



Weekly Information Sheet 02

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.

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.