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Pro Se Cites & Authorities

Pro Se Cites & Authorities

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Affidavits

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1. Uncontested allegations of fact in affidavit must be accepted as true.
Morris v. National Cash Register Co., 44
S.W.2d 433
2. One person has no authority to make an affidavit in the name of another.
Ex parte Johnson, 154 S.W.2d 854

Appeals

Pro Se Cites & Authorities

1. Pro se petitioners arguments must be liberally construed on appeal.
U.S. v. Eatinger, 902 F2d 1383 (9th Cir. 1990)
2. Argument not presented in trial court cannot be raised for the first time on appeal.
Manzoli v. C.I.R., 904 F2d 101 (1st Cir. 1990)
3. Issue may be heard for first time on appeal when plain error has occurred and injustice might otherwise result.
Snyder v. Sumner, 960 F2d 1448 (9th Cir. 1992)
4. For an appellate court to overturn a conviction under the “plain error” standard parties must meet 3 requirements: 1) error must be plain (i.e. so obvious that judge should have recognized it on his own); 2) error must affect substantial rights of the parties; and 3) the error must be one that seriously affects fairness, integrity, or public reputation of judicial proceedings.
U.S. v. Davis, 974 F2d 182 (D.C. Cir. 1992)
5. Notice of appeal are generally to be read liberally.
Davis v. Locke, 936 F2d 1208 (11th Cir. 1991)
6. Defendant’s right of effective assistance of counsel applies not just at trial but also on direct appeal.
Romero v. Tansy, 46 F3d 1024 (10th Cir. 1995)
7. Pro se petitioners arguments must be liberally construed on appeal.
U.S. v. Eatinger, 902 F.2d 1383
8. Court of Appeals may review a ruling motion for abuse of discretion.
Wages v. I.R.S., 915 F.2d 1230 (9th Cir. 1990)
9. It may be appropriate for Court of Appeals to address issue raised for first time on appeal if such issue concerns pure question of law or if proper resolution of issue is beyond doubt.
State of Texas v. United States, 730 F.2d 339 (1984)

Attorneys

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1. As an officer of the court, an attorney is charged with the advancement and protection of property, liberty and occasionally life.

Keker v. Procunier, 398 F.Supp. 756

2. An attorney has no constitutional guaranty of freedom from arrest and any immunity which he possesses must be found in the common law and in the statutes supplementing it.

Zumsteg v. American Food Club, Inc.,
143 N.E.2d 701

Citizenship

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1. Citizenship in the United States is a dual relation, national and state. In so far as it relates to the national government, it embraces all persons within the fourteenth amendment of the federal Constitution, providing that all persons born or naturalized in the United States and of the state wherein they reside. Citizenship of a state, however, means residence by a citizen of the United States in a state with an intention of remaining.

Hammerstein v. Lyne, 200 F. 165

2. The distinction between citizenship of the United States and citizenship of a state is clearly recognized and established. Not only may a man be a citizen of the United States without being a citizen of a state, but an important element is necessary to convert the former into the latter. He must reside within the state to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union. It is quite clear, then, that there is a citizenship of the United States, and a citizenship of a state., which are distinct from each other, and which depend upon different characteristics or circumstances in the individual.

Slaughterhouse Cases, 16 Wall. 36, 73-74;
21 L.Ed. 394

3. Citizenship, when spoken of in the Constitution in reference to the jurisdiction of the courts of the United States, means nothing more than residence. The citizens of each state are entitled to all the privileges and immunities of citizens in the several states; but to give jurisdiction to the courts of the United States, the suit must be between citizens residing in different states, or between a citizen and an alien.

Cooper v. Galbraith, No. 3,193, 6 Fed.
Cas. 473

Compelling Interest

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1. A fundamental right may not be abridged without a compelling state interest.
Curry v. Planning and Zoning
Commission of Town of Guilford, 376
A.2d 79, 34
2. Denial of a right to privacy is not a compelling state interest.
Baker v. Wade, 553 F.Supp. 1121, 1145
3. The test of compelling state interest is whether agency's actions are repugnant to the constitution.
Kohn v. Davis, 320 F.Supp. 246, 250
4. Compelling interest include only those interests pertaining to survival of republic or physical safety of its citizen.
In re Tessier, Bkrcty., 190 B.R. 396, 405
5. Although city had strong interest in ensuring public safety and order, city's interest in avoiding potential treat to public order was not "compelling government interest" sufficient to justify content-based-injunction against simultaneous picketing on street outside residence by groups with opposing viewpoints.
Seven Hills v. Aryan Nations, 667 N.E.2d
942, 947
6. Neither privacy and reputation interest of third parties, government's "investigation interest," nor policy interests of liberal disclosure of Brady material were "compelling interests" which overcame newspaper's First Amendment right of access to sealed documents.
U.S. v. Gonzalez, 927 F.Supp. 768, 783

Complaint

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1. A “complaint” must contain a statement of the facts showing jurisdiction of court; ownership of a right by plaintiff; violation of that right by defendant; injury resulting to plaintiff by such violation; justification for equitable relief where that is sought; and a demand for relief.

Pierce v. Wagner, 134 F.2d 958, 960

Conspiracy

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1. Each member of a conspiracy is criminally liable for all reasonably foreseeable crimes committed during the course and in furtherance of the conspiracy.

Pinkerton v. U.S., 328 U.S. 640

2. A "civil conspiracy" is an agreement between two or more people to participate in an unlawful act or a lawful act in an unlawful manner.

Hobson v. Wilson, 737 F2d 1 (D.C. Cir. 1984)

3. Separate transactions are not separate conspiracies as long as activities were aimed at common, illicit goal.

U.S. v. Powell, 982 F2d 1422 (10th Cir. 1992)

4. One does not become participant in conspiracy merely by associating with conspirators known to be involved in crime; one must agree to participate in order to be convicted for conspiracy.

U.S. v. Jones, 44 F3d 860 (10th Cir. 1995)

5. Law generally requires taking of some affirmative action in order to withdraw from a conspiracy.

U.S. v. Greenfield, 44 F3d 1141 (2nd Cir. 1995)

Constitution

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1. It is also not entirely unworthy of observation that 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.

Marbury v. Madison, 1 Cranch 137

2. Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.

Miranda v. Arizona, 384 U.S. 436, 491

3. History is clear that the first ten amendments to the Constitution were adopted to secure certain common law rights of the people, against invasion by the Federal Government.

Bell v. Hood, 71 F.Supp. 813, 816 (1947)

4. All laws which are repugnant to the Constitution are null and void.

Marbury v. Madison, 5 U.S. (Cranch)
137, 174 (1803)

5. Failure to obey the command of a police officer constitutes a traditional form of breach of the peace. Obviously, however, one cannot be punished for failing to obey the command of an officer if that command is itself violative of the constitution.

Wright v. Georgia, 337 U.S. 284, 291

Contracts

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1. Obligation of contract is law which binds parties to perform their agreement.
Norfolk & Western Ry. Co. v. American
Train Dispatchers Ass'n., 499 U.S. 117
(1991)
2. No contract exists unless parties agree on all of its material terms and
conditions and nothing is left to future agreement.
Browning v. Peyton, 918 F2d 1516 (11th
Cir. 1990)
3. To have enforceable contract, parties must exchange consideration, and that
ambiguity in contract will generally be construed against party who drafted
contract.
Kafka v. Bellevue, 999 F2d 1117 (7th Cir.
1993)
4. Contract can be avoided if it was induced by fraud, duress or
misrepresentation.
Goldman v. Bequai, 19 F3d 666 (D.C.
Cir. 1994)
5. Contractual clauses purporting to waive constitutional rights must be clear
and unambiguous.
In RE Worker's Compensation Refund,
46 F3d 813 (8th Cir. 1995)

Corporations

Pro Se Cites & Authorities

1. Corporations are creatures of state law, and that state law generally governs their affairs.

RE G&L Packing Co., Inc., 41 BR 903
(D.C. New York 1984)

2. Corporation is artificial entity that can act only through agents.

U.S. v. Tri-No Enterprises, 819 F2d 154
(7th Cir. 1987)

3. While a corporation can be held liable for the acts of its agents, directors or officers cannot be held individually liable unless they participate in the conduct which gave rise to the liability.

Prince v. Zazove, 959 F2d 1395 (7th Cir.
1992)

Giorgio Morandi Inc. v. Textport Corp.,
761 F.Supp. 12 (S.D. New York 1991)

4. Under Georgia law victim of tort committed by corporate agent may sue agent personally or corporation under theory of vicarious liability or both.

Velten v. Regis B. Lippert, Interact, Inc.,
985 F2d 1515 (11th Cir. 1993)

5. Notice to president of company is notice to company as matter of law.

E.E.O.C. v. G-K-G, 39 F3d 740 (7th Cir.
1994)

6. A corporation is a citizen resident, or inhabitant of the state or country by or under the laws of which it was created, and of that state or country only.

19 C.J.S., Section 886

7. A foreign corporation is one that derives its existence solely from the laws of another state, government or country; the United States government is a foreign corporation with respect to a state.

19 C.J. S., Section 886

8. 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 power to the state, but the individual's right to live and own property are natural rights for the enjoyment of which an excise cannot be imposed.

Redfield v. Fisher, 292 Oregon 814, 817

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9. The United States Government is a foreign corporation with respect to a state.
NY re: Merriam 36 N.E. 505; 1441 S.Ct. 1973; 41 L.Ed. 287
10. Governments are corporations.
Penhallow v. Doane, 3 Dall 55
Dred Scott v. Danford, 10 How 393
11. Corporations are persons within the meaning of the constitutional provisions forbidding the deprivation of property without due process.
164 U.S. 578; 26 U.S. 544
12. An act removing the liability of corporations to suit on existing obligations is void.
Nat'l. Bank v. Sebastian Co., 5 Dill 415
13. Every corporation formed for governmental purposes is a municipal corporation.
Woodward v. Livermore Falls Water Dist., 116 Me 496
14. The bank plaintiffs, being corporations, have no constitutional privilege against compulsory self-incrimination by virtue of the Fifth Amendment.
California Bankers Assn. V. Schultz, 416 U.S. 21
15. For taxation purposes there are fundamental distinctions between individuals and corporations.
Kentucky R.R. Tax Cases, 115 U.S. 321, 337, 339;
Pacific Exp. Co. v. Seibert, 142 U.S. 339
16. A corporation is protected under the Fifth Amendment against taking of its property without just compensation.
Monongahela Nav. Co. v. U.S., 148 U.S. 312;
Hale v. Henkel, 201 U.S. 43, 76

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17. Any privilege which may exempt a corporation from burdens common to individuals does not flow necessarily from the charter, but must be expressed in it, or they do not exist.

Bank v. Hamilton, 21 Ill. 53;
Peters v. Railroad Co., 23 Mo. 107;
Thrope v. Burlington, 27 Vt. 140

18. Municipal corporations constitute a part of the civil government of the state.

New Orleans Gas Co. v. Louisiana
Light Co., 115 U.S. 650, 672 (1885)

19. Corporate veil may be pierced only in cases of fraud or injustice.

Mobay Corp. v. Allied-Signal, Inc., 761
F.Supp. 345 (D. New Jersey 1991)

20. Corporation is artificial entity that can only act through agents.

U.S. v. Tri-No Enterprises, 819 F.2d 154
(7th Cir. 1987)

21. Since federal government may form corporation only under necessary and proper clause of constitution, and therefore most corporations are formed by states, the inclusion of "corporations" in term "person" and "whoever" under 1 USCS 1 must be interpreted to comprise state as well as federally created corporations.

United States v. Polizzi, 500 F.2d 856
(CA9 Cal. 1974)

22. Local governments, municipal corporations, and school boards are "persons" subject to liability under 42 USCS 1983 for violating another person's federally protected rights, and thus are not wholly immune from suite under 1983.

Monell v. Dept. of Social Services, 436
U.S. 658 (1978)

23. Corporations are not citizens, within the meaning of provisions of Art. IV, 2, cl 1, declaring that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

Paul v. Virginia, 75 U.S. 168 (1869)

24. Where all named plaintiffs are corporations they have no standing to assert a violation of privileges and immunity clause (US Const., Art 4, 2, Cl 1).

American Trucking Ass'n. v. Gray, 707
S.W. 759 (1986)

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26. When a corporation assumes to do that which it has not been empowered by the state to do, the act is a nullity.

R.I. & PR. Co. v. Union Pac. Ry., 47 Fed. Rep. 15

26. An act removing the liability of corporations to suits on existing obligations is void.

Nat'l. Bank v. Sebastian Co., 5 Dill 415

27. Since the state, used in the real sense of the word, is an abstract entity with its individual citizens as its component parts, it can no more act in and of itself than can a corporation which is in the same sense composed of its stockholders.

City of Bisbee v. Cochise County, 78 P.2d 982, 986 (1938)

28. A suit against a municipal corporation is not a suit against "one of the United States" within the meaning of the Eleventh Amendment, and that such a corporation is the agent of the state government is undoubtedly true, but it does not follow therefrom that a suit against it or its officers is such a suit.

Camden Interstate R.Co. v. Catlettsburg, 129 Fed. Rep. 422 (1904)

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Court Procedures

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1. FRCP contemplates liberal discovery in interest of just and complete resolution of disputes.

Katz v. Batavia Marine & Sporting Supplies, Inc., 984 F.2d 422 (Fed. Cir. 1993)

2. Subpoena duces tecum must be reasonable and specific, and documents sought must be relevant.

U.S. v. Kalter, 5 F.3d 1166 (8th Cir. 1993)

3. Purpose of discovery after motion for summary judgment is to test truth of allegations of the pleadings.

Charash v. Oberlin College, 14 F.3d 291 (6th Cir. 1994)

4. F.R.C.P. strongly favor full discovery whenever possible.

Farnsworth v. Procter & Gamble Co., 758 F.2d 1545 (11th Cir. 1985)

5. Defendant must raise before trial by motion any objections based on defects in indictment, and failure to raise nonjurisdictional objections prior to trial constitutes waiver of such objections. Fed. Rules Cr. Proc. Rule 12(b)(2),(f), 18 U.S.C.A.

United States v. Richards, 723 F.2d 646 (1983)

6. Without personal service in accordance with rule of civil procedure, district court is without jurisdiction to render personal judgment against a defendant.

Rule 4, 28 U.S.C.A., Fed. Rules Civ. Proc.

7. Rule requiring specificity.

Rule 8(a)(2), 28 U.S.C.A., Fed. Rules Civ. Proc.

8. Exhaustion of administrative remedies is not required when plaintiffs raise constitutional question and irreparable injury will occur without preliminary judicial relief.

Able v. United States, 847 F.Supp. 1038 (1994)

Courts

Pro Se Cites & Authorities

1. Court must accept allegations in pleadings as true.
Cooper v. Pate, 378 U.S. 546
2. FRCP Rule 65(b) Injunctions (will issue if)
 - (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss and damage will result to applicant before the adverse party or his attorney can be heard in opposition.
3. Courts will intervene to prevent an abuse of discretion.
People ex rel. Ghent v. Cleveland, C.C.
L.R. Co., 6. N.E.2d 851; 110 ALR 119
4. Federal courts will discharge their duty to protect constitutional rights.
Procunier v. Martinez, 416 U.S. 396
5. Judge must be fair to all parties and may not do or say anything that might prejudice either litigant.
U.S. v. Price, 13 F.3d 711 (3rd Cir. 1994)
6. A court of record is a court presided over by a man of experience and learned in the law, assisted by counsel also of experience and learning who acts as advisers of the court. Its proceedings are conducted with solemnity and deliberation, and in strict conformity with established modes, and they are taken down and made a matter of record at or about the time they transpire.
Hahn v. Kelly, 34 Cal. 391
7. We (Court of Appeals) may not disturb the judgment of the (lower court) unless we find that judgment to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.
Perreira v. Secretary of DHHS, 33 F.3d
1375 (Fed. Cir. 1994)
8. When a federal court reviews sufficiency of complaint, before reception of any evidence either by affidavit or admissions, issue is not whether plaintiff will ultimately prevail or is likely to prevail but whether claimant is entitled to offer evidence to support claim.
Scheuer v. Rhodes, 416 U.S. 232 (1974)
9. When court take judicial notice of facts, and err in their assumed facts, a question of law is presented.
United States v. 1500 Bales of Cotton,
Fed. Cas. No. 15, 958

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10. District Court's conclusion of law is subject to complete and independent review.

Gould, Inc. v. United States, 935 F.2d
1271, 1273 (Fed. Cir. 1991)

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Debt Collection

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1. The license authorizing a collection agency to do business may be revoked for a violation of the statutes and rules regulating such agencies.
Meade v. State Collection Agency Bd.,
181 Cal. App.2d 774; 5 Cal. Rptr. 486
(1960)
2. A license does not constitute a “franchise,” and therefore quo warranto is not the proper remedy when an association allegedly has been operating a collection agency without a license required by statute.
State ex rel. Fairchild v. Wisconsin
Automotive Trade Ass’n., 254 Wis. 398;
37 N.W.2d 98 (1949)
3. Quo warranto is the proper procedure, however, to prevent an individual operating a collection from continuing to do acts which constitute the unauthorized practice of law.
Berk v. State, 225 Ala. 324; 142 So. 832;
84 A.L.R. 740 (1932)
4. The forfeiture of the charter of a corporation engaging illegally in the practice of law may be sought in quo warranto proceedings.
State ex rel. McKittrick v. C.S. Dudley &
Co., 340 Mo. 852; 102 S.W.2d 895 (1937),
cert. Denied, 302 U.S. 693; 58 S.Ct. 12; 82
L.Ed. 535 (1937)
5. An injunction will lie against a collection agency which takes assignments in violation of a statutory prohibition.
Bennett ex rel. New York County
Lawyers’ Ass’n. v. Supreme
Enforcement Corp., 250 A.D. 265; 293
N.Y.S. 870(1937); judgment aff’d, 275
N.Y. 502; 11 N.E.2d 315 (1937)
6. Recovery by debtor, under tort of intentional or reckless infliction of emotional distress, for damages resulting from debt collection methods.
87 A.L.R.3d 201, Section 7(b)

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7. An injunction will lie against a corporate collection agency engaged in the unauthorized practice of law.

Bump v. Barnett, 235 Iowa 308; 16 N.W.2d 579 (1944);
Depew v. Wichita Ass'n. of Credit Men, 142 Kan 403; 49 P.2d 1041 (1935), cert. Denied, 297 U.S. 710; 56 S.Ct. 574; 80 L.Ed. 997 (1936) and cert. Denied, 297 U.S. 711; 56 S.Ct. 574; 80 L.Ed. 997 (1936)

8. In some states, in an action by a debtor against a creditor under statutes prohibiting various debt collection methods, only compensatory damages, to the exclusion of punitive damages, are permitted, while in other states, punitive damages may be recovered.

Waterfield Mortg. Co., Inc. v. Rodriguez, 929 S.W.2d 641 (Tex. App. San Antonio 1996)

9. The publication of a mercantile credit report is not speech within the protection of the First Amendment.

Hood v. Dunn & Bradstreet, Inc., 486 F.2d 25 (5th Cir. 1973)

10. Taxes are not "debts."

Perry v. Washburn, 20 Cal. 318;
McKeesport v. Fidler, 147 Pa. 532; 23 Atl. 799;
City Council of Charleston v. Phosphate Co., 34 S.C. 541; 13 S.E. 845

11. Use of false, deceptive or misleading representation in collection letter violates Fair Debt Collection Protection Act (FDCPA), regardless of whether representation in question violates particular subsection of FDCPA prohibiting false or misleading representations. "There are few, if any, cases in which mass-produced debt collection letter bearing facsimile of attorney's signature will comply with restrictions imposed by Fair Debt Collection Practices Act (FDCPA) provision prohibiting false, deceptive or misleading representations; use of attorney's signature on collection letter implies that attorney directly controlled or supervised process through which letter was sent and that attorney signing letter formed opinion about how to manage case of debtor to whom letter was sent and in mass mailing, these implications are frequently false because attorney

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whose signature is used might play no role either in sending letters or in determining who should receive them.”

Clomon v. Jackson, 988 F.2d 1314
(2nd Cir. 1993)

Due Process

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1. When a person of ordinary intelligence does not receive fair notice that his contemplated conduct is forbidden, prosecution for such conduct deprives him of due process.

U.S. v. Nevers, 7 F.3d 59 (9th Cir. 1993)

2. When hearing is necessary to protect defendant's due process rights, then failure to hold hearing would be abuse of discretion.

U.S. v. Henderson, 19 F.3d 917 (5th Cir. 1994)

3. Citizens must be afforded due process before deprivation of life, liberty or property.

Kelm v. Hyatt, 44 F.3d 415 (6th Cir. 1995)

4. Due process requires that litigant claim be heard by fair and impartial fact finder applies to administrative as well as judicial proceedings.

Muse v. Sullivan, 925 F.2d 785 (5th Cir. 1991)

5. Due process of law is violated when government vindictively attempts to penalize a person for exercising protected statutory or constitutional rights.

U.S. v. Conkins, 987 F.2d 564 (9th Cir. 1993)

6. Prosecution of Citizen who is unaware of any wrongdoing for "wholly passive conduct" violates due process.

U.S. v. Layne, 43 F.3d 127 (5th Cir. 1995)

7. For the government to punish a person because he had done what the law plainly allows him to do is a due process violation of the most basic sort.

U.S. v. Guthrie, 789 F.2d 356 (5th Cir. 1986)

8. Absent notice, such as where regulation is not sufficiently clear to warn party of what is expected of it, agency may not deprive party of property by imposing civil or criminal liability.

General Electric Co. v. E.P.A. 53 F.3d 1324 (D.C. Cir. 1995)

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9. The purpose of the due process hearing is to safeguard from deprivation the liberty or property rights of protected person, and this can only be done where the requisite hearing is held before the decision maker so that the decision maker can sift through the facts, weigh the evidence and reach the appropriate conclusion.

Poonce v. Housing Authority of Tulare County, 389 F.Supp. 635 (D.C. Cal. 1975)

10. Only by due process of law may courts acquire jurisdiction over parties.

Weiss v. Shapiro Candy Mfg. Co., Inc., 18 A.2d 706, 707

11. Due process of law means that every citizen shall hold his life, liberty and property under the protection of the general law which governs society, and, in the concrete, that in a contest concerning these rights he will be given the opportunity to contest the propriety of each step in the action sought to be taken against him.

City of St. Louis v. Missouri Pac. Ry. Co., 211 S.W. 671, 672

12. The essential elements of due process of law are notice and opportunity to defend.

Simon v. Croft, 182 U.S. 427

13. Due process requires that a person be given fair notice as to what constitutes illegal conduct, so that he may conform his conduct to the requirements of the law.

U.S. v. Batchelder, 442 U.S. 114, 123

14. Individual must be afforded notice and opportunity for hearing before he is deprived of any significant property interest, and exceptions to this principle can be justified only in extraordinary circumstances.

Randone v. Appellate Dept. of S.Ct. of Sacramento Co., 488 P.2d 13 (1971)

15. Central meaning of "procedural due process" is that parties whose rights are to be affected are entitled to be heard and, in order that they may enjoy that right, they must first be notified, also includes right to notice and opportunity to be heard at meaningful time and in meaningful manner.

Fuentes v. Shevin, 407 U.S. 67

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16. Cornerstone of due process is prevention of abusive governmental power.
Weimer v. Amen, 870 F.2d 1400 (8th Cir. 1989)
17. Substantive due process refers to certain actions that the government may not engage in, no matter how many procedural safeguards it employs.
Rochin v. California, 342 U.S. 165
18. Even temporary deprivation of property entitled owner to due process which means, as a general rule, reasonable notice and opportunity for fair hearing.
Matter of Special March 1981 Grand Jury, 753 F.2d 575, 580 (9th Cir. 1985)
19. Law of the Land....and “due process of law” are synonymous.
Direct Plumbing Supply Co. v. City of Dayton, 38 N.E.2d 70, 72
20. Failure to adhere to agency regulations may amount to denial of due process if regulations are required by constitution or statute.
Curley v. United States, 791 F.Supp. 52
21. Depriving one of property without just compensation is a denial of due process of law.
Hoffman v. Stevens, 177 F.Supp. 808 (1959)
22. The due process clause of the Fifth Amendment guarantees to each citizen the equal protection of the laws and prohibits a denial thereof by any Federal official.
Bolling v. Sharpe, 327 U.S. 497
23. Due process clause not only applies when one’s physical liberty is threatened but also where a person’s good name, reputation, honor or integrity are at stake.
Gotkin v. Miller, 514 F.2d 125 (1975)
24. The constitutional provisions that no person shall be deprived of life, liberty, or property without due process of law, nor private property taken for public use without just compensation, are intended as limitations upon the power of the government in its dealings with the citizen, and relate to that class of rights whose protection is peculiarly within the province of the judicial branch of government, and that the courts are bound to give remedy for unlawful invasion of rights of property by officers of any branch of government.
United States v. Lee, 106 U.S. 196 (1882)

Pro Se Cites & Authorities

25. Right to a fair trial is basic requirement of due process and includes the right of unbiased judge.

Haupt v. Dillard, 17 F.3d 285

26. Neither the state nor the municipality, which is an arm of the state, can deprive any person of life, liberty, or property without due process of law.

Wilson v. Zanesville, 13 Ohio St. 286;
199 N.E. 187

27. The provisions in the fifth amendment to the Constitution of the United States, declaring that private property shall not be taken for public use without just compensation, is intended solely as a limitation on the exercise of power by the government of the United States, and is not applicable to the legislation of the States. (Fourteenth Amendment is)

Barron v. Mayor and City Council of
City of Baltimore, 32 U.S. 243 (1833)

28. The due process clause protects an accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime which he is charged.

United States v. Johnson, 718 F.2d 1317,
1320 (5th Cir. 1983)

29. A judge may not direct a verdict of guilty no matter how conclusive the evidence.

Connecticut v. Johnson, 460 U.S. 73, 83

Pro Se Cites & Authorities

Eleventh Amendment

Pro Se Cites & Authorities

1. A suit against a municipal corporation is not a suit against “one of the United States” within the meaning of the Eleventh Amendment, and that such a corporation is the agent of the state government is undoubtedly true, but it does not follow therefrom that a suit against it or its officers is such a suit.
Camden Interstate R.Co. v.
Catlettsburg, 129 Fed. Rep. 422 (1904)
2. Eleventh Amendment is limited to those suits in which a state is a party on the record, and does not prohibit suits against counties.
Lincoln County v. Lining, 133 U.S. 530
(1890)
3. Eleventh Amendment does not bar state law actions against state officials in their individual capacities.
Hunt v. Bennett, 17 E3d 1263 (10th Cir.
1994)
Hays County Guardian v. Supple, 969
F2d 111 (5th Cir. 1992)
4. Eleventh Amendment does not erect a barrier against suits to impose “individual and personal liability” on state officials under Section 1983.
Hafer v. Melo, 502 U.S. 21
5. The Eleventh Amendment did not in terms prohibit suits by individuals against the States, but declared that the Constitution should not be construed to import any power to authorize the bringing of such suits.
Hans v. State of Louisiana, 134 U.S. 1
6. In all these cases the effort was to show, and the court held, that the suits were not against the State or the United States, but against the individuals; conceding that if they had been against either the State or the United States, they could not be maintained.
Board of Liquidation v. McComb, 92
ULSL 531;
United States v. Lee, 106 U.S. 63;
Poindexter v. Greenhow, 109 U.S. 269
(Quoted in Hans, supra)

Equity vs Common Law

Pro Se Cites & Authorities

1. Equity will not interfere when law provides adequate remedy. Equity as administered in America at least, is for the purpose of giving aid to the execution of the law according to the principles of justice. It cannot be used to supplant or circumvent the law, but only to give aid and assistance to its higher and better principles.

Hinds v. Minus, 64 S.W.2D 1093, 1095

2. There are three classes of cases for which the Constitution grants power to the judiciary.
 - a. Cases in law, or suits at common law, wherein legal rights are to be ascertained, and legal remedies administered according to the old and established proceedings at common law;
 - b. Cases or suits in equity where equitable rights only are recognized, and equitable remedies administered;
 - c. Cases or suits in the admiralty, where there is a mixture of public or maritime law and of equity in the same suit.

Bains v The Schooner James and Catherine, Federal Cases 576

3. If the common law can try the case, and give full redress that alone takes away the admiralty jurisdiction.

Ramsey v. Allegrie, 12 Wall 611

4. The phrase "common law" found in this clause, is used in contradistinction to equity, admiralty, and maritime jurisprudence.

Parsons v. Bedford, et al, 3 Pet 433, 479.

5. The common law, as it was received in the United States at the time of the adoption of the Constitution, did not afford a remedy in rem in suits between private persons. Hence the adoption of the savings clause in the Judiciary Act of 1789.

C.J. Hendry Co. et al. V. Moore et al.,
318 U.S. 133, 135 (1942)

6. Equity jurisdiction can only be involved if there is no plain, adequate remedy at law or if there is a legal relationship between the parties.

Yuba Consolidated Golf Fields v.
Kilkeary, 206 F.2d 884

Pro Se Cites & Authorities

- Equity jurisprudence may properly be said to be that portion of remedial justice which is exclusively administered by a court of equity, as distinguished from that portion of remedial justice which is exclusively administered by a court of common law.

Jackson v. Nimmo, 71 Tenn. 597, 609

- To sustain a suit in equity in the federal courts it must appear there is no plain, adequate, and complete remedy at law.

Yuba Consolidated Gold Fields v.
Kilkeary, 206 F.2d 884

- The party who brings a suit is master to decide what law he will rely upon and does determine whether he will bring a suit arising thereunder....Whether the complaint state a cause of action on which relief can be granted is a question of law and, just as issues of fact, it must be decided after and not before the court has assumed jurisdiction over the controversy.

Bell v. Hood, 327 U.S. 678

- "Equity jurisdiction" imports not the power to hear and decide but the cases or occasions when that power will be exercised.

Queens Plaza Amusements v. Queens
Bridge Realty Corp., 39 N.Y.S.2d 463,
464

- Though jurisdiction in its proper sense means authority to hear and decide a cause, jurisdiction of a court of equity involves the question whether equity ought to assume jurisdiction, and hear and decide the cause.

Miller v. Rowan, 96 N.E. 285, 287

- While superior court is, in a broad sense, a "court of equity", there must be proper pleadings to invoke application of equitable principles before they can be applied in suit at common law.

Metropolitan Life Ins. Co. v.
Applewhite, 18 S.E.2d 93, 97

- The term "equity jurisdiction" is used in contradistinction to "jurisdiction" in general, and to "common-law jurisdiction" in particular.

Venner v. Great Northern R. Co., 153 F.
408, 413, 414

Pro Se Cites & Authorities

14. The suits “in equity” of which the federal courts were given cognizance by the First Judiciary Act constituted that body of remedies, procedures and practices which theretofore had been evolved in the English Court of Chancery, subject to the modifications by Congress.

Sprague v. Ticonic Nat. Bank, 307 U.S.
161

15. “Equity” is that portion of remedial justice which is exclusively administered by a court of equity as contradistinguished from that portion of remedial justice which is exclusively administered by court of law.

Properties v. Edelman, 297 N.Y.S. 572,
574

False Arrest/Imprisonment

Pro Se Cites & Authorities

1. Prima facie any restraint put by fear or force on the actions of another is unlawful and constitutes a “false imprisonment” for which damages are recoverable.

Schramko v. Boston Store, 243 Ill. App. 251

2. Miranda decision is not applicable to the routine traffic offense where the driver is detained no longer than is necessary to make out the citation and have it signed, but the Miranda warnings must be given prior to any questioning regarding the state of intoxication of the driver or when an arrest is to be made.

Campbell v. Superior Court In and For Marciopa County, 479 P.2d 685 (1971)

3. “False imprisonment” consists of unlawful detention of person.

Commonweath v. Brewer, 167 A. 386, 389

4. Any imprisonment which is not justifiable is a “false imprisonment.”

Warner v. State, 68 N.Y.S.2d 60, 66

5. “False imprisonment” is the illegal restraint of one’s person against his will.

Mobley v. Broome, 102 S.E.2d 407, 409

6. An action for “false imprisonment” is based upon the deprivation of one’s liberty without legal process.

Parrish v. Hewitt, 18 S.E.2d 141, 143

7. “False imprisonment” is a trespass committed by one against the person of another by unlawfully arresting him and detaining him without any legal authority.

Lippert v. State, 139 N.Y.S.2d 751, 755

8. “False arrest” or “false imprisonment” consists of arrest of restraint without adequate legal justification.

Forgione v. U.S., 202 F.2d 249, 252

9. Where imprisonment has been extrajudicial, without legal process, it is “false imprisonment.”

Batten v. McCarty, 158 N.E. 583, 585

Pro Se Cites & Authorities

10. The defendant must either prove that he did not imprison the party or he must justify the imprisonment.

Floyd v. State, 12 Ark. 43, 47

11. "False imprisonment" is the unlawful restraint of a person without his consent either with or without process of law.

Doescher v. Robinson, 271 N.W. 784,
786

12. "False imprisonment" is forcible wrong for which action for damages can be maintained against a corporation.

J.J. Newberry Co. v. Judd, 83 S.W.2d
359, 361

13. "False imprisonment" is unlawful arrest or detention of person without warrant or by illegal warrant or warrant illegally executed.

Reilly v. United States Fedelity &
Guaranty Co., 15 F.2d 314, 315

14. To constitute the injury of "false imprisonment" the two requisites are the detention of the person, and the unlawfulness of such detention.

Cohen v. Lit Bros., 70 A.2d 419, 421

15. "False imprisonment" may be accomplished without actual arrest, assault or imprisonment, and may be committed by words alone or by acts alone, or by both.

S.H. Kress & Co. v. Bradshaw, 99 P.2d
508, 511

16. All that is necessary to constitute "false imprisonment" is that the individual be restrained of his liberty without any sufficient legal cause by words or acts which he fears to disregard.

Panisko v. Drebelbis, 124 P.2d 997, 1000

17. Physical restraint is not essential to "false imprisonment" if words and conduct induce reasonable apprehension that resistance or attempted flight would be futile.

Halliburton-Abbott Co. v. Hodge, 44
P.2d 122, 125

Pro Se Cites & Authorities

18. Officer who refused to issue citation to motorist for violation of speed laws and directed motorist to follow him to office of justice of the peace, and who upon motorist's failure to follow obtained warrant and arrested motorist thereunder, was guilty of "false imprisonment."

Montgomery v. State, 170 S.W.2d 750,
752

19. One who charges "false imprisonment" must show by evidence that he was falsely imprisoned by the persons or person charged, or adduce evidence from which it may be reasonably inferred that he was so imprisoned.

Jonson, Heller, 6 N.W.2d 359, 360

20. Any imprisonment which is not justifiable is a "false imprisonment" and subjects him who is responsible therefor, whether as principle or agent, to an action in tort for damages.

Grago v. Vassello, 19 N.Y.S.2d 34, 36

21. "False imprisonment" consists in the unlawful detention of the person of another for any length of time whereby he is deprived of his personal liberty, and furnishes a right of action for damages to the person so detained.

Sinclair Refining Co. v. Meek, 10 S.E.2d
76

22. It must not be forgotten that there can be no arrest without due process of law. An arrest without a warrant has never been lawful, except in those cases where the public security requires it; and this has only been recognized in felony, and in breaches of the peace committed in the presence of the officer.

Exparte Rhodes, 79 So. 462, 465;
Sarah Way's Case, 41 Mich. 304;
Pinkerton v. Verberg, 44 N.W. 579;
State v. Williams, 77 Pac. 965;
Adair v. Williams, 24 Ariz. 422

23. Officers are justified in arresting without warrant only in cases of felony and breaches of the peace. This elementary. It is needless to city authorities.

Tillman v. Beard, 80 N.W. 248

24. When a police officer stops a moving vehicle for a brief detention, it is sufficient to constitute an arrest.

5 Am J2d, Arrest, Sec. 1, pg 696

Pro Se Cites & Authorities

25. Anyone who assists or participates in an unlawful arrest or imprisonment is equally liable for the damage caused. Thus where a man was illegally arrested by a police officer, and was placed in a patrol wagon in which he was taken to the central station, it was held that the two officers in charge of the patrol wagon were liable, along with the arresting officer, for false imprisonment.

Cook v. Hastings, 114 N.W. 71, 72
(1907)

26. An illegal arrest is an assault and battery.

State v. Robinson, 72 A.2d 260, 262
(1950)

27. The arrest being wrongful, the defendant is liable for all the injurious consequences to the plaintiff which resulted directly from the wrongful act.

Mandeville v. Guernsey, 51 Barb. 99
(N.Y.)

28. A false imprisonment generally includes an assault and battery, and always, at least, a technical assault.

Black v. Clark's Greensboro, Inc., 139
S.E.2d 199, 201 (1964)

29. False imprisonment was indictable offense at common law, and relief by the party aggrieved was obtained by an action for trespass vi et armis (with force & arms).

Meints v. Huntington, 276 Fed. 245,
249 (1921)

30. The general rule of damages in cases of false imprisonment is that the person causing a wrongful imprisonment is that the person causing a wrongful imprisonment is liable for all the natural and probable consequences thereof. The plaintiff is entitled to recover damages for what the party wrongfully did.

Knickerbocker Steamboat Co. v.
Cusack, 172 Fed. 358, 360 (1905)

31. In a case of malicious prosecution the arrest or detention is procured from malicious motives and without probable cause, but was done under lawful process; whereas in false imprisonment the detention is without proper legal authority.

Stallings v. Foster, 259 P.2d 1006, 1009
(1953)

Pro Se Cites & Authorities

32. The law governing this case is elementary; except for a breach of the peace committed in his presence, or when he has reasonable ground to believe that the person arrested is a felon or is about to commit a felony, a police officer has no authority to arrest without a warrant.

Cook v. Hastings, 114 N.W. 71, 72

33. At common law, a peace officer may arrest without a warrant for a breach of the peace committed in his presence, but for no other misdemeanor.

Galliher v. Commonwealth, 170 S.E. 734, 736 (1933)

34. The duty of one making an arrest to bring the prisoner before a proper magistrate that proceedings for the trial of the prisoner may be instituted and that he may have an opportunity to give bail or otherwise procure his release, is even more imperative than if a warrant had been issued before arrest; and if the prisoner is released without being brought before such magistrate, the officer or private person who made the arrest becomes a trespasser ab initio.

Williams v. Zelzah Warehouse, 14 P.2d 177, 178 (1932)

35. It is the undoubted right of every person in this community not to be deprived of liberty without due process of law, and that it has long been recognized that arrests without warrants are justified in cases of treason, felony or breach of the peace, in which actual or threatened violence is an essential element.

Commonwealth v. Krubeck, 8 Penn. Dist. Rep. 521, 522 (1899)

36. Impudent, abusive or offensive language addressed to a peace officer does not tend to breach the peace, even though it may provoke the officer to anger.

Parrish v. Meyers, 225 P. 633, 634 (1924);
Salem v. Coffey, 88 S.W. 772 (1905);
People v. Lukowsky, 159 N.Y.S. 599 (1916);
Myers v. Collett, 268 P.2d 432, 434 (1954);

37. The mere refusal to give one's name and address does not justify the incarceration of a citizen.

Scott v. Feilschmidt, 182 N.W. 382, 384 (1921);

Pro Se Cites & Authorities

38. An officer cannot arrest because he thinks or has suspicions that a breach of peace might be committed. The cause for arresting upon such cases must be when a breach of the peace is “threatened” or its occurrence is “imminent.”
Price v. State, 175 A.2d 11, 16 (1961)
39. An arrest for breach of the peace cannot be justified merely upon belief or suspicion existing in the mind of the officer.
Hughes v. State, 238 S.W. 588, 596 (1922)
40. If the officer must show the warrant, if required, then it is plain that it must be in his actual possession. It would be absurd to construe this to mean that after making the arrest the officer must, if required, take the defendant to some other place and there show him the warrant.
People v. Shanely, 40 Hun 477, 478 (1886)
41. It is the duty of an officer who attempts to make an arrest to exhibit the warrant if he has one.
Jones v. State, 39 S.E. 861 (1901)
42. The requirement to bring an arrested person directly to a court or judge is due process of law, and as such this procedure cannot be abrogated by statute.
Hill v. Smith, 59 S.E. 475 (1907);
Folson v. Piper, 186 N.W. 28, 29 (1922)
43. Neither the guilt nor innocence of the person arrested has anything to do with the legality of the arrest.
Michigan Law Review, Vol. 31, Pg 750 (1933)
44. Under the great weight of authority, and officer making an arrest for a misdemeanor not committed in his presence must have the warrant for such arrest in his actual possession if the arrest is to be lawful.
Smith v. State, 208 So.2d 746, 747 (1968)

Pro Se Cites & Authorities

45. The warrant must at the time of arrest be in the possession of and with the person purporting to act thereunder or of one with whom he is acting in conjunction. Accordingly, where the warrant is at the officer's house some distance from the scene of the arrest, or in the hands of another who is not at the scene or arrest, or in the central office of a city detective bureau, the arrest is unlawful.

6 C.J.S., Arrest, Sec. 4, pg 576

46. Where an officer arrests a person without a warrant, the burden rests upon the officer to plead and prove justification. Otherwise the arrest is prima facie unlawful.

Evans v. Jorgenson, 234 N.W. 292, 293
(1931)

47. Where a man deprives another of his liberty, the injured party is entitled to maintain an action for false imprisonment, and it is for the defendant to justify his proceeding by showing that he had legal authority for doing that which he had done.

Jackson v. Knowlton, 53 N.E. 134 (1899)

48. The law watches personal liberty with vigilance and jealousy; and whoever imprisons another, in this country, must do it for lawful cause and in a legal manner.

Pratt v. Hill, 16 Barb. Rep. 303, 308
(1853)

49. As in all cases of illegal arrest, the officer is bound to know these fundamental rights and privileges, and must keep within the law at his peril.

Thiede v. Town of Scandia Valley, 14
N.W.2d 400 (1944)

50. The language of the Fourth Amendment that "...now Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing...the persons or things to be seized," of course applies to arrest as well as search warrants.

Giordinello v. United States, 357 U.S.
480 (1958)

51. Executive officers or clerks are not to determine if a person arrested is to be held or released upon bail, or fix the amount of bail, since the power to do so is judicial.

Bryant v. City of Bisbee, 237 P. 380, 381
(1925)

Pro Se Cites & Authorities

52. If a person was being detained for the purpose of arrest, it was the duty of the arresting officer to take him before an examining magistrate as soon as the nature of the circumstance would reasonably permit. The power to arrest does not confer upon the arresting officer the power to detain a prisoner for the other purposes.

Geldon v. Finnegan et al., 252 N.W. 369, 372 (1934)

53. A person may not be arrested, imprisoned and released upon judgment or at the discretion of a constable or any one else. If the alleged offense be criminal in its character the officer may arrest and take the offender before a magistrate for trial and a constable who constitutes himself the judge, jury and executioner is guilty of despotism.

State v. Parker, 75 N.C. 249, 250 (1876)

54. One who interferes with another's liberty does so at his peril.

Kroger v. Passmore, 93 P. 805, 807 (1908);

McBeath v. Campbell, 12 S.W.2d 118, 122 (1929)

55. Unlawful detention or deprivation of liberty is the basis of an action for the tort of false imprisonment, and that actual seizure or the laying on of hands is not necessary to constitute an unlawful detention.

Hanser v. Bieber, 197 S.W. 68, 70 (1917)

56. The essential elements of an unlawful detention are (1) detention or restraint against one's will; (2) the unlawfulness of such detention or restraint.

Sinclair Refining Co. v. Meek, 10 S.E.2d 76, 79 (1940)

57. False imprisonment is a wrong akin to the wrongs of assault and battery, and consists in imposing, by force or threats, and unlawful restraint upon a man's freedom of locomotion.

Meints v. Huntington, 276 F. 245, 248 (1921)

58. Every confinement of a person is an imprisonment, whether it be in a common prison, or in a private house, or in the stocks, or even by forcibly detaining one in the public streets.

Fox v. McCurnin, 218 N.W. 499, 501 (1928)

Pro Se Cites & Authorities

59. The power of detaining a person arrested, or restraining him of his liberty, is not a matter within the discretion of the officer making the arrest.

Harness v. Steele, 64 N.E. 875, 878
(1902);

Stromberg v. Hansen, 225 N.W. 148,
149 (1929)

60. A warrantless arrest by a peace officer, if challenged, is presumptively invalid.

Gatlin v. U.S., 326 F.2d 666

61. A search and seizure which precedes an arrest is usually considered unlawful.

Sibron v. State, 392 U.S. 40

62. A warrant of arrest is designed to meet the dangers of unlimited and unreasonable arrest of persons who are not at the moment committing a crime.

Re Moten, 242 So.2d 849

63. Example of damages or injuries sustained because of unlawful acts: Bodily pain, great physical inconvenience and discomfort, loss of time, mental suffering, injury to reputation, distress, and anguish, humiliation of mind, embarrassment, shame, public ridicule, invidious publicity, and public disgrace.

Fingerprinting

Pro Se Cites & Authorities

1. Fingerprint evidence is no exception to the rule that all evidence obtained by searches and seizures in violation of the Constitution is inadmissible in a state court.

Davis v. Mississippi, 384 U.S. 436

First Amendment

Pro Se Cites & Authorities

1. First Amendment rights are not to be abridged or even chilled by statutory vagueness, and any legislative impingement of these rights must be drawn with precision and narrow specificity.

Bore v. Gorton, 526 P2d 379

2. This is not to say that citizens must submit to public authorities like docile lambs or fawning puppy dogs, and it is not to deny that at the constitutional level speech need not be a sedative; it can be disruptive.

Colten v. Kentucky, 407 U.S. 104,122

3. First Amendment protects author of book from being forced to produce documentation for purpose of proving truth of statements contained in book.

In Re Grand Jury Matter, 755 F2d 1044
(3rd Cir. 1985)

4. Police officers are always free to approach citizens and question them, if they are willing to stay and listen.

U.S. v. O'Neal, 17 F3d 239 (8th Cir. 1994)

5. The first amendment right to petition for redress of grievances is "among" the most precious of the liberties safeguarded by the Bill of Rights; there can be no doubt that the filing of a legitimate criminal complaint with local law enforcement officials constitutes an exercise of the first amendment right.

United States v. Hylton, 558 F.Supp. 872
(1982)

6. Tax protester's First Amendment right to petition for redress of grievances was violated when she was charged with corruptly endeavoring to intimidate and impede IRS agents by filing factually accurate, nonfraudulent criminal trespass complaints against agents after they entered upon protester's property in total disregard of "no trespassing" signs and protester's previous letters requesting that her privacy rights be respected.

United States v. Hylton, 710 F.2d 1106

Fourteenth Amendment

Pro Se Cites & Authorities

1. Fourteenth Amendment substantive due process requires that both state legislative and administrative actions that deprive citizens of life, liberty and property must have some rational basis.

Pearson v. City of Grand Blanc, 961
F.2d 1211 (6th Cir. 1992)

2. The adoption of the XIV Amendment completed the circle of protection against violations of the provisions of the Magna Carta, which guaranteed to the citizen his life, liberty, and property against interference except by the "Law of the land," which phrase was coupled in the petition of right with due process of law. The latter phrase was then used for the first time, but the two are generally treated as meaning the same. This security is provided as against the United States by the XIV and V Amendments, and against the states by the XIV Amendment.

Davidson v. New Orleans, 96 U.S. 97

3. Due process of Law is secured against invasions by the Federal Government by this Amendment (5th) and is safeguarded against state actions in identical words per the Fourteenth Amendment.

Bartlett Trust Co. v. Elliott, 30 F.2d 700,
Aff' d 40 F.2d 351

Fraud

Pro Se Cites & Authorities

1. Silence can only be equated with fraud where there is a legal or moral duty to speak or where an inquiry left unanswered would be intentionally misleading.

U.S. v. Tweel, 550 F.2d 297 (1977)

2. Untrue statements amount to constructive fraud.

Thompson v. Houston, 135 P.2d 834; 17 Wash 457

3. Constructive fraud comprises all acts, omissions, and concealments involving a breach of legal or equitable duty, trust, or confidence which resulted in damage to another.

Re Arbuckle's Estate, 220 P.2d 950

4. Fraud is defined as deceit, deception, artifice, or trickery operating prejudicially on the rights of another, and so intended, by inducing him to part with property or surrender some legal right. Also, anything calculated to deceive another to his prejudice and accomplishing the purpose, whether it be an act, a word, silence, the suppression of the truth or other device contrary to the plain rules of common honesty.

23 Am J2d, Fraud, Section 2

5. Anything calculated to deceive another to his prejudice and accomplishing the purpose, whether it be an act, a word, silence, the suppression of the truth, or other device contrary to the plain rules of common honesty.

23 Am J2d, Fraud, Section 2

Good Faith

Pro Se Cites & Authorities

1. A government officer acting in the course of his official duties is insulated from suit if (1) there existed reasonable grounds for the belief that the challenged action was appropriate, and (2) the officer acted in good faith.
Hutchinson, v. UNITED STATES of America, A political entity and corporation, 677 F.2d 1322, 1328
2.a good faith misunderstanding of the law may negate willfulness, a good faith disagreement with the law does not.
United States v. Thiel, 619 F.2d 778 (1980)
3. The requirement of an offense committed willfully is not met if a taxpayer has relied in good faith upon a prior decision of the court.
U.S. v. Bishop, 412 U.S. 346 (1973)

Government Constraints

Pro Se Cites & Authorities

1. It is well settled that a civil code which contemplates criminal penalties and sanctions is unenforceable, null and void.

United States v. Claffin, 97 U.S. 546
(1878)

2. The legislative authority of the Union must first make an act a crime, affix a punishment to it, and declare the court that shall have jurisdiction of the offense.

United States v. Hudson, 7 Cranch 32,34
(1812)

3. Crime is contagious; if the government becomes a lawbreaker it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.

Olmstead v. U.S., 277 U.S. 438

4. The state can only tax and regulate something it created.

Ward v. Maryland, 12 Wallace 418

5. It is true that the police power of a State is the least limitable of its powers, but even it may not transcend the prohibition of the Constitution of the United States.

Shevlin-Carpenter Co. v. Minnesota, 218
U.S. 57, 61

6. Our system of government is based upon the individuality and intelligence of the citizen, the state does not claim to control him, except as his conduct to others, leaving him the sole judge as to all that only affects him.

Mugler v. Kansas, 123 U.S. 623, 659-660

7. Government may not prohibit or control the conduct of a person for reasons that infringe upon constitutionally guaranteed freedoms.

Smith v. U.S., 502 F.2d 512 (1974)

8. The United States Government is a foreign corporation with respect to a state.

NY RE: Merriam, 41 L.Ed. 287 (1973)

9. The mere fact that a private corporation conducts its business under a contract with the United States does not make it an instrumentality of the latter.

Fidelity & D. Co. v. Pennsylvania, 240
U.S. 319

Pro Se Cites & Authorities

10. A county is a person in a legal sense.
Lancaster Co. v. Trimble, 34 Neb. 752
11. A sovereign is not a person.
In RE Fox, 52 N.Y. 535
12. When did the obligation occur and when was individual noticed?
U.S. v. Batchelder, 442 U.S. 114
13. "Agency action" includes any failure to act.
Caulfield v. Board of Education, 449
F.Supp. 1203
14. It is apparent, that the framers of the constitution contemplated that instrument as a rule of the government of courts, as well as of the legislature. Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies, in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!
Marbury v. Madison, 1 Cranch 137
(1803)
15. Suit against a federal official in his official capacity is a suit against the United States.
Hartford Accident & Indemnity Co. v.
Town of Saltillo, Miss., 371 F.Supp. 331
(1974)
16. Knowledge in possession of a government employee who has a duty to transmit or receive information is knowledge in the possession of the appropriate agency.
In re Agent Orange Product Liability
Litigation, 597 F.Supp. 740
17. Discretion is the equitable decision of what is just and proper under the circumstances.
The S.S. Styria v. Morgan, 186 U.S. 1, 9
18. The fundamental maxims of a free government seem to require, that the rights of personal liberty and private property should be held sacred.
Wilkinson v. Leland, 27 U.S. 627

Pro Se Cites & Authorities

19. No consideration of public policy can properly induce a court to reject statutory definition of the powers of an officer.

Bird v. McGoldrick, 116 ALR 1059

20. When agency of federal government insinuates itself into local business world, it should, as a general rule, be held to same legal obligations as private property owner. (U.S.C.A. Const. Art. 6, cl. 2)

Burroughs v. Hills, 564 F.Supp. 1007,
affirmed 741 F.2d 1525

21. Administrative agencies are required to follow their own regulations.

Bar MK Ranches v. Yeuther, 994 F.2d 735
(10th Cir. 1993)

22. All persons are presumed to know the law; If any person acts under any unconstitutional statute, he does so at his own peril; He must take the consequences.

16 Am Jur, 177, 178

23. The Commissioner shall, to the extent of authority otherwise vested in him, provide for the administration of the United States internal revenue laws in the U.S. Territories and insular possessions and other authorized areas of the world.

T.D.O. No. 150-01, 51 Fed Reg 9571, 2-27-86

24. Absent notice, such as where regulation is not sufficiently clear as to warn party of what is expected of it, agency may not deprive party of property by imposing civil or criminal liability.

General Electric Co. v. E. P. A., 53 F.3d
1324 (D.C. Cir. 1995)

25. After agency issues regulations it must abide by them.

Schering Corp. v. Shalala, 995 F.2d 1103
(D.C. Cir. 1993)

26. Congress cannot exercise police powers within the states.

Keller v. United States, 213 U.S. 138

27. Federally created corporations engaged in business in the States were subject to state laws.

Reagan v. Mercantile Trust Co., 154 U.S.
413 (1894)

Pro Se Cites & Authorities

28. Agent of government does not have authority to make a promise, representation, or agreement that is contrary to regulations of an executive department of the United States.

Jackson v. U.S., 573 F.2d 1189

29. One who deals with the Government assumes the risk that the officials with whom he deals have no authority.

Airmotive Engineering Corp. v. U.S., 535 F.2d 8

30. Federal Courts must first determine what property or rights to property an individual has under state law in applying a federal revenue act for purpose of determining whether property may be sold for unpaid taxes.

Herndon v. U.S., 501 F.2d 1219 (1974)

31. A failure substantially to comply with the statutory requirements as to the mode and manner or making the levy invalidates the tax; and there must be strict compliance with mandatory procedures...no tax can be sustained as valid unless it is levied in accordance to the letter of the statute.

Hough v. North Adams, 82 N.E.

32. Anything that is a right cannot be subject to conditions or licensing.

Lane v. Wilson, 307 U.S. 268, 275

33. An officer who acts in violation of the United States Constitution ceases to represent the government.

Brookfield Const. Co., Inc. v. Stuart, 234 F.Supp. 94, 99 (1964)

34. The USA has no inland jurisdiction.

Arndt v. Griggs, 134 U.S. 316

35. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual or unnecessary restrictions upon lawful occupations. Its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts.

Lawton v. Steele, 152 U.S. 133

Pro Se Cites & Authorities

36. Persons dealing with government cannot rely upon conversations with officials.

Allstate Ins. Co. v. Adana Mortg.
Bankers, Inc., 725 F.2d 1324

37. Substantive common law of the states governs the Federal Government/Environment.

Erie RR v. Thompkins, 304 U.S. 64
(1938)

38. Agent of government does not have authority to make a promise, representation, or agreement that is contrary to regulations of an executive department of the United States.

Jackson v. U.S., 573 F.2d 1189

39. Our system of jurisprudence rests on the assumption that all individuals, whatever their position in government, are subject to federal law and that no person is so high that he is above the law.

Davis v. Passman, 442 U.S. 228

40. When federal officials are executing their duties under federal law, such officials, even when acting pursuant to congressional authorization, are subject to restraints imposed by Federal Constitution.

Butz v. Economou, 438 U.S. 478

41. A grand jury indictment is required in any case where a person is being charged with an "infamous crime" and that any crime for which the punishment is imprisonment is an "infamous crime."

Makin v. United States, 117 U.S. 348

42. And the Constitution itself is in every sense a law.

Carter v. Carter Coal Co., 298 U.S. 140,
296 (1935)

43. The legislature's determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts.

Lawton v. Steele, 152 U.S. 133

Pro Se Cites & Authorities

44. Courts should not tolerate or condone disregard of law and arbitrary usurpation of power on the part of any officer. Ours is a government of law, and not of men, and before any act of any official will be sustained by the courts such act must be authorized by law.

Ex parte Owens, 10 Okla. Crim. Rep 284

45. No consideration of public policy can properly induce a court to reject statutory definition of the powers of an officer.

Bird v. McGoldrick, 277 NY 492

46. The public is entitled to be informed as to the procedures and practices of a government agency, so as to be able to govern their actions accordingly.

Berends v. Butz, 357 F.Supp. 143 (1973)

47. All legislation is prima facie territorial.

American Banana Co. v. United Fruit Co., 213 U.S. 347;
New York Central Railroad Co. v. Chisholm, 268 U.S. 29

48. Failure to adhere to agency regulations may amount to denial of due process if regulations are required by constitution or statute.

Curley v. United States, 791 F.Supp. 52

49. Criminal jurisdiction of the federal courts is restricted to federal reservations over which the Federal Government has exclusive jurisdiction, as well as to forts, magazines, arsenal, dockyards or other needful buildings.

18 U.S.C., Section 451

50. The laws of Congress in respect to those matters do not extend into the territorial limits of the States, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government.

Caha v. United States, 152 U.S. 215

51. Constitutional restrictions and limitations were not applicable to the areas of lands, enclaves, territories and possessions over which Congress had exclusive legislative authority.

Downs v. Bidwell, 182 U.S. 244

Pro Se Cites & Authorities

52. Persons dealing with government are charged with knowing government statutes and regulations, and they assume risk that government agents may exceed their authority and provide misinformation.

Lavin v. Marsh, 644 F.2d 1378

53. The authority of public officers to proceed in a particular way and only upon specific conditions as to such matters implies a duty not to proceed in any manner other than that which is authorized by the law.

First Nat'l. Bank v. Flier, 87 ALR 267

54. Congress does not have the authority and jurisdiction to regulate commerce within the 50 states of the Union.

United States v. Scarborough, 431 U.S.
563

55. No sanction can be imposed absent proof of jurisdiction.

Standard v. Olsen, 74 S.Ct. 768

56. All offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided by law.

Title 4 U.S.C., Section 72

57. The law reflects also a Congressional determination that the taxpayer (sic) should be afforded certain procedural rights, which IRS is bound to respect.

Laing v. United States, 423 U.S. 161

58. All household goods owned by the user thereof and used solely for noncommercial purposes shall be exempt from taxation, and such person entitled to such exemption shall not be required to take any affirmative action to receive the benefit of such exemption.

Article 9, Section 2, Para (4) Constitution
of Arizona

59. A tax penalty must be properly assessed and the taxpayer properly noticed before then penalty is enforceable.

Stallard v. United States, 806 F.Supp.
152 (1992)

Pro Se Cites & Authorities

60. A judicial warrant for tax levies was necessary to protect against unjustified intrusions into privacy...forcible entry by IRS officials onto private premises without prior judicial authorization is an invasion of privacy.

G.M. Leasing Corp. v. United States,
429 U.S. 338

61. Internal Revenue Service, with its expertise, is obliged to know its own government statutes and to apply them realistically.

Bothke v. Fluor Engineers & Const., et
al., 713 F.2d 1405 (1983)

62. Federal government agencies are obliged to conform to their own regulatory standards.

Laningham v. U.S., 2 Cl. Ct. 535

63. Silence can only be equated with fraud where there is a legal or moral duty to speak or where an inquiry left unanswered would be intentionally misleading.

U.S. v. Tweel, 550 F.2d 297 (1977)

64. Crime is contagious; if the government becomes a lawbreaker it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.

Olstead v. U.S., 277 U.S. 438

65. Our system of government, based upon the individuality and intelligence of the citizen, the state does not claim to control him, except as his conduct to others, leaving him the sole judge as to all that only affects him.

Mugler v. Kansas, 123 U.S. 623, 659-60

66. The constitutional provisions that no person shall be deprived of life, liberty, or property without due process of law, nor private property taken for public use without just compensation, are intended as limitations upon the power of the government in its dealings with the citizen, and relate to that class of rights whose protection is peculiarly within the province of the judicial branch of government, and that the courts are bound to give remedy for unlawful invasion of rights of property by officers of any branch of government.

United States v. Lee, 106 U.S. 196 (1882)

67. The Citizen knows no person, however near to those in power, or however powerful himself, to whom he need yield the rights which the law secures to him when it is well administered. When he, in one of the courts of competent jurisdiction, has established his right to property, there is no reason why

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deference to any person, natural or artificial, not even the United States, should prevent him from using the means which the law gives him for the protection and enforcement of that right.

United States v. Lee, 106 U.S. 196 (1882)

68. The Government of the United States, therefore, can claim no powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given, or given by necessary implication.

Buffington v. Day, 78 U.S. 122 (1871)

69. When the United States enters into commercial business it abandons its sovereign capacity and is to be treated like any other corporation.

91 C.J.S., United States, Sec. 4

70. Congress may not, under pretext of executing its powers, pass laws for accomplishment of objects not entrusted to it by the Constitution.

Ashwander v. T.V.A., 297 U.S. 288
(1936)

71. Special provision is made in the constitution for the cession of jurisdiction from the states over places where the federal government shall establish forts or other military works. And it is only in these places, or in the territories of the United States, where it can exercise a general jurisdiction.

New Orleans v. United States, 35 U.S.
662

72. It is, we think, a sound principle, that when a government becomes a partner in any trading company, it divests itself, so far as concerns that transactions of that company, of its sovereign character, and takes that of a private citizen.

The Bank of the U.S. v. The Planters'
Bank of Georgia, 22 U.S. 904

73. When the government seeks to enforce the laws, it must follow the steps which Congress has specified.

Goodwin v. United States, 935 F.2d
1061 (9th Cir. 1991)

74. Every acquisition, holding, or disposition of the property by the Federal Government depends upon proper exercise of the constitutional grant of power.

Mesta Machine Company v. County of
Allegheny, Pennsylvania, 322 U.S. 174,
198

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75. A husband's pre-marital tax liability could be enforced by lien on his interest in community property, but not his wife's interest in that property.
Draper v. United States, 243 F.Supp.
563 (WD Wash. 1965)

Pro Se Cites & Authorities

Grand Jury

Pro Se Cites & Authorities

1. A grand jury indictment is required in any case where a person is being charged with an “infamous crime,” and that any crime for which the punishment is imprisonment is an “infamous crime.”
Makin v. United States, 117 U.S. 348
2. Federal courts may exercise their supervisory powers over grand juries to remedy violations of recognized rights, protect integrity of federal courts, and deter illegal conduct by government officials.
U.S. v. DeBernardo, 775 F.2d 1470 (11th Cir. 1985)
3. Principle duties of grand jurors are to determine whether probable cause exists to believe that crime has been committed and to protect accused from unfounded prosecutions.
U.S. v. Powell, 823 F.2d 996 (6th Cir. 1987)
4. Constructive amendment that broadens an indictment is reversible error per se, because only grand jury can amend indictment.
U.S. v. Mills, 29 F.3d 545 (10th Cir. 1994)
5. Indictment must be dismissed on ground of “duplication” when two or more separate crimes are joined in single count of indictment.
U.S. v. Hope, 861 F.2d 1574 (11th Cir. 1988)

Immunity / Liability

Pro Se Cites & Authorities

1. An officer who acts in violation of the United States Constitution ceases to represent the government.

Brookfield Co. v. Stuart, 234 F.Supp.
94, 99

2. IRS agents are “relatively low-level executive officers” with a correspondingly narrow range of official discretion.

Mark v. Groff, 521 F.2d at 1380-81

3. All officers, including judges, are liable if they act wholly outside of their jurisdiction or official authority, even where the act is a discretionary one. The officer is then regarded as not acting in the capacity of an officer at all.

Robichaud v. Ronan, 351 F.2d 533 (9th
Cir., 1965)

4. Taxpayer: The term “taxpayer” means any person subject to any internal revenue tax.

26 U.S.C., Section 7701(a)(14)

5. Untrue statements amount to constructive fraud.

Thompson v. Huston, 135 P2d 834

6. In the beginning of a change the patriot is a scarce man, and brave, and hated and scorned. When his cause succeeds, the timid join him, for then it costs nothing to be a patriot.

Mark Twain

7. Neither a town nor its officers have any right to appropriate or interfere with private property.

Mitchell v. City of Rockland, 45 Me 496

8. Every corporation formed for governmental purposes is a municipal corporation.

Woodward v. Livermore Falls Water
Dist., 116 Me 86

Pro Se Cites & Authorities

9. As long as information contained in agency's files is capable of being verified, then, under Privacy Act, agency must take reasonable steps to maintain accuracy of information to assure fairness to individual and, if agency willfully or intentionally fails to maintain its records in that way, and consequently makes determination adverse to individual, it will be liable to that person for money damages.

Sellers v. Bureau of Prisons, 959 F2d 307
(DC Cir. 1992)

10. Supreme Court held that government agents may be held liable for violating constitutional rights.

Bivens v. Six Unknown Agents, 403 U.S.
388 (1970)

11. There are two instances when the plaintiff can sue the United States directly:
1) Action by an officer beyond his statutorily defined powers; 2) where the power or the manner of their execution are unconstitutional.

B.K. Instrument, Inc. v. U.S., 715 F2d 713
(2nd Cir. 1983)

12. The Attorney General and IRS agents do not have absolute immunity.

Cameron v. I.R.S., 773 F2d 126 (1985)
Mitchell v. Forsyth, 472 U.S. 511 (1985)

13. Government officials may be held liable for constitutional wrongs caused by their failure to adequately train or supervise subordinates.

Cole v. Bone, 993 F2d 1328 (8th Cir. 1993)
White v. Farrier, 849 F2d 322 (8th Cir.
1988)

14. Qualified immunity defense fails if public officer violates clearly established right because a reasonably competent official should know the law governing this conduct.

Jones v. Counce, 7 F3d 1359 (8th Cir.
1993)
Benitez v. Wolff, 985 F2d 662 (2nd Cir.
1993)

Pro Se Cites & Authorities

15. Eleventh Amendment does not bar state law actions against state officials in their individual capacities.

Hunt v. Bennett, 17 E3d 1263 (10th Cir. 1994)

Hays County Guardian v. Supple, 969 F2d 111 (5th Cir. 1992)

16. Supervisor may be liable based on either: 1) personal involvement in constitutional deprivation or 2) sufficient casual connection between superior's wrongful conduct and the constitutional violation.

Armendariz v. Penman, 31 F3d 860 (9th Cir. 1994)

17. Absolute immunity protects the prosecutor's role as advocate for the state, not his or her role as an administrator or investigative officer, and that prosecutorial conduct is given absolute immunity only if it is intimately associated with the judicial phase of the criminal process.

Guzman-Rivera v. Rivera-Cruz, 55 F3d 26 (1st Cir. 1995)

18. For purposes of immunity analysis, federal officials are indistinguishable from state officials and receive no greater degree of protection from constitutional claims.

Mendenhall v. Goldsmith, 59 F3d 685 (7th Cir. 1995)

19. When a government agent acts in an unconstitutional manner he becomes liable for money damages.

Bivens v. Six Unknown Agents, 403 U.S. 388 (1970)

20. A court clerk can be sued when critical documents are missing from an individual's appellate record.

Curry v. Pucinski, 864 F.Supp. 839 (1994)

21. Fair Debt Collection Practices Act (FDCPA) permitted recovery of statutory damages up to \$1,000.00 per violation, rather than \$1,000.00 per action.

Wright v. Finance Service of NGRWALK, Inc., 996 F2d 820 (6th Cir. 1993)

Pro Se Cites & Authorities

22. Government must demonstrate that alleged constitutional error was harmless while defendant need not show harm.

U.S. v. McKinney, 954 F2d 471 (7th Cir. 1992)

23. After agency issues regulations it must abide by them.

Schering Corp. v. Shalala, 995 F2d 1103 (D.C. Cir. 1993)

24. An officer who acts in violation of the United States Constitution ceases to represent the government.

Brookfield Const. Co., Inc. v. Stuart, 234 F.Supp. 94, 99 (1964)

25. Untrue statements amount to constructive fraud.

Thompson v. Huston, 135 P2d 834

26. When federal officials are executing their duties under federal law, such officials, even when acting pursuant to congressional authorization, are subject to restraints imposed by Federal Constitution.

Butz v. Economou, 438 U.S. 478

27. All persons are presumed to know the law; If any person acts under any unconstitutional statute, he does so at his own peril; He must take the consequences.

16 Am Jur 177,178

28. The government waives its immunity when it violates one of its own statutes.

Hollingshead v. US., 85-2 USTC 9772 (5th Cir. 1985)

29. An officer who acts in violation of the United States Constitution ceases to represent the government.

Brookfield Co. v. Stuart, 234 F.Supp. 94 (1964)

30. Government immunity violates the common law maxim that everyone shall have a remedy for an injury done to his person or property.

Firemans Ins. Co. of Newark, NJ v. Washburn County, 85 N.W.2d 840 (1957)

Pro Se Cites & Authorities

31. In actions claiming that a government official acted in violation of the Constitution or of statutory authority...Congress has either waived sovereign immunity or the doctrine does not apply. (5 U.S.C., Section 702)
Larson v. Domestic and Foreign
Commerce Corp., 337 U.S. 682, 689-91;
Hill v. United States, 571 F.2d 1098, 1102
(9th Cir. 1978)
32. Judges are not immune from criminal sanctions.
Ex parte Virginia, 100 U.S. 339 (1879)
33. The court of appeals for the Sixth Circuit has reaffirmed its view that a judge loses all immunity when he acts in absence of all jurisdiction.
Yates v. Hoffman Estates, 209 F.Supp.
757
34. It is well established that judges may be enjoined from interfering with citizen's rights.
Bramlett v. Peterson, 307 F.Supp. 1049
35. Judges may be punished criminally for willful deprivations of constitutional rights on the strength of 18 USC, Section 242.
Imbler v. Pachtman, 47 L.Ed.2d 128
36. State executive officials are not entitled to absolute immunity for their official actions, and that the phrase "acting in their official capacities" is best understood as a reference to the capacity in which the state officer is sued, not the capacity in which the officer inflicted the alleged injury.
Hafer v. Melo, 502 U.S. 21
37. Federal government officials are presumed to act conscientiously and in good faith in the discharge of their duties.
Asco-Falcon II Shipping Co. v. U.S., 32
Fed. 495 (1994)
39. If a taxpayer has informed an IRS agent that he or she believes that there is an error in an assessment and the agent continues collection action, without first determining if the taxpayer's argument has merit, such an agent loses his or her immunity from a suit, and becomes personally liable for any damages inflicted upon the citizen.
Bothke v. Fluor Engineers, 713 F.2d 1405
(1983)

Pro Se Cites & Authorities

40. A judge can be sued if he acts outside the scope of his authority or jurisdiction.

Joyce v. Hickey, 147 N.E.2d 187 (1958);
Haley v. Troy, 338 F.Supp. 794 (1972);
Koen v. Long, 302 F.Supp. 1383;
Staambler v. Dillion, 288 F.Supp. 646

41. When state official acts under state law in manner violative of Federal Constitution he comes into conflict with superior authority of that Constitution and is stripped of his official or representative character and subjected in his person to consequences of his individual conduct; a state has no power to impart to him any immunity from responsibility to supreme authority of United States.

Scheuer v. Rhodes, 416 U.S. 232 (1974)

42. To be within scope of his employment, it is only necessary that action of federal official who claims absolute immunity bears some reasonable relation to and connection with his duties and responsibilities.

Knight v. United States, 596 F.Supp. 543
(1948)

43. When a state appears as a party to a suit, she voluntarily casts off the robes of her sovereignty, and stands before the bar of a court of her own creation in the same attitude as a individual litigant; and her rights are determined and fixed by the same principles of law and equity, and a judgment for or against her must be given the same effect as would have been given it had it been rendered in a case between private individuals.

State v. Cloudt, 84 S.W. 415, 416;

44. The State at all time voluntarily appears before her courts. If she elects to so appear, there are no special privileges to be accorded by the courts. To accord the State any such special privileges would defeat the purpose of the appearance. The government is bound by law just as the citizen.

Harris v. O'Connor, 185 S.W.2d 993, 998;

45. It is likewise a general rule that when the State enters the courts as a litigant it casts off its robe as a sovereign, comes as would an individual litigant, and is bound by the judgment rendered as would an individual litigant.

State v. City Nat'l. Bank of Austin, 578
S.W.2d 155 (1979)

Pro Se Cites & Authorities

46. Eleventh Amendment does not erect a barrier against suits to impose “individual and personal liability” on state officials under Section 1983.
Hafer v. Melo, 502 U.S. 21
47. The mere fact that Grand River Dam Authority is an agency of the state does not extend to it “sovereign immunity.”
Grand Hydro v. Grand River Dam, Authority, 139 P.2d 798
48. The state’s “sovereign immunity from liability” exists when the state is engaged in a governmental function, and is distinguishable from the state’s “sovereign immunity from suit.”
Manion v. State, 5 N.W.2d 527, 528
49. Officer proceeds under color of state law if proceeding in official capacity, even though acts committed are not within his authority, or are in excess of his authority.
Arkansas use of Temple v. Central Surety & Ins. Corp., 102 F.Supp. 444 (1952)
50. One may violate 18 USCS 242 by willful failure to carry out his duty.
Catlette v. United States, 132 F.2d 902 (1943)
51. The power to regulate does not include the power to prohibit; To regulate is not synonymous with to prohibit.
People v. Gadway, 28 N.W. 101
52. Attorneys may be sanctioned for impugning integrity of judge or of court only if their statements are false; truth is absolute defense.
Standing Committee v. Yagman, 55 F.3d 1430 (9th Cir. 1995)
53. Constructive fraud comprises all acts, omissions, and concealments involving a breach of legal or equitable duty, trust, or confidence which resulted in damage to another.
Re Arbuckle’s Estate, 220 P.2d 950
54. Defendants’ sovereign immunity defense was inappropriate since suit was initiated against defendants in their individual capacities and not against the federal government.
Lojeski v. Boandl, 626 F.Supp. 530 (1985)

Pro Se Cites & Authorities

55. Federal employees may become personally liable for constitutional deprivation by direct participation, failure to remedy participation, failure to remedy wrongs after learning about them, creation of a policy or custom under which unconstitutional practices occur, or gross negligence in managing subordinates who cause violations.
Gallegos v. Haggerty, Northern Dist. of New York, 689 F.Supp. 93
56. Acts of administrative assistants are deemed acts of head of department.
Alvord v. United States, 95 U.S. 356 (1877); 24 L.Ed. 414
57. Federal official is immune from suit unless a plaintiff alleges either that the United States did not delegate to the official the power to act as he did or that his exercise of that power violates the Federal Constitution.
State of Wis. V. Baker, 698 F.2d 1323, cert. denied 103 S.Ct. 3537; 463 U.S. 1207; 77 L.Ed.2d 1388
58. There is no such blanket immunity for an arm of government.
Bothke v. Fluor Engineers and Constructors, Inc., 713 F.2d 1412 (1983)
59. The court of appeals for the Sixth Circuit has reaffirmed its view that a judge loses all immunity when he acts in absence of all jurisdiction.
Lucarell v. McNair, 453 F.2d 836 (1972)
60. The Seventh Circuit Court of Appeals has held that a public official does not have immunity simply because he operates in a discretionary manner. It indicated that public servants are to be held liable when they abuse their discretion or acted in a way that was arbitrary fanciful, or clearly unreasonable.
Littleton v. Berling, 468 F.2d 389 (1972)
61. Our system of jurisprudence rests on the assumption that all individuals, whatever their position in government, are subject to federal law.
Butz v. Economou, 438 U.S. 478

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62. Judges do not enjoy judicial immunity from unconstitutional behavior.
Eggar v. City of Livingston, 40 F.3d
312 (9th Cir. 1994)
63. Qualified immunity defense fails if public officer violates clearly established right because a reasonably competent official should know the law governing his conduct.
Jones v. Counce, 7 F.3d 1359 (8th
Cir. 1993)
64. Supervisor may be liable based on either, (1) personal involvement in constitutional deprivation or (2) sufficient casual connection between subordinate's wrongful conduct and the constitutional violation.
Armendariz v. Penman, 31 F.3d
860 (9th Cir. 1994)
65. State judge does not enjoy judicial immunity from unconstitutional behavior when facts are sufficient to grant party declaratory or injunctive relief against judge.
Eggar v. City of Livingston, 40 F.3d 312 (9th
Cir. 1994)
66. Absolute immunity protects the prosecutor's role as advocate for the state, not his or her role as an administrator or investigative officer.
Guzman-Rivera v. Rivera-Cruz, 55 F.3d 26
(1st Cir. 1995)
67. For purposes of immunity analysis, federal officials are indistinguishable from state officials and receive no grater degree of protection from constitutional claims.
Mendenhall v. Goldsmith, 59 F.3d 685 (7th
Cir. 1995)
68. Administrative agencies are required to follow their own regulations.
Bar MK Ranches v. Yeuther, 994 F.2d 735
(10 Cir. 1993)
69. Judge must be fair to all parties and may not do or say anything that might prejudice either litigant.
U.S. v. Price, 13 F.3d 711 (3rd Cir. 1994)

Pro Se Cites & Authorities

70. Person is not criminally responsible unless criminal intent accompanies wrongful act.

Gasho v. U.S., 39 f.3D 1420 (9TH Cir. 1994)

71. The Supreme Court held that state statutes did not take precedent over constitutional law.

James v. Kentucky, 466 U.S. 341

72. Federal officers seeking absolute immunity from personal liability for unconstitutional conduct must bear burden of showing that public policy requires exemption of that scope.

Harlow v. Fitzgerald, 457 U.S. 800

73. Sovereign immunity serves to protect federal government from unconsented suits that go to invading public treasury and mandating governmental action, but doctrine does not extend to protect governmental officers from personal liabilities arising out of their official activities.

Neely v. Blumenthal, 458 F.Supp. 945

74. Purpose of doctrine of official immunity is to ensure that government officials are free to exercise their duties without fear of damage suits in respect to acts done in the course of their duties.

Washburn v. Shapiro, 409 F.Supp. 3

75. Government cannot be held responsible for actions of its agents unless those actions were performed in the scope of their duties.

U.S. v. Levering, 455 F.Supp. 1165

76. Government officials performing discretionary functions are entitled to qualified immunity from liability in civil rights suit unless their conduct violates clearly established statutory or constitutional rights of which reasonable person would have known.

Thorsted v. Kelly, 858 F2d 571 (9th Cir. 1988)

77. When the United States enters into commercial business it abandons its sovereign capacity and is to be treated like any other corporation.

91 C.J.S., United States, Section 4

Pro Se Cites & Authorities

78. Immunity from suit is a high attribute of sovereignty a prerogative of the State itself which cannot be availed of by public agents when sued for their own torts. The 11th Amendment was not intended to afford them freedom from liability in any case where, under color of their office, they have injured one of the State's citizens. To grant them immunity would be to create a privileged class free from liability from wrongs inflicted or injuries threatened. Public agents must be liable to the law, unless they are to be put above the law.

Hopkins v. Clemson Agri. College, 221
U.S. 636;
Old Colony Trust Co. v. Seattle, 271
U.S. 427

79. Public officials are entitled to qualified immunity from liability for civil damages so long as their conduct does not violate clearly established statutory or constitutional right.

Richardson v. Selsky, 5 F.3d 616 (2nd
Cir. 1993)

80. Silence can only be equated with fraud where there is a legal or moral duty to respond or where an inquire left unanswered would be intentionally misleading.

United States v. Prudden, 424 F.2d 1021
(1970);
United States v. Tweel, 550 F.2d 297
(1977)

81. State court judges are not immune from injunctive power of federal court if actions of such judges are in contravention of law or exceed their constitutional authority.

Hodges v. Hamilton Municipal Court,
349 F.Supp. 1125 (1972)

82. The public is entitled to be informed as to the procedures and practices of a governmental agency, so as to be able to govern their actions accordingly.

Berends v. Butz, 357 F.Supp. 143 (1973)

83. The act of a public official of a state is the act of the state in depriving an individual of property, life, or liberty without due process.

Neal v. Delaware, 103 U.S. 370

Pro Se Cites & Authorities

84. Neither the state nor the municipality, which is an arm of the state, can deprive any person of life, liberty, or property without due process of law.
Wilson v. Zanesville, 13 Ohio St. 286;
199 N.E. 187
85. If an administrative officer or agency acts outside the scope of its authority or jurisdiction, its act are null and void.
Doolan v. Carr, 125 U.S. 618
86. When federal officials perpetuate constitutional torts, they do so ultra vires and lose the shield of sovereign immunity.
Williamson v. U.S. Dept. of Agriculture,
815 F.2d 369
87. Decency, security and liberty alike demand that government officials shall be subject to the rules of conduct that are commands to the citizen.
U.S. v. Olmstead, 277 U.S. 438 (1928)
88. Abuse of Discretion - Decision by whim or caprice, arbitrarily, or from a bad motive which amounts practically to a denial of justice as a clearly erroneous conclusion, one that is clearly against logic and effect of the facts presented.
5 Am J2d, A&E, Sec. 774
89. Abuse of Process - The malicious perversion of a regularly issued civil or criminal process, for a purpose, and to obtain a result not lawfully warranted or properly attainable thereby, and for which perversion and action will lie to recover the pecuniary loss sustained.
1 Am J2d, Abuse P, Sec. 2
90. Malicious abuse of process is the employment of a process in a manner not contemplated by law, or to effect a purpose which such a process is not intended by law to effect.
1 Am J2d, Abuse P, Sec. 2
91. Libel is a malicious defamation expressed in printing or writing, or by signs, pictures, etc., tending to injure the reputation of another, thereby exposing such person to public hatred, contempt, or ridicule.
Henry v. Cherry, 30 RI 13; 73 A. 97

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92. Assault consists of an offer to do bodily harm, made by a person who is in a position to inflict it; an essential element being a reasonable apprehension of imminent physical injury, so that any movement, however threatening, which does not produce fear of physical harm, is not an assault.
Henry v. Cherry, 30 RI 13; 73 A. 79
93. “Agency action” includes any failure to act (5 USC 551 (13)).
Caulfield v. Board of Education, 449 F.Supp. 1203 (ED NY 1978)
94. Attorney General’s failure to conduct preliminary investigation under Ethics In Government Act (28 USC 591 et seq.) is agency action subject to judicial review.
Dellums v. Smith, 573 F.Supp. 1489 (ND Cal. 1983)
95. Under 18 USCS 242, “color of law” includes misuse of power possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state law.
United States v. Ramey, 336 F.2d 512 (CA4 W Va 1964)
96. 18 USCS 242 applies to actions taken under color of both state and federal law.
United States v. Otherson, 637 F.2d 1276 (CA9 Cal 1980)
97. Supervisory liability may be imposed under Title 42, Sec. 1983, when an official has actual or constructive notice of unconstitutional practices and demonstrates “deliberate indifference” by failing to act.
Meriwether v. Coughlin, 879 F.2d 1037 (2nd Cir. 1989)
98. The many claims of immunity from suit have therefore been uniformly denied, where the action was brought for injuries done or threatened by public officers. If they were indeed agents, acting for the state, they – though not exempt from suit – could successfully defend by exhibiting the valid power of attorney or lawful authority under which they acted.
Cunningham v. Macon & B.R. Co., 109 U.S. 446, 452

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99. Corporate agents or individual officers of the State stand in no better position than officers of the general government, and as to them it has often been held that “the exemption of the United States from judicial process does not protect their officers and agents, civil or military, in time of peace, from being personally liable to an action of tort by a private person, whose rights of property they have wrongfully invaded or injured, even by authority of the United States.”

Belknap v. Schild, 161 U.S. 18

100. “Punitive damages” may be available in section 1983 actions when conduct is motivated by evil motive or intent or when it demonstrates reckless or callous indifference to federally protected rights.

Smith v. Wade, 461 U.S. 30, 56

101. The jury awarded punitive damages because it found that the defendants’ conduct was malicious, wanton, or oppressive.

Meriwether v. Coughlin, 879 F.2d 1037
(2nd Cir. 1989)

102. Plaintiff may sue government agents personally for damages while simultaneously suing United States agency and agents officially for injunctive and declaratory relief.

Lopez v. Aran, 600 F.Supp. 323

103. Our system of jurisprudence rests on the assumption that all individuals, whatever their position in government, are subject to federal law; in light of such principle, federal officials who seek absolute exemption from personal liability for unconstitutional conduct must bear burden of showing that public policy requires an exemption of that scope.

Butz v. Economou, 438 U.S. 478, on
remand 466 F.Supp. 1351, affirmed
Economou v. U.S. Dept. of
Agriculture, 633 F.2d 203

104. Immunity available to federal official depends not on official’s job title or agency, but on function that person was performing when taking the actions that provoked lawsuit.

Bothke v. Fluor Engineers and
Construction, Inc., 713 F.2d 1405,
vacated Terry v. Bothke, 104 S.Ct.
3566, on remand 739 F.2d 484

Pro Se Cites & Authorities

105. A supervisor can be held liable for civil rights violations where his conduct is causally related to constitutional violations committed by his subordinate.

Heller v. Plave, 743 F.Supp. 1553
(1990)

106. Judicially created doctrine of official immunity confers immunity on government officials for discretionary acts within the scope of their authority. And to be entitled to official immunity, federal officials must show that their conduct was authorized, but the mere fact of authorization is insufficient, in itself, to immunize the conduct; in addition, the federal officials must show that they acted reasonable and in good faith.

Benford v. American Broadcasting
Companies, Inc., 502 F.Supp. 1148

107. Under doctrine of official immunity, federal officials are absolutely immune from liability from common-law torts allegedly committed during performance of any official duties that require exercise of judgment or discretion.

Newkirk v. Allen, 552 F.Supp. 8

108. Federal official enjoys absolute immunity from common-law tort claims so long as his allegedly tortious actions were discretionary within outer perimeter of his authority.

Richards v. Mileski, 567 F.Supp. 1391

109. Federal law enforcement officers are entitled only to qualified, or good faith, immunity.

Forsyth v. Kleindienst, 599 F.2d
1203, certiorari denied Mitchell v.
Forsyth, 453 U.S. 913, on remand 772
F.2d 894

110. A court is all powerful within its jurisdiction, but is absolutely powerless in any legitimate sense when acting outside thereof.

Harrigan v. Gilchrist, 121 Wis. 127;
99 N.W. 909 (1904)

111. We have recognized that when the taxpayer challenges the procedural regularity of a tax lien and the procedures used to enforce the lien, and not the validity of the tax assessment, sovereign immunity is waived.

Lonsdale v. United States, 919 F.2d
1440 (10th Cir. 1990)

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112. The rule laid down in the Six Carpenter's case, 8 Coke 146, that if a man abuses an authority given him by the law he becomes a trespasser ab initio, has never been questioned.

Bass v. State, 92 N.Y.S.2d 42 (1949)

113. When one fails to perform part of his duty and it impinges upon the rights of a citizen, he is said to be a trespasser from the beginning because his whole justification fails, and he stands as if he never had any authority at all to act.

Brock v. Stimson, 108 Mass. 520 (1871);

Hefler v. Hunt, 112 A. 675, 676 (1921)

114. One who interferes with another's liberty does so at his peril.

Kroger v. Passmore, 93 P. 805, 807
(1908);

McBeath v. Campbell, 12 S.W.2d 118,
122 (1929)

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Implementing Regulations

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1. Once promulgated, these regulations, called for by the statute itself, have the force of law, and violations thereof incur criminal prosecutions, just as if all the details had been incorporated into the congressional language. The result is that neither the statute nor the regulations are complete without the other, and only together do they have any force. In effect, therefore, the construction of one necessarily involves the construction of the other.

United States v. Mersky, 361 U.S. 431; 4
L.Ed 423

2. Regulations have force of statute.

Ex parte Reed, 100 U.S. 13 (1879)

3. Regulations have force and effect of law.

Conrad v. Conrad, 152 P2d 221 (1944)

4. Federal government agencies are obligated to conform to their own regulatory standards.

Laningham v. U.S., 2 Cl.Ct. 535

5. For federal tax purposes, regulations govern.

Dodd v. United States, 223 F.Supp. 785
(1963)

6. It is entirely proper for Congress to delegate broad powers to executives to determine details of legislative scheme through implementing regulations.

Cameron v. Internal Revenue Service,
593 F.Supp. 1540 (1984)

Injury

Pro Se Cites & Authorities

1. With no injured party, a complaint is invalid on its face.
Gibson v. Boyle, 139 Ariz. 512
2. Government immunity violates the common law maxim that everyone shall have a remedy for an injury done to his person or property.
Firemans Ins. Co. of Newark, NJ v. Washburn County, 85 N.W.2d 840 (1957)
3. "Injury" within constitutional section providing that every person, for an injury done him in his land, goods, person or reputation, shall have a remedy by due process of law is damage resulting from breach of a legal duty.
Randle v. Payne, 107 So.2d 907, 911
4. Constitutional guarantee insuring a remedy for "injuries" to person, property, or character does not guarantee a remedy for every species of injury, but only such as results from invasion or infringement of a legal right or a failure to discharge a legal duty.
Scholberg v. Itnyre, 58 N.W.2d 698, 699
5. An injury is "irreparable" only if it cannot be undone through monetary remedies...Similarly the right of privacy must be carefully guarded for once an infringement has occurred it cannot be undone by monetary relief.
Deerfield Medical Center v. City of Deerfield Beach, 661 F.2d 328 (1981)
6. When it is said in contemplation of the law that there is no wrong without a remedy, it must be noted that the term "wrong" has a legal significance distinct from "damage," and is synonymous with "injuria," signifying a legal injury.
Thomason v. Seaborad Air Line Ry., 55 S.E. 205, 209
7. By "injuria" is meant a tortious act. It need not be willful and malicious; for though it be accidental, if it be tortious, an action will lie.
Sprague v. Heaps, 7 Ill. App. 438, 446
8. Injury is any wrong or damage done to another, either in his person, rights, or reputation, or property.
Dept. Of Highways v. Lykes Bros. S.S. Co., 24 So.2d 623, 626

Pro Se Cites & Authorities

9. Injury strictly speaking, means something done against the right of a party producing damage.

Yazoo & M.V.R.Co. v. Fields, 195 So.
489, 490

10. The words “injuries to the person” have been held to mean not only bodily injuries but also to include injuries to the relative rights of persons, as well as injuries to their absolute rights.

Bohring v. Kansas City, 71 S.W.2d 170,
73

11. One who unintentionally fails to perform a duty should pay compensatory damages only, but one who maliciously infringes another’s legal rights should pay both compensatory and punitive damages.

Western Union Tel. Co. v. Ferguson, 60
N.E. 674 (1901)

12. Irreparable harm would rest upon plaintiffs showing that their constitutional rights have been violated; violation of a constitutional right is irreparable harm, even for minimal periods of time; one who shows deprivation of a constitutional right need go no further in showing the requisite harm for injunctive relief.

Hill v. Green County School District,
848 F.Supp. 697 (S.D. Miss. 1994)

13. Any right to monetary relief against the government must be grounded in contract, statute, or the Constitution.

Detriot Int’l. Bridge Co. v. United
States, 32 Fed.Cl. 225 (1994)

14. The factors for determining injunctive relief are: (1) a substantial likelihood that plaintiff will prevail on the merits; (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted; (3) that the threatened injury to the plaintiff outweighs the threatened harm the injunction may do to the defendant; and (4) that granting the injunction will not disserve the public interest.

Hill v. Greene County School District,
848 F.Supp. 697 (S.D. Miss. 1994)

Pro Se Cites & Authorities

15. An injury is “irreparable” only if it cannot be undone through monetary remedies, and that the right to privacy must be carefully guarded for once an infringement has occurred it cannot be undone by monetary relief.

Deerfield Medical Center v. City of
Deerfield Beach, 661 F.2d 328 (1981)

16. We have already determined that the constitutional right to privacy is “either threatened or in fact being impaired”, and this conclusion mandates a finding of irreparable injury.

Elrod v. Burns, 427 U.S. @ 373

17. Plaintiffs in federal courts must allege some threatened or actual injury resulting from the putatively illegal action before a federal court may assume jurisdiction.

Linda R.S. v. Richard D., 410 U.S. 614,
617

18. Loss and injury are the two elements which must exist in combination of essentials of a cause of action.

1 Am J2d, Actions, Sec. 70

Jurisdiction

Pro Se Cites & Authorities

1. There are three classes of cases for which the Constitution grants power to the judiciary.
 - a. Cases in law, or suits at common law, wherein legal rights are to be ascertained, and legal remedies administered according to the old and established proceedings at common law;
 - b. Cases or suits in equity where equitable rights only are recognized, and equitable remedies administered;
 - c. Cases or suits in the admiralty, where there is a mixture of public or maritime law and of equity in the same suit.

Bains v The Schooner James and Catherine, Federal Cases 576

2. The difference between departments undoubtedly is, that the legislature makes, the executive executes, and the judiciary construes the law;..."

Wayman and another v. Southland and another, 10 Wall 1, p.327

3. The Constitution of the United States protects the citizens from unconstitutional laws to limit admiralty so that it:

"...could then no longer prescribe its own limits in prejudice of the individual, and to the exclusion of the common law rights."

Ramsey v. Allegrie, 12 Wall 611, p. 399

4. If the common law can try the case, and give full redress that alone takes away the admiralty jurisdiction.

Ramsey v. Allegrie, 12 Wall 611

5. The phrase "common law" found in this clause, is used in contradistinction to equity, admiralty, and maritime jurisprudence.

Parsons v. Bedford, et al, 3 Pet 433, 479.

6. The common law, as it was received in the United States at the time of the adoption of the Constitution, did not afford a remedy in rem in suits between private persons. Hence the adoption of the savings clause in the Judiciary Act of 1789.

C.J. Hendry Co. et al. V. Moore et al., 318 U.S. 133, 135 (1942)

Pro Se Cites & Authorities

7. The rights enforceable under the “savings clause” include not only those rights which arise from the general maritime law known to the framers of the Constitution and the Judiciary Act, but also any new rights created by the Federal Government which are amenable to the remedies of the common law.
Panama R.R. v. Vasquez, 271 U.S.
557,561 (1926)
8. Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.
Miranda v. Arizona, 384 U.S. 436,491
9. In the United States, Sovereignty resides in the people, who act through the organs established by the Constitution.
Yick Wo v. Hopkins, 118 U.S. 356,370
10. This Constitution, and the laws of the United States which shall be made in pursuance thereof...shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.
Article VI, U.S Constitution
11. All laws repugnant to the Constitution are null and void.
Marbury v. Madison, 5 U.S. 137,174,176
(1803)
12. Constitutional provisions for the security of person and property should be liberally construed. It is the duty of the courts to be watchful of constitutional rights against any stealthy encroachments thereon.
Boyd v. U.S. 116 U.S. 635
13. The basic purpose of a written constitution has a twofold aspect, first the securing to the people of certain unchangeable rights and remedies, and second, the curtailment of unrestricted governmental activity within certain defined fields.
Du Pont v. Du Pont, Sup. 32 Ded. Ch.
413
14. The constitution of a state is the fundamental law of the state.
Ware v. Hylton, 3 Dall 199
15. The Constitution of the United States is the supreme law of the land.
Article 2, Section 3, Arizona
Constitution

Pro Se Cites & Authorities

16. Government may not prohibit or control the conduct of a person for reasons that infringe upon the constitutionally guaranteed freedoms.
Smith v. U.S., 502 F2d 512, C.A. Tex
(1974)
17. The due process clause of the Fifth Amendment guarantees to each citizen the equal protection of the laws and prohibits a denial thereof by any Federal Official.
Bolling v. Sharpe, 327 U.S. 497
18. The requirement of an offense committed willfully is not met, therefore, if a taxpayer has relied in good faith upon prior decisions of the court.
U.S. v. Bishop, 412 U.S. 346 (1973) at
2017;
U.S. v. Sullivan, 274 U.S. 259,263
19. Title 28 Section 1391, this section makes it possible to bring actions against government officials and agencies in district court outside D.C.
Norton v. McShane, 14 L. Ed2d 274
20. Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen.
Olmstead v. United States, 277 U.S.
438,485
21. Due process clause not only applies when one's physical liberty is threatened but also where a person's good name, reputation, honor or integrity are at stake.
Gotkin v. Miller, 514 F2d 125 C.A. N.Y.
(1975)
22. Failure to secure a valid court order must be punishable for those conducting a search or seizure without it, if the rights of the Fourth Amendment of the U.S. Constitution are to be maintained. If no penalty will be ever attached to a failure to seek a warrant, as distinguished from the officer making their own, correct, determination of probable cause, warrants will never be sought.
U.S. v. Mason, 290 F.Supp. 843 (1968)

Pro Se Cites & Authorities

23. When the right of privacy must be reasonably yielded to the right of search, is as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent.

Johnson v. U.S., 333 U.S. 10,14

24. It is a cardinal rule that, in seizing goods and articles, law enforcement agents must secure and use search warrants whenever reasonable practicable...to provide the necessary security against unreasonable intrusions upon the private lives of individuals, the framers of the Fourth Amendment required adherence to judicial processes wherever possible, and subsequent history has confirmed the wisdom of that requirement.

Trupiano v. U.S., 334 U.S. 705

25. Mere good faith assertions of power and authority have been abolished.

Owens v. City of Independence, 445 U.S. 622

26. It is well established that judges may be enjoined from interfering with citizen's rights.

Pierson v. Ray, 386 U.S. 547 (1967)

27. Jurisdiction is the right to adjudicate concerning the subject-matter in the given case. To constitute this there are three essentials: First, the court must have cognizance of the class of cases to which the one to be adjudicated belongs; second, the proper parties must be present; and third, the point decided upon must be in substance and effect within the issue.

Reynolds v. Stockton, 140 U.S. 254,268

28. We the people...do ordain and establish this Constitution for the United States of America.

Preamble, U.S. Constitution (1789)

29. Constitution extends to equal protection of the laws to people, not to interest.

Taylor v. McKeithen, 499 F2d 893, C.A. La (1974)

30. The Seventh Circuit Court of Appeals has held that a public official does not have immunity simply because he operates in a discretionary manner. It indicated that public servants are to held liable when they abused their discretion or acted in a way that was arbitrary, fanciful or clearly unreasonable.

Littelton v. Berling, 468 F2d 389 C.A. 7 Ill (1972)

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31. There should be no arbitrary deprivation of life or liberty, or arbitrary spoilation of property.

Barber v. Connolly, 113 U.S. 27,31

32. History is clear that the first ten amendments to the Constitution were adopted to secure certain common law rights of the people, against invasion by the Federal Government.

Bell v. Hood, 71 F.Supp., 813,816 (1947)

33. Federal courts will be guided by state law.

U.S. v. First Nat'l. Bank, 470 F2d 944

34. Anyone who voluntarily gives up his rights, gives up his free agency and admits to the jurisdiction and control of government.

Wickard v. Wilburn, 317 U.S. 111

35. There is no federal statute which confers criminal jurisdiction to the federal courts in internal revenue matters. Title 28, Section 1340 of the United States Code confers the district courts with civil jurisdiction alone in matters arising under the Internal Revenue Code. It is well settled that a civil code which contemplates criminal penalties and sanctions is unenforceable, null and void.

United States v. Claffin, 97 U.S. 546
(1878)

36. When jurisdiction is challenged, a court of competent authority must not only cite the statute setting forth the crime, but advert to the specific power granted in the Constitution from whence the statute arises.

U.S. v. Worrall, 2 U.S. 384 (1798)

U.S. v. Fox, 95 U.S. 670 (1878)

U.S. v. Hall, 98 U.S. 343 (1879)

37. It is true that this court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution.

Cohens v. Virginia, 6 Wall 100

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38. Mandamus is extraordinary remedy which is designed to enforce performance of plain positive duty; thus writ will issue only when person against whom it is directed us under some clear legal obligation to perform act compelled and, moreover, party seeking performance of duty has burden of establishing his clear legal right to performance.

Kisinski v. Lawler, 418 A2d 66

39. Whenever the legislature passes an act which transcends the limits of the police power, it is the duty of the judiciary to pronounce it invalid, and to nullify the legislative attempt to invade citizens' rights.

Colon v. Lisk, 47 N.E. 302,304

40. Constitutional right of access to courts applies to civil as well as constitutional claims.

Jackson v. Proconier, 789 F.2d 307

41. There are two instances when the plaintiff can sue the United States directly: 1) Action by an officer beyond his statutorily defined powers; 2) where the power or the manner of their execution are unconstitutional.

B.K. Instrument, Inc. v. U.S., 715 F2d
713 (2nd Cir. 1983)

42. Fair Debt Collection Practices Act (FDCPA) permitted recovery of statutory damages up to \$1,000.00 per violation, rather than \$1,000.00 per action.

Wright v. Finance Service of
NGRWALK, Inc., 996F.2d 820 (6th Cir.
1993)

43. Unless contrary intent appears, federal statutes apply only within the territorial jurisdiction of the United States.

United States v. Cotroni, 527 F.2d 708
(1975)

44. The courts must obey the constitution rather than the law-making department of government, and must, upon their own responsibility, determine whether, in any particular case, these limits have been passed.

Mugler v. Kansas, 123 U.S. 623 (1887)

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45. The legislative authority of the Union must first make an act a crime, affix a punishment to it, and declare the court that shall have jurisdiction of the offense.

United States v. Hudson, 7 Cranch 32,34
(1812)

46. Suit against a federal official in his official capacity is a suit against the United States.

Hartford Accident & Indemnity Co. v.
Town of Saltillo, Miss., 371 F.Supp. 331
(1974)

47. Federal courts are courts of limited jurisdiction. However, under “absolute right doctrine,” federal court has obligation to hear cases that legitimately come before it.

Estrella v. V & G Management Corp., 158
F.R.D. 575, 578

48. Equity jurisdiction can only be invoked if there is no plain, adequate remedy at law or if there is a legal relationship between the parties.

Yuba Consolidated Golf Fields v.
Kilkeary, 206 F.2d 884

49. Jurisdiction once challenged cannot be assumed and must be decided.

Maine v. Thiboutot, 100 S.Ct. 2502

50. Once challenged, jurisdiction cannot be “assumed” it must be proved to exist.

Stuck v. Medical Examiners, 94 Ca.2d
751

51. Federal jurisdiction cannot be assumed, but must be clearly shown.

Brooks v. Yawkey, 200 F.2d 633

52. No sanction can be imposed absent proof of jurisdiction.

Stanard v. Olesen, 74 S.Ct. 768

53. Special provision is made in the Constitution for the cession of jurisdiction from the states over the places where the federal government shall establish forts or other military works; and it is only in these places, or in territories of the United States, where it can exercise a general jurisdiction.

New Orleans v. United States, 35 U.S. 662
(1836)

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54. No officer can acquire jurisdiction by deciding that he has it. The officer whether judicial or ministerial decides at his peril.

Middleton v. Low, 30 C 596

55. It is a well established principle of law that all federal legislation applies only within the territorial jurisdiction of the United States unless a contrary intent appears.

Foley Brothers v. Filardo, 336 U.S. 281
(1948)

56. When jurisdiction is challenged the burden of proof is on the government.

Title 5 U.S.C., Section 556(d);
McNutt v. G.M., 56 S.Ct. 789;
Thomson v. Gaskiel, 62 S.Ct. 673

57. When a court's jurisdiction with respect to a particular matter is derived wholly from statutes, the statutory provisions are "mandatory" and must be complied with in all respects, and the court, in exercising its particular authority, is a "court of limited jurisdiction."

Felton v. Poynor, 156 S.W.2d 277, 278

58. Equity jurisprudence may properly be said to be that portion of remedial justice which is exclusively administered by a court of equity, as distinguished from that portion of remedial justice which is exclusively administered by a court of common law.

Jackson v. Nimmo, 71 Tenn. 597, 609

59. To sustain a suit in equity in the federal courts it must appear there is no plain, adequate, and complete remedy at law.

Yuba Consolidated Gold Fields v.
Kilkeary, 206 F.2d 884

60. Equity jurisdiction can only be invoked if there is no plain, adequate remedy at law or if there is a legal relationship between the parties.

Yuba Consolidated Golf Fields v.
Kilkeary, 206 F.2d 884

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61. The party who brings a suit is master to decide what law he will rely upon and does determine whether he will bring a suit arising thereunder....Whether the complaint state a cause of action on which relief can be granted is a question of law and, just as issues of fact, it must be decided after and not before the court has assumed jurisdiction over the controversy.

Bell v. Hood, 327 U.S. 678

62. The decisions of inferior courts are not, as a rule, binding on the higher courts.

McIlhenny Co. v. Gaidry, 253 F. 613

63. Jurisdiction, in the general sense, as applied to the subject matter of a suit at law, or in equity, must be found in, and derived from the law.

Harrington v. Superior Court of Placer County, 228 P. 15

64. Jurisdiction must be raised before making any plea to the merits, if at all, when it arises from formal defect in the process, or when the want of jurisdiction over the persons.

Smith v. Curtis, 7 Cal. 584

65. Courts do not have jurisdiction to interfere with action of administrative agency until administrative remedies have been exhausted, at least where applicable rules have been followed.

Herriges v. United States, 314 F.Supp. 1352 (1970)

66. "Agency action" includes any failure to act.

Caulfield v. Board of Education, 449 F.Supp. 1203 (1978)

67. Legislative courts are courts created by Legislature not named or described by Constitution.

Gorham v. Robinson, 186 A. 832

68. All legislation is prima facie territorial.

American Banana Co. v. United Fruit Co., 213 U.S. 347;
New York Central Railroad Co. v. Chisholm, 268 U.S. 29

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69.the judge of the municipal court is acting as an administrative officer, and not in a judicial capacity.

W.L. Thompson v. Smith, 71 ARL 604
(1930)

70. Failure to adhere to agency regulations may amount to denial of due process if regulations are required by constitution or statute.

Curley v. United States, 791 F.Supp. 52

71. Criminal jurisdiction of the federal courts is restricted to federal reservations over which the Federal Government has exclusive jurisdiction, as well as to forts, magazines, arsenal, dockyards or other needful buildings.

18 U.S.C., Section 451

72. The laws of Congress in respect to those matters do not extend into the territorial limits of the States, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government.

Caha v. United States, 152 U.S. 215

75. Constitutional restrictions and limitations were not applicable to the areas of lands, enclaves, territories and possessions over which Congress had exclusive legislative authority.

Downs v. Bidwell, 182 U.S. 244

76. One who relies on the act of a government agent must show that the agent acted within his authority.

Saulque v. U.S., 663 F.2d 968

77. A person is born subject to the jurisdiction of the United States for purposes of acquiring citizenship at birth, if the birth occurs in a territory over which the United States is sovereign.

3 A Am Jur 1420, Aliens & Citizens

78. Violation of administrative law voids the agency action.

U.S. v. Heffner, 420 F.2d 809 (1970)

79. A distinction must be here observed between excess of jurisdiction and the clear absence of jurisdiction over the subject matter, any authority exercised is a usurped authority, when the want of jurisdiction is known to the judge, no excuse is permissible.

Bradley v. Fisher, 13 Wall 335, 351

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80. In administrative law the term “jurisdiction” has three aspects: 1) personal jurisdiction; 2) subject matter jurisdiction; and 3) the agency(s) scope of authority under statute. Compliance with jurisdictional requirement is essential to give validity to the determinations of administrative agencies; absent such compliance, their acts are void and open to collateral attack. Actions by an agency in violation of its own regulations or procedures are illegal, void and constitute procedural error.

Vander Molen v. Stetson, 571 F.2d 617
(1977)

81. 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

82. Federal court had jurisdiction where defendant was charged with depriving named person of rights and privileges under Constitution of United States, even though acts of defendants also violated laws of state.

Williams v. United States, 179 F.2d 656
(1950)

83. When a code of law is part civil and part criminal the entire code must be considered criminal.

Boyd v. United States, 116 U.S. 616 (1886)

84. Congress does not have the authority and jurisdiction to regulate commerce within the 50 states of the Union.

United States v. Scarborough, 431 U.S.
563

85. Jurisdiction is essential to give validity to the determination of administrative agencies and where jurisdictional requirements are not satisfied, the action of the agency is a nullity.

City Street Improv. Co. v. Pearson, 185 P.
962;
O’Neill v. Dept. of Professional &
Vocational Standards, 46 P2d 234

86. If any tribunal finds absence of proof of jurisdiction over person and subject matter, the case must be dismissed.

Louisville RR v. Motley, 211 U.S. 149

Pro Se Cites & Authorities

87. State and USA must have jurisdiction to enforce judgment/decrees without which it cannot further proceed.

Morrow v. Corbin, 62 SW2d 641

88. Term “district courts” means only those courts which are created under Article 3 of the Constitution of the United States.

Wells v. United States, 214 F.2d 380
(1954)

89. A fiction of law will not prevail where the fact appears, or where there is no voluntary submission to the court’s jurisdiction.

United States v. 1960 Bags of Coffee, 8
Cranch 398, 415 (1814)

90. The criminal jurisdiction of the United States is wholly statutory.

United States v. Flores, 289 U.S. 137, 151
(1933)

91. Jurisdiction is obtained when one who appears and by their pleadings admit jurisdiction.

Burks v. Lasker, 441 U.S. ???

92. No sanction can be imposed absent proof of jurisdiction.

Standard v. Olsen, 74 S.Ct. 768

93. It is incorrect to suppose that the power to decide in any case rests solely on the averments of a pleading, but on the contrary the jurisdiction of a court in no way depends on the sufficiency or insufficiency of the pleadings, and if the pleadings state a case belonging to a general class over which the authority of the court extends, then jurisdiction attaches, and the court has power to hear and determine the issues involved.

Zeagler v. Zeagler, 15 S.E.2d 478, 480

94. “Jurisdiction of the subject-matter: means the power, lawfully conferred to deal with the particular subject involved in a particular action in a civil court, or of a particular offense charged in an indictment in a criminal prosecution.

People v. Blake, 106 N.Y.S. 319, 324

Pro Se Cites & Authorities

95. A court, in order for its acts to be valid, must have power to hear and determine cases of general class to which the proceedings in question belong, which is known as “jurisdiction over the subject-matter” and must also have power to subject the parties in a particular case to the decisions and rulings made by the court in such case, which is commonly known as “jurisdiction over the person.”

Collins v. Powell, 277 N.W. 477, 481

96. Jurisdiction is of three kinds, of the subject-matter, of the person, and to render the particular judgment which was given.

City of Phoenix v. Greer, 29 P.2d 1062,
1064

97. In respect to jurisdiction over the subject-matter, by which is meant the nature of the cause of action and of the relief sought, jurisdiction is acquired only by the Constitution of the court.

Wolff v. McGaugh, 57 So. 754, 755

98. Jurisdiction of the subject-matter is authority to hear and decide a cause, and does not depend on the correctness of the decision entered.

People v. Leavens, 123 N.E. 545, 546

99. “Jurisdiction over the person” is the power of the court over the parties obtained by process or appearance.

Rensing v. Turner Aviation Corp., 166
F.Supp. 790, 794

100. “Jurisdiction over the person” is obtained by the service of process or by the voluntary appearance of the party in the progress of the cause.

Cooper v. Reynolds, 77 U.S. 308

101. “Jurisdiction of the subject matter” exists by operation of law only, and cannot be conferred upon any court by consent or waiver.

Federal Underwriters Exchange v. Pugh,
174 S.W.2d 598, 600

102. “Jurisdiction of the subject-matter” means not only authority to hear and determine particular class of action, but also particular question court assumes to determine.

Alberta Lumber Co. v. Pioneer Lumber
Co., 244 P. 250, 252

Pro Se Cites & Authorities

103. Civil Rule, providing that party waives all objections and other matters then available to him by motion by failure to assert same, was not intended to apply to situation in which court has no jurisdiction to proceed, which is equivalent to no "jurisdiction of subject-matter."

State ex rel. Ballew v. Hawkins, 361
S.W.2d 850, 852

104. The component elements required to confer jurisdiction on a court consists of "jurisdiction of the person," and "jurisdiction of the subject-matter;" the former refers to bringing person to be affected by judgment before court so as to give him an opportunity to be heard, while the latter pertains to right of the court, under the laws of the sovereignty where it sits, to adjudicate the particular character of case, or issue.

Swartz v. Caudill, 130 S.W.2d 80, 82

105. Jurisdiction of justice courts exists only to the extent conferred by Const. Art. 6, Section 32 and Sections 22-201 and 22-301.

State ex rel. Milstead v. Melvin, 140 Ariz.
402

106. The mere fact that a matter arises under the laws of the United States or even involves the question of constitutionality under the Federal Constitution, is, in itself, insufficient to give jurisdiction to the federal courts. Jurisdiction does not exist unless, at the same time, the plaintiff can show affirmatively that he is injured in the jurisdictional amount.

Gaitor v. Peninsular & Occidental
Steamship Co., 287 F.2d 252 (1961)

107. The tax court's jurisdiction is confined to determining the amount of deficiency or overpayment for the particular tax year for which the commissioner has sought a deficiency and the taxpayer has filed a petition for review; the tax court has no jurisdiction to order or to deny a refund, or to decide equitable questions; the taxpayer must resort to the district court or the court of claims for a resolution of such disputes or for an order granting a refund.

Morse v. United States, 494 F.2d 876
(1974)

Pro Se Cites & Authorities

108. Although the Tax Court was upgraded from an executive agency to an Article I “legislative court” in 1969, that change did not extend the jurisdiction of the court to the full judicial power over “all cases, in law and equity,” that is vested in “constitutional courts” under Article III.

20 Federal Procedures, Tax Court
Proceedings, Section 48 : 895

109. Tax court decision on questions of statutory interpretation is subject to de novo review.

Wolpaw v. CIR, 47 F.3d 787 (6th Cir.
1995)

110. Judicial Code provisions, rather than Internal Revenue Code provisions, were applicable and would give Federal District Court jurisdiction regardless of compliance with Internal Revenue Code provisions if property owner was a nontaxpayer.

Gerth v. United States, 132 F.Supp.
894 (1955)

111. Congress is constitutionally free to make an administrative determination final and immune from judicial review where it gives the aggrieved party a right to elect between administrative or judicial relief.

U.S. v. Interstate Commerce
Commission, 337 U.S. 426

112. The Tax Court is a court of limited jurisdiction having such jurisdiction (USTC Section 9375) as is conferred under the Internal Revenue Code (26 USCS Section 7442).

20 Federal Procedures, Tax Court
Proceedings, Section 48:895

113. The mere transaction of business in a State by non-resident natural persons does not imply consent to be bound by the process of its courts.

Flexner v. Farson, 248 U.S. 289

114. The USA has no inland jurisdiction.

Arndt v. Griggs, 134 U.S. 316

115. Title 28, Section 1391, this section makes it possible to bring actions against government officials and agencies in district court outside D.C.

Norton v. McShane, 14 L.Ed.2d 274

Pro Se Cites & Authorities

116. District court has jurisdiction to grant injunctive relief to taxpayer who contests IRS levy on his wages where taxpayer alleges that IRS failed to comply with pre-levy notice requirements; if IRS fails to comply with pre-levy notice requirements District Court has jurisdiction to enter injunctive relief for taxpayer.

Jensen v. IRS, 835 F.2d 196 (1987)

117. Jurisdiction may be defined to be the right to adjudicate concerning the subject matter in the given case. To constitute this there are three essentials: First, the court must have cognizance of the class of cases to which the one to be adjudged belongs; second, the proper parties must be present; and third, the point decided must be, in substance and effect, within the issue.

Reynolds v. Stockton, 140 U.S. 584 (1891)

118. Judicial code provisions, rather than Internal Revenue Code provisions, were applicable and would give Federal District Court jurisdiction regardless of compliance with Internal Revenue Code provisions if property owner was a non-taxpayer,

Gerth v. United States, 132 F.Supp. 894
(1955)

119. The State of Georgia is not a sovereign power, in the sense that it is exempt from suit in the federal courts by a private citizen.

Chisholm v. State of Georgia, 2 U.S. 419,
455

120. Section 7421(a) of the Internal Revenue Code of 1954 (I.R.C.) states: "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed," with certain exceptions, one of which is a civil action by a nontaxpayer who claims that his or her property has been the subject of a wrongful levy.

Hollingshed v. United States, 85-2
USTC, 9772 (5th Cir. 1985)

121. Citizenship, when spoken of in the Constitution in reference to the jurisdiction of the courts of the United States, means nothing more than residence. The citizens of each state are entitled to all the privileges and immunities of citizens in the several states; but to give jurisdiction to the courts of the United States, the suit must be between citizens residing in different states, or between a citizen and an alien.

Cooper v. Galbraith, No. 3,193, 6 Fed.
Cas.

Pro Se Cites & Authorities

122. Plaintiffs in federal courts must allege some threatened or actual injury resulting from the putatively illegal action before a federal court may assume jurisdiction.
- Linda R.S. v. Richard D., 410 U.S. 614,
617
123. The terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit.
- United States v. Sherwood, 312 U.S. 584
(1941)
124. Only those whose rights are directly affected can properly question the constitutionality of a state statute, and invoke our jurisdiction in respect thereto.
- New York ex rel. Hatch v. Reardon, 204
U.S. 152, 161
125. It is conceded that where the jurisdiction depends alone upon the character of the parties, a controversy between a State and its own citizens is not embraced within it; but it is contended that though jurisdiction does not exist on that ground, it nevertheless does exist if the case itself is one which necessarily involves a federal question; and with regard to ordinary parties this is undoubtedly true.
- Hans v. State of Louisiana, 134 U.S. 1
126. It is axiomatic that the prosecution must always prove territorial jurisdiction over a crime in order to sustain a conviction therefor.
- United States v. Benson, 495 F.2d 475
127. If it is in the interest of justice, court may transfer action over which it does not have jurisdiction to any other court with jurisdiction.
- Sanford v. United States, 32 Fed. Cl. 363
(1994)
128. Burden of establishing jurisdiction is on plaintiff.
- Calhoun v. United States, 32 Fed. Cl. 400
(1994)

Mandamus

Pro Se Cites & Authorities

1. Mandamus is extraordinary remedy which is designed to enforce performance of plain positive duty; thus writ will issue only when person against whom it is desired is under clear legal obligation to perform act compelled and , moreover, party seeking performance of duty has burden of establishing his clear legal right to performance.

Kisinski v. Lawler, 418 A2d 66

2. Mandamus may be issued when petitioner shows there is no other means available to obtain desired relief and that his right to issuance of the writ is clear and undisputable.

Mallard v. U.S. Dist. Court For S. Dist.
Of Iowa, 490 U.S. 296; 104 L.Ed.2d 318;
109 S.Ct. 1814 (1989)

3. Remedy of mandamus is a drastic one, to be invoked only in extraordinary situations.

Allied Chemical Corp. v. Daiflon, Inc.,
449 U.S. 33 (1980)

4. Prisoner who alleges cause of action under the Mandamus Act need not rely upon implied or private right of action under any other statute.

Socer v. Scott, 942 F.2d 597 (9th Cir. 1991)

5. Mandamus cannot be used as a substitute for an appeal.

U.S. v. Gunderson, 978 F.2d 580 (10th
Cir. 1992)

Miranda Rights

Pro Se Cites & Authorities

1. Miranda decision is not applicable to the routine traffic offense where the driver is detained no longer than is necessary to make out the citation and have it signed, but the Miranda warnings must be given prior to any questioning regarding the state of intoxication of the driver or when an arrest is to be made.

Campbell v. Superior Court In and For Maricopa County, 479 P.2d 685 (1971)

2. Point at which defendant must be warned of his Miranda rights is when police have both reasonable grounds to believe that crime has been committed and to believe that defendant is one who committed the crime.

State v. Jellez, 431 P.2d 691 (1967)

3. Whether a suspect is in “custody” for purposes of giving Miranda warnings is determined by an objective test of whether a reasonable man would feel that he was deprived of his freedom in a significant way.

State v. Morse, 617 P.2d 1141 (1980)

4. Police officers are required to give Miranda warnings only when defendant is undergoing “custodial interrogation,” that is, questioning initiated by law enforcement officers after person has been taken into custody or otherwise deprived of his freedom of action in any significant way.

Matter of Appeal in Maricopa County Juvenile Action No. J-84357, 576 P.2d 143 (1978)

5. Miranda warnings become requirement only when defendant is in custody or in fact is not free to leave place of interrogation; test of “custodial interrogation” is whether reasonable man would feel that he was deprived of his freedom of action in any significant way.

State v. Hatton, 568 P.2d 1040 (1977)

6. Custody is the crucial issue in determining whether Miranda warnings are necessary before a statement made by defendant may be received in evidence against him.

State v. Wilson, 548 P.2d 23 (1976)

Motion To Dismiss

Pro Se Cites & Authorities

1. A complaint may not be dismissed on motion if it states some sort of claim, baseless though it may prove to be and inartistically as the complaint may be drawn. This particularly true where the plaintiff is not represented by counsel.

Brooks v. Pennsylvania R. Co., 91
F.Supp. 101 (1950)

2. Ordinarily, insufficient service of process will be squashed and the action preserved, where there is reasonable prospect that plaintiff ultimately will be able to serve defendant properly, Rule 4 (c)(2) (c) (ii). (Service By Mail).

Nikwei v. Ross School of Aviation, Inc.,
822 F.2d 939 (10th Cir. 1987)

3. Trial court ordinarily should permit litigant, especially pro se litigant, opportunity to amend complaint before dismissing complaint for failure to state a claim.

Ingram v. Becher, 3 F.3d 1050 (7th Cir.
1993)

4. Complaint should not be dismissed unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

Duke v. Cleland, 5 F.3d 1399 (11th Cir.
1993)

5. Complaint may not be dismissed for failure to state a claim if there is a possibility that plaintiff could obtain some relief on the facts stated, even though plaintiff may not have prayed for the appropriate relief.

U.S. v. White County Bridge
Commission, 275 F.2d 529 (CA7 1950)

6. Whether the complaint states a cause of action on which relief can be granted is a question of law and, just as issues of fact, it must be decided after and not before the court has assumed jurisdiction over the controversy.

Bell v. Hood, 327 U.S. 678 (1946)

7. A judge ordering a dismissal based upon lack of subject matter jurisdiction retains no power to make judgments relating to the merits of the case.

Cook v. Kiewit Sons Co., 775 F.2d 1030,
1035 (9th Cir. 1985)

Pro Se Cites & Authorities

8. When considering motion to dismiss for failure to state claim upon which relief can be granted, actual allegations in complaint are taken as true and all reasonable inferences are drawn in favor of plaintiff.

Lee v. United States, 32 Fed. Cl. 530
(1995)

9. In passing on motion to dismiss, whether on ground of lack of jurisdiction over the subject matter or for failure to state a cause of action, allegations of complaint should be construed favorably to pleader.

Scheuer v. Rhodes, 416 U.S. 232 (1974)

10. When dismissal of pro se complaint is warranted, it should generally be without prejudice to afford plaintiff opportunity to file amended complaint.

Good v. Allian, 823 F.2d 64 (5th Cir.
1987)

11. In rendering decision on motion to dismiss, court must presume undisputed factual allegations included in complaint by plaintiff are true. (FRCP 12 (b) (1), 28 USCA)

IMS Services, Inc. v. United States, 32
Fed. Cl. 388 (1994);

12. The party who brings a suit is master to decide what law he will rely upon and does determine whether he will bring a suit arising thereunder.

Bell v. Hood, 327 U.S. 678

13. When challenged jurisdictional facts are so closely tied to the merits of a claim that a dismissal for lack of subject matter jurisdiction is essentially a dismissal on the merits, the court should generally assume jurisdiction and decide the case on its merits.

Lewis v. United States, 32 Fed. Cl. 301
(1994)

14. Court of Appeals may not assume the truth of allegations in a pleading which are contradicted by affidavit; if a plaintiff's proof of jurisdiction is limited to written material, it is necessary only for the materials to demonstrate facts which support a finding of jurisdiction in order to avoid a motion to dismiss.

Data Disc., Inc. v. Systems Tech. Assocs.,
Inc., 557 F.2d 1280 (9th Cir. 1977)

Pro Se Cites & Authorities

15. Dismissal based on failure to state a claim requires a judgment on the merits and cannot be decided before the court assumes jurisdiction.

Wages v. I.R.S., 915 F.2d 1230, 1234 (9th Cir. 1990)

16. We think appellants were entitled to file amended complaints as a matter of right. "A party may amend his pleading once as a matter of course at any time before a responsive pleading is served..." (Rule 15(a), Fed. R. Civ. P.) A motion to dismiss is not a "responsive pleading" within the meaning of the Rule.

Breier v. Northern California Bowling Proprietors Ass'n., 316 F.2d 787 (1963)

P

17. Pro se litigant is entitled to an opportunity to amend the complaint to overcome the deficiency unless it clearly appears from the complaint that the deficiency cannot be overcome by amendment.

Noll v. Carlson, 809 F.2d 1446 (9th Cir. 1998)

1

18. A judgment dismissing an action for failure to state a claim is a judgment on the merits.

United States v. Bechtel Corp., 648 F.2d 660, 663 (9th Cir.), cert. denied, 454 U.S. 1083

19. Where the alleged violations of the Fourth and Fifth Amendments, by defendants formed the sole basis of relief sought, and if the allegations had any foundation in truth, plaintiff's legal right had been violated, the court could not dismiss the action for want of jurisdiction on ground that the cause of action was potentially without merit.

Bell v. Hood, 327 U.S. 678 (1946)

20. While motion to dismiss for failure to state a claim may be treated as motion for summary judgment when evidentiary materials outside of pleadings are considered, rule dealing with subject matter jurisdiction contains no similar provision. (RCFC, Rule 12(b)(1,4), 28 U.S.C.A.)

Cook v. United States, 32 Fed. Cl. 783 (1995)

Pro Se Cites & Authorities

21. In considering motion to dismiss for lack of subject matter jurisdiction, court must accept as true any undisputed allegations of fact made by nonmoving party. (RCFC, Rule 12(b)(1), 28 U.S.C.A.)

Sam Gray Enterprises, Inc. v. United States, 32 Fed. Cl. 526 (1995)

22. If the question whether jurisdiction lies in federal court is to be decided on the basis of facts contained in the parties' affidavits, however, the party who bears the burden need only present a prima facie case for personal jurisdiction; proof by a preponderance of the evidence is not required...Moreover, on a motion to dismiss for lack of jurisdiction, uncontroverted allegations in the plaintiff's complaint must be taken as true and conflicts between the facts contained in the parties' affidavits must be resolved in the plaintiff's favor for purposes of determining whether a prima facie case for personal jurisdiction exists.

Zakaria v. Safani, 741 F.Supp. 1263 (1990)

23. A complaint may only be dismissed when "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

Conley v. Gibson, 355 U.S. 41, 45 (1957)

Pro Se Cites & Authorities

Nontaxpayer

Pro Se Cites & Authorities

1. Section 7421(a) of the Internal Revenue Code of 1954 (I.R.C.) states: “No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed,” with certain exceptions, one of which is a civil action by a nontaxpayer who claims that his or her property has been the subject of a wrongful levy.

Hollingshed v. United States, 85-2
USTC, 9772 (5th Cir. 1985)

2. The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws.

Long v. Rasmussen, 281 F. 236, 238
Economy Plumbing & Heating v. U.S.,
470 F.2d 585, 589

3. Revenue laws are a code or system in regulation of tax assessment collection and relate to taxpayers and not to non-taxpayers.

Bartell v. Riddlell, 202 F.Supp. 70
(1962)

4. Judicial Code provisions, rather than Internal Revenue Code provisions, were applicable and would give Federal District Court jurisdiction regardless of compliance with Internal Revenue Code provisions if property owner was a nontaxpayer.

Gerth v. United States, 132 F.Supp.
894 (1955)

5. Persons who are not taxpayers are not within the system and can obtain no benefit by following the procedures prescribed for taxpayers, such as the filing of claims for refund...there have been many cases where parties have sued to enjoin the assessment or collection of their moneys to pay the taxes of another...the courts have allowed these suits because the parties filing the suits were not taxpayers and were outside the revenue system of which the above statute (26 U.S.C., Section 3653 (1952 ed.)) is a part.

Rothensies v. Ullman, 110 F.2d 590 (3rd
Cir. 1940);
Raffaele v. Granger, 196 F.2d 620 (3rd Cir.
1952);
Bullock v. Latham, 306 F.2d 45 (2nd Cir.)

Person

Pro Se Cites & Authorities

1. Since in common usage, the term “person” does not include the sovereign, statutes not employing the phrase are ordinarily construed to exclude it.
United States v. Fox, 94 U.S. 315
United States v. General Motors Corp.,
2 F.R.D. 528, 530

Privacy/Private

Pro Se Cites & Authorities

1. When we ask you for information, we must first tell you several things: our legal right to ask for the information, why we are asking for it, and how it will be used. We must also tell you what could happen if we do not receive it and whether your response is voluntary or mandatory under the law.
Internal Revenue Service Privacy Act
Notice 609
2. The right of “privacy” is the right to be let alone.
Gill v. Curtis Pub. Co., 239 P.2d 630, 632
3. The right to “privacy” is not absolute.
Voneye v. Turner, 240 S.W.2d 588, 590
4. The right of “privacy” is the right to be let alone and the right to live one’s life in seclusion, without being subjected to unwarranted and undesired publicity.
Souder v. Pendleton Detective, Inc., 88
So.2d 716, 718
5. “Privacy” is the right of a person to be free from unwarranted publicity and is a right to live without unwarranted interference by the public in matters with which the public is not necessarily concerned.
Souder v. Pendelton Detective, Inc., 88
So.2d 716, 718
6. “Private” means personal or concerning an individual or peculiar to an individual, it relates to the privacy of an individual.
Guardian Savings & Trust Co. v. Bryar,
20 Ohio N.P., N.S. 417
7. The word “private” when applied to powers of municipality is used to designate proprietary as distinguished from governmental functions.
Keeter v. Town of Lake Lure, 141 S.E.2d
634, 643
8. Word “private” means not of a public nature, unconnected with others.
Stocking v. Johnson Flying Service, 387
P.2d 312, 317
9. “Private” is defined as belonging to, or concerning, an individual person, company, or interest; one’s own; not public; not general.
Mitchell v. Green, 39 S.E.2d 696, 698

Pro Se Cites & Authorities

10. The word “private” means apart from the state, peculiar to an individual.
R.F.C. v. Foust Distilling Co., 204 F.2d
343, 348
11. “Private” relates to individuals as opposed to that which is public or general.
Stovall v. Gartrell, 332 S.W.2d 256, 260
12. Statute was not “private” because applicable only to teachers’ pensions in cities of first class.
State ex rel. Teweles v. Public School
Teachers’ Annuity and Retirement Fund
Trustees of City of Milwaukee, 291 N.W.
775, 777
13. A “special’ of “private” act is one operating only on particular persons and private concerns; a “local act” is one applicable only to a particular part of the legislative jurisdiction.
Trumper v. School Dist. No. 55 of
Musselshell County, 173 P. 946, 947
14. Mr. Webster says that, in general “public” expresses something common to mankind at large, to a nation, state, city, or town, and is opposed to “private,” which denotes that which belongs to an individual, to a family, to a company or a corporation.
Chamberlain v. City of Burlington, 19
Iowa 395, 402
15. “Private” and “separate” mean substantially the same thing. The word “separate,” when used in a certificate of acknowledgment, imports that the acknowledgment of the grantor was taken by a private examination.
Timber v. Desparois, 101 N.W. 879, 881
16. The term “public” is opposed to the term “private.”
State v. Whitesides, 9 S.E. 661
17. “Public,” is a convertible term, and, when used in an act of assembly, may refer to the whole body politic –that is, all the inhabitants of the state – or to the inhabitants of a particular place only...In its most comprehensive sense, it is the opposite of “private.”
Houston Tp. Poor Dist. v. Benzette Tp.
Poor Dist., 19 A. 1060, 1061

Pro Se Cites & Authorities

18. The phrase “public and official” has varied meanings, depending on the context in which it is found. “Public” may be used in contradistinction to “private,” or it may be the antithesis of “secret.” “Public” means of, pertaining to, or affecting the people at large or the community, distinguished from “private” or “personal.” “Official” means of or pertaining to an office or public trust.

Farrell v. New York Evening Post, 3
N.Y.S.2d 1018, 1022

19. “Public” referred to community generally, not to different individual members thereof.

Areal v. Home Owner’s Loan
Corporation, 43 N.Y.S.2d 538, 540

20. The “public” within protection of mail order fraud statute includes the vast multitude of the ignorant, the unthinking and the credulous.

Gottlieb v. Schaffer, 141 F.Supp. 7, 16

21. The word “public” does not mean everybody all the time but the word must be interpreted in each case according to use and intent.

Bennetts, Inc. v. Carpenter, 137 P.2d
780, 781

22. The term “public” and “general” are sometimes used as synonymous, meaning merely that which concerns a multitude of persons.

Stockton v. Williams, 1 Doug. 546, 570,
citing Greenl.Ev. 152

23. The word “municipal,” as originally used in its strictness, applied to cities only, but it now has a much more extended meaning, and, when applied to corporations, the words “municipal,” “political,” and “public” are used interchangeably.

Curry v. District Tp. Of Sioux City, 17
N.W. 191

24. The law of unfair competition is not made for the protection of experts, but the “public,” which includes the ignorant, unthinking, and the credulous, who in making purchases are governed by appearances and general impressions.

J.N.Collins Co. v. F.M. Paist Co., 14
F.2d 614, 615

Pro Se Cites & Authorities

25. A nuisance is “public” when it affects rights to which every citizen is entitled, even though it in fact affects only a small fraction of the people of the state.

State v. Jacob E. Decker & Sons, 191
N.W. 359, 361

26. A “nuisance” may be anything which essentially interferes with the enjoyment of life or property, and a nuisance is “public” when it affects the rights to which every citizen is entitled.

Murden v. Commissioners of Town of
Lewes, 96 A. 506, 507

27. Neither a town nor its officers have any right to appropriate or interfere with private property.

Mitchell v. City of Rockland, 45 Me.
496

Pro Se Cites & Authorities

Pro Se

Pro Se Cites & Authorities

1. The pleading of one who pleads pro se for the protection of civil rights should be liberally construed.

Blood v. Margis, 322 F. 1086
2. Pro se petitioners arguments must be liberally construed on appeal.

U.S. v. Eatinger, 902 F.2d 1383
3. When dismissal of pro se complaint is warranted, it should generally be without prejudice to afford plaintiff opportunity to file an amended complaint.

Good v. Allain, 823 F.2d 64 (5th Cir. 1987)
4. To insure that pro se complaints are given fair and meaningful consideration, they are liberally construed however inartfully pleaded.

Talley v. Lane, 13 F.2d 1031 (7th Cir. 1994)
5. Pro se litigants pleadings are to be construed liberally and held to less stringent standard than formal pleadings drafted by lawyers; if court can reasonably read pleadings to state valid claim on which litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with pleading requirements.

Simmons v. Abruzzo, 49 F.3d 83 (2nd Cir. 1995);
Ferran v. Town of Nassau, 11 F.3d 21 (2nd Cir. 1993);
Boag v. MacDougall, 454 U.S. 364 (1982);
Haines v. Kerner, 404 U.S. 519 (1972)
6. Pro Se pleadings are held to less stringent pleading requirements, and that technical rigor in the examination of such pleadings is inappropriate.

Cameron v. I.R.S., 593 F.Supp. 1540 (1984)
7. In reviewing pro se complaint, Court of Appeals must employ standards less stringent than if complaint was drafted by counsel.

Baker v. Cuomo, 58 F.3d 814 (2nd Cir. 1995)
Curtis v. Bembenek, 48 F.3d 281 (7th Cir. 1995)

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8. Pro se petitioners arguments must be liberally construed on appeal.
Woods v. Thieret, 903 F.2d 1080 (7th Cir.
1990)

Pro Se Cites & Authorities

Registered Mail

Pro Se Cites & Authorities

1. If any such claim, statement, or other document is sent by United States registered mail, such registration shall be prima facie evidence that the claim, statement, or other document was delivered to the agency, office, or officer to which addressed, and the date of registration shall be deemed the postmark date.

Public Law 85-866, Section 89,(a)(1)

Relief

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1. The Seventh Circuit Court of Appeals has held that a public official does not have immunity simply because he operates in a discretionary manner. It indicated that public servants are to held liable when they abused their discretion or acted in a way that was arbitrary, fanciful or clearly unreasonable.

Littelton v. Berling, 468 F2d 389 (C.A. 7 Ill 1972)

2. As long as information contained in agency's files is capable of being verified, then, under Privacy Act, agency must take reasonable steps to maintain accuracy of information to assure fairness to individual and, if agency willfully or intentionally fails to maintain its records in that way, and consequently makes determination adverse to individual, it will be liable to that person for money damages.

Sellers v. Bureau of Prisons, 959 F2d 307 (DC Cir. 1992)

3. Punitive damages are appropriate in cases of reckless or callous disregard for plaintiff's rights or intentional violations of federal law.

U.S. v. Balistreri, 981 F2d 916 (7th Cir. 1992)

4. Word "damages" is commonly understood to connote payment in money for plaintiff's losses caused by defendant's breach of duty.

Griffith v. State Of Colo., Div. Of Youth Services, 17 F3d 1323 (10th Cir. 1994)

5. Compensatory damages serve to compensate for harm sustained by party.

Deisler v. McCormack Aggregates, Co., 54 F3d 1074 (3rd Cir. 1995)

6. Innocent mistake is a defense to both a criminal and civil complaint - so is mere negligence.

U.S. v. Cheek, 882 F2d 1263 (7th Cir. 1989)

7. Federal courts have the power to order expungement of government records where necessary to vindicate rights secured by Constitution or by statute.

U.S. v. Pinto, 1 F3d 1069 (10th Cir. 1993)

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8. Admission of Procedural Violations Requires Relief because the federal defendants have admitted, in every instance claimed by this Aggrieved Citizen, that they did not follow proper procedures. They have admitted, through That every fact alleged or necessarily inferred in the complaint is true.

Todaro v. Orbit Int'l. Travel, Ltd., 755
F.Supp. 1229
Mitchell v. King, 537 F.2d 385
Fitzke v. Shappell, 468 F.2d 1072

9. Single violation of Fair Debt Collection Practices Act (FDCPA) provision prohibiting debt collector from using any false, deceptive or misleading representations is sufficient to establish civil liability under FDCPA.

Clomon v. Jackson, 998 F.2d 1314 (2nd
Cir. 1993)

10. Punitive damages are injuries and sufferings that were intended, or occurred through malice, carelessness or negligence amounting to a wrong so reckless and wanton as to be without excuse.

Ross v. Leggett, 28 N.W. 695, 697

11. One who unintentionally fails to perform a duty should pay compensatory damages only. One who maliciously infringes another's legal rights should pay both compensatory and punitive damages.

Western Union Tel. Co. v. Ferguson,
60 N.E. 674 (1901)

12. That public officers should be held to the faithful performance of their official duties, and made to answer in damages to all persons who may have been injured through their malfeasance, omission, or neglect, to which the persons injured have in no respect contributed, cannot be denied.

Lick v. Madden, 36 Cal. 208
First Nat'l. Bank Of Key West v. H.H.
Filer, 87 ALR 267

13. It is well settled that, where the law imposes upon a public officer the performance of ministerial duties in which a private individual has a special and direct interest, the officer will become liable to such individual for any injury which he may proximately sustain in consequence of the failure or neglect of the officer either to perform the duty at all, or to perform it properly. In such case the officer is liable as well for nonfeasance as for misfeasance or malfeasance.

First Nat'l. Bank of Key West v. H.H.

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Filer, 87 ALR 267

14. That the individual who considers himself injured, has a right to resort to the laws of his country for a remedy.

Marbury v. Madison, 1 Cranch 137

15. When a government agent acts in an unconstitutional manner, he becomes personally liable for money damages.

Bivens v. Six Unknown Agents, 403
U.S. 388

16. Punitive damages are appropriate in cases of reckless or callous disregard for plaintiff's rights or intentional violations of federal law.

U.S. v. Balistrieri, 981 F.2d 916 (7th Cir.
1992)

17. Compensatory damages serve to compensate for harm sustained by party.

Deisler v. McCormick Aggregates Co.,
54 F.3d 1074 (3rd Cir. 1995)

18. Punitive damages may not be so high as to shock judicial conscience.

Tingley Systems, Inc. v. Norse
Systems, Inc., 49 F.3d 93 (2nd Cir. 1995)

19. "Injury" within constitutional section providing that every person, for an injury done him in his land, goods, person or reputation, shall have a remedy by due process of law is damage resulting from breach of a legal duty.

Randle v. Payne, 107 So.2d 907, 911

20. Constitutional guarantee insuring a remedy for "injuries" to person, property, or character does not guarantee a remedy for every species of injury, but only such as results from invasion or infringement of a legal right or a failure to discharge a legal duty.

Scholberg v. Itnyre, 58 N.W.2d 698,
699

21. Remedy is defined as the means employed to enforce a right or redress an injury.

Paulsen v. Reinecke, 181 La. 917; 97
ALR 1184

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22. Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property or character; these words were not inserted in the constitution as a matter of idle ceremony, or as a string of glittering generalities.

Rhodes v. Walsh, 57 N.W. 212, 213

23. Redress for constitutional injuries cannot be provided without evidence that injuries were caused by federal agents acting within parameters of his authority.

Otto v. Heckler, 781 F.2d 754

24. The obligation to do justice rests upon all persons, natural and artificial, if one obtains the money or property of others without authority, the law, independently of express contract, will compel restitution or compensation.

Rankin v. Emigh, 218 U.S. 27

25. Federal courts may exercise their supervisory powers over grand juries to remedy violations of recognized rights, protect integrity of federal courts, and deter illegal conduct by government officials.

U.S. v. DiBernardo, 755 F.2d 1470 (11th Cir. 1985)

26. If seeking only monetary damages under Bivens, exhaustion is not required.

Lyons v. U.S. Marshals, 840 F.2d 202 (3rd Cir. 1988)

27. If administrative remedies are pursued, the citizen may win complete relief without needlessly invoking judicial process...We ought not to encourage litigants to bypass simple, inexpensive and expeditious remedies available at their doorstep in order to invoke expensive judicial machinery on matters capable of being resolved at local levels.

Moore v. East Cleveland, 431 U.S. 494, 525 (1976)

28. Court of Appeals may review a ruling motion for abuse of discretion.

Wages v. I.R.S., 915 F.2d 1230 (9th Cir. 1990)

29. Federal courts will discharge their duty to protect constitutional rights.

Procunier v. Martinez, 416 U.S. 396

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30. Courts will intervene to prevent an abuse of discretion.
People ex rel. Ghent v. Cleveland, C.C.
& St. L.R. Co., 6 N.E.2d 851; 110 A.L.R.
119
31. One who unintentionally fails to perform a duty should pay compensatory damages only, but one who maliciously infringes another's legal rights should pay both compensatory and punitive damages.
Western Union Tel. Co. v. Ferguson,
60 N.E. 674 (1901)
32. Irreparable harm would rest upon plaintiffs showing that their constitutional rights have been violated; violation of a constitutional right is irreparable harm, even for minimal periods of time; one who shows deprivation of a constitutional right need go no further in showing the requisite harm for injunctive relief.
Hill v. Green County School District,
848 F.Supp. 697 (S.D. Miss. 1994)
33. Relief by way of injunction should be granted where an internal revenue officer, without notice, has undertaken to assess a penalty for an alleged criminal act, and threatens to enforce payment by seizure and sale of property without an opportunity for a hearing of any kind.
Lipke v. Kederer, 259 U.S. 557
34. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or any officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein denied on the ground that it is against the United States or that the United States is an indispensable party.
Beller v. Middendorf, 632 F.2d 788
(1980)
35. Relief - FRCP
Rule 8(a) must contain three things:
1. A short and plain statement of courts jurisdiction;
 2. A short and plain statement of claim that pleader is entitled to relief;
 3. A demand for judgment for the relief pleader seeks. Relief in the alternate or of several different types may be demanded.

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36. Provides damage remedy for violations of the Fourth Amendment by internal revenue agents.

G.M. Leasing Corp. v. United States,
429 U.S. 338, 360;
Capozzoli v. Tracey, 663 F.2d 654, 656

37. Internal Revenue Service agents do not have absolute immunity from liability for damages arising out of performance of their duties; agents are immune only if they act in good faith, i.e., with reason to believe that they are acting lawfully.

Cameron v. I.R.S., 773 F.2d 126, 127
(1985)

38. Venue statute (28 U.S.C.A, Section 1391) designed to permit action which is essentially against United States to be brought locally rather than in District of Columbia as would normally be required if Washington, D.C., is official residence of agency sued only applies to actions in which defendant is officer or employee of United States or any agency thereof acting in his official capacity or under color of legal authority; it does not apply to actions for money damages brought against federal officials in their individual capacities.

Gilbert v. DaGrossa, 756 F.2d 1455,
1457 (1985)

39. Section 1391(e) only applies to actions in which the defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority.

Stafford v. Briggs, 444 U.S. 527

40. It has long been the rule that the bar of sovereign immunity cannot be avoided by naming officers and employees of the United States as defendants.

Larson v. Domestic & Foreign
Commerce Corp., 337 U.S. 682, 688

41. For a breach of its contract by a State, no remedy is provided by the Constitution of the United States against the State itself.

Antoni v. Greenhow, 107 U.S. 783

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42. To take away all remedy for the enforcement of a right is to take away the right itself. But that is not in the power of the State.

Siebert v. Lewis, 122 U.S. 284, 295

43. Immunity from suit is a high attribute of sovereignty a prerogative of the State itself which cannot be availed of by public agents when sued for their own torts. The 11th Amendment was not intended to afford them freedom from liability in any case where, under color of their office, they have injured one of the State's citizens. To grant them immunity would be to create a privileged class free from liability from wrongs inflicted or injuries threatened. Public agents must be liable to the law, unless they are to be put above the law.

Hopkins v. Clemson Agri. College, 221 U.S. 636;

Old Colony Trust Co. v. Seattle, 271 U.S. 427

44. A suit against a municipal corporation is not a suit against "one of the United States" within the meaning of this amendment (Eleventh Amendment). That such a corporation is the agent of the state government is undoubtedly true, but it does not follow therefrom that a suit against it or its officers is such a suit.

Camden Interstate R.Co. v. Catlettsburg, 129 Fed. Rep. 422 (1904)

45. The Eleventh Amendment of the Constitution of the United States is limited to those suits in which a state is a party on the record, and does not prohibit suits against counties.

Lincoln County v. Luning, 133 U.S. 530 (1821)

46. Exhaustion of administrative remedies is not required when plaintiffs raise constitutional question and irreparable injury will occur without preliminary judicial relief.

Able v. United States, 847 F.Supp. 1038 (1994)

47. Any right to monetary relief against the government must be grounded in contract, statute, or the Constitution.

Detroit International Bridge Company v. United States, 32 Fed. Cl. 225 (1994)

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48. The Claims Court's decision to dismiss a complaint for lack of jurisdiction is a question of law subject to complete and independent review by this court.

Shearin v. United States, 992 F.2d 1195
(Fed. Cir. 1993)

49. Punitive damages are injuries and sufferings that were intended, or occurred through malice, carelessness or negligence amounting to a wrong so reckless and wanton as to be without excuse.

Ross v. Leggett, 28 N.W. 695, 697
(1886)

50. The rule laid down in the Six Carpenter's case, 8 Coke 146, that if a man abuses an authority given him by the law he becomes a trespasser ab initio, has never been questioned.

Bass v. State, 92 N.Y.S.2d 42 (1949)

51. When one fails to perform part of his duty and it impinges upon the rights of a citizen, he is said to be a trespasser from the beginning because his whole justification fails, and he stands as if he never had any authority at all to act.

Brock v. Stimson, 108 Mass. 520 (1871);
Hefler v. Hunt, 112 A. 675, 676 (1921)

52. One who interferes with another's liberty does so at his peril.

Kroger v. Passmore, 93 P. 805, 807
(1908);
McBeath v. Campbell, 12 S.W.2d 118,
122 (1929)

53. Example of damages or injuries sustained because of unlawful acts: Bodily pain, great physical inconvenience and discomfort, loss of time, mental suffering, injury to reputation, distress, and anguish, humiliation of mind, embarrassment, shame, public ridicule, invidious publicity, and public disgrace.

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Rights

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1.the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice.
Davis v. Wechsler, 263 U.S. 22, 24
2. Opportunity to question witness is matter of right.
Johnson v. U.S., 418 A2d 136
3. Person who sees a crime being committed has no legal duty to either stop it or report it.
U.S. v. Zimmerman, 943 F2d 1204 (10th Cir. 1991)
4. Leave to amend pleadings should be liberally granted unless other parties to suit would be prejudiced.
Dale v. Weller, 956 F2d 813 (8th Cir. 1992)
5. Right to fair trial is basic requirement of due process and includes right of unbiased judge.
Haupt v. Dillard, 17 F3d 285 (9th Cir. 1994)
6. Person is not criminally responsible unless criminal intent accompanies wrongful act.
Gasho v. U.S., 39 F3d 1420 (9th Cir. 1994)
7. The fundamental maxims of a free government seem to require, that the rights of personal liberty and private property should be held sacred.
Wilkinson v. Leland, 27 U.S. 627
8. Failure to adhere to agency regulations may amount to denial of due process if regulations are required by constitution or statute.
Curley v. United States, 791 F.Supp. 52
9. An individual who is engaged in lawful, innocent and harmless activities for lawful compensation is not subject to any income or revenue tax. All Americans by nature are free and independent and have inalienable rights. Among these are enjoying and defending life and liberty; acquiring, possessing, and protecting property. Included in the right of personal liberty and right of private property is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by

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which labor and other services are exchanged for money or other forms of property.

Coppage v. Kansas, 236 U.S. 1, 14

10. All household goods owned by the user thereof and used solely for noncommercial purposes shall be exempt from taxation, and such person entitled to such exemption shall not be required to take any affirmative action to receive the benefit of such exemption.

Article 9, Section 2, Para (4)
Constitution of Arizona

12. Depriving one of property without just compensation is a denial of due process of law.

Hoffman v. Stevens, 177 F.Supp. 808
(1959)

13. Tax protester's First Amendment right to petition for redress of grievances was violated when she was charged with corruptly endeavoring to intimidate and impede IRS agents by filing factually accurate, nonfraudulent criminal trespass complaints against agents after they entered upon protester's property in total disregard of "no trespassing" signs and protester's previous letters requesting that her privacy rights be respected.

United States v. Hylton, 710 F.2d 1106

14. Private ownership of property and its enjoyment secure from arbitrary governmental interference are cherished, fundamental concepts, and are two of the features distinguishing this society from those with oppressive governments.

Bothke v. Fluor Engineers and
Constructors, Inc., 713 F.2d 1413 (1983)

15. There should be no arbitrary deprivation of life or liberty, or arbitrary spoilation of property.

Barber v. Connolly, 113 U.S. 27, 31

16. The due process clause of the Fifth Amendment guarantees to each citizen the equal protection of the laws and prohibits a denial thereof by any Federal official.

Bolling v. Sharpe, 327 U.S. 497

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17. Due process clause not only applies when one's physical liberty is threatened but also where a person's good name, reputation, honor or integrity are at stake.

Gotkin v. Miller, 514 F.2d 125 (1975)

18. The essential elements of due process of law are notice and opportunity to defend.

Simon v. Croft, 182 U.S. 427

19. Anything that is a right cannot be subject to conditions or licensing.

Lane v. Wilson, 307 U.S. 268, 275

20. No excise tax may be imposed upon a right secured by the Constitution.

Grosican v. American Press Co., 297 U.S. 233 (1936)

21. Courts will intervene to prevent an abuse of discretion.

People ex rel. Ghent v. Cleveland, C.C. & St. L.R. Co., 6. N.E.2d 851; 110 ALR 119

22. Waivers of constitutional rights not only must be voluntary, they must be knowingly intelligent acts done with sufficient awareness of the relevant circumstances and consequences.

Brady v. U.S., 397 U.S. 742, 748

23. Constitutional right of access to courts applies to civil as well as constitutional claims.

Jackson v. Procunier, 789 F.2d 307 (1986)

24. Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.

Miranda v. Arizona, 348 U.S. 436, 491

25. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.

Boyd v. United States, 116 U.S. 616

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26. Federal government is always charged with duty of protecting rights and property of its citizens.

U.S. v. Petersen, 91 F.Supp. 209,
affirmed 191 F.2d 154, certiorari denied
72 S.Ct. 174, 342 U.S. 885

27. An injury is “irreparable” only if it cannot be undone through monetary remedies, and that the right to privacy must be carefully guarded for once an infringement has occurred it cannot be undone by monetary relief.

Deerfield Medical Center v. City of
Deerfield Beach, 661 F.2d 328 (1981)

28. We have already determined that the constitutional right to privacy is “either threatened or in fact being impaired”, and this conclusion mandates a finding of irreparable injury.

Elrod v. Burns, 427 U.S. @ 373

29. The constitutional provisions that no person shall be deprived of life, liberty, or property without due process of law, nor private property taken for public use without just compensation, are intended as limitations upon the power of the government in its dealings with the citizen, and relate to that class of rights whose protection is peculiarly within the province of the judicial branch of government, and that the courts are bound to give remedy for unlawful invasion of rights of property by officers of any branch of government.

United States v. Lee, 106 U.S. 196 (1882)

30. The Citizen knows no person, however near to those in power, or however powerful himself, to whom he need yield the rights which the law secures to him when it is well administered. When he, in one of the courts of competent jurisdiction, has established his right to property, there is no reason why deference to any person, natural or artificial, not even the United States, should prevent him from using the means which the law gives him for the protection and enforcement of that right.

United States v. Lee, 106 U.S. 196 (1882)

31. Judge must be fair to all parties and may not do or say anything that might prejudice either litigant.

U.S. v. Price, 13 F.3d 711 (3rd Cir. 1994)

32. Right to a fair trial is basic requirement of due process and includes the right of unbiased judge.

Haupt v. Dillard, 17 F.3d 285

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33. Person is not criminally responsible unless criminal intent accompanies wrongful act.
Gasho v. U.S., 39 f.3D 1420 (9TH Cir. 1994)
34. Where property or rights are enjoyed under a grant or contract made by a State, they cannot wantonly be invaded. Whilst the State cannot be compelled by suit to perform its contracts, any attempt on its part to violate property or rights acquired under its contracts, may be judicially resisted; and any law impairing the obligation of contracts under which such property or rights are held is void and powerless to affect their enjoyment.
Hans v. State of Louisiana, 134 U.S. 1, 21
35. The public is entitled to be informed as to the procedures and practices of a governmental agency, so as to be able to govern their actions accordingly.
Berends v. Butz, 357 F.Supp. 143 (1973)
36. Neither the state nor the municipality, which is an arm of the state, can deprive any person of life, liberty, or property without due process of law.
Wilson v. Zanesville, 13 Ohio St. 286; 199 N.E. 187
37. The general rule is that parties may rely only on constitutional rights which are personal to themselves.
National Welfare Rights Organization v. Wyman, 304 F.Supp. 1346 (1969)
38. The provisions in the fifth amendment to the Constitution of the United States, declaring that private property shall not be taken for public use without just compensation, is intended solely as a limitation on the exercise of power by the government of the United States, and is not applicable to the legislation of the States. (Fourteenth Amendment is)
Barron v. Mayor and City Council of City of Baltimore, 32 U.S. 243 (1833)
40. The property which every man has is his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property.

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Butchers' Union Co. v. Crescent City,
111 U.S. 746 (1884)

41. Exhaustion of administrative remedies is not required when plaintiffs raise constitutional question and irreparable injury will occur without preliminary judicial relief.

Able v. United States, 847 F.Supp. 1038
(1994)

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Seizure

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1. Failure to secure a valid court order must be punishable for those conducting a search or seizure without it, if the rights of the Fourth Amendment of the U.S. Constitution are to be maintained. If no penalty will be ever attached to a failure to seek a warrant, as distinguished from the officer making their own, correct, determination of probable cause, warrants will never be sought.

U.S. v. Mason, 290 F.Supp. 843 (1968)

2. When the right of privacy must be reasonably yielded to the right of search, is as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent.

Johnson v. U.S., 333 U.S. 10,14

3. It is a cardinal rule that, in seizing goods and articles, law enforcement agents must secure and use search warrants whenever reasonable practicable...to provide the necessary security against unreasonable intrusions upon the private lives of individuals, the framers of the Fourth Amendment required adherence to judicial processes wherever possible, and subsequent history has confirmed the wisdom of that requirement.

Trupiano v. U.S., 334 U.S. 705

4. For a levy to be statutorily authorized in the circumstances here, two conditions must be fulfilled. First, a 10 day notice of intent to levy must have issued. (See 26 USC, Section 6331(a)). Second, the taxpayer must be liable for the tax. Id. Tax liability is a condition precedent to the demand. Merely demanding payment, even repeatedly, does not cause liability.

Bothke v. Fluor Engineers and
Constructors, Inc., 713 F.2d 1414 (1983)

5. For the condition precedent of liability to be met, there must be a lawful assessment, either a voluntary one by the taxpayer, or one procedurally proper by the IRS. Because this country's tax system is based on voluntary self-assessment, rather than distraint.

Flora v. United States, 362 U.S. 145, 176
(1960)

6. The Constitution protects individuals against invasion of their privacy by the government.

Whalen v. Roe, 429 U.S. 589 (1977)

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7. One claiming Fourth Amendment violation must show that he had a legitimate expectation of privacy and that the expectation was invaded by government action.

U.S. v. Welliver, 976 F2d 1148 (8th Cir. 1992)

8. Fifth Amendment due process clause held to generally prohibit federal government from seizing real property in civil forfeiture without prior notice and hearing.

U.S. v. Good Real Property, 126 LEd2d 490 (1993)

9. Law of trespass forbids intrusions onto land that Fourth Amendment would not proscribe.

U.S. v. Hall, 47 F3d 1091 (11th Cir. 1995)

10. United States cannot take property from an innocent spouse to satisfy tax obligation of delinquent spouse.

Raffaele v. Granger, 196 F.2d 620 (3rd. Cir. 1952)

11. A tax penalty must be properly assessed and the taxpayer properly noticed before the penalty is enforceable.

Stallard v. United States, 806 F.Supp. 152 (1992)

12. A judicial warrant for tax levies was necessary to protect against unjustified intrusions into privacy...forcible entry by IRS officials onto private premises without prior judicial authorization is an invasion of privacy.

G.M. Leasing Corp. v. United States, 429 U.S. 338 (1977)

13. There is no general power in the federal government to seize private property.

Schneider v. District of Columbia, 117 F.Supp. 705, modified Berman v. Parker, 348 U.S. 26

14. There should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property.

Barber v. Connolly, 113 U.S. 27, 31

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15. Internal Revenue Service, with its expertise, is obliged to know its own government statutes and to apply them realistically.

Bothke v. Fluor Engineers & Const., et al.,
713 F.2d 1405 (1983)

16. Federal government agencies are obliged to conform to their own regulatory standards.

Laningham v. U.S., 2 Cl. Ct. 535

17. We find it hard to imagine a case where the Government can take a citizen's money, by refusing him something to which he is entitled, and then keep the money on the ground of estoppel; this defense is beneath the dignity of the Government.

Clapp v. United States, 117 F.Supp. 576
(1954) cert. denied, 348 U.S. 834 (1954)

18. It is a well established rule that a consent search is unreasonable under the Fourth Amendment if the consent was induced by the deceit, trickery or misrepresentation of the Internal Revenue Agent.

United States v. Rothstein, 530 F.2d 1275
(5th Cir. 1976);
United States v. Dawson, 486 F.2d 1326
(5th Cir. 1973)

19. A "levy" requires that property be brought into legal custody through seizure, actual or constructive, levy being an absolute appropriation in law of the property levied on, and mere notice is insufficient.

United States v. O'Dell, 160 F.2d 304

20. The method for accomplishing a levy on a bank account is the issuing of warrants of distraint, the making of the bank a party, and the serving with notice of levy, copy of the warrants of distraint, and notice of lien.

United States v. O'Dell, 160 F.2d 304

21. Section 3692 does not prescribe any procedure for accomplishing a levy upon a bank account. The method followed in the cases is that of issuing warrants of distraint, making the bank a party, and serving with the notice of levy copy of the warrants of distraint and notice of lien.

Commonwealth Bank v. United States,
115 F.2d 327:
United States v. Bank of United States, 5
F.Supp. 942, 944

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22. Taxpayers do not have a constitutional right to a pre-levy hearing.
Phillips v. Commissioner, 283 U.S. 589,
593-601
23. We previously held that a statutory provision enabling a taxpayer to challenge an assessment after it has been levied satisfies the dictates of due process.
Todd v. United States, 849 F.2d 365, 369
24. A “seizure” of property, occurs when there is some meaningful interference with an individual’s possessory interests in that property.
United States v. Jacobsen, 466 U.S. 109,
113
25. Extra-official or casual notice, or a hearing granted as a matter of favor or discretion in proceedings for the taking of one’s property to satisfy his alleged debt or obligation, is not a substantial substitute for the due process of law which U.S. Const., 14th Amend., requires.
Coe v. Armour Fertilizer Works, 237 U.S.
413 (1915)
26. As between taxpayer and the Government, seizure and sale of taxpayer’s property for delinquent payroll taxes was invalid where the Government did not provide notice by personal service or leaving written notice at usual place of abode, as required by statute, even though notice was served by certified mail and taxpayer had actual notice....when the government seeks to enforce the laws, it must follow the steps which Congress has specified.
Goodwin v. United States, 935 F.2d 1061
(9th Cir. 1991)
27. Every acquisition, holding, or disposition of the property by the Federal Government depends upon proper exercise of the constitutional grant of power.
Mesta Machine Company v. County of Allegheny, Pennsylvania, 322 U.S. 174,
198
28. A husband’s pre-marital tax liability could be enforced by lien on his interest in community property, but not his wife’s interest in that property.
Draper v. United States, 243 F.Supp. 563
(Wash. 1965)

Pro Se Cites & Authorities

29. Except in certain carefully defined classes of cases, a search of private property without proper consent is “unreasonable” unless it has been authorized by a valid search warrant.

Camara v. Municipal Court, 387 U.S. 523,
528

30. The fourth amendment protects two types of expectations, one involving “searches” and the other “seizures.” A search occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. A seizure occurs where there is some meaningful interference with an individual’s possessory interests in that property.

Horton v. California, 496 U.S. 128

31. We do not agree with this (7th Circuit Court’s) interpretation of the 4th Amendment. The Amendment protects the people from unreasonable searches and seizures of their persons, house, papers, and effect. This language surely cuts against the novel holding above, and our cases unmistakably hold that the Amendment protects property as well as privacy.

Soldal et u. v. Cook County, Illinois, et
al., 113 S.Ct. 538 (1992)

32. When the government seizes property not to preserve evidence of criminal wrongdoing, but to assert ownership and control over the property, its action must also comply with the Due Process Clause.

Fuentes v. Shevin, 407 U.S. 67

Sixteenth Amendment

Pro Se Cites & Authorities

1. The Sixteenth Amendment does not purport to confer power to levy income taxes in a generic sense, as that authority was already possessed, or to limit and distinguished between one kind of income tax and another; but its purpose is to relieve all income taxes when imposed from apportionment and from consideration of the source whence the income is derived.

Brushaber v. Union Pacific Railroad
Company, 240 U.S. 1

2. The source of the taxing power is not the 16th Amendment, it is Article I, Section 8, of the Constitution.

Penn. Mutual Indemnity Co. v.
Commissioner, 32 T.C. (1959), CCH at
page 659

3. Explains why the 16th Amendment was created.

Brushaber v. Union Pacific Railroad
Company, 240 U.S. 1, @ 17, 18, 19

4. In the matter of taxation, the Constitution recognizes the two great classes of direct and indirect taxes, and lays down two rules by which their imposition must be governed, namely: The rule of apportionment as to direct taxes, and the rule of uniformity as to duties, imposts and excises.

Pollock v. Farmers' Loan & Trust Co.,
157 U.S. 429, 557

5. From another point of view, the 16th Amendment demonstrates that that no such purpose was intended and on the contrary shows that it was drawn with the object of maintaining the limitations of the Constitution and harmonizing their operation. We say this because it is to be observed that although from the date of the Hylton Case because of statements made in the opinions in that case it had come to be accepted that direct taxes in the constitutional sense were confined to taxes levied directly on real estate because of its ownership, the Amendment contains nothing repudiating or challenging the ruling in the Pollock Case that the word direct had a broader significance since it embraced also taxes levied directly on personal property because of its ownership, and therefore the Amendment at least impliedly makes such wider significance a part of the Constitution - a condition which clearly demonstrates that the purpose was not to change the existing interpretation except to the extent necessary to accomplish the result intended, that is, the prevention of the resort to the sources from which a taxed income was derived in order to cause a direct tax on the income to be a direct tax on the source itself and thereby to take an income tax out of the class of excises, duties and imports and place it in the class of direct taxes.

Pro Se Cites & Authorities

Brushaber v. Union Pacific Railroad
Company, 240 U.S. 1 @ 19

Pro Se Cites & Authorities

Social Security

Pro Se Cites & Authorities

1. Social Security is a social welfare program essentially universal in its application, rather than a contractual arrangement.

Nat'l. Railroad Passenger Corp. v.
Atchison, T. & S.F. Ry., No. 83-1492
(1985)

2. Congress provided that the states could join the Social Security System by means of individual agreements in an attempt to permit (them) to play a continued role.

FERC v. Mississippi, 456 U.S. 742, 765
(1982)

3. Social security claimant bears burden of proving disability.

Smith v. Shalala, 987 F.2d 1371 (8th Cir.
1993)

4. Social Security Administration may not reject claim of fatigue based solely on lack of medical support.

Aborn v. Sullivan, 959 F.2d 111 (8th Cir.
1992)

5. In disability cases, greater weight is afforded to opinion of treating physician that that of non-treating physician.

Ramirez v. Shalala, 8 F.3d 1499 ((9th Cir.
1993)

Sovereignty

Pro Se Cites & Authorities

1. The words “sovereign people” are familiarly used to describe the political body, who, according to our republican institutions, form the sovereign, and who hold the power and conduct the government through their representatives. Every citizen is one of these people and a constituent member of this sovereignty.

Scott v. Sandford, Mo., 60 U.S. 393, 404

2. The State of Georgia is not a sovereign power, in the sense that it is exempt from suit in the federal courts by a private citizen.

Chisholm v. State of Georgia, 2 U.S. 419, 455 (Resulted in creation of 11th Amendment)

3. “Sovereignty” means supremacy in respect of power, domination or rank; supreme dominion, authority or rule.

Brandes v. Mitterling, 196 P.2d 464

4. “Government” is not “sovereignty.” “Government” is the machinery or expedient for expressing the will of the sovereign power.

City of Bisbee v. Cochise County, 78 P.2d 982

5. “Sovereignty of a state” embraces the power to execute its laws and the right to exercise supreme dominion and authority except as limited by the fundamental law.

People ex rel. Attorney General v. Tool, 86 P. 224, 226

Special/General Appearance

Pro Se Cites & Authorities

1. If a defendant by his appearance insists only upon objection that he is not in court for want of jurisdiction over his person and confines his appearance for that purpose only, he has made a "special appearance," but if he raises any other question, or asks any relief which can only be granted upon hypothesis that court had jurisdiction of his person, he has made a "general appearance."
Bank of America Nat. Trust & Sav.
Ass'n v. Harrah, 248 P.2d 814, 815
2. While a special appearance may be made to attack court's jurisdiction over defendant's person, joining therewith of attack on plaintiff's affidavit renders appearance a "general appearance" waiving all objections to such jurisdiction.
Sowl v. Union Pac. R.Co., 72 F.Supp.
542, 543
3. A defendant, who files an answer to the merits or in any manner attacks plaintiff's case, thereby, makes a "general appearance," and gives the court full jurisdiction over the person of such defendant.
Jefferson Park Realty Corp. v. Kelley
Glover & Vale, 12 N.E.2d 977, 979
4. A voluntary appearance whereby a defendant obtains an extension of time in which to plead is a "general appearance."
Youngblood v. Bright, 91 S.E.2d 559, 561
5. A special appearance by defendant for purpose of filing a motion to dismiss restraining order and bill to enjoin collection of judgment did not constitute a "general appearance."
McFarlane v. McFarlane, 293 N.W. 895,
897
6. If an appearance be for purpose of objecting to jurisdiction of court and is confined solely to such question, appearance is "special," but any action of defendant, except to object to jurisdiction which recognizes the action as in court, will amount to a "general appearance."
Guthrie v. Threlkeld Co., 192 P.2d 307,
308
7. A "general appearance" may be entered by making a motion, by filing an answer, and in other ways.
Welter v. Bowman Dairy Co., 47 N.E.2d
739, 744

Pro Se Cites & Authorities

8. Where defendant filed an answer, it made a “general appearance,” and thus conferred jurisdiction of the court over itself from the date of the appearance.
Hart v. Rigler, 295 N.W. 308, 310
9. A general demurrer, filed without protestation is a “general appearance.”
Pacific Selling Co. v. Albright-Prior Co.,
59 S.E. 468, 469
10. An appearance made only for the purpose of moving to dismiss an action on one of the grounds specified in section of Code of Civil Procedures is made only on the hypothesis that the party is not properly before the court and is a “special appearance.”
Frohman v. Bonelli, 204 P.2d 890, 893
11. A party who appears for the purpose of applying to have proceedings set aside for want of jurisdiction waives nothing by such appearance.
McCaslin v. Camp, 26 Mich. 390, 391
12. A party’s appearance with a statement that he appeared “specially” is a “special appearance,” though no objection to the jurisdiction was specified.
Marr v. Cook, 111 N.W. 116, 117
13. A “special appearance” is an appearance for the purpose of objecting to the jurisdiction, to the proof, or to some other specific matter, without submitting to the jurisdiction of the court as to any other matter.
National Furnace Co. v. Moline
Malleable Iron Works, 18 F. 863, 864
14. A “special appearance” must be made for purpose of urging jurisdictional objections only and must be confined to a denial of jurisdiction.
Blake v. Union Ins. Exchange, 46 N.E.2d
141, 142
15. An appearance for any purpose other than questioning the jurisdiction of the court is “general” and not “special” notwithstanding that the appearance is accompanied by the claim that the appearance is only special.
The Ucayali, 47 F.Supp. 203, 206
16. A demand for a copy of the complaint constitutes neither a “general appearance” nor a “special appearance.”
Lisle v. Palmer, 29 N.Y.S.2d 975, 976

Pro Se Cites & Authorities

17. Party desiring to challenge jurisdiction over his person waives “special appearance” and enters “general appearance,” by calling into action powers of court over subject-matter of controversy.

Application of Goorich, 68 P.2d 597

18. The appearance of an attorney for the sole purpose of moving to dismiss the action for irregularities in the proceedings is a “special appearance,” and the right to dismiss may be insisted on.

Woodard v. Tri-State Milling Co., 55
S.E. 70, 71

19. An appearance is “special” when its sole purpose is to question court’s jurisdiction.

Behr v. Duling, 260 N.W. 281

20. Appearance for sole purpose of challenging jurisdiction over person is “special appearance.”

Robinson v. Glover, 244 N.W. 322, 323

State

Pro Se Cites & Authorities

1. It is true that the police power of a State is the least limitable of its powers, but even it may not transcend the prohibition of the Constitution of the United States.

Shevlin-Carpenter Co. v. Minnesota, 218
U.S. 57,61

2. Eleventh Amendment does not bar state law actions against state officials in their individual capacities.

Hunt v. Bennett, 17 E3d 1263 (10th Cir.
1994);
Hays County Guardian v. Supple, 969
F2d 111 (5th Cir. 1992)

3. Supervisor may be liable based on either: 1) personal involvement in constitutional deprivation or 2) sufficient casual connection between superior's wrongful conduct and the constitutional violation.

Armendariz v. Penman, 31 F3d 860 (9th
Cir. 1994)

4. Absolute immunity protects the prosecutor's role as advocate for the state, not his or her role as an administrator or investigative officer, and that prosecutorial conduct is given absolute immunity only if it is intimately associated with the judicial phase of the criminal process.

Guzman-Rivera v. Rivera-Cruz, 55 F3d
26 (1st Cir. 1995)

5. For purposes of immunity analysis, federal officials are indistinguishable from state officials and receive no greater degree of protection from constitutional claims.

Mendenhall v. Goldsmith, 59 F3d 685
(7th Cir. 1995)

6. Unequal application of state law may violate equal protection clause.

Mackenzie v. City of Rockledge, 920 F2d
1554 (11th Cir. 1991)

7. All 50 states of the Union adopted the Constitution of the United States as its fundamental law, and that all that was meant by these words was that the state acknowledged, as every other state has done, the Supremacy of the Federal Constitution.

Coyle v. Oklahoma, 221 U.S. 559, 576.

Pro Se Cites & Authorities

8. The Supreme Court held that state statutes did not take precedent over constitutional law.

James v. Kentucky, 466 U.S. 341

9. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual or unnecessary restrictions upon lawful occupations. Its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts.

Lawton v. Steele, 152 U.S. 133

10. Knowledge in possession of a government employee who has a duty to transmit or receive information is knowledge in the possession of the United States or an appropriate agency.

In re Agent Orange Product Liability
Litigation, 597 F.Supp. 740

11. Every member of a State legislature, and every executive and judicial officer of a State, shall, before he proceeds to execute the duties of his office, take an oath in the following form, to wit: "I, AB, do solemnly swear that I will support the Constitution of the United States."

4 U.S.C., Section 101

12. Federal courts will be guided by state law.

U.S. v. First Nat'l. Bank, 470 F.2d 944

13. The legislature's determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts.

Lawton v. Steele, 152 U.S. 133

14. When a state exercises power wholly within the domain of state interest, it is insulated from federal judicial review, but such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right.

United States v. Reading Co., 226 U.S.
324

15. Powers of the legislature are absolute except as limited by the Constitution.

Crabtree v. Ayer, 122 Me 18

Pro Se Cites & Authorities

16. Violation of administrative law voids the agency action.
U.S. v. Heffner, 420 F.2d 809 (1970)
17. In administrative law the term "jurisdiction" has three aspects: 1) personal jurisdiction; 2) subject matter jurisdiction; and 3) the agency(s) scope of authority under statute. Compliance with jurisdictional requirement is essential to give validity to the determinations of administrative agencies; absent such compliance, their acts are void and open to collateral attack. Actions by an agency in violation of its own regulations or procedures are illegal, void and constitute procedural error.
Vander Molen v. Stetson, 571 F.2d 617 (1977)
18. 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
19. The authority of public officers to proceed in a particular way and only upon specific conditions as to such matters implies a duty not to proceed in any manner other than that which is authorized by the law.
First Nat'l. Bank v. Flier, 87 ALR 267
20. No sanction can be imposed absent proof of jurisdiction.
Standard v. Olsen, 74 S.Ct. 768
21. All household goods owned by the user thereof and used solely for noncommercial purposes shall be exempt from taxation, and such person entitled to such exemption shall not be required to take any affirmative action to receive the benefit of such exemption.
Article 9, Section 2, Para (4) Constitution of Arizona
22. A state is prohibited from levying an excise, occupation, or privilege tax on activities conducted beyond its borders or jurisdiction.
Buckstaff Bath House Company v. McKinley, 308 U.S. 358
23. Our system of government, based upon the individuality and intelligence of the citizen, the state does not claim to control him, except as his conduct to others, leaving him the sole judge as to all that only affects him.
Mugler v. Kansas, 123 U.S. 623, 659-60

Pro Se Cites & Authorities

24. State executive officials are not entitled to absolute immunity for their official actions, and that the phrase “acting in their official capacities” is best understood as a reference to the capacity in which the state officer is sued, not the capacity in which the officer inflicted the alleged injury.

Hafer v. Melo, 502 U.S. 21

25. When state official acts under state law in manner violative of Federal Constitution he comes into conflict with superior authority of that Constitution and is stripped of his official or representative character and subjected in his person to consequences of his individual conduct; a state has no power to impart to him any immunity from responsibility to supreme authority of United States.

Scheuer v. Rhodes, 416 U.S. 232 (1974)

26. When a state appears as a party to a suit, she voluntarily casts off the robes of her sovereignty, and stands before the bar of a court of her own creation in the same attitude as a individual litigant; and her rights are determined and fixed by the same principles of law and equity, and a judgment for or against her must be given the same effect as would have been given it had it been rendered in a case between private individuals.

State v. Cloudt, 84 S.W. 415, 416;

27. The State at all time voluntarily appears before her courts. If she elects to so appear, there are no special privileges to be accorded by the courts. To accord the State any such special privileges would defeat the purpose of the appearance. The government is bound by law just as the citizen.

Harris v. O'Connor, 185 S.W.2d 993, 998;

28. Eleventh Amendment does not erect a barrier against suits to impose “individual and personal liability” on state officials under Section 1983.

Hafer v. Melo, 502 U.S. 21

29. The mere fact that Grand River Dam Authority is an agency of the state does not extend to it “sovereign immunity.”

Grand Hydro v. Grand River Dam,
Authority, 139 P.2d 798

30. The state’s “sovereign immunity from liability” exists when the state is engaged in a governmental function, and is distinguishable from the state’s “sovereign immunity from suit.”

Manion v. State, 5 N.W.2d 527, 528

Pro Se Cites & Authorities

31. State judge does not enjoy judicial immunity from unconstitutional behavior when facts are sufficient to grant party declaratory or injunctive relief against judge.

Eggar v. City of Livingston, 40 F.3d 312
(9th Cir. 1994)

67. 32. For purposes of immunity analysis, federal officials are indistinguishable from state officials and receive no greater degree of protection from constitutional claims.

Mendenhall v. Goldsmith, 59 F.3d 685
(7th Cir. 1995)

68. The Supreme Court held that state statutes did not take precedent over constitutional law.

James v. Kentucky, 466 U.S. 341

69. A State can no more impair the obligation of a contract by her Organic Law than by legislative enactment, for her Constitution is a law within the meaning of the contract clause of the National Constitution.

Dodge v. Woolsey, 59 U.S. 18 How. 331

70. For a breach of its contract by a State, no remedy is provided by the Constitution of the United States against the State itself.

Antoni v. Greenhow, 107 U.S. 783

71. To take away all remedy for the enforcement of a right is to take away the right itself. But that is not in the power of the State.

Siebert v. Lewis, 122 U.S. 284, 295

72. It is conceded that where the jurisdiction depends alone upon the character of the parties, a controversy between a State and its own citizens is not embraced within it; but it is contended that though jurisdiction does not exist on that ground, it nevertheless does exist if the case itself is one which necessarily involves a federal question; and with regard to ordinary parties this is undoubtedly true.

Hans v. State of Louisiana, 134 U.S. 1

73. The Eleventh Amendment did not in terms prohibit suits by individuals against the States, but declared that the Constitution should not be construed to import any power to authorize the bringing of such suits.

Hans v. State of Louisiana, 134 U.S. 1

Pro Se Cites & Authorities

74. In all these cases the effort was to show, and the court held, that the suits were not against the State or the United States, but against the individuals; conceding that if they had been against either the State or the United States, they could not be maintained.

Board of Liquidation v. McComb, 92
ULSL 531;
United States v. Lee, 106 U.S. 63;
Poindexter v. Greenhow, 109 U.S. 269
(Quoted in Hans, supra)

75. Where property or rights are enjoyed under a grant or contract made by a State, they cannot wantonly be invaded. Whilst the State cannot be compelled by suit to perform its contracts, any attempt on its part to violate property or rights acquired under its contracts, may be judicially resisted; and any law impairing the obligation of contracts under which such property or rights are held is void and powerless to affect their enjoyment.

Hans v. State of Louisiana, 134 U.S. 1, 21

76. For a breach of its contract by a State, no remedy is provided by the Constitution of the United States against the State itself.

Antoni v. Greenhow, 107 U.S. 783

77. To take away all remedy for the enforcement of a right is to take away the right itself. But that is not in the power of the State.

Siebert v. Lewis, 122 U.S. 284, 295

78. Immunity from suit is a high attribute of sovereignty a prerogative of the State itself which cannot be availed of by public agents when sued for their own torts. The 11th Amendment was not intended to afford them freedom from liability in any case where, under color of their office, they have injured one of the State's citizens. To grant them immunity would be to create a privileged class free from liability from wrongs inflicted or injuries threatened. Public agents must be liable to the law, unless they are to be put above the law.

Hopkins v. Clemson Agri. College, 221
U.S. 636;
Old Colony Trust Co. v. Seattle, 271 U.S.
427

Pro Se Cites & Authorities

79. A suit against a municipal corporation is not a suit against “one of the United States” within the meaning of this amendment (Eleventh Amendment). That such a corporation is the agent of the state government is undoubtedly true, but it does not follow therefrom that a suit against it or its officers is such a suit.

Camden Interstate R.Co. v. Catlettsburg,
129 Fed. Rep. 422 (1904)

80. The Eleventh Amendment of the Constitution of the United States is limited to those suits in which a state is a party on the record, and does not prohibit suits against counties.

Lincoln County v. Luning, 133 U.S. 530
(1821)

81. State court judges are not immune from injunctive power of federal court if actions of such judges are in contravention of law or exceed their constitutional authority.

Hodges v. Hamilton Municipal Court,
349 F.Supp. 1125 (1972)

82. The act of a public official of a state is the act of the state in depriving an individual of property, life, or liberty without due process.

Neal v. Deleware, 103 U.S. 370

83. If an administrative officer or agency acts outside the scope of its authority or jurisdiction, its act are null and void.

Doolan v. Carr, 125 U.S. 618

84. Under 18 USCS 242, “color of law” includes misuse of power possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state law.

United States v. Ramey, 336 F.2d 512
(CA4 W Va 1964)

85. 18 USCS 242 applies to actions taken under color of both state and federal law.

United States v. Otherson, 637 F.2d 1276
(CA9 Cal 1980)

86. “Agency action” includes any failure to act (5 USC 551 (13)).

Caulfield v. Board of Education, 449
F.Supp. 1203 (ED NY 1978)

Pro Se Cites & Authorities

87. The term “state” as used in connection with matters of government in the United States usually designates a member of the Union of states of the United States.

81A C.J.S., States, Sec. 2

Pro Se Cites & Authorities

State Constitutions

Pro Se Cites & Authorities

1. The state constitution is the highest expression of the will of the people, and, so far as it speaks, it represents the state.

Ex parte Braun, 141 Cal. 204; 74 P. 780

2. The constitution is the supreme law, written by the supreme power of the state, the people themselves.

Weinberger v. Miller, 87 Ohio St. 12; 99 N.E. 1078

3. No function of government can be discharged in disregard of or in opposition to the fundamental law.

Collins v. Martin, 290 Pa. 388; 55 A.L.R. 311

4. A state constitution is the fundamental, basic, and substantive law of the state.

Rankin v. Love, 125 Mont. 184; 232 P.2d 998

5. The state constitution is the mandate of a sovereign people to its servants and representatives. No one of them has a right to ignore or disregard its mandates.

John F. Jelke Co. v. Emery, 214 N.W. 369; 53 A.L.R. 463

6. All of the people of the state are bound by state constitutional limitations and all provisions of the state constitution are the supreme law of the land.

State v. Garden City, 74 Idaho 513; 265 P.2d 328

7. The constitution of the state is a higher authority than any act or law of any officer or body assuming to act under it, and in case of conflict the constitution must govern and the act or law in conflict with it must be held to have no legal validity.

Johnson v. Duke, 180 Md. 434; 24 A.2d 304

8. A mandate of a state constitution is supreme.

O'Bannon v. Gustafson, 120 Mont. 402; 303 P.2d 938

Pro Se Cites & Authorities

9. Disobedience or evasion of a constitutional mandate may not be tolerated even though such disobedience may, at least temporarily, promote in some respects the best interest of the public.

Sloat v. Board of Examiners of Board of Education, 274 N.Y. 367; 112 A.L.R. 660

10. Insofar as the state constitution purports to regulate any matter not covered by the federal Constitution, the state constitution is controlling.

Dye v. Council of Compton, 80 Cal. App.2d 486; 182 P.2d 623

11. The constitution must be interpreted and given effect as the paramount law of the land.

Armstrong v. Treasurer of Athens County, 10 Ohio 235 affd 41 U.S. 281; 10 L.Ed 965

12. With regard to the state of Florida, the Florida Constitution is the supreme law adopted by the people.

Miami Beach v. Lachman (Fla.) 71 So.2d 148 app dismd 348 U.S. 906

13. Every state law must conform in the first place to the Constitution of the United States, and then to the subordinate constitution of the particular state; and if it infringes upon the provisions of either, it is so far void.

Houston v. Moore, 18 U.S. 1; 5 L.Ed. 19

14. Manifestly, when the constitution of the state declares and defines certain public policies, such public policies must be paramount, though a score of statutes conflict and a multitude of judicial decisions be to the contrary.

Kintz v. Harringer, 99 Ohio St. 240; 124 N.E. 168; 12 A.L.R. 1240 (ovrld on other grounds in Taplin-Rice-Clerkin Co. v. Hower, 124 Ohio St. 123; 10 Ohio L. Abs. 478; 177 N.E. 203; 81 A.L.R. 1117)

15. A constitutional provision controls a statute conflicting therewith regardless of the fact that the statute was adopted as an initiative measure.

McMillan v. Siemon, 36 Cal. App.2d 721; 98 P.2d 790

Pro Se Cites & Authorities

16. There is no law enforceable by the courts above or beyond the constitution.
Board of Education v. Minor, 23 Ohio St. 211
17. The doctrine of a higher law than the constitution has no place in American jurisprudence.
Peel Splint Coal Co. v. State, 36 W. Va. 802; 15 S.E. 1000
18. It is fundamental that in passing laws the legislature is governed by the provisions of the constitution.
Tout v. Blair, 3 Cal. App. 180; 84 P. 671
19. The constitution contemplates that the legislature shall enact all laws necessary to give effect to its commands, but that no law shall contravene its provisions.
People v. Stephens, 62 Cal. 209
20. The state constitution is superior to any act of the legislature and the constitution, and not such act, must govern the case to which they both apply.
Appeal of Pollak (CP) 89 Ohio L. Abs. 112; 182 N.E.2d 69
21. A legislative definition cannot be more inclusive than the constitutional definition of the same term; it can neither enlarge nor diminish the scope of such term.
Albert v. Hobler, 111 Cal. 398; 43 P. 1104
22. When a classification is made in the constitution, neither the legislature nor the courts can make a different classification.
Fulton v. Brannan, 88 Cal. 454; 26 P. 506
23. Where constitutions speak, statutes should remain silent.
Switzer v. State, 103 Ohio St. 306; 113 N.E. 552
24. What the constitution grants, no statute can take away.
State ex rel. Hoel v. Brown, 105 Ohio St. 479;
1 Ohio L. Abs. 230; 138 N.E. 230

Pro Se Cites & Authorities

25. A constitutional limitation which in itself is valid and not in conflict with the Federal Constitution cannot be made invalid by any act of the legislature.
Beveridge v. Lewis, 137 Cal. 627; 67 P. 1040
26. Local laws or ordinances enacted by a city must be consistent with the state constitution.
Bell v. Vaughn 155 Fla. 551; 21 So.2d 31;
Evans v. Berry, 262 N.Y. 61; 186 N.E. 203
27. Judicial decisions, however numerous, are subject to correction by the constitution itself.
State v. Buente, 256 Mo. 227; 165 S.W. 340
28. No rule of court, however general its terms, may contravene a privilege based on a constitutional right.
Joaquin & Kings River Canal & Irrig. Co. v. Stevinson, 165 Cal. 540; 132 P. 1021
29. Law and court-made rules of expediency must not be placed above the state constitution.
State v. Arregui, 44 Idaho 43; 52 A.L.R. 463
30. A judge has no more right to disregard and violate the constitution than a criminal has to violate the law.
People ex rel.. Sammons v. Snow, 340 Ill. 464; 72 A.L.R. 798
31. 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; 45 So. 879
32. The Constitution was made not to act upon the legislative department alone, but upon every department of the government.
Way v. Hillier, 16 Ohio 105

Pro Se Cites & Authorities

33. The provisions of the constitution must be given effect even if in doing so a statute is held to be inoperative.

State ex rel. West v. Butler, 70 Fla. 102;
69 So. 771

Summary Judgment

Pro Se Cites & Authorities

1. Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. A fact is material if it might significantly affect the outcome of the suit under the governing law.

Hafen v. United States, 30 Fed. Cl. 470
(1994)

2. Party seeking summary judgment bears burden of demonstrating absence of any genuine factual dispute.

Keywell Corp. v. Weinstein, 33 F.3d 159
(2nd Cir. 1994)

3. Movant for summary judgment must show absence of any genuine issue of material fact or, in alternative, that there is no evidence to support nonmoving party's case; once proper showing is made, burden shifts to adverse party to prove by sufficient evidence that genuine issue of material fact is present for trial.

Atlas Enterprises Limited Partnership v.
United States, 32 Fed. Cl. 704 (1995);
City of Wheeling v. United States, 20 Cl.
Ct. 659 (1990)

4. Summary judgment may be granted when affidavits in support of motion pierce alleged issues of fact raised in pleadings.

Schoenbaum v. Firstbrook, 268 F.Supp.
385 (1967)

5. Summary judgment is not granted unless there are no triable issues.

Tolentino v. Friedman, 46 F.3d 645 (7th
Cir. 1995)

6. Role of judge at summary judgment stage is not to weigh evidence, but to determine whether there is a genuine issue of material fact.

Anderson v. Liberty Lobby, Inc., 477
U.S. 242 (1986);
City Mgm't Corp. v. U.S. Chemical Co.,
Inc., 43 F.3d 244 (6th Cir. 1994)

7. Even if there are some disputed facts, where undisputed facts are material facts involved and those facts show one party is entitled to judgment as a matter of law, summary judgment is appropriate.

Cameron v. Internal Revenue Service,
593 F.Supp. 1540 (1984)

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8. Summary judgment procedure is properly regarded not a disfavored procedural shortcut but, rather, as an integral part of the federal rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action.

Celotex Corp. v. Catrett, 477 U.S. 317
(1986)

9. Where movant has supported its motion for summary judgment with affidavits or other evidence which unopposed, would establish its right to judgment, nonmovant may not rest upon general denials in its pleadings or otherwise, but must proffer countering evidence sufficient to create genuine factual dispute.

Sweats Fashions, Inc. v. Pannill Knitting
Co., 833 F.2d 1560 (1987)

10. Mere denials or conclusory statements not supported by specific facts shown by affidavits or other evidence are insufficient to establish existence of factual dispute for summary judgment purposes.

Mayer v. United States, 32 Fed. Cl. 149
(1994)

11. To create genuine issue of material fact to defeat summary judgment, nonmovant must do more than present evidence raising some doubt regarding assertedly disputed issue, and that party moving for summary judgment need not produce evidence showing absence of genuine issue of material fact, but rather may discharge its burden by showing absence of evidence to support nonmoving party's case.

Fromson v. United States, 32 Fed. Cl. 1
(1994)

12. While motion to dismiss for failure to state a claim may be treated as motion for summary judgment when evidentiary materials outside of pleadings are considered, rule dealing with subject matter jurisdiction contains no similar provision. (RCFC, Rule 12(b)(1,4), 28 U.S.C.A.)

Cook v. United States, 32 Fed. Cl. 783
(1995)

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Taxes

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1. Only the rare taxpayer would be likely to know that he could refuse to produce his records to Internal Revenue Service agents.
U.S. v. Dickerson, 413 F2d 1111
2. A person cannot be forced to submit records for inspection. (tax)
U.S.A. & Fred J. Rosauer v. Johanna Van Poperin, U.S. District Court of Minn., 4th Div. 4-71 Civil 635
3. The claim and exercise of a constitutional right cannot be converted into a crime.
Miller v. U.S. 230 F 486,489
4. IRS summons was not entitled to enforcement if the purpose of the investigation was to obtain evidence for a pending criminal case.
Donaldson v. U.S., 400 U.S. 517 (1971)
5. One does not derive income by rendering services and charging for them.
Edwards v. Keith, 231 Fed Rep 110
6. The citizen is immune, has a right to be free from such taxation and regulating, duties, obligations, sanctions as a matter of law.
U.S. v. Texas, 384 U.S. 155;
Wilson v. U.S., 221 U.S. 361
7. Who would believe the ironic truth that the cooperative taxpayer fares much worse than the individual who relies upon his constitutional rights....Only the rare taxpayer would be likely to know that he could refuse to produce his records to Internal Revenue Service agents.
U.S. v. Dickerson, 413 F2d 1111
8. The Congress shall have the power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform through the United States.
Article I, Section 8, Clause 1, US Constitution
9. Congress may not, under the taxing power, assert a power not delegated to it by the constitution.
Regal Drug Co. v. Wardell, 260 U.S. 386

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10. Pennsylvania declares income tax, graduated style, as illegal, and outlaws it in the state of Pennsylvania.

Amidon v. Kane, Pa.279 A.2d 53

11. Internal Revenue Service could not seize private records even with a seizure warrant.

Vincent R. Hill v. Jay G. Philpott, Dist. Dir. Of IRS, et al, No. 18487, Jan. 1971, 7th Cir. Ct. Of Appeals

12. Jeopardy Assessment of IRS now prohibited by Supreme Court in January 13, 1976.

Laing v. U.S., 493 F2d 1211

13. IRS must obtain a court order to compel a taxpayer to surrender his books, papers and records for audit.

Sherar v. Cullen, 481 F.2d 945 (9 C.A., 1973); 26 U.S.C., Section 7402(b)

14. Reasonable compensation for labor on service rendered is not profit.

Lauderdale Cemetary Assoc. v. Matthews, 345 PA. 239

15. There is a clear distinction between profit and wages or compensation for labor. Compensation for labor cannot be regarded as profit within the meaning of the law.

Oliver v. Halstead, 196 V.A. 992

16. The right to labour and to its protection from unlawful interference is a constitutional as well as a common law right. Every man has a natural right to the fruits of his own industry.

Bogni v. Perotti, 112 N.E. 643

17. The right to acquire property includes the right to acquire property by labour.

State v. Julow, 31 S.W. 781;
48 Am Jur 2d, Sections 1-3

18. The right of the citizen to choose and follow an innocent occupation is both a personal and property right.

Cummings v. Missouri, 4 Wall 321

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19. Federal reserve notes are valueless.
IRC, Section 1.1001-1 (4657) C.C.H.
20. A check is not money.
School Dist. v. U.S. Nat'l. Bank, 211
P2d 723
21. The term "person" as used in this chapter includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. (Private citizen/individual is not a person)
26 U.S.C., Section 7343
22. No excise tax may be imposed upon a right secured by the Constitution.
Grosican v. American Press Co., 297
U.S. 233 (1936);
Murdock v. Pennsylvania, 319 U.S.
105 (1943)
23. An income tax is neither a property tax nor a tax on occupations of common right, but is an excise tax.
Sims v. Ahrens, 271 S.W. 720
24. The individual right to live and own property are natural rights for the enjoyment of which an excise (tax) cannot be imposed.
Redfield v. Fisher, 135 Ore 180
25. An excise tax involves the exercise of a privilege.
Flint v. Stone Tracy, 220 U.S. 107
26. Realizing and receiving income is not a privilege that can be taxed.
Jack Cole Co. v. Alfred T.
McFarland, 337 S.W.2d 453, 455
27. Since the right to receive income or earnings is a right belonging to every person, this right cannot be taxed as privilege.
Jack Cole Co. v. Alfred T.
McFarland, 337 S.W.2d 453, 456

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28. It cannot be denied that the Legislature can name any privilege a taxable privilege and tax it by means other than an income tax, but the Legislature cannot name something to be a taxable privilege unless it is first a privilege.

Jack Cole Co. v. Alfred T.
McFarland, 337 S.W.2d 453 (1960)

29. Taxpayer who alleged unlawful seizure and subsequent use of his tax information could pursue remedy through Bivens action, or through other applicable tort action.

Stokwitz v. U.S., 831 F2d 893 (9th
Cir. 1987)

30. Excise tax is one not directly imposed upon persons or property.

New Neighborhoods v. WVA.
Workers Comp. Fund, 886 F2d 714
(7th Cir. 1986)

31. Wages are income for purpose of internal revenue.

U.S. v. Connor, 898 F2d 942 (3rd Cir.
1990);
Coleman v. CIR, 791 F2d 68 (7th Cir.
1986)

32. Properly executed levy does not automatically entitle government to taxpayer property.

Resolution Trust Corp. v. Gill, 960 F2d
336 (3rd Cir. 1992)

33. Notice of deficiency is "ticket" to the court that allows taxpayer to challenge tax assessment before paying it.

Guthrie v. Sawyer, 970 F2d 733 (10th
Cir. 1992)

34. To prove violation of tax evasion statute, government must demonstrate the existence of a tax deficiency, that the defendant acted willfully, and that the defendant took an affirmative step to elude or defeat the payment of tax.

U.S. v. Robinson, 974 F2d 575 (5th Cir.
1992);
U.S. v. Beall, 970 F2d 343 (7th Cir. 1992)

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35. When there is reasonable doubt about meaning of revenue statute, doubt is resolved in favor of those taxed.

Security Bank Minnesota v. CIR, 994
F2d 432 (8th Cir. 1993)

36. Objectively reasonable good-faith misunderstanding of the law negates willfulness. To show willfulness in criminal tax cases, government must show awareness of legal duty.

U.S. v. Cheek, 882 F2d 1263 (7th Cir.
1989)
U.S. v. Hilgefurd, 7 F3d 1340 (7th Cir.
1993)

37. Offense of failure to file tax return consists of three elements: 1) defendant was required to file tax return; 2) he failed to file return; and 3) he acted willfully.

U.S. v. Nichols, 9 F3d 1420 (9th Cir.
1993)

38. Unlike treasury regulations, IRS rulings do not have the force of law and are merely persuasive authority.

Constantino v. TRW. Inc., 13 F3d 969
(6th Cir. 1994)

39. Once proper assessment has been made, taxpayer's recourse is to pay the tax and bring suit for refund.

Hempel v. U.S., 14 F3d 572 (11th Cir.
1994)

40. Tax court decision on questions of statutory interpretation is subject to de novo review.

Wolpaw v. CIR, 47 F3d 787 (6th Cir.
1995)

41. Federal tax liens do not automatically prime all other liens; rather, priority is government by federal common law principle that first in time is first in right.

Monica Fuel, Inc. v. IRS, 56 F3d 508 (3rd
Cir. 1995)

42. The state can only tax and regulate something it created.

Ward v. Maryland, 12 Wallace 418

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42. The United States Government is a foreign corporation with respect to a state.

NY RE: Merriam, 41 L.Ed. 287 (1973)

44. When section 6020 (b) is lifted out of the Code and read literally, as petitioner has done, its scope is broad and its meaning and purpose hazy. But the Internal Revenue Code cannot be so read, for each section is not a self-contained whole, but rather a building block of a complex, interrelated statute. Based on its location in chapter 61 and the lack of any cross-references (other than the word "return"), section 6020(b) is not to be read as a prerequisite to the Commissioner's proceeding under section 6201(a)(1)(ch.63).

Hartman v. C.I.R., 65 T.C. 542 (1975)

45. The Commissioner shall, to the extent of authority otherwise vested in him, provide for the administration of the United States internal revenue laws in the U.S. Territories and insular possessions and other authorized areas of the world.

T.D.O. No. 150-01, 51 Fed Reg 9571, 2-27-86

46. The term "employee" specifically includes officers and employees whether elected or appointed, of the United States, a State, territory, or political subdivision thereof or the District of Columbia or any agency or instrumentality of any one or more of the foregoing.

Fed. Reg., Tuesday, Sept. 7, 1943, Sec 404.104, pg 12267

47. Absent notice, such as where regulation is not sufficiently clear as to warn party of what is expected of it, agency may not deprive party of property by imposing civil or criminal liability.

General Electric Co. v. E. P. A., 53 F.3d 1324 (D.C. Cir. 1995)

48. Federal Courts must first determine what property or rights to property an individual has under state law in applying a federal revenue act for purpose of determining whether property may be sold for unpaid taxes.

Herndon v. U.S., 501 F.2d 1219 (1974)

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49. A failure substantially to comply with the statutory requirements as to the mode and manner or making the levy invalidates the tax; and there must be strict compliance with mandatory procedures...no tax can be sustained as valid unless it is levied in accordance to the letter of the statute.
Hough v. North Adams, 82 N.E. 46
50. Anything that is a right cannot be subject to conditions or licensing.
Lane v. Wilson, 307 U.S. 268, 275
51. The general term "income" is not defined in the Internal Revenue Code.
Ballard v. United States, 535
Fed.Rep.2d 400, 404 (1967)
52. With the IRS's broad power must come a concomitant responsibility to exercise it within the confines of the law. The Court has emphasized that no official is above the law, and that broad powers present broad opportunities for abuse.
Mark v. Groff, 521 F.2d 1380
53. The reasonable construction of the taxing statutes does not include vesting any tax official with absolute power of assessment against individuals not specified in the statutes as persons liable for the tax without an opportunity for judicial review of this status before the appellation of "taxpayer" is bestowed upon them and their property seized.
Botta v. Scanlon, 228 F.2d 304 (1961)
54. A lien is security for a debt, duty or obligation.
Hurley v. Boston, 54 N.E.2d 183
55. A lien is a charge on property for payment of a debt or duty.
Harpeth Motors, 135 F.Supp. 863
56. Lien is a charge on property to secure payment or performance of duty, debt, or other obligation.
U.S. v. Phillips, 267 F.2d 374
57. Secretary of Treasury cannot, by regulations, alter revenue laws.
Morril v. Jones, 106 U.S. 466 (1883)
58. \$1,000,000 in damages.
Taxpayer's Bill of Rights, Section
801(a)

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59. Congress does not have the authority and jurisdiction to regulate commerce within the 50 states of the Union.

United States v. Scarborough, 431 U.S.
563

60. Stops levies against personal bank accounts.

U.S. v. Nat'l. Bank of Commerce, 472
U.S. 713; 105 S.Ct. 2919

61. Treasury regulations require that the Form 23-C contain the taxpayer's name, social security number and address, the name of the corporation, the character of the liability assessed, the amount of the tax, the taxable period involved, and the signature of a responsible officer (26 CFR, Section 301.6203-1).

Robinson v. U.S., 920 F.2d 1157;
Brewer v. U.S., 764 F.Supp. 309;
Curley v. U.S., 791 F.Supp. 52;
Portillo v. Commissioner, 932 F.2d
1128

62. If the income tax liability has been established by assessment, there is no authority for summons.

Rasquin v. Muccini, 72 F.2d 688

63. Tips are gifts and therefore not taxable.

Olk v. United States, February 18,
1975, Las Vegas, NV, Judge Thomas
W. Clary

64. We cannot condone this shocking conduct by the IRS. Our revenue system is based upon the good faith of the taxpayers and the taxpayers should be able to expect the same from the government in its enforcement and collection activities.

United States v. Tweel, 550 F.2d 297
(1977)

65. Government official has power to abate an income tax assessment even after the levy has been made. (26 U.S.C.A. (I.R.C. 1954) Section 6861(g))

Homan Mfg. Co. v. Long, 242 F.2d 645
(1957)

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66. Employee. - For purposes of this chapter, the term “employee” includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term “employee” also includes an officer of a corporation.

26 U.S.C., Section 3401 (c)

67. Employer. - For purposes of this chapter, the term “employer” means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person...

26 U.S.C., Section 3401 (d)

68. Wages. - For purposes of this chapter, the term “wages” means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer....

26 U.S.C., Section 3401 (a)

69. A tax laid upon the happening of an event, as distinguished from its tangible fruits, is an indirect tax.

Tyler v. U.S., 281 U.S. 497, 502

70. The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means within which the law permits, cannot be doubted.

Gregory v. Helvering, 293 U.S. 465

71. An individual who is engaged in lawful, innocent and harmless activities for lawful compensation is not subject to any income or revenue tax. All Americans by nature are free and independent and have inalienable rights. Among these are enjoying and defending life and liberty; acquiring, possessing, and protecting property. Included in the right of personal liberty and right of private property is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property.

Coppage v. Kansas, 236 U.S. 1, 14

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72. The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws.

Long v. Rasmussen, 281 F. 236, 238;
Economy Plumbing & Heating v. U.S.,
470 F.2d 585, 589

73. The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the subject of the tax: it is the basis for determining the amount of tax.

House Congressional Record, March
27, 1943, pg 2580

74. 26 CFR 301.6020-1 Returns prepared or executed by district directors or other internal revenue officers.

(a) Preparation of returns—(1) In general. If any person required by the Code or by the regulations prescribed thereunder to make a return fails to make such return, it may be prepared by the district director or other authorized internal revenue officer or employee provided such person consents to disclose all information necessary for the preparation of such return.

(2) Responsibility of person for whom return is prepared. A person for whom a return is prepared in accordance with subparagraph (1) of this paragraph shall for all legal purposes remain responsible for the correctness of the return to the same extent as if the return had been prepared by him.

(b) (2) Status of returns. Any return made in accordance with subparagraph (1) of this paragraph and subscribed by the district director or other authorized internal revenue officer or employee shall be prima facie good and sufficient for all legal purposes.

26 CFR, Section 301.6020-1

75. Chapter 5200, Internal Revenue Manual - Delinquent Return Procedures
5290. Refusal to file -

IRC 6020(b) Assessment Procedure

5291. Scope

(1) This procedure applies to employment, excise and partnership returns...the following returns will be involved:

(a) Form 940 - Employer's Annual Federal Unemployment Tax Return

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- (b) Form 941 - Employer's Quarterly Federal Tax Return
- (c) Form 942 - Employer's Quarterly Tax Return for Household Employees
- (d) Form 943 - Employer's Annual Tax Return for Agricultural Employees
- (e) Form 11-B - Special Tax Return - Gaming Devices
- (f) Form 720 - Quarterly Federal Excise Tax Return
- (g) Form 2290 - Federal Use Tax Return on Highway Motor Vehicles
- (h) Form CT-1 - Employer's Annual Railroad Retirement Tax Return
- (i) Form 1065 - U.S. Partnership Return of Income

76. The labor of a human being is not a commodity or article of commerce.
Title 15 U.S.C., Section 17
ARS 44, Section 1404
77. The law reflects also a Congressional determination that the taxpayer (sic) should be afforded certain procedural rights, which IRS is bound to respect.
Laing v. United States, 423 U.S. 161
78. Congress has determined that violations of the procedural rights at issue here are exceptions to the Anti-Injunction Act.
26 U.S.C., Sections 6213(a), (b)(2);
7421(a)
79. Information obtained from the Arizona Corporation Commission indicates that the IRS is not a corporation authorized to do business in the state of Arizona. Therefore, any acts committed against this Plaintiff, a Private Citizen, in the state of Arizona was unlawful. Further, the Uniform Federal Lien Registration Act was not adopted by the State of Arizona, and therefore the IRS agents have acted under color of "non existent" State Law.
80. "Excise tax" is not one directly imposed upon persons or property.
New Neighborhoods v. W. Va.
Workers Comp. Fund, 886 F.2d 714
(4th Cir. 1989)
81. Properly executed levy does not automatically entitle government to taxpayer property.
Resolution Trust Corp. v. Gill, 960 F.2d 733 (10th Cir. 1992)
82. Notice of deficiency is "ticket" to the court that allows taxpayer to challenge tax assessment before paying it.
Guthrie v. Sawyer, 970 F.2d 733
(10th Cir. 1992)

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83. When there is reasonable doubt about meaning of revenue statute, doubt is resolved in favor of those taxed.

Security Bank Minnesota v. CIR, 994
F.2d 432 (8th Cir. 1993)

84. The mission of district offices is to administer the internal revenue laws (except those relating to alcohol, tobacco and firearms) within a geographically defined internal revenue district and to provide services to, and contact, with taxpayers.

1112.41, Internal Revenue Manual -
Administration

85. Regional director (compliance). The ATF regional official principally responsible for administering regulations in this part concerning commodity taxes imposed by the provisions of 26 U.S.C. enforced and administered by the Bureau, and for collecting tax by levy (other than third-party levy).

47606 Federal Regulation

86. A state is prohibited from levying an excise, occupation, or privilege tax on activities conducted beyond its borders or jurisdiction.

Buckstaff Bath House Company
v. McKinley, 308 U.S. 358

87. Single violation of Fair Debt Collection Practices Act (FDCPA) provision prohibiting debt collector from using any false, deceptive or misleading representations is sufficient to establish civil liability under FDCPA.

Clomon v. Jackson, 998 F.2d 1314 (2nd
Cir. 1993)

88. Government official has power to abate an income tax assessment even after the levy has been made.

Homan Mfg. Co. v. Long, 242 F.2d 620
(3rd Cir. 1952)

89. Revenue laws are a code or system in regulation of tax assessment collection and relate to taxpayers and not to non-taxpayers.

Bartell v. Riddlell, 202 F.Supp. 70
(1962)

90. Under 26 U.S.C., Section 6211, IRS cannot send a notice of deficiency for an employment tax. (Did they assess a liability for an employment tax?)

26 U.S.C., Section 6211

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91. The power to tax involves the power to destroy.
Crandell v. Nevada, 6 Wall 35, 46
92. 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 power to the state, but the individual's right to live and own property are natural rights for the enjoyment of which an excise cannot be imposed.
Redfield v. Fisher, 292 Oregon 814, 817
93. If taxpayer has informed an IRS agent that he believes that there is an error in assessment and the agent continues levy action, without, first determining if the taxpayer's argument has merit, such agent loses his immunity from suit.
Bothke v. Flour Engineers, 713 F.2d 1405
94. Offense of failure to file tax return consists of three elements: 1) defendant was required to file tax return; 2) he failed to file return; 3) he acted willfully.
U.S. v Nichols, 9 F.3d 1420 (9th Cir. 1993)
95. To show willfulness in criminal tax cases, government must show awareness of legal duty.
U.S. v. Cheek, 882 F.2d 1263
96. Tax court decision on questions of statutory interpretation is subject to de novo review.
Wolpaw v. CIR, 47 F.3d 787 (6th Cir. 1995)
97. When tax returns were filed in plaintiff's name by her fiduciary declaring income....and making her potentially liable for the tax due on that income, she became a "taxpayer" within the meaning of the Internal Revenue Code.
Morse v. U.S., 494 F.2d 876 (1974)
98. Statute prohibiting suits to restrain assessment and collection of Federal taxes is directed at the person liable for taxes and is not intended to preclude courts from affording protection to one not liable to taxes whose property may be in danger of seizure and sale by taxing authorities.
Shelton v. Gill, 202 F.2d 503 (1953)
99. The general term income is not defined in the Internal Revenue Code.
Ballard v. United States, 535 Fed. Rep.2d 400, 404

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100. Our tax system is based on voluntary assessment and payment, not upon distraint.

Flora v. U.S., 362 U.S. 145

101. For federal tax purposes, federal regulations govern.

Dodd v. U.S., 223 F.Supp. 785

102. This is where the structure differs. Your income tax is a 100% voluntary tax, and your liquor tax is a 100% enforced tax. Now the situation is as different as night and day. Consequently, your same rules simply do not apply.

Dwight E. Avis, Head ATF, Bureau of Internal Revenue, Senate Hearing Report, 83rd Congress, House of Representatives, House of Ways and Means 2/3/53 - 2/13/53

103. Tax protester's First Amendment right to petition for redress of grievances was violated when she was charged with corruptly endeavoring to intimidate and impede IRS agents by filing factually accurate, nonfraudulent criminal trespass complaints against agents after they entered upon protester's property in total disregard of "no trespassing" signs and protester's previous letters requesting that her privacy rights be respected.

United States v. Hylton, 710 F.2d 1106

104. Judicial Code provisions, rather than Internal Revenue Code provisions, were applicable and would give Federal District Court jurisdiction regardless of compliance with Internal Revenue Code provisions if property owner was a nontaxpayer.

Gerth v. United States, 132 F.Supp. 894 (1955)

105. United States cannot take property from an innocent spouse to satisfy tax obligation of delinquent spouse.

Raffaele v. Granger, 196 F.2d 620 (3rd Cir. 1952)

106. A tax penalty must be properly assessed and the taxpayer properly noticed before the penalty is enforceable.

Stallard v. United States, 806 F.Supp. 152 (1992)

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107. The source of the taxing power is not the 16th Amendment, it is Article I, Section 8, of the Constitution.

Penn. Mutual Indemnity Co. v.
Commissioner, 32 T.C. (1959), CCH at
page 659

108. The government has proven its case when it has established beyond a reasonable doubt: that the defendant was required to file a return; that he knew that he was required to file a return; and that he willfully or purposefully, as distinguished from inadvertently, negligently, or mistakenly, failed to file such a return.

U.S. v. Murdock, 290 U.S. 389, 396;
U.S. v. Matosky, 421 F.2d 410 (1970)

109. Congress has taxed income, not compensation.

Connor v. U.S., 303 F.Supp. 1187, 1191

110. An excise tax on the business of a natural person, the business being lawful, not the subject of license nor exercised through a franchised, cannot be graduated in proportion to the net profits.

Flint v. Stone Tracy Co., 220 U.S. 107

111. The requirement of an offense committed willfully is not met therefore, if a taxpayer has relied in good faith upon a prior decision of the court.

U.S. v. Bishop, 412 U.S. 346 (1973);
U.S. v. Sullivan, 274 U.S. 259, 263

112. Internal Revenue Service cannot prevail on a deficiency assessment and, thus injunctive relief may be appropriate when the asserted claim is entirely excessive, arbitrary, capricious, and without factual foundation.

Shapiro v. Sec. Of State, 499 F.2d 527

113. The term excise tax and privilege tax are synonymous.

American Airways v. Wallace 57 F.2d
877, 880

114. Person voluntarily paying illegal tax has no claim for repayment.

Austin Nat'l. Bank of Austin v.
Sheppard, 71 S.W.2d 242 (1934)

115. Revenue laws are a code or system in regulation of tax assessment collection and relate to taxpayers and not to nontaxpayers.

Bartell v. Riddell, 202 F.Supp. 70

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116. Notice is a condition precedent, its absence invalidates assessment, and waiver not accepted by Commissioner personally did not relieve taxing officials of their statutory obligation to give notice before assessment and collection, and in such situation the federal District Court could, and properly did, bring its equity powers into play, despite statute.

Steiner v. Nelson, 259 F.2d 853 (1958)

117. The Tax Court is a court of limited jurisdiction having such jurisdiction (USC Section 9375) as is conferred under the Internal Revenue Code (22 USCS Section 7442).

20 Federal Procedures, Tax Court
Proceedings, Section 48:895

118. Keeping in mind the well-settled rule that the citizen is exempt from taxation unless the same is imposed by clear and unequivocal language, and that where the construction of a tax law is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid.

Spreckels Sugar Refining Co., v.
McClain, 192 U.S. 397 (1904)

119. It has long been settled, by the solemn adjudication of the Supreme Court, that the United States do not possess any general right of priority or privilege over private creditors for the satisfaction of the debts due to them, founded upon any general prerogative belonging to the government in its sovereign capacity; but that all the priority or privilege which the government is at liberty to assert is or must be founded upon some statute, passed by Congress in virtue of its constitutional authority.

S.H. Hawes & Co. et al. V. Wm. R.
Trigg Co. et al., 65 S.E. 538 (1909)

120. Our tax system is based on voluntary assessment and payment, not upon distraint.

Flora v. U.S., 362 U.S. 145

122. The requirement of an offense committed willfully is not met therefore, if a taxpayer has relied in good faith upon a prior decision of the court.

U.S. v. Bishop, 412 U.S. 346 (1973)

123. A lawful tender of the amount due on a tax judgment and a refusal of it, amounts to satisfaction of the judgment.

Woodruff v. Trapnall, 10 How. 190

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124. Internal Revenue Service, with its expertise, is obliged to know its own government statutes and to apply them realistically.

Bothke v. Fluor Engineers & Const., et al., 713 F.2d 1405 (1983)

125. Anything that is a right cannot be subject to conditions or licensing.

Lane v. Wilson, 307 U.S. 268, 275

126. One accepts the advice of a revenue agent at his own peril.

United Block Co. v. Helvering, 123 F.2d 704, cert. den. 315 U.S. 818

127. Judgment liens will not be enforced in equity where they have ceased to be enforceable at law.

McCarthy v. Ball, 82 Va. 872

128. The taxes imposed by provisions 26 U.S.C. enforced and administered by the Bureau shall be collected by regional directors (compliance), the Chief, Tax Processing Center, and other ATF officials designated by the Director of the Bureau.

27 CFR, Section 70.51

129. District court has jurisdiction to grant injunctive relief to taxpayer who contests IRS levy on his wages where taxpayer alleges that IRS failed to comply with pre-levy notice requirements; if IRS fails to comply with pre-levy notice requirements District Court has jurisdiction to enter injunctive relief for taxpayer.

Jensen v. IRS, 835 F.2d 196 (1987)

130. Prohibition against restraint was invoked where taxpayer claimed withholding taxes were not collected from employees because withholding tax system is not constitutional.

Orr v. Dietrich, 331 F.2d 52 (1964)

131. A state may not charge for nor tax a common law right which existed at the time of the formation of the state.

Murdock v. Pennsylvania, 319 U.S. 105

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132. If a taxpayer has informed an IRS agent that he or she believes that there is an error in an assessment and the agent continues collection action, without first determining if the taxpayer's argument has merit, such an agent loses his or her immunity from a suit, and becomes personally liable for any damages inflicted upon the citizen.

Bothke v. Fluor Engineers, 713 F.2d
1405 (1983)

133. One who voluntarily pays tax has no legal claim for its repayment, but one who pays more tax than law requires, under duress, has such a claim, and that duress could still be implied from institution of administrative or legal proceedings.

Lincoln Nat'l. Life Ins. Co. v. State, 632
S.W.2d 227 (1982)

134. Section 7421(a) of the Internal Revenue Code of 1954 (I.R.C.) states: "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed," with certain exceptions, one of which is a civil action by a nontaxpayer who claims that his or her property has been the subject of a wrongful levy.

Hollingshed v. United States, 85-2
USTC, 9772 (5th Cir. 1985)

135. The taxing authorities cannot assess a taxpayer who has neglected to make a return for a particular after the expiration of that year.

Schmuck v. Hartman, 222 Pa. 190; 70
A. 1091 (1908)

136. It is a long recognized legal principle that a husband and wife are separate and distinct taxpayers even where they have filed a joint Federal income tax return. A determination for a particular year against a husband who filed a joint return with his wife is not res judicata against the wife for the same year...A wife who files a joint return with her husband is not a party privy to her husband in (income tax) litigation....

Henry M. Rodney, 53 T.C. 287, 307
(1969);
Moore v. United States, 360 F.2d 353,
357-58 (4th Cir. 1966);
Herrington v. United States, 416 F.2d
1029, 1034 (10th Cir. 1969), cert. denied,
385 U.S. 1001

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137. Warrantless automobile seizures, which occurred in public streets, parking lots, or other open areas, involved no invasion of privacy and were not unconstitutional.

Murray's Lessee v. Hoboken Land &
Improv. Co., 18 How. 272, 351-52

138. The warrantless entry into the privacy of petitioner's office by IRS agents violated the Fourth Amendment, since except in certain carefully defined classes of cases, a search of private property without proper consent is "unreasonable" unless it has been authorized by a valid search warrant.

Camara v. Municipal Court, 387 U.S.
523, 528-29;

G.M. Leasing Corp. v. United States,
429 U.S. 338, 358

139. The respondents (I.R.S.) offer no legislative history in support of their reading of Section 6331, and to give the statute that reading would call its constitutionality into serious question. We therefore decline to read it as giving carte blanche for warrantless invasions of privacy. Rather, we give it its natural reading, namely, as an authorization for all forms of seizure, but as silent on the subject of intrusions into privacy...We therefore conclude that the warrantless entry into petitioners office was in violation of the commands of the Fourth Amendment.

G.M. Leasing Corp. v. United States,
429 U.S. 338, 358, 359

140. The labor of a human being is not a commodity or article of commerce.

Title 15 U.S.C., Section 17;

141. The Ninth Circuit Court of Appeals concluded that a citizen does not become a taxpayer until after he enters a civil contract with the I.R.S., by filing a tax return for the year involved.

Morse v. U.S., 494 f.2D 876 (1974)

142. Taxes are not "debts."

Perry v. Washburn, 20 Cal. 318;
McKeesport v. Fidler, 147 Pa. 532; 23
A. 799;
City Council of Charleston v.
Phosphate Co., 34 S.C. 541; 13 S.E. 845

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142. Liability to pay taxes arises from no contractual relation and cannot be enforced by common law proceedings, unless a statute so provides.

Schmuck v. Hartman, 222 Pa. 190; 70 A. 1091

143. No matter how equitable a tax may be, it is void unless legally assessed.

Joyner v. School Dist. Number Three, 3 Cush. (Mass.) 567;

145. The Sixteenth Amendment does not purport to confer power to levy income taxes in a generic sense, as that authority was already possessed, or to limit and distinguished between one kind of income tax and another; but its purpose is to relieve all income taxes when imposed from apportionment from consideration of the source whence the income is derived.

Brushaber v. Union Pacific Railroad Company, 240 U.S. 1

146. For taxation purposes there are fundamental distinctions between individuals and corporations.

Kentucky R.R. Tax Cases, 115 U.S. 321, 337, 339;
Pacific Exp. Co. v. Seibert, 142 U.S. 339

147. In the matter of taxation, the Constitution recognizes the two great classes of direct and indirect taxes, and lays down two rules by which their imposition must be governed, namely: The rule of apportionment as to direct taxes, and the rule of uniformity as to duties, imposts and excises.

Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 557

148. Excises are taxes laid upon the manufacture, sale or consumption of commodities within the country, upon licenses to pursue certain occupations and upon corporate privileges; the requirement to pay such taxes involves the exercise of the privilege and if business is not done in the manner described no tax is payable.

Flint v. Stone Tracy Co., 220 U.S. 107, 110

149. The terms duties, imposts and excises are generally treated as embracing the indirect forms of taxation contemplated by the Constitution.

Flint v. Stone Tracy Co., 220 U.S. 107, 151

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150. The requirement to pay an excise tax involves the exercise of privileges.....If business is not done in the manner described in the statute, no tax is payable.

Flint v. Stone Tracy Co., 220 U.S. 107 @
151, 152

151. The Constitution contains only two limitations on the right of Congress to levy excise taxes; they must be levied for the public welfare and are required to be uniform throughout the United States.

Flint v. Stone Tracy Co., 220 U.S. 107,
153

152. Income tax return facially indicated that taxpayer's self-assessment was incorrect and that his position was frivolous; thus, taxpayer, who had claimed that he was a natural individual and unenfranchised freeman who neither requested, obtained nor exercised any privilege from any agency of the government, could be assessed a penalty for filing a frivolous tax return.

Holker v. United States, 737 F.2d 751
(1984)

Tax Court

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1. Although the Tax Court was upgraded from an executive agency to an Article I “legislative court” in 1969, that change did not extend the jurisdiction of the court to the full judicial power over “all cases, in law and equity,” that is vested in “constitutional courts” under Article III.

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2. Tax Court is a legislative court, and that a Legislative Court is a court created by Legislature not named or described by Constitution.

Gorham v. Robinson, 186 A. 832

3. The tax court’s jurisdiction is confined to determining the amount of deficiency or overpayment for the particular tax year for which the commissioner has sought a deficiency and the taxpayer has filed a petition for review; the tax court has no jurisdiction to order or to deny a refund, or to decide equitable questions; the taxpayer must resort to the district court or the court of claims for a resolution of such disputes or for an order granting a refund.

Morse v. United States, 494 F.2d 876
(1974)

4. The Tax Court is a court of limited jurisdiction having such jurisdiction (USC Section 9375) as is conferred under the Internal Revenue Code (22 USCS Section 7442).

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The Law

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1. It is not presumed that the common law is changed by passage of a statute which gives no indication that it proposes such a change.
Atkins v. United States, 556 F.2d 1028
(1977)
2. And the Constitution itself is in every sense a law.
Carter v. Carter Coal Co., 298 U.S. 140,
296 (1935)
3. Law in the regular course of administration through courts of justice according to those rules and forms which have been established for the protection of private rights.
Endicott-Johnson Corp. v. Smith, 266
U.S. 291
4. Proof of a criminal charge beyond a reasonable doubt is constitutionally required.
Miles v. United States, 103 U.S. 304, 312
5. Law of the land means the Common Law.
Taylor v. Porter, 4 Hill 140, 146
6. The term "law" includes decisions of courts, as well as legislative acts.
Miller v. Dunn, 14 P. 27, 29
Warren v. U.S., 340 U.S. 523
7. We think it is well settled that a common law certiorari tries nothing but the jurisdiction, and, incidentally, the regularity of the proceedings upon which the jurisdiction depends. It brings up no issue of law or fact not involved in question of jurisdiction. Under no circumstances, can the review be extended to the merits.
Whitney v. Board of Delegates of the
S.F. Fire Dept., 14 Cal. 479 (1860)
8. Willfulness is defined as the "voluntary, intentional violation of a known legal duty."
Cheek v. United States, 111 S.Ct. @ 610
9. Ex post facto law is a law which operates upon a subject not liable to it at the time the law was made.
State v. Masino, 14 ALR.2d 720

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10. Favors from government often carry with them an enhanced measure of regulation.

California Bankers Assn. v. Schultz, 416
U.S. 21

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Trespassing

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1. Tax protester's First Amendment right to petition for redress of grievances was violated when she was charged with corruptly endeavoring to intimidate and impede IRS agents by filing factually accurate, nonfraudulent criminal trespass complaints against agents after they entered upon protester's property in total disregard of "no trespassing" signs and protester's previous letters requesting that her privacy rights be respected.

United States v. Hylton, 710 F.2d 1106

Under Penalty Of Perjury

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1. Under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.
28 U.S.C., Section 1746

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Ernest Solivan