



Weekly Information Sheet 01

General Legal Principles -

The simple **DEFINITION** of the concept of **LAW** is:

Rules by which civilization is ordered.

The simple **DEFINITION** of the concept of **RIGHTS** is:

The legally recognized ability to exercise power and control over an action or object.

Types and Priority of Law

- The three basic types of law are **Constitutions, Statutes and Case Law.**
- The priority or ranking of law is as follows:
 - 1. Constitution;**
 - 2. Statute;**
 - 3. Regulation;**
 - 4. Executive Order or Policy.**
- It should be noted that Case Law (Common Law) is not ranked or given a priority order because its purpose is merely to decide a case in controversy or interpret or explain a constitution, statute, regulation or executive order.
- The Constitution (both federal and state) are the supreme law, and no other law within the federal or state systems can outrank them.
- Other than the Constitution, no other law can ever outrank a statute.
- A statute is a law enacted by Congress (federal) or the legislature (state).

Freedom is the Fundamental Pillar of American Law

- *Freedom derives from the **fundamental respect for the individual.***
- *In order to secure our Freedom, the law protects our rights.*
- *These are **individual rights**, not community or collective rights.*
- *Freedom can be a scary thing. For is not the power to do what everyone thinks is a good idea, but rather what some think is a bad one.*

American Constitutional Government

- American Government is based upon the representative, republican model (where people are elected to represent the voters).
- The purpose of government in that system is to protect the rights of individual people, and the **sovereignty of the government is vested in the people themselves.**

American Constitutional Government Continued

- Both the States and the Federal Government are founded upon written constitutions. The first governments in human history to do so.
- When these constitutions were first drafted, they all followed the Adams framework, in his *“Thoughts on Government”* Essay.
- Under this Adams framework, all these governments contain three
 - separate, ○ independent, ○ competing and ○ co-equal branches, that would provide checks and balances, against the powers of each other.
- That is why, to this day, all the early state governments have a common structure.
- The federal government, which was modeled after these states, thus also has a similar structure.
- The states added after the US Constitution was adopted, then also followed this structure.

Court System:

- The Court System is structured as follows:
 - The highest court in the United States is the **United States Supreme Court**.
 - The mid level appellate court is the **Circuit Court of Appeals**.
 - The federal trial level court is the **United States District Court**.
 - The highest court in the State of New York is the **Court of Appeals**.
 - The mid level appellate court is the **Appellate Division**.
 - The state trial level court is **the Supreme Court**.

Founders and Property Rights

- The founders maintained a clear grasp of the connection between liberty, freedom and property rights.
- They understood that it is *the pursuit of property* that *is the catalyst of freedom*, and that a person’s unfettered ability to freely exercise their property rights, is the gateway of liberty.
- Throughout the Declaration of Independence, the Constitution and the Bill of Rights, the pursuit of property, and a person’s ability to freely exercise their property rights, is deemed sacrosanct.
- Property rights are thereby a foundational pillar upon which American government is built.

Law of Property

Because it developed from the Common Law, most law of Property is:

State Law



Weekly Information Sheet 02

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The Pathway to Property

FREEDOM → RIGHTS → LAW

Evolution of Rights

- In our Constitutional system of law, government principle purpose is to protect the rights of individuals, especially property rights.
- Derived from Rome and England, America's legal system was the first in world history to provide such protections and recognize individual rights.
- Under American law these rights are unalienable.
- **St. Thomas Aquinas** transformed the concept of Rights by means of his concept of Grace, citing that all people had an individual relationship with God, and men like William Ockham and John Wycliffe, used this perspective to assert that human beings are instruments of God, with fundamental, individual, natural rights).

The Transformation of the Meaning of Rights

Steps in the Evolution of Rights and Protection of Individual Freedom

1. *Greek Democracy*
2. *Roman Law*
3. *The Development of English Common Law*
4. *The Magna Carta*
5. *Clerical Philosophy and the Recognition of Natural Law*
- Magna Carta - 4th Lateran Council - St. Thomas Aquinas - William Ockham - John Wycliffe
6. *The Social Contract Theory*
7. *John Locke and the Pronouncement of Property Rights*

Lineage of the Law

- Our laws have an important history from ancient times to today.
- The first real concept of a body of law, with an executive to enforce it, a senate to debate it, and courts to decide it, was in:

Rome

- The reason the first set of laws was developed in Rome was because they viewed their society and culture as lasting longer than a human lifetime.
- They viewed **Law** as a means to maintain that society and to:
 - **Promote the continuity of trade and commerce;**
 - **Help administrate military conquests; and**
 - **Instill consumer confidence.**
- The law we respect today has a lineage over time and distance.
- Beginning in Rome, it was transported to England as a Roman Colony.
- As English law developed, it was then brought to America when we were a British Colony.
- The law we know today in the **United States** is descended from:

England

- As a result, the body of law that was the most prevalent in Colonial and Early America, as descended from England was:

The Common Law

- **Common law** was the law made by **Judges** in deciding cases based upon precedent and custom.
- Most of the cases involved property disputes.
- In making the decisions that created the **Common Law**, **Judges** followed the legal principle of **“Stare Decisis”** which means:

“Let the Decision Stand”

Law and Equity

- Prior to 1800, Courts were divided between Law and Equity.
 - **Equity had sole jurisdiction over injunctions. Its judges were clergy.**
 - **Law had sole jurisdiction over damages (\$). Its judges were lawyers.**

Reporting on the Law

- The man who was the first to compile the reports and explanations of Case (Common) Law in British Courts, into his famous "Commentaries", that would become known as the "Bible of the Law", was:

Sir William Blackstone

- Blackstone's Commentaries would be used as the primary legal authority for common law courts in England and America until the middle of the nineteenth century, and are still often cited today.

Magna Carta

- The first real battle that was fought and won for property rights was:

The Battle of Runnymede in 1215

- At the Battle of Runnymede, the landed knights (freemen land owners) made **King John I** of England sign the **Magna Carta**, which is Latin for:

"Great Charter"

- King John was the son of King Henry and Brother to King Richard.
- A king following the Norman line started by William the Conqueror in 1066.
- The Magna Carta, signed by King John, was one of the forerunners of modern British law.
- The Magna Carta and the Fourth Lateran Council were each major developments in the evolution of rights across the world.
- It was also one of the foundational documents for the US Constitution and its Amendments (the Bill of Rights).
- Originally known by the people of England as the Charter of Liberties.
- It became a guiding document of both England, and several other countries.
- It expanded the rights and liberties of the people, and limited the power of the government.

What is in the Magna Carta

- Containing 63 clauses, this landmark document:
 - Created a council to the King (a forerunner to parliament);
 - Promised all freemen access to courts and a fair trial;
 - Specified many property rights from infringement by the king and his agents;
 - Eliminated unfair fines and punishments;
 - Gave certain legal powers to the Catholic Church; and
 - Addressed many lesser specific issues of the day.
- It should be noted, however, that **one major right the Magna Carta did not recognize, was that it did not abolish the condition of involuntary servitude (serfdom)**, since the freemen who drafted the document, depended upon this feudal system for their wealth, power and life.

Sovereignty

- Sovereignty, in which law recognizes the power of ruling, is vested in Great Britain in the government (the King in Parliament).
- In the United States, however, sovereignty vests in the people.
- Such is why the first three words in the Constitution are:

“We The People”

Property as a Fundamental Right

- **Property Rights = Freedom:** The Founders understood that the lynchpin of liberty was the proper management of power.
- **Founders Understood – Government’s Purpose is to Protect Rights:** From the very beginning it was all about rights and building a legal system to protect those rights.
- **Property Rights are Key to Freedom:** The first of all those rights in the minds of our founders, was always property.
- **The Meaning of Property:** For as we know by now, property is a collection of rights, not a collection of things.
- **Government of Law Not Men:** The building of freedom and liberty, and allowing the free exercise of those property rights, meant a need for a government of law, not men, that would respect and protect rights, and was limited with true checks and balances and separation of powers.
- **The Declaration of Independence** created a *NATION OF IDEALS*:
 - A nation of laws and not men.
 - A nation evolved from the principles of the enlightenment.
- The Declaration outlined a concept of principles, not finalized government.
- Among its foremost declared rights were **Property Rights**
- **The Key to Understanding Property:** To understand property, it must be seen through a prism of rights. Such requires an understanding of:
 - what a right is,
 - what the law is that protects property rights, and
 - how protecting property rights an essential element to freedom.
- **Freedom + Protection of Property Rights:** The founders understood, that if you want freedom, set up a system to protect property rights.
- The Founders held that such a system requires the power of government to be limited, and that its express purpose must be to protect, and not infringe on, people’s individual rights.



Weekly Information Sheet 03

The Four Postulates

The most important concept in our class is the collection of ideas known as the four postulates of property law.

These postulates outline all the nature that is property law, and collectively illustrate its meaning.

The Four Postulates of Property Law:

- 1. Property needs to be seen as a collection of “Rights” not a collection of “Things”;*
- 2. Property Rights are those recognized by Law and the Law evolved from Property Rights;*
- 3. Our Foundations of Law recognized that we are endowed with Property Rights; and*
- 4. Property Rights can be summarized by E-PUT*

Exercising Property Rights

E-PUT – Just what are your property rights?

They can be summarized by the initials EPUT.

These initials stand for:

E-PUT

- 1. The Right to Exclude;*
- 2. The Right to Possess;*
- 3. The Right to Use; and*
- 4. The Right to Transfer.*

Types of Property

Property can be seen through the prism of three **types**.

These **types** of property allow one to exercise their property rights according to the use and function of the property.

These **types** include:

Types of Property

1. Real (Rights in Land);

Real Estate – Ownership/Leaseholds/Easements/Life Estates

2. Personal (Rights in Objects); and/or

Chattels – Tangible, visible “things”

3. Intellectual (Rights in Ideas).

Patents – Idea for Product or Process

Trademarks – Logo, Identification or Distinction

Copyrights – Written or Performed Works

Locke, Jefferson and Bentham

- **John Locke**, author of the famous **Two Treatises on Government**, declared that natural law provides men with three rights. Such are:

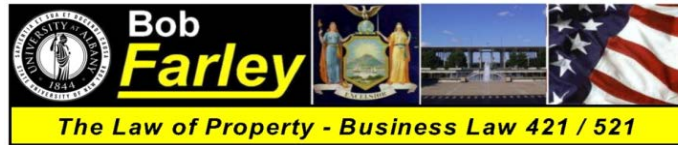
Life, Liberty and the Pursuit of Property.

- **Thomas Jefferson**, author of the **Declaration of Independence** paraphrased Locke, when he declared three inalienable rights of:

Life, Liberty and the Pursuit of Happiness.

- **Jeremy Bentham**, the famous positivist legal commentator, linked property rights and the law when he wrote:

*Property and the Law are born together and die together.
Before laws were made there was no property,
take away laws and property ceases.*



Weekly Information Sheet 04

Intro to Property Terms and Rights

Why Do We Recognize Rights in Property?

- **First in Time First in Right**
(A way to allocate resources not yet owned);
- **Labor**
(People should be entitled to fruits of their labor);
- **Utilitarianism**
(Private Property exists in order to maximize the overall happiness and utility of all citizens – i.e. People respond to incentives);
- **Economics**
(Private Property exists to maximize the overall wealth of society – i.e. Society responds to incentives); and
- **Liberty and Personhood**
(Private Property is essential to the development of a free society and individuals).

Private Rights of Action in Property Cases

Election of Remedies

One who destroys, misuses, misdelivers, or otherwise wrongfully deprives the owner of chattel of his possessory rights, may be liable to the owner under various theories of recovery.

- 1) **Replevin** - Replevin is an action to recover the chattel itself;
- 2) **Trespass** - The action in trespass is to recover money damages incurred by reason of the dispossession; and
- 3) **Trover** - The action in trover is to recover the value of the chattel along with damages for dispossession.

Escheatment

When property “Escheats” it:

Returns to the State

Property Terms and Rights Continued

Title to Personal Property

Rights and title to personal property are acquired or lost by:

- 1. Transfer – Sale;**
- 2. Occupancy;**
- 3. Adverse Possession;**
- 4. Accession;**
- 5. Confusion;**
- 6. Judgment;**
- 7. When the chattel is lost, mislaid, or abandoned; or**
- 8. Gift.**

Plants and Crops

Fructus Naturales

Plants that grow spontaneously on land, e.g., trees, bushes, and grass, are described as fructus naturales and are considered to be a part of the land, and therefore real property. Title to the land includes such Plants.

Fructus Industriales

Crops that are the result of annual planting, labor, and cultivation, e.g., grains, vegetables, and other crops, are described as fructus industriales. These crops are, as a general rule, regarded as personal property.

Lost, Mislaid and Abandoned Property

Lost or Mislaid Property:

Can be kept by the finder if it is under \$20 in value and a reasonable attempt has been made to find the owner.

Abandoned Property:

Can be kept by the finder no matter what its value.

Domesticated Animals

Are considered personal property under the law (they are moveable).

Special Rules: Wild Animals

Wild animals (ferae naturae) in their natural state are unowned.

They become private property upon being reduced to possession.

Acquisition of Title and Possession

An animal in its natural state is unowned.

The first person to exercise dominion and control over such animal becomes, with possession, the owner of it.

To become the owner, the claimant must establish that they have exercised dominion and control over the animal. (Pierson v Post)

Special Rules: Wild Animals - Continued

Acquisition of Title - Constructive Possession

Animals caught in a trap or net belong to the one who owns and has set the trap or net.

By setting such a trap, one is said to constructively possess those animals snared.

Mere Pursuit

Mere pursuit does *not* constitute the exercise of dominion and control sufficient to give the hunter a property right in the animal.

However, where an animal has been *mortally wounded* so that actual possession is practically inevitable, a vested property right in the animal accrues and cannot be divested by another's intervening act in killing the animal.

Violation of Statute

One who violates a statute (e.g., fails to have a hunting license) forfeits his title in animals caught pursuant thereof.

One who violates a statute (e.g., fails to have a hunting license) forfeits his title in animals caught or killed.

Trespass

While a landowner is *not* regarded as the owner of all wild animals found on their property, a trespasser who kills game on another's land forfeits title in favor of the landowner.

This rule does not change the fact that the animal is unowned until reduced to possession.

In order not to give a benefit to the act of trespassing, however, the possessor will be forced to surrender title in favor of the landowner

Escape

If a wild animal, captured and held in private ownership, escapes and resumes its natural liberty, the former owner loses their property right in it. The animal is once again unowned and the first person thereafter to capture it becomes the owner.

Habit of Return

If a wild animal escapes and, although wandering about without restraint, retains a habit of periodic return to its master's home, or if, although endeavoring to escape, is still pursued by the owner or is by other means liable to be recaptured by its owner, title is not lost.

Marked Animals

When animals have been captured and reduced to private ownership, it is common for the owner to mark or brand them for purposes of identification.

If the animal escapes and resumes its natural liberty, the question becomes if title is lost.

Normally, modern courts will allow title to be retained in the former possessor as long as the animal is marked and the owner exercises all possible effort to recapture the animal. (3)



Weekly Information Sheet 05

GIFTS -

There are two principal types of gifts.

These types of gifts have distinct legal names.

Types of Gifts

1. Gifts Inter Vivos.
(Gifts During Lifetime)

2. Gifts Causa Mortis
(Gifts in Contemplation of Death)

There are also three factors that make the transfer of property a gift.

These factors must be present for the gift to be legally valid.

The Three Factors that make a Gift

- 1. Donor's Intent**
- 2. Delivery**
- 3. Acceptance**

Certain Special Circumstances

In order for a gift in contemplation of marriage to be legally valid:

- **The marriage has to happen.**

In order for a gift causa mortis to be upheld:

- **The person offering the gift has to die (but not of what they were afraid they would die of); and**
- **The recipient of the gift must show evidence of actual delivery**

Liens

Lien Defined:

Black's Law Dictionary defines a "LIEN" as:

1. A charge or security or encumbrance upon property;
2. A claim or charge on property for payment of some debt, obligation or duty;
3. A right to retain property for payment of debt or demand

Liens can be statutory or based upon a common law right

Classes of Liens:

There are two principal *classes* of liens.

These classes of liens have distinct legal names.

1. General Liens.

(The Lien attaches as security to ALL the effected property of the person against whom the lien is levied – such as all the items left by a patron in a hotel room).

2. Special Liens

(The Lien attaches as security to ONE single item of property of the person against whom the lien is levied – such as a car in a car loan).

Where a doubt exists as to whether the lienholder has a general or special lien, the law presumes the lien to be special rather than general.

Important Qualities to Know About Liens:

A Lien:

- Gives the Lien holder the right to possess and retain certain property under certain circumstances;
- Cannot be levied against an item not given by its owner; and
- Can be deemed waived by contract, acceptance of other security, or by a demand for unlawful charges.

Bailments

Bailment Defined:

Bailments can be understood from their definition. This definition is:

“A bailment is the relationship created by the transfer of possession of an item of personal property by one called the bailor to another called the bailee for the accomplishment of a certain purpose.”

Elements of a Bailment: DAPPER

A Bailment can be broken down to a series of *Elements*.

These elements include:

- Delivery
- Agreement
- Personal Property
- Purpose
- Entered into for the Benefit of one or both parties; and
- Ended with Redelivery

In order for a Bailment to be valid, all of the above *Elements* must be present.

Important Issues for a Bailment

For a bailment to exist, there must be:

- A Transfer of Possession; and
- An intent of the bailee to take control of the bailed item.

Duty of Care for a Bailment

The level of the duty of care of a bailee depends upon:

- Whose benefit the bailment is for. (3)



Weekly Information Sheet 06

Intellectual Property

There are three recognized **types** of intellectual property.

Like the **types** of property itself, these **types** of intellectual property allow one to exercise their property rights according to the use and function of the intellectual property.

These **types** of intellectual property include:

Types of Intellectual Property

- 1. Copyrights** (Rights in Writings, Arts or Expression);
- 2. Patents** (Rights in Inventions or Discoveries); and
- 3. Trademarks** (Rights in a Word, Name or Symbol).

These rights were NOT widely recognized in common law.

These rights are NOT enforceable world-wide (without a treaty).

These rights are recognized in modern law pursuant to federal statutes.

- *Title 17 of the United States Code outlines United States Copyright law.*
- *Title 35 of the United States Code outlines United States Patent law.*
- *Title 15 of the United States Code outlines United States Trademark law.*

Computer Programs have been held to be covered under copyright law as they are written code, not under patent law as processes.

Common Law Felonies

Remember **MR & MRS LAMB.**



Murder
Rape
Manslaughter
Robbery
Sodomy
Larceny
Arson
Mayhem
Burglary



Common Law Felonies vs. Modern Felonies

At common law, a **felony** was a capital offense, meaning the ultimate **punishment** was **DEATH**.

Today, a **felony** under New York law is generally considered a **crime that can be punished by more than a year in jail**. While a **Misdemeanor** is generally considered a **crime that can be punished by less than a year in jail**.

Murder

A person is guilty of murder when:

1. With intent to cause the death of another person, he causes the death of such person or of a third person;
2. Under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes the death of another person; or
3. Acting either alone or with one or more other persons, he commits or attempts to a felony, and, in the course of and in furtherance of such crime or of immediate flight therefrom, he, or another participant, if there be any, causes the death of a person other than one of the participants.

Rape

A person is guilty of rape (in the first degree) when:

He or she engages in sexual intercourse with another person:

1. By forcible compulsion; or
2. Who is incapable of consent by reason of being physically helpless; or
3. Who is less than eleven years old; or
4. Who is less than thirteen years old and the actor is eighteen years old or more.

Robbery

Robbery is forcible stealing.

A person forcibly steals property and commits robbery when:

In the course of committing a larceny, he uses or threatens the immediate use of physical force upon another person for the purpose of:

1. Preventing or overcoming resistance to the taking of the property or to the retention thereof immediately after the taking; or
2. Compelling the owner of such property or another person to deliver up the property or to engage in other conduct which aids in the commission of the larceny. (2)