

## **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 DJ.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.

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