Prize, Booty, Admiralty

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Summary – Note worth Things

- **Prize vs. Booty**. Things appropriated at sea (prize) or at land (Booty).
- **Law Form Concerns**: As someone who is passionate about law, it's important to know which law form your operating, or are assumed to be operating in.
- **Enemy of the State**: Does the state prosecutor deem us to be "enemies of the state" and are seeking to capture us or our property?
- **The Law of the Sea imposed on the Land:** Does the presumed legal status of the individual allows for and enables the laws of the sea to be imposed on that individual? And therefore if we seek another law form is the burden on us to proactively define that status?

PRIZE (1)[1] – Apprehension of the goods of a ship at sea

mar. law, **war**.

1. The apprehension and detention at sea, of a ship or other vessel, by authority of a belligerent[2] power, either with the design of appropriating it, with the goods and effects it contains, or with that of becoming master of the whole or a part of its cargo. 1 Rob. Adm. R. 228. The vessel or goods thus taken are also called a prize. Goods taken on land from a public enemy, are called **booty**, (q. v.) and the distinction between a prize and booty consists in this, that the former is taken at sea and the latter on laud.

2. In order to vest the title of the prize in the captors, it must be brought with due care into some convenient port for adjudication by a competent court. The condemnation must be pronounced by a prize court of the government of the captor sitting in the country of the captor, or his ally; the prize court of an ally cannot condemn. Strictly speaking, as between the belligerent parties the title passes, and is vested when the capture is complete; and that was formerly held to be complete and perfect when the battle was over, and the *spes recuperandi* was gone. 1 Kent, Com. 100; Abbott on Shipp. Index, h. t.; 13 Vin. Ab. 51; 8 Com. Dig. 885; 2 Bro. Civ. Law, 444; Harr. Dig. Ship. and Shipping, X; Merl. Repert. h. t.; Bouv. Inst. Index. h. t. Vide Infra praesidia.

BOOTY – personal property captured on land

war.

1. The capture of personal property by a public enemy **on land**, in contradistinction **to prize**, which is a capture of such property by such an enemy, **on the sea**.

2. After booty has been in complete possession of the enemy for twenty-four hours, it becomes absolutely his, without any right of postliminy in favor of the original owner, particularly when it has passed, bona fide, into the hands of a neutral. 1 Kent, Com. 110.

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[1] PRIZE (2) contracts: JKM Summary: is the layman's understanding of this term e.g. winning the lottery. This definition for Prize is referenced in "Word-Study-G997-boeetheoo-succour-succor-help.doc"

[2] **Belligerent**: a nation or person engaged in war or conflict, as recognized by **international law**. Source Google

3. The right to the booty, Pothier says, belongs to the sovereign but sometimes the right of the sovereign, or the public, is transferred to the soldiers, to encourage them. Tr. du Droit de Propriete, part 1, c. 2, art. 1, 2; Burl. Nat. and Pol. Law, vol. ii. part 4, o. 7, n. 12.

BLACK BOOK OF THE ADMIRALTY

An ancient book compiled in the reign of Edw. III. It has always been deemed of the highest authority in matters concerning the admiralty. It contains the laws of Oleron[3], At large; a view of the crimes and offences cognizable in the **admiralty**; ordinances and commentaries on matters of prize and **maritime** torts, injuries and contracts, 2 Gall. R. 404.

COURT OF ADMIRALTY

A court having jurisdiction of all maritime causes. Vide Admiralty; Courts of the United States; Instance Courts; Prize Court; 2 Chit. Pr. 508 to 538.

PRIZE COURT

Engl. law

1. The name of court which has jurisdiction of all captures made in war on the high seas.

2. In England this is a separate branch of the court of admiralty, the other branch being called the instance court. (q. v.)

3. The **district courts of the United States** have jurisdiction both as instance and prize courts, there being no distinction in this respect as in England. 3 Dall. 6; vide 1 Gall. R. 563; Bro. Civ. & Adm. Law, ch. 6 & 7; 1 Kent, Com. 356; Mann. Comm. B. 3, c. 12.

JKM Comment: Does the state prosecutor deem us to be “enemies of the state” and are seeking to capture us or our property? Do we need to be concerned for those who find themselves in a court of admiralty generally speaking, but the fact that these courts were merged, the question arises do we need to be doubly concerned not knowing that they seek a prize which is us or our property?

INSTANCE COURT – A Court of Admiralty

Eng. law.

1. The English court of admiralty is divided into two distinct tribunals; the one having, generally, all the jurisdiction of the admiralty, except in prize cases, is called the instance court; the other, acting under a special commission, distinct from the usual commission given to judges of the admiralty, **to enable the judge in time of war to assume the jurisdiction of prizes**, and' called Prize Court.

2. In the United States, the district courts of the U. S. possess all the powers of courts of admiralty, whether considered as instance or prize courts. 3 Dall. R. 6. Vide 1 Gall. R. 563; Bro. Civ. & Adm. Law, ch. 4 & 5; 1 Kent, Com. 355, 378. Vide Courts of the United States; Prize Court.

[3] The name of a maritime code

SPES RECUPERANDI – The Hope of Recover

The hope of recovery. This term is applied to cases of capture of an enemy's property as a booty or prize. As between the belligerent parties, the title to the property taken as a prize passes the moment there is no longer any hope of recovery. 2 Burr. Rep. 683. Vide Infra praesidea; Jus Postliminy; Bopty; Piize.

POSTLIMINIUM[4] - Etymology: After + a Threshold

1. That right in virtue of which persons and things taken by the enemy are restored to their former state, when coming again under the power of the nation to which they belong. Vat. Liv. 3, c. 14, s. 204; Chit. Law of Nat. 93 to, 104; Lee on Captures, ch. 5; Mart. Law of Nat. 305; 2 Wooddes. p. 441, s. 34; 1 Rob. Rep. 134; 3 Rob. Rep. 236; Id. 97 2 Burr. 683; 10 Mod. 79; 6 Rob. R. 45; 2 Rob. Rep. 77; 1 Rob. Rep. 49; 1 Kent, Com. 108.

2. The *jus posiliminii* was a fiction of the Roman law. Inst. 1, 12, 5. 3. It is a right recognized by the law of nations, and contributes essentially to mitigate the calamities of war. When, therefore, property taken by the enemy is either recaptured or rescued from him, by the fellow subjects or allies of the original owner, it does not become the property of the recaptor or rescuer, as if it had been a new prize, but it is restored to the original owner by right of postliminy, upon certain terms.

FICTION OF LAW – Differs from Presumption, e.g. a corporation = a natural person

1. The assumption that a certain thing is true, and which gives to a person or thing, a quality which is not natural to it, and establishes, consequently, a certain disposition, which, without the fiction, would be repugnant to reason and to truth. It is an order of things which does not exist, but which the law prescribe; or authorizes it differs from presumption, because it establishes as true, something which is false; whereas presumption supplies the proof of something true. Dalloz, Dict. h. t. See 1 Toull. 171, n. 203; 2 Toull. 217, n. 203; 11 Toull. 11, n. 10, note 2; Ferguson, Moral Philosophy, part 5, c. 10, s. 3 Burgess on Insolvency, 139, 140; Report of the Revisers of the Civil Code of Pennsylvania, March 1, 1832, p. 8.

2. The law never feigns what is impossible *fictum est id quod factum non est sed fieri potuit*. Fiction is like art; it imitates nature, but never disfigures it it[?] aids truth, but it ought never to destroy it. It may well suppose that what was possible, but which is not, exists; but it will never feign that what was impossible, actually is. D'Aguesseau, Oeuvres, tome iv. page 427, 47e Plaidoyer.

3. Fictions were invented by the Roman praetors, who, not possessing the power to abrogate the law, were nevertheless willing to derogate from it, under the pretence of doing equity. Fiction is the resource of weakness, which, in order to obtain its object, assumes as a fact, what is known to be contrary to truth: when the legislator desires to accomplish his object, he need not feign, he commands. Fictions of law owe their origin to the legislative usurpations of the bench. 4 Benth. Ev. 300. 4. It is said that every fiction must be framed according to the rules of law, and that every legal fiction must have equity for its object. 10 Co. 42; 10 Price's R. 154; Cowp. 177. To prevent, their evil effects, they are not allowed to be carried further than the reasons which introduced them necessarily require. 1 Lill. Ab. 610; Hawk. 320; Best on Pres. 20. 5. The law abounds in fictions. That an estate is in abeyance; the doctrine of remitter, by which a party who has been disseised of his freehold, and afterwards acquires a defective title, is remitted to his former good title; that one thing done today, is considered as done, at a preceding time by the doctrine of relation; that, because one thing is proved, another shall be presumed to be true, which is the case in all presumptions; that the heir, executor, and administrator stand by representation, in the place of the deceased are all fictions of law. "Our various introduction of John

[4] See Word-Study-G997-boeetheoo-succour-succor-help.doc;

Doe and Richard Roe," says Mr. Evans, (Poth. on Ob. by Evans, vol. n. p. 43,) "our solemn process upon disseisin by Hugh Hunt; our casually losing and finding a ship (which never was in Europe) in the parish of St. Mary Le Bow, in the ward of Cheap; our trying the validity of a will by an imaginary, wager of five pounds; our imagining and compassing the king's death, by giving information which may defeat an attack upon an enewy's settlement in the antipodes our charge of picking a pocket, or forging a bill with force and arms; of neglecting to repair a bridge, against the peace of our lord the king, his crown and dignity are circumstances, which, looked at by themselves, would convey an impression of no very favorable nature, with respect to the wisdom of our jurisprudence." Vide 13 Vin. Ab. 209; Merl. Rep. h. t.; Dane's Ab. Index, h. t.; and Rey, des Inst. de I'Angl. tome 2, p. 219, where he severely cesures these fictions as absurd and useless.

Legal Fiction

A legal fiction is a fact assumed or created by courts[1] which is then used in order to apply a legal rule which was not necessarily designed to be used in that way.

…

Legal fictions may be counterintuitive in the sense that one might not normally view a certain fact or idea as established in the course of everyday life, but they are preserved to advance public policy and preserve the rights of certain individuals and institutions. A common example of a legal fiction is when a corporation is treated in judicial proceedings as if it were a "natural person" and thus has same legal rights and responsibilities as a natural person.

Legal fictions are mostly encountered under common law systems.

The term "legal fiction" is not usually used in a pejorative way, and has been likened to scaffolding around a building under construction.[2]

…

Source: https://en.wikipedia.org/wiki/Legal_fiction

LAWS OF OLERON

maritime law.

1. A code of sea laws of deserved celebrity. It was originally promulgated by Eleonor, duchess of Guienne, the mother of Richard the First of England. Returning from the Holy Land, and familiar with the maritime regulations of the Archipelago, she enacted these laws at Oleron in Guienne, and they derive their title from the place of their publication. The language in which they were originally written is the Gascon, and their first object appears to have been the commercial operations of that part of France only. Richard I., of England, who inherited the dukedom of Guienne from his mother, improved this code, and introduced it into England. Some additions were made to it by King John; it was prormulgated anew in the 50th year of Henry III., and received its ultimate confirmation in the 12th year of Edward III. Brown's Civ. and Adm. Law, vol. ii. p. 40.

2. These laws are inserted in the beginning of the book entitled "*Us et Coutumes de la Mer*," with a very excellent commentary on each section by Clairac, the learned editor. A translation is to be found in the Appendix to 1 Pet. Adm. Dec.; Marsh. Ins. B. 1, c. 1, p. 16. See Laws of Wisbuy: Laws of the Hanse Towns; Code

https://en.wikipedia.org/wiki/Rolls_of_Ol%C3%A9ron

The **Rolls of Oléron** (*Rôles d'Oléron*, also known as the "Judgments of Oleron" and the "Rules of Oléron") **were the first formal statement of** "maritime" or "admiralty" laws **in northwestern Europe**.

They were promulgated by Eleanor of Aquitaine in about 1160, after her return from the second crusade having accompanied her first husband Louis VII. They were based upon the ancient *Lex Rhodia*, which had governed Mediterranean commerce since before the 1st century. She likely became acquainted with them while at the court of King Baldwin III of Jerusalem, who had adopted them, as the *Maritime Assizes of the Kingdom of Jerusalem*. They are named for the island of Oléron since the island was the site of the maritime court associated with the most powerful seamen's guild of the Atlantic. She promulgated them in England at the very end of the twelfth century having been granted viceregal powers of England while King Richard I was on the third crusade.[1]

Timeline of Jews in England

Source: The-Shetars-Effect-on-English-Law-and-A-Law-of-the-Jews-becomes-the-Law-of-the-Land-by-Judith-Shapiro.pdf

58. Id. at 117-18. The dates of the Norman and Angevin Kings from the Conquest to the expulsion of the Jews in 1290 are:

William I	1066-1087	
William II	1087-1100	
Henry I	1100-1135	
Stephen	1135-1154	
Henry II	1154-1189	
Richard I	1189-1199	
John	1199-1216	
Henry III	11216-1272	
Edward	11272-1307	1290 Expulsion of the Jews from England

Excerpt from “Exodus Chapter 5 and straw man”

Statute Staples

See 01-26-084E Mortgages – Statute Staples; 05-19-08d Fhetar Contracts - Statute Staples; 08-25-08K Staple’s Caper)

STATUTES STAPLE

1, English law. The statute of the staple, 27 Ed. HI. stat.

2, confined the sale of all commodities to be exported to certain towns in England, called estaple or staple, where foreigners might resort. It authorized a security for money, commonly called statute staple, to be taken by traders for the benefit of commerce; the mayor of the place is entitled to take a recognizance of a debt, in proper form, which has the effect to convey the lands of the debtor to the creditor, till out of the rents and profits of them he may be satisfied. 2 Bl. Com. 160; Cruise, Dig. tit. 14, s. 10; 2 Rolle's Ab. 446; Bac. Ab. Execution, B. 1 4 Inst. 238.

Statute-staple. In English law. A security for a debt acknowledged to be due, so called from its being entered into before the mayor of the staple, that is to say, the grand mart for the principal commodities or manufactures of the kingdom, formerly held by act of parliament in certain trading towns. In other respects it resembled the statute-merchant, (a. v.,) but like that has now fallen into disuse. 2 Bl. Comm. 160; 1 Steph. Comm. 287. Source Blacks 2nd

The Shetar's Effect on English Law

by Judith A. Shapiro

Several elements of historical Jewish legal practice have been integrated into the English legal system. Notable among these is the written credit agreement - **shetar**, or **starr**, as it appears in English documents. The basis of the shetar, or "Jewish **Gage**," was a lien on all property (including realty) that has been traced as a source of the modern mortgage. Under Jewish law, the shetar permitted a creditor to proceed against all the goods and land of the defaulting debtor

Starr, Star-Chamber, Gage, Mortgage

STARR, or STARRA.

The old term for contract or obligation among the Jews, being a corruption from the Hebrew word "shetar," a covenant. By an ordinance of Richard I., no starr was allowed to be valid, unless deposited in one of certain repositories established by law, the most considerable of which was in the king's exchequer at Westminster ; and Blackstone conjectures that the room in which these chests were kept was thence called the "starr-chamber." 4 Bl. Comm. 266, 267, note o. Source Blacks 2nd

STAR-CHAMBER

was a court which, originally had jurisdiction in cases where the ordinary course of justice was so much obstructed by one party, through writs, combination of maintenance, or overawing influence that no inferior court would find its process obeyed. The court consisted of the privy council[5], the common-law judges, and (it seems) all peers of parliament. In the reign of Henry VIII. and his successors, the jurisdiction of the court was illegally extended to such a degree (especially in punishing disobedience to the king's arbitrary proclamations) that it became odious to the nation, and was abolished. 4 Steph. Comm. 310; Sweet. Source Blacks 2nd

[5] **PRIVY COUNCIL**: Eng. law. A council of state composed of the king and of such persons as he may select.

Gage – Dead Pledge aka Mortgage

GAGE, v. In old English law. To pawn or pledge;- to give as security for a payment or performance; to wage or wager.

-GAGE, n. In old English law. A pawn or pledge; something deposited as security for the performance of some act or the payment of money, and to be forfeited on failure or non-performance. Glanv. lib. 10, c. 6; Britt . c. 27. A mortgage is a dead-gage or pledge; for, whatsoever profit it yields, it redeems not itself, unless the whole amount secured is paid at the appointed time. Cowell. In French law. The contract of pledge or pawn; also the article pawned.

-Gage, estates in. Those held in *vadio*, or pledge. They are of two kinds: (1) *Vivum vadium*, or living pledge, or *vifgage*; (2) *mortuum vadium*, or dead pledge, better known as a "mortgage." Source Blacks 2nd

JKM: This sounds (edenics) like token => FRN's?

DE JUDAISMO, STATUTUM – Statutes against the Jews by Edward I

1. The name of a statute passed in the reign of Edw. I., which enacted severe and absurd penalties against the Jews. Barr. on Stat. 197.

2. The Jews were exceedingly oppressed during the middle ages throughout Christendom, and, are so still in some countries. In France, a Jew was a serf, and his person and goods belonged to the baron on whose demesnes he lived. He could not change his domicil without permission of the baron, who could pursue him as a fugitive even on the domains of the king. Like an article of commerce, he might be lent or hired for a time, or mortgaged. If he became a Christian, his conversion was considered a larceny of the lord, and his property and goods were confiscated. They were allowed to utter their prayers only in a low voice and without chanting. They were not allowed to appear in public without some badge or mark of distinction. Christians were forbidden to employ Jews of either sex as domestics, physicians or surgeons. Admission to the bar was forbidden to Jews. They were obliged to appear in court in person, when they demanded justice for a wrong done them, and it was deemed disgraceful to an advocate to undertake the cause of a Jew. If a Jew appeared in court against a Christian, he was obliged to swear by the ten names of God, and invoke a thousand imprecations against himself, if he spoke not the truth. Sexual intercourse between a Christian man and a Jewess was deemed a crime against nature, and was punishable with death by burning. Quia est rem habere cum cane, rem habere a Christiano cum Judaea quae CANIS reputatur - sic comburi debet. 1 Fournel, Hist. des Avocats, 108, 110. See Merlin, Repert. au mot Juifs.

3. - In the fifth book of the Decretals, it is provided, that if a Jew have a servant that desireth to be a Christian, the Jew shall be compelled to sell him to a Christian for twelve pence that it shall not be lawful for them to take any Christian to be their servant that they may repair their old synagogues, but not build new - that it shall not be lawful for them to open their doors, or windows on good Friday; that their wives neither have Christian nurses, nor themselves be nurses to Christian women - that they wear different apparel from the Christians, whereby they may be known, &c See Ridley's View of the Civ. and Eccl Law, part 1, chap. 5, sect. 7 and Madox Hist. of the Exchequer, Index, as to their condition in England.

PRAETOR – Officer of Rome later called Consuls

Roman civil law.

1. A municipal officer of Rome, so called because, (*praeiret populo*,) he went before or took precedence of the people. The consuls[6] were at first called praetors. Liv. Hist. III. 55. He was a sort of minister of justice, invested with certain legislative powers, especially in regard to the forms or formalities of legal proceedings.[7] Ordinarily, ~~be aid~~ he did not decide causes as a judge, but prepared the grounds of decision for the judge and sent to, him the questions to be decided between the parties. The judge was always chosen by the parties, either directly, or by rejecting, under certain rules and limitations, the persons proposes to them by the praetor. Hence the saying of Cicero, (pro Cluentis, 43,) that no one could be judged except by a judge of his own choice. There were several kinds of officers called proctors. See Vicat, Vocab.

2. Before entering on his functions he published an edict announcing the system adopted by him for the application and interpretation of the laws during his magistracy. His authority extended over all jurisdictions, and was summarily expressed by the word *do, dico, addico*[8], i, e. *do* I give the action, *dico* I declare the law, I promulgate the edict, *addico* I invest the judge with the right of judging. There were certain cases which he was bound to decide himself, assisted by a council chosen by himself perhaps the Decemvirs[9]. But the greater part of causes brought before him, be sent either to a judge, an arbitrator, or to recuperators, (recuperatores,) or to the *centumvirs*[100 men], as before stated. Under the empire the powers of the praetor passed by degrees to the praefect[10] of the praetorium, or the praefect of the city; so that this magistrate, who at first ranked with the consuls, at last dwindled into a director or manager of the public spectacles or games.

3. Till lately, there were officers in certain cities of Germany denominated praetors Vide 1 Kent, Com. 528.

PROCTOR – Similar to an Attorney

One appointed to represent in judgment the party who empowers him, by writing under his hand called a proxy. The term is used chiefly in the courts of civil and ecclesiastical law. The proctor is somewhat similar to the attorney. Avl. Parerg. 421.

Decemviri – Ten Men

Decemviri (singular ***decemvir***) is a Latin term meaning "Ten Men" which designates any such commission in the Roman Republic (cf.*Triumviri*, Three Men). Different types of decemvirate include the writing of laws with consular *imperium* (*LEGIBVS SCRIBVNDIS CONSVLARI IMPERIO*), the judging of litigation (*STLITIBVS IVDICANDIS*), the making of sacrifices (*SACRIS FACIVNDIS*), and the distribution of public lands (*AGRIS DANDIS ADSIGNANDIS*). Source: https://en.wikipedia.org/wiki/Decemviri

[6] See D:\Documents\Law\WordStudy_Honorary-Foreign-Consul.doc

[7] An interesting mixture of legislation with the judiciary.

[8] Lat. I give, I say, I adjudge

[9] Can you say *Minyan*? https://en.wikipedia.org/wiki/Minyan , see Word-Study-H4510-Minyan-enumeration-number

[10] **PRAEFECTUS VIGILUM:** Roman civ. law. The chief officer of the night watch. His jurisdiction extended to certain offences affecting the public peace; and even to larcenies. But he could inflict only slight punishments.