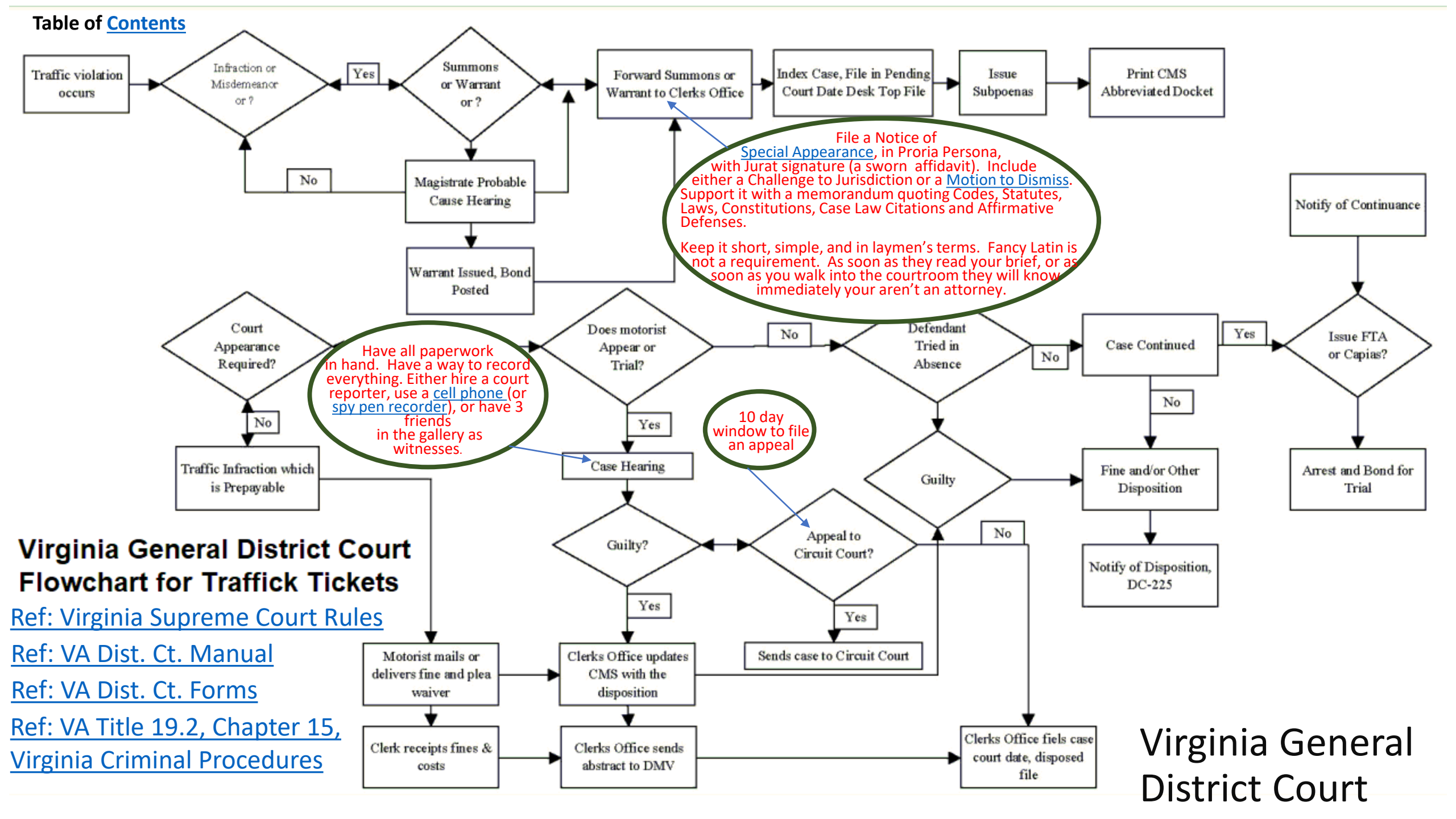

Virginia General District Court Flowchart for Traffick Tickets

Ref: Virginia Supreme Court Rules

Ref: VA Dist. Ct. Manual

Ref: VA Dist. Ct. Forms

Ref: VA Title 19.2, Chapter 15, Virginia Criminal Procedures

Virginia General District Court

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Right of Defense Against Unlawful Arrest

"Citizens may resist unlawful arrest to the point of taking an arresting officer's life if necessary." Plummer v. State, 136 Ind. 306. This premise was upheld by the Supreme Court of the United States in the case: John Bad Elk v. U.S., 177 U.S. 529. The Court stated:

"Where the officer is killed in the course of the disorder which naturally accompanies an attempted arrest that is resisted, the law looks with very different eyes upon the transaction, when the officer had the right to make the arrest, from what it does if the officer had no right. What may be murder in the first case might be nothing more than manslaughter in the other, or the facts might show that no offense had been committed."

"An arrest made with a defective warrant, or one issued without affidavit, or one that fails to allege a crime is within jurisdiction, and one who is being arrested, may resist arrest and break away. if the arresting officer is killed by one who is so resisting, the killing will be no more than an involuntary manslaughter." Housh v. People, 75 111. 491; reaffirmed and quoted in State v. Leach, 7 Conn. 452; State v. Gleason, 32 Kan. 245; Ballard v. State, 43 Ohio 349; State v Rousseau, 241 P. 2d 447; State v. Spaulding, 34 Minn. 3621.

"When a person, being without fault, is in a place where he has a right to be, is violently assaulted, he may, without retreating, repel by force, and if, in the reasonable exercise of his right of self-defense, his assailant is killed, he is justified." Runyan v. State, 57 Ind. 80; Miller v. State, 74 Ind. 1.

"These principles apply as well to an officer attempting to make an arrest, who abuses his authority and transcends the bounds thereof by the use of unnecessary force and violence, as they do to a private individual who unlawfully uses such force and violence." Jones v. State, 26 Tex. App. I; Beaverts v. State, 4 Tex. App. 1 75; Skidmore v. State, 43 Tex. 93, 903.

"An illegal arrest is an assault and battery. The person so attempted to be restrained of his liberty has the same right to use force in defending himself as he would in repelling any other assault and battery." State v. Robinson, 145 ME. 77, 72 ATL. 260

"Each person has the right to resist an unlawful arrest. In such a case, the person attempting the arrest stands in the position of a wrongdoer and may be resisted by the use of force, as in self- defense." State v. Mobley, 240 N.C. 476, 83 S.E. 2d 100

"One may come to the aid of another being unlawfully arrested, just as he may where one is being assaulted, molested, raped or kidnapped. Thus, it is not an offense to liberate one from the unlawful custody of an officer, even though he may have submitted to such custody, without resistance." Adams v. State, 121 Ga. 16, 48 S.E. 910.

"Story affirmed the right of self-defense by persons held illegally. In his own writings, he had admitted that 'a situation could arise in which the checks-and-balances principle ceased to work, and the various branches of government concurred in a gross usurpation.' There would be no usual remedy by changing the law or passing an amendment to the Constitution, should the oppressed party be a minority. Story concluded, 'If there be any remedy at all ... it is a remedy never provided for by human institutions.' That was the `ultimate right of all human beings in extreme cases to resist oppression, and to apply force against ruinous injustice.'" From Mutiny on the Amistad by Howard Jones, Oxford University Press, 1987, an account of the reading of the decision in the case by Justice Joseph Story of the Supreme Court.As for grounds for arrest: "The carrying of arms in a quiet, peaceable, and orderly manner, concealed on or about the person, is not a breach of the peace. Nor does such an act of itself, lead to a breach of the peace." Wharton's Criminal and Civil Procedure, 12th Ed., Vol.2: Judy v. Lashley, 5 W. Va. 628, 41 S.E. 197

The Belligerent Claimant:
"The privilege against self-incrimination is neither accorded to the passive resistant, nor the person who is ignorant of his rights, nor to one indifferent thereto. It is a fighting clause. Its benefits can be retained only by sustained combat. It cannot be retained by attorney or solicitor. It is valid only when insisted upon by a belligerent claimant in person. The one who is persuaded by honeyed words or moral suasion to testify or produce documents rather than make a last-ditch stand, simply loses the protection. Once he testifies to part, he has waived his right and must on cross examination or otherwise, testify as to the whole transaction. He must refuse to answer or produce, and test the matter in contempt proceedings, or by habeas corpus."
District Judge James Alger Fee, United States v. Johnson, 76 F. Supp. 538 (at page 540) District Court, M.D. Pennsylvania Feb. 26, 1947

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Definitions 1

AD LITEM – FOR THE SUIT: Courts appoint attorneys ad litem, generally as a matter of law, for parties that have a legal interest in a case but that cannot represent themselves like children or incapacitated adults.

Affirmative Defense: When a Motion to Strike, Motion to Dismiss or Motion for More Definite Statement did not prevent the defendant from answering the plaintiffs complaint, an affirmative defense should be introduced when answering. If found credible, it will negate criminal or civil liability, even if it is proven that the defendant committed the alleged acts. Affirmative defenses should always be filed with the Defendant's answer, otherwise the answers are merely admitting or denying the facts

Affidavit: An affidavit is a sworn statement a person makes before a notary or officer of the court outside of the court asserting that certain facts are true to the best of that person's knowledge.

AMICUS CURIAE – FRIEND OF THE COURT: If a non-party to a proceeding has an interest in the case (or the law) before the court, the non-party can ask the court for permission to file a friend of the court brief. An amicus brief, carries no formal legal weight, but the hope of the non-party is that the brief will help the court to resolve the issue based on their legal argument or perspective.

Appeal: When an "appellant" claims an "appellee" has gone beyond judicial discretion, abuses their power outside their jurisdictional authority, failure of the judge to properly apply the law, to follow the law, or to act reasonably, based exclusively on fixed principles of law. Common abuses are violation of the rules of evidence, (hearsay evidence allowed or relevant evidence denied). Immediate objections and why must be made on the record in the lower court proceedings for a successful appeal.

Appearance-General: A general appearance is made when a party first comes into court and appears in the case. The party may come for any reason that recognizes the authority of the court.

Appearance-Special: Special appearance is a tool defendants can use to challenge a court's jurisdiction over them. If a court does not have personal jurisdiction or there are other errors like for service of process, many states allow defendants to challenge the lawsuit without submitting to a court's jurisdiction. Example here.

Beneficiary: "Cestui Que" (ses-tee-kay) is the person who benefits from the trust property held by the trustee.

Bond-Administrator Surety: Probate courts require this (also known as Executor Surety Bond) to help ensure the protection of the administration of an estate, will or guardianship from financial harm.

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Bond-Appeal Surety: This suspends the lower court's decision until the higher court can hear and decide the case. An appeal bond guarantees that there will be money available to pay not only the original judgement, but the appeal, regardless of whether the appeal was successful or not.

Bond-Bid: GSA Form SF24, has a "Penal Sum" attached to it (if you don't pay the Debt, you go into "Default Judgment") and is a bond conditioned upon the bidder on a Contract entering into the Contract, and furnishing the required Payment and Performance Bonds. This is the first bond created when you are arrested.

Bond-Cost Surety: This ensures proper compensation to clerks in certain court cases. This bond is generally required for people with court cases outside the state they reside in.

Bond-Judicial: Generally protect against loss that can occur as a result of a ruling, for example, a bail bond.

Bond-Fiduciary: Also called a probate bond, guarantees that the fiduciary (person who the court tasks with guarding and handling assets or estates) will responsibly and ethically handle assets assigned to them.

Bond-Payment: GSA Form SF25A, has a "Penal Sum" attached to it (if you don't pay the Debt, you go into "Default Judgment") and means a bond which is conditioned upon the payment by the Principal of money to persons who have a right of action against such bond

Bond-Performance: GSA Form SF25, has a "Penal Sum" attached to it (if you don't pay the Debt, you go into "Default Judgment") and means a bond conditioned upon the completion by the Principal of a Contract in accordance with its terms.

Bond-Trustee Surety: This guarantees that trustees will act in accordance with the ruling of the court. This bond protects a trust from loss as a result of a trustee acting dishonestly or unethically.

Brief: A brief is a written argument submitted to the court. Lawyers often prepare briefs which highlight and clarify certain information or provide legal comparisons in an attempt to persuade the courtroom to rule in favor of that lawyer's client.

CAFR: The Annual Comprehensive Financial Report is a thorough and detailed presentation of the state's financial condition

CAGE: Commercial and Government Entity code (CAGE) is an identifier assigned to entities located in the United States, its outlying areas by the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Branch to identify a commercial or government entity by unique location; or an identifier (NATO CAGE, or NCAGE) assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file.

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Cause of Action: The right to file a lawsuit because a duty was breached and as a direct result of foreseeable actions, damages were created

CRIS: The Court Registry Investment System is an interest-bearing cash management tool administered by the Administrative Office of the U.S. Courts that provides Clerks with an easy, efficient and safe way to comply with federal requirements (Title 28, Sect 2045) concerning the handling of Court Registry Funds

CUSIP: Committee on Uniform Securities Identification Procedures. A CUSIP number identifies most financial instruments, including: stocks of all registered U.S. and Canadian companies, commercial paper, and U.S. government and municipal bonds

CERTIORARI – TO BE MORE FULLY INFORMED: A Writ of Certiorari, sometimes shortened to just “cert.”, is most commonly known as a means to seek review of a case by the U.S. Supreme Court.

Claim: A cause of action on which the court can grant relief.

Depositions: A deposition is a witness's sworn out-of-court testimony. It is used to gather information as part of the discovery process and, in limited circumstances, may be used at trial.

Discovery: The formal process of exchanging information between the parties about the witnesses and evidence that will be presented at trial.

Demurrer: A response in a court proceeding in which the defendant does not dispute the truth of the allegation but claims it is not sufficient grounds to justify legal action. A hearing before a judge (on the law and motion calendar) will then be held to determine the validity of the demurrer. Some causes of action may be defeated by a demurrer while others may survive. Some demurrers contend that the complaint is unclear or omits an essential element of fact. If the judge finds these errors, he/she will usually sustain the demurrer (state it is valid), but "with leave to amend" in order to allow changes to make the original complaint good. An amendment to the complaint cannot always overcome a demurrer, as in a case filed after the time allowed by law to bring a suit. If after amendment the complaint is still not legally good, a demurrer will be granted sustained. In rare occasions, a demurrer can be used to attack an answer to a complaint. Some states have substituted a motion to dismiss for failure to state a cause of action for the demurrer.

DE NOVO – A NEW: This term is usually associated with the standard of judicial review. When an appellate court reviews a case de novo, the court gives no deference to the findings of the lower court.

EX PARTE – FROM THE PART: This term generally describes hearings held or orders made by the court at the request of one party without providing notice to or permitting argument from the opposing party – not a common procedural practice.

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HABEAS CORPUS – THAT YOU HAVE THE BODY: A writ of habeas corpus seeks a ruling on a matter when someone has been imprisoned or otherwise detained by the government. The writ of habeas corpus is directed at the public official that is holding the person, so if a case name includes the name of a warden or an attorney general, it is likely a habeas proceeding.

IN CAMERA – IN A CHAMBER: If something is to be reviewed in camera, it will be reviewed in the judge's chamber – away from the other parties and jury.

IN FORMA PAUPERIS – IN THE MANNER OF A PAUPER: Often, if an indigent party pleads in forma pauperis, court costs will be waived. IN RE – IN THE MATTER OF: This term is often used in case names, e.g., In re Estate of Jones.

Interrogatories: In a civil action, an interrogatory is a list of questions one party sends to another as part of the discovery process. The recipient must answer the questions under oath and according to the case's schedule.

Inter Vivos: Latin for "while alive" or "between the living". This phrase is primarily used in property law and refers to various legal actions taken by a given person while still alive, such as giving gifts, creating trusts, or conveying property.

IRS FORM W-9: Form W-9 is used to provide a correct TIN to payers (or brokers) required to file information returns with IRS.

IRS FORM 1096: Form 1096 is used by filers of paper Forms 1099, 1098, 5498, and W-2G to transmit copies to IRS. Do not use this form to transmit electronically.

IRS FORM 1099-A: Form 1099-A is used if you lend money in connection with your trade or business and, in full or partial satisfaction of the debt, you acquire an interest in property that is security for the debt, or you have reason to know that the property has been abandoned. You need not be in the business of lending money to be subject to this reporting requirement.

IRS FORM 1099-C: File Form 1099-C for each debtor for whom you canceled $600 or more of a debt owed to you if you are an applicable financial entity, or if an identifiable event has occurred.

IRS FORM 1099-OID: Is used if:
The original issue discount (OID) includible in gross income is at least $10.
For any person for whom you withheld and paid any foreign tax on OID.
From whom you withheld (and did not refund) any federal income tax under the backup withholding rules even if the amount of the OID is less than $10.

IRS FORM 13909: Tax-Exempt Organization Complaint If you suspect a tax-exempt organization is not complying with the tax laws.

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IRS FORM 14242: Ttelegramo report a suspected abusive tax avoidance scheme and/or tax return preparers who promote such schemes.

Jurat: A statement on an affidavit of when, where, and before whom it was sworn, or the person it is sworn to, for example, a notary public.

Jurisdiction-In Personam: The power to adjudicate matters directed against the party being sued, by serving them with a copy of the complaint with a summons signed by the court clerk and stamped with the court seal, and an affidavit of service must be filed with the court.

Jurisdiction-Subject Matter: The power to adjudicate matters directed against a particular cause of action, statute, or common law authority you are moving under, as well as someone who has standing that has sworn to the veracity of the complaint through an affidavit or a jurat within the complaint.

Jurisdiction-In Rem: The power to adjudicate matters directed against real or personal property, after proof of interest in the property is submitted to the court.

MANDAMUS – WE COMMAND: A writ of mandamus seeks to command a public official, including a lower court judge, to take a particular action. This can be used in limited circumstances as an alternative to a direct appeal of a case

Maxims: Maxims are brief statements of self-evident truth, (water doesn't naturally flow uphill, Sir Isaac Newton's theory based on **God's law** of gravity)

Memorandum: A memorandum in a legal sense can refer to a brief yet comprehensive and organized written document that summarizes and analyzes relevant laws based on legal research to support a conclusion on a particular legal issue. A memorandum usually includes a description of factual background of the subject case or fact pattern, a statement of the legal issues to be discussed, an introduction of the relevant laws, an analysis of how the law should apply to specific facts and a conclusion. They state the Facts, Rules, Statutes, Case Law Citations, and Constitutions to support a motion.

Motion: Moves the court forward, with the responsibility lying on either the Plaintiff or the Defendant (not the Court) to demand what is right with an argue memoranda listing facts, cases, statutes, court rules and constitutions, schedule it with a hearing, send out a notice of hearing, and then argue it until the judge rules on your motion, thus moving the court forward by signing a court order, (while you are always preparing for an appeal).

NON COMPOS MENTIS– MENTALLY INCAPABLE OF: Latin legal phrase that **translates to "of unsound mind**". Or, "The cheese done slid off'n yer cracker".

Objections: Objections are violations of the rules of evidence, rules of procedure, general law violations or polity and precedence and are essential to the process of winning or preparing for a successful appeal. Object is every time you think an objection is likely to favor your case

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Orders: A direction a judger or a court normally made or entered in writing, and not included in a judgment. Always verify any judge's or court's order at the end of the day asking the judge and comparing it to the transcripts. Prepare the order yourself **WHENEVER** possible. If the judge orders the opposing party to write it, then **ENSURE** opposing council gives you a copy for your approval **BEFORE** it goes to the judge for signature. **Lawyers and Lyers are synonymous.**

PER CURIAM – BY THE COURT AS A WHOLE: A per curiam decision is a unanimous decision of a court that is authored by the court as a whole rather than by a particular judge.

Pleadings: Pleadings are certain formal documents filed with the court that state the parties' basic positions. A lawsuit begins when the person bringing the suit files a complaint. This first step begins what is known as the pleadings stage of the suit. Provide notice to the defendant that a lawsuit has been instituted concerning a specific controversy or controversies. Common pre-trial pleadings include:

- **Complaint** (or petition or bill). Probably the most important pleading in a civil case, since by setting out the plaintiff's version of the facts and specifying the damages, it frames the issues of the case. It includes various counts - that is, distinct statements of the plaintiff s cause of action - highlighting the factual and legal basis of the suit.
- **Answer**. This statement by the defendant usually explains why the plaintiff should not prevail. It may also offer additional facts, or plead an excuse.
- **Reply**. Any party in the case may have to file a reply, which is an answer to new allegations raised in pleadings.
- **Counterclaim**. The defendant may file a counterclaim, which asserts that the plaintiff has injured the defendant in some way, and should pay damages. ("You're suing me? Well then, I'm suing you.") It may be filed separately or as part of the answer. If a counterclaim is filed, the plaintiff must be given the opportunity to respond by filing a reply.

Probate Estate: In trusts and estates, the probate estate includes assets that are held in an individual's name. The disposition of the probate estate is determined by probate court, and is usually divided as directed by the decedent's will. Probate estate assets also include assets that do not have title (i.e. household items, jewelry) and other assets owed to the decedent prior to their death (including wrongful death lawsuit proceeds). These assets exclude non-probate assets, in which the title has been transferred within decedent's lifetime or in which transfer of title is controlled by a survivorship mechanism.

PRO BONO (PUBLICO) – FOR THE PUBLIC GOOD: Attorneys that do pro bono work are volunteering their services for free for the public good.

PROPRIA PERSONA- IN ONE'S ONE PERSON: "Pro Per" is a Latin phrase meaning "**for one's self**." The phrase is used for a person who appears before a court or represents themselves in absence of a lawyer.

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PRO SE –ON ONE'S OWN BEHALF; WITHOUT A LAWYER: Latin for "**in one's own behalf**." The right to appear pro se in a civil case in federal court is defined by statute 28 U.S.C. § 1654.

QUASI – AS IF: This term is a favorite prefix of lawyers and courts everywhere. It can be added to any term to make an argument that one thing is like another, e.g., "even if it was not technically a judicial action, it was a quasi-judicial action.

Res: Anything you can physically move into a trust.

Requests for Admissions: In a civil action, a request for admission is a discovery device that allows one party to request that another party admit or deny the truth of a statement under oath.

Request for Production: a legal request for documents, electronically stored information, or other tangible items made in the course of litigation.

Settlor: Sets the agreement and creates the trust by will (a document transferring ownership, or free will to answer questions) or inter vivos transfer. This is also called the protector, founder,executor, trustor, donor, transferor, grantor, testator or testatrix.

SUA SPONTE – OF ONE'S OWN ACCORD; VOLUNTARILY: If a court is permitted to act sua sponte, a court can take an action in a case without a request from either party

SUI JURIS – OF AGE: Latin phrase that literally means "of one's own right". It means you're old enough to have a beer after court.

Subpoena: A subpoena is a written order to compel an individual to give testimony on a particular subject, often before a court, but sometimes in other proceedings (such as a Congressional inquiry). Failure to comply with such an order to appear may be punishable as contempt.

Testator: A person who has made a will or given a legacy.

Testatrix: a woman who has made a will or given a legacy.

Trust: A fiduciary relationship with respect to specific property, to which the trustee holds legal title for the benefit of the beneficiaries who hold an equitable interest in the property.

Trust-Express: An intentional trust created voluntarily by a settlor.

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Trust-Public: Certain natural and cultural resources are preserved for the public, and they should be kept available so the public can study, enjoy, and learn from them.

Trust-Private: A "fiduciary relationship" that grants a beneficiary the right to money or property.

Trust-Statutory: A trust created by an authorized statue. A traffic violation creates a statutory trust by the presiding judge (as executor),

Trustee: The entity that holds legal title to the trust property.

Trust Property: The "Res", or property the trustee holds for the beneficiary.

Witness (Lay) : the most common type — is a person who watched certain events and describes what they saw.

Witness (Expert): Is a specialist who is educated in a certain area. They testify with respect to their specialty area only.

Witness (Character): Someone who knew the victim, the defendant, or other people involved in the case. Character witnesses usually don't see the crime take place but they can be very helpful in a case because they know the personality of the defendant or victim, or what type of person the defendant or victim was before the crime. Neighbors, friends, family, and clergy are often used as character witnesses.

Writ: A form of written command in the name of a court or other legal authority to act, or abstain from acting, in some way.

Writ of Attachment: **A** form of prejudgment process in which the court orders the seizure or attachment of property specifically described in the writ.

Writ of Certiorari: A type of writ, meant for rare use, by which an appellate court decides to review a case at its discretion.

Writ of Coram Nobis: This writ is intended to correct a final judgement by the same court in which it was rendered by redressing a fundamental error, such as a deprivation of the right to counsel in violation of the 6th Amendment

Writ of Error: A writ emanating from an appellate court demanding that a lower court convey the record of a case to the appellate court so that the record may be reviewed for alleged errors of law committed during a juridical proceeding.

Writ of Habeas Corpus: A writ of habeas corpus is used to bring a prisoner or other detainee (e.g. institutionalized mental patient) before the court to determine if the person's imprisonment or detention is lawful.

Writ of Mandamus: Remedy for when an officer of government acts outside his or her authority, directing a government official (regardless of branch or level) to answer by what authority he is acting in a particular situation or requiring him to act in accordance with lawful authority.

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Writ of Prerogative: Writ of Prerogative: A writ issued by a court exercising unusual or discretionary power (as opposed to a writ of right); a writ directing a governmental agency, official, or other court. The prerogative writs are the writs of procedendo, mandamus, prohibition, quo warranto, habeas corpus, and certiorari.

Writ of Procedendo: It is a writ that sends a case from an appellate court to a lower court with an order to proceed to judgment. The writ of procedendo is merely an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment.

Writ of Prohibition: A judicial order that may be used, at a higher court's discretion, to prevent a lower court from interfering with the higher court's determination of a case pending an appeal. To be entitled to a writ of prohibition, you must prove that (1) the inferior court or tribunal is about to exercise or has exercised judicial power, (2) that exercise of judicial power was unauthorized by law, and (3) "denying the writ would result in injury for which no other adequate remedy exists in the ordinary course of law."

Writ of Scire Facias: Founded upon some judicial record, such as a judgment or letters patent, requiring the defendant to appear in court and show cause as to why the record should not be enforced against him or her.

Writ of Quo Warranto: is used to challenge a person's right to hold a public or corporate office.

Qui tam pro domino rege quam pro se ipso in hac parte sequitur – who as well for the king as for himself sues in this matter

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Demurrer [1]

A frivolous traffic ticket (or any other frivolous action before a court) may be handled with what is known as a demurrer. Before changes were made to the old common law Forms of Action procedures in American government courts, there used to be such a thing known as a ”Demurrer in Pleading”. Here is an example: California Court Demurrer

Using this legal device, a party to a frivolous lawsuit could challenge the sufficiency of pleadings made by the opposing party by filing a demurrer before any pleading to the complaint took place. In the case of a victimless traffic ticket, this would be a challenge to the complaint issued by a code enforcement officer.

Generally speaking, the “demurrer” is a legal pleading filed by a party defending against claims or defenses in a lawsuit. The demurrer challenges whether a legal *cause of action* exists for the facts as stated by the complaining party. This is referred to as challenging the "legal sufficiency" of a claim or a cause of action. A demurrer would typically be filed *at the beginning* of a case, before any answer to a complaint could be solicited. It therefore would take place *before* any arraignment proceeding could be held asking for a plea to a complaint, and would be asking the court for a ruling as to the sufficiency of the demurrer.

For example, if a party were alleged to have been traveling 50 mph in a posted 40 mph speed limit zone, the party being complained against may not challenge that fact. But he may wish to know, before pleading to the complaint, who, if anyone, was hurt or injured [the STATE is alleging that the party harmed or injured the STATE, which is a legal fiction and cannot be harmed] by the action, and if so, could he or she please stand before the court and make a claim that they were hurt by the party travelling 50 mph in a 40 mph zone. If no one was harmed or injured, then there is no valid claim being alleged! Being able to file a demurrer in pleading could have brought out this fault in the complainant’s pleadings before the matter was allowed to proceed, and thus saved the court time and energy in having to sit through a frivolous complaint!

At common law, a demurrer was the most common pleading by which a defendant could challenge the legal validity of a claim or complaint in criminal or civil cases. However today this form of pleading has been abolished in many jurisdictions, including the federal court system (though many large jurisdictions, including California retain the demurrer). In criminal cases, a demurrer was considered a common law due process right to be heard and decided before an alleged defendant was required to plead “not guilty,” or make any other pleading in response, without having to admit or deny any of the facts alleged.

A demurrer is not a challenge of the ultimate merits of a case or claim. It is merely asking the court to rule on the sufficiency of the plaintiff’s pleadings before the matter can go forward. When ruling on a demurrer, a judge is required by law to assume as true facts alleged in the complaint, even if those facts would later be challenged. Historically, however, a party filing a demurrer often had to admit the facts in the complaint and waive the right to later challenge those facts. Yet that would not be a problem in a matter where there was a fault found in subject matter jurisdiction, which can be challenged at any time, such as the example given above in a victimless traffic violation.

Technically a “demurrer” is not a motion before a court, but rather a challenge as of right. In other words, has the complaining party proven legal grounds therefore giving him a right upon which to enter a complaint for which relief may be granted. One does not file a motion for demurrer nor move the court to demur. Rather, a demurrer asks the court to dismiss an action for want of right. In lay terms, if a judge sustains a demurrer, he or she is saying that the law does not recognize a legal claim or right to make a claim based on the facts stated by the complaining party.

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Demurrer 2

In the case of a frivolous traffic ticket, a demurrer would attack a complaint as missing one or more required elements of a claim. For instance, a negligence cause of action must allege one of four elements. It must allege that:

- 1) the defendant owed a duty to the plaintiff;
- 2) the defendant breached the duty;
- 3) the breach caused plaintiff injury; and
- 4) the plaintiff suffered damage.

A defendant could demur by saying that the complaint failed to plead one or more of these essential elements.

Using the above example of exceeding a speed limit and applying it to these four elements, who would the defendant owe a duty to which might be breached? The STATE? But the STATE is legally a fiction (it does not exist in point of fact) and therefore cannot be harmed or owed a duty which might be breached! If it cannot be harmed (by reason of its non-existence), that means it cannot be injured or suffer damage if someone exceeds the speed limit. Thus, all four of the elements for a negligent cause of action have been defeated, and the demurrer by all rights should be granted!

In conjunction with the method of relief asserted in the Common Law Remedy To Beat Traffic Tickets, a glaring error precluding the procedural use of a demurrer would be the fact that in order to use a demurrer (if it were even allowed in a traffic court) one would have to grant entrance to the complaint and *submit* (or consent) to being characterized as "a party" to the action.

One would have to be very well versed in law in order successfully to use a demurrer in a traffic ticket matter as these courts are often disposed to ignoring points of law once a person has submitted himself to their jurisdiction. This is because, for the most part, these courts are adjudicating private law while posing as a public court.

While in many states the demurrer has been abolished as a formal type of answer to a complaint, the same objection against the plaintiff's *cause of action* can be made by "motion to dismiss" the plaintiff's action on the ground that it has "failed to state a claim on which relief may be granted." The only problem with this approach is, once again, in the instance of a judge acting on his own discretion, the judge could be acting in "conflict of interest" (as an employee of the State, which has a financial revenue interest in the outcome of the matter) rather than as an impartial arbiter. This is what quite often occurs when a party enters the foreign jurisdiction of the State (or municipality) thinking he has a winning objection to the *cause of action* only to learn that the judge fails to recuse himself while simultaneously railroading the case through on the government's behalf and benefit.

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Motions

Motion to Compel Discovery: Seeks an order to force your opponent to produce items that are "reasonably calculated to lead to admissible evidence", by citing rules that grant your right to discovery evidence.

Motion to Strike: Seeks an order to delete all or parts of an opponent's paper on the grounds it is impertinent, inflammatory, or known to be false at the time of filing.

Motion to Dismiss: Seeks an order to get the judge to dismiss a charge or the case. This may be done if there is not enough evidence, if the alleged facts do not amount to a crime.

Motion for More Definite Statement: A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response

Motion for Extension of Time: Seeks an order giving movant a later deadline to file a response, obtain additional discovery, etc.

Motion for Rehearing (State) or Reconsideration (Federal): Seeks an order for a State or Federal Court to reconsider a prior decision.

Motion for Summary Judgement: A motion seeking an order to issue summary judgment on at least one claim. If the motion is granted, a decision is made on the claims involved without holding a trial. Typically, the motion must show that no genuine issue of material fact exists, and that the opposing party loses on that claim even if all its allegations are accepted as true.

Motion to Suppress: An attempt to keep certain statements or evidence from being introduced as evidence. For example, if police conducted a search without probable cause (in violation of the Fourth Amendment), it may be possible to suppress the evidence found as a result of that search.

Motion for Change of Venue: May be made for various reasons including pre-trial publicity. If the local news has covered the case a great deal, it may be necessary to move the trial to another venue to protect the defendant's right to an impartial jury.

Motion for Continuance (or enlargement of time): Defendant's (Plaintiff should have been prepared long in advance) attempt to reschedule a hearing to a later date showing just cause.. For example : Not enough notice of the hearing. (The law says you must get at least 45 days' notice of a final hearing, at least 10 days' notice of an enforcement hearing, and at least three days' notice of most other hearings. • You need more time to hire a lawyer or apply for legal aid. (Bring the names of any lawyers or legal aid organizations you've spoken with about your case to your continuance hearing.) • You need more time to get ready to represent yourself at a hearing. • You need more time to get important evidence or subpoena an important witness.

Motion for default: If the defendant fails to file a responsive pleading within the time permitted for such filings, the plaintiff may move for entry of the clerk's default.

Motion to amend: Filed anytime a party wishes to alter what's been said in a document already filed.

Motion for protective order: If discovery is likely to unduly burden or prejudice a party, that party may move for a protective order to either prevent the discovery altogether or require that discovery take place under controlled conditions

Motion (in limine) to include/exclude evidence: Seeks an order to include certain evidence or to exclude introduction of certain evidence.

Motion to Show Cause: Seeks an order to show why an opponent should not be held in contempt for disobeying a court order, or committing perjury.

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Objection Categories

Evidence Rule Violations: The most frequently-heard objections encountered. When a party (or the judge) ignores one of the evidence rules.

Procedural Rule Violations: Another common objection is when a party (or judge) permits an action that is not permitted by the Rules of Civil Procedure (or the Rules of Criminal Procedure in a criminal case).

General Law Violations: Less frequent, however it should be clear that if a party (or judge) violates an ordinance, statute, appellate court decision, or other proscriptive law, an objection should be made at once, stating the law that's been violated and, if necessary, describing how it's been violated, so the court record will reflect what's happened, and the judge has an opportunity to cure the problem.

Polity and Precedence: Disruptions of proper and polite proceedings prejudice your ability to effectively present your case. Public policy, a reasonable code of decency, and the requirement of polite decorum are also a part of the courtroom procedure. For the judge to allow anything that disrupts this balance is appealable error.

The object of objections, is to make a winning record for appeal. To make a record in the court of the judges errors. Don't think that the other side will play "fair". It is not expected and not practiced.

Object in a timely manner, and if the situation calls for it, do it forcefully. If the judge does not rule, move the court to rule. If the judge refuses to rule, you have made a strong record of his error for a later appeal. Failure to rule on your objection is a serious judicial error. By objecting to the judge's failure to rule, you make your record clear that the court did not merely overlook your objection but intentionally refused to rule on it. Again, a serious judicial error.

Renew any objections that were overruled. Failure to renew your objection may waive your right to raise the issue on appeal. Proper times for renewing objections include:

- After jury voir dire and before the jury is sworn
- close of your side's presentation,
- close of your opponent's presentation,
- At the close of the case and before deliberation
- **Anytime** it seems necessary to preserve your record for appeal

Ref: Virginia Code of Judicial Conduct

Ref: Virginia BAR Liability Carrier List

Ref: Virginia BAR Complaint Procedure

Ref: Virginia BAR Complaint Form

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Common Objections

- **Hearsay:** A person can only testify as to what s/he knows to be true, not what s/he heard from someone else.
- **Asked and answered:** Repeatedly ask you or your witness the same question. or opposing counsel could repeatedly ask his/her own client the same question hoping that contradicting answers will be given.
- **Motions Undisposed:** A case is never ready for trial until all motions directed to the pleadings are disposed of.
- **Outside the Pleadings**: Once the pleadings are "closed", no more issues can be raised for the court to try and decide in favor of one side or the other.
- **Prejudice:** Prejudicing the court against your witnesses or inflaming the court with wild or extremely disturbing facts that attack human emotion that may tend to influence the court's decision contrary to reason and the facts.
- **Best Evidence:** Rule 1002 of the Federal Rules of Evidence, "Except as otherwise provided by statute, an original writing, recording, or photograph is required in order to prove the contents".
- **Hearsay**: A person can only testify as to what s/he knows to be true, not what s/he heard from someone else. Testimony as to statements made out of court by someone who is not "in court", and offered to prove the truth of what they said, is inadmissible hearsay.
- **Competence:** the only witnesses who are competent to testify to a fact are those who • saw, • heard, • felt, • tasted, or • smelled the fact personally.
- **Council Testifying:** When a lawyer begins to state facts outside his own personal knowledge.
- **Facts Not in Evidence:** Unlawful hints when the opposing party has no witnesses or documents to enter as evidence
- **Qualifications:** Lay witnesses are not experts, Generally, only a witness who has been recognized as an expert witness by the judge can offer an opinion.
- **Relevance:** You can object to the relevance of evidence if you think a piece of evidence or something a witness is saying has nothing to do with the case or it is not important in determining who should win in court.
- **Leading question:** If the other party poses a question on direct examination that leads the witness to a certain answer.
- **Compound question:** When two or more questions are combined as one question.
- **Argumentative:** When the person asking cross-examination questions begins to argue with the witness, known as "**badgering** the witness".
- **Vague:** Difficult or impossible to tell what the question is about.
- **Foundation issues:** A question or response can be objectionable if a person failed to explain the background circumstances of how s/he knows the information s/he is testifying about.
- **Non-responsive:** When a witness starts responding to a question with information that is completely unrelated to the question.
- **Speculation:** If a witness does not know a fact to be true or not, but testifies about it anyway, or if a question that is posed can only be answered by using speculation.

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Objections
Evidence Rule Violations

Rules 402 and 403 – RELEVANT EVIDENCE is generally admissible unless it is unfairly prejudicial, may confuse the issue, or waste the court's time.

Rule 404 – CHARACTER EVIDENCE is generally not admissible to prove conduct, except:
- Character of Accused offered by Accused (State may rebut)
- Character of Victim offered by Accused (State may rebut), or peacefulness of victim offered by State to rebut self-defense.
- Character of Witness, as provided in Rules 607-609.
- Other crimes, wrongs or acts are not admissible to prove action in conformity with character but are admissible for other purposes.

Rule 405 - If character admissible, OPINION AND GENERAL REPUTATION are admissible. Specific conduct only admissible during direct examination when character is an essential element. Otherwise, only during cross-examination.

Rule 406 – HABIT OR ROUTINE is admissible to prove action in conformity therewith.

Rule 407 – SUBSEQUENT REMEDIAL MEASURES are not admissible to prove liability but may be admissible to show ownership, control, feasibility of precautionary measures (if controverted), or for impeachment.

Rule 408 – Evidence of COMPROMISE OR OFFERS TO COMPROMISE are not admissible to prove liability, invalidity of claim, or value of claim. May be admissible for other purposes.

Rule 409 – PAYMENT OF MEDICAL OR SIMILAR EXPENSES is not admissible to prove liability.

Rule 410 – Withdrawn GUILTY PLEAS, nolo pleas, statements made in federal Rule 11, or similar, proceedings, and plea discussions that don't result in guilty plea (or plea is withdrawn), are not admissible. Plea discussion statements are admissible if another such statement has been admitted and the statement ought to be considered with it, or in a criminal perjury proceeding**.**

Rule 501- PRIVILEGES include: spouses, attorney/client, grand jurors, state secrets, and psychiatrist/patient.

Rule 601 – Everyone is COMPETENT to be a witness.

Rule 602 - Witnesses may only testify about facts within their PERSONALK NOWLEDGE (except experts).

Rule 607 – Any party may attack the credibility of a witness.

Rule 608 - Evidence as to the TRUTHFULNESS OR UNTRUTHFULNESS of a witness is admissible in the form of opinion or reputation (evidence of truthfulness only admissible after character has been attacked). SPECIFIC INSTANCES OF CONDUCT (except convictions under Rule 609) may not be proved by extrinsic evidence. Judge may allow it on cross-exam concerning truthfulness or untruthfulness of witness, or other witness about whom witness testified.

Rule 609 - Adult convictions for crimes of dishonesty are admissible for impeachment unless annulled. Other felony convictions, less then ten years old, are admissible only if the probative value outweighs the prejudice. See simplified rule for complete conditions. - JUVENILE ADJUDICATIONS are generally not admissible. However, judge may allow adjudication of a witness other than the accused if it would be admissible to attack credibility of an adult and if court is satisfied that evidence is necessary for a fair determination on the issue of guilt or innocence.

Rule 611 – Court shall exercise reasonable control over methods of INTERROGATION AND PRESENTATION to make sure they are effective for ascertaining truth, avoiding needless use of time, and protecting witnesses from harassment and undue embarrassment. Scope of CROSS-EXAM is not limited to scope of direct exam, but re-direct and re-cross should be limited to issue raised during cross and re-direct. LEADING QUESTIONS should only be asked during cross-exam, when questioning an adverse or hostile witness, or when necessary on direct exam.

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Objections
Evidence Rule Violations

Rule 612 – WRITTEN STATEMENTS used to refresh the memory of a witness shall be produced for inspection by the adverse party. The adverse party may cross-examine the witness regarding the statement and introduce relevant parts into evidence.

Rule 613 – PRIOR STATEMENTS OF WITNESSES need not be shown or disclosed to the witnesses but, on request, they shall be shown to opposing counsel. EXTRINSIC EVIDENCE of a prior inconsistent statement by a witness is admissible only after the witness is afforded an opportunity to explain or deny the statement and the opposing party is given an opportunity to interrogate.

Rule 701 – A LAY OPINION is admissible only if limited to inferences based on witnesses' own perception and if helpful in explaining witness' story. An EXPERT OPINION is admissible only after the expert is qualified as such.

Rule 702 – An Expert opinion is admissible if it is helpful to jury.

Rule 703 - Expert opinion can be based on any information made known to the expert at or before trial. The information need not be admissible of it is normally relied upon by experts in the field.

Rule 704 - An Opinion otherwise admissible is not objectionable because it embraces issue to be decided by trier of fact. However, an expert in a criminal case shall not express opinion as to guilt or innocence of the accused.

Rule 802 - HEARSAY is an out of court statement, made by someone other than the witness, which is introduced to prove the truth of the matter asserted. It is generally not admissible.

Rule 803 – HEARSAY EXCEPTIONS: present sense impressions, excited utterances, statements of present mental state or physical condition, statements for medical diagnosis or treatment, recorded recollection, business records, learned treatises, reputation as to character, judgment of previous conviction.

Rule 804 – HEARSAY EXCEPTIONS, DECLARANT UNAVAILABLE
- "Unavailability as a witness" includes situations where declarant is unavailable due to: privilege, refusal to testify, lack of memory, death or illness, absence.
- The following are not excluded by the hearsay rule if the declarant is unavailable as a witness: former testimony, statement under belief of impending death, statement against interest, statement of personal or family history, statement offered against party that has acted with intent to procure unavailability of witness.

Rule 805 – HEARSAY WITHIN HEARSAY is not admissible unless it conforms with an exception to the hearsay rule.

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Rule 805 – HEARSAY WITHIN HEARSAY is not admissible unless it conforms with an exception to the hearsay rule.

Best Evidence Rule: Rule 1002 of the Federal Rules of Evidence, "Except as otherwise provided by statute, an original writing, recording, or photograph is required in order to prove the contents

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Writs

Writ of Habeas Corpus: A writ of habeas corpus is used to bring a prisoner or other detainee (e.g. institutionalized mental patient) before the court to determine if the person's imprisonment or detention is lawful.
Example here.

Writ of Mandamus: Remedy for when an officer of government acts outside his or her authority, directing a government official (regardless of branch or level) to answer by what authority he is acting in a particular situation or requiring him to act in accordance with lawful authority.
Example here.

Writ of Quo Warranto: is used to challenge a person's right to hold a public or corporate office.
Example here.

Writ of Certiorari: A type of writ, meant for rare use, by which an appellate court decides to review a case at its discretion.
Example here.

Writ of Prohibition: A judicial order that may be used, at a higher court's discretion, to prevent a lower court from interfering with the higher court's determination of a case pending an appeal. To be entitled to a writ of prohibition, you must prove that (1) the inferior court or tribunal is about to exercise or has exercised judicial power, (2) that exercise of judicial power was unauthorized by law, and (3) "denying the writ would result in injury for which no other adequate remedy exists in the ordinary course of law."
Example here.

Writ of Coram Nobis: This writ is intended to correct a final judgement by the same court in which it was rendered by redressing a fundamental error, such as a deprivation of the right to counsel in violation of the 6th Amendment.
Example here.

Writ of Procedendo: It is a writ that sends a case from an appellate court to a lower court with an order to proceed to judgment. The writ of procedendo is merely an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment.
Example here.

Writ of Scire Facias: Founded upon some judicial record, such as a judgment or letters patent, requiring the defendant to appear in court and show cause as to why the record should not be enforced against him or her.
Example here.

Writ of Error: A writ emanating from an appellate court demanding that a lower court convey the record of a case to the appellate court so that the record may be reviewed for alleged errors of law committed during a juridical proceeding.
Example here.

Writ of Attachment: A form of prejudgment process in which the court orders the seizure or attachment of property specifically described in the writ.
Example here.

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Maxims in Law Categories

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Maxims in Law
Accidents and Injury

An act of God does wrong to no one.

The act of God does no injury; that is, no one is responsible for inevitable accidents.

No one is held to answer for the effects of a superior force, or of an accident, unless his own fault has contributed.

The execution of law does no injury.

An action is not given to one who is not injured.

An action is not given to him who has received no damages.

He who suffers a damage by his own fault, has no right to complain.

Mistakes, neglect, or misconducts are not to be regarded as accidents.

Whoever pays by mistake what he does not owe, may recover it back; but he who pays, knowing he owes nothing; is presumed to give.

What one has paid knowing it not to be due, with the intention of recovering it back, he cannot recover back. [If the IRS accuses you of owing them money, if you want to go to court to dispute it, you must pay them in full what they demand and then sue them to get it back. Which places the burden of proof upon the accused rather than the accuser]

No man ought to be burdened in consequence of another's act.

There may be damage or injury inflicted without any act of injustice.

Not every loss produces and injury.

A personal injury does not receive satisfaction from a future course of proceeding.

Wrong is wiped out by reconciliation.

An injury is extinguished by the forgiveness or reconcilement of the party injured. [Luke 17:3-4, 2 Corinthians 2:7-8]

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Maxims in Law
Benefits and Privileges

Favors from government often carry with them an enhanced measure of regulation.

Any one may renounce a law introduced for his own benefit.

No one is obliged to accept a benefit against his consent.

He who receives the benefit should also bear the disadvantage.

He who derives a benefit from a thing, ought to feel the disadvantages attending it.

He who enjoys the benefit, ought also to bear the burden.

He who enjoys the advantage of a right takes the accompanying disadvantage.

A privilege is, as it were, a private law.

A privilege is a personal benefit and dies with the person.

One who avails himself of the benefits conferred by statute cannot deny its validity.

What I approve I do not reject. I cannot approve and reject at the same time. I cannot take the benefit of an instrument, and at the same time repudiate it.

He who does any benefit to another for me is considered as doing it to me.

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Maxims in Law
Commerce

Caveat emptor (let the buyer beware).

Let the purchaser beware.

Let the seller beware.

The payment of the price stands in the place of a sale.

The payment of the price of a thing is held as a purchase.

Goods are worth as much as they can be sold for.

Mere recommendation of an article does not bind the vendor of it.

It is settled that there is to be considered the home of each one of us where he may have his habitation and account-books, and where he has made an establishment of his business.

No rule of law protects a buyer who willfully closes his ears to information, or refuses to make inquiry when circumstances of grave suspicion imperatively demand it.

Let every one employ himself in what he knows.

He at whose risk a thing is done, should receive the profits arising from it.

Usury is odious in law. [Exodus 22:25, Leviticus 25:36-37, Nehemiah 5:7,10, Proverbs 28:8, Ezekiel 18:8,13,17; 22:12]

In commerce truth is sovereign. (Exodus 20:16; Ps. 117:2; John 8:32; II Cor. 13:8)

In commerce for any matter to be resolved must be expressed (Heb. 4:16; Phil. 4:6; Eph. 6:19-21)

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Maxims in Law
Common Sense

When you doubt, do not act.

It is a fault to meddle with what does not belong to or does not concern you.

Many men know many things, no one knows everything.

One is not present unless he understands.

It avails little to know what ought to be done, if you do not know how it is to be done.

He who leaves the battlefield first loses by default. (Book of Job; Mat. 10:22)

Sacrifice is the measure of credibility. (Acts 6:5 thru 7:59, life/death of Stephen)

All are equal under the law. (Exodus 21:23-25;Lev. 24: 17-21; Deut. 1;17, 19:21; Mat. 22:36-40; Luke 10:17; Col. 3:25)

He who questions well, learns well.

What ever is done in excess is prohibited by law.

No one is bound to give information about things he is ignorant of, but every one is bound to know that which he gives information about.

No man is bound to have foreknowledge of a Divine or a future event.

No one is bound to arm his adversary.

A workman is worthy of his hire (Exodus20:15; Lev. 19:13; Mat. 10:10; Luke 10"7; II Tim. 2:6)

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Maxims in Law
Consent and Contracts

Consent makes the law. A contract is a law between the parties, which can acquire force only by consent.

Consent makes the law: the terms of a contract, lawful in its purpose, constitute the law as between the parties.

To him consenting no injury is done.

He who consents cannot receive an injury.

Consent removes or obviates a mistake.

He who mistakes is not considered as consenting.

Every consent involves a submission; but a mere submission does not necessarily involve consent.

A contract founded on a base and unlawful consideration, or against good morals, is null.

One who wills a thing to be or to be done cannot complain of that thing as an injury.

The agreement of the parties makes the law of the contract.

The contract makes the law.

Agreements give the law to the contract.

The agreement of the parties overcomes or prevails against the law.

Advice, unless fraudulent, does not create an obligation.

No action arises out of an immoral consideration.

No action arises on an immoral contract.

In the agreements of the contracting parties, the rule is to regard the intention rather than the words.

The right of survivorship does not exist among merchants for the benefit of commerce.

When two persons are liable on a joint obligation, if one makes default the other must bear the whole.

You ought to know with whom you deal.

He who contracts, knows, or ought to know, the quality of the person with whom he contracts, otherwise he is not excusable.

He who approves cannot reject.

If anything is due to a corporation, it is not due to the individual members of it, nor do the members individually owe what the corporation owes.

Agreement takes the place of the law: the express understanding of parties supersedes such understanding as the law would imply.

Manner and agreement overrule the law.

The essence of a contract being assent, there is no contract where assent is wanting.

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Maxims in Law
Court and Pleas

There can be no plea of that thing of which the dissolution is sought.

A false plea is the basest of all things.

There can be no plea against an action which entirely destroys the plea.

He who does not deny, admits. [A well-known rule of pleading]

No one is believed in court but upon his oath.

An infamous person is repelled or prevented from taking an oath.

In law none is credited unless he is sworn. All the facts must, when established by witnesses, be under oath or affirmation.

An act of the court shall oppress no one.

The practice of a court is the law of the court.

There ought to be an end of law suits.

It concerns the commonwealth that there be an end of law suits.

It is for the public good that there be an end of litigation.

A personal action dies with the person. This must be understood of an action for a tort only.

Equity acts upon the person.

No one can sue in the name of another.

Truth is expressed in the form of an affidavit. (Lev. 5:4-5; Lev.6:3-5; Lev. 19:11-13: Num. 30:2; Mat. 5:33; James 5: 12)

An unrebutted affidavit stands as truth in commerce
(12 Pet.1:25; Heb. 6:13-15)

An unrebutted affidavit becomes the judgement in commerce. (Heb. 6:16-17)

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A general appearance cures antecedent irregularity of process, a defective service, etc.

Certain legal consequences are attached to the voluntary act of a person.

The presence of the body cures the error in the name; the truth of the name cures an error in the description

An error in the name is immaterial if the body is certain.

An error in the name is nothing when there is certainty as to the person.

The truth of the demonstration removes the error of the name.

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Maxims in Law
Crime and Punishment

A madman is punished by his madness alone.

The instigator of a crime is worse than he who perpetrates it.

They who consent to an act, and they who do it, shall have equal punishment.

Acting and consenting parties are liable to the same punishment.

No one is punished for his thoughts.

No one is punished for merely thinking of a crime.

He who has committed iniquity, shall not have equity.

He who is once bad, is presumed to be always so in the same degree.

He who is once criminal is presumed to be always criminal in the same kind/way

Whatever is once bad, is presumed to be so always in the same degree.

He who does not forbid a crime while he may, sanctions it.

He who does not blame, approves.

He is clear of blame who knows, but cannot prevent.

No one is to be punished for the crime or wrong of another.

No guilt attaches to him who is compelled to obey.

Gross negligence is held equivalent to intentional wrong.

Punishment ought not to precede a crime.

If one falsely accuses another of a crime, the punishment due to that crime should be inflicted upon the perjured informer. [Deuteronomy 19:18]

Misconduct binds its own authors. It is a never-failing axiom that everyone is accountable only for his own offence or wrong.

In offenses, the will and not the consequences are to be looked to.

It is to the intention that all law applies.
The intention of the party is the soul of the instrument.
The intention amounts to nothing unless some effect follows.

Every act is to be estimated by the intention of the doer.

An act does not make a man a criminal, unless his intention be criminal.

An act does not make a person guilty, unless the intention be also guilty. This maxim applies only to criminal cases; in civil matters it is otherwise.

In offenses, the intention is regarded, not the event.

Take away the will, and every action will be indifferent.

Your motive gives a name to your act.

An outlaw is, as it were, put out of the protection of the law.

Vainly does he who offends against the law, seek the help of the law.

Drunkenness inflames and produces every crime.

Drunkenness both aggravates and reveals every crime.

He who sins when drunk shall be punished when sober.

Punishment is due if the words of an oath be false.

A prison is established not for the sake of punishment, but of detention and guarding.

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Maxims in Law
Customs and Usages

Long time and long use, beyond the memory of man, suffices for right.

Custom is the best expounder of the law.

Custom is another law.

A prescriptive and legitimate custom overcomes the law.

Custom leads the willing, law compels or draws the unwilling.

Usage is the best interpreter of things.

Custom is the best interpreter of laws.

What is done contrary to the custom of our ancestors, neither pleases nor appears right.

Where two rights concur, the more ancient shall be preferred.

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Maxims in Law
Expressions and Words

The meaning of words is the spirit of the law. [Romans 8:2]

The propriety of words is the safety of property.

It is immaterial whether a man gives his assent by words or by acts and deeds.

It matters not whether a revocation be by words or by acts.

What is expressed renders what is implied silent.

An unequivocal statement prevails over an implication.

In ambiguous expressions, the intention of the person using them is chiefly to be regarded.

The expression of those things which are tacitly implied operates nothing.

The expression of one thing is the exclusion of another.

A general expression is to be construed generally.

A general expression implies nothing certain.

General words are understood in a general sense.

When the words and the mind agree, there is no place for interpretation.

Every interpretation either declares, extends or restrains.

The best interpretation is made from things preceding and following; i.e., the context.

Words are to be interpreted according to the subject-matter.

He who considers merely the letter of an instrument goes but skin deep into its meaning.

Frequently where the propriety of words is attended to, the meaning of truth is lost.

Words are to be taken most strongly against him who uses them.

Multiplicity and indistinctness produce confusion; and questions, the more simple they are, the more lucid.

When two things repugnant to each other are found in a will, the last is to be confirmed.

Bad or false grammar does not vitiate a deed or grant.

Many things can be implied from a few expressions.

Language is the exponent of the intention.

Words are indicators of the mind or thought.

Speech is the index of the mind. [James 1:26]

Laws are imposed, not upon words, but upon things.

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Maxims in Law
Fictions

A fiction is a rule of law that assumes something which is or may be false as true.

Where truth is, fiction of law does not exist.

There is no fiction without law.

Fictions arise from the law, and not law from fictions

Fiction is against the truth, but it is to have truth.

In a fiction of law, equity always subsists.

A fiction of law injures no one.

Fiction of law is wrongful is it works loss or injury to any one.

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Maxims in Law
Fraud and Deceit

It is safer to be deceived than to deceive.

A deceiver deals in generals.

Fraud lies hid in general expressions.

A concealed fault is equal to a deceit.

Out of fraud no action arises.

A forestaller is an oppressor of the poor, and a public enemy to the whole community and the country.

It is a fraud to conceal a fraud.

Gross negligence is equivalent to fraud.

Once a fraud, always a fraud.

What otherwise is good and just, if it be sought by force and fraud, becomes bad and unjust.

He is not deceived who knows himself to be deceived.

Let him who wishes to be deceived, be deceived.

He who does not prevent what he can, seems to commit the thing.

He who does not prevent what he can prevent, is viewed as assenting.

He who does not forbid what he can forbid, seems to assent.

He who does not forbid, when he might forbid, commands.

He who does not repel a wrong when he can, induces it.

Often it is the new road, not the old one, which deceives the traveler.

Deceit is an artifice, since it pretends one thing and does another..

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Maxims in Law
God and Religion

If ever the law of God and man are at variance, the former are to be obeyed in derogation of the later. [Acts 5:29]

That which is against Divine Law is repugnant to society and is void.

He who becomes a soldier of Christ has ceased to be a soldier of the world. [2 Timothy 2:3-4]

Where the Divinity is insulted the case is unpardonable.

Human things never prosper when divine things are neglected.

No man is presumed to be forgetful of his eternal welfare, and particularly at the point of death.

The church does not die.

That is the highest law which favors religion.

The law is from everlasting.

He who acts badly, hates the light.

He who does not willingly speak the truth, is a betrayer of the truth.

He who does not speak the truth, is a traitor to the truth.

The truth that is not sufficiently defended is frequently overpowered; and he who does not disapprove, approves.

Suppression of the truth is equivalent to the expression of what is false.

Truth, by whomever pronounced, is from God.

Truth fears nothing but concealment.

We can do nothing against truth. [2 Corinthians 13:8]

Truth is the mother of justice.

To swear is to call God to witness, and is an act of religion.

Earlier in time, is stronger in right. First in time, first in right.

He who is before in time, is preferred in right.

What is first is truest; and what comes first in time, is best in law.

No man is ignorant of his eternal welfare.

All men know God. [Hebrews 8:11]

The cause of the Church is a public cause.

The Law of God and the law of the land are all one, and both favor and preserve the common good of the land.

No man warring for God should be troubled by secular business.

What is given to the church is given to God..

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Maxims in Law
Governments and Jurisdiction

That which seems necessary for the king and the state ought not to be said to tend to the prejudice of liberty of the [Christ's] ekklesia.

The power which is derived [from God] cannot be greater than that from which it is derived [God]. [Romans 13:1]

The order of things is confounded if every one preserves not his jurisdiction [in and of Christ].

Jurisdiction is a power introduced for the public good, on account of the necessity of dispensing justice.

Every jurisdiction has its own bounds.

The government cannot confer a favor which occasions injury and loss to others.

A minor ought not to be guardian of a minor, for he is unfit to govern others who does not know how to govern himself.

The government is to be subject to the law, for the law makes government.

The law is not to be violated by those in government.

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Maxims in Law
Heirs

God, and not man, make the heir. [Romans 8:16]

God alone makes the heir, not man.

Co-heirs are deemed as one body or person, by reason of the unity of right which they possess. [Romans 8:17, Ephesians 5:31-32]

No one can be both owner and heir at the same time.

An heir is either by right of property, or right of representation.

An heir is the same person with his ancestor. [Because the ancestor, during his life, bears in his body (of law) all his heirs].

'Heir' is a collective name or noun [so it is not private, and has no private rights].

Several co-heirs are as one body, by reason of the unity of right which they possess. [Romans 8:17, Ephesians 5:31-32]

The law favors a man's inheritance.

Heir is a term of law, son one of nature.

An heir is another self, and a son is a part of the father.

The heir succeeds to the restitution not the penalty.

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Maxims in Law
Judges and Judgment 1

Let justice be done, though the heavens should fall.

One who commands lawfully must be obeyed.

Whoever does anything by the command of a judge is not reckoned to have done it with an evil intent, because it is necessary to obey. [Isaiah 33:22, "For the LORD is our judge…"]

Where a person does an act by command of one exercising judicial authority, the law will not suppose that he acted from any wrongful or improper motive, because it was his bounden duty to obey.

A judgment is always taken as truth.

If you judge, understand.

It is the duty of a good judge to remove the cause of litigation. [Acts 18:12-16]

The end of litigation is justice.

To a judge who exceeds his office or jurisdiction no obedience is due.

One who exercises jurisdiction out of his territory is not obeyed with impunity.

A twisting of language is unworthy of a judge.

A good judge decides according to justice and right, and prefers equity to strict law.

Of the credit and duty of a judge, no question can arise; but it is otherwise respecting his knowledge, whether he be mistaken as to the law or fact.

It is punishment enough for a judge that he is responsible to God. [Psalm 2:10-12, Romans 13]

That is the best system of law which confides as little as possible to the discretion of the judge.

That law is the best which leaves the least discretion to the judge; and this is an advantage which results from certainty.

He is the best judge who relies as little as possible on his own discretion.

Whenever there is a doubt between liberty and slavery, the decision must be in favor of liberty.

He who decides anything, a party being unheard, though he should decide right, does wrong.

He who spares the guilty, punishes the innocent. [Mark 15:6-15, Luke 23:17-25, John 18:38-40]

The judge is condemned when a guilty person escapes punishment.

What appears not does not exist, and nothing appears judicially before judgment.

It is improper to pass an opinion on any part of a sentence, without examining the whole.

Hasty justice is the step-mother of misfortune.

Faith is the sister of justice.

Justice knows not father not mother; justice looks at truth alone.

A judge is not to act upon his personal judgment or from a dictate of private will, but to pronounce according to law and justice.

No one should be judge in his own cause.

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Maxims in Law
Judges and Judgment 2

No one can be at once judge and party.

A judge is to expound, not to make, the law.

It is the duty of a judge to declare the law, not to enact the law or make it.

Definite, legal conclusions cannot be arrived at upon hypothetical averments.

A judge is the law speaking. [the mouth of the law]

A judge should have two salts: the salt of wisdom, lest he be insipid; and the salt of conscience, lest he be devilish.

He who flees judgment confesses his guilt.

No man should be condemned unheard.

The judge is counsel for the prisoner.

Everyone is presumed to be innocent until his guilt is established beyond a reasonable doubt.

Justice is neither to be denied nor delayed.

It is the property of a Judge to administer justice, not to give it.

Justice is an excellent virtue, and pleasing to the Most High.

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Maxims in Law

Law 1

A maxim is so called because its dignity is chiefest, and its authority most certain, and because universally approved of all.

All law has either been derived from the consent of the people, established by necessity, confirmed by custom, or of Divine Providence.

Nothing is so becoming to authority [God] as to live according to the law [of God].

He acts prudently who obeys the commands of the Law. [Ecclesiastes 12:13]

Law is the safest helmet; under the shield of the law no one is deceived. [Ephesians 6:13-17, 1 Thessalonians 5:8]

An argument drawn from authority [scripture] is the strongest in law.

An argument drawn from a similar case, or analogy, avails in law.

That which was originally void, does not by lapse of time become valid.

The law does not seek to compel a man to do that which he cannot possibly perform.

The law requires nothing impossible.

The law compels no one to do anything which is useless or impossible.

No one is bound to do what is impossible

Impossibility excuses the law.

No prescription runs against a person unable to act.

The law shall not, through the medium of its executive capacity, work a wrong.

The law does wrong to no one.

An act of the law wrongs no man.

The law never works an injury, or does him a wrong.

The construction of law works not an injury.

An argument drawn from what is inconvenient is good in law, because the law will not permit any inconvenience.

Nothing inconvenient is lawful.

Nothing against reason is lawful.

The law which governs corporations is the same as that which governs individuals [godless entities].

Nothing against reason is lawful.

The laws sometimes sleep, but never die.

A contemporaneous exposition is the best and most powerful in the law.

The law never suffers anything contrary to truth.

Law is the dictate of reason.

The law does not notice or care for trifling matters.

It is a miserable slavery where the law is vague or uncertain.

It is a wretched state of things when the law is vague and mutable.

Examples illustrate and do not restrict the law.

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Maxims in Law
Law 2

The disposition of law is firmer and more powerful than the will of man.

Law is established for the benefit of man. [Mark 2:27]

To be able to know is the same as to know. This maxim is applied to the duty of every one to know the law.

We may do what is allowed by law.

Ignorance of fact may excuse, but not ignorance of law.

Ignorance of facts excuses, ignorance of law does not excuse.

In a doubtful case, that is the construction of the law which the words indicate.

In doubt, the gentler course is to be followed.

In doubt, the safer course is to be adopted.

In a deed which may be considered good or bad, the law looks more to the good than to the bad.

In things favored what does good is more regarded than what does harm.

In all affairs, and principally in those which concern the administration of justice, the rules of equity ought to be followed.

In ambiguous things, such a construction is to be made, that what is inconvenient and absurd is to be avoided.

Law is the science of what is good and evil.

The law punishes falsehood.

Reason and authority are the two brightest lights in the world.

The reason of the law is the soul of the law.

The reason ceasing, the law itself ceases.

When the reason, which is the soul of a law, ceases to exist, the law itself should lose its operative effect.

In default of the law, the maxim rules.

Human laws are born, live and die.

It is a perpetual law that no human or positive law can be perpetual.

If you depart from the law you will wander without a guide and everything will be in a state of uncertainty to every one. [Joshua 1:8]

Where there is no law there is no transgression, as it regards the world. [Romans 4:15]

Everything is permitted, which is not forbidden by law.

All rules of law are liable to exceptions. [Matthew 12:1-5]

What is inconvenient or contrary to reason, is not allowed in law.

The laws serve the vigilant, not those who sleep upon their rights.

Relief is not given to such as sleep on their rights.

Nothing unjust is presumed in law.

Acts required by law to be done, admit of no qualification.

To know the laws, is not to observe their mere words, but their force and power. [John 6:68]

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Maxims in Law

Law 3

We are all bound to our lawgiver, regardless of our personal interpretation of reality. [Isaiah 33:22, James 4:12]

Legality is not reality

The law sustains the watchful.

Those awake, not those asleep, the laws assist. [1 Timothy 1:9]

Legal remedies are for the active and vigilant.

What is good and equal, is the law of laws.

Whose right it is to institute, his right it is to abrogate.

Laws are abrogated or repealed by the same authority by which they are made.

The civil law is what a people establishes for itself. [It is not established by God]

Many things have been introduced into the common law, with a view to the public good, which are inconsistent with sound reason. [The law of merchants was merged with the common law]

The people is the greatest master of error.

A man may obey the law and yet be neither honest nor a good neighbor.

To investigate [inquire into] is the way to know what things are truly lawful. [2 Timothy 2:15]

Those who do not preserve the law of the land, they justly incur the awesome and indelible brand of infamy.

An exception to the rule should not destroy the rule.

Laws should bind their own maker.

Necessity overrules the law.

Necessity makes that lawful which otherwise is not lawful.

Things which are tolerated on account of necessity ought not to be drawn into precedents.

It has been said, with much truth, "Where the law ends, tyranny begins."

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Maxims in Law
Marriage

The law favors dower; it is the reward of chastity; therefore let it be preserved. [Exodus 22:17]

Husband and wife are considered one person in law. [Genesis 2:24]

A wife is not her own mistress, but is under the power of her husband.

The union of a man and a woman is of the law of nature.

Marriages ought to be free.

All things which are of the wife, belong to the husband. [Genesis 3:16]

Although the property may be the wife's, the husband is the keeper of it, since he is the head of the wife.

Consent, and not cohabitation, makes the marriage.

Insanity prevents marriage from being contracted, because consent is needed.

A wife follows the domicile of her husband.

Husband and wife cannot be a witness for, or against, each other, because of the union of person that exists.

The right of blood and kindred cannot be destroyed by any civil law. [Acts 17:26-28]

Children are the blood of their parents, but the father and mother are not of the blood of the children.

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Maxims in Law Miscellaneous 1

Satisfaction of a lien. (Gen. 2-3; Mat. 4; Revelation)

- Rebuttal of an affidavit, with another affidavit, point by point, until the matter is resolved as to whose is correct, in case of non-resolution.
- You convene a Sheriff's common law jury, based on the Seventh Amendment, concerning a dispute involving a claim of more than $20. Or, you can use three disinterested parties to make judgment.
- The only other way to satisfy a lien is to pay it.

He who has the risk has the dominion or advantage.

There is no disputing against a man denying principles.

The immediate, and not the remote cause, is to be considered.

A consequence ought not to be drawn from another consequence.

He who takes away the means, destroys the end.

He who destroys the means, destroys the end.

He who seeks a reason for everything, subverts reason.

Every exception not watched tends to assume the place of the principle.

Where there is a right, there is a remedy.

For every legal right the law provides a remedy.

He who uses the right of another [belonging to Christ] ought to use the same right [of Christ]. [In other words, don't use something new, or something outside of Christ].

Liberty is an inestimable good.

than naked truth; and frequently error conquers truth and reasoning.

All shall have liberty to renounce those things which have been established in their favor.

Power is not conferred, but for the public good.

Power ought to follow, not to precede justice.

To know properly is to know the reason and cause of a thing.

The useful by the useless is not destroyed.

Where there is no act, there can be no force.

One may not do an act to himself.

A thing done cannot be undone.

No man is bound for the advice he gives.

He who commands a thing to be done is held to have done it himself.

When anything is commanded, everything by which it can be accomplished is also commanded.

The principal part of everything is the beginning.

To refer errors to their origin is to refute them.

The origin of a thing ought to be inquired into.

Human nature does not change with time or environment.

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Maxims in Law Miscellaneous 2

Anger is short insanity.

It is lawful to repel force by force, provided it be done with the moderation of blameless defense, not for the purpose of taking revenge, but to ward off injury.

The status of a person is his legal position or condition.

A person is a man considered with reference to a certain status.

The partner of my partner is not my partner.

Use is the master of things, experience is the mistress of things.

Protection draws to it subjection, subjection, protection.

Error artfully colored is in many things more probable

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Maxims in Law Officers

Ignorance of the Law does not excuse misconduct in anyone, least of all a sworn officer of the law.

Summonses or citations should not be granted before it is expressed under the circumstances whether the summons ought to be made.

A delegated power cannot be again delegated. A deputy cannot appoint a deputy.

An office ought to be injurious to no one.

A neglected duty often works as much against the interests as a duty wrongfully performed.

Failure to enforce the law does not change it.

It is contrary to the Law of Nations to do violence to Ambassadors.

An Ambassador fills the place of the king by whom he is sent, and is to be honored as he is whose place he fills.

The greatest enemies to peace are force and wrong.

Force and wrong are greatly contrary to peace.

Force is inimical to the laws.

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Maxims in Law
Possession

No one gives who does not have.

No one can give what he does not own.

One cannot transfer to another a right which he has not.

He gives nothing who has nothing.

Two cannot possess one thing each in entirety.

A gift is rendered complete by the possession of the receiver.

What is mine cannot be taken away without my consent.

He that gives never ceases to possess until he that receives begins to possess.

A person in possession is not bound to prove that the possessions belong to him.

Things taken or captured by pirates and robbers do not change their ownership.

Things which are taken from enemies immediately become the property of the captors.

It is one thing to possess, it is another to be in possession.

Possession of the termer, possession of the reversioner.

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Maxims in Law
Property and Land

Land lying unoccupied is given to the first occupant.

What belongs to no one, naturally belong to the first occupant.

Possession is a good title, where no better title appears.

Long possession produces the right of possession, and takes away from the true owner his action.

When a man has the possession as well as the right of property, he is said to have jus duplicatum - a double right, forming a complete title.

Rights of dominion are transferred without title or delivery, by prescription, to wit, long and quiet possession.

Possessor has right against all men but him who has the very right.

Enjoy your own property in such a manner as not to injure that of another person.

He who owns the soil, owns up to the sky.

The owner of a piece of land owns everything above and below it to an indefinite extent.

Of whom is the land, of him is it also to the sky and to the deepest depths; he who owns the land owns all above and all below the surface.

Every person has exclusive dominion over the soil which he absolutely owns; hence such an owner of land has the exclusive right of hunting and fishing on his land, and the waters covering it.

Every man's house is his castle.

A citizen cannot be taken by force from his house to be conducted before a judge or to prison.

The habitation of each one is an inviolable asylum for him.

Whatever is affixed to the soil belongs to it.

Rivers and ports are public, therefore the right of fishing there is common to all.

Land comprehends any ground soil, or earth whatsoever; as meadows, pastures, woods, moors, waters, and marshes.

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Maxims in Law
Right and Wrong

A right cannot arise from a wrong.

You are not to do evil that good may come of it.

It is not lawful to do evil that good may come of it.

That interpretation is to be received, which will not intend a wrong.

It is better to suffer every wrong or ill, than to consent to it.

It is better to recede than to proceed wrongly.

To lie is to go against the mind.

The multitude of those who err is no excuse for error. [Exodus 23:2]

No one is considered as committing damages, unless he is doing what he has no right to do.

No one shall take advantage of his own wrong.

No man ought to derive any benefit of his own wrong.

No one ought to gain by another's loss.

No one ought to enrich himself at the expense of others.

No one can improve his condition by a crime.

He who uses his legal rights, harms no one.

An error not resisted is approved.

He who is silent appears to consent.

Things silent are sometimes considered as expressed.

To conceal is one thing, to be silent another.

Concealment of the truth is (equivalent to) a statement of what is false.

Suppression of fact, which should be disclosed, is the same in effect as willful misrepresentation.

Evil is not presumed.

It is safer to err on the side of mercy.

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Maxims in Law
Scriptural

Unequal things ought not to be joined. [2 Corinthians 6:14]

Things unite with similar things.

The law is no respecter of persons. [Acts 10:34]

Time runs against the slothful and those who neglect their rights. [Proverbs 24:30-31]

Debts follow the person of the debtor.

The most favorable construction is made in restitutions. [Exodus 22:5-6,12]

Where damages are given, the losing party should pay the costs of the victor.

In many counselors there is safety. [Proverbs 11:14; 15:22; 24:6]

Remove the foundation, the structure or work fall. [Luke 6:48-49]

A legacy is confirmed by the death of the testator, in the same manner as a gift from a living person is by delivery alone. [Hebrews 9:16]

The will of a testator is ambulatory (alterable, revocable) up to his death. [Hebrews 9:16-17]

Every will is completed at death. A will speaks from the time of death only. [Hebrews 9:16-17]

The last will of a testator is to be fulfilled according to his real intention.

To insult the deity is an unpardonable offense. [Matthew 12:31]

Women are excluded from all civil and public charges or offices. [1 Timothy 2:12, 1 Corinthians 14:34].

He who is in the womb, is considered as born, whenever it is for his benefit. [Job 31:15, Isaiah 49:1,5, Jeremiah 1:5]

He who first offends, causes the strife. [Matthew 5:22]

He who pays tardily, pays less than he ought. [Leviticus 19:13, Deuteronomy 24:14-15]

The beaten path is the safe path; the old way is the safe way. [Jeremiah 6:16]

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Maxims in Law
Servants and Slaves

Whatever is acquired by the servant, is acquired for the master.

A slave is not a person.

A slave, and everything a slave has, belongs to his master.

He who acts by or through another, acts for himself.

He who does anything through another, is considered as doing it himself.

The master is liable for injury done by his servant.

He is not presumed to consent who obeys the orders of his father or his master.

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Maxims in Law
Wisdom and Knowledge

If you know not the names of things, the knowledge of things themselves perishes; and of you lose the names, the distinction of the things is certainly lost.

Names are mutable, but things immutable.

Names of things ought to be understood according to common usage, not according to the opinions of individuals.

A name is not sufficient if a thing or subject for it does not exist by law or by fact.

Not to believe rashly is the nerve of wisdom.

Reason is a ray of the Divine Light. [Isaiah 1:18]

Abundant caution does no harm.

External acts indicate undisclosed thoughts.

External actions show internal secrets.

Outward acts evince the inward purpose.

You will perceive many things more easily by practice than by rules.

Remove the cause and the effect will cease.

Give the things which are yours whilst they are yours; after death they are not yours.

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Maxims in Law
Witnesses and Proof

A witness is a person who is present at and observes a transaction. [The government only has over persons, not substance. Any video tape, audio tape, computer printout, etc. that are used as witnesses

The answer of one witness shall not be heard. [Deuteronomy 19:15]

The testimony of one witness, unsupported, may not be enough to convict; for there may then be merely oath against oath.

This is a maxim of the civil law, where everything must be proved by two witnesses. [Matthew 18:16, 2 Corinthians 13:1]

In law, none is credited unless he is sworn. All facts must, when established by witnesses, be under oath or affirmation.

A confession made in court is of greater effect than any proof.

No man is bound to produce writings against himself.

No one can be made to testify against himself or betray himself.

No one is bound to accuse himself.

No one ought to accuse himself, unless before God.

One making a voluntary confession, is to be dealt with more mercifully.

He ought not to be heard who advances a proposition contrary to the rules of law.

False in one (particular), false in all.

Deliberate falsehood in one matter will be imputed to related matters.

He who alleges contradictory things is not to be listened to.

Proofs are to be weighed not numbered; that is, the more worthy or credible are to be believed. [It doesn't matter how many men say something, because the Word of God is superior to all. It does not matter how many people believe a lie, it's still a lie. And in a democracy, a lie is the truth].

A presumption will stand good until the contrary is proved.

The presumption is always in favor of the one who denies.

All things are presumed to be lawfully done and duly performed until the contrary is proved.

When the plaintiff does not prove his case, the defendant is absolved.

When opinions are equal, a defendant is acquitted.

An act done by me against my will is not my act.

What does not appear and what is not is the same; it is not the defect of law, but the want of proof.

The faculty or right of offering proof is not to be narrowed.

The latter decisions are stronger in law.

No one is restrained from using several defenses.

No one is bound to inform about a thing he knows not, but he who gives information is bound to know what he says.

No one is bound to expose himself to misfortune and dangers.

Plain truths need not be proved.

What is clearly apparent need not be proved.

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Maxims in Law
Witnesses and Proof

One eye witness is better than ten ear ones.

An eye witness outweighs others.

What appears to the court needs not the help of witnesses.

It is in the nature of things, that he who denies a fact is not bound to prove it.

The burden of proof lies upon him who affirms, not on him who denies.

The claimant is always bound to prove: the burden of proof lies on him.

Upon the one alleging, not upon him denying, rests the duty of proving.

Upon the plaintiff rests the proving – the burden of proof.

The necessity of proving lies with him who makes the charge.

When the law presumes the affirmative, the negative is to be proved.

When the proofs of facts are present, what need is there of words.

It is vain to prove that which if proved would not aid the matter in question.

Facts are more powerful than words.

Negative facts are not proof.

Witnesses cannot testify to a negative; they must testify to an affirmative.

Better is the condition of the defendant, than that of the plaintiff.

What is not proved and what does not exist are the same; it is not a defect of the law, but of proof.

Principles prove, they are not proved.

There is no reasoning of principles.

All things are presumed to have been done in due and solemn form.

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Affirmative Defense 1

When a Motion to Strike, Motion to Dismiss or Motion for More Definite Statement did not prevent a defendant from answering the plaintiffs complaint.

Failure to state a cause of action (state) or failure to state a claim on which the court can grant relief (federal) upon which relief may be granted (almost always use): Failure to state sufficient ultimate facts to support all essential elements of a cause of action is a defense that first should be asserted by a motion to dismiss.

Accord and Satisfaction: If terms of a prior case had been settled, and then both parties agree on new terms which may be less stringent than the original contact, the plaintiff agreed to accord on lesser terms and satisfaction was met But the defendant is sued again for breach of contract for the original terms, the affirmative defense when answering the new complaint would be "accord and satisfaction" because plaintiff has signed the contract releasing the defendant. Accord and satisfaction erases the former obligation when performance of the second promise satisfies the first.

Arbitration and Award: If an arbiter or arbitration board makes an award to the prevailing party, then a lawsuit brought on the same disputed issues will be dismissed if the defendant files the affirmative defense of "arbitration and award"

Assumption of Risk: When the court deem that the plaintiff "knew or should have known" of the inherent risk involved and that he voluntarily waived the right to sue for damages

Act of God: may be used against certain classes of claim if a natural disaster, extreme weather conditions, or other event beyond the control of mankind makes performance by the defendant impossible.

Alibi: If the defendant files this affirmative defense and subsequently proves he had an alibi at the time of the alleged crime he wins.

Coercion/Duress: The act of applying force to illegally compel someone to perform an act.

Comparative Negligence: If the plaintiff is at least partially responsible for his own damages, the plaintiff cannot recover that portion of damages caused by himself.

Consent: When a plaintiff attempts to sue for damages resulting from an act to which he knowingly and intelligently consented.

Contributory Negligence: If a plaintiff negligently contributed to the event giving rise to plaintiff's claim, the defendant may have grounds for this defense.

Discharge in Bankruptcy: If you filed bankruptcy, and the claim you are being sued for was included in your bankruptcy, you may have been released from paying the claim when your bankruptcy case was over. Check with your bankruptcy attorney to find out if the plaintiff's claim was "discharged" or released by the bankruptcy court. Include the bankruptcy case information including the date of discharge and the case number. Case # _____, discharge date: _____.

Economic Loss: A defense to prevent plaintiffs from double-dipping (doubling their damages for the same loss).

Entrapment: a defendant may be found not guilty if entrapment occurred even if he or she would be otherwise guilty of the crime.

Judicial Estoppel: A party is barred from taking positions in a case that are inconsistent with their positions in a prior judicial proceeding.

Failure of Consideration: You may use this defense if the person suing you never performed the services that they are suing you for, or if the goods or products you bought from the person or entity suing you are completely defective.

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Affirmative Defense 2

When a Motion to Strike, Motion to Dismiss or Motion for More Definite Statement did not prevent a defendant from answering the plaintiffs complaint.

Lack of Consideration: You may use this defense if the services provided by the person suing you were so poorly performed that any further payment to that person would be unreasonable and unfair, or if the goods or products you purchased were so defective that enforcement of the contract would be unreasonable and unfair.

Estoppel: This arises where one party leads another to believe some set of facts, the second party reasonably relies on those facts, then the first party changes position and seeks to stand on a different set of facts. The courts say the first part is estopped to deny the initial facts, and the second party is justified in continuing to rely on the facts initially represented by the first party

Failure of Consideration: Useful in breach of contract cases where the plaintiff claims the defendant failed to uphold his end of the bargain, and the defendant wishes to make clear that the plaintiff didn't do his part, either – such as failure to pay for services or failure to deliver goods or pay the price for same.

Failure to Demand: When plaintiffs fail to make a formal demand for performance (payment of money, performance of services, or delivery of goods) as a pre-requisite to filing a lawsuit against a breach of contract.

Failure to Join an Indispensable Party: It is proper where someone who has an interest in the case such that a final decree cannot be made without either affecting the interest or leaving the case unresolved or contrary to the requirements of justice.

Failure to Mitigate Damages: Plaintiffs should not be able to collect money from you if they could have prevented the damage. For example, if you break a year long lease, a landlord is required to find a new tenant as soon as possible. You may still be responsible for the difference in the rent and the time the unit was not rented. But the landlord cannot just wait out the year and then try and force you to pay the whole year's rent.

Failure to Post Bond: Some jurisdictions require the posting of a bond to protect the foreseeable injury to a defendant in certain types of cases – most notably actions for injunctive relief.

Fraud: One must spell out fraudulent details with specificity so the court knows what material misrepresentation was made that gives rise to the alleged fraud. In other words, the defensive pleading must be both complete and accurate.

Fraud (generally, as an equitable defense, as opposed to fraud in the inducement, below): A wrongful act of deception that causes a person to give up property or a right.

Fraud in the inducement: a defense to a breach of contract claim. Fraud in the inducement requires a showing that: The party made a false statement of fact, and the fact was material to the contract or agreement.

Futile Act: If requiring or prohibiting an action will have no reasonably foreseeable benefit, the court is without jurisdiction to lawfully enter an order.

Good Samaritan Defense: Some jurisdictions have enacted statutory protections that limit the liability of persons who render assistance, medical or otherwise, in "emergency" situations.

Illegality: A general rule that controls the trial courts in all jurisdictions that a contract arising from an illegal act (e.g., gambling) or one seeking to enforce performance of an illegal act (e.g., a mob hit) cannot be enforced in our courts.

Impossibility of Performance: A defendant may be excused from performing certain acts if prevented by some circumstance beyond his control. It was impossible to perform the contract. claim.

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Affirmative Defense 3

When a Motion to Strike, Motion to Dismiss or Motion for More Definite Statement did not prevent a defendant from answering the plaintiffs complaint.

Improper Venue: This should be brought by motion to dismiss first. Then, if the motion fails, defendant should file this affirmative defense to preserve the issue. In that way, defendant may continue to argue the case is not ***where*** it should be

Injury by Fellow Servant: Where an employee is injured by another employee of the same employer.

Insanity: It is an affirmative defense to a prosecution under any Federal statute that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.

Insufficiency of Process: This arises when the summons is defective (e.g., unsigned) or when a copy of the complaint was not attached to the summons when served.

Insufficiency of Service Process: When a party is not served with a summons and complaint.

No Irreparable Harm: If a plaintiff sues for an injunction when the wrong plaintiff seeks to prevent by means of the injunction could be fully compensated by awarding money damages alone, the court should not issue the injunction. The affirmative defense of “no irreparable harm” should be filed with defendant’s answer.

Laches: The law requires people to act promptly to enforce their rights. If the plaintiff waited a long time to file a lawsuit, without having a good reason for the delay, and the delay has made it harder for you to defend the case, this defense may apply to you.

Lack of Subject Matter Jurisdiction: In federal court, under the Federal Rules of Civil Procedure, a motion to dismiss for lack of subject-matter jurisdiction is considered a favored defense and may be raised at any point in the litigation process, even if the parties had previously argued that subject-matter jurisdiction existed. If a federal court has exclusive jurisdiction to hear a copyright infringement case, it can’t be tried in a state courtroom.

Lack of In Personam Jurisdiction: In order for a court to have jurisdiction over a person, the person must be served with process, i.e., a summons and copy of the complaint. Before a court can exercise power over a party, the U.S. Constitution requires that the party has certain minimum contacts with the forum in which the court sits. International Shoe v Washington, 326 US 310 (1945). So if the plaintiff sues a defendant, that defendant can object to the suit by arguing that the court does not have personal jurisdiction over the defendant.

Lack of In Rem Jurisdiction: In Rem applies to property or "all the world" instead of a specific person. If the lawsuit is to determine title to property (in rem) then the action must be filed where the property exists and is only enforceable there.

License: Without a license to possess or use the property of another, a plaintiff has a cause of action by right and is entitled to judgment for all provable damages directly resulting from the defendant’s unauthorized acts. If, however, the plaintiff grants defendant license to use, possess, or enter upon plaintiff’s property, then defendant has an affirmative defense that is absolute.

Necessity: When an individual commits a criminal act during an emergency situation in order to prevent a greater harm from happening. The defendant must reasonably have believed that there was an actual and specific threat that required immediate action, The defendant must have had no realistic alternative to completing the criminal act, The harm caused by the criminal act must not be greater than the harm avoided, The defendant did not himself contribute to or cause the threat.

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Affirmative Defense 4

When a Motion to Strike, Motion to Dismiss or Motion for More Definite Statement did not prevent a defendant from answering the plaintiffs complaint.

Res Judicata: A plaintiff is prevented from litigating claims that have been either finally adjudicated or could have been adjudicated in a prior **Respondeat Superior:**

Self Defense: The defendant's actions were necessary to protect himself or others from harm.

Statute of Frauds: The "Statute of Frauds" is a law that requires many different types of contracts be in writing. There are some exceptions to the Statute of Frauds, but if you think the claim the plaintiff is suing you for arose out of an agreement that was required by law to be in writing, but was not in writing, this defense may apply to you.

Statute of Limitations: The plaintiff has a limited amount of time to sue you from the date the incident (they are suing you about) happened. Below are common time limits:

a. **Personal Injury** 2 years from the injury or discovery
b. **Oral Contract** 2 years from the date the contract is broken.
c. **Written Contract** 4 years from the date the contract is broken.
d. **Property Damage** 3 years from when the damage happened.

Unclean Hands: The law requires those coming into the court seeking justice to do justice themselves. This concept is called "clean hands." If you believe the plaintiff has taken advantage of his or her own wrong doing in relation to the lawsuit, you may raise this defense.

Unconscionability: The absence of meaningful choice on the part of a party to a contract because the terms are overwhelmingly one-sided in favor of the party with the superior bargaining power.

Collateral Estoppel (Issue Preclusion): A party is barred from re-litigating issues.

Equitable Estoppel: Legal relief to a party who has acted unfairly is barred.

Waiver and Estoppel: These two defenses are closely related. They are based on the concept that if someone "says one thing but does another," he or she may be held to what was first said. If the plaintiff told or promised you something regarding the money you are being sued for, and you relied upon the statement or promise, but plaintiff failed to honor it, these defenses may apply to you.
statutory defenses prerequisites (these will vary depending on the claims)

failure of condition precedent: Sometimes one party's performance of a contract is dependant on someone else first performing an obligation, or something else happening first. If someone else was required to do something before you had to perform your obligations under the contract but failed to do it, or something was required to happen before you had to perform but it did not happen, you may raise this defense.

anticipatory repudiation / breach: If the person suing you cancelled the contract, or pulled out of the deal before you had a chance to perform your part of the contract, you can raise this defense.

no adequate assurances: A defendant can allege that any failure to keep her promise is excused because, before the defendant was to perform, circumstances indicated that the plaintiff's promise would not be kept and the plaintiff failed to give adequate assurances.

improper notice of breach: You may use this defense if the plaintiff did not tell you before suing you that you were violating the terms of the contract, and therefore denied you the opportunity to fix the problem. In this defense, notice of breach may need to be required in the contract, and the other side's failure to give you notice must have deprived you of your opportunity to fix the problem.

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Affirmative Defense 5

When a Motion to Strike, Motion to Dismiss or Motion for More Definite Statement did not prevent a defendant from answering the plaintiffs complaint.

breach of express warranty: This defense applies if the person suing you failed to honor a promise or written warranty for services.

breach of implied warranty : This defense applies if the services provided by the person suing you failed to meet the custom and standard within the industry or if the goods or products purchased from the person or entity suing you could not be used for the purpose for which they were sold. You tried to return the goods but the seller refused to accept them.

unjust enrichment: You can use this defense if giving the plaintiff the amount they request in the lawsuit would result in the plaintiff receiving more money than s/he is entitled to.

prevention of performance: If you were prevented from doing your part of the contract by the plaintiff this affirmative defense may apply to you.

lack of privity: You can raise this defense if there was no contract or agreement between you and the person suing you, or the debt was not properly assigned to the person suing you

parole evidence: The law states that when people put their agreements in writing, the written contract takes priority over whatever else is said in relation to the agreement. If the plaintiff's claims are based on a verbal statement that contradicts, or falls outside the written terms of the agreement, you may raise this defense.

no deficiency judgment permitted by law: If the complaint is asking for money after the goods or property that served as collateral on a loan were sold, and the sale was not properly noticed or conducted, this defense may apply. Plaintiff, or the person or entity that assigned the claim to plaintiff, is not entitled to sue for extra money after the sale of the goods or property if the law does not allow for a deficiency judgment, or there was improper notice of sale, or the sale was conducted improperly.

violation of the Real Estate Settlement Procedure Act (RESPA): In many cases, a defendant can allege as an affirmative defense that the plaintiff violated the provisions of a statute. The defendant would review the facts of his case alongside the statute and identify anything missing. A RESPA violation might also be used to allege the failure of conditions precedent.

violation of the Truth in Lending Act (TILA): A foreclosure defendant can allege that the plaintiff violated certain provisions of TILA. The defendant would review the facts of his case alongside the statute and identify anything missing. A TILA violation might also be used to allege failure of conditions precedent.

Failure of conditions precedent: An action or actions are required to take place (usually by the plaintiff) before the defendant should perform on a contract.

attorneys' fees award not permissible: The law only allows the winning side in a lawsuit to be reimbursed the money they paid for attorney's fees if the contract upon which the lawsuit is based says that the winning side can recover attorney's fees, or a **statute** (law) says the winning side can recover attorney's fees. If the plaintiff has asked for reimbursement of attorney's fees but there is no contract provision or law that entitles plaintiff to recover attorney's fees, you can raise this defense.

Offset: You may use this defense if the plaintiff owes you money, or the plaintiff failed to credit you for money you already paid.

unilateral mistake of fact: A defendant may allege as an affirmative defense that there was no contract because he was mistaken about a material fact.

undue influence: A contract can be rendered void or voidable if a person is reasonably considered to be in a position of trust in relation to another person and abuses that trust.

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Affirmative Defense 6

When a Motion to Strike, Motion to Dismiss or Motion for More Definite Statement did not prevent a defendant from answering the plaintiffs complaint.

Novation: The substitution of an old contract with a new one.

Ratification: The act of giving consent to or sanctioning the prior acts of a defendant such that a plaintiff can't complain about the act later.

contrary to public policy: If the contract required a party to perform an illegal act or to violate a law, then it may be unenforceable, and this defense may apply

Failure to exhaust administrative remedies: You may use this defense if the plaintiff was supposed to pursue different administrative avenues but failed to do so before suing you. This defense is most commonly used by government agencies or businesses.

Failure to Pursue Alternative Dispute Resolution (ADR): You may use this defense if the person suing you failed to request mediation or arbitration as required before filing a lawsuit. **CAUTION:** If you think this affirmative defense applies to you, and you want to enforce an arbitration clause in the contract which is the subject of the lawsuit, filing an answer alone, without filing a petition to compel arbitration at the same time, may cause you to waive your right to have the dispute resolved through arbitration. You can get a form for filing a petition to compel arbitration from the court's Self-Help Legal Access Center

frustration of purpose: If enforcement of the actual contract would go against the very purpose of the agreement you made with the person suing you, you may raise this defense.

failure to join an indispensable party: A person must be joined in an action when a matter cannot be resolved without him.

prior breach by plaintiff: If the person suing you broke their end of the contract first, and you believe you were therefore excused from performing your part, you can raise this defense.

assumption of the risk: The plaintiff knew of a dangerous condition and voluntarily exposed himself to it.

force majeure (enjoying a renaissance due to COVID-19)

Usury: You may use this defense if the plaintiff is charging higher interest than the law allows

ultra vires

champerty

failure to act in a commercially reasonable manner

acquiescence

no benefit conferred (unjust enrichment)

refusal to surrender (unlawful detainder)

doctrine of primary or exclusive jurisdiction

exemption

failure to preserve confidentiality (in a privacy action)

not inherently distinctive (trademark)

no secondary meaning (trademark)

fair use (trademark and copyright)

no commercial goodwill (trademark)

no dilution (trademark)

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Affirmative Defense 7

When a Motion to Strike, Motion to Dismiss or Motion for More Definite Statement did not prevent a defendant from answering the plaintiffs complaint.

single instance rule (defamation)

innocently construed (defamation)

made in jest (defamation)

public person (defamation)

suicide (in accident or some benefits actions)

adverse possession (in trespass action)

mutual acquiescence in boundary (in trespass action)

statutory immunity (under applicable state or federal law)

unconstitutional (relating to statute allegedly violated)

insanity (normally in criminal context, but may have some application in civil suits linked to criminal acts)

self-defense (in assault, battery, trespass actions)

defense of others (assault/battery)

defense of real property (assault/battery)

defense of personal property (assault/battery)

recapture of personal property (assault/battery)

permission/invitation/consent (in assault, battery, trespass actions)

agency

Section 2-607 UCC acceptance of goods, notification of defect in time or quality within reasonable time

at-will employment

forfeit of entitlement

breach of contract: The act of breaking the terms of a contract without a legal excuse.

breach of implied covenant of good faith and fair dealing

hindrance of contract

cancellation of contract/resignation

circuitry of action

discharge (other than bankruptcy)

election of parties

election of remedies

joint venture

lack of authority

no government action

privilege

reasonable accommodation

retraction

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Affirmative Defense 8

When a Motion to Strike, Motion to Dismiss or Motion for More Definite Statement did not prevent a defendant from answering the plaintiffs complaint.

safety of employee (ADA)

statutory compliance

no damages (where required element of pleading)

category of damages sought barred by contract

damages sought in excess of limitation and barred by contract

termination of employment

undue burden (ADA)

wrong party

barred by premises liability act

barred by worker's compensation law

implied repeal of statute (*see In re: Stock Exchanges Options Trading Antitrust Litigation*, 317 F.3d 134 (2d. Cir. 2003)

failure to take advantage of effective system to report/stop harassment (in Title VII actions, called the Faragher-Ellerth defense) (*see Jones v. D.C. Dept. of Corrections*, 429 F.3d 276 (D.C. Cir. 2005) - fair use (copyright). *See, e.g., Campbel, aka Skywalker, et al. v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 590 (1994)

Noerr-Pennington defense (antitrust) (a Sherman Act defendant can raise the affirmative defense of right to petition for redress, even if they use that right to try to gain an anti-competitive advantage). *See Noerr-Pennington* Doctrine (2009), ABA Section of Antitrust Law, at p.107.

Same decision defense (employer would still have fired employee for lawful reasons even if the actual firing was for a mix of lawful and unlawful reasons) (*Mt. Healthy City School Dist. Bd. of Ed. v. Doyle*, 429 U.S. 274 (1977)).

ignorance of the law. Ignorance of the law is rarely a defense to liability, but if proven, ignorance that racial discrimination violates federal law may be a defense to punitive damages in Title VII cases. *See, e.g. Alexander v. Riga*, 208 F.3d 419, 432 (3d Cir. 2000).

business judgment rule (hat tip Iain Johnston)

claim of right (defense to element of intent required to prove theft)

barred/preempted by the Public Securities Litigation Reform Act (PSLRA)

prior commercial use (trademark and patent)

license and assignment (patent)

implied license (patent)

no literal infringement (patent)

merger doctrine

learned intermediary or sophisticated user doctrine

adequate warning

browserwrap/clickwrap

Sham:

Truth:

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Affirmative Defense 9

When a Motion to Strike, Motion to Dismiss or Motion for More Definite Statement did not prevent a defendant from answering the plaintiffs complaint.

doctrine of equivalents (patent)

estoppel due to prosecution history

limitation by prior art

disclosed but unclaimed embodiments

functionality defense (design patent infringement)

repair versus reconstruction (patent)

expiration of patent for nonpayment of fees (patent validity)

estoppel due to prior judgment of invalidity (patent validity)

lack of novelty re prior art (Section 102) (patent)

prior art (patent)

obviousness (patent)

misnamed inventorship (patent)

inadequately disclosed or claimed (patent)

abandonment (patent)

double patenting (patent)

grace period as to disclosures from inventor (patent)

good faith

business competition privilege (intentional interference)

no joint tortfeasor

no intent to permanently deprive (civil theft)

no intent to defraud

prior pending action

sovereign immunity

governmental immunity

failure of required notice

truth (in defamation actions)

statement is opinion (defamation)

statement is privileged (defamation)

statement is fair comment (defamation)

cardinal change

set off

fair consideration (fraudulent transfer)

plaintiff is not a consumer (FDCPA)

fraud in the inducement

borrowed servant

void for vagueness

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Affirmative Defense 10

When a Motion to Strike, Motion to Dismiss or Motion for More Definite Statement did not prevent a defendant from answering the plaintiffs complaint.

restriction/rule/covenant was not reasonably/uniformly applied

in pari delicto

no adequate remedy at law

impermissible mandatory injunction

adequate remedy at law (claims in equity)

failure to mitigate damages (or, in some circumstances, successful mitigation of damages)

rejection of goods

revocation of acceptance of goods

failing to plead fraud with particularity

no reliance

punitive damages not permissible/barred by statute

preemption by federal or other law

arbitration and award

assumption of risk

unavoidable accident

economic loss rule

contributory or comparative negligence

No Prior Course of Dealing:

Payment:

Release:

punitive damages sought prematurely under statute

lack of standing

sole negligence of co-defendant

collateral source rule (common law) or as codified in statute (see, e.g., C.R.S. Section 13-21-111.6)

improper service

failure to serve

violation of the Soldier's and Sailor's Civil Relief Act (protections for active duty military against service of process while deployed)

indemnity

mutual mistake

lack of mutuality of obligation

scrivener's error

adhesion

no evidence that modified warning would have been followed or would have prevented injury

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Affirmative Defense 11

When a Motion to Strike, Motion to Dismiss or Motion for More Definite Statement did not prevent a defendant from answering the plaintiffs complaint.

intervening cause

supervening cause

not forseeable

claimants own conduct, or the conduct of its agents, reps, and consultants

equitable estoppel

recoupment.

claim barred by death (does not survive to be asserted by estate)

claim barred by probate code/testament/closing of estate

minority (age)

no alter ego / barred by limited liability status of entity

restraint of trade

barred or reduced by bond

alteration of product

manufacturing/labeling/marketing in conformity with the state of the art at the time

release

filed rate doctrine

product was unavoidably unsafe

product provides net benefits for a class of patients

duty/obligation was not severable

spoliation

damages were the result of unrelated, pre-existing, or subsequent conditions unrelated to defendant's conduct

lack of causal relationship

act of god (or peril of the sea in admiralty cases)

breach was not material

business judgment rule

not intended third-party beneficiary

parol evidence rule

misuse of product

produce use was outside of particular purpose

modification of product

failure to provide opportunity to inspect/repair

product supplied in accordance with specification

good faith purchaser for value

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Affirmative Defense 12

When a Motion to Strike, Motion to Dismiss or Motion for More Definite Statement did not prevent a defendant from answering the plaintiffs complaint.

impossibility

preemption

prior pending action

no private right of action

execution of public duty

charitable immunity

misnomer of parties

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Types of Trusts 1

Common Trusts.

#1. Revocable Living Trust: This is a trust that allows you to make changes to it, while you are living. Pretty simple concept, right?

#2. Grantor Trust: A Grantor is an individual who creates the trust, and this type of trust allows them to place money, assets, or whatever it may be into a trust in order to streamline things.

#3. Irrevocable Trust: Once you've placed money into the trust, it stays there. You can't change your mind about this one. There are many types of revocable and irrevocable trusts, and we are going to go over them as we continue.

#4. Testamentary Trust: Most often, a testamentary trust is created by the will and specifically outlines what assets are going to be utilized upon the death of the grantor. If you're not careful, this could create some problems, tax-wise, for your business. So be sure to have your attorney take a close look at your last will and testament when setting up a testamentary trust.

#5. Minor's Trust: As the name implies, this is a trust that provides money to a child that is under the age of eighteen. It is usually created before you pass away, but it could be a part of the testamentary process as well. A minor's trust will require the appointment of a trustee to manage the funds until the minor child comes of age.

#6. Spendthrift Trust: A spendthrift trust is a great option for leaving money to someone who may not be the best at dealing with their finances. The spendthrift trust gives an independent trustee the full authority to make decisions as to how the funds may be spent. I recently told you about a client that has a child with some addiction issues. This would be a great trust for someone in such a situation.

#7. Blind Trust: I first heard about blind trusts in an episode of Law & Order. Basically, it allows the trustee or anyone with the power of attorney to handle the assets without the beneficiary's knowledge. The most common reason for this is to stave off contention between beneficiaries.

#8. Discretionary Trust: Discretionary trusts don't have a constant, or fixed, allocation of assets. The beneficiaries and the payments can be adjusted throughout the length of the trust by the trustee, based upon the criteria outlined within the trust document.

#9. Intentional Defective Grantor Trust: This one is a bit more advanced. An Intentional defective grantor trust freezes some of the grantor's assets for tax purposes. Essentially, the grantor intentionally creates a problem within the trust document that guarantees they must pay income tax on the income, decreasing the value of their estate. So you would use the estate asset to pay the taxes on the trust that is outside of your estate. Thus, allowing the trust assets to continue to grow without the erosion of taxes.

#10. Credit Shelter Trust: The credit shelter trust allows married people to avoid estate taxes by allowing the assets specified in the trust to be transferred to the beneficiary. Usually, this is the grantor's children. This allows the spouses to maximize their estate exemption. These are commonly listed in the last will and testament and used in conjunction with trust number eleven.

#11. Marital Trust: Instead of shifting the proceeds of the trust to your children, as in the credit shelter trust, a marital trust moves them to your spouse. When the first spouse passes away, they leave the assets to the second spouse and, through the marital trust, they aren't included in the second spouse's estate.

#12. Qualified Terminable Interest Property Trust: Qualified terminable interest property trusts or QTIP trusts provide for the surviving spouse but allow the grantor to remain in control after the death of the surviving spouse. These are useful in second marriages or to prevent predatory marriages.

#13. Qualified Personal Residence Trust: If you need to remove your home from your estate, a qualified personal residence trust is a great way to do so. You would transfer your house to a QPRT trust in order to remove it from your estate and it can be considered a gift. Under the terms of the trust, you would allow the beneficiary to live in the house for a certain number of years, rent-free.

#14. Generation-Skipping Trust: Let's say you want to leave all of your assets to your grandchildren because you have already provided your own children with a means for success. A generation-skipping trust does exactly what it sounds like. It allows you to skip a generation in order to provide for the next one.

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Types of Trusts 2

Charitable Trusts

#1. Charitable Remainder Annuity Trust: The first is called the charitable remainder annuity trust or CRAT. With a CRAT you place your assets into the trust, which then pays back a fixed amount each year. Once you die, the remainder goes to charity.

#2. Charitable Lead Annuity Trust: The charitable lead annuity trust is very similar to the CRAT, however, it works inversely. Instead of receiving a fixed annual payment and then giving the remainder to charity, a CLAT pays the annual benefit to the charity and then leaves the remainder to a beneficiary of your choosing, once you've passed.

#3. Charitable Remainder Unitrust: A Charitable Remainder Unitrust, also known as CRUTs, is an irrevocable trust that is created under the authority of the internal revenue service. It pays a fixed percentage of the assets to your beneficiary — or to yourself — and then transfers the assets to a charity after your death.

#4. Charitable Lead Unitrust: Charitable Lead Unitrusts or CLUTs allow a donor to give a varying amount each year, for a fixed amount of time. When the term of the trust is met, the remaining assets are given back to the donor or to the beneficiary.

#5. Shark-Fin CLAT: The most aggressive type of CLAT allows small payments to be made into the trust for the first few years. However, a very large payment must be made in the last year, or two. By increasing payments over time, the assets in the trust have more time to grow.

Complex Trusts

#1. Irrevocable Life Insurance Trust: This is one that I personally have. Basically, I've set the trust to buy life insurance and when I pass away, the trust shifts the proceeds to my wife and kids.

#2. Crummey Trust: Some will argue that the Crummey trust isn't a trust, but rather, a provision. Technically it is a trust, however. It's based on the 1968 Crummey case and essentially allows you to take advantage of the gift tax exclusion when you transfer cash or assets to another person. With a Crummey trust, you retain the right to place limitations on when the recipient can access the funds.

#3. Buildup Equity Retirement Trust: Buildup equity retirement trusts, allow a spouse to give a gift to their spouse, using the annual gift instead of the unlimited marital deduction. In doing this, the assets are exempt from both the gift and the estate taxes.

Grantor Type Trusts.

#1. Grantor Retained Unitrust: GRUTs are irrevocable trusts that allow the grantor to place assets into the trust and receive a variable amount of income during the term of the trust. Let's say it's a twenty-year trust, the grantor can receive a fixed or a varied income for the length of that twenty-year term, or the life of the grantor.

#2. Grantor Retained Income Trust: Being a Southern boy, I am particularly fond of a good batch of grits but that's not the type of GRITs I am referring to when I talk about GRITs: grantor retained income trusts. This is the same basic concept as a GRUT but in this case, the grantor places an asset in the trust and retains the right to receive income from those assets for a period of time.

#3. Grantor Retained Annuity Trust: These allow the grantor to make a large contribution, as a means to avoid gift taxes, and then set up an annuity through the GRAT. This creates an annuity payment for a fixed period of the term. Afterward, the remaining assets go to the beneficiary as a gift.

#4. Dynasty Trust: This one is where your attorney will earn his money, as some states do not allow these types of trust. Dynasty trusts are irrevocable and give the grantor the right — as long as it is within the law — to set stringent rules on how the money is to be distributed and how it is to be used by the beneficiary. Because it is irrevocable, a dynasty trust can't be altered by the grantor or their beneficiaries. These are typically used by wealthy grantors to ensure that they are leaving their financial legacy to generations rather than individuals.

Asset Protection Trusts.

#1. Domestic Asset Protection Trust: This is a simple way to protect your assets from creditors. That is, literally, the simplest term available to describe a DAPT.

#2. Offshore Asset Protection Trust: While it might sound like something the incredibly wealthy super-villain in a movie would have, in order to shield their holdings from the scrupulous eyes of the hero, in reality, they're pretty common. Essentially, you create a trust in a non-domestic jurisdiction to protect your assets from seizures, judgments, or creditors.

Types of Trusts 3

Asset Protection Trusts (cont.)

#3. Totten Trust: We discussed these in the last article, but basically, it is a form of trust in which the grantor places money into a bank account or security. Upon the grantor's death, the assets in the account pass to a beneficiary.

#4. Illinois Land Trust: Illinois land trusts are for non-profit entities for the purpose of conservation. If you had a piece of wooded land or a farm and wanted to have it maintained for the benefit of someone else, you would create a land trust.

#5. Gun Trust: A trust that isn't so well known is the gun trust. It allows its creator to acquire a class-3 weapons holder — you must have a license — in order to transfer a gun into the trust. This is especially useful for collectors and enthusiasts that may have several (Legally obtained) automatic firearms, suppressors, and things of that nature. There are a lot of laws that surround gun trusts though, so it's best to speak to your attorney when setting one up.

#6. IRA Trust: Individual Retirement Account Trusts are often set up by the courts. You are essentially setting up a retirement account for the beneficiary, usually your kids, and placing it into a trust.

Special Needs and Elderly Care Trusts

#1. Third-Party Special Needs Trust: Third-party SNTs are commonly used by persons planning in advance for a loved one with special needs.

#2. First-Party Special Needs Trust: These trusts can be set up by an individual with special needs, in order to maximize their social security or Medicaid benefits.

#3. Medicaid Trust: Medicaid Trusts are income-only trusts that help seniors avoid tax issues and probate problems when they are living in a nursing home and pass away. It's a way to protect assets, but there are some clawback issues. You will need to speak with an experienced estate-planning attorney. Preferably, one with Medicaid law experience.

#4. Qualified Income Trust: Also known as the **Miller trust,** the QIT protects the assets of an individual that has applied or is applying to Medicaid. If the individual has too much money to qualify for Medicaid, they could place their assets into a qualified income trust in order to meet the financial requirements. Personally, I have ethical issues with this type of trust, but feel free to form your own opinion.

#5. V.A. Eligible Trust: The V.A. Eligible trust is similar in concept to the Miller trust. Once again, you are placing money outside of what the government can track, in order to make way for the Veteran's Association to help you with in-home care or nursing home care.

#6. Spousal Testamentary Special Needs Trust: Spousal testamentary special needs trusts combine two different trusts to help the surviving spouse be counted eligible for Medicaid.

#7. Pooled Trust: Finally, we've come to the end of our exhaustive list with the pooled trust. It is designed to allow people with disabilities to become financially eligible for public assistance benefits like Medicaid home care.