

**Abuse of process:**

Administrative Procedure Act

The Administrative Procedure Act (APA) is a federal act that governs the procedures of administrative law. The APA is codified in 5 U.S.C. §§ 551–559.

Abuse of process is a common law tort that involves the misuse of legal process(es) for an ulterior purpose. Abuse of process is one of several actionable offenses aimed at discouraging bad-faith litigation attempts. Indeed, courts hold the authority to sanction parties for bringing frivolous action, and parties also have a right to action under the claim of malicious prosecution. Generally, the elements for abuse of process are:

- (1) the use of illegal or improper use of process;
- (2) an ulterior motive or improper purpose; and in some jurisdictions
- (3) harm to a litigant. For the purposes of abuse of process, an arbitration proceeding is a judicial proceeding. Abuse of process has been described as misusing a "criminal or civil process against another party for a purpose different than the proceeding's intended purposes" and thereby causing the party damages (e.g., arrest, seizure of property, or economic injury).

A classic case of abuse of process entails an attempt by a plaintiff to coerce the defendant to do some collateral thing that they could not be legally and regularly compelled to do. For example, in a case where a former employer sought to bring criminal charges to its employee to recover stolen money while knowing that the employee was not responsible for the theft, the court held the employer liable for abuse of process for initiating criminal charges while knowing that the charges were unsupported by probable cause.

In regard to defenses to abuse of process, there is disagreement among jurisdictions on whether good-faith reliance on an attorney's advice in bringing action serves as a complete defense. Still, attorneys who bring the improper process can be held liable to the damaged party as well.

**CORPUS DELICTI:**

"For a crime to exist, there must be an injured party (Corpus Delicti) There can be no sanction or penalty imposed on one because of this Constitutional right." *Sherer v. Cullen* 481 F. 945:

Supreme courts ruled "Without Corpus delicti there can be no crime""In every prosecution for crime it is necessary to establish the "corpus delicti", i.e., the body or elements of the crime." *People v. Lopez*, 62 Ca.Rptr. 47, 254 C.A.2d 185.

"In every criminal trial, the prosecution must prove the corpus delicti, or the body of the crime itself-i.e., the fact of injury, loss or harm, and the existence of a criminal agency as its cause. " *People v. Sapp*, 73 P.3d 433, 467 (Cal. 2003) [quoting *People v. Alvarez*, (2002) 27 Cal.4th 1161, 1168-1169, 119 Cal.Rptr.2d 903, 46 P.3d 372.].

"As a general principal, standing to invoke the judicial process requires an actual justiciable controversy as to which the complainant has a real interest in the ultimate adjudication because he or she has either suffered or is about to suffer an injury. " *People v. Superior Court*, 126 Cal.Rptr.2d 793.

"Without standing, there is no actual or justiciable controversy, and courts will not entertain such cases. (3 Witlen, Cal. Procedure (3rd ed. 1985) Actions § 44, pp 70-72.)

"Typically, ... the standing inquiry requires careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted. " (*Allen v. Wright*, (1984) 468 U.S. 737, 752...

Whether one has standing in a particular case generally revolved around the question whether that person has rights that may suffer some injury, actual or threatened. " Clifford S. v. Superior Court, 45 Cal.Rptr.2d 333, 335.

SEVEN ELEMENTS OF JURISDICTION:

1. The accused must be properly identified, identified in such a fashion there is no room for mistaken identity. The individual must be singled out from all others; otherwise, anyone could be subject to arrest and trial without benefit of "wrong party" defense. Almost always, the means of identification is a person's proper name,

BUT ANY MEANS OF IDENTIFICATION IS EQUALLY VALID IF SAID MEANS DIFFERENTIATES THE ACCUSED WITHOUT DOUBT. (There is no constitutionally valid requirement you must identify yourself, see 4th Amendment; also see, Brown vs. Texas, 443 US 47 and Kolender v. Lawson 461 US 352.)

2. The statute of offense must be identified by its proper or common name. A number is insufficient. Today, a citizen may stand in jeopardy of criminal sanctions for alleged violation of statutes, regulations, or even low-level bureaucratic orders

(example: Colorado National Monument Superintendent's Orders regarding an unleashed dog or a dog defecating on a trail).

If a number were to be deemed sufficient, government could bring new and different charges at any time by alleging clerical error. For any act to be triable as an offense, it must be declared to be a crime. Charges must negate any exception forming part of the statutory definition of an offense, by affirmative non-applicability. In other words, any charge must affirmatively negate any exception found in the law.

3. The acts of alleged offense must be described in non-prejudicial language and detail so as to enable a person of average intelligence to understand nature of charge

(to enable preparation of defense);

the actual act or acts constituting the offense complained of. The charge must not be described by parroting the statute; not by the language of same. The naming of the acts of the offense describes a specific offense whereas the verbiage of a statute describes only a general class of offense. Facts must be stated.

Conclusions cannot be considered in the determination of probable cause.

4. The accuser must be named. He/she may be an officer or a third party, but some positively identifiable person (human being) must accuse; some certain person must take responsibility for the making of the accusation, not an agency or an institution.

This is the only valid means by which a citizen may begin to face his accuser. Also, the injured party (corpus delicti) must make the accusation. Hearsay evidence may not be provided. Anyone else testifying that they heard that another party was injured does not qualify as direct evidence.

5. The accusation must be made under penalty of perjury. If perjury cannot reach the accuser, there is no accusation. Otherwise, anyone may accuse another falsely without risk.

6. To comply with the five elements above, that is for the accusation to be valid, the accused must be accorded due process. Accuser must have complied with law, procedure and form in bringing the charge. This includes court-determined probable cause, summons and notice procedure. If lawful process may be abrogated in placing a citizen in jeopardy, then any means may be utilized to deprive a man of his freedom, and all dissent may be stifled by utilization of defective process.

"The essential elements of due process are notice and an opportunity to defend. "Simon v. Craft, 182 US 427.

"one is not entitled to protection unless he has reasonable cause to apprehend danger from a direct answer. The mere assertion of a privilege does not immunize him; the court must determine whether his refusal is justified, and may require that he is mistaken in his refusal. "Hoffman v. United States, 341 U.S. 479 (1951)

7. The court must be one of competent jurisdiction. To have valid process, the tribunal must be a creature of its constitution, in accord with the law of its creation, i.e., Article III judge.

Lacking any of the seven elements or portions thereof, (unless waived, intentionally or unintentionally) all designed to ensure against further prosecution (double jeopardy); it is the defendant's duty to inform the court of facts alleged for determination of sufficiency to support conviction, should one be obtained. Otherwise, there is no lawful notice, and charge must be dismissed for failure to state an offense. Without

lawful notice, there is no personal jurisdiction and all proceedings prior to filing of a proper trial document in compliance with the seven elements is void. A lawful act is always legal but many legal acts by government are often unlawful. Most bureaucrats lack elementary knowledge and incentive to comply with the mandates of constitutional due process. They will make mistakes. Numbers beyond count have been convicted without benefit of governmental adherence to these seven elements. Today, informations are being filed and prosecuted by "accepted practice" rather than due process of law.

Jurisdiction, once challenged, is to be proven, not by the court, but by the party attempting to assert jurisdiction. The burden of proof of jurisdiction lies with the asserter. The court is only to rule on the sufficiency of the proof tendered. See, "McNutt v. General Motors Acceptance Corp, 298 U.S. 178 (1936).

The origins of this doctrine of law may be found in "MAXFIELD v. LEVY, 4 U.S. 330 (1797), 4 U.S. 330 (Dall.) 2 Dall. 381 2 U.S. 381 1 L.Ed. 424  
NO VICTIM.. NO CRIME!!!

-NEXT-

No Lawful Right:

- 1~ Police have no lawful right to impose a summary conviction during a road stop and seize your property without first obtaining a warrant from a proper due process court judgement.
- 2~ Police have no lawful right to expect identification from you unless you are wanted for a valid crime that is ordered by a proper due process court conviction and this judgement needs to have a valid claim from an injured party.
- 3~ Police have no lawful right to assault you at any time and arbitrary arrest is considered assault without your consent.
- 4~ Police have no lawful right to make presumptions of guilt.
- 5~ Police have no lawful right to follow unlawful orders.
- 6~ Police are out of uniform if they are not wearing badge, name tag and have a business card with a bonding number. If the police are out of uniform they are acting under full commercial and criminal liability for their actions against you.
- 7~ Police do not have the lawful right to enter or otherwise violate your privacy or property without your consent. This includes pockets, automobiles, private housing and luggage.
- 8~ Police do not have the lawful right to violate your privacy at any time.
- 9~ Police do not have the right to stop you from video taping or audio recording their conduct as they are public servants and must be scrutinized for public safety.
- 10~ Judges must at all times be held to their oath in a court of law or there is no law.
- 11~ Judges must at all times be impartial in a court of law and practicing law from the bench is a violation of their oath.
- 12~ Judges can never pass sentence in a criminal court, only an impartial jury can make that determination.
- 13~ Judges must first establish a crime with a claim from an injured party prior to commencement.
- 14~ Judges who will not allow their oath into the court record are imposters.
- 15~ Government cannot own property since they cannot make a claim to it.
- 16~ Government cannot create laws without the consent of the governed.
- 17~ All statutory legislation is enforced by consent, fraud, coercion or extortion.
- 18~ All statutory acts are invalid due to lack of consideration of contract
- 19~ All licenses, permits and registrations are voidable if consideration and full disclosure was not offered.
- 20~ All loans and mortgages are invalid and the liability is upon the issuer if the contract has only one signature.