

SELECTED MAXIM'S OF LAW FOR FATHERS RIGHTS

I. MAXIM'S OF LAW

Maxim's of Interest that apply to Fathers Rights

II. MAXIM

a.

An established principle or proposition. A principle of law universally admitted, as being just and consonant With reason.

Maxims in law are somewhat like axioms in geometry. 1 Bl. Com. 68. They are principles and authorities, and part of the general customs or common law of the land; and are of the same strength as acts of parliament, when the judges have determined what is a maxim; which belongs to the judges and not the jury. Terms do Ley; Doct. & Stud. Dial. 1, c. 8. Maxims of the law are holden for law, and all other cases that may be applied to them shall be taken for granted. 1 Inst. 11. 67; 4 Rep. See 1 Com. c. 68; Plowd. 27,

b.

The application of the maxim to the case before the court, is generally the only difficulty. The true method of making the application is to ascertain bow the maxim arose, and to consider whether the case to which it is applied is of the same character, or whether it is an exception to an apparently general rule.

The alterations of any of the maxims of the common law are dangerous. 2 Inst. 210. The following are some of the more important maxims.

Regula pro lege, si deficit lex. In default of the law, the maxim rules.

[FROM: Bouvier's 1856 Law Dictionary]

A communi observantia non est recedendum. From common observance there should be no departure; there must be no departure from common usage. A maxim formerly applied to the practice of the courts, to the ancient and established forms of pleading and conveyancing, and to professional usage generally. Lord Coke applies it to common professional opinion. [Blacks Law, 6th Ed.]

OWNERSHIP OF CHILDREN—Memorize!

- *Partus sequitur ventrem.* "The offspring follow the condition of the mother, This is the case of slaves and animals.; 1 Bouv. Inst. n. 167, 502; but with regard to freemen, children follow the condition of the father."

- **Trying to split children: Memorize!**
"Here be two maxims of the common law. First, that no man can hold one and the same land immediately of two severall lords. Secondly, that one man cannot of the same land be both lord and tenant. And it is to be observed, that it is holden for an inconvenience, that any of the maxims of the law should be broken, though a private man suffer losse; for that by infringing of a maxime, not onely a generall prejudice to many, but in the end a publike incertainty and confusion to all would follow." Section 152b. Maxim's of Lord Coke

[*Nemo potest esse tenes et dominus.* No man can be at the same time tenant and landlord of the same tenement.

Idem agens et patiens esse non potest. One cannot be agent and patient, in the same matter. Jenk. Cent. 40.

Meaning: You are either your child's Father, or the judge is.

No man can hold the same land immediately of two several landlords. Co. Litt. 152.]

Meaning: There can only be one Father (one main guardian of the child—NOT TWO!)

- *Haeres est alter ispe, et filius est pars patris.* An heir is another self, and a son is a part of the father.
- *Duo non possunt in solido unam rem possidere.* "Two cannot possess one thing in its entirety." Blacks Law Dictionary, Sixth Edition, pg. 502

Meaning: Only one person can own the child. There is only four (4) choices: 1.) Father 2.) State 3.) Mother (but she needs subsidy, thereby can't really own the child) or 4.) the child (as an unemancipated minor).

- *Haeredem Deus facit, non homo.* God and not man, make the heir.
- *Haeris est nomen juris, filius est nomen naturae.* Heir is a term of law, son a term of nature.

- *Haeres est eadem persona cum antecessore.* The heir is the same person with the ancestor. Co. Litt. 22.
- *Haeres haeredis mei est meus haeres.* The heir of my heir is my heir.
- *Haeres legitimus est quem nuptiae demonstrant.* He is the lawful heir whom the marriage demonstrates.

RIGHTS OF FATHERS

- Rights never die. [Bouvier's 1856 Law Dictionary]
- *Nulli enim res sua servit jure servitutis.* "No one can have a servitude over his own property." Dig 8, 2, 26; 17 Mass. 443; 2 Bov. Inst. n. 1600.
- *Defendit vim et injuriam.* He defends the force and injury.
- *Remisus imperanti melius paretur.* "A [father] commanding not too strictly is best obeyed." 3 Co. Inst. 233.
- *Qui providet sibi, providet haeredibus.* He who provides for himself, provides for his heirs.
- *Vir et uxor consentur in lege una persona.* Husband and wife are considered one person in law. Co. Litt. 112.
- *Privilegium est beneficium personale et extinguitur cum person .* A privilege is a personal benefit and dies with the person. 3 Buls. 8.
- *Patria potestas in pietate debet, non in atrocitate consistere.* Paternal power should consist in affection, not in atrocity.
- *Nemo potest sibi devere.* No one can owe to himself. See Confusion of Rights.
- *Matrimonia debent esse libera.* Marriages ought to be free.
- *Nemo de domo sua extrahi debet.* "A citizen cannot be taken by force from his house to be conducted before a judge or to prison. Dig. 50, 17.
- Where two rights concur, the more ancient shall be preferred.

- *Omnia quae sunt uxoris sunt ipsius viri.* All things which are of the wife, belong to the husband. Co. Litt. 112.
- *"Invito beneficium non datur-* No one is obliged to accept a benefit against his consent." Bouvier's Law Dictionary (1914), "Maxim," p, 2140).[No officer can compel any Good and Lawful Man to get a license, benefit, or privilege in commerce.]
- *Nemo praesumitur alienam posteritatem suae praetulisse.* NO one is presumed to have preferred another's posterity to his own.
- *Quicquid acquiritur servo, acquiritur domino.* Whatever is acquired by the servant, is acquired for the master. 15 Bin. Ab. 327.
- *Quod ad jus naturale attinet, omnes homines aequales sunt.* All men are equal before the natural law. Dig. 50, 17, 32.
- *Nuptias non concubitas, sed consensus facit.* Cohabitation does not make the marriage, it is the consent of the parties. Dig 50, 17, 30; 1 Bouv. Inst. n. 239; Co. Litt. 33.
- *Matrimonium subsequens tollit peccatum praecedens.* A subsequent marriage cures preceding criminality.
- *Pater is est quem nuptiae demonstrant.* The father is he whom the marriage points out. 1 Bl. Com. 446; 7 mart. N. S. 548, 553; Dig. 2, 4, 5; 1 Bouv. Inst. n. 273, 304, 322.
- *Qui jure suo utitur, nemini facit injuriam.* He who uses his legal rights, harms no one.
- *Pecata contra naturam sunt gravissima.* "Offenses against nature are the gravest. 3 Co. Inst. 20.
- *Patria Potestas* "In Roman law, paternal authority; the paternal power. This term denotes the aggregate of those peculiar powers and rights which by the civil law of Rome, belonged to the head of a family in respect to his wife, children (natural or adopted), and any more remote descendants who sprang from him through males only. Anciently, it was of very extensive reach, embracing even the power of life and death, but was gradually curtailed, until finally it amounted to little more than a right in the paterfamilias to hold as his own any property or acquisitions of one under his power. [Blacks Law Dictionary, 6th Ed., pg. 1127]

- *Sui Juris*: “Of his own right; possessing full social and civil rights; not under any legal disability to act for one’s self. (See Emancipation: Majority) [Black’s Law Dictionary, 6th Ed., pg. 1434]

RIGHTS OF CHILDREN

- *Si quis custos fraudem pupillo fecerit, a tutela removendus est.* “If a guardian behave fraudulently to his ward, he shall be removed from guardianship Jenk. Cent. 39.
- *Solus Deus haeredem facit.* God alone makes the heir.
- *The Child* knows his Fathers bed the best.
- *Qui doit inheritoer al p re, doit inheriter al fitz.* He who ought to inherit from the father, ought to inherit from the son.
- *Qui in utero est, pro jam nato habetur quoties de ejus commodo quaeritur.* He who is in the womb, is considered as born, whenever it is for his benefit. (There can be no abortions due to this maxim.)
- *Pueri sunt de sanguine parentum, sed pater et mater non sunt de sanguine puerorum.* Children are of the blood of their parents, but the father and mother are not the blood of their children. 3 Co. 40.

FRAUD

- *Once a fraud, always a fraud.* 13 Vin. Ab. 539.
- *Jus et fradem numquam cohabitant.* “Right and fraud never go together.
- *Malum hominum est obviandum.* The malice of men is to be avoided. 4 Co. 15.
- *Fraus est celare fraudem.* It is a fraud to conceal a fraud. 1 Vern. 270.
- *Fraus est odiosa et non praesumenda.* Fraud is odious and not to be presumed. Cro. Car. 550.
- *Fraus et dolus nemini patrocianari debent.* Fraud and deceit should excuse no man. 3 Co. 78.

- *Fraus et jus numquam cohabitant.* Fraud and justice never agree together. Wing. 680.
- *Fraus latet in generalibus.* Fraud lies hid in general expressions
- *Fraus meretur fraudem.* Fraud deserves fraud. Plow. 100. This is very doubtful morality.
- *Frustr legis auxilium quaerit qui in legem committit.* Vainly does he who offends against the law, seek the help of the law.
- *Quod initio vitiosum est, non potest tractu temporis convalescere.* "Time cannot render valid, an act void in its origin." Dig. 50, 17, 29.
- *Qui semel malus, semper prasumitur esse malus in eodem genere.* He who is once bad, is presumed to be always so, in the same degree. Cro. Car. 317.
- *Qui per fraudem agit, frustra agit.* He who acts fraudrlently acts in vain. 2 Roll. R. 17.

MOTHERS OBTAIN BENEFIT OF CUSTODY OF CHIDLREN MUST BEAR BURDEN:

- Accouchement-- "The act of a woman in giving birth to a child. The fact of the accouchement, which may be proved by the direct testimony of one who was present, as a physician or midwife, is often important evidence in proving parentage. [Blacks Law, 6th Ed. p. 18]
- *Secundum naturam est, commoda cujusque rei eum sequi, quem sequentur incommoda.* It is natural that he who bears the charge of a thing, should receive the profits. Dig. 50, 17, 10.
- *Faemina ab omnibus officiis civilibus vel publicis remotae sunt.* Women are excluded from all civil and public charges or offices. Dig. 50, 17, 2.
- *Nemo plus juris ad alienum transfere potest, quam ispe habent.* One cannot transfer to another a right which he has not. Dig. 50, 17, 54; 10 Pet. 161, 175.
- "Non dat qui non habet---He gives nothing who has nothing. "Bouvier's Law Dictionary (1914),"Maxim,"p.2149, [No legislative body

or man can convey any authority or jurisdiction he does not possess over common Rights vested by God in another. Because legislative powers are limited, all powers derived from legislative acts are limited.]

- *Nul ne doit s'enrichir aux depens des autres.* No one ought to enrich himself at the expense of others.
- *Qui ex damnato coitu nascuntur, inter liberos non computantur.* He who is born of an illicit union, is not counted among the children. Co. Litt. 8. See 1 Bouv. Inst. n. 289.

CLEAN HANDS

- *Qui accusat integrae famae sit et non criminosus.* Let him who accuses be of a clear fame, and not criminal. 3 Co. Inst. 26.
- *He who does not have clean hands, cannot benefit from the law.*
- *Jus ex injuria non oritur.* “A right cannot arise from a wrong.” 4 Bin 639.
- *Qui primum peccat ille facit rixam.* He who first offends, causes the strife.
- He who has committed iniquity, shall not have equity. Francis' Max., Max. 2.
- *Qui male agit, odit lucem.* “He who acts badly, hates the light. 7 Co. 66.
- *Nemo ex suo delecto meliorem suam conditionem facere potest.* “No one can improve his condition by a crime.” Dig. 50, 17, 137.
- *Nemo punitur pro alieno delecto.* “No one is to be punished for the crime or wrong of another. Bouviers Law Dictionary, pg 38.
- *Nul ne doit s'enrichir aux depens des autres.* “no one ought to enrich himself at the expense of others.”
- *Nul prendra avantage de son tort demesne.* “No one shall take advantage of his own wrong.”
- *Que sentit commodum, sentire debet et onus.* “He who derives a benefit from a thing, ought to feel the disadvantages attending it.” 2 Bouv. Inst. n. 1433.

- *Omne actum ab intentione agentis est judicandum.* “Every act is to be estimated by the intention of the doer.” Bouvier’s Dictionary, 1856, pg. 45.
- *Nul prendra advantage de son tort demesne.* No one shall take advantage of his own wrong.
- *Nullus commodum capere potest de injuri su propri .* No one shall take advantage of his own wrong. Co. Litt. 148.

EVERY CITIZEN MUST KNOW THE LAW (Natural/Common Law)

Idem est scire aut scire debet aut potuisse. 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.

Id possumus quod de jure possumus. We may do what is allowed by law. Lane, 116.

Ignorantia excusatur, non juris sed facti. Ignorance of fact may excuse, but not ignorance of law. See Ignorance.

Ignorantia legis neminem excusat. Ignorance of fact may excuse, but not ignorance of law. 4 Bouv. Inst. n. 3828.

Impotentia excusat legem. Impossibility excuses the law. Co. Litt. 29.

In criminalibus, probationes bedent esse luce clariores. In criminal cases, the proofs ought to be clearer than the light. 3 Co. inst. 210.

Non in legendo sed in intelligendo leges consistunt. The laws consist not in being read, but in being understood. 8 co. 167.

- *In judiciis minori aetati succuritur.* In judicial proceedings, infancy is aided or favored.
- *Non nasci, et natum mori, pari sunt.* Not to be born, and to be dead born, is the same.
- *Mortuus exitus non est exitus.* To be dead born is not to be born. Co. Litt. 29. See 2 Paige, 35; Domat, liv. pr l. t. 2, s. 1, n. 4, 6; 2 Bouv. Inst. n. 1721 and 1935.

JUDGES

- *Judicium a non suo iudice datum nullius est momenti.* “A judgement given by an improper judge is of no moment. 11 Co. 76.
- *Judici officium suum excedenti non paretur.* “To a judge who exceeds his office or jurisdiction no obedience is due. Jenk. Cent. 139.
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- *Judex non potest iniuriam sibi datum punier.* “A judge cannot punish a wrong done to himself.” 12 Co. 113.
- *Judex non potest esse testis in proprii caus.* A judge cannot be a witness in his own cause. 4 Co. Inst. 279.
- No one may be judge in his own cause.
- *Testis nemo in su caus esse potest.* No one can be a witness in his own cause. [Bouvier’s 1856]
- *Judex est lex loquens.* The judge is the speaking law. 7 co. 4.
- *Ubi non est condendi auctoritas ibi non est parendi necessitas.* “Where there is no authority to enforce, there is no authority to obey.” Dav. 69.
- *Officia magistratus non debent esse venalia.* The offices of magistrates ought not to be sold. Co. Litt. 234.
- *Factum iudice quod ad ujus officium non spectat, non ratum est.* An act of a judge which does not relate to his office, is of no force. 10 Co. 76.
- *Pirata est hostis humani generis.* A pirate is an enemy of the human race. 3 Co. Inst. 113.
- *Praxis iudicim est interpret legum.* The practice of the judges is the interpreter of the laws. Hob. 96.
- *Officium nemini debet esse damnosum.* An office ought to be injurious to no one.
- *Si meliores sunt quos ducit amor, plures sunt quos corrigit timer.* If many are better led by love, more are corrected by fear. Co. Litt. 392.

Optimam esse legem, quae minimum relinquit arbitrio iudicis; id quod certitudo ejus praestat. That law is the best which leaves the least discretion to the judge; and this is an advantage which results from certainty. Bacon, De Aug. Sc. Aph. 8.

Optimus iudex, qui minimum sibi. He is the best judge who relies as little as possible on his own discretion. Bac. De Aug. Sci. Aph. 46.

- **BLACK'S LAW DICTIONARY, 6th Ed.** (13th Reprint 1998), p. 756 reads:

Impossibile nulla obligatio est. There is no obligation to do impossible things.

1.) "*Nemo debet esse iudex in propria causa.*----No one should be judge in his own cause."

2.) "*Nemo debet esse iudex in propria sua causa*----No man can be judge in his own cause."

3.) "*In propria causa nemo iudex*----No one can be judge in his own cause."

- *Officia magistrates non debent esse venalia.* "The offices of magistrates ought not to be sold." Col.Litt. 234.
- *Quaelibet jurisdictio cancellos suos habet.* Every jurisdiction has its bounds.
- *Paen ad paucos, metus ad omnes perveniat.* A punishment inflicted on a few, causes a dread to all. 22 Vin. Ab. 550.
- *Optima est lex, quae minimum relinquit arbitrio iudicis.* That is the best system of law which confides as little as possible to the discretion of the judge. Bac. De Aug. Sci. Aph. 46.
- *Nemo praesumitur donare.* No one is presumed to give.
- *Nemo praesumitur malus.* No one is presumed to be bad.

NO ONE CAN BE PUNISHED FOR ANOTHER PERSON'S CRIME

- *Nemo punitur pro alieno delicto.* No one is to be punished for the crime or wrong of another.
- *Mora reprobatur in lege.* Delay is disapproved of in law.

EFFECT OF LAW

- *Lex semper dabit remedium.* “The law always gives a remedy.” 3 Bouv. Inst. n. 2411.
- *Lex semper dabit remedium.* The law always gives a remedy. 3 Bouv. Inst. n. 2411.
- *Lex nemini facit injuriam.* “The Law does wrong to no one.”
- *Lex nemini operatur inquam, nemini facit injuriam.* “The law never works an injury, or does him a wrong. Jenk. Cent. 22.
- *Melius est recurrere quam malo currere.* “It is better to recede than to proceed in evil.” 4 Inst. 176.

FIFTH AMENDMENT—RIGHT OF DEFENSE

- *Nemo admittendus est inhabilitare seipsum.* “No one is allowed to incapacitate himself.” Jenk. Cent. 40
- *Nemo tenetur sse seipsum accusare.* “No man is bound to accuse himself.” Bouviers Law Dictionary, 1856, pg 40.
- *Nemo prohibetur pluribus defensionibus uti.* No one is restrained from using several defences. Co. Litt. 304.
- “The pig does not skin himself.”
- *Nemo Cogitur rem suam vendere, etiam justo pretio.* “No one is bound to sell his property, even for a just price.” Sed vide Eminent Domain. 2 Inst. 66.
- *Majus est delictum seipsum occidere quam alium.* it is a greater crime to kill one's self than another.
- *Nemo tenetur armare adversarum contra se.* No one is bound to arm his adversary.
- No man is presumed to do anything against nature. 22 Vin. Ab. 154.
- One may not do an act to himself.

IMPOSSIBILITY

- *A l'impossible nul n'est tenu.* No one is bound to do what is impossible. 1 Bouv. Inst. n. 601.
- *Nemo tenetur ad impossibile.* No one is bound to an impossibility.
- BLACK'S LAW DICTIONARY, 7th Ed. (1999), Appendix A, pp. 1615-1701 lists legal maxims, among which I found, at p. 1653:

Lex non cogit ad impossibilia. The law does not compel to impossible ends.

Lex non intendi aliquid impossibile. The law does not intend anything impossible.

- *Lex neminem cogit ad vana seu inutilia peragenda.* The law forces no one to do vain or useless things.
- *Nihil quod inconueniens est licitum est.* Nothing inconvenient is lawful.

IMPRISONMENT FOR A DEBT EVEN FOR THE SHORTEST TIME, FULLY DISCHARGES THE DEBT

Minima paena corporalis est major qualibet pecuniari. . The smallest bodily punishment is greater than any pecuniary one. 2 Inst. 220.

Nulli enim res sua servit jure servitutis. “No one can have a servitude over his own property.” Dig 8, 2, 26; 17 Mass. 443; 2 Bov. Inst. n. 1600.

TRUTH MUST PREVAIL IN COURT

- *Nihil possumus contra veritatem.* We can do nothing against truth. Doct. & Stu. Dial. 2, c. 6.
- *Lex est norma recti.* Law is a rule of right.
- *Malum non praesumitur.* Evil is not presumed. 4 Co. 72.
- *Malus usus est abolendus.* An evil custom is to be abolished. Co. Litt. 141.

- *Praetextu liciti non debet admitti illicitum.* Under pretext of legality, what is illegal ought not to be admitted. 10 Co. 88.
- *Ipsae legis cupiunt ut jure regantur.* The laws themselves require that they should be governed by right. Co. Litt. 174.
- *Quicquid est contra normam recti est injuria.* Whatever is against the rule of right, is a wrong. 3 Buls. 313.
- *Malum quo communius eo pejus.* The more common the evil, the worse.
- *Quod per recordum probatum, non debet esse negatum.* “What is proved by the record, ought not to be denied.” Bouviers Law Dictionary, 1856, pg. 62.
- *Facta sunt potentiora verbis.* Facts are more powerful than words.
- *Lex punit mendacium.* “The law punishes falsehood.”
- *A verbis legis non est recedendum.* From the words of the law there must be no departure. Broom's Max. 268; 5 Rep. 119; Wing. Max. 25.
- *Factum negantis nulla probatio.* Negative facts are not proof.
- *Rei turpis nullum mandatum est.* A mandate of an illegal thing is void. Dig. 17, 1, 6, 3.
- *Ratio potest allegari deficiente lege, sed vera et legalis et non apparens.* Reason may be alleged when the law is defective, but it must be true and legal reason, and not merely apparent. 6 Co. Litt. 191.
- *Qui non libere veritatem pronunciat, proditor est veritatis.* He who does not willingly speak the truth, is a betrayer of the truth.
- *Perspicua vera non sunt probanda.* Plain truths need not be proved. Co. Litt. 16.
- *Non faciat malum, ut inde veniat bonum.* You are not to do evil that good may come of it. 11 Co. 74.

- *Nemo punitur sine injuria facto, seu defalto.* “No one is punished unless for some wrong act or default.” 2 Co. Inst. 287.
- *Non videtur consensum retinuisse si quis ex praescripto minantis aliquid immutavit.* “He does not appear to have retained his consent, if he have changed anything through the means of a party threatening.” Bacon’s Max. Reg. 33.
- **BLACK'S LAW DICTIONARY**, 6th Ed. (13th Reprint 1998), p. 756 reads:

Impossibilium nulla obligatio est [pronunciation omitted]. There is no obligation to do impossible things.

1.) "*Nemo debet esse judex in propria causa*----No one should be judge in his own case."

2.) "*Nemo debet esse judex in propria sua causa*----No man can be judge in his own cause."

3.) "*In propria causa nemo judex*----No one can be judge in his own cause."

REASON MUST BE IN THE LAW

Ratio est legis anima, mutata legis ratione mutatur et lex. Reason is the soul of the law; the reason of the law being changed, the law is also changed.

Ratio est radius divini luminis. Reason is a ray of divine light. Co. Litt. 232.

Ratio et auctoritas duo clarissima mundi limina. Reason and authority are the two brightest lights in the world. 4 Co. Inst. 320.

Ratio in jure aequitas integra. Reason in law is perfect equity.

Ratio legis est anima legis. The reason of the law is the soul of the law.

Ratio non clauditur loco. Reason is not confined to any place.

Nihil quod est contra rationem est licitum. Nothing against reason is lawful. Co. Litt. 97.

LAW

Lex semper dabit remedium. The law always gives a remedy. 3 Bouv. Inst. n. 2411.

Liberum corpus aestimationem non recipit. The body of a freeman does not admit of valuation.

Lex semper intendit quod convenit ratione. The law always intends what is agreeable to reason. Co. Litt. 78.

Lex plus laudatur quando ratione probatur. The law is the more praised when it is consonant to reason.

Lex non deficit in justitia exhibenda. The law does not fail in showing justice.

Lex non intendit aliquid impossibile. The law intends not anything impossible. 12 Co. 89.

Lex non praecipit inutilia, quia inutilis labor stultus. The law commands not useless things, because useless labor is foolish. Co. Litt. 197.

Lex non cogit ad impossibilia. The forces not to impossibilities. Hob. 96.

Lex nemini facit injuriam. The law does wrong to no one.

Saepe viatorim nova non vetus orbita fallit. Often it is the new road, not the old one, which deceives the traveller. 4 Co. Inst. 34.

Lex est ratio summa, quae jubet quae sunt utilia et necessaria, et contraria prohibet. Law is the perfection of reason, which commands what is useful and necessary and forbids the contrary. Co. Litt. 319.

Lex est dictamen rationis. Law is the dictate of reason. Jenk. Cent. 117.

Solemnitas juris sunt observandae. “The solemnities of law are to be observed.” Jenk. Cent. 13.

- *Legibus sumptis disinentibus, lege naturae utendum est.* When laws imposed by the state fail, we must act by the law of nature. 2 Roll. R. 298.
- *A Privilegium est quasi privata lex.* A privilege is, as it were, a private law. 2 Buls. 8.

Regula pro lege, si deficit lex. “In default of the law, the maxim rules.” Bouviers Law Dictionary, 1856, pg. 65.

Leges humanae nascuntur, vivunt et moriuntur. Human laws are born, live and die.
7 co. 25.

Le contrat fait la loi. The contract makes the law.

Fiat justitia ruat caelum. Let justice be done, though the heavens should fall.

STRICT CONSTRUCTION OF THE LAW

- *Potestas stricte interpretatur.* “Power ought to be strictly interpreted.”
Bouvier’s Law Dictionary, 1856, pg. 52.
- *A verbis legis non est recedendum.* From the words of the law there
must be no departure. Broom's Max. 268; 5 Rep. 119; Wing. Max. 25.
- *Paena ad paucos, metus ad omnes perveniat.* “A punishment inflicted
on a few, causes a dread to all.” 22 Vin. Ab. 550.
- *Mandata licita recipiunt strictam interpretationem, sed illicita latam et
extensam.* Lawful commands receive a strict interpretation, but unlawful,
a wide or broad construction. Bacon's Max. Reg. 16.
- When the common law and statute law concur, the common law is to
be preferred. 4 Co. 71.
- *Statuta pro publico commodo late interpretantur.* Statutes made for the
public good ought to be liberally construed. Jenk. Cent. 21.
- *Sequi debet potentia justitiam, non praecedere.* Power should follow
justice, not precede it. 2 Co. Inst. 454.
- *Non alio modo puniatur aliquis, quam secundum quod se habet
condemnatio.* A person may not be punished differently than according
to what the sentence enjoins. 3 Co. Inst. 217.
- *Potestas strict interpretatur.* Power should be strictly interpreted.
- *Si a jure discedas vagus eris, et erunt omnia omnibus incerta.* If you
depart from the law, you will wander without a guide, and everything
will be in a state of uncertainty to every one. Co. Litt. 227.

- *Non faciat malum, ut inde veniat bonum.* You are not to do evil that good may come of it. 11 Co. 74.
- *Paenae potius molliendae quam exasperendae sunt.* Punishments should rather be softened than aggravated. 3 Co. Inst. 220.
- *Paci sunt maxime contraria, vis et injuria.* Force and wrong are greatly contrary to peace. Co. Litt. 161.

THREE (3) ELEMENTS OF EVERY CRIME: “Every” crime *must* have all three of these following elements in which to be a crime under law. Not two of the three. Not one of the three—but all three. (Failure to provide 99.9% of the time does not meet this requirement (Father is either forced or driven out of child’s life, Father is usually poor and financially debilitated, or Father does not owe as either a crime or great dishonor has been committed against him).

- 1.) **Mens Rea** -- “An element of criminal responsibility: a guilty mind; a guilty or wrongful purpose; a criminal intent. Guilty knowledge and wilfulness. *United States v. Greenbaum*, C.C.A.N.J., 138 F2d 437, 438. See Model Penal Code Section 2.02. See also Criminal (Criminal Intent). [Blacks Law Dictionary, 6th Ed. p. 985]
- 2.) **Actus reus** -- “The guilty act.” A wrongful deed which renders the actor criminally liable if combined with mens rea. The actus reus is the physical aspect of a crime, whereas the mens rea (guilty mind) involves the intent factor. [Blacks Law, 6th Ed. p. 36]
- 3.) **Corpus Delecti** -- “The body of a crime. The body (material substance) upon which a crime has been committed, e.g., the corpse of a murdered man, the charred remains of a house burned down. In a derivative sense, the objective proof or substantial fact that a crime has been committed. The “corpus delecti” of a crime is the body, foundation or substance of the crime, which ordinarily includes two elements, the act and the criminal agency of the act. *State v. Edwards*, 49 Ohio St.2d 31, 358 N.E.2d 1051, 1055. [Blacks Law Dictionary, 6th Ed. 344]

Act malum in se (See malum in se) [REAL CRIME] “A wrong in itself; an act or case involving illegality from the very nature of the transaction, upon principals of natural, moral, and public law. *Grindstaff v. State*, 214 Tenn. 58, 377 S.W.2d 921, 926; *State v. Shedoudy*, 45 N.M. 516, 118 P.2d 280, 287. An act is said to be malum in se when it is inherently and essentially⁷ evil, that is, immoral in its nature and injurious in its consequences, without any regard to the fact of its being noticed or punished by the law of the state. Such are most or all of the offenses cognizable

at common law (without the denouncement of a statute; as murder, larceny, etc. *Compare Malum Prohibitum.* [Blacks Law Dictionary, 6th Ed., p. 959]

Act malum prohibitum (See Malum prohibitum). [A CRIME JUST BECAUSE GOVERNMENT MAKES IT A CRIME] “A wrong prohibited; a thing which is wrong because [it is] prohibited; an act which is not inherently immoral, but becomes so because its commission is expressly forbidden by positive law; an act involving an illegality resulting from positive law. [Blacks Law Dictionary, 6th Ed., pg. 960]

OLD LAW—NOT NEW LAW IS TO BE PREFERRED AND PROTECTED

- *Quae praeter consuetudinem et morem majorum fiunt, neque placent, necque recta videntur.* “What is done contrary to the custom of our ancestors, neither pleases nor appears right.” 4 Co. 78.
- *Quae contra rationem juris introducta sunt, non debent trahi in consequentiam.* “Things introduced contrary to the reason of the law, ought not to be drawn into precedents.” 12 Co. 75.
- “When the common law and the statute law concur, the common law is to be preferred.” 4 Co. 71.
- *Quod initio vitiosum est, non potest tractu temporis convalescere.* “Time cannot render valid an act void in its origin.” Dig. 50, 17, 29.
- *Periculosum est res novas et inusitatas inducere.* “It is dangerous to introduce new and dangerous things.” Co.Litt. 379.

SILENCE—NOT RESPONDING TO ATTACKS BY GOVERNMENT

- *Qui tacet consentire videtur.* He who is silent appears to consent. Jenk. Cent. 32.
- *Quod per me non possum, nec per alium.* What I cannot do in person, I cannot do by proxy. 4 Co. 24.
- *Qui non propulsat injuriam quando potest, infert.* He who does not repel a wrong when he can, induces it. Jenk. Cent. 271.

- *Melius est recurrere quam malo currere.* It is better to recede than to proceed in evil. 4 Inst. 176.
- *Melius est omnia mala pati quam malo consentire.* It is better to suffer every wrong or ill, than to consent to it. 3 Co. Inst. 23.
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- *Nihil simul inventum est et perfectum.* Nothing is invented and perfected at the same moment. Co. Litt. 230.
- *Statutum generaliter est intelligendum quoad verva statuti sunt specialia, ratio autem generalis.* When the words of a statute are special, but the reason of it general, it is to be understood generally. 10 Co. 101.

PROCEEDURE OF LAW

Origo rei inspici debet. The origin of a thing ought to be inquired into. 1 Co. 99.

Sensus verborum est anima legis. The meaning of words is the spirit of the law. 5 Co. 2.

Semper necessitas probandi incumbit qui agit. The claimant is always bound to prove: the burden of proof lies on him.

Finis rei attendendus est. The end of a thing is to be attended to. 3 Co. Inst. 51.

Finis finem litibus imponit. The end puts an end to litigation. 3 Inst. 78.

Firmior et potentior est operatio legis quam dispositio hominis. The disposition of law is firmer and more powerful than the will of man. Co. Litt. 102.

Forma legalis forma essentialis. Legal form is essential form. 10 Co. 100.

Forma non observata, inferiur adnullatio actus. When form is not observed a nullity of the act is inferred. 12 Co. 7.

- *Sublato fundamento cadit opus.* “Remove the foundation, the structure or work fall.” Bouviers Law Dictionary, 1856, pg. 72.
- *Sublato principali tollitur adjunctum.* “If the principal be taken away, the adjunct is also taken away.” Co.Litt. 389.

Actio tutelae -- Action founded on the duties or obligations arising on the relation analogous to that of guardian and ward. [Blacks Law, 6th Ed. p. 32]

Actio stricti juris -- An action of strict right. The class of civil law personal actions which were adjudged only by the strict law, and in which the judge was limited to the precise language of the formula, and had no discretionary power to regard and bona fides of the transaction. [Blacks Law, 6th Ed. p. 32]

Actus Dei nemini facit injuriam -- The act of God does injury to no one. 1 Bl.Comm. 122. A thing which is inevitable by the act of God, which no industry can avoid, nor policy prevent, will not be construed to the prejudice of any person in whom there was no laches.

Actore non probante reus absolvitur -- When the plaintiff does not prove his case the defendant is acquitted (or absolved).

Nihil tam naturale est, quod in eo genere quidque dissolvere, quo colligatum est. It is very natural that an obligation should not be dissolved but by the same principles which were observed in contracting it. Dig. 50, 17, 35. See 1 Co. 100; 2 Co. Inst. 359.

Cujusque rei potissima pars principium est-- The principal part of everything is in the beginning.

Potior est conditio defendentis. Better is the condition of the defendant, than that of the plaintiff.

Non observata forma, infertur adnullatio actus. When the form is not observed, it is inferred that the act is annulled. 12 Co. 7.

Omne testamentum morte consummatum est. Every will is consummated by death. 3 Co. 29.

Praetextu liciti non debet admitti illicitum. Under pretext of legality, what is illegal ought not to be admitted. [Blacks Law 6th Ed., pg. 1175]

REBUTTAL TO THOSE WHO SAY “I’M ONLY DOING MY JOB.”

Qui potest et debet vetare, jubet. He who can and ought to forbid, and does not, commands.

Qui non prohibet quod prohibere potest assentire videtur. He who does not forbid what he can forbid, seems to assent. 2 Inst. 305.

PROPERTY

Prohibetur ne quis faciat in suo quod nocere possit alieno. It is prohibited to do on one's own property that which may injure another's. 9 co. 59.

Potior est conditio possidentis. Better is the condition of the possessor.

Privatorum conventio juri publico non derogat. Private agreements cannot derogate from public law. Dig. 50, 17, 45, 1.

Potest quis renunciare pro se, et suis, juri quod pro se introductum est. A man may relinquish, for himself and his heirs, a right which was introduced for his own benefit. See 1 Bouv. Inst. n. 83.

Possession is a good title, where no better title appears. 20 Vin. Ab. 278.

Parte quacumque integranta sublata, tollitur totum. An integral part being taken away, the whole is taken away. 3 Co. 41.

Pacta privata juri publico derogare non possunt. Private contracts cannot derogate from the public law. 7 Co. 23.