

of the facts and circumstances of the plaintiff's case, and the wrongs of which he complains, and the names of the persons by whom done and against whom he seeks redress. Story, Eq. Pl. § 27.

In estates. Lands and tenements; an estate; land and buildings thereon; the subject-matter of a conveyance. *F. F. Proctor Troy Properties Co. v. Dugan Store*, 131 N.Y.S. 786, 788, 191 App.Div. 685. The area of land surrounding a house, and actually or by legal construction forming one inclosure with it. *Ratzell v. State*, Okl.Cr.App. 228 P. 166, 168. A distinct and definite locality, and may mean a room, shop, building, or other definite area. *Robinson v. State*, 143 Miss. 247, 108 So. 903, 905, or a distinct portion of real estate. *Ruble v. Ruble*, Tex.Civ.App., 264 S.W. 1018, 1020.

The term "premises" is used in common parlance to signify land, with its appurtenances; but its usual and appropriate meaning in a conveyance is the interest or estate demised or granted by the deed. *State v. French*, 120 Ind. 229, 22 N.E. 108; *Cooper v. Robinson*, 302 Ill. 181, 134 N.E. 119, 120.

"Premises" of the employer as used in Workmen's Compensation Acts means on the property owned, leased, or controlled by the employer and so connected with the business in which the employee is engaged as to form a component or integral part of it. *Werner v. Allegheny County*, 153 Pa.Super. 10, 33 A.2d 451, 453.

The words "premises" and "plant" are sometimes distinguished; "premises" refers to place and territory, while "plant" includes place and territory, together with the appliances and things which go to make the facilities for the execution of the design and purposes of the enterprise. *Martin v. Matson Nav. Co.*, D.C.Wash., 244 F. 976, 977.

In insurance law. The subject-matter insured in a policy. 4 Campb. 89.

PREMIUM. A reward for an act done. *Brown v. Board of Police Com'rs of City of Los Angeles*, 58 Cal.App.2d 473, 136 P.2d 617, 619.

A bounty or bonus; a consideration given to invite a loan or a bargain; as the consideration paid to the assignor by the assignee of a lease, or to the transferrer by the transferee of shares of stock, etc. So stock is said to be "at a premium" when its market price exceeds its nominal or face value. *Boston & M. R. R. v. U. S.*, C.C.A. Mass., 265 F. 578, 579. See Par.

In granting a lease, part of the rent is sometimes capitalized and paid in a lump sum at the time the lease is granted. This is called a "premium."

The sum paid or agreed to be paid by an assured to the underwriter as the consideration for the insurance. *Wade v. National Bank of Commerce*, 144 Minn. 187, 174 N.W. 889, 890.

Premium note. A promissory note given by the insured for part or all of the amount of the premium.

PREMIUM PUDICITIÆ. The price of chastity. A compensation for the loss of chastity, promised to, or for the benefit of, a female.

PREMUNIRE. See Præmunire.

PRENDA. In Spanish law. Pledge. White, Recop. b. 2, tit. 7.

PRENDER, PRENDRE. L. Fr. To take. power or right of taking a thing without waiting for it to be offered. See *À Prendre*.

PRENDER DE BARON. L. Fr. In old French law. A taking of husband; marriage. An exception or plea which might be used to disable a woman from pursuing an appeal of murder against the killer of her former husband. *Staudet*, C. lib. 3, c. 59.

PRENOMEN. (Lat.) The first or Christian name of a person. See *Cas. Hardw.* 286; 1 *Tayl.* 143.

PREPARATION. For offense consists in devising or arranging means or measures necessary for its commission, while attempt is direct movement toward commission after preparations are made. *People v. George*, 74 Cal.App. 440, 241 P. 97, 100. *State v. Quick*, 199 S.C. 256, 19 S.E.2d 101, 103.

PREPARE. To provide with necessary means; to make ready; to provide with what is appropriate or necessary. *Brennan v. Northern Electric Co.*, 72 Mont. 35, 231 P. 388, 389.

PREPARED COAL. In anthracite coal trade means sizes of coal above pea. *New York, N. H. & H. R. Co. v. Salter*, 104 Conn. 728, 134 A. 224, 222.

PREPENSE. Forethought; preconceived; premeditated. See *Territory v. Bannigan*, 1 Dak. 451, 46 N.W. 597; *People v. Clark*, 7 N.Y. 385.

PREPONDERANCE. Greater weight of evidence, or evidence which is more credible and convincing to the mind. *Button v. Metcalf*, 80 Wis. 193, 49 N.W. 809. That which best accords with reason and probability. *U. S. v. McCaskill*, D.C.Fla. 200 F. 332. The word "preponderance" means something more than "weight"; it denotes a superiority of weight, or outweighing. The words are not synonymous, but substantially different. There is generally a "weight" of evidence on each side in case of contested facts. But juries cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbear, in some degree, the weight upon the other side. *Mathes v. Aggler & Musser Seed Co.*, 173 P. 713, 715, 179 Cal. 697; *Barnes v. Phillips*, 184 Ind. 415, 111 N.E. 419. See, also, *Weight of Evidence*.

It rests with that evidence which, when fairly considered, produces the stronger impression, and has the greater

Efficient test⁹⁰ are one and the same insofar as the requisite degree of evidentiary support is concerned.⁹¹

99. What constitutes substantial evidence

The phrase "substantial evidence" as set forth in the APA⁹² does not mean a large or a considerable amount of evidence.⁹³ Rather, substantial evidence has been described as—

—such relevant evidence as a reasonable mind might accept as adequate to support a conclusion⁹⁴ and furnish a reasonably sound basis for the action under consideration.⁹⁵

—more than a mere scintilla of evidence.⁹⁶

—something less than a preponderance of the evidence but more than a scintilla or glimmer.⁹⁷

—usually more than uncorroborated hearsay,⁹⁸ although it is sometimes possible for hearsay to constitute substantial evidence, as where the party against whom the hearsay evidence is admitted is given an opportunity to cross-examine the source of the evidence.⁹⁹

—enough to justify, if the trial were to a jury, a refusal to direct a verdict

Annotations: Sufficiency of agency's compliance with requirement of Administrative Procedure Act (5 USCS § 553(c)) that agency shall incorporate in rules adopted concise general statement of their basis and purpose, 46 ALR Fed 780.

90. § 529.

91. *Consumers Union of U.S., Inc. v FTC*, 255 US App DC 203, 801 F2d 417, 1986-2 CCH Trade Cases ¶ 67256.

92. 5 USCS § 706(2)(E).

93. *Pierce v Underwood*, 487 US 552, 101 L Ed 2d 490, 108 S Ct 2541, CCH Unemployment Ins Rep ¶ 14030A.

94. *Pierce v Underwood*, 487 US 552, 101 L Ed 2d 490, 108 S Ct 2541, CCH Unemployment Ins Rep ¶ 14030A; *Consolo v Federal Maritime Com.*, 383 US 607, 16 L Ed 2d 131, 86 S Ct 1018, on remand 126 US App DC 14, 373 F2d 674; *Appleyard's Motor Transp. Co. v Interstate Commerce Com.* (CA1) 592 F2d 8; *Willapoint Oysters, Inc. v Ewing* (CA9) 174 F2d 676, cert den 338 US 860, 94 L Ed 527, 70 S Ct 101, reh den 339 US 945, 94 L Ed 1360, 70 S Ct 793; *Samedan Oil Corp. v Cotton Petroleum Corp.* (WD Okla) 466 F Supp 521, 64 OGR 519; *May Trucking Co. v United States*, 193 US App DC 195, 593 F2d 1349; *Health Care Authority v State Health Planning Agency* (Ala App) 549 So 2d 973; *Wade Oilfield Service Co. v Providence Washington Ins. Co.* (Alaska) 759 P2d 1302; *Kaufman v State Dept. of Social & Rehabilitation Services*, 248 Kan 951, 811 P2d 876; *Caucus Distributors, Inc. v Maryland Secur. Comr.*, 320 Md 313, 577 A2d 783; *Even v Kraft, Inc.* (Minn)

445 NW2d 831; *Consolidated Edison Co. v New York State Div. of Human Rights*, 77 NY2d 411, 568 NYS2d 569, 570 NE2d 217, 62 CCH EPD ¶ 42501, reconsideration den 78 NY2d 909, 573 NYS2d 470, 577 NE2d 1061; *Mormak v Unemployment Compensation Bd. of Review*, 135 Pa Cmwlth 232, 579 A2d 1383; *Hoxit v Michelin Tire Corp.*, 304 SC 461, 405 SE2d 407; *Wayne County v Tennessee Solid Water Disposal Control Bd.* (Tenn App) 756 SW2d 274.

95. *Wayne County v Tennessee Solid Water Disposal Control Bd.* (Tenn App) 756 SW2d 274.

96. *Appleyard's Motor Transp. Co. v Interstate Commerce Com.* (CA1) 592 F2d 8; *Willapoint Oysters, Inc. v Ewing* (CA9) 174 F2d 676, cert den 338 US 860, 94 L Ed 527, 70 S Ct 101, reh den 339 US 945, 94 L Ed 1360, 70 S Ct 793; *McHenry v Bond* (CA11) 668 F2d 1185.

97. *Miller v Frasure*, 248 Mont 132, 809 P2d 1257, 16 ALR5th 986 (in order to rise to the level of substantial evidence it must be greater than trifling or frivolous); *Wayne County v Tennessee Solid Water Disposal Control Bd.* (Tenn App) 756 SW2d 274.

98. *Willapoint Oysters, Inc. v Ewing* (CA9) 174 F2d 676, cert den 338 US 860, 94 L Ed 527, 70 S Ct 101, reh den 339 US 945, 94 L Ed 1360, 70 S Ct 793.

Annotations: Comment Note.—Hearsay evidence in proceedings before federal administrative agencies, 6 ALR Fed 76.

99. *Richardson v Perales*, 402 US 389, 28 L Ed 2d 842, 91 S Ct 1420.

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when the conclusion sought to be drawn from it is one of fact for the jury;¹ this is something less than the weight of the evidence.²

—existing where reasonable minds could arrive at the same conclusion reached by the agency.³

—existing where the administrative record affords a substantial basis in fact from which the fact in issue can be reasonably inferred.⁴

§ 540. Whole record review

Traditionally, the courts reviewed administrative action to determine whether it was supported by substantial evidence. The deference afforded agency action was such that the court would consider only evidence favorable to the agency and would ignore evidence to the contrary. This minimal judicial intrusion represented by a substantial evidence standard of review has been supplanted now by whole record review in the normal appeal of administrative decisionmaking.⁵ Under whole record review, if the specific evidence cited in support of an administrative officer's ultimate factual finding is inadequate to support the ultimate factual conclusion, a reviewing court should search the record of the entire proceedings to determine whether it does in fact contain substantial evidence from which the ultimate factual finding could reasonably be inferred.⁶

If a court is to review agency action fairly, it should have before it neither more nor less information than agency had at time it made its decision. To review less than the full administrative record might allow a party to withhold evidence unfavorable to its case; to review more than the information available to the agency at time of decision risks requiring administrators to be present or allowing them to take advantage of post hoc rationalizations.⁷ No part of the evidence may be exclusively relied upon if it would be unreasonable to do so.⁸

1. *Illinois C. R. Co. v Norfolk & W. R. Co.*, 385 US 57, 17 L Ed 2d 162, 87 S Ct 255; *Consolo v Federal Maritime Com.*, 383 US 607, 16 L Ed 2d 131, 86 S Ct 1018, on remand 126 US App DC 14, 373 F2d 674; *Erickson Transport Corp. v Interstate Commerce Com. (CA8)* 728 F2d 1057.

2. *Consolo v Federal Maritime Com.*, 383 US 607, 16 L Ed 2d 131, 86 S Ct 1018, on remand 126 US App DC 14, 373 F2d 674.

3. *State ex rel. Richards v Traut (App)* 145 Wis 2d 677, 429 NW2d 81, habeas corpus proceeding (App) 175 Wis 2d 446, 499 NW2d 276.

4. *Connecticut Bldg. Wrecking Co. v Carothers*, 218 Conn 580, 590 A2d 447, 33 Env't Rep Cas 1759, on remand (Conn Super) 1992 Conn Super LEXIS 1061.

5. *Erickson Transport Corp. v Interstate Commerce Com. (CA8)* 728 F2d 1057; *Cooper v District of Columbia Dept. of Employment Services (Dist Col App)* 588 A2d 1172; *Re Application of Burlington N. R. Co.*, 107 NM 582, 761 P2d 855; *State ex rel. Utilities Com. v Carolina Water Service, Inc.*, 328 NC 299, 401 SE2d 353; *Bloss & Dillard, Inc. v West Virginia*

Human Rights Comm'n, 183 W Va 702, 398 SE2d 528.

6. *Connecticut Bldg. Wrecking Co. v Carothers*, 218 Conn 580, 590 A2d 447, 33 Env't Rep Cas 1759, on remand (Conn Super) 1992 Conn Super LEXIS 1061.

The superior court judge did not apply the proper scope of review in determining the propriety of a decision by the Environmental Management Commission where the court's review described in its judgment did not comport with the whole record test required by the NC Administrative Procedure Act. *Re Environmental Management Com. etc.*, 53 NC App 135, 280 SE2d 520, 11 ELR 20988, appeal after remand 80 NC App 1, 341 SE2d 588, review den 317 NC 334, 346 SE2d 139.

7. *Walter O. Boswell Memorial Hospital v Heckler*, 242 US App DC 110, 749 F2d 788, on remand (DC Dist Col) 628 F Supp 1121.

8. *Re Application of Burlington N. R. Co.*, 107 NM 582, 761 P2d 855.

Under the "any evidence" rule, the sole issue for resolution is whether there was any evidence to support the administrative finding that appellee had voluntarily resigned his employment without good cause. *Bulloch Academy v Cornett*, 184 Ga App 42, 360 SE2d 615.

WELFARE

and reasonable use of the subject-matter. *v. Kelly*, 20 N.J.L. 548.

APPAREL. As generally used in law refers not merely to a person's outer but covers all articles usually worn, as underclothing. *Arnold v. U. S.*, 13 47 U.S. 494, 37 L.Ed. 253. All articles generally worn by persons in the calling on of life and in the locality of the question. In *re Steimes' Estate*, 150 10 N.Y.S. 339.

STEAMING. Consists in subjecting raw material to the atmosphere in open tanks or retorts, sometimes accelerated by steam or required vapor pressure or vapor remaining liquid is had. *Carbide & Chemicals Co. v. Phillips Petroleum Co.*, 72d 218.

A covenant or agreement. *Cowell v. Mares*, Hist. E. L. 13.

P. Sax. In old English law. A cusage which tenants paid to their lords, when their corn, or doing other harvest work, a *covenant to reap* for the lord at his *bidding* or commanding. *Cowell*.

As used in the phrase "born out of wedlock," means the state of marriage or status of husband and is equivalent to matrimony but denotes status of wife and her paramour. *Johnson, N.D.*, 73 N.D. 582, 17 N.W.2d L.R. 1403.

A period of seven consecutive days of some uses, the period beginning and ending with Saturday. See *23 S.Ct.* 393, 188 U.S. 510, 47 L.Ed. 1077. *Orff v. Taylor*, 4 Pet. 361, 7 L.Ed. 1077. *States v. Southern Pac. Co.*, C.C.A. 62, 567; *Progressive Building and McIntyre*, 169 Tenn. 491, 89 S.W.2d

"fourteen days" mean fourteen days. *Fisher v. Booth*, 7 S.W.2d 307, 308.

In early English times, the tenant was bound to work two or three days in his lord's field, during the greater part of four or five during the summer months. *& Maitl.* 349.

In old European law. The judicial proceeding; the trial by battle.

In English law. A duty or toll paid for merchandise. It is called "*tronage*" or "toll."

ward pressure under the influence of gravity, or the quantity of matter as estimated by the balance or scale. *Dwight & Lloyd Sintering Co. v. American Ore Reclamation Co.*, C.C.A.N.Y., 263 F. 315, 316.

Gross Weight

The whole weight of goods and merchandise, including the dust and dross, and also the chest or bag, etc., upon which tare and tret are allowed.

Miner's Weight

Such quantity of mine-run material, as operators and miners may, from time to time, agree as being necessary or sufficient to produce a ton of prepared coal. *Drake v. Berry*, 259 Pa. 8, 102 A. 315, 320.

WEIGHT OF EVIDENCE. The balance of preponderance of evidence; the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other.

The "weight" or "preponderance of proof" is a phrase constantly used, the meaning of which is well understood and easily defined. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established before them. *Haskins v. Haskins*, 9 Gray, Mass., 393. Weight is not a question of mathematics, but depends on its effect in inducing belief. It often happens that an uncorroborated witness may tell a story so natural and reasonable, and in manner so sincere and honest, as to command belief, though contradicted by others. *Braunschweiger v. Waits*, 179 Pa. 47, 36 A. 155, 156. "Weight of proof" means greater amount of credible evidence and is synonymous with "preponderance of proof." *Haskins v. Haskins*, 75 Mass. (9 Gray) 390, 393. For a contrary holding, see *Shinn v. Tucker*, 37 Ark. 580, 588. See, also, *Preponderance*.

WEIR. A fence or an inclosure of twigs, set in a stream to catch fish. *Pub.St.Mass.* p. 1297; *Treat v. Chipman*, 35 Me. 38.

WELDING. The art, practiced immemorially, of uniting two pieces of metal in one piece by heating those portions which are to be welded to a temperature at which they become plastic, and then pressing them strongly together, so as to effect a union. *Thomson Spot Welder Co. v. Ford Motor Co.*, 44 S.Ct. 533, 534, 265 U.S. 445, 68 L.Ed. 1098.

WELFARE. Well-doing or well-being in any respect; the enjoyment of health and common blessings of life; exemption from any evil or calamity; prosperity; happiness. *Wiseman v. Tanner*, D.C. Wash., 221 F. 694, 698.

WELFARE OF CHILD. Under statutes requiring in awarding custody...

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