

DUE CONSIDERATION

F.2d 780, 783. As regards sufficient consideration in contract law, see Consideration.

Due course holder. See Holder in due course.

Due course of law. This phrase is synonymous with "due process of law," or "the law of the land," and the general definition thereof is "law in its regular course of administration through courts of justice". See Due process of law.

Due date. In general, the particular day on or before which something must be done to comply with law or contractual obligation.

Due diligence. See Diligence.

Due influence. Influence obtained by persuasion and argument or by appeals to the affections. In re Chamberlain's Estate, Cal.App., 109 P.2d 449, 452. See also Coercion; Duress.

Duel. A duel is any combat with deadly weapons fought between two or more persons, by previous agreement or upon a previous quarrel.

Dueling. The fighting of two persons, one against the other, at an appointed time and place, upon a precedent quarrel. If death results, the crime is murder. It differs from an affray in this, that the latter occurs on a sudden quarrel, while the former is always the result of design.

Duellum /d(y)uwéləm/. The trial by battel or judicial combat. See Battel.

Due negotiation. Transferring a negotiable document of title under such conditions that the transferee takes the document and the goods free of certain claims enforceable against the transferor. See U.C.C. §§ 7-501(4) & 7-502(1). Due negotiation is the good faith purchase exception to the doctrine of derivative title as applied to documents.

Due notice. Sufficient, legally prescribed notice. Notice reasonably intended, and with the likelihood of, reaching the particular person or public. No fixed rule can be established as to what shall constitute "due notice." "Due" is a relative term, and must be applied to each case in the exercise of the discretion of the court in view of the particular circumstances. See Notice.

Due-on-encumbrance clause. Mortgage language that gives the mortgagee the option to accelerate the mortgage debt in the event the mortgagor further encumbers or mortgages the real estate without mortgagee's consent.

Due-on-sale clause. A provision usually found in a note or mortgage whereby the entire debt becomes immediately due and payable at mortgagee's option upon sale of mortgaged property. Such clauses are generally used to prevent subsequent purchasers from assuming existing loans at lower than current market rates. The validity of such provisions has been upheld by the Supreme Court.

Due posting. Stamping and placing letter in United States mail.

Due process clause. Two such clauses are found in the U.S. Constitution, one in the 5th Amendment pertaining to the federal government, the other in the 14th Amendment which protects persons from state actions. There are two aspects: procedural, in which a person is guaranteed fair procedures and substantive which protects a person's property from unfair governmental interference or taking. Similar clauses are in most state constitutions. See Due process of law.

Due process of law. Law in its regular course of administration through courts of justice. Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. A course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance. *Pennoy v. Neff*, 95 U.S. 733, 24 L.Ed. 565. Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law.

An orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case. *Kazubowski v. Kazubowski*, 45 Ill.2d 405, 259 N.E.2d 282, 290. Phrase means that no person shall be deprived of life, liberty, property or of any right granted him by statute, unless matter involved first shall have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings, and it forbids condemnation without a hearing. *Pettit v. Penn*, La.App., 180 So.2d 66, 69. The concept of "due process of law" as it is embodied in Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a reasonable and substantial relation to the object being sought. *U. S. v. Smith*, D.C.Iowa, 249 F.Supp. 515, 516. Fundamental requisite of "due process" is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest, and to assert before the appropriate decision-making body the reasons for such choice. *Trinity Episcopal Corp. v. Romney*, D.C.N.Y., 387 F.Supp. 1044, 1084. Aside from all else, "due process"

means fundamental fairness and substantial justice. *Vaughn v. State*, 3 Tenn.Crim.App. 54, 456 S.W.2d 879, 883.

Embodied in the due process concept are the basic rights of a defendant in criminal proceedings and the requisites for a fair trial. These rights and requirements have been expanded by Supreme Court decisions and include, timely notice of a hearing or trial which informs the accused of the charges against him or her; the opportunity to confront accusers and to present evidence on one's own behalf before an impartial jury or judge; the presumption of innocence under which guilt must be proven by legally obtained evidence and the verdict must be supported by the evidence presented; the right of an accused to be warned of constitutional rights at the earliest stage of the criminal process; protection against self-incrimination; assistance of counsel at every critical stage of the criminal process; and the guarantee that an individual will not be tried more than once for the same offense (double jeopardy).

See also Procedural due process; Substantive due process.

Due process rights. All rights which are of such fundamental importance as to require compliance with due process standards of fairness and justice. Procedural and substantive rights of citizens against government actions that threaten the denial of life, liberty, or property. See Due process of law.

Due proof. Within insurance policy requirements, term means such a statement of facts, reasonably verified, as, if established in court, would prima facie require payment of the claim, and does not mean some particular form of proof which the insurer arbitrarily demands. *National Life Ins. Co. v. White*, D.C.Mun.App., 38 A.2d 663, 666. Sufficient evidence to support or produce a conclusion; adequate evidence. See Burden of proof; Proof.

Due regard. Consideration in a degree appropriate to demands of the particular case.

Dues. Certain payments, rates or taxes. As applied to clubs and other membership organizations, refers to sums paid toward support and maintenance of same and as a requisite to retain membership.

Due to. Expressions "sustained by," "caused by," "due to," "resulting from," "sustained by means of," "sustained in consequence of," and "sustained through" have been held to be synonymous.

D.U.I. The crime of driving under the influence of alcohol or drugs. See Driving while intoxicated.

Duke. In English law, is a title of nobility, ranking immediately next to the Prince of Wales. It is only a title of dignity. Conferring it does not give any domain, territory, or jurisdiction over the place whence the title is taken. *Duchess*, the consort of a duke.

Duke of Exeter's Daughter. The name of a rack in the Tower, so called after a minister of Henry VI, who sought to introduce it into England.

Duke of York's Laws. A body of laws compiled in 1665 for the government of the colony of New York.

Despotism /d(y)üwłókrásiy/. A government where servants and slaves have so much license and privilege that they domineer.

Duly. In due or proper form or manner; according to legal requirements. Regularly; properly; suitable; upon a proper foundation, as distinguished from mere form; according to law in both form and substance. See Due process of law.

Duly ordained minister of religion. Person who has been ordained in accordance with the ceremonial, ritual, or discipline of a recognized church, religious sect, or religious organization, to teach and preach its doctrines and to administer its rites and ceremonies and public worship, and who customarily performs those duties.

Duly qualified. Being "duly qualified" to fill an office, in the constitutional sense and in the ordinary acceptance of the words, means that the officer shall possess every qualification; that he shall in all respects comply with every requisite before entering on duties of the office; and that he shall be bound by oath or affirmation to support the Constitution, and to perform the duties of the office with fidelity.

Dum /dám/. Lat. While; as long as; until; upon condition that; provided that.

Dumb-bidding. In sales at auction, when the minimum amount which the owner will take for the article is written on a piece of paper, and placed by the owner under an object, and it is agreed that no bidding shall avail unless equal to that, this is called "dumb-bidding."

Dum bene se gesserit /dám bínyiy síy jésərət/. While he shall conduct himself well; during good behavior. Expressive of a tenure of office not dependent upon the pleasure of the appointing power, nor for a limited period, but terminable only upon the death or misconduct of the incumbent.

Dum fervet opus /dám fərvət ówpəs/. While the work glows; in the heat of action.

Dum fuit infra ætatem /dám fyúwət ínrə iytéytəm/. (While he was within age.) In old English practice, a writ of entry which formerly lay for an infant after he had attained his full age, to recover lands which he had aliened in fee, in tail, or for life, during his infancy; and, after his death, his heir had the same remedy.

Dum fuit in prisona /dám fyúwət ín prízənə/. In old English law, a writ which lay for a man who had aliened lands under duress by imprisonment, to restore to him his proper estates. Abolished by St. 3 & 4 Wm. IV, c. 27.

Dummodo /dámówdow/. Provided; provided that. A word of limitation in the Latin forms of conveyances, of frequent use in introducing a reservation; as in reserving a rent.

Dummy, *n.* One who purchases property and holds legal title for another, usually to conceal the identity of the