Idem Sonans

Description

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The rule of *idem sonans* (Latin for â??sounding the sameâ?•) can be traced back to the 1851 English common law case of *R v. Davis*,[1] which provided:

If two names spelt differently necessarily sound alike, the court may, as matter of law, pronounce them to be idem sonantia; but if they do not necessarily sound alike, the question whether they are idem sonantia is a question of fact for the jury.

The doctrine, as adopted by American jurisprudence,[2] holds that a nameâ??s misspelling in legal documents does not invalidate the document if the name, when spoken, sounds substantially like the correct name. Some states have gone so far as to codify this rule.[3]

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In Virginia, we value precision in the land records to secure the effective transfer of real property, so a rule that boils down to â??close enoughâ?• seems unsettling. How close is close enough when we are comparing the name of the grantee of a deed to the name of the grantor on next deed in the chain? How close is close enough when determining whether the defendantâ??s name on the judgment abstract is the same person in the chain of title?

A survey of cases across the nation only increases this concern. Consider the following table of names that were considered the same person:[4]

Names considered *idem sonans*

Abigail, Abigal Allen, Allain, Allaine Alwin, Alvin Amen, Amiel Anne, Anna Anne, Anny Armstead, Almstead, Olmstead Arnall, Arnold Bagwell, Bagswell Barbra, Barbara: Barnstein, Burnstein: Baudin, Beaudin, Bauden Beniditto, Benedetto Berry, Barry Bert, Burt: Bettie, Beattie Bermingham, Birmingham Beulah, Berlah Biggers, Bickers Biglow, Bigelow Bishop, Bischoff Blackenship, Blankenship Bland, DeBland Blunt, Blount Bobb, Bubb Boge, Bogue Bolen, Bolden Booth, Boothe Bosse, Busse Brady, Braddy Brearly, Brailey Calvert, Calvit Canada, Kennedy Celestia, Celeste Celia, Selia Charleston, Charlestown Chatman, Chapman Clark, Clarke Cobbs, Cobs Coburn, Colburn Cockrell, Cockrell Collin, Colin Conaway, Conavay Conklin, Conklan Conn, Corn Conolly, Conly Corrigan, Corgan Daniel, Daniels Danny, Denny Deston, Disston Dickson, Dixon Dierkes, Dierges, Doerges Di Orio, Di Iorio Donnelly, Donly Dooley, Doorley Dope, Doke Dyer, Dyre Edmonds, Edmunds Elbertson, Elberson Ellitt, Elliott Emerly, Emley Emonds, Emmens, Emmons Erwin, Irvin Esparza, Esparsa	Faust, Foust Forris, Farris Foster, Forster Frazier, Fraser Gardiner, Gardner Giboney, Gibney Giddings, Gidings, Gidines Gillispie, Gillespie Gooden, Goodwin Gordon, Gorden Gottleib, Gottlieb Gravier, Gravaier Hackman, Heckman Hamelton, Hamilton Hamilton, Hampton Hanaford, Hanoford Hankins, Hankines Hanley, Hanly Harman, Herman Harriman, Herriman Haverly, Havely Hearn, Hearne Henning, Herring Hinsdall, Hinsdale Horn, Horne Hornbeck, Hornback Hudson, Hutson Ila, Ira Isah, Isaiah Japheth, Japhath Jeffers, Jeffries Johnson, Johnsen Johnson, Johnston Josier, Josiah Josef, Joseph Kay, Key Kealiher, Keoliher, Kelliher, Kellier, Keolhier, Kelhier Keeland, Kneeland Kimberling, Kamberling Kinney, Kenney Koch, Kock Kochannek, Kochawnek, Kochanek Kreitz, Krietz, Kritz, Critz Kuhns, Coons Langford, Lankford Larson, Larsen LeBoeuf, LeBouf Liggion, Liggion Lincoln, Lington Louis, Lewis Lowery, Lowry Lytle, Little McDonald, McDonnell McFarlin, McFarland McInnis, McGinnis McKay, Macke McLaughlin, McGloflin Mahaffrey, Mahaffey Maier, Meyer Marietta, Mary Etta Martin, Martain Megilligan, McGilligan Metz, Meetz	Meyer, Meyers, Mayer Minner, Miner Mitchell, Michael Monson, Munson Moss, Morse Newberry, Nuberry Newbraw, Newbrough Newton, Newten, Nuton Nicholas, Nickols Nolen, Noland Oliver, DeOliver Oâ??Meara, Oâ??Mara, Oâ??Mera Osburn, Ozburn Patterson, Petterson Pedersen, Pederson Penryn, Pennyrine Peregran, Peregrine Petrie, Petris Philip, Pilip Pickren, Pickron Pillsby, Pillsbury Preyer, Pryor, Prior Read, Reed Reulo, Rulo Rosa, Rose Rooks, Rux Ruty, Ruthe Saffle, Saffel Schmidt, Schmidt Seaver, Seavers Serelda, Zerelday Seibert, Sibert Shaffer, Shafer Sinclair, St. Clair Sophia, Sophie Starlin, Starling Steinberg, Steenburg Stier, Stirr Stores, Storrs Stormer, Stermer Strahn, Strahm Stramler, Strambler Symonds, Simons Tilter, Tiller Totley, Tapley Tougaw, Tugaw Townsen, Townsend Trobridge, Trowbridge Usrey, Usury Van Nortrick, Van Nortwick Veike, Vieke Wanser, Wanzer Watford, Wadford Watkins, Wadkins Weiming, Wenning Welsh, Welch Westley, Wesley Whatson, Watson Woolley, Wolley Wray, Rae Wray, Ray Yarbery, Yarbro Zerelday, Serelda Zimri, Zemeriah Zulakoskie, Zulkowsky

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Now, consider the follow table of names (again, from various jurisdictions) that have been considered NOT to be the same person:[5]

Names NOT considered *idem sonans*

Asher, AshleyBattles, Bappels, BoppesBinford, BrimfordBrown, BrowBryan, BryantManuel de J. Castillo,Manual de J. Castello or Cattillo. Carhart, CawhartClemmons, ClementsCobb, CobbsComyns, CumminsConrad, CoonrodDallam, DillonDavid, DavidsDonnel, DonaldEbling, AbleElijah, ElishaElliot, ElliottEmma, EmilyEthelbert, EthelwoodFalk, Falleck

Faver, FaversFerdinand, Fernando Furman, FreemanGenero, GeneraGoldberg, HoldbergGraton, GraftonGriffin, GriffithHesser, HesseHicks, WicksHumphrey, HumphreysJackson Sons Company, Inc., Jackson & Sons Co., IncorporatedJeffery, JeffriesJoest, YoestKlingsbury, KingburyKladder, KritlerKraig, KrugLandis, LandersLane, LeaneLazanes, Lazurus

Lindsey, LindsleyMcCravey, McCarverMcKee, McReeMcMahan, McManusMathews, MatherMelville, MelvinMeyer, MeyersMillen, MillerSandland, SunderlandSchoonhoven, SchoonhovenSemon, SemonsSimonson, SiemsonSmyth, SmuthSpintz, SprinzStrahn, StrahmTaussig, TanssingWaldimar, WaltimoreWhelen, WhelerWillard, WilliamWilliam, WilhelmWillis, WilliamWilliston, Willison

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Can you detect a pattern? Do the names in the first table all sound more similar to each other than the names in the second table? Perhaps most would agree that â??Dannyâ?• and â??Dennyâ?• (first table) sound similar enough, and â??Willisâ?• and â??Williamâ?• (second table) donâ??t. But do you agree that â??Allenâ?• and â??Allaineâ?• (first table) sounds close enough while â??Laneâ?• and â??Leaneâ?• (second table) do not? Reasonable people may disagree. Not all ears are created equal.

If you find this unsettling, donâ??t panic. The rule of *idem sonans* is much more than trying to sound out names and guessing whether they are close enough and keeping a list of names that do and do not make the cut.

The first step in being more comfortable with this rule is to recognize several policy considerations that support it:

1. *Protecting substance over form*: minor errors in names should not invalidate legal documents when the identity of the person is clear from context.
2. *Judicial economy*: allowing courts to overlook such errors prevents needless litigation or document re-execution to correct such errors.
3. *Protecting legitimate expectations*: parties should be able to rely on the apparent validity of legal documents.
4. *Legal tradition*: rooted in centuries of common law tradition, its continued use reflects the legal systemâ??s respect for precedent.
5. *Balanced flexibility in identification*: While the doctrine allows for flexibility in name recognition, it also draws a lineâ??if the misspelling is so severe that it misleads or prejudices another party, the doctrine does not apply.

Keeping these policy considerations in mind, the second step in being more comfortable with this rule is to recognize that the rule is employed in a variety of legal contexts. Some legal contexts provide more liberty to conclude that two names sound enough alike to be considered one.

A brief survey of the few Virginia cases considering *idem sonans* can illustrate.

Consider *Gauss v. Commonwealth*[6] in which a â??W.D. Poynerâ?• was sworn in as a juror, but the verdict was signed by â??W.D. Pointer, foreman.â?• The court determined this to be immaterial, holding the names to be *idem sonans*. This result makes sense. Arguably, someone made a typo when swearing in a juror. Overturning this verdict on this technicality and retrying the case would not promote *judicial economy*. The court protected *substance over form*.

Likewise, consider *Pitsnogle v. Commonwealth*[7] in which a defendant, convicted of larceny, attempted to overturn his conviction, citing conflicting evidence: the indictment stated that a watch was stolen from â??Edmond Bolden,â?• while the evidence proved that the property was stolen from â??Ed Bolen.â?• The court upheld the conviction, holding that the two names were *idem sonans*. Again, protecting *substance over form* and *judicial economy* were in view.

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Consider also *Kentucky Virginia Stone Co. v. Fortner*, [8] a chancery suit to enforce a vendorâ??s lien, in which the court upheld the admissibility into evidence a letter that was mistakenly addressed to â??Kentucky Virginia Stone *and Pipe* Companyâ?• instead of to the actual company, â??Kentucky Virginia Stone Company.â?• Holding the two names *idem sonans*, the court noted that the actual company received the letter, despite the slight error in the name of the addressee. No rights would be prejudiced if the letter was admitted into evidence.

The context to apply *idem sonans* becomes more limited, however, when we are talking not about the notice of a mere letter being admitted into evidence, but the notice of the very lawsuit itself. For example, in *Steinman v. Jessee*, [9] the complainant, whose name was â??A.J. Steinman,â?• was sought to be made a party to a suit by publication of notice, in the caption of which his name was spelled â??Stainmau,â?• while in the warning part of the publication it was spelled â??Stinman.â?• The court held that such names were not *idem sonans* because they did not sound the same; therefore, the publication was insufficient to charge the complainant as a party to the suit. Arguably, there was more at stake here: due process. People have to be put on notice before property is taken. Here we can see *balanced flexibility*â??the misspelling was so severe that it prejudiced another party.

Likewise, in *Virginia & West Virginia Coal Co. v. Charles*, [10] the advertisement for a tax sale naming â??Richard Smythâ?• was defective because â??Richard Smythâ?• was not *idem sonans* with â??Robert Smith,â?• the true owner. The misspelling prejudiced the owner of the property.

In contrast to these two cases, consider *Winfield v. G.W. Motors, Inc*., [11] in which the incorrect name of â??Tamara Sloan Ford, Inc.â?• was held to be *idem sonans* with â??Lamar Sloan Ford, Inc.â?• and therefore sufficient for legal notice, the court noting that this error in the description was not material, given the other parts of the notice otherwise describing Lamar Sloan Ford, Inc. Again, this demonstrates the *balanced flexibility* a court will use when leaning on this rule, but this time there were more factors to allow application of the rule.

A few other cases illustrate this balancing act a court will use in determining whether two names are *idem sonans*. In *Butler v. News-Leader Co.,*[12] a defamation case, Annie Butler, an expert marksman who performed under the stage name of â??Annie Oakley,â?• brought a defamation case against a

newspaper for publishing an article about another expert marksman, Any Oâ??Klayâ??D. The article recited (among other things) that Any had been arrested for stealing a manâ??s trousers for cocaine. Annie alleged that these statements about Any constituted libel against her (Annie). While the court acknowledged that â??Any Oâ??Klayâ??Dâ??â?• was *idem sonans* with â??Annie Oakleyâ?• when â??somewhat carelessly pronounced,â?• it was up to the jury to decide whether the article was intended to publish false facts about Annieâ??which they did not. Allowing the names to be considered the same only allowed the matter to be decided by a jury.

Likewise, in *Safeway Stores v. Suburban Foods*,[13] a trademark infringement case in which the court upheld an action by â??Safewayâ?• to enjoin another companyâ??s use of the name â??Savewayâ?• since both names were *idem sonans* and both were applied to grocery stores. To hold otherwise would have allowed Saveway to steal customers from Safeway.

This balancing act can also be seen in the few cases dealing with the land records. In *Goodman v. Riddick*,[14] property was conveyed to Richard H. Riddick, Jr. (an infant) at the request of his father, Richard H. Riddick. At the same time, the father signed the infantâ??s name (â??Richard H. Riddick, Jr.â?•) to a purchase money deed of trust to Goodman, who subsequently foreclosed when the note was not paid. The Circuit Court held that Goodman had no title to the property, presumably because the signature on the deed of trust was a forgery. Upon appeal, the Virginia Supreme Court reversed, holding that the two names, â??Richard H. Riddickâ?• and â??Richard H. Riddick, Jr.â?• were *idem sonans*, and that to allow Richard H. Riddick, Jr. to take and hold the title to the property would work a fraud upon Goodman, who lent the money to pay for the property. Goodman had no constructive notice that the father lacked title when he signed the deed of trust. The court balanced the reasonable expectations of Goodman against the fraudulent act of the father and used *idem sonans* to achieve a just result.

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In a very similar case, *Gallew v. Roberts*,[15] property was conveyed to an infant, Robert E. Gallew, Jr. A few years later, the infantâ??s parents, Robert E. Gallew and Bessie Gallew, fraudulently signed a deed of trust with a derivation clause that falsely recited that the property had been conveyed to them by the prior deed. The note was not paid, the lender defaulted, and the property was sold to a third-party. Once again, a court used *idem sonans* to achieve the right result. As the court noted, â??any purchaser would naturally conclude that the grantee in the deed (Robert E. Gallew, Jr.) and the grantor in the deed of trust (Robert E. Gallew) were one and the same. Indeed, the above quoted recital in the deed of trust says, in effect, that they are one and the same. No other meaning could be given to this recital.â?•

So, after reviewing all the *idem sonans* cases that Virginia has to offer, where does it leave us? The rule of *idem sonans* is not merely a rule that equates two names if they sound sufficiently alike. It is a rule that is meant to serve several policy considerations in a variety of legal contexts. Courts balance several factors when applying the rule to accomplish a just outcome.

So how do we apply the rule in the context of the land records? We do what we have always done: cast a wide net in our title examinations to include names that are reasonable variations of the names in the chain of title. Remember that the land record system is designed to provide constructive notice, so the names used must be sufficient to meet that standard. This means that the standard that a court might use in evaluating whether a name was â??close enoughâ?• to effect a lien or to transfer title is likely to be high, similar to the cases like *Steinman* and *Virginia & West Virginia Coal Co.,* where the notice of the very lawsuit was at issue. We should be comforted that *idem sonans* is not meant to put

us into a panic trying to think up every permutation of a name, but it is merely a tool that courts use to effect a balanced means of identification, to make sure that form is not elevated over substance, and to achieve a just outcome.

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[1] 15 JP 450 (1851).

[2] *See, e.g., White v. Van Horn*, 159 U.S. 3 (1895) (holding that â??J.H. Chisholmâ?• and â??J.H. Chismâ?• were *idem sonans* for a forgery statute); *Faust v. U.S.*, 163 U.S. 452 (1896) (indictment naming â??W.J. Faustâ?• not defective against defendant W.J. Foust).

[3] Iowa Code Ann. Â§ 558.6; Okla. Stat. Ann. Title 16 Â§ 53(A)(11)(c); S.D. Codified Laws Ann. Â§ 43-29-4.

[4] *Patton and Palomar on Land Titles* Â§ 78 (3rd ed. 2024 update) (citing cases).

[5] *Id.*

[6]141 Va. 440 (1925).

[7] 91 Va. 808 (1895).

[8] 159 Va. 234 (1932).

[9] 108 Va. 567 (1908).

[10] 251 F. 83 (1917).

[11] 1985 WL 306783.

[12] 104 Va. 1 (1905).

[13] 130 F.Supp. 249 (1955).

[14] 152 Va. 693 (1929).

[15] 7 Va. Cir. 516 (1978).

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