REPORT #PCT07: UNDERSTANDING COMMON LAW

A Brief History of Common Law
Until the 12th century, law in the western world consisted of written laws, called Civil Laws, all traceable to Roman Law. This basic system still prevails in many countries as well as in the state of Louisiana.

However, after the Norman conquest of Britain in 1066, a legal tradition called the "common law," different from that of civil law, began to develop in England. In the 1100s during the reign of the legal reformer, Henry II, court decisions were written down and catalogued according to the types of cases. When the courts were called on to decide similar issues later, they reviewed the earlier decisions and if one was found that covered the earlier decision, they applied the principle of the earlier decision. They called this doctrine, "*stare decisis*," a Latin term meaning "to stand by the decision."

Under this rule of *stare decisis*, once a legal issue has been resolved as it applied to a particular set of facts, a court did not reconsider that legal issue in a later case where the factual circumstances were substantially similar. But this did not mean that every decision stood forever. However, the principle of *stare decisis* was a strong one, and judges were reluctant to discard well-established rules, and took great pains to explain a significant departure from a precedent.

During America's colonial period, most of the English common law tradition did not change, and the new country continued to follow English common law. When the U.S. Constitution was ratified in 1789, the Constitution, based upon the common law inherited from England, became the new foundation on which the American legal system was built.

If you're interested in learning more about the history of common law, I recommend ***Origins of The Common Law*** by Arthur R. Hogue (LibertyPress, 7440 N. Shadeland, Indianapolis, IN 46250; 1985).

The Two Basic Common Laws
According to Richard J. Maybury (***Whatever Happened to Justice?*** - Bluestocking

Press, PO Box 1014, Placerville, CA 95667; 1993 - highly recommended), there are two fundamental common laws:

1. Do all you have agreed to do;
2. Do not encroach on other persons or their property.

"Do all you have agreed to do" is the basis for contract law. "Do not encroach... " is the basis for criminal law and tort law. A "tort" is harm done to someone.

Black's Law Dictionary defines encroach as: "To enter by gradual steps or stealth into the possessions or rights of another; to trespass or intrude. To gain or intrude unlawfully upon the lands, property, or authority of another."

Now consider the people who masquerade as "government." They agreed to follow their Constitution. To what extent do they do this? And to what extent do they respect other persons or their property? Could it be that so-called "government" is simply common law turned upside-down?

The Code of Build Freedom

(1) Free Sovereign Citizens own their own lives, minds, bodies, and labor, and may do with them anything that doesn't violate the equal rights of others. This principle of individual sovereignty or self-ownership is the foundation for all legitimate property.

(2) Free Sovereign Citizens have the right to own property, which consists of all possessions acquired without coercing others. They respect the equal right of others to own property, which forms the basis for productive and cooperative human relationships.

(3) No individual, group, or majority has the right to initiate or threaten force, fraud, violence, or theft against Free Sovereign Citizens or their property.

(4) Free Sovereign Citizens have a right to choose whether to communicate or associate with others. These rights of speech and privacy follow directly from the principle of individual sovereignty or self-ownership.

(5) Free Sovereign Citizens have the right to associate with others and to enter into agreements and contracts. For a contract between Free Sovereign Citizens to be valid, it needs to be entered into knowingly, voluntarily, and intentionally.

(6) Free Sovereign Citizens have the right to produce and exchange property, and to own the products of their labor and thought. No individual, group, or majority has a

right to the labor, ideas, production, or property of a Free Sovereign Citizen, or any part thereof, without prior consent or agreement.

(7) Free Sovereign Citizens have the right to defend and protect themselves and their property against coercive aggression, and to contract with others to assist them. The authority of voluntarily-chosen agents to defend or protect Citizens and/or their property is strictly limited to that defense or protection.

(8) Free Sovereign Citizens consider a crime to occur only when there is a damaged person or property. Therefore, there is no such thing as a "victimless crime," and no Free Sovereign Citizen can commit a crime simply by disobeying the arbitrary rules of tyrants or coercive organizations.

(9) To be legitimate, courts and trials must be based on voluntary association and agreement, rather than on coercion. However, anyone who infringes on the person or property of another may be subject to a requirement for restitution by the damaged person.

(10) Free Sovereign Citizens recognize that social order and cooperation develop spontaneously in the absence of coercion. They also recognize that leadership by example and productive effort is more beneficial than leadership by force, violence, compulsion, or fear.

(11) The principles stated in this Code apply to all Free Sovereign Citizens without regard to age, race, religion, philosophy, background, birthplace, geographic location, gender, or sexual preference.

(12) For a right to be valid its exercise may not impose a positive obligation on another; it only depends on others not taking coercive actions. Free Sovereign Citizens respect the equal rights of other Citizens, and therefore do not expect others to contribute to their interests, except through voluntary transactions or contributions.

Notice that the Build Freedom Code is an extension of the two basic common laws.

The Distinction Between Free and Unfree
[This section is extracted from an article by Alfred Adask in the Nov/Dec 1992 issue of *AntiShyster*.]

- " On page 1238 of *Black's Law Dictionary (Revised 4th Edition)* we find the entry: "OMNES HOMINES AUT LIBERI SUNT AUT SERVI. All men are freemen or slaves. Inst. 1, 3, pr.; Fleta, 1. 1, c. 1, Sect. 2."

- This Latin dictum declares you must be either a "freeman" or a "slave." Mutually exclusive categories. No middle ground. If you're not one, you must be the other. It's an interesting notion, but does this obscure Latin phrase have any current relevance to you and me?
- Inst. 1, 3, pr." is a reference to *Justinian's Institutes*, a treatise on Roman Law compiled under the direction of Emperor Justinian, and first published in AD 533. This tells us that the freeman/slave dichotomy dates back at least 1,400 years in Western civilization and legal tradition.
- The second reference - "Fleta, 1. 1, c. 1, Sect. 2." - refers to an ancient treatise on the laws of England, called *Fleta* and written during the reign of Edward I in the late 13th Century or early 14th century. So the 6th Century Roman dictum of "slave or freeman" was still honored 800 years later in *Fleta* and, presumably, in the law of 14th Century England.
- *Black's* defines "free" as: "Not subject to legal constraint of another. Unconstrained; having power to follow the dictates of his own will. Not subject to the dominion of another. Not compelled to involuntary servitude. Used in this sense as opposed to 'slave'... Enjoying full civic rights... "
- *Black's* defines "freeman" as: "A person in the possession and enjoyment of all the civil and political rights according to the people under a free government. In Roman law, it denoted one who was either born free or emancipated, and was the opposite of 'slave.' In feudal law, it designated an allodial proprietor, as distinguished from a vassal or feudal tenant. (And so in Pennsylvania colonial law. Fry's Election Case, 71 Pa. 308, 10 Am. Rep. 698.) In old English law, the word described a freeholder or tenant by free services; one who was not a villein [slave of a feudal lord]. In modern legal phraseology, it is the appellation of a member of a city or borough having the right of suffrage, or a member of any municipal corporation invested with full civic right." [An allodial proprietor or freeholder has an inalienable right to property. Someone whose property is subject to property tax is a vassal or feudal tenant.]
- "Full civic right" suggests a person who enjoys all political rights, including the right to hold all public offices. In America, today, only 0.3% of the population - lawyers - can hold office in the judicial branch of government and the other 99.7% of us are denied that civic right. Taken together, the definition of "freemen" and the Roman dictum of freeman/slave dichotomy suggests that the only legal "freemen" in America are licensed lawyers, and conversely, the other 99.7% of us are "slaves." Not a cheery thought. But what do lawyers have that we don't? Education. Knowledge. And what does the Bible say? "My people perish from lack of knowledge." Better start studying, folks.
- Interesting to see how the 6th Century Roman concept of freeman/slave moved

right along through feudal times, to old English law, and on to colonial Pennsylvania. That means the Roman legal concept of "freeman" not only crossed Europe and eight centuries to reach 14th Century England. It later crossed the Atlantic and four more centuries to appear in Pennsylvania law somewhere around 1700.

- Article I, Section 2 of the Bill of Rights of the 1869 Texas State Constitution says, "All freemen, when they form a compact [voluntary agreement or contract], have equal rights; and no man, or set of men, is entitled to exclusive separate public emoluments or privileges." So the term "freeman" was still in use and clearly part of American Law, as far west as Texas and as recently as 1869 - just over a hundred years ago.
- [Article I (Bill of Rights), Section 2 of the Texas Constitution also states: "All political power is inherent in the people, and free governments are founded on their authority, and instituted for their benefit. The faith on the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform, or abolish their government in such manner as they may think expedient."]
- <u>If the legal term "freeman" was sufficiently resilient to cross one ocean, two continents, and thirteen centuries, it doesn't take a great deal of faith or imagination to suppose the Roman freeman/slave dictum might still carry some weight in today's American legal system.</u> Which means that ancient, obscure Roman dictum still has relevance to your life and mine.
- *Black's* defines "slave" as: "A person who is wholly subject to the will of another; one who has no freedom of action, but whose person and services are wholly under the control of another... One who is under the power of a master, and who belongs to him; so that the master may sell and dispose of his person, of his industry, and of his labor, without his being able to do anything, have anything, or acquire anything, but what must belong to his master... ""

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According to Arthur M. Hogue, "Medieval English common law, like Roman law, recognized only two great classes of men - free and unfree." Freemen and slaves. <u>Hale v. Henkel</u> makes a distinction between the individual and the corporation - the freeman and the slave?

"There is a clear distinction in this particular case between an individual and a corporation, and that the latter has no right to refuse to submit its books and papers

for an examination at the suit of the State. The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no such duty to the State, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the constitution. Among his rights are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon their rights.

Upon the other hand, the corporation is a creature of the State. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to the laws of the State and the limitations of its charter. Its powers are limited by law. It can make no contract not authorized by its charter. Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its charter." Hale v. Henkel, 201 U.S. 43 at 47 (1905).

Particularly note, that the rights of the individual (freeman), precede the organization of the state. The common-law rights of the individual are senior to any contrary statutes or regulations. The people who masquerade as so-called "government" have used various means (covered below) to trick their victims to unwittingly submit to statutory jurisdiction.

Common Law Jurisdiction vs. Statutory Jurisdiction

It is possible for an individual or company to operate according to the basic principles of freedom inherent in human nature. Most fundamentally, these are the rights to own property, to engage in voluntary exchange, and the sanctity of contract. These are also basic common law rights. These principles are in accordance with the U.S. Constitution as intended by the American Founding Fathers. Article I, Section 10 of the Constitution states: "No State shall pass any law impairing the obligation of contracts." The individual's right to contract is unlimited and no State may interfere with that right.

Very few Americans know that they have a fundamental choice: To live their lives and conduct their businesses under **common law jurisdiction** or under **statutory jurisdiction**. Common law is the law of the land, the law of the Constitution. Statutory law is legislated law. Richard Maybury refers to the two kinds of law as scientific law and political law.

The IRS makes this distinction between the two kinds of law:
"1. Common law comprises the body of principles and rules of action relating to government and security of persons and property which derive their authority solely from usages and customs or from judgments and decrees of courts recognizing, affirming, and enforcing such usages and customs.
2. Statutory law refers to laws enacted and established by a legislative body." IRS Manual, page 5041.1 Section 222.1.

Much of the original U.S. common law has been codified in a single Federal statute, the Uniform Commercial Code.

"The Code is complementary to the Common Law, which remains in force, except where displaced by the code." UCC 1-103.6.

The UCC provides the mechanism for making the choice between common law jurisdiction and statutory jurisdiction. It also states that the failure to make the choice results in the loss of common law rights.

"When a waivable right or claim is involved, the failure to make a reservation thereof, causes a loss of the right, and bars its assertion at a later date." UCC 1-207.9.
"The Sufficiency of the Reservation - Any expression indicating an intention to reserve rights, is sufficient, such as "without prejudice."" UCC 1-207.4.

The specific method for reserving your common law rights - for choosing to operate under common law jurisdiction - is to write below your signature "**Without Prejudice UCC 1-207**." You could use this phrase on your driver's license, on bank signature cards, and on contracts.

However, the people who masquerade as "government" may claim that any of the following subjects you to statutory jurisdiction:

- The 14th Amendment made you a "U.S. citizen" - as opposed to an American Sovereign or a citizen of one of the 50 states.
- Having a birth certificate
- Using a social security number.
- Registering as a voter.
- Having filed a federal tax return.
- Having a driver's license.
- Having a vehicle registration.
- Having a government marriage certificate.

- Having children in a government school.
- Having registered as a voter.
- Having received a professional license (attorney, doctor, architect, engineer, etc.)
- Being a director of a corporation.
- Etc.

The people who masquerade as "government" may claim that all the above are "government benefits" which subject you to their jurisdiction. Several organizations provide services involving the systematic revocation of all the above and declaring your sovereignty. We've developed an "Affidavit of Truth" to achieve the same objective.

Once you've established your status as a sovereign or state citizen, you then operate under common law jurisdiction, and you're no longer subject to statutory jurisdiction.

One of the reasons for creating a Pure Contract Trust is that it is a common law entity not subject to statutory jurisdiction. The Trust then can do or own all the things you don't want to be subject to statutory jurisdiction. Many people simply don't want to be bothered with all the hassle it takes to become a sovereign. Of course, even if you do become a sovereign, it's usually worth it to also use a Pure Contract Trust to keep certain assets and activities legally separate from yourself. In fact, if you do become a sovereign, this may put you on some government black list, therefore it may be especially prudent to use a Trust.

Practical Considerations in the Application of Your Common Law Rights
There are different approaches to applying your individual rights under common law. Which combination of approaches you use depends on your particular situation and preferences.

For example, some people prefer to make very public their intentions, status, and actions rights from the start. Some people believe that as a matter of moral principle it's important to fully disclose in advance to various bureaucrats exactly what they think and do. This is certainly an honorable viewpoint to hold, and many people who are quite freedom-oriented subscribe to this methodology. With respect to disclosure of facts, this method parallels that of many philosophies of civil disobedience - which often hold that assertion of whatever right you are claiming must be fully disclosed and public to be properly and morally claimed.

Another approach is to think and do as you wish - of course, morally and properly

according to individual rights principles based in common law. When confronted by a bureaucrat who might want to infringe on your common law rights, you can then make a more open and public assertion of your rights.

If appropriate, you could choose some middle ground between "full public disclosure in advance" and "waiting to be confronted before asserting your rights." This approach does not necessarily mean rights are forfeited because you didn't give COMPLETELY LOUD disclosure in advance. How can this be done?

As a declaration of intentions you could, for example, use the "Affidavit of Truth" by filing it with the County Recorder. For many people, this may be a good summary of their state of mind with regard to retaining, reserving, and using (when desired) individual rights secured by common law.

The reason this represents a middle ground between full disclosure to bureaucrats and no disclosure at all is that the act of filing the document with the County Recorder makes this declaration of your state of mind a matter of public record.

Higher profile is to send such a document (or similar declarations) directly to various bureaucrats. This may suit you better if it is morally important to you to give full accounting and disclosure to your enemies, no matter how much they may harm you. Another circumstance in which you may consider direct confrontation is when you are being attacked anyway. In this case, they already are after you and you may get better results by showing the bureaucrats very clearly that you are not "easy pickings" and that coming after you will cost them dearly in terms of time, effort, and money.

No public disclosure at all to assert your individual rights under common law may work well for you sometimes. In this case, being discrete about your affairs may reduce the chances of attack against you to nearly zero.

Public recording of your state of mind with the County Recorder does increase chances of attack against you some, but in many cases probably not much. There are thousands of Counties in the United States. Consider using a County Recorder some distance from where you spend most of your time. If you do that, the chances of any bureaucrat who might infringe on your individual common law rights ever noticing that you are in fact asserting those rights may well be close to zero!

U.S. Court Decisions

Today, the court decisions that are published and available in the law freedomries, and thus become a part of common law, are almost always appellate court decisions,

not trial court decisions. The U.S. Supreme Court and the state Supreme Courts are part of the U.S. appellate court system. The appellate court opinions that appear in published form in the law freedomry follow a format as follows:

1. The Facts, which are taken from the lower court's determination.
2. The Issues, which are presented by the appealing parties.
3. The Ruling or Holding, which is the answer to the issues.
4. The Reasoning or Rationale, which is the discussion.

Most judges try hard to be consistent with decisions that they or a higher court have made. This consistency is very important to the common law tradition. For this reason, if you can find a previous court decision that rules your way on facts similar to your situation, you have a good shot at persuading a judge to follow that case and decide in your favor.

There are two basic principles to understand when you want to persuade a judge to rule your way. One is called "precedent authority," and the other is called "persuasive authority. "

Under precedent authority, using the principle of *stare decisis* (to stand by the decision), means that the court is compelled to uphold the earlier decision if there is nothing that makes the earlier decision different from the one being decided. If the earlier decision was a U.S. Supreme Court case, that case is binding authority on all courts in this country.

As a general rule, persuasive authority means the higher the court, the more persuasive its opinion. However, in the absence of a precedent case, such as the Lee Marvin case, which was the first major case establishing the principle of "palimony," the Marvin case was considered persuasive authority by many out-of-state courts, although that case was not binding outside of California.

What bearing does all this have on Hale v. Henkel? We know that Hale v. Henkel was decided in 1905 in the U. S. Supreme Court. Since it was the U. S. Supreme Court, the case is binding on all courts of the land, until another U.S. Supreme Court case says it isn't. Has another U.S. Supreme Court case overturned Hale v. Henkel? The answer is "No." As a matter of fact, since 1905, Hale v. Henkel has been cited by all of the federal and state appellate court systems a total of 1,600 times! Remember that in nearly every instance when a case is cited, it has an impact on the precedential authority of the cited case.

How does that compare with other previously decided U.S. Supreme Court cases? Although a careful study has not been made, initial observations have shown that only one other case (the Dartmouth College case - see Report #PCT08: The Sanctity of Contract) have surpassed Hale v. Henkel in the number of times it has been cited by the courts. None of the various issues of this case has ever been overruled.

On the persuasive side, in Hale v. Henkel, it was the U.S. Supreme Court that was speaking, the Law of the Land. How much more persuasive can a case be!

One of the most popular tools available in the law freedomries is called Shepard's Citations. Shepard's Citations is a series of publications, encompassing volumes, which identify all federal and state appellate cases. Shepardizing a case is a part of legal research with which all lawyers and judges are familiar. It is a process by which the present status of a case is evaluated as to how it has been affected by later cases; and the process of locating cases that might otherwise have been overlooked. A citation is simply a reference to a legal authority. A published or reported case is identified: (1) by the publication in which it appears, (2) by the volume number of that publication, and (3) by the page on which the case begins. Thus, the citation of Hale v. Henkel, 201 U. S. 43, identifies the case as being on page 43 of volume 201 of *United States Reports*, which means the cases of the U.S. Supreme Court. Therefore, if you see a case listed in a Shepard's book under page 43 of volume 201 United States Reports, and the listed case is 934 F. 2d 743, then the cited case is 201 U.S. 43, Hale v. Henkel, and the citing case is 934 F 2d 743, because this case is citing Hale v. Henkel in its reasoning and ruling.

Here are some examples of the types of letter abbreviations you will find next to a citing case. Again, remember that a citing case is the case that has cited the case in which you are interested.
cc (connected case) - Different case from case cited but arising out of same subject matter or intimately connected therewith.
r (reversed) - Same case reversed on appeal.
d (distinguished) - Case at bar different either in law, or fact from case cited for reasons given.
j (dissenting opinion) - Citation in dissenting opinion.
o (overruled) - Ruling in cited case expressly overruled.
p (parallel) - Citing case substantially alike in respect of facts, issues, ruling, and reasoning of cited case.

Therefore, by the use of the letter abbreviations, it is not difficult, and extremely time efficient, to run down the citing cases of Hale v. Henkel and determine how each

citing case was treated in its reference to Hale v. Henkel.

If you're interested in obtaining a complimentary copy of a Shepard's guide to legal research, call (719) 488-3000, or write to Shepard's, PO Box 35300, Colorado Springs, CO 80935-3530, requesting free copies of their publications, "How to Shepardize" and "Questions and Answers."

Court Rulings Contrary to the U.S. Constitution

America is unique in the world in that it has a constitution which is the senior law of the land and severely limits what government may do. Also, all government officials are supposed to swear an oath to uphold their constitution. Furthermore, the constitution includes a procedure for amending it. No court - including the U.S. Supreme Court - has the legal power to amend the constitution. This means that, applying a strict legal and logical test, only those court decisions that conform with the constitution are valid.

The practice, however, is very different. Generally, judges seem to operate on the basis that they'll do whatever they can get away with.

As indicated in ***The Economic Rape of America: What You Can Do About It***, most lawyers are of questionable character - to put it mildly! Most judges are lawyers wearing black robes. Furthermore, most of them are also political appointees. In my opinion, a case can be made that American judges are the worst criminals in the world. If you'd like some evidence to back up my opinion, I suggest you read ***With Justice for None*** by Gerry Spence.

Conclusion

Ideally, you need to conduct your affairs in such a way that you don't have to go to court. It's the enemy's territitory - not a good place to fight! First, you attempt to organize matters so the enemy isn't aware of you as a threat or potential target. Second, you take measures that, should you become visible to the enemy as a potential target, will induce the enemy to decide that you'll be a very tough nut to crack, and there are much easier pickings elsewhere.

The Pure Contract Trust and the Affidavit of Truth are tools to assist you to achieve the above two objectives.

The enemy wants to rob you. That's how he gets his income and makes a living. Ultimately, it's your own determination, ingenuity, and resourcefulness that will deflect the enemy to seek out an easier mark.

Fortunately, if you're well prepared, it's relatively easy to win!

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