

CONSTITUTIONAL CASE LAW

Bennett v. Boggs, 1 Baldw 60, “Statutes that violate the plain and obvious principles of common right and common reason are null and void”. Would we not say that these judicial decisions are straight to the point --that there is no lawful method for government to put restrictions or limitations on rights belonging to the people? Other cases are even more straight forward: “The assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of practice.”

Davis v. Wechsler , 263 US 22, 24. “Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.”

Miranda v. Arizona, 384 US 436, 491. “The claim and exercise of a constitutional right cannot be converted into a crime.”

Miller v. US, 230 F 486, 489. “There can be no sanction or penalty imposed upon one because of this exercise of constitutional rights.”

Sherer v. Cullen , 481 F 946. We could go on, quoting court decision after court decision, however, the Constitution itself answers our question ♦ Can a government legally put restrictions on the rights of the American people at anytime, for any reason? The answer is found in Article Six of the U.S. Constitution: **Miranda v. Arizona, 384 U.S. 426, 491; 86 S. Ct. 1603** "Where rights secured by the Constitution are involved, there can be no 'rule making' or legislation which would abrogate them."

Norton v. Shelby County , 118 U.S. 425 p. 442

"An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed."

Sherar v. Cullen , 481 F. 2d 946 (1973)

"There can be no sanction or penalty imposed upon one because of his exercise of constitutional rights."

Simmons v. United States , 390 U.S. 377 (1968)

"The claim and exercise of a Constitution right cannot be converted into a crime"... "a denial of them would be a denial of due process of law".

Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401 (1958)

Note: Any judge who does not comply with his oath to the Constitution of the United States wars against that Constitution and engages in acts in violation of the supreme law of the land. The judge is engaged in acts of treason.

The U.S. Supreme Court has stated that "no state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it". See also In Re **Sawyer, 124 U.S. 200 (188); U.S. v. Will, 449 U.S. 200, 216, 101 S. Ct. 471, 66 L. Ed. 2d 392, 406 (1980); Cohens v. Virginia,**

19 U.S. (6 Wheat) 264, 404, 5 L. Ed 257 (1821).

Hoffsomer v. Hayes, 92 Okla 32, 227 F. 417 "The courts are not bound by an officer's interpretation of the law under which he presumes to act."

Marbury v. Madison, 5 U.S. (2 Cranch) 137, 180 (1803)

"... the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void, and that courts, as well as other departments, are bound by that instrument." "In declaring what shall be the supreme law of the land, the Constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the Constitution, have that rank". "All law (rules and practices) which are repugnant to the Constitution are VOID". Since the 14th Amendment to the Constitution states "NO State (Jurisdiction) shall make or enforce any law which shall abridge the rights, privileges, or immunities of citizens of the United States nor deprive any citizens of life, liberty, or property, without due process of law, ... or equal protection under the law", this renders judicial immunity unconstitutional.

Scheuer v. Rhodes, 416 U.S. 232, 94 S. Ct. 1683, 1687 (1974)

Note: By law, a judge is a state officer. The judge then acts not as a judge, but as a private individual (in his person). **When a judge acts as a trespasser of the law**, when a judge does not follow the law, the Judge loses subject-matter jurisdiction and the judges' orders are not voidable, but VOID, and of no legal force or effect. The U.S. Supreme Court stated that "when a state officer acts under a state law in a manner violative of the Federal Constitution, he comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States."

Miller v. U.S., 230 F. 2d. 486, 490; 42

"There can be no sanction or penalty imposed upon one, because of his exercise of constitutional rights."

Murdock v. Pennsylvania, 319 U.S. 105

"No state shall convert a liberty into a license, and charge a fee therefore."

Shuttlesworth v. City of Birmingham, Alabama, 373 U.S. 262

"If the State converts a right (liberty) into a privilege, the citizen can ignore the license and fee and engage in the right (liberty) with impunity."

Brinegar v. U.S., 338 US 160 (1949)

Probable Cause to Arrest - Provides details on how to determine if a crime has been or is being committed.

Carroll v. U.S., 267 US 132 (1925)

Probable Cause to Search - Provides details on the belief that seizable property exists in a particular place or on a particular person.

Draper v. U.S. (1959)

Probable cause is where known facts and circumstances, of a reasonably trustworthy nature, are sufficient to justify a man of reasonable caution in the belief that a crime has been or is being committed. *Reasonable man definition*; common textbook definition; comes from this case.

Davis v. Wechler, 263 U.S. 22, 24; Stromberb v. California, 283 U.S. 359; NAACP v. Alabama, 375 U.S. 449 "The assertion of federal rights, when plainly and reasonably made, are not to be defeated under the name of local practice."

Elmore v. McCammon (1986) 640 F. Supp. 905

"... the right to file a lawsuit pro se is one of the most important rights under the constitution and laws."

Haines v. Kerner, 404 U.S. 519 (1972)

"Allegations such as those asserted by petitioner, however in artfully pleaded, are sufficient"... "which we hold to less stringent standards than formal pleadings drafted by lawyers."

Jenkins v. McKeithen, 395 U.S. 411, 421 (1959); Picking v. Pennsylvania R. Co., 151 Fed 2nd 240 ; Pucket v. Cox, 456 2nd 233 Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers.

Picking v. Pennsylvania Railway, 151 F.2d. 240, Third Circuit Court of Appeals

The plaintiff's civil rights pleading was 150 pages and described by a federal judge as "inept". Nevertheless, it was held "Where a plaintiff pleads pro se in a suit for protection of civil rights, the Court should endeavor to construe Plaintiff's Pleadings without regard to technicalities."

Puckett v. Cox, 456 F. 2d 233 (1972) (6th Cir. USCA)

It was held that a pro se complaint requires a less stringent reading than one drafted by a lawyer per Justice Black in Conley v. Gibson (see case listed above, Pro Se Rights Section).

Sims v. Aherns, 271 SW 720 (1925) "The practice of law is an occupation of common right." "Because of what appears to be a lawful command on the surface, many Citizens, because of their respect for what appears to be law, are cunningly coerced into waiving their rights due to ignorance."

US v Minker, 350 US 179 at 187(1956)

◆ Supreme Court of the United States 1795 "Inasmuch as every government is an artificial person, an abstraction, and a creature of the mind only, a government can interface only with other artificial persons. The imaginary, having neither actuality nor substance, is foreclosed from creating and attaining parity with the tangible. The legal manifestation of this is that no

government, as well as any law, agency, aspect, court, etc. can concern itself with anything other than corporate, artificial persons and the contracts between them."

S.C.R. 1795, Penhallow v. Doane's Administraters (3 U.S. 54; 1 L.Ed. 57; 3 Dall.

54), "The prosecutor is not a witness; and he should not be permitted to add to the record either by subtle or gross improprieties. Those who have experienced the full thrust of the power of government when leveled against them know that the only protection the citizen has is in the requirement for a fair trial."

Donnelly v. Dechristoforo, 1974.SCT.41709 ¶ 56; 416 U.S. 637 (1974) McNally v. U.S., 483 U.S. 350, 371-372, Quoting U.S. v Holzer, 816 F.2d. 304, 307 Fraud in its elementary common law sense of deceit... includes the deliberate concealment of material information in a setting of fiduciary obligation.

A public official is a fiduciary toward the public,... and if he deliberately conceals material information from them he is guilty of fraud.

"The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings."

Hagans v Lavine 415 U. S. 533. "A judgment rendered by a court without personal jurisdiction over the defendant is void. It is a nullity."

Sramek v. Sramek, 17 Kan. App 2d 573, 576-7, 840 P. 2d 553 (1992) rev. denied 252 Kan. 1093(1993) "The law provides that once State and Federal jurisdiction has been challenged, it must be proven."

Main v Thiboutot, 100 S Ct. 2502(1980) "Jurisdiction can be challenged at any time," and "Jurisdiction, once challenged, cannot be assumed and must be decided."

Basso v. Utah Power & Light Co. 395 F 2d 906, 910

"Once challenged, jurisdiction cannot be assumed, it must be proved to exist."

Stock v. Medical Examiners 94 Ca 2d 751. 211 P2d 289 In Interest of M.V., 288 Ill.App.3d 300, 681 N.E.2d 532 (1st Dist. 1997) "Where a court's power to act is controlled by statute, the court is governed by the rules of limited jurisdiction, and courts exercising jurisdiction over such matters must proceed within the structures of the statute." "The state citizen is immune from any and all government attacks and procedure, absent contract." see, **Dred Scott vs. Sanford, 60 U.S. (19 How.) 393** or as the Supreme Court has stated clearly, "...every man is independent of all laws, except those prescribed by nature. He is not bound by any institutions formed by his fellowmen without his consent."

CRUDEN vs. NEALE, 2 N.C. 338 2 S.E. 70 "Corpus delicti consists of a showing of "1) the occurrence of the specific kind of injury and 2) someone's criminal act as the cause of the injury."

Johnson v. State, 653 N.E.2d 478, 479 (Ind. 1995). "State must produce corroborating evidence of "corpus delicti," showing that injury or harm constituting

crime occurred and that injury or harm was caused by someone's criminal activity."

Jorgensen v. State, 567 N.E.2d 113, 121. "To establish the corpus delicti, independent evidence must be presented showing the occurrence of a specific kind of injury and that a criminal act was the cause of the injury."

Porter v. State, 391 N.E.2d 801, 808-809. "When governments enter the world of commerce, they are subject to the same burdens as any private firm or corporation" -- **U.S. v. Burr, 309 U.S. 242** See: **22 U.S.C.A.286e, Bank of U.S. vs. Planters Bank of Georgia, 6L, Ed. (9 Wheat) 244; 22 U.S.C.A. 286 et seq., C.R.S. 11-60-103**

TREZEVANT CASE DAMAGE AWARD STANDARD

"Evidence that motorist cited for traffic violation was incarcerated for 23 minutes during booking process, even though he had never been arrested and at all times had sufficient cash on hand to post bond pending court disposition of citation, was sufficient to support finding that municipality employing officer who cited motorist and county board of criminal justice, which operated facility in which motorist was incarcerated, had unconstitutionally deprived motorist of his right to liberty. **42 U.S.C.A. Sec. 1983." Trezevant v. City of Tampa (1984) 741 F.2d 336, hn. 1**

"Jury verdict of \$25,000 in favor of motorist who was unconstitutionally deprived of his liberty when incarcerated during booking process following citation for traffic violation was not excessive in view of evidence of motorist's back pain during period of incarceration and jailor's refusal to provide medical treatment, as well as fact that motorist was clearly entitled to compensation for incarceration itself and for mental anguish that he had suffered from entire episode. **42 U.S.C.A. Sec. 1983." Trezevant v. City of Tampa (1984) 741 F.2d 336, hn. 5**

Mattox v. U.S., 156 US 237,243. (1895) "We are bound to interpret the Constitution in the light of the law as it existed at the time it was adopted."

SHAPIRO vs. THOMSON, 394 U. S. 618 April 21, 1969. Further, the Right to TRAVEL by private conveyance for private purposes upon the Common way can NOT BE INFRINGED. **No license or permission is required for TRAVEL** when such TRAVEL IS NOT for the purpose of [COMMERCIAL] PROFIT OR GAIN on the open highways operating under license IN COMMERCE. "The rights of the individuals are restricted only to the extent that they have been voluntarily surrendered by the citizenship to the agencies of government."

City of Dallas v Mitchell, 245 S.W. 944 "To take away all remedy for the enforcement of a right is to take away the right itself. But that is not within the power of the State."

Poindexter v. Greenhow, 114 U.S. 270, 303 (1885). Brady v. U.S., 397 U.S. 742, 748, (1970) "Waivers of Constitutional Rights, not only must they be voluntary, they must be knowingly intelligent acts done with sufficient awareness."

Carnley v. Cochran, 369 U.S. 506, 516 (1962), "Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show,

that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver."

Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401 (1958). "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." The constitutional theory is that we the people are the sovereigns, the state and federal officials only our agents." "The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; but, the individual's rights to live and own property are natural rights for the enjoyment of which an excise cannot be imposed."

Redfield v Fisher, 292 P 813, at 819 [1930] "...an officer may be held liable in damages to any person injured in consequence of a breach of any of the duties connected with his office...The liability for nonfeasance, misfeasance, and for malfeasance in office is in his 'individual' , not his official capacity..."

70 Am. Jur. 2nd Sec. 50, VII Civil Liability

"Fraud destroys the validity of everything into which it enters,"

Nudd v. Burrows, 91 U.S 426. "Fraud vitiates everything"

Boyce v. Grundy, 3 Pet. 210 "Fraud vitiates the most solemn contracts, documents and even judgments."

U.S. v. Throckmorton, 98 US 61 WHEREAS, officials and even judges have no immunity (See, **Owen vs. City of Independence, 100 S Ct. 1398; Maine vs. Thiboutot, 100 S. Ct. 2502; and Hafer vs. Melo, 502 U.S. 21;** officials and judges are deemed to know the law and sworn to uphold the law; officials and judges cannot claim to act in good faith in willful deprivation of law, they certainly cannot plead ignorance of the law, even the Citizen cannot plead ignorance of the law, the courts have ruled there is no such thing as ignorance of the law, it is ludicrous for learned officials and judges to plead ignorance of the law therefore there is no immunity, judicial or otherwise, in matters of rights secured by the Constitution for the United States of America. See: **Title 42 U.S.C. Sec. 1983.** "When lawsuits are brought against federal officials, they must be brought against them in their "individual" capacity not their official capacity. When federal officials perpetrate constitutional torts, they do so *ultra vires* (beyond the powers) and lose the shield of immunity."

Williamson v. U.S. Department of Agriculture, 815 F.2d. 369, ACLU Foundation v. Barr, 952 F.2d. 457, 293 U.S. App. DC 101, (CA DC 1991).

"It is the duty of all officials whether legislative, judicial, executive, administrative, or ministerial to so perform every official act as not to violate constitutional provisions."

Montgomery v state 55 Fla. 97-45S0.879

a. "Inasmuch as every government is an artificial person, an abstraction, and a creature of the mind only, a government can interface only with other artificial persons. The imaginary, having neither actuality nor substance, is foreclosed from creating and attaining parity with the tangible.

The legal manifestation of this is that no government, as well as any law, agency, aspect, court, etc. can concern itself with anything other than corporate, artificial persons and the contracts between them."

S.C.R. 1795, Penhallow v. Doane's Administrators 3 U.S. 54; 1 L.Ed. 57; 3 Dall. 54; and,

b. "the contracts between them" involve U.S. citizens, which are deemed as Corporate Entities:

c. "Therefore, the U.S. citizens residing in one of the states of the union, are classified as property and franchises of the federal government as an "individual entity"', **Wheeling Steel Corp. v. Fox, 298 U.S. 193, 80 L.Ed. 1143, 56 S.Ct. 773**

Alexander v. Bothsworth, 1915. "Party cannot be bound by contract that he has not made or authorized. Free consent is an indispensable element in making valid contracts."

HALE v. HENKEL 201 U.S. 43 at 89 (1906) Hale v. Henkel was decided by the united States Supreme Court in 1906. The opinion of the court states: "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 duty to the State or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to incriminate him. He owes no duty to the State, since he receives nothing there from, beyond the protection of his life and property. "His rights" are such as "existed" by the Law of the Land (Common Law) "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." "He owes nothing" to the public so long as he does not trespass upon their rights."

HALE V. HENKEL 201 U.S. 43 at 89 (1906) Hale v. Henkel is binding on all the courts of the United States of America until another Supreme Court case says it isn't. No other Supreme Court case has ever overturned Hale v. Henkel None of the various issues of Hale v. Henkel has ever been overruled since 1906, Hale v. Henkel has been cited by the Federal and State Appellate Court systems over 1,600 times! In nearly every instance when a case is cited, it has an impact on precedent authority of the cited case. Compared with other previously decided Supreme Court cases, no other case has surpassed Hale v. Henkel in the number of times it has been cited by the courts. "The rights of the individuals are restricted only to the extent that they have been voluntarily surrendered by the citizenship to the agencies of government."

City of Dallas v Mitchell, 245 S.W. 944

"An illegal arrest is an assault and battery. The person so attempted to be restrained of his liberty has the same right to use force in defending himself as he would in repelling any other assault and battery." (**State v. Robinson, 145 ME. 77, 72 ATL. 260**).

TITLE 18

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PART I

>

CHAPTER 2

> §

31Definitions (6)

Motor vehicle.❖ The term “motor vehicle” means every description of carriage or other **contrivance** propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, passengers and property, or property or cargo.

"Highways are for the use of the traveling public, and all have the right to use them in a reasonable and proper manner; the use thereof is an inalienable right of every citizen." **Escobedo v. State 35 C2d 870 in 8 Cal Jur 3d p.27**

The use of the automobile as a necessary adjunct to the earning of a livelihood in modern life requires us in the interest of realism to conclude that the RIGHT to use an automobile on the public highways partakes of the of a liberty within the meaning of the Constitutional guarantees.

..."

Berberian v. Lussier (1958) 139 A2d 869, 872 "The RIGHT of the citizen to DRIVE on the public street with freedom from police interference, unless he is engaged in suspicious conduct associated in some manner with criminality is a FUNDAMENTAL CONSTITUTIONAL RIGHT which must be protected by the courts."

People v. Horton 14 Cal. App. 3rd 667 (1971) “A “US Citizen” upon leaving the District of Columbia becomes involved in “interstate commerce”, as a “resident” does not have the common-law right to travel, of a Citizen of one of the several states.”

Hendrick v. Maryland S.C. Reporter’s Rd. 610-625. (1914) "One who DRIVES an automobile is an operator within meaning of the Motor Vehicle Act."

Pontius v. McClean 113 CA 452 "The word 'operator' shall not include any person who solely transports his own property and who transports no persons or property for hire or compensation." Statutes at Large California Chapter 412 p.833 "The right of a citizen to travel upon the public highways and to transport his property thereon, by horse-drawn carriage, wagon, or automobile is not a mere privilege which may be permitted or prohibited at will, but a common right which he has under his right to life, liberty, and the pursuit of happiness."

Slusher v. Safety Coach Transit Co., 229 Ky 731, 17 SW2d 1012, and affirmed by the Supreme Court in Thompson v. Smith 154 S.E. 579.

Also See:

- **EDWARDS VS. CALIFORNIA, 314 U.S. 160**
- **TWINING VS NEW JERSEY, 211 U.S. 78**
- **WILLIAMS VS. FEARS, 179 U.S. 270, AT 274**
- **CRANDALL VS. NEVADA, 6 WALL. 35, AT 43-44**
- **THE PASSENGER CASES, 7 HOWARD 287, AT 492**
- **U.S. VS. GUEST, 383 U.S. 745, AT 757-758 (1966)**
- **GRIFFIN VS. BRECKENRIDGE, 403 U.S. 88, AT 105-106 (1971)**
- **CALIFANO VS. TORRES, 435 U.S. 1, AT 4, note 6**
- **SHAPIRO VS. THOMPSON, 394 U.S. 618 (1969)**
- **CALIFANO VS. AZNAVORIAN, 439 U.S. 170, AT 176 (1978)**

Protection; **California Constitution Article 1, section 9 Due Process; Equal Privileges and Immunities:**

(a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws. Due process means that anybody wishing to restrain property or file a protest against property of another, be it land, livestock, etc. must first put up a Bond to indemnify the lawful owner(s) for the takings, THEN go through the process of having the matter decided by a jury.