

# Affidavit of Violated Constitutional Rights By Unlawful Tribunal and Constitutional Demand for Remedy

## Exhibit 1-A – Evidence

**The following evidence supports Affiant’s claims in Affidavit of Violated Constitutional Rights By Unlawful Tribunal and Constitutional Demand for Remedy, and is attach and made a part thereof:**

### E1. The Constitution.

“The main objective of government is the protection and preservation of personal rights, private property and personal liberties, and upholding the law of God.” American Maxim.

This section refers to the Constitutions for and of the United States and state Constitutions of **Colorado, Florida, New Jersey, Pennsylvania, Oklahoma, New York** by referencing these codes US, CO, FL, NJ, PA, OK, NY respectively.

The right to due process of law

- 1.1 **US Constitution, Fifth Amendment** – “No person shall... be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation”.
- 1.2 **Colorado Constitution, Article II, Section 25** – “No person shall be deprived of life, liberty, or property without due process of law”.
- 1.3 **Florida Constitution** – reflecting the same as the US Constitution.
- 1.4 **New Jersey Constitution** – reflecting the same as the US Constitution.
- 1.5 **Pennsylvania Constitution** – reflecting the same as the US Constitution.
- 1.6 **Oklahoma Constitution** – reflecting the same as the US Constitution.
- 1.7 **New York Constitution** – reflecting the same as the US Constitution.

The right of trial by jury, not jury trial, but trial by jury, and according to the rules of common law.

- 1.8 US Constitution, Seventh Amendment  
In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.
- 1.9 Colorado Constitution – reflecting the same as the US Constitution.
- 1.10 Florida Constitution – reflecting the same as the US Constitution.
- 1.11 New Jersey Constitution – reflecting the same as the US Constitution.
- 1.12 Oklahoma Constitution – reflecting the same as the US Constitution.
- 1.13 New York Constitution – reflecting the same as the US Constitution.
- 1.14 **US Constitution, Article I Section 10** – “**No State shall** enter into any Treaty, Alliance, or Confederation; **grant Letters of Marque and Reprisal**; ...or grant any Title of Nobility...
- 1.15 US Constitution, Eight Amendment – “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

### E2. SEC v. Jarkesy, 603 U.S. \_\_\_\_ (2024)

“The Fifth Amendment’s Due Process Clause addressed remaining concerns about the process that would attend trials before independent judges and juries. It provided the government may not deprive anyone of “life, liberty, or property, without due process of law.” As originally understood, this provision prohibited the government from “depriv[ing] a person of those rights without affording him the benefit of (at least) those customary procedures to which freemen were entitled by the old law of England.” *Sessions v. Dimaya*, 584 U.S. 148, 176 (2018) (GORSUCH, J, concurring in part and concurring in judgment) (quotation marks omitted); see *Erlinger*, 602 U.S., at \_\_\_\_ (slip op., and property, due process often meant judicial process. 1 St. George Tucker, Blackstone’s Commentaries, Editor’s App. 358 (1803). That is, if the

government sought to interfere with those rights, nothing less than “the process and proceedings of the common law” had to be observed before any such deprivation could take place. 3 J. Story, Commentaries on the Constitution of the United State §1783 p.661 (1833) (Story). In other words, ‘due process of law’ generally implic[d] and include[d]... judex [a judge], regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceedings.” *Murray’s Lessee*, 18 How., at 280.”

E3. **Trump v. United States, 604 U.S. \_\_\_\_\_ (2024)**

“There is no immunity for unofficial acts.”

E4. **“Court of Record”, Black’s Law Dictionary (4<sup>th</sup>)**

“A **“court of record”** is a judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it, and proceeding according to the course of common law, its acts and proceedings being enrolled for a perpetual memorial.”

E5. **“Common law”, Black’s Law Dictionary (4<sup>th</sup>)**

As distinguished from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England.

E6. **Maxims in Law:**

- 6.1 “The main objective of government is the protection and preservation of personal rights, private property and personal liberties, and upholding the law of God.” American Maxim.
- 6.2 “Punishment is due if the words of an oath are false.” *Black’s*, 840.
- 6.3 “A judicial act by a judge without jurisdiction is void.”
- 6.4 “Nothing can be entered as evidence which is not introduced as such.”
- 6.5 “Jurisdiction is the power to declare the law; and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.”
- 6.6 “Jurisdiction is the power of a court to apply the law and to enter and enforce judgment.”
- 6.7 “Justice is neither to be denied nor delayed.”
- 6.8 “Punishment is due if the words of an oath be false”. *Black’s*, 840.
- 6.9 “In law, none is credited unless he is sworn. All facts must, when established by witnesses, be under oath or affirmation.” *Cro. Car.64; Bouv. 130.*
- 6.10 <sup>16</sup> “People swear by someone greater than themselves, and the oath confirms what is said and puts an end to all argument. <sup>17</sup> Because God wanted to make the unchanging nature of his purpose very clear to the heirs of what was promised, he confirmed it with an oath.” Hebrews 6:16-17
- 6.11 “He who does not deny, admits.” (A well-known rule of pleading.) *Tray. Leg. Max. 503.*
- 6.12 An unrebutted affidavit stands as the Truth in Commerce.
- 6.13 An affidavit not rebutted point-for-point after thirty (30) days becomes the Judgment in Commerce.
- 6.14 A man may not with impunity infringe upon another man’s rights.

E7. **Definitions from Black’s Law Dictionary (6<sup>th</sup>)**

- 7.1 **“Attach”** – “To bind, fasten, tie, or connect, to make fast or join, and its antonyms are separate, detach, remove...”
- 7.2 **“Letters of Marque and reprisal”** – These words, "marque" and "reprisal," are frequently used as synonymous, but, taken in their strict etymological sense, the latter signifies a "taking in return;" the former, the passing the frontiers (*marches*) in order to such taking. Letters of marque and reprisal are grantable, by the law of nations, whenever the subjects of one state are oppressed and injured by those of another, and justice is denied by that state to which the oppressor belongs; and the party to whom these letters are granted may then seize the bodies or the goods of the subjects of the state to which the offender belongs, until satisfaction be made, wherever they happen to be found. Reprisals are to be granted only in case of a clear and open denial of justice. At the present day, in

consequence partly of treaties and partly of the practice of nations, [the making of reprisals is confined to the seizure of commercial property on the high seas by public cruisers, or by private cruisers specially authorized thereto.](#) Article I, Sec. 8, of U.S. Const. grants Congress the power to grant Letters of Marque and Reprisal.

**E8. DOMESTIC TERRORISM:**

**18 U.S. Code § 2331 - Definitions**

(5) the term “domestic terrorism” means activities that—

(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;

(B) appear to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(C) occur primarily within the territorial jurisdiction of the United States; and

**E9. Government and artificial persons can only interface with artificial persons.**

**1795 Supreme Court Ruling – No corporate jurisdiction over the natural man.**

Penhallow v. Doane's Administralers (3 U.S. 54; 1 L.Ed. 57; 3 Dall. 54), Supreme Court of the United States 1795.

"Inasmuch as every GOVERNMENT is an ARTIFICIAL PERSON, an abstraction, and a creature of the mind only 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, (3 U.S. 54; 1 LEd. 57; 3 Dall. 54),

**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."

**E10. 18 USC 242 Deprivation of Rights under Color of Law**

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

**E11. 18 USC 241 Conspiracy against Rights**

**If two or more persons [conspire to injure, oppress, threaten, or intimidate](#) any person in any State, Territory, Commonwealth, Possession, or District [in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States](#), or because of his having so exercised the same; or**

**If two or more persons [go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured](#)—**

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or [if such acts include kidnapping or an attempt to kidnap](#), aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

**E12. 42 U.S. Code § 1983 - Civil action for deprivation of rights**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia

- E13. **U.S. v. Throckmorton, 98 US 61** WHEREAS, officials and even judges have NO immunity.
- E14. 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.
- E15. **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." P. 358 U.S 18. "The interpretation of the Fourteenth Amendment enunciated by this Court in the Brown case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."
- E16. **18 U.S. Code § 1342 - Fictitious name or address**.  
Whoever, for the purpose of conducting, promoting, or carrying on by means of the Postal Service, any scheme or device mentioned in [section 1341 of this title](#) or any other unlawful business, uses or assumes, or requests to be addressed by, any fictitious, false, or assumed title, name, or address or name other than his own proper name, or takes or receives from any post office or authorized depository of mail matter, any letter, postal card, package, or other mail matter addressed to any such fictitious, false, or assumed title, name, or address, or name other than his own proper name, shall be fined under this title or imprisoned not more than five years, or both.

E17. **Trustees, Public Officers and their Duties.**

**63C Am.Jur.2d, Public Officers and Employees, §247**

[1] “As expressed otherwise, **the powers delegated to a public officer are held in trust for the people and are to be exercised in behalf of the government or of all citizens who may need the intervention of the officer**”.

[2] Furthermore, the view has been expressed that **all public officers**, within whatever branch and whatever level of government, and whatever be their private vocations, **are trustees of the people**, and accordingly labor under every disability and prohibition imposed by law upon trustees relative to the making of personal financial gain from a discharge of their trusts. [3] That is, **a public officer occupies a fiduciary relationship to the political entity on whose behalf he or she serves. [4] and owes a fiduciary duty to the public. [5]** It has been said that the fiduciary responsibilities of a public officer cannot be less than those of a private individual. [6] Furthermore, it has been stated that any enterprise undertaken by the public official which tends to weaken public confidence and undermine the sense of security for individual rights is against public policy.

**Also See**

[7] “**A Public official is a fiduciary toward the public, including in the case of a judge**, the litigants who appear before him and **if he deliberately conceals material information from them he is guilty of fraud**”. Fraud in its elementary common law sense of deceit-and this is one of the meanings that fraud bears [483 U.S. 372] in the statute.

[8] **Public officials are also "trustee(s) and servant(s) of the people"**

[9] **"Public office" is a public trust or agency for the benefit of the people** to be administered under legislative control in the interest of the office."

[10] **...Every taxpayer is a Cestui que trust** having sufficient interest in preventing abuse of the trust to be recognized in the field of this court's prerogative jurisdiction as a relator in the proceedings to set sovereign authority in motion by actions..."

[11] 63C Am.Jur.2d, Public Officers and Employees, §241. Generally; fiduciary nature of duties.

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Footnotes:

[1] State ex rel. Nagle v Sullivan, 98 Mont 425, 40 P2d 995, 99 ALR 321; Jersey City v Hague, 18 NJ 584, 115 A2d 8.

[2] Georgia Dep't of Human Resources v Sistrunk, 249 Ga 543, 291 SE2d 524. A public official is held in public trust. Madlener v Finley (1st Dist) 161 Ill App 3d 796, 113 Ill Dec 712, 515 NE2d 697, app gr 117 Ill Dec 226, 520 NE2d 387 and revd on other grounds 128 Ill 2d 147, 131 Ill Dec 145, 538 NE2d 520.

[3] Chicago Park Dist. v Kenroy, Inc., 78 Ill 2d 555, 37 Ill Dec 291, 402 NE2d 181, appeal after remand (1st Dist) 107 Ill App 3d 222, 63 Ill Dec 134, 437 NE2d 783.

[4] United States v Holzer (CA7 Ill) 816 F2d 304 and vacated, remanded on other grounds 484 US 807, 98 L Ed 2d 18, 108 S Ct 53, on remand (CA7 Ill) 840 F2d 1343, cert den 486 US 1035, 100 L Ed 2d 608, 108 S Ct 2022 and (criticized on other grounds by United States v Osser (CA3 Pa) 864 F2d 1056) and (superseded by statute on other grounds as stated in United States v Little (CA5 Miss) 889 F2d 1367) and (among conflicting authorities on other grounds noted in United States v Boylan (CA1 Mass) 898 F2d 230, 29 Fed Rules Evid Serv 1223).

[5] Chicago ex rel. Cohen v Keane, 64 Ill 2d 559, 2 Ill Dec 285, 357 NE2d 452, later proceeding (1st Dist) 105 Ill App 3d 298, 61 Ill Dec 172, 434 NE2d 325.

[6] Indiana State Ethics Comm'n v Nelson (Ind App) 656 NE2d 1172, reh gr (Ind App) 659 NE2d 260, reh den (Jan 24, 1996) and transfer den (May 28, 1996).

[7] U.S. v Holzer 816 F. 2d 304, 307 (1987) and McNally v United States 483 U.S. 350 (1987). United States v. Dial, 757 F.2d 163, 168 (7th Cir1985) includes the deliberate concealment of material information in a setting of fiduciary obligation.

[8] Georgia Department v Sistrunk 291 S.E. 2d 524, 526 (1982).

[9] State ex rel Nagle v. Sullivan 40 P. 2d 995, 997, Supreme Court of Montana (1935).

[10] In re Bolens 135 N.W. Rep. 164 (1912) Supreme Court of Wisconsin.

E18. **Attorney “Represent” – synonymous with deception, fraud, gain advantage, doing harm and counterfeit.**

Since an attorney is an officers of the court, when an attorney commits fraud against a client, there is fraud upon the court. All actions the attorney negotiated on behalf of the client is null and void.

This is bona fide proof that an attorney can only represent a “thing” and a fictitious entity.

- ▶ **Represent.** Black's Law 6th Ed. Page 1301 > To appear in the character of; **personate**; to exhibit; to expose before the eyes. To represent a **thing** is to produce it publicly. To represent a person is to stand in his place; to speak or act with authority on behalf of such **person**; to supply his place; to act as his substitute or agent. *See also* Agent;
- ▶ **Personate.** Black's Law 6th Ed. Page 1144 > In criminal law. To assume the person (character) of another, without his consent or knowledge, in order to deceive others, and, in such **feigned** character, to fraudulently do some act or gain some advantage, to the harm or prejudice of the person counterfeited.
- ▶ **Things.** Black's Law 6th Ed. Page 1479 > **The objects of dominion or property** as contradistinguished from "persons." *Gayer v. Whelan*, 59 CaLApp.2d 255, 138 P.2d 763, 768. **The object of a right; i.e., whatever is treated by the law as the object over which one person exercises a right, and with reference to which another person lies under a duty.** Such permanent objects, not being persons, as are sensible, or perceptible through the senses. Things are distributed into three kinds: (1) Things real or immovable, comprehending lands, tenements, and hereditaments; (2) things personal or movable, comprehending goods and **chattels**; and (3) things mixed, partaking of the characteristics of the two former, as a **title-deed**, a term for years. The civil law divided things into corporeal (*tangi possunt*) and incorporeal (*tangi non possunt*).

E19. Attorney & Client Relationship – 7 C.J.S § 4 and 7 C.J.S §§ 2-3.

7 C.J.S. § 4 Attorney & Client

"His first duty is to the courts and the public, not to the client, and wherever the duties to his client conflict with those he owes as an officer of the court in administration of justice, the former must yield to the latter."

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→ His first duty is to the courts and the public, not to the client,<sup>55</sup> and wherever the duties to his client conflict with those he owes as an officer of the court in the administration of justice, the former must yield to the latter.<sup>56</sup>

The office of attorney is indispensable to the administration of justice and is intimate and

peculiar in its relation to, and vital to the well-being of, the court.<sup>57</sup> An attorney has a duty to aid the court in seeing that actions and proceedings in which he is engaged as counsel are conducted in a dignified and orderly manner, free from passion and personal animosities, and that all causes brought to an issue are tried and decided on their merits only;<sup>58</sup> to aid the court

7 C.J.S. §§ 2-3 Attorney & Client

"Clients are also called wards of court in regard to their relationships with their attorneys"

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and the term is synonymous with "attorney."<sup>14</sup> Therefore, anyone advertising himself as a lawyer holds himself out to be an attorney, an attorney at law, or counselor at law.<sup>15</sup>

If one appears before any court in the interest of another and moves the court to action with respect to any matter before it of a legal nature, such person appears as an "advocate", as that term is generally understood.<sup>16</sup> The phrase "as an advocate in a representative capacity," as used in the statute regulating the practice of law, implies a representation distinct from officer or other regular administrative corporate employee representation.<sup>17</sup>

In England and her colonies a "barrister" is a person entitled to practice as an advocate or counsel in the superior courts.<sup>18</sup> A "solicitor" is a person whose business it is to be employed in the care and management of suits depending in courts of chancery.<sup>19</sup> In the great majority of the states of the Union, where law and equity are both administered by the same court, it has naturally come about that the two offices of attorney at law and solicitor in chancery have practically been consolidated, although in the federal equity practice the term "solicitor" is in

general use; but in some states the office of solicitor in chancery is a distinct and separate office from that of attorney at law.<sup>20</sup>

→ A client is one who applies to a lawyer or counselor for advice and direction in a question of law, or commits his cause to his management in prosecuting a claim or defending against a suit in a court of justice;<sup>21</sup> one who retains the attorney, is responsible to him for his fees, and to whom the attorney is responsible for the management of the suit;<sup>22</sup> one who communicates facts to an attorney expecting professional advice.<sup>23</sup> Clients are also called "wards of the court" in regard to their relationship with their attorneys.<sup>24</sup>

← ward of court

§ 3. Nature of Right to Practice

While it has been broadly stated that the right to practice law is not a natural or constitutional right, but is in the nature of a privilege or franchise, the practice of law is not a matter of grace but of right for one who is qualified by his learning and moral character.

Library References

Attorney and Client ⇔14.

The right to practice law is not a natural or constitutional right.<sup>25</sup> Nor is the right to practice

**Wards of court.** Black's Law 6th Ed. Page 1584 >> **Infants and persons of unsound mind** placed by the court under the care of a guardian. Davis' Committee v. Loney, 290 Ky. 644, 162 S.W.2d 189, 190. Their rights must be guarded jealously. Montgomery v. Erie R. Co., C.C.A.N.J., 97 F.2d 289, 292. See Guardianship.

E20. **Constructive Trust a Constructive Fraud.**

“**Constructive Trust**”, Black's Law, 6th Ed. Page 314.

Trust created by operation of law against one who by **actual or constructive fraud**, by duress or by abuse of confidence, or by commission of wrong, or by any form of **unconscionable conduct**, or other questionable means, has obtained or holds legal right to property which he should not, in equity and good conscience, hold and enjoy. Davis v. Howard, 19 Or.App. 310, 527 P.2d 422, 424.

**Trust > Constructive Trust**, Black's Law, 6th Ed. Page 1510.

A trust raised by construction of law, or arising by **operation of law**, as distinguished from an express trust. Wherever the circumstances of a transaction are such that the person who takes the legal estate in property cannot also enjoy the beneficial interest without necessarily violating some established principle of equity, the court will immediately raise a *constructive trust*, and fasten it upon the conscience of the legal owner, so as to convert him into a trustee for the parties who in equity are entitled to the beneficial enjoyment.

**Constructive trusts do not arise by agreement or from intention, but by operation of law, and fraud**, active or constructive, is their essential element. Actual fraud is not necessary, but such a trust will arise whenever circumstances under which property was acquired made it inequitable **that it should be retained by him who holds the legal title**. Constructive trusts have been said to arise through the application of the **doctrine of equitable estoppel**, or under the broad doctrine that equity regards and treats as done what in good conscience ought to be done, **and such trusts are also known as "trusts ex maleficio" or "ex delicto" or "involuntary trusts"** and their forms and varieties are practically without limit, being raised by courts of equity whenever it becomes necessary to prevent a failure of justice. *See also Involuntary trust; Trust ex maleficio, below.*

**Trust ex maleficio**. Black's Law, 6th Ed. Page 1513,

Where **actual fraud is practiced in acquiring legal title**, the arising trust is referred to as a "**trust ex maleficio**." Andres v. Andres, 1 Ark.App. 75, 613 S.W.2d 404, 407.

A "**constructive trust**," otherwise known as "**trust ex maleficio**," a "**trust ex delicto**," a "**trust de son tort**," an "**involuntary trust**" or an "**implied trust**" is a trust by **operation of law** which arises against one who, by **fraud**, actual or constructive, **by duress or abuse of confidence**, by commission of a wrong or by any form of **unconscionable conduct, artifice, concealment or questionable means and against good conscience**, either has obtained or holds right to property which he ought not in equity and good conscience hold and enjoy. Briggs v. Richardson, App., 288 S.C. 537, 343 S.E.2d 653, 654.

**Trustee de son tort**. Black's Law 6<sup>th</sup> Ed. Page 1514.

“Person who is treated as a trustee because of his wrongdoing with respect to property entrusted to him or over which he exercised authority which he lacked.”

**Trustee ex maleficio**. Black's 6<sup>th</sup> Ed. Page 1514.

“A person who, being guilty of wrongful or fraudulent conduct, is held by equity to the duty and liability of a trustee, in relation to the subject matter, to prevent him from profiting by his own wrong.”

“**Constructive fraud**”, Black's 6<sup>th</sup> Ed.

“**Exists where conduct, though not actually fraudulent, has all actual consequences and all legal effects of actual fraud**. Agair Inc. v. Shaeffer, 232 Cal.App.2d 513, 42 Cal.Rptr. 883, 886. **Breach of legal or equitable duty which, irrespective of moral guilt, is declared by law to be fraudulent because of its tendency to deceive others or violate confidence**. Daves v. Lawyers Sur. Corp., Tex.Civ.App., 459 S.W.2d 655, 657. *See also* Fraud.

**Involuntary trust**. Involuntary or "constructive" trusts embrace all those instances in which a trust is raised by the doctrines of equity, for the purpose of working out justice in the most efficient manner, **when there is no intention of the parties to create a trust relation**. This class of trusts may usually be referred to **fraud**, either actual or constructive, as an essential element.

**Foreign situs trust**. A trust which owes its existence to foreign law. It is treated for tax purposes as a non-resident alien individual.

**Operation of Law** means [Black's Law 6th Ed. Page 1092. *This term expresses the manner in which rights, and sometimes liabilities, devolve upon a person by the mere application to the particular transaction of the established rules of law, without the act or co-operation of the party himself.*] **By definition it is an act without one's consent or without full disclosure.**

**Cestui que trust**. The person for whom benefit a trust is created or who is to enjoy the income or the avails of it. *See* Beneficiary.



E21. **Court Cases Ruling that Title U.S.C is NOT Positive Law, only Statutes at Large.**

Title U.S.C. is NOT positive law. It is only “prima facie” evidence of law, therefore, the Statutes-at-Large are the legal evidence of the law.

1. Official source for the United States laws is **Statute at Large** and the United States Code is only prima facie evidence of such laws.  
**Royer’s Inc. v. United States** (1959, CA3 Pa) 265 F.2d 615, 59-1 USTC 9371, 3 AFTR 2d 1137.
2. Statutes at Large are “legal evidence” of laws contained therein and are accepted as proof of those laws in any court of the United States.  
**Bear v. United States** (1985, DC Neb) 611 F Supp 589, affd (1987, CA8 Neb) 810 F.2d 153.
3. Unless Congress affirmatively enacts title of United States Code into law, title is only **prima facie evidence of law**.  
**Preston v. Heckler** (1984, CA9 Alaska) 734 F.2d 1359, 34 CCH EPO) 34433, later proceeding (1984, DC Alaska) 596 F Supp 1158.
4. Where title has not been enacted into positive law, title is only prima facie or rebuttable evidence of law, and if construction is necessary, resource may be had to original statutes themselves.  
**United States v. Zuger** (1984, DC Conn) 602 F Supp 889, affd without op (1985, CA2 Conn) 755 F.2d 915, cert den and app dismd (1985) 474 US 805, 88 L Ed 2d 32, 105 S Ct 38.
5. Even codification into positive law will not give code precedence where there is **conflict** between codification and Statutes at Large.  
**Warner v Goltra** (1934) 293 US 155, 79 L Ed 254, 55 S Ct 46, **Stephan v United States** (1934) 319 US 423, 87 L Ed 1490, 63 S Ct 1135, **United States v Welden** (1964) 377 US 95, 12 L 2d 152, 84 S Ct 1082.
6. United States Code does not prevail over Statutes at Large when the two are inconsistent.  
**Stephan v United States** (1943) 319 US 423, 87 L Ed 1490, 63 S Ct 1135, **Peart v The Motor Vessel Bering Explorer** (1974, DC Alaska) 373 F Supp 927.
7. Although United States Code establishes prima facie what laws of United States are, to extent that provisions of United States Code are inconsistent with Statutes at Large, Statutes at Large will prevail. **Best Food, Inc v United States** (1965) 37 Cust Ct 1, 147 F Supp 749.
8. Where there is a conflict between codification and Statutes at Large, Statutes at Large must prevail. **American Export Lines, Inc v United States** (1961) 153 Ct C1 201, 290F 2d 925, **Abell v United States** (1975) 207 Ct C1 207, 518 F 2d 1369, cert den (1976) 429 US 817, 50 L Ed 76, 97 S Ct 59.

**Court Cases (All Circuits) - Statutes at Large Prevail over Title of the U.S. Code**

The following cases neither expressly hold nor support the proposition that when a conflict exists between the **Statutes at Large (or Revised Statutes)** and provisions of a non-positive **law title of the United States Code**, the provisions of Statutes at Large (or Revised Statutes) prevail.

**UNITED STATES SUPREME COURT**

Warner v Goltra (1934) 293 US 155, 79 L Ed 254, 55 S Ct 46;  
Stephen v. United States (1943) 319 US 423, 87 L Ed 1490, 63 S Ct 1135;  
Nashville Milk Co. v Carnation Co. (1958) 355 US 373, 2 L Ed 2d 340, 78 S Ct 352;  
United States v. Welden (1964) 377 US 95, 12 L Ed 2d 152, 84 S Ct 1082;  
United States v Neifert-White Co. (1968) 390 US 228, 19 L Ed 2d 1061, 88 S Ct 959;  
Goldstein v Cox (1970) 396 US 471, 24 L Ed 2d 663, 90 S Ct 671;  
United States v Bornstein (1976) 423 US 303, 46 L Ed 2d 514, 96 S Ct 523;  
American Bank & Trust Co v Dallas County (1983) 463 US 855, 77 L Ed 2d 1072, 103 S Ct 3369

**SECOND CIRCUIT**

Leonardi v Chase Nat Bank (1936, CA2 NY) 81 F 2d 19, cert den 298 US 677, 80 L Ed 1398, 56 S Ct 941;  
United States ex rel. Kessler v Mercur Corp. (1936, CA2 NY) 83 F 2d 17, cert den 299 US 576, 81 L Ed 424, 57 S Ct 40;  
United States v Zuger (1984, DC Conn) 602 F Supp 889, aff'd without op. 755 F 2d 915, cert den 474 US 805, 88 L Ed 2d 32, 106 S Ct 38.

**THIRD CIRCUIT**

Royer's Inc. v. United States (1959, CA3 Pa.) 265 F.2d 615;  
Crilly v. SEPTA (1975, CA3 Pa.) 529 F.2d 1355;  
United States v. Hibbs (1976, ED Pa.) 420 F Supp 1365, vacated on other grounds 568 F.2d 347;  
United States v. Gigh (1984, WD Pa.) 37 BR 939.

**FOURTH CIRCUIT**

United States v. Shively (1936, DC Va.) 15 F Supp 107.

**FIFTH CIRCUIT**

Murrell v Western Union Tel Co. [1947, CA5 Fla) 160 F 2d 787.

**SIXTH CIRCUIT**

Rose v National Cash Register Corp. (193, CA6 Mich) 703 F 2d 225, cert den 464 US 939, 78L Ed 2d 317, 104 S Ct 352 (1983);  
Marx v Centran Corp (194, CA 6 Ohio) 747 F 2d 1536 cert den 471 US 1125,86 L Ed 2d 273, 105 S Ct 2656 (1985);  
United States ex rel Boyd v McMurtry (1933, WD Ky) 5 F Supp 515.

**SEVENTH CIRCUIT**

United States v Vivian (1955, CA7 Ill) 224 F 2d 53:  
Lode v. Leonardo (1982, ND Ill) 557 F Supp 675, Young v IRS (1984, ND Ind) 596 F Supp 141;  
United States v Burgess (December 1, 197, ND Ill) 1987 U.S. Dist LEXIS 11227 1987 WL 39092.

**EIGHTH CIRCUIT**

United States v Wodtke (1985, ND Iowa) 627 F Supp 1034.

**NINTH CIRCUIT**

Preston v Heckler (1984, CA9 Alaska) 734 F 2d 1359, 34 CCH FPD P 34433;  
Ryan v Bilby (1985, CA9 Ariz) 764 F 2d 1325;  
Woner v Lewis (1935 DC Cal) 13 F Supp 45;  
Peart v The Motor Vessel Bering Explorer (1974, DC Alaska) 373 F Supp 927.

**DISTRICT OF COLUMBIA CIRCUIT**

Five Flags Pipeline Co. v Department of Transportation (1988 App DC) 854 F 2d 1438.

**OTHER COURTS**

American Export Lines, Inc v United States (1961, Ct CL) 290 F 2d 925 153 Ct Cl 201;  
Best Food, Inc v United States (1956) 37 Cust. Ct. 1, 147 F Supp. 749  
“The two most recent cases which have addressed this matter are Five Flags Pipe Line Co v Department of Transportation (1988, App DC) 854 F 2d 1438 and United States v Burgess (December 1, 197, ND Ill) 1987 U.S. Dist LEXIS 11227, 197 WL 390092 In Five Flags, the court stated: “Where the language of the Statutes at Large conflicts with the language of the United States Code that has not been enacted into positive law, the language of the Statutes at Large controls.”.