Definitions in Common Law

**COMMON LAW**. That which derives its force and authority from the universal consent and immemorial practice of the people. See Law, common. Self-evident Truth.

**COMMON INTENT**, *construction*. The natural sense given to words.

2. It is a rule that when words are used which will bear a natural sense and an artificial one, or one to be made out by argument and inference, the natural sense shall prevail; it. is simply a rule of construction and not of addition common intent cannot add to a sentence words which have been omitted. 2 H. Black. 530. In pleading, certainty is required, but certainty to a common intent is sufficient; that is, what upon a reasonable construction may be called certain, without recurring to possible facts. Co. Litt. 203, a; Dougl. 163. See Certainty.

**COMMON COUNCIL**. In many cities the charter provides for their government, in imitation of the national and state governments. There are two branches of the legislative assembly; the less numerous, called the select, the other, the common council. 2. In English law, the common council of the whole realm means the parliament. Fleta, lib. 2, cap. 13.

**COMMON SENSE**, med. jur. When a person possesses those perceptions, associations and judgments, in relation to persons and things, which agree with those of the generality of mankind, he is said to possess common sense. On the contrary, when a particular individual differs from the generality of persons in these respects, he is said not to have common sense, or not to be in his senses. 1 Chit. Med. Jur. 334.

**COMMONALTY**, *Eng. law*. This word signifies, 1st. the common people of England, as contradistinguished from the king and the nobles; 2d. the body of a society as the masters, wardens, and commonalty of such a society.

**COMMUNINGS**, *Scotch law.* This term is used to express the negotiations which have taken place before making a contract, in relation thereto. See Pourparler. 2. It is a general rule, that such communings or conversations, and the propositions then made, are no part of the contract for no parol evidence 313 will be allowed to be given to contradict, alter, or vary a written instrument. 1 Serg. & R. 464 Id. 27; Add. R. 361; 2 Dall. R. 172 1 Binn. 616; 1 Yeates, R. 140; 12 John. R. 77; 20 John. R. 49; 3 Conn. R. 9; 11 Mass. R. 30; 13 Mass. R. 443; 1 Bibb's R. 271; 4 Bibb's R. 473; 3 Marsh. (Kty.) R. 333; Bunb. 175; 1 M. & S. 21; 1 Esp. C. 58; 3 Campb. R. 57.

**COMMUNIO BONORUM**, civil law. Common goods.

2. When a person has the management of common property, owned by himself and others, not as partners, he is bound to account for the profits, and is entitled to be reimbursed for the expenses which he has sustained by virtue of the quasi-contract which is created by his act, called communio bonorum. Vicat; 1 Bouv. Inst. n. 907, note.

**COMMUNITY**. This word has several meanings; when used in common parlance it signifies the body of the people.

2. In the civil law, by community is understood corporations, or bodies politic. Dig. 3, 4. 3. In the French law, which has been adopted in this respect in Louisiana, Civ. Code, art. 2371, community is a species of partnership, which a man and woman contract when they are lawfully married to each other. It consists of the profits of all, the effects of which the husband has the administration and enjoyment, either of right or in fact; of the produce of the reciprocal industry and labor of both husband and wife, and of the estates which they may acquire during the marriage, either by donations made jointly to them, or by purchase, or in any other similar way, even although the purchase he made in the name of one of the two, and not of both; because in that case the period of time when the purchase is made is alone attended to, and not the person who made the purchase. 10 L. R. 146; Id. 172, 181; 1 N. S. 325; 4 N. S. 212.

The debts contracted during the marriage enter into the community, and must be acquitted out of the common fund; but not the debts contracted before the marriage.

4. The community is either, first, conventional, or that which is formed by an express agreement in the contract of marriage itself; by this contract the legal community may be modified, as to the proportions which each shall take, or as to the things which shall compose it; Civ. Code of L. art. 2393; second, legal, which takes place when the parties make no agreement on this subject in the contract of marriage; when it is regulated by the law of the domicil they had at the time of marriage.

5. The effects which compose the community of gains, are divided into two equal portions between the heirs, at the dissolution of the marriage. Civ. Code of L. art. 2375. See Poth. h.t.; Toull. h.t.; Civ. Code of Lo. tit. 6, c. 2, s. 4. 6.

In another sense, community is the right which all men have, according to the laws of nature, to use all things. Wolff, Inst. Sec. 186.

**COMMUTATIVE CONTRACT***, civil law*. One in which each of the contracting parties gives and, receives an equivalent. The contract of sale is of this kind. The seller gives the thing sold, and receives the price, which is the equivalent. The buyer gives the price and receives the thing sold, which is the equivalent. 2. These contracts are usually distributed into four classes, namely; Do ut des; Facio ut facias; Facio ut des; Do ut facias. Poth. Obl. n. 13. See' Civ. Code of Lo. art. 1761.

**DUTY**, *natural law*. A human action which is, exactly conformable to the laws which require us to obey them.

2. It differs from a legal obligation, because a duty cannot always be enforced by the law; it is our duty, for example, to be temperate in eating, but we are under no legal obligation to be so; we ought to love our neighbors, but no law obliges us to love them.

3. Duties may be considered in the relation of man towards God, towards himself, and towards mankind.

4-1. We are bound to obey the will of God as far as we are able to discover it, because he is the sovereign Lord of the universe who made and governs all things by his almighty power, and infinite wisdom. The general name of this duty is piety: which consists in entertaining just opinions concerning him, and partly in such affections towards him, and such, worship of him, as is suitable to these opinions.

4 -2. A man has a duty to perform towards himself; he is bound by the law of nature to protect his life and his limbs; it is his duty, too, to avoid all intemperance in eating and drinking, and in the unlawful gratification of all his other appetites. 5.-3. He has duties to perform towards others. He is bound to do to others the same justice which he would have a right to expect them to do to him.

**PRETEXT**. The reasons assigned to justify an act, which have only the appearance of truth, and which are without foundation; or which if true are not the true reasons for such act. Vattel, liv. 3, c. 3, 32.

**PRESUMPTION***, evidence*. An inference as to the existence of one fact, from the existence of some other fact, founded on a previous experience of their connexion. 3 Stark. Ev. 1234; 1 Phil. Ev. 116; Gilb. Ev. 142; Poth. Tr. des. Ob. part. 4, c. 3, s. 2, n. 840. Or it, is an opinion, which circumstances, give rise to, relative to a matter of fact, which they are supposed to attend. Menthuel sur les Conventions, liv. 1, tit. 5.

2. To constitute such a presumption, a previous experience of the connexion between the known and inferred facts is essential, of such a nature that as soon as the existence of the one is established, admitted or assumed, an inference as to the existence of the other arises, independently of any reasoning upon the subject. It follows that an inference may be certain or not certain, but merely, probable, and therefore capable of being rebutted by contrary proof.

3. In general a presumption is more or less strong according as the fact presumed is a necessary, usual or infrequent consequence of the fact or facts seen, known, or proven. When the fact inferred is the necessary consequence of the fact or facts known, the presumption amounts to a proof when it is the usual, but not invariable consequence, the presumption is weak; but when it is sometimes, although rarely,the consequence of the fact or facts known, the presumption is of no weight. Menthuel sur les Conventions, tit. 5. See Domat, liv. 9, tit. 6 Dig. de probationibus et praesumptionibus.

4. Presumptions are either legal and artificial, or natural.

5.-1. Legal or artificial presumptions are such as derive from the law a technical or artificial, operation and effect, beyond their mere natural. tendency to produce belief, and operate uniformly, without applying the process of reasoning on which they are founded, to the circumstances of the particular case. For instance, at the expiration of twenty years, without payment of interest on a bond, or other acknowledgment of its existence, satisfaction is to be presumed; but if a single day less than twenty years has elapsed, the presumption of satisfaction from mere lapse of time, does not arise; this is evidently an artificial and arbitrary distinction. 4 Greenl. 270; 10 John. R. 338; 9 Cowen, R. 653; 2 McCord, R. 439; 4 Burr. 1963; Lofft, 320; 1 T. R. 271; 6 East, R. 215; 1 Campb. R. 29.

An example of another nature is given under this head by the civilians. If a mother and her infant at the breast perish in the same conflagration, the law presumes that the mother survived, and that the infant perished first, on account of its weakness, and on this ground the succession belongs to the heirs of the mother. See Death, 9 to 14.

6. Legal presumptions are of two kinds: first, such as are made by the law itself, or presumptions of mere law; secondly, such as are to be made by a jury, or presumptions of law and fact. 7.-1st. Presumptions of mere law, are either absolute and conclusive; as, for instance, the presumption of law that a bond or other specialty was executed upon a good consideration, cannot be rebutted by evidence, so long as the instrument is not impeached for fraud; 4 Burr. 2225; or they are not absolute, and may be rebutted evidence; for example, the law presumes that a bill of exchange was accepted on a good consideration, but that presumption may be rebutted by proof to the contrary.

8.-2d. Presumptions of law and fact are such artificial presumptions as are recognized and warranted by the law as the proper inferences to be made by juries under particular circumstances; for instance, au unqualified refusal to deliver up the goods on demand made by the owner, does not fall within any definition of a conversion, but inasmuch as the detention is attended with all the evils of a conversion to the owner, the law makes it, in its effects and consequences, equivalent to a conversion, by directing or advising the jury to infer a conversion from the facts of demand and refusal.

9.-2. Natural presumptions depend upon their own form and efficacy in generating belief or conviction on the mind, as derived from these connexions which are pointed out by experience; they are wholly independent of any artificial connexions and relations, and differ from mere presumptions of law in this essential respect, that those depend, or rather are a branch of the particular system of jurisprudence to which they belong; but mere natural presumptions are derived wholly by means of the common experience of mankind, from the course of nature and the ordinary habits of society. Vide, generally, Stark. Ev. h.t.; 1 Phil. Ev. 116; Civ. Code of Lo. 2263 to 2267; 17 Vin. Ab. 567; 12 Id. 124; 1 Supp. to Ves. jr. 37, 188, 489; 2 Id. 51, 223, 442; Bac. Ab. Evidence, H; Arch. Civ. Pl. 384; Toull. Dr. Civ. Fr. liv. 3, t. 3, o. 4, s. 3; Poth. Tr. des Obl. part 4, c. 3, s. 2; Matt. on Pres.; Gresl. Eq. Ev. pt. 3, c. 4, 363; 2 Poth. Ob. by Evans, 340; 3 Bouv. Inst. n. 3058, et seq.

**LAW OF NATURE**. The law of nature is that which God, the sovereign of the universe, has prescribed to all men, not by any formal promulgation, but by the internal dictate of reason alone. It is discovered by a just consideration of the agreeableness or disagreeableness of human actions to the nature of man; and it comprehends all the duties which we owe either to the Supreme Being, to ourselves, or to our neighbors; as reverence to God, self-defence, temperance, honor to our parents, benevolence to all, a strict adherence to our engagements, gratitude, and the like. Erskine's Pr. of L. of Scot. B. 1, t. 1, s. 1. See Ayl. Pand. tit. 2, p. 5; Cicer. de Leg. lib. 1.

2. The primitive laws of nature may be reduced to six, namely:

1. Comparative sagacity, or reason.

2. Self-love.

3. The attraction of the sexes to each other.

4. The tenderness of parents towards their children.

5. The religious sentiment.

6. Sociability.

3.-1. When man is properly organized, he is able to discover moral good from moral evil; and the study of man proves that man is not only an intelligent, but a free being, and he is therefore responsible for his actions. The judgment we form of our good actions, produces happiness; on the contrary the judgment we form of our bad actions produces unhappiness.

4.-2. Every animated being is impelled by nature to his own preservation, to defend his life and body from injuries, to shun what may be hurtful, and to provide all things requisite to his existence. Hence the duty to watch over his own preservation. Suicide and duelling are therefore contrary to this law; and a man cannot mutilate himself, nor renounce his liberty.

5.-3. The attraction of the sexes has been provided for the preservation of the human race, and this law condemns celibacy. The end of marriage proves that polygamy, (q.v.) and polyendry, (q.v.) are contrary to the law of nature. Hence it follows that the husband and wife have a mutual and exclusive right over each other.

6.-4. Man from his birth is wholly unable to provide for the least of his necessities; but the love of his parents supplies for this weakness. This is one of the most powerful laws of nature. The principal duties it imposes on the parents, are to bestow on the child all the care its weakness requires, to provide for its necessary food and clothing, to instruct it, to provide for its wants, and to use coercive means for its good, when requisite.

7.-5. The religious sentiment which leads us naturally towards the Supreme Being, is one of the attributes which belong to humanity alone; and its importance gives it the rank of the moral law of nature. From this sentiment arise all the sects and different forms of worship among men.

8.-6. The need which man feels to live in society, is one of the primitive laws of nature, whence flow our duties and rights; and the existence of society depends upon the condition that the rights of all shall be respected. On this law are based the assistance, succors and good offices which men owe to each other, they being unable to provide each every thing for himself.

**LAW, COMMON**. The common law is that which derives its force and authority from the universal consent and immemorial practice of the people. It has never received the sanction of the legislature, by an express act, which is the criterion by which it is distinguished from the statute law. It has never been reduced to writing; by this expression, however, it is not meant that all those laws are at present merely oral, or communicated from former ages to the present solely by word of mouth, but that the evidence of our common law is contained in our books of Reports, and depends on the general practice and judicial adjudications of our courts.

2. The common law is derived from two sources, the common law of England, and the practice and decision of our own courts. In some states the English common law has been adopted by statute. There is no general rule to ascertain what part of the English common law is valid and binding. To run the line of distinction, is a subject of embarrassment to courts, and the want of it a great perplexity to the student. Kirb. Rep. Pref. It may, however, be observed generally, that it is binding where it has not been superseded by the constitution of the United States, or of the several states, or by their legislative enactments, or varied by custom, and where it is founded in reason and consonant to the genius and manners of the people.

3. The phrase "common law" occurs in the seventh article of the amendments of the constitution of the United States. "In suits at common law, where the value in controversy shall not exceed twenty dollar says that article, "the right of trial by jury shall be preserved. The "common law" here mentioned is the common law of England, and not of any particular state. 1 Gall. 20; 1 Bald. 558; 3 Wheat. 223; 3 Pet. R. 446; 1 Bald. R. 554. The term is used in contradistinction to equity, admiralty, and maritime law. 3 Pet. 446; 1 Bald. 554.

4. The common law of England is not in all respects to be taken as that of the United States, or of the several states; its general principles are adopted only so far as they are applicable to our situation. 2 Pet, 144; 8 Pet. 659; 9 Cranch, 333; 9 S. & R. 330; 1 Blackf 66, 82, 206; Kirby, 117; 5 Har. & John. 356; 2 Aik. 187; Charlt. 172; 1 Ham. 243. See 5 Cow. 628; 5 Pet. 241; 1 Dall. 67; 1 Mass. 61; 9 Pick. 532; 3 Greenl. 162; 6 Greenl. 55; 3 Gill & John. 62; Sampson's Discourse before the Historical Society of New York; 1 Gallis. R. 489; 3 Conn. R. 114; 2 Dall. 2, 297, 384; 7 Cranch, R. 32; 1 Wheat. R. 415; 3 Wheat. 223; 1 Blackf. R. 205; 8 Pet. R. 658; 5 Cowen, R. 628; 2 Stew. R. 362.

notes

**Types of Compensation:**

**COMPENSATIO CRIMINIS**. The compensation or set-off of one crime against another; for example, in questions of divorce, where one party claims the divorce on the ground of adultery of his or her companion, the latter may show that the complainant has been guilty of the same offence, and having 315 himself violated the contract, he cannot complain of its violation on the other side. This principle is incorporated in the codes of most civilized nations. 1 Ought. Ord. per tit. 214; 1 Hagg. Consist. R. 144; 1 Hagg. Eccl. R. 714; 2 Paige, 108; 2 Dev. & Batt. 64. See Condonation.

**COMPENSATION**, *chancery practice*. The performance of that which a court of chancery orders to be done on relieving a party who has broken a condition, which is to place the opposite party in no worse situation than if the condition had not been broken. 2. Courts of equity will not relieve from the consequences of a broken condition, unless compensation can be made to the opposite party. Fonb. c. 6; s. 51 n. (k) Newl. Contr: 251, et. seq. 3. When a simple mistake, not a fraud, affects a contract, but does not change its essence, a court of equity will enforce it, upon making compensation for the error, The principle upon which courts of equity act," says Lord Chancellor Eldon, "is by all the authorities brought to the true standard, that though the party had not a title at law, because he had not strictly complied with the terms so as to entitle him to an action, (as to time for instance,) yet if the time, though introduced, as some time must be fixed, where something is to be done on one side, as a consideration for something to be done on the other, is not the essence of the contract; a material object, to which they looked in the first conception of it, even though the lapse of time has not arisen from accident, a court of equity will compel the execution of the contract upon this ground, that one party is ready to perform, and that the other ma, have performance in substance if he will permit it." 13 Ves. 287. See 10 Ves. 505; 13 Ves. 73, 81, 426; 6 Ves. 675; 1 Cox, 59.

**COMPENSATION**, *contracts, civil law*. When two persons are equally indebted to each other, there takes place a compensation between them, which extinguishes both debts. Compensation is, therefore, a reciprocal liberation between two persons who are creditors and debtors to each other, which liberation takes place instead of payment, and prevents a circuity. Or it may be more briefly defined as follows; compensatio est debiti et crediti intter se contributio. 2. Compensation takes places, of course, by the mere operation of law, even unknown to the debtors the two debts are reciprocally extinguished, as soon as they exist simultaneously, to the, amount of their respective sums. Compensation takes place only between two debts, having equally for their object a sum of money, or a certain quantity of consumable things of one and the same kind, and which are equally liquidated and demandable. Compensation takes place, whatever be the cause of either of the debts, except in case, 1st. of a demand of restitution of a thing of which the owner has been unjustly deprived; 2d. of a demand of restitution of a deposit and a loan for use; 3d. of a debt which has for its cause, aliments declared not liable to seizure. Civil Code of. Louis. 2203 to 2208. Compensation is of three kinds: 1. legal or by operation of law;

2. compensation by way of exception; and,

3. by reconvention. 8 L. R. 158; Dig. lib. 16, t. 2; Code, lib. 4, t. 31; Inst. lib. 4, t' 6, s. 30; Poth. Obl. partie. 3eme, ch. 4eme, n. 623; Burge on Sur., Book 2, c. 6, p. 181. 3. Compensation very nearly resembles the set-off (q.v.) of the common law. The principal difference is this, that a set-off, to have any effect, must be pleaded; whereas compensation is effectual without any such plea, only the balance is a debt. 2 Bouv. Inst. n. 1407.

**COMPENSATION**, *criminal law*; Compensatio criminura, or recrimination (q.v.) 2. In cases of suits for divorce on the ground of adultery, a compensation of the crime hinders its being granted; that is, if the defendant proves that the party has also committed adultery, the defendant is absolved as to the matters charged in the libel of the plaintiff. Ought. tit. 214, Pl. 1; Clarke's Prax. tit. 115; Shelf. on Mar. & Div. 439; 1 Hagg. Cons. R. 148. See Condonation; Divorce.

**RESTITUTION**, maritime law. The placing back or restoring articles which have been lost by jettison; this is done when the remainder of the cargo has been saved at the general charge of the owners of the cargo; but when the remainder of the goods are afterwards lost, there is not any restitution. Stev. on Av. 1, c. 1, s. 1, art. 1, ii., 8. Vide Recompense.

**RESTITUTION**, practice. The return of something to the owner of it, or to the person entitled to it. 2. After property has been taken into execution, and the judgment has been reversed or set aside, the party against whom the execution was sued out shall have restitution, and this is enforced by a writ of restitution. Cro. Jac. 698; 4 Mod. 161. When the thing levied upon under an execution has not been sold, the thing itself shall be restored; when it has been sold, the price for which it is sold is to be restored. Roll. Ab. 778; Bac. Ab. Execution, Q; 1 Al. & S. 425. 3. The phrase restitution of conjugal rights frequently occurs in the ecclesiastical courts. A suit may there be brought for this purpose whenever either the husband or wife is guilty of the injury of subtraction, or lives separate from the other without sufficient reason; by which the party injured may compel the other to return to cohabitation. 1 Bl. Com. 94; 1 Addams, R. 305; 3 Hagg. Eccl. R. 619.

**TO RESTORE**. To return what has been unjustly taken; to place the owner of a thing in the state in which he formerly was. By restitution is understood not only the return of the thing itself, but all its accessories. It is to return the thing and its fruits. Dig. 60, 16, 35, 75 et 246, Sec. 1.

**RESTRAINING**. Narrowing down, making less extensive; as, a restraining statute, by which the common law is narrowed down or made less extensive in its operation.

**RESTRAINING POWERS**. A term used in equity. When the donor of a power, who is the owner of the estate, imposes certain restrictions by the terms of the powers, these restrictions are called restraining powers.

**RESTRAINT.** Something which prevents us from doing what we would desire to do.

2. Restraint is lawful and unlawful. It is lawful when its object is to prevent the violation of the law, or the rights of others. It is unlawful when it is used to prevent others from doing a lawful act; for example, when one binds himself not to trade generally; but an agreement not to trade in a particular place is lawful. A legacy given in restraint of marriage, or on condition that the legatee shall not marry, is good, and the condition alone is void.

The Roman civil law agrees with ours in this respect; a legacy given on condition that the legatee shall not marry is void.

**RESTRICTIVE INDORSEMENT**, *contracts*. One which confines the negotiability of a promissory note or bill of exchange, by using express words to that effect, as by indorsing it "payable to A,B only." 1 Wash. C. C. 512; 2 Murph. 138; 1 Bouv. Inst. n. 1138.

**RESPONSIBILITY**. The obligation to answer for an act done, and to repair any injury it may have caused. 2. This obligation arises without any contract, either on the part of the party bound to repair the injury, or of the party injured. The law gives to the person who has suffered loss, a compensation in damages.

3. it is a general rule that no one is answerable for the acts of another unless he has, by some act of his own, concurred in them. But when he has sanctioned those acts, either explicitly or by implication, he is responsible. An innkeeper in general, civilly liable for the acts of his servants towards his guests, for anything done in their capacity of servants.

The owner of a carriage is also, civilly responsible to a passenger for any injury done by the driver as such. See Driver.

4. There are cases where persons are made civilly responsible for the acts of others by particular laws and statutory provisions, when they have not done anything by which they might be considered as participating in such acts. The responsibility which the hundred (q.v.) in England formerly incurred to make good any robbery committed within its precincts, may be mentioned as an instance. A somewhat similar liability is incurred now in some places in this country by a county, when property has been destroyed by a mob.

5. Penal responsibility is always personal, and no one can be punished for the commission of a crime but the person who has committed it or his accomplice. Vide Damages; Injury; Loss.

**ECCLESIA**. In classical Greek this word signifies any assembly, and in this sense it is used in Acts xix. 39. But ordinarily, in the New Testament, the word denotes a Christian assembly, and is rendered into English by the word church. It occurs thrice only in, the Gospels, viz. in Matt. xvi. 18, and xviii. 17; but very frequently in the other parts of the New Testament, beginning with Acts ii. 47. In Acts xix. 37, the word churches, in the common English version, seems to be improperly used to denote heathen temples. Figuratively, the word church is employed to signify the building set apart for the Christian assemblies; but the word ecclesia is not used in the New Testament in that sense.

**ORDINARY**, *civil and* *ecclesiastical law*. An officer who has original jurisdiction in his own right and not by deputation.

2. In England the ordinary is an officer who has immediate jurisdiction in ecclesiastical causes. Co. Litt. 344.

3. In the United States, the ordinary possesses, in those states where such officer exists, powers vested in him by the constitution and acts of the legislature, In South Carolina, the ordinary is a judicial officer. 1 Rep. Const. Ct. 26; 2 Rep. Const. Ct. 384.

**ECCLESIASTICAL LAW**. By this phrase it is intended to include all those rules which govern ecclesiastical tribunals. Vide Law Canon. (church law)

**EDICT**. A law ordained by the sovereign, by which he forbids or commands something it extends either to the whole country, or only to some particular provinces.

2. Edicts are somewhat similar to public proclamations. Their difference consists in this, that the former have authority and form of law in themselves, whereas the latter are at most, declarations of a law, before enacted by congress, or the legislature.

3. Among the Romans this word sometimes signified, a citation to appear before a judge. The edict of the emperors, also called constitutiones principum, were new laws which they made of their own motion, either to decide cases which they had foreseen, or to abolish or change some ancient laws. They were different from their rescripts or decrees. These edicts were the sources which contributed to the formation of the Gregorian, Hermogenian, Theodosian, and Justinian Codes. Vide Dig. 1, 4, 1, 1; Inst. 1, 2, 7; Code, 1, 1 Nov. 139.

notes

**Contractual Terminology**

**EARNEST**, *contracts.* The payment of a part of the price of goods sold, or the delivery of part of such goods, for the purpose of binding the contract.

2. The effect of earnest is to bind the goods sold, and upon their being paid for without default, the buyer is entitled to them. But notwithstanding the earnest, the money must be paid upon taking away the goods, because no other time for payment is appointed; earnest only binds the bargain, and gives the buyer a right to demand, but a demand without payment of the money is void; after earnest given the vendor cannot sell the goods to another, without a default in the vendee, and therefore if the latter does not come and pay, and take the goods, the vendor ought to go and request him, and then if he does not come, pay for the goods and take them away in convenient time, the agreement is dissolved, and he is at liberty to sell them to any other person. 1 Salk. 113: 2 Bl. Com. 447; 2 Kent, Com. 389; Ayl. Pand. 450; 3 Campb. R. 426.

**COMPACT**, *contracts*. In its more general sense, it signifies an agreement. In its strict sense, it imports a contract between parties, which creates obligations and rights capable of being enforced, and contemplated as such between the parties, in their distinct and independent characters. Story, Const. B. 3, c. 3; Rutherf. Inst. B. 2, c. 6,

Sec. 1. 2. The constitution of the United States declares that "no state shall, without the consent of congress, enter into agreement or compact with another state, or with a foreign power." See 11 Pet: 1; 8 Wheat. 1 Bald. R. 60; 11 Pet. 185.

**COMMUNICATION***, contracts*. Information; consultation; conference.

2. In order to make a contract, it is essential there should be an agreement; a bare communication or conference will not, therefore, amount to a contract; nor can evidence of such communication be received in order to take from, contradict, or alter a written agreement. 1 Dall. 426; 4 Dall. 340; 3 Serg. & Rawle, 609. Vide Pour-parler; Wharton's Dig. Evid. R.

**COMMUTATIVE CONTRACT***, civil law*. One in which each of the contracting parties gives and, receives an equivalent. The contract of sale is of this kind. The seller gives the thing sold, and receives the price, which is the equivalent. The buyer gives the price and receives the thing sold, which is the equivalent. 2. These contracts are usually distributed into four classes, namely; Do ut des; Facio ut facias; Facio ut des; Do ut facias. Poth. Obl. n. 13. See' Civ. Code of Lo. art. 1761.

**DURESS**. An actual or a threatened violence or restraint of a man's person, contrary to law, to compel him to enter into a contract, or to discharge one. 1 Fairf. 325.

2. Sir William Blackstone divides duress into two sorts: First. Duress of imprisonment, where a man actually loses his liberty. If a man be illegally deprived of his liberty until he sign and seal a bond, or the like, he may allege this duress, and avoid the bond. But, if a man be legally imprisoned, and either to procure his discharge, or on any other fair account, seal a bond or a deed, this is not by duress of imprisonment, and he is not at liberty to avoid it. 2 Inst. 482; 3 Caines' R. 168; 6 Mass. R. 511; 1 Lev. 69; 1 Hen. & Munf. 350; 5 Shepl. R. 338. Where the proceedings at, law are a mere pretext, the instrument may be avoided. Aleyn, 92; 1 Bl. Com. 136.

3. Second. Duress per minas, which is either for fear of loss of life, or else for fear of mayhem, or loss of limb,; and this must be upon a sufficient reason. 1 Bl. Com. 131. In this case, a man way avoid his own act. Id. Lord Coke enumerates four instances in which a man may avoid his own act by reason of menaces: ***1st. For fear of loss of life. 2d. Of member. 3d. Of mayhem. 4th. Of imprisonment.*** 2 Inst. 483; 2 Roll. Abr. 124 Bac. Ab. Duress; Id. Murder, A; 2 Str. R. 856 Fost. Cr. Law, 322; 2 St. R. 884 2 Ld. Raym. 1578; Sav. Dr. Rom. Sec. 114.

4. In South Carolina, duress of goods, under circumstances of great hardship, will avoid a contract. 2 Bay R. 211 Bay, R. 470. But see Hardin, R. 605; 2 Gallis. R. 337.

5. In Louisiana consent to a contract is void if it be produced by violence or threats, and the contract is invalid. Civ. Code of Louis. art. 1844.

6. It is not every degree of violence or any hind of threats, that will invalidate a contract; they must be such as would naturally operate on a person of ordinary firmness, and inspire a just fear of great injury to person, reputation or fortune. The age, sex, state of health; temper and disposition of the party, and other circumstances calculated to give greater or less effect to the violence or threats, must be taken into consideration. Id. art. 1845. The author of Fleta states the rule of the ancient common law thus: "Est autem metus praesentis vel futuri periculi causa mentis trepidatio; est praesertim viri constantis et non cujuslibet vani hominis vel meticulosi et talis debet esse metus qui in se contineat, mortis periculum, vel corporis cruciatura."

7. A contract by violence or threats, is void, although the party in whose favor the contract is made, and not exercise the violence or make the threats, and although he were ignorant of them. Id. 1846.

8. Violence or threats are cause of nullity, not only where they are exercised on the contracting party, but when the wife, the husband, the descendants or ascendants of the party are the object of them. Id. 1847. Fleta adds on this subject: "et exceptionem habet si sibi ipsi inferatur vis et metus verumetiam si vis ut filio vel filiae, patri vel fratri, vel sorori et ahis domesticis et propinquis."

9. If the violence used be only a legal constraint, or the threats only of doing that which the party using them had a right to do, they shall not invalidate the contract A just and legal imprisonment, or threats of any measure authorized by law, and the circumstances of the case, are of this description. Id. 1850. See Norris Peake's Evid. 440, and the cases cited also, 6 Mass. Rep. 506, for the general rule at common law.

10. But the mere forms of law to cover coercive proceedings for an unjust and illegal cause, if used or threatened in order to procure the assent to a contract, will invalidate it; an arrest without cause of action, or a demand of bail in an unreasonable sum, or threat of such proceeding, by this rule invalidate a contract made under their pressure. Id. 1851.

11. All the above, articles relate to cases where there may be some other motive besides the violence or threats for making the contract. When, however, there is no other cause for making the contract, any threats, even of slight injury, will invalidate it. Id. 1853. Vide, generally, 2 Watts, 167; 1 Bailey, 84; 6 Mass. 511; 6 N. H. Rep. 508; 2 Gallis. R. 337.

**DOCUMENTS**, evidence. The deeds, agreements, title papers, letters, receipts, and other written instruments used to prove a fact. Among the civilians, by documents is also understood evidence delivered in the forms established by law, of whatever nature such evidence may be, but applied principally to the testimony of witnesses. Savig. Dr. Rom. Sec. 165.

2. Public documents are all such records, papers and acts, as are filed in the public offices of the United States or of the several states; as, for example, public statutes, public proclamations, resolutions of the legislature, the journals of either branch of the legislature, diplomatic correspondence communicated by the president to congress, and the like. These are in general evidence of the facts they contain or recite. 1 Greenl. Sec. 491.

**LIABILITY.** Responsibility; the state of one who is bound in law and justice to do something which may be enforced by action. This liability may arise from contracts either express or implied, or in consequence of torts committed.

2. The liabilities of one man are not in general transferred to his representative's further than to reach the estate in his hands. For example, an executor is not responsible for the liabilities of his testator further than the estate of the testator which has come to his hands. See Hamm. on Part. 169, 170.

3. The husband is liable for his wife's contracts made dum sola, and for those made during coverture for necessaries, and for torts committed either while she was sole or since her marriage with him; but this liability continues only during the coverture; as to her torts, or even her contracts made before marriage; for the latter, however, she may be sued as her executor or administrator, when she assumes that character.

4. A master is liable for the acts of his servant while in his employ, performed in the usual course of his business, upon the presumption that they have been authorized by him; but he is responsible only in a civil point of view and not criminally, unless the acts have been actually authorized by him. See Bouv. Inst. Index, h.t.; Driver; Quasi Offence; Servant.

**MARITIME CONTRACT**. One which relates to the navigation of the sea.

2. The admiralty has jurisdiction in case of the breach of such contract, whether it has been entered into on land or at sea. 4 Wash. C. C. R. 453; see 2 Gallis. 465; 2 Sumn. 1; Gilp. 529.

***Terms Basic in Self-Governance***

**LIBERTY.** Freedom from restraint. The power of acting as one thinks fit, without any restraint or control, except from the laws of nature.

2. Liberty is divided into civil, natural, personal, and political.

3. Civil liberty is the power to do whatever is permitted by the constitution of the state and the laws of the land. It is no other than natural liberty, so far restrained by human laws, and no further, operating equally upon all the citizens, as is necessary and expedient for the general advantage of the public. 1 Black. Com. 125; Paley's Mor. Phil. B. 6, c.5; Swifts Syst. 12

4. That system of laws is alone calculated to maintain civil liberty, which leaves the citizen entirely master of his own conduct, except in those points in which the public good requires some direction and restraint. When a man is restrained in his natural liberty by no municipal laws but those which are requisite to prevent his violating the natural law, and to promote the greatest moral and physical welfare of the community, he is legally possessed of the fullest enjoyment of his civil rights of individual liberty. But it must not be inferred that individuals are to judge for themselves how far the law may justifiably restrict their individual liberty; for it is necessary to the welfare of the commonwealth, that the law should be obeyed; and thence is derived the legal maxim, that no man may be wiser than the law.

5. Natural liberty is the right which nature gives to all mankind, of disposing of their persons and property after the manner they judge most consonant to their happiness, on condition of their acting within the limits of the law of nature, and that they do not in any way abuse it to the prejudice of other men. Burlamaqui, c. 3, s. 15; 1 Bl. Com. 125.

6. Personal liberty is the independence of our actions of all other will than our own. Wolff, Ins. Nat. Sec. 77. It consists in the power of locomotion, of changing situation, or removing one's person to whatever place one's inclination may direct, without imprisonment or restraint, unless by due course of law. 1 Bl. Com. 134.

7. Political liberty may be defined to be, the security by which, from the constitution, form and nature of the established government, the citizens enjoy civil liberty. No ideas or definitions are more distinguishable than those of civil and political liberty, yet they are generally confounded. 1 Bl. Com. 6, 125. The political liberty of a state is based upon those fundamental laws which establish the distribution of legislative and executive powers. The political liberty of a citizen is that tranquillity of mind, which is the effect of an opinion that he is in perfect security; and to insure this security, the government must be such that one citizen shall not fear another.

8. In the English law, by liberty is meant a privilege held by grant or prescription, by which some men enjoy greater benefits than ordinary subjects. A liberty is also a territory, with some extraordinary privilege.

9. By liberty or liberties, is understood a part of a town or city, as the Northern Liberties of the city of Philadelphia. The same as Fanbourg. (q.v.)

**LIBERTY OF THE PRESS**. The right to print and publish the truth, from good motives, and for justifiable ends. 3 Johns. Cas. 394.

2. This right is secured by the constitution of the United States. Amendments, art. 1. The abuse of the right is punished criminally, by indictment; civilly, by action. Vide Judge Cooper's Treatise on the Law of Libel, and the Liberty of the Press, passim; and article Libel.

**LIBERTY OF SPEECH**. The right given by the constitution and the laws to public support in speaking facts or opinions.

2. In a republican government like ours, liberty of speech cannot be extended too far, when its object is the public good. It is, therefore, wisely provided by the constitution of the United States, that members of congress shall not be called to account for anything said in debate; and similar provisions are contained in the constitutions of the several states in relation to the members of their respective legislatures. This right, however, does not extend beyond the mere speaking; for if a member of congress were to reduce his speech to writing and cause it to be printed, it would no longer bear a privileged character and he might be held responsible for a libel, as any other individual. Bac. Ab. Libel, B.\* See Debate.

3. The greatest latitude is allowed by the common law to counsel; in the discharge of his professional duty he may use strong epithets, however derogatory to other persons they may be, if pertinent to the cause, and stated in his instructions, whether the thing were true or false. But if he were maliciously to travel out of his case for the purpose of slandering another, he would be liable to an action, and amenable to a just and often more efficacious punishment inflicted by public opinion. 3 Chit. Pr. 887. No respectable counsel will indulge himself with unjust severity; and it is doubtless the duty of the court to prevent any such abuse.

notes