

# LAW

"Law" means not only any applicable statutes but also the common law concepts of due process and fair play and avoidance of arbitrary action. State ex rel. Ball v. McPhee, 94 N.W.2d 711, 716, 6 Wis.2d 190.

While in an enlarged sense the word "law" may include positive, as well as common, law, yet in technical precision the word "law" is usually restricted to the common law, and other words, such as "statute" or "act," are applied to legislative provisions. So it is held that a conclusion of a declaration of debt for a penalty under a statute, "contrary to the law in such case made and provided," is not equivalent to a conclusion "contrary to the statute in such cases made and provided." Smith v. U. S., 22 Fed.Cas. 694, 696.

The word "law," as used in federal rule authorizing service of process upon agent authorized by law to receive service of process, refers to statutory law rather than to common or general law. Fleming v. Malouf, D.C. N.Y., 7 F.R.D. 56, 57.

# Common law

In the seventh amendment of the Constitution of the United States, and in the judiciary acts, by "common law" is meant what the Constitution denominated in the third article "law"; not merely suits which the common law recognized among its old and settled proceedings, but suits in which legal rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized and equitable remedies administered; Fenn v. Holme, 62 U.S. 481, 486, 21 How. 481, 486, 16 L.Ed. 198; Michaelson v. Cautley, 32 S.E. 170, 172, 45 W. Va. 533; U. S. v. Block, 24 Fed.Cas. 1176, 1179; or where, as in admiralty, a measure of public law and of maritime law and equity was often found in the same suit. U. S. v. Block, 24 Fed.Cas. 1176, 1179. Thus a fact once tried by a jury cannot be retried or re-examined except by another jury, if either party require it, according to such procedure. Michaelson v. Cautley, 32 S.E. 170, 172, 45 W.Va. 533.