pledgee. One with whom a pledge is deposited. [Cases: Pledges ⇨8.]

pledgery. *Archaic.* See SURETYSHIP (1).

pledgor. One who gives a pledge to another. — Also spelled *pledger.* [Cases: Pledges ⇨8.]

plegiis acquietandis. See DE PLEGIIS ACQUIETANDIS.

plena aetas (**plee**-nə **ee**-tas). [Latin] Full age. See AGE OF MAJORITY.

plena forisfactura (**plee**-nə for-is-**fak**-chər-ə). [Latin "complete forfeiture"] A forfeiture of all that one possesses. [Cases: Forfeitures ⇨1.]

plena probatio. See *probatio plena* under PROBATIO.

plenarty (**plee**-nər-tee *or* **plen**-ər-tee), *n. Hist.* The condition of being full or occupied; esp., the state of a benefice that is lawfully occupied by an incumbent.

plenary (**plee**-nə-ree *or* **plen**-ə-ree), *adj.* (15c) **1.** Full; complete; entire <plenary authority>. **2.** (Of an assembly) intended to have the attendance of all members or participants <plenary session>.

plenary action. See ACTION (4).

plenary confession. See CONFESSION.

plenary guardianship. See GUARDIANSHIP.

plenary jurisdiction. See JURISDICTION.

plenary power. See POWER (3).

plenary review. See JUDICIAL REVIEW.

plenary session. See SESSION (1).

plenary suit. See SUIT.

plene (**plee**-nee), *adv.* [Latin] Fully; completely; sufficiently.

plene administravit (**plee**-nee ad-min-ə-**stray**-vit). [Law Latin "he has fully administered"] *Hist.* A defensive plea in which an executor or administrator asserts that no assets remain in the estate to satisfy the plaintiff's demand.

plene administravit praeter (**plee**-nee ad-min-ə-**stray**-vit **pree**-tər). [Law Latin "he has fully administered, except"] *Hist.* A defensive plea in which an executor or administrator asserts that no assets remain in the estate, except a stated few that are insufficient to satisfy the plaintiff's demand.

plene computavit (**plee**-nee kom-pyoo-**tay**-vit). [Law Latin "he has fully accounted"] *Hist.* A plea in an action of account render, alleging that the defendant has fully accounted. See ACCOUNTING (3).

plenipotentiary (plen-ə-pə-**ten**-shee-er-ee). A person who has full power to do a thing; a person fully commissioned to act for another. See *minister plenipotentiary* under MINISTER.

pleno jure (**plee**-noh **joor**-ee). [Latin] *Hist.* With full right. • The phrase usu. referred to a conveyance of the full rights to property.

plenum dominium. See *dominium plenum* under DOMINIUM.

plevin (**plev**-in), *n. Archaic.* An assurance or warrant; a pledge.

Plimsoll marks. See LOAD LINE (2).

PLL. *abbr.* See *product-liability loss* under LOSS.

plot, *n.* (bef. 12c) **1.** A measured piece of land; LOT (1). Cf. PLAT (1). **2.** A plan forming the basis of a conspiracy. [Cases: Conspiracy ⇨1.1, 24(1).]

plot plan. (1925) A plan that shows a proposed or present use of a plot of land, esp. of a residential area. [Cases: Zoning and Planning ⇨245.]

plottage. (1916) The increase in value achieved by combining small, undeveloped tracts of land into larger tracts.

plow back, *vb.* To reinvest earnings and profits into a business instead of paying them out as dividends or withdrawals. [Cases: Corporations ⇨152.]

plowbote. See BOTE (1).

plowland. See CARUCATE.

plowman's fee. See FEE (2).

PLR. *abbr.* PUBLIC-LENDING RIGHT.

pltf. *abbr.* PLAINTIFF.

plunder. See PILLAGE.

plunderage. *Maritime law.* The embezzling of goods on a ship.

plurality. (1803) The greatest number (esp. of votes), regardless of whether it is a simple or an absolute majority <a four-member plurality of the Supreme Court agreed with this view, which received more votes than any other>. — Also termed *plural majority.* Cf. MAJORITY (2).

plurality opinion. See OPINION (1).

plurality vote. See PLURALITY.

plurality voting. 1. See PLURALITY. **2.** See VOTING.

plural majority. See PLURALITY.

plural marriage. 1. See MARRIAGE (1). **2.** See POLYGAMY.

plural wife. See WIFE.

pluries (**pluur**-ee-eez), *n.* [Latin "many times"] (15c) A third or subsequent writ issued when the previous writs have been ineffective; a writ issued after an alias writ. — Also termed *pluries writ.* [Cases: Process ⇨45.]

plurinational administrative institution. *Int'l law.* An entity designed to perform transnational administrative activities when politically oriented international organizations and traditional international agreements are unsuitable. • These institutions usu. arise in fields where transnational arrangements are necessary (such as natural-resource management, transportation, or utilities), and they are often organized as international corporations, national agencies, or private corporations.

***plurium* defense.** See MULTIPLE ACCESS.

plus factor. A fact that supports finding that a specified legal test has been satisfied.

plus petere tempore (pləs pə-**ten**-dɪ **tem**-pə-ree). [Latin "to overclaim in point of time"] *Roman law.* To claim before payment was due.

plus petitio (pləs-pə-**tish**-ee-oh). [Latin "overclaim" or "claiming too much"] *Roman law.* A claim for more than is due; esp., the mistake of claiming more in one's pleadings than is due. • This was fatal to the action under classical law. Under *cognitio extraordinaria*, however, a claimant could continue the action, but could be liable for treble damages to any person injured by the overstated claim. — Also spelled (erroneously) *pluspetitio*. — Also termed *pluris petitio*.

> "A plaintiff may overclaim . . . in substance (*re*) when he claims a bigger amount than is due to him; in time (*tempore*) when he claims before the payment is due; in place (*loco*), when he claims at a place (in a city) other than that where the payment had to be performed . . . or in cause (*causa*) when he claims a certain thing although the debtor had the right to choose between two or more things . . . . After the abolition of the formula-regime the *pluspetitio* lost its actuality. Imperial legislation modified the severe provisions against overclaims . . . . In Justinian's law the plaintiff lost the case only if he maliciously persisted during the whole trial in his overclaim." Adolf Berger, *Encyclopedic Dictionary of Roman Law* 633 (1953).

plus quam tolerabile (pləs kwam tol-ə-**rab**-ə-lee). [Latin] *Hist.* More than can be endured. • The phrase appeared in reference to damage to crops from unavoidable causes (*vis major*).

p.m. *abbr.* POST MERIDIEM.

PM. *abbr.* **1.** POSTMASTER. **2.** PRIME MINISTER. **3.** BUREAU OF POLITICAL–MILITARY AFFAIRS.

PMI. *abbr.* Private mortgage insurance. See *mortgage insurance* under INSURANCE.

PMM. See *purchase-money mortgage* under MORTGAGE.

PMRT. See *purchase-money resulting trust* under TRUST.

PMSI. See *purchase-money security interest* under SECURITY INTEREST.

pneumoconiosis. Chronic lung disease and related conditions characterized by respiratory and pulmonary impairments and caused or aggravated by coal-dust exposure during coal-mine employment.• The disease is usu. latent and often does not manifest until after coal-dust exposure has ended. 20 CFR § 718.201. — Also termed *black-lung disease*. [Cases: Labor and Employment ☞2680, 2689.]

clinical pneumoconiosis. Any medically recognized condition caused by coal-dust exposure while working in a coal mine and characterized by large, permanent deposits of particulate matter in the lungs, coupled with the lung tissue's fibrotic reaction. • Some examples of clinical pneumoconioses are silicosis or silicotuberculosis, massive pulmonary fibrosis, and anthrosilicosis. Cf. *legal pneumoconiosis*. [Cases: Labor and Employment ☞2680, 2689.]

legal pneumoconiosis. Any chronic restrictive or obstructive pulmonary disease or impairment and related conditions arising out of coal-mine employment. Cf. *clinical pneumoconiosis*. [Cases: Labor and Employment ☞2680, 2689.]

P.O. *abbr.* **1.** Post office. **2.** PURCHASE ORDER.

poaching, *n.* The illegal taking or killing of fish or game on another's land. [Cases: Fish ☞13(1); Game ☞7.] — **poach,** *vb.*

pocket immunity. See IMMUNITY (3).

pocket judgment. *Hist.* See STATUTE MERCHANT (1).

pocket money. See HAT MONEY.

pocket part. (1931) A supplemental pamphlet inserted usu. into the back inside cover of a lawbook, esp. a treatise or code, to update the material in the main text until the publisher issues a new edition of the entire work. • Legal publishers frequently leave a little extra room inside their hardcover books so that pocket parts may later be added. — Also termed *cumulative supplement*.

pocket veto. See VETO.

P.O.D. *abbr.* Pay on delivery.

POD account. See *pay-on-death account* under ACCOUNT.

poena (**pee**-nə). [Latin] (1859) Punishment; penalty.

poena arbitraria (**pee**-nə ahr-bi-**trair**-ee-ə). [Law Latin] *Hist.* Arbitrary punishment; punishment left to a judge's discretion.

poena corporalis (**pee**-nə kor-pə-**ray**-lis). [Latin] *Hist.* Corporal punishment.

poena ordinaria (**pee**-nə or-di-**nair**-ee-ə). [Law Latin] *Hist.* Ordinary punishment; punishment fixed by law.

poena pecuniary. A fine.

poenae secundarum nuptiarum (**pee**-nee sek-ən-**dair**-əm nəp-shee-**air**-əm). [Latin "penalties of second marriages"] *Roman law.* Disabilities that, for the protection of children of a first marriage, are imposed on a parent who remarries.

> "If either parent re-married, the interests of the children of the first marriage were protected (in the later Roman Empire) by a number of legal rules the effect of which was to confer certain benefits on the children and to impose certain disabilities — the so-called poenae secundarum nuptiarum — on the parens binubus. The most important of these rules was that which declared that all the property which the parens binubus had acquired gratuitously from his or her deceased spouse, whether by way of gift, dos, donatio propter nuptias, or testamentary disposition — the so-called lucra nuptialia — should become ipso jure the property of the children of the first marriage at the moment of the conclusion of the second marriage, and that only a usufruct should be reserved for the parens binubus." Rudolph Sohm, *The Institutes: A Textbook of the History and System of Roman Private Law* 477 (James Crawford Ledlie trans., 3d ed. 1907).

poenalis (pi-**nay**-lis), *adj.* [Latin] *Roman law.* Imposing a penalty; penal.

poena pilloralis (**pee**-nə pil-ə-**ray**-lis). [Latin] *Hist.* Punishment of the pillory.

poenitentia (pee-nə-**ten**-shee-ə *or* pen-ə), *n.* [Latin "repentance"] *Roman law.* Reconsideration; changing one's mind.

poinding (**pin**-ding), *n. Scots law.* A judgment creditor's seizing of a debtor's corporeal movable property to satisfy the debt. — **poind,** *vb.*

point, *n.* (13c) **1.** A pertinent and distinct legal proposition, issue, or argument <point of error>. **2.** *Parliamentary law.* Any of several kinds of requests made in a deliberative body. See REQUEST.

point of clarification. A question about procedure or substance.

point of information. An inquiry asking a question about a motion's merits or effect. • A point of information can be made only to seek information, not to volunteer information. It may request an objective fact or an expert opinion, but may not request anyone — including the chair or the mover — to speculate about how he or she expects or intends that the present or future leadership will interpret or apply a motion. See INQUIRY (2). — Also termed *question of information.*

point of order. A request suggesting that the meeting or a member is not following the applicable rules and asking the chair enforce the rules. • Some organizations use the term "point of order" as a generic term that also includes a parliamentary inquiry and a question of privilege. — Also termed *question of order.* See *parliamentary inquiry* under INQUIRY; *question of privilege* under QUESTION (3).

point of privilege. A motion that raises a question of privilege. See *question of privilege* under QUESTION (3); RAISE A QUESTION OF PRIVILEGE.

procedural point. A request that raises a personal privilege relating to a member's ability to participate effectively in the meeting, such as the member's ability to see or hear the proceedings. See *personal privilege* under PRIVILEGE (5).

3. One percent of the face value of a loan (esp. a mortgage loan), paid up front to the lender as a service charge or placement fee <the borrower hoped for only a two-point fee on the mortgage>. — Also termed *mortgage point.* See MORTGAGE DISCOUNT. **4.** A unit used for quoting stock, bond, or commodity prices <the stock closed up a few points today>. **5.** A payment to secure a loan, stated as a percentage of the loan's face amount.

point-and-click agreement. (2000) An electronic version of a shrink-wrap license in which a computer user agrees to the terms of an electronically displayed agreement by pointing the cursor to a particular location on the screen and then clicking. • Point-and-click agreements usu. require express acceptance only once but may include a clause providing for a user's ongoing-acceptance of any changes to the agreement's terms, whether or not the user is notified of the changes. See *shrink-wrap license* under LICENSE. — Also termed *e-contract; click-wrap license; click-wrap agreement; user agreement; website-user agreement; web-wrap agreement.* Cf. E-CONTRACT. [Cases: Copyrights and Intellectual Property ⟹107.]

point of attachment. *Copyright.* A connection with a copyright-convention member nation sufficient to make a work eligible for protection under that convention. • For example, a work is eligible for Berne Convention protection if the author is a citizen of a Berne member nation or if the work originated in a Berne member nation. — Also termed *connecting factor.* [Cases: Copyrights and Intellectual Property ⟹34.]

point of error. (18c) An alleged mistake by a lower court asserted as a ground for appeal. See ERROR (2); WRIT OF ERROR. [Cases: Appeal and Error ⟹758.3; Criminal Law ⟹1130(2).]

point of fact. A discrete factual proposition at issue in a case.

point of law. (16c) A discrete legal proposition at issue in a case.

reserved point of law. (1821) An important or difficult point of law that arises during trial but that the judge sets aside for future argument or decision so that testimony can continue. — Also termed *point reserved.*

point reserved. See *reserved point of law* under POINT OF LAW.

points-and-authorities brief. See *brief on the merits* under BRIEF (1).

point source. *Environmental law.* The discernible and identifiable source from which pollutants are discharged. [Cases: Environmental Law ⟹175.]

point system. (1955) *Criminal law.* A system that assigns incremental units to traffic violations, the accumulation of a certain number within a year resulting in the automatic suspension of a person's driving privileges. [Cases: Automobiles ⟹144.1(3).]

poisonous-tree doctrine. See FRUIT-OF-THE-POISONOUS-TREE DOCTRINE.

poison pill. A corporation's defense against an unwanted takeover bid whereby shareholders are granted the right to acquire equity or debt securities at a favorable price to increase the bidder's acquisition costs. — Often shortened to *pill.* See TAKEOVER DEFENSE; SHARK REPELLANT. Cf. PORCUPINE PROVISION. [Cases: Corporations ⟹310(1).]

> "Another recent tactic is the 'poison pill' which is a conditional stock right that is triggered by a hostile takeover and makes the takeover prohibitively expensive. The poison pill is a variation of the scorched earth defense . . . ." Thomas Lee Hazen, *The Law of Securities Regulation* § 11.20, at 575 (2d ed. 1990).

***Polaroid* test.** *Trademarks.* A judicial test for trademark infringement, analyzing eight factors: (1) strength of the mark, (2) similarity between the marks, (3) proximity of the products' markets, (4) effects on market expansion (ability to "bridge the gap"), (5) actual confusion, (6) the defendant's good or bad faith, (7) quality of the products, and (8) sophistication of the buyer. *Polaroid*

Corp. v. Polarad Electronics Corp., 287 F.2d 492, 495 (2d Cir. 1961). [Cases: Trademarks ⚷1081.]

police, *n.* **1.** The governmental department charged with the preservation of public order, the promotion of public safety, and the prevention and detection of crime. [Cases: Municipal Corporations ⚷180.] **2.** The officers or members of this department. [Cases: Municipal Corporations ⚷184.] — **police,** *vb.*

police action. See ARMED CONFLICT.

police-assisted suicide. See *suicide-by-cop* under SUICIDE.

police blotter. See ARREST RECORD.

police chief. The head of a police department.

police court. See *magistrate's court* (1) under COURT.

police jury. *Louisiana law.* The governing body of a parish. [Cases: Counties ⚷38.]

police justice. See *police magistrate* under MAGISTRATE.

police magistrate. See MAGISTRATE.

police officer. A peace officer responsible for preserving public order, promoting public safety, and preventing and detecting crime. Cf. PEACE OFFICER. [Cases: Municipal Corporations ⚷179.]

police power. (1821) **1.** The inherent and plenary power of a sovereign to make all laws necessary and proper to preserve the public security, order, health, morality, and justice. • It is a fundamental power essential to government, and it cannot be surrendered by the legislature or irrevocably transferred away from government. [Cases: States ⚷21(2).]

> "[I]t is possible to evolve at least two main attributes or characteristics which differentiate the police power: it aims directly to secure and promote the public welfare, and it does so by restraint or compulsion." Ernst Freund, *The Police Power* § 3, at 3 (1904).

2. A state's Tenth Amendment right, subject to due-process and other limitations, to establish and enforce laws protecting the public's health, safety, and general welfare, or to delegate this right to local governments. [Cases: States ⚷18.13.] **3.** Loosely, the power of the government to intervene in the use of privately owned property, as by subjecting it to eminent domain. See EMINENT DOMAIN. [Cases: Eminent Domain ⚷1–5.]

police science. See CRIMINAL JUSTICE (2).

police state. See STATE.

policy. (14c) **1.** The general principles by which a government is guided in its management of public affairs. See PUBLIC POLICY. **2.** A document containing a contract of insurance; INSURANCE POLICY. [Cases: Insurance ⚷1712, 1713.] **3.** A type of lottery in which bettors select numbers to bet on and place the bet with a "policy writer. [Cases: Lotteries ⚷3, 20.]

policy court. See COURT.

policyholder. One who owns an insurance policy, regardless of whether that person is the insured party. — Also termed *policyowner.* [Cases: Insurance ⚷1717.]

policy limits. See LIABILITY LIMIT.

policy loan. See LOAN.

policy of insurance. See INSURANCE POLICY.

policy of the law. See PUBLIC POLICY (1).

policyowner. See POLICYHOLDER.

policy proof of interest. *Insurance.* Evidence — shown by possession of a policy — that a person making a claim has an insurable interest in the loss. — Abbr. PPI. [Cases: Insurance ⚷1779–1795.]

policy reserve. See RESERVE.

policy stacking. See STACKING.

policy value. *Insurance.* The amount of cash available to a policyholder on the surrender or cancellation of the insurance policy. [Cases: Insurance ⚷2037.]

policy year. *Insurance.* The year beginning on the date that a policy becomes effective. Cf. ANNIVERSARY DATE.

political, *adj.* Pertaining to politics; of or relating to the conduct of government.

political-action committee. (1839) An organization formed by a special-interest group to raise and contribute money to the campaigns of political candidates who the group believes will promote its interests. — Abbr. PAC. [Cases: Elections ⚷317.1.]

political assessment. See ASSESSMENT.

political asylum. See ASYLUM (2).

political corporation. See *public corporation* (2) under CORPORATION.

political correctness, *n.* (1979) **1.** The inclination to avoid language and practices that might offend anyone's political sensibilities, esp. in racial or sexual matters. **2.** An instance in which a person conforms to this inclination. — Abbr. P.C. — **politically correct,** *adj.*

political corruption. See *official misconduct* under MISCONDUCT.

political crime. See POLITICAL OFFENSE.

political economy. See ECONOMY.

political gerrymandering. See GERRYMANDERING (1).

political law. See POLITICAL SCIENCE.

political liberty. 1. See LIBERTY. **2.** See *political right* under RIGHT.

Political–Military Affairs Bureau. See BUREAU OF POLITICAL–MILITARY AFFAIRS.

political offense. (18c) A crime directed against the security or government of a nation, such as treason, sedition, or espionage. • Under principles of international law, the perpetrator of a political offense cannot be extradited. — Also termed *political crime.* [Cases: Extradition and Detainers ⚷5.]

political party. An organization of voters formed to influence the government's conduct and policies by nominating and electing candidates to public office. • The United States has traditionally maintained a two-

party system, which today comprises the Democratic and Republican parties. — Often shortened to *party*.

political patronage. See PATRONAGE (3).

political power. The power vested in a person or body of persons exercising any function of the state; the capacity to influence the activities of the body politic. — Also termed *civil power*.

sovereign political power. Power that is absolute and uncontrolled within its own sphere. • Within its designated limits, its exercise and effective operation do not depend on, and are not subject to, the power of any other person and cannot be prevented or annulled by any other power recognized within the constitutional system. — Often shortened to *sovereign power*. — Also termed *supreme power*. [Cases: States ⟹1.]

subordinate political power. Power that, within its own sphere of operation, is subject in some degree to external control because there exists some superior constitutional power that can prevent, restrict, direct, or annul its operation. — Often shortened to *subordinate power*.

political question. (1808) A question that a court will not consider because it involves the exercise of discretionary power by the executive or legislative branch of government. — Also termed *nonjusticiable question*. Cf. JUDICIAL QUESTION. [Cases: Constitutional Law ⟹2580–2593.]

political-question doctrine. The judicial principle that a court should refuse to decide an issue involving the exercise of discretionary power by the executive or legislative branch of government. [Cases: Constitutional Law ⟹2580–2593.]

political right. See RIGHT.

political science. (17c) The branch of learning concerned with the study of the principles and conduct of government. — Also termed *political law*.

political society. See STATE (1).

political subdivision. (1827) A division of a state that exists primarily to discharge some function of local government. [Cases: Municipal Corporations ⟹54.]

political trial. See TRIAL.

political-vote privilege. See PRIVILEGE (3).

politics. **1.** The science of the organization and administration of the state. **2.** The activity or profession of engaging in political affairs.

polity (**pol**-ə-tee). (16c) **1.** The total governmental organization as based on its goals and policies. **2.** A politically organized body or community.

polity approach. (1975) A method of resolving church-property disputes by which a court examines the structure of the church to determine whether the church is independent or hierarchical, and then resolves the dispute in accordance with the decision of the proper church-governing body. [Cases: Religious Societies ⟹11, 14.]

poll, *n.* (18c) **1.** A sampling of opinions on a given topic, conducted randomly or obtained from a specified group. **2.** The act or process of voting at an election. **3.** The result of the counting of votes. **4.** (*usu. pl.*) The place where votes are cast.

poll, *vb.* (17c) **1.** To ask how each member of (a group) individually voted <after the verdict was read, the judge polled the jury>. [Cases: Criminal Law ⟹874; Federal Civil Procedure ⟹2191; Trial ⟹325.] **2.** To question (people) so as to elicit votes, opinions, or preferences <the committee polled 500 citizens about their views>. **3.** To receive (a given number of votes) in an election <the third-party candidate polled only 250 votes in the county>.

pollicitation. *Contracts.* (15c) The offer of a promise.

> "By a *promise* we mean an accepted offer as opposed to an offer of a promise, or, as Austin called it, a *pollicitation*." William R. Anson, *Principles of the Law of Contract* 6 (Arthur L. Corbin ed., 3d Am. ed. 1919).

poll tax. See TAX.

pollute, *vb.* To corrupt or defile; esp., to contaminate the soil, air, or water with noxious substances. [Cases: Environmental Law ⟹161–389.] — **pollution,** *n.* — **polluter,** *n.*

pollution exclusion. See EXCLUSION (3).

po. lo. suo. *abbr.* PONIT LOCO SUO.

polyandry (**pol**-ee-an-dree). (17c) The condition or practice of having more than one husband at the same time. Cf. POLYGYNY. [Cases: Bigamy ⟹1.]

polyarchy (**pol**-ee-ahr-kee). Government by many persons. — Also termed *polygarchy* (**pol**-ə-gahr-kee). Cf. MONARCHY. — **polyarchal,** *adj.*

polygamist (pə-**lig**-ə-məst). **1.** A person who has several spouses simultaneously. **2.** An advocate of polygamy.

polygamy (pə-**lig**-ə-mee), *n.* (16c) **1.** The state or practice of having more than one spouse simultaneously. — Also termed *simultaneous polygamy*; *plural marriage*. [Cases: Bigamy ⟹1; Marriage ⟹11.] **2.** *Hist.* The fact or practice of having more than one spouse during one's lifetime, though never simultaneously. • Until the third century, polygamy included remarriage after a spouse's death because a valid marriage bond was considered indissoluble. — Also termed *successive polygamy*; *serial polygamy*; *sequential marriage*. Cf. BIGAMY; MONOGAMY. — **polygamous,** *adj.* — **polygamist,** *n.*

> "Polygamy (many marriages) is employed at times as a synonym of bigamy and at other times to indicate the simultaneous marriage of two or more spouses." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 458 (3d ed. 1982).

> "[T]his one-marriage-at-a-time rule behind which the legal systems of the West have seemingly thrown so much weight is not what a sociologist would call a general prohibition of polygamy. Polygamy can be simultaneous (if more than one spouse is simultaneously present) or successive (if spouses are married one after the other). Only simultaneous polygamy is prohibited by the laws with which we are here concerned. These statutes reserve the use of the word *polygamy* for that kind which is not very common among

us. They do not affect the serial form, which is so very popular in the United States and Western Europe that . . . the law is fast changing to adapt to it." Mary Ann Glendon, *The Transformation of Family Law* 52 (1989).

polygarchy. See POLYARCHY.

polygraph, *n.* (1923) A device used to evaluate truthfulness by measuring and recording involuntary physiological changes in the human body during interrogation. • Polygraph results are inadmissible as evidence in most states but are commonly used by the police as an investigative tool. — Also termed *lie detector.* [Cases: Criminal Law ⟹388.5; Evidence ⟹150.] — **polygraphic,** *adj.* — **polygraphy,** *n.*

polygyny (pə-**lij**-ə-nee). (18c) The condition or practice of having more than one wife at the same time. Cf. POLYANDRY.

pondere, numero, et mensura (**pon**-dər-ee, **n**[**y**]**oo**-mər-oh, et men-**s**[**y**]**uur**-ə). [Latin] *Hist.* By weight, number, and measure. • The phrase appeared in reference to methods for determining fungibles.

"Pondere, numero, et mensura . . . . These are the tests proposed by our law, by which to ascertain whether a certain subject falls within that class of subjects known as fungibles, which class includes all those things which perish in the using, and which can be estimated generally by weight, number and measure; such, for example, are corn, wine, money, &c." John Trayner, *Trayner's Latin Maxims* 462 (4th ed. 1894).

pone (**poh**-nee). [Latin "put"] *Hist.* An original writ used to remove an action from an inferior court (such as a manorial court or county court) to a superior court. • The writ was so called from the initial words of its mandate, which required the recipient to "put" the matter before the court issuing the writ.

ponendis in assisis (pə-**nen**-dis in ə-**si**-zis). [Latin "to be placed in assizes"] *Hist.* A writ directing the sheriff to empanel a jury for an assize or real action.

ponendo sigillum ad exceptionem. See DE PONENDO SIGILLUM AD EXCEPTIONEM.

ponendum in ballium (pə-**nen**-dəm in **bal**-ee-əm). [Latin "to be placed in bail"] *Hist.* A writ commanding that a prisoner be bailed in a bailable matter.

pone per vadium (**poh**-nee pər **vay**-dee-əm). [Latin] *Hist.* A writ commanding the sheriff to summon a defendant who has failed to appear in response to an initial writ by attaching some of the defendant's property and requiring the defendant to find sureties. • It was so called from the words of the writ, *pone per vadium et salvos plegios* ("put by gage and safe pledges").

ponit loco suo (**poh**-nit **loh**-ko **s**[**y**]**oo**-oh). [Latin] Puts in his place. • This phrase was formerly used in a power of attorney. — Abbr. *po. lo. suo.*

ponit se super patriam (**poh**-nit see **s**[**y**]**oo**-pər **pay**-tree-əm *or* **pa**-tree-əm). [Latin "he puts himself upon the country"] *Hist.* A defendant's plea of not guilty in a criminal action. — Abbr. *po. se.* See GOING TO THE COUNTRY; PATRIA (3).

pontifex (**pon**-ti-feks), *n. Roman law.* A member of the college of pontiffs, one of several groups of priests, who had control of religion in Rome. — Also termed *pontiff.* Pl. **pontifices** (pon-**tif**-i-seez).

pontiff. 1. *Roman law.* A member of the council of priests in ancient Rome. — Also termed *pontifex.*

"The specialists who interpreted the Twelve Tables and the unwritten part of the law were called *pontiffs*. At first they dealt with both sacred law (how to appease the gods) and secular law (how to secure peace among men). Some of them later confined themselves to secular law. As an example of how they interpreted the law, the Twelve Tables said that if a father sells his son three times (into bondage, to pay off debts) the son is to be free from his father's power. The Twelve Tables said nothing about a daughter. The pontiffs held that if a father sold his daughter once, she was free." Tony Honoré, *About Law* 13 (1995).

2. The leader of the Catholic Church; the Pope. See PONTIFEX.

pony homestead. See *constitutional homestead* under HOMESTEAD.

Ponzi scheme (**pon**-zee). (1920) A fraudulent investment scheme in which money contributed by later investors generates artificially high dividends or returns for the original investors, whose example attracts even larger investments. • Money from the new investors is used directly to repay or pay interest to earlier investors, usu. without any operation or revenue-producing activity other than the continual raising of new funds. This scheme takes its name from Charles Ponzi, who in the late 1920s was convicted for fraudulent schemes he conducted in Boston. See GIFTING CLUB. Cf. PYRAMID SCHEME. [Cases: Antitrust and Trade Regulation ⟹231.]

pool, *n.* (1868) **1.** An association of individuals or entities who share resources and funds to promote their joint undertaking; esp., an association of persons engaged in buying or selling commodities. • If such an association is formed to eliminate competition throughout a single industry, it is a restraint of trade that violates federal antitrust laws. [Cases: Antitrust and Trade Regulation ⟹537.8.] **2.** A gambling scheme in which numerous persons contribute stakes for betting on a particular event (such as a sporting event). [Cases: Gaming ⟹5, 73.]

pool clerk. See CLERK (5).

pooled-income fund. A trust created and maintained by a public charity rather than a private person, whereby (1) the donor creates an irrevocable, vested remainder in the charitable organization that maintains the trust, (2) the property transferred by each donor is commingled with property transferred by other donors, (3) the fund cannot invest in tax-exempt securities, (4) no donor or income beneficiary can be a trustee, (5) the donor retains (either personally or for one or more named income beneficiaries) a life income interest, and (6) each income beneficiary is entitled to and receives a proportional share of the annual income based on the rate of return earned by the fund. IRC (26 USCA) § 642(c)(5). [Cases: Charities ⟹6; Trusts ⟹280.]

pooled trust. See TRUST.

pooling, *n. Oil & gas.* The bringing together of small tracts of land or fractional mineral interests over a producing reservoir for the purpose of drilling an oil or gas well. • Pooling is usu. associated with collecting a large enough tract to meet well-spacing regulations. — Also termed *communitization.* Cf. UNITIZATION. [Cases: Mines and Minerals ⚷79.1(5), 92.78.]

compulsory pooling. Pooling done by order of a regulatory agency. — Also termed *forced pooling.*

forced pooling. See *compulsory pooling.*

voluntary pooling. Pooling arranged by agreement of the owners of mineral interests.

pooling agreement. A contractual arrangement by which corporate shareholders agree that their shares will be voted as a unit. — Also termed *voting agreement; shareholder voting agreement; shareholder-control agreement.* [Cases: Corporations ⚷198.1(1).]

pooling clause. *Oil & gas.* A provision found in most oil-and-gas leases granting the lessee the right to combine part or all of the leased acreage with other properties for development or operation. [Cases: Mines and Minerals ⚷78.1(7).]

pooling of interests. A method of accounting used in mergers, whereby the acquired company's assets are recorded on the acquiring company's books at their cost when originally acquired. • No goodwill account is created under the pooling method.

Poor Law. *Hist.* The British law that provided relief to paupers, originally on the parish level and supported by property taxes. • The Poor Law was supplanted in 1948 by the National Assistance Act.

poor man's court. See RUSTICUM FORUM.

poor relief. See WELFARE (2).

pop, *n. Telecommunications.* A calculation of the potential customer base for a mobile-phone-service provider, calculated by the number of people living in the area multiplied by the company's percentage ownership of the area's cellular service.

Poppean law. See LEX PAPIA POPPEA.

popular action. See QUI TAM ACTION.

popular election. See ELECTION (3).

popularis (pop-yə-**lair**-is), *adj.* [Latin] *Roman law.* (Of an action) available to any male member of the public. See *actio popularis* under ACTIO.

popular justice. See JUSTICE (1).

popular sovereignty. See SOVEREIGNTY (1).

popular use. See USE (1).

populus (**pop**-yə-ləs), *n. & adj.* [Latin] *Roman law.* The people; the whole body of Roman citizens, patricians, and plebeians.

porcupine provision. A clause in a corporation's charter or bylaws designed to prevent a takeover without the consent of the board of directors. Cf. SHARK REPELLENT; POISON PILL.

pork-barrel legislation. See LEGISLATION.

pornography, *n.* (1842) Material (such as writings, photographs, or movies) depicting sexual activity or erotic behavior in a way that is designed to arouse sexual excitement. • Pornography is protected speech under the First Amendment unless it is determined to be legally obscene. See OBSCENITY. [Cases: Obscenity ⚷5.] — **pornographic,** *adj.*

child pornography. (1967) Material depicting a person under the age of 18 engaged in sexual activity. • Child pornography is not protected by the First Amendment — even if it falls short of the legal standard for obscenity — and those directly involved in its distribution can be criminally punished. [Cases: Obscenity ⚷5.]

virtual child pornography. Material that includes a computer-generated image that appears to be a minor engaged in sexual activity but that in reality does not involve a person under the age of 18. [Cases: Obscenity ⚷5.]

port. 1. A harbor where ships load and unload cargo. [Cases: Navigable Waters ⚷14.] **2.** Any place where persons and cargo are allowed to enter a country and where customs officials are stationed. — Also termed (in sense 2) *port of entry.*

foreign port. **1.** One exclusively within the jurisdiction of another country or state. **2.** A port other than a home port.

free port. A port located outside a country's customs frontier, so that goods may be delivered usu. free of import duties or taxes, without being subjected to customs-control procedures; FREE-TRADE ZONE.

home port. The port that is either where a vessel is registered or where its owner resides.

port of call. A port at which a ship stops during a voyage.

port of delivery. The port that is the terminus of any particular voyage and where the ship unloads its cargo.

port of departure. The port from which a vessel departs on the start of a voyage.

port of destination. The port at which a voyage is to end. • This term generally includes any stopping places at which the ship receives or unloads cargo.

port of discharge. The place where a substantial part of the cargo is discharged.

portable business. (1983) A portfolio of legal business that an attorney can take from one firm or geographic location to another, with little loss in client relationships. — Also termed *portable practice.*

port authority. (1870) A state or federal agency that regulates traffic through a port or that establishes and maintains airports, bridges, tollways, and public transportation. [Cases: Navigable Waters ⚷14(2); Shipping ⚷15.]

portfolio. (1848) **1.** The various securities or other investments held by an investor at any given time. • An investor will often hold several different types of investments in a portfolio for the purpose of diversifying risk.

market portfolio. A value-weighted portfolio of every asset in a particular market.

2. The role within the government of a high official <minister without portfolio>.

portfolio income. See INCOME.

portfolio-pumping. *Securities.* The practice of purchasing additional shares of a stock near the end of a fiscal period in an attempt to improve an investment fund's apparent performance. — Also termed *window dressing.*

portio legitima (**por**-shee-oh lə-**jit**-i-mə). [Latin "lawful portion"] *Roman & civil law.* The portion of an estate required by law to be left to close relatives; specif., the portion of an inheritance that a given heir is entitled to, and of which the heir cannot be deprived by the testator without special cause. Cf. LEGITIME. Pl. ***portiones legitimae.***

portion. A share or allotted part (as of an estate).

portioner (**por**-shə-nər), *n.* **1.** *Scots law.* One who owns a portion of a decedent's estate.

heir portioner. **1.** One of two or more female heirs who, in the absence of male heirs, inherit equal shares of an estate. **2.** One of two or more usu. female heirs in the same degree who take equal shares per capita.

2. The proprietor of a small fee. **3.** *Hist.* A minister who serves a benefice with others. • The person was called a *portioner* because he had only a portion of the tithes or allowance that a vicar commonly has out of a rectory or impropriation.

portionibus haereditariis (por-shee-**oh**-nə-bəs hə-red-i-**tair**-ee-is). [Law Latin] *Hist.* In hereditary portions.

port of call. See PORT.

port of delivery. See PORT.

port of departure. See PORT.

port of destination. See PORT.

port of discharge. See PORT.

port of entry. See PORT (2).

portorium (por-**tohr**-ee-əm). [Law Latin] *Hist.* **1.** A tax or toll levied at a port or at the gates of a city. **2.** A toll for passing over a bridge.

port-risk insurance. See INSURANCE.

portsale. *Hist.* A public sale of goods to the highest bidder; an auction.

port-state control. *Maritime law.* The exercise of authority under international conventions for a state to stop, board, inspect, and when necessary detain vessels sailing under foreign flags while they are navigating in the port state's territorial waters or are in one of its ports. • The purpose is to ensure the safety of the vessels as well as to enforce environmental regulations. Cf. COASTAL-STATE CONTROL; FLAG-STATE CONTROL.

port toll. A duty paid for bringing goods into a port.

portwarden. An official responsible for the administration of a port.

po. se. *abbr.* PONIT SE SUPER PATRIAM.

posit, *vb.* **1.** To presume true or to offer as true. **2.** To present as an explanation.

position. The extent of a person's investment in a particular security or market.

positional-risk doctrine. The principle by which the workers'-compensation requirement that the injury arise out of employment is satisfied if the injured worker's employment required the worker to be at the place where the injury occurred at the time it occurred. — Also termed *positional risk analysis; positional risk test.* [Cases: Workers' Compensation ⇨ 607.]

position of the United States. (1981) The legal position of the federal government in a lawsuit, esp. in a case involving the Equal Access to Justice Act. • Under the EAJA, the reasonableness of the position in light of precedent determines whether the government will be liable for the opposing party's attorney's fees. [Cases: United States ⇨ 147(10).]

positive act. **1.** OVERT ACT. **2.** ACT (2).

positive condition. See CONDITION (2).

positive covenant. See COVENANT (1).

positive duty. See DUTY (1).

positive easement. See *affirmative easement* under EASEMENT.

positive evidence. See *direct evidence* (1) under EVIDENCE.

positive externality. See EXTERNALITY.

positive fraud. See *actual fraud* under FRAUD.

positive justice. See JUSTICE (1).

positive law. (14c) A system of law promulgated and implemented within a particular political community by political superiors, as distinct from moral law or law existing in an ideal community or in some non-political community. • Positive law typically consists of enacted law — the codes, statutes, and regulations that are applied and enforced in the courts. The term derives from the medieval use of *positum* (Latin "established"), so that the phrase *positive law* literally means law established by human authority. — Also termed *jus positivum; made law.* Cf. NATURAL LAW.

> "A judge is tethered to the positive law but should not be shackled to it." Patrick Devlin, *The Enforcement of Morals* 94 (1968).

positive misprision. See MISPRISION.

positive notice. See *direct notice* under NOTICE.

positive prescription. See PRESCRIPTION (5).

positive proof. See PROOF.

positive reprisal. See REPRISAL.

positive right. See RIGHT.

positive servitude. See SERVITUDE (2).

positive testimony. See *affirmative testimony* under TESTIMONY.

positive wrong. See WRONG.

positivi juris (poz-ə-**ti**-vi **joor**-is). [Law Latin] Of positive law. See POSITIVE LAW.

positivism. (1846) The doctrine that all true knowledge is derived from observable phenomena, rather than speculation or reasoning. See LEGAL POSITIVISM; LOGICAL POSITIVISM; *positivist jurisprudence* under JURISPRUDENCE.

positivistic, *adj.* Of or relating to legal positivism. See LEGAL POSITIVISM.

positivistic jurisprudence. See *positivist jurisprudence* under JURISPRUDENCE.

positivist jurisprudence. See JURISPRUDENCE.

posse (**pos**-ee). [Latin] (16c) **1.** A possibility. See IN POSSE. Cf. IN ESSE. **2.** Power; ability. **3.** POSSE COMITATUS.

posse comitatus (**pos**-ee kom-ə-**tay**-təs), *n.* [Latin "power of the county"] (16c) A group of citizens who are called together to help the sheriff keep the peace or conduct rescue operations. — Often shortened to *posse*. [Cases: Armed Services ☞ 3; Sheriffs and Constables ☞ 27.]

Posse Comitatus Act. A federal law that, with a few exceptions, prohibits the Army or Air Force from directly participating in civilian law-enforcement operations, as by making arrests, conducting searches, or seizing evidence. • The Act was originally enacted in 1878. It does not usu. apply to members of the Navy, the National Guard, or the Coast Guard. 18 USCA § 1385. — Abbr. PCA. [Cases: Armed Services ☞ 3(2).]

possess, *vb.* (14c) To have in one's actual control; to have possession of.

possessio (pə-**zes**[**h**]-ee-oh), *n.* [Latin] The de facto control of a thing that the holder intends to control.

pedis possessio (**pee**-dis *or* **ped**-is pə-**zes**[**h**]-ee-oh). [Latin] A foothold; an actual possession of real property, implying either actual occupancy or enclosure or use. See PEDIS POSSESSIO DOCTRINE. — Also termed *substantial possession*; *possessio pedis*.

possessio bona fide (pə-**zes**[**h**]-ee-oh **boh**-nə **fi**-dee). [Latin] Possession in good faith. Cf. *possessio mala fide*.

possessio bonorum (pə-**zes**[**h**]-ee-oh bə-**nor**-əm). [Latin] *Roman law.* Possession of goods.

possessio civilis (pə-**zes**[**h**]-ee-oh sə-**vi**-lis). [Latin] *Roman law.* Legal possession; that is, possession accompanied by an intent to hold it as one's own. — Also termed *possession in law*. See *possessory interdict* under INTERDICT (1); USUCAPIO; *possession in law* under POSSESSION. Cf. *possessio naturalis*.

possessio corporis. See *corporeal possession* under POSSESSION.

possessio fictitia. See *constructive possession* under POSSESSION.

possessio fratris (pə-**zes**[**h**]-ee-oh **fray**-tris *or* **fra**-tris). [Latin] *Hist.* The possession or seisin of a brother; that is, a possession of an estate by a brother that would entitle his full sister to succeed him as heir, to the exclusion of a half-brother.

possessio juris. See *incorporeal possession* under POSSESSION.

possessio mala fide (pə-**zes**[**h**]-ee-oh **mal**-ə **fi**-dee). [Latin] Possession in bad faith, as by a thief. Cf. *possessio bona fide*.

possessio naturalis (pə-**zes**[**h**]-ee-oh nach-ə-**ray**-lis). [Latin "natural possession"] *Roman law.* The simple holding of a thing, often under a contract, with no intent of keeping it permanently. • This type of possession exists when the possessor's holding of the object is limited by a recognition of another person's outstanding right. The holder may be a usufructuary, a bailee, or a servant. — Also termed *naturalis possessio*; *nuda detentio*; *detentio*; *possession in fact*. See *natural possession* under POSSESSION. Cf. *possessio civilis*.

possessio pedis. See *pedis possessio*.

possession. (14c) **1.** The fact of having or holding property in one's power; the exercise of dominion over property. [Cases: Property ☞ 10.] **2.** The right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. **3.** *Civil law.* The detention or use of a physical thing with the intent to hold it as one's own. La. Civ. Code art. 3421(1). **4.** (*usu. pl.*) Something that a person owns or controls; PROPERTY (2). Cf. OWNERSHIP; TITLE (1). **5.** A territorial dominion of a state or nation.

> "[A]s the name of Possession is . . . one of the most important in our books, so it is one of the most ambiguous. Its legal senses (for they are several) overlap the popular sense, and even the popular sense includes the assumption of matters of fact which are not always easy to verify. In common speech a man is said to possess or to be in possession of anything of which he has the apparent control, or from the use of which he has the apparent power of excluding others. . . . [A]ny of the usual outward marks of ownership may suffice, in the absence of manifest power in some one else, to denote as having possession the person to whom they attach. Law takes this popular conception as a provisional groundwork, and builds up on it the notion of possession in a technical sense, as a definite legal relation to something capable of having an owner, which relation is distinct and separable both from real and from apparent ownership, though often concurrent with one or both of them." Frederick Pollock & Robert Samuel Wright, *An Essay on Possession in the Common Law* 1-2 (1888).

> "In the whole range of legal theory there is no conception more difficult than that of possession. The Roman lawyers brought their usual acumen to the analysis of it, and since their day the problem has formed the subject of a voluminous literature, while it still continues to tax the ingenuity of jurists. Nor is the question one of mere curiosity or scientific interest, for its practical importance is not

less than its difficulty. The legal consequences which flow from the acquisition and loss of possession are many and serious. Possession, for example, is evidence of ownership; the possessor of a thing is presumed to be the owner of it, and may put all other claimants to proof of their title." John Salmond, *Jurisprudence* 285 (Glanville L. Williams ed., 10th ed. 1947).

actual possession. (16c) Physical occupancy or control over property. Cf. *constructive possession*. [Cases: Property ⇨10.]

adverse possession. See ADVERSE POSSESSION.

bona fide possession. (1815) Possession of property by a person who in good faith does not know that the property's ownership is disputed. [Cases: Vendor and Purchaser ⇨220.]

civil possession. **1.** *Civil law.* Possession existing by virtue of a person's intent to own property even though the person no longer occupies or has physical control of it. **2.** *Louisiana law.* The continuation of possession through the possessor's presumed intent to continue holding the thing as his or her own, after the possessor' ceases to possess the thing corporeally. La. Civ. Code arts. 3431–32. • Civil possession may be evidenced by such things as paying taxes on the property or granting rights of interest in it. [Cases: Property ⇨10.]

constructive possession. (18c) **1.** Control or dominion over a property without actual possession or custody of it. — Also termed *effective possession*. [Cases: Property ⇨10.] **2.** *Civil law.* Possession by operation of law of an entirety by virtue of corporeal possession of a part. • When a possessor holds title to a property and physically possesses part of it, the law will deem the possessor to hold constructive possession of the rest of the property described in the title. La. Civ. Code art. 3426. — Also termed *possessio fictitia*; *possession in law*. Cf. *actual possession*.

corporeal possession. Possession of a material object, such as a farm or a coin. — Also termed *natural possession*; *possessio corporis*; (Ger.) *Sachenbesitz*. [Cases: Property ⇨10.]

criminal possession. (1811) The unlawful possession of certain prohibited articles, such as illegal drugs or drug paraphernalia, firearms, or stolen property. [Cases: Controlled Substances ⇨24; Receiving Stolen Goods ⇨1; Weapons ⇨4.]

derivative possession. (1851) Lawful possession by one (such as a tenant) who does not hold title.

direct possession. See *immediate possession*.

double possession. The doctrine that, in a bailment, both the bailor and the bailee have possession of the item that has been bailed. • This doctrine does not apply in most Anglo-American jurisdictions.

"It has been suggested that the essence of bailment is that the bailee secures possession and therefore that the bailor loses possession. This elementary proposition is sometimes obscured by the fact that some dicta treat the possession of the bailee as the possession of the bailor. The theoretical justification for this is the doctrine of 'double possession' — a principal may have possession through the possession of an agent. This view is in accord with some foreign systems, but it does not suit the basic principles of English law which treats possession as exclusive." G.W. Paton, *Bailment in the Common Law* 6 (1952).

effective possession. See *constructive possession*.

exclusive possession. (18c) The exercise of exclusive dominion over property, including the use and benefit of the property.

hostile possession. (1812) Possession asserted against the claims of all others, esp. the record owner. See ADVERSE POSSESSION. [Cases: Adverse Possession ⇨58–85.]

immediate possession. (17c) Possession that is acquired or retained directly or personally. — Also termed *direct possession*.

immemorial possession. Possession that began so long ago that no one still living witnessed its beginning.

incorporeal possession. (1964) Possession of something other than a material object, such as an easement over a neighbor's land, or the access of light to the windows of a house. — Also termed *possessio juris*; *quasi-possession*.

"It is a question much debated whether incorporeal possession is in reality true possession at all. Some are of opinion that all genuine possession is corporeal, and that the other is related to it by way of analogy merely. They maintain that there is no single generic conception which includes *possessio corporis* and *possessio juris* as its two specific forms. The Roman lawyers speak with hesitation and even inconsistency on the point. They sometimes include both forms under the title of *possessio*, while at other times they are careful to qualify incorporeal possession as *quasi possessio* — something which is not true possession, but is analogous to it. The question is one of no little difficulty, but the opinion here accepted is that the two forms do in truth belong to a single genus. The true idea of possession is wider than that of corporeal possession, just as the true idea of ownership is wider than that of corporeal ownership." John Salmond, *Jurisprudence* 288–89 (Glanville L. Williams ed., 10th ed. 1947).

indirect possession. See *mediate possession*.

insular possession. An island territory of the United States, such as Guam. [Cases: Territories ⇨7.]

joint possession. Possession shared by two or more persons.

mediate possession (**mee**-dee-it). Possession of a thing through someone else, such as an agent. • In every instance of mediate possession, there is a direct possessor (such as an agent) as well as a mediate possessor (the principal). — Also termed *indirect possession*.

"If I go myself to purchase a book, I acquire direct possession of it; but if I send my servant to buy it for me, I acquire mediate possession of it through him, until he has brought it to me, when my possession becomes immediate." John Salmond, *Jurisprudence* 300 (Glanville L. Williams ed., 10th ed. 1947).

naked possession. (16c) The mere possession of something, esp. real estate, without any apparent right or colorable title to it. [Cases: Estates in Property ⇨1; Property ⇨10.]

natural possession. *Civil law.* The exercise of physical detention or control over a thing, as by occupying a building or cultivating farmland. • Natural possession may be had without title, and may give rise to a claim of unlawful possession or a claim of ownership by acquisitive prescription. The term "natural possession" has been replaced by the term "corporeal possession" in the Louisiana Civil Code, by virtue of a 1982 revision. La. Civ. Code Ann. art. 3425. See *corporeal possession*; PRESCRIPTION (2). Cf. *possessio naturalis* under POSSESSIO. [Cases: Adverse Possession ⇨14; Property ⇨10.]

notorious possession. (18c) Possession or control that is evident to others; possession of property that, because it is generally known by people in the area where the property is located, gives rise to a presumption that the actual owner has notice of it. • Notorious possession is one element of adverse possession. — Also termed *open possession*; *open and notorious possession*. See ADVERSE POSSESSION. [Cases: Adverse Possession ⇨28–33.]

open and notorious possession. See *notorious possession*.

open possession. See *notorious possession*.

peaceable possession. (16c) Possession (as of real property) not disturbed by another's hostile or legal attempts to recover possession; esp., wrongful possession that the rightful possessor has appeared to tolerate. Cf. *scrambling possession* (1); ADVERSE POSSESSION.

pedal possession. (1839) Actual possession, as by living on the land or by improving it. • This term usu. appears in adverse-possession contexts.

possession animo domini. *Civil law.* Possession with the intent to own a thing, movable or immovable; possession as an owner. *See* La. Civ. Code art. 3427.

possession by relation of law. A person's legally recognized possession of land despite the person's not having actual possession after being improperly or unlawfully dispossessed by another.

possession in fact. (17c) Actual possession that may or may not be recognized by law. • For example, an employee's possession of an employer's property is for some purposes not legally considered possession, the term *detention* or *custody* being used instead. — Also termed *possessio naturalis*.

possession in law. (16c) **1.** Possession that is recognized by the law either because it is a specific type of possession in fact or because the law for some special reason attributes the advantages and results of possession to someone who does not in fact possess. **2.** See *constructive possession*. — Also termed *possessio civilis*.

"There is no conception which will include all that amounts to possession in law, and will include nothing else, and it is impossible to frame any definition from which the concrete law of possession can be logically deduced." John Salmond, *Jurisprudence* 287 (Glanville L. Williams ed., 10th ed. 1947).

possession of a right. (17c) The continuing exercise and enjoyment of a right. • This type of possession is often unrelated to an ownership interest in property. For example, a criminal defendant possesses the right to demand a trial by jury. — Also termed *possessio juris*; (Ger.) *Rechtsbesitz*.

precarious possession. *Civil law.* Detention of property by someone other than the owner or possessor on behalf of or with permission of the owner or possessor. • A lessee has precarious possession of the leased property.

"[Article 3437 of the Louisiana Civil Code defines precarious possession as] 'exercise of possession over a thing with the permission of or on behalf of the owner or possessor.' The definition indicates the difference between *possession* in the proper sense of the word and precarious possession, that is, *detention*. A possessor is one who possesses as owner, whereas a precarious possessor or detainer is one who exercises factual authority over a thing with the permission of or on behalf of another person." A.N. Yiannopoulos, *Civil Law Property* § 319, at 629 (4th ed. 2001).

quasi-possession. See *incorporeal possession*.

scrambling possession. (1823) **1.** A wrongful possession that the rightful possessor has not appeared to tolerate. Cf. *peaceable possession*. **2.** Possession that is uncertain because it is in dispute. • With scrambling possession, the dispute is over who actually has possession — not over whether a party's possession is lawful.

substantial possession. See *pedis possessio* under POSSESSIO.

possession unity. See *unity of possession* under UNITY.

possessio pedis. See *pedis possessio* under POSSESSIO.

possessor. (15c) One who has possession of real or personal property; esp., a person who is in occupancy of land with the intent to control it or has been but no longer is in that position, but no one else has gained occupancy or has a right to gain it. — **possessorial** (pos-ə-**sor**-ee-əl), *adj.*

legal possessor. (17c) One with the legal right to possess property, such as a buyer under a conditional sales contract, as contrasted with the legal owner who holds legal title. See *legal owner* under OWNER.

possessor bona fide (**boh**-nə **fī**-dee). A possessor who believes that no other person has a better right to the possession.

possessor mala fide (**mal**-ə **fī**-dee). A possessor who knows that someone else has a better right to the possession.

possessorium (pos-ə-**sor**-ee-əm). See *possessory action* under ACTION (4).

possessory (pə-**zes**-ə-ree), *adj.* Of, relating to, or having possession.

possessory action. See ACTION (4).

possessory claim. (1833) Title to public land held by a claimant who has filed a declaratory statement but has not paid for the land. [Cases: Public Lands ⇨31.]

possessory conservator. See *noncustodial parent* under PARENT.

possessory estate. See ESTATE (1).

possessory garageman's lien. See LIEN.

possessory interdict. See INTERDICT (1).

possessory interest. (18c) **1.** The present right to control property, including the right to exclude others, by a person who is not necessarily the owner. [Cases: Property ⇨10.] **2.** A present or future right to the exclusive use and possession of property.

"We shall use the term 'possessory interest' to include both present and future interests, and to exclude such interests as easements and profits. The reader should note that the Restatement of Property uses the term 'possessory' to refer only to interests that entitle the owner to *present* possession. See Restatement, Property §§ 7, 9, 153 (1936)." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 19–20 n.1 (2d ed. 1984).

possessory lien. See LIEN.

possessory warrant. See WARRANT (1).

possibilitas (pos-ə-**bil**-ə-tas). [Latin] Possibility; a possibility.

possibility. (14c) **1.** An event that may or may not happen. **2.** A contingent interest in real or personal property.

bare possibility. See *naked possibility.*

naked possibility. (18c) A mere chance or expectation that a person will acquire future property. • A conveyance of a naked possibility is usu. void for lack of subject matter, as in a deed conveying all rights to a future estate not yet in existence. — Also termed *bare possibility*; *naked expectancy.* [Cases: Assignments ⇨8.]

possibility coupled with an interest. (18c) An expectation recognized in law as an estate or interest, as occurs in an executory devise or in a shifting or springing use. • This type of possibility may be sold or assigned. See *shifting use, springing use* under USE. [Cases: Assignments ⇨9.]

possibility on a possibility. See *remote possibility.*

remote possibility. (17c) A limitation dependent on two or more facts or events that are contingent and uncertain; a double possibility. — Also termed *possibility on a possibility.*

possibility of reverter. (18c) A reversionary interest that is subject to a condition precedent; specif., a future interest retained by a grantor after conveying a fee simple determinable, so that the grantee's estate terminates automatically and reverts to the grantor if the terminating event ever occurs. • In this type of interest, the grantor transfers an estate whose maximum potential duration equals that of the grantor's own estate and attaches a special limitation that operates in the grantor's favor. — Often shortened to *reverter.* See *fee simple determinable* under FEE SIMPLE. Cf. REMAINDER (1); REVERSION.

"Most treatise-writers define the possibility of reverter as the interest a transferor keeps when he transfers a fee simple determinable or a fee simple conditional. See, e.g., 1 American Law of Property § 4.12; Simes & Smith § 281. Although this definition is all right as far as it goes, it fails to provide for interests less than the fee simple that are granted on special limitation. . . . Although we call the possibility of reverter an 'estate,' the courts of an earlier era would probably have called it a 'possibility of becoming an estate.'" Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 58 n.5 (2d ed. 1984).

possibility on a possibility. See *remote possibility* under POSSIBILITY.

possidere (pos-ə-**dee**-ree). [Latin fr. *potis* "having power" + *sedere* "to sit"] *Hist.* To possess (a thing), esp. as a person with an interest protected by law (e.g., an owner or mortgagee) rather than a mere custodian.

"A distinction was made in the civil law, and adopted by Bracton, between *possidere*, (to possess,) and *esse in possessione*, (to be in possession.) . . . . Thus, a guardian, holding in demesne though not in fee, was said to be *in possession*, though he did not *possess*. The same language was applied to a bailiff, . . . a domestic, . . . a fermor or lessee, . . . and a tenant at will from day to day, and from year to year." 2 Alexander M. Burrill, *A Law Dictionary and Glossary* 314 (2d ed. 1867).

POSSLQ (**pahs**-əl-kyoo). *abbr.* A person of opposite sex sharing living quarters. • Although this term (which is used by the Census Bureau) is intended to include only a person's roommate of the opposite sex to whom the person is not married, the phrase literally includes those who are married. This overbreadth has occasionally been criticized. See CUPOS.

"In the 1980 census, the United States Census Bureau — recognizing a societal change with numerous persons living together without being 'officially' married — counted not only persons who were 'Single' and 'Married,' but also 'Persons of the Opposite Sex Sharing Living Quarters.' The acronym is *POSSLQ* — and, of course, is pronounced *possle-kew.* It has been suggested that, although the source was stunningly unlikely, it was the Very Word that society has been looking for to describe these relationships: POSSLQ. Precise, businesslike, nonjudgmental. And, in its own way, sort of poetic, too . . . ." *Fischer v. Dallas Federal Savings and Loan Ass'n*, 106 F.R.D. 465 (N.D. Tex. 1985).

post. [Latin] (14c) After. Cf. ANTE.

post, *vb.* (17c) **1.** To publicize or announce by affixing a notice in a public place <foreclosure notice was posted at the county courthouse>. **2.** To transfer (accounting entries) from an original record to a ledger <post debits and credits>. **3.** To place in the mail <post a letter>. [Cases: Postal Service ⇨19.] **4.** To make a payment or deposit; to put up <post bail>.

postal currency. See CURRENCY.

Postal Rate Commission. An independent federal agency that recommends changes in postage rates, fees, and mail classifications to the governors of the United States Postal Service. • It was created by the Postal Reorganization Act. 39 USCA §§ 3601–04. — Abbr. PRC. [Cases: Postal Service ⇨15.]

post-answer default judgment. See DEFAULT JUDGMENT.

post audit. See AUDIT.

post bail, *vb.* See GIVE BAIL.

post causam cognitam (pohst **kaw**-zəm **kog**-ni-təm). [Latin] *Hist.* After investigation. Cf. CAUSA COGNITA.

post contractum debitum (pohst kən-**trak**-təm **deb**-i-təm). [Latin] *Hist.* After debt has been contracted.

postconviction-relief proceeding. (1964) A state or federal procedure for a prisoner to request a court to vacate or correct a conviction or sentence. — Also termed *postconviction-remedy proceeding; PCR action; postconviction proceeding.* [Cases: Criminal Law ☞ 1400–1669.]

postdate, *vb.* (17c) To put a date on (an instrument, such as a check) that is later than the actual date. Cf. ANTEDATE; BACKDATE. [Cases: Bills and Notes ☞ 8.]

postdated check. See CHECK.

post diem (pohst **dı**-əm). [Latin] After the day. • A plea of payment *post diem* is made after the day when the money becomes due.

post disseisina. See DE POST DISSEISINA.

postea (**poh**-stee-ə), *n.* [Latin "afterwards"] *Hist.* A formal statement, endorsed on the trial record, giving an account of the proceedings at trial; a record of what occurred at *nisi prius* after the issue had been joined.

> "With the verdict of the jury [in the 15th–18th centuries] . . . the proceedings at *nisi prius* closed, and the case was sent back to the court at Westminster from which it issued for judgment, after a statement of the holding of the trial and of the verdict had been added to the record. This statement, from the fact that it began with the Latin word 'postea,' or 'afterwards,' was known as the 'postea' and was in fact drafted by the party in whose favour the verdict had gone, whence the phrase 'postea to the plaintiff' or 'the defendant,' which is found in the old reports." Geoffrey Radcliffe & Geoffrey Cross, *The English Legal System* 185 (G.J. Hand & D.J. Bentley eds., 6th ed. 1977).

posted water. See WATER.

posteriores (pah-steer-ee-**or**-eez), *n. pl.* [Latin] *Roman law.* Descendants in a direct line beyond the sixth degree.

posteriority (pah-steer-ee-**or**-ə-tee). The condition or state of being subsequent. • This word was formerly used to describe the relationships existing between a tenant and the two or more lords the tenant held of; the tenant held the older tenancy "by priority" and the more recent one "by posteriority."

posterity, *n.* (14c) **1.** Future generations collectively. **2.** All the descendants of a person to the furthest generation.

post-expiration-sales theory. *Patents.* A theory of lost-profits remedy by which compensation is sought for sales lost after a patent expired, on the basis that infringement gave the competitor a head start on entering the market. — Also termed *accelerated reentry theory.* [Cases: Patents ☞ 318(3).]

post facto (pohst **fak**-toh). [Latin] After the fact. See EX POST FACTO.

post-factum (pohst-**fak**-təm). [Latin] An after-act; an act done afterwards. — Also termed *postfactum.*

post-fine. See KING'S SILVER.

postglossators (pohst-glah-**say**-tərz), *n. pl.* (*often cap.*) A group of mainly Italian jurisconsults who were active during the 14th and 15th centuries writing commentaries and treatises that related Roman law to feudal and Germanic law, canon law, and other contemporary bodies of law. • The postglossators constituted the second wave of Roman-law study after its revival in the 11th century, the first being that of the glossators. — Also termed *commentators.* See GLOSSATORS.

post hoc (pohst hok). [Latin fr. *post hoc, ergo propter hoc* "after this, therefore because of this"] (1844) **1.** *adv.* After this; subsequently. **2.** *adj.* Of or relating to the fallacy of assuming causality from temporal sequence; confusing sequence with consequence.

posthumous (**pos**-chə-məs), *adj.* Occurring or existing after death; esp., (of a child) born after the father's death.

posthumous adoption. See ADOPTION.

posthumous child. See CHILD.

posthumous work. See WORK (2).

posting. (17c) **1.** *Accounting.* The act of transferring an original entry to a ledger. **2.** The act of mailing a letter. **3.** A method of substituted service of process by displaying the process in a prominent place (such as the courthouse door) when other forms of service have failed. See SERVICE (1). [Cases: Process ☞ 81.] **4.** A publication method, as by displaying municipal ordinances in designated localities. [Cases: Municipal Corporations ☞ 110.] **5.** The act of providing legal notice, as by affixing notices of judicial sales at or on the courthouse door. [Cases: Judicial Sales ☞ 11.] **6.** The procedure for processing a check, including one or more of the following steps: (1) verifying any signature, (2) ascertaining that sufficient funds are available, (3) affixing a "paid" or other stamp, (4) entering a charge or entry to a customer's account, and (5) correcting or reversing an entry or erroneous action concerning the check. [Cases: Banks and Banking ☞ 137.]

post-issue activity. *Patents.* Any acts done during a patent's term, including making, using, or selling a patented invention or process, esp. without authorization.

postjudgment discovery. See DISCOVERY.

postliminium (pohst-lə-**min**-ee-əm), *n.* [fr. Latin *post* "after" + *limen* "threshold"] **1.** *Roman & civil law.* The reentering of one's residence. **2.** *Roman & civil law.* The doctrine that a restoration of a person's lost rights or status relates back to the time of the original loss or deprivation, esp. in regard to the restoration of the status of a prisoner of war.

> "[A] person who is taken captive and comes back within the limits of the Empire is correctly described as returning by postliminium. By 'limen' (threshold) we mean the frontier of a house, and the old lawyers applied the word to the frontier of the Roman State; so that the word postliminium conveys the idea of recrossing the frontier. If a prisoner is recovered from a beaten foe he is deemed to have come back by postliminium." R.W. Lee, *The Elements of Roman Law* 85–86 (4th ed. 1956).

3. *Int'l law.* The act of invalidating all of an occupying force's illegal acts, and the post-occupation revival of all illegitimately modified legal relations to their former condition, esp. the restoration of property to its rightful owner. — Also termed *postliminy*; *jus postliminii.*

post litem motam (pohst **li**-təm **moh**-təm). [Law Latin] After suit commenced. • Depositions held after litigation had begun were formerly sometimes so called.

postman (**pohst**-mən). *Hist.* A barrister in the Court of Exchequer who had precedence in motions. • The postman was so called because of the post he stood next to when making motions. Cf. TUBMAN.

> "The postman was an experienced member of the junior Bar who had a place in the Court of Exchequer by the post anciently used as a measure of length in excise cases. He had precedence in motions over all other juniors . . . ." Sir Robert Megarry, *A Second Miscellany-at-Law* 122 (1973).

postmarital, *adj.* **1.** Of, relating to, or occurring after marriage. Cf. PREMARITAL. **2.** Of, relating to, or occurring after divorce.

postmark. An official mark put by the post office on an item of mail to cancel the stamp and to indicate the place and date of sending or receipt. [Cases: Postal Service ☞15.]

postmaster. A U.S. Postal Service official responsible for a local branch of the post office. — Abbr. PM. [Cases: Postal Service ☞7.]

Postmaster General. The head of the U.S. Postal Service. [Cases: Postal Service ☞4.]

post meridiem (pohst mə-**rid**-ee-əm). [Latin] After noon. — Abbr. p.m.; PM.

postmortem, *adj.* (1824) Done or occurring after death <a postmortem examination>.

postmortem, *n.* See AUTOPSY (1).

postnatus (pohst **nay**-təs). [Latin] A person born after a certain political event that affected the person's political rights; esp., a person born after the Declaration of Independence. Cf. ANTENATUS. Pl. ***postnati.***

post note. A banknote payable at a future time rather than on demand. See *time note* under NOTE (1).

postnup, *n. Slang.* See POSTNUPTIAL AGREEMENT.

postnuptial (pohst-**nəp**-shəl), *adj.* (1807) Made or occurring during marriage <a postnuptial contract>. Cf. PRENUPTIAL. [Cases: Husband and Wife ☞30.]

postnuptial agreement (pohst-**nəp**-shəl). (1834) An agreement entered into during marriage to define each spouse's property rights in the event of death or divorce. • The term commonly refers to an agreement between spouses during the marriage at a time when separation or divorce is not imminent. When dissolution is intended as the result, it is more properly called a *property settlement* or *marital agreement.* — Often shortened to *postnup.* — Also termed *postnuptial settlement.* Cf. PRENUPTIAL AGREEMENT. [Cases: Husband and Wife ☞30, 31.]

postnuptial settlement. See POSTNUPTIAL AGREEMENT.

postnuptial will. See WILL.

post-obit agreement. See BOND (3).

post-obit bond. See BOND (3).

postpone, *vb.* (15c) **1.** To put off to a later time. **2.** To place lower in precedence or importance; esp., to subordinate (a lien) to a later one. **3.** *Parliamentary law.* To temporarily or permanently suppress a main motion. — **postponement,** *n.*

postpone definitely. To delay a main motion's consideration to a specified time or until a specified condition occurs, usu. by the next meeting — or to the next meeting as unfinished business. — Also termed *postpone to a certain time*; *postpone to a definite time*; *postpone to a time certain.* See TIME CERTAIN.

postpone indefinitely. To dispose of a main motion without taking a view on its merits while preventing its further consideration during the same session. • This motion's ancient form in the English Parliament was to postpone consideration until "this day six months" (or "three months") — that is, some time beyond the current session, sufficiently remote that the body expected not to consider the matter again. — Also termed *indefinite postponement.*

postpone temporarily. See TABLE.

postpone to a certain time. See *postpone definitely.*

postpone to a definite time. See *postpone definitely.*

postpone to a time certain. See *postpone definitely.*

post prolem suscitatam (pohst **proh**-ləm səs-ə-**tay**-təm). [Law Latin] After issue born.

postremogeniture. See BOROUGH ENGLISH.

post tantum temporis (pohst **tan**-təm **tem**-pə-ris). [Latin] *Hist.* After so long a time.

post-terminal sitting. A court session held after the normal term.

post terminum (pohst **tər**-mə-nəm). [Law Latin] After term, as a writ returned after the ending of a judicial term.

posttrial discovery. See *postjudgment discovery* under DISCOVERY.

posttrial motion. See MOTION (1).

posttrial proceeding. See PROCEEDING.

postulate, *vb. Eccles. law.* To name someone to an ecclesiastical position, subject to approval by a higher authority.

postulatio (pos-chə-**lay**-shee-oh). [Latin] *Hist. Eccles. law.* A petition requesting the naming or transfer of a bishop.

postulatio actionis (pos-chə-**lay**-shee-oh ak-shee-**oh**-nis). [Latin] *Roman law.* A request to a magistrate having jurisdiction for permission to bring an action.

potentate (**poh**-tən-tayt). A ruler who possesses great power or sway; a monarch.

potentia (pə-**ten**-shee-ə). [Latin] Possibility; power.

potential, *adj.* Capable of coming into being; possible <things having a potential existence may be the subject of mortgage, assignment, or sale>.

potentially responsible party. *Environmental law.* A person or entity that may be required to clean up a polluted site because the person or entity (1) owns or operates on the site, (2) arranged for the disposal of a hazardous substance on the site, (3) transported a hazardous substance to the site, or (4) contributed in any other way to contaminate the site. — Abbr. PRP. See SUPERFUND.

potential Pareto superiority. See WEALTH MAXIMIZATION.

potentia propinqua (pə-**ten**-shee-ə prə-**ping**-kwə). [Latin] Common possibility.

potestas (pə-**tes**-təs *or* -tas), *n.* [Latin "power"] *Roman law.* Authority or power, such as the power of a magistrate to enforce the law, or the authority of an owner over a slave.

patria potestas (**pay**-tree-ə *or* **pa**-tree-ə). [Latin "paternal power"] The authority held by the male head of a family (the senior ascendant male) over his legitimate and adopted children, as well as further descendants in the male line, unless emancipated. • Initially, the father had extensive powers over the family, including the power of life and death; until Justinian's time, the father alone in his *familia* had proprietary capacity but he could give a son or slave a *peculium*. Over time, the broad nature of the *patria potestas* gradually became more in the nature of a responsibility to support and maintain family members. But except in early Roman history, a wife did not fall into her husband's power but remained in her father's until she became *sui juris* by his death. — Also termed *fatherly power.*

"The power of the father continued ordinarily to the close of his life, and included not only his own children, but also the children of his sons, and those of his sons' sons, if any such were born during his lifetime. . . . Originally and for a long time the *patria potestas* had a terribly despotic character. Not only was the father entitled to all the service and all the acquisitions of his child, as much as to those of a slave, but he had the same absolute control over his person. He could inflict upon him any punishment however severe. . . . Consider now that the *patria potestas* had this character and extent down to the Christian era: that, in general, every citizen of the republic who had a living father was in this condition, unable to hold property, unable to acquire any thing for himself, wholly dependent on his father in property and person . . . without help or vindication from the law. . . . The reason which caused the Romans to accept and uphold the *patria potestas*, to maintain it with singular tenacity against the influence of other systems with which they came in contact, must have been the profound impression of family unity, the conviction that every family was, and of right ought to be, one body, with one will and one executive." James Hadley, *Introduction to Roman Law* 119-21 (1881).

"Nature and Extent of Patria Potestas. — From the most remote ages the power of a Roman father over his children, including those by adoption as well as by blood, was unlimited. A father might, without violating any law, scourge or imprison his son, or sell him for a slave, or put him to death, even after that son had risen to the highest honours in the state. This jurisdiction was not merely nominal, but, in early times, was not infrequently exercised to its full extent, and was confirmed by the laws of the XII Tables. . . . By degrees the right of putting a child to death (*ius vitae et necis*) fell into desuetude; and long before the close of the republic, the execution of a son by order of his father, although not forbidden by any positive statute, was regarded as something strange, and, unless under extraordinary circumstances, monstrous. But the right continued to exist in theory . . . after the establishment of the empire. [In the Christian empire, these extreme punishments were forbidden and disciplinary powers were reduced to those of reasonable chastisement. — Ed.]" William Ramsay, *A Manual of Roman Antiquities* 291-92 (Rodolfo Lanciani ed., 15th ed. 1894).

potestas gladii (pə-**tes**-təs [*or* -tas] **glad**-ee-ī). [Latin "the power of the sword"] *Roman law.* See JUS GLADII.

potestas maritalis (pə-**tes**-təs [*or* -tas] mar-ə-**tay**-lis). [Latin] *Hist.* The marital power.• In Roman law, this was an institution, one that was decaying by the end of the Republic.

potestative condition. See CONDITION (2).

pound, *n.* (12c) **1.** A place where impounded property is held until redeemed. **2.** A place for the detention of stray animals. [Cases: Animals ☞103.] **3.** A measure of weight equal to 16 avoirdupois ounces or 7,000 grains. [Cases: Weights and Measures ☞3.] **4.** The basic monetary unit of the United Kingdom, equal to 100 pence. • A pound was worth 20 shillings until decimalization in 1968. — Also termed (in sense 4) *pound sterling.*

poundage fee. (18c) A percentage commission awarded to a sheriff for moneys recovered under judicial process, such as execution or attachment. [Cases: Sheriffs and Constables ☞51.]

pound-breach. *Hist.* The offense of breaking a pound for the purpose of taking out something that has been impounded.

pound of land. (16c) An uncertain quantity of land, usu. thought to be about 52 acres.

pound sterling. See POUND (4).

pour acquit (**poor** a-**kee**), *n.* [French "for acquittance"] *French law.* The formula that a creditor adds when signing a receipt.

pour appuyer (**poor** a-poo-**yay**). [Law French] For the support of; in the support of.

pour autrui (**poor** oh-troo-**ee**). [Law French] For others. [Cases: Contracts ☞187.]

pour faire **proclaimer** (**poor fair** prə-**klay**-mər), *n.* [Law French "for making a proclamation"] *Hist.* A writ addressed to the mayor or bailiff of a city or town, requiring that official to make a proclamation about some matter, such as a nuisance.

pour out, *vb.* (1978) *Slang.* To deny (a claimant) damages or relief in a lawsuit <the plaintiff was poured out of court by the jury's verdict of no liability>.

pourover trust. See TRUST.

pourover will. See WILL.

pourparler (poor-pahr-lər), *vb.* [French] To informally discuss before actual negotiating begins. — **pourparler,** *n.*

pourparty (**poor**-pahr-tee). [Law French] See PURPART.

pourpresture (poor-**pres**-chər). [Law French] See PURPRESTURE.

pour seisir terres (poor **si**-zər **ter**-eez). [Law French "for seizing the lands"] *Hist.* A writ by which the Crown could seize land that the wife of its deceased tenant, who held *in capite*, had for her dower if she married without leave.

poverty. 1. The condition of being indigent; the scarcity of the means of subsistence <war on poverty>. **2.** Dearth of something desirable <a poverty of ideas>.

poverty affidavit. See AFFIDAVIT.

POW. *abbr.* PRISONER OF WAR.

***Powell* doctrine.** See CORRUPT-MOTIVE DOCTRINE.

power. (13c) **1.** The ability to act or not act; esp., a person's capacity for acting in such a manner as to control someone else's responses. **2.** Dominance, control, or influence over another; control over one's subordinates. **3.** The legal right or authorization to act or not act; a person's or organization's ability to alter, by an act of will, the rights, duties, liabilities, or other legal relations either of that person or of another.

> "A *power* is the capacity to change a legal relationship. In this terminology the offeree has, before the contract is made, a *power* to create a contract by means of acceptance." E. Allan Farnsworth, *Contracts* § 3.4, at 114 n.3 (3d ed. 1999).

agent's power. The ability of an agent or apparent agent to act on behalf of the principal in matters connected with the agency or apparent agency. [Cases: Principal and Agent ⇨49, 91–126.]

concurrent power. (1812) A political power independently exercisable by both federal and state governments in the same field of legislation.

congressional power. The authority vested in the U.S. Senate and House of Representatives to enact laws and take other constitutionally permitted actions. U.S. Const. art. I. [Cases: United States ⇨22.]

delegated power. Power normally exercised by an authority that has temporarily conferred the power on a lower authority. [Cases: Powers ⇨1.]

derivative power. Power that arises only from a grant of authority. • Power may be derived, for example, by an agent from a principal, or by a head of state from constitutional or statutory provisions. [Cases: Powers ⇨1.]

discretionary power. A power that a person may choose to exercise or not, based on the person's judgment.

enumerated power. (1805) A political power specifically delegated to a governmental branch by a constitution. — Also termed *express power.* [Cases: Constitutional Law ⇨635–639.]

fatherly power. See *patria potestas* under POTESTAS.

implied power. (1807) A political power that is not enumerated but that nonetheless exists because it is needed to carry out an express power. [Cases: Administrative Law and Procedure ⇨325; Powers ⇨1.]

incident power. (17c) A power that, although not expressly granted, must exist because it is necessary to the accomplishment of an express purpose. — Also termed *incidental power.*

inherent power. (17c) A power that necessarily derives from an office, position, or status.

institorial power (in-stə-**tor**-ee-əl). *Civil law.* The power given by a business owner to an agent to act in the owner's behalf.

investigatory power (in-**ves**-tə-gə-tor-ee). (*usu. pl.*) The authority conferred on a governmental agency to inspect and compel disclosure of facts germane to an investigation. [Cases: Administrative Law and Procedure ⇨346.]

judicial power. See JUDICIAL POWER.

mediate powers. See MEDIATE POWERS.

naked power. (18c) The power to exercise rights over something (such as a trust) without having a corresponding interest in that thing. Cf. *power coupled with an interest.*

particular power. See *special power.*

plenary power (**plee**-nə-ree *or* **plen**-ə-ree). (16c) Power that is broadly construed; esp., a court's power to dispose of any matter properly before it. [Cases: Courts ⇨1, 26, 30, 207.1.]

police power. See POLICE POWER.

power coupled with an interest. (18c) A power to do some act, conveyed along with an interest in the subject matter of the power. • A power coupled with an interest is not held for the benefit of the principal, and it is irrevocable due to the agent's interest in the subject property. For this reason, some authorities assert that it is not a true agency power. — Also termed *power given as security; proprietary power.* See *irrevocable power of attorney* under POWER OF ATTORNEY. Cf. *naked power.* [Cases: Powers ⇨27.]

> "[S]uppose that the principal borrows money from the agent and by way of security authorizes the agent to sell Blackacre if the loan is not repaid and pay himself out of the proceeds. In such case there is no more reason why the principal should be permitted to revoke than if he had formally conveyed or mortgaged Blackacre to the agent. Hence it would be highly unfair to the agent to allow his principal to revoke. The reason why such a case is not properly governed by the considerations usually making an agency revocable is that this is in reality not a case of agency at all. In a normal agency case the power is conferred upon the agent to enable him to do something for the principal while here it is given to him to enable him to do something for himself. Coupled with an interest means that the agent must have a present interest in the property upon which the power is to operate." Harold Gill Reuschlein & William A. Gregory, *The Law of Agency and Partnership* § 47, at 99 (1990).

power given as security. See *power coupled with an interest.*

power of acceptance. An offeree's power to bind an offeror to a contract by accepting the offer. [Cases: Contracts ⚷16, 22(1).]

power of revocation (rev-ə-**kay**-shən). (17c) A power that a person reserves in an instrument (such as a trust) to revoke the legal relationship that the person has created. [Cases: Contracts ⚷217; Powers ⚷19; Trusts ⚷59.]

power of sale. A power granted to sell the property that the power relates to. • The power's exercise is often conditioned on the occurrence of a specific event, such as the nonpayment of a debt. [Cases: Powers ⚷20.]

power over oneself. See CAPACITY (2).

power over other persons. See AUTHORITY (1).

primary powers. See PRIMARY POWERS.

private power. A power vested in a person to be exercised for personal ends and not as an agent for the state.

proprietary power. See *power coupled with an interest.*

public power. A power vested in a person as an agent or instrument of the functions of the state. • Public powers comprise the various forms of legislative, judicial, and executive authority. [Cases: Officers and Public Employees ⚷103.]

quasi-judicial power. (152) An administrative agency's power to adjudicate the rights of those who appear before it. [Cases: Administrative Law and Procedure ⚷108.]

quasi-legislative power. (1864) An administrative agency's power to engage in rulemaking. 5 USCA § 553. [Cases: Administrative Law and Procedure ⚷106, 385.]

reserved power. (1831) A political power that is not enumerated or prohibited by a constitution, but instead is reserved by the constitution for a specified political authority, such as a state government. See TENTH AMENDMENT.

restraining power. A power to restrict the acts of others.

resulting power. A political power derived from the aggregate powers expressly or impliedly granted by a constitution.

special power. (18c) **1.** An agent's limited authority to perform only specific acts or to perform under specific restrictions. — Also termed *particular power.* [Cases: Powers ⚷19.] **2.** See *limited power of appointment* under POWER OF APPOINTMENT.

spending power. (1923) The power granted to a governmental body to spend public funds; esp., the congressional power to spend money for the payment of debt and provision of the common defense and general welfare of the United States. U.S. Const. art. I, § 8, cl. 1. [Cases: United States ⚷82.]

taxing power. (18c) The power granted to a governmental body to levy a tax; esp., the congressional power to levy and collect taxes as a means of effectuating Congress's delegated powers. U.S. Const. art. I, § 8, cl. 1. See SIXTEENTH AMENDMENT. [Cases: Internal Revenue ⚷3001–3008; [Cases: Taxation ⚷2003–2007.]

trust power. See *beneficial power.*

visitatorial power. The power to inspect or make decisions about an entity's operations. — Also termed *visitorial power.*

4. A document granting legal authorization. See AUTHORITY. **5.** An authority to affect an estate in land by (1) creating some estate independently of any estate that the holder of the authority possesses, (2) imposing a charge on the estate, or (3) revoking an existing estate. See POWER OF APPOINTMENT; PERMIT. [Cases: Powers ⚷1.]

> "The word 'power' is normally used in the sense of an authority given to a person to dispose of property which is not his. The person giving the power is called the donor and the person to whom it is given the donee." Robert E. Megarry & P.V. Baker, *A Manual of the Law of Real Property* 253 (4th ed. 1969).

appendant power (ə-**pen**-dənt). (17c) **1.** A power that gives the donee a right to appoint estates that attach to the donee's own interest. **2.** A power held by a donee who owns the property interest in the assets subject to the power, and whose interest can be divested by the exercise of the power. • The appendant power is generally viewed as adding nothing to the ownership and thus is not now generally recognized as a true power. — Also termed *power appendant; power appurtenant.* [Cases: Powers ⚷23.]

avoiding power. *Bankruptcy.* The power of a bankruptcy trustee or debtor in possession to void certain transfers made or obligations incurred by a debtor, including fraudulent conveyances, preferences transferred to creditors, unperfected security interests in personal property, and unrecorded mortgages. 11 USCA §§ 544–53. [Cases: Bankruptcy ⚷2703, 2704.]

beneficial power. (18c) A power that is executed for the benefit of the power's donee, as distinguished from a *trust power,* which is executed for the benefit of someone other than the power's donee (i.e., a trust beneficiary). [Cases: Powers ⚷25.]

collateral power. A power created when the donee has no estate in the land, but simply the authority to appoint. [Cases: Powers ⚷25.]

general power. See POWER OF APPOINTMENT.

limited power. See POWER OF APPOINTMENT.

mandatory power. A power that the donee must exercise and must do so only as instructed, without discretion.

power appendant. See *appendant power.*

power appurtenant. See *appendant power.*

power collateral. See *power in gross.*

power in gross. (18c) A power held by a donee who has an interest in the assets subject to the power but whose interest cannot be affected by the exercise of the power. • An example is a life tenant with a power over the remainder. — Also termed *power collateral.* [Cases: Powers ⇨23.]

power of appointment. See POWER OF APPOINTMENT.

relative power. A power that relates directly to land, as distinguished from a collateral power.

testamentary power. See POWER OF APPOINTMENT.

6. Physical strength. **7.** Moral or intellectual force. **8.** A person of influence <a power in the community>. **9.** One of the great nations of the world <one of the world's two great powers>. See PROTECTING POWER. **10.** The military or unit of it, such as a troop of soldiers.

power-delegating law. See LAW OF COMPETENCE.

power given as security. See *power coupled with an interest* under POWER (3).

power of alienation. (16c) The capacity to sell, transfer, assign, or otherwise dispose of property.

power of appointment. (18c) A power created or reserved by a person having property subject to disposition, enabling the donee of the power to designate transferees of the property or shares in which it will be received; esp., a power conferred on a donee by will or deed to select and determine one or more recipients of the donor's estate or income. • If the power is exercisable before the donee's death, it is exercisable wholly in favor of the donee. If the power is testamentary, it is exercisable wholly in favor of the donee's estate. — Often shortened to *power.* — Also termed *enabling power.* [Cases: Powers ⇨19; Wills ⇨589.]

general power of appointment. (18c) A power of appointment by which the donee can appoint — that is, dispose of the donor's property — in favor of anyone at all, including oneself or one's own estate; esp., a power that authorizes the alienation of a fee to any alienee. — Often shortened to *general power.* [Cases: Powers ⇨19; Wills ⇨589.]

limited power of appointment. (1830) A power of appointment that either does not allow the entire estate to be conveyed or restricts to whom the estate may be conveyed; esp., a power by which the donee can appoint to only the person or class specified in the instrument creating the power, but cannot appoint to oneself or one's own estate. — Often shortened to *limited power.* — Also termed *special power of appointment.* [Cases: Powers ⇨19; Wills ⇨589.]

special power of appointment. See *limited power of appointment.*

testamentary power of appointment (tes-tə-**men**-tə-ree *or* -tree). (1858) A power of appointment created by a will. — Often shortened to *testamentary power.* [Cases: Wills ⇨589.]

power-of-appointment trust. See TRUST.

power of attorney. (18c) **1.** An instrument granting someone authority to act as agent or attorney-in-fact for the grantor. • An ordinary power of attorney is revocable and automatically terminates upon the death or incapacity of the principal. — Also termed *letter of attorney; warrant of attorney.* See ATTORNEY (1). [Cases: Principal and Agent ⇨51.] **2.** The authority so granted; specif., the legal ability to produce a change in legal relations by doing whatever acts are authorized. Pl. **powers of attorney.**

durable power of attorney. (1980) A power of attorney that remains in effect during the grantor's incompetency. • Such instruments commonly allow an agent to make healthcare decisions for a patient who has become incompetent. [Cases: Principal and Agent ⇨51.]

general power of attorney. (18c) A power of attorney that authorizes an agent to transact business for the principal. Cf. *special power of attorney.* [Cases: Principal and Agent ⇨97.]

irrevocable power of attorney (i-**rev**-ə-kə-bəl). (18c) A power of attorney that the principal cannot revoke. — Also termed *power of attorney coupled with an interest.* See *power coupled with an interest* under POWER (3). [Cases: Principal and Agent ⇨37.]

power of attorney coupled with an interest. See *irrevocable power of attorney.*

power of attorney for healthcare. See ADVANCE DIRECTIVE (1).

special power of attorney. (18c) A power of attorney that limits the agent's authority to only a specified matter. Cf. *general power of attorney.*

springing power of attorney. A power of attorney that becomes effective only when needed, at some future date or upon some future occurrence, usu. upon the principal's incapacity. — Also termed *springing durable power of attorney.* See *durable power of attorney;* ADVANCE DIRECTIVE.

power of revocation (rev-ə-**kay**-shən). See POWER (3).

power of sale. See POWER (3).

power-of-sale clause. (1883) A provision in a mortgage or deed of trust permitting the mortgagee or trustee to sell the property without court authority if the payments are not made. [Cases: Mortgages ⇨21.]

power-of-sale foreclosure. See FORECLOSURE.

power of termination. (1919) A future interest retained by a grantor after conveying a fee simple subject to a condition subsequent, so that the grantee's estate terminates (upon breach of the condition) only if the grantor exercises the right to retake it. — Also termed *right of entry; right of reentry; right of entry for breach of condition; right of entry for condition broken.* See *fee simple subject to a condition subsequent* under FEE SIMPLE. Cf. POSSIBILITY OF REVERTER. [Cases: Deeds ⇨159.]

power over oneself. See CAPACITY (2).

power over other persons. See AUTHORITY (1).

power politics. *Int'l law.* An approach to foreign policy that encourages a nation to use its economic and military strength to enlarge its own power as an end in itself; a system in which a country is willing to bring its economic and (esp.) military strength to bear in an effort to increase its own power.

power to inspect. *Patents.* The authority of a third party to review a patent application. • The power may be given by the applicant or an assignee, often to a potential buyer. It must specify which application the person is authorized to see, and it becomes part of the record of the application. See ACCESS (4), (5). [Cases: Patents ⇨97.]

p.p. *abbr.* **1.** PER PROCURATIONEM. **2.** PROPRIA PERSONA.

PPA. *abbr.* **1.** See *provisional application* under PATENT APPLICATION. **2.** PLANT PATENT ACT.

PPI. *abbr.* POLICY PROOF OF INTEREST.

PPO. *abbr.* **1.** PREFERRED-PROVIDER ORGANIZATION. **2.** See *permanent protective order* under PROTECTIVE ORDER.

p. pro. *abbr.* PER PROCURATIONEM.

p. proc. *abbr.* PER PROCURATIONEM.

PR. *abbr.* PUBLIC RELATIONS.

practicable, *adj.* (16c) (Of a thing) reasonably capable of being accomplished; feasible.

practicably irrigable acreage. Land that is susceptible to prolonged irrigation, at reasonable cost.

practical construction. See *contemporaneous construction* under CONSTRUCTION.

practical finality. The situation in which a court order directs immediate delivery of physical property, subjecting the losing party to irreparable harm if an immediate appeal were not possible. • Practical finality provides an exception to the usual rule that interlocutory orders are not appealable. See FINALITY DOCTRINE. [Cases: Federal Courts ⇨572.1.]

practical interpretation. See *contemporaneous construction* under CONSTRUCTION.

practically avoidable. See AVOIDABLE.

practice, *n.* (15c) **1.** The procedural methods and rules used in a court of law <local practice requires that an extra copy of each motion be filed with the clerk>. **2.** PRACTICE OF LAW <where is your practice?>. [Cases: Patents ⇨90(5).]

practice, *vb. Patents.* **1.** To make and use (a patented invention) <the employer had a shop right to practice the patent, but not to sell it>. **2.** To build a physical embodiment of an invention. See REDUCTION TO PRACTICE.

practice act. (1881) A statute governing practice and procedure in courts. • Practice acts are usu. supplemented with court rules such as the Federal Rules of Civil Procedure.

practice book. (1873) A volume devoted to the procedures in a particular court or category of courts, usu. including court rules, court forms, and practice directions.

practice court. 1. MOOT COURT. **2.** (*cap.*) BAIL COURT.

practice goodwill. See GOODWILL.

practice guide. A written explanation of how to proceed in a particular area of law or in a particular court or locality.

practice of law. (17c) The professional work of a duly licensed lawyer, encompassing a broad range of services such as conducting cases in court, preparing papers necessary to bring about various transactions from conveying land to effecting corporate mergers, preparing legal opinions on various points of law, drafting wills and other estate-planning documents, and advising clients on legal questions. • The term also includes activities that comparatively few lawyers engage in but that require legal expertise, such as drafting legislation and court rules. — Also termed *legal practice.* Cf. LAW PRACTICE. [Cases: Attorney and Client ⇨11.]

multidisciplinary practice of law. See MULTIDISCIPLINARY PRACTICE.

unauthorized practice of law. (1928) The practice of law by a person, typically a nonlawyer, who has not been licensed or admitted to practice law in a given jurisdiction. — Abbr. UPL. [Cases: Attorney and Client ⇨11.]

"The definitions and tests employed by courts to delineate unauthorized practice by non-lawyers have been vague or conclusory, while jurisdictions have differed significantly in describing what constitutes unauthorized practice in particular areas.

"Certain activities, such as the representation of another person in litigation, are generally proscribed. Even in that area, many jurisdictions recognize exceptions for such matters as small-claims and landlord-tenant tribunals and certain proceedings in administrative agencies. Moreover, many jurisdictions have authorized law students and others not locally admitted to represent indigent persons or others as part of clinical legal education programs.

"Controversy has surrounded many out-of-court activities such as advising on estate planning by bank trust officers, advising on estate planning by insurance agents, stock brokers, or benefit-plan and similar consultants, filling out or providing guidance on forms for property transactions by real estate agents, title companies, and closing-service companies, and selling books or individual forms containing instructions on self-help legal services accompanied by personal, non-lawyer assistance on filling them out in connection with legal procedures such as obtaining a marriage dissolution. The position of bar associations has traditionally been that non-lawyer provisions of such services denies the person served the benefit of such legal measures as the attorney-client privilege, the benefits of such extraordinary duties as that of confidentiality of client information and the protection against conflicts of interest, and the protection of such measures as those regulating lawyer trust accounts and requiring lawyers to supervise non-lawyer personnel. Several jurisdictions recognize that many such services can be provided by non-lawyers without significant risk of incompetent service, that actual experience in several states with extensive non-lawyer provision of traditional legal services indicates no significant risk of harm to consumers of such services, that persons in

need of legal services may be significantly aided in obtaining assistance at a much lower price than would be entailed by segregating out a portion of a transaction to be handled by a lawyer for a fee, and that many persons can ill afford, and most persons are at least inconvenienced by, the typically higher cost of lawyer services." Restatement (Third) of the Law Governing Lawyers § 4 cmt. c (1998).

practicks (**prak**-tiks). *Hist. Scots law.* (*usu. pl.*) An old collection of notes about points of practice, decisions of the Court of Sessions, statutes, and forms, compiled by members of the court. • An example is Balfour's *Practicks* (1469–1579). A precursor of law reports, the notes remain historical legal literature of some authority.

practitioner. (16c) A person engaged in the practice of a profession, esp. law or medicine.

praebentes causam mortis (pri-**ben**-teez **kaw**-zəm **mor**-tis). [Latin] *Hist.* (Persons) occasioning the cause of death.

praeceptio haereditatis (pri-**sep**-shee-oh hə-red-i-**tay**-tis). [Law Latin] *Scots law.* A taking of the inheritance in advance. — Also termed *lucrative succession.*

"Praeceptio haereditatis . . . . This is one of the passive titles known in law, which, if incurred by the heir, renders him in some measure liable for his ancestor's debts. It was introduced to prevent an heir from receiving and enjoying, under a gratuitous disposition *inter vivos* from his ancestor, that heritable estate to which he would be entitled to succeed on the ancestor's death, and of thus avoiding responsibility for his ancestor's debts and other obligations." John Trayner, *Trayner's Latin Maxims* 466-67 (4th ed. 1894).

praeceptores (pree-sep-**tor**-eez). [Law Latin "masters"] *Hist.* The chief clerks of Chancery, responsible for preparing remedial writs.

praecipe (**pree**-sə-pee *or* **pres**-ə-pee), *n.* [Latin "command"] (15c) **1.** At common law, a writ ordering a defendant to do some act or to explain why inaction is appropriate. — Also termed *writ of praecipe.* **2.** A written motion or request seeking some court action, esp. a trial setting or an entry of judgment. — Also spelled *precipe.* — **praecipe,** *vb.*

praecipe quod reddat (**pree**-sə-pee or **pres**-ə-pee kwod **red**-at). [Latin "command that he render"] *Hist.* A writ directing the defendant to return certain property. • An action for common recovery was often begun with this writ. When the writ was brought to recover land, it was termed *ingressu.* See COMMON RECOVERY.

"The *praecipe quod reddat* was the proper writ when the plaintiff's action was for a specifick thing; as for the recovery of a debt certain, or for the restoration of such a chattel, or for giving up such a house, or so much land, specifying the nature and quantity of it. By this writ the sheriff was commanded to summon the tenant or defendant to appear at *Westminster,* at such a day in term." 1 George Crompton, *Rules and Cases of Practice in the Courts of King's Bench and Common Pleas* xxxix (3d ed. 1787).

praecipitium (pree-sə-**pish**-ee-əm *or* pres-ə-), *n.* [Latin "headlong fall"] *Roman law.* The punishment of casting a criminal from the Tarpeian rock.

praecipuum (pri-**sip**-yoo-əm), *n.* [Latin] *Hist.* The estate portion that is not subject to rules of division; the part of an estate that one claimant (usu. the eldest heir-portioner) receives to the exclusion of all others.

praeco (**pree**-koh), *n.* [Latin] *Roman law.* A herald or crier.

praedia (**pree**-dee-ə), *n.* [Latin] The plural of *praedium* (land; an estate). See PRAEDIUM.

praedia bellica (**pree**-dee-ə **bel**-ə-kə). [Latin] Property seized in war; booty.

praedia stipendiaria (**pree**-dee-ə stɪ-pen-dee-**air**-ee-ə). [Latin] Provincial lands belonging to the *res publicae*; the senatorial provinces.

praedia tributaria (**pree**-dee-ə trib-yoo-**tair**-ee-ə). [Latin] Provincial lands belonging to the emperor; the imperial provinces.

praedial (**pree**-dee-əl), *adj.* See PREDIAL.

praedial tithe. See *predial tithe* under TITHE.

praedictus (pri-**dik**-təs), *adj.* [Law Latin] *Hist.* Aforesaid. • In pleading, *praedictus* usu. referred to a defendant, a town, or lands, *idem* to a plaintiff, and *praefatus* to a person other than a party. Cf. PRAEFATUS.

praedium (**pree**-dee-əm), *n.* [Latin] *Roman law.* Land; an estate. Pl. ***praedia.***

praedium dominans (**pree**-dee-əm **dom**-ə-nanz). [Latin] A dominant estate; an estate benefiting from a servitude. See SERVITUDE. Cf. *dominant estate* under ESTATE (4).

praedium rusticum (**pree**-dee-əm **rəs**-ti-kəm). [Latin] An estate used for agricultural purposes. Cf. *rural servitude* under SERVITUDE (2).

praedium serviens (**pree**-dee-əm **sər**-vee-enz). [Latin] An estate burdened by a servitude; a servient estate. See SERVITUDE. Cf. *servient estate* under ESTATE (4).

praedium urbanum (**pree**-dee-əm ər-**bay**-nəm). [Latin] An estate used for business or for dwelling; any estate other than a *praedium rusticum.* See *urban servitude* (2) under SERVITUDE (2).

praedo (**pree**-doh), *n.* [Latin] *Roman law.* A robber. Pl. ***praedones.***

praefatus (pri-**fay**-təs), *adj.* [Latin] Aforesaid. — Abbr. *praefat*; *p. fat.* Cf. PRAEDICTUS.

praefectura (pri-**fek**-chər-ə), *n.* [Latin] *Roman law.* **1.** The office of prefect. **2.** A town or territory administered by a prefect.

praefectus urbi (pri-**fek**-təs ər-bɪ). [Latin "prefect of the city"] *Roman law.* A senator charged with keeping law and order in the city of Rome. • This duty originated in the early Empire. The *praefectus* had both criminal and civil jurisdiction; the latter was gradually taken over from the praetor, although the *praefectus*'s civil jurisdiction was always *cognitio.* — Also termed *urban prefect*; *prefect of the city.*

"*Praefectus urbi.* The prefect of the city was originally a mere delegate appointed in case of the temporary absence of the emperor, but the office became a permanency owing to Tiberius' continued residence away from Rome in the latter part of his reign, and under subsequent emperors

the prefect remained in office even when the emperor was present. His duties included generally the maintenance of order in the city, and he had under his command the urban cohorts, in effect a police force numbering between 4,000 and 6,000 men. He early assumed criminal jurisdiction, and in the end became the chief criminal court not only for Rome but for the district within 100 miles." H.F. Jolowicz, *Historical Introduction to the Study of Roman Law* 345-46 (1952).

praefectus vigilum (pri-**fek**-təs vi-**jil**-əm). [Latin "prefect of the watch"] *Roman law.* An officer, immediately subordinate to the *praefectus urbi*, with police and fire-prevention duties. • This officer had the authority to punish offenses relating to the public peace. See PRAEFECTUS URBI.

praefectus villae (pri-**fek**-təs **vil**-ee). [Latin] *Hist.* The mayor of a town.

praefine (**pree**-fin). See PRIMER FINE.

praejuramentum (pree-juur-ə-**men**-təm), *n.* [Law Latin] *Hist.* A preparatory oath.

praelegatum (pree-lə-**gay**-təm), *n.* [Latin] *Roman law.* A legacy to one of several heirs whereby the legatee was entitled to the legacy before the estate was divided. • This was similar to an advancement.

praelibatio matrimonii (pree-li-**bay**-shee-oh ma-trə-**moh**-nee-i). [Law Latin] *Hist.* A foretaste of marriage.

praematura diligentia (pree-mə-**t[y]uur**-ə [*or* -**chuur**-ə] dil-ə-**jen**-shee-ə). [Law Latin] *Scots law.* Premature execution of a judgment.

praemium emancipationis (**pree**-mee-əm i-man-sə-pay-shee-**oh**-nis). [Latin "reward for emancipation"] *Roman law.* A compensation allowed by Constantine to a father on the emancipation of his child, consisting of one-third of the property that came to the child from his mother's side. • Justinian replaced this with the usufruct of half the child's separate property.

praemium pudicitiae (**pree**-mee-əm pyoo-də-**sish**-ee-ee. [Latin "the price of chastity"] *Hist.* Compensation paid by a man who seduced a chaste woman. — Also written *premium pudicitiae.* — Also termed *praemium pudoris.*

praemunire (pree-myoo-**ni**-ree), *n.* [Latin *praemoneri* "to be forewarned"] *Hist.* The criminal offense of obeying an authority other than the king. • *Praemunire* stems from the efforts of Edward I (1272–1307) to counter papal influence in England, and takes its name from the writ's initial words: *praemunire facias* ("that you cause to be forewarned"). One type of *praemunire* was to appeal to the pope rather than the monarch. Another was to bring a suit in a temporal court instead of a royal court, in part because the monarch wanted all fines levied as punishment to go to the royal coffers, not those of the church.

praenomen (pree-**noh**-mən), *n.* [Latin] *Roman law.* The first of a person's three names, given to distinguish the person from family members.

praeposita negotiis vel rebus domesticis (pri-**poz**-ə-tə ni-**goh**-shee-is vel **ree**-bəs də-**mes**-ti-sis). [Latin] *Hist.* Set over domestic affairs. • The phrase usu. referred to a wife's status.

praepositor (pri-**poz**-ə-tər *or* -tor), *n.* [Law Latin "supervisor, reeve"] *Hist.* One who delegates duties (esp. of a business's management) to another; one who places (another) in a position over others.

praepositura (pri-poz-ə-**t[y]uur**-ə), *n.* [Latin "management" or "supervisory office"] *Hist.* **1.** One to whom management duties are delegated. **2.** The area of responsibility delegated to a person to manage, esp. a wife's authority to manage the household.

praepositus (pree-**poz**-ə-təs), *n.* [Latin] *Hist.* **1.** An officer next in authority to the alderman of a hundred. **2.** A steward or bailiff of an estate.

praepositus negotiis (pri-**poz**-ə-təs ni-**goh**-shee-is). [Latin] *Hist.* Put in charge of another's business.

praepositus negotiis societatis (pri-**poz**-ə-təs ni-**goh**-shee-is sə-si-ə-**tay**-tis). [Latin] *Hist.* Put in charge of a partnership's business.

praepositus villae (pree-**poz**-ə-təs **vil**-ee). [Latin] *Hist.* A constable of a town; a petty constable.

praerogativa regis (pree-rog-ə-**ti**-və **ree**-jis). [Law Latin "of the Crown's prerogative"] *Hist.* A declaration made at the time of Edward I (1272–1307) defining certain feudal and political rights of the Crown, including the right to wardship of an idiot's lands to protect the idiot's heirs from disinheritance or alienation. — Also termed *de praerogativa regis* (dee pree-rog-ə-**ti**-və **ree**-jis).

"The king's right is distinctly stated in the document known as *praerogativa Regis*, which we believe to come from the early years of Edward I. The same document seems to be the oldest that gives us any clear information about a wardship of lunatics. The king is to provide that the lunatic and his family are properly maintained out of the income of his estate, and the residue is to be handed over to him upon his restoration to sanity, or, should he die without having recovered his wits, is to be administered by the ordinary for the good of his soul; but the king is to take nothing to his own use." 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 481 (2d ed. 1898).

praescriptio (pri-**skrip**-shee-oh), *n.* [Latin] *Roman law.* **1.** A preliminary portion of a *formula* that defines the scope of action. **2.** A defensive plea in an action to recover land by which the defendant asserts ownership based on continuous possession for a prescribed time. — Also termed (in sense 2) *praescriptio longi temporis.* Pl. ***praescriptiones*** (pri-skrip-shee-**oh**-neez).

praescriptio fori (pri-**skrip**-shee-oh **for**-i). [Latin] *Roman law.* An objection on the ground that the person objecting is not subject to the court's jurisdiction.

praescriptis verbis (pri-**skrip**-tis **vər**-bis). [Latin "in the words before written"] **1.** *Roman law.* An action on a bilateral agreement under which one party had performed and required the other to perform in turn. **2.** *Roman law.* The grounds given for the existence of a contract that falls into the class later described as innominate. • Innominate contracts were developed and recognized late in classical law.

See *innominate contract* under CONTRACT. **3.** *Hist.* (Of a clause) restricted in scope by introductory words — esp., in a pleading, words defining the issue.

praeses (**pree**-seez), *n.* [Latin] **1.** *Roman law.* A governor of a province. **2.** The president of a college or university.

praestare (pree-**stair**-ee), *vb.* [Latin] *Roman law.* **1.** To perform an obligation. **2.** To undertake liability.

praestatio culpae levis (pri-**stay**-shee-oh **kəl**-pee **lee**-vis). [Law Latin] *Hist.* An obligation for the middle degree of diligence — that is, the diligence and care required by a person of ordinary prudence. • This phrase was a forerunner of the modern terms *reasonable care* and *reasonable person.*

praesumitur pro negante (pri-**zyoo**-mə-tər proh ni-**gan**-tee). [Latin] It is presumed for the negative. • This is the rule of the House of Lords when the votes are equal on a motion.

praesumptio (pri-**zəmp**-shee-oh), *n.* [Latin] A presumption. Pl. ***praesumptiones*** (pri-zəmp-shee-**oh**-neez).

praesumptio fortior (pri-**zəmp**-shee-oh **for**-shee-ər *or* -or). [Latin] A strong presumption (of fact); a presumption strong enough to shift the burden of proof to the opposing party.

praesumptio hominis (pri-**zəmp**-shee-oh **hom**-ə-nis). [Latin] The presumption of an individual; that is, a natural presumption unfettered by rules.

praesumptio juris (pri-**zəmp**-shee-oh **joor**-is). [Latin] A presumption of law; that is, one in which the law assumes the existence of something until it is disproved. See *presumption of law* and *rebuttable presumption* under PRESUMPTION.

praesumptio Muciana (pri-**zəmp**-shee-oh myoo-shee-**ay**-nə). [Latin] *Roman law.* The rebuttable presumption that in case of doubt a thing possessed by a married woman had been given to her by her husband. • The presumption was named after the jurist Quintus Mucius.

praeter dotem (**pree**-tər **doh**-təm *or* -tem). [Latin] *Hist.* Over and above the dowry.

praeteritio (pree-tə- *or* pret-ə-**rish**-ee-oh), *n.* [Latin] *Roman law.* A testator's exclusion of an heir by passing the heir over. • In Roman law, passing over *sui heredes* usu. invalidated the will. See SUI HEREDES.

praeter legem. See EQUITY PRAETER LEGEM.

praetor (**pree**-tər), *n.* [Latin] *Roman law.* The magistrate responsible for identifying and framing the legal issues in a case and for ordering a lay judge (judex) to hear evidence and decide the case in accordance with the formula. See FORMULA (1).

praetor fideicommissarius (**pree**-tər **fɪ**-dee-ɪ-kom-ə-**sair**-ee-əs). A special praetor having jurisdiction over cases involving trusts.

praetorian edict. See *edictum praetoris* under EDICTUM.

praevaricatio (pri-var-ə-**kay**-shee-oh), *n.* [Latin "collusion with an opponent"] *Roman law.* An accuser's colluding with the defense in such a way that the accused will be acquitted. • An accuser might do this in various ways, as by deemphasizing the most important charges, refraining from calling the most important witnesses, or refraining from exercising peremptory challenges against jurors who would tend to favor the accused. See CALUMNIA. Cf. TERGIVERSATIO.

praevaricator (pree-var-ə-**kay**-tər). See PREVARICATOR.

praevento termino (pri-**ven**-toh **tər**-mə-noh). [Law Latin "by anticipating the term"] *Scots law.* An action in the Court of Session to prevent a delay in a suspension or an appeal. See SUSPENSION (6).

pratique (pra-**teek** *or* **prat**-ik). *Maritime law.* A license allowing a vessel to trade in a particular country or port after complying with quarantine requirements or presenting a clean bill of health.

praxis (**prak**-sis). [Greek "doing; action"] (1933) In critical legal studies, practical action; the practice of living the ethical life in conjunction and in cooperation with others.

prayer conference. See CHARGE CONFERENCE.

prayer for relief. (18c) A request addressed to the court and appearing at the end of a pleading; esp., a request for specific relief or damages. — Often shortened to *prayer.* — Also termed *demand for relief*; *request for relief.* See AD DAMNUM CLAUSE. [Cases: Federal Civil Procedure ⇨680; Pleading ⇨72.]

> "*The prayer for relief.* The plaintiff prays in his bill for the relief to which he supposes himself entitled on the case made out in the bill. This is called the *special* prayer. He then prays for general relief, usually in these words: 'And the plaintiff (*or* your orator) prays for such further or other relief as the nature of the case may require, and as may be agreeable to equity and good conscience.' Both prayers are generally inserted in the bill, — the special prayer first, the general following." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 69 (2d ed. 1899).

general prayer. (18c) A prayer for additional unspecified relief, traditionally using language such as, "Plaintiff additionally prays for such other and further relief to which she may show herself to be justly entitled." • The general prayer typically follows a special prayer. [Cases: Federal Civil Procedure ⇨2585; Judgment ⇨252; Pleading ⇨72.]

special prayer. (18c) A prayer for the particular relief to which a plaintiff claims to be entitled. [Cases: Judgment ⇨252; Pleading ⇨72.]

prayer in aid. See AID PRAYER.

prayer of process. (18c) A conclusion in a bill in equity requesting the issuance of a subpoena if the defendant fails to answer the bill. [Cases: Equity ⇨139.]

PRC. *abbr.* POSTAL RATE COMMISSION.

preamble (**pree**-am-bəl), *n.* (14c) **1.** An introductory statement in a constitution, statute, or other document explaining the document's basis and objective; esp., a

statutory recital of the inconveniences for which the statute is designed to provide a remedy. • A preamble often consists of a series of clauses introduced by the conjunction *whereas*. Such a preamble is sometimes called the *whereas clauses*. [Cases: Statutes ☞210.]

"The preamble cannot control the enacting part of the statute, in cases where the enacting part is expressed in clear, unambiguous terms; but in case any doubt arises on the enacting part, the preamble may be resorted to to explain it, and show the intention of the law maker." *Den v. Urison*, 2 N.J.L. 212 (1807).

2. *Patents*. The first words of a patent claim, often a single phrase indicating the field of art. • The preamble is typically nonlimiting unless it "breathes life and meaning into the claims." *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1257 (Fed. Cir. 1989). Elements, the later parts of the claim, narrow this broad identification more and more specifically. Cf. BODY OF A CLAIM; TRANSITION PHRASE.[Cases: Patents ☞165(4).] — **preambulary** (pree-**am**-byə-ler-ee), **preambular** (pree-**am**-byə-lər), *adj.*

preappointed evidence. See EVIDENCE.

preargument-conference attorney. See CIRCUIT MEDIATOR.

preaudience. *English law.* The right of a senior barrister to be heard in court before other barristers.

prebankruptcy, *adj.* Occurring before the filing of a bankruptcy petition <prebankruptcy transactions>.

prebend (**preb**-ənd), *n.* **1.** A stipend granted in a cathedral church for the support of the members of the chapter. **2.** The property from which the stipend comes.

prebendary (**preb**-ən-der-ee). A person serving on the staff of a cathedral who receives a stipend from the cathedral's endowment.

prebut (**pree**-bət), *vb. Slang.* To rebut an argument in advance of an opponent's making it.; to engage in anticipatory refutation.

precariae (pri-**kair**-ee-ee). [Law Latin "favors"] *Hist.* Day labor that tenants of certain manors were bound to give their lords at harvest time. — Also termed *preces*.

precarious, *adj.* (17c) Dependent on the will or pleasure of another; uncertain.

precarious loan. See LOAN.

precarious possession. See POSSESSION.

precarious right. See RIGHT.

precarious trade. See TRADE.

precarium (pri-**kair**-ee-əm), *n.* [Latin] **1.** *Roman law.* The gratuitous grant of the enjoyment of property, revocable at will. **2.** The property so granted. **3.** *Hist.* An estate or tenure arising from a precarious grant, and usu. characterized by uncertainty or arduous conditions of tenure.

precatory (**prek**-ə-tor-ee), *adj.* (17c) (Of words) requesting, recommending, or expressing a desire for action, but usu. in a nonbinding way. • An example of precatory language is "it is my wish and desire to . . . ." [Cases: Trusts ☞29; Wills ☞467.]

precatory trust. See TRUST.

precautionary appeal. See *protective appeal* under APPEAL.

precedence (**pres**-ə-dənts *or* prə-**seed**-ənts), *n.* (16c) **1.** The order or priority in place or time observed by or for persons of different statuses (such as political dignitaries) on the basis of rank during ceremonial events. **2.** Generally, the act or state of going before something else according to some system of priorities. **3.** *Parliamentary law.* The ranked priority that determines whether a motion is in order while another motion is pending, or whether a pending motion yields to another motion.

"There is a principle that determines the precedence of motions. The closer a motion is to final disposition of the matter under consideration, the lower it is in the order of precedence. The further removed the motion is from final disposition of the matter, the higher it is in the order of precedence." National Conference of State Legislatures, *Mason's Manual of Legislative Procedure* 6 (2000).

4. *Parliamentary law.* The priority in which a member is entitled to the floor. — Also termed *precedence in recognition; preference in being recognized*. **5.** The order in which persons may claim the right to administer an intestate's estate. • The traditional order is (1) surviving spouse, (2) next of kin, (3) creditors, and (4) public administrator. [Cases: Executors and Administrators ☞17.]

precedent (prə-**seed**-ənt *also* **pres**-ə-dənt), *adj.* (14c) Preceding in time or order <condition precedent>.

precedent (**pres**-ə-dənt), *n.* (16c) **1.** The making of law by a court in recognizing and applying new rules while administering justice. [Cases: Courts ☞87.] **2.** A decided case that furnishes a basis for determining later cases involving similar facts or issues. See STARE DECISIS. [Cases: Courts ☞88.] — **precedential,** *adj.*

"In law a precedent is an adjudged case or decision of a court of justice, considered as furnishing a rule or authority for the determination of an identical or similar case afterwards arising, or of a similar question of law. The only theory on which it is possible for one decision to be an authority for another is that the facts are alike, or, if the facts are different, that the principle which governed the first case is applicable to the variant facts." William M. Lile et al., *Brief Making and the Use of Law Books* 288 (3d ed. 1914).

"A precedent . . . is a judicial decision which contains in itself a principle. The underlying principle which thus forms its authoritative element is often termed the *ratio decidendi*. The concrete decision is binding between the parties to it, but it is the abstract *ratio decidendi* which alone has the force of law as regards the world at large." John Salmond, *Jurisprudence* 191 (Glanville L. Williams ed., 10th ed. 1947).

"One may say, roughly, that a case becomes a precedent only for such a general rule as is necessary to the actual decision reached, when shorn of unessential circumstances." 1 James Parker Hall, Introduction, *American Law and Procedure* xlviii (1952).

"One may often accord respect to a precedent not by embracing it with a frozen logic but by drawing from its thought the elements of a new pattern of decision." Lon L. Fuller, *Anatomy of the Law* 151 (1968).

binding precedent. (17c) A precedent that a court must follow. • For example, a lower court is bound by an applicable holding of a higher court in the same jurisdiction. — Also termed *authoritative precedent*; *binding authority*. Cf. *imperative authority* under AUTHORITY (4). [Cases: Courts ☞88, 107.]

declaratory precedent. (1900) A precedent that is merely the application of an already existing legal rule.

original precedent. (17c) A precedent that creates and applies a new legal rule.

persuasive precedent. (1905) A precedent that is not binding on a court, but that is entitled to respect and careful consideration. • For example, if the case was decided in a neighboring jurisdiction, the court might evaluate the earlier court's reasoning without being bound to decide the same way. [Cases: Courts ☞88.]

precedent sub silentio (səb sə-**len**-shee-oh). (1825) A legal question that was neither argued nor explicitly discussed in a judicial decision but that seems to have been silently ruled on and might therefore be treated as a precedent.

superprecedent. **1.** A precedent that defines the law and its requirements so effectively that it prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation. • This sense was posited by W. Landes and Richard Posner in *Legal Precedent: A Theoretical and Empirical Analysis*, 19 J. Law & Econ. 249, 251 (1976). **2.** A precedent that has become so established in the law by a long line of reaffirmations that it is very difficult to overturn it; specif., a precedent that has been reaffirmed many times and whose rationale has been extended to cover cases in which the facts are dissimilar, even wholly unrelated, to those of the precedent. • For example, *Roe v. Wade* has been called a superprecedent because it has survived more than three dozen attempts to overturn it and has been relied on in decisions protecting gay rights and the right to die. Cf. *super stare decisis* under STARE DECISIS.

3. DOCTRINE OF PRECEDENT. **4.** A form of pleading or property-conveyancing instrument. • Precedents are often compiled in book form and used by lawyers as guides for preparing similar documents.

> "Collections of Precedents have existed from very early times. In this connection precedents must not be confused with judicial precedents or case law. We refer here simply to common-form instruments compiled for use in practice, whereby the lawyer can be more or less certain that he is using the correct phraseology for the particular case before him. They were used both in conveyancing and litigation. . . . It is interesting to note that these precedents were apparently among the first legal works to be published after printing was introduced. Collections of conveyancing precedents continued to be brought up to date or new volumes issued . . . ." A.K.R. Kiralfy, *Potter's Outlines of English Legal History* 42-43 (5th ed. 1958).

prece partium (**pree**-see **pahr**-shee-əm). [Law Latin] On the prayer of the parties.

precept (**pree**-sept). (14c) **1.** A standard or rule of conduct; a command or principle <several legal precepts govern here>. [Cases: Courts ☞87-100.] **2.** A writ or warrant issued by an authorized person demanding another's action, such as a judge's order to an officer to bring a party before the court <the sheriff executed the precept immediately>.

preceptive statute. See STATUTE.

preceptum amissionis superioritatis (pri-**sep**-təm ə-mis[h]-ee-**oh**-nis suu-peer-ee-or-ə-**tay**-tis). [Law Latin "a precept of a lost superiority"] *Hist.* A precept to force a superior to give a vassal's disponee entry to the land.

preces (**pree**-seez), *n.* [Latin "prayers"] *Roman law.* A petition, esp. one addressed to the emperor by a private person. Cf. RESCRIPT (3).

preces primariae (**pree**-seez pri-**mair**-ee-ee). [Latin] *Hist.* The right of the sovereign to appoint a person to fill a vacant prebendary office after the sovereign's accession. • This right was exercised during the reign of Edward I. — Also termed *primae preces*. See PREBENDARY.

precinct. A geographical unit of government, such as an election district, a police district, or a judicial district. [Cases: Municipal Corporations ☞40.]

magisterial precinct. (1894) A county subdivision that defines the territorial jurisdiction of a magistrate, constable, or justice of the peace. — Also termed *magisterial district*. [Cases: Justices of the Peace ☞52.]

precipe (**pre**-sə-pee). See PRAECIPE.

précis (pray-**see** *or* **pray**-see), *n.* [French] (18c) A concise summary of a text's essential points; an abstract. Pl. **précis** (pray-**seez** *or* **pray**-seez).

precludi non debet (pri-**kloo**-dı non **dee**-bet *or* **deb**-et). [Latin "he ought not to be barred"] *Hist.* The beginning of a plaintiff's reply to a plea in bar in which the plaintiff objects to being barred from maintaining the action. — Sometimes shortened to *precludi non*.

preclusion order. See ORDER (2).

precognition (pree-kog-**nish**-ən). *Scots law.* **1.** A preliminary examination under oath of persons believed to have knowledge about the facts of a case, esp., in a criminal case, to determine whether there is sufficient evidence for a trial. **2.** The written record of the statement that a prospective witness can give as evidence.

precompounded prescription drug. See DRUG.

preconceived malice. See MALICE AFORETHOUGHT.

precondition. See CONDITION (1).

precontract. See CONTRACT.

predate, *vb.* See ANTEDATE.

predation. See PREDATORY PRICING.

predator. See SEXUAL PREDATOR.

predatory crime. See CRIME.

predatory intent. See INTENT (1).

predatory pricing. Unlawful below-cost pricing intended to eliminate specific competitors and reduce overall competition; pricing below an appropriate measure of cost for the purpose of eliminating competitors in the short run and reducing competition in the long run. — Also termed *predation*. See ANTITRUST. [Cases: Antitrust and Trade Regulation ⟹832.]

> "In its most orthodox form, 'predatory pricing' refers to a practice of driving rivals out of business by selling at a price below cost. The predator's intent — and the only intent that can make predatory pricing rational, profit-maximizing behavior — is to charge monopoly prices after rivals have been dispatched or disciplined. Predatory pricing is analyzed under the antitrust laws as illegal monopolization or attempt to monopolize under § 2 of the Sherman Act, or sometimes as a violation of the Clayton Act § 2, generally called the Robinson- Patman Act." Herbert Hovenkamp, *Federal Antitrust Policy* 335 (2d ed. 1999).

predecease, *vb.* To die before (another) <she predeceased her husband>.

predecessor. 1. One who precedes another in an office or position. **2.** An ancestor.

predecisional, *adj.* Of, relating to, or occurring during the time before a decision.

predial (pree-dee-əl), *adj.* (15c) Of, consisting of, relating to, or attached to land <predial servitude>. — Also spelled *praedial*.

predial servitude. See *servitude appurtenant* under SERVITUDE (2).

predial tithe. See TITHE.

predicate act. (1977) **1.** See *predicate offense* under OFFENSE (1). **2.** See *lesser included offense* under OFFENSE (1). **3.** Under RICO, one of two or more related acts of racketeering necessary to establish a pattern. See RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT. **4.** See *predicate act* under ACT (2). [Cases: Racketeer Influenced and Corrupt Organizations ⟹5, 103.]

predicate fact. See FACT.

predicate offense. See *lesser included offense* under OFFENSE (1).

prediction theory. 1. See BAD-MAN THEORY. **2.** See PREDICTIVE THEORY OF LAW.

predictive theory of law. (1956) The view that the law is nothing more than a set of predictions about what the courts will decide in given circumstances. • This theory is embodied in Holmes's famous pronouncement, "The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law." Oliver Wendell Holmes, *The Path of the Law*, 10 Harv. L. Rev. 457, 460–61 (1897). — Also termed *prediction theory*. Cf. BAD-MAN THEORY.

predisposition. (17c) A person's inclination to engage in a particular activity; esp., an inclination that vitiates a criminal defendant's claim of entrapment. [Cases: Criminal Law ⟹37(4).]

predominant-aspect test. See PREDOMINANT-PURPOSE TEST.

predominant-purpose test. An assessment of whether Article 2 of the UCC applies to an exchange, conducted by considering whether the exchange's chief aspect, viewed in light of all the circumstances, is the sale of goods. • If goods account for most of the exchange's value, it is probably a sale; if services account for most of the value, it probably is not. The leading case is *Bonebrake v. Cox*, 499 F.2d 951, 960 (8th Cir. 1974). — Also termed *predominant-aspect test*. [Cases: Sales ⟹3.]

preemption (pree-**emp**-shən), *n.* (18c) **1.** The right to buy before others. See RIGHT OF PREEMPTION. [Cases: Contracts ⟹16.5; Sales ⟹24; Vendor and Purchaser ⟹18(.5).] **2.** The purchase of something under this right. **3.** An earlier seizure or appropriation. **4.** The occupation of public land so as to establish a preemptive title. [Cases: Public Lands ⟹34.] **5.** *Constitutional law.* The principle (derived from the Supremacy Clause) that a federal law can supersede or supplant any inconsistent state law or regulation. — Also termed (in sense 5) *federal preemption*. See COMPLETE-PREEMPTION DOCTRINE. [Cases: States ⟹18.3.] — **preempt,** *vb.* — **preemptive,** *adj.*

conflict preemption. See *obstacle preemption*.

Garmon preemption. *Labor law.* A doctrine prohibiting state and local regulation of activities that are actually or arguably (1) protected by the National Labor Relations Act's rules relating to the right of employees to organize and bargain collectively, or (2) prohibited by the National Labor Relations Act's provision that governs unfair labor practices. *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 79 S.Ct. 773 (1959). — Also termed *Garmon doctrine*. See COLLECTIVE BARGAINING; UNFAIR LABOR PRACTICE. [Cases: Labor and Employment ⟹968, 1670; States ⟹18, 46.]

Machinists preemption. *Labor law.* The doctrine prohibiting state regulation of an area of labor activity or management-union relations that Congress has intentionally left unregulated. *Lodge 76, Int'l Ass'n of Machinists v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 96 S.Ct. 2548 (1976). [Cases: Labor and Employment ⟹968.]

obstacle preemption. The principle that federal or state law can supersede or supplant state or local law that stands as an obstacle to accomplishing the full purposes and objectives of the overriding federal or state law. — Also termed *conflict preemption*. [Cases: States ⟹18.5.]

preemption claimant. (1824) One who has settled on land subject to preemption, intending in good faith to acquire title to it.

preemption right. (18c) The privilege to take priority over others in claiming land subject to preemption. • The privilege arises from the holder's actual settlement of the land. See PREEMPTION (3).

preemptive right. A shareholder's privilege to purchase newly issued stock — before the shares are offered to the public — in an amount proportionate to the

shareholder's current holdings in order to prevent dilution of the shareholder's ownership interest. • This right must be exercised within a fixed period, usu. 30 to 60 days. — Also termed *subscription privilege*. See SUBSCRIPTION RIGHT. Cf. *rights offering* under OFFERING. [Cases: Corporations ⇨158.]

preexisting condition. See CONDITION (2).

preexisting duty. See DUTY (1).

preexisting-duty rule. (1990) *Contracts*. The rule that if a party does or promises to do what the party is already legally obligated to do — or refrains or promises to refrain from doing what the party is already legally obligated to refrain from doing — the party has not incurred detriment. • This rule's result is that the promise does not constitute adequate consideration for contractual purposes. For example, if a builder agrees to construct a building for a specified price but later threatens to walk off the job unless the owner promises to pay an additional sum, the owner's new promise is not enforceable because, under the preexisting-duty rule, there is no consideration for that promise. — Also termed *preexisting-legal-duty rule*. [Cases: Contracts ⇨75.]

prefect (**pree**-fekt), *n.* **1.** A high official or magistrate put in charge of a particular command, department, or region. **2.** In New Mexico, a probate judge.

prefect of the city. See PRAEFECTUS URBI.

prefer, *vb.* (14c) **1.** To put forward or present for consideration; esp. (of a grand jury), to bring (a charge or indictment) against a criminal suspect <the defendant claimed he was innocent of the charges preferred against him>. **2.** To give priority to, such as to one creditor over another <the statute prefers creditors who are first to file their claims>.

preference. 1. The act of favoring one person or thing over another; the person or thing so favored. **2.** Priority of payment given to one or more creditors by a debtor; a creditor's right to receive such priority. **3.** *Bankruptcy.* PREFERENTIAL TRANSFER.

insider preference. A transfer of property by a bankruptcy debtor to an insider more than 90 days before but within one year after the filing of the bankruptcy petition. [Cases: Bankruptcy ⇨2608(2).]

liquidation preference. A preferred shareholder's right, once the corporation is liquidated, to receive a specified distribution before common shareholders receive anything. [Cases: Corporations ⇨629.]

voidable preference. See PREFERENTIAL TRANSFER.

preference case. See *preferred cause* under CAUSE (3).

preference cause. See *preferred cause* under CAUSE (3).

preference in being recognized. See PRECEDENCE (4).

preference shares. See *preferred stock* under STOCK.

preferential assignment. See PREFERENTIAL TRANSFER.

preferential ballot. See *preferential vote* under VOTE (1).

preferential debt. See DEBT.

preferential nonunion shop. See SHOP.

preferential rule. (1959) *Evidence*. A rule that prefers one kind of evidence to another. • It may work provisionally, as when a tribunal refuses to consider one kind of evidence until another kind (presumably better) is shown to be unavailable, or it may work absolutely, as when the tribunal refuses to consider anything but the better kind of evidence. [Cases: Criminal Law ⇨398.]

> "There are only three or four . . . sets of [preferential] rules. There is a rule preferring the production of the *original of a document*, in preference to a copy. There is a rule requiring the *attesting witness* to a will to be summoned to evidence its execution. And there is a rule preferring the magistrate's *official report* of testimony taken before him. Then there are a few miscellaneous rules, such as the officially certified enrollment of a statute, etc." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 219 (1935).

preferential shop. See *preferential union shop* under SHOP.

preferential tariff. See TARIFF (2).

preferential transfer. *Bankruptcy.* A prebankruptcy transfer made by an insolvent debtor to or for the benefit of a creditor, thereby allowing the creditor to receive more than its proportionate share of the debtor's assets; specif., an insolvent debtor's transfer of a property interest for the benefit of a creditor who is owed on an earlier debt, when the transfer occurs no more than 90 days before the date when the bankruptcy petition is filed or (if the creditor is an insider) within one year of the filing, so that the creditor receives more than it would otherwise receive through the distribution of the bankruptcy estate. • Under the circumstances described in 11 USCA § 547, the bankruptcy trustee may recover — for the estate's benefit — a preferential transfer from the transferee. — Also termed *preference*; *voidable preference*; *voidable transfer*; *preferential assignment*. Cf. FRAUDULENT CONVEYANCE (2). [Cases: Bankruptcy ⇨2601–2623.]

preferential union shop. See SHOP.

preferential vote. See VOTE (1).

preferential voting. See VOTING.

preferred, *adj.* Possessing or accorded a priority or privilege <a preferred claim>.

preferred cause. See CAUSE (3).

preferred creditor. See CREDITOR.

preferred dividend. See DIVIDEND.

preferred docket. See DOCKET (2).

preferred-provider organization. (1984) A group of healthcare providers (such as doctors, hospitals, and pharmacies) that agree to provide medical services at a discounted cost to covered persons in a given geographic area. — Abbr. PPO. Cf. HEALTH-MAINTENANCE ORGANIZATION; MANAGED-CARE ORGANIZATION. [Cases: Health ⇨294; Insurance ⇨1259, 2501.]

preferred stock. See STOCK.

preferring of charges. *Military law.* The formal completion of a charge sheet, which includes signing and swearing to the charges and specifications. • Only a person subject to the Uniform Code of Military Justice can prefer charges. Cf. INITIATION OF CHARGES. [Cases: Military Justice ⚷951.]

prefiled bill. See BILL (3).

Pregnancy-Discrimination Act. A federal statute that prohibits workplace discrimination against a pregnant woman or against a woman affected by childbirth or a related medical condition. 42 USCA § 2000. • The Pregnancy-Discrimination Act is part of Title VII of the Civil Rights Act of 1964. — Abbr. PDA. [Cases: Civil Rights ⚷1176.]

pregnant chad. See *dimpled chad* under CHAD.

prehearing conference. (1946) An optional conference for the discussion of procedural and substantive matters on appeal, usu. held in complex civil, criminal, tax, and agency cases. • Those attending are typically the attorneys involved in the case as well as a court representative such as a judge, staff attorney, or deputy clerk. Fed. R. App. P. 33. [Cases: Appeal and Error ⚷808; Criminal Law ⚷632(5); Federal Courts ⚷741.]

> "The prehearing conference, if held, generally is scheduled after the time for appeal and cross-appeal has passed, and as soon as it becomes apparent that the case is complex due to the legal issues, the length of the record, or the number of parties. In a complex or multiparty case, the conference provides a forum in which to discuss briefing responsibilities, timing, and handling the record and joint appendix. There may be some discussion of the amount of oral argument the parties desire and how that argument will be divided . . . ." Michael E. Tigar, *Federal Appeals: Jurisdiction and Practice* § 8.06, at 309–10 (2d ed. 1993).

prehire agreement. An employment contract between a union and an employer, in which the employer agrees to hire union members. See *closed shop* under SHOP.

prejudgment attachment. See ATTACHMENT (1).

prejudgment interest. See INTEREST (3).

prejudice, *n.* (14c) **1.** Damage or detriment to one's legal rights or claims. See *dismissal with prejudice* and *dismissal without prejudice* under DISMISSAL.

legal prejudice. (18c) A condition that, if shown by a party, will usu. defeat the opposing party's action; esp., a condition that, if shown by the defendant, will defeat a plaintiff's motion to dismiss a case without prejudice. • The defendant may show that dismissal will deprive the defendant of a substantive property right or preclude the defendant from raising a defense that will be unavailable or endangered in a second suit. [Cases: Federal Civil Procedure ⚷1700; Pretrial Procedure ⚷510.]

undue prejudice. (17c) The harm resulting from a fact-trier's being exposed to evidence that is persuasive but inadmissible (such as evidence of prior criminal conduct) or that so arouses the emotions that calm and logical reasoning is abandoned.

2. A preconceived judgment formed with little or no factual basis; a strong bias. [Cases: Judges ⚷49.] — **prejudice,** *vb.* — **prejudicial,** *adj.*

prejudicial error. See *reversible error* under ERROR (2).

prejudicial publicity. (1935) Extensive media attention devoted to an upcoming civil or criminal trial. • Under the Due Process Clause, extensive coverage of a criminal trial may deprive the defendant of a fair trial. [Cases: Criminal Law ⚷633(1); Federal Civil Procedure ⚷1951; Trial ⚷20.]

preliminary, *adj.* Coming before and usu. leading up to the main part of something <preliminary negotiations>.

preliminary amendment. See PATENT-APPLICATION AMENDMENT.

preliminary availability search. *Trademarks.* A cursory or moderate search of registered trademarks and common-law uses of proposed-trademark names or phrases, done to narrow the list of names phrases before conducting a thorough search.

preliminary complaint. See COMPLAINT.

preliminary crime. See *inchoate offense* under OFFENSE (1).

preliminary evidence. See EVIDENCE.

preliminary examination. 1. See EXAMINATION (3). **2.** See PRELIMINARY HEARING.

preliminary hearing. A criminal hearing (usu. conducted by a magistrate) to determine whether there is sufficient evidence to prosecute an accused person. • If sufficient evidence exists, the case will be set for trial or bound over for grand-jury review, or an information will be filed in the trial court. — Also termed *preliminary examination*; *probable-cause hearing*; *bindover hearing*; *examining trial*. Cf. ARRAIGNMENT. [Cases: Criminal Law ⚷222–238.]

preliminary injunction. See INJUNCTION.

preliminary inquiry. *Military law.* The initial investigation of a reported or suspected violation of the Uniform Code of Military Justice. Cf. PRETRIAL INVESTIGATION.

preliminary-inquiry officer. See OFFICER (2).

preliminary letter. See INVITATION TO NEGOTIATE.

preliminary objection. *Int'l law.* In a case before an international tribunal, an objection that, if upheld, would render further proceedings before the tribunal impossible or unnecessary. • An objection to the court's jurisdiction is an example of a preliminary objection.

preliminary proof. See PROOF.

preliminary prospectus. See PROSPECTUS.

preliminary protective hearing. See *shelter hearing* under HEARING.

preliminary statement. (1834) The introductory part of a brief or memorandum in support of a motion, in which the advocate summarizes the essence of what follows. • In at least two jurisdictions, New York and

New Jersey, the preliminary statement is a standard part of court papers. In many other jurisdictions, advocates do not routinely include it. But preliminary statements are typically allowed, even welcomed, though not required. — Also termed *summary of argument.*

preliminary warrant. See WARRANT (1).

premarital, *adj.* Of, relating to, or occurring before marriage. Cf. POSTMARITAL.

premarital agreement. See PRENUPTIAL AGREEMENT.

premarital asset. See ASSET.

prematurity. 1. The circumstance existing when the facts underlying a plaintiff's complaint do not yet create a live claim. Cf. RIPENESS. [Cases: Action ⇨6, 62; Federal Courts ⇨12.1.] **2.** The affirmative defense based on this circumstance.

premeditated, *adj.* (16c) Done with willful deliberation and planning; consciously considered beforehand <a premeditated killing>. [Cases: Homicide ⇨535; Sentencing and Punishment ⇨1676.]

premeditated malice. See MALICE AFORETHOUGHT.

premeditation, *n.* (15c) Conscious consideration and planning that precedes some act (such as committing a crime). [Cases: Homicide ⇨535; Sentencing and Punishment ⇨1676.] — **premeditate,** *vb.*

premier serjeant. See SERJEANT-AT-LAW.

premise (**prem**-is), *n.* (14c) A previous statement or contention from which a conclusion is deduced. — Also spelled (in BrE) *premiss.* — **premise** (**prem**-is *or* pri-**mɪz**), *vb.*

premises (**prem**-ə-siz). (15c) **1.** Matters (usu. preliminary facts or statements) previously referred to in the same instrument <wherefore, premises considered, the plaintiff prays for the following relief>. **2.** The part of a deed that describes the land being conveyed, as well as naming the parties and identifying relevant facts or explaining the reasons for the deed. **3.** A house or building, along with its grounds <smoking is not allowed on these premises>.

> "*Premises* (= a house or building) has a curious history in legal usage. Originally, in the sense of things mentioned previously, it denoted the part of a deed that sets forth the names of the grantor and grantee, as well as the things granted and the consideration. Then, through hypallage in the early 18th century, it was extended to refer to the subject of a conveyance or bequest as specified in the premises of the deed. Finally, it was extended to refer to a house or building along with its grounds. In short, someone who says, "No alcohol is allowed on these premises," is engaging unconsciously in a popularized legal technicality." Bryan A. Garner, *A Dictionary of Modern Legal Usage* 685 (2d ed. 1995).

demised premises. Leased property. — Also termed *premises demised.*

premises liability. (1950) A landowner's or landholder's tort liability for conditions or activities on the premises. [Cases: Negligence ⇨1000, 1001.]

premises rule. See PARKING-LOT RULE.

premium, *n.* **1.** The periodic payment required to keep an insurance policy in effect. — Also termed *insurance premium.* [Cases: Insurance ⇨2000.]

advance premium. A payment made before the start of the period covered by the insurance policy. [Cases: Insurance ⇨1760.]

earned premium. The portion of an insurance premium applicable to the coverage period that has already expired. • For example, if the total premium for a one-year insurance policy is $1,200, the earned premium after three months is $300. [Cases: Insurance ⇨2000.]

gross premium. **1.** The net premium plus expenses (i.e., the loading), less the interest factor. See LOADING; INTEREST FACTOR. [Cases: Insurance ⇨1127, 2005.] **2.** The premium for participating life insurance. See *participating insurance* under INSURANCE.

natural premium. The actual cost of life insurance based solely on mortality rates. • This amount will be less than a net premium. See *net premium.*

net level annual premium. A net premium that stays the same each year.

net premium. **1.** Generally, the premium amount for an insurance policy less agent commissions. [Cases: Insurance ⇨1652, 2000.] **2.** The portion of the premium that covers the estimated cost of claims. **3.** The money needed to provide benefits under an insurance policy. • The net premium in a life-insurance policy is calculated by using an assumed interest and mortality-table rate; it does not include additional expense amounts that will be charged to the policyholder. — Also termed *net valuation premium.*

net single premium. The money that must be collected from a policyholder at one time to guarantee enough money to pay claims made on an insurance policy. • This amount assumes that interest accrues at an expected rate and is based on a prediction of the likelihood of certain claims. [Cases: Insurance ⇨2037.]

net valuation premium. See *net premium.*

unearned premium. The portion of an insurance premium applicable to the coverage period that has not yet occurred. • In the same example as above under *earned premium,* the unearned premium after three months is $900. [Cases: Insurance ⇨1371, 1930, 2046.]

2. A sum of money paid in addition to a regular price, salary, or other amount; a bonus. **3.** The amount by which a security's market value exceeds its face value. — Also termed (specif.) *bond premium.* Cf. DISCOUNT (3).

control premium. A premium paid for shares carrying the power to control a corporation. • The control premium is often computed by comparing the aggregate value of the controlling block of shares with the cost that would be incurred if the shares could be

acquired at the going market price per share. [Cases: Corporations ☞174.]

4. The amount paid to buy a securities option. — Also termed (in sense 4) *option premium*.

premium bond. See BOND (3).

premium loan. See LOAN.

premium note. See NOTE (1).

premium on capital stock. See *paid-in surplus* under SURPLUS.

premium *pudoris*. See PRAEMIUM PUDICITIAE.

premium rate. *Insurance.* The price per unit of life insurance. • It is usu. expressed as a cost per thousands of dollars of coverage. Life insurers use three factors — the interest factor, the mortality factor, and the risk factor — to calculate premium rates. — Sometimes shortened to *rate*. See INTEREST FACTOR; MORTALITY FACTOR; RISK FACTOR. [Cases: Insurance ☞1541–1546.]

premium stock. See STOCK.

premium tax. See TAX.

prenatal injury. Harm to a fetus or an embryo. Cf. BIRTH INJURY.

prenatal tort. See TORT.

prender. The right to take a thing before it is offered. — Also spelled *prendré*.

prender de baron (**pren**-dər də **bar**-ən). [Law French "a taking of husband"] *Hist.* A plea asserting that the former wife of a murder victim should not be allowed to appeal a murder case against the alleged killer because she has since remarried.

prendré. See PRENDER.

prenup, *n. Slang.* See PRENUPTIAL AGREEMENT.

prenuptial (pree-**nəp**-shəl), *adj.* (1857) Made or occurring before marriage; premarital. — Also termed *antenuptial* (an-tee-**nəp**-shəl). Cf. POSTNUPTIAL.

prenuptial agreement. (1882) An agreement made before marriage usu. to resolve issues of support and property division if the marriage ends in divorce or by the death of a spouse. — Also termed *antenuptial agreement*; *antenuptial contract*; *premarital agreement*; *premarital contract*; *marriage settlement*. — Sometimes shortened to *prenup*. Cf. POSTNUPTIAL AGREEMENT; COHABITATION AGREEMENT. [Cases: Husband and Wife ☞29, 31.]

prenuptial gift. See GIFT.

prenuptial will. See WILL.

prepaid card. See STORED-VALUE CARD.

prepaid expense. See EXPENSE.

prepaid income. See INCOME.

prepaid interest. See INTEREST (3).

prepaid legal services. (1963) An arrangement — usu. serving as an employee benefit — that enables a person to make advance payments for future legal services. [Cases: Attorney and Client ☞137.]

preparation. *Criminal law.* The act or process of devising the means necessary to commit a crime. Cf. ATTEMPT.

prepayment clause. (1935) A loan-document provision that permits a borrower to satisfy a debt before its due date. • Although any interest not yet due is waived, the lender may impose a penalty for prepayment. [Cases: Bills and Notes ☞129, 429.]

prepayment penalty. See PENALTY (2).

prepense (**pree**-pens), *adj. Rare.* Planned; deliberate <malice prepense>.

prepetition (pree-pə-**tish**-ən), *adj.* (1938) Occurring before the filing of a petition (esp. in bankruptcy) <prepetition debts>.

preponderance (pri-**pon**-dər-ənts), *n.* (17c) Superiority in weight, importance, or influence. — **preponderate** (pri-**pon**-dər-ayt), *vb.* — **preponderant** (pri-**pon**-dər-ənt), *adj.*

preponderance of the evidence. (18c) The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. • This is the burden of proof in most civil trials, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be. — Also termed *preponderance of proof*; *balance of probability*. See REASONABLE DOUBT. Cf. *clear and convincing evidence* under EVIDENCE. [Cases: Evidence ☞598.]

> "Criminal convictions are so serious in their consequences that it is felt that an accused person should be freed, if there is any fair or reasonable doubt about his guilt, even though there seems to be considerable likelihood that he did commit the crime. . . . In civil cases, however, the consequence of losing a case, although serious enough in many cases, is not considered to be such as to require so stringent a rule. Accordingly the plaintiff is entitled to a verdict if he proves the case 'by the preponderance of the evidence.' In other words, he is entitled to a verdict even though there may be a reasonable doubt as to the liability of the accused, if the jury is satisfied nevertheless that the plaintiff has proved his case." Charles Herman Kinnane, *A First Book on Anglo-American Law* 562 (2d ed. 1952).

prerogative (pri-**rog**-ə-tiv), *n.* (15c) An exclusive right, power, privilege, or immunity, usu. acquired by virtue of office. — **prerogative,** *adj.*

prerogative of mercy. The discretionary power of a supreme authority, such as a state governor, national president, or sovereign, to commute a death sentence, change the method of execution, or issue a pardon.

prerogative court. See COURT.

prerogative of mercy. The limited right of a chief executive to commute a death sentence or to pardon a convicted person, esp. one convicted of a capital crime.

prerogative writ. See *extraordinary writ* under WRIT.

pres (pray). [Law French] Near. See CY PRES.

presale. The sale of real property (such as condominium units) before construction has begun. [Cases: Condominium ⚷4.]

prescribable (pri-**skrīb**-ə-bəl), *adj.* (1890) (Of a right) that can be acquired or extinguished by prescription.

prescribe, *vb.* **1.** To dictate, ordain, or direct; to establish authoritatively (as a rule or guideline). **2.** To claim ownership through prescription. **3.** To invalidate or otherwise make unenforceable through prescription. **4.** To become invalid or otherwise unenforceable through prescription. [Cases: Holidays ⚷1; Limitation of Actions ⚷1.]

prescript, *adj.* Having the nature of a rule or command.

prescript, *n. Archaic.* A rule, law, command, or ordinance; PRESCRIPTION (2). • A general term, *prescript* may also apply to an edict, a regulation, or any instructive guideline.

prescription, *n.* (15c) **1.** The act of establishing authoritative rules. Cf. PROSCRIPTION. **2.** A rule so established. — Also termed (archaically) *prescript*. **3.** The effect of the lapse of time in creating and destroying rights. [Cases: Limitation of Actions ⚷1.] **4.** The extinction of a title or right by failure to claim or exercise it over a long period. — Also termed *negative prescription*; *extinctive prescription*. **5.** The acquisition of title to a thing (esp. an intangible thing such as the use of real property) by open and continuous possession over a statutory period. — Also termed *positive prescription*; *acquisitive prescription*. Cf. ADVERSE POSSESSION. See (for senses 3–5) PERIOD OF PRESCRIPTION. [Cases: Adverse Possession ⚷1–95.] **6.** *Int'l law.* The acquisition of a territory through a continuous and undisputed exercise of sovereignty over it. **7.** *Oil & gas.* A Louisiana doctrine that extinguishes unused mineral servitudes after ten years if there is no effort to discover or produce on the land or the land pooled with it. [Cases: Mines and Minerals ⚷78.2.]

acquisitive prescription (ə-**kwiz**-ə-tiv). **1.** PRESCRIPTION (5). **2.** *Civil law.* A mode of acquiring ownership or other legal rights through possession for a specified period of time. [Cases: Adverse Possession ⚷1.]

liberative prescription (**lib**-ə-rə-tiv). *Civil law.* A bar to a lawsuit resulting from its untimely filing. La. Civ. Code art. 3447. • This term is essentially the civil-law equivalent of a statute of limitations. See STATUTE OF LIMITATIONS. [Cases: Limitation of Actions ⚷1.]

prescription in a que estate (ah **kee**). [Law French "prescription in whose estate"] A claim of prescription based on the immemorial enjoyment of the right by the claimant and the former owners whose estate the claimant has succeeded to.

prescription of nonuse. *Civil law.* A mode of extinction of a real right other than ownership (such as a servitude) as a result of failure to exercise the right for a specified period of time. [Cases: Adverse Possession ⚷109; Easements ⚷30.]

prescriptive easement. See EASEMENT.

prescriptive right. (17c) A right obtained by prescription <after a nuisance has been continuously in existence for 20 years, a prescriptive right to continue it is acquired as an easement appurtenant to the land on which it exists>. [Cases: Nuisance ⚷11–17.]

presence, *n.* **1.** The state or fact of being in a particular place and time <his presence at the scene saved two lives>. **2.** Close physical proximity coupled with awareness <the agent was in the presence of the principal>.

constructive presence. **1.** *Criminal law.* Legal imputation of having been at a crime scene, based on having been close enough to the scene to have aided and abetted the crime's commission. See CONSPIRACY. [Cases: Criminal Law ⚷59(3).] **2.** *Wills & estates.* Legal imputation of a witness's having been in the room when a will was signed, based on the fact that the testator and the witness were able to see each other at the time of the signing. • This principle was commonly employed until the 20th century, when the presence-of-the-testator rule became dominant. See PRESENCE-OF-THE-TESTATOR RULE. [Cases: Wills ⚷123(5).]

presence-of-defendant rule. The principle that a felony defendant is entitled to be present at every major stage of the criminal proceeding. Fed. R. Crim. P. 43. [Cases: Criminal Law ⚷636.]

presence of the court. (18c) The company or proximity of the judge or other courtroom official. • For purposes of contempt, an action is in the presence of the court if it is committed within the view of the judge or other person in court and is intended to disrupt the court's business.

> "Some decisions indicate that the term 'in the presence of the court' is to be given a liberal interpretation, that 'the court' consists not of the judge, the courtroom, the jury, or the jury room individually, but of all of these combined, and that the court is present wherever any of its constituent parts is engaged in the prosecution of the business of the court according to law." 17 Am. Jur. 2d *Contempt* § 19 (1990).

presence-of-the-testator rule. The principle that a testator must be aware (through sight or other sense) that the witnesses are signing the will. • Many jurisdictions interpret this requirement liberally, and the Uniform Probate Code has dispensed with it. [Cases: Wills ⚷117.]

present, *adj.* (14c) **1.** Now existing; at hand <a present right to the property>. **2.** Being considered; now under discussion <the present appeal does not deal with that issue>. **3.** In attendance; not elsewhere <all present voted for him>.

present ability. See ABILITY.

present and voting. *Parliamentary law.* (Of a member) casting a vote. • The result of a vote is ordinarily determined with reference to the members voting (often termed, somewhat redundantly, as "present and

voting"). An answer of "present" when casting a vote amounts to an abstention because the voter is indicating that he or she is present but not voting. See ABSTAIN (1).

presentation. (15c) **1.** The delivery of a document to an issuer or named person for the purpose of initiating action under a letter of credit; PRESENTMENT (3). [Cases: Banks and Banking ⚷191.] **2.** *Hist. Eccles. law.* A benefice patron's nomination of a person to fill a vacant benefice. • If the bishop rejected the appointee, the patron could enforce the right to fill the vacancy by writ of *quare impedit* in the Court of Common Pleas. See QUARE IMPEDIT. Cf. ADVOWSON; INSTITUTION (5).

next presentation. *Hist. Eccles. law.* In the law of advowsons, the right to present to the bishop a clerk to fill the first vacancy that arises in a church or other ecclesiastical office.

present case. See case at bar under CASE.

present conveyance. See CONVEYANCE.

present covenant. See COVENANT (4).

presentence hearing. (1940) A proceeding at which a judge or jury receives and examines all relevant information regarding a convicted criminal and the related offense before passing sentence. — Also termed sentencing hearing. [Cases: Sentencing and Punishment ⚷325.]

presentence-investigation report. (1943) A probation officer's detailed account of a convicted defendant's educational, criminal, family, and social background, conducted at the court's request as an aid in passing sentence. *See* Fed. R. Crim. P. 32(c). — Abbr. PSI; PIR. — Often shortened to *presentence report.* [Cases: Sentencing and Punishment ⚷275–301.]

present enjoyment. See ENJOYMENT.

presenter. *Commercial law.* Any person presenting a document (such as a draft) to an issuer for honor. UCC § 5-102.

present estate. 1. ESTATE (1). **2.** See *present interest* under INTEREST (2).

presenting bank. See BANK.

presenting jury. See GRAND JURY.

present interest. See INTEREST (2).

presentment (pri-**zent**-mənt). (15c) **1.** The act of presenting or laying before a court or other tribunal a formal statement about a matter to be dealt with legally. **2.** *Criminal procedure.* A formal written accusation returned by a grand jury on its own initiative, without a prosecutor's previous indictment request. • Presentments are obsolete in the federal courts. [Cases: Grand Jury ⚷42.]

> "A grand jury has only two functions, either to indict or to return a 'no bill.' The Constitution speaks also of a 'presentment,' but this is a term with a distinct historical meaning now not well understood. Historically presentment was the process by which a grand jury initiated an independent investigation and asked that a charge be drawn to cover the facts should they constitute a crime. With United States attorneys now always available to advise grand juries, proceeding by presentment is an outmoded practice." 1 Charles Alan Wright, *Federal Practice and Procedure* § 110, at 459 (3d ed. 1999).

3. The formal production of a negotiable instrument for acceptance or payment. — Also termed (in sense 3) *presentation.* [Cases: Bills and Notes ⚷385–407.]

> "Presentment and dishonor occur, for instance, when the holder of a check attempts to cash it at the drawee bank, but payment is refused because the drawer lacks sufficient funds on deposit. The demand for payment is presentment. The bank's refusal to pay is dishonor." 2 James J. White & Robert S. Summers, *Uniform Commercial Code* § 16-8, at 100 (4th ed. 1995).

presentment for acceptance. (18c) Production of an instrument to the drawee, acceptor, or maker for acceptance. • This type of presentment may be made anytime before maturity, except that with bills payable at sight, after demand, or after sight, presentment must be made within a reasonable time. [Cases: Bills and Notes ⚷388.]

presentment for payment. (18c) Production of an instrument to the drawee, acceptor, or maker for payment. • This type of presentment must be made on the date when the instrument is due. [Cases: Bills and Notes ⚷399.]

presentment of Englishry. *Hist.* The offering of proof that a slain person was English rather than (before the Conquest) a Dane or (after the Conquest) a Norman. • This requirement was issued first by the conquering Danes and then by the Normans to protect these groups from the English by the threat of a village- or hundred-wide amercement if the inhabitants failed to prove that a dead person found among them was English.

presentment warranty. See WARRANTY (2).

present recollection refreshed. (1908) *Evidence.* A witness's memory that has been enhanced by showing the witness a document that describes the relevant events. • The document itself is merely a memory stimulus and is not admitted in evidence. Fed. R. Evid. 612. — Also termed *refreshing recollection; refreshing memory; present recollection revived.* Cf. PAST RECOLLECTION RECORDED. [Cases: Witnesses ⚷253.]

presents, *n. pl.* (14c) *Archaic.* The instrument under consideration. • This is usu. part of the phrase *these presents,* which is part of the longer phrase *know all men by these presents* (itself a loan translation from the Latin *noverint universi per praesentes*). See KNOW ALL MEN BY THESE PRESENTS.

present sale. See SALE.

present sense impression. (1942) *Evidence.* One's perception of an event or condition, formed during or immediately after the fact. • A statement containing a present sense impression is admissible even if it is hearsay. Fed. R. Evid. 803(1). Cf. EXCITED UTTERANCE. [Cases: Criminal Law ⚷419(2.15); Evidence ⚷120.]

present use. See USE (4).

present value. The sum of money that, with compound interest, would amount to a specified sum at a specified

future date; future value discounted to its value today. — Also termed *present worth*.

adjusted present value. An asset's value determined by adding together its present value and the value added by capital-structure effects. — Abbr. APV.

net present value. The present value of net cash flow from a project, discounted by the cost of capital. • This value is used to evaluate the project's investment potential. — Abbr. NPV.

preservation order. A direction to a property owner to maintain a historic building or conserve a natural habitat.

preside, *vb.* (15c) **1.** To occupy the place of authority, esp. as a judge during a hearing or trial <preside over the proceedings>. **2.** To exercise management or control <preside over the estate>.

president, *n.* **1.** The chief political executive of a government; the head of state. [Cases: United States ⇨26.] **2.** The chief executive officer of a corporation or other organization. **3.** CHAIR (1). **4.** CHAIR (3). See (in senses 3 & 4) *presiding officer* (3) under OFFICER (2). — **presidential,** *adj.*

immediate past president. The last president who held office before the incumbent. See EMERITUS.

president-elect. An officer who automatically succeeds to the presidency when the incumbent president's term expires. • If the organization's governing documents so provide, the president-elect may act as president in the incumbent president's absence, or may assume the presidency early if the incumbent does not finish the term.

president emeritus. See EMERITUS.

presidential elector. See ELECTOR (1).

Presidential message. See MESSAGE.

president judge. See *presiding judge* under JUDGE.

president of a court-martial. *Military law.* The senior member in rank present at a court-martial trial. [Cases: Military Justice ⇨870.]

President of the United States. The highest executive officer of the federal government of the United States. • The President is elected to a four-year term by a majority of the presidential electors chosen by popular vote from each of the states. The President must be a natural citizen, must be at least 35 years old, and must have been a resident for 14 years within the United States. U.S. Const. art. II, § 1. [Cases: United States ⇨26.]

presiding judge. See JUDGE.

presiding juror. See JUROR.

presiding officer. See OFFICER (2).

press, *n.* **1.** The news media; print and broadcast news organizations collectively. [Cases: Constitutional Law ⇨90(2).]

> "The Constitution specifically selected the press, which includes not only newspapers, books, and magazines, but also humble leaflets and circulars, to play an important role in the discussion of public affairs." *Mills v. Alabama*, 384 U.S. 214, 219, 86 S.Ct. 1434, 1437 (1966).
>
> "'Press' could refer to one or more subsets of media, defined either by function or form. To the extent that existing law defines 'the press' at all, it does so mostly in terms of specific media forms. The Supreme Court has addressed the matter only obliquely . . . . [I]t has never had to decide whether a particular litigant was 'press.' In most cases the question does not arise because the claimed right would be protected as fully by the Speech Clause as by the Press Clause. The cases in which the Court seems to rely on the Press Clause have involved newspapers or magazines whose status as press was unquestioned. The Court on other occasions has mentioned 'publishers and broadcasters,' 'the media,' 'editorial judgment,' 'editorial control,' 'journalistic discretion,' and 'newsgathering' as possible objects of protection. The most famous discussion of the meaning of the Press Clause, a 1974 speech by Justice Stewart, identified its beneficiaries as 'the daily newspapers and other established media,' or 'newspapers, television, and magazines.'" David A. Anderson, *Freedom of the Press*, 80 Texas L. Rev. 429, 436 (2002).

2. *Hist.* A piece of parchment, as one sewed together to make up a roll or record of judicial proceedings.

Press Clause. The First Amendment provision that "Congress shall make no law . . . abridging the freedom . . . of the press." U.S. Const. amend I. — Also termed *Freedom of the Press Clause*. [Cases: Constitutional Law ⇨2070–2081.]

prest (prest). *Hist.* A duty to be paid by the sheriff upon his account in the Exchequer or for money remaining in his custody.

prestable (**pres**-tə-bəl), *adj. Scots law.* **1.** Payable. **2.** Enforceable; exigible. • This term appears generally in reference to a debt. Cf. EXIGIBLE.

prestation (pre-**stay**-shən). *Hist.* **1.** A payment (or *presting*) of money. **2.** The rendering of a service.

prest money. *Hist.* A monetary payment made to a soldier or sailor on enlistment.

presume, *vb.* To assume beforehand; to suppose to be true in the absence of proof.

presumed bias. See *implied bias* under BIAS.

presumed crime. See *constructive crime* under CRIME.

presumed fact. See FACT.

presumed father. See FATHER.

presumed-seller test. A method of imposing product liability on a manufacturer if the manufacturer, having full knowledge of the product's dangerous propensities, would be negligent in placing the product on the market.

presumption. (15c) A legal inference or assumption that a fact exists, based on the known or proven existence of some other fact or group of facts. • Most presumptions are rules of evidence calling for a certain result in a given case unless the adversely affected party overcomes it with other evidence. A presumption shifts the burden of production or persuasion to the opposing party, who can then attempt to overcome the presumption. See BURDEN OF PRODUCTION. [Cases: Criminal Law ⇨305; Evidence ⇨53–89.]

"A presumption may be defined to be an inference as to the existence of one fact from the existence of some other fact founded upon a previous experience of their connection." William P. Richardson, *The Law of Evidence* § 53, at 25 (3d ed. 1928).

absolute presumption. See *conclusive presumption.*

adverse presumption. See *adverse inference* under INFERENCE.

artificial presumption. See *presumption of law.*

conclusive presumption. (18c) A presumption that cannot be overcome by any additional evidence or argument <it is a conclusive presumption that a child under the age of seven is incapable of committing a felony>. — Also termed *absolute presumption*; *irrebuttable presumption*; *mandatory presumption*; *presumption juris et de jure.* Cf. *rebuttable presumption.* [Cases: Constitutional Law ⟹253(5); Evidence ⟹53–89.]

"'Conclusive presumptions' or 'irrebuttable presumptions' are usually mere fictions, to disguise a rule of substantive law (e.g., the conclusive presumption of malice from an unexcused defamation); and when they are not fictions, they are usually repudiated by modern courts." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 454 (1935).

"Conclusive presumptions, sometimes called irrebuttable presumptions of law, are really rules of law. Thus it is said that a child under the age of fourteen years is conclusively presumed to be incapable of committing rape. This is only another way of saying that such a child cannot be found guilty of rape." Richard Eggleston, *Evidence, Proof and Probability* 92 (1978).

conditional presumption. See *rebuttable presumption.*

conflicting presumption. (1830) One of two or more presumptions that would lead to opposite results. — Also termed *inconsistent presumption.* [Cases: Criminal Law ⟹325; Evidence ⟹88.]

"'Conflicting presumptions' are simply two ordinary presumptions that would give opposite results; usually they are really successive presumptions. E.g., where A proves himself to be the son of N, wife of M, but M and N were already separated, and later M married P, and had a son B, the later marriage of M might presume a prior divorce from N before separation to make it valid, and yet the birth of A from a married mother might be presumed legitimate, and thus the question whether A or B was the legitimate son would be attended by opposing presumptions. But in this aspect the doctrine of presumptions is clouded with difficulties and leads to much vain speculation and logical unrealism." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 454 (1935).

disputable presumption. See *rebuttable presumption.*

dry presumption. A presumption that has no probative value unless the party with the burden of proof presents evidence to support the presumption. [Cases: Evidence ⟹53.]

factual presumption. See *presumption of fact.*

heeding presumption. (1990) A rebuttable presumption that an injured product user would have followed a warning label had the product manufacturer provided one. [Cases: Products Liability ⟹351(2).]

inconsistent presumption. See *conflicting presumption.*

irrebuttable presumption. See *conclusive presumption.*

legal presumption. See *presumption of law.*

mandatory presumption. See *conclusive presumption.*

McClanahan presumption. See MCCLANAHAN PRESUMPTION.

mixed presumption. (1838) A presumption containing elements of both law and fact.

Morgan presumption. See MORGAN PRESUMPTION.

natural presumption. (16c) A deduction of one fact from another, based on common experience. [Cases: Criminal Law ⟹305.1; Evidence ⟹53.]

permissive presumption. (1827) A presumption that a trier of fact is free to accept or reject from a given set of facts. — Also termed *permissive inference.* [Cases: Criminal Law ⟹306, 324; Evidence ⟹53, 87.]

presumption juris et de jure. See *conclusive presumption.*

presumption of a quorum. *Parliamentary law.* The presumption that a quorum, once established, is present until the chair or a member notices otherwise.

presumption of fact. A type of rebuttable presumption that may be, but as a matter of law need not be, drawn from another established fact or group of facts <the possessor of recently stolen goods is, by presumption of fact, considered the thief>. — Also termed *factual presumption.* [Cases: Criminal Law ⟹306.; Evidence ⟹53, 87.]

presumption of general application. A presumption that applies across the board to all legislation, as a result of which lawmakers need not list each such presumption in all bills. [Cases: Criminal Law ⟹305; Evidence ⟹53–89.]

"One function of the word 'presumption' in the context of statutory interpretation is to state the result of this legislative reliance (real or assumed) on firmly established legal principles. There is a 'presumption' that *mens rea* is required in the case of statutory crimes, and a 'presumption' that statutory powers must be exercised reasonably. These presumptions apply although there is no question of linguistic ambiguity in the statutory wording under construction, and they may be described as 'presumptions of general application.' At the level of interpretation, their function is the promotion of brevity on the part of the draftsman. Statutes make dreary enough reading as it is, and it would be ridiculous to insist in each instance upon an enumeration of the general principles taken for granted." Rupert Cross, *Statutory Interpretation* 142–43 (1976).

presumption of innocence. See PRESUMPTION OF INNOCENCE.

presumption of intent. (18c) A permissive presumption that a criminal defendant who intended to commit an act did so. [Cases: Criminal Law ⟹312.]

presumption of law. (16c) A legal assumption that a court is required to make if certain facts are established and no contradictory evidence is produced <by

presumption of law, a criminal defendant is considered innocent until proven guilty beyond a reasonable doubt>. — Also termed *legal presumption*; *artificial presumption*; *praesumptio juris*; *pseudopresumption of law*. [Cases: Criminal Law ⚷305; Evidence ⚷86.]

presumption of maternity. See PRESUMPTION OF MATERNITY.

presumption of natural and probable consequences. See PRESUMPTION OF NATURAL AND PROBABLE CONSEQUENCES.

presumption of paternity. See PRESUMPTION OF PATERNITY.

presumption of survivorship. See PRESUMPTION OF SURVIVORSHIP.

presumption of validity. See PRESUMPTIONO OF VALIDITY.

prima facie presumption. See *rebuttable presumption*.

procedural presumption. A presumption that may be rebutted by credible evidence. [Cases: Criminal Law ⚷305; Evidence ⚷53.]

pseudopresumption of law. See *presumption of law*.

rebuttable presumption. (1852) An inference drawn from certain facts that establish a prima facie case, which may be overcome by the introduction of contrary evidence. — Also termed *prima facie presumption*; *disputable presumption*; *conditional presumption*; *praesumptio juris*. Cf. *conclusive presumption*. [Cases: Criminal Law ⚷324; Evidence ⚷89.]

statutory presumption. (1819) A rebuttable or conclusive presumption that is created by statute. [Cases: Criminal Law ⚷305; Evidence ⚷53.]

Thayer presumption. See THAYER PRESUMPTION.

presumption of death. (18c) A presumption that arises on the unexpected disappearance and continued absence of a person for an extended period, commonly seven years. [Cases: Damages ⚷2.]

presumption-of-fertility rule. See FERTILE-OCTOGENARIAN RULE.

presumption-of-identity rule. The common-law rule that unless there is a specific, applicable statute in another state, a court will presume that the common law has developed elsewhere identically with how it has developed in the court's own state, so that the court may apply its own state's law. • Today this rule applies primarily in Georgia. See *Shorewood Packaging Corp. v. Commercial Union Ins.*, 865 F. Supp. 1577 (N.D. Ga. 1994). [Cases: Criminal Law ⚷320; Evidence ⚷80.]

presumption of innocence. (18c) *Criminal law.* The fundamental principle that a person may not be convicted of a crime unless the government proves guilt beyond a reasonable doubt, without any burden placed on the accused to prove innocence. [Cases: Criminal Law ⚷308; Evidence ⚷60.]

presumption of legitimacy. See PRESUMPTION OF PATERNITY.

presumption of maternity. *Family law.* The presumption that the woman who has given birth to a child is both the genetic mother and the legal mother of the child. — Also termed *maternity presumption*. Cf. PRESUMPTION OF PATERNITY.

presumption of natural and probable consequences. (1980) *Criminal law.* The presumption that *mens rea* may be derived from proof of the defendant's conduct. [Cases: Criminal Law ⚷312.]

presumption of paternity. (1829) *Family law.* The presumption that the father of a child is the man who (1) is married to the child's mother when the child was conceived or born (even though the marriage may have been invalid), (2) married the mother after the child's birth and agreed either to have his name on the birth certificate or to support the child, or (3) welcomed the child into his home and later held out the child as his own. — Also termed *paternity presumption*; *presumption of legitimacy*; *legitimacy presumption*. See *presumed father* under FATHER. [Cases: Children Out-of-Wedlock ⚷3.]

presumption of survivorship. (1844) The presumption that one of two or more victims of a common disaster survived the others, based on the supposed survivor's youth, good health, or other reason rendering survivorship likely. [Cases: Death ⚷5.]

presumption of validity. *Patents.* The doctrine that the holder of a patent is entitled to a statutory presumption that the patent is valid and that the burden is on a challenger to prove invalidity. See BORN VALID. [Cases: Patents ⚷112.1.]

presumptive (pri-**zəmp**-tiv), *adj.* (15c) **1.** Giving reasonable grounds for belief or presumption. **2.** Based on a presumption. [Cases: Criminal Law ⚷305.1; Evidence ⚷53.] — **presumptively**, *adv.*

presumptive authority. See *implied authority* under AUTHORITY (1).

presumptive damages. See *punitive damages* under DAMAGES.

presumptive death. See DEATH.

presumptive evidence. See EVIDENCE.

presumptive heir. See *heir presumptive* under HEIR.

presumptive notice. See *implied notice* under NOTICE.

presumptive proof. See *conditional proof* under PROOF.

presumptive sentence. See SENTENCE.

presumptive sentencing. See SENTENCING.

presumptive taker. See TAKER.

presumptive title. See TITLE (2).

presumptive trust. See *resulting trust* under TRUST.

pret a usage. *Civil law.* A gratuitous loan for use.

pretax, *adj.* Existing or occurring before the assessment or deduction of taxes <pretax income>. [Cases: Internal Revenue ⚷3110; Taxation ⚷3446.]

pretax earnings. See EARNINGS.

prête-nom (pret-**nohm**). [French] One who lends his name.

pretensive joinder. See JOINDER.

preterlegal (pree-tər-**lee**-gəl), *adj. Rare.* Beyond the range of what is legal; not according to law <preterlegal customs>.

pretermission (pree-tər-**mish**-ən). (18c) **1.** The condition of one who is pretermitted, as an heir of a testator. **2.** The act of omitting an heir from a will. [Cases: Descent and Distribution ⚷47.]

pretermission statute. See PRETERMITTED-HEIR STATUTE.

pretermit (pree-tər-**mit**), *vb.* (15c) **1.** To ignore or disregard purposely <the court pretermitted the constitutional question by deciding the case on procedural grounds>. **2.** To neglect, overlook, or omit accidentally <the third child was pretermitted in the will>. • Although in ordinary usage sense 1 prevails, in legal contexts (esp. involving heirs) sense 2 is usual. [Cases: Descent and Distribution ⚷47.]

pretermitted child. See *pretermitted heir* under HEIR.

pretermitted defense. See DEFENSE (1).

pretermitted heir. See HEIR.

pretermitted-heir statute. (1955) A state law that, under certain circumstances, grants an omitted heir the right to inherit a share of the testator's estate, usu. by treating the heir as though the testator had died intestate. • Most states have a pretermitted-heir statute, under which an omitted child or spouse receives the same share of the estate as if the testator had died intestate, unless the omission was intentional. The majority rule, and that found in the Uniform Probate Code, is that only afterborn children — that is, children born after the execution of a will — receive protection as pretermitted heirs. Under that circumstance, an inference arises that their omission was inadvertent rather than purposeful. — Also termed *pretermission statute.* [Cases: Descent and Distribution ⚷47.]

pretermitted spouse. See *pretermitted heir* under HEIR.

pretext (**pree**-tekst), *n.* (16c) A false or weak reason or motive advanced to hide the actual or strong reason or motive. [Cases: Civil Rights ⚷1033(1), 1137.] — **pretextual** (pree-**teks**-choo-əl), *adj.*

pretextual arrest. See ARREST.

pretextus (pree-**teks**-təs). [Latin] A pretext.

pretium (**pree**-shee-əm). [Latin] Price; value; worth.

pretium affectionis (**pree**-shee-əm ə-fek-shee-**oh**-nis). An enhanced value placed on a thing by the fancy of its owner, growing out of an attachment for the specific article and its associations; sentimental value. • This value is not taken as a basis for measuring damages.

pretium periculi (**pree**-shee-əm pə-**rik**-yə-lī). The price of the risk, such as the premium paid on an insurance policy.

pretorial court (pri-**tor**-ee-əl). See COURT.

pretrial conference. (1938) An informal meeting at which opposing attorneys confer, usu. with the judge, to work toward the disposition of the case by discussing matters of evidence and narrowing the issues that will be tried. *See* Fed. R. Civ. P. 16; Fed. R. Crim. P. 17.1. • The conference takes place shortly before trial and ordinarily results in a pretrial order. — Often shortened to *pretrial.* — Also termed *pretrial hearing.* [Cases: Federal Civil Procedure ⚷1921; Pretrial Procedure ⚷741.]

pretrial detention. See DETENTION.

pretrial discovery. See DISCOVERY.

pretrial diversion. See DIVERSION PROGRAM (1).

pretrial hearing. See PRETRIAL CONFERENCE.

pretrial intervention. 1. DIVERSION PROGRAM (1). **2.** See *deferred judgment* under JUDGMENT.

pretrial investigation. *Military law.* An investigation to decide whether a case should be recommended for forwarding to a general court-martial. [Cases: Military Justice ⚷921.]

pretrial order. (1939) A court order setting out the claims and defenses to be tried, the stipulations of the parties, and the case's procedural rules, as agreed to by the parties or mandated by the court at a pretrial conference. *See* Fed. R. Civ. P. 16(e). • In federal court, a pretrial order supersedes the pleadings. [Cases: Federal Civil Procedure ⚷1935; Pretrial Procedure ⚷747.]

prevail, *vb.* (17c) **1.** To obtain the relief sought in an action; to win a lawsuit <the plaintiff prevailed in the Supreme Court>. **2.** To be commonly accepted or predominant <it's unclear which line of precedent will prevail>.

prevailing party. See PARTY (2).

prevarication (pri-var-ə-**kay**-shən), *n.* (16c) The act or an instance of lying or avoiding the truth; equivocation. — **prevaricate** (pri-**var**-ə-kayt), *vb.*

prevaricator (pri-**var**-ə-kay-tər), *n.* [Latin] **1.** A liar; an equivocator. **2.** *Roman law.* One who betrays another's trust, such as an advocate who aids the opposing party by betraying the client. — Also spelled (in sense 2) *praevaricator.*

prevent, *vb.* To hinder or impede <a gag order to prevent further leaks to the press>.

preventative law. See PREVENTIVE LAW.

prevention. *Civil law.* The right of one of several judges having concurrent jurisdiction to exercise that jurisdiction over a case that the judge is first to hear.

prevention doctrine. (1979) *Contracts.* The principle that each contracting party has an implied duty to not do

anything that prevents the other party from performing its obligation. — Also termed *prevention-of-performance doctrine*. [Cases: Contracts ⚷168, 303(4).]

preventive custody. See CUSTODY (1).

preventive detention. See DETENTION.

preventive injunction. See INJUNCTION.

preventive justice. See JUSTICE (1).

preventive law. A practice of law that seeks to minimize a client's risk of litigation or secure more certainty with regard to the client's legal rights and duties. • Emphasizing planning, counseling, and the nonadversarial resolution of disputes, preventive law focuses on the lawyer's role as adviser and negotiator. — Also termed (less correctly) *preventative law*.

preventive punishment. See PUNISHMENT.

previously taxed income. See INCOME.

previous notice. See NOTICE (6).

previous question. See CLOSE DEBATE.

price. The amount of money or other consideration asked for or given in exchange for something else; the cost at which something is bought or sold. [Cases: Contracts ⚷229(1); Sales ⚷74.1.]

agreed price. The price for a sale, esp. of goods, arrived at by mutual agreement. Cf. *open price*. [Cases: Sales ⚷75.]

arm's-length price. The price at which two unrelated, unaffiliated, and nondesperate parties would freely agree to do business. See *arm's-length transaction* under TRANSACTION; *fair market value* under VALUE.

asked price. The lowest price at which a seller is willing to sell a security at a given time. See SPREAD (2).

asking price. The price at which a seller lists property for sale, often implying a willingness to sell for less. — Also termed *ask price*; *offering price*.

at-the-market price. A retail price that store owners in the same vicinity generally charge.

bid price. The highest price that a prospective buyer is willing to pay for a security at a given time. See SPREAD (2).

call price. **1.** The price at which a bond may be retired before its maturity. [Cases: Corporations ⚷468.1.] **2.** See *strike price*.

ceiling price. **1.** The highest price at which a buyer is willing to buy. **2.** The highest price allowed by a government agency or by some other regulatory institution. [Cases: War and National Emergency ⚷108.]

closing price. The price of a security at the end of a given trading day. — Also termed *close*.

exercise price. See *strike price*.

ex-works price. The price of goods as they leave the factory. See EX WORKS.

fixed price. A price that is agreed upon by a wholesaler and a retailer for the later sale or resale of an item. • Agreements to fix prices are generally prohibited by state and federal statutes.

floor price. The lowest price at which a seller is willing to sell.

liquidating price. See *redemption price*.

liquidation price. A price that is paid for property sold to liquidate a debt. • Liquidation price is usu. below market price. — Also termed *liquidation value*.

list price. A published or advertised price of goods; retail price.

market price. The prevailing price at which something is sold in a specific market. See *fair market value* under VALUE (2).

mean trading price. *Securities.* The average of the daily trading price of a security determined at the close of the market each day during a 90-day period.

net price. The price of something, after deducting cash discounts.

offering price. See *asking price*.

open price. The price for a sale, esp. of goods, that has not been settled at the time of a sale's conclusion. UCC § 2-305. Cf. *agreed price*. [Cases: Sales ⚷78.]

predatory price. See PREDATORY PRICING.

put price. See *strike price*.

redemption price. **1.** The price of a bond that has not reached maturity, purchased at the issuer's option. **2.** The price of shares when a mutual-fund shareholder sells shares back to the fund. — Also termed *liquidating price*; *repurchase price*. [Cases: Corporations ⚷468.1.]

reserve price. In an auction, the amount that a seller of goods stipulates as the lowest acceptable offer. • The reserve price may or may not be announced. See WITH RESERVE; WITHOUT RESERVE.

sales price. The total amount for which property is sold, often including the costs of any services that are a part of the sale. • Under sales-tax statutes, the amount is typically valued in money even if the value is not received in money. — Also termed *selling price*.

spot price. The amount for which a commodity is sold in a spot market.

strike price. *Securities.* The price for which a security will be bought or sold under an option contract if the option is exercised. — Also termed *striking price*; *exercise price*; *call price*; *put price*. See OPTION.

subscription price. See SUBSCRIPTION PRICE.

suggested retail price. The sales price recommended to a retailer by a manufacturer of the product.

support price. A minimum price set by the federal government for a particular agricultural commodity. [Cases: Agriculture ⚷3.5.]

target price. A price set by the federal government for particular agricultural commodities. • If the market price falls below the target price, farmers receive a

subsidy from the government for the difference. [Cases: Agriculture ⇨3.5.]

trade price. The price at which a manufacturer or wholesaler sells to others in the same business or industry.

transfer price. The price charged by one segment of an organization for a product or service supplied to another segment of the same organization; esp., the charge assigned to an exchange of goods or services between a corporation's organizational units.

unit price. A price of a food product expressed in a well-known measure such as ounces or pounds.

upset price. The lowest amount that a seller is willing to accept for property or goods sold at auction. [Cases: Auctions and Auctioneers ⇨7.]

wholesale price. The price that a retailer pays for goods purchased (usu. in bulk) from a wholesaler for resale to consumers at a higher price.

price amendment. *Securities.* A change in a registration statement, prospectus, or prospectus supplement affecting the offering price, the underwriting and selling discounts or commissions, the amount of proceeds, the conversion rates, the call prices, or some other matter relating to the offering price.

price/cost analysis. A technique of determining, for antitrust purposes, whether predatory pricing has occurred by examining the relationship between a defendant's prices and either its average variable cost or its average total cost.

price discrimination. (1915) The practice of offering identical or similar goods to different buyers at different prices when the costs of producing the goods are the same. • Price discrimination can violate antitrust laws if it reduces competition. It may be either direct, as when a seller charges different prices to different buyers, or indirect, as when a seller offers special concessions (such as favorable credit terms) to some but not all buyers. [Cases: Antitrust and Trade Regulation ⇨839.]

persistent price discrimination. A monopolist's systematic policy of obtaining different rates of return from different sales groupings.

price-earnings ratio. The ratio between a stock's current share price and the corporation's earnings per share for the last year. • Some investors avoid stocks with high price-earnings ratios because those stocks may be overpriced. — Abbr. P/E ratio. Cf. *earnings yield* under YIELD.

price-erosion theory. *Patents.* A theory of lost-profits remedy that measures the difference between what an item could have sold for with patent protection and what it actually sold for while having to compete against an infringing item. [Cases: Patents ⇨318(3).]

price expectancy. See EXHIBITION VALUE.

price-fixing. (1889) The artificial setting or maintenance of prices at a certain level, contrary to the workings of the free market. • Price-fixing is usu. illegal per se under antitrust law. See FIX (3). [Cases: Antitrust and Trade Regulation ⇨821.]

> "Price-fixing agreements may or may not be aimed at complete elimination of price competition. The group making those agreements may or may not have the power to control the market. But the fact that the group cannot control the market prices does not necessarily mean that the agreement as to prices has no utility to the members of the combination. The effectiveness of price-fixing agreements is dependent on many factors, such as competitive tactics, position in the industry, the formula underlying price policies. Whatever economic justification particular price-fixing agreements may be thought to have, the law does not permit an inquiry into their reasonableness. They are all banned because of their actual or potential threat to the central nervous system of the economy." *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 225–26 n.59, 60 S.Ct. 811, 845 n.59 (1940).

horizontal price-fixing. (1935) Price-fixing among competitors on the same level, such as retailers throughout an industry. [Cases: Antitrust and Trade Regulation ⇨822.]

vertical price-fixing. (1936) Price-fixing among parties in the same chain of distribution, such as manufacturers and retailers attempting to control an item's resale price. [Cases: Antitrust and Trade Regulation ⇨821.]

price index. An index of average prices as a percentage of the average prevailing at some other time (such as a base year). See CONSUMER PRICE INDEX; PRODUCER PRICE INDEX.

price leadership. (1942) A market condition in which an industry leader establishes a price that others in the field adopt as their own. • Price leadership alone does not violate antitrust laws without other evidence of an intent to create a monopoly.

price-level-adjusted mortgage. See MORTGAGE.

price memorandum. *Securities.* A document created by an underwriter to explain how securities are priced for a public offering and, typically, to show estimates and appraisals that are not allowed as part of the offering documents.

price-renegotiation clause. *Oil & gas.* A provision in a gas contract allowing for price renegotiation from time to time or upon election of one of the parties.

price squeeze. *Antitrust.* Discriminatory pricing practiced by a manufacturer or distributor who also supplies materials or products to a competitor, and charges a high wholesale price in an attempt to reduce or eliminate a competitor's ability to make a retail profit. [Cases: Antitrust and Trade Regulation ⇨811.]

price support. (1927) The artificial maintenance of prices (as of a particular commodity) at a certain level, esp. by governmental action (as by subsidy). [Cases: Agriculture ⇨3.5.]

price war. (1895) A period of sustained or repeated price-cutting in an industry (esp. among retailers), designed to undersell competitors or force them out of business.

priest–penitent privilege. See PRIVILEGE (3).

primae impressionis (**pr**ī-mee im-pres[h]-ee-**oh**-nis). [Law Latin] Of the first impression. See *case of first impression* under CASE.

primae preces. See PRECES PRIMARIAE.

prima facie (**pr**ī-mə **fay**-shə *or* **fay**-shee), *adv.* [Latin] (15c) At first sight; on first appearance but subject to further evidence or information <the agreement is prima facie valid>. [Cases: Evidence ⚷53, 85, 584(1).]

prima facie, *adj.* (18c) Sufficient to establish a fact or raise a presumption unless disproved or rebutted <a prima facie showing>.

prima facie case. (1805) **1.** The establishment of a legally required rebuttable presumption. [Cases: Evidence ⚷53, 85.] **2.** A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor. [Cases: Evidence ⚷584(1).]

prima facie evidence. See EVIDENCE.

prima facie presumption. See *rebuttable presumption* under PRESUMPTION.

prima facie privilege. See *qualified immunity* under IMMUNITY (1).

prima facie tort. See TORT.

primage (**pr**ī-mij). See HAT MONEY.

primary, *n.* See *primary election* under ELECTION (3).

primary activity. *Labor law.* Concerted action (such as a strike or picketing) directed against an employer with which a union has a dispute. Cf. SECONDARY ACTIVITY.

primary agent. See AGENT (2).

primary allegation. See ALLEGATION.

primary amendment. See AMENDMENT (3).

primary assumption of the risk. See ASSUMPTION OF THE RISK.

primary authority. See AUTHORITY (4).

primary beneficiary. See BENEFICIARY.

primary boycott. See BOYCOTT.

primary caregiver. *Family law.* **1.** The parent who has had the greatest responsibility for the daily care and rearing of a child. See TENDER-YEARS DOCTRINE; PRIMARY-CAREGIVER DOCTRINE. [Cases: Child Custody ⚷44, 459.] **2.** The person (including a nonparent) who has had the greatest responsibility for the daily care and rearing of a child. — Also termed *primary caretaker.*

primary-caregiver doctrine. *Family law.* The presumption that, in a custody dispute, the parent who is a child's main caregiver will be the child's custodian, assuming that he or she is a fit parent. • This doctrine includes the quality and the quantity of care that a parent gives a child — but excludes supervisory care by others while the child is in the parent's custody. Under this doctrine, courts sometimes divide children into three age groups: those under the age of 6, those 6 to 14, and those 14 and older. For children under the age of 6, an absolute presumption exists in favor of the primary caretaker as custodian. For those 6 to 14, the trial court may hear the child's preference on the record but without the parents being present. For those 14 and older, the child may be allowed to choose which parent will be the custodian, assuming that both parents are fit. — Also termed *primary-caretaker doctrine; primary-caregiver presumption; primary-caretaker presumption; primary-caregiver preference.* Cf. MATERNAL-PREFERENCE PRESUMPTION; TENDER-YEARS DOCTRINE. [Cases: Child Custody ⚷44, 459.]

primary caretaker. See PRIMARY CAREGIVER.

primary cause. See *proximate cause* under CAUSE (1).

primary committee. *Bankruptcy.* A group of creditors organized to help the debtor draw up a reorganization plan. [Cases: Bankruptcy ⚷3024.]

primary conveyance. See CONVEYANCE.

primary devise. See DEVISE.

primary domiciliary parent. See PARENT.

primary-duty doctrine. *Maritime law.* The principle that a seaman cannot recover damages if the injury arose from an unseaworthy condition created by the seaman's breach of duty. [Cases: Seamen ⚷29(4).]

primary election. See ELECTION (3).

primary evidence. See *best evidence* under EVIDENCE.

primary fact. See FACT.

primary insurance. See INSURANCE.

primary insured. See INSURED.

primary insurer. See INSURER.

primary jurisdiction. See JURISDICTION.

primary-jurisdiction doctrine. A judicial doctrine whereby a court tends to favor allowing an agency an initial opportunity to decide an issue in a case in which the court and the agency have concurrent jurisdiction. See *primary jurisdiction* under JURISDICTION. [Cases: Administrative Law and Procedure ⚷228.1.]

primary lease. See HEADLEASE.

primary liability. See LIABILITY.

primary-line competition. See *horizontal competition* under COMPETITION.

primary-line injury. *Antitrust.* Under the price-discrimination provisions of the Robinson-Patman Act, the practice of charging below-cost, predatory prices in an attempt to eliminate the seller's competition in the market. 15 USCA § 13(a). • A primary-line injury, which hinders or seeks to hinder competition among the seller's competitors, is distinguishable from a secondary-line injury, which refers to discriminatory pricing that hinders or seeks to hinder competition among the seller's customers, by favoring one customer over another in the prices the seller charges. Cf. SECONDARY-LINE INJURY.

> "Liggett contends that Brown & Williamson's discriminatory volume rebates to wholesalers threatened substantial competitive injury by furthering a predatory pricing scheme designed to purge competition from the economy segment

of the cigarette market. This type of injury, which harms direct competitors of the discriminating seller, is known as a primary-line injury." *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 220, 113 S.Ct. 2578, 2586 (1993).

primary market. See MARKET.

primary mortgage market. See MORTGAGE MARKET.

primary obligation. See OBLIGATION.

primary offering. See OFFERING.

primary officer. See *principal officer* under OFFICER (1).

primary plea. See *primary allegation* under ALLEGATION.

primary powers. (1864) The chief powers given by a principal to an agent to accomplish the agent's tasks. Cf. MEDIATE POWERS.

primary purpose or effect. *Copyright.* The main reason for or consequence of using a product, as a test for whether its sale amounts to contributory infringement. • The Supreme Court rejected the test in a landmark copyright case, but four justices said that if the primary purpose or effect of the product's sale or use infringes the copyrights of others, its manufacturer could be enjoined from selling the product or required to pay a reasonable royalty to the copyright owners. *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 457–500, 104 S.Ct. 774, 796–818 (1984) (Blackmun, J., dissenting). Cf. COMMERCIALLY SIGNIFICANT NONINFRINGING USE.

primary receiver. See *principal receiver* under RECEIVER.

primary reserve ratio. See RESERVE RATIO.

primary residential responsibility. See RESIDENTIAL RESPONSIBILITY.

primary right. See RIGHT.

primary term. *Oil & gas.* The option period — set by the habendum clause in an oil-and-gas lease — during which the lessee has the right to search, develop, and produce from the property. • The primary term should be long enough to allow the lessee to evaluate the property and make arrangements to drill. In practice, the primary term may extend for 24 hours or 25 years, depending on how much competition there is for leases in the area. See HABENDUM CLAUSE. Cf. SECONDARY TERM. [Cases: Mines and Minerals ⇨73.5, 78.1(9).]

primate (**prī**-mit). A chief ecclesiastic; an archbishop or bishop having jurisdiction over other bishops within a province.

prime, *n.* See *prime rate* under INTEREST RATE.

prime, *vb.* To take priority over <Watson's preferred mortgage primed Moriarty's lien>.

prime contractor. See *general contractor* under CONTRACTOR.

prime cost. See COST (1).

prime lending rate. See *prime rate* under INTEREST RATE.

prime maker. See MAKER.

prime minister. (*often cap.*) The chief executive of a parliamentary government; the head of a cabinet. — Abbr. PM.

primer (**prim**-ər *or* **prī**-mər). [Law French] First; primary <primer seisin>.

prime rate. See INTEREST RATE.

primer election. A first choice; esp., the eldest coparcener's pick of land on division of the estate. See ELECTION.

primer fine (**prim**-ər *or* **prī**-mər **fin**). [Latin] *Hist.* A fee payable to the Crown on the suing out of a writ of praecipe to begin a conveyance by fine. See FINE (1). — Also termed *praefine*.

primer seisin. See SEISIN.

prime serjeant. See *premier serjeant* under SERJEANT-AT-LAW.

prime tenant. See TENANT.

primitiae (pri-**mish**-ee-ee). [fr. Latin *primus* "first"] See FIRST FRUITS (2). — **primitial** (pri-**mish**-əl), *adj.*

primitive obligation. See OBLIGATION.

primo fronte (**prī**-moh **fron**-tee). [Latin] *Hist.* At first sight.

primogeniture (prī-mə-**jen**-ə-chər). (15c) **1.** The state of being the firstborn child among siblings. **2.** The common-law right of the firstborn son to inherit his ancestor's estate, usu. to the exclusion of younger siblings. — Also termed (in sense 2) *primogenitureship*. See BOROUGH ENGLISH. [Cases: Descent and Distribution ⇨7.]

"If by primogeniture we only mean 'that the male issue shall be admitted before the female, and that, when there are two or more males in equal degrees, the eldest only shall inherit, but the females "all together"' [Blackstone's definition], then ancient records may indeed contain but scant references. But primogeniture embraces all the cases of single inheritance, and may indeed be defined as the prerogative enjoyed by an eldest son or occasionally an eldest daughter, through law or custom, to succeed to their ancestor's inheritance in preference to younger children. Nay, we might even make it more comprehensive, extending it to all cases of single succession depending upon priority in birth." Radhabinod Pal, *The History of the Law of Primogeniture* 11 (1929).

"We might note here, parenthetically, that the English preference for single-file male descent — that is, the system of descent known as *primogeniture* — was never cordially received in this country. Our statutes of descent and distribution uniformly provide for sons' and daughters' sharing the inheritance equally. Although this seems a fairer method than primogeniture, which was finally abolished in Britain with the 1925 reforms, the descent of property to an ever-expanding group of heirs can seriously complicate the clearing of old titles." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 9 (2d ed. 1984).

primogenitureship. See PRIMOGENITURE (2).

primo loco (**prī**-moh **loh**-koh). [Latin] *Hist.* In the first place.

primo venienti (**prī**-moh ven-ee-**en**-tī). [Latin] To the one first coming. • This refers to the former practice by estate executors of paying debts as they were presented without regard to whether the estate had enough assets to pay all the debts.

primum decretum (**prī**-məm di-**kree**-təm). [Latin "first decree"] **1.** *Hist. Eccles. law.* A preliminary decree granted in favor of the plaintiff on the nonappearance of a defendant. **2.** *Maritime law.* A provisional decree.

princeps (**prin**-seps), *n.* [Latin] *Roman law.* A leading person, esp. the emperor.

principal, *adj.* Chief; primary; most important.

principal, *n.* (14c) **1.** One who authorizes another to act on his or her behalf as an agent. Cf. AGENT (2). [Cases: Principal and Agent ⇨1, 130.]

apparent principal. A person who, by outward manifestations, has made it reasonably appear to a third person that another is authorized to act as the person's agent. [Cases: Principal and Agent ⇨99.]

disclosed principal. (1858) A principal whose identity is revealed by the agent to a third party. • A disclosed principal is always liable on a contract entered into by the agent with the principal's authority, but the agent is usu. not liable. [Cases: Principal and Agent ⇨92–137.]

partially disclosed principal. (1934) A principal whose existence — but not actual identity — is revealed by the agent to a third party. [Cases: Principal and Agent ⇨138–146.]

undisclosed principal. (1835) A principal whose identity is kept secret by the agent; a principal for whom the other party has no notice that the agent is acting. • An undisclosed principal and the agent are both liable on a contract entered into by the agent with the principal's authority. [Cases: Principal and Agent ⇨138–146.]

2. One who commits or participates in a crime. Cf. ACCESSORY (2); ACCOMPLICE (2). [Cases: Criminal Law ⇨59–67.]

> "The student should notice that in criminal law the word 'principal' suggests the very converse of the idea which it represents in mercantile law. In the former, as we have seen, an accessory proposes an act, and the 'principal' carries it out. But in the law of contract, and in that of tort, the 'principal' only authorizes an act, and the 'agent' carries it out. Where the same transaction is both a tort and a crime, this double use of the word may cause confusion. For example, if, by an innkeeper's directions, his chambermaid steals jewels out of a guest's portmanteau, the maid is the 'principal' in a *crime*, wherein her master is an accessory before the fact; whilst she is also the agent in a *tort*, wherein her master is the 'principal'." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 89 (16th ed. 1952).

principal in the first degree. (18c) The perpetrator of a crime. — Also termed *first-degree principal.* [Cases: Criminal Law ⇨61, 78.]

> "By a principal in the first degree, we mean the actual offender — the man in whose guilty mind lay the latest blamable mental cause of the criminal act. Almost always, of course, he will be the man by whom this act itself was done. But occasionally this will not be so; for the felony may have been committed by the hand of an innocent agent who, having no blamable intentions in what he did, incurred no criminal liability by doing it. In such a case the man who instigates this agent is the real offender; his was the last *mens rea* that preceded the crime, though it did not cause it immediately but mediately." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 85–86 (16th ed. 1952).

principal in the second degree. (18c) One who helped the perpetrator at the time of the crime. — Also termed *accessory at the fact; second-degree principal.* See ABETTOR. [Cases: Criminal Law ⇨63, 78.]

> "The distinction between principals in the first and second degrees is a distinction without a difference except in those rare instances in which some unusual statute has provided a different penalty for one of these than for the other. A principal in the first degree is the immediate perpetrator of the crime while a principal in the second degree is one who did not commit the crime with his own hands but was present and abetting the principal. It may be added, in the words of Mr. Justice Miller, that one may perpetrate a crime, not only with his own hands, but 'through the agency of mechanical or chemical means, as by instruments, poison or powder, or by an animal, child, or other innocent agent' acting under his direction." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 736 (3d ed. 1982) (quoting *Beausoliel v. United States*, 107 F.2d 292, 297 (D.C. Cir. 1939)).

3. One who has primary responsibility on an obligation, as opposed to a surety or indorser. **4.** The corpus of an estate or trust. [Cases: Trusts ⇨1.] **5.** The amount of a debt, investment, or other fund, not including interest, earnings, or profits.

principal action. See *main demand* under DEMAND (1).

principal challenge. See CHALLENGE (2).

principal contract. See CONTRACT.

principal covenant. See COVENANT (1).

principal creditor. See CREDITOR.

principal demand. See *main demand* under DEMAND (1).

principal fact. 1. See *fact in issue* under FACT. **2.** See *ultimate fact* under FACT.

principal in the first degree. See PRINCIPAL (2).

principal in the second degree. See PRINCIPAL (2).

principalis (prin-sə-**pay**-lis), *adj.* [Latin] Principal, as in *principalis debitor* ("principal debtor").

principal motion. See *main motion* under MOTION (2).

principal obligation. See *primary obligation* (2) under OBLIGATION.

principal obligor. See OBLIGOR.

principal officer. See OFFICER (1).

principal place of business. See PLACE OF BUSINESS.

principal receiver. See RECEIVER.

Principal Register. *Trademarks.* The list of distinctive marks approved for federal trademark registration. • The register is maintained by the U.S. Patent and Trademark Office. Only marks that are strong, distinctive, and famous are listed. 15 USCA § 1052. Cf.

SUPPLEMENTAL REGISTER. [Cases: Trademarks ⚷ 1245.]

principal right. See RIGHT.

principle, *n.* A basic rule, law, or doctrine.

principle of finality. See FINALITY DOCTRINE.

principle of legality. See LEGALITY (2).

principle of nonintervention. See NONINTERVENTION.

principle of retribution. See LEX TALIONIS.

print. 1. *Copyright.* The impression made in a material by a die, mold, stamp, or the like; a distinctive stamped or printed mark or design. **2.** FINGERPRINT.

printed-matter doctrine. *Patents.* The rule that printed matter may not be patented unless it is a physical part of a patentable invention. • For example, the doctrine has been used to deny patents for systems of representing sheet music and for methods of compiling directories. But it cannot be used to deny a patent for computer software. [Cases: Patents ⚷ 5.]

Printers Ink Statute. A model statute drafted in 1911 and adopted in a number of states making it a misdemeanor to print an advertisement that contains a false or deceptive statement.

prior, *adj.* (17c) **1.** Preceding in time or order <under this court's prior order>. **2.** Taking precedence <a prior lien>.

prior, *n.* (1919) *Criminal law. Slang.* A previous conviction <because the defendant had two priors, the judge automatically enhanced his sentence>.

prior-acts coverage. *Insurance.* A claims-made professional-liability policy indorsement that makes the effective date retroactive and extends the policy's protection to claims made and lawsuits filed during the policy period for negligent acts that occurred before the policy was actually purchased. — Also termed *nose coverage.* Cf. TAIL COVERAGE. [Cases: Insurance ⚷ 2266.]

prior and persistent offender. See RECIDIVIST.

prior-appropriation doctrine. (1959) The rule that, among the persons whose properties border on a waterway, the earliest users of the water have the right to take all they can use before anyone else has a right to it. Cf. RIPARIAN-RIGHTS DOCTRINE. [Cases: Waters and Water Courses ⚷ 140.]

prior art. See ART.

prior-claim rule. The principle that before suing for a tax refund or abatement, a taxpayer must first assert the claim to the Internal Revenue Service. [Cases: Internal Revenue ⚷ 5003.]

prior consistent statement. See STATEMENT.

prior creditor. See CREDITOR.

prior-exclusive-jurisdiction doctrine. The rule that a court will not assume in rem jurisdiction over property that is already under the jurisdiction of another court of concurrent jurisdiction.

prior inconsistent statement. See STATEMENT.

priori petenti (prɪ-**or**-ɪ pə-**ten**-tɪ). [Latin "to the first person applying"] *Wills & estates.* The principle that when two or more persons are equally entitled to administer an estate, the court will appoint the person who applies first.

priority. (15c) **1.** The status of being earlier in time or higher in degree or rank; precedence. **2.** *Commercial law.* An established right to such precedence; esp., a creditor's right to have a claim paid before other creditors of the same debtor receive payment. [Cases: Secured Transactions ⚷ 138–145.] **3.** The doctrine that, as between two courts, jurisdiction should be accorded the court in which proceedings are first begun. [Cases: Courts ⚷ 475, 493, 514; Federal Courts ⚷ 1145.] **4.** *Patents & Trademarks.* The status of being first to invent something (and therefore be potentially eligible for patent protection)or to use a mark in trade (and therefore be potentially eligible for trademark registration). [Cases: Patents ⚷ 90; Trademarks ⚷ 1137]

priority of adoption. *Trademarks.* Priority in designing or creating a trademark. • Priority of adoption does not in itself confer the right to exclusive use of a mark if someone else was first to use it in commerce. — Also termed *priority of appropriation; priority of invention.* Cf. *priority of use.* [Cases: Trademarks ⚷ 1131.]

priority of appropriation. *Trademarks.* See *priority of adoption.*

priority of invention. **1.** *Patents.* The determination that one among several patent applications, for substantially the same invention, should receive the patent when the U.S. Patent and Trademark Office has declared interference. • This determination depends on the date of conception, the date of reduction to practice, and diligence. [Cases: Patents ⚷ 90, 106.] **2.** *Trademarks.* See *priority of adoption.*

priority of use. *Trademarks.* Priority in using a mark in actual commerce. • The priority of use, not the priority of adoption, determines who has the right to protection. Cf. *priority of adoption.* [Cases: Trademarks ⚷ 1137.]

priority award. *Patents.* A final judgment by the U.S. Patent and Trademark Office designating one party in an interference contest as the first inventor. — Also termed *award in interference.*

priority claim. See CLAIM (5).

priority contest. See INTERFERENCE (3).

priority date. See DATE.

priority-jurisdiction rule. See FIRST-TO-FILE RULE.

priority lien. See *prior lien* under LIEN.

priority of liens. The ranking of liens in the order in which they are perfected.

prior laesit (**prɪ**-ər **lee**-sit). [Law Latin] *Scots law.* He (or she) first injured. • The phrase usu. referred to the provocation for an assault.

prior lien. See LIEN.

prior petens (**pri**-ər **pet**-enz). [Latin] The person first applying.

prior preferred stock. See STOCK.

prior publication. *Patents.* Public disclosure of the basis for or existence of an invention, made before filing a patent application for the invention. • If the publication was made more than a year before the application is filed, the patent is barred by statute. Publication occurs when the information is made available to any member of the general public. See *limited publication* under PUBLICATION. [Cases: Patents ⇨67.]

prior-relationship rape. See *relationship rape* under RAPE.

prior restraint. (1833) A governmental restriction on speech or publication before its actual expression. • Prior restraints violate the First Amendment unless the speech is obscene, is defamatory, or creates a clear and present danger to society. [Cases: Constitutional Law ⇨1525.]

> "The legal doctrine of prior restraint (or formal censorship before publication) is probably the oldest form of press control. Certainly it is one of the most efficient, since one censor, working in the watershed, can create a drought of information and ideas long before they reach the fertile plain of people's minds. In the United States, the doctrine of prior restraint has been firmly opposed by the First Amendment to the Constitution, and by the Supreme Court, perhaps most notably in the case of *Near v. Minnesota*, decided in 1931. But the philosophy behind that doctrine lives zestfully on, and shows no signs of infirmities of age." David G. Clark & Earl R. Hutchinson, *Mass Media and the Law* 11 (1970).

prior sale. *Patents.* Sale or offer of sale of an invention before a patent is applied for. • If the sale occurred more than one year before the application is filed, the patent is barred by statute. 35 USCA § 102(b). [Cases: Patents ⇨76.]

prior sentence. See SENTENCE.

prior-use bar. See PUBLIC-USE BAR.

prior-use doctrine. (1856) The principle that, without legislative authorization, a government agency may not appropriate property already devoted to a public use. [Cases: Eminent Domain ⇨47.]

prior-user right. *Patents.* The right of a first inventor to continue using an invention after someone else has patented it. • This right protects first inventors in most countries from the harsh effects of a first-to-file system. [Cases: Patents ⇨90(1).]

prisage (**pri**-zij). *Hist.* A royal duty on wine imported into England. • Prisage was replaced by butlerage in the reign of Edward I. Cf. BUTLERAGE.

prisel en auter lieu (**pri**-zəl awn **oh**-tayl-**yoo**). [Law French "a taking in another place"] A plea in abatement in a replevin action.

prison. (bef. 12c) A state or federal facility of confinement for convicted criminals, esp. felons. — Also termed *penitentiary*; *penal institution*; *adult correctional institution*. Cf. JAIL. [Cases: Prisons ⇨213.]

private prison. (1865) A prison that is managed by a private company, not by a governmental agency. [Cases: Prisons ⇨12.]

prison breach. (17c) A prisoner's forcible breaking and departure from a place of lawful confinement; the offense of escaping from confinement in a prison or jail. • *Prison breach* has traditionally been distinguished from *escape* by the presence of force, but some jurisdictions have abandoned this distinction. — Also termed *prison breaking*; *breach of prison*. Cf. ESCAPE (2). [Cases: Escape ⇨4.]

> "Breach of prison by the offender himself, when committed for *any* cause, was felony at the common law: or even conspiring to break it. But this severity is mitigated by the statute *de frangentibus prisonam*, I Edw. II, which enacts that no person shall have judgment of life or member, for breaking prison, unless committed for some capital offence. So that to break prison, when lawfully committed for any treason or felony, remains still a felony as at the common law; and to break prison, when lawfully confined upon any other inferior charge, is still punishable as a high misdemeanor by fine and imprisonment." 4 William Blackstone, *Commentaries on the Laws of England* 130–31 (1769).

prison camp. (1864) A usu. minimum-security camp for the detention of trustworthy prisoners who are often employed on government projects.

prisoner. 1. A person who is serving time in prison. **2.** A person who has been apprehended by a law-enforcement officer and is in custody, regardless of whether the person has yet been put in prison. Cf. CAPTIVE (1).

> "While breach of prison, or prison breach, means breaking out of or away from prison, it is important to have clearly in mind the meaning of the word 'prison.' If an officer arrests an offender and takes him to jail the layman does not think of the offender as being 'in prison' until he is safely behind locked doors, but no one hesitates to speak of him as a 'prisoner' from the moment of apprehension. He is a prisoner because he is 'in prison . . . whether he were actually in the walls of a prison, or only in the stocks, or in the custody of any person who had lawfully arrested him . . . .'" Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 566 (3d ed. 1982) (quoting 2 Hawk. P.C. ch. 18, § 1 (6th ed. 1788)).

prisoner at the bar. (16c) *Archaic.* An accused person who is on trial.

prisoner of conscience. *Human-rights law.* A person who is imprisoned because of his or her beliefs, race, sex, ethnic origin, language, or religion. • The range of "beliefs" that fall within this definition is not settled but may include political ideologies and objections to military service, esp. in wartime.

prisoner of war. A person, usu. a soldier, who is captured by or surrenders to the enemy in wartime. — Also termed *captive*. — Abbr. POW. [Cases: War and National Emergency ⇨11.]

prisoner's dilemma. A logic problem — often used by law-and-economics scholars to illustrate the effect of cooperative behavior — involving two prisoners who are being separately questioned about their participation in a crime: (1) if both confess, they will each receive a 5-year sentence; (2) if neither confesses, they will each receive a 3-year sentence; and (3) if one confesses but

the other does not, the confessing prisoner will receive a 1-year sentence while the silent prisoner will receive a 10-year sentence. See EXTERNALITY.

Prison Litigation Reform Act. A federal statute designed to reduce the number of frivolous lawsuits and petitions filed by prisoners and to reduce the power of federal courts over state prison systems. 110 Stat. 1321-66–1321-77 (1996).

prist (prist). [Law French] *Hist.* Ready. • In oral pleading, this term was used to express a joinder of issue.

privacy. The condition or state of being free from public attention to intrusion into or interference with one's acts or decisions.

autonomy privacy. An individual's right to control his or her personal activities or intimate personal decisions without outside interference, observation, or intrusion. • If the individual's interest in an activity or decision is fundamental, the state must show a compelling public interest before the private interest can be overcome. If the individual's interest is acknowledged to be less than fundamental or is disputed, then a court must apply a balancing test. *Hill v. NCAA*, 865 P.2d 633, 653, 654 (Cal. 1994). [Cases: Constitutional Law ⟹1210–1275.]

informational privacy. *Tort.* A private person's right to choose to determine whether, how, and to what extent information about oneself is communicated to others, esp. sensitive and confidential information. [Cases: Constitutional Law ⟹1227.]

privacy, invasion of. See INVASION OF PRIVACY.

privacy, right of. See RIGHT OF PRIVACY.

privacy act. See PRIVACY LAW (1).

Privacy Act of 1974. An act that regulates the government's creation, collection, use, and dissemination of records that can identify an individual by name, as well as other personal information. 18 USCA § 552a. [Cases: Records ⟹31.]

privacy law. (1936) **1.** A federal or state statute that protects a person's right to be left alone or that restricts public access to personal information such as tax returns and medical records. — Also termed *privacy act.* [Cases: Records ⟹31.] **2.** The area of legal studies dealing with a person's right to be left alone and with restricting public access to personal information such as tax returns and medical records.

privacy privilege. See PRIVILEGE (3).

privata delicta (pri-**vay**-tə di-**lik**-tə). [Latin] *Roman law.* Private wrongs; torts. See DELICT. Cf. PUBLICA DELICTA.

privatae leges (pri-**vay**-tee **lee**-jeez). [Law Latin] *Scots law.* Personal laws. • These were laws, such as a pardon, that affected a single individual, not a class of people.

private, *adj.* (14c) **1.** Relating or belonging to an individual, as opposed to the public or the government. **2.** (Of a company) not having shares that are freely available on an open market. **3.** Confidential; secret.

private act. See *special statute* under STATUTE.

private action. See *civil action* under ACTION (4).

private adoption. See ADOPTION.

private agent. See AGENT (2).

private annuity. See ANNUITY.

private attorney. See ATTORNEY (1).

private-attorney-general doctrine. The equitable principle that allows the recovery of attorney's fees to a party who brings a lawsuit that benefits a significant number of people, requires private enforcement, and is important to society as a whole. [Cases: Costs ⟹194.42; Federal Civil Procedure ⟹2737.2.]

private bank. See BANK.

private benefit. *Tax.* The use of a tax-exempt organization's assets primarily to further the interests of a private individual or entity, rather than for a public interest. • Under most circumstances, this type of benefit is prohibited. *See* IRC (26 USCA) § 501(c)(3). Cf. *private inurement* under INUREMENT.

qualitatively incidental private benefit. A permissible private benefit arising from circumstances under which a benefit to the public cannot be achieved without necessarily also benefiting a private interest.

quantitatively incidental private benefit. A permissible private benefit that is a necessary but insubstantial concomitant to a public benefit.

private bill. See BILL (3).

private boundary. See BOUNDARY.

private brand. See BRAND.

private carrier. See CARRIER.

private contract. See CONTRACT.

private corporation. See CORPORATION.

private delict. See DELICT.

private easement. See EASEMENT.

privateer (pri-və-**teer**), *n.* **1.** A vessel owned and operated by private persons, but authorized by a nation on certain conditions to damage the commerce of the enemy by acts of piracy. **2.** A sailor on such a vessel.

privateering, *n. Int'l law.* The practice of arming privately owned merchant ships for the purpose of attacking enemy trading ships. • Before the practice was outlawed, governments commissioned privateers by issuing letters of marque to their merchant fleets. Privateering was prohibited by the Declaration of Paris Concerning Naval Warfare of 1856, which has been observed by nearly all nations since that time. — **privateer,** *vb.*

private fact. See FACT.

private foundation. See FOUNDATION.

private grant. See GRANT.

private injury. See *personal injury* (2) under INJURY.

private international law. See INTERNATIONAL LAW.

private inurement. See INUREMENT.

private judging. (1979) A type of alternative dispute resolution whereby the parties hire a private individual to hear and decide a case. • This process may occur as a matter of contract between the parties or in connection with a statute authorizing such a process. — Also termed *rent-a-judging.*

> "In contrast [to arbitration], private judging is a less contractual, less privatized process. Party agreement, usually formed post-dispute, does send a case to private judging. And the parties have the freedom of contract to determine the time and place of trial, as well as the identity of the judge. Unlike arbitration, however, privately judged trials may . . . be: (1) required to use the same rules of procedure and evidence used in ordinary litigation, (2) exposed to public view by court order, (3) adjudicated only by a former judge, and (4) subject to appeal in the same manner as other trial verdicts. In sum, private judging is essentially an ordinary bench trial except that the parties select, and pay for, the judge." Stephen J. Ware, *Alternative Dispute Resolution* § 2.54, at 113 (2001).

private land grant. See LAND GRANT.

private law. (18c) **1.** The body of law dealing with private persons and their property and relationships. Cf. PUBLIC LAW (1). **2.** See *special law* under LAW.

private letter ruling. See LETTER RULING.

private morality. See MORALITY.

private mortgage insurance. See *mortgage insurance* under INSURANCE.

private necessity. See NECESSITY.

private nonoperating foundation. See *private foundation* under FOUNDATION.

private nuisance. See NUISANCE.

private offering. See OFFERING.

private operating foundation. See FOUNDATION.

private person. See PERSON (1).

private placement. 1. *Family law.* The placement of a child for adoption by a parent, lawyer, doctor, or private agency, rather than by a government agency. • At least eight states have prohibited private-placement adoptions. — Also termed *direct placement.* [Cases: Adoption ⇨6–7.8, 13, 16.] **2.** *Securities.* See *private offering* under OFFERING.

private-placement adoption. See *private adoption* under ADOPTION.

private power. See POWER (3).

private prison. See PRISON.

private property. See PROPERTY.

private prosecution. See PROSECUTION.

private prosecutor. See PROSECUTOR (2).

private publication. See *limited publication* under PUBLICATION.

private reprimand. See REPRIMAND.

private right. See RIGHT.

private right-of-way. See EASEMENT.

private river. See RIVER.

private sale. See SALE.

private school. See SCHOOL.

private seal. See SEAL.

private search. See SEARCH.

private sector. (1930) The part of the economy or an industry that is free from direct governmental control. Cf. PUBLIC SECTOR.

private servitude. See SERVITUDE (2).

private signature. See SIGNATURE.

private statute. See *special statute* under STATUTE.

private stream. See STREAM.

private treaty. See TREATY (3).

private trust. See TRUST.

private-use exception. *Patents.* An exception to the public-use statutory bar, allowing the inventor to use the invention for personal benefit for more than one year without abandoning patent rights under the statutory bars. — Also termed *prior-user right.* [Cases: Patents ⇨75.]

private voluntary organization. See NONGOVERNMENTAL ORGANIZATION.

private war. See WAR.

private water. See WATER.

private way. See WAY.

private wharf. See WHARF.

private wrong. See WRONG.

private zoning. See ZONING.

privation (prī-**vay**-shən). (15c) **1.** The act of taking away or withdrawing. **2.** The condition of being deprived.

privatization (prī-və-tə-**zay**-shən), *n.* (1942) The act or process of converting a business or industry from governmental ownership or control to private enterprise. Cf. DENATIONALIZATION (2). — **privatize,** *vb.*

privatum (prī-**vay**-təm). [Latin] Private. • This term appeared in phrases such as *jus privatum* ("private law").

privies (**priv**-eez). See PRIVY.

privigna (prī-**vig**-nə), *n.* [Latin] *Roman & civil law.* A daughter of one's husband or wife by a previous marriage; a stepdaughter.

privignus (prī-**vig**-nəs). [Latin] *Roman & civil law.* A son of one's husband or wife by a previous marriage; a stepson.

privilege. (bef. 12c) **1.** A special legal right, exemption, or immunity granted to a person or class of persons; an exception to a duty. • A privilege grants someone the legal freedom to do or not to do a given act. It immunizes conduct that, under ordinary circumstances, would subject the actor to liability.

absolute privilege. (18c) A privilege that immunizes an actor from suit, no matter how wrongful the action might be, and even though it is done with an

improper motive. Cf. *qualified privilege*. [Cases: Libel and Slander ⚷36; Torts ⚷121.]

audit privilege. See AUDIT PRIVILEGE.

conditional privilege. See *qualified privilege*.

courtroom privilege. See *judicial privilege*.

defamation privilege. See *litigation privilege*.

deliberative-process privilege. (1977) A privilege permitting the government to withhold documents relating to policy formulation to encourage open and independent discussion among those who develop government policy. [Cases: Privileged Communications and Confidentiality ⚷361.]

judicial privilege. (1845) *Defamation*. **1.** The privilege protecting any statement made in the course of and with reference to a judicial proceeding by any judge, juror, party, witness, or advocate. **2.** See *litigation privilege*. — Also termed *courtroom privilege*. [Cases: Libel and Slander ⚷38.]

judicial-proceedings privilege. See *litigation privilege*.

legislative privilege. (1941) *Defamation*. The privilege protecting (1) any statement made in a legislature by one of its members, and (2) any paper published as part of legislative business. — Also termed (in a parliamentary system) *parliamentary privilege*. [Cases: Libel and Slander ⚷37.]

litigation privilege. A privilege protecting the attorneys and parties in a lawsuit against tort claims based on certain acts done and statements made when related to the litigation. • The privilege is most often applied to defamation claims but may be extended to encompass other torts, such as invasion of privacy and disclosure of trade secrets. The facts of each case determine whether the privilege applies and whether it is qualified or absolute. — Also termed *judicial-proceedings privilege*; *judicial privilege*; *defamation privilege*. [Cases: Libel and Slander ⚷38.]

official privilege. (1927) The privilege immunizing from a defamation lawsuit any statement made by one state officer to another in the course of official duty. [Cases: Libel and Slander ⚷39, 42.]

parliamentary privilege. **1.** See *legislative privilege*. **2.** PRIVILEGE (5).

privilege from arrest. (1840) An exemption from arrest, as that enjoyed by members of Congress during legislative sessions. U.S. Const. art. I, § 6, cl. 1. [Cases: Arrest ⚷60.]

qualified privilege. (1865) A privilege that immunizes an actor from suit only when the privilege is properly exercised in the performance of a legal or moral duty. — Also termed *conditional privilege*. Cf. *absolute privilege*. [Cases: Libel and Slander ⚷41; Officers and Public Employees ⚷114; Torts ⚷121.]

"Qualified privilege . . . is an intermediate case between total absence of privilege and the presence of absolute privilege." R.F.V. Heuston, *Salmond on the Law of Torts* 165 (17th ed. 1977).

special privilege. (17c) **1.** A privilege granted to a person or class of persons to the exclusion of others and in derogation of the common right. **2.** See *personal privilege* under PRIVILEGE (5).

testimonial privilege. (1907) A right not to testify based on a claim of privilege; a privilege that overrides a witness's duty to disclose matters within the witness's knowledge, whether at trial or by deposition. [Cases: Witnesses ⚷297.]

viatorial privilege (vī-ə-**tor**-ee-əl). (1904) A privilege that overrides a person's duty to attend court in person and to testify.

work-product privilege. See WORK-PRODUCT RULE.

2. An affirmative defense by which a defendant acknowledges at least part of the conduct complained of but asserts that the defendant's conduct was authorized or sanctioned by law; esp., in tort law, a circumstance justifying or excusing an intentional tort. See JUSTIFICATION (2). Cf. IMMUNITY (2). [Cases: Torts ⚷121.] **3.** An evidentiary rule that gives a witness the option to not disclose the fact asked for, even though it might be relevant; the right to prevent disclosure of certain information in court, esp. when the information was originally communicated in a professional or confidential relationship. • Assertion of an evidentiary privilege can be overcome by proof that an otherwise privileged communication was made in the presence of a third party to whom the privilege would not apply. [Cases: Privileged Communications and Confidentiality ⚷1, 17.]

accountant–client privilege. (1956) The protection afforded to a client from an accountant's unauthorized disclosure of materials submitted to or prepared by the accountant. • The privilege is not widely recognized. [Cases: Privileged Communications and Confidentiality ⚷405.]

antimarital-facts privilege. See *marital privilege* (2).

attorney–client privilege. (1934) The client's right to refuse to disclose and to prevent any other person from disclosing confidential communications between the client and the attorney. • The privilege is not widely recognized. — Also termed *lawyer–client privilege*; *client's privilege*. [Cases: Privileged Communications and Confidentiality ⚷102.]

"There are a number of ways to organize the essential elements of the attorney-client privilege to provide for an orderly analysis. One of the most popular is Wigmore's schema: '(1) Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose (4) made in confidence (5) by the client (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the privilege be waived.' Though this organization has its virtues, there is some question as to whether it completely states the modern privilege." 24 Charles Alan Wright & Kenneth W. Graham Jr., *Federal Practice and Procedure* § 5473, at 103-04 (1986) (quoting 8 John Henry Wigmore, *Evidence* § 2292, at 554 (John T. McNaughton rev., 1961)).

"At the present time it seems most realistic to portray the attorney-client privilege as supported in part by its

traditional utilitarian justification, and in part by the integral role it is perceived to play in the adversary system itself. Our system of litigation casts the lawyer in the role of fighter for the party whom he represents. A strong tradition of loyalty attaches to the relationship of attorney and client, and this tradition would be outraged by routine examination of the lawyer as to the client's confidential disclosures regarding professional business. To the extent that the evidentiary privilege, then, is integrally related to an entire code of professional conduct, it is futile to envision drastic curtailment of the privilege without substantial modification of the underlying ethical system to which the privilege is merely ancillary." John W. Strong, *McCormick on Evidence* § 87, at 121-22 (4th ed. 1992).

clergyman-penitent privilege. See *priest-penitent privilege.*

client's privilege. See *attorney-client privilege.*

doctor-patient privilege. (1954) The right to exclude from discovery and evidence in a legal proceeding any confidential communication that a patient makes to a physician for the purpose of diagnosis or treatment, unless the patient consents to the disclosure. — Also termed *patient-physician privilege*; *physician-patient privilege*; *physician-client privilege.* [Cases: Privileged Communications and Confidentiality ⚷202.]

editorial privilege. See *journalist's privilege* (2).

executive privilege. (1909) A privilege, based on the constitutional doctrine of separation of powers, that exempts the executive branch of the federal government from usual disclosure requirements when the matter to be disclosed involves national security or foreign policy. Cf. *executive immunity* under IMMUNITY (1). [Cases: Privileged Communications and Confidentiality ⚷353.]

husband-wife privilege. See *marital privilege.*

informant's privilege. (1962) The qualified privilege that a government can invoke to prevent disclosure of the identity and communications of its informants. • In exercising its power to formulate evidentiary rules for federal criminal cases, the U.S. Supreme Court has consistently declined to hold that the government must disclose the identity of informants in a preliminary hearing or in a criminal trial. *McCray v. Illinois*, 386 U.S. 300, 312, 87 S.Ct. 1056, 1063 (1967). A party can, however, usu. overcome the privilege by demonstrating that the need for the information outweighs the public interest in maintaining the privilege. — Also termed *informer's privilege.* [Cases: Criminal Law ⚷627.6; Privileged Communications and Confidentiality ⚷374.]

joint-defense privilege. (1975) The rule that a defendant can assert the attorney-client privilege to protect a confidential communication made to a codefendant's lawyer if the communication was related to the defense of both defendants. — Also termed *common-interest doctrine*; *common-interest privilege*; *common-interest exception.* [Cases: Privileged Communications and Confidentiality ⚷122.]

journalist's privilege. (1970) **1.** A reporter's protection, under constitutional or statutory law, from being compelled to testify about confidential information or sources. — Also termed *reporter's privilege*; *newsman's privilege.* See SHIELD LAW (1). [Cases: Privileged Communications and Confidentiality ⚷404.] **2.** A publisher's protection against defamation lawsuits when the publication makes fair comment on the actions of public officials in matters of public concern. — Also termed *editorial privilege*; *common-interest privilege*; *common-interest exception.* See FAIR COMMENT. [Cases: Libel and Slander ⚷49.]

lawyer-client privilege. See *attorney-client privilege.*

marital privilege. (1902) **1.** The privilege allowing a spouse not to testify, and to prevent another person from testifying, about confidential communications between the spouses during the marriage. — Also termed *marital-communications privilege.* [Cases: Privileged Communications and Confidentiality ⚷60.] **2.** The privilege allowing a spouse not to testify in a criminal case as an adverse witness against the other spouse, regardless of the subject matter of the testimony. — Also termed (in sense 2) *privilege against adverse spousal testimony*; *antimarital-facts privilege.* [Cases: Witnesses ⚷51.] **3.** The privilege immunizing from a defamation lawsuit any statement made between husband and wife. — Also termed (in all senses) *spousal privilege*; *husband-wife privilege.*

national-security privilege. See *state-secrets privilege.*

newsman's privilege. See *journalist's privilege* (1).

patient-physician privilege. See *doctor-patient privilege.*

peer-review privilege. (1979) A privilege that protects from disclosure the proceedings and reports of a medical facility's peer-review committee, which reviews and oversees the patient care and medical services provided by the staff. [Cases: Privileged Communications and Confidentiality ⚷422.]

physician-client privilege. See *doctor-patient privilege.*

political-vote privilege. A privilege to protect from compulsory disclosure a vote cast in an election by secret ballot. [Cases: Elections ⚷28.]

priest-penitent privilege. (1958) The privilege barring a clergy member from testifying about a confessor's communications. — Also termed *clergyman-penitent privilege.* [Cases: Privileged Communications and Confidentiality ⚷403.]

privacy privilege. A defendant's right not to disclose private information unless the plaintiff can show that (1) the information is directly relevant to the case, and (2) the plaintiff's need for the information outweighs the defendant's need for nondisclosure. • This privilege is recognized in California but in few other jurisdictions. [Cases: Witnesses ⚷184(1).]

privilege against adverse spousal testimony. See *marital privilege* (2).

privilege against self-incrimination. *Criminal law.* **1.** RIGHT AGAINST SELF-INCRIMINATION. **2.** A criminal defendant's right not to be asked any questions by the judge or prosecution unless the defendant chooses to testify. — Also termed *right not to be questioned.* [Cases: Witnesses ⇨299.]

"According to the rule, neither the judge nor the prosecution is entitled at any stage to question the accused unless he chooses to give evidence. . . . This rule may be called the accused's right not to be questioned; in America it is termed the privilege against self-incrimination. The latter expression is more apt as the name for another rule, the privilege of any witness to refuse to answer an incriminating question; this is different from the rule under discussion, which, applying only to persons accused of crime, prevents the question from being asked. The person charged with crime has not merely the liberty to refuse to answer a question incriminating himself; he is freed even from the embarrassment of being asked the question." Glanville Williams, *The Proof of Guilt* 37-38 (3d ed. 1963).

psychotherapist-patient privilege. (1968) A privilege that a person can invoke to prevent the disclosure of a confidential communication made in the course of diagnosis or treatment of a mental or emotional condition by or at the direction of a psychotherapist. • The privilege can be overcome under certain conditions, as when the examination is ordered by a court. — Also termed *psychotherapist-client privilege.* [Cases: Privileged Communications and Confidentiality ⇨312.]

reporter's privilege. See *journalist's privilege* (1).

self-critical-analysis privilege. (1982) A privilege protecting individuals and entities from divulging the results of candid assessments of their compliance with laws and regulations, to the extent that the assessments are internal, the results were intended from the outset to be confidential, and the information is of a type that would be curtailed if it were forced to be disclosed. • This privilege is founded on the public policy that it is beneficial to permit individuals and entities to confidentially evaluate their compliance with the law, so that they will monitor and improve their compliance with it. — Also termed *self-policing privilege; self-evaluation privilege.* [Cases: Privileged Communications and Confidentiality ⇨418.]

spousal privilege. See *marital privilege.*

state-secrets privilege. (1959) A privilege that the government may invoke against the discovery of a material that, if divulged, could compromise national security. — Also termed *national-security privilege.* [Cases: Privileged Communications and Confidentiality ⇨360.]

tax-return privilege. A privilege to refuse to divulge the contents of a tax return or certain related documents. • The privilege is founded on the public policy of encouraging honest tax returns. [Cases: Witnesses ⇨216(2).]

4. *Civil law.* A creditor's right, arising from the nature of the debt, to priority over the debtor's other creditors. **5.** *Parliamentary law.* The status of a motion as outranking other business because of its relationship to the meeting's or a member's rights. — Also termed *parliamentary privilege.* See *question of privilege* under QUESTION (3).

general privilege. A privilege that concerns the deliberative assembly as a body, rather than any particular member or members. — Also termed *privilege of the assembly; privilege of the house.* Cf. *personal privilege.*

parliamentary privilege. **1.** A privilege under parliamentary law. **2.** See *legislative privilege* under PRIVILEGE (1).

personal privilege. A privilege that concerns an individual member or members (e.g., a member's reputation or physical ability to hear the proceedings) rather than the deliberative assembly generally. — Also termed *special privilege.* See *procedural point* under POINT. Cf. *general privilege.*

privilege of the assembly. See *general privilege.*

privilege of the floor. *Parliamentary law.* (*usu. pl.*) The right of entering, passing through, and sitting on the floor during a meeting. See FLOOR (1).

"The expression 'privileges of the floor,' sometimes used in legislative bodies or conventions, has nothing to do with *having the floor,* but means merely that a person is permitted to enter the hall. It carries no right to speak or any other right of membership, except as may be determined by rules or action of the body." Henry M. Robert, *Robert's Rules of Order Newly Revised* § 3, at 28 n. (10th ed. 2000).

privilege of the house. See *general privilege.*

special privilege. See *personal privilege.*

privileged, *adj.* **1.** Not subject to the usual rules or liabilities; esp., not subject to disclosure during the course of a lawsuit <a privileged document>. **2.** Enjoying or subject to a privilege. See *privileged motion* under MOTION (2).

privileged communication. See COMMUNICATION.

privileged copyhold. See COPYHOLD.

privileged debt. See DEBT.

privileged evidence. See EVIDENCE.

privileged motion. See MOTION (2).

privileged question. See QUESTION (3).

privileged subscription. See *rights offering* under OFFERING.

privileged villeinage. See VILLEINAGE.

privilege from arrest. See PRIVILEGE (1).

privilege of palace. The exemption of a dwelling that is used as a royal residence from the execution of legal process within its precincts. • The monarch does not have to be in residence at the time but must intend to retain the power to take up personal residence in the dwelling at will. Not all palaces are royal residences; England's Westminster Palace, for example, is occupied by the Parliament of the United Kingdom, not the queen, who relinquished all control of the palace in 1965.

Privileges and Immunities Clause. (1911) The constitutional provision (U.S. Const. art. IV, § 2, cl. 1) prohibiting a state from favoring its own citizens by discriminating against other states' citizens who come within its borders. [Cases: Constitutional Law ⚷ 2935–2963.]

Privileges or Immunities Clause. (1918) The constitutional provision (U.S. Const. amend. XIV, § 1) prohibiting state laws that abridge the privileges or immunities of U.S. citizens. • The clause was effectively nullified by the Supreme Court in the *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1873). Cf. DUE PROCESS CLAUSE; EQUAL PROTECTION CLAUSE. [Cases: Constitutional Law ⚷2910–2932.]

privilege tax. See TAX.

privilegium (priv-ə-**lee**-jee-əm), *n.* [Latin] **1.** *Roman law.* A law passed against or in favor of a specific individual. **2.** *Roman law.* A special right, esp. one giving priority to a creditor. **3.** *Civil law.* Every right or favor that is granted by the law but is contrary to the usual rule.

privilegium clericale (priv-ə-**lee**-jee-əm kler-ə-**kay**-lee). [Law Latin] See BENEFIT OF CLERGY.

privity (**priv**-ə-tee). (16c) **1.** The connection or relationship between two parties, each having a legally recognized interest in the same subject matter (such as a transaction, proceeding, or piece of property); mutuality of interest <privity of contract>. [Cases: Contracts ⚷186; Judgment ⚷678(2).]

horizontal privity. (1968) *Commercial law.* The legal relationship between a party and a nonparty who is related to the party (such as a buyer and a member of the buyer's family). [Cases: Sales ⚷255.]

privity of blood. (16c) **1.** Privity between an heir and an ancestor. **2.** Privity between coparceners.

privity of contract. (17c) The relationship between the parties to a contract, allowing them to sue each other but preventing a third party from doing so. • The requirement of privity has been relaxed under modern laws and doctrines of implied warranty and strict liability, which allow a third-party beneficiary or other foreseeable user to sue the seller of a defective product. [Cases: Contracts ⚷186; Sales ⚷255.]

"To many students and practitioners of the common law *privity of contract* became a fetish. As such, it operated to deprive many a claimant of a remedy in cases where according to the *mores* of the time the claim was just. It has made many learned men believe that a *chose* in action *could not* be assigned. Even now, it is gravely asserted that a man cannot be made the debtor of another against his will. But the common law was gradually influenced by equity and by the law merchant, so that by assignment a debtor could become bound to pay a perfect stranger to himself, although until the legislature stepped in, the common-law courts characteristically made use of a fiction and pretended that they were not doing that which they really were doing." William R. Anson, *Principles of the Law of Contract* 335 (Arthur L. Corbin ed., 3d Am. ed. 1919).

"It is an elementary principle of English law — known as the doctrine of 'Privity of Contract' — that contractual rights and duties only affect the parties to a contract, and this principle is the distinguishing feature between the law of contract and the law of property. True proprietary rights are 'binding on the world' in the lawyer's traditional phrase. Contractual rights, on the other hand, are only binding on, and enforceable by, the immediate parties to the contract. But this distinction, fundamental though it be, wears a little thin at times. On the one hand, there has been a constant tendency for contractual rights to be extended in their scope so as to affect more and more persons who cannot be regarded as parties to the transaction. On the other hand, few proprietary rights are literally 'binding on the world'." P.S. Atiyah, *An Introduction to the Law of Contract* 265 (3d ed. 1981).

"The doctrine of privity means that a person cannot acquire rights or be subject to liabilities *arising under* a contract to which he is not a party. It does not mean that a contract between A and B cannot affect the legal rights of C indirectly." G.H. Treitel, *The Law of Contract* 538 (8th ed. 1991).

privity of estate. (17c) A mutual or successive relationship to the same right in property, as between grantor and grantee or landlord and tenant. — Also termed *privity of title*; *privity in estate.* [Cases: Landlord and Tenant ⚷20, 53.]

privity of possession. (1818) Privity between parties in successive possession of real property. • The existence of this type of privity is often at issue in adverse-possession claims. [Cases: Adverse Possession ⚷43.]

privity of title. See *privity of estate.*

vertical privity. (1968) **1.** *Commercial law.* The legal relationship between parties in a product's chain of distribution (such as a manufacturer and a seller). [Cases: Sales ⚷255.] **2.** Privity between one who signs a contract containing a restrictive covenant and one who acquires the property burdened by it.

2. Joint knowledge or awareness of something private or secret, esp. as implying concurrence or consent <privity to a crime>.

privy (**priv**-ee), *n. pl.* (15c) A person having a legal interest of privity in any action, matter, or property; a person who is in privity with another. • Traditionally, there were six types of privies: (1) *privies in blood*, such as an heir and an ancestor; (2) *privies in representation*, such as an executor and a testator or an administrator and an intestate person; (3) *privies in estate*, such as grantor and grantee or lessor and lessee; (4) *privies in respect to a contract* — the parties to a contract; (5) *privies in respect of estate and contract*, such as a lessor and lessee where the lessee assigns an interest, but the contract between lessor and lessee continues because the lessor does not accept the assignee; and (6) *privies in law*, such as husband and wife. The term also appears in the context of litigation. In this sense, it includes someone who controls a lawsuit though not a party to it; someone whose interests are represented by a party to the lawsuit; and a successor in interest to anyone having a derivative claim. Pl. **privies.**

Privy Council. In Britain, the principal council of the sovereign, composed of the cabinet ministers and other persons chosen by royal appointment to serve as privy councillors. • The functions of the Privy Council are

now mostly ceremonial. See JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Privy Councillor. A member of the Privy Council. — Abbr. P.C.

privy purse. *English law.* The income set apart for the sovereign's personal use.

privy seal. 1. A seal used in making out grants or letters patent before they are passed under the great seal. **2.** (*cap.*) LORD PRIVY SEAL.

privy signet. *Hist.* The signet or seal used by the sovereign in making out grants and private letters.

privy verdict. See VERDICT.

prize. 1. Something of value awarded in recognition of a person's achievement. **2.** A vessel or cargo captured at sea or seized in port by the forces of a nation at war, and therefore liable to being condemned or appropriated as enemy property. [Cases: War and National Emergency ⇨28.]

prize court. See COURT.

prize fighting. Fighting for a reward or prize; esp., professional boxing. [Cases: Public Amusement and Entertainment ⇨27.]

> "Prize fighting . . . was not looked upon with favor by the common law as was a friendly boxing match or wrestling match. On the other hand it was not punishable by the common law unless it was fought in a public place, or for some other reason constituted a breach of the peace." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 480 (3d ed. 1982).

prize goods. See GOODS.

prize law. The system of laws applicable to the capture of prize at sea, dealing with such matters as the rights of captors and the distribution of the proceeds. [Cases: War and National Emergency ⇨28.]

prize money. 1. A dividend from the proceeds of a captured vessel, paid to the captors. **2.** Money offered as an award.

PRM. *abbr.* BUREAU OF POPULATION, REFUGEES, AND MIGRATION.

PRO. *abbr.* PEER-REVIEW ORGANIZATION.

pro (proh). [Latin] (15c) For.

proamita (proh-**am**-ə-tə). [Latin] *Roman & civil law.* A great-great aunt; the sister of one's great-grandfather.

proamita magna (proh-**am**-ə-tə **mag**-nə). [Latin] *Civil law.* A great-great-great-aunt.

proavia (proh-**ay**-vee-ə). [Latin] *Roman & civil law.* A great-grandmother.

proavunculus (proh-ə-**vəngk**-yə-ləs). [Latin] *Civil law.* A great-grandmother's brother.

proavus. *Civil law.* A great-grandfather.

probabilis causa (prə-**bay**-bə-lis **kaw**-zə). [Latin] Probable cause.

probabilis causa litigandi (prə-**bab**-ə-lis **kaw**-zə lit-**i-gan**-dī). [Law Latin] *Scots law.* A probable cause of action. • A person applying for legal aid has to show a reasonable basis for the proposed legal action.

probable cause. (16c) **1.** *Criminal law.* A reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime. • Under the Fourth Amendment, probable cause — which amounts to more than a bare suspicion but less than evidence that would justify a conviction — must be shown before an arrest warrant or search warrant may be issued. — Also termed *reasonable cause*; *sufficient cause*; *reasonable grounds*; *reasonable excuse* Cf. *reasonable suspicion* under SUSPICION. [Cases: Arrest ⇨63.4(2).]

> "Probable cause may not be established simply by showing that the officer who made the challenged arrest or search subjectively believed he had grounds for his action. As emphasized in *Beck v. Ohio* [379 U.S. 89, 85 S.Ct. 223 (1964)]: 'If subjective good faith alone were the test, the protection of the Fourth Amendment would evaporate, and the people would be "secure in their persons, houses, papers, and effects" only in the discretion of the police.' The probable cause test, then, is an objective one; for there to be probable cause, the facts must be such as would warrant a belief by a reasonable man." Wayne R. LaFave & Jerold H. Israel, *Criminal Procedure* § 3.3, at 140 (2d ed. 1992).

2. *Torts.* A reasonable belief in the existence of facts on which a claim is based and in the legal validity of the claim itself. • In this sense, probable cause is usu. assessed as of the time when the claimant brings the claim (as by filing suit). **3.** A reasonable basis to support issuance of an administrative warrant based on either (1) specific evidence of an existing violation of administrative rules, or (2) evidence showing that a particular business meets the legislative or administrative standards permitting an inspection of the business premises. [Cases: Searches and Seizures ⇨129.]

probable-cause hearing. 1. See PRELIMINARY HEARING. **2.** See *shelter hearing* under HEARING.

probable consequence. (16c) An effect or result that is more likely than not to follow its supposed cause. [Cases: Negligence ⇨386.]

probable-desistance test. (1974) *Criminal law.* A common-law test for the crime of attempt, focusing on whether the defendant has exhibited dangerous behavior indicating a likelihood of committing the crime. See ATTEMPT (2).

probable evidence. See *presumptive evidence* under EVIDENCE.

probandum (proh-**ban**-dəm), *n.* A fact to be proved. See *fact in issue* under FACT. Pl. **probanda.**

probata (proh-**bay**-tə). [Latin] *pl.* PROBATUM.

probate (**proh**-bayt), *n.* (15c) **1.** The judicial procedure by which a testamentary document is established to be a valid will; the proving of a will to the satisfaction of the court. • Unless set aside, the probate of a will is conclusive upon the parties to the proceedings (and others who had notice of them) on all questions of testamentary capacity, the absence of fraud or undue influence, and due execution of the will. But probate does not

preclude inquiry into the validity of the will's provisions or on their proper construction or legal effect. — Also termed *proof of will*. [Cases: Wills ⇨203–434.]

independent probate. See *informal probate*.

informal probate. (1974) Probate designed to operate with minimal input and supervision of the probate court. • Most modern probate codes encourage this type of administration, with an independent personal representative. — Also termed *independent probate*. Cf. *independent executor* under EXECUTOR. [Cases: Executors and Administrators ⇨3(1).]

probate in common form. Probate granted in the registry, without any formal procedure in court, on the executor's ex parte application. • The judgment is subject to being reopened by a party who has not been given notice. [Cases: Wills ⇨213.]

probate in solemn form. Probate granted in open court, as a final decree, when all interested parties have been given notice. • The judgment is final for all parties who have had notice of the proceeding, unless a later will is discovered. [Cases: Wills ⇨214.]

small-estate probate. (2004) An informal procedure for administering small estates, less structured than the normal process and usu. not requiring the assistance of an attorney.

2. Loosely, a personal representative's actions in handling a decedent's estate. **3.** Loosely, all the subjects over which probate courts have jurisdiction. **4.** *Archaic.* A nonresident plaintiff's proof of a debt by swearing before a notary public or other officer that the debt is correct, just, and due, and by having the notary attach a jurat.

probate, *vb.* (18c) **1.** To admit (a will) to proof. **2.** To administer (a decedent's estate). **3.** To grant probation to (a criminal); to reduce (a sentence) by means of probation.

probate asset. See *legal asset* under ASSET.

probate bond. See BOND (2).

probate code. (1931) A collection of statutes setting forth the law (substantive and procedural) of decedents' estates and trusts. [Cases: Wills ⇨204.]

probate court. See COURT.

probate distribution. See DISTRIBUTION.

probate duty. See DUTY (4).

probate estate. (1930) A decedent's property subject to administration by a personal representative. • The probate estate comprises property owned by the decedent at the time of death and property acquired by the decedent's estate at or after the time of death. — Also termed *probate property*. See *decedent's estate* under ESTATE (3). [Cases: Executors and Administrators ⇨38–61; Wills ⇨4.]

net probate estate. The probate estate after the following deductions: (1) family allowances, (2) exempt property, (3) homestead allowances, (4) claims against the estate, and (5) taxes for which the estate is liable. — Also termed *net estate*. Cf. *adjusted gross estate* (1) under ESTATE (3). [Cases: Internal Revenue ⇨4149–4185; Taxation ⇨3351.]

probate fee. See FEE (1).

probate homestead. See HOMESTEAD.

probate in common form. See PROBATE.

probate in solemn form. See PROBATE.

probate judge. See JUDGE.

probate jurisdiction. See JURISDICTION.

probate law. The body of statutes, rules, cases, etc. governing all subjects over which a probate court has jurisdiction.

probate property. See PROBATE ESTATE.

probate register. See REGISTER.

probatio (prə-**bay**-shee-oh). [Latin] *Roman & civil law.* Proof.

plena probatio. See *probatio plena*.

probatio diabolica (prə-**bay**-shee-oh dɪ-ə-**bol**-i-kə). [Latin "devil's proof"] *Civil law.* The (usu. difficult) proof of ownership of an immovable thing by tracing its title back to the sovereign.

probatio mortua (prə-**bay**-shee-oh **mor**-choo-ə). [Latin] Dead proof; proof by an inanimate object such as a deed or other instrument.

probatio plena (prə-**bay**-shee-oh **plee**-nə). [Latin] *Civil law.* Full proof; proof by two witnesses or a public instrument. — Also termed *plena probatio*.

probatio probata (prə-**bay**-shee-oh prə-**bay**-tə). [Law Latin] A proven proof; evidence that could not be contradicted.

probatio prout de jure (proh-**bay**-shee-oh **proh**-ət dee [*or* di] **joor**-ee). [Law Latin] A proof according to any of the legal modes of proof applicable to the circumstance.

probatio semi-plena (prə-**bay**-shee-oh sem-ɪ-**plee**-nə). [Latin] *Civil law.* Half-full proof; half-proof; proof by one witness or a private instrument.

probatio viva (prə-**bay**-shee-oh **vɪ**-və). [Latin] Living proof; that is, proof by the mouth of a witness.

probation. (16c) **1.** A court-imposed criminal sentence that, subject to stated conditions, releases a convicted person into the community instead of sending the criminal to jail or prison. Cf. PAROLE. [Cases: Sentencing and Punishment ⇨1811.] — **probationary,** *adj.*

bench probation. (1966) Probation in which the offender agrees to certain conditions or restrictions and reports only to the sentencing judge rather than a probation officer. — Also termed *bench parole*; *court probation*. [Cases: Sentencing and Punishment ⇨1969.]

deferred-adjudication probation. See *deferred judgment* under JUDGMENT.

shock probation. (1972) Probation that is granted after a brief stay in jail or prison. • Shock probation

is intended to awaken the defendant to the reality of confinement for failure to abide by the conditions of probation. This type of probation is discretionary with the sentencing judge and is usu. granted within 180 days of the original sentence. — Also termed *split sentence*. Cf. *shock incarceration* under INCARCERATION. [Cases: Sentencing and Punishment ⇨ 1936.]

2. The act of judicially proving a will. See PROBATE. — **probate,** *adj.*

probationary employee. See EMPLOYEE.

probation before judgment. See *deferred judgment* under JUDGMENT.

probationer. A convicted criminal who is on probation.

probation officer. See OFFICER (1).

probation termination. (1970) The ending of a person's status as a probationer by (1) the routine expiration of the probationary period, (2) early termination by court order, or (3) probation revocation. [Cases: Sentencing and Punishment ⇨ 1948, 1953, 2000–2041.]

probation-violation warrant. See *violation warrant* under WARRANT (1).

probation without judgment. See *deferred judgment* under JUDGMENT.

probatio plena. See PROBATIO.

probatio semi-plena. See PROBATIO.

probatio viva. See PROBATIO.

probative (**proh**-bə-tiv), *adj.* (17c) Tending to prove or disprove. • Courts can exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice. Fed. R. Evid. 403. [Cases: Criminal Law ⇨ 338(1), 338(7); Evidence ⇨ 99, 146.] — **probativeness, probativity,** *n.*

probative evidence. See EVIDENCE.

probative fact. See FACT.

probative similiarity. See *substantial similarity* under SIMILARITY.

probator (proh-**bay**-tər), *n. Hist.* An accused person who confesses to a crime but asserts that another also participated in the crime. • The probator had to undertake to prove the supposed accomplice's guilt.

probatory term. See *term probatory* (2) under TERM (5).

probatum (proh-**bay**-təm), *n.* [Latin] Something conclusively established or proved; proof. Pl. ***probata.*** Cf. ALLEGATUM.

problem-oriented policing. (1986) A method that law-enforcement officers use to reduce crime by identifying and remedying the underlying causes of criminal incidents rather than merely seeking basic information (such as the identity of the perpetrator) about the crime being investigated.

problem-solving court. See COURT.

pro bono (proh **boh**-noh), *adv.* & *adj.* [Latin *pro bono publico* "for the public good"] (1966) Being or involving uncompensated legal services performed esp. for the public good <took the case pro bono> <50 hours of pro bono work each year>. [Cases: Attorney and Client ⇨ 23, 132.]

> "The bar in this country has a long-standing tradition of service *pro bono publico* — legal services 'for the public good,' provided at no cost or a reduced fee. This concept encompasses a wide range of activities, including law reform efforts, participation in bar associations and civic organizations, and individual or group representation. Clients who receive such assistance also span a broad range including: poor people, nonprofit organizations, ideological or political causes, and friends, relatives, or employees of the lawyer." Deborah L. Rhode & Geoffrey C. Hazard, *Professional Responsibility* 162 (2002).

pro bono et malo (proh **boh**-noh et **mal**-oh). [Latin] For good and ill. See DE BONO ET MALO.

pro bono publico (proh **boh**-noh **pəb**-li-koh *or* **poo**-bli-koh). [Latin] *Hist.* For the public good. Cf. PRO PRIVATO COMMODO.

probus et legalis homo (**proh**-bəs et lə-**gay**-lis **hoh**-moh). [Law Latin] A good and lawful man. • This phrase referred to a juror who was legally competent to serve on a jury. Pl. ***probi et legales homines.***

procedendo (proh-sə-**den**-doh). [Latin] A higher court's order directing a lower court to determine and enter a judgment in a previously removed case.

procedendo ad judicium. See DE PROCEDENDO AD JUDICIUM.

procedural consolidation. See JOINT ADMINISTRATION.

procedural-default doctrine. (1980) The principle that a federal court lacks jurisdiction to review the merits of a habeas corpus petition if a state court has refused to review the complaint because the petitioner failed to follow reasonable state-court procedures. [Cases: Habeas Corpus ⇨ 313–431.]

procedural due process. See DUE PROCESS.

procedural law. (1896) The rules that prescribe the steps for having a right or duty judicially enforced, as opposed to the law that defines the specific rights or duties themselves. — Also termed *adjective law*. Cf. SUBSTANTIVE LAW. [Cases: Statutes ⇨ 242.]

procedural main motion. See *incidental main motion* under MOTION (2).

procedural motion. See MOTION (2).

procedural point. See POINT.

procedural presumption. See PRESUMPTION.

procedural right. See RIGHT.

procedural unconscionability. See UNCONSCIONABILITY.

procedure. (16c) **1.** A specific method or course of action. **2.** The judicial rule or manner for carrying on a civil lawsuit or criminal prosecution. — Also termed

rules of procedure. See CIVIL PROCEDURE; CRIMINAL PROCEDURE.

proceeding. (16c) **1.** The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment. **2.** Any procedural means for seeking redress from a tribunal or agency. **3.** An act or step that is part of a larger action. **4.** The business conducted by a court or other official body; a hearing. **5.** *Bankruptcy*. A particular dispute or matter arising within a pending case — as opposed to the case as a whole. [Cases: Bankruptcy ⇨2156.]

> "'Proceeding' is a word much used to express the business done in courts. A proceeding in court is an act done by the authority or direction of the court, express or implied. It is more comprehensive than the word 'action,' but it may include in its general sense all the steps taken or measures adopted in the prosecution or defense of an action, including the pleadings and judgment. As applied to actions, the term 'proceeding' may include—(1) the institution of the action; (2) the appearance of the defendant; (3) all ancillary or provisional steps, such as arrest, attachment of property, garnishment, injunction, writ of *ne exeat*; (4) the pleadings; (5) the taking of testimony before trial; (6) all motions made in the action; (7) the trial; (8) the judgment; (9) the execution; (10) proceedings supplementary to execution, in code practice; (11) the taking of the appeal or writ of error; (12) the *remittitur*, or sending back of the record to the lower court from the appellate or reviewing court; (13) the enforcement of the judgment, or a new trial, as may be directed by the court of last resort." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 3-4 (2d ed. 1899).

adjudicatory proceeding. See *adjudication hearing* under HEARING.

administrative proceeding. See ADMINISTRATIVE PROCEEDING.

collateral proceeding. (18c) A proceeding brought to address an issue incidental to the principal proceeding.

competency proceeding. (1925) A proceeding to assess a person's mental capacity. • A competency hearing may be held either in a criminal context to determine a defendant's competency to stand trial or as a civil proceeding to assess whether a person should be committed to a mental-health facility or should have a guardian appointed to manage the person's affairs.

contempt proceeding. (1859) A judicial or quasi-judicial hearing conducted to determine whether a person has committed contempt. [Cases: Contempt ⇨40.]

core proceeding. See CORE PROCEEDING.

criminal proceeding. (16c) A proceeding instituted to determine a person's guilt or innocence or to set a convicted person's punishment; a criminal hearing or trial.

ex parte proceeding (eks **pahr**-tee). (18c) A proceeding in which not all parties are present or given the opportunity to be heard. — Also termed *ex parte hearing*.

in camera proceeding (in **kam**-ə-rə). (1958) A proceeding held in a judge's chambers or other private place. [Cases: Pretrial Procedure ⇨411; Privileged Communications and Confidentiality ⇨31.]

informal proceeding. (18c) A trial conducted in a more relaxed manner than a typical court trial, such as an administrative hearing or a trial in small-claims court. [Cases: Administrative Law and Procedure ⇨469; Courts ⇨176.]

involuntary proceeding. See *involuntary bankruptcy* under BANKRUPTCY.

judicial proceeding. (16c) Any court proceeding; any proceeding initiated to procure an order or decree, whether in law or in equity.

noncore proceeding. See RELATED PROCEEDING.

posttrial proceeding. Action on a case that occurs after the trial is completed.

proceeding in rem. A proceeding brought to affect all persons' interests in a thing that is subject to the power of a state. [Cases: Action ⇨16.]

proceeding quasi in rem. A proceeding brought to affect particular persons' interests in a thing. [Cases: Action ⇨16.]

quasi-criminal proceeding. *Procedure*. A civil proceeding that is conducted in conformity with the rules of a criminal proceeding because a penalty analogous to a criminal penalty may apply, as in some juvenile proceedings. • For example, juvenile delinquency is classified as a civil offense. But like a defendant in a criminal trial, an accused juvenile faces a potential loss of liberty. So criminal procedure rules apply. [Cases: Action ⇨18; Infants ⇨194.1, 195.]

related proceeding. See RELATED PROCEEDING.

special proceeding. (18c) **1.** A proceeding that can be commenced independently of a pending action and from which a final order may be appealed immediately. **2.** A proceeding involving statutory or civil remedies or rules rather than the rules or remedies ordinarily available under rules of procedure; a proceeding providing extraordinary relief. [Cases: Action ⇨20.]

summary proceeding. (17c) A nonjury proceeding that settles a controversy or disposes of a case in a relatively prompt and simple manner. — Also termed *summary trial*. Cf. *plenary action* under ACTION (4).

> "Summary proceedings were such as were directed by Act of Parliament, there was no jury, and the person accused was acquitted or sentenced only by such person as statute had appointed for his judge. The common law was wholly a stranger to summary proceedings." A.H. Manchester, *Modern Legal History of England and Wales, 1750-1950* 160 (1980).

supplementary proceeding. (17c) **1.** A proceeding held in connection with the enforcement of a judgment, for the purpose of identifying and locating the debtor's assets available to satisfy the judgment. **2.** A proceeding that in some way supplements another. [Cases: Execution ⇨358; Federal Civil Procedure ⇨2707.]

proceedings below. See STATEMENT OF THE CASE (1).

proceeds (**proh**-seedz), *n.* (13c) **1.** The value of land, goods, or investments when converted into money; the amount of money received from a sale <the proceeds are subject to attachment>. **2.** Something received upon selling, exchanging, collecting, or otherwise disposing of collateral. UCC § 9-102(a)(67). • Proceeds differ from other types of collateral because they constitute any collateral that has changed in form. For example, if a farmer borrows money and gives the creditor a security interest in the harvest, the harvested wheat is collateral. If the farmer then exchanges the harvest for a tractor, the tractor becomes the proceeds of the wheat. [Cases: Secured Transactions ☞164.]

net proceeds. (18c) The amount received in a transaction minus the costs of the transaction (such as expenses and commissions). — Also termed *net balance.*

proceeds and avails. The cash-surrender value of a life-insurance policy, together with values built up since the policy's issue date and the benefits payable on maturity and at the death of the insured. [Cases: Exemptions ☞50(1); Insurance ☞3487.]

proceres (**pros**-ə-reez). [Latin] Nobles; lords. See DOMUS PROCERUM.

process, *n.* (14c) **1.** The proceedings in any action or prosecution <due process of law>. **2.** A summons or writ, esp. to appear or respond in court <service of process>. — Also termed *judicial process*; *legal process.* [Cases: Federal Civil Procedure ☞401; Process ☞1, 3.]

"*Process* is so denominated because it *proceeds* or issues forth in order to bring the defendant into court, to answer the charge preferred against him, and signifies the writs or judicial means by which he is brought to answer." 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 338 (2d ed. 1826).

"The term 'process' is not limited to 'summons.' In its broadest sense it is equivalent to, or synonymous with, 'procedure,' or 'proceeding.' Sometimes the term is also broadly defined as the means whereby a court compels a compliance with its demands.

"'Process' and 'writ' or 'writs' are synonymous, in the sense that every writ is a process, and in a narrow sense of the term 'process' is limited to judicial writs in an action, or at least to writs or writings issued from or out of a court, under the seal thereof and returnable thereto; but it is not always necessary to construe the term so strictly as to limit it to a writ issued by a court in the exercise of its ordinary jurisdiction." 72 CJS *Process* § 2, at 589 (1987).

alias process. A process issued after an earlier process has failed for some reason. • Among the types of alias process are *alias execution*, *alias subpoena*, *alias summons*, and *alias writ.* [Cases: Process ☞45.]

bailable process. A process instructing an officer to take bail after arresting a defendant. • The defendant's discharge is required by law after the tender of suitable security.

civil process. A process that issues in a civil lawsuit. [Cases: Federal Civil Procedure ☞401; Process ☞1.]

compulsory process. A process, with a warrant to arrest or attach included, that compels a person to appear in court as a witness. [Cases: Witnesses ☞2.]

criminal process. A process (such as an arrest warrant) that issues to compel a person to answer for a crime. [Cases: Criminal Law ☞216.]

defective process. Void or voidable process. See *void process*; *voidable process.*

final process. A process issued at the conclusion of a judicial proceeding; esp., a writ of execution. [Cases: Execution ☞1.]

irregular process. A process not issued in accordance with prescribed practice. • Whether the process is void or merely voidable depends on the type of irregularity. Cf. *regular process.*

legal process. Process validly issued. — Also termed *lawful process.*

mesne process (meen). **1.** A process issued between the commencement of a lawsuit and the final judgment or determination. **2.** The procedure by which a contumacious defendant is compelled to plead. — Also termed *writ of mesne process*; *writ of mesne.*

original process. A process issued at the beginning of a judicial proceeding. [Cases: Process ☞1.]

"Original process is any writ or notice by which a defendant is called upon to appear and answer the plaintiff's declaration. The commencement of the suit at common law was formerly by original writ. Judicial process was by summons, attachment, arrest and outlawry." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 3, at 17 (Henry Winthrop Ballantine ed., 3d ed. 1923).

regular process. A process that issues lawfully according to prescribed practice. Cf. *irregular process.*

summary process. **1.** An immediate process, issuing and taking effect without intermediate applications or delays. **2.** A legal procedure used to resolve a controversy more efficiently and expeditiously than ordinary methods. **3.** The legal documents achieving such a result. **4.** A procedure for repossessing real property from a tenant upon default. See *summary eviction* under EVICTION. [Cases: Landlord and Tenant ☞293.] **5.** SHOW-CAUSE PROCEEDING.

trust process. In some states (particularly in New England), garnishment or foreign attachment. [Cases: Garnishment ☞1.]

voidable process. A defective process with a curable defect. [Cases: Process ☞151–167.]

void process. Legal process that, in some material way, does not comply with the required form.

3. *Patents.* A method, operation, or series of actions intended to achieve some new and useful end or result by changing a material's chemical or physical characteristics. • Process is a statutory category of patentable invention. Cf. MACHINE; MANUFACTURE. [Cases: Patents ☞7.]

"A process is a way of doing something. If it is a patentable process, it must be a new, useful, and nonobvious way of doing something. If the process is patentable, the result

of that process — the something getting done — need not of itself be new, useful, or nonobvious. In other words, the result of an inventive process need not be an invention itself." Arthur R. Miller & Michael H. Davis, *Intellectual Property in a Nutshell* 24 (2d ed. 1990).

process, abuse of. See ABUSE OF PROCESS.

process agent. See AGENT (2).

process by foreign attachment. See FACTORIZING PROCESS.

process claim. See PATENT CLAIM.

processioning. The survey and inspection of land boundaries, performed esp. in the former English colonies along the southeastern seaboard, and analogous to the English *perambulation*.

process patent. See PATENT (3).

process server. (17c) A person authorized by law or by a court to formally deliver process to a defendant or respondent. See SERVICE (1). [Cases: Federal Civil Procedure ☞418; Process ☞50.]

processum continuando (prə-**ses**-əm kən-tin-yoo-**an**-doh). [Latin "for continuing process"] *Hist.* A writ for the continuation of process after the death of a justice authorized to review cases by a commission of oyer and terminer.

procès-verbal (proh-**say**-vair-**bahl**). [French "official record of oral proceedings"] *Civil & int'l law.* A detailed, authenticated written report of a proceeding, esp. of an international conference; PROTOCOL (3). • A *procès-verbal* may be cast in various forms, according to the style a country prefers.

prochein ami (**proh**-shen ə-**mee**). [Law French] See NEXT FRIEND.

proclaim, *vb.* To declare formally or officially.

proclamation. A formal public announcement made by the government.

proclamation by lord of manor. *Hist.* A proclamation (repeated three times) made by the lord of a manor requiring an heir or devisee of a deceased copyholder to pay a fine and be admitted to the estate, failing which the lord could seize the lands provisionally.

proclamation of exigents (**eks**-ə-jənts). *Hist.* Repeated proclamations by the sheriff of an imminent outlawing of a person in the county where the person lived. See EXIGENT.

proclamation of rebellion. *Hist.* A proclamation made by the sheriff, warning a person who failed to obey a Chancery subpoena or attachment that a commission of rebellion would issue if the person continued to resist the Chancery process. See COMMISSION OF REBELLION.

proclamation of recusants (**rek**-yə-zənts). *Hist.* A proclamation by which persons who willfully absented themselves from church could be convicted on nonappearance at the assizes.

proclamator (**prok**-lə-may-tər). *Hist.* An official at the English Court of Common Pleas responsible for making proclamations.

procompetitive, *adj.* Increasing, encouraging, or preserving competition. Cf. ANTICOMPETITIVE.

pro-con debate. See DEBATE.

pro-con divorce. See DIVORCE.

pro confesso (proh kən-**fes**-oh). [Latin] *Roman law.* As having confessed or admitted liability, as by failing to appear when required. • A defendant who failed to answer a bill in equity was often treated *pro confesso*.

pro consilio impendendo (proh kən-**sil**-ee-oh im-pen-**den**-doh). [Law Latin] For counsel to be given. • The phrase describes consideration in the form of a commitment to give legal advice in exchange for an annuity.

pro consilio impenso (proh kən-**sil**-ee-oh im-pen-**soh**). For counsel given.

proconsul (proh-**kon**-səl), *n.* [Latin] *Roman law.* **1.** An ex-consul whose consular powers were extended by the Senate or emperor after leaving office. **2.** The governor of certain senatorial provinces.

pro convicto. As convicted.

pro corpore regni (proh **kor**-pə-ree **reg**-nɪ). [Latin] In behalf of the body of the realm.

proctor. 1. One appointed to manage the affairs of another. **2.** An advocate who represents clients in ecclesiastical courts; PROCURATOR (4). **3.** DIVORCE PROCTOR. **4.** An advocate who represents a party in the admiralty side of a district court. — Also termed (in sense 4) *proctor in admiralty*.

proctorship. See PROCURATORIUM.

procuracy (**prok**-yə-rə-see). The document that grants power to an attorney-in-fact; a letter of agency.

procurare (prok-yə-**rair**-ee), *vb.* [Latin] To take care of another's affairs.

procuratio (prok-yə-**ray**-shee-oh). [Latin] Management of another's affairs; agency.

procuration (prok-yə-**ray**-shən). **1.** The act of appointing someone as an agent or attorney-in-fact. [Cases: Principal and Agent ☞10(1).] **2.** The authority vested in a person so appointed; the function of an attorney. **3.** PROCUREMENT.

procurationes ad resignandum in favorem (prok-yə-ray-shee-**oh**-neez ad rez-ig-**nan**-dəm in fə-**vor**-əm). [Law Latin] *Hist.* Procuratories of resignation in favor of the disponee of a vassal. • The phrase referred to the rule requiring a vassal's resignation before a superior had to receive the disponee of a vassal to the property. See RESIGNATION (3).

procuration fee. *English law.* A commission or brokerage allowed to a solicitor for obtaining a loan. — Also termed *procuration money*.

procurator (**prok**-yə-ray-tər), *n.* **1.** *Roman law.* A person informally appointed to represent another in a judicial proceeding. Cf. COGNITOR. **2.** *Roman law.* A

government official, usu. subordinate in authority to a provincial governor; one of several imperial officers of the Roman Empire entrusted with the management of the financial affairs of the province and often having administrative powers in a province as agents of the emperor. **3.** *Hist. English law.* An agent, attorney, or servant. **4.** *Eccles. law.* An advocate of a religious house; a lawyer who represents a cleric or religious society in legal matters. — Also termed *proctor.* **5.** An agent or attorney-in-fact. **6.** *Scots law.* A solicitor who represents clients in the lower courts; formerly, any law agent.

procuratores ecclesiae parochialis (prok-yə-rə-**tor**-eez e-**klee**-z[h]ee-ee pə-roh-kee-**ay**-lis). [Latin] *Hist.* A churchwarden; a representative of a parish church.

procurator fiscal. *Scots law.* The representative of the Lord Advocate in inferior courts, responsible for investigating sudden deaths and crimes and for prosecuting in the sheriff or district court.

procurator in rem suam (prok-yə-**ray**-tər in rem **s**[y] **oo**-əm). [Latin] **1.** *Roman law.* An assignee of a right of action. • True agency did not exist in Roman law, so a principal whose agent had, for example, bought something on the principal's behalf would have to be made the agent's procurator to claim under that sale. **2.** *Scots law.* Procurator in his own affair. • This phrase refers to a situation in which a person acts under a power of attorney with reference to property that the person has acquired.

procuratorio nomine (prok-yə-rə-**tor**-ee-oh **nahm**-ə-nee). [Latin] *Hist.* In the name and character of a procurator. See PROCURATOR.

procuratorium (prok-yə-rə-**tor**-ee-əm), *n.* [Law Latin] *Hist.* The instrument by which a person appointed a procurator as the person's representative in litigation. — Also termed *proctorship; proxy.*

procurator litis (prok-yə-**ray**-tər **lı**-tis). [Latin] *Roman law.* A person who represents another in a lawsuit. — Often shortened to *procurator.* Cf. DEFENSOR (1).

procurator negotiorum (prok-yə-**ray**-tər ni-goh-shee-**or**-əm). [Latin] *Civil law.* An attorney-in-fact; a manager of business affairs for another.

procurator provinciae (prok-yə-**ray**-tər prə-**vin**-shee-ee). [Latin] *Roman law.* See PROCURATOR (2).

procuratory (**prok**-yə-rə-tor-ee), *adj.* Of, relating to, or authorizing a procuration. See PROCURATION.

procuratory, *n.* **1.** *Civil law.* Authorization of one person to act for another. **2.** *Scots law.* A mandate or commission for one person to act for another; POWER OF ATTORNEY. See PROCURATOR.

procuratrix (prok-yə-**ray**-triks). [Latin] *Hist.* A female agent or attorney-in-fact.

procurement (proh-**kyoor**-mənt), *n.* (14c) **1.** The act of getting or obtaining something or of bringing something about. — Also termed *procuration.* **2.** The act of persuading or inviting another, esp. a woman or child, to have illicit sexual intercourse. — **procure,** *vb.*

procurement contract. See CONTRACT.

procurement of breach of contract. See TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS.

procurer. (15c) One who induces or prevails upon another to do something, esp. to engage in an illicit sexual act. See PIMP.

procuring agent. See AGENT (2).

procuring an abortion. See ABORTION.

procuring cause. See CAUSE (1).

procuring miscarriage. *Hist.* See ABORTION (1).

pro. def. *abbr.* PRO DEFENDENTE.

pro defectu emptorum (proh di-**fek**-t[y]oo emp-**tor**-əm). [Latin] For want of purchasers.

pro defectu exitus (proh di-**fek**-t[y]oo **eks**-ə-təs). [Latin] For, or in case of, default of issue.

pro defectu haeredis (proh di-**fek**-t[y]oo hə-**ree**-dis). [Latin] For want of an heir.

pro defectu justitiae (proh di-**fek**-t[y]oo jəs-**tish**-ee-ee). [Latin] For defect or want of justice.

pro defendente (proh def-ən-**den**-tee). [Latin] For the defendant. — Abbr. *pro. def.* Cf. PRO QUERENTE.

pro derelicto (proh der-ə-**lik**-toh). [Latin] As derelict or abandoned. • This refers to property subject to *usucapio.* See USUCAPIO.

prodigal (**prod**-ə-gəl), *n. Civil law.* A person whose affairs are managed by a curator because of the person's wasteful spending or other bad conduct. • In Roman law, the agnatic family of a prodigal (*prodigus*) or spendthrift could result in that person's being prohibited from engaging in certain legal transactions, and the person's estate being put in the charge of a curator. See *cura prodigi* under CURA.

pro dignitate regali (proh dig-nə-**tay**-tee ri-**gay**-lı). [Latin] In consideration of the royal dignity.

prodigus (**prod**-ə-gəs), *n. & adj.* [Latin "a spendthrift"] *Roman law.* See PRODIGAL.

prodition (prə-**dish**-ən). *Archaic.* Treason; treachery.

proditor (**prod**-i-tər), *n. Roman law.* **1.** A traitor. **2.** An informer.

proditorie (proh-di-**tor**-ee-ee), *adv.* [Latin] Treasonably. • This word formerly appeared in a treason indictment.

pro diviso (proh di-**vı**-zoh). [Latin] As divided; i.e., in severalty.

pro domino (proh **dom**-ə-noh). [Latin] As master or owner; in the character of a master.

pro donatione (proh də-**nay**-shee-oh-nee). [Latin] *Roman & civil law.* As a gift; as in case of gift. • This is a ground of *usucapio.* — Also written *pro donato.* See USUCAPIO.

pro dote (proh **doh**-tee). [Latin] *Civil law.* As a dowry; by title of dowry. • This is a ground of *usucapio.* See USUCAPIO.

produce (**proh**-doos), *n.* The product of natural growth, labor, or capital; esp., agricultural products.

produce (prə-**doos**), *vb.* (15c) **1.** To bring into existence; to create. **2.** To provide (a document, witness, etc.) in response to subpoena or discovery request. **3.** To yield (as revenue). **4.** To bring (oil, etc.) to the surface of the earth.

producent (prə-**d**[y]**oo**-sənt), *n. Hist. Eccles. law.* The party calling a witness.

producer. See INSURANCE AGENT.

producer price index. An index of wholesale price changes, issued monthly by the U.S. Bureau of Labor Statistics. — Formerly also termed *wholesale price index.* Cf. CONSUMER PRICE INDEX.

producing cause. See *proximate cause* under CAUSE (1).

product. (1825) Something that is distributed commercially for use or consumption and that is usu. (1) tangible personal property, (2) the result of fabrication or processing, and (3) an item that has passed through a chain of commercial distribution before ultimate use or consumption. See ARTICLE OF MANUFACTURE; PRODUCTS LIABILITY. [Cases: Products Liability ⟹ 120.]

defective product. (1903) A product that is unreasonably dangerous for normal use, as when it is not fit for its intended purpose, inadequate instructions are provided for its use, or it is inherently dangerous in its design or manufacture. [Cases: Products Liability ⟹ 122.]

product-by-process claim. See PATENT CLAIM.

product claim. See PATENT CLAIM.

product defect. See DEFECT.

product disparagement. See TRADE DISPARAGEMENT.

product-extension merger. See MERGER.

production burden. See BURDEN OF PRODUCTION.

production casing. See CASING.

production for commerce. The production of goods that an employer intends for interstate commerce. • This is one criterion by which an employer may be subject to the Fair Labor Standards Act. [Cases: Commerce ⟹ 62.44–62.67; Labor and Employment ⟹ 2227.]

production of suit. (1830) *Common-law pleading.* The plaintiff's burden to produce evidence to confirm the allegations made in the declaration.

production payment. *Oil & gas.* A share of oil-and-gas production from property, free of the costs of production, ending when an agreed sum has been paid. [Cases: Mines and Minerals ⟹ 79.1(2).]

productio sectae (prə-**dək**-shee-oh **sek**-tee). [Latin] See PRODUCTION OF SUIT.

product liability. See PRODUCTS LIABILITY.

product-liability loss. See LOSS.

product-line exception. An exception from the usual rule that a successor corporation is not liable for the acts of its predecessor, arising when the successor acquired all the predecessor's assets, held itself out as a continuation of the predecessor by producing the same product line under the same or a similar name, and benefited from the predecessor's goodwill.

product mark. See *product trademark* under TRADEMARK.

product market. See MARKET.

product rule. A means of calculating the likelihood that a series of independent events will occur jointly, done by multiplying together the probability of each event. [Cases: Criminal Law ⟹ 388.2.]

products liability, *n.* (1925) **1.** A manufacturer's or seller's tort liability for any damages or injuries suffered by a buyer, user, or bystander as a result of a defective product. • Products liability can be based on a theory of negligence, strict liability, or breach of warranty. [Cases: Products Liability ⟹ 111.] **2.** The legal theory by which liability is imposed on the manufacturer or seller of a defective product. **3.** The field of law dealing with this theory. — Also termed *product liability*; (specif.) *manufacturer's liability.* See LIABILITY. — **products-liability,** *adj.*

> "The law of products liability is that body of common and statutory law permitting money reparation for substandard conduct of others resulting in product-related injury to the injured party's person or property. Resistance to the description of products liability as a doctrine having receded, there is today a guiding tenet in the law of product-related injury that is the distillate of seventy years of decisional law. The birth of the doctrine can be dated at 1916, the publication of the immensely influential decision in *MacPherson v. Buick Motor Co.*, [217 N.Y. 382, 111 N.E. 1050 (1916)], in which the New York Court of Appeals held that the manufacturer of any product capable of serious harm if incautiously made owed a duty of care in the design, inspection, and fabrication of the product, a duty owed not only to the immediate purchaser but to all persons who might foreseeably come into contact with the product. Following MacPherson, the doctrine as formed by decisions of the ensuing decades is that a buyer, user, consumer or bystander in proximity to an unreasonably dangerous product, and who is injured in person or in property by its dangerous propensities, may recover in damages from the manufacturer or intermediate seller." 1 M. Stuart Madden, *Products Liability* § 1.1, at 1–2 (2d ed. 1988).

strict products liability. (1964) Products liability arising when the buyer proves that the goods were unreasonably dangerous and that (1) the seller was in the business of selling goods, (2) the goods were defective when they were in the seller's hands, (3) the defect caused the plaintiff's injury, and (4) the product was expected to and did reach the consumer without substantial change in condition. [Cases: Products Liability ⟹ 113.]

products-liability action. A lawsuit brought against a manufacturer, seller, or lessor of a product — regardless of the substantive legal theory or theories upon which the lawsuit is brought — for personal injury, death, or property damage caused by the manufacture, construction, design, formulation, installation, preparation, or assembly of a product. — Also termed *product-liability action.* [Cases: Products Liability ⟹ 110; Sales ⟹ 425.]

products-liability insurance. See INSURANCE.

product test. See DURHAM RULE.

product trademark. See TRADEMARK.

pro emptore (proh emp-**tor**-ee). [Latin] *Civil law.* As a purchaser; by the title of a purchaser. See USUCAPIO.

pro et durante. For and during.

pro facto (proh **fak**-toh). [Latin] For the fact; considered or held as fact.

pro falso clamore suo (proh **fal**-soh [*or* **fawl**-soh] klə-**mor**-ee s[**y**]**oo**-oh). [Latin "for his false claim"] A nominal amercement of a plaintiff for a false allegation, inserted in a judgment for the defendant.

profane, *adj.* (Of speech or conduct) irreverent to something held sacred.

profanity. Obscene, vulgar, or insulting language; BLASPHEMY. • Profanity is distinguished from mere vulgarity and obscenity by the additional element of irreverence toward or mistreatment of something sacred. [Cases: Criminal Law ⇨45.20.]

profectitium peculium (pro-fek-**tish**-ee-əm pə-*kyoo*-lee-əm). *Hist. Roman law.* Property that a father allowed a son in *patria potestas* to manage and use while the father retained ownership. — Also written *peculium profectitium.*

profectitius (proh-fek-**tish**-ee-əs). [Latin] That which descends from an ancestor.

profer (**proh**-fər). *Hist.* **1.** An offer or proffer. **2.** A return made by a sheriff of an account into the Exchequer.

proferens (proh-**fer**-enz). [Latin] The party that proposes a contract or a condition in a contract. Pl. ***proferentes*** (proh-fə-**ren**-teez).

profert (**proh**-fərt). (18c) *Common-law pleading.* A declaration on the record stating that a party produces in court the deed or other instrument relied on in the pleading. [Cases: Bills and Notes ⇨488; Pleading ⇨305.]

profert in curia (**proh**-fərt in **kyoor**-ee-ə). [Law Latin] He produces in court. • In common-law pleading, this phrase was used in a declaration asserting that the plaintiff was ready to produce, or had produced, the deed or other instrument on which the action was founded.

profess, *vb.* (16c) To declare openly and freely; to confess.

professio juris (prə-**fes**[**h**]-ee-oh **joor**-is). [Latin] A recognition of the right of a contracting party to stipulate the law that will govern the contract.

profession. (15c) **1.** A vocation requiring advanced education and training; esp., one of the three traditional learned professions — law, medicine, and the ministry.

> "Learned professions are characterized by the need of unusual learning, the existence of confidential relations, the adherence to a standard of ethics higher than that of the market place, and in a profession like that of medicine by intimate and delicate personal ministration. Traditionally, the learned professions were theology, law and medicine; but some other occupations have climbed, and still others may climb, to the professional plane." *Commonwealth v. Brown*, 20 N.E.2d 478, 481 (Mass. 1939).

2. Collectively, the members of such a vocation.

professional, *n.* (1846) A person who belongs to a learned profession or whose occupation requires a high level of training and proficiency.

professional association. See ASSOCIATION.

professional corporation. See CORPORATION.

professional goodwill. See *personal goodwill* under GOODWILL.

professionalism. The practice of a learned art in a characteristically methodical, courteous, and ethical manner.

professional negligence. See MALPRACTICE.

professional relationship. See RELATIONSHIP.

proffer (**prof**-ər), *vb.* (14c) To offer or tender (something, esp. evidence) for immediate acceptance. [Cases: Criminal Law ⇨670; Federal Civil Procedure ⇨2013; Trial ⇨44.] — **proffer,** *n.*

proffered evidence. See EVIDENCE.

proficua (prə-**fik**-yoo-ə). [Law Latin] *Hist.* Profits; esp., the profits of an estate in land.

profiling. 1. See RACIAL PROFILING. **2.** See LINGUISTIC PROFILING.

profit, *n.* (13c) **1.** The excess of revenues over expenditures in a business transaction; GAIN (2). Cf. EARNINGS; INCOME. [Cases: Internal Revenue ⇨3178; Taxation ⇨3466.]

accumulated profit. Profit that has accrued but not yet been distributed; earned surplus. — Also termed *undivided profit.* See *retained earnings* under EARNINGS. [Cases: Internal Revenue ⇨3833.]

gross profit. Total sales revenue less the cost of the goods sold, no adjustment being made for additional expenses and taxes. Cf. *net profit.* [Cases: Internal Revenue ⇨3175; Taxation ⇨3447, 3466.]

lost profits. See LOST PROFITS.

mesne profits. The profits of an estate received by a tenant in wrongful possession between two dates. — Also termed (archaically) *medium tempus.* [Cases: Ejectment ⇨124.]

net profit. Total sales revenue less the cost of the goods sold and all additional expenses. — Also termed *net revenue.* Cf. *gross profit.* [Cases: Internal Revenue ⇨3175; Taxation ⇨3448, 3466.]

operating profit. Total sales revenue less all operating expenses, no adjustment being made for any nonoperating income and expenses, such as interest payments. [Cases: Internal Revenue ⇨3175; Taxation ⇨3448, 3466.]

paper profit. A profit that is anticipated but not yet realized. • Gains from stock holdings, for example, are paper profits until the stock is actually sold at a price higher than its original purchase price. — Also

termed *unrealized profit*. [Cases: Internal Revenue ⇨3178; Taxation ⇨3449.]

short-swing profits. See SHORT-SWING PROFITS.

surplus profit. *Corporations.* The excess of revenue over expenditures. • Some jurisdictions prohibit the declaration of a dividend from sources other than surplus profit. [Cases: Corporations ⇨151.]

undistributed profit. See *retained earnings* under EARNINGS.

undivided profit. See *accumulated profit.*

unrealized profit. See *paper profit.*

2. A servitude that gives the right to pasture cattle, dig for minerals, or otherwise take away some part of the soil; PROFIT À PRENDRE. • A profit may be either appurtenant or in gross. See SERVITUDE (1). [Cases: Licenses ⇨43.]

profit appendant (ə-**pen**-dənt). A profit annexed to land by operation of law; esp., a common of pasture. See *common appendant* under COMMON.

profit appurtenant (ə-**pərt**-ən-ənt). A profit, whether several or in common, attached to land, for the benefit of certain other identified land, by the act of the parties (as by grant or by prescription). See *common appurtenant* under COMMON.

profit in gross (in **grohs**). A profit exercisable by the owner independently of his or her ownership of land. See *common in gross* under COMMON.

> "[A] right to take fish from a canal without stint (i.e., without limit) can exist as a profit in gross, but not, as already seen, as a profit appurtenant. A profit in gross is an interest in land which will pass under the owner's will or intestacy or can be sold or dealt with in any of the usual ways." Robert E. Megarry & M.P. Thompson, *A Manual of the Law of Real Property* 377 (6th ed. 1993).

profit pur cause de vicinage (pər **kawz** də **vis**-ə-nij). A profit arising when the holders of adjoining commons have allowed their cattle to stray on each other's lands. • A claim for this profit fails if one of the commoners fences off the common or has in the past driven off the other commoner's cattle.

profit-and-loss account. See ACCOUNT.

profit-and-loss statement. See INCOME STATEMENT.

profit à prendre (a **prawn**-drə *or* ah **prahn**-dər). [Law French "profit to take"] (*usu. pl.*) (17c) A right or privilege to go on another's land and take away something of value from its soil or from the products of its soil (as by mining, logging, or hunting). — Also termed *right of common*. Pl. **profits à prendre.** Cf. EASEMENT. [Cases: Licenses ⇨43.]

> "A profit à prendre has been described as 'a right to take something off another person's land.' This is too wide; the thing taken must be something taken out of the soil, i.e., it must be either the soil, the natural produce thereof, or the wild animals existing on it; and the thing taken must at the time of taking be susceptible of ownership. A right to 'hawk, hunt, fish, and fowl' may thus exist as a profit, for this gives the right to take creatures living on the soil which, when killed, are capable of being owned. But a right to take water from a spring or a pump, or the right to water cattle at a pond, may be an easement but cannot be a profit; for the water, when taken, was not owned by anyone nor was it part of the soil." Robert E. Megarry & M.P. Thompson, *A Manual of the Law of Real Property* 375–76 (6th ed. 1993).

profiteering, *n.* (1814) The taking advantage of unusual or exceptional circumstances to make excessive profits, as in the selling of scarce goods at inflated prices during war. [Cases: War and National Emergency ⇨59.] — **profiteer,** *vb.*

profit insurance. See INSURANCE.

profit margin. 1. The difference between the cost of something and the price for which it is sold. **2.** The ratio, expressed as a percentage, between this difference and the selling price. • For example, a widget costing a retailer $10 and selling for $15 has a profit margin of 33% ($5 difference divided by $15 selling price). — Often shortened to *margin*.

profit-sharing plan. An employee benefit plan that allows an employee to share in the company's profits. • ERISA governs the administration of many profit-sharing plans, which provide for discretionary employer contributions and provide a definite predetermination formula for allocating the contributions to the plan among the participants. Contributions are frequently allocated in proportion to each participant's compensation. See EMPLOYEE BENEFIT PLAN; EMPLOYEE RETIREMENT INCOME SECURITY ACT. [Cases: Labor and Employment ⇨491.]

qualified profit-sharing plan. A plan in which an employer's contributions are not taxed to the employee until distribution. • The employer is allowed to deduct the contributions. IRC (26 USCA) § 401(a). — Often shortened to *qualified plan*. [Cases: Internal Revenue ⇨3578.]

pro forma (proh **for**-mə), *adj.* [Latin "for form"] (16c) **1.** Made or done as a formality. **2.** (Of an invoice or financial statement) provided in advance to describe items, predict results, or secure approval.

pro forma amendment. See AMENDMENT (3).

pro forma earnings. See *operating earnings* under EARNINGS.

pro forma session. See SESSION (1).

progener (proh-**jee**-nər). [Latin] A grandson-in-law.

progeny (**proj**-ə-nee), *n. pl.* (14c) **1.** Children or descendants; offspring <only one of their progeny attended law school>. **2.** In a figurative sense, a line of precedents that follow a leading case <*Erie* and its progeny>.

prognosis (prog-**noh**-sis). (17c) **1.** The process of forecasting the probable outcome of a present medical condition (such as a disease). **2.** The forecast of such an outcome. Cf. DIAGNOSIS. [Cases: Health ⇨637–640, 906.]

program. *Parliamentary law.* **1.** An agenda for a meeting or a convention, listing the order of business and possibly including educational or social events. See AGENDA; *business meeting* under MEETING. **2.** A speech

or other presentation within a meeting offered for the assembly's information or for the members' education or entertainment, but not for their formal consideration or action as a deliberative assembly.

program committee. See COMMITTEE.

program trading. A form of computerized securities trading that usu. involves buying or selling large amounts of stocks while simultaneously selling or buying index futures in offsetting amounts.

pro gravitate admissi (proh grav-ə-**tay**-tee ad-**mis**-ī). [Latin] *Hist.* According to the gravity of the offense.

progressive lawyering. See CAUSE LAWYERING.

progressive loss. See LOSS.

progressive tax. See TAX.

pro hac vice (proh hahk **vee**-chay *or* hak **vī**-see *also* hahk **vees**). [Latin] (17c) For this occasion or particular purpose. • The phrase usu. refers to a lawyer who has not been admitted to practice in a particular jurisdiction but who is admitted there temporarily for the purpose of conducting a particular case. — Abbr. *p.h.v.* See *admission pro hac vice* under ADMISSION (2). For *owner pro hac vice*, see *demise charter* under CHARTER (8). [Cases: Attorney and Client ⇨ 10.]

prohibit, *vb.* **1.** To forbid by law. **2.** To prevent or hinder.

prohibited and reserved trademarks. See TRADEMARK.

prohibited degree. See DEGREE.

prohibited substitution. See SUBSTITUTION.

prohibitio de vasto, directa parti (proh-hə-**bish**-ee-oh dee **vas**-toh, di-**rek**-tə **pahr**-tī). [Latin "prohibition of waste, directed to the party"] *Hist.* A writ issued during litigation prohibiting a tenant from committing waste.

prohibition. (15c) **1.** A law or order that forbids a certain action. **2.** An extraordinary writ issued by an appellate court to prevent a lower court from exceeding its jurisdiction or to prevent a nonjudicial officer or entity from exercising a power. — Also termed (in sense 2) *writ of prohibition*; *inhibition*; (in Scots law) *inhibition*. Cf. WRIT OF CONSULTATION. [Cases: Prohibition ⇨ 1.]

> "Prohibition is a kind of common-law injunction to prevent an unlawful assumption of jurisdiction. . . . It is a common-law injunction against governmental usurpation, as where one is called coram non judice (before a judge unauthorized to take cognizance of the affair), to answer in a tribunal that has no legal cognizance of the cause. It arrests the proceedings of any tribunal, board, or person exercising judicial functions in a manner or by means not within its jurisdiction or discretion." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 341, at 542 (Henry Winthrop Ballantine ed., 3d ed. 1923).

3. (*cap.*) The period from 1920 to 1933, when the manufacture, transport, and sale of alcoholic beverages in the United States was forbidden by the 18th Amendment to the Constitution. • The 18th Amendment was repealed by the 21st Amendment. [Cases: Intoxicating Liquors ⇨ 17.]

prohibitive statute. See STATUTE.

prohibitory injunction. See INJUNCTION.

prohibitory interdict. See INTERDICT (1).

pro illa vice (proh **il**-ə **vī**-see). [Latin] For that turn.

pro indefenso (proh in-də-**fen**-soh). [Latin] As undefended; as making no defense.

pro indiviso (proh in-də-**vī**-zoh), *adj.* [Latin "as undivided"] (Of property) owned or possessed by several persons at the same time, without partition.

pro interesse suo (proh in-tər-**es**-ee **s**[**y**]**oo**-oh). [Latin] According to his interest; to the extent of his interest. • A third party, for example, may be allowed to intervene *pro interesse suo*.

project financing. See FINANCING.

projectio (prə-**jek**-shee-oh). [Latin] Alluvion created by the sea. See ALLUVION.

projector. See PROMOTER.

projet (proh-**zhay**). [French] *Int'l law.* A draft of a proposed measure, treaty, or convention.

pro laesione fidei (proh lee-zhee-**oh**-nee **fī**-dee-ī). [Latin] For breach of faith.

pro legato (proh lə-**gay**-toh). [Latin] As a legacy; by the title of a legacy. • This is a ground of *usucapio*. See USUCAPIO.

proles (**proh**-leez). [Latin] Offspring; esp., the issue of a lawful marriage.

proletariat (proh-lə-**tair**-ee-ət). The working class; those without capital who sell their labor to survive.

proletarius (proh-lə-**tair**-ee-əs), *n.* [Latin] *Roman law.* One of the common people; a member of a lower class who owned little or no property.

prolicide (**proh**-lə-sīd). (1826) **1.** The killing of offspring; esp., the crime of killing a child shortly before or after birth. **2.** One who kills a child shortly before or after birth. Cf. INFANTICIDE. — **prolicidal,** *adj.*

prolixity (proh-**lik**-sə-tee). (14c) The unnecessary and superfluous stating of facts and legal arguments in pleading or evidence.

prolixity rejection. See REJECTION.

pro loco et tempore (proh **loh**-koh et **tem**-pə-ree). [Latin] *Hist.* For the place and time.

prolocutor (proh-**lok**-yə-tər). **1.** *Eccles. law.* The president or chair of a convocation. **2.** *Hist.* The speaker of the British House of Lords. • This office now belongs to the Lord Chancellor. — Also termed (in sense 2) *forspeca*.

pro majori cautela (proh mə-**jor**-ī kaw-**tee**-lə). [Latin] For greater caution; by way of additional security. • This phrase usu. applies to an act done or to a clause put in an instrument as a precaution.

promatertera (proh-mə-**tər**-tər-ə). [Latin] *Roman & civil law.* A great-great-aunt; the sister of one's great-grandmother.

promatertera magna (proh-mə-**tər**-tər-ə **mag**-nə). [Latin] *Civil law.* A great-great-great-aunt.

promise, *n.* (15c) **1.** The manifestation of an intention to act or refrain from acting in a specified manner, conveyed in such a way that another is justified in understanding that a commitment has been made; a person's assurance that the person will or will not do something. • A binding promise — one that the law will enforce — is the essence of a contract. [Cases: Contracts ☞1.]

"By common usage, a promise is an expression leading another person justifiably to expect certain conduct on the part of the promisor. Such an expression is a promise, whether enforceable at law or not. It is indeed an essential element in every contract. Society does not guarantee the fulfillment of all expectations so induced." William R. Anson, *Principles of the Law of Contract* 6 n.3 (Arthur L. Corbin ed., 3d Am. ed. 1919).

"[*Promise*] means not only the physical manifestations of assurance by words or conduct, but also the moral duty to make good the assurance by performance. If by reason of other operative facts the promise is recognized as creating a legal duty, the promise is a contract." Samuel Williston, *A Treatise on the Law of Contracts* § 1A, at 4 (Walter H.E. Jaeger ed., 3d ed. 1957).

"It is well to make clear two points at the outset . . . . The first is that I do not believe that all promises are morally binding; accordingly, I use the term 'promise' without prejudging the question whether the promise creates an obligation. The second is that, where a promise does create an obligation, the reason for that may depend upon whether the promise was explicit or implied. There is thus, in my view, a fundamental distinction between explicit and implied promises, and when I use the word 'promise' without qualification, I normally mean an explicit promise." P.S. Atiyah, *Promises, Morals, and Law* 8 (1981).

2. The words in a promissory note expressing the maker's intention to pay a debt. • A mere written acknowledgment that a debt is due is insufficient to constitute a promise. [Cases: Bills and Notes ☞30.] — **promise,** *vb.*

aleatory promise (**ay**-lee-ə-tor-ee). A promise conditional on the happening of a fortuitous event, or on an event that the parties believe is fortuitous. [Cases: Contracts ☞218.]

alternative promise. (17c) A contractual promise to do one of two or more things, any one of which qualifies as consideration.

"A promise in the alternative may be made because each of the alternative performances is the object of desire to the promisee. Or the promisee may desire one performance only, but the promisor may reserve an alternative which he may deem advantageous. In either type of case the promise is consideration if it cannot be kept without some action or forbearance which would be consideration if it alone were bargained for. But if the promisor has an unfettered choice of alternatives, and one alternative would not have been consideration if separately bargained for, the promise in the alternative is not consideration." Restatement (Second) of Contracts § 77 cmt. b (1981).

bare promise. See *gratuitous promise.*

collateral promise. A promise to guarantee the debt of another, made primarily without benefit to the party making the promise. • Unlike an original promise, a collateral promise must be in writing to be enforceable. See MAIN-PURPOSE RULE. [Cases: Guaranty ☞1.]

conditional promise. (16c) A promise that is conditioned on the occurrence of an event other than the lapse of time <she made a conditional promise to sell the gold on April 2 unless the price fell below $300 an ounce before that time>. • A conditional promise is not illusory as long as the condition is not entirely within the promisor's control. [Cases: Contracts ☞58, 218.]

corresponding promise. A mutual promise calling for the performance of an act substantially similar to the act called for by the other mutual promise, both acts being in pursuit of a common purpose.

counterpromise. See COUNTERPROMISE.

dependent promise. (1829) A promise to be performed by a party only when another obligation has first been performed by another party. [Cases: Contracts ☞173, 278(1).]

divisible promises. Promises that are capable of being divided into independent parts.

false promise. A promise made with no intention of carrying it out. Cf. *promissory fraud* under FRAUD.

fictitious promise. See *implied promise.*

gratuitous promise. (17c) A promise made in exchange for nothing; a promise not supported by consideration. • A gratuitous promise is not ordinarily legally enforceable. — Also termed *bare promise*; *naked promise.* [Cases: Contracts ☞47.]

illusory promise. (1841) A promise that appears on its face to be so insubstantial as to impose no obligation on the promisor; an expression cloaked in promissory terms but actually containing no commitment by the promisor. • An illusory promise typically, by its terms, makes performance optional with the promisor. For example, if a guarantor promises to make good on the principal debtor's obligation "as long as I think it's in my commercial interest," the promisor is not really bound. [Cases: Contracts ☞10(1).]

"An apparent promise which, according to its terms, makes performance optional with the promisor no matter what may happen, or no matter what course of conduct in other respects he may pursue, is in fact no promise. Such an expression is often called an illusory promise." Samuel Williston, *A Treatise on the Law of Contracts* § 1A, at 5 (Walter H.E. Jaeger ed., 3d ed. 1957).

implied promise. (18c) A promise created by law to render a person liable on a contract so as to avoid fraud or unjust enrichment. — Also termed *fictitious promise.* [Cases: Implied and Constructive Contracts ☞1.]

"Under some circumstances the promise inferred is called an implied promise and in others it is referred to as a constructive promise. But whichever conclusion is reached, the result is the same. In other words an implied promise and a constructive promise are not treated differently. The theoretical difference between the two is that a promise implied from the conduct of the parties arises by construction of law, only when justice requires it under the circumstances." John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 4-12, at 234–35 (3d ed. 1987).

independent promise. See *unconditional promise.*

marriage promise. *Family law.* A betrothal; an engagement to be married. — Also termed *agreement to marry; promise to marry; promise of marriage.* [Cases: Breach of Marriage Promise ⇨1.]

mutual promises. (16c) Promises given simultaneously by two parties, each promise serving as consideration for the other. See *bilateral contract* under CONTRACT.

naked promise. See *gratuitous promise.*

new promise. A previously unenforceable promise that a promisor revives and agrees to fulfill, as when a debtor agrees to pay a creditor an amount discharged in the debtor's bankruptcy.

original promise. A promise to guarantee the debt of another, made primarily for the benefit of the party making the promise. • An original promise need not be in writing to be enforceable. See MAIN-PURPOSE RULE. [Cases: Frauds, Statute of ⇨23.]

promise implied in fact. (1909) A promise existing by inference from the circumstances or actions of the parties. See *implied promise.* [Cases: Contracts ⇨27.]

promise in consideration of marriage. A promise for which the actual performance of the marriage is the consideration, as when a man agrees to transfer property to a woman if she will marry him. • A promise to marry, however, is not considered a promise in consideration of marriage. [Cases: Breach of Marriage Promise ⇨5.]

promise in restraint of trade. A promise whose performance would limit competition in any business or restrict the promisor in the exercise of a gainful occupation. • Such a promise is usu. unenforceable. [Cases: Contracts ⇨116.]

remedial promise. A seller's promise to repair or replace goods or to refund the price if the goods (1) do not conform to the contract or to a representation at the time of the delivery of the goods, (2) conform at the time of delivery but later fail to perform as agreed, or (3) contain a defect. UCC § 2-102(a)(31).

unconditional promise. (1802) A promise that either is unqualified or requires nothing but the lapse of time to make the promise presently enforceable. • A party who makes an unconditional promise must perform that promise even though the other party has not performed according to the bargain. — Also termed *independent promise.* [Cases: Contracts ⇨218.]

voidable promise. A promise that one party may, under the law, declare void by reason of that party's incapacity or mistake, or by reason of the fraud, breach, or other fault of the other party. [Cases: Contracts ⇨98.]

promisee (prom-is-**ee**). (18c) One to whom a promise is made.

promise not to compete. See *noncompetition covenant* under COVENANT (1).

promise of marriage. See *marriage promise* under PROMISE.

promise to marry. See *marriage promise* under PROMISE.

promisor (prom-is-**or**). (17c) One who makes a promise; esp., one who undertakes a contractual obligation.

promissor (**prom**-is-ər). [Latin] *Civil law.* **1.** A promisor; specif., a party who undertakes to do a thing in response to the interrogation of the other party (the *stipulator*). **2.** See REUS PROMITTENDI.

promissory, *adj.* (15c) Containing or consisting of a promise <the agreement's promissory terms>.

promissory condition. See CONDITION (2).

promissory estoppel. See ESTOPPEL.

promissory fraud. See FRAUD.

promissory note. See NOTE (1).

promissory oath. See OATH.

promissory representation. See REPRESENTATION (1).

promissory restraint. An attempt by an otherwise effective conveyance or contract to discourage a later conveyance by imposing contractual liability on anyone who makes a later conveyance. [Cases: Perpetuities ⇨6(1).]

promissory warranty. See WARRANTY (3).

pro modo admissi (proh **moh**-doh ad-**mis**-i). [Latin] *Hist.* According to the measure of the offense.

promoter. (14c) **1.** A person who encourages or incites. **2.** A founder or organizer of a corporation or business venture; one who takes the entrepreneurial initiative in founding or organizing a business or enterprise. — Formerly also termed *projector.* [Cases: Corporations ⇨30.]

> "The complete judicial acceptance of the term 'promoter' is a matter of comparatively recent date. In some of the early cases, persons engaged in the formation of a corporation are spoken of as 'projectors.' Other cases of about the same period, though recognizing the obligations flowing therefrom, do not give any name to the relation in which such persons stand to the contemplated company. The word *promoter,* while undoubtedly employed in common parlance before that time, does not seem to have been used in any reported decision until after it had been used, and for the purposes of the act defined, in the Joint Stock Companies Act of 1844. . . . [A] person may be said to be a promoter of a corporation if before its organization, he directly or indirectly solicits subscriptions to its stock, or assumes to act in its behalf in the purchase of property, or in the securing of its charter, or otherwise assists in its organization." Manfred W. Ehrich, *The Law of Promoters* § 1, at 2–3; § 13, at 15 (1916).

> "A promoter is a person who takes the initiative in developing and organizing a new business venture. A promoter may act either alone or with co-promoters. The term 'promoter' is not one of opprobrium; indeed, the promoter is often an aggressive, imaginative entrepreneur who fulfills the essential economic function of taking an idea and creating a profitable business to capitalize on the idea." Robert W. Hamilton, *The Law of Corporations in a Nutshell* 64 (3d ed. 1991).

promoting prostitution. See PANDERING (1).

prompt, *vb.* To incite, esp. to immediate action.

promulgare (proh-məl-**gair**-ee), *vb.* [Latin] *Roman law.* To promulgate; to make (a law) publicly known after its enactment.

promulgate (prə-**məl**-gayt *or* **prom**-əl-gayt), *vb.* (16c) **1.** To declare or announce publicly; to proclaim. **2.** To put (a law or decree) into force or effect. **3.** (Of an administrative agency) to carry out the formal process of rulemaking by publishing the proposed regulation, inviting public comments, and approving or rejecting the proposal. — **promulgation** (prom-əl-**gay**-shən *or* proh-məl-), *n.*

promulgation (prom-əl-**gay**-shən *or* proh-məl-). The official publication of a new law or regulation, by which it is put into effect.

promutuum (proh-**myoo**-choo-əm). [Latin "as if lent"] *Civil law.* A quasi-contract in which a person who received money or property in error agrees to return what was received to the person who paid it.

pronepos (proh-**nep**-ohs). [Latin] *Roman & civil law.* A great-grandson. Pl. ***pronepotes.***

proneptis (proh-**nep**-tis). [Latin] *Roman & civil law.* A great-granddaughter. Pl. ***proneptes.***

pro non adjecto (proh non ə-**jek**-toh). [Latin] *Hist.* As not added. • For example, a nonessential deed provision might be treated *pro non adjecto.*

pro non scripto (**proh** non **skrip**-toh). [Latin] As not written; as though it had not been written. • The phrase usu. referred to testamentary conditions that a court would disregard because the conditions were impossible, illegal, or meaningless.

pronotary (proh-**noh**-tə-ree), *n.* First notary.

pronounce, *vb.* (14c) To announce formally <pronounce judgment>.

pronunciation (prə-nən-see-**ay**-shən). *Archaic.* A sentence or decree.

pronurus (**proh**-nə-rəs). [Latin] *Roman & civil law.* The wife of a grandson or great-grandson. Pl. ***pronurus.***

proof, *n.* (13c) **1.** The establishment or refutation of an alleged fact by evidence; the persuasive effect of evidence in the mind of a fact-finder. [Cases: Evidence ⇨584.] **2.** Evidence that determines the judgment of a court. **3.** An attested document that constitutes legal evidence.

affirmative proof. (18c) Evidence establishing the fact in dispute by a preponderance of the evidence. [Cases: Evidence ⇨99.]

conditional proof. (1931) A fact that amounts to proof as long as there is no other fact amounting to disproof. — Also termed *presumptive proof.*

double proof. (1955) **1.** *Bankruptcy.* Proof of claims by two or more creditors against the same debt. • This violates the general rule that there can be only one claim with respect to a single debt. [Cases: Bankruptcy ⇨2891.] **2.** *Evidence.* Corroborating government evidence (usu. by two witnesses) required to sustain certain convictions.

full proof. **1.** *Civil law.* Proof by two witnesses or by public instrument. **2.** Evidence that satisfies the minds of the jury of the truth of the fact in dispute beyond a reasonable doubt. [Cases: Evidence ⇨584.]

literal proof. *Civil law.* Written evidence. Cf. *testimonial proof.*

negative proof. (16c) Proof that establishes a fact by showing that its opposite is not or cannot be true. Cf. *positive proof.* [Cases: Criminal Law ⇨551; Evidence ⇨586.]

positive proof. (17c) Direct or affirmative proof. Cf. *negative proof.* [Cases: Criminal Law ⇨551; Evidence ⇨586.]

preliminary proof. *Insurance.* The first proof offered of a loss occurring under a policy, usu. sent in to the underwriters with a notification of the claim. [Cases: Insurance ⇨3164.]

presumptive proof. See *conditional proof.*

proof beyond a reasonable doubt. (1834) Proof that precludes every reasonable hypothesis except that which it tends to support. See REASONABLE DOUBT. • Formerly, this standard required evidence to "establish the truth of the fact to a reasonable and moral certainty" and "proof to a moral certainty as distinguished from an absolute certainty." *Moral certainty* is no longer a synonym for *proof beyond a reasonable doubt. See Victor v. Nebraska,* 511 U.S. 1, 8, 12, 114 S.Ct. 1239, 1244, 1246 (1994). [Cases: Criminal Law ⇨561.]

testimonial proof. *Civil law.* Proof by the evidence of witnesses, rather than proof by written instrument. Cf. *literal proof.*

4. *Scots law.* A bench trial.

proof, burden of. See BURDEN OF PROOF.

proof brief. See BRIEF.

proof of acknowledgment. (18c) An authorized officer's certification — based on a third party's testimony — that the signature of a person (who usu. does not appear before the notary) is genuine and was freely made. — Also termed *certificate of proof.* See ACKNOWLEDGMENT (5). [Cases: Acknowledgment ⇨8–39.]

proof of claim. *Bankruptcy.* A creditor's written statement that is submitted to show the basis and amount of the creditor's claim. Pl. **proofs of claim.** [Cases: Bankruptcy ⇨2891–2904.]

informal proof of claim. A proof of claim stating a creditor's demand for payment and intent to hold the debtor's bankruptcy estate liable, but that does not comply with the Bankruptcy Code's form for proofs of claim. • A late-filed proof of claim may be given effect if the creditor had timely filed an informal proof of claim. [Cases: Bankruptcy ⇨2902.]

proof of debt. The establishment by a creditor of a debt in some prescribed manner (as by affidavit) as a first

step in recovering the debt from an estate or property; PROOF OF CLAIM.

proof of loss. An insured's formal statement of loss required by an insurance company before it will determine whether the policy covers the loss. [Cases: Insurance ⇨3164.]

proof of service. (18c) **1.** A document filed (as by a sheriff) in court as evidence that process has been successfully served on a party. — Also termed *return of service*; *return of process*. See SERVICE (1). [Cases: Federal Civil Procedure ⇨511–518; Process ⇨127–150.] **2.** CERTIFICATE OF SERVICE.

proof of will. See PROBATE (1).

pro omni alio onere (proh **om**-nɪ [*also* -nee] **ay**-lee-oh **on**-ər-ee). [Law Latin "for all other burden"] *Hist.* A portion of a charter clause restricting the vassal's duties to those explicitly named in the charter.

pro opere et labore (proh **op**-ə-ree et lə-**bor**-ee). [Latin] For work and labor.

propaganda. *Int'l law.* **1.** The systematic dissemination of doctrine, rumor, or selected information to promote or injure a particular doctrine, view, or cause. **2.** The ideas or information so disseminated. • The word *propaganda* originated as an abbreviated form of *Congregatio de propaganda fide*, a committee (of cardinals) for propagating the (Christian) faith.

defamatory propaganda. Propaganda used to promote dissatisfaction among a nation's citizens and undermine government authority. • Defamatory propaganda is common in wartime but is also used in peacetime as a means of incitement.

hostile propaganda. Propaganda employed by a nation to manipulate the people of another nation to support or oppose their government. — Also termed *ideological aggression*. See *subversive propaganda*.

> "Ideological aggression . . . is the spreading of ideas intentionally and deliberately so as to manipulate by symbols controversial attitudes and positions. It is hostile propaganda indulged in by a state directly or vicariously to incite and influence the people of another state so as to maintain or alter the institutions and policies of that state. The campaign of hostile propaganda may emanate from within or without the territory of the victim state and can be carried on by any means of communications." Ann Van Wynen Thomas & A.J. Thomas, Jr., *The Concept of Aggression in International Law* 84 (1972).

subversive propaganda. Propaganda calculated to incite a civil war or revolution. • When the instigator is another nation, it is termed *hostile propaganda* or *ideological aggression*.

war-mongering propaganda. Propaganda calculated to produce national support for a war and to encourage the government to declare or join in a war regardless of any legal constraints.

pro parte (proh **pahr**-tee). [Latin] *Hist.* Partly; in part.

pro parte legitimus, pro parte illegitimus (proh **pahr**-tee lə-**jit**-ə-məs, proh **pahr**-tee il-lə-**jit**-ə-məs). [Law Latin] *Hist.* Partly legitimate, partly illegitimate. • In Roman and civil law, an illegitimate child could be later legitimated through the marriage of the child's parents. But England did not fully recognize this legitimate status.

pro parte virili (proh **pahr**-tee və-**rɪ**-lɪ). [Latin "for the share per man"] *Hist.* In equal shares; for one's own proportion.

pro partibus liberandis (proh **pahr**-ti-bəs lib-ə-**ran**-dis). [Latin "to free the portions"] *Hist.* A writ for the partition of lands among coheirs.

propatruus (proh-**pay**-troo-əs *or* -**pa**-troo-əs). [Latin] *Roman & civil law.* A great-grandfather's brother.

propatruus magnus (proh-**pay**-troo-əs [*or* -**pa**-troo-əs] **mag**-nəs). [Latin] *Roman & civil law.* A great-great-great-uncle on the father's side.

pro per., *adv. & adj.* See PRO PERSONA.

pro per., *n.* **1.** See PRO SE. **2.** See PROPRIA PERSONA.

proper care. See *reasonable care* under CARE.

proper evidence. See *admissible evidence* under EVIDENCE.

proper feud. See FEUD (1).

proper improbation. See IMPROBATION.

proper independent advice. See INDEPENDENT ADVICE.

proper law. *Conflict of laws.* The substantive law that, under the principles of conflict of laws, governs a transaction. [Cases: Action ⇨17.]

proper lookout, *n.* (1842) The duty of a vehicle operator to exercise caution to avoid collisions with pedestrians or other vehicles. [Cases: Automobiles ⇨150.]

proper means. *Trade secrets.* Any method of discovering trade secrets that does not violate property-protection statutes or standards of commercial ethics. • Proper means include independent invention, reverse engineering, observing the product in public, and studying published literature. RESTATEMENT OF TORTS § 757 cmt. f (1977). [Cases: Antitrust and Trade Regulation ⇨414.]

> "Trade secrets are protected . . . in a manner akin to private property, but only when they are disclosed or used through improper means. Trade secrets do not enjoy the absolute monopoly afforded patented processes, for example, and trade secrets will lose their character as private property when the owner divulges them or when they are discovered through proper means. . . . Thus, it is the employment of improper means to produce the trade secret, rather than mere copy or use, which is the basis of liability" *Chicago Lock Co. v. Fanberg*, 676 F.2d 400, 404 (9th Cir. 1982).

proper party. See PARTY (2).

pro persona (proh pər-**soh**-nə), *adv. & adj.* [Latin] For one's own person; on one's own behalf <a *pro persona* brief>. — Sometimes shortened to *pro per.* See PRO SE.

property. (14c) **1.** The right to possess, use, and enjoy a determinate thing (either a tract of land or a chattel); the right of ownership <the institution of private property is protected from undue governmental interference>. — Also termed *bundle of rights*. [Cases: Constitutional Law ⇨277; Property ⇨1.] **2.** Any

external thing over which the rights of possession, use, and enjoyment are exercised <the airport is city property>. [Cases: Property ☞1.]

> "In its widest sense, property includes all a person's legal rights, of whatever description. A man's property is all that is *his in law*. This usage, however, is obsolete at the present day, though it is common enough in the older books. . . . In a second and narrower sense, property includes not all a person's rights, but only his proprietary as opposed to his personal rights. The former constitute his estate or property, while the latter constitute his status or personal condition. In this sense a man's land, chattels, shares, and the debts due to him are his property; but not his life or liberty or reputation. . . . In a third application, which is that adopted [here], the term includes not even all proprietary rights, but only those which are both proprietary and *in rem*. The law of property is the law of proprietary rights *in rem*, the law of proprietary rights *in personam* being distinguished from it as the law of obligations. According to this usage a freehold or leasehold estate in land, or a patent or copyright, is property; but a debt or the benefit of a contract is not. . . . Finally, in the narrowest use of the term, it includes nothing more than corporeal property — that is to say, the right of ownership in a material object, or that object itself." John Salmond, *Jurisprudence* 423-24 (Glanville L. Williams ed., 10th ed. 1947).

abandoned property. (1841) Property that the owner voluntarily surrenders, relinquishes, or disclaims. Cf. *lost property*; *mislaid property*. [Cases: Abandoned and Lost Property ☞1.]

absolute property. Property that one has full and complete title to and control over.

adventitious property. **1.** *Roman law.* Property coming to a son or daughter from anyone other than the paterfamilias. — Also termed *peculium adventitium*. **2.** *Hist.* Property coming to one from a stranger or collateral relative.

appointive property. A property interest that is subject to a power of appointment. [Cases: Powers ☞4.]

common property. (17c) **1.** Real property that is held by two or more persons with no right of survivorship. Cf. *joint property*. [Cases: Common Lands ☞1.] **2.** COMMON AREA.

community property. See COMMUNITY PROPERTY.

complete property. The entirety of the rights, privileges, powers, and immunities that it is legally possible for a person to have with regard to land or any other thing, apart from those that all other members of society have in the land or thing.

corporeal property. **1.** The right of ownership in material things. **2.** Property that can be perceived, as opposed to incorporeal property; tangible property. [Cases: Property ☞1, 2.]

distressed property. (1927) Property that must be sold because of mortgage foreclosure or because it is part of an insolvent estate. [Cases: Bankruptcy ☞3067.1.]

domestic-partnership property. Property that would be marital property if the domestic partners were married to each other. See DOMESTIC PARTNERSHIP; DOMESTIC-PARTNERSHIP PERIOD. [Cases: Marriage ☞54.]

dotal property. *Civil law.* Separate property that the wife brings to the marriage to assist the husband with the marriage expenses. Cf. *extradotal property*. [Cases: Dower and Curtesy ☞10.]

exempt property. See EXEMPT PROPERTY.

extradotal property (ek-strə-**doh**-təl). *Civil law.* **1.** That portion of a wife's property over which she has complete control. **2.** All of a wife's effects that have not been settled on her as dowry; any property that a wife owns apart from her dowry. • In Louisiana, after January 1, 1980, all property acquired by the wife that is not community is neither dotal nor extradotal; it is simply her separate property, as has always been true of the husband. La. Civ. Code art. 2341. — Also termed *paraphernal property*. Cf. *dotal property*.

general property. Property belonging to a general owner. See *general owner* under OWNER.

income property. Property that produces income, such as rental property.

incorporeal property. (18c) **1.** An in rem proprietary right that is not classified as corporeal property. • Incorporeal property is traditionally broken down into two classes: (1) *jura in re aliena* (encumbrances), whether over material or immaterial things, examples being leases, mortgages, and servitudes; and (2) *jura in re propria* (full ownership over immaterial things), examples being patents, copyrights, and trademarks. **2.** A legal right in property having no physical existence. • Patent rights, for example, are incorporeal property. — Also termed *incorporeal chattel*; *incorporeal thing*.

intangible property. (1843) Property that lacks a physical existence. • Examples include stock options and business goodwill. Cf. *tangible property*. [Cases: Property ☞1, 2.]

intellectual property. See INTELLECTUAL PROPERTY.

joint property. Real or personal property held by two or more persons with a right of survivorship. Cf. *common property*. [Cases: Joint Tenancy ☞1.]

limited-market property. See *special-purpose property*.

literary property. See LITERARY PROPERTY.

lost property. (1810) Property that the owner no longer possesses because of accident, negligence, or carelessness, and that cannot be located by an ordinary, diligent search. Cf. *abandoned property*; *mislaid property*. [Cases: Abandoned and Lost Property ☞10.]

marital property. (1855) Property that is acquired during marriage and that is subject to distribution or division at the time of marital dissolution. • Generally, it is property acquired after the date of the marriage and before a spouse files for separation or divorce. The phrase *marital property* is used in equitable-distribution states and is roughly equivalent to *community property*. — Also termed *marital estate*. See COMMU-

NITY PROPERTY; EQUITABLE DISTRIBUTION. [Cases: Divorce ⟹248; Husband and Wife ⟹6–15(6).]

maternal property. Property that comes from the mother of a party or other ascendants of the maternal stock.

mislaid property. (1915) Property that has been voluntarily relinquished by the owner with an intent to recover it later — but that cannot now be found. Cf. *abandoned property*; *lost property*. [Cases: Abandoned and Lost Property ⟹1, 10.]

"A distinction is drawn between lost property and mislaid property. An article is 'mislaid' if it is intentionally put in a certain place for a temporary purpose and then inadvertently left there when the owner goes away. A typical case is the package left on the patron's table in a bank lobby by a depositor who put the package there for a moment while he wrote a check and then departed without remembering to take it with him. There is always a 'clue' to the ownership of property which is obviously *mislaid* rather than *lost*, because of the strong probability that the owner will know where to return for his chattel when he realizes he has gone away without it." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 310–11 (3d ed. 1982).

mixed property. (18c) Property with characteristics of both real property and personal property — such as heirlooms and fixtures. [Cases: Property ⟹4.]

movable property. See MOVABLE (1).

neutral property. See NEUTRAL PROPERTY.

nonancestral property. See *nonancestral estate* under ESTATE (1).

nonexempt property. See NONEXEMPT PROPERTY.

paraphernal property. See *extradotal property*.

paternal property. Property that comes from the father of a party or other ascendants of the paternal stock.

personal property. (18c) **1.** Any movable or intangible thing that is subject to ownership and not classified as real property. — Also termed *personalty*; *personal estate*; *movable estate*; (in plural) *things personal*. Cf. *real property*. [Cases: Property ⟹4.] **2.** *Tax.* Property not used in a taxpayer's trade or business or held for income production or collection. [Cases: Taxation ⟹2176.]

private property. (17c) Property — protected from public appropriation — over which the owner has exclusive and absolute rights.

public property. (17c) State- or community-owned property not restricted to any one individual's use or possession. [Cases: States ⟹88.]

qualified property. A temporary or special interest in a thing (such as a right to possess it), subject to being totally extinguished by the occurrence of a specified contingency over which the qualified owner has no control.

qualified-terminable-interest property. (1982) Property that passes by a QTIP trust from a deceased spouse to the surviving spouse and that (if the executor so elects) qualifies for the marital deduction provided that the surviving spouse is entitled to receive all income in payments made at least annually for life and that no one has the power to appoint the property to anyone other than the surviving spouse. • The purpose of the marital deduction is to permit deferral of estate taxes until the death of the surviving spouse. But this property is included in the surviving spouse's estate at death, where it is subject to the federal estate tax. — Abbr. QTIP. See *QTIP trust* under TRUST. [Cases: Internal Revenue ⟹4169(4).]

quasi-community property. See COMMUNITY PROPERTY.

real property. (18c) Land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land. • Real property can be either corporeal (soil and buildings) or incorporeal (easements). — Also termed *realty*; *real estate*. Cf. *personal property* (1). [Cases: Property ⟹4.]

"Historically, the line between real and personal property stems from the types of assets administered on death respectively, in the king's and in the church's courts. The king's courts, concerned with the preservation of the feudal structure, dealt with fees simple, fees tail and life estates. Estates for years, gradually evolving out of contracts made by feudally unimportant persons, clearly became interests in land but never fully attained the historical dignity of being 'real property.' The early economic unimportance of money, goods and things other than land permitted the church courts to take over the handling of all such assets on the death of the owner. When the development of trade and of capitalism caused assets of these types to assume great, and sometimes paramount, importance we found ourselves with the two important categories of property, namely 'real' and 'personal' property, each with its set of rules evolved from a different matrix. The pressure of modern society has been strongly for assimilation and the resultant elimination of this line, but this movement is far from complete attainment of its goal." 1 Richard R. Powell, *Powell on Real Property* § 5.04, at 5-7 to 5-8 (Patrick J. Rohan ed., rev. ed. 1998).

scheduled property. *Insurance.* Property itemized on a list (usu. attached to an insurance policy) that records property values, which provide the basis for insurance payments in the event of a loss under an insurance policy. [Cases: Insurance ⟹2169.]

separate property. See SEPARATE PROPERTY.

special-design property. See *special-purpose property*.

special property. Property that the holder has only a qualified, temporary, or limited interest in, such as (from a bailee's standpoint) bailed property.

special-purpose property. Property that has a unique design or layout, incorporates special construction materials, or has other features that limit the property's utility for purposes other than the one for which it was built. • Because of the property's specialized nature, the market for the property may be quite limited. — Also termed *limited-market property*; *special-design property*. [Cases: Eminent Domain ⟹134; Taxation ⟹2514.]

specialty property. See SPECIALTY (3).

tangible personal property. (1843) Corporeal personal property of any kind; personal property that can be

seen, weighed, measured, felt, or touched, or is in any other way perceptible to the senses, such as furniture, cooking utensils, and books.

tangible property. (1802) Property that has physical form and characteristics. Cf. *intangible property.* [Cases: Property ⚷1, 2.]

terminable property. Property (such as a leasehold) whose duration is not perpetual or indefinite but is limited in time or is liable to termination upon the occurrence of some specified event.

wasting property. (1853) **1.** Property that is consumed in its normal use, such as a wasting asset, a leasehold interest, or a patent right. **2.** A right to or an interest in such property.

property, law of. See LAW OF PROPERTY.

property crimes. See CRIMES AGAINST PROPERTY.

property-damage insurance. See *property insurance* under INSURANCE.

property dividend. See *asset dividend* under DIVIDEND.

property division. See PROPERTY SETTLEMENT (1).

property insurance. See INSURANCE.

property of the debtor. *Bankruptcy.* Property that is owned or (in some instances) possessed by the debtor, including property that is exempted from the bankruptcy estate. 11 USCA § 541(b). — Also termed *debtor's property.* [Cases: Bankruptcy ⚷2531–2559.]

property of the estate. *Bankruptcy.* The debtor's tangible and intangible property interests (including both legal and equitable interests) that fall under the bankruptcy court's jurisdiction because they were owned or held by the debtor when the bankruptcy petition was filed. 11 USCA § 541. — Also termed *estate's property.* [Cases: Bankruptcy ⚷2491–2559.]

property *ratione privilegii* (ray-shee-**oh**-nee priv-i-**lee**-jee-i). *Hist.* A common-law right, granted by a royal franchise, to take wild animals on another's land. • This principle made its way into American law. *See, e.g., Hanson v. Fergus Falls Nat'l Bank*, 65 N.W.2d 857, 862 (Minn. 1954). Cf. PROPERTY RATIONE SOLI.

> "Property Ratione privilegii is the right which, by a peculiar franchise anciently granted by the Crown in virtue of its prerogative, one man had of killing and taking animals Ferae naturae on the land of another; and in like manner the game, when killed or taken by virtue of the privilege, became the absolute property of the owner of the franchise, just as in the other case it becomes the absolute property of the owner of the soil." *Blades v. Higgs*, 11 Eng. Rep. 1474, 1479 (H.L. 1865).

property *ratione soli* (ray-shee-**oh**-nee **soh**-lī). The common-law right to take wild animals found on one's own land. Cf. PROPERTY RATIONE PRIVILEGII.

> "The exclusive common law right of a landowner to take game on his land, known as property ratione soli . . . has been recognized throughout the history of common law, with one exception: Following the Norman Conquest the King contended that he was lord paramount of the field, possessed of the right to the universal soil and of the exclusive right to take the game, but the irate landowners, vehemently objecting, quickly and decisively recaptured their rights and re-established the common law." *Alford v. Finch*, 155 So.2d 790, 792 (Fla. 1963).

property right. See RIGHT.

property settlement. 1. A judgment in a divorce case determining the distribution of the marital property between the divorcing parties. • A property settlement includes a division of the marital debts as well as assets. — Also termed *property division; division of property.* [Cases: Husband and Wife ⚷248.] **2.** A contract that divides up the assets of divorcing spouses and is incorporated into a divorce decree. — Also termed *integrated property settlement; property settlement agreement.* Cf. DIVORCE AGREEMENT. [Cases: Husband and Wife ⚷277.] **3.** MARITAL AGREEMENT.

property settlement agreement. See PROPERTY SETTLEMENT (2).

property tax. See TAX.

property tort. See TORT.

prophylactic (proh-fə-**lak**-tik), *adj.* (16c) Formulated to prevent something <a prophylactic rule>. — **prophylaxis** (proh-fə-**lak**-sis), **prophylactic,** *n.*

prophylactic cost. See COST (1).

propinquity (prə-**ping**-kwə-tee). (15c) The state of being near; specif., kindred or parentage <degrees of propinquity>.

propior sobrina (**proh**-pee-ər sə-**brī**-nə), *n.* [Latin] *Civil law.* The daughter of a great-uncle or great-aunt, paternal or maternal.

propior sobrino (**proh**-pee-ər sə-**brī**-noh), *n.* [Latin] *Civil law.* The son of a great-uncle or great-aunt, paternal or maternal.

propone (prə-**pohn**), *vb.* To put forward for consideration or adjudication <propone a will for probate>.

proponent, *n.* (16c) **1.** A person who puts forward a legal instrument for consideration or acceptance; esp., one who offers a will for probate. — Also termed *propounder.* [Cases: Wills ⚷211, 219.] **2.** A person who puts forward a proposal; one who argues in favor of something <a proponent of gun control>. **3.** *Parliamentary law.* A member who speaks in favor of a pending motion. Cf. OPPONENT (3).

proportionality. *Int'l law.* The principle that the use of force should be in proportion to the threat or grievance provoking the use of force.

proportionality review. (1976) *Criminal law.* An appellate court's analysis of whether a death sentence is arbitrary, capricious, or excessive by comparing the case in which it was imposed with similar cases in which the death penalty was approved or disapproved. [Cases: Sentencing and Punishment ⚷1788(6).]

proportional quorum. See QUORUM.

proportional representation. 1. An electoral system that allocates legislative seats to each political group in proportion to its popular voting strength. **2.** See *proportional voting* under VOTING. • The term refers to

two related but distinguishable concepts: proportional *outcome* (having members of a group elected in proportion to their numbers in the electorate) and proportional *involvement* (more precisely termed *proportional voting* and denoting the electoral system also known as *single transferable voting*).

proportional tax. See *flat tax* under TAX.

proportional voting. See VOTING.

proportionate-reduction clause. See LESSER-INTEREST CLAUSE.

proposal. Something offered for consideration or acceptance.

proposed agenda. See AGENDA.

proposed regulation. See REGULATION.

proposition. See *main motion* under MOTION (2).

propositus (proh-**poz**-ə-təs). [Law Latin] *Civil law.* **1.** A person from whom descent is to be traced. **2.** The person whose rights or obligations are in issue. — Also termed *persona proposita*. Pl. ***propositi***.

pro possessore (proh pos-ə-**sor**-ee). [Latin] As a possessor; by title of a possessor; by virtue of possession alone.

pro posse suo (proh **pos**-ee **s**[**y**]**oo**-oh). [Latin] To the extent of one's power or ability.

propound (prə-**pownd**), *vb.* (16c) **1.** To offer for consideration or discussion. **2.** To make a proposal. **3.** To put forward (a will) as authentic.

propounder. An executor or administrator who offers a will or other testamentary document for admission to probate; PROPONENT.

prop. reg. *abbr.* See *proposed regulation* under REGULATION.

propria persona (**proh**-pree-ə pər-**soh**-nə), *adj.* & *adv.* [Latin] In his own person; PRO SE. — Sometimes shortened to *pro per.* — Abbr. *p.p.* [Cases: Attorney and Client ☞62.]

proprietary (prə-**prī**-ə-ter-ee), *adj.* (15c) **1.** Of or relating to a proprietor <the licensee's proprietary rights>. **2.** Of, relating to, or holding as property <the software designer sought to protect its proprietary data>.

proprietary act. See PROPRIETARY FUNCTION.

proprietary article. See ARTICLE.

proprietary capacity. See CAPACITY (1).

proprietary capital. See CAPITAL.

proprietary drug. See DRUG.

proprietary duty. See DUTY (2).

proprietary function. (1902) *Torts.* A municipality's conduct that is performed for the profit or benefit of the municipality, rather than for the benefit of the general public. • Generally, a municipality is not immune from tort liability for proprietary acts. But the distinction between proprietary acts and governmental functions has been abrogated by statute in many states. — Also termed *proprietary act*. Cf. GOVERNMENTAL FUNCTION. [Cases: Municipal Corporations ☞725.]

proprietary government. See GOVERNMENT.

proprietary information. Information in which the owner has a protectable interest. See TRADE SECRET. [Cases: Contracts ☞118.]

proprietary interest. See INTEREST (2).

proprietary lease. See LEASE.

proprietary license. See LICENSE.

proprietary name. See NAME.

proprietary power. See *power coupled with an interest* under POWER (3).

proprietary right. See RIGHT.

proprietary software. Software that cannot be used, redistributed, or modified without permission. • Proprietary software is usu. sold for profit, consists only of machine-readable code, and carries a limited license that restricts copying, modification, and redistribution. A user may usu. make a backup copy for personal use; but if the software is sold or given away, any backup copies must be passed on to the new user or destroyed. Cf. FREEWARE; SHAREWARE; SEMI-FREE SOFTWARE.

proprietary technology. *Intellectual property.* A body of knowledge or know-how that is owned or controlled by a person whose authorization is required before any other party may use that know-how or knowledge for commercial purposes. See TRADE SECRET.

proprietas (prə-**prī**-ə-tas). [Latin] *Hist.* Ownership.

proprietas nuda (prə-**prī**-ə-tas **n**[**y**]**oo**-də). Naked ownership; the mere title to property, without the usufruct.

proprietas plena (prə-**prī**-ə-tas **plee**-nə). Full ownership, including both the title and the usufruct.

proprietate probanda (prə-prī-ə-**tay**-tee prə-**ban**-də). See DE PROPRIETATE PROBANDA.

proprietor, *n.* (16c) An owner, esp. one who runs a business. See SOLE PROPRIETORSHIP. — **proprietorship,** *n.*

propriety. *Hist.* Privately owned possessions; property.

propriis manibus (**proh**-pree-is **man**-ə-bəs). [Latin] *Hist.* By one's own hands.

proprio jure (**proh**-pree-oh **joor**-ee). [Latin] *Hist.* By one's own property right.

proprio nomine (**proh**-pree-oh **nahm**-ə-nee). [Latin] *Hist.* In one's own name.

proprio vigore (**proh**-pree-oh vi-**gor**-ee). [Latin] By its own strength.

proprium negotium (**proh**-pree-əm ni-**goh**-shee-əm). [Latin] *Hist.* One's own business.

pro privato commodo (proh prī-**vay**-toh **kom**-ə-doh). [Law Latin] *Hist.* For private convenience. • The phrase sometimes appeared in reference to a private road as distinguished from a public highway. Cf. PRO BONO PUBLICO.

propter (**prop**-tər). [Latin] For; on account of.

propter affectum (**prop**-tər ə-**fek**-təm). See *challenge propter affectum* under CHALLENGE (2).

propter commodum curiae (**prop**-tər **kom**-ə-dəm **kyoor**-ee-ee). [Law Latin] *Hist.* For the advantage of the court.

propter curam et culturam (**prop**-tər **kyoor**-əm et kəl-**t**[**y**]**oor**-əm). [Latin] *Hist.* For care and cultivation.

propter defectum (**prop**-tər də-**fek**-təm). See *challenge propter defectum* under CHALLENGE (2).

propter defectum sanguinis (**prop**-tər də-**fek**-təm **sang**-gwi-nis). [Latin] On account of failure of blood.

propter delectum personae (**prop**-tər də-**lek**-təm pər-**soh**-nee). [Law Latin] *Hist.* On account of the selection of persons. • For example, a person could not delegate the principal duties of an office when that person had been specifically chosen to perform those duties.

propter delictum (**prop**-tər də-**lik**-təm). See *challenge propter delictum* under CHALLENGE.

propter honoris respectum (**prop**-tər hə-**nor**-is ri-**spek**-təm). [Latin] On account of respect of honor or rank.

propter impotentiam (**prop**-tər im-pə-**ten**-shee-əm). [Latin] On account of helplessness. • This was formerly given as a ground for gaining a property interest in a wild animal, based on the animal's inability to escape (as where, for example, a young bird could not yet fly away).

propter ingratitudinem (**prop**-tər in-grat-ə-**t**[**y**]**oo**-də-nəm). [Latin] *Hist.* On account of ingratitude. • In some instances, a superior could revoke a gift based on the vassal's ingratitude, and a slave-owner could revoke the manumission of a slave.

propter majorem securitatem (**prop**-tər mə-**jor**-əm si-kyoor-ə-**tay**-təm). [Law Latin] *Hist.* For greater security.

propter negligentiam haeredis jus suum non prosequentis (**prop**-tər neg-li-**jen**-shee-əm hə-**ree**-dis jəs **s**[**y**]**oo**-əm non prahs-ə-**kwen**-tis). [Law Latin] *Hist.* On account of the negligence of the heir in not following up the heir's right. • If a vassal's heir failed, for a year and a day, to enter the estate, then the heir forfeited the right to the land.

propter privilegium (**prop**-tər priv-ə-**lee**-jee-əm). [Latin] On the account of privilege. • This describes a way of acquiring a property interest in a wild animal, based on the claimant's exclusive right to hunt in a particular park or preserve.

propter quod fecerunt per alium (**prop**-tər kwod fi-**see**-rənt pər **ay**-lee-əm). [Law Latin] *Hist.* On account of what they have done by another. • The phrase usu. referred to an agent's actions.

propter rem ipsam non habitam (**prop**-tər rem **ip**-səm non **hab**-ə-təm). [Law Latin] *Hist.* On account of not having had possession of the thing itself. • The phrase appeared in reference to damages suffered by a party who failed to receive a thing for which he had contracted.

pro quantitate haereditatis et temporis (proh kwon-ti-**tay**-tee hə-red-i-**tay**-tis et **tem**-pə-ris). [Law Latin] *Hist.* According to the extent of the succession.

pro quer. *abbr.* PRO QUERENTE.

pro querente (proh kwə-**ren**-tee). [Latin] For the plaintiff. • In old law reports, the plaintiff's advocate is designated *pro querente* and the opposing advocate *contra*. — Abbr. *pro quer.* Cf. PRO DEFENDENTE.

pro rata (proh **ray**-tə *or* **rah**-tə *or* **ra**-tə), *adv.* (16c) Proportionately; according to an exact rate, measure, or interest <the liability will be assessed pro rata between the defendants>. See RATABLE. — **pro rata,** *adj.*

pro rata clause. An insurance-policy provision — usu. contained in the "other insurance" section of the policy — that limits the insurer's liability to payment of the portion of the loss that the face amount of the policy bears to the total insurance available on the risk. — Also termed *pro rata distribution clause.* Cf. ESCAPE CLAUSE; EXCESS CLAUSE. [Cases: Insurance ☞2112.]

pro rata itineris (proh **ray**-tə I-**tin**-ə-ris). [Latin] *Scots law.* For the proportion of the journey.

> "Where a ship, chartered to convey a cargo to a certain port . . . is prevented from completing the voyage . . . the master of the ship may transship the goods, and thus conveying them to their destination, earn his full freight. But if, when the ship has been prevented from proceeding on her voyage, the freighter himself transships the cargo, the master is entitled to freight *pro rata itineris,* for the proportion of the voyage which he has accomplished." John Trayner, *Trayner's Latin Maxims* 486 (4th ed. 1894).

prorate (**proh**-rayt *or* proh-**rayt**), *vb.* (1858) To divide, assess, or distribute proportionately <prorate taxes between the buyer and the seller>. — **proration,** *n.*

pro re nata (proh ree **nay**-tə). [Latin "in the light of what has arisen"] *Hist.* By reason of emergency; arising from exigent circumstances. • The phrase appeared, for example, in reference to a meeting called to address an emergency.

> "So far as may be, the state leaves the rule of right to be declared and constituted by the agreement of those concerned with it. So far as possible, it contents itself with executing the rules which its subjects have made for themselves. And in so doing it acts wisely. For, in the first place, the administration of justice is enabled in this manner to escape in a degree not otherwise attainable the disadvantages inherent in the recognition of rigid principles of law. Such principles we must have; but if they are established *pro re nata* by the parties themselves, they will possess a measure of adaptability to individual cases which is unattainable by the more general legislation of the state itself." John Salmond, *Jurisprudence* 352 (Glanville L. Williams ed., 10th ed. 1947).

prorogated jurisdiction. See JURISDICTION.

prorogatio de loco in locum (proh-roh-**gay**-shee-oh dee **loh**-koh in **loh**-kəm). [Law Latin] *Hist.* Prorogation (of jurisdiction) from one place to another.

prorogatio de tempore in tempus (proh-roh-**gay**-shee-oh dee **tem**-pə-ree in **tem**-pəs). [Law Latin] *Hist.* Prorogation (esp. of jurisdiction) from one time to another.

prorogation (proh-rə-**gay**-shən). (14c) **1.** The act of putting off to another day; esp., the discontinuance of a legislative session until its next term. [Cases: States ⚷32.] **2.** *Civil law.* The extension of a court's or judge's jurisdiction by consent of the parties to a case that it would otherwise be incompetent to hear. — **prorogative,** *adj.*

tacit prorogation. *Civil law.* Consent to jurisdiction that arises when a party does not request recusal despite awareness that the judge is not qualified to try the case. Cf. *prorogated jurisdiction* under JURISDICTION.

prorogue (proh-**rohg** *or* prə-), *vb.* (15c) **1.** To postpone or defer. **2.** To discontinue a session of (a legislative assembly, esp. the British Parliament) without dissolution. **3.** To suspend or discontinue a legislative session. [Cases: States ⚷32.]

proscribe, *vb.* (15c) **1.** To outlaw or prohibit; to forbid. **2.** *Roman & civil law.* To post or publish the name of (a person) as condemned to death and forfeiture of property.

proscription, *n.* (14c) **1.** The act of prohibiting; the state of being prohibited. **2.** A prohibition or restriction. Cf. PRESCRIPTION (1). — **proscriptive,** *adj.*

pro se (proh **say** *or* **see**), *adv.* & *adj.* [Latin] (1817) For oneself; on one's own behalf; without a lawyer <the defendant proceeded pro se> <a pro se defendant>. — Also termed *pro persona*; *in propria persona*; *propria persona*; *pro per.* See PROPRIA PERSONA. [Cases: Attorney and Client ⚷62; Criminal Law ⚷1750.]

pro se, *n.* (1857) One who represents oneself in a court proceeding without the assistance of a lawyer <the third case on the court's docket involving a pro se>. — Also termed *pro per*; *self-represented litigant*; (rarely) *pro se-er.* [Cases: Attorney and Client ⚷62; Criminal Law ⚷1750]

prosecutable, *adj.* (Of a crime or person) subject to prosecution; capable of being prosecuted.

prosecute, *vb.* (15c) **1.** To commence and carry out a legal action <because the plaintiff failed to prosecute its contractual claims, the court dismissed the suit>. **2.** To institute and pursue a criminal action against (a person) <the notorious felon has been prosecuted in seven states>. **3.** To engage in; carry on <the company prosecuted its business for 12 years before going bankrupt>. — **prosecutory,** *adj.*

prosecuting attorney. See DISTRICT ATTORNEY.

prosecuting witness. See WITNESS.

prosecution. (16c) **1.** The commencement and carrying out of any action or scheme <the prosecution of a long, bloody war>. **2.** A criminal proceeding in which an accused person is tried <the conspiracy trial involved the prosecution of seven defendants>. — Also termed *criminal prosecution.*

deferred prosecution. See *deferred judgment* under JUDGMENT.

private prosecution. *Hist.* A criminal prosecution initiated by a privately employed attorney or by a layperson or private organization, rather than a district attorney or other government-employed prosecutor. • Until the 19th century, victims often had the burden of directly prosecuting criminals who had harmed them. With the rise of public-prosecution services, the need for private prosecutions declined. Though uncommon, they are still sometimes permitted in England. [Cases: Criminal Law ⚷1704.]

selective prosecution. See SELECTIVE PROSECUTION.

sham prosecution. (1903) A prosecution that seeks to circumvent a defendant's double-jeopardy protection by appearing to be prosecuted by another sovereignty, when it is in fact controlled by the sovereignty that already prosecuted the defendant for the same crime. • A sham prosecution is, in essence, a misuse of the dual-sovereignty doctrine. Under that doctrine, a defendant's protection against double jeopardy does not provide protection against a prosecution by a different sovereignty. For example, if the defendant was first tried in federal court and acquitted, that fact would not forbid the state authorities from prosecuting the defendant in state court. But a sham prosecution — for example, a later state-court prosecution that is completely dominated or manipulated by the federal authorities that already prosecuted the defendant, so that the state-court proceeding is merely a tool of the federal authorities — will not withstand a double-jeopardy challenge. See DUAL-SOVEREIGNTY DOCTRINE. [Cases: Double Jeopardy ⚷53.]

vindictive prosecution. (1834) A prosecution in which a person is singled out under a law or regulation because the person has exercised a constitutionally protected right. Cf. SELECTIVE ENFORCEMENT. [Cases: Criminal Law ⚷37.15.]

3. The government attorneys who initiate and maintain a criminal action against an accused defendant <the prosecution rests>. **4.** *Patents.* The process of applying for a patent through the U.S. Patent and Trademark Office and negotiating with the patent examiner. — Also termed *patent-prosecution process.* [Cases: Patents ⚷104.]

prosecution history. See FILE WRAPPER.

prosecution-history estoppel. See ESTOPPEL.

prosecution laches. See LACHES.

prosecution-laches doctrine. See CONTINUATION-APPLICATION LACHES DOCTRINE.

prosecutor, *n.* (16c) **1.** A legal officer who represents the state or federal government in criminal proceedings. See DISTRICT ATTORNEY; UNITED STATES ATTORNEY; ATTORNEY GENERAL. — Also termed *public prosecutor*; *state's attorney*; *public commissioner.*

public prosecutor. **1.** See PROSECUTOR (1). **2.** See DISTRICT ATTORNEY.

special prosecutor. (1859) A lawyer appointed to investigate and, if justified, seek indictments in a particular case. See *independent counsel* under COUNSEL.

2. A private person who institutes and carries on a legal action, esp. a criminal action. — Also termed (in sense 2) *private prosecutor.* — **prosecutorial,** *adj.*

prosecutorial discretion. See DISCRETION (4).

prosecutorial immunity. See IMMUNITY.

prosecutorial misconduct. (1963) *Criminal law.* A prosecutor's improper or illegal act (or failure to act), esp. involving an attempt to avoid required disclosure or to persuade the jury to wrongly convict a defendant or assess an unjustified punishment. • If prosecutorial misconduct results in a mistrial, a later prosecution may be barred under the Double Jeopardy Clause. [Cases: Criminal Law ⇨1980–1986.]

prosecutorial vindictiveness. *Criminal law.* The act or an instance of intentionally charging a more serious crime or seeking a more severe penalty in retaliation for a defendant's lawful exercise of a constitutional right. [Cases: Criminal Law ⇨37.15; Sentencing and Punishment ⇨115.]

prosecutrix (pros-ə-**kyoo**-triks). *Archaic.* A female prosecutor.

prosequi (**prahs**-ə-kwi), *vb.* [Latin] To follow up or pursue; to sue or prosecute. See NOLLE PROSEQUI.

prosequitur (prə-**sek**-wə-tər *or* proh-). [Latin] He follows or pursues; he prosecutes.

pro servitio burgali (proh sər-**vish**-ee-oh bər-**gay**-li). [Law Latin] *Hist.* For burghal service. See BURGAGE-TENURE (2).

prosocer (**proh**-sə-sər). [Latin] *Civil law.* A father-in-law's father; a spouse's grandfather.

prosocerus (prə-**sos**-ə-rəs). [Latin] *Civil law.* A wife's or husband's grandmother.

pro socio (proh **soh**-shee-oh). [Latin] As a partner. • This was the name of an action on behalf of a partner.

pro solido (proh **sol**-ə-doh). [Latin] For the whole; without division.

prospectant evidence. See EVIDENCE.

prospective, *adj.* (18c) **1.** Effective or operative in the future <prospective application of the new statute>. Cf. RETROACTIVE. **2.** Anticipated or expected; likely to come about <prospective clients>.

prospective damages. See DAMAGES.

prospective heir. See HEIR.

prospective law. See *prospective statute* under STATUTE.

prospective nuisance. See *anticipatory nuisance* under NUISANCE.

prospective statute. See STATUTE.

prospective waiver. See WAIVER (1).

prospect theory. See INCENTIVE-TO-COMMERCIALIZE THEORY.

prospectus (prə-**spek**-təs). A printed document that describes the main features of an enterprise (esp. a corporation's business) and that is distributed to prospective buyers or investors; esp., a written description of a securities offering. • Under SEC regulations, a publicly traded corporation must provide a prospectus before offering to sell stock in the corporation. Pl. **prospectuses.** See REGISTRATION STATEMENT. Cf. TOMBSTONE. [Cases: Securities Regulation ⇨25.50–25.75.]

newspaper prospectus. A summary prospectus that the SEC allows to be disseminated through advertisements in newspapers, magazines, or other periodicals sent through the mails as second-class matter (though not distributed by the advertiser), when the securities involved are issued by a foreign national government with which the United States maintains diplomatic relations.

preliminary prospectus. A prospectus for a stock issue that has been filed but not yet approved by the SEC. • The SEC requires such a prospectus to contain a notice — printed in distinctive red lettering — that the document is not complete or final. That notice, which is usu. stamped or printed in red ink, typically reads as follows: "The information here given is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities cannot be sold — and offers to buy cannot be accepted — until the registration statement becomes effective. This prospectus does not constitute an offer to buy. And these securities cannot be sold in any state where the offer, solicitation, or sale would be unlawful before registration or qualification under the securities laws of that state." — Also termed *red-herring prospectus; red herring.* [Cases: Securities Regulation ⇨25.51.]

prostitute, *n.* (16c) A person who engages in sexual acts in exchange for money or anything else of value.

child prostitute. A child who is offered or used for sex acts in exchange for money. • Some people object to this phrase because the term "prostitute" suggests a degree of voluntariness or choice on the child's part, which is often not true. An alternative without those connotations is *prostituted child.* [Cases: Infants ⇨13.]

prostituted child. See *child prostitute* under PROSTITUTE.

prostitution, *n.* (16c) **1.** The act or practice of engaging in sexual activity for money or its equivalent; commercialized sex. [Cases: Prostitution ⇨1.]

> "Prostitution is not itself a crime in England or Scotland, although certain activities of prostitutes and those who profit from prostitution are prohibited, such as soliciting in a public place, procuring, letting premises for the purpose of prostitution and so forth. On the other hand, prostitution was, at least at one time, prohibited in all American jurisdictions." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 470 (3d ed. 1982).

child prostitution. The act or practice of offering or using a minor for sex acts in exchange for money. See *child prostitute* under PROSTITUTE.

2. The act of debasing. — **prostitute,** *vb.* — **prostitute,** *n.*

pro tanto (proh **tan**-toh), *adv.* & *adj.* [Latin] (17c) To that extent; for so much; as far as it goes <the debt is pro tanto discharged> <a pro tanto payment>.

protected activity. (1918) Conduct that is permitted or encouraged by a statute or constitutional provision, and for which the actor may not legally be retaliated against. • For example, Title VII of the Civil Rights Act prohibits an employer from retaliating against an employee who opposes a discriminatory employment practice or helps in investigating an allegedly discriminatory employment practice. An employee who is retaliated against for engaging in one of those activities has a claim against the employer. 42 USCA § 2000e-3(a). [Cases: Civil Rights ⚷1244; Labor and Employment ⚷772.]

protected class. See CLASS (1).

protected person. See PERSON (1).

protecting power. *Int'l law.* A country responsible for protecting another country's citizens and interests during a conflict or a suspension of diplomatic ties between the citizens' country and a third party. • After a protecting power is accepted by both belligerents, it works to ensure the proper treatment of nationals who are in a belligerent's territory, esp. prisoners of war. If the parties cannot agree on a protecting power, the International Committee of the Red Cross is often appointed to this position.

protection, *n.* (14c) **1.** The act of protecting. **2.** PROTECTIONISM. **3.** COVERAGE (1). **4.** A document given by a notary public to sailors and other persons who travel abroad, certifying that the bearer is a U.S. citizen. — **protect,** *vb.*

Protection and Advocacy for Individuals with Mental Illness Act. A 1986 federal statute that provides funding for the state-level establishment of independent organizations dedicated to monitoring and protecting the rights of mentally ill citizens. 42 U.S.C. §§ 10801–10851. • Formerly titled the *Protection and Advocacy for Mentally Ill Individuals Act,* this statute was renamed in the Children's Health Act of 2000 (114 Stat. 1101).

Protection and Advocacy for Mentally Ill Individuals Act. See PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS ACT.

protection covenant. *Oil & gas.* The implied promise in an oil-and-gas lease that the lessee will protect the property against the loss of oil and gas by drainage from the producing reservoir by drilling one or more offsetting wells. • The covenant applies only if a reasonably prudent operator would drill the additional wells. — Also termed *covenant to protect against drainage.* See REASONABLY PRUDENT-OPERATOR STANDARD. [Cases: Mines and Minerals ⚷78.1(11).]

protectionism. (1844) The protection of domestic businesses and industries against foreign competition by imposing high tariffs and restricting imports. — **protectionist,** *adj.*

protection money. (18c) **1.** A bribe paid to an officer as an inducement not to interfere with the criminal activities of the briber. • Examples include payments to an officer in exchange for the officer's releasing an arrestee, removing records of traffic violations from a court's files, and refraining from making a proper arrest. [Cases: Bribery ⚷1(1).] **2.** Money extorted from a business owner by one who promises to "protect" the business premises, with the implied threat that if the owner does not pay, the person requesting the payment will harm the owner or damage the premises.

protection order. See RESTRAINING ORDER (1).

protective appeal. See APPEAL.

protective committee. A group of security holders or preferred stockholders appointed to protect the interests of their group when the corporation is liquidated or reorganized.

protective custody. See CUSTODY (1).

protective order. (1884) **1.** A court order prohibiting or restricting a party from engaging in conduct (esp. a legal procedure such as discovery) that unduly annoys or burdens the opposing party or a third-party witness. [Cases: Federal Civil Procedure ⚷1271.5; Pretrial Procedure ⚷41.] **2.** RESTRAINING ORDER (1).

blanket protective order. A protective order that covers a broad subject or class. — Often shortened to *blanket order.* — Also termed *umbrella protective order.*

emergency protective order. A temporary protective order granted on an expedited basis, usu. after an ex parte hearing (without notice to the other side), most commonly to provide injunctive relief from an abuser in a domestic-violence case; esp., a short-term restraining order that is issued at the request of a law-enforcement officer in response to a domestic-violence complaint from a victim who is in immediate danger. • A victim of domestic violence can obtain an EPO only through a law-enforcement officer. There is no notice requirement, but the abuser must be served with the order. The duration of an EPO varies from three to seven days, depending on state law. — Abbr. EPO. Cf. TEMPORARY RESTRAINING ORDER. [Cases: Breach of the Peace ⚷20.]

permanent protective order. A protective order of indefinite duration granted after a hearing with notice to both sides; esp., a court order that prohibits an abuser from contacting or approaching the protected person for a long period, usu. years. Despite the name, permanent orders often have expiration dates set by state law. An order may also require the abuser to perform certain acts such as attending counseling or providing financial support for the protected

person. — Abbr. PPO. [Cases: Breach of the Peace ⇨20.]

protective principle. *Int'l law.* The doctrine that a sovereign state has the power to assert jurisdiction over a person whose conduct outside its boundaries threatens its security or could interfere with the operation of its government functions. [Cases: International Law ⇨7.]

protective search. See SEARCH.

protective sweep. (1973) A police officer's quick and limited search — conducted after the officer has lawfully entered the premises — based on a reasonable belief that such a search is necessary to protect the officer or others from harm.

protective tariff. See TARIFF (2).

protective trust. See TRUST.

protector. 1. An unrelated, disinterested overseer of a trust who possesses broader authority than a trustee. • Protectors are usu. appointed to manage offshore trusts, but the concept is slowly being applied to domestic trusts. Protectors often possess broad powers to act for the benefit of the trust, as by removing trustees and clarifying or modifying trust terms to promote the settlor's objectives. For these reasons, a protector is generally not a trustee or beneficiary of the trust. Cf. TRUSTEE. **2.** A person who, having been named in an instrument creating a fee tail, has the responsibility of exercising discretion over whether the tenant in tail may bar the entail. — Also termed *protector of the settlement.*

> "The only additional restriction imposed upon the alienation of an estate tail is that the consent of the person who is called the Protector of the settlement is necessary to its being effectually barred. Alienation by tenant in tail without this consent binds his own issue, but not remaindermen or reversioners, and creates what is called a 'base fee.' The Protector of the settlement is usually the tenant for life in possession; but the settlor of the lands may appoint in his place any number of persons not exceeding three to be together Protector during the continuance of the estates preceding the estate tail." Kenelm E. Digby, *An Introduction to the History of the Law of Real Property* 255 (5th ed. 1897).

protectorate (prə-**tek**-tə-rət). **1.** *Int'l law.* The relationship between a weaker nation and a stronger one when the weaker nation has transferred the management of its more important international affairs to the stronger nation. **2.** *Int'l law.* The weaker or dependent nation within such a relationship. **3.** (*usu. cap.*) The period in British history — from 1653 to 1659 — during which Oliver Cromwell and Richard Cromwell governed. **4.** The British government in the period from 1653 to 1659.

protégé. 1. A person protected by or under the care or training of another person or an entity, esp. one who is established or influential. **2.** *International law.* A nation that is under the protection of another nation. **3.** *International law.* A person who is a citizen of a protected nation or otherwise recognized by treaty as a protected person.

pro tem. *abbr.* PRO TEMPORE.

pro tempore (proh **tem**-pə-ree), *adv.* & *adj.* [Latin] (15c) For the time being; appointed to occupy a position temporarily <a judge pro tempore>. — Abbr. pro tem. [Cases: Judges ⇨15.]

protest, *n.* (15c) **1.** A formal statement or action expressing dissent or disapproval. • Under some circumstances, a protest is lodged to preserve a claim or right. **2.** A notary public's written statement that, upon presentment, a negotiable instrument was neither paid nor accepted. — Also termed *initial protest; noting protest.* Cf. NOTICE OF DISHONOR. [Cases: Bills and Notes ⇨408.]

> "Noting or initial protest is a memorandum made on [a dishonored] instrument, with the notary's initials, date, and the amount of noting charges, together with a statement of the cause of dishonor, such as 'no effects,' 'not advice,' or 'no account.' This is done to charge the memory of the notary, and should be done on the day of dishonor." Frederick M. Hinch, *John's American Notary and Commission of Deeds Manual* § 442, at 281 (3d ed. 1922).

3. A formal statement, usu. in writing, disputing a debt's legality or validity but agreeing to make payment while reserving the right to recover the amount at a later time. • The disputed debt is described as *under protest.* [Cases: Payment ⇨88.] **4.** *Tax.* A taxpayer's statement to the collecting officer that payment is being made unwillingly because the taxpayer believes the tax to be invalid. **5.** *Int'l law.* A formal communication from one subject of international law to another objecting to conduct or a claim by the latter as violating international law. **6.** *Patents.* A proceeding in the U.S. Patent and Trademark Office to determine patentability of an invention after a third party has challenged it in a petition. • Unlike in a public use proceeding, the protestant has no right to participate in the proceeding beyond filing the petition and supporting documents. 37 CFR 1.291. Cf. PUBLIC-USE PROCEEDING. [Cases: Patents ⇨104.] — **protest,** *vb.*

protestando (proh-tə-**stan**-doh). [Law Latin] Protesting. • This emphatic word was used in a protestation to allege or deny something in an oblique manner.

protestant. *Patents.* A person who files a protest petition with the U.S. Patent and Trademark Office challenging the patentability of an invention. See PROTEST. [Cases: Patents ⇨104.]

protestatio contraria facto (proh-tes-**tay**-shee-oh kən-**trair**-ee-ə **fak**-toh). [Law Latin] *Hist.* Protestation inconsistent with one's conduct while protesting.

protestation (prot-ə-**stay**-shən). (14c) **1.** *Common-law pleading.* A declaration by which a party makes an oblique allegation or denial of some fact, claiming that it does or does not exist or is or is not legally sufficient, while not directly affirming or denying the fact. [Cases: Pleading ⇨128.]

> "The practice of protestation of facts not denied arose where the pleader, wishing to avail himself of the right to contest in a future action some traversable fact in the pending action, passes it by without traverse, but at the same time makes a declaration collateral or incidental to

his main pleading, importing that the fact so passed over is untrue. The necessity for this arose from the rule that pleadings must not be double, and that every pleading is taken to admit such matters as it does not traverse. Such being its only purpose, it is wholly without effect in the action in which it occurs . . . ." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 207, at 358 (Henry Winthrop Ballantine ed., 3d ed. 1923).

2. *Scots law.* A defendant's act in a civil case to compel a pursuer (plaintiff) who has failed to take the necessary procedural steps either to proceed or to allow the action to fall.

protest certificate. A notarial certificate declaring (1) that a holder in due course has recruited the notary public to present a previously refused or dishonored negotiable instrument, (2) that the notary has presented the instrument to the person responsible for payment or acceptance (the *drawee*), (3) that the instrument was presented at a given time and place, and (4) that the drawee refused or dishonored the instrument. • In former practice, the notary would issue a protest certificate, which could then be presented to the drawee and any other liable parties as notice that the holder could seek damages for the dishonored negotiable instrument. — Also termed *notarial protest certificate.* See NOTICE OF DISHONOR. [Cases: Bills and Notes ☞ 408.]

protest fee. A fee charged by a bank or other financial institution when an item (such as a check) is presented but cannot be collected.

prothonotary (prə-**thon**-ə-ter-ee *or* proh-thə-**noh**-tə-ree), *n.* A chief clerk in certain courts of law. — Also termed *protonotary.* [Cases: Clerks of Courts ☞ 1.] — **prothonotarial,** *adj.*

protocol. 1. A summary of a document or treaty. **2.** A treaty amending and supplementing another treaty. [Cases: Treaties ☞ 8.] **3.** The formal record of the proceedings of a conference or congress. — Also termed *procès-verbal.* **4.** The minutes of a meeting, usu. initialed by all participants after confirming accuracy. **5.** The rules of diplomatic etiquette; the practices that nations observe in the course of their contacts with one another.

protonotary. See PROTHONOTARY.

pro tribunali (proh trib-yə-**nay**-lī). [Latin] *Hist.* Before the court.

protutor (proh-**t**[**y**]**oo**-tər). *Civil law.* A person who, though not legally appointed as a guardian, administers another's affairs.

prout de lege (**proh**-ət dee [*or* di] **lee**-jee). [Law Latin] According to law. • Proof *prout de lege* is proof by any legal means, as distinct from proof limited to writing. — Also termed *prout de jure* (**proh**-ət dee [*or* di] **joor**-ee).

"A proof *prout de jure* is a proof by all the legal means of probation — viz.: writ, witnesses, and oath of party; although, in practice, the phrase is usually applied to a proof of facts and circumstances by parole, in contradistinction to a proof limited to writ or oath of party." William Bell, *Bell's Dictionary and Digest of the Law of Scotland* 871 (George Watson ed., 7th ed. 1890).

prout patet per recordum (**proh**-ət **pay**-tet pər ri-**kor**-dəm). [Latin] As appears by the record.

provable, *adj.* (15c) Capable of being proved.

prove, *vb.* (13c) To establish or make certain; to establish the truth of (a fact or hypothesis) by satisfactory evidence.

prover, *n. Hist.* A person charged with a felony who attempts to obtain a pardon by confessing and naming accomplices.

pro veritate accipitur (proh ver-i-**tay**-tee ak-**sip**-ə-tər). [Latin] *Hist.* Is held or received as the truth.

prove up, *vb.* (1832) To present or complete the proof of (something) <deciding not to put a doctor on the stand, the plaintiff attempted to prove up his damages with medical records only>.

prove-up, *n.* The establishment of a prima facie claim. • A prove-up is necessary when a factual assertion is unopposed because even without opposition, the claim must be supported by evidence.

provided, *conj.* (15c) **1.** On the condition or understanding (that) <we will sign the contract provided that you agree to the following conditions>. • For the Latin antecedent of this term, see DUMMODO. **2.** Except (that) <all permittees must be at least 18 years of age, provided that those with a bona fide hardship must be at least 15 years of age>. **3.** And <a railway car must be operated by a full crew if it extends for more than 15 continuous miles, provided that a full crew must consist of at least six railway workers>.

provident plea. See PLEA (1).

province, *n.* **1.** An administrative district into which a country has been divided. **2.** A sphere of activity of a profession such as medicine or law.

provincialis (prə-vin-shee-**ay**-lis). [Latin] One who has a domicile in a province.

provincial synod. See SYNOD.

proving the tenor. *Scots law.* An action to establish the terms of a deed or will that has been lost or destroyed.

provision. (15c) **1.** A clause in a statute, contract, or other legal instrument. **2.** A stipulation made beforehand. See PROVISO.

provisional, *adj.* (16c) **1.** Temporary <a provisional injunction>. **2.** Conditional <a provisional government>.

provisional alimony. See *temporary alimony* under ALIMONY.

provisional application. See PATENT APPLICATION.

provisional attachment. See ATTACHMENT (1).

provisional court. See COURT.

provisional director. See DIRECTOR.

provisional exit. *Criminal procedure.* A prisoner's temporary release from prison for a court appearance,

hospital treatment, work detail, or other purpose requiring a release with the expectation of return.

provisional government. See GOVERNMENT.

provisional injunction. See *preliminary injunction* under INJUNCTION.

provisional partition. See PARTITION.

provisional patent application. See *provisional application* under PATENT APPLICATION.

provisional remedy. See REMEDY.

provisional right. *Patents.* The right to obtain a reasonable royalty for use of a patented invention or process by an infringer with actual notice during the period between the publication of a patent application and the time a patent is issued. • The right is only available if the invention as claimed in the issued patent is substantially identical to the invention as claimed in the published application. 35 USCA § 154.

provisional seizure. See ATTACHMENT (1).

provisione hominis (prə-vizh-ee-**oh**-nee **hom**-ə-nis). [Law Latin] *Hist.* By an individual's appointment. • The phrase referred to heirs that a testator appoints, as distinguished from those who succeed by law.

provisione legis (prə-vizh-ee-**oh**-nee **lee**-jis). [Law Latin] *Hist.* By provision of law.

> "Heirs who succeed according to the rules of law regulating succession, without the consent or appointment of their ancestor, are said to succeed *provisione legis*, and are known as heirs-at-law." John Trayner, *Trayner's Latin Maxims* 494 (4th ed. 1894).

provisione tenus (prə-vizh-ee-**oh**-nee **ten**-əs). [Law Latin] *Hist.* To the extent of the provision.

provision of a fine. *Hist.* A proclamation made after the conveying of land by fine, read aloud in court 16 times — four times in the term when the fine was made, and four times in the three succeeding terms.

Provisions of Oxford. *Hist.* During the reign of Henry III, a constitution created by the Mad Parliament and forming the King's advisory council that met with a group of barons several times a year to handle the country's affairs and resolve grievances, esp. those resulting from the King's avoidance of his obligations under Magna Carta. • The Provisions were effective until the baron uprising in 1263 under Simon de Montfort.

proviso (prə-**vi**-zoh). (15c) **1.** A limitation, condition, or stipulation upon whose compliance a legal or formal document's validity or application may depend. **2.** In drafting, a provision that begins with the words *provided that* and supplies a condition, exception, or addition.

provisor. 1. *Hist.* A provider of care or sustenance. **2.** *Eccles. law.* A person nominated by the pope to be the next incumbent of a benefice that is vacant or about to become vacant.

provocation, *n.* (15c) **1.** The act of inciting another to do something, esp. to commit a crime. **2.** Something (such as words or actions) that affects a person's reason and self-control, esp. causing the person to commit a crime impulsively. [Cases: Sentencing and Punishment ☞ 1675.] — **provoke,** *vb.* — **provocative,** *adj.*

adequate provocation. (1842) Something that would cause a reasonable person to act without self-control and lose any premeditated state of mind. • The usual form of adequate provocation is the heat of passion. Adequate provocation can reduce a criminal charge, as from murder to voluntary manslaughter. — Also termed *adequate cause*; *reasonable provocation*. See HEAT OF PASSION. Cf. SELF-DEFENSE. [Cases: Homicide ☞673.]

reasonable provocation. See *adequate provocation*.

provost marshal. *Military law.* A staff officer who supervises a command's military police and advises the commander.

proxenete (prok-sə-**neet**). [Latin fr. Greek] *Roman & civil law.* **1.** A person who negotiates or arranges the terms of a contract between parties; a broker. **2.** [Greek] A person who negotiates marriages; a matchmaker. — Also termed *proxeneta*.

proximate (**prok**-sə-mit), *adj.* (17c) **1.** Immediately before or after. **2.** Very near or close in time or space. Cf. IMMEDIATE. — **proximateness,** *n.*

proximate cause. See CAUSE (1).

proximate consequence. (1840) A result following an unbroken sequence from some (esp. negligent) event. [Cases: Negligence ☞383–387.]

proximate damages. See DAMAGES.

proximity. (15c) The quality or state of being near in time, place, order, or relation.

proximus pubertati (**prok**-sə-məs pyoo-bər-**tay**-ti). [Latin] *Roman law.* Near puberty — hence likely to know right from wrong.

proxy, *n.* (15c) **1.** One who is authorized to act as a substitute for another; esp., in corporate law, a person who is authorized to vote another's stock shares. Cf. *absentee vote* under VOTE (1). [Cases: Corporations ☞198(1); Securities Regulation ☞49.10–49.30.] **2.** The grant of authority by which a person is so authorized. **3.** The document granting this authority. — Also termed (for sense 3 in Roman law) *procuratorium*.

proxy contest. A struggle between two corporate factions to obtain the votes of uncommitted shareholders. • A proxy contest usu. occurs when a group of dissident shareholders mounts a battle against the corporation's managers. — Also termed *proxy fight*. [Cases: Corporations ☞198(3).]

proxy directive. A document that appoints a surrogate decision-maker for the declarant's healthcare decisions. Cf. ADVANCE DIRECTIVE; INSTRUCTION DIRECTIVE; LIVING WILL.

proxy marriage. See MARRIAGE (3).

proxy solicitation. A request that a corporate shareholder authorize another person to cast the shareholder's vote at a corporate meeting. [Cases: Corporations ☞198(3); Securities Regulation ☞49.11.]

proxy statement. An informational document that accompanies a proxy solicitation and explains a proposed action (such as a merger) by the corporation. [Cases: Corporations ⚷198(3); Securities Regulation ⚷49.19.]

PRP. *abbr.* POTENTIALLY RESPONSIBLE PARTY.

prudent, *adj.* (14c) Circumspect or judicious in one's dealings; cautious. — **prudence,** *n.*

prudent-investor rule. (1960) *Trusts.* The principle that a fiduciary must invest in only those securities or portfolios of securities that a reasonable person would buy. • The origin of the prudent-investor rule is *Harvard College v. Amory*, 26 Mass. 446 (1830). This case stressed two points for a trustee to consider when making investments: probable income and probable safety. The trustee must consider both when making investments. Originally termed the *prudent-man rule*, the Restatement (Third) of Trusts changed the term to *prudent-investor rule.* — Also termed *prudent-person rule.* [Cases: Trusts ⚷217.3(5).]

prudent-operator standard. See REASONABLY-PRUDENT-OPERATOR STANDARD.

prudent person. See REASONABLE PERSON.

prudent-person rule. See PRUDENT-INVESTOR RULE.

prurient (**pruur**-ee-ənt), *adj.* (17c) Characterized by or arousing inordinate or unusual sexual desire <films appealing to prurient interests>. See OBSCENITY. — **prurience,** *n.*

PRWORA. *abbr.* PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT.

p.s. *abbr.* (*usu. cap.*) **1.** Public statute. See PUBLIC LAW (2). **2.** Postscript.

pseudo-foreign-corporation statute. A state law regulating foreign corporations that either derive a specified high percentage of their income from that state or have a high percentage of their stock owned by people living in that state. [Cases: Corporations ⚷636.]

pseudograph (**soo**-də-graf). A false writing; a forgery.

pseudo-guarantee treaty. See *guarantee treaty* under TREATY (1).

pseudonym (**sood**-ə-nim), *n.* A fictitious name or identity. Cf. ALIAS. [Cases: Federal Civil Procedure ⚷101; Names ⚷10; Parties ⚷67, 73.] — **pseudonymous** (soo-**don**-ə-məs), *adj.* — **pseudonymity** (sood-ə-**nim**-ə-tee), *n.*

pseudonymous work. See WORK (2).

pseudopresumption of law. See *presumption of law* under PRESUMPTION.

pseudo-stepparent adoption. See *second-parent adoption* under ADOPTION.

PSI. *abbr.* PRESENTENCE INVESTIGATION REPORT.

psychiatric (si-kee-**at**-rik), *adj.* Of or relating to the study or treatment of mental, emotional, and behavioral disorders by medical doctors trained in the field of psychiatry.

psychiatric examination. *Criminal law.* An analysis performed by a psychiatrist to determine a defendant's mental state. • A defendant in a criminal prosecution may undergo a psychiatric examination to determine competence to stand trial or to establish a defense based on some mental condition, such as insanity. — Also (more broadly) termed *mental examination.* See INSANITY DEFENSE; COMPETENCY (2). Cf. *competency proceeding* under PROCEEDING; SUBSTANTIAL-CAPACITY TEST. Cf. INDEPENDENT MENTAL EVALUATION. [Cases: Mental Health ⚷434.]

psychological abuse. See *emotional abuse* under ABUSE.

psychological fact. See FACT.

psychological father. See *psychological parent* under PARENT.

psychological mother. See *psychological parent* under PARENT.

psychological parent. See PARENT.

psychopath (si-kə-path), *n.* (1885) **1.** A person with a mental disorder characterized by an extremely antisocial personality that often leads to aggressive, perverted, or criminal behavior. • The formal psychiatric term for the mental illness from which a psychopath suffers is *antisocial personality disorder.* **2.** Loosely, a person who is mentally ill or unstable. — Also termed *sociopath.* [Cases: Mental Health ⚷3.] — **psychopathy** (si-**kop**-ə-thee), *n.* — **psychopathic** (si-kə-**path**-ik), *adj.*

psychotherapist–client privilege. See *psychotherapist-patient privilege* under PRIVILEGE (3).

psychotherapist–patient privilege. See PRIVILEGE (3).

PTA. *abbr.* PATENT-TERM ADJUSTMENT.

PTI. See *previously taxed income* under INCOME.

PTO. *abbr.* Patent and Trademark Office. See UNITED STATES PATENT AND TRADEMARK OFFICE.

PTO Code of Professional Responsibility. Disciplinary rules and canons of ethics for practicing before the U.S. Patent and Trademark Office. • The Code is found at 37 CFR §§ 10.20-10.112. — Often shortened to PTO Code. [Cases: Patents ⚷97.]

PTP. See *publicly traded partnership* under PARTNERSHIP.

puberes (**pyoo**-bə-reez), *n. pl.* [Latin] *Roman law.* Children who have reached puberty, whether or not they have reached the age of majority.

puberty. 1. The stage of physical development in which a person takes on secondary sexual characteristics, when it becomes possible to reproduce. • In females, the beginning of this stage is marked by the menarche. **2.** *Hist.* The earliest age at which one could presumptively consent and to legally enter into a binding marriage. • At English common law, children became marriageable at the onset of legal puberty (age 12 for girls and 14 for boys). At French civil law, a marriage was invalid if contracted before the end of legal puberty (age 15 for girls and 18 for boys). An underage spouse had the power to

void the marriage. — Also termed (in English common law) *age of discretion*.

Pub. L. *abbr.* PUBLIC LAW (2).

public, *adj.* (14c) **1.** Relating or belonging to an entire community, state, or nation. [Cases: Municipal Corporations ⇨721.] **2.** Open or available for all to use, share, or enjoy. **3.** (Of a company) having shares that are available on an open market. [Cases: Corporations ⇨3.]

public, *n.* (16c) **1.** The people of a nation or community as a whole <a crime against the public>. **2.** A place open or visible to the public <in public>.

Public Access to Court Electronic Records. A computer system by which subscribers can obtain online information from the federal courts, including information from a court's docket sheet about the parties, filing, and orders in a specific case. — Abbr. PACER.

public accommodation. See ACCOMMODATION.

public act. See PUBLIC LAW (2).

public action. See *civil action* under ACTION (4).

publica delicta (**pəb**-li-kə **di**-**lik**-tə). [Latin] *Roman law.* Public wrongs; crimes. See DELICT. Cf. PRIVATA DELICTA.

public administration. See ADMINISTRATION.

public administrator. See ADMINISTRATOR (2).

public advocate. See ADVOCATE.

public agency. See AGENCY (3).

public agent. See AGENT (2).

publican (**pəb**-li-kən). **1.** A person authorized by license to keep a public house for consumption of alcoholic beverages on or off the premises. **2.** PUBLICANUS.

publicanus (pəb-li-**kay**-nəs). [Latin] *Hist. Roman law.* A tax collector. • A *publicanus* was described as "a farmer of the public revenue," although the *publicanus* reaped only the money from that sown by the labor of others. — Often shortened to *publican*.

public appointment. See APPOINTMENT (1).

publication, *n.* (14c) **1.** Generally, the act of declaring or announcing to the public. **2.** *Copyright.* The offering or distribution of copies of a work to the public. • At common law, publication marked the dividing line between state and federal protection, but the Copyright Act of 1976 superseded most of common-law copyright and thereby diminished the significance of publication. Under the Act, an original work is considered published only when it is first made publicly available without restriction. [Cases: Copyrights and Intellectual Property ⇨31.]

> "The concept of publication was of immense importance under the 1909 Act. It became a legal word of art, denoting a process much more esoteric than is suggested by the lay definition of the term. That it thus evolved was due largely to the American dichotomy between common law and statutory copyright, wherein the act of publication constituted the dividing line between the two systems of protection [state and federal]." 1 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 4.01, at 4-3 (Supp. 1997).

divestitive publication. *Archaic.* The public distribution of an author's work on a scale large enough to divest the author of any claim to state common-law copyright protection. • The Copyright Act of 1976 preempted most common-law copyright. — Sometimes (erroneously) written *divestive publication*.

general publication. Distribution of an author's work to the public, as opposed to a selected group, whether or not restrictions are placed on the use of the work. • Before the Copyright Act of 1976, a general publication was generally held to divest common-law rights in a work. Rather, the author was deemed to have dedicated the work to the public. Cf. *limited publication*. [Cases: Copyrights and Intellectual Property ⇨31.]

investitive publication. *Archaic.* The public distribution of an author's work on a scale large enough to qualify for federal statutory copyright protection. • Since 1976 copyright has protected works since their creation, rather than their publication.

limited publication. Distribution of copies of an author's work to a selected group for a limited purpose and with no permission to copy the work, at a time when copies are not available to the general public. • Before the Copyright Act of 1976 made publication irrelevant, courts distinguished between limited publication and general publication to decide whether federal copyright laws applied. Under that Act, a work published before January 1, 1978 without proper copyright notice entered the public domain unless the publication was limited. — Also termed *private publication*. Cf. *general publication*. [Cases: Copyrights and Intellectual Property ⇨31.]

private publication. See *limited publication*.

3. *Defamation.* The communication of defamatory words to someone other than the person defamed. • The communication may be in any form, verbal or nonverbal. [Cases: Libel and Slander ⇨23.]

> "Publication means the act of making the defamatory statement known to any person or persons other than the plaintiff himself. It is not necessary that there should be any publication in the popular sense of making the statement public. A private and confidential communication to a single individual is sufficient. Nor need it be published in the sense of being written or printed; for we have seen that actions as well as words may be defamatory. A communication to the person defamed himself, however, is not a sufficient publication on which to found civil proceedings; though it is otherwise in the case of a criminal prosecution, because such a communication may provoke a breach of the peace. Nor does a communication between husband and wife amount to publication; domestic intercourse of this kind is exempt from the restrictions of the law of libel and slander. But a statement by the defendant to the wife or husband of the plaintiff is a ground of action." R.F.V. Heuston, *Salmond on the Law of Torts* 154 (17th ed. 1977).

> "The publication of a libel might be in the form of a book, pamphlet or newspaper, but nothing of that nature is required. A letter sent to a single individual is sufficient." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 489 (3d ed. 1982).

4. *Wills & estates.* The formal declaration made by a testator when signing the will that it is the testator's will. • There is no requirement that the provisions of the will or the identities of the beneficiaries be revealed to the witnesses.

publication-quality drawings. *Patents.* Illustrations or drawings filed with a patent application and capable of being scanned. [Cases: Patents ⇨100.]

publication right. *Copyright.* The right of an author or artist to decide when to reveal or display a creative work. • Publication is one of the moral rights of artists recognized in civil-law countries and much of Europe, but largely unavailable in the United States. — Also termed *right of disclosure.* [Cases: Copyrights and Intellectual Property ⇨36.]

public attorney. See ATTORNEY (2).

public authority. See AUTHORITY (3).

public-authority justification. See JUSTIFICATION.

publica vindicta (**pəb**-li-kə vin-**dik**-tə). [Latin] *Hist.* The protection of the public interest.

public-benefit corporation. See *public corporation* (3) under CORPORATION.

public bill. See BILL (3).

public blockade. See BLOCKADE.

public boundary. See BOUNDARY.

public building. A building that is accessible to the public; esp., one owned by the government. [Cases: States ⇨88.]

Public Buildings Service. A unit in the General Services Administration responsible for constructing federal buildings and managing federally owned and leased property through 11 regional offices. — Abbr. PBS. [Cases: United States ⇨57.]

public carrier. See *common carrier* under CARRIER.

public character. See PUBLIC FIGURE.

public commissioner. See PROSECUTOR (1).

public contract. See CONTRACT.

Public Contracts Act. See WALSH–HEALEY ACT.

public controversy. See CONTROVERSY.

public-convenience-and-necessity standard. (1964) A common criterion used by a governmental body to assess whether a particular request or project should be granted or approved.

public corporation. See CORPORATION.

public debt. See DEBT.

public defender. (1827) A lawyer or staff of lawyers, usu. publicly appointed and paid, whose duty is to represent indigent criminal defendants. — Often shortened to *defender.* — Abbr. P.D. [Cases: Criminal Law ⇨1840.]

public delict. See DELICT.

public director. See DIRECTOR.

public disclosure of private facts. See DISCLOSURE (1).

public disturbance. See BREACH OF THE PEACE.

public document. See DOCUMENT.

public domain. (17c) 1. Government-owned land. 2. *Hist.* Government lands that are open to entry and settlement. • Today virtually all federal lands are off-limits to traditional entry and settlement. 3. *Intellectual property.* The universe of inventions and creative works that are not protected by intellectual-property rights and are therefore available for anyone to use without charge. • When copyright, trademark, patent, or trade-secret rights are lost or expire, the intellectual property they had protected becomes part of the public domain and can be appropriated by anyone without liability for infringement. [Cases: Copyrights and Intellectual Property ⇨40.]

> "[P]ublic domain is the status of an invention, creative work, commercial symbol, or any other creation that is not protected by any form of intellectual property. Public domain is the rule: intellectual property is the exception." 1 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 1.01[2], at 1-3 (3d ed. 1996).

public-duty doctrine. (1976) *Torts.* The rule that a governmental entity (such as a state or municipality) cannot be held liable for an individual plaintiff's injury resulting from a governmental officer's or employee's breach of a duty owed to the general public rather than to the individual plaintiff. — Also termed *public-duty rule.* See SPECIAL-DUTY DOCTRINE. [Cases: Municipal Corporations ⇨723.]

public easement. See EASEMENT.

public enemy. See ENEMY.

public entity. See ENTITY.

public-exchange offer. See OFFER.

public fact. See FACT.

public figure. (1871) A person who has achieved fame or notoriety or who has voluntarily become involved in a public controversy. • A public figure (or public official) suing for defamation must prove that the defendant acted with actual malice. *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710 (1964). — Also termed *public character.* [Cases: Libel and Slander ⇨48(1).]

all-purpose public figure. A person who achieves such pervasive fame or notoriety that he or she becomes a public figure for all purposes and in all contexts. • For example, a person who occupies a position with great persuasive power and influence may become an all-purpose public figure whether or not the person actively seeks attention. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345, 94 S.Ct. 2997, 3009 (1974). [Cases: Libel and Slander ⇨48(1).]

limited-purpose public figure. (1979) A person who, having become involved in a particular public issue, has achieved fame or notoriety only in relation to that particular issue. [Cases: Libel and Slander ⇨48(1).]

public forum. (1935) *Constitutional law.* A public place where people traditionally gather to express ideas and

exchange views. • To be constitutional, the government's regulation of a public forum must be narrowly tailored to serve a significant government interest and must usu. be limited to time-place-or-manner restrictions. — Also termed *open forum*. See TIME-PLACE-OR-MANNER RESTRICTION. Cf. NONPUBLIC FORUM. [Cases: Constitutional Law ⚷1732.]

"[T]raditional public fora are open for expressive activity regardless of the government's intent. The objective characteristics of these properties require the government to accommodate private speakers. The government is free to open additional properties for expressive use by the general public or by a particular class of speakers, thereby creating designated public fora. Where the property is not a traditional public forum, the property is either a nonpublic forum or not a forum at all." *Arkansas Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 678, 118 S.Ct. 1633, 1641 (1998).

designated public forum. (1985) Public property that has not traditionally been open for public assembly and debate but that the government has opened for use by the public as a place for expressive activity, such as a public-university facility or a publicly owned theater. • Unlike a traditional public forum, the government does not have to retain the open character of a designated public forum. Also, the subject matter of the expression permitted in a designated public forum may be limited to accord with the character of the forum; reasonable, content-neutral time, place, and manner restrictions are generally permissible. But any prohibition based on the content of the expression must be narrowly drawn to effectuate a compelling state interest, as with a traditional public forum. — Also termed *limited public forum*; *nontraditional public forum*. [Cases: Constitutional Law ⚷1744.]

traditional public forum. (1973) Public property that has by long tradition — as opposed to governmental designation — been used by the public for assembly and expression, such as a public street, public sidewalk, or public park. • To be constitutional, the government's content-neutral restrictions of the time, place, or manner of expression must be narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication. Any government regulation of expression that is based on the content of the expression must meet the much higher test of being necessary to serve a compelling state interest. — Also termed *quintessential public forum*. [Cases: Constitutional Law ⚷1736]

public-function doctrine. See PUBLIC-FUNCTION TEST.

public-function rationale. See GOVERNMENTAL-FUNCTION THEORY.

public-function test. (1966) In a suit under 42 USCA § 1983, the doctrine that a private person's actions constitute state action if the private person performs functions that are traditionally reserved to the state. — Also termed *public-function doctrine*; *public-function theory*. [Cases: Civil Rights ⚷1326(4, 7).]

public fund. See FUND (1).

public grant. See PATENT (2).

public ground. See *public land* under LAND.

public health. See HEALTH.

Public Health Service. The combined offices and units of the U.S. Department of Health and Human Services responsible for promoting the physical and mental health of American citizens.

public hearing. See HEARING.

public highway. See HIGHWAY.

public house. 1. *Archaic.* An inn. **2.** A tavern where alcoholic beverages may be bought and consumed on the premises. • The British term *pub* is an abbreviation of *public house*. — Also termed (in sense 2) *tippling house*.

publici juris (**pəb**-li-si **joor**-is), *adj.* [Latin] Of public right; of importance to or available to the public <a city holds title to its streets as property *publici juris*> <words that are in general or common use and that are merely descriptive are *publici juris* and cannot be appropriated as a trademark>.

public improvement. See IMPROVEMENT.

public injury. See INJURY.

public institution. See INSTITUTION (3).

public instrument. See PUBLIC WRITING.

public interest. (16c) **1.** The general welfare of the public that warrants recognition and protection. **2.** Something in which the public as a whole has a stake; esp., an interest that justifies governmental regulation.

public-interest exception. (1957) The principle that an appellate court may consider and decide a moot case — although such decisions are generally prohibited — if (1) the case involves a question of considerable public importance, (2) the question is likely to arise in the future, and (3) the question has evaded appellate review. [Cases: Appeal and Error ⚷781(1); Federal Courts ⚷723.]

public-interest law. Legal practice that advances social justice or other causes for the public good, such as environmental protection. • Although public-interest law primarily encompasses private not-for-profit work, the term is sometimes used to include the work of government agencies such as public-defender offices. Cf. CAUSE LAWYERING; *social justice* under JUSTICE.

public-interest lawyer. See LAWYER.

public international law. See INTERNATIONAL LAW.

public intoxication. See INTOXICATION.

public invitee. See INVITEE.

publicist. 1. A public-relations specialist. **2.** An international-law scholar. • The term applies to scholars of both public and private international law.

public-key encryption. See KEY ENCRYPTION.

public land. See LAND.

public law. (16c) **1.** The body of law dealing with the relations between private individuals and the government,

and with the structure and operation of the government itself; constitutional law, criminal law, and administrative law taken together. Cf. PRIVATE LAW (1). **2.** A statute affecting the general public. • Federal public laws are first published in *Statutes at Large* and are eventually collected by subject in the U.S. Code. — Abbr. Pub. L.; P.L. — Also termed *public statute* (abbr. P.S.); *general statute*; (esp. in BrE) *public act*. Cf. *general law* (1) under LAW; *general act* and *public act* under ACT (3). [Cases: Statutes ⇨68.] **3.** Constitutional law.

public-lending right. *Copyright.* In the U.K. and some other countries, the right of an author to a royalty for works that are lent out by a public library.

public-liability insurance. See *liability insurance* under INSURANCE.

publicly held corporation. See *public corporation* (1) under CORPORATION.

publicly traded partnership. See PARTNERSHIP.

public market. See MARKET.

public-meeting law. See SUNSHINE LAW.

public minister. See MINISTER.

public morality. See MORALITY.

public necessity. See NECESSITY.

public notice. See NOTICE.

public nuisance. See NUISANCE.

public offense. See OFFENSE (1).

public offer. See *offer to all the world* under OFFER.

public offering. See OFFERING.

public office. A position whose occupant has legal authority to exercise a government's sovereign powers for a fixed period. [Cases: Officers and Public Employees ⇨1.]

public official. See OFFICIAL (1).

public passage. A right held by the public to pass over a body of water, whether the underlying land is publicly or privately owned. [Cases: Navigable Waters ⇨15.]

public-performance right. See PERFORMANCE RIGHTS.

public person. A sovereign government, or a body or person delegated authority under it.

public place. Any location that the local, state, or national government maintains for the use of the public, such as a highway, park, or public building. [Cases: Municipal Corporations ⇨721; States ⇨88; United States ⇨57.]

public policy. (16c) **1.** Broadly, principles and standards regarded by the legislature or by the courts as being of fundamental concern to the state and the whole of society. • Courts sometimes use the term to justify their decisions, as when declaring a contract void because it is "contrary to public policy." — Also termed *policy of the law*. [Cases: Contracts ⇨108.]

> "The policy of the law, or public policy, is a phrase of common use in estimating the validity of contracts. Its history is obscure; it is most likely that agreements which tended to restrain trade or to promote litigation were the first to elicit the principle that the courts would look to the interests of the public in giving efficacy to contracts. Wagers, while they continued to be legal, were a frequent provocative of judicial ingenuity on this point, as is sufficiently shown by the case of *Gilbert v. Sykes* [16 East 150 (1812)] . . . : but it does not seem probable that the doctrine of public policy began in the endeavor to elude their binding force. Whatever may have been its origin, it was applied very frequently, and not always with the happiest results, during the latter part of the eighteenth and the commencement of the nineteenth century. Modern decisions, however, while maintaining the duty of the courts to consider the public advantage, have tended more and more to limit the sphere within which this duty may be exercised." William R. Anson, *Principles of the Law of Contract* 286 (Arthur L. Corbin ed., 3d Am. ed. 1919).

2. More narrowly, the principle that a person should not be allowed to do anything that would tend to injure the public at large.

public-policy limitation. (1961) *Tax.* A judicially developed principle that a person should not be allowed to deduct expenses related to an activity that is contrary to the public welfare. • This principle is reflected in the Internal Revenue Code's specific disallowance provisions (such as for kickbacks and bribes). [Cases: Internal Revenue ⇨3368.]

public pond. See GREAT POND.

public power. See POWER (3).

public property. See PROPERTY.

public prosecutor. 1. See DISTRICT ATTORNEY. **2.** See PROSECUTOR (1).

public purpose. (18c) An action by or at the direction of a government for the benefit of the community as a whole. [Cases: Municipal Corporations ⇨861.]

public record. See RECORD.

public-records doctrine. The principle, applicable in many states, that a third person acquiring or interested in real or immovable property may rely on the face of relevant public records and need not investigate further for unrecorded interests. [Cases: Vendor and Purchaser ⇨231.]

public-records exception. The exception from the hearsay rule for the contents of certain public records or the absence of a record where it would ordinarily be kept in public archives. Fed. R. Evid. 803(8)–(10). [Cases: Criminal Law ⇨429; Evidence ⇨325–337.]

public relations. 1. The business of creating or maintaining a company's goodwill or good public image. **2.** A company's existing goodwill or public image. — Abbr. PR.

public reprimand. See REPRIMAND.

public revenue. See REVENUE.

public right. See RIGHT.

public right-of-way. See RIGHT-OF-WAY.

public safety. (16c) The welfare and protection of the general public, usu. expressed as a governmental responsibility <Department of Public Safety>. [Cases: Municipal Corporations ⇨595.]

public-safety exception. (1984) *Evidence.* An exception to the *Miranda* rule, allowing into evidence an otherwise suppressible statement by a defendant concerning information that the police needed at the time it was made in order to protect the public. • If, for example, a victim tells the police that an assailant had a gun, and upon the suspect's arrest the police find a holster but no gun, they would be entitled immediately to ask where the gun is. Under the public-safety exception, the suspect's statement of the gun's location would be admissible. [Cases: Criminal Law ⇨412.2(3).]

public sale. See SALE.

public school. See SCHOOL.

public seal. See SEAL.

public sector. (1934) The part of the economy or an industry that is controlled by the government. Cf. PRIVATE SECTOR.

public security. See SECURITY.

public service. (16c) **1.** A service provided or facilitated by the government for the general public's convenience and benefit. **2.** Government employment; work performed for or on behalf of the government. **3.** Broadly, any work that serves the public good, including government work and public-interest law. [Cases: Officers and Public Employees ⇨1.]

public-service commission. See COMMISSION (3).

public-service corporation. See CORPORATION.

public servitude. See SERVITUDE (2).

public session. See *open session* under SESSION (1).

public statute. 1. See *general statute* under STATUTE. **2.** See PUBLIC LAW (2).

public stock. See STOCK.

public store. See STORE.

public tort. See TORT.

public trial. See TRIAL.

public, true, and notorious. *Hist. Eccles. law.* The concluding words of each allegation in a court petition.

public trust. See *charitable trust* under TRUST.

public-trust doctrine. The principle that navigable waters are preserved for the public use, and that the state is responsible for protecting the public's right to the use. [Cases: Navigable Waters ⇨2.]

publicum jus (**pəb**-li-kəm **jəs**). [Latin] See JUS PUBLICUM.

public use. See USE (1).

public-use bar. *Patents.* A statutory bar that prevents the granting of a patent for an invention that was publicly used or sold in the United States more than one year before the application date. 35 USCA § 102(b). • The doctrine can be invoked for any public use, any commercial use, any sale or offer of sale, or any private transfer made without a pledge of secrecy. Cf. PRIVATE-USE EXCEPTION. — Also termed *prior-use bar.* [Cases: Patents ⇨75.]

public-use proceeding. *Patents.* An investigation into whether a patent is barred because the invention was publicly used or sold more than a year before the application was filed. • Rarely used, this procedure is instituted upon a petition by someone protesting the application. If the petition and supporting documents make out a prima facie case, the examiner will hold a hearing and issue a final decision, which is not reviewable. 37 CFR 1.292. — Abbr. PUP. Cf. PROTEST. [Cases: Patents ⇨75.]

public utility. See UTILITY.

public utility district. See *municipal utility district* under DISTRICT.

Public Utility Holding Company Act. A federal law enacted in 1935 to protect investors and consumers from the economic disadvantages produced by the small number of holding companies that owned most of the nation's utilities. • The Act also sought to protect the public from deceptive security advertising. 15 USCA §§ 79 et seq. — Abbr. PUHCA. [Cases: Public Utilities ⇨211–216.]

public verdict. See VERDICT.

public vessel. See VESSEL.

Public Vessels Act. A federal law enacted in 1925 to allow claims against the United States for damages caused by one of its vessels. 46 USCA app. §§ 781–90. — Abbr. PVA. [Cases: United States ⇨78(7).]

public war. See WAR.

public water. See WATER.

public welfare. See WELFARE (1).

public-welfare offense. See OFFENSE (1).

public wharf. See WHARF.

public works. See WORKS.

public worship. See WORSHIP.

public writing. 1. The written acts or records of a government (or its constituent units) that are not constitutionally or statutorily protected from disclosure. • Laws and judicial records, for example, are public writings. A private writing that becomes part of a public record may be a public writing in some circumstances. [Cases: Records ⇨54.] **2.** *Rare.* A document prepared by a notary public in the presence of the parties who sign it before witnesses. — Also termed (in both senses) *public instrument*; (in sense 2) *escritura publica.*

public wrong. See WRONG.

publish, *vb.* (14c) **1.** To distribute copies (of a work) to the public. **2.** To communicate (defamatory words) to someone other than the person defamed. See INTENT TO PUBLISH. [Cases: Libel and Slander ⇨23.] **3.** To declare (a will) to be the true expression of one's testamentary intent. [Cases: Wills ⇨119.] **4.** To make (evidence) available to a jury during trial. See PUBLICATION.

PUC. *abbr.* Public Utilities Commission.

PUD. *abbr.* **1.** PLANNED-UNIT DEVELOPMENT. **2.** See *municipal utility district* under DISTRICT.

pudzeld. See WOOD-GELD.

pueblo (**pweb**-loh). [Spanish] A town or village, esp. in the southwestern United States.

puer (**pyoo**-ər), *n.* [Latin] *Roman law.* **1.** A child, esp. a boy. **2.** A male slave. Pl. ***pueri*** (**pyoor**-ī).

puerility (pyoo-ə-**ril**-ə-tee *or* pyuu-**ril**-ə-tee). *Civil law.* A child's status between infancy and puberty.

pueritia (pyoo-ə-**rish**-ee-ə), *n.* [Latin] *Roman law.* Childhood, esp. up to the age of 17, the minimum age for pleading before a magistrate. Cf. AETAS INFANTIAE PROXIMA; AETAS PUBERTATI PROXIMA.

puffer. See BY-BIDDER.

puffing. (18c) **1.** The expression of an exaggerated opinion — as opposed to a factual misrepresentation — with the intent to sell a good or service. • Puffing involves expressing opinions, not asserting something as a fact. Although there is some leeway in puffing goods, a seller may not misrepresent them or say that they have attributes that they do not possess. — Also termed *puffery*; *sales puffery*; *dealer's talk*. [Cases: Contracts ⚷94(7); Sales ⚷38(3), 261(5).]

> "'Dealer's puffing,' so long as it remains in the realm of opinion or belief, will not support a conviction of false pretenses however extravagant the statements." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 369 (3d ed. 1982).

2. Secret bidding at an auction by or on behalf of a seller; BY-BIDDING.

Pugh clause. *Oil & gas.* A provision in an oil-and-gas lease modifying the effect of most lease-pooling clauses by severing pooled portions of the lease from unpooled portions of the lease. • Drilling or production on a pooled portion will not maintain the lease for the unpooled portions. The clause is named for Lawrence G. Pugh, an attorney from Cowley, Louisiana, who drafted the first version in 1947. In Texas it is termed a Freestone rider. See POOLING. [Cases: Mines and Minerals ⚷78.1(7).]

PUHCA. *abbr.* PUBLIC UTILITY HOLDING COMPANY ACT.

puis (pwis *or* pwee). [French] Afterwards; since.

puis darrein continuance (**pwis dar**-ayn kən-**tin**-yoo-ənts). [Law French "since the last continuance"] See *plea puis darrein continuance* under PLEA (3).

puisne (**pyoo**-nee), *adj.* [Law French] (16c) Junior in rank; subordinate.

puisne judge. See JUDGE.

puisne mortgage. See *junior mortgage* under MORTGAGE.

***Pullman* abstention.** See ABSTENTION.

pulsare (pəl-**sair**-ee), *vb.* [Latin] *Civil law.* To accuse or charge; to proceed against at law.

pulsator (pəl-**say**-tər). *Civil law.* A plaintiff or actor.

pumping unit. *Oil & gas.* Equipment used to pump oil to the surface when the pressure difference between the formation and the borehole is not strong enough to cause oil to rise to the surface. — Also termed *pumpjack*; *horsehead*.

pumpjack. See PUMPING UNIT.

punctum temporis (**pəngk**-təm **tem**-pə-ris). [Latin] A point of time; an instant.

punies (**pyoo**-neez). *Slang.* Punitive damages. See *punitive damages* under DAMAGES.

punishable, *adj.* (15c) **1.** (Of a person) subject to a punishment <there is no dispute that Jackson remains punishable for these offenses>. **2.** (Of a crime or tort) giving rise to a specified punishment <a felony punishable by imprisonment for up to 20 years>. — **punishability,** *n.*

punishment, *n.* (15c) **1.** A sanction — such as a fine, penalty, confinement, or loss of property, right, or privilege — assessed against a person who has violated the law. See SENTENCE.

> "Punishment in all its forms is a loss of rights or advantages consequent on a breach of law. When it loses this quality it degenerates into an arbitrary act of violence that can produce nothing but bad social effects." Glanville Williams, *Criminal Law* 575 (2d ed. 1961).

> "In the treatment of offenders there is a clear and unmistakable line of division between the function of the judge and that of the penologist. I should modify that: the law is clear only if it is first made clear in what sense the word 'treatment' is being used. For in this context the word can be used in two senses, one wide and the other narrow. Let me take the wide meaning first. The object of a sentence is to impose punishment. For 'punishment', a word which to many connotes nothing but retribution, the softer word 'treatment' is now frequently substituted; this is the wider meaning. The substitution is made, I suppose, partly as a concession to the school which holds that crime is caused by mental sickness, but more justifiably as a reminder that there are other methods of dealing with criminal tendencies besides making the consequences of crime unpleasant." Patrick Devlin, *The Judge* 32-33 (1979).

capital punishment. See CAPITAL PUNISHMENT.

collective punishment. See COLLECTIVE PUNISHMENT.

corporal punishment. (16c) Physical punishment; punishment that is inflicted upon the body (including imprisonment). [Cases: Sentencing and Punishment ⚷1524, 1525.]

> "Past forms of corporal punishment included branding, blinding, mutilation, amputation, and the use of the pillory and the stocks. It was also an element in such violent modes of execution as drowning, stoning, burning, hanging, and drawing and quartering . . . . In most parts of Europe and in the United States, such savage penalties were replaced by imprisonment during the late eighteenth and early nineteenth centuries, although capital punishment itself remained. Physical chastisement became less frequent until, in the twentieth century, corporal punishment was either eliminated as a legal penalty or restricted to beating with a birch rod, cane, whip, or other scourge. In ordinary usage the term now refers to such penal flagellation." Gordon Hawkins, "Corporal Punishment," in 1 *Encyclopedia of Crime and Justice* 251, 251 (Sanford H. Kadish ed., 1983).

cruel and unusual punishment. (17c) Punishment that is torturous, degrading, inhuman, grossly disproportionate to the crime in question, or otherwise shocking to the moral sense of the community. • Cruel and unusual punishment is prohibited by the Eighth Amendment. [Cases: Sentencing and Punishment ☞1430–1607.]

cumulative punishment. (1842) Punishment that increases in severity when a person is convicted of the same offense more than once.

deterrent punishment. (1896) **1.** *Criminal law.* Punishment intended to deter the offender and others from committing crimes and to make an example of the offender so that like-minded people are warned of the consequences of crime. [Cases: Sentencing and Punishment ☞41.] **2.** *Torts.* Punishment intended to deter a tortfeasor from repeating a behavior or failing to remove a hazard that led to an injury. • Punitive damages are usu. awarded as a deterrent punishment.

excessive punishment. (17c) Punishment that is not justified by the gravity of the offense or the defendant's criminal record. See *excessive fine* (1) under FINE (5). [Cases: Sentencing and Punishment ☞32.]

infamous punishment. (16c) Punishment by imprisonment, usu. in a penitentiary. See *infamous crime* under CRIME.

nonjudicial punishment. *Military law.* A procedure under which a commanding officer levies punishment against a minor offender who is subject to the Uniform Code of Military Justice. • In the Navy and Coast Guard, nonjudicial punishment is termed *captain's mast*; in the Marine Corps, it is termed *office hours*; and in the Army and Air Force, it is referred to as *Article 15*. Nonjudicial punishment is not a court-martial. [Cases: Armed Services ☞39; Military Justice ☞525.]

preventive punishment. (1893) Punishment intended to prevent a repetition of wrongdoing by disabling the offender. [Cases: Sentencing and Punishment ☞42.]

reformative punishment. (1919) Punishment intended to change the character of the offender. [Cases: Sentencing and Punishment ☞45.]

retributive punishment. (1887) Punishment intended to satisfy the community's retaliatory sense of indignation that is provoked by injustice. [Cases: Sentencing and Punishment ☞44.]

> "The fact that it is natural to hate a criminal does not prove that retributive punishment is justified." Glanville Williams, *The Sanctity of Life and the Criminal Law* 60 (1957).

2. *Family law.* A negative disciplinary action administered to a minor child by a parent. [Cases: Parent and Child ☞2.5.]

punitive, *adj.* (16c) Involving or inflicting punishment. — Also termed *punitory*.

punitive articles. Articles 77–134 of the Uniform Code of Military Justice. • These articles list the crimes in the military-justice system. [Cases: Armed Services ☞35; Military Justice ☞550–789.]

punitive damages. See DAMAGES.

punitive isolation. See *punitive segregation* under SEGREGATION (1).

punitive segregation. See SEGREGATION.

punitive statute. See *penal statute* under STATUTE.

punitory. See PUNITIVE.

punitory damages. See *punitive damages* under DAMAGES.

PUP. *abbr.* See PUBLIC-USE PROCEEDING.

pupil. *Scots & civil law.* A person who has not reached or completed puberty. See MINORITY (1).

pupillarity (pyoo-pi-**lair**-ə-tee). *Scots & Civil law.* The stage of a person's life that spans from infancy through puberty.

pupillary substitution (**pyoo**-pə-ler-ee). See SUBSTITUTION (5).

pupillus (pyoo-**pil**-əs), *n.* [Latin] *Roman law.* A child under the age of puberty and under the authority of a *sui juris* tutor. See TUTELA.

pur (pər *or* poor). [Law French] By; for.

pur autre vie (pər **oh**-trə [*or* **oh**-tər] **vee**). [Law French "for another's life"] For or during a period measured by another's life <a life estate *pur autre vie*>. — Also spelled *per autre vie*.

purchase, *n.* (15c) **1.** The act or an instance of buying. **2.** The acquisition of real property by one's own or another's act (as by will or gift) rather than by descent or inheritance. [Cases: Vendor and Purchaser ☞3.] Cf. DESCENT (1). — **purchase,** *vb.*

compulsory purchase. *Rare.* See EMINENT DOMAIN.

purchase, words of. See WORDS OF PURCHASE.

purchase accounting method. See ACCOUNTING METHOD.

purchase agreement. (1909) A sales contract. Cf. REPURCHASE AGREEMENT.

blanket purchase agreement. See BLANKET ORDER (3).

purchase money. (17c) The initial payment made on property secured by a mortgage. [Cases: Mortgages ☞115.]

purchase-money interest. See *purchase-money security interest* under SECURITY INTEREST.

purchase-money mortgage. See MORTGAGE.

purchase-money resulting trust. See TRUST.

purchase-money security interest. See SECURITY INTEREST.

purchase order. (1916) A document authorizing a seller to deliver goods with payment to be made later. — Abbr. P.O. [Cases: Sales ☞23(1).]

blanket purchase order. See BLANKET ORDER (3).

purchaser. (14c) **1.** One who obtains property for money or other valuable consideration; a buyer.

affiliated purchaser. *Securities.* Any of the following: (1) a person directly or indirectly acting in concert with a distribution participant in connection with the acquisition or distribution of the securities involved; (2) an affiliate who directly or indirectly controls the purchases of those securities by a distribution participant, or whose purchases are controlled by such a participant, or whose purchases are under common control with those of such a participant; (3) an affiliate, who is a broker or a dealer (except a broker-dealer whose business consists solely of effecting transactions in "exempted securities," as defined in the Exchange Act); (4) an affiliate (other than a broker-dealer) who regularly purchases securities through a broker-dealer, or otherwise, for its own account or for the account of others, or recommends or exercises investment discretion in the purchase or sale of securities (with certain specified exceptions). SEC Rule 10b-18(a)(2) (17 CFR § 240.10b-18(a)(2)).

bona fide purchaser. (18c) One who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims. • Generally, a bona fide purchaser for value is not affected by the transferor's fraud against a third party and has a superior right to the transferred property as against the transferor's creditor to the extent of the consideration that the purchaser has paid. — Abbr. BFP. — Also termed *bona fide purchaser for value*; *good-faith purchaser*; *purchaser in good faith*; *innocent purchaser*; *innocent purchaser for value*. [Cases: Sales ⇨234(1); Vendor and Purchaser ⇨220.]

good-faith purchaser. See *bona fide purchaser.*

innocent purchaser. See *bona fide purchaser.*

innocent purchaser for value. See *bona fide purchaser.*

purchaser for value. A purchaser who pays consideration for the property bought.

purchaser in good faith. See *bona fide purchaser.*

purchaser pendente lite. One who buys an interest in something that is the subject of a pending lawsuit. [Cases: Lis Pendens ⇨22(4), 23.]

2. One who acquires real property by means other than descent, gift, or inheritance.

first purchaser. An ancestor who first acquired an estate that still belongs to the family.

pure accident. See *unavoidable accident* under ACCIDENT.

pure annuity. See *nonrefund annuity* under ANNUITY.

pure-comparative-negligence doctrine. (1976) The principle that liability for negligence is apportioned in accordance with the percentage of fault that the fact-finder assigns to each party and that a plaintiff's percentage of fault reduces the amount of recoverable damages but does not bar recovery. See *comparative negligence* under NEGLIGENCE; APPORTIONMENT OF LIABILITY. Cf. 50-PERCENT RULE. [Cases: Negligence ⇨549(10).]

pure debt. See *pure obligation* under OBLIGATION.

pure easement. See *easement appurtenant* under EASEMENT.

pure freezeout. See FREEZEOUT.

pure mark. See *technical trademark* under TRADEMARK.

pure obligation. See OBLIGATION.

pure plea. See PLEA (3).

pure race statute. See RACE STATUTE.

pure risk. See RISK.

pure speech. See SPEECH.

pure theory. The philosophy of Hans Kelsen, in which he contends that a legal system must be "pure" — that is, self-supporting and not dependent on extralegal values. • Kelsen's theory, set out in such works as *General Theory of Law and the State* (1945) and *The Pure Theory of Law* (1934), maintains that laws are norms handed down by the state. Laws are not defined in terms of history, ethics, sociology, or other external factors. Rather, a legal system is an interconnected system of norms, in which coercive techniques are used to secure compliance. The validity of each law, or legal norm, is traced to another legal norm. Ultimately, all laws must find their validity in the society's basic norm (*grundnorm*), which may be as simple as the concept that the constitution was validly enacted. See *basic norm* under NORM.

pure trademark. See *technical trademark* under TRADEMARK.

pure villeinage. See VILLEINAGE.

purgation (pər-**gay**-shən). *Hist.* The act of cleansing or exonerating oneself of a crime or accusation by an oath or ordeal.

canonical purgation. Purgation by oath-helpers in an ecclesiastical court. See COMPURGATION.

vulgar purgation. Purgation by fire, hot irons, battle, or cold water; purgation by means other than by oath-helpers. • Vulgar purgation was so called because it was not sanctioned by the church after 1215.

purgatory oath. See OATH.

purge, *vb.* (13c) To exonerate (oneself or another) of guilt <the judge purged the defendant of contempt>. [Cases: Contempt ⇨81.]

purpart (**pər**-pahrt). A share of an estate formerly held in common; a part in a division; an allotment from

an estate to a coparcener. — Formerly also termed *purparty*; *perparts*; *pourparty*.

purparty (**pər**-pahr-tee). See PURPART.

purport (**pər**-port), *n.* (15c) The idea or meaning that is conveyed or expressed, esp. by a formal document.

purport (pər-**port**), *vb.* (17c) To profess or claim, esp. falsely; to seem to be <the document purports to be a will, but it is neither signed nor dated>.

purported, *adj.* (1885) Reputed; rumored.

purpose. (13c) An objective, goal, or end; specif., the business activity that a corporation is chartered to engage in. [Cases: Corporations ☞14.]

purpose approach. See MISCHIEF RULE.

purpose clause. An introductory clause to a statute explaining its background and stating the reasons for its enactment. [Cases: Statutes ☞210.]

purposeful, *adj.* Done with a specific purpose in mind; deliberate.

purposive construction. See CONSTRUCTION.

purpresture (pər-**pres**-chər). (14c) An encroachment upon public rights and easements by appropriation to private use of that which belongs to the public. — Also spelled *pourpresture*.

purprise (pər-**prīz**), *vb.* [Law French] *Hist.* To encroach on land illegally; to make a purpresture.

purse, *n.* A sum of money available to the winner of a contest or event; a prize. [Cases: Gaming ☞7.]

purser. A person in charge of accounts and documents on a ship. [Cases: Shipping ☞74.]

purse-snatching. The stealing of a handbag or other similar item by seizing or grabbing it from a victim's physical possession and then fleeing, often without harm or threat of harm to the victim. • Purse-snatching is usu. a type of larceny. But if the perpetrator uses great force to take the bag or injures or threatens to injure the victim, it may instead be classified as a robbery. Cf. LARCENY; ROBBERY. [Cases: Larceny ☞19; Robbery ☞6.]

pursuant to. (16c) **1.** In compliance with; in accordance with; under <she filed the motion pursuant to the court's order>. **2.** As authorized by; under <pursuant to Rule 56, the plaintiff moves for summary judgment>. **3.** In carrying out <pursuant to his responsibilities, he ensured that all lights had been turned out>.

pursuer. *Civil & Scots law.* A plaintiff.

pursuit. (14c) **1.** An occupation or pastime. **2.** The act of chasing to overtake or apprehend. See FRESH PURSUIT.

pursuit of happiness. (18c) The principle — announced in the Declaration of Independence — that a person should be allowed to pursue the person's desires (esp. in regard to an occupation) without unjustified interference by the government. [Cases: Constitutional Law ☞1107.]

pur tant que (pər tant **kyoo** *or* poor **tahn** kə). [Law French] Forasmuch as; because; for the purpose of.

purus idiota (**pyoor**-əs id-ee-**oh**-tə). [Latin] An absolute or congenital idiot. See IDIOT.

purview (**pər**-vyoo). (15c) **1.** Scope; area of application. **2.** The body of a statute following the preamble.

> "The word 'purview' appears sometimes to be confined to so much of the body of the statute as would be left by omitting the exceptions, provisos, and savings clauses; and as the word is ambiguous, and not very useful at best, a wise course may be not to use it at all." William M. Lile et al., *Brief Making and the Use of Law Books* 336 (3d ed. 1914).

pusher. A person who sells illicit drugs. [Cases: Controlled Substances ☞32.]

***Pushman* doctrine.** *Archaic.* The rule that transfer of an unpublished work transfers the common-law copyright to the work along with the work itself. • The name derives from *Pushman v. New York Graphic Soc'y, Inc.*, 39 N.E.2d (N.Y. 1942). The doctrine was rejected by § 202 of the Copyright Act of 1976, but it remains in effect for transfers completed before the provision's effective date of January 1, 1978.

> "[A]n outright sale of a material object, such as a book, canvas, or master tape of a musical work, does not transfer copyright. One possible exception to this rule is the *Pushman* doctrine under which an author or artist who has sold an unpublished work of art or a manuscript is presumed to have transferred his *common law* copyright, unless the copyright has been specifically reserved." Marshall A. Leaffer, *Understanding Copyright Law* 211 (3d ed. 1999).

put, *n.* See *put option* under OPTION.

putative (**pyoo**-tə-tiv), *adj.* (15c) Reputed; believed; supposed.

putative damages. See DAMAGES.

putative father. See FATHER.

putative-father registry. *Family law.* An official roster in which an unwed father may claim possible paternity of a child for purposes of receiving notice of a prospective adoption of the child. [Cases: Adoption ☞12; Children Out-of-Wedlock ☞12.]

Putative Fathers Act. See UNIFORM PUTATIVE AND UNKNOWN FATHERS ACT.

putative marriage. See MARRIAGE (1).

putative matrimony. See *putative marriage* under MARRIAGE (1).

putative spouse. See SPOUSE.

putative-spouse doctrine. See *putative marriage* under MARRIAGE (1).

put bond. See BOND (3).

put in, *vb.* (15c) To place in due form before a court; to place among the records of a court.

put on notice. See CHARGED WITH NOTICE.

put option. See OPTION.

put out. See EVICT (1).

put price. See *strike price* under PRICE.

puttable (**puut**-ə-bəl), *adj.* (Of a security) capable of being required by the holder to be redeemed by the issuing company.

put the question. (Of the chair) to formally state a question in its final form for the purpose of taking a vote. Cf. STATE THE QUESTION.

putting in fear. (17c) The threatening of another person with violence to compel the person to hand over property. • These words are part of the common-law definition of robbery. [Cases: Robbery ⇨7.]

putting to the horn. *Scots law.* See HORNING.

put to the horn. *Scots law.* To declare (a person) an outlaw. — Also termed *be at the horn.*

PVA. *abbr.* PUBLIC VESSELS ACT.

PVPA. *abbr.* PLANT VARIETY PROTECTION ACT.

PWBA. *abbr.* PENSION AND WELFARE BENEFITS ADMINISTRATION.

pyramid distribution plan. See PYRAMID SCHEME.

pyramiding. A speculative method used to finance a large purchase of stock or a controlling interest by pledging an investment's unrealized profit. See LEVERAGE; MARGIN.

pyramiding inferences. See INFERENCE-STACKING.

pyramiding inferences, rule against. (1959) *Evidence.* A rule prohibiting a fact-finder from piling one inference on another to arrive at a conclusion. • Today this rule is followed in only a few jurisdictions. Cf. REASONABLE-INFERENCE RULE. [Cases: Criminal Law ⇨306; Evidence ⇨54.]

pyramid scheme. (1949) A property-distribution scheme in which a participant pays for the chance to receive compensation for introducing new persons to the scheme, as well as for when those new persons themselves introduce participants. • Pyramid schemes are illegal in most states. — Also termed *endless-chain scheme; chain-referral scheme; multilevel-distribution program; pyramid distribution plan.* Cf. PONZI SCHEME. [Cases: Antitrust and Trade Regulation ⇨231.]

Q

Q. *abbr.* (16c) QUESTION (1). • This abbreviation is almost always used in deposition and trial transcripts to denote each question asked by the examining lawyer.

Q-and-A. *abbr.* (1837) QUESTION-AND-ANSWER.

Q.B. *abbr.* QUEEN'S BENCH.

Q.B.D. *abbr.* QUEEN'S BENCH DIVISION.

Q.C. *abbr.* QUEEN'S COUNSEL.

qcf. *abbr.* QUARE CLAUSUM FREGIT.

QD. *abbr.* [Latin *quasi dicat*] (16c) As if he should say.

QDOT. *abbr.* QUALIFIED DOMESTIC TRUST.

QDRO (**kwah**-droh). *abbr.* QUALIFIED DOMESTIC-RELATIONS ORDER.

QED. *abbr.* [Latin *quod erat demonstrandum*] (17c) Which was to be demonstrated or proved.

QEF. *abbr.* [Latin *quod erat faciendum*] Which was to be done.

QEN. *abbr.* [Latin *quare executionem non*] Why execution should not be issued.

QMCSO. *abbr.* QUALIFIED MEDICAL CHILD- SUPPORT ORDER.

QPRT. *abbr.* QUALIFIED PERSONAL-RESIDENCE TRUST.

qq.v. See Q.V.

Q.S. See *quarter session* under SESSION (1).

QSST. *abbr.* See *qualified S-corporation trust* under TRUST (3).

Q.T. *abbr.* QUI TAM ACTION.

QTIP (**kyoo**-tip). *abbr.* QUALIFIED-TERMINABLE-INTEREST PROPERTY.

QTIP trust. See TRUST.

qua (kway *or* kwah). [Latin] (17c) In the capacity of; as <the fiduciary, qua fiduciary, is not liable for fraud, but he may be liable as an individual>.

quacumque via data (kway-**kəm**-kwee **vI**-ə **day**-tə). [Latin] Whichever way given; whichever way you take it.

quadragesima (kwah-drə-**jes**-i-mə), *n.* [Latin "fortieth"] *Hist.* **1.** Lent — so called because it runs about 40 days. **2.** The first Sunday in Lent — so called because it is about the fortieth day before Easter.

quadragesimals (kwah-drə-**jes**-i-məlz), *n. pl.* [fr. Latin *quadragesima* "the fortieth"] *Hist.* Offerings made on Mid-Lent Sunday by daughter churches to the mother church.

quadriennium (kwah-dree-**en**-ee-əm), *n.* [Latin fr. *quatuor* "four" + *annus* "year"] **1.** *Roman law.* The four-year course of study required of law students before they were qualified to study the Code or collection of imperial constitutions. **2.** *Scots law.* See QUADRIENNIUM UTILE.

quadriennium utile (kwah-dree-**en**-ee-əm **yoo**-tə-lee). *Scots law.* A four-year period after the attainment of majority within which the young adult may seek to annul any contract made while the person was a minor. — Sometimes shortened to *quadriennium.*

quadripartite, *adj. Hist.* (Of an indenture, etc.) drawn, divided, or executed in four parts.

quadripartite, *n.* A book or treatise divided into four parts.

quadruplator (kwah-**droo**-plə-tor), *n.* [Latin] *Roman law.* An informer who, by law, could institute criminal proceedings and then receive a reward of a fourth part of the thing informed against, usu. relating to frauds on the *fiscus.* Pl. ***quadruplatores*** (kwah-drə-plə-**tor**-eez).

quadruplicatio (kwah-drə-pli-**kay**-shee-oh), *n.* [fr. Latin *quadruplicatus* "quadrupled"] **1.** *Roman law & civil law.* A defendant's pleading, following the *triplicatio* and similar to the *rebutter* at common law; the third defensive pleading. — Also termed *quadruplication*; (in old Scots law) *quadruply.* **2.** *Roman law.* A plaintiff's pleading, following the *triplicatio*, the *replicatio*, and the *exceptio.* Pl. ***quadruplicationes*** (kwah-drə-pli-kay-shee-**oh**-neez).

quae cadit in virum constantem (kwee **kay**-dit in **vI**-rəm kən-**stan**-təm). [Latin] *Hist.* That which would overcome a man of firmness and resolution.

quae cadunt in non causam (kwee **kay**-dənt in non **kaw**-zəm). [Law Latin] *Hist.* Those things that we lose on the cessation of the title by which we hold them.

quae est eadem (kwee est ee-**ay**-dəm). [Law Latin] *Hist.* Which is the same. • This phrase was used by a defendant in a trespass action to show that the trespass the defendant was justified in committing was the same as that alleged in the plaintiff's pleading; that is, the plaintiff gave the defendant permission to enter, and so the defendant entered the property. — Formerly also termed *que est le mesme.*

quae functionem recipiunt (kwee fungk-shee-**oh**-nəm ri-**sip**-ee-ənt). [Law Latin] *Hist.* Things whose value depends on the class of things to which they belong (e.g., money, corn, etc.). • The phrase appeared in reference to fungibles — that is, things that could be generically estimated by quantity or weight. Cf. QUAE NON RECIPIUNT FUNCTIONEM.

quae non mente sed manu tenentur (kwee non **men**-tee sed **man**-yoo tə-**nen**-tər). [Law Latin "things that are held not by the mind but by hand"] *Hist.* The natural

parental duties arising from affection for one's child, as distinguished from purely legal obligations.

quae non recipiunt functionem (kwee non ri-**sip**-ee-ənt fungk-shee-**oh**-nəm). [Law Latin] *Hist.* They that do not supply the place of others. • The phrase appeared in reference to goods that are unique, specific, or irreplaceable. Cf. QUAE FUNCTIONEM RECIPIUNT.

quae perimunt causam (kwee **per**-ə-mənt **kaw**-zəm). [Latin] *Hist.* Pleas (such as peremptory defenses) that take away the basis of an action.

quae plura (kwee **ploor**-ə). [Law Latin "what more"] *Hist.* A writ ordering the escheator, when it appeared that not all of a decedent's property had been located, to inquire about any additional lands and tenements the decedent held at the time of death.

quaequidem (kwee-**kwid**-əm). [Law Latin "which indeed" or "accordingly"] *Hist.* The introductory words of a charter clause showing, among other things, the manner in which the grantor obtained title.

quaere (**kweer**-ee), *vb.* [Latin] (17c) Inquire; query; examine. • This term was often used in the syllabus of a reported case to show that a point was doubtful or open to question.

quaerens (**kweer**-enz), *n.* [Law Latin] *Hist.* One who complains; a plaintiff.

quaerens nihil capiat per billam (**kweer**-enz **nɪ**-hil **kap**-ee-ət pər **bil**-əm). [Law Latin] *Hist.* Let the plaintiff take nothing by his bill. • This was a form of judgment for the defendant.

quaerens non invenit plegium (**kweer**-enz non in-**vee**-nit **plee**-jee-əm). [Law Latin "the plaintiff did not find a pledge"] *Hist.* A sheriff's return to a writ requiring him to take security from the plaintiff for prosecution of the plaintiff's claim.

quaeritur (**kwee**-ri-tər *or* **kwer**-i-tər), *n.* [Latin] *Roman law.* It is questioned. • This term introduced a doubtful legal problem.

quae sapiunt delictum (kwee **say**-pee-ənt di-**lik**-təm). [Law Latin] *Hist.* Things that partake of the character of delict.

quae sequuntur personam (kwee si-**kwən**-tər pər-**soh**-nəm). [Latin] *Hist.* Things that follow the person. • The phrase usu. referred to movable property.

quae servando servari nequeunt (kwee sər-**van**-doh sər-**vair**-ɪ **nee**-kwee-ənt). [Latin] *Hist.* Things that cannot be preserved uninjured by keeping. • The phrase usu. referred to perishable goods.

quaesita. See QUAESTA.

quae solum Deum habent ultorem (kwee **soh**-ləm **dee**-əm **hay**-bənt əl-**tor**-əm). [Latin] *Hist.* Acts that have only God as avenger; crimes that can be punished only by God.

quaesta (**kwees**-tə), *n.* [Latin "demands"] Remissions of penance, authorized by the Pope to those who contributed a certain amount to the church. — Also termed *quesita*; *quaesita*.

quaestio (**kwes**-chee-oh *or* **kwees**-), *n.* [Latin fr. *quaerere* "to inquire"] *Roman law.* **1.** A special commission of the Senate appointed to hear criminal cases involving the public interest, sometimes with the power to try all cases of a given class arising within a specified period. — Also termed *quaestio extraordinaire.* **2.** QUAESTIO PERPETUA. **3.** An interrogation by inflicting torture. **4.** The torture so inflicted. Pl. ***quaestiones*** (kews-chee-**oh**-neez or kwees-).

quaestio extraordinaire. See QUAESTIO (1).

quaestionarius (kwes-chee-ə-**nair**-ee-əs). See QUAESTOR.

quaestio perpetua (kwes-chee-**oh**-neez pər-**pech**-oo-ee). [Latin "perpetual inquiry"] *Roman law.* A permanent commission to hear criminal cases; specif., a standing jury court created by statute to try and pass sentence on particular crimes. Pl. ***quaestiones perpetuae.***

> "Then in 149 the *lex Calpurnia* was passed, concerned not only with reparation but also punishment; it established a permanent court of senators as sworn jurors to deal with claims of provincial extortion. Thereafter, both the senatorial special commissions, and also the jurisdiction of the assemblies began in their turn to be superseded by the creation of *quaestiones perpetuae*, permanent jury courts, [which] provided, each for its own offence or range of offences a framework." O.F. Robinson, *The Criminal Law of Ancient Rome* 1-2 (1995).

quaestio vexata (**kwes**-chee-oh vek-**say**-tə). [Law Latin] See VEXED QUESTION.

quaestio voluntatis (**kwes**-chee-oh vol-**ən**-**tay**-tis). [Latin] *Hist.* A question of intention.

quaestor (**kwes**-tər *or* **kwees**-tər), *n.* [Latin] **1.** *Roman law.* A magistrate, subordinate to the consuls or provincial governors, who maintained and administered the public money, performing tasks such as making necessary payments, receiving revenues, keeping accurate accounts, registering debts and fines, supervising the accommodation of foreign ambassadors, and financing the burials and monuments of distinguished citizens. **2.** *Hist.* An agent of the Pope who carried *quaesita* from door to door. — Also termed *quaesitor*; *questionarius.* See QUAESTA. Pl. ***quaestores.*** — **quaestorial,** *adj.* — **quaestorship,** *n.*

> "The office of quaestor goes back at least to the beginning of the Republic. Each year two quaestors were nominated by the consuls, later elected by the comitia tributa, to assist the consuls in matters of finance. This continued to be their principal concern, but they enlarged their functions as their numbers increased." R.W. Lee, *The Elements of Roman Law* 15 (4th ed. 1956).

quaestores parricidii (kwes-**tor**-eez par-ə-**sɪ**-dee-ɪ), *n. pl.* [Latin "quaestors of parricide"] *Roman law.* Two officers of the early Republic who were deputized to search out and try all cases of parricide and other capital offenses. See LEX POMPEIA DE PARRICIDIIS.

quaestor sacri palatii (**kwes**-tər **say**-krɪ pə-**lay**-shee-ɪ). [Latin "quaestor of the sacred palace"] *Roman law.* An officer of the imperial court who acted as legal adviser to the emperor.

> "The *quaestor sacri palatii* was one of the highest civil functionaries in the later Empire, concerned with the

preparation of enactments and legal decisions to be issued by the emperor. He was the principal legal adviser of the emperor and he was [often] chosen from among the persons with considerable legal training." Adolf Berger, *Encyclopedic Dictionary of Roman Law* 664 (1953).

quaestus (**kwes**-təs *or* **kwee**-stəs), *n.* [Latin] **1.** *Roman law.* Profit, esp. from a business. **2.** *Hist.* Acquisition; purchase. • This term refers to a purchased estate, as distinguished from *hereditas*, referring to an estate obtained by descent.

quae sunt in patrimonio nostro (kwee sənt in pa-trə-**moh**-nee-oh **nos**-troh). [Latin] *Hist.* Things that form part of our possession.

quae transeunt per commercium (kwee **tran**-see-ənt [*or* **tran**-zee] pər kə-**mər**-shee-əm). [Law Latin] *Hist.* Things that pass through commerce; things that are bought and sold.

quale jus (**kway**-lee *or* **kwah**-lee **jəs**). [Latin "what kind of right"] *Hist.* A writ ordering an escheator to inquire into the extent of a religious person's right to a judgment, before its execution, to make sure that the judgment was not collusively made to avoid the mortmain statute.

qualificate (kwah-li-fi-**kay**-tee). [Law Latin] *Hist.* Qualifiedly.

qualification. (16c) **1.** The possession of qualities or properties (such as fitness or capacity) inherently or legally necessary to make one eligible for a position or office, or to perform a public duty or function <voter qualification requires one to meet residency, age, and registration requirements>. [Cases: Officers and Public Employees ⇨35.] **2.** A modification or limitation of terms or language; esp., a restriction of terms that would otherwise be interpreted broadly <the contract contained a qualification requiring the lessor's permission before exercising the right to sublet>. **3.** CHARACTERIZATION (1). — **qualify,** *vb.*

qualified, *adj.* (16c) **1.** Possessing the necessary qualifications; capable or competent <a qualified medical examiner>. **2.** Limited; restricted <qualified immunity>. — **qualify,** *vb.*

qualified acceptance. See ACCEPTANCE (1).

qualified corporation. See *admitted corporation* under CORPORATION.

qualified disclaimer. See DISCLAIMER.

qualified domestic-relations order. (1984) A state-court order or judgment that relates to alimony, child support, or some other state domestic-relations matter and that (1) recognizes or provides for an alternate payee's right to receive all or part of any benefits due a participant under a pension, profit-sharing, or other retirement benefit plan, (2) otherwise satisfies § 414 of the Internal Revenue Code, and (3) is exempt from the ERISA rule prohibiting the assignment of plan benefits. • Among other things, the QDRO must set out certain facts, including the name and last-known mailing address of the plan participant and alternate payee, the amount or percentage of benefits going to the alternate payee, and the number of payments to which the plan applies. The benefits provided under a QDRO are treated as income to the actual recipient. IRC (26 USCA) § 414(p)(1)(A); 29 USCA § 1056(d)(3)(D)(i). — Abbr. QDRO. [Cases: Divorce ⇨252.3(4); Internal Revenue ⇨3587; Labor and Employment ⇨594.]

qualified domestic trust. See TRUST.

qualified elector. See ELECTOR.

qualified estate. See ESTATE (1).

qualified fee. **1.** See *fee simple defeasible* under FEE SIMPLE. **2.** See *fee simple determinable* under FEE SIMPLE. **3.** See *base fee* under FEE (2).

qualified general denial. See DENIAL.

qualified immunity. See IMMUNITY (1).

qualified income trust. See *Miller trust* under TRUST.

qualified indorsement. See INDORSEMENT.

qualified institutional buyer. See BUYER.

qualified investor. See INVESTOR.

qualifiedly (**kwah**-lə-fid-lee *or* -fī-əd-lee), *adv.* In a fit or qualified manner <qualifiedly privileged>.

qualified martial law. See MARTIAL LAW.

qualified medical child-support order. A family-court order that enables a nonemployee custodial parent — without the employee parent's consent — to enroll the child, make claims, and receive payments as needed under the employee parent's group health plan, all at the employee parent's expense. • The group-health-plan administrator must find that the order meets the requirements of a QMCSO, which are established by § 609(a) of the Employee Retirement Income Security Act, 29 USCA § 1169(a). — Abbr. QMCSO. [Cases: Child Support ⇨158.]

qualified nuisance. See NUISANCE.

qualified opinion. An audit-report statement containing exceptions or qualifications to certain items in the accompanying financial statement.

qualified ownership. See OWNERSHIP.

qualified pension plan. See PENSION PLAN.

qualified personal-residence trust. See TRUST.

qualified plan. **1.** See *qualified pension plan* under PENSION PLAN. **2.** See *qualified profit-sharing plan* under PROFIT-SHARING PLAN.

qualified privilege. See PRIVILEGE (1).

qualified profit-sharing plan. See PROFIT-SHARING PLAN.

qualified property. See PROPERTY.

qualified residence interest. See INTEREST (3).

qualified S-corporation trust. See TRUST (3).

qualified stock option. See STOCK OPTION.

qualified subchapter-S corporation trust. See *qualified S-corporation trust* under TRUST (3).

qualified-terminable-interest property. See PROPERTY.

qualified veto. See VETO.

qualified voter. 1. See *qualified elector* under ELECTOR. **2.** VOTER (2).

qualified witness. See WITNESS.

qualifying event. Any one of several specified occasions that, but for the continuation-of-coverage provisions under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), would result in a loss of benefits to a covered employee under a qualified benefit plan. • These occasions include employment termination, a reduction in work hours, the employee's separation or divorce, the employee's death, and the employer's bankruptcy. IRC (26 USCA) § 4980B(f)(3). [Cases: Labor and Employment ⚷568.]

qualifying share. See SHARE (2).

qualitatively incidental private benefit. See PRIVATE BENEFIT.

quality. 1. The particular character or properties of a person, thing, or act, often essential for a particular result <she has leadership quality> <greed is a negative quality>. **2.** The character or degree of excellence of a person or substance, esp. in comparison with others <the quality of work performed under the contract>.

quality of estate. (18c) **1.** The period when the right of enjoying an estate is conferred upon the owner, whether at present or in the future. **2.** The manner in which the owner's right of enjoyment of an estate is to be exercised, whether solely, jointly, in common, or in coparcenary.

quality-of-products legislation. See LEMON LAW (2).

quamdiu (**kwam**-dee-yoo). [Latin] *Hist.* As long as; so long as. • This was a word of limitation formerly used in conveyances.

quamdiu bene se gesserint (**kwam**-dee-yoo **bee**-nee see **jes**-ər-int). [Law Latin] As long as they shall conduct themselves properly. • This term refers to the holding of an office, specif. the Act of Settlement, 1700, ch. 2, which provided that a judge's tenure was no longer at the king's pleasure, but could continue until death or improper conduct. This protected judges against arbitrary dismissal. The singular form is *quamdiu se bene gesserit* "as long as he behaves himself properly." — Also written *quamdiu se bene gesserint*. Cf. GOOD BEHAVIOR; DURANTE BENE PLACITO.

> "But at present, by the long and uniform usage of many ages, our kings have delegated their whole judicial power to the judges of their several courts . . . . And, in order to maintain both the dignity and independence of the judges in the superior courts, it is enacted by the statute 13 W. III. c.2 that their commissions shall be made (not as formerly, *durante bene placito*, but) *quamdiu bene se gesserint*, and their salaries ascertained and established; but that it may be lawful to remove them on the address of both houses of parliament." 1 William Blackstone, *Commentaries on the Laws of England* 267 (1765).

quamdiu se bene gesserint. [Latin "as long as they behave themselves properly"] • The singular form is *quamdiu se bene gesserit* "as long as he behaves himself properly." The plural form appears in the Act of Settlement (1701) to protect judges against arbitrary dismissal. Cf. DUM SE BENE GESSERIT.

quamdiu sustinuit istam furiositatem (**kwam**-dee-yoo səs-**tin**-[y]oo-it **is**-təm fyoor-ee-ahs-ə-**tay**-təm). [Law Latin] *Hist.* How long he has labored under that insanity.

quamprimum (kwam-**prī**-məm). [Latin] *Hist.* As soon as possible.

quamvis non potuerit dare (**kwam**-vis non pah-tyoo-**air**-it [*or* pah-choo-] **dair**-ee). [Law Latin] *Hist.* Although he had not been able to give or administer it.

quando acciderent (**kwahn**-doh ak-si-**deer**-ənt). [Latin] A judgment entered against a decedent's personal representative, to be satisfied by the estate out of assets that the representative receives after judgment.

quandocunque (kwahn-doh-**kəng**-kwee). [Latin] *Hist.* At any time.

quandocunque decederit (kwahn-do**h**-**kəng**-kwee di-**see**-dər-it). [Latin] *Hist.* Whenever he died.

quango (**kwang**-goh). See QUASI-AUTONOMOUS NONGOVERNMENTAL ORGANIZATION.

quanti minoris (**kwon**-tī mi-**nor**-is). [Latin "how much less"] *Civil law.* An action brought by a purchaser of an article to reduce the purchase price due to the article's defects. [Cases: Sales ⚷188; Vendor and Purchaser ⚷174, 334(1).]

quantitatively incidental private benefit. See PRIVATE BENEFIT.

quantitative rule. (1919) An evidentiary rule requiring that a given type of evidence is insufficient unless accompanied by additional evidence before the case is closed. • Such a rule exists because of the known danger or weakness of certain types of evidence. — Also termed *synthetic rule*.

quantity discount. See *volume discount* under DISCOUNT.

quantum (**kwon**-təm). [Latin "an amount"] The required, desired, or allowed amount; portion or share <a quantum of evidence>. Pl. **quanta** (**kwon**-tə).

quantum damnificatus (**kwon**-təm dam-nə-fi-**kay**-təs). [Latin "how much damnified"] *Hist.* The issue of damages submitted by a court of equity to the jury.

quantum et quale? (**kwon**-təm et **kway**-lee *or* **kwah**-lee). [Latin] *Roman & Scots law.* How much and of what kind?

> "It is not unusual for parties to a submission to agree that, in the event of no final decree-arbitral being pronounced, the proof taken in the course of the submission shall be received as legal probation *quantum et quale* (*i.e.*, to the same extent and as of the same quality or effect) in any after-submission or process at law between the same parties regarding the same matter." John Trayner, *Trayner's Latin Maxims* 505 (4th ed. 1894).

quantum meruit (**kwon**-təm **mer**-oo-it). [Latin "as much as he has deserved"] (17c) **1.** The reasonable value of services; damages awarded in an amount considered reasonable to compensate a person who has rendered

services in a quasi-contractual relationship. **2.** A claim or right of action for the reasonable value of services rendered. [Cases: Implied and Constructive Contracts ⇨30.] **3.** At common law, a count in an assumpsit action to recover payment for services rendered to another person. • Quantum meruit is still used today as an equitable remedy to provide restitution for unjust enrichment. It is often pleaded as an alternative claim in a breach-of-contract case so that the plaintiff can recover even if the contract is unenforceable. See *implied-in-law contract* under CONTRACT.

quantum nunc valent (**kwon**-təm nəngk **vay**-lent). [Law Latin] *Hist.* How much they (the lands) are now worth. Cf. ANTIQUUS ET NOVUS EXTENTUS; QUANTUM VALUERUNT TEMPORE PACIS.

quantum valebant (**kwon**-təm və-**lee**-bant *or* -bənt). [Latin "as much as they were worth"] (18c) **1.** The reasonable value of goods and materials. **2.** At common law, a count in an assumpsit action to recover payment for goods sold and delivered to another. • *Quantum valebant* — although less common than *quantum meruit* — is still used today as an equitable remedy to provide restitution for another's unjust enrichment. [Cases: Implied and Constructive Contracts ⇨31.]

quantum valuerunt tempore pacis (**kwon**-təm val-yoo-**air**-ənt **tem**-pə-ree **pay**-sis). [Law Latin] *Hist.* How much they (the lands) were worth in peacetime. Cf. ANTIQUUS ET NOVUS EXTENTUS; QUANTUM NUNC VALENT.

quarantina habenda. See DE QUARANTINA HABENDA.

quarantine. (17c) **1.** The isolation of a person or animal afflicted with a communicable disease or the prevention of such a person or animal from coming into a particular area, the purpose being to prevent the spread of disease. • Federal, state, and local authorities are required to cooperate in the enforcement of quarantine laws. 42 USCA § 243(a).

> "Power to make quarantine regulations is one of the most frequent powers conferred on boards of health. Such regulations constitute a proper exercise of the police power, provided they are not in conflict with federal regulations on the subject or that legislation by Congress is absent, and that they do not abridge rights protected by the Fourteenth Amendment." 39 Am. Jur. 2d *Health* § 59, at 529–30 (1999).

2. A place where a quarantine is in force. **3.** *Hist.* A period of 40 days, esp. for the isolation and detention of ships containing persons or animals suspected of having or carrying a dangerous communicable disease, in order to prevent the spread of the disease.

> "Quarantine . . . . The name is drawn from the fact that the period was formerly commonly 40 (Ital. *quaranta*) days. In 1423 Venice established a lazaretto or quarantine station on an island to check the growth of disease brought in by ships. In the sixteenth century quarantine became widespread and there developed the system of bills of health, certificates that the last port was free from disease; a clean bill entitled a ship to use the port without subjection to quarantine." David M. Walker, *The Oxford Companion to Law* 1022 (1980).

4. *Hist.* A widow's privilege to remain in her husband's house for 40 days after his death while her dower is being assigned. • This right was enforced by a writ *de quarantina habenda*. See DE QUARANTINA HABENDA. — Also spelled *quarentine*; *quarentene*. — **quarantine,** *vb.*

> "[I]t was provided by Magna Charta that the widow should give nothing for her dower, and that she should tarry in the chief house of her husband for forty days, (and which is called the widow's quarantine,) after the death of her husband, within which time her dower should be assigned her; and that, in the mean time, she should have reasonable estovers, or maintenance, out of the estate. The provision that the widow should pay nothing for the dower, was made with the generous intention of taking away the uncourtly and oppressive claim of the feudal lord, for a fine, upon allowing the widow to be endowed. This declaration of Magna Charta is, probably, the law in all the United States." 4 James Kent, *Commentaries on American Law* *61 (George Comstock ed., 11th ed. 1866).

quare (**kwair**-ee). [Latin] Why; for what reason; on what account. • This was used in various common-law writs, esp. writs in trespass.

quare clausum fregit (**kwair**-ee **klaw**-zəm **free**-jit). [Latin] Why he broke the close. — Abbr. *qu. cl. fr.*; *q.c.f.* See TRESPASS QUARE CLAUSUM FREGIT. [Cases: Trespass ⇨10, 16.]

quare clausum querentis fregit. See *trespass quare clausum fregit* under TRESPASS.

quare ejecit infra terminum (**kwair**-ee i-**jee**-sit **in**-frə **tər**-mə-nəm), *n.* [Law Latin "why he ejected within the term"] *Hist.* A writ for a lessee who was prematurely ejected, when the ejector was not actually in possession but one claiming under the ejector was.

> "For this injury the law has provided him with two remedies . . . the writ of *ejectione firmae*; . . . and the writ of *quare ejecti infra terminum*; which lies not against the wrongdoer or ejector himself, but his feoffee or other person claiming under him. These are mixed actions, somewhat between real and personal; for therein are two things recovered, as well restitution of the term of years, as damages for the ouster or wrong." 3 William Blackstone, *Commentaries on the Laws of England* 199 (1768).

quare executionem non. [Latin] Why execution should not be issued. — Abbr. QEN.

quare impedit (**kwair**-ee **im**-pə-dit). [Latin "why he hinders"] *Hist. Eccles. law.* A writ or action to enforce a patron's right to present a person to fill a vacant benefice. — Also termed *writ of quare impedit*. See PRESENTATION (2); ADVOWSON.

> "The writ of *quare impedit* commands the disturbers, the bishop, the pseudo-patron, and his clerk, to permit the plaintiff to present a proper person (without specifying the particular clerk) to such a vacant church, which pertains to his patronage; and which the defendants, as he alleges, do obstruct: and unless they so do, then that they appear in court to shew the reason why they hinder him." 3 William Blackstone, *Commentaries on the Laws of England* 248 (1768).

quare incumbravit (**kwair**-ee in-kəm-**bray**-vit), *n.* [Law Latin "why he incumbered"] *Hist.* A writ or action to compel a bishop to explain why he encumbered the church when, within six months after the vacation of a benefice and after a *ne admittas* was received, the

bishop conferred the benefice on his clerk while other clerks were contending for the right of presentation in a *quare impedit* action. • The writ was abolished by the Real Property Limitation Act of 1833, ch. 27.

quare intrusit (**kwair**-ee in-**troo**-sit), *n.* [Law Latin "why he thrust in"] *Hist.* A writ allowing a lord to recover the value of a marriage, when the lord offered a suitable marriage to a ward but the ward rejected it and married someone else. • It was abolished by the Tenures Abolition Act, 1660, ch. 24.

quare non permittit (**kwair**-ee non pər-**mit**-it), *n.* [Law Latin "why he does not permit"] *Hist.* A writ for one who has a right to present to a church, against the proprietor.

quarentena terrae (kwahr-en-**tee**-nə **ter**-ee), *n.* [Law Latin "a quantity of land"] *Hist.* A furlong.

quarentine. See QUARANTINE.

quare obstruxit (**kwair**-ee əb-**strək**-sit), *n.* [Law Latin "why he obstructed"] *Hist.* A writ for one who could not enjoy a privilege to pass through a neighbor's land because the neighbor had obstructed the path.

quarrel, *n.* **1.** An altercation or angry dispute; an exchange of recriminations, taunts, threats, or accusations between two persons. — **quarrel,** *vb.* **2.** *Archaic.* A complaint; a legal action.

> "Quarrels is derived from *querendo*, and extends not only to actions as well real as personal, but also to the causes of actions and suits: so that by the release of all quarrels, not only actions depending in suit, but causes of action and suit also are released; and quarrels, controversies and debates, are words of one sense, and of one and the same signification, Coke, lib. 8, fol. 153." *Termes de la Ley* 330 (1st Am. ed. 1812).

quarta divi Pii (**kwor**-tə **dI**-vI **pI**-I). [Latin "quarter of the deified Pius"] *Roman law.* The quarter portion of a testator's estate required to be left to an adrogated child who had been unjustly emancipated or disinherited.

quarta Falcidiana (**kwor**-tə fal-**sid**-ee-ə). [Latin "Falcidian fourth"] See FALCIDIAN PORTION.

quarta Trebellianica (**kwor**-tə trə-bel-ee-**an**-ə-kə). [Latin "the quarter due under Trebellianus's *senatus consultum*"] *Hist.* The fourth portion that an heir could retain from a succession after transferring the succession as directed by the testator under a *fideicommissum*. — Also termed *quarta Trebelliana* (trə-bel-ee-**ay**-nə *or* -**an**-ə). Cf. FALCIDIAN PORTION.

quarter, *n.* **1.** In the law of war, the act of showing mercy to a defeated enemy by sparing lives and accepting a surrender <to give no quarter>. **2.** See *quarter section* under SECTION.

quarter day. See DAY.

quartering, *n. Hist.* **1.** The dividing of a criminal's body into quarters after execution, esp. as part of the punishment for a crime such as high treason. See HANGED, DRAWN, AND QUARTERED. **2.** The furnishing of living quarters to members of the military. • In the United States, a homeowner's consent is required before soldiers may be quartered in a private home during peacetime. During wartime, soldiers may be quartered in private homes only as prescribed by law. The Third Amendment generally protects U.S. citizens from being forced to use their homes to quarter soldiers. U.S. Const. amend. III. **3.** The dividing of a shield into four parts to show four different coats of arms. — **quarter,** *vb.*

quarterly report. A financial report issued by a corporation (and by most mutual funds and investment managers) every three months.

quartermaster. See TREASURER.

quarter seal. See SEAL.

quarter section. See SECTION.

quarter session. See SESSION (1).

Quarter Sessions Court. See COURT OF GENERAL QUARTER SESSIONS OF THE PEACE.

quarters of coverage. The number of quarterly payments made by a person into the social-security fund as a basis for determining the person's entitlement to benefits. [Cases: Social Security and Public Welfare ⇨135, 140.5.]

quarto die post (**kwor**-toh **dI**-ee **pohst**), *n.* [Law Latin "on the fourth day after"] The defendant's appearance day, being four days (inclusive) from the return of the writ.

quash (kwahsh), *vb.* (13c) **1.** To annul or make void; to terminate <quash an indictment> <quash proceedings>. **2.** To suppress or subdue; to crush <quash a rebellion>.

quashal (**kwahsh**-əl), *n.* The act of quashing something <quashal of the subpoena>. [Cases: Witnesses ⇨16.]

quasi (**kway**-sI *or* **kway**-zI *also* **kwah**-zee). [Latin "as if"] (15c) Seemingly but not actually; in some sense or degree; resembling; nearly.

> "QUASI. A Latin word frequently used in the civil law, and often prefixed to English words. It is not a very definite word. It marks the resemblance, and supposes a little difference, between two objects, and in legal phraseology the term is used to indicate that one subject resembles another, with which it is compared, in certain characteristics, but that there are also intrinsic and material differences between them. It negatives the idea of identity, but implies a strong superficial analogy, and points out that the conceptions are sufficiently similar for one to be classed as the equal of the other." 74 C.J.S. *Quasi*, at 2 (1951).

quasi-admission. See ADMISSION (1).

quasi-affinity. See AFFINITY.

quasi-autonomous nongovernmental organization. A semipublic administrative body (esp. in the United Kingdom) having some members appointed and financed by, but not answerable to, the government, such as a tourist authority, a university-grants commission, a price-and-wage commission, a prison or parole board, or a medical-health advisory panel. • This term is more commonly written as an acronym, *quango* (**kwang**-goh), without capital letters.

quasi committee of the whole. See COMMITTEE.

quasi-community property. See COMMUNITY PROPERTY.

quasi-contract. See *implied-in-law contract* under CONTRACT.

quasi-corporation. See CORPORATION.

quasi-crime. See CRIME.

quasi-criminal proceeding. See PROCEEDING.

quasi-delict. See DELICT.

quasi-deposit. See DEPOSIT (5).

quasi-derelict. See DERELICT.

quasi-deviation. See DEVIATION.

quasi-domicile. See *commercial domicile* under DOMICILE.

quasi-dwelling-house. See DWELLING-HOUSE.

quasi-easement. See EASEMENT.

quasi-enclave. See ENCLAVE.

quasi-entail. See ENTAIL.

quasi-estoppel. See ESTOPPEL.

quasi ex contractu (**kway**-sɪ [*or* -zɪ] eks kən-**trak**-t[y]oo). [Latin] *Hist.* Arising as if from contract.

quasi ex delicto (**kway**-sɪ [*or* -zɪ] eks di-**lik**-toh). [Latin] *Hist.* Arising as if from delict. See DELICT.

quasi-fee. See FEE (2).

quasi feudum (**kway**-sɪ [*or* -zɪ] **fyoo**-dəm). [Law Latin "as if a (heritable) fee"] *Hist.* A heritable right, usu. in money.

quasi-governmental agency. See AGENCY (3).

quasi-guarantee treaty. See *guarantee treaty* under TREATY (1).

quasi-guardian. See GUARDIAN.

quasi-individual. See *private corporation* under CORPORATION.

quasi in rem. See IN REM.

quasi-in-rem jurisdiction. See JURISDICTION.

quasi-insurer. See INSURER.

quasi-judicial, *adj.* (1820) Of, relating to, or involving an executive or administrative official's adjudicative acts. • Quasi-judicial acts, which are valid if there is no abuse of discretion, often determine the fundamental rights of citizens. They are subject to review by courts. [Cases: Administrative Law and Procedure ⇨108.]

> "Quasi-judicial is a term that is . . . not easily definable. In the United States, the phrase often covers judicial decisions taken by an administrative agency — the test is the nature of the tribunal rather than what it is doing. In England quasi-judicial belongs to the administrative category and is used to cover situations where the administrator is bound by the law to observe certain forms and possibly hold a public hearing but where he is a free agent in reaching the final decision. If the rules are broken, the determination may be set aside, but it is not sufficient to show that the administration is biased in favour of a certain policy, or that the evidence points to a different conclusion." George Whitecross Paton, *A Textbook of Jurisprudence* 336 (G.W. Paton & David P. Derham eds., 4th ed. 1972).

quasi-judicial act. (1840) **1.** A judicial act performed by an official who is not a judge. [Cases: Officers and Public Employees ⇨110.] **2.** An act performed by a judge who is not acting entirely in a judicial capacity. See *judicial act* under ACT.

quasi-judicial duty. See DUTY (1).

quasi-judicial function. See FUNCTION.

quasi-judicial power. See POWER (3).

quasi-legislative, *adj.* (1934) (Of an act, function, etc.) not purely legislative in nature <the administrative agency's rulemaking, being partly adjudicative, is not entirely legislative — that is, it is quasi-legislative>. [Cases: Administrative Law and Procedure ⇨106, 381.]

quasi-legislative power. See POWER (3).

quasi-main motion. See *incidental main motion* under MOTION (2).

quasi-municipal corporation. See *quasi-corporation* under CORPORATION.

quasi-national domicile. See DOMICILE.

quasi-offense. See OFFENSE (2).

quasi-partner. See PARTNER.

quasi-personalty. See PERSONALTY.

quasi-possession. See *incorporeal possession* under POSSESSION.

quasi-posthumous child. See CHILD.

quasi-public corporation. See CORPORATION.

quasi-pupillary substitution. See SUBSTITUTION (5).

quasi-realty. See REALTY.

quasi-rent. (*often pl.*) *Law and economics.* Value over and above one's opportunity cost or next best alternative; the excess of an asset's value over its salvage value. • In the economic theory of marriage, a quasi-rent is a spouse's excess value of the marriage over the value of the next best option of not being in that specific marriage. The next best option may be separation, divorce, or divorce and remarriage, depending on the spouse's preferences and opportunities.

quasi-seisin. See SEISIN.

quasi-statute. See STATUTE.

quasi-suspect classification. See SUSPECT CLASSIFICATION.

quasi-tenant. See TENANT.

quasi-tort. See TORT.

quasi traditio (**kway**-sɪ [*or* -zɪ] trə-**dish**-ee-oh). [Latin "as if transfer"] *Roman law.* A party's acquisition of a servitude by using it with the informal permission or acquiescence of the owner.

> "According to the civil law again a servitude — that is, a limited right of user in respect of a thing not one's own, e.g. a usufruct or a right of way — could only be created by means of certain definite legal forms. The praetorian law, on the other hand, allowed a servitude to be created by a so-called quasi traditio servitutis; that is, it was satisfied if one party gave the other, without any form, permission

to exercise the right of user in question." Rudolph Sohm, *The Institutes: A Textbook of the History and System of Roman Private Law* 82 (James Crawford Ledlie trans., 3d ed. 1907).

quasi-trustee. See TRUSTEE (1).

quasi-usufruct. See USUFRUCT.

quator tempora jejunii. See EMBER DAYS.

quatuor pedibus currit (**kwah**-too-or **ped**-ə-bəs **kər**-it). [Law Latin] It runs upon four feet; it runs upon all fours. • The term commonly described a precedent that was extremely close to a point being decided. See ON ALL FOURS.

quayage (**kee**-əj). A toll or fee charged for lading or unlading goods on a quay or wharf. — Also written *keyage*.

***Quayle* action.** *Patents.* An office action telling the patent applicant that the claims are allowable on the merits but that the form of the application still needs to be amended. *Ex parte Quayle*, 25 USPQ (BNA) 74, 1935 C.D. 11, 453 O.G. 213 (Comm'r Pat. 1935). • The applicant generally has two months to respond. A *Quayle* action ends the prosecution on the merits, and amendments that affect the merits will be treated in a manner similar to amendments after final rejection. [Cases: Patents ☞109.]

qu. cl. fr. *abbr.* QUARE CLAUSUM FREGIT.

queen. 1. A woman who possesses, in her own right, the sovereignty and royal power in a monarchy. • Among the most famous English queens are Queen Mary I, Queen Elizabeth I, Queen Victoria, and Queen Elizabeth II. — Also termed *queen regnant*. **2.** The wife of a reigning king. • She has some royal prerogatives (such as having her own officers), but is in many ways legally no different from the rest of the king's subjects. — Also termed *queen consort*. **3.** A woman who rules in place of the actual sovereign (e.g., if the sovereign is a child). — Also termed *queen regent*. **4.** DOWAGER-QUEEN.

Queen Anne's Bounty. See FIRST FRUITS.

queen dowager. See DOWAGER-QUEEN.

queen mother. A queen who has children; esp., a dowager-queen whose child is the reigning monarch. See DOWAGER-QUEEN.

Queen's Bench. Historically, the highest common-law court in England, presided over by the reigning monarch. • The jurisdiction of this court now lies with the Queen's Bench Division of the High Court of Justice; when a king begins to reign, the name automatically changes to *King's Bench*. — Abbr. Q.B. — Also termed *Court of Queen's Bench*. Cf. KING'S BENCH.

Queen's Bench Division. The English court, formerly known as the Queen's Bench or King's Bench, that presides over tort and contract actions, applications for judicial review, and some magistrate-court appeals. — Abbr. Q.B.D.

Queen's Counsel. In the United Kingdom, Canada, and territories that have retained the rank, an elite, senior-level barrister or advocate. • Originally, a Queen's Counsel was appointed to serve as counsel to the reigning monarch. — Also termed *senior counsel*. — Abbr. Q.C. Cf. KING'S COUNSEL.

Queen's evidence. See EVIDENCE.

Queen's prison. A prison established in 1842 in Southwark, to be used for debtors and criminals confined under authority of the superior courts at Westminster, the highest court of admiralty, and the bankruptcy laws. • It replaced the Queen's Bench Prison, Fleet Prison, and Marshalsea Prison but was closed in 1862.

Queen's proctor. A solicitor who represents the Crown in domestic-relations, probate, and admiralty cases. • For example, in a suit for divorce or nullity of marriage, the Queen's proctor might intervene to prove collusion between the parties. — Also termed (when a king reigns) *King's proctor*.

que est le mesme (**kyoo** ay lə **mem**). [Law French] See QUAE EST EADEM.

quem nuptiae demonstrant (kwem **nəp**-shee-ee di-**mon**-strant). [Latin] *Roman & Scots law.* Whom the marriage indicates. • The phrase refers to the rebuttable presumption that a husband is the father of a child that his wife gives birth to. See *presumed father* and *putative father* under FATHER.

quem redditum reddit (**kwem red**-ə-təm **red**-it), *n.* [Law Latin "which return he made"] *Hist.* A writ for a grantee of a rent (not a rent service) to force the tenant to consent to the transfer.

querela (kwə-**ree**-lə), *n.* [Law Latin fr. Latin *queri* "to complain"] *Hist.* **1.** A complaint founding an action; the plaintiff's count or declaration. **2.** A cause of action. **3.** An action.

querela coram rege a concilio discutienda et terminanda (kwə-**ree**-lə **kor**-əm **ree**-jee ay kən-**sil**-ee-oh dis-kə-shee-**en**-də et tər-mə-**nan**-də), *n.* [Law Latin "a dispute to be discussed and resolved by the council in front of the king"] *Hist.* A writ ordering someone to appear before the king to answer to a trespass.

querela inofficiosi testamenti (kwə-**ree**-lə in-ə-fish-ee-**oh**-sī tes-tə-**men**-tī). [Latin "complaint of an undutiful will"] *Roman law.* An action allowing a descendant, ascendant, or sibling who was unjustly disinherited or passed over by a parent's will to have the will set aside as undutifully made.

"By far the most important is due to the *querela inofficiosi testamenti*. By this procedure, though the forms had been complied with, near relatives with obvious claims (the classes of those entitled having been gradually widened) might attack the will as contrary to natural duty (*inofficiosum*) and get it set aside." W.W. Buckland, *A Manual of Roman Private Law* 199 (2d ed. 1953).

querens (**kweer**-enz), *n.* [Latin fr. *queri* "to complain"] *Hist.* A plaintiff; the complaining party.

questa (**kwes**-tə), *n.* [Law Latin] *Hist.* A quest; an inquest or inquiry upon the oaths of an impaneled jury.

question. (14c) **1.** A query directed to a witness. — Abbr. Q. [Cases: Witnesses ☞236.]

categorical question. (18c) **1.** LEADING QUESTION. **2.** (*often pl.*) One of a series of questions, on a particular subject, arranged in systematic or consecutive order.

cross-question. (17c) A question asked of a witness during cross-examination. — Abbr. XQ. [Cases: Witnesses ☞266–284.]

direct question. (17c) A question asked of a witness during direct examination. [Cases: Witnesses ☞236.]

hypothetical question. See HYPOTHETICAL QUESTION.

leading question. See LEADING QUESTION.

2. An issue in controversy; a matter to be determined.

certified question. See CERTIFIED QUESTION.

federal question. See FEDERAL QUESTION.

judicial question. See JUDICIAL QUESTION.

mixed question. See MIXED QUESTION.

mixed question of law and fact. See MIXED QUESTION OF LAW AND FACT.

nonjusticiable question. See POLITICAL QUESTION.

political question. See POLITICAL QUESTION.

question of fact. See QUESTION OF FACT.

question of law. See QUESTION OF LAW.

ultimate question. See *ultimate issue* under ISSUE (1).

3. *Parliamentary law.* A motion that the chair has stated for a meeting's consideration in a form that the meeting can adopt or reject; a pending motion. • A question is technically only a "motion" until the chair states it for the meeting's consideration. But for most purposes, the parliamentary terms "motion" and "question" are interchangeable. See MOTION (2); PUT THE QUESTION; STATE THE QUESTION.

privileged question. A privileged motion that that the chair has stated for a meeting's consideration. See *privileged motion* under MOTION (2). Cf. *question of privilege.*

question of consideration. See OBJECTION (2).

question of information. See *point of information* under POINT.

question of order. See *point of order* under POINT.

question of privilege. Any question that concerns the deliberative assembly's or a member's rights or privileges. See PRIVILEGE (6); RAISE A QUESTION OF PRIVILEGE. Cf. *privileged question.*

question-and-answer. (17c) **1.** The portion of a deposition or trial transcript in which evidence is developed through a series of questions asked by the lawyer and answered by the witness. — Abbr. Q-and-A. **2.** The method for developing evidence during a deposition or at trial, requiring the witness to answer the examining lawyer's questions, without offering unsolicited information. [Cases: Witnesses ☞236, 247.] **3.** The method of instruction used in many law-school classes, in which the professor asks questions of one or more students and then follows up each answer with another question. — Also termed *Socratic method.* See SOCRATIC METHOD; QUESTION-AND-ANSWER METHOD.

question of consideration. See OBJECTION (2).

question of fact. (17c) **1.** An issue that has not been predetermined and authoritatively answered by the law. • An example is whether a particular criminal defendant is guilty of an offense or whether a contractor has delayed unreasonably in constructing a building. **2.** An issue that does not involve what the law is on a given point. **3.** A disputed issue to be resolved by the jury in a jury trial or by the judge in a bench trial. — Also termed *fact question.* See FACT-FINDER. **4.** An issue capable of being answered by way of demonstration, as opposed to a question of unverifiable opinion.

question of law. (17c) **1.** An issue to be decided by the judge, concerning the application or interpretation of the law <a jury cannot decide questions of law, which are reserved for the court>. **2.** A question that the law itself has authoritatively answered, so that the court may not answer it as a matter of discretion <the enforceability of an arbitration clause is a question of law>. **3.** An issue about what the law is on a particular point; an issue in which parties argue about, and the court must decide, what the true rule of law is <both parties appealed on the question of law>. **4.** An issue that, although it may turn on a factual point, is reserved for the court and excluded from the jury; an issue that is exclusively within the province of the judge and not the jury <whether a contractual ambiguity exists is a question of law>. — Also termed *legal question; law question.*

question of privilege. See QUESTION (3).

questman. *Hist.* **1.** An instigator of a lawsuit or prosecution. **2.** A person who was chosen to inquire into abuses, esp. those relating to weights and measures. **3.** A churchwarden; SIDESMAN. — Also termed *quest-monger.*

questus est nobis (**kwes**-təs est **noh**-bis), *n.* [Law Latin "hath complained to us"] *Hist.* By 1287, a writ against someone who continued a nuisance that existed before inheritance or purchase. • The former law provided recovery only against the party who had first caused the nuisance.

quia (**kwi**-ə *or* **kwee**-ə). [Latin] *Hist.* Because; whereas. • This term was used to point out the consideration in a conveyance.

quia alimenta liberis non debentur nisi in subsidium (**kwi**-ə *or* **kwee**-ə al-i-**men**-tə **lib**-ər-is non di-**ben**-tər **ni**-si in səb-**sid**-ee-əm). [Law Latin] *Scots law.* Because aliment (alimony) is not due to children except in aid. • A parent was not required to support a child for whom another source, such as a separate estate, provided.

Quia Emptores (**kwi**-ə *or* **kwee**-ə emp-**tor**-eez). [Latin "since purchasers"] *Hist.* A statute giving fee-simple tenants (other than those holding directly of the Crown) the power to alienate their land and bind the transferee to perform the same services for the lord

as the transferor had been obliged to perform. • The statute, enacted in 1290, tended to concentrate feudal lordships in the Crown by eliminating multiple layers of fealty. 18 Edw., ch. 1. — Also termed *Quia Emptores Terrarum*.

"Edward I and his lords wished, for political reasons, to prevent the growth of subinfeudation, and in 1290 the Statute *Quia Emptores* was enacted. It took its name from the beginning of its preamble — 'Since purchasers . . . .'" L.B. Curzon, *English Legal History* 300 (2d ed. 1979).

quia erronice emanavit (**kwi**-ə **i-roh**-nə-see em-ə-**nay**-vit). [Law Latin] *Hist.* Because it issued erroneously.

quia ita lex scripta est (**kwi**-ə *or* **kwee**-ə **i**-tə leks **skrip**-tə est). [Latin "because the law is so written"] *Hist.* Because that is the text of the statute.

quia succedunt in universum jus quod defunctus habuit (**kwi**-ə *or* **kwee**-ə sək-**see**-dənt in yoo-ni-**vər**-səm jəs kwod di-**fəngk**-təs **hab**-yoo-it). [Latin] *Roman & Scots law.* Because they succeed to every right that the decedent had. • The phrase appeared in reference to the position of heirs-at-law.

quia surrogatum sapit naturam surrogati (**kwi**-ə *or* **kwee**-ə sər-ə-**gay**-təm **say**-pit nə-**t**[**y**]**oor**-əm sər-ə-**gay**-ti). [Law Latin] *Hist.* Because the substitute partakes of the character of that for which it is substituted.

quia timet (**kwi**-ə **ti**-mət *or* **kwee**-ə **tim**-et). [Latin "because he fears"] (17c) A legal doctrine that allows a person to seek equitable relief from future probable harm to a specific right or interest. [Cases: Equity ☞ 17.]

"A second class of cases where equity courts act to prevent injury are known as 'quia timet' cases. The name comes from the two Latin words, once used when asking relief in this class of cases; the words mean, 'whereas he fears' that some injury will be inflicted in the future unless the court of equity assists him in advance, the plaintiff asks the assistance of the court to do this, that, or the other thing with respect to the defendant." Charles Herman Kinnane, *A First Book on Anglo-American Law* 648 (2d ed. 1952).

"Quia timet is the right to be protected against anticipated future injury that cannot be prevented by the present action. The doctrine of 'quia timet' permits equitable relief based on a concern over future probable injury to certain rights or interests, where anticipated future injury cannot be prevented by a present action at law, such as where there is a danger that a defense at law might be prejudiced or lost if not tried immediately." 27A Am. Jur. 2d *Equity* § 93, at 581 (1996).

***quia-timet* injunction.** See INJUNCTION.

quibus deficientibus (**kwib**-əs di-fish-ee-**en**-ti-bəs). [Latin] *Hist. Scots law.* Who failing. • In a disposition, this phrase appeared in reference to one or more who succeeded to an estate and then died. Cf. QUIBUS NON EXISTENTIBUS.

quibus non existentibus (**kwib**-əs non ek-si-**sten**-tə-bəs). [Latin] *Scots law.* Whom failing. • In a disposition, this phrase appeared in reference to one or more who never existed. Cf. QUIBUS DEFICIENTIBUS.

qui cedit foro (kwi **see**-dit **for**-oh). [Latin] *Hist.* One who stops payment; one who becomes bankrupt.

quick asset. See ASSET.

quick-asset ratio. The ratio between an entity's current or liquid assets (such as cash and accounts receivable) and its current liabilities. — Also termed *quick ratio*; *acid-test ratio*.

quick condemnation. See CONDEMNATION (2).

quick dispatch. See DISPATCH.

quickening. The first motion felt in the womb by the mother of the fetus, usu. occurring near the middle of the pregnancy.

quickie divorce. See DIVORCE.

quickie strike. See *wildcat strike* under STRIKE.

quick ratio. See QUICK-ASSET RATIO.

quick-take. See *quick condemnation* under CONDEMNATION (2).

quid actum est (kwid **ak**-təm est). [Latin] *Hist.* What has been done.

quidam (**kwi**-dəm), *n.* [Latin] *Hist.* Somebody. • This term has esp. been used in French law to designate a person whose name is unknown.

quid juratum est (kwid juu-**ray**-təm est). [Law Latin] *Hist.* What has been sworn. — Also termed *quid juravit*.

quid juravit. See QUID JURATUM EST.

quid juris? (kwid **joor**-is). [Latin] *Scots law.* What is the law? • This question was posed in difficult cases.

quid pro quo (**kwid** proh **kwoh**), *n.* [Latin "something for something"] (16c) An action or thing that is exchanged for another action or thing of more or less equal value; a substitute <the discount was given as a quid pro quo for the extra business>. See RECIPROCITY (2). Cf. CONSIDERATION. [Cases: Contracts ☞ 50.]

quid pro quo sexual harassment. See SEXUAL HARASSMENT.

quid valet nunc (kwid **vay**-let nəngk). [Latin] *Hist.* What it is now worth.

quiet, *vb.* **1.** To pacify or silence (a person, etc.). **2.** To make (a right, position, title, etc.) secure or unassailable by removing disturbing causes or disputes.

quieta non movere (kwi-**ee**-tə non moh-**veer**-ee). [Latin] Not to unsettle things that are established. See STARE DECISIS.

quietare (kwi-ə-**tair**-ee), *vb.* [Law Latin] *Hist.* To acquit, discharge, or hold harmless. • This term was used in conveyances.

quiet diplomacy. See *secret diplomacy* under DIPLOMACY.

quiete clamantia (kwi-**ee**-tee klə-**man**-shee-ə), *n.* [Law Latin] *Hist.* Quitclaim.

quiete clamare (kwi-**ee**-tee klə-**mair**-ee), *vb.* [Law Latin] *Hist.* To quitclaim or renounce all pretensions of right and title.

quiet enjoyment. See ENJOYMENT.

quiet-title action. See *action to quiet title* under ACTION.

quietus (kwɪ-**ee**-təs), *adj.* [Law Latin] Quit; acquitted; discharged, esp. from a debt or obligation, or from serving as an executor. • In England, this term was formerly used by the Clerk of the Pipe, in a discharge given to an accountant, usu. concluding with *abinde recessit quietus* ("hath gone quit thereof"), called *quietus est.* **2.** *Hist.* The removal of a judge from the bench.

quietus redditus (kwɪ-**ee**-təs **red**-ə-təs). [Law Latin] See QUIT RENT.

qui improvide (**kwɪ** im-**prov**-ə-dee). [Latin "who unforeseeably"] *Hist.* A supersedeas granted when a writ is erroneously sued out or wrongfully awarded.

qui justus esse debet (kwɪ **jəs**-təs **es**-ee **dee**-bet *or* **deb**-et). [Latin] *Hist.* Who is bound to be just.

Quinquaginta Decisiones. See FIFTY DECISIONS.

quinquepartite (kwin[g]-kwə-**pahr**-tɪt). [Latin "in five parts"] *Hist.* Consisting of five parts; divided into five parts.

quintal (**kwin**-təl). A weight of 100 pounds or 100 kilograms. — Also termed *kintal.*

quintessential public forum. See *traditional public forum* under PUBLIC FORUM.

quinto exactus (**kwin**-toh eg-**zak**-təs). [Latin "exacted the fifth time"] *Hist.* A sheriff's return made after a defendant had been called to five county courts but failed to appear. • The county coroners then ordered that the defendant be deprived of the benefits of the law.

> "And, if a *non est inventus* is returned upon all of them, a writ of *exigent* or *exigi facias* may be sued out, which requires the sheriff to cause the defendant to be proclaimed, required, or exacted, in five county courts successively, to render himself; and, if he does, then to take him, as in a *capias*: but if he does not appear, and is returned *quinto exactus*, he shall then be outlawed by the coroners of the county." 3 William Blackstone, *Commentaries on the Laws of England* 283 (1768).

Quiritarian (kwi-rə-**tair**-ee-ən), *adj. Roman law.* (In the context of ownership, with the full right available to citizens) legal as opposed to equitable; LEGAL (3). — Also termed *Quiritary.* Cf. BONITARIAN (1).

qui sibi vigilavit (kwɪ sib-ɪ vij-i-**lay**-vit). [Latin] *Hist.* Who has looked after his own interest.

quit, *adj.* (13c) (Of a debt, obligation, or person) acquitted; free; discharged.

quit, *vb.* (15c) **1.** To cease (an act, etc.); to stop <he didn't quit stalking the victim until the police intervened>. **2.** To leave or surrender possession of (property) <the tenant received a notice to quit but had no intention of quitting the premises>.

qui tam action (**kwɪ** tam *or* **kee**-tam). [Latin *qui tam pro domino rege quam pro se ipso in hac parte sequitur* "who as well for the king as for himself sues in this matter"] (18c) An action brought under a statute that allows a private person to sue for a penalty, part of which the government or some specified public institution will receive. — Often shortened to *qui tam* (Q.T.). — Also termed *popular action.* See FALSE CLAIMS ACT. [Cases: United States ⇨122.]

quitclaim, *n.* (14c) **1.** A formal release of one's claim or right. **2.** See *quitclaim deed* under DEED.

quitclaim, *vb.* (14c) **1.** To relinquish or release (a claim or right). **2.** To convey all of one's interest in (property), to whatever extent one has an interest; to execute a quitclaim deed. [Cases: Deeds ⇨25, 121.]

quitclaim deed. See DEED.

quit rent. *Hist.* A payment to a feudal lord by a freeholder or copyholder, so called because upon payment the tenant goes "quit and free" (discharged) of all other services. — Also spelled *quitrent.* — Also termed *quietus redditus.*

quittance. (13c) **1.** A release or discharge from a debt or obligation. **2.** The document serving as evidence of such a release. See ACQUITTANCE.

qui utuntur communi jure gentium (kwɪ yoo-**tən**-tər kə-**myoo**-nɪ **joor**-ee **jen**-shee-əm). [Law Latin] *Hist.* Who use the common law of nations; who conform to international law.

quoad (**kwoh**-ad). [Latin] As regards; with regard to <with a pledge, the debtor continues to possess *quoad* the world at large>.

quoad civilia (**kwoh**-ad sə-**vil**-ee-ə). [Latin] *Hist.* With regard to civil rights and benefits.

quoad creditorem (**kwoh**-ad kred-i-**tor**-əm). [Latin] *Hist.* With regard to the creditor.

quoad debitorem (**kwoh**-ad deb-i-**tor**-əm). [Latin] *Hist.* With regard to the debtor.

quoad excessum (**kwoh**-ad ek-**ses**-əm). [Latin] *Hist.* With regard to the excess.

> "Where a husband makes a postnuptial provision in favour of his wife commensurate with his circumstances and natural duty, it is not subject to revocation by him as a donation. But if the provision be immoderate, it may be revoked *quoad excessum*, in so far as it is excessive." John Trayner, *Trayner's Latin Maxims* 525–26 (4th ed. 1894).

quoad fiscum (**kwoh**-ad **fis**-kəm). [Latin] *Hist.* With regard to the fisc; as regards the Crown's rights.

quoad hoc (**kwoh**-ad **hok**). [Latin] (17c) As to this; with respect to this; so far as this is concerned. • A prohibition *quoad hoc* is a prohibition of certain things among others, such as matters brought in an ecclesiastical court that should have been brought in a temporal court.

quoad maritum (**kwoh**-ad mə-**rɪ**-təm). [Latin] *Hist.* With regard to the husband.

quoad mobilia (**kwoh**-ad moh-**bil**-ee-ə). [Latin] *Hist.* With regard to movable property.

quoad non executa (**kwoh**-ad non ek-sə-**kyoo**-tə). [Law Latin] *Scots law.* With regard to the acts not done. • A second executor may be appointed *quoad non executa* upon the death of the first.

quoad potest (**kwoh**-ad **poh**-test). [Latin] *Hist.* Insofar as one is able.

quoad reliquum (**kwoh**-ad **rel**-ə-kwəm). [Latin] *Hist.* With regard to the remainder.

> "When a debtor, in an action brought against him by his creditor, pleads compensation to a certain extent of the debt sued for, *quoad* the sum due to him . . . the creditor's right of action falls; but *quoad reliquum*, after making deduction of the sum pled in compensation, the creditor's right of action remains." John Trayner, *Trayner's Latin Maxims* 526 (4th ed. 1894).

quoad sacra (**kwoh**-ad **say**-krə). [Latin] As to sacred things; for religious purposes. • This term often referred to property that was located so far from the parish to which it belonged that it was annexed *quoad sacra* to another parish, allowing the inhabitants to attend the closer parish's services. But the land continued to belong to the original parish for all civil purposes.

quoad ultra (**kwoh**-ad **əl**-trə). [Law Latin] *Hist.* With regard to the rest. • This reference was commonly used in pleading when a defendant admitted part of the plaintiff's claim and *quoad ultra* denied it.

quoad valet seipsum (**kwoh**-ad **vay**-let see-**ip**-səm). [Latin] *Hist.* With regard to its real value.

quoad valorem (**kwoh**-ad və-**lor**-əm). [Latin] *Hist.* With regard to the value.

quo animo (**kwoh an**-ə-moh), *adv.* [Latin] With what intention or motive. See ANIMUS.

quocumque modo velit, quocumque modo possit (kwoh-**kəm**-kwee **moh**-doh **vel**-it, kwoh-**kəm**-kwee **moh**-doh **pahs**-it). [Latin] In any way he wishes; in any way he can.

quodammodo jurisdictionis voluntariae (kwoh-**dam**-ə-doh joor-is-dik-shee-**oh**-nis vol-ən-**tair**-ee-ee). [Law Latin] *Hist.* Belonging in some measure to voluntary jurisdiction.

quod billa cassetur (kwod **bil**-ə kə-**see**-tər), *n.* [Latin "that the bill be quashed"] The common-law form of a judgment sustaining a plea in abatement that proceeds from a bill instead of an original writ. See CASSETUR BILLA.

quod clerici non eligantur in officio ballivi, etc. (kwod **kler**-ə-sɪ non el-ə-**gan**-tər in ə-**fish**-ee-oh bal-**lɪ**-vɪ), *n.* [Law Latin "that clerks are not chosen in the office of a bailiff, etc."] *Hist.* A writ exempting a clerk, who was to be appointed as a bailiff, beadle, reeve, or other officer, from serving in the office.

quod computet (kwod **kom**-pyə-tet). [Law Latin "that he account"] The first judgment in an action of account, requiring the defendant to give an accounting before auditors. — Also termed *judgment quod computet.*

> "In this action, if the plaintiff succeeds, there are two judgments: the first is, that the defendant do account (*quod computet*) before auditors appointed by the court; and, when such account is finished, then the second judgment is, that he do pay the plaintiff so much as he is found in arrear." 3 William Blackstone, *Commentaries on the Laws of England* 163 (1768).

quod cum (**kwod** kəm). [Law Latin] For that; whereas. • In common-law pleading, this phrase introduced explanations for the claims alleged, as in *assumpsit* actions.

quod ei deforceat (kwod **ee**-ɪ di-**for**-see-ət), *n.* [Law Latin "that he deforces him"] *Hist.* A writ allowed by St. Westm. 2, 13 Edw., ch. 4 for the owners of a particular estate (such as a life estate or fee tail) who had lost land unwittingly by default in a possessory action. • Up to that time, only owners in fee simple could recover property after such a default.

quod erat demonstrandum (kwod **er**-ət dem-ən-**stran**-dəm). See Q.E.D.

quod erat faciendum (kwod **er**-ət fay-shee-**en**-dəm). See Q.E.F.

quod fuit concessum (kwod **f**[**y**]**oo**-it kən-**ses**-əm). [Law Latin] Which was granted. • This phrase was used in old reports to indicate that an argument or point made by counsel was approved or allowed by the court.

quod jussu (kwod **jəs**-[y]oo). [Latin "which was done by order"] *Roman law.* See *actio quod jussu* under ACTIO.

quod non fuit negatum (kwod non **f**[**y**]**oo**-it ni-**gay**-təm). [Law Latin] *Hist.* Which was not denied. • This phrase usu. signifies that an argument or proposal is not denied or controverted by the court.

quod nota (kwod **noh**-tə). [Latin] *Hist.* Which note; which mark. • This is a reporter's note directing attention to a point or rule.

quod partes replacitent (kwod **pahr**-teez ri-**plas**-i-tənt), *n.* [Law Latin "that the parties do replead"] *Hist.* The judgment ordering repleader when an issue is formed on so immaterial a point that the court does not know for whom to give a judgment. • The parties must then reconstruct their pleadings.

quod partitio fiat (kwod pahr-**tish**-ee-oh **fɪ**-ət). [Latin "that partition be made"] *Hist.* In a partition suit, a judgment granting the partition.

quod permittat (kwod pər-**mit**-it), *n.* [Latin "that he permit"] *Hist.* A writ to prevent an interference in the exercise of a right, such as a writ for the heir of someone disseised of a common of pasture against the heir of the disseisor.

quod permittat prosternere (kwod pər-**mit**-it proh-**stər**-nə-ree), *n.* [Law Latin "that he permit to abate"] *Hist.* A writ to abate a nuisance, similar in nature to a petition of right. • This writ was abolished by the Real Property Limitation Act of 1833.

> "This is a writ commanding the defendant to permit the plaintiff to abate, *quod permittat prosternere*, the nuisance complained of; and, unless he so permits, to summon him to appear in court, and shew cause why he will not. And this writ lies as well *for* the alienee of the party first injured, as *against* the alienee of the party first injuring; as hath been determined by all the judges. And the plaintiff shall have judgment herein to abate the nuisance, and to recover damages against the defendant." 3 William Blackstone, *Commentaries on the Laws of England* 222 (1768).

quod recuperet (kwod ri-**k**[**y**]**oo**-pər-it), *n.* [Law Latin "that he do recover"] *Hist.* The ordinary judgment for a plaintiff in an action at law. • The judgment might be either final or interlocutory depending on whether damages had been ascertained at the time the

judgment was rendered. — Also termed *judgment quod recuperet.*

quod si contingat (kwod **SI** kon-**ting**-at). [Law Latin] *Hist.* That if it happen. • These words were used to create a condition in a deed.

quod vide (kwod **VI**-dee *or* **vee**-day). See Q.V.

quod voluit non dixit (kwod **vol**-yoo-it non **dik**-sit). [Latin] *Hist.* That he did not say what he intended. • This phrase was sometimes used in an argument concerning the intention of a lawmaker or testator.

quo jure (kwoh **joor**-ee). [Law Latin "by what right"] *Hist.* A writ for someone holding land to which another claimed a common, to compel the latter to prove title. See COMMON (1).

quominus (**kwoh**-mə-nəs *or* kwoh-**MI**-nəs). [Latin *quo minus* "by which the less"] *Hist.* A 14th-century Exchequer writ alleging that the plaintiff had lent the defendant a sum of money and that the plaintiff was unable to repay a debt of similar amount to the Crown because of the debt to the defendant. • In effect, the plaintiff pleaded the fiction that he was a debtor of the king who could not repay that debt because of the defendant's failure to repay him. — Also termed *writ of quominus.*

> "[W]hat in the beginning had been permitted as a means of collecting the royal revenue came in the end to be nothing more or less than permitting any citizen to sue in the court of the king in order to collect a private debt. The old pretense that the matter concerned the royal revenue had to be kept up, and accordingly A had to allege that he was 'less able' to pay the king when his debtors would not pay him. But everyone, even the court itself, recognized this as a mere fiction, and that since the suit was in fact between A and B, B was not permitted to bring in other matters, such for example as a defense on the ground that A did not actually owe any taxes to the crown. This fiction came to be known as the 'quo minus' fiction, because these were the Latin words used in the litigation, which meant that A was 'less able' to pay the king." Charles Herman Kinnane, *A First Book on Anglo-American Law* 265–66 (2d ed. 1952).

quomodo constat (**kwoh**-mə-doh **kon**-stat). [Latin] *Hist.* As it appears (from the record, the pleadings, etc.).

quomodo desiit possidere (**kwoh**-mə-doh **des**-ee-it pos-ə-**dee**-ree). [Law Latin] *Scots law.* In what way he ceased to possess. • In an action to reclaim possession, the plaintiff was required to prove previous possession and *quomodo desiit possidere* (as by theft, etc.).

quondam (**kwon**-dəm), *adj.* Having been formerly; former <the quondam ruler>.

quondam, *n. Archaic.* A person who once held an office or a position, esp. one who was involuntarily removed or deposed.

quorum, *n.* (17c) *Parliamentary law.* The minimum number of members (usu. a majority of all the members) who must be present for a deliberative assembly to legally transact business. Pl. **quorums.** [Cases: Parliamentary Law ☞5.]

constituency-based quorum. See *interest-based quorum.*

disappearing quorum. A quorum whose presence may be more presumptive than actual. See *presumption of a quorum* under PRESUMPTION.

interest-based quorum. A quorum determined according to the presence or representation of various constituencies. — Also termed *constituency-based quorum.*

notice-based quorum. A quorum determined according to how far in advance of the meeting its call was circulated. • Under a notice-based quorum, the later the call gets sent out, the larger the quorum grows.

proportional quorum. A quorum calculated with reference to some defined or assumed set, usu. either the number of seats (including vacancies) or the number of sitting members (excluding vacancies).

registration-based quorum. A quorum determined according to how many members have checked in at the meeting, either at some fixed time or throughout the time since the meeting began.

quorum bonorum (**kwor**-əm bə-**nor**-əm). [Latin] *Roman law.* A praetorian interdict by which a person was allowed to take possession of an estate. See BONORUM POSSESSIO CONTRA TABULAS.

quorum call. See CALL (1).

quorumless, *adj.* Lacking a quorum. — **quorumlessness,** *n.*

quorum nobis. See CORAM NOBIS.

quorum usus consistit in abusu (**kwor**-əm **yoo**-səs [*or* **yoo**-zəs] kən-**sis**-tit in ə-**byoo**-s[y]oo). [Law Latin] *Scots law.* The use of which consists in consuming them. • The phrase appeared in reference to fungibles.

quot. *Hist. Scots law.* Formerly, the 20th part of an estate's movables, calculated before the decedent's debts are paid, owed to the bishop of the diocese.

quota. (17c) **1.** A proportional share assigned to a person or group; an allotment <the university's admission standards included a quota for in-state residents>. [Cases: Colleges and Universities ☞9.15.] **2.** A quantitative restriction; a minimum or maximum number <Faldo met his sales quota for the month>.

export quota. A restriction on the products that can be sold to foreign countries. • In the United States, export quotas can be established by the federal government for various purposes, including national defense, price support, and economic stability.

import quota. A restriction on the volume of a certain product that can be brought into the country from a foreign country. • In the United States, the President may establish a quota on an item that poses a threat of serious injury to a domestic industry.

quot articuli tot libelli (kwot ahr-**tik**-yə-lI taht li-**bel**-I). [Law Latin] *Hist.* As many points of dispute as libels.

quotation. (17c) **1.** A statement or passage that is exactly reproduced, attributed, and cited. **2.** The amount stated as a stock's or commodity's current price.

market quotation. The most current price at which a security or commodity trades. [Cases: Exchanges ⇨13.]

3. A contractor's estimate for a given job. — Sometimes shortened to *quote*. [Cases: Contracts ⇨229(1).]

quot generationes tot gradus (kwot jen-ə-ray-shee-**oh**-neez taht **gray**-dəs). [Law Latin] *Hist.* As many generations as degrees (of relationship). • The phrase appeared in reference to degrees of relationship.

quotient verdict. See VERDICT.

quousque (kwoh-**əs**-kwee). [Latin] *Hist.* As long as; how long; until; how far. • This term was used in conveyances as a limitation.

quovis modo (**kwoh**-vis **moh**-doh). [Latin] In whatever manner.

quovis tempore (**kwoh**-vis **tem**-pə-ree). [Latin] *Hist.* At whatever time.

quo warranto (kwoh wə-**ran**-toh *also* kwoh **wahr**-ən-toh). [Law Latin "by what authority"] (15c) **1.** A common-law writ used to inquire into the authority by which a public office is held or a franchise is claimed. — Also termed *writ of quo warranto*. [Cases: Quo Warranto ⇨9.] **2.** An action by which the state seeks to revoke a corporation's charter. • The Federal Rules of Civil Procedure are applicable to proceedings for quo warranto "to the extent that the practice in such proceedings is not set forth in statutes of the United States and has therefore conformed to the practice in civil actions." Fed. R. Civ. P. 81(a)(2). [Cases: Quo Warranto ⇨15.]

"There are two modes of proceeding judicially to ascertain and enforce the forfeiture of a charter for default or abuse of power. The one is by scire facias; and that process is proper where there is a legal existing body, capable of acting, but who have abused their power. The other mode is by information in the nature of a *quo warranto*; which is in form a criminal, and in its nature a civil remedy; and that proceeding applies where there is a body corporate *de facto* only, but who take upon themselves to act, though, from some defect in their constitution, they cannot legally exercise their powers. Both these modes of proceeding are at the instance of and on behalf of the government. The state must be a party to the prosecution, for the judgment is that the parties be ousted, and the franchises seised into the hands of the government." 2 James Kent, *Commentaries on American Law* *313 (George Comstock ed., 11th ed. 1866).

"Quo warranto means 'by what warrant?' — or authority? — and was a proceeding to inquire whether authority existed to justify or authorize certain acts of a public character or interest. Originally the proceeding of quo warranto was a criminal one instituted by the crown, the purpose of which was to find out, in the course of a formal inquiry, whether or not persons or corporations were exercising a privilege or franchise illegally, or if persons who had no right to do so were occupying some public office. If it were found that the person or corporation was in fact illegally interfering with the prerogative power of the crown, or was in fact doing some other illegal act, it was ousted from the illegal practice or office. Accordingly, it can be seen at once that the proceeding on quo warranto was not one to be used by private parties in the conduct of ordinary litigation." Charles Herman Kinnane, *A First Book on Anglo-American Law* 662 (2d ed. 1952).

q.v. *abbr.* [Latin *quod vide*] (17c) Which see — used in non-*Bluebook* citations for cross-referencing. Pl. **qq.v.**

R

R. *abbr.* **1.** REX. **2.** REGINA. **3.** RANGE. **4.** *Trademarks.* When contained in a circle (and often superscripted), the symbol indicating that a trademark or servicemark is registered in the U.S. Patent and Trademark Office. See *registered trademark* under TRADEMARK; SERVICEMARK.

rabbicular trust. See TRUST (3).

rabbinical divorce. See DIVORCE.

rabbi trust. See TRUST (3).

race act. See RACE STATUTE.

race-notice statute. (1968) A recording law providing that the person who records first, without notice of prior unrecorded claims, has priority. • About half the states have race-notice statutes. — Also termed *race-notice act*; *notice-race statute*. Cf. RACE STATUTE; NOTICE STATUTE. [Cases: Vendor and Purchaser ☞231(11).]

race of diligence. *Bankruptcy.* A first-come, first-served disposition of assets. [Cases: Bankruptcy ☞3442.]

race statute. (1944) A recording act providing that the person who records first, regardless of notice, has priority. • Only Louisiana and North Carolina have race statutes. — Also termed *pure race statute*; *race act*. Cf. NOTICE STATUTE; RACE-NOTICE STATUTE. [Cases: Vendor and Purchaser ☞231(11).]

race to the courthouse.(1961) **1.** *Bankruptcy.* The competition among creditors to make claims on assets, usu. motivated by the advantages to be gained by those who act first in preference to other creditors. • Chapter 11 of the Bankruptcy Code, as well as various other provisions, is intended to prevent a race to the courthouse and instead to promote equality among creditors. [Cases: Bankruptcy ☞2022, 2391, 2601, 3501.] **2.** *Civil procedure.* The competition between disputing parties, both of whom know that litigation is inevitable, to prepare and file a lawsuit in a favorable or convenient forum before the other side files in one that is less favorable or less convenient. • A race to the courthouse may result after one party informally accuses another of breach of contract or intellectual-property infringement. When informal negotiations break down, both want to resolve the matter quickly, usu. to avoid further business disruption. While the accuser races to sue for breach of contract or infringement, the accused seeks a declaratory judgment that no breach or infringement has occurred. See ANTICIPATORY FILING.

rachat (rah-**shah**), *n.* [French] **1.** Repurchase; redemption. **2.** Ransom.

racheter (rah-shə-**tay**), *vb.* [French] **1.** To repurchase or buy back. **2.** To ransom.

racial discrimination. See DISCRIMINATION.

racial profiling. The law-enforcement practice of using race, national origin, or ethnicity as a salient basis for suspicion of criminal activity. • Originally, the term referred to the practice of stopping a disproportionate number of male African-American drivers on the assumption that they had a heightened likelihood of being involved in criminal activity. After the terrorist attacks of September 11, 2001, the term was frequently used in reference to searching and interrogating Middle Eastern men at airports. — Also termed *ethnic profiling*; *profiling*. Cf. LINGUISTIC PROFILING. [Cases: Arrest ☞63.5(4); Civil Rights ☞1088(4).]

rack, *n. Hist.* An instrument of torture on which a person was slowly stretched, formerly used to interrogate someone charged with a crime.

racket, *n.* (1819) **1.** An organized criminal activity; esp., the extortion of money by threat or violence. **2.** A dishonest or fraudulent scheme, business, or activity. [Cases: Racketeer Influenced and Corrupt Organizations ☞50, 107.]

racketeer, *n.* (1924) A person who engages in racketeering. [Cases: Racketeer Influenced and Corrupt Organizations ☞4, 103.] — **racketeer,** *vb.*

Racketeer Influenced and Corrupt Organizations Act. A law designed to attack organized criminal activity and preserve marketplace integrity by investigating, controlling, and prosecuting persons who participate or conspire to participate in racketeering. 18 USCA §§ 1961–1968. • Enacted in 1970, the federal RICO statute applies only to activity involving interstate or foreign commerce. Since then, many states have adopted laws (sometimes called "little RICO" acts) based on the federal statute. The federal and most state RICO acts provide for enforcement not only by criminal prosecution but also by civil lawsuit, in which the plaintiff can sue for treble damages. — Abbr. RICO. [Cases: Racketeer Influenced and Corrupt Organizations ☞2, 101.]

> "Before criminal or civil liability can attach under RICO, it must be shown that the two or more acts of racketeering alleged in the criminal indictment or civil complaint constitute a pattern of racketeering activity on the part of the culpable person. The statutory definition of pattern 'requires at least two' predicate acts occurring within ten years of each other, with one of them occurring after October 15, 1970. More broadly put, the pattern of racketeering activity is a scheme of unlawful conduct with a nexus to both the culpable person and the enterprise." David R. McCormack, *Racketeering Influenced Corrupt Organizations* § 1.04, at 1-20 (1998).

racketeering, *n.* (1897) **1.** A system of organized crime traditionally involving the extortion of money from businesses by intimidation, violence, or other illegal methods. [Cases: Racketeer Influenced and Corrupt Organizations ☞4, 103.] **2.** A pattern of illegal activity

(such as bribery, extortion, fraud, and murder) carried out as part of an enterprise (such as a crime syndicate) that is owned or controlled by those engaged in the illegal activity. • The modern sense (sense 2) derives from the federal RICO statute, which greatly broadened the term's original sense to include such activities as mail fraud, securities fraud, and the collection of illegal gambling debts. See 18 USCA §§ 1951–1960. [Cases: Racketeer Influenced and Corrupt Organizations ⚷3, 102.]

rack rent, *n.* Rent equal to or nearly equal to the full annual value of the property; excessively or unreasonably high rent. — **rack-rent,** *vb.* — **rack-renter,** *n.*

radical lawyering. See CAUSE LAWYERING.

raffle, *n.* A form of lottery in which each participant buys one or more chances to win a prize. [Cases: Lotteries ⚷3.]

raid, *n.* **1.** A sudden attack or invasion by law-enforcement officers, usu. to make an arrest or to search for evidence of a crime. **2.** An attempt by a business or union to lure employees or members from a competitor. **3.** An attempt by a group of speculators to cause a sudden fall in stock prices by concerted selling.

raider. See CORPORATE RAIDER.

railroad, *vb.* **1.** To transport by train. **2.** To send (a measure) hastily through a legislature so that there is little time for consideration and debate. **3.** To convict (a person) hastily, esp. by the use of false charges or insufficient evidence.

railroad-aid bond. See BOND (3).

railroad company. See *railroad corporation* under CORPORATION.

railroad corporation. See CORPORATION.

Railroad Retirement Board. A three-member federal board that administers the program providing retirement, unemployment, and sickness benefits to retired railroad employees and their families. • The Board was established by the Railroad Retirement Act of 1934. — Abbr. RRB. [Cases: Social Security and Public Welfare ⚷161; Unemployment Compensation ⚷231.]

Railway Labor Act. A 1926 federal law giving transportation employees the right to organize without management interference and establishing guidelines for the resolution of labor disputes in the transportation industry. • In 1934, the law was amended to include the airline industry and to establish the National Mediation Board. 45 USCA §§ 151–188. See NATIONAL MEDIATION BOARD.

rainmaker, *n.* A lawyer who generates a large amount of business for a law firm, usu. through wide contacts within the business community <the law firm fell on hard times when the rainmaker left and took his clients with him>. — **rainmaking,** *n.*

raise, *vb.* (12c) **1.** To increase in amount or value <the industry raised prices>. **2.** To gather or collect <the charity raised funds>. **3.** To bring up for discussion or consideration; to introduce or put forward <the party raised the issue in its pleading>. **4.** To create or establish <the person's silence raised an inference of consent>. **5.** To increase the stated amount of (a negotiable instrument) by fraudulent alteration <the indorser raised the check>.

raise a question of privilege. To offer a question of privilege to be considered by the meeting or ruled on by the chair. See *question of privilege* under QUESTION (3).

raised check. See CHECK.

raising an instrument. The act of fraudulently altering a negotiable instrument, esp. a check, to increase the amount stated as payable. See *raised check* under CHECK. [Cases: Banks and Banking ⚷147.]

rake-off, *n.* (1887) A percentage or share taken, esp. from an illegal transaction; an illegal bribe, payoff, or skimming of profits. — **rake off,** *vb.*

rally, *n.* A sharp rise in price or trading (as of stocks) after a declining market.

RAM. See *reverse annuity mortgage* under MORTGAGE.

Rambo lawyer. *Slang.* A lawyer, esp. a litigator, who uses aggressive, unethical, or illegal tactics in representing a client and who lacks courtesy and professionalism in dealing with other lawyers. — Often shortened to *Rambo.*

ram raid. *Slang.* The smashing of a shop window or other commercial premises with a vehicle in order to break in and steal cash or goods. • The term is most common in Britain, Ireland, and Australia. — Also termed *crash-and-dash.* Cf. SMASH-AND-GRAB.

Ramseyer rule. A rule of the U.S. House of Representatives requiring any committee reporting a bill that amends legislation in force to show in its report what wording the bill would strike from or insert into the current law. • The rule is named for Representative C. William Ramseyer (1875–1943) of Iowa, who proposed it. The analogous rule in the U.S. Senate is the Cordon rule. See CORDON RULE.

R and D. *abbr.* RESEARCH AND DEVELOPMENT.

range, *n. Land law.* In U.S. government surveys, a strip of public land running due north to south, consisting of a row of townships, at six-mile intervals. — Abbr. R. [Cases: Public Lands ⚷25.]

ranger. 1. *Hist.* In England, an officer or keeper of a royal forest, appointed to patrol the forest, drive out stray animals, and prevent trespassing. **2.** An officer or warden who patrols and supervises the care and preservation of a public park or forest. [Cases: Woods and Forests ⚷7.] **3.** One of a group of soldiers who patrol a given region; esp., in the U.S. military, a soldier specially trained for surprise raids and close combat. **4.** A member of a special state police force.

rank, *n.* **1.** A social or official position or standing, as in the armed forces <the rank of captain>. [Cases: Armed Services ⚷8.] **2.** *Parliamentary law.* A motion's relative precedence. See PRECEDENCE (3).

rank and file. **1.** The enlisted soldiers of an armed force, as distinguished from the officers. **2.** The general membership of a union.

rank-order voting. See *preferential voting* under VOTING.

ransom, *n.* (13c) **1.** Money or other consideration demanded or paid for the release of a captured person or property. See KIDNAPPING. **2.** The release of a captured person or property in exchange for payment of a demanded price. [Cases: Kidnapping ⇨19.]

ransom, *vb.* (14c) **1.** To obtain the release of (a captive) by paying a demanded price. **2.** To release (a captive) upon receiving such a payment. **3.** To hold and demand payment for the release of (a captive).

ransom bill. *Int'l law.* A contract by which a vessel or other property captured at sea during wartime is ransomed in exchange for release and safe conduct to a friendly destination. — Also termed *ransom bond.*

ransom factor. *Slang.* The costliness of litigation considered as a disincentive to vindicate one's rights in court. • The term is used mostly in England.

rap, *n.* (1903) *Slang.* **1.** Legal responsibility for a criminal act <he took the rap for his accomplices>. **2.** A criminal charge <a murder rap>. **3.** A criminal conviction; esp., a prison sentence <a 20-year rap for counterfeiting>.

rape, *n.* (15c) **1.** At common law, unlawful sexual intercourse committed by a man with a woman not his wife through force and against her will. • The common-law crime of rape required at least a slight penetration of the penis into the vagina. Also at common law, a husband could not be convicted of raping his wife. — Formerly termed *rapture*; *ravishment.* [Cases: Rape ⇨1.] **2.** Unlawful sexual activity (esp. intercourse) with a person (usu. a female) without consent and usu. by force or threat of injury. • Most modern state statutes have broadened the definition along these lines. Rape includes unlawful sexual intercourse without consent after the perpetrator has substantially impaired his victim by administering, without the victim's knowledge or consent, drugs or intoxicants for the purpose of preventing resistance. It also includes unlawful sexual intercourse with a person who is unconscious. Marital status is now usu. irrelevant, and sometimes so is the victim's gender. — Also termed (in some statutes) *unlawful sexual intercourse*; *sexual assault*; *sexual battery*; *sexual abuse*; (in Latin) *crimen raptus.* Cf. *sexual assault* under ASSAULT; *sexual battery* under BATTERY.

> "[Another] offence, against the female part also of his majesty's subjects, but attended with greater aggravations than that of forcible marriage, is the crime of *rape*, *raptus mulierum*, or the carnal knowledge of a woman forcibly and against her will." 4 William Blackstone, *Commentaries on the Laws of England* 210 (1769).

> "If force is to be declared an element of the crime [of rape] it becomes necessary to resort to the fiction of 'constructive force' to take care of those cases in which no force is needed beyond what is involved in the very act of intercourse itself. A better analysis is to recognize that the requirement of force is simply a means of demonstrating that the unlawful violation of the woman was without her consent and against her will. Therefore, evidence of serious force need not be shown in many cases. Hence the better view is that 'force' is not truly speaking an element of the crime itself, but if great force was not needed to accomplish the act the necessary *lack of consent* has been *disproved* in other than exceptional situations. The courts today frequently state the position that a woman's resistance need not be 'more than her age, strength, the surrounding facts, and all attending circumstances' make reasonable." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 211–12 (3d ed. 1982).

acquaintance rape. (1980) Rape committed by someone known to the victim, esp. by the victim's social companion. Cf. *date rape*; *relationship rape.*

command rape. Coerced or forced sexual contact between a superior member and subordinate member of the armed forces.

date rape. (1975) Rape committed by a person who is escorting the victim on a social occasion. • Loosely, *date rape* also sometimes refers to what is more accurately called *acquaintance rape* or *relationship rape.* [Cases: Rape ⇨4.]

marital rape. (1936) A husband's sexual intercourse with his wife by force or without her consent. • Marital rape was not a crime at common law, but under modern statutes the marital exemption no longer applies, and in most jurisdictions a husband can be prosecuted for raping his wife. — Also termed *spousal rape.* [Cases: Rape ⇨4.]

prior-relationship rape. See *relationship rape.*

rape by means of fraud. An instance of sexual intercourse that has been induced by fraud. • Authorities are divided on the question whether rape can occur when a woman is induced by fraudulent statements to have sexual intercourse. But the term *rape by means of fraud* is not uncommon in legal literature. [Cases: Justices of the Peace ⇨10.]

rape under age. See *statutory rape.*

relationship rape. (1999) Rape committed by someone with whom the victim has had a significant association, often (though not always) of a romantic nature. • This term encompasses all types of relationships, including family, friends, dates, cohabitants, and spouses, in which the victim has had more than brief or perfunctory interaction with the other person. Thus it does not extend to those with whom the victim has had only brief encounters or a nodding acquaintance. — Also termed *prior-relationship rape.* Cf. *date rape*; *acquaintance rape.*

spousal rape. See *marital rape.*

statutory rape. (1873) Unlawful sexual intercourse with a person under the age of consent (as defined by statute), regardless of whether it is against that person's will. • Generally, only an adult may be convicted of this crime. A person under the age of consent cannot be convicted. — Also termed *rape under age.* See *age of consent* under AGE. [Cases: Rape ⇨13.]

> "Carnal knowledge of a child is frequently declared to be rape by statute and where this is true the offense is

popularly known as 'statutory rape,' although not so designated in the statute." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 198 (3d ed. 1982).

3. *Archaic.* The act of seizing and carrying off a person (esp. a woman) by force; abduction. **4.** The act of plundering or despoiling a place. **5.** *Hist.* One of the six administrative districts into which Sussex, England was divided, being smaller than a shire and larger than a hundred.

rape, *vb.* **1.** To commit rape against. **2.** *Archaic.* To seize and carry off by force; abduct. **3.** To plunder or despoil. — **rapist, raper,** *n.*

rape shield law. See SHIELD LAW (2).

rape shield statute. See SHIELD LAW (2).

rape under age. See *statutory rape* under RAPE.

rapina (rə-**pī**-nə). [Latin "robbery, pillage"] *Roman & civil law.* The forcible taking of another's movable property with the intent to appropriate it to one's own use.

"Rapina is the taking away of a thing by violent means. It gives rise to the praetorian actio vi bonorum raptorum . . . ." Rudolph Sohm, *The Institutes: A Textbook of the History and System of Roman Private Law* 419 (James Crawford Ledlie trans., 3d ed. 1907).

rapine (**rap**-in). **1.** Forcible seizure and carrying off of another's property; pillage or plunder. **2.** *Archaic.* Rape.

rapport à succession (ra-**por** ah sook-ses-**syawn**), *n.* [French "return to succession"] *Civil law.* The restoration to an estate of property that an heir received in advance from the decedent, so that an even distribution may be made among all the heirs. Cf. HOTCHPOT.

rapporteur (ra-por-**tuur** *or* -**tər**), *n.* [French] An official who makes a report of committee proceedings for a larger body (esp. a legislature).

rapprochement (ra-prosh-**mahn**). [French] The establishment or restoration of cordial relations between two or more nations. — Also spelled *rapprochment.*

rap sheet. (1960) *Slang.* A person's criminal record.

raptu haeredis (**rap**-t[y]oo hə-**ree**-dis), *n.* [Latin] *Hist.* A writ for taking away an heir held in socage. See SOCAGE.

rapture. *Archaic.* **1.** Forcible seizure and carrying off of another person (esp. a woman); abduction. **2.** RAPE (1).

raptu virginum (**rap**-t[y]oo **vər**-ji-nəm). See DE RAPTU VIRGINUM.

rapuit (**rap**-yoo-it). [Latin] *Hist.* Ravished. • The term was formerly used in indictments for rape. See RAVISHMENT.

RAR. *abbr.* REVENUE AGENT'S REPORT.

rasure (**ray**-zhər). **1.** The scraping or shaving of a document's surface to remove the writing from it; erasure. **2.** Obliteration. — **rase,** *vb.*

rat. *Slang.* See STOOL PIGEON (1).

ratable (**ray**-tə-bəl), *adj.* (16c) **1.** Proportionate <ratable distribution>. **2.** Capable of being estimated, appraised, or apportioned <because hundreds of angry fans ran onto the field at the same time, blame for the goalpost's destruction is not ratable>. **3.** Taxable <the government assessed the widow's ratable estate>. See PRO RATA.

ratchet theory. (1977) *Constitutional law.* The principle that Congress, in exercising its enforcement power under the 14th Amendment, can increase but not dilute the scope of 14th Amendment guarantees as previously defined by the Supreme Court. • The thought underlying the term is that the enabling clause works in only one direction, like a ratchet. The theory was stated by Justice Brennan in *Katzenbach v. Morgan*, 384 U.S. 641, 86 S.Ct. 1717 (1966), but was repudiated by the Supreme Court in *City of Boerne v. Flores*, 521 U.S. 507, 117 S.Ct.2157 (1997). — Also termed *one-way ratchet theory.*

rate, *n.* (15c) **1.** Proportional or relative value; the proportion by which quantity or value is adjusted <rate of inflation>. **2.** An amount paid or charged for a good or service <the rate for a business-class fare is $550>.

class rate. A single rate applying to the transportation of several articles of the same general character. [Cases: Carriers ☞189.]

confiscatory rate. A utility rate set so low by the government that the utility company cannot realize a reasonable return on its investment. [Cases: Public Utilities ☞129.]

freight rate. A rate charged by a carrier for the transportation of cargo, usu. based on the weight, volume, or quantity of goods but sometimes also on the goods' value or the mileage. [Cases: Carriers ☞12, 189.]

joint rate. A single rate charged by two or more carriers to cover a shipment of goods over a single route. [Cases: Carriers ☞26, 193.]

union rate. The wage scale set by a union as a minimum wage to be paid and usu. expressed as an hourly rate or piecework rate.

3. INTEREST RATE <the rate on the loan increases by 2% after five years>. **4.** PREMIUM RATE. **5.** *English law.* A sum assessed or payable to the local government in the place where a ratepayer dwells or has property. See RATEPAYER. — **rate,** *vb.*

rate base. The investment amount or property value on which a company, esp. a public utility, is allowed to earn a particular rate of return. [Cases: Public Utilities ☞124.]

rate-base value. See *net book cost* under COST (1).

rate of interest. See INTEREST RATE.

rate of return. The annual income from an investment, expressed as a percentage of the investment. See RETURN (5).

fair rate of return. The amount of profit that a public utility is permitted to earn, as determined by a public utility commission. [Cases: Public Utilities ☞129.]

internal rate of return. *Accounting.* A discounted-cash-flow method of evaluating a long-term project, used to determine the actual return on an investment. — Abbr. IRR.

ratepayer. *English law.* A person who pays local taxes; a person liable to pay rates. See RATE (4).

ratification, *n.* (15c) **1.** Adoption or enactment, esp. where the act is the last in a series of necessary steps or consents <The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same>. • In this sense, ratification runs the gamut of a formal approval of a constitutional amendment to rank-and-file approval of a labor union's collective-bargaining agreement with management. See ADOPTION (5). Cf. SANCTION (1). **2.** Confirmation and acceptance of a previous act, thereby making the act valid from the moment it was done <the board of directors' ratification of the president's resolution>. • This sense includes action taken by the legislature to make binding a treaty negotiated by the executive. [Cases: Estoppel ⚷90(1).] **3.** *Contracts.* A person's binding adoption of an act already completed but either not done in a way that originally produced a legal obligation or done by a third party having at the time no authority to act as the person's agent <an adult's ratification of a contract signed during childhood is necessary to make the contract enforceable>. [Cases: Contracts ⚷97(2); Infants ⚷57; Principal and Agent ⚷163–176.]

> "Ratification may take place by express words indicating an intention to confirm the contract. These words may consist of a new express promise, or such words as 'I do ratify and confirm.' A mere acknowledgment that the contract was in fact made and that it has not been performed is not sufficient as a ratification. It is sometimes said that a ratification is ineffective unless made with knowledge of the possession of a legal power to disaffirm, but the cases holding the contrary seem to have the better reason." William R. Anson, *Principles of the Law of Contract* 179–80 (Arthur L. Corbin ed., 3d Am. ed. 1919).

4. *Int'l law.* The final establishment of consent by the parties to a treaty to be bound by it, usu. including the exchange or deposit of instruments of ratification <the ratification of the nuclear-weapons treaty>. See INSTRUMENT OF RATIFICATION. Cf. CONFIRMATION. [Cases: Treaties ⚷3.] — **ratify,** *vb.* — **ratifiable,** *adj.*

ratihabitio (rat-ə-hə-**bish**-ee-oh), *n.* [Latin fr. *ratum habere* "to hold ratified"] *Civil law.* Ratification or approval, esp. by a principal of an agent's transaction. Pl. ***ratihabitiones.***

rating. 1. *Marine insurance.* The determination of a vessel's state or condition as a factor of insurability. [Cases: Insurance ⚷1515, 1540.] **2.** INSURANCE RATING.

ratio. See RATIO DECIDENDI.

ratiocination (rash-ee-os-ə-**nay**-shən), *n.* (16c) The process or an act of reasoning. — **ratiocinative** (rash-ee-**os**-ə-nay-tiv), *adj.* — **ratiocinate** (rash-ee-**os**-ə-nayt), *vb.*

ratio decidendi (**ray**-shee-oh des-ə-**den**-dı), *n.* [Latin "the reason for deciding"] (18c) **1.** The principle or rule of law on which a court's decision is founded <many poorly written judicial opinions do not contain a clearly ascertainable *ratio decidendi*>. **2.** The rule of law on which a later court thinks that a previous court founded its decision; a general rule without which a case must have been decided otherwise <this opinion recognizes the Supreme Court's *ratio decidendi* in the school desegregation cases>. — Often shortened to *ratio.* Pl. ***rationes decidendi*** (**ray**-shee-oh-neez des-ə-**den**-dı). Cf. OBITER DICTUM; HOLDING (1).

> "The phrase 'the *ratio decidendi* of a case' is slightly ambiguous. It may mean either (1) the rule that the judge who decided the case intended to lay down and apply to the facts, or (2) the rule that a later court concedes him to have had the power to lay down." Glanville Williams, *Learning the Law* 75 (11th ed. 1982).

> "There are . . . two steps involved in the ascertainment of the *ratio decidendi* . . . . First, it is necessary to determine all the facts of the case as seen by the judge; secondly, it is necessary to discover which of those facts were treated as material by the judge." Rupert Cross & J.W. Harris, *Precedent in English Law* 65–66 (4th ed. 1991).

ratio legis (**ray**-shee-oh **lee**-jəs), *n.* [Latin] The reason or purpose for making a law <the Senator argued that the rapid spread of violent crime was a compelling *ratio legis* for the gun-control statute>. — Also termed *ratio juris.*

rationabile estoverium (rash-[ee]-ə-**nay**-bə-lee es-tə-**veer**-ee-əm), *n.* [Law Latin "reasonable necessaries"] *Hist.* Alimony.

rationabilibus divisis. See DE RATIONABILIBUS DIVISIS.

rationabili parte bonorum. See DE RATIONABILI PARTE BONORUM.

rational-basis test. (1947) *Constitutional law.* The criterion for judicial analysis of a statute that does not implicate a fundamental right or a suspect or quasi-suspect classification under the Due Process or Equal Protection Clause, whereby the court will uphold a law if it bears a reasonable relationship to the attainment of a legitimate governmental objective. • Rational basis is the most deferential of the standards of review that courts use in due-process and equal-protection analysis. — Also termed *rational-purpose test; rational-relationship test; minimum scrutiny; minimal scrutiny.* Cf. STRICT SCRUTINY; INTERMEDIATE SCRUTINY. [Cases: Constitutional Law ⚷3052, 3877.]

rational-choice theory. (1979) The theory that behavioral choices, including the choice to engage in criminal activity, are based on purposeful decisions that the potential benefits outweigh the risks. Cf. CONTROL THEORY; ROUTINE-ACTIVITIES THEORY; STRAIN THEORY.

rational doubt. See REASONABLE DOUBT.

rational interpretation. See *logical interpretation* under INTERPRETATION.

rational-purpose test. See RATIONAL-BASIS TEST.

rational-relationship test. See RATIONAL-BASIS TEST.

ratione (ray-shee-**oh**-nee *or* rash-ee-**oh**-nee). [Latin] By reason; on account.

ratione bonorum (bə-**nor**-əm). By reason of property.

ratione causae (**kaw**-zee). By reason of the nature of the case.

ratione contractus (kən-**trak**-təs). By reason of the contract.

> "By entering into a contract, the contracting parties may . . . render themselves amenable to the jurisdiction of a judge to whose jurisdiction they would not have been amenable had the contract not been entered into. Thus, a foreigner, for the time being domiciled in Scotland, entering into a contract there with a Scotchman . . . renders himself amenable to the jurisdiction of the Scotch courts in any question arising out of the contract, for the parties . . . are presumed to have had the law and the courts of Scotland in view as the *forum* . . . and a jurisdiction thus founded is said to arise *ratione contractus*." John Trayner, *Trayner's Latin Maxims* 540 (4th ed. 1894).

ratione delicti (di-**lik**-tī). On account of the delict.

ratione domicilii (dom-ə-**sil**-ee-ī). By reason of domicile; on account of residence. • The phrase appeared in reference to the foundation of jurisdiction in many civil cases.

ratione habita (**hab**-i-tə). Regard being had (of particular factors or circumstances).

ratione impotentiae (im-pə-**ten**-shee-ee). By reason of inability. • This was the basis for a property right in young wild animals that were unable to run or fly. See FERAE NATURAE.

ratione incidentiae (in-si-**den**-shee-ee). By reason of the incident.

ratione loci (**loh**-sī). By reason of place. • This was the basis for a property right in rabbits and hares.

ratione materiae (mə-**teer**-ee-ee). By reason of the matter involved.

ratione originis (ə-**rij**-ə-nis). By reason of one's origin.

ratione personae (pər-**soh**-nee). By reason of the person concerned.

ratione privilegii (priv-ə-**lee**-jee-ī). By reason of privilege. • This was the basis for a property right in animals of warren. See WARREN.

ratione rei sitae (**ree**-ī **sī**-tee). By reason of the situation of a thing.

ratione soli (**soh**-lī). By reason of the soil. • This was the basis for a property right in bees.

ratione subjectae materiae (səb-**jek**-tee mə-**teer**-ee-ee). On account of the subject matter.

ratione suspecti judicis (sə-**spek**-tī **joo**-di-sis). On account of the judge being suspected. • This referred to a judge's recusal in a case.

ratione temporis (tem-**por**-is), *adv.* By reason of time or the times. See RATIONE.

ratione tenurae (**ten**-yə-ree). By reason of tenure.

rationes (ray-shee-**oh**-neez *or* rash-ee-**oh**-neez), *n.* [Latin "reasons"] *Hist.* The pleadings in a suit.

ratio pertinens. A pertinent reason (for a question).

ratio scientiae (**ray**-shee-oh sī-**en**-shee-ee). [Law Latin] *Hist.* The ground of knowledge; esp., the basis for a witness's testimony.

ratio scripta (**ray**-shee-oh **skrip**-tə). [Latin] *Roman law.* Written reason.

rattening (**rat**-ning). *Hist.* The practice of taking away tools, destroying machinery, and the like in an attempt either to compel a worker to join a union or to enforce a company's compliance with union rules. • Rattening was formerly a common labor-union tactic in England, and it was a criminal offense.

ravishment, *n. Archaic.* **1.** Forcible seizure and carrying off of another person (esp. a woman); abduction. **2.** RAPE (1). • In this sense the term is widely considered inappropriate for modern usage, given its romantic connotations (in other contexts) of ecstasy and delight. In the Restatement (First) of Torts § 65a, the word was defined as including not just rape but any carnal intercourse of a criminal nature. See RAPUIT. — **ravish,** *vb.*

RBS. *abbr.* RURAL BUSINESS-COOPERATIVE SERVICE.

RCE. *abbr.* REQUEST FOR CONTINUED EXAMINATION.

rDNA. *abbr.* RECOMBINANT DNA TECHNOLOGY.

re (ree *or* ray), *prep.* (18c) Regarding; in the matter of. • In the title of a case, it usu. signifies a legal proceeding regarding the disposition of real or personal property or a change in legal status. In American caselaw, the abbreviation commonly used is *in re* <In re Estate of Kirk>. In business correspondence, the term signals the subject matter <re: Board Meeting>. See IN RE.

REA. *abbr.* RURAL ELECTRIFICATION ADMINISTRATION.

rea (**ree**-ə), *n.* [Latin] In civil and canon law, a defendant. Pl. ***reae.***

reacquired stock. See *treasury stock* under STOCK.

reading. *Parliamentary law.* The recitation aloud of a bill or other main motion, sometimes by title only, usu. in a series of three such recitations necessary before a legislative body can pass a bill. See *reading clerk* under CLERK (7).

reading clerk. See CLERK (7).

read into, *vb.* See READ ON.

readjustment, *n.* (18c) Voluntary reorganization of a financially troubled corporation by the shareholders themselves, without a trustee's or a receiver's intervention. — **readjust,** *vb.*

read law. 1. To prepare for a legal career by working in a lawyer's office as a clerk while studying legal texts on one's own time. • Most American lawyers in the 18th and 19th centuries obtained their legal educations solely by reading law. Today, few American states allow applicants to take the bar exam without attending law school. **2.** To study law at a law school.

read on, *vb. Patents.* **1.** (Of a patent claim) to contain all the same features of (a prior-art reference). • If the patent claim reads on the prior art, the claim has been anticipated and the patent will be denied. See ANTICIPATED. [Cases: Patents ⚷72(1).] **2.** (Of a patent claim) to describe an infringing product or process. • If all the patent claims read on the other product, that product infringes the patent. [Cases: Patents ⚷226.6.]

ready, willing, and able. (1829) (Of a prospective buyer) legally and financially capable of consummating a purchase. [Cases: Brokers ⚷54; Specific Performance ⚷87.]

> "'READY, WILLING, AND ABLE' — A phrase referring to a prospective buyer of property who is legally capable and financially able to consummate the deal. Traditionally, the broker earns a commission upon procuring a 'ready, willing, and able' buyer on the listing terms, regardless of whether the seller actually goes through with the sale. The 'ready and willing' means, generally, that the broker must in fact produce a buyer who indicates that he or she is prepared to accept the terms of the seller and is willing to enter into a contract for sale. The buyer is not 'ready and willing' when he or she enters into an option with the seller, but the buyer is 'ready and willing' when the option is exercised. The buyer is not 'ready and willing' when the offer is subject to any new conditions, such as making the closing date an unreasonably long period, for example, one year from the offer. . . . The 'able' requires that the buyer be financially able to comply with the terms of the sale in both initial cash payment and any necessary financing. The broker is not required to show that the purchaser has actual cash or assets to pay off the mortgage. But the broker is required to reveal the identity of the buyer if requested by the seller." John W. Reilly, *The Language of Real Estate* 326 (4th ed. 1993).

reaffirmation, *n.* (1857) **1.** Approval of something previously decided or agreed to; renewal <the Supreme Court's reaffirmation of this principle is long overdue>. **2.** *Bankruptcy.* An agreement between the debtor and a creditor by which the debtor promises to repay a prepetition debt that would otherwise be discharged at the conclusion of the bankruptcy <the debtor negotiated a reaffirmation so that he could keep the collateral>. • There are two main requirements for a reaffirmation to be enforceable: (1) the agreement must contain a clear and conspicuous provision stating that the debtor may rescind the reaffirmation agreement anytime before discharge or within 60 days after the agreement is filed with the court; and (2) for a debtor who is not represented by counsel, the court must determine that the reaffirmation is in the debtor's best interest and does not impose an undue hardship. 11 USCA § 524(c). — Also termed (in sense 2) *reaffirmation agreement.* [Cases: Bankruptcy ⚷3415.] — **reaffirm,** *vb.*

reaffirmation hearing. *Bankruptcy.* A hearing at which the debtor and a creditor present a reaffirmation of a dischargeable debt for the court's approval. • The reaffirmation hearing is usu. held simultaneously with the discharge hearing. See DISCHARGE HEARING. [Cases: Bankruptcy ⚷3417.]

real, *adj.* (15c) **1.** Of or relating to things (such as lands and buildings) that are fixed or immovable <real property> <a real action>. **2.** *Civil law.* Of, relating to, or attached to a thing (whether movable or immovable) rather than a person <a real right>. **3.** Actual; genuine; true <real authority>. **4.** (Of money, income, etc.) measured in terms of purchasing power rather than nominal value; adjusted for inflation <real wages>.

real account. See ACCOUNT.

real action. See ACTION (4).

real asset. See ASSET.

real authority. See *actual authority* under AUTHORITY (1).

real burden. See BURDEN (4).

real chattel. See *chattel real* under CHATTEL.

real contract. See CONTRACT.

real covenant. See *covenant running with the land* under COVENANT (4).

real damages. See *actual damages* under DAMAGES.

real defense. See DEFENSE (4).

real earnings. See EARNINGS.

real estate. See *real property* under PROPERTY.

real-estate agent. See AGENT (2).

real-estate broker. See BROKER.

real-estate investment trust. A company that invests in and manages a portfolio of real estate, with the majority of the trust's income distributed to its shareholders. • Such a trust may qualify for special income-tax treatment if it distributes 95% of its income to its shareholders. — Abbr. REIT. See *investment company* under COMPANY. Cf. REAL-ESTATE MORTGAGE TRUST. [Cases: Internal Revenue ⚷3997.]

umbrella-partnership real-estate investment trust. A REIT that controls and holds most of its properties through an umbrella limited partnership, as a result of which the trust can acquire properties in exchange for the limited-partnership interests in the umbrella while triggering no immediate tax obligations for certain sellers. • This is a structure that many REITs now use. — Abbr. UPREIT. [Cases: Internal Revenue ⚷3997.]

real-estate-mortgage investment conduit. An entity that holds a fixed pool of mortgages or mortgage-backed securities (such as collateralized mortgage obligations), issues interests in itself to investors, and receives favorable tax treatment by passing its income through to those investors. • Real-estate-mortgage investment conduits were created by the Tax Reform Act of 1986. They can be organized as corporations, partnerships, or trusts. To qualify for tax-exempt status, the entity must meet two requirements: (1) almost all the entity's assets must be real-estate mortgages (though a few other cash-flow-maintaining assets are allowed); and (2) all interests in the entity must be classified as either regular interests (which entitle the holder to principal and interest income through debt or equity) or residual interests (which provide contingent income). — Abbr. REMIC.

real-estate mortgage trust. A real-estate investment trust that buys and sells the mortgages on real property rather than the real property itself. — Abbr. REMT. Cf. REAL-ESTATE INVESTMENT TRUST.

real estate owned. Property acquired by a lender, usu. through foreclosure, in satisfaction of a debt. — Abbr. REO. [Cases: Mortgages ⚷534.]

Real Estate Settlement Procedures Act. A federal law that requires lenders to provide home buyers with information about known or estimated settlement costs. 12 USCA §§ 2601–2617. — Abbr. RESPA. See REGULATION X. [Cases: Consumer Credit ⚷30.]

real-estate syndicate. A group of investors who pool their money to buy and sell real property. • Most real-estate syndicates operate as limited partnerships or real-estate investment trusts.

real evidence. See EVIDENCE.

realignment (ree-ə-**lin**-mənt), *n.* The process by which a court, usu. in determining diversity jurisdiction, identifies and rearranges the parties as plaintiffs and defendants according to their ultimate interests. [Cases: Federal Civil Procedure ⚷101; Federal Courts ⚷304.] — **realign,** *vb.*

real income. See INCOME.

realization, *n.* (18c) **1.** Conversion of noncash assets into cash assets. **2.** *Tax.* An event or transaction, such as the sale or exchange of property, that substantially changes a taxpayer's economic position so that income tax may be imposed or a tax allowance granted. Cf. RECOGNITION (4). [Cases: Internal Revenue ⚷3115, 3178; Taxation ⚷3466.] — **realize,** *vb.*

realized gain. See GAIN (3).

realized loss. See LOSS (2).

real law. The law of real property; real-estate law.

real money. See MONEY.

real party in interest. See PARTY (2).

real-party-in-interest rule. The principle that the person entitled by law to enforce a substantive right should be the one under whose name the action is prosecuted. Fed. R. Civ. P. 17(a). [Cases: Federal Civil Procedure ⚷131; Parties ⚷6.]

real property. See PROPERTY.

real rate. See INTEREST RATE.

real right. See RIGHT.

real security. See SECURITY.

real servitude. See *servitude appurtenant* under SERVITUDE (2).

real statute. See STATUTE.

real subrogation. See SUBROGATION.

real suretyship. See SURETYSHIP.

real things. (18c) Property that is fixed and immovable, such as lands and buildings; real property. — Also termed *things real.* See *real property* under PROPERTY. Cf. *chattel real* under CHATTEL. [Cases: Property ⚷4.]

realtor (**reel**-tər). **1.** (*cap.*) *Servicemark.* A real-estate agent who is a member of the National Association of Realtors. [Cases: Brokers ⚷3.] **2.** Loosely, any real-estate agent or broker. [Cases: Brokers ⚷2.]

real treaty. See TREATY (1).

realty. Land and anything growing on, attached to, or erected on it, that cannot be removed without injury to the land. — Also termed *real property.*

quasi-realty. *Hist.* Things that the law treats as fixed to realty, but are themselves movable, such as title deeds.

realty trust. See *nominee trust* (2) under TRUST.

real wages. See WAGE.

real warrandice. See WARRANDICE.

real wrong. See WRONG.

reapportionment, *n.* (1874) Realignment of a legislative district's boundaries to reflect changes in population and ensure proportionate representation by elected officials. See U.S. Const. art. I, § 2, cl. 3. — Also termed *redistricting.* Cf. GERRYMANDERING. [Cases: Elections ⚷12(6); States ⚷27.] — **reapportion,** *vb.*

reargument, *n.* (18c) The presentation of additional arguments, which often suggest that a controlling legal principle has been overlooked, to a court (usu. an appellate court) that has already heard initial arguments. Cf. REHEARING. [Cases: Appeal and Error ⚷828; Federal Civil Procedure ⚷928; Federal Courts ⚷744; Motions ⚷39.] — **reargue,** *vb.*

rearrest. See ARREST.

reasonable, *adj.* (14c) **1.** Fair, proper, or moderate under the circumstances <reasonable pay>. **2.** According to reason <your argument is reasonable but not convincing>.

> "It is extremely difficult to state what lawyers mean when they speak of 'reasonableness.' In part the expression refers to ordinary ideas of natural law or natural justice, in part to logical thought, working upon the basis of the rules of law." John Salmond, *Jurisprudence* 183 n.(u) (Glanville L. Williams ed., 10th ed. 1947).

> "In one sense the word [*reasonable*] describes the proper use of the reasoning power, and in another it is no more than a word of assessment. Reasoning does not help much in fixing a reasonable or fair price or a reasonable or moderate length of time, or in estimating the size of a doubt. Lawyers say a reasonable doubt, meaning a substantial one; the Court of Appeal has frowned upon the description of a reasonable doubt as one for which reasons could be given." Patrick Devlin, *The Judge* 134 (1979).

3. (Of a person) having the faculty of reason <a reasonable person would have looked both ways before crossing the street>. **4.** *Archaic.* Human <criminal homicide is traditionally called the unlawful killing of a "reasonable person">. — **reasonableness,** *n.*

reasonable accommodation. See ACCOMMODATION.

reasonable-apprehension test. *Patents.* A judicial analysis to decide whether there is a justiciable

controversy between a patentee and an alleged infringer. • The test has two elements: (1) the patent owner must make an explicit threat or take other action that makes another person reasonably believe that an infringement suit is likely, and (2) the other person must be engaged in an activity that could constitute infringement or must be intentionally preparing to engage in possibly infringing activity. If either element is prospective or uncertain, the court will not consider the complaint. [Cases: Declaratory Judgment ⚷234.]

reasonable care. See CARE.

reasonable cause. See PROBABLE CAUSE (1).

reasonable-consumer test. The prevailing test for determining whether advertisement is deceptive, determined by asking whether the reasonable consumer would believe that the claim is true. Cf. FOOL'S TEST. [Cases: Antitrust and Trade Regulation ⚷22.]

reasonable-development covenant. *Oil & gas.* The implied promise in an oil-and-gas lease that once production is obtained the lessee will continue to develop the property as would a reasonably prudent operator, as opposed to merely holding the lease by the production already obtained. See FURTHER-EXPLORATION COVENANT. [Cases: Mines and Minerals ⚷78.1(4), 78.1(8).]

reasonable deviation. See DEVIATION.

reasonable diligence. See DILIGENCE.

reasonable doubt. (18c) The doubt that prevents one from being firmly convinced of a defendant's guilt, or the belief that there is a real possibility that a defendant is not guilty. • "Beyond a reasonable doubt" is the standard used by a jury to determine whether a criminal defendant is guilty. *See* Model Penal Code § 1.12. In deciding whether guilt has been proved beyond a reasonable doubt, the jury must begin with the presumption that the defendant is innocent. — Also termed *rational doubt*. See BURDEN OF PERSUASION. Cf. *clear and convincing evidence* under EVIDENCE; PREPONDERANCE OF THE EVIDENCE. [Cases: Constitutional Law ⚷266(7); Criminal Law ⚷561.]

> "Reasonable doubt . . . is a term often used, probably pretty well understood, but not easily defined. It is not a mere possible doubt; because every thing relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge." *Commonwealth v. Webster*, 59 Mass. (5 Cush.) 295, 320 (1850) (per Lemuel Shaw, J.).

> "The gravamen of Lord Goddard's objection to the formula of 'reasonable doubt' seems to have been the muddle occasionally created by an impromptu effort to explain to a jury the meaning of this phrase. A simple solution would be to refrain from explaining it, relying on the common sense of the jury. As Barton J. said in an Australian case, 'one embarks on a dangerous sea if he attempts to define with precision a term which is in ordinary use with reference to this subject-matter, and which is usually stated to a jury without embellishment as a well understood expression.' However, some modes of embellishment seem to be unobjectionable. There is probably no harm in telling the jury, as some judges do, that a reasonable doubt is one for which a sensible reason can be supplied." Glanville Williams, *Criminal Law* 873 (2d ed. 1961).

reasonable excuse. See PROBABLE CAUSE.

reasonable-expectations doctrine. The principle that an ambiguous or inconspicuous term in a contract should be interpreted to favor the weaker party's objectively reasonable expectations from the contract, even though the explicit language of the terms may not support those expectations. • This principle is most often applied when interpreting insurance policies, consumer contracts, and other types of adhesion contracts. — Also written *reasonable-expectation doctrine*. [Cases: Insurance ⚷1817.]

reasonable force. See FORCE.

reasonable grounds. See PROBABLE CAUSE (1).

reasonable-inference rule. (1945) An evidentiary principle providing that a jury, in deciding a case, may properly consider any reasonable inference drawn from the evidence presented at trial. Cf. PYRAMIDING INFERENCES, RULE AGAINST. [Cases: Criminal Law ⚷559; Evidence ⚷595.]

reasonable man. See REASONABLE PERSON.

reasonable medical probability. (1949) In proving the cause of an injury, a standard requiring a showing that the injury was more likely than not caused by a particular stimulus, based on the general consensus of recognized medical thought. — Also termed *reasonable medical certainty*. [Cases: Damages ⚷185(1); Evidence ⚷547.5.]

reasonable notice. See NOTICE.

reasonable person. 1. A hypothetical person used as a legal standard, esp. to determine whether someone acted with negligence; specif., a person who exercises the degree of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own and of others' interests. • The reasonable person acts sensibly, does things without serious delay, and takes proper but not excessive precautions. See Restatement (Second) of Torts § 283(b). — Also termed *reasonable man*; *prudent person*; *ordinarily prudent person*; *reasonably prudent person*; *highly prudent person*. See *reasonable care* under CARE. [Cases: Negligence ⚷233.]

> "The reasonable man connotes a person whose notions and standards of behaviour and responsibility correspond with those generally obtained among ordinary people in our society at the present time, who seldom allows his emotions to overbear his reason and whose habits are moderate and whose disposition is equable. He is not necessarily the same as the average man — a term which implies an amalgamation of counter-balancing extremes." R.F.V. Heuston, *Salmond on the Law of Torts* 56 (17th ed. 1977).

2. *Archaic.* A human being.

> "In the antique phraseology which has been repeated since the time of Lord Coke the *actus reus* of murder (and therefore of any criminal homicide) was declared to be unlawfully killing a reasonable person who is in being and under

the King's peace, the death following within a year and a day. In this sentence the word 'reasonable' does not mean 'sane', but 'human'. In criminal law, a lunatic is a *persona* for all purposes of protection, even when not so treated for the assessment of liability." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 102 (16th ed. 1952).

reasonable provocation. See *adequate provocation* under PROVOCATION.

reasonable royalty. See ROYALTY (1).

reasonable skill. See SKILL.

reasonable support. 1. See SUPPORT (1). **2.** See SUPPORT (2).

reasonable suspicion. See SUSPICION.

reasonable time. (1951) **1.** *Contracts.* The time needed to do what a contract requires to be done, based on subjective circumstances. • If the contracting parties do not fix a time for performance, the law will usu. presume a reasonable time. [Cases: Contracts ⇨212.] **2.** *Commercial law.* The time during which the UCC permits a party to accept an offer, inspect goods, substitute conforming goods for rejected goods, and the like. [Cases: Sales ⇨22(5), 23(5), 166(1), 168(2), 179(6).]

reasonable use. See USE (1).

reasonable-use theory. (1933) *Property.* The principle that owners of riparian land may make reasonable use of their water if this use does not affect the water available to lower riparian owners. [Cases: Waters and Water Courses ⇨41.]

reasonably believe. See BELIEVE.

reasonably-prudent-operator standard. *Oil & gas.* The test generally applied to determine a lessee's compliance with implied lease covenants by considering what a reasonable, competent operator in the oil-and-gas industry would do under the circumstances, acting in good faith and with economic motivation, and taking into account the lessor's interests as well as that of the operator. — Also termed *reasonable-prudent-operator standard*; *prudent-operator standard*. [Cases: Mines and Minerals ⇨78.1(2).]

reasonably prudent person. See REASONABLE PERSON.

reasonably suspect. See SUSPECT.

reasons for allowance. See RULE 109 STATEMENT.

reason to know. Information from which a person of ordinary intelligence — or of the superior intelligence that the person may have — would infer that the fact in question exists or that there is a substantial enough chance of its existence that, if the person exercises reasonable care, the person can assume the fact exists.

reassurance. See REINSURANCE.

rebate, *n.* A return of part of a payment, serving as a discount or reduction. — **rebate,** *vb.*

rebellion. 1. Open, organized, and armed resistance to an established government or ruler. **2.** Open resistance or opposition to an authority or tradition. **3.** *Hist.* Disobedience of a legal command or summons.

rebus integris (**ree**-bəs **in**-tə-gris). [Latin] *Scots law.* Matters being complete; no performance having taken place. • For example, a contract could be rescinded if nothing had been done toward performance.

rebus ipsis et factis (**ree**-bəs **ip**-sis et **fak**-tis). [Latin] *Scots law.* By the facts and circumstances themselves. • A marital contract was sometimes inferred *rebus ipsis et factis.*

rebus sic stantibus (**ree**-bəs sik **stan**-ti-bəs). [Latin "matters so standing"] *Civil law & Int'l law.* The principle that all agreements are concluded with the implied condition that they are binding only as long as there are no major changes in the circumstances. See CLAUSA REBUS SIC STANTIBUS. [Cases: Treaties ⇨5.]

rebut, *vb.* (14c) To refute, oppose, or counteract (something) by evidence, argument, or contrary proof <rebut the opponent's expert testimony> <rebut a presumption of negligence>.

rebuttable presumption. See PRESUMPTION.

rebuttal, *n.* (1830) **1.** In-court contradiction of an adverse party's evidence. **2.** The time given to a party to present contradictory evidence or arguments. Cf. CASE-IN-CHIEF. [Cases: Criminal Law ⇨683; Federal Civil Procedure ⇨2015; Trial ⇨62.]

"Rebuttal is the hardest argument to make in any court. In the Supreme Court and in most courts of appeals, petitioner has to work hard to save any time at all for rebuttal. In the Supreme Court, rebuttal time comes directly out of the 30 minutes allotted to petitioner's side and, if the justices keep asking questions that use up petitioner's time, the case is submitted without rebuttal. Many courts of appeals permit counsel to reserve time for rebuttal, either through the clerk in advance of the argument or at the beginning of the argument itself. It is the rare court of appeals panel that does not permit counsel at least one minute of rebuttal, even when counsel's time has expired." David C. Frederick, *Supreme Court and Appellate Advocacy* § 7.3, at 178 (2003) (dealing only with oral rebuttals on appeal).

3. The arguments contained in a reply brief. See *reply brief* under BRIEF. [Cases: Appeal and Error ⇨762; Criminal Law ⇨1130(6); Federal Courts ⇨714.]

rebuttal evidence. See EVIDENCE.

rebuttal witness. See WITNESS.

rebutter. (16c) **1.** *Common-law pleading.* The defendant's answer to a plaintiff's surrejoinder; the pleading that followed the rejoinder and surrejoinder, and that might in turn be answered by the surrebutter. [Cases: Pleading ⇨185.] **2.** One who rebuts.

rebutting evidence. See *rebuttal evidence* under EVIDENCE.

recall, *n.* (1902) **1.** Removal of a public official from office by popular vote. [Cases: Officers and Public Employees ⇨70.7.] **2.** A manufacturer's request to consumers for the return of defective products for repair or replacement. [Cases: Insurance ⇨2278(24); Products Liability ⇨144.] **3.** Revocation of a judgment for factual or legal reasons. — **recall,** *vb.*

recall election. See ELECTION (3).

recall exclusion. See *sistership exclusion* under EXCLUSION (3).

recall of mandate. The extraordinary action by an appellate court of withdrawing the order it issued to the trial court upon deciding an appeal, usu. after the deadline has passed for the losing party to seek a rehearing. • Because this action can interfere with trial-court proceedings on remand, and also because it clouds the waters that repose (the finality of a judgment) is meant to clear, courts are reluctant to use the power. But they will use it to correct clerical errors or to remedy a fraud on the court during the appeal. It has also been used when the original mandate would result in a grave injustice. See MANDATE (1). [Cases: Appeal and Error ⚷1218; Criminal Law ⚷1193; Federal Courts ⚷956.1.]

recant (ri-**kant**), *vb.* (16c) **1.** To withdraw or renounce (prior statements or testimony) formally or publicly <the prosecution hoped the eyewitness wouldn't recant her corroborating testimony on the stand>. **2.** To withdraw or renounce prior statements or testimony formally or publicly <under grueling cross-examination, the witness recanted>. — **recantation,** *n.*

recapitalization, *n.* An adjustment or recasting of a corporation's capital structure — that is, its stocks, bonds, or other securities — through amendment of the articles of incorporation or merger with a parent or subsidiary. • An example of recapitalization is the elimination of unpaid preferred dividends and the creation of a new class of senior securities. Cf. REORGANIZATION (2). [Cases: Corporations ⚷575, 576.] — **recapitalize,** *vb.*

leveraged recapitalization. Recapitalization whereby the corporation substitutes debt for equity in the capital structure, usu. to make the corporation less attractive as a target for a hostile takeover. — Also termed *leveraging up.*

reception. (17c) **1.** At common law, lawful seizure of another's property for a second time to secure the performance of a duty; a second distress. See DISTRESS. **2.** Peaceful retaking, without legal process, of one's own property that has been wrongfully taken.

recapture, *n.* **1.** The act or an instance of retaking or reacquiring; recovery. **2.** The lawful taking by the government of earnings or profits exceeding a specified amount; esp., the government's recovery of a tax benefit (such as a deduction or credit) by taxing income or property that no longer qualifies for the benefit. [Cases: Internal Revenue ⚷3089, 3138, 3531.] **3.** *Int'l law.* The retaking of a prize or booty so that the property is legally restored to its original owner. See POSTLIMINIUM (2). — **recapture,** *vb.*

> "Upon recapture from pirates, the property is to be restored to the owner, on the allowance of a reasonable compensation to the retaker, in the nature of salvage; for it is a principle of the law of nations, that a capture by pirates does not, like a capture by an enemy in solemn war, change the title, or devest the original owner of his right to the property, and it does not require the doctrine of postliminy to restore it." 1 James Kent, *Commentaries on American Law* *107-08 (George Comstock ed., 11th ed. 1866).

recapture clause. 1. A contract provision that limits prices or allows for the recovery of goods if market conditions greatly differ from what the contract anticipated. **2.** A commercial-lease provision that grants the landlord both a percentage of the tenant's profits above a fixed amount of rent and the right to terminate the lease — and thus recapture the property — if those profits are too low.

recapture rule. *Patents.* The doctrine that a patentee cannot regain, in a reissue patent, a claim that the patentee previously abandoned in order to gain allowance of the patent application. • The rule provides a defense in an infringement action by allowing the defendant to attack the validity of a reissue patent. An attempt to recapture a strategically abandoned claim cannot meet the statutory requirement that the error be made without deceptive intent. 35 USCA § 251. [Cases: Patents ⚷141(6).]

recede, *vb.* (Of a house in a bicameral legislature) to withdraw from an amendment in which the other house has not concurred. See CONCUR (3). [Cases: Statutes ⚷16, 23.]

> "A vote to recede from amendments constitutes a final passage of the bill without the amendments from which the house has receded, since both houses have then agreed to the bill in its form prior to amendment." National Conference of State Legislatures, *Mason's Manual of Legislative Procedure* § 767, at 555 (2000).

receding market. See *bear market* under MARKET.

receipt, *n.* (14c) **1.** The act of receiving something <my receipt of the document was delayed by two days>. **2.** A written acknowledgment that something has been received <keep the receipt for the gift>.

accountable receipt. A receipt in which a person admits that goods or money were delivered to the person and that the person is obliged to deliver all or part of the goods or money to a third person.

interim receipt. The written acknowledgment of a premium paid on an insurance policy that is pending final approval. [Cases: Insurance ⚷1746.]

warehouse receipt. See WAREHOUSE RECEIPT.

3. (*usu. pl.*) Something received; INCOME <post the daily receipts in the ledger>.

receipt, *vb.* (18c) **1.** To acknowledge in writing the receipt of (something, esp. money) <the bill must be receipted>. **2.** To give a receipt for (something, esp. money) <the bookkeeper receipted the payments>.

receipt clause. In a conveyancing document, a clause that acts as a receipt for the consideration given. • This clause typically appears to avoid the necessity of a separate receipt.

receiptor (ri-**see**-tər). (1814) A person who receives from a sheriff another's property seized in garnishment and agrees to return the property upon demand or execution. [Cases: Execution ⚷150.]

receivable, *adj.* **1.** Capable of being admitted or accepted <receivable evidence>. **2.** Awaiting receipt of payment <accounts receivable>. **3.** Subject to a call for payment <a note receivable>.

receivable, *n.* (14c) An amount owed, esp. by a business's customer. See *account receivable* under ACCOUNT.

unrealized receivable. (1957) An amount earned but not yet received. • Unrealized receivables have no income-tax basis for cash-basis taxpayers. [Cases: Internal Revenue ⚷3931, 3935.]

receiver. (18c) **1.** A disinterested person appointed by a court, or by a corporation or other person, for the protection or collection of property that is the subject of diverse claims (for example, because it belongs to a bankrupt or is otherwise being litigated). Cf. LIQUIDATOR. [Cases: Corporations ⚷552, 621(.5); Receivers ⚷1, 81.]

ancillary receiver. One who is appointed as a receiver in a particular area to help a foreign receiver collect the assets of an insolvent corporation or other entity. [Cases: Corporations ⚷686.]

> "An ancillary receiver of a corporation or unincorporated association may be appointed (a) by a competent court of a state in which there are assets of the corporation or unincorporated association at the time of the commencement of the action for the appointment of such receiver, or (b) in the case of a corporation, by a competent court of the state of incorporation. . . . The purpose of such an ancillary receivership is to aid the foreign primary receivership in the collection and taking charge of assets of the estate being administered." 66 Am. Jur. 2d *Receivers* § 436, at 239 (1973).

general receiver. See *principal receiver.*

judgment receiver. A receiver who collects or diverts funds from a judgment debtor to the creditor. • A judgment receiver is usu. appointed when it is difficult to enforce a judgment in any other manner. — Also termed *receiver in aid of execution.* [Cases: Execution ⚷404.]

local receiver. *Conflict of laws.* A receiver appointed in the state where property is located or where an act is done. [Cases: Receivers ⚷206.]

principal receiver. A receiver who is primarily responsible for the receivership estate. • A principal receiver may ordinarily (1) act outside the state of appointment, (2) sue in a foreign court, (3) exercise broad powers of assignment, and (4) handle all distributions. — Also termed *primary receiver; general receiver; original receiver.* [Cases: Receivers ⚷205–210.]

receiver in aid of execution. See *judgment receiver.*

statutory receiver. A receiver whose appointment is provided for in a statute.

2. *Hist.* An officer in the royal household who collected revenues and disbursed them in a lump sum to the treasurer, and who also acted as an attorney with the power to appear in any court in England. • The monarch and his or her consort each had a receiver, thus the full title was King's Receiver or Queen's Receiver.

receiver general. A public official in charge of a government's receipts and treasury. Pl. **receivers general.**

receiver's certificate. *Bankruptcy.* An instrument issued by a receiver as evidence that the holder is entitled to receive payment from funds controlled by the bankruptcy court. [Cases: Bankruptcy ⚷3025.1, 3035.1.]

receivership. (15c) **1.** The state or condition of being in the control of a receiver. [Cases: Corporations ⚷552, 621(.5); Receivers ⚷1.] **2.** The position or function of being a receiver appointed by a court or under a statute. **3.** A proceeding in which a court appoints a receiver.

ancillary receivership. A receivership in which a further administrative proceeding is appointed in another state to help the principal receivership. [Cases: Corporations ⚷686; Receivers ⚷206.]

dry receivership. A receivership in which there is no equity available to pay general creditors. [Cases: Receivers ⚷151, 163.]

receivership estate. The totality of the interests that the receivers of an association in one or more states are appointed to protect.

receiving, *n.* See RECEIVING STOLEN PROPERTY.

receiving order. See ORDER (2).

receiving state. See STATE.

receiving stolen property. (1847) The criminal offense of acquiring or controlling property known to have been stolen by another person. • Some jurisdictions require the additional element of wrongful intent. In some jurisdictions it is a felony, but in others it is either a felony or a misdemeanor depending on the value of the property. *See* Model Penal Code §§ 223.1, 223.6. — Sometimes shortened to *receiving.* — Also termed *receiving stolen goods.* See FENCE (1). [Cases: Receiving Stolen Goods ⚷1.]

recens insecutio (**ree**-senz in-sə-**kyoo**-shee-oh). [Latin "fresh pursuit"] *Hist.* Pursuit of a thief immediately after discovery of the theft. See FRESH PURSUIT.

receptator (ree-sep-**tay**-tor *or* -tər). [Latin fr. *receptare* "to harbor (a criminal or the proceeds of crime)"] *Scots law.* **1.** A harborer of a felon. **2.** A receiver of stolen property.

reception. (1931) The adoption in whole or in part of the law of one jurisdiction by another jurisdiction. • In the legal idiom, it is most common to speak of the reception of Roman law.

> "In many parts of Europe monarchs encouraged a 'reception' of Roman law at the expense of medieval customary systems. On the continent—in France, Holland, and Germany—the results of the reception of Roman law have tended to be permanent; the continental jurist in the twentieth century studies Roman law to grasp the jurisprudence underlying modern codes. And in the British Isles, the law of Scotland now contains so much borrowing from Roman law that there, too the road to legal practice leads through study of the corpus of Roman civil law compiled at Justinian's direction. But a reception of Roman law never occurred in England." Arthur R. Hogue, *Origins of the Common Law* 242 (1966).

receptitious (ree-sep-**tish**-əs), *adj. Roman law.* **1.** (Of a dowry) returnable by agreement to the donor upon the dissolution of the marriage. **2.** (Of property) retained by the wife and not included in the dowry.

receptus (ri-**sep**-təs). [Latin "(a person) having been received"] *Civil law.* An arbitrator. • The term takes its name from the idea that the arbitrator is "received" by the parties to settle their dispute.

recess (**ree**-ses), *n.* (17c) **1.** A brief break in judicial proceedings <the court granted a fifteen-minute recess so the attorney and plaintiff could confer>. Cf. CONTINUANCE (3). [Cases: Criminal Law ⇨649; Federal Civil Procedure ⇨1951; Trial ⇨26.] **2.** *Parliamentary law.* A motion that suspends but does not end a meeting, and that usu. provides for resumption of the meeting <the meeting had a 15-minute recess>. • The motion to recess, which merely suspends the meeting, differs from the motion to adjourn, which ends the meeting. Cf. ADJOURN. [Cases: United States ⇨18.] **3.** *Parliamentary law.* The interval between such a motion's adoption and the meeting's reconvening <Congress took a monthlong recess>. — **recess** (ri-**ses**), *vb.*

recess appointment. See APPOINTMENT.

recession. (1929) A period characterized by a sharp slowdown in economic activity, declining employment, and a decrease in investment and consumer spending. Cf. DEPRESSION.

recessus maris (ri-**ses**-əs **mair**-əs). [Latin] A going back or retreat of the sea. See RELICTION.

recharacterization. A court's determination that an insider's loan to an entity in liquidation (such as a corporation or partnership) should be treated as a capital contribution, not as a loan, thereby entitling the insider to only part of the liquidation proceeds payable after all the business's debts have been discharged. • Factors influencing this determination include the amount of capital initially available, the ability of the entity to obtain loans from outside sources, how long the entity has existed, the treatment of the loan in the entity's business records, and past treatment of similar transactions made to that entity by an insider. [Cases: Corporations ⇨60.]

Recht (rekt). [German "right"] **1.** Law generally. **2.** A body of law. **3.** A right or claim.

Rechtsbesitz (**rekts**-be-zitz). See *possession of a right* under POSSESSION.

Rechtsphilosophie (**rekts**-fə-los-ə-fee). See *ethical jurisprudence* under JURISPRUDENCE.

recidivate (ri-**sid**-ə-vayt), *vb.* To return to a habit of criminal behavior; to relapse into crime. [Cases: Sentencing and Punishment ⇨1202.]

recidivation. *Archaic.* See RECIDIVISM.

recidivism (ri-**sid**-ə-viz-əm), *n.* (1886) A tendency to relapse into a habit of criminal activity or behavior. — Also termed (archaically) *recidivation.* — **recidivous, recidivist,** *adj.*

recidivist (ri-**sid**-ə-vist), *n.* (1880) One who has been convicted of multiple criminal offenses, usu. similar in nature; a repeat offender <proponents of prison reform argue that prisons don't cure the recidivist>. — Also termed *habitual offender; habitual criminal; repeater; career criminal; prior and persistent offender.* [Cases: Sentencing and Punishment ⇨1200.]

reciprocal (ri-**sip**-rə-kəl), *adj.* (16c) **1.** Directed by each toward the other or others; MUTUAL <reciprocal trusts>. **2.** BILATERAL <a reciprocal contract>. **3.** Corresponding; equivalent <reciprocal discovery>.

reciprocal contract. See *bilateral contract* under CONTRACT.

reciprocal dealing. A business arrangement in which a buyer having greater economic power than a seller agrees to buy something from the seller only if the seller buys something in return. • Reciprocal dealing usu. violates antitrust laws. — Also termed *reciprocal-dealing arrangement.* Cf. TYING ARRANGEMENT.

reciprocal discovery. See *reverse Jencks material* under JENCKS MATERIAL.

reciprocal exchange. An association whose members exchange contracts and pay premiums through an attorney-in-fact for the purpose of insuring themselves and each other. • A reciprocal exchange can consist of individuals, partnerships, trustees, or corporations, but the exchange itself is unincorporated. — Also termed *interinsurance exchange; reciprocal insurance exchange; reciprocal interinsurance exchange.* See *reciprocal insurance* under INSURANCE; EXCHANGE (5). [Cases: Insurance ⇨1204.]

reciprocal insurance. See INSURANCE.

reciprocal insurance exchange. See RECIPROCAL EXCHANGE.

reciprocal interinsurance exchange. See RECIPROCAL EXCHANGE.

reciprocal negative easement. See EASEMENT.

reciprocal trade agreement. An agreement between two countries providing for the exchange of goods between them at lower tariffs and better terms than exist between one of the countries and other countries.

reciprocal trust. See TRUST.

reciprocal will. See *mutual will* under WILL.

reciprocity (res-ə-**pros**-i-tee). (18c) **1.** Mutual or bilateral action <the Arthurs stopped receiving social invitations from friends because of their lack of reciprocity>. **2.** The mutual concession of advantages or privileges for purposes of commercial or diplomatic relations <Texas and Louisiana grant reciprocity to each other's citizens in qualifying for in-state tuition rates>. — Also termed *mutuality of benefits; quid pro quo; equivalence of advantages.* [Cases: Colleges and Universities ⇨9.20(2).] **3.** *Intellectual property.* The recognition by one country of a foreign national's intellectual-property rights only if and only to the extent that the other nation would recognize those same rights for the first country's citizens. • Reciprocity is the most restrictive

approach to international intellectual-property law rights. Cf. NATIONAL TREATMENT; UNIVERSALITY.

"It has become common when introducing new categories of rights for them to be granted on the basis of reciprocity. The advantages of reciprocity are twofold. First, reciprocity benefits rights owners by providing incentives for non-conforming countries to change their laws. Secondly, it saves users in one country (A) from paying royalties for foreign authors from countries that do not pay royalties to the authors of country A." Lionel Bently & Brad Sherman, *Intellectual Property Law* 101 (2001).

recision. See RESCISSION.

recission. See RESCISSION.

recital. (16c) **1.** An account or description of some fact or thing <the recital of the events leading up to the accident>. **2.** A preliminary statement in a contract or deed explaining the reasons for entering into it or the background of the transaction, or showing the existence of particular facts <the recitals in the settlement agreement should describe the underlying dispute>. • Traditionally, each recital begins with the word *whereas*. — Also termed (in sense 2) *whereas clause*. [Cases: Contracts ⇨160; Deeds ⇨34, 35, 96.] — **recite,** *vb.*

"The parties may wish to begin the agreement with a statement of their intentions. Often they do this through recitals, which were traditionally introduced by 'whereas,' but can simply state the background without this formality." Scott J. Burnham, *Contract Drafting Guidebook* § 8.4, at 158 (2d ed. 1992).

introductory recital. (*usu. pl.*) A recital explaining how and why the existing state of affairs is to be altered.

narrative recital. (*usu. pl.*) A recital dealing with matters such as how the buyer and the seller came together.

particular recital. A recital that states a fact definitely.

recite, *vb.* See READ ON.

reckless, *adj.* (bef. 12c) Characterized by the creation of a substantial and unjustifiable risk of harm to others and by a conscious (and sometimes deliberate) disregard for or indifference to that risk; heedless; rash. • Reckless conduct is much more than mere negligence: it is a gross deviation from what a reasonable person would do. See RECKLESSNESS. Cf. CARELESS; WANTON. [Cases: Automobiles ⇨330; Negligence ⇨274.] — **recklessly,** *adv.*

"Intention cannot exist without foresight, but foresight can exist without intention. For a man may foresee the possible or even probable consequences of his conduct and yet not desire them to occur; none the less if he persists on his course he knowingly runs the risk of bringing about the unwished result. To describe this state of mind the word 'reckless' is the most appropriate. The words 'rash' and 'rashness' have also been used to indicate this same attitude." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 28 (16th ed. 1952).

reckless disregard. See DISREGARD.

reckless driving. (1902) The criminal offense of operating a motor vehicle in a manner that shows conscious indifference to the safety of others. [Cases: Automobiles ⇨330.]

reckless endangerment. (1968) The criminal offense of putting another person at substantial risk of death or serious injury. • This is a statutory, not a common-law, offense. [Cases: Assault and Battery ⇨48.]

reckless homicide. See HOMICIDE.

reckless indifference. See *deliberate indifference* under INDIFFERENCE.

reckless knowledge. See KNOWLEDGE.

reckless negligence. See *gross negligence* under NEGLIGENCE.

recklessness, *n.* (bef. 12c) **1.** Conduct whereby the actor does not desire harmful consequence but nonetheless foresees the possibility and consciously takes the risk. • Recklessness involves a greater degree of fault than negligence but a lesser degree of fault than intentional wrongdoing. [Cases: Negligence ⇨274.] **2.** The state of mind in which a person does not care about the consequences of his or her actions. — Also termed *heedlessness*. Cf. WANTONNESS. [Cases: Negligence ⇨274.]

"The ordinary meaning of the word [*recklessness*] is a high degree of carelessness. It is the doing of something which in fact involves a grave risk to others, whether the doer realises it or not. The test is therefore objective and not subjective." R.F.V. Heuston, *Salmond on the Law of Torts* 194 (17th ed. 1977).

"An abiding difficulty in discussing the legal meaning of recklessness is that the term has been given several different shades of meaning by the courts over the years. In the law of manslaughter, 'reckless' was long regarded as the most appropriate adjective to express the degree of negligence needed for a conviction: in this sense, it meant a high degree of carelessness. In the late 1950s the courts adopted a different meaning of recklessness in the context of *mens rea*, referring to D's actual awareness of the risk of the prohibited consequence occurring: we shall call this 'common-law recklessness.' Controversy was introduced into this area in the early 1980s, when the House of Lords purported to broaden the meaning of recklessness so as to include those who failed to give thought to an obvious risk that the consequence would occur . . . ." Andrew Ashworth, *Principles of Criminal Law* 154 (1991).

reclamation (rek-lə-**may**-shən), *n.* (1848) **1.** The act or an instance of improving the value of economically useless land by physically changing the land, such as irrigating a desert. [Cases: Waters and Water Courses ⇨222.] **2.** *Commercial law.* A seller's limited right to retrieve goods delivered to a buyer when the buyer is insolvent. UCC § 2-702(2). See STOPPAGE IN TRANSITU. [Cases: Sales ⇨316.] **3.** The act or an instance of obtaining valuable materials from waste materials. — **reclaim,** *vb.*

reclusion (ri-**kloo**-zhən). *Civil law.* Incarceration as punishment for a crime; esp. solitary confinement or confinement at hard labor in a penitentiary.

recognition, *n.* (16c) **1.** Confirmation that an act done by another person was authorized. See RATIFICATION. [Cases: Principal and Agent ⇨170(2).] **2.** The formal admission that a person, entity, or thing has a particular status; esp. a nation's act in formally acknowledging

the existence of another nation or national government. **3.** *Parliamentary law.* The chair's acknowledgment that a member is entitled to the floor <the chair recognizes the delegate from Minnesota>. See PRECEDENCE (4).

"When any member desires to speak or deliver any matter to the house, that person should rise and respectfully address the presiding officer. When the presiding officer recognizes the member by calling the member by name or by indicating recognition, that person is entitled to the floor and may address the body or present a matter of business, but may not yield the floor to any other member." National Conference of State Legislatures, *Mason's Manual of Legislative Procedure* § 91, at 76-77 (2000).

4. *Tax.* The act or an instance of accounting for a taxpayer's realized gain or loss for the purpose of income-tax reporting. Cf. NONRECOGNITION PROVISION; REALIZATION (2). [Cases: Internal Revenue ⇨3115, 3178; Taxation ⇨3466.] **5.** An employer's acknowledgment that a union has the right to act as a bargaining agent for employees. [Cases: Labor and Employment ⇨1160.] **6.** *Int'l law.* Official action by a country acknowledging, expressly or by implication, *de jure* or *de facto*, the existence of a government or a country, or a situation such as a change of territorial sovereignty. [Cases: International Law ⇨4.] **7.** RULE OF RECOGNITION. — **recognize,** *vb.*

recognition clause. *Real estate.* A clause providing that, when a tract of land has been subdivided for development, the ultimate buyers of individual lots are protected if the developer defaults on the mortgage. • Such a clause is typically found in a blanket mortgage or a contract for deed.

recognition picketing. See *organizational picketing* under PICKETING.

recognition strike. See STRIKE.

recognitor (ri-**kog**-nə-tər), *n.* 1. *Hist.* A member of a jury impaneled on an assize or inquest. See RECOGNITION (1), (2). **2.** *Rare.* RECOGNIZOR.

recognizance (ri-**kog**-nə-zənts). (14c) **1.** A bond or obligation, made in court, by which a person promises to perform some act or observe some condition, such as to appear when called, to pay a debt, or to keep the peace; specif., an in-court acknowledgment of an obligation in a penal sum, conditioned on the performance or nonperformance of a particular act. • Most commonly, a recognizance takes the form of a bail bond that guarantees an unjailed criminal defendant's return for a court date <the defendant was released on his own recognizance>. See RELEASE ON RECOGNIZANCE. [Cases: Bail ⇨54, 63; Recognizances ⇨1.]

"Recognizances are aptly described as 'contracts made with the Crown in its judicial capacity.' A recognizance is a writing acknowledged by the party to it before a judge or officer having authority for the purpose, and enrolled in a court of record. It usually takes the form of a promise, with penalties for the breach of it, to keep the peace, to be of good behavior, or to appear at the assizes." William R. Anson, *Principles of the Law of Contract* 80-81 (Arthur L. Corbin ed., 3d Am. ed. 1919).

"A recognizance is an acknowledgment of an obligation in court by the recognizor binding him to make a certain payment subject to the condition that on the performance of a specified act the obligation shall be discharged." 1 Samuel Williston, *A Treatise on the Law of Contracts* § 6, at 18 (Walter H.E. Jaeger ed., 3d ed. 1957).

personal recognizance. (18c) The release of a defendant in a criminal case in which the court takes the defendant's word that he or she will appear for a scheduled matter or when told to appear. • This type of release dispenses with the necessity of the person's posting money or having a surety sign a bond with the court. [Cases: Bail ⇨40.]

2. See *bail bond* under BOND (2).

recognized gain. See GAIN (3).

recognized loss. See LOSS.

recognized market. See MARKET.

recognizee (ri-kog-nə-**zee**). (16c) A person in whose favor a recognizance is made; one to whom someone is bound by a recognizance.

recognizor (ri-kog-nə-**zor**). (16c) A person who is obligated under a recognizance; one who is bound by a recognizance. — Also termed *recognitor.*

"A recognizance is an acknowledgment upon record of a former debt, and he who so acknowledges such debt to be due is termed the recognizor, and he to whom or for whose benefit he makes such acknowledgment is termed the recognizee." John Indermaur, *Principles of the Common Law* 8 (Edmund H. Bennett ed., 1st Am. ed. 1878).

recollection, *n.* (17c) **1.** The action of recalling something to the mind, esp. through conscious effort. **2.** Something recalled to the mind. See PAST RECOLLECTION RECORDED; PRESENT RECOLLECTION REFRESHED. — **recollect,** *vb.*

recombinant (ri-**kom**-bə-nənt), *adj. Patents.* Of, relating to, or describing the introduction of DNA from one living organism into another.

recombinant DNA technology. *Patents.* The science of mutating organisms by splicing sections of one organism's DNA onto that of another. — Abbr. rDNA.

recommit. *Parliamentary law.* To refer (a motion) back to a committee that has considered it. • The motion is called "recommit" rather than "re-refer" for the sake of euphony. See REFER. Cf. *re-refer* under REFER. — **recommit,** *n.*

recompensable. See COMPENSABLE.

recompensation. *Scots law.* In an action for debt, a plaintiff's allegation that money owed to a defendant has already been paid and should not be considered as a setoff against an award to the plaintiff.

recompense (**rek**-əm-pents), *n.* (15c) Repayment, compensation, or retribution for something, esp. an injury or loss. — **recompense,** *vb.*

reconciliation (rek-ən-sil-ee-**ay**-shən), *n.* (14c) **1.** Restoration of harmony between persons or things that had been in conflict <a reconciliation between the plaintiff and the defendant is unlikely even if the lawsuit settles before trial>. **2.** *Family law.* Voluntary resumption, after a separation, of full marital relations between spouses <the court dismissed the divorce petition

after the parties' reconciliation>. Cf. CONDONATION (2). [Cases: Divorce ⚷48; Husband and Wife ⚷279(3).] **3.** *Accounting.* An adjustment of accounts so that they agree, esp. by allowing for outstanding items <reconciliation of the checking account and the bank statement>. — **reconcile** (**rek**-ən-sīl), *vb.*

reconciliation agreement. *Family law.* A contract between spouses who have had marital difficulties but who now wish to save the marital relationship, usu. by specifying certain economic actions that might ameliorate pressures on the marriage. • This type of agreement serves a limited purpose. In fact, many states have statutes prohibiting enforcement of contracts for domestic services, so if the agreement governs anything other than economic behavior, it may be unenforceable. [Cases: Husband and Wife ⚷30.]

reconciliation statement. An accounting or financial statement in which discrepancies are adjusted.

reconduction, *n.* **1.** *Civil law.* The renewal of a lease. — Also termed *relocation.* See TACIT RELOCATION. [Cases: Landlord and Tenant ⚷90.] **2.** *Int'l law.* The forcible return of aliens (esp. illegal aliens, destitute or diseased aliens, or alien criminals who have served their punishment) to their country of origin. — Also termed (in sense 2) *renvoi.* — **reconduct,** *vb.*

reconsider, *vb.* To discuss or take up (a matter) again <legislators voted to reconsider the bill>. • Under parliamentary law, a motion to reconsider sets aside a certain vote already taken and restores the motion on which the vote is being reconsidered to its status immediately before the vote occurred. Making a motion to reconsider suspends a vote already taken until the assembly decides whether to reconsider it. — **reconsideration,** *n.*

> "The motion to reconsider is a distinctively American motion (it was first made the subject of a rule in the U. S. House of Representatives in 1802).
>
> "This motion was unknown to the early British Parliament. When Parliament (the British Congress) passed an act, that act then stood as the judgment of the body until another law or supplementary act was afterward passed explaining or amending the previous act — a slow-moving and time-consuming process in the estimation of American lawmakers.
>
> "Consequently, the American love for celerity invented the motion to reconsider, and cleverly made it a mere procedural or restoratory motion. As a result, the motion to reconsider now makes possible immediate reconsideration of a question, even on the same day." George Demeter, *Demeter's Manual of Parliamentary Law and Procedure* 154 (1969).

reconsider and enter on the minutes. *Parliamentary law.* To make a motion to reconsider for the purpose of suspending a vote already taken and bringing it back up at the next meeting. — Also termed *reconsider and enter; reconsider and have it entered on the minutes.*

reconsignment. (16c) A change in the terms of a consignment while the goods are in transit. See CONSIGNMENT. [Cases: Carriers ⚷73, 178.]

reconstruction. **1.** The act or process of rebuilding, recreating, or reorganizing something <an expert in accident reconstruction>. **2.** *Patents.* A rebuilding of a broken, worn-out, or otherwise inoperative patented article in such a way that a new article is created, thus resulting in an infringement <the replacement of the machine's essential parts was an infringing reconstruction rather than a permissible repair>. Cf. REPAIR DOCTRINE. [Cases: Patents ⚷255.] **3.** (*cap.*) The process by which the Southern states that had seceded during the Civil War were readmitted into the Union during the years following the war (i.e., from 1865 to 1877) <the 13th, 14th, and 15th Amendments to the U.S. Constitution are a lasting legacy of Reconstruction>.

recontinuance. (16c) *Hist.* **1.** Resumption or renewal. **2.** The recovery of an incorporeal hereditament that had been wrongfully deprived.

reconvention. *Civil law.* The act or process of making a counterclaim. See COUNTERCLAIM. [Cases: Set-off and Counterclaim ⚷6.]

reconventional demand. See DEMAND (1).

reconventione (ree-kən-ven-shee-**oh**-nee). [Law Latin] *Hist.* By reconvention. See RECONVENTION.

reconversion. The notional or imaginary process by which an earlier constructive conversion (a change of personal into real property or vice versa) is annulled and the converted property restored to its original character. See *equitable conversion* under CONVERSION (1). [Cases: Conversion ⚷22.]

reconveyance, *n.* (16c) The restoration or return of something (esp. an estate or title) to a former owner or holder. — **reconvey,** *vb.*

record, *n.* (13c) **1.** A documentary account of past events, usu. designed to memorialize those events. **2.** Information that is inscribed on a tangible medium or that, having been stored in an electronic or other medium, is retrievable in perceivable form. UCC § 2A-102(a)(34). **3.** MINUTES (2). **4.** The official report of the proceedings in a case, including the filed papers, a verbatim transcript of the trial or hearing (if any), and tangible exhibits. — Also termed (in some jurisdictions) *clerk's record*; (in BrE) *bundle.* See DOCKET (1). [Cases: Administrative Law and Procedure ⚷676; Appeal and Error ⚷493–717; Criminal Law ⚷1086.1–1128; Federal Courts ⚷691.]

defective record. (18c) **1.** A trial record that fails to conform to requirements of appellate rules. [Cases: Appeal and Error ⚷634–645; Criminal Law ⚷1109; Federal Courts ⚷698.] **2.** A flawed real-estate title resulting from a defect on the property's record in the registry of deeds. [Cases: Vendor and Purchaser ⚷231(6).]

public record. (16c) A record that a governmental unit is required by law to keep, such as land deeds kept at a county courthouse. • Public records are generally open to view by the public. Cf. *public document* under DOCUMENT. [Cases: Records ⚷1, 30, 54.]

reporter's record. In some jurisdictions, a trial transcript. — Also termed *stenographer's record.*

silent record. *Criminal procedure.* A record that fails to disclose that a defendant voluntarily and knowingly entered a plea, waived a right to counsel, or took any other action affecting his or her rights. [Cases: Criminal Law ⚷1144.1–1144.20.]

stenographer's record. See *reporter's record.*

record, *vb.* To deposit (an original or authentic official copy of a document) with an authority <she recorded the deed in the county property office>. [Cases: Records ⚷7.]

recorda (ri-**kor**-də). *Hist.* In England, records that contained the judgments and pleadings in actions tried before the barons of the Exchequer. Cf. ORIGINALIA.

record agent. See INSURANCE AGENT.

recordal. See RECORDATION.

recordare (ree-kor-**dair**-ee), *n.* [Law Latin] See RECORDARI.

recordari (ree-kor-**dair**-ī). A writ to bring up for review, as a substitute for an appeal, a judgment of a justice of the peace or other court not of record. • Writs of recordari are most common in North Carolina but are used infrequently in other states. — Also spelled *recordare.* [Cases: Justices of the Peace ⚷164(5).]

recordari facias loquelam (ree-kor-**dair**-ī **fay**-shee-əs lə-**kwee**-ləm), *n.* [Law Latin "you cause the plaint to be recorded"] *Hist.* In England, a writ by which a suit or plaint in replevin could be removed from a county court to a superior court (esp. to one of the courts of Westminster Hall). — Abbr. *re. fa. lo.* See PLAINT (1).

recordation (rek-ər-**day**-shən), *n.* The act or process of recording an instrument, such as a deed or mortgage, in a public registry. • Recordation generally perfects a person's interest in the property against later purchasers (including later mortgagees), but the effect of recordation depends on the type of recording act in effect. — Also termed *recordal.* [Cases: Records ⚷6.]

recordatur (ri-**kor**-də-tuur). *Hist.* An order to record the verdict returned in a *nisi prius* case.

record date. See DATE.

recorded recollection. See PAST RECOLLECTION RECORDED.

recorder. (15c) **1.** *Hist.* A magistrate with criminal jurisdiction in some British cities or boroughs. **2.** A municipal judge with the criminal jurisdiction of a magistrate or a police judge and sometimes also with limited civil jurisdiction. **3.** A municipal or county officer who keeps public records such as deeds, liens, and judgments.

court recorder. (18c) A court official who records court activities using electronic recording equipment, usu. for the purpose of preparing a verbatim transcript. Cf. COURT REPORTER (1). [Cases: Courts ⚷55.]

recorder of deeds. See *register of deeds* under REGISTER (1).

4. SECRETARY (3).

recorder's court. See COURT.

recording act. (1802) A law that establishes the requirements for recording a deed or other property interest and the standards for determining priorities between persons claiming interests in the same property (usu. real property). • Recording acts — the three main types of which are the *notice statute,* the *race statute,* and the *race-notice statute* — are designed to protect bona fide purchasers from earlier unrecorded interests. — Also termed *recording statute.* See NOTICE STATUTE; RACE STATUTE; RACE-NOTICE STATUTE. [Cases: Deeds ⚷79; Records ⚷9; Vendor and Purchaser ⚷231.]

recording agent. See INSURANCE AGENT.

recording officer. See SECRETARY (3).

recording secretary. See SECRETARY (3).

recording statute. See RECORDING ACT.

record notice. See NOTICE.

recordo et processu mittendis. See DE RECORDO ET PROCESSU MITTENDIS.

record of decision. *Environmental law.* A public document, generated under CERCLA, describing a federal agency's decision regarding an environmental problem, identifying the remedies considered and which one is best, stating whether practical means to minimize or prevent environmental harms caused by the chosen remedy have been adopted, and summarizing a plan for monitoring and enforcing any measures required to mitigate environmental harm. — Abbr. ROD. [Cases: Environmental Law ⚷439.]

record on appeal. The record of a trial-court proceeding as presented to the appellate court for review. — Also termed *appellate record.* See RECORD (4). [Cases: Appeal and Error ⚷493–717; Criminal Law ⚷1086.1–1128; Federal Courts ⚷691–710.]

record owner. See OWNER.

record title. See TITLE (2).

recordum (ri-**kor**-dəm). [Law Latin] *Hist.* A record, esp. a judicial one.

recoupment (ri-**koop**-mənt), *n.* (17c) **1.** The recovery or regaining of something, esp. expenses. **2.** The withholding, for equitable reasons, of all or part of something that is due. See EQUITABLE RECOUPMENT (1), (2). **3.** Reduction of a plaintiff's damages because of a demand by the defendant arising out of the same transaction. See EQUITABLE RECOUPMENT (3). Cf. SETOFF (2). [Cases: Set-off and Counterclaim ⚷6.] **4.** The right of a defendant to have the plaintiff's claim reduced or eliminated because of the plaintiff's breach of contract or duty in the same transaction. **5.** An affirmative defense alleging such a breach. **6.** *Archaic.* A counterclaim arising out of the same transaction or occurrence as the one on which the original action is based. • In modern practice, the recoupment has been replaced by the compulsory counterclaim. — **recoup,** *vb.*

recourse (**ree**-kors *or* ri-**kors**). (14c) **1.** The act of seeking help or advice. **2.** Enforcement of, or a method for enforcing, a right. **3.** The right of a holder of a negotiable instrument to demand payment from the drawer or indorser if the instrument is dishonored. See WITH RECOURSE; WITHOUT RECOURSE. **4.** The right to repayment of a loan from the borrower's personal assets, not just from the collateral that secured the loan.

recourse loan. See LOAN.

recourse note. See NOTE (1).

recover, *vb.* (14c) **1.** To get back or regain in full or in equivalence <the landlord recovered higher operating costs by raising rent>. **2.** To obtain by a judgment or other legal process <the plaintiff recovered punitive damages in the lawsuit>. **3.** To obtain (a judgment) in one's favor <the plaintiff recovered a judgment against the defendant>. **4.** To obtain damages or other relief; to succeed in a lawsuit or other legal proceeding <the defendant argued that the plaintiff should not be allowed to recover for his own negligence>.

recoverable, *adj.* (14c) Capable of being recovered, esp. as a matter of law <court costs and attorney's fees are recoverable under the statute>. — **recoverability,** *n.*

recovered-memory syndrome. See REPRESSED-MEMORY SYNDROME.

recoveree. *Hist.* The party against whom a judgment is obtained in a common recovery. See COMMON RECOVERY.

recoveror. *Hist.* The demandant who obtains a judgment in a common recovery. See COMMON RECOVERY.

recovery. (15c) **1.** The regaining or restoration of something lost or taken away. **2.** The obtainment of a right to something (esp. damages) by a judgment or decree. **3.** An amount awarded in or collected from a judgment or decree.

double recovery. (1813) **1.** A judgment that erroneously awards damages twice for the same loss, based on two different theories of recovery. [Cases: Damages ☞ 15.] **2.** Recovery by a party of more than the maximum recoverable loss that the party has sustained.

recrimination (ri-krim-i-**nay**-shən), *n.* **1.** *Family law. Archaic.* In a divorce suit, a countercharge that the complainant has been guilty of an offense constituting a ground for divorce. • When both parties to the marriage have committed marital misconduct that would be grounds for divorce, neither may obtain a fault divorce. Recriminations are now virtually obsolete because of the prevalence of no-fault divorce. See COMPARATIVE RECTITUDE. Cf. COLLUSION (2); CONNIVANCE (2); CONDONATION (2). [Cases: Divorce ☞ 52.] **2.** *Criminal law.* An accused person's counteraccusation against the accuser. • The accusation may be for the same or a different offense. — **recriminatory,** *adj.*

recross-examination. (1869) A second cross-examination, after redirect examination. — Often shortened to *recross.* See CROSS-EXAMINATION. [Cases: Witnesses ☞ 291.]

recta gubernatio (**rek**-tə g[y]oo-bər-**nay**-shee-oh), *n.* [Latin "right government"] A government in which the highest power, however strong and unified, is neither arbitrary nor irresponsible, and derives from a law that is superior to itself. — Also termed *legitima gubernatio.*

rectification (rek-tə-fi-**kay**-shən), *n.* (18c) **1.** A court's equitable correction of a contractual term that is misstated; the judicial alteration of a written contract to make it conform to the true intention of the parties when, in its original form, it did not reflect this intention. • As an equitable remedy, the court alters the terms as written so as to express the true intention of the parties. The court might do this when the rent is wrongly recorded in a lease or when the area of land is incorrectly cited in a deed. [Cases: Reformation of Instruments ☞ 1.] **2.** A court's slight modification of words of a statute as a means of carrying out what the court is convinced must have been the legislative intent. • For example, courts engage in rectification when they read *and* as *or* or *shall* as *may,* as they frequently must do because of unfastidious drafting. See REFORMATION. — **rectify,** *vb.*

rectification of boundaries. *Hist.* An action to determine or correct the boundaries between two adjoining pieces of land. [Cases: Boundaries ☞ 27.]

rectification of register. *Hist.* A process by which a person whose name was wrongly entered in or omitted from a record can compel the recorder to correct the error.

rectitudo (rek-tə-**t[y]oo**-doh). [Law Latin] A right or legal due; a tribute or payment.

recto de advocatione. See DE RECTO DE ADVOCATIONE.

recto de rationabili parte. See DE RECTO DE RATIONABILI PARTE.

recto patens. See DE RECTO PATENS.

rector (**rek**-tər). **1.** *Eccles. law.* The spiritual head and presiding officer of a parish. — Also termed *parson.* Cf. VICAR.

impropriate rector. A lay rector as opposed to a clerical rector.

rector sinecure (si-nee-**kyoor**-ee). A rector who does not have the cure of souls.

2. *Roman law.* A governor or ruler.

rector provinciae (prə-**vin**-shee-ee). A governor of a province.

rectum (**rek**-təm). [Latin] **1.** Right. **2.** A trial or accusation.

rectus (**rek**-təs). [Latin "right"] *Hist.* (Of a line of descent) straight; direct. Cf. OBLIQUUS.

rectus in curia (**rek**-təs in **kyoor**-ee-ə), *adj.* [Latin "right in the court"] *Hist.* Free from charge or offense; competent to appear in court and entitled to the benefit of law. See LEGALIS HOMO.

recuperatio (ri-k[y]oo-pə-**ray**-shee-oh), *n.* [Latin "recovery"] *Hist.* Judicial restitution of something that has been wrongfully taken or denied.

recuperator (ri-k[y]oo-pə-**ray**-tor), *n.* [Latin "assessor"] *Roman law.* **1.** A member of a mixed body of commissioners, appointed by a convention between two states for the purpose of adjusting any claims or disputes that might arise between the members of those states. **2.** One of a bank of judges, instead of a single *judex*, appointed to hear civil cases that had a public-interest element. Pl. ***recuperatores*** (ri-k[y]oo-pə-rə-**tor**-eez).

recurrent nuisance. See NUISANCE.

recusable (ri-**kyoo**-zə-bəl), *adj.* (1863) **1.** (Of an obligation) arising from a party's voluntary act and that can be avoided. Cf. IRRECUSABLE. **2.** (Of a judge) capable of being disqualified from sitting on a case. [Cases: Judges ☞39–56.] **3.** (Of a fact) providing a basis for disqualifying a judge from sitting on a case.

recusal (ri-**kyoo**-zəl), *n.* (1949) Removal of oneself as judge or policy-maker in a particular matter, esp. because of a conflict of interest. — Also termed *recusation*; *recusement*. Cf. DISQUALIFICATION. [Cases: Administrative Law and Procedure ☞314; Judges ☞39–56.]

recusant (**rek**-yə-zənt *or* ri-**kyoo**-zənt), *adj.* (16c) Refusing to submit to an authority or comply with a command <a recusant witness>.

recusant (**rek**-yə-zənt *or* ri-**kyoo**-zənt), *n.* **1.** *Eccles. law.* A person (esp. a Roman Catholic) who refuses to attend the services of the established Church of England. **2.** A person who refuses to submit to an authority or comply with a command.

recusatio judicis (reh-kyoo-**zay**-shee-oh **joo**-dish-is), *n.* [Latin] *Eccles. law.* The procedure and grounds by which a judge may be challenged and removed from hearing a case. • The grounds for disqualification traditionally include great friendship or enmity with a party, close kinship to a party, acceptance of a bribe, previously giving counsel to a party, or demonstrated ignorance of the law. A panel of three arbiters, chosen by the challenging party and the judge, decides whether the party's complaint has merit.

recusation (rek-yə-**zay**-shən). **1.** *Civil law.* An objection, exception, or appeal; esp. an objection alleging a judge's prejudice or conflict of interest. [Cases: Judges ☞39–56.] **2.** RECUSAL.

recuse (ri-**kyooz**), *vb.* (16c) **1.** To remove (oneself) as a judge in a particular case because of prejudice or conflict of interest <the judge recused himself from the trial>. [Cases: Judges ☞39–56.] **2.** To challenge or object to (a judge) as being disqualified from hearing a case because of prejudice or a conflict of interest <the defendant filed a motion to recuse the trial judge>.

recusement. See RECUSAL.

redaction (ri-**dak**-shən), *n.* (18c) **1.** The careful editing of a document, esp. to remove confidential references or offensive material. [Cases: Criminal Law ☞663; Federal Civil Procedure ☞2011; Records ☞66; Trial ☞39.] **2.** A revised or edited document. — **redactional,** *adj.* — **redact,** *vb.*

red-cow case. See WHITEHORSE CASE.

reddendo (ri-**den**-doh). *Scots law.* **1.** A clause in a charter specifying a duty, rent, or service due from a vassal to a superior. **2.** The duty or service specified in this clause; feu duty.

reddendo singula singulis (ri-**den**-doh **sing**-gyə-lə **sing**-gyə-lis). [Latin "by rendering each to each"] Assigning or distributing separate things to separate persons, or separate words to separate subjects. • This was used as a rule of construction designed to give effect to the intention of the parties who drafted the instrument. — Also termed *referendo singula singulis*.

reddendum (ri-**den**-dəm). [Latin "that must be given back or yielded"] (17c) A clause in a deed by which the grantor reserves some new thing (esp. rent) out of what had been previously granted. [Cases: Deeds ☞141–143.]

reddidit se (**red**-ə-dit **see**). [Latin "he has rendered himself"] *Hist.* A person who has personally appeared in order to discharge bail.

reddition (ri-**dish**-ən). *Hist.* An acknowledgment in court that one is not the owner of certain property being demanded, and that it in fact belongs to the demandant.

redditus. See REDITUS.

redeemable bond. See BOND (3).

redeemable ground rent. See *ground rent* (1) under RENT (1).

redeemable security. See SECURITY.

redeemable stock. See STOCK.

redelivery. (15c) An act or instance of giving back or returning something; restitution.

redelivery bond. See *replevin bond* under BOND (2).

redemise, *n.* (18c) An act or instance of conveying or transferring back (an estate) already demised. See DEMISE. — **redemise,** *vb.*

redemption, *n.* (16c) **1.** The act or an instance of reclaiming or regaining possession by paying a specific price. [Cases: Secured Transactions ☞241.] **2.** *Bankruptcy.* A debtor's right to repurchase property from a buyer who obtained the property at a forced sale initiated by a creditor. [Cases: Bankruptcy ☞3034.] **3.** *Securities.* The reacquisition of a security by the issuer. • Redemption usu. refers to the repurchase of a bond before maturity, but it may also refer to the repurchase of stock and mutual-fund shares. — Also termed (in reference to stock) *stock redemption*; *stock repurchase*. [Cases: Corporations ☞68, 376, 468.1.] **4.** *Property.* The payment of a defaulted mortgage debt by a borrower who does not want to lose the property. — Also termed *dismortgage*. See EQUITY OF REDEMPTION. [Cases: Mortgages ☞591–624.] — **redeemable, redemptive, redemptional** *adj.* — **redeem,** *vb.*

deeds and wills>. Cf. REGISTRAR. [Cases: Registers of Deeds ⚷1.]

probate register. (1887) One who serves as the clerk of a probate court and, in some jurisdictions, as a quasi-judicial officer in probating estates.

register of deeds. (18c) A public official who records deeds, mortgages, and other instruments affecting real property. — Also termed *registrar of deeds*; *recorder of deeds*. [Cases: Registers of Deeds ⚷1.]

register of land office. *Hist.* A federal officer appointed for each federal land district to take charge of the local records and to administer the sale, preemption, or other disposition of public lands within the district. [Cases: Public Lands ⚷95.]

register of wills. (18c) A public official who records probated wills, issues letters testamentary and letters of administration, and serves generally as clerk of the probate court. • The register of wills exists only in some states. [Cases: Executors and Administrators ⚷8.]

2. See *probate judge* under JUDGE. **3.** A book in which all docket entries are kept for the various cases pending in a court. — Also termed (in sense 3) *register of actions*. **4.** *Eccles. law.* A record book of significant events occurring in a parish, including marriages, births, christenings, and burials. • Registers became required in England around 1530. — Abbr. Reg.

register, *vb.* (14c) **1.** To enter in a public registry <register a new car>. [Cases: Records ⚷9.] **2.** To enroll formally <five voters registered yesterday>. [Cases: Elections ⚷95–119.] **3.** To make a record of <counsel registered three objections>. **4.** (Of a lawyer, party, or witness) to check in with the clerk of court before a judicial proceeding <please register at the clerk's office before entering the courtroom>. **5.** To file (a new security issue) with the Securities and Exchange Commission or a similar state agency <the company hopes to register its securities before the end of the year>. [Cases: Securities Regulation ⚷11.10–11.50.]

registered agent. See AGENT (2).

registered bond. 1. See BOND (2). **2.** See BOND (3).

registered broker. See BROKER.

registered check. See CHECK.

registered corporation. See CORPORATION.

registered dealer. See DEALER.

registered mail. See MAIL.

registered mark. See *registered trademark* under TRADEMARK.

registered offering. See OFFERING.

registered organization. An organization created under state or federal law, for which the state or federal government must maintain a public record showing that the organization has been duly organized. UCC § 9-102(a)(47).

registered patent agent. See *patent agent* under AGENT (2).

registered public offering. See *registered offering* under OFFERING.

registered representative. See REPRESENTATIVE.

registered security. See SECURITY.

registered stock. See *registered security* under SECURITY.

registered tonnage. See REGISTER TONNAGE.

registered trademark. See TRADEMARK.

registered voter. See VOTER.

register in bankruptcy. See *referee in bankruptcy* under REFEREE.

register of actions. See REGISTER (3).

Register of Copyrights. The federal official who is in charge of the U.S. Copyright Office, which issues regulations and processes applications for copyright registration. — Also termed (erroneously) *Registrar of Copyrights*. [Cases: Copyrights and Intellectual Property ⚷50.30.]

register of deeds. See REGISTER (1).

register of land office. See REGISTER (1).

register of ships. *Maritime law.* A record kept by a customs collector containing the names and owners of commercial vessels and other key information about the vessels. • When a ship logs in with customs, it receives a certificate of registry. Cf. REGISTRY (2). [Cases: Shipping ⚷5.]

Register of the Treasury. An officer of the U.S. Treasury whose duty is to keep accounts of receipts and expenditures of public money, to record public debts, to preserve adjusted accounts with vouchers and certificates, to record warrants drawn on the Treasury, to sign and issue government securities, and to supervise the registry of vessels under federal law. 31 USCA § 161.

register of wills. See REGISTER (1).

register's court. See COURT.

register tonnage. The volume of a vessel available for commercial use, officially measured and entered in a record for purposes of taxation. — Also termed *registered tonnage*.

registrant. (1890) One who registers; esp., one who registers something for the purpose of securing a right or privilege granted by law upon official registration.

registrar. (17c) A person who keeps official records; esp., a school official who maintains academic and enrollment records. Cf. REGISTER (1).

registrarii liber (rej-ə-**strair**-ee-ī **lī**-bər). [Latin] *Hist.* The register's book in chancery, containing all decrees. — Abbr. *reg. lib.*

registrarius (rej-ə-**strair**-ee-əs). [Latin] *Hist.* A registrar or register; a notary.

Registrar of Copyrights. See REGISTER OF COPYRIGHTS.

registrar of deeds. See *register of deeds* under REGISTER (1).

registration, *n.* **1.** The act of recording or enrolling <the county clerk handles registration of voters>. [Cases: Elections ⇨95–119.]

criminal registration. The requirement in some communities that any felon who spends any time in the community must register his or her name with the police. • Since the late 1980s, many states have adopted strict registration laws for convicted sex offenders. See MEGAN'S LAW. [Cases: Criminal Law ⇨1222.1; Mental Health ⇨469.]

special registration. Voter registration for a particular election only.

2. *Securities.* The complete process of preparing to sell a newly issued security to the public <the security is currently in registration>. [Cases: Securities Regulation ⇨11.10–11.50.] — **register,** *vb.*

shelf registration. Registration with the SEC of securities to be sold over time, the purpose being to avoid the delays and market uncertainties of individual registration.

> "It is generally contemplated that the entire allotment of securities covered by a registered offering will be made available for purchase on the effective date. This is not always the case, however. For example, insiders, promoters or underwriters might receive securities directly from the issuer with an intent to resell at a later date. . . . [I]t may be desirable to get a debt offering all ready to go but wait for a propitious moment to release it. These and other delayed offerings have led to what is known as shelf registration. In a shelf registration the registration statement is filed but the securities are put on the shelf until the manner and date of the offering are determined." Thomas Lee Hazen, *The Law of Securities Regulation* § 3.8, at 119 (2d ed. 1994).

registration and community-notification law. See MEGAN'S LAW.

registration-based quorum. See QUORUM.

registration rights. *Securities.* A securities owner's entitlement to have the securities registered for public sale or to participate in a public sale or resale of securities by the issuer or by another securities owner.

demand registration rights. A securities holder's right to force the issuing company to register all or part of the securities so that the holder can resell them.

piggyback registration rights. A securities holder's option to require the issuing company to include all or part of the holder's securities in a registration of other securities of the same class when a third party, such as a lender, requests the registration.

registration statement. A document containing detailed information required by the SEC for the public sale of corporate securities. • The statement includes the prospectus to be supplied to prospective buyers. See PROSPECTUS. [Cases: Securities Regulation ⇨25.10–25.35.]

registration system. *Patents.* A patent system in which an invention is given patent protection when it is registered, without being subjected to official examination. • The United States operated under a registration system from 1790 until 1793. Cf. EXAMINATION SYSTEM.

registrum brevium (ri-**jis**-trəm **bree**-vee-əm). [Latin] *Hist.* The register of writs. — Abbr. *reg. brev.*

registrum judicale (ri-**jis**-trəm joo-di-**kay**-lee). [Latin] *Hist.* The register of judicial writs. — Abbr. *reg. jud.*

registrum originale (ri-**jis**-trəm ə-rij-ə-**nay**-lee). [Latin] *Hist.* The register of original writs. — Abbr. *reg. orig.*

registry. 1. See *probate judge* under JUDGE. **2.** REGISTER (2). **3.** *Maritime law.* The list or record of ships subject to a particular country's maritime regulations. • A ship is listed under the nationality of the flag it flies. See CERTIFICATE OF REGISTRY. Cf. REGISTER OF SHIPS; *enrollment of vessels* under ENROLLMENT. [Cases: Shipping ⇨5.]

reg. jud. *abbr.* REGISTRUM JUDICALE.

reg. lib. *abbr.* REGISTRARII LIBER.

regnal (**reg**-nəl), *adj.* Of or relating to a monarch's reign <the regnal years of Henry II are 1154–1159>.

regnal year. A year of a monarch's reign, marked from the date or anniversary of the monarch's accession. • Before 1962, British statutes were cited by the regnal years in which they were enacted. Since 1962, British statutes have been cited by calendar year rather than regnal year. (A table of British regnal years is listed in Appendix F of this book.)

regnant (**reg**-nənt), *adj.* Exercising rule, authority, or influence; reigning <a queen regnant>.

reg. orig. *abbr.* REGISTRUM ORIGINALE.

reg. pl. *abbr.* REGULA PLACITANDI.

regrant, *n.* The act or an instance of granting something again; the renewal of a grant (as of property). — **regrant,** *vb.*

regrating, *n. Hist.* **1.** The purchase of market commodities (esp. necessary provisions) for the purpose of reselling them in or near the same market at a higher price. **2.** The resale of commodities so purchased. • In England, regrating was a criminal offense. — **regrater,** *n.*— **regrate,** *vb.*

> "Regrating is described by [5 & 6 Edw. 6, ch. 14] to be the buying of corn, or other dead victual, in any market, and selling them again in the same market, or within four miles of the place. For this also enhances the price of the provisions, as every successive seller must have a successive profit." 4 William Blackstone, *Commentaries on the Laws of England* 158 (1769).

regress, *n.* (14c) **1.** The act or an instance of going or coming back; return or reentry <free entry, egress, and regress>. **2.** The right or liberty of going back; reentry. Cf. EGRESS; INGRESS. **3.** *Hist.* The right to repayment or compensation; recourse. — **regress** (ri-**gres**), *vb.*

regressive tax. See TAX.

regula (**reg**-yə-lə). [Latin] A rule.

regula generalis (**reg**-yə-lə jen-ə-**ray**-lis). [Latin] A general rule, esp. of a court. — Abbr. *reg. gen.*; r.g. Pl. ***regulae generales.***

regula placitandi (**reg**-yə-lə plas-ə-**tan**-dī). [Latin] *Hist.* A rule of pleading. — Abbr. *reg. pl.*

regula regulans (**reg**-yə-lə **reg**-yə-lanz). [Law Latin] *Hist.* The governing rule.

regula Catoniana (**reg**-yə-lə kay-toh-nee-**ay**-nə *or* kə-toh-). [Latin "rule attributed to Cato"] *Roman law.* The principle that the lapse of time does not cure something void at the outset. • This principle, named for the Roman legal scholar Cato, was ordinarily used to set aside a bequest when the testator did not have the capacity to make the bequest.— Also termed *Catoniana regula.*

regular army. See ARMY.

regular course of business. See COURSE OF BUSINESS.

regular election. See *general election* (1) under ELECTION (3).

regular income. See INCOME.

regular life policy. See *life policy* under INSURANCE POLICY.

regular meeting. See MEETING.

regular process. See PROCESS.

regular session. See SESSION (1).

regular term. See TERM (5).

regular use. See USE (1).

regulation, *n.* (17c) **1.** The act or process of controlling by rule or restriction <the federal regulation of the airline industry>.

self-regulation. The process by which an identifiable group of people, such as licensed lawyers, govern or direct their own activities by rules; specif., an organization's or industry's control, oversight, or direction of itself according to rules and standards that it establishes. • Self-regulation is often subject to the oversight of various governmental agencies, such as the Securities Exchange Commission and the Commodities Futures Trading Commission.

2. BYLAW (1) <the CEO referred to the corporate regulation>. **3.** A rule or order, having legal force, usu. issued by an administrative agency <Treasury regulations explain and interpret the Internal Revenue Code>. — Abbr. (usu. cap.) reg. — Also termed (in sense 3) *agency regulation*; *subordinate legislation*; *delegated legislation.* See MERIT REGULATION. [Cases: Administrative Law and Procedure ☞381–427.] — **regulatory, regulable,** *adj.* — **regulate,** *vb.*

proposed regulation. A draft administrative regulation that is circulated among interested parties for comment. — Abbr. prop. reg. [Cases: Administrative Law and Procedure ☞392.]

Regulation A. An SEC regulation that exempts stock offerings of up to $5 million from certain registration requirements. [Cases: Securities Regulation ☞18.18.]

Regulation D. An SEC regulation that exempts certain stock offerings (such as those offered by private sale) from registration under the Securities Act of 1933. [Cases: Securities Regulation ☞18.11.]

Regulation Fair Disclosure. An October 2000 SEC rule requiring companies to disclose material information to all investors at the same time. • The regulation is intended to prevent some investors from receiving advance information about earnings, mergers and acquisitions, product discoveries, changes in auditors, and any other information that a reasonable investor would consider in making an investment decision. — Often shortened to *Regulation FD*; *Reg. FD.*

Regulation FD. See REGULATION FAIR DISCLOSURE.

Regulation J. A Federal Reserve Board regulation that governs the collection of checks by and the transfer of funds through member banks. [Cases: Banks and Banking ☞188.5, 356.]

Regulation Q. A Federal Reserve Board regulation that sets interest-rate ceilings and regulates advertising of interest on savings accounts. • The Banking Act of 1933 is the basis of this regulation, which applies to all commercial banks. [Cases: Banks and Banking ☞132, 359.]

Regulation T. A Federal Reserve Board regulation that limits the amount of credit that a securities broker or dealer may extend to a customer, and that sets initial margin requirements and payment rules for securities transactions. • The credit limit and margin rules usu. require the customer to provide between 40 and 60% of the purchase price. [Cases: Securities Regulation ☞45.11.]

Regulation U. A Federal Reserve Board regulation that limits the amount of credit that a bank may extend to a customer who buys or carries securities on margin. [Cases: Securities Regulation ☞45.26.]

Regulation X. A HUD regulation that implements the provisions of the Real Estate Settlement Procedures Act. See REAL ESTATE SETTLEMENT PROCEDURES ACT. [Cases: Consumer Credit ☞50.]

Regulation Z. A Federal Reserve Board regulation that implements the provisions of the federal Consumer Credit Protection Act for member banks. See CONSUMER CREDIT PROTECTION ACT. [Cases: Consumer Credit ☞32, 50, 51.]

regulatory agency. See AGENCY (3).

regulatory offense. See OFFENSE (1).

regulatory-out clause. See FERC-OUT CLAUSE.

regulatory search. See *administrative search* under SEARCH.

rehabere facias seisinam. See HABERE FACIAS SEISINAM.

rehabilitation, *n.* (1940) **1.** *Criminal law.* The process of seeking to improve a criminal's character and outlook so that he or she can function in society without

committing other crimes <rehabilitation is a traditional theory of criminal punishment, along with deterrence and retribution>. Cf. DETERRENCE; RETRIBUTION (1). [Cases: Sentencing and Punishment ⚷ 45.] **2.** *Evidence.* The restoration of a witness's credibility after the witness has been impeached <the inconsistencies were explained away during the prosecution's rehabilitation of the witness>. [Cases: Witnesses ⚷ 410–416.] **3.** *Bankruptcy.* The process of reorganizing a debtor's financial affairs — under Chapter 11, 12, or 13 of the Bankruptcy Code — so that the debtor may continue to exist as a financial entity, with creditors satisfying their claims from the debtor's future earnings <the corporation's rehabilitation was successful>. — Also termed *debtor rehabilitation*. Cf. LIQUIDATION (4). [Cases: Bankruptcy ⚷ 3501, 3671, 3701.] — **rehabilitative,** *adj.* — **rehabilitate,** *vb.*

rehabilitative alimony. See ALIMONY.

rehearing. (17c) A court's second or subsequent hearing of a case, a motion, or an appeal, usu. to consider an alleged error or omission in the court's judgment or opinion <the appellant, dissatisfied with the appellate court's ruling, filed a motion for rehearing>. — Abbr. reh'g. Cf. REARGUMENT. [Cases: Administrative Law and Procedure ⚷ 480; Appeal and Error ⚷ 829; Criminal Law ⚷ 1133; Federal Civil Procedure ⚷ 928; Federal Courts ⚷ 744; Motions ⚷ 39.]

reh'g. *abbr.* REHEARING.

rei (**ree**-ī). *pl.* REUS.

reif (reef). *Scots law.* Robbery.

reification (ree-ə-fi-**kay**-shən), *n.* (1846) **1.** Mental conversion of an abstract concept into a material thing. **2.** *Civil procedure.* Identification of the disputed thing in a nonpersonal action and attribution of an in-state situs to it for jurisdictional purposes. **3.** *Commercial law.* Embodiment of a right to payment in a writing (such as a negotiable instrument) so that a transfer of the writing also transfers the right. — **reify** (**ree**-ə-fī *or* **ray**-), *vb.*

rei interitus (**ree**-ī in-**ter**-ə-təs). [Latin] *Hist.* The destruction of a thing.

rei interventus (**ree**-ī in-tər-**ven**-təs), *n.* [Latin "things intervening"] Actions or efforts by one party to a contract with the consent of the other party, so that the one party has made a partial performance and the other cannot repudiate without being in breach.

reimbursement, *n.* **1.** Repayment. **2.** Indemnification. — **reimburse,** *vb.*

reimbursement alimony. See ALIMONY.

re infecta (ree in-**fek**-tə). [Latin] *Hist.* The thing not having been done; the performance having failed.

reinscription, *n. Civil law.* A second or renewed recordation of a mortgage or other title document. [Cases: Mortgages ⚷ 96.] — **reinscribe,** *vb.*

reinstate, *vb.* To place again in a former state or position; to restore <the judge reinstated the judgment that had been vacated>. — **reinstatement,** *n.*

reinsurance. Insurance of all or part of one insurer's risk by a second insurer, who accepts the risk in exchange for a percentage of the original premium. — Also termed *reassurance*. [Cases: Insurance ⚷ 3593.]

> "The term 'reinsurance' has been used by courts, attorneys, and textwriters with so little discrimination that much confusion has arisen as to what that term actually connotes. Thus, it has so often been used in connection with transferred risks, assumed risks, consolidations and mergers, excess insurance, and in other connections that it now lacks a clean-cut field of operation. Reinsurance, to an insurance lawyer, means one thing only — the ceding by one insurance company to another of all or a portion of its risks for a stipulated portion of the premium, in which the liability of the reinsurer is solely to the reinsured, which is the ceding company, and in which contract the ceding company retains all contact with the original insured, and handles all matters prior to and subsequent to loss." 13A John Alan Appleman & Jean Appleman, *Insurance Law and Practice* § 7681, at 479–80 (1976).

> "The laying off of risk by means of reinsurance traditionally serves three basic purposes. First, reinsurance can increase the capacity of the insurer to accept risk. The insurer may be enabled to take on larger individual risks, or a large number of smaller risks, or a combination of both. . . . Secondly, reinsurance can promote financial stability by ameliorating the adverse consequences of an unexpected accumulation of losses or of single catastrophic losses, because these will, at least in part, be absorbed by reinsurers. Thirdly, reinsurance can strengthen the solvency of an insurer from the point of view of any regulations under which the insurer must operate which provide for a minimum 'solvency margin,' generally expressed as a ratio of net premium income over capital and free reserves." P.T. O'Neill & J.W. Woloniecki, *The Law of Reinsurance in England and Bermuda* 4 (1998).

excess reinsurance. Reinsurance in which a reinsurer assumes liability only for an amount of insurance that exceeds a specified sum. See *excess insurance* under INSURANCE.

facultative reinsurance. Reinsurance of an individual risk at the option (the "faculty") of the reinsurer. [Cases: Insurance ⚷ 3593.]

flat reinsurance. Reinsurance (esp. of marine insurance) that cannot be canceled or modified.

treaty reinsurance. Reinsurance under a broad agreement of all risks in a given class as soon as they are insured by the direct insurer. [Cases: Insurance ⚷ 3593.]

reinsurance treaty. A contract of reinsurance (usu. long-term) covering different classes or lines of business of the reinsured (such as professional liability, property, etc.) and obligating the reinsurer in advance to accept the cession of covered risks. • Rather than receive individual notice of each specific claim covered, the treaty reinsurer will generally receive periodic reports providing basic information on the losses paid. — Also termed *treaty of reinsurance*. See BORDEREAU. Cf. FACULTATIVE CERTIFICATE. [Cases: Insurance ⚷ 3593.]

reinsured, *n.* An insurer that transfers all or part of a risk it underwrites to a reinsurer, usu. along with a percentage of the original premium. — Also termed *cedent*; *cedant*. [Cases: Insurance ⚷ 3593.]

reinsurer. An insurer that assumes all or part of a risk underwritten by another insurer, usu. in exchange for a percentage of the original premium. [Cases: Insurance ☞3593.]

reinvested dividend. See DIVIDEND.

reinvestment. 1. The addition of interest earned on a monetary investment to the principal sum. **2.** A second, additional, or repeated investment; esp., the application of dividends or other distributions toward the purchase of additional shares (as of a stock or a mutual fund).

reissuable error. *Patents.* A type of nondeceptive mistake in a patent that may be corrected in a reissue patent. 35 USCA § 252. [Cases: Patents ☞136.]

reissuable note. See NOTE (1).

reissue. 1. An abstractor's certificate attesting to the correctness of an abstract. • A reissue is an important precaution when the abstract comprises an original abstract brought down to a certain date and then several later continuations or extensions. [Cases: Abstracts of Title ☞3.] **2.** See *reissue patent* under PATENT (3).

reissue patent. See PATENT (3).

rei suae providus (**ree-ī s[y]oo-ee prə-vī-dəs**). [Latin] *Hist.* Careful of one's property.

> "Interdiction, whether voluntary or judicial, can only be recalled or removed by an interlocutor of Court, and it affords a good ground on which to apply for the removal of the restraint imposed by interdiction that the interdicted has become *rei suae providus*." John Trayner, *Trayner's Latin Maxims* 546–47 (4th ed. 1894).

REIT (reet). *abbr.* REAL-ESTATE INVESTMENT TRUST.

reject, assume or. See ASSUME OR REJECT.

rejecting, *n.* A parent's or caregiver's pattern of refusing to acknowledge a child's worth or legitimate needs. Cf. ISOLATING; IGNORING.

rejection. (16c) **1.** A refusal to accept a contractual offer. [Cases: Contracts ☞21.] **2.** A refusal to accept tendered goods as contractual performance. • Under the UCC, a buyer's rejection of nonconforming goods must be made within a reasonable time after tender or delivery, and notice of the rejection must be given to the seller. [Cases: Sales ☞168(4), 179(6).] Cf. REPUDIATION (2); RESCISSION; REVOCATION (1). **3.** *Parliamentary law.* Failure of adoption or ratification. See LOST (3). **4.** *Patents.* A patent examiner's finding in an office action that a claim in an application is unpatentable. Cf. OBJECTION (4); RESTRICTION (4). [Cases: Patents ☞108.] — **reject,** *vb.*

aggregation rejection. Rejection of a patent claim on the ground that it is a list of unrelated elements that, taken together, do not assert a claim. [Cases: Patents ☞25.]

alternativeness rejection. Rejection of a patent claim on the ground that it seeks a broad monopoly on the invention as disclosed and on other unspecified variations. • For example, a claim using a phrase such as "and similar materials" would probably be too broad to be allowed. [Cases: Patents ☞124.]

duplicate-claiming rejection. The nonart rejection of a patent claim because it is not substantially different from another claim.

exhausted-combination rejection. See *old-combination rejection.*

failure-to-disclose-best-mode rejection. Rejection of a patent application on the ground that the inventor has not disclosed the best way to use the invention. • To warrant rejection, the examiner must find deliberate concealment or a description so poorly drafted as to amount to concealment. [Cases: Patents ☞98.]

final rejection. A patent examiner's finding, in a second or subsequent office action, that a claim in an application is unpatentable on the merits. • A final rejection is made in the final office action. Despite the misleading name, a final rejection need not end the prosecution. The rejection can be appealed, or the application can be reexamined or continued in another application. A rejection may also be appealed to the Board of Patent Appeals and Interferences. A decision of that Board may be reviewed by the U.S. District Court for the District of Columbia or appealed to the U.S. Court of Appeals for the Federal Circuit. 35 USCA §§ 141–45. [Cases: Patents ☞108.]

formal rejection. Rejection of a patent claim because of an error in format rather than substance. • A formal rejection is actually an objection rather than a rejection, since it requires no substantive change in the claim. — Also termed *nonart rejection.* [Cases: Patents ☞104.]

functional rejection. Rejection of a patent claim on the grounds that it broadly claims a function but does not disclose enough structure to account for achieving that function. Cf. FUNCTIONAL LIMITATION. [Cases: Patents ☞101(8).]

inaccuracy rejection. Rejection of a patent claim on the ground that it is not consistent with the description.

incompleteness rejection. Rejection of a patent application on the ground that an element of the device or a step in the process has been left out.

interference-estoppel rejection. Rejection of a patent claim on the ground that the applicant failed to bring the claim into a previous interference contest where its priority could have been determined. [Cases: Patents ☞112.4.]

judicially-created-double-patenting rejection. Rejection of a patent application on the ground that the invention is an obvious variation of another patented invention by the same inventor. — Also termed *obviousness-type double-patenting rejection.* [Cases: Patents ☞120.]

lack-of-antecedent-basis rejection. Rejection of a patent application on the ground that a reference either in the specification or in the claim is missing.

lack-of-enablement rejection. See *nonenablement rejection.*

lack-of-utility rejection. Rejection of a patent claim on the ground that the invention is inoperative, frivolous, fraudulent, or against the public interest. • The classic examples are perpetual-motion machines (inoperative), cures for the common cold (frivolous because believed impossible, and also probably fraudulent), and gambling devices (formerly seen as against the public interest). [Cases: Patents ⇨46.]

new-matter rejection. Rejection of a patent claim on the ground that an amendment contains new matter. [Cases: Patents ⇨109.]

nonart rejection. See *formal rejection.*

nonenablement rejection. Rejection of a patent application claim on the ground that its specification does not teach enough to enable a person skilled in the art to make and use the invention. — Also termed *lack-of-enablement rejection.* [Cases: Patents ⇨99.]

obviousness-type double-patenting rejection. See *judicially created double-patenting rejection.*

old-combination rejection. Rejection of a patent claim on the ground that, despite the fact that one or more elements perform in a different way, all the elements perform the same function as a previously patented invention. • The improved element may be patentable, but the combination may not be. — Also termed *exhausted-combination rejection.* [Cases: Patents ⇨26(1.1).]

prolixity rejection. Rejection of a patent application on the ground that the language is so wordy and tedious that it tends more to hide than to disclose the invention.

rejection on issues of interference. Rejection of a patent claim on the ground that the applicant has lost a final judgment of priority regarding the claim in an interference contest. [Cases: Patents ⇨112.4.]

same-invention double patenting rejection. See *statutory double patenting rejection.*

Section 101 rejection. Rejection of a patent application on the ground that it is based on nonstatutory subject matter. 35 USCA § 101.

Section 102 rejection. Rejection of a patent application for lack of novelty. 35 USCA § 102. [Cases: Patents ⇨37.]

Section 103 rejection. Rejection of a patent application for obviousness. 35 USCA § 103. [Cases: Patents ⇨16.1.]

Section 112 rejection. See *vague-and-indefinite rejection.*

shotgun rejection. *Slang.* Denial of all or almost all claims in a patent application by the U.S. Patent and Trademark Office, esp. in the first office action.

statutory double patenting rejection. Rejection of a patent application on the ground that the invention is the same subject matter as an already-patented invention by the same inventor. • This rejection is based on 35 USCA § 101. — Also termed *same-invention double patenting rejection.* [Cases: Patents ⇨120.]

undue-breadth rejection. Rejection of a patent claim on the ground that it seeks a patent monopoly on more than the invention. • For instance, a functional claim is too broad if it purports to include every other possible way of accomplishing that function. A claim on a chemical is more likely to be rejected for undue breadth than a claim on a machine, because future discoveries are less predictable. [Cases: Patents ⇨124.]

undue-multiplicity-of-claims rejection. Rejection of a patent application on the ground that it makes an unreasonable number of claims. See AGGREGATION OF CLAIMS. [Cases: Patents ⇨124.]

vague-and-indefinite rejection. Rejection of a patent claim on the ground that a person of ordinary skill in the art could not clearly understand it. • For example, terms used in more than one sense could make the meaning unclear. — Also termed *Section 112 rejection.* [Cases: Patents ⇨101(6).]

rejoinder, *n.* (15c) *Common-law pleading.* The defendant's answer to the plaintiff's reply (or replication). [Cases: Pleading ⇨183.] — **rejoin,** *vb.*

related good. *Trademarks.* A good that infringes a trademark because it appears to come from the same source as the marked good, despite not competing with the marked good. • For example, a cutting tool named "McKnife" might infringe the "McDonald's" trademark as a related good.

related proceeding. *Bankruptcy.* A proceeding that involves a claim that will affect the administration of the debtor's estate (such as a tort action between the debtor and a third party), but that does not arise under bankruptcy law and could be adjudicated in a state court. • A related proceeding must be adjudicated in federal district court unless the parties consent to bankruptcy-court jurisdiction or unless the district court refers the matter to the bankruptcy court or to state court. — Also termed *noncore proceeding.* Cf. CORE PROCEEDING (1). [Cases: Bankruptcy ⇨2043–2063.]

related right. See NEIGHBORING RIGHT.

relation. See RELATIVE.

relation back, *n.* (18c) **1.** The doctrine that an act done at a later time is, under certain circumstances, treated as though it occurred at an earlier time. • In federal civil procedure, an amended pleading may relate back, for purposes of the statute of limitations, to the time when the original pleading was filed. Fed. R. Civ. P. 15(c). [Cases: Limitation of Actions ⇨127.] **2.** A judicial application of that doctrine. — Also termed *doctrine of relation back.* Cf. NUNC PRO TUNC. — **relate back,** *vb.*

relationship. The nature of the association between two or more people; esp., a legally recognized association that makes a difference in the participants' legal rights and duties of care.

attorney–client relationship. The formal legal representation of a person by a lawyer. • An attorney–client relationship may be found, for disciplinary purposes, without any formal agreement. [Cases: Attorney and Client ☞64.]

confidential relationship. **1.** See *fiduciary relationship.* **2.** *Trade secrets.* A relationship in which one person has a duty to the other not to disclose proprietary information. • A confidential relationship can be expressly established, as by the terms of an employment contract. It can also be implied when one person knows or should know that the information is confidential, and the other person reasonably believes that the first person has consented to keep the information confidential. A confidential relationship might be implied, for instance, between two people negotiating the sale of a business. [Cases: Antitrust and Trade Regulation ☞418; Labor and Employment ☞304.]

doctor–patient relationship. The association between a medical provider and one who is being diagnosed or treated. • The relationship imposes a duty on the doctor to ensure that the patient gives informed consent for treatment. [Cases: Health ☞576, 615.]

employer–employee relationship. The association between a person employed to perform services in the affairs of another, who in turn has the right to control the person's physical conduct in the course of that service. • At common law, the relationship was termed "master-servant." That term is still used often, but "employer–employee" dominates in modern legal usage. [Cases: Labor and Employment ☞23.]

fiducial relationship. See *trust relationship.*

fiduciary relationship. (1846) A relationship in which one person is under a duty to act for the benefit of another on matters within the scope of the relationship. • Fiduciary relationships — such as trustee–beneficiary, guardian–ward, principal–agent, and attorney–client — require an unusually high degree of care. Fiduciary relationships usu. arise in one of four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer. — Also termed *fiduciary relation*; *confidential relationship.* Cf. *special relationship.* [Cases: Fraud ☞7.]

master–servant relationship. The association between one in authority and a subordinate, esp. between an employer and an employee. • At common law, this term also designated the husband–wife relationship for purposes of analyzing loss of consortium, but that usage is now obsolete. — Also termed *employer–employee relationship.* See MASTER AND SERVANT. [Cases: Labor and Employment ☞23.]

parent–child relationship. The association between an adult and a minor in the adult's care, esp. an offspring or an adoptee. • The relationship imposes a high duty of care on the adult, including the duties to support, to rescue, to supervise and control, and to educate. [Cases: Parent and Child ☞1.]

professional relationship. An association that involves one person's reliance on the other person's specialized training. • Examples include one's relationship with a lawyer, doctor, insurer, banker, and the like.

special relationship. A nonfiduciary relationship having an element of trust, arising esp. when one person trusts another to exercise a reasonable degree of care and the other knows or ought to know about the reliance. Cf. *fiduciary relationship.* [Cases: Negligence ☞214, 220.]

trust relationship. An association based on one person's reliance on the other person's specialized training. — Also termed *fiducial relationship.* [Cases: Fraud ☞7.]

relationship rape. See RAPE.

relative, *n.* (14c) A person connected with another by blood or affinity; a person who is kin with another. — Also termed *relation*; *kinsman.* Cf. NEXT OF KIN (1).

blood relative. (1863) One who shares an ancestor with another.

collateral relative. (18c) A relative who is not in the direct line of descent, such as a cousin. [Cases: Descent and Distribution ☞32–41.]

relative by affinity. (1821) A person who is related solely as the result of a marriage and not by blood or adoption. • A person is a relative by affinity (1) to any blood or adopted relative of his or her spouse, and (2) to any spouse of his or her blood and adopted relatives. Based on the theory that marriage makes two people one, the relatives of each spouse become the other spouse's relatives by affinity. See AFFINITY. [Cases: Descent and Distribution ☞21; Wills ☞502.]

relative of the half blood. A collateral relative who shares one common ancestor. • A half brother, for example, is a relative of the half blood. See *half blood* under BLOOD. [Cases: Descent and Distribution ☞35; Wills ☞506(2).]

relative confession. See CONFESSION.

relative-convenience doctrine. The principle that an injunction or other equitable relief may be denied if granting it would cause one party great inconvenience but denying it would cause the other party little or no inconvenience. [Cases: Injunction ☞12, 23, 138.15.]

relative fact. See FACT.

relative nullity. See NULLITY.

relative power. See POWER (5).

relative-responsibility statute. A law requiring adult children to support or provide basic necessities for their indigent elderly parents. [Cases: Parent and Child ⇨ 4.]

relative right. See RIGHT.

relative simulated contract. See CONTRACT.

relator. (17c) **1.** The real party in interest in whose name a state or an attorney general brings a lawsuit. See EX REL. [Cases: Attorney General ⇨ 9.] **2.** The applicant for a writ, esp. a writ of mandamus, prohibition, or quo warranto. [Cases: Mandamus ⇨ 144; Prohibition ⇨ 19; Quo Warranto ⇨ 30.] **3.** A person who furnishes information on which a civil or criminal case is based; an informer.

relatrix (ri-**lay**-triks). *Archaic.* A female relator.

relaxatio (ree-lak-**say**-shee-oh). [Law Latin] *Hist.* An instrument by which one relinquishes a right or claim to another; a release.

release, *n.* (14c) **1.** Liberation from an obligation, duty, or demand; the act of giving up a right or claim to the person against whom it could have been enforced <the employee asked for a release from the noncompete agreement>. — Also termed *discharge; surrender.* **2.** The relinquishment or concession of a right, title, or claim <Benson's effective release of the claim against Thompson's estate precluded his filing a lawsuit>. [Cases: Release ⇨ 1.] **3.** A written discharge, acquittance, or receipt; specif., a writing — either under seal or supported by sufficient consideration — stating that one or more of the worker's contractual or compensatory rights are discharged <Jones signed the release before accepting the cash from Hawkins>. • Beneficiaries of an estate are routinely required to sign a release discharging the estate from further liability before the executor or administrator distributes the property. **4.** A written authorization or permission for publication <the newspaper obtained a release from the witness before printing his picture on the front page>. **5.** The act of conveying an estate or right to another, or of legally disposing of it <the release of the easement on February 14>. **6.** A deed or document effecting a conveyance <the legal description in the release was defective>. See *deed of release* under DEED. [Cases: Deeds ⇨ 23.] **7.** The action of freeing or the fact of being freed from restraint or confinement <he became a model citizen after his release from prison>. **8.** A document giving formal discharge from custody <after the sheriff signed the release, the prisoner was free to go>. — **release,** *vb.*

conditional release. (18c) **1.** A discharge from an obligation based on some condition, the failure of which defeats the release. **2.** An early discharge of a prison inmate, who is then subject to the rules and regulations of parole. [Cases: Prisons ⇨ 248.]

marginal release. *Property.* An entry made in the margin of a property record by the recorder of deeds to show that a claim against the property has been satisfied.

mutual release. A simultaneous exchange of releases of legal claims held by two or more parties against each other. [Cases: Prisons ⇨ 14.]

partial release. (1837) A release of a portion of a creditor's claims against property; esp., a mortgagee's release of specified parcels covered by a blanket mortgage. [Cases: Mortgages ⇨ 310.]

Pierringer release. A release that allows a defendant in a negligence suit to settle with the plaintiff for a share of the damages and insulates the settling defendant against contribution claims by nonsettling defendants. • This type of release was first described in *Pierringer v. Hoger*, 124 N.W.2d 106, 110–11 (Wis. 1963). It is used in some jurisdictions that do not have contribution statutes. — Also spelled (incorrectly) *Perringer release.* [Cases: Release ⇨ 29(4).]

study release. (1970) A program that allows a prisoner to be released for a few hours at a time to attend classes at a nearby college or technical institution. — Also termed *study furlough.* [Cases: Convicts ⇨ 2.]

unconditional release. (1871) The final discharge of a prison inmate from custody. [Cases: Release ⇨ 14.]

9. *Environmental law.* The injection of contaminants or pollutants into the environment as a side effect of operations such as manufacturing, mining, or farming.

release clause. *Real estate.* **1.** A blanket-mortgage provision that enables the mortgagor to obtain a release from the mortgage of a specific portion of the property upon paying a specific (usu. more than pro rata) portion of the loan. • Mortgagees commonly include a clause that disallows a partial release if the mortgagor is in default on any part of the mortgage. [Cases: Mortgages ⇨ 310.] **2.** A purchase-agreement provision that allows a seller who has accepted an offer containing a contingency to continue to market the property and accept other offers. • If the seller accepts another buyer's offer, the original buyer typically has a specified time (such as 72 hours) to waive the contingency (such as the sale of the buyer's present house) or to release the seller from the agreement. [Cases: Vendor and Purchaser ⇨ 79.]

release deed. See DEED.

releasee. **1.** One who is released, either physically or by contractual discharge. [Cases: Release ⇨ 26.] **2.** One to whom an estate is released.

release of mortgage. A written document that discharges a mortgage upon full payment by the borrower and that is publicly recorded to show that the borrower has full equity in the property. [Cases: Mortgages ⇨ 309, 314.]

release on recognizance. (1913) The pretrial release of an arrested person who promises, usu. in writing but without supplying a surety or posting bond, to appear for trial at a later date. — Abbr. ROR. — Also termed *release on own recognizance.* See RECOGNIZANCE. [Cases: Bail ⇨ 40.]

releaser. See RELEASOR.

release to uses. (1830) Conveyance of property, by deed of release, by one party to another for the benefit of the grantor or a third party. See *deed of release* under DEED; STATUTE OF USES; USE (4). [Cases: Deeds ⚷23.]

releasor. (17c) One who releases property or a claim to another. — Also spelled *releaser*. [Cases: Release ⚷1.]

relegatio (rel-ə-**gay**-shee-oh), *n.* [fr. Latin *relegare* "to send away"] *Roman law.* Temporary or permanent banishment of a condemned criminal from Rome and the criminal's native province, without loss of citizenship or forfeiture of all the criminal's property. Cf. DEPORTATIO.

> "Relegatio. The expulsion of a citizen ordered either by an administrative act of a magistrate or by judgment in a criminal trial. In the latter case the *relegatio* was sometimes combined with additional punishments, such as confiscation of the whole or of a part of the property of the condemned person, loss of Roman citizenship, confinement in a certain place. A milder form of *relegatio* was the exclusion of the wrongdoer from residence in a specified territory. Illicit return was punished with the death penalty." Adolf Berger, *Encyclopedic Dictionary of Roman Law* 673 (1953).

relegation, *n.* (16c) **1.** Banishment or exile, esp. a temporary one. **2.** Assignment or delegation. — **relegate,** *vb.*

relevance. The fact, quality, or state of being relevant; relation or pertinence to the issue at hand. — Also termed *relevancy*. [Cases: Criminal Law ⚷338; Evidence ⚷99.]

relevancy. See RELEVANCE.

relevant, *adj.* (16c) Logically connected and tending to prove or disprove a matter in issue; having appreciable probative value — that is, rationally tending to persuade people of the probability or possibility of some alleged fact. Cf. MATERIAL (2), (3). [Cases: Criminal Law ⚷338; Evidence ⚷99.]

> "The word 'relevant' means that any two facts to which it is applied are so related to each other that according to the common course of events one either taken by itself or in connection with other facts proves or renders probable the past, present, or future existence or non-existence of the other." James Fitzjames Stephen, *A Digest of the Law of Evidence* 2 (4th ed. 1881).

relevant art. See ART.

relevant evidence. See EVIDENCE.

relevant market. See MARKET.

reliance, *n.* (17c) Dependence or trust by a person, esp. when combined with action based on that dependence or trust. — **rely,** *vb.*

detrimental reliance. (1941) Reliance by one party on the acts or representations of another, causing a worsening of the first party's position. • Detrimental reliance may serve as a substitute for consideration and thus make a promise enforceable as a contract. See *promissory estoppel* under ESTOPPEL. [Cases: Estoppel ⚷55, 85, 87.]

reliance damages. See DAMAGES.

reliance interest. See INTEREST (2).

reliance-loss damages. See DAMAGES.

reliance materials. See EXPERT-RELIANCE MATERIALS.

relict (**rel**-ikt). *Archaic.* A surviving spouse; esp., a widow.

relicta verificatione (ri-**lik**-tə ver-ə-fi-kay-shee-**oh**-nee). [Latin "his pleading being abandoned"] *Hist.* A confession of judgment accompanied by a withdrawal of the plea. See COGNOVIT ACTIONEM.

reliction (ri-**lik**-shən). (17c) **1.** A process by which a river or stream shifts its location, causing the recession of water from its bank. [Cases: Navigable Waters ⚷44; Waters and Water Courses ⚷93.] **2.** The alteration of a boundary line because of the gradual removal of land by a river or stream. See ACCRETION; DERELICTION (2). [Cases: Navigable Waters ⚷44; Waters and Water Courses ⚷93.]

relief. (14c) **1.** A payment made by an heir of a feudal tenant to the feudal lord for the privilege of succeeding to the ancestor's tenancy.

> "A mesne lord could, upon the death of his tenant, accept the tenant's heir as tenant; but he was not required to do so. When he did accept his deceased tenant's heir as tenant, it was typically because the heir had paid the mesne lord a substantial sum (known as a *relief*) for the re-grant of the tenancy." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 8 (2d ed. 1984).

2. Aid or assistance given to those in need, esp., financial aid provided by the state. [Cases: Social Security and Public Welfare ⚷4.] **3.** The redress or benefit, esp. equitable in nature (such as an injunction or specific performance), that a party asks of a court. — Also termed *remedy*. Cf. REMEDY.

affirmative relief. (1842) The relief sought by a defendant by raising a counterclaim or cross-claim that could have been maintained independently of the plaintiff's action.

alternative relief. (1851) Judicial relief that is mutually exclusive with another form of judicial relief. • In pleading, a party may request alternative relief, as by asking for both specific performance and damages that would be averted by specific performance. Fed. R. Civ. P. 8(a). Cf. ELECTION OF REMEDIES. [Cases: Specific Performance ⚷127.]

coercive relief. (1886) Judicial relief, either legal or equitable, in the form of a personal command to the defendant that is enforceable by physical restraint.

declaratory relief. A unilateral request to a court to determine the legal status or ownership of a thing. [Cases: Declaratory Judgment ⚷385.]

extraordinary relief. Judicial relief that exceeds what is typically or customarily granted but is warranted by the unique or extreme circumstances of a situation. • The types of extraordinary relief most frequently sought are injunctions and extraordinary writs, esp. mandamus. See INJUNCTION; MANDAMUS. Cf. *extraordinary writ* under WRIT. [Cases: Courts ⚷207.]

interim relief. (1886) Relief that is granted on a preliminary basis before an order finally disposing of a request for relief.

therapeutic relief. (1889) The relief, esp. in a settlement, that requires the defendant to take remedial measures as opposed to paying damages. • An example is a defendant-corporation (in an employment-discrimination suit) that agrees to undergo sensitivity training. — Often shortened to *therapeutics*.

religion. A system of faith and worship usu. involving belief in a supreme being and usu. containing a moral or ethical code; esp., such a system recognized and practiced by a particular church, sect, or denomination. • In construing the protections under the Establishment Clause and the Free Exercise Clause, courts have interpreted the term *religion* quite broadly to include a wide variety of theistic and nontheistic beliefs. [Cases: Religious Societies ⚷ 1.]

state religion. A religion promoted, taught, or enforced by a government's acts to the exclusion of other religions.

religion, freedom of. See FREEDOM OF RELIGION.

Religion Clause. In the Bill of Rights, the provision stating that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." U.S. Const. amend. I. • Some writers use the plural form, "Religion Clauses," to mean both the Establishment Clause and the Free Exercise Clause, thus emphasizing the asserted common purpose of the two provisions. [Cases: Constitutional Law ⚷ 1290–1428.]

religious-affinity fraud. See FRAUD.

religious corporation. See CORPORATION.

religious-exemption statute. See FAITH-HEALING EXEMPTION.

religious liberty. See LIBERTY.

Religious Test Clause. The clause of the U.S. Constitution that prohibits the use of a religious test as a qualification to serve in any office or public trust. U.S. Const. art. VI, par. 3, cl. 2. — Also termed *No Religious Test Clause*.

relinquishment, *n.* (15c) The abandonment of a right or thing. — **relinquish,** *vb.*

reliqua (**rel**-ə-kwə). [Latin] *Civil law.* The remainder of a debt after balancing or liquidating an account; money left unpaid.

relitigate, *vb.* (1826) To litigate (a case or matter) again or anew <relitigate the issue in federal court>. — **relitigation,** *n.*

relocatio (ree-loh-**kay**-shee-oh). [Latin] *Civil law.* The renewal of a lease; RECONDUCTION (1).

relocation. 1. Removal and establishment of someone or something in a new place. **2.** *Mining law.* Appropriation of a new tract of land for a mining claim, as by an owner who wishes to change the boundaries of the original tract or by a stranger who wishes to claim an abandoned or forfeited tract. [Cases: Mines and Minerals ⚷ 26.] **3.** *Civil law.* RECONDUCTION (1).

rem. See IN REM.

remainder. (15c) *Property.* **1.** A future interest arising in a third person — that is, someone other than the estate's creator, its initial holder, or the heirs of either — who is intended to take after the natural termination of the preceding estate. • For example, if a grant is "to A for life, and then to B," B's future interest is a remainder. If there is only one preceding estate and the remainder vests on that estate's expiration, the remainder is also termed an *executed estate*. — Also termed *remainder estate*; *estate in remainder*. Cf. EXECUTORY INTEREST; REVERSION; POSSIBILITY OF REVERTER. [Cases: Remainders ⚷ 1.]

> "Whether a remainder is vested or contingent depends upon the language employed. If the conditional element is incorporated into the description of, or the gift to the remainder-man, then the remainder is contingent; but if, after words giving a vested interest, a clause is added divesting it, the remainder is vested. Thus, on a devise to A. for life, remainder to his children, but if any child dies in the lifetime of A. his share to go to those who survive, the share of each child is vested, subject to be divested by his death. But on a devise to A. for life, remainder to such of his children as survive him, the remainder is contingent." John Chipman Gray, *The Rule Against Perpetuities* 66 (1886).

> "Under the names of 'remainders' and 'executory limitations,' various classes of interests in land could be created in expectancy, either at the Common Law or under the Statute of Uses. The differences between the two classes were highly technical; and the learning involved in acquiring a knowledge of the rules of determining them [is] quite out of proportion to the value obtained." Edward Jenks, *The Book of English Law* 263 (P.B. Fairest ed., 6th ed. 1967).

accelerated remainder. (1901) A remainder that has passed to the remainderman, as when the gift to the preceding beneficiary fails. [Cases: Remainders ⚷ 5.]

alternative remainder. (1830) A remainder in which the disposition of property is to take effect only if another disposition does not take effect.

charitable remainder. (1932) A remainder, usu. from a life estate, that is given to a charity; for example, "to Jane for life, and then to the American Red Cross. [Cases: Internal Revenue ⚷ 4172(3); Taxation ⚷ 3328.]

contingent remainder. (18c) A remainder that is either given to an unascertained person or made subject to a condition precedent. • An example is "to A for life, and then, if B has married before A dies, to B." — Also termed *executory remainder*; *remainder subject to a condition precedent*. [Cases: Remainders ⚷ 1, 4.]

> "Unlike a vested remainder, a contingent remainder is *either* subject to a condition precedent (in addition to the natural expiration of a prior estate), *or* owned by unascertainable persons, *or both*. But the contingent remainder, like the vested remainder, 'waits patiently' for possession. It is so created that it can become a present estate (if ever it does) immediately upon, and no sooner than, the natural expiration of particular estates that stand in front of it and were created simultaneously with it." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 73 (2d ed. 1984).

cross-remainder. (18c) A future interest that results when particular estates are given to two or more persons in different parcels of land, or in the same land in undivided shares, and the remainders of all the estates are made to vest in the survivor or survivors. • Two examples of devises giving rise to cross-remainders are (1) "to A and B for life, with the remainder to the survivor and her heirs," and (2) "Blackacre to A and Whiteacre to B, with the remainder of A's estate to B on A's failure of issue, and the remainder of B's estate to A on B's failure of issue." • If no tenants or issue survive, the remainder vests in a third party (sometimes known as the *ulterior remainderman*). Each tenant in common has a reciprocal, or *cross*, remainder in the share of the others. This type of remainder could not be created by deed unless expressly stated. It could, however, be implied in a will. [Cases: Remainders ⇨1.]

"By a will also an estate may pass by mere implication, without any express words to direct its course. . . . So also, where a devise of black-acre to A and of white-acre to B in tail, and if they both die without issue, then to C in fee: here A and B have *cross remainders* by implication, and on the failure of either's issue, the other or his issue shall take the whole; and C's remainder over shall be postponed till the issue of both shall fail." 2 William Blackstone, *Commentaries on the Laws of England* 381 (1766).

defeasible remainder. (18c) A vested remainder that will be destroyed if a condition subsequent occurs. • An example is "to A for life, and then to B, but if B ever sells liquor on the land, then to C." — Also termed *remainder subject to divestment*. [Cases: Remainders ⇨10.]

executed remainder. See *vested remainder.*

executory remainder. See *contingent remainder.*

indefeasible remainder. (1898) A vested remainder that is not subject to a condition subsequent; specif., a remainder in which the remainderman is certain to acquire a present interest sometime in the future and will be entitled to retain the interest permanently. — Also termed *indefeasibly vested remainder*; *remainder indefeasibly vested.*

remainder subject to a condition precedent. See *contingent remainder.*

remainder subject to divestment. See *defeasible remainder.*

remainder subject to open. (1838) A vested remainder that is given to a class of persons whose numbers may change over time and that is to be shared equally by each member of the class. • An example is "to A for life, and then equally to all of B's children." The class must have at least one member, but more can be added over time. — Also termed *remainder subject to partial divestment*; *remainder vested subject to open.*

vested remainder. (18c) A remainder that is given to an ascertained person and that is not subject to a condition precedent. • An example is "to A for life, and then to B." — Also termed *executed remainder.* [Cases: Remainders ⇨1.]

2. The property in a decedent's estate that is not otherwise specifically devised or bequeathed in a will. See *residuary estate* under ESTATE (3). [Cases: Wills ⇨586.]

remainder bequest. See *residuary bequest* under BEQUEST.

remainderer. See REMAINDERMAN.

remainder estate. See REMAINDER (1).

remainder indefeasibly vested. See *indefeasible remainder* under REMAINDER.

remainder interest. (1815) The property that passes to a beneficiary after the expiration of an intervening income interest. • For example, if a grantor places real estate in trust with income to A for life and remainder to B upon A's death, then B has a remainder interest.

remainderman. (18c) A person who holds or is entitled to receive a remainder. — Also termed *remainderer*; *remainderperson*; *remainor.* [Cases: Remainders ⇨1.]

ulterior remainderman. A third party whose future interest in a property vests only if all the preceding reciprocal interests expire. See *cross-remainder* under REMAINDER.

remainder subject to partial divestment. See *remainder subject to open* under REMAINDER.

remainder vested subject to open. See *remainder subject to open* under REMAINDER.

remainor, *n.* See REMAINDERMAN.

remake rights. *Copyright.* The rights to produce one or more additional movies or screenplays based on what is substantially the same story as is contained in the original movie or screenplay for which the rights have been granted. [Cases: Copyrights and Intellectual Property ⇨38.]

remancipate, *vb.* To mancipate (a thing or person) again.

remand (ri-**mand** *also* **ree**-mand), *n.* (18c) **1.** The act or an instance of sending something (such as a case, claim, or person) back for further action. **2.** An order remanding a case, claim, or person.

fourth-sentence remand. In a claim for social-security benefits, a court's decision affirming, reversing, or modifying the decision of the Commissioner of Social Security. • This type of remand is called a fourth-sentence remand because it is based on the fourth sentence of 42 USCA § 405(g): "The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." *See Melkonyan v. Sullivan*, 501 U.S. 89, 111 S.Ct. 2157 (1991). [Cases: Social Security and Public Welfare ⇨149.]

sixth-sentence remand. In a claim for social-security benefits, a court's decision that the claim should be reheard by the Commissioner of Social Security

because new evidence is available, which was not available before, that might change the outcome of the proceeding. • This type of remand is called a sixth-sentence remand because it is based on the sixth sentence of 42 USCA § 405(g): "The court may, on motion of the Commissioner of Social Security made for good cause shown before the Commissioner files the Commissioner's answer, remand the case to the Commissioner of Social Security for further action by the Commissioner of Social Security, and it may at any time order additional evidence to be taken before the Commissioner of Social Security, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding . . . ." *See Melkonyan v. Sullivan*, 501 U.S. 89, 111 S.Ct. 2157 (1991). [Cases: Social Security and Public Welfare ⚷149.]

remand (ri-**mand**), *vb.* (15c) **1.** To send (a case or claim) back to the court or tribunal from which it came for some further action <the appellate court reversed the trial court's opinion and remanded the case for new trial>. Cf. REMOVAL (2). [Cases: Administrative Law and Procedure ⚷817; Appeal and Error ⚷1106, 1178, 1186; Criminal Law ⚷1181.5; Federal Courts ⚷937, 943; Removal of Cases ⚷107(8).] **2.** To recommit (an accused person) to custody after a preliminary examination <the magistrate, after denying bail, remanded the defendant to custody>.

remanentia (rem-ə-**nen**-shee-ə). [Law Latin] *Hist.* A remainder or perpetuity.

remanent pro defectu emptorum (**rem**-ə-nənt proh di-**fek**-t[y]oo emp-**tor**-əm). [Latin] *Hist.* Remains unsold for want of buyers. • This language was used in a return of a writ of execution when the sheriff could not sell the seized property. [Cases: Execution ⚷334.]

remanet (**rem**-ə-net). (16c) **1.** A case or proceeding whose hearing has been postponed. **2.** A remainder or remnant.

remargining, *n. Securities.* The act or process of depositing additional cash or collateral with a broker when the equity in a margin account falls to an insufficient level. See *margin account* under ACCOUNT. — **remargin,** *vb.*

remarry, *vb.* To marry a second or later time, after a divorce or the death of one's spouse. [Cases: Divorce ⚷319.]

remediable, *adj.* (15c) Capable of being remedied, esp. by law <remediable wrongs>. — **remediability,** *n.*

remedial, *adj.* (17c) **1.** Affording or providing a remedy; providing the means of obtaining redress <a remedial action>. **2.** Intended to correct, remove, or lessen a wrong, fault, or defect <a remedial statute>. **3.** Of or relating to a means of enforcing an existing substantive right <a remedial right>.

remedial action. 1. *Environmental law.* An action intended to bring about or restore long-term environmental quality; esp., under CERCLA, a measure intended to permanently alleviate pollution when a hazardous substance has been released or might be released into the environment, so as to prevent or minimize any further release of hazardous substances and thereby minimize the risk to public health or to the environment. 42 USCA § 9601(24); 40 CFR § 300.6. — Also termed *remedy.* See CERCLA. Cf. REMOVAL ACTION. [Cases: Environmental Law ⚷439.] **2.** See *personal action* (1) under ACTION (4).

remedial enforcement. See *secondary right* under RIGHT.

remedial law. (17c) **1.** A law providing a means to enforce rights or redress injuries. **2.** A law that corrects or modifies an existing law; esp., a law providing a new or different remedy when the existing remedy, if any, is inadequate. [Cases: Statutes ⚷236.]

remedial liability. See LIABILITY.

remedial promise. See PROMISE.

remedial right. See RIGHT.

remedial statute. See STATUTE.

remedial trust. See *constructive trust* under TRUST.

remediation. *Environmental law.* The restoration of polluted land, water, or air to its former state, or as nearly so as is practical. [Cases: Environmental Law ⚷366, 439.]

remedies, *n.* The field of law dealing with the means of enforcing rights and redressing wrongs.

remediis praetoriis (ri-**mee**-dee-is pri-**tor**-ee-is). [Latin] *Hist.* By praetorian remedies.

remedium extraordinarium (ri-**mee**-dee-əm ek-stror-di-**nair**-ee-əm *or* ek-strə-or-). [Latin] *Hist.* An extraordinary remedy.

remedy, *n.* (13c) **1.** The means of enforcing a right or preventing or redressing a wrong; legal or equitable relief. — Also termed *civil remedy.* **2.** REMEDIAL ACTION. Cf. RELIEF. — Also termed (in both senses) *law of remedy.* — **remedy,** *vb.*

> "A remedy is anything a court can do for a litigant who has been wronged or is about to be wronged. The two most common remedies are judgments that plaintiffs are entitled to collect sums of money from defendants and orders to defendants to refrain from their wrongful conduct or to undo its consequences. The court decides whether the litigant has been wronged under the substantive law; it conducts its inquiry in accordance with the procedural law. The law of remedies falls somewhere between substance and procedure, distinct from both but overlapping with both." Douglas Laycock, *Modern American Remedies* 1 (3d ed. 2002).

adequate remedy at law. (18c) A legal remedy (such as an award of damages) that provides sufficient relief to the petitioning party, thus preventing the party from obtaining equitable relief. See IRREPARABLE INJURY RULE. [Cases: Equity ⚷45; Specific Performance ⚷5.]

administrative remedy. (1880) A nonjudicial remedy provided by an administrative agency. • Ordinarily, if an administrative remedy is available, it must

be exhausted before a court will hear the case. See EXHAUSTION OF REMEDIES. [Cases: Administrative Law and Procedure ☞229.]

civil remedy. See REMEDY (1).

concurrent remedy. (18c) One of two or more legal or equitable actions available to redress a wrong.

cumulative remedy. (18c) A remedy available to a party in addition to another remedy that still remains in force.

equitable remedy. (18c) A remedy, usu. a nonmonetary one such as an injunction or specific performance, obtained when available legal remedies, usu. monetary damages, cannot adequately redress the injury. • Historically, an equitable remedy was available only from a court of equity. — Also termed *equitable relief.* See IRREPARABLE-INJURY RULE. [Cases: Injunction ☞15, 138.9; Specific Performance ☞1.]

extrajudicial remedy. A remedy not obtained from a court, such as repossession. — Also termed *self-help remedy.*

extraordinary remedy. (16c) A remedy — such as a writ of mandamus or habeas corpus — not available to a party unless necessary to preserve a right that cannot be protected by a standard legal or equitable remedy. • Because there is no agreed list of extraordinary remedies, some standard remedies — such as preliminary and permanent injunctions — are sometimes described as extraordinary. [Cases: Injunction ☞1, 132; Mandamus ☞3(1)–3(2.1).]

judicial remedy. (18c) A remedy granted by a court.

legal remedy. (17c) A remedy historically available in a court of law, as distinguished from a remedy historically available only in equity. • After the merger of law and equity, this distinction remained relevant in some ways, such as in determining the right to jury trial and the choice between alternate remedies. [Cases: Action ☞21.]

provisional remedy. (18c) A temporary remedy awarded before judgment and pending the action's disposition, such as a temporary restraining order, a preliminary injunction, a prejudgment receivership, or an attachment. • Such a remedy is intended to maintain the status quo by protecting a person's safety or preserving property. [Cases: Attachment ☞1; Injunction ☞132, 138.3, 150.]

remedy over. (18c) A remedy that arises from a right of indemnification or subrogation. • For example, if a city is liable for injuries caused by a defect in a street, the city has a "remedy over" against the person whose act or negligence caused the defect. [Cases: Indemnity ☞20, 91; Subrogation ☞1.]

self-help remedy. See *extrajudicial remedy.*

specific remedy. (18c) A remedy whereby the injured party is awarded the very performance that was contractually promised or whereby the injury threatened or caused by a tort is prevented or repaired. • A court awards a specific remedy by ordering a defaulting seller of goods to deliver the specified goods to the buyer (as opposed to paying damages). [Cases: Specific Performance ☞126.]

speedy remedy. (18c) A remedy that, under the circumstances, can be pursued expeditiously before the aggrieved party has incurred substantial detriment. • "Speedy remedy" is an informal expression with no fixed meaning — that is, what is considered speedy in one context may not be considered speedy in other contexts. For example, the Federal Tax Injunction Act requires a "plain, speedy, and efficient remedy" in state courts. But the Act does not require preliminary or injunctive relief — or even interest for delay.

> "'Speedy' is perforce a relative concept, and we must assess the 2-year delay against the usual time for similar litigation." *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 518 (1981).

substitutional remedy. (1987) A remedy intended to give the promisee something as a replacement for the promised performance or to give the plaintiff something in lieu of preventing or repairing an injury. • A court awards a substitutional remedy by ordering a defaulting seller of goods to pay the buyer damages (as opposed to delivering the promised goods). — Also termed *substitutionary remedy.* [Cases: Contracts ☞324(1).]

> "With substitutionary remedies, plaintiff suffers harm and receives a sum of money. Specific remedies seek to avoid this exchange. They seek to prevent harm, or undo it, rather than let it happen and compensate for it. . . . [Money damages] are substitutionary both in the sense that the sum of money is substituted for plaintiff's original entitlement, and in the less obvious sense that the fact finder's valuation of the loss is substituted for plaintiff's valuation. Specific relief seeks to avoid both these substitutions, giving plaintiff the very thing he lost if that is what he wants." Douglas Laycock, *The Death of the Irreparable Injury Rule* 13 (1991).

remedy, mutuality of. See MUTUALITY OF REMEDY.

réméré (ray-may-**ray**), *n.* [French] The right of repurchase.

REMIC (**rem**-ik *or* **ree**-mik). *abbr.* REAL-ESTATE-MORTGAGE INVESTMENT CONDUIT.

remise (ri-**mīz**), *vb.* (15c) To give up, surrender, or release (a right, interest, etc.) <the quitclaim deed provides that the grantor remises any rights in the property>.

remissio injuriae (ri-**mis**[**h**]-ee-oh in-**joor**-ee-ee). [Latin] *Hist.* Forgiveness of the offense.

remission. (13c) **1.** A cancellation or extinguishment of all or part of a financial obligation; a release of a debt or claim. [Cases: Release ☞1.]

conventional remission. *Civil law.* A remission expressly granted to a debtor by a creditor having capacity to alienate. La. Civ. Code art. 1840.

tacit remission. *Civil law.* A remission arising by operation of law, as when a creditor surrenders an original title to the debtor. La. Civ. Code art. 1888.

2. A pardon granted for an offense. **3.** Relief from a forfeiture or penalty. [Cases: Controlled Substances ☞

189; Forfeitures ⚷9; Penalties ⚷11.] **4.** A diminution or abatement of the symptoms of a disease.

remit, *vb.* (14c) **1.** To pardon or forgive <the wife could not remit her husband's infidelity>. **2.** To abate or slacken; to mitigate <the receipt of money damages remitted the embarrassment of being fired>. **3.** To refer (a matter for decision) to some authority, esp. to send back (a case) to a lower court <the appellate court remitted the case to the trial court for further factual determinations>. See REMAND. [Cases: Administrative Law and Procedure ⚷817; Appeal and Error ⚷1106, 1178; Criminal Law ⚷1181.5; Federal Courts ⚷943.1.] **4.** To send or put back to a previous condition or position <a landlord's breach of a lease does not justify the tenant's refusal to pay rent; instead, the tenant is remitted to the right to recover damages>. **5.** To transmit (as money) <upon receiving the demand letter, she promptly remitted the amount due>. — **remissible** (for senses 1–4), *adj.* — **remittable** (for sense 5), *adj.*

remittance. (18c) **1.** A sum of money sent to another as payment for goods or services. **2.** An instrument (such as a check) used for sending money. **3.** The action or process of sending money to another person or place.

remittance advice. See ADVICE.

remittee. (18c) One to whom payment is sent.

remitter. (16c) **1.** The principle by which a person having two titles to an estate, and entering on it by the later or more defective title, is deemed to hold the estate by the earlier or more valid title. **2.** The act of sending back a case to a lower court. **3.** One who sends payment to someone else. — Also spelled (in sense 3) *remittor.*

remitting bank. See BANK.

remittit damna (ri-**mit**-it **dam**-nə). [Latin] *Hist.* An entry on the record by which a plaintiff declares that he or she remits part of the damages that have been awarded. — Also termed *remittitur damna*; *remittitur damnum.*

remittitur (ri-**mit**-i-tər). (18c) **1.** An order awarding a new trial, or a damages amount lower than that awarded by the jury, and requiring the plaintiff to choose between those alternatives <the defendant sought a remittitur of the $100 million judgment>. **2.** The process by which a court requires either that the case be retried, or that the damages awarded by the jury be reduced. Cf. ADDITUR. [Cases: Federal Civil Procedure ⚷2377; Federal Courts ⚷945; New Trial ⚷162.]

remittitur damna. See REMITTIT DAMNA.

remittitur damnum. See REMITTIT DAMNA.

remittitur of record. (1848) The action of sending the transcript of a case back from an appellate court to a trial court; the notice for doing so.

remittor. See REMITTER (3).

remnants and surpluses. *Maritime law.* The proceeds remaining from the sale of a ship after claims for seamen's wages, bottomry bonds, salvage services, and supplies have been paid. [Cases: Admiralty ⚷101.]

remonetization, *n.* The restoration of a precious metal (such as gold or silver) to its former use as legal tender. — **remonetize,** *vb.*

remonstrance (ri-**mon**-strənts), *n.* (16c) **1.** A presentation of reasons for opposition or grievance. **2.** A formal document stating reasons for opposition or grievance. **3.** A formal protest against governmental policy, actions, or officials. — **remonstrate** (ri-**mon**-strayt), *vb.*

remote, *adj.* (15c) **1.** Far removed or separated in time, space, or relation. **2.** Slight. **3.** *Property.* Beyond the 21 years after some life in being by which a devise must vest. See RULE AGAINST PERPETUITIES. [Cases: Perpetuities ⚷4(3).]

remote cause. See CAUSE (1).

remote damages. See *speculative damages* (1) under DAMAGES.

remoteness of consequence. *Torts.* The lack of proximate causation with respect to an alleged act by a defendant. • Even if the plaintiff proves every other element for tortious liability, the defendant will not be liable if the harm suffered by the plaintiff is too far removed from the defendant's conduct. — Also termed *remoteness of damage.*

remote possibility. See POSSIBILITY.

remotis testibus (ri-**moh**-tis **tes**-ti-bəs). [Latin] *Hist.* The witnesses being absent.

removal, *n.* (16c) **1.** The transfer or moving of a person or thing from one location, position, or residence to another. **2.** The transfer of an action from state to federal court. • In removing a case to federal court, a litigant must timely file the removal papers and must show a valid basis for federal-court jurisdiction. 28 USCA § 1441. Cf. REMAND (1). [Cases: Removal of Cases ⚷16.] — **remove,** *vb.*

civil-rights removal. (1964) Removal of a case from state to federal court because a person: (1) has been denied or cannot enforce a civil right in the state court, (2) is being sued for performing an act under color of authority derived from a law providing for equal rights, or (3) is being sued for refusing to perform an act that would be inconsistent with equal rights. [Cases: Removal of Cases ⚷70.]

removal action. *Environmental law.* An action, esp. under CERCLA, intended to bring about the short-term abatement and cleanup of pollution (as by removing and disposing of toxic materials). See CERCLA. Cf. REMEDIAL ACTION. [Cases: Environmental Law ⚷439, 441.]

removal bond. See BOND (2).

rem pupilli salvam fore (rem pyoo-**pil**-i **sal**-vəm **for**-ee). [Latin] *Roman law.* The guarantee required of a guardian that the estate of the person under puberty will be safe.

REMT. *abbr.* REAL-ESTATE MORTGAGE TRUST.

remuneration (ri-myoo-nə-**ray**-shən), *n.* (15c) **1.** Payment; compensation. **2.** The act of paying or

compensating. — **remunerative,** *adj.* — **remunerate,** *vb.*

remunerative donation. See DONATION.

rencounter (ren-**kown**-tər). (16c) A hostile meeting or contest; a battle or combat. — Also spelled *rencontre* (ren-**kon**-tər).

render, *n.* (14c) *Hist.* **1.** A payment in money, goods, or services made by a feudal tenant to the landlord. **2.** A return conveyance made by the grantee to the grantor in a fine. See FINE (1).

render, *vb.* **1.** To transmit or deliver <render payment>. **2.** (Of a judge) to deliver formally <render a judgment>. **3.** (Of a jury) to agree on and report formally <render a verdict>. **4.** To pay as due <render an account>.

rendezvous, *n.* **1.** A place designated for meeting or assembly, esp. of troops or ships. **2.** The meeting or assembly itself.

rendition, *n.* (17c) **1.** The action of making, delivering, or giving out, such as a legal decision. **2.** The return of a fugitive from one state to the state where the fugitive is accused or was convicted of a crime. — Also termed (in sense 2) *interstate rendition.* Cf. EXTRADITION. [Cases: Extradition and Detainers ⚷6, 30.]

erroneous rendition. See EXTRAORDINARY RENDITION.

extraordinary rendition. The transfer, without formal charges, trial, or court approval, of a person suspected of being a terrorist or supporter of a terrorist group to a foreign nation for imprisonment and interrogation on behalf of the transferring nation. • When an innocent person is subjected to extraordinary rendition, it is also termed *erroneous extradition.* When a transfer is made to a nation notorious for human-rights violations, it may be colloquially termed *torture by proxy* or *torture flight.*

rendition of judgment. (18c) The judge's oral or written ruling containing the judgment entered. Cf. ENTRY OF JUDGMENT. [Cases: Federal Civil Procedure ⚷2621; Judgment ⚷215.]

rendition warrant. See WARRANT (1).

renege (ri-**nig** *or* ri-**neg**), *vb.* (16c) To fail to keep a promise or commitment; to back out of a deal.

renegotiable-rate mortgage. See MORTGAGE.

renegotiation, *n.* (1934) **1.** The act or process of negotiating again or on different terms; a second or further negotiation. **2.** The reexamination and adjustment of a government contract to eliminate or recover excess profits by the contractor. [Cases: United States ⚷70(35).] — **renegotiate,** *vb.*

renewable term insurance. See INSURANCE.

renewal, *n.* (17c) **1.** The act of restoring or reestablishing. **2.** *Parliamentary law.* The introduction or consideration of a question already disposed of. — Also termed *renewal of a motion.* See *restorative motion* under MOTION (2). Cf. RECONSIDER. **3.** The re-creation of a legal relationship or the replacement of an old contract with a new contract, as opposed to the mere extension of a previous relationship or contract. Cf. EXTENSION (1); REVIVAL (1). [Cases: Contracts ⚷217.] — **renew,** *vb.*

renewal note. See NOTE (1).

renewal of a motion. See RENEWAL (2).

renounce, *vb.* (14c) **1.** To give up or abandon formally (a right or interest); to disclaim <renounce an inheritance>. [Cases: Descent and Distribution ⚷72; Wills ⚷717.] **2.** To refuse to follow or obey; to decline to recognize or observe <renounce one's allegiance>.

renovare (ren-ə-**vair**-ee), *vb.* [Latin] *Hist.* To renew.

renovatio (ren-ə-**vay**-shee-oh). [Latin] *Hist.* A renewal (as of a lease).

rent, *n.* (13c) **1.** Consideration paid, usu. periodically, for the use or occupancy of property (esp. real property). [Cases: Landlord and Tenant ⚷181.]

ceiling rent. The maximum rent that can be charged under a rent-control regulation. [Cases: Landlord and Tenant ⚷200.46.]

crop rent. The portion of a harvest given by a sharecropper to a landlord as rent. • Specific crop names, such as *grain rent* and *potato rent,* are commonly used. [Cases: Landlord and Tenant ⚷215.]

double rent. Twice the amount of rent agreed to; specif., a penalty of twice the amount of rent against a tenant who holds possession of the leased property after the date provided in the tenant's notice to quit. • The penalty was provided by the Distress for Rent Act, 1737, 11 Geo. 2., ch. 19, § 13. [Cases: Landlord and Tenant ⚷216.]

dry rent. **1.** Rent reserved without a distress clause allowing the rent to be collected by distress; rent that can be collected only by an ordinary legal action. — Formerly also termed *rent seck.* **2.** See *rent seck* under RENT (2).

economic rent. See ECONOMIC RENT.

grain rent. See *crop rent.*

ground rent. **1.** Rent paid by a tenant under a long-term lease for the use of undeveloped land, usu. for the construction of a commercial building. — Also termed *redeemable ground rent.* See *ground lease* under LEASE. **2.** A heritable interest, in rental income from land, reserved by a grantor who conveys the land in fee simple. • This type of ground rent is found primarily in Maryland and Pennsylvania. — Also termed (in Scots law) *irredeemable ground rent; ground annual.* [Cases: Estates in Property ⚷13.]

guild rent. *Hist.* Rent payable to the Crown by a guild. — Also spelled *gild-rent.*

irredeemable ground rent. See *ground rent* (2).

net rent. The rental price for property after payment of expenses, such as repairs, utilities, and taxes. [Cases: Landlord and Tenant ⚷201, 210.]

rack-rent. See RACK-RENT.

redeemable ground rent. See *ground rent* (1).

2. *Hist.* A compensation or return made periodically by a tenant or occupant for the possession and use of lands or corporeal hereditaments; money, chattels, or services issuing usu. annually out of lands and tenements as payment for use.

peppercorn rent. A nominal rent that is far below the market rate. • The rent may be a mere token payment. Historically in English law, some lease agreements called for a token annual rent payment of a single dried berry of black pepper. See PEPPERCORN.

quit rent. See QUIT RENT.

rent charge. The right to receive an annual sum from the income of land, usu. in perpetuity, and to retake possession if the payments are in arrears. — Also spelled *rent-charge*; *rentcharge*. — Also termed *fee-farm rent*.

"Rent-charge is a rent with liberty to distrain. As when a man seised of land granteth by a deed poll, or by indenture, a yearly rent going out of the same land to another in fee or fee-tail, or for a term of life, etc. with clause of distress, or maketh a feoffment in fee by indenture, reserving to himself a certain yearly rent, with clause of distress." Sir Henry Finch, *Law, or a Discourse Thereof* 155 (1759).

"A rentcharge is an annual or periodic payment charged upon, and payable by the owner of, land. Unlike a rent service, in the case of a rentcharge there is no tenure or privity of estate between the parties. The owner of a rentcharge has no tenurial relationship with the land upon which it is charged. A rentcharge is a species of incorporeal property, but, unlike an easement, is incorporeal property in gross, being enjoyed by the owner personally and not in the capacity of proprietor of land." Peter Butt, *Land Law* 330 (2d ed. 1988).

rent seck. *Hist.* A rent reserved by deed but without any clause of distress. — Also spelled *rent-seck*; *rent-sec*. — Also termed *dry rent*. Pl. **rents seck.**

"But rents-seck have long ceased to exist, because the inability of their owners to distrain was abolished by the Landlord and Tenant Act, 1730 (4 George II), which enacted that the owners of rents-seck, rents of assize and chief rents should have the same remedy by distress as existed in the case of rent reserved upon lease." G.C. Cheshire, *Modern Law of Real Property* 199 (3d ed. 1933).

"At common law, the relationship of lord and tenant carried with it an automatic right of distress for any rent. If no such relationship existed, there was no common law right of distress, and consequently an express clause of distress was frequently inserted when reserving the rent. A rent supported by no right of distress was known as a rent seck (from the Latin *siccus*, dry, barren) . . . . Rent seck ceased to exist many years ago, for by the Landlord and Tenant Act 1730, the owners of rents seck were given the same rights of distress as a landlord has against his tenant under a lease, namely, a right to distrain as soon as the rent is in arrear." Robert E. Megarry & P.V. Baker, *A Manual of the Law of Real Property* 409 (4th ed. 1969).

rent service. A rent with some corporeal service incident to it (as by fealty) and with a right of distress. — Also written *rent-service*.

"[R]ent-service exists only where the relation of landlord and tenant is found, and in such a case rent derives its name from the fact that it was given as a substitute for the services to which the land was originally liable." G.C. Cheshire, *Modern Law of Real Property* 198 (3d ed. 1933).

3. *Civil law.* A contract by which one party conveys to another party a tract of land or other immovable property, to be held by the other party as owner and in perpetuity, in exchange for payment of an annual sum of money or quantity of fruits. • Under Louisiana law, the rent is essentially redeemable even though stipulated to be perpetual. The seller may set the terms of the redemption, which must take place after a stipulated time (not to exceed 30 years) La. Civ. Code art. 2788. See FRUIT (2). — Also termed *rent of lands*. [Cases: Landlord and Tenant ☞181.] 4. The difference between the actual return from a commodity or service and the cost of supplying it; the difference between revenue and opportunity cost. — **rent,** *vb.*

rentage. (17c) Rent or rental.

rent-a-judging. See PRIVATE JUDGING.

rental, *n.* (14c) 1. The amount received as rent.

crescendo rental. A rent payment that gradually increases at fixed periods during the lease term.

delay rental. *Oil & gas.* A periodic payment made by an oil-and-gas lessee to postpone exploration during the primary lease term. See DRILLING-DELAY RENTAL CLAUSE; *"or" lease, "unless" lease* under LEASE; PAID-UP LEASE. [Cases: Mines and Minerals ☞78.1(3).]

net rental. The amount remaining after deducting all expenses from the gross rental income.

2. The income received from rent. 3. A record of payments received from rent. — **rental,** *adj.*

rent, *vb.* 1. To pay for the use of another's property. [Cases: Landlord and Tenant ☞181.] 2. *Hist. Slang.* EXTORT (2).

Rental and Related Rights Directive. See DIRECTIVE ON RENTAL, LENDING AND CERTAIN NEIGHBORING RIGHTS.

Rental Directive. See DIRECTIVE ON RENTAL, LENDING AND CERTAIN NEIGHBORING RIGHTS.

rental division order. *Oil & gas.* A stipulation signed by those entitled to delay rentals, stating what interest each owns and how much rental each is to receive. [Cases: Mines and Minerals ☞79.1(3).]

rental right. *Copyright.* The power of a copyright owner to control the use of copies of the work beyond the first sale, when that use involves offering the copy to the public for temporary use for a fee (as at a store renting DVDs and videotapes) or some other commercial advantage (as at a hotel offering the loan of DVDs or videotapes). • Rental rights are recognized among members of the European Commission and under TRIPs. The right also applies to the rental of computer software. [Cases: Copyrights and Intellectual Property ☞38.5.]

rentcharge. The right to receive an annual sum from the income of land, usu. in perpetuity, and to retake possession if the payments are in arrears. — Also spelled *rent-charge*; *rent charge*. — Also termed *fee-farm rent*.

"Rent-charge is a rent with liberty to distrain. As when a man seised of land granteth by a deed poll, or by indenture,

a yearly rent going out of the same land to another in fee or fee-tail, or for a term of life, etc. with clause of distress, or maketh a feoffment in fee by indenture, reserving to himself a certain yearly rent, with clause of distress." Sir Henry Finch, *Law, or a Discourse Thereof* 155 (1759).

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ecclesiastical-tithe rentcharge. *Hist. English law.* A rentcharge attached to a benefice or ecclesiastical corporation. • Under the Tithe Act 1925, a landowner liable for an ecclesiastical-tithe rentcharge could redeem the land and discharge the tithe obligation by making an annual sinking-fund payment to Queen Anne's Bounty. The tithe was due for 81.5 years if the rentcharge was attached to a corporation or 85 years if the rentcharge was attached to a benefice. The law was repealed in 1998. See QUEEN ANNE'S BOUNTY; BENEFICE.

rent control. (1931) A restriction imposed, usu. by municipal legislation, on the maximum rent that a landlord may charge for rental property, and often on a landlord's power of eviction. [Cases: Landlord and Tenant ☞200.10–200.83, 278.1.]

rente (rawnt), *n.* [French "income, rent"] *French law.* **1.** Annual income or rent.

rente foncière (fawn-**syair**) [French "ground rent"] A rent that is payable for the use of land and is perpetual.

rente viagère (vee-ah-**zhair**). [French "life rent"] A rent charge or annuity that is payable for life; a life interest or annuity.

2. (*usu. pl.*) Interest paid annually by the French government on the public debt; a government stock, bond, or annuity.

rentee. *Rare.* A tenant.

rente foncière. See RENTE.

rente viagère. See RENTE.

rentier (rawn-**tyay**). [French] **1.** A person who owns or holds *rentes*. See RENTE. **2.** A person who makes or lives off an income from property or investment; a stockholder or annuitant.

rent of lands. See RENT (3).

rent seck. See RENT (2).

rent-seeking, *n.* Economic behavior motivated by an incentive to overproduce goods that will yield a return greater than the cost of production. • The term is often used in the field of law and economics. See RENT (4).

rent service. See RENT (2).

rents, issues, and profits. (17c) The total income or profit arising from the ownership or possession of property.

rent strike. (1964) A refusal by a group of tenants to pay rent until grievances with the landlord are heard or settled.

renunciation (ri-nən-see-**ay**-shən), *n.* (14c) **1.** The express or tacit abandonment of a right without transferring it to another. **2.** *Wills & estates.* The act of waiving a right under a will. • At one time, one *renounced* an inheritance by intestacy and *disclaimed* a gift by will. Today *disclaim* is common in both situations. — Also termed (in sense 2) *disclaimer.* See RIGHT OF ELECTION. Cf. DISCLAIMER. [Cases: Descent and Distribution ☞72; Wills ☞717.] **3.** *Criminal law.* Complete and voluntary abandonment of criminal purpose — sometimes coupled with an attempt to thwart the activity's success — before a crime is committed. • Renunciation can be an affirmative defense to attempt, conspiracy, and the like. Model Penal Code § 5.01(4). — Also termed *withdrawal*; *abandonment.* [Cases: Conspiracy ☞40.4.] **4.** See *anticipatory repudiation* under REPUDIATION. — **renunciative, renunciatory,** *adj.* — **renounce,** *vb.*

renvoi (ren-**voy**), *n.* [French "sending back"] **1.** The doctrine under which a court in resorting to foreign law adopts as well the foreign law's conflict-of-laws principles, which may in turn refer the court back to the law of the forum. [Cases: Action ☞17.] **2.** The problem arising when one state's rule on conflict of laws refers a case to the law of another state, and that second state's conflict-of-law rule refers the case either back to the law of the first state or to a third state. See CONFLICT OF LAWS. **3.** RECONDUCTION (2).

REO. *abbr.* REAL ESTATE OWNED.

reo absente (**ree**-oh ab-**sten**-tee). [Latin] The defendant being absent; the absence of the defendant.

reopen. (Of a court) to review (an otherwise final and nonappealable judgment) for the purpose of possibly granting or modifying relief. • A court will reopen a judgment or case only in highly unusual circumstances. *See* Fed. R. Civ. P. 60. [Cases: Federal Civil Procedure ☞2641; Judgment ☞336.]

reo praesente (**ree**-oh pri-**zen**-tee). [Latin] *Hist.* The defendant being present; the presence of the defendant.

reorganization, *n.* **1.** *Bankruptcy.* A financial restructuring of a corporation, esp. in the repayment of debts, under a plan created by a trustee and approved by a court. See CHAPTER 11. [Cases: Bankruptcy ☞3501.]

haircut reorganization. A restructuring that reduces the principal amount of indebtedness owed to creditors. • The more common usage is simply *haircut* <we took a haircut on that deal>.

2. *Tax.* A restructuring of a corporation, as by a merger or recapitalization, in order to improve its tax treatment under the Internal Revenue Code. • The Code classifies the various types of reorganizations with different letters. IRC (26 USCA) § 368(a)(1). Cf. RECAPITALIZATION.

A reorganization. A reorganization involving a merger or consolidation under a specific state statute. [Cases: Internal Revenue ⚷3668.]

B reorganization. A reorganization in which one corporation exchanges its voting shares for another corporation's voting shares. [Cases: Internal Revenue ⚷3669.]

C reorganization. A reorganization in which one corporation exchanges its voting shares for substantially all the assets of another corporation. [Cases: Internal Revenue ⚷3670.]

D reorganization. A reorganization in which the corporation transfers some or all of its assets to another corporation that is controlled by the transferor or its shareholders, and then the stock of the transferee corporation is distributed. [Cases: Internal Revenue ⚷3670.]

E reorganization. A reorganization involving a recapitalization. [Cases: Internal Revenue ⚷3671.]

F reorganization. A reorganization involving a mere change in a corporation's identity, form, or place of organization. [Cases: Internal Revenue ⚷3672.]

G reorganization. A reorganization involving a transfer of all or part of the corporation's assets to another corporation in a bankruptcy or similar proceeding. [Cases: Internal Revenue ⚷3673.]

reorganization bond. See *adjustment bond* under BOND (3).

reorganization plan. *Bankruptcy.* A plan of restructuring submitted by a corporation for approval by the court in a Chapter 11 case. See CHAPTER 11. [Cases: Bankruptcy ⚷3531–3570.]

rep. *abbr.* **1.** REPORT. **2.** REPORTER. **3.** REPRESENTATIVE. **4.** REPUBLIC.

repair-and-replace provision. A contractual clause providing that a product's defect will be remedied by repairing or replacing the defective part or product. [Cases: Sales ⚷286, 418(6).]

repair doctrine. *Patents.* The rule that a licensee who is authorized to produce, use, or distribute a patented device also has the right to repair and replace unpatented components. — Also termed *permissible-repair doctrine.* Cf. RECONSTRUCTION. [Cases: Patents ⚷255.]

reparable injury. See INJURY.

reparation (rep-ə-**ray**-shən). (14c) **1.** The act of making amends for a wrong. **2.** (*usu. pl.*) Compensation for an injury or wrong, esp. for wartime damages or breach of an international obligation.

reparatione facienda. See DE REPARATIONE FACIENDA.

reparative injunction. See INJUNCTION.

reparole. (1916) A second release from prison on parole, served under the same sentence for which the parolee served the first term of parole. [Cases: Pardon and Parole ⚷72.1.]

repeal, *n.* (16c) RESCIND (3); esp., abrogation of an existing law by legislative act. [Cases: Statutes ⚷149–170, 232.] — **repeal,** *vb.*

express repeal. (17c) Repeal by specific declaration in a new statute or main motion. [Cases: Statutes ⚷151.]

implied repeal. (18c) Repeal by irreconcilable conflict between an old law or main motion and a more recent law or motion. — Also termed *repeal by implication.* [Cases: Statutes ⚷159.]

repeal by implication. See *implied repeal.*

repealer. 1. A legislative act abrogating an earlier law. — Also termed *repealing act.* [Cases: Statutes ⚷149–170, 232.] **2.** One who repeals.

repealing clause. (17c) A statutory provision that repeals an earlier statute.

repealing statute. See STATUTE.

repeater. See RECIDIVIST.

repeat offender. See OFFENDER.

repetition. *Civil law.* A demand or action for restitution or repayment. See SOLUTIO INDEBITI.

repetitum namium (ri-**pet**-ə-təm **nay**-mee-əm). [Law Latin] *Hist.* A second, repeated, or reciprocal distress; WITHERNAM.

repetundae (rep-ə-**tən**-dee). [Latin "things or money claimed back"] *Roman law.* See RES REPETUNDAE.

replacement cost. See COST (1).

replacement-cost depreciation method. See DEPRECIATION METHOD.

replacement insurance. See INSURANCE.

replead, *vb.* (16c) **1.** To plead again or anew; to file a new pleading, esp. to correct a defect in an earlier pleading. [Cases: Federal Civil Procedure ⚷1838; Pretrial Procedure ⚷695.] **2.** To make a repleader.

repleader (ree-**plee**-dər). (17c) *Common-law pleading.* A court order or judgment — issued on the motion of a party who suffered an adverse judgment — requiring the parties to file new pleadings because of some defect in the original pleadings. — Also termed *judgment of repleader.* See MOTION FOR REPLEADER.[Cases: Pleading ⚷286.]

replegiare (ri-plee-jee-**air**-ee), *vb.* [Law Latin] *Hist.* To take back on pledge or surety; to replevy.

repleviable (ri-**plev**-ee-ə-bəl), *adj.* (16c) Capable of being replevied; recoverable by replevin <repleviable property>. — Also spelled *replevisable* (ri-**plev**-ə-sə-bəl). Cf. IRREPLEVIABLE. [Cases: Replevin ⚷3.]

replevin (ri-**plev**-in), *n.* (17c) **1.** An action for the repossession of personal property wrongfully taken or detained by the defendant, whereby the plaintiff gives security for and holds the property until the court decides who owns it. — Also termed *claim and delivery.* [Cases: Replevin ⚷1.] **2.** A writ obtained from a court authorizing the retaking of personal property wrongfully taken or detained. — Also termed (in sense 2)

writ of replevin. Cf. DETINUE; TROVER. [Cases: Replevin ⇨34.]

"The action of replevin lies, where specific personal property has been wrongfully taken and is wrongfully detained, to recover possession of the property, together with damages for its detention. To support the action it is necessary: (a) That the property shall be personal. (b) That the plaintiff, at the time of suit, shall be entitled to the immediate possession. (c) That (at common law) the defendant shall have wrongfully taken the property (replevin in the cepit). But, by statute in most states, the action will now also lie where the property is wrongfully detained, though it was lawfully obtained in the first instance (replevin in the detinet). (d) That the property shall be wrongfully detained by the defendant at the time of suit." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 49, at 120 (Henry Winthrop Ballantine ed., 3d ed. 1923).

"In rare cases, the plaintiff might seek equitable relief to secure return of a chattel. More commonly, the claim for recovery of the chattel was pursued at common law under forms of action such as Detinue or Replevin. American statutes or court rules tracked the common law generally, referring to the recovery variously as replevin, detinue, claim-and-delivery, or sequestration. The statutes usually allowed the plaintiff to recover the disputed chattel before trial, though this is now subject to constitutional limits which have led to procedural revisions in many of the statutes." 1 Dan B. Dobbs, *Law of Remedies* § 5.17(1), at 917 (2d ed. 1993).

personal replevin. (1844) At common law, an action to replevy a person out of prison or out of another's custody. • Personal replevin has been largely superseded by the writ of habeas corpus as a means of investigating the legality of an imprisonment. See HABEAS CORPUS.

replevin in cepit (in **see**-pit). (18c) An action for the repossession of property that is both wrongfully taken and wrongfully detained. [Cases: Replevin ⇨9.]

replevin in detinet (in **det**-i-net). (18c) An action for the repossession of property that is rightfully taken but wrongfully detained. [Cases: Replevin ⇨9.]

replevin, *vb. Archaic.* REPLEVY.

replevin bond. See BOND (2).

replevisable. See REPLEVIABLE.

replevisor (ri-**plev**-ə-sər). The plaintiff in a replevin action.

replevy (ri-**plev**-ee), *n. Archaic.* REPLEVIN.

replevy, *vb.* (16c) **1.** To recover possession of (goods) by a writ of replevin. [Cases: Replevin ⇨1.] **2.** To recover (goods) by replevin. **3.** *Archaic.* To bail (a prisoner).

replevy bond. See *replevin bond* under BOND (2).

repliant (ri-**plī**-ənt). (16c) A party who makes a replication (i.e., a common-law reply). — Also termed *replicant.*

replicare (rep-lə-**kair**-ee), *vb.* [Latin] *Hist.* To reply; to answer a defendant's plea.

replicatio (rep-li-**kay**-shee-oh), *n.* [Latin] *Roman law.* A plaintiff's rejection of what a defendant asserted in an *exceptio*; a counterexception. Pl. ***replicationes*** (rep-li-kay-shee-**oh**-neez). Cf. TRIPLICATIO; QUADRUPLICATIO.

replication (rep-lə-**kay**-shən). (15c) A plaintiff's or complainant's reply to a defendant's plea or answer; REPLY (2). [Cases: Pleading ⇨162.]

anticipatory replication. *Equity pleading.* In an original bill, the denial of defensive matters that the defendant might assert. • A defendant who relies on the anticipated defense must traverse the anticipatory matter in addition to setting up the defense. [Cases: Equity ⇨133.]

general replication. *Equity pleading.* A replication consisting of a general denial of the defendant's plea or answer and an assertion of the truth and sufficiency of the bill. [Cases: Equity ⇨207.]

replication de injuria. *Common-law pleading.* A traverse occurring only in the replication whereby the plaintiff is permitted to traverse the whole substance of a plea consisting merely of legal excuse, when the matter does not involve a title or interest in land, authority of law, authority of fact derived from the opposing party, or any matter of record. — Also termed *replication de injuria sua propria, absque tali causa.* [Cases: Pleading ⇨179.]

replication per fraudem. *Common-law pleading.* A replication asserting that the discharge pleaded by the defendant was obtained by fraud.

special replication. *Equity pleading.* A replication that puts in issue a new fact to counter a new matter raised in the defendant's plea or answer. [Cases: Equity ⇨209.]

reply, *n.* (18c) **1.** *Civil procedure.* In federal practice, the plaintiff's response to the defendant's counterclaim (or, by court order, to the defendant's or a third party's answer). Fed. R. Civ. P. 7(a). [Cases: Federal Civil Procedure ⇨801–815.] **2.** *Common-law pleading.* The plaintiff's response to the defendant's plea or answer. • The reply is the plaintiff's second pleading, and it is followed by the defendant's rejoinder. — Also termed (in sense 2) *replication.* [Cases: Pleading ⇨162, 164.] — **reply,** *vb.*

reply brief. See BRIEF.

repo (**ree**-poh). **1.** REPOSSESSION. **2.** REPURCHASE AGREEMENT.

report, *n.* (14c) **1.** A formal oral or written presentation of facts or a recommendation for action <according to the treasurer's report, there is $300 in the bank>.

committee report. *Parliamentary law.* A report from a committee to a deliberative assembly on business referred to the committee or on a matter otherwise under its charge.

informational report. *Parliamentary law.* A report without a recommendation for action.

insider report. *Securities.* A monthly report that must be filed with the SEC when more than 10% of a company's stock is traded.

majority report. *Parliamentary law.* A committee report, as distinguished from a minority report. See *committee report.* Cf. *minority report.*

minority report. *Parliamentary law.* A report by a member or members who dissent from a committee report, setting forth their views, and sometimes proposing an alternative recommendation. • Some organizations require that a minority must reach a certain size (or obtain permission) before it can file a report. A typical minimum is one-fourth of the committee's members, which guarantees that not more than one minority report will result.

officer's report. *Parliamentary law.* A report from an officer to an organization or deliberative assembly on business relating to the officer's duties or on a matter otherwise under the officer's charge.

report with recommendation. *Parliamentary law.* A report accompanied by a recommendation for action.

2. A written account of a court proceeding and judicial decision <the law clerk sent the court's report to counsel for both sides>. [Cases: Courts ⚷103.] **3.** (*usu. pl.*) A published volume of judicial decisions by a particular court or group of courts <U.S. Reports>. • Generally, these decisions are first printed in temporary paperback volumes, and then printed in hardbound reporter volumes. Law reports may be either official (published by a government entity) or unofficial (published by a private publisher). Court citations frequently include the names of both the official and unofficial reports. — Also termed *reporter; law report; law reporter.* Cf. ADVANCE SHEETS. [Cases: Courts ⚷103; Reports ⚷3.]

official report. (*usu. pl.*) The governmentally approved set of reported cases within a given jurisdiction. [Cases: Courts ⚷103; Reports ⚷1.]

> "[I]t may justly be said that all reports are in a sense 'official,' or that to use the term 'official reports' as referring to any particular series of reports is a misnomer, for it is certainly misleading. The mere fact that each state authorizes or requires publication of reports of its Supreme Court decisions, and, to insure such publication, agrees to purchase a stated number of each volume of the reports, cannot be said to give such a series pre-eminence as an 'official' publication." William M. Lile et al., *Brief Making and the Use of Law Books* 33 (3d ed. 1914).

4. (*usu. pl.*) A collection of administrative decisions by one or more administrative agencies. [Cases: Administrative Law and Procedure ⚷507.] **5.** MINUTES (2). — Abbr. rep. — **report,** *vb.*

report agenda. See *report calendar* under CALENDAR (4).

report calendar. See CALENDAR (4).

reporter. (14c) **1.** A person responsible for making and publishing a report; esp., a lawyer-consultant who prepares drafts of official or semi-official writings such as court rules or Restatements <the reporter to the Advisory Committee on Bankruptcy Rules explained the various amendments>. [Cases: Reports ⚷3.] **2.** REPORTER OF DECISIONS. **3.** REPORT (3) <Supreme Court Reporter>. — Abbr. rep.; rptr.

> "It may not come amiss to remark that the National Report System is usually spoken of as the 'Reporters,' and one of the component parts of that system is in like manner spoken of as a 'Reporter.' Wherever, in this or the succeeding chapters of this work, the word is used with a capital, it refers to one or more of the parts of the National Reporter System. When the word 'reporter' is used without capitalization, it refers to the person who reports or edits the cases in any series of reports to which reference is being made." William M. Lile et al., *Brief Making and the Use of Law Books* 37 (3d ed. 1914).

reporter of decisions. (1839) The person responsible for publishing a court's opinions. • The position began historically — in the years before systematic reporting of decisions was introduced — when lawyers attended the sessions of particular courts, were accredited to them by the judges, and reported the decisions of that court. Today, the reporter of decisions holds an administrative post as a court employee. The reporter often has duties that include verifying citations, correcting spelling and punctuation, and suggesting minor editorial improvements before judicial opinions are released or published. — Often shortened to *reporter.* — Also termed *court reporter.* See COURT REPORTER. [Cases: Courts ⚷103; Reports ⚷3.]

reporter's privilege. See *journalist's privilege* (1) under PRIVILEGE (3).

reporter's record. 1. See RECORD. **2.** See TRANSCRIPT.

reporter's syllabus. See HEADNOTE.

reporting company. See COMPANY.

report of proceedings. See TRANSCRIPT.

reports, *n.* See REPORT.

Reports, The. A series of 13 volumes of caselaw published in the 17th century by Sir Edward Coke.

report with recommendation. See REPORT (1).

repose (ri-**pohz**), *n.* (16c) **1.** Cessation of activity; temporary rest. **2.** A statutory period after which an action cannot be brought in court, even if it expires before the plaintiff suffers any injury. See STATUTE OF REPOSE. [Cases: Limitation of Actions ⚷1, 165.]

repository (ri-**poz**-ə-tor-ee). (15c) A place where something is deposited or stored; a warehouse or storehouse.

repossession, *n.* (15c) The act or an instance of retaking property; esp., a seller's retaking of goods sold on credit when the buyer has failed to pay for them. — Often shortened to *repo.* Cf. FORECLOSURE; RESCUE (3). [Cases: Secured Transactions ⚷228.] — **repossess,** *vb.*

representation, *n.* (16c) **1.** A presentation of fact — either by words or by conduct — made to induce someone to act, esp. to enter into a contract; esp., the manifestation to another that a fact, including a state of mind, exists <the buyer relied on the seller's representation that the roof did not leak>. Cf. MISREPRESENTATION. [Cases: Fraud ⚷9.]

> "Representation . . . may introduce terms into a contract and affect performance: or it may induce a contract and so affect the intention of one of the parties, and the formation of the contract. . . . At common law, . . . if a representation did not afterwards become a substantive part of the

contract, its untruth (save in certain excepted cases and apart always from fraud) was immaterial. But if it did, it might be one of two things: (1) it might be regarded by the parties as a vital term going to the root of the contract (when it is usually called a 'condition'); and in this case its untruth entitles the injured party to repudiate the whole contract; or (2) it might be a term in the nature only of an independent subsidiary promise (when it is usually called a 'warranty'), which is indeed a part of the contract, but does not go to the root of it; in this case its untruth only gives rise to an action *ex contractu* for damages, and does *not* entitle the injured party to repudiate the whole contract." William R. Anson, *Principles of the Law of Contract* 218, 222 (Arthur L. Corbin ed., 3d Am. ed. 1919).

affirmative representation. (1842) A representation asserting the existence of certain facts pertaining to a given subject matter. [Cases: Contracts ⚷205.5; Fraud ⚷9.]

false representation. See MISREPRESENTATION.

material representation. (18c) A representation to which a reasonable person would attach importance in deciding his or her course of action in a transaction. • Material representation is a necessary element of an action for fraud. [Cases: Contracts ⚷94(2); Fraud ⚷18.]

promissory representation. (1842) A representation about what one will do in the future; esp., a representation made by an insured about what will happen during the time of coverage, stated as a matter of expectation and amounting to an enforceable promise. [Cases: Fraud ⚷12; Insurance ⚷3035.]

2. The act or an instance of standing for or acting on behalf of another, esp. by a lawyer on behalf of a client <Clarence Darrow's representation of John Scopes>. [Cases: Attorney and Client ⚷77–101.]

concurrent representation. The simultaneous representation of more than one person in the same matter. See CONFLICT OF INTEREST (2).

3. The fact of a litigant's having such a close alignment of interests with another person that the other is considered as having been present in the litigation <the named plaintiff provided adequate representation for the absent class members>.

adequate representation. (1939) A close alignment of interests between actual parties and potential parties in a lawsuit, so that the interests of potential parties are sufficiently protected by the actual parties. • The concept of adequate representation is often used in procedural contexts. For example, if a case is to be certified as a class action, there must be adequate representation by the named plaintiffs of all the potential class members. Fed. R. Civ. P. 23(a)(4). And if a nonparty is to intervene in a lawsuit, there must not already be adequate representation of the nonparty by an existing party. Fed. R. Civ. P. 24(a)(2). [Cases: Federal Civil Procedure ⚷164, 316; Parties ⚷35.13, 41.]

virtual representation. (1934) A party's maintenance of an action on behalf of others with a similar interest, as a class representative does in a class action. See VIRTUAL-REPRESENTATION DOCTRINE. [Cases: Federal Civil Procedure ⚷103.2, 163; Judgment ⚷677; Parties ⚷35.3.]

4. The assumption by an heir of the rights of his or her predecessor <each child takes a share by representation>. See PER STIRPES. [Cases: Wills ⚷550.] **5.** (*usu. pl.*) *Int'l law.* A friendly but firm statement of a perceived wrong. • This is the mildest form of complaint that one nation can make to another. — Also termed *diplomatic representation.* — **represent,** *vb.*

"Representations are in the nature of vigorous arguments employed in the hope of securing a modification of the action complained of without implying necessarily or expressly an intention ultimately to seek redress by more vigorous means." Ellery C. Stowell, *International Law: A Restatement of Principles in Conformity with Actual Practice* 427 (1931).

representation, estoppel by. See *estoppel by representation* under ESTOPPEL.

representation election. See ELECTION (3).

representative, *n.* (17c) **1.** One who stands for or acts on behalf of another <the owner was the football team's representative at the labor negotiations>. See AGENT (2). [Cases: Principal and Agent ⚷1.]

accredited representative. (1846) A person with designated authority to act on behalf of another person, group, or organization, usu. by being granted that authority by law or by the rules of the group or organization <as an officer of the union, she was the accredited representative of the employees in the wage dispute>.

class representative. (1942) A person who sues on behalf of a group of plaintiffs in a class action. — Also termed *named plaintiff.* See CLASS ACTION. [Cases: Federal Civil Procedure ⚷164; Parties ⚷35.13.]

independent personal representative. See *personal representative.*

lawful representative. (17c) **1.** A legal heir. **2.** An executor, administrator, or other legal representative. — Also termed *legal representative.* See *personal representative.* [Cases: Executors and Administrators ⚷14–18.]

legal-personal representative. (18c) **1.** When used by a testator referring to personal property, an executor or administrator. [Cases: Executors and Administrators ⚷14–18.] **2.** When used by a testator referring to real property, one to whom the real estate passes immediately upon the testator's death. **3.** When used concerning the death of a mariner at sea, the public administrator, executor, or appointed administrator in the seaman's state of residence.

legal representative. **1.** See *lawful representative.* **2.** See *personal representative.*

personal representative. (18c) A person who manages the legal affairs of another because of incapacity or death, such as the executor of an estate. • Technically, an executor is a personal representative named in a will, while an administrator is a personal

representative not named in a will. — Also termed *independent personal representative*; *legal representative*. [Cases: Executors and Administrators ☞ 14–18.]

registered representative. (1945) A person approved by the SEC and stock exchanges to sell securities to the public. — Formerly also termed *customer's man*; *customer's person*. [Cases: Securities Regulation ☞ 40.12–40.14.]

2. A member of a legislature, esp. of the lower house <one senator and one representative attended the rally>. [Cases: States ☞ 28.] — Abbr. rep.

representative action. (1911) **1.** CLASS ACTION. **2.** DERIVATIVE ACTION (1).

representative capacity. See CAPACITY (1).

representee. One to whom a representation is made.

> "First, where the representor can show that he was not negligent, he will not be liable under the 1967 Act; and secondly, where the representee wants to claim damages at the contractual rate, for loss of his bargain, it may be that the Misrepresentation Act will not suffice." P.S. Atiyah, *An Introduction to the Law of Contract* 165 (3d ed. 1981).

representor. One who makes a representation.

> "[I]t is arguable that even where a contracting party does not intend to guarantee the accuracy of what he says, the other party is at least entitled to assume that due care has been taken by the representor." P.S. Atiyah, *An Introduction to the Law of Contract* 309 (3d ed. 1981).

repressed-memory syndrome. A memory disorder characterized by an intermittent and extensive inability to recall important personal information, usu. following or concerning a traumatic or highly stressful occurrence, when the memory lapses cannot be dismissed as normal forgetfulness. • The theoretical basis for this syndrome was proposed by Sigmund Freud in 1895. The American Psychiatric Association has recognized the syndrome officially by the medical term *dissociative amnesia*. Although the APA has affirmed that some people suffering partial or total dissociative amnesia may later recover some or all of the memory of the traumatic or stressful event, the existence of the syndrome is controversial. Some studies indicate that "repressed" memories, at least in some patients, may be a product of suggestions made by mental-health therapists rather than of any actual experience. — Abbr. RMS. — Also termed *recovered-memory syndrome*; *dissociative amnesia*. Cf. FALSE-MEMORY SYNDROME.

repressive tax. See *sin tax* under TAX.

reprieve (ri-**preev**), *n.* (16c) Temporary postponement of the carrying out of a criminal sentence, esp. a death sentence. Cf. COMMUTATION (2); PARDON. [Cases: Pardon and Parole ☞ 27.] — **reprieve,** *vb.*

> "The term *reprieve* is derived from *reprendre*, to keep back, and signifies the withdrawing of the sentence for an interval of time, and operates in delay of execution." 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 757 (2d ed. 1826).

reprimand, *n.* (17c) In professional responsibility, a form of disciplinary action — imposed after trial or formal charges — that declares the lawyer's conduct improper but does not limit his or her right to practice law; a mild form of lawyer discipline that does not restrict the lawyer's ability to practice law. [Cases: Attorney and Client ☞ 59.7, 59.8.] — **reprimand,** *vb.*

private reprimand. An unpublished communication between a disciplinary agency and a wrongdoing attorney, admonishing the attorney about the improper conduct. • Sometimes a published reprimand that does not identify the lawyer by name is considered a private reprimand. [Cases: Attorney and Client ☞ 59.7.]

public reprimand. A published notice, appearing usu. in a legal newspaper or bar journal, admonishing the attorney about improper conduct and describing the impropriety for the benefit of other members of the legal profession. [Cases: Attorney and Client ☞ 59.8.]

reprisal (ri-**prī**-zəl). **1.** (*often pl.*) *Int'l law.* The use of force, short of war, against another country to redress an injury caused by that country. [Cases: War and National Emergency ☞ 12.]

> "'Reprisals' is a word with a long history, and modern writers are not agreed on the meaning which should be given to it today. Literally and historically it denotes the seizing of property or persons by way of retaliation . . . . Reprisals when they are taken today are taken by a state, but some writers would still limit the word to acts of taking or withholding the property of a foreign state or its nationals, for example by an embargo, whilst others would abandon the historical associations and use it to denote any kind of coercive action not amounting to war whereby a state attempts to secure satisfaction from another for some wrong which the latter has committed against it." J.L. Brierly, *The Law of Nations* 321–22 (5th ed. 1955).

general reprisal. A reprisal by which a nation directs all its military officers and citizens to redress an injury caused by another nation. • An example is a command to seize the property of the offending nation wherever it is found.

negative reprisal. A reprisal by which a nation refuses to perform an obligation to another nation, such as the fulfillment of a treaty.

positive reprisal. A reprisal by which a nation forcibly seizes another nation's property or persons.

special reprisal. A reprisal by which a nation authorizes an aggrieved private citizen to redress an injury caused by another nation. • An example is an authorization for a private citizen to seize a particular vessel of the offending nation. See LETTERS OF MARQUE.

2. (*often pl.*) *Int'l law.* An act of forceful retaliation for injury or attack by another country; formerly, in war, the killing of prisoners in response to an enemy's war crimes (now unlawful). Cf. RETORSION. **3.** Any act or instance of retaliation, as by an employer against a complaining employee. [Cases: Labor and Employment ☞ 771.]

reprise (ri-**prīz**), *n.* An annual deduction, duty, or payment out of a manor or estate, such as an annuity.

reprobation (rep-rə-**bay**-shən). The act of raising an objection or exception, as to the competency of a witness or the sufficiency of evidence. — **reprobationary** (rep-rə-**bay**-shə-ner-ee), **reprobative** (**rep**-rə-bay-tiv), *adj.* — **reprobate** (**rep**-rə-bayt), *vb.*

reprobator (**rep**-rə-bay-tər). *Scots law. Hist.* A challenge to disqualify a witness or to invalidate the testimony of an objectionable witness. — Also termed *action of reprobator.*

reproduction right. *Copyright.* A copyright holder's exclusive right to make copies or phonorecords of the protected work. • Unauthorized copying constitutes infringement. — Also termed *right of reproduction.* [Cases: Copyrights and Intellectual Property ☞36.]

reproductive rights. A person's constitutionally protected rights relating to the control of his or her procreative activities; specif., the cluster of civil liberties relating to pregnancy, abortion, and sterilization, esp. the personal bodily rights of a woman in her decision whether to become pregnant or bear a child. • The phrase includes the idea of being able to make reproductive decisions free from discrimination, coercion, or violence. Human-rights scholars increasingly consider many reproductive rights to be protected by international human-rights law. [Cases: Civil Rights ☞1029.]

republic, *n.* A system of government in which the people hold sovereign power and elect representatives who exercise that power. • It contrasts on the one hand with a pure democracy, in which the people or community as an organized whole wield the sovereign power of government, and on the other with the rule of one person (such as a king or dictator) or of an elite group (such as an oligarchy, aristocracy, or junta). — Abbr. rep. Cf. DEMOCRACY. — **republican,** *adj.*

> "A republic is a government which (a) derives all of its powers directly or indirectly from the great body of the people and (b) is administered by persons holding their office during pleasure, for a limited period, or during good behavior." Robert A. Dahl, *A Preface to Democratic Theory* 10 (1956).

republican government. See GOVERNMENT.

republication, *n.* (18c) **1.** The act or an instance of publishing again or anew. **2.** *Wills & estates.* Reestablishment of the validity of a previously revoked will by repeating the formalities of execution or by using a codicil. • The result is to make the old will effective from the date of republication. — Also termed *revalidation.* Cf. REVIVAL (2). [Cases: Wills ☞196–202.] **3.** *Defamation.* The act or an instance of repeating or spreading more widely a defamatory statement. — **republish,** *vb.*

repudiate, *vb.* (16c) **1.** To reject or renounce (a duty or obligation); esp., to indicate an intention not to perform (a contract). [Cases: Contracts ☞313.] **2.** *Hist.* To divorce or disown (one's wife).

repudiatee (ri-pyoo-dee-ə-**tee**). A party to a contract that has been repudiated by the other party. [Cases: Contracts ☞313.]

repudiation (ri-pyoo-dee-**ay**-shən), *n.* (16c) **1.** *Eccles. law. Rare.* A person's refusal to accept a benefice. **2.** A contracting party's words or actions that indicate an intention not to perform the contract in the future; a threatened breach of contract. Cf. REJECTION (1), (2); RESCISSION; REVOCATION (1). [Cases: Contracts ☞313(2).] — **repudiatory** (ri-**pyoo**-dee-ə-tor-ee), **repudiable** (ri-**pyoo**-dee-ə-bəl), *adj.*

> "A repudiation is (a) a statement by the obligor to the obligee indicating that the obligor will commit a breach that would of itself give the obligee a claim for damages for total breach . . . , or (b) a voluntary affirmative act which renders the obligor unable or apparently unable to perform without such a breach." Restatement (Second) of Contracts § 250 (1979).

> "In order to constitute a repudiation, a party's language must be sufficiently positive to be reasonably interpreted to mean that the party will not or cannot perform. Mere expression of doubt as to his willingness or ability to perform is not enough to constitute a repudiation, although such an expression may give an obligee reasonable grounds to believe that the obligor will commit a serious breach and may ultimately result in a repudiation . . . . However, language that under a fair reading 'amounts to a statement of intention not to perform except on conditions which go beyond the contract' constitutes a repudiation." Restatement (Second) of Contracts § 250, cmt. b (1979).

anticipatory repudiation. (1913) Repudiation of a contractual duty before the time for performance, giving the injured party an immediate right to damages for total breach, as well as discharging the injured party's remaining duties of performance. • This type of repudiation occurs when the promisor unequivocally disavows any intention to perform when the time for performance comes. Once the repudiation occurs, the nonrepudiating party has three options: (1) treat the repudiation as an immediate breach and sue for damages; (2) ignore the repudiation, urge the repudiator to perform, wait for the specified time of performance, and sue if the repudiating party does not perform; or (3) cancel the contract. — Also termed *renunciation.* See *anticipatory breach* under BREACH OF CONTRACT. [Cases: Contracts ☞313.]

> The Restatement lists three actions that constitute anticipatory repudiation: "(a) a positive statement to the promisee or other person having a right under the contract, indicating that the promisor will not or cannot substantially perform his contractual duties; (b) transferring or contracting to transfer to a third person an interest in specific land, goods, or in any other thing essential for the substantial performance of his contractual duties; (c) any voluntary affirmative act which renders substantial performance of his contractual duties impossible, or apparently impossible." Restatement (Second) of Contracts § 318 (1979).

total repudiation. (1859) An unconditional refusal by a party to perform the acts required by a contract. • This type of repudiation justifies the other party in refraining from performance. [Cases: Contracts ☞313.]

repudiator (ri-**pyoo**-dee-ay-tər). One who repudiates; esp., a party who repudiates a contract. [Cases: Contracts ☞313.]

repudium (ri-**pyoo**-dee-əm), *n.* [Latin] *Roman law.* The revocation of betrothal or marriage by either the man or the woman. • After Augustus, it was necessary to send the other spouse a letter of repudiation in order to terminate the marriage. Cf. DIVORTIUM.

repugnancy (ri-**pəg**-nən-see). (1865) An inconsistency or contradiction between two or more parts of a legal instrument (such as a contract or statute). [Cases: Contracts ⚷162; Statutes ⚷207.]

repugnant (ri-**pəg**-nənt), *adj.* (14c) Inconsistent or irreconcilable with; contrary or contradictory to <the court's interpretation was repugnant to the express wording of the statute>.

repugnant verdict. See VERDICT.

repurchase, *n.* The act or an instance of buying something back or again; esp., a corporation's buying back of some or all of its stock at market price. See REDEMPTION. [Cases: Corporations ⚷82, 120.] — **repurchase,** *vb.*

repurchase agreement. A short-term loan agreement by which one party sells a security to another party but promises to buy back the security on a specified date at a specified price. — Often shortened to *repo.* [Cases: Corporations ⚷82, 120.]

repurchase price. See *redemption price* under PRICE.

reputation, *n.* (14c) The esteem in which a person is held by others. • Evidence of reputation may be introduced as proof of character whenever character evidence is admissible. Fed. R. Evid. 405. — Also termed *personal reputation.* See *character evidence* under CHARACTER. [Cases: Criminal Law ⚷375; Evidence ⚷106; Witnesses ⚷338.] — **reputational,** *adj.*

reputational evidence. See *reputation evidence* under EVIDENCE.

reputation evidence. See EVIDENCE.

reputed manor. See MANOR.

request, *n. Parliamentary law.* A motion by which a member invokes a right, seeks permission for the exercise of a privilege, or asks a question. Cf. MOTION (2); DEMAND (2); INQUIRY (2); POINT (2).

request for leave to modify a motion. See *request for permission to modify a motion.*

request for leave to withdraw a motion. See *request for permission to withdraw a motion.*

request for permission to modify a motion. A motion by which the mover seeks an amendment to his or her own motion after the chair has stated the motion. • The mover controls a motion only until the chair states the question. After that, the motion belongs to the assembly and the mover cannot modify it without the assembly's permission. See *friendly amendment* under AMENDMENT (3). — Also termed *request for leave to modify a motion.*

request for permission to withdraw a motion. A motion by the mover to end consideration of the motion without reaching a decision on its merits. See *request for permission to modify a motion.* — Also termed *request for leave to withdraw a motion.*

request to be excused from a duty. A motion seeking relief from a duty that an officer or other member has been charged with.

request to read papers. **1.** A motion asking permission to read aloud from printed matter. • Reading aloud is generally not allowed without permission. **2.** A motion asking that the chair or secretary read aloud a document for the mover's or the assembly's information.

request for admission. (1939) *Civil procedure.* In pretrial discovery, a party's written factual statement served on another party who must admit, deny, or object to the substance of the statement. • Ordinarily, many requests for admission appear in one document. The admitted statements, along with any statements not denied or objected to, will be treated by the court as established and therefore do not have to be proved at trial. Fed. R. Civ. P. 36. — Abbr. RFA. — Also termed *request for admissions; request to admit; notice to admit.* [Cases: Federal Civil Procedure ⚷1671; Pretrial Procedure ⚷471.]

request for continued examination. *Patents.* A means of negating the final action on a patent so that the applicant can file amendments, new claims, etc. to show that the invention is patentable as of the original application date. • Unlike a continuation application, a request for continued examination keeps a patent alive as if no final decision had been made. It allows prosecution of claims that have been rejected in a final office action to continue. — Abbr. RCE. Cf. CONTINUATION. [Cases: Patents ⚷104.]

request for instructions. (1942) *Procedure.* During trial, a party's written request that the court instruct the jury on the law as set forth in the request. *See* Fed. R. Civ. P. 51. — Abbr. RFI. — Also termed *request to charge.* [Cases: Federal Civil Procedure ⚷2176; Trial ⚷259.]

request for leave to withdraw a motion. See REQUEST.

request for leave to modify a motion. See REQUEST.

request for permission to withdraw a motion. See REQUEST.

request for permission to modify a motion. See REQUEST.

request for production. (1944) *Procedure.* In pretrial discovery, a party's written request that another party provide specified documents or other tangible things for inspection and copying. Fed. R. Civ. P. 34. — Abbr. RFP. — Also termed *document request; request for production of documents; notice to produce; demand for document inspection.* [Cases: Federal Civil Procedure ⚷1551; Pretrial Procedure ⚷331.]

request for proposal. An invitation to prospective suppliers or contractors to submit proposals or bids to provide goods or services. • Unlike most invitations for bids, an RFP requires bidders to give more information

than the proposed price. For instance, bidders may have to provide evidence of good financial condition, acceptable technical capability, stock availability, and customer satisfaction. — Abbr. RFP. [Cases: Municipal Corporations ⚷238; Public Contracts ⚷7; States ⚷98; United States ⚷64.25.]

request for reconsideration. *Patents.* An applicant's submission of further arguments after a patent claim's rejection. [Cases: Patents ⚷104.]

request for reexamination. *Patents.* A formal process of asking the Patent and Trademark Office to review an in-force patent's validity in light of prior-art references. • Anyone, including the patent owner or an infringer, may request a patent's reexamination. [Cases: Patents ⚷140.]

request for relief. See PRAYER FOR RELIEF.

request to admit. See REQUEST FOR ADMISSION.

request to be excused from a duty. See REQUEST.

request to charge. See REQUEST FOR INSTRUCTIONS.

request to read papers. See REQUEST.

required-records doctrine. (1945) The principle that the privilege against self-incrimination does not apply when one is being compelled to produce business records that are kept in accordance with government regulations and that involve public aspects. • Some courts have held that certain medical records and tax forms fall within this doctrine and are thus not protected by the privilege against self-incrimination. [Cases: Witnesses ⚷298.]

required-request law. A law mandating that hospital personnel discuss with a deceased patient's relatives the possibility of an anatomical gift. • The Uniform Anatomical Gift Act (not in effect in some states) mandates a required-request law. [Cases: Dead Bodies ⚷1.]

required reserve. See RESERVE.

requirement for division. See RESTRICTION (4).

requirement for restriction. See RESTRICTION (4).

requirements contract. See CONTRACT.

requirements testing. See ACCEPTANCE TESTING.

requisition (rek-wə-**zish**-ən), *n.* **1.** An authoritative, formal demand <a state governor's requisition for another state's surrender of a fugitive>. [Cases: Extradition and Detainers ⚷34.] **2.** A governmental seizure of property <the state's requisition of the shopping center during the weather emergency>. See TAKING (2). — **requisition,** *vb.*

requisitionist. One who makes a formal demand (as for the performance of an obligation or the return of a fugitive). See REQUISITION (1).

requisitory letter. See LETTER OF REQUEST.

rere-county (**reer**-kown-tee). *Hist.* A subsidiary English county court held by the sheriff on the day after the regular county court. — Also spelled *rere county*; *rier county.*

re-refer. See REFER.

res (rays *or* reez *or* rez), *n.* [Latin "thing"] (17c) **1.** An object, interest, or status, as opposed to a person <jurisdiction of the res — the real property in Colorado>. [Cases: Courts ⚷16.] **2.** The subject matter of a trust; CORPUS (1) <the stock certificate is the res of the trust>. [Cases: Trusts ⚷1.] Pl. **res.**

res accessoria (rays ak-ses-**or**-ee-ə). [Latin] *Civil law.* An accessory thing; a thing that is related to a principal thing. Pl. ***res accessoriae.***

res adjudicata (rays ə-joo-di-**kay**-tə *or* -**kah**-tə). See RES JUDICATA.

resale, *n.* (17c) **1.** The act of selling goods or property — previously sold to a buyer who breached the sales contract — to someone else. UCC § 2-706. [Cases: Sales ⚷332–339.] **2.** A retailer's selling of goods, previously purchased from a manufacturer or wholesaler, usu. to consumers or to someone else further down the chain of distribution. — **resell,** *vb.*

resale-price maintenance. A form of price-fixing in which a manufacturer forces or persuades several different retailers to sell the manufacturer's product at the same price, thus preventing competition. • Resale-price maintenance is not per se illegal under antitrust law, but it is illegal if it produces anticompetitive effects under the rule of reason. A manufacturer may suggest a retail price as long as it does not compel retailers to sell at that price. See RULE OF REASON; *vertical price-fixing* under PRICE-FIXING. [Cases: Antitrust and Trade Regulation ⚷821.]

res aliena (rays ay-lee-**ee**-nə *or* al-ee-). [Latin] *Archaic.* The property belonging to another.

res alienari prohibita (rays ay-**lee**-ə-**nair**-ī proh-**hib**-i-tə). [Law Latin] *Hist.* A thing that cannot be alienated.

res aliena scienter legata (rays ay-lee-**ee**-nə [*or* al-ee-] sī-**en**-tər lə-**gay**-tə). [Latin] *Hist.* The property of another knowingly bequeathed — that is, property that a testator did not own but purported to bequeath by will.

res caduca (rays kə-**d**[**y**]**oo**-kə). [Latin] *Civil law.* A fallen thing; an escheat. Pl. ***res caducae.***

resceit (ri-**seet**). *Hist.* The admittance of an interested third party to plead in a case between two others; intervention.

rescind (ri-**sind**), *vb.* (17c) **1.** To abrogate or cancel (a contract) unilaterally or by agreement. [Cases: Contracts ⚷249.] **2.** To make void; to repeal or annul <rescind the legislation>. **3.** *Parliamentary law.* To void, repeal, or nullify a main motion adopted earlier. — Also termed *annul*; *repeal.* — **rescindable,** *adj.*

rescind and expunge. See EXPUNGE (2).

rescissio (ri-**sis**[**h**]-ee-oh). [Latin] *Civil law.* Annulment or voidance of a juridical act; rescission. Pl. ***rescissiones.***

rescission (ri-**sizh**-ən), *n.* (17c) **1.** A party's unilateral unmaking of a contract for a legally sufficient reason, such as the other party's material breach, or a judgment

rescinding the contract; VOIDANCE. • Rescission is generally available as a remedy or defense for a nondefaulting party and is accompanied by restitution of any partial performance, thus restoring the parties to their precontractual positions. — Also termed *avoidance*. [Cases: Contracts ☞249.] **2.** An agreement by contracting parties to discharge all remaining duties of performance and terminate the contract. — Also spelled *recision*; *recission*. — Also termed (in sense 2) *agreement of rescission*; *mutual rescission*; *abandonment*. Cf. REJECTION (2); REPUDIATION (2); REVOCATION (1). [Cases: Contracts ☞252.] — **rescissory** (ri-**sis**-ə-ree *or* ri-**siz**-), *adj.*

"The [UCC] takes cognizance of the fact that the term 'rescission' is often used by lawyers, courts and businessmen in many different senses; for example, termination of a contract by virtue of an option to terminate in the agreement, cancellation for breach and avoidance on the grounds of infancy or fraud. In the interests of clarity of thought — as the consequences of each of these forms of discharge may vary — the Commercial Code carefully distinguishes three circumstances. 'Rescission' is utilized as a term of art to refer to a mutual agreement to discharge contractual duties. 'Termination' refers to the discharge of duties by the exercise of a power granted by the agreement. 'Cancellation' refers to the putting an end to the contract by reason of a breach by the other party. Section 2-720, however, takes into account that the parties do not necessarily use these terms in this way." John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 21-2, at 864-65 (3d ed. 1987).

equitable rescission. (1889) Rescission that is decreed by a court of equity. [Cases: Cancellation of Instruments ☞1.]

legal rescission. (1849) **1.** Rescission that is effected by the agreement of the parties. [Cases: Contracts ☞251.] **2.** Rescission that is decreed by a court of law, as opposed to a court of equity.

"The modern tendency is to treat rescission as equitable, but rescission was often available at law. If plaintiff had paid money, or had delivered goods, he could rescind by tendering whatever he had received from defendant and suing at law to recover his money or replevy his goods. But if he had delivered a promissory note or securities, or conveyed real estate, rescission required the court to cancel the instruments or compel defendant to reconvey. This relief was available only in equity. Many modern courts ignore the distinction . . . . But versions of the distinction are codified in some states." Douglas Laycock, *Modern American Remedies* 627-28 (3d ed. 2002).

rescissory action. See ACTION (4).

rescissory damages. See DAMAGES.

res communes (rays kə-**myoo**-neez), *n. pl.* [Latin "common things"] *Civil law.* Things common to all; things that cannot be owned or appropriated, such as light, air, and the sea. La. Civ. Code art. 449.

res controversa (rays kon-trə-**vər**-sə). [Latin] *Civil law.* A matter in controversy; a point in question. Pl. ***res controversae.***

res coronae (rays kə-**roh**-nee), *n. pl.* [Latin] *Hist.* Things of the Crown, such as ancient manors, homages of the king, and liberties.

res corporales (rays kor-pə-**ray**-leez), *n. pl.* [Latin] *Civil law.* Corporeal things; tangible things that are perceptible to the senses. La. Civ. Code art. 461. See *corporeal thing* under THING.

rescous (**res**-kəs). **1.** RESCUE (2). **2.** RESCUE (3).

rescript (**ree**-skript), *n.* (17c) **1.** A judge's written order to a court clerk explaining how to dispose of a case. **2.** An appellate court's written decision, usu. unsigned, that is sent down to the trial court. [Cases: Appeal and Error ☞1192; Criminal Law ☞1192; Federal Courts ☞949.] **3.** A Roman emperor's or a Pope's written answer to a legal inquiry or petition. Cf. PRECES. — Also termed (when the reply is to a private citizen) *annotation*; *subnotation*; *subscription*; (when the reply is to an official body) *epistle.* **4.** A duplicate or counterpart; a rewriting.

rescue, *n.* (14c) **1.** The act or an instance of saving or freeing someone from danger or captivity. **2.** The forcible and unlawful freeing of a person from arrest or imprisonment. [Cases: Rescue ☞1.]

"A *rescue* signifies a forcible setting at liberty, against law, of a person duly arrested. It is necessary, that the rescuer should have knowledge that the person whom he sets at liberty has been apprehended for a criminal offence, if he be in the custody of a private person; but if he be under the care of an officer, then he is to take notice of it at his peril." 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 62 (2d ed. 1826).

3. The forcible retaking by the owner of goods that have been lawfully distrained. — Also termed (in senses 2 & 3) *rescous.* Cf. REPOSSESSION. **4.** *Int'l law.* The retaking of a prize by persons captured with it, so that the property is legally restored to its original owner. See POSTLIMINIUM (3). — **rescue,** *vb.*

rescue clause. See SUE-AND-LABOR CLAUSE.

rescue doctrine. (1926) *Torts.* The principle that a tortfeasor who negligently endangered a person is liable for injuries to someone who reasonably attempted to rescue the person in danger. • The rationale for this doctrine is that an attempted rescue of someone in danger is always foreseeable. Thus, if the tortfeasor is negligent toward the rescuee, the tortfeasor is also negligent toward the rescuer. — Also termed *danger-invites-rescue doctrine.* Cf. EMERGENCY DOCTRINE; GOOD SAMARITAN DOCTRINE. [Cases: Negligence ☞510(3).]

"Danger invites rescue. The cry of distress is the summons to relief. The law does not ignore these reactions of the mind in tracing conduct to its consequences. It recognizes them as normal. It places their effects within the range of the natural and probable. The wrong that imperils life is a wrong to the imperiled victim; it is a wrong also to his rescuer . . . . The railroad company whose train approaches without signal is a wrongdoer toward the traveler surprised between the rails, but a wrongdoer also to the bystander who drags him from the path . . . . The emergency begets the man. The wrongdoer may not have foreseen the coming of a deliverer. He is accountable as if he had." *Wagner v. International Ry. Co.*, 133 N.E. 437, 437-38 (N.Y. 1921).

rescue syndrome. *Family law.* A situation in which a child in a custody battle expresses a preference for the parent perceived by the child to be the "weaker" of the

two, in the belief that the parent needs the child. • This is a form of parent-alienation syndrome. One parent may overtly or subtly act increasingly dependent on the child, leading the child to believe that he or she is responsible for the parent's comfort, happiness, and protection. The child may also believe that one parent is actively harming the other and attempt to protect the "weaker" parent by choosing to stay with that parent, even if the child would actually prefer to live with the "stronger" parent. Cf. LOLLIPOP SYNDROME; PARENT-ALIENATION SYNDROME.

rescussu. See DE RESCUSSU.

res derelicta (rays der-ə-**lik**-tə). [Latin] A thing thrown away or forsaken by its owner; abandoned property.

res dominans (rays **dom**-ə-nanz). [Latin] The dominant property entitled to enjoy a servitude. See *dominant estate* under ESTATE.

research and development. An effort (as by a company or business enterprise) to create or improve products or services, esp. by discovering new technology or advancing existing technology. — Abbr. R and D; R & D.

Research and Special Programs Administration. A unit in the U.S. Department of Transportation responsible for conducting research and engaging in special programs through several offices, including the Office of Hazardous Materials Safety, the Office of Pipeline Safety, the Transportation Systems Center, the Office of Emergency Transportation, the Office of Program Management and Administration, and the Office of Aviation Information Management. — Abbr. RSPA.

research attorney. See ATTORNEY.

research memorandum. See MEMORANDUM.

reseiser (ri-**see**-zər). *Hist.* The taking of lands by the monarch in a case in which a general livery or ouster le main was previously misused.

resentencing, *n.* (1878) The act or an instance of imposing a new or revised criminal sentence. — **resentence,** *vb.*

reservation. (15c) **1.** The creation of a new right or interest (such as an easement), by and for the grantor, in real property being granted to another. Cf. EXCEPTION (3). [Cases: Deeds ☞141; Easements ☞14.]

implied reservation. (1867) An implied easement that reserves in a landowner an easement across a portion of sold land, such as a right-of-way over land lying between the seller's home and the only exit. • An implied reservation arises only if the seller could have expressly reserved an easement, but for some reason failed to do so. See *implied easement* under EASEMENT. [Cases: Easements ☞17.]

> "If the implied easement is in favor of the conveyee and is appurtenant to the tract conveyed, it is called an implied grant; if the implied easement is in favor of the conveyor and is appurtenant to the tract retained, it is called an implied reservation." Ralph E. Boyer et al., *The Law of Property* 311 (4th ed. 1991).

2. The establishment of a limiting condition or qualification; esp., a nation's formal declaration, upon signing or ratifying a treaty, that its willingness to become a party to the treaty is conditioned on the modification or amendment of one or more provisions of the treaty as applied in its relations with other parties to the treaty. [Cases: Treaties ☞3.] **3.** A tract of public land that is not open to settlers but is set aside for a special purpose; esp., a tract of land set aside for use by indigenous peoples. — Also termed (in sense 3) *reserve*; *reserved land*; *withdrawn land.* [Cases: Indians ☞12.]

reservation-of-rights letter. *Insurance.* A notice of an insurer's intention not to waive its contractual rights to contest coverage or to apply an exclusion that negates an insured's claim. — Also termed *reservation of rights.* [Cases: Insurance ☞3111(2), 3120.]

reserve, *n.* **1.** Something retained or stored for future use; esp., a fund of money set aside by a bank or an insurance company to cover future liabilities.

amortization reserve. An account created for bookkeeping purposes to extinguish an obligation gradually over time.

bad-debt reserve. A reserve to cover losses on uncollectible accounts receivable.

excess reserve. The portion of a bank's reserve against deposits in excess of the amount of reserve required by law.

legal reserve. The minimum amount of liquid assets that a bank or an insurance company must maintain by law to meet depositors' or claimants' demands. [Cases: Banks and Banking ☞14, 503; Insurance ☞1139.]

loss reserve. **1.** An insurance company's reserve that represents the estimated value of future payments, as for losses incurred but not yet reported. [Cases: Insurance ☞1139.] **2.** A bank's reserve set aside to cover possible losses, as from defaulting loans.

mean reserve. In insurance, the average of the beginning reserve (after the premium has been paid for the policy year) and the ending reserve of the policy year.

policy reserve. An insurance company's reserve that represents the difference between net premiums and expected claims for a given year. • This type of reserve is kept esp. by life-insurance companies. [Cases: Insurance ☞1139.]

required reserve. The minimum amount of money, as required by the Federal Reserve Board, that a bank must hold in the form of vault cash and deposits with regional Federal Reserve Banks. [Cases: Banks and Banking ☞14, 351–359.]

sinking-fund reserve. A reserve used to pay long-term debt. See *sinking fund* under FUND (1).

unearned-premium reserve. An insurance company's reserve that represents premiums that have been received in advance but not yet applied to policy coverage. • If a policyholder cancels coverage before the policy expires but has already paid a premium for the full policy period, the insurance company refunds

the policyholder out of this reserve. [Cases: Insurance ⇨1139.]

2. RESERVATION (3). **3.** See *net value* under VALUE (2). — **reserve,** *vb.*

reserve account. See *impound account* under ACCOUNT.

reserve bank. See *member bank* under BANK.

Reserve Board. See FEDERAL RESERVE BOARD OF GOVERNORS.

reserve clause. A clause in a professional athlete's contract restricting the athlete's right to change teams, even after the contract expires. • Reserve clauses are uncommon in modern professional sports. Cf. FREE AGENCY.

reserved easement. See EASEMENT.

reserved land. See RESERVATION (3).

reserved point of law. See POINT OF LAW.

reserved power. See POWER (3).

Reserved Power Clause. See TENTH AMENDMENT.

reserved surplus. See *appropriated surplus* (1) under SURPLUS.

reserve militia. See MILITIA.

reserve price. See PRICE.

reserve ratio. The Federal Reserve Board's measurement of a member bank's required reserves. See *required reserve* under RESERVE.

primary reserve ratio. The ratio between a bank's required reserves (cash in vault plus deposits with Federal Reserve Banks) and its demand and time deposits.

secondary reserve ratio. The ratio between a bank's government securities and its demand and time deposits.

reset, *n. Scots law.* **1.** The act or an instance of knowingly receiving stolen goods. **2.** *Archaic.* The harboring or sheltering of a criminal or outlaw. — **resetter,** *n.* — **reset,** *vb.*

resettlement, *n.* (17c) **1.** The settlement of one or more persons in a new or former place. See SETTLEMENT (6). **2.** The reopening of an order or decree for the purpose of correcting a mistake or adding something omitted. [Cases: Motions ⇨49.] — **resettle,** *vb.*

res fit inempta (rays fit in-**emp**-tə). [Latin] *Hist.* The object is regarded as unbought. • This is the ancient way of saying, "The sale is off."

res fungibiles (rays fən-**jib**-ə-leez), *n. pl.* [Latin] *Civil law.* Fungible things; things that are commercially interchangeable.

res gestae (rays **jes**-tee *also* **jes**-tī), *n. pl.* [Latin "things done"] (17c) The events at issue, or other events contemporaneous with them. • In evidence law, words and statements about the res gestae are usu. admissible under a hearsay exception (such as present sense impression or excited utterance). Where the Federal Rules of Evidence or state rules fashioned after them are in effect, the use of *res gestae* is now out of place. *See* Fed. R. Evid. 803(1), (2). — Also termed *res gesta.* [Cases: Criminal Law ⇨363–368; Evidence ⇨118–128.]

> "The Latin expression 'res gestae' or 'res gesta,' literally 'things done' or 'thing transacted,' has long served as a catchword . . . . [T]he phrase has frequently served both to let in utterances which in strictness were not admissible and to exclude utterances which might well have been admitted. And frequently also its indefiniteness has served as a basis for rulings where it was easier for the judge to invoke this imposing catchword than to think through the real question involved. The phrase is antiquated. By modern judges it is being gradually discarded. It is superfluous, and serves only to obscure the logic of the rules. It should be left to oblivion." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 279 (1935).

> "The res gestae embraces not only the actual facts of the transaction and the circumstances surrounding it, but the matters immediately antecedent to and having a direct causal connection with it, as well as acts immediately following it and so closely connected with it as to form in reality a part of the occurrence." *State v. Fouquette*, 221 P.2d 404, 416–17 (Nev. 1950).

res gestae witness. See WITNESS.

res habiles (rays **hab**-ə-leez), *n. pl.* [Latin] *Civil law.* Things that may be acquired by prescription.

resiance (**rez**-ee-ənts). *Archaic.* Residence; abode.

resiant (**rez**-ee-ənt), *adj. Archaic.* Continually dwelling or abiding in a place; resident.

resiant, *n. Archaic.* A resident.

residence. (14c) **1.** The act or fact of living in a given place for some time <a year's residence in New Jersey>. — Also termed *residency.* **2.** The place where one actually lives, as distinguished from a domicile <she made her residence in Oregon>. • *Residence* usu. just means bodily presence as an inhabitant in a given place; *domicile* usu. requires bodily presence plus an intention to make the place one's home. A person thus may have more than one residence at a time but only one domicile. Sometimes, though, the two terms are used synonymously. Cf. DOMICILE (2). [Cases: Domicile ⇨2.] **3.** A house or other fixed abode; a dwelling <a three-story residence>. **4.** The place where a corporation or other enterprise does business or is registered to do business <Pantheon Inc.'s principal residence is in Delaware>. [Cases: Corporations ⇨52, 503(1), 666.]

habitual residence. **1.** *Family law.* A person's customary place of residence; esp., a child's customary place of residence before being removed to some other place. • The term, which appears as an undefined term in the Hague Convention, is used in determining the country having a presumed paramount interest in the child. [Cases: Child Custody ⇨804.] **2.** *Copyright.* An established place, esp. a country, in which one lives for the long term, usu. without being a citizen of the place. • The Berne Convention makes habitual residence an alternative to legal domicile in a member country to qualify for copyright protection but leaves the exact definition of the term to member countries.

residency. (14c) **1.** A place of residence, esp. an official one <the diplomat's residency>. **2.** RESIDENCE (1) <one year's residency to be eligible for in-state tuition>.

resident, *adj.* **1.** Affiliated with or working for a particular person or company <resident agent>. **2.** Dwelling in a place other than one's home on a long-term basis <the hospital's resident patient>.

resident, *n.* (15c) **1.** A person who lives in a particular place. **2.** A person who has a home in a particular place. • In sense 2, a resident is not necessarily either a citizen or a domiciliary. Cf. CITIZEN (1); DOMICILIARY.

resident agent. See *registered agent* under AGENT (2).

resident alien. See ALIEN.

resident ambassador. See AMBASSADOR.

residential care. *Family law.* Foster-care placement involving residence in a group home or institution. • This type of foster care is most commonly used for adolescents who have been adjudged to be delinquents or status offenders.

residential cluster. *Land-use planning.* An area of land developed as a unit with group housing and open common space. Cf. PLANNED-UNIT DEVELOPMENT. [Cases: Zoning and Planning ⇨66, 256.]

residential community treatment center. See HALFWAY HOUSE.

residential custody. See PHYSICAL CUSTODY (2).

residential parent. See PARENT.

residential responsibility. Overnight responsibility for a child. See *Principles of the Law of Family Dissolution: Analysis and Recommendations* § 3.02 (2000). See CUSTODY; *dual-residential parent*, *residential parent* under PARENT.

primary residential responsibility. Predominant overnight responsibility for a child.

residential time. See VISITATION (2).

residua (ri-**zij**-oo-ə). *pl.* RESIDUUM.

residual, *adj.* (16c) Of, relating to, or constituting a residue; remaining; leftover <a residual claim> <a residual functional disability>.

residual, *n.* **1.** A leftover quantity; a remainder. **2.** (*often pl.*) A disability remaining after an illness, injury, or operation. **3.** (*usu. pl.*) A fee paid to a composer or performer for each repeated broadcast (esp. on television) of a film, program, or commercial. [Cases: Copyrights and Intellectual Property ⇨48.]

residual estate. See *residuary estate* under ESTATE (3).

residual value. See *salvage value* under VALUE (2).

residuary (ri-**zij**-oo-er-ee), *adj.* (18c) Of, relating to, or constituting a residue; residual <a residuary gift>.

residuary, *n.* **1.** See *residuary estate* under ESTATE (3). **2.** See *residuary legatee* under LEGATEE.

residuary bequest. See BEQUEST.

residuary clause. (18c) *Wills & estates.* A testamentary clause that disposes of any estate property remaining after the satisfaction of all other gifts. — Also termed *omnibus clause.* [Cases: Wills ⇨586.]

residuary devise. See DEVISE.

residuary devisee. See DEVISEE.

residuary estate. See ESTATE (3).

residuary legacy. See LEGACY.

residuary legatee. See LEGATEE.

residue. (14c) **1.** Something that is left over after a part is removed or disposed of; a remainder. **2.** See *residuary estate* under ESTATE (3).

residuum (ri-**zij**-oo-əm). (17c) **1.** That which remains; a residue. **2.** See *residuary estate* under ESTATE (3). Pl. **residua** (ri-**zij**-oo-ə).

residuum rule. *Administrative law.* The principle that an agency decision based partly on hearsay evidence will be upheld on judicial review only if the decision is founded on at least some competent evidence. • The residuum rule has generally been rejected by federal and state courts. [Cases: Administrative Law and Procedure ⇨784.]

resignation, *n.* (14c) **1.** The act or an instance of surrendering or relinquishing an office, right, or claim. [Cases: Officers and Public Employees ⇨62.] **2.** A formal notification of relinquishing an office or position. **3.** *Hist.* The surrender to the lord of the vassal's interest in land. — **resign,** *vb.*

resile (ri-**zil**), *vb.* **1.** To retract (a statement, allegation, etc.). **2.** To draw back (from an agreement, contract, etc.). **3.** To return to one's original position.

res immobiles (rays i-**moh**-bə-leez), *n. pl.* [Latin] *Civil law.* Immovable things; chattels real. See IMMOBILIA.

res incorporales (rays in-kor-pə-**ray**-leez), *n. pl.* [Latin] *Civil law.* Incorporeal things; intangible things that are not perceptible to the senses. See *incorporeal thing* under THING.

res in privatorum patrimonio. See RES PRIVATAE.

res integra (rays **in**-tə-grə *also* in-**teg**-rə). [Latin "an entire thing"] See RES NOVA.

res inter alios acta (rays **in**-tər **ay**-lee-ohs **ak**-tə). [Latin "a thing done between others"] **1.** *Contracts.* The common-law doctrine holding that a contract cannot unfavorably affect the rights of a person who is not a party to the contract. [Cases: Contracts ⇨186(1).] **2.** *Evidence.* The rule prohibiting the admission of collateral facts into evidence. [Cases: Criminal Law ⇨338(1), 369.1; Evidence ⇨99, 130.]

res ipsa loquitur (rays **ip**-sə **loh**-kwə-tər). [Latin "the thing speaks for itself"] (17c) *Torts.* The doctrine providing that, in some circumstances, the mere fact of an accident's occurrence raises an inference of negligence that establishes a prima facie case. — Often shortened to *res ipsa.* [Cases: Negligence ⇨1610.]

> "The phrase 'res ipsa loquitur' is a symbol for the rule that the fact of the occurrence of an injury, taken with the surrounding circumstances, may permit an inference or raise a presumption of negligence, or make out a plaintiff's prima

facie case, and present a question of fact for defendant to meet with an explanation. It is merely a short way of saying that the circumstances attendant on the accident are of such a nature as to justify a jury, in light of common sense and past experience, in inferring that the accident was probably the result of the defendant's negligence, in the absence of explanation or other evidence which the jury believes." Stuart M. Speiser, *The Negligence Case: Res Ipsa Loquitur* § 1:2, at 5–6 (1972).

"It is said that *res ipsa loquitur* does not apply if the cause of the harm is known. This is a dark saying. The application of the principle nearly always presupposes that some part of the causal process is known, but what is lacking is evidence of its connection with the defendant's act or omission. When the fact of control is used to justify the inference that defendant's negligence was responsible it must of course be shown that the thing in his control in fact caused the harm. In a sense, therefore, the cause of the harm must be known before the maxim can apply." H.L.A. Hart & Tony Honoré, *Causation in the Law* 419–20 (2d ed. 1985).

"Res ipsa loquitur is an appropriate form of circumstantial evidence enabling the plaintiff in particular cases to establish the defendant's likely negligence. Hence the res ipsa loquitur doctrine, properly applied, does not entail any covert form of strict liability. . . . The doctrine implies that the court does not know, and cannot find out, what actually happened in the individual case. Instead, the finding of likely negligence is derived from knowledge of the causes of the type or category of accidents involved." Restatement (Third) of Torts § 15 cmt. a (Discussion Draft 1999).

res ipsa loquitur test (rays **ip**-sə **loh**-kwə-tər). (1962) A method for determining whether a defendant has gone beyond preparation and has actually committed an attempt, based on whether the defendant's act itself would have indicated to an observer what the defendant intended to do. — Also termed *equivocality test*. See ATTEMPT (2). [Cases: Criminal Law ⚷44.]

resisting arrest. (1851) The crime of obstructing or opposing a police officer who is making an arrest. — Also termed *resisting lawful arrest*. [Cases: Obstructing Justice ⚷3.]

resisting process. See OBSTRUCTION OF PROCESS.

resisting unlawful arrest. (1905) The act of opposing a police officer who is making an unlawful arrest. • Most jurisdictions have accepted the Model Penal Code position prohibiting the use of force to resist an unlawful arrest when the person arrested knows that a police officer is making the arrest. But some jurisdictions allow an arrestee to use nondeadly force to prevent the arrest. *See* Model Penal Code § 3. [Cases: Obstructing Justice ⚷3.]

res judicata (rays joo-di-**kay**-tə *or* -**kah**-tə). [Latin "a thing adjudicated"] (17c) **1.** An issue that has been definitively settled by judicial decision. [Cases: Judgment ⚷540, 584, 585.] **2.** An affirmative defense barring the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been — but was not — raised in the first suit. • The three essential elements are (1) an earlier decision on the issue, (2) a final judgment on the merits, and (3) the involvement of the same parties, or parties in privity with the original parties. Restatement (Second) of Judgments §§ 17, 24 (1982). — Also termed *res adjudicata*; *claim preclusion*; *doctrine of res judicata*. Cf. COLLATERAL ESTOPPEL. [Cases: Judgment ⚷540, 584, 948(1).]

"'Res judicata' has been used in this section as a general term referring to all of the ways in which one judgment will have a binding effect on another. That usage is and doubtless will continue to be common, but it lumps under a single name two quite different effects of judgments. The first is the effect of foreclosing any litigation of matters that never have been litigated, because of the determination that they should have been advanced in an earlier suit. The second is the effect of foreclosing relitigation of matters that have once been litigated and decided. The first of these, preclusion of matters that were never litigated, has gone under the name, 'true res judicata,' or the names, 'merger' and 'bar.' The second doctrine, preclusion of matters that have once been decided, has usually been called 'collateral estoppel.' Professor Allan Vestal has long argued for the use of the names 'claim preclusion' and 'issue preclusion' for these two doctrines [Vestal, *Rationale of Preclusion*, 9 St. Louis U. L.J. 29 (1964)], and this usage is increasingly employed by the courts as it is by Restatement Second of Judgments." Charles Alan Wright, *The Law of Federal Courts* § 100A, at 722–23 (5th ed. 1994).

res litigiosae (rays li-tij-ee-**oh**-see), *n. pl.* [Latin] *Civil law.* Things that are in litigation; property or rights that are the subject of a pending action.

res mancipi (rays **man**-sə-pī). [Latin "things of mancipium"] *Roman law.* Property, specifically Italic land with its rustic servitudes and beasts of draft or burden, that can be transferred only by a formal ceremony of mancipation. — Also termed *mancipi res*; *things mancipi*. See MANCIPATION.

res merae facultatis (rays **meer**-ee fak-əl-**tay**-tis). [Law Latin] *Scots law.* A matter of mere power.

"Res merae facultatis . . . . Such, for example, is the right which a proprietor has of building upon his own property, or which any one has of walking upon the seashore, or sailing upon the sea, or on any navigable river. It is a right which may or may not be exercised at the pleasure of him who holds it; and such rights are never lost by their non-exercise for any length of time, because it is of their essential character that they may be used or exercised at any time." John Trayner, *Trayner's Latin Maxims* 554 (4th ed. 1894).

res mobiles (rays **moh**-bə-leez), *n. pl.* [Latin] *Civil law.* Movable things; chattels personal.

res nec mancipi (rays nek **man**-sə-pī). [Latin "things not of mancipium"] *Roman law.* Property that can be transferred without a formal ceremony of mancipation. — Also termed *things nec mancipi*.

res non est integra (rays non est **in**-tə-grə). [Latin] *Hist.* The original position has changed; performance has taken place (in whole or in part).

res nova (rays **noh**-və). [Latin "new thing"] **1.** An undecided question of law. **2.** A case of first impression. — Also termed *res integra*. See *case of first impression* under CASE.

res nullius (rays nə-lī-əs). [Latin "thing of no one"] A thing that can belong to no one; an ownerless chattel.

resolution. (17c) **1.** *Parliamentary law.* A main motion that formally expresses the sense, will, or action of a

deliberative assembly (esp. a legislative body). • A resolution is a highly formal kind of main motion, often containing a preamble, and one or more resolving clauses in the form, "*Resolved*, That . . . ."

concurrent resolution. (17c) A resolution passed by one house and agreed to by the other. • It expresses the legislature's opinion on a subject but does not have the force of law.

joint resolution. (17c) A legislative resolution passed by both houses. • It has the force of law and is subject to executive veto. [Cases: Statutes ☞22, 229.]

simple resolution. (18c) A resolution passed by one house only. • It expresses the opinion or affects the internal affairs of the passing house, but it does not have the force of law.

2. Formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment. — Also termed *corporate resolution*.

shareholder resolution. A resolution by shareholders, usu. to ratify the actions of the board of directors.

3. A document containing such an expression or authorization.

resolutions committee. See COMMITTEE.

Resolution Trust Corporation. A federal agency established to act as a receiver for insolvent federal savings-and-loan associations and to transfer or liquidate those associations' assets. • The agency was created when the Federal Savings and Loan Insurance Corporation was abolished in 1989. — Abbr. RTC. See FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION. [Cases: Building and Loan Associations ☞42(6).]

resolutive condition. See *resolutory condition* under CONDITION (2).

resolutory (ri-**zahl**-yə-tor-ee), *adj.* (1818) Operating or serving to annul, dissolve, or terminate <a resolutory clause>.

resolutory condition. See CONDITION (2).

resolving clause. See CLAUSE.

resort, *n.* Something that one turns to for aid or refuge <the court of last resort>. — **resort,** *vb.*

RESPA (**res**-pə). *abbr.* REAL ESTATE SETTLEMENT PROCEDURES ACT.

respite (**res**-pit), *n.* (14c) **1.** A period of temporary delay; an extension of time. **2.** A temporary suspension of a death sentence; a reprieve. [Cases: Sentencing and Punishment ☞1798.] **3.** A delay granted to a jury or court for further consideration of a verdict or appeal. **4.** *Civil law.* An agreement between a debtor and several creditors for an extension of time to repay the various debts. La. Civ. Code art. 3084. — **respite,** *vb.*

forced respite. A respite in which some of the creditors are compelled by a court to give the same extension of time that the other creditors have agreed to.

voluntary respite. A respite in which all the creditors agree to the debtor's proposal for an extension of time.

respondeat ouster (ri-**spon**-dee-at **ow**-stər). [Law Latin "let him make further answer"] An interlocutory judgment or order that a party who made a dilatory plea that has been denied must now plead on the merits. — Also termed *judgment respondeat ouster.* [Cases: Pleading ☞111.47.]

> "In case of felony, if the plea be held bad, the judgment is *respondeat ouster*; or rather, as the defendant generally pleads over to the felony, the jury are charged again, and that at the same time with the issue on the plea of autrefois acquit, to inquire of the second issue, and the trial proceeds as if no plea in bar had been pleaded." 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 461 (2d ed. 1826).

respondeat superior (ri-**spon**-dee-at soo-**peer**-ee-ər *or* sə-peer-ee-**or**). [Law Latin "let the superior make answer"] (17c) *Torts.* The doctrine holding an employer or principal liable for the employee's or agent's wrongful acts committed within the scope of the employment or agency. — Also termed *master–servant rule.* See SCOPE OF EMPLOYMENT. [Cases: Labor and Employment ☞3026; Principal and Agent ☞159(2).]

> "Most courts have made little or no effort to explain the result, and have taken refuge in rather empty phrases, such as 'he who does a thing through another does it himself,' or the endlessly repeated formula of 'respondeat superior,' which in itself means nothing more than 'look to the man higher up.'" W. Page Keeton et al., *The Law of Torts* § 69, at 500 (5th ed. 1984).

***responde* book.** *Hist. Scots law.* The chancellery's record of all duties payable by heirs who obtained royal warrants for possession of the decedent's lands.

respondent. (16c) **1.** The party against whom an appeal is taken; APPELLEE. • In some appellate courts, the parties are designated as *petitioner* and *respondent.* In most appellate courts in the United States, the parties are designated as *appellant* and *appellee.* Often the designations depend on whether the appeal is taken by writ of certiorari (or writ of error) or by direct appeal. [Cases: Appeal and Error ☞326; Federal Courts ☞545.1.] **2.** The party against whom a motion or petition is filed. Cf. PETITIONER. **3.** At common law, the defendant in an equity proceeding. **4.** *Civil law.* One who answers for another or acts as another's security.

respondent bank. See BANK.

respondentia (ree-spon-**den**-shee-ə *or* res-pon-). [Law Latin fr. Latin *respondere* "to answer"] A loan secured by the cargo on one's ship rather than the ship itself. Cf. BOTTOMRY. [Cases: Shipping ☞88.]

respondentia bond. See BOND (2).

respondere non debet (ri-**spon**-də-ree non **deb**-ət). [Latin] *Common-law pleading.* The prayer of a plea in which the defendant insists that he or she does not have to answer — because of a privilege, for example.

responsalis (res-pon-**say**-lis). [Law Latin] **1.** *Hist.* One who appears and answers for another. **2.** *Eccles. law.* A proctor. See APOCRISARIUS.

responsa prudentium (ri-**spon**-sə proo-**den**-shee-əm). [Latin "the answers of the learned"] *Roman law.* The opinions and judgments of eminent lawyers or jurists on questions of law addressed to them. • The *responsa prudentium* originally constituted part of the early Roman civil law. Roman citizens seeking legal advice, as well as magistrates and judges, often referred legal questions to leading jurists so as to obtain their opinions (*responsa*). The *responsa* of some leading jurists were collected, much in the manner of caselaw digests, and many of them passed into Justinian's Digest. The phrase *responsa prudentium* gradually migrated to the common law, but today it is of primarily historical use. — Also spelled *responsa prudentum.*

"[T]he *judex*, or as we would now call him, the referee, might have no technical knowledge of law whatever. Under such conditions the unlearned judicial magistrates naturally looked for light and leading to the jurisconsults who instructed them through their *responsa prudentium*, the technical name given to their opinions as experts, which were promptly recorded on tablets by their students or disciples." Hannis Taylor, *The Science of Jurisprudence* 90-91 (1908).

"In [classical Latin] *responsa prudentium* is the usual form, but most of the legal sources . . . have *prudentum* following the example of Blackstone (1765)." *The Oxford English Dictionary* (2d ed. 1989).

response. *Patents.* A patent applicant's answer to an office action, usu. countering the examiner's rejections and objections and often amending the claims. [Cases: Patents ☞109.]

responsibility, *n.* (18c) **1.** LIABILITY (1). **2.** *Criminal law.* A person's mental fitness to answer in court for his or her actions. See COMPETENCY. [Cases: Mental Health ☞432.] **3.** *Criminal law.* Guilt. — Also termed (in senses 2 & 3) *criminal responsibility.* — **responsible,** *adj.*

"[As for] the ambiguities of the word 'responsibility,' . . . it is, I think, still important to distinguish two of the very different things this difficult word may mean. To say that someone is legally responsible for something often means only that under legal rules he is liable to be made either to suffer or to pay compensation in certain eventualities. The expression 'he'll pay for it' covers both these things. In this the primary sense of the word, though a man is normally only responsible for his own actions or the harm he has done, he may be also responsible for the actions of other persons if legal rules so provide. Indeed in this sense a baby in arms or a totally insane person might be legally responsible — again, if the rules so provide; for the word simply means liable to be made to account or pay and we might call this sense of the word 'legal accountability'. But the new idea — the programme of eliminating responsibility — is not, as some have feared, meant to eliminate legal accountability: persons who break the law are not just to be left free. What is to be eliminated are enquiries as to whether a person who has done what the law forbids was responsible at the time he did it and responsible in this sense does not refer to the legal status of accountability. It means the capacity, so far as this is a matter of a man's mind or will, which normal people have to control their actions and conform to law. In this sense of responsibility a man's responsibility can be said to be 'impaired'." H.L.A. Hart, "Changing Conceptions of Responsibility," in *Punishment and Responsibility* 186, 196-97 (1968).

"Responsibility means answerability or accountability. It is used in the criminal law in the sense of 'criminal responsibility' and hence means answerability to the criminal law." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law and Procedure: Cases and Materials* 399 (5th ed. 1977).

responsible broker-dealer. See BROKER.

responsive, *adj.* (15c) Giving or constituting a response; answering <the witness's testimony is not responsive to the question>. [Cases: Witnesses ☞248.]

responsive action. *Patents.* A patent applicant's answer to an examiner rejections in an office action. • To be responsive, the answer must address all of the examiner's issues in detail, rather than merely submitting substitute claims. [Cases: Patents ☞108.]

responsive pleading. See PLEADING (1).

responsive verdict. See VERDICT.

res privatae (rays pri-**vay**-tee), *n. pl.* [Latin "private things"] *Roman & civil law.* Things that can be owned by individuals or by the state and its political subdivisions in their capacity as private citizens. La. Civ. Code art. 450. — Also termed *res in privatorum patrimonio.*

res publicae (rays **pəb**-li-see), *n. pl.* [Latin "public things"] *Roman & civil law.* Things that cannot be individually owned because they belong to the public, such as the sea, navigable waters, and highways. • Public things are owned by the state and its political subdivisions in their capacity as public persons. La. Civ. Code art. 449.

res quotidianae (rays kwoh-tid-ee-**ay**-nee), *n. pl.* [Latin] *Civil law.* Everyday matters; familiar points or questions.

res religiosae (rays ri-lij-ee-**oh**-see), *n. pl.* [Latin] *Civil law.* Religious things; esp., burial places.

res repetundae (rays rep-ə-**tən**-dee). [Latin "things due to be repaid"] *Roman law.* **1.** Money or things that can be reclaimed by a person who was forced to give them to a public official. **2.** The illegal act of forcing someone to give money or things; extortion. — Sometimes (erroneously) shortened to *repetundae.* See CRIMEN REPETUNDARUM.

res sanctae (rays **sangk**-tee), *n. pl.* [Latin "sacred things"] *Roman law.* The walls of a city. • The Romans considered maintenance of city walls so important that damage to a city's walls was a capital offense.

res serviens (rays **sər**-vee-enz). [Latin] The servient property subject to a servitude. See *servient estate* under ESTATE (4).

res singulorum (rays sing-gyə-**lor**-əm). [Latin] *Hist.* The property of individuals.

res sua (rays s[y]**oo**-ə). [Latin] *Hist.* One's own property.

rest, *vb.* (1905) **1.** (Of a litigant) to voluntarily conclude presenting evidence in a trial <after the police officer's testimony, the prosecution rested>. **2.** (Of a litigant) to voluntarily conclude presenting evidence in (a trial) <the defense rested its case after presenting just two witnesses>. • In sense 1, the verb is intransitive; in sense 2, it is transitive.

Restatement. One of several influential treatises published by the American Law Institute describing the law in a given area and guiding its development. • The Restatements use a distinctive format of black-letter rules, official comments, illustrations, and reporter's notes. Although the Restatements are frequently cited in cases and commentary, a Restatement provision is not binding on a court unless it has been officially adopted as the law by that jurisdiction's highest court. Restatements have been published in the following areas of law: Agency, Conflict of Laws, Contracts, Employment Law, Foreign Relations Law of the United States, Judgments, Law Governing Lawyers, Property, Restitution, Security, Suretyship and Guaranty, Torts, Trusts, and Unfair Competition. — Also termed *Restatement of the Law.*

> "We speak of the work which the organization should undertake as a restatement; its object should not only be to help make certain much that is now uncertain and to simplify unnecessary complexities, but also to promote those changes which will tend better to adapt the laws to the needs of life. The character of the restatement which we have in mind can be best described by saying that it should be at once analytical, critical and constructive." Committee on the Establishment of a Permanent Organization for the Improvement of the Law (Elihu Root, chairman), *Report Proposing the Establishment of an American Law Institute*, 1 ALI Proc. 14 (1923).

restater. (1955) An author or reporter of a Restatement.

restaur (res-**tor**). **1.** The recourse that insurers (esp. marine underwriters) have against each other according to the date of their insurance. **2.** The recourse that marine insurers have against a ship's master if a loss occurs through the master's fault or negligence. **3.** The recourse that one has against a guarantor or other person under a duty to indemnify. — Also spelled *restor.*

restitutio in integrum (res-tə-**t**[**y**]**oo**-shee-oh in **in**-tə-grəm). [Latin] *Roman & civil law.* Restoration to the previous condition or the status quo. • In Roman law, a praetor could accomplish this by annulling a contract or transaction that was strictly legally valid but inequitable and by restoring the parties to their previous legal relationship. The phrase is still sometimes used in American law (esp. in Louisiana) when a court annuls a contract and orders restitution on equitable grounds.

restitution, *n.* (13c) **1.** A body of substantive law in which liability is based not on tort or contract but on the defendant's unjust enrichment. See UNJUST ENRICHMENT. **2.** The set of remedies associated with that body of law, in which the measure of recovery is usu. based not on the plaintiff's loss, but on the defendant's gain. Cf. COMPENSATION; DAMAGES. **3.** Return or restoration of some specific thing to its rightful owner or status. **4.** Compensation for loss; esp., full or partial compensation paid by a criminal to a victim, not awarded in a civil trial for tort, but ordered as part of a criminal sentence or as a condition of probation. [Cases: Damages ⇨ 1; Implied and Constructive Contracts ⇨ 4; Infants ⇨ 224; Sentencing and Punishment ⇨ 1973, 2100–2217.] — **restitutionary**, *adj.*

> "The term 'restitution' appears in early decisions, but general recognition probably began with the publication of the *Restatement of Restitution* [in 1937]. The term is not wholly apt since it suggests restoration to the successful party of some benefit obtained from him. Usually this will be the case where relief is given, but by no means always. There are cases in which the successful party obtains restitution of something he did not have before, for example a benefit received by the defendant from a third person which justly should go to the plaintiff." 1 George E. Palmer, *The Law of Restitution* § 1.1, at 4 (1978).

> "'Restitution' is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for injury done. Often, the result under either meaning of the term would be the same. If the plaintiff has been defrauded into paying $1,000 to the defendant, his loss and the defendant's gain coincide. Where they do not coincide, as where the plaintiff is out of pocket more than the defendant has gained and the defendant's conduct is tortious, the plaintiff will recover his loss in a quasi-contractual or equitable action for restitution. Unjust impoverishment as well as unjust enrichment is a ground for restitution. If the defendant is guilty of a non-tortious misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed." John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 9-23, at 376 (3d ed. 1987).

restitutionary redress. See REDRESS.

restitution damages. See DAMAGES.

restitutione extracti ab ecclesia (res-tə-t[y]oo-shee-**oh**-nee ek-**strak**-tɪ ab e-**klee**-z[h]ee-ə). [Latin] *Eccles. law.* A writ restoring someone who had been suspected or accused of a felony to the church.

restitutione temporalium (res-tə-t[y]oo-shee-**oh**-nee tem-pə-**ray**-lee-əm). [Latin] *Eccles. law.* A writ directing the sheriff to restore the temporalities of a diocese to a bishop. See TEMPORALITY (2).

restitution interest. See INTEREST (2).

restitutory interdict. See INTERDICT (1).

restitutory right. See RIGHT.

restor. See RESTAUR.

restorative justice. An alternative delinquency sanction focused on repairing the harm done, meeting the victim's needs, and holding the offender responsible for his or her actions. • Restorative-justice sanctions use a balanced approach, producing the least restrictive disposition while stressing the offender's accountability and providing relief to the victim. The offender may be ordered to make restitution, to perform community service, or to make amends in some other way that the court orders.

restorative motion. See MOTION (2).

restoratory motion. See *restorative motion* under MOTION (2).

restraining order. (1876) **1.** A court order prohibiting family violence; esp., an order restricting a person from harassing, threatening, and sometimes merely contacting or approaching another specified person. • This type of order is issued most commonly in cases

of domestic violence. A court may grant an ex parte restraining order in a family-violence case if it is necessary to (1) achieve the government's interest in protecting victims of family violence from further abuse, (2) ensure prompt action where there is an immediate threat of danger, and (3) provide governmental control by ensuring that judges grant such orders only where there is an immediate danger of such abuse. *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983 (1972). — Also termed *protection order*; *protective order*; *stay-away order*. See *ex parte motion* under MOTION. [Cases: Protection of Endangered Persons ☞70–82.] **2.** TEMPORARY RESTRAINING ORDER. **3.** A court order entered to prevent the dissipation or loss of property.

restraining power. See POWER (3).

restraining statute. See *disabling statute* under STATUTE.

restraint, *n.* (15c) **1.** Confinement, abridgment, or limitation <a restraint on the freedom of speech>. See PRIOR RESTRAINT. **2.** Prohibition of action; holding back <the victim's family exercised no restraint — they told the suspect exactly what they thought of him>. **3.** RESTRAINT OF TRADE. **4.** FORFEITURE RESTRAINT.

restraint of marriage. (16c) A condition (esp. in a gift or bequest) that nullifies the grant to which it applies if the grantee marries or remarries. • Restraints of marriage are usu. void if they are general or unlimited in scope. [Cases: Contracts ☞111.]

restraint of princes. *Archaic.* An embargo. • The phrase still occasionally appears in marine-insurance contexts. — Also termed *restraint of princes and rulers*; *restraint of princes, rulers, and people*. See EMBARGO.

restraint of trade. 1. A limitation on business dealings or professional or gainful occupations. **2.** *Antitrust.* An agreement between two or more businesses or a combination of businesses intended to eliminate competition, create a monopoly, artificially raise prices, or otherwise adversely affect the free market. • Restraints of trade are usu. illegal, but may be declared reasonable if they are in the best interests of both the parties and the public. — Often shortened to *restraint*. — Also termed *conspiracy in restraint of trade*. See PER SE RULE; RULE OF REASON. [Cases: Antitrust and Trade Regulation ☞537.]

horizontal restraint. A restraint of trade imposed by agreement between competitors at the same level of distribution. • The restraint is horizontal not because it has horizontal effects, but because it is the product of a horizontal agreement. — Also termed *horizontal agreement*.

unreasonable restraint of trade. A restraint of trade that produces a significant anticompetitive effect and thus violates antitrust law.

vertical restraint. A restraint of trade imposed by agreement between firms at different levels of distribution (as between manufacturer and retailer).

restraint on alienation. (18c) **1.** A restriction, usu. in a deed of conveyance, on a grantee's ability to sell or transfer real property; a provision that conveys an interest and that, even after the interest has become vested, prevents or discourages the owner from disposing of it at all or from disposing of it in particular ways or to particular persons. • Restraints on alienation are generally unenforceable as against public policy favoring the free alienability of land. — Also termed *unreasonable restraint on alienation*. **2.** A trust provision that prohibits or penalizes alienation of the trust corpus. [Cases: Perpetuities ☞6.]

restricted indorsement. See *conditional indorsement* under INDORSEMENT.

restricted interpretation. See *restrictive interpretation* under INTERPRETATION.

restricted security. See SECURITY.

restricted stock. See *restricted security* under SECURITY.

restricted surplus. See SURPLUS.

restricted visitation. See *supervised visitation* under VISITATION.

restriction. (15c) **1.** A limitation or qualification. **2.** A limitation (esp. in a deed) placed on the use or enjoyment of property. See *restrictive covenant* under COVENANT (4). [Cases: Covenants ☞49–52, 69.]

conservation restriction. See *conservation easement* under EASEMENT.

3. *Military law.* A deprivation of liberty involving moral and legal, rather than physical, restraint. • A military restriction is imposed as punishment either by a commanding officer's nonjudicial punishment or by a summary, special, or general court-martial. Restriction is a lesser restraint because it permits the restricted person to perform full military duties. See *nonjudicial punishment* under PUNISHMENT. [Cases: Military Justice ☞526, 1322.1.]

restriction in lieu of arrest. A restriction in which a person is ordered to stay within specific geographical limits, such as a base or a ship, and is permitted to perform full military duties. [Cases: Military Justice ☞935.1.]

4. *Patents.* A patent examiner's ruling that a patent application comprises two or more patentably distinct or independent inventions; the requirement that the applicant elect one invention to continue prosecuting under the original application by abandoning some of the original claims. • The applicant may defend the claims by traversing the requirement, abandon any nonelected invention, or continue prosecuting any nonelected invention under a separate divisional application. — Also termed *requirement for restriction*; *restriction requirement*; *division*. Cf. OBJECTION (2); REJECTION (4). [Cases: Patents ☞120.]

restriction application. See *divisional application* under PATENT APPLICATION.

restriction requirement. See RESTRICTION (4).

restrictive condition. See *negative condition* under CONDITION (2).

restrictive covenant. 1. See *noncompetition covenant* under COVENANT (1). **2.** See COVENANT (4).

restrictive covenant in equity. See *restrictive covenant* under COVENANT (4).

restrictive indorsement. See INDORSEMENT.

restrictive interpretation. See INTERPRETATION.

restrictive principle of sovereign immunity. The doctrine by which a foreign nation's immunity does not apply to claims arising from the nation's private or commercial acts, but protects the nation only from claims arising from its public functions. See COMMERCIAL-ACTIVITY EXCEPTION; JURE GESTIONIS; JURE IMPERII. [Cases: International Law ⇨10.33.]

> "[T]he [Foreign Sovereign] Immunities Act codified the so-called 'restrictive' principle of sovereign immunity, as recognized in international law. Under this doctrine, the immunity of a foreign state in the courts of the United States is 'restricted' to claims involving the foreign state's public acts and does not extend to suits based on its commercial or private conduct." 14A Charles Alan Wright et al., *Federal Practice and Procedure* § 3662, at 161–62 (3d ed. 1998).

restrictive title. See TITLE (3).

resulting power. See POWER (3).

resulting trust. See TRUST.

resulting use. See USE (4).

resume consideration. See *take from the table* under TABLE.

resummons. (15c) A second or renewed summons to a party or witness already summoned. See SUMMONS.

resumption. 1. The taking back of property previously given up or lost. **2.** *Hist.* The retaking by the Crown or other authority of lands or rights previously given to another (as because of false suggestion or other error).

res universitatis (rays yoo-nə-vər-sə-**tay**-tis), *n. pl.* [Latin] *Roman law.* Things belonging to a community or corporate body and free to be used by all its members.

resurrender, *n. Hist.* The return of a copyhold estate to a mortgagor by the mortgagee after the debt has been repaid. See SURRENDER OF COPYHOLD.

retail, *n.* The sale of goods or commodities to ultimate consumers, as opposed to the sale for further distribution or processing. — **retail,** *adj.* Cf. WHOLESALE. — **retail,** *vb.*

retailer, *n.* A person or entity engaged in the business of selling personal property to the public or to consumers, as opposed to selling to those who intend to resell the items.

retail installment contract. See CONTRACT.

retail installment contract and security agreement. See *retail installment contract* under CONTRACT.

retail installment sale. See INSTALLMENT SALE.

retail sales tax. See *sales tax* under TAX.

retainage (ri-**tayn**-ij). (1901) A percentage of what a landowner pays a contractor, withheld until the construction has been satisfactorily completed and all mechanic's liens are released or have expired. — Also termed *retained fund.* [Cases: Contracts ⇨214, 221(3).]

retained earnings. See EARNINGS.

retained fund. See RETAINAGE.

retained income trust. See *grantor-retained income trust* under TRUST.

retainer, *n.* (18c) **1.** A client's authorization for a lawyer to act in a case <the attorney needed an express retainer before making a settlement offer>. [Cases: Attorney and Client ⇨64.] **2.** A fee that a client pays to a lawyer simply to be available when the client needs legal help during a specified period or on a specified matter. [Cases: Attorney and Client ⇨137.] **3.** A lump-sum fee paid by the client to engage a lawyer at the outset of a matter. — Also termed *engagement fee.* **4.** An advance payment of fees for work that the lawyer will perform in the future. — Also termed *retaining fee.* Cf. ATTORNEY'S FEES. [Cases: Attorney and Client ⇨137.] — **retain,** *vb.*

> "Over the years, attorneys have used the term 'retainer' in so many conflicting senses that it should be banished from the legal vocabulary. . . . If some primordial urge drives you to use the term 'retainer,' at least explain what you mean in terms that both you and the client will understand." Mortimer D. Schwartz & Richard C. Wydick, *Problems in Legal Ethics* 100, 101 (2d ed. 1988).

general retainer. (18c) A retainer for a specific length of time rather than for a specific project. [Cases: Attorney and Client ⇨137.]

special retainer. (18c) A retainer for a specific case or project. [Cases: Attorney and Client ⇨137.]

retaining fee. See RETAINER (4).

retaining lien. See LIEN.

retaliatory discharge. See DISCHARGE (7).

retaliatory eviction. See EVICTION.

retaliatory law. (1820) A state law restraining another state's businesses — as by levying taxes — in response to similar restraints imposed by the second state on the first state's businesses.

retaliatory tariff. See TARIFF (2).

retallia (ri-**tal**-ee-ə). [Law Latin] *Hist.* The sale of goods or commodities in small quantities; retail.

retenementum (ri-ten-ə-**men**-təm). *Hist.* A withholding; restraint or detainment.

retenta possessione (ri-**ten**-tə pə-zes[h]-ee-**oh**-nee). [Latin] *Hist.* Possession being retained.

retention. *Scots law.* A possessor's right to keep a movable until the possessor's claim against the movable or its owner is satisfied; a lien.

general retention. *Scots law.* A possessor's right to keep all property owned by a debtor as security for the debt.

special retention. *Scots law.* A possessor's right to keep property owned by another until reimbursed for expenditures on the property for its repair or for its care and maintenance.

retinue. A group of persons who are retained to follow and attend to a sovereign, noble, or other distinguished person.

retired stock. See *treasury stock* under STOCK.

retirement, *n.* (16c) **1.** Termination of one's own employment or career, esp. upon reaching a certain age or for health reasons; retirement may be voluntary or involuntary. **2.** Withdrawal from action or for privacy <Carol's retirement to her house by the lake>. **3.** Withdrawal from circulation; payment of a debt <retirement of a series of bonds>. See REDEMPTION. — **retire,** *vb.*

compulsory retirement. Mandatory retirement based on a person's age, esp. as specified in a union contract, by corporate policy, or by statute.

retirement annuity. See ANNUITY.

Retirement Equity Act of 1984. A federal law that requires private pension plans to comply with the court-ordered division of a pension between spouses and permits the plan administrator to pay all or part of a worker's pensions and survivor benefits directly to a former spouse if the plan has been served with a court order that meets the federal requirements for a qualified domestic-relations order. 29 USCA § 1056(d)(3). See QUALIFIED DOMESTIC-RELATIONS ORDER. [Cases: Labor and Employment ⇨594.]

retirement-income insurance. See INSURANCE.

retirement plan. See EMPLOYEE BENEFIT PLAN.

retorna brevium (ri-**tor**-nə **bree**-vee-əm). [Law Latin] *Hist.* The return of a writ. • This was the indorsement on a writ by a sheriff or other officer, reporting on the writ's execution.

retorno habendo. See DE RETORNO HABENDO.

retorsion (ri-**tor**-shən). *Int'l law.* An act of lawful retaliation in kind for another nation's unfriendly or unfair act. • Examples of retorsion include suspending diplomatic relations, expelling foreign nationals, and restricting travel rights. — Also spelled *retortion.* Cf. REPRISAL (2).

retraction, *n.* (14c) **1.** The act of taking or drawing back <retraction of anticipatory repudiation before breach of contract>. **2.** The act of recanting; a statement in recantation <retraction of a defamatory remark>. [Cases: Libel and Slander ⇨66.] **3.** *Wills & estates.* A withdrawal of a renunciation <because of her retraction, she took property under her uncle's will>. See RENUNCIATION (3). **4.** *Copyright.* The right of authors and artists to renounce their creative works and to forbid their sale or display. • Retraction is one of the moral rights of artists recognized in civil-law countries and much of Europe, but largely unavailable in the United States. — Also termed (in sense 4) *withdrawal.* — **retract,** *vb.*

retractus feudalis (ri-**trak**-təs fyoo-**day**-lis). [Law Latin "a recall of the fee"] *Scots law.* A superior's right to pay a debt of a vassal's lands in exchange for the return of the conveyance.

retraxit (ri-**trak**-sit). [Latin "he has withdrawn"] A plaintiff's voluntary withdrawal of a lawsuit in court so that the plaintiff forever forfeits the right of action. • In modern practice, retraxit is called *voluntary dismissal with prejudice.* A dismissal without prejudice does not operate as a retraxit. See *judgment of retraxit* under JUDGMENT.

retreat rule. (1935) *Criminal law.* The doctrine holding that the victim of an assault has a duty to retreat instead of resorting to deadly force in self-defense, unless (1) the victim is at home or in his or her place of business (the so-called *castle doctrine*), or (2) the assailant is a person whom the victim is trying to arrest. • A minority of American jurisdictions have adopted this rule. Cf. NO-RETREAT RULE. [Cases: Homicide ⇨798.]

> "The rationale for the retreat rule is not difficult to ascertain, at least in part. It rests upon the view that human life, even the life of an aggressor, is sufficiently important that it should be preserved when to do so requires only the sacrifice of the much less important interest in standing one's ground." George E. Dix, "Justification: Self-defense," in 3 *Encyclopedia of Crime and Justice* 946, 948–49 (Sanford H. Kadish ed., 1983).

retrial, *n.* (18c) A new trial of an action that has already been tried. See *trial de novo* under TRIAL. [Cases: Federal Civil Procedure ⇨2311; New Trial ⇨0.5.] — **retry,** *vb.*

retribution, *n.* (14c) **1.** *Criminal law.* Punishment imposed as repayment or revenge for the offense committed; requital. Cf. DETERRENCE; REHABILITATION (1). [Cases: Sentencing and Punishment ⇨44.] **2.** Something justly deserved; repayment; reward. — **retributive,** *adj.* — **retribute,** *vb.*

retributive danger. See DANGER.

retributive punishment. See PUNISHMENT.

retributivism (ri-**trib**-yə-tə-viz-əm). (1966) The legal theory by which criminal punishment is justified, as long as the offender is morally accountable, regardless of whether deterrence or other good consequences would result. • According to retributivism, a criminal is thought to have a debt to pay to society, which is paid by punishment. The punishment is also sometimes said to be society's act of paying back the criminal for the wrong done. Opponents of retributivism sometimes refer to it as "vindictive theory." Cf. *hedonistic utilitarianism* under UTILITARIANISM; UTILITARIAN-DETERRENCE THEORY. [Cases: Sentencing and Punishment ⇨44.]

maximalist retributivism. The classical form of retributivism, espoused by scholars such as Immanuel Kant, under which it is argued that society has a duty, not just a right, to punish a criminal who is guilty and culpable, that is, someone who has no justification or excuse for the illegal act.

minimalist retributivism. The more contemporary form of retributivism, which maintains that no one should be punished in the absence of guilt and

culpability (that is, unless punishment is deserved), and that a judge may absolve the offender from punishment, wholly or partially, when doing so would further societal goals such as rehabilitation or deterrence.

retroactive, *adj.* (17c) (Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past. — Also termed *retrospective*. Cf. PROSPECTIVE (1). [Cases: Administrative Law and Procedure ⚷419; Courts ⚷100(1); Statutes ⚷278.2.] — **retroactivity,** *n.*

> "'Retroactivity' is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called 'true retroactivity,' consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated. The second concept, which will be referred to as 'quasi-retroactivity,' occurs when a new rule of law is applied to an act or transaction in the process of completion. . . . [T]he foundation of these concepts is the distinction between completed and pending transactions . . . ." T.C. Hartley, *The Foundations of European Community Law* 129 (1981).

retroactive law. (18c) A legislative act that looks backward or contemplates the past, affecting acts or facts that existed before the act came into effect. • A retroactive law is not unconstitutional unless it (1) is in the nature of an ex post facto law or a bill of attainder, (2) impairs the obligation of contracts, (3) divests vested rights, or (4) is constitutionally forbidden. — Also termed *retrospective law*; *retroactive statute*; *retrospective statute*. [Cases: Statutes ⚷278.3, 278.9.]

retrocession. (17c) **1.** The act of ceding something back (such as a territory or jurisdiction). [Cases: United States ⚷3.] **2.** The return of a title or other interest in property to its former or rightful owner. **3.** The process of transferring all or part of a reinsured risk to another reinsurance company; reinsurance of reinsurance. • Subsequent retrocessions are referred to as *first retrocession*, *second retrocession*, and so on. **4.** The amount of risk that is so transferred.

retrocessionaire. *Reinsurance.* A reinsurer of a reinsurer. See RETROCESSION.

retrocessional agreement. An agreement providing for reinsurance of reinsurance.

retrospectant evidence. See EVIDENCE.

retrospective, *adj.* See RETROACTIVE.

retrospective law. See RETROACTIVE LAW.

retrospective statute. See RETROACTIVE LAW.

return, *n.* (15c) **1.** A court officer's bringing back of an instrument to the court that issued it; RETURN OF WRIT <a sheriff's return of citation>. [Cases: Execution ⚷330–347.] **2.** A court officer's indorsement on an instrument brought back to the court, reporting what the officer did or found <a return of *nulla bona*>. See FALSE RETURN (1). **3.** TAX RETURN <file your return before April 15>. **4.** (*usu. pl.*) An official report of voting results <election returns>. **5.** Yield or profit <return on an investment>. See RATE OF RETURN. — **return,** *vb.*

capital return. *Tax.* Revenue that represents the repayment of cost or capital and thus is not taxable as income. — Also termed *return of capital*.

fair return on investment. The usual or reasonable profit in a business, esp. a public utility.

net return. The profit on an investment after deducting all investment expenses.

return of capital. See *capital return*.

return date. See *return day* under DAY.

return day. See DAY.

returnee. A refugee whom authorities have returned to the country of origin; one who has fled from the home country and then been sent back. [Cases: Aliens, Immigration, and Citizenship ⚷644.]

returning board. An official body or commission that canvasses election returns.

return of process. See PROOF OF SERVICE.

return of service. See PROOF OF SERVICE.

return of writ. (18c) The sheriff's bringing back a writ to the court that issued it, with a short written account (usu. on the back) of the manner in which the writ was executed. — Often shortened to *return*. See RETURN (1). [Cases: Execution ⚷334; Sheriffs and Constables ⚷87.]

reunification. The return of a child who has been removed from his or her parents because of abuse or neglect by one or both of them. • When a child has been removed from the home because of abuse or neglect, the state's primary goal is family reunification as long as this is in the best interests of the child. The state is required, in most instances, to provide the parent or parents with services that will enable them to provide adequately for their child upon his or her return. After the enactment of the Adoption and Safe Families Act in 1997, states became more concerned with limiting the time that children are in foster care and less concerned with lengthy reunification plans. — Also termed *family reunification*. See ADOPTION AND SAFE FAMILIES ACT; PERMANENCY PLAN; ADOPTION ASSISTANCE AND CHILD WELFARE ACT. [Cases: Infants ⚷155, 231.] — **reunify,** *vb.*

re-up, *vb.* **1.** To reenlist in one of the armed forces <the soldier re-upped the day after being discharged>. [Cases: Armed Services ⚷18.5.] **2.** To sign an extension to a contract, esp. an employment agreement <the star athlete re-upped in a three-year deal worth $12 million>.

reus (**ree**-əs). [Latin] *Roman & civil law.* **1.** A defendant. Cf. ACTOR (3). **2.** A party to a suit, whether plaintiff or defendant. **3.** A party to a contract or transaction, esp. one assuming a debt or obligation. **4.** *Roman law.* In criminal law, an accused or convicted person. Pl. ***rei***. Fem. ***rea***, pl. ***reae***.

reus promittendi (**ree**-əs proh-mi-**ten**-dī). [Latin "party promising"] *Roman law.* The answerer in a Roman-law

stipulation. — Also termed *promissor*. See STIPULATION (3).

reus stipulandi (**ree**-əs **stip**-yə-**lan**-dī). [Latin "party stipulating"] *Roman law.* The questioner in a Roman-law stipulation. — Also termed *stipulator*. See STIPULATION (3).

revalidation. See REPUBLICATION (2).

revaluation, *n.* An increase in the value of one currency in relation to another currency. Cf. DEVALUATION. — **revalue,** *vb.*

revaluation surplus. See SURPLUS.

rev'd. *abbr.* Reversed.

reve (reev). *Hist.* The bailiff of a franchise or manor. See REEVE.

revendication, *n.* **1.** The recovery or claiming back of something by a formal claim or demand. **2.** *Civil law.* An action to recover real rights in and possession of property that is wrongfully held by another. • This is analogous to the common-law replevin. [Cases: Replevin ⇨1.] — **revendicate,** *vb.*

revendicatory action. See *petitory action* under ACTION (4).

revenue. (15c) Gross income or receipts.

general revenue. The income stream from which a state or municipality pays its obligations unless a law calls for payment from a special fund. See *general fund* under FUND (1). [Cases: Municipal Corporations ⇨886; States ⇨126.]

land revenue. Revenue derived from lands owned by the Crown in Great Britain. • Since, over the years, crown lands have been largely granted to subjects, they are now transferred within very narrow limits. See *Crown land* under LAND.

marginal revenue. The amount of revenue earned from the sale of one additional unit.

public revenue. A government's income, usu. derived from taxes, levies, and fees.

revenue agent's report. A report indicating any adjustments made to a tax return as a result of an IRS audit. • After an audit, this report is mailed to the taxpayer along with a thirty-day letter. — Abbr. RAR. See THIRTY-DAY LETTER.

revenue bill. See BILL (3).

revenue bond. See BOND (3).

Revenue Procedure. An official statement by the IRS regarding the administration and procedures of the tax laws. — Abbr. Rev. Proc. [Cases: Internal Revenue ⇨3048.]

Revenue Ruling. An official interpretation by the IRS of the proper application of the tax law to a specific transaction. • Revenue Rulings carry some authoritative weight and may be relied on by the taxpayer who requested the ruling. — Abbr. Rev. Rul. [Cases: Internal Revenue ⇨3043, 3049.]

revenue stamp. (1862) A stamp used as evidence that a tax has been paid. [Cases: Internal Revenue ⇨4406; Taxation ⇨3679.]

revenue tariff. See TARIFF (2).

re, verbis, literis, consensu (ree, **vər**-bis, **lit**-ər-is, kən-**sen**-s[y]oo). [Latin] *Roman law.* By the performance (namely, handing over), by words, by writing, by consent. • The phrase appeared in reference to the four classes of Roman contract.

reversal, *n.* (15c) **1.** An appellate court's overturning of a lower court's decision. [Cases: Appeal and Error ⇨1156–1180; Criminal Law ⇨1185–1190; Federal Courts ⇨932.] **2.** *Securities.* A change in a security's near-term market-price trend.

reverse, *vb.* To overturn (a judgment) on appeal. • Sometimes, the verb is used without a direct object <We reverse>. The equivalent expression in British English is *to allow the appeal.* [Cases: Appeal and Error ⇨1156–1180; Criminal Law ⇨1187; Federal Courts ⇨932.]

reverse annuity mortgage. See MORTGAGE.

reverse bear hug. See BEAR HUG.

reverse bonus. See *reverse contingent fee* under CONTINGENT FEE.

reverse condemnation. See *inverse condemnation* under CONDEMNATION.

reverse confusion. See CONFUSION.

reverse-confusion doctrine. *Intellectual property.* The rule that it is unfair competition if the defendant's use of a title that is confusingly similar to the one used by the plaintiff leads the public to believe that the plaintiff's work is the same as the defendant's, or that it is derived from or associated in some manner with the defendant. • Under the conventional passing-off form of unfair competition, similarity of titles leads the public to believe that the defendant's work is the same as the plaintiff's work, or is in some manner derived from the plaintiff. But in reverse confusion, the unfair competition results from the confusion created about the origin of the plaintiff's work. [Cases: Antitrust and Trade Regulation ⇨38; Trademarks ⇨1089.]

reverse consensus. *Intellectual property.* In a dispute-settlement procedure under TRIPs, an agreement between the parties that a dispute should not be submitted to a World Trade Organization panel for adjudication. • Before TRIPs, any party could delay formation of a WTO panel or adoption of its report by withholding consensus. Under TRIPs, each process is automatic unless all parties agree not to go forward.

reverse contingent fee. See CONTINGENT FEE.

reverse discovery. See *reverse Jencks material* under JENCKS MATERIAL.

reverse discrimination. See DISCRIMINATION.

reverse doctrine of equivalents. See DOCTRINE OF EQUIVALENTS.

reverse-engineering. *Intellectual property.* The process of discovering how an invention works by inspecting and studying it, esp. by taking it apart in order to learn how it works and how to copy it and improve it. • Reverse engineering is a proper means of discovering trade secrets, according to the Uniform Trade Secrets Act, and is a defense against a suit for misappropriation of trade secrets. But it is not a defense in a suit for patent infringement. — **reverse-engineer,** *vb.*

reverse *Erie* doctrine. 1. The rule that a state court must apply federal law when state law is preempted by federal law or federal law prevails by an *Erie*-like balancing of the facts in situations not already regulated by Congress or the Constitution. **2.** *Maritime law.* The principle that a state court hearing an admiralty or maritime case must apply federal admiralty law even if that law conflicts with the law of the state. — Often shortened to *reverse Erie.* — Also termed *converse-Erie doctrine; inverse-Erie doctrine.* Cf. ERIE DOCTRINE. [Cases: Admiralty ⇨1.20.]

reverse FOIA suit (**foy**-ə). A lawsuit by the owner of a trade secret or other information exempt from disclosure under a freedom-of-information act to prevent a governmental entity from making that information available to the public. See FREEDOM OF INFORMATION ACT. [Cases: Records ⇨31, 63.]

reverse *Jencks.* See *reverse Jencks material* under JENCKS MATERIAL.

reverse mortgage. See *reverse annuity mortgage* under MORTGAGE.

reverse palming off. See PASSING OFF.

reverse passing off. See PASSING OFF.

reverse spot zoning. See ZONING.

reverse stock split. See STOCK SPLIT.

reverse subsidiary merger. See *reverse triangular merger* under MERGER.

reverse transfer statute. See TRANSFER STATUTE.

reverse triangular merger. See MERGER.

reversible error. See ERROR (2).

reversio (ri-**vər**-shee-oh). [Law Latin] *Hist.* The returning of land to the grantor.

reversion, *n.* (15c) **1.** The interest that is left after subtracting what the transferor has parted with from what the transferor originally had; specif., a future interest in land arising by operation of law whenever an estate owner grants to another a particular estate, such as a life estate or a term of years, but does not dispose of the entire interest. • A reversion occurs automatically upon termination of the prior estate, as when a life tenant dies. — Also termed *reversionary estate; estate in reversion; equitable reversion.* [Cases: Reversions ⇨1.] **2.** Loosely, REMAINDER. Cf. POSSIBILITY OF REVERTER; REMAINDER. — **reversionary,** *adj.* — **revert,** *vb.*

reversionary estate. See REVERSION.

reversionary interest. See INTEREST (2).

reversionary lease. See LEASE.

reversioner. (17c) **1.** One who possesses the reversion to an estate; the grantor or heir in reversion. [Cases: Reversions ⇨1.] **2.** Broadly, one who has a lawful interest in land but not the present possession of it.

reversor. *Scots law.* A debtor who secures a debt by pledging property to a creditor and retaining a right of reversion.

reverter. See POSSIBILITY OF REVERTER.

reverter guarantee. *Real estate.* A mortgage clause protecting the mortgagee against a loss occasioned by the occurrence of a terminating event under a possibility of reverter. See POSSIBILITY OF REVERTER. [Cases: Mortgages ⇨211.]

revest, *vb.* (16c) To vest again or anew <revesting of title in the former owner>.

rev'g. *abbr.* Reversing.

review, *n.* (15c) **1.** Consideration, inspection, or reexamination of a subject or thing. **2.** Plenary power to direct and instruct an agent or subordinate, including the right to remand, modify, or vacate any action by the agent or subordinate, or to act directly in place of the agent or subordinate <Subject to the Assembly's review, the Council enjoys the same powers of review and delegation as the Assembly.>. — **review,** *vb.*

administrative review. (1928) **1.** Judicial review of an administrative proceeding. [Cases: Administrative Law and Procedure ⇨651.] **2.** Review of an administrative proceeding within the agency itself. [Cases: Administrative Law and Procedure ⇨513.]

appellate review. (1837) Examination of a lower court's decision by a higher court, which can affirm, reverse, modify, or vacate the decision. [Cases: Appeal and Error ⇨836; Federal Courts ⇨751.]

discretionary review. (1914) The form of appellate review that is not a matter of right but that occurs only with the appellate court's permission. See CERTIORARI. [Cases: Appeal and Error ⇨358; Federal Courts ⇨660.1.]

judicial review. See JUDICIAL REVIEW.

reviewable issue. See *appealable decision* under DECISION.

review hearing. See HEARING.

revised statutes. See STATUTE.

revision, *n.* (17c) **1.** A reexamination or careful review for correction or improvement. **2.** *Parliamentary law.* A general and thorough rewriting of a governing document, in which the entire document is open to amendment <bylaws revision>. **3.** *Military law.* The reconvening of a general or special court-martial to revise its action or to correct the record because of an improper or inconsistent action concerning the findings or the sentence. • A revision can occur only if it will not materially prejudice the accused. [Cases: Military Justice ⇨1397.] **4.** An altered version of a work.

revival, *n.* (17c) **1.** Restoration to current use or operation; esp., the act of restoring the validity or legal force of an

expired contract, an abandoned patent, or a dormant judgment. — Also termed (for a dormant judgment) *revival of judgment*. Cf. RENEWAL (2). [Cases: Federal Civil Procedure ⟹2399; Judgment ⟹857–872.] **2.** *Wills & estates.* The reestablishment of the validity of a revoked will by revoking the will that invalidated the original will or in some other way manifesting the testator's intent to be bound by the earlier will. Cf. REPUBLICATION (2). [Cases: Wills ⟹196–202.] **3.** *Patents.* Renewal of a patent prosecution that has been deemed abandoned because the applicant did not respond to an office action within the statutory period. • The applicant can petition for revival on the basis of unavoidable or unintentional delay. 37 CFR § 1.137. [Cases: Patents ⟹107.] — **revive,** *vb.*

revival statute. See STATUTE.

revivor. (18c) A proceeding to revive an action ended because of either the death of one of the parties or some other circumstance. [Cases: Abatement and Revival ⟹72; Equity ⟹303–309.]

***Revlon* duty.** *Delaware law.* The obligation of a company's board of directors, upon deciding to sell the company or when the sale of the company becomes inevitable, to act reasonably in seeking out and accepting a transaction that offers the best value to shareholders. • This duty was first applied in *Revlon v. MacAndrews & Forbes Holdings Inc.*, 506 A.2d 173, 181–82 (Del. 1986). [Cases: Corporations ⟹310(1), 584.]

revocable (**rev**-ə-kə-bəl), *adj.* (15c) Capable of being canceled or withdrawn <a revocable transfer>. [Cases: Licenses ⟹58.]

revocable guaranty. See GUARANTY.

revocable letter of credit. See LETTER OF CREDIT.

revocable trust. See TRUST.

revocation (rev-ə-**kay**-shən), *n.* (15c) **1.** An annulment, cancellation, or reversal, usu. of an act or power. **2.** *Contracts.* Withdrawal of an offer by the offeror. Cf. REPUDIATION (2); RESCISSION; REJECTION (1). [Cases: Contracts ⟹19; Sales ⟹22(2), 23(2).] **3.** *Wills & estates.* Invalidation of a will by the testator, either by destroying the will or by executing a new one. • A will, or parts of a will, may be revoked by operation of law. For example, most states have a statute providing for the revocation, upon divorce, of all provisions relating to the testator's former spouse. [Cases: Wills ⟹167–195.] — **revoke,** *vb.*

revocation hearing. See HEARING.

revocatory action (**rev**-ə-kə-tor-ee *or* ri-**vok**-ə-tor-ee). *Civil law.* An action brought by a creditor to annul a contract that has been entered into by the debtor and that will increase the debtor's insolvency. La. Civ. Code art. 2036. [Cases: Fraudulent Conveyances ⟹205–328.]

revocatur (ree-voh-**kay**-tər). [Latin] *Hist.* It is recalled. • In former English practice, this was used as a notation on a judgment that was set aside because of a factual error (as opposed to being reversed because of legal error).

revolution, *n.* An overthrow of a government, usu. resulting in fundamental political change; a successful rebellion. — **revolutionary,** *adj.* & *n.* — **revolt,** *vb.*

revolver loan. See LOAN.

revolving charge account. See *revolving credit* under CREDIT (4).

revolving credit. See CREDIT (4).

revolving fund. See FUND (1).

revolving letter of credit. See LETTER OF CREDIT.

revolving loan. See LOAN.

revolving performance bond. See PERFORMANCE BOND.

Rev. Proc. *abbr.* REVENUE PROCEDURE.

Rev. Rul. *abbr.* REVENUE RULING.

Rev. Stat. See *revised statutes* under STATUTE.

reward, *n.* **1.** Something of value, usu. money, given in return for some service or achievement, such as recovering property or providing information that leads to the capture of a criminal. Cf. BOUNTY (1).[Cases: Rewards ⟹0.5.] **2.** SALVAGE (3). — **reward,** *vb.*

rewritten specification. See *substitute specification* under SPECIFICATION (3).

rex (reks). (*usu. cap.*) **1.** A king. **2.** The official title of a king. **3.** The prosecution side (as representatives of the king) in criminal proceedings in a monarchy. — Abbr. R. Cf. REGINA.

rezone, *vb.* (1951) To change the zoning boundaries or restrictions of (an area) <rezone the neighborhood>. See ZONING. [Cases: Zoning and Planning ⟹151–199.]

RFA. *abbr.* REQUEST FOR ADMISSION.

RFI. *abbr.* REQUEST FOR INSTRUCTIONS.

RFP. *abbr.* **1.** REQUEST FOR PRODUCTION. **2.** See REQUEST FOR PROPOSAL.

r.g. *abbr.* REGULA GENERALIS.

rhadamanthine (rad-ə-**man**-thin), *adj.* (*often cap.*) (1840) (Of a judge) rigorous and inflexible <the judge's rhadamanthine interpretation of procedural requirements makes it essential to study the local rules before appearing in court>.

Rhodian law (**roh**-dee-ən). As legend would have it, the earliest known system or code of maritime law, supposedly dating from 900 B.C. and adopted intact by the Romans. • Rhodian law was purportedly developed by the people of the island Rhodes, located in the Aegean Sea and now belonging to Greece. The ancient inhabitants of Rhodes are said to have controlled the seas because of their commercial prosperity and naval superiority. Despite the uncertainties about its history, Rhodian law has often been cited as a source of admiralty and maritime law.

> "A strong tradition says that a maritime code was promulgated by the Island of Rhodes, in the Eastern Mediterranean, at the height of its power; the ridiculously early date of 900 B.C. has even been assigned to this suppositious

code — a date accepted uncritically by some legal scholars. But even the existence of such a code has been pretty well cast in doubt, and we know next to nothing of its contents, if it existed. It is interesting to note, however, that the root-principle of the highly distinctive maritime-law system of general average . . . is clearly stated in Justinian's Digest, and that the Rhodian Law is invoked as authority." Grant Gilmore & Charles L. Black Jr., *The Law of Admiralty* § 1-2, at 3-4 (2d ed. 1975).

RHS. *abbr.* RURAL HOUSING SERVICE.

ribbon-matching rule. See MIRROR-IMAGE RULE.

Richard Roe. A fictitious name for a male party to a legal proceeding, used because the party's true identity is unknown or because his real name is being withheld; esp., the second of two such parties. Cf. JOHN DOE. [Cases: Federal Civil Procedure ⚷101; Parties ⚷67, 73.]

RICO (**ree**-koh). *abbr.* (1972) RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT.

RICO person. Under the Racketeer Influenced and Corrupt Organizations Act, any individual or entity capable of holding a legal or beneficial interest in property and posing a continuous threat of engaging in the acts of racketeering. [Cases: Racketeer Influenced and Corrupt Organizations ⚷64.]

rider. An attachment to some document, such as a legislative bill or an insurance policy, that amends or supplements the document. • A rider to a legislative bill often addresses subject matter unrelated to the main purpose of the bill. [Cases: Insurance ⚷1845(1).]

rien culp (ryan kəlp). [Law French "not guilty"] *Hist.* A plea of not guilty.

rien dit (ryan dee). [Law French "says nothing"] *Hist.* A plea of *nihil dicit*. See NIHIL DICIT.

rien luy doit (**ryan** lwee **dwah**). [Law French "owes him nothing"] *Hist.* A plea of *nil debet*. See NIL DEBET.

riens en arrière (**ryan** aw-nah-ree-**air**). [Law French "nothing in arrear"] *Hist.* A plea in a debt action for arrearages of account.

riens passa per le fait (**ryan** pah-**sah** pair lə **fay**). [Law French "nothing passed by the deed"] *Hist.* A plea by which a party seeks to avoid the operation of a deed that has been enrolled or acknowledged in court.

riens per descent (**ryan** pair day-**sawn**). [Law French "nothing by descent"] *Hist.* The plea of an heir who is sued for the ancestor's debt and who received no land or assets from the ancestor.

rier county. See RERE-COUNTY.

RIF. *abbr.* Reduction in force. See LAYOFF.

rif, *vb. Slang.* To lay off (a worker). • The word derives from the acronym for *reduction in force*.

rigging the market. The practice of artificially inflating stock prices, by a series of bids, so that the demand for those stocks appears to be high and investors will therefore be enticed into buying the stocks. See MANIPULATION. [Cases: Securities Regulation ⚷60.25.]

right, *n.* (bef. 12c) **1.** That which is proper under law, morality, or ethics <know right from wrong>. **2.** Something that is due to a person by just claim, legal guarantee, or moral principle <the right of liberty>. **3.** A power, privilege, or immunity secured to a person by law <the right to dispose of one's estate>. **4.** A legally enforceable claim that another will do or will not do a given act; a recognized and protected interest the violation of which is a wrong <a breach of duty that infringes one's right>. **5.** (*often pl.*) The interest, claim, or ownership that one has in tangible or intangible property <a debtor's rights in collateral> <publishing rights>. **6.** The privilege of corporate shareholders to purchase newly issued securities in amounts proportionate to their holdings. **7.** The negotiable certificate granting such a privilege to a corporate shareholder.

"Right is a correlative to duty; where there is no duty there can be no right. But the converse is not necessarily true. There may be duties without rights. In order for a duty to create a right, it must be a duty *to act or forbear*. Thus, among those duties which have rights corresponding to them do not come the duties, if such there be, which call for an inward state of mind, as distinguished from external acts or forbearances. It is only to acts and forbearances that others have a right. It may be our duty to love our neighbor, but he has no right to our love." John Chipman Gray, *The Nature and Sources of the Law* 8-9 (2d ed. 1921).

"[T]he word 'right' is one of the most deceptive of pitfalls; it is so easy to slip from a qualified meaning in the premise to an unqualified one in the conclusion. Most rights are qualified." *American Bank & Trust Co. v. Federal Reserve Bank of Atlanta*, 256 U.S. 350, 358, 41 S.Ct. 499, 500 (1921) (Holmes, J.).

"[In Hohfeldian terminology,] A is said to have a *right* that B shall do an act when, if B does not do the act, A can initiate legal proceedings that will result in coercing B. In such a situation B is said to have a *duty* to do the act. *Right* and *duty* are therefore correlatives, since in this sense there can never be a duty without a right." E. Allen Farnsworth, *Contracts* § 3.4, at 114. n.3 (3d ed. 1999).

absolute right. **1.** A right that belongs to every human being, such as the right of personal liberty; a natural right. **2.** An unqualified right; specif., a right that cannot be denied or curtailed except under specific conditions <freedom of thought is an absolute right>. • For example, a plaintiff has an absolute right to voluntarily nonsuit a case before it is finally submitted; after final submission, the court has discretion to grant or deny a voluntary nonsuit. Cf. *relative right*.

accessory right. A supplementary right that has been added to the main right that is vested in the same owner. • For example, the right in a security is accessory to the right that is secured; a servitude is accessory to the ownership of the land for whose benefit the servitude exists. Cf. *principal right*.

accrued right. A matured right; a right that is ripe for enforcement (as through litigation).

acquired right. A right that a person does not naturally enjoy, but that is instead procured, such as the right to own property.

civil right. See CIVIL RIGHT.

conditional right. A right that depends on an uncertain event; a right that may or may not exist. • For example, parents have the conditional right to punish their child, the condition being that the punishment must be reasonable.

conjugal rights. See CONJUGAL RIGHTS.

equitable right. A right cognizable within a court of equity. • If a legal right and an equitable right conflict, the legal right ordinarily prevails over and destroys the equitable right even if the legal right arose after the equitable right. Breaches of equitable rights are remedied by means other than monetary damages, such as an injunction or specific performance. With the merger of law and equity in federal and most state courts, the procedural differences between legal and equitable rights have been largely abolished. Cf. *legal right* (1), (2). [Cases: Equity ⇨3.]

expectant right. A right that is contingent on the occurrence of some future event; a contingent right.

fundamental right. See FUNDAMENTAL RIGHT.

imperfect right. A right that is recognized by the law but is not enforceable. • Examples include time-barred claims and claims exceeding the local limits of a court's jurisdiction.

> "[T]here are certain rights, sometimes called imperfect rights, which the law recognizes but will not enforce directly. Thus a statute-barred debt cannot be recovered in a court of law, but for certain purposes the existence of the debt has legal significance. If the debtor pays the money, he cannot later sue to recover it as money paid without consideration; and the imperfect right has the faculty of becoming perfect if the debtor makes an acknowledgment of the debt from which there can be inferred a promise to pay." George Whitecross Paton, *A Textbook of Jurisprudence* 286 (G.W. Paton & David P. Derham eds., 4th ed. 1972).

imprescriptible right. A right that cannot be lost to prescription.

inalienable right. A right that cannot be transferred or surrendered; esp., a natural right such as the right to own property. — Also termed *inherent right*.

incorporeal right. A right to intangible, rather than tangible, property. • A right to a legal action (a *chose in action*) is an incorporeal right. See *chose in action* under CHOSE.

inherent right. See *inalienable right*.

legal right. **1.** A right created or recognized by law. • The breach of a legal right is usu. remediable by monetary damages. **2.** A right historically recognized by common-law courts. Cf. *equitable right*. **3.** The capacity of asserting a legally recognized claim against one with a correlative duty to act.

natural right. A right that is conceived as part of natural law and that is therefore thought to exist independently of rights created by government or society, such as the right to life, liberty, and property. See NATURAL LAW.

negative right. A right entitling a person to have another refrain from doing an act that might harm the person entitled. Cf. *positive right*.

patent right. A right secured by a patent. [Cases: Patents ⇨1.]

perfect right. A right that is recognized by the law and is fully enforceable.

peripheral right. A right that surrounds or springs from another right.

personal right. **1.** A right that forms part of a person's legal status or personal condition, as opposed to the person's estate. **2.** See *right in personam*.

political right. The right to participate in the establishment or administration of government, such as the right to vote or the right to hold public office. — Also termed *political liberty*. [Cases: Constitutional Law ⇨1460–1482; Elections ⇨1; Officers and Public Employees ⇨18.]

positive right. A right entitling a person to have another do some act for the benefit of the person entitled. Cf. *negative right*.

precarious right. A right enjoyed at the pleasure of another; a right that can be revoked at any time.

primary right. A right prescribed by the substantive law, such as a right not to be defamed or assaulted. • The enforcement of a primary right is termed *specific enforcement*.

principal right. A right to which has been added a supplementary right in the same owner. Cf. *accessory right*.

private right. A personal right, as opposed to a right of the public or the state. Cf. *public right*.

procedural right. (1911) A right that derives from legal or administrative procedure; a right that helps in the protection or enforcement of a substantive right. Cf. *substantive right*.

property right. (1853) A right to specific property, whether tangible or intangible. [Cases: Constitutional Law ⇨3874.]

proprietary right. A right that is part of a person's estate, assets, or property, as opposed to a right arising from the person's legal status.

public right. A right belonging to all citizens and usu. vested in and exercised by a public office or political entity. Cf. *private right*.

real right. **1.** *Civil law.* A right that is connected with a thing rather than a person. • Real rights include ownership, use, habitation, usufruct, predial servitude, pledge, and real mortgage.

> "The term 'real rights' (*jura in re*) is an abstraction unknown to classical Roman law. The classical jurists were preoccupied with the availability of remedies rather than the existence of *substantive* rights, and did not have a generic term to include all 'rights' which civilian scholars of following generations classified as 'real.' The expression ('real rights') was first coined by medieval writers elaborating on the *Digest* in an effort to explain ancient procedural forms of action in terms of substantive rights." A.N. Yiannopoulos, *Real Rights in Louisiana and Comparative Law*, 23 La. L. Rev. 161, 163 (1963).

2. JUS IN RE. **3.** See *right in rem*.

relative right. A right that arises from and depends on someone else's right, as distinguished from an absolute right. Cf. *absolute right.*

remedial right. The secondary right to have a remedy that arises when a primary right is broken. See *secondary right.*

restitutory right. A right to restitution.

right in personam (in pər-**soh**-nəm). An interest protected solely against specific individuals. — Also termed *personal right*; *jus in personam.* See IN PERSONAM.

right in rem (in **rem**). A right, often negative, exercisable against the world at large. — Also termed *real right*; *jus in rem.* See IN REM.

> "A right *in rem* need not relate to a tangible *res*. Thus a right that one's reputation should not be unjustifiably attacked is today described as a right *in rem*, since it is a right that avails against persons generally. This shows how far the conception has developed from the Roman notion of *actio in rem*, for one who sues to protect his reputation is not asking for judgment for a specific *res*. It should also be noticed that on breach of a right *in rem*, a right *in personam* arises against the aggressor." George Whitecross Paton, *A Textbook of Jurisprudence* 300 (G.W. Paton & David P. Derham eds., 4th ed. 1972).

secondary right. A right prescribed by procedural law to enforce a substantive right, such as the right to damages for a breach of contract. • The enforcement of a secondary right is variously termed *secondary enforcement*, *remedial enforcement*, or *sanctional enforcement.* — Also termed *remedial right*; *sanctioning right.*

substantial right. (18c) An essential right that potentially affects the outcome of a lawsuit and is capable of legal enforcement and protection, as distinguished from a mere technical or procedural right.

substantive right (**səb**-stən-tiv). (18c) A right that can be protected or enforced by law; a right of substance rather than form. Cf. *procedural right.*

vested right. A right that so completely and definitely belongs to a person that it cannot be impaired or taken away without the person's consent. [Cases: Constitutional Law ☞2630–2655.]

right against self-incrimination. (1911) A criminal defendant's or a witness's constitutional right — under the Fifth Amendment, but waivable under certain conditions — guaranteeing that a person cannot be compelled by the government to testify if the testimony might result in the person's being criminally prosecuted. • Although this right is most often asserted during a criminal prosecution, a person can also "plead the Fifth" in a civil, legislative, administrative, or grand-jury proceeding. — Also termed *privilege against self-incrimination*; *right to remain silent.* See SELF-INCRIMINATION. [Cases: Criminal Law ☞393; Witnesses ☞297.]

> "The right against self-incrimination, protected by the Fifth Amendment, is central to the accusatorial system of criminal justice: together with the presumption of innocence, the right against self-incrimination ensures that the state must bear the burden of prosecution. . . . The right against self-incrimination is personal. It may be claimed only by the person who himself might be at risk for testifying. It may not be claimed on behalf of another . . . ." Jethro K. Lieberman, *The Evolving Constitution* 481–82 (1992).

right-and-wrong test. See MCNAGHTEN RULES.

rightful, *adj.* **1.** (Of an action) equitable; fair <a rightful dispossession>. **2.** (Of a person) legitimately entitled to a position <a rightful heir>. **3.** (Of an office or piece of property) that one is entitled to <her rightful inheritance>.

right heir. See HEIR.

right in personam. See RIGHT.

right in re aliena. See JUS IN RE ALIENA.

right in rem. See RIGHT.

right in re propria. See JUS IN RE PROPRIA.

right not to be questioned. See *privilege against self-incrimination* under PRIVILEGE (3).

right of action. 1. The right to bring a specific case to court. [Cases: Action ☞1, 2.] **2.** A right that can be enforced by legal action; a chose in action. Cf. CAUSE OF ACTION. [Cases: Action ☞1, 2; Property ☞5.5.]

right of angary. See ANGARY.

right of approach. *Int'l law.* The right of a warship on the high seas to draw near another vessel to determine its nationality. [Cases: War and National Emergency ☞20.]

right of assembly. The constitutional right — guaranteed by the First Amendment — of the people to gather peacefully for public expression of religion, politics, or grievances. — Also termed *freedom of assembly*; *right to assemble.* Cf. FREEDOM OF ASSOCIATION; *unlawful assembly* under ASSEMBLY. [Cases: Constitutional Law ☞1430, 1431.]

right of audience. A right to appear and be heard in a given court. • The term is chiefly used in England to denote the right of a certain type of lawyer to appear in a certain type of court.

right of common. See PROFIT À PRENDRE.

right-of-conscience law. A statute allowing healthcare professionals to refuse to provide services that they find morally objectionable.

right of contribution. See CONTRIBUTION (1).

right of discussion. *Scots law.* See BENEFIT OF DISCUSSION.

right of dissent and appraisal. See APPRAISAL REMEDY.

right of division. *Scots law.* See BENEFIT OF DIVISION.

right of election. *Wills & estates.* A surviving spouse's statutory right to choose either the gifts given by the deceased spouse in the will or a forced share or a share of the estate as defined in the probate statute. — Also termed *widow's election.* See ELECTION (2); *augmented estate* under ESTATE (3). [Cases: Descent and Distribution ☞64; Wills ☞778–818.]

right of entry. 1. The right of taking or resuming possession of land or other real property in a peaceable manner. **2.** POWER OF TERMINATION. **3.** The right to go into another's real property for a special purpose without committing trespass. • An example is a landlord's right to enter a tenant's property to make repairs. [Cases: Trespass ⚷24.] **4.** The right of an alien to go into a jurisdiction for a special purpose. • An example is an exchange student's right to enter another country to attend college. [Cases: Aliens, Immigration, and Citizenship ⚷162, 163.]

right of entry for breach of condition. See POWER OF TERMINATION.

right of entry for condition broken. See POWER OF TERMINATION.

right of exoneration. See EQUITY OF EXONERATION.

right of family integrity. A fundamental and substantive due-process right for a family unit to be free of unjustified state interference. • While not specifically mentioned in the U.S. Constitution, this right is said to emanate from it. The contours of the right are nebulous and incompletely defined, but it at least includes the right to bear children, to rear them, and to guide them according to the parents' beliefs, as well as the right of children to be raised by their parents free of unwarranted interference by state officials. The right restricts state action under the Fourteenth Amendment. Interference is not permitted in the absence of a compelling state interest and is reviewed under a strict-scrutiny standard. Most courts require a state to establish by clear and convincing evidence that interference in a familial relationship is justified. — Also termed *right to family integrity*. See PARENTAL-AUTONOMY DOCTRINE; PARENTAL-PRIVILEGE DOCTRINE. Cf. *freedom of intimate association* under FREEDOM OF ASSOCIATION. [Cases: Constitutional Law ⚷4382.]

right of first publication. See *common-law copyright* under COPYRIGHT.

right of first refusal. 1. A potential buyer's contractual right to meet the terms of a third party's higher offer. • For example, if Beth has a right of first refusal on the purchase of Sam's house, and if Terry offers to buy the house for $300,000, then Beth can match this offer and prevent Terry from buying it. Cf. RIGHT OF PREEMPTION. [Cases: Contracts ⚷16.5, 172; Sales ⚷24, 64; Vendor and Purchaser ⚷18(.5), 57.] **2.** *Family law.* The right of a parent to be offered the opportunity to have custody of a child other than during a usual visitation period before the other parent turns to a third-party caregiver. • The right may be exercised by either parent, and may exist in circumstances that are foreseeable (e.g., a business trip) or unforeseeable (e.g., an illness). [Cases: Child Custody ⚷149.]

right of fishery. See FISHERY (1).

right of innocent passage. See INNOCENT PASSAGE.

right of occupancy. See INDIAN TITLE.

right of petition. See RIGHT TO PETITION.

right of possession. The right to hold, use, occupy, or otherwise enjoy a given property; esp., the right to enter real property and eject or evict a wrongful possessor. [Cases: Forcible Entry and Detainer ⚷9(2).]

right of preemption. A potential buyer's contractual right to have the first opportunity to buy, at a specified price, if the seller chooses to sell within the contracted period. • For example, if Beth has a right of preemption on Sam's house for five years at $100,000, Sam can either keep the house for five years (in which case Beth's right expires) or, if he wishes to sell during those five years, offer the house to Beth, who can either buy it for $100,000 or refuse to buy. If Beth refuses, Sam can sell to someone else. — Also termed *first option to buy*. Cf. RIGHT OF FIRST REFUSAL. [Cases: Contracts ⚷16.5; Sales ⚷24; Vendor and Purchaser ⚷18(.5).]

right of privacy. 1. The right to personal autonomy. • The U.S. Constitution does not explicitly provide for a right of privacy or for a general right of personal autonomy, but the Supreme Court has repeatedly ruled that a right of personal autonomy is implied in the "zones of privacy" created by specific constitutional guarantees. [Cases: Constitutional Law ⚷1210–1275.] **2.** The right of a person and the person's property to be free from unwarranted public scrutiny or exposure. — Also termed *right to privacy*. See INVASION OF PRIVACY.

right of publicity. The right to control the use of one's own name, picture, or likeness and to prevent another from using it for commercial benefit without one's consent. [Cases: Torts ⚷384.]

> "The right of publicity is a state-law created intellectual property right whose infringement is a commercial tort of unfair competition. It is a distinct legal category, not just a 'kind of' trademark, copyright, false advertising or right of privacy." 1 J. Thomas McCarthy, *The Rights of Publicity and Privacy* § 1:3, at 1-2 (2d ed. 2000).

right of redemption. 1. See EQUITY OF REDEMPTION. **2.** See STATUTORY RIGHT OF REDEMPTION.

right of reentry. See POWER OF TERMINATION.

right of relief. *Scots law.* See EQUITY OF SUBROGATION.

right of reproduction. See REPRODUCTION RIGHT.

right of rescission. See RIGHT TO RESCIND.

right of retainer. A trustee's power to withhold trust funds or property from distribution, exercisable when the beneficiary owes money to the trust. [Cases: Trusts ⚷282.]

right of retention. See RETENTION.

right of revolution. The inherent right of a people to cast out its rulers, change its polity, or effect radical reforms in its system of government or institutions, by force or general uprising, when the legal and constitutional methods of making such changes have proved inadequate or are so obstructed as to be unavailable.

right of search. *Int'l law.* The right to stop, visit, and examine vessels on the high seas to discover whether they or the goods they carry are liable to capture; esp., a belligerent state's right to stop any merchant vessel of a neutral state on the high seas and to search as

reasonably necessary to determine whether the ship has become liable to capture under the international law of naval warfare. • This right carries with it no right to destroy without full examination, unless those on a given vessel actively resist. — Also termed *right of visit*; *right of visit and search*; *right of visitation*; *right of visitation and search*. See VISIT.

right of subrogation. 1. See SUBROGATION. **2.** See EQUITY OF SUBROGATION.

right of suit. A person's right to seek redress in a court. [Cases: Action ⇨1.]

right of support. *Property.* **1.** A landowner's right to have the land supported by adjacent land and by the underlying earth. [Cases: Adjoining Landowners ⇨2.] **2.** A servitude giving the owner of a house the right to rest timber on the walls of a neighboring house.

right of survivorship. A joint tenant's right to succeed to the whole estate upon the death of the other joint tenant. — Also termed *jus accrescendi*. See SURVIVORSHIP; *joint tenancy* under TENANCY. [Cases: Joint Tenancy ⇨6.]

right of termination. A remedy involving the ending of contractual relations, accorded to a party to a contract when the other party breaches a duty that arises under the contract. • The right of termination is contrasted with a right to rescind, which arises when the other party breaches a duty that arises independently of the contract. — Also termed *right to terminate*. [Cases: Contracts ⇨217; Sales ⇨84.]

right of transit passage. See TRANSIT PASSAGE.

right of visit. See RIGHT OF SEARCH.

right of visit and search. See RIGHT OF SEARCH.

right of visitation. 1. VISITATION RIGHT. **2.** RIGHT OF SEARCH.

right of visitation and search. See RIGHT OF SEARCH.

right-of-way. 1. The right to pass through property owned by another. • A right-of-way may be established by contract, by longstanding usage, or by public authority (as with a highway). Cf. EASEMENT. [Cases: Easements ⇨1.] **2.** The right to build and operate a railway line or a highway on land belonging to another, or the land so used. [Cases: Railroads ⇨69.] **3.** The right to take precedence in traffic. [Cases: Automobiles ⇨154, 171(4); Highways ⇨99;] **3.** The strip of land subject to a nonowner's right to pass through. — Also written *right of way*. Pl. **rights-of-way.**

private right-of-way. See EASEMENT.

public right-of-way. The right of passage held by the public in general to travel on roads, freeways, and other thoroughfares.

right of wharfing out. A right to the exclusive use of submerged lands, as by establishing a permanent structure or wharf on the land to dock oceangoing vessels. [Cases: Navigable Waters ⇨43(2).]

rights arbitration. See *grievance arbitration* under ARBITRATION.

rights-consciousness. See CLAIMS-CONSCIOUSNESS.

rights-management information. *Intellectual property.* Information about an intellectual-property right, affixed to the subject matter when it is communicated to the public, esp. in electronic form, and identifying the right's owner, terms of use, indexing numbers or codes, or other identifying information. • The information facilitates contracting with the owner of the rights. In digital technology, laws may ban the removal or alteration of rights-management information as a form of intellectual-property protection.

rights of attribution. See ATTRIBUTION RIGHTS.

rights off. See EX RIGHTS.

rights offering. See OFFERING.

rights on. See CUM RIGHTS.

right to assemble. See RIGHT OF ASSEMBLY.

right to assistance of counsel. See RIGHT TO COUNSEL.

right to bear arms. The constitutional right of persons to own firearms. U.S. Const. amend II. See SECOND AMENDMENT. [Cases: Weapons ⇨1.]

right to choose. See FREEDOM OF CHOICE.

right-to-convey covenant. See *covenant of seisin* under COVENANT (4).

right to counsel. 1. *Criminal law.* A criminal defendant's constitutional right, guaranteed by the Sixth Amendment, to representation by a court- appointed lawyer if the defendant cannot afford to hire one. • The Supreme Court has recognized a juvenile delinquent defendant's right to counsel. *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428 (1967). — Also termed *benefit of counsel*; *right to assistance of counsel*. [Cases: Criminal Law ⇨1766.] **2.** *Family law.* The right of a defendant in a suit for termination of parental rights to representation by a court-appointed lawyer if the defendant cannot afford to hire one. • Although some states appoint counsel for indigent defendants in a suit for termination of parental rights, the Supreme Court has held that the Constitution does not require that counsel be appointed for indigent defendants in all termination suits, but if a criminal charge may be made, the right to counsel may attach. *Lassiter v. Department of Soc. Servs.*, 452 U.S. 18, 101 S.Ct. 2153 (1981). — Also termed (in both senses) *access to counsel*. [Cases: Infants ⇨205.] See ASSISTANCE OF COUNSEL.

right to die. The right of a terminally ill person to refuse life-sustaining treatment. — Also termed *right to refuse treatment*. See ADVANCE DIRECTIVE. [Cases: Health ⇨914.]

right to exclude. *Patents.* A patentee's right to prevent others from making, using, selling, or offering for sale the patentee's invention. [Cases: Patents ⇨191.]

right to family integrity. See RIGHT OF FAMILY INTEGRITY.

right-to-know act. A federal or state statute requiring businesses (such as chemical manufacturers) that produce hazardous substances to disclose information

about the substances both to the community where they are produced or stored and to employees who handle them. — Also termed *right-to-know statute*. [Cases: Environmental Law ⟹415.]

right to petition. (17c) The constitutional right — guaranteed by the First Amendment — of the people to make formal requests to the government, as by lobbying or writing letters to public officials. — Also termed *right of petition; freedom of petition*. [Cases: Constitutional Law ⟹1435–1438.]

right to privacy. See RIGHT OF PRIVACY.

right to pursue happiness. See HAPPINESS, RIGHT TO PURSUE.

right to refuse treatment. See RIGHT TO DIE.

right to remain silent. See RIGHT AGAINST SELF-INCRIMINATION.

right to rescind. The remedy accorded to a party to a contract when the other party breaches a duty that arises independently of the contract. • The right to rescind is contrasted with a right of termination, which arises when the other party breaches a duty that arises under the contract. — Also termed *right of rescission*. [Cases: Contracts ⟹258.]

right to terminate. See RIGHT OF TERMINATION.

right to travel. (1838) A person's constitutional right — guaranteed by the Privileges and Immunities Clause — to travel freely between states.

right to vote. See SUFFRAGE (1).

right-to-work law. (1958) A state law that prevents labor-management agreements requiring a person to join a union as a condition of employment. See *open shop* under SHOP. [Cases: Labor and Employment ⟹964, 1264.]

right-wrong test. See MCNAGHTEN RULES.

rigid constitution. See CONSTITUTION.

rigor juris (**rig**-ər **joor**-is). [Latin] Strictness of law. Cf. GRATIA CURIAE.

rigor mortis (**rig**-ər **mor**-tis). The temporary stiffening of a body's joints and muscles after death. • The onset of rigor mortis can vary from 15 minutes to several hours after death, depending on the body's condition and on atmospheric factors.

ringing out. See RINGING UP.

ringing the changes. Fraud consisting in the offender's using a large bill to pay for a small purchase, waiting for the shopkeeper to put change on the counter, and then, by a series of maneuvers involving changes of mind — such as asking for some other article of little value or for smaller change for some of the money on the counter — creating a confused situation in which the offender picks up more the money than due. [Cases: Larceny ⟹14(1).]

ringing up. A method by which commodities dealers cooperate to discharge contracts for future delivery in advance by using offsets, cancellations, and price adjustments, thus saving the cost of actual delivery and change of possession. — Also termed *ringing out*.

riot, *n.* (14c) **1.** An assemblage of three or more persons in a public place taking concerted action in a turbulent and disorderly manner for a common purpose (regardless of the lawfulness of that purpose). **2.** An unlawful disturbance of the peace by an assemblage of usu. three or more persons acting with a common purpose in a violent or tumultuous manner that threatens or terrorizes the public or an institution. Cf. *unlawful assembly* under ASSEMBLY; CIVIL COMMOTION; ROUT; AFFRAY. [Cases: Riot ⟹1.] — **riotous,** *adj.* — **riot,** *vb.*

> "A riot is defined as an unlawful assembly (i.e. an assembly come together in pursuance of an unlawful purpose), consisting of at least three persons, which has begun to create a breach of the peace. At Common Law it is an indictable misdemeanour, punishable by a fine and imprisonment. But the statutory form of it, introduced by the Riot Act of 1714, is better known. By that statute, passed to deal with Jacobite disturbances, it was provided that the members of a riotous assembly of twelve or more persons which does not disperse within an hour after the reading by a magistrate of the proclamation contained in the Act, become guilty of felony, which, at the time of the passing of the Act, was a capital offence, and is, even now, punishable with imprisonment for life." Edward Jenks, *The Book of English Law* 136 (P.B. Fairest ed., 6th ed. 1967).

> "A riot is a tumultuous disturbance of the peace by three or more persons acting together (a) in the commission of a crime by open force, or (b) in the execution of some enterprise, lawful or unlawful, in such a violent, turbulent and unauthorized manner as to create likelihood of public terror and alarm. . . . When they come together for this purpose they are guilty of unlawful assembly. When they start on their way to carry out their common design they are guilty of *rout*. In the actual execution of their design they are guilty of *riot*." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 483 (3d ed. 1982).

Riot Act. A 1714 English statute that made it a capital offense for 12 or more rioters to remain together for an hour after a magistrate has officially proclaimed that rioters must disperse. • This statute was not generally accepted in the United States and did not become a part of American common law. It did, however, become a permanent part of the English language in the slang phrase *reading the riot act* (meaning "to reprimand vigorously"), which originally referred to the official command for rioters to disperse.

riotous assembly. See ASSEMBLY.

ripae muniendae causa (**rī**-pee myoo-nee-**en**-dee **kaw**-zə). [Latin] *Hist.* For the purpose of strengthening a riverbank.

riparian (ri-**pair**-ee-ən *or* rī-), *adj.* (1841) Of, relating to, or located on the bank of a river or stream (or occasionally another body of water, such as a lake) <riparian land> <a riparian owner>. Cf. LITTORAL. [Cases: Navigable Waters ⟹39–46; Waters and Water Courses ⟹34–49, 109.]

riparian land. See LAND.

riparian proprietor. (1808) A person who is in possession of riparian land or who owns an estate in it; a landowner whose property borders on a stream or river. See

riparian land under LAND. [Cases: Navigable Waters ⟹39(1); Waters and Water Courses ⟹39.]

riparian right. (*often pl.*) (1860) The right of a landowner whose property borders on a body of water or watercourse. • Such a landowner traditionally has the right to make reasonable use of the water. — Also termed *water right*. [Cases: Navigable Waters ⟹39–46; Waters and Water Courses ⟹34–47.]

riparian-rights doctrine. (1921) The rule that owners of land bordering on a waterway have equal rights to use the water passing through or by their property. Cf. PRIOR-APPROPRIATION DOCTRINE. [Cases: Navigable Waters ⟹39; Waters and Water Courses ⟹40.]

ripeness, *n.* **1.** The state of a dispute that has reached, but has not passed, the point when the facts have developed sufficiently to permit an intelligent and useful decision to be made. **2.** The requirement that this state must exist before a court will decide a controversy. See JUSTICIABILITY. Cf. MOOTNESS DOCTRINE; PREMATURITY (1). [Cases: Action ⟹6; Federal Courts ⟹12.1.] — **ripe,** *adj.* — **ripen,** *vb.*

ripper act. *Slang.* A statute that gives a government's chief executive broad powers to appoint and remove department heads or other subordinate officials.

rise, *vb.* **1.** (Of a court) to adjourn finally at the end of a term. **2.** (Of spectators and participants in a courtroom) to stand when the judge enters or exits. **3.** (Of a court) to take a recess or temporary break, as at the end of a day. **4.** *Parliamentary law.* (Of a special committee that has exhausted its business) to dissolve and send a report to the referring body. • A committee's rising is equivalent to a deliberative assembly's adjourning sine die. — Also termed *rise and report*. Cf. *adjourn sine die* under ADJOURN (2).

rising vote. See VOTE (4).

rising vote of thanks. See *rising vote* under VOTE (4).

risk, *n.* (17c) **1.** The uncertainty of a result, happening, or loss; the chance of injury, damage, or loss; esp., the existence and extent of the possibility of harm <many feel that skydiving is not worth the risk>. See ASSUMPTION OF THE RISK. **2.** Liability for injury, damage, or loss if it occurs <the consumer-protection statute placed the risk on the manufacturer instead of the buyer>. **3.** *Insurance.* The chance or degree of probability of loss to the subject matter of an insurance policy <the insurer undertook the risk in exchange for a premium>. Cf. PERIL (2). [Cases: Insurance ⟹1542.] **4.** *Insurance.* The amount that an insurer stands to lose <the underwriter took steps to reduce its total risk>. **5.** *Insurance.* A person or thing that an insurer considers a hazard; someone or something that might be covered by an insurance policy <she's a poor risk for health insurance>. [Cases: Insurance ⟹1542(3).] **6.** *Insurance.* The type of loss covered by a policy; a hazard from a specified source <this homeowner's policy covers fire risks and flood risks>. [Cases: Insurance ⟹2097.] — **risk,** *vb.*

absorbable risk. A potential loss that a corporation believes that it can cover either with available capital or with self-insurance.

assigned risk. One who is a poor risk for insurance but whom an insurance company is forced to insure because of state law. • For example, an accident-prone driver is an assigned risk in a state with a compulsory motor-vehicle-insurance statute. [Cases: Insurance ⟹1528.]

classified risk. In life- and health-insurance policies, the risk created by a policyholder's substandard health or other peril.

noninsurable risk. A risk for which insurance will not be written because the risk is too uncertain to be the subject of actuarial analysis.

pure risk. A risk that can only result in a loss. • Insurance protects only against pure risks. Cf. *speculative risk*.

shifting risk. The changing risk covered under an insurance policy insuring a stock of goods or similar property that varies in amount and composition in the course of trade. [Cases: Insurance ⟹2138(1).]

speculative risk. A risk that can result in either a loss or a gain. Cf. *pure risk*.

risk arbitrage. See ARBITRAGE.

risk assessment. *Family law.* A process for ascertaining the likelihood that a person, usu. a parent, will harm a child. • Before a child can be removed from his or her family by a governmental entity, a risk assessment should be performed to determine the likelihood of the child's being harmed in the future. [Cases: Infants ⟹192.]

risk-averse, *adj.* (Of a person) uncomfortable with volatility or uncertainty; not willing to take risks; very cautious <a risk-averse investor>.

risk-benefit test. See RISK-UTILITY TEST.

risk capital. See CAPITAL.

risk-capital test. *Securities.* A test of whether a transaction constitutes the sale of a security (and is thus subject to securities laws) based on whether the seller is soliciting risk capital with which to develop a business venture. Cf. CAPITAL-RISK TEST. [Cases: Securities Regulation ⟹5, 248, 249.]

risk distribution. The method by which a legal system allocates the risk of harm between the person who suffers it and the loss.

risk factor. *Insurance.* In life-insurance ratemaking, the estimated cost of present and future claims, based on a mortality table. • The risk factor is one element that a life insurer uses to calculate premium rates. See PREMIUM RATE. Cf. INTEREST FACTOR; MORTALITY FACTOR. [Cases: Insurance ⟹1542.]

risk management. The procedures or systems used to minimize accidental losses, esp. to a business.

Risk Management Agency. An agency in the U.S. Department of Agriculture responsible for administering the

programs of the Federal Crop Insurance Corporation and for overseeing other programs relating to the risk management of crops and commodities. — Abbr. RMA.

risk of jury doubt. See BURDEN OF PERSUASION.

risk of loss. (18c) **1.** The danger or possibility of damage to, destruction of, or misplacement of goods or other property <commercial transportation always carries some risk of loss>. **2.** Responsibility for bearing the costs and expenses of such damage, destruction, or misplacement <the contract specifies who assumes the risk of loss>.

risk of nonpersuasion. See BURDEN OF PERSUASION.

risk-stops-here rule. See DOCTRINE OF SUPERIOR EQUITIES.

risk-utility test. (1982) A method of imposing product liability on a manufacturer if the evidence shows that a reasonable person would conclude that the benefits of a product's particular design versus the feasibility of an alternative safer design did not outweigh the dangers inherent in the original design. — Also termed *danger-utility test*; *risk-benefit test*. Cf. CONSUMER-CONTEMPLATION TEST. [Cases: Products Liability ⇨129.]

RIT. *abbr.* Rochester Institute of Technology. See NATIONAL TECHNICAL INSTITUTE FOR THE DEAF.

river. A natural, flowing body of water that empties into another body of water, such as a lake, sea, or channel. [Cases: Navigable Waters ⇨1; Waters and Water Courses ⇨38.]

international river. A river that flows through or between two or more countries.

national river. A river wholly contained within a single country. • That country has exclusive territorial rights over the river. [Cases: Navigable Waters ⇨2.]

private river. A river to which a riparian owner may claim ownership of the riverbed because the river is unnavigable or navigable only by vessels with shallow drafts. • A navigable private river is not wholly owned by a private person and cannot be closed to public use; people may still make ordinary use of the river for transportation and navigation. [Cases: Navigable Waters ⇨4.]

RL/C. See *revolving letter of credit* under LETTER OF CREDIT.

RMA. *abbr.* RISK MANAGEMENT AGENCY.

RMS. *abbr.* REPRESSED-MEMORY SYNDROME.

roadstead. *Maritime law.* A convenient or safe place where vessels usu. anchor. [Cases: Collision ⇨69.]

robbery, *n.* (12c) The illegal taking of property from the person of another, or in the person's presence, by violence or intimidation; aggravated larceny. • Robbery is usu. a felony, but some jurisdictions classify some robberies as high misdemeanors. — Also termed (in Latin) *crimen roberiae*. See LARCENY; THEFT. Cf. BURGLARY. [Cases: Robbery ⇨1.] — **rob,** *vb.*

"Robbery is larceny from the person by violence or intimidation. It is a felony both at common law and under modern statutes. Under some of the new penal codes robbery does not require an actual taking of property. If force or intimidation is used in the attempt to commit theft this is sufficient." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 343 (3d ed. 1982).

aggravated robbery. (1878) Robbery committed by a person who either carries a dangerous weapon — often called *armed robbery* — or inflicts bodily harm on someone during the robbery. • Some statutes also specify that a robbery is aggravated when the victim is a member of a protected class, such as children or the elderly. [Cases: Robbery ⇨11.]

armed robbery. (1926) Robbery committed by a person carrying a dangerous weapon, regardless of whether the weapon is revealed or used. • Most states punish armed robbery as an aggravated form of robbery rather than as a separate crime. [Cases: Robbery ⇨11.]

conjoint robbery (kən-**joynt**). A robbery committed by two or more persons. [Cases: Robbery ⇨15.]

highway robbery. **1.** Robbery committed against a traveler on or near a public highway. [Cases: Robbery ⇨1.] **2.** Figuratively, a price or fee that is unreasonably high; excessive profit or advantage.

simple robbery. (18c) Robbery that does not involve an aggravating factor or circumstance. [Cases: Robbery ⇨1.]

robe. (18c) **1.** The gown worn by a judge while presiding over court. • In the U.S., judges generally wear plain black gowns. In the U.K., judicial robes vary in color and adornment, depending on the judge's rank, the season, and the court, and are traditionally worn with white horsehair wigs. — Also termed *judicial robe*. **2.** (*often cap.*) The legal or judicial profession <eminent members of the robe>.

Robert's Rules. 1. A parliamentary manual titled *Robert's Rules of Order*, originally written in 1875–76 by Henry M. Robert (1837–1923). • The manual went through three editions under its original title and three more (beginning in 1915) under the title *Robert's Rules of Order Revised*. Since 1970 it has been titled *Robert's Rules of Order Newly Revised*. It is the best selling and most commonly adopted parliamentary manual in the United States. **2.** Any parliamentary manual that includes "Robert's Rules" in its title. • The copyright on the first several editions has expired, and many imitators have adapted those editions in varying degrees of faithfulness to the original. **3.** (*sing.*) RULE (3). See PARLIAMENTARY MANUAL.

Robinson–Patman Act. A federal statute (specif., an amendment to the Clayton Act) prohibiting price discrimination that hinders competition or tends to create a monopoly. 15 USCA § 13. See ANTITRUST LAW; CLAYTON ACT. [Cases: Antitrust and Trade Regulation ⇨452.]

***Rochin* rule.** The now-rejected principle that unconstitutionally obtained evidence is admissible against

the accused unless the evidence was obtained in a manner that shocks the conscience (such as pumping the stomach of a suspect to obtain illegal drugs that the suspect has swallowed, as occurred in the *Rochin v. California* case). • The Supreme Court handed down *Rochin* before the Fourth Amendment exclusionary rule applied to the states. *Rochin v. California*, 342 U.S. 165, 72 S.Ct. 205 (1952). [Cases: Criminal Law ⇨394.]

rocket docket. (1987) **1.** An accelerated dispute-resolution process. **2.** A court or judicial district known for its speedy disposition of cases. **3.** A similar administrative process, in which disputes must be decided within a specified time (such as 60 days).

ROD. *abbr.* See RECORD OF DECISION.

rogatio testium. The production of a witness who can testify to the making of a nuncupative will. • The witness must confirm that the testator declared or expressed that the words spoken were a will. See *nuncupative will* under WILL. [Cases: Wills ⇨142.]

rogatory letter (rog-ə-tor-ee). See LETTER OF REQUEST.

rogue court. See COURT.

rogue jury. See JURY.

roll, *n.* (14c) **1.** A record of a court's or public office's proceedings. [Cases: Judgment ⇨277; Records ⇨6, 32.] **2.** An official list of the persons and property subject to taxation. — Also termed (in sense 2) *tax roll*; *tax list*; *assessment roll*. Cf. TAXPAYERS' LISTS. [Cases: Taxation ⇨2576.] **3.** *Parliamentary law.* The roster of those entitled to vote. — Also termed *roll of delegates*; *roll of members*.

roll call. See CALL (1).

roll-call vote. See VOTE (4).

rolled-up plea. See PLEA (3).

rolling stock. Movable property, such as locomotives and rail cars, owned by a railroad.

roll of delegates. See ROLL (3).

roll of members. See ROLL (3).

rollover, *n.* **1.** The extension or renewal of a short-term loan; the refinancing of a maturing loan or note. **2.** The transfer of funds (such as IRA funds) to a new investment of the same type, esp. so as to defer payment of taxes. [Cases: Internal Revenue ⇨3587, 3594.] — **roll over,** *vb.*

rollover mortgage. See *renegotiable-rate mortgage* under MORTGAGE.

Roman-Dutch law. A system of law in Holland from the mid-15th century to the early 19th century, based on a mixture of Germanic customary law and Roman law as interpreted in medieval and Renaissance lawbooks. • This law forms the basis of modern South African law, the law of several other countries in southern Africa, and the law of Sri Lanka.

> "The phrase 'Roman-Dutch Law' was invented by Simon van Leeuwen, who employed it as the sub-title of his work entitled *Paratitla Juris Novissimi*, published at Leyden in 1652. Subsequently his larger and better known treatise on the 'Roman-Dutch Law' was issued under that name in the year 1664.
>
> "The system of law thus described is that which obtained in the province of Holland from the middle of the fifteenth to the early years of the nineteenth century. Its main principles were carried by the Dutch into their settlements in the East and West Indies; and when some of these, namely, the Cape of Good Hope, Ceylon, and part of Guiana, at the end of the eighteenth and the beginning of the nineteenth century, passed under the dominion of the Crown of Great Britain, the old law was retained as the common law of the territories which now became British colonies. With the expansion of the British Empire in South Africa, the sphere of the Roman-Dutch Law has extended its boundaries, until the whole of the area comprised within the Union of South Africa . . . has adopted this system as its common law. This is the more remarkable since in Holland itself and in the Dutch colonies of the present day the old law has been replaced by codes . . . ." R.W. Lee, *An Introduction to Roman-Dutch Law* 2 (4th ed. 1946).

Romanesque law. See CIVIL LAW (1).

Romanist, *n.* One who is versed in or practices Roman law; a Roman-law specialist.

Roman law. (16c) The legal system of the ancient Romans, forming the basis of the modern civil law; CIVIL LAW (1).

> "The Roman law is the body of rules that governed the social relations of many peoples in Europe, Asia, and Africa for some period between the earliest prehistoric times and 1453 A.D. This date should perhaps be extended to 1900 A.D., or even to the present time, and we might include America in the territory concerned. . . . Yet the essential fact is that no present-day community . . . consciously applies as binding upon its citizens the rules of Roman law in their unmodified form. That law is an historical fact. It would have only a tepid historical interest . . . if it were not for the circumstance that, before it became a purely historical fact, it was worked into the foundation and framework of what is called the civil law . . . ." Max Radin, *Handbook of Roman Law* 1 (1927).
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> "Roman law is not only the best-known, the most highly developed, and the most influential of all legal systems of the past; apart from English law, it is also the only one whose entire and unbroken history can be traced from early and primitive beginnings to a stage of elaborate perfection in the hands of skilled specialists." Hans Julius Wolff, *Roman Law: An Historical Introduction* 5 (1951).

Rome Act. *Copyright.* A 1928 revision of the Berne Convention adding the moral rights of attribution and integrity to the minimum standards of protection that member nations must recognize, creating a compulsory license of recorded performances for radio broadcasting, and specifying that the term of protection for joint works must be measured from the death of the last surviving coauthor. — Also termed *Rome Act of 1928*; *1928 Rome Act*.

Rome Convention. See ROME CONVENTION ON RELATED RIGHTS.

Rome Convention on Related Rights. *Copyright.* A 1961 treaty setting minimum standards for neighboring rights of performers, producers, and broadcasters. • The United States is not a signatory. Neighboring rights were not protected under the Paris Convention or the Berne Convention. They are part of the copyright protection under the Agreement on Trade-Related Aspects

of Intellectual Property (TRIPs). — Also termed *Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.* — Often shortened to *Rome Convention.* See NEIGHBORING RIGHT.

***Rooker–Feldman* doctrine.** The rule that a federal court cannot consider claims actually decided by a state court or claims inextricably intertwined with an earlier state-court judgment. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415–16, 44 S.Ct. 149, 150 (1923); *District of Columbia Ct. of App. v. Feldman*, 460 U.S. 462, 476, 103 S.Ct. 1303, 1311 (1983). • This doctrine precludes "a party losing in state court . . . from seeking what in substance would be appellate review of [a] state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Johnson v. De Grandy*, 512 U.S. 997, 1005–06, 114 S.Ct. 2647, 2654 (1994). [Cases: Courts ⇨509.]

root. *Civil law.* A descendant.

root of title. (1846) The recorded land transaction, usu. at least 40 years old, that is used to begin a title search. See CHAIN OF TITLE; TITLE SEARCH.

ROR. *abbr.* RELEASE ON RECOGNIZANCE.

Roth IRA. See INDIVIDUAL RETIREMENT ACCOUNT.

round lot. See LOT (3).

round-up. See *dragnet arrest* under ARREST.

roup. *Scots law.* A sale by auction (usu. public).

rout (rowt), *n.* (15c) The offense that occurs when an unlawful assembly makes some move toward the accomplishment of its participants' common purpose. Cf. RIOT. [Cases: Riot ⇨1.]

> "The word 'rout' comes from the same source as the word 'route.' It signifies that three or more who have gathered together in unlawful assembly are 'on their way.' It is not necessary for guilt of this offense that the design be actually carried out, nor that the journey be made in a tumultuous manner." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 483 (3d ed. 1982).

routine-activities theory. (1985) The theory that criminal acts occur when (1) a person is motivated to commit the offense, (2) a vulnerable victim is available, and (3) there is insufficient protection to prevent the crime. Cf. CONTROL THEORY; RATIONAL-CHOICE THEORY; STRAIN THEORY.

Royal Marriages Act. A 1772 statute (12 Geo. 3, ch. 1) forbidding members of the royal family from marrying without the sovereign's permission, except on certain conditions.

> "Royal Marriages Act . . . . An Act occasioned by George III's fear of the effect on the dignity and honour of the royal family of members thereof contracting unsuitable marriages, two of his brothers having done so . . . . It provided that marriages of descendants of George II, other than the issue of princesses who marry into foreign families, should not be valid unless they had the consent of the King in Council, or, if the parties were aged over 25, they had given 12 months' notice to the Privy Council, unless during that time both Houses of Parliament expressly declare disapproval of the proposed marriage." David M. Walker, *The Oxford Companion to Law* 1091 (1980).

royalty. (1839) **1.** *Intellectual property.* A payment — in addition to or in place of an up-front payment — made to an author or inventor for each copy of a work or article sold under a copyright or patent. • Royalties are often paid per item made, used, or sold, or per time elapsed. [Cases: Copyrights and Intellectual Property ⇨48; Patents ⇨217.1.]

established royalty. A royalty set at an agreed-on price. • In the absence of an established royalty, a court will determine a remedy for infringement based on what a reasonable royalty would have been.

reasonable royalty. A royalty that a licensee would be willing to pay the holder of the thing's intellectual-property rights while still making a reasonable profit from its use. • The reasonable-royalty standard often serves as the measure of damages in a claim of patent, copyright, or trademark infringement, or for misappropriation of trade secrets. In deciding what royalty is reasonable in a trade-secrets suit, courts consider the unique circumstances of the case, as well as (1) how the use affected the parties' ability to compete; (2) the cost of past licenses; (3) the cost to develop the secret and its present value; (4) how the defendant intends to use the information; and (5) the availability of alternatives. [Cases: Patents ⇨319(1).]

2. *Oil & gas.* A share of the product or profit from real property, reserved by the grantor of a mineral lease, in exchange for the lessee's right to mine or drill on the land. — Also termed (in sense 2) *override.* [Cases: Mines and Minerals ⇨70, 79.]

haulage royalty. A royalty paid to a landowner for moving coal via a subterranean passageway under the landowner's land from a mine located on an adjacent property. • The payment is calculated at a certain amount per ton of coal.

landowner's royalty. A share of production or revenues provided for the lessor in the royalty clause of the oil-and-gas lease and paid at the well free of any costs of production. • Traditionally, except in California, the landowner's royalty has been 1/8 of gross production for oil and 1/8 of the proceeds received from the sale of gas. But today the size is often negotiated. — Also termed *leaseholder royalty.* [Cases: Mines and Minerals ⇨79.1(1).]

mineral royalty. A right to a share of income from mineral production. [Cases: Mines and Minerals ⇨70, 79.]

nonparticipating royalty. A share of production — or of the revenue from production free its costs — carved out of the mineral interest. • A nonparticipating-royalty holder is entitled to the stated share of production or cash without regard to the terms of any lease. Nonparticipating royalties are often retained by mineral-interest owners who sell their rights. [Cases: Mines and Minerals ⇨79.1(1).]

overriding royalty. A share of either production or revenue from production (free of the costs of production) carved out of a lessee's interest under an oil-and-gas lease. • Overriding-royalty interests are often used to compensate those who have helped structure a drilling venture. An overriding-royalty interest ends when the underlying lease terminates. [Cases: Mines and Minerals ☞74.]

shut-in royalty. A payment made by an oil-and-gas lessee to the lessor to keep the lease in force when a well capable of producing is not utilized because there is no market for the oil or gas. • Generally, without such a payment, the lease will terminate at the end of the primary term unless actual production has begun. [Cases: Mines and Minerals ☞78.1(3).]

royalty interest. *Oil & gas.* A share of production — or the value or proceeds of production, free of the costs of production — when and if there is production. • A royalty interest is usu. expressed as a fraction (such as 1/6). A royalty-interest owner has no right to operate the property and therefore no right to lease the property or to share in bonuses or delay rentals. In some states a royalty owner has the right of ingress and egress to take the royalty production. Authorities are split over what costs are costs of production. Several different but related kinds of royalty interests are commonly encountered. See ROYALTY (2).

rptr. *abbr.* REPORTER.

RRB. *abbr.* RAILROAD RETIREMENT BOARD.

R.S. See *revised statutes* under STATUTE.

RSPA. *abbr.* RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION.

RTC. *abbr.* RESOLUTION TRUST CORPORATION.

rubber check. See *bad check* under CHECK.

rubber-stamp seal. See NOTARY SEAL.

rubric (**roo**-brik). **1.** The title of a statute or code <the rubric of the relevant statute is the Civil Rights Act of 1964>. **2.** A category or designation <assignment of rights falls under the rubric of contract law>. **3.** An authoritative rule, esp. for conducting a public worship service <the rubric dictates whether the congregation should stand or kneel>. **4.** An introductory or explanatory note; a preface <a well-known scholar wrote the rubric to the book's fourth edition>. **5.** An established rule, custom, or law <what is the rubric in the Northern District of Texas regarding appearance at docket call?>.

rule, *n.* (13c) **1.** Generally, an established and authoritative standard or principle; a general norm mandating or guiding conduct or action in a given type of situation.

default rule. A legal principle that fills a gap in a contract in the absence of an applicable express provision but remains subject to a contrary agreement. Cf. GAP-FILLER. [Cases: Contracts ☞168.]

general rule. A rule applicable to a class of cases or circumstances.

mandatory rule. A legal rule that is not subject to a contrary agreement. • For example, the UCC obligation of good faith and fair dealing cannot be disclaimed.

peremptory rule. A court order that must be obeyed without an opportunity to respond. • No objections may be lodged or arguments made.

special rule. See SPECIAL RULE (1).

2. A regulation governing a court's or an agency's internal procedures. [Cases: Administrative Law and Procedure ☞381; Courts ☞85; Federal Civil Procedure ☞21.] **3.** *Parliamentary law.* A procedural rule (sense 1) for the orderly conduct of business in a deliberative assembly. — Also termed *rule of order* (*often pl.*).

Cordon rule. See CORDON RULE.

joint rule. A rule adopted by both houses of a bicameral legislature for the conduct of business or relations between them, such as when they meet in joint session, or for other matters in which they share an interest. See *joint session* under SESSION (1). [Cases: States ☞35.]

ordinary standing rule. See *standing rule* (1).

Ramseyer rule. See RAMSEYER RULE.

special rule. **1.** See SPECIAL RULE (2). **2.** See SPECIAL RULE (3).

standing rule. **1.** A rule that relates to an organization's administration or operation rather than to its procedure in meetings. • For example, a rule about the time and place of regular meetings, or about a committee's jurisdiction, is a standing rule. — Also termed *ordinary standing rule.* **2.** A special rule of continuing force. • Many conventions and other deliberative assemblies collect both their administrative and procedural rules into a set titled "standing rules." See *special rule* (1).

rule, *vb.* (13c) **1.** To command or require; to exert control <the dictator ruled the country>. **2.** To decide a legal point <the court ruled on the issue of admissibility>.

rule, the. An evidentiary and procedural rule by which all witnesses are excluded from the courtroom while another witness is testifying <invoking "the rule">. • The phrase "the rule" is used chiefly in the American South and Southwest, but it is a common practice to exclude witnesses before they testify. [Cases: Criminal Law ☞665; Federal Civil Procedure ☞2012; Trial ☞41.]

rule against vitiation of a claim element. See ALL-ELEMENTS RULE.

Rule in Queen Caroline's Case. The common-law principle that a witness who is impeached with a prior inconsistent statement on cross-examination must be given the opportunity to admit, explain, repudiate, or deny it before the statement is admissible into evidence. • In American law, Federal Rule of Evidence 613 embodies this principle, with some variations. The original rule

is found in *Queen Caroline's Case*, (1820) 129 Eng. Rep. 976. [Cases: Witnesses ⚷388(2.1).]

Rule 1.53 application. See *continued-prosecution application* under PATENT APPLICATION.

Rule 10b-5. The SEC rule that prohibits deceptive or manipulative practices (such as material misrepresentations or omissions) in the buying or selling of securities. — Also termed *antifraud rule*. [Cases: Securities Regulation ⚷60.10–60.70.]

Rule 11. *Civil procedure.* **1.** In federal practice, the procedural rule requiring the attorney of record or the party (if not represented by an attorney) to sign all pleadings, motions, and other papers filed with the court and — by this signing — to represent that the paper is filed in good faith after an inquiry that is reasonable under the circumstances. • This rule provides for the imposition of sanctions, upon a party's or the court's own motion, if an attorney or party violates the conditions stated in the rule. Fed. R. Civ. P. 11. [Cases: Compromise and Settlement ⚷5; Federal Civil Procedure ⚷2750–2831; Judgment ⚷72.] **2.** In Texas practice, the procedural rule requiring agreements between attorneys or parties concerning a pending suit to be in writing, signed, and filed in the court's record or made on the record in open court. Tex. R. Civ. P. 11. [Cases: Compromise and Settlement ⚷5.]

Rule 109 statement. *Patents.* A statement by a patent examiner of the reasons for allowing a patent claim. • An examiner may file a Rule 109 statement at any time if it appears that the record does not adequately reflect the reasons for allowance. It should state how the claim differs from prior art and why that difference is nonobvious. PTO Reg. § 1.109; 37 CFR § 1.104(e). — Also termed *Reasons for Allowance*. [Cases: Patents ⚷104.]

Rule 116 amendment. See *amendment after final action* under PATENT-APPLICATION AMENDMENT.

Rule 312 amendment. See *amendment after allowance* under PATENT-APPLICATION AMENDMENT.

rule absolute. See *decree absolute* under DECREE.

rule against accumulations. See ACCUMULATIONS, RULE AGAINST.

rule against inalienability. The principle that property must not be made nontransferable. — Also termed *rule against trusts of perpetual duration*. Cf. RULE AGAINST PERPETUITIES. [Cases: Property ⚷11.]

rule against perpetuities. (*sometimes cap.*) (18c) *Property.* The common-law rule prohibiting a grant of an estate unless the interest must vest, if at all, no later than 21 years (plus a period of gestation to cover a posthumous birth) after the death of some person alive when the interest was created. • The purpose of the rule was to limit the time that title to property could be suspended out of commerce because there was no owner who had title to the property and who could sell it or exercise other aspects of ownership. If the terms of the contract or gift exceeded the time limits of the rule, the gift or transaction was void. See MEASURING LIFE. Cf. ACCUMULATIONS, RULE AGAINST. [Cases: Perpetuities ⚷4.]

> "The true form of the Rule against Perpetuities is believed to be this: — NO INTEREST SUBJECT TO A CONDITION PRECEDENT IS GOOD, UNLESS THE CONDITION MUST BE FULFILLED, IF AT ALL, WITHIN TWENTY-ONE YEARS AFTER SOME LIFE IN BEING AT THE CREATION OF THE INTEREST." John Chipman Gray, *The Rule Against Perpetuities* 144 (1886).

> "Another scholar who spent a substantial part of an academic lifetime attempting to bring order and add sense to the rule [against perpetuities], W. Barton Leach, described the rule as a 'technicality-ridden legal nightmare' and a 'dangerous instrumentality in the hands of most members of the bar.'" Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 178 (2d ed. 1984) (quoting Leach, *Perpetuities Legislation, Massachusetts Style*, 67 Harv. L. Rev. 1349 (1954)).

> "The Rule Against Perpetuities is a rule against remoteness of vesting. A contingent future interest is invalid under the orthodox rule if, at the time of the creation of the interest, the circumstances are such that the contingency may go unresolved for too long a time. The Rule is not concerned with the duration of interests, that is, the length of time that they endure. It is not a rule against suspension of the power of alienation, nor a rule against restraints on alienation. It is not a rule that directly limits the duration of trusts . . . . The orthodox rule is satisfied if all contingent future interests are so created that they must vest, if they vest at all, within the perpetuities period." Robert J. Lynn, *The Modern Rule Against Perpetuities* 9 (1966).

> "The common law Rule Against Perpetuities (modified by statute in some states) provides that no interest is valid unless it must vest within 21 years after lives in being when the interest was created. The rule is something of a misnomer. It does not limit the duration of a condition in a bequest, but rather limits the testator's power to earmark gifts for remote descendants." Richard A. Posner, *Economic Analysis of Law* § 18.7, at 394 (2d ed. 1977).

rule against trusts of perpetual duration. See RULE AGAINST INALIENABILITY.

rule day. See *return day* (3) under DAY.

rule in Heydon's case. See MISCHIEF RULE.

Rule in Shelley's Case. (18c) *Property.* The rule that if — in a single grant — a freehold estate is given to a person and a remainder is given to the person's heirs, the remainder belongs to the named person and not the heirs, so that the person is held to have a fee simple absolute. • The rule, which dates from the 14th century but draws its name from the famous 16th-century case, has been abolished in most states. *Wolfe v. Shelley*, 76 Eng. Rep. 206 (K.B. 1581). [Cases: Estates in Property ⚷8.]

> "[T]he rule in Shelley's Case, the Don Quixote of the law, which, like the last knight errant of chivalry, has long survived every cause that gave it birth and now wanders aimlessly through the reports, still vigorous, but equally useless and dangerous." *Stamper v. Stamper*, 28 S.E. 20, 22 (N.C. 1897).

Rule in Wild's Case. (1842) *Property.* The rule construing a grant to "A and A's children" as a fee tail if A's children do not exist at the effective date of the instrument, and as a joint tenancy if A's children do exist at the effective date. • The rule has been abolished along with the fee tail in most states.

rulemaking, *n.* (1926) The process used by an administrative agency to formulate, amend, or repeal a rule or regulation. — Also termed *administrative rulemaking.* Cf. ADMINISTRATIVE ADJUDICATION; INFORMAL AGENCY ACTION. [Cases: Administrative Law and Procedure ⚷381–427.] — **rulemaking,** *adj.*

formal rulemaking. (1960) Agency rulemaking that, when required by statute or the agency's discretion, must be on the record after an opportunity for an agency hearing, and must comply with certain procedures, such as allowing the submission of evidence and the cross-examination of witnesses. Cf. *informal rulemaking.* [Cases: Administrative Law and Procedure ⚷381–427.]

informal rulemaking. (1968) Agency rulemaking in which the agency publishes a proposed regulation and receives public comments on the regulation, after which the regulation can take effect without the necessity of a formal hearing on the record. • Informal rulemaking is the most common procedure followed by an agency in issuing its substantive rules. — Also termed *notice-and-comment rulemaking.* See NOTICE-AND-COMMENT PERIOD. Cf. *formal rulemaking.* [Cases: Administrative Law and Procedure ⚷381–427.]

rule nisi. See *decree nisi* under DECREE.

rule of capture. 1. The doctrine that if the donee of a general power of appointment manifests an intent to assume control of the property for all purposes and not just for the purpose of appointing it to someone, the donee captures the property and the property goes to the donee's estate. • One common way for the donee to show an intent to assume control for all purposes is to include provisions in his or her will blending the appointing property with the donee's own property. **2.** *Property.* The principle that wild animals belong to the person who captures them, regardless of whether they were originally on another person's land. [Cases: Animals ⚷1.5(3).] **3.** *Water law.* The principle that a surface landowner can extract and appropriate all the groundwater beneath the land by drilling or pumping, even if doing so drains away groundwaters to the point of drying up springs and wells from which other landowners benefit. • This doctrine has been widely abolished or limited by legislation. [Cases: Waters and Water Courses ⚷101.] **4.** *Oil & gas.* A fundamental principle of oil-and-gas law holding that there is no liability for drainage of oil and gas from under the lands of another so long as there has been no trespass and all relevant statutes and regulations have been observed. — Also termed *doctrine of capture; law of capture.* Cf. AD COELUM DOCTRINE. [Cases: Mines and Minerals ⚷47.]

rule of completeness. See RULE OF OPTIONAL COMPLETENESS.

rule of construction. See *canon of construction* under CANON (1).

rule of court. (17c) A rule governing the practice or procedure in a given court <federal rules of court>. See LOCAL RULE. [Cases: Courts ⚷85; Federal Civil Procedure ⚷21.]

rule of decision. (18c) A rule, statute, body of law, or prior decision that provides the basis for deciding or adjudicating a case. [Cases: Courts ⚷88.]

rule of doubt. 1. *Copyright.* The doctrine that unreadable or incomprehensible identifying material deposited with the U.S. Copyright Office may not be protected under copyright law because it cannot easily be examined to determine whether it qualifies. • This rule usu. applies to computer object code. • Unlike a Certificate of Registration, a filing under the rule of doubt is not prima facie evidence of a valid copyright. [Cases: Copyrights and Intellectual Property ⚷4.] **2.** *Patents.* An abandoned judicial doctrine holding that when there is doubt whether an invention is patentable, the patent should be issued so that the inventor can test its validity in court.

rule of evidence. See EVIDENCE (4).

rule of four. (1949) The convention that for certiorari to be granted by the U.S. Supreme Court, four justices must vote in favor of the grant. See CERTIORARI. [Cases: Federal Courts ⚷452, 509.]

rule of inconvenience. (1934) The principle of statutory interpretation holding that a court should not construe a statute in a way that will jeopardize an important public interest or produce a serious hardship for anyone, unless that interpretation is unavoidable. — Often shortened to *inconvenience.* [Cases: Statutes ⚷181(2).]

rule of interpretation. See *canon of construction* under CANON (1).

rule of justice. A jurisprudential principle that determines the sphere of individual liberty in the pursuit of individual welfare, so as to confine that liberty within limits that are consistent with the general welfare of humankind.

rule of law. (18c) **1.** A substantive legal principle <under the rule of law known as respondeat superior, the employer is answerable for all wrongs committed by an employee in the course of the employment>. **2.** The supremacy of regular as opposed to arbitrary power <citizens must respect the rule of law>. — Also termed *supremacy of law.* **3.** The doctrine that every person is subject to the ordinary law within the jurisdiction <all persons within the United States are within the American rule of law>. **4.** The doctrine that general constitutional principles are the result of judicial decisions determining the rights of private individuals in the courts <under the rule of law, Supreme Court caselaw makes up the bulk of what we call "constitutional law">. **5.** Loosely, a legal ruling; a ruling on a point of law <the *ratio decidendi* of a case is any rule of law reached by the judge as a necessary step in the decision>. [Cases: Courts ⚷87.]

rule of lenity (len-ə-tee). The judicial doctrine holding that a court, in construing an ambiguous criminal statute that sets out multiple or inconsistent punishments, should resolve the ambiguity in favor of the more lenient punishment. — Also termed *lenity rule*. [Cases: Statutes ⚷241(1).]

rule of marshaling assets. An equitable doctrine that requires a senior creditor, having two or more funds to satisfy its debt, to first dispose of the fund not available to a junior creditor. • It prevents the inequity that would result if the senior creditor could choose to satisfy its debt out of the only fund available to the junior creditor and thereby exclude the junior creditor from any satisfaction. — Also termed *marshaling doctrine*; *rule of marshaling securities*; *rule of marshaling remedies*. [Cases: Debtor and Creditor ⚷13.]

rule of marshaling liens. See INVERSE-ORDER-OF-ALIENATION DOCTRINE.

rule of marshaling remedies. See RULE OF MARSHALING ASSETS.

rule of marshaling securities. See RULE OF MARSHALING ASSETS.

rule of necessity. A rule requiring a judge or other official to hear a case, despite bias or conflict of interest, when disqualification would result in the lack of any competent court or tribunal. — Often shortened to *necessity*. [Cases: Judges ⚷39.]

rule of operation. *Patents*. A method of using a machine to produce its intended useful result. • A rule of operation and moving parts generally distinguish a machine from an article of manufacture.

rule of optional completeness. (1983) The evidentiary rule providing that when a party introduces part of a writing or an utterance at trial, the opposing party may require that the remainder of the passage be read to establish the full context. • The rule has limitations: first, no utterance can be received if it is irrelevant, and second, the remainder of the utterance must explain the first part. In many jurisdictions, the rule applies to conversations, to an opponent's admissions, to confessions, and to all other types of writings — even account books. But the Federal Rules of Evidence limit the rule to writings and recorded statements. Fed. R. Evid. 106. In most jurisdictions, including federal, the remainder is admissible unless its admission would be unfair or misleading. — Also termed *rule of completeness*; *doctrine of completeness*; *doctrine of optional completeness*; *completeness doctrine*; *optional-completeness rule*; *optional-completeness doctrine*. [Cases: Criminal Law ⚷396(2); Evidence ⚷155, 383(12).]

rule of order. See RULE (3).

rule of rank. A doctrine of statutory construction holding that a statute dealing with things or persons of an inferior rank cannot by any general words be extended to things or persons of a superior rank. • Blackstone gives the example of a statute dealing with deans, prebendaries, parsons, vicars, *and others* having spiritual promotion. According to Blackstone, this statute is held not to extend to bishops, even though they have spiritual promotion, because deans are the highest persons named, and bishops are of a higher order. Cf. EJUSDEM GENERIS; EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS; NOSCITUR A SOCIIS.

rule of reason. *Antitrust*. The judicial doctrine holding that a trade practice violates the Sherman Act only if the practice is an unreasonable restraint of trade, based on the totality of economic circumstances. See SHERMAN ANTITRUST ACT; RESTRAINT OF TRADE. Cf. PER SE RULE. [Cases: Antitrust and Trade Regulation ⚷535.]

rule of recognition. In the legal theory of H.L.A. Hart, a legal system's fundamental rule, by which all other rules are identified and understood. • In *The Concept of Law* (1961), Hart contends that a society's legal system is centered on rules. There are primary rules of obligation, which prescribe how a person should act in society, and secondary rules, by which the primary rules are created, identified, changed, and understood. A "rule of recognition" is a secondary rule, and serves to instruct citizens on when a pronouncement or societal principle constitutes a rule of obligation. — Sometimes shortened to *recognition*. Cf. RULES OF CHANGE; *basic norm* under NORM.

> "This rule [the rule of recognition] may amount to no more than specifying a list of primary rules carved on a public monument. Or it may actually be a complete set of rules . . . ." Martin P. Golding, *Philosophy of Law* 44 (1975).

rule of right. (18c) The source of a right; the rule that gives rise to a right.

rule of 72. A method for determining how many years it takes to double money invested at a compound interest rate. • For example, at a compound rate of 6%, it takes 12 years (72 divided by 6) for principal to double.

rule of 78. A method for computing the amount of interest that a borrower saves by paying off a loan early, when the interest payments are higher at the beginning of the loan period. • For example, to determine how much interest is saved by prepaying a 12-month loan after 6 months, divide the sum of the digits for the remaining six payments (21) by the sum of the digits for all twelve payments (78) and multiply that percentage by the total interest. — Also termed *rule of the sum of the digits*.

rule of the floating subtrahend. The common-law doctrine that a plaintiff whose damage was not caused entirely by the defendant must prove the amount of damage that is not attributable to the defendant (the subtrahend) or else recover nothing. • The reasoning behind the rule is that damage is an essential element of a tort claim, and the plaintiff has the burden of proof. If proved, the subtrahend is subtracted from the total damage to determine the plaintiff's recovery.

rule of the last antecedent. (1919) An interpretative principle by which a court determines that qualifying words or phrases modify the words or phrases immediately preceding them and not words or phrases more remote, unless the extension is necessary from the context or

the spirit of the entire writing. • For example, an application of this rule might mean that, in the phrase *Texas courts, New Mexico courts, and New York courts in the federal system*, the words *in the federal system* might be held to modify only *New York courts* and not *Texas courts* or *New Mexico courts*. — Also termed *doctrine of the last antecedent; doctrine of the last preceding antecedent*. [Cases: Statutes ⇨196.]

rule of the shorter term. *Copyright.* A provision of the Universal Copyright Convention stating that no member country is required to extend a longer term of protection than the work receives in the country where it is first published. — Also termed *shorter-term rule*.

rule of the sum of the digits. See RULE OF 78.

rule of universal inheritance. See UNIVERSAL-INHERITANCE RULE.

rules committee. See COMMITTEE.

rules of change. In the legal theory of H.L.A. Hart, the fundamental rules by which a legal system's other rules are altered. • In Hart's theory, a legal system's primary rules are subject to identification and change by secondary rules. Among those rules are "rules of change," which prescribe how laws are altered or repealed. Cf. RULE OF RECOGNITION.

rules of court. See COURT RULES.

Rules of Decision Act. A federal statute (28 USCA § 1652) providing that a federal court, when exercising diversity jurisdiction, must apply the substantive law of the state in which the court sits. See *diversity jurisdiction* under JURISDICTION. [Cases: Federal Courts ⇨373.]

rules of evidence. See EVIDENCE (4); FEDERAL RULES OF EVIDENCE.

rules of navigation. *Maritime law.* The principles and regulations that govern the steering and sailing of vessels to avoid collisions. • Examples include the International Rules governing conduct on the high seas and the Inland Rules governing navigation on the inland waters of the United States and U.S. vessels on the Canadian waters of the Great Lakes. 33 USCA §§ 1602–1608, 2001–2073. [Cases: Collision ⇨3–16.]

rules of order. See RULE (3).

rules of procedure. See PROCEDURE (2).

rule to show cause. 1. See SHOW-CAUSE PROCEEDING. **2.** See *show-cause order* under ORDER (2).

ruling, *n.* (16c) **1.** The outcome of a court's decision either on some point of law or on the case as a whole. — Also termed *legal ruling*. Cf. JUDGMENT (1); OPINION (1). [Cases: Courts ⇨88.]

> "A distinction is sometimes made between rules and rulings. Whether or not a formal distinction is declared, in common usage 'legal ruling' (or simply 'ruling') is a term ordinarily used to signify the outcome of applying a legal test when that outcome is one of relatively narrow impact. The immediate effect is to decide an issue in a single case. This meaning contrasts, for example, with the usual meaning of 'legal rule' (or simply 'rule'). The term 'rule' ordinarily refers to a legal proposition of general application. A 'ruling' may have force as precedent, but ordinarily it has that force because the conclusion it expresses (for example, 'objection sustained') explicitly depends upon and implicitly reiterates a 'rule' — a legal proposition of more general application . . . ." Robert E. Keeton, *Judging* 67–68 (1990).

2. *Parliamentary law.* The chair's decision on a point of order. — **rule,** *vb.*

ruling case. See LEADING CASE (3).

ruling letter. See DETERMINATION LETTER.

RULPA. *abbr.* Revised Uniform Limited Partnership Act. See UNIFORM LIMITED PARTNERSHIP ACT.

run, *vb.* (bef. 12c) **1.** To expire after a prescribed period <the statute of limitations had run, so the plaintiff's lawsuit was barred>. **2.** To accompany a conveyance or assignment of (land) <the covenant runs with the land>. [Cases: Covenants ⇨53–84.] **3.** To apply <the injunction runs against only one of the parties in the dispute>.

runaway. (16c) **1.** A person who is fleeing or has escaped from custody, captivity, restraint, or control; esp., a minor who has voluntarily left home without permission and with no intent to return. Cg. THROWAWAY. [Cases: Infants ⇨151.] **2.** An animal or thing that is out of control or has escaped from confinement. [Cases: Animals ⇨47.] — **run away,** *vb.*

runaway grand jury. See GRAND JURY.

runner. (18c) **1.** A law-office employee who delivers papers between offices and files papers in court. **2.** One who solicits personal-injury cases for a lawyer. — Also termed *capper*. **3.** A smuggler. **4.** *BrE. Slang.* An escape; flight (from something); a voluntary disappearance.

running account. See ACCOUNT.

running description. See METES AND BOUNDS.

running-down clause. *Marine insurance.* A provision for the hull insurer's paying a proportion of the damages sustained by the other vessel in a collision. [Cases: Insurance ⇨2367.]

running objection. See *continuing objection* under OBJECTION.

running policy. See *floating policy* under INSURANCE POLICY.

running with the land. *Property law.* See *covenant running with the land* under COVENANT (4).

runoff election. See ELECTION (3).

Rural Business-Cooperative Service. An agency in the U.S. Department of Agriculture responsible for making loans and grants to public agencies and private parties to develop rural businesses. — Abbr. RBS. [Cases: United States ⇨53(7).]

Rural Electrification Administration. A former agency in the U.S. Department of Agriculture responsible for making or guaranteeing loans to rural electric and telephone utilities. • Its duties were transferred to the Rural Utilities Service in 1994. — Abbr. REA. See

RURAL UTILITIES SERVICE. [Cases: United States ⇨ 53(7).]

Rural Housing Service. An agency in the U.S. Department of Agriculture responsible for making or guaranteeing loans for rural housing. — Abbr. RHS. [Cases: United States ⇨53(7).]

rural servitude. See SERVITUDE (2).

Rural Utilities Service. An agency in the U.S. Department of Agriculture responsible for making or guaranteeing loans to rural electric and telecommunication utilities. • The agency is the successor to the Rural Electrification Administration. — Abbr. RUS. [Cases: United States ⇨53(7).]

RUS. *abbr.* RURAL UTILITIES SERVICE.

rustica et urbana (**rəs**-ti-kə et ər-**bay**-nə). [Latin] *Hist.* Rural and urban. • The phrase appeared in reference to servitudes. See SERVITUS.

rusticum forum (**rəs**-ti-kəm **for**-əm). Any nonjudicial body (such as an arbitral panel or workers'-compensation review board) that has authority to make a binding decision. — Also termed *poor man's court.*

rusticum judicium (**rəs**-ti-kəm joo-**dish**-ee-əm). **1.** The division of liability so that one party (usu. a defendant) must pay only part (usu. half) of another party's (usu. the plaintiff's) loss. • *Rusticum judicium* originated in 17th century maritime law as a means of efficiently resolving collision cases in which both ships were at fault. In maritime law, damages were equally divided. — Also termed *rusticum jus.* Cf. *comparative negligence* under NEGLIGENCE. **2.** *Rare.* Rough justice; a rustic tribunal. • This is a literal translation of the term, used colloquially rather than accurately. — Sometimes misspelled *rusticum judicum.*

rusticum jus (**rəs**-ti-kəm jəs). *Maritime law.* See RUSTICUM JUDICIUM (1).

S

s. *abbr.* **1.** STATUTE. **2.** SECTION (1). **3.** (*usu. cap.*) SENATE.

S-1. An SEC form that a company usu. must file before listing and trading its securities on a national exchange. • Used primarily by first-time issuers of securities, this form is the basic, full-length registration statement that requires a great deal of information about the issuer and the securities being sold. The SEC has also adopted modified forms for smaller enterprises, such as Forms SB-1 and SB-2. — Also termed *Form S-1*.

Sabbath-breaking. The violation of laws or rules on observing the Sabbath; esp., the violation of a blue law.

Sabbath law. See BLUE LAW.

sabotage (**sab**-ə-tahzh), *n.* (1910) **1.** The destruction, damage, or knowingly defective production of materials, premises, or utilities used for national defense or for war. 18 USCA §§ 2151 et seq. [Cases: War and National Emergency ⇨53.] **2.** The willful and malicious destruction of an employer's property or interference with an employer's normal operations, esp. during a labor dispute. — **sabotage,** *vb.*

saboteur (sab-ə-**tər**), *n.* (1921) A person who commits sabotage.

sac, *n.* See SOC.

sacer (**sas**-ər), *adj.* [Latin "sacred; forfeited to a god"] *Roman law.* (Of an outlaw or a wrongdoer) punished by being placed outside the law's protection. See CONSECRATIO CAPITIS; OUTLAWRY.

sachbaro. See SAGIBARO.

Sache (**zahk**-ə). [German] A thing; an article or matter. See THING.

sacramentalis (sak-rə-men-**tay**-leez), *n. pl.* [Law Latin fr. Latin *sacramentum* "an oath-taker"] *Hist.* A compurgator; one who takes an oath swearing to a defendant's innocence. Pl. ***sacramentales.***

sacramento (sak-rə-**men**-toh), *n.* [Latin "by oath"] *Roman law.* A legal action in the earliest form of civil procedure in which, at its commencement, each of the contending parties deposited or gave security for a certain sum (called the *sacramentum*), which the loser forfeited to the public. — Also termed *legis actio sacramento.* See LEGIS ACTIO.

sacramentum (sak-rə-**men**-təm), *n.* [Latin "an oath"] *Roman law.* **1.** SACRAMENTO. **2.** An oath of allegiance given by a soldier upon enlistment.

sacramentum decisionis (sak-rə-**men**-təm di-sizh-ee-**oh**-nis). [Latin "the oath of decision"] *Civil law.* The offer by one party to accept the opposing party's oath as decisive of the issues involved in a lawsuit. Pl. ***sacramenta decisionis.***

> "The defendant or person accused was . . . to make oath of his own innocence, and to produce a certain number of compurgators, who swore they believed his oath. Somewhat similar also to this is the *sacramentum decisionis*, or the voluntary and decisive oath of the civil law; where one of the parties to the suit, not being able to prove his charge, offers to refer the decision of the cause to the oath of his adversary: which the adversary was bound to accept, or tender the same proposal back again; otherwise the whole was taken as confessed by him." 3 William Blackstone, *Commentaries on the Laws of England* 342 (1768).

sacramentum fidelitatis (sak-rə-**men**-təm fi-del-ə-**tay**-tis). [Law Latin] *Hist.* The oath of fidelity, given by a vassal to a lord.

sacrilege (**sak**-rə-lij). **1.** The act or an instance of desecrating or profaning a sacred thing. **2.** *Hist.* Larceny of sacred objects, as from a church.

sacrilegium (sak-rə-**lee**-jee-əm), *n.* [Latin fr. *sacer* "sacred" + *legere* "to steal"] *Roman law.* **1.** The theft of a sacred thing, usu. a capital offense. See CAPITALIS. **2.** Violation of an imperial law.

> "In the later Empire the conception of *sacrilegium* was somewhat distorted and those 'who through ignorance or negligence confound, violate and offend the sanctity of a divine law' . . . were considered guilty of *sacrilegium*. 'Divine' is here used in the sense of imperial, issued by the emperor . . . . Thus *sacrilegium* and *sacrilegus* became rather general terms applied to the neglect or violation of imperial orders or enactments." Adolf Berger, *Encyclopedic Dictionary of Roman Law* 689 (1953).

sacrilegus (sə-**kril**-ə-gəs), *adj.* & *n.* [Latin "sacrilegious"] *Roman law.* (A person) guilty of *sacrilegium*. See SACRILEGIUM.

sacristan (**sak**-ri-stən). [Latin] *Hist.* A caretaker of a church; a sexton of a church.

sacristy (**sak**-ri-stee). See VESTRY (1).

sadaq. See MAHR.

saemend (**see**-mənd). [Old English] *Hist.* An arbitrator; an umpire.

SAET. *abbr.* SUBSTANCE-ABUSE EVALUATION AND TREATMENT.

saevitia (si-**vish**-ee-ə). [Latin fr. *saevus* "cruel"] *Hist.* Cruelty in a marriage, as a result of which cohabitation is dangerous enough to justify a decree of separation.

safe, *adj.* **1.** Not exposed to danger; not causing danger <driving at a safe limit of speed>. **2.** Unlikely to be overturned or proved wrong.

safe-berth clause. *Maritime law.* A provision in a voyage or time charterparty obligating the charterer to choose a berth for loading and unloading the chartered ship where the ship will be safe from damage. • The ship's master can refuse to enter the berth without breaching

the charter. But if the master reasonably enters the berth and the ship is damaged, the charterer is liable. Cf. SAFE-PORT CLAUSE. [Cases: Shipping ⚷54.]

safe blower. One who uses explosives to open a safe, esp. for the purpose of stealing the contents. Cf. SAFE CRACKER.

safe breaker. See SAFE CRACKER.

safe conduct. *Int'l law.* **1.** A privilege granted by a belligerent allowing an enemy, a neutral, or some other person to travel within or through a designated area for a specified purpose. **2.** A document conveying this privilege. — Sometimes written *safe-conduct.* — Also termed *safeguard; passport.*

> "Passports and safeguards, or safe conducts, are letters of protection, with or without an escort, by which the person of an enemy is rendered inviolable. These may be given in order to carry on the peculiar commerce of war, or for reasons which have no relation to it, which terminate in the person himself." Theodore D. Woolsey, *Introduction to the Study of International Law* § 155, at 265 (5th ed. 1878).

> "Safe-conduct . . . . The grantee is inviolable so long as he complies with the conditions imposed on him or necessitated by the circumstances of the case. Unless stated, a safe-conduct does not cover goods or luggage. They may be given also for ships and for goods. To be effective under international law the grant must have been arranged between belligerents." David M. Walker, *The Oxford Companion to Law* 1098 (1980).

safe cracker. One who breaks into a safe, esp. for the purpose of stealing the contents. — Also termed *safe breaker.* Cf. SAFE BLOWER.

safe-deposit box. (1874) A lockbox stored in a bank's vault to secure a customer's valuables. • It usu. takes two keys (one held by the bank and one held by the customer) to open the box. — Often shortened to *deposit box.* — Also termed *safety-deposit box.* [Cases: Warehousemen ⚷38.]

safe-deposit company. See DEPOSITARY (1).

safe harbor. (1960) **1.** An area or means of protection. **2.** A provision (as in a statute or regulation) that affords protection from liability or penalty. • SEC regulations, for example, provide a safe harbor for an issuer's business forecasts that are made in good faith. — Also termed *safe-harbor clause; safe-harbor provision.* [Cases: Securities Regulation ⚷60.27(5).]

safe-haven law. *Family law.* A statute that protects a parent who abandons a baby at a designated place such as a hospital, a physician's office, or a fire station, where it can receive emergency medical assistance as needed. • The law typically stipulates that a parent who leaves a baby at such a place will not be publicly identified or prosecuted. Such laws have been enacted in many states in response to a perceived increase in incidents of child abandonment. — Also termed *Baby Moses law.*

safe house. A residence where people live under protection, usu. in anonymity. • Safe houses are operated for a range of purposes, both legal and illegal. Shelters for abused spouses and runaway children are safe houses. Law-enforcement agencies keep safe houses for undercover operations and to protect witnesses who have been threatened. Lawbreakers use them to shield criminal activity such as drug manufacturing.

safekeeping. **1.** The act of protecting something in one's custody. **2.** Under the Securities Investors Protection Act, the holding of a security on behalf of the investor or broker that has paid for it. 15 USCA § 78lll(2). [Cases: Securities Regulation ⚷185.13–185.16.]

safe-pledge. See PLEDGE (5).

safe-port clause. *Maritime law.* A provision in a voyage or time charterparty obligating the charterer to choose a port where the ship will be safe from damage. • The ship's master can refuse to enter the port without breaching the charter. But if the master reasonably enters the port and the ship is damaged, the charterer is liable. Cf. SAFE-BERTH CLAUSE. [Cases: Shipping ⚷39, 55.]

safe-storage statute. A law that prohibits persons from leaving firearms unattended in places where children may gain access to them. — Also termed *child-access prevention statute.* [Cases: Weapons ⚷4.]

Safety Appliance Act. A federal law regulating the safety of equipment used by railroads in interstate commerce. 49 USCA §§ 20301 et seq. [Cases: Labor and Employment ⚷2862–2864; Railroads ⚷229.]

safety-deposit box. See SAFE-DEPOSIT BOX.

safety engineering. The inspection and study of potentially dangerous conditions, usu. in an industrial environment, so that precautionary measures can be taken.

safety officer. See OFFICER (1).

safe workplace. A place of employment in which all dangers that should reasonably be removed have been removed; a place of employment that is reasonably safe given the nature of the work performed. See OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION. [Cases: Labor and Employment ⚷2832; Negligence ⚷1204(4).]

sagibaro (**sag**-ə-bar-oh), *n.* [Old English] *Hist.* A determiner of disputes; a judge. — Also termed *sachbaro* (**sak**-bar-oh).

said, *adj.* (13c) Aforesaid; above-mentioned. • The adjective *said* is obsolescent in legal drafting, its last bastion being patent claims. But even in that context the word is giving way to the ordinary word *the,* which if properly used is equally precise. See AFORESAID.

> "The word 'said' is used by many practitioners rather than 'the' to refer back to previously recited elements, sometimes to a previously cited anything. This practice is unobjectionable, although perhaps overly legalistic. If 'saids' or 'thes' are used, one should be consistent in the usage and not alternate between those words in repetitions of the same element or among different elements." Robert C. Faber, *Landis on Mechanics of Patent Claim Drafting* § 23, at 50 (3d ed. 1990).

sailor's will. See *soldier's will* under WILL.

Saint Lawrence Seaway Development Corporation. A wholly-owned corporation in the U.S. Department of Transportation responsible for developing, operating,

and maintaining a part of the St. Lawrence Seaway from Montreal to Lake Erie. • It charges tolls at rates negotiated with the St. Lawrence Seaway Authority of Canada. — Abbr. SLSDC.

sake and soke (sayk / sohk). *Hist.* A lord's right to hold court and compel attendance. — Also spelled *sak and soc* (sak / sok). See SOC.

salable (**say**-lə-bəl *or* **sayl**-ə-bəl), *adj.* (16c) Fit for sale in the usual course of trade at the usual selling price; MERCHANTABLE. [Cases: Sales ⇨272.] — **salability** (say-lə-**bil**-ə-tee *or* sayl-ə-**bil**-ə-tee), *n.*

salable value. See *fair market value* under VALUE (2).

salarium (sə-**lair**-ee-əm), *n.* [Latin "salt money"] **1.** *Roman law.* An allowance, esp. for living expenses, given to persons in noble professions (such as teachers or doctors) who were not allowed to sue for fees. **2.** *Roman law.* Wages for persons engaged in military service on an emergency basis. • The regular soldier's pay is a *stipendium*. **3.** *Hist.* The rent or profits of a hall or house.

salary. (13c) An agreed compensation for services — esp. professional or semiprofessional services — usu. paid at regular intervals on a yearly basis, as distinguished from an hourly basis. • Salaried positions are usu. exempt from the requirements of the Fair Labor Standards Act (on overtime and the like) but are subject to state regulation. Cf. WAGE. [Cases: Labor and Employment ⇨168, 2264.]

accrued salary. A salary that has been earned but not yet paid.

sale, *n.* (bef. 12c) **1.** The transfer of property or title for a price. See UCC § 2-106(1). [Cases: Sales ⇨1; Vendor and Purchaser ⇨1.] **2.** The agreement by which such a transfer takes place. • The four elements are (1) parties competent to contract, (2) mutual assent, (3) a thing capable of being transferred, and (4) a price in money paid or promised.

absolute sale. A sale in which possession and title to the property pass to the buyer immediately upon the completion of the bargain. Cf. *conditional sale.* [Cases: Sales ⇨454; Vendor and Purchaser ⇨79.]

approval sale. See *sale on approval.*

auction sale. See AUCTION.

average gross sales. The amount of total sales divided by the number of sales transactions in a specific period.

bona fide sale. A sale made by a seller in good faith, for valuable consideration, and without notice of a defect in title or any other reason not to hold the sale. [Cases: Vendor and Purchaser ⇨220.]

bootstrap sale. **1.** A sale in which the purchase price is financed by earnings and profits of the thing sold; esp., a leveraged buyout. See BUYOUT. **2.** A seller's tax-saving conversion of a business's ordinary income into a capital gain from the sale of corporate stock.

bulk sale. See BULK SALE.

cash-against-documents sale. See *documentary sale.*

cash sale. **1.** A sale in which cash payment is concurrent with the receipt of the property sold. [Cases: Sales ⇨82(1).] **2.** A securities transaction on the stock-exchange floor requiring cash payment and same-day delivery.

compulsory sale. The forced sale of real property in accordance with either an eminent-domain order or an order for a judicial sale arising from nonpayment of taxes. [Cases: Taxation ⇨2963.]

conditional sale. **1.** A sale in which the buyer gains immediate possession but the seller retains title until the buyer performs a condition, esp. payment of the full purchase price. See *retail installment contract* under CONTRACT. [Cases: Sales ⇨450.] **2.** A sale accompanied by an agreement to resell upon specified terms. Cf. *absolute sale.*

consignment sale. A sale of an owner's property (such as clothing or furniture) by a third party entrusted to make the sale. UCC § 9-102(a)(20). See CONSIGNMENT. [Cases: Factors ⇨5, 20; Sales ⇨8.]

consumer-credit sale. A sale in which the seller extends credit to the consumer. • A consumer-credit sale includes a lease in which the lessee's rental payments equal or exceed the retail value of the item rented. [Cases: Consumer Credit ⇨3.]

credit sale. A sale of goods to a buyer who is allowed to pay for the goods at a later time. [Cases: Sales ⇨82(1).]

distress sale. **1.** A form of liquidation in which the seller receives less for the goods than what would be received under normal sales conditions; esp., a going-out-of-business sale. **2.** A foreclosure or tax sale. [Cases: Internal Revenue ⇨4860; Taxation ⇨2846, 2963.]

dock sale. A sale in which a purchaser takes possession of the product at the seller's shipping dock, esp. for transportation outside the state.

documentary sale. A sale in which the buyer pays upon the seller's tender of documents of title covering the goods, plus a sight draft requiring the buyer to pay "at sight." • This type of sale typically occurs before delivery of the goods, which might be en route when the buyer pays. — Also termed *cash-against-documents sale.*

exclusive sale. A sale made by a broker under an exclusive-agency listing. See *exclusive-agency listing* under LISTING. [Cases: Brokers ⇨40.]

execution sale. A forced sale of a debtor's property by a government official carrying out a writ of execution. — Also termed *forced sale*; *judgment sale*; *sheriff's sale.* See EXECUTION. [Cases: Execution ⇨213.]

executory sale. A sale agreed upon in principle but with a few minor details remaining.

fair sale. A foreclosure sale or other judicial sale conducted with fairness toward the rights and interests

of the affected parties. [Cases: Judicial Sales ⚷15; Mortgages ⚷514, 515.]

fire sale. **1.** A sale of merchandise at reduced prices because of fire or water damage. **2.** Any sale at greatly reduced prices, esp. due to an emergency. • Fire sales are often regulated to protect the public from deceptive sales practices.

forced sale. **1.** See *execution sale.* **2.** A hurried sale by a debtor because of financial hardship or a creditor's action. Cf. *voluntary sale.*

foreclosure sale. The sale of mortgaged property, authorized by a court decree or a power-of-sale clause, to satisfy the debt. See FORECLOSURE. [Cases: Mortgages ⚷360, 514.]

fraudulent sale. A sale made to defraud the seller's creditors by converting into cash property that should be used to satisfy the creditors' claims. [Cases: Fraudulent Conveyances ⚷1.]

gross sales. Total sales (esp. in retail) before deductions for returns and allowances. — Also termed *sales in gross.*

installment sale. See INSTALLMENT SALE.

isolated sale. An infrequent or one-time sale that does not carry an implied warranty of merchantability because the seller is not a merchant with respect to goods of that kind. UCC § 2-314(1). [Cases: Sales ⚷272.]

judgment sale. See *execution sale.*

judicial sale. A sale conducted under the authority of a judgment or court order, such as an execution sale. — Also termed *sheriff's sale.* [Cases: Cases: Execution ⚷213; Judicial Sales ⚷1.]

lumping sale. A court-ordered sale in which several distinct pieces of property are sold together for a single sum.

memorandum sale. A conditional sale in which the buyer takes possession but does not accept title until approving the property. [Cases: Sales ⚷459.]

net sale. The amount of money remaining from a sale, after deducting returns, allowances, rebates, discounts, and other expenses.

present sale. Under the UCC, a sale accomplished by the making of a contract. UCC § 2-106(1). [Cases: Sales ⚷1(1).]

private sale. An unadvertised sale negotiated and concluded directly between the buyer and seller, not through an agent.

public sale. **1.** A sale made after public notice, such as an auction or sheriff's sale; specif., a sale to which the public has been invited by advertisement to appear and bid at auction for the items to be sold. **2.** *Patents.* An actual exchange for value or an offer through some medium (e.g., a sales brochure) of an article, product, or process to a member of the general public. [Cases: Patents ⚷76.]

retail installment sale. See INSTALLMENT SALE.

sale against the box. See *short sale against the box.*

sale and leaseback. See LEASEBACK.

sale and return. See *sale or return.*

sale as is. A sale in which the buyer accepts the property in its existing condition unless the seller has misrepresented its quality. — Also termed *sale with all faults.* [Cases: Sales ⚷260, 267.]

sale by sample. A sale in which the parties understand that the goods exhibited constitute the standard with which the goods not exhibited correspond and to which all deliveries should conform. • Any sample that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model. UCC § 9-102(a)(20). — Also termed *sample sale.* [Cases: Sales ⚷73.]

sale in gross. **1.** A sale of a tract of land made with no guarantee about the exact amount or size of the land being sold. [Cases: Vendor and Purchaser ⚷65(2).] **2.** (*pl.*) See *gross sales.*

sale-leaseback. See LEASEBACK.

sale on approval. A sale in which completion hinges on the buyer's satisfaction, regardless of whether the goods conform to the contract. • Title and risk of loss remain with the seller until the buyer approves. UCC § 2-326(1)(a). — Also termed *approval sale.* [Cases: Sales ⚷168.5(.5).]

sale on credit. A sale accompanied by delivery of possession, but with payment deferred to a later date. [Cases: Sales ⚷82(1).]

sale or return. A sale in which the buyer may return the goods to the seller, regardless of whether they conform to the contract, if the goods were delivered primarily for resale. • This transaction is a type of consignment in which the seller (usu. a distributor) sells goods to the buyer (often a retailer), who then tries to resell the goods, but a buyer who cannot resell is allowed to return them to the seller. Title and risk of loss are with the buyer until the goods are returned. UCC § 2-326(1)(b). — Also termed *sale and return.* Cf. SALES GUARANTEED. [Cases: Sales ⚷168.5(.5).]

sale per aversionem (pər ə-vər-zhee-**oh**-nəm). *Civil law.* A conveyance of all immovable property that falls within the boundaries stated in a purchase agreement, as opposed to a specified amount of acreage. • The sales price will not be modified because of a surplus or shortage in the amount of property that is exchanged, because the boundary description is the binding definition of the property conveyed. La. Civ. Code art. 2495. [Cases: Vendor and Purchaser ⚷65(2).]

sale positive. A sale with no reserve price.

sales in gross. See *gross sales.*

sale short. See *short sale.*

sale with all faults. See *sale as is.*

sale with right of redemption. A sale in which the seller reserves the right to retake the goods by refunding the purchase price.

sample sale. See *sale by sample.*

sheriff's sale. **1.** See *execution sale.* **2.** See *judicial sale.*

short sale. *Securities.* A sale of a security that the seller does not own or has not contracted for at the time of sale, and that the seller must borrow to make delivery. • Such a sale is usu. made when the seller expects the security's price to drop. If the price does drop, the seller can make a profit on the difference between the price of the shares sold and the lower price of the shares bought to pay back the borrowed shares. — Also termed *sale short.* [Cases: Securities Regulation ⇨45.17.]

short sale against the box. *Securities.* A short sale of a security by a seller who owns enough shares of the security to cover the sale but borrows shares anyway because the seller wants to keep ownership a secret or because the owned shares are not easily accessible. • Delivery may be made with either the owned or the borrowed shares, so it is less risky than an ordinary short sale. The phrase *against the box* refers to the owned shares that are in safekeeping; formerly, the "box" was a container used to store stock certificates. — Often shortened to *sale against the box.*

similar sales. *Eminent domain.* Sales of like property in the same locality and time frame, admissible in a condemnation action to determine the market value of the particular property at issue. [Cases: Evidence ⇨142.]

simulated sale. A sale in which no price or other consideration is paid or intended to be paid, and in which there is no intent to actually transfer ownership. • Simulated sales are usu. done in an attempt to put property beyond the reach of creditors. — Also termed *simulated transaction.* [Cases: Fraudulent Conveyances ⇨1.]

tax sale. A sale of property because of nonpayment of taxes. See *tax deed* under DEED. [Cases: Taxation ⇨2900.]

voluntary sale. A sale made freely with the seller's consent. Cf. *forced sale.*

wash sale. *Securities.* A sale of securities made at about the same time as a purchase of the same securities (such as within 30 days), resulting in no change in beneficial ownership. • A loss from a wash sale is usu. not tax-deductible. And securities laws prohibit a wash sale made to create the false appearance of market activity. — Also termed *wash transaction.* [Cases: Internal Revenue ⇨3216; Securities Regulation ⇨60.25.]

sale and exchange. See SALE OR EXCHANGE.

sale and leaseback. See LEASEBACK.

sale and return. See *sale or return* under SALE.

sale-leaseback. See LEASEBACK.

sale note. See NOTE (1).

sale-of-business doctrine. The outmoded rule holding that the transfer of stock incident to the sale of a business does not constitute a transfer of securities. • This doctrine was rejected by the U.S. Supreme Court in *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 105 S.Ct. 2297 (1985), and its companion case, *Gould v. Ruefenacht*, 471 U.S. 701, 105 S.Ct. 2308 (1985). [Cases: Securities Regulation ⇨5.25(2).]

sale of land. A transfer of title to real estate from one person to another by a contract of sale. • A transfer of real estate is often referred to as a conveyance rather than a sale. [Cases: Vendor and Purchaser ⇨1, 3.]

sale on approval. See SALE.

sale on credit. See SALE.

sale or exchange. (1905) **1.** *Tax.* A voluntary transfer of property for value (as distinguished from a gift) resulting in a gain or loss recognized for federal tax purposes. **2.** A transfer of property; esp., a situation in which proceeds of a sale are to be vested in another estate of the same character and use. — Also termed (in both senses) *sale and exchange.* [Cases: Internal Revenue ⇨3232; Taxation ⇨3469.]

sale or return. See SALE.

sale per aversionem. See SALE.

sale positive. See SALE.

sales agreement. (1920) A contract in which ownership of property is presently transferred, or will be transferred in the future, from a seller to a buyer for a fixed sum. UCC § 2-106(1). [Cases: Sales ⇨1(1), 3.1.]

sales-assessment-ratio study. A method for calculating the assessment level for taxable property in a jurisdiction, by comparing the assessed value and the actual sales price of a statistically reliable sample of the property in the jurisdiction, to determine the percentage by which the assessed values are above or below the sales prices. [Cases: Taxation ⇨2515.]

sales finance company. See FINANCE COMPANY.

sales guaranteed. *Hist.* As used in a sale-of-goods contract, the seller's promise to accept the purchaser's return of unsold or unsalable goods and to grant the purchaser a proportional credit or refund. • Under the UCC, the modern equivalent is *sale or return.* Cf. *sale or return* under SALE.

sale short. See *short sale* under SALE.

sales in gross. See *gross sales* under SALE.

sales invoice. See INVOICE.

sales journal. A book used to record sales of merchandise on account.

sales load. See LOAD.

sales mix. The relative combination of individual-product sales to total sales.

sales price. See PRICE.

sales puffery. See PUFFING (1).

sales tax. See TAX.

sale with all faults. See *sale as is* under SALE.

sale with right of redemption. See SALE.

Salic law (**sal**-ik *or* **say**-lik). An influential early medieval Frankish code of law that originated with the Salian Franks and that deals with a variety of civil property and family issues but is primarily a penal code listing the punishments for various crimes. • Salic law is the principal compilation of the early Germanic laws known collectively as *leges barbarorum* ("laws of the barbarians"). Salic law also designated a rule barring females from the line of succession to the throne, as a result of which references to *Salic law* have sometimes referred only to the code provision excluding women from inheriting certain lands (which probably existed only because military duties were connected with the inheritance). In the late 19th century, Oliver Wendell Holmes revived scholarly interest in Salic law by referring to it throughout *The Common Law* (1881). — Also termed *Salique law*; *law Salique* (sə-**leek** *or* **sal**-ik); *lex Salica* (leks **sal**-ə-kə).

salic marriage. See *morganatic marriage* under MARRIAGE (1).

salting, *n. Labor law.* A union tactic that involves a paid union employee going to work for a targeted nonunion employer with the intention of organizing the workforce. • The union agent (known as a *salt*) is considered an employee of the nonunion company and is protected by the National Labor Relations Act.

salus (**sal**-əs), *n.* [Latin] Health; prosperity; safety.

salva gardia. See DE SALVA GARDIA.

salvage (**sal**-vij), *n.* **1.** The rescue of imperiled property. **2.** The property saved or remaining after a fire or other loss, sometimes retained by an insurance company that has compensated the owner for the loss. [Cases: Insurance ☞2194, 2717.] **3.** Compensation allowed to a person who, having no duty to do so, helps save a ship or its cargo. — Also termed (in sense 3) *salvage award*; *reward*. [Cases: Salvage ☞1.] — **salvage,** *vb.*

> "Salvage is a reward payable either by the shipowner or by the owners of goods carried in the ship to persons who save the ship or cargo from shipwreck, capture or other loss. The right to salvage is an ancient rule of maritime law and is not based on contractual rights. The actual amount payable is, as a rule, assessed by the Court. Sometimes an express agreement, fixing an amount, is made before the assistance is rendered, but this is not a question of salvage in the strict sense, which always implies service by persons who are under no obligation to render it." 2 E.W. Chance, *Principles of Mercantile Law* 98 (P.W. French ed., 10th ed. 1951).

> "With reference to aid rendered to distressed property on navigable waters the word 'salvage' is often used indifferently to describe the salvage operation and the salvage operation and the salvage award — the latter being the compensation granted for the services rendered." Martin J. Norris, *The Law of Salvage* § 2, at 2 (1958).

> "A salvage award, or reward, is the compensation allowed to the volunteer whose services on navigable waters have aided distressed property in whole or in part. The award is not regarded merely as pay on the principle of quantum meruit or as remuneration pro opera et labore, but as a reward to persons participating and the owners of salving property, voluntarily rendering their services and to encourage others to similarly undertake the saving of life and property. That part of the award constituting more than quantum meruit has, on occasions, been referred to as a 'bounty,' 'gratuity,' and 'bonus.'" Martin J. Norris, *The Law of Salvage* § 3, at 3–4 (1958).

salvage award. See SALVAGE (3).

salvage charges. *Insurance.* Costs necessarily incurred in salvage.

salvage loss. See LOSS.

salvager. See SALVOR.

salvage service. The aid or rescue given, either voluntarily or by contract, to a vessel in need of assistance because of present or apprehended danger. • Although salvage may involve towing, it is distinguished from *towing service*, which is rendered merely to expedite a voyage, not to respond to dangerous circumstances. [Cases: Salvage ☞6.]

salvage value. See VALUE (2).

salvam fecit totius pignoris causam (**sal**-vəm **fee**-sit **toh**-shee-əs **pig**-nə-ris **kaw**-zəm). [Law Latin] *Scots law.* He furnished the means of saving the whole pledge. • A bottomry creditor posting the last bond obtained preference over the remaining bottomry creditors because the later loan preserved the property for the earlier creditors. See *bottomry bond* under BOND (2).

salva substantia (**sal**-və səb-**stan**-shee-ə). [Latin] *Roman & civil law.* The substance (of the property) being preserved; the substance remaining intact. — Also termed *salva rei substantia.*

> "A right of liferent, therefore, cannot be constituted in a subject which necessarily perishes in the use; it must be a subject which can be used *salva substantia*." John Trayner, *Trayner's Latin Maxims* 563 (4th ed. 1894).

salvo (**sal**-voh). [Latin fr. *salvus* "safe"] *Hist.* **1.** Saving; excepting. • This term was used in deeds. **2.** Safely.

salvo beneficio competentiae (**sal**-voh ben-ə-**fish**-ee-oh kom-pə-**ten**-shee-ee). [Latin] *Hist.* Saving the benefit of being held liable only to the extent that one's means permit. See BENEFICIUM COMPETENTIAE.

salvo conductu. See DE SALVO CONDUCTU.

salvo jure (**sal**-voh **joor**-ee). [Latin "the rule being safe"] Without prejudice to.

salvor (**sal**-vər), *n.* [Law Latin] A person who saves a vessel and its cargo from danger or loss; a person entitled to salvage. — Also termed *salvager.* [Cases: Salvage ☞18, 19.]

> "A 'salvor' is a person who, without any particular relation to a ship in distress, proffers useful service, and gives it as a volunteer adventurer, without any pre-existing covenant that connected him with the duty of employing himself for the preservation of the ship. To be a salvor, one must have the intention and capacity to save the distressed property involved, but need not have an intent to acquire it." 68 Am. Jur. 2d *Salvage* § 2, at 270 (1993).

salvus plegius (**sal**-vəs **plee**-jee-əs). [Law Latin] *Hist.* A safe pledge; a satisfactory pledge. See PLEDGE. — Also termed *certus plegius*.

SAM. See *shared-appreciation mortgage* under MORTGAGE.

same, *pron.* (14c) The very thing just mentioned or described; it or them <two days after receiving the goods, Mr. Siviglio returned same>.

same-actor inference. *Employment law.* The doctrine that when an employee is hired and fired by the same person, and the termination occurs a reasonably short time after the hiring, the termination will be presumed not to be based on a discriminatory reason. [Cases: Civil Rights ⚷1534.]

same-conduct test. *Criminal law.* A test for determining whether a later charge arising out of a single incident is barred by the Double Jeopardy Clause; specif., an analysis of whether the later charge requires the state to prove the same conduct that it was required to prove in a previous trial against the same defendant. • The Supreme Court abandoned the *Blockburger* test and adopted the same-conduct test in 1990 (*Grady v. Corbin*, 495 U.S. 508, 110 S.Ct. 2084), but overruled that decision and revived *Blockburger* three years later (*U.S. v. Dixon*, 509 U.S. 688, 113 S.Ct. 2849 (1993)). Cf. BLOCKBURGER TEST; SAME-TRANSACTION TEST. [Cases: Double Jeopardy ⚷132.1.]

same-elements test. 1. See BLOCKBURGER TEST. **2.** See LEGAL-ELEMENTS TEST.

same-evidence test. See BLOCKBURGER TEST.

same invention. *Patents.* **1.** A second invention claiming the identical subject matter as a previous invention. [Cases: Patents ⚷120.] **2.** Within a reissue statute, the invention described in the original patent. [Cases: Patents ⚷141.]

same-invention double patenting. See *statutory double patenting* under DOUBLE PATENTING.

same-invention double patenting rejection. See *statutory double patenting rejection* under REJECTION.

same offense. See OFFENSE (1).

same-sex harassment. See *same-sex sexual harassment* under SEXUAL HARASSMENT.

same-sex marriage. See MARRIAGE (1).

same-sex sexual harassment. See SEXUAL HARASSMENT.

same-transaction test. *Criminal law.* A double-jeopardy test, never adopted, that would require the government to bring all charges arising out of a single incident against a defendant in one prosecution. • Justice Brennan advocated the same-transaction test in a case involving a conviction for felony-murder and a later prosecution for the underlying felony. *Harris v. Okla.*, 433 U.S. 682, 97 S.Ct. 2912 (1977). Cf. BLOCKBURGER TEST; SAME-CONDUCT TEST. [Cases: Double Jeopardy ⚷134.]

sample sale. See *sale by sample* under SALE.

sampling, *n. Copyright.* The process of taking a small portion of a sound recording and digitally manipulating it as part of a new recording. • Sampling may infringe the copyright of the sample's source, esp. the musical-works and sound-recording copyrights. — Also termed *digital sampling*. [Cases: Copyrights and Intellectual Property ⚷67.2.]

S&T. *abbr.* SCIENCE AND TECHNOLOGY DIRECTORATE.

sanae mentis (**san**-ee **men**-tis). [Law Latin] *Hist.* Of sound mind; of sane mind.

sancire (san-**si**-ree), *vb.* [Latin] *Roman law.* To enact; confirm; prescribe.

sanctio (**sangk**-shee-oh), *n.* [Latin fr. *sancio* "to ordain, confirm, or forbid under penalty"] *Roman law.* A particular clause in a statute imposing a penalty on any violation of that statute. Pl. ***sanctiones*** (sangk-shee-**oh**-neez).

> "Sanctio (legis). A clause in a statute which strengthens its efficacity by fixing a penalty for its violation, by forbidding its derogation through a later enactment, or by releasing from responsibility any one who by acting in accordance with the statute violated another law. The purpose of the sanction clause was to settle the relation between the new statute and former and future legislation. Thus the *sanctio* could also state that a previous statute remained fully or partially in force without being changed by the new one." Adolf Berger, *Encyclopedic Dictionary of Roman Law* 689 (1953).

sanction (**sangk**-shən), *n.* (15c) **1.** Official approval or authorization <the committee gave sanction to the proposal>. Cf. RATIFICATION (1). **2.** A penalty or coercive measure that results from failure to comply with a law, rule, or order <a sanction for discovery abuse>. Cf. DISCIPLINE.[Cases: Costs ⚷2; Criminal Law ⚷627.8(6); Federal Civil Procedure ⚷1278, 2750; Pretrial Procedure ⚷44.]

> "Without adequate sanctions the procedure for discovery would often be ineffectual. Under Rule 37 [of the Federal Rules of Civil Procedure], . . . any party or person who seeks to evade or thwart full and candid discovery incurs the risk of serious consequences, which may involve imprisonment for contempt of court, an order that designated facts be taken to be established, an order refusing the delinquent party the right to support or oppose designated claims or defenses, striking out pleadings or parts of pleadings, rendering judgment by default, dismissal of the action or a claim therein, or assessment of expenses and attorney's fees. Sanctions are intended to prompt a party to respond." 8A Charles Alan Wright et al., *Federal Practice and Procedure* § 2281, at 595–95 (2d ed. 1994).

criminal sanction. (1872) A sanction attached to a criminal conviction, such as a fine or restitution. — Also termed *penal sanction*.

> "A criminal sanction . . . is a legally authorized post-conviction deprivation suffered by a human being through governmental action. By using the words 'post-conviction' in that definition, criminal sanctions are thus limited to those imposed upon defendants in criminal proceedings who, by reason or in consequence of a judgment entered upon a verdict of guilty found by a jury, or judge sitting without a jury (the latter having been legally waived), or upon a plea of guilty, or a plea of nolo contendere, stand convicted." *A Treatise on the Law of Crimes* § 2.00, at 66 (Marian Quinn Barnes ed., 7th ed. 1967).

death-penalty sanction. (1991) *Civil procedure.* A court's order dismissing the suit or entering a default judgment in favor of the plaintiff because of extreme discovery abuses by a party or because of a party's action or inaction that shows an unwillingness to participate in the case. • Such a sanction is rarely ordered, and is usu. preceded by orders of lesser sanctions that have not been complied with or that have not remedied the problem. — Often shortened to *death penalty.* [Cases: Federal Civil Procedure ☞1278; Pretrial Procedure ☞46.]

shame sanction. (1991) A criminal sanction designed to stigmatize or disgrace a convicted offender, and often to alert the public about the offender's conviction. • A shame sanction usu. publicly associates the offender with the crime that he or she committed. An example is being required to post a sign in one's yard stating, "Convicted Child Molester Lives Here." — Also termed *shame sentence*; *shaming sanction*; *shaming sentence*; *scarlet-letter punishment*; *scarlet-letter sentence.*

3. *Int'l law.* An economic or military coercive measure taken by one or more countries toward another to force it to comply with international law <U.N. sanctions against a renegade nation>.

sanction, *vb.* (18c) **1.** To approve, authorize, or support <the court will sanction the trust disposition if it is not against public policy>. **2.** To penalize by imposing a sanction <the court sanctioned the attorney for violating the gag order>.

sanctionable, *adj.* (18c) (Of conduct or action) meriting sanctions; likely to be sanctioned. [Cases: Federal Civil Procedure ☞1278, 2750–2848.]

sanctional enforcement. See *secondary right* under RIGHT.

sanctioning right. See *secondary right* under RIGHT.

sanctions tort. A means of recovery for another party's discovery abuse, whereby the judge orders the abusive party to pay a fine to the injured party for the discovery violation. • This is not a tort in the traditional sense, but rather a form of punishment that results in monetary gain for the injured party.

sanctity of contract. (1831) The principle that the parties to a contract, having duly entered into it, must honor their obligations under it. [Cases: Contracts ☞1.]

> "[Sanctity of contract] is merely another facet of freedom of contract, but the two concepts cover, to some extent, different grounds. The sanctity of contractual obligations is merely an expression of the principle that once a contract is freely and voluntarily entered into, it should be held sacred, and should be enforced by the Courts if it is broken. No doubt this very sanctity was an outcome of freedom of contract, for the reason why contracts were held sacred was the fact that the parties entered into them of their own choice and volition, and settled the terms by mutual agreement." P.S. Atiyah, *An Introduction to the Law of Contract* 12 (3d ed. 1981).

sanctuary. (14c) **1.** A safe place, esp. where legal process cannot be executed; asylum.

> "Every consecrated church was a sanctuary. If a malefactor took refuge therein, he could not be extracted; but it was the duty of the four neighbouring vills to beset the holy place, prevent his escape and send for a coroner. . . . [A]fter he had enjoyed the right of asylum for forty days, he was to be starved into submission; but the clergy resented this interference with the peace of Holy Church." 2 Frederick Pollock & Frederic William Maitland, *History of English Law Before the Time of Edward I* 590–91 (2d ed. 1899).

> "In medieval England, as elsewhere in Europe, there were a number of ecclesiastical places where the king's writ did not run. The underlying theory was that consecrated places should not be profaned by the use of force, but the result in practice was that thieves and murderers could take refuge and thereby gain immunity even against the operation of criminal justice. This was the privilege called 'sanctuary.' In the case of parochial churches, the sanctuary lasted for forty days only. Before the expiration of this period, the fugitive had to choose whether to stand trial or 'abjure' the realm . . . . This was only permitted if he made a written confession to the coroner, which resulted in the forfeiture of his property as on conviction; his life only was spared . . . ." J.H. Baker, *An Introduction to English Legal History* 585 (3d ed. 1990).

2. A holy area of a religious building; esp., the area in a church or temple where the main altar or tabernacle is located.

sandbagging, *n.* **1.** A trial lawyer's remaining cagily silent when a possible error occurs at trial, with the hope of preserving an issue for appeal if the court does not correct the problem. • Such a tactic does not usu. preserve the issue for appeal because objections must be promptly made to alert the trial judge of the possible error. [Cases: Criminal Law ☞1030(1); Federal Courts ☞611.] **2.** *Corporations.* An antitakeover tactic wherein the target company delays a hostile bidder's final offer by agreeing to negotiate then prolonging bad-faith negotiations as long as possible. — **sandbag,** *vb.*

S & L. *abbr.* SAVINGS-AND-LOAN ASSOCIATION.

sandpapering, *n.* A lawyer's general preparation of a witness before a deposition or trial. Cf. HORSESHEDDING.

sandwich lease. See LEASE.

sane, *adj.* (17c) Having a relatively sound and healthy mind; capable of reason and of distinguishing right from wrong. [Cases: Criminal Law ☞46; Mental Health ☞3.1.]

sane memory. See CAPACITY (3).

sanguis (**sang**-gwis), *n.* [Latin "blood"] **1.** *Roman law.* Blood relationship. **2.** *Hist.* Consanguinity. **3.** *Hist.* The right of a chief lord to judge cases involving bloodshed.

sanitary code. A set of ordinances regulating the food and healthcare industries. [Cases: Food ☞1; Health ☞354.]

sanity. (15c) The state or condition of having a relatively sound and healthy mind. Cf. INSANITY. [Cases: Mental Health ☞3.1, 432.]

sanity hearing. (1925) **1.** An inquiry into the mental competency of a person to stand trial. See COMPETENCY. Cases: Criminal Law ☞623.] **2.** A proceeding

to determine whether a person should be institutionalized. [Cases: Mental Health ⚷37.]

sans ce que (sanz **see** kə *or* **sawn** sə **kə**). [Law French] See ABSQUE HOC.

sans frais (sawn **fray**). [Law French] Without expense.

sans impeachment de wast (sanz im-**peech**-mənt də **wayst**). [Law French] *Hist.* Without impeachment of waste.

sans jour (sawn **zhoor** *or* sanz **joor**). [Law French] *Hist.* Without day; SINE DIE. See ALLER SANS JOUR.

sans recours (sawn rə-**koor** *or* sanz ri-**kuur**). See WITHOUT RECOURSE.

sap, *n.* A club, a blackjack, a hose containing rocks in the middle, or any other object generally used as a bludgeon.

sapiens naturam delicti (say-pee-enz nə-t[y]**oor**-əm di-**lik**-tī). [Law Latin] *Hist.* Partaking of the character of a delict.

SAPJ. See *senior administrative patent judge* under JUDGE.

SAR. *abbr.* **1.** STOCK-APPRECIATION RIGHT. **2.** SUSPICIOUS-ACTIVITY REPORT.

sasine. See SEISIN.

satellite litigation. (1983) **1.** One or more lawsuits related to a major piece of litigation that is being conducted in another court <the satellite litigation in state court prevented the federal judge from ruling on the issue>. **2.** Peripheral skirmishes involved in the prosecution of a lawsuit <the plaintiffs called the sanctions "satellite litigation," drummed up by the defendants to deflect attention from the main issues in the case>.

satellite state. See *client state* under STATE.

satisdare (sat-is-**dair**-ee), *vb.* [Latin fr. *satis* "sufficient" + *dare* "to give"] *Roman law.* To give security in the form of *satisdatio*. See SATISDATIO.

satisdatio (sat-is-**day**-shee-oh), *n.* [Latin fr. *satisdare*] *Roman law.* Security given by a person, such as a debtor, through a surety. Pl. ***satisdationes*** (sat-is-day-shee-**oh**-neez).

satisfaction, *n.* (14c) **1.** The giving of something with the intention, express or implied, that it is to extinguish some existing legal or moral obligation. • Satisfaction differs from performance because it is always something given as a substitute for or equivalent of something else, while performance is the identical thing promised to be done. — Also termed *satisfaction of debt*. [Cases: Accord and Satisfaction ⚷1.] **2.** The fulfillment of an obligation; esp., the payment in full of a debt.

> "Satisfaction closely resembles performance. Both depend upon presumed intention to carry out an obligation, but in satisfaction the thing done is something different from the thing agreed to be done, whereas in performance the *identical* act which the party contracted to do is considered to have been done. The cases on satisfaction are usually grouped under four heads, namely, (i) satisfaction of debts by legacies; (ii) satisfaction of legacies by legacies; (iii) satisfaction (or ademption) of legacies by portions; and (iv) satisfaction of portion-debts by legacies, or by portions. Strictly, however, only the first and last of these heads are really cases of satisfaction; for satisfaction presupposes an obligation, which, of course, does not exist in the case of a legacy in the will of a living person." R.E. Megarry, *Snell's Principles of Equity* 226–27 (23d ed. 1947).

3. SATISFACTION PIECE. **4.** *Wills & estates.* The payment by a testator, during the testator's lifetime, of a legacy provided for in a will; ADVANCEMENT. Cf. ADEMPTION. [Cases: Wills ⚷772.] **5.** *Wills & estates.* A testamentary gift intended to satisfy a debt owed by the testator to a creditor. See ACCORD AND SATISFACTION. — **satisfy,** *vb.*

satisfaction contract. See CONTRACT.

satisfaction of debt. See SATISFACTION (1).

satisfaction of judgment. (17c) **1.** The complete discharge of obligations under a judgment. [Cases: Federal Civil Procedure ⚷2398; Judgment ⚷874–899.] **2.** The document filed and entered on the record indicating that a judgment has been paid. [Cases: Federal Civil Procedure ⚷2398; Judgment ⚷897.]

> "Generally, a satisfaction of a judgment is the final act and end of a proceeding. Satisfaction implies or manifests an expression of finality as to all questions of liability and damages involved in the litigation. Once satisfaction occurs, further alteration or amendment of a final judgment generally is barred. Satisfaction of a judgment, when entered of record by the act of the parties, is prima facie evidence that the creditor has received payment of the amount of the judgment or its equivalent, and operates as an extinguishment of the judgment debt." 47 Am. Jur. 2d *Judgments* § 1006, at 443 (1995).

satisfaction of lien. (1833) **1.** The fulfillment of all obligations made the subject of a lien. **2.** The document signed by the lienholder releasing the property subject to a lien.

satisfaction of mortgage. (18c) **1.** The complete payment of a mortgage. **2.** A discharge signed by the mortgagee or mortgage holder indicating that the property subject to the mortgage is released or that the mortgage debt has been paid and the mortgage conditions have been fully satisfied. [Cases: Mortgages ⚷309–315.]

satisfaction piece. (1831) A written statement that one party (esp. a debtor) has discharged its obligation to another party, who accepts the discharge. — Also termed *certificate of discharge*; *satisfaction*. [Cases: Mortgages ⚷309.]

satisfactory evidence. See EVIDENCE.

satisfactory proof. See *satisfactory evidence* under EVIDENCE.

satisfied term. See TERM (4).

Saturday-night special. (1959) **1.** A handgun that is easily obtained and concealed. [Cases: Weapons ⚷4, 8.] **2.** *Corporations.* A surprise tender offer typically held open for a limited offering period (such as one week) to maximize pressure on a shareholder to accept. • These tender offers are now effectively prohibited by section 14(e) of the Williams Act. 15 USCA § 78n(e).

saunkefin (sawn-kə-**fan**). [fr. Law French *sang quifin*] *Hist.* End of blood; the failure of a line of succession.

SAUSA. *abbr.* Special assistant to the united states attorney. See UNITED STATES ATTORNEY.

sauvagine (soh-və-**zheen**). [Law French] *Hist.* **1.** Wild animal. **2.** Wild nature of an animal.

save, *vb.* **1.** To preserve from danger or loss <save a ship in distress>. **2.** To lay up; to hoard <save money>. **3.** To toll or suspend (the operation, running, etc.) of something <save a statute of limitations>. **4.** To except, reserve, or exempt (a right, etc.) <to save vested rights>. **5.** To lessen or avoid (a cost, resource, etc.) <save labor>.

save harmless. See HOLD HARMLESS.

save-harmless agreement. See HOLD-HARMLESS AGREEMENT.

save-harmless clause. See INDEMNITY CLAUSE.

saver default (**say**-vər di-**fawlt**). [Law French] *Hist.* To excuse a default. — Also spelled *saver de fault*; *saver defaut*.

> "Saver default is the same as to excuse a default. And this is properly when a man having made default in court, comes afterwards, and alleges a good cause why he did it, as imprisonment at the same time, or the like." *Termes de la Ley* 352 (1st Am. ed. 1812).

saving, *n.* An exception; a reservation.

saving clause. (17c) 1. A statutory provision exempting from coverage something that would otherwise be included. • A saving clause is generally used in a repealing act to preserve rights and claims that would otherwise be lost. [Cases: Statutes ⇨228, 278.23.] **2.** SAVING-TO-SUITORS CLAUSE. **3.** SEVERABILITY CLAUSE. — Also termed *savings clause*.

savings account. A savings-bank depositor's account usu. bearing interest or containing conditions (such as advance notice) to the right of withdrawal.

savings-account trust. See *Totten trust* under TRUST.

savings-and-loan association. (1884) A financial institution — often organized and chartered like a bank — that primarily makes home-mortgage loans but also usu. maintains checking accounts and provides other banking services. — Often shortened to S & L. — Also termed *savings-and-loan bank*; *loan association*; *thrift institution*; *thrift*. Cf. BUILDING-AND-LOAN ASSOCIATION. [Cases: Building and Loan Associations ⇨1, 24–40.]

> "The thrift institutions, mutual savings banks, savings and loan associations, and credit unions, originally were created to meet needs for saving, credit and loans of people whose resources and income were modest. Commercial banks, merchants, money lenders, and pawn shops often did not serve this demand for loans or savings as well, or with interest rates as favorable to poor individuals, and families. During the last two centuries, thrift institutions were gradually developed, therefore, by social reformers, philanthropic benefactors, religious and fraternal organizations, trade unions, employers, and thrift entrepreneurs (in most countries of the world) as a collateral type of banking or financial intermediation." William A. Lovett, *Banking and Financial Institutions Law in a Nutshell* 236 (1997).

savings bank. See BANK.

savings-bank trust. See *Totten trust* under TRUST.

savings bond. See BOND (3).

savings clause. See SAVING CLAUSE.

savings note. See NOTE (1).

saving-to-suitors clause. *Maritime law.* In the federal statutory provision granting admiralty and maritime jurisdiction to the federal courts, a clause that preserves the option to file suit in a nonadmiralty court. 28 USCA § 1333(1). • The nonadmiralty court is typically either a state court or a law-side federal court. Under the reverse-*Erie* doctrine, the nonadmiralty court is required to apply the same law that the admiralty court would have used. — Also termed *saving clause*. [Cases: Admiralty ⇨2.]

savor, *vb.* (16c) To partake of the character of or bear affinity to (something). • In traditional legal idiom, an interest arising from land is said to "savor of the realty." — Also spelled *savour*.

S.B. See *senate bill* under BILL (3).

SBA. *abbr.* SMALL BUSINESS ADMINISTRATION.

SBIC. *abbr.* SMALL- BUSINESS INVESTMENT COMPANY.

sc. *abbr.* SCILICET.

S.C. *abbr.* **1.** SUPREME COURT. **2.** Same case. • In former practice, when put between two citations, the abbreviation indicated that the same case was reported in both places. **3.** SENATUS CONSULTUM.

scab. (18c) A person who works under conditions contrary to a union contract; esp., a worker who crosses a union picket line to replace a union worker during a strike. — Also termed *strikebreaker*; (in BrE) *blackleg labor*.

scabini (skə-**bi**-ni). [Law Latin] *Hist.* Judges or the judge's assessors in the court held by the count; magistrates. • The term was found in a charter from the wardens of Lynn in Norfolk, during the reign of Henry VIII. But even earlier than that, the title was used in Charlemagne's empire (the French equivalent being *édevins*) and later Germanized as *Schöffen*.

scalam (**skay**-ləm), *n.* [Latin] *Hist.* Scale. • *Ad scalam* was the method of paying money to the Exchequer, in which sixpence was added to each twenty shillings to compensate for a deficiency in weight, although no scales were actually used.

scale, *n.* **1.** A progression of degrees; esp., a range of wage rates. **2.** A wage according to a range of rates. **3.** An instrument for weighing. **4.** *Hist.* In the practice of the English Supreme Court of Judicature, the fee charged by a solicitor for a particular type of case. • Unless the court ordered otherwise, the *lower scale* applied to all causes and matters assigned by the Judicature Acts to the King's Bench, or the Probate, Divorce, and Admiralty divisions; to all actions for debt, contract, or tort; and to almost all causes and matters assigned by the acts to the Chancery division and in which the amount in controversy was less than £1,000. The *higher scale* applied in all other cases, and in actions falling

under one of the lower-scale classes if the principal relief sought was injunctive.

scale order. See ORDER (8).

scale tolerance. The nominal variation of the mass or weight of the same goods on different scales.

scaling law. (1882) *Hist.* A statute establishing a process for adjusting value differences between depreciated paper money and specie. • Statutes of this type were necessary when paper depreciated after both the American Revolution and the Civil War.

scalper. 1. A seller who buys something (esp. a ticket) at face value (or less) and then tries to resell it for a higher price. — Also termed *ticket speculator.* [Cases: Public Amusement and Entertainment ⚷70.] **2.** An investment adviser who buys a security before recommending it to clients. **3.** A market-maker who puts an excessive markup or markdown on a transaction.

scalping, *n.* **1.** The practice of selling something (esp. a ticket) at a price above face value once it becomes scarce (usu. just before a high-demand event begins). [Cases: Public Amusement and Entertainment ⚷70.] **2.** The purchase of a security by an investment adviser before the adviser recommends that a customer buy the same security. • This practice is usu. considered unethical because the customer's purchase will increase the security's price, thus enabling the investment adviser to sell at a profit. **3.** The excessive markup or markdown on a transaction by a market-maker. • This action violates National Association of Securities Dealers guidelines. — **scalp,** *vb.*

scandal. 1. Disgraceful, shameful, or degrading acts or conduct. **2.** Defamatory reports or rumors; esp., slander. See SCANDALOUS MATTER.

> "**Scandal** consists in the allegation of anything which is unbecoming the dignity of the court to hear, or is contrary to decency or good manners, or which charges some person with a crime not necessary to be shown in the cause, to which may be added that any unnecessary allegation, bearing cruelly upon the moral character of an individual, is also scandalous. The matter alleged, however, must be not only offensive, but also *irrelevant* to the cause, for however offensive it be, if it be pertinent and material to the cause the party has a right to plead it. It may often be necessary to charge false representations, fraud and immorality, and the pleading will not be open to the objection of scandal, if the facts justify the charge." Eugene A. Jones, *Manual of Equity Pleading and Practice* 50-51 (1916).

scandalous matter. (17c) *Civil procedure.* A matter that is both grossly disgraceful (or defamatory) and irrelevant to the action or defense. • A federal court — upon a party's motion or on its own — can order a scandalous matter struck from a pleading. Fed. R. Civ. P. 12(f). Cf. IMPERTINENT MATTER. [Cases: Federal Civil Procedure ⚷1127; Pleading ⚷364(4).]

scandalous subject matter. *Trademarks.* A word, phrase, symbol, or graphic depiction that the U.S. Patent and Trademark Office may refuse to register because it is shockingly offensive to social mores. • Although the Lanham Act uses the phrase "immoral, deceptive, or scandalous subject matter," courts have not distinguished "scandalous" from "immoral." [Cases: Trademarks ⚷1072.]

scandalum magnatum (**skan**-də-ləm mag-**nay**-təm). [Law Latin] *Hist.* Actionable slander of powerful people; specif., defamatory comments regarding persons of high rank, such as peers, judges, or state officials.

> "Words spoken in derogation of a peer, a judge, or other great officer of the realm, which are called *scandalum magnatum*, are held to be still more heinous; and, though they be such as would not be actionable in the case of a common person, yet when spoken in disgrace of such high and respectable characters, they amount to an atrocious injury: which is redressed by an action on the case founded on many ancient statutes; as well on behalf of the crown, to inflict the punishment of imprisonment on the slanderer, as on behalf of the party, to recover damages for the injury sustained." 3 William Blackstone, *Commentaries on the Laws of England* 123-24 (1768).

scarlet-letter punishment. See *shame sanction* under SANCTION.

scarlet-letter sentence. See *shame sanction* under SANCTION.

scatter-point analysis. (1993) A method for studying the effect that minority-population changes have on voting patterns, involving a plotting of the percentage of votes that candidates receive to determine whether voting percentages increase or decrease as the percentages of voters of a particular race increase or decrease.

scènes à faire (**sen** ah **fair**). [French "scenes for action"] *Copyright.* Standard or general themes that are common to a wide variety of works and are therefore not copyrightable. • Examples of *scènes à faire* are obvious plot elements and character types. [Cases: Copyrights and Intellectual Property ⚷12(2).]

schedule, *n.* (15c) A written list or inventory; esp., a statement that is attached to a document and that gives a detailed showing of the matters referred to in the document <Schedule B to the title policy lists the encumbrances on the property>. — **schedule,** *vb.* — **scheduled,** *adj.*

scheduled injury. See INJURY.

scheduled property. See PROPERTY.

scheme. (16c) **1.** A systemic plan; a connected or orderly arrangement, esp. of related concepts <legislative scheme>. **2.** An artful plot or plan, usu. to deceive others <a scheme to defraud creditors>.

scheme of arrangement. *English law.* A court-approved reorganization of a company's capital structure or debts. • The company seeking to reorganize is usu. in financial trouble but may not yet be insolvent.

creditors' scheme of arrangement. A reorganization plan in which creditors agree to defer demands for payment, in hopes of eventually receiving more than they would if the company were immediately liquidated.

members' scheme of arrangement. A reorganization plan voted on and approved by the company's shareholders. • This type of scheme may be used to prepare

for a merger. — Also termed *shareholders' scheme of arrangement.*

shareholders' scheme of arrangement. See *members' scheme of arrangement.*

schism (**siz**-əm *or* **skiz**-əm). (14c) **1.** A breach or rupture; a division, esp. among members of a group, as of a union. **2.** A separation of beliefs and doctrines by persons of the same organized religion, religious denomination, or sect. [Cases: Religious Societies ⇨23, 35.]

> "It has been held that the civil courts are not concerned with mere schisms stemming from disputations over matters of religious doctrine, not only because such questions are essentially ecclesiastical rather than judicial, but also because of the separation between the church and the state . . . . However, it has also been held that the situation is different in the case of self-governing congressional churches, for here the courts do not hesitate to assume jurisdiction when a schism affects property rights, for in this form . . . each local congregation is independent and autonomous and there is no recourse within the denomination." 66 Am. Jur. 2d *Religious Societies* § 51, at 804 (1973).

school, *n.* **1.** An institution of learning and education, esp. for children. [Cases: Schools ⇨11.]

> "Although the word 'school' in its broad sense includes all schools or institutions, whether of high or low degree, the word 'school' frequently has been defined in constitutions and statutes as referring only to the public common schools generally established throughout the United States . . . . When used in a statute or other contract, 'school' usually does not include universities, business colleges, or other institutions of higher education unless the intent to include such institutions is clearly indicated." 68 Am. Jur. 2d *Schools* § 1, at 355 (1993).

common school. See *public school.*

district school. A public school contained in and maintained by a school district. See SCHOOL DISTRICT.

private school. A school maintained by private individuals, religious organizations, or corporations, funded, at least in part, by fees or tuition, and open only to pupils selected and admitted based on religious affiliations or other particular qualifications. [Cases: Schools ⇨1.]

public school. An elementary, middle, or high school established under state law, regulated by the local state authorities in the various political subdivisions, funded and maintained by public taxation, and open and free to all children of the particular district where the school is located. — Also termed *common school.* [Cases: Schools ⇨11.]

2. The collective body of students under instruction in an institution of learning. **3.** A group of people adhering to the same philosophy or system of beliefs.

school board. An administrative body, made up of a number of directors or trustees, responsible for overseeing public schools within a city, county, or district. Cf. BOARD OF EDUCATION. [Cases: Schools ⇨51.]

school bond. See BOND (3).

school district. A political subdivision of a state, created by the legislature and invested with local powers of self-government, to build, maintain, fund, and support the public schools within its territory and to otherwise assist the state in administering its educational responsibilities. [Cases: Schools ⇨21.]

consolidated school district. A public-school district in which two or more existing schools have consolidated into a single district. [Cases: Schools ⇨33.]

school land. See LAND.

Schumer box. In a credit-card agreement, a table that summarizes all the costs for which the cardholder is liable, so that the cardholder can more easily compare credit-card agreements. • The term derives from the name of Senator Charles Schumer, who proposed the disclosure requirements. The box must contain the information listed in 15 USCA § 1637(c)(1)(A)–(B). — Also termed *Schumer's box.* [Cases: Consumer Credit ⇨52.]

Science and Technology Directorate. The division of the Department of Homeland Security responsible for coordinating research and development, including preparing for and responding to terrorist threats involving weapons of mass destruction. • The Directorate also works with the Chemical, Biological, Radiological, and Nuclear Countermeasures Program and the Environmental Measurements Lab in the Department of Energy, the National BW (biological warfare) Defense Analysis Center in the Department of Defense, and the Plum Island Animal Disease Center — Abbr. S&T.

science of legislation. See LAW REFORM.

sciendum est (**si**-**en**-dəm **est**). [Latin] *Roman law.* It is to be known or understood. • This phrase often introduced a particular topic or explanation.

sciens et prudens (**si**-enz et **proo**-denz). [Latin] *Hist.* In full knowledge and understanding.

scienter (**si**-**en**-tər *or* see-), *n.* [Latin "knowingly"] (1824) **1.** A degree of knowledge that makes a person legally responsible for the consequences of his or her act or omission; the fact of an act's having been done knowingly, esp. as a ground for civil damages or criminal punishment. See KNOWLEDGE; MENS REA. [Cases: Criminal Law ⇨20; Negligence ⇨212, 302.] **2.** A mental state consisting in an intent to deceive, manipulate, or defraud. • In this sense, the term is used most often in the context of securities fraud. The Supreme Court has held that to establish a claim for damages under Rule 10b-5, a plaintiff must prove that the defendant acted with scienter. *Ernst & Ernst v. Hochfelder,* 425 U.S. 185, 96 S.Ct. 1375 (1976). [Cases: Securities Regulation ⇨60.45, 60.51(2).]

scienter action. A lawsuit in which the plaintiff must prove that the defendant acted knowingly or knew of the danger — e.g., at common law an action for damage caused by a domestic animal. See SCIENTER.

scientific creationism. See CREATIONISM.

scientific evidence. See EVIDENCE.

scientific knowledge. See KNOWLEDGE.

scientific method. An analytical technique by which a hypothesis is formulated and then systematically tested

through observation and experimentation. [Cases: Criminal Law ⚷388.1; Evidence ⚷555.]

sci. fa. *abbr.* SCIRE FACIAS.

scil. *abbr.* SCILICET.

scilicet (**sil**-ə-set *or* -sit). [fr. Latin *scire licet* "that you may know"] (14c) That is to say; namely; VIDELICET. • Like *videlicet*, this word is used in pleadings and other instruments to introduce a more particular statement of matters previously mentioned in general terms. It has never been quite as common, however, as *videlicet*. — Abbr. sc.; scil.; (erroneously) ss.

SCIN. *abbr.* See *self-canceling installment note* under NOTE (1).

scintilla (sin-**til**-ə). (13c) A spark or trace <the standard is that there must be more than a scintilla of evidence>. Pl. **scintillas** (sin-**til**-əz). [Cases: Evidence ⚷597; Federal Civil Procedure ⚷2146; Judgments ⚷185(5); Trial ⚷139.1(8).]

scintilla juris (sin-**til**-ə **joor**-is). [Law Latin "a spark of right"] *Hist.* A fragment of law or right. • This refers to a figurative expression in the law of uses providing a trace of seisin rights to remain in the feoffees sufficient to allow contingent uses to be executed under the Statute of Uses. It was abolished in the Law of Property Amendment Act of 1860. See STATUTE OF USES.

scintilla-of-evidence rule. (1896) A common-law doctrine holding that if even the slightest amount of relevant evidence exists on an issue, then a motion for summary judgment or for directed verdict cannot be granted and the issue must go to the jury. • Federal courts do not follow this rule, but some states apply it. — Also termed *scintilla rule*. [Cases: Federal Civil Procedure ⚷2146, 2546; Judgment ⚷185(5); Trial ⚷139.1(8).]

scire facias (**sɪ**-ree **fay**-shee-əs). [Law Latin "you are to make known, show cause"] (15c) A writ requiring the person against whom it is issued to appear and show cause why some matter of record should not be annulled or vacated, or why a dormant judgment against that person should not be revived. — Abbr. *sci. fa.* [Cases: Scire Facias ⚷1.]

amicable scire facias to revive a judgment. A written agreement in which a person against whom a revival of an action is sought agrees to the entry of an adverse judgment.

scire facias ad audiendum errores (**sɪ**-ree **fay**-shee-əs ad aw-dee-**en**-dəm e-**ror**-eez). [Law Latin "that you cause to know to hear errors"] *Hist.* A common-law writ allowing a party who had assigned error to compel the opposing party to plead. • It was abolished in 1875.

scire facias ad disprobandum debitum (**sɪ**-ree **fay**-shee-əs ad dis-proh-**ban**-dəm **deb**-ə-təm). [Law Latin "that you cause to know to disprove the debt"] *Hist.* A writ allowing a defendant in a foreign attachment against the plaintiff to disprove or avoid the debt recovered by the plaintiff, within a year and a day from the time of payment.

scire facias ad rehabendam terram (**sɪ**-ree **fay**-shee-əs ad re-hə-**ben**-dəm **ter**-əm), *n.* [Law Latin "that you cause to know to recover the land"] *Hist.* A writ allowing a judgment debtor to recover lands taken in execution after the debtor has satisfied the judgment.

scire facias quare restitutionem non (**sɪ**-ree **fay**-shee-əs **kwair**-ee res-tə-t[y]oo-shee-**oh**-nəm non), *n.* [Law Latin "that you cause to know why (there is not) restitution"] *Hist.* A writ for restitution after an execution on a judgment is levied but not paid and the judgment is later reversed on appeal.

scire facias sur mortgage (**sɪ**-ree **fay**-shee-əs sər **mor**-gij), *n.* [Law Latin "that you cause to know on mortgage"] *Hist.* A writ ordering a defaulting mortgagor to show cause why the mortgage should not be foreclosed and the property sold in execution. [Cases: Mortgages ⚷388.]

scire facias sur municipal claim (**sɪ**-ree **fay**-shee-əs sər myoo-**nis**-ə-pəl **klaym**), *n.* [Law Latin "that you cause to know on municipal claim"] *Hist.* A writ compelling the payment of a municipal claim out of the property to which a municipal lien is attached.

scire feci (**sɪ**-ree **fee**-sɪ). [Latin "I have caused to know"] *Hist.* The sheriff's return to a writ of scire facias, indicating that notice was given to the parties against whom the writ was issued.

***scire fieri* inquiry** (**sɪ**-ree **fɪ**-ə-rɪ), *n.* [Law Latin] *Hist.* A writ to ascertain the location of a testator's property from an executor, when the sheriff returned nulla bona to a writ of execution *fieri facias de bonis testatoris*. See FIERI FACIAS.

scite (sɪt). [fr. Latin *situs*] *Archaic.* **1.** A location; a site. **2.** The site of a capital messuage. **3.** A municipal ordinance. — Also termed *site*.

scofflaw (**skof**-law). (1924) **1.** A person who treats the law with contempt; esp., one who avoids various laws that are not easily enforced <some scofflaws carry mannequins in their cars in order to drive in the carpool lane>. **2.** *Hist.* A person who consumes illegally made or obtained alcoholic beverages. • This was the original meaning.

scold, *n. Hist.* A person who regularly breaks the peace by scolding people, increasing discord, and generally being a public nuisance to the neighborhood. • This behavior was formerly punishable in various ways, including having an iron bridle fitted to the person's mouth. — Also termed *common scold*; *objurgatrix*. See BRANKS. [Cases: Criminal Law ⚷45.25.]

scolding bridle. See BRANKS.

scope note. (1903) In a digest, a précis appearing after a title and showing concisely what subject matter is included and what is excluded.

"In the Century and Decennial Digests, though not in the various digests of the Key-Number Series, there is printed

immediately following each topic title a couple of paragraphs which are called the Scope-Note. The first paragraph of this scope-note shows very briefly the character of the subject-matter included under the title. The second paragraph shows the 'Exclusions' — i.e., what related matter has been excluded in order to conform to the plan of the Digest — and directs the reader to the proper title under which such related matter may be found. Consequently a little study of the scope-note will ofttimes repay the searcher for a few moments' time consumed in so doing." William M. Lile et al., *Brief Making and the Use of Law Books* 116 (3d ed. 1914).

scope of a patent. *Patents.* The limits of a patent's protection, as defined by the allowed claims. [Cases: Patents ⇨165.]

scope of authority. (1805) *Agency.* The range of reasonable power that an agent has been delegated or might foreseeably be delegated in carrying out the principal's business. See SCOPE OF EMPLOYMENT; RESPONDEAT SUPERIOR. [Cases: Principal and Agent ⇨26, 92–137.]

scope of business. The range of activities that are reasonably necessary to operate a commercial venture successfully, as determined by the nature of the venture and the activities of others engaged in the same occupation in the same area.

scope of employment. (1836) The range of reasonable and foreseeable activities that an employee engages in while carrying out the employer's business; the field of action in which a servant is authorized to act in the master-servant relationship. See RESPONDEAT SUPERIOR. Cf. COURSE OF EMPLOYMENT; ZONE OF EMPLOYMENT. [Cases: Labor and Employment ⇨2769, 3044.]

scope-of-work clause. A contractual provision that highlights in summary fashion what work is to be performed under the contract.

scorched-earth defense. *Corporations.* An antitakeover tactic by which a target corporation sells its most valuable assets or divisions in order to reduce its value after acquisition and thus try to defeat a hostile bidder's tender offer. Cf. CROWN-JEWEL DEFENSE; PAC-MAN DEFENSE.

S corporation. See CORPORATION.

scot. *Hist.* A payment; esp., a customary tax.

soul scot. *Hist. Eccles. law.* See MORTUARY. — Also written *soul shot.*

scotal (**skot**-əl). *Hist.* An extortionary practice by which forest officers forced people to patronize the officers' alehouses, often in exchange for the officers' ignoring forest offenses. • This practice was prohibited in 1217 by the Charter of the Forest, ch. 7. — Also spelled *scotale* (**skot**-ayl).

scot and lot. *Hist.* **1.** The customary payment of a share of taxes based on one's ability. **2.** A municipal tax on the right to vote.

Scotch marriage. See MARRIAGE (1).

Scotch verdict. See NOT PROVEN.

scottare (skə-**tair**-ee), *vb.* [Law Latin] *Hist.* To pay a tax.

SCPA. *abbr.* SEMICONDUCTOR CHIP PROTECTION ACT.

scrambling possession. See POSSESSION.

scrap value. See *salvage value* under VALUE (2).

scratch-and-dent loan. See LOAN.

scratching the ticket. A party member's rejection of a candidate on a regular party ticket by canceling the candidate's name or by voting for one or more nominees of the opposing political party.

scrawl. See SCROLL (3).

screening committee. See COMMITTEE.

screening grand jury. See GRAND JURY.

screening mechanism. See ETHICAL WALL.

screen-scraping, *n. Intellectual property.* The practice of extracting data directly from one website and displaying it on another website. • The source website's database is not used — only the display. Screen-scraping may infringe the extracted website-owner's copyright in the contents. — **screen-scrape,** *vb.*

scriba (**skri**-bə), *n.* [Latin] *Roman law.* A court or office clerk; a scribe; a secretary. • In England, the *scriba regis* was the king's secretary. Cf. NOTARIUS.

scribe. See SECRETARY (3).

scribere est agere (**skri**-bə-ree est **aj**-ə-ree). [Latin] *Hist.* To write is to act.

"But now it seems clearly to be agreed, that, by the common law and the statute of Edward III, words spoken amount only to a high misdemeanor, and no treason. For they may be spoken in heat, without any intention . . . . If the words be set down in writing, it argues more deliberate intention; and it has been held that writing is an overt act of treason; for *scribere est agere.* But even in this case the bare words are not the treason, but the deliberate act of writing them." 4 William Blackstone, *Commentaries on the Laws of England* 80 (1769).

Scribes. See AMERICAN SOCIETY OF WRITERS ON LEGAL SUBJECTS.

scrip. (18c) **1.** A document that entitles the holder to receive something of value. See LAND SCRIP. **2.** Money, esp. paper money, that is issued for temporary use.

Internet scrip. **1.** Value that may be exchanged over the Internet but may not be exchanged for money. • Internet scrip is analogous to coupons or bonus points that can be exchanged by a consumer for goods or services but that have no cash value. **2.** See *e-money* under MONEY. — Also termed *online scrip.*

on-line scrip. See *Internet scrip.*

scrip dividend. See DIVIDEND.

script. (14c) **1.** An original or principal writing. **2.** Handwriting.

scripto (**skrip**-toh). [Latin] *Hist.* By writing.

scripto vel juramento (**skrip**-toh vel juur-ə-**men**-toh). [Law Latin] *Hist.* By writ or oath. • The phrase appeared in reference to the mode of proof required in certain cases.

scriptum indentatum (**skrip**-təm **in**-den-**tay**-təm). [Law Latin "indented writing"] *Hist.* An indenture.

scrivarius. *Law Latin.* A notary public.

scrivener (**skriv**-[ə]-nər). (14c) A writer; esp., a professional drafter of contracts or other documents.

money scrivener. See MONEY SCRIVENER.

scrivener's error. See *clerical error* under ERROR (2).

scrivener's exception. (1978) An exemption from the attorney–client privilege whereby the privilege does not attach if the attorney is retained solely to perform a ministerial task for the client, such as preparing a statutory-form deed. [Cases: Privileged Communications and Confidentiality ⇨129, 131.]

scroll, *n.* (15c) **1.** A roll of paper, esp. one containing a writing; a list. **2.** A draft or outline to be completed at a later time. **3.** A written mark; esp., a character affixed to a signature in place of a seal. — Also termed (in sense 3) *scrawl.*

Scroops's Inn. See SERJEANT'S INN.

scruet-roll (**skroo**-ət-**rohl**). *Hist.* The record of bail accepted in a habeas corpus case.

scrutator (skroo-**tay**-tər), *n.* [Latin fr. *scrutari* "to search"] *Hist.* A bailiff or officer who enforces the king's water rights, as by supervising wreckage, flotsam, and jetsam; a customs officer.

S.Ct. *abbr.* **1.** SUPREME COURT. **2.** Supreme Court Reporter.

scutage (**skyoo**-tij), *n.* [fr. Latin *scutum* "a shield"] *Hist.* **1.** A monetary payment levied by the king on barons as a substitute for some or all of the knights to be supplied to the king by each baron. • This payment seems to date from the 12th century, Henry II (1154–1189) having levied five scutages in the first 11 years of his reign. **2.** A fee paid by a tenant-in-chief by knight-service in lieu of serving in a war. **3.** A tax on a knight's estate to help furnish the army. — Also termed *escuage.*

> "Scutage . . . . Shield-money, in mediaeval feudal law, a payment in lieu of military service, paid by a tenant-in-chief in respect of the service of knights which he owed to the Crown. His personal obligation to serve could not be discharged by scutage but only by fine. Payment of scutage, though known in France and Germany, was most highly developed in England where it became a general tax on knights' estates at rates which by the thirteenth century were standardized. King John demanded frequent and heavy scutages and Magna Carta forbade the levying of scutage without the consent of a general council. Scutage was divided between the King and the tenants-in-chief who gave personal service in the campaign. It became obsolete by the fourteenth century." David M. Walker, *The Oxford Companion to Law* 1121 (1980).

scutagio habendo. See DE SCUTAGIO HABENDO.

scyra (**shy**-rə), *n.* [Law Latin "shire"] *Hist.* **1.** A county; shire. **2.** A county's inhabitants.

S.D. *abbr.* Southern District, in reference to U.S. judicial districts.

s/d b/l. *abbr.* Sight draft with bill of lading attached. See *sight draft* under DRAFT.

S.E. *abbr.* SOUTH EASTERN REPORTER.

sea. 1. The ocean <on the sea>. **2.** A large landlocked part of the ocean; a large body of salt water smaller than a regular ocean <the Mediterranean Sea>. **3.** The ocean swell <a rough sea>. **4.** An extremely large or extended quantity <a sea of documents>.

free seas. See *high seas.*

high seas. The seas or oceans beyond the jurisdiction of any country. • Under traditional international law, the high seas began 3 miles from the coast; today the distance is generally accepted as 12 miles. Under the 1982 U.N. Convention on the Law of the Sea, coastal shores now have a 200-mile exclusive economic zone. — Also termed *free seas*; *open seas*; *main sea.* [Cases: Criminal Law ⇨97(3); International Law ⇨5, 7.]

main sea. *Archaic.* The open ocean; high seas.

navigable sea. See NAVIGABLE SEA.

open seas. See *high seas.*

territorial sea. See *territorial waters* under WATER.

seabed. The sea floor; the ground underlying the ocean, over which nations may assert sovereignty, esp. if underlying their territorial waters.

sea brief. See SEA LETTER.

seagoing vessel. See VESSEL.

seal, *n.* (13c) **1.** A fastening that must be broken before access can be obtained; esp., a device or substance that joins two things, usu. making the seam impervious. — Also termed *common-law seal.* **2.** A piece of wax, a wafer, or some other substance affixed to the paper or other material on which a promise, release, or conveyance is written, together with a recital or expression of intention by which the promisor, releasor, or grantor manifests that a piece of wax, wafer, or other substance is a seal. • The purpose of a seal is to secure or prove authenticity. **3.** A design embossed or stamped on paper to authenticate, confirm, or attest; an impression or sign that has legal consequence when applied to an instrument. [Cases: Seals ⇨1.]

> "The use of the seal in England seems to have begun after the Norman Conquest, spreading from royalty and a few of the nobility to those of lesser rank. Originally a seal often consisted of wax bearing the imprint of an individualized signet ring, and in the seventeenth century Lord Coke said that wax without impression was not a seal. But in the United States the courts have not required either wax or impression. Impressions directly on the paper were recognized early and are still common for notarial and corporate seals, and gummed wafers have been widely used. In the absence of statute decisions have divided on the effectiveness of the written or printed word 'seal,' the printed initials 'L.S.' (locus sigilli, meaning place of the seal), a scrawl made with a pen (often called a 'scroll') and a recital of sealing. Most states in which the seal is still recognized now have statutes giving effect to one or more such devices." Restatement (Second) of Contracts § 96 cmt. a (1979).

> "The time-honoured form of seal was a blob of wax at the foot of the document, bearing an imprint of some kind, often a crest or motto. The use of wax was not, however, necessary for a seal, and any mark or impression on the

paper was sufficient as long as it was made with the intention of affixing a seal. Recent English cases have been willing to find the necessary intention in circumstances where courts in the past would almost certainly have declined; so much so that it may now be the common law that a document purporting to be executed as a deed but lacking actual sealing will be regarded as sealed as long as it contains a printed or written indication of where the mark or impression constituting the seal should be placed if it were to be affixed." Peter Butt, *Land Law* 481-82 (2d ed. 1988).

corporate seal. (18c) A seal adopted by a corporation for executing and authenticating its corporate and legal instruments. [Cases: Corporations ⇨51.]

great seal. **1.** The official seal of the United States, of which the Secretary of State is the custodian. — Also termed *seal of the United States.* [Cases: United States ⇨5.5.] **2.** The official seal of a particular state. — Also termed *seal of the state; state seal.* [Cases: States ⇨23.] **3.** The official seal of Great Britain, of which the Lord Chancellor is the custodian.

notary seal. See NOTARY SEAL.

private seal. (16c) A corporate or individual seal, as distinguished from a public seal. [Cases: Seals ⇨1.]

public seal. (16c) A seal used to certify documents belonging to a public authority or government bureau.

quarter seal. A seal (originally a quarter section of the great seal) maintained in the Scotch chancery to be used on particular grants from the Crown. See *great seal* (3).

seal of the state. See *great seal* (2).

seal of the United States. See *great seal* (1).

state seal. See *great seal* (2).

wafer seal. A plastic or paper disk, usu. red or gold, affixed to a legal document as a substitute for a wax seal. • Wafers are more common in the U.K. than in the U.S. — Sometimes shortened to *wafer.*

seal, *vb.* (14c) **1.** To authenticate or execute (a document) by use of a seal. **2.** To close (an envelope, etc.) tightly; to prevent access to (a document, record, etc.).

sealed and delivered. See SIGNED, SEALED, AND DELIVERED.

sea lane. *Int'l & maritime law.* A designated course or regularly used route for ships, esp. in restricted waters such as harbors and straits. • Although sea lanes have obvious safety advantages, they were long resisted by sea captains, who saw them as a threat to their freedom to navigate.

sea law. See MARITIME LAW.

sealed bid. See BID (2).

sealed-container rule. (1961) *Products liability.* The principle that a seller is not liable for a defective product if the seller receives the product from the manufacturer and sells it without knowing of the defect or having a reasonable opportunity to inspect the product. [Cases: Products Liability ⇨168, 175; Sales ⇨430.]

sealed contract. See *contract under seal* under CONTRACT.

sealed instrument. (17c) At common law and under some statutes, an instrument to which the bound party has affixed a personal seal, usu. recognized as providing indisputable evidence of the validity of the underlying obligations. • The common-law distinction between sealed and unsealed instruments has been abolished by many states, and the UCC provides that the laws applicable to sealed instruments do not apply to contracts for the sale of goods or negotiable instruments. UCC § 2-203. See *contract under seal* under CONTRACT. [Cases: Contracts ⇨36; Seals ⇨1.]

"At common law, the seal served to render documents indisputable as to the terms of the underlying obligation, thereby dispensing with the necessity of witnesses; the sealed instrument was considered such reliable evidence that it actually became the contract itself — called a 'specialty' — the loss of which meant loss of all rights of the obligee against the obligor. The seal also had many other consequences at common law, some of which have been retained in jurisdictions which still recognize the seal . . . . In states where the seal is still recognized, its primary legal significance is often the application of a longer statute of limitations to actions on sealed instruments." 69 Am. Jur. 2d *Seals* § 2, at 617-18 (1993).

"In medieval England a wax seal may have performed [the functions of a formality] tolerably well. But in the United States few people owned or used a seal and the ritual deteriorated to the point that wax was dispensed with and printing houses decorated the signature lines of their standard forms with the printed letters 'L.S.' for *locus sigilli* (place of the seal). Perfunctory invocation of the rules for sealed documents called into question the seal's utility in making promises enforceable." E. Allan Farnsworth, *Changing Your Mind: The Law of Regretted Decisions* 46 (1998).

sealed-record statute. See CONFIDENTIALITY STATUTE.

sealed testament. See *mystic will* under WILL.

sealed verdict. See VERDICT.

sealed will. See *mystic will* under WILL.

sea letter. *Hist.* A manifest issued during a war by authorities of a port where a neutral vessel is fitted, certifying the vessel's nationality, specifying the nature of and destination of the vessel's cargo, and allowing the vessel to sail under the neutral flag of its owner. • The last sea letter was issued at the Port of New York in 1806, and the use of sea letters was discontinued by proclamation of President James Madison. — Also spelled *sea-letter.* — Also termed *sea brief; sea pass; passport.*

"Our laws require masters of vessels, on entering a port for traffic, to lodge with the consul their registers, sea-letters, and passports . . . ." Theodore D. Woolsey, *Introduction to the Study of International Law* 161-62 (5th ed. 1878).

sealing of records. (1953) The act or practice of officially preventing access to particular (esp. juvenile-criminal) records, in the absence of a court order. Cf. EXPUNGEMENT OF RECORD. [Cases: Records ⇨32.]

seal of cause. *Scots law.* The seal of a burgh court, by which a royal burgh could, consistently with its charter powers, create a subordinate corporation by charter. •

The seal of cause was most commonly used to create charitable corporations and craft guilds.

seal of the state. See *great seal* (2) under SEAL.

seal of the United States. See *great seal* (1) under SEAL.

seaman. *Maritime law.* Under the Jones Act and the Longshore and Harbor Workers' Compensation Act, a person who is attached to a navigating vessel as an employee below the rank of officer and contributes to the function of the vessel or the accomplishment of its mission. • Seamen's injuries are covered under the Jones Act and the general maritime law. — Also termed *crew member*; *mariner*; *member of a crew*. See JONES ACT. Cf. STEVEDORE. [Cases: Seamen ⇨2.]

"The Jones Act plaintiff must be a 'seaman' who is injured (or killed) 'in the course of his employment.' The 'course of . . . employment' requirement at least excluded passengers, guests, trespassers, pirates (unless of course the pirate was suing his own employer) and so on. Who else might be excluded (or included) was, as a matter of initial construction, impossible to say. After a half-century of litigation the answer to the riddle is not apparent. The Supreme Court has alternated between giving the term 'seaman' an exceedingly broad construction and giving it a much narrower one. Consequently defendants have been encouraged to argue, in all but the most obvious cases, that plaintiff is not a Jones Act seaman and that the action must be dismissed. Thus there has always been, there continues to be, and presumably there will go on being a substantial volume of depressing litigation of this type." Grant Gilmore & Charles L. Black Jr., *The Law of Admiralty* § 6-21, at 328 (2d ed. 1975).

"The traditional seaman is a member of the crew of a merchant vessel . . . . However, vessels are not limited in their functions to the transportation of goods over water. The performance by a vessel of some other mission, such as operating as a cruise ship, necessitates the presence aboard ship of employees who do not 'man, reef and steer' the vessel . . . . Exploration for oil and gas on navigable waters has led to further expansion of the concept of a 'seaman.' In 1959, in the celebrated case of *Offshore Oil Co. v. Robinson*, 266 F.2d 769 (5th Cir. 1959), the Fifth Circuit held that floating drilling structures are 'vessels' and that the amphibious oil workers aboard them are entitled to the seaman's remedies against their employers and the operators of the 'vessels' on which they are employed." Frank L. Maraist, *Admiralty in a Nutshell* 178-80 (2d ed. 1988).

able-bodied seaman. An experienced seaman who is qualified for all seaman's duties and certified by an inspecting authority. — Abbr. AB; ABS. — Also termed *able seaman*; *bluewater seaman*. [Cases: Seamen ⇨11, 29.]

merchant seaman. A sailor employed by a private vessel, as distinguished from one employed in public or military service. [Cases: Seamen ⇨2.]

ordinary seaman. A seaman who has some experience but who is not proficient enough to be classified as an able-bodied seaman. — Abbr. OS; OD. [Cases: Seamen ⇨11, 29.]

seaman's will. See *soldier's will* under WILL.

sea pass. See SEA LETTER.

search, *n.* (14c) **1.** *Criminal procedure.* An examination of a person's body, property, or other area that the person would reasonably be expected to consider as private, conducted by a law-enforcement officer for the purpose of finding evidence of a crime. • Because the Fourth Amendment prohibits unreasonable searches (as well as seizures), a search cannot ordinarily be conducted without probable cause. [Cases: Searches and Seizures ⇨13.]

"It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person. And it is nothing less than sheer torture of the English language to suggest that a careful exploration of the outer surfaces of a person's clothing all over his or her body in an attempt to find weapons is not a 'search.'" *Terry v. Ohio*, 392 U.S. 1, 16, 88 S.Ct. 1868, 1877 (1968) (Warren, J.).

administrative search. (1963) A search of public or commercial premises carried out by a regulatory authority to enforce compliance with health, safety, or security regulations. • The probable cause required for an administrative search is less stringent than that required for a search incident to a criminal investigation. — Also termed *regulatory search*; *inspection search*. [Cases: Searches and Seizures ⇨79.]

border search. (1922) **1.** A search conducted at the border of a country, esp. at a checkpoint, to exclude illegal aliens and contraband. [Cases: Aliens, Immigration, and Citizenship ⇨440–446; Customs Duties ⇨126(1).]

"[W]arrantless searches and seizures conducted at national boundaries are permitted under the general authority of the United States to ensure the integrity of its borders. As the Supreme Court stated in *Carroll v. United States*, such activity ensures 'national self-protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in.' [267 U.S. 132, 154, 45 S.Ct. 280, 285 (1925).] Thus, the right to remain silent and protect one's personal belongings from government intrusion, normally afforded constitutional protection, are surrendered at the border." Charles H. Whitebread, *Criminal Procedure* § 12.02, at 227 (1980).

2. Loosely, a search conducted near the border of a country. • Generally, searches near the U.S. border are treated no differently from those conducted elsewhere in the country.

checkpoint search. (1973) **1.** A search anywhere on a military installation. **2.** A search in which police officers set up roadblocks and stop motorists to ascertain whether the drivers are intoxicated. [Cases: Automobiles ⇨349(9).]

Chimel search. See *protective search*.

consent search. (1965) A search conducted after a person with the authority to do so voluntarily waives Fourth Amendment rights. • The government has the burden to show that the consent was given freely — not under duress. *Bumper v. North Carolina*, 391 U.S. 543, 548–49, 88 S.Ct. 1788, 1792 (1968). — Also termed *consensual search*. [Cases: Searches and Seizures ⇨171–186.]

"The voluntariness of a consent to search is 'to be determined from the totality of all the circumstances.' [*Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041 (1973).] Among the factors to be considered in determining the effectiveness of an alleged consent to search are whether the defendant (1) has minimal schooling or was of low

intelligence; (2) was mentally ill or intoxicated; (3) was under arrest at the time the consent was given; (4) was overpowered by officers, handcuffed, or similarly subject to physical restriction; (5) has seized from him by the police the keys to the premises thereafter searched; (6) employed evasive conduct or attempted to mislead the police; (7) denied guilt or the presence of any incriminatory objects in his premises; (8) earlier gave a valid confession or otherwise cooperated, as by instigating the search, or at least the investigation leading to the search; (9) was hesitant in agreeing to the search; or (10) was refused his request to consult with counsel. The presence of some of these factors is not controlling, however, as each case must stand or fall on its own special facts." Jerold H. Israel & Wayne R. LaFave, *Criminal Procedure in a Nutshell* 141–42 (5th ed. 1993).

constructive search. A subpoena of a corporation's records.

"[I]t is settled that the so-called 'constructive search' involved in an administrative subpoena of corporate books or records constitutes a 'search' or 'seizure' within the meaning of the Fourth Amendment." 68 Am. Jur. 2d *Searches and Seizures* § 44, at 674 (1993).

emergency search. (1971) A warrantless search conducted by a police officer who has probable cause and reasonably believes that, because of a need to protect life or property, there is not enough time to obtain a warrant. See EMERGENCY DOCTRINE (3). [Cases: Searches and Seizures ⇨42.]

exigent search (**eks**-ə-jənt). (1974) A warrantless search carried out under exigent circumstances, such as an imminent danger to human life or a risk of the destruction of evidence. See *exigent circumstances* under CIRCUMSTANCE. [Cases: Controlled Substances ⇨105, 114, 123, 130; Searches and Seizures ⇨42.]

illegal search. See *unreasonable search.*

inventory search. (1966) A complete search of an arrestee's person before that person is booked into jail. • All possessions found are typically held in police custody. [Cases: Automobiles ⇨349.5(12); Controlled Substances ⇨117; Searches and Seizures ⇨58.]

no-knock search. (1970) A search of property by the police without knocking and announcing their presence and purpose before entry. • A no-knock search warrant may be issued under limited circumstances, as when a prior announcement would probably lead to the destruction of the objects searched for, or would endanger the safety of the police or another person. [Cases: Searches and Seizures ⇨143.1; Controlled Substances ⇨153.]

private search. A search conducted by a private person rather than by a law-enforcement officer. • Items found during a private search are generally admissible in evidence if the person conducting the search was not acting at the direction of a law-enforcement officer. [Cases: Searches and Seizures ⇨33.]

protective search. (1967) A search of a detained suspect and the area within the suspect's immediate control, conducted to protect the arresting officer's safety (as from a concealed weapon) and often to preserve evidence. • A protective search can be conducted without a warrant. *Chimel v. California*, 395 U.S. 752, 89 S.Ct. 2034 (1969). — Also termed *search incident to arrest*; *Chimel search* (shə-**mel**). [Cases: Arrest ⇨63, 63.5(8); Searches and Seizures ⇨70.]

regulatory search. See *administrative search.*

search incident to arrest. See *protective search.*

sector search. See *zone search.*

shakedown search. (1952) A usu. unannounced and warrantless search for illicit or contraband material (such as weapons or drugs) in a prisoner's cell. — Often shortened to *shakedown*. [Cases: Prisons ⇨134.]

strip search. (1955) A search of a person conducted after that person's clothes have been removed, the purpose usu. being to find any contraband the person might be hiding. [Cases: Controlled Substances ⇨126.]

unreasonable search. (18c) A search conducted without probable cause or other considerations that would make it legally permissible. — Also termed *illegal search.*

voluntary search. (1936) A search in which no duress or coercion was applied to obtain the defendant's consent. See *consent search.*

warranted search. (1968) A search conducted under authority of a search warrant. [Cases: Searches and Seizures ⇨141.]

warrantless search. (1950) A search conducted without obtaining a proper warrant. • Warrantless searches are permissible under exigent circumstances or when conducted incident to an arrest. See *exigent circumstances* under CIRCUMSTANCE; *protective search.* Arrest ⇨71.1(1); Searches and Seizures ⇨24, 42.1.]

zone search. A search of a crime scene (such as the scene of a fire or explosion) by dividing it up into specific sectors. — Also termed *sector search.*

2. An examination of public documents or records for information; esp., TITLE SEARCH. **3.** *Int'l law.* The wartime process of boarding and examining the contents of a merchant vessel for contraband. • A number of treaties regulate the manner in which the search must be conducted. See RIGHT OF SEARCH. [Cases: War and National Emergency ⇨20.]

search-and-seizure warrant. See SEARCH WARRANT.

search book. (1912) A lawbook that contains no statements of the law but instead consists of lists or tables of cases, statutes, and the like, used simply to help a researcher find the law. • Most indexes, other than index-digests, are search books.

search committee. See COMMITTEE.

search incident to arrest. See *protective search* under SEARCH.

search of patentability. See PATENTABILITY SEARCH.

search report. *Patents.* A list of prior-art documents cited by the patent examiner during the patent application's preliminary examination.

search warrant. (18c) *Criminal law.* A judge's written order authorizing a law-enforcement officer to conduct a search of a specified place and to seize evidence. *See* Fed. R. Crim. P. 41. — Also termed *search-and-seizure warrant.* See WARRANT (1). [Cases: Searches and Seizures ⟹101.]

anticipatory search warrant. (1912) A search warrant based on an affidavit showing probable cause that evidence of a certain crime (such as illegal drugs) will be located at a specific place in the future. [Cases: Searches and Seizures ⟹122.]

blanket search warrant. (1921) **1.** A single search warrant that authorizes the search of more than one area. **2.** An unconstitutional warrant that authorizes the seizure of everything found at a given location, without specifying which items may be seized.

covert-entry search warrant. A warrant authorizing law-enforcement officers to clandestinely enter private premises in the absence of the owner or occupant without prior notice, and to search the premises and collect intangible evidence, esp. photographs and eyewitness information. • Although previously used in federal criminal investigations, these types of warrants were first given express statutory authority by the USA Patriot Act. 18 USCA § 3103a. Information gathered while executing a sneak-and-peek warrant can later be used to support a search warrant under which physical evidence can be seized. — Also termed *sneak-and-peek search warrant; surreptitious-entry search warrant.* [Cases: Searches and Seizures ⟹143.1.]

no-knock search warrant. (1972) A search warrant that authorizes the police to enter premises without knocking and announcing their presence and purpose before entry because a prior announcement would lead to the destruction of the objects searched for or would endanger the safety of the police or another person. Cf. KNOCK-AND-ANNOUNCE RULE .[Cases: Searches and Seizures ⟹143.1.]

sneak-and-peek search warrant. See *covert-entry search warrant*

surreptitious-entry search warrant. See *covert-entry search warrant.*

search-warrant affidavit. See AFFIDAVIT.

sea reeve (see reev). *Hist.* An officer appointed to watch the shore and enforce a lord's maritime rights, including the right to wreckage.

sea rover. 1. A person who roves the sea for plunder; a pirate. **2.** A pirate vessel.

***Sears–Compco* doctrine.** The principle that Congress, by passing copyright, trademark, and patent laws, has preempted some state-law protection of information that is not protected by those statutes. *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225, 84 S.Ct. 784 (1964); *Compco Corp. v. Day-Brite Lighting, Inc.*, 376 U.S. 234, 84 S.Ct. 779 (1964). • The doctrine reflects a congressional policy decision that public access to information outweighs private economic incentives to collect and disseminate it. It limits how far states may protect against misappropriation. [Cases: Copyrights and Intellectual Property ⟹109.]

seasonable, *adj.* (15c) Within the time agreed on; within a reasonable time <seasonable performance of the contract>.

seasonal employment. See EMPLOYMENT.

seat, *n.* **1.** Membership and privileges in an organization; esp., membership on a securities or commodities exchange <her seat at the exchange dates back to 1998>. [Cases: Exchanges ⟹7.] **2.** The center of some activity <the seat of government>.

seated land. See LAND.

seat of government. The nation's capital, a state capital, a county seat, or other location where the principal offices of the national, state, and local governments are located. [Cases: Counties ⟹27; States ⟹22.]

seaward. See CUSTOS MARIS.

seaworthy, *adj.* (Of a vessel) properly equipped and sufficiently strong and tight to resist the perils reasonably incident to the voyage for which the vessel is insured. • An implied condition of marine-insurance policies, unless otherwise stated, is that the vessel will be seaworthy. [Cases: Seamen ⟹9; Shipping ⟹80, 121.] — **seaworthiness,** *n.*

seaworthy vessel. See VESSEL.

sec. *abbr.* **1.** (all cap.) SECURITIES AND EXCHANGE COMMISSION. **2.** Section. See SECTION (1).

secession. The process or act of withdrawing, esp. from a religious or political association <the secession from the established church> <the secession of 11 states at the time of the Civil War>.

seck (sek), *adj. Hist.* **1.** Lacking the right or remedy of distress. **2.** Lacking profits, usu. due to a reversion without rent or other service. See RENT SECK.

second, *n. Parliamentary law.* **1.** A statement by a member other than a motion's maker that the member also wants the assembly to consider the motion <Is there a second to the motion?>. **2.** *Criminal law.* A person who directs, assists, or supports another engaged in a duel. See DUEL (2). — **second,** *vb.*

Second Amendment. The constitutional amendment, ratified with the Bill of Rights in 1791, guaranteeing the right to keep and bear arms as necessary for securing freedom through a well-regulated militia. See RIGHT TO BEAR ARMS. [Cases: Weapons ⟹1.]

secondary, *adj.* (14c) (Of a position, status, use, etc.) subordinate or subsequent.

secondary, *n. Hist.* An officer of the courts of the King's Bench and common pleas, so called because he was next to the chief officer. • By the Superior Courts (Officers)

Act (1837), the secondary office was abolished. St. 7 Will. 4; 1 Vict., ch. 30.

secondary abuse. See ABUSE.

secondary activity. *Labor law.* A union's picketing or boycotting of a secondary or neutral party, with the goal of placing economic pressure on that party so that it will stop doing business with the employer that is the primary subject of the labor dispute. • Secondary activities are forbidden by the Labor–Management Relations Act. 29 USCA § 158(b)(4). See *secondary boycott* under BOYCOTT; *secondary picketing* under PICKETING. Cf. PRIMARY ACTIVITY. [Cases: Labor and Employment ⇨1411, 1412.]

secondary affinity. See AFFINITY.

secondary amendment. See AMENDMENT (3).

secondary assumption of risk. See ASSUMPTION OF THE RISK.

secondary authority. See AUTHORITY (4).

secondary beneficiary. See *contingent beneficiary* (2) under BENEFICIARY.

secondary boycott. See BOYCOTT.

secondary consideration. See SECONDARY FACTOR.

secondary conveyance. See CONVEYANCE.

secondary creditor. See CREDITOR.

secondary devise. See *alternative devise* under DEVISE.

secondary distribution. See DISTRIBUTION.

secondary easement. See EASEMENT.

secondary-effects test. A court's analysis of a regulation affecting free-speech interests to determine whether it is actually intended to diminish or eliminate an indirect harm flowing from the regulated expression. • The test is used to distinguish content-specific regulation from content-neutral regulation. A regulation that is facially content-specific may be treated as content-neutral if its purpose is to diminish or eliminate a secondary effect of the speech, such as a zoning regulation for adult theaters when it is intended to limit crime. The test was first enunciated in *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 106 S.Ct. 925 (1986). [Cases: Constitutional Law ⇨2213.]

secondary enforcement. See *secondary right* under RIGHT.

secondary evidence. See EVIDENCE.

secondary factor. (*usu. pl.*) *Patents.* Objective evidence that courts consider in determining a patent claim's nonobviousness. • Secondary factors include "commercial success, long-felt but unsolved need, failure of others, and unexpected results." *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). — Also termed *secondary consideration.* [Cases: Patents ⇨36.1.]

secondary insured. See *additional insured* under INSURED.

secondary insurer. See *excess insurer* under INSURER.

secondary invention. *Patents.* An invention that uses or incorporates established elements or combinations to achieve a new and useful result. [Cases: Patents ⇨174.]

secondary lender. A wholesale mortgage buyer who purchases first mortgages from banks and savings-and-loan associations, enabling them to restock their money supply and loan more money.

secondary liability. See LIABILITY.

secondary-line competition. See *vertical competition* under COMPETITION.

secondary-line injury. *Antitrust.* Under the price-discrimination provisions of the Robinson-Patman Act, the act of hindering or seeking to hinder competition among a seller's customers by selling substantially the same products at favorable prices to one customer, or a select group of customers, to the detriment of others. 15 USCA § 13(a). • A secondary-line injury, which refers to competition among the seller's customers, is distinguishable from a primary-line injury, which refers to the anticompetitive effects that predatory pricing has on the direct competitors of the seller. Cf. PRIMARY-LINE INJURY.

secondary market. See MARKET.

secondary meaning. *Intellectual property.* A special sense that a trademark or tradename for a business, goods, or services has acquired even though the trademark or tradename was originally merely descriptive and therefore not protectable. • The term does not refer to a subordinate or rare meaning, but rather to a later meaning that has been added to the original one borne by the mark or name and that has now become in the market its usual and primary meaning. — Also termed *special meaning*; *trade meaning.* [Cases: Trademarks ⇨1032.]

> "Secondary meaning is *association*, nothing more. It exists only in the minds of those of the public who have seen or known or have heard of a brand of goods by some name or sign and have associated the two in their minds." Harry D. Nims, *The Law of Unfair Competition and Trade-Marks* 105 (1929).

secondary mortgage market. See MORTGAGE MARKET.

secondary motion. See MOTION (2).

secondary obligation. See OBLIGATION.

secondary offering. See OFFERING.

secondary party. *Commercial law.* **1.** A party not primarily liable under an instrument, such as a guarantor. [Cases: Bills and Notes ⇨49; Guaranty ⇨33.] **2.** The drawer or indorser of a negotiable instrument.

secondary picketing. See PICKETING.

secondary register. See SUPPLEMENTAL REGISTER.

secondary reserve ratio. See RESERVE RATIO.

secondary right. See RIGHT.

secondary strike. See STRIKE.

secondary term. *Oil & gas.* The term of an oil-and-gas lease after production has been established, typically

lasting "as long thereafter as oil and gas is produced from the premises." See HABENDUM CLAUSE; PRIMARY TERM. [Cases: Mines and Minerals ⇨73.5.]

secondary trading. See TRADING.

secondary use. See *shifting use* under USE (4).

second chair, *n.* (1968) A lawyer who helps the lead attorney in court, usu. by examining some of the witnesses, arguing some of the points of law, and handling parts of the voir dire, opening statement, and closing argument <the young associate was second chair for the fraud case>. — **second-chair,** *vb.*

second-collision doctrine. See CRASHWORTHINESS DOCTRINE.

second cousin. See COUSIN.

second-degree amendment. See *secondary amendment* under AMENDMENT (3).

second-degree manslaughter. See *involuntary manslaughter* under MANSLAUGHTER.

second-degree murder. See MURDER.

second-degree principal. See *principal in the second degree* under PRINCIPAL (2).

second deliverance. See DELIVERANCE.

second delivery. See DELIVERY.

second distress. See DISTRESS.

secondhand evidence. See HEARSAY.

second-impact doctrine. See CRASHWORTHINESS DOCTRINE.

second lien. See LIEN.

second-look doctrine. (1962) **1.** WAIT-AND-SEE PRINCIPLE. **2.** An approach that courts use to monitor the continuing effectiveness or validity of an earlier order. • For example, a family court may reconsider a waiver of alimony, and a federal court may reconsider a law that Congress has passed a second time after the first law was struck down as unconstitutional.

second mortgage. See MORTGAGE.

second offense. See OFFENSE (1).

second-parent adoption. See ADOPTION.

second-permittee doctrine. *Insurance.* The principle that, when a third person is allowed to use an insured's car by permission granted by someone else to whom the insured gave permission to use the car, the third person's use of the car will be a permissive use, under the insured's automobile-liability-insurance policy, as long as that use falls within the scope of the permission originally given by the insured. [Cases: Insurance ⇨2666.]

seconds, *n. Commercial law.* Goods that are defective or nonconforming because they do not meet a recognized standard.

second-step freezeout. See FREEZEOUT.

second surcharge. See SURCHARGE.

second-tier patent. See UTILITY MODEL.

second user. See JUNIOR USER.

secrecy. The state or quality of being concealed, esp. from those who would be affected by the concealment; hidden.

secret, *n.* (14c) **1.** Something that is kept from the knowledge of others or shared only with those concerned. See STATE SECRET; TRADE SECRET. **2.** Information that cannot be disclosed without a breach of trust; specif., information that is acquired in the attorney–client relationship and that either (1) the client has requested be kept private or (2) the attorney believes would be embarrassing or likely to be detrimental to the client if disclosed. • Under the ABA Code of Professional Responsibility, a lawyer usu. cannot reveal a client's secret unless the client consents after full disclosure. DR 4-101. Cf. CONFIDENCE (3). [Cases: Attorney and Client ⇨32(13).]

secretarius (sek-rə-**tair**-ee-əs), *n.* [Law Latin] See APOCRISARIUS.

secretary. 1. An administrative assistant. **2.** A corporate officer in charge of official correspondence, minutes of board meetings, and records of stock ownership and transfer. — Also termed *clerk of the corporation.* [Cases: Corporations ⇨302.] **3.** *Parliamentary law.* An officer charged with recording a deliberative assembly's proceedings. — Also termed *clerk; recorder; recording secretary; recording officer; scribe.*

corresponding secretary. An officer in charge of an organization's correspondence, usu. including notices to members.

financial secretary. **1.** An officer in charge of billing, collecting, and accounting for dues from the members. **2.** TREASURER.

Secretary General. The chief administrative officer of the United Nations, nominated by the Security Council and elected by the General Assembly.

Secretary of Agriculture. The member of the President's cabinet who heads the U.S. Department of Agriculture. [Cases: Agriculture ⇨2.]

Secretary of Commerce. The member of the President's cabinet who heads the U.S. Department of Commerce. [Cases: United States ⇨32.]

Secretary of Defense. The member of the President's cabinet who heads the U.S. Department of Defense. [Cases: United States ⇨32.]

Secretary of Education. The member of the President's cabinet who heads the U.S. Department of Education. [Cases: United States ⇨32.]

secretary of embassy. A diplomatic officer appointed as secretary or assistant, usu. to an ambassador or minister plenipotentiary.

Secretary of Energy. The member of the President's cabinet who heads the U.S. Department of Energy. [Cases: United States ⇨32.]

Secretary of Health and Human Services. The member of the President's cabinet who heads the U.S.

Department of Health and Human Services. [Cases: United States ⇨32.]

Secretary of Homeland Security. The member of the President's cabinet who heads the U.S. Department of Homeland Security. [Cases: United States ⇨32.]

Secretary of Housing and Urban Development. The member of the President's cabinet who heads the U.S. Department of Housing and Urban Development. [Cases: United States ⇨32.]

Secretary of Labor. The member of the President's cabinet who heads the U.S. Department of Labor. [Cases: United States ⇨32.]

secretary of legation. An officer employed to attend a foreign mission and perform certain clerical duties.

Secretary of State. (18c) **1.** The member of the President's cabinet who heads the U.S. Department of State. • The Secretary is the first-ranking member of the cabinet and is also a member of the National Security Council. He or she is fourth in line of succession to the presidency after the Vice President, the Speaker of the House, and the President pro tempore of the Senate. [Cases: United States ⇨32.] **2.** A state government official who is responsible for the licensing and incorporation of businesses, the administration of elections, and other formal duties. • The secretary of state is elected in some states and appointed in others. [Cases: United States ⇨68.]

Secretary of the Interior. The member of the President's cabinet who heads the U.S. Department of the Interior. [Cases: United States ⇨32.]

Secretary of the Treasury. The member of the President's cabinet who heads the U.S. Department of the Treasury. [Cases: United States ⇨32.]

Secretary of Transportation. The member of the President's cabinet who heads the U.S. Department of Transportation. [Cases: United States ⇨32.]

Secretary of Veterans Affairs. The member of the President's cabinet who heads the U.S. Department of Veterans Affairs. [Cases: United States ⇨102.]

secret ballot. See BALLOT (2).

secret detainee. See DETAINEE.

secret detention. See DETENTION.

secret diplomacy. See DIPLOMACY.

secrete (si-**kreet**), *vb.* (17c) To conceal or secretly transfer (property, etc.), esp. to hinder or prevent officials or creditors from finding it.

secret equity. See *latent equity* under EQUITY.

secret evidence. See EVIDENCE.

secretion of assets. The hiding of property, usu. for the purpose of defrauding an adversary in litigation or a creditor.

secret lien. See LIEN.

secret partner. See PARTNER.

Secret Service. See UNITED STATES SECRET SERVICE.

secret session. See *executive session* under SESSION (1).

secret testament. See *mystic will* under WILL.

secret trust. See TRUST.

secret will. See *mystic will* under WILL.

secta (**sek**-tə), *n.* [Latin "suit"] **1.** *Roman law.* A group of followers, as of a particular religion or school of philosophy, law, etc.; a religious sect. **2.** *Hist.* People whom a plaintiff must bring to court to support the plaintiff's case. **3.** *Hist.* A lawsuit.

secta ad molendinum. See DE SECTA AD MOLENDINUM.

secta curiae (**sek**-tə **kyoor**-ee-ee). [Latin "suit of court"] *Hist.* Attendance at court, esp. by feudal tenants, who are obligated to attend the lord's court as jurors or parties.

secta facienda per illam quae habet eniciam partem (**sek**-tə fay-shee-**en**-də pər **il**-əm kwee **hay**-bət i-**nish**-ee-əm **pahr**-təm), *n.* [Law Latin "suit to be performed by her who has the eldest part"] *Hist.* A writ ordering the eldest heir or coparcener to perform suit and services for all the coheirs or coparceners.

secta regalis (**sek**-tə **ri**-**gay**-lis). [Latin "king's suit"] *Hist.* An obligation to attend the sheriff's court twice a year, so called because it had the same functions and jurisdiction as the king's court.

sectarian, *adj.* Of or relating to a particular religious sect <sectarian college>.

sectatoris (sek-tə-**tor**-is), *n.* [Latin] *Roman law.* A supporter of a candidate for office, who accompanied a candidate during a campaign, primarily to impress voters. Pl. ***sectatores.***

secta unica tantum facienda pro pluribus haereditatibus (**sek**-tə **yoo**-nə-kə **tan**-təm fay-shee-**en**- də proh **ploor**-ə-bəs hə-red-ə-**tay**-tə-bəs), *n.* [Law Latin "one suit alone to be performed for several inheritances"] *Hist.* A writ exempting the eldest heir, distrained by a lord to perform several services for the coheirs, from performing all services but one.

section. (16c) **1.** A distinct part or division of a writing, esp. a legal instrument. — Abbr. §; sec.; s. **2.** *Real estate.* A piece of land containing 640 acres, or one square mile. • Traditionally, public lands in the United States were divided into 640-acre squares, each one called a "section." — Also termed *section of land.*

half section. A piece of land containing 320 acres, laid off either by a north-and-south or by an east-and-west line; half a section of land.

quarter section. A piece of land containing 160 acres, laid off by a north-south or east-west line; one quarter of a section of land, formerly the amount usu. granted to a homesteader. — Often shortened to *quarter.*

Section 8 affidavit. See DECLARATION OF USE.

Section 8 and 15 affidavit. See COMBINED § 8 AND § 15 AFFIDAVIT.

Section 8 and 15 declaration. See COMBINED § 8 AND § 15 AFFIDAVIT.

Section 8 declaration. See DECLARATION OF USE.

section 8(f) agreement. *Labor law.* A labor contract that is negotiated between an employer in the construction business and a union that cannot demonstrate that it represents a majority of the employees at the time the contract is executed. 29 USCA § 158(f). • This is an exception to the general rule that an employer need only negotiate with a union that can demonstrate majority status. It was enacted in part because of the nature of the construction industry, in which the employers may have several different jobs in different parts of the country, the jobs are typically completed in a relatively short time, and the workforce is often transient. Since the workforce often does not have sufficient ties to a particular employer to petition for a certification election, section 8(f) agreements provide a certain level of protection in recognition of that fact. But section 8(f) agreements are not equivalent to collective-bargaining agreements. For example, the employer can legally repudiate the agreement at any time, and the employees may not legally picket to enforce the agreement. The main protection such an agreement provides is a monetary obligation, which can be enforced, if necessary, in federal court. And if the union achieves majority status, the section 8(f) agreement will essentially become a fully enforceable collective-bargaining agreement.

Section 15 affidavit. See DECLARATION OF INCONTESTABILITY.

Section 15 declaration. See DECLARATION OF INCONTESTABILITY.

Section 43(a) action. *Trademarks.* A private cause of action codified in the Lanham Trademark Act and covering a broad spectrum of deceptive trade practices, including passing off, false advertising, trade-dress infringement, trademark dilution, and cyperpiracy. 15 USCA § 1125(a). [Cases: Antitrust and Trade Regulation ⟹61; Trademarks ⟹1554.]

Section 101 rejection. See REJECTION.

Section 102 rejection. See REJECTION.

Section 103 rejection. See REJECTION.

Section 112 rejection. See *vague-and-indefinite rejection* under REJECTION.

section of land. See SECTION (2).

sectis non faciendis (**sek**-tis non fay-shee-**en**-dis). See DE SECTIS NON FACIENDIS.

sector (sek-**tor**), *n.* [Latin] *Roman law.* A successful bidder at a public auction. Pl. ***sectores.***

sector search. See *zone search* under SEARCH.

secular, *adj.* Worldly, as distinguished from spiritual <secular business>.

secular clergy. 1. Clergy who have no particular religious affiliation or do not belong to a particular religious denomination. **2.** Clergy who live in their parishes and minister there, as contrasted with regular clergy who live in monasteries.

secular trust. See TRUST (3).

secundum (si-**kən**-dəm), *adj.* [Latin] *Roman law.* According to; in favor of, as in *secundum actorem* ("in favor of the plaintiff").

secundum aequum et bonum (si-**kən**-dəm **ee**-kwəm et **boh**-nəm). [Latin] *Hist.* According to what is just and good.

secundum allegata et probata (si-**kən**-dəm al-ə-**gay**-tə et prə-**bay**-tə). [Latin] *Hist.* According to what is alleged and proved.

secundum artem (si-**kən**-dəm **ahr**-təm). [Latin] *Hist.* According to the art or trade.

secundum bonos mores (si-**kən**-dəm **boh**-nohs **mor**-eez). [Latin] *Hist.* According to good usages; customary.

secundum bonum et aequum (sə-**kən**-dəm **boh**-nəm et **ee**-kwəm). [Latin] *Hist.* According to that which is good and equitable.

secundum chartam conficiendam (sə-**kən**-dəm **kahr**-təm kən-fish-ee-**en**-dəm). [Law Latin] *Hist.* According to a charter to be granted. Cf. SECUNDUM TENOREM CHARTAE CONFECTAE.

secundum consuetudinem manerii (si-**kən**-dəm kon-swə-**t[y]oo**-də-nəm mə-**neer**-ee-ī). [Law Latin] *Hist.* According to the custom of the manor.

secundum formam chartae (si-**kən**-dəm **for**-məm **kahr**-tee). [Law Latin] *Hist.* According to the form of the charter.

secundum formam doni (si-**kən**-dəm **for**-məm **doh**-nī). [Latin] *Hist.* According to the form of the gift or grant.

secundum formam statuti (si-**kən**-dəm **for**-məm stə-**t[y]oo**-tī). [Law Latin] *Hist.* According to the form of the statute.

secundum legem communem (si-**kən**-dəm **lee**-jəm kə-**myoo**-nəm). [Law Latin] *Hist.* According to the common law.

secundum legem domicilii, vel loci contractus (sə-**kən**-dəm **lee**-jəm dom-ə-**sil**-ee-ī, vel **loh**-sī kən-**trak**-təs). [Law Latin] *Hist.* According to the law of the domicile or of the place where the contract was entered into. See LEX LOCI CONTRACTUS.

secundum materiam subjectam (sə-**kən**-dəm mə-**teer**-ee-əm səb-**jek**-təm). [Latin] *Hist.* According to the subject matter.

secundum naturam. [Latin] According to nature.

secundum normam legis (si-**kən**-dəm **nor**-məm **lee**-jis). [Latin] *Hist.* According to the rule of law; by rule of law.

secundum regulam (si-**kən**-dəm **reg**-yə-ləm). [Latin] *Hist.* According to the rule; by rule.

secundum subjectam materiam (si-**kən**-dəm səb-**jek**-təm mə-**teer**-ee-əm). [Law Latin] *Hist.* According to the subject matter.

secundum tenorem chartae confectae (sə-**kən**-dəm tə-**nor**-əm **kahr**-tee kən-**fek**-tee). [Latin] *Hist.*

According to the tenor of the charter already granted. Cf. SECUNDUM CHARTAM CONFICIENDAM.

secundum vires hereditatis (sə-**kən**-dəm VI-reez hə-red-i-**tay**-tis). [Law Latin] *Hist.* According to the extent of the inheritance.

secundum vires inventarii (sə-**kən**-dəm VI-reez in-ven-**tair**-ee-I). [Law Latin] *Hist.* According to the extent of the inventory.

secured, *adj.* (1875) **1.** (Of a debt or obligation) supported or backed by security or collateral. [Cases: Secured Transactions ⇨2.] **2.** (Of a creditor) protected by a pledge, mortgage, or other encumbrance of property that helps ensure financial soundness and confidence. See SECURITY. [Cases: Mortgages ⇨22.]

secured bond. See BOND (3).

secured claim. See CLAIM (5).

secured creditor. See CREDITOR.

secured debt. See DEBT.

secured loan. See LOAN.

secured note. See NOTE (1).

secured party. See *secured creditor* under CREDITOR.

secured transaction. (1936) A business arrangement by which a buyer or borrower gives collateral to the seller or lender to guarantee payment of an obligation. • Article 9 of the UCC deals with secured transactions. See SECURITY AGREEMENT. [Cases: Secured Transactions ⇨1.]

securitas (si-**kyoor**-i-tas), *n.* [Latin] **1.** *Roman law.* Security; freedom from liability after performance. **2.** *Civil law.* A release.

securitatem inveniendi (si-kyoor-i-**tay**-təm in-vee-nee-**en**-dI), *n.* [Law Latin] *Hist.* A writ from the Crown requiring subjects to find security to ensure that they would not leave the kingdom without the Crown's permission. • It was replaced by *ne exeat regno.* See NE EXEAT.

securitate pacis (si-kyoor-i-**tay**-tee **pay**-sis), *n.* [Law Latin "of security of the peace"] *Hist.* A writ for someone fearing bodily harm from another, as when the person has been threatened with violence. — Also termed *securitatis pacis; writ of threats.*

securities act. (1933) A federal or state law protecting the public by regulating the registration, offering, and trading of securities. See SECURITIES ACT OF 1933; SECURITIES EXCHANGE ACT OF 1934; BLUE-SKY LAW.

Securities Act of 1933. The federal law regulating the registration and initial public offering of securities, with an emphasis on full public disclosure of financial and other information. 15 USCA §§ 77a–77aa. — Also termed *Securities Act; 1933 Act.* [Cases: Securities Regulation ⇨11.10–30.15.]

securities analyst. A person, usu. an employee of a bank, brokerage, or mutual fund, who studies a company and reports on the company's securities, financial condition, and prospects.

Securities and Exchange Commission. The five-member federal agency that regulates the issuance and trading of securities to protect investors against fraudulent or unfair practices. • The Commission was established by the Securities Exchange Act of 1934. — Abbr. SEC. [Cases: Securities Regulation ⇨81–89.]

Securities and Investment Board. See FINANCIAL SERVICES AGENCY. — Abbr. SIB.

securities broker. See BROKER.

securities exchange. (1909) **1.** A marketplace or facility for the organized purchase and sale of securities, esp. stocks. **2.** A group of people who organize themselves to create such a marketplace; EXCHANGE (5). — Often shortened to *exchange.* — Also termed *stock exchange.* [Cases: Exchanges ⇨1.]

regional securities exchange. A securities exchange that focuses on stocks and bonds of local interest, such as the Boston, Philadelphia, and Midwest stock exchanges. — Also termed *regional stock exchange.*

Securities Exchange Act of 1934. The federal law regulating the public trading of securities. • This law provides for periodic disclosures by issuers of securities and for the registration and supervision of securities exchanges and brokers, and regulates proxy solicitations. The Act also established the SEC. 15 USCA §§ 78a et seq. — Also termed *Exchange Act; 1934 Act.* [Cases: Securities Regulation ⇨35.10–67.15.]

Securities Investor Protection Act. A 1970 federal law establishing the Securities Investor Protection Corporation that, although not a governmental agency, is designed to protect investors whose brokers and dealers are in financial trouble. — Abbr. SIPA. 15 USCA §§ 78aaa et seq. [Cases: Securities Regulation ⇨185.10–185.21.]

Securities Investor Protection Corporation. A federally chartered corporation established under the Securities Investor Protection Act to protect investors and help brokers in financial trouble. — Abbr. SIPC. See SECURITIES INVESTOR PROTECTION ACT. [Cases: Securities Regulation ⇨185.11.]

securities-offering distribution. See DISTRIBUTION.

securitizable, *adj.* **1.** Of, relating to, or constituting the class of obligations that a creditor (originator) may package and sell to others for corporate purposes. **2.** (Of an asset) capable of being rapidly converted to cash, as with commercial-loan receivables and trade accounts receivable.

securitize, *vb.* To convert (assets) into negotiable securities for resale in the financial market, allowing the issuing financial institution to remove assets from its books, and thereby improve its capital ratio and liquidity, and to make new loans with the security proceeds if it so chooses. — **securitized,** *adj.* — **securitization,** *n.*

security, *n.* (15c) **1.** Collateral given or pledged to guarantee the fulfillment of an obligation; esp., the assurance that a creditor will be repaid (usu. with interest) any

money or credit extended to a debtor. [Cases: Secured Transactions ⚷11, 115.] **2.** A person who is bound by some type of guaranty; SURETY. **3.** The state of being secure, esp. from danger or attack. **4.** An instrument that evidences the holder's ownership rights in a firm (e.g., a stock), the holder's creditor relationship with a firm or government (e.g., a bond), or the holder's other rights (e.g., an option). • A security indicates an interest based on an investment in a common enterprise rather than direct participation in the enterprise. Under an important statutory definition, a security is any interest or instrument relating to finances, including a note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in a profit-sharing agreement, collateral trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of these things. A security also includes any put, call, straddle, option, or privilege on any security, certificate of deposit, group or index of securities, or any such device entered into on a national securities exchange, relating to foreign currency. 15 USCA § 77b(1). — Also termed (in sense 4) *evidence of indebtedness*; *evidence of debt*. Cf. SHARE (2); STOCK (4). [Cases: Corporations ⚷63.1, 470; Securities Regulation ⚷5, 249.]

> "Securities differ from most other commodities in which people deal. They have no intrinsic value in themselves — they represent rights in something else. The value of a bond, note or other promise to pay depends on the financial condition of the promisor. The value of a share of stock depends on the profitability or future prospects of the corporation or other entity which issued it; its market price depends on how much other people are willing to pay for it, based on their evaluation of those prospects." David L. Ratner, *Securities Regulation in a Nutshell* 1 (4th ed. 1992).

> "What do the following have in common: scotch whisky, self-improvement courses, cosmetics, earthworms, beavers, muskrats, rabbits, chinchillas, fishing boats, vacuum cleaners, cemetery lots, cattle embryos, master recording contracts, animal feeding programs, pooled litigation funds, and fruit trees? The answer is that they have all been held to be securities within the meaning of federal or state securities statutes. The vast range of such unconventional investments that have fallen within the ambit of the securities laws' coverage is due to the broad statutory definition of a 'security' . . . ." 1 Thomas Lee Hazen, *Treatise on the Law of Securities Regulation* § 1.5, at 28-29 (3d ed. 1995).

adjustment security. A stock or bond that is issued during a corporate reorganization. • The security holders' relative interests are readjusted during this process.

assessable security. A security on which a charge or assessment covering the obligations of the issuing company is made. • Bank and insurance-company stock may be assessable.

asset-backed security. A debt security (such as a bond) that is secured by assets that have been pooled and secured by the assets from the pool.

bearer security. An unregistered security payable to the holder. Cf. *bearer bond* under BOND (3).

callable security. See *redeemable security*.

certificated security. A security that is a recognized investment vehicle, belongs to or is divisible into a class or series of shares, and is represented on an instrument payable to the bearer or a named person. UCC § 8-102(1)(4). [Cases: Corporations ⚷94.]

collateral security. **1.** A security, subordinate to and given in addition to a primary security, that is intended to guarantee the validity or convertibility of the primary security. **2.** COLLATERAL (2).

consolidated security. (*usu. pl.*) A security issued in large enough numbers to provide the funds to retire two or more outstanding issues of debt securities.

conversion security. The security into which a convertible security may be converted, usu. common stock.

convertible security. A security (usu. a bond or preferred stock) that may be exchanged by the owner for another security, esp. common stock from the same company, and usu. at a fixed price on a specified date. — Also termed (specif.) *convertible debt*; *convertible stock*. [Cases: Securities Regulation ⚷53.16(10).]

coupon security. A security with detachable interest coupons that the holder must present for payment as they mature. • Coupon securities are usu. in denominations of $1,000, and they are negotiable. [Cases: Corporations ⚷472.]

debt security. A security representing funds borrowed by the corporation from the holder of the debt obligation; esp., a bond, note, or debenture. • Generally, a debt security is any security that is not an equity security. See BOND (3). [Cases: Securities Regulation ⚷5.12, 5.13, 250.]

dematerialized security. See *uncertificated security*.

derivative security. See DERIVATIVE.

divisional security. A special type of security issued to finance a particular project.

equity security. A security representing an ownership interest in a corporation (such as a share of stock) rather than a debt interest (such as a bond); any stock or similar security, or any security that is convertible into stock or similar security or carrying a warrant or right to subscribe to or purchase stock or a similar security, and any such warrant or right. [Cases: Corporations ⚷63.1; Securities Regulation ⚷5.25.]

exempt security. A security that need not be registered under the provisions of the Securities Act of 1933 and is exempt from the margin requirements of the Securities Exchange Act of 1934. [Cases: Securities Regulation ⚷14.10–14.40.]

fixed-income security. A security that pays a fixed rate of return, such as a bond with a fixed interest rate or a preferred stock with a fixed dividend.

government security. A security issued by a government, a government agency, or a government corporation; esp., a security (such as a Treasury bill) issued by a U.S. government agency, with the implied backing of Congress. — Also termed *government-agency security*; *agency security*; *government bond*. [Cases: Securities Regulation ⇨5.29; United States ⇨91.]

heritable security. *Scots law.* A debt instrument secured by a charge on heritable property. — Also termed *inheritable security*. See *heritable bond* under BOND (2).

high-grade security. A security issued by a company of sound financial condition and having the ability to maintain good earnings (e.g., a utility company security).

hybrid security. A security with features of both a debt instrument (such as a bond) and an equity interest (such as a share of stock). • An example of a hybrid security is a convertible bond, which can be exchanged for shares in the issuing corporation and is subject to stock-price fluctuations.

investment security. An instrument issued in bearer or registered form as a type commonly recognized as a medium for investment and evidencing a share or other interest in the property or enterprise of the issuer. [Cases: Securities Regulation ⇨5.10, 252.]

junior security. A security that is subordinate to a senior security. • Junior securities have a lower priority in claims on assets and income.

landed security. A mortgage or other encumbrance affecting land. [Cases: Mortgages ⇨1.]

letter security. See *restricted security*.

listed security. A security accepted for trading on a securities exchange. • The issuing company must have met the SEC's registration requirements and complied with the rules of the particular exchange. — Also termed *listed stock*. See DELISTING. [Cases: Exchanges ⇨13.10.]

long-term security. **1.** A new securities issue with an initial maturity of ten years or more. **2.** On a balance sheet, a security with a remaining maturity of one year or more.

low-grade security. A security with low investment quality. • Low-grade securities usu. offer higher yields to attract capital. See *high-yield bond* under BOND (3).

marginable security. A security that can be bought on margin. — Also termed *margin stock*. See MARGIN.

margined security. A security that is bought on margin and that serves as collateral in a margin account. See MARGIN.

marketable security. A security that the holder can readily sell on a stock exchange or an over-the-counter market.

mortgage-backed security. A security (esp. a pass-through security) backed by mortgages. • The cash flow from these securities depends on principal and interest payments from the pool of mortgages. See *stripped mortgage-backed security*. [Cases: Securities Regulation ⇨5.13.]

municipal security. See *municipal bond* under BOND (3).

noncallable security. A security that cannot be redeemed, or bought back, at the issuer's option. — Also termed (specif.) *noncallable bond*.

nonmarketable security. **1.** A security that cannot be sold on the market and can be redeemed only by the holder. **2.** A security that is not of investment quality.

outstanding security. A security that is held by an investor and has not been redeemed by the issuing corporation.

pass-through security. A security that passes through payments from debtors to investors. • Pass-through securities are usu. assembled and sold in packages to investors by private lenders who deduct a service fee before passing the principal and interest payments through to the investors.

personal security. **1.** An obligation for the repayment of a debt, evidenced by a pledge or note binding a natural person, as distinguished from property. **2.** A person's legal right to enjoy life, health, and reputation.

public security. A negotiable or transferable security that is evidence of government debt.

real security. The security of mortgages or other liens or encumbrances upon land. See COLLATERAL (2). [Cases: Mortgages ⇨1.]

redeemable security. Any security, other than a short-term note, that, when presented to the issuer, entitles the holder to receive a share of the issuer's assets or the cash equivalent. — Also termed *callable security*.

registered security. **1.** A security whose owner is recorded in the issuer's books. • The issuer keeps a record of the current owners for purposes of sending dividends, interest payments, proxies, and the like. **2.** A security that is to be offered for sale and for which a registration statement has been submitted. — Also termed (specif.) *registered stock*. [Cases: Securities Regulation ⇨11.10–11.50.]

restricted security. A security that is not registered with the SEC and therefore may not be sold publicly unless specified conditions are met. • A restricted security is usu. acquired in a nonpublic transaction in which the buyer gives the seller a letter stating the buyer's intent to hold the stock as an investment rather than resell it. — Also termed *restricted stock*; *letter security*; *letter stock*; *unregistered security*.

senior security. A security of a class having priority over another class as to the distribution of assets or the payment of dividends. 15 USCA § 77r(d)(4).

shelf security. A security that is set aside for shelf registration.

short-term security. A bond or note that matures and is payable within a brief period (often one year).

speculative security. A security that, as an investment, involves a risk of loss greater than would usu. be involved; esp., a security whose value depends on proposed or promised future promotion or development, rather than on present tangible assets or conditions.

stripped mortgage-backed security. A derivative security providing distributions to classes that receive different proportions of either the principal or interest payments from a pool of mortgage-backed securities. — Abbr. SMBS. See *mortgage-backed security.*

structured security. (*usu. pl.*) **1.** A security whose cash-flow characteristics depend on one or more indexes, or that has an embedded forward or option. **2.** A security for which an investor's investment return and the issuer's payment obligations are contingent on, or highly sensitive to, changes in the value of the underlying assets, indexes, interest rates, or cash flows. SEC Rule 434(h) (17 CFR § 230.434(h)).

treasury security. See *treasury stock* under STOCK.

uncertificated security. A share or other interest in property or an enterprise, or an obligation of the issuer that is not represented by an instrument but is registered on the issuer's books. UCC § 8-102(a)(18). • This term was called *uncertified security* in earlier versions of the UCC. — Also termed (in BrE) *dematerialized security.*

unlisted security. An over-the-counter security that is not registered with a stock exchange. — Also termed *unlisted stock.*

unregistered security. See *restricted security.*

voting security. See *voting stock* under STOCK.

when-issued security. A security that can be traded even though it has not yet been issued. • Any transaction that takes place does not become final until the security is issued.

worthless security. A security that has lost its value, for which a loss (usu. capital) is allowed for tax purposes. IRC (26 USCA) § 165. [Cases: Internal Revenue ⇨ 3429.]

zero-coupon security. A security (esp. a bond) that is issued at a large discount but pays no interest. • The face value of the bond is payable at maturity.

security agreement. An agreement that creates or provides for an interest in specified real or personal property to guarantee the performance of an obligation. • It must provide for a security interest, describe the collateral, and be signed by the debtor. The agreement may include other important covenants and warranties. [Cases: Secured Transactions ⇨ 41–51.]

Security Council. A principal organ of the United Nations, consisting of five permanent members (China, France, Russia, the United Kingdom, and the United States) and ten additional members elected at stated intervals, charged with the responsibility of maintaining international peace and security, and esp. of preventing or halting wars by diplomatic, economic, or military action. • The nonpermanent members are elected from each of the world's major regions, based on a distribution formula. [Cases: International Law ⇨ 10.45.]

security deposit. See DEPOSIT (3).

security for costs. (17c) Money, property, or a bond given to a court by a plaintiff or an appellant to secure the payment of court costs if that party loses. [Cases: Costs ⇨ 105, 302; Federal Civil Procedure ⇨ 2732.]

security grade. See SECURITY RATING.

security grading. See SECURITY RATING.

security interest. (1951) A property interest created by agreement or by operation of law to secure performance of an obligation (esp. repayment of a debt). • Although the UCC limits the creation of a security interest to personal property, the Bankruptcy Code defines the term to mean "a lien created by an agreement." 11 USCA § 101(51). [Cases: Secured Transactions ⇨ 2, 11.]

perfected security interest. (1955) A security interest that complies with the statutory requirements for achieving priority over a trustee in bankruptcy and unperfected interests. • A perfected interest may also have priority over another interest that was perfected later in time. See PERFECT. [Cases: Bankruptcy ⇨ 2952; Secured Transactions ⇨ 81–96, 138–145.]

purchase-money security interest. (1957) A security interest that is created when a buyer uses the lender's money to make the purchase and immediately gives the lender security by using the purchased property as collateral (UCC § 9-107); a security interest that is either (1) taken or retained by the seller of the collateral to secure all or part of its price or (2) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if that value is in fact so used. • If a buyer's purchase of a boat, for example, is financed by a bank that loans the amount of the purchase price, the bank's security interest in the boat that secures the loan is a purchase-money security interest. — Abbr. PMSI. — Also termed *purchase-money interest.* [Cases: Secured Transactions ⇨ 83, 146.]

unperfected security interest. (1957) A security interest held by a creditor who has not established priority over any other creditor. • The only priority is over the debtor. [Cases: Secured Transactions ⇨ 139.]

security rating. 1. The system for grading or classifying a security by financial strength, stability, or risk. • Firms such as *Standard and Poor's* and *Moody's* grade securities. — Also termed *security grade*; *security grading*; *security rate*. **2.** The classification that a given security is assigned to under this system.

secus (**see**-kəs). [Latin] Otherwise; to the contrary.

sedato animo (si-**day**-toh **an**-ə-moh). [Latin] With stated or settled purpose.

se defendendo (**see** def-**en**-**den**-doh), *adv.* [Law Latin] In self-defense; in defending oneself <homicide *se defendendo*>.

"Homicide *se defendendo* is of two kinds. (1) Such, as tho it excuseth from death, yet it excuseth not the forfeiture of goods, . . . (2) Such as wholly acquits from all kinds of forfeiture." 1 Hale P.C. 478.

sedentary work. See WORK (1).

sedente curia (si-**den**-tee **kyoor**-ee-ə). [Latin] The court sitting; during the court sitting.

sede plena (**see**-dee **plee**-nə). [Latin] *Hist.* The see being filled. • This term indicated that a bishop's see was not vacant.

sederunt. See ACT OF SEDERUNT.

sedes (**see**-deez), *n.* [Latin "a seat"] **1.** *Roman law.* A private residence. **2.** *Roman law.* Judicial office; the bench. **3.** *Hist.* A see; a bishop's dignity.

sede vacante (**see**-dee və-**kan**-tee). [Law Latin] *Hist.* The benefice being vacant.

sedge flat. A tract of land below the high-water mark.

sedition, *n.* (14c) **1.** An agreement, communication, or other preliminary activity aimed at inciting treason or some lesser commotion against public authority. **2.** Advocacy aimed at inciting or producing — and likely to incite or produce — imminent lawless action. • At common law, sedition included defaming a member of the royal family or the government. The difference between *sedition* and *treason* is that the former is committed by preliminary steps, while the latter entails some overt act for carrying out the plan. But if the plan is merely for some small commotion, even accomplishing the plan does not amount to treason. Cf. TREASON. [Cases: Insurrection and Sedition ☞ 1.] — **seditious,** *adj.*

"*Sedition* — This, perhaps the very vaguest of all offences known to the Criminal Law, is defined as the speaking or writing of words calculated to excite disaffection against the Constitution as by law established, to procure the alteration of it by other than lawful means, or to incite any person to commit a crime to the disturbance of the peace, or to raise discontent or disaffection, or to promote ill-feeling between different classes of the community. A charge of sedition is, historically, one of the chief means by which Government, especially at the end of the eighteenth and the beginning of the nineteenth century, strove to put down hostile critics. It is evident that the vagueness of the charge is a danger to the liberty of the subject, especially if the Courts of Justice can be induced to take a view favourable to the Government." Edward Jenks, *The Book of English Law* 136 (P.B. Fairest ed., 6th ed. 1967).

Sedition Act. *Hist.* A 1798 federal statute that prohibited the malicious publication of defamatory material about the government, Congress, or the President. • The act expired in 1801.

seditious conspiracy. See CONSPIRACY.

seditious libel. See LIBEL.

seditious speech. See SPEECH.

sed non allocatur (sed non al-ə-**kay**-tər). [Law Latin] *Hist.* But it is not allowed or upheld. • This phrase was formerly used to indicate the court's disagreement with the arguments of counsel.

sed per curiam (sed pər **kyoor**-ee-əm). [Latin] But by the court. • This phrase is used to introduce: (1) a statement made by the court disagreeing with counsel's arguments; or (2) the opinion of the whole court when different from the opinion of the single judge immediately before quoted.

sed quaere (sed **kweer**-ee). [Latin] But inquire; examine this further. • This remark indicates that the correctness of a particular statement is challenged.

seduction. (16c) The offense that occurs when a man entices a woman of previously chaste character to have unlawful intercourse with him by means of persuasion, solicitation, promises, or bribes, or other means not involving force. • Many states have abolished this offense for persons over the age of legal consent. Traditionally, the parent of a young woman had an action to recover damages for the loss of her services. But in measuring damages, the jury could consider not just the loss of services but also the distress and anxiety that the parent had suffered in being deprived of her comfort and companionship. Though seduction was not a crime at common law, many American states made it a statutory crime until the late 20th century. [Cases: Seduction ☞ 29–54.]

sed vide (sed **vi**-dee). [Latin] But see. • This remark, followed by a citation, directs the reader's attention to an authority or a statement that conflicts with or contradicts the statement or principle just given. — Also termed *but see*.

see, *n.* The area or district of a bishop's jurisdiction <the see of Canterbury>.

seed money. Start-up money for a business venture. — Also termed *front money*; *front-end money*.

seeming danger. See DANGER.

segregation, *n.* (16c) **1.** The act or process of separating.

punitive segregation. (1958) The act of removing a prisoner from the prison population for placement in separate or solitary confinement, usu. for disciplinary reasons. — Also termed *punitive isolation*. [Cases: Prisons ☞ 231.]

2. The unconstitutional policy of separating people on the basis of color, nationality, religion, or the like. [Cases: Civil Rights ☞ 1033(1, 1); Constitu-

tional Law ☞214; Schools ☞13(5).] — **segregate,** *vb.* — **segregative,** *adj.*

de facto segregation. (1958) Segregation that occurs without state authority, usu. on the basis of socio-economic factors. [Cases: Civil Rights ☞1033(1); Schools ☞13(5).]

de jure segregation. (1963) Segregation that is permitted by law. [Cases: Civil Rights ☞1033(1); Schools ☞13(5).]

seignior (**seen**-yər), *n.* [Law French] *Hist.* An owner of something; a lord of a fee or manor. — Also spelled *seigneur* (seen- *or* sayn-**yər**); *seignor.* See SEIGNIORY.

seignior in gross (**seen**-yər in **grohs**), *n.* [Law French] A lord having no manor but enjoying the other rights of lordship.

seigniorage (**seen**-yər-ij), *n.* [Law French] **1.** *Hist.* The tenure existing between lord and vassal. **2.** *Hist.* A prerogative of the Crown; specif., the charge for coining bullion into money; mintage. **3.** A royalty. **4.** A profit.

seignioress (**seen**-yər-es *or* -is), *n.* [Law French] *Hist.* A female superior; a lady.

seigniory (**seen**-yər-ee), *n.* [Law French] *Hist.* **1.** The rights and powers of a lord; esp., a grantor's retained right to have the grantee perform services in exchange for the transfer of land. **2.** A lord's dominions; a feudal or manor lordship; esp., land held subject to such a retained right in the grantor. — Also spelled *seignory.*

seigniory in gross (**seen**-yər-ee in **grohs**). See *reputed manor* under MANOR.

seignory. See SEIGNIORY.

seise (seez), *vb.* To invest with seisin or establish as a holder in fee simple; to put in possession <he became seised of half a section of farmland near Amarillo>.

seised to uses. See STANDING SEISED TO USES.

seisin (**see**-zin), *n.* (14c) **1.** *Hist.* Completion of the ceremony of feudal investiture, by which the tenant was admitted into freehold. **2.** Possession of a freehold estate in land; ownership. **3.** *Louisiana law.* The right that the law accords universal successors to own and possess a person's estate directly and immediately upon that person's death. La. Civ. Code arts. 935 *et seq.* — Also spelled *seizin.* — Also termed *vesture*; *seisina*; (in Scots law) *sasine.* [Cases: Property ☞10.]

"Originally, seisin meant simply possession and the word was applicable to both land and chattels. Prior to the fourteenth century it was proper to speak of a man as being seised of land or seised of a horse. Gradually, seisin and possession became distinct concepts. A man could be said to be in possession of chattels, or of lands wherein he had an estate for years, but he could not be said to be seised of them. Seisin came finally to mean, in relation to land, possession under claim of a freehold estate therein. The tenant for years had possession but not seisin; seisin was in the reversioner who had the fee. And although the word 'seisin' appears in modern statutes with a fair degree of frequency, it is usually treated as synonymous with ownership." Cornelius J. Moynihan, *Introduction to the Law of Real Property* 98–99 (2d ed. 1988).

"It is difficult to define seisin satisfactorily. It has nothing to do with 'seizing,' with its implication of violence. To medieval lawyers it suggested the very opposite: peace and quiet. A man who was put in seisin of land was 'set' there and continued to 'sit' there. Seisin thus denotes quiet possession of land, but quiet possession of a particular kind. . . . Although it seems impossible to frame a satisfactory definition . . . , to call it 'that feudal possession of land which only the owner of a freehold estate in freehold land could have' is to express the most important elements." Robert E. Megarry & M.P. Thompson, *A Manual of the Law of Real Property* 27–28 (6th ed. 1993).

actual seisin. See *seisin in deed.*

constructive seisin. See *seisin in law.*

covenant of seisin. See COVENANT (4).

customary seisin. See *quasi-seisin.*

equitable seisin. **1.** Possession or enjoyment of a property interest or right enforceable in equity. **2.** See *seisin in law.*

fictitious seisin. See *seisin in law.*

legal seisin. See *seisin in law.*

livery of seisin. See LIVERY OF SEISIN.

primer seisin (**prim**-ər *or* **prī**-mər **see**-zin). *Hist.* A right of the Crown to receive, from the heir of a tenant who died in possession of a knight's fee, one year's profits of the inherited estate (or half a year's profits if the estate was in reversion); FIRST FRUITS (1).

quasi-seisin. A copyholder's possession of lands, the freehold possession being in the lord. — Also termed *customary seisin.*

seisin in deed. (17c) Actual possession of a freehold estate in land, by oneself or by one's tenant or agent, as distinguished from legal possession. — Also termed *seisin in fact*; *actual seisin.* [Cases: Property ☞10.]

seisin in fact. See *seisin in deed.*

seisin in law. (17c) The right to immediate possession of a freehold estate in land, as when an heir inherits land but has not yet entered it. — Also termed *legal seisin*; *constructive seisin*; *equitable seisin*; *fictitious seisin.* [Cases: Property ☞10.]

"Seisin in law is, when something is done, which the law accounteth a *seisin*; as an inrollment." 2 E. Chambers, *Cyclopedia: Or, an Universal Dictionary of Arts and Sciences* (1743), s.v. SEISIN IN FACT.

seisina (**see**-zin-ə), *n.* [Law Latin] *Hist.* Seisin.

seisina habenda (**see**-zin-ə hə-**ben**-də). See DE SEISINA HABENDA.

seisor (**see**-zər), *n.* One who takes possession of a freehold.

seize, *vb.* (13c) **1.** To forcibly take possession (of a person or property). **2.** To place (someone) in possession. **3.** To be in possession (of property). **4.** To be informed of or aware of (something). See SEISIN; SEIZURE.

seizin. See SEISIN.

seizure, *n.* (15c) The act or an instance of taking possession of a person or property by legal right or process; esp., in constitutional law, a confiscation or arrest that may interfere with a person's reasonable expectation of

privacy. [Cases: Arrest ⚷68(4); Searches and Seizures ⚷13.1.]

constructive seizure. A manifest intent to seize and take possession of another person's property, usu. either by lawfully acquiring actual custody and control of the property or by posting notice of the property's pending foreclosure. [Cases: Attachment ⚷162; Execution ⚷126.]

select committee. See *special committee* under COMMITTEE.

select council. See COUNCIL.

selecti judices (si-**lek**-ti **joo**-di-seez). [Latin] *Roman law.* Jurors on the official panel prepared by the praetor, who for a specific trial were drawn by lot subject to challenge and sworn to office in a similar manner to modern juries.

selective disclosure. (1963) The act of divulging part of a privileged communication, or one of several privileged communications, usu. because the divulged portion is helpful to the party giving the information, while harmful portions of the communication are withheld. • Such a disclosure can result in a limited waiver of the privilege for all communications on the same subject matter as the divulged portion. [Cases: Privileged Communications and Confidentiality ⚷20.]

selective-draft law. A statute empowering the federal government to conscript citizens for military duty. • The constitutionality of the first selective-draft law was challenged and upheld in the Selective-Draft-Law Cases. *See Arver v. United States*, 245 U.S. 366, 38 S.Ct. 159 (1918). [Cases: Armed Services ⚷20, 40.1.]

selective enforcement. (1958) The practice of law-enforcement officers who use wide or even unfettered discretion about when and where to carry out certain laws; esp., the practice of singling a person out for prosecution or punishment under a statute or regulation because the person is a member of a protected group or because the person has exercised or is planning to exercise a constitutionally protected right. — Also termed *selective prosecution.* Cf. *vindictive prosecution* under PROSECUTION. [Cases: Constitutional Law ⚷223, 250.1(3); Criminal Law ⚷37.10.]

> "The chief of police of a New England town once declared to the press that he believed in a strict curfew law, 'selectively enforced.' 'Selective enforcement' in this case means that the policeman decides for himself who ought to be sent home from the street; legislative candour would suggest that if this is the intention it ought to be expressed in the law itself, instead of being concealed behind words that are 'strict' and categorical." Lon L. Fuller, *Anatomy of the Law* 42 (1968).

selective incorporation. See INCORPORATION.

selective prosecution. (1967) **1.** SELECTIVE ENFORCEMENT. **2.** The practice or an instance of a criminal prosecution brought at the discretion of a prosecutor rather than one brought as a matter of course in the normal functioning of the prosecuting authority's office. • Selective prosecution violates the Equal Protection Clause of the Fourteenth Amendment if a defendant is singled out for prosecution when others similarly situated have not been prosecuted and the prosecutor's reasons for doing so are impermissible.

selective prospectivity. (1991) A court's decision to apply a new rule of law in the particular case in which the new rule is announced, but to apply the old rule in all other cases pending at the time the new rule is announced or in which the facts predate the new rule's announcement. [Cases: Courts ⚷100(1).]

Selective Service System. The federal agency that registers all persons 18–26 who are eligible for military service military service and provides personnel to the Armed Forces during emergencies. • It was established in 1940 as a part of the War Manpower Commission and became independent in 1943. — Abbr. SSS. [Cases: Armed Services ⚷20.8.]

selectman. A municipal officer elected annually in some New England towns to transact business and perform some executive functions. [Cases: Towns ⚷26.]

self-applying, *adj.* (1894) (Of a statute, ordinance, etc.) requiring no more for interpretation than a familiarity with the ordinary meanings of words.

self-authentication. See AUTHENTICATION.

self-canceling installment note. See NOTE (1).

self-crimination. See SELF-INCRIMINATION.

self-critical-analysis privilege. See PRIVILEGE (3).

self-dealing, *n.* (1940) Participation in a transaction that benefits oneself instead of another who is owed a fiduciary duty. • For example, a corporate director might engage in self-dealing by participating in a competing business to the corporation's detriment. Cf. FAIR DEALING (1), (2). [Cases: Corporations ⚷315, 316.] — **self-deal,** *vb.*

self-defense, *n.* (1651) **1.** The use of force to protect oneself, one's family, or one's property from a real or threatened attack. • Generally, a person is justified in using a reasonable amount of force in self-defense if he or she reasonably believes that the danger of bodily harm is imminent and that force is necessary to avoid this danger. — Also termed *defense of self.* Cf. *adequate provocation* under PROVOCATION. [Cases: Assault and Battery ⚷13, 67; Homicide ⚷766.]

> "The law of self-defence, as it is applied by the courts, turns on two requirements: the force must have been necessary, and it must have been reasonable." Andrew Ashworth, *Principles of Criminal Law* 114 (1991).

imperfect self-defense. (1882) The use of force by one who makes an honest but unreasonable mistake that force is necessary to repel an attack. • In some jurisdictions, such a self-defender will be charged with a lesser offense than the one committed. [Cases: Homicide ⚷686.]

perfect self-defense. (1883) The use of force by one who accurately appraises the necessity and the amount of force to repel an attack.

2. *Int'l law.* The right of a state to defend itself against a real or threatened attack. *See* United Nations Charter,

art. 51 (59 Stat. 1031). — Also spelled (esp. in BrE) *self-defence*. — **self-defender,** *n.*

"Self-defence, properly understood, is a legal right, and as with other legal rights the question whether a specific state of facts warrants its exercise is a legal question. It is not a question on which a state is entitled, in any special sense, to be a judge in its own cause." J.L. Brierly, *The Law of Nations* 319 (5th ed. 1955).

self-destruct clause. A provision in a trust for a condition that will automatically terminate the trust. • Discretionary trusts, esp. supplemental-needs trusts, often include a self-destruct provision. For example, a trust to provide for the needs of a disabled person may terminate if the beneficiary becomes ineligible for a government-benefits program such as Medicaid.

self-destruction. See SUICIDE (1).

self-determination contract. See CONTRACT.

self-determination election. See GLOBE ELECTION.

self-disserving declaration. *Hist.* See *declaration against interest* under DECLARATION (6).

self-employed retirement plan. See KEOGH PLAN.

self-employment tax. See TAX.

self-evaluation privilege. See *self-critical-analysis privilege* under PRIVILEGE (3).

self-executing, *adj.* (1857) (Of an instrument) effective immediately without the need of any type of implementing action <the wills had self-executing affidavits attached>. • Legal instruments may be self-executing according to various standards. For example, treaties are self-executing under the Supremacy Clause of the U.S. Constitution (art. VI, § 2) if textually capable of judicial enforcement and intended to be enforced in that manner.

self-help, *n.* (1831) An attempt to redress a perceived wrong by one's own action rather than through the normal legal process. • The UCC and other statutes provide for particular self-help remedies (such as repossession) if the remedy can be executed without breaching the peace. UCC § 9-609. — Also termed *self-redress*; *extrajudicial enforcement*. [Cases: Secured Transactions ⚷228.]

"Notice to the debtor is generally not required prior to self-help repossession of collateral by the creditor upon default, although the provision for self-help repossession has been held to violate due process requirements in some instances, and states under the Uniform Consumer Credit Code require particular notice requirements. Furthermore, while the UCC generally does not require notice to the debtor upon self-help repossession of the collateral upon the debtor's default, the agreement between the parties may require such notice prior to repossession." 68A Am. Jur. 2d *Secured Transactions* § 608, at 466 (1993).

self-help remedy. See *extrajudicial remedy* under REMEDY.

self-incrimination. (1853) The act of indicating one's own involvement in a crime or exposing oneself to prosecution, esp. by making a statement. — Also termed *self-crimination*; *self-inculpation*. See RIGHT AGAINST SELF-INCRIMINATION. [Cases: Criminal Law ⚷393; Witnesses ⚷297.]

Self-Incrimination Clause. (1925) The clause of the Fifth Amendment to the U.S. Constitution barring the government from compelling criminal defendants to testify against themselves. [Cases: Witnesses ⚷299.]

self-inculpation. See SELF-INCRIMINATION.

self-induced frustration. See FRUSTRATION.

self-induced intoxication. See *voluntary intoxication* under INTOXICATION.

self-insurance. See INSURANCE.

self-insured retention. *Insurance.* The amount of an otherwise-covered loss that is not covered by an insurance policy and that usu. must be paid before the insurer will pay benefits <the defendant had a $1 million CGL policy to cover the loss, but had to pay a self-insured retention of $100,000, which it had agreed to so that the policy premium would be lower>. — Abbr. SIR. Cf. DEDUCTIBLE. [Cases: Insurance ⚷2283.]

self-killing. See SUICIDE (1).

self-liquidating mortgage. See *amortized mortgage* under MORTGAGE.

self-murder. See SUICIDE (1).

self-policing privilege. See *self-critical-analysis privilege* under PRIVILEGE (3).

self-proved will. See WILL.

self-proving affidavit. See AFFIDAVIT.

self-redress. See SELF-HELP.

self-regulation. See REGULATION (1).

self-regulatory organization. A nongovernmental organization that is statutorily empowered to regulate its members by adopting and enforcing rules of conduct, esp. those governing fair, ethical, and efficient practices. — Abbr. SRO.

self-represented litigant. See PRO SE.

self-serving declaration. See DECLARATION (6).

self-settled trust. See TRUST.

self-slaughter. See SUICIDE (1).

self-stultification. (1862) The act or an instance of testifying about one's own deficiencies. See STULTIFY.

sell, *vb.* (bef. 12c) To transfer (property) by sale.

seller. (13c) **1.** A person who sells or contracts to sell goods; a vendor. UCC § 2-103(1)(d). [Cases: Sales ⚷15.] **2.** Generally, a person who sells anything; the transferor of property in a contract of sale.

seller's market. See MARKET.

seller's option. See OPTION.

selling agent. See AGENT (2).

selling price. See *sales price* under PRICE.

sell-off, *n.* A period when heavy pressure to sell causes falling stock-market prices.

sell order. See ORDER (8).

semble (**sem**-bəl). [Law French] (1817) It seems; it would appear <semble that the parties' intention was to create a binding agreement>. • This term is used chiefly to indicate an obiter dictum in a court opinion or to introduce an uncertain thought or interpretation. — Abbr. sem.; semb.

semestria (si-**mes**-tree-ə), *n.* [Latin "half-yearly matters"] *Roman law.* The collected decisions of Roman emperors, issued every six months.

Semiconductor Chip Protection Act. *Intellectual property.* A 1984 statute protecting manufacturers against the unauthorized copying or use of semiconductor chips and the mask works used to manufacture them. • Semiconductor chips do not qualify for patent protection since technological advancements are small and usu. obvious. Mask works are multi-layered, three-dimensional templates used to produce semiconductor chips. Mask-work design is more functional than expressive and so traditional copyright protection was inapplicable until 1984. The Act provides copyright protection to the mask works for a period of ten years. 17 USCA §§ 901–914. — Abbr. SCPA. [Cases: Copyrights and Intellectual Property ⇨10.4.]

semi-free software. Software that does not include source code but comes with permission for individuals to use, copy, modify, and distribute the software for nonprofit purposes. Cf. FREEWARE; PROPRIETARY SOFTWARE; SHAREWARE.

semi-matrimonium (**sem**-ɪ ma-trə-**moh**-nee-əm), *n.* [Latin] A half-marriage.

seminary. 1. An educational institution such as a college, academy, or other school; esp., one that trains students for the clergy. [Cases: Colleges and Universities ⇨1.] **2.** The building in which the institution performs its functions.

seminaufragium (sem-ɪ-naw-**fray**-jee-əm), *n.* [Latin] *Hist.* A half-shipwreck, as when goods are cast overboard in a storm or when a damaged ship's repair costs are more than the ship's worth.

semiplena probatio (sem-ɪ-**plee**-nə proh-**bay**-shee-oh), *n.* [Latin] Half-proof.

> "In actions of filiation, a pursuer was formerly entitled, on adducing a *semiplena probatio*, to her oath in supplement to prove that the defender was the father of her child. A *semiplena probatio* was such a proof as induced, not merely a suspicion, but a reasonable belief that the pursuer's case was well-founded, and consisted generally of a proof of opportunity for connection, acts of familiarity on the part of the defender towards the pursuer, &c . . . ." John Trayner, *Trayner's Latin Maxims* 569 (4th ed. 1894).

semi-secret trust. See TRUST.

semi-skilled work. See WORK (1).

semper (**sem**-pər). [Latin] Always. • This term introduces several Latin maxims, such as *semper in dubiis benigniora praeferenda sunt* ("in doubtful cases, the more favorable constructions are always to be preferred").

semper paratus. A defendant's pleading that he or she has always been ready to perform as the plaintiff demanded.

senage (**see**-nij). [French] Money paid for synodals; tribute-money. See SYNODAL.

senate. (13c) **1.** The upper chamber of a bicameral legislature. [Cases: States ⇨26.] **2.** (*cap.*) The upper house of the U.S. Congress, composed of 100 members — two from each state — who are elected to six-year terms. — Abbr. S. [Cases: United States ⇨7.1.]

senate bill. See BILL (3).

senator. (13c) A person who is a member of a senate.

senatores (sen-ə-**tor**-eez), *n. pl.* [Latin] *Roman law.* **1.** Members of the Roman senate. **2.** Members of municipal councils.

senatorial courtesy. (1884) **1.** The tradition that the President should take care in filling a high-level federal post (such as a judgeship) with a person agreeable to the senators from the nominee's home state, lest the senators defeat confirmation. [Cases: Judges ⇨3.]

> "The risk of a deadlock is minimized by [the President's] consulting informally with the Senators from the State in which the office lies, if they are members of his own political party. Actually this amounts in most instances to his taking the advice of these two Senators as to a selection. A nomination approved by them is practically certain of final confirmation by the Senate as a whole. The arrangement is a 'log-rolling' one, which has been dignified by the name of 'Senatorial courtesy.' 'If you will help me to get the appointments I want in my State, I will help you get the appointments you want in your State.'" Herbert W. Horwill, *The Usages of the American Constitution* 129 (1925).

2. Loosely, civility among senators <a decline of senatorial courtesy>.

Senator of the College of Justice. *Scots law.* See LORD OF SESSION.

senatus (si-**nay**-təs), *n.* [Latin] *Roman law.* **1.** The Roman senate. **2.** The meeting place for the Roman senate.

senatus consulto (si-**nay**-təs kən-**səl**-toh). [Latin] *Roman law.* By the decree of the Senate.

senatus consultum (si-**nay**-təs kən-**səl**-təm). [Latin] *Roman law.* In the Republic, a resolution of the Roman Senate, which did not have the force of law (though usu. followed). • In the first century A.D., these resolutions replaced the legislation of the *comitia*, but by the end of the second century, they were merely the Senate's official expression of the imperial will. The senate often adopted the text of a speech (*oratio*) by the emperor. — Sometimes written *senatusconsultum*. — Also termed *senatus consult*. — Abbr. S.C. Pl. ***senatus consulta.***

> "*Senatus consulta.* — In the regal and republican periods the Senate enjoyed no legislative power. It was an advisory body, nominated by the King, and at first purely patrician. Later it . . . included patricians and plebeians . . . its chief duty still being to tender advice to the magistrates . . . . The theory still was, till the time of Hadrian, that *senatus consulta* were directions to the magistrates, who were now in fact, if not in name, bound to give effect to them, till by a process of gradual usurpation *senatus consulta* came to be direct legislation." R.W. Leage, *Roman Private Law* 12–13 (C.H. Ziegler ed., 2d ed. 1930).

senatus consultum Macedonianum (si-**nay**-təs kən-**səl**-təm mas-ə-doh-nee-**ay**- nəm). [Latin "Macedo's Resolution"] *Roman law.* A senate decree under Vespasian to protect fathers from children in their power who had borrowed excessive sums in expectation of their father's death, by making actions to recover such loans unlawful. — Also termed *Macedonian Decree.*

> "In the principate of Vespasian, 69-79 A.D., a *senatus consultum* was passed which forbade loans to a *filius-familias.* It was called the *senatus consultum — Macedonianum,* after one Macedo, a usurer who had made such a loan and thereby instigated a hard-pressed debtor to kill his father in order to enter into his inheritance. To prevent tragic possibilities like these, the *senatus consultum* declared that no action would lie to recover money lent to a *filius-familias.*" Max Radin, *Handbook of Roman Law* 188-89 (1927).

> "The *senatus consultum Macedonianum* reads as follows: 'Whereas Macedo's borrowings gave him an added incentive to commit a crime to which he was naturally predisposed and whereas those who lend money on terms which are dubious, to say the least, often provide evil men with the means of wrongdoing, it has been decided, in order to teach pernicious moneylenders that a son's debt cannot be made good by waiting for his father's death, that a person who has lent money to a son-in-power is to have no claim or action even after the death of the person in whose power he was.'" *Digest of Justinian* 14.6.1 (Ulpian, Ad Sabinum 49).

senatus consultum ultimum necessitatis (si-**nay**-təs kən-**səl**-təm **əl**-tə-mee nə-ses-i-**tay**-tis). [Latin] *Roman law.* A decree of the senate of the last necessity. • This decree usu. preceded the nomination of a leader with absolute power in a time of emergency. — Also termed *senatus consultum ultimae necessitatis.*

senatus consultum Velleianum (si-**nay**-təs kən-**səl**-təm vel-ee-**ay**-nəm). [Latin "Velleian Decree"] *Roman law.* A senate decree, probably of A.D. 46, to protect women from making unconscionable guarantees, suretyship undertakings, or debt assumptions for their husbands and for others generally, by making actions to enforce such undertakings unlawful.

senatus decreta (si-**nay**-təs di-**kree**-tə). [Latin] *Roman law.* The senate's decisions.

sending state. See STATE.

senescallus (sen-əs-**kal**-əs), *n.* [Law Latin] See SENESCHAL.

seneschal (**sen**-ə-shəl), *n.* [Law French] *Hist.* **1.** A French title of office, equivalent to a steward in England. • A seneschal was originally a duke's lieutenant or a lieutenant to other dignities of the kingdom. **2.** The steward of a manor. **3.** *Hist.* An administrative or judicial officer, such as the governor of a city or province. — Also termed *senescallus.*

senility. (18c) Mental feebleness or impairment caused by old age. • A senile person (in the legal, as opposed to the popular, sense) is incompetent to enter into a binding contract or to execute a will. — Also termed *senile dementia* (**see**-nil di-**men**-shee-ə). [Cases: Mental Health ☞3.] — **senile,** *adj.*

senior, *adj.* (14c) **1.** (Of a debt, etc.) first; preferred, as over junior obligations. **2.** (Of a person) older than someone else. **3.** (Of a person) higher in rank or service. **4.** (Of a man) elder, as distinguished from the man's son who has the same name.

senior administrative patent judge. See JUDGE.

senior counsel. 1. See *lead counsel* under COUNSEL. **2.** See KING'S COUNSEL; QUEEN'S COUNSEL.

senior debt. See DEBT.

senior interest. See INTEREST (2).

seniority. (15c) **1.** The preferential status, privileges, or rights given to an employee based on the employee's length of service with an employer. • Employees with seniority may receive additional or enhanced benefit packages and obtain competitive advantages over fellow employees in layoff and promotional decisions. **2.** The status of being older or senior.

seniority system. *Employment law.* Any arrangement that recognizes length of service in making decisions about job layoffs and promotions or other advancements.

senior judge. See JUDGE.

senior lien. See LIEN.

senior mortgage. See MORTGAGE.

senior partner. See PARTNER.

senior party. *Intellectual property.* In an interference proceeding, the first person to file an application for a property's legal protection, e.g., an invention patent or a trademark registration. • In the United States, merely being the first to file does not entitle the party to the protection. The proceeding's administrator also takes other factors into account. For instance, in a patent-interference proceeding the invention's conception date and the inventor's diligence in reducing the invention to practice are relevant factors. Priority in the filing date is prima facie evidence that the senior party is the first inventor, so the challenger has the burden of proof. Cf. JUNIOR PARTY. [Cases: Patents ☞106(1).]

senior security. See SECURITY.

senior status. (1970) The employment condition of a semiretired judge who continues to perform certain judicial duties that the judge is willing and able to undertake. [Cases: Judges ☞7.]

senior user. *Trademarks.* The first person to use a mark. • That person is usu. found to be the mark's owner. — Also termed *first user.* Cf. JUNIOR USER. [Cases: Trademarks ☞1137.]

sensitivity training. (1956) One or more instructional sessions for management and employees, designed to counteract the callous treatment of others, esp. women and minorities, in the workplace.

sensus (**sen**-səs). [Latin] *Hist.* Sense; meaning; signification. • The word appears in its inflected form in phrases such as *malo sensu* ("an evil sense"), *mitiori sensu* ("in a milder sense"), and *sensu honesto* ("in an honest sense").

sentence, *n.* (14c) The judgment that a court formally pronounces after finding a criminal defendant guilty; the punishment imposed on a criminal wrongdoer <a sentence of 20 years in prison>. *See* Fed. R. Crim. P. 32. — Also termed *judgment of conviction.* [Cases: Sentencing and Punishment ☞1001.] — **sentence,** *vb.*

accumulative sentences. See *consecutive sentences.*

aggregate sentence. (1917) A sentence that arises from a conviction on multiple counts in an indictment. [Cases: Sentencing and Punishment ☞642–643.]

alternative sentence. (1841) A sentence other than incarceration. • Examples include community service and victim restitution. — Also termed *creative sentence.* [Cases: Sentencing and Punishment ☞2049, 2100–2217.]

blended sentence. In a juvenile-delinquency disposition, a sanction that combines delinquency sanctions and criminal punishment.

concurrent sentences. (1905) Two or more sentences of jail time to be served simultaneously. • For example, if a convicted criminal receives concurrent sentences of 5 years and 15 years, the total amount of jail time is 15 years. [Cases: Sentencing and Punishment ☞547.]

conditional sentence. (1843) A sentence of confinement if the convicted criminal fails to perform the conditions of probation. [Cases: Sentencing and Punishment ☞1960–1988.]

consecutive sentences. (1844) Two or more sentences of jail time to be served in sequence. • For example, if a convicted criminal receives consecutive sentences of 20 years and 5 years, the total amount of jail time is 25 years. — Also termed *cumulative sentences; accumulative sentences.* [Cases: Sentencing and Punishment ☞545.]

consolidated sentence. See *general sentence.*

creative sentence. See *alternative sentence.*

death sentence. (1811) A sentence that imposes the death penalty. See Model Penal Code § 210.6. — Also termed *judgment of blood.* See DEATH PENALTY. [Cases: Sentencing and Punishment ☞1610, 1787.]

deferred sentence. (1915) A sentence that will not be carried out if the convicted criminal meets certain requirements, such as complying with conditions of probation. [Cases: Sentencing and Punishment ☞2051–2054.]

delayed sentence. (1906) A sentence that is not imposed immediately after conviction, thereby allowing the convicted criminal to satisfy the court (usu. by complying with certain restrictions or conditions during the delay period) that probation is preferable to a prison sentence. [Cases: Sentencing and Punishment ☞2051–2054.]

determinate sentence. (1885) A sentence for a fixed length of time rather than for an unspecified duration. — Also termed *definite sentence; definitive sentence; fixed sentence; flat sentence; straight sentence.* [Cases: Sentencing and Punishment ☞1053, 1054.]

excessive sentence. (1879) A sentence that gives more punishment than is allowed by law. [Cases: Sentencing and Punishment ☞34, 1480, 1483.]

fixed sentence. **1.** See *determinate sentence.* **2.** See *mandatory sentence.*

flat sentence. See *determinate sentence.*

general sentence. (1891) An undivided, aggregate sentence in a multicount case; a sentence that does not specify the punishment imposed for each count. • General sentences are prohibited. — Also termed *consolidated sentence.* [Cases: Sentencing and Punishment ☞1060.]

indeterminate sentence. (1885) **1.** A sentence of an unspecified duration, such as one for a term of 10 to 20 years. [Cases: Sentencing and Punishment ☞1057–1059, 1125–1127.] **2.** A maximum prison term that the parole board can reduce, through statutory authorization, after the inmate has served the minimum time required by law. — Also termed *indefinite sentence.* See INDETERMINATE SENTENCING.

intermittent sentence. (1964) A sentence consisting of periods of confinement interrupted by periods of freedom. — Also termed (when served on weekends) *weekend sentence.*

life sentence. (1878) A sentence that imprisons the convicted criminal for life — though in some jurisdictions the prisoner may become eligible for release on good behavior, rehabilitation, or the like. [Cases: Sentencing and Punishment ☞1055, 1120.]

mandatory sentence. (1926) A sentence set by law with no discretion for the judge to individualize punishment. — Also termed *mandatory penalty; mandatory punishment; fixed sentence.* [Cases: Sentencing and Punishment ☞1053, 1054.]

maximum sentence. (1898) The highest level of punishment provided by law for a particular crime. [Cases: Sentencing and Punishment ☞1059, 1127.]

minimum sentence. (1891) The least amount of time that a convicted criminal must serve in prison before becoming eligible for parole. [Cases: Sentencing and Punishment ☞1057, 1126.]

multiple sentences. (1938) Concurrent or consecutive sentences, if a convicted criminal is found guilty of more than one offense. [Cases: Sentencing and Punishment ☞500.]

nominal sentence. (1852) A criminal sentence in name only; an exceedingly light sentence.

noncustodial sentence. (1971) A criminal sentence (such as probation) not requiring prison time.

presumptive sentence. (1978) An average sentence for a particular crime (esp. provided under sentencing guidelines) that can be raised or lowered based on the presence of mitigating or aggravating circumstances. [Cases: Sentencing and Punishment ☞34, 654.]

prior sentence. (1863) A sentence previously imposed on a criminal defendant for a different offense, whether by a guilty verdict, a guilty plea, or a *nolo contendere*. [Cases: Sentencing and Punishment ☞ 630–637.]

split sentence. (1927) A sentence in which part of the time is served in confinement — to expose the offender to the unpleasantness of prison — and the rest on probation. See *shock probation* under PROBATION. [Cases: Sentencing and Punishment ☞ 1934, 1936.]

straight sentence. See *determinate sentence*.

suspended sentence. (1919) A sentence postponed so that the convicted criminal is not required to serve time unless he or she commits another crime or violates some other court-imposed condition. • A suspended sentence, in effect, is a form of probation. — Also termed *withheld sentence*. [Cases: Sentencing and Punishment ☞ 1804–1810.]

weekend sentence. See *intermittent sentence*.

sentence bargain. See PLEA BARGAIN.

sentence cap. *Military law.* A pretrial plea agreement in a court-martial proceeding by which a ceiling is placed on the maximum penalty that can be imposed. [Cases: Military Justice ☞ 990, 1326.]

sentenced to time served. (1959) A sentencing disposition whereby a criminal defendant is sentenced to the same jail time that the defendant is credited with serving while in custody awaiting trial. • The sentence results in the defendant's release from custody. Cf. BALANCE OF SENTENCE SUSPENDED. [Cases: Sentencing and Punishment ☞ 1156.]

sentence-factor manipulation. See *sentencing entrapment* under ENTRAPMENT.

sentence-package rule. (1996) *Criminal procedure.* The principle that a defendant can be resentenced on an aggregate sentence — that is, one arising from a conviction on multiple counts in an indictment — when the defendant successfully challenges part of the conviction, as by successfully challenging some but not all of the counts.

sentencing. The judicial determination of the penalty for a crime.

determinate sentencing. See *mandatory sentencing*.

discretionary sentencing. See *indeterminate sentencing*.

fixed sentencing. See *mandatory sentencing*.

indeterminate sentencing. Sentencing that is left up to the court, with few or very flexible guidelines. — Also termed *discretionary sentencing*. [Cases: Sentencing and Punishment ☞ 1057–1059, 1125–1127.]

mandatory sentencing. A statutorily specified penalty that automatically follows a conviction for the offense, often with a minimum mandatory term. — Also termed *determinate sentencing*; *fixed sentencing*. [Cases: Sentencing and Punishment ☞ 1053, 1054.]

presumptive sentencing. A statutory scheme that prescribes a sentence or range of sentences for an offense but allows the court some flexibility in atypical cases. [Cases: Sentencing and Punishment ☞ 34, 654.]

sentencing council. (1973) A panel of three or more judges who confer to determine a criminal sentence. • Sentencing by a council occurs less frequently than sentencing by a single trial judge.

sentencing entrapment. See ENTRAPMENT.

sentencing guidelines. (1970) A set of standards for determining the punishment that a convicted criminal should receive, based on the nature of the crime and the offender's criminal history. • The federal government and several states have adopted sentencing guidelines in an effort to make judicial sentencing more consistent. [Cases: Sentencing and Punishment ☞ 650–998.]

sentencing hearing. See PRESENTENCE HEARING.

sentencing phase. See PENALTY PHASE.

Sentencing Reform Act of 1984. A federal statute enacted to bring greater uniformity to punishments assessed for federal crimes by creating a committee of federal judges and other officials (the United States Sentencing Commission) responsible for producing sentencing guidelines to be used by the federal courts. 28 USCA § 994(a)(1).

Sentencing Table. A reference guide used by federal courts to calculate the appropriate punishment under the sentencing guidelines by taking into account the gravity of the offense and the convicted person's criminal history. [Cases: Sentencing and Punishment ☞ 666–871.]

sententia (sen-**ten**-shee-ə), *n.* [Latin] *Roman & civil law.* **1.** Sense; meaning. **2.** An opinion, esp. a legal opinion. **3.** A judicial decision.

sententia voluntatis (sen-**ten**-shee-ə vol-ən-**tay**-tis). [Law Latin] *Hist.* The determination of the will.

SEP. *abbr.* See *simplified employee pension plan* under EMPLOYEE BENEFIT PLAN.

separability. *Copyright.* An element of various judicial tests used to determine whether a design in a functional article is a copyrightable work of applied art, or an uncopyrightable industrial design, the test being based on whether the beholder separates the work's artistic appearance from its useful function. • Some courts use a strict physical separability test, but most look at whether the work's two roles are conceptually separate. [Cases: Copyrights and Intellectual Property ☞ 4.]

separability clause. See SEVERABILITY CLAUSE.

separable, *adj.* (14c) Capable of being separated or divided <a separable controversy>.

separable controversy. See CONTROVERSY.

separaliter (sep-ə-**ray**-lə-tər). [Latin] *Hist.* Separately. • This term was formerly used in an indictment to emphasize that multiple defendants were being charged with separate offenses, when it appeared from the general

language of the indictment that the defendants were jointly charged.

separate, *adj.* (15c) (Of liability, cause of action, etc.) individual; distinct; particular; disconnected.

separate action. See ACTION (4).

separate and apart. See LIVING SEPARATE AND APART.

separate-but-equal doctrine. (1950) The now-defunct doctrine that African-Americans could be segregated if they were provided with equal opportunities and facilities in education, public transportation, and jobs. • This rule was established in *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138 (1896), and overturned in *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686 (1954). [Cases: Schools ⇨13(2).]

separate caucus. See CAUCUS.

separate count. See COUNT.

separate covenant. See *several covenant* under COVENANT (1).

separate demise. See DEMISE.

separate estate. See ESTATE (1).

separate examination. (18c) **1.** The private interrogation of a witness, apart from the other witnesses in the same case. **2.** The interrogation of a wife outside the presence of her husband by a court clerk or notary for the purpose of acknowledging a deed or other instrument. • This was done to ensure that the wife signed without being coerced to do so by her husband.

separate goodwill. See *personal goodwill* under GOODWILL.

separate maintenance. See MAINTENANCE.

separate offense. See OFFENSE (1).

separate property. (18c) **1.** Property that a spouse owned before marriage or acquired during marriage by inheritance or by gift from a third party, and in some states property acquired during marriage but after the spouses have entered into a separation agreement and have begun living apart or after one spouse has commenced a divorce action. — Also termed *individual property*. Cf. COMMUNITY PROPERTY; *marital property* under PROPERTY. [Cases: Divorce ⇨252.3(3).] **2.** In some common-law states, property titled to one spouse or acquired by one spouse individually during marriage. **3.** Property acquired during the marriage in exchange for separate property (in sense 1 or sense 2).

separate-property state. See COMMON-LAW STATE (2).

separate return. See TAX RETURN.

separate-sovereigns rule. (1995) *Criminal procedure.* The principle that a person may be tried twice for the same offense — despite the Double Jeopardy Clause — if the prosecutions are conducted by separate sovereigns, as by the federal government and a state government or by two different states. See DOUBLE JEOPARDY. [Cases: Double Jeopardy ⇨183.]

separate-spheres doctrine. *Hist. Family law.* The common-law doctrine that wives were limited to control of the home — the personal or domestic sphere — and that husbands had control of the public sphere. • Under this-early-19th century doctrine, the wife was to tend to the home and family and the husband was to be the breadwinner. — Also termed *doctrine of separate spheres*.

separate support. See *separate maintenance* under MAINTENANCE.

separate trading of registered interest and principal of securities. A treasury security by which the owner receives either principal or interest, but usu. not both. — Abbr. STRIP.

separate trial. See TRIAL.

separatim (sep-ə-**ray**-tim). [Latin] *Hist.* Severally. • This term referred to the formation of several covenants in a deed.

separatio (sep-ə-**ray**-shee-oh), *n.* See FRUCTUS (1).

separatio bonorum. See BENEFICIUM SEPARATIONIS.

separation. (17c) **1.** An arrangement whereby a husband and wife live apart from each other while remaining married, either by mutual consent (often in a written agreement) or by judicial decree; the act of carrying out such an arrangement. — Also termed *separation from bed and board*. See *divorce a mensa et thoro* under DIVORCE. [Cases: Divorce ⇨155; Husband and Wife ⇨277.] **2.** The status of a husband and wife having begun such an arrangement, or the judgment or contract that brought about the arrangement. — Also termed (in both senses) *legal separation*; *judicial separation*. **3.** Cessation of a contractual relationship, esp. in an employment situation. — **separate,** *vb.*

separation agreement. (1886) **1.** An agreement between spouses in the process of a divorce or legal separation concerning alimony, maintenance, property division, child custody and support, and the like. — Also termed *separation order* (if approved or sanctioned judicially). See *temporary order* under ORDER. **2.** DIVORCE AGREEMENT. [Cases: Husband and Wife ⇨277.]

separation a mensa et thoro. See *divorce a mensa et thoro* under DIVORCE.

separation from bed and board. **1.** SEPARATION (1). **2.** See *divorce a mensa et thoro* under DIVORCE.

separation of patrimony. *Civil law.* The act of providing creditors of a succession the right to collect against the class of estate property from which the creditors should be paid, by separating certain succession property from property rights belonging to the heirs. [Cases: Descent and Distribution ⇨137.]

separation of powers. (1896) The division of governmental authority into three branches of government — legislative, executive, and judicial — each with specified duties on which neither of the other branches can encroach; a constitutional doctrine of checks and balances designed to protect the people against tyranny. Cf. DIVISION OF POWERS. [Cases: Constitutional Law ⇨2330–2626.]

"[T]he doctrine of the separation of powers was adopted by the convention of 1787 not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy." Justice Louis Brandeis (as quoted in Roscoe Pound, *The Development of Constitutional Guarantees of Liberty* 94 (1957)).

"Although in political theory much has been made of the vital importance of the separation of powers, it is extraordinarily difficult to define precisely each particular power. In an ideal state we might imagine a legislature which had supreme and exclusive power to lay down general rules for the future without reference to particular cases; courts whose sole function was to make binding orders to settle disputes between individuals which were brought before them by applying these rules to the facts which were found to exist; an administrative body which carried on the business of government by issuing particular orders or making decisions of policy within the narrow confines of rules of law that it could not change. The legislature makes, the executive executes, and the judiciary construes the law." George Whitecross Paton, *A Textbook of Jurisprudence* 330 (G.W. Paton & David P. Derham eds., 4th ed. 1972).

"Separation of powers means something quite different in the European context from what it has come to mean in the United States. . . . Separation of powers to an American evokes the familiar system of checks and balances among the three coordinate branches of government — legislative, executive, and judiciary — each with its independent constitutional basis. To a European, it is a more rigid doctrine and inseparable from the notion of legislative supremacy." Mary Ann Glendon et al., *Comparative Legal Traditions* 67 (1994).

separation of witnesses. (1819) The exclusion of witnesses (other than the plaintiff and defendant) from the courtroom to prevent them from hearing the testimony of others. [Cases: Criminal Law ⇨665; Federal Civil Procedure ⇨2012; Trial ⇨41.]

separation order. 1. See SEPARATION AGREEMENT. **2.** See ORDER (2).

separation pay. See SEVERANCE PAY.

separatio tori (sep-ə-**ray**-shee-oh **tor**-ī). [Law Latin] *Hist.* A separation of the marriage bed. See A MENSA ET THORO.

separator, *n. Oil & gas.* Equipment used at a well site to separate oil, water, and gas produced in solution with oil. • Basic separators simply heat oil to speed the natural separation process. More complex separators may use chemicals.

separatum tenementum (sep-ə-**ray**-təm ten-ə-**men**-təm). [Law Latin] *Hist.* A separate tenement.

SEP-IRA. See *simplified employee pension plan* under EMPLOYEE BENEFIT PLAN.

sequatur sub suo periculo (si-**kway**-tər səb s[y]**oo**-oh pə-**rik**-[y]ə-loh), *n.* [Law Latin "let him follow at his peril"] *Hist.* A writ available when a sheriff returned nihil to several summonses; specif., a writ issued after the sheriff returned nihil to a warrant *ad warrantizandum* and following an *alias* and a *pluries* writ. See SICUT ALIAS.

sequela (si-**kwee**-lə), *n.* [Latin "that which follows"] *Hist.* Suit; process, as in *sequela curiae* ("a suit of court") and *sequela causae* ("the process of a cause"). Pl. ***sequelae*** (si-**kwee**-lee).

sequela villanorum (si-**kwee**-lə vil-ə-**nor**-əm). [Law Latin] *Hist.* The family and appurtenances to a villein's goods, which were at the lord's disposal.

sequence listing. *Patents.* A description of the nucleotide or amino-acid chain in a biotechnological invention.

sequential journal. See JOURNAL OF NOTARIAL ACTS.

sequential marriage. See BIGAMY (2).

sequester (si-**kwes**-tər), *n.* (14c) **1.** An across-the-board cut in government spending. [Cases: States ⇨121.] **2.** A person with whom litigants deposit property being contested until the case has concluded; a sequestrator.

sequester, *vb.* (15c) **1.** To seize (property) by a writ of sequestration. [Cases: Sequestration ⇨15.] **2.** To segregate or isolate (a jury or witness) during trial. [Cases: Criminal Law ⇨665, 854; Federal Civil Procedure ⇨2012; Trial ⇨41, 303.] **3.** *Eccles. law.* To excommunicate. See EXCOMMUNICATION. — Also (erroneously) termed *sequestrate.* [Cases: Criminal Law ⇨665, 854; Trial ⇨41, 303.]

sequestered account. See ACCOUNT.

sequesterer. See SEQUESTRATOR.

sequestrari facias (see-kwes-**trair**-ī **fay**-shee-əs), *n.* [Law Latin "you are to cause to be sequestered"] *Hist. Eccles. law.* A process to enforce a judgment against a clergyman in a benefice, by which the bishop was ordered to sequester a church's rents, tithes, or other profits until the debt was paid.

sequestrate, *vb.* See SEQUESTER.

sequestratio (see-kwes-**tray**-shee-oh), *n.* [Latin] *Roman law.* The depositing of an object in dispute with a holder, the sequester, either voluntarily or by court order. Pl. ***sequestrationes*** (see-kwes-tray-shee-**oh**-neez).

sequestration (see-kwes-**tray**-shən), *n.* (16c) **1.** The process by which property is removed from the possessor pending the outcome of a dispute in which two or more parties contend for it. Cf. ATTACHMENT (1); GARNISHMENT. [Cases: Sequestration ⇨1.]

conventional sequestration. The parties' voluntary deposit of the property at issue in a lawsuit.

judicial sequestration. The court-ordered deposit of the property at issue in a lawsuit. [Cases: Sequestration ⇨1.]

2. The setting apart of a decedent's personal property when no one has been willing to act as a personal representative for the estate. **3.** The process by which a renounced interest is subjected to judicial management and is distributed as the testator would have wished if he or she had known about the renunciation. **4.** A judicial writ commanding the sheriff or other officer to seize the goods of a person named in the writ. • This writ is sometimes issued against a civil defendant who has defaulted or has acted in contempt of court. [Cases: Sequestration ⇨13.] **5.** The court-ordered seizure of

a bankrupt's estate for the benefit of creditors. **6.** *Int'l law.* The seizure by a belligerent power of enemy assets. [Cases: War and National Emergency ⟹ 12.] **7.** The freezing of a government agency's funds; SEQUESTER (1). [Cases: States ⟹ 121.] **8.** Custodial isolation of a trial jury to prevent tampering and exposure to publicity, or of witnesses to prevent them from hearing the testimony of others. — Also termed (in sense 8) *jury sequestration.* [Cases: Federal Civil Procedure ⟹ 2012; Trial ⟹ 41, 303.]

sequestration for rent. *Scots law.* A landlord's remedy to recover up to one year's unpaid rent by seizing and selling, under court order, the tenant's personal property. Cf. DISTRESS (2).

sequestrator (**see**-kwes-tray-tər). (15c) **1.** An officer appointed to execute a writ of sequestration.

> "[A] sequestrator was an officer of the Court of Chancery acting under the order of that court in seizing property. The law courts appear, however, to have held that the holder of the property could resist seizure by the officer of the Court of Chancery, and indeed kill that officer if necessary to prevent the seizure. And if he killed the officer, he would not be held guilty of murder because the Court of Chancery was an illegal tribunal or its decrees were illegal, and could not justify an officer in seizing the property mentioned in the order." Charles Herman Kinnane, *A First Book on Anglo-American Law* 306 (2d ed. 1952).

2. A person who holds property in sequestration. — Also termed *sequesterer.* [Cases: Sequestration ⟹ 14.]

sequestro habendo (si-**kwes**-troh hə-**ben**-doh), *n.* [Law Latin] *Hist. Eccles. law.* A writ from the sovereign to the bishop ordering the discharge of the sequestration of a benefice's profits.

serendipity doctrine. (1989) *Criminal procedure.* The principle that all evidence discovered during a lawful search is eligible to be admitted into evidence at trial. [Cases: Criminal Law ⟹ 394.1(1).]

serf. *Hist.* A person in a condition of feudal servitude, bound to labor at the will of a lord; a villein. • Serfs differed from slaves in that they were bound to the native soil rather than being the absolute property of a master.

> "As the categories became indistinct, the more abject varieties of slavery disappeared and in the twelfth century the word 'villein' became the general term for unfree peasants. 'Serf' did not become a legal term of art, and in so far as it remained in use it did not connote a status lower than that of villein. The merger was to the detriment of the *villani,* but it ensured that full slavery was not received as part of the common law." J.H. Baker, *An Introduction to English Legal History* 532 (3d ed. 1990).

sergeant. 1. *Hist.* A person who is not a knight but holds lands by tenure of military service. **2.** *Hist.* A municipal officer performing duties for the Crown. **3.** *Hist.* A bailiff. **4.** SERGEANT-AT-ARMS. **5.** A noncommissioned officer in the armed forces ranking a grade above a corporal. **6.** An officer in the police force ranking below a captain or lieutenant. — Also spelled *serjeant.* [Cases: Municipal Corporations ⟹ 180(2).]

sergeant-at-arms. 1. *Hist.* An armed officer attending a sovereign. **2.** An officer the Crown assigns to attend a session of Parliament. **3.** A legislative officer charged with maintaining order and serving notices and process on behalf of the legislative body and its committees. [Cases: States ⟹ 32.] **4.** *Parliamentary law.* An officer charged with helping keep order in a meeting under the chair's direction. — Also spelled (in senses 1, 2, & 4) *serjeant-at-arms.* — Also termed (in sense 4) *warden; warrant officer.*

sergeantry. See SERJEANTY.

Sergeant Schultz defense. *Slang.* An assertion by a criminal or civil defendant who claims that he or she was not an active participant in an alleged scheme or conspiracy, and that he or she knew nothing, saw nothing, and heard nothing. • This defense is named after a character from the television series *Hogan's Heroes,* in which Sergeant Schultz, a German guard in charge of prisoners of war during World War II, would avoid responsibility for the prisoners' schemes by proclaiming that he saw nothing and knew nothing. [Cases: Criminal Law ⟹ 31.5.]

sergeanty. See SERJEANTY.

serial bond. See BOND (3).

serial consideration. See *consideration seriatim* under CONSIDERATION (2).

serial murder. See MURDER.

serial note. See *installment note* under NOTE (1).

serial number. 1. A number assigned to a specific thing, esp. a product, to identify it from other things of the same kind. • While serial numbers are usually assigned in numerical order, they may also be random. **2.** *Patents & Trademarks.* An identifying number assigned to a completed patent or trademark application. • The serial number is assigned when the application is received or completed. See APPLICATION NUMBER.

serial polygamy. See POLYGAMY (2).

serial right. The right of publication; esp., a right reserved in a publishing contract giving the author or publisher the right to publish the manuscript in installments (as in a magazine) before or after the publication of the book. [Cases: Copyrights and Intellectual Property ⟹ 38.]

serial violation. (1989) *Civil-rights law.* The practice by an employer of committing a series of discriminatory acts against an employee, all of which arise out of the same discriminatory intent or animus. • Such a series of discriminatory acts will usu. be considered a continuing violation. For a claim on the violation to be timely, at least one of the discriminatory acts must have taken place within the time permitted to assert the claim (e.g., 300 days for a Title VII claim). Cf. SYSTEMATIC VIOLATION. [Cases: Civil Rights ⟹ 1505(7).]

seriatim (seer-ee-**ay**-tim), *adj.* Occurring in a series.

seriatim, *adv.* [Latin] One after another; in a series; successively <the court disposed of the issues seriatim>. See

consideration seriatim under CONSIDERATION. — Also termed *seriately* (**seer**-ee-ət-lee).

seriatim opinions. See OPINION (1).

series bonds. See BOND (3).

series code. *Patents & Trademarks.* A numerical designation assigned to any of a group of applications for patent or trademark registration filed in the U.S. Patent and Trademark Office. • The series code is part of an application number and is followed by a slash. For example, if the application number is 09/445,323, then 09 is the series code, and the application is the 445,323rd application in that batch. For ordinary patent applications, series codes are assigned for a group of applications filed during a particular period. Nonprovisional patent applications are assigned series codes from 01 to 10, depending on the period during which the application was filed. The series code for design applications is 29, for provisional applications 60, for ex parte reexamination proceedings 90, and for *inter partes* reexamination proceedings 95. For trademark applications, the series code usu. begins with numbers between 70 and 75. — Also termed *batch number.*

series rerum judicatarum (**seer**-ə-eez *or* **seer**-eez **reer**-əm joo-di-kə-**tor**-əm). [Law Latin] *Scots law.* A succession of decisions deciding a particular principle, as a result of which a precedent has been established.

serious, *adj.* **1.** (Of conduct, opinions, etc.) weighty; important <serious violation of rules>. **2.** (Of an injury, illness, accident, etc.) dangerous; potentially resulting in death or other severe consequences <serious bodily harm>.

serious and willful misconduct. *Workers' compensation.* An intentional act performed with the knowledge that it is likely to result in serious injury or with a wanton and reckless disregard of its probable consequences. [Cases: Workers' Compensation ☞774; 2093.]

serious bodily harm. See *serious bodily injury* under INJURY.

serious bodily injury. See INJURY.

serious crime. 1. See *serious offense* under OFFENSE (1). **2.** See FELONY (1).

serious felony. See FELONY.

serious health condition. Under the Family and Medical Leave Act, an illness, injury, or physical or mental state that involves in-patient care or continuing treatment by a healthcare provider for several days. • Excluded from the definition are cosmetic treatments and minor illnesses that are not accompanied by medical complications. [Cases: Labor and Employment ☞351(2).

serious illness. *Insurance.* A disorder that permanently or materially impairs, or is likely to permanently or materially impair, the health of the insured or an insurance applicant. [Cases: Insurance ☞3003(9).]

seriously harmful behavior. See HARMFUL BEHAVIOR.

serious misdemeanor. See MISDEMEANOR.

serious offense. See OFFENSE (1).

serjeant. 1. See SERGEANT. **2.** See SERJEANT-AT-LAW.

serjeant-at-arms. See SERGEANT-AT-ARMS.

serjeant-at-law. *Hist. English law.* A barrister of superior grade; one who had achieved the highest degree of the legal profession, having (until 1846) the exclusive privilege of practicing in the Court of Common Pleas. • Every judge of the common-law courts was required to be a serjeant-at-law until the Judicature Act of 1873. The rank was gradually superseded by that of Queen's Counsel. — Often shortened to *serjeant.* — Also termed *serjeant at the law*; *serjeant of the law*; *serjeant of the coif*; *serviens narrator.*

premier serjeant. The serjeant given the primary right of preaudience by royal letters patent. — Also termed *prime serjeant.* See PREAUDIENCE.

Serjeants' Inn. *Hist.* A building on Chancery Lane, London, that housed the Order of Serjeants-at-Law. • The building was sold and demolished in 1877. Until 1416, the Inn was called *Faryndon's Inn* or *Faryndon Inn*, after Robert Faryndon, who held the lease. Two other inns in the 15th and 16th centuries were also called Serjeants' Inn, one in Holborn (sometimes called *Scroops's Inn*) and one in Fleet Street.

serjeanty (**sahr**-jən-tee). *Hist.* A feudal lay tenure requiring some form of personal service to the king. • The required service was not necessarily military. Many household officers of the Crown, even those as humble as bakers and cooks, held lands in serjeanty. — Also spelled *sergeanty.* — Also termed *sergeantry.*

grand serjeanty. *Hist.* Serjeanty requiring the tenant to perform a service relating to the country's defense. • The required service could be as great as fielding an army or as small as providing a fully equipped knight. Sometimes the service was ceremonial or honorary, such as carrying the king's banner or serving as an officer at the coronation.

petit serjeanty (**pet**-ee). *Hist.* Serjeanty requiring only a minor service of small value, usu. with military symbolism. • Examples include presenting an arrow or an unstrung bow to the king.

serment (**sər**-mənt). *Hist.* An oath.

serological test (seer-ə-**loj**-ə-kəl). (1931) A blood examination to detect the presence of antibodies and antigens, as well as other characteristics, esp. as indicators of disease. • Many states require serological tests to determine the presence of venereal disease in a couple applying for a marriage license. See BLOOD TEST.

serpentine vote. See VOTE (4).

serva aliena. See SERVUS.

servage (**sər**-vij). *Hist.* A feudal service that a serf was required to perform for the lord or else pay the equivalent value in kind or money.

servant. (13c) A person who is employed by another to do work under the control and direction of the employer. • A servant, such as a full-time employee, provides personal services that are integral to an employer's business, so a servant must submit to the

employer's control of the servant's time and behavior. See EMPLOYEE. Cf. MASTER (1). [Cases: Labor and Employment ⟹23.]

> "A servant, strictly speaking, is a person who, by contract or operation of law, is for a limited period subject to the authority or control of another person in a particular trade, business or occupation . . . . The word *servant*, in our legal *nomenclature*, has a broad significance, and embraces all persons of whatever rank or position who are in the employ, and subject to the direction or control of another in any department of labor or business. Indeed it may, in most cases, be said to be synonymous with employee." H.G. Wood, *A Treatise on the Law of Master and Servant* § 1, at 2 (2d ed. 1886).

fellow servant. See FELLOW SERVANT.

indentured servant. *Hist.* A servant who contracted to work without wages for a fixed period in exchange for some benefit, such as learning a trade or cancellation of a debt or paid passage to another country, and the promise of freedom when the contract period expired. • Indentured servitude could be voluntary or involuntary. A contract usu. lasted from four to ten years, but the servant could terminate the contract sooner by paying for the unexpired time. Convicts transported to the colonies were often required to serve as indentured servants as part of their sentences.

serve, *vb.* (15c) **1.** To make legal delivery of (a notice or process) <a copy of the pleading was served on all interested parties>. **2.** To present (a person) with a notice or process as required by law <the defendant was served with process>. [Cases: Federal Civil Procedure ⟹411; Process ⟹48.]

service, *n.* (15c) **1.** The formal delivery of a writ, summons, or other legal process <after three attempts, service still had not been accomplished>. — Also termed *service of process.* [Cases: Federal Civil Procedure ⟹411–518; Process ⟹48–150.] **2.** The formal delivery of some other legal notice, such as a pleading <be sure that a certificate of service is attached to the motion>. [Cases: Federal Civil Procedure ⟹665.]

actual service. See PERSONAL SERVICE (1).

constructive service. (1808) **1.** See *substituted service.* **2.** Service accomplished by a method or circumstance that does not give actual notice.

personal service. See PERSONAL SERVICE (1).

service by publication. (1826) The service of process on an absent or nonresident defendant by publishing a notice in a newspaper or other public medium. [Cases: Federal Civil Procedure ⟹414; Process ⟹84–111.]

sewer service. *Slang.* The fraudulent service of process on a debtor by a creditor seeking to obtain a default judgment.

substituted service. (1840) Any method of service allowed by law in place of personal service, such as service by mail. — Also termed *constructive service.* [Cases: Federal Civil Procedure ⟹414; Process ⟹69–111.]

3. The act of doing something useful for a person or company, usu. for a fee <your services were no longer required>.

personal service. See PERSONAL SERVICE (2).

4. A person or company whose business is to do useful things for others <a linen service>.

civil service. See CIVIL SERVICE.

salvage service. See SALVAGE SERVICE.

5. An intangible commodity in the form of human effort, such as labor, skill, or advice <contract for services>. [Cases: Contracts ⟹190.]

service, *vb.* (1927) To provide service for; specif., to make interest payments on (a debt) <service the deficit>.

service by publication. See SERVICE (2).

service charge. 1. A charge assessed for performing a service, such as the charge assessed by a bank against the expenses of maintaining or servicing a customer's checking account. **2.** The sum of (1) all charges payable by the buyer and imposed by the seller as an incident to the extension of credit and (2) charges incurred for investigating the collateral or creditworthiness of the buyer or for commissions for obtaining the credit. UCCC § 2.109. — Also termed (in sense 2) *credit service charge.* [Cases: Consumer Credit ⟹13.]

service contract. See CONTRACT.

service establishment. Under the Fair Labor Standards Act, an establishment that, although having the characteristics of a retail store, primarily furnishes services to the public, such as a barber shop, laundry, or automobile-repair shop.

service life. The period of an asset's expected usefulness. • It may or may not coincide with the asset's depreciable life for income-tax purposes.

servicemark. (1945) *Trademarks.* A name, phrase, or other device used to identify and distinguish the services of a certain provider. • Servicemarks identify and afford protection to intangible things such as services, as distinguished from the protection already provided for marks affixed to tangible things such as goods and products. — Often shortened to *mark.* — Also spelled *service mark; service-mark.* Cf. TRADEMARK (1); *registered trademark* under TRADEMARK. [Cases: Trademarks ⟹1024.]

servicemark application. See TRADEMARK APPLICATION.

service-occupation tax. See TAX.

service of process. See SERVICE (1).

serviens narrator (**sər**-vee-enz nə-**ray**-tər). See SERJEANT-AT-LAW.

servient (**sər**-vee-ənt), *adj.* (17c) (Of an estate) subject to a servitude or easement. See *servient estate* under ESTATE (4). [Cases: Easements ⟹1.]

servient estate. See ESTATE (4).

servient property. See *servient estate* under ESTATE (4).

servient tenant. See TENANT.

servient tenement. See *servient estate* under ESTATE (4).

servitia solita et consueta (sər-**vish**-ee-ə **sol**-ə-tə kən-**swee**-tə). [Law Latin "services used and wont"] *Scots law.* A common return required by certain charters, usu. implying military service, from a vassal to a lord.

servitii praestatio (sər-**vish**-ee-ɪ pri-**stay**-shee-oh). [Law Latin] *Hist.* The performance of services.

servitiis acquietandis (sər-**vish**-ee-is ə-kwɪ-ə-**tan**-dis), *n.* [Law Latin "for being quit of service"] *Hist.* A writ exempting a person from performing certain services, either because they are not due or because they are due someone other than the distrainor.

servitium (sər-**vish**-ee-əm), *n.* [Latin "service"] *Hist.* The duty of service; esp., a tenant's duty of performance and obedience to the lord.

servitium feodale et praediale (sər-**vish**-ee-əm fee-ə-**day**-lee [*or* fyoo-**day**-lee] et pree-dee-**ay**-lee), *n.* [Law Latin] *Hist.* A personal service due only by reason of lands held in fee.

servitium forinsecum (sər-**vish**-ee-əm fə-**rin**-si-kəm), *n.* [Law Latin] *Hist.* A service due the king rather than a lord.

servitium intrinsecum (sər-**vish**-ee-əm in-**trin**-si-kəm), *n.* [Law Latin] *Hist.* The ordinary service due from a tenant to the chief lord.

servitium liberum (sər-**vish**-ee-əm **lib**-ər-əm), *n.* [Law Latin] *Hist.* The service by a free tenant (not a vassal) to the lord, as by attending the lord's court or accompanying the lord into military service. — Also termed *liberum servitium*; *servitium liberum armorum.*

servitium regale (sər-**vish**-ee-əm ri-**gay**-lee). [Latin "royal service"] *Hist.* The right of a lord of a royal manor to settle disputes, make assessments, mint money, and the like.

servitium scuti (sər-**vish**-ee-əm **sk**[**y**]**oo**-tɪ). [Latin "service of the shield"] *Hist.* Knight-service.

servitium socae (sər-**vish**-ee-əm **soh**-see). [Latin "service of the plow"] *Hist.* Socage.

servitor of bills (**sər**-vi-tər). *Hist.* A messenger of the marshal of the King's Bench, sent out to summon people to court. — Also termed *tip-stave.*

servitude. (16c) **1.** An encumbrance consisting in a right to the limited use of a piece of land or other immovable property without the possession of it; a charge or burden on an estate for another's benefit <the easement by necessity is an equitable servitude>. • Servitudes include easements, irrevocable licenses, profits, and real covenants. See EASEMENT; LICENSE; PROFIT (2); *covenant running with the land* under COVENANT (4). [Cases: Covenants ⇨49, 53; Easements ⇨1.] **2.** *Roman & civil law.* The right exercised by a dominant tenement over a servient tenement, either adjoining or neighboring. • This right was perpetual except for personal servitudes; the land, rather than its owner, enjoyed the right. Although a servitude could not be possessed because it was incorporeal, it could be protected by interdict. Generally, a servitude had to be exercised *civiliter*, with as little inconvenience as possible. There was never a closed list of what constituted a servitude; for example, Justinian classed personal rights *in re aliena* as personal servitude. See SERVITUS (2).

acquired servitude. (1971) A servitude requiring a special mode of acquisition before it comes into existence.

additional servitude. (18c) A servitude imposed on land taken under an eminent-domain proceeding for a different type of servitude, as when a highway is constructed on land condemned for a public sidewalk. • A landowner whose land is burdened by an additional servitude is entitled to further compensation.

affirmative servitude. *Civil law.* See *positive servitude.*

apparent servitude. (1834) *Civil law.* A servitude appurtenant that is manifested by exterior signs or constructions, such as a roadway. Cf. *nonapparent servitude.*

conservation servitude. See *conservation easement* under EASEMENT.

continuous servitude. *Louisiana law.* See *continuous easement* under EASEMENT. La. Civ. Code art. 646.

conventional servitude. *Civil law.* A servitude established by agreement or through acquisitive prescription. [Cases: Easements ⇨5, 14.]

discontinuous servitude. See *discontinuous easement* under EASEMENT.

equitable servitude. See *restrictive covenant* under COVENANT (4).

landed servitude. See *servitude appurtenant.*

legal servitude. (18c) *Civil law.* A limitation that the law imposes on the use of an estate for the benefit of the general public or of a particular person or persons. • Examples of legal servitudes are restrictions on certain uses of the shores of navigable rivers, and the obligation of a landowner to provide a passage to an enclosed estate.

mineral servitude. (1931) *Louisiana law.* A servitude granting the right to enter another's property to explore for and extract minerals; specif., under the Louisiana Mineral Code, a charge on land in favor of a person or another tract of land, creating a limited right to use the land to explore for and produce minerals. • The servitude is generally equivalent to the severed mineral interest in a common-law state. Mines and Minerals ⇨55(6), 62.1, 73.1(6).]

natural servitude. (18c) **1.** A servitude naturally appurtenant to land, requiring no special mode of acquisition. • An example is the right of land, unencumbered by buildings, to the support of the adjoining land. **2.** *Civil law.* A servitude imposed by law because of the natural situation of the estates. • An example of a natural servitude is a lower estate that

is bound to receive waters flowing naturally from a higher estate.

navigation servitude. **1.** An easement allowing the federal government to regulate commerce on navigable water without having to pay compensation for interfering with private ownership rights. See NAVIGABLE WATER. [Cases: Navigable Waters ⇨2.]

"The navigation servitude, because of its link to navigable waters and the protection of navigation, is often confused with the public trust doctrine. The navigation servitude, however, is a paramount federal servitude on navigable waters based on the commerce power rather than on ownership or trust responsibilities." Donna R. Christie, *Coastal and Ocean Management Law in a Nutshell* 34 (1994).

2. An easement, based on the state police power or public-trust doctrine, that allows a state to regulate commerce on navigable water and provide limited compensation for interference with private ownership rights. • A state servitude is inferior to the federal servitude. [Cases: Navigable Waters ⇨2.]

negative servitude. *Civil law.* A servitude appurtenant allowing a dominant landowner to prohibit the servient landowner from exercising a right. • For example, a negative servitude, such as *jus ne luminibus officiatur*, prevents a landowner from building in a way that blocks light from reaching another person's house.

nonapparent servitude. *Civil law.* A servitude appurtenant that is not obvious because there are no exterior signs of its existence. • An example is a prohibition against building above a certain height. Cf. *apparent servitude.*

personal servitude. (17c) **1.** A servitude granting a specific person certain rights in property. **2.** *Roman law.* A specific person's right over the property of another, regardless of who the owner might be. • A personal servitude lasted for the person's lifetime. **3.** *Louisiana law.* A servitude that benefits a person or an immovable. La. Civ. Code art. 534. [Cases: Easements ⇨1, 3.]

positive servitude. *Civil law.* A real servitude allowing a person to lawfully do something on the servient landowner's property, such as entering the property. — Also termed *affirmative servitude.*

predial servitude. See *servitude appurtenant.*

private servitude. (1922) A servitude vested in a particular person. • Examples include a landowner's personal right-of-way over an adjoining piece of land or a right granted to one person to fish in another's lake.

public servitude. (1805) A servitude vested in the public at large or in some class of indeterminate individuals. • Examples include the right of the public to use a highway over privately owned land and the right to navigate a river the bed of which is privately owned.

real servitude. See *servitude appurtenant.*

rural servitude. *Roman law.* A servitude chiefly affecting agricultural land or land in the country. • The four oldest types, *iter, actus, via,* and *aqueductus* were all *res mancipi* despite being incorporeal. Most rural servitudes were easements, but some were profits. — Also termed *rustic servitude; praedium rusticum; jus rusticorum praediorum.*

servitude appurtenant. (1893) A servitude that is not merely an encumbrance of one piece of land but is accessory to another piece; the right of using one piece of land for the benefit of another, such as the right of support for a building. — Also termed *real servitude; predial* (or *praedial*) *servitude; landed servitude.* La. Civ. Code art. 646. [Cases: Easements ⇨3.]

servitude in gross. (1884) A servitude that is not accessory to any dominant estate for whose benefit it exists but is merely an encumbrance on a given piece of land. [Cases: Easements ⇨3.]

servitude of drip. *Louisiana law.* A servitude appurtenant that binds the servient estate's owner to maintain a roof so that rainwater does not drip or drain onto the dominant estate. La. Civ. Code art. 664. — Also termed *servitude of drip and drain.* [Cases: Waters and Water Courses ⇨121.]

servitude of view. *Louisiana law.* The dominant estate owner's right to enjoy a view through the servient estate and to prevent its obstruction. La. Civ. Code art. 701. [Cases: Adjoining Landowners ⇨10; Easements ⇨11, 19.]

urban servitude. (1831) **1.** A servitude appertaining to the building and construction of houses in a city, such as the right to light and air. [Cases: Adjoining Landowners ⇨10; Easements ⇨11, 19.] **2.** *Roman law.* A servitude that primarily affects buildings or urban land. • With the exception of *oneris ferendi,* urban servitudes were passive. They could be affected by planning legislation. — Also termed (in sense 2) *praedium urbanum; jus urbanorum praediorum.*

3. The condition of being a servant or slave <under the 15th Amendment, an American citizen's right to vote cannot be denied on account of race, color, or previous condition of servitude>. **4.** The condition of a prisoner who has been sentenced to forced labor <penal servitude>.

involuntary servitude. (18c) The condition of one forced to labor — for pay or not — for another by coercion or imprisonment. [Cases: Constitutional Law ⇨1101.]

servitude of drip and drain. See *servitude of drip* under SERVITUDE (2).

servitus (**sər**-vi-təs), *n.* [Latin fr. *servire* "to serve"] *Roman law.* **1.** Slavery; bondage. **2.** A servitude, usu. a servitude appurtenant as opposed to a personal servitude such as usufruct; an easement. See *rural servitude* and *urban servitude* under SERVITUDE (2). Pl. ***servitutes.***

servitus actus (**sər**-vi-təs **ak**-təs). [Latin "the servitude of driving cattle"] *Roman law.* A type of right-of-way; a rural servitude entitling one to walk, ride, or drive animals over another's property.

servitus altius non tollendi (**sər**-vi-təs **al**-shee-əs non tə-**len**-dī). [Latin "the servitude of not building higher"] *Roman law.* An urban servitude allowing a person to prevent a neighbor from building a taller house.

servitus aquae ducendae (**sər**-vi-təs **ak**-wee d[y]oo-**sen**-dee). [Latin "the servitude of leading water"] *Roman law.* A rural servitude allowing one to bring water to property through another's land, as by a canal. — Also termed *aquaeductus.*

servitus aquae educendae (**sər**-vi-təs **ak**-wee ee-d[y]oo-**sen**-dee). [Latin "the servitude of leading off water"] *Roman law.* An urban servitude entitling a person to discharge water onto another's land.

servitus aquae hauriendae (**sər**-vi-təs haw-ree-**en**-dee). [Latin "the servitude of drawing water"] *Roman law.* See AQUAEHAUSTUS.

servitus aquaehaustus (**sər**-vi-təs **ak**-wee **haws**-təs). [Latin "the servitude of drawing water"] *Roman law.* See AQUAEHAUSTUS.

servitus fluminis (**sər**-vi-təs **floo**-mə-nəs). [Latin "the servitude of a stream of rainwater"] *Roman law.* An urban servitude consisting in the right to divert rainwater as opposed to drip (*stillicidium*) onto another's land.

servitus fumi immittendi (**sər**-vi-təs **fyoo**-mī im-ə-**ten**-dī). [Latin "the servitude of discharging smoke"] *Roman law.* An urban servitude allowing a person's chimney smoke to be directed over a neighbor's property.

servitus itineris (**sər**-vi-təs ī-**tin**-ər-is). [Latin "the servitude of way"] See ITER.

servitus luminum (**sər**-vi-təs **loo**-mə-nəm). [Latin "the servitude of lights"] *Roman law.* An urban servitude entitling one to receive light from a neighbor's land, as by building windows in a common wall to light a room.

servitus ne luminibus officiatur (**sər**-vi-təs nee loo-**min**-ə-bəs ə-fish-ee-**ay**-tər). [Latin "the servitude not to hinder light"] *Roman law.* An urban servitude preventing someone's light from being obstructed by a neighbor's building.

servitus ne prospectui officiatur (**sər**-vi-təs nee prə-**spek**-too-ī ə-fish-ee-**ay**-tər). [Latin "the servitude not to intercept one's prospect"] *Roman law.* An urban servitude entitling someone to an unobstructed view.

servitus oneris ferendi (**sər**-vi-təs **on**-ə-ris fə-**ren**-dī). [Latin "the servitude of bearing weight"] *Roman law.* The urban servitude allowing a person's building to rest on a neighbor's building, wall, or pillar. See ONERIS FERENDI; JUS ONERIS FERENDI.

servitus pascendi (**sər**-vi-təs pa-**sen**-dī). [Latin "the servitude of pasturing"] *Roman law.* A rural servitude allowing one to pasture cattle on another's land. — Also termed *jus pascendi.*

servitus pecoris ad aquam adpulsum (**sər**-vi-təs **pek**-ə-ris ad **ak**-wəm ad-**pəl**-səm). [Latin "the servitude to drive cattle to water"] *Roman law.* A rural servitude allowing one to drive cattle to water across another's land.

servitus praedii rustici (**sər**-vi-təs **pree**-dee-ī **rəs**-ti-sī). [Latin "the servitude of a country estate"] *Roman law.* A rural servitude; a servitude attached to land, as in *servitus pecoris ad aquam adpulsus.* Cf. *rural servitude* under SERVITUDE (2).

servitus praedii urbani (**sər**-vi-təs **pree**-dee-ī ər-**bay**-nī). [Latin "the servitude of an urban estate"] *Roman law.* An urban servitude; a servitude attached to a building, as in *servitus oneris ferendi.* See *urban servitude* under SERVITUDE (2).

servitus praediorum (**sər**-vi-təs pree-dee-**or**-əm). [Latin "praedial servitude"] *Roman law.* A burden on one estate for the benefit of another. See *servitude appurtenant* under SERVITUDE (2).

servitus projiciendi (**sər**-vi-təs prə-jish-ee-**en**-dī). [Latin "the servitude of projecting"] *Roman law.* An urban servitude allowing a projection from one's building into the open space over a neighbor's property.

servitus stillicidii (**sər**-vi-təs stil-ə-**sid**-ee-ī). [Latin "the servitude of drip"] *Roman law.* An urban servitude allowing water to drip from one's house onto a neighbor's house or ground. Cf. AQUAE IMMITTENDAE; DRIP RIGHTS.

servitus tigni immittendi (**sər**-vi-təs **tig**-nī im-ə-**ten**-dī). [Latin "the servitude of letting in a beam"] *Roman law.* An urban servitude allowing one to insert beams into a neighbor's wall.

servitus viae (**sər**-vi-təs **vī**-ee). [Latin "the servitude of road way"] *Roman law.* A rural servitude allowing a right-of-way over another's land. See VIA (2).

servus (**sər**-vəs), *n.* [Latin] **1.** *Roman law.* A slave; a human being who was property, and could be bought, sold, pledged, and testated. • A Roman slave who was formally freed became a Roman citizen. Cf. INGENUUS; LATINI JUNIANI; LIBERTINII. **2.** *Hist.* A bondman; a servant.

sess, *n.* See CESS.

sessio (**sesh**-ee-oh), *n.* [Latin "a sitting"] *Hist.* A session; a sitting, as in *sessio parliamenti* ("the sitting of Parliament").

session. (15c) **1.** *Parliamentary law.* A meeting or series of related meetings throughout which a court, legislature, or other deliberative assembly conducts business in a continuing sequence <the court's spring session>. — Also termed (for a court) *sitting.* See TERM (5).

> "Parliament have three modes of separation, to wit, by adjournment, by prorogation, or dissolution by the king, or by the efflux of the term for which they were elected. Prorogation or dissolution constitutes there what is called a session, provided some act has passed. In this case all matters depending before them are discontinued, and at their next meeting are to be taken up de novo, if taken up at all. Adjournment, which is by themselves, is no more than a continuance of the session from one day to another,

or for a fortnight, a month, &c. ad libitum. All matters depending remain in statu quo, and when they meet again, be the term ever so distant, are resumed without any fresh commencement, at the point at which they were left. Their whole session is considered in law but as one day, and has relation to the first day thereof." Thomas Jefferson, *A Manual of Parliamentary Practice* 127–28 (1801) (citations omitted).

biennial session. (1854) A legislative session held every two years. • Most state legislatures have biennial sessions, usu. held in odd-numbered years. [Cases: States ⟹32.]

closed session. (1956) **1.** See *executive session.* **2.** A session to which parties not directly involved are not admitted. **3.** *Military law.* A period during a court-martial when the members (or the judge, if trial is before a military judge) deliberate alone. — Also termed *closed court.* [Cases: Military Justice ⟹1222, 1270.]

executive session. A meeting, usu. held in secret, that only the members and invited nonmembers may attend. • The term originated in the United States Senate, which until 1929 sat behind closed doors when it advised the President about executive business such as appointments and treaties. — Also termed *closed session*; *secret session.* [Cases: Administrative Law and Procedure ⟹124; Municipal Corporations ⟹92.]

"Virtually all open meeting statutes expressly authorize the use of executive sessions, typically specifying the particular circumstances in which executive sessions are permitted. When the specific circumstances are specified, generally no other exceptions are permitted . . . . Use of the executive session to discuss matters not properly hidden from the public is a clear violation of the open meeting law. Many states expressly or implicitly forbid use of the executive session as a subterfuge to defeat the purposes of the open meeting law." Ann Taylor Schwing, *Open Meeting Laws* § 7.1, at 357, 359 (2d ed. 2000).

extraordinary session. See *special session.*

extra session. See *special session.*

joint session. (1853) The combined meeting of two legislative bodies (such as the House of Representatives and the Senate) to pursue a common agenda. [Cases: United States ⟹18.]

"When the two houses meet in a joint session, they, in effect, merge into one house where the quorum is a majority of the members of both houses, where the votes of members of each house have equal weight, and where special rules can be adopted to govern joint sessions or they can be governed by the parliamentary common law." National Conference of State Legislatures, *Mason's Manual of Legislative Procedure* § 782, at 573 (2000).

lame-duck session. (1924) A post-election legislative session in which some of the participants are voting during their last days as elected officials. See LAME DUCK. [Cases: States ⟹32.]

open session. (1810) **1.** A session to which parties not directly involved are admitted. — Also termed *public session.* **2.** *Military law.* The period during a court-martial in which all participants are in the courtroom. • Generally, the public may attend a court-martial's open session. [Cases: Military Justice ⟹1210.1, 1222.]

plenary session. (1936) A meeting of all the members of a deliberative assembly, not just a committee.

pro forma session. A legislative session held not to conduct business but only to satisfy a constitutional provision that neither house may adjourn for longer than a certain time (usu. three days) without the other house's consent.

public session. See *open session* (1).

quarter session. **1.** *English law.* The meetings held four times a year by a county's justices of the peace to transact business, including trying certain criminal and civil matters as specified by statute. • The quarter sessions were abolished in 1971 and replaced by the Crown Court system. **2.** *Scots law.* A meeting formerly held four times a year by the justices to review criminal sentences. — Abbr. Q.S.

regular session. (18c) A session that takes place at fixed intervals or specified times.

secret session. See *executive session.*

special session. (17c) A legislative session, usu. called by the executive, that meets outside its regular term to consider a specific issue or to reduce backlog. — Also termed *extra session*; *extraordinary session.* [Cases: States ⟹32.]

2. The period within any given day during which such a body is assembled and performing its duties <court is in session>. • The terms "meeting" and "session" have opposite but sometimes interchangeable meanings. An organization's annual convention may consist of several consecutive meetings that it calls "sessions," such as a morning session and an afternoon session, or a Friday session and a Saturday session, which are technically meetings rather than sessions. Likewise, the organization may call its convention an "annual meeting," which technically comprises several meetings that constitute a single session. Cf. MEETING. **3.** A trading day in a stock market.

triple witching session. A stock-market session on the third Friday in March, June, September, and December during which stock options, index options and futures contracts all expire. • Stock-market volatility and share volume are often high on these days

session laws. (18c) **1.** A body of statutes enacted by a legislature during a particular annual or biennial session. **2.** The softbound booklets containing these statutes. — Also termed *acts of assembly*; *blue books*; *sheet acts.*

sessions. See COURT OF GENERAL QUARTER SESSIONS OF THE PEACE.

set-aside, *n.* (1943) Something (such as a percentage of funds) that is reserved or put aside for a specific purpose.

set aside, *vb.* (18c) (Of a court) to annul or vacate (a judgment, order, etc.) <the judge refused to set aside the default judgment>. [Cases: Federal Civil Procedure ⟹2441, 2641; Judgment ⟹135, 336.]

setback, *n.* (1916) *Real estate.* The minimum amount of space required between a lot line and a building line <a 12-foot setback>. • Typically contained in zoning ordinances or deed restrictions, setbacks are designed to ensure that enough light and ventilation reach the property and to keep buildings from being erected too close to property lines. See BUSINESS LINE. [Cases: Zoning and Planning ⇨64, 252.]

setback requirement. See BUILDING LINE.

set down, *vb.* (18c) To schedule (a case) for trial or hearing, usu. by making a docket entry.

se te fecerit securum (see tee **fes**-ər-it **si-kyoor**-əm). [Latin] See SI FECERIT TE SECURUM.

set forth. See SET OUT.

seti (**set**-ee). *Mining law.* A lease.

set of exchange. *Commercial law.* A single bill of lading drawn in a set of parts, each of which is valid only if the goods have not been delivered against any other part. • Bills may be drawn in duplicate or triplicate, the first part being "first of exchange," the second part being "second of exchange," and so on. When one part has been paid, the other parts become void.

setoff, *n.* (18c) **1.** A defendant's counterdemand against the plaintiff, arising out of a transaction independent of the plaintiff's claim. [Cases: Federal Civil Procedure ⇨772; Set-off and Counterclaim ⇨8.] **2.** A debtor's right to reduce the amount of a debt by any sum the creditor owes the debtor; the counterbalancing sum owed by the creditor. — Also written *set-off.* — Also termed (in civil law) *compensation*; *stoppage.* See COUNTERCLAIM; OFFSET. Cf. RECOUPMENT (3). [Cases: Banks and Banking ⇨134; Set-off and Counterclaim ⇨8.] **3.** The balancing of mutual liabilities with respect to a pledge relationship. — **set off,** *vb.*

> "Set-off signifies the subtraction or taking away of one demand from another opposite or cross demand, so as to distinguish the smaller demand and reduce the greater by the amount of the less; or, if the opposite demands are equal, to extinguish both. It was also, formerly, sometimes called stoppage, because the amount to be set-off was *stopped* or deducted from the cross demand." Thomas W. Waterman, *A Treatise on the Law of Set-Off, Recoupment, and Counter Claim* § 1, at 1 (2d ed. 1872).

> "Before considering the counter-claim, a brief reference to 'the set-off' as known in former practice is necessary. By the common law, the setting off of one demand against another in the same action was unknown. If A had a cause of action in debt against B, and B had another cause of action in debt in equal amount against A, each must bring his action. One could not be set off against the other. This was changed by statute in England in 1729, by a provision which, somewhat enlarged and modified, has been generally adopted in this country." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 250-51 (2d ed. 1899).

> "Set-off is defined to be a counter-demand, generally of a liquidated debt *growing out of an independent transaction* for which an action might be maintained by the defendant against the plaintiff." Eugene A. Jones, *Manual of Equity Pleading and Practice* 65 n.42 (1916).

set out, *vb.* (16c) To recite, explain, narrate, or incorporate (facts or circumstances) <set out the terms of the contract>. — Also termed *set forth.*

set over, *vb.* (16c) To transfer or convey (property) <to set over the land to the purchaser>.

setting, *n.* The date and time established by a court for a trial or hearing <the plaintiff sought a continuance of the imminent setting>. [Cases: Federal Civil Procedure ⇨1991; Trial ⇨6, 9.]

special setting. (1916) A preferential setting on a court's calendar, usu. reserved for older cases or cases given priority by law, made either on a party's motion or on the court's own motion. • For example, some jurisdictions authorize a special setting for cases involving a party over the age of 70. — Also termed *special trial setting*; *trial-setting preference.* [Cases: Trial ⇨13.]

settled estate. See ESTATE (1).

settled insanity. See DELIRIUM TREMENS.

settled land. See LAND.

settlement, *n.* (17c) **1.** The conveyance of property — or of interests in property — to provide for one or more beneficiaries, usu. members of the settlor's family, in a way that differs from what the beneficiaries would receive as heirs under the statutes of descent and distribution <in marriage settlements, historically, the wife waived her right to claim dower or to succeed to her husband's property>. [Cases: Executors and Administrators ⇨515.]

strict settlement. *Hist.* A property settlement that aimed to keep the estate within the family by creating successive interests in tail and shielding remainders from destruction by the interposition of a trust. Cf. *trader's settlement.*

trader's settlement. *Hist.* A property settlement in which the land is put into a trust for sale, the proceeds to be either paid out to beneficiaries over time or divided among the settlor's heirs. Cf. *strict settlement.*

voluntary settlement. A property settlement made without valuable consideration — other than psychological or emotional consideration such as love and affection — from the beneficiary.

2. An agreement ending a dispute or lawsuit <the parties reached a settlement the day before trial>.— Also termed *settlement agreement.* [Cases: Compromise and Settlement ⇨1.]

derivative settlement. **1.** The negotiated outcome of a derivative action. See DERIVATIVE ACTION. **2.** A person's legal-residence status that is acquired though another person, as with a child through one or both parents.

final settlement. A court order discharging an executor's duties after an estate's execution. [Cases: Executors and Administrators ⇨512.]

full settlement. A settlement and release of all pending claims between the parties. [Cases: Compromise and Settlement ⇨1.]

judicial settlement. The settlement of a civil case with the help of a judge who is not assigned to adjudicate the dispute. • Parties sometimes find this procedure advantageous because it capitalizes on judicial experience in evaluating the settlement value of a claim.

mediated settlement agreement. A settlement agreement arrived at through mediation. — Abbr. MSA. [Cases: Alternative Dispute Resolution ⇨484; Compromise and Settlement ⇨2, 5.]

nuisance settlement. A settlement in which the defendant pays the plaintiff purely for economic reasons — as opposed to any notion of responsibility — because without the settlement the defendant would spend more money in legal fees and expenses caused by protracted litigation than in paying the settlement amount. • The money paid in such a settlement is often termed *nuisance money.*

out-of-court settlement. The settlement and termination of a pending suit, arrived at without the court's participation. [Cases: Compromise and Settlement ⇨1.]

structured settlement. A settlement in which the defendant agrees to pay periodic sums to the plaintiff for a specified time.[Cases: Assignments ⇨62; Compromise and Settlement ⇨2.]

> "Especially in personal injury and product liability cases, structured settlements — i.e., those which provide for an initial cash payment followed by deferred payments in future years, normally on some annuity basis — are becoming more frequent. . . . Such a structured settlement may have advantages over a lump-sum cash payment. Deferred payments or arranged settlements may serve particular purposes that a cash settlement could not reach, and there will be instances when a structured settlement will be in lieu of an all-cash settlement that would not be acceptable to one party or the other." Alba Conte, *Attorney Fee Awards* § 2.31, at 101 (1993).

3. Payment, satisfaction, or final adjustment <the seller shipped the goods after confirming the buyer's settlement of the account>.

viatical settlement (vī-**at**-ə-kəl). [fr. Latin *viaticus* "relating to a road or journey"] A transaction in which a terminally or chronically ill person sells the benefits of a life-insurance policy to a third party in return for a lump-sum cash payment equal to a percentage of the policy's face value. • Viatical settlements are common with AIDS patients, many of whom sell their policies at a 20% to 40% discount, depending on life expectancy. When the insured (called the "viator") dies, the investor receives the insurance benefit. — Also termed *life settlement.* [Cases: Insurance ⇨1994.]

4. CLOSING <the settlement on their first home is next Friday>. **5.** *Wills & estates.* The complete execution of an estate by the executor <the settlement of the estate was long and complex>. [Cases: Executors and Administrators ⇨502–516.] **6.** The establishment of a legal residence. • This sense was frequently used in poor-relief contexts. Cf. (in sense 6) STATUS OF IRREMOVABILITY. — **settle,** *vb.*

settlement agent. 1. See AGENT (2). **2.** See *settlement attorney* under ATTORNEY.

settlement agreement. See SETTLEMENT (2).

settlement attorney. See ATTORNEY.

settlement class. See CLASS (4).

settlement counsel. See CIRCUIT MEDIATOR.

settlement credit. (1979) *Civil procedure.* A court's reduction of the amount of a jury verdict — or the effect of the verdict on nonsettling defendants — to account for settlement funds the plaintiff has received from former defendants or from other responsible parties. [Cases: Compromise and Settlement ⇨15(1); Damages ⇨63.]

settlement date. See DATE.

settlement-first method. (1996) A means by which to apply a settlement credit to a jury verdict, by first reducing the amount of the verdict by subtracting the amount of all settlements the plaintiff has received on the claim, then reducing the remainder by the percentage of the plaintiff's comparative fault. See SETTLEMENT CREDIT. Cf. FAULT-FIRST METHOD. [Cases: Damages ⇨63.]

settlement option. See OPTION.

settlement right. *Hist.* A government-issued certificate granting land to a settler.

settlement sheet. See CLOSING STATEMENT (2).

settlement statement. See CLOSING STATEMENT (2).

settlement value. See VALUE (2).

settler. (17c) **1.** A person who occupies property with the intent to establish a residence. • The term is usu. applied to an early resident of a country or region. **2.** SETTLOR.

settle up, *vb.* (1884) To collect, pay, and turn over debts and property (e.g., of a decedent, bankrupt, or insolvent business).

settlor (**set**-lər). (18c) **1.** A person who makes a settlement of property; esp., one who sets up a trust. — Also termed *creator; donor; trustor; grantor; founder.* [Cases: Trusts ⇨8.] **2.** A party to an instrument. — Also spelled (in both senses) *settler.*

set up, *vb.* To raise (a defense) <the defendant set up the insanity defense on the murder charge>.

Seventeenth Amendment. The constitutional amendment, ratified in 1913, transferring the power to elect U.S. senators from the state legislatures to the states' voters. [Cases: United States ⇨11.]

Seventh Amendment. The constitutional amendment, ratified with the Bill of Rights in 1791, guaranteeing the right to a jury trial in federal civil cases that are traditionally considered to be suits at common law and that have an amount in controversy exceeding $20. [Cases: Jury ⇨9–14.]

72 COLREGS. See INTERNATIONAL RULES OF THE ROAD.

seven-years'-absence rule. (1920) The principle that a person who has been missing without explanation for at least seven years is legally presumed dead. Cf. ENOCH ARDEN LAW.

> "[I]n the United States, it is quite generally held or provided by statute that a presumption of death arises from the continued and unexplained absence of a person from his home or place of residence without any intelligence from or concerning him for the period of 7 years. The presumption has been regarded as a procedural expedient and a rule of evidence." 22A Am. Jur. 2d *Death* § 551, at 527 (1988).

severability. See BLUE-PENCIL TEST.

severability clause. (1935) A provision that keeps the remaining provisions of a contract or statute in force if any portion of that contract or statute is judicially declared void, unenforceable, or unconstitutional. — Also termed *saving clause; separability clause.* See *severable contract* under CONTRACT; *severable statute* under STATUTE. [Cases: Contracts ⚷137; Statutes ⚷64.]

severable contract. See CONTRACT.

severable statute. See STATUTE.

several, *adj.* (15c) **1.** (Of a person, place, or thing) more than one or two but not a lot <several witnesses>. [Cases: Negligence ⚷484; Torts ⚷135.] **2.** (Of liability, etc.) separate; particular; distinct, but not necessarily independent <a several obligation>. **3.** (Of things, etc.) different; various <several settlement options>.

several action. See *separate action* under ACTION (4).

several contract. See *severable contract* under CONTRACT.

several count. See COUNT.

several covenant. See COVENANT (1).

several demise. See DEMISE.

several fishery. See FISHERY (1).

several inheritance. See INHERITANCE.

several liability. See LIABILITY.

severally, *adj.* Distinctly; separately <severally liable>.

several obligation. See OBLIGATION.

several-remedies rule. (1975) A procedural rule that tolls a statute of limitations for a plaintiff who has several available forums (such as a workers'-compensation proceeding and the court system) and who timely files in one forum and later proceeds in another forum, as long as the defendant's right and claims are not affected. [Cases: Limitation of Actions ⚷105.]

several tail. See TAIL.

several tenancy. See TENANCY.

severalty (sev-[ə]-rəl-tee). (15c) The state or condition of being separate or distinct <the individual landowners held the land in severalty, not as joint tenants>.

severance, *n.* (15c) **1.** The act of cutting off; the state of being cut off. **2.** *Civil procedure.* The separation, by the court, of the claims of multiple parties either to permit separate actions on each claim or to allow certain interlocutory orders to become final. — Also termed *severance of actions; severance of claims.* See *bifurcated trial* under TRIAL. Cf. CONSOLIDATION (3). [Cases: Action ⚷60; Federal Civil Procedure ⚷81.] **3.** The termination of a joint tenancy, usu. by converting it into a tenancy in common. [Cases: Joint Tenancy ⚷4.] **4.** The removal of anything (such as crops or minerals) attached or affixed to real property, making it personal property rather than a part of the land. • Mineral rights are frequently severed from surface rights on property that may contain oil and gas or other minerals. **5.** See SEVERANCE PAY. — **sever,** *vb.* — **severable,** *adj.*

severance damages. See DAMAGES.

severance of actions. See SEVERANCE (2).

severance of claims. See SEVERANCE (2).

severance pay. Money (apart from back wages or salary) paid by an employer to a dismissed employee. • The payment may be made in exchange for a release of any claims that the employee might have against the employer. — Sometimes shortened to *severance.* — Also termed *separation pay; dismissal compensation.* [Cases: Labor and Employment ⚷217.]

severance tax. See TAX.

seward. See CUSTOS MARIS.

sewer service. See SERVICE (2).

sex. (14c) **1.** The sum of the peculiarities of structure and function that distinguish a male from a female organism; gender. **2.** Sexual intercourse. **3.** SEXUAL RELATIONS (2).

sex change. See SEX REASSIGNMENT.

sex discrimination. See DISCRIMINATION.

sex-offender registry. A publicly available list of the names and addresses of sex offenders who have been released from prison. • The registries were started by state statutes known as "Megan's laws." The lists are often posted on the Internet, and some states require publication of the offender's photograph, name, and address in local newspapers. See MEGAN'S LAW. [Cases: Mental Health ⚷469(1).]

sex reassignment. Medical treatment intended to effect a sex change; surgery and hormonal treatments designed to alter a person's gender. — Also termed *sex change.* [Cases: Health ⚷397, 481.]

sexual abuse. 1. See ABUSE. **2.** See RAPE.

sexual activity. See SEXUAL RELATIONS.

sexual assault. 1. See ASSAULT. **2.** See RAPE.

sexual assault by contact. See *sexual assault* (2) under ASSAULT.

sexual battery. 1. See BATTERY. **2.** See RAPE.

sexual exploitation. The use of a person, esp. a child, in prostitution, pornography, or other sexually manipulative activity that has caused or could cause serious emo-

tional injury. — Sometimes shortened to *exploitation*. [Cases: Infants ⇨13, 5–7; Obscenity ⇨2.5.]

sexual harassment. (1973) A type of employment discrimination consisting in verbal or physical abuse of a sexual nature. See HARASSMENT. [Cases: Civil Rights ⇨1181.]

hostile-environment sexual harassment. (1986) Sexual harassment in which a work environment is created where an employee is subject to unwelcome verbal or physical sexual behavior that is either severe or pervasive. • This type of harassment might occur, for example, if a group of coworkers repeatedly e-mailed pornographic pictures to a colleague who found the pictures offensive. [Cases: Civil Rights ⇨1185.]

quid pro quo sexual harassment. (1982) Sexual harassment in which an employment decision is based on the satisfaction of a sexual demand. • This type of harassment might occur, for example, if a boss fired or demoted an employee who refused to go on a date with the boss. [Cases: Civil Rights ⇨1184.]

same-sex sexual harassment. Sexual harassment by a supervisor of an employee of the same sex. — Also termed *same-sex harassment*. [Cases: Civil Rights ⇨1187, 1194.]

sexually dangerous person. See SEXUAL PREDATOR.

sexually transmitted disease. A disease transmitted only or chiefly by engaging in sexual acts with an infected person. • Common examples are syphilis and gonorrhea. — Abbr. STD. — Also termed *venereal disease*.

sexually violent predator. See SEXUAL PREDATOR.

sexual offense. See OFFENSE (1).

sexual orientation. (1931) A person's predisposition or inclination toward a particular type of sexual activity or behavior; heterosexuality, homosexuality, or bisexuality. • There has been a trend in recent years to make sexual orientation a protected class, esp. in employment and hate-crime statutes. [Cases: Civil Rights ⇨1012, 1191.]

sexual predator. A person who has committed many violent sexual acts or who has a propensity for committing violent sexual acts. — Also termed *predator*; *sexually dangerous person*; *sexually violent predator*. [Cases: Mental Health ⇨452.]

sexual relations. (1909) **1.** Sexual intercourse. — Also termed *carnalis copula*. **2.** Physical sexual activity that does not necessarily culminate in intercourse. • Sexual relations usu. involve the touching of another's breast, vagina, penis, or anus. Both persons (the toucher and the person touched) are said to engage in sexual relations. — Also termed *sexual activity*.

SF. See *sinking fund* under FUND (1).

S/F. *abbr.* STATUTE OF FRAUDS.

SG. *abbr.* **1.** SOLICITOR GENERAL. **2.** SURGEON GENERAL.

shack. *Hist.* The straying and escaping of cattle out of their owner's land into other unenclosed land; an intercommoning of cattle.

shadow economy. Collectively, the unregistered economic activities that contribute to a country's gross national product. • A shadow economy may involve the legal and illegal production of goods and services, including gambling, prostitution, and drug-dealing, as well as barter transactions and unreported incomes. — Also termed *black economy*; *black market*; *underground economy*.

shadow jury. See JURY.

shadow stock plan. See PHANTOM STOCK PLAN.

shakedown. (1902) **1.** An extortion of money using threats of violence or, in the case of a police officer, threats of arrest. **2.** See *shakedown search* under SEARCH.

shakedown search. See SEARCH.

shaken-baby syndrome. The medical condition of a child who has suffered forceful shaking, with resulting brain injury. • The syndrome was first identified in the early 1970s. Common injuries include retinal hemorrhage and subdural and subarachnoid hemorrhage, with minimal or no signs of external cranial trauma. Many victims suffer blindness or death. [Cases: Criminal Law ⇨474.4(4); Infants ⇨13, 20.]

shakeout, *n.* An elimination of weak or nonproductive businesses in an industry, esp. during a period of intense competition or declining prices.

shall, *vb.* (bef. 12c) **1.** Has a duty to; more broadly, is required to <the requester shall send notice> <notice shall be sent>. • This is the mandatory sense that drafters typically intend and that courts typically uphold. [Cases: Statutes ⇨227.] **2.** Should (as often interpreted by courts) <all claimants shall request mediation>. **3.** May <no person shall enter the building without first signing the roster>. • When a negative word such as *not* or *no* precedes *shall* (as in the example in angle brackets), the word *shall* often means *may*. What is being negated is permission, not a requirement. **4.** Will (as a future-tense verb) <the corporation shall then have a period of 30 days to object>. **5.** Is entitled to <the secretary shall be reimbursed for all expenses>. • Only sense 1 is acceptable under strict standards of drafting.

sham, *n.* (17c) **1.** Something that is not what it seems; a counterfeit. **2.** A person who pretends to be something that he or she is not; a faker. — **sham,** *vb.* — **sham,** *adj.*

sham action. See ACTION (4).

sham affidavit. See AFFIDAVIT.

sham defense. See DEFENSE (1).

shame sanction. See SANCTION.

shame sentence. See *shame sanction* under SANCTION.

sham exception. (1969) An exception to the *Noerr–Pennington* doctrine whereby a company that petitions the government will not receive First Amendment protection or an exemption from the antitrust laws if its intent in petitioning the government for favorable government

action or treatment is really an effort to harm its competitors. See NOERR–PENNINGTON DOCTRINE; *sham action* under ACTION (4). [Cases: Antitrust and Trade Regulation ⇨905.

shaming sentence. See *shame sanction* under SANCTION.

sham lawsuit. See *sham action* under ACTION (4).

sham litigation. See *sham action* under ACTION (4).

sham marriage. See MARRIAGE (1).

sham petitioning. See *sham action* under ACTION (4).

sham plea. See *sham pleading* under PLEADING (1).

sham pleading. See PLEADING (1).

sham prosecution. See PROSECUTION.

sham suit. See *sham action* under ACTION (4).

sham transaction. (1937) An agreement or exchange that has no independent economic benefit or business purpose and is entered into solely to create a tax advantage (such as a deduction for a business loss). • The Internal Revenue Service is entitled to ignore the purported tax benefits of a sham transaction. [Cases: Internal Revenue ⇨3071.]

shanghaiing (shang-**hī**-ing). The act or an instance of coercing or inducing someone to do something by fraudulent or other wrongful means; specif., the practice of drugging, tricking, intoxicating, or otherwise illegally inducing a person to work aboard a vessel, usu. to secure advance money or a premium. — Also termed *shanghaiing sailors*. 18 USCA § 2194. [Cases: Seamen ⇨34.]

share, *n.* (14c) **1.** An allotted portion owned by, contributed by, or due to someone <each partner's share of the profits>.

intestate share. The share that the renouncer of a will would take in the decedent's assets if the decedent had left no will affecting in any way the distribution of assets. [Cases: Wills ⇨717.]

2. One of the definite number of equal parts into which the capital stock of a corporation or joint-stock company is divided <the broker advised his customer to sell the stock shares when the price reaches $29>. • A share represents an equity or ownership interest in the corporation or joint-stock company. Cf. STOCK (4); SECURITY (4). [Cases: Corporations ⇨62; Joint Adventures ⇨6.]

American share. *Securities.* A share of stock in a foreign corporation issued directly to U.S. investors through a transfer agent.

qualifying share. A share of common stock purchased by someone in order to become a director of a corporation that requires its directors to be shareholders.

share, *vb.* (16c) **1.** To divide (something) into portions. **2.** To enjoy or partake of (a power, right, etc.).

share account. See *share-draft account* under ACCOUNT.

share acquisition. The acquisition of a corporation by purchasing all or most of its outstanding shares directly from the shareholders; TAKEOVER. — Also termed *share-acquisition transaction*; *stock acquisition*; *stock-acquisition transaction*. Cf. ASSET ACQUISITION. [Cases: Corporations ⇨197; Securities Regulation ⇨262.1.]

share and share alike. To divide (assets, etc.) in equal shares or proportions; to engage in per capita division. See PER CAPITA.

share certificate. See STOCK CERTIFICATE.

sharecropping. An agricultural arrangement in which a landowner leases land to a tenant who, in turn, gives the landlord a portion of the crop as rent. • The landlord usu. provides the seed, fertilizer, and equipment. [Cases: Landlord and Tenant ⇨319–333.] — **sharecropper,** *n.*

shared-appreciation mortgage. See MORTGAGE.

shared custody. See *joint custody* under CUSTODY (2).

shared-equity mortgage. See MORTGAGE.

shared parenting. See PARENTING.

share draft. See DRAFT.

share-draft account. See ACCOUNT.

shared residency. See *joint physical custody* under CUSTODY.

shareholder. (1832) One who owns or holds a share or shares in a company, esp. a corporation. — Also termed *shareowner*; (in a corporation) *stockholder*. [Cases: Corporations ⇨170.]

controlling shareholder. A shareholder who can influence the corporation's activities because the shareholder either owns a majority of outstanding shares or owns a smaller percentage but a significant number of the remaining shares are widely distributed among many others. [Cases: Corporations ⇨174.]

dummy shareholder. A shareholder who owns stock in name only for the benefit of the true owner, whose identity is usu. concealed.

interested shareholder. A person who owns enough of a corporation's stock to affect corporate decision-making, usu. at least 15–20% of the corporation's outstanding stock. — Also termed *interested stockholder*.

majority shareholder. A shareholder who owns or controls more than half the corporation's stock. [Cases: Corporations ⇨182.3.]

minority shareholder. A shareholder who owns less than half the total shares outstanding and thus cannot control the corporation's management or singlehandedly elect directors. [Cases: Corporations ⇨182.3.]

shareholder-control agreement. See POOLING AGREEMENT.

shareholder derivative suit. See DERIVATIVE ACTION (1).

shareholder oppression. See OPPRESSION (4).

shareholder proposal. A proposal by one or more corporate stockholders to change company policy or procedure. • Ordinarily, the corporation informs all stockholders about the proposal before the next shareholder meeting.

shareholder resolution. See RESOLUTION (2).

shareholders' equity. See OWNERS' EQUITY.

shareholder's liability. See LIABILITY.

shareholders' scheme of arrangement. See SCHEME OF ARRANGEMENT.

shareholder voting agreement. See POOLING AGREEMENT.

shareowner. See SHAREHOLDER.

shares outstanding. See *outstanding stock* under STOCK.

share split. See STOCK SPLIT.

shareware. Software that can be redistributed but not modified and requires all users to pay a license fee. • The license fee applies to both originals and distributed copies. Cf. FREEWARE; PROPRIETARY SOFTWARE; SEMI-FREE SOFTWARE.

share-warrant to bearer. A warrant providing that the bearer is entitled to a certain amount of fully paid stock shares. • Delivery of the warrant operates as a transfer of the shares of stock.

Sharia (shə-**ree**-ə). The body of Islamic religious law applicable to police, banking, business, contracts, and social issues. • Sharia is a system of laws, rather than a codification of laws, based on the Koran and other Islamic sources.

shark repellent. 1. TAKEOVER DEFENSE. **2.** More specifically, a charter or bylaw provision designed to impede hostile bids to acquire a controlling interest in a corporation.

sharp, *adj.* (1886) (Of a clause in a mortgage, deed, etc.) empowering the creditor to take immediate and summary action upon the debtor's default. See DROP-DEAD PROVISION.

sharp practice. (1836) Unethical action and trickery, esp. by a lawyer. — Also termed (archaically) *unhandsome dealing.* [Cases: Attorney and Client ⇨32(4), 38.] — **sharp practitioner,** *n.*

shave, *vb.* (1832) **1.** To purchase (a negotiable instrument) at a greater than usual discount rate. **2.** To reduce or deduct from (a price).

sheer, *n. Maritime law.* A vessel's sudden deviation from its line of course; a swerve.

sheet acts. See SESSION LAWS.

shelf company. See COMPANY.

shelf corporation. See *shelf company* under COMPANY.

shelf issue. See ISSUE (2).

shelf registration. See REGISTRATION (2).

shelf security. See SECURITY.

shell corporation. See CORPORATION.

Shelley's Case, Rule in. See RULE IN SHELLEY'S CASE.

shell game. A sleight-of-hand game that uses three cups or thimble-like objects, one of which has a pea, ball, or other small object underneath. • This is a game of chance in which one player bets that he or she can remember under which cup the object is. The cups are moved around so quickly that the player finds it difficult to remember where the object is. When played casually on public streets the shell game is usu. a swindle because the operator palms the object rather than leaving it under a cup, so the player has no chance of winning. — Also termed *thimblerig; thimbles and balls.* See GAME OF CHANCE. [Cases: Gaming ⇨62, 68(0.5).]

shelter, *n.* **1.** A place of refuge providing safety from danger, attack, or observation.

homeless shelter. A privately or publicly operated residential facility providing overnight accommodation free of charge to homeless people. • Most homeless shelters accept occupants on a first-come-first-served basis and are open only from early evening to early morning. Those that serve homeless families may remain open throughout the day to women and children. Some shelters offer occupants help such as advice on finding and applying for public assistance, employment, and medical care. [Cases: Asylums and Assisted Living Facilities ⇨35(2).]

women's shelter. A privately or publicly operated residential facility providing women (and their children) who are victims of domestic violence with temporary lodging, food, and other services such as employment assistance, counseling, and medical care. — Also termed *family shelter.*

youth shelter. **1.** A privately or publicly operated residential facility offering young runaway or throwaway children and homeless young people a safe place to stay, usu. for a short time. • The residents enter the shelter voluntarily and can leave anytime they wish. Some shelters offer long-term transitional training so that young people can leave street life and eventually lead independent, productive lives. **2.** An alternative type of juvenile-detention center that is less physically restrictive than a jail or boot camp. • Delinquent juveniles are usu. brought to these shelters by police or ordered to reside there by a court. Residents attend school or work in the daytime and may be permitted weekend visits at their family homes.

2. See TAX SHELTER <the shelter saved the taxpayer over $2,000 in taxes>. — **shelter,** *vb.*

shelter-care hearing. See *shelter hearing* under HEARING.

shelter doctrine. (1955) *Commercial law.* The principle that a person to whom a holder in due course has transferred commercial paper, as well as any later transferee, will succeed to the rights of the holder in due course. • As a result, transferees of holders in due course are generally not subject to defenses against the payment of an instrument. This doctrine ensures

the free transferability of commercial paper. Its name derives from the idea that the transferees "take shelter" in the rights of the holder in due course. [Cases: Bills and Notes ⚷362.]

shelter hearing. See HEARING.

shelving. *Patents.* The failure to begin or the stopping of commercial use of a patent during a specified period, usu. the term of the license. • A licensor may place an anti-shelving provision in a license to ensure the licensed product's manufacture and sale. The term usu. applies to patented inventions, but licenses for trademarked products may also address shelving.

shepardize, *vb.* (1928) **1.** (*often cap.*) To determine the subsequent history and treatment of (a case) by using a printed or computerized version of *Shepard's Citators.* **2.** Loosely, to check the precedential value of (a case) by the same or similar means. — **shepardization, shepardizing,** *n.*

sheriff. [Middle English *shire reeve* from Anglo-Saxon *scirgerefa*] **1.** A county's chief peace officer, usu. elected, who in most jurisdictions acts as custodian of the county jail, executes civil and criminal process, and carries out judicial mandates within the county. — Also termed *high sheriff*; *vice-comes.* [Cases: Sheriffs and Constables ⚷1.]

deputy sheriff. An officer who, acting under the direction of a sheriff, may perform most of the duties of the sheriff's office. • Although *undersheriff* is broadly synonymous with *deputy sheriff*, writers have sometimes distinguished between the two, suggesting that a deputy is appointed for a special occasion or purpose, while an undersheriff is permanent. — Also termed *undersheriff*; *general deputy*; *vice-sheriff.* [Cases: Sheriffs and Constables ⚷16.]

2. *Scots law.* The chief judge at the county level, with limited criminal and unlimited civil jurisdiction. • A sheriff may not hear cases of murder or of some minor offenses. In medieval times, the sheriff was the king's representative in the shires, having military, administrative, and judicial functions. The office was hereditary until the Heritable Jurisdictions Act of 1746.

sheriff clerk. *Scots law.* The clerk of a sheriff's court.

sheriff-depute. *Hist. Scots law.* The qualified judge of a district or county, acting for the titular, unqualified sheriff.

sheriff principal. *Scots law.* The chief judge of a sheriffdom comprising one or more counties.

sheriff's court. See COURT.

sheriff's deed. See DEED.

sheriff's jury. See JURY.

sheriff's sale. See SALE.

Sherman Antitrust Act. A federal statute, passed in 1890, that prohibits direct or indirect interference with the freely competitive interstate production and distribution of goods. • This Act was amended by the Clayton Act in 1914. 15 USCA §§ 1–7. — Often shortened to *Sherman Act.* — Also termed *the Antitrust Law.* [Cases: Antitrust and Trade Regulation ⚷523.]

***Sherman–Sorrells* doctrine.** (1998) The principle that a defendant may claim as an affirmative defense that he or she was not disposed to commit the offense until a public official (often an undercover police officer) encouraged the defendant to do so. • This entrapment defense, which is recognized in the federal system and a majority of states, was developed in *Sherman v. United States*, 356 U.S. 369, 78 S.Ct. 819 (1958), and *Sorrells v. United States*, 287 U.S. 435, 53 S.Ct. 210 (1932). — Also termed *subjective method.* See ENTRAPMENT. Cf. HYPOTHETICAL-PERSON DEFENSE. [Cases: Criminal Law ⚷37.]

shield law. (1971) **1.** A statute that affords journalists the privilege not to reveal confidential sources. See *journalist's privilege* under PRIVILEGE (3). [Cases: Privileged Communications and Confidentiality ⚷404.]

> "More than half of the states have 'shield laws' creating 'reporters' privileges' that are sometimes broader than the First Amendment version of that privilege." David A. Anderson, *Freedom of the Press*, 80 Texas L. Rev. 429, 432 (2002).

2. A statute that restricts or prohibits the use, in rape or sexual-assault cases, of evidence about the victim's past sexual conduct. — Also termed (in sense 2) *rape shield law*; *rape shield statute.* [Cases: Rape ⚷40(1)–40(5).]

> "The 'rape shield law.' At common law the character of the woman as to chastity or unchastity was held to be admissible in evidence on the theory that it had probative value in determining whether she did or did not consent. Defense counsel, in unrestrained zeal for an acquittal, took advantage of this to the point that it often seemed as if it was the victim of the rape, rather than the perpetrator, who was on trial. . . . A typical 'rape shield statute' does not prevent the introduction of any relevant and otherwise admissible evidence, but requires that the relevancy of any evidence of the previous sexual conduct of the complaining witness must be determined in a pretrial hearing before the judge in camera." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 206 (3d ed. 1982).

shifting, *adj.* (1874) (Of a position, place, etc.) changing or passing from one to another <a shifting estate>.

shifting clause. (1813) At common law, a clause under the Statute of Uses prescribing a substituted mode of devolution in the settlement of an estate. See STATUTE OF USES.

shifting executory interest. See EXECUTORY INTEREST.

shifting ground. *Patents.* The broadening of a patent application in an amendment by claiming a feature of the invention that was disclosed but not claimed in the original application. [Cases: Patents ⚷109.]

shifting inheritance. See INHERITANCE.

shifting risk. See RISK.

shifting stock of merchandise. Merchandise inventory subject to change by purchases and sales in the course of trade.

shifting the burden of proof. (1805) In litigation, the transference of the duty to prove a fact from one party to the other; the passing of the duty to produce evidence

in a case from one side to another as the case progresses, when one side has made a prima facie showing on a point of evidence, requiring the other side to rebut it by contradictory evidence. See BURDEN OF PROOF. [Cases: Criminal Law ⚷327; Evidence ⚷94.]

shifting trust. See TRUST.

shifting use. See USE (4).

shill. 1. A person who poses as an innocent bystander at a confidence game but actually serves as a decoy for the perpetrators of the scheme. 2. BY-BIDDER. — **shill,** *vb.*

shilling, *n.* 1. The practice of fraudulently bidding on items at an auction solely to drive up the price. • The seller might collude with another person to bid or might act alone and anonymously. Cf. BIDDING UP; BY-BIDDING. [Cases: Auctions and Auctioneers ⚷7.] 2. *Hist.* An English coin equal to 12 pence or 1/20th of a pound. • Shillings were revalued as five pence and phased out when decimalization was adopted in the early 1970s. The modern five-pence coin, like its predecessor equal to 1/20th of a pound, is sometimes nostalgically referred to as a shilling.

shingle. A small, usu. dignified sign that marks the office door of a lawyer or other professional.

shingle theory. *Securities.* The notion that a broker-dealer must be held to a high standard of conduct because by engaging in the securities business ("hanging out a shingle"), the broker-dealer implicitly represents to the world that the conduct of all its employees will be fair and meet professional norms. [Cases: Securities Regulation ⚷27.21, 60.32(1).]

> "[I]n judging the appropriate standard of care that attaches to a broker-dealer in recommending securities to his or her customers and in dealing with the customers' accounts, the Commission has relied upon the 'shingle theory.' The shingle theory is but an extension of the common law doctrine of 'holding out.' When brokers hold themselves out as experts either in investments in general or in the securities of a particular issuer, they will be held to a higher standard of care in making recommendations." Thomas Lee Hazen, *The Law of Securities Regulation* § 10.6, at 423 (2d ed. 1994).

shin plaster. *Hist. Slang.* 1. A bank note that has greatly depreciated in value; esp., the paper money of the Republic of Texas in relation to the U.S. dollar. 2. Paper money in denominations less than one dollar.

ship, *n.* A type of vessel used or intended to be used in navigation. See VESSEL. [Cases: Shipping ⚷1.]

chartered ship. 1. A ship specially hired to transport the goods of only one person or company. [Cases: Shipping ⚷34–58.] 2. A ship on which a shipper has chartered space for a cargo.

general ship. A ship that is set for a particular voyage to carry the goods of any persons willing to ship goods on it for that voyage.

ship, *vb.* To send (goods, documents, etc.) from one place to another, esp. by delivery to a carrier for transportation.

ship broker. *Maritime law.* 1. The business agent of a shipowner or charterer; an intermediary between an owner or charterer and a shipper. 2. One who negotiates the purchase and sale of a ship.

ship channel. *Maritime law.* The part of a navigable body of water where the water is deep enough for large vessels to travel safely. [Cases: Collision ⚷89; Navigable Waters ⚷1(5).]

shipmaster. See MASTER OF A SHIP.

shipment. 1. The transportation of goods; esp., the delivery of goods to a carrier and subsequent issuance of a bill of lading. 2. The goods so shipped; an order of goods.

shipment contract. See CONTRACT.

Ship Mortgage Act. A federal law regulating mortgages on ships registered as U.S. vessels by, among other things, providing for enforcement of maritime liens in favor of those who furnish supplies or maintenance to the vessels. 46 USCA §§ 30101, 31301–43. [Cases: Shipping ⚷32.]

shipowner-negligence doctrine. The principle that a shipowner is liable for an assault on a crew member if the crew member was assaulted by a superior, during an activity undertaken for the benefit of the ship's business, and if the ship's officers could reasonably have foreseen the assault. [Cases: Seamen ⚷29(3).]

shipper. 1. One who ships goods to another. 2. One who contracts with a carrier for the transportation of cargo. • As a legal term of art, the shipper may not be the person who owns the cargo, but an agent or an independent contractor. Cf. CARRIER (1). [Cases: Carriers ⚷3.]

shipping articles. *Maritime law.* A document (provided by a master of a vessel to the mariners) detailing voyage information, such as the voyage term, the number of crew, and the wage rates. 46 USCA § 10302. [Cases: Seamen ⚷7.]

shipping commissioner. An officer, appointed by the secretary of the treasury, who is posted at a port of entry, and vested with general supervisory authority over seamen's contracts and welfare. • In 1993, the term was changed to "master or individual in charge." See Pub. L. 103-206 § 403. [Cases: Seamen ⚷5.]

shipping document. Any paper that covers a shipment in trade, such as a bill of lading or letter of credit. [Cases: Carriers ⚷46–68; Shipping ⚷106.]

shipping law. See LAW OF SHIPPING.

shipping order. A copy of the shipper's instructions to a carrier regarding the disposition of goods to be transported. [Cases: Carriers ⚷61.]

ship's husband. *Maritime law.* A person appointed to act as general agent of all the coowners of a ship, as by contracting for all necessary services, equipment, and supplies. Cf. EXERCITOR. [Cases: Maritime Liens ⚷28; Seamen ⚷22; Shipping ⚷74.]

ship's papers. *Maritime law.* The papers that a vessel is required to carry to provide the primary evidence of the ship's national character, ownership, nature and

destination of cargo, and compliance with navigation laws. •These papers includes certificates of health, charter-party, muster-rolls, licenses, and bills of lading. [Cases: Shipping ⇨5.]

shipwreck. *Maritime law.* **1.** A ship's wreckage. [Cases: Shipping ⇨212.] **2.** The injury or destruction of a vessel because of circumstances beyond the owner's control, rendering the vessel incapable of carrying out its mission.

> "There are two kinds of shipwreck: (1.) When the vessel sinks or is dashed to pieces. (2.) When she is stranded, which is, when she grounds and fills with water. The latter may terminate in shipwreck, or may not, and it depends on circumstances whether it will or will not justify an abandonment." 4 James Kent, *Commentaries on American Law* *323 n.(b) (George Comstock ed., 11th ed. 1866).

shire. A county in Great Britain (esp. England), originally made up of many hundreds but later consisting of larger divisions set off by metes and bounds.

shire-gerefa. See *shire-reeve* under REEVE.

shire-reeve. See REEVE.

***Shively* presumption** (**shiv**-lee). The doctrine that any prestatehood grant of public property does not include tidelands unless the grant specifically indicates otherwise. *Shively v. Bowlby*, 152 U.S. 1, 14 S.Ct. 548 (1894); *United States v. Holt State Bank*, 270 U.S. 49, 46 S.Ct. 197 (1925). See EQUAL-FOOTING DOCTRINE. [Cases: Navigable Waters ⇨36(1).]

shock, *n.* A profound and sudden disturbance of the physical or mental senses; a sudden and violent physical or mental impression depressing the body's vital forces, as by a sudden injury or medical procedure.

mental shock. Shock caused by agitation of the mental senses and resulting in extreme grief or joy, as by witnessing the horrific death of a family member or winning the lottery. Cf. EMOTIONAL DISTRESS.

physical shock. Shock caused by agitation of the physical senses, as from a sudden violent blow, impact, collision, or concussion.

shock incarceration. See INCARCERATION.

shock probation. See PROBATION.

shock the conscience. To cause intense ethical or humanitarian discomfort. • This phrase is used as an equitable standard for gauging whether (1) state action amounts to a violation of a person's substantive-due-process rights, (2) a jury's award is excessive, (3) a fine, jail term, or other penalty is disproportionate to the crime, or (4) a contract is unconscionable. See CONSCIENCE OF THE COURT (2). [Cases: Appeal and Error ⇨1004(5); Constitutional Law ⇨3896; Contracts ⇨1; Damages ⇨127.1–127.3; New Trial ⇨76.]

shop, *n.* (13c) A business establishment or place of employment; a factory, office, or other place of business.

agency shop. A shop in which a union acts as an agent for the employees, regardless of their union membership. • Nonunion members must pay union dues because it is presumed that any collective bargaining will benefit nonunion as well as union members.

closed nonunion shop. A shop in which the employer restricts employment to workers who are unaffiliated with any labor union.

closed shop. A shop in which the employer, by agreement with a union, employs only union members in good standing. • Closed shops were made illegal under the federal Labor-Management Relations Act. — Also termed *closed union shop.* See PREHIRE AGREEMENT. Cf. *closed union* under UNION. [Cases: Labor and Employment ⇨1264.]

open closed shop. A shop in which the employer hires nonunion workers on the understanding that they will become union members within a specified period. — Also termed *open shop.* [Cases: Labor and Employment ⇨1264.]

open shop. **1.** A shop in which the employer hires workers without regard to union affiliation. See RIGHT-TO-WORK LAW. Cf. *open union* under UNION. **2.** See *open closed shop.*

preferential nonunion shop. A shop in which nonunion members are given preference over main members in employment matters.

preferential shop. See *preferential union shop.*

preferential union shop. A shop in which union members are given preference over nonunion members in employment matters. — Also termed *preferential shop.*

union shop. A shop in which the employer may hire nonunion employees on the condition that they join a union within a specified time (usu. at least 30 days).

shop-book rule. (1898) *Evidence.* An exception to the hearsay rule permitting the admission into evidence of original bookkeeping records if the books' entries were made in the ordinary course of business and the books are authenticated by somebody who maintains them. [Cases: Criminal Law ⇨436(2); Evidence ⇨354.]

shop books. (17c) Records of original entry maintained in the usual course of business by a shopkeeper, trader, or other businessperson. — Also termed *books of account*; *account books.*

shop committee. A union committee that resolves employee complaints within a union shop. See *union shop* under SHOP.

shoplifting, *n.* (17c) Theft of merchandise from a store or business; specif., larceny of goods from a store or other commercial establishment by willfully taking and concealing the merchandise with the intention of converting the goods to one's personal use without paying the purchase price. See LARCENY. [Cases: Larceny ⇨1.] — **shoplift,** *vb.*

> "Shoplifting is a form of larceny . . . . As a practical matter, however, the difficulty of proving the wrongful taking and the felonious intent requisites for a conviction under the general larceny statutes, together with the risk of retributory civil action against the shopkeeper consequent to

acquittal of an accused shoplifter, have caused shoplifting to be established as a specific statutory crime in many jurisdictions." 50 Am. Jur. 2d *Larceny* § 71, at 79-80 (1995).

shop right. (1879) *Patents.* An employer's right to an irrevocable, nonassignable, nonexclusive, royalty-free license in an employee's invention, if the employee conceived and developed the invention during the course of employment and used company funds and materials. • The term derives from the idea that the right belongs to the shop, not to the employee. Employment contracts frequently contain patent-assignment clauses, but the employer is entitled to the license even if the employee retains the patent. If the employee or consultant was hired to invent, then the employer owns the resulting inventions. If an employee develops an invention independently, the employee is its sole owner. But if an employees uses the employer's resources to make the invention, courts use the shop-right doctrine to order the employee to compensate the employer. [Cases: Labor and Employment ⚷308.]

shop steward. See STEWARD (2).

shore. (14c) **1.** Land lying between the lines of high- and low-water mark; lands bordering on the shores of navigable waters below the line of ordinary high water. [Cases: Navigable Waters ⚷36(3); Waters and Water Courses ⚷90.] **2.** Land adjacent to a body of water regardless of whether it is below or above the ordinary high- or low-water mark. — Also termed *shore land.* [Cases: Navigable Waters ⚷18, 33, 41; Waters and Water Courses ⚷90-96.]

short, *adj.* **1.** Not holding at the time of sale the security or commodity that is being sold in anticipation of a fall in price <the trader was short at the market's close>. **2.** Of or relating to a sale of securities or commodities not in the seller's possession at the time of sale <a short position>. See *short sale* under SALE. Cf. LONG. [Cases: Securities Regulation ⚷45.17.]

short, *adv.* By a short sale <sold the stock short>. See *short sale* under SALE.

short, *vb.* To sell (a security or commodity) by a short sale <shorted 1,000 shares of Pantheon stock>. See *short sale* under SALE. [Cases: Securities Regulation ⚷45.17.]

short cause. See CAUSE (3).

short-cause calendar. See CALENDAR (2).

short-cause trial. See *short cause* under CAUSE (3).

shortened statutory period. *Patents.* An amount of time less than 6 months, but not less than 30 days, given in certain circumstances to a patent applicant to respond to an office action. • The period for most responses can be extended up to the statutory period of 6 months. MPEP 710.02. [Cases: Patents ⚷104.]

shorter-term rule. See RULE OF THE SHORTER TERM.

short-form agreement. *Labor law.* A contract usu. entered into by a small independent contractor whereby the contractor agrees to be bound by a collective-bargaining agreement negotiated between a union and a multiemployer bargaining unit.

short-form bill of lading. See BILL OF LADING.

short-form merger. See MERGER.

short interest. *Securities.* In a short sale, the number of shares that have not been purchased for return to lenders. See *short sale* under SALE.

short lease. See LEASE.

short notice. See NOTICE.

short position. The position of an investor who borrowed stock to make a short sale but has not yet purchased the stock to repay the lender. See *short sale* under SALE.

short sale. See SALE.

short sale against the box. See SALE.

short-shipped, *adj. Commercial law.* Partially filled; containing fewer units than requested or paid for. [Cases: Shipping ⚷116.]

short summons. See SUMMONS.

short-swing profits. Profits made by a corporate insider on the purchase and sale (or sale and purchase) of company stock within a six-month period. • These profits are subject to being returned to the company. [Cases: Securities Regulation ⚷53.10-53.22.]

short-term alimony. See *rehabilitative alimony* under ALIMONY.

short-term capital gain. See CAPITAL GAIN.

short-term debt. 1. See DEBT. **2.** See *current liability* under LIABILITY.

short-term loan. See LOAN.

short-term security. See SECURITY.

short-term trading. See TRADING.

short-term trust. See *Clifford trust* under TRUST.

short title. See TITLE (3).

short ton. See TON.

shotgun instruction. See ALLEN CHARGE.

shotgun pleading. See PLEADING (1).

shotgun rejection. See REJECTION.

show, *vb.* (12c) To make (facts, etc.) apparent or clear by evidence; to prove.

show cause. To produce a satisfactory explanation or excuse, usu. in connection with a motion or application to a court. [Cases: Motions ⚷24.]

show-cause motion. See MOTION.

show-cause order. See ORDER (2).

show-cause proceeding. (1922) A usu. expedited proceeding on a show-cause order. — Also termed *rule to show cause; summary process; summary procedure; expedited proceeding.*

show-cause rule. See *show-cause order* under ORDER (2).

shower (**shoh**-ər), *n.* A person commissioned by a court to take jurors to a place so that they may observe it as they consider a case on which they are sitting. See VIEW (3). [Cases: Criminal Law ⚷651; Trial ⚷28.]

showing, *n.* (1857) The act or an instance of establishing through evidence and argument; proof <a prima facie showing>.

show of hands. See *vote by show of hands* under VOTE (4).

show-stopper. *Corporations.* An antitakeover tactic by which the target company seeks an injunction barring the takeover offer, usu. because the proposed merger violates antitrust laws.

show trial. (1937) A trial, usu. in a nondemocratic country, that is staged primarily for propagandistic purposes, with the outcome predetermined.

showup, *n.* (1929) A pretrial identification procedure in which a suspect is confronted with a witness to or the victim of a crime. • Unlike a lineup, a showup is a one-on-one confrontation. Cf. LINEUP. [Cases: Criminal Law ⇨339.8(5, 6).]

shrinkage. (1961) The reduction in inventory caused by theft, breakage, or waste.

shrink-wrap license. See LICENSE.

SHU. *abbr.* SPECIAL HOUSING UNIT.

shutdown. (1884) A cessation of work production, esp. in a factory.

shut-in royalty. See ROYALTY (2).

shut-in royalty clause. *Oil & gas.* A provision in an oil-and-gas lease allowing the lessee to maintain the lease while there is no production from the property because wells capable of production are shut in. • The lessee pays the lessor a shut-in royalty in lieu of production. [Cases: Mines and Minerals ⇨78.1(3).]

shuttle diplomacy. See DIPLOMACY.

shyster (**shɪs**-tər). (1843) A person (esp. a lawyer) whose business affairs are unscrupulous, deceitful, or unethical.

si actio (sɪ **ak**-shee-oh), *n.* [Latin] *Hist.* The closing statement in a defendant's plea demanding judgment.

si aliquid sapit (sɪ **al**-i-kwid **say**-pit). [Law Latin] *Hist.* If he knows anything.

si antecedit ictum licet non congressum (sɪ an-ti-**see**-dit **ik**-təm **lɪ**-set non kən-**gres**-əm). [Law Latin] *Hist.* If it precedes the blow, although not actually connected with it. • The phrase appeared in reference to the malice sufficient to warrant a capital murder conviction.

SIB. *abbr.* **1.** Securities and Investment Board. See FINANCIAL SERVICES AGENCY. **2.** See *survivor-income benefit plan* under EMPLOYEE BENEFIT PLAN.

sibi imputet (**sib**-ɪ **im**-pyə-tet). [Latin] *Hist.* Let it be imputed to himself.

sibi invigilare (**sib**-ɪ in-vij-ə-**lair**-ee). [Latin] *Hist.* To watch for themselves.

sibling. A brother or sister.

sibship. 1. The quality or state of being a blood relative, esp. a sibling. See DEGREE.

> "[T]he ancient Germans knew yet another calculus of kinship, which was bound up with their law of inheritance. Within the household composed of a father and children there was no degree; this household was regarded for this purpose as a unit, and only when, in default of children, the inheritance fell to remoter kinsmen, was there any need to count the grades of 'sibship.' Thus first cousins are in the first degree of sibship; second cousins in the second." 2 Frederick Pollock & Frederic William Maitland, *History of English Law Before the Time of Edward I* 386 (2d ed. 1899).

2. A group of blood relatives; kindred.

sic (sik). [Latin "so, thus"] (1859) Spelled or used as written. • *Sic*, invariably bracketed and usu. set in italics, is used to indicate that a preceding word or phrase in a quoted passage is reproduced as it appeared in the original document <"that case peeked [*sic*] the young lawyer's interest">.

sick leave. 1. An employment benefit allowing a worker time off for sickness, either with or without pay, but without loss of seniority or other benefits. [Cases: Labor and Employment ⇨182.] **2.** The time so taken by an employee.

sickness and accident insurance. See *health insurance* under INSURANCE.

si constet de persona (sɪ **kon**-stet dee pər-**soh**-nə). [Latin] If it is certain who is the person meant.

si contingat (sɪ kon-**ting**-at). [Law Latin] If it happens. • This term was formerly used to describe conditions in a conveyance.

sicut alias (**sɪ**-kət **ay**-lee-əs), *n.* [Latin "as at another time"] *Hist.* A second writ issued when the first one was not executed.

> "But where a defendant absconds, and the plaintiff would proceed to an outlawry against him, an original writ must then be sued out regularly, and after that a *capias*. And if the sheriff cannot find the defendant upon the first writ . . . there issues out an *alias* writ, and after that a *pluries*, to the same effect as the former: only after these words 'we command you,' this clause is inserted, 'as we have *formerly*,' or, 'as we have *often* commanded you;' '*sicut* alias' . . . ." 3 William Blackstone, *Commentaries on the Laws of England* 283 (1768).

sicut me Deus adjuvet (**sik**-ət mee **dee**-əs **aj**-ə-vet). [Latin] So help me God.

side, *n.* (13c) **1.** The position of a person or group opposing another <the law is on our side>. **2.** Either of two parties in a transaction or dispute <each side put on a strong case>. **3.** *Archaic.* The field of a court's jurisdiction <equity side> <law side>. **4.** *Property.* In a description of more or less rectangularly shaped land, either of the two long boundary lines.

side agreement. See AGREEMENT.

sidebar. (1856) **1.** A position at the side of a judge's bench where counsel can confer with the judge beyond the jury's earshot <the judge called the attorneys to sidebar>. **2.** SIDEBAR CONFERENCE <during the sidebar, the prosecutor accused the defense attorney of misconduct>. **3.** A short, secondary article within or accompanying a main story in a publication <the sidebar contained information on related topics>. **4.** SIDEBAR COMMENT.

sidebar comment. (1922) An unnecessary, often argumentative remark made by an attorney or witness, esp. during a trial or deposition <the witness paused after testifying, then added a sidebar>. — Often shortened to *sidebar*. — Also termed *sidebar remark*. [Cases: Trial ☞113.]

sidebar conference. (1925) **1.** A discussion among the judge and counsel, usu. over an evidentiary objection, outside the jury's hearing. — Also termed *bench conference*. [Cases: Trial ☞18, 50.] **2.** A discussion, esp. during voir dire, between the judge and a juror or prospective juror. — Often shortened to *sidebar*.

sidebar remark. See SIDEBAR COMMENT.

sidebar rule. *Hist. English law.* An order or rule allowed by the court without formal application, such as an order to plead within a particular time. • Formerly, the rules or orders were made on the motion of the attorneys at the sidebar in court.

side judge. See JUDGE.

side lines. **1.** The margins of something, such as property. **2.** A different type of business or goods than one principally engages in or sells. **3.** *Mining law.* The boundary lines of a mining claim not crossing the vein running on each side of it. — Also written *sidelines*. Cf. END LINES. [Cases: Mines and Minerals ☞18.]

sidenote. See MARGINAL NOTE.

si deprehendatur (si dep-ri-hen-**day**-tər). [Latin] *Hist.* If captured.

side reports. (1943) **1.** Unofficial volumes of case reports. **2.** Collections of cases omitted from the official reports.

sidesman. *Eccles. law.* A church officer who originally reported to the bishop on clerical and congregational misdeeds, including heretical acts, and later became a standing officer whose duties gradually devolved by custom on the churchwarden. — Also termed *synodsman*; *questman*.

si deventum sit ad actum maleficio proximum (si di-**ven**-təm sit ad **ak**-təm mal-ə-**fish**-ee-oh **prok**-sə-məm). [Law Latin] *Hist.* If it approaches an act bordering on crime. • The phrase described the determination of a criminal attempt.

***Sierra–Mobile* doctrine.** See MOBILE–SIERRA DOCTRINE.

si fecerit te securum (si **fes**-ər-it tee si-**kyoor**-əm). [Law Latin] *Hist.* If he has made you secure. • These were the initial words of a writ ordering the sheriff, upon receipt of security from the plaintiff, to compel the defendant's appearance in court. — Also spelled (erroneously) *se te fecerit securum*.

sight. (1810) A drawee's acceptance of a draft <payable after sight>. • The term *after sight* means "after acceptance."

sight draft. See DRAFT.

sight strike. See STRIKE (2).

sigil (**sij**-əl), *n.* A seal or an abbreviated signature used as a seal; esp., a seal formerly used by civil-law notaries.

sigillum (si-**jil**-əm), *n.* [Latin] A seal, esp. one impressed on wax.

sigla (**sig**-lə), *n. pl.* [Latin] Abbreviations and signs used in writing, esp. by the Glossators.

sign, *vb.* (15c) **1.** To identify (a record) by means of a signature, mark, or other symbol with the intent to authenticate it as an act or agreement of the person identifying it <both parties signed the contract>. **2.** To agree with or join <the commissioner signed on for a four-year term>.

signal. (1949) **1.** A means of communication, esp. between vessels at sea or between a vessel and the shore. • The international code of signals assigns arbitrary meanings to different arrangements of flags or light displays. [Cases: Collision ☞75–79, 81, 98, 100(2).] **2.** In the citation of legal authority, an abbreviation or notation supplied to indicate some basic fact about the authority. • For example, according to the *Bluebook*, the signal *See* means that the cited authority plainly supports the proposition, while *Cf.* means that the cited authority supports a proposition analogous to (but in some way different from) the main proposition. For these and other signals, see *The Bluebook: A Uniform System of Citation* § 1.2, at 22–24 (17th ed. 2000). — Also termed (in sense 2) *citation signal*.

signatorius anulus (sig-nə-**tor**-ee-əs **an**-yə-ləs). [Latin] *Roman law.* A signet ring.

signatory (**sig**-nə-tor-ee), *n.* (1866) A person or entity that signs a document, personally or through an agent, and thereby becomes a party to an agreement <eight countries are signatories to the treaty>. — **signatory,** *adj.*

signatory authority. **1.** License to make a decision, esp. to withdraw money from an account or to transfer a negotiable instrument. **2.** *Patents.* In the U.S. Patent and Trademark Office, the power of an examiner to approve an office action. [Cases: Patents ☞104.]

signature. (16c) **1.** A person's name or mark written by that person or at the person's direction. — Also termed *sign manual*. [Cases: Signatures ☞1–5.] **2.** *Commercial law.* Any name, mark, or writing used with the intention of authenticating a document. UCC §§ 1-201(37), 3-401(b). — Also termed *legal signature*. [Cases: Bills and Notes ☞54; Contracts ☞35; Sales ☞29.]

> "The signature to a memorandum may be any symbol made or adopted with an intention, actual or apparent, to authenticate the writing as that of the signer." Restatement (Second) of Contracts § 134 (1979).

digital signature. (1978) A secure, digital code attached to an electronically transmitted message that uniquely identifies and authenticates the sender. • A digital signature consists of a "hashed" number combined with a number assigned to a document (a private-encryption key). Generating a signature requires the use of private- and public-key-encryption software, and is often activated by a simple command or act,

such as clicking on a "place order" icon on a retailer's website. Digital signatures are esp. important for electronic commerce and are a key component of many electronic message-authentication schemes. Several states have passed legislation recognizing the legality of digital signatures. See E-COMMERCE; KEY ENCRYPTION. [Cases: Signatures ⇨1, 2.]

electronic signature. An electronic symbol, sound, or process that is either attached to or logically associated with a document (such as a contract or other record) and executed or adopted by a person with the intent to sign the document. • Types of electronic signatures include a typed name at the end of an email, a digital image of a handwritten signature, and the click of an "I accept" button on an e-commerce site. The term *electronic signature* does not suggest or require the use of encryption, authentication, or identification measures. A document's integrity (unaltered content), authenticity (sender's identity), and confidentiality (of the signer's identity or document's contents) are not ensured merely because an electronic signature is provided for. [Cases: Signatures ⇨1–3.]

facsimile signature. (1892) **1.** A signature that has been prepared and reproduced by mechanical or photographic means. **2.** A signature on a document that has been transmitted by a facsimile machine. See FAX.

private signature. *Civil law.* A signature made on a document (such as a will) that has not been witnessed or notarized. [Cases: Wills ⇨149.]

unauthorized signature. (1859) A signature made without actual, implied, or apparent authority. • It includes a forgery. UCC § 1-201(43). [Cases: Banks and Banking ⇨147; Bills and Notes ⇨54, 279.]

signature card. (1902) A financial-institution record consisting of a customer's signature and other information that assists the institution in monitoring financial transactions, as by comparing the signature on the record with signatures on checks, withdrawal slips, and other documents. [Cases: Banks and Banking ⇨133, 151.]

signature crime. See CRIME.

signature evidence. See EVIDENCE.

signature loan. See LOAN.

signed, sealed, and delivered. (17c) In a certificate of acknowledgment, a statement that the instrument was executed by the person acknowledging it. — Often shortened to *sealed and delivered.* [Cases: Acknowledgment ⇨29.]

signed writing. See WRITING.

signet. 1. *Civil law.* An elaborate hand-drawn symbol (usu. incorporating a cross and the notary's initials) formerly placed at the base of notarial instruments, later replaced by a seal. **2.** *Scots law.* A seal used to authenticate summonses in civil matters before the Court of Session. • Originally, this was the monarch's personal seal. Cf. WRITER TO THE SIGNET.

significant-connection jurisdiction. See JURISDICTION.

significant-connection/substantial-evidence jurisdiction. See *significant-connection jurisdiction* under JURISDICTION.

significant-relationship theory. See CENTER-OF-GRAVITY DOCTRINE.

significavit (sig-ni-fi-**kay**-vit), *n.* [Latin "he has signified"] *Eccles. law.* **1.** A bishop's certificate that a person has been in a state of excommunication for more than 40 days. **2.** A notice to the Crown in chancery, based on the bishop's certificate, whereby a writ *de contumace capiendo* (or, earlier, a writ *de excommunicato capiendo*) would issue for the disobedient person's arrest and imprisonment. See DE CONTUMACE CAPIENDO.

sign manual. 1. See SIGNATURE (1). **2.** A symbol or emblem, such as a trademark, representing words or an idea.

signum (**sig**-nəm), *n.* [Latin] *Roman law.* **1.** A sign; a seal.

> "Signum. (On written documents.) A seal (a stamp) put on to close a document in order to make its contents inaccessible to unauthorized persons and protect against forgery, or at the end of it after the written text. In the latter case the seal (without or with a signature) indicated that the sealer recognized the written declaration as his . . . . *Signum* is also the seal of a witness who was present at the making of a document." Adolf Berger, *Encyclopedic Dictionary of Roman Law* 707 (1953).

2. An indication of something seen or otherwise perceived by the senses, such as a bloodstain on a murder suspect. Pl. **signa.**

si institutus sine liberis decesserit (si in-sti-t[y]**oo**-təs si-nee **lib**-ər-is di-**ses**-ər-it). [Latin] *Hist.* If the instituted heir should die without issue. See SUBSTITUTION.

si ita est (si **i**-tə est). [Latin] If it be so. • This phrase was formerly used in a mandamus writ to order a judge to affix a seal to a bill of exceptions, if the facts were accurately stated.

silence, *n.* (13c) **1.** A restraint from speaking. • In criminal law, silence includes an arrestee's statements expressing the desire not to speak and requesting an attorney. **2.** A failure to reveal something required by law to be revealed. See *estoppel by silence* under ESTOPPEL. — **silent,** *adj.*

silent confirmation. See CONFIRMATION.

silentiary (si-len-shee-**air**-ee), *n.* **1.** *Roman law.* An official who maintains order in the imperial palace and on the imperial council; a chamberlain. **2.** *Hist.* An officer who is sworn to silence about state secrets; esp., a privy councillor so sworn. **3.** *Hist.* A court usher who maintains order and esp. silence in the court. — Also termed *silentiarius.*

silent partner. See PARTNER.

silent record. See RECORD.

silent-witness theory. (1973) *Evidence.* A method of authenticating and admitting evidence (such as a

photograph), without the need for a witness to verify its authenticity, upon a sufficient showing of the reliability of the process of producing the evidence, including proof that the evidence has not been altered. [Cases: Criminal Law ⚷438, 444; Evidence ⚷359, 380.]

silk gown. **1.** The professional robe worn by a Queen's Counsel. **2.** One who is a Queen's Counsel. — Often shortened (in sense 2) to *silk*. Cf. STUFF GOWN.

silver certificate. *Hist.* A banknote issued by the United States Treasury from 1878 to 1963 and redeemable in silver. • The notes represented that a certain amount of silver was on deposit with the government and would be paid to the bearer on demand. Originally, these notes were not legal tender and could be used only to pay taxes and other public obligations. In 1967, Congress abolished redemption in silver after June 1968. Silver certificates now have the same status as Federal Reserve notes, which are not redeemable for precious metal. Cf. FEDERAL RESERVE NOTE; GOLD CERTIFICATE.

silver parachute. See TIN PARACHUTE.

silver-platter doctrine. (1958) *Criminal procedure.* The principle that a federal court could admit evidence obtained illegally by a state police officer as long as a federal officer did not participate in or request the search. • The Supreme Court rejected this doctrine in *Elkins v. United States*, 364 U.S. 206, 80 S.Ct. 1437 (1960). [Cases: Criminal Law ⚷394.2.]

si malitia suppleat aetatem (si mə-**lish**-ee-ə **səp**-lee-at ee-**tay**-təm). [Latin] *Hist.* If malice should supply the want of age.

similar happenings. *Evidence.* Events that occur at a time different from the time in dispute and are therefore usu. inadmissible except to the extent that they provide relevant information on issues that would be fairly constant, such as the control of and conditions on land on the day in question. [Cases: Criminal Law ⚷369–374; Evidence ⚷129–142.]

similarity. *Intellectual property.* The resemblance of one trademark or copyrighted work to another. • How closely a trademark must resemble another to amount to infringement depends on the nature of the product and how much care the typical buyer would be expected to take in making the selection in that particular market. It is a question of overall impression rather than an element-by-element comparison of the two marks. — Also termed *imitation*; *colorable imitation*. Cf. SUBSTANTIAL SIMILARITY. [Cases: Trademarks ⚷1095.]

> "It is the buyer who uses ordinary caution in making his purchase, who is buying with the care usually exercised in such transactions, who must be deceived by this similarity. He who buys a box of candy does not use as much care as he who buys a watch. He who buys a handkerchief does not usually examine the goods offered him as carefully as he who buys a suit of clothes." Harry D. Nims, *The Law of Unfair Competition and Trade-Marks* 836 (1929).

comprehensive nonliteral similarity. *Copyright.* Similarity evidenced by the copying of the protected work's general ideas or structure (such as a movie's plot) without using the precise words or phrases of the work. — Also termed *pattern similarity*.

fragmented literal similarity. *Copyright.* Similarity evidenced by the copying of verbatim portions of the protected work.

substantial similarity. *Copyright.* A strong resemblance between a copyrighted work and an alleged infringement, thereby creating an inference of unauthorized copying. • The standard for substantial similarity is whether an ordinary person would conclude that the alleged infringement has appropriated nontrivial amounts of the copyrighted work's expressions. — Also termed *probative similarity*. See *derivative work* under WORK (2). [Cases: Copyrights and Intellectual Property ⚷53(1).]

similar sales. See SALE.

similiter (si-**mil**-i-tər). [Latin "similarly"] *Common-law pleading.* A party's written acceptance of an opponent's issue or argument; a set form of words by which a party accepts or joins in an issue of fact tendered by the other side. See *joinder of issue* (2) under JOINDER. [Cases: Pleading ⚷100, 186.]

si minor se majorem dixerit (si **mi**-nər see mə-**jor**-əm **dik**-sər-it). [Latin] *Hist.* If the minor has said that he is major. • The phrase refers to a defense that might be raised in a suit for a minor's claim for restitution for minority.

simony (**sim**-ə-nee *or* **si**-mə-nee), *n.* [fr. Latin *simonia* "payment for things spiritual," fr. the proper name *Simon Magus* (see below)] *Hist. Eccles. law.* The unlawful practice of giving or receiving money or gifts in exchange for spiritual promotion; esp., the unlawful buying or selling of a benefice or the right to present clergy to a vacant benefice.

> "By *simony*, the right of presentation to a living is forfeited, and vested *pro hac vice* in the crown. Simony is the corrupt presentation of any one to an ecclesiastical benefice for money, gift, or reward. It is so called from the resemblance it is said to bear to the sin of Simon Magus, though the purchasing of holy orders seems to approach nearer to his offence. It was by the canon law a very grievous crime: and is so much the more odious, because, as sir Edward Coke observes, it is ever accompanied with perjury; for the presentee is sworn to have committed no simony." 2 William Blackstone, *Commentaries on the Laws of England* 278 (1766).

> "Simony is an offence which consists in the buying and selling of holy orders, and any bond or contract involving simony is illegal and void." John Indermaur, *Principles of the Common Law* 195 (Edmund H. Bennett ed., 1st Am. ed. 1878).

simple, *adj.* (16c) **1.** (Of a crime) not accompanied by aggravating circumstances. Cf. AGGRAVATED (1). [Cases: Criminal Law ⚷28.] **2.** (Of an estate or fee) heritable by the owner's heirs with no conditions concerning tail. [Cases: Descent and Distribution ⚷11; Estates in Property ⚷5; Wills ⚷596.] **3.** (Of a contract) not made under seal. [Cases: Contracts ⚷36.]

simple agreement. See AGREEMENT.

simple assault. **1.** See ASSAULT (1). **2.** See ASSAULT (2).

simple average. See *particular average* under AVERAGE.

simple battery. See BATTERY.

simple blockade. See BLOCKADE.

simple bond. See BOND (2).

simple contract. 1. See *informal contract* (1) under CONTRACT. **2.** See *parol contract* (2) under CONTRACT.

simple-contract debt. See DEBT.

simple interest. See INTEREST (3).

simple kidnapping. See KIDNAPPING.

simple larceny. See LARCENY.

simple listing. See *open listing* under LISTING (1).

simple majority. See MAJORITY.

simple mortgage clause. See *open mortgage clause* under MORTGAGE CLAUSE.

simple negligence. See *inadvertent negligence* under NEGLIGENCE.

simple obligation. See OBLIGATION.

SIMPLE plan. See EMPLOYEE BENEFIT PLAN.

simple reduction. *Scots law.* A court's temporary ruling that a document is of no effect until it is produced in court.

simple resolution. See RESOLUTION (1).

simple robbery. See ROBBERY.

simple state. See *unitary state* under STATE.

simple-tool rule. The principle that an employer has no duty to warn its employees of dangers that are obvious to everyone involved, and has no duty to inspect a tool that is within the exclusive control of an employee when that employee is fully acquainted with the tool's condition.

simple trust. 1. See *mandatory trust* under TRUST. **2.** See *passive trust* under TRUST.

simplex (**sim**-pleks), *adj.* [Latin] Simple; pure; unconditional.

simplex dictum. See DICTUM.

simplex passagium (**sim**-pleks pə-**say**-jee-əm). [Law Latin] *Hist.* Simple passage (to the holy land alone). • This type of pilgrimage served as an excuse for absence from court during the Crusades. — Also termed *simplex peregrinatio.* Cf. IN GENERALI PASSAGIO.

simpliciter (sim-**plis**-i-tər), *adv.* [Latin] (16c) **1.** In a simple or summary manner; simply. **2.** Absolutely; unconditionally; per se.

simplified employee pension plan. See EMPLOYEE BENEFIT PLAN.

simplum (**sim**-pləm), *n.* [Latin] *Roman law.* The single value of something. Cf. DUPLUM.

simulated contract. See CONTRACT.

simulated fact. See FACT.

simulated judgment. See JUDGMENT.

simulated sale. See SALE.

simulated transaction. See *simulated sale* under SALE.

simulatio latens (sim-yə-**lay**-shee-oh **lay**-tenz). [Latin "hidden pretence"] *Hist.* Feigned enhancement of illness, as when symptoms are present but not nearly as severe as is pretended.

simulation. 1. An assumption of an appearance that is feigned, false, or deceptive. **2.** *Civil law.* A feigned, pretended act, usu. to mislead or deceive. **3.** See *simulated contract* under CONTRACT.

simul cum (**sɪ**-məl kəm). [Latin] Together with. • This phrase was formerly used in an indictment or other instrument to indicate that a defendant had committed an injury jointly with others unknown.

simul et semel (**sɪ**-məl et **sem**-əl). [Latin] Together at one time.

simultaneous death. See DEATH.

simultaneous-death act. See UNIFORM SIMULTANEOUS DEATH ACT.

simultaneous-death clause. (1953) A testamentary provision mandating that if the testator and beneficiary die in a common disaster, or the order of their deaths is otherwise unascertainable, the testator is presumed to have survived the beneficiary. • If the beneficiary is the testator's spouse, an express exception is often made so that the spouse with the smaller estate is presumed to have survived. See *simultaneous death* under DEATH. Cf. SURVIVAL CLAUSE.

simultaneous polygamy. See POLYGAMY (1).

sine (**sɪ**-nee or **sin**-ay), *prep.* [Latin] Without.

sine animo remanendi (**sɪ**-nee **an**-ə-moh rem-ə-**nen**-dɪ). [Law Latin] *Hist.* Without the intention of remaining.

sine animo revertendi (**sɪ**-nee **an**-ə-moh ree-vər-**ten**-dɪ). [Latin] Without the intention of returning. See *animus revertendi* under ANIMUS.

sine assensu capituli (**sɪ**-nee ə-**sen**-s[y]oo kə-**pich**-[y] ə-lɪ), *n.* [Law Latin "without the consent of the chapter"] *Hist.* A writ for a successor to recover land that the former bishop, abbot, or prior had alienated without the chapter's permission.

sine consideratione curiae (**sɪ**-nee kən-sid-ə-ray-shee-**oh**-nee **kyoor**-ee-ɪ). [Law Latin] Without the judgment of the court.

sine cura et cultura (**sɪ**-nee **kyoor**-ə et kəl-**t**[y]**oor**-ə). [Latin] *Hist.* Without care and culture. • Natural fruits fitting this description automatically passed to the purchaser of property. But industrial fruits that had to be cultivated required a special conveyance.

sinecure (**sɪ**-nə-kyoor *or* **sin**-ə-kyoor). [fr. Latin *sine cura* "without duties"] *Hist.* A post without any duties attached; an office for which the holder receives a salary but has no responsibilities. — **sinecural** (**sɪ**-nə-kyoor-əl *or* sɪ-nə-**kyoor**-əl), *adj.*

sine decreto (**sɪ**-nee di-**kree**-toh). [Latin] Without a judge's authority.

sine die (**sī**-nee **dī**-ee *or* **dī**- *or* **sin**-ay **dee**-ay). [Latin "without day"] (17c) With no day being assigned (as for resumption of a meeting or hearing). See *adjourn sine die* under ADJOURN (2); GO HENCE WITHOUT DAY. [Cases: Courts ☞76; States ☞32.]

sine fraude (**sī**-nee **fraw**-dee). [Latin] *Hist.* Without fraud.

sine hoc quod (**sī**-nee hok **kwod**). [Law Latin] Without this, that. See ABSQUE HOC.

sine numero (**sī**-nee **n**[**y**]**oo**-mər-oh). [Law Latin "without number"] Countless; without limit.

sine pacto (**sī**-nee **pak**-toh). [Latin] *Hist.* Without an agreement.

sine prole (**sī**-nee **proh**-lee). [Latin] Without issue. • This phrase was used primarily in genealogical tables. — Abbr. s.p.

sine qua non (**sī**-nee kway **non** *or* **sin**-ay kwah **nohn**), *n.* [Latin "without which not"] (17c) An indispensable condition or thing; something on which something else necessarily depends. — Also termed *conditio sine qua non.* [Cases: Negligence ☞379.]

sine quibus funus honeste duci non potest (**sī**-nee **kwib**-əs **fyoo**-nəs [h]ə-**nes**-tee **d**[**y**]**oo**-sī non **poh**-test). [Latin] *Scots law.* Without which the funeral cannot be decently conducted. • The phrase appeared in reference to funeral expenses that could be deducted against the decedent's estate.

sine vi aut dolo (**sī**-nee **vī** awt **doh**-loh). [Latin] *Hist.* Without force or fraud.

single, *adj.* **1.** Unmarried <single tax status>. **2.** Consisting of one alone; individual <single condition> <single beneficiary>.

single-act statute. See LONG-ARM STATUTE.

single adultery. See ADULTERY.

single-asset real estate. *Bankruptcy.* A single piece of real property (apart from residential property with fewer than four residential units) that a debtor operates for business purposes, that provides the debtor with substantially all his or her gross income, and that carries aggregate, liquidated, noncontingent secured debts of $4 million or less. 11 USCA § 101(51B). [Cases: Bankruptcy ☞2021.1.]

single bill. See *bill single* under BILL (7).

single bond. See *bill obligatory* under BILL (7).

single combat. See DUEL (2).

single condition. See CONDITION (2).

single-controversy doctrine. See ENTIRE-CONTROVERSY DOCTRINE.

single-country fund. See MUTUAL FUND.

single creditor. See CREDITOR.

single-criminal-intent doctrine. See SINGLE-LARCENY DOCTRINE.

single-date-of-removal doctrine. *Civil procedure.* The principle that the deadline for removing a case from state court to federal court is 30 days from the day that any defendant receives a copy of the state-court pleading on which the removal is based. • If a later-served defendant seeks to remove a case to federal court more than 30 days after the day any other defendant received the pleading, the removal is untimely even if effectuated within 30 days after the removing defendant received the pleading. One theory underlying this doctrine is that all defendants must consent to remove a case to federal court, and a defendant who has waited longer than 30 days to remove does not have the capacity to consent to removal. 28 USCA § 1446(b). See NOTICE OF REMOVAL. [Cases: Removal of Cases ☞79(1).]

single demise. See DEMISE.

single-element means claim. See *single-means claim* under PATENT CLAIM.

single-entry bookkeeping. See BOOKKEEPING.

single-filing rule. *Civil-rights law.* The principle that an administrative charge filed by one plaintiff in a civil-rights suit (esp. a Title VII suit) will satisfy the administrative-filing requirements for all coplaintiffs who are making claims for the same act of discrimination. • But this rule will not usu. protect a coplaintiff's claims if the coplaintiff also filed an administrative charge, against the same employer, in which different discriminatory acts were complained of, because the administrative agency (usu. the EEOC) and the employer are entitled to rely on the allegations someone makes in an administrative charge. [Cases: Civil Rights ☞1517.]

single-impulse plan. See SINGLE-LARCENY DOCTRINE.

single-juror instruction. See JURY INSTRUCTION.

single-larceny doctrine. (1969) *Criminal law.* The principle that the taking of different items of property belonging to either the same or different owners at the same time and place constitutes one act of larceny if the theft is part of one larcenous plan, as when it involves essentially one continuous act or if control over the property is exercised simultaneously. • The thief's intent determines the number of occurrences. — Also termed *single-impulse plan; single-larceny rule; single-criminal-intent doctrine.* [Cases: Larceny ☞1.]

single-means claim. See PATENT CLAIM.

single-name paper. A negotiable instrument signed by only one maker and not backed by a surety.

single obligation. See OBLIGATION.

single ordeal. See ORDEAL.

single original. (1815) An instrument executed singly, not in duplicate.

single-paragraph form. *Patents.* A style of writing patent claims that uses a colon after the introductory phrase and a semicolon between each element. Cf. COLON-SEMICOLON FORM; OUTLINE FORM; SUBPARAGRAPH FORM.

single-premium deferred annuity. See ANNUITY.

single-premium insurance. See *single-premium life insurance* under LIFE INSURANCE.

single-premium life insurance. See LIFE INSURANCE.

single-publication rule. The doctrine that a plaintiff in a libel suit against a publisher has only one claim for each mass publication, not a claim for every book or issue in that run. [Cases: Libel and Slander ☞26.]

single-purpose project. A facility that is designed, built, and used for one reason only, such as to generate electricity. • This term most often refers to large, complex, expensive projects such as power plants, chemical-processing plants, mines, and toll roads. Projects of this type are often funded through project financing, in which a special-purpose entity is established to perform no function other than to develop, own, and operate the facility, the idea being to limit the number of the entity's creditors and thus provide protection for the project's lenders. See *project financing* under FINANCING; SPECIAL-PURPOSE ENTITY; BANKRUPTCY-REMOTE ENTITY.

single-recovery rule. See ONE-SATISFACTION RULE.

single-registration rule. *Copyright.* The U.S. Copyright Office doctrine that permits only one registration for each original work. • Exceptions to the rule are routinely made for unpublished works that are later published. Generally, revised works cannot be registered a second time if the revisions are not substantial, but the creator may be allowed to file a supplemental registration. [Cases: Copyrights and Intellectual Property ☞50.16.]

single-source requirement. Under the common-law tort of false advertising, the necessity to show that the plaintiff is the only supplier of the genuine goods in question and that buyers would have bought the plaintiff's goods if the true nature of the defendant's goods had been known. *Ely-Norris Safe Co. v. Mosler Safe Co.*, 7 F.2d 603 (2d Cir. 1925). • This is a narrow exception to the common-law rule that the tort of false advertising applies only in instances of passing off, trade defamation, or trade disparagement. [Cases: Antitrust and Trade Regulation ☞19.]

singles' penalty. See MARRIAGE BONUS.

single transferable vote. See VOTE (1).

singular, *adj.* **1.** Individual; each <all and singular>. **2.** *Civil law.* Of or relating to separate interests in property, rather than the estate as a whole <singular succession>.

singular successor. See SUCCESSOR.

singular title. See TITLE (2).

singuli in solidum (**sing**-gyə-lɪ in **sol**-ə-dəm). [Latin] *Hist.* Each for the whole.

> "Where there are several co-obligants in one obligation, each bound in full performance, they are said to be liable *singuli in solidum*; and where each is liable only for his own proportion of the debt, they are said to be liable *pro rata*." John Trayner, *Trayner's Latin Maxims* 580 (4th ed. 1894).

sinking fund. See FUND (1).

sinking-fund bond. See BOND (3).

sinking-fund debenture. See DEBENTURE.

sinking-fund depreciation method. See DEPRECIATION METHOD.

sinking-fund reserve. See RESERVE.

sinking-fund tax. See TAX.

si non jure seminis, saltem jure soli (sɪ non **joor**-ee **sem**-i-nis, **sal**-tem **joor**-ee **soh**-lɪ). [Law Latin] *Hist.* If not by right of seed, at least by right of soil.

si non omnes (sɪ non **om**-neez). [Latin "if not all"] *Hist.* A writ allowing two or more judges to proceed in a case if the whole commission cannot be present on the assigned day.

sin tax. See TAX.

SIPA (**see**-pə). *abbr.* SECURITIES INVESTOR PROTECTION ACT.

si parcere ei sine suo periculo non potest (sɪ **pahr**-sər-ee **ee**-ɪ sɪ-nee **s[y]oo**-oh pə-**rik**-yə-loh non **poh**-test). [Latin] *Roman law.* If he could not spare him except at his own peril. • This phrase defined the circumstances in which a defendant could plead self-defense.

si paret (sɪ **par**-et). [Latin] If it appears. • In Roman law, this phrase was part of the praetor's formula by which judges were appointed and told how they were to decide.

SIPC. *abbr.* SECURITIES INVESTOR PROTECTION CORPORATION.

si petatur tantum (sɪ pi-**tay**-tər **tan**-təm). [Law Latin] *Hist.* If asked only.

> "In blench holdings, where the return for the lands is generally elusory, that return is for the most part due and payable *si petatur tantum*; and this clause, by universal practice, has been interpreted to mean, if asked only within the year (*si petatur intra annum*). If the duty is not demanded within the year, the vassal is not liable for it." John Trayner, *Trayner's Latin Maxims* 575 (4th ed. 1894).

si prius (sɪ **prɪ**-əs). [Law Latin] If before. • This phrase is used in a writ summoning a jury.

si quis (sɪ **kwis**). [Latin] *Roman law.* If any one. • This term was used in praetorian edicts. In England, it was also mentioned in notices posted in parish churches requesting anyone who knows of just cause why a candidate for holy orders should not be ordained to inform the bishop.

SIR. *abbr.* **1.** SELF-INSURED RETENTION. **2.** STATUTORY INVENTION REGISTRATION.

si recognoscat (sɪ rek-əg-**nos**-kat). [Latin "if he acknowledges"] *Hist.* A writ allowing a creditor to obtain money counted — that is, a specific sum that the debtor had acknowledged in county court to be owed.

si sine liberis decesserit (sɪ **sɪ**-nee **lib**-ər-**is** di-**ses**-ər-it). [Latin] *Hist.* If he shall have died without children.

si sit admodum grave (sɪ sit ad-**moh**-dəm **gray**-vee). [Latin] *Hist.* If it be very heinous.

si sit incompos mentis, fatuus, et naturaliter idiota (sɪ sit in-**kom**-pəs **men**-tis, **fach**-oo-əs et nach-ə-**ray**-li-tər

id-ee-**oh**-tə). [Law Latin] *Scots law.* If he is of unsound mind, fatuous, and naturally an idiot. • The phrase appeared in reference to an inquiry that was posed to a jury required to make an idiocy determination.

si sit legitimae aetatis (SI sit lə-**jit**-ə-mee ee-**tay**-tis). [Latin] *Hist.* If he (or she) is of lawful age.

sist (sist), *n. Scots law.* An order staying or suspending legal proceedings. — Also termed *supersedere.*

sist, *vb. Scots law.* **1.** To bring into court; to summon. **2.** To stay (a judicial proceeding, etc.), esp. by court order. **3.** To intervene in legal proceedings as an interested third party, e.g., a trustee.

sister. (bef. 12c) A female who has one parent or both parents in common with another person.

consanguine sister (kahn-**sang**-gwin *or* kən-**san**-gwin). *Civil law.* A sister who has the same father, but a different mother.

half sister. A sister who has the same father or the same mother, but not both.

sister-german. A full sister; the daughter of both of one's parents. See GERMAN.

stepsister. (15c) The daughter of one's stepparent.

uterine sister (**yoo**-tər-in). *Civil law.* A sister who has the same mother, but a different father.

sister corporation. See CORPORATION.

sisterhood. See GIFTING CLUB.

sister-in-law. (15c) The sister of one's spouse or the wife of one's brother. • The wife of one's spouse's brother is also sometimes considered a sister-in-law. Pl. **sisters-in-law.**

sistership exclusion. See EXCLUSION (3).

sistren, *n.* Sisters, esp. those considered spiritual kin (such as female colleagues on a court). Cf. BRETHREN.

sit, *vb.* (14c) **1.** (Of a judge) to occupy a judicial seat <Judge Wilson sits on the trial court for the Eastern District of Arkansas>. **2.** (Of a judge) to hold court or perform official functions <is the judge sitting this week?>. **3.** (Of a court or legislative body) to hold proceedings <the U.S. Supreme Court sits from October to June>.

sit-and-squirm test. A judicial doctrine, used esp. by administrative-law judges in disability-claim cases, whereby a court subjectively determines a set of traits that it expects the claimant to exhibit and denies relief if the claimant fails to exhibit those traits. • The doctrine is adhered to only in some federal circuits and has been expressly rejected in others. Generally, an administrative-law judge may observe a claimant's demeanor in evaluating the credibility of the complaint. Yet it is error for the judge to base a judgment solely on personal observation and not on the record as a whole.

sit-down strike. See STRIKE.

site. 1. A place or location; esp., a piece of property set aside for a specific use. **2.** SCITE.

site assessment. See *transactional audit* under AUDIT.

site license. See LICENSE.

site plan. (1937) An illustrated proposal for the development or use of a particular piece of real property. • The illustration is usu. a map or sketch of how the property will appear if the proposal is accepted. Some zoning ordinances require a developer to present a site plan to the city council and to receive council approval before certain projects may be completed. [Cases: Zoning and Planning ⇨245, 372.1.]

sit-in, *n.* An organized, passive demonstration in which participants usu. sit (or lie) down and refuse to leave a place as a means of protesting against policies or activities. • Sit-ins originated as a communal act of protesting racial segregation. People who were discriminated against would sit in places that were prohibited to them and refuse to leave. Later the term came to refer to any group protest, as with anti–Vietnam War protests and some labor strikes. Cf. *sit-down strike* under STRIKE.

sitio ganado mayor (**sit**-yoh gah-**nah**-doh MI-**yor**). *Spanish & Mexican law.* A square unit of land with each side measuring 5,000 varas (about 4,583 yards). • This term is found in old land grants in states that were formerly Spanish provinces or governed by Mexico. See VARA. *Spanish & Mexican law.* A unit of land shaped like a square with each side measuring 5,000 varas (about 4,583 yards). • This term is sometimes found in old land grants in states that were formerly Spanish colonies or governed by Mexico. See VARA.

sitting, *n.* (14c) A court session; esp., a session of an appellate court. See SESSION (1).

en banc sitting. (1944) A court session in which all the judges (or a quorum) participate. See EN BANC.

in camera sitting. (1976) A court session conducted by a judge in chambers or elsewhere outside the courtroom. See IN CAMERA.

situation. 1. Condition; position in reference to circumstances <dangerous situation>. **2.** The place where someone or something is occupied; a location <situation near the border>.

situational offender. See OFFENDER.

situation of danger. See DANGEROUS SITUATION.

situs (SI-təs). [Latin] (1834) The location or position (of something) for legal purposes, as in *lex situs,* the law of the place where the thing in issue is situated. See LOCUS.

tax situs. See TAX SITUS.

si vidua manserit et non nupserit (SI **vij**-yoo-ə **man**-sər-it et non **nəp**-sər-it). [Law Latin] *Hist.* If she should remain a widow and not marry. • This requirement was a common condition in a widow's provision.

Six Clerks. *Hist.* A collective name for the clerks of the English Court of Chancery who filed pleadings and other papers. • The office was abolished in 1842, and its duties transferred to the Clerk of Enrollments in Chancery and to the Clerks of Records and Writs.

678 trust. See *nongrantor-owner trust* under TRUST (3).

Sixteenth Amendment. The constitutional amendment, ratified in 1913, allowing Congress to tax income. [Cases: Internal Revenue ⚷3067.]

Sixth Amendment. The constitutional amendment, ratified with the Bill of Rights in 1791, guaranteeing in criminal cases the right to a speedy and public trial by jury, the right to be informed of the nature of the accusation, the right to confront witnesses, the right to counsel, and the right to compulsory process for obtaining favorable witnesses.

sixth-sentence remand. See REMAND.

sixty clerks. See SWORN CLERKS IN CHANCERY.

sixty-day notice. *Labor law.* Under the Taft-Hartley Act, the 60-day advance notice required for either party to a collective-bargaining agreement to reopen or terminate the contract. • During this period, strikes and lockouts are prohibited. 29 USCA § 158(d)(1).

S.J.D. See DOCTOR OF JURIDICAL SCIENCE.

SJI. See STATE JUSTICE INSTITUTE.

skeletal legislation. See LEGISLATION.

skeleton bill. See BILL (7).

skeleton bill of exceptions. See BILL (2).

skeleton legislation. See *skeletal legislation* under LEGISLATION.

skill. Special ability and proficiency; esp., the practical and familiar knowledge of the principles and processes of an art, science, or trade, combined with the ability to apply them appropriately, with readiness and dexterity. • Skill is generally considered more than mere competence. It is a special competence that is not a part of the reasonable person's ordinary equipment, but that results from aptitude cultivated through special training and experience.

ordinary skill. The skill of a typical person who performs a given task or job.

reasonable skill. The skill ordinarily possessed and used by persons engaged in a particular business.

skilled artisan. See ARTISAN.

skilled witness. See *expert witness* under WITNESS.

skilled work. See WORK (1).

skip bail. See JUMP BAIL.

skip person. (1988) *Tax.* A beneficiary who is more than one generation removed from the transferor and to whom assets are conveyed in a generation-skipping transfer. IRC (26 USCA) § 2613(a). See GENERATION-SKIPPING TRANSFER. [Cases: Internal Revenue ⚷4224.]

> "Since a skip person is necessary to trigger a generation-skipping tax, it is important to have a precise definition of 'skip person.' In most cases, it suffices to say that a skip person is a person who is two or more generations younger than the transferor." John K. McNulty, *Federal Estate and Gift Taxation in a Nutshell* 63 (5th ed. 1994).

skippeson. See ESKIPPESON.

skiptracing agency. (1984) A service that locates persons (such as delinquent debtors, missing heirs, witnesses, stockholders, bondholders, etc.) or missing assets (such as bank accounts).

skyjack, *vb. Slang.* To hijack an aircraft. See HIJACK (1). — **skyjacking,** *n.*

S.L. *abbr.* **1.** Session law. See SESSION LAWS. **2.** Statute law.

slack tax. See *pickup tax* under TAX.

slamming. The practice by which a long-distance telephone company wrongfully appropriates a customer's service from another company, usu. through an unauthorized transfer or by way of a transfer authorization that is disguised as something else, such as a form to sign up for a free vacation. [Cases: Telecommunications ⚷863.]

slander, *n.* (13c) **1.** A defamatory assertion expressed in a transitory form, esp. speech. • Damages for slander — unlike those for libel — are not presumed and thus must be proved by the plaintiff (unless the defamation is slander per se). [Cases: Libel and Slander ⚷1, 24, 32, 33.] **2.** The act of making such a statement. See DEFAMATION. Cf. LIBEL (1). — **slander,** *vb.* — **slanderous,** *adj.*

> "Although libel and slander are for the most part governed by the same principles, there are two important differences: (1) Libel is not merely an actionable tort, but also a criminal offence, whereas slander is a civil injury only. (2) Libel is in all cases actionable *per se*; but slander is, save in special cases, actionable only on proof of actual damage. This distinction has been severely criticised as productive of great injustice." R.F.V. Heuston, *Salmond on the Law of Torts* 139 (17th ed. 1977).

slander per quod. (18c) Slander that does not qualify as slander per se, thus forcing the plaintiff to prove special damages. [Cases: Libel and Slander ⚷11, 33.]

slander per se. (1841) Slander for which special damages need not be proved because it imputes to the plaintiff any one of the following: (1) a crime involving moral turpitude, (2) a loathsome disease (such as a sexually transmitted disease), (3) conduct that would adversely affect one's business or profession, or (4) unchastity (esp. of a woman). [Cases: Libel and Slander ⚷7(2), 7(16), 8, 9(1), 33.]

trade slander. Trade defamation that is spoken but not recorded. See *trade defamation* under DEFAMATION. Cf. *trade libel* under LIBEL.

slanderer, *n.* (13c) One who commits slander.

slander of goods. See DISPARAGEMENT.

slander of title. (18c) A false statement, made orally or in writing, that casts doubt on another person's ownership of property. — Also termed *jactitation of title.* See DISPARAGEMENT. [Cases: Libel and Slander ⚷132.]

slander per quod. See SLANDER.

slander per se. See SLANDER.

SLAPP (slap). *abbr.* A strategic lawsuit against public participation — that is, a suit brought by a developer, corporate executive, or elected official to stifle those

who protest against some type of high-dollar initiative or who take an adverse position on a public-interest issue (often involving the environment). — Also termed *SLAPP suit*. [Cases: Pleading ⚷358, 360.]

slate. A list of candidates, esp. for political office or a corporation's board of directors, that usu. includes as many candidates for election as there are representatives being elected. [Cases: Corporations ⚷283(2).]

slave. *Roman law.* See SERVUS (1).

slavery. 1. A situation in which one person has absolute power over the life, fortune, and liberty of another. **2.** The practice of keeping individuals in such a state of bondage or servitude. • Slavery was outlawed by the 13th Amendment to the U.S. Constitution. [Cases: Constitutional Law ⚷1101; Slaves ⚷1.]

> "Slavery was a big problem for the Constitution makers. Those who profited by it insisted on protecting it; those who loathed it dreaded even more the prospect that to insist on abolition would mean that the Constitution would die aborning. So the Framers reached a compromise, of sorts. The words 'slave' and 'slavery' would never be mentioned, but the Constitution would safeguard the 'peculiar institution' from the abolitionists." Jethro K. Lieberman, *The Evolving Constitution* 493 (1992).

slavery, badge of. See BADGE OF SLAVERY.

slay, *vb.* To kill (a person), esp. in battle.

slayer rule. (1986) The doctrine that neither a person who kills another nor the killer's heirs can share in the decedent's estate. — Also termed *slayer's rule*.

slayer statute. *Slang.* A statute that prohibits a person's killer from taking any part of the decedent's estate through will or intestacy. • The Uniform Probate Code and nearly all jurisdictions have a slayer-statute provision. [Cases: Descent and Distribution ⚷51; Wills ⚷711.]

SL/C. See *standby letter of credit* under LETTER OF CREDIT.

SLC. *abbr.* SPECIAL LITIGATION COMMITTEE.

sleeper. A security that has strong market potential but is underpriced and lacks investor interest.

sleeping on rights. See LACHES (1).

sleeping partner. See *secret partner* under PARTNER.

sleepwalking defense. See AUTOMATISM.

sliding scale. A pricing method in which prices are determined by a person's ability to pay.

slight care. See CARE.

slight diligence. See DILIGENCE.

slight evidence. See EVIDENCE.

slight-evidence rule. (1936) **1.** The doctrine that if evidence establishes the existence of a conspiracy between at least two other people, the prosecution need only offer slight evidence of a defendant's knowing participation or intentional involvement in the conspiracy to secure a conviction. • This rule was first announced in *Tomplain v. United States*, 42 F.2d 202, 203 (5th Cir. 1930). In the decades after *Tomplain*, other circuits adopted the rule, but not until the 1970s did the rule become widespread. Since then, the rule has been widely criticized and, in most circuits, abolished. *See, e.g.*, *United States v. Durrive*, 902 F.2d 1379, 1380 n.* (7th Cir. 1990). But its vitality remains undiminished in some jurisdictions. [Cases: Conspiracy ⚷47.] **2.** The doctrine that only slight evidence of a defendant's participation in a conspiracy need be offered in order to admit a coconspirator's out-of-court statement under the coconspirator exception to the hearsay rule. *See* Fed. R. Evid. 801(d)(2)(E). [Cases: Criminal Law ⚷427.]

slight negligence. See NEGLIGENCE.

slip-and-fall case. (1952) **1.** A lawsuit brought for injuries sustained in slipping and falling, usu. on the defendant's property. [Cases: Negligence ⚷1095, 1104.] **2.** Loosely, any minor case in tort.

slip decision. See *slip opinion* under OPINION (1).

slip law. (1922) An individual pamphlet in which a single enactment is printed immediately after its passage but before its inclusion in the general laws (such as the session laws or the *U.S. Statutes at Large*). — Also termed *slip-law print*.

slip opinion. See OPINION (1).

slippery-slope principle. See WEDGE PRINCIPLE.

slipsheet. See *slip opinion* under OPINION (1).

slot charter. See CHARTER (8).

slough. 1. (sloo) An arm of a river, separate from the main channel. **2.** (slow) A bog; a place filled with deep mud.

slowdown. An organized effort by workers to decrease production to pressure the employer to take some desired action.

slowdown strike. See STRIKE (1).

SLSDC. *abbr.* SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION.

slump, *n.* A temporary downturn in the economy and particularly in the stock market, characterized by falling market prices.

slush fund. Money that is set aside for undesignated purposes, often corrupt ones, and that is not subject to financial procedures designed to ensure accountability.

SM. *abbr.* SERVICEMARK.

Small Business Administration. A federal agency that helps small businesses by assuring them a fair share of government contracts, guaranteeing their loans or lending them money directly, and providing disaster relief. • The agency was established by the Small Business Act of 1953. — Abbr. SBA. [Cases: United States ⚷53(8).]

small-business concern. A business qualifying for an exemption from freight undercharges because it is independently owned and operated and is not dominant in its field of operation, with limited numbers of

employees and business volume. 15 USCA § 632. — Often shortened to *small business*. [Cases: Carriers ⚷189; Commerce ⚷85.33.]

small-business corporation. See CORPORATION.

Small Business Investment Act. A federal law, originally enacted in 1958, under which investment companies may be formed and licensed to supply long-term equity capital to small businesses. • The statute is implemented by the Small Business Administration. 15 USCA §§ 661 et seq. [Cases: United States ⚷53(8).]

small-business investment company. A corporation created under state law to provide long-term equity capital to small businesses, as provided under the Small Business Investment Act and regulated by the Small Business Administration. 15 USCA §§ 661 et seq. — Abbr. SBIC. [Cases: Banks and Banking ⚷310; United States ⚷53(8).]

small claim. A claim for damages at or below a specified monetary amount. See *small-claims court* under COURT. [Cases: Courts ⚷174.]

small-claims court. See COURT.

small-debts court. See *small-claims court* under COURT.

small entity. *Patents.* An independent inventor, a nonprofit organization, or a company with 500 or fewer employees. • A small entity is usu. charged a lower fee for patent applications and related expenses as long as the patent rights are not assigned or licensed to a large entity (a for-profit organization with more than 500 employees). 37 CFR § 1.27. [Cases: Patents ⚷103.]

small-estate probate. See PROBATE.

small invention. See UTILITY MODEL.

small-loan act. A state law fixing the maximum legal interest rate and other terms on small, short-term loans by banks and finance companies. [Cases: Banks and Banking ⚷181; Consumer Credit ⚷3; Usury ⚷42.]

small-loan company. See *consumer finance company* under FINANCE COMPANY.

smart card. See STORED-VALUE CARD.

smart money. 1. Funds held by sophisticated, usu. large investors who are considered capable of minimizing risks and maximizing profits <the smart money has now left this market>. **2.** See *punitive damages* under DAMAGES <although the jury awarded only $7,000 in actual damages, it also awarded $500,000 in smart money>.

smash-and-grab. *Slang.* The act of breaking a window or other glass barrier in order to seize goods beyond it before fleeing. • In a smash-and-grab, the criminal usu. breaks a shop window or a glass display case with a handheld tool and seizes whatever merchandise is nearest. Cf. RAM RAID.

SMBS. *abbr.* See *stripped mortgage-backed security* under SECURITY.

Smith Act. A 1948 federal antisedition law that criminalizes advocating the forcible or violent overthrow of the government. 18 USCA § 2385. [Cases: Insurrection and Sedition ⚷1.]

> "The Smith Act is aimed at the advocacy and teaching of concrete action for the forcible overthrow of the government, and not at advocacy of principles divorced from action. The essential distinction is that those to whom the advocacy is addressed must be urged to do something, now or in the future, rather than merely to believe in something." 70 Am. Jur. 2d *Sedition, Etc.* § 63, at 59 (1987).

Smithsonian Institution. An independent trust of the United States responsible for conducting scientific and scholarly research; publishing its results; maintaining over 140 million artifacts, works of art, and scientific specimens for study, display, and circulation throughout the nation; and engaging in educational programming and international cooperative research. • It was created in 1846 to give effect to the terms of the will of a British scientist, James Smithson, who left his entire estate to the United States.

smoking gun. (1974) A piece of physical or documentary evidence that conclusively impeaches an adversary on an outcome-determinative issue or destroys the adversary's credibility.

Smoot–Hawley Tariff Act. *Hist.* A 1930 protectionist statute that raised tariff rates on most articles imported into the U.S., and provoked U.S. trading partners to institute comparable tariff increases. • This act is often cited as a factor in precipitating and spreading the Great Depression. The Act was named for the legislators who sponsored it, Senator Reed Smoot of Utah and Representative Willis C. Hawley of Oregon. It is sometimes called the *Grundy Tariff* for Joseph Grundy, who was president of the Pennsylvania Manufacturers Association and the chief lobbyist supporting the Act. — Also termed *Tariff Act of 1930*.

smuggling, *n.* (17c) The crime of importing or exporting illegal articles or articles on which duties have not been paid. See CONTRABAND. Cf. PEOPLE-SMUGGLING; TRAFFICKING. [Cases: Customs Duties ⚷120.1, 125.] — **smuggle,** *vb.*

alimentary-canal smuggling. Smuggling carried out by swallowing packets, usu. balloons, filled with contraband, which stays in the smuggler's stomach or intestines during the crossing of a border.

smurf, *n. Slang.* **1.** A person who participates in a money-laundering operation by making transactions of less than $10,000 (the amount that triggers federal reporting requirements) at each of many banks. • The name derives from a cartoon character of the 1980s. **2.** See CURRENCY-TRANSACTION REPORT.

sneak-and-peek search warrant. See *covert-entry search warrant* under SEARCH WARRANT.

SNS. *abbr.* STRATEGIC NATIONAL STOCKPILE.

So. *abbr.* SOUTHERN REPORTER.

sober, *adj.* (14c) **1.** (Of a person) not under the influence of drugs or alcohol. **2.** (Of a person) regularly abstinent

or moderate in the use of intoxicating liquors. [Cases: Chemical Dependents ⚷1.] **3.** (Of a situation, person, etc.) serious; grave. **4.** (Of facts, arguments, etc.) basic; unexaggerated. **5.** (Of a person) rational; having self-control.

sober house. See SOBER-LIVING RESIDENCE.

sober-living residence. A transitional form of group housing for people recovering from alcoholism or drug abuse. • The residents typically receive counseling about how to function without mind-altering substances. — Sometimes shortened to *sober living.* — Also termed *sober-living housing; sober house.*

sobrante. Surplus. • This term is sometimes found in old land grants in states that were formerly governed by Mexico.

sobrestadia. See ESTADIA.

sobriety checkpoint. (1984) A part of a roadway at which police officers maintain a roadblock to stop motorists and ascertain whether the drivers are intoxicated. [Cases: Automobiles ⚷349(9).]

sobriety test. (1931) A method of determining whether a person is intoxicated. • Common sobriety tests are coordination tests and the use of mechanical devices to measure the blood alcohol content of a person's breath sample. See BREATHALYZER; HORIZONTAL-GAZE NYSTAGMUS TEST. [Cases: Automobiles ⚷411; Criminal Law ⚷388.2.]

field sobriety test. (1956) A motor-skills test administered by a peace officer during a stop to determine whether a suspect has been driving while intoxicated. • The test usu. involves checking the suspect's speaking ability or coordination (as by reciting the alphabet or walking in a straight line). — Abbr. FST. [Cases: Automobiles ⚷411.]

sobrini (sə-**brɪ**-nɪ), *n. pl.* [Latin] *Roman law.* Children of first cousins; second cousins.

soc (**sohk** *or* **sok**), *n.* [Law Latin] *Hist.* **1.** A liberty of exercising private jurisdiction; specif., the privilege granted to a seigniory of holding a tenant's court. **2.** The territory subject to such private jurisdiction. — Also spelled *soke; soca; sac.*

fold soc. See FALDAGE (1).

soca (**soh**-kə *or* **sok**-ə), *n.* See SOC.

socage (**sok**-ij). *Hist.* A type of lay tenure in which a tenant held lands in exchange for providing the lord husbandry-related (rather than military) service. • Socage, the great residuary tenure, was any free tenure that did not fall within the definition of knight-service, serjeanty, or frankalmoin. Cf. KNIGHT-SERVICE; VILLEINAGE.

> "If they [the peasant's duties] were fixed — for instance, helping the lord with sowing or reaping at specified times — the tenure was usually called *socage.* This was originally the tenure of *socmen;* but it became . . . a generic term for all free services other than knight-service, serjeanty, or spiritual service." J.H. Baker, *An Introduction to English Legal History* 260 (3d ed. 1990).

free socage. Socage in which the services were both certain and honorable. • By the statute 12 Car. 2, ch. 24 (1660), all the tenures by knight-service were, with minor exceptions, converted into free socage. — Also termed *free and common socage; liberum socagium.*

villein socage (**vil**-ən). Socage in which the services, though certain, were of a baser nature than those provided under free socage.

socager (**sok**-ij-ər). A tenant by socage; SOCMAN.

socer (**soh**-sər), *n.* [Latin] *Roman law.* A father-in-law.

social contract. (1837) The express or implied agreement between citizens and their government by which individuals agree to surrender certain freedoms in exchange for mutual protection; an agreement forming the foundation of a political society. • The term is primarily associated with political philosophers, such as Thomas Hobbes, John Locke, and esp. Jean Jacques Rousseau, though it can be traced back to the Greek Sophists.

social cost. See COST (1).

social guest. See GUEST.

social harm. See HARM.

social insurance. See INSURANCE.

social justice. See JUSTICE (1).

social restriction. 1. The curtailment of individuals' liberties ostensibly for the general benefit. **2.** A governmental measure that has this effect.

Social Security Act. A federal law, originally enacted in 1935 in response to the Great Depression, creating a system of benefits, including old-age and survivors' benefits, and establishing the Social Security Administration. 42 USCA §§ 401–433. [Cases: Social Security and Public Welfare ⚷5, 121.]

Social Security Administration. A federal agency in the executive branch responsible for administering the nation's retirement program and its survivors- and disability-insurance program. • The agency was established under the Social Security Act of 1935 and became independent in 1995. — Abbr. SSA. [Cases: Social Security and Public Welfare ⚷5.]

Social Security Disability Insurance. A benefit for adults with disabilities, paid by the Social Security Administration to wage-earners who have accumulated enough quarters of coverage and then become disabled. • Benefits are also available to disabled adult children and to disabled widows and widowers of qualified wage-earners. — Abbr. SSDI. [Cases: Social Security and Public Welfare ⚷140.5.]

social-service state. See STATE.

social study. See HOME-STUDY REPORT.

social value. See VALUE (1).

socida (sə-**sɪ**-də), *n.* [Latin] *Civil law.* A contract of bailment by which the bailee assumes the risk of loss; specif., a bailment by which a person delivers animals to another for a fee, on the condition that if any animals perish, the bailee will be liable for the loss.

societas (sə-**sɪ**-ə-tas), *n.* [Latin] *Roman law.* A partnership between two or more people agreeing to share profits and losses; a partnership contract.

"*Societas* in its widest acceptation denotes two or more persons who unite or combine for the prosecution of a common object; in its more restricted sense it denotes a mercantile partnership . . . , the individual members being termed *Socii*." William Ramsay, *A Manual of Roman Antiquities* 316 (Rodolfo Lanciani ed., 15th ed. 1894).

societas leonina (sə-**sɪ**-ə-tas lee-ə-**nɪ**-nə). [Latin "partnership with a lion"] *Roman law.* An illegal partnership in which a partner shares in only the losses, not the profits; a partnership in which one person takes the lion's share. — Also termed *leonina societas.*

"But an arrangement by which one party should have *all* the gain was not recognized as binding; it was considered as contrary to the nature and purposes of the *societas*, the aim of which was gain for all the parties concerned. Such an arrangement the lawyers called *societas leonina*, a partnership like that which the lion in the fable imposed upon the cow, the sheep, and the she-goat, his associates in the chase." James Hadley, *Introduction to Roman Law* 231-32 (1881).

societas navalis (sə-**sɪ**-ə-tas nə-**vay**-lis), *n.* [Latin] *Hist.* A naval partnership; an assembly of vessels for mutual protection. — Also termed *admiralitas.*

societas universorum bonorum (sə-**sɪ**-ə-tas yoo-ni-vər-**sor**-əm bə-**nor**-əm), *n. Hist.* An entire partnership, including all the individual partners' property.

société (soh-see-ay-**tay**), *n.* [French] *French law.* A partnership.

société anonyme (soh-see-ay-**tay** an-aw-**neem**), *n.* [French] *French law.* An incorporated joint-stock company.

société d'acquêts (soh-see-ay-**tay** dah-**kay**), *n.* [French] *French law.* A written agreement between husband and wife designating community property to be only that property acquired during marriage.

société en commandite (soh-see-ay-**tay** aw*n* koh-maw*n*-**deet**), *n.* [French] *French law.* A limited partnership.

société en nom collectif (soh-see-ay-**tay** aw*n* naw*n* koh-lek-**teef**), *n.* [French] *French law.* A partnership in which all members are jointly and severally liable for the partnership debts; an ordinary partnership.

société en participation (soh-see-ay-**tay** aw*n* pahr-tee-see-pah-**syaw*n***), *n. French law.* A joint venture.

société par actions (soh-see-ay-**tay** pahr ak-**syaw*n***), *n. French law.* A joint-stock company.

society. (16c) **1.** A community of people, as of a state, nation, or locality, with common cultures, traditions, and interests.

civil society. The political body of a state or nation; the body politic.

2. An association or company of persons (usu. unincorporated) united by mutual consent, to deliberate, determine, and act jointly for a common purpose; ORGANIZATION (1). [Cases: Associations ☞ 1.] **3.** The general love, affection, and companionship that family members share with one another.

sociological jurisprudence. See JURISPRUDENCE.

sociology of law. See *sociological jurisprudence* under JURISPRUDENCE.

sociopath, *n.* See PSYCHOPATH. — **sociopathy,** *n.* — **sociopathic,** *adj.*

socius (**soh**-shee-əs), *n.* [Latin] *Roman law.* **1.** A partner. **2.** An accomplice; an accessory. **3.** A political ally. Pl. ***socii*** (**soh**-shee-ī).

socius criminis (**soh**-shee-əs **krim**-ə-nis). An associate in crime; an accomplice.

sockman. See SOCMAN.

socman (**sok**-mən). *Hist.* A person who holds land by socage tenure. — Also spelled *sokeman*; *sockman.* — Also termed *socager*; *gainor.* See SOCAGE.

socmanry (**sok**-mən-ree). *Hist.* **1.** Free tenure by socage. **2.** Land and tenements held only by simple services; land enfranchised by the sovereign from ancient demesne. • The tenants were socmen. **3.** The state of being a socman.

socna (**sok**-nə). *Hist.* A privilege; a liberty; a franchise.

Socratic method. (18c) A technique of philosophical discussion — and of law-school instruction — by which the questioner (a law professor) questions one or more followers (the law students), building on each answer with another question, esp. an analogy incorporating the answer. • This method takes its name from the Greek philosopher Socrates, who lived in Athens from about 469–399 B.C. His method is a traditional one in law schools, primarily because it forces law students to think through issues rationally and deductively — a skill required in the practice of law. Most law professors who employ this method call on students randomly, an approach designed to teach students to think quickly, without stage fright. — Also termed *question-and-answer method.* See QUESTION-AND-ANSWER (3). Cf. CASEBOOK METHOD; HORNBOOK METHOD.

"[Socrates] himself did not profess to be capable of teaching anything, except consciousness of ignorance . . . . He called his method of discussion (the *Socratic method*) *obstetrics* . . . because it was an art of inducing his interlocutors to develop their own ideas under a catechetical system." 5 *The Century Dictionary and Cyclopedia* 5746 (rev. ed. 1914).

socrus (**sok**-rəs), *n.* [Latin] *Roman law.* A mother-in-law.

SODDI defense (**sahd**-ee). *Slang.* The some-other-dude-did-it defense; a claim that somebody else committed a crime, usu. made by a criminal defendant who cannot identify the third party.

sodomy (**sod**-ə-mee), *n.* (13c) **1.** Oral or anal copulation between humans, esp. those of the same sex. [Cases: Sodomy ☞ 1.] **2.** Oral or anal copulation between a human and an animal; bestiality. — Also termed *buggery*; *crime against nature*; *abominable and detestable crime against nature*; *unnatural offense*; *unspeakable crime*; (archaically) *sodomitry*; (in Latin) *crimen innominatum.* Cf. PEDERASTY. — **sodomize,** *vb.* — **sodomitic,** *adj.* — **sodomist, sodomite,** *n.*

"Sodomitry is a carnal copulation against nature; to wit, of man or woman in the same sex, or of either of them with beasts." Sir Henry Finch, *Law, or a Discourse Thereof* 219 (1759).

"Sodomy was not a crime under the common law of England but was an ecclesiastical offense only. It was made a felony by an English statute so early that it is a common-law felony in this country, and statutes expressly making it a felony were widely adopted. 'Sodomy' is a generic term including both 'bestiality' and 'buggery.'" Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 465 (3d ed. 1982).

aggravated sodomy. (1965) Criminal sodomy that involves force or results in serious bodily injury to the victim in addition to mental injury and emotional distress. • Some laws provide that sodomy involving a minor is automatically aggravated sodomy. [Cases: Sodomy ☞1.]

SOF. *abbr.* STATUTE OF FRAUDS.

SOFA. *abbr.* See STATEMENT OF FINANCIAL AFFAIRS.

soft currency. See CURRENCY.

soft dollars. 1. *Securities.* The credits that brokers give their clients in return for the clients' stock-trading business. **2.** The portion of an equity investment that is tax-deductible in the first year. Cf. HARD DOLLARS.

soft goods. See GOODS.

soft law. 1. Collectively, rules that are neither strictly binding nor completely lacking in legal significance. **2.** *Int'l law.* Guidelines, policy declarations, or codes of conduct that set standards of conduct but are not legally binding.

soft market. See MARKET.

soft positivism. See INCORPORATIONISM.

soft sell. A low-key sales practice characterized by sincerity and professionalism. Cf. HARD SELL.

software beta-test agreement. See BETA-TEST AGREEMENT.

software-based invention. See INVENTION.

Software Directive. See DIRECTIVE ON THE LEGAL PROTECTION OF COMPUTER PROGRAMS.

Software Patent Institute. A Kansas-based nonprofit institute that collects and organizes nonpatented prior-art software references in a database for patent researchers.

so help me God. The final words of the common oath. • The phrase is a translation, with a change to first person, of the Latin phrase *ita te Deus adjuvet* "so help you God." See ITA TE DEUS ADJUVET. [Cases: Oath ☞5; Witnesses ☞227.]

soil bank. A federal agricultural program in which farmers are paid to not grow crops or to grow noncommercial vegetation, to preserve the quality of the soil and stabilize commodity prices by avoiding surpluses. See LAND BANK (2). [Cases: Agriculture ☞3.2.]

Soil Conservation Service. See NATURAL RESOURCES CONSERVATION SERVICE.

soit (swah). [Law French] Be; let it be. • This term was used in English-law phrases, esp. to indicate the will of the sovereign in a formal communication with Parliament.

soit baile aux commons (swah **bayl** oh **kom**-ənz). [Law French] Let it be delivered to the commons. • This is an indorsement on a bill sent to the House of Commons.

soit baile aux seigneurs (swah **bayl** oh sen-**yərz**). [Law French] Let it be delivered to the lords. • This is an indorsement on a bill sent to the House of Lords.

soit droit fait al partie (swah **droyt** [*or* **drwah**] **fayt** [*or* **fay**] ahl pahr-**tee**). [Law French] *Hist.* Let right be done to the party. • This phrase is written on a petition of right and subscribed by the Crown.

soit fait comme il est desire (swah **fay**[**t**] **kawm** eel ay day-zeer-**ay**). [Law French] Let it be as it is desired. • This is the phrase indicating royal assent to a private act of Parliament.

sojourn (**soh**-jərn), *n.* A temporary stay by someone who is not just passing through a place but is also not a permanent resident <she set up a three-month sojourn in France>. — **sojourn** (**soh**-jərn *or* soh-**jərn**), *vb.* — **sojourner** (**soh**-jər-nər *or* soh-**jər**-nər), *n.*

soke. See SOC.

sokeman. See SOCMAN.

soke-reeve (**sohk**-reev). *Hist.* The lord's rent-collector in the soc.

solar (soh-**lahr**). *Hist. Spanish & Mexican law.* A residential lot; a small, privately owned tract of land. • This term is sometimes found (esp. in the plural form *solares*) in old land grants in states that were formerly Spanish provinces or governed by Mexico.

solar day. See DAY.

solar easement. See EASEMENT.

solarium (sə-**lair**-ee-əm), *n.* [Latin fr. *solum* "soil"] *Roman law.* Rent paid for building on public land; ground rent.

solar month. See MONTH (4).

sola superviventia (**soh**-lə soo-pər-vi-**ven**-shee-ə). [Law Latin] *Hist.* By mere survivance.

solatium (sə-**lay**-shee-əm), *n.* [Latin "solace"] *Scots law.* Compensation; esp., damages allowed for hurt feelings or grief, as distinguished from damages for physical injury.

Soldiers' and Sailors' Civil Relief Act. A federal law, originally enacted in 1940, protecting the civil rights of persons in military service, as by modifying their civil liability, placing limits on interest rates charged against their obligations, and prescribing specific procedures for claims made against them. 50 USCA app. §§ 501 et seq. [Cases: Armed Services ☞34.1.]

soldier's and sailor's will. See *soldier's will* under WILL.

soldier's will. See WILL.

sold note. 1. See NOTE (1). **2.** See CONFIRMATION SLIP.

sole-actor doctrine. (1923) *Agency.* The rule charging a principal with knowledge of the agent's actions, even

if the agent acted fraudulently. [Cases: Principal and Agent ⚷177(1), 180–182.]

sole and separate use. See *entire use* under USE (4).

sole and unconditional owner. See OWNER.

sole cause. See CAUSE (1).

sole corporation. See CORPORATION.

sole custody. See CUSTODY (2).

sole discretion. See DISCRETION (2).

solemn admission. See *judicial admission* under ADMISSION (1).

solemnitas attachiamentorum (sə-**lem**-ni-tas ə-tach-ee-ə-men-**tor**-əm). [Law Latin] *Hist.* The formality required in issuing attachments of property.

solemnity (sə-**lem**-nə-tee). (14c) **1.** A formality (such as a ceremony) required by law to validate an agreement or action <solemnity of marriage>. **2.** The state of seriousness or solemn respectfulness or observance <solemnity of contract>.

solemnity of contract. (1812) The concept that two people may enter into any contract they wish and that the resulting contract is enforceable if formalities are observed and no defenses exist. [Cases: Contracts ⚷1.]

solemnization. The performance of a formal ceremony (such as a marriage ceremony) before witnesses, as distinguished from a clandestine ceremony. [Cases: Marriage ⚷26.]

solemnize (**sol**-əm-nɪz), *vb.* (14c) To enter into (a marriage, contract, etc.) by a formal act, usu. before witnesses. [Cases: Marriage ⚷26.]

solemn oath. See *corporal oath* under OATH.

solemn occasion. In some states, the serious and unusual circumstance in which the supreme court is constitutionally permitted to render advisory opinions to the remaining branches of government, as when the legislature doubts the legality of proposed legislation and a determination must be made to allow the legislature to exercise its functions. • Some factors that have been considered in determining whether a solemn occasion exists include whether an important question of law is presented, whether the question is urgent, whether the matter is ripe for an opinion, and whether the court has enough time to consider the question. [Cases: Constitutional Law ⚷2600–2609; Courts ⚷208.]

solemn war. See WAR.

sole practitioner. (1946) A lawyer who practices law without any partners or associates. — Often shortened to *solo.* — Also termed *solo practitioner.*

sole proprietorship. (1860) **1.** A business in which one person owns all the assets, owes all the liabilities, and operates in his or her personal capacity. [Cases: Corporations ⚷1.] **2.** Ownership of such a business. — Also termed *individual proprietorship.*

sole selling agency. See *exclusive agency* under AGENCY (1).

sole-source rule. In a false-advertising action at common law, the principle that a plaintiff may not recover unless it can demonstrate that it has a monopoly in the sale of goods possessing the advertised trait, because only then is it clear that the plaintiff would be harmed by the defendant's advertising.

sole use. See *entire use* under USE (4).

solicitation, *n.* (16c) **1.** The act or an instance of requesting or seeking to obtain something; a request or petition <a solicitation for volunteers to handle at least one pro bono case per year>. **2.** The criminal offense of urging, advising, commanding, or otherwise inciting another to commit a crime <convicted of solicitation of murder>. • Solicitation is an inchoate offense distinct from the solicited crime. Under the Model Penal Code, a defendant is guilty of solicitation even if the command or urging was not actually communicated to the solicited person, as long as it was designed to be communicated. Model Penal Code § 5.02(2). — Also termed *criminal solicitation; incitement.* Cf. ATTEMPT (2). [Cases: Criminal Law ⚷45; Homicide ⚷562.] **3.** An offer to pay or accept money in exchange for sex <the prostitute was charged with solicitation>. — Also termed *soliciting.* Cf. PATRONIZING A PROSTITUTE. [Cases: Prostitution ⚷16.] **4.** An attempt or effort to gain business <the attorney's solicitations took the form of radio and television ads>. • The Model Rules of Professional Conduct place certain prohibitions on lawyers' direct solicitation of potential clients. [Cases: Attorney and Client ⚷32(9).] **5.** *Securities.* A request for a proxy; a request to execute, not execute, or revoke a proxy; the furnishing of a form of proxy; or any other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy. [Cases: Securities Regulation ⚷49.10–49.16.] — **solicit,** *vb.*

solicitation for bids. See INVITATION TO NEGOTIATE.

solicitation of a bribe. The crime of asking or enticing another to commit bribery. 18 USCA § 201. See BRIBERY. [Cases: Bribery ⚷1.]

solicitation of chastity. *Hist.* The act of trying to persuade another person to engage in unlawful sexual intercourse.

solicitee. One who is solicited. See SOLICITATION.

soliciting, *n.* See SOLICITATION (3).

soliciting agent. See AGENT (2).

solicitor. (15c) **1.** A person who seeks business or contributions from others; an advertiser or promoter. **2.** A person who conducts matters on another's behalf; an agent or representative. **3.** The chief law officer of a governmental body or a municipality. [Cases: Municipal Corporations ⚷169.] **4.** In the United Kingdom, a lawyer who consults with clients and prepares legal documents but is not generally heard in High Court or (in Scotland) Court of Session unless specially licensed. Cf. BARRISTER. **5.** See *special agent* under INSURANCE AGENT. **6.** A prosecutor (in some jurisdictions, such as

South Carolina). 7. See *special agent* under INSURANCE AGENT.

solicitor general. (*usu. cap.*) (17c) The second-highest-ranking legal officer in a government (after the attorney general); esp., the chief courtroom lawyer for the executive branch. — Abbr. SG. Pl. **solicitors general.**

> "By [federal] law, only the Solicitor General or his designee can conduct and argue before the Supreme Court cases 'in which the United States is interested.' Thus, if a trial court appoints a special, independent prosecutor in order to prosecute a criminal contempt of court, that court-appointed special prosecutor cannot represent the United States in seeking Supreme Court review of any lower court decision unless the Solicitor General authorizes the filing of such a petition. . . . Although the Solicitor General serves at the pleasure of the President, by tradition the Solicitor General also acts with independence. Thus, if the Solicitor General does not believe in the legal validity of the arguments that the government wants presented, he will refuse to sign the brief. In close cases the Solicitor General will sign the brief but tag on a disclaimer that has become known as 'tying a tin can.' The disclaimer would state, for example, 'The foregoing is presented as the position of the Internal Revenue Service.' The justices would then know that the Solicitor General, although not withholding a legal argument, was not personally sponsoring or adopting the particular legal position." Ronald D. Rotunda & John E. Nowak, *Treatise on Constitutional Law* § 2.2, at 86–88 (3d ed. 1999).

solicitor's hypothec. See HYPOTHEC.

solidarity. (1875) The state of being jointly and severally liable (as for a debt). See *solidary obligation* under OBLIGATION. [Cases: Action ☞14.] — **solidarily,** *adv.*

solidary (**sol**-ə-der-ee), *adj.* (Of a liability or obligation) joint and several. See JOINT AND SEVERAL. [Cases: Action ☞14.]

> "It is a single debt of £100 owing by each of them, in such fashion that each of them may be compelled to pay the whole of it, but that when it is once paid by either of them, both are discharged from it. Obligations of this description may be called solidary, since in the language of Roman law, each of the debtors is bound *in solidum* instead of *pro parte*; that is to say, for the whole, and not for a proportionate part. A solidary obligation, therefore, may be defined as one in which two or more debtors owe the same thing to the same creditor." John Salmond, *Jurisprudence* 462–63 (Glanville L. Williams ed., 10th ed. 1947).

solidary liability. See LIABILITY.

solidary obligation. See OBLIGATION.

solidum (**sol**-ə-dəm), *n.* [Latin] *Roman law.* A whole; an undivided thing. See SOLIDARY.

solinum (sə-**lī**-nəm), *n.* [Law Latin] *Hist.* **1.** Slightly less than two and a half plowlands. **2.** A single plowland.

solitary confinement. (17c) Separate confinement that gives a prisoner extremely limited access to other people; esp., the complete isolation of a prisoner. [Cases: Prisons ☞232.]

sollertia (sə-**lər**-shee-ə). [Latin] *Hist.* Shrewdness; resourcefulness; cleverness.

solo, *n.* See SOLE PRACTITIONER.

solo animo (**soh**-loh **an**-ə-moh). [Latin] *Hist.* By mere intention.

Solomon Amendment. A federal law authorizing the Secretary of Defense to withhold federal funding from schools that do not allow military recruiters on their campuses or deny access equal to that enjoyed by other types of recruiters. • The amendment is named for Representative Gerald B.H. Solomon of New York. 10 USCA § 983. [Cases: Colleges and Universities ☞4, 6(5).]

solo practitioner. See SOLE PRACTITIONER.

solum italicum (**soh**-ləm ī-**tal**-ə-kəm). [Latin "Italian land"] *Roman law.* Land in Italy (an extension of the old *ager Romanus*) needing, for full ownership to pass, to be transferred by formal methods, such as *mancipatio* or *cession in jure.* Cf. *solum provinciale.*

solum provinciale (**soh**-ləm prə-vin-shee-**ay**-lee). [Latin "provincial land"] *Roman law.* Provincial land ultimately held by the Emperor or state, with private holders having only, in theory, a possessory title without the right to transfer the property by formal methods, as distinguished from *solum italicum.* • Justinian abolished all distinctions between the two, allowing all land to be conveyed by *traditio.* Cf. SOLUM ITALICUM.

> "Ownership of provincial land. The *dominium* of this was in Caesar or the *populus* according as it was an imperial or a senatorial province . . . . The holders were practically owners, but as they were not *domini* formal methods of transfer were not applicable. The holdings were however transferable informally . . . . The case disappeared when Justinian abolished the distinction between Italic and provincial land. Not all land in the provinces was *solum provinciale*: many provincial communities were given *ius italicum*, the chief result being that the land was in the *dominium* of the holder and not of the State, so that it could be transferred and claimed at law by civil law methods." W.W. Buckland, *A Text-Book of Roman Law from Augustus to Justinian* 190 (Peter Stein ed., 3d ed. 1963).

solus cum sola in loco suspecto (**soh**-ləs kəm **soh**-lə in **loh**-koh sə-**spek**-toh). [Law Latin] *Hist.* A man alone with a woman in a suspicious place.

solutio (sə-**loo**-shee-oh), *n.* [Latin "payment"] *Roman law.* Performance of an obligation; satisfaction. Pl. ***solutiones*** (sə-loo-shee-**oh**-neez).

solutio indebiti (sə-**loo**-shee-oh in-**deb**-ə-tī). [Latin "payment of what is not owing"] *Roman law.* Payment of a nonexistent debt. • If the payment was made in error, the recipient had a duty to give back the money.

solutio obligationis (sə-**loo**-shee-oh ob-li-gay-shee-**oh**-nis). *Roman law.* The unfastening of a legal bond, so that a party previously bound need not perform any longer. Cf. VINCULUM JURIS.

solutus (sə-**loo**-təs), *adj.* [Latin fr. *solvere* "to loose"] **1.** *Roman law.* Set free; released from obligation or confinement. **2.** *Scots law.* Purged, esp. in reference to counsel.

solvabilité (sawl-vah-beel-ee-**tay**), *n.* [French] *French law.* Solvency.

solvency, *n.* (18c) The ability to pay debts as they come due. Cf. INSOLVENCY. — **solvent,** *adj.*

solvendo esse (sol-**ven**-doh **es**-ee). [Latin] *Hist.* To be solvent; to be able to pay an obligation.

solvendum in futuro (sol-**ven**-dəm in f[y]oo-**t[y]oor**-oh). [Latin "to be paid in the future"] *Hist.* (Of a debt) due now but payable in the future.

solvent debtor. See DEBTOR.

solvere (**sol**-və-ree), *vb.* [Latin "to unbind"] *Roman law.* To pay (a debt); to release (a person) from an obligation.

solvere poenas (səl-**veer**-ee **pee**-nəs). [Latin] *Hist.* To pay the penalty.

solvit (**sol**-vit). [Latin] He paid; paid.

solvit ad diem (**sol**-vit ad **dI**-əm). [Law Latin "he paid on the day"] *Hist.* In a debt action, a plea that the defendant paid the debt on the due date.

solvit ante diem (**sol**-vit **an**-tee **dI**-əm). [Law Latin "he paid before the day"] *Hist.* In a debt action, a plea that the defendant paid the money before the due date.

solvit post diem (**sol**-vit pohst **dI**-əm). [Law Latin "he paid after the day"] *Hist.* In a debt action on a bond, a plea that the defendant paid the debt after the due date but before commencement of the lawsuit.

somnambulism (sahm-**nam**-byə-liz-əm). (18c) Sleepwalking. • Generally, a person will not be held criminally responsible for an act performed while in this state. See AUTOMATISM.

somnolentia (sahm-nə-**len**-shee-ə). (1879) **1.** The state of drowsiness. **2.** A condition of incomplete sleep resembling drunkenness, during which part of the faculties are abnormally excited while the others are dormant; the combined condition of sleeping and wakefulness producing a temporary state of involuntary intoxication. • To the extent that it destroys moral agency, somnolentia may be a defense to a criminal charge.

son. 1. A person's male child, whether natural or adopted; a male of whom one is the parent. **2.** An immediate male descendant. **3.** *Slang.* Any young male person.

son assault demesne (sohn ə-**sawlt** di-**mayn**). [French "his own assault"] The plea of self-defense in a tort action, by which the defendant alleges that the plaintiff originally engaged in an assault and that the defendant used only the force necessary to repel the plaintiff's assault and to protect person and property. See SELF-DEFENSE.

son-in-law. The husband of one's daughter.

Sonny Bono Copyright Term Extension Act. *Copyright.* A federal law extending the copyright term by 20 years for all works published in the U.S. after January 1, 1978, and settling the copyright term for works created before 1978 as 95 years from the original copyright date. • Before the extension, the copyright term was the life of the author plus 50 years. Pub. L. 105-298, 112 Stat. 2827. [Cases: Copyrights and Intellectual Property ☞33.]

Son-of-Sam law. (1981) A state statute that prohibits a convicted criminal from profiting by selling his or her story rights to a publisher or filmmaker. • State law usu. authorizes prosecutors to seize royalties from a convicted criminal and to place the money in an escrow account for the crime victim's benefit. This type of law was first enacted in New York in 1977, in response to the lucrative book deals that publishers offered David Berkowitz, the serial killer who called himself "Son of Sam." In 1992, the U.S. Supreme Court declared New York's Son-of-Sam law unconstitutional as a content-based speech regulation, prompting many states to amend their laws in an attempt to avoid constitutionality problems. *Simon & Schuster, Inc. v. New York State Crime Victims Bd.*, 502 U.S. 105, 112 S.Ct. 501 (1992). [Cases: Criminal Law ☞1221.]

sonticus (**sahn**-ti-kəs), *n.* [Latin] *Roman law.* Serious; more than trivial. • The term was used in the Twelve Tables to refer to a serious illness (*morbus sonticus*) that gave a defendant a valid reason not to appear in court.

***Sony* doctrine.** See COMMERCIALLY SIGNIFICANT NON-INFRINGING USE.

sophisticated investor. See INVESTOR.

soror (**sor**-or), *n.* [Latin] *Roman law.* A sister.

sororicide (sə-**ror**-ə-sID). (17c) **1.** The act of killing one's own sister. **2.** A person who kills his or her sister. Cf. FRATRICIDE. — **sororicidal,** *adj.*

sors (sors), *n.* [Latin] **1.** *Roman law.* A lot; a chance. **2.** *Scots law.* A partnership's capital. **3.** *Hist.* Principal, as distinguished from interest. **4.** *Hist.* Something recovered in an action, as distinguished from mere costs.

sortitio (sor-**tish**-ee-oh), *n.* [Latin fr. *sortiri* "to cast lots"] *Roman law.* The drawing of lots, used, for example, in selecting judges for a criminal trial. — Also termed (in English) *sortition*; *sortilege.*

soul scot. See MORTUARY (3).

soul shot. See MORTUARY (3).

sound, *adj.* (12c) **1.** (Of health, mind, etc.) good; whole; free from disease or disorder. [Cases: Mental Health ☞3.1.] **2.** (Of property) good; marketable. **3.** (Of discretion) exercised equitably under the circumstances. — **soundness,** *n.*

sound, *vb.* (18c) **1.** To be actionable (in) <her claims for physical injury sound in tort, not in contract>. **2.** To be recoverable (in) <his tort action sounds in damages, not in equitable relief>.

sound health. *Insurance.* **1.** A policy applicant's good mental and physical condition; a state of health characterized by a lack of grave impairment or disease, or of any ailment that seriously affects the applicant's health. [Cases: Insurance ☞1758, 3003(8).] **2.** GOOD HEALTH.

sound mind. 1. MIND (2). **2.** See *testamentary capacity* under CAPACITY (3).

Sound Recording Amendment of 1972. A Copyright Act of 1909 amendment that established copyright protection for sound recordings. [Cases: Copyrights and Intellectual Property ☞10.2.]

source, *n.* The originator or primary agent of an act, circumstance, or result <she was the source of the

information> <the side business was the source of income>.

source code. *Copyright.* The nonmachine language used by a computer programmer to create a program. • If it is not included with the software sold to the public, source code is protected by trade secret laws as well as copyright and patent laws. Source code may be deposited with the U.S. Copyright Office but, because of the need to protect a trade secret, and because a skilled programmer could figure out how to duplicate the source code's functions without necessarily copying it, strategic parts may be blacked out. Cf. OBJECT CODE. [Cases: Copyrights and Intellectual Property ⚷10.4.]

source of law. (1892) Something (such as a constitution, treaty, statute, or custom) that provides authority for legislation and for judicial decisions; a point of origin for law or legal analysis. — Also termed *fons juris.*

> "The term 'sources of law' is ordinarily used in a much narrower sense than will be attributed to it here. In the literature of jurisprudence the problem of 'sources' relates to the question: Where does the judge obtain the rules by which to decide cases? In this sense, among the sources of law will be commonly listed: statutes, judicial precedents, custom, the opinion of experts, morality, and equity. In the usual discussions these various sources of law are analyzed and some attempt is made to state the conditions under which each can appropriately be drawn upon in the decision of legal controversies. Curiously, when a legislature is enacting law we do not talk about the 'sources' from which it derives its decision as to what the law shall be, though an analysis in these terms might be more enlightening than one directed toward the more restricted function performed by judges. Our concern here will be with 'sources' in a much broader sense than is usual in the literature of jurisprudence. Our interest is not so much in sources of laws, as in sources of law. From whence does the law generally draw not only its content but its force in men's lives?" Lon L. Fuller, *Anatomy of the Law* 69 (1968).

> "In the context of legal research, the term 'sources of law' can refer to three different concepts which should be distinguished. One, sources of law can refer to the origins of legal concepts and ideas. . . . Two, sources of law can refer to governmental institutions that formulate legal rules. . . . Three, sources of law can refer to the published manifestations of the law. The books, computer databases, microforms, optical disks, and other media that contain legal information are all sources of law." J. Myron Jacobstein & Roy M. Mersky, *Fundamentals of Legal Research* 1-2 (5th ed. 1990).

South Eastern Reporter. A set of regional lawbooks, part of the West Group's National Reporter System, containing every published appellate decision from Georgia, North Carolina, South Carolina, Virginia, and West Virginia, from 1887 to date. • The first series ran from 1887 to 1939; the second series is the current one. — Abbr. S.E.; S.E.2d.

Southern Common Market. See **Mercosur.**

Southern Reporter. A set of regional lawbooks, part of the West Group's National Reporter System, containing every published appellate decision from Alabama, Florida, Louisiana, and Mississippi, from 1887 to date. • The first series ran from 1887 to 1941; the second series is the current one. — Abbr. So.; So.2d.

South Western Reporter. A set of regional lawbooks, part of the West Group's National Reporter System, containing every published appellate decision from Arkansas, Kentucky, Missouri, Tennessee, and Texas, from 1886 to date. • The first series ran from 1886 to 1928; the second series ran until 1999; the third series is the current one. — Abbr. S.W.; S.W.2d.; S.W.3d.

sovereign, *adj.* (Of a state) characteristic of or endowed with supreme authority <sovereign nation> <sovereign immunity>.

sovereign, *n.* (13c) **1.** A person, body, or state vested with independent and supreme authority. **2.** The ruler of an independent state. — Also spelled *sovran.* See SOVEREIGNTY.

sovereign equality. *Int'l law.* The principle that nations have the right to enjoy territorial integrity and political independence, free from intervention by other nations,. • The United Nations "is based on the principle of the sovereign equality of all its Members." UN Charter art. 2, ¶ 1. [Cases: International Law ⚷10.45(1).]

sovereign immunity. See IMMUNITY (1).

sovereign people. (17c) The political body consisting of the collective number of citizens and qualified electors who possess the powers of sovereignty and exercise them through their chosen representatives.

sovereign political power. See POLITICAL POWER.

sovereign power. (15c) **1.** The power to make and enforce laws. **2.** See *sovereign political power* under POLITICAL POWER.

sovereign right. (16c) A unique right possessed by a state or its agencies that enables it to carry out its official functions for the public benefit, as distinguished from certain proprietary rights that it may possess like any other private person. [Cases: States ⚷21.]

sovereign state. (17c) **1.** A state that possesses an independent existence, being complete in itself, without being merely part of a larger whole to whose government it is subject. **2.** A political community whose members are bound together by the tie of common subjection to some central authority, whose commands those members must obey. — Also termed *independent state.* Cf. *client state, nonsovereign state* under STATE. [Cases: International Law ⚷3.]

> "The essence of statehood is sovereignty, the principle that each nation answers only to its own domestic order and is not accountable to a larger international community, save only to the extent it has consented to do so. Sovereign states are thus conceived as hermetically sealed units, atoms that spin around an international orbit, sometimes colliding, sometimes cooperating, but always separate and apart." David J. Bederman, *International Law Frameworks* 50 (2001).

part-sovereign state. A political community in which part of the powers of external sovereignty are exercised by the home government, and part are vested in or controlled by some other political body or bodies. • Such a state is not fully independent because by the conditions of its existence it is not allowed full freedom of action in external affairs.

sovereignty (**sahv**-[ə-]rin-tee). (18c) **1.** Supreme dominion, authority, or rule. [Cases: International Law ⟹8.]

popular sovereignty. A system of government in which policy choices reflect the preferences of the majority of citizens.

state sovereignty. See STATE SOVEREIGNTY.

2. The supreme political authority of an independent state. **3.** The state itself.

> "It is well to [distinguish] the senses in which the word Sovereignty is used. In the ordinary popular sense it means Supremacy, the right to demand obedience. Although the idea of actual power is not absent, the prominent idea is that of some sort of title to exercise control. An ordinary layman would call that person (or body of persons) Sovereign in a State who is obeyed because he is acknowledged to stand at the top, whose will must be expected to prevail, who can get his own way, and make others go his, because such is the practice of the country. Etymologically the word of course means merely superiority, and familiar usage applies it in monarchies to the monarch, because he stands first in the State, be his real power great or small." James Bryce, *Studies in History and Jurisprudence* 504-05 (1901).

external sovereignty. The power of dealing on a nation's behalf with other national governments.

internal sovereignty. The power enjoyed by a governmental entity of a sovereign state, including affairs within its own territory and powers related to the exercise of external sovereignty.

sovran. See SOVEREIGN.

SOW. *Abbr.* STATEMENT OF WORK.

s.p. *abbr.* **1.** SINE PROLE. **2.** Same principle; same point. • This notation, when inserted between two citations, indicates that the second involves the same principles as the first.

space arbitrage. See ARBITRAGE.

space charter. See CHARTER (8).

spacial jurisdiction. See JURISDICTION.

spado (**spay**-doh), *n.* [Latin] *Roman law.* **1.** A eunuch. **2.** One who is incapable of sexual intercourse by reason of impotence. Pl. ***spadones*** (spə-**doh**-neez).

spam. Unsolicited commercial e-mail. [Cases: Telecommunications ⟹1343.]

sparsim (**spahr**-sim). [Latin] *Hist.* Scattered; here and there. • This term was used in several situations — for example, when an action to recover for waste not only when the injury was complete, but also when the injury was partial or scattered.

> "And if waste be done *sparsim*, or here and there, all over a wood, the whole wood shall be recovered; or if in several rooms of a house, the whole house shall be forfeited; because it is impracticable for the reversioner to enjoy only the identical places wasted, when lying interspersed with the other. But if waste be done only in one end of a wood (or perhaps in one room of a house) if that can be conveniently separated from the rest, that part only is the *locus vastatus*, or thing wasted, and that only shall be forfeited to the reversioner." 2 William Blackstone, *Commentaries on the Laws of England* 283-84 (1766).

spatae placitum (**spay**-tee **plas**-ə-təm), *n.* [Latin "the plea of the sword] *Hist.* During the reign of Henry II, a court providing swift justice in military matters.

SPD. *abbr.* SUMMARY PLAN DESCRIPTION.

SPDA. See *single-premium deferred annuity* under ANNUITY.

SPE. *abbr.* SPECIAL-PURPOSE ENTITY.

speaker. 1. One who speaks or makes a speech <the slander claim was viable only against the speaker>. **2.** The presiding officer of a large deliberative assembly, esp. a legislature's more numerous house, such as the House of Representatives <Speaker of the House>. See CHAIR (1). [Cases: United States ⟹7.1.]

speaking a vessel. *Maritime law.* A pilot's offer of services.

speaking demurrer. See DEMURRER.

speaking motion. See MOTION (1).

speaking objection. See OBJECTION.

speaking statute. See STATUTE.

spec. *abbr.* SPECIFICATION.

special, *adj.* (13c) **1.** Of, relating to, or designating a species, kind, or individual thing. **2.** (Of a statute, rule, etc.) designed for a particular purpose. **3.** (Of powers, etc.) unusual; extraordinary.

special acceptance. See ACCEPTANCE (4).

special act. See *special law* under LAW.

special administration. See ADMINISTRATION.

special administrator. See ADMINISTRATOR (2).

special advocate. See *guardian ad litem* under GUARDIAN.

special agency. See AGENCY (1).

special agent. 1. See AGENT (2). **2.** See INSURANCE AGENT.

special agreement. See *ad hoc compromis* under COMPROMIS.

special allocatur. See ALLOCATUR.

special allowance. See ALLOWANCE (4).

special appearance. See APPEARANCE.

special assessment. See ASSESSMENT.

special-assessment bond. See *special-tax bond* under BOND (3).

Special Assistant to the United States Attorney. See UNITED STATES ATTORNEY.

special assumpsit. See ASSUMPSIT.

special attorney. See *special counsel* under COUNSEL.

special authority. See AUTHORITY (1).

special bail. See *bail to the action* under BAIL (4).

special bailiff. See BAILIFF.

special benefit. See BENEFIT.

special calendar. See CALENDAR (2).

special case. See *case reserved* (1) under CASE.

special charge. 1. See *special instruction* under JURY INSTRUCTION. 2. See CHARGE.

special charter. See CHARTER (3).

special circumstances. See *exigent circumstances* under CIRCUMSTANCE.

special-circumstances rule. See SPECIAL-FACTS RULE.

special committee. See COMMITTEE.

special contract. See CONTRACT.

special-contract debt. See DEBT.

special counsel. See COUNSEL.

special count. See COUNT.

special court-martial. See COURT-MARTIAL.

special covenant against encumbrances. See COVENANT (4).

special custom. See *local custom* under CUSTOM.

special damages. See DAMAGES.

special demurrer. See DEMURRER.

special deposit. See DEPOSIT (2).

special deputy. See DEPUTY.

special-design property. See *special-purpose property* under PROPERTY.

special deterrence. See DETERRENCE.

special diligence. See DILIGENCE.

special district. See DISTRICT.

special dividend. See *extraordinary dividend* under DIVIDEND.

special-duty doctrine. (1980) *Torts.* The rule that a governmental entity (such as a state or municipality) can be held liable for an individual plaintiff's injury when the entity owed a duty to the plaintiff but not to the general public. • This is an exception to the public-duty doctrine. The special-duty doctrine applies only when the plaintiff has reasonably relied on the governmental entity's assumption of the duty. — Also termed *special-duty exception.* See PUBLIC-DUTY DOCTRINE. [Cases: Municipal Corporations ⇨723.]

special-duty exception. 1. SPECIAL-DUTY DOCTRINE. 2. SPECIAL-ERRAND DOCTRINE.

special election. See ELECTION (3).

special employee. See *borrowed employee* under EMPLOYEE.

special employer. See EMPLOYER.

special-errand doctrine. The principle that workers' compensation covers an employee's injuries occurring while the employee is on a journey or special duty for the employer away from the workplace. • This is an exception to the general rule that an employee is not covered for injuries occurring away from work. — Also termed *special-duty exception; special-mission exception.* See GOING-AND-COMING RULE. Cf. SPECIAL-HAZARD RULE. [Cases: Workers' Compensation ⇨718, 723.]

special exception. 1. A party's objection to the form rather than the substance of an opponent's claim, such as an objection for vagueness or ambiguity. See DEMURRER. Cf. *general exception* (1) under EXCEPTION (1). [Cases: Pleading ⇨228.14.] 2. An allowance in a zoning ordinance for special uses that are considered essential and are not fundamentally incompatible with the original zoning regulations. — Also termed (in sense 2) *conditional use; special use.* Cf. VARIANCE (2). [Cases: Zoning and Planning ⇨481.]

special execution. See EXECUTION.

special executor. See EXECUTOR.

special-facts rule. *Corporations.* The principle that a director or officer has a fiduciary duty to disclose material inside information to a shareholder when engaging in a stock transaction under special circumstances, as when the shareholder lacks business acumen, the shares are closely held with no readily ascertainable market value, or the director or officer instigated the transaction. • This is an exception to the "majority rule." — Also termed *special-circumstances rule.* Cf. MAJORITY RULE (2). [Cases: Corporations ⇨316(3).]

special finding. See FINDING OF FACT.

special-form drawing. See DRAWING.

special franchise. See FRANCHISE (2).

special grand jury. See GRAND JURY.

special guaranty. See GUARANTY.

special guardian. See GUARDIAN.

special-hazard rule. The principle that workers' compensation covers an employee for injuries received while traveling to or from work if the route used contains unique risks or hazards and is not ordinarily used by the public except in dealing with the employer. • This is an exception to the general rule that an employee is not covered for injuries occurring during the employee's commute. See GOING-AND-COMING RULE. Cf. SPECIAL-ERRAND DOCTRINE. [Cases: Workers' Compensation ⇨719–755.]

special housing unit. A block of cells used to house inmates who have been separated from the general prison population, usu. for disciplinary purposes but sometimes for safety reasons. • Inmates in special housing units typically have fewer privileges than other inmates. — Abbr. SHU. [Cases: Prisons ⇨13(5).]

special imparlance. See IMPARLANCE.

special indorsement. See INDORSEMENT.

special injunction. See INJUNCTION.

special instruction. See JURY INSTRUCTION.

special-interest group. An organization that seeks to influence legislation or government policy in favor of a particular interest or issue, esp. by lobbying. — Also termed *special interest.*

special interrogatory. See INTERROGATORY.

special issue. **1.** See ISSUE (1). **2.** See *special interrogatory* under INTERROGATORY.

specialist. **1.** A lawyer who has been board-certified in a specific field of law. See BOARD OF LEGAL SPECIALIZATION. **2.** *Securities.* A securities-exchange member who makes a market in one or more listed securities. • The exchange assigns securities to various specialists and expects them to maintain a fair and orderly market as provided by SEC standards. [Cases: Exchanges ⇨ 10.10.]

special judge. See JUDGE.

special jurisdiction. See *limited jurisdiction* under JURISDICTION.

special jury. See JURY.

special law. See LAW.

special legacy. See *specific legacy* under LEGACY.

special letter of credit. See LETTER OF CREDIT.

special lien. See *particular lien* under LIEN.

special limitation. See LIMITATION.

special litigation committee. *Corporations.* A committee of independent corporate directors assigned to investigate the merits of a shareholder derivative suit and, if appropriate, to recommend maintaining or dismissing the suit. — Abbr. SLC. — Also termed *independent investigation committee; authorized committee.* See DERIVATIVE ACTION. [Cases: Corporations ⇨ 206(1).]

specially accredited agent. See AGENT (2).

special malice. See *particular malice* under MALICE.

special master. **1.** MASTER. **2.** See *judicial officer* (3) under OFFICER.

special matter. See MATTER.

special meaning. See SECONDARY MEANING.

special meeting. See MEETING.

special message. See MESSAGE.

special-mission exception. See SPECIAL-ERRAND DOCTRINE.

special mortgage. See MORTGAGE.

special motion. See MOTION (1).

special-needs analysis. (1989) *Criminal procedure.* A balancing test used by the Supreme Court to determine whether certain searches (such as administrative, civil-based, or public-safety searches) impose unreasonably on individual rights. [Cases: Searches and Seizures ⇨ 24.]

special-needs child. See CHILD.

special-needs trust. See *supplemental-needs trust* under TRUST.

special *non est factum*. See NON EST FACTUM.

special occupant. See OCCUPANT.

special offering. See OFFERING.

special order. See ORDER (4).

special-order agenda. See *special-order calendar* under CALENDAR (4).

special-order calendar. See CALENDAR (4).

special owner. See OWNER.

special partner. See *limited partner* under PARTNER.

special partnership. See PARTNERSHIP.

special permit. See SPECIAL-USE PERMIT.

special plea. See PLEA (3).

special pleader. See PLEADER.

special pleading. (17c) **1.** The common-law system of pleading that required the parties to exchange a series of court papers (such as replications, rebutters, and surrebutters) setting out their contentions in accordance with hypertechnical rules before a case could be tried. • Often, therefore, cases were decided on points of pleading and not on the merits. [Cases: Pleading ⇨ 1.] **2.** The art of drafting pleadings under this system. **3.** An instance of drafting such a pleading. **4.** A responsive pleading that does more than merely deny allegations, as by introducing new matter to justify an otherwise blameworthy act. **5.** An argument that is unfairly slanted toward the speaker's viewpoint because it omits unfavorable facts or authorities and develops only favorable ones.

special plea in bar. See PLEA IN BAR.

special plea in error. At common law, a plea alleging some extraneous matter as a ground for defeating a writ of error (such as a release or expiration of the time within which error can be brought), to which the plaintiff in error must reply or demur.

special power. **1.** See POWER (3). **2.** See *limited power of appointment* under POWER OF APPOINTMENT.

special power of appointment. See *limited power of appointment* under POWER OF APPOINTMENT.

special power of attorney. See POWER OF ATTORNEY.

special prayer. See PRAYER FOR RELIEF.

special privilege. See PRIVILEGE (1).

special proceeding. See PROCEEDING.

special property. See PROPERTY.

special prosecutor. See PROSECUTOR.

special-purpose entity. A business established to perform no function other than to develop, own, and operate a large, complex project (usu. called a *single-purpose project*), esp. so as to limit the number of creditors claiming against the project. • A special-purpose entity provides additional protection for project lenders, which are usu. paid only out of the money generated by the entity's business, because there will be fewer competing claims for that money and because the entity will be less likely to be forced into bankruptcy. A special-purpose entity will sometimes issue securities instead of just receiving a direct loan. — Abbr. SPE. — Also termed *special-purpose vehicle* (SPV). See BANKRUPTCY-REMOTE ENTITY; SINGLE-PURPOSE PROJECT; *project financing* under FINANCING.

special-purpose property. See PROPERTY.

special-purpose vehicle. See SPECIAL-PURPOSE ENTITY.

special reference. See REFERENCE.

special registration. See REGISTRATION (1).

special relationship. See RELATIONSHIP.

special-relationship doctrine. (1981) The theory that if a state has assumed control over an individual sufficient to trigger an affirmative duty to protect that individual (as in an involuntary hospitalization or custody), then the state may be liable for the harm inflicted on the individual by a third party. • This is an exception to the general principle prohibiting members of the public from suing state employees for failing to protect them from third parties. — Also termed *special-relationship exception*. Cf. DANGER-CREATION DOCTRINE. [Cases: States ⇨112.2(2).]

special relief. *Copyright*. A variance from a formal requirement for copyright registration or deposit granted by the U.S. Copyright Office when an applicant shows a good reason for the variance. [Cases: Copyrights and Intellectual Property ⇨50.20.]

special replication. See REPLICATION.

special reprisal. See REPRISAL.

special retainer. See RETAINER.

special retention. See RETENTION.

special rule. 1. A rule applicable to a particular case or circumstance only. See RULE (1). **2.** A deliberative assembly's rule that supplements or supersedes its parliamentary authority. See PARLIAMENTARY AUTHORITY. **3.** A rule that applies only to a particular matter, such as a specific bill. In senses 2 & 3, see RULE (2), (3).

specials. See *special damages* under DAMAGES.

special-sensitivity rule. See EGGSHELL-SKULL RULE.

special session. See SESSION (1).

special setting. See SETTING.

special statute. See STATUTE.

special stock. See STOCK.

special tail. See *tail special* under TAIL.

special tax. See TAX.

special-tax bond. See BOND (3).

special term. See TERM (5).

Special 301. *Intellectual property*. A provision of the Omnibus Trade and Competitiveness Act of 1988 directing the U.S. Trade Representative to report annually on countries that do not provide adequate and effective protection against the pirating of goods protected by U.S. intellectual-property rights. • Countries that fail the annual audit are put on a watch list and may face trade sanctions. 19 USCA §§ 2411 et seq.

special traverse. See TRAVERSE.

special trial setting. See *special setting* under SETTING.

special truce. See TRUCE.

special trust. See *active trust* under TRUST.

specialty. 1. See *contract under seal* under CONTRACT. **2.** DOCTRINE OF SPECIALTY. **3.** *Eminent domain*. Unique property (such as a church or cemetery) that is essentially not marketable, so that its value for condemnation purposes is determined by measuring the property's reproduction cost less any depreciation. — Also termed (in sense 3) *specialty property*. [Cases: Eminent Domain ⇨134.]

specialty bar. See BAR.

specialty contract. See *contract under seal* under CONTRACT.

specialty creditor. See CREDITOR.

specialty debt. See *special-contract debt* under DEBT.

specialty doctrine. See DOCTRINE OF SPECIALTY.

specialty property. See SPECIALTY (3).

special use. See SPECIAL EXCEPTION (2).

special-use permit. A zoning board's authorization to use property in a way that is identified as a special exception in a zoning ordinance. • Unlike a variance, which is an authorized violation of a zoning ordinance, a special-use permit is a permitted exception. — Abbr. SUP. — Also termed *conditional-use permit*; *special permit*. See SPECIAL EXCEPTION (2). Cf. VARIANCE (2). [Cases: Zoning and Planning ⇨371, 483.]

special-use valuation. See VALUATION.

special venire. See VENIRE.

special verdict. See VERDICT.

special warranty. See WARRANTY (1).

special warranty deed. See DEED.

specie (**spee**-shee). See IN SPECIE.

species (**spee**-sheez). **1.** A taxonomic class of organisms uniquely distinguished from other classes by shared characteristics and usu. by an inability to interbreed with members of other classes.

candidate species. *Environmental law*. Plants and animals identified by the Fish and Wildlife Service or National Marine Fisheries Service as potentially endangered or threatened but not of high enough priority to develop a proposed listing regulation under the Endangered Species Act. • Candidate species are not protected by federal law. — Also termed *listed species*.

endangered species. A species in danger of becoming extinct; esp., under federal law, a species that is in danger of extinction throughout all or a significant part of its range. • Federal law excludes from the definition a species of the class Insecta if the Environmental Protection Agency determines that it constitutes a pest whose protection would present a significant risk to the human population. 50 CFR § 81. [Cases: Environmental Law ⇨528.]

listed species. See *candidate species*.

threatened species. A species that, within the foreseeable future, is likely to become an endangered species throughout all or a significant part of its range. 16

USCA § 1532(20). [Cases: Environmental Law ⚷ 528.]

2. A specific class or kind of thing within a larger, general class. • For example, *tort* refers to a general class or genus. *Slander* refers to a specific kind of tort. Cf. GENUS. **3.** *Patents.* An element, usu. one of several mutually exclusive alternatives, that may be used in an invention to achieve a desired result <magnetic metals, including iron and steel>. • Species may be structures, steps, parts, compounds, and so on.

ultimate species. A species that has been fully and narrowly defined. • For example, a species may be defined generally as "magnetic metals, including iron and steel," or particularly, such as "sodium chloride."

species claim. See PATENT CLAIM.

species facti (**spee**-shee-eez *or* **spee**-sheez **fak**-tɪ). [Latin] *Scots law.* The particular character of the thing done. • The phrase appeared in reference to the specific criminal act or civil wrong alleged.

specific, *adj.* **1.** Of, relating to, or designating a particular or defined thing; explicit <specific duties>. **2.** Of or relating to a particular named thing <specific item>. **3.** Conformable to special requirements <specific performance>. — **specificity** (spes-ə-**fis**-i-tee), *n.* — **specifically,** *adv.*

specific appropriation. See APPROPRIATION (2).

specificatio (spes-ə-fi-**kay**-shee-oh), *n.* [Latin fr. *species* "form" + *facere* "to make"] *Roman & civil law.* **1.** A giving of form to materials; the process of making something new from existing property. **2.** A mode of acquisition by which a person makes something new from existing material (for example, wine from grapes or a ship from timber). See ACCESSION (4). Pl. ***specificationes.***

> "***Specificatio.*** This may be described as acquisition of a new thing by making it, out of materials wholly or partly belonging to another person. We shall deal only with the case in which the materials are wholly another's. There was in classical law a conflict of opinion on this topic . . . . Justinian tells us that there had been a *media sententia* according to which it belonged to the maker if (i) it was irreducible to its former state, and (ii) it really was a *nova species*, where *species* means thing. And this view he adopts as law." W.W. Buckland, *A Manual of Roman Private Law* 143 (2d ed. 1953).

specification. (17c) **1.** The act of making a detailed statement, esp. of the measurements, quality, materials, or other items to be provided under a contract. [Cases: Contracts ⚷ 199(1).] **2.** The statement so made. **3.** *Patents.* The part of a patent application describing how an invention is made and used, the best mode of operation of the claimed invention, and the inventor's claims. • The specification must be clear and complete enough to enable a person of ordinary skill in the art to make and use the invention. It must also disclose the best mode of working the invention. The term may also refer to the description as separate from the claims. — Abbr. spec. Cf. PATENT CLAIM. [Cases: Patents ⚷ 99.]

> "The specification and claims of a patent, particularly if the invention be at all complicated, constitute one of the most difficult legal instruments to draw with accuracy; and, in view of the fact that valuable inventions are often placed in the hands of inexperienced persons to prepare such specifications and claims, it is no matter of surprise that the latter frequently fail to describe with requisite certainty the exact invention of the patentee, and err either in claiming that which the patentee had not in fact invented, or in omitting some element which was a valuable or essential part of his actual invention." *Topliff v. Topliff*, 145 U.S. 156, 170, 12 S.Ct. 825, 831 (1892).

substitute specification. A patent specification that is rewritten (1) to include amendments made to the specification after filing; (2) to replace an illegible or unreadable original; or (3) to prepare the papers for printing. • A substitute specification must be accompanied by a statement that it contains no new matter, and by a copy showing what has been added and deleted since the original specification. Substitute specifications are allowed under 37 CFR 1.125. — Also termed *rewritten specification.* [Cases: Patents ⚷ 109.]

4. A statement of charges against one who is accused of an offense, esp. a military offense. [Cases: Military Justice ⚷ 950–971.]

> "A *charge* sets forth an *offense* — that is, a particular kind of act or conduct that the governing rules define as entailing liability to prescribed penalties — of which the accused is alleged to be guilty. A *specification* states *what the accused is alleged to have done* which, if true, constitutes an instance of the offense indicated in the charge. An accused must be found guilty of a *charge* before a penalty can be imposed." Henry M. Robert, *Robert's Rules of Order Newly Revised* § 61, at 636 (10th ed. 2002).

5. The acquisition of title to materials belonging to another person by converting those materials into a new and different form, as by changing grapes into wine, lumber into shelving, or corn into liquor. • The effect is that the original owner of the materials loses the property rights in them and is left with a right of action for their original value. — Abbr. spec.

specific bequest. See BEQUEST.

specific denial. See DENIAL.

specific deposit. See *special deposit* under DEPOSIT (2).

specific devise. See DEVISE.

specific duty. See DUTY (4).

specific enforcement. See *primary right* under RIGHT.

specific example. See EXAMPLE.

specific guaranty. See GUARANTY.

specific intent. See INTENT (1).

specific-intent defense. *Criminal law.* A defendant's claim that he or she did not have the capacity (often supposedly because of intoxication or mental illness) to form the intent necessary for committing the crime alleged. [Cases: Criminal Law ⚷ 48–51, 55.]

specific jurisdiction. See JURISDICTION.

specific legacy. See LEGACY.

specific legatee. See LEGATEE.

specific lien. See LIEN.

specific main motion. See *incidental main motion* under MOTION (2).

specific objection. See OBJECTION.

specific performance. (18c) The rendering, as nearly as practicable, of a promised performance through a judgment or decree; specif., a court-ordered remedy that requires precise fulfillment of a legal or contractual obligation when monetary damages are inappropriate or inadequate, as when the sale of real estate or a rare article is involved. • Specific performance is an equitable remedy that lies within the court's discretion to award whenever the common-law remedy is insufficient, either because damages would be inadequate or because the damages could not possibly be established. — Also termed *specific relief.* [Cases: Specific Performance ⇨1.]

> "In essence, the remedy of specific performance enforces the execution of a contract according to its terms, and it may therefore be contrasted with the remedy of damages, which is compensation for non-execution. In specific performance, execution of the contract is enforced by the power of the Court to treat disobedience of its decree as contempt, for which the offender may be imprisoned until he is prepared to comply with the decree. Actually, . . . it is not strictly accurate to say that the Court enforces execution of the contract according to its terms, for the Court will not usually intervene until default upon the contract has occurred, so that enforcement by the Court is later in time than performance carried out by the person bound, without the intervention of the Court." G.W. Keeton, *An Introduction to Equity* 304 (5th ed. 1961).

specific personal jurisdiction. See JURISDICTION.

specific policy. See *basic-form policy* under INSURANCE POLICY.

specific-purpose rule. *Insurance.* The principle that a nonowner driver of a vehicle is treated as an omnibus insured under the vehicle owner's liability coverage only if the driver's actual use of the vehicle at the time of the accident is the exact use that the owner contemplated when granting permission or consent to the nonowner driver. • The time at which the bailment of the vehicle was to expire must not have passed, the place where the vehicle was being used must be as specified or contemplated by the insured, and the use of the vehicle must comport with the type of use that the insured had in mind when the bailment was created. Otherwise, the permittee's use of the vehicle will be regarded as a conversion. — Also termed *conversion rule; strict rule.* [Cases: Insurance ⇨2667.]

specific relief. See SPECIFIC PERFORMANCE.

specific remedy. See REMEDY.

specific tax. See TAX.

specific traverse. See *common traverse* under TRAVERSE.

specimen. An actual sample of something; esp., an example of a trademark as it is used in commerce. • In the field of trademarks, a specimen typically consists of a label, a container, a display, or a photograph of the mark used for selling or advertising the goods or services. [Cases: Trademarks ⇨1282.]

specious, *adj.* Falsely appearing to be true, accurate, or just <specious argument>.

spectrograph. (1884) An electromagnetic machine that analyzes sound, esp. a human voice, by separating and mapping it into elements of frequency, time lapse, and intensity (represented by a series of horizontal and vertical bar lines) to produce a final voiceprint. See VOICEPRINT. [Cases: Criminal Law ⇨339.6, 388.2.]

speculation, *n.* (14c) **1.** The buying or selling of something with the expectation of profiting from price fluctuations <he engaged in speculation in the stock market>. **2.** The act or practice of theorizing about matters over which there is no certain knowledge <the public's speculation about the assassination of John F. Kennedy>. — **speculate,** *vb.* — **speculative,** *adj.*

speculative damages. See DAMAGES.

speculative risk. See RISK.

speculative security. See SECURITY.

speculator. A knowledgeable, aggressive investor who trades securities to profit from fluctuating market prices.

speech. (bef. 12c) **1.** The expression or communication of thoughts or opinions in spoken words; something spoken or uttered. See FREEDOM OF SPEECH. [Cases: Constitutional Law ⇨1492.]

commercial speech. (1963) Communication (such as advertising and marketing) that involves only the commercial interests of the speaker and the audience, and is therefore afforded lesser First Amendment protection than social, political, or religious speech. Cf. *pure speech.* [Cases: Constitutional Law ⇨1535–1541.]

corporate speech. (1959) Speech deriving from a corporation and protected under the First Amendment. • It does not lose protected status simply because of its corporate source.

hate speech. (1988) Speech that carries no meaning other than the expression of hatred for some group, such as a particular race, esp. in circumstances in which the communication is likely to provoke violence. Cf. *hate crime* under CRIME; *group libel* under LIBEL. [Cases: Civil Rights ⇨1808; Constitutional Law ⇨1560.]

pure speech. (1943) Words or conduct limited in form to what is necessary to convey the idea. • This type of speech is given the greatest constitutional protection. Cf. *commercial speech; symbolic speech.*

seditious speech. (1920) Speech advocating the violent overthrow of government. See SEDITION. [Cases: Constitutional Law ⇨1580.]

speech-plus. See *symbolic speech.*

symbolic speech. (1966) Conduct that expresses opinions or thoughts, such as a hunger strike or the wearing of a black armband. • Symbolic speech does not enjoy the same constitutional protection that pure

speech does. — Also termed *speech-plus*. Cf. *pure speech*. [Cases: Constitutional Law ⚷90.1(1).]

2. *English law.* An opinion delivered by a Law Lord; JUDGMENT (2). **3.** *Parliamentary law.* The unit of debate; specif., one statement, usu. subject to a time limit, on one question by one member. • When finished, the speaker must relinquish the floor and ordinarily cannot yield it to another member.

Speech Clause. The First Amendment provision that "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend I. — Also termed *Freedom of Speech Clause*. [Cases: Constitutional Law ⚷1490–2304.]

Speech or Debate Clause. (1965) The clause of the U.S. Constitution giving members of Congress immunity for statements made during debate in either the House or the Senate. • This immunity is extended to other areas where it is necessary to prevent impairment of deliberations and other legitimate legislative activities, such as subpoenaing bank records for an investigation. U.S. Const. art. I, § 6., cl. 1. — Also termed *Speech and Debate Clause*. See *congressional immunity* under IMMUNITY (1). [Cases: United States ⚷12.]

speech-plus. See *symbolic speech* under SPEECH.

speedy execution. See EXECUTION.

speedy remedy. See REMEDY.

speedy trial. (18c) *Criminal procedure.* A trial that the prosecution, with reasonable diligence, begins promptly and conducts expeditiously. • The Sixth Amendment secures the right to a speedy trial. In deciding whether an accused has been deprived of that right, courts generally consider the length of and reason for the delay, and the prejudice to the accused. [Cases: Criminal Law ⚷577.1–577.16.]

Speedy Trial Act of 1974. A federal statute establishing time limits for carrying out the major events (such as information, indictment, arraignment, and trial commencement) in the prosecution of federal criminal cases. 18 USCA §§ 3161–3174. [Cases: Criminal Law ⚷577.2, 577.5.]

spending bill. See *appropriations bill* under BILL (3).

spending power. See POWER (3).

spendthrift, *n.* One who spends lavishly and wastefully; a profligate. [Cases: Spendthrifts ⚷3.] — **spendthrift,** *adj.*

spendthrift trust. See TRUST.

spent bill of lading. See BILL OF LADING.

spe numerandae pecuniae (spee n[y]oo-mə-**ran**-dee pi-**kyoo**-nee-ee). [Law Latin] *Scots law.* In the hope of the money being paid.

> "So, also, where one delivers a conveyance, which acknowledges receipt of the consideration price, and discharges the disponee, this does not exclude his action for the price, if the disponee, on receiving delivery, refuses payment; the disponee is still liable *ex dolo*, the deed having been delivered *spe numerandae pecuniae*." John Trayner, *Trayner's Latin Maxims* 582 (4th ed. 1894).

sperate (**speer**-ət), *adj. Archaic.* (Of a debt) recoverable; not hopeless. • In determining whether a debt could be collected, consideration was formerly given to whether the debt was *desperate* or *sperate*.

spes accrescendi (**speez** ak-rə-**sen**-dī). [Latin "hope of accrual"] Hope of acquiring an extra share of a legacy or inheritance by survival.

spes obligationis (**speez** ob-li-gay-shee-**oh**-nis). [Latin] *Hist.* The hope of an obligation yet to emerge.

spes recuperandi (**speez** ri-k[y]oo-pə-**ran**-dī). [Latin "hope of recovery"] Hope of recovering a prize, as from a captured vessel.

spes successionis (**speez** sək-sesh-ee-**oh**-nis). [Latin "hope of succession"] Hope of succeeding to a right.

> "A mere *spes successionis* must be distinguished from a contingent right. If Matilda has nursed her invalid friend for thirty years, she may have every hope of succeeding to the property, but she has no right." George Whitecross Paton, *A Textbook of Jurisprudence* 306 (G.W. Paton & David P. Derham eds., 4th ed. 1972).

spes successionis in destinatione (**speez** sək-ses[h]-ee-**oh**-nis in des-ti-nay-shee-**oh**-nee). [Law Latin] *Hist.* A hope of succeeding under a destination (that is, an appointment by will).

spes successionis in obligatione (**speez** sək-ses[h]-ee-**oh**-nis in ob-li-gay-shee-**oh**-nee). [Law Latin] *Hist.* A hope of succeeding to a right under an existing obligation.

***Spielberg* doctrine.** *Labor law.* The policy of the National Labor Relations Board to defer to an arbitrator's decision regarding a contract dispute if (1) the decision is not repugnant to the NLRB, (2) the arbitration proceedings provided a hearing as fair as would have been provided before the NLRB, and (3) the contract requires binding arbitration. *Spielberg Mfg. Co.*, 112 NLRB Dec. (CCH) 86 (1955). Cf. COLLYER DOCTRINE.

> "In Spielberg Mfg. Co. (1955), the Board announced its policy of dismissing an unfair labor practice complaint in deference to an arbitration award already rendered, provided the arbitral procedures were fair and the award was not repugnant to the policies of the Labor Act. . . . The Supreme Court in several cases cited the Board's deferral policy with approval, noting that the Board has discretion to respect an arbitration award and that arbitration of disputes contributes to industrial peace and stability." Robert A. Gorman, *Basic Text on Labor Law: Unionization and Collective Bargaining* 751 (1976).

spigurnel (spig-ər-**nel**), *n. Hist.* An early officer of the Chancery, equivalent to the Sealer of the king's writs in later times.

spillover. See EXTERNALITY.

spillover theory. (1985) The principle that a severance must be granted only when a defendant can show that a trial with a codefendant would substantially prejudice the defendant's case, as when the jury might wrongly use evidence against the defendant. See BRUTON ERROR. [Cases: Criminal Law ⚷622.7(8).]

> "The spillover theory involves the question of whether a jury's unfavorable impression of a defendant against whom the evidence is properly admitted will influence the way the jurors view a codefendant . . . . The test . . . is whether the jury can keep separate the evidence that is relevant to

each defendant and render a fair and impartial verdict." 22A C.J.S. *Criminal Law* § 571, at 190–91 (1989).

spinning. *Securities.* The giving of shares or preferred opportunities to buy shares in an initial public offering to key investment-banking clients in order to solicit or retain profitable business in the future.

spin-off, *n.* **1.** A corporate divestiture in which a division of a corporation becomes an independent company and stock of the new company is distributed to the corporation's shareholders. [Cases: Corporations ⚷445.] **2.** The company created by this divestiture. — Also written *spinoff.* Cf. SPLIT-OFF; SPLIT-UP.

spirit of the law. (16c) The general meaning or purpose of the law, as opposed to its literal content. Cf. LETTER OF THE LAW. [Cases: Statutes ⚷183.]

spiritual, *adj.* Of or relating to ecclesiastical rather than secular matters <spiritual corporation>.

spiritual corporation. See CORPORATION.

spiritual court. See *ecclesiastical court* under COURT.

spiritual lord. An archbishop or bishop having a seat in the House of Lords.

spiritual tenure. See TENURE.

spiritual-treatment exemption. See FAITH-HEALING EXEMPTION.

spital (**spit**-əl). *Archaic.* A hospital. — Also termed *spittle.*

spite fence. (1901) A fence erected solely to annoy a neighbor, as by blocking the neighbor's view or preventing the neighbor from acquiring an easement of light <the court temporarily enjoined the completion of the 25-foot spite fence>. Cf. LAWFUL FENCE. [Cases: Adjoining Landowners ⚷10; Fences ⚷22; Nuisance ⚷3(12).]

spittle. See SPITAL.

split, *vb.* **1.** To divide (a cause of action) into segments or parts. **2.** To issue two or more shares for each old share without changing the shareholder's proportional ownership interest. See STOCK SPLIT; SPLIT-INTEREST PURCHASE OF PROPERTY. [Cases: Corporations ⚷66.]

split custody. See CUSTODY (2).

split-dollar life insurance. See LIFE INSURANCE.

split fund. See *dual fund* under MUTUAL FUND.

split-funded plan. See EMPLOYEE BENEFIT PLAN.

split gift. See GIFT.

split income. See INCOME.

split-interest purchase of property. An arrangement between two parties to purchase an asset whereby one party (often a parent) purchases a life estate and the other party (often a child or grandchild of the life tenant) purchases a remainder interest. • Each party to a split pays the actuarial value of the interest purchased. — Often shortened to *split.* — Also termed *joint-interest purchase.*

split-interest trust. See *charitable-remainder trust* under TRUST.

split-level statute. See STATUTE.

split-off, *n.* **1.** The creation of a new corporation by an existing corporation that gives its shareholders stock in the new corporation in return for their stock in the original corporation. **2.** The corporation created by this process. — Also written *splitoff.* Cf. SPIN-OFF; SPLIT-UP.

split order. See ORDER (8).

split sentence. See SENTENCE.

splitting a cause of action. (1850) Separating parts of a demand and pursuing it piecemeal; presenting only a part of a claim in one lawsuit, leaving the rest for a second suit. • This practice has long been considered procedurally impermissible. [Cases: Action ⚷53; Judgment ⚷591.]

split-up, *n.* The division of a corporation into two or more new corporations. • The shareholders in the original corporation typically receive shares in the new corporations, and the original corporation goes out of business. — Also written *splitup.* Cf. SPIN-OFF; SPLIT-OFF.

split verdict. See VERDICT.

spoiled ballot. See BALLOT (2).

spoils of war. See BOOTY (1).

spoils system. The practice of awarding government jobs to supporters and friends of the victorious political party. Cf. MERIT SYSTEM. [Cases: Officers and Public Employees ⚷25.]

spoliation (spoh-lee-**ay**-shən), *n.* (18c) **1.** The intentional destruction, mutilation, alteration, or concealment of evidence, usu. a document. • If proved, spoliation may be used to establish that the evidence was unfavorable to the party responsible. [Cases: Evidence ⚷78; Federal Civil Procedure ⚷1636; Pretrial Procedure ⚷434.] **2.** The seizure of personal or real property by violent means; the act of pillaging. **3.** The taking of a benefit properly belonging to another. **4.** *Eccles. law.* The wrongful deprivation of a cleric of his benefice. — **spoliate** (**spoh**-lee-ayt), *vb.* — **spoliator** (**spoh**-lee-ay-tər), *n.*

spolium (**spoh**-lee-əm), *n.* [Latin "booty"] *Roman law.* Something taken from an enemy in war or plundered from a fellow-citizen. • The plural *spolia* was more common than the singular.

Spondesne? Spondeo (**spon**-deez **spon**-dee-oh). [Latin] *Roman law.* Do you agree to undertake? I undertake. • This was the special phrase, available only to citizens, that created a *sponsio.* See SPONSIO; STIPULATIO.

spondet peritiam artis (**spon**-det pə-**rish**-ee-əm **ahr**-tis). [Latin "he guarantees his professional skill"] *Hist.* He promised to use the skill of his art. • This phrase is used in construction contracts to indicate an implied agreement to perform in a workmanlike manner.

sponge tax. See *pickup tax* under TAX.

sponsalia (spon-**say**-lee-ə), *n.* [Latin] *Hist.* **1.** A betrothal; an engagement to marry. **2.** An engagement gift. — Also termed *stipulatio sponsalitia.*

sponsalia per verba de futuro (spon-**say**-lee-ə pər **vər**-bə dee f[y]oo-**t**[y]**oor**-oh). [Latin "espousals by words about the future"] *Hist.* A promise to marry in the future.

> "[A] promise to marry in the future (*sponsalia per verba de futuro*) gave rise only to an executory contract of marriage. The regular way of executing the contract was to solemnise the marriage, using present words. But the Canon law acknowledged that it could also be turned into the indissoluble bond of present matrimony by physical consummation . . . . Thus, in the absence of carnal copulation, the validity of a marriage had come to depend on whether the contract was by words *de praesenti* or *de futuro* . . . . It is hardly surprising that it gave rise to so much wrangling and fraud, and that the commonest species of matrimonial suit in the medieval consistory courts was to interpret and enforce 'espousals'." J.H. Baker, *An Introduction to English Legal History* 546 (3d ed. 1990).

sponsalia per verba de praesenti (spon-**say**-lee-ə pər **vər**-bə dee pri-**zen**-ti *or* pree-). *Eccles. law.* A type of informal marriage that occurred when the parties made an informal agreement to have each other as husband and wife. • This type of informal marriage was based on nothing more than the present consent to be married but was entirely valid and would take precedence over a later formal ceremonial marriage that either of the parties attempted to contract with someone else.

sponsio (**spon**-shee-oh), *n.* [Latin] *Roman law.* An undertaking, available only to citizens, in the form of an answer to a question using a solemn form of words with religious overtones. • This was the original form of stipulation. See STIPULATIO.

sponsio judicialis (**spon**-shee-oh joo-dish-ee-**ay**-lis). [Latin] *Roman law.* A formal promise that the judge is entitled to acquire by virtue of his office. Pl. ***sponsiones judiciales.***

sponsio ludicra (**spon**-shee-oh **loo**-di-krə). [Latin "a laughable promise"] **1.** *Civil law.* An informal or illicit understanding that is not enforceable. **2.** *Scots law.* An obligation that a court will not enforce because it does not concern a worthy subject; e.g., a gambling agreement. Pl. ***sponsiones ludicrae.***

sponsion (**spon**-shən), *n.* [fr. Latin *spondere* "to engage"] **1.** The formal pledge by which a person becomes a surety. **2.** *Int'l law.* An ultra vires promise of an official agent (such as a general in wartime), requiring later ratification by the principal. **3.** *Roman law.* A form of guarantee accessory to an oral contract. • Only Roman citizens could make this type of guarantee. See ADPROMISSION (1). — **sponsional** (**spon**-shən-əl), *adj.*

sponsor. **1.** One who acts as a surety for another. **2.** A legislator who proposes a bill. **3.** *Civil law.* One who voluntarily intervenes for another without being requested to do so. **4.** GODPARENT.

spontaneous abortion. See MISCARRIAGE.

spontaneous crime. See CRIME.

spontaneous declaration. (1840) *Evidence.* A statement that is made without time to reflect or fabricate and is related to the circumstances of the perceived occurrence. — Also termed *spontaneous statement; spontaneous exclamation; spontaneous utterance.* See EXCITED UTTERANCE; PRESENT SENSE IMPRESSION. [Cases: Criminal Law ⚷363; Evidence ⚷120.]

sponte (**spon**-tee). [Latin] *Hist.* Spontaneously; voluntarily. See SUA SPONTE.

sponte oblata (**spon**-tee ə-**blay**-tə). [Latin "freely offered"] *Hist.* A gift to the Crown.

sports franchise. See FRANCHISE (4).

sportula (**spor**-chə-lə), *n.* [Latin] *Roman law.* **1.** A present; a donation, as to the poor. **2.** A fee paid to certain officials for performing judicial duties. — Also termed *sportella.*

spot, *adj.* Made, paid, or delivered immediately <a spot sale> <spot commodities>.

spot market. See MARKET.

spot price. See PRICE.

spot zoning. See ZONING.

spousal abuse. See ABUSE.

spousal allowance. See ALLOWANCE (1).

spousal consortium. See CONSORTIUM.

spousal-impoverishment provision. A section of the Medicare Catastrophic Coverage Act allowing the stay-at-home spouse of a person residing in a nursing home to retain certain assets and some joint income, and to earn income without jeopardizing the institutionalized spouse's eligibility for Medicaid. • Before the provision was enacted in 1988, almost all of a couple's joint assets and the noninstitutionalized spouse's income had to go toward the cost of the nursing-home resident's care before Medicaid provided any support. 42 USCA § 1396r-5. [Cases: Health ⚷471.]

spousal labor. *Family law.* Work by either spouse during the marriage. • This term is typically used in community-property states.

spousal privilege. See *marital privilege* under PRIVILEGE (3).

spousal rape. See *marital rape* under RAPE.

spousals. *Hist.* Mutual promises to marry.

spousal support. See ALIMONY.

spousal-unity doctrine. *Hist.* **1.** *Family law.* The common-law rule that a husband and wife were a legal unity. • Under the spousal-unity doctrine, the husband had all rights to the possession, management, control, and alienation of property. The wife had no interests in property. — Also termed *doctrine of spousal unity.* Cf. LEGAL-UNITIES DOCTRINE. See MARRIED WOMEN'S PROPERTY ACTS. **2.** *Tax.* The rule that a person and that person's spouse are treated as one. • This rule has been repealed. — Also termed *spousal-unity rule.* [Cases: Internal Revenue ⚷3566; Taxation ⚷3484.]

spouse. One's husband or wife by lawful marriage; a married person. [Cases: Husband and Wife ⚷1.]

innocent spouse. (1924) *Tax.* A spouse who may be relieved of liability for taxes on income that the other spouse did not include on a joint tax return. • The innocent spouse must prove that the other spouse omitted the income, that the innocent spouse did not know and had no reason to know of the omission, and that it would be unfair under the circumstances to hold the innocent spouse liable. [Cases: Internal Revenue ⚷3566.1; Taxation ⚷3484.]

putative spouse. *Family law.* A spouse who believes in good faith that his or her invalid marriage is legally valid. See *putative marriage* under MARRIAGE (1). [Cases: Marriage ⚷54.]

surviving spouse. A spouse who outlives the other spouse.

spouse-breach. See ADULTERY.

spray trust. See *sprinkle trust* under TRUST.

spread, *n.* **1.** *Banking.* The difference between the interest rate that a financial institution must pay to attract deposits and the rate at which money can be loaned. **2.** *Securities.* The difference between the highest price a buyer will pay for a security (the *bid price*) and the lowest price at which a seller will sell a security (the *asked price*). **3.** *Securities.* The simultaneous buying and selling of one or more options or futures contracts on the same security in order to profit from the price difference. **4.** In investment banking, the difference between the price the underwriter pays the issuer of the security and the price the public paid in the initial offering. • The spread compensates the underwriter for its services; it comprises the manager's fee, the underwriter's discount, and the selling-group concession or discount. — Also termed (in sense 4) *gross spread*; *underwriting spread.*

spread eagle. See STRADDLE.

spreadsheet. A multicolumn worksheet used esp. by accountants and auditors to summarize and analyze financial transactions.

spread upon the minutes. *Parliamentary law.* To incorporate into the minutes a statement expressing a sentiment, such as a memorial celebrating a deceased member's life.

spreta auctoritate judicis (**spree**-tə awk-tor-ə-**tay**-tee **joo**-di-sis). [Law Latin] *Hist.* The authority of the judge being disregarded.

spreta inhibitione (**spree**-tə in-hi-bish-ee-**oh**-nee). [Law Latin] *Hist.* In contempt of an inhibition.

springing durable power of attorney. See *springing power of attorney* under POWER OF ATTORNEY.

springing executory interest. See EXECUTORY INTEREST.

springing power of attorney. See POWER OF ATTORNEY.

springing use. See USE (4).

spring tide. See TIDE.

sprinkle power. In a sprinkle trust, the trustee's discretion about when and how much of the trust principal and income are to be distributed to the beneficiaries. See *sprinkle trust* under TRUST.

sprinkle trust. See TRUST.

spuilzie (**spuul**-yee), *n. Scots law.* **1.** The wrongful taking of corporeal movable property from another's possession. • This is the Scottish equivalent of common-law conversion. **2.** An action to recover wrongfully taken movables, and often for either profits made with them while in the taker's possession or reparations for unjust dispossession. — Also spelled *spulzie*; *spulyie.* — **spuilzied,** *adj.*

spurious (**spyoor**-ee-əs), *adj.* (16c) **1.** Deceptively suggesting an erroneous origin; fake <spurious trademarks>. **2.** Of doubtful or low quality <spurious goods that fell apart>. **3.** *Archaic.* Of illegitimate birth <spurious offspring>.

spurious bank bill. See *spurious banknote* under BANKNOTE.

spurious banknote. See BANKNOTE.

spurious class action. See CLASS ACTION.

spurius (**spyuur**-ee-əs), *n.* [Latin] *Roman law.* A bastard; the offspring of unlawful intercourse. Pl. ***spurii*** (**spyuur**-ee-ī). See NOTHUS.

SPV. *abbr.* Special-purpose vehicle. See SPECIAL-PURPOSE ENTITY.

spy. One who secretly observes and collects secret information or intelligence about what another government or company is doing or plans to do; one who commits espionage. See ESPIONAGE.

squalor carceris (**skway**-lor **kahr**-sər-is). [Law Latin] *Scots law.* The strictness of imprisonment.

> "This term means merely the strictness of imprisonment which a creditor is entitled to enforce, with the view of compelling the debtor to pay the debt, or disclose any funds which he may have concealed. It does not imply (as it did with the ancient churchmen, from whom the term is derived) anything loathsome or unhealthy in the imprisonment in Scotland, which is indeed less close than in England. *Squalor carceris* is not necessary in imprisonment on *meditatio fugae* warrant, security being all that is required in such cases." William Bell, *Bell's Dictionary and Digest of the Law of Scotland* 1032 (George Watson ed., 7th ed. 1890).

squalor morbi (**skway**-lor **mor**-bī). [Law Latin] *Hist.* The dregs of disease.

square, *n.* (17c) **1.** A certain portion of land within a city limit. — Also termed *block.* [Cases: Municipal Corporations ⚷721(1).] **2.** A space set apart for public use. **3.** In a government survey, an area measuring 24 by 24 miles.

squatter. (18c) **1.** A person who settles on property without any legal claim or title. **2.** A person who settles on public land under a government regulation allowing the person to acquire title upon fulfilling specified conditions. [Cases: Public Lands ⚷35.]

squatter's rights. (1855) The right to acquire title to real property by adverse possession, or by preemption of public lands. See ADVERSE POSSESSION.

squeeze-out, *n.* An action taken in an attempt to eliminate or reduce a minority interest in a corporation. Cf. FREEZE-OUT. [Cases: Corporations ⇨182.3, 584.]

***Squires* claim.** See PATENT CLAIM.

***Squires* doctrine.** *Patents.* A rule of the U.S. Patent and Trademark Office that a utility-patent claim may incorporate drawings or tables by reference, but only when there is no practical way to express the information in words, and when referring to the artwork is a concise way to communicate the information. • The namesake case involved a numerical font designed to be readable in the dim red light inside a submarine. It is allowed only when necessary, and is not available just for the convenience of an applicant. *Ex parte Squires*, 133 USPQ (BNA) 598 (Bd. App. 1961). [Cases: Patents ⇨100.]

SRO. *abbr.* See SELF-REGULATORY ORGANIZATION.

ss. *abbr.* **1.** Sections. **2.** *Subscripsi* (i.e., signed below). **3.** Sans (i.e., without). **4.** (Erroneously) scilicet.

"Many possible etymologies have been suggested for this mysterious abbreviation. One is that it signifies *scilicet* (= namely, to wit), which is usually abbreviated *sc.* or *scil.* Another is that *ss.* represents '[t]he two gold letters at the ends of the chain of office or "collar" worn by the Lord Chief Justice of the King's Bench . . . .' Max Radin, *Law Dictionary* 327 (1955). Mellinkoff suggests that the precise etymology is unknown: 'Lawyers have been using *ss* for nine hundred years and still are not sure what it means.' David Mellinkoff, *The Language of the Law* 296 (1963). In fact, though, it is a flourish deriving from the Year Books — an equivalent of the paragraph mark: '¶.' Hence Lord Hardwicke's statement that *ss.* is nothing more than a division mark. See *Jodderrell v. Cowell*, 95 Eng. Rep. 222, 222 (K.B. 1737) . . . . An early formbook writer incorporated it into his forms, and ever since it has been mindlessly perpetuated by one generation after another." Bryan A. Garner, *A Dictionary of Modern Legal Usage* 825 (2d ed. 1995).

SSA. *abbr.* SOCIAL SECURITY ADMINISTRATION.

SSDI. *abbr.* SOCIAL SECURITY DISABILITY INSURANCE.

SSI. *abbr.* SUPPLEMENTAL SECURITY INCOME.

SSS. *abbr.* SELECTIVE SERVICE SYSTEM.

stabilize, *vb.* **1.** To make firm or steadfast <to stabilize the ship>. **2.** To maintain a particular level or amount <stabilize prices>.

stable stand. *Hist.* In forest law, a person found standing in a forest either with a bow bent, ready to shoot a deer, or close to a tree with greyhounds on a leash and ready to slip, being presumptive evidence of an intent to steal the Crown's deer.

stacking. (1982) **1.** *Insurance.* The process of obtaining benefits from a second policy on the same claim when recovery from the first policy alone would be inadequate. [Cases: Insurance ⇨2108, 2799.]

judicial stacking. The principle that a court can construe insurance policies to permit stacking, under certain circumstances, when the policies do not specifically allow stacking but public policy is best served by permitting it. [Cases: Insurance ⇨2799.]

policy stacking. Stacking that is permitted by the express terms of an insurance policy. [Cases: Insurance ⇨2108.]

2. A gerrymandering technique in which a large political or racial group is combined in the same district with a larger opposition group. Cf. CRACKING; PACKING. [Cases: Elections ⇨12(6).]

staff attorney. 1. See ATTORNEY. **2.** See CLERK (5).

staff director. See EXECUTIVE DIRECTOR.

staff judge advocate. See JUDGE ADVOCATE.

stagflation (stag-**flay**-shən), *n.* A period of slow economic growth or recession characterized by high inflation, stagnant consumer demand, and high unemployment. — **stagflationary,** *adj.*

staggered board of directors. See BOARD OF DIRECTORS.

stagiarius (stay-jee-**air**-ee-əs), *n.* [Latin] *Hist.* **1.** *Eccles. law.* A resident canon; an ecclesiastic bound to keep terms of residence. **2.** A stagiary; a law student keeping terms before admission to the bar.

stake, *n.* (bef. 12c) **1.** Something (such as property) deposited by two or more parties with a third party pending the resolution of a dispute; the subject matter of an interpleader. [Cases: Interpleader ⇨21.] **2.** An interest or share in a business venture. **3.** Something (esp. money) bet in a wager, game, or contest. [Cases: Gaming ⇨1, 67.] **4.** A boundary marker used in land surveys. [Cases: Boundaries ⇨5.]

stakeholder. (18c) **1.** A disinterested third party who holds money or property, the right to which is disputed between two or more other parties. See INTERPLEADER. [Cases: Interpleader ⇨13.] **2.** A person who has an interest or concern in a business or enterprise, though not necessarily as an owner. **3.** One who holds the money or valuables bet by others in a wager. [Cases: Gaming ⇨27, 72.5.]

stale check. See CHECK.

stale claim. See CLAIM (3).

Stalingrad defense. See DEFENSE (2).

stalking. (bef. 12c) **1.** The act or an instance of following another by stealth. **2.** The offense of following or loitering near another, often surreptitiously, to annoy or harass that person or to commit a further crime such as assault or battery. • Some statutory definitions include an element that the person being stalked must reasonably feel harassed, alarmed, or distressed about personal safety or the safety of one or more persons for whom that person is responsible. And some definitions include acts such as telephoning another and remaining silent during the call. Cf. CYBERSTALKING. [Cases: Extortion and Threats ⇨25.1.]

stallage (**stawl**-ij), *n.* *Hist.* **1.** The right to erect stalls in public markets. **2.** The cost for that right.

stamp, *n.* (15c) An official mark or seal placed on a document, esp. to indicate that a required tax (such as duty or excise tax) has been paid. [Cases: Bills and Notes ⚷56; Internal Revenue ⚷4390–4409; Taxation ⚷2218, 3679.]

stamp acts. English statutes requiring and regulating stamps on deeds, contracts, legal papers, bills, or other documents.

stamp duty. *Hist.* A tax raised by requiring stamps sold by the government to be affixed to designated documents, thus forming part of the perpetual revenue. See *stamp tax* under TAX. [Cases: Internal Revenue ⚷4390–4409; Taxation ⚷2218.]

> "A fifth branch of the perpetual revenue consists in the stamp duties, which are a tax imposed upon all parchment and paper whereon any legal proceedings, or private instruments of almost any nature whatsoever, are written; and also upon licenses . . . and pamphlets containing less than six sheets of paper. These imposts are very various, according to the nature of the thing stamped, rising gradually from a penny to ten pounds." 1 William Blackstone, *Commentaries on the Laws of England* 312–13 (1765).

stamp tax. See TAX.

stand. See WITNESS STAND.

stand adjourned. (Of a meeting or proceeding) to be in a state of adjournment <this court stands adjourned until 10:00 a.m. tomorrow>. • This status is usu. announced by a judge or other presiding officer concerning the business scheduled to continue at a later time. — Often shortened to *adjourned*. [Cases: Courts ⚷66.]

standard, *n.* (15c) **1.** A model accepted as correct by custom, consent, or authority <what is the standard in the ant-farm industry?>. **2.** A criterion for measuring acceptability, quality, or accuracy <the attorney was making a nice living — even by New York standards>. — **standard,** *adj.*

objective standard. (1915) A legal standard that is based on conduct and perceptions external to a particular person. • In tort law, for example, the reasonable-person standard is considered an objective standard because it does not require a determination of what the defendant was thinking.

subjective standard. (1915) A legal standard that is peculiar to a particular person and based on the person's individual views and experiences. • In criminal law, for example, a subjective standard applies to determine premeditation because it depends on the defendant's mental state.

Standard & Poor's. An investment-analysis and -advisory service. • Standard & Poor's rates the financial strength of businesses from AAA (strongest) to AA, A, BBB, and so on to CCC. Most grades may also be modified with a plus- or minus-sign according to the business's relative strength among similar companies. A rating of R means that the company is the subject of some regulatory action.

standard characteristics. See STANDARD DESCRIPTIVE CHARACTERISTICS.

standard deduction. See DEDUCTION.

standard descriptive characteristics. *Parliamentary law.* The basic rules that apply to and define a motion. • The characteristics include when the motion is in order; its rank — that is, what it takes precedence over, and what yields to it; whether making it may interrupt a speaker; whether it needs a second; whether it is debatable; whether it is amendable; what vote its adoption takes; and whether it can be reconsidered. — Also termed *standard characteristics.*

standard-form contract. See CONTRACT.

standard instruction. See JURY INSTRUCTION.

standardized contract. See *standard-form contract* under CONTRACT.

standard mortgage clause. See MORTGAGE CLAUSE.

standard of care. (1890) *Torts.* In the law of negligence, the degree of care that a reasonable person should exercise. See CARE (2). [Cases: Negligence ⚷230–233.]

standard of need. In public-assistance law, the total subsistence resources required by an individual or family unit as determined by a state and, when unsatisfied by available resources, entitles the individual or family unit to public assistance. [Cases: Social Security and Public Welfare ⚷4.10, 194.7.]

standard of proof. (1922) The degree or level of proof demanded in a specific case, such as "beyond a reasonable doubt" or "by a preponderance of the evidence." See BURDEN OF PERSUASION. [Cases: Criminal Law ⚷560; Evidence ⚷596.]

standard of review. The criterion by which an appellate court exercising appellate jurisdiction measures the constitutionality of a statute or the propriety of an order, finding, or judgment entered by a lower court. [Cases: Appeal and Error ⚷836–1099; Criminal Law ⚷1134.1–1180; Federal Courts ⚷751–917.]

standard policy. See INSURANCE POLICY.

standard-setting organization. A body that sets, describes, or documents uniform operating, technological, or other norms for participants in a particular field or industry. — Also termed *standards body.*

Standards for Imposing Lawyer Sanctions. The ABA's 1986 supplement to the Standards for Lawyer Discipline, prescribing a range of sanctions and guidelines for applying them. • Sanctions range from reprimands to disbarment. [Cases: Attorney and Client ⚷59.5(2).]

Standards for Lawyer Discipline. A set of model rules, created by the ABA in 1979, establishing procedures for disciplining lawyers who violate ethics rules or commit crimes. • The rules stress that the process is an inquiry to determine an attorney's fitness to practice, not to determine a punishment.

stand at ease. *Parliamentary law.* To take an informal pause during a meeting without taking a recess, at the instance of the chair.

standby charge. A property levy, often based on acreage, imposed on the mere availability of a service, whether or not the service is actually used.

standby commitment. An arrangement between an underwriter and an issuer of securities whereby the underwriter agrees, for a fee, to buy any unsold shares remaining after the public offering. — Also termed *standby underwriting agreement.*

standby counsel. See COUNSEL.

standby guardian. See GUARDIAN.

standby guardianship. See GUARDIANSHIP.

standby letter of credit. See LETTER OF CREDIT.

standby trust. See TRUST.

standby underwriting. See UNDERWRITING.

standby underwriting agreement. See STANDBY COMMITMENT.

standing, *n.* (1924) A party's right to make a legal claim or seek judicial enforcement of a duty or right. • To have standing in federal court, a plaintiff must show (1) that the challenged conduct has caused the plaintiff actual injury, and (2) that the interest sought to be protected is within the zone of interests meant to be regulated by the statutory or constitutional guarantee in question. — Also termed *standing to sue.* Cf. JUSTICIABILITY. [Cases: Action ⚷13; Federal Civil Procedure ⚷103.1.]

> "Have the appellants alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions? This is the gist of the question of standing." *Baker v. Carr*, 369 U.S. 186, 204, 82 S.Ct. 691, 703 (1962) (Brennan, J.).

> "The word *standing* is rather recent in the basic judicial vocabulary and does not appear to have been commonly used until the middle of our own century. No authority that I have found introduces the term with proper explanations and apologies and announces that henceforth *standing* should be used to describe who may be heard by a judge. Nor was there any sudden adoption by tacit consent. The word appears here and there, spreading very gradually with no discernible pattern. Judges and lawyers found themselves using the term and did not ask why they did so or where it came from." Joseph Vining, *Legal Identity* 55 (1978).

third-party standing. (1968) Standing held by someone claiming to protect the rights of others. • For example, in most jurisdictions, only a parent has standing to bring a suit for custody or visitation; in some, however, a third party — for instance, a grandparent or a person with whom the child has substantial contacts — may have standing to bring an action for custody or visitation. See GRANDPARENT RIGHTS. [Cases: Action ⚷13; Child Custody ⚷409; Federal Civil Procedure ⚷103.4.]

standing aside a juror. The prosecution practice of provisionally placing a juror aside until the panel is exhausted, without providing a reason, instead of challenging the juror or showing cause. • The practice originally developed as a method of avoiding the Challenge of Jurors Act (1305), which prohibited the Crown from challenging a juror without showing cause. A similar practice was formerly used in Pennsylvania. [Cases: Jury ⚷122.]

standing by. (14c) **1.** The awaiting of an opportunity to respond, as with assistance. **2.** Silence or inaction when there is a duty to speak or act; esp., the tacit possession of knowledge under circumstances requiring the possessor to reveal the knowledge. See *estoppel by silence* under ESTOPPEL.

standing committee. See COMMITTEE.

Standing Committee on Rules of Practice and Procedure. A group of judges, lawyers, and legal scholars appointed by the Chief Justice of the United States to advise the Judicial Conference of the United States on possible amendments to the procedural rules in the various federal courts and on other issues relating to the operation of the federal courts. 28 USCA § 331.

> "[Under 28 USCA § 331], the Judicial Conference of the United States has created a Standing Committee on Rules of Practice and Procedure and has authorized the appointment from time to time of various advisory committees. These committees make recommendations regarding amendments of the rules to the Judicial Conference, which in turn transmits those recommendations it approves to the Supreme Court. Under this new plan, as under the machinery in effect from 1934 to 1956, the Court retains the ultimate responsibility for the adoption of amendments to the rules." 4 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1007, at 35 (2d ed. 1987).

standing crops. See CROPS.

standing division. See *standing vote* under VOTE (4).

standing master. See MASTER.

standing mortgage. See *interest-only mortgage* under MORTGAGE.

standing mute. See MUTE (2).

standing offer. See OFFER.

standing order. See ORDER (2).

standing rule. See RULE (3).

standing seised to uses. The holding of title for the benefit or use of another, such as a relative in consideration of blood or marriage. • A covenant to stand seised to uses is a type of conveyance that depends on the Statute of Uses for its effect. — Often shortened to *seised to uses.* See STATUTE OF USES.

standing to sue. See STANDING.

standing vote. See VOTE (4).

stand mute. (16c) **1.** (Of a defendant) to refuse to enter a plea to a criminal charge. • Standing mute is treated as a plea of not guilty. [Cases: Criminal Law ⚷300.] **2.** (Of any party) to raise no objections.

standstill agreement. (1934) Any agreement to refrain from taking further action; esp., an agreement by which a party agrees to refrain from further attempts to take over a corporation (as by making no tender offer) for a specified period, or by which financial institutions agree not to call bonds or loans when due.

stand trial. (17c) To submit to a legal proceeding, esp. a criminal prosecution.

stante matrimonio (**stan**-tee ma-trə-**moh**-nee-oh). [Latin] *Hist.* The marriage remaining undissolved.

staple (**stay**-pəl). **1.** A key commodity such as wool, leather, tin, lead, butter, or cheese (collectively termed *the staple*). **2.** *Hist.* A town appointed by the Crown as an exclusive market for staple products. See STATUTE STAPLE. **3.** *Patents.* An unpatented thing or material that is a component of a patented product or is used in a patented process, but also has other practical uses. • Patentees may not gain control of the market for staples through tying agreements. Cf. NONSTAPLE.

Star Chamber. 1. *Hist.* An English court having broad civil and criminal jurisdiction at the king's discretion and noted for its secretive, arbitrary, and oppressive procedures, including compulsory self-incrimination, inquisitorial investigation, and the absence of juries. • The Star Chamber was abolished in 1641 because of its abuses of power. — Also termed *Court of Star Chamber*; *Camera Stellata*. **2.** (*usu. l.c.*) Any secretive, arbitrary, or oppressive tribunal or proceeding.

stare decisis (**stahr**-ee di-**si**-sis *or* **stair**-ee), *n.* [Latin "to stand by things decided"] (18c) The doctrine of precedent, under which a court must follow earlier judicial decisions when the same points arise again in litigation. See PRECEDENT; NON QUIETA MOVERE. Cf. RES JUDICATA; LAW OF THE CASE; (in civil law) *jurisprudence constante* under JURISPRUDENCE. [Cases: Courts ⇨89.]

> "The rule of adherence to judicial precedents finds its expression in the doctrine of stare decisis. This doctrine is simply that, when a point or principle of law has been once officially decided or settled by the ruling of a competent court in a case in which it is directly and necessarily involved, it will no longer be considered as open to examination or to a new ruling by the same tribunal, or by those which are bound to follow its adjudications, unless it be for urgent reasons and in exceptional cases." William M. Lile et al., *Brief Making and the Use of Law Books* 321 (3d ed. 1914).

> "The general orthodox interpretation of *stare decisis* . . . is *stare rationibus decidendis* ('keep to the *rationes decidendi* of past cases'), but a narrower and more literal interpretation is sometimes employed. To appreciate this narrower interpretation it is necessary to refer . . . to Lord Halsbury's assertion that a case is only authority for what it actually decides. We saw that situations can arise in which all that is binding is the decision. According to Lord Reid, such a situation arises when the *ratio decidendi* of a previous case is obscure, out of accord with authority or established principle, or too broadly expressed." Rupert Cross & J.W. Harris, *Precedent in English Law* 100-01 (4th ed. 1991).

horizontal stare decisis. The doctrine that a court, esp. an appellate court, must adhere to its own prior decisions, unless it finds compelling reasons to overrule itself. [Cases: Courts ⇨90(1).]

super stare decisis. The theory that courts must follow earlier court decisions without considering whether those decisions were correct. • Critics argue that strict adherence to old decisions can result in grave injustices and cite as an example the repudiation of *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138 (1896) by *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686 (1954).

vertical stare decisis. The doctrine that a court must strictly follow the decisions handed down by higher courts within the same jurisdiction. [Cases: Courts ⇨91(0.5).]

stare decisis et non quieta movere (**stair**-ee di-**si**-sis et non kwi-**ee**-tə moh-**veer**-ee). [Latin] To stand by things decided, and not to disturb settled points. See STARE DECISIS.

stare enim religioni debet (**stair**-ee **ee**-nim ri-lij-ee-**oh**-nee **dee**-bet *or* **deb**-et). [Latin] *Hist.* For one ought to abide by one's solemn obligation.

stare in judicio (**stair**-ee in joo-**dish**-ee-oh). [Latin] *Hist.* To appear before a tribunal as either a plaintiff or a defendant.

star paging, *n.* (1873) **1.** A method of referring to a page in an earlier edition of a book, esp. a legal source. • This method correlates the pagination of the later edition with that of the earlier (usu. the first) edition. **2.** By extension, the method of displaying on a computer screen the page breaks that occur in printed documents such as law reports and law reviews. — Also termed *star pagination*. — **star page,** *n.*

starr (stahr), *n.* [fr. Latin *starrum* fr. Hebrew *sh'tar* "a writing"] *Hist.* A Jewish contract (esp. for release of an obligation) that Richard I declared to be invalid unless it was placed in a lawful repository, the largest being in the king's Exchequer at Westminster. — Also termed *starra*.

> "It is well known that, before the banishment of the Jews under Edward I, their contracts and obligations were denominated in our ancient records *starra* or *starrs*, from a corruption of the Hebrew word, *shetàr*, a covenant. . . . These starrs, by an ordinance of Richard the first . . . were commanded to be enrolled and deposited in chests under three keys in certain places; one, and the most considerable, of which was in the king's exchequer at Westminster . . . . [T]he room at the exchequer, where the chests containing these starrs were kept, was probably called the *starr-chamber*, and, when the Jews were expelled from the kingdom, was applied to the use of the king's council, when sitting in their judicial capacity." 4 William Blackstone, *Commentaries on the Laws of England* 263 n.a (1769).

stash, *vb.* To hide or conceal (money or property).

stat. *abbr.* STATUTE.

state, *n.* (16c) **1.** The political system of a body of people who are politically organized; the system of rules by which jurisdiction and authority are exercised over such a body of people <separation of church and state>. — Also termed *political society*. Cf. NATION. [Cases: International Law ⇨3.]

> "A STATE is a community of persons living within certain limits of territory, under a permanent organization which aims to secure the prevalence of justice by self-imposed law. The organ of the state by which its relations with other states are managed is the government." Theodore D. Woolsey, *Introduction to the Study of International Law* § 36, at 34 (5th ed. 1878).

"A state or political society is an association of human beings established for the attainment of certain ends by certain means. It is the most important of all the various kinds of society in which men unite, being indeed the necessary basis and condition of peace, order, and civilisation. What then is the difference between this and other forms of association? In what does the state differ from such other societies as a church, a university, a joint-stock company, or a trade union? The difference is clearly one of *function*. The state must be defined by reference to such of its activities and purposes as are essential and characteristic." John Salmond, *Jurisprudence* 129 (Glanville L. Williams ed., 10th ed. 1947).

"A state is an *institution*, that is to say, it is a system of relations which men establish among themselves as a means of securing certain objects, of which the most fundamental is a system of order within which their activities can be carried on. Modern states are territorial; their governments exercise control over persons and things within their frontiers, and today the whole of the habitable world is divided between about seventy of these territorial states. A state should not be confused with the whole community of persons living on its territory; it is only one among a multitude of other institutions, such as churches and corporations, which a community establishes for securing different objects, though obviously it is one of tremendous importance; none the less it is not, except in the ideology of totalitarianism, an all-embracing institution, not something from which, or within which, all other institutions and associations have their being; many institutions, e.g. the Roman Catholic Church, and many associations, e.g. federations of employers and of workers, transcend the boundaries of any single state." J.L. Brierly, *The Law of Nations* 118 (5th ed. 1955).

client state. A country that is obliged in some degree to cede some of the control of its external relations to some foreign power or powers. — Also termed *satellite state*. Cf. SOVEREIGN STATE.

composite state. A state that comprises an aggregate or group of constituent states.

dependent state. See *nonsovereign state*.

federal state. A composite state in which the sovereignty of the entire state is divided between the central or federal government and the local governments of the several constituent states; a union of states in which the control of the external relations of all the member states has been surrendered to a central government so that the only state that exists for international purposes is the one formed by the union. Cf. *confederation of states* under CONFEDERATION.

imperial state. *Archaic.* A composite state in which a common or central government possesses in itself the entire sovereignty, so that the constituent states possess no portion of this sovereignty.

nonsovereign state. A state that is a constituent part of a greater state that includes both it and one or more others, and to whose government it is subject; a state that is not complete and self-existent. • Among other things, a nonsovereign state has no power to engage in foreign relations. — Also termed *dependent state*. Cf. SOVEREIGN STATE.

part-sovereign state. See SOVEREIGN STATE.

police state. A state in which the political, economic, and social life of its citizens is subject to repressive governmental control and arbitrary uses of power by the ruling elite, which uses the police as the instrument of control; a totalitarian state.

receiving state. The country to which a diplomatic agent or consul is sent by the country represented by that agent. Cf. *sending state*. [Cases: Ambassadors and Consuls ⚷3.]

satellite state. See *client state*.

sending state. The country from which a diplomatic agent or consul is sent abroad. Cf. *receiving state*. [Cases: Ambassadors and Consuls ⚷3.]

simple state. See *unitary state*.

social-service state. A state that uses its power to create laws and regulations to provide for the welfare of its citizens.

sovereign state. See SOVEREIGN STATE.

unitary state. A state that is not made up of territorial divisions that are states themselves. — Also termed (archaically) *simple state*.

2. An institution of self-government within a larger political entity; esp., one of the constituent parts of a nation having a federal government <the 50 states>. [Cases: States ⚷1.] **3.** (*often cap.*) The people of a state, collectively considered as the party wronged by a criminal deed; esp., the prosecution as the representative of the people <the State rests its case>.

state action. (1893) Anything done by a government; esp., in constitutional law, an intrusion on a person's rights (esp. civil rights) either by a governmental entity or by a private requirement that can be enforced only by governmental action (such as a racially restrictive covenant, which requires judicial action for enforcement). [Cases: Civil Rights ⚷1325; Constitutional Law ⚷1061.]

state-action doctrine. *Antitrust.* The principle that the antitrust laws do not prohibit a state's anticompetitive acts, or official acts directed by a state. *Parker v. Brown*, 317 U.S. 341, 63 S.Ct. 307 (1943). — Also termed *Parker doctrine*. See MIDCAL TEST. [Cases: Antitrust and Trade Regulation ⚷901.]

state agency. See AGENCY (3).

state-all-facts interrogatory. See *identification interrogatory* under INTERROGATORY.

state appeal. See APPEAL.

state auditor. See AUDITOR.

state bank. See BANK.

state bar association. See BAR ASSOCIATION.

state body. See *state agency* under AGENCY (3).

state bond. See BOND (3).

state-compulsion test. (1978) *Civil-rights law.* The rule that a state is responsible for discrimination that a private party commits while acting under the requirements of state law, as when a restaurant owner is required by state law to refuse service to minorities. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 90 S.Ct. 1598

(1970). See SYMBIOTIC-RELATIONSHIP TEST; NEXUS TEST. [Cases: Civil Rights ⚷1326(4, 7).]

state court. See COURT.

state criminal. See CRIMINAL.

stated, *adj.* **1.** Fixed; determined; settled <at the stated time> <settlement for a stated amount>. **2.** Expressed; declared <stated facts>.

stated account. See *account stated* under ACCOUNT.

stated capital. See CAPITAL.

State Department. See DEPARTMENT OF STATE.

stated-income loan. See LOAN.

stated interest rate. See *nominal rate* under INTEREST RATE.

stated meeting. See *regular meeting* under MEETING.

stated rate. See *nominal rate* under INTEREST RATE.

stated term. See *general term* under TERM (5).

stated value. See PAR VALUE.

state government. See GOVERNMENT.

state jurisdiction. See JURISDICTION.

State Justice Institute. A nonprofit federal corporation charged with improving judicial administration in state courts. • It was created by the State Justice Institute Act of 1984. 42 USCA §§ 10701–10713. — Abbr. SJI.

state law. (18c) A body of law in a particular state consisting of the state's constitution, statutes, regulations, and common law. Cf. FEDERAL LAW.

stateless person. *Int'l law.* A natural person who is not considered a national by any country. • The Convention Relating to Status of Stateless Persons (1954) provides these people with certain protections and obliges them to abide by the laws of the country where they reside.

statement. (18c) **1.** *Evidence.* A verbal assertion or nonverbal conduct intended as an assertion. [Cases: Evidence ⚷412.] **2.** A formal and exact presentation of facts. — Also termed (for plaintiff) *statement of cause of action.* **3.** *Criminal procedure.* An account of a person's knowledge of a crime, taken by the police during their investigation of the offense. Cf. CONFESSION.

consonant statement. (1889) A witness's previous declaration, testified to by a person to whom the declaration was made and allowed into evidence only after the witness's testimony has been impeached. • This type of evidence would, but for the impeachment of the witness, be inadmissible hearsay. Cf. *prior consistent statement.* [Cases: Witnesses ⚷414(2).]

false statement. (18c) **1.** An untrue statement knowingly made with the intent to mislead. See PERJURY. **2.** Any one of three distinct federal offenses: (1) falsifying or concealing a material fact by trick, scheme, or device; (2) making a false, fictitious, or fraudulent representation; and (3) making or using a false document or writing. 18 USCA § 1001. [Cases: Fraud ⚷68.10(1).]

financial statement. See FINANCIAL STATEMENT.

incriminating statement. (1896) A statement that tends to establish the guilt of someone, esp. the person making it.

prior consistent statement. (1883) A witness's earlier statement that is consistent with the witness's testimony at trial. • A prior consistent statement is not hearsay if it is offered to rebut a charge that the testimony was improperly influenced or fabricated. Fed. R. Evid. 801(d)(1)(B). Cf. *consonant statement.*

prior inconsistent statement. (1885) A witness's earlier statement that conflicts with the witness's testimony at trial. • In federal practice, extrinsic evidence of an unsworn prior inconsistent statement is admissible — if the witness is given an opportunity to explain or deny the statement — for impeachment purposes only. Fed. R. Evid. 613(b). Sworn statements may be admitted for all purposes. Fed. R. Evid. 801(d)(1)(A).

sworn statement. (1831) **1.** A statement given under oath; an affidavit. Cf. AFFIDAVIT; DECLARATION (8). [Cases: Affidavits ⚷1.] **2.** A contractor-builder's listing of suppliers and subcontractors, and their respective bids, required by a lending institution for interim financing.

voluntary statement. (1817) A statement made without the influence of duress, coercion, or inducement.

Statement and Account Clause. (1975) The clause of the U.S. Constitution requiring the regular publication of the receipts and expenditures of the federal government. U.S. Const. art. I, § 9, cl. 7. [Cases: United States ⚷44.]

statement of account. 1. A report issued periodically (usu. monthly) by a bank to a customer, providing certain information on the customer's account, including the checks drawn and cleared, deposits made, charges debited, and the account balance. — Also termed *bank statement.* See ACCOUNT (4). [Cases: Banks and Banking ⚷151.] **2.** A report issued periodically (usu. monthly) by a creditor to a customer, providing certain information on the customer's account, including the amounts billed, credits given, and the balance due. — Also termed *account statement.*

statement of affairs. 1. STATEMENT OF FINANCIAL AFFAIRS. **2.** A balance sheet showing immediate liquidation values (rather than historical costs), usu. prepared when insolvency or bankruptcy is imminent.

statement of cause of action. See STATEMENT (2).

statement of claim. 1. COMPLAINT (1). **2.** *English law.* A plaintiff's initial pleading in a civil case; DECLARATION (7).

statement of condition. See BALANCE SHEET.

statement of confession. See CONFESSION OF JUDGMENT.

statement of defense. The assertions by a defendant; esp., in England, the defendant's answer to the plaintiff's statement of claim.

statement of fact. A form of conduct that asserts or implies the existence or nonexistence of a fact. • The term includes not just a particular statement that a particular fact exists or has existed, but also an assertion that, although perhaps expressed as an opinion, implies the existence of some fact or facts that have led the assertor to hold the opinion in question. See *affirmative testimony* under TESTIMONY. [Cases: Criminal Law ⚷448; Evidence ⚷471, 505.]

statement of facts. (18c) A party's written presentation of the facts leading up to or surrounding a legal dispute, usu. recited toward the beginning of a brief. Cf. STATEMENT OF THE CASE.

> "The statement of facts is another of those critical parts of the brief . . . . Two principles are at war in drafting the statement of facts. First, judges want and some circuit rules require a nonargumentative, 'fair summary without argument or comment.' Conversely, you want a statement of facts that persuades the judges to rule for you as soon as they finish reading it. Satisfying both ends requires some balancing." David G. Knibb, *Federal Court of Appeals Manual* § 31.7, at 549 (4th ed. 2000).

agreed statement of facts. A narrative statement of facts that is stipulated to be correct by the parties and is submitted to a tribunal for a ruling. • When the narrative statement is filed on appeal instead of a report of the trial proceedings, it is called an *agreed statement on appeal.* [Cases: Appeal and Error ⚷845(2); Stipulations ⚷14(10), 18(7).]

statement of financial affairs. *Bankruptcy.* A document that an individual or corporate debtor must file to answer questions about the debtor's past and present financial status. — Also termed *statement of affairs.* [Cases: Bankruptcy ⚷2321.]

statement of financial condition. See BALANCE SHEET.

statement of financial position. See BALANCE SHEET.

statement of income. See INCOME STATEMENT.

statement of intention. *Bankruptcy.* A preliminary statement filed by an individual debtor in a chapter 7 case, in which the debtor details, among other things, whether property of the bankruptcy estate securing any debt will be retained or surrendered and whether the property is claimed as exempt. • The statement must be filed on or before the date of the first creditors' meeting or within 30 days after the bankruptcy petition is filed, whichever is earlier. 11 USCA § 521 (a)(2). [Cases: Bankruptcy ⚷2851, 3022, 3034, 3415.1.]

statement of particulars. See BILL OF PARTICULARS.

statement of principle. In legislative drafting, a sentence or paragraph that explains the legislature's purpose in passing a statute. • Although a statement of principle often resembles a preamble (usu. both do not appear in a single statute), it differs in that it typically appears in a numbered section of the statute. [Cases: Statutes ⚷210.]

statement of prior-art references. See INFORMATION-DISCLOSURE STATEMENT.

statement of the case. In an appellate brief, a short review of what has happened procedurally in the lawsuit and how it reached the present court. • The statement introduces the reviewing court to the case by reciting the facts, procedures, decisions of the court or courts below as they are relevant to the appeal, and the reasons for those decisions. — Also termed *proceedings below.* Cf. STATEMENT OF FACTS. [Cases: Appeal and Error ⚷757; Federal Courts ⚷713.]

statement of use. See *amendment to allege use* under TRADEMARK-APPLICATION AMENDMENT.

statement of utility. *Patents.* The portion of a patent-application disclosure statement that explains how the invention is useful. [Cases: Patents ⚷99.]

statement of work. A contractual provision or exhibit that defines what one party (e.g., the seller) is going to do for the other (e.g., the buyer). • The statement of work often covers such terms as (1) inspection and acceptance, (2) quality-assurance requirements, (3) packing and marking, (4) data requirements, and (5) training. There are generally two types of specifications in a statement of work: a performance specification establishing the minimum requirements for items to be supplied, and a design specification establishing the methods to be used in meeting those minimum requirements. — Also termed *statement-of-work clause.* — Abbr. SOW.

state of art. See STATE OF THE ART.

state officer. See OFFICER (1).

state of mind. (17c) **1.** The condition or capacity of a person's mind; MENS REA. **2.** Loosely, a person's reasons or motives for committing an act, esp. a criminal act.

state-of-mind exception. (1949) *Evidence.* The principle that an out-of-court declaration of an existing motive is admissible, even when the declarant cannot testify in person. • This principle is an exception to the general rule that hearsay is inadmissible. [Cases: Criminal Law ⚷419(2.20); Evidence ⚷268.]

state of nature. (16c) The lack of a politically organized society. • The term is a hypothetical construct for the period in human history predating any type of political society.

> "[W]e may make use of the contrast, familiar to the philosophy of the seventeenth and eighteenth centuries, between the civil state and the state of nature. This state of nature is now commonly rejected as one of the fictions which flourished in the era of the social contract, but such treatment is needlessly severe. The term certainly became associated with much false or exaggerated doctrine touching the golden age, on the one hand, and the *bellum omnium contra omnes* of Hobbes, on the other, but in itself it nevertheless affords a convenient mode for the expression of an undoubted truth. As long as there have been men, there has probably been some form of human society. The state of nature, therefore, is not the absence of society, but the absence of a society so organised on the basis of physical force as to constitute a state. Though human society is coeval with mankind, the rise of political society, properly so called, is an event in human history." John Salmond, *Jurisprudence* 103–04 (Glanville L. Williams ed., 10th ed. 1947).

state of the art. (1910) *Products liability.* The level of pertinent scientific and technical knowledge existing

at the time of a product's manufacture, and the best technology reasonably available at the time the product was sold. — Also termed *state of art*. [Cases: Products Liability ⚷178, 378.] — **state-of-the-art,** *adj.*

"While the statutes in effect in some jurisdictions speak in terms of a state of the art defense, statutes in other jurisdictions provide that state of the art evidence is admissible or may be considered by the trier of fact by statute, and that in determining whether a product was in a defective condition or unreasonably dangerous at the time it left the control of the manufacturer or seller, consideration is given to the state of scientific and technical knowledge available to the manufacturer or seller at the time the product was placed on the market, and to the customary designs, methods, standards, and techniques of manufacturing, inspecting, and testing used by other manufacturers or sellers of similar products." 63A Am. Jur. 2d *Products Liability* § 1319, at 472 (2008).

state of the case. The posture of litigation as it develops, as in discovery, at trial, or on appeal.

State of the Union. See *Presidential message* under MESSAGE.

state of war. A situation in which war has been declared or armed conflict is in progress. See WAR. [Cases: War and National Emergency ⚷7.]

state paper. 1. A document prepared by or relating to a state or national government and affecting the administration of that government in its political or international relations. **2.** A newspaper officially designated for the publication of public statutes, resolutions, notices, and advertisements. [Cases: Newspapers ⚷1–7.]

state paper office. *Hist.* An office established in London in 1578, headed by the Clerk of the Papers, to maintain custody of state documents.

state police. (1843) The department or agency of a state government empowered to maintain order, as by investigating and preventing crimes, and making arrests.

state police power. (1849) The power of a state to enforce laws for the health, welfare, morals, and safety of its citizens, if enacted so that the means are reasonably calculated to protect those legitimate state interests.

state religion. See RELIGION.

state's attorney. 1. See DISTRICT ATTORNEY. **2.** See PROSECUTOR (1).

state seal. See *great seal* (2) under SEAL.

state secret. (1822) A governmental matter that would be a threat to the national defense or diplomatic interests of the United States if revealed; information possessed by the government and of a military or diplomatic nature, the disclosure of which would be contrary to the public interest. • State secrets are privileged from disclosure by a witness in an ordinary judicial proceeding. — Also termed *governmental secret*; *government secret*. See *executive privilege* & *state-secrets privilege* under PRIVILEGE (3). [Cases: Privileged Communications and Confidentiality ⚷360.]

state-secrets privilege. See PRIVILEGE (3).

state's evidence. See EVIDENCE.

state's evidence, turn. See TURN STATE'S EVIDENCE.

state sovereignty. (18c) The right of a state to self-government; the supreme authority exercised by each state. [Cases: States ⚷1.]

state-sponsored terrorism. See TERRORISM.

states' rights. (1839) Under the Tenth Amendment, rights neither conferred on the federal government nor forbidden to the states. [Cases: States ⚷4.16.]

State Street Bank. *Patents.* A landmark 1998 decision in the Federal Circuit that made it easier to get patents on computer software, and also rejected the long-accepted notion that business methods are per se unpatentable. • The court struck down *per se* rules against patenting mathematical algorithms (the soul of software), focusing instead on whether the ultimate result was useful, concrete, and tangible in practice. *State Street Bank & Trust C. v. Signature Fin. Group, Inc.*, 149 F.3d 1368 (Fed. Cir. 1998). [Cases: Patents ⚷6.]

state's ward. See *ward of the state* under WARD.

state tax. See TAX.

state terrorism. See TERRORISM.

state the question. *Parliamentary procedure.* (Of the chair) to formally state a motion as in order and ready for consideration. Cf. PUT THE QUESTION.

state trial. See TRIAL.

stateway, *n.* A governmental policy or law. • This term is formed on the analogy of *folkway*.

statim (stay-tim). [Latin] *Hist.* Immediately; at the earliest possible time when an act might lawfully be completed.

station. 1. Social position or status. See STATUS. **2.** A place where military duties are performed or military goods are stored. **3.** A headquarters, as of a police department. **4.** A place where both freight and passengers are received for transport or delivered after transport. [Cases: Railroads ⚷225.] **5.** *Civil law.* A place where ships may safely travel. [Cases: Shipping ⚷11.]

Stationers' Company. *Hist.* An association of stationers and their successors, formed in London in 1403 and granted a royal charter in 1557, entrusted, by order of the Privy Council, with censorship of the press. • This company was the holder of the first rights we associate today with copyright.

Stationers' Hall. *Hist.* The hall of the Stationers' Company, established in London in 1553, at which every person claiming a copyright was required to register as a condition precedent to filing an infringement action.

"Accordingly 'Entered at Stationers' Hall' on the title page of books was a form of warning to pirates that the owner of the copyright could and might sue. This requirement disappeared with the Copyright Act, 1911." David M. Walker, *The Oxford Companion to Law* 1182 (1980).

Stationery Office. *Hist. English law.* A government office established in 1786 as a department of the treasury, to supply government offices (including Parliament) with stationery and books, and to print and publish govern-

ment papers. — Also termed *Her Majesty's Stationery Office*.

stationhouse. **1.** A police station or precinct. **2.** The lockup at a police precinct.

stationhouse bail. See *cash bail* under BAIL (1).

station-in-life test. *Family law.* An analysis performed by a court to determine the amount of money reasonably needed to maintain a particular person's accustomed lifestyle. • The elements were first set forth in *Canfield vs. Security-First Nat'l Bank*, 87 P.2d 830, 840 (Cal. 1939). The court takes into account the person's station in society and the costs of the person's support in that station, including housing and related expenses, medical care, further education, and other reasonably necessary expenses, but not including luxuries or extravagant expenditures. See NECESSARIES (1), (2). [Cases: Divorce ⚷240(2); Husband and Wife ⚷19.]

statist (**stay**-tist). **1.** *Archaic.* A statesman; a politician. **2.** A statistician.

statistical-decision theory. (1966) A method for determining whether a panel of potential jurors was selected from a fair cross section of the community, by calculating the probabilities of selecting a certain number of jurors from a particular group to analyze whether it is statistically probable that the jury pool was selected by mere chance. • This method has been criticized because a pool of potential jurors is not ordinarily selected by mere chance; potential jurors are disqualified for many legitimate reasons. See FAIR-CROSS-SECTION REQUIREMENT; ABSOLUTE DISPARITY; COMPARATIVE DISPARITY; DUREN TEST. [Cases: Jury ⚷33(1.1, 1.2).]

statuliber (stach-ə-**lɪ**-bər), *n.* [Latin] *Roman law.* A person whose freedom under a will is made conditional or postponed; a person who will be free at a particular time or when certain conditions are met. — Also written *statu liber* (**stay**-t[y]oo **lɪ**-bər).

> "The *statuliber* is one who has freedom arranged to take effect on completion of a period or fulfillment of a condition. Men become *statuliberi* as a result of an express condition, or by the very nature of the case. The meaning of 'express condition' presents no problem. The status arises from the very nature of the case when men are manumitted for the purpose of defrauding a creditor; for so long as it is uncertain whether the creditor will use his right, the men remain *statuliberi*, since fraud is taken in the *lex Aelia Sentia* to involve actual damage." *Digest of Justinian* 40.7.1 (Paul, ad Sabinum 5).

status. (17c) **1.** A person's legal condition, whether personal or proprietary; the sum total of a person's legal rights, duties, liabilities, and other legal relations, or any particular group of them separately considered <the status of a landowner>. **2.** A person's legal condition regarding personal rights but excluding proprietary relations <the status of a father> <the status of a wife>. **3.** A person's capacities and incapacities, as opposed to other elements of personal status <the status of minors>. **4.** A person's legal condition insofar as it is imposed by the law without the person's consent, as opposed to a condition that the person has acquired by agreement <the status of a slave>.

> "By the status (or standing) of a person is meant the position that he holds with reference to the rights which are recognized and maintained by the law — in other words, his capacity for the exercise and enjoyment of legal rights." James Hadley, *Introduction to Roman Law* 106 (1881).

> "The word 'status' itself originally signified nothing more than the position of a person before the law. Therefore, every person (except slaves, who were not regarded as persons, for legal purposes) had a *status*. But, as a result of the modern tendency towards legal equality formerly noticed, differences of *status* became less and less frequent, and the importance of the subject has greatly diminished, with the result that the term *status* is now used, at any rate in English Law, in connection only with those comparatively few classes of persons in the community who, by reason of their conspicuous differences from normal persons, and the fact that by no decision of their own can they get rid of these differences, require separate consideration in an account of the law. But professional or even political differences do not amount to *status*; thus peers, physicians, clergymen of the established Church, and many other classes of persons, are not regarded as the subjects of *status*, because the legal differences which distinguish them from other persons, though substantial, are not enough to make them legally abnormal. And landowners, merchants, manufacturers, and wage-earners are not subjects of the Law of Status, though the last-named are, as the result of recent legislation, tending to approach that position." Edward Jenks, *The Book of English Law* 109 (P.B. Fairest ed., 6th ed. 1967).

status, law of. See LAW OF STATUS.

STAT-USA. A unit in the U.S. Department of Commerce responsible for disseminating economics and trade information compiled by other federal agencies to businesses and individuals through subscription services and federal depository libraries. • STAT-USA is an agency within the Department's Economics and Statistics Administration.

status crime. See CRIME.

status de manerio (**stay**-təs dee mə-**neer**-ee-oh). [Law Latin "the state of a manor"] *Hist.* The assembly of tenants to attend the lord's court.

status offender. See OFFENDER.

status offense. See OFFENSE (1).

status-offense jurisdiction. See JURISDICTION.

status of irremovability. *Hist.* A pauper's right not to be removed from a parish after residing there for one year. Cf. SETTLEMENT (6).

status quo (**stay**-təs *or* **stat**-əs **kwoh**). [Latin "state in which"] (1807) The situation that currently exists.

status quo ante (**stay**-təs **kwoh an**-tee). [Latin "state in which previously"] (1877) The situation that existed before something else (being discussed) occurred.

statutable (**stach**-ə-tə-bəl), *adj.* (17c) **1.** Prescribed or authorized by statute. **2.** Conforming to the legislative requirements for quality, size, amount, or the like. **3.** (Of an offense) punishable by law. See STATUTORY.

statute. (14c) A law passed by a legislative body; specif., legislation enacted by any lawmaking body, including legislatures, administrative boards, and municipal

courts. • The term *act* is interchangeable as a synonym. For each of the subentries listed below, *act* is sometimes substituted for *statute*. — Abbr. s.; stat. [Cases: Statutes ⚷2.]

"[W]e are not justified in limiting the statutory law to those rules only which are promulgated by what we commonly call 'legislatures.' Any positive enactment to which the state gives the force of a law is a 'statute,' whether it has gone through the usual stages of legislative proceedings, or has been adopted in other modes of expressing the will of the people or other sovereign power of the state. In an absolute monarchy, an edict of the ruling sovereign is statutory law. Constitutions, being direct legislation by the people, must be included in the statutory law, and indeed they are examples of the highest form that the statute law can assume. Generally speaking, treaties also are statutory law, because in this country, under the provisions of the United States Constitution, treaties have not the force of law until so declared by the representatives of the people." William M. Lile et al., *Brief Making and the Use of Law Books* 8 (3d ed. 1914).

affirmative statute. (16c) A law requiring that something be done; one that directs the doing of an act. Cf. *negative statute*.

always-speaking statute. See *speaking statute*.

antideficiency statute. See *antideficiency legislation* under LEGISLATION.

codifying statute. (1908) A law that purports to be exhaustive in restating the whole of the law on a particular topic, including prior caselaw as well as legislative provisions. • Courts generally presume that a codifying statute supersedes prior caselaw. Cf. *consolidating statute*.

compiled statutes. Laws that have been arranged by subject but have not been substantively changed; COMPILATION (2). Cf. *revised statutes*.

"The term 'compiled statutes' is properly applied to a methodical arrangement, without revision or reenactment, of the existing statutes of a State, all the statutes on a given subject being collected in one place. The work is usually performed by private persons; and the former statutes, as they were before the compilation, remain the authority." Frank Hall Childs, *Where and How to Find the Law* 12 (1922).

consolidating statute. (1886) A law that collects the legislative provisions on a particular subject and embodies them in a single statute, often with minor amendments and drafting improvements. • Courts generally presume that a consolidating statute leaves prior caselaw intact. Cf. *codifying statute*.

"A distinction of greater importance in this field is that between consolidating and codifying statutes. A consolidating statute is one which collects the statutory provisions relating to a particular topic, and embodies them in a single Act of Parliament, making only minor amendments and improvements. A codifying statute is one which purports to state exhaustively the whole of the law on a particular subject (the common law as well as previous statutory provisions). . . . The importance of the distinction lies in the courts' treatment of the previous case law, the existence of special procedural provisions with regard to consolidating statutes and the existence of a presumption that they do not change the law." Rupert Cross, *Statutory Interpretation* 5 (1976).

construction statute. A legislative directive included in a statute, intended to guide or direct a court's interpretation of the statute. • A construction act can, for example, be a simple statement such as "The word 'week' means seven consecutive days" or a broader directive such as "Words and phrases are to be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, are to be construed accordingly." [Cases: Statutes ⚷179.]

criminal statute. (18c) A law that defines, classifies, and sets forth punishment for one or more specific crimes. See PENAL CODE. [Cases: Statutes ⚷241.]

curative statute. **1.** An act that corrects an error in a statute's original enactment, usu. an error that interferes with interpreting or applying the statute. Cf. *validating statute*. [Cases: Statutes ⚷236, 278.11.] **2.** See *remedial statute*.

declaratory statute. (17c) A law enacted to clarify prior law by reconciling conflicting judicial decisions or by explaining the meaning of a prior statute. — Also termed *expository statute*. [Cases: Statutes ⚷236, 278.11.]

directory statute. (1834) A law that indicates only what should be done, with no provision for enforcement. Cf. *mandatory statute*; *permissive statute*. [Cases: Statutes ⚷227.]

disabling statute. (18c) A law that limits or curbs certain rights.

enabling statute. (18c) A law that permits what was previously prohibited or that creates new powers; esp., a congressional statute conferring powers on an executive agency to carry out various delegated tasks. [Cases: Administrative Law and Procedure ⚷305; Statutes ⚷219.]

expository statute. See *declaratory statute*.

general statute. (16c) A law pertaining to an entire community or all persons generally. — Also termed *public statute*. See PUBLIC LAW (2). [Cases: Statutes ⚷68.]

imperfect statute. (1847) A law that prohibits, but does not render void, an objectionable transaction. • Such a statute provides a penalty for disobedience without depriving the violative transaction of its legal effect.

local statute. **1.** See LOCAL LAW (1). **2.** See LOCAL LAW (2).

mandatory statute. (18c) A law that requires a course of action as opposed to merely permitting it. Cf. *directory statute*; *permissive statute*. [Cases: Statutes ⚷227.]

model statute. See *uniform statute*.

negative statute. (16c) A law prohibiting something; a law expressed in negative terms. Cf. *affirmative statute*.

nonclaim statute. (18c) **1.** STATUTE OF LIMITATIONS. **2.** A law that sets a time limit for creditors to bring claims against a decedent's estate. • Unlike a statute of limitations, a nonclaim statute is usu. not subject to tolling and is not waivable. [Cases: Executors and Administrators ⇨223, 225.]

organic statute. (1856) A law that establishes an administrative agency or local government. — Also termed *organic act*. Cf. ORGANIC LAW.

penal statute. (16c) A law that defines an offense and prescribes its corresponding fine, penalty, or punishment. — Also termed *penal law*; *punitive statute*. [Cases: Statutes ⇨241.]

"It is a familiar and well-settled rule that penal statutes are to be construed strictly, and not extended by implications, intendments, analogies, or equitable considerations. Thus, an offense cannot be created or inferred by vague implications. And a court cannot create a penalty by construction, but must avoid it by construction unless it is brought within the letter and the necessary meaning of the act creating it." Henry Campbell Black, *Handbook on the Construction and Interpretation of the Laws* 287 (1896).

permanent statute. See *perpetual statute*.

permissive statute. A statute that allows certain acts but does not command them. • A permissive statute creates a license or privilege, or allows discretion in performing an act. Cf. *directory statute*; *mandatory statute*. [Cases: Statutes ⇨227.]

perpetual statute. (16c) A law containing no provision for repeal, abrogation, or expiration. — Also termed *permanent statute*. Cf. *temporary statute* (1).

personal statute. *Civil law.* A law that primarily affects a person's condition or status (such as a statute relating to capacity or majority) and affects property only incidentally.

preceptive statute. A statute that is prescriptive, general, definite, and complete. • In form, a preceptive statute is similar to a rule.

private statute. See *special statute*.

prohibitive statute. A statute that forbids all acts that disturb society's peace or forbids certain acts on other grounds. • An example of a noncriminal prohibitive statute is one forbidding the execution of a mentally retarded criminal because a person who lacks mental capacity cannot understand the reason for the punishment.

prospective statute. (1831) A law that applies to future events.

public statute. See PUBLIC LAW (2).

punitive statute. See *penal statute*.

quasi-statute. An executive or administrative order, or a regulation promulgated by a governmental agency, that has the binding effect of legislation. [Cases: Administrative Law and Procedure ⇨417.]

"Quasi-Statutes. Executive and administrative orders by the government as well as military regulations, while not called statutes, not originating as statutes usually do, are, nevertheless, in force and effect, laws. Copies of general orders and proclamations are issued to the public press for publication, but military regulations may for public reasons be kept private." Jesse Franklin Brumbaugh, *Legal Reasoning and Briefing* 223 (1917).

real statute. *Civil law.* A law primarily affecting the operation, status, and condition of property, and addressing persons only incidentally.

recording statute. See RECORDING ACT.

reference statute. A law that incorporates and adopts by reference provisions of other laws. [Cases: Statutes ⇨51.]

remedial statute. (18c) A law that affords a remedy. — Also termed *curative statute*. [Cases: Statutes ⇨236, 278.11.]

repealing statute. A statute that revokes, and sometimes replaces, an earlier statute. • A repealing statute may work expressly or by implication. [Cases: Statutes ⇨151, 158.]

restraining statute. See *disabling statute*.

retroactive statute. See RETROACTIVE LAW.

retrospective statute. See RETROACTIVE LAW.

revised statutes. (18c) Laws that have been collected, arranged, and reenacted as a whole by a legislative body. — Abbr. Rev. Stat.; R.S. See CODE (1). Cf. *compiled statutes*. [Cases: Statutes ⇨144–148, 231.]

revival statute. (1899) A law that provides for the renewal of actions, of wills, and of the legal effect of documents. • A revival statute cannot resurrect a time-barred criminal prosecution. *Stegner v. California*, 539 U.S. 607, 123 S.Ct. 2446 (2003).

severable statute. (1930) A law that remains operative in its remaining provisions even if a portion of the law is declared unconstitutional. [Cases: Statutes ⇨64.]

single-act statute. See LONG-ARM STATUTE.

speaking statute. (2000) A statute to be interpreted in light of the understanding of its terms prevailing at the time of interpretation. — Also termed *always-speaking statute*.

special statute. (17c) A law that applies only to specific individuals, as opposed to everyone. — Also termed *private statute*. [Cases: Statutes ⇨77–104.]

"It is ancient wisdom, tracing back at least as far as the Roman taboo against the *privilegium*, that laws ought to be *general*, they ought to be addressed, not to particular persons, but to persons generally or to classes of persons (say, 'all householders'). Accordingly, a number of American states have inserted in their constitutions prohibitions against 'private or special' statutes. These have given rise to endless difficulties." Lon L. Fuller, *Anatomy of the Law* 102-03 (1968).

split-level statute. (1980) A law that includes officially promulgated explanatory materials in addition to its substantive provisions, so that courts are left with two levels of documents to construe.

statute of descent and distribution. See STATUTE OF DISTRIBUTION.

statute of distribution. See STATUTE OF DISTRIBUTION.

statute of frauds. See STATUTE OF FRAUDS.

temporary statute. (17c) **1.** A law that specifically provides that it is to remain in effect for a fixed, limited period. Cf. *perpetual statute.* [Cases: Statutes ☞172.] **2.** A law (such as an appropriation statute) that, by its nature, has only a single and temporary operation.

uniform statute. A law drafted with the intention that it will be adopted by all or most of the states; esp., UNIFORM LAW. — Also termed *model statute; uniform act.* Cf. MODEL ACT. [Cases: Statutes ☞226.]

validating statute. (1882) A law that is amended either to remove errors or to add provisions to conform to constitutional requirements. — Also termed *validation statute.* Cf. *curative statute.* [Cases: Statutes ☞52, 236.]

statute book. (16c) A bound collection of statutes, usu. as part of a larger set of books containing a complete body of statutory law, such as the United States Code Annotated.

statute fair. *Hist.* A fair during which the fixed labor rates were announced and laborers of both sexes offered themselves for hire. — Also termed *mop fair.*

statute law. See STATUTORY LAW.

statute-making. See LEGISLATION (1).

statute merchant. *Hist.* **1.** (*cap.*) One of two 13th-century statutes establishing procedures to better secure and recover debts by, among other things, providing for a commercial bond that, if not timely paid, resulted in swift execution on the debtor's lands, goods, and body. 13 Edw. I, ch. 6 (1283); 15 Edw. I, ch. 6 (1285).• These statutes were repealed in 1863. — Also termed *pocket judgment.* **2.** The commercial bond so established. Cf. STATUTE STAPLE.

> "It is not a little remarkable that our common law knew no process whereby a man could pledge his body or liberty for payment of a debt . . . . Under Edward I, the tide turned. In the interest of commerce a new form of security, the so-called 'statute merchant,' was invented, which gave the creditor power to demand the seizure and imprisonment of his debtor's body." 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 596–97 (2d ed. 1899).

statute mile. See MILE (1).

Statute of Accumulations. *Hist.* A statute forbidding the accumulation, beyond a certain period, of property settled by deed or will. 39 & 40 Geo. 3, ch. 98 (1800).

Statute of Allegiance de Facto. *Hist.* A statute requiring subjects to give allegiance to the actual (de facto) king, and protecting them in so doing. 11 Hen. 7, ch. 1.

Statute of Amendments and Jeofails (**jef**-aylz). *Hist.* One of several 15th- and 16th-century statutes allowing a party who acknowledges a pleading error to correct it. 1 Hen. 5, ch. 5 (1413); 32 Hen. 8, ch. 30 (1540); 37 Hen. 8, ch. 6 (1545). See JEOFAIL.

Statute of Anne. *Hist. English law.* **1.** The Copyright Act of 1709, which first granted copyright protection to book authors. 8 Anne, ch. 19 (1709). **2.** The statute that modernized the English bankruptcy system and first introduced the discharge of the debtor's existing debts. 4 Anne, ch. 17 (1705).

statute of bread and ale. See ASSISA PANIS ET CEREVISIAE.

statute of distribution. (18c) A state law regulating the distribution of an estate among an intestate's heirs and relatives. • Historically, the statute specified separate, and often different, patterns for distributing an intestate's real property and personal property. Generally, land descended to the heirs and personalty descended to the next of kin. — Also termed *statute of descent and distribution.* [Cases: Descent and Distribution ☞1–43.]

Statute of Elizabeth. *Hist. English law.* A 1571 penal statute that contained provisions against conveyances made to defraud creditors. 13 Eliz., ch. 5. • The fundamental provisions of this statute formed the basis for modern laws against fraudulent conveyances.

statute of frauds. (18c) **1.** *Hist.* (*cap.*) A 1677 English statute that declared certain contracts judicially unenforceable (but not void) if they were not committed to writing and signed by the party to be charged. • The statute was entitled "An Act for the Prevention of Frauds and Perjuries" (29 Car. 2, ch. 3). — Also termed *Statute of Frauds and Perjuries.*

> "The best known, and until recently, most important, Act prescribing written formalities for certain contracts only required that those contracts should be evidenced in writing, or to put it another way, that the contract would be unenforceable in a Court (but not void) in the absence of writing. This was the Statute of Frauds 1677, sections 4 and 17 of which required written evidence of a somewhat curious list of contracts. Today, all that is left of these provisions is that part of section 4, which requires contracts of guarantee to be evidenced in writing, and section 40 of the Law of Property Act 1925 (replacing another part of section 4), which deals with contracts of sale of an interest in land." P.S. Atiyah, *An Introduction to the Law of Contract* 141 (3d ed. 1981).

2. A statute (based on the English Statute of Frauds) designed to prevent fraud and perjury by requiring certain contracts to be in writing and signed by the party to be charged. • Statutes of frauds traditionally apply to the following types of contracts: (1) a contract for the sale or transfer of an interest in land, (2) a contract that cannot be performed within one year of its making, (3) a contract for the sale of goods valued at $500 or more, (4) a contract of an executor or administrator to answer for a decedent's debt, (5) a contract to guarantee the debt or duty of another, and (6) a contract made in consideration of marriage. UCC § 2-201. — Abbr. S/F; SOF. [Cases: Frauds, Statute of ☞1–118.]

> "[T]he primary theory of statutes of frauds, past and present, is that they are means to the end of preventing successful courtroom perjury. The means to this end is simply the requirement of a writing signed by the party to be charged. . . . [B]ut the statute of frauds writing requirement is . . . so far from any kind of guarantee against

successful perjury that it is inappropriate even to call it a means to fraud prevention at all." 1 James J. White & Robert S. Summers, *Uniform Commercial Code* § 2-8, at 82 (4th ed. 1995).

Statute of Frauds and Perjuries. See STATUTE OF FRAUDS (1).

Statute of Gloucester (**glos**-tər). *Hist. English law.* A 1278 statute providing for the award of costs in legal actions. 6 Edw., ch. 1.

statute of jeofails (**jef**-aylz). A law permitting a litigant to acknowledge an error in a pleading and correct or amend the pleading without risking dismissal of the claim. See JEOFAIL.

statute of limitations. (18c) **1.** A law that bars claims after a specified period; specif., a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered). • The purpose of such a statute is to require diligent prosecution of known claims, thereby providing finality and predictability in legal affairs and ensuring that claims will be resolved while evidence is reasonably available and fresh. — Also termed *nonclaim statute*; *limitations period.* [Cases: Limitation of Actions ⚷1.]

"Statutes of limitations, like the equitable doctrine of laches, in their conclusive effects are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Order of R.R. Telegraphers v. Railway Express Agency*, 321 U.S. 342, 348-49, 64 S.Ct. 582, 586 (1944).

2. A statute establishing a time limit for prosecuting a crime, based on the date when the offense occurred. — Abbr. S/L; SOL. Cf. STATUTE OF REPOSE. [Cases: Criminal Law ⚷145.5-160.]

"The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature had decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity." *Toussie v. United States*, 397 U.S. 112, 90 S.Ct. 858 (1970).

Statute of Monopolies. *Hist.* A 1624 act of the English Parliament banning the Crown's practice of granting monopolies with the single exception of letters patent, which gave an inventor the exclusive right to make and use the invention for 14 years. 21 Jac. 1, ch. 3.

statute of mortmain. See MORTMAIN STATUTE.

statute of repose. (18c) A statute barring any suit that is brought after a specified time since the defendant acted (such as by designing or manufacturing a product), even if this period ends before the plaintiff has suffered a resulting injury. Cf. STATUTE OF LIMITATIONS. [Cases: Limitation of Actions ⚷1.]

"A statute of repose . . . limits the time within which an action may be brought and is not related to the accrual of any cause of action; the injury need not have occurred, much less have been discovered. Unlike an ordinary statute of limitations which begins running upon accrual of the claim, the period contained in a statute of repose begins when a specific event occurs, regardless of whether a cause of action has accrued or whether any injury has resulted." 54 C.J.S. *Limitations of Actions* § 4, at 20-21 (1987).

Statute of Uses. *Hist.* An English statute of 1535 that converted the equitable title held by a cestui que use (i.e., a beneficiary) to a legal one in order to make the cestui que use liable for feudal dues, as only a legal owner (the *feoffee to uses*) could be. 27 Hen. 8, ch. 10. • This statute was the culmination of a series of enactments designed by the Tudors to stop the practice of creating uses in land that deprived feudal lords of the valuable incidents of feudal tenure. The statute discouraged the granting of property subject to another's use by deeming the person who enjoys the use to have legal title with the right of absolute ownership and possession. So after the statute was enacted, if A conveyed land to B subject to the use of C, then C became the legal owner of the land in fee simple. Ultimately, the statute was circumvented by the courts' recognition of the use of equitable trusts in land-conveyancing. See CESTUI QUE USE; GRANT TO USES; USE (4).

"The Statute of 27 H.8. hath advanced Uses, and hath established Surety for him that hath the Use against the Feoffees: for before the Statute the Feoffees were Owners of the Land, but now it is destroyed, and the *cestuy que use* is the Owner of the same: before the Possession ruled the Use, but since the Use governeth the Possession." William Noy, *A Treatise of the Principal Grounds and Maxims of the Laws of This Nation* 73 (4th ed. 1677; repr. C. Sims ed., 1870).

Statute of Westminster the First. See WESTMINSTER THE FIRST, STATUTE OF.

statute of wills. (17c) **1.** (*cap.*) An English statute (enacted in 1540) that established the right of a person to devise real property by will. — Also termed *Wills Act.* **2.** A state statute, usu. derived from the English statute, providing for testamentary disposition and if certain requirements for valid execution in that jurisdiction are met. [Cases: Wills ⚷1-20.]

Statute of Winchester. See WINCHESTER, STATUTE OF.

Statute of York. See YORK, STATUTE OF.

statute roll. *Hist.* A roll upon which a statute was formally entered after receiving the royal assent.

Statutes at Large. An official compilation of the acts and resolutions that become law from each session of Congress, printed in chronological order.

statute staple. *Hist.* **1.** A 1353 statute establishing procedures for settling disputes among merchants who traded in staple towns. • The statute helped merchants receive swift judgments for debt. Cf. STATUTE MERCHANT. **2.** A bond for commercial debt. • A statute staple gave the lender a possessory right in the land of a debtor who failed to repay a loan. See STAPLE.

"A popular form of security after 1285 . . . was the . . . 'statute staple' — whereby the borrower could by means of a registered contract charge his land and goods without giving up possession; if he failed to pay, the lender became a tenant of the land until satisfied . . . . The borrower

under a statute or recognizance remained in possession of his land, and it later became a common practice under the common-law forms of mortgage likewise to allow the mortgagor to remain in possession as a tenant at will or at sufferance of the mortgagee." J.H. Baker, *An Introduction to English Legal History* 354 (3d ed. 1990).

statuti (stə-t[y]oo-ti), *n. pl.* [Latin] *Roman law.* Licensed officials, esp. advocates, whose names are inscribed in registers of matriculation, forming part of the college of advocates. Cf. SUPERNUMERARII.

statuto mercatorio. See DE STATUTO MERCATORIO.

statutory (stach-ə-tor-ee), *adj.* (18c) **1.** Of or relating to legislation <statutory interpretation>. **2.** Legislatively created <the law of patents is purely statutory>. **3.** Conformable to a statute <a statutory act>.

statutory action. See ACTION (4).

statutory agent. See AGENT (2).

statutory arson. See ARSON (2).

statutory bar. *Patents.* A patent law provision that denies patent protection to inventors who wait too long to apply. • This "loss of right" may occur when an inventor publishes an article about the work, sells it, offers it for sale, or makes public use of the invention. The inventor has one year after the disclosure to apply for a patent. See BAR (7). Cf. GRACE PERIOD (2). [Cases: Patents ⚷80.]

statutory bond. 1. See BOND (2). **2.** See BOND (3).

statutory burglary. See BURGLARY (2).

statutory construction. (1813) **1.** The act or process of interpreting a statute. **2.** Collectively, the principles developed by courts for interpreting statutes. — Also termed *statutory interpretation.* See CONSTRUCTION (2). [Cases: Statutes ⚷174–247.]

"[T]here is not, and probably never can be, anything meriting the description of a coherent body of case-law on statutory interpretation as a whole as distinct from the interpretation of a particular statute." Rupert Cross, *Statutory Interpretation* 39 (1976).

statutory contract. See CONTRACT.

statutory crime. See CRIME.

statutory damages. See DAMAGES.

statutory dedication. See DEDICATION.

statutory deed. See DEED.

statutory disclaimer. See DISCLAIMER.

statutory double patenting. See DOUBLE PATENTING.

statutory double-patenting rejection. See REJECTION.

statutory employee. See EMPLOYEE.

statutory employer. See EMPLOYER.

statutory exception. See EXCEPTION (2).

statutory exclusion. *Criminal procedure.* The removal, by law, of certain crimes from juvenile-court jurisdiction. • Many states now remove certain particularly serious crimes committed by older juveniles from the jurisdiction of the juvenile courts. In this kind of case, the juvenile court never has jurisdiction, so a transfer hearing is not required or necessary. Cf. MANDATORY WAIVER. [Cases: Infants ⚷68.5, 68.7.]

statutory exposition. (1854) A statute's special interpretation of the ambiguous terms of a previous statute <the statute contained a statutory exposition of the former act>.

statutory extortion. See EXTORTION.

statutory forced share. See ELECTIVE SHARE.

statutory foreclosure. See *power-of-sale foreclosure* under FORECLOSURE.

statutory guardian. See GUARDIAN.

statutory homestead. See *constitutional homestead* under HOMESTEAD.

statutory insolvency. See BANKRUPTCY (3).

statutory instrument. A British administrative regulation or order; an order or regulation issued by an authority empowered by statute to do so, usu. to give detailed effect to the statute.

statutory interpretation. See STATUTORY CONSTRUCTION.

statutory invention registration. *Patents.* An official procedure for placing an invention in the public domain by publishing the patent abstract (which is included with the invention's original application) in the U.S. Patent and Trademark Office's Official Gazette, thus making the abstract a prior-art reference as of the application's filing date. • The process results in abandonment of the patent application. If an alternative form of disclosure is used, the prior-art references's effective date is the date of publication. 35 USCA § 157. — Abbr. SIR. See DEFENSIVE DISCLOSURE. [Cases: Patents ⚷115.]

statutory law. (17c) The body of law derived from statutes rather than from constitutions or judicial decisions. — Also termed *statute law; legislative law; ordinary law.* Cf. COMMON LAW (1); CONSTITUTIONAL LAW.

statutory liability. See LIABILITY.

statutory lien. See LIEN.

statutory merger. See MERGER.

statutory obligation. See OBLIGATION.

statutory omnibus clause. See OMNIBUS CLAUSE.

statutory partnership association. See PARTNERSHIP ASSOCIATION.

statutory penalty. See PENALTY (1).

statutory period. 1. A time limit specified in a statute; esp., the period prescribed in the relevant statute of limitations. • This period includes, in addition to a fixed number of years, whatever time local law allows because of infancy, insanity, coverture, and other like circumstances. [Cases: Limitation of Actions ⚷1.] **2.** *Patents.* The time available to a patent applicant to answer an examiner's office action. • Since the six-month period is set by statute, it cannot be extended but it can be shortened to as few as 30 days. 35 USCA § 133. Cf. SHORTENED STATUTORY PERIOD. [Cases: Patents ⚷104.]

statutory presumption. See PRESUMPTION.

statutory rape. See RAPE.

statutory rate. See MECHANICAL ROYALTY.

statutory receiver. See RECEIVER.

statutory redemption. See REDEMPTION.

statutory release. *Hist.* A conveyance superseding the compound assurance by lease and release, created by the Conveyance by Release Without Lease Act of 1841 (St. 4 & 5 Vict., ch. 21).

statutory right of redemption. (1857) The right of a mortgagor in default to recover property after a foreclosure sale by paying the principal, interest, and other costs that are owed, together with any other measure required to cure the default. • This statutory right exists in many states but is not uniform. See EQUITY OF REDEMPTION; REDEMPTION (4). [Cases: Mortgages ⇨591–624.]

statutory share. See ELECTIVE SHARE.

statutory staple. *Hist.* A writ to seize the lands, goods, and person of a debtor for forfeiting a statute staple. See STATUTE STAPLE.

statutory subject matter. See PATENTABLE SUBJECT MATTER.

statutory successor. See SUCCESSOR.

statutory tenant. See TENANT.

statuto stapulae. See DE STATUTO STAPULAE.

statutum (stə-**t**[**y**]**oo**-təm), *adj.* Established; determined.

statutum, *n.* **1.** *Hist.* An act of Parliament, esp. one that has been approved by the monarch. Cf. ACTUS (2). **2.** *Roman law.* An ordinance; esp., an imperial law.

Statutum de Nova Custuma (stə-**t**[**y**]**oo**-təm dee **noh**-və **kəs**-chə-mə *or* kəs-tyə-mə). See CARTA MERCATORIA.

stay, *n.* (16c) **1.** The postponement or halting of a proceeding, judgment, or the like. **2.** An order to suspend all or part of a judicial proceeding or a judgment resulting from that proceeding. — Also termed *stay of execution*; *suspension of judgment*. [Cases: Action ⇨67; Execution ⇨158; Federal Civil Procedure ⇨2700.] — **stay,** *vb.* — **stayable,** *adj.*

automatic stay. *Bankruptcy.* A bar to all judicial and extrajudicial collection efforts against the debtor or the debtor's property, subject to specific statutory exceptions. 11 USCA §§ 362 (a)–(b). • The policy behind the automatic stay, which is effective upon the filing of the bankruptcy petition, is that all actions against the debtor should be halted pending the determination of creditors' rights and the orderly administration of the debtor's assets free from creditor interference. — Also termed *automatic suspension*. [Cases: Bankruptcy ⇨2391–2404.]

stay-away order. 1. In a domestic-violence case, an order forbidding the defendant to contact the victim. • A stay-away order usu. prohibits the defendant from coming within a certain number of feet of the victim's home, school, work, or other specific place. Stay-away orders are most often issued in criminal cases. [Cases: Breach of the Peace ⇨16.] **2.** RESTRAINING ORDER (1). **3.** In a juvenile-delinquency case, an order prohibiting a youthful offender from frequenting the scene of the offense or from being in the company of certain persons. — Also termed *no-contact order*; *stay-away order of protection*.

stay of execution. See STAY.

stay of mandate. 1. The suspension of a lower court's order of execution, imposed by a higher court. **2.** An appellate court's suspension of its own judgment for reconsideration.

stayor. *Rare. Tennessee law.* A surety for a judgment.

stay-put rule. *School law.* The principle that a child must remain in his or her current educational placement while an administrative claim under the Individuals with Disabilities Education Act (usu. for an alternative placement or for mainstreaming) is pending. 20 USCA § 1415(j). [Cases: Schools ⇨148(2.1).]

STB. *abbr.* SURFACE TRANSPORTATION BOARD.

STD. *abbr.* SEXUALLY TRANSMITTED DISEASE.

steady course. *Maritime law.* A ship's path that can be readily ascertained either because the ship is on a straight heading or because the ship's future positions are easy to plot based on the ship's current position and movements. [Cases: Collision ⇨35–38.]

steal, *vb.* (bef. 12c) **1.** To take (personal property) illegally with the intent to keep it unlawfully. [Cases: Larceny ⇨1.] **2.** To take (something) by larceny, embezzlement, or false pretenses.

stealth. 1. *Hist.* Theft; an act or instance of stealing. • Etymologically, this term is the noun corresponding to the verb *steal*.

> "Stealth is the wrongful taking of goods without pretence of title: and therefore altereth not the property, as a trespass doth, so as upon an appeal the party shall re-have them." Sir Henry Finch, *Law, or a Discourse Thereof* 210 (1759).

2. Surreptitiousness; furtive slyness.

stealth juror. See JUROR.

steganography (steg-ə-**nog**-rə-fee), *n.* A cryptographic method that digitally embeds or encodes one item of information within another. • Because digitized audio or visual files usu. have unused data areas, indelible (and nearly undetectable) information can be added without altering the file's quality. Copyright or trademark tags can be hidden in every fragment of a digital work, making disassociation almost impossible. — Also termed *digital fingerprinting*; *digital watermarking*.

stellionatus (stel-ee-ə-**nay**-təs *or* stel-yə-). [Latin "underhand dealing"] *Roman & Scots law.* Conduct that is fraudulent but does not fall within a specific class of offenses. • This term applies primarily to fraudulent practices in the sale or hypothecation of land. — Also termed (in Scots law) *stellionate*. Cf. COZENING.

> "Though *pignus* and hypothec are almost different names for the same thing, there were differences. Hypothec was

used mainly for land, which cannot be removed. A thing could be pledged only to one, but successive hypothecs might be created over a thing. There was no fraud in this but it was the offence of *stellionatus* to give a hypothec without declaring existing hypothecs." W.W. Buckland, *A Manual of Roman Private Law* 355 (2d ed. 1953).

"STELLIONATE . . . is a term applied, in the law of Scotland, either to any crime which, though indictable, goes under no general denomination, and is punishable arbitrarily, or to any civil delinquency of which fraud is an ingredient. Those, *e.g.*, who grant double conveyances of the same subject, are guilty of this crime . . . and are punishable arbitrarily in their persons and goods, besides becoming infamous." William Bell, *Bell's Dictionary and Digest of the Law of Scotland* 940 (George Watson ed., 1882).

stenographer's record. See *reporter's record* under RECORD.

stent, *n. Scots law.* A property assessment made for taxation purposes.

stent, *vb. Scots law.* To assess or charge (a person or community) for taxation purposes.

stepbrother. See BROTHER.

stepchild. See CHILD.

stepfather. See FATHER.

step-in-the-dark rule. (1955) *Torts.* The contributory-negligence rule that a person who enters a totally unfamiliar area in the darkness has a duty, in the absence of unusual stress, to refrain from proceeding until first ascertaining whether any dangerous obstacles exist. See *contributory negligence* under NEGLIGENCE. [Cases: Negligence ⇨1286(8).]

stepmother. See MOTHER.

stepparent. See PARENT.

stepparent adoption. See ADOPTION.

stepped-up basis. See BASIS.

stepped-up visitation. See VISITATION.

step-rate-premium insurance. See INSURANCE.

stepsister. See SISTER.

step-transaction doctrine. A method used by the Internal Revenue Service to determine tax liability by viewing the transaction as a whole, and disregarding one or more nonsubstantive, intervening transactions taken to achieve the final result. — Also termed *step-transaction approach.* [Cases: Internal Revenue ⇨3071.]

sterilization. 1. The act of making (a person or other living thing) permanently unable to reproduce. **2.** The act of depriving (a person or other living thing) of reproductive organs; esp., castration. — Also termed (in both senses) *asexualization.* [Cases: Abortion and Birth Control ⇨133; Mental Health ⇨57.]

sterling, *adj.* **1.** Of or conforming to a standard of national value, esp. of English money or metal <a pound sterling>. **2.** (Of an opinion, value, etc.) valuable; authoritative <a sterling report>.

stet (stet), *n.* [Latin "let it stand"] (18c) **1.** An order staying legal proceedings, as when a prosecutor determines not to proceed on an indictment and places the case on a stet docket. • The term is used chiefly in Maryland. **2.** An instruction to leave a text as it stands.

stet processus (stet prə-**ses**-əs), *n.* [Law Latin "let the process stand"] *Hist.* **1.** A record entry, similar to a *nolle prosequi*, by which the parties agree to stay further proceedings. **2.** The agreement between the parties to stay those proceedings. • This was typically used by a plaintiff to suspend an action rather than suffer a nonsuit.

stevedore (**stee**-və-dor). *Maritime law.* A person or company that hires longshore and harbor workers to load and unload ships. Cf. SEAMAN; LONGSHOREMAN. [Cases: Shipping ⇨84, 110.]

steward. 1. A person appointed to manage the affairs of another. **2.** A union official who represents union employees and who oversees the performance of union contracts. — Also termed (in sense 2) *union steward*; *shop steward.*

steward of all England. *Hist.* An officer vested with various powers, including the power to preside over the trial of peers.

steward of a manor. *Hist.* An officer who handles the business matters of a manor, including keeping the court rolls and granting admittance to copyhold lands.

Steward of Chiltern Hundreds (**chil**-tərn). *English law.* Formerly, a royal officer charged with protecting residents from robbers and thieves who hid in the hundreds' wooded areas. • Today, a member of Parliament can accept this royal appointment as a step toward resigning, which is generally forbidden by statute. By law, for a member to accept this and certain other Crown appointments is to forfeit his or her seat. A resignation from the office of Steward completes the resignation process.

stickering. *Securities.* The updating of a prospectus by affixing stickers that contain the new or revised information. • Stickering avoids the expense of reprinting an entire prospectus.

stickler. *Hist.* An arbitrator.

stickup. (1904) An armed robbery in which the victim is threatened by the use of weapons. — Also termed *holdup.* See *armed robbery* under ROBBERY. [Cases: Robbery ⇨11.]

stiffening note. *Maritime law.* A permit, issued by a customs collector to the ship's master, that authorizes the receipt and loading of heavy goods necessary to ballast a vessel before the inward-bound cargo has been completely unloaded.

stifling of a prosecution. An illegal agreement, in exchange for money or other benefit, to abstain from prosecuting a person. [Cases: Compounding Offenses ⇨1.]

stigma-plus doctrine. The principle that defamation by a government official is not actionable as a civil-rights violation unless the victim suffers not only embarrassment but also the loss of a property interest (such as

continued employment in a government job). [Cases: Civil Rights ⇨1038; Constitutional Law ⇨4040.]

still, *n.* An instrument or apparatus used for making distilled liquor or alcohol.

stillborn, *adj.* (Of an infant) born dead. — Also termed *deadborn.*

stillicidium (stil-ə-**sid**-ee-əm), *n.* [Latin fr. *stilla* "a drop" + *cadere* "to fall"] *Roman law.* Eavesdropping. See AQUAE IMMITTENDAE; *servitus stillicidii* under SERVITUS.

stilus curiae (**stɪ**-ləs **kyoor**-ee-ee). [Law Latin] *Hist.* The form of court.

sting. (1976) An undercover operation in which law-enforcement agents pose as criminals to catch actual criminals engaging in illegal acts.

stint. 1. *English law.* Limitation; restriction <a right to take fish from a canal without stint can exist as a profit in gross>.

> "All these species, of pasturable common, may be and usually are limited as to number and time; but there are also commons without stint, and which last all the year." 2 William Blackstone, *Commentaries on the Laws of England* 34 (1766).

2. A specific quantity of work; the time spent performing a specific activity <he has done his stint>.

stipend (**stɪ**-pend *or* -pənd). **1.** A salary or other regular, periodic payment. **2.** A tribute to support the clergy, usu. consisting of payments in money or grain. [Cases: Religious Societies ⇨27(5).]

stipendiary estate (stɪ-**pen**-dee-er-ee). See ESTATE (1).

stipendiary magistrate. See MAGISTRATE.

stipendium (stɪ-**pen**-dee-əm), *n.* [Latin] *Roman law.* A soldier's regular pay. Cf. SALARIUM.

stipes (**stɪ**-peez), *n.* [Latin "a trunk"] *Hist.* Family stock; a source of descent or title. Pl. ***stipites*** (**stip**-ə-teez).

stipital (**stip**-i-təl), *adj.* See STIRPITAL.

stipulated authority. See *express authority* under AUTHORITY (1).

stipulated damages. See *liquidated damages* under DAMAGES.

stipulated judgment. See *agreed judgment* under JUDGMENT.

stipulatio (stip-yə-**lay**-shee-oh), *n.* [Latin] *Roman law.* An oral contract requiring a formal question and reply, binding the replier to do what was asked. • It is essential that both parties speak, and that the reply directly conforms to the question asked and is made with the intent to enter into a contractual obligation. No consideration is required. See *actio ex stipulatu* under ACTIO. Pl. ***stipulationes*** (stip-yə-lay-shee-**oh**-neez).

> "[I]t must be remembered that the law-forms used by the Romans had their origin in times when writing was neither easy nor common. It is not surprising, therefore, that among them a form of spoken words, a verbal contract, should hold the place which among us is occupied by written notes. This form . . . *stipulatio* — was of a very simple character, consisting only of a question asked by one party, and an answer returned by the other . . . . Such forms as *Spondesne mihi decem aureos dare* (do you engage to give me ten aurei, or gold-pieces): answer, *Spondeo* (I engage) . . . ." James Hadley, *Introduction to Roman Law* 210 (1881).

> "The oldest Roman contract was the *stipulatio*, an oral promise made by an answer to an immediately preceding question, with the promisor using the same verb. The contract was unilateral. Only one party, the promisor, was legally liable, and he was bound strictly by the words used." Alan Watson, *Ancient Law and Modern Understanding* 96 (1998).

stipulatio aquiliana (stip-yə-**lay**-shee-oh ə-kwil-ee-**ay**-nə). [Latin] *Roman law.* A type of *stipulatio* used to collect and discharge all the liabilities owed on various grounds by a single contract.

> "[S]*tipulatio Aquiliana*, a device credited to Aquilius Gallus, of Cicero's time. Where two persons with complex relations between them desired to square or simplify their accounts they could work out the items and arrive at the balance . . . . This balance being paid or otherwise arranged, each party would then make with the other this *stipulatio*, which was a comprehensive formula . . . . This would novate all the claims and turn them into a single promise, for an *incertum*. These mutual stipulations might then be released by *acceptilatio*." W.W. Buckland, *A Manual of Roman Private Law* 348 (2d ed. 1953).

stipulatio juris (stip-yə-**lay**-shee-oh **joor**-is). [Latin "stipulatio as to the law"] The parties' agreement on a question of law or its applicability. • The court is not bound to accept the stipulation if it is erroneous. But the parties are allowed to stipulate the law to be applied to a dispute.

stipulation (stip-yə-**lay**-shən), *n.* (18c) **1.** A material condition or requirement in an agreement; esp., a factual representation that is incorporated into a contract as a term <breach of the stipulation regarding payment of taxes>. • Such a contractual term often appears in a section of the contract called "Representations and Warranties." [Cases: Contracts ⇨173, 207, 218, 221.] **2.** A voluntary agreement between opposing parties concerning some relevant point; esp., an agreement relating to a proceeding, made by attorneys representing adverse parties to the proceeding <the plaintiff and defendant entered into a stipulation on the issue of liability>. • A stipulation relating to a pending judicial proceeding, made by a party to the proceeding or the party's attorney, is binding without consideration. [Cases: Stipulations ⇨1.]

> "Breach of a stipulation should not be confused with *misrepresentation*, which is a false statement made before or at the time the contract is made, and which induces the contract; only if it is incorporated into the contract does it become a stipulation or term, the breach of which will entitle the injured party to pursue the usual remedies which are available where there has been a breach of a warranty or of a condition." 1 E.W. Chance, *Principles of Mercantile Law* 239 (P.W. French ed., 13th ed. 1950).

> "Stipulations with respect to matters of form and procedure serve the convenience of the parties to litigation and often serve to simplify and expedite the proceeding. In some cases they are supported by the policy of favoring compromise in order to reduce the volume of litigation. Hence they are favored by the courts and enforced without regard to consideration." Restatement (Second) of Contracts § 94 cmt. a (1979).

3. *Roman law.* A formal contract by which a promisor (and only the promisor) became bound by oral question and answer. • By the third century A.D., stipulations were always evidenced in writing. See REUS PROMITTENDI; REUS STIPULANDI. — **stipulate** (**stip**-yə-layt), *vb.* — **stipulative** (**stip**-yə-lə-tiv), *adj.*

"A stipulation consisted in a question and answer, the question being put by the person who was to acquire a right, the answer being given orally by the person who undertook the obligation. The matter of the agreement being stated, the binding words were usually simple; those used by (and peculiar to) Romans being *Spondesne?* or *spondes? Spondeo.* A stipulation made with a foreigner in these terms was invalid. The questioner was called *stipulator,* sometimes *reus stipulandi* ('[stipulating party]'), the answerer usually *promissor* (or *reus promittendi* [the promising party]) . . . ." 2 Henry John Roby, *Roman Private Law* 12 (1902).

stipulation pour autrui (**poor** oh-troo-**ee**). [French "for other persons"] *Civil law.* A contractual provision that benefits a third party and gives the third party a cause of action against the promisor for specific performance. La. Civ. Code art. 1978. See *third-party beneficiary* under BENEFICIARY. [Cases: Contracts ⇨187.]

stipulatio sponsalitia (stip-yə-**lay**-shee-oh spon-sə-**lish**-ee-ə). [Latin] *Roman law.* In early law a solemn promise by a father (paterfamilias) that his child would marry someone else's child. • In some cases, there was a penalty if the marriage did not occur. In classical and later Roman law, in which free marriage was the rule, such a promise was unenforceable because it was regarded as immoral (*contra bonos mores*).

stipulative definition. See DEFINITION.

stipulator. 1. One who makes a stipulation. **2.** *Civil law.* The promisee in a stipulation pour autrui, accepting the promise of a benefit to a third party. See REUS STIPULANDI.

stirpal (**stər**-pəl), *adj.* See STIRPITAL.

stirpes (**stər**-peez). (*pl.*) See STIRPS.

stirpital (**stər**-pə-təl), *adj.* (1886) Of or relating to per stirpes distribution. — Also termed *stipital; stirpal.* See PER STIRPES. [Cases: Descent and Distribution ⇨43; Wills ⇨530.]

stirps (stərps), *n.* [Latin "stock"] (17c) A branch of a family; a line of descent. Pl. **stirpes** (**stər**-peez). See PER STIRPES.

stock, *n.* (14c) **1.** The original progenitor of a family; a person from whom a family is descended; BRANCH (1) <George Harper, Sr. was the stock of the Harper line>. **2.** A merchant's goods that are kept for sale or trade <the car dealer put last year's models on sale to reduce its stock>. **3.** The capital or principal fund raised by a corporation through subscribers' contributions or the sale of shares <Acme's stock is worth far more today than it was 20 years ago>. **4.** A proportional part of a corporation's capital represented by the number of equal units (or shares) owned, and granting the holder the right to participate in the company's general management and to share in its net profits or earnings <Julia sold her stock in Pantheon Corporation>. See SHARE (2). Cf. SECURITY (4). [Cases: Corporations ⇨63.1.]

adjustable-rate preferred stock. Preferred stock whose dividend is periodically changed according to changes in a benchmark interest rate, such as that of Treasury bills.

assented stock. Stock that an owner deposits with a third person according to an agreement by which the owner voluntarily accepts a change in the corporation's securities.

assessable stock. Stock that is subject to resale by the issuer if the holder fails to pay any assessment levied on it. [Cases: Corporations ⇨175.]

authorized stock. See *capital stock* (1).

bailout stock. Nontaxable preferred stock issued to stockholders as a dividend. • Bailout stock is issued to gain favorable tax rates by distributing corporate earnings at capital gains rates rather than by distributing dividends at ordinary income rates. This practice is now prohibited by the Internal Revenue Code. IRC (26 USCA) § 306.

barometer stock. A stock whose price fluctuates according to market conditions; an individual stock considered to be indicative of the strength of the market in general. — Also termed *bellwether stock.*

blank stock. *Securities.* Stock with voting powers and rights set by the issuer's board of directors after the stock has been sold. [Cases: Corporations ⇨126.]

blue-chip stock. See BLUE CHIP.

bonus stock. A stock share that is issued for no consideration, as an enticement to buy some other type or class of security. • It is considered a type of watered stock. — Also termed *bonus share.* [Cases: Corporations ⇨99, 243(6).]

book-value stock. Stock offered to executives at a book-value price, rather than at its market value. • The stock is offered with the understanding that when its book value has risen, the company will buy back the stock at the increased price or will make payments in stock equal to the increased price.

callable preferred stock. Preferred stock that may be repurchased by the issuing corporation at a prestated price, usu. at or slightly above par value. [Cases: Corporations ⇨68.]

capital stock. **1.** The total number of shares of stock that a corporation may issue under its charter or articles of incorporation, including both common stock and preferred stock. • A corporation may increase the amount of capital stock if the owners of a majority of the outstanding shares consent. — Also termed *authorized stock; authorized capital stock; authorized stock issue; authorized shares.* [Cases: Corporations ⇨60.] **2.** The total par value or stated value of this stock; CAPITALIZATION (4). **3.** See *common stock.*

cheap stock. Stock or stock options issued to the issuer's directors, employees, consultants, promoters, and the

like at a price lower than the public-offering price up to 12 months before the offering.

common stock. A class of stock entitling the holder to vote on corporate matters, to receive dividends after other claims and dividends have been paid (esp. to preferred shareholders), and to share in assets upon liquidation. • Common stock is often called *capital stock* if it is the corporation's only class of stock outstanding. — Also termed *ordinary shares*. Cf. *preferred stock*. [Cases: Corporations ☞155.]

convertible stock. See *convertible security* under SECURITY.

corporate stock. An equity security issued by a corporation.

cumulative preferred stock. Preferred stock that must receive dividends in full before common shareholders may receive any dividend. • If the corporation omits a dividend in a particular year or period, it is carried over to the next year or period and must be paid before the common shareholders receive any payment. — Also termed *cumulative stock*; *cumulative preference share*. [Cases: Corporations ☞156.]

deferred stock. Stock whose holders are entitled to dividends only after the corporation has met some other specified obligation, such as the discharge of a liability or the payment of a dividend to preferred shareholders.

discount stock. A stock share issued for less than par value. • Discount stock is considered a type of watered stock, the issuance of which may impose liability on the recipient for the difference between the par value and the cash amount paid. — Also termed *discount share*.

donated stock. Stock donated to a charity or given to a corporation by its own stockholders, esp. for resale.

equity stock. Stock of any class having unlimited dividend rights, regardless of whether the stock is preferred.

floating stock. Stock that is offered for sale on the open market and that has not yet been purchased; the number of outstanding shares available for trading.

full-paid stock. Stock on which no further payments can be demanded by the issuing company. — Also termed *paid-up stock*. [Cases: Corporations ☞88, 89.]

glamour stock. See *growth stock* (2).

growth stock. **1.** Stock issued by a growth company. • Because a growth company usu. reinvests a large share of its income back into the company, growth stock pays relatively low dividends, though its price usu. has a relatively high appreciation in market value over time. **2.** Stock that has produced or is expected to produce above-average returns and usu. receives small or no dividends. — Also termed *glamour stock*.

guaranteed stock. Preferred stock on which a dividend is guaranteed by someone (usu. a parent corporation) other than the issuer. [Cases: Corporations ☞156.]

guarantee stock. A fixed, nonwithdrawal investment in a building-and-loan association. • This type of stock guarantees to all other investors in the association a fixed dividend or interest rate. See BUILDING-AND-LOAN ASSOCIATION. [Cases: Building and Loan Associations ☞7.]

guaranty stock. A savings-and-loan association's stock yielding dividends to the holders after dividends have been paid to the depositors. [Cases: Building and Loan Associations ☞11.]

hot stock. See *hot issue* under ISSUE (2).

inactive stock. A low-volume stock.

income stock. A stock with a history of high yields or dividend payments (e.g., public utilities and well-established corporations).

issued stock. Capital stock that has been authorized and sold to subscribers, but may be reacquired, such as treasury stock. [Cases: Corporations ☞72, 159.]

joint stock. Capital invested in an unincorporated business and divided into shares proportionate to the size of each investment. [Cases: Joint-Stock Companies and Business Trusts ☞5.]

letter stock. See *restricted security* under SECURITY.

listed stock. See *listed security* under SECURITY.

margin stock. See *marginable security* under SECURITY.

nonassessable stock. Stock owned by a holder whose potential liability is limited to the amount paid for the stock and who cannot be charged additional funds to pay the issuer's debts. • Stock issued in the United States is usu. nonassessable. [Cases: Corporations ☞78, 175.]

noncumulative preferred stock. Preferred stock that does not have to be paid dividends that are in arrears. • Once a periodic dividend is omitted, it will not be paid. — Also termed *noncumulative stock*. [Cases: Corporations ☞156.]

nonparticipating preferred stock. Preferred stock that does not give the shareholder the right to additional earnings — usu. surplus common-stock dividends — beyond those stated in the preferred contract.

nonvoting stock. Stock that has no voting rights under most situations. [Cases: Corporations ☞197.]

no-par stock. Stock issued without a specific value assigned to it. • For accounting purposes, it is given a legal or stated value that has little or no connection to the stock's actual value. — Sometimes shortened to *no par*. — Also termed *no-par-value stock*.

outstanding stock. Stock that is held by investors and has not been redeemed by the issuing corporation. — Also termed *outstanding capital stock*; *shares outstanding*.

paid-up stock. See *full-paid stock*.

participating preferred stock. Preferred stock whose holder is entitled to receive stated dividends and to

share with the common shareholders in any additional distributions of earnings.

participation stock. Stock permitting the holder to participate in profits and surplus.

par-value stock. Stock originally issued for a fixed value derived by dividing the total value of capital stock by the number of shares to be issued. • The par value does not bear a necessary relation to the actual stock value because surplus plays a role in the valuation. [Cases: Corporations ⚷62, 99(3).]

penny stock. An equity security that is not traded in established markets, represents no tangible assets, or has average revenues less than required for trading on an exchange. • Typically, a penny stock is highly speculative and can be purchased for less than $5 a share.

performance stock. See *glamour stock.*

phantom stock. Imaginary stock that is credited to a corporate executive account as part of the executive's compensation package. See PHANTOM STOCK PLAN. [Cases: Corporations ⚷308(3).]

preferred stock. A class of stock giving its holder a preferential claim to dividends and to corporate assets upon liquidation but that usu. carries no voting rights. — Also termed *preference shares.* Cf. *common stock.* [Cases: Corporations ⚷156.]

premium stock. Stock that carries a premium for trading, as in the case of short-selling.

prior preferred stock. Preferred stock that has preference over another class of preferred stock from the same issuer. • The preference usu. relates to dividend payments or claims on assets. [Cases: Corporations ⚷156.]

public stock. **1.** See *public security* under SECURITY. **2.** Stock of a publicly traded corporation.

reacquired stock. See *treasury stock.*

redeemable stock. Preferred stock that can be called by the issuing corporation and retired. [Cases: Corporations ⚷68.]

registered stock. See *registered security* under SECURITY.

restricted stock. See *restricted security* under SECURITY.

retired stock. See *treasury stock.*

special stock. *Hist.* Corporate stock that guarantees investors an annual dividend and gives them creditor status to the extent that dividends have become payable. • In contrast, preferred-stock holders' claims for dividends payable are secondary to creditors' claims. Special stock was statutorily authorized only in Massachusetts. [Cases: Corporations ⚷71.]

subscribed stock. A stockholder's equity account showing the capital that will be contributed when the subscription price is collected. See SUBSCRIPTION (2). [Cases: Corporations ⚷88.]

tainted stock. Stock owned or transferred by a person disqualified from serving as a plaintiff in a derivative action. • A good-faith transferee is also disqualified from filing a derivative action.

treasury stock. Stock issued by a company but then reacquired and either canceled or held. • Some states have eliminated this classification and treat such stock as if it is authorized but unissued. — Also termed *treasury security; treasury share; reacquired stock; retired stock.* [Cases: Corporations ⚷72.]

unissued stock. Stock that is authorized by the corporate charter but not yet distributed.

unlisted stock. See *unlisted security* under SECURITY.

volatile stock. Stock subject to wide and rapid fluctuations in price. — Also termed *yo-yo stock.*

voting stock. Stock that entitles the holder to vote in the corporation's election of directors and on other matters that are put to a vote. — Also termed *voting security.* [Cases: Corporations ⚷197.]

watered stock. Stock issued for less than par value. [Cases: Corporations ⚷99.]

> "The term 'watered stock' is a colorful common law phrase describing the situation where shareholders receive shares without paying as much for them as the law requires. . . . Much of the early common law relating to watered shares concerned the liability of shareholders receiving watered shares to pay the additional consideration needed to 'squeeze out the water.' . . . [It now] seems clear that a shareholder is liable to the corporation if he or she pays less for the shares than the consideration fixed by the directors, and this liability is measured by the difference between the fixed consideration and the amount actually paid." Robert W. Hamilton, *The Law of Corporations in a Nutshell* 120–21 (3d ed. 1991).

whisper stock. The stock of a company that is rumored to be the target of a takeover attempt.

yo-yo stock. See *volatile stock.*

stock acquisition. See SHARE ACQUISITION.

stock-appreciation right. (*usu. pl.*) A right, typically granted in tandem with a stock option, to be paid the option value (usu. in cash) when exercised along with the simultaneous cancellation of the option. — Abbr. SAR. [Cases: Corporations ⚷116.]

stock association. See *joint-stock company* under COMPANY.

stock attribution. See ATTRIBUTION.

stock bailout. A stock redemption in the form of a preferred stock dividend.

stock/bond power. See STOCK POWER.

stock bonus plan. A special type of profit-sharing plan in which the distribution of benefits consists of the employer-company's own stock. [Cases: Corporations ⚷308(1).]

stockbroker. One who buys or sells stock as agent for another. — Also termed *account executive; account representative.* [Cases: Brokers ⚷2.]

stock certificate. An instrument evidencing ownership of shares of stock. — Also termed *certificate of stock*; *share certificate*. [Cases: Corporations ⚷94.]

face-amount certificate. **1.** A certificate, investment contract, or other security representing an obligation by its issuer to pay a stated or determinable sum, at a fixed or determinable date or dates more than 24 months after the date of issuance, in consideration of the payment of periodic installments of a stated or determinable amount. — Also termed *face-amount certificate of the installment type*. **2.** A security representing a similar obligation on the part of the issuer of a face-amount certificate, the consideration for which is the payment of a single lump sum. See 15 USCA § 80a-2(a)(15). — Also termed *fully paid face-amount certificate*.

periodic-payment-plan certificate. A certificate, investment contract, or other security providing for a series of periodic payments by the holder and representing an undivided interest in certain specified securities or in a unit or fund of securities purchased wholly or partly with the proceeds of those payments. • The term also includes any security whose issuer is also issuing the certificates described above and whose holder has substantially the same rights and privileges as those holders have upon completing the periodic payments for which the securities provide. See 15 USCA § 80a-2(a)(27).

stock clearing. The actual exchange of money and stock between buyer and seller, typically performed by a clearing corporation.

stock clearing corporation. A New York Stock Exchange subsidiary that is a central agency for securities deliveries and payments between member firms.

stock control. A system of inventory management by which a business maintains perpetual records of its inventory.

stock corporation. See CORPORATION.

stock dividend. See DIVIDEND.

stock exchange. See SECURITIES EXCHANGE.

stock-for-assets exchange. *Mergers & acquisitions.* A merger in which one corporation agrees to dissolve and transfers all or most of its assets to another corporation, which then distributes shares of its own stock to the dissolving corporation's shareholders.

stock-for stock exchange. See *stock swap* under SWAP.

stockholder. See SHAREHOLDER.

stockholder derivative suit. See DERIVATIVE ACTION (1).

stockholder of record. The person who is listed in the issuer's books as the owner of stock on the record date. — Also termed *holder of record*; *owner of record*; *record owner*. See *record date* under DATE. [Cases: Corporations ⚷128.]

stockholders' equity. See OWNERS' EQUITY.

stockholder's liability. See *shareholder's liability* under LIABILITY.

stock insurance company. See INSURANCE COMPANY.

stock in trade. 1. The inventory carried by a retail business for sale in the ordinary course of business. **2.** The tools and equipment owned and used by a person engaged in a trade. **3.** The equipment and other items needed to run a business.

stock issue. See ISSUE (2).

stockjobber. See JOBBER (2).

stockjobbing, *n.* The business of dealing in stocks or shares; esp., the buying and selling of stocks and bonds by jobbers who operate on their own account. — Also termed *stockjobbery*.

stock-law district. See DISTRICT.

stock life-insurance company. See INSURANCE COMPANY.

stock manipulation. See MANIPULATION.

stock market. 1. See MARKET (5). **2.** See MARKET (6).

stock merger. See MERGER.

stock note. See NOTE (1).

stock option. 1. An option to buy or sell a specific quantity of stock at a designated price for a specified period regardless of shifts in market value during the period. [Cases: Corporations ⚷116.] **2.** An option that allows a corporate employee to buy shares of corporate stock at a fixed price or within a fixed period. • Such an option is usu. granted as a form of compensation and can qualify for special tax treatment under the Internal Revenue Code. — Also termed (in sense 2) *employee stock option*; *incentive stock option* (ISO).

nonqualified stock option. A stock-option plan that does not receive capital-gains tax treatment, thus allowing a person to buy stock for a period (often ten years) at or below the market price. — Abbr. NQSO. [Cases: Internal Revenue ⚷3596.]

qualified stock option. A now-rare stock-option plan that allows a person to buy stock for a period (often five years) at the market price, the stock being subject to capital-gains tax treatment. [Cases: Internal Revenue ⚷3602.]

stock-option contract. See CONTRACT.

stock-parking, *n.* See PARKING (2).

stock power. A power of attorney permitting a person, other than the owner, to transfer ownership of a security to a third party. — Also termed *stock/bond power*. [Cases: Corporations ⚷126.]

stock-purchase plan. An arrangement by which an employer corporation allows employees to purchase shares of the corporation's stock. [Cases: Corporations ⚷116.]

stock redemption. See REDEMPTION (3).

stock-redemption agreement. An agreement between a corporation's individual owners and the corporation

itself, whereby the corporation agrees to purchase (i.e., redeem) the stock of a withdrawing or deceased owner. — Often shortened to *redemption agreement*. — Also termed *stock-retirement agreement*. [Cases: Corporations ⇨82, 120.]

stock repurchase. See REDEMPTION (3).

stock-repurchase plan. A program by which a corporation buys back its own shares in the open market, usu. when the corporation believes the shares are undervalued.

stock-retirement agreement. See STOCK-REDEMPTION AGREEMENT.

stock right. See SUBSCRIPTION RIGHT.

stocks, *n.* A punishment device consisting of two boards that together form holes for trapping an offender's feet and hands. — Formerly also termed *cippi*. Cf. BILBOES (1); PILLORY.

stock sale. *Mergers & acquisitions.* A takeover in which the acquiring corporation buys stock directly from the target corporation's shareholders until it controls all or a majority of the target's stock.

stock split. The issuance of two or more new shares in exchange for each old share without changing the proportional ownership interests of each shareholder. • For example, a 3-for-1 split would give an owner of 100 shares a total of 300 shares, or 3 shares for each share previously owned. A stock split lowers the price per share and thus makes the stock more attractive to potential investors. — Also termed *share split*. [Cases: Corporations ⇨66.]

reverse stock split. A reduction in the number of a corporation's shares by calling in all outstanding shares and reissuing fewer shares having greater value. [Cases: Corporations ⇨68.]

stock subscription. See SUBSCRIPTION (2).

stock swap. See SWAP.

stock-transfer agent. See AGENT (2).

stock-transfer tax. See TAX.

stock warrant. See WARRANT (4).

stolen property. (18c) Goods acquired by larceny, robbery, or theft. [Cases: Larceny ⇨4; Receiving Stolen Goods ⇨2; Robbery ⇨4.]

stonewall, *vb.* To persistently refuse to cooperate in an investigation; esp., to refuse to testify or to hand over requested material until every available legal challenge has been exhausted. — **stonewalling,** *n.*

stool pigeon. *Slang.* **1.** An informant, esp. a police informant. **2.** A person who acts as a decoy, esp. on behalf of a gambler or swindler, or for the police to help make an arrest. — Also termed (in sense 1) *rat*; (in sense 2) *capper*.

stop, *n.* (16c) Under the Fourth Amendment, a temporary restraint that prevents a person from walking away. [Cases: Arrest ⇨63.5.]

stop and frisk, *n.* (1963) A police officer's brief detention, questioning, and search of a person for a concealed weapon when the officer reasonably suspects that the person has committed or is about to commit a crime. • The stop and frisk, which can be conducted without a warrant or probable cause, was held constitutional by the Supreme Court in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968). — Also termed *investigatory stop*; *investigatory detention*; *Terry stop*; *field stop*. See *reasonable suspicion* under SUSPICION. [Cases: Arrest ⇨63.5.]

stopgap tax. See TAX.

stopgap zoning. See *interim zoning* under ZONING.

stop-limit order. See *stop order* under ORDER (8).

stop-list. *Antitrust.* An illegal means by which manufacturers sometimes attempt to enforce price maintenance, by having suppliers agree among themselves not to supply any party who competes actively and breaks anticompetitive price "rules."

stop-loss insurance. See INSURANCE.

stop-loss order. See *stop order* under ORDER (8).

stop-notice statute. (1963) A law providing an alternative to a mechanic's lien by allowing a contractor, supplier, or worker to make a claim against the construction lender and, in some instances, the owner for a portion of the undisbursed construction-loan proceeds. See *mechanic's lien* under LIEN. [Cases: Mechanics' Liens ⇨113, 115.]

stop order. 1. See ORDER (8). **2.** An SEC order that suspends a registration statement containing false, incomplete, or misleading information. [Cases: Securities Regulation ⇨25.16.] **3.** A bank customer's order instructing the bank not to honor one of the customer's checks. — Also termed (in sense 3) *stop-payment order*. [Cases: Banks and Banking ⇨139.]

stoppage, *n.* (15c) **1.** An obstruction or hindrance to the performance of some act <stoppage of goods or persons in transit for inspection>. **2.** *Civil law.* SETOFF <stoppage in pay for money owed>.

stoppage *in transitu* (in **tran**-si-t[y]oo *or* **tranz**-i-t[y]oo). (18c) The right of a seller of goods to regain possession of those goods from a common carrier under certain circumstances, even though the seller has already parted with them under a contract for sale. • This right traditionally applies when goods are consigned wholly or partly on credit from one person to another, and the consignee becomes bankrupt or insolvent before the goods arrive — in which event the consignor may direct the carrier to deliver the goods to someone other than the consignee (who can no longer pay for them). — Also termed *stoppage in transit*. See RECLAMATION (2). [Cases: Sales ⇨289–299.]

stop-payment order. See STOP ORDER (3).

store, *n.* (13c) **1.** A place where goods are deposited for purchase or sale. **2.** (*usu. pl.*) A supply of articles provided for the subsistence and accommodation of a ship's crew and passengers. **3.** A place where goods or supplies are stored for future use; a warehouse.

public store. A government warehouse administratively maintained, as for the storage of imported goods or military supplies.

store, *vb.* (13c) To keep (goods, etc.) in safekeeping for future delivery in an unchanged condition.

stored-value card. A device that provides access to a specified amount of funds for making payments to others, is the only means of routine access to the funds, and does not have an associated account in the name of the holder. • Typically, a consumer pays a bank or merchant money in exchange for a stored-value card; the consumer uses the card rather than paper currency to purchase goods and services. — Also termed *smart card*; *prepaid card*; *value-added card.*

store-receiver exemption. See AIKEN EXEMPTION.

stouthrief. *Scots law.* Robbery that takes place in or near one's dwelling, but is not coupled with housebreaking.

stowage (**stoh**-ij). *Maritime law.* **1.** The storing, packing, or arranging of cargo on a vessel to protect the goods from friction, bruising, or water damage during a voyage. • The bill of lading will often prescribe the method of stowage to be used. [Cases: Shipping ☞ 110.] **2.** The place (such as a ship's hull) where goods are stored. [Cases: Shipping ☞ 110, 123.] **3.** The goods so stored. **4.** A fee paid for the storage of goods; a storage fee.

stowaway. A person who hides on board an outgoing or incoming vessel or aircraft to obtain free passage. 18 USCA § 2199. [Cases: Aliens, Immigration, and Citizenship ☞ 255, 265; Aviation ☞ 17.]

STR. *abbr.* SUSPICIOUS-TRANSACTION REPORT.

straddle, *n.* In securities and commodities trading, a situation in which an investor holds contracts to buy and to sell the same security or commodity, thus ensuring a loss on one of the contracts. • The aim of this strategy is to defer gains and use losses to offset other taxable income. — Also termed *spread eagle*; *combination.* — **straddle,** *vb.*

straight annuity. See ANNUITY.

straight bankruptcy. See CHAPTER 7 (2).

straight bill of lading. See BILL OF LADING.

straight deductible. See DEDUCTIBLE.

straight letter of credit. See LETTER OF CREDIT.

straight life annuity. See *nonrefund annuity* under ANNUITY.

straight life insurance. See *whole life insurance* under LIFE INSURANCE.

straight-line depreciation method. See DEPRECIATION METHOD.

straight-line interest. See *simple interest* under INTEREST (3).

straight mortgage. See MORTGAGE.

straight sentence. See *determinate sentence* under SENTENCE.

straight-term mortgage. See *interest-only mortgage* under MORTGAGE.

straight up. See S.U.

straight voting. See *noncumulative voting* under VOTING.

strain theory. (18c) The theory that people commit crimes to alleviate stress created by the disjunction between their station in life and the station to which society has conditioned them to aspire. Cf. CONTROL THEORY; RATIONAL-CHOICE THEORY; ROUTINE-ACTIVITIES THEORY.

stramineus homo (strə-**min**-ee-əs **hoh**-moh). [Latin "man of straw"] See STRAW MAN.

strand, *n.* (bef. 12c) A shore or bank of an ocean, lake, river, or stream.

stranding, *n. Maritime law.* A ship's drifting, driving, or running aground on a strand. • The type of stranding that occurs determines the method of apportioning the liability for any resulting losses. [Cases: Salvage ☞ 9, 30.]

accidental stranding. Stranding caused by natural forces, such as wind and waves. — Also termed *involuntary stranding.* See *general average* and *particular average* under AVERAGE.

> "Damage to a vessel from involuntary stranding or wreck, and the cost of repairs, are particular average only. Where, however, the ship and cargo are exposed to a common peril by the accidental stranding, the expenses of unloading and taking care of the cargo, rescuing the vessel, reloading the cargo, and other expenses other than repairs requisite to enable the vessel to proceed on the voyage, are brought into general average, provided the vessel and cargo were saved by the same series of measures during the continuance of the common peril which created the joint necessity for the expenses." 70 Am. Jur. 2d *Shipping* § 961, at 1069 (1987).

voluntary stranding. Stranding to avoid a more dangerous fate or for fraudulent purposes.

> "The loss occurring when a ship is voluntarily run ashore to avoid capture, foundering, or shipwreck is to be made good by general average contribution, if the ship is afterwards recovered so as to be able to perform its voyage, as such a claim is clearly within the rule that whatever is sacrificed for the common benefit of the associated interests shall be made good by all the interests exposed to the common peril which were saved from the common danger by the sacrifice . . . . A vessel cannot, however, claim contribution founded on even a voluntary stranding made necessary by . . . unseaworthiness or the negligence of those in charge, except in pursuance of a valid agreement to that effect." 70 Am. Jur. 2d *Shipping* § 961, at 1069 (1987).

stranger. (14c) **1.** One who is not party to a given transaction; esp., someone other than a party or the party's employee, agent, tenant, or immediate family member. [Cases: Contracts ☞ 185.] **2.** One not standing toward another in some relation implied in the context; esp., one who is not in privity. **3.** A person who voluntarily pays another person's debt even though the payor cannot be held liable for the debt and the payor's property is not affected by the creditor's rights. • Subrogation does not apply to a stranger if the debtor did not agree to or assign subrogation rights.

stranger in blood. (17c) **1.** One not related by blood, such as a relative by affinity. **2.** Any person not within the consideration of natural love and affection arising from a relationship.

stratagem. (15c) A trick or deception to obtain an advantage, esp. in a military conflict.

strategic alliance. (1983) A coalition formed by two or more persons in the same or complementary businesses to gain long-term financial, operational, or marketing advantages without jeopardizing competitive independence <through their strategic alliance, the manufacturer and distributor of a co-developed product shared development costs>. Cf. ALLIANCE (1); JOINT VENTURE; PARTNERSHIP.

Strategic National Stockpile. A national repository of medicines and healthcare supplies maintained jointly by the U.S. Department of Homeland Security and the U.S. Department of Health and Human Services to respond to public-health emergencies. • Created as the National Pharmaceutical Stockpile in 1999, the agency caches antibiotics, chemical antidotes, antitoxins, life-support medications, IV administration, airway maintenance supplies, and medical supplies. — Abbr. SNS.

stratocracy (strə-**tok**-rə-see). A military government.

strator (**stray**-tər). *Hist.* A surveyor of the highways.

straw bail. See *bail common* under BAIL (4).

straw bond. See BOND (2).

straw man. (1896) **1.** A fictitious person, esp. one that is weak or flawed. **2.** A tenuous and exaggerated counterargument that an advocate makes for the sole purpose of disproving it. — Also termed *straw-man argument.* **3.** A third party used in some transactions as a temporary transferee to allow the principal parties to accomplish something that is otherwise impermissible. **4.** A person hired to post a worthless bail bond for the release of an accused. — Also termed *stramineus homo.* Cf. DUMMY.

straw-man scam. *Criminal law.* A scheme in which an innocent third person is hired to receive fraudulently obtained money and wire it to a location outside the country.

straw poll. A nonbinding vote, taken as a way of informally gauging support or opposition but usu. without a formal motion or debate.

stray remarks. *Employment law.* Statements to or about an employee by a coworker or supervisor, concerning the employee's race, sex, age, national origin, or other status, that are either objectively or subjectively offensive, but that do not represent harassment or discrimination by the employer because of (1) their sporadic, unsystematic, and unofficial nature, (2) the circumstances in which they were made, or (3) their not showing any intention to hamper the employee's continued employment. — Also termed *stray comments.* [Cases: Civil Rights ⇨1147, 1543.]

stream. Anything liquid that flows in a line or course; esp., a current of water consisting of a bed, bank, and watercourse, usu. emptying into other bodies of water but not losing its character even if it breaks up or disappears. [Cases: Waters and Water Courses ⇨38.]

private stream. A watercourse, the bed, channel, or waters of which are exclusively owned by private parties.

stream-of-commerce theory. (1942) **1.** The principle that a state may exercise personal jurisdiction over a defendant if the defendant places a product in the general marketplace and the product causes injury or damage in the forum state, as long as the defendant also takes other acts to establish some connection with the forum state, as by advertising there or by hiring someone to serve as a sales agent there. *Asahi Metal Indus. Co., Ltd. v. Superior Court of Cal.*, 480 U.S. 102, 107 S.Ct. 1026 (1987). [Cases: Corporations ⇨665(1); Courts ⇨12(2.25); Federal Courts ⇨76, 81.] **2.** The principle that a person who participates in placing a defective product in the general marketplace is strictly liable for harm caused by the product. Restatement (Second) of Torts § 402A (1979). [Cases: Products Liability ⇨164.]

street. A road or public thoroughfare used for travel in an urban area, including the pavement, shoulders, gutters, curbs, and other areas within the street lines. [Cases: Municipal Corporations ⇨658.]

> "Strictly speaking, a 'street' is a public thoroughfare in an urban community such as a city, town, or village, and the term is not ordinarily applicable to roads and highways outside of municipalities. Although a street, in common parlance, is equivalent to a highway, it is usually specifically denominated by its own proper appellation. . . . Whether a particular highway is to be regarded as a 'street' within the meaning of that term as used in a statute must, of course, be resolved by construction." 39 Am. Jur. 2d *Highways, Streets, and Bridges* § 8, at 588–89 (1999).

paper street. A thoroughfare that appears on plats, subdivision maps, and other publicly filed documents, but that has not been completed or opened for public use. [Cases: Municipal Corporations ⇨646.]

street crime. See CRIME.

street gang. See GANG.

street name. A brokerage firm's name in which securities owned by another are registered. • A security is held by a broker in street name (at the customer's request) to simplify trading because no signature on the stock certificate is required. A street name may also be used for securities purchased on margin. The word "street" in this term is a reference to Wall Street.

street-name security. See *nominee account* under ACCOUNT.

street sweep. *Mergers & acquisitions. Slang.* A bidder's cancellation of a tender offer followed by the open-market purchase of large blocks of stock in the target corporation.

street time. *Criminal law.* The period between a person's release from prison on parole and a court's revocation of that parole.

strepitus judicialis (**strep**-ə-təs joo-dish-ee-**ay**-lis), *n.* [Law Latin] *Hist.* Disruptive behavior in court.

strict, *adj.* (15c) **1.** Narrow; restricted <strict construction>. **2.** Rigid; exacting <strict statutory terms>. **3.** Severe <strict punishment>. **4.** Absolute; requiring no showing of fault <strict liability>.

strict construction. See CONSTRUCTION.

strict constructionism. See CONSTRUCTIONISM.

strict constructionist. See CONSTRUCTIONIST.

strict foreclosure. See FORECLOSURE.

stricti juris (**strik**-tɪ **joor**-is). [Latin] **1.** Of strict right of law; according to the exact law, without extension or enhancement in interpretation. • This term was often applied to servitudes because they are a restriction on the free exercise of property rights. **2.** *Roman law.* (Of a contract) required to be interpreted strictly on its terms, regardless of circumstances. See BONA FIDES (2).

strict interpretation. See INTERPRETATION.

strictissimi juris (strik-**tis**-ə-mɪ **joor**-is). [Latin] Of the strictest right or law; to be interpreted in the strictest manner. • This term was usu. applied to certain statutes, esp. those imposing penalties or restraining natural liberties.

strict liability. See LIABILITY.

strict-liability crime. See CRIME.

strict-liability offense. See OFFENSE (1).

stricto jure (**strik**-toh **joor**-ee). [Latin] In strict law.

strict products liability. See PRODUCTS LIABILITY.

strict rule. See SPECIFIC-PURPOSE RULE.

strict scrutiny. (1941) *Constitutional law.* The standard applied to suspect classifications (such as race) in equal-protection analysis and to fundamental rights (such as voting rights) in due-process analysis. • Under strict scrutiny, the state must establish that it has a compelling interest that justifies and necessitates the law in question. See COMPELLING-STATE-INTEREST TEST; SUSPECT CLASSIFICATION; FUNDAMENTAL RIGHT. Cf. INTERMEDIATE SCRUTINY; RATIONAL-BASIS TEST. [Cases: Constitutional Law ☞3062, 3901.]

strict settlement. See SETTLEMENT (1).

strict test. *Evidence.* The principle that disclosure of a privileged document, even when inadvertent, results in a waiver of the attorney–client privilege regarding the document, unless all possible precautions were taken to protect the document from disclosure. Cf. LENIENT TEST; HYDRAFLOW TEST. [Cases: Privileged Communications and Confidentiality ☞168.]

strictum jus (**strik**-təm **jəs**). See JUS STRICTUM.

strict underwriting. See *standby underwriting* under UNDERWRITING.

strike, *n.* (1810) **1.** An organized cessation or slowdown of work by employees to compel the employer to meet the employees' demands; a concerted refusal by employees to work for their employer, or to work at their customary rate of speed, until the employer grants the concessions that they seek. — Also termed *walkout.* Cf. LOCKOUT; BOYCOTT; PICKETING. [Cases: Labor and Employment ☞1384.]

ca'canny strike. See *slowdown strike.*

economic strike. A strike resulting from an economic dispute with the employer (such as a wage dispute); a dispute for reasons other than unfair labor practices. • An employer can permanently replace an economic striker but cannot prevent the worker from coming back to an unreplaced position simply because the worker was on strike.

general strike. A strike organized to affect an entire industry.

illegal strike. **1.** A strike using unlawful procedures. **2.** A strike to obtain unlawful objectives, as in a strike to force an employer to stop doing business with a particular company.

jurisdictional strike. A strike resulting from a dispute between members of different unions over work assignments.

organizational strike. See *recognition strike.*

outlaw strike. See *wildcat strike.*

quickie strike. See *wildcat strike.*

recognition strike. A strike by workers seeking to force their employer to acknowledge the union as their collective-bargaining agent. • After the National Labor Relations Act was passed in 1935, recognition strikes became unnecessary. Under the Act, the employer is required to recognize an NLRB-certified union for bargaining purposes. — Also termed *organizational strike.*

secondary strike. A strike against an employer because that employer has business dealings with another employer directly involved in a dispute with the union. See *secondary boycott* under BOYCOTT; *secondary picketing* under PICKETING.

sit-down strike. A strike in which employees occupy the workplace but do not work. See SIT-IN.

slowdown strike. A strike in which the workers remain on the job but work at a slower pace to reduce their output. — Also termed *ca'canny strike.*

sympathy strike. A strike by union members who have no grievance against their own employer but who want to show support for another union involved in a labor dispute. [Cases: Labor and Employment ☞1385.]

whipsaw strike. A strike against some but not all members of a multiemployer association, called for the purpose of pressuring all the employees to negotiate a labor contract. • Employers whose workers are not on strike have the right to lock out employees to exert counterpressure on the union. [Cases: Labor and Employment ☞1385.]

wildcat strike. A strike not authorized by a union or by a collective-bargaining agreement. — Also termed *outlaw strike; quickie strike.*

2. The removal of a prospective juror from the jury panel <a peremptory strike>. See CHALLENGE (2). [Cases: Jury ⇨83–142.] **3.** A failure or disadvantage, as by a criminal conviction <a strike on one's record>. **4.** *Parliamentary law.* A form of the motion to amend by deleting one or more words. See *amendment by striking out* under AMENDMENT (3).

sight strike. The elimination of a veniremember based solely on appearance. See *peremptory challenge* under CHALLENGE (2).

strike, *vb.* (14c) **1.** (Of an employee or union) to engage in a strike <the flight attendants struck to protest the reduction in benefits>. **2.** To remove (a prospective juror) from a jury panel by a peremptory challenge or a challenge for cause <the prosecution struck the panelist who indicated an opposition to the death penalty>. See *peremptory challenge* under CHALLENGE (2). [Cases: Jury ⇨83–142.] **3.** To expunge, as from a record <motion to strike the prejudicial evidence>. [Cases: Federal Civil Procedure ⇨2018.] **4.** *Parliamentary law.* To amend by deleting one or more words. See *amendment by striking out* under AMENDMENT (3). — Also termed (in sense 4) *strike out.*

strikebreaker. See SCAB.

strike down. (1894) To invalidate (a statute); to declare void.

strike fund. A union fund that provides benefits to its members who are on strike, esp. for subsistence while the members are not receiving wages.

strike off. 1. (Of a court) to order (a case) removed from the docket. **2.** (Of an auctioneer or sheriff) to announce, usu. by the falling of the hammer, that an item of personal or real property has been sold.

strike out. See STRIKE (4).

strike price. See PRICE.

strike suit. See SUIT.

strike zone. *Slang.* The period in jury selection in which veniremembers are subject to being struck by peremptory challenge before the jury is seated. • If a court requires 12 jurors and allows each side 10 peremptory strikes, the strike zone would be the first 32 veniremembers.

striking a jury. (1859) The selecting of a jury out of all the candidates available to serve on the jury; esp., the selecting of a special jury. See *struck jury, special jury* under JURY. [Cases: Jury ⇨71.]

striking off the roll. See DISBARMENT.

striking price. See *strike price* under PRICE.

string of title. See CHAIN OF TITLE (1).

strip, *n.* (16c) **1.** The act of separating and selling a bond's coupons and corpus separately. **2.** The act of a tenant who, holding less than the entire fee in land, spoils or unlawfully takes something from the land. [Cases: Landlord and Tenant ⇨55(2).]

STRIP (strip). *abbr.* SEPARATE TRADING OF REGISTERED INTEREST AND PRINCIPAL OF SECURITIES.

stripped mortgage-backed security. See SECURITY.

stripper well. See WELL.

strip search. See SEARCH.

strong-arm clause. See CLAUSE.

strongly corroborated. (18c) (Of testimony) supported from independent facts and circumstances that are powerful, satisfactory, and clear to the court and jury.

strong mark. See *strong trademark* under TRADEMARK.

strong market. See *bull market* under MARKET.

strong trademark. See TRADEMARK.

struck jury. See JURY.

struck off. 1. Removed from an active docket, usu. because of a want of prosecution or jurisdiction. [Cases: Trial ⇨14. **2.** *BrE.* Removed from the register of qualified persons and, in the case of a professional, forbidden to practice. [Cases: Attorney and Client ⇨38, 39.]

structural alteration. See ALTERATION (1).

structural takeover defense. See TAKEOVER DEFENSE.

structural unemployment. See UNEMPLOYMENT.

structure. (15c) **1.** Any construction, production, or piece of work artificially built up or composed of parts purposefully joined together <a building is a structure>. **2.** The organization of elements or parts <the corporate structure>. **3.** A method of constructing parts <the loan's payment structure was a financial burden>.

structured security. See SECURITY.

structured settlement. See SETTLEMENT (2).

student-benefit theory. A principle that allows state funds to be provided to private-school pupils if the allotment can be justified as benefiting the child. • The Supreme Court upheld a Louisiana law that allowed the purchase of textbooks for all children throughout the state — even those in private schools — under this theory. *Cochran v. Louisiana State Bd. of Educ.*, 281 U.S. 370, 50 S.Ct. 335 (1930). — Also termed *child-benefit theory.* [Cases: Schools ⇨3.]

study furlough. See *study release* under RELEASE.

study release. See RELEASE.

stuff gown. 1. The professional robe worn by barristers of the outer bar who have not been appointed Queen's Counsel. **2.** A junior barrister. Cf. SILK GOWN.

stultify, *vb.* (18c) **1.** To make (something or someone) appear stupid or foolish <he stultified opposing counsel's argument>. **2.** To testify about one's own lack of mental capacity. **3.** To contradict oneself, as by denying what one has already alleged.

stultiloquium (stəl-ti-**loh**-kwee-əm). [fr. Latin *stultus* "foolish" + *loqui* "to speak"] *Hist.* A frivolous pleading

punishable by fine. • This may have been the origin of the beaupleader. See BEAUPLEADER.

stumpage (**stəmp**-ij). (1835) **1.** The timber standing on land. **2.** The value of the standing timber. **3.** A license to cut the timber. [Cases: Logs and Logging ☞4.] **4.** The fee paid for the right to cut the timber. [Cases: Logs and Logging ☞1–4.]

stuprum (**st**[**y**]**oo**-prəm), *n.* [Latin] *Roman & civil law.* Disgrace by unchastity; a man's illegal sexual intercourse with a woman, usu. a virgin or widow, or with a male (pederasty). Pl. ***stupra.***

> "The law refers to *stuprum* and adultery indiscriminately and with rather a misuse of terms. But properly speaking adultery is committed with a married woman, the name being derived from children conceived by another (*alter*); *stuprum*, however, is committed against a virgin or a widow; the Greeks call it corruption." *Digest of Justinian* 48.5.6.1 (Papinian, De Adulteriis 1).

STV. See *single transferable vote* under VOTE (1).

style, *n.* **1.** A case name or designation <the style of the opinion is *Connor v. Gray*>. — Also termed *title*. Cf. CAPTION (1). **2.** *Scots law.* A form of writ or deed used in conveyancing. • A book of styles is essentially a formbook; a typical Scottish example is John Hendry's *Styles of Deeds and Instruments* (2d ed. 1862).

stylized drawing. See *special-form drawing* under DRAWING.

s.u. *abbr.* Straight up. • When a prosecutor writes this on a defendant's file, it usu. means that the prosecutor plans to try the case — that is, not enter into a plea bargain.

suable, *adj.* (17c) **1.** Capable of being sued <a suable party>. [Cases: Action ☞14; Parties ☞21.] **2.** Capable of being enforced <a suable contract>. — **suability,** *n.*

sua potestas (**s**[**y**]**oo**-ə pə-**tes**-təs *or* -tas). [Latin] *Hist.* The natural power that one has over oneself.

suapte natura (s[y]oo-**ap**-tee nə-**t**[**y**]**oor**-ə). [Latin] In its own nature — as in *suapte natura sterilia* ("barren of its own nature").

sua sponte (**s**[**y**]**oo**-ə **spon**-tee). [Latin "of one's own accord; voluntarily"] Without prompting or suggestion; on its own motion <the court took notice sua sponte that it lacked jurisdiction over the case>.

sub (səb). [Latin] Under; upon.

sub. See *subsidiary corporation* under CORPORATION.

subagent. See AGENT (2).

subaltern (səb-**awl**-tərn), *n.* An inferior or subordinate officer.

subassignee. See ASSIGNEE.

sub ballivus (səb bə-**li**-vəs), *n.* [Law Latin] *Hist.* An undersheriff; a sheriff's deputy. See BAILIWICK.

subchapter-C corporation. See *C corporation* under CORPORATION.

subchapter-S corporation. See *S corporation* under CORPORATION.

sub colore juris (səb kə-**lor**-ee **joor**-is). [Latin] Under color of right; under an appearance of right.

sub colore officii (səb kə-**lor**-ee ə-**fish**-ee-i). [Law Latin] *Hist.* Under color of office.

subcombination claim. See PATENT CLAIM.

subcommittee. See COMMITTEE.

sub conditione (səb kən-dish-ee-**oh**-nee). [Law Latin] Under condition. • This term creates a condition in a deed.

subcontract. See CONTRACT.

subcontractor. (1834) One who is awarded a portion of an existing contract by a contractor, esp. a general contractor. • For example, a contractor who builds houses typically retains subcontractors to perform specialty work such as installing plumbing, laying carpet, making cabinetry, and landscaping — each subcontractor is paid a somewhat lesser sum than the contractor receives for the work. [Cases: Contracts ☞177, 198.]

sub cura mariti (səb **kyoor**-ə mə-**ri**-ti). [Law Latin] *Hist.* Under the care of one's husband.

sub cura uxoris (səb **kyoor**-ə ək-**sor**-is). [Law Latin] *Hist.* Under the care of one's wife.

sub curia (səb **kyoor**-ee-ə). [Latin] Under law.

sub disjunctione (səb dis-jəngk-shee-**oh**-nee). [Latin] In the alternative.

subditus (**səb**-də-təs). [Latin] *Hist.* Someone under another's power; a vassal.

subdivision, *n.* (15c) **1.** The division of a thing into smaller parts. **2.** A parcel of land in a larger development. — **subdivide,** *vb.*

illegal subdivision. The division of a tract of land into smaller parcels in violation of local subdivision regulations, as when a developer begins laying out streets, installing sewer and utility lines, and constructing houses without the local planning commission's authorization. [Cases: Zoning and Planning ☞372.1.]

legal subdivision. The governmentally approved division of a tract of land into smaller parcels using ordinary and legally recognized methods for surveying and platting land and publicly recording the results. [Cases: Zoning and Planning ☞245, 381.5.]

subdivision exaction. A charge that a community imposes on a subdivider as a condition for permitting recordation of the subdivision map and sale of the subdivided parcels. [Cases: Zoning and Planning ☞382.4.]

subdivision map. (1887) A map that shows how a parcel of land is to be divided into smaller lots, and generally showing the layout and utilities. [Cases: Zoning and Planning ☞29.5, 245.]

sub domino (səb **dom**-ə-noh). [Law Latin] *Hist.* Under a lord.

subfeudum (səb-**fyoo**-dəm). [Law Latin] *Hist.* A subfee.

subinfeudate (səb-in-**fyoo**-dayt), *vb. Hist.* (Of a subvassal) to grant land to another, who then holds the land as the grantor's vassal rather than as the vassal of the grantor's superior. — Also termed *subinfeud* (səb-in-**fyood**).

"[A] more common method of obtaining the annual quota of knights was to *subinfeudate* portions of the baronial lands to individual knights in exchange for their obligations to spend a fixed portion of time annually in the king's or baron's service. A knight who so received a portion of a baron's land would hold *of* his baron in much the same way as the baron held *of* the king." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 4 (2d ed. 1984).

subinfeudation (səb-in-fyoo-**day**-shən), *n. Hist.* The system under which the tenants in a feudal system granted smaller estates to their tenants, who in turn did the same from their pieces of land. • As this system proceeded down the social scale, the lords were deprived of their feudal profits, as a result of which the system was suppressed by the statute *Quia Emptores* in 1290. Instead of subinfeudation, alienation in the modern sense was introduced. Cf. INFEUDATION; SUPERINFEUDATION.

"The first step taken in mitigation of the rigors of the law of feuds, and in favor of voluntary alienations, was the countenance given to the practice of subinfeudations. They were calculated to elude the restraint upon alienation, and consisted in carving out portions of the fief to be held of the vassal by the same tenure with which he held of the chief lord of the fee. The alienation prohibited by the feudal law, all over Europe, was the substitution of a new feudatory in the place of the old one; but subinfeudation was a feoffment by the tenant to hold of himself. The purchaser became his vassal, and the vendor still continued liable to the chief lord for all the feudal obligations. Subinfeudations were encouraged by the subordinate feudatories, because they contributed to their own power and independence; but they were found to be injurious to the fruits of tenure, such as reliefs, marriages and wardships, belonging to the paramount lords." 4 James Kent, *Commentaries on American Law* *443-44 (George Comstock ed., 11th ed. 1866).

subinfeudatory (səb-in-**fyoo**-də-tor-ee), *n.* A tenant holding lands by subinfeudation.

subjacent (səb-**jay**-sənt), *adj.* (16c) Located underneath or below <the land's subjacent support>.

subjacent support. See SUPPORT (4).

subject, *adj.* Referred to above; having relevance to the current discussion <the subject property was then sold to Smith>.

subject, *n.* (14c) **1.** One who owes allegiance to a sovereign and is governed by that sovereign's laws <the monarchy's subjects>.

"Speaking generally, we may say that the terms subject and citizen are synonymous. Subjects and citizens are alike those whose relation to the state is personal and not merely territorial, permanent and not merely temporary. This equivalent, however, is not absolute. For in the first place, the term subject is commonly limited to monarchical forms of government, while the term citizen is more specially applicable in the case of republics. A British subject becomes by naturalisation a citizen of the United States of America or of France. In the second place, the term citizen brings into prominence the rights and privileges of the status, rather than its correlative obligations, while the reverse is the case with the term subject. Finally it is to be noticed that the term subject is capable of a different and wider application, in which it includes all members of the body politic, whether they are citizens (*i.e.*, subjects *stricto sensu*) or resident aliens. All such persons are subjects, all being subject to the power of the state and to its jurisdiction, and as owing to it, at least temporarily, fidelity and obedience." John Salmond, *Jurisprudence* 133 (Glanville L. Williams ed., 10th ed. 1947).

liege subject. See *natural-born subject.*

natural-born subject. A person born within the dominion of a monarchy, esp. England. — Also termed *liege subject.* Cf. NATIONAL.

2. The matter of concern over which something is created <the subject of the statute>. — Also termed (in sense 2) *subject matter.*

subject, *adj.* Referred to above; having relevance to the current discussion <the subject property was then sold to Smith>.

subjection. (14c) **1.** The act of subjecting someone to something <their subjection to torture was unconscionable>. **2.** The condition of a subject in a monarchy; the obligations surrounding such a person <a subject, wherever residing, owes fidelity and obedience to the Crown, while an alien may be released at will from all such ties of subjection>. **3.** The condition of being subject, exposed, or liable; liability <the defendants' subjection to the plaintiffs became clear shortly after the trial began>. — Also termed (in sense 3) *liability; susceptibility.*

subjective, *adj.* (18c) **1.** Based on an individual's perceptions, feelings, or intentions, as opposed to externally verifiable phenomena <the subjective theory of contract — that the parties must have an actual meeting of the minds — is not favored by most courts>. **2.** Personal; individual <subjective judgments about popular music>. Cf. OBJECTIVE.

subjective ethics. See MORAL RELATIVISM.

subjective impossibility. See IMPOSSIBILITY.

subjective meaning. See MEANING.

subjective method. See SHERMAN–SORRELLS DOCTRINE.

subjective novation. See NOVATION.

subjective standard. See STANDARD.

subjective theory of contract. (1928) The doctrine (now largely outmoded) that a contract is an agreement in which the parties have a subjective meeting of the minds. — Often shortened to *subjective theory.* See MEETING OF THE MINDS. Cf. OBJECTIVE THEORY OF CONTRACT. [Cases: Contracts ⇨15.]

subject matter. (16c) **1.** The issue presented for consideration; the thing in which a right or duty has been asserted; the thing in dispute. **2.** PATENTABLE SUBJECT MATTER. — Sometimes written (as a noun) *subject-matter.* See SUBJECT (2); CORPUS (1). — **subject-matter,** *adj.*

subject-matter jurisdiction. See JURISDICTION.

subject-matter-neutral. See NEUTRAL.

subject-matter test. (1974) A method of determining whether an employee's communication with a corporation's lawyer was made at the direction of the employee's supervisors and in the course and scope of the employee's employment, so as to be protected under the attorney–client privilege, despite the fact that the employee is not a member of the corporation's control group. *Harper & Row Pubs., Inc. v. Decker*, 423 F.2d 487 (7th Cir. 1970), *aff'd per curiam by equally divided Court*, 400 U.S. 348, 91 S.Ct. 479 (1971). — Also termed *Decker test*. Cf. CONTROL-GROUP TEST. [Cases: Privileged Communications and Confidentiality ⇨123.]

subject-matter waiver. See WAIVER (1).

subject of an action. The right or property at issue in a lawsuit; the basis of a legal claim. Cf. *object of an action* under OBJECT (2). [Cases: Action ⇨1.]

subject of a right. (1876) **1.** The owner of a right; the person in whom a legal right is vested. **2.** OBJECT OF A RIGHT.

subject to liability, *adj.* (Of a person) susceptible to a lawsuit that would result in an adverse judgment; specif., having engaged in conduct that would make the actor liable for another's injury because the actor's conduct is the legal cause of the injury, the injured party having no disability for bringing the lawsuit. [Cases: Action ⇨14.]

subject to open. (1906) Denoting the future interest of a class of people when this class is subject to a possible increase or decrease in number.

sub judice (səb **joo**-di-see *also* suub **yoo**-di-kay), *adv.* [Latin "under a judge"] (17c) Before the court or judge for determination; at bar <in the case sub judice, there have been no out-of-court settlements>. • Legal writers sometimes use "case sub judice" where "the present case" would be more comprehensible.

subjugation. See DEBELLATIO.

sublease, *n.* A lease by a lessee to a third party, conveying some or all of the leased property for a term shorter than or equal to that of the lessee, who retains a reversion in the lease. — Also termed *subtenancy*; *derivative lease*; and (esp. in England) *underlease*. [Cases: Landlord and Tenant ⇨80.] — **sublease, sublet,** *vb.*

sublessee. (1882) A third party who receives by lease some or all of the leased property from a lessee. — Also termed *subtenant* and (esp. in England) *undertenant*. [Cases: Landlord and Tenant ⇨80.]

sublessor. (1884) A lessee who leases some or all of the leased property to a third party. — Also termed (esp. in England) *underlessor*. [Cases: Landlord and Tenant ⇨80.]

sublicense. (1880) A license or contract granting to a third party a portion or all of the rights granted to the licensee under an original license.

submarine patent. See PATENT (3).

submission, *n.* (14c) **1.** A yielding, or readiness to yield, to the authority or will of another <his resistance ended in an about-face: complete submission>. **2.** A contract in which the parties agree to refer their dispute to a third party for resolution <in their submission to arbitration, they referred to the rules of the American Arbitration Association>. [Cases: Alternative Dispute Resolution ⇨160–174.] **3.** An advocate's argument <neither the written nor the oral submissions were particularly helpful>. — **submit,** *vb.*

submission bond. See BOND (2).

submission date. See DATE.

submission of controversy. 1. The completion of the series of acts by which the parties to a particular dispute place any matter of real controversy existing between them before a court with jurisdiction for a final determination. **2.** A statutory action in which the parties submit their dispute to a court that has jurisdiction, agree on and sign a statement of facts, swear that the controversy is real, and swear that the suit is brought in good faith. [Cases: Submission of Controversy ⇨1.]

submission to a finding. The admission to facts sufficient to warrant a finding of guilt. — Also termed *admission to sufficient facts*.

submission to the jury. (1818) The process by which a judge gives a case to the jury for its consideration and verdict, usu. after all evidence has been presented, arguments have been completed, and jury instructions have been given.

submit, *vb.* To end the presentation of further evidence in (a case) and tender a legal position for decision <case submitted, Your Honor>.

sub modo (səb **moh**-doh). [Latin] Subject to a modification or qualification <the riparian landowner enjoys the property *sub modo*, i.e., subject to the right of the public to reserve enough space for levees, public roads, and the like>.

submortgage. See MORTGAGE.

sub nomine (səb **nom**-ə-nee). [Latin] (1861) Under the name of. • This phrase, typically in abbreviated form, is often used in a case citation to indicate that there has been a name change from one stage of the case to another, as in *Guernsey Memorial Hosp. v. Secretary of Health and Human Servs.*, 996 F.2d 830 (6th Cir. 1993), *rev'd sub nom. Shalala v. Guernsey Memorial Hosp.*, 514 U.S. 87, 115 S.Ct. 1232 (1995). — Abbr. *sub nom.*

subnotation. RESCRIPT (3).

subordinate (sə-**bor**-də-nit), *adj.* (15c) **1.** Placed in or belonging to a lower rank, class, or position <a subordinate lien>. **2.** Subject to another's authority or control <a subordinate lawyer>.

subordinate (sə-**bor**-də-nayt), *vb.* (17c) To place in a lower rank, class, or position; to assign a lower priority to <subordinate the debt to a different class of claims>.

subordinated bond. See *junior bond* under BOND (3).

subordinate debenture. See DEBENTURE.

subordinate debt. See DEBT.

subordinate legislation. See LEGISLATION.

subordinate officer. See OFFICER (1).

subordinate political power. See POLITICAL POWER.

subordination, *n.* **1.** The act or an instance of moving something (such as a right or claim) to a lower rank, class, or position <subordination of a first lien to a second lien>. [Cases: Secured Transactions ☞147.] **2.** *Parliamentary law.* The status and relation of a lower-ranking governing document to a higher-ranking one. • A higher-ranking document supersedes and controls a subordinate document if there is any inconsistency between them. See *governing document* under DOCUMENT. — **subordinate,** *adj.*

subordination clause. **1.** In a legal instrument, a clause that explicitly acknowledges the one party's claim of interest is inferior to that of another party. **2.** A covenant in a junior mortgage enabling the first lien to keep its priority in case of renewal or refinancing. [Cases: Mortgages ☞159.] **3.** In a legal instrument, a clause that explicitly subjects its provisions to those in a higher-ranking document.

subordination agreement. See AGREEMENT.

suborn (sə-**born**), *vb.* [Latin *subonare*, from *sub* "secretly + *ornare* "to furnish; equip"] (16c) **1.** To induce (a person) to commit an unlawful or wrongful act, esp. in a secret or underhanded manner. **2.** To induce (a person) to commit perjury. **3.** To obtain (perjured testimony) from another. — **subornation** (səb-or-**nay**-shən), *n.* — **suborner** (sə-**bor**-nər), *n.*

subornation of perjury. (16c) The crime of persuading another to commit perjury. — Sometimes shortened to *subornation.* [Cases: Perjury ☞13.]

subparagraph form. A style of legal drafting that uses indented subparagraphs for enumerated items; esp., a style of drafting patent claims in this form so as to distinguish clearly between each of the claimed elements. — Also termed *tabular form.* Cf. COLON-SEMICOLON FORM; OUTLINE FORM; SINGLE-PARAGRAPH FORM.

subpartnership. See PARTNERSHIP.

sub pede sigilli (səb **pee**-dee si-**jil**-ī). [Latin] Under the foot of the seal.

subpena. See SUBPOENA.

subpermittee. See PERMITTEE.

subpoena (sə-**pee**-nə), *n.* [Latin "under penalty"] (15c) A writ or order commanding a person to appear before a court or other tribunal, subject to a penalty for failing to comply. — Also spelled *subpena.* [Cases: Witnesses ☞7.] Pl. **subpoenas.**

accommodation subpoena. See *friendly subpoena.*

administrative subpoena. A subpoena issued by an administrative agency to compel an individual to provide information to the agency. • The subpoena may take the form of a *subpoena ad testificandum* or a *subpoena duces tecum.* [Cases: Administrative Law and Procedure ☞357, 358.]

alias subpoena (**ay**-lee-əs sə-**pee**-nə). (18c) A second subpoena issued after an initial subpoena has failed.

deposition subpoena. **1.** A subpoena issued to summon a person to make a sworn statement in a time and place other than a trial. [Cases: Federal Civil Procedure ☞1353; Pretrial Procedure ☞129.] **2.** In some jurisdictions, a subpoena duces tecum. [Cases: Federal Civil Procedure ☞1354; Pretrial Procedure ☞130.]

friendly subpoena. A subpoena issued to a person or entity that is willing to testify or produce documents, but only if legally required to do so. • The subpoena may protect the information provider from retaliation from others because the provider is required to comply. — Also termed *accommodation subpoena.*

subpoena ad testificandum (sə-**pee**-nə ad tes-tə-fi-**kan**-dəm). [Law Latin] (1807) A subpoena ordering a witness to appear and give testimony. [Cases: Witnesses ☞7.]

subpoena duces tecum (sə-**pee**-nə **d**[**y**]**oo**-seez **tee**-kəm *also* **doo**-səz **tay**-kəm). [Law Latin] (18c) A subpoena ordering the witness to appear in court and to bring specified documents, records, or things. — Also termed *deposition subpoena duces tecum.* [Cases: Witnesses ☞16.]

subpoena, *vb.* (17c) **1.** To serve with a subpoena to appear before a court or other tribunal <subpoena the material witnesses>. [Cases: Witnesses ☞7.] **2.** To order the production of (documents or other things) by subpoena duces tecum <subpoena the corporate records>. — Also spelled *subpena.* [Cases: Witnesses ☞16.]

subpoenal (sə-**pee**-nəl), *adj.* (1969) Required or done under penalty, esp. in compliance with a subpoena.

sub potestate (səb poh-tes-**tay**-tee). [Latin] Under the power of another, as with a child or other person not *sui juris.* Cf. SUI JURIS.

sub potestate parentis (səb poh-tes-**tay**-tee pə-**ren**-tis). [Latin] *Hist.* Under the authority of a parent.

sub potestate viri. *Hist.* (Of a wife) under the protection of a husband.

subprime loan. See LOAN.

subreptio (səb-**rep**-shee-oh), *n.* [Latin "surreptitious removal"] *Roman law.* **1.** Theft. **2.** The obtaining of a grant from the emperor under false pretenses. — Also termed (in French law) *subreption.* Pl. ***subreptiones*** (səb-rep-shee-**oh**-neez).

subreptione vel obreptione (səb-rep-shee-**oh**-nee vel ob-rep-shee-**oh**-nee), *adv.* [Latin] *Hist.* By deceit or surprise; by concealing the truth or affirming a falsehood.

subrogate (**səb**-rə-gayt), *vb.* (15c) To substitute (a person) for another regarding a legal right or claim. [Cases: Subrogation ☞1.]

subrogation (səb-rə-**gay**-shən), *n.* (15c) **1.** The substitution of one party for another whose debt the party pays, entitling the paying party to rights, remedies, or

securities that would otherwise belong to the debtor. • For example, a surety who has paid a debt is, by subrogation, entitled to any security for the debt held by the creditor and the benefit of any judgment the creditor has against the debtor, and may proceed against the debtor as the creditor would. Subrogation most commonly arises in relation to insurance policies. [Cases: Subrogation ⚷1, 33.] **2.** The equitable remedy by which such a substitution takes place. **3.** The principle under which an insurer that has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured against a third party with respect to any loss covered by the policy. See EQUITY OF SUBROGATION; ANTISUBROGATION RULE. [Cases: Insurance ⚷3509, 3513.]

> "Subrogation is equitable assignment. The right comes into existence when the surety becomes obligated, and this is important as affecting priorities; but such right of subrogation does not become a cause of action until the debt is fully paid. Subrogation entitles the surety to use any remedy against the principal which the creditor could have used, and in general to enjoy the benefit of any advantage that the creditor had, such as a mortgage, lien, power to confess judgment, to follow trust funds, to proceed against a third person who has promised either the principal or the creditor to pay the debt." Laurence P. Simpson, *Handbook on the Law of Suretyship* 205 (1950).

> "Subrogation simply means substitution of one person for another; that is, one person is allowed to stand in the shoes of another and assert that person's rights against the defendant. Factually, the case arises because, for some justifiable reason, the subrogation plaintiff has paid a debt owed by the defendant." Dan B. Dobbs, *Law of Remedies* § 4.3, at 404 (2d ed. 1993).

conventional subrogation. Subrogation that arises by contract or by an express act of the parties. [Cases: Subrogation ⚷27.]

legal subrogation. Subrogation that arises by operation of law or by implication in equity to prevent fraud or injustice. • Legal subrogation usu. arises when (1) the paying party has a liability, claim, or fiduciary relationship with the debtor, (2) the party pays to fulfill a legal duty or because of public policy, (3) the paying party is a secondary debtor, (4) the paying party is a surety, or (5) the party pays to protect its own rights or property. — Also termed *equitable subrogation.* [Cases: Subrogation ⚷1–25.]

real subrogation. *Civil law.* The substitution of one thing for another.

subrogation clause. 1. *Insurance.* A provision in a property- or liability-insurance policy whereby the insurer acquires certain rights upon paying a claim for a loss under the policy. • These rights include (1) taking legal action on behalf of the insured to recover the amount of the loss from the party who caused the loss, and (2) receiving a full or proportionate amount of the benefits (such as disability compensation) paid to the insured under a statutory plan. **2.** *Oil & gas.* A provision in an oil-and-gas lease permitting the lessee to pay taxes, mortgages, or other encumbrances on the leased property and to recover those payments out of future proceeds under the lease.

subrogative (**səb**-rə-gay-tiv), *adj.* Of or relating to subrogation <subrogative rights>. — Also termed *subrogatory; subrogational.*

subrogee (səb-rə-**gee**). One who is substituted for another in having a right, duty, or claim; esp., the person or entity that assumes the right to attempt to collect on another's claim against a third party by paying the other's claim-related debts or expenses. • An insurance company frequently becomes a subrogee after paying a policy claim, as a result of which it is then in a position to sue a tortfeasor who injured the insured or otherwise caused harm.

subrogor (səb-rə-**gor**). One who allows another to be substituted for oneself as creditor, with a transfer of rights and duties; esp., one who transfers a legal right to collect a claim to another in return for payment of the transferor's claim-related debts or expenses.

sub rosa (səb **roh**-zə), *adj.* [Latin "under the rose"] *Hist.* Confidential; secret; not for publication.

sub salvo et securo conductu (səb **sal**-voh et si-**kyoor**-oh kən-**dək**-t[y]oo). [Law Latin] *Hist.* Under safe and secure conduct. • This phrase was used in writs of habeas corpus.

subscribed capital. See CAPITAL.

subscribed stock. See STOCK.

subscribing witness. See WITNESS.

subscriptio (səb-**skrip**-shee-oh), *n.* [Latin] *Roman law.* **1.** A signature, esp. a name written under or at the bottom of a document to authenticate it; an imperial rescript. **2.** A signature to a will, required in certain cases in addition to the seals of witnesses. Pl. ***subscriptiones*** (səb-skrip-shee-**oh**-neez).

subscription, *n.* (15c) **1.** The act of signing one's name on a document; the signature so affixed. **2.** *Securities.* A written contract to purchase newly issued shares of stock or bonds. — Also termed (in connection with stock) *stock subscription.* [Cases: Corporations ⚷75.1.] **3.** An oral or a written agreement to contribute a sum of money or property, gratuitously or with consideration, to a specific person or for a specific purpose. — Also termed *subscription contract.* **4.** RESCRIPT (3). [Cases: Subscriptions ⚷1.] — **subscribe,** *vb.* — **subscriber,** *n.*

subscription contract. See SUBSCRIPTION (3).

subscription list. An enumeration of subscribers to an agreement, periodical, or service.

subscription price. The fixed price at which investors can buy shares in a new stock offering before the shares are offered to the public. [Cases: Corporations ⚷75, 158.]

subscription privilege. See PREEMPTIVE RIGHT.

subscription right. A certificate evidencing a shareholder's right (known as a *preemptive right*) to purchase newly issued stock before the stock is offered to the public. • Subscription rights have a market value and are actively traded because they allow the holder to

purchase stock at favorable prices. — Also termed *stock right*. See PREEMPTIVE RIGHT. [Cases: Corporations ⚷78, 158.]

subscription warrant. See WARRANT (4).

subscriptor (səb-**skrip**-tor *or* -tər), *n.* [Latin] *Roman law.* **1.** A person who made or signed a written accusation of crime against a particular person. **2.** The witness to a will. Pl. ***subscriptores.***

subsellia (səb-**sel**-ee-ə), *n.* [Latin fr. *sub* "under" + *sella* "seat"] *Roman law.* Lower seats in a court, usu. occupied by the parties or their witnesses, as distinguished from the seat of the tribunal.

subsequent, *adj.* (15c) (Of an action, event, etc.) occurring later; coming after something else.

subsequent-advance rule. *Bankruptcy.* The principle that a preferential transfer by the debtor will not be avoided or rescinded by the debtor's bankruptcy trustee if (1) the creditor extended new value to the debtor after receiving the preferential transfer, (2) the new value is unsecured, and (3) the new value remains unpaid after its transfer. 11 USCA § 547(c)(4). [Cases: Bankruptcy ⚷2613(4).]

subsequent creditor. See CREDITOR.

subsequente copula (səb-si-**kwen**-tee **kop**-yə-lə). [Law Latin] *Hist.* Carnal intercourse having followed.

subsequent negligence. See NEGLIGENCE.

subsequent-negligence doctrine. See LAST-CLEAR-CHANCE DOCTRINE.

subsequent remedial measure. (*usu. pl.*) (1956) *Evidence.* An action taken after an event, which, if taken before the event, would have reduced the likelihood of the event's occurrence. • Evidence of subsequent remedial measures, such as repairs made after an accident or the installation of safety equipment, is not admissible to prove negligence, but it may be admitted to prove ownership, control, feasibility, or the like. Fed. R. Evid. 407. [Cases: Evidence ⚷219.10.]

subservant. See *subagent* under AGENT (2).

subsidence (səb-**sīd**-ən[t]s), *n.* Any downward movement of the soil from its natural position; esp., a sinking of soil.

subsidiarie (səb-sid-ee-**air**-ee-ee). [Law Latin] *Scots law.* Subsidiarily.

subsidiary (səb-**sid**-ee-er-ee), *adj.* Subordinate; under another's control. See *subsidiary corporation* under CORPORATION.

subsidiary, *n.* See *subsidiary corporation* under CORPORATION.

subsidiary corporation. See CORPORATION.

subsidiary merger. See *triangular merger* under MERGER.

subsidiary motion. See MOTION (2).

subsidy (**səb**-sə-dee), *n.* (14c) **1.** A grant, usu. made by the government, to any enterprise whose promotion is considered to be in the public interest. • Although governments sometimes make direct payments (such as cash grants), subsidies are usu. indirect. They may take the form of research-and-development support, tax breaks, provision of raw materials at below-market prices, or low-interest loans or low-interest export credits guaranteed by a government agency. — Also termed *grant*. [Cases: United States ⚷82(1).] **2.** A specific financial contribution by a foreign government or public entity conferring a benefit on exporters to the United States. • Such a subsidy is countervailable under 19 USCA §§ 1671, 1677. [Cases: Customs Duties ⚷21.5(2).]

countervailable subsidy (kown-tər-**vayl**-ə-bəl). A foreign government's subsidy on the manufacture of goods exported to another country, giving rise to the importing country's entitlement to impose a countervailing duty on the goods if their import caused or threatens to cause material injury to domestic industry. See *countervailing duty* under DUTY (4). [Cases: Customs Duties ⚷21.5(2).]

3. *Int'l law.* Financial assistance given by one nation to another to preserve the receiving nation's neutrality or to support it in a war, even if the donor nation does not directly participate. — **subsidize,** *vb.*

sub sigillo (səb si-**jil**-oh). [Latin "under the seal (of confession)"] *Hist.* In the strictest confidence.

sub silentio (səb si-**len**-shee-oh). [Latin] (17c) Under silence; without notice being taken; without being expressly mentioned (such as precedent *sub silentio*).

subsistence. (17c) Support; means of support. See NECESSARIES.

sub spe reconciliationis (səb **spee** rek-ən-sil-ee-ay-shee-**oh**-nis). [Latin] *Hist.* Under the hope of reconcilement.

substance. (14c) **1.** The essence of something; the essential quality of something, as opposed to its mere form <matter of substance>. **2.** Any matter, esp. an addictive drug <illegal substance> <abuse of a substance>.

substance-abuse evaluation and treatment. (1983) A drug offender's court-ordered participation in a drug rehabilitation program. • This type of treatment is esp. common in DUI cases. — Abbr. SAET.

substantial-capacity test. (1968) *Criminal law.* The Model Penal Code's test for the insanity defense, stating that a person is not criminally responsible for an act if, as a result of a mental disease or defect, the person lacks substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the law. • This test combines elements of both the *McNaghten* rules and the irresistible-impulse test by allowing consideration of both volitional and cognitive weaknesses. This test was formerly used by the federal courts and many states, but since 1984 many jurisdictions (including the federal courts) — in response to the acquittal by reason of insanity of would-be presidential assassin John Hinckley — have narrowed the insanity defense and adopted a new test resembling the *McNaghten* rules, although portions of the substantial-capacity test

continue to be used. Model Penal Code § 4.01. — Also termed *Model Penal Code test*; *MPC test*; *American Law Institute test*; *ALI test*. See INSANITY DEFENSE. [Cases: Criminal Law ⚷48.]

substantial-cause test. (1929) *Torts.* The principle that causation exists when the defendant's conduct is an important or significant contributor to the plaintiff's injuries. — Also termed *substantial-factor test*. Cf. BUT-FOR TEST. [Cases: Negligence ⚷380.]

substantial-certainty test. *Copyright.* The test for deciding whether a second work was copied from the first. • The question is whether a reasonable observer would conclude with substantial certainty that the second work is a copy. [Cases: Copyrights and Intellectual Property ⚷53(1).]

substantial change in circumstances. See CHANGE IN CIRCUMSTANCES.

substantial-compliance rule. See SUBSTANTIAL-PERFORMANCE DOCTRINE.

substantial-continuity doctrine. A principle for holding a successor corporation liable for the acts of its predecessor corporation, if the successor maintains the same business as the predecessor, with the same employees, doing the same jobs, for the same supervisors, under the same working conditions, and using the same production processes to produce the same products for the same customers. — Also termed *continuity-of-enterprise doctrine*. Cf. MERE-CONTINUATION DOCTRINE. [Cases: Corporations ⚷445.1.]

substantial damages. See DAMAGES.

substantial equivalent. *Patents.* A device or process that falls outside a patent claim's literal scope but performs the same function in substantially the same way. — Also termed *substantial equivalent of a patented device*. See **tripartite test.** [Cases: Patents ⚷237.]

substantial error. See ERROR (2).

substantial evidence. See EVIDENCE.

substantial-evidence jurisdiction. See *significant-connection jurisdiction* under JURISDICTION.

substantial-evidence rule. (1938) The principle that a reviewing court should uphold an administrative body's ruling if it is supported by evidence on which the administrative body could reasonably base its decision. [Cases: Administrative Law and Procedure ⚷791.]

substantial-factor test. (1929) See SUBSTANTIAL-CAUSE TEST.

substantial justice. See JUSTICE (1).

substantially justified. (Of conduct, a position, etc.) having a reasonable basis in law and in fact. • Under the Equal Access to Justice Act, a prevailing party in a lawsuit against the government will be unable to recover its attorney's fees if the government's position is substantially justified. [Cases: United States ⚷147(10).]

substantial new question of patentability. *Patents.* A significant, freshly arisen issue relating to the validity of a patent, triggering the statutory threshold required for the Director of the U.S. Patent and Trademark Office to order that a patent's validity be reexamined. • An examination cannot be reopened solely on issues of prior art and issues that came up during the original examination. The Director's determination is final and not appealable. 35 USCA §§ 303–04. [Cases: Patents ⚷136.]

substantial noninfringing use. See COMMERCIALLY SIGNIFICANT NONINFRINGING USE.

substantial performance. See PERFORMANCE.

substantial-performance doctrine. (1936) The rule that if a good-faith attempt to perform does not precisely meet the terms of an agreement or statutory requirements, the performance will still be considered complete if the essential purpose is accomplished, subject to a claim for damages for the shortfall. • Under the Uniform Probate Code, a will that is otherwise void because some formality has not been followed may still be valid under the substantial-performance doctrine. But this rule is not widely followed. — Also termed *substantial-compliance rule*. Cf. PERFECT-TENDER RULE. [Cases: Contracts ⚷294.]

> "There has arisen in the United States an indefinite doctrine sometimes referred to as that of substantial performance. It is a doctrine that deals not with performance of a duty as a discharge thereof but with performance by the plaintiff as a condition precedent to the active duty of performance by the defendant. Where a defendant is sued for non-performance he cannot avoid paying damages by showing that he substantially performed or came near performing or gave something equally good; but he can always successfully defend if in fact some condition precedent to his own duty has not been fulfilled by the plaintiff." William R. Anson, *Principles of the Law of Contract* 422 (Arthur L. Corbin ed., 3d Am. ed. 1919).

substantial possession. See *pedis possessio* under POSSESSIO.

substantial right. See RIGHT.

substantial similarity. See SIMILARITY.

substantial-step test. (1980) *Criminal law.* The Model Penal Code's test for determining whether a person is guilty of attempt, based on the extent of the defendant's preparation for the crime, the criminal intent shown, and any statements personally made that bear on the defendant's actions. Model Penal Code § 5.01(1)(c). See ATTEMPT. [Cases: Criminal Law ⚷44.]

substantiate, *vb.* (17c) To establish the existence or truth of (a fact, etc.), esp. by competent evidence; to verify.

substantive consolidation. See CONSOLIDATION.

substantive crime. See *substantive offense* under OFFENSE (1).

substantive due process. See DUE PROCESS.

substantive evidence. See EVIDENCE.

substantive examination. *Patents.* A patent examiner's in-depth study of a patent application to determine whether a patent should be granted.

substantive felony. See *substantive offense* under OFFENSE (1).

substantive law (**səb**-stən-tiv). (18c) The part of the law that creates, defines, and regulates the rights, duties, and powers of parties. Cf. PROCEDURAL LAW.

> "So far as the administration of justice is concerned with the application of remedies to violated rights, we may say that the substantive law defines the remedy and the right, while the law of procedure defines the modes and conditions of the application of the one to the other." John Salmond, *Jurisprudence* 476 (Glanville L. Williams ed., 10th ed. 1947).

substantive main motion. See *original main motion* under MOTION (2).

substantive motion. See *original main motion* under MOTION (2).

substantive offense. See OFFENSE (1).

substantive right. See RIGHT.

substantive rule. See LEGISLATIVE RULE.

substantive unconscionability. See UNCONSCIONABILITY.

substitute, *n.* **1.** One who stands in another's place <a substitute for a party>. See SUBSTITUTION OF PARTIES; SUBROGATION. **2.** *Civil law.* A person named in a will as heir to an estate after the estate has been held and then passed on by another specified person (called the *institute*). See INSTITUTE (5). **3.** *Parliamentary law.* A form of the motion to amend by replacing one or more words with others. See *amendment by substituting* under AMENDMENT (3). **4.** *Scots law.* A deputy. — **substitute,** *vb.*

substitute amendment. See AMENDMENT (3).

substitute application. See PATENT APPLICATION.

substituted agreement. See NOVATION.

substituted basis. See BASIS.

substituted complaint. See *amended complaint* under COMPLAINT.

substituted contract. See CONTRACT.

substituted executor. See EXECUTOR.

substituted-judgment doctrine. (1967) A principle that allows a surrogate decision-maker to attempt to establish, with as much accuracy as possible, what health-care decision an incompetent patient would make if he or she were competent to do so. • The standard of proof is by clear and convincing evidence. Generally, the doctrine is used for a person who was once competent but no longer is. — Also termed *doctrine of substituted judgment.* Cf. SPIRITUAL-TREATMENT EXEMPTION; *medical neglect* under NEGLECT. [Cases: Health ☞910.]

substitute drawing. See DRAWING.

substituted service. See SERVICE (2).

substitute gift. See GIFT.

substitute information in lieu of indictment. See INFORMATION.

substitute obligation. See OBLIGATION.

substitute specification. See SPECIFICATION (3).

substitutio heredis (səb-stə-**t**[**y**]**oo**-shee-oh hə-**ree**-dis). [Latin] *Roman law.* **1.** See SUBSTITUTION (3). **2.** See SUBSTITUTION (4).

substitution. (14c) **1.** A designation of a person or thing to take the place of another person or thing. **2.** The process by which one person or thing takes the place of another person or thing. [Cases: Federal Civil Procedure ☞351; Parties ☞57.] **3.** *Parliamentary law.* An amendment by replacing one or more words with others. See *amendment by substituting* under AMENDMENT (3). **4.** *Roman law.* The nomination of a person to take the place of a previously named heir who has refused or failed to accept an inheritance. — Also termed *common substitution*; *vulgar substitution.* **5.** *Roman law.* The nomination of a person to take the place of, or to succeed, a descendant who is under the age of puberty and in the *potestas* of the testator, if the descendant has died before reaching puberty. • This type of substitution was known as a *pupillary substitution.* If a descendant of any age failed to take by reason of lunacy, the substitution was known as an *exemplary substitution* or *quasi-pupillary substitution.* **6.** *Roman law.* A testator's designation of a person to whom the property was to be given by the person named as heir, or by the heir of that person. — Also termed *fideicommissary substitution.* See FIDEICOMMISSUM. **7.** *Civil law.* The designation of a person to succeed another as beneficiary of an estate, usu. involving a fideicommissum. — Also termed (in senses 6 & 7) *fideicommissary substitution.* [Cases: Wills ☞553.]

prohibited substitution. *Louisiana law.* The designation of a person who is not a trustee to take full ownership of property and deliver it to another designated person at death. • The first donee is called the *institute*, the second the *substitute.* See INSTITUTE (5); SUBSTITUTE (2). [Cases: Wills ☞553.]

substitutional, *adj.* (14c) Capable of taking or supplying the position of another <substitutional executor> <substitutional issue>. — Also termed *substitutionary.*

substitutional gift. See *substitute gift* under GIFT.

substitutional legacy. See LEGACY.

substitutional remedy. See REMEDY.

substitutionary. See SUBSTITUTIONAL.

substitutionary evidence. See *secondary evidence* under EVIDENCE.

substitutionary remedy. See REMEDY.

substitution-of-judgment doctrine. 1. *Administrative law.* The standard for reviewing an agency's decision, by which a court uses its own independent judgment in interpreting laws and administrative regulations — rather than deferring to the agency — when the agency's interpretation is not instructive or the regulations do not involve matters requiring the agency's expertise. [Cases: Administrative Law and Procedure ☞760, 784, 796.] **2.** *Wills & estates.* The principle that

a guardian, conservator, or committee of an incompetent person may make gifts out of that person's estate.

substitution of parties. The replacement of one litigant by another because of the first litigant's death, incompetency, transfer of interest, or, when the litigant is a public official, separation from office. [Cases: Federal Civil Procedure ☞352; Parties ☞57.]

substraction (səb-**strak**-shən), *n.* (1814) The secret misappropriation of property, esp. from a decedent's estate.

subsume (səb-**s**[**y**]**oom**), *vb.* (1825) To judge as a particular instance governed by a general principle; to bring (a case) under a broad rule. — **subsumption** (səb-**səmp**-shən), *n.*

sub suo periculo (səb **s**[**y**]**oo**-oh pə-**rik**-[y]ə-loh). [Law Latin] *Hist.* At his own risk.

subsurety (səb-**shuur**[-ə]-tee). (1916) A person whose undertaking is given as additional security, usu. conditioned not only on nonperformance by the principal but also on nonperformance by an earlier promisor as well; a surety with the lesser liability in a subsuretyship. [Cases: Principal and Surety ☞191.]

subsuretyship (səb-**shuur**[-ə]-tee-ship). (1967) The relation between two (or more) sureties, in which a principal surety bears the burden of the whole performance that is due from both sureties; a relationship in which one surety acts as a surety for another. [Cases: Principal and Surety ☞191.]

subsurface interest. 1. A landowner's right to the minerals and water below the property. [Cases: Mines and Minerals ☞47; Waters and Water Courses ☞100, 101.] **2.** A similar right held by another through grant by, or purchase from, a landowner. Cf. SURFACE INTEREST; MINERAL INTEREST.

subtenancy. See SUBLEASE.

subtenant. See SUBLESSEE.

subterfuge (**səb**-tər-fyooj). (16c) A clever plan or idea used to escape, avoid, or conceal something <a subterfuge to avoid liability under a statute>.

subterfuge arrest. See ARREST.

subterranean water. See WATER.

subtraction. 1. The process of deducting one number from another number to determine the difference. **2.** *Hist.* The act of neglecting a duty or service that one party owes to another, esp. one that arises out of land tenure.

> "Subtraction, which is the fifth species of injuries affecting a man's real property, happens, when any person who owes any suit, duty, custom, or service to another, withdraws or neglects to perform it. It differs from a disseisin, in that *this* is committed without any denial of the right, consisting merely in non-performance; *that* strikes at the very title of the party injured, and amounts to an ouster or actual dispossession. Subtraction however, being clearly an injury, is remediable by due course of law: but the remedy differs according to the nature of the services; whether they be due by virtue of any tenure, or by custom only." 3 William Blackstone, *Commentaries on the Laws of England* 230 (1768).

subtraction of conjugal rights. *Hist.* The act of a husband and wife unlawfully living apart.

subtrahend (**səb**-trə-hend). In a mathematical equation, the amount subtracted from another number (the minuend) to arrive at a remainder or balance. • The term is used in law in a variety of accounting contexts. Cf. MINUEND.

suburbani (səb-ər-**bay**-nī), *n.* [Latin] *Roman law.* **1.** Husbandmen. **2.** Large country estates just outside Rome.

subvention (səb-**ven**-shən). A grant of financial aid or assistance; a subsidy. [Cases: United States ☞82.]

subversion. (14c) The process of overthrowing, destroying, or corrupting <subversion of legal principles> <subversion of the government>.

> "Subversion can succeed where diplomacy has failed. Subversion exceeds the bounds of diplomacy in that it employs methods which diplomacy abhors; it does not wince at assassination, riot, pillage, and arson, if it believes these to be useful in the attainment of its ends. Subversion is a form of war. It may include the use of propaganda . . . to sway the thinking and action of influential social groups, especially attempting to discredit the leadership of the target area, labeling it as the 'tool' of . . . any convenient target for emotional hatred. By inflaming passion, the purveyors of violent propaganda can stir up peaceful citizens so that in minutes they are transformed into a terrifying mob. The art of subversion has developed the technique of the manipulation of mobs to a high degree." T. Wyckoff, *War by Subversion*, 59 South Atlantic Q. 36 (1960).

> "Prior to World War II, subversive activities were thought to cover cases where states attempted to achieve certain political ends of fomenting civil strife in another state or by supporting rebellion against the legally established government of another state by giving to the rebels supplies of personnel, training facilities, war materials, or munitions and by engaging in hostile propaganda against the victim state and its government. . . . By the beginning of World War II, the concept of subversion had been expanded to include the attempt of one state to weaken or overthrow the government of another by means of infiltration of its governmental apparatus with conspirators who strongly opposed the domestic policy of their own government and willingly served as clandestine instruments in the conduct of an alien state's foreign policy. But with increased militancy of modern ideologies, . . . subversive activities are no longer seen in many quarters as advancing the foreign policy of a nation or nations, but rather are thought to advance universal human values, i.e., the specific ideological theory adhered to." Ann Van Wynen Thomas & A.J. Thomas Jr., *The Concept of Aggression in International Law* 72-73 (1972).

> "Today, the term *subversion* designates all illegal activities, whether direct or indirect, overt or covert, conducted under the auspices of a state and designed to overthrow the established government or vitally disrupt the public order of another state. Subversion combines psychological, political, social, and economic actions, as well as active military or paramilitary operations, and it is generally a sustained, long-run, intermeshed, and coordinated process. Consequently, it is usually impossible to place acts of subversion into neat little categorical definitions. Subversion, being a technique of opportunity, is successful mainly in areas where social and political revolution is at least incipient." Ann Van Wynen Thomas & A.J. Thomas Jr., *The Concept of Aggression in International Law* 80-81 (1972).

Subversive Activities Control Act of 1950. See MCCARRAN ACT.

subversive activity. (1939) A pattern of acts designed to overthrow a government by force or other illegal means.

subversive propaganda. See PROPAGANDA.

success fee. See FEE (1).

successful party. See *prevailing party* under PARTY (2).

successio (sək-**sesh**-ee-oh), *n.* [Latin] *Roman law.* A succession to something, as to an estate by will or by the laws of intestacy.

successio in universum jus (sək-**ses**[**h**]-ee-oh in yoo-ni-vər-səm jəs). [Latin "succession to universal right"] *Roman law.* The succession on death to the entirety of a deceased person's assets and liabilities. See *hereditas jacens* under HEREDITAS.

succession, *n.* (14c) **1.** The act or right of legally or officially taking over a predecessor's office, rank, or duties. **2.** The acquisition of rights or property by inheritance under the laws of descent and distribution; DESCENT (1). [Cases: Descent and Distribution ⇨1–43.] — **succeed,** *vb.*

hereditary succession. See *intestate succession.*

intestate succession. (18c) **1.** The method used to distribute property owned by a person who dies without a valid will. **2.** Succession by the common law of descent. — Also termed *hereditary succession; descent and distribution.* See DESCENT (1). Cf. *testate succession.* [Cases: Descent and Distribution ⇨20–43.]

irregular succession. (17c) Succession by special laws favoring certain persons or the state, rather than heirs (such as testamentary heirs) under the ordinary laws of descent. [Cases: Descent and Distribution ⇨1.]

legal succession. (18c) The succession established by law, usu. in favor of the nearest relation of a deceased person.

lucrative succession. *Scots law.* See PRAECEPTIO HAEREDITATIS.

natural succession. (18c) Succession between natural persons, as in descent on the death of an ancestor. [Cases: Descent and Distribution ⇨20–43.]

testamentary succession. *Civil law.* Succession resulting from the designation of an heir in a testament executed in the legally required form. [Cases: Descent and Distribution ⇨44.]

testate succession. (18c) The passing of rights or property by will. Cf. *intestate succession.* [Cases: Wills ⇨1.]

universal succession. Succession to an entire estate of another at death. • This type of succession carries with it the predecessor's liabilities as well as assets. Originally developed by Roman law and later continued by civil law, this concept has now been widely adopted as an option endorsed and authorized by the Uniform Probate Code. La. Civ. Code art. 3506(28).

vacant succession. *Civil law.* **1.** A succession that fails either because there are no known heirs or because the heirs have renounced the estate. **2.** An estate that has suffered such a failure. See ESCHEAT.

3. The right by which one group, in replacing another group, acquires all the goods, movables, and other chattels of a corporation. [Cases: Corporations ⇨445.1.] **4.** The continuation of a corporation's legal status despite changes in ownership or management. — Also termed *artificial succession.* [Cases: Corporations ⇨1.1.]

perpetual succession. The continuous succession of a corporation — despite changes in shareholders and officers — for as long as the corporation legally exists. [Cases: Corporations ⇨36.]

> "As a general rule, the words 'perpetual succession,' as used in charters, often in connection with a further provision limiting the period of corporate existence to a certain number of years, mean nothing more than that the corporation shall have continuous and uninterrupted succession so long as it shall continue to exist as a corporation, and are not intended to define its duration." 18 Am. Jur. 2d *Corporations* § 69, at 883 (1985).

successional, *adj.* (14c) Of or relating to acquiring rights or property by inheritance under the laws of descent and distribution.

succession duty. See DUTY (4).

succession tax. See *inheritance tax* (1) under TAX.

successio praedilecta (sək-**ses**[**h**]-ee-oh pree-di-**lek**-tə). [Law Latin] *Hist.* A preferred succession; a succession that the testator prefers.

successive, *adj.* **1.** *Archaic.* (Of an estate) hereditary. **2.** (Of persons, things, appointments, etc.) following in order; consecutive.

successive polygamy. See POLYGAMY (2).

successive tortfeasors. See TORTFEASOR.

successive-writ doctrine. (1987) *Criminal procedure.* The principle that a second or supplemental petition for a writ of habeas corpus may not raise claims that were heard and decided on the merits in a previous petition. Cf. ABUSE-OF-THE-WRIT DOCTRINE. [Cases: Habeas Corpus ⇨894.]

successor. (14c) **1.** A person who succeeds to the office, rights, responsibilities, or place of another; one who replaces or follows a predecessor. **2.** A corporation that, through amalgamation, consolidation, or other assumption of interests, is vested with the rights and duties of an earlier corporation. [Cases: Corporations ⇨445.1, 589, 590.]

particular successor. *Civil law.* One who succeeds to rights and obligations that pertain only to the property conveyed.

singular successor. One who succeeds to a former owner's rights in a single piece of property.

statutory successor. One who succeeds to the assets of a corporation upon its dissolution; specif., the person to whom all corporate assets pass upon a corporation's dissolution according to the statute of the state of incorporation applicable at the time of the

dissolution. See Restatement (Second) of Conflict of Laws § 388 cmt. a (1971). [Cases: Corporations ☞ 619.]

universal successor. **1.** One who succeeds to all the rights and powers of a former owner, as with an intestate estate or an estate in bankruptcy. **2.** *Louisiana law.* An heir or legatee who succeeds in the entire estate of the deceased or a specified portion of it, rather than by particular title as legatee of a specific thing. • A universal successor succeeds in all of the decedent's rights and charges, whereas the particular legatee succeeds only to the rights and charges pertaining to the bequeathed thing. La. Civ. Code art. 3506(28).

successor agent. See AGENT (2).

successor fiduciary. See FIDUCIARY.

successor guardian. See GUARDIAN.

successor in interest. (1832) One who follows another in ownership or control of property. • A successor in interest retains the same rights as the original owner, with no change in substance.

successor titulo lucrativo post contractum debitum (sək-**ses**-or [*or* -ər] **tich**-ə-loh loo-krə-**ti**-voh pohst kən-**trak**-təm **deb**-i-təm). [Law Latin] *Hist.* A successor under a lucrative title after debt has been contracted. • Such a successor is liable to pay all debts contracted by the grantor.

successor trustee. See TRUSTEE (1).

sucesión legítima (soo-se-**syon** lay-**hee**-tee-mah). *Spanish law.* The process of regular inheritance, the rules of which may not be altered by will. *See Ortiz De Rodriguez v. Vivoni*, 201 U.S. 371, 376–77, 26 S.Ct. 475, 476 (1906).

such, *adj.* (bef. 12c) **1.** Of this or that kind <she collects a variety of such things>. **2.** That or those; having just been mentioned <a newly discovered Fabergé egg will be on auction next week; such egg is expected to sell for more than $500,000>.

sudden-and-accidental pollution exclusion. See *pollution exclusion* under EXCLUSION (3).

sudden-death jurisdiction. *Wills & estates.* A jurisdiction in which a will once revoked cannot be revived, and instead must be reexecuted. See REVIVAL (2).

sudden-emergency doctrine. See EMERGENCY DOCTRINE (1).

sudden heat. See HEAT OF PASSION.

sudden heat and passion. See HEAT OF PASSION.

sudden heat of passion. See HEAT OF PASSION.

sudden-onset rule. (1981) The principle that medical testimony is unnecessary to prove causation of the obvious symptoms of an injury that immediately follows a known traumatic incident. [Cases: Damages ☞ 185(1).]

sudden passion. See HEAT OF PASSION.

sudden-peril doctrine. See EMERGENCY DOCTRINE (1).

sudden-peril rule. See EMERGENCY DOCTRINE (1).

sue, *vb.* To institute a lawsuit against (another party).

sue-and-labor clause. *Marine insurance.* A provision in property- and marine-insurance policies requiring the insured to protect damaged property against further loss. • The clause generally requires the insured to "sue and labor" to protect the insured party's interests. — Also termed *rescue clause.* [Cases: Insurance ☞ 2195, 2245(2).]

> "Some insurance today is written against 'all risks' . . . . Besides the perils clause . . . recovery under the policy can be had on the entirely separate 'sue and labor' clause . . . . Under this clause, the underwriter may become liable for certain charges incurred by the assured in caring for the insured property, whether or not there is any actual loss or damage. Where sue-and-labor charges are incurred and loss also occurs, the underwriter may become liable for more than the policy amount, which limits only a claim for loss of or damage to the goods or vessel." Grant Gilmore & Charles L. Black Jr., *The Law of Admiralty* § 2-10, at 75 (2d ed. 1975).

sue facts. (1980) Facts that determine whether a party should bring a lawsuit; esp., facts determining whether a shareholder-derivative action should be instituted under state law.

sue out, *vb.* (15c) **1.** To apply to a court for the issuance of (a court order or writ). **2.** To serve (a complaint) on a defendant.

suerte (**swer**-tə). *Spanish law.* **1.** Chance; destiny; fate. **2.** A small plot of land. **3.** Land within a municipality's boundaries, reserved for cultivating or planting because of its proximity to water. • This term appears in the caselaw of states that were formerly Spanish or Mexican possessions.

suffer, *vb.* (14c) **1.** To experience or sustain physical or emotional pain, distress, or injury <suffer grievously><suffer damages>. [Cases: Damages ☞ 31, 57.1.] **2.** To allow or permit (an act, etc.) <to suffer a default>.

sufferance (**səf**-ər-ənts *or* **səf**-rənts). (14c) **1.** Toleration; passive consent. **2.** The state of one who holds land without the owner's permission. See *tenancy at sufferance* under TENANCY. **3.** A license implied from the omission to enforce a right.

sufferance wharves. *Hist. English law.* Wharves designated by the Commissioner of the Customs to receive goods before any duties must be paid.

sufferentia pacis (səf-ə-**ren**-shee-ə **pay**-sis), *n.* [Latin] A grant of peace; a truce; an armistice.

suffering a recovery. *Hist.* A conveyor's act of allowing, for the purposes of a conveyance, a fictitious action to be brought by the conveyee and a judgment to be recovered for the land in question.

sufficiency of disclosure. See ADEQUACY OF DISCLOSURE.

sufficiency-of-evidence test. (1972) *Criminal procedure.* **1.** The guideline for a grand jury considering whether to indict a suspect: if all the evidence presented were uncontradicted and unexplained, it would warrant a

conviction by the fact-trier. [Cases: Indictment and Information ⇨10.2.] **2.** A standard for reviewing a criminal conviction on appeal, based on whether enough evidence exists to justify the fact-trier's finding of guilt beyond a reasonable doubt. — Also termed *sufficiency-of-the-evidence test*. [Cases: Criminal Law ⇨1159.2(7).]

sufficient, *adj.* Adequate; of such quality, number, force, or value as is necessary for a given purpose <sufficient consideration> <sufficient evidence>.

sufficient cause. 1. See *good cause* under CAUSE (2). **2.** PROBABLE CAUSE.

sufficient consideration. See CONSIDERATION (1).

sufficient evidence. See *satisfactory evidence* under EVIDENCE.

suffragan (**sə**f-rə-gən *or* -jən). A titular bishop ordained to assist a bishop of the diocese in the church business; a deputy or assistant bishop. • Suffragans were originally appointed only to replace absent bishops and were called *chorepiscopi* ("bishops of the county"), as distinguished from the regular bishops of the city or see.

suffrage (**sə**f-rij). (14c) **1.** The right or privilege of casting a vote at a public election. — Also termed *right to vote*. [Cases: Elections ⇨1.]

> "In the United States suffrage is a privilege, franchise or trust conferred by the people upon such persons as it deems fittest to represent it in the choice of magistrates or in the performance of political duties which it would be inexpedient or inconvenient for the people to perform in a body. The person upon whom the franchise is conferred is called an elector or voter. No community extends suffrage to all persons, but places such restrictions upon it as may best subserve the ends of government." George W. McCrary, *A Treatise on the American Law of Elections* § 1, at 2 (Henry L. McCune ed., 4th ed. 1897).

2. A vote; the act of voting.

suffragium (sə-**fray**-jee-əm), *n.* [Latin "voting tablet"] *Roman law.* **1.** A vote; the right to vote. **2.** A recommendation of someone for a special privilege or office.

suggested retail price. See PRICE.

suggestibility, *n.* The readiness with which a person accepts another's suggestion. — **suggestible,** *adj.*

suggestio falsi (səg-**jes**-tee-oh **fal**-sɪ *or* **fawl**-sɪ). [Latin] A false representation or misleading suggestion. Cf. SUPPRESSIO VERI.

suggestion, *n.* (14c) **1.** An indirect presentation of an idea <the client agreed with counsel's suggestion to reword the warranty>. **2.** *Procedure.* A statement of some fact or circumstance that will materially affect the further proceedings in the case <suggestion for rehearing en banc>. **3.** *Archaic. Wills & estates.* UNDUE INFLUENCE. — **suggest** (for senses 1 & 2), *vb.*

suggestion of bankruptcy. (1869) A pleading by which a party notifies the court that the party has filed for bankruptcy and that, because of the automatic stay provided by the bankruptcy laws, the court cannot take further action in the case. [Cases: Bankruptcy ⇨3418.]

suggestion of death. (18c) A pleading filed by a party, or the party's representatives, by which the court is notified that a party to a suit has died. [Cases: Federal Civil Procedure ⇨353–357, 361; Parties ⇨61.]

suggestion of error. (1811) An objection made by a party to a suit, indicating that the court has committed an error or that the party wants a rehearing of a particular issue. [Cases: Appeal and Error ⇨758, 829; Criminal Law ⇨1133.]

suggestion on the record. A formal written or oral statement informing the court of an important fact that may require a stay of proceedings or affect the court's decision. • Suggestions on the record include suggestion of bankruptcy, suggestion of death, and suggestion of error.

suggestive interrogation. See LEADING QUESTION.

suggestive mark. See *suggestive trademark* under TRADEMARK.

suggestive name. See *suggestive trademark* under TRADEMARK.

suggestive question. See LEADING QUESTION.

suggestive trademark. See TRADEMARK.

sui. See SUI HEREDES.

suicide, *n.* (17c) **1.** The act of taking one's own life. — Also termed *self-killing*; *self-destruction*; *self-slaughter*; *self-murder*; *felony-de-se*; *death by one's own hand*. [Cases: Suicide ⇨1.]

assisted suicide. (1976) The intentional act of providing a person with the medical means or the medical knowledge to commit suicide. — Also termed *assisted self-determination*; (when a doctor provides the means) *physician-assisted suicide*. Cf. EUTHANASIA. [Cases: Suicide ⇨3.]

attempted suicide. (1880) An unsuccessful suicidal act. [Cases: Suicide ⇨2.]

physician-assisted suicide. See *assisted suicide.*

police-assisted suicide. See *suicide-by-cop.*

suicide-by-cop. *Slang.* A form of suicide in which the suicidal person intentionally engages in life-threatening behavior to induce a police officer to shoot the person. • Frequently, the decedent attacks the officer or otherwise threatens the officer's life, but occasionally a third person's life is at risk. A suicide-by-cop is distinguished from other police shootings by three elements. The person must: (1) evince an intent to die; (2) consciously understand the finality of the act; and (3) confront a law enforcement official with behavior so extreme that it compels that officer to act with deadly force. — Also termed *police-assisted suicide*; *victim-precipitated homicide*.

2. A person who has taken his or her own life. — Also termed *felo-de-se*; *felon-de-se*; *felon of oneself*. — **suicidal,** *adj.*

suicide clause. *Insurance.* A life-insurance-policy provision either excluding suicide as a covered risk or

limiting the insurer's liability in the event of a suicide to the total premiums paid. [Cases: Insurance ☞2434.]

suicide letter of credit. See *clean letter of credit* under LETTER OF CREDIT.

sui generis (**s[y]oo**-ī *or* **soo**-ee **jen**-ə-ris). [Latin "of its own kind"] (18c) Of its own kind or class; unique or peculiar. • The term is used in intellectual-property law to describe a regime designed to protect rights that fall outside the traditional patent, trademark, copyright, and trade-secret doctrines. For example, a database may not be protected by copyright law if its content is not original, but it could be protected by a sui generis statute designed for that purpose.

sui heredes (**s[y]oo**-ī hə-**ree**-deez). [Latin "one's own heirs"] *Roman law.* A person's direct descendants who were unemancipated, and who would be heirs on intestacy .— Also spelled *sui haeredes.* — Often shortened to *sui.* See SUUS HERES.

> "If a man died without a will, his property went to his *sui heredes* (own heirs, direct heirs), that is, to the persons who were previously under his *potestas*, but were released from it by his death. If he had adopted as son a person not connected with him by birth, that person was included among the *sui heredes*; on the other hand, a son by birth whom he had emancipated was . . . excluded from the *sui heredes* . . . ." James Hadley, *Introduction to Roman Law* 134 (1881).

sui juris (**s[y]oo**-ī *or* **soo**-ee **joor**-is). [Latin "of one's own right; independent"] (17c) **1.** Of full age and capacity. **2.** Possessing full social and civil rights. **3.** *Roman law.* Of or relating to anyone of any age, male or female, not in the *postestas* of another, and therefore capable of owning property and enjoying private law rights. • As a status, it was not relevant to public law.

sui potens (**s[y]oo**-ī **poh**-tenz). [Latin] *Hist.* Able to do something, as in to enter a contract.

suit. (14c) Any proceeding by a party or parties against another in a court of law; CASE (1). — Also termed *lawsuit*; *suit at law.* See ACTION (4).

ancillary suit (**an**-sə-ler-ee). (1845) An action, either at law or in equity, that grows out of and is auxiliary to another suit and is filed to aid the primary suit, to enforce a prior judgment, or to impeach a prior decree. — Also termed *ancillary bill*; *ancillary proceeding*; *ancillary process.* [Cases: Federal Courts ☞20.1.]

blackmail suit. (1892) A suit filed by a party having no genuine claim but hoping to extract a favorable settlement from a defendant who would rather avoid the expense and inconvenience of litigation.

class suit. See CLASS ACTION.

derivative suit. See DERIVATIVE ACTION (1).

frivolous suit. (1837) A lawsuit having no legal basis, often filed to harass or extort money from the defendant. [Cases: Action ☞8; Costs ☞2; Federal Civil Procedure ☞2767.]

official-capacity suit. A lawsuit that is nominally against one or more individual state employees but that has as the real party in interest the state or a local government. Cf. *personal-capacity suit.* [Cases: Officers and Public Employees ☞119.]

personal-capacity suit. An action to impose personal, individual liability on a government officer. Cf. *official-capacity suit.*

petitory suit. See *petitory action* under ACTION (4).

plenary suit (**plee**-nə-ree *or* **plen**-ə-ree). (1817) An action that proceeds on formal pleadings under rules of procedure. Cf. *summary proceeding* under PROCEEDING.

sham suit. See *sham action* under ACTION (4).

strike suit. (1902) A suit (esp. a derivative action), often based on no valid claim, brought either for nuisance value or as leverage to obtain a favorable or inflated settlement. [Cases: Corporations ☞214.]

suit at law. A suit conducted according to the common law or equity, as distinguished from statutory provisions. • Under the current rules of practice in federal and most state courts, the term *civil action* embraces an action both at law and in equity. Fed. R. Civ. P. 2. See *action at law* under ACTION (4).

suit in equity. A civil suit stating an equitable claim and asking for an exclusively equitable remedy. — Also termed *action in equity.* [Cases: Action ☞21.]

suit of a civil nature. A civil action. See *civil action* under ACTION (4).

suitable, *adj.* (Of goods, etc.) fit and appropriate for their intended purpose.

suitas (**s[y]oo**-ə-tas), *n.* [Law Latin] The status of a proper heir.

suit for exoneration. (1928) A suit in equity brought by a surety to compel the debtor to pay the creditor. • If the debtor has acted fraudulently and is insolvent, a suit for exoneration may include further remedies to ensure that the debtor's assets are applied equitably to the debtor's outstanding obligations. — Also termed *suit to compel payment.* [Cases: Principal and Surety ☞179.]

suit money. (1846) Attorney's fees and court costs allowed or awarded by a court; esp., in some jurisdictions, a husband's payment to his wife to cover her reasonable attorney's fees in a divorce action. [Cases: Divorce ☞220.]

suitor. (16c) **1.** A party that brings a lawsuit; a plaintiff or petitioner. **2.** An individual or company that seeks to take over another company.

Suitors' Deposit Account. *English law.* An account consisting of suitors' fees paid in the Court of Chancery that, by the Chancery Act of 1872, were to be invested in government securities bearing interest at 2% per annum on behalf of the investing suitor, unless the suitor directed otherwise.

Suitors' Fee Fund. *Hist.* A fund consisting largely of fees generated by the Court of Chancery out of which the court officers' salaries and expenses were paid. • In

1869 the fund was transferred to the Commissioners for the Reduction of the National Debt.

suit papers. See COURT PAPERS.

suit *pro laesione fidei* (proh lee-zhee-**oh**-nee **fī**-dee-ī), *n.* [Latin "for injury to faith"] *Hist. Eccles. law.* A suit in ecclesiastical court for spiritual offenses against conscience, nonpayment of debts, or a breach of contract, esp. an oral contract made by oath.

Suits in Admiralty Act. A 1920 federal law giving injured parties the right to sue the government in admiralty. 46 USCA app. §§ 741–52. [Cases: United States ⟹ 78(7).]

suit to compel payment. See SUIT FOR EXONERATION.

sum. 1. A quantity of money. **2.** *English law.* A legal summary or abstract; a compendium; a collection. • Several treatises are called *sums*.

sum certain. (16c) **1.** Any amount that is fixed, settled, or exact. **2.** *Commercial law.* In a negotiable instrument, a sum that is agreed on in the instrument or a sum that can be ascertained from the document. [Cases: Bills and Notes ⟹ 157.]

summa injuria (**səm**-ə in-**joor**-ee-ə). [Latin] The greatest injury or injustice.

summa necessitate (**səm**-ə ni-ses-ə-**tay**-tee). [Latin] *Hist.* In extreme necessity. See NECESSITY.

summa potestas (**səm**-ə pə-**tes**-təs), *n.* [Latin "sum or totality of power"] The final authority or power in government.

summary, *adj.*(15c) **1.** Short; concise <a summary account of the events on March 6>. **2.** Without the usual formalities; esp., without a jury <a summary trial>. **3.** Immediate; done without delay <the new weapon was put to summary use by the military>. — **summarily** (**səm**-ər-ə-lee *or* sə-**mair**-ə-lee), *adv.*

summary, *n.* (16c) **1.** An abridgment or brief. **2.** A short application to a court without the formality of a full proceeding.

summary adjudication. See *partial summary judgment* under SUMMARY JUDGMENT.

summary conviction. See CONVICTION.

summary court-martial. See COURT-MARTIAL.

summary disposition. See SUMMARY JUDGMENT.

summary eviction. See EVICTION.

summary judgment. (18c) A judgment granted on a claim or defense about which there is no genuine issue of material fact and upon which the movant is entitled to prevail as a matter of law. • The court considers the contents of the pleadings, the motions, and additional evidence adduced by the parties to determine whether there is a genuine issue of material fact rather than one of law. This procedural device allows the speedy disposition of a controversy without the need for trial. Fed. R. Civ. P. 56. — Also termed *summary disposition; judgment on the pleadings.* See JUDGMENT. [Cases: Federal Civil Procedure ⟹ 2461–2559; Judgment ⟹ 178–190.]

partial summary judgment. (1924) A summary judgment that is limited to certain issues in a case and that disposes of only a portion of the whole case. — Also termed *summary adjudication.* [Cases: Federal Civil Procedure ⟹ 2557; Judgment ⟹ 181(14).]

summary-judgment motion. See MOTION FOR SUMMARY JUDGMENT.

summary jurisdiction. See JURISDICTION.

summary jury trial. See TRIAL.

summary of argument. See SUMMARY OF THE ARGUMENT.

Summary of Commentary on Current Economic Conditions by Federal Reserve District. See BEIGE BOOK.

summary offense. 1. See OFFENSE (1). **2.** See MISDEMEANOR (1).

summary of the argument. The part of a brief, esp. an appellate brief, in which the advocate condenses the argument to a précis or synopsis, directing the court to the heart of the argument on each point. • A summary typically runs from one to four pages. — Also termed *summary of argument.* [Cases: Appeal and Error ⟹ 761; Criminal Law ⟹ 1130(3); Federal Courts ⟹ 714.]

> "A summary of the argument, suitably paragraphed. The summary should be a clear and concise condensation of the argument made in the body of the brief; mere repetition of the headings under which the argument is arranged is not sufficient." Sup. Ct. R. 24.1(h).

summary of the invention. *Patents.* In a U.S. patent application, the section that describes the nature, operation, and purpose of the invention in enough detail that the examiner and anyone searching the patent literature for prior art can understand the unique character of the invention. [Cases: Patents ⟹ 99.]

summary plan description. Under the Employee Retirement Security Act (ERISA), an outline of an employee benefit plan, containing such information as the identity of the plan administrator, the requirements for eligibility and participation in the plan, circumstances that may result in disqualification or denial of benefits, and the identity of any insurers responsible for financing or administering the plan. • A summary plan description must generally be furnished to all employee-benefit-plan participants and beneficiaries. 29 USCA § 1022. [Cases: Labor and Employment ⟹ 483] — Abbr. SPD.

summary procedure. See SHOW-CAUSE PROCEEDING.

summary proceeding. See PROCEEDING.

summary process. See PROCESS.

summary trial. See *summary proceeding* under PROCEEDING.

summation. See CLOSING ARGUMENT.

summer associate. See CLERK (4).

summer clerk. See CLERK (4).

summing up. 1. CLOSING ARGUMENT. 2. *English law.* A judge's review of the key points of evidence presented in a case and instructions to the jury on the law it is to apply to the evidence. • The judge's summing up follows the advocates' closing speeches. — **sum up,** *vb.*

summo jure (**səm**-oh **joor**-ee). [Latin] *Hist.* In the highest right.

summon, *vb.* (13c) To command (a person) by service of a summons to appear in court. — Also termed *summons.* [Cases: Witnesses ☞7.]

summoneas (sə-**moh**-nee-əs), *n.* [Law Latin "you are to summon"] *Hist.* A writ ordering a party to appear in court.

summoner. *Hist.* A petty officer charged with summoning parties to appear in court. See NUNTIUS.

> "But process, as we are now to consider it, is the method taken by the law to compel a compliance with the original writ, of which the primary step is by giving the party notice to obey it. This notice is given . . . by *summons*; which is a warning to appear in court . . . given to the defendant by two of the sheriff's messengers called *summoners*, either in person or left at his house or land." 3 William Blackstone, *Commentaries on the Laws of England* 279 (1768).

summonitio (səm-ə-**nish**-ee-oh), *n.* [Law Latin fr. Latin *summonere* "to summon"] *Hist.* A summons.

summonitores scaccarii (səm-ən-ə-**tor**-eez skə-**kair**-ee-ī). [Law Latin] *Hist.* Exchequer officers who assisted in revenue collections by summoning defaulters to court.

summons, *n.* (13c) **1.** A writ or process commencing the plaintiff's action and requiring the defendant to appear and answer. [Cases: Federal Civil Procedure ☞401; Process ☞7.] **2.** A notice requiring a person to appear in court as a juror or witness. [Cases: Jury ☞67(1); Witnesses ☞7.] **3.** *Hist.* A writ directing a sheriff to summon a defendant to appear in court. **4.** *English law.* The application to a common-law judge upon which an order is made. Pl. **summonses.**

alias summons. A second summons issued after the original summons has failed for some reason. [Cases: Process ☞45.]

John Doe summons. **1.** A summons to a person whose name is unknown at the time of service. [Cases: Federal Civil Procedure ☞401; Process ☞28.] **2.** *Tax.* A summons from the Internal Revenue Service to a third party to provide information on an unnamed, unknown taxpayer with potential tax liability. — Also termed *third-party record-custodian summons.* [Cases: Internal Revenue ☞4493–4517.]

judgment summons. A process used by a judgment creditor to start an action against a judgment debtor to enforce the judgment. [Cases: Judgment ☞854.]

short summons. A summons having a response time less than that of an ordinary summons, usu. served on a fraudulent or nonresident debtor. [Cases: Process ☞33.]

third-party record-custodian summons. See *John Doe summons.*

summons, *vb.* (17c) **1.** SUMMON. **2.** To request (information) by summons.

> "The horrible expression 'summonsed for an offence' (turning the noun 'summons' into a verb) has now become accepted usage, but 'summoned' remains not only allowable but preferable." Glanville Williams, *Learning the Law* 15 *n.*28 (11th ed. 1982).

summum bonum (**səm**-əm **boh**-nəm *also* **suum**-uum **baw**-nuum). [Latin] The greatest good.

summum jus (**səm**-əm **jəs**). [Latin] The highest law.

sumner (**səm**-nər), *n. Hist.* A summoning officer, esp. in an ecclesiastical court. See SUMMONER.

sum-of-the-years'-digits depreciation method. See DEPRECIATION METHOD.

sum payable. (17c) An amount due; esp., the amount for which the maker of a negotiable instrument becomes liable and must tender in full satisfaction of the debt.

sumptuary law (**səmp**-choo-er-ee). **1.** A statute, ordinance, or regulation that limits the expenditures that people can make for personal gratification or ostentatious display. **2.** More broadly, any law whose purpose is to regulate conduct thought to be immoral, such as prostitution, gambling, or drug abuse.

Sunday-closing law. See BLUE LAW.

Sunday law. See BLUE LAW.

sundries (**sən**-dreez). Miscellaneous items that may be considered together, without being separately specified or identified.

sundry (**sən**-dree), *adj.* Separate; diverse; various.

sunk cost. See COST (1).

sunna. See FEMALE GENITAL MUTILATION.

sunset law. (1976) A statute under which a governmental agency or program automatically terminates at the end of a fixed period unless it is formally renewed. [Cases: Administrative Law and Procedure ☞128.]

sunset legislation. See SUNSET LAW.

sunshine committee. (2000) An official or quasi-official committee whose proceedings and work are open to public access. [Cases: Administrative Law and Procedure ☞124.]

sunshine law. (1972) A statute requiring a governmental department or agency to open its meetings or its records to public access. — Also termed *open-meeting law; public-meeting law; open-door law.* [Cases: Administrative Law and Procedure ☞124; Records ☞50–68.]

suo nomine (**s**[**y**]**oo**-oh **nom**-ə-nee). [Latin] In one's own name.

suo periculo. See SUB SUO PERICULO.

SUP. *abbr.* SPECIAL-USE PERMIT.

sup. ct. *abbr.* SUPREME COURT.

super (**s**[**y**]**oo**-pər). [Latin] Above; over; higher.

super aliquam partem fundi (**s**[**y**]**oo**-pər **al**-i-kwam **pahr**-tem **fən**-dī). [Law Latin] *Hist.* Upon any part of the land.

super altum mare (s[y]**oo**-pər **al**-təm **mair**-ee *or* **mahr**-ee). [Latin] On the high sea.

super attentatis aut innovatis lite dependente (s[y]**oo**-pər a-ten-**tay**-tis awt in-ə-**vay**-tis **lI**-tee dee-pen-**den**-tee). [Law Latin] *Hist.* Concerning those things allegedly due during the pendency of the case.

supercargo. *Maritime law.* A person specially employed and authorized by a cargo owner to sell cargo that has been shipped and to purchase returning cargo, at the best possible prices; the commercial or foreign agent of a merchant.

> "Supercargoes are persons employed by commercial companies or by private merchants to take charge of the cargoes they export to foreign countries, to sell them there to the best advantage, and to purchase proper commodities to relade the ships on their return home. They usually go out with the ships on board of which the goods are embarked, and return home with them, and in this they differ from factors who live abroad . . . . The supercargo is the agent of the owners, and disposes of the cargo and makes purchases under their general instructions on his own responsibility." 70 Am. Jur. 2d *Shipping* § 886, at 1025 (1987).

superductio (s[y]oo-pər-**dək**-shee-oh), *n.* [Latin] *Roman law.* The obliteration of part of a will or other document by writing over something erased within it. Pl. ***superductiones*** (s[y]oo-pər-dək-shee-**oh**-neez).

super eisdem deductis (s[y]**oo**-pər ee-**is**-dəm di-**dək**-tis). [Law Latin] *Hist.* Upon the same grounds.

superfeudation. See SUPERINFEUDATION.

superficiarius (s[y]oo-pər-fish-ee-**air**-ee-əs), *n.* [Latin] *Roman law.* A person who had a hereditary and alienable right to a building on municipal or other public land, subject to the payment of an annual rent. • In classical law this right was extended to private land. Cf. EMPHYTEUSIS.

superficies (s[y]oo-pər-**fish**-ee-eez *or* -**fish**-eez), *n.* [Latin "surface"] *Roman & civil law.* **1.** The surface of the ground. **2.** An improvement that stands on the surface of the ground, such as a building, other construction, trees, plants, or crops. **3.** The right of a *superficiarius.* See SUPERFICIARIUS.

Superfund. (1977) **1.** The program that funds and administers the cleanup of hazardous-waste sites through a trust fund (financed by taxes on petroleum and chemicals and a tax on certain corporations) created to pay for cleanup pending reimbursement from the liable parties. [Cases: Environmental Law ⇨ 437.] **2.** The popular name for the act that established this program — the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). See CERCLA.

superinfeudation. *Hist.* The granting of one or more feuds out of a feudal estate. — Also termed *superfeudation.* Cf. SUBINFEUDATION.

> "Whatever may be the proper view of its origin and legal nature, the best mode of vividly picturing to ourselves the feudal organisation is to begin with the basis, to consider the relation of the tenant to the patch of soil which created and limited his services — and then to mount up, through narrowing circles of super-feudation, till we approximate to the apex of the system." Henry S. Maine, *Ancient Law* 88 (17th ed. 1901).

superinstitution. *Eccles. law.* The investiture of one person in an office that already has an incumbent, as when two individuals claim a benefice by adverse titles.

superintendent. A person with the power to direct activities; a manager.

superintending control. See CONTROL.

superior, *adj.* (14c) (Of a rank, office, power, etc.) higher; elevated; possessing greater power or authority; entitled to exert authority or command over another <superior estate> <superior force> <superior agent>. — **superior,** *n.*

superior agent. See *high-managerial agent* under AGENT (2).

superior commissioned officer. See OFFICER (2).

superior court. See COURT.

superior fellow servant. See FELLOW SERVANT.

superior force. 1. See FORCE MAJEURE. **2.** See ACT OF GOD. **3.** See VIS MAJOR.

superior knowledge. See KNOWLEDGE.

superior-knowledge rule. The doctrine that when a property owner knows or should know that a hazardous condition exists on the property, and the condition is not obvious to a person exercising reasonable care, the owner must make the premises reasonably safe or else warn others of the hazardous condition. • An exception to the rule is sometimes allowed for obvious dangers or dangers of which the invitee is aware. Restatement (Second) of Torts § 343A. But the exception is neither automatic nor absolute. See *id.* § 343A(1) & cmt. f. — Also termed *equal-or-superior-knowledge rule.* Cf. EQUAL-KNOWLEDGE RULE. [Cases: Negligence ⇨ 1088.]

superior servant. See *superior fellow servant* under FELLOW SERVANT.

superior-servant doctrine. See FELLOW-SERVANT RULE.

superjurare (s[y]oo-pər-juu-**rair**-ee). [Latin "to overswear"] *Hist.* To swear too strenuously. • This describes the situation in which an obviously guilty criminal attempted to avoid conviction by producing oaths of several parties but was convicted by an overwhelming number of witnesses.

super jure naturae alendi liberos (s[y]**oo**-pər **joor**-ee nə-**tyoor**-ee ə-**len**-dI **lib**-ər-ohs). [Law Latin] *Hist.* On the ground of natural law, obligating persons to support their children.

superlien. (1984) A government's lien that is imposed on a property whose condition violates environmental and public-health and public-safety rules and that has priority over all other liens, so that the government can recover public funds spent on cleanup operations. • A statutory lien is superior to all existing liens and all later-filed liens on the same property. Superliens

are sometimes granted to a state's environmental-protection agency. Several states — including Arkansas, Connecticut, Massachusetts, New Hampshire, New Jersey, and Tennessee — have enacted statutes creating superliens on property owned by a party responsible for environmental cleanup. See LIEN.

supermajority. See MAJORITY.

supermajority provision. A clause in a corporation's articles of incorporation requiring more than a simple majority of shareholders to vote in favor of a merger or substantial sale of assets.

supernumerarii (s[y]oo-pər-n[y]oo-mə-**rair**-ee-ī), *n.* [Latin "persons above the number"] *Roman law.* Officials beyond the permitted number; esp., advocates who were unregistered and not attached to a particular bar. Cf. STATUTI.

supernumerary witness. See WITNESS.

superoneratio (s[y]oo-pər-on-ə-**ray**-shee-oh). [Law Latin] *Hist.* **1.** The act or practice of surcharging a common. **2.** The placement of more cattle on a common than is allowed; overstocking.

superoneratione pasturae. See DE SUPERONERATIONE PASTURAE.

superplusagium (s[y]oo-pər-plə-**say**-jee-əm), *n.* [Law Latin] *Hist.* A surplus; a remainder.

super praerogativa regis (s[y]oo-pər pri-rog-ə-**tī**-və **ree**-jis), *n.* [Law Latin] *Hist.* A writ against the king's tenant's widow for marrying without royal permission.

superprecedent. See PRECEDENT.

superpriority. *Bankruptcy.* The special priority status granted by the court to a creditor for extending credit to a debtor or trustee that cannot obtain unsecured credit from a willing lender. • This priority may be either an administrative claim outranking other administrative claims or, if certain statutory requirements are met, a security interest in property. 11 USCA § 364(c)(1). [Cases: Bankruptcy ⇨3036.]

supersede, *vb.* (17c) **1.** To annul, make void, or repeal by taking the place of <the 1996 statute supersedes the 1989 act>. **2.** To invoke or make applicable the right of supersedeas against (an award of damages) <what is the amount of the bond necessary to supersede the judgment against her?>. [Cases: Appeal and Error ⇨458, 460.] — **supersession** (for sense 1), *n.*

supersedeas (soo-pər-**seed**-ee-əs), *n.* [Latin "you shall desist"] (14c) **1.** A writ or bond that suspends a judgment creditor's power to levy execution, usu. pending appeal. — Also termed *writ of supersedeas.* **2.** See *supersedeas bond* under BOND (2). [Cases: Appeal and Error ⇨458; Execution ⇨158(2); Supersedeas ⇨1.] Pl. **supersedeases** (soo-pər-**see**-dee-əs-iz).

supersedeas bond. See BOND (2).

supersedere (s[y]oo-pər-sə-**deer**-ee). [Law Latin] *Hist.* SIST.

"When creditors voluntarily agree to supersede or sist diligence against their debtor for a certain period, such an agreement is called a *supersedere*; and the same name is given to any judicial act by which creditors are restrained from doing diligence. A creditor who commits a breach of the *supersedere*, whether it be voluntary or judicial, is liable to the debtor in damages." John Trayner, *Trayner's Latin Maxims* 591 (4th ed. 1894).

superseding cause. See CAUSE (1).

super stare decisis. See STARE DECISIS.

super statuto (s[y]oo-pər stə-t[y]oo-toh), *n.* [Law Latin] *Hist.* A writ against tenants-in-chief who transferred their land without the king's permission in violation of the Statute of Westminster II, chs. 12 & 13.

super statuto de articulis cleri (s[y]oo-pər stə-t[y]oo-toh dee ahr-**tik**-yə-lis **kleer**-ī), *n.* [Law Latin] *Hist.* A writ against a sheriff who unlawfully distrains goods.

super statuto facto pour seneschal et marshal de roy (s[y]oo-pər stə-t[y]oo-toh **fak**-toh poor sen-ə-**shahl** ay mahr-[ə-]**shahl** də **roy**), *n.* [Law Latin] *Hist.* A writ to restrain the court of the Marshalsea from interfering in matters outside its jurisdiction.

super statuto versus servantes et laboratores (s[y]oo-pər stə-t[y]oo-toh **vər**-səs sər-**van**-teez et lab-ər-ə-**tor**-eez), *n.* [Law Latin] *Hist.* **1.** A writ against someone who employs laborers who unlawfully left former employments. **2.** A writ against a person who refused to work at the required wage.

superstitious use. See USE (1).

supervening cause. See *intervening cause* under CAUSE (1).

supervening impossibility. See IMPOSSIBILITY.

supervening negligence. See *subsequent negligence* under NEGLIGENCE.

supervening-negligence doctrine. See LAST-CLEAR-CHANCE DOCTRINE.

supervised visitation. See VISITATION.

supervision, *n.* The act of managing, directing, or overseeing persons or projects. — **supervise,** *vb.* — **supervisory** (soo-pər-**vī**-zə-ree), *adj.*

supervision order. See ORDER (2).

supervisor, *n.* (15c) **1.** One having authority over others; a manager or overseer. • Under the National Labor Relations Act, a supervisor is any individual having authority to hire, transfer, suspend, lay off, recall, promote, discharge, discipline, and handle grievances of other employees, by exercising independent judgment. **2.** The chief administrative officer of a town or county. [Cases: Counties ⇨41.] — **supervisorial** (soo-pər-vī-**zor**-ee-əl), *adj.*

supervisory authority. *Military law.* An officer who, exercising general court-martial jurisdiction, reviews summary and special court-martial trial records after the convening authority has reviewed them. [Cases: Military Justice ⇨1380.]

supervisory control. The control exercised by a higher court over a lower court, as by prohibiting the lower court from acting extrajurisdictionally and by revers-

ing its extrajurisdictional acts. See MANDAMUS. [Cases: Courts ⚷207.]

supine negligence. See *advertent negligence* under NEGLIGENCE.

supplanting limitation. See LIMITATION.

supplemental, *adj.* (17c) Supplying something additional; adding what is lacking <supplemental rules>.

supplemental affidavit. See AFFIDAVIT.

supplemental agreement. See *side agreement* under AGREEMENT.

supplemental bill. See BILL (2).

supplemental bill in the nature of a bill of review. See *bill in the nature of a bill of review* under BILL (2).

supplemental claim. See CLAIM (4).

supplemental complaint. See COMPLAINT.

supplemental declaration. *Patents.* A sworn document, filed after the U.S. Patent and Trademark Office allows a patent's issuance. See SUPPLEMENTAL OATH.

supplemental jurisdiction. See JURISDICTION.

supplemental-needs trust. See TRUST.

supplemental pleading. See PLEADING (1).

supplemental register. *Trademarks.* A roll of trademarks that are ineligible for listing on the Principal Register because they are not distinctive. • Marks on the supplemental register are not protected by trademark law, except to the extent that the listing may bar the registration of a similar mark. The listing may be required, however, for the mark to be registered in other countries. 15 USCA § 1091. Cf. PRINCIPAL REGISTER. — Also termed *secondary register.* Trademarks ⚷1246.

Supplemental Rules for Certain Maritime and Admiralty Claims. A supplement to the Federal Rules of Civil Procedure, setting out procedures for suits in admiralty and maritime law.

Supplemental Security Income. A welfare or needs-based program providing monthly income to the aged, blind, or disabled. • It is authorized by the Social Security Act. — Abbr. SSI. [Cases: Social Security and Public Welfare ⚷140.5, 175.]

supplemental surety. See SURETY.

supplementary proceeding. See PROCEEDING.

supplendo vices (sə-**plen**-doh **vi**-seez). [Law Latin] *Hist.* By supplying the place.

suppletory oath (**sap**-lə-tor-ee). See OATH.

suppliant (**sap**-lee-ənt). (15c) One who humbly requests something; specif., the actor in a petition of right.

supplicatio (sap-li-**kay**-shee-oh), *n.* [Latin] *Roman law.* **1.** A petition to the emperor requesting him to decide a case, not already before a court, in first instance or, sometimes, to reopen a case in which no appeal is normally allowed. Pl. ***supplicationes*** (sap-li-kay-shee-**oh**-neez).

> "Another mode was *supplicatio*, petition to the Emperor by a private person, not allowed when the question was already before a court or had been decided and not properly appealed. It was mainly used to bring matters before the Emperor or his delegate, in first instance, where for any reason it was unlikely that justice would be done, e.g. where the claimant was humble and the opponent a '*potentior*,' or where the claimant was of too high rank to go before the ordinary court, or the decision was of an unappealable magistrate." W.W. Buckland, *Elementary Principles of the Roman Private Law* 671 (1912).

2. A petition for a pardon on a first offense. **3.** *Hist.* A pleading similar to a rejoinder.

supplicavit (sap-li-**kay**-vit). *Hist.* A writ issued by the King's Bench or Chancery for taking sureties of the peace, obligating a person to be on good behavior for a specified period. • It is commonly directed to the justices of the peace who are hesitant to intervene in their judicial capacities. See *surety of the peace* under SURETY.

> "Any justices of the peace, by virtue of their commission, or those who are *ex officio* conservators of the peace . . . may demand such security according to their own discretion: or it may be granted at the request of any subject, upon due cause shewn . . . . Or, if the justice is averse to act, it may be granted by a mandatory writ, called a *supplicavit*, issuing out of the court of king's bench or chancery; which will compel the justice to act, as a ministerial and not as a judicial officer . . . ." 4 William Blackstone, *Commentaries on the Laws of England* 250 (1769).

supplicium (sə-**plish**-ee-əm), *n.* [Latin "atonement"] *Roman law.* A punishment. • *Ultimum supplicium* is the death penalty.

supplier, *n.* **1.** A person engaged, directly or indirectly, in the business of making a product available to consumers.

> "The supplier may be the seller, the manufacturer, or anyone else in the chain who makes the product available to the consumer." 1 Julian B. McDonnell & Elizabeth J. Coleman, *Commercial and Consumer Warranties* ¶ 6.06[2], at 6-33 (1991).

2. A person who gives possession of a chattel for another's use or allows someone else to use or occupy it while it is in the person's possession or control.

supplies, *n.* **1.** Means of provision or relief; stores available for distribution. **2.** In parliamentary proceedings, the annual grant voted on by the House of Commons for maintaining the Crown and various public services.

supply, *n.* The amount of goods produced or available at a given price.

aggregate supply. The total amount of goods and services generated in an economy during a specific period.

supply curve. A line on a price-output graph showing the relationship between a good's price and the quantity supplied at a given time.

support, *n.* (14c) **1.** Sustenance or maintenance; esp., articles such as food and clothing that allow one to live in the degree of comfort to which one is accustomed. See MAINTENANCE; NECESSARIES.

> "Generally speaking, the words 'support' and 'maintenance' are used synonymously to refer to food, clothing and other conveniences, and shelter, including, in some cases, medicines, medical care, nursing care, funeral

services, education, and reasonable personal care, and the courtesies and kindness usually obtaining between individuals that have the same ties of blood in families of similar station as the contracting parties." 73 Am.Jur.2d *Support of Persons* § 1, at 880-81 (2d ed. 1974).

2. One or more monetary payments to a current or former family member for the purpose of helping the recipient maintain an acceptable standard of living. — Also termed (in both senses) *reasonable support*. See ALIMONY. Cf. NONSUPPORT; MAINTENANCE (5). [Cases: Child Support ⟹8; Divorce ⟹208, 230.]

child support. See CHILD SUPPORT.

family support. See FAMILY SUPPORT.

spousal support. See ALIMONY.

3. Basis or foundation. **4.** The bracing of land so that it does not cave in because of another landowner's actions. — **support,** *vb.*

lateral support. Support by the land that lies next to the land under consideration. — Also termed *easement of natural support*. [Cases: Adjoining Landowners ⟹2.]

subjacent support. Support by the earth that lies underneath the land under consideration.

support agreement. *Oil & gas.* A contract between people or entities in the oil-and-gas industry to promote exploratory operations. • Generally, one party agrees to contribute money or property to another if the other will drill a well on leases that it holds and provide the contributing party with information from tests conducted. For the contributing party, a support agreement is a purchase of geological or technological information. For the party receiving the support, the contribution lessens the cost or the risk of drilling operations. — Also termed *contribution agreement*. See DRY-HOLE AGREEMENT; BOTTOM-HOLE AGREEMENT; ACREAGE-CONTRIBUTION AGREEMENT. [Cases: Mines and Minerals ⟹109.]

support deed. See DEED.

support obligation. (1938) A secondary obligation or letter-of-credit right that supports the payment or performance of an account, chattel paper, general intangible, document, healthcare-insurance receivable, instrument, or investment property. UCC § 9-102(a)(53).

support order. (1948) A court decree requiring a party (esp. one in a divorce or paternity proceeding) to make payments to maintain a child or spouse, including medical, dental, and educational expenses. [Cases: Child Support ⟹8, 223; Divorce ⟹208, 230.]

foreign support order. An out-of-state support order. [Cases: Child Support ⟹500–510; Divorce ⟹388.]

support price. See PRICE.

support trust. See TRUST.

supposition (səp-ə-**zish**-ən), *n.* An assumption that something is true, without proof of its veracity; the act of supposing. — **suppose,** *vb.* — **supposable,** *adj.*

suppress, *vb.* To put a stop to, put down, or prohibit; to prevent (something) from being seen, heard, known, or discussed <the defendant tried to suppress the incriminating evidence>. — **suppression,** *n.* — **suppressible, suppressive,** *adj.*

suppression hearing. See HEARING.

suppression of evidence. (18c) **1.** A trial judge's ruling that evidence offered by a party should be excluded because it was illegally acquired. [Cases: Criminal Law ⟹394; Evidence ⟹154.] **2.** The destruction of evidence or the refusal to give evidence at a criminal proceeding. • This is usu. considered a crime. See OBSTRUCTION OF JUSTICE. [Cases: Obstructing Justice ⟹5.] **3.** The prosecution's withholding from the defense of evidence that is favorable to the defendant. [Cases: Criminal Law ⟹1990–2008.]

suppressio veri (sə-**pres**[**h**]-ee-oh **veer**-ī). [Latin] Suppression of the truth; a type of fraud. Cf. SUGGESTIO FALSI.

supra (s[y]**oo**-prə). [Latin "above"] (15c) Earlier in this text; used as a citational signal to refer to a previously cited authority. Cf. INFRA.

supra citatum (s[y]**oo**-prə sī-**tay**-təm). [Law Latin] *Hist.* Above cited. — Abbr. *sup. cit.*

supralegal, *adj.* Above or beyond the law <a supralegal sovereign>.

supranational, *adj.* Free of the political limitations of nations.

supra protest. (Of a debt) under protest. See PROTEST (3).

supra riparian (**soo**-prə ri-**pair**-ee-ən *or* rī-). (1857) Upper riparian; higher up the stream. • This phrase describes the estate, rights, and duties of a riparian owner whose land is situated nearer the source of a stream than the land it is compared to.

supremacy. (16c) The position of having the superior or greatest power or authority.

Supremacy Clause. (1940) The clause in Article VI of the U.S. Constitution declaring that the Constitution, all laws made in furtherance of the Constitution, and all treaties made under the authority of the United States are the "supreme law of the land" and enjoy legal superiority over any conflicting provision of a state constitution or law. See PREEMPTION. [Cases: States ⟹18.1.]

supremacy of law. See RULE OF LAW (2).

supreme, *adj.* (16c) (Of a court, power, right, etc.) highest; superior to all others.

Supreme Civil Court in Scotland. See COURT OF SESSION (1).

supreme court. (17c) **1.** (*cap.*) SUPREME COURT OF THE UNITED STATES. **2.** An appellate court existing in most states, usu. as the court of last resort. [Cases: Courts ⟹91(1).] **3.** In New York, a court of general jurisdiction with trial and appellate divisions. • The Court of Appeals is the court of last resort in New York. **4.**

SUPREME COURT OF JUDICATURE. — Abbr. S.C.; S.Ct.; Sup. Ct.

Supreme Court of Appeals. The highest court in West Virginia. [Cases: Courts ⚷252.]

Supreme Court of Errors. *Hist.* The court of last resort in Connecticut. • The court is now called the *Supreme Court.*

Supreme Court of Judicature. The highest court in England and Wales, consisting of the High Court of Justice, the Court of Appeal, and the Crown Court. • The Supreme Court was created under the Judicature Act of 1873 that consolidated the existing superior courts, including the High Court of Chancery, the court of Queen's Bench, the court of Exchequer, the High Court of Admiralty, the court of Probate, and the London court of Bankruptcy. — Sometimes shortened to *Supreme Court.*

Supreme Court of the United States. The court of last resort in the federal system, whose members are appointed by the President and approved by the Senate. • The Court was established in 1789 by Article III of the U.S. Constitution, which vests the Court with the "judicial power of the United States." — Often shortened to *Supreme Court.* — Also termed *United States Supreme Court.* [Cases: Federal Courts ⚷441.]

Supreme Judicial Court. See COURT.

supreme law of the land. (18c) **1.** The U.S. Constitution. [Cases: Constitutional Law ⚷502.] **2.** Acts of Congress made in accordance with the U.S. Constitution. **3.** U.S. treaties. See SUPREMACY CLAUSE.

supreme legislation. See LEGISLATION.

supreme power. See *sovereign political power* under POLITICAL POWER.

sur (sər). [Law French] *Hist.* Upon. • This term appears in various phrases, such as *sur cognizance de droit* ("upon acknowledgment of right").

surcharge, *n.* **1.** An additional tax, charge, or cost, usu. one that is excessive. **2.** An additional load or burden. **3.** A second or further mortgage. **4.** The omission of a proper credit on an account. **5.** The amount that a court may charge a fiduciary that has breached its duty. **6.** An overprint on a stamp, esp. one that changes its face value. **7.** The overstocking of an area with animals. — **surcharge,** *vb.*

surcharge, *vb.* (15c) **1.** To impose an additional (usu. excessive) tax, charge, or cost. **2.** To impose an additional load or burden. **3.** (Of a court) to impose a fine on a fiduciary for breach of duty. **4.** To overstock (an area) with animals.

second surcharge. To overstock (a common) a second time for which a writ of second surcharge was issued.

surcharge and falsify. To scrutinize particular items in an account to show items that were not credited as required (to surcharge) and to prove that certain items were wrongly inserted (to falsify). • The courts of chancery usu. granted plaintiffs the opportunity to surcharge and falsify accounts that the defendant alleged to be settled.

sur cui ante divortium (sər kɪ [*or* kwɪ *or* kwee] **an**-tee də-**vor**-shee-əm). See CUI ANTE DIVORTIUM.

sur cui in vita (sər kɪ [*or* kwɪ *or* kwee] in **vɪ**-tə). See CUI IN VITA.

sur disclaimer. *Hist.* A writ brought by a lord against a tenant who has disclaimed tenure, to recover the land.

surdus (**sər**-dəs), *n.* [Latin] *Roman law.* A deaf person. • A wholly deaf and mute person could not lawfully make a will before the time of Justinian, who modified the law.

surety (**shuur**[-ə]-tee). (14c) **1.** A person who is primarily liable for paying another's debt or performing another's obligation. • Although a surety is similar to an insurer, one important difference is that a surety often receives no compensation for assuming liability. A surety differs from a guarantor, who is liable to the creditor only if the debtor does not meet the duties owed to the creditor; the surety is directly liable. Cf. GUARANTOR. [Cases: Principal and Surety ⚷1, 65, 66.]

> "The words surety and guarantor are often used indiscriminately as synonymous terms; but while a surety and a guarantor have this in common, that they are both bound for another person, yet there are points of difference between them which should be carefully noted. A surety is usually bound with his principal by the same instrument, executed at the same time and on the same consideration. He is an original promisor and debtor from the beginning, and is held ordinarily to know every default of this principal. Usually the surety will not be discharged, either by the mere indulgence of the creditor to the principal, or by want of notice of the default of the principal, no matter how much he may be injured thereby. On the other hand, the contract of the guarantor is his own separate undertaking, in which the principal does not join. It is usually entered into before or after that of the principal, and is often founded on a separate consideration from that supporting the contract of the principal." 1 George W. Brandt, *The Law of Suretyship and Guaranty* § 2, at 9 (3d ed. 1905).

> "A surety, in the broad sense, is one who is liable for the debt or obligation of another, whether primarily or secondarily, conditionally or unconditionally. In other words, the term surety includes anyone who is bound on an obligation which, as between himself and another person who is bound to the obligee for the same performance, the latter obligor should discharge. In this sense, suretyship includes all accessorial obligations. By such terminology, guarantors and indorsers are kinds of sureties. . . . A surety, in the narrow sense, is one who is liable in form primarily on the debt or obligation of another. His obligation is accessorial to that of the principal debtor, but it is direct and not conditioned on the principal debtor's default. In this sense, suretyship differs from guaranty and indorsement, which are conditional, secondary obligations. . . . The word surety is in the majority of American decisions used in the narrower sense to indicate a primary obligation to pay another's debt, to distinguish it from the secondary obligation of a guarantor. This terminology has the advantage of indicating by the use of the one word 'surety' an obligation which is at once one to pay another's debt, but which at the same time is not conditioned upon another's default." Laurence P. Simpson, *Handbook on the Law of Suretyship* 6, 8–9 (1950).

accommodation surety. See *voluntary surety.*

compensated surety. A surety who is paid for becoming obliged to the creditor; esp., one that engages in the business of executing suretyship contracts in exchange for premiums, which are determined by an actuarial computation of risks. • A bonding company is a typical example of a compensated surety. — Also termed *commercial surety.*

cosurety. See COSURETY.

gratuitous surety. A surety who is not compensated for becoming obliged to the creditor. • Perhaps the most common example is the parent who signs as a surety for a child.

subsurety. See SUBSURETY.

supplemental surety. A surety for a surety.

surety of the peace. *Hist.* A surety responsible for ensuring that a person will not commit a future offense. • It is required of one against whom there are probable grounds to suspect future misbehavior. See SUPPLICAVIT.

voluntary surety. A surety who receives no consideration for the promise to act as a surety. — Also termed *accommodation surety.*

2. A formal assurance; esp., a pledge, bond, guarantee, or security given for the fulfillment of an undertaking.

surety and fidelity insurance. See *fidelity insurance* under INSURANCE.

surety bond. See PERFORMANCE BOND.

surety company. See COMPANY.

surety insurance. See *guaranty insurance* under INSURANCE.

suretyship. 1. The legal relation that arises when one party assumes liability for a debt, default, or other failing of a second party. • The liability of both parties begins simultaneously. In other words, under a contract of suretyship, a surety becomes a party to the principal obligation. [Cases: Principal and Surety ☞1, 65, 66.] **2.** The lending of credit to aid a principal who does not have sufficient credit. • The purpose is to guard against loss if the principal debtor were to default. **3.** The position or status of a surety.

involuntary suretyship. A suretyship that arises incidentally, when the chief object of the contract is to accomplish some other purpose. [Cases: Principal and Surety ☞11.]

personal suretyship. A suretyship in which the surety is answerable in damages. [Cases: Principal and Surety ☞65.]

real suretyship. A suretyship in which specified property can be taken, but the surety is not answerable in damages. [Cases: Principal and Surety ☞65.]

suretyship by operation of law. A suretyship that the law creates when a third party promises a debtor to assume and pay the debt that the debtor owes to a creditor. [Cases: Principal and Surety ☞14.]

voluntary suretyship. A suretyship in which the chief object of the contract is to make one party a surety.

surface. 1. The top layer of something, esp. of land. **2.** *Mining law.* An entire portion of land, including mineral deposits, except those specifically reserved. • The meaning of the term varies, esp. when used in legal instruments, depending on the language used, the intention of the parties, the business involved, and the nature and circumstances of the transaction. **3.** *Mining law.* The part of the geologic section lying over the minerals in question.

surface casing. See CASING.

surface-damage clause. *Oil & gas.* A lease provision requiring the lessee to pay the lessor or the surface-interest owner for all or for a specified kind or degree of damage to the surface that results from oil-and-gas operations. — Also termed *location-damage clause; damages clause.* [Cases: Mines and Minerals ☞120.]

surface interest. *Oil & gas.* Every right in real property other than the mineral interest. • The surface-interest owner has the right to the surface subject to the right of the mineral-interest owner to use the surface. The surface-interest owner is entitled to all whatever nonmineral substances are found in or under the soil. — Also termed *surface right.* Cf. MINERAL INTEREST; SUBSURFACE INTEREST. [Cases: Mines and Minerals ☞55(6).]

surface issue. See ISSUE (1).

Surface Transportation Board. A unit in the U.S. Department of Transportation responsible for the economic regulation of interstate surface transportation, primarily railroads. • Its jurisdiction includes railroad-rate and -service issues, railroad-company mergers and related labor matters; certain truck and ocean shipping rates; certain intercity bus-company structures; and certain pipeline matters not regulated by the Federal Energy Regulatory Commission. — Abbr. STB. [Cases: Carriers ☞10.]

surface water. See WATER.

Surgeon General. (18c) **1.** The chief medical officer of the U.S. Public Health Service or of a state public-health agency. **2.** The chief officer of the medical departments in the armed forces. — Abbr. SG.

surmise (sər-**mɪz**), *n.* (18c) **1.** An idea based on weak evidence; conjecture. **2.** *Hist.* A suggestion, esp. to a court. **3.** *Hist. Eccles. law.* An allegation in the complaint. • A collateral surmise is a surmise of a fact not contained in the libel. See LIBEL (3).

surname. See NAME.

surplice fees (**sər**-plis **feez**). *Eccles. law.* Fees paid to clergy for performing occasional duties, such as marriages, funerals, and baptisms.

surplus. 1. The remainder of a thing; the residue or excess. **2.** The excess of receipts over disbursements. **3.** Funds that remain after a partnership has been dissolved and all its debts paid. **4.** A corporation's net

worth, beyond the par value of capital stock. — Also termed *overplus*.

accumulated surplus. Earnings in excess of a corporation's capital and liabilities.

acquired surplus. The surplus gained by the purchase of another business.

actuarial surplus. See ACTUARIAL SURPLUS.

appreciation surplus. See *revaluation surplus*.

appropriated surplus. **1.** The portion of surplus earmarked for a specific purpose. — Also termed *reserved surplus*. **2.** See *appropriated retained earnings* under EARNINGS.

capital surplus. **1.** All surplus (such as paid-in surplus or donated surplus) not arising from the accumulation of profits; a company's surplus other than earned surplus, usu. created by financial reorganization or gifts. **2.** See *paid-in surplus*.

donated surplus. **1.** Assets (such as stock) contributed to a corporation. **2.** The increase in the shareholders' equity account resulting from such a contribution.

earned surplus. See *retained earnings* under EARNINGS.

initial surplus. The surplus that appears on the financial statement at the beginning of an accounting period, but that does not reflect the operations for the statement's period.

paid-in surplus. The surplus gained by the sale, exchange, or issuance of capital stock at a price above par value. — Also termed *capital surplus*; *premium on capital stock*.

reserved surplus. See *appropriated surplus* (1).

restricted surplus. A surplus with a limited or restricted use; esp., the portion of retained earnings that cannot be distributed as dividends. • The restriction is usu. due to preferred dividends in arrears, a covenant in a loan agreement, or some decision of the board of directors. See *retained earnings* under EARNINGS.

revaluation surplus. Surplus that is gained when assets are reappraised at a higher value. — Also termed *appreciation surplus*.

trade surplus. The excess of merchandise exports over merchandise imports during a specific period. Cf. *trade deficit* under DEFICIT.

unearned surplus. *Corporations.* The total of amounts assigned to shares in excess of stated capital, surplus arising from a revaluation of assets above cost, and contributions other than for shares, whether from shareholders or others.

surplusage (**sər**-pləs-ij). (15c) **1.** Redundant words in a statute or legal instrument; language that does not add meaning <the court must give effect to every word, reading nothing as mere surplusage>. [Cases: Statutes ☞202, 206.] **2.** Extraneous matter in a pleading <allegations that are irrelevant to the case will be treated as surplusage>. [Cases: Indictment and Information ☞118.]

> "Surplusage is to be avoided. The perfection of pleading is to combine the requisite certainty and precision with the greatest possible brevity of statement. 'Surplusage' . . . includes matter of any description which is unnecessary to the maintenance of the action or defense. The rule requires the omission of such matter in two instances: (1) Where the matter is wholly foreign and irrelevant to the merits of the case. (2) When, though not wholly foreign, such matter need not be stated." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 316, at 514 (Henry Winthrop Ballantine ed., 3d ed. 1923).

surplus earnings. See EARNINGS.

surplus-lines insurance. See INSURANCE.

surplus profit. See PROFIT (1).

surplus revenue. See *appropriated retained earnings* under EARNINGS.

surplus water. See WATER.

surprise. (15c) An occurrence for which there is no adequate warning or that affects someone in an unexpected way. • In a trial, the procedural rules are designed to limit surprise — or trial by ambush — as much as possible. For example, the parties in a civil case are permitted to conduct discovery, to determine the essential facts of the case and the identities of possible witnesses, and to inspect relevant documents. At trial, if a party calls a witness who has not been previously identified, the witness's testimony may be excluded if it would unfairly surprise and prejudice the other party. And if a party has diligently prepared the case and is nevertheless taken by surprise on a material point at trial, that fact can sometimes be grounds for a new trial or for relief from the judgment under Rules 59 and 60 of the Federal Rules of Civil Procedure.

surrebuttal (sər-ri-**bət**-əl). (1853) The response to the opposing party's rebuttal in a trial or other proceeding; a rebuttal to a rebuttal <called two extra witnesses in surrebuttal>. [Cases: Criminal Law ☞683; Federal Civil Procedure ☞2015; Trial ☞64.]

surrebutter (sər-ri-**bət**-ər). *Common-law pleading.* (17c) The plaintiff's answer of fact to the defendant's rebutter. [Cases: Pleading ☞185.]

surrejoinder (sər-ri-**joyn**-dər). *Common-law pleading.* (16c) The plaintiff's answer to the defendant's rejoinder. See REPLICATION. [Cases: Pleading ☞184.]

> "Where the common-law system of pleading is in force, the pleadings do not terminate with the plaintiff's replication. The defendant may interpose a rejoinder to the replication, and the plaintiff a surrejoinder to the defendant's rejoinder. Then follows the rebutter, which in turn may be met by a surrebutter." 61A Am. Jur. 2d *Pleading* § 193, at 192 (1981).

surrender, *n.* (15c) **1.** The act of yielding to another's power or control. **2.** The giving up of a right or claim; RELEASE (1). [Cases: Release ☞1.] **3.** The return of an estate to the person who has a reversion or remainder, so as to merge the estate into a larger estate. Cf. MERGER (4).

> "Merger bears a very near resemblance, in circumstances and effect, to a surrender; but the analogy does not hold in all cases, though there is not any case in which merger will take place, unless the right of making and surrender

resided in the parties between whom the merger takes place. To a surrender, it is requisite that the tenant of the particular estate should *relinquish* his estate in favor of the tenant of the next vested estate, in remainder or reversion. But merger is confined to the cases in which the tenant of the estate in reversion or remainder *grants* that estate to the tenant of the particular estate, or in which the particular tenant grants his estate to him in reversion or remainder. Surrender is the act of the party, and merger is the act of the law." 4 James Kent, *Commentaries on American Law* *100 (George Comstock ed., 11th ed. 1866).

4. *Commercial law.* The delivery of an instrument so that the delivery releases the deliverer from all liability. [Cases: Bills and Notes ☞438.] **5.** A tenant's relinquishment of possession before the lease has expired, allowing the landlord to take possession and treat the lease as terminated. — Also termed (in sense 5) *surrender of term.* [Cases: Landlord and Tenant ☞109.] — **surrender,** *vb.*

surrender by bail. (18c) A surety's delivery of a prisoner, who had been released on bail, into custody. [Cases: Bail ☞80.]

surrender by operation of law. (1836) An act that is an equivalent to an agreement by a tenant to abandon property and the landlord to resume possession, as when the parties perform an act so inconsistent with the landlord–tenant relationship that surrender is presumed, or when a tenant performs some act that would not be valid if the estate continued to exist. [Cases: Landlord and Tenant ☞109, 110, 194.]

surrender clause. *Oil & gas.* A provision commonly found in oil-and-gas leases authorizing a lessee to release its rights to all or any portion of the leased property at any time and to be relieved of further obligations on the acreage surrendered. [Cases: Mines and Minerals ☞77.]

surrenderee. One to whom a surrender is made. See SURRENDER.

surrenderer. See SURRENDEROR.

surrender of a criminal. An officer's delivery of a prisoner to the authorities in the appropriate jurisdiction. See EXTRADITION; RENDITION. [Cases: Extradition and Detainers ☞16, 36.]

surrender of a preference. *Bankruptcy.* The yielding of a voidable conveyance, transfer, assignment, or encumbrance by a creditor to the trustee as a condition of allowing the creditor's claim. [Cases: Bankruptcy ☞2824.]

surrender of charter. *Corporations.* The dissolution of a corporation by a formal yielding of its charter to the state under which it was created and the subsequent acceptance of that charter by the state. [Cases: Corporations ☞610(1).]

"The surrender of a charter can be made only by some formal, solemn act of the corporation, and will be of no avail until accepted by the government. There must be the same agreement of the parties to dissolve that there was to form the compact. It is the acceptance which gives efficacy to the surrender. Consent of the state is sometimes given by general statute." 19 Am. Jur. 2d *Corporations* § 2738, at 546 (1986).

surrender of copyhold. *Hist.* The transfer by a tenant of a copyhold estate by yielding it to the lord in trust for the transferee according to the terms in the surrender. • In normal practice, the tenant went to the steward of the manor and delivered a rod, a glove, or other customary symbol, thereby conveying to the lord (through the steward) all interest and title to the estate, in trust, to be then granted by the lord to the transferee. See COPYHOLD.

surrender of term. See SURRENDER (5).

surrenderor. One who surrenders; esp., one who yields up a copyhold estate for conveyance. — Also spelled *surrenderer.* See COPYHOLD.

surrender to uses of will. *Hist.* A required yielding of a copyhold interest passed by will to the will's uses. • The requirement was abolished by St. 55 Geo. 3, ch. 192.

surrender value. See *cash surrender value* under VALUE (2).

surreply. A movant's second supplemental response to another party's opposition to a motion. — Sometimes written *sur-reply.* [Cases: Federal Civil Procedure ☞921.]

surreptitious (sər-əp-**tish**-əs), *adj.* (15c) (Of conduct) unauthorized and clandestine; stealthily and usu. fraudulently done <surreptitious interception of electronic communications is prohibited under wiretapping laws>. [Cases: Telecommunications ☞1434.]

surreptitious-entry search warrant. See *covert-entry search warrant* under SEARCH WARRANT.

surreptitious-entry warrant. See WARRANT (1).

surrogacy. 1. The act of performing some function in the place of someone else. **2.** The process of carrying and delivering a child for another person. [Cases: Child Custody ☞274.5; Child Support ☞63; Children Out-of-Wedlock ☞15; Parent and Child ☞20.]

gestational surrogacy. A pregnancy in which one woman (the genetic mother) provides the egg, which is fertilized, and another woman (the surrogate mother) carries the fetus and gives birth to the child.

traditional surrogacy. A pregnancy in which a woman provides her own egg, which is fertilized by artificial insemination, and carries the fetus and gives birth to a child for another person.

surrogacy contract. See SURROGATE-PARENTING AGREEMENT.

surrogate (**sər**-ə-git), *n.* (17c) **1.** A substitute; esp., a person appointed to act in the place of another <in his absence, Sam's wife acted as a surrogate>. See SURROGACY; *surrogate mother* under MOTHER. **2.** A probate judge <the surrogate held that the will was valid>. See *probate judge* under JUDGE. **3.** One who acts in place of another. — **surrogate,** *adj.* — **surrogacy** (**sər**-ə-gə-see), **surrogateship,** *n.*

surrogate carrier. See *surrogate mother* (1) under MOTHER.

surrogate court. See *probate court* under COURT.

surrogate mother. See MOTHER.

surrogate parent. 1. See PARENT. **2.** See *surrogate mother* under MOTHER.

surrogate-parenting agreement. (1985) A contract between a woman and typically an infertile couple under which the woman provides her uterus to carry an embryo throughout pregnancy; esp., an agreement between a person (the intentional parent) and a woman (the surrogate mother) providing that the surrogate mother will (1) bear a child for the intentional parent, and (2) relinquish any and all rights to the child. • If the surrogate mother is married, her husband must also consent to the terms of the surrogacy contract. The agreement usu. provides that the woman will relinquish to the couple any parental rights she may have upon the birth of the child. Complex issues arise concerning who is the parent of the resulting child: the genetic donor of egg or sperm, a spouse of either donor, the surrogate, or the person intending to care for the resulting child? American jurisdictions are split on the interpretation and enforceability of these contracts. — Also termed *surrogacy contract*. See *surrogate mother* under MOTHER; *intended child* under CHILD; *intentional parent* under PARENT. [Cases: Child Custody ⇨274.5; Child Support ⇨63; Children Out-of-Wedlock ⇨15; Parent and Child ⇨20.]

surrogate's court. See *probate court* under COURT.

surrounding circumstances. (1828) The facts underlying an act, injury, or transaction — usu. one at issue in a legal proceeding.

sursise (sər-**sɪz**). [Law French] *Hist.* Neglect; omission.

sursum reddere (**sər**-səm **red**-ər-ee), *vb.* [Law Latin] *Hist.* In conveyancing, to render up or surrender (property rights, etc.).

sursum redditio (**sər**-səm rə-**dish**-ee-oh). [Law Latin] *Hist.* In conveyancing, a surrender of an estate by mutual agreement.

surtax. See TAX.

surtax exemption. (18c) **1.** An exclusion of an item from a surtax. [Cases: Internal Revenue ⇨3633.] **2.** An item or an amount not subject to a surtax. See *surtax* under TAX.

surveillance (sər-**vay**-lənts), *n.* (1802) Close observation or listening of a person or place in the hope of gathering evidence. — **surveil** (sər-**vayl**), *vb.*

survey, *n.* (16c) **1.** A general consideration of something; appraisal <a survey of the situation>. **2.** The measuring of a tract of land and its boundaries and contents; a map indicating the results of such measurements <the lender requires a survey of the property before it will issue a loan>.

government survey. A survey made by a governmental entity of tracts of land (as of townships and sections and quarter-sections of land). — Also termed (when conducted by the federal government) *congressional survey*. [Cases: Municipal Corporations ⇨42; Public Lands ⇨23–28.]

inclusive survey. A survey that includes within the described boundaries land that is owned or claimed by others and excluded from the survey's computed area.

topographical survey. A survey that determines a property's elevation above sea level.

3. A governmental department that carries out such measurements <please obtain the boundaries from survey>. **4.** A poll or questionnaire, esp. one examining popular opinion <the radio station took a survey of the concert audience>. **5.** *Maritime law.* A written assessment of the current condition of a vessel or cargo. — Also termed (in sense 5) *survey of a vessel*. [Cases: Shipping ⇨12.] — **survey,** *vb.*

survey of a vessel. See SURVEY (5).

surveyor (sər-**vay**-ər), *n.* One who surveys land and buildings. — **surveyorship,** *n.*

surveyor of the port. *Hist.* A U.S. customs revenue officer appointed for each principal port of entry to oversee the inspection and valuation of imports. • The office was abolished in 1953.

survival action. (1938) A lawsuit brought on behalf of a decedent's estate for injuries or damages incurred by the decedent immediately before dying. • A survival action derives from the claim that a decedent would have had — such as for pain and suffering — if he or she had survived. In contrast is a claim that the beneficiaries may have in a wrongful-death action, such as for loss of consortium or loss of support from the decedent. Cf. WRONGFUL-DEATH ACTION. [Cases: Death ⇨10.]

survival clause. *Wills & estates.* A testamentary provision conditioning a bequest on a beneficiary's living for a specified period, often 60 days, after the testator's death. • If the beneficiary dies within the stated period, the testamentary gift usu. accrues to the residuary estate. — Also termed *survivorship clause*. Cf. SIMULTANEOUS-DEATH CLAUSE.

survival statute. (1892) A law that modifies the common law by allowing certain actions to continue in favor of a personal representative after the death of the party who could have originally brought the action; esp., a law that provides for the estate's recovery of damages incurred by the decedent immediately before death. Cf. DEATH STATUTE. [Cases: Death ⇨10.]

survivance. The right of succession (as to an office or to an estate) of a survivor named before the death of the incumbent or the holder.

surviving, *adj.* (16c) Remaining alive; living beyond the happening of an event so as to entitle one to a distribution of property or income <surviving spouse>. See SURVIVAL ACTION.

surviving corporation. See CORPORATION.

surviving partner. See PARTNER.

surviving spouse. See SPOUSE.

survivor. (15c) **1.** One who outlives another. **2.** A trustee who administers a trust after the cotrustee has been removed, has refused to act, or has died.

survivor-income benefit plan. See EMPLOYEE BENEFIT PLAN.

survivorship. (17c) **1.** The state or condition of being the one person out of two or more who remains alive after the others die. **2.** The right of a surviving party having a joint interest with others in an estate to take the whole. See RIGHT OF SURVIVORSHIP.

survivorship annuity. See ANNUITY.

survivorship clause. See SURVIVAL CLAUSE.

survivorship policy. See INSURANCE POLICY.

susceptibility. See SUBJECTION (3).

suspect, *n.* (14c) A person believed to have committed a crime or offense.

suspect, *vb.* **1.** To consider (something) to be probable. **2.** To consider (something) possible. **3.** To consider (a person) as having probably committed wrongdoing, but without certain truth.

reasonably suspect. **1.** To consider (something) to be probable under circumstances in which a reasonable person would be led to that conclusion. **2.** To consider (someone) as having probably committed wrongdoing under circumstances in which a reasonable person would be led to that conclusion.

suspect class. (1952) A group identified or defined in a suspect classification.

suspect classification. (1949) *Constitutional law.* A statutory classification based on race, national origin, or alienage, and thereby subject to strict scrutiny under equal-protection analysis. • Examples of laws creating suspect classifications are those permitting only U.S. citizens to receive welfare benefits and setting quotas for the government's hiring of minority contractors. See STRICT SCRUTINY. Cf. FUNDAMENTAL RIGHT. [Cases: Constitutional Law ⚷3072, 3078.]

quasi-suspect classification. A statutory classification based on gender or legitimacy, and therefore subject to intermediate scrutiny under equal-protection analysis. • Examples of laws creating a quasi-suspect classification are those permitting alimony for women only and providing for an all-male draft. See INTERMEDIATE SCRUTINY. [Cases: Constitutional Law ⚷3074, 3081.]

suspend, *vb.* (14c) **1.** To interrupt; postpone; defer <the fire alarm suspended the prosecutor's opening statement>. **2.** To temporarily keep (a person) from performing a function, occupying an office, holding a job, or exercising a right or privilege <the attorney's law license was suspended for violating the Model Rules of Professional Conduct>. [Cases: Licenses ⚷38; Officers and Public Employees ⚷65.]

suspend the rules. *Parliamentary law.* To pass a motion that overrides an agenda or other procedural rule, for a limited time and purpose, so that the deliberative assembly may take some otherwise obstructed action.

> "When a body wishes to do something that cannot be done without violating its own rules, but yet that is not in conflict with the constitution or with any controlling statutory provision, it 'suspends the rules that interfere with' the proposed action. Suspension differs from amendment because it is limited in scope and in time. The object of the suspension must be specified, and nothing falling outside the stated limits of the motion to suspend the rules can be done under the suspension." National Conference of State Legislatures, *Mason's Manual of Legislative Procedure* § 279, at 211 (2000).

suspendatur per collum (səs-pen-**day**-tər pər **kahl**-əm). [Law French] *Hist.* Let him be hanged by the neck. • This phrase was written by a judge in the margin of the sheriff's calendar, opposite the name of a prisoner who had been sentenced to death. — Abbr. *sus. per coll.*

> "And now the usage is, for the judge to sign the calendar, or list of all the prisoners' names, with their separate judgments in the margin, which is left with the sheriff. As, for capital felony, it is written opposite to the prisoner's name, 'hanged by the neck;' formerly, in the days of Latin and abbreviation, '*sus. per coll.*' for '*suspendatur per collum.*' And this is the only warrant that the sheriff has for so material an act as taking away life of another." 4 William Blackstone, *Commentaries on the Laws of England* 396 (1769).

suspended sentence. See SENTENCE.

suspended trading. See TRADING HALT.

suspense. (15c) The state or condition of being suspended; temporary cessation <a suspense of judgment>.

suspense account. See ACCOUNT.

suspense reserve. See *appropriated retained earnings* under EARNINGS.

suspension. (15c) **1.** The act of temporarily delaying, interrupting, or terminating something <suspension of business operations> <suspension of a statute>. **2.** The state of such delay, interruption, or termination <corporate transfers were not allowed because of the suspension of business>. **3.** The temporary deprivation of a person's powers or privileges, esp. of office or profession; esp., a fairly stringent level of lawyer discipline that prohibits the lawyer from practicing law for a specified period, usu. from several months to several years <suspension of the bar license>. • Suspension may entail requiring the lawyer to pass a legal-ethics bar examination, or to take one or more ethics courses as continuing legal education, before being readmitted to active practice. [Cases: Licenses ⚷38; Officers and Public Employees ⚷65.] **4.** The temporary withdrawal from employment, as distinguished from permanent severance <suspension from teaching without pay>. [Cases: Labor and Employment ⚷825.] **5.** *Eccles. law.* An ecclesiastical censure that can be temporary or permanent, and partial or complete. See DEPRIVATION. **6.** *Scots law.* The process of staying a judgment pending an appeal to the Supreme Court.

suspension of arms. See TRUCE.

suspension of judgment. See STAY.

suspension of trading. The temporary cessation of all trading of a particular stock on a stock exchange because of some abnormal market condition.

suspensive appeal. See APPEAL.

suspensive condition. See CONDITION (2).

suspensive veto. See *suspensory veto* under VETO.

suspensory veto. See VETO.

sus. per coll. *abbr.* SUSPENDATUR PER COLLUM.

suspicion. (14c) The apprehension or imagination of the existence of something wrong based only on inconclusive or slight evidence, or possibly even no evidence.

reasonable suspicion. (18c) A particularized and objective basis, supported by specific and articulable facts, for suspecting a person of criminal activity. • A police officer must have a reasonable suspicion to stop a person in a public place. See STOP AND FRISK. Cf. PROBABLE CAUSE. [Cases: Arrest ⇨63.5.]

suspicious-activity report. (1996) A form that, as of 1996, a financial institution must complete and submit to federal regulatory authorities if it suspects that a federal crime has occurred in the course of a monetary transaction. • This form superseded two earlier forms, the criminal-referral form and the suspicious-transaction report. — Abbr. SAR. [Cases: Banks and Banking ⇨151, 188.5; United States ⇨34.]

suspicious character. (18c) In some states, a person who is strongly suspected or known to be a habitual criminal and therefore may be arrested or required to give security for good behavior.

suspicious-transaction report. (1993) A checkbox on IRS Form 4789 formerly (1990–1995) requiring banks and other financial institutions to report transactions that might be relevant to a violation of the Bank Secrecy Act or its regulations or that might suggest money-laundering or tax evasion. • This checkbox, like the criminal-referral form, has since been superseded by the suspicious-activity report. — Abbr. STR. [Cases: Banks and Banking ⇨151.]

sustain, *vb.* (13c) **1.** To support or maintain, esp. over a long period <enough oxygen to sustain life>. **2.** To nourish and encourage; lend strength to <she helped sustain the criminal enterprise>. **3.** To undergo; suffer <Charles sustained third-degree burns>. **4.** (Of a court) to uphold or rule in favor of <objection sustained>. **5.** To substantiate or corroborate <several witnesses sustained Ms. Sipes's allegation>. **6.** To persist in making (an effort) over a long period <he sustained his vow of silence for the last 16 years of his life>. — **sustainment, sustentation,** *n.* — **sustainable,** *adj.*

suthdure (suuth-**door**). *Hist. Eccles. law.* The south door of a church, where purgations and other acts were performed and complaints were heard and resolved.

suum cuique tribuere (**s[y]oo-əm k[w]ı-kwee tri-byoo-ər-ee**), *vb.* [Latin] *Roman law.* To render to every person his due. • This was one of the three general precepts in which Justinian expressed the requirements of the law. Cf. ALTERUM NON LAEDERE; HONESTE VIVERE.

suus heres (**s[y]oo-əs heer-eez**). [Latin] *Roman law.* An heir in the power of the deceased, by whom acceptance of the inheritance was not necessary. See SUI HEREDES.

suus judex (**s[y]oo-əs joo-deks**). [Law Latin] *Hist.* A proper judge in a cause.

suzerain (**soo-zə-rin** *or* **-rayn**), *n.* [Law French] **1.** *Hist.* A Crown tenant; a tenant *in capite* holding an estate immediately of the Crown. **2.** *Int'l law.* A nation that exercises control over another nation's foreign relations. — Also spelled *suzereign.*

suzerainty (**soo-zə-rin-tee** *or* **-rayn-tee**). **1.** *Hist.* The power of a feudal overlord to whom fealty is due. See FEALTY. **2.** *Int'l law.* The dominion of a nation that controls the foreign relations of another nation but allows it autonomy in its domestic affairs.

> "At the present time there appears to be no instance of a relation between states which is described as a suzerainty. The term was applied to the relation between Great Britain and the South African Republic, and also to that between Turkey and Bulgaria from 1878 to 1909, but it seems likely to disappear from diplomatic terminology." J.L. Brierly, *The Law of Nations* 128 (5th ed. 1955).

suzereign. See SUZERAIN.

S.W. *abbr.* SOUTH WESTERN REPORTER.

swamp and overflowed land. See LAND.

swap, *n. Commercial law.* **1.** An exchange of one security for another. **2.** A financial transaction between two parties, usu. involving an intermediary or dealer, in which payments or rates are exchanged over a specified period and according to specified conditions.

currency swap. An agreement to swap specified payment obligations denominated in one currency for specified payment obligations denominated in a different currency.

stock swap. In a corporate reorganization, an exchange of one corporation's stock for another corporation's stock. — Also termed *stock-for-stock exchange.*

swarf money. *Hist.* A payment made in lieu of the service of maintaining a lord's castle.

swatting, *n. Slang.* The act of falsely telephoning a report of a serious crime or emergency in progress in order to provoke a response from a law-enforcement agency, esp. the dispatch of a SWAT (Special Weapons and Tactics) team. • Swatting schemes are often elaborate, involving the use of electronic tools to mask the caller's true identity and location, such as voice-changing devices, fake caller-IDs, and the like. — **swatter,** *n.*

swear, *vb.* (bef. 12c) **1.** To administer an oath to (a person). [Cases: Oath ⇨5.] **2.** To take an oath. **3.** To use obscene or profane language.

swearing behind. *Patents.* A patent applicant's showing that an invention was conceived of or reduced to practice before the effective date of a prior-art reference cited by a patent examiner as grounds for rejecting an application. 37 CFR § 1.131. — Also termed *swearing behind the reference.* See ANTEDATING OF A PRIOR-

ART REFERENCE.[Cases: Patents ⚷91(.5).] — **swear behind,** *vb.*

swearing contest. See SWEARING MATCH.

swearing-in, *n.* (1900) The administration of an oath to a person who is taking office or testifying in a legal proceeding. See OATH. [Cases: Officers and Public Employees ⚷36(1).]

swearing match. (1907) A dispute in which determining a vital fact involves the credibility choice between one witness's word and another's — the two being irreconcilably in conflict and there being no other evidence. • In such a dispute, the fact-finder is generally thought to believe the more reputable witness, such as a police officer over a convicted drug-dealer. — Also termed *swearing contest*; *oath against an oath.*

swearing the peace. *Hist.* The giving of proof to a magistrate that one fears for one's own safety, so that the magistrate will order the troublemaker to keep the peace by issuing a supplicavit. See SUPPLICAVIT.

swear out, *vb.* (1850) To obtain the issue of (an arrest warrant) by making a charge under oath <Franklin swore out a complaint against Sutton>.

sweat equity. (1966) Financial equity created in property by the owner's labor in improving the property <the lender required the homeowner to put 300 hours of sweat equity into the property>.

sweating. (1824) *Criminal procedure.* The illegal interrogation of a prisoner by use of threats or similar means to extort information.

sweat-of-the-brow doctrine. *Copyright.* The now-discarded principle that copyrights can protect the labor and expense that went into a work, rather than the work's originality. • The Supreme Court rejected the sweat-of-the-brow doctrine in *Feist Pubs., Inc. v. Rural Tel. Servs. Co.*, 499 U.S. 340, 111 S.Ct. 1282 (1991). Cf. SWEATWORK. [Cases: Copyrights and Intellectual Property ⚷12(1).]

sweatshop. (1890) *Slang.* A business where the employees are overworked and underpaid in extreme conditions; esp., in lawyer parlance, a law firm that requires associates to work so hard that they barely (if at all) maintain a family or social life — though the firm may, in return, pay higher salaries.

sweatwork. *Slang.* A compilation, esp. a searchable computer database, that does not qualify for U.S. copyright protection because the underlying facts are not copyrightable and the compilation is not a nontrivial arrangement. • New forms of intellectual-property laws are aimed at protecting the "sweat-of-the-brow" investment that goes into compiling databases. Cf. SWEAT-OF- THE-BROW DOCTRINE. [Cases: Copyrights and Intellectual Property ⚷12(3).]

sweeping, *adj.* **1.** Comprehensive in scope <a sweeping objection><sweeping legislation>. **2.** Overwhelming <sweeping voter turnout>.

Sweeping Clause. See NECESSARY AND PROPER CLAUSE.

sweepstakes. 1. A race (esp. a horse race) in which the winner's prize is the sum of the stakes contributed by the various competitors. **2.** A contest, often for promotional purposes, that awards prizes based on the random selection of entries. • State and federal laws prohibit conducting a sweepstakes as a scheme to obtain money or property through the mail by false representations. 39 USCA § 3005. [Cases: Gaming ⚷62; Lotteries ⚷3.]

sweetener. 1. An inducement offered to a brokerage firm to enter into an underwriting arrangement with an issuer. **2.** A special stock feature (such as convertibility) that enhances the stock's marketability.

sweetheart deal. A collusive agreement; esp., a collective-bargaining agreement made as a result of collusion between an employer and a union representative, usu. allowing the employer to pay lower wages in exchange for payoffs to the union representative.

swein (swayn). *Hist.* A forest freeholder. — Also spelled *swain.*

sweinmote (**swayn**-moht). *Hist.* A forest court held three times a year, before verderors as judges and freeholders of the forest as jurors, to try forest offenses. — Also spelled *swainmote*; *swanimote*; *swainemote*; *swaingemote.*

> "The court of *sweinmote* is to be holden before the verderors, as judges, by the steward of the sweinmote thrice in every year . . . . The principal jurisdiction of this court is, first, to enquire into the oppressions and grievances committed by the officers of the forest . . . and, secondly, to receive and try presentments certified from the court of attachments against offences in vert and venison." 3 William Blackstone, *Commentaries on the Laws of England* 72 (1768).

swell, *n.* **1.** An expansion in the bulk of something <a swell resulting from defective canning procedures>. **2.** A gradual rise of something <a swell of damages>. **3.** A large, unbroken wave; the collective waves, particularly following a storm <a rough swell caused the shipwreck>.

swift witness. See *zealous witness* under WITNESS.

swindle, *vb.* (18c) To cheat (a person) out of property <Johnson swindled Norton out of his entire savings> <Johnson swindled Norton's entire savings out of him>. — **swindle,** *n.* — **swindling,** *n.*

swindler. A person who willfully defrauds or cheats another.

swinging-door chad. See CHAD.

swing loan. See *bridge loan* under LOAN.

swing vote. (1962) The vote that determines an issue when all other voting parties, such as appellate judges, are evenly split.

swipe, *vb.* **1.** To strike or try to strike with a swinging blow <the cat swiped its claws across my hand>. **2.** To steal <the thief swiped the ring out of the display case>. **3.** To pass a card with a magnetic stripe through a machine that reads the stripe <I swiped my credit

card through the pay phone's reader and made my call>. — Sometimes termed (in sense 3) *wipe*.

switching. In mutual funds, the practice of selling shares in one fund to buy shares in another.

swoling (**swuul**-ing). *Hist.* The quantity of land that can be plowed in a year; a hide of land. — Also spelled *suling* (**suul**-ing); *sulung* (**suu**-luung). — Also termed *swoling of land*.

sworn brothers. *Hist.* Persons who, by mutual oaths, swear to share in each other's fortunes.

sworn clerks in chancery. *Hist.* Certain officers in the Court of Chancery who assist the six principal clerks by performing clerical tasks, including keeping records and making copies of pleadings. • The offices were abolished in 1842 by the Court of Chancery Act. St. 5 & 6 Vict., ch. 103. — Also termed *sixty clerks*.

sworn statement. See STATEMENT.

SYD. *abbr.* Sum of the years' digits. See *sum-of-the-years'-digits depreciation method* under DEPRECIATION METHOD.

SYD method. See *sum-of-the-year's-digits depreciation method* under DEPRECIATION METHOD.

syllabus (**sil**-ə-bəs). **1.** An abstract or outline of a topic or course of study. **2.** A case summary appearing before the printed judicial opinion in a law report, briefly reciting the facts and the holding of the case. • The syllabus is ordinarily not part of the court's official opinion. — Sometimes termed *headnote*. Cf. HEADNOTE. Pl. **syllabuses, syllabi** (**sil**-ə-bī).

symbiotic-relationship test. (1973) The standard by which a private person may be considered a state actor — and may be liable for violating someone's constitutional rights — if the relationship between the private person and the government is so close that they can fairly be said to be acting jointly. • Private acts by a private person do not generally create liability for violating someone's constitutional rights. But if a private person violates someone's constitutional rights while engaging in state action, the private person, and possibly the government, can be held liable. State action may be shown by proving that the private person and the state have a mutually dependent (symbiotic) relationship. For example, a restaurant in a public parking garage was held to have engaged in discriminatory state action by refusing to serve African-Americans. *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 81 S.Ct. 856 (1961). There, the Court found a symbiotic relationship because the restaurant relied on the garage for its existence and significantly contributed to the municipal parking authority's ability to maintain the garage. But the symbiotic-relationship test is strictly construed. For example, the fact that an entity receives financial support from — or is heavily regulated by — the government is probably insufficient to show a symbiotic relationship. Thus, although a state had granted a partial monopoly to a public utility, the Court refused to find a symbiotic relationship between them. *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 95 S.Ct. 449 (1974). See JOINT-PARTICIPATION TEST. Cf. STATE-COMPULSION TEST; NEXUS TEST. [Cases: Civil Rights ⇨ 1326(5, 7); Constitutional Law ⇨ 1061.]

symbolaeography (sim-bə-lee-**og**-rə-fee). The art of drafting legal instruments.

symbolic, *adj.* (Of a signature) consisting of a symbol or mark. Cf. ONOMASTIC (2); HOLOGRAPH.

symbolic delivery. See DELIVERY.

symbolic speech. See SPEECH.

symbolum animae (**sim**-bə-ləm **an**-ə-mee). [Latin] *Hist.* A mortuary. See MORTUARY (2).

sympathy strike. See STRIKE.

synallagmatic contract. See CONTRACT.

synchronization license. See LICENSE.

syndic (**sin**-dik), *n.* [French "governmental representative"] **1.** An agent (esp. of a government or corporation) appointed to transact business for others. **2.** *Civil law.* A bankruptcy trustee. [Cases: Bankruptcy ⇨ 3001.]

syndicalism (**sin**-di-kə-liz-əm), *n.* A direct plan or practice implemented by trade-union workers seeking to control the means of production and distribution, esp. by using a general strike. — **syndicalist,** *n.*

criminal syndicalism. Any doctrine that advocates or teaches the use of illegal methods to change industrial or political control.

syndicate (**sin**-di-kit), *n.* (17c) A group organized for a common purpose; esp., an association formed to promote a common interest, carry out a particular business transaction, or (in a negative sense) organize criminal enterprises. See ORGANIZED CRIME. — **syndicate** (**sin**-di-kayt), *vb.* — **syndication** (sin-di-**kay**-shən), *n.* — **syndicator** (**sin**-di-kay-tər), *n.*

buying syndicate. A group of investment bankers who share the risk in underwriting a securities issue.

syndicate book. *Securities.* A list of investors who have expressed an interest in purchasing shares in a forthcoming public offering. • The lead managing underwriter of the offering compiles and maintains the list during the offering.

syndicating. 1. The act or process of forming a syndicate. **2.** The gathering of materials for newspaper publication from various writers and distribution of the materials at regular intervals to newspapers throughout the country for publication on the same day.

syndicus (**sin**-di-kəs), *n.* [Latin "advocate" fr. Greek *syn-* "with" + dike "lawsuit"] *Roman law.* One chosen (by a corporate body such as a municipality, college, etc.) to represent it at law. See SYNDIC.

synergism (**sin**-ər-jiz-əm), *n. Patents.* **1.** A combination of known elements or functions that create a result greater than the sum of the individual elements or functions. • Demonstrating that synergism exists is sometimes useful in proving nonobviousness. The U.S. Supreme Court held that synergism was a requirement for a combination patent in *Great Atl. & Pac. Tea Co. v.*

Supermarket Equip. Corp., 340 U.S. 147 (1950). But that holding was overturned by the Patent Act of 1952. 35 USCA § 103. [Cases: Patents ⇨26(1.5).] **2.** A patentable device that produces a new or different function or an unusual or surprising consequence. — Also termed *synergy; synergistic result.* — **synergistic** (sin-ər-**jis**-tik), **synergetic** (sin-ər-**jet**-ik), *adj.*

syngraph (**sin**-graf). A written contract or bond signed by all the parties.

synod (**sin**-əd). *Eccles. law.* An ecclesiastical council lawfully assembled to determine church matters; esp., a meeting of several adjoining presbyteries in the Presbyterian church. [Cases: Religious Societies ⇨11, 12.]

diocesan synod (dy-**os**-ə-sən). A synod composed of clergy from one diocese.

general synod. A synod composed of bishops from all nations. — Also termed *universal synod.*

national synod. A synod composed of clergy from a single nation.

provincial synod. A synod composed of clergy from a single province. — Also termed *convocation.*

synodal (**sin**-ə-dəl), *n.* **1.** A collection of ordinances of diocesan synods. **2.** A tribute of money given by clergy to a bishop at the Easter visitation.

synodales testes (sin-ə-**day**-leez **tes**-teez), *n.* [Law Latin "synods-men"] *Hist.* Persons who gave evidence at synods (or later at visitations), informing them of misconduct by clergy or laity.

synodsman. See SIDESMAN.

synopsis (si-**nop**-sis), *n.* (17c) A brief or partial survey; a summary or outline; HEADNOTE. — **synopsize** (si-**nop**-siz), *vb.*

synthetic lease. See LEASE.

synthetic rule. See QUANTITATIVE RULE.

systematic jurisprudence. See *expository jurisprudence* under JURISPRUDENCE.

systematic violation. (1980) *Civil-rights law.* An employer's policy or procedure that discriminates against an employee. • Such a policy or procedure will usu. be considered a continuing violation. So an employee's claim of unlawful discrimination will not be barred as untimely as long as some discriminatory effect of the policy or procedure occurs within the limitations period (e.g., 300 days for a Title VII claim). Cf. SERIAL VIOLATION. [Cases: Civil Rights ⇨1505(7).]

T

T. *Hist.* **1.** A letter branded on the base of the thumb of a person who claimed the benefit of clergy to prevent the person from claiming it again. • This practice was formally abolished by the Criminal Statutes (England) Repeal Act of 1827. **2.** In Pennsylvania, a letter sewn onto the left sleeve of a convicted thief. • This letter — required by a 1698 statute — had to be at least four inches high and of a different color from the rest of the garment.

TAB. *abbr.* TAX-ANTICIPATION BILL.

table, *n.* **1.** A synopsized representation, esp. in columnar form, of the particulars of a subject, usu. to present diverse items in a way that can be more easily understood. • Examples include actuarial tables, genealogical tables (which show the names and relationships of all the persons constituting a family), and interest tables. **2.** A formulation of laws inscribed on tablets, such as the Twelve Tables of Roman law. See TWELVE TABLES. **3.** *Parliamentary law.* The secretary's desk.

table, *vb.* (1849) *Parliamentary law.* (Of a deliberative assembly) to set aside the pending business until the assembly votes to resume its consideration. • A matter that has been tabled may be brought up again by a vote of the assembly. — Also termed *lay on the table*; *postpone temporarily.*

> "The early name of the motion to postpone temporarily was '*lay on the table*.' (In American usage the phrase has been shortened, and the motion is now generally referred to as the motion '*to table*.') The term grew out of the legislative custom of literally laying a bill awaiting further consideration on the clerk's table.
>
> "The reference to 'laying the motion on the table' or 'tabling' is still widely used, but the more precise term, 'postpone temporarily,' is preferred when that is its purpose, because the term is self-explanatory.
>
> "Sometimes, however, the purpose of the motion is *not* merely to postpone temporarily, but to set the motion aside indefinitely — in effect, to 'kill' it . . . ." Alice Sturgis, *The Standard Code of Parliamentary Procedure* 70 (4th ed. 2001).

2. *English law.* To put forward (a bill, proposal, resolution, etc.) for consideration and discussion by a legislative or deliberative assembly.

tableau of distribution. *Civil law.* A list of creditors of an estate, stating what each is entitled to. See *judgment homologating the tableau* under JUDGMENT.

tableaux vivant. *Copyright.* A performance by actors dressed as characters in a painting and acting out the event portrayed in the painting.

table of authorities. See INDEX OF AUTHORITIES.

table of cases. (18c) **1.** An alphabetical list of the cases cited in a brief or lawbook, usu. prefixed or appended to it, with one or more page or section numbers showing where in the text each case is cited. **2.** INDEX OF AUTHORITIES.

Tablets of Amalfi. See AMALPHITAN CODE.

tabula in naufragio. [Latin "the last plank from the shipwreck"] Something added to a lawsuit, often on appeal, as a last-ditch argument or as an afterthought.

tabula rasa (**tab**-yə-lə **rah**-sə *or* -zə). [Latin "scraped tablet"] (16c) A blank tablet ready for writing; a clean slate. Pl. ***tabulae rasae*** (**tab**-yə-lee-**rahs**-i).

tabular form. See SUBPARAGRAPH FORM.

tabulis exhibendis. See DE TABULIS EXHIBENDIS.

T-account. An accounting form shaped like the letter *T*, with the account's name above the horizontal line, debits listed to the left of the vertical line, and credits to the right.

tacere per quadriennium utile (tə-**seer**-ee pər kwod-ree-**en**-ee-əm **yoo**-tə-lee). [Law Latin] *Hist.* To be silent throughout the four years after majority. • A person is estopped from challenging a deed made when that person was a minor if the right is not exercised within the four years after the person reaches the age of majority.

tacit (**tas**-it), *adj.* (17c) **1.** Implied but not actually expressed; implied by silence or silent acquiescence <a tacit understanding> <a tacit admission>. **2.** *Civil law.* Arising by operation of law; constructive <a tacit mortgage> <tacit relocation>. La. Civ. Code art. 3506(30). — **tacitly,** *adv.*

tacit acceptance. *Civil law.* **1.** An acceptance of an offer indicated by circumstances or operation of law rather than express words. La. Civ. Code art. 1927. **2.** An acceptance of an inheritance, indicated by the heir's doing some act that shows an intent to accept it and that the heir would have no right to do except in that capacity. [Cases: Descent and Distribution ⚷72, 119(2).]

tacit admission. See *implied admission* under ADMISSION (1).

tacit collusion. See CONSCIOUS PARALLELISM.

tacit contract. See CONTRACT.

tacit dedication. See DEDICATION.

tacit hypothecation. See HYPOTHECATION.

tacit law. See LAW.

tacit mortgage. 1. See *legal mortgage* under MORTGAGE. **2.** See *tacit hypothecation* under HYPOTHECATION.

tacit prorogation. See PROROGATION.

tacit relocation. The implied or constructive renewal of a lease, usu. on a year-to-year basis, when the landlord and tenant have failed to indicate their intention to

have the lease terminated at the end of the original term. [Cases: Landlord and Tenant ⚷115(1).]

tacit-relocation doctrine. The principle under which a lease is presumed to continue (usu. for a one-year period) beyond its expiration date because of the parties' failure to indicate that the agreement should terminate at the stipulated date. [Cases: Landlord and Tenant ⚷115(1).]

tacit remission. See REMISSION.

tack, *n. Scots law.* A deed creating a lease of land or other immovable property for an annual rent payable in money, services, or fruits produced on the land. • The lessee may be referred to as a *tacksman* or *tacks-woman.* — **tack,** *vb.*

tack, *vb.* **1.** To add (one's own period of land possession) to a prior possessor's period to establish continuous adverse possession for the statutory period. [Cases: Adverse Possession ⚷43.] **2.** To annex (a junior lien) to a first lien to acquire priority over an intermediate lien.

> "It is the established doctrine in the English law, that if there be three mortgages in succession, and all duly registered, or a mortgage, and then a judgment, and then a second mortgage upon the estate, the junior mortgagee may purchase in the first mortgage, and tack it to his mortgage, and by that contrivance 'squeeze out' the middle mortgage and gain preference over it. The same rule would apply if the first as well as the second incumbrance was a judgment; but the incumbrancer who tacks must always be a mortgagee, for he stands in the light of a bonâ fide purchaser, parting with his money upon the security of the mortgage." 4 James Kent, *Commentaries on American Law* *176 (George Comstock ed., 11th ed. 1866).

3. *Scots law.* To lease land or another immovable for an annual rent payable in money, services, or fruits produced on the land.

tacking. (18c) **1.** The joining of consecutive periods of possession by different persons to treat the periods as one continuous period; esp., the adding of one's own period of land possession to that of a prior possessor to establish continuous adverse possession for the statutory period. See ADVERSE POSSESSION. [Cases: Adverse Possession ⚷43.] **2.** The joining of a junior lien with the first lien in order to acquire priority over an intermediate lien. [Cases: Mortgages ⚷151(2).]

Taft–Hartley Act. See LABOR–MANAGEMENT RELATIONS ACT.

Taft–Hartley fund. See *joint-welfare fund* under FUND (1).

tail, *n.* (14c) The limitation of an estate so that it can be inherited only by the fee owner's issue or class of issue. See FEE TAIL; ENTAIL. — Also termed (in Scots law) *tailzie* (**tay**-lee). [Cases: Descent and Distribution ⚷29; Estates in Property ⚷12; Wills ⚷604.]

several tail. A tail that designates two separate heirs or classes of heirs who are eligible to inherit.

tail female. (18c) A limitation to female heirs. [Cases: Estates in Property ⚷12; Wills ⚷605.]

tail general. (15c) **1.** A tail limited to the issue of a particular person, but not to that of a particular couple. — Also termed *general tail.* **2.** See *tail male.* [Cases: Estates in Property ⚷12; Wills ⚷604.]

tail male. (17c) A limitation to male heirs. — Also termed *tail general.* [Cases: Estates in Property ⚷12; Wills ⚷604.]

tail special. (15c) A tail limited to specified heirs of the donee's body. — Also termed *special tail.* [Cases: Estates in Property ⚷12; Wills ⚷604.]

> "Estates-tail are either *general,* or *special* . . . . Tenant in tail-special is where the gift is restrained to certain heirs . . . and does not go to all of them in general. And this may happen in several ways. I shall instance in only one: as where lands and tenements are given to a man and the *heirs of his body, on Mary his now wife to be begotten;* here no issue can inherit, but such special issue as is engendered, between them two; not such as the husband may have by another wife: and therefore it is called special tail." 2 William Blackstone, *Commentaries on the Laws of England* 113–14 (1766).

tail coverage. *Insurance.* An extension of a claims-made professional-liability policy to protect against claims and lawsuits filed after the end of the policy period but based on negligent acts that occurred during the policy period. — Also termed *extended-reporting-period endorsement.* Cf. PRIOR-ACTS COVERAGE. [Cases: Insurance ⚷2266.]

tailzie (**tay**-lee), *n. Scots law.* **1.** See ENTAIL. **2.** See TAIL.

taint, *n.* (16c) **1.** A conviction of felony. **2.** A person so convicted. See ATTAINDER.

taint, *vb.* (14c) **1.** To imbue with a noxious quality or principle. **2.** To contaminate or corrupt. **3.** To tinge or affect slightly for the worse. — **taint,** *n.*

tainted evidence. See EVIDENCE.

tainted stock. See STOCK.

take, *vb.* (bef. 12c) **1.** To obtain possession or control, whether legally or illegally <it's a felony to take that property without the owner's consent>. **2.** To seize with authority; to confiscate or apprehend <take the suspect into custody>. **3.** To acquire (property) for public use by eminent domain; (of a governmental entity) to seize or condemn property <the state took the land under its eminent-domain powers>. [Cases: Eminent Domain ⚷1–65.] **4.** To acquire possession by virtue of a grant of title, the use of eminent domain, or other legal means; esp., to receive property by will or intestate succession <the probate code indicates the proportions according to which each heir will take>. See TAKING. **5.** To claim one's rights under <she took the Fifth Amendment>.

take a default judgment. To reduce to final judgment a defendant's failure to timely answer a lawsuit. • The process usu. involves informing the court of the defendant's failure to answer, proving damages, and submitting a proposed judgment for the judge to sign. See DEFAULT JUDGMENT. [Cases: Federal Civil Procedure ⚷2423; Judgment ⚷92–131.]

take a deposition. To obtain the testimony of a witness by deposition. See DEPOSITION (1). [Cases: Federal Civil Procedure ⚷1371; Pretrial Procedure ⚷91.]

take away, *vb. Hist.* To entice or persuade (a female under the age of 18) to leave her family for purposes of marriage, prostitution, or illicit sex. See ABDUCTION (2).

take back, *vb.* (18c) To revoke; to retract.

take by stealth. (16c) To steal (personal property); to pilfer or filch. [Cases: Larceny ⚷1, 12.]

take care of. (16c) **1.** To support or look after (a person). **2.** To pay (a debt). **3.** To attend to (some matter).

take delivery. (1829) To receive something purchased or ordered; esp., to receive a commodity under a futures contract or spot-market contract, or to receive securities recently purchased.

take effect, *vb.* (14c) **1.** To become operative or executed. **2.** To be in force; to go into operation.

take from the table. *Parliamentary law.* To resume consideration of (business previously tabled). — Also termed *resume consideration.*

take-home pay. Gross wages or salary reduced by deductions such as income taxes, social-security taxes, voluntary contributions, and union dues; the net amount of a paycheck.

take-it-or-leave-it contract. See *adhesion contract* under CONTRACT.

take-nothing judgment. See JUDGMENT.

take-or-pay contract. See CONTRACT.

takeover. The acquisition of ownership or control of a corporation. • A takeover is typically accomplished by a purchase of shares or assets, a tender offer, or a merger. [Cases: Securities Regulation ⚷52.10–52.26.]

friendly takeover. A takeover that is approved by the target corporation.

hostile takeover. A takeover that is resisted by the target corporation. — Also termed *unfriendly takeover.* [Cases: Corporations ⚷310(1).]

unfriendly takeover. See *hostile takeover.*

takeover agreement. See AGREEMENT.

takeover bid. An attempt by outsiders to wrest control from the incumbent management of a target corporation. — Also termed *tender offer.* See TENDER OFFER.

takeover defense. A measure taken by a corporation to discourage hostile takeover attempts. — Often shortened to *defense.* — Also termed *shark repellent.*

structural takeover defense. A legal mechanism adopted by a corporation to thwart any future takeover bid without having any financial or operational effect on the target corporation.

transactional takeover defense. A financial or operational transaction designed to make a present or future takeover bid more difficult by raising a company's share price, paying off the bidder, or reducing a bidder's profit. • Examples include issuing new shares of stock, acquiring expensive assets, and adopting a poison-pill defense. See POISON PILL; PORCUPINE PROVISION.

takeover offer. See TENDER OFFER.

taker, *n.* (18c) A person who acquires; esp., one who receives property by will, by power of appointment, or by intestate succession. [Cases: Descent and Distribution ⚷20–41; Wills ⚷492–511.]

first taker. (18c) A person who receives an estate that is subject to a remainder or executory devise.

presumptive taker. A person who would take under the applicable provisions if the takers were to be finally ascertained at the present moment. [Cases: Wills ⚷849.]

taker in default. (1911) A person who will receive property not effectively appointed; esp., a person designated by a donor to receive property under a power of appointment if the donee fails to exercise that power.

take the Fifth. To assert one's right against self-incrimination under the Fifth Amendment. • A common but loose variant of the phrase is *plead the Fifth*; invoking the right is not a plea. See RIGHT AGAINST SELF-INCRIMINATION. [Cases: Criminal Law ⚷393(1).]

take the witness. You may now question the witness. • This phrase is a lawyer's courtroom announcement that ends one side's questioning and prompts the other side to begin its questioning. Synonymous phrases are *your witness* and *pass the witness.*

take up, *vb.* **1.** To pay or discharge (a note). [Cases: Bills and Notes ⚷428, 436.] **2.** To retire (a negotiable instrument); to discharge one's liability on (a negotiable instrument), esp. the liability of an indorser or acceptor. **3.** To purchase (a note).

taking, *n.* (14c) **1.** *Criminal & tort law.* The act of seizing an article, with or without removing it, but with an implicit transfer of possession or control.

constructive taking. (1843) An act that does not equal an actual appropriation of an article but that does show an intention to convert it, as when a person entrusted with the possession of goods starts using them contrary to the owner's instructions.

2. *Constitutional law.* The government's actual or effective acquisition of private property either by ousting the owner or by destroying the property or severely impairing its utility. • There is a taking of property when government action directly interferes with or substantially disturbs the owner's use and enjoyment of the property. — Also termed *constitutional taking.* See CONDEMNATION (2); EMINENT DOMAIN. [Cases: Eminent Domain ⚷2.]

actual taking. See *physical taking.*

de facto taking (di **fak**-toh). (1921) **1.** Interference with the use or value or marketability of land in anticipation of condemnation, depriving the owner of reasonable use and thereby triggering the obligation to

pay just compensation. **2.** A taking in which an entity clothed with eminent-domain power substantially interferes with an owner's use, possession, or enjoyment of property. [Cases: Eminent Domain ⚷2.]

permanent taking. A government's taking of property with no intention to return it. • The property owner is entitled to just compensation. [Cases: Eminent Domain ⚷69, 122.]

physical taking. A physical appropriation of an owner's property by an entity clothed with eminent-domain authority. — Also termed *actual taking.* [Cases: Eminent Domain ⚷2.]

temporary taking. A government's taking of property for a finite time. • The property owner may be entitled to compensation and damages for any harm done to the property. [Cases: Eminent Domain ⚷114, 143.]

taking a case from the jury. See *directed verdict* under VERDICT.

Takings Clause. (1955) The Fifth Amendment provision that prohibits the government from taking private property for public use without fairly compensating the owner. — Also termed *Just Compensation Clause.* See EMINENT DOMAIN. [Cases: Eminent Domain ⚷69, 70.]

taking the Fifth. See TAKE THE FIFTH.

tales (**tay**-leez *or* taylz). [Latin, pl. of *talis* "such," in the phrase *tales de circumstantibus* "such of the bystanders"] (15c) **1.** A supply of additional jurors, usu. drawn from the bystanders at the courthouse, summoned to fill a panel that has become deficient in number because of juror challenges or exemptions. **2.** A writ or order summoning these jurors.

tales-juror. See TALESMAN.

talesman (**taylz**-mən *or* **tay**-leez-mən). *Archaic.* **1.** A person selected from among the bystanders in court to serve as a juror when the original jury panel has become deficient in number. [Cases: Jury ⚷72.] **2.** VENIREMEMBER. — Also termed *tales-juror.*

talisman (**tal**-is-mən), *n.* A charm, amulet, or other physical thing supposedly capable of working wonders <private property is not some sacred talisman that can never be touched by the state — it can be taken for public use as long as the owner is justly compensated>. — **talismanic** (tal-is-**man**-ik), *adj.*

talis qualis (**tay**-lis **kway**-lis). [Latin] *Hist.* Such as it is. • A purchaser who accepts title as it stands at the time of sale takes the title *talis qualis.*

tallage. 1. *Hist.* An arbitrary tax levied by the monarch on towns and lands belonging to the crown. • Royal tallages were abolished in the 14th century when Parliament gained the power to approve or disapprove the monarch's direct-taxation schemes. **2.** *Hist.* A levy demanded by a feudal lord from tenants in lieu of the tenants' provision of goods and services. • The timing and amount of the levy varied according to local custom, type of tenure, and caprice. **3.** TOLLAGE.

tally. 1. *Hist.* A stick cut into two parts and marked with notches to show what was due between a debtor and creditor.

> "The tally, used as a receipt for money or chattels, was a narrow wooden stick with notches of varying dimensions to represent the amount received. After the notches had been cut, the stick was split lengthwise into two unequal pieces. The longer, which contained a stump or handle and was called the 'stock,' was given to the person making the payment, and the shorter, a flat strip called the 'foil,' to the other party. If the sum involved was disputed, the two pieces could be fitted one to the other to see if they would 'tally.'" C.H.S. Fifoot, *History and Sources of the Common Law: Tort and Contract* 223 (1949).

> "A thousand pounds was marked by cutting out the thickness of the palm of the hand, a hundred by the breadth of the thumb, a score by the breadth of the little finger, one pound by that of a swelling barley-corn . . . . The terminology has left a permanent imprint on our language. If you lent money to the Bank of England, tallies were cut for the amount: the Bank kept the foil and you received the stock; you thus held 'Bank Stock' of the amount recorded upon it. When the form of cheque was adopted, it was not indeed called a foil, but the part retained by the payer is still the counterfoil; and the word 'cheque' itself goes back ultimately to the same root as 'exchequer.'" Reginald L. Poole, *The Exchequer in the Twelfth Century* 86-93 (1912).

> "From early times tallies were used in the Exchequer and this lasted until 1826. The burning of a large quantity of old tallies led to the burning down of the old Houses of Parliament." David M. Walker, *The Oxford Companion to Law* 1207 (1980).

2. Anything used to record an account. **3.** An account; a score.

Talmud (**tahl**-muud *or* **tal**-məd), *n.* A work embodying the civil and canonical law of the Jewish people. — **Talmudic** (tahl-**moo**-dik *or* tal-), *adj.*

talweg. See THALWEG.

TAM. *abbr.* TECHNICAL ADVICE MEMORANDUM.

tame, *adj.* (Of an animal) domesticated; accustomed to humans. See *domestic animal* under ANIMAL. [Cases: Animals ⚷1.5(3).]

tam facti quam animi (tam **fak**-tɪ kwam **an**-ə-mɪ). [Latin] *Hist.* In deed as well as in intention.

tamper, *vb.* (16c) **1.** To meddle so as to alter (a thing); esp., to make changes that are illegal, corrupting, or perverting. **2.** To interfere improperly; to meddle.

tampering, *n.* (17c) **1.** The act of altering a thing; esp., the act of illegally altering a document or product, such as written evidence or a consumer good. *See* Model Penal Code §§ 224.4, 241.8; 18 USCA § 1365. **2.** The act or an instance of engaging in improper or underhanded dealings, esp. in an attempt to influence. • Tampering with a witness or jury is a criminal offense. See WITNESS TAMPERING; OBSTRUCTION OF JUSTICE; EMBRACERY.

TAN. See *tax-anticipation note* under NOTE (1).

TANF. *abbr.* TEMPORARY ASSISTANCE TO NEEDY FAMILIES.

tangible, *adj.* (16c) **1.** Having or possessing physical form; CORPOREAL. **2.** Capable of being touched and seen; perceptible to the touch; capable of being pos-

sessed or realized. **3.** Capable of being understood by the mind.

tangible asset. See ASSET.

tangible chattel paper. See CHATTEL PAPER.

tangible cost. See COST (1).

tangible damages. See *actual damages* under DAMAGES.

tangible evidence. See EVIDENCE.

tangible medium of expression. *Copyright.* Any material form in which a work can be expressed and communicated, either directly or through a machine. • A requirement for copyright is that the work be fixed in a tangible medium of expression. [Cases: Copyrights and Intellectual Property ⇨12(1).]

tangible personal property. See PROPERTY.

tangible-personal-property memorandum. A handwritten or signed document that lists items of tangible personal property (such as jewelry, artwork, or furniture) and the persons who should receive the property upon the owner's death. • This memorandum is a separate document from the property owner's will, and if referred to by the will, it is a valid testamentary disposition. Unif. Probate Code § 2-513. — Abbr. TPPM.

tangible property. See PROPERTY.

tangible thing. See *corporeal thing* under THING.

tangible worth. See WORTH.

tanquam bonus vir (**tan**-kwam **boh**-nəs veer). [Law Latin] *Scots law.* As an honest or honorable man. • A tenant was required to run his farm *tanquam bonus vir.* — Also spelled *tamquam bonus vir.*

tanquam dominus (**tan**-kwam **dom**-ə-nəs). [Law Latin] *Hist.* As owner.

tanquam in libello (**tan**-kwam in lə-**bel**-oh). [Law Latin] *Hist.* As if alleged in the libel.

tanquam interim dominus (**tan**-kwam **in**-tər-im **dom**-ə-nəs). [Law Latin] *Hist.* As the temporary owner.

tanquam jure devoluto (**tan**-kwam **joor**-ee dee-və-**loo**-toh). [Law Latin] *Hist.* As if the right had devolved. See JUS DEVOLUTUM.

tanquam optimum maximum (**tan**-kwam **op**-tə-məm **mak**-sə-məm). [Law Latin] *Hist.* At its best and fullest. • The phrase was often used in the conveyance of an estate.

tanquam quilibet (**tan**-kwam **kwi**-lə-bet). [Law Latin] *Hist.* Like any other person. • The phrase usu. referred to certain transactions of the sovereign.

tantum et tale (**tan**-təm et **tay**-lee). [Latin] *Hist.* So much and of such a kind.

> "When a purchaser accepts a subject from the seller *tantum et tale* as it stands in the person of the latter, he accepts it with all its advantages and all its faults; he comes precisely into the right and place of the seller: if the subject or the right sold turns out to be more valuable than was thought, the purchaser has the advantage; if otherwise, he bears the loss." John Trayner, *Trayner's Latin Maxims* 595 (4th ed. 1894).

tapper, *n.* (1930) **1.** A person who approaches another for money; a beggar. **2.** By extension, a thief.

tapping, *n.* See WIRETAPPING.

tarde venit. A return of a writ that was delivered to the sheriff too late to be executed before the return day. See *return day* under DAY.

tare (tair), *n.* **1.** A deficiency in the weight or quantity of merchandise resulting from including its container's weight in the total. **2.** An allowance or abatement of a certain weight or quantity that a seller makes to the buyer because of the container's weight. Cf. TRET.

target benefit plan. See EMPLOYEE BENEFIT PLAN.

target corporation. See CORPORATION.

target defendant. See DEFENDANT.

target offense. See *object offense* under OFFENSE (1).

target price. See PRICE.

target witness. See WITNESS.

tariff, *n.* **1.** A schedule or system of duties imposed by a government on imported or exported goods. • In the United States, tariffs are imposed on imported goods only. [Cases: Customs Duties ⇨23–38.] **2.** A duty imposed on imported or exported goods under such a system. See DUTY (4).

ad valorem tariff. A tariff set as a percentage of the imported goods' value. • This is the primary method used to calculate customs duties.

antidumping tariff. A tariff equaling the difference between the price at which the product is sold in the exporting country and the price at which the importer will sell the product in the importing country. • These tariffs are designed to prevent foreign businesses from artificially lowering their prices and gaining unfair advantages outside their home market. — Also termed *antidumping duty.* See ANTIDUMPING LAW. [Cases: Customs Duties ⇨21.5.]

autonomous tariff. A tariff set by legislation rather than by commercial treaty.

common external tariff. A tariff rate that members of a customs union, common market, or economic union uniformly apply to imports from nonmember nations. — Abbr. CXT. — Also termed *tariff exterior commun.*

discriminatory tariff. A tariff containing duties that are applied unequally to different countries or manufacturers.

preferential tariff. A tariff that favors the products of one country over those of another. Cf. MOST-FAVORED-NATION CLAUSE.

protective tariff. A tariff designed primarily to give domestic manufacturers economic protection against price competition from abroad, rather than to generate revenue.

retaliatory tariff. A tariff imposed to pressure another country into removing its own tariffs or making trade concessions.

revenue tariff. A tariff enacted solely or primarily to raise revenue.

tariff exterior commun. [French] See *common external tariff.* — Abbr. TEC.

3. A fee that a public utility or telecommunications company may assess for its services. • The tariffs that a provider may charge are limited by statute. [Cases: Public Utilities ⇨119.1; Telecommunications ⇨928.] **4.** A schedule listing the rates charged for services provided by a public utility, the U.S. Postal Service, or a business (esp. one that must by law file its rates with a public agency). [Cases: Public Utilities ⇨119.1.] **5.** A scale of sentences and damages for crimes and injuries, arranged by severity. — **tariff,** *vb.*

joint tariff. A rate schedule established by two or more carriers covering shipments between places requiring the use of facilities owned by those carriers. [Cases: Carriers ⇨30.]

Tariff Act of 1930. See SMOOT–HAWLEY TARIFF ACT.

tarnishment. *Trademarks.* A form of dilution that occurs when a trademark's unauthorized use degrades the mark and diminishes its distinctive quality. Cf. BLURRING. [Cases: Trademarks ⇨1465.]

task order. See *task-order contract* under CONTRACT.

task-order contract. See CONTRACT.

tax, *n.* (14c) A charge, usu. monetary, imposed by the government on persons, entities, transactions, or property to yield public revenue. • Most broadly, the term embraces all governmental impositions on the person, property, privileges, occupations, and enjoyment of the people, and includes duties, imposts, and excises. Although a tax is often thought of as being pecuniary in nature, it is not necessarily payable in money. [Cases: Internal Revenue ⇨3001; Taxation ⇨2001.] — **tax,** *vb.*

> "Taxes are the enforced proportional contributions from persons and property, levied by the state by virtue of its sovereignty for the support of government and for all public needs. This definition of taxes, often referred to as 'Cooley's definition,' has been quoted and indorsed, or approved, expressly or otherwise, by many different courts. While this definition of taxes characterizes them as 'contributions,' other definitions refer to them as 'imposts,' 'duty or impost,' 'charges,' 'burdens,' or 'exactions'; but these variations in phraseology are of no practical importance." 1 Thomas M. Cooley, *The Law of Taxation* § 1, at 61–63 (Clark A. Nichols ed., 4th ed. 1924).

accrued tax. (1872) A tax that has been incurred but not yet paid or payable.

accumulated-earnings tax. (1957) A penalty tax imposed on a corporation that has retained its earnings in an effort to avoid the income-tax liability arising once the earnings are distributed to shareholders as dividends. — Also termed *undistributed-earnings tax.* [Cases: Internal Revenue ⇨3843–3845.]

additional tax. See *stopgap tax.*

admission tax. A tax imposed as part of the price of being admitted to a particular event. [Cases: Public Amusement and Entertainment ⇨50.]

ad valorem tax. (1810) A tax imposed proportionally on the value of something (esp. real property), rather than on its quantity or some other measure. [Cases: Taxation ⇨2061.]

> "[A]n ad valorem tax is a tax of a fixed proportion of the value of the property with respect to which the tax is assessed, and requires the intervention of assessors or appraisers to estimate the value of such property before the amount due from each taxpayer can be determined." 71 Am. Jur. 2d *State and Local Taxation* § 20, at 355 (1973).

alternative minimum tax. (1972) A tax, often a flat rate, potentially imposed on corporations and higher-income individuals to ensure that those taxpayers do not avoid too much (or all) income-tax liability by legitimately using exclusions, deductions, and credits. — Abbr. AMT. — Also termed *minimum tax.* [Cases: Internal Revenue ⇨3550.]

amusement tax. A tax on a ticket to a concert, sporting event, or the like. • The tax is usu. expressed as a percentage of the ticket price. [Cases: Public Amusement and Entertainment ⇨50.]

back tax. (*oft. pl.*) A tax that, though assessed for a previous year or years, remains due and unpaid.

betterment tax. See BETTERMENT TAX.

capital-gains tax. (1930) A tax on income derived from the sale of a capital asset. • The federal income tax on capital gains typically has a more favorable tax rate — for example, 20% for an individual and 34% for a corporation — than the otherwise applicable tax rate on ordinary income. See CAPITAL GAIN. [Cases: Internal Revenue ⇨3230.1–3260.]

capital-stock tax. **1.** A tax on capital stock in the hands of a stockholder. [Cases: Taxation ⇨2234.] **2.** A state tax for conducting business in the corporate form, usu. imposed on out-of-state corporations for the privilege of doing business in the state. • The tax is usu. assessed as a percentage of the par or assigned value of a corporation's capital stock.

capitation tax. See *poll tax.*

child's income tax. See *kiddie tax.*

classified tax. A tax system in which different rates are assessed against different types of taxed property.

collateral-inheritance tax. A tax levied on the transfer of property by will or intestate succession to a person other than the spouse, a parent, or a descendant of the decedent. Cf. *legacy tax.* [Cases: Taxation ⇨3301.]

commutation tax. **1.** A combination of two or more taxes that is or can be substituted for something else that could be imposed, such as a demand for other taxes or the performance of personal services. • For example, an excise or franchise tax may be combined with a local tax in lieu of all other taxes related to the subject matter. **2.** *Hist.* A tax imposed on shipowners, requiring them to post a bond or remit a payment per foreign passenger. • In the 19th-century, the tax was used to discourage immigration and to raise revenue to defray the costs of supporting indigent immigrants who had remained in the U.S. **3.** *Hist.* A 1784 tax

intended to reduce tea-smuggling and increase tax revenue by cutting the tax on tea and raising the tax on windows. • To avoid payment of the tax, many people boarded up their windows.

consumption tax. A tax imposed on sale of goods or services to be consumed. [Cases: Taxation ⚷ 3602.]

death tax. **1.** See *estate tax.* **2.** See *inheritance tax.*

delinquent tax. A tax not paid when due. [Cases: Internal Revenue ⚷ 4827; Taxation ⚷ 2760, 3554, 3697.]

direct tax. (18c) A tax that is imposed on property, as distinguished from a tax on a right or privilege. • A direct tax is presumed to be borne by the person upon whom it is assessed, and not "passed on" to some other person. Ad valorem and property taxes are direct taxes. [Cases: Internal Revenue ⚷ 3059–3064; Taxation ⚷ 2061.]

documentary-stamp transfer tax. See *stamp tax.*

erroneous tax. **1.** A tax levied without statutory authority. [Cases: Taxation ⚷ 2062, 3404, 3607.] **2.** A tax on property not subject to taxation. **3.** A tax levied by an officer who lacks authority to levy the tax. — Also termed *illegal tax.*

estate tax. (1928) A tax imposed on the transfer of property by will or by intestate succession. — Also termed *death tax; death duty.* Cf. *inheritance tax.* [Cases: Internal Revenue ⚷ 4145; Taxation ⚷ 3301.]

estimated tax. (1926) A tax paid quarterly by a taxpayer not subject to withholding (such as a self-employed person) based on either the previous year's tax liability or an estimate of the current year's tax liability. [Cases: Internal Revenue ⚷ 4827, 4832, 5219.40; Taxation ⚷ 3554.]

excess-profits tax. (1918) A tax levied on profits that are beyond a business's normal profits. • This type of tax is usu. imposed only in times of national emergency (such as war) to discourage profiteering. [Cases: Internal Revenue ⚷ 4130–4136.]

excise lieu property tax. A tax on the gross premiums received and collected by designated classes of insurance companies. [Cases: Taxation ⚷ 2243.]

excise tax. See EXCISE.

export tax. A tax levied on merchandise and goods shipped or to be shipped out of a country.

flat tax. (1952) A tax whose rate remains fixed regardless of the amount of the tax base. • Most sales taxes are flat taxes. — Also termed *proportional tax.* Cf. *progressive tax; regressive tax.* [Cases: Taxation ⚷ 3672, 3673.]

floor tax. A tax imposed on distilled spirits stored in a warehouse. [Cases: Internal Revenue ⚷ 4314.]

franchise tax. A tax imposed on the privilege of carrying on a business (esp. as a corporation), usu. measured by the business's income. See FRANCHISE. [Cases: Taxation ⚷ 2233.]

general tax. (16c) **1.** A tax that returns no special benefit to the taxpayer other than the support of governmental programs that benefit all. [Cases: Taxation ⚷ 2001, 2010.] **2.** A property tax or an ad valorem tax that is imposed for no special purpose except to produce public revenue. Cf. *special assessment* under ASSESSMENT.

generation-skipping tax. (1977) A tax on a property transfer that skips a generation. • The tax limits the use of generation-skipping techniques as a means of avoiding estate taxes. [Cases: Internal Revenue ⚷ 4220.]

generation-skipping transfer tax. (1984) A gift or estate tax imposed on a generation-skipping transfer or a generation-skipping trust. IRC (26 USCA) §§ 2601–2663. — Sometimes shortened to *generation-skipping tax; transfer tax.* See DIRECT SKIP; GENERATION-SKIPPING TRANSFER; *generation-skipping trust* under TRUST; TAXABLE DISTRIBUTION. [Cases: Internal Revenue ⚷ 4220–4228.]

gift tax. (1925) A tax imposed when property is voluntarily and gratuitously transferred. • Under federal law, the gift tax is imposed on the donor, but some states tax the donee. [Cases: Internal Revenue ⚷ 4200; Taxation ⚷ 3381.]

graduated tax. **1.** A tax employing a rate schedule with higher marginal rates for larger taxable bases (income, property, transfer, etc.) **2.** See *progressive tax.*

gross-income tax. (1916) A tax on gross income, possibly after the deduction for costs of goods sold, rather than on net profits; an income tax without allowance for expenses or deductions. See *gross income* under INCOME. [Cases: Internal Revenue ⚷ 3110; Taxation ⚷ 3447.]

gross-receipts tax. A tax on a business's gross receipts, without a deduction for costs of goods sold, or allowance for expenses or deductions. See GROSS RECEIPTS. [Cases: Taxation ⚷ 3604.]

head tax. **1.** See *poll tax.* **2.** HEAD MONEY (3).

hidden tax. (1935) A tax that is paid, often unknowingly, by someone other than the person or entity on whom it is levied; esp., a tax imposed on a manufacturer or seller (such as a gasoline producer) who passes it on to consumers in the form of higher sales prices.

highway tax. A tax raised to pay for the construction, repair, and maintenance of highways. [Cases: Highways ⚷ 123.]

holding-company tax. A federal tax imposed on undistributed personal-holding-company income after allowing deductions for such things as dividends paid. IRC (26 USCA) § 545. — Also termed *personal-holding-company tax.* [Cases: Internal Revenue ⚷ 3850.1–3858.]

illegal tax. **1.** A tax that violates the law, esp. the constitution. • For an example, see *poll tax*. **2.** See *erroneous tax*.

income tax. (18c) A tax on an individual's or entity's net income. • The federal income tax — set forth in the Internal Revenue Code — is the federal government's primary source of revenue, and most states also have income taxes. Cf. *property tax*; EXCISE. [Cases: Internal Revenue ⇨3065–4122; Taxation ⇨3401.]

indirect tax. (18c) A tax on a right or privilege, such as an occupation tax or franchise tax. • An indirect tax is often presumed to be partly or wholly passed on from the nominal taxpayer to another person. [Cases: Licenses ⇨1.]

inheritance tax. (18c) **1.** A tax imposed on a person who inherits property from another (unlike an estate tax, which is imposed on the decedent's estate). • There is no federal inheritance tax, but some states have an inheritance tax (though it is creditable or deductible under the federal estate tax). — Also termed *succession tax*; *death tax*. Cf. *estate tax*. [Cases: Taxation ⇨3301.] **2.** Loosely, an estate tax.

in lieu tax. A tax imposed as a substitute for another. [Cases: Taxation ⇨2295.]

intangible tax. A state tax imposed on the privilege of owning, transferring, devising, or otherwise dealing with intangible property. [Cases: Taxation ⇨2061.]

interest-equalization tax. A tax imposed on a U.S. citizen's acquisition of stock issued by a foreign issuer or a debt obligation of a foreign obligor, but only if the obligation did not mature within a year. • This tax was repealed in the mid-1970s. IRC (26 USCA) § 4911.

kiddie tax. (18c) *Slang*. A federal tax imposed on a child's unearned income (above an exempt amount) at the parents' tax rate if the parents' rate is higher and if the child is under 18 years old. — Also termed *child's income tax*.

land tax. See *property tax*.

legacy tax. A tax on a legacy, often with the provision that the rate increases as the relationship of the legatee becomes more remote from the testator. • In English law, this tax was known as a *legacy duty*; it was abolished in 1949. Cf. *collateral-inheritance tax*. [Cases: Taxation ⇨3301.]

luxury tax. (1925) An excise tax imposed on high-priced items that are not deemed necessities (such as cars costing more than a specified amount). Cf. *sin tax*. [Cases: Taxation ⇨3602.]

minimum tax. See *alternative minimum tax*.

nanny tax. (1993) *Slang*. A federal social-security tax imposed on the employer of a domestic employee if the employer pays that employee more than a specified amount in total wages in a year. • The term, which is not a technical legal phrase, was popularized in the mid-1990s, when several of President Clinton's nominees were found not to have paid the social-security tax for their nannies.

occupation tax. (1879) An excise tax imposed for the privilege of carrying on a business, trade, or profession. • For example, many states require lawyers to pay an occupation tax. — Also termed *occupational tax*. [Cases: Licenses ⇨1.]

payroll tax. (1936) **1.** A tax payable by an employer based on its payroll (such as a social-security tax or an unemployment tax). [Cases: Internal Revenue ⇨4849; Taxation ⇨3560.] **2.** A tax collected by an employer from its employees' gross pay (such as an income tax or a social-security tax). See *withholding tax*.

per capita tax. See *poll tax*.

personal-holding-company tax. See *holding-company tax*.

personal-property tax. (1863) A tax on personal property (such as jewelry or household furniture) levied by a state or local government. [Cases: Taxation ⇨2176.]

pickup tax. *Slang*. A state death tax levied in an amount equal to the federal death-tax credit. — Also termed *sponge tax*; *slack tax*. [Cases: Taxation ⇨3301.]

poll tax. (17c) A fixed tax levied on each person within a jurisdiction. • The 24th Amendment prohibits the federal and state governments from imposing poll taxes as a condition for voting. — Also termed *per capita tax*; *capitation tax*; *capitation*; *head tax*. [Cases: Elections ⇨83; Taxation ⇨2050.]

premium tax. A state tax paid by an insurer on premiums paid by the insured. [Cases: Taxation ⇨2243.]

privilege tax. A tax on the privilege of carrying on a business or occupation for which a license or franchise is required. [Cases: Licenses ⇨1.]

progressive tax. (1886) **1.** A tax structured so that the effective tax rate increases more than proportionately as the tax base increases, or so that an exemption remains flat or diminishes. • With this type of tax, the percentage of income paid in taxes increases as the taxpayer's income increases. Most income taxes are progressive, so that higher incomes are taxed at a higher rate. But a tax can be progressive without using graduated rates. — Also termed *graduated tax*. Cf. *regressive tax*; *flat tax*. [Cases: Internal Revenue ⇨3545–3552; Taxation ⇨3526.] **2.** See *graduated tax*.

property tax. (1808) A tax levied on the owner of property (esp. real property), usu. based on the property's value. • Local governments often impose property taxes to finance school districts, municipal projects, and the like. — Also termed (specif.) *land tax*. Cf. *income tax*; EXCISE. [Cases: Taxation ⇨2170–2216.]

proportional tax. See *flat tax*.

regressive tax. (1893) A tax structured so that the effective tax rate decreases as the tax base increases. • With this type of tax, the percentage of income paid in taxes decreases as the taxpayer's income increases. A flat tax (such as the typical sales tax) is usu. considered regressive — despite its constant rate — because it is more burdensome for low-income taxpayers than high-income taxpayers. A growing exemption also produces a regressive tax effect. Cf. *progressive tax*; *flat tax*. [Cases: Internal Revenue ⚷3545–3552; Taxation ⚷3526.]

repressive tax. See *sin tax*.

sales tax. (1921) A tax imposed on the sale of goods and services, usu. measured as a percentage of their price. — Also termed *retail sales tax*. See *flat tax*. [Cases: Taxation ⚷3602.]

"While the term 'sales tax' encompasses a large variety of levies, the term often refers to the 'retail sales tax,' where the tax is separately stated and collected on a transaction-by-transaction basis from the consumer; although the economic burden of the sales tax falls upon the consumer, the seller has the statutory duty to collect the tax for the taxing jurisdiction." 68 Am. Jur. 2d *Sales and Use Tax* § 1, at 11 (1993).

self-employment tax. The Social-Security and Medicare tax imposed on the net earnings of a self-employed person. [Cases: Internal Revenue ⚷4381.]

service-occupation tax. A tax imposed on persons who sell services, usu. computed as a percentage of net cost of the tangible personal property (e.g., materials and goods) transferred as an incident to the sale. [Cases: Licenses ⚷1; Taxation ⚷3658.]

severance tax. A tax imposed on the value of oil, gas, timber, or other natural resources extracted from the earth. [Cases: Logs and Logging ⚷4; Mines and Minerals ⚷87.]

sinking-fund tax. A tax to be applied to the repayment of a public loan.

sin tax. (1971) An excise tax imposed on goods or activities that are considered harmful or immoral (such as cigarettes, liquor, or gambling). — Also termed *repressive tax*. Cf. *luxury tax*.

slack tax. See *pickup tax*.

special tax. (18c) **1.** A tax levied for a unique purpose. **2.** A tax (such as an inheritance tax) that is levied in addition to a general tax. [Cases: Taxation ⚷24.]

specific tax. (18c) A tax imposed as a fixed sum on each article or item of property of a given class or kind without regard to its value.

sponge tax. See *pickup tax*.

stamp tax. (18c) A tax imposed by requiring the purchase of a revenue stamp that must be affixed to a legal document (such as a deed or note) before the document can be recorded. — Also termed *documentary-stamp transfer tax*. [Cases: Internal Revenue ⚷4390–4409.]

state tax. (18c) **1.** A tax — usu. in the form of a sales or income tax — earmarked for state, rather than federal or municipal, purposes. [Cases: Taxation ⚷2001.] **2.** A tax levied under a state law.

stock-transfer tax. A tax levied by the federal government and by some states on the transfer or sale of shares of stock. — Often shortened to *transfer tax*. [Cases: Internal Revenue ⚷4404; Taxation ⚷2218.]

"Some state statutes impose special taxes, usually in the form of a stamp tax, upon sales and agreements for sale and other transfers of stock in corporations. Such a tax is in the nature of an excise tax on the transfer. Taxes on the issuance and transfer of corporate stock, commonly known as 'stock transfer taxes' and payable by means of stamps, are constitutional, as within the power of state governments." 71 Am. Jur. 2d *State and Local Taxation* § 643, at 896 (1973).

stopgap tax. A tax, usu. temporary, levied during the term of a budget to cover an unexpected deficit. — Also termed *additional tax*.

succession tax. See *inheritance tax* (1).

surtax. (1881) An additional tax imposed on something being taxed or on the primary tax itself. [Cases: Taxation ⚷3527.]

tonnage tax. See *tonnage duty* under DUTY (4).

transfer tax. (1890) **1.** A tax imposed on the transfer of property, esp. by will, inheritance, or gift. [Cases: Internal Revenue ⚷4220–4228; Taxation ⚷2218, 3301, 3381.] **2.** See *stock-transfer tax*. **3.** See *generation-skipping transfer tax*.

undistributed-earnings tax. See *accumulated-earnings tax*.

unemployment tax. (1937) A tax imposed on an employer by state or federal law to cover the cost of unemployment insurance. • The Federal Unemployment Tax Act (FUTA) provides for a tax based on a percentage of employee earnings but allows a credit for amounts paid in state unemployment taxes. [Cases: Internal Revenue ⚷4305.]

unified transfer tax. The federal transfer tax imposed equally on property transferred during life or at death. • Until 1977, gift-tax rates were lower than estate taxes. — Also termed *unified estate-and-gift tax*.

unitary tax. A tax of income earned locally by a business that transacts business through an affiliated company outside the state or country. See UNITARY BUSINESS. [Cases: Taxation ⚷3477.]

unrelated-business-income tax. (1962) A tax levied on a not-for-profit organization's taxable income, such as advertising revenue from a publication. [Cases: Internal Revenue ⚷4068; Taxation ⚷3488.]

use tax. A tax imposed on the use of certain goods that are bought outside the taxing authority's jurisdiction. • Use taxes are designed to discourage the purchase of products that are not subject to the sales tax. [Cases: Taxation ⚷3603.]

value-added tax. (1935) A tax assessed at each step in the production of a commodity, based on the value added at each step by the difference between the

commodity's production cost and its selling price. • A value-added tax — which is levied in several European countries — effectively acts as a sales tax on the ultimate consumer. — Abbr. VAT. [Cases: Taxation ⚷3602.]

windfall-profits tax. (1973) A tax imposed on a business or industry as a result of a sudden increase in profits. • An example is the tax imposed on oil companies in 1980 for profits resulting from the Arab oil embargo of the 1970s. [Cases: Internal Revenue ⚷4338.]

window tax. *Hist. English law.* A tax imposed on a house containing a certain number of windows (usu. more than six). • It was established under the Taxation Act of 1695 and replaced with a tax on inhabited houses established under the House Tax of 1851. See HOUSE-DUTY.

withholding tax. (1927) A portion of income tax that is subtracted from salary, wages, dividends, or other income before the earner receives payment. • The most common example is the income tax and social-security tax withheld by an employer from an employee's pay. [Cases: Internal Revenue ⚷4849; Taxation ⚷3560.]

taxable, *adj.* (16c) **1.** Subject to taxation <interest earned on a checking account is taxable income>. [Cases: Internal Revenue ⚷3110; Taxation ⚷3446–3477.] **2.** (Of legal costs or fees) assessable <expert-witness fees are not taxable court costs>. [Cases: Costs ⚷146–194; Federal Civil Procedure ⚷2742.]

taxable cost. See COST (3).

taxable distribution. (1927) A generation-skipping transfer from a trust to the beneficiary (i.e., the skip person) that is neither a direct skip nor a taxable termination. See GENERATION-SKIPPING TRANSFER; *generation-skipping transfer tax* under TAX; *generation-skipping trust* under TRUST; SKIP PERSON. [Cases: Internal Revenue ⚷4224.]

taxable estate. See ESTATE (3).

taxable gift. See GIFT.

taxable income. See INCOME.

taxable termination. (1988) A taxable event that occurs when (1) an interest in a generation-skipping trust property terminates (as on the death of a skip person's parent who possessed the interest), (2) no interest in the trust is held by a nonskip person, and (3) a distribution may be made to a skip person. • Before the creation of taxable terminations in 1976, a taxpayer could create a trust that paid income to a child for life, then to that child's child for life, and so on without incurring an estate or gift tax liability at the death of each generation's beneficiary. See GENERATION-SKIPPING TRANSFER; *generation-skipping transfer tax* under TAX; *generation-skipping trust* under TRUST; SKIP PERSON. [Cases: Internal Revenue ⚷4224.]

taxable year. See *tax year* under YEAR.

tax accounting. The accounting rules and methods used in determining a taxpayer's liability.

tax-anticipation bill. A short-term obligation issued by the U.S. Treasury to meet the cash-flow needs of the government. • Corporations can tender these bills at par value to make quarterly tax payments. — Abbr. TAB.

tax-anticipation note. See NOTE (1).

tax-anticipation warrant. See WARRANT (2).

tax-apportionment clause. A testamentary provision directing how inheritance and estate taxes should be paid. [Cases: Internal Revenue ⚷4824; Taxation ⚷3346.]

tax assessment. See ASSESSMENT (3).

tax assessor. See ASSESSOR (1).

taxation. (14c) **1.** The imposition or assessment of a tax; the means by which the state obtains the revenue required for its activities. [Cases: Internal Revenue ⚷3001–3007; Taxation ⚷2001.]

double taxation. (18c) **1.** The imposition of two taxes on the same property during the same period and for the same taxing purpose. [Cases: Taxation ⚷2150–2156, 3435.] **2.** The imposition of two taxes on one corporate profit; esp., the structure of taxation employed by Subchapter C of the Internal Revenue Code, under which corporate profits are taxed twice, once to the corporation when earned and once to the shareholders when the earnings are distributed as dividends. **3.** *Int'l law.* The imposition of comparable taxes in two or more states on the same taxpayer for the same subject matter or identical goods. — Also termed *duplicate taxation.*

duplicate taxation. See *double taxation.*

equal and uniform taxation. A tax system in which no person or class of persons in the taxing district — whether it be a state, city, or county — is taxed at a different rate from others in the same district on the same value or thing. [Cases: Taxation ⚷2134, 3428, 3627.]

pass-through taxation. (1998) The taxation of an entity's owners for the entity's income without taxing the entity itself. • Partnerships and S corporations are taxed under this method. So are limited liability companies and limited liability partnerships unless they elect to be taxed as corporations by "checking the box" on their income tax returns. The election is made on Form 8832 (Entity Classification Election). See Treas. Reg. § 301.7701-(3)(b)(1). — Also termed *conduit taxation.* [Cases: Internal Revenue ⚷3896, 3920–3924.]

2. TAXATION OF COSTS.

taxation of costs. The process of fixing the amount of litigation-related expenses that a prevailing party is entitled to be awarded. — Sometimes shortened to *taxation.* [Cases: Costs ⚷195; Federal Civil Procedure ⚷2742.1.]

tax audit. See AUDIT.

tax avoidance. (1927) The act of taking advantage of legally available tax-planning opportunities in order to minimize one's tax liability. Cf. TAX EVASION. [Cases: Internal Revenue ⚷3056–3058; Taxation ⚷2220.]

tax base. The total property, income, or wealth subject to taxation in a given jurisdiction; the aggregate value of the property being taxed by a particular tax. Cf. BASIS (2).

tax basis. See BASIS (2).

tax-benefit doctrine. See TAX-BENEFIT RULE.

tax-benefit rule. (1942) The principle that if a taxpayer recovers a loss or expense that was deducted in a previous year, the recovery must be included in the current year's gross income to the extent that it was previously deducted. — Also termed *tax-benefit doctrine*. [Cases: Internal Revenue ⚷3089, 3138.]

tax bracket. (1923) A categorized level of income subject to a particular tax rate under federal or state law <28% tax bracket>. [Cases: Internal Revenue ⚷3545–3552; Taxation ⚷3525–3529.]

tax certificate. An instrument issued to the buyer of property at a tax sale, certifying the sale and entitling the buyer to a tax deed and possession of the property upon the expiration of the redemption period. • If the property is redeemed, the tax certificate is voided. See REDEMPTION PERIOD; *tax sale* under SALE. Cf. *tax deed* under DEED. [Cases: Taxation ⚷2986, 3064.]

tax court. (1841) **1.** TAX COURT, U.S. **2.** In some states, a court that hears appeals in nonfederal tax cases and can modify or change any valuation, assessment, classification, tax, or final order that is appealed. [Cases: Taxation ⚷2691, 3548, 3695.]

Tax Court, U.S. A federal court that hears appeals by taxpayers from adverse IRS decisions about tax deficiencies. • The Tax Court was created in 1942, replacing the Board of Tax Appeals. — Abbr. T.C. [Cases: Internal Revenue ⚷4645–4655.]

tax credit. (1946) An amount subtracted directly from one's total tax liability, dollar for dollar, as opposed to a deduction from gross income. — Often shortened to *credit*. Cf. DEDUCTION (2). [Cases: Internal Revenue ⚷3520–3537; Taxation ⚷3517.]

child- and dependent-care tax credit. (2001) A tax credit available to a person who is employed full-time and who maintains a household for a dependent child or a disabled spouse or dependent. [Cases: Internal Revenue ⚷3520, 3534; Taxation ⚷3517.]

earned-income credit. (1927) A refundable federal tax credit on the earned income of a low-income worker with dependent children. • The credit is paid to the taxpayer even if it exceeds the total tax liability. See IRC (26 USCA) § 32. — Abbr. EIC. [Cases: Internal Revenue ⚷3532.]

foreign tax credit. (1928) A tax credit against U.S. income taxes for a taxpayer who earns income overseas and has paid foreign taxes on that income. See FOREIGN-EARNED-INCOME EXCLUSION. [Cases: Internal Revenue ⚷4098.]

> "Since direct foreign investments and business operations of United States persons often attract foreign income taxes along with the baseline U.S. tax, the specter of double taxation is bound to haunt the pursuit of foreign income. The principal accommodation of the U.S. tax system to the possibility of source-based taxation by other countries is the foreign tax credit. From a simple idea — a dollar-for-dollar reduction of U.S. tax for income taxes paid to foreign countries — the foreign tax credit has evolved into an elaborate statutory structure capable of engulfing an entire professional career." Joseph Isenbergh, *International Taxation* 14 (2000).

investment tax credit. (1965) A tax credit intended to stimulate business investment in capital goods by allowing a percentage of the purchase price as a credit against the taxpayer's income taxes. • The Tax Reform Act of 1986 generally repealed this credit retroactively for most property placed in service after January 1, 1986. — Abbr. ITC. [Cases: Internal Revenue ⚷3523; Taxation ⚷3517.]

unified credit. See *unified estate-and-gift tax credit*.

unified estate-and-gift tax credit. (1988) A tax credit applied against the federal unified transfer tax. IRC (26 USCA) § 2001(c)(2). — Often shortened to *unified credit*. — Also termed *applicable exclusion credit*. [Cases: Internal Revenue ⚷4182.30.]

tax deduction. See DEDUCTION (2).

tax deed. See DEED.

tax-deferred, *adj.* (1948) Not taxable until a future date or event <a tax-deferred retirement plan>. [Cases: Internal Revenue ⚷3575–3615.]

tax-deferred account. See ACCOUNT.

tax-deferred annuity. See *403(b) plan* under EMPLOYEE BENEFIT PLAN.

tax deficiency. See DEFICIENCY (2).

tax-deficiency notice. See NINETY-DAY LETTER.

tax denier. See TAX PROTESTER.

tax evasion. (1922) The willful attempt to defeat or circumvent the tax law in order to illegally reduce one's tax liability. • Tax evasion is punishable by both civil and criminal penalties. — Also termed *tax fraud*. Cf. TAX AVOIDANCE. [Cases: Internal Revenue ⚷5263; Taxation ⚷3232, 3563, 3712.]

tax-exempt, *adj.* (1923) **1.** By law not subject to taxation <a tax-exempt charity>. [Cases: Internal Revenue ⚷4045–4071; Taxation ⚷2309–2356, 3518, 3664.] **2.** Bearing interest that is free from income tax <tax-exempt municipal bonds>. — Also termed *tax-free*.

tax-exempt bond. See BOND (3).

tax ferret. A private person engaged in the business of searching for taxable property that has somehow not been taxed. [Cases: Internal Revenue ⚷4442.]

tax foreclosure. See FORECLOSURE.

tax fraud. See TAX EVASION.

tax-free, *adj.* See TAX-EXEMPT.

tax-free exchange. (1927) A transfer of property for which the tax law specifically defers (or possibly exempts) income-tax consequences. • For example, a transfer of property to a controlled corporation under IRC (26 USCA) § 351(a) and a like-kind exchange under IRC (26 USCA) § 1031(a). — Also termed *1031 exchange*. Cf. 1031 EXCHANGE. [Cases: Internal Revenue ⚷3184; Taxation ⚷3466.]

tax haven. (18c) A jurisdiction, esp. a country, that imposes little or no tax on the profits from transactions carried on there or on persons resident there.

> "Among the reasons for this complexity [in international taxation] is the elusive nature of tax havens. A tax haven is not always immediately obvious. What makes a particular environment a tax haven is not invariably a low rate of tax, but relations with other tax regimes that permit the ultimate deflection of income to a low-tax environment with which the income may have little indigenous connection." Joseph Isenbergh, *International Taxation* 16 (2000).

tax home. (18c) A taxpayer's principal business location, post, or station. • Travel expenses are tax-deductible only if the taxpayer is traveling away from home. [Cases: Internal Revenue ⚷3343.]

tax-identification number. A nine-digit tracking number assigned by the Internal Revenue Service to the tax accounts of businesses and also to entities or individuals who are required to file business tax returns. — Abbr. TIN. — Often shortened to *tax i.d.* — Also termed *employer-identification number* (EIN); *federal-employer-identification number* (FEIN).

tax incentive. (18c) A governmental enticement, through a tax benefit, to engage in a particular activity, such as the contribution of money or property to a qualified charity.

tax-increment financing. A technique used by a municipality to finance commercial developments usu. involving issuing bonds to finance land acquisition and other up-front costs, and then using the additional property taxes generated from the new development to service the debt. — Abbr. TIF. [Cases: Municipal Corporations ⚷953.]

taxing district. See DISTRICT.

taxing power. See POWER (3).

tax injunction act. A federal law prohibiting a federal court from interfering with the assessment or collection of any state tax where the state affords a plain, speedy, and efficient remedy in its own courts. 28 USCA § 1341. [Cases: Federal Courts ⚷27.]

tax law. (18c) **1.** INTERNAL REVENUE CODE. **2.** The statutory, regulatory, constitutional, and common-law rules that constitute the law applicable to taxation. **3.** The area of legal study dealing with taxation.

tax lease. See LEASE.

tax levy. See LEVY (1).

tax liability. (1932) The amount that a taxpayer legally owes after calculating the applicable tax; the amount of unpaid taxes.

tax lien. See LIEN.

tax list. An official schedule listing the taxable items within a jurisdiction; ROLL (2).

tax loophole. See LOOPHOLE.

tax-loss carryback. See CARRYBACK.

tax-loss carryforward. See CARRYOVER.

tax-loss carryover. See CARRYOVER.

tax negligence. See NEGLIGENCE.

tax-option corporation. See *S corporation* under CORPORATION.

taxpayer. One who pays or is subject to a tax. Cf. TAX PROTESTER. [Cases: Internal Revenue ⚷3560; Taxation ⚷2168, 3480–3495.]

taxpayers' bill of rights. (1988) Federal legislation granting taxpayers specific rights when dealing with the Internal Revenue Service, such as the right to have representation and the right to receive written notice of a levy 30 days before enforcement.

taxpayers' lists. Written exhibits required of taxpayers in some taxing districts, listing all property owned by them and subject to taxation, used as a basis for assessment and valuation. Cf. ROLL (2). [Cases: Taxation ⚷2462, 2493.]

taxpayer-standing doctrine. (1977) *Constitutional law.* The principle that a taxpayer has no standing to sue the government for allegedly misspending the public's tax money unless the taxpayer can demonstrate a personal stake and show some direct injury. [Cases: Constitutional Law ⚷683; Municipal Corporations ⚷987.]

tax-preference items. (1971) Certain items that, even though lawfully deducted in arriving at taxable income for regular tax purposes, must be considered in calculating a taxpayer's alternative minimum tax. See *alternative minimum tax* under TAX. [Cases: Internal Revenue ⚷3550.]

tax protest. A taxpayer's formal, usu. written, statement that he or she does not acknowledge a legal or just basis for the tax or a duty to pay it. • The purpose of the protest is to make clear that any payment is made "under protest" and to avoid waiving the right to recover the money paid if the tax is later invalidated.

tax protester. 1. One who files a tax protest. **2.** A person who opposes tax laws and seeks or employs ways, often illegal, to avoid the laws' effects; esp., a person who refuses to pay a tax on grounds that the government has no authority to levy the tax. — Sometimes spelled *tax protestor*. — Also termed *tax denier*. Cf. TAXPAYER.

illegal tax protester. *Hist.* The name once used by the IRS to designate a person believed to have used illegal means to avoid or reduce tax liability. • In the Internal Revenue Service Restructuring and Reform Act of 1998, Congress forbade the IRS to continue using the label. Today the term *nonfiler* is typically used instead.

tax-protest scheme. A plan designed to avoid or express dissatisfaction with tax laws, usu. by unlawful means. • The most common schemes involve illegally evading or

reducing tax liabilities, or interfering with the administration of the tax laws.

tax rate. (1876) A mathematical figure for calculating a tax, usu. expressed as a percentage. [Cases: Internal Revenue ⇨3545–3552; Taxation ⇨3525–3529, 3672, 3673.]

average tax rate. (1895) A taxpayer's tax liability divided by the amount of taxable income. — Also called *effective tax rate.*

marginal tax rate. (1939) In a tax scheme, the rate applicable to the last dollar of income earned by the taxpayer. • This concept is useful in calculating the tax effect of receiving additional income or claiming additional deductions. See TAX BRACKET.

tax-rate schedule. (1951) A schedule used to determine the tax on a given level of taxable income and based on a taxpayer's status (for example, married filing a joint income-tax return). — Also termed *tax table.* [Cases: Internal Revenue ⇨3545–3552; Taxation ⇨3525–3529.]

tax rebate. See TAX REFUND.

tax redemption. See REDEMPTION.

tax refund. Money that a taxpayer overpaid and is thus returned by the taxing authority. — Also termed *tax rebate.* [Cases: Internal Revenue ⇨4950; Taxation ⇨2773, 3555, 3699.]

tax return. (1870) An income-tax form on which a person or entity reports income, deductions, and exemptions, and on which tax liability is calculated. — Often shortened to *return.* — Also termed *income-tax return.* [Cases: Internal Revenue ⇨4470; Taxation ⇨3539, 3688.]

amended return. (1861) A return filed after the original return, usu. to correct an error in the original. [Cases: Internal Revenue ⇨4479; Taxation ⇨3539, 3688.]

consolidated return. A return that reflects combined financial information for a group of affiliated corporations. [Cases: Internal Revenue ⇨3865–3880; Taxation ⇨3541.]

false return. See FALSE RETURN (2).

information return. (1920) A return, such as a W-2, filed by an entity to report some economic information related to, but other than, tax liability.

joint return. (1930) A return filed together by spouses. • A joint return can be filed even if only one spouse had income, but each spouse is usu. individually liable for the tax payment. [Cases: Internal Revenue ⇨4481; Taxation ⇨3540.]

separate return. (1913) A return filed by each spouse separately, showing income and liability. • Unlike with a joint return, each spouse is individually liable only for taxes due on the separate return. [Cases: Internal Revenue ⇨4481; Taxation ⇨3540.]

tax-return privilege. See PRIVILEGE (3).

tax roll. See ROLL (2).

tax sale. See SALE.

tax shelter, *n.* (1952) A financial operation or investment strategy (such as a partnership or real-estate investment trust) that is created primarily for the purpose of reducing or deferring income-tax payments. • The Tax Reform Act of 1986 — by restricting the deductibility of passive losses — sharply limited the effectiveness of tax shelters. — Often shortened to *shelter.* — **tax-sheltered,** *adj.*

tax-sheltered annuity. See *403(b) plan* under EMPLOYEE BENEFIT PLAN.

tax situs (sī-təs). A state or other jurisdiction that has a substantial connection with assets that are subject to taxation. [Cases: Taxation ⇨2211.]

tax-straddle rule. A rule preventing undue deferral of tax on income or conversion of ordinary income or short-term capital gain into long-term capital gain by disallowing the premature deduction of a loss on sale or disposition of one leg of a straddle position while retaining the other, offsetting leg or position. • For example, in a straddle position a promise to sell may be offset by a promise to buy, such as in a futures contract. This practice has been greatly restricted by the requirement that gains and losses on commodities transactions must be reported based on their value at year end. IRC (26 USCA) § 165(c)(2). See STRADDLE. [Cases: Internal Revenue ⇨3397.]

tax table. See TAX-RATE SCHEDULE.

tax title. See TITLE (2).

tax warrant. See WARRANT (1).

tax write-off. (1955) A deduction of depreciation, loss, or expense from taxable income. [Cases: Internal Revenue ⇨3310–3442, 3470–3505; Taxation ⇨3501–3516.]

tax year. See YEAR.

TBC. *abbr.* Trial before the court. See *bench trial* under TRIAL.

T-bill. *abbr.* TREASURY BILL.

T-bond. *abbr.* TREASURY BOND.

T.C. *abbr.* See TAX COURT, U.S.

T.C.M. See T.C. MEMO.

T.C. memo. *abbr.* A memorandum decision of the U.S. Tax Court. — Also abbreviated T.C.M.

TDA. *abbr.* UNITED STATES TRADE AND DEVELOPMENT AGENCY.

teach, *vb. Patents.* **1.** (Of a patent specification) to instruct (a person of ordinary skill in the art how to make and use an invention). [Cases: Patents ⇨99.] **2.** (Of a prior-art reference) to anticipate (the invention being examined) by discussing, describing, or analyzing the invention's essential elements or technology. • In this sense, prior art that discourages an inventor from pursuing an invention "teaches away from" that invention. A teaching raises a statutory bar to an invention's patentability. [Cases: Patents ⇨65.]

teamwork. (1828) Work done by a team; esp., work by a team of animals as a substantial part of one's business, such as farming, express carrying, freight hauling, or transporting material. • In some jurisdictions, animals (such as horses) that work in teams are exempt from execution on a civil judgment.

tear-me-open license. See *shrink-wrap license* under LICENSE.

TEAS. *abbr.* TRADEMARK ELECTRONIC APPLICATION SYSTEM.

TEC. *abbr.* Tariff exterior commun. See *common external tariff* under TARIFF (2).

TECA (**tee**-kə). *abbr.* TEMPORARY EMERGENCY COURT OF APPEALS.

technical adjustment. A brief change in the general upward or downward trend of stock-market prices, such as a short rally during a bear market.

Technical Advice Memorandum. (1967) A publication issued by the national office of the IRS, usu. at a taxpayer's request, to explain some complex or novel tax-law issue. — Abbr. TAM. [Cases: Internal Revenue ☞3044, 3051.]

technical conversion. See CONVERSION (2).

technical error. See *harmless error* under ERROR (2).

technical estoppel. See ESTOPPEL.

technical mark. See *technical trademark* under TRADEMARK.

technical mortgage. See MORTGAGE.

technical trademark. See TRADEMARK.

technical trust. See *passive trust* under TRUST.

Technology Administration. A unit in the U.S. Department of Commerce responsible for working with industry on ways to use technology to stimulate economic growth. • The agency also carries out technology programs and disseminates information about technology. It has three offices: the Office of Technology Policy (OTP), the National Institute of Standards and Technology (NIST), and the National Technical Information Service (NTIS). It was established in 1988. 15 USCA § 3704.

technology transfer. 1. The sale or licensing of intellectual property. **2.** The field involving the sale and licensing of intellectual property. • Many major universities have an office of technology transfer to control the university's intellectual property and generate income from it. [Cases: Copyrights and Intellectual Property ☞107.]

teen court. See COURT.

teind (teend). *Scots law.* (*usu. pl.*) A tithe. **teind,** *vb.* — **teindable,** *adj.*

Teind Court. *Scots law.* A court that adjudicates questions relating to teinds, esp. increases in the stipends of parish ministers. • It includes one of the judges of the Court of Session, sitting as Commissioner of Teinds. — Also termed *Court of Teinds.*

telecopier. See FAX (2).

teleological interpretation. See *purposive construction* under CONSTRUCTION.

telescam. A fraud committed by using telemarketing to induce the victim to disclose sensitive personal information or send money to the perpetrator. Cf. BOILER-ROOM TRANSACTION; PHISHING.

teller. 1. A bank clerk who deals directly with customers by receiving and paying out money. **2.** *Parliamentary law.* A member of a tellers committee; esp., a vote-counter at an election. See *tellers committee* under COMMITTEE. [Cases: Elections ☞126(3), 209.]

Teller in Parliament. One of the members of the British House of Commons — two from government and two from the opposition — appointed by the Speaker to count votes.

teller's check. See CHECK.

tellers committee. See COMMITTEE.

teller vote. See *lobby vote* under VOTE (4).

temerarium perjurium super assisam (tem-ə-**rair**-ee-əm pər-**juur**-ee-əm s[y]**oo**-pər ə-**si**-zəm). [Law Latin] *Hist.* Rash perjury on an assize. • The phrase described a perverse verdict returned by a jury.

temere jurantes super assisam (**tem**-ə-ree juur-**an**-teez s[y]**oo**-pər ə-**si**-zəm). [Law Latin] *Hist.* Persons swearing rashly upon an assize. See TEMERARIUM PERJURIUM SUPER ASSISAM.

temere litigare (**tem**-ə-ree lit-ə-**gair**-ee), *vb.* [Latin] *Hist.* To litigate rashly.

temperance. 1. Habitual moderation regarding the indulgence of the natural appetites and passions; restrained or moderate indulgence (esp. of alcoholic beverages). **2.** Abstinence.

temperate damages. See DAMAGES.

tempestive (tem-**pes**-tiv) *adj. Scots law.* Of or relating to the proper time; timely; timeous.

templar. A barrister who has chambers in the Temple of the Inns of Court. • The Middle and Inner Temples are so named because they are housed in buildings on land that once belonged to the Knights Templars.

temporality. 1. Civil or political power, as distinguished from ecclesiastical power. **2.** (*usu. pl.*) The secular properties or revenues of an ecclesiastic.

temporal jurisdiction. See JURISDICTION.

temporal lord. See LORD.

temporary, *adj.* Lasting for a time only; existing or continuing for a limited (usu. short) time; transitory.

temporary administration. See ADMINISTRATION.

temporary alimony. See ALIMONY.

temporary allegiance. See ALLEGIANCE.

Temporary Assistance to Needy Families. A combined state and federal program that provides limited financial assistance to families in need. 42 USCA §§ 601–603a. • This program replaced Aid to Families with

Dependent Children. TANF differs from AFDC because families are limited to no more than five years of assistance, and states have more control over eligibility requirements. — Abbr. TANF. [Cases: Social Security and Public Welfare ⇨194–194.21.]

temporary-cessation-of-production doctrine. *Oil & gas.* The rule that an oil-and-gas lease term "for so long thereafter as oil and gas are produced" will not terminate once production is attained unless the cessation of production is for an unreasonable length of time. See CESSATION-OF-PRODUCTION CLAUSE. [Cases: Mines and Minerals ⇨78.1(9).]

temporary committee. See *special committee* under COMMITTEE.

temporary damages. See DAMAGES.

temporary detention. See *pretrial detention* under DETENTION.

temporary disability. See DISABILITY (2).

Temporary Emergency Court of Appeals. *Hist.* A special U.S. court created in 1971 with exclusive jurisdiction over appeals from federal district courts in cases arising under the wage-and-price-control program of the Economic Stabilization Act of 1970. • The court consisted of nine district and circuit judges appointed by the Chief Justice. This court was abolished in 1992. — Abbr. TECA. Cf. EMERGENCY COURT OF APPEALS. [Cases: Federal Courts ⇨1140.]

temporary employment. See EMPLOYMENT.

temporary executor. See *acting executor* under EXECUTOR.

temporary fiduciary. See FIDUCIARY.

temporary frustration. See FRUSTRATION.

temporary injunction. See *preliminary injunction* under INJUNCTION.

temporary injury. See INJURY.

temporary insanity. See INSANITY.

temporary insider. See INSIDER.

temporary judge. See *visiting judge* under JUDGE.

temporary nuisance. See NUISANCE.

temporary order. See ORDER (2).

temporary perfection. See PERFECTION.

temporary restraining order. (1861) **1.** A court order preserving the status quo until a litigant's application for a preliminary or permanent injunction can be heard. • A temporary restraining order may sometimes be granted without notifying the opposing party in advance. Cf. *emergency protective order* under PROTECTIVE ORDER. [Cases: Injunction ⇨150.] **2.** See *ex parte injunction* under INJUNCTION. — Often shortened to *restraining order.* — Abbr. TRO.

temporary statute. See STATUTE.

temporary taking. See TAKING (2).

temporary total disability. See DISABILITY (2).

temporary ward. See WARD.

tempus (**tem**-pəs), *n.* [Latin] *Hist.* Time; a specified duration.

tempus continuum (**tem**-pəs kən-**tin**-yoo-əm), *n.* [Latin] *Hist.* Time continuing without interruption; a continuous period.

tempus deliberandi (**tem**-pəs di-lib-ə-**ran**-dī), *n.* [Latin] *Hist.* The period allowed for deliberation; esp., the time during which an heir could consider whether to accept or reject an inheritance. Cf. JUS DELIBERANDI.

tempus lugendi (**tem**-pəs loo-**gen**-dī). *n.* See LUCTUS.

tempus semestre (**tem**-pəs si-**mes**-trə), *n.* [Latin] A period of 182 days (half a year).

tempus utile (**tem**-pəs **yoo**-tə-lee), *n.* [Latin "useful time"] *Hist.* Time that one can use to exercise his or her legal rights; the period within which an action or proceeding must be brought. • This is the period before prescription or limitation cuts off a right.

tenancy. (16c) **1.** The possession or occupancy of land under a lease; a leasehold interest in real estate. **2.** The period of such possession or occupancy. See ESTATE (1). [Cases: Landlord and Tenant ⇨20.] **3.** The possession of real or personal property by right or title, esp. under a conveying instrument such as a deed or will.

at-will tenancy. See *tenancy at will.*

common tenancy. See *tenancy in common.*

cotenancy. (1875) A tenancy with two or more coowners who have unity of possession. • Examples are a joint tenancy and tenancy in common. [Cases: Joint Tenancy ⇨1; Tenancy in Common ⇨1.]

entire tenancy. (17c) A tenancy possessed by one person, as opposed to a joint or common tenancy. See *estate by entirety* under ESTATE (1).

general tenancy. (18c) A tenancy that is not of fixed duration under the parties' agreement. [Cases: Landlord and Tenant ⇨114.]

holdover tenancy. See *tenancy at sufferance.*

joint tenancy. (17c) A tenancy with two or more coowners who take identical interests simultaneously by the same instrument and with the same right of possession. • A joint tenancy differs from a tenancy in common because each joint tenant has a right of survivorship to the other's share (in some states, this right must be clearly expressed in the conveyance — otherwise, the tenancy will be presumed to be a tenancy in common). See RIGHT OF SURVIVORSHIP. Cf. *tenancy in common.* [Cases: Joint Tenancy ⇨1, 6.]

> "The rules for creation of a joint tenancy are these: The joint tenants must get their interests at the same time. They must become entitled to possession at the same time. The interests must be physically undivided interests, and each undivided interest must be an equal fraction of the whole — e.g., a one-third undivided interest to each of three joint tenants. The joint tenants must get their interests by the same instrument — e.g., the same deed or will. The joint tenants must get the same kinds of estates — e.g., in fee simple, for life, and so on." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 55 (2d ed. 1984).

life tenancy. See *life estate* under ESTATE (1).

periodic tenancy. (1891) A tenancy that automatically continues for successive periods — usu. month to month or year to year — unless terminated at the end of a period by notice. • A typical example is a month-to-month apartment lease. This type of tenancy originated through court rulings that, when the lessor received a periodic rent, the lease could not be terminated without reasonable notice. — Also termed *tenancy from period to period*; *periodic estate*; *estate from period to period*; (more specif.) *month-to-month tenancy* (or *estate*); *year-to-year tenancy* (or *estate*). [Cases: Landlord and Tenant ⇨114, 115.]

several tenancy. (17c) A tenancy that is separate and not held jointly with another person.

tenancy at sufferance. (18c) A tenancy arising when a person who has been in lawful possession of property wrongfully remains as a holdover after his or her interest has expired. • A tenancy at sufferance takes the form of either a tenancy at will or a periodic tenancy. — Also termed *holdover tenancy*; *estate at sufferance*. See HOLDING OVER (1). [Cases: Landlord and Tenant ⇨117, 119.]

"A tenancy at sufferance arises where a tenant, having entered upon land under a valid tenancy, holds over without the landlord's assent or dissent. Such a tenant differs from a trespasser in that his original entry was lawful, and from a tenant at will in that his tenancy exists without the landlord's assent. No rent, as such, is payable, but the tenant is liable to pay compensation for his use and occupation of the land. The tenancy may be determined [i.e., terminated] at any time, and may be converted into a yearly or other periodic tenancy in the usual way, e.g., if rent is paid and accepted with reference to a year in circumstances where the parties intended there to be a tenancy." Robert E. Megarry & M.P. Thompson, *A Manual of the Law of Real Property* 319 (6th ed. 1993).

tenancy attendant on the inheritance. A tenancy for a term that is vested in a trustee in trust for the owner of the inheritance. • The tenancy is a form of personal property to the trustee. — Also termed *tenancy attendant on an inheritance*; *term attendant on the inheritance*.

tenancy at will. (17c) A tenancy in which the tenant holds possession with the landlord's consent but without fixed terms (as for duration or rent); specif., a tenancy that is terminable at the will of either the transferor or the transferee and that has no designated period of duration. • Such a tenancy may be terminated by either party upon fair notice. — Also termed *at-will tenancy*; *estate at will*. [Cases: Landlord and Tenant ⇨117, 118, 120.]

tenancy by the entirety (en-**tī**-ər-tee). See *estate by entirety* under ESTATE (1). [Cases: Husband and Wife ⇨14.2–14.11.]

"Tenancy by the entireties is a form of joint tenancy. It resembles joint tenancy in that upon the death of either husband or wife the survivor automatically acquires title to the share of the deceased spouse. Like a joint tenancy, also, it is necessary for the creation of a tenancy by the entireties that the husband and wife acquire title by the same deed or will." Robert Kratovil, *Real Estate Law* 198 (6th ed. 1974).

"Where [tenancy by the entirety] is recognized, it may exist only between a husband and a wife. It resembles, in most respects, the joint tenancy. The only major difference is that a tenant by the entirety may not destroy the other spouse's right of survivorship by transferring his or her interest to another. Whether a tenant by the entirety may transfer *any* interest to a third party — for example, the right of present possession or the contingent right of survivorship — is a matter on which the states differ. Most take the view that no interest may be transferred. The husband and wife may, of course, together convey their estate to a third person. If they *both* wish to convert their tenancy into a tenancy in common or a joint tenancy, they may do so. Upon the death of a tenant by the entirety, no interest passes, in theory, to the surviving spouse. As was true of the joint tenancy, the survivor's ownership is thought simply to expand to absorb the relinquished ownership of the decedent." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 55 (2d ed. 1984).

"A tenancy by the entireties could exist in any estate, whether in fee, for life, for years or otherwise. The nature of the tenancy was virtually that of an unseverable joint tenancy; neither husband nor wife could dispose of any interest in the land without the concurrence of the other, nor could one of them cause a forfeiture of the land. The unity of husband and wife was regarded as so complete that they were said to be seised '*per tout et non per mie*,' the survivor being entitled to the whole of the land by force of the original limitation, discharged of the other's right to participate, and not, as in the case of joint tenancy, by virtue of survivorship on the death of the other tenant. Unlike joint tenants, neither tenant was regarded as having any potential share in the land; 'between husband and wife there are no moieties.'" Robert E. Megarry & P.V. Baker, *A Manual of the Law of Real Property* 232–33 (4th ed. 1969) (quoting *Marquis of Winchester's Case*, 3 Co. Rep. 1a, 5a (1583)).

tenancy by the rod. See COPYHOLD.

tenancy by the verge. See COPYHOLD.

tenancy for a term. (17c) A tenancy whose duration is known in years, weeks, or days from the moment of its creation. — Also termed *tenancy for a period*; *tenancy for years*; *term for years*; *term of years*; *estate for a term*; *estate for years*; *lease for years*. [Cases: Landlord and Tenant ⇨70, 72, 113–115.]

tenancy from period to period. See *periodic tenancy*.

tenancy in common. (17c) A tenancy by two or more persons, in equal or unequal undivided shares, each person having an equal right to possess the whole property but no right of survivorship. — Also termed *common tenancy*; *estate in common*. Cf. *joint tenancy*. [Cases: Tenancy in Common ⇨1.]

"The central characteristic of a tenancy in common is simply that each tenant is deemed to own by himself, with most of the attributes of independent ownership, a physically undivided part of the entire parcel." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 54 (2d ed. 1984).

tenancy in coparcenary. See COPARCENARY.

tenancy in fee. See FEE SIMPLE.

tenancy in gross. (1860) A tenancy for a term that is outstanding — that is, one that is unattached to or disconnected from the estate or inheritance, such as

one that is in the hands of some third party having no interest in the inheritance.

tenancy in tail. See FEE TAIL.

tenancy par la verge. See COPYHOLD.

year-to-year tenancy. See *periodic tenancy.*

tenant, *n.* (14c) **1.** One who holds or possesses lands or tenements by any kind of right or title. See TENANCY. [Cases: Landlord and Tenant ⟹ 1.]

copyhold tenant. See *customary tenant.*

customary tenant. A tenant holding by the custom of the manor. • Over time, customary tenants became known as *copyhold tenants.* See COPYHOLD.

> "The lord has a court; in that court the tenant in villeinage, even though he be personally unfree, appears as no mere tenant at will, but as holding permanently, often heritably, on fairly definite terms. He is a customary tenant, *customarius, consuetudinarius*; he holds according to the custom of the manor. . . . Then gradually . . . [d]ealings with villein tenements are set forth upon the rolls of the lord's court; the villein tenement is conceived to be holden 'by roll of court,' or even 'by copy of court roll,' and the mode of conveyance serves to mark off the most beneficial of villeinholds from the most onerous of freeholds . . . . In Henry III's time this process which secured for the tenant in villeinage a written, a registered title, and gave him the name of 'copyholder,' was but beginning . . . ." 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 361, 375 (2d ed. 1899).

dominant tenant. The person who holds a dominant estate and therefore benefits from an easement. Cf. *servient tenant.* [Cases: Easements ⟹ 2.]

holdover tenant. A person who remains in possession of real property after a previous tenancy (esp. one under a lease) expires, thus giving rise to a tenancy at sufferance. — Sometimes shortened to *holdover.* See *tenancy at sufferance* under TENANCY. [Cases: Landlord and Tenant ⟹ 119(2).]

hypothetical tenant. See HYPOTHETICAL TENANT.

illusory tenant. **1.** A fictitious person who, as the landlord's alter ego, subleases an apartment to permit the landlord to circumvent rent-law regulations. **2.** A tenant whose business is to sublease rent-controlled apartments. [Cases: Landlord and Tenant ⟹ 200.16.]

joint tenant. See *joint tenancy* under TENANCY.

life tenant. See LIFE TENANT.

particular tenant. A tenant of a limited estate taken out of a fee. See *particular estate* under ESTATE (1).

prime tenant. A commercial or professional tenant with an established reputation that leases substantial, and usu. the most preferred, space in a commercial development. • A prime tenant is important in securing construction financing and in attracting other desirable tenants.

quasi-tenant. A sublessee that the new tenant or reversioner allows to hold over.

servient tenant. The person who holds a servient estate and is therefore burdened by an easement. Cf. *dominant tenant.* [Cases: Easements ⟹ 2.]

statutory tenant. A person who is legally entitled to remain on property after the tenancy expires. [Cases: Landlord and Tenant ⟹ 200.20, 278.4(5).]

tenant at sufferance. A tenant who has been in lawful possession of property and wrongfully remains as a holdover after the tenant's interest has expired. • The tenant may become either a tenant at will or a periodic tenant. — Also termed *permissive tenant.* See *tenancy at will*; *periodic tenancy.* [Cases: Landlord and Tenant ⟹ 117, 119.]

tenant by elegit. See ELEGIT.

tenant by the curtesy. A life tenant who receives the estate from his deceased wife by whom he has had legitimate children. • The children hold the remainder interest. See CURTESY. [Cases: Descent and Distribution ⟹ 52–67; Dower and Curtesy ⟹ 5, 11, 113, 114; Wills ⟹ 496, 778–803.]

tenant by the verge. See COPYHOLDER.

tenant for a term. A tenant whose tenancy is for a defined number of years, months, weeks, or days, set when the tenancy is created.

tenant for life. See LIFE TENANT.

tenant in chief. *Hist.* A person who held land directly of the king. — Also termed *tenant in capite.* See IN CAPITE.

tenant in common. One of two or more tenants who hold the same land by unity of possession but by separate and distinct titles, with each person having an equal right to possess the whole property but no right of survivorship. See *tenancy in common* under TENANCY. [Cases: Tenancy in Common ⟹ 1.]

tenant in demesne (di-**mayn** *or* di-**meen**). A feudal tenant who holds land of, and owes services to, a tenant in service. Cf. *tenant in service.*

tenant in dower. A life tenant who is entitled to hold and use one-third of all the real property owned by her deceased husband. See DOWER. [Cases: Dower and Curtesy ⟹ 113, 114.]

tenant in fee. The owner of land held in fee. — Also termed *tenant in fee simple.* [Cases: Estates in Property ⟹ 5.]

> "A tenant in fee simple is [one who owns] lands, tenements, or hereditaments, to hold to him and his heirs forever; generally, absolutely, and simply, without mentioning what heirs, but referring that to his own pleasure, or to the disposition of the law. An estate in fee simple is an estate of inheritance without condition, belonging to the owner, and alienable by him or transmissible to his heirs absolutely and simply; it is an estate or interest in land of one holding absolute and exclusive control and dominion over it, no matter how acquired." 31 C.J.S. *Estates* § 11, at 27 (1996).

tenant in service. A feudal tenant who grants an estate to another (a *tenant in demesne*) and is there-

fore entitled to services from the latter. Cf. *tenant in demesne.*

undertenant. See SUBLESSEE.

2. One who pays rent for the temporary use and occupation of another's land under a lease or similar arrangement. See LESSEE. **3.** *Archaic.* The defendant in a real action (the plaintiff being called a *demandant*). See *real action* under ACTION (4).

tenancy by the curtesy. See CURTESY.

tenantable repair. (17c) A repair that will render premises fit for present habitation. See HABITABILITY. [Cases: Landlord and Tenant ⇨150(1), 152(3), 160(2).]

tenantlike, *adj.* In accordance with the rights and obligations of a tenant, as in matters of repairs, waste, etc.

tenant paravail. *Archaic.* A tenant's tenant; a sublessor.

tenant par la verge. See COPYHOLDER.

tenant-right. *English law.* A tenant's right, upon termination of the tenancy, to payment for unexhausted improvements made on the holding. • This right is governed by the Agricultural Holdings Act of 1986.

tenantry. A body or group of tenants.

tenant's fixture. See FIXTURE.

tend, *vb.* **1.** To be disposed toward (something). **2.** To serve, contribute, or conduce in some degree or way; to have a more or less direct bearing or effect. **3.** To be directed or have a tendency to (an end, object, or purpose).

ten-day rule. The doctrine that one who sells goods on credit and then learns that the buyer is insolvent has ten days after the buyer receives the goods to demand their return. • The seller has even longer to demand return if the buyer has made a written representation of solvency to the seller within three months before delivery. [Cases: Sales ⇨316(1).]

tender, *n.* (16c) **1.** A valid and sufficient offer of performance; specif., an unconditional offer of money or performance to satisfy a debt or obligation <a tender of delivery>. • The tender may save the tendering party from a penalty for nonpayment or nonperformance or may, if the other party unjustifiably refuses the tender, place the other party in default. Cf. OFFER OF PERFORMANCE; CONSIGNATION. [Cases: Contracts ⇨279; Sales ⇨153, 185; Vendor and Purchaser ⇨148, 170.]

tender of delivery. (1821) A seller's putting and holding conforming goods at the buyer's disposition and giving the buyer any notification reasonably necessary to take delivery. • The manner, time, and place for tender are determined by the agreement and by Article 2 of the Uniform Commercial Code. [Cases: Sales ⇨153.]

tender of performance. (18c) An obligor's demonstration of readiness, willingness, and ability to perform the obligation; esp., a buyer's demonstration of readiness, willingness, and ability to pay the purchase money, or a seller's offer to deliver merchantable title.• An offer to perform is usu. necessary to hold the defaulting party to a contract liable for breach. [Cases: Contracts ⇨279.]

2. Something unconditionally offered to satisfy a debt or obligation. [Cases: Tender ⇨1, 10.] **3.** *Contracts.* Attempted performance that is frustrated by the act of the party for whose benefit it is to take place. • The performance may take the form of either a tender of goods or services, or a tender of payment. Although this sense is quite similar to sense 1, it differs in making the other party's refusal part of the definition itself.

perfect tender. (18c) A seller's tender that meets the contractual terms entered into with the buyer concerning the quality and specifications of the goods sold. See PERFECT-TENDER RULE. [Cases: Sales ⇨153, 177.]

4. An offer or bid put forward for acceptance <a tender for the construction contract>. [Cases: Public Contracts ⇨8.] **5.** Something that serves as a means of payment, such as coin, banknotes, or other circulating medium; money <legal tender>. [Cases: Payment ⇨10; United States ⇨34.] — **tender,** *vb.*

tender, plea of. See PLEA OF TENDER.

tender offer. A public offer to buy a minimum number of shares directly from a corporation's shareholders at a fixed price, usu. at a substantial premium over the market price, in an effort to take control of the corporation. — Also termed *takeover offer*; *takeover bid.* Cf. *public-exchange offer* under OFFER. [Cases: Securities Regulation ⇨52.30–52.50.]

> "Broadly speaking, a direct solicitation of a corporation's stockholders to sell their shares to an acquirer is known as a tender offer (because the acquirer is asking the existing stockholders to tender their shares for sale)." Franklin A. Gevurtz, *Corporation Law* § 7.3, at 673 (2000).

cash tender offer. A tender offer in which the bidder offers to pay cash for the target's shares, as opposed to offering other corporate shares in exchange. • Most tender offers involve cash. [Cases: Securities Regulation ⇨52.30–52.50.]

creeping tender offer. See *creeping acquisition* under ACQUISITION.

tender of issue. (1811) *Common-law pleading.* A form attached to a traverse, by which the traversing party refers the issue to the proper mode of trial. [Cases: Pleading ⇨100, 112.]

> "[I]t is the object of all pleadings to bring the parties, in the course of their mutual altercations, to an issue that is a single entire point, affirmed on the one side and denied on the other; and it is to effect this object that the above rule was established. There can be no arrival at this point until one or the other of the parties, by the conclusion of his pleading, offers an issue for the acceptance of his opponent, and this offer is called the 'tender of issue.'" Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 254, at 446 (Henry Winthrop Ballantine ed., 3d ed. 1923).

tender-years doctrine. (1954) *Family law.* The doctrine holding that custody of very young children (usu. five years of age and younger) should generally be awarded to the mother in a divorce unless she is found to be

unfit. • This doctrine has been rejected in most states and replaced by a presumption of joint custody. See MATERNAL-PREFERENCE DOCTRINE; PRIMARY-CAREGIVER DOCTRINE. [Cases: Child Custody ☞457.]

tender-years hearsay exception. See HEARSAY EXCEPTION.

tenement. (14c) **1.** Property (esp. land) held by freehold; an estate or holding of land.

dominant tenement. See *dominant estate* under ESTATE (4).

servient tenement (**sər**-vee-ənt). See *servient estate* under ESTATE (4).

2. A house or other building used as a residence. **3.** An apartment. **4.** TENEMENT HOUSE.

tenement house. (1858) A low-rent apartment building, usu. in poor condition and at best meeting only minimal safety and sanitary conditions. — Sometimes shortened to *tenement*.

tenendas (tə-**nen**-das), *n.* [Law Latin "to be held"] *Hist.* The charter clause stating the nature of the tenure, so called because of the first word of the clause.

tenendum (tə-**nen**-dəm). [Latin "to be held"] (17c) A clause in a deed designating the kind of tenure by which the things granted are to be held. — Also termed *tenendum clause*; (in Scots law) *tenendas*. See HABENDUM ET TENENDUM. Cf. HABENDUM CLAUSE (1).

10-K. A financial report filed annually with the SEC by a registered corporation. • The report typically includes an audited financial statement, a description of the corporation's business and financial condition, and summaries of other financial data. — Also termed *Form 10-K*. Cf. 8-K; 10-Q. [Cases: Securities Regulation ☞60.27(6).]

Tennessee Valley Authority. A government-owned corporation, created in 1933, that conducts a unified program of resource development to advance economic growth in the Tennessee Valley region. • The Authority's activities include flood control, navigation development, electric-power production, fertilizer development, recreation improvement, and forestry-and-wildlife development. Though its power program is financially self-supporting, the Authority's other programs are financed primarily by congressional appropriations. — Abbr. TVA. [Cases: United States ☞53(6.1).]

tenor, *n.* **1.** An exact copy of an instrument. **2.** The exact words of a legal document, esp. as cited in a pleading. **3.** The meaning of a legal document.

ten-percent bond. See BOND (2).

10-Q. An unaudited financial report filed quarterly with the SEC by a registered corporation. • The 10-Q is less detailed than the 10-K. — Also termed *Form 10-Q*. Cf. 10-K.[Cases: Securities Regulation ☞60.27(6).]

tentative agenda. See *proposed agenda* under AGENDA.

tentative trust. See *Totten trust* under TRUST.

Tenth Amendment. The constitutional amendment, ratified as part of the Bill of Rights in 1791, providing that any powers not constitutionally delegated to the federal government, nor prohibited to the states, are reserved for the states or the people. — Also termed *Reserved Power Clause*. [Cases: States ☞4.16.]

1031 exchange (**ten**-thər-tee-**wən**). (1972) **1.** An exchange of like-kind property that is exempt from income-tax consequences under IRC (26 USCA) § 1031. [Cases: Internal Revenue ☞3184.] Cf. TAX-FREE EXCHANGE. **2.** See TAX-FREE EXCHANGE.

tenure (**ten**-yər), *n.* (15c) **1.** A right, term, or mode of holding lands or tenements in subordination to a superior. • In feudal times, real property was held predominantly as part of a tenure system. **2.** A particular feudal mode of holding lands, such as socage, gavelkind, villeinage, and frankalmoign.

> "Most of the feudal incidents and consequences of socage tenure were expressly abolished in New York by the act of 1787; and they were [later] wholly and entirely annihilated by the New York Revised Statutes . . . . They were also abolished by statute in Connecticut, 1793; and they have never existed, or they have ceased to exist, in all essential respects, in every other state. The only feudal fictions and services to be retained in any part of the United States consist of the feudal principle, that the lands are held of some superior or lord, to whom the obligation of fealty, and to pay a determinate rent, are due. . . . The lord paramount of all socage land was none other than the people of the state, and to them, and them only, the duty of fealty was to be rendered . . . ." 3 James Kent, *Commentaries on American Law* *509-10 (George Comstock ed., 11th ed. 1866).

base tenure. *Hist.* The holding of property in villeinage rather than by military service or free service. See VILLEINAGE.

copyhold tenure. See COPYHOLD.

lay tenure. *Hist.* Any tenure not held through religious service, such as a base tenure or a freehold tenure. • The three historical types of lay tenures are *knight-service*, *socage*, and *serjeanty*. See KNIGHT-SERVICE; SOCAGE; SERJEANTY. Cf. *tenure by divine service*.

military tenure. A tenure that bears some relation to military service, such as knight-service, grand serjeanty, and cornage. — Also termed *tenure in chivalry*.

spiritual tenure. A tenure that bears some relation to religious exercises, such as frankalmoign and tenure by divine service.

tenure ad furcam et flagellum (ad **fər**-kəm et flə-**jel**-əm). [Latin] *Hist.* Tenure by gallows and whip. • This was the meanest of the servile tenures — the bondman was at the disposal of the lord for life and limb.

tenure by divine service. *Hist.* A tenure obligating the tenant to perform an expressly defined divine service, such as singing a certain number of masses or distributing a fixed sum of alms. Cf. *lay tenure*.

tenure in chivalry. See *military tenure*.

villein tenure. See VILLEINAGE.

3. A status afforded to a teacher or professor as a protection against summary dismissal without sufficient cause. • This status has long been considered a cornerstone of academic freedom. [Cases: Colleges and Universities ☞8.1(2); Schools ☞133.6.] **4.** More generally, the legal protection of a long-term relationship, such as employment. [Cases: Officers and Public Employees ☞60.] — **tenurial** (ten-**yuur**-ee-əl), *adj.*

tenured faculty. The members of a school's teaching staff who hold their positions for life or until retirement, and who may not be discharged except for cause. [Cases: Colleges and Universities ☞8.1(2).]

tenure in capite. See IN CAPITE.

tenure in chivalry. See *military tenure* under TENURE.

tepid bench. See *lukewarm bench* under BENCH.

teratogen (tə-**rat**-ə-jən), *n.* An agent, usu. a chemical, that causes injury to a fetus or causes any of various birth defects <alcohol is a teratogen to the developing brain of a fetus>. — **teratogenic** (tə-rat-ə-**jen**-ik), *adj.*

terce. *Hist. Scots law.* A widow's interest in one-third of her husband's real property, if she has not accepted some other special provision. • The couple must have been married at least a year and a day or else have produced a living child together. See DOWER.

terce land. *Hist. Scots law.* Income-producing real property in which a widow has a pecuniary interest because it was owned by her husband.

tercer. *Hist. Scots law.* A widow who has an interest in one-third of her husband's real property. — Also spelled *tiercear.*

tergiversatio (tər-jiv-ər-**say**-shee-oh), *n.* [Latin "being reluctant, hanging back"] *Roman law.* A delay tactic, esp. an accuser's failure to pursue a criminal charge, perhaps by not appearing at the trial. • To withdraw an accusation, it was necessary to obtain the court's permission for an annulment (*abolitio*). In A.D. 61, a law was passed by which anyone convicted of *tergiversatio* was subject to a fine. See CALUMNIA. Cf. PRAEVARICATIO. Pl. ***tergiversationes*** (tər-jiv-ər-say-shee-**oh**-neez).

term, *n.* (14c) **1.** A word or phrase; esp., an expression that has a fixed meaning in some field <term of art>. **2.** A contractual stipulation <the delivery term provided for shipment within 30 days>. See CONDITION (3).

essential term. See *fundamental term.*

fundamental term. (1873) **1.** A contractual provision that must be included for a contract to exist; a contractual provision that specifies an essential purpose of the contract, so that a breach of the provision through inadequate performance makes the performance not only defective but essentially different from what had been promised. [Cases: Contracts ☞9(1), 15.] **2.** A contractual provision that must be included in the contract to satisfy the statute of frauds. — Also termed *essential term*; *vital term.* [Cases: Frauds, Statute of ☞113.]

implied term. (18c) A provision not expressly agreed to by the parties but instead read into the contract by a court as being implicit. • An implied term should not, in theory, contradict the contract's express terms. [Cases: Contracts ☞168.]

material term. (1839) A contractual provision dealing with a significant issue such as subject matter, price, payment, quantity, quality, duration, or the work to be done. [Cases: Contracts ☞9.]

nonessential term. See *nonfundamental term.*

nonfundamental term. (1969) Any contractual provision that is not regarded as a fundamental term. — Also termed *nonessential term*; *nonvital term.* [Cases: Contracts ☞9(1), 15.]

vital term. See *fundamental term.*

3. (*pl.*) Provisions that define an agreement's scope; conditions or stipulations <terms of sale>. **4.** A fixed period of time; esp., the period for which an estate is granted <term of years>.

attendant term. (1983) A long period (such as 1,000 years) specified as the duration of a mortgage, created to protect the mortgagor's heirs' interest in the land by not taking back title to the land once it is paid for, but rather by assigning title to a trustee who holds the title in trust for the mortgagor and the mortgagor's heirs. • This arrangement gives the heirs another title to the property in case the interest they inherited proves somehow defective. These types of terms have been largely abolished. See *tenancy attendant on the inheritance* under TENANCY. [Cases: Mortgages ☞54.]

> "The advantage derived from attendant terms is the security which they afford to purchasers and mortgagees. If the *bona fide* purchaser or mortgagee should happen to take a defective conveyance or mortgage, by which he acquires a mere equitable title, he may, by taking an assignment of an outstanding term to a trustee for himself, cure the defect, so far as to entitle himself to the legal estate during the term, in preference to any creditor, of whose incumbrance he had not notice, at or before the time of completing his contract for the purchase or mortgage. He may use this term to protect his possessions, or to recover it when lost. This protection extends generally as against all estates and incumbrances created intermediately between the raising of the term and the time of the purchase or mortgage; and the outstanding term, so assigned to a trustee for the purchaser or mortgagee, will prevail over the intermediate legal title to the inheritance." 4 James Kent, *Commentaries on American Law* *87 (George Comstock ed., 11th ed. 1866).

satisfied term. (18c) A term of years in land that has satisfied the purpose for which it was created before the term's expiration.

term for deliberating. (1843) The time given a beneficiary to decide whether to accept or reject an inheritance or other succession.

term in gross. (1852) A term that is unattached to an estate or inheritance. See *tenancy in gross* under TENANCY.

term of years. **1.** A fixed period covering a precise number of years. — Also termed *tenancy for a term.* **2.** *English law.* A fixed period covering less than a year, or a specified number of years and a fraction of a year. • This sense applies under a seminal English

statute — the Law of Property Act of 1925. [Cases: Landlord and Tenant ⇨70.]

"In effect, 'term of years' seems to mean a term for any period having a fixed and certain duration as a minimum. Thus, in addition to a tenancy for a specified number of years (e.g., 'to X for ninety-nine years'), such tenancies as a yearly tenancy or a weekly tenancy are 'terms of years' within the definition, for there is a minimum duration of a year or a week respectively. But a lease 'for the life of X' cannot exist as a legal estate, and the same, perhaps, applies to tenancies at will or at sufferance (if they are estates at all) for their duration is wholly uncertain." Robert E. Megarry & M.P. Thompson, *A Manual of the Law of Real Property* 74 (6th ed. 1993).

unexpired term. The remainder of a period prescribed by law or by agreement.

5. The period or session during which a court conducts judicial business <the most recent term was busy indeed>. — Also termed (in sense 5) *term of court*. See SESSION. [Cases: Courts ⇨63.]

additional term. A distinct, added term to a previous term. [Cases: Courts ⇨64.]

adjourned term. (18c) A continuance of a previous or regular term but not a separate term; the same term prolonged. [Cases: Courts ⇨66.]

appearance term. The regular judicial term in which a party is required to appear, usu. the first one after legal service has been made. [Cases: Courts ⇨63.]

civil term. The period during which a civil court hears cases.

criminal term. A term of court during which indictments are found and returned, and criminal trials are held. [Cases: Courts ⇨63.]

equity term. (1836) The period during which a court tries only equity cases.

general term. A regular term of court — that is, the period during which a court ordinarily sits. — Also termed *stated term*. [Cases: Courts ⇨63.]

regular term. (1820) A term of court begun at the time appointed by law and continued, in the court's discretion, until the court lawfully adjourns. [Cases: Courts ⇨63.]

special term. (1803) A term of court scheduled outside the general term, usu. for conducting extraordinary business. [Cases: Courts ⇨64.]

stated term. See *general term*.

term probatory. *Eccles. law.* **1.** The period given to the promoter of an ecclesiastical suit to produce witnesses and prove the case. **2.** *Hist.* The time assigned for taking testimony. — Sometimes termed (in sense 2) *probatory term*.

term to conclude. *Eccles. law.* A deadline imposed by the judge for all parties to renounce any further exhibits and allegations.

term to propound all things. *Eccles. law.* A deadline imposed by the judge for the parties to exhibit all evidence supporting their positions.

6. *Hist. English law.* One of the four periods in a year during which the courts are in session to conduct judicial business. • Terms came into use in the 13th century, and their dates varied. The four terms — Hilary, Easter, Trinity, and Michaelmas — were abolished by the Judicature Acts of 1873–1875, and the legal year was divided into sittings and vacations. Terms are still maintained by the Inns of Court to determine various time periods and dates, such as a call to the bar or observance of a Grand Day.

term annuity. See *annuity certain* under ANNUITY.

term attendant on the inheritance. See *tenancy attendant on the inheritance* under TENANCY.

term bond. See BOND (3).

term clause. See HABENDUM CLAUSE.

term day. See *quarter day* under DAY.

term deposit. See *time deposit* under DEPOSIT.

term fee. *English law.* A sum that a solicitor may charge a client, and that the client (if successful) may recover from the losing party, payable for each term in which any proceedings following the summons take place.

term for deliberating. See TERM (4).

term for years. See *tenancy for a term* under TENANCY.

terminable interest. See INTEREST (2).

terminable property. See PROPERTY.

terminal disclaimer. See DISCLAIMER.

terminate, *vb.* **1.** To put an end to; to bring to an end. **2.** To end; to conclude.

termination, *n.* (15c) **1.** The act of ending something; EXTINGUISHMENT <termination of the partnership by winding up its affairs>.

termination of conditional contract. The act of putting an end to all unperformed portions of a conditional contract. [Cases: Contracts ⇨249.]

termination of employment. The complete severance of an employer–employee relationship. [Cases: Labor and Employment ⇨40(2), 825.]

2. The end of something in time or existence; conclusion or discontinuance <the insurance policy's termination left the doctor without liability coverage>. — **terminate,** *vb.* — **terminable,** *adj.*

termination clause. See CANCELLATION CLAUSE.

termination fee. A fee paid if a party voluntarily backs out of a deal to sell or purchase a business or a business's assets. • Termination fees are usu. negotiated and agreed on as part of corporate merger or acquisition negotiations. The fee is designed to protect the prospective buyer and to deter the target corporation from entertaining bids from other parties. — Also termed *break-up fee*. [Cases: Corporations ⇨310(1), 582.]

termination-for-convenience clause. A contractual provision allowing the government to terminate all or a portion of a contract when it chooses. • Among the governmental contracts that often include a

termination-for-convenience clause are service contracts, research-and-development contracts, and fixed-price contracts. See 48 CFR § 52.249-1--52.249-2. [Cases: United States ☞70(35).]

termination hearing. See *termination-of-parental-rights hearing* under HEARING.

termination of parental rights. (1939) *Family law.* The legal severing of a parent's rights, privileges, and responsibilities regarding his or her child. • Termination of a parent's rights frees the child to be adopted by someone else. — Abbr. TPR. See *termination-of-parental-rights hearing* under HEARING; PARENTAL RIGHTS. [Cases: Infants ☞155.]

termination-of-parental-rights hearing. See HEARING.

termination proceeding. (1939) An administrative action to end a person's or entity's status or relationship. • For example, the International Banking Act authorizes the International Banking Board to institute a termination proceeding when a foreign bank or its U.S. agency or branch is convicted of money-laundering. 12 USCA § 3105(e).

terminer. See OYER AND TERMINER.

term in gross. See TERM (4).

termini habiles (**tər**-mi-nɪ **hab**-ə-leez), *n.* [Law Latin] *Hist.* Sufficient grounds. • The phrase usu. referred to the facts necessary to establish a prescriptive right.

termini sanctorum (**tər**-mi-nɪ sangk-**tor**-əm), *n.* [Law Latin] *Hist.* The limits of a sanctuary. See SANCTUARY (1).

term interest. *Oil & gas.* A mineral interest or royalty interest that is not perpetual. • A term interest may be for a fixed term (e.g., for 25 years) or defeasible (e.g., for 25 years and so long thereafter as there is production from the premises). [Cases: Mines and Minerals ☞55.]

terminus ad quem (**tər**-mi-nəs ad kwem). [Law Latin] *Hist.* The point to which. • The phrase appeared in reference to the point before which some action must be taken.

terminus a quo (**tər**-mi-nəs ay kwoh). [Law Latin] *Hist.* The point from which. • The phrase appeared in reference to the point from which something is calculated, or the earliest time at which some action is possible.

term life insurance. See LIFE INSURANCE.

term loan. See LOAN.

term of art. (17c) **1.** A word or phrase having a specific, precise meaning in a given specialty, apart from its general meaning in ordinary contexts. • Examples in law include *and his heirs* and *res ipsa loquitur.* [Cases: Contracts ☞152; Statutes ☞192.] **2.** Loosely, a jargonistic word or phrase. — Also termed *word of art.*

term-of-art canon. (1994) In statutory construction, the principle that if a term has acquired a technical or specialized meaning in a particular context, the term should be presumed to have that meaning if used in that context. [Cases: Statutes ☞192.]

term of court. See TERM (5).

term of office. The period during which an elected officer or appointee may hold office, perform its functions, and enjoy its privileges and emoluments. [Cases: Officers and Public Employees ☞50–54.]

term of years. 1. See TERM (4). **2.** See *tenancy for a term* under TENANCY.

termor (**tər**-mər). (14c) A person who holds lands or tenements for a term of years or for life.

term policy. See INSURANCE POLICY.

term probatory. See TERM (5).

terms. See YEAR BOOKS.

term sheet. *Securities.* **1.** A document setting forth all information that is material to investors about the offering but is not disclosed in the accompanying prospectus or the confirmation. **2.** LETTER OF INTENT.

abbreviated term sheet. A term sheet that includes (1) the description of the securities as required by Item 202 of SEC Regulation S-K, or a good summary of that information; and (2) all material changes to the issuer's affairs required to be disclosed on SEC Form S-3 or F-3, as applicable.

termtime. The time of the year when a court is in session. [Cases: Courts ☞63, 65.]

term to conclude. See TERM (5).

term to propound all things. See TERM (5).

terra nullius (**ter**-ə **nəl**-ee-əs), *n.* [Latin "the land of no one"] A territory not belonging to any particular country.

terre-tenant (**tair** ten-ənt). (15c) **1.** One who has actual possession of land; the occupant of land. **2.** One who has an interest in a judgment debtor's land after the judgment creditor's lien has attached to the land (such as a subsequent purchaser). — Also spelled *tertenant* (**tər**-ten-ənt). — Also termed *land-tenant.* [Cases: Judgment ☞793, 794.]

territorial, *adj.* Having to do with a particular geographical area.

territorial court. See COURT.

territorialism. (1977) The traditional approach to choice of law, whereby the place of injury or of contract formation determines which state's law will be applied in a case. See CHOICE OF LAW.

territoriality. *Int'l law.* The principle that a nation has the right of sovereignty within its borders. [Cases: International Law ☞7.]

> "Three maxims formulated by the seventeenth-century Dutch scholar Ulrich Huber undergird the modern concept of territoriality: (1) a state's laws have force only within the state's boundaries; (2) anyone found within the state's boundaries is subject to the state's authority; and (3) comity will discipline sovereign exercises of authority so that the territorial effect of each state's laws is respected." Paul Goldstein, *International Copyright: Principles, Law, and Practice* 64 (2001).

territorial jurisdiction. See JURISDICTION.

territorial law. The law that applies to all persons within a given territory regardless of their citizenship or nationality. Cf. PERSONAL LAW.

> "[T]he expression 'territorial law' . . . is not confined to the positive rules that regulate acts and events occurring within the jurisdiction, but includes also rules for the choice of law. English rules for the choice of law are part of the law of England and when a court, for instance, tests the substantial validity of a contract made by two foreigners in Paris by reference to French law, it applies a rule imposed by the English sovereign and it may accurately be described as putting into force part of the territorial law of England." G.C. Cheshire, *Private International Law* 32 (6th ed. 1961).

territorial property. Land and water over which a state has jurisdiction and control, whether the legal title is held by the state or by a private individual or entity. • Lakes and waters wholly within a state are generally its property, as is the marginal sea within the three-mile limit, but bays and gulfs are not always recognized as state property. [Cases: States ⚷11.]

territorial sea. See *territorial waters* under WATER.

territorial waters. See WATER.

territory, *n.* (14c) **1.** A geographical area included within a particular government's jurisdiction; the portion of the earth's surface that is in a state's exclusive possession and control. Cf. INSULAR AREA. [Cases: International Law ⚷5.]

non-self-governing territory. *Int'l law.* A territory that is governed by another country. • These types of territories are rarely allowed representation in the governing country's legislature.

trust territory. *Int'l law.* A territory to which the United Nations' international trusteeship system formerly applied; a territory once administered by the United Nations or a member state for the political, economic, educational, and social advancement of its inhabitants. • All territories that were subject to this system either became independent nations or opted to become part of another nation.

2. A part of the United States not included within any state but organized with a separate legislature (such as Guam and the U.S. Virgin Islands). Cf. COMMONWEALTH (2); DEPENDENCY (1). [Cases: Territories ⚷7.] — **territorial,** *adj.*

> "The United States has had territories from its inception. The Northwest Territory, along with the thirteen original states, was a part of the nation when the constitution was ratified. The original U.S. constitution expressly granted Congress the power to govern territories. Before the Civil War all of the territories were on the North American continent and contiguous with the states or the other territories. After the Civil War with the purchase of Alaska in 1867 (called 'Seward's Folly' or 'Seward's Icebox' by detractors) came the United States' first acquisition of non-contiguous territory. Alaska did, however, have certain basics in common with earlier U.S. territories. Alaska was on the North American continent and sparsely populated. . . . In the latter part of the 19th century, the U.S. became interested in various islands around the world." Stanley K. Laughlin Jr., *The Law of United States Territories and Affiliated Jurisdictions* § 3.1, at 25–26 (1995).

territory of a judge. (18c) The territorial jurisdiction of a particular court. See JURISDICTION (3). [Cases: Courts ⚷29, 171; Judges ⚷30.]

terrorem clause. See NO-CONTEST CLAUSE.

terrorism, *n.* (18c) The use or threat of violence to intimidate or cause panic, esp. as a means of affecting political conduct. See 18 USCA § 2331. See also *terroristic threat* under THREAT; *terrorism insurance* under INSURANCE. [Cases: Extortion and Threats ⚷25.] — **terrorist,** *adj.* & *n.*

bioterrorism. Terrorism involving the intentional release of harmful biological agents, such as bacteria or viruses, into the air, food, or water supply, esp. of humans. — Also termed *biological terrorism.*

cyberterrorism. Terrorism committed by using a computer to make unlawful attacks and threats of attack against computers, networks, and electronically stored information, and actually causing the target to fear or experience harm.

domestic terrorism. **1.** Terrorism that occurs primarily within the territorial jurisdiction of the United States. 18 USCA § 2331(5). **2.** Terrorism that is carried out against one's own government or fellow citizens. [Cases: War and National Emergency ⚷50.]

ecoterrorism. Terrorism related to environmental issues or animal rights. — Also termed *enviroterrorism*; *ecological terrorism*; *environmental terrorism*; *ecosabotage*; *ecovandalism.*

international terrorism. Terrorism that occurs primarily outside the territorial jurisdiction of the United States, or that transcends national boundaries by the means in which it is carried out, the people it is intended to intimidate, or the place where the perpetrators operate or seek asylum. 18 USCA § 2331(1). Cf. *state-sponsored terrorism.* [Cases: War and National Emergency ⚷50.]

state-sponsored terrorism. **1.** International terrorism supported by a sovereign government to pursue strategic and political objectives. **2.** See *state terrorism* (1). Cf. *international terrorism.*

state terrorism. **1.** Terrorism practiced by a sovereign government, esp. against its own people. • Under international legal principles of sovereignty, a government's conduct that has effects only within its borders is generally not subject to interference from other nations. **2.** See *state-sponsored terrorism* (1).

terrorism insurance. See INSURANCE.

terroristic threat. See THREAT.

terrorizing, *n. Family law.* A parent's or caregiver's act of orally assaulting, bullying, or frightening a child, or causing the child to believe that the world is a hostile place.

***Terry* stop.** See STOP AND FRISK.

tertenant. See TERRE-TENANT.

tertia (**tər**-shee-ə), *n. Hist.* A third. • A widow's terce was usu. referred to as *tertia rationabilis* ("a reasonable third").

tertium quid (**tər**-shee-əm kwid). [Latin] *Scots law.* A third thing that has qualities distinct from the prior two components.

> "Thus where, by the confusion of liquids or commixture of solids, the subject produced is of a character different from that of either of its component parts, it is called a *tertium quid*." John Trayner, *Trayner's Latin Maxims* 598 (4th ed. 1894).

tertius gaudens (**tər**-shee-əs **gaw**-denz). [Latin "a rejoicing third"] A third party who profits when two others dispute.

testable, *adj.* (17c) **1.** Capable of being tested <a testable hypothesis>. **2.** Capable of being transferred by will <today virtually all property is considered testable>. **3.** Capable of making a will <an 18-year-old person is testable in this state>. **4.** Legally qualified to testify as a witness or give evidence <the witness is testable about the statement>.

Test Act. *Hist.* An English statute that required a person who occupied a public office or position of trust to be a member of the Church of England, to swear the Oath of Supremacy, and to sign a declaration against transubstantiation. 25 Car. 2, ch. 2 (1673). • The Act was repealed in 1828.

test action. See *test case* (2) under CASE.

testacy. The state or condition of a person having died with a valid will. Cf. INTESTACY. [Cases: Wills ⇨1.]

testament (**tes**-tə-mənt). (14c) **1.** Traditionally, a will disposing of personal property. Cf. DEVISE (4). **2.** WILL (2).

closed testament. See *mystic will* under WILL.

inofficious testament. *Civil law.* A will that does not dispose of property to the testator's natural heirs; esp., a will that deprives the heirs of a portion of the estate to which they are entitled by law. — Also termed *inofficious will*; *unofficious will*. See *forced heir* under HEIR. [Cases: Wills ⇨82.]

military testament. See *soldier's will* under WILL.

mutual testament. See *mutual will* under WILL.

mystic testament. See *mystic will* under WILL.

officious testament. *Civil law.* A will that disposes of property to the testator's family; a will that reserves the legitime for the testator's children and other natural heirs. — Also termed *officious will*. See LEGITIME.

sealed testament. See *mystic will* under WILL.

secret testament. See *mystic will* under WILL.

testamentary (tes-tə-**men**-tə-ree *or* -tree), *adj.* (14c) **1.** Of or relating to a will or testament <testamentary intent>. [Cases: Wills ⇨1–20.] **2.** Provided for or appointed by a will <testamentary guardian>. **3.** Created by a will <testamentary gift>.

testamentary capacity. See CAPACITY (3).

testamentary class. See CLASS (3).

testamentary condition. See CONDITION (2).

testamentary disposition. See DISPOSITION (1).

testamentary gift. See GIFT.

testamentary guardian. See GUARDIAN.

testamentary heir. See HEIR.

testamentary instrument. See WILL.

testamentary intent. See INTENT (1).

testamentary power of appointment. See POWER OF APPOINTMENT.

testamentary succession. See SUCCESSION (2).

testamentary transfer. See TRANSFER.

testamentary trust. See TRUST.

testamentary trustee. See TRUSTEE (1).

testamenti factio (tes-tə-**men**-tī **fak**-shee-oh). [Latin "right to make a testament"] *Roman law.* **1.** Broadly, the capacity to take part in a will, as testator, heir, or witness. **2.** The capacity to make a will, open to any citizen, male or female, *sui juris*, and over puberty. • This term is sometimes known as "active" *testamenti factio* or *testamenti factio activa*, though the latter phrase was not known to the Roman law. **3.** The capacity to receive property by will. • Junian Latini and peregrini did not have this capacity. It is also known as "passive" *testamenti factio* or *testamenti factio passiva*, though the latter phrase was (like *testamenti factio activa*) unknown to the Roman law. **4.** The capacity to witness a will. • Women did not have this capacity. — Also termed *factio testamenti*.

> "Under the civil law, this was a power . . . vested only in the Roman citizen . . . . The *testamenti factio* was necessary to any participation whatever in a testament. Without it, no one could make a will, or take a legacy, or even be a witness to the execution of a will . . . . In Scotch law, this phrase can only signify the power of making a will, as any one may be a beneficiary under another's settlement." John Trayner, *Trayner's Latin Maxims* 216–17 (4th ed. 1894).

testamentum (tes-tə-**men**-təm), *n.* [Latin] *Roman law.* A will. • In early and classical law, the mancipatory will was standard. It was still used in the Later Empire but the in A.D. 446, the holographic will was accepted in the Western Empire. A will could also be made by registration on the court *acta*. See *holographic will*, *mancipatory will* under WILL.

testamentum calatis comitiis (**kə**-**lay**-tis kə-**mish**-ee-is). [Latin "will made before the *comitia curiata*"] *Roman law.* In early Rome, a will made before the *comitia curiata*, having an effect comparable to adrogation. • The *comitia curiata* was known as the *comitia calata* when it met twice a year for the purpose of making wills. See *comitia curiata* under COMITIA.

testamentum holografum (tes-tə-**men**-təm hol-ə-**graf**-əm). [Latin] See *holographic will* under WILL.

testamentum in procinctu (in prə-**singk**-t[y]oo). [Latin "will made before the army"] *Roman law.* A will made

by a soldier before a fellow soldiers while preparing for battle.

testamentum militum (tes-tə-**men**-təm **mil**-ə-təm). [Latin] See *soldier's will* under WILL.

testamentum tripertitum (trī-pər-**tī**-təm). [Latin "tripartite will"] *Roman law.* A will made without interruption, with seven witnesses to seal it, and signed by the testator. • This form of will was valid in Justinian's law. It was called "tripartite" because the authority for various parts of it derived from three sources: the civil law (requiring that the will be made at one and the same time before witnesses); the praetor's edict (requiring that there be seven witnesses and that they must seal it); and imperial constitutions (requiring that the testator must sign at the end).

testate (**tes**-tayt), *adj.* (15c) Having left a will at death <she died testate>. Cf. INTESTATE. [Cases: Wills ⇨ 1.]

testate, *n.* See TESTATOR.

testate succession. See SUCCESSION (2).

testatio mentis (tes-**tay**-shee-oh **men**-tis), *n.* [Latin] *Hist.* An expression of a testator's mind; a testament.

testation (te-**stay**-shən). **1.** The disposal of property by will; the power to dispose of property by will. **2.** *Archaic.* Attestation; a witnessing. [Cases: Wills ⇨ 1.]

testator (**tes**-tay-tər *also* te-**stay**-tər). (14c) A person who has made a will; esp., a person who dies leaving a will. • Because this term is usu. interpreted as applying to both sexes, *testatrix* has become archaic. — Also termed *testate.* Cf. INTESTATE. [Cases: Wills ⇨ 21–55.]

testatrix (te-**stay**-triks *or* **tes**-tə-triks). *Archaic.* A female testator. • In modern usage, a person who leaves a will is called a testator, regardless of sex. Pl. **testatrixes, testatrices.**

testatum (tes-**tay**-təm). [Latin "attested"] **1.** A writ issued in a county where a defendant or a defendant's property is located when venue lies in another county. • This writ, when issued after a ground writ, allowed the seizure of the defendant or the defendant's property in another county. — Also termed *writ of testatum fieri facias; writ fi. fa.; testatum bill; testatum writ; latitat* (**lat**-ə-tat). Cf. *ground writ* under WRIT.

> "But if the defendant had removed into another county, the next process the plaintiff might sue out against him was a *testatum bill,* directed to the sheriff thereof, which soon gained the name of a *latitat,* from that word being within it." 1 George Crompton, *Practice Common-Placed: Rules and Cases of Practice in the Courts of King's Bench and Common Pleas* xxxv (3d ed. 1787).

2. The operative part of a deed by which the seller acknowledges the amount and receipt of the purchase money, whether or not the buyer has actually paid any money to the seller. — Also termed *witnessing part.*

testatum clause. See TESTIMONIUM CLAUSE.

testatus (tes-**tay**-təs), *n.* [Latin] *Civil law.* See TESTATOR.

test case. See CASE.

teste (**tes**-tee). [Latin *teste meipso* "I myself being a witness"] **1.** In drafting, the clause that states the name of a witness and evidences the act of witnessing. — Also termed *teste of process; teste of writ.* **2.** The final clause in a royal writ naming the person who authorizes the affixing of the king's seal. • The clause generally contains the place and date of the sealing. When the monarch authenticates the sealing, the clause begins with the phase *teste meipso* ("by my own witness"). Otherwise, the authenticator states his or her name and office.

teste meipso. See TESTE (2).

testifier. One who testifies; WITNESS. — Also termed (archaically) *testificator* (**tes**-tə-fi-kay-tər).

testify, *vb.* (14c) **1.** To give evidence as a witness <she testified that the Ford Bronco was at the defendant's home at the critical time>. [Cases: Witnesses ⇨ 224.] **2.** (Of a person or thing) to bear witness <the incomplete log entries testified to his sloppiness>.

testifying expert. See EXPERT.

testimonial evidence. 1. See TESTIMONY. **2.** See EVIDENCE.

testimonial immunity. See IMMUNITY (3).

testimonial incapacity. See INCAPACITY.

testimonial privilege. See PRIVILEGE (1).

testimonial proof. See PROOF.

testimonium clause. (1823) A provision at the end of an instrument (esp. a will) reciting the date when the instrument was signed, by whom it was signed, and in what capacity. • This clause traditionally begins with the phrase "In witness whereof." — Also termed *testatum clause; witness clause.* Cf. ATTESTATION CLAUSE. [Cases: Wills ⇨ 111(2).]

testimony, *n.* (14c) Evidence that a competent witness under oath or affirmation gives at trial or in an affidavit or deposition. — Also termed *testimonial evidence; personal evidence.* [Cases: Federal Civil Procedure ⇨ 2011; Trial ⇨ 33; Witnesses ⇨ 224.] — **testimonial,** *adj.*

affirmative testimony. (1806) Testimony about whether something occurred or did not occur, based on what the witness saw or heard at the time and place in question. — Also termed *positive testimony;* (formerly) *statement of fact.* See *direct evidence* under EVIDENCE. [Cases: Evidence ⇨ 586.]

cumulative testimony. (1818) Identical or similar testimony by more than one witness, and usu. by several, offered by a party usu. to impress the jury with the apparent weight of proof on that party's side. • The trial court typically limits cumulative testimony. [Cases: Criminal Law ⇨ 675; Federal Civil Procedure ⇨ 2011; Trial ⇨ 56.]

dropsy testimony. (1970) *Slang.* A police officer's false testimony that a fleeing suspect dropped an illegal substance that was then confiscated by the police and used as probable cause for arresting the suspect. •

Dropsy testimony is sometimes given when an arrest has been made without probable cause, as when illegal substances have been found through an improper search.

> "Before [*Mapp v. Ohio*, 367 U.S. 643 (1961)], the policeman typically testified that he had stopped the defendant for little or no reason, searched him, and found narcotics on his person. This had the ring of truth. It was an illegal search (not based upon 'probable cause'), but the evidence was admissible because *Mapp* had not yet been decided. Since it made no difference, the policeman testified truthfully. After, the decision in *Mapp* it made a great deal of difference. [¶] For the first few months, New York policemen continued to tell the truth about the circumstances of their searches, with the result that evidence was suppressed. Then the police made the great discovery that if the defendant drops the narcotics on the ground, after which the policeman arrests him, then the search is reasonable and the evidence is admissible. Spend a few hours in the New York City Criminal Court nowadays and you will hear case after case in which a policeman testifies that the defendant dropped the narcotics on the ground whereupon the policeman arrested him. [¶] Usually the very language of the testimony is identical from one case to another. This is now known among defense lawyers and prosecutors as 'dropsy' testimony. The judge has no reason to disbelieve it in any particular case, and of course the judge must decide each case on its own evidence, without regard to the testimony in other cases. Surely, though, not in every case was the defendant unlucky enough to drop his narcotics." Irving Younger, "The Perjury Routine," *The Nation*, May 3, 1967, at 596-97.

expert testimony. See *expert evidence* under EVIDENCE.

false testimony. (16c) Testimony that is untrue. • This term is broader than *perjury*, which has a state-of-mind element. Unlike perjury, false testimony does not denote a crime. — Also termed *false evidence*.

interpreted testimony. Testimony translated because the witness cannot communicate in the language of the tribunal. [Cases: Witnesses ☞230.]

lay opinion testimony. (1942) Evidence given by a witness who is not qualified as an expert but who testifies to opinions or inferences. • In federal court, the admissibility of this testimony is limited to opinions or inferences that are rationally based on the witness's perception and that will be helpful to a clear understanding of the witness's testimony or the determination of a fact in issue. Fed. R. Evid. 701. [Cases: Criminal Law ☞449.1–467; Evidence ☞470–503.]

mediate testimony. See *secondary evidence* under EVIDENCE.

negative testimony. See *negative evidence* under EVIDENCE.

nonverbal testimony. (1922) A photograph, drawing, map, chart, or other depiction used to aid a witness in testifying. • The witness need not have made it, but it must accurately represent something that the witness saw. See *demonstrative evidence* under EVIDENCE. [Cases: Criminal Law ☞437, 438; Evidence ☞358, 359.]

opinion testimony. (1925) Testimony based on one's belief or idea rather than on direct knowledge of the facts at issue. • Opinion testimony from either a lay witness or an expert witness may be allowed in evidence under certain conditions. See *opinion evidence* under EVIDENCE. [Cases: Criminal Law ☞448–494; Evidence ☞470–574.]

positive testimony. See *affirmative testimony*.

testimony de bene esse (dee **bee**-nee **es**-ee *also* day **ben**-ay **es**-ay). (1805) Testimony taken because it is in danger of being lost before it can be given at a trial or hearing, usu. because of the impending death or departure of the witness. • Such testimony is taken in aid of a pending case, while testimony taken under a bill to perpetuate testimony is taken in anticipation of future litigation. See *deposition de bene esse* under DEPOSITION. [Cases: Federal Civil Procedure ☞1291; Pretrial Procedure ☞61.]

written testimony. (17c) **1.** Testimony given out of court by deposition or affidavit. • The recorded writing, signed by the witness, is considered testimony. [Cases: Federal Civil Procedure ☞1432; Pretrial Procedure ☞201.] **2.** In some administrative agencies and courts, direct narrative testimony that is reduced to writing, to which the witness swears at a hearing or trial before cross-examination takes place in the traditional way. [Cases: Administrative Law and Procedure ☞461; Federal Civil Procedure ☞2011; Trial ☞33.]

testing clause. *Scots law.* The clause at the end of a formal written instrument or deed by which it is authenticated according to the forms of law. • Traditionally, the clause states the name and address of the writer, the number of pages in the instrument, any alterations or erasures, the names and addresses of the witnesses, the name and address of the person who penned the instrument, and the date and place of signing.

testis. [Latin] *Hist.* A witness. Pl. **testes.**

test oath. See *oath of allegiance* under OATH.

test paper. A writing that has been proved genuine and submitted to a jury as a standard by which to determine the authenticity of other writings. • The court decides the test paper's authenticity as a matter of law before it is used by the jury. Direct evidence, such as a witness to the writing's creation or an admission by the party, is preferred, but strong circumstantial evidence is usu. acceptable. In Pennsylvania, a paper or instrument shown to the jury as evidence is still called a *test paper* (sometimes written *test-paper*).

Texas ballot. See BALLOT (4).

textbook digest. (1922) A legal text whose aim is to set forth the law of a subject in condensed form, with little or no criticism or discussion of the authorities cited, and no serious attempt to explain or reconcile apparently conflicting decisions.

textual citation. See CITATION (4).

textualism. See *strict constructionism* under CONSTRUCTIONISM.

thalweg (**tahl**-vayk *or* -veg). (1831) **1.** A line following the lowest part of a (usu. submerged) valley. **2.** The middle of the primary navigable channel of a waterway, constituting the boundary between states. — Also spelled *talweg*. — Also termed *midway*. [Cases: States ⇨ 12.1.]

live thalweg. The part of a river channel that is most followed, usu. at the middle of the principal channel. *Louisiana v. Mississippi*, 466 U.S. 96, 104 S.Ct. 1645 (1984).

Thayer presumption. (1958) A presumption that allows the party against whom the presumption operates to come forward with evidence to rebut the presumption, but that does not shift the burden of proof to that party. *See* James B. Thayer, *A Preliminary Treatise on Evidence* 31–44 (1898). • Most presumptions that arise in civil trials in federal court are interpreted in this way. Fed. R. Evid. 301. Cf. MORGAN PRESUMPTION. [Cases: Criminal Law ⇨ 324; Evidence ⇨ 85, 89.]

The Federalist. See FEDERALIST PAPERS.

theft, *n.* (bef. 12c) **1.** The felonious taking and removing of another's personal property with the intent of depriving the true owner of it; larceny. [Cases: Larceny ⇨ 1.] **2.** Broadly, any act or instance of stealing, including larceny, burglary, embezzlement, and false pretenses. • Many modern penal codes have consolidated such property offenses under the name "theft." — Also termed (in Latin) *crimen furti*. See LARCENY. Cf. ROBBERY.

> "[T]he distinctions between larceny, embezzlement and false pretenses serve no useful purpose in the criminal law but are useless handicaps from the standpoint of the administration of criminal justice. One solution has been to combine all three in one section of the code under the name of 'larceny.' This has one disadvantage, however, because it frequently becomes necessary to add a modifier to make clear whether the reference is to common-law larceny or to statutory larceny. To avoid this difficulty some states have employed another word to designate a statutory offense made up of a combination of larceny, embezzlement, and false pretenses. And the word used for this purpose is 'theft.' 'Theft' is not the name of any common-law offense. At times it has been employed as a synonym of 'larceny,' but for the most part has been regarded as broader in its general scope. Under such a statute it is not necessary for the indictment charging theft to specify whether the offense is larceny, embezzlement or false pretenses." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 389–90 (3d ed. 1982).

cybertheft. See CYBERTHEFT.

identity theft. See IDENTITY THEFT.

petty theft. A theft of a small quantity of cash or of low-value goods or services. • This offense is usu. a misdemeanor. [Cases: Larceny ⇨ 23.]

theft by deception. (1930) The use of trickery to obtain another's property, esp. by (1) creating or reinforcing a false impression (as about value), (2) preventing one from obtaining information that would affect one's judgment about a transaction, or (3) failing to disclose, in a property transfer, a known lien or other legal impediment. Model Penal Code § 223. [Cases: False Pretenses ⇨ 1.]

theft by extortion. (1969) Larceny in which the perpetrator obtains property by threatening to (1) inflict bodily harm on anyone or commit any other criminal offense, (2) accuse anyone of a criminal offense, (3) expose any secret tending to subject any person to hatred, contempt, or ridicule, or impair one's credit or business reputation, (4) take or withhold action as an official, or cause an official to take or withhold action, (5) bring about or continue a strike, boycott, or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act, (6) testify or provide information or withhold testimony or information with respect to another's legal claim or defense, or (7) inflict any other harm that would not benefit the actor. Model Penal Code § 223.4. — Also termed *larceny by extortion*. See EXTORTION. [Cases: Extortion and Threats ⇨ 25.1.]

theft by false pretext. The use of a false pretext to obtain another's property. [Cases: False Pretenses ⇨ 1.]

theft of property lost, mislaid, or delivered by mistake. (1973) Larceny in which one obtains control of property the person knows to be lost, mislaid, or delivered by mistake (esp. in the amount of property or identity of recipient) and fails to take reasonable measures to restore the property to the rightful owner. Model Penal Code § 223.5. — Also termed *larceny of property lost, mislaid, or delivered by mistake*. [Cases: Larceny ⇨ 10.]

theft of services. (1946) The act of obtaining services from another by deception, threat, coercion, stealth, mechanical tampering, or using a false token or device. See Model Penal Code § 223.7.

theftbote. (**theft**-boht) See BOTE (2).

theftuous (**thef**-choo-əs), *adj.* **1.** (Of an act) characterized by theft. **2.** (Of a person) given to stealing. — Also spelled *theftous*.

thence, *adv.* (13c) **1.** From that place; from that time. • In surveying, and in describing land by courses and distances, this word, preceding each course given, implies that the following course is continuous with the one before it <south 240 feet to an iron post, thence west 59 feet>. **2.** On that account; therefore.

thence down the river. (16c) With the meanders of a river. • This phrase appears in the field notes of patent surveyors, indicating that the survey follows a meandering river unless evidence shows that the meander line as written was where the surveyor in fact ran it. Meander lines show the general course of the river and are used in estimating acreage, but are not necessarily boundary lines. See MEANDER LINE. [Cases: Boundaries ⇨ 12.]

theocracy (thee-**ok**-rə-see). (17c) **1.** Government of a state by those who are believed to be or represent that they are acting under the immediate direction of God or some other divinity. **2.** A state in which power is exercised by ecclesiastics.

Theodosian Code (thee-ə-**doh**-shən). *Roman law.* A compilation of imperial enactments prepared at the direction of the emperor Theodosius II and published in A.D. 438. • The Theodosian Code replaced all other imperial legislation from the time of Constantine I (A.D. 306–337), and remained the basis of Roman law until it was superseded by the first Justinian Code in A.D. 529. — Also termed (in Latin) *Codex Theodosianus* (**koh**-deks thee-ə-doh-shee-**ay**-nəs).

> "As a literary work the Theodosian Code has a dismal reputation . . . . Some quaestors possessed an elegant, powerful, or agreeably ornate style. . . . Against these may be set others with literary pretensions whose prose is ponderous or marred by excessive alliteration, assonance, pleonasm, or fondness for technical terms, or whose compositions are in other ways inept." Tony Honoré, *Law in the Crisis of the Empire 379–455* AD 21 (1998).

theolonio. See DE THEOLONIO.

theory of law. The legal premise or set of principles on which a case rests.

theory-of-pleading doctrine. (1956) The principle — now outmoded — that one must prove a case exactly as pleaded. • Various modern codes and rules of civil procedure have abolished this strict pleading-and-proof requirement. For example, Fed. R. Civ. P. 15 allows amendment of pleadings to conform to the evidence. [Cases: Federal Civil Procedure ⇨881; Pleading ⇨370.]

theory of the case. (1800) A comprehensive and orderly mental arrangement of principles and facts, conceived and constructed for the purpose of securing a judgment or decree of a court in favor of a litigant; the particular line of reasoning of either party to a suit, the purpose being to bring together certain facts of the case in a logical sequence and to correlate them in a way that produces in the decision-maker's mind a definite result or conclusion favored by the advocate. See CAUSE OF ACTION (1).

therapeutic abortion. See ABORTION.

therapeutic jurisprudence. See JURISPRUDENCE.

therapeutic relief. See RELIEF.

therapeutics. See *therapeutic relief* under RELIEF.

thereabouts, *adv.* (bef. 12c) Near that time or place <Schreuer was seen in Rudolf Place or thereabouts>. — Also termed *thereabout.*

thereafter, *adv.* (bef. 12c) Afterward; later <Skurry was thereafter arrested>.

thereat, *adv.* (bef. 12c) **1.** At that place or time; there. **2.** Because of that; at that occurrence or event.

thereby, *adv.* (bef. 12c) By that means; in that way <Blofeld stepped into the embassy and thereby found protection>.

therefor, *adv.* (bef. 12c) For it or them; for that thing or action; for those things or actions <she lied to Congress but was never punished therefor>.

therefore, *adv.* (14c) **1.** For that reason; on that ground or those grounds <a quorum was not present; therefore, no vote was taken>. **2.** To that end <she wanted to become a tax lawyer, and she therefore applied for the university's renowned LL.M. program in taxation>. — Also termed *thereupon.*

therefrom, *adv.* (13c) From that, it, or them <Hofer had several financial obligations to Ricks, who refused to release Hofer therefrom>.

therein, *adv.* (bef. 12c) **1.** In that place or time <the Dallas/Fort Worth metroplex has a population of about 3 million, and some 20,000 lawyers practice therein>. **2.** Inside or within that thing; inside or within those things <there were 3 school buses with 108 children therein>. **3.** In that regard, circumstance, or particular <therein lies the problem>.

thereinafter, *adv.* (1818) Later in that thing (such as a speech or document) <the book's first reference was innocuous, but the five references thereinafter were libelous per se>.

thereof, *adv.* (bef. 12c) Of that, it, or them <although the disease is spreading rapidly, the cause thereof is unknown>.

thereon, *adv.* (bef. 12c) On that or them <Michaels found the online reports of the cases and relied thereon instead of checking the printed books>. — Also termed *thereupon.*

thereto, *adv.* (bef. 12c) To that place, thing, issue, or the like <the jury awarded $750,000 in actual damages, and it added thereto another $250,000 in punitive damages>. — Also termed *thereunto.*

theretofore, *adv.* (14c) Until that time; before that time <theretofore, the highest award in such a case has been $450,000>.

thereunder, *adv.* (bef. 12c) Under that or them <on the top shelf were three books, and situated thereunder was the missing banknote> <section 1988 was the relevant fee statute, and the plaintiffs were undeniably proceeding thereunder>.

thereunto, *adv.* See THERETO.

thereupon, *adv.* (13c) **1.** Immediately; without delay; promptly <the writ of execution issued from the court, and the sheriff thereupon sought to find the judgment debtor>. **2.** THEREON. **3.** THEREFORE.

thesauri inventio (thi-**sawr**-ī in-**ven**-shee-oh). [Latin "discovery of treasure"] *Roman law.* The principle according to which the finder of treasure acquires full or partial ownership of it.

thesaurus (thi-**sawr**-əs), *n.* [Latin] *Roman law.* **1.** Treasure; specif., valuables that have been hidden for so long that the owner's identity can no longer be established. **2.** A storehouse. Pl. ***thesauri.***

***Thibodaux* abstention** (**tib**-ə-doh). See ABSTENTION.

thief. (bef. 12c) One who steals, esp. without force or violence; one who commits theft or larceny. See THEFT.

common thief. (16c) A thief who has been convicted of theft or larceny more than once. — Also termed *common and notorious thief.*

manifest thief. See FUR MANIFESTUS.

thieve, *vb.* (bef. 12c) To steal; to commit theft or larceny. See THEFT.

thievery. The act or practice of stealing.

thimblerig. See SHELL GAME.

thimbles and balls. See SHELL GAME.

thin capitalization. See CAPITALIZATION.

thin corporation. See CORPORATION.

thing. (bef. 12c) **1.** The subject matter of a right, whether it is a material object or not; any subject matter of ownership within the sphere of proprietary or valuable rights. • Things are divided into three categories: (1) things real or immovable, such as land, tenements, and hereditaments, (2) things personal or movable, such as goods and chattels, and (3) things having both real and personal characteristics, such as a title deed and a tenancy for a term. The civil law divided things into corporeal (*tangi possunt*) and incorporeal (*tangi non possunt*). La. Civ. Code art. 461. [Cases: Property ⇨ 1.]

accessory thing. A thing that stands in a dependency relationship with another thing (the principal thing). • An accessory thing ordinarily serves the economic or other purpose of the principal thing and shares its legal fate in case of transfer or encumbrance.

corporeal thing. (17c) The subject matter of corporeal ownership; a material object. — Also termed *res corporales*; *tangible thing.*

immovable thing. See IMMOVABLE.

incorporeal thing. (17c) The subject matter of incorporeal ownership; any proprietary right apart from the right of full dominion over a material object. — Also termed *res incorporale*; *intangible thing.*

movable thing. See MOVABLE (1).

real things. See REAL THINGS.

thing in action. See *chose in action* under CHOSE.

thing in possession. See *chose in possession* under CHOSE.

2. Anything that is owned by someone as part of that person's estate or property. — Also termed *res*; *chose.*

thing in action. See *chose in action* under CHOSE.

thing in possession. See *chose in possession* under CHOSE.

things mancipi. See RES MANCIPI.

things nec mancipi. See RES NEC MANCIPI.

things personal. See *personal property* (1) under PROPERTY.

things real. See REAL THINGS.

thin market. See MARKET.

thin-skull rule. See EGGSHELL-SKULL RULE.

Third Amendment. The constitutional amendment, ratified as part of the Bill of Rights in 1791, prohibiting the quartering of soldiers in private homes except during wartime.

third cousin. See COUSIN.

third degree, *n.* (1900) The process of extracting a confession or information from a suspect or prisoner by prolonged questioning, the use of threats, or physical torture <the police gave the suspect the third degree>.

third-degree instruction. See ALLEN CHARGE.

third-degree murder. See MURDER.

third estate. *Property.* A landowner's right to have the land supported below the surface against subsidence when it is undermined by tunnels, such as those made for mining operations. • The phrase appears most frequently in Pennsylvania, where the common law traditionally recognizes three estates in land: the surface (first or surface estate), the minerals (second or mineral estate), and an estate in the support of the surface (the third estate). The third estate originated with the common-law duty of miners to support the surface estate. [Cases: Mines and Minerals ⇨ 55(6).]

third opposition. *Civil law.* A species of intervention, usu. in a real-property case, in which the third party asserts a claim of ownership or other real right to seized property, and the claim does not depend on the outcome of the original suit between the plaintiff and the defendant. La. Code Civ. Proc. art. 1092. *See, e.g., Atkins v. Smith*, 15 So. 2d 855 (La. 1943). See INTERVENTION (1).

third party, *n.* (1818) A person who is not a party to a lawsuit, agreement, or other transaction but who is usu. somehow implicated in it; someone other than the principal parties. — Also termed *outside party*; *third person.* See PARTY. [Cases: Federal Civil Procedure ⇨ 281; Parties ⇨ 49.] — **third-party,** *adj.*

third-party, *vb.* (1965) To bring (a person or entity) into litigation as a third-party defendant <seeking indemnity, the defendant third-partied the surety>. [Cases: Federal Civil Procedure ⇨ 281; Parties ⇨ 49.]

third-party action. See ACTION (4).

third-party beneficiary. See BENEFICIARY.

third-party-beneficiary contract. See CONTRACT.

third-party business-buyout agreement. See AGREEMENT.

third-party check. (1904) A check that the payee indorses to another party — for example, a customer check that the payee indorses to a supplier. • A person who takes a third-party check in good faith and without notice of a security interest can be a holder in due course.

third-party complaint. See COMPLAINT.

third-party consent. (1942) A person's agreement to official action (such as a search of premises) that affects another person's rights or interests. • To be effective for a search, third-party consent must be based on the consenting person's common authority over the place

to be searched or the items to be inspected. See COMMON-AUTHORITY RULE. [Cases: Searches and Seizures ⚷173.]

third-party defendant. (1927) A party brought into a lawsuit by the original defendant. [Cases: Federal Civil Procedure ⚷281; Parties ⚷49.]

third-party equity lease. See *leveraged lease* under LEASE.

third-party insurance. See *liability insurance* under INSURANCE.

third-party logistical service provider. See FREIGHT FORWARDER. — Abbr. TPL.

third-party plaintiff. (1857) A defendant who files a pleading in an effort to bring a third party into the lawsuit. See *third-party complaint* under COMPLAINT. [Cases: Federal Civil Procedure ⚷281; Parties ⚷49.]

third-party practice. See IMPLEADER.

third-party record-custodian summons. See *John Doe summons* under SUMMONS.

third-party standing. See STANDING.

third person. See THIRD PARTY.

third possessor. *Civil law.* A person who acquires mortgaged property but is not personally bound by the obligation secured by the mortgage. [Cases: Mortgages ⚷277.]

Third World. *Int'l law.* **1.** DEVELOPING COUNTRY. **2.** The group of nations (esp. in Africa and Asia) not aligned with major powers, whether Western democracies (i.e., the *First* — or *Free* — *World*) or countries that were formerly part of the Soviet bloc (i.e., the *Second World*). • Although Third World nations are often underdeveloped, the term *Third World* may denote only their political rather than their economic status.

Third World country. See DEVELOPING COUNTRY.

Thirteenth Amendment. The constitutional amendment, ratified in 1865, that abolished slavery and involuntary servitude. [Cases: Constitutional Law ⚷1101.]

> "The thirteenth amendment is fairly unique in two respects. First, it contains an absolute bar to the existence of slavery or involuntary servitude; there is no requirement of 'state action.' Thus it is applicable to individuals as well as states . . . . Secondly, like the fourteenth and fifteenth amendments, it contains an enforcement clause, enabling Congress to pass all necessary legislation." John E. Nowak & Ronald D. Rotunda, *Constitutional Law* § 15.6, at 918 (4th ed. 1991).

30(b)(6) deposition. See DEPOSITION.

thirty-day letter. (1929) A letter that accompanies a revenue agent's report issued as a result of an Internal Revenue Service audit or the rejection of a taxpayer's claim for refund and that outlines the taxpayer's appeal procedure before the Internal Revenue Service. • If the taxpayer does not request any such procedure within the 30-day period, the IRS will issue a statutory notice of deficiency. Cf. NINETY-DAY LETTER. [Cases: Internal Revenue ⚷4542.1, 5044.]

threat, *n.* (bef. 12c) **1.** A communicated intent to inflict harm or loss on another or on another's property, esp. one that might diminish a person's freedom to act voluntarily or with lawful consent <a kidnapper's threats of violence>. [Cases: Extortion and Threats ⚷25.1.]

terroristic threat. (1959) A threat to commit any crime of violence with the purpose of (1) terrorizing another, (2) causing the evacuation of a building, place of assembly, or facility of public transportation, (3) causing serious public inconvenience, or (4) recklessly disregarding the risk of causing such terror or inconvenience. Model Penal Code § 211. See TERRORISM. [Cases: Extortion and Threats ⚷25.1.]

2. An indication of an approaching menace <the threat of bankruptcy>. **3.** A person or thing that might well cause harm <Mrs. Harrington testified that she had never viewed her husband as a threat>. — **threaten,** *vb.* — **threatening,** *adj.*

threatened species. See SPECIES (1).

threat of continuing harm. See CONTINUING THREAT OF HARM.

threat of continuing injury. See CONTINUING THREAT OF HARM.

three estates, the. See ESTATES OF THE REALM (1).

threefold ordeal. See *triple ordeal* under ORDEAL.

312 amendment. See *amendment after allowance* under PATENT-APPLICATION AMENDMENT.

341 meeting. See *creditors' meeting* under MEETING.

three-judge court. See COURT.

three-mile limit. The distance of one marine league or three miles offshore, usu. recognized as the limit of territorial jurisdiction. [Cases: International Law ⚷5.]

three-step test. *Copyright.* An analysis of an infringement defense under TRIPs and the Berne Convention, looking at whether the defendant's use of a protected work (1) is inherently limited to special cases, (2) did not conflict with the owner's normal exploitation of the work, and (3) did not unreasonably prejudice the legitimate interests of the owner. • The test is analogous to the analysis under the fair-use doctrine in U.S. law.

three-strikes law. (1984) *Slang.* A statute prescribing an enhanced sentence, esp. life imprisonment, for a repeat offender's third felony conviction. • About half the states have enacted a statute of this kind. — Also termed *three-strikes-and-you're-out law.* [Cases: Sentencing and Punishment ⚷1200–1219.]

three wicked sisters. *Slang.* The three doctrines — contributory negligence, the fellow-servant rule, and assumption of the risk — used by 19th-century courts to deny recovery to workers injured on the job.

> "These three common law defenses, contributory negligence, fellow servant rule, and assumption of the risk, became known as the 'three wicked sisters,' because of their preclusive effect on the ability of injured workers to recover. . . . By precluding application of the traditional respondeat superior concept for acts of fellow servants and by presuming that workers assumed the risks associated with their employment, courts made it extremely difficult

for employees to recover from their employers for the increasing number of work-related injuries. . . . By the late 1800s, courts began to recognize the harsh results generated by rote application of the fellow servant, assumption of the risk, and contributory negligence doctrines." Mark A. Rothstein et al., *Employment Law* § 7.2, at 404 (1994).

threshold. *Parliamentary law.* The number or proportion of votes needed for election.

threshold confession. See CONFESSION.

thrift institution. See SAVINGS-AND-LOAN ASSOCIATION.

through bill of lading. See BILL OF LADING.

through lot. A lot that abuts a street at each end.

through rate. The total shipping cost when two or more carriers are involved. • The carriers agree in advance on a through rate, which is typically lower than the sum of the separate rates. [Cases: Carriers ⇨12(2), 29.]

throwaway, *n. Slang.* **1.** An unemancipated minor whose parent or caregiver has forced him or her to leave home. **2.** A runaway whose parent or caregiver refuses to allow him or her to return home. Cf. RUNAWAY.

throwback rule. (1972) *Tax.* **1.** In the taxation of trusts, a rule requiring that an amount distributed in any tax year that exceeds the year's distributable net income must be treated as if it had been distributed in the preceding year. • The beneficiary is taxed in the current year although the computation is made as if the excess had been distributed in the previous year. If the trust did not have undistributed accumulated income in the preceding year, the amount of the throwback is tested against each of the preceding years. IRC (26 USCA) §§ 665–668. [Cases: Internal Revenue ⇨4019.] **2.** A taxation rule requiring a sale that would otherwise be exempt from state income tax (because the state to which the sale would be assigned for apportionment purposes does not have an income tax, even though the seller's state does) to be attributed to the seller's state and thus subjected to a state-level tax. • This rule applies only if the seller's state has adopted a throwback rule.

throw out, *vb.* (1817) To dismiss (a claim or lawsuit).

thrust-upon conflict. See CONFLICT OF INTEREST.

thumbprint. See FINGERPRINT.

ticket, *n.* **1.** A certificate indicating that the person to whom it is issued, or the holder, is entitled to some right or privilege <she bought a bus ticket for Miami>. **2.** CITATION (2) <he got a speeding ticket last week>. **3.** BALLOT (2) <they all voted a straight-party ticket>.

ticket of leave. *Archaic.* The English equivalent of parole.

ticket-of-leave man. A convict who has obtained a ticket of leave.

ticket speculator. A person who buys tickets and then resells them for more than their face value; in slang, a scalper. See SCALPER (1).

tidal, *adj.* Affected by or having tides. • For a river to be "tidal" at a given spot, the water need not necessarily be salt, but the spot must be one where the tide, in the ordinary and regular course of things, flows and reflows.

tide. The rising and falling of seawater that is produced by the attraction of the sun and moon, uninfluenced by special winds, seasons, or other circumstances that create meteorological and atmospheric meteorological tides; the ebb and flow of the sea. • Tides are used to measure a shore's upland boundary.

lower low tide. The lowest point of the daily tide.

mean high tide. The average of all high tides, esp. over a period of 18.6 years. — Also termed *ordinary high tide.*

mean lower low tide. The average of lower low tides over a fixed period.

mean low tide. The average of all low tides — both low and lower low — over a fixed period.

neap tide (neep). A tide, either high tide or low tide, that is lower than average because it occurs during the first or last quarter of the moon, when the sun's attraction partly counteracts the moon's.

ordinary high tide. See *mean high tide.*

spring tide. A tide, either high tide or low tide, that is higher than average because it occurs during the new moon and full moon.

tideland. (18c) Land between the lines of the ordinary high and low tides, covered and uncovered successively by the ebb and flow of those tides; land covered and uncovered by the ordinary tides. [Cases: Navigable Waters ⇨36(3).]

tidesman. *English law.* A customhouse officer appointed to watch or attend upon ships until the customs are paid. • A tidesman boards a ship at its arrival in the mouth of the Thames and comes up with the tide. See CUSTOMHOUSE.

tidewater. (18c) Water that falls and rises with the ebb and flow of the tide. • The term is not usu. applied to the open sea, but to coves, bays, and rivers.

tideway. (18c) Land between high- and low-water marks. [Cases: Navigable Waters ⇨36(3).]

tie, *n.* **1.** An equal number of votes for two candidates in an election. [Cases: Elections ⇨238.] **2.** An equal number of votes cast for and against a particular measure by a legislative or deliberative body. • In the U.S. Senate, the Vice President has the deciding vote in the event of a tie. U.S. Const. art. I, § 3. See *tie vote* under VOTE.

tied product. See TYING ARRANGEMENT (1).

tied service. See TYING ARRANGEMENT (1).

tie-in arrangement. See TYING ARRANGEMENT.

tiempo inhabil. *Hist. Louisiana law.* The time at which a person becomes insolvent.

tiercear. See TERCER.

tiered partnership. See PARTNERSHIP.

tie vote. See VOTE (3).

TIF. *abbr.* TAX-INCREMENT FINANCING.

tight, *adj. Slang.* (Of a note, bond, mortgage, lease, etc.) characterized by summary and stringent clauses providing the creditor's remedies in case of default.

TILA. *abbr.* Truth in Lending Act. See CONSUMER CREDIT PROTECTION ACT. [Cases: Consumer Credit ⇨32.]

tillage (til-ij), *n.* (15c) A place tilled or cultivated; land under cultivation as opposed to land lying fallow or in pasture.

till-tapping. (1893) *Slang.* Theft of money from a cash register.

timber easement. See EASEMENT.

timber lease. See LEASE.

timber rights. See *timber easement* under EASEMENT.

time. (bef. 12c) **1.** A measure of duration. **2.** A point in or period of duration at or during which something is alleged to have occurred. **3.** *Slang.* A convicted criminal's period of incarceration.

dead time. (1909) Time that does not count for a particular purpose, such as time not included in calculating an employee's wages or time not credited toward a prisoner's sentence. • The time during which a prisoner has escaped, for example, is not credited toward the prisoner's sentence. — Also termed *nonrun time.* [Cases: Labor and Employment ⇨2311; Sentencing and Punishment ⇨1155–1182.]

earned time. A credit toward a sentence reduction awarded to a prisoner who takes part in activities designed to lessen the chances that the prisoner will commit a crime after release from prison. • Earned time, which is usu. awarded for taking educational or vocational courses, working, or participating in certain other productive activities, is distinct from good time, which is awarded simply for refraining from misconduct. Cf. *good time.* [Cases: Prisons ⇨243.]

flat time. (1943) A prison term that is to be served without the benefit of time-reduction allowances for good behavior and the like.

good time. (1886) The credit awarded to a prisoner for good conduct, which can reduce the duration of the prisoner's sentence. Cf. GOOD BEHAVIOR; *earned time.* [Cases: Prisons ⇨243.]

jail-credit time. See JAIL CREDIT.

nonrun time. See *dead time.*

street time. The time that a convicted person spends on parole or on other conditional release. • If the person's parole is revoked, this time may or may not be credited toward the person's sentence, depending on the jurisdiction and the particular conditions of that person's parole. See *dead time.*

time agreement. 1. A pact made by the party leaders in the U.S. Senate to limit the time allowed for debate on a bill or amendment. **2.** See UNANIMOUS-CONSENT AGREEMENT.

time arbitrage. See ARBITRAGE.

time-bar, *n.* (1881) A bar to a legal claim arising from the lapse of a defined length of time, esp. one contained in a statute of limitations. [Cases: Limitation of Actions ⇨1.] — **time-barred,** *adj.*

time-bargain. See FUTURES CONTRACT.

time bill. See *time draft* under DRAFT.

time certain. 1. A definite, specific date and time. Cf. DATE CERTAIN. **2.** *Parliamentary law.* A specified time or condition for which a matter's consideration is scheduled or to which its consideration is postponed. See *postpone definitely* under POSTPONE (3); *special order* under ORDER (4).

time charter. See CHARTER (8).

time check. See TIMESHEET.

time deposit. See DEPOSIT (2).

time draft. See DRAFT.

time immemorial. (17c) **1.** A point in time so far back that no living person has knowledge or proof contradicting the right or custom alleged to have existed since then. • At common law, that time was fixed as the year 1189, the year that Henry II of England died. — Also termed *time out of memory; time out of mind; time of memory.* **2.** A point in time beyond which legal memory cannot go. See LEGAL MEMORY. **3.** A very long time.

time insurance. See INSURANCE.

time is of the essence. See OF THE ESSENCE.

time-is-of-the-essence clause. *Contracts.* A contractual provision making timely performance a condition. [Cases: Contracts ⇨211; Vendor and Purchaser ⇨78.]

time letter of credit. See LETTER OF CREDIT.

time loan. See *term loan* under LOAN.

time note. See NOTE (1).

time of memory. *Archaic.* See TIME IMMEMORIAL (1).

time option. See OPTION (2).

time order. See ORDER (8).

time out of memory. See TIME IMMEMORIAL.

time out of mind. See TIME IMMEMORIAL.

time-place-or-manner restriction. (1974) *Constitutional law.* A government's limitation on when, where, or how a public speech or assembly may occur, but not on the content of that speech or assembly. • As long as such restrictions are narrowly tailored to achieve a legitimate governmental interest, they do not violate the First Amendment. — Also written *time, place, or manner restriction.* — Also termed *time-place-and-manner restriction.* See PUBLIC FORUM.

time policy. See INSURANCE POLICY.

time-price differential. 1. A figure representing the difference between the current cash price of an item

and the total cost of purchasing it on credit. [Cases: Consumer Credit ⟹4; Usury ⟹32.] **2.** The difference between a seller's price for immediate cash payment and a different price when payment is made later or in installments.

time-price doctrine. The rule that if a debt arises out of a purchase and sale, the usury laws do not apply. • If a higher price is charged for a deferred payment than for an immediate payment, the difference between the time price and the cash price is deemed compensation to the seller for the risk that the buyer will default and for the interest that the seller could have earned on an immediate payment. Because the buyer can usu. choose to postpone a purchase and save up the cash price, the buyer does not have the same status as a needy borrower who must deal with a potentially predatory lender. [Cases: Usury ⟹32.]

time-sharing, *n.* (1976) Joint ownership or rental of property (such as a vacation condominium) by several persons who take turns occupying the property. — Also termed *time-share.* [Cases: Estates in Property ⟹1.] — **time-share,** *vb.*

timesheet. (1970) **1.** An employee's record of time spent on the job. **2.** An attorney's daily record of billable and nonbillable hours, used to generate clients' bills. — Also termed (formerly) *time check.* See BILLABLE HOUR.

time-shifting. The practice of recording a broadcast for viewing at a later time. • Time-shifting was found to be a noninfringing fair use of videotape recorders in *Sony Corp. v. Universal Studios, Inc.*, 464 U.S. 417, 104 S.Ct. 774 (1984). [Cases: Copyrights and Intellectual Property ⟹67.1.]

time unity. See *unity of time* under UNITY.

time value. The price associated with the length of time that an investor must wait until an investment matures or the related income is earned. Cf. YIELD TO MATURITY.

timocracy (tɪ-**mok**-rə-see). (15c) **1.** An aristocracy of property; government by propertied, relatively rich people. **2.** A government in which the rulers' primary motive is the love of honor.

TIN. *abbr.* See TAX-IDENTIFICATION NUMBER.

tin parachute. An employment-contract provision that grants a corporate employee (esp. one below the executive level) severance benefits in the event of a takeover. • These benefits are typically less lucrative than those provided under a golden parachute. — Also termed *silver parachute.* Cf. GOLDEN PARACHUTE.

tip, *n.* **1.** A piece of special information; esp., in securities law, advance or inside information passed from one person to another. See INSIDE INFORMATION; INSIDER TRADING. [Cases: Securities Regulation ⟹60.28(2).] **2.** A gratuity for service given. • Tip income is taxable. IRC (26 USCA) § 61(a). [Cases: Internal Revenue ⟹3163; Taxation ⟹3455.]

tippee. *Securities.* A person who acquires material nonpublic information from someone in a fiduciary relationship with the company to which that information pertains. [Cases: Securities Regulation ⟹60.28(5).]

tipper. *Securities.* A person who is in a fiduciary relationship with a company that the person possesses material inside information about, and who selectively discloses that information for trading or other personal purposes <the tippee traded 5,000 shares after her conversation with the tipper>. [Cases: Securities Regulation ⟹60.28(5).]

tippling house. See PUBLIC HOUSE.

TIPS. *abbr.* See *TIPS bond* under TREASURY BOND.

tipstaff. A court crier. • The name derives from the crier's former practice of holding a staff tipped with silver as a badge of office. See CRIER. [Cases: Courts ⟹58.] Pl. **tipstaves, tipstaffs.**

tip-stave. See SERVITOR OF BILLS.

tithe (tɪth), *n.* **1.** A tenth of one's income, esp. in reference to a religious or charitable gift or obligation. [Cases: Religious Societies ⟹15.] **2.** *Hist.* A small tax or assessment, esp. in the amount of one-tenth. — **tithe,** *vb.* — **tithable,** *adj.*

> "A tithe was the right of a rector to a tenth part of the produce of all the land in his parish. In some cases a rector was an individual, while in others the rectory was vested in a monastery, which appointed a vicar to perform the necessary ecclesiastical duties 'vicariously' for the monastery. On the dissolution of the monasteries in the reign of Henry VIII many rectories passed into the royal hands and were granted to laymen; the result was that the right to tithes in many cases passed into lay hands. Like advowsons, tithes were deemed to be land in which the various estates could exist." Robert E. Megarry & P.V. Baker, *A Manual of the Law of Real Property* 415 (4th ed. 1969).

great tithe. (*usu. pl.*) A tithe paid in kind and therefore considered more valuable than other tithes. • The great tithes often consisted of corn, peas, beans, hay, and wood.

mixed tithes. A tithe consisting of a natural product, such as milk or wool, obtained or cultivated by human effort.

> "A second species of incorporeal hereditaments is that of tithes . . . the first species being usually called *predial*, as of corn, grass, hops, and wood; the second *mixed*, as of wool, milk, pigs, etc., consisting of natural products, but nurtured and preserved in part by the care of man; and of these the tenth must be paid in gross: the third *personal*, as of manual occupations, trades, fisheries, and the like; and of these only the tenth part of the clear gains and profits is due." 2 William Blackstone, *Commentaries on the Laws of England* 24 (1766).

personal tithe. A tithe of profits from manual occupations or trades.

predial tithe. A tithe of crops (such as corn). — Also spelled *praedial tithe.*

vicarial tithe (vɪ-**kair**-ee-əl). A small tithe payable to a vicar.

tithe of agistment (ə-**jist**-mənt). *Hist.* A church-levied charge on grazing land. • The tithe was paid by the

occupier of the land rather than the person whose cattle grazed on the land. See AGISTMENT.

tithing. See DECENARY.

Titius heres esto (**tish**-ee-əs **heer**-eez **es**-toh). [Latin] *Roman law.* Let Titius be my heir. • The phrase was the testamentary form for appointing an heir. Titius was a fictitious name often used by way of example in legal writing, esp. in forms.

title. (15c) **1.** The union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of property; the legal link between a person who owns property and the property itself <no one has title to that land>. Cf. OWNERSHIP; POSSESSION. **2.** Legal evidence of a person's ownership rights in property; an instrument (such as a deed) that constitutes such evidence <record your title with the county clerk>.

> "Though employed in various ways, [*title*] is generally used to describe either the manner in which a right to real property is acquired, or the right itself. In the first sense, it refers to the conditions necessary to acquire a valid claim to land; in the second, it refers to the legal consequences of such conditions. These two senses are not only interrelated, but inseparable: given the requisite conditions, the legal consequences or rights follow as of course; given the rights, conditions necessary for the creation of those rights must have been satisfied. Thus, when the word 'title' is used in one sense, the other sense is necessarily implied." Kent McNeil, *Common Law Aboriginal Title* 10 (1989).

aboriginal title. **1.** Land ownership, or a claim of land ownership, by an indigenous people in a place that has been colonized. — Also termed *native title.* **2.** INDIAN TITLE. [Cases: Indians ⇨151.]

absolute title. (17c) An exclusive title to land; a title that excludes all others not compatible with it. See *fee simple absolute* under FEE SIMPLE. [Cases: Estates in Property ⇨5.]

adverse title. (18c) A title acquired by adverse possession. See ADVERSE POSSESSION. [Cases: Adverse Possession ⇨106.]

after-acquired title. (1810) Title held by a person who bought property from a seller who acquired title only after purporting to sell the property to the buyer. See AFTER-ACQUIRED-TITLE DOCTRINE. Cf. *title by estoppel.* [Cases: Vendor and Purchaser ⇨8.]

apparent title. See COLOR OF TITLE.

bad title. **1.** See *defective title.* **2.** See *unmarketable title.*

clear title. (17c) **1.** A title free from any encumbrances, burdens, or other limitations. [Cases: Vendor and Purchaser ⇨130(2), 133.] **2.** See *marketable title.* — Also termed *good title.*

defeasible title. (17c) A title voidable on the occurrence of a contingency, but not void on its face. [Cases: Estates in Property ⇨6.]

defective title. (17c) A title that cannot legally convey the property to which it applies, usu. because of some conflicting claim to that property. — Also termed *bad title.* [Cases: Vendor and Purchaser ⇨129.]

derivative title. (17c) **1.** A title that results when an already existing right is transferred to a new owner. **2.** The general principle that a transferee of property acquires only the rights held by the transferor and no more. [Cases: Vendor and Purchaser ⇨210.]

dormant title. (17c) A title in real property held in abeyance.

doubtful title. (17c) A title that exposes the party holding it to the risk of litigation with an adverse claimant. See *unmarketable title.* [Cases: Vendor and Purchaser ⇨129(1), 130(2).]

equitable title. (17c) A title that indicates a beneficial interest in property and that gives the holder the right to acquire formal legal title. • Before the Statute of Uses (1536), an equitable title was enforceable only in a court of chancery, not of law. Cf. *legal title.* [Cases: Vendor and Purchaser ⇨54.]

good title. (16c) **1.** A title that is legally valid or effective. [Cases: Vendor and Purchaser ⇨130(2), 133.] **2.** See *clear title* (1). **3.** See *marketable title.*

imperfect title. (18c) A title that requires a further exercise of the granting power to pass land in fee, or that does not convey full and absolute dominion.

Indian title. See INDIAN TITLE.

just title. In a case of prescription, a title that the possessor received from someone whom the possessor honestly believed to be the real owner, provided that the title was to transfer ownership of the property. [Cases: Adverse Possession ⇨69.]

legal title. (17c) A title that evidences apparent ownership but does not necessarily signify full and complete title or a beneficial interest. • Before the Statute of Uses (1536), a legal title was enforceable only in a court of law, not chancery. Cf. *equitable title.* [Cases: Vendor and Purchaser ⇨54.]

lucrative title. *Civil law.* A title acquired without giving anything in exchange for the property; title by which a person acquires anything that comes as a clear gain, as by gift, descent, or devise. • Because lucrative title is usu. acquired by gift or inheritance, it is treated as the separate property of a married person. Cf. *onerous title.*

marketable title. (18c) A title that a reasonable buyer would accept because it appears to lack any defect and to cover the entire property that the seller has purported to sell; a title that enables a purchaser to hold property in peace during the period of ownership and to have it accepted by a later purchaser who employs the same standards of acceptability. — Also termed *good title*; *merchantable title*; *clear title.* [Cases: Vendor and Purchaser ⇨130.]

> "One definition of a marketable title which has been put forward repeatedly is one free from all reasonable doubt. Stated another way, a marketable title is one which does *not* contain any manner of defect or outstanding interest or claim which may conceivably operate to defeat or impair the interest which is bargained for and is intended to be conveyed. This negative concept of marketability has become an implied invitation for courts to declare titles

unmarketable if an examiner has entertained any doubt whatever with respect to them. The digests attest the painful truth that claims of a bygone era cling like barnacles to land titles and encumber them long after they should have been scraped clean. . . . We need to replace this negative approach by a positive one which will make the marketability of titles depend solely upon their state during some recent interval of time rather than upon their entire history." Paul E. Basye, *Clearing Land Titles* § 371, at 539 (1953).

native title. See *aboriginal title* (1).

nonmerchantable title. See *unmarketable title.*

onerous title (on-ər-əs). **1.** *Civil law.* A title acquired by giving valuable consideration for the property, as by paying money or performing services. **2.** A title to property that is acquired during marriage through a spouse's skill or labor and is therefore treated as community property. Cf. *lucrative title.*

original title. A title that creates a right for the first time.

"The catching of fish is an original title of the right of ownership, whereas the purchase of them is a derivative title. The right acquired by the fisherman is newly created; it did not formerly exist in any one." John Salmond, *Jurisprudence* 345 (Glanville L. Williams ed., 10th ed. 1947).

paper title. See *record title.*

paramount title. (18c) **1.** *Archaic.* A title that is the source of the current title; original title. **2.** A title that is superior to another title or claim on the same property.

particular title. *Civil law.* A title acquired from an ancestor by purchase, gift, or inheritance before or after the ancestor's death.

perfect title. **1.** FEE SIMPLE. **2.** A grant of land that requires no further act from the legal authority to constitute an absolute title to the land. **3.** A title that does not disclose a patent defect that may require a lawsuit to defend it. **4.** A title that is good both at law and in equity. **5.** A title that is good and valid beyond all reasonable doubt.

presumptive title. (17c) A title of the lowest order, arising out of the mere occupation or simple possession of property without any apparent right, or any pretense of right, to hold and continue that possession.

record title. (18c) A title as it appears in the public records after the deed is properly recorded. — Also termed *title of record*; *paper title.* [Cases: Vendor and Purchaser ⚷132, 231(1).]

singular title. (17c) The title by which one acquires property as a singular successor.

tax title. (1831) A title to land purchased at a tax sale. [Cases: Taxation ⚷3060–3082.]

title by descent. (17c) A title that one acquires by law as an heir of the deceased owner.

title by devise. (1819) A title created by will.

title by estoppel. Title acquired from a person who did not have title at the time of a purported conveyance with a warranty but later acquired the title, which then inures to the benefit of the grantee. Cf. *after-acquired title.*

title by prescription. (17c) A title acquired by prescription. See PRESCRIPTION (5). [Cases: Adverse Possession ⚷106.]

title defective in form. (1836) A title for which some defect appears on the face of the deed, as opposed to a defect that arises from circumstances or extrinsic evidence. • Title defective in form cannot be the basis of prescription. See PRESCRIPTION (5). [Cases: Vendor and Purchaser ⚷129.]

title of entry. (16c) The right to enter upon lands.

title of record. See *record title.*

universal title. (17c) A title acquired by a conveyance causa mortis of a stated portion of all the conveyor's property interests so that on the conveyor's death the recipient stands as a universal successor.

unmarketable title. (18c) A title that a reasonable buyer would refuse to accept because of possible conflicting interests in or litigation over the property. — Also termed *bad title*; *unmerchantable title*; *nonmerchantable title.* [Cases: Vendor and Purchaser ⚷130(2).]

3. The heading of a statute or other legal document <the title of the contract was "Confidentiality Agreement">. [Cases: Contracts ⚷152; Statutes ⚷109.2.]

general title. A statute's name that broadly and comprehensively identifies the subject matter addressed by the legislature. Cf. *restrictive title.* [Cases: Statutes ⚷109.2.]

long title. The full, formal title of a statute, usu. containing a brief statement of legislative purpose.

"The first Acts of Parliament did not have titles. The first time that an Act of Parliament was given a title was about 1495. Even when the long title came to be added to each Act of Parliament as a matter of course, as it did from about 1513, the long title was not regarded as part of the Act of Parliament itself. Today, however, the position is different: the long title is part of the Act of Parliament." D.J. Gifford & John Salter, *How to Understand an Act of Parliament* 19 (1996).

"Because Parliament's clerks, rather than Parliament, provided the titles of acts, the traditional rule has been that the title could not be used for interpretive purposes. . . . This is no longer the practice in most English-speaking jurisdictions, for the long title, and often a short title as well, are part of the legislative bill from the very beginning. In the United States, most state constitutions require the legislative enactment to have a title that gives accurate notice of the contents of the law." William N. Eskridge Jr. & Elizabeth Garett, *Legislation* 831 (2001).

short title. The abbreviated title of a statute by which it is popularly known; a statutory nickname.

4. A subdivision of a statute or code <Title IX>.

restrictive title. A statute's name that narrowly identifies the particular subject matter addressed by the legislature. Cf. *general title.* [Cases: Statutes ⚷109.2.]

5. The name by which a court case or other legal proceeding is distinguished from others; STYLE (1). **6.** An appellation of office, dignity, or distinction <after the

election, he bore the title of mayor for the next four years>.

title, abstract of. See ABSTRACT OF TITLE.

title, action to quiet. See *action to quiet title* under ACTION (4).

title, chain of. See CHAIN OF TITLE.

title, cloud on. See CLOUD ON TITLE.

title, color of. See COLOR OF TITLE.

title, covenant for. See *covenant for title* under COVENANT (4).

title, document of. See DOCUMENT OF TITLE.

title, indicia of. See INDICIA OF TITLE.

title, muniment of. See MUNIMENT OF TITLE.

title, root of. See ROOT OF TITLE.

title, warranty of. See *warranty of title* under WARRANTY (2).

Title VII of the Civil Rights Act of 1964. A federal law that prohibits employment discrimination and harassment on the basis of race, sex, pregnancy, religion, and national origin, as well as prohibiting retaliation against an employee who opposes illegal harassment or discrimination in the workplace. • This term is often referred to simply as Title VII. 42 USCA §§ 2000e et seq. [Cases: Civil Rights ⇨1102.]

Title IX of the Educational Amendments of 1972. A federal statute generally prohibiting sex discrimination and harassment by educational facilities that receive federal funds. • This term is often referred to simply as Title IX. 20 USCA §§ 1681 et seq. [Cases: Civil Rights ⇨1067.]

title clearance. The removal of impediments to the marketability of land, esp. through title examinations.

title company. See COMPANY.

title deed. See DEED.

title division. *Archaic.* A common-law system for dividing property acquired during marriage upon the dissolution of the marriage, the divisions being based on who holds legal title to the property. • Under title division, when a marriage ends in divorce, property purchased during the marriage is awarded to the person who holds title to the property. Cf. COMMUNITY PROPERTY; EQUITABLE DISTRIBUTION.

title-guaranty company. See *title company* under COMPANY.

title insurance. See INSURANCE.

title jurisdiction. See TITLE THEORY.

title member. See *name partner* under PARTNER.

title-object clause. See CLAUSE.

title of entry. See TITLE (2).

title of record. See *record title* under TITLE (2).

title of right. (1917) A court-issued decree creating, transferring, or extinguishing rights. • Examples include a decree of divorce or judicial separation, an adjudication of bankruptcy, a discharge in bankruptcy, a decree of foreclosure against a mortgagor, an order appointing or removing a trustee, and a grant of letters of administration. In all the examples listed, the judgment operates not as a remedy but as a title of right.

title opinion. See OPINION (2).

title registration. (1971) A system of registering title to land with a public registry, such as a county clerk's office. See TORRENS SYSTEM. [Cases: Records ⇨9.]

title retention. (1936) A form of lien, in the nature of a chattel mortgage, to secure payment of a loan given to purchase the secured item. [Cases: Chattel Mortgages ⇨1.]

title search. (1965) An examination of the public records to determine whether any defects or encumbrances exist in a given property's chain of title. • A title search is typically conducted by a title company or a real-estate lawyer at a prospective buyer's or mortgagee's request. [Cases: Abstracts of Title ⇨1–3; Vendor and Purchaser ⇨231(2).]

title standards. (1938) Criteria by which a real-estate title can be evaluated to determine whether it is defective or marketable. • Many states, through associations of conveyancers and real-estate attorneys, still adhere to title standards. [Cases: Abstracts of Title ⇨1–3; Vendor and Purchaser ⇨130(2).]

title state. See TITLE THEORY.

title theory. (1907) *Property law.* The idea that a mortgage transfers legal title of the property to the mortgagee, who retains it until the mortgage has been satisfied or foreclosed. • Only a few American states — known as *title states, title jurisdictions,* or *title-theory jurisdictions* — have adopted this theory. Cf. LIEN THEORY. [Cases: Mortgages ⇨136.]

title transaction. (1939) A transaction that affects title to an interest in land.

title unity. See *unity of title* under UNITY.

titulo lucrativo, qui titulus est post contractum debitum (**tich**-ə-loh loo-krə-**tɪ**-voh, kwɪ **tich**-ə-ləs est pohst kən-**trak**-təm **deb**-i-təm). [Law Latin] *Hist.* By a lucrative title, which occurs after the contracting of debt.

titulo singulari (**tich**-ə-loh sing-gyə-**lair**-ɪ). [Law Latin] *Hist.* By a singular title. • Those acquiring property by means other than succession held the property under a *titulus singularis.*

titulo universali (**tich**-ə-loh yoo-ni-vər-**say**-lɪ). [Law Latin] *Hist.* By a universal title. • An heir succeeding to an ancestor's estate held title *titulo universali.*

titulus transferendi (**tich**-ə-ləs trans-fər-**en**-dɪ). [Law Latin] *Hist.* The legal title for transferring. — Also spelled *titulus transferrendi.* Cf. MODUS TRANSFERENDI.

TM. *abbr.* TRADEMARK. • Typically used as a superscript after a mark (™), it signals only that someone claims ownership of the mark; it does not mean that the mark is registered.

TMEP. *abbr.* TRADEMARK MANUAL OF EXAMINING PROCEDURE.

T-note. *abbr.* TREASURY NOTE.

tocher. *Scots law.* Dowry.

to-have-and-to-hold clause. See HABENDUM CLAUSE (1).

token, *n.* (bef. 12c) **1.** A sign or mark; a tangible evidence of the existence of a fact. **2.** A sign or indication of an intention to do something, as when a buyer places a small order with a vendor to show good faith with a view toward later placing a larger order. **3.** A coin or other legal tender. • Although *token* most commonly refers to a piece of metal, the term may also denote a bill or other medium of exchange.

false token. A counterfeit coin, bill, or the like.

toleration, *n.* **1.** The act or practice of permitting or enduring something not wholly approved of; the act or practice of allowing something in a way that does not hinder. **2.** The allowance of opinions and beliefs, esp. religious ones, that differ from prevailing norms. **3.** *Archaic.* Legal permission or authorization; LICENSE (1). — **tolerate,** *vb.*

toll, *n.* **1.** A tax or due paid for the use of something; esp., the consideration paid either to use a public road, highway, or bridge, or to maintain a booth for the sale of goods at a fair or market. [Cases: Bridges ☞33; Turnpikes and Toll Roads ☞37.] **2.** A right to collect such a tax or due. **3.** The privilege of being free from such a tax or due. **4.** A charge for a long-distance telephone call. [Cases: Telecommunications ☞950.]

toll, *vb.* (15c) **1.** To annul or take away <toll a right of entry>. **2.** (Of a time period, esp. a statutory one) to stop the running of; to abate <toll the limitations period>. See EQUITABLE TOLLING. **3.** *Hist.* To raise or collect a tax or due for the use of something.

tollage (**toh**-lij). **1.** Payment of a toll. **2.** Money charged or paid as a toll. **3.** The liberty or franchise of charging a toll.

tolling agreement. (1934) An agreement between a potential plaintiff and a potential defendant by which the defendant agrees to extend the statutory limitations period on the plaintiff's claim, usu. so that both parties will have more time to resolve their dispute without litigation. [Cases: Limitation of Actions ☞14.]

tolling statute. (1899) A law that interrupts the running of a statute of limitations in certain situations, as when the defendant cannot be served with process in the forum jurisdiction. [Cases: Limitation of Actions ☞43–138.]

tolt (tohlt). *Hist.* A writ for removing a case pending in a court baron to a county court. — Also termed *writ of tolt.* See COURT BARON; *county court* under COURT.

> "Where the disputed interest in the land was not a fee held of the king in chief but a fee held of a 'mesne lord' the writ was directed to him bidding him do full right between the parties in the matter of the land in question under pain of the case being removed from his court to the sheriff's court if he failed to do justice. This removal was effected (if necessary) by the process known as 'tolt' under which a sheriff on a complaint to him in his county court of a failure of the lord to do justice ordered his bailiff to attend the lord's court and take away the plaint into the county court." Geoffrey Radcliffe & Geoffrey Cross, *The English Legal System* 38 (G.J. Hand & D.J. Bentley eds., 6th ed. 1977).

tombstone. *Securities.* An advertisement (esp. in a newspaper) for a public securities offering, describing the security and identifying the sellers. • The term gets its name from the ad's traditional black border and plain print. — Also termed *tombstone advertisement; tombstone ad.* Cf. PROSPECTUS.

ton. A measure of weight fixed at either 2,000 pounds avoirdupois or 20 hundredweights, each hundredweight being 112 pounds avoirdupois. [Cases: Weights and Measures ☞3.]

long ton. Twenty long hundredweight (2,240 pounds), or 1.016 metric tons.

short ton. Twenty short hundredweight (2,000 pounds), or 0.907 metric tons.

ton mile. In transportation, a measure equal to the transportation of one ton of freight one mile.

tonnage (**tən**-ij). **1.** The capacity of a vessel for carrying freight or other loads, calculated in tons. — Also termed *net tonnage.* [Cases: Shipping ☞7.] **2.** The total shipping tonnage of a country or port. **3.** See *tonnage duty* under DUTY (4).

tonnage duty. See DUTY (4).

tonnage-rent. A rent reserved by a mining lease or similar transaction, consisting of a royalty on every ton of minerals extracted from the mine. [Cases: Mines and Minerals ☞70.]

tonnage tax. See *tonnage duty* under DUTY (4).

tonsure. *Hist.* The shaving of a person's (usu. a cleric's) head. • Serjeants-at-law supposedly wore coifs to conceal their shaved heads.

tontine (**ton**-teen *or* ton-**teen**), *n.* **1.** A financial arrangement in which a group of participants share in the arrangement's advantages until all but one has died or defaulted, at which time the whole goes to that survivor. [Cases: Insurance ☞2441.] **2.** A financial arrangement in which an entire sum goes to the contributing participants still alive and not in default at the end of a specified period.

tontine policy. See INSURANCE POLICY.

top-hat pension plan. See PENSION PLAN.

top lease. See LEASE.

top management. See MANAGEMENT.

topographical survey. See SURVEY.

torpedo doctrine. See ATTRACTIVE-NUISANCE DOCTRINE.

Torrens system (**tor**-ənz *or* **tahr**-ənz). (1863) A system for establishing title to real estate in which a claimant first acquires an abstract of title and then applies to a court for the issuance of a title certificate, which serves as conclusive evidence of ownership. • This

system — named after Sir Robert Torrens, a 19th-century reformer of Australian land laws — has been adopted in the United States by several counties with large metropolitan areas. — Also termed *Torrens title system*. See CAVEAT (3). [Cases: Records ⚷9.]

tort (tort). (16c) **1.** A civil wrong, other than breach of contract, for which a remedy may be obtained, usu. in the form of damages; a breach of a duty that the law imposes on persons who stand in a particular relation to one another. [Cases: Torts ⚷106.] **2.** (*pl.*) The branch of law dealing with such wrongs.

> "To ask concerning any occurrence 'Is this a crime or is it a tort?' is — to borrow Sir James Stephen's apt illustration — no wiser than it would be to ask concerning a man 'Is he a father or a son?' For he may well be both." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 543 (16th ed. 1952).

> "We may . . . define a tort as a civil wrong for which the remedy is a common-law action for unliquidated damages, and which is not exclusively the breach of a contract or the breach of a trust or other merely equitable obligation." R.F.V. Heuston, *Salmond on the Law of Torts* 13 (17th ed. 1977).

> "It might be possible to define a tort by enumerating the things that it is not. It is not crime, it is not breach of contract, it is not necessarily concerned with property rights or problems of government, but is the occupant of a large residuary field remaining if these are taken out of the law. But this again is illusory, and the conception of a sort of legal garbage-can to hold what can be put nowhere else is of no help. In the first place, tort is a field which pervades the entire law, and is so interlocked at every point with property, contract and other accepted classifications that, as the student of law soon discovers, the categories are quite arbitrary. In the second, there is a central theme, or basis or idea, running through the cases of what are called torts, which, although difficult to put into words, does distinguish them in greater or less degree from other types of cases." W. Page Keeton et al., *The Law of Torts* § 1, at 2-3 (5th ed. 1984).

business tort. A tort that impairs some aspect of an economic interest or business relationship and causes economic loss rather than property damage or bodily harm. • Business torts include tortious interference with contractual relations, intentional interference with prospective economic advantage, unfair business practices, misappropriation of trade secrets, and product disparagement. [Cases: Antitrust and Trade Regulation ⚷410; Libel and Slander ⚷130; Torts ⚷211, 241.]

constitutional tort. (1966) A violation of one's constitutional rights by a government officer, redressable by a civil action filed directly against the officer. • A constitutional tort committed under color of state law (such as a civil-rights violation) is actionable under 42 USCA § 1983. — Sometimes (informally) shortened to *contort*. [Cases: Civil Rights ⚷1304.]

dignitary tort (**dig**-nə-tair-ee). (1996) A tort involving injury to one's reputation or honor. • In the few jurisdictions in which courts use the phrase *dignitary tort* (such as Maine), defamation is commonly cited as an example. — Also (erroneously) termed *dignatory tort*.

environmental tort. A tort involving exposure to disagreeable or harmful environmental conditions or harm to and degradation of an environment (e.g., the pouring of acid on golf greens). • An environmental tort is usu. harmful to land rather than people, though people may find it unpleasant (e.g., odors from a landfill). By contrast, toxic torts involve exposure to harmful substances that cause personal physical injury or disease. Cf. *toxic tort*.

government tort. (1945) A tort committed by the government through an employee, agent, or instrumentality under its control. • The tort may or may not be actionable, depending on whether the government is entitled to sovereign immunity. A tort action against the U.S. government is regulated by the Federal Tort Claims Act, while a state action is governed by the state's tort claims act. See FEDERAL TORT CLAIMS ACT; *sovereign immunity* under IMMUNITY (1). [Cases: Municipal Corporations ⚷723.]

intentional tort. (1860) A tort committed by someone acting with general or specific intent. • Examples include battery, false imprisonment, and trespass to land. — Also termed *willful tort*. Cf. NEGLIGENCE. [Cases: Torts ⚷115.]

marital tort. A tort by one spouse against the other. • Since most jurisdictions have abolished interspousal tort immunity, courts have had to decide which tort claims to recognize between married persons. Among those that some, but not all, courts have chosen to recognize are assault and battery, including claims for infliction of sexually transmitted disease, and intentional and negligent infliction of emotional distress. — Also termed *domestic tort*. Cf. *husband-wife immunity* under IMMUNITY. [Cases: Husband and Wife ⚷53, 205(2).]

maritime tort. Any tort within the admiralty jurisdiction. [Cases: Admiralty ⚷17.]

mass tort. (1940) A civil wrong that injures many people. • Examples include toxic emissions from a factory, the crash of a commercial airliner, and contamination from an industrial-waste-disposal site. Cf. *toxic tort*.

negligent tort. (1865) A tort committed by failure to observe the standard of care required by law under the circumstances. See NEGLIGENCE.

personal tort. (17c) A tort involving or consisting in an injury to one's person, reputation, or feelings, as distinguished from an injury or damage to real or personal property. [Cases: Torts ⚷425.]

preconception tort. A tort that is committed before the victim has been conceived.

prenatal tort. (1960) **1.** A tort committed against a fetus. • If born alive, a child can sue for injuries resulting from tortious conduct predating the child's birth. [Cases: Death ⚷15; Infants ⚷72(2).] **2.** Loosely, any of several torts relating to reproduction, such as those giving rise to wrongful-birth actions, wrongful-

life actions, and wrongful-pregnancy actions. [Cases: Health ⇨686, 687.]

prima facie tort (**prī**-mə **fay**-shee-ee *or* -shee *or* -shə). (1938) An unjustified, intentional infliction of harm on another person, resulting in damages, by one or more acts that would otherwise be lawful. • Some jurisdictions have established this tort to provide a remedy for malicious deeds — esp. in business and trade contexts — that are not actionable under traditional tort law. [Cases: Torts ⇨155.]

property tort. (1898) A tort involving damage to property. [Cases: Torts ⇨429.]

public tort. (1949) A minor breach of the law (such as a parking violation) that, although it carries a criminal punishment, is considered a civil offense rather than a criminal one because it is merely a prohibited act (*malum prohibitum*) and not inherently reprehensible conduct (*malum in se*). — Also termed *civil offense*. Cf. *civil wrong* under WRONG; *public delict* under DELICT. [Cases: Criminal Law ⇨26, 27.]

quasi-tort. (1809) A wrong for which a nonperpetrator is held responsible; a tort for which one who did not directly commit it can nonetheless be found liable, as when an employer is held liable for a tort committed by an employee. — Also spelled *quasi tort*. See *vicarious liability* under LIABILITY; RESPONDEAT SUPERIOR.

sanctions tort. See SANCTIONS TORT.

toxic tort. (1979) A civil wrong arising from exposure to a toxic substance, such as asbestos, radiation, or hazardous waste. • A toxic tort can be remedied by a civil lawsuit (usu. a class action) or by administrative action. Cf. *mass tort*; *environmental tort*. [Cases: Negligence ⇨306; Products Liability ⇨201, 217.]

willful tort. See *intentional tort*.

tortfeasor (**tort**-fee-zər). (17c) One who commits a tort; a wrongdoer.

concurrent tortfeasors. (1921) Two or more tortfeasors whose simultaneous actions cause injury to a third party. • Such tortfeasors are jointly and severally liable. [Cases: Negligence ⇨421, 484; Torts ⇨134, 135.]

consecutive tortfeasors. (1955) Two or more tortfeasors whose actions, while occurring at different times, combine to cause a single injury to a third party. • Such tortfeasors are jointly and severally liable.

joint tortfeasors. (1822) Two or more tortfeasors who contributed to the claimant's injury and who may be joined as defendants in the same lawsuit. See *joint and several liability* under LIABILITY. [Cases: Negligence ⇨484; Torts ⇨134, 135.]

successive tortfeasors. (1954) Two or more tortfeasors whose negligence occurs at different times and causes different injuries to the same third party. [Cases: Damages ⇨34.]

tortious (**tor**-shəs), *adj.* (16c) **1.** Constituting a tort; wrongful <tortious conduct>. [Cases: Torts ⇨106, 107.] **2.** In the nature of a tort <tortious cause of action>.

tortious act. See ACT (2).

tortious battery. See BATTERY (2).

tortious conduct. See CONDUCT.

tortious interference with a business advantage. See TORTIOUS INTERFERENCE WITH PROSPECTIVE ADVANTAGE.

tortious interference with contractual relations. (1954) A third party's intentional inducement of a contracting party to break a contract, causing damage to the relationship between the contracting parties. — Also termed *unlawful interference with contractual relations*; *interference with a contractual relationship*; *interference with contract*; *inducement of breach of contract*; *procurement of breach of contract*. [Cases: Labor and Employment ⇨903–914; Torts ⇨212.]

tortious interference with economic relations. See TORTIOUS INTERFERENCE WITH PROSPECTIVE ADVANTAGE.

tortious interference with prospective advantage. (1973) An intentional, damaging intrusion on another's potential business relationship, such as the opportunity of obtaining customers or employment. — Also termed *interference with a business relationship*; *tortious interference with a business advantage*; *tortious interference with economic relations*. [Cases: Torts ⇨213.]

tortious liability. See LIABILITY.

tort-of-another doctrine. *Torts*. The principle that a party who must bring or defend an action against a third person based on a tort committed by another person is entitled to seek litigation-related damages from that other person. [Cases: Damages ⇨73.]

tort reform. (1974) A movement to reduce the amount of tort litigation, usu. involving legislation that restricts tort remedies or that caps damages awards (esp. for punitive damages). • Advocates of tort reform argue that it lowers insurance and healthcare costs and prevents windfalls, while opponents contend that it denies plaintiffs the recovery they deserve for their injuries.

torture, *n.* (16c) The infliction of intense pain to the body or mind to punish, to extract a confession or information, or to obtain sadistic pleasure. — **torture,** *vb.*

> "By *torture* I mean the infliction of physically founded suffering or the threat immediately to inflict it, where such infliction or threat is intended to elicit, or such infliction is incidental to means adopted to elicit, matter of intelligence or forensic proof and the motive is one of military, civil, or ecclesiastical interest." James Heath, *Torture and English Law* 3 (1982).

torture by proxy. See *extraordinary rendition* under RENDITION.

torture flight. See *extraordinary rendition* under RENDITION.

total, *adj.* (14c) **1.** Whole; not divided; full; complete. **2.** Utter; absolute.

total assignment. See ASSIGNMENT (2).

total breach. See BREACH OF CONTRACT.

total disability. See DISABILITY (2).

total-disability insurance. See *general-disability insurance* under INSURANCE.

total eviction. See EVICTION.

total failure of consideration. See FAILURE OF CONSIDERATION.

total incorporation. See INCORPORATION.

totality-of-the-circumstances test. (1959) *Criminal procedure.* A standard for determining whether hearsay (such as an informant's tip) is sufficiently reliable to establish probable cause for an arrest or search warrant. • Under this test — which replaced *Aguilar–Spinelli*'s two-pronged approach — the reliability of the hearsay is weighed by focusing on the entire situation as described in the probable-cause affidavit, and not on any one specific factor. *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317 (1983). Cf. AGUILAR–SPINELLI TEST. [Cases: Arrest ⇨63.4(7); Searches and Seizures ⇨115.1.]

total loss. See LOSS.

total-offset rule. *Torts.* A theory of damages holding that the eroding effect of inflation offsets the accrual of interest on an award and makes it unnecessary to discount future damages to their present value. [Cases: Damages ⇨226.]

total repudiation. See REPUDIATION.

tota re perspecta (**toh**-tə ree pər-**spek**-tə). [Latin] *Hist.* The whole matter being taken into account or considered. — Also termed *tota materia perspecta.*

totidem verbis. [Latin] In so many words.

toties quoties (**toh**-shee-eez **kwoh**-shee-eez *or* **toh**-sheez **kwoh**-sheez). [Latin] *Hist.* As often as.

toto caelo (**toh**-toh **see**-loh), *adv.* [Latin "by the whole extent of the heavens"] As far as possible; diametrically <the parties differ with each other *toto caelo*>.

toto genere (**toh**-toh **jen**-ə-ree). [Latin] *Hist.* In their whole character; entirely.

Totten trust. See TRUST.

touch, *vb. Marine insurance.* To stop at a port, usu. for a brief period. [Cases: Insurance ⇨3059.]

touch and stay. *Marine insurance.* A right, granted by an insurer to an insured vessel, to stop and remain at certain designated points in the course of the voyage. • A vessel that has the power to touch and stay at a place must confine itself strictly to the terms of the permission given, and any deviation during a stay — for example, by shipping or landing goods — will discharge the underwriters, unless the vessel has permission to trade as well as to touch and stay. [Cases: Insurance ⇨3059.]

***Touhy* regulations.** The rules governing procedures for document production by federal agencies for purposes of litigation. 28 C.F.R. 16.21 et seq. • The term comes from *United States ex rel. Touhy v. Ragen*, 340 U.S. 462, 71 S.Ct. 416 (1951). In that case, an FBI agent refused to produce certain records under a subpoena duces tecum because a departmental regulation expressly stated that the Attorney General was the only person with authority to produce the documents. The United States Supreme Court upheld the regulation's validity. [Cases: Witnesses ⇨16.]

tout court (too **koor**), *adv.* [French "simply, without qualification"] Very briefly; without explanation.

tout ensemble (toot *on*-**son**-blə), *n.* [French "all together"] The overall visual effect of a design; general effect. • The phrase denotes a way of comparing two designs, by looking at the total impact rather than comparing individual design elements. That is the technique used in determining whether a design infringes someone's trade-dress rights, or if a design-patent application shows a novel and nonobvious change from existing designs. Although the phrase is adverbial in French, it is typically used as a noun in English. See ANTIDISSECTION RULE.

touting, *n.* The solicitation of business by highly recommending a security or product, esp. when the recommendation's basis is largely puffery.

tout temps prist et encore prist. [Law French] *Common-law pleading.* The clause in a plea of tender stating that the pleader is and always has been ready to pay. See PLEA OF TENDER.

towage (**toh**-ij), n. **1.** The act or service of towing ships and vessels, usu. by means of a small vessel called a *tug.* [Cases: Towage ⇨1.] **2.** The charge for such a service. [Cases: Towage ⇨5.]

toward, *adj.* **1.** In the direction of; on a course or line leading to (some place or something). **2.** Coming soon; not long before.

to wit (too **wit**), *adv.* (14c) *Archaic.* That is to say; namely <the district attorney amended the complaint to include embezzlement, to wit, "stealing money that the company had entrusted to the accused">. — Sometimes spelled *to-wit*; *towit.*

town. 1. A center of population that is larger and more fully developed than a village, but that (traditionally speaking) is not incorporated as a city. [Cases: Towns ⇨1.] **2.** The territory within which this population lives. **3.** Collectively, the people who live within this territory. Cf. CITY.

> "A town is a precinct anciently containing ten families, whereupon in some countries they are called tithings, within one of which tithings every man must be dwelling, and find sureties for his good behaviour, else he that taketh him into his house is to be amerced in the leet." Sir Henry Finch, *Law, or a Discourse Thereof* 80 (1759).

town-bonding act. A law authorizing a town, county, or other municipal corporation to issue its corporate bonds for the purpose of aiding in construction, often of railroads. — Also termed *town-bonding law.* [Cases: Towns ⇨52.]

town clerk. See CLERK (1).

town collector. A town officer charged with collecting the taxes assessed by a town. [Cases: Towns ☞59.]

town commissioner. See COMMISSIONER.

town crier. *Hist.* A town officer responsible for making proclamations related to town business.

town hall. A building that houses the offices of a town's government. [Cases: Towns ☞35.]

townhouse. A dwelling unit having usu. two or three stories and often connected to a similar structure by a common wall and (particularly in a planned-unit development) sharing and owning in common the surrounding grounds. — Also termed *townhome.*

town meeting. 1. A legal meeting of a town's qualified voters for the administration of local government or the enactment of legislation. • Town meetings of this type are common in some New England states. [Cases: Towns ☞17.] **2.** More generally, any assembly of a town's citizens for the purpose of discussing political, economic, or social issues. **3.** Modernly, a televised event in which one or more politicians meet and talk with representative citizens about current issues.

town order. An official written direction by the auditing officers of a town, directing the treasurer to pay a sum of money. — Also termed *town warrant.* [Cases: Towns ☞50.]

town purpose. A municipal project or expenditure that concerns the welfare and advantage of the town as a whole. [Cases: Towns ☞46(1).]

township. 1. In a government survey, a square tract six miles on each side, containing thirty-six square miles of land. **2.** In some states, a civil and political subdivision of a county. — Abbr. tp. [Cases: Municipal Corporations ☞6.]

township trustee. See TRUSTEE (1).

townsite. A portion of the public domain segregated by proper authority and procedure as the site for a town.

town treasurer. An officer responsible for maintaining and disbursing town funds. [Cases: Towns ☞30.]

town warrant. See TOWN ORDER.

toxic, *adj.* Having the character or producing the effects of a poison; produced by or resulting from a poison; poisonous. — Also termed *toxical.* [Cases: Environmental Law ☞413.]

toxicant (**tok**-si-kənt), *n.* (1879) A poison; a toxic agent; any substance capable of producing toxication or poisoning.

toxic asset. See *troubled asset* under ASSET.

toxicate, *vb. Archaic.* To poison. See INTOXICATION.

toxic convert. See DEATH-SPIRAL DEAL.

toxicology (tok-si-**kol**-ə-jee). (18c) The branch of medicine that concerns poisons, their effects, their recognition, their antidotes, and generally the diagnosis and therapeutics of poisoning; the science of poisons. — **toxicological** (tok-si-kə-**loj**-i-kəl), *adj.*

toxic tort. See TORT.

toxic waste. See WASTE (2).

toxin, *n.* (1886) **1.** Broadly, any poison or toxicant. **2.** As used in pathology and medical jurisprudence, any diffusible alkaloidal substance — such as the ptomaines, abrin, brucin, or serpent venoms — and esp. the poisonous products of disease-producing bacteria.

tp. *abbr.* TOWNSHIP.

TPL. *abbr.* Third-party logistical service provider. See FREIGHT FORWARDER.

TPPM. *abbr.* TANGIBLE-PERSONAL-PROPERTY MEMORANDUM.

TPR. *abbr.* TERMINATION OF PARENTAL RIGHTS.

traces, *n.* See *retrospectant evidence* under EVIDENCE.

tracing, *n.* (16c) **1.** The process of tracking property's ownership or characteristics from the time of its origin to the present <tracing the vehicle's history>. • Parties in a divorce will be expected to trace the origins of property in existence at the time of marital dissolution in order to characterize each asset as separate or marital property (or as community property in some states). — Also termed *tracing of funds; tracing of property.* Cf. COMMINGLE. **2.** The act of discovering and following a person's actions or movements <tracing the robber's steps>.

tract. (14c) A specified parcel of land <a 40-acre tract>.

tract index. See INDEX (1).

tractus futuri temporis (**trak**-təs fyoo-**t**[**y**]**oor**-ī **tem**-pə-ris). [Latin] *Hist.* A tract of future time.

trade, *n.* (14c) **1.** The business of buying and selling or bartering goods or services; COMMERCE.

inland trade. Trade wholly carried on within a country, as distinguished from foreign commerce.

precarious trade. *Int'l law.* Trade by a neutral country between two belligerent powers, allowed to exist at the latter's sufferance.

2. A transaction or swap. **3.** A business or industry occupation; a craft or profession. — **trade,** *vb.*

trade acceptance. See ACCEPTANCE (4).

trade agreement. 1. An agreement — such as the North American Free Trade Agreement — between two or more nations concerning the buying and selling of each nation's goods. [Cases: Customs Duties ☞10.] **2.** COLLECTIVE-BARGAINING AGREEMENT.

trade and commerce. Every business occupation carried on for subsistence or profit and involving the elements of bargain and sale, barter, exchange, or traffic.

Trade and Development Program. See UNITED STATES TRADE AND DEVELOPMENT AGENCY.

trade association. See ASSOCIATION.

trade council. A central labor union; the central organization of a local trade union. — Also termed *trades council.* See UNION.

trade defamation. See DEFAMATION.

trade deficit. See DEFICIT.

trade discount. See DISCOUNT.

trade disparagement. The common-law tort of belittling someone's business, goods, or services with a remark that is false or misleading but not necessarily defamatory. • To succeed at the action, a plaintiff must prove that (1) the defendant made the disparaging remark; (2) the defendant either intended to injure the business, knew the statement was false, or recklessly disregarded whether it was true; and (3) the statement resulted in special damages to the plaintiff, usu. by passing off. — Also termed *commercial disparagement*; *product disparagement*; *injurious falsehood*. Cf. *trade defamation* under DEFAMATION. [Cases: Antitrust and Trade Regulation ⟹25.]

trade dispute. 1. *Int'l law.* A dispute between two or more countries arising from tariff rates or other matters related to international commerce. **2.** *Labor law.* A dispute between an employer and employees over pay, working conditions, or other employment-related matters. • An employee who leaves during a trade dispute is not entitled to benefits under the Unemployment Insurance Act.

trade dollar. *Hist.* A United States dollar coin, made of silver, issued from 1873 to 1878 for use in foreign trade, esp. in eastern Asia. • A trade dollar was legal tender within the U.S. until 1876 when the coin's silver content fell to less than one dollar. From 1878 to 1885, trade dollars were minted only in proof sets, then discontinued.

trade draft. See DRAFT.

trade dress. *Trademarks.* The overall appearance and image in the marketplace of a product or a commercial enterprise. • For a product, trade dress typically comprises packaging and labeling. For an enterprise, it typically comprises design and decor. If a trade dress is distinctive and nonfunctional, it may be protected under trademark law. — Also termed *get-up*; *look and feel*. [Cases: Trademarks ⟹1061.]

> "The 'trade dress' of a product is essentially its total image and overall appearance. It 'involves the total image of a product and may include features such as size, shape, color or color combinations, texture, graphics, or even particular sales techniques.'" *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 765 n.1, 112 S.Ct. 2755, 2755 n.1 (1992).

trade embargo. See EMBARGO (3).

trade fixture. See FIXTURE.

trade gap. See *trade deficit* under DEFICIT.

trade guild. See GUILD (1).

trade libel. Trade defamation that is written or recorded. See LIBEL; *trade defamation* under DEFAMATION; DISPARAGEMENT (3). Cf. *trade slander* under SLANDER. [Cases: Libel and Slander ⟹130.]

trademark, *n.* (1838) 1. A word, phrase, logo, or other graphic symbol used by a manufacturer or seller to distinguish its product or products from those of others. • The main purpose of a trademark is to designate the source of goods or services. In effect, the trademark is the commercial substitute for one's signature. To receive federal protection, a trademark must be (1) distinctive rather than merely descriptive or generic; (2) affixed to a product that is actually sold in the marketplace; and (3) registered with the U.S. Patent and Trademark Office. In its broadest sense, the term *trademark* includes a servicemark. Unregistered trademarks are protected under common-law only, and distinguished with the mark "TM." — Often shortened to *mark*. Cf. SERVICEMARK. [Cases: Trademarks ⟹1021.] **2.** The body of law dealing with how businesses distinctively identify their products. — Abbr. TM. See LANHAM ACT. Cf. SERVICEMARK; *registered trademark*; BRAND; TRADENAME.

> "The protection of trade-marks is the law's recognition of the psychological function of symbols. If it is true that we live by symbols, it is no less true that we purchase goods by them. A trade-mark is a merchandising short-cut which induces a purchaser to select what he wants, or what he has been led to believe he wants. The owner of a mark exploits this human propensity by making every effort to impregnate the atmosphere of the market with the drawing power of a congenial symbol. Whatever the means employed, the aim is the same — to convey through the mark, in the minds of potential customers, the desirability of the commodity upon which it appears. Once this is attained, the trade-mark owner has something of value. If another poaches upon the commercial magnetism of the symbol he has created, the owner can obtain legal redress." *Mishawaka Rubber & Woolen Mfg. Co. v. S.S. Kresge Co.*, 316 U.S. 203, 205, 62 S.Ct. 1022, 1024 (1942) (Frankfurter, J.).

> "A trademark functions on three different levels: as an indication of origin or ownership, as a guarantee of constancy of the quality or other characteristics of a product or service, and as a medium of advertisement. Thus, a trademark guarantees, identifies, and sells the product or service to which it refers. These three facets of a trademark — of differing importance at different times, in different lines of business and for different products or services — are somewhat correlative. The classical function, that of identification, has been primarily responsible for molding the development of trademark law. The significance of the guarantee function has been somewhat exaggerated, while the implications of the advertisement function still await full recognition in the law." 3 Rudolf Callmann, *The Law of Unfair Competition, Trademarks and Monopolies* § 17.01, at 2 (4th ed. 1998).

abandoned trademark. A mark whose owner has discontinued using it and has no intent to resume using it in the ordinary course of trade, or has allowed it to become a generic term or otherwise to lose its distinctive significance. • Under § 45 of the Lanham Act, nonuse of a mark for three consecutive years is prima facie evidence of abandonment. The owner of an abandoned mark has no trademark rights to exclude others from using it. — Also termed *abandoned mark*. [Cases: Trademarks ⟹1153, 1155.]

arbitrary trademark. A trademark containing common words that do not describe or suggest any characteristic of the product to which the trademark is assigned. • Because arbitrary marks are neither descriptive nor suggestive of the goods or services in connection with which they are used, they are inherently distinctive, require no proof of secondary meaning, and are entitled to strong legal protection. A name that would be generic if used with one product may be arbitrary if used with another. For example, "Bicycle" may be

registered to identify playing cards, but it could not be protected as a mark to identify bicycles. — Also termed *arbitrary mark*; *arbitrary name*. [Cases: Trade Regulation ☞1039.]

certification trademark. A word, symbol, or device used on goods or services to certify the place of origin, material, mode of manufacture, quality, or other characteristic. See 15 USCA § 1127. — Also termed *certification mark*. Cf. *collective trademark*. [Cases: Trademarks ☞1066.]

coined trademark. See *fanciful trademark*.

collective trademark. (1941) A trademark or servicemark used by an association, union, or other group either to identify the group's products or services or to signify membership in the group. • Collective marks — such as "Realtor" or "American Peanut Farmers" — can be federally registered under the Lanham Act. — Also termed *collective mark*. Cf. *certification trademark*. [Cases: Trademarks ☞1067.]

Community trademark. A trademark registered with the European Union Trademark Office and recognized in all EU countries. — Also termed *Community mark*. [Cases: Trademarks ☞1261.]

composite trademark. (kəm-**poz**-it mahrk). A trademark or servicemark made up of several words that form a distinctive whole, even if the individual words are ordinary. • Advertising slogans are often protectable as composite marks. A trademark registrant can establish ownership in the whole mark, but must disclaim ownership in any unregistrable parts. — Also termed *composite mark*; *hybrid mark*; *hybrid trademark*. [Cases: Trademarks ☞1058.]

counterfeit trademark. A spurious mark that is identical to, or substantially indistinguishable from, a registered trademark. 15 USCA § 1116(d)(1)(B). — Also termed *counterfeit mark*. [Cases: Trademarks ☞1432, 1787.]

descriptive trademark. A trademark that is a meaningful word in common usage or that merely describes or suggests a product. • This type of trademark is entitled to protection only if it has acquired distinctiveness over time. — Also termed *descriptive mark*; *weak mark*; *weak trademark*. See SECONDARY MEANING. [Cases: Trademarks ☞1035.]

> "The bar against descriptive marks simply reflects the requirement of distinctiveness. 15 U.S.C.A. § 1052(e)(1). It often is said that a mark should not be analyzed in a piecemeal fashion. Instead, the mark as a whole must be tested for descriptiveness or secondary meaning. A mark that merely describes a product cannot possibly distinguish one producer from another. As an obvious example, 'apple' would be a descriptive name for that fruit, and, as a mark, would serve only to confuse the consumer, for it would tell nothing about the different origins of a selection of apples produced by different producers. Moreover, to allow an owner to pre-empt the term 'apple' would afford the owner a monopoly of something that is necessary to describe the goods for sale." Arthur R. Miller & Michael H. Davis, *Intellectual Property: Patents, Trademarks, and Copyright in a Nutshell* 163 (2d ed. 1990).

disparaging trademark. A trademark that tends to bring a person or class of people into contempt or disrepute. • Section 2(a) of the Lanham Act prohibits the registration of disparaging marks. 15 USCA § 1052(a). — Also termed *disparaging mark*. See *prohibited and reserved trademark*. [Cases: Trademarks ☞1073.]

distinctive trademark. A very strong trademark, one that consumers immediately and consistently associate with specific goods and services. • Distinctive trademarks are usu. fanciful, arbitrary, or suggestive, but descriptive trademarks and common names can become distinctive if they become so well known as to acquire a secondary meaning. — Also termed *distinctive mark*. [Cases: Trademarks ☞1029.]

evocative trademark. See *suggestive trademark*.

famous trademark. A trademark that not only is distinctive but also has been used and heavily advertised or widely accepted in the channels of trade over a long time, and is so well known that consumers immediately associate it with one specific product or service. • Only famous marks are protected from dilution. Eight nonexclusive statutory factors are often used in determining whether a particular mark is famous. See 15 USCA § 1125 (c)(1)(A)–(H). — Also termed *famous mark*. [Cases: Trademarks ☞1468.]

fanciful trademark. A trademark consisting of a made-up or coined word; a distinctive trademark or tradename having no independent meaning. • This type of mark is considered inherently distinctive and thus protected at common law, and is eligible for trademark registration from the time of its first use. — Also termed *fanciful mark*; *fanciful term*; *coined trademark*; *coined mark*; *coined term*. [Cases: Trademarks ☞1039.]

> "Arbitrary or fanciful marks convey nothing about the nature of the product except through knowledge of the market. For instance, Kodak conveys nothing about photographic equipment except to those knowledgeable about that trade." Arthur R. Miller & Michael H. Davis, *Intellectual Property in a Nutshell* 168 (2d ed. 1990).

geographically descriptive trademark. A trademark that uses a geographic name to indicate where the goods are grown or manufactured. • This type of mark is protected at common law, and can be registered only on proof that it has acquired distinctiveness over time. — Also termed *geographically descriptive mark*. See SECONDARY MEANING. [Cases: Trademarks ☞1047.]

house trademark. A trademark that identifies a company, a division of a company, or a company's product line as the source of a product or service. • A house mark and a product mark often appear together on a label. — Also termed *house mark*. Cf. *product trademark*. [Cases: Trademarks ☞1060.]

hybrid trademark. See *composite trademark*.

product trademark. A trademark that identifies a single good or service, rather than the producing company, a division of a company, or a product line. • A product

mark and a house mark often appear together on a label. — Also termed *product mark*. Cf. *house trademark*. [Cases: Trademarks ⇨1022.]

prohibited and reserved trademark. A mark that is not protected under the Lanham Act because it either fall into an expressly excluded category or else is similar to a mark granted by statute to another. 15 USCA § 1052. — Also termed *prohibited and reserved mark*. [Cases: Trademarks ⇨1243.]

pure trademark. See *technical trademark*.

registered trademark. A trademark that has been filed and recorded with the Patent and Trademark Office. • A federally registered trademark is usu. marked by the symbol "®" or a phrase such as "Registered U.S. Patent & Trademark Office" so that the trademark owner can potentially collect treble damages or the defendant's profits for an infringement. If the symbol is not used, the owner can collect these damages or profits only by proving that the defendant actually knew that the mark was registered. — Also termed *registered mark*. Cf. SERVICEMARK. [Cases: Trademarks ⇨1240.]

strong trademark. An inherently distinctive trademark that is used — usu. by the owner only — in a fictitious, arbitrary, and fanciful manner, and is therefore given greater protection than a weak mark under the trademark laws. — Also termed *strong mark*. [Cases: Trademarks ⇨1033.]

suggestive trademark. A trademark that suggests rather than describes the particular characteristics of a product, thus requiring a consumer to use imagination to draw a conclusion about the nature of the product. • A suggestive trademark is entitled to protection without proof of secondary meaning. — Also termed *evocative mark*; *suggestive mark*; *suggestive name*. See SECONDARY MEANING. [Cases: Trademarks ⇨1038.]

technical trademark. A mark that satisfies all the elements of a common-law trademark. • The essential elements of a technical trademark are as follows: (1) its use to designate a commercial source would not interfere with anyone else's right to use the mark; (2) it must primarily identify the source, rather than the product's category or grade of quality; (3) it must be attached to the product, label, or collateral materials rather than merely used in advertising; and (4) its use must not undermine some public policy, as by being scandalous or deceptive. — Also termed *pure trademark*; *technical mark*; *true trademark*. [Cases: Trademarks ⇨1039.]

true trademark. See *technical trademark*.

weak trademark. See *descriptive trademark*.

Trademark Act of 1946. See LANHAM ACT.

trademark application. A mark owner's written request, filed with the U.S. Patent and Trademark Office, for federal registration of a mark, accompanied by a sample of the mark to be protected and the filing fee. • The application may describe either an existing mark that is in use or a proposed mark. — Also termed *servicemark application*. [Cases: Trademarks ⇨1282.]

combined application. An application to register a mark to be used in more than one class of goods or services. • A combined application is given a single serial number, but it is examined as if it were a set of distinct single applications. Separate filing fees must be paid for each class. — Also termed *multiple-class application*. [Cases: Trademarks ⇨1282.]

intent-to-use application. An application filed with the U.S. Patent and Trademark Office to protect a trademark or servicemark that is not currently in commercial use but whose owner has a bona fide intent to use the mark commercially in the foreseeable future. • Trademark rights have traditionally been restricted to marks actually used in trade, but a 1988 amendment to the Lanham Act permitted applications to be filed before actual use begins if the mark otherwise qualifies for the Principal Register. 15 USCA § 1051(b). See PRINCIPAL REGISTER. [Cases: Trademarks ⇨1284.]

multiple-class application. See *combined application*.

trademark-application amendment. A proposed modification to a registered trademark or to an application for trademark registration. [Cases: Trademarks ⇨1251, 1282.]

amendment of registration. *Trademarks.* Amendment of an existing trademark registration to make minor changes in the design of a mark to reflect how the mark is actually used. • The U.S. Patent and Trademark Office permits an amendment of registration only if it does not materially alter the character of the mark. The PTO amends a registration by attaching to the printed registration a printed certificate showing the amendment. — Also termed *amendment of mark in registration*. [Cases: Trademarks ⇨1251.]

amendment to allege use. *Trademarks.* A supplement to a trademark applicant's intent-to-use application filed to inform the U.S. Patent and Trademark Office that a trademark is actually in use in interstate commerce. • The form is titled "Allegation of Use for Intent to Use Application." — Abbr. AAU. — Also termed *statement of use*; *allegation of use*. See DECLARATION OF USE. [Cases: Trademarks ⇨1284.]

amendment to different register. *Trademarks.* An amendment to an application for registration on the Principal Register, requesting that the mark instead be placed on the supplemental register. [Cases: Trademarks ⇨1283.]

trademark class. Any one of 42 international trademark-protection categories, each comprising similar goods or services. • There are 34 goods classes and 8 services classes. A trademark is protected in each class that is relevant to the product's or service's business area. [Cases: Trademarks ⇨1369.]

Trademark Cyberpiracy Prevention Act. See ANTICYBERSQUATTING CONSUMER PROTECTION ACT.

Trademark Electronic Application System. A method of applying to the U.S. Patent and Trademark Office for a trademark over the Internet. • The system is available at http://www.uspto.gov/teas/index.html. — Abbr. TEAS.

trademark infringement. See INFRINGEMENT.

Trademark Law Treaty. A 1994 treaty that reduces barriers to applying for and registering trademarks internationally, and establishes a model international-trademark-registration form acceptable by all signatory nations. • The United States is a party to the treaty. [Cases: Trademarks ⟹1236.]

Trademark Manual of Examining Procedure. *Trademarks.* The U.S. Patent and Trademark Office book containing guidelines and procedures for trademark examiners. — Abbr. TMEP. [Cases: Trademarks ⟹1280.]

Trademark Office. See UNITED STATES PATENT AND TRADEMARK OFFICE.

trademark-registration notice. A notice that a mark is protected by registration with the U.S. Patent and Trademark Office, shown by placing a symbol next to the mark. • In the U.S., the R-within-a-circle symbol (®) is common but the legend "Reg. U.S. Pat. Off." is acceptable. Only federally registered marks may use this notice. [Cases: Trademarks ⟹1250.]

Trademark Trial and Appeal Board. An administrative body that hears and decides disputes involving trademark ownership, conflicts between marks, and registrability of marks. — Abbr. TTAB. [Cases: Trademarks ⟹1313.]

> "No judicial body has administered our trademark laws with more regularity than the Trademark Trial and Appeal Board . . . , the administrative tribunal of the U.S. Patent and Trademark Office that decides trademark proceedings. Established by Congress in 1958, the Board has seen its caseload increase dramatically over time, reflecting the growing importance of trademarks in our competitive marketplace." 1 Jeffery A. Handelman, *Guide to TTAB Practice* § 1.01, at 1–3 (2008).

trade meaning. See SECONDARY MEANING.

tradename. *Intellectual property.* **1.** A name, style, or symbol used to distinguish a company, partnership, or business (as opposed to a product or service); the name under which a business operates. • A tradename is a means of identifying a business — or its products or services — to establish goodwill. It symbolizes the business's reputation. Cf. BRAND; D/B/A; TRADEMARK. [Cases: Trademarks ⟹1026.] **2.** A trademark that was not originally susceptible to exclusive appropriation but has acquired a secondary meaning. — Also termed *brand name; commercial name.*

trade or business. *Tax.* Any business or professional activity conducted by a taxpayer with the objective of earning a profit. • If the taxpayer can show that the primary purpose and intention is to make a profit, the taxpayer may deduct certain expenses as trade-or-business expenses under the Internal Revenue Code. [Cases: Internal Revenue ⟹3314.1–3318.]

trade practice. A customary way of doing business; esp., a method of using specifications for size, thickness, shape, or quality adopted within a given industry. [Cases: Customs and Usages ⟹9.]

trade price. See PRICE.

trader. 1. A merchant; a retailer; one who buys goods to sell them at a profit. **2.** One who sells goods substantially in the form in which they are bought; one who has not converted them into another form of property by skill and labor. **3.** One who, as a member of a stock exchange, buys and sells securities on the exchange floor either for brokers or on his or her own account. **4.** One who buys and sells commodities and commodity futures for others or for his or her own account in anticipation of a speculative profit.

Trade-Related Aspects of Intellectual Property Rights. See TRIPS.

trader's settlement. See SETTLEMENT (1).

trades council. See TRADE COUNCIL.

trade secret. (1862) **1.** A formula, process, device, or other business information that is kept confidential to maintain an advantage over competitors; information — including a formula, pattern, compilation, program, device, method, technique, or process — that (1) derives independent economic value, actual or potential, from not being generally known or readily ascertainable by others who can obtain economic value from its disclosure or use, and (2) is the subject of reasonable efforts, under the circumstances, to maintain its secrecy. • This definition states the majority view, which is found in the Uniform Trade Secrets Act. [Cases: Antitrust and Trade Regulation ⟹413.] **2.** Information that (1) is not generally known or ascertainable, (2) provides a competitive advantage, (3) has been developed at the plaintiff's expense and is used continuously in the plaintiff's business, and (4) is the subject of the plaintiff's intent to keep it confidential. • This definition states the minority view, which is found in the Restatement of Torts § 757 cmt. b (1939). [Cases: Antitrust and Trade Regulation ⟹413.]

> "So long as the owner of a secret keeps it a secret he has a monopoly. While equity affords protection to trade secrets against betrayal by those under contract or in confidential relations with the owners of the secret, there is no difference between contracts as to trade secrets and contracts as to any other personal property, as far as restraint of trade is concerned." Harry D. Nims, *The Law of Unfair Competition and Trade-Marks* 406 (1929).

> "The concept of protecting trade secrets is related to the principles of trademark and patent law. The scope of trade secret protection, however, goes well beyond that of patent law. Unlike patent law, protection under trade secret law is not tied to the information's novelty; rather, the essence of a trade secret is its relative secrecy. Additionally, unlike patent law, trade secret law draws less from property principles, and more from the equitable principles surrounding confidential relationships." Mark A. Rothstein et al., *Employment Law* § 8.18, at 516 (1994).

> "The difficulty with defining 'trade secrets' in the abstract is that there are so many ways to go about it. In large part, this is a reflection of the fact that the law of trade secrets, unlike the law of patents or copyright, is a creature of the

common law rather than of statute. In trying to impose a moral solution on cases of apparent breach of confidence, judges have juggled competing policy interests while trying to draw a line of protection that would lead to the result that they believed was right. . . . In other words, the development of trade secret law has been a bit chaotic . . . ." James Pooley, *Trade Secrets* § 1.01, at 1-1 to 1-3 (1998).

trade slander. See SLANDER.

tradesman (**traydz**-mən), *n.* **1.** One who buys and sells things for profit; esp., a shopkeeper. **2.** A shopkeeper's employee. **3.** A mechanic or artisan whose livelihood depends on manual labor; one who is skilled in a trade. — Also termed *tradesperson*.

trade surplus. See SURPLUS.

trade union. See UNION.

trade usage. See USAGE.

trading. The business of buying and selling, esp. of commodities and securities. [Cases: Commodity Futures Trading Regulation ⇨11; Securities Regulation ⇨35.10–67.15.]

day trading. The act or practice of buying and selling stock shares or other securities on the same day, esp. over the Internet, usu. for the purpose of making a quick profit on the difference between the buying price and the selling price.

secondary trading. The buying and selling of securities in the market between members of the public, involving neither the issuer nor the underwriter of the securities.

short-term trading. Investment in securities only to hold them long enough to profit from market-price fluctuations. [Cases: Securities Regulation ⇨53.10–53.22.]

trading corporation. See CORPORATION.

trading curb. A temporary restriction on trading in a particular security to curtail dramatic price movements. — Sometimes shortened to *curb*. Cf. TRADING HALT.

trading halt. A temporary suspension of trading in a particular security for a specific reason, such as an order imbalance or a pending news announcement. • Options can be exercised during a trading halt, and open orders may be canceled. — Also termed *suspended trading*. Cf. TRADING CURB.

trading partnership. See PARTNERSHIP.

trading voyage. See VOYAGE.

trading with the enemy. The federal offense of carrying on commerce with a nation or with a subject or ally of a nation with which the United States is at war. [Cases: War and National Emergency ⇨514.]

traditio (trə-**dish**-ee-oh), *n.* [Latin] *Roman law.* The simple delivery of a piece of property by one person to another with the intention of transferring ownership. • This was the simplest form of transfer, and ultimately it was applied to land as well as movables. Constructive delivery was developed. — Also termed *traditio rei*. See BREVI MANU; CONSITUTUM POSSESSORIUM. Pl. ***traditiones*** (trə-dish-ee-**oh**-neez).

traditio brevi manu (trə-**dish**-ee-oh **bree**-vi **man**-yoo). [Latin] *Roman law.* The surrender of the mediate possession of a thing to the person who is already in immediate possession of it. • This is a type of constructive delivery in which a delivery to the mediate possessor and redelivery to the immediate possessor are unnecessary. See BREVI MANU. For the other two types of constructive delivery, see ATTORNMENT; CONSTITUTUM POSSESSORIUM.

"The first [type of constructive delivery] is that which the Roman lawyers termed *traditio brevi manu*, but which has no recognised name in the language of English law. . . . If, for example, I lend a book to someone, and afterwards, while he still retains it, I agree with him to sell it to him, or to make him a present of it, I can effectually deliver it to him in fulfilment of this sale or gift, by telling him that he may keep it. It is not necessary for him to go through the form of handing it back to me and receiving it a second time from my hands." John Salmond, *Jurisprudence* 306 (Glanville L. Williams ed., 10th ed. 1947).

traditio longa manu (trə-**dish**-ee-oh **long**-gə **man**-yoo). [Latin] *Roman law.* See CONSTITUTUM POSSESSORIUM.

tradition. (14c) **1.** Past customs and usages that influence or govern present acts or practices. [Cases: Customs and Usages ⇨10.] **2.** The delivery of an item or an estate.

traditional public forum. See PUBLIC FORUM.

traditional surrogacy. See SURROGACY.

traditionary evidence. See EVIDENCE.

traditio rei. See TRADITIO.

trado tibi ecclesiam (**trad**-oh **tib**-i e-**klee**-z[h]ee-əm). [Law Latin] *Hist. Eccles. law & Scots law.* I deliver this church (or living) to you. • A patron uttered this phrase when presenting an incumbent to a vacant church. Cf. ACCIPE ECCLESIAM.

traduce (trə-**d**[**y**]**oos**), *vb.* (16c) To slander; calumniate. — **traducement,** *n.*

traffic, *n.* (16c) **1.** Commerce; trade; the sale or exchange of such things as merchandise, bills, and money. **2.** The passing or exchange of goods or commodities from one person to another for an equivalent in goods or money. **3.** People or things being transported along a route. **4.** The passing to and fro of people, animals, vehicles, and vessels along a transportation route.

traffic, *vb.* To trade or deal in (goods, esp. illicit drugs or other contraband) <trafficking in heroin>. [Cases: Controlled Substances ⇨32, 82.] — **trafficking,** *n.* — **trafficker,** *n.*

traffic balance. The balance of moneys collected in payment for transporting passengers and freight.

traffic court. See COURT.

trafficking. The act of transporting, trading, or dealing, esp. in people or illegal goods. Cf. PEOPLE-SMUGGLING; SMUGGLING.

drug trafficking. The act of illegally producing, importing, selling, or supplying significant amounts of a controlled substance. [Cases: Controlled Substances ⚷32, 82.]

human trafficking. The illegal recruitment, transportation, transfer, harboring, or receipt of a person, esp. one from another country, with the intent to hold the person captive or exploit the person for labor, services, or body parts. • Human-trafficking offenses include forced prostitution, forced marriages, sweat-shop labor, slavery, and harvesting organs from unwilling donors. — Also termed *trafficking in persons*. Cf. PEOPLE-SMUGGLING;. *organ trafficking*.

organ trafficking. Illegal trafficking in human body parts, esp. transplantable organs that are offered to the highest bidder or that have been harvested without the consent of the donor or the donor's next of kin. • In international law, organ trafficking is broadly included in the offense of human trafficking. — Also termed *trafficking in persons*. Cf. *human trafficking*.

trafficking in persons. **1.** See *human trafficking*. **2.** See *organ trafficking*.

trafficking in persons. See TRAFFICKING.

traffic regulation. A prescribed rule of conduct for traffic; a rule intended to promote the orderly and safe flow of traffic. [Cases: Automobiles ⚷5(5), 7, 335.]

trailer clause. An employee's promise to assign to the employer the rights to all inventions developed while employed and for a specified time afterward. • For the covenant to be enforceable, the time restriction must be reasonable. — Also termed *holdover clause*.

traitor, *n.* **1.** A person who commits treason against his or her country. [Cases: Treason ⚷10.] **2.** One who betrays a person, a cause, or an obligation. — **traitorous,** *adj.*

tramp, *n.* **1.** A person who roams about from place to place, begging or living without labor or visible means of support; a vagrant. **2.** TRAMP STEAMER.

tramp corporation. See CORPORATION.

tramp steamer. A ship that is not scheduled to sail between prearranged ports of call but that stops at those ports for which it has cargo. • A tramp steamers typically carries bulk cargoes such as oil, grain, coal, steel, iron ore, or lumber, and is contracted with a charterparty rather than a bill of lading. — Often shortened to *tramp*.

tranche (transh), *n.* [French "slice"] *Securities.* **1.** A bond issue derived from a pooling of similar debt obligations. • A tranche usu. differs from other issues by maturity date or rate of return. **2.** A block of bonds designated for sale in a foreign country. — Also spelled *tranch*; *trench*. See COLLATERALIZED MORTGAGE OBLIGATION.

transact, *vb.* **1.** To carry on or conduct (negotiations, business, etc.) to a conclusion <transact business>. **2.** *Civil law.* To settle (a dispute) by mutual concession. See TRANSACTION (4). **3.** To carry on or conduct negotiations or business <refuses to transact with the enemy>.

transactio (tran-**sak**-shee-oh), *n.* [Latin "compromise"] *Roman law.* The renunciation of a contested claim or defense in litigation in consideration of a quid pro quo. Pl. ***transactiones*** (tran-sak-shee-**oh**-neez).

transaction, *n.* (17c) **1.** The act or an instance of conducting business or other dealings; esp., the formation, performance, or discharge of a contract. **2.** Something performed or carried out; a business agreement or exchange. **3.** Any activity involving two or more persons. **4.** *Civil law.* An agreement that is intended by the parties to prevent or end a dispute and in which they make reciprocal concessions. La. Civ. Code art. 3071. — **transactional,** *adj.*

arm's-length transaction. **1.** A transaction between two unrelated and unaffiliated parties. **2.** A transaction between two parties, however closely related they may be, conducted as if the parties were strangers, so that no conflict of interest arises.

closed transaction. *Tax.* A transaction in which an amount realized on a sale or exchange can be established for the purpose of stating a gain or loss. [Cases: Internal Revenue ⚷3393.]

colorable transaction. (18c) A sham transaction having the appearance of authenticity; a pretended transaction <the court set aside the colorable transaction>.

transactional audit. See AUDIT.

transactional immunity. See IMMUNITY (3).

transactional lawyer. **1.** See LAWYER. **2.** See OFFICE PRACTITIONER.

transactional takeover defense. See TAKEOVER DEFENSE.

transaction causation. See CAUSATION.

transaction cost. See COST (1).

transaction-or-occurrence test. (1957) A test used to determine whether, under Fed. R. Civ. P. 13(a), a particular claim is a compulsory counterclaim. • Four different tests have been suggested: (1) Are the legal and factual issues raised by the claim and counterclaim largely the same? (2) Would res judicata bar a later suit on the counterclaim in the absence of the compulsory-counterclaim rule? (3) Will substantially the same evidence support or refute both the plaintiff's claim and the counterclaim? (4) Are the claim and counterclaim logically related? See *compulsory counterclaim* under COUNTERCLAIM. [Cases: Federal Civil Procedure ⚷776; Set-off and Counterclaim ⚷60.]

transaction slip. See CONFIRMATION SLIP.

transcarceration. (1987) The movement of prisoners or institutionalized mentally ill persons from facility to facility, rather than from a prison or an institution back to the community, as when a prisoner is transferred to a halfway house or to a drug-treatment facility. [Cases: Prisons ⚷13.3, 13.5.]

transcribe, *vb.* (16c) To make a written or typed copy of (spoken material, esp. testimony).

transcript, *n.* (14c) A handwritten, printed, or typed copy of testimony given orally; esp., the official record of proceedings in a trial or hearing, as taken down by a court reporter. — Also termed *report of proceedings*; *reporter's record*. [Cases: Appeal and Error ☞593–611; Criminal Law ☞1104; Federal Courts ☞694.]

transcription. (16c) **1.** The act or process of transcribing. **2.** Something transcribed; a transcript.

transcript of proceedings. A compilation of all documents relating to a bond issue, typically including the notices, affidavits of notices, a bond resolution (or bond ordinance), official statement, trust indenture and loan agreements, and minutes of meetings of all authorizing bodies.

transeunt cum universitate (**tran**-see-ənt kəm yoo-ni-vər-sə-**tay**-tee). [Latin] *Hist.* They are transferred with the whole estate.

transfer, *n.* (14c) **1.** Any mode of disposing of or parting with an asset or an interest in an asset, including a gift, the payment of money, release, lease, or creation of a lien or other encumbrance. • The term embraces every method — direct or indirect, absolute or conditional, voluntary or involuntary — of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor's equity of redemption. **2.** Negotiation of an instrument according to the forms of law. • The four methods of transfer are by indorsement, by delivery, by assignment, and by operation of law. [Cases: Bills and Notes ☞176–222.] **3.** A conveyance of property or title from one person to another. [Cases: Bills and Notes ☞176–222.]

colorable transfer. A sham transfer having the appearance of authenticity; a pretended transfer. See ILLUSORY-TRANSFER DOCTRINE. [Cases: Fraudulent Conveyances ☞109, 131.1.]

constructive transfer. (1852) A delivery of an item — esp. a controlled substance — by someone other than the owner but at the owner's direction. [Cases: Controlled Substances ☞32, 82.]

incomplete transfer. *Tax.* A decedent's inter vivos transfer that is not completed for federal estate-tax purposes because the decedent retains significant powers over the property's possession or enjoyment. • Because the transfer is incomplete, some or all of the property's value will be included in the transferor's gross estate. IRC (26 USCA) §§ 2036–2038. [Cases: Internal Revenue ☞4159(3).]

inter vivos transfer (**in**-tər **vi**-vohs *or* **vee**-vohs). (1930) A transfer of property made during the transferor's lifetime.

testamentary transfer. A transfer made in a will. • The transfer may be of something less than absolute ownership. Cf. *testamentary gift* under GIFT. [Cases: Wills ☞86.]

transfer in contemplation of death. See *gift causa mortis* under GIFT.

transfer in fraud of creditors. (1883) A conveyance of property made in an attempt to prevent the transferor's creditors from making a claim to it. [Cases: Fraudulent Conveyances ☞1.]

transfer, *vb.* (14c) **1.** To convey or remove from one place or one person to another; to pass or hand over from one to another, esp. to change over the possession or control of. **2.** To sell or give.

transferable (trans-**fər**-ə-bəl), *adj.* (14c) Capable of being transferred, together with all rights of the original holder.

transferable letter of credit. See LETTER OF CREDIT.

transferable vote. See *single transferable vote* under VOTE (1).

transfer agent. See AGENT (2).

transfer-agent-run dividend-reinvestment plan. See DIVIDEND-REINVESTMENT PLAN.

transferee. One to whom a property interest is conveyed.

transferee liability. (1951) *Tax.* The liability of a transferee to pay taxes owed by the transferor. • This liability is limited to the value of the asset transferred. The Internal Revenue Service can, for example, force a donee to pay the gift tax when the donor who made the transfer cannot pay it. IRC (26 USCA) §§ 6901–6905. [Cases: Internal Revenue ☞4817; Taxation ☞3480.]

transference. *Scots law.* The act of substituting a representative for a deceased litigant in a pending action. • This is similar to the common law's substitution of parties.

transfer hearing. See HEARING.

transfer in fraud of creditors. See TRANSFER.

transfer of a case. (1843) The removal of a case from the jurisdiction of one court or judge to another by lawful authority. — Also termed *transfer of a cause*. See REMOVAL (2). [Cases: Removal of Cases ☞16.]

transfer of venue. See CHANGE OF VENUE.

transferor. (1875) One who conveys an interest in property.

transfer payment. (*usu. pl.*) (1945) A governmental payment to a person who has neither provided goods or services nor invested money in exchange for the payment. • Examples include unemployment compensation and welfare payments. [Cases: United States ☞82(1).]

transfer price. See PRICE.

transferred intent. See INTENT (1).

transferred-intent doctrine. (1957) The rule that if one person intends to harm a second person but instead unintentionally harms a third, the first person's criminal or tortious intent toward the second applies to the third as well. • Thus, the offender may be prosecuted for an

intent crime or sued by the third person for an intentional tort. See INTENT. [Cases: Assault and Battery ⚷ 3, 49; Homicide ⚷ 555, 702; Torts ⚷ 115.]

transferred malice. See MALICE.

transfer statute. A provision that allows or mandates the trial of a juvenile as an adult in a criminal court for a criminal act. • Every state has some form of transfer statute. The Supreme Court has held that a juvenile cannot be transferred to criminal court under a discretionary statute "without ceremony — without hearing, without effective assistance of counsel, without a statement of reasons." *Kent v. United States*, 383 U.S. 541, 554, 86 S.Ct. 1045, 1053–54 (1966). [Cases: Infants ⚷ 68.7.]

automatic-transfer statute. A law requiring the transfer from delinquency court to criminal court for certain statutorily enumerated offenses if certain statutory requirements are met. [Cases: Infants ⚷ 68.5, 68.7(2).]

discretionary-transfer statute. A law that allows, but does not mandate, the transfer from delinquency court to criminal court for certain statutorily enumerated offenses if certain statutory requirements are met. • The prosecutor has discretion to request the transfer, and the judge has discretion to order the transfer. [Cases: Infants ⚷ 68.7.]

reverse transfer statute. A provision that allows a criminal court to return certain cases to juvenile court. [Cases: Infants ⚷ 68.6.]

Transfers to Minors Act. See UNIFORM TRANSFERS TO MINORS ACT.

transfer tax. See *generation-skipping transfer tax* under TAX.

transfer warranty. See WARRANTY (2).

transformative use. *Copyright.* The use of copyrighted material in a manner, or for a purpose, that differs from the original use in such a way that the expression, meaning, or message is essentially new. • The term was coined by Judge Pierre N. Leval in a 1990 law-review article entitled *Toward a Fair Use Standard*, 103 Harv. L. Rev. 1105, 1111 (1990). The concept was first applied by the U.S. Supreme Court in *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 114 S.Ct. 1164 (1994). The Court held that the transformative use in that case was a fair, noninfringing use of the plaintiff's copyright. [Cases: Copyrights and Intellectual Property ⚷ 53.2.]

transgenic (tranz-**jen**-ik), *adj. Patents.* Of, relating to, or describing a living organism that has been genetically altered by introducing recombinant DNA from another organism.

transgress, *vb.* **1.** To exceed the limits of (a law, rule, regulation, etc.); to break or violate. **2.** To pass over (limits, boundaries, etc.). — **transgressor,** *n.*

transgression. *Archaic.* See MISDEMEANOR.

transgressione, ad audiendum et terminandum (trans-gres[h]-ee-**oh**-nee, ad aw-dee-**en**-dəm et tər-mə-**nan**-dəm). See DE TRANSGRESSIONE, AD AUDIENDUM ET TERMINANDUM.

transgressive trust. See TRUST.

transient (**tran**-shənt), *adj.* (16c) Temporary; impermanent; passing away after a short time.

transient, *n.* **1.** A person or thing whose presence is temporary or fleeting. **2.** TRANSIENT PERSON.

transient foreigner. One who visits a country without the intent to remain.

transient jurisdiction. See JURISDICTION.

transient merchant. A trader who sells merchandise at a temporary location without intending to become a permanent merchant in that place. [Cases: Licenses ⚷ 15(2).]

transient person. (18c) One who has no legal residence within a jurisdiction for the purpose of a state venue statute. — Also termed *transient*. [Cases: Venue ⚷ 18.]

transit, *n.* (15c) **1.** The transportation of goods or persons from one place to another. [Cases: Insurance ⚷ 2137(3).] **2.** Passage; the act of passing.

transitional alimony. See *rehabilitative alimony* under ALIMONY.

transition phrase. *Patents.* In a patent claim, the word or phrase that relates the preamble to the body. • The transition is often the term "comprising," "having," "including," "consisting of," or "consisting essentially of." Cf. PREAMBLE (2); BODY OF A CLAIM.

transitive covenant. See COVENANT (1).

transitory (**tran**-sə-tor-ee *or* **tran**-zə-), *adj.* (14c) Passing from place to place; capable of passing or being changed from one place to another.

transitory action. See ACTION (4).

transitory treaty. See TREATY (1).

transitory wrong. See WRONG.

transit passage. *Int'l law.* The right of a vessel or airplane to exercise freedom of navigation and overflight solely for the purpose of continuous and expeditious transit between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. — Also termed *right of transit passage*. Cf. INNOCENT PASSAGE.

transit terra cum onere (**tran**-sit [*or* **tran**-zit] **ter**-ə kəm **on**-ər-ee). [Law Latin] *Hist.* The land passes with its burdens.

translation, *n.* **1.** The transformation of language from one form to another; esp., the systematic rendering of the language of a book, document, or speech into another language.

> "Generally speaking, a translation need not consist of transferring from one language into another; it may apply to the expression of the same thoughts in other words of the same language." *Rasmussen v. Baker*, 50 P. 819, 826 (Wyo. 1897).

2. *Archaic.* The transfer of property. 3. *Eccles. law.* The removal of a bishop from one diocese to another.

translative (trans- *or* tranz-**lay**-tiv), *adj.* Making or causing a transfer or conveyance.

translative fact. See FACT.

transmission. *Civil law.* The passing of an inheritance to an heir.

transmit, *vb.* (15c) **1.** To send or transfer (a thing) from one person or place to another. **2.** To communicate.

transmittal letter. (1914) A nonsubstantive letter that establishes a record of delivery, such as a letter to a court clerk advising that a particular pleading is enclosed for filing. • Lawyers have traditionally opened transmittal letters with the phrase "Enclosed please find," even though that phrasing has been widely condemned in business-writing handbooks since the late 19th century. A transmittal letter may properly begin with a range of openers as informal as "Here is" to the more formal "Enclosed is." — Also termed *cover letter.*

transmutation. A change in the nature of something; esp., in family law, the transformation of separate property into marital property, or of marital property into separate property. [Cases: Divorce ☞252.3(3); Husband and Wife ☞249(6).]

transnational adoption. See *international adoption* under ADOPTION.

transnational corporation. See *multinational corporation* under CORPORATION.

transnational law. 1. The amalgam of common principles of domestic and international law dealing esp. with problems arising from agreements made between sovereign states and foreign private parties. **2.** The problems to which such principles apply. Cf. INTERNATIONAL LAW.

transparency. Openness; clarity; lack of guile and attempts to hide damaging information. • The word is used of financial disclosures, organizational policies and practices, lawmaking, and other activities where organizations interaction with the public.

transport, *vb.* To carry or convey (a thing) from one place to another.

transportation, *n.* (16c) **1.** The movement of goods or persons from one place to another by a carrier. **2.** *Criminal law.* A type of punishment that sends the criminal out of the country to another place (usu. a penal colony) for a specified period. Cf. DEPORTATION.

Transportation Security Administration. The federal agency charged with promoting safety and security of air, water, rail, and highway transportation. • The agency was created in the Department of Transportation after the terrorist attacks of September 11, 2001, and was transferred to the Department of Homeland Security in 2002.

transracial adoption. See ADOPTION.

transsexual. A person born with the physical characteristics of one sex but who has undergone, or is preparing to undergo, sex-change surgery. See SEX REASSIGNMENT.

transshipment. *Maritime law.* The act of taking cargo out of one ship and loading it on another. • Transshipment may also involve transfer of cargo to another mode of transportation, such as rail or truck.[Cases: Shipping ☞112.] — **transship,** *vb.*

transvestitive fact. See FACT.

trap, *n.* (bef. 12c) **1.** A device for capturing living creatures, such as a pitfall, snare, or machine that shuts suddenly.

mantrap. A booby-trap; esp., a device to catch a trespasser or burglar. • A mantrap is not illegal if it is designed merely to sound an alarm and not cause bodily harm. Illegal mantraps include manufactured devices such as spring guns, and dangerous hidden conditions (manufactured or natural) that can injure a person, such as pitfalls. — Also spelled *man-trap.*

2. Any device or contrivance by which one may be caught unawares; stratagem; snare. **3.** *Torts.* An ultrahazardous hidden peril of which the property owner or occupier, but not a licensee, has knowledge. • A trap can exist even if it was not designed or intended to catch or entrap anything. [Cases: Negligence ☞1040(3).]

trashing. DECONSTRUCTION.

trauma-pricing. See DRAMA-PRICING.

travaux préparatoires (tra-**voh** pray-par-ə-**twah**[**r**]**z**). [French "preparatory works"] Materials used in preparing the ultimate form of an agreement or statute, and esp. of an international treaty; the draft or legislative history of a treaty. See LEGISLATIVE HISTORY.

travel-accident insurance. See INSURANCE.

Travel Act. A federal law, enacted in 1961, that prohibits conduct intended to promote, direct, or manage illegal business activities in interstate commerce. • This statute was enacted to create federal jurisdiction over many criminal activities traditionally handled by state and local governments to help those jurisdictions cope with increasingly complex interstate criminal activity. 18 USCA § 1952. [Cases: Commerce ☞82.10.]

traveled place. (1894) A place where the public has, in some manner, acquired the legal right to travel.

traveler, *n.* A person who passes from place to place, for any reason.

traveler's check. See CHECK.

traveler's letter of credit. See LETTER OF CREDIT.

travel expense. See EXPENSE.

traverse (**trav**-ərs), *n.* (15c) *Common-law pleading.* A formal denial of a factual allegation made in the opposing party's pleading <Smith filed a traverse to Allen's complaint, asserting that he did not knowingly provide false information>. See DENIAL. [Cases: Pleading ☞112–129.] — **traverse** (**trav**-ərs *or* trə-**vərs**), *vb.*

"It is said that the technical term *traverse*, from *transverto*, to turn over, is applied to an issue taken upon an indictment for a misdemeanor, and means nothing more than turning over or putting off the trial to a following session or assize; and that thus it is that the officer of the court asks the party whether he is ready to try then, or will *traverse* to the next session; though some have referred its meaning originally to the denying or taking issue upon an indictment, without reference to the delay of trial, and which seems more correct." 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 486 (2d ed. 1826).

common traverse. (1841) A traverse consisting of a tender of issue — that is, a denial accompanied by a formal offer for decision of the point denied — with a denial that expressly contradicts the terms of the allegation traversed. — Also termed *specific traverse.* [Cases: Pleading ⇨ 117.]

"The common or specific traverse is an express denial of a particular allegation in the opposing pleading in the terms of the allegation, accompanied by a tender of issue or formal offer of the point denied for trial." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 168, at 303 (Henry Winthrop Ballantine ed., 3d ed. 1923).

cumulative traverse. (1848) A traverse that analyzes a proposition into its constituent parts and traverses them cumulatively. • It amounts to the same thing as traversing the one entire proposition, since the several parts traversed must all make up one entire proposition or point.

general traverse. (17c) A denial of all the facts in an opponent's pleading.

special traverse. (18c) A denial of one material fact in an opponent's pleading; a traverse that explains or qualifies the denial. • The essential parts of a special traverse are an inducement, a denial, and a verification. [Cases: Pleading ⇨ 118.]

specific traverse. See *common traverse.*

traverse jury. See *petit jury* under JURY.

traverser, *n.* (14c) One who traverses or denies a pleading.

traverse the requirement, *vb. Patents.* To (1) respond in detail to a patent examiner's decision that the patent application claims more than one invention and (2) ask that the restriction requirement be reconsidered. • The traverse must specifically explain why restriction should not be required, not merely assert that the requirement is wrong. Failure to traverse a requirement forfeits any rights to appeal the decision. [Cases: Patents ⇨ 104.]

treachery, *n.* A deliberate and willful betrayal of trust and confidence.

treason, *n.* (13c) The offense of attempting to overthrow the government of the state to which one owes allegiance, either by making war against the state or by materially supporting its enemies. — Also termed *high treason; alta proditio.* Cf. SEDITION. [Cases: Treason ⇨ 1.] — **treasonable, treasonous,** *adj.*

"The judgment of *high treason* was, until very lately, an exception to the merciful tenor of our judgments. The least offensive form which is given in the books is, that the offender 'be carried back to the place from whence he came, and from thence to be drawn to the place of execution, and be there hanged by the neck, and cut down alive, and that his entrails be taken out and burned before his face, and his head cut off, and his body divided into four quarters, and his head and quarters disposed of at the king's pleasure.' Some of the precedents add other circumstances, of still more grossness and aggravation. But this horrible denunciation was very seldom executed in its more terrible niceties." 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 702 (2d ed. 1826).

"[S]everal important characteristics marked off high treason from all other crimes. For one thing, it earned a peculiarly ghastly punishment. For another, it was 'unclergyable,' while every felony was 'clergyable' unless some statute had otherwise ordained. Thirdly, while the felon's land escheated to his lord, the traitor's land was forfeited to the king. This last distinction influenced the development of the law." 2 Frederick Pollock & Frederic William Maitland, *History of English Law Before the Time of Edward I* 500 (2d ed. 1899).

"Treason against the United States, shall consist only in levying war against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court." U.S. Const. art. III, § 3.

constructive treason. **1.** Speech that manifests a desire or intent to make war against the state or materially support an enemy, even though the speech is unaccompanied by acts that further the desire or intent. • There is no crime of constructive treason in U.S. law because treason requires an affirmative act, and intent alone cannot substitute for an act. Cf. SEDITION. [Cases: Treason ⇨ 1.] **2.** *Hist.* Speech that is critical of the government. • This sense arose during the reign of Henry VIII of England. Critical speech remained a capital crime until the early 18th century.

petty treason. *Archaic.* Murder of one's employer or husband. • Until 1828, this act was considered treason under English law. — Also spelled *petit treason.*

"The frequent reference to *high* treason is a carry-over from an ancient division of the offense that has long since disappeared. In the feudal stage of history the relation of lord to vassal was quite similar to the relation of king to subject. The relation of husband to wife came to be regarded in the same category, as also did the relation of master to servant, and that of prelate to clergyman. And just as it was *high* treason to kill the king, so a malicious homicide was *petit* treason if it involved a killing of (originally, lord by vassal, and later) husband by wife, master by mistress or servant, or prelate by clergyman. When the special brutality provided by the common law for the punishment of petit treason disappeared, this crime became merged with murder and only one crime of treason remained." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 498-99 (3d ed. 1982).

treasonable misdemeanor. *English law.* An act that is likely to endanger or alarm the monarch, or disturb the public peace in the presence of the monarch. Cf. TREASON FELONY.

treason felony. *English law.* An act that shows an intention of committing treason, unaccompanied by any further act to carry out that intention. • This offense usu. results in life imprisonment rather than the death penalty. Cf. TREASONABLE MISDEMEANOR.

Treas. Reg. *abbr.* TREASURY REGULATION.

treasurer. An organization's chief financial officer. • The treasurer's duties typically include prudently depositing (or, if authorized, investing) and safeguarding the organization's funds and otherwise managing its finances; monitoring compliance with any applicable law relating to such finances and filing any required report; disbursing money as authorized; and reporting to the organization on the state of the treasury. — Also termed *finance officer*; *financial secretary*; *quartermaster*. [Cases: Corporations ⇨301.]

city treasurer. A local officer who is responsible for managing municipal funds.

Treasurer, Lord High. See LORD HIGH TREASURER.

Treasurer of the United States. The officer in the U.S. Department of the Treasury responsible for overseeing the operations of the Bureau of Engraving and Printing and the U.S. Mint.

treasure trove. [Law French "treasure found"] (16c) Valuables (usu. gold or silver) found hidden in the ground or other private place, the owner of which is unknown. • At common law in the United States, the finder of a treasure trove can usu. claim good title against all except the true owner. But until 1996, any treasure trove found in the United Kingdom belonged to the Crown.

> "Treasure hid in the earth, not upon the earth, nor in the sea, and coin though not hidden, being found is the king's; we call it treasure trove." Sir Henry Finch, *Law, or a Discourse Thereof* 177 (1759).

> "Treasure trove consists essentially of articles of gold and silver, intentionally hidden for safety in the earth or in some secret place, the owner being unknown, although it is probable that the category might include articles made from the required metals buried in the ground for other purposes, for example in connection with an ancient sepulture. In the United States, the state has never claimed title to lost property by virtue of its character as treasure trove, and it has been stated that the law relating thereto is merged with that of lost goods generally, although there is authority for the proposition that while treasure trove in the United States belongs to the finder, found goods not of that character go to the owner of the *locus in quo*." Ray Andrews Brown, *The Law of Personal Property* § 13, at 27–28 (2d ed. 1955).

Treasuries. (1922) Debt obligations of the federal government backed by the full faith and credit of the government. See TREASURY BILL; TREASURY BOND; TREASURY CERTIFICATE; TREASURY NOTE. [Cases: United States ⇨89–91.]

treasury. 1. A place or building in which stores of wealth are kept; esp., a place where public revenues are deposited and kept and from which money is disbursed to defray government expenses. [Cases: United States ⇨81.] **2.** (*cap.*) DEPARTMENT OF THE TREASURY.

Treasury, First Lord. See FIRST LORD OF THE TREASURY.

Treasury Bench. In the British House of Commons, the first row of seats on the right hand of the speaker. • The Treasury Bench is occupied by the First Lord of the Treasury or principal minister of the Crown.

Treasury bill. (18c) A short-term debt security issued by the federal government, with a maturity of 13, 26, or 52 weeks. • These bills — auctioned weekly or quarterly — pay interest in the form of the difference between their discounted purchase price and their par value at maturity. — Abbr. T-bill. [Cases: United States ⇨89.]

Treasury bond. (1858) A long-term debt security issued by the federal government, with a maturity of 10 to 30 years. • These bonds are considered risk-free, but they usu. pay relatively little interest. — Abbr. T-bond. [Cases: United States ⇨91.]

TIPS bond. A treasury bond whose face value is adjusted to keep pace with the inflation rate. • The acronym TIPS stands for *Treasury inflation-protected securities*. — Abbr. TIPS.

treasury certificate. An obligation of the federal government maturing in one year and on which interest is paid on a coupon basis. [Cases: United States ⇨90.]

Treasury Department. See DEPARTMENT OF THE TREASURY.

Treasury inflation-protected securities. See *TIPS bond* under TREASURY BOND.

Treasury note. (18c) An intermediate-term debt security issued by the federal government, with a maturity of two to ten years. • These notes are considered risk-free, but they usu. pay relatively little interest. — Abbr. T-note. [Cases: United States ⇨90.]

Treasury Regulation. (1860) A regulation promulgated by the U.S. Treasury Department to explain or interpret a section of the Internal Revenue Code. • Treasury Regulations are binding on all taxpayers. — Abbr. Treas. Reg. [Cases: Internal Revenue ⇨3038–3042, 3045, 3048.]

treasury security. See *treasury stock* under STOCK.

treasury share. See *treasury stock* under STOCK.

treasury stock. See STOCK.

treasury warrant. See WARRANT (2).

treating-physician rule. The principle that a treating physician's diagnoses and findings about the degree of a social-security claimant's impairment are binding on an administrative-law judge in the absence of substantial contrary evidence. [Cases: Social Security and Public Welfare ⇨143.65.]

treaty. 1. An agreement formally signed, ratified, or adhered to between two nations or sovereigns; an international agreement concluded between two or more states in written form and governed by international law. — Also termed *accord*; *convention*; *covenant*; *declaration*; *pact*. Cf. EXECUTIVE AGREEMENT. [Cases: Treaties ⇨1.]

> "[T]he legal terminology used by the United States to describe international agreements is markedly different from that employed elsewhere. Under the U.S. Constitution, the term 'treaty' has a particular meaning — an agreement made by the President with the advice and consent of the Senate." David J. Bederman, *International Law Frameworks* 158 (2001).

commercial treaty. A bilateral or multilateral treaty concerning trade or other mercantile activities. • Such a treaty may be general in nature, as by supplying the framework of long-term commercial relations. Or it may be specific, as by detailing the conditions of particular branches of trade or other commercial transactions. Sometimes a treaty of this kind deals with an individual project, such as a guaranty agreement. [Cases: Treaties ⚷8.]

defensive treaty. A treaty in which each party agrees to come to the other's aid if one is attacked by another nation. See *treaty of alliance.*

> "*Defensive treaties*, as generally understood, are made to secure the parties to them against aggression from other states. They may, also, aim at the maintenance of internal quiet, or of neutrality amid the conflicts of neighboring powers. To attempt to gain any of these objects is not necessarily contrary to the law of nations or to natural justice. Mutual aid, indeed, against the disturbers of internal quiet, may secure an absolute government against popular revolutions in favor of liberty, but if a confederation or alliance may secure to its members the enjoyment of free institutions, there is no reason, as far as international law is concerned, why institutions of an opposite kind may not support themselves in the same way." Theodore D. Woolsey, *Introduction to the Study of International Law* § 107, at 171 (5th ed. 1878).

dispositive treaty (dis-**poz**-ə-tiv). A treaty by which a country takes over territory by impressing a special character on it, creating something analogous to a servitude or easement in private law.

guarantee treaty. An agreement between countries directly or indirectly establishing a unilateral or reciprocal guarantee. — Also spelled *guaranty treaty.* — Also termed *treaty of guarantee*; *quasi-guarantee treaty*; *pseudo-guarantee treaty.*

> "In many instances where the term 'guarantee' is used in international treaties, the contracting parties merely intend to underline their willingness to comply with the obligation they have entered into. Obligations of this kind do not fall within the concept of guarantee in the proper sense of the term. In this particular respect, the expression 'pseudo-guarantees' or 'quasi-guarantee treaties' is used." George Ress, "Guarantee Treaties," in 2 *Encyclopedia of Public International Law* 634 (1995).

mixed treaty. A treaty with characteristics of different types of treaties, esp. contrasting types (e.g., permanent and transitory, or personal and real).

nonaggression treaty. See NONAGGRESSION PACT.

nonproliferation treaty. A treaty forbidding the transfer of nuclear weapons from a country with a nuclear arsenal to one that does not have nuclear-weapons capability. • The first such treaty was concluded in 1968, and now more than 100 nations have agreed to its terms. — Also termed *nuclear-nonproliferation treaty.*

offensive treaty. A treaty in which the parties agree to declare war jointly on another nation and join forces to wage the war. See *treaty of alliance.*

peace treaty. A treaty signed by heads of state to end a war. — Also termed *treaty of peace.* Cf. TRUCE. [Cases: War and National Emergency ⚷33.]

> "A peace differs not from a truce essentially in the length of its contemplated duration, for there may be very long armistices and a state of peace continuing only a definite number of years. The ancients often concluded treaties of peace which were to expire after a certain time . . . ." Theodore D. Woolsey, *Introduction to the Study of International Law* § 158, at 268 (5th ed. 1878).

permanent treaty. A treaty that contemplates ongoing performance (as with a treaty of neutrality).

personal treaty. *Hist.* A treaty relating exclusively to the contracting sovereign as a person. • Examples of personal treaties are family alliances and treaties guaranteeing the throne to a particular sovereign and his or her family. With the advent of constitutional government in Europe, personal treaties have lost their importance.

pseudo-guarantee treaty. See *guarantee treaty.*

quasi-guarantee treaty. See *guarantee treaty.*

real treaty. A treaty relating solely to the subject matter of the compact, independently of the persons of the contracting sovereigns. • Real treaties continue to bind the state even when the heads of government change.

transitory treaty. A treaty carried into effect once and for all, so that it is complete when the act has been performed (as with a treaty of cession).

treaty of alliance. A treaty establishing mutual and reciprocal support obligations. • A treaty of alliance may be for support in defense, aggression, or both. See *defensive treaty*; *offensive treaty.*

> "A treaty of alliance can bind the parties to no injustice, nor justify either of them in being accessory to an act of bad faith on the part of another. Hence a defensive, still more an offensive alliance, can only contemplate, if lawful, the warding off of intended injustice." Theodore D. Woolsey, *Introduction to the Study of International Law* § 107, at 172 (5th ed. 1878).

treaty of guarantee. See *guarantee treaty.*

treaty of neutrality. A treaty in which the parties agree not to engage in any aggressive action against one another, whether individually or jointly with others, and not to interfere with the other party's affairs. • There is no commitment to aid another party in the event of war — only to refrain from becoming involved.

> "*Treaties of neutrality* are reciprocal engagements to have no part in the conflicts between other powers — to remain at peace in an apprehended or an actual war. They are suggested by, and prevent the evils of that interference of nations in each other's affairs, for the preservation of the balance of power or the safety of the parties interfering, which is so common in modern history." Theodore D. Woolsey, *Introduction to the Study of International Law* § 107, at 172 (5th ed. 1878).

treaty of peace. See *peace treaty.*

2. A contract or agreement between insurers providing for treaty reinsurance. See *treaty reinsurance* under REINSURANCE. [Cases: Insurance ⚷3593.] **3.** A negotiated contract or agreement between private persons.

private treaty. An agreement to convey property negotiated by the buyer and seller or their agents. • This term is esp. common in the U.K.

Treaty Clause. The constitutional provision giving the President the power to make treaties, with the advice and consent of the Senate. U.S. Const. art. II, § 2. [Cases: Treaties ⚷2.]

treaty-created law. See CONVENTIONAL LAW.

treaty-made law. See CONVENTIONAL LAW.

treaty of reinsurance. See REINSURANCE TREATY.

treaty power. (1835) The President's constitutional authority to make treaties, with the advice and consent of the Senate. See TREATY CLAUSE. [Cases: Treaties ⚷2.]

treaty reinsurance. See REINSURANCE.

treble damages. See DAMAGES.

trebucket (**tree**-bək-it). See CASTIGATORY.

trend. A price pattern in the stock market generally or in a particular stock.

major trend. A long-term trend of the stock market; a general increase or decrease of stock prices over an extended period. — Also termed *fundamental trend.*

market trend. The direction of stock-market prices over a several-month period.

trespass (**tres**-pəs *or* **tres**-pas), *n.* (13c) **1.** An unlawful act committed against the person or property of another; esp., wrongful entry on another's real property. Cf. *unlawful entry* under ENTRY (1). [Cases: Trespass ⚷1–15.] **2.** At common law, a legal action for injuries resulting from an unlawful act of this kind. **3.** *Archaic.* MISDEMEANOR. — **trespass,** *vb.* — **trespassory** (**tres**-pə-sor-ee), *adj.*

"The familiar legend on notice-boards, 'Trespassers will be prosecuted,' implies that it is a crime, but this may usually be dismissed as 'a wooden lie.' Yet in time past the idea was correct, for trespass of any sort was punishable by fine and imprisonment as well as redressible by an action for damages, and actually it was not until 1694 that the punitive element disappeared although it had faded into obsolescence long before that date. But nowadays trespass is never criminal except under special statutes which make it punishable . . . ." P.H. Winfield, *A Textbook of the Law of Tort* § 90, at 307 (5th ed. 1950).

"The term trespass has been used by lawyers and laymen in three senses of varying degrees of generality. (1) In its widest and original signification it includes any wrongful act — any infringement or transgression of the rule of right. This use is common in the Authorised Version of the Bible, and was presumably familiar when that version was first published. But it never obtained recognition in the technical language of the law, and is now archaic even in popular speech. (2) In a second and narrower signification — its true legal sense — the term means any legal wrong for which the appropriate remedy was a writ of trespass — *viz.* any direct and forcible injury to person, land, or chattels. (3) The third and narrowest meaning of the term is that in which, in accordance with popular speech, it is limited to one particular kind of trespass in the second sense — *viz.* the tort of trespass to land (trespass *quare clausum fregit*)." R.F.V. Heuston, *Salmond on the Law of Torts* 4 (17th ed. 1977).

"Before the word 'misdemeanor' became well established the old writers tended to use the word 'trespass' to indicate an offense below the grade of felony. And it was used at times by Blackstone for this purpose, as in the phrase 'treason, felony, or trespass.'" Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 405 (3d ed. 1982).

cattle-trespass. *Hist.* Trespass by one's cattle or other animals on another's land, as a result of which the other might either distrain them damage feasant or sue for trespass in the local courts. • At first (from the early 13th century) this type of trespass applied only to intentional trespass by the keeper of the cattle, but in 1353 it was extended to beasts that had merely escaped. This type of trespass gave rise to strict liability. [Cases: Animals ⚷89.]

"It has long been settled that liability for cattle-trespass is independent of negligence, and it is that which constitutes its strictness. And, in spite of some confusion in time past, it is quite distinct from the *scienter* type of liability. In *Lee v. Riley* [(1865), 18 C.B. (N.S.) 722] the defendant's mare strayed through a gap in his fence, which it was his duty to repair, to the plaintiff's land and there quarrelled with and kicked the plaintiff's horse. The defendant was held liable for cattle-trespass. A great deal of argument was expended at the trial on whether the defendant had notice of the ferocious disposition of his mare, but Erle, C.J., pointed out that, however relevant that might have been in a *scienter* action, it was beside the mark in one for cattle-trespass." P.H. Winfield, *A Textbook of the Law of Tort* § 148, at 518 (5th ed. 1950).

constructive trespass. See *trespass to chattels.*

continuing trespass. A trespass in the nature of a permanent invasion on another's rights, such as a sign that overhangs another's property. [Cases: Trespass ⚷51.]

criminal trespass. **1.** A trespass on property that is clearly marked against trespass by signs or fences. [Cases: Trespass ⚷81.] **2.** A trespass in which the trespasser remains on the property after being ordered off by a person authorized to do so.

innocent trespass. A trespass committed either unintentionally or in good faith. [Cases: Trespass ⚷2.]

joint trespass. A trespass that two or more persons have united in committing, or that some have actually committed while others commanded, encouraged, or directed it. [Cases: Trespass ⚷31.]

permanent trespass. A trespass consisting of a series of acts, done on consecutive days, that are of the same nature and that are renewed or continued from day to day, so that the acts in the aggregate form one indivisible harm.

trespass ab initio (ab i-**nish**-ee-oh). An entry on land that, though begun innocently or with a privilege, is deemed a trespass from the beginning because of conduct that abuses the privilege. [Cases: Trespass ⚷13.]

trespass by relation. A trespass committed when the plaintiff had a right to immediate possession of land but had not yet exercised that right. • When the plaintiff takes possession, a legal fiction treats the plaintiff as having had possession ever since the accrual of the

right of entry. This is known as *trespass by relation* because the plaintiff's possession relates back to the time when the plaintiff first acquired a right to possession.

trespass de bonis asportatis (dee **boh**-nis as-pər-**tay**-tis). [Latin "trespass for carrying goods away"] **1.** A wrongful taking of chattels. • This type of trespassory taking was also an element of common-law larceny. **2.** At common law, an action to recover damages for the wrongful taking of chattels. — Abbr. trespass d.b.a. — Often shortened to *trespass de bonis*. — Also termed *trespass to personal property*. [Cases: Trespass ⇨6.]

trespass on the case. (15c) At common law, an action to recover damages that are not the immediate result of a wrongful act but rather a later consequence. • This action was the precursor to a variety of modern-day tort claims, including negligence, nuisance, and business torts. — Often shortened to *case*. — Also termed *action on the case*; *breve de transgressione super casum*. [Cases: Trespass ⇨1, 16, 17.]

"The most important of the writs framed under the authority of the statute of Westminster 2 is that of 'trespass on the case,' to meet cases analogous to trespass in delict, but lacking the element of direct or immediate force or violence. This writ gave a form of action in which the court was enabled to render judgment of damages in cases of fraud, deceit, negligence, want of skill, defamation oral or written, and all other injurious acts or omissions resulting in harm to person or property, but wanting the *vi et armis*, the element of direct force and violence, to constitute trespass." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 7 (2d ed. 1899).

"Common law recognizes a distinction between the actions of trespass vi et armis (or simply trespass) and trespass on the case. This distinction has been expressed by stating that a tort committed by the direct application of force is remediable by an action for trespass, while a tort accomplished indirectly is a matter for trespass on the case. Other authority makes the distinction on the basis of the defendant's intent, stating that trespass involves a willful and deliberate act while trespass on the case contemplates an act or omission resulting from negligence." 1 Am. Jur. 2d *Actions* § 23, at 738 (1994).

trespass quare clausum fregit (**kwair**-ee-**klaw**-zəm-**free**-jit). [Latin "why he broke the close"] (17c) **1.** A person's unlawful entry on another's land that is visibly enclosed. • This tort consists of doing any of the following without lawful justification: (1) entering upon land in the possession of another, (2) remaining on the land, or (3) placing or projecting any object upon it. **2.** At common law, an action to recover damages resulting from another's unlawful entry on one's land that is visibly enclosed. — Abbr. trespass q.c.f. — Also termed *trespass to real property*; *trespass to land*; *quare clausum querentis fregit*. See *trespass vi et armis*. [Cases: Trespass ⇨10, 16, 17.]

"Every unwarrantable entry on another's soil the law entitles a trespass by *breaking his close*; the words of the writ of trespass commanding the defendant to shew cause, *quare clausum querentis fregit*. For every man's land is in the eye of the law enclosed and set apart from his neighbour's: and that either by a visible and material fence, as one field is divided from another by a hedge; or, by an ideal invisible boundary, existing only in the contemplation of law, as when one man's land adjoins to another's in the same field. And every such entry or breach of a man's close carries necessarily along with it some damage or other: for, if no other special loss can be assigned, yet still the words of the writ itself specify one general damage, viz. the treading down and bruising his herbage." 3 William Blackstone, *Commentaries on the Laws of England* 209–10 (1768).

trespass to chattels. (1843) The act of committing, without lawful justification, any act of direct physical interference with a chattel possessed by another. • The act must amount to a direct forcible injury. — Also termed *trespass to goods*; *constructive trespass*. [Cases: Trespass ⇨5.]

"Trespass to goods is a wrongful interference with the possession of them. It may take innumerable forms, such as scratching the panel of a coach, removing a tire from a car, injuring or destroying goods, or in the case of animals, beating or killing them, or infecting them with disease. All that is necessary is that the harm done should be direct . . . ." P.H. Winfield, *A Textbook of the Law of Tort* § 99, at 345 (5th ed. 1950).

trespass to goods. See *trespass to chattels*.

trespass to land. See *trespass quare clausum fregit* (2).

trespass to personal property. See *trespass de bonis asportatis*.

trespass to real property. See *trespass quare clausum fregit* (2).

trespass to try title. (1826) **1.** In some states, an action for the recovery of property unlawfully withheld from an owner who has the immediate right to possession. **2.** A procedure under which a claim to title may be adjudicated.

trespass vi et armis (**vi** et **ahr**-mis). [Latin "with force and arms"] (17c) **1.** At common law, an action for damages resulting from an intentional injury to person or property, esp. if by violent means; trespass to the plaintiff's person, as in illegal assault, battery, wounding, or imprisonment, when not under color of legal process, or when the battery, wounding, or imprisonment was in the first instance lawful, but unnecessary violence was used or the imprisonment continued after the process had ceased to be lawful. • This action also lay for injury to relative rights, such as menacing tenants or servants, beating and wounding a spouse, criminal conversation with or seducing a wife, or debauching a daughter or servant. **2.** See *trespass quare clausum fregit*. • In this sense, the "force" is implied by the "breaking" of the close (that is, an enclosed area), even if no real force is used. [Cases: Trespass ⇨17.]

trespass d.b.a. See *trespass de bonis asportatis* under TRESPASS.

trespasser. (14c) One who commits a trespass; one who intentionally and without consent or privilege enters another's property. • In tort law, a landholder owes no duty to unforeseeable trespassers. Cf. INVITEE; LICENSEE (2). [Cases: Trespass ⇨9.]

"The word 'trespasser' has an ugly sound, but it covers the wicked and the innocent. The burglar and the arrogant squatter are trespassers, but so are all sorts of

comparatively innocent and respectable persons such as a walker in the countryside who unhindered strolls across an open field. Perhaps much of the trouble in this area has arisen from 'the simplistic stereotype' of the definition. The courts are therefore beginning to recognise that the duty of the occupier may vary according to the nature of the trespasser." R.F.V. Heuston, *Salmond on the Law of Torts* 278 (17th ed. 1977).

innocent trespasser. (1888) One who enters another's land unlawfully, but either inadvertently or believing in a right to do so. [Cases: Trespass ⇨2, 23.]

trespass for mesne profits. *Hist.* An action — supplementing an action for ejectment — brought against a tenant in possession to recover the profits wrongfully received during the tenant's occupation. [Cases: Ejectment ⇨128.]

trespass q.c.f. See *trespass quare clausum fregit* under TRESPASS.

tret (tret), *n.* An allowance or abatement of a certain weight or quantity that a seller makes to a buyer because of water or dust that may be mixed with a commodity. Cf. TARE.

triable, *adj.* (15c) Subject or liable to judicial examination and trial <a triable offense>.

triable either way. *English law.* (Of an offense) prosecutable either in the Crown Court or in a magistrates' court.

"The criminal courts in England and Wales are the magistrates' courts and the Crown Court. Those offences considered least serious are summary offences, triable only in the magistrates' courts. Those offences considered most serious are triable only on indictment, in the Crown Court. A large number of offences, such as theft and most burglaries, are 'triable either way,' in a magistrates' court or the Crown Court. For these offences the defendant can elect to be tried at the Crown Court, where there is a judge and jury. If the defendant does not wish a Crown Court trial, the magistrates may decide (having heard representations from the prosecutor) that the case is so serious that it should be committed to the Crown Court for trial." Andrew Ashworth, *Principles of Criminal Law* 16 (1991).

trial. (15c) A formal judicial examination of evidence and determination of legal claims in an adversary proceeding. [Cases: Federal Civil Procedure ⇨1951; Trial ⇨18.]

abortive trial. See MISTRIAL.

bench trial. (1954) A trial before a judge without a jury. • The judge decides questions of fact as well as questions of law. — Also termed *trial to the bench*; *nonjury trial*; *court trial*; *trial before the court* (abbr. TBC); *judge trial.* [Cases: Criminal Law ⇨247–260.13; Federal Civil Procedure ⇨2251; Trial ⇨367–387.]

bifurcated trial. (1945) A trial that is divided into two stages, such as for guilt and punishment or for liability and damages. — Also termed *two-stage trial.* Cf. SEVERANCE (2). [Cases: Federal Civil Procedure ⇨1954; Sentencing and Punishment ⇨334; Trial ⇨3.]

closed trial. A trial that is not open to the public, usu. because of some overriding concern such as a need to protect a child's anonymity or for security. [Cases: Criminal Law ⇨635; Federal Civil Procedure ⇨1951; Trial ⇨20.]

court trial. See *bench trial.*

fair trial. See FAIR TRIAL.

joint trial. (18c) A trial involving two or more parties; esp., a criminal trial of two or more persons for the same or similar offenses. [Cases: Criminal Law ⇨622.]

judge trial. See *bench trial.*

jury trial. (18c) A trial in which the factual issues are determined by a jury, not by the judge. — Also termed *trial by jury.*

mock trial. See MOCK TRIAL.

new trial. (16c) A postjudgment retrial or reexamination of some or all of the issues determined in an earlier judgment. • The trial court may order a new trial by motion of a party or on the court's own initiative. Also, when an appellate court reverses the trial court's judgment, it may remand the case to the trial court for a new trial on some or all of the issues on which the reversal is based. *See* Fed. R. Civ. P. 59; Fed. R. Crim. P. 33. See MOTION FOR NEW TRIAL; REMAND. [Cases: Criminal Law ⇨905–965; Federal Civil Procedure ⇨2311; New Trial ⇨0.5.]

nonbinding minitrial. See *summary jury trial.*

nonbinding summary jury trial. See *summary jury trial.*

nonjury trial. See *bench trial.*

perfect trial. A trial free from all error.

political trial. (18c) A trial (esp. a criminal prosecution) in which either the prosecution or the defendant (or both) uses the proceedings as a platform to espouse a particular political belief; a trial of a person for a political crime. See SHOW TRIAL.

public trial. A trial that anyone may attend or observe. [Cases: Criminal Law ⇨635; Federal Civil Procedure ⇨1951; Trial ⇨20.]

separate trial. (18c) **1.** *Criminal procedure.* The individual trial of each of several persons jointly accused of a crime. Fed. R. Crim. P. 14. [Cases: Criminal Law ⇨622] **2.** *Civil procedure.* Within a single action, a distinct trial of a separate claim or issue — or of a group of claims or issues — ordered by the trial judge, usu. to conserve resources or avoid prejudice. Fed. R. Civ. P. 42(b). Cf. SEVERANCE (2). [Cases: Federal Civil Procedure ⇨1953–1965; Trial ⇨3.]

short-cause trial. See *short cause* under CAUSE (3).

show trial. See SHOW TRIAL.

speedy trial. See SPEEDY TRIAL.

state trial. A trial for a political offense.

summary jury trial. (1984) A settlement technique in which the parties argue before a mock jury, which then reaches a nonbinding verdict that will assist the parties in evaluating their positions. — Also termed

nonbinding summary jury trial; nonbinding minitrial. Cf. MOCK TRIAL. [Cases: Federal Civil Procedure ⇨ 2252.]

trial at bar. *Hist.* A trial before all the judges of the court in which the proceedings take place. — Also termed *trial at the bar.*

trial at nisi prius (**nI-si pri**-əs). *Hist.* A trial before the justices of assize and nisi prius in the county where the facts are alleged to have occurred, and from which county the jurors have been summoned.

trial before the court. See *bench trial.*

trial by battle. See TRIAL BY COMBAT.

trial by certificate. *Hist.* A trial in which the issue is decided on evidence in the form of witnesses' certificates of what they individually know.

trial by combat. See TRIAL BY COMBAT.

trial by duel. See TRIAL BY COMBAT.

trial by inspection. *Hist.* A trial in which the judge decided the dispute by individual observation and investigation, without the benefit of a jury.

trial by jury. See *jury trial.*

trial by ordeal. See ORDEAL.

trial by record. *Hist.* A trial in which, a record having been pleaded by one party and denied by the other, the record is inspected in order to decide the dispute, no other evidence being admissible. See NUL TIEL RECORD.

trial by the country. See *trial per pais.*

trial by the record. A trial in which one party insists that a record exists to support its claim and the opposing party denies the existence of such a record. • If the record can be produced, the court will consider it in reaching a verdict — otherwise, it will rule for the opponent.

trial de novo (dee *or* di **noh**-voh). (18c) A new trial on the entire case — that is, on both questions of fact and issues of law — conducted as if there had been no trial in the first instance. [Cases: Appeal and Error ⇨ 892; Criminal Law ⇨ 260; Federal Courts ⇨ 776.]

trial in absentia. A trial held without the accused being present. • In the United States, a trial may be held *in absentia* only if the accused has either voluntarily left after the trial has started else has so disrupted the proceedings that the judge orders the accused's removal as a last resort. [Cases: Criminal Law ⇨ 636.]

trial on the merits. (18c) A trial on the substantive issues of a case, as opposed to a motion hearing or interlocutory matter.

trial per pais (pər **pay** *or* **pays**). [Law French "trial by the country"] (17c) Trial by jury. — Also termed *trial by the country.* Cf. CONCLUSION TO THE COUNTRY; GOING TO THE COUNTRY; PATRIA (3).

trial to the bench. See *bench trial.*

trifurcated trial. (1959) A trial that is divided into three stages, such as for liability, general damages, and special damages. [Cases: Federal Civil Procedure ⇨ 1961; Trial ⇨ 3(5.1).]

two-stage trial. See *bifurcated trial.*

trial brief. See BRIEF.

trial by combat. *Hist.* A trial that is decided by personal battle between the disputants, common in Europe and England during the Middle Ages; specif., a trial in which the person accused fought with the accuser, the idea being that God would give victory to the person in the right. • This method was introduced into England by the Normans after 1066, but it was a widely detested innovation and was little used. It became obsolete several centuries before being formally abolished in 1818, having been replaced in practice by the grand assize and indictment. — Also termed *trial by battle; trial by wager of battle; trial by duel; judicial combat; duel; duellum; wager of battle; ornest; vadiatio duelli; wehading.* See JUDICIUM DEI.

trial by corsnaed. See *ordeal of the morsel* under ORDEAL.

trial by duel. See TRIAL BY COMBAT.

trial by oath. See COMPURGATION.

trial by ordeal. See ORDEAL.

trial by wager of battle. See TRIAL BY COMBAT.

trial calendar. See DOCKET (2).

trial counsel. See COUNSEL.

trial court. See COURT.

trial de novo. See TRIAL.

trial examiner. See ADMINISTRATIVE-LAW JUDGE.

trial franchise. See FRANCHISE (4).

trial judge. See JUDGE.

trial jury. See *petit jury* under JURY.

trial of right of property. 1. INTERVENTION (1). **2.** INTERVENTION (2).

trial per pais. See TRIAL.

trial-setting preference. See *special setting* under SETTING.

trial-type hearing. See ADMINISTRATIVE PROCEEDING.

triangular merger. See MERGER.

Tribal Court. Under the Indian Child Welfare Act, a court with child-custody jurisdiction that is (1) a Court of Indian Offenses, (2) a court established and operated under an Indian tribe's code or custom, or (3) any other tribal administrative body that is vested with authority over child-custody proceedings. • The Tribal Court is composed of tribal members, is usu. situated on the reservation, and varies in its characteristics from tribe to tribe. It is not part of any state's judicial system, instead operating more or less as a judicial system of a foreign nation. See INDIAN CHILD WELFARE ACT. [Cases: Indians ⇨ 134(3).]

tribal-exhaustion doctrine. The general principle that when an Indian tribal court, original or appellate, has personal and subject-matter jurisdiction, the parties

must pursue all remedies available under tribal law before turning to nontribal courts. • A federal court may review a challenge to jurisdiction only after the tribal court has established it has jurisdiction and determined the case on the merits. *See National Farmer's Union Ins. Co. v. Crow Tribe*, 471 U.S. 845, 856–57, 105 S.Ct. 2447, 2454 (1985).

tribal land. A part of an Indian reservation that is not allotted to or occupied by individual Indians but is held as the tribe's common land. Cf. INDIAN LAND. [Cases: Indians ⇨151.]

tribunal (tri-**byoo**-nəl). (15c) **1.** A court or other adjudicatory body. **2.** The seat, bench, or place where a judge sits.

tributary (**trib**-yə-ter-ee), *n.* (14c) A stream flowing directly or indirectly into a river.

tribute (**trib**-yoot), *n.* (14c) **1.** An acknowledgment of gratitude or respect. **2.** A contribution that a sovereign raises from its subjects to defray the expenses of state. **3.** Money paid by an inferior sovereign or state to a superior one to secure the latter's friendship and protection.

tributum (tri-**byoo**-təm), *n.* [Latin] *Roman law.* Originally, a war tax; later, a regular tax on land or persons in the Roman provinces.

tri-chad. See CHAD.

trier of fact. See FACT-FINDER.

trifurcated trial. See TRIAL.

trigamy (**trig**-ə-mee), *n.* (17c) The act of marrying a person while legally married to someone else and bigamously married to yet another. [Cases: Bigamy ⇨1.]

> "Trigamy, literally three marriages, is often used for a special situation. 'Trigamy,' in the sense of the special problem of the third wife, stems from the premise that invalidity of the alleged prior marriage is a good defense to a charge of bigamy. Thus in a bigamy prosecution a so-called common-law marriage can be relied upon to establish either the first or second marriage, if it is recognized in the jurisdiction as giving rise to the marital status, but cannot be relied upon where it is not so recognized. A logical result is that a charge of bigamy may be defeated by showing that the alleged prior marriage, relied upon to support the charge, was itself void because of an even earlier marriage existing at the time—as was held about 1648 in Lady Madison's Case. For example, D marries A, and afterward while A is alive marries B, and still later when A is dead but B alive, marries C. The marriage to C is not bigamy because the marriage to B was bigamous and void." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 458 (3d ed. 1982).

triggering condition. See CONDITION (2).

Trinity House. *Maritime law.* A British corporation chartered in 1514 to train and license pilots and officially regulate pilotage. • Trinity House has also erected and maintained aids to navigation, such as lighthouses and buoys, on the coasts of Great Britain.

Trinity sittings. *English law.* A term of court beginning on May 22 of each year and ending on June 12. • This was known until 1875 as *Trinity term.* Cf. EASTER SITTINGS; HILARY SITTINGS; MICHAELMAS SITTINGS.

tripartite (tri-**pahr**-tit), *adj.* (15c) Involving, composed of, or divided into three parts or elements <a tripartite agreement>.

tripartite lease. See *finance lease* under LEASE.

tripartite test. *Patents.* A judicial test for determining patent infringement by looking at whether a challenged device or process, though outside the literal scope of the patent claims, performs the function in substantially the same way. See SUBSTANTIAL EQUIVALENT.

triple damages. See *treble damages* under DAMAGES.

triple net lease. See *net-net-net lease* under LEASE.

triple ordeal. See ORDEAL.

triple trigger. *Insurance.* (1981) A theory of coverage providing that all insurers on a risk must cover a loss from the day a claimant is first exposed to an injury-producing product (such as asbestos) to the date of diagnosis or death, whichever occurs first. • This term was first used in *Keene Corp. v. Insurance Co. of N. Am.*, 667 F.2d 1034 (D.C. Cir. 1981), *cert denied*, 445 U.S. 1007, 102 S.Ct. 1644 (1982). — Also termed *continuous trigger.* Cf. ACTUAL-INJURY TRIGGER; EXPOSURE THEORY; MANIFESTATION THEORY. [Cases: Insurance ⇨2265.]

triplicatio (trip-li-**kay**-shee-oh), *n.* [Latin] *Roman law.* A defendant's response to a plaintiff's *replicatio.* Pl. ***triplicationes*** (trip-li-kay-shee-**oh**-neez). See REPLICATIO. Cf. QUADRUPLICATIO.

TRIPs. *abbr. Intellectual property.* The Agreement on Trade-Related Aspects of Intellectual Property Rights, a treaty that harmonized and strengthened the intellectual-property laws of its signatories by linking the obligation to protect the intellectual-property rights of other members' citizens with a mechanism for settling international trade disputes. • TRIPs was negotiated at the 1994 Uruguay Round of the General Agreement on Tariffs and Trade (GATT). More than 150 nations are parties to the agreement. In the field of patents, TRIPs standardized patentable subject matter to include medicines, required testing for nonobviousness and utility, and protected patentees from infringing imports. In response to the agreement Congress (1) changed patent terms to 20 years from the date of application, rather than 17 years from the date of issue; (2) allowed foreign filers to prove priority by inventive efforts that preceded filing; (3) widened the definition of infringement to cover offering for sale and importing; and (4) permitted provisional applications, with brief descriptions and no claims, to establish priority. 33 I.L.M. 1197. In the field of copyrights, TRIPs incorporates most of the provisions of the Berne Convention for the Protection of Literary or Artistic Works, and sets the length of copyright protection as the life of the author plus 50 years. In the field of trademarks, TRIPs sets the initial term of a trademark registration as not less than seven years, and makes it renewable indefinitely. Nations subject to TRIPs may make registrability dependent on use but may not require use as a condition for filing an application. — Also written TRIPS. — Also termed *TRIPs Agreement.*

"Articles 1–8 of TRIPs include the basic principles of national treatment and most-favoured-nation treatment. That is, each Member must give to the nationals of other Members treatment no less favourable than that given to its own nationals, and must give to the nationals of all Members the same privileges as are given to the nationals of any Member. Thus, subject to certain exemptions, bilateral agreements between Members should no longer be permitted." Philip W. Grubb, *Patents for Chemicals, Pharmaceuticals and Biotechnology* 31 (3d ed. 1999).

tristis successio (**tris**-tis sək-**ses**[**h**]-ee-oh). See *hereditas luctuosa* under HEREDITAS.

triverbial days (trī-**vər**-bee-əl). See *dies fasti* under DIES.

trivial, *adj.* (16c) Trifling; inconsiderable; of small worth or importance.

TRO (tee-ahr-**oh**). *abbr.* TEMPORARY RESTRAINING ORDER.

troubled asset. See ASSET.

trover (**troh**-vər). (16c) A common-law action for the recovery of damages for the conversion of personal property, the damages generally being measured by the property's value. — Also termed *trover and conversion.* Cf. DETINUE; REPLEVIN. [Cases: Trover and Conversion ☞1, 43.]

"Trover may be maintained for all kinds of personal property, including legal documents, but not where articles are severed from land by an adverse possessor, at least until recovery of possession of the land. It lies for the misappropriation of specific money, but not for breach of an obligation to pay where there is no duty to return specific money." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 43, at 99 (Henry Winthrop Ballantine ed., 3d ed. 1923).

truancy (**troo**-ən-see), *n.* (18c) The act or state of shirking responsibility; esp., willful and unjustified failure to attend school by one who is required to attend.[Cases: Schools ☞161.] — **truant,** *adj.* & *n.*

truancy officer. An official responsible for enforcing laws mandating school attendance for minors of specified ages (usu. 16 and under). — Also termed *truant officer; attendance officer.* [Cases: Schools ☞161.]

truant, *n.* A person who without permission is absent from work or school or who shirks a duty. [Cases: Schools ☞161.]

truce. *Int'l law.* A suspension or temporary cessation of hostilities by agreement between belligerent powers. — Also termed *armistice; ceasefire; suspension of arms.* Cf. *peace treaty* under TREATY (1). [Cases: War and National Emergency ☞33.] — **trucial,** *adj.*

general truce. A truce suspending hostilities in all places.

special truce. A truce referring only to operations before a specific fortress or in a district, or between certain detachments of armies. — Also termed *partial truce.*

truck. *Hist. Scots law.* The payment of wages in scrip or goods. • Truck systems, once common where workers had to live in isolated areas and depended on company stores for food and clothing, were abolished in the 19th century.

"Truck was payment not in money but in goods or tickets which could be exchanged for goods. . . . The principle that contractors could buy in bulk and retail to the workmen, deducting the cost from their wages, was sound but was open to abuse; in fact truck became a means of robbery. Railway contractors frequently made more profit from truck than from the contract. . . . Truck shops, frequently called tommy shops or tally shops, might be run by the contractor or let by him to an associate or a shopkeeper for a rent or on the basis that part of the shop profits would go back to the contractor. The goods were frequently inferior and sold at excessive prices. David M. Walker, 6 *A Legal History of Scotland* 820 (2001).

true admission. See *judicial admission* under ADMISSION (1).

true and correct. Authentic; accurate; unaltered <we have forwarded a true and correct copy of the expert's report>. — Also termed *true and exact.*

true bill, *n.* (18c) A grand jury's notation that a criminal charge should go before a petty jury for trial <the grand jury returned a true bill, and the state prepared to prosecute>. — Also termed *billa vera.* Cf. NO BILL. [Cases: Grand Jury ☞42.]

true-bill, *vb.* To make or deliver a true bill on <the grand jury true-billed the indictment>.

true copy. See COPY.

true defense. See DEFENSE (1).

true legal impossibility. See *legal impossibility* (1) under IMPOSSIBILITY.

true mark. See *technical trademark* under TRADEMARK.

true residue. See CLEAR RESIDUE.

true trademark. See *technical trademark* under TRADEMARK.

true value. See *fair market value* under VALUE (2).

true-value rule. The rule requiring that one who subscribes for and receives corporate stock must pay par value for it, in either money or its equivalent, so that a corporation's real assets square with its books. • If true value is less than par value, the stock is deemed unpaid for to the full extent of the difference, and the affected shareholder is liable to creditors for the difference, notwithstanding the directors' good faith. [Cases: Corporations ☞232.]

true verdict. See VERDICT.

trust, *n.* (15c) **1.** The right, enforceable solely in equity, to the beneficial enjoyment of property to which another person holds the legal title; a property interest held by one person (the *trustee*) at the request of another (the *settlor*) for the benefit of a third party (the *beneficiary*). • For a trust to be valid, it must involve specific property, reflect the settlor's intent, and be created for a lawful purpose. The two primary types of trusts are *private trusts* and *charitable trusts* (see below). [Cases: Trusts ☞1.] **2.** A fiduciary relationship regarding property and charging the person with title to the property with

equitable duties to deal with it for another's benefit; the confidence placed in a trustee, together with the trustee's obligations toward the property and the beneficiary. • A trust arises as a result of a manifestation of an intention to create it. See *fiduciary relationship* under RELATIONSHIP. **3.** The property so held; CORPUS (1).

> "One must distinguish, . . . [in] countries where English is spoken, between a wide and a narrow sense of the word 'trust.' In the wide sense a trust exists when property is to be held or administered by one person on behalf of another or for some purpose other than his own benefit. . . . In the narrow or strict sense a trust exists when the creator of the trust . . . hands over or is bound to hand over the control of an asset which, or the proceeds of which, is to be administered by another (the trustee or administrator) in his capacity as such for the benefit of some person (beneficiary) other than the trustee or for some impersonal object. A trust in this sense is a species of the genus 'trust' in the wide sense." Tony Honoré, *The South African Law of Trusts* §§ 1-2, at 1-3 (3d ed. 1985).

> "Some courts and legal writers have defined a trust as a certain kind of right that the beneficiary has against the trustee, or a certain kind of interest that the beneficiary has against the trustee, or a certain kind of interest that the beneficiary has in the trust property, thus looking at it from the point of view of the beneficiary. While it is true that the beneficiary has the right or interest described, the trust is something more than the right or interest of the beneficiary. The trust is the whole juridical device: the legal relationship between the parties with respect to the property that is its subject matter, including not merely the duties that the trustee owes to the beneficiary and to the rest of the world, but also the rights, privileges, powers, and immunities that the beneficiary has against the trustee and against the rest of the world. It would seem proper, therefore, to define the trust either as a relationship having certain characteristics stated in the definition or perhaps as a juridical device or legal institution involving such a relationship." 1 Austin W. Scott & William F. Fratcher, *The Law of Trusts* § 2.4, at 42 (4th ed. 1987).

> "In the strict, traditional sense, a trust involves three elements: (1) a trustee, who hold the trust property and is subject to deal with it for the benefit of one or more others; (2) one or more beneficiaries, to whom and for whose benefit the trustee owes duties with respect to the trust property; and (3) trust property, which is held by the trustee for the beneficiaries. In a more comprehensive sense, the trust purpose is often included in discussions of the elements of the trusts . . . . Although all of these elements are present in a complete trust, either or both of elements (1) and (2) above may be temporarily absent without destroying the trust or preventing its creation." Restatement (Third) of Trusts § 2 cmt. f (2003).

A-B-Q trust. See *bypass trust.*

A-B trust. See *bypass trust.*

accumulation trust. A trust in which the trustee must accumulate income and gains from sales of trust assets for ultimate disposition with the principal when the trust terminates. • Many states restrict the time over which accumulations may be made or the amount that may be accumulated. [Cases: Trusts ☞ 280.]

active trust. A trust in which the trustee has some affirmative duty of management or administration besides the obligation to transfer the property to the beneficiary. — Also termed *express active trust*; *special trust*; *operative trust*. Cf. *passive trust*. [Cases: Trusts ☞135.]

Alaska trust. See *asset-protection trust* (1).

alimony trust. A trust in which the payor spouse transfers to the trustee property from which the payee spouse, as beneficiary, will be supported after a divorce or separation.

annuity trust. A trust from which the trustee must pay a sum certain annually to one or more beneficiaries for their respective lives or for a term of years, and must then either transfer the remainder to or for the use of a qualified charity or retain the remainder for such a use. • The sum certain must not be less than 5% of the initial fair market value of the property transferred to the trust by the donor. A qualified annuity trust must comply with the requirements of IRC (26 USCA) § 664. [Cases: Trusts ☞281.]

asset-protection trust. **1.** A trust designed specifically to insulate assets from the settlor's creditors. • When the trust is created using the law of a state, it is also termed a *domestic asset-protection trust*. It may also be referred to by the name of the specific state, e.g., *Alaska trust*, *Delaware trust*, or *Nevada trust*. If it is created under foreign law, even though the assets are within the United States, it is also termed an *offshore asset-protection trust*. **2.** See *self-settled trust*.

bank-account trust. See *Totten trust.*

blended trust. A trust in which the beneficiaries are a group, with no member of the group having a separable individual interest. • Courts rarely recognize these trusts.

blind trust. (1969) A trust in which the settlor places investments under the control of an independent trustee, usu. to avoid a conflict of interest. • The beneficiary has no knowledge of the trust's holdings and no right to participate in the trust's management.

bond trust. A trust whose principal consists of bonds that yield interest income.

bypass trust. (1981) A trust into which just enough of a decedent's estate passes, so that the estate can take advantage of the unified credit against federal estate taxes. See 26 USCA § 2010. — Also termed *credit-shelter trust*; *A-B trust*; *A-B-Q trust*; *marital life-estate trust*. See *unified estate-and-gift tax credit* under TAX CREDIT.

charitable lead trust. An irrevocable trust made in favor of a charity and allowing the charity to receive income from the trust property for a specified period, after which the property reverts to the settlor's estate.

charitable-remainder annuity trust. A charitable-remainder trust in which the beneficiaries receive for a specified period a fixed payment of 5% or more of the fair market value of the original principal, after which the remaining principal passes to charity. — Abbr. CRAT. — Also termed *charitable-remainder-*

trust retirement fund. [Cases: Charities ⚷6; Trusts ⚷281.]

charitable-remainder trust. A trust consisting of assets that are designated for a charitable purpose and paid over to the trust after the expiration of a life estate or intermediate estate. — Abbr. CRT. — Also termed *split-interest trust.* [Cases: Charities ⚷4.]

charitable-remainder-trust retirement fund. See *charitable-remainder annuity trust.*

charitable trust. (18c) A trust created to benefit a specific charity, specific charities, or the general public rather than a private individual or entity. • Charitable trusts are often eligible for favorable tax treatment. If the trust's terms do not specify a charity or a particular charitable purpose, a court may select a charity. See Uniform Trust Act § 405. — Also termed *public trust; charitable use.* See *charitable deduction* under DEDUCTION; CY PRES. Cf. *private trust.* [Cases: Charities ⚷1; Internal Revenue ⚷4048; Taxation ⚷2337, 3328, 3488.]

Claflin trust. See *indestructible trust.*

Clifford trust. (1941) An irrevocable trust, set up for at least ten years and a day, whereby income from the trust property is paid to the beneficiary but the property itself reverts back to the settlor when the trust expires. • These trusts were often used by parents — with their children as beneficiaries — to shelter investment income, but the Tax Reform Act of 1986 eliminated the tax advantage by imposing the kiddie tax and by taxing the income of settlors with a reversionary interest that exceeds 5% of the trust's value. This term gets its name from *Helvering v. Clifford*, 309 U.S. 331, 60 S.Ct. 554 (1940). — Also termed *short-term trust.* [Cases: Internal Revenue ⚷3362.]

common-law trust. See *business trust* under TRUST (4).

community trust. See COMMUNITY TRUST.

complete voluntary trust. See *executed trust.*

complex trust. **1.** A trust having elaborate provisions. **2.** See *discretionary trust.*

constructive trust. (18c) An equitable remedy that a court imposes against one who has obtained property by wrongdoing. • A constructive trust, imposed to prevent unjust enrichment, creates no fiduciary relationship. Despite its name, it is not a trust at all. — Also termed *implied trust; involuntary trust; trust de son tort; trust ex delicto; trust ex maleficio; remedial trust; trust in invitum.* See *trustee de son tort* under TRUSTEE. Cf. *resulting trust.* [Cases: Trusts ⚷91–111.]

> "A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee." *Beatty v. Guggenheim Exploration Co.*, 122 N.E. 378, 380 (N.Y. 1919) (Cardozo, J.).

> "It is sometimes said that when there are sufficient grounds for imposing a constructive trust, the court 'constructs a trust.' The expression is, of course, absurd. The word 'constructive' is derived from the verb 'construe,' not from the verb 'construct.' . . . The court construes the circumstances in the sense that it explains or interprets them; it does not construct them." 5 Austin W. Scott & William F. Fratcher, *The Law of Trusts* § 462.4 (4th ed. 1987).

contingent trust. An express trust depending for its operation on a future event.

credit-shelter trust. See *bypass trust.*

Crummey trust. A trust in which the trustee has the power to distribute or accumulate income and to give the beneficiary the right to withdraw an amount equal to the annual gift exclusion (or a smaller sum) within a reasonable time after the transfer. • This type of trust can have multiple beneficiaries and is often used when the beneficiaries are minors. Gifts to a *Crummey* trust qualify for the annual gift exclusion regardless of the age of the beneficiaries. The trust assets are not required to be distributed to the beneficiaries at age 21. The validity of this type of trust was established in *Crummey v. Commissioner*, 397 F.2d 82 (9th Cir. 1968). — Also termed *discretionary trust.* See CRUMMEY POWER; *annual exclusion* under EXCLUSION. Cf. *2503(c) trust.*

custodial trust. A revocable trust for which a custodial trustee is named to manage the assets for an incapacitated or disabled beneficiary. • The beneficiary does not have to be disabled or incapacitated at the time the trust is created. An adult beneficiary who is not disabled or incapacitated may terminate the trust at any time before his or her disability, incapacity, or death.

declared trust. See *express trust.*

defective trust. A trust that is treated, for income-tax purposes, as if it were the same entity as the grantor, but for estate-tax purposes is treated as an entity separate from the grantor. • Typically a trust is an independent entity that is taxed separately from the settlor. Because trust income is taxed at higher rates than individual income, the settlor may intentionally create a defect in the trust terms so that the trust's income will be taxable to the grantor. This is achieved by violating the grantor-trust rules of IRC §§ 671–677 in a way that does not affect the completeness of the gift under IRC §§ 2035–2042. A violation renders the trust "defective" because the settlor must recognize the income even if the settlor does not actually receive it. The attribution of tax liability and payment of taxes on trust income do not give the grantor an ownership in the trust, which remains separate from the settlor's estate and is not subject to estate taxes. [Cases: Internal Revenue ⚷4023.]

Delaware trust. See *asset-protection trust.*

destructible trust. (1953) A trust that can be destroyed by the happening of an event or by operation of law.

directory trust. **1.** A trust that is not completely and finally settled by the instrument creating it, but only defined in its general purpose and to be carried into

detail according to later specific directions. **2.** See *fixed trust.*

direct trust. See *express trust.*

discretionary trust. (1837) **1.** A trust in which the settlor has delegated nearly complete or limited discretion to the trustee to decide when and how much income or property is distributed to a beneficiary. • This is perhaps the most common type of trust used in estate planning. [Cases: Trusts ⚷150, 177.] **2.** See *Crummey trust.* Cf. *mandatory trust*; CRUMMEY POWER.

domestic asset-protection trust. See *asset-protection trust* (1).

donative trust. A trust that establishes a gift of a beneficial interest in property for a beneficiary. • Most trusts are donative trusts. — Also termed *gratuitous trust.* [Cases: Trusts ⚷35(1).]

donor-advised trust. A trust set up by a public charity using cash or other assets donated by a person who will act as a director of the trust. IRC (26 USCA) § 4966(d)(2). — Also termed *donor-advised fund.*

dry trust. **1.** A trust that merely vests legal title in a trustee and does not require that trustee to do anything. **2.** See *passive trust.*

dynasty trust. A generation-skipping trust funded with the amount that is permanently exempt from generation-skipping tax and designed to last more than two generations. • In 2000, a settlor could contribute $1 million to a dynasty trust. Almost half the states allow dynasty trusts, despite their potential for lasting more than 100 years. — Also termed *GST supertrust.* [Cases: Internal Revenue ⚷4224.]

educational trust. **1.** A trust to found, endow, or support a school. **2.** A trust to support someone's education.

electing small-business trust. A trust of which the beneficiaries are individuals, estates, certain charitable organizations, or certain governmental entities, who did not purchase an interest in the trust, and for which the trustee has elected to be taxed under special rules. IRC (26 USCA) § 1391(e)(1). — Abbr. ESBT.

equipment trust. See EQUIPMENT TRUST.

estate trust. A trust that is established to qualify a deceased spouse's property for the marital deduction. • The trustee may be given discretion to distribute principal or income to the donor's spouse if the donor also provides that, at the surviving spouse's death, any accumulated income and remaining principal must be distributed to the surviving spouse's estate. See *marital deduction* under DEDUCTION.

ex delicto trust (də-**lik**-toh). A trust that is created for an illegal purpose, esp. to prevent the settlor's creditors from collecting their claims out of the trust property.

executed trust. A trust in which the estates and interests in the subject matter of the trust are completely limited and defined by the instrument creating the trust and require no further instruments to complete them. — Also termed *complete voluntary trust.* [Cases: Trusts ⚷114.]

executory trust (eg-**zek**-yə-tor-ee). (18c) A trust in which the instrument creating the trust is intended to be provisional only, and further conveyances are contemplated by the trust instrument before the terms of the trust can be carried out. — Also termed *imperfect trust.* [Cases: Trusts ⚷114.]

express active trust. See *active trust.*

express private passive trust. A trust in which land is conveyed to or held by one person in trust for another, without any power being expressly or impliedly given to the trustee to take actual possession of the land or exercise any ownership rights over it, except at the beneficiary's direction. [Cases: Trusts ⚷136.]

express trust. (18c) A trust created with the settlor's express intent, usu. declared in writing; an ordinary trust as opposed to a resulting trust or a constructive trust. — Also termed *direct trust*; *declared trust.* [Cases: Trusts ⚷1–61.5.]

family-pot trust. A trust in which all the assets are kept in a single fund for the trustee to use for multiple beneficiaries (usu. children). • Family-pot trusts are typically testamentary and used to administer a donor's property until the donor's minor children have completed their education.

family trust. A trust created to benefit persons who are related to one another by blood, affinity, or law.

fixed trust. A trust in which the trustee may not exercise any discretion over the trust's management or distributions. — Also termed *directory trust*; *nondiscretionary trust.*

foreign-situs trust (**sī**-təs). A trust created under foreign law. • This type of trust usu. has no significant income-tax benefits and is subject to greater reporting requirements than a domestic trust. Because creditors cannot easily reach the foreign trust's assets, it is frequently used as a means of asset-protection. — Also termed *foreign trust*; *offshore trust.*

general trust. See *passive trust.*

generation-skipping trust. (1976) A trust that is established to transfer (usu. principal) assets to a skip person (a beneficiary more than one generation removed from the settlor). • The transfer is often accomplished by giving some control or benefits (such as trust income) of the assets to a nonskip person, often a member of the generation between the settlor and skip person. This type of trust is subject to a generation-skipping transfer tax. IRC (26 USCA) §§ 2601 et seq. See DEEMED TRANSFEROR; GENERATION-SKIPPING TRANSFER; *generation-skipping transfer tax* under TAX; SKIP PERSON. Cf. *dynasty trust.* [Cases: Internal Revenue ⚷4224.]

governmental trust. **1.** A type of charitable trust established to provide a community with facilities ordinarily supplied by the government, esp. by a municipality, and to promote purposes that are sufficiently beneficial

to the community to justify permitting the property to be perpetually devoted to those purposes. • Examples of such facilities include public buildings, bridges, streets, parks, schools, and hospitals. **2.** A type of charitable trust established for general governmental or municipal purposes, such as defraying the expenses of a governmental entity or paying the public debt. Restatement (Second) of Trusts §§ 373, 374 (1959).

grantor-retained annuity trust. An irrevocable trust into which the grantor transfers property in exchange for the right to receive fixed payments at least annually, based on original fair market value of the property transferred. • At the end of the specified time, the principal passes to a noncharitable beneficiary such as the grantor's child or grandchild. Essentially, the grantor makes to the remainderman a current gift of the right to trust assets at a specified date in the future. — Abbr. GRAT.

grantor-retained income trust. A trust in which a gift's value can be reduced by the grantor's retaining an income interest, for a specified time, in the gifted property. • At the end of the specified time, the principal passes to a noncharitable beneficiary such as the grantor's child or grandchild. Essentially, the grantor makes to the remainderman a current gift of the right to trust assets at a specified date in the future. — Sometimes shortened to *retained income trust.* — Abbr. GRIT.

grantor-retained unitrust. An irrevocable trust into which the grantor transfers property in exchange for the right to receive annual payments, the amount of which fluctuates based on the increase or decrease in the value of the property transferred. — Abbr. GRUT. Cf. *grantor-retained annuity trust.*

grantor trust. A trust in which the settlor retains control over the trust property or its income to such an extent that the settlor is taxed on the trust's income. • The types of controls that result in such tax treatment are set out in IRC (26 USCA) §§ 671–677. An example is the revocable trust.

gratuitous trust. See *donative trust.*

GST supertrust. See *dynasty trust.*

honorary trust. (1844) A noncharitable trust that is of doubtful validity because it lacks a beneficiary capable of enforcing the trust. • Examples include trusts for the care and support of specific animals, or for the care of certain graves. The modern trend is to recognize the validity of such trusts, if the trustee is willing to accept the responsibility. If the trustee fails to carry out the duties, however, a resulting trust arises in favor of the settlor's residuary legatees or next of kin. [Cases: Trusts ⚷1.]

Illinois land trust. See *land trust.*

illusory trust. (1939) An arrangement that looks like a trust but, because of powers retained in the settlor, has no real substance and is not a completed trust. [Cases: Trusts ⚷1.]

imperfect trust. See *executory trust.*

implied trust. **1.** See *constructive trust.* **2.** See *resulting trust.*

indestructible trust. (1909) A trust that, because of the settlor's wishes, cannot be prematurely terminated by the beneficiary. — Also termed *Claflin trust.*

insurance trust. A trust whose principal consists of insurance policies or their proceeds.

inter vivos trust (**in**-tər **vī**-vohs *or* **vee**-vohs). (1921c) A trust that is created and takes effect during the settlor's lifetime. — Also termed *living trust.* Cf. *testamentary trust.* [Cases: Trusts ⚷1, 58–61.]

investment trust. See *investment company* under COMPANY.

involuntary trust. See *constructive trust.*

irrevocable trust (i-**rev**-ə-kə-bəl). (1837) A trust that cannot be terminated by the settlor once it is created. • In most states, a trust will be deemed irrevocable unless the settlor specifies otherwise. [Cases: Trusts ⚷59.]

land trust. A land-ownership arrangement by which a trustee holds both legal and equitable title to land while the beneficiary retains the power to direct the trustee, manage the property, and draw income from the trust. — Also termed *Illinois land trust; naked land trust.* [Cases: Trusts ⚷140(1).]

life-insurance trust. A trust consisting of one or more life-insurance policies payable to the trust when the insured dies. [Cases: Trusts ⚷37.]

limited trust. A trust created for a limited period. Cf. *perpetual trust.*

liquidating trust. A trust designed to be liquidated as soon as possible. • An example is a trust into which a decedent's business is placed to safeguard the business until it can be sold.

living trust. See *inter vivos trust.*

mandatory trust. A trust in which the trustee must distribute all the income generated by the trust property to one or more designated beneficiaries. — Also termed *simple trust.* Cf. *discretionary trust.*

marital-deduction trust. (1953) A testamentary trust created to take full advantage of the marital deduction; esp., a trust entitling a spouse to lifetime income from the trust and sufficient control over the trust to include the trust property in the spouse's estate at death. See *marital deduction* under DEDUCTION. [Cases: Internal Revenue ⚷4169.]

marital life-estate trust. See *bypass trust.*

Massachusetts trust. See *business trust* under TRUST (4).

Medicaid-qualifying trust. (1989) A trust deemed to have been created in an effort to reduce someone's assets so that the person may qualify for Medicaid, and that will be included as an asset for purposes of determining the person's eligibility. • A person who wants to apply and qualify for Medicaid, but who has too many assets to qualify, will sometimes set

up a trust — or have a spouse or custodian set up a trust — using the applicant's own assets, under which the applicant may be the beneficiary of all or part of the payments from the trust, which are distributed by a trustee with discretion to make trust payments to the applicant. Such a trust may be presumed to have been established for the purpose of attempting to qualify for Medicaid, and may be counted as an asset of the applicant, resulting in a denial of benefits and the imposition of a penalty period during which the applicant cannot reapply. Nonetheless, Medicaid rules allow three types of trusts that do not impair Medicaid eligibility, since the trust assets are not considered the beneficiary's property: *Miller trust, pooled trust*, and *under-65 trust*. [Cases: Health ⚷471(6).]

Miller trust. An irrevocable trust funded with the income of an incompetent beneficiary who seeks to qualify for Medicaid in a state with an income cap. • Funding is strictly limited to the beneficiary's income (from any source). The assets in the trust are not included in the beneficiary's estate for Medicaid purposes if the trust assets will be used to reimburse the state after the beneficiary's death. Trust distributions are kept below the income cap in order to preserve the beneficiary's Medicaid eligibility. This type of trust was first judicially sanctioned in *Miller v. Ibarra*, 746 F.Supp. 19 (D. Colo. 1990). — Also termed *Miller's trust; qualified income trust.*

ministerial trust. See *passive trust.*

minor's trust. See *2503(c) trust.*

mixed trust. A trust established to benefit both private individuals and charities.

naked land trust. See *land trust.*

naked trust. See *passive trust.*

Nevada trust. See *asset-protection trust* (1).

nominal trust. See *passive trust.*

nominee trust. **1.** A trust in which the beneficiaries have the power to direct the trustee's actions regarding the trust property. **2.** An arrangement for holding title to real property under which one or more persons or corporations, under a written declaration of trust, declare that they will hold any property that they acquire as trustees for the benefit of one or more undisclosed beneficiaries. — Also termed (in sense 2) *realty trust*. [Cases: Trusts ⚷133–140.]

nondiscretionary trust. See *fixed trust.*

nongrantor-owner trust. A trust in which the beneficiary has an unrestricted power to vest the principal or interest in him or herself. IRC (26 USCA) § 678. — Also termed *678 trust.*

offshore asset-protection trust. See *asset-protection trust* (1).

offshore trust. See *foreign-situs trust.*

onerous trust. A trust that places exceptionally heavy and time-consuming duties of responsibility and care on the trustee, often without providing for compensation. • Because of the burden and inequity of requiring the trust to be administered voluntarily, courts often grant a trustee a reasonable sum for the tasks performed.

oral trust. **1.** A trust created by the settlor's spoken statements as opposed to a written agreement. • Trusts of real property must usu. be in writing (because of the statute of frauds). Trusts of personal property may be created orally but require clear and convincing evidence to show that an oral trust was created. Uniform Trust Act § 8407. — Also termed *parol trust*. [Cases: Trusts ⚷17.] **2.** A trust created by operation of law, such as a resulting trust or a constructive trust.

parol trust. See *oral trust* (1).

passive trust. A trust in which the trustee has no duty other than to transfer the property to the beneficiary. — Also termed *dry trust; general trust; nominal trust; simple trust; naked trust; ministerial trust; technical trust*. See *bare trustee* under TRUSTEE. Cf. *active trust*. [Cases: Trusts ⚷136.]

pension trust. An employer-funded pension plan; esp., a pension plan in which the employer transfers to trustees amounts sufficient to cover the benefits payable to the employees. [Cases: Labor and Employment ⚷400.]

perpetual trust. A trust that is to continue as long as the need for it continues, such as for the lifetime of a beneficiary or the term of a particular charity. Cf. *limited trust.*

personal-residence trust. An irrevocable trust to which the settlor transfers ownership of his or her personal residence while retaining the right to live there for a specified term of years. • The trust cannot hold any assets other than the residence and proceeds resulting from damage to or destruction of the residence. Cf. *qualified personal-residence trust*. [Cases: Trusts ⚷1.]

personal trust. See *private trust.*

pet trust. An honorary trust that is established for the care and maintenance of a particular animal or group of animals. • Pet trusts are generally invalid because animals are incapable of compelling a trustee to act, and animals have no standing in law. Effectively, the trust has no beneficiary. But some states (e.g., Colorado) statutorily recognize these trusts as valid. Pet trusts are covered in the Uniform Trust Code (§ 408).

pooled-income fund. See POOLED-INCOME FUND.

pooled trust. An irrevocable, discretionary trust that (1) is established and managed by a nonprofit association, (2) is funded with the assets of disabled persons, and (3) maintains a separate trust account for each beneficiary, but (4) pools the trust assets for investment purposes. • If the trust provides for distribution of a deceased beneficiary's interest to the state in reimbursement of Medicaid expenditures, a

pooled-trust beneficiary may be eligible for Medicaid benefits. The assets contributed to the trust for the individual's benefit are not treated as the beneficiary's property. — Also termed *pooled-assets trust*. [Cases: Trusts ⚷11(1).]

pourover trust. (1981) An inter vivos trust that receives property (usu. the residual estate) from a will upon the testator's death. Cf. *pourover will* under WILL.

power-of-appointment trust. (1848) A trust in which property is left in trust for the surviving spouse. • The trustee must distribute income to the spouse for life, and the power of appointment is given to the spouse or to his or her estate. A power-of-appointment trust is commonly used to qualify property for the marital deduction. See *marital deduction* under DEDUCTION.

precatory trust (**prek**-ə-tor-ee). (1878) A trust that the law will recognize to carry out the wishes of the testator or grantor even though the statement in question is in the nature of an entreaty or recommendation rather than a command. [Cases: Trusts ⚷29.]

presumptive trust. See *resulting trust*.

private trust. A trust created for the financial benefit of one or more designated beneficiaries rather than for the public benefit; an ordinary trust as opposed to a charitable trust. • Three elements must be present for a private trust: (1) the demonstrated intent of the settlor, (2) trust property (as *res*), and (3) a certain beneficiary capable of enforcing the trust. — Also termed *personal trust*. Cf. *charitable trust*. [Cases: Trusts ⚷1.]

protective trust. A trust that is designed to protect the trust property to ensure the continued support of the beneficiary. [Cases: Trusts ⚷152.]

> "In a broad sense, a spendthrift, support, or other similarly protective trust is one created to provide a fund for the maintenance of the beneficiary and at the same time to secure it against the beneficiary's improvidence or incapacity." 76 Am. Jur. 2d *Trusts* § 121 (1992).

public trust. See *charitable trust*.

purchase-money resulting trust. A resulting trust that arises when one person buys property but directs the seller to transfer the property and its title to another. • Although a purchase-money resulting trust is properly understood as a court-imposed equitable remedy rather than as a true trust, the buyer is occasionally referred to as the "beneficiary" and the titleholder as the "trustee." — Abbr. PMRT. [Cases: Trusts ⚷72–83.]

QTIP trust (**kyoo**-tip). (1985) A trust that is established to qualify for the marital deduction. • Under this trust, the assets are referred to as qualified-terminable-interest property, or QTIP. See *qualified-terminable-interest property* under PROPERTY. Cf. *qualified domestic trust*. [Cases: Internal Revenue ⚷4169(4).]

qualified domestic trust. A trust for a noncitizen spouse qualifying for the marital deduction. See 26 USCA § 2056(d). — Abbr. QDOT. See *marital deduction* under DEDUCTION. Cf. *QTIP trust*.

qualified income trust. See *Miller trust*.

qualified personal-residence trust. An irrevocable trust that is funded with cash and the personal residence of the grantor, who retains the right to dwell in the residence for a specified term of years. • The trust may receive and hold additional cash to pay for trust expenses, mortgage installments, and improvements to the residence. — Abbr. QPRT. Cf. *personal-residence trust*. [Cases: Trusts ⚷1.]

qualified S-corporation trust. A trust that (1) owns stock in one or more S corporations, (2) distributes all income to one individual (who must be a United States citizen or resident), (3) requires only one beneficiary at a time, and (4) requires the income-beneficiary-elect to have the trust qualify as a QSST. • The trust is rarely termed a *qualified subchapter-S corporation trust* but the common abbreviation is *QSST*, not *QSCT*.

rabbicular trust. A rabbi trust that protects the trust assets against the claims of the employer's creditors by converting to a secular trust if the employer funding the trust becomes insolvent. • The term is a portmanteau word from *rabbi* and *secular*. Cf. *rabbi trust*; *secular trust*.

rabbi trust. *Slang.* An irrevocable grantor trust whose assets remain subject to the claims of the grantor's general creditors, and from which benefits are paid to the grantor's employees if a stipulated event occurs. • A rabbi trust is a form of nonqualified deferred-compensation plan. Because the trust can be reached by creditors, the participants can avoid being taxed on the constructive receipt of the benefits held in the trust. Its name derives from the IRS letter ruling that approved its use by a synagogue. Priv. Ltr. Rul. 81-13-107 (Dec. 31, 1980). Cf. *rabbicular trust*; *secular trust*. [Cases: Labor and Employment ⚷431.]

real-estate investment trust. See REAL-ESTATE INVESTMENT TRUST.

real-estate mortgage trust. See REAL-ESTATE MORTGAGE TRUST.

realty trust. See *nominal trust* (2).

reciprocal trust. A trust arrangement between two parties in which one party is beneficiary of a trust established by the other party, and vice versa. • Such trusts are common between husband and wife.

remedial trust. See *constructive trust*.

resulting trust. (18c) A remedy imposed by equity when property is transferred under circumstances suggesting that the transferor did not intend for the transferee to have the beneficial interest in the property. — Also termed *implied trust*; *presumptive trust*. Cf. *constructive trust*. [Cases: Trusts ⚷62–90.]

retained income trust. See *grantor-retained income trust.*

revocable trust (**rev**-ə-kə-bəl). A trust in which the settlor reserves the right to terminate the trust and recover the trust property and any undistributed income. [Cases: Trusts ☞59.]

savings-account trust. See *Totten trust.*

savings-bank trust. See *Totten trust.*

secret trust. An instrument, usu. a will, that appears to give an absolute gift to another although the donee has orally agreed with the grantor that he or she is to use the property for the benefit of some third party. • Courts admit evidence of the promise to prevent unjust enrichment and enforce it by imposing the remedy of a constructive trust upon the reneging "trustee." Cf. *semi-secret trust.* [Cases: Trusts ☞35(3).]

secular trust. An irrevocable trust, funded by an employer, that protects an employee-beneficiary's deferred compensation from the claims of creditors during an employer's bankruptcy or insolvency. • The trust provides the employee-beneficiary with exclusive rights. The employee enjoys security since the trust is funded and the funds are beyond the reach of creditors and immune from forfeiture, but the employee cannot defer income recognition. Cf. *rabbicular trust*; *rabbi trust.*

self-settled trust. (1969) A trust in which the settlor is also the person who is to receive the benefits from the trust, usu. set up in an attempt to protect the trust assets from creditors. • In most states, such a trust will not protect trust assets from the settlor's creditors. Restatement (Second) of Trusts § 156 (1959). — Also termed *asset-protection trust.*

semi-secret trust. An instrument that indicates who is to serve as a trustee but fails to identify either the beneficiary or the terms of the trust, or both. • Traditionally, this trust was deemed to fail for want of an ascertainable beneficiary. But the modern view is to provide the same relief as that given for a secret trust: to receive evidence of the donor's intent, including the intended beneficiary, and impose a constructive trust in his or her favor. Cf. *secret trust.* [Cases: Trusts ☞1, 64.]

shifting trust. An express trust providing that, upon a specified contingency, it may operate in favor of an additional or substituted beneficiary.

short-term trust. See *Clifford trust.*

simple trust. **1.** See *mandatory trust.* **2.** See *passive trust.*

678 trust. See *nongrantor-owner trust.*

special-needs trust. See *supplemental-needs trust.*

special trust. See *active trust.*

spendthrift trust. (1878) **1.** A trust that prohibits the beneficiary's interest from being assigned and also prevents a creditor from attaching that interest; a trust by the terms of which a valid restraint is imposed on the voluntary or involuntary transfer of the beneficiary's interest. [Cases: Trusts ☞12, 141, 152.] **2.** A similar trust in which the restraint on alienation results from a statute rather than from the settlor's words in the trust instrument.

> "**Origin of the term 'spendthrift trust.'** The phrase 'spendthrift trust' seems to have been first used, as might be expected, in Pennsylvania. The earliest instance in which a use of the phrase has been found was in 1875, when it appeared in the syllabus of a case, though the court did not use it in its opinion. Four years later, in *Overman's Appeal* [88 Pa. 276 (1879)], the phrase is found in the auditor's report (in italics), while the opinion of the court in the same case refers to the trust in question as 'a trust for a spendthrift as it is termed' [*id.* at 278]. That the phrase had not become familiar by 1882 is indicated by *Thackara v. Mintzer* [100 Pa. 151 (1882)], where the head note refers to a 'spendthrift son trust,' but the court does not use that or any similar phrase. And in 1883, in the first edition of his Restraints on Alienation, [John Chipman] Gray used the phrase only rarely, and then spoke rather apologetically of 'spendthrift trusts so called.' In the second edition of this book, published twelve years later, the use of the phrase is frequent." Erwin N. Griswold, *Spendthrift Trusts* § 33, at 32 (2d ed. 1947).

split-interest trust. See *charitable-remainder trust.*

spray trust. See *sprinkle trust.*

sprinkle trust. A trust in which the trustee has discretion to decide how much will be given to each beneficiary. — Also termed *spray trust.* See SPRINKLE POWER.

standby trust. A trust created to manage a person's assets while he or she is out of the country or disabled. Trusts ☞14.]

supplemental-needs trust. A trust established to provide supplemental income for a disabled beneficiary who is receiving or may be eligible to receive government benefits. • This type of irrevocable trust is often used by parents of disabled children to ensure the beneficiary's eligibility for government benefits by expressly prohibiting distributions that may be used for the beneficiary's food, shelter, or clothing. [Cases: Trusts ☞11(1).]

support trust. (1946) A discretionary trust in which the settlor authorizes the trustee to pay to the beneficiary as much income or principal as the trustee believes is needed for support, esp. for "comfortable support" or "support in accordance with the beneficiary's standard of living." • The beneficiary's interest cannot be voluntarily transferred, but creditors who provide necessaries can usu. reach it; general creditors cannot. [Cases: Trusts ☞127.]

technical trust. See *passive trust.*

tentative trust. See *Totten trust.*

testamentary trust (tes-tə-**men**-tə-ree *or* -tree). (1832) A trust that is created by a will and takes effect when the settlor (testator) dies. — Also termed *trust under will.* Cf. *inter vivos trust.* [Cases: Wills ☞669–694.]

Totten trust. (1931) A revocable trust created by one's deposit of money, typically in a savings account, in

the depositor's name as trustee for another. • A Totten trust is an early form of "pay on death" account, since it creates no interest in the beneficiary unless the account remained at the depositor's death. Its name derives from the earliest decision in which the court approved the concept, even though the formalities of will execution were not satisfied: *In re Totten*, 71 N.E. 748 (N.Y. 1904). A Totten trust is commonly used to indicate a successor to the account without having to create a will, and thus it is a will substitute. — Also termed *tentative trust*; *bank-account trust*; *savings-account trust*; *savings-bank trust*; *trustee bank account*. [Cases: Trusts ⚷34(1).]

"A deposit by one person of his own money, in his own name as trustee for another, standing alone, does not establish an irrevocable trust during the lifetime of the depositor. It is a tentative trust merely, revocable at will, until the depositor dies or completes the gift in his lifetime by some unequivocal act or declaration, such as delivery of the pass book or notice to the beneficiary. In case the depositor dies before the beneficiary without revocation, or some decisive act or declaration of disaffirmance, the presumption arises that an absolute trust was created as to the balance on hand at the death of the depositor." *In re Totten*, 179 N.Y. 112, 125-26 (1904) (Vann, J.).

transgressive trust. A trust that violates the rule against perpetuities. See RULE AGAINST PERPETUITIES.

trust de son tort (də sawn [*or* son] **tor**[**t**]). See *constructive trust.*

trust ex delicto. See *constructive trust.*

trust ex maleficio. See *constructive trust.*

trust for support. A trust that, by its terms, provides that the trustee must pay or apply only as much of the income and principal as is necessary for the education and support of the beneficiary. [Cases: Trusts ⚷276, 280.]

trust in invitum. See *constructive trust.*

trust under will. See *testamentary trust.*

2503(b) trust. A trust that requires a distribution of income to the beneficiary at least annually, and provides that gifts to the trust qualifying as gifts of a present interest become eligible for the annual gift-tax exclusion. • It is named after the section of the IRS code on which it is based. IRC (26 USCA) § 2503(b). [Cases: Internal Revenue ⚷4206.]

2503(c) trust. A trust with only one beneficiary, who must be a minor and must have the power to withdraw all assets from the trust upon attaining the age of 21. • This type of trust derives its name from the requirements set forth in IRC (26 USCA) § 2503(c). Although the trust may continue after the beneficiary turns 21, gifts to the trust will no longer qualify for the annual exclusion if the beneficiary has no immediate right to withdraw the gift. — Also termed *minor's trust.* [Cases: Internal Revenue ⚷4206.30.]

under-65 trust. A discretionary trust established for the sole benefit of a Medicaid recipient who is under the age of 65. • This type of trust may be established by anyone except the beneficiary, who must be less than 65 years old at the time of creation. The assets in trust will not be included in the beneficiary's estate for purposes of determining Medicaid eligibility. The beneficiary may receive distributions from the trust during life, but any balance remaining in the trust must be used to reimburse the state for the beneficiary's Medicaid expenditures.

unit-investment trust. **1.** A trust in which funds are pooled and invested in income-producing securities. • Units of the trust are sold to investors, who maintain an interest in the trust in proportion to their investment. **2.** An investment company that gives a shareholder an undivided interest in a fixed pool of securities held by the trustee. • This type of company can be organized in several ways (as by trust indenture, contract of custodianship or agency, or similar instrument), but is most commonly organized with a trust indenture. Such a company does not have a board of directors and issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities. 15 USCA § 80a-4. See *investment company* under COMPANY.

unitrust. (1971) A trust from which a fixed percentage of the fair market value of the trust's assets, valued annually, is paid each year to the beneficiary. [Cases: Trusts ⚷276.]

voluntary trust. **1.** A trust that is not founded on consideration. • One having legal title to property may create a voluntary trust by (1) declaring that the property is to be held in trust for another, and (2) transferring the legal title to a third person who acts as trustee. [Cases: Trusts ⚷13.] **2.** An obligation arising out of a personal confidence reposed in, and voluntarily accepted by, one for the benefit of another.

voting trust. A trust used to hold shares of voting stock in a closely held corporation, usu. transferred from a parent to a child, and empowering the trustee to exercise the right to vote. • The trust acts as custodian of the shares but is not a stockholder. Cf. VOTING GROUP. [Cases: Corporations ⚷198.1(1).]

"At common law there was great suspicion of voting trusts. One commentator described a voting trust as 'little more than a vehicle for corporate kidnapping.' This attitude has largely disappeared. State statutes now uniformly recognize the validity of voting trusts and they have received a more hospitable judicial reception." Robert W. Hamilton, *The Law of Corporations in a Nutshell* 199 (3d ed. 1991).

wasting trust. A trust in which the trust property is gradually depleted by periodic payments to the beneficiary.

4. A business combination that aims at monopoly. See ANTITRUST LAW.

business trust. A form of business organization, similar to a corporation, in which investors receive transferable certificates of beneficial interest instead of stock shares. — Also termed *Massachusetts trust*; *common-law trust.* [Cases: Internal Revenue ⚷4206; Joint-Stock Companies and Business Trusts ⚷1, 8.]

"The business trust was developed in Massachusetts from 1910 to 1925 to achieve limited liability and to avoid restrictions then existing there on a corporation's acquiring and developing real estate, by adoption of the trust device . . . ." Henry G. Henn & John R. Alexander, *Laws of Corporations* § 58, at 117 (3d ed. 1983).

common-law trust. See *business trust.*

Massachusetts trust. See *business trust.*

trust account. See CLIENT TRUST ACCOUNT.

trust agreement. See *declaration of trust* (2) under DECLARATION (1).

trustbuster, *n.* A person — esp. a federal officer — who seeks the dissolution of business trusts under the antitrust laws. See *business trust* under TRUST (4).

trust certificate. See EQUIPMENT TRUST CERTIFICATE.

trust company. See COMPANY.

trust corporation. See *trust company* under COMPANY.

trust deed. 1. See *declaration of trust* (2) under DECLARATION (1). **2.** See *deed of trust* under DEED.

trust de son tort (də sawn [*or* son] **tor**[**t**]). See *constructive trust* under TRUST.

trust distribution. See DISTRIBUTION.

trustee (trəs-**tee**), *n.* (17c) **1.** One who stands in a fiduciary or confidential relation to another; esp., one who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary. • Generally, a trustee's duties are to convert to cash all debts and securities that are not qualified legal investments, to reinvest the cash in proper securities, to protect and preserve the trust property, and to ensure that it is employed solely for the beneficiary, in accordance with the directions contained in the trust instrument. [Cases: Trusts ⚷133, 171.]

bare trustee. A trustee of a passive trust. • A bare trustee has no duty other than to transfer the property to the beneficiary. See *passive trust* under TRUST.

corporate trustee. (1852) A corporation that is empowered by its charter to act as a trustee, such as a bank or trust company.

indenture trustee. A trustee named in a trust indenture and charged with holding legal title to the trust property; a trustee under an indenture.

joint trustee. See COTRUSTEE.

judicial trustee. (18c) A trustee appointed by a court to execute a trust.

quasi-trustee. (1830) One who benefits from a breach of a trust to a great enough degree to become liable as a trustee.

successor trustee. (1866) A trustee who succeeds an earlier trustee, usu. as provided in the trust agreement. [Cases: Trusts ⚷169, 243.]

testamentary trustee (tes-tə-**men**-tə-ree *or* -tree). (1811) A trustee appointed by or acting under a will; one appointed to carry out a trust created by a will. [Cases: Wills ⚷681.]

township trustee. One of a board of officers to whom, in some states, a township's affairs are entrusted. [Cases: Towns ⚷28.]

trustee ad litem (ad **lī**-tem *or* -təm). (1921) A trustee appointed by the court.

trustee de son tort (də sawn [*or* son] **tor**[**t**]). (1857) A person who, without legal authority, administers a living person's property to the detriment of the property owner. See *constructive trust* under TRUST. [Cases: Trusts ⚷170.]

trustee ex maleficio (eks mal-ə-**fish**-ee-oh). (1837) A person who is guilty of wrongful or fraudulent conduct and is held by equity to the duty of a trustee, in relation to the subject matter, to prevent him or her from profiting from the wrongdoing.

2. *Bankruptcy.* A person appointed by the U.S. Trustee or elected by creditors or appointed by a judge to administer the bankruptcy estate during a bankruptcy case. • The trustee's duties include (1) collecting and reducing to cash the assets of the estate, (2) operating the debtor's business with court approval if appropriate to preserve the value of business assets, (3) examining the debtor at a meeting of creditors, (4) filing inventories and making periodic reports to the court on the financial condition of the estate, (5) investigating the debtor's financial affairs, (6) examining proofs of claims and objecting to improper claims, (7) furnishing information relating to the bankruptcy to interested parties, and (8) opposing discharge through bankruptcy, if advisable. A trustee is appointed or elected in every Chapter 7 case, and is appointed in every Chapter 12 and Chapter 13 case under the Bankruptcy Code. A trustee is not appointed or elected in a Chapter 11 case unless the court finds that a trustee is needed and appoints one. In most Chapter 11 cases, the bankruptcy estate is administered by the debtor in possession, rather than by a trustee. The role of a bankruptcy trustee varies depending on the type of bankruptcy case. 11 USCA §§ 701–03, 1104, 1202. — Also termed (in sense 2) *bankruptcy trustee; trustee in bankruptcy.* See UNITED STATES TRUSTEE. [Cases: Bankruptcy ⚷3001–3011.]

interim trustee. A bankruptcy trustee appointed to perform all the functions and duties of a trustee until the regular trustee is selected and qualified. • Before the meeting of creditors, the interim trustee often preliminarily investigates the debtor's assets and financial affairs. [Cases: Bankruptcy ⚷3002.]

3. DIRECTOR (2). **4.** *Parliamentary law.* An officer who audits an organization's finances.

trustee, *vb.* (1818) **1.** To serve as trustee. **2.** To place (a person or property) in the hands of one or more trustees. **3.** To appoint (a person) as trustee, often of a bankrupt's estate in order to restrain a creditor from collecting moneys due. **4.** To attach (the effects of a debtor) in the hands of a third person.

trustee, U.S. See UNITED STATES TRUSTEE.

trustee bank account. See *Totten trust* under TRUST.

trustee in bankruptcy. See TRUSTEE (2).

trustee process. See FACTORIZING PROCESS.

trusteeship. 1. The office, status, or function of a trustee. **2.** *Int'l law.* Administration or supervision of a territory by one or more countries, esp. under a U.N. trusteeship council. Cf. MANDATE (6).

trust estate. See CORPUS (1).

trust ex delicto. See *constructive trust* under TRUST.

trust ex maleficio. See *constructive trust* under TRUST.

trust fund. (18c) The property held in a trust by a trustee; CORPUS (1). [Cases: Trusts ⚷1.]

common trust fund. (1852) A trust fund set up within a trust department to combine the assets of numerous small trusts to achieve greater investment diversification. • Common trust funds are regulated by state law.

pooled-income fund. See POOLED-INCOME FUND.

trust-fund doctrine. (1892) The principle that the assets of an insolvent company, including paid and unpaid subscriptions to the capital stock, are held as a trust fund to which the company's creditors may look for payment of their claims. • The creditors may follow the property constituting this fund, and may use it to reduce the debts, unless it has passed into the hands of a bona fide purchaser without notice. — Also termed *trust-fund theory.* [Cases: Corporations ⚷544(2).]

trust indenture. See INDENTURE.

Trust Indenture Act. A federal law, enacted in 1939, designed to protect investors of certain types of bonds by requiring that (1) the SEC approve the trust indenture, (2) the indenture include certain protective clauses and exclude certain exculpatory clauses, and (3) the trustees be independent of the issuing company. 15 USCA §§ 77aaa et seq. • The Act is administered by the U.S. Securities and Exchange Commission. [Cases: Securities Regulation ⚷29.10–29.14.]

trust indorsement. See INDORSEMENT.

trust in invitum (in in-VI-təm). See *constructive trust* under TRUST.

trust instrument. See *declaration of trust* (2) under DECLARATION (1).

trust legacy. See LEGACY.

trust officer. See OFFICER (1).

trustor. (1855) One who creates a trust; SETTLOR (1).

trust ownership. See OWNERSHIP.

trust power. See *beneficial power* under POWER (5).

trust process. See PROCESS.

trust property. See CORPUS (1).

trust receipt. 1. A pre-UCC security device — now governed by Article 9 of the Code — consisting of a receipt stating that the wholesale buyer has possession of the goods for the benefit of the financier. • Today there must usu. be a security agreement coupled with a filed financing statement. [Cases: Chattel Mortgages ⚷9; Sales ⚷454.] **2.** A method of financing commercial transactions by which title passes directly from the manufacturer or seller to a banker or lender, who as owner delivers the goods to the dealer on whose behalf the banker or lender is acting, and to whom title ultimately goes when the banker's or lender's primary right has been satisfied.

trust relationship. See RELATIONSHIP.

trust res (reez *or* rays). See CORPUS (1).

trust territory. See TERRITORY.

trust under will. See *testamentary trust* under TRUST.

trusty, *n.* (1855) A convict or prisoner who is considered trustworthy by prison authorities and therefore given special privileges. [Cases: Prisons ⚷113, 170.]

truth. (bef. 12c) **1.** A fully accurate account of events; factuality. **2.** *Defamation.* An affirmative defense by which the defendant asserts that the alleged defamatory statement is substantially accurate. [Cases: Libel and Slander ⚷54.]

Truth in Lending Act. See CONSUMER CREDIT PROTECTION ACT. — Abbr. TILA.

truth-seeker. One who strives to reveal the truth <the trial lawyer should be a truth-seeker>.

truth, the whole truth, and nothing but the truth. The words used in the common oath administered to a witness who is about to testify <do you swear or affirm that you shall tell the truth, the whole truth and nothing but the truth?>. • The purpose of the second part of the oath is to preclude the possibility of *supressio veri*; the purpose of the third part is to preclude the possibility of *suggestio falsi.* See SUPPRESSIO VERI; SUGGESTIO FALSI. [Cases: Oath ⚷5; Witnesses ⚷227.]

try, *vb.* (13c) To examine judicially; to examine and resolve (a dispute) by means of a trial.

try title. The judicial examination of a title. See TRESPASS TO TRY TITLE; *action to quiet title* under ACTION (4).

TSCA. *abbr.* Toxic Substances Control Act. 42 USCA §§ 2601 et seq. [Cases: Environmental Law ⚷413.]

TTB. *abbr.* ALCOHOL AND TOBACCO TAX AND TRADE BUREAU.

tubman (təb-mən). *Hist.* A junior barrister in the Court of Exchequer who made motions that were second in precedence to those of the postman. • The tubman was so called because he stood by a tub anciently used as a measure of capacity. Cf. POSTMAN.

Tucker Act. A federal law enacted in 1887 to ameliorate the inadequacies of the original authority of the Court of Claims by extending that court's jurisdiction to include (1) claims founded on the Constitution, a federal statute, or a federal regulation, and (2) damage claims in cases not arising in tort. [Cases: Federal Courts ⚷1071.]

turncoat witness. See WITNESS.

turnkey, *adj.* (1927) **1.** (Of a product) provided in a state of readiness for immediate use <a turnkey computer

network>. **2.** Of, relating to, or involving a product provided in this manner <a turnkey contract>.

turnkey, *n.* A jailer; esp., one charged with keeping the keys to a jail or prison.

turnkey contract. See *engineering, procurement, and construction contract* under CONTRACT.

turnkey drilling contract. See DRILLING CONTRACT.

turnover duty. *Maritime law.* A shipowner's obligation to provide safe working conditions and to give notice of any nonobvious hazards regarding instruments and areas that the shipowner turns over to the stevedore and longshoremen while the ship is being loaded or unloaded. Cf. ACTIVE-OPERATIONS DUTY; INTERVENTION DUTY. [Cases: Shipping ⇨84(3).]

turnover order. See ORDER (2).

turn state's evidence, *vb.* (1846) To cooperate with prosecutors and testify against other criminal defendants <after hours of intense negotiations, the suspect accepted a plea bargain and agreed to turn state's evidence>.

turntable doctrine. See ATTRACTIVE-NUISANCE DOCTRINE.

turpis causa (**tər**-pis **kaw**-zə). [Latin "immoral consideration"] See *immoral consideration* under CONSIDERATION (1).

turpitude (**tər**-pə-t[y]ood). See MORAL TURPITUDE.

tutela (t[y]oo-**tee**-lə), *n.* [Latin "tutelage"] *Roman law.* A type of guardianship either for those not having reached puberty (*tutela impuberum*) or for women (*tutela mulierum*). • The guardian was called the *tutor*, the ward the *pupillus*. Guardians for women no longer existed in Justinian's time. Cf. CURA.

tutelage (**t[y]oo**-tə-lij), *n.* **1.** The act of protecting or guiding; guardianship. **2.** *Int'l law.* The state of being under the care and management of an international organization such as the League of Nations or United Nations. • This term applies, for example, to the status of a people who do not yet benefit from a fully operational government of their own — such as people displaced by war and living in a territory that will in the future be given its autonomy.

tutor, *n.* **1.** One who teaches; esp., a private instructor. Pl. **tutors.** **2.** *Roman & civil law.* A guardian of a minor; a person appointed to have the care of the minor's person and estate. • The guardian of a minor past the age of puberty is called a *curator* and has duties somewhat different from those of a tutor. Pl. ***tutores.*** [Cases: Guardian and Ward ⇨10, 17.]

tutor dativus (**t[y]oo**-tor [*or* -ər] də-**tī**-vəs). [Latin] *Roman law.* A tutor appointed by the court upon application. Pl. ***tutores dativi.***

tutor gerens (**t[y]oo**-tor [*or* -tər] **jeer**-enz). [Latin] *Roman law.* A tutor who, though not sole tutor, actually administered the ward's affairs. Pl. ***tutores gerentes.***

tutor legitimus (**t[y]oo**-tor [*or* -ər] lə-**jit**-i-məs). [Latin] *Roman law.* A tutor-at-law; a tutor by virtue of the relationship with the pupil, such as a paternal uncle. Pl. ***tutores legitimi.***

tutor testamentarius (**t[y]oo**-tor [*or* -ər] tes-tə-men-**tair**-ee-əs). [Latin] *Roman law.* A tutor appointed by will to have the guardianship over the testator's children. Pl. ***tutores testamentarii.***

undertutor. *Civil law.* A person appointed by a court to represent a minor under the care of a tutor when the interests of the minor conflict with that of the tutor. See TUTORSHIP. [Cases: Guardian and Ward ⇨12.]

tutorio nomine (t[y]oo-**tor**-ee-oh **nahm**-ə-nee). [Latin] *Hist.* In the name and character of tutor.

tutor legitimus. See TUTOR.

tutorship. *Civil law.* The office and power of a tutor; the power that an individual has, *sui juris*, to take care of one who cannot care for himself or herself. • The four types of tutorship are (1) tutorship by nature, (2) tutorship by will, (3) tutorship by the effect of the law, and (4) tutorship by judicial appointment. La. Civ. Code art. 247. [Cases: Guardian and Ward ⇨1.]

dative tutorship. *Civil law.* Tutorship that arises from a court's appointment, usu. on the advice of the family. — Also termed *dative curatorship*; *tutorship by judicial appointment.* [Cases: Guardian and Ward ⇨10.]

legal tutorship. *Civil law.* Tutorship that is bestowed by statute and does not require a court's or family's approval. • For example, a spouse has the legal tutorship of the incompetent spouse. — Also termed *tutorship by the effect of the law.* [Cases: Guardian and Ward ⇨10.]

tutorship by judicial appointment. *Civil law.* See *dative tutorship.*

tutorship by nature. **1.** Tutorship of a minor child that belongs by right to a surviving parent. **2.** Tutorship of a minor child that belongs to the parent under whose care the child has been placed following divorce or judicial separation. • If the parents are awarded joint custody, both have cotutorship and equal authority, privileges, and responsibilities. La. Civ. Code art. 250. [Cases: Child Custody ⇨1.]

tutorship by the effect of the law. *Civil law.* See *legal tutorship.*

tutorship by will. Tutorship that is created (1) by the will of the parent who dies last, or (2) by any declaration of the surviving father or mother (or the parent who is the curator of the other spouse), executed before a notary and two witnesses. La. Civ. Code art. 257.

tutor testamentarius. See TUTOR.

tutory (**t[y]oo**-tər-ee). **1.** Guardianship; charge. **2.** Tutorage; tutelage. — Also spelled *tutry*; *tutoury.* Cf. TUTELAGE (1).

tutrix. *Archaic.* A female tutor. See TUTOR (2).

tutus accessus non fuit (t[y]oo-təs ak-ses-əs non fyoo-it). [Latin] *Hist.* There was no safe access.

TVA. *abbr.* TENNESSEE VALLEY AUTHORITY.

Twelfth Amendment. The constitutional amendment, ratified in 1804, that altered the electoral-college system by separating the balloting for presidential and vice-presidential candidates. • In 1800, members of the Electoral College could cast votes only for the office of President, and Thomas Jefferson and his running mate Aaron Burr each received the same number of votes. The House of Representatives had to break the tie. [Cases: United States ⚷25.]

twelve-day rule. *Criminal procedure.* A rule in some jurisdictions requiring that a person charged with a felony be given a preliminary examination no later than 12 days after the arraignment on the original warrant. [Cases: Criminal Law ⚷264.]

twelve-month liquidation. See LIQUIDATION.

Twelve Tables. *Roman law.* The earliest surviving legislation enacted by the Romans, written on 12 tablets in the 5th century B.C. • The Tables set out many rights and duties of Roman citizens, including debtors' rights, family law, wills, torts, civil procedure, and some public law. They substituted a written body of laws, easily accessible and binding on all citizens of Rome, for an unwritten usage accessible to only a few. The law of the Twelve Tables was also known as the *Lex Duodecim Tabularum.*

> "The Twelve Tables continued to be recognized for many centuries as the fundamental law of the Romans; they did not formally lose this character until it was taken from them by the legislation of Justinian." James Hadley, *Introduction to Roman Law* 74–75 (1881).

Twentieth Amendment. The constitutional amendment, ratified in 1933, that changed the date of the presidential and vice-presidential inaugurations from March 4 to January 20, and the date for congressional convention from March 4 to January 3, thereby eliminating the short session of Congress, during which a number of members sat who had not been reelected to office. — Also termed *lame-duck amendment.* [Cases: United States ⚷26.]

Twenty-fifth Amendment. The constitutional amendment, ratified in 1967, that established rules of succession for the presidency and vice presidency in the event of death, resignation, or incapacity. • Article II, § 1 of the Constitution provides for the Vice President to assume the President's powers and duties but does not clearly state that the Vice President also assumes the title of President. [Cases: United States ⚷26.]

Twenty-first Amendment. The constitutional amendment, ratified in 1933, that repealed the 18th Amendment (which established national Prohibition) and returned the power to regulate alcohol to the states. [Cases: Intoxicating Liquors ⚷5.1, 17.]

2503(b) trust. See TRUST (3).

2503(c) trust. See TRUST (3).

Twenty-fourth Amendment. The constitutional amendment, ratified in 1964, that prohibits the federal and state governments from restricting the right to vote in a federal election because of one's failure to pay a poll tax or other tax. [Cases: Elections ⚷83.]

Twenty-second Amendment. The constitutional amendment, ratified in 1951, that prohibits a person from being elected President more than twice (or, if the person succeeded to the office with more than half the predecessor's term remaining, more than once). [Cases: United States ⚷26.]

Twenty-seventh Amendment. The constitutional amendment, ratified in 1992, that prevents a pay raise for senators and representatives from taking effect until a new Congress convenes. • This amendment was proposed as part of the original Bill of Rights in 1789, but it took 203 years for the required three-fourths of the states to ratify it. — Also termed *Madison Amendment.* [Cases: United States ⚷39(6).]

Twenty-sixth Amendment. The constitutional amendment, ratified in 1971, that sets the minimum voting age at 18 for all state and federal elections. [Cases: Elections ⚷18.]

Twenty-third Amendment. The constitutional amendment, ratified in 1961, that allows District of Columbia residents to vote in presidential elections. [Cases: United States ⚷25.]

twist, *n. Slang.* An informant who provides testimony in exchange for leniency in sentencing, rather than for money. See INFORMANT.

twisting, *n.* An insurance agent's or company's misrepresenting or misstating facts, or giving an incomplete comparison of policies, to induce an insured to give up a policy in one company and buy another company's policy. [Cases: Insurance ⚷1563, 1618.]

two-controlled-studies standard. The requirement by the Federal Trade Commission that before the maker of an over-the-counter painkiller can advertise that it is better or has fewer side effects than another brand, the maker must verify the claim in two scientifically controlled studies.

two-dismissal rule. (1944) The rule that a notice of voluntary dismissal operates as an adjudication on the merits — not merely as a dismissal without prejudice — when filed by a plaintiff who has already dismissed the same claim in another court. [Cases: Federal Civil Procedure ⚷1714; Pretrial Procedure ⚷519.]

245(i) waiver. *Immigration law.* An Immigration and Nationality Act provision that allows certain qualified aliens who are otherwise ineligible for adjustment of their status to pay a penalty for the convenience of having their status adjusted to permanent-resident status without having to leave the United States. 8 USCA § 1255(i). Cf. ADJUSTMENT OF STATUS. [Cases: Aliens, Immigration, and Citizenship ⚷309.]

two-issue rule. (1929) The rule that if multiple issues were submitted to a trial jury and at least one of them

is error-free, the appellate court should presume that the jury based its verdict on the proper issue — not on an erroneous one — and should therefore affirm the judgment. [Cases: Appeal and Error ⇨1068(2).]

two-party payment. See PAYMENT.

two-round voting. See VOTING.

two-stage trial. See *bifurcated trial* under TRIAL.

two-tier offer. A two-step technique by which a bidder tries to acquire a target corporation, the first step involving a cash tender offer and the second usu. a merger in which the target company's remaining shareholders receive securities from the bidder (these securities ordinarily being less favorable than the cash given in the first step).

two-witness rule. (1900) **1.** The rule that, to support a perjury conviction, two independent witnesses (or one witness along with corroborating evidence) must establish that the alleged perjurer gave false testimony. [Cases: Perjury ⇨34.] **2.** The rule, as stated in the U.S. Constitution, that no person may be convicted of treason without two witnesses to the same overt act — or unless the accused confesses in open court. U.S. Const. art. IV, § 2, cl. 2. [Cases: Treason ⇨13.]

tying, *adj. Antitrust.* Of or relating to an arrangement whereby a seller sells a product to a buyer only if the buyer purchases another product from the seller <tying agreement>. [Cases: Antitrust and Trade Regulation ⇨568.]

tying arrangement. *Antitrust.* (1953) A seller's agreement to sell one product or service only if the buyer also buys a different product or service; a seller's refusal to sell one product or service unless the buyer also buys a different product or service. • The product or service that the buyer wants to buy is known as the *tying product* or *tying service*; the different product or service that the seller insists on selling is known as the *tied product* or *tied service*. Tying arrangements may be illegal under the Sherman or Clayton Act if their effect is too anticompetitive. — Also termed *tying agreement*; *tie-in*; *tie-in arrangement*. Cf. RECIPROCAL DEALING. [Cases: Antitrust and Trade Regulation ⇨568.]

> "The courts have developed an easily articulated text for so-called *per se* illegal tying arrangements, although the test varies from one circuit court to another. . . . In operation, the tests are similar, and the three-part test combines elements that are separated in the tests of other circuits. For purpose of analysis we use this five-part test: (1) There must be separate tying and tied products; (2) there must be 'evidence of actual coercion by the seller that in fact forced the buyer to accept the tied product . . .'; (3) the seller must possess 'sufficient economic power in the tying product market to coerce purchaser acceptance of the tied product . . .'; (4) there must be 'anticompetitive effects in the tied market . . .'; and (5) there must be 'involvement of a "not insubstantial" amount of interstate commerce in the tied product market . . . .'" Herbert Hovenkamp, *Federal Antitrust Policy* 392 (2d ed. 1999) (quoting *Yetsch v. Texaco, Inc.*, 630 F.2d 46, 56, 57 (2d Cir. 1980)).

> "The traditional objection to tying arrangements is that they enable a firm having a monopoly in one market to obtain a monopoly in a second one. Thus, a firm having monopoly power in the market for business machines could obtain a monopoly on punch cards as well simply by refusing to sell or lease its machines unless the purchaser or lessee agreed to use only its punch cards in the machines." Richard A. Posner, *Antitrust Law* 197 (2d ed. 2001).

tying product. See TYING ARRANGEMENT.

tying service. See TYING ARRANGEMENT.

typed drawing. See DRAWING.

typed-form drawing. See *typed drawing* under DRAWING.

typographum (tī-**pog**-rə-fəm). [Latin] *Hist.* Impressed by use of a type, as distinguished from *chirographum* ("written by hand").

tyranny. 1. The severe deprivation of a natural right. **2.** The accumulation of all powers — the legislative, executive, and judicial — in the same hands (whether few or many). • Sense 2 expresses the Madisonian view of tyranny, to be found in *The Federalist*, No. 47. **3.** Arbitrary or despotic government; the severe and autocratic exercise of sovereign power, whether vested constitutionally in one ruler or usurped by that ruler by breaking down the division and distribution of governmental powers. — **tyrannical, tyrannous,** *adj.*

tyrant, *n.* A sovereign or ruler, legitimate or not, who wields power unjustly and arbitrarily to oppress the citizenry; a despot.

U

U3C. *abbr.* UNIFORM CONSUMER CREDIT CODE.

UAA. *abbr.* UNIFORM ADOPTION ACT.

UAGA. *abbr.* UNIFORM ANATOMICAL GIFT ACT.

U.B. *abbr.* Upper Bench. See *bancus superior* under BANCUS.

uberior titulus (yoo-**beer**-ee-or **tich**-ə-ləs). [Latin] *Hist.* The fuller title.

uberrimae fidei (yoo-**ber**-ə-mee **fi**-dee-ī). [Latin] (1850) Of the utmost good faith. See *contract uberrimae fidei* under CONTRACT. [Cases: Insurance ⇨1867, 2996.]

uberrima fides (yoo-**ber**-ə-mə **fī**-deez), *n.* [Latin] Utmost good faith <a contract requiring *uberrima fides*>.

ubi (**yoo**-bī *or* **oo**-bee). [Latin] Where.

ubi aberat animus foenerandi (**yoo**-bī ə-**ber**-at **an**-ə-məs fee-nə-**ran**-dī). [Latin] *Hist.* Where the intention of taking of a usurious interest was wanting. • A lender was not liable for usurious provisions in a contract unless the lender had the requisite intention of exacting the money. Cf. USURA VELATA.

ubi defunctus habuit domicilium (**yoo**-bī di-**fəngk**-təs **hay**-byoo-it dom-ə-**sil**-ee-əm). [Law Latin] *Scots law.* Where the decedent had his domicile.

ubi dies cessit, licet nondum venerit (**yoo**-bī **dī**-eez **ses**-it, **lī**-set **non**-dəm və-**neer**-it). [Latin] *Hist.* In the case where the time has arrived at which money is due, although that time has not arrived at which it may be exacted. See DEBITUM IN DIEM.

ubi dolus dedit causam contractui (**yoo**-bī **doh**-ləs **dee**-dit **kaw**-zəm kən-**trak**-choo-ī). [Latin] *Hist.* Where fraud gave rise to the contract.

ubi re vera (**yoo**-bī ree **veer**-ə). [Latin] Where in reality; when in truth or in point of fact.

ubi supra (**yoo**-bī **s**[**y**]**oo**-prə). [Latin] Where stated above.

UCC. *abbr.* **1.** UNIFORM COMMERCIAL CODE. **2.** UNIVERSAL COPYRIGHT CONVENTION.

UCC battle of the forms. See BATTLE OF THE FORMS.

UCCC. *abbr.* UNIFORM CONSUMER CREDIT CODE.

UCCJA. *abbr.* UNIFORM CHILD CUSTODY JURISDICTION ACT.

UCCJEA. *abbr.* UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT.

UCE. *abbr.* Unsolicited commercial e-mail. See SPAM.

UCITA. *abbr.* UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT.

UCMJ. *abbr.* UNIFORM CODE OF MILITARY JUSTICE.

UCP. *abbr.* UNIFORM CUSTOMS AND PRACTICE FOR COMMERCIAL DOCUMENTARY CREDITS.

UCR. *abbr.* UNIFORM CRIME REPORTS.

UDITPA. *abbr.* UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT.

UDRA. *abbr.* UNIFORM DIVORCE RECOGNITION ACT.

UDRP. *abbr.* UNIFORM DOMAIN-NAME DISPUTE-RESOLUTION POLICY.

UDTPA. *abbr.* UNIFORM DECEPTIVE TRADE PRACTICES ACT.

UETA. *abbr.* UNIFORM ELECTRONIC TRANSACTIONS ACT.

UFCA. *abbr.* UNIFORM FRAUDULENT CONVEYANCES ACT.

UFTA. *abbr.* UNIFORM FRAUDULENT TRANSFER ACT.

UGMA. *abbr.* Uniform Gifts to Minors Act. See UNIFORM TRANSFERS TO MINORS ACT.

UHCDA. *abbr.* UNIFORM HEALTH-CARE DECISION ACT.

UIFSA. *abbr.* UNIFORM INTERSTATE FAMILY SUPPORT ACT.

UIJC. *abbr.* UNIFORM INTERSTATE JUVENILE COMPACT.

UJCA. *abbr.* UNIFORM JUVENILE COURT ACT.

U.K. *abbr.* UNITED KINGDOM.

ukase (yoo-**kays** *or* **yoo**-kays). (18c) A proclamation or decree, esp. of a final or arbitrary nature. • This term originally referred to a decree issued by a Russian czar.

ullage (**əl**-ij), *n.* The degree to which a container of liquid falls short of being full.

ullage, *vb.* To determine the amount of ullage in a container holding liquid.

ulna ferrea (**əl**-nə **fer**-ee-ə). [Law Latin "iron ell"] *Hist.* An iron measuring device, approximately a yard in length, kept in the Exchequer as a standard measure.

ulnage (**əl**-nij). Alnage. See ALNAGER.

ULPA. *abbr.* UNIFORM LIMITED PARTNERSHIP ACT.

ulterior intent. See INTENT (1).

ulterior remainderman. See REMAINDERMAN.

ultima ratio (**əl**-ti-mə **ray**-shee-oh). [Latin] **1.** The final argument; the last resort; the means last to be resorted to. **2.** A final sanction.

ultimate fact. See FACT.

ultimate issue. See ISSUE (1).

ultimate question. See *ultimate issue* under ISSUE (1).

ultimate species. See SPECIES (2).

ultimatum (əl-tə-**may**-təm), *n.* (18c) The final and categorical proposal made in negotiating a treaty, contract, or the like. • An ultimatum implies that a rejection

might lead to a break-off in negotiations or, in international law, to a cessation of diplomatic relations or even to war. Pl. **ultimatums.**

ultimatum supplicum. [Law Latin "final or extreme punishment"] Capital punishment.

ultimogeniture. See BOROUGH ENGLISH.

ultimo loco (**əl**-ti-moh **loh**-koh). [Latin] *Hist.* In the last place. • The phrase usu. referred to the position of a claimant who takes only after all other claims have been satisfied.

ultimum tempus pariendi (**əl**-ti-məm **tem**-pəs par-ee-**en**-dī). [Law Latin "last date for giving birth"] *Hist.* A time beyond or after which a child may not be born. • The phrase was used, for example, in determining legitimacy or paternity.

ultimus heres (**əl**-ti-məs **heer**-eez). See HERES.

ultra fines compromissi (**əl**-trə **fī**-neez kom-prə-**mis**-ī). [Law Latin] *Hist.* Beyond the limits of the submission to arbitration. See ULTRA VIRES COMPROMISSI.

ultra fines decreti (**əl**-trə **fī**-neez di-**kree**-tī). [Law Latin] *Hist.* Beyond the limits of the decree.

ultra fines mandati (**əl**-trə **fī**-neez man-**day**-tī). [Law Latin] *Hist.* Beyond the limits of the mandate.

ultrahazardous. See EXTRAHAZARDOUS.

ultrahazardous activity. See ABNORMALLY DANGEROUS ACTIVITY.

ultra licitum (**əl**-trə **lis**-i-təm). [Law Latin] *Hist.* Beyond what is permissible or legal.

ultra mare (**əl**-trə **mair**-ee *or* **mahr**-ee). [Latin] See BEYOND SEAS.

ultra petita (**əl**-trə pə-**tī**-tə). [Law Latin] *Hist.* Beyond that which was sought.

> "A judgment or decision is said to be *ultra petita* when it awards more than was sought or sued for in the petition or summons; and the same thing is said of a sentence when it [does] not conform to its grounds and warrants. This affords a good ground for the reversal or reduction of such a decree." John Trayner, *Trayner's Latin Maxims* 609-10 (4th ed. 1894).

ultra reprises (**əl**-trə ri-**prīz**-iz). After deduction of expenses; net.

ultra valorem (**əl**-trə və-**lor**-əm). [Law Latin] *Hist.* Beyond the value.

ultra vires (**əl**-trə **vī**-reez *also* **veer**-eez), *adj.* [Latin "beyond the powers (of)"] (18c) Unauthorized; beyond the scope of power allowed or granted by a corporate charter or by law <the officer was liable for the firm's ultra vires actions>. — Also termed *extra vires.* Cf. INTRA VIRES. [Cases: Corporations ☞370(1), 385.] — **ultra vires,** *adv.*

ultra vires compromissi (**əl**-trə **vī**-reez [*also* **veer**-eez] kom-prə-**mis**-ī). [Law Latin] *Hist.* Beyond the force of the submission to arbitration; beyond the authority of the submission. • An arbitration award, for example, could be reduced if the award was greater than the submission warranted.

ultra vires inventarii (**əl**-trə **vī**-reez [*also* **veer**-eez] in-ven-**tair**-ee-ī). [Law Latin] *Hist.* Beyond the value of the inventory. • An executor was not liable for the decedent's debts *ultra vires inventarii.*

ultroneous witness. See WITNESS.

umbrella insurance. See INSURANCE.

umbrella limited partnership. See PARTNERSHIP.

umbrella order. See BLANKET ORDER (1).

umbrella-partnership real-estate investment trust. See REAL-ESTATE INVESTMENT TRUST.

umbrella policy. See INSURANCE POLICY.

umbrella protective order. See *blanket protective order* under PROTECTIVE ORDER.

UMDA. *abbr.* UNIFORM MARRIAGE AND DIVORCE ACT.

umpirage (**əm**-pīr-ij). **1.** The office or authority of an umpire. **2.** The decision (such as an arbitral award) of an umpire.

umpire. (15c) An impartial person appointed to make an award or a final decision, usu. when a matter has been submitted to arbitrators who have failed to agree. • An arbitral submission may provide for the appointment of an umpire. — Also termed (in Scots law) *oversman.* [Cases: Alternative Dispute Resolution ☞239.] — **umpire,** *vb.*

UMTA. *abbr.* URBAN MASS TRANSIT ADMINISTRATION.

un-, *prefix.* (bef. 12c) **1.** Not <unassignable>. **2.** Contrary to; against <unconstitutional>.

U.N. *abbr.* UNITED NATIONS.

unaccrued, *adj.* Not due, as rent on a lease.

una cum. [Latin] Together with.

unalienable, *adj.* See INALIENABLE.

unanimous (yoo-**nan**-ə-məs), *adj.* (17c) **1.** Agreeing in opinion; being in complete accord <the judges were unanimous in their approval of the recommendation>. **2.** Arrived at by the consent of all <a unanimous verdict>. See *unanimous consent* under CONSENT (2); *unanimous vote* under VOTE. Cf. *without objection* under OBJECTION (3).

unanimous consent. See CONSENT (2).

unanimous-consent agenda. See *consent calendar* under CALENDAR (4).

unanimous-consent agreement. *Parliamentary law.* An agreement, negotiated between opposing sides debating a motion, regarding the procedure under which the assembly will consider the motion. • The unanimous-consent agreement is a common practice in the U.S. Senate. — Also termed *time agreement.* See *unanimous consent* under CONSENT (2).

unanimous-consent calendar. See *consent calendar* under CALENDAR (4).

unanimous vote. See VOTE (3).

unascertained duty. See DUTY (4).

unauthorized, *adj.* (16c) Done without authority; specif. (of a signature or indorsement), made without actual, implied, or apparent authority. UCC § 1-201(43). [Cases: Principal and Agent ☞147–162.]

unauthorized completion. *Commercial law.* The act of filling in missing information in a negotiable instrument either without any authority to do so or without adequate authority. • Unauthorized completion is a personal defense, so it can be raised against any later holder of the instrument who does not have the rights of a holder in due course. See *personal defense* under DEFENSE (4). [Cases: Bills and Notes ☞60, 378, 452(1).]

unauthorized indorsement. See INDORSEMENT.

unauthorized practice of law. See PRACTICE OF LAW.

unauthorized signature. See SIGNATURE.

unauthorized use of a vehicle. See JOYRIDING.

unavailability, *n.* (1855) The status or condition of not being available, as when a witness is exempted by court order from testifying. • Unavailability is recognized under the Federal Rules of Evidence as an exemption to the hearsay rule. Fed. R. Evid. 804. [Cases: Criminal Law ☞419(5); Evidence ☞317(17).]

una voce (**yoo**-nə **voh**-see). [Latin] With one voice; unanimously; without dissent.

unavoidable accident. See ACCIDENT.

unavoidable-accident doctrine. (1961) *Torts.* The rule holding no party liable for an accident that was not foreseeable and that could not have been prevented by the exercise of reasonable care. • The modern trend is for courts to ignore this doctrine and to rely instead on the basic concepts of duty, negligence, and proximate cause. — Also termed *inevitable-accident doctrine.* [Cases: Automobiles ☞201(10); Negligence ☞440.]

unavoidable casualty. See *unavoidable accident* under ACCIDENT.

unavoidable cause. See CAUSE (1).

unavoidable danger. See DANGER.

unbanked, *adj.* Lacking a formal relationship with a bank or other financial institution. • Unbanked consumers are the most frequent users of money services businesses.

unborn beneficiary. See BENEFICIARY.

unborn child. See CHILD.

unborn-widow rule. (1957) The legal fiction, assumed under the rule against perpetuities, that a beneficiary's widow is not alive at the testator's death, and thus a succeeding life estate to her voids any remainders because the interest would not vest within the perpetuities period. See RULE AGAINST PERPETUITIES.

unbroken, *adj.* (14c) Not interrupted; continuous <unbroken possession by the adverse possessor>.

unbundling rules. *Telecommunications.* Regulations passed by the Federal Communications Commission to effectuate the local-competition requirements of the Telecommunications Act of 1996, which requires local-exchange carriers to provide access to elements of local-exchange networks on an unbundled (i.e., separated) basis. 47 USCA § 251; 47 CFR pt. 51. See NETWORK ELEMENT. [Cases: Telecommunications ☞860.]

uncertain damages. See DAMAGES.

uncertificated security. See SECURITY.

uncertified security. See *uncertificated security* under SECURITY.

uncia (**ən**-shee-ə), *n.* [Latin] **1.** *Roman law.* One-twelfth of the *as* (a pound or, by analogy, an estate or inheritance). • The English word *ounce* is derived from this term. Cf. AS; BES. **2.** *Hist.* A measure of land used in a royal charter. • The size of an *uncia* is unclear, but it may have measured 1,200 square feet (i.e., 12 *modii*). **3.** Generally, the proportion of one-twelfth.

unciarius heres (ən-shee-**air**-ee-əs **heer**-eez). [Latin] *Roman law.* An heir to one-twelfth of an estate or inheritance.

uncitable. See NONCITABLE.

UNCITRAL Rules. The Arbitration Rules of the United Nations Commission on International Trade Law, applicable to all international commercial arbitrations except as prohibited by the local law where the arbitration takes place.

unclean bill of lading. See BILL OF LADING.

unclean-hands doctrine. See CLEAN-HANDS DOCTRINE.

uncollected funds. A credit, such as an increase in the balance of a checking or other deposit account in a financial institution, given on the basis of a check or other right to payment that has not yet been received from the drawee or other payor. [Cases: Banks and Banking ☞122, 133, 137.]

unconditional, *adj.* (17c) Not limited by a condition; not depending on an uncertain event or contingency; absolute.

unconditional delivery. See DELIVERY.

unconditional discharge. See DISCHARGE (5).

unconditional heir. See HEIR.

unconditional pardon. See *absolute pardon* under PARDON.

unconditional promise. See PROMISE.

unconditional release. See RELEASE.

unconscionability (ən-kon-shə-nə-**bil**-ə-tee). (16c) **1.** Extreme unfairness. • Unconscionability is normally assessed by an objective standard: (1) one party's lack of meaningful choice, and (2) contractual terms that unreasonably favor the other party. **2.** The principle that a court may refuse to enforce a contract that is unfair or oppressive because of procedural abuses during contract formation or because of overreaching contractual terms, esp. terms that are unreasonably favorable to one party while precluding meaningful choice for the other party. • Because unconscionability depends on circumstances at the time the contract is

formed, a later rise in market price is irrelevant. [Cases: Contracts ⚷1.]

"Traditionally, a bargain was said to be unconscionable in an action at law if it was 'such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other;' damages were then limited to those to which the aggrieved party was 'equitably' entitled. Even though a contract was fully enforceable in an action for damages, equitable remedies such as specific performance were refused where 'the sum total of its provisions drives too hard a bargain for a court of conscience to assist.' Modern procedural reforms have blurred the distinction between remedies at law and in equity. For contracts for the sale of goods, Uniform Commercial Code § 2-302 states the rule of this Section without distinction between law and equity. Comment 1 to that section adds, 'The principle is one of the prevention of oppression and unfair surprise . . . and not of disturbance of allocation of risks because of superior bargaining power.'" Restatement (Second) of Contracts § 208 cmt. b (1979) (citations omitted).

"Nowhere among the [Uniform Commercial] Code's many definitions is there one of *unconscionability*. That the term is incapable of precise definition is a source of both strength and weakness." E. Allan Farnsworth, *Contracts* § 4.28, at 310 (3d ed. 1999)

procedural unconscionability. (1973) Unconscionability resulting from improprieties in contract formation (such as oral misrepresentations or disparities in bargaining position) rather than from the terms of the contract itself. [Cases: Contracts ⚷1.]

"Most cases of unconscionability involve a combination of procedural and substantive unconscionability, as it is generally agreed that if more of one is present, then less of the other is required." E. Allan Farnsworth, *Contracts* § 4.28, at 312 (3d ed. 1999).

substantive unconscionability. (1973) Unconscionability resulting from actual contract terms that are unduly harsh, commercially unreasonable, and grossly unfair given the existing circumstances. [Cases: Contracts ⚷1.]

unconscionable (ən-**kon**-shə-nə-bəl), *adj.* (16c) **1.** (Of a person) having no conscience; unscrupulous <an unconscionable used-car salesman>. **2.** (Of an act or transaction) showing no regard for conscience; affronting the sense of justice, decency, or reasonableness <the contract is void as unconscionable>. Cf. CONSCIONABLE. [Cases: Contracts ⚷1.]

unconscionable agreement. See AGREEMENT.

unconscionable bargain. See *unconscionable agreement* under AGREEMENT.

unconscionable contract. See *unconscionable agreement* under AGREEMENT.

unconscious, *adj.* Without awareness; not conscious. • A person who commits a criminal act while unconscious may be relieved from liability for the act.

unconsciousness defense. See AUTOMATISM.

unconstitutional, *adj.* (18c) Contrary to or in conflict with a constitution, esp. the U.S. Constitution <the law is unconstitutional because it violates the First Amendment's free-speech guarantee>. Cf. NONCONSTITUTIONAL.

unconstitutional-conditions doctrine. *Constitutional law.* **1.** The rule that the government cannot condition a person's receipt of a governmental benefit on the waiver of a constitutionally protected right (esp. a right under the First Amendment). • For example, a television station that receives public funds cannot be forced to refrain from endorsing political candidates. [Cases: Constitutional Law ⚷1057.] **2.** The rule that the government cannot force a defendant to choose between two constitutionally protected rights. — Also termed *doctrine of unconstitutional conditions.*

unconstitutionally vague. See VAGUE.

uncontestable clause. See INCONTESTABILITY CLAUSE.

uncontested divorce. See DIVORCE.

uncontested hearing. See HEARING.

uncontrollable, *adj.* Incapable of being controlled.

uncontrollable impulse. See IMPULSE.

uncontrolled-securities-offering distribution. See *securities-offering distribution* (2) under DISTRIBUTION.

uncopyrightable, *adj.* (Of a work) ineligible for copyright protection either because the work lacks originality or because it is an idea, concept, process, or other abstraction that is not included in one of the eight covered classifications of copyrightable works. 17 USCA §§ 101–106. [Cases: Copyrights and Intellectual Property ⚷4.]

uncore prist (ən[g]-kor **prist**). [Law French "still ready"] *Hist.* A plea by which a party alleges readiness to pay or perform what is justly demanded.

"Yet sometimes, after tender and refusal of a debt, if the creditor harasses his debtor with an action, it then becomes necessary for the defendant to acknowledge the debt, and plead the tender; adding, that . . . he is still ready, *uncore prist*, to discharge it . . . ." 3 William Blackstone, *Commentaries on the Laws of England* 303 (1768).

uncorrectability defense. *Patents.* An affirmative defense in an infringement suit, established by showing (1) that a coinventor's name was omitted from a patent, and (2) that the patent cannot be corrected because the named coinventor acted with deceptive intent. [Cases: Patents ⚷283(1).]

uncounseled, *adj.* Without the benefit or participation of legal counsel <an uncounseled conviction> <an uncounseled defendant>.

uncovered option. See *naked option* under OPTION.

UNCRC. *abbr.* UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD.

unde nihil habet (ən-dee **ni**-hil **hay**-bət). [Law Latin "whereof she has nothing"] *Hist.* A writ of dower for a widow where no dower had been assigned to her within the time allowed by law. See WRIT OF DOWER. Cf. DE DOTE UNDE NIL HABET.

undercapitalization. See CAPITALIZATION.

undercover agent. See AGENT.

undercurrent of surface stream. Water that moves slowly through the bed of a stream or the lands under

or immediately adjacent to the stream. • This water is considered part of the surface stream. — Also termed *underflow of surface stream*.

underdeveloped country. See DEVELOPING COUNTRY.

underflow of surface stream. See UNDERCURRENT OF SURFACE STREAM.

underground economy. See SHADOW ECONOMY.

underground recording. See BOOTLEG RECORDING (1).

underinsurance. An agreement to indemnify against property damage up to a certain amount but for less than the property's full value.

underinsured-motorist coverage. Insurance that pays for the insured's losses and injuries negligently caused by a driver does not have enough liability insurance to cover the damages. Cf. UNINSURED-MOTORIST COVERAGE. [Cases: Insurance ⇨2772, 2787.]

underlease. See SUBLEASE.

underlessor. See SUBLESSOR.

under one's hand. (Of a person's signature) affixed manually, as opposed to printed or stamped.

under protest. See PROTEST (3).

Undersecretary of Commerce for Intellectual Property. See DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE.

undersheriff. See *deputy sheriff* under SHERIFF.

undersigned, *n.* (17c) A person whose name is signed at the end of a document <the undersigned agrees to the terms and conditions set forth above>.

under-65 trust. See TRUST.

understand, *vb.* To apprehend the meaning of; to know <the testator did not understand what he was signing>.

understanding, *n.* (bef. 12c) **1.** The process of comprehending; the act of a person who understands something. **2.** One's personal interpretation of an event or occurrence. **3.** An agreement, esp. of an implied or tacit nature.

under submission. (18c) Being considered by the court; under advisement <the case was under submission in the court of appeals for more than two years>.

undertake, *vb.* (13c) **1.** To take on an obligation or task <he has undertaken to chair the committee on legal aid for the homeless>. **2.** To give a formal promise; guarantee <the merchant undertook that the goods were waterproof>. **3.** To act as surety for (another); to make oneself responsible for (a person, fact, or the like) <her husband undertook her appearance in court>. [Cases: Undertakings ⇨1.]

undertaking, *n.* (14c) **1.** A promise, pledge, or engagement. [Cases: Undertakings ⇨1.] **2.** A bail bond. [Cases: Bail ⇨54.]

undertenant. See SUBLESSEE.

under the influence. (1879) (Of a driver, pilot, etc.) deprived of clearness of mind and self-control because of drugs or alcohol. See DRIVING UNDER THE INFLUENCE. [Cases: Automobiles ⇨332.]

Undertreasurer of England. *Hist.* An officer immediately subordinate to the Lord High Treasurer.

undertutor. See TUTOR.

underwriter. 1. INSURER. **2.** One who buys stock from the issuer with an intent to resell it to the public; a person or entity, esp. an investment banker, who guarantees the sale of newly issued securities by purchasing all or part of the shares for resale to the public. [Cases: Securities Regulation ⇨11.18, 60.31.]

> "The term 'underwriter' derives its meaning from former British insurance practices. When insuring their cargo shippers would seek out investors to insure their property. The insurers would add their signatures and would write their names under those of the shipper; hence the term 'underwriters.' Both in terms of the insurance industry and the securities markets, the concept of underwriting has expanded significantly since its inception." Thomas Lee Hazen, *The Law of Securities Regulation* § 2.1, at 57 (2d ed. 1994).

chartered life underwriter. An underwriter who has satisfied the requirements set forth by The American College (formerly The American College of Life Underwriters) to be designated a life insurance underwriter. — Abbr. CLU.

insurance underwriter. **1.** INSURER. — Also termed *writer*. **2.** An insurance-company employee who is responsible for determining whether to issue a policy and the amount to charge for the coverage provided. [Cases: Insurance ⇨1515.]

underwriting, *n.* **1.** The act of assuming a risk by insuring it; the insurance of life or property. See INSURANCE. [Cases: Insurance ⇨1515.] **2.** The act of agreeing to buy all or part of a new issue of securities to be offered for public sale. [Cases: Securities Regulation ⇨11.18, 60.31.] — **underwrite,** *vb.*

best-efforts underwriting. Underwriting in which an investment banker agrees to direct, but not guarantee, the public sale of the issuer's securities. • The underwriter, or underwriting group, sells the securities as agent for the issuer, and unsold securities are never issued.

firm-commitment underwriting. Underwriting in which the underwriter agrees to buy and sell all the shares to be issued and assumes full financial responsibility for any unsold securities. • The underwriter, or underwriting group, buys the securities from the issuer and resells them as principal. In this type of underwriting, securities that are not sold to the public are owned by the underwriter, and the issuer is paid for those securities as well as the others.

standby underwriting. Underwriting in which the underwriter agrees, for a fee, to buy from the issuer any unsold shares remaining after the public offering. — Also termed *strict underwriting*.

underwriting agreement. See AGREEMENT.

underwriting spread. See SPREAD (4).

undesirable discharge. See DISCHARGE (8).

unde vi (ən-dee vī). [Latin] *Roman law.* A praetorian interdict allowing one who was violently dispossessed of a thing to recover it.

undigested offering. See OFFERING.

undisclosed agency. See AGENCY (1).

undisclosed principal. See PRINCIPAL (1).

undisputed, *adj.* Not questioned or challenged; uncontested.

undisputed fact. See FACT.

undistributed-earnings tax. See *accumulated-earnings tax* under TAX.

undistributed profit. See *retained earnings* under EARNINGS.

undivided interest. See INTEREST (2).

undivided profit. See *accumulated profit* under PROFIT (1).

undivided right. See *undivided interest* under INTEREST (2).

undivided title. See *undivided interest* under INTEREST (2).

undocumented alien. See *illegal alien* under ALIEN.

undue, *adj.* (14c) **1.** *Archaic.* Not yet owed; not currently payable <an undue debt>. **2.** Excessive or unwarranted <undue burden> <undue influence>. — **unduly,** *adv.*

undue-breadth rejection. See REJECTION.

undue burden, *n.* See BURDEN.

undue-burden test. (1992) *Constitutional law.* The Supreme Court test stating that a law regulating abortion will be struck down if it places a substantial obstacle in the path of a woman's right to obtain an abortion. • This test replaced the "trimester analysis" set forth in *Roe v. Wade*, in which the state's ability to restrict abortion increased after each trimester of pregnancy. *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 112 S.Ct. 2791 (1992). [Cases: Abortion and Birth Control ⇨104.]

undue experimentation. *Patents.* An unreasonable amount of research and testing that would be required for a person skilled in the appropriate art to make and work an invention from the specification in the patent application. • If undue experimentation would be required, the application fails the embodiment requirement of 35 USCA § 112. See WANDS TEST. [Cases: Patents ⇨99.]

undue hardship. See HARDSHIP.

undue influence. (18c) **1.** The improper use of power or trust in a way that deprives a person of free will and substitutes another's objective. • Consent to a contract, transaction, or relationship or to conduct is voidable if the consent is obtained through undue influence. — Also termed *implied coercion*; *moral coercion*. [Cases: Contracts ⇨96.]

> "Undue influence is unfair persuasion of a party who is under the domination of the person exercising the persuasion or who by virtue of the relation between them is justified in assuming that the person will not act in a manner inconsistent with his welfare." Restatement (Second) of Contracts § 177(1) (1979).

> "When at the turn of the twentieth century, the common law doctrine of duress was expanded to provide relief for coercion irrespective of the means of coercion, much of the work of undue influence became unnecessary. The doctrine has a much more specialized role today, although often enough the precedents decided when the more general doctrine prevailed are cited and quoted to the general confusion of the profession. Today the gist of the doctrine is unfair persuasion rather than coercion. Euphoria rather than fear is often, but certainly not always, the state of mind of the party unduly influenced." John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 9-9, at 351-52 (3d ed. 1987).

2. *Wills & estates.* Coercion that destroys a testator's free will and substitutes another's objectives in its place. • When a beneficiary actively procures the execution of a will, a presumption of undue influence may be raised, based on the confidential relationship between the influencer and the person influenced. — Also termed *improper influence*; (formerly, in both senses) *suggestion*. See COERCION; DURESS. [Cases: Wills ⇨154.]

undue multiplicity of claims. See AGGREGATION OF CLAIMS.

undue-multiplicity-of-claims rejection. See REJECTION.

undue prejudice. See PREJUDICE.

unduly dangerous conduct. See *unreasonably dangerous conduct* under CONDUCT.

undutiful will. See *unnatural will* under WILL.

unearned income. See INCOME.

unearned increment. See INCREMENT.

unearned interest. See INTEREST (3).

unearned premium. See PREMIUM (1).

unearned-premium reserve. See RESERVE.

unearned surplus. See SURPLUS.

unemployment. The state or condition of not having a job even though available for work and perhaps seeking it.

structural unemployment. Unemployment resulting from a shift in the demand for a particular product or service.

unemployment compensation. See *unemployment insurance* under INSURANCE; COMPENSATION.

unemployment insurance. See INSURANCE.

unemployment tax. See TAX.

unenacted law. See LAW.

unencumbered (ən-in-kəm-bərd), *adj.* Without any burdens or impediments <unencumbered title to property>.

unenforceable, *adj.* (1804) (Of a contract) valid but incapable of being enforced. Cf. VOID; VOIDABLE. [Cases: Contracts ⇨138(1).]

unenforceable contract. See CONTRACT.

UNEP. *abbr.* UNITED NATIONS ENVIRONMENT PROGRAMME.

unequal, *adj.* (16c) Not equal in some respect; uneven <unequal treatment under the law>.

unequivocal (ən-i-**kwiv**-ə-kəl), *adj.* (18c) Unambiguous; clear; free from uncertainty.

unerring (ən-**ər**-ing *also* ən-**er**-ing), *adj.* Incapable of error; infallible.

UNESCO. *abbr.* UNITED NATIONS EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATION.

unessential mistake. See MISTAKE.

unethical, *adj.* (1871) Not in conformity with moral norms or standards of professional conduct. See LEGAL ETHICS.

unexpected, *adj.* Happening without warning; not expected.

unexpired term. See TERM (4).

unfair competition. (1876) **1.** Dishonest or fraudulent rivalry in trade and commerce; esp., the practice of endeavoring to pass off one's own goods or products in the market for those of another by means of imitating or counterfeiting the name, brand, size, shape, or other distinctive characteristic of the article or its packaging. [Cases: Antitrust and Trade Regulation ⇨40.] **2.** The body of law encompassing various business and privacy torts, all generally based on deceitful trade practices, including passing off, false advertising, commercial disparagement, and misappropriation.

> "The legal doctrine of unfair competition is a development of the fundamental idea that dealings based on deceit are legally wrong." Harry D. Nims, *The Law of Unfair Competition and Trade-Marks* 6 (1929).

unfair hearing. See HEARING.

unfair labor practice. Any conduct prohibited by state or federal law governing the relations among employers, employees, and labor organizations. • Examples of unfair labor practices by an employer include (1) interfering with protected employee rights, such as the right to self-organization, (2) discriminating against employees for union-related activities, (3) retaliating against employees who have invoked their rights, and (4) refusing to engage in collective bargaining. Examples of unfair labor practices by a labor organization include causing an employer to discriminate against an employee, engaging in an illegal strike or boycott, causing an employer to pay for work not to be performed (i.e., featherbedding), and refusing to engage in collective bargaining. 29 USCA §§ 151–169. [Cases: Labor and Employment ⇨1427–1504.]

unfair persuasion. (1931) *Contracts.* A type of undue influence in which a stronger party achieves a result by means that seriously impair the weaker party's free and competent exercise of judgment. • Unfair persuasion is a lesser form of undue influence than duress and misrepresentation. The two primary factors to be considered are the unavailability of independent advice and the susceptibility of the person persuaded. See UNDUE INFLUENCE (1). [Cases: Contracts ⇨96.]

unfair surprise. (1815) A situation in which a party, having had no notice of some action or proffered evidence, is unprepared to answer or refute it.

unfair trade. An inequitable business practice; esp., the act or an instance of a competitor's repeating of words in a way that conveys a misrepresentation that materially injures the person who first used the words, by appropriating credit of some kind earned by the first user. [Cases: Antitrust and Trade Regulation ⇨25.]

Unfair Trade Practices and Consumer Protection Law. A model statute patterned on the Federal Trade Commission Act and proposed by the FTC in 1967 for adoption by the states; a state law providing consumer-protection remedies, including private causes of action, for deceptive trade practices and false advertising. • The Act gives the state attorney general power to regulate unfair and deceptive trade practices. It also gives consumers a right to sue offenders directly. — Abbr. UTPCPL. — Also termed *Little FTC Acts.* [Cases: Antitrust and Trade Regulation ⇨126.]

unfinished business. See BUSINESS.

unfinished business and general orders. See BUSINESS.

unfit, *adj.* (16c) **1.** Unsuitable; not adapted or qualified for a particular use or service <the buyer returned the unfit goods to the seller and asked for a refund>. [Cases: Contracts ⇨312(5); Sales ⇨284(1).] **2.** *Family law.* Morally unqualified; incompetent <the judge found the mother unfit and so found that awarding custody of the child to the father was in the child's best interests>. [Cases: Child Custody ⇨32; Infants ⇨154.1–159.]

unfitness of a parent. *Family law.* A parent's failure to exhibit a reasonable concern for, interest in, or responsibility for a child's welfare. • Regardless of the specific ground for an allegation of unfitness, a court considers the parent's actions and the circumstances surrounding the conduct in deciding whether unfitness has been demonstrated. [Cases: Child Custody ⇨51; Infants ⇨154.1–159.]

unforeseen, *adj.* Not foreseen; not expected <unforeseen circumstances>.

unfriendly suitor. See CORPORATE RAIDER.

unfriendly takeover. See *hostile takeover* under TAKEOVER.

unfunded deferred-compensation plan. See EMPLOYEE BENEFIT PLAN.

unhandsome dealing. *Archaic.* See SHARP PRACTICE.

unharmed, *adj.* Not injured or damaged.

unica taxatio (**yoo**-nə-kə tak-**say**-shee-oh). [Law Latin "a single taxation"] *Hist.* The practice of having the jury assess damages against a defaulting defendant as well as a defendant who contests the case.

unico contextu (**yoo**-ni-koh kən-**teks**-t[y]oo). [Law Latin] *Hist.* In one connection. • The phrase appeared in ref-

erence to that which was accomplished by the same act or by different acts performed at the same time.

> "When there are more parties than one to a deed, it is not essential to the validity of its execution that they should subscribe *unico contextu* — *i.e.*, it is not necessary for them to subscribe at the same time and place. But where (as was formerly required) two notaries subscribed for a person who could not write, it was necessary that they should subscribe *unico contextu* at the same time and place, and before the same witnesses." John Trayner, *Trayner's Latin Maxims* 611 (4th ed. 1894).

unifactoral obligation. See OBLIGATION.

unified bar. See *integrated bar* under BAR.

unified credit. See *unified estate-and-gift tax credit* under TAX CREDIT.

unified estate-and-gift tax. See *unified transfer tax* under TAX.

unified estate-and-gift tax credit. See TAX CREDIT.

unified family court. See COURT.

unified transfer tax. See TAX.

uniform, *adj.* Characterized by a lack of variation; identical or consistent.

uniform act. 1. A law drafted with the intention that it will be adopted by all or most of the states; esp., a uniform law. See UNIFORM LAW. Cf. MODEL ACT. **2.** See *uniform statute* under STATUTE. [Cases: Statutes ⇨ 226.]

Uniform Adoption Act. A 1994 model statute aimed at achieving uniformity in adoption laws. • The current version of the Act was promulgated in 1994 by the National Conference of Commissioners on Uniform State Laws. State adoption has been largely unsuccessful. Earlier versions, in 1953 and 1971, were amended many times but were enacted in only a few states. — Abbr. UAA. [Cases: Adoption ⇨ 1–25.]

Uniform Anatomical Gift Act. A 1968 model statute that created protocols that govern the giving and receiving of anatomical gifts. • Under the Act, persons may donate their body or parts of their body for purposes of transplantation, therapy, research, or education. The original Act has been adopted in some form in all 50 states and the District of Columbia. It was revised in 1987, and the revised version has been adopted in some form in at least 22 states. — Abbr. UAGA. [Cases: Dead Bodies ⇨ 1.]

Uniform Child Custody Jurisdiction Act. A 1968 model statute that sets out a standard (based on the child's residence in and connections with the state) by which a state court determines whether it has jurisdiction over a particular child-custody matter or whether it must recognize a custody decree issued by another state's court. • The Uniform Child Custody Jurisdiction Act was replaced in 1997 by the Uniform Child Custody Jurisdiction and Enforcement Act. — Abbr. UCCJA. See HOME STATE. Cf. PARENTAL KIDNAPPING PREVENTION ACT; UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT. [Cases: Child Custody ⇨ 730–753.]

Uniform Child Custody Jurisdiction and Enforcement Act. A 1997 model statute that provides uniform methods of expedited interstate custody and visitation orders. • This Act was promulgated as a successor to the Uniform Child Custody Jurisdiction Act. The UCCJEA brings the Uniform Child Custody Jurisdiction Act into conformity with the Parental Kidnapping Prevention Act and the Violence Against Women Act. The Act revises child-custody jurisdiction, giving clearer standards for original jurisdiction and a standard for continuing jurisdiction. The Act also provides a remedial process for enforcing interstate child custody and visitation. — Abbr. UCCJEA. Cf. UNIFORM CHILD CUSTODY JURISDICTION ACT. [Cases: Child Custody ⇨ 730–753.]

Uniform Code of Military Justice. 1. CODE OF MILITARY JUSTICE. **2.** A model code promulgated by the National Conference of Commissioners on Uniform State Laws to govern state military forces when not in federal service. 11 U.L.A. 335 et seq. (1974). — Abbr. UCMJ. [Cases: Military Justice ⇨ 502.]

Uniform Commercial Code. A uniform law that governs commercial transactions, including sales of goods, secured transactions, and negotiable instruments. • The Code has been adopted in some form by every state and the District of Columbia. — Abbr. UCC. [Cases: Bills and Notes ⇨ 2; Sales ⇨ 3.1; Secured Transactions ⇨ 3.]

Uniform Computer Information Transactions Act. A model law that regulates software licensing and computer-information transactions. • The act draws upon contract law and the Uniform Commercial Code to create a regulatory scheme for licensing, rather than sales or lease, transactions. Among other things, UCITA applies to contracts for the licensing or purchase of software, contracts for software development, and contracts for access to databases through the Internet. It does not cover goods or services contracts within the scope of the UCC. — Abbr. UCITA.

Uniform Consumer Credit Code. A uniform law designed to simplify and modernize the consumer credit and usury laws, to improve consumer understanding of the terms of credit transactions, to protect consumers against unfair practices, and the like. • This Code has been adopted by only a few states. — Abbr. UCCC; U3C. — Also termed *Consumer Credit Code*. See CONSUMER CREDIT PROTECTION ACT. [Cases: Consumer Credit ⇨ 1.]

Uniform Controlled Substances Act. A uniform act, adopted by many states and the federal government, governing the sale, use, and distribution of drugs. 21 USCA §§ 801 et seq. [Cases: Controlled Substances ⇨ 4, 20.]

Uniform Crime Reports. A series of annual criminological studies (each entitled *Crime in the United States*) prepared by the FBI. • The reports include data on eight index offenses, statistics on arrests, and information on offenders, crime rates, and the like. — Abbr. UCR.

Uniform Customs and Practice for Commercial Documentary Credits. A publication of the International Chamber of Commerce that codifies widespread customs of bankers and merchants relating to the mechanics and operation of letters of credit. • Courts use this publication to supplement and help interpret primary sources of credit law, such as UCC Article 5. — Abbr. UCP. [Cases: Banks and Banking ⚷191.]

Uniform Deceptive Trade Practices Act. A 1964 model state statute that codified many common-law intellectual-property torts, such as trademark infringement, passing off, trade disparagement, and false advertising, and that provided additional consumer protection against other forms of commercial deception. • The Act provides a laundry list of prohibited practices, all involving misrepresentation. — Abbr. UDTPA. See BABY FTC ACT. [Cases: Consumer Protection ⚷6.] [Cases: Antitrust and Trade Regulation ⚷126.]

Uniform Determination of Death Act. A 1978 model statute that provides a comprehensive basis for determining death. • This is a technical act that merely defines death clinically and does not deal with suicide, assisted suicide, or the right to die. The Act was revised in 1980. It has been adopted in almost all states. [Cases: Death ⚷1.]

Uniform Disposition of Community Property at Death Act. A 1971 model statute designed for non-community-property states to preserve the rights of each spouse in property that was community property before the spouses moved to non-community-property states, unless they have severed or altered their community-property rights.

Uniform Division of Income for Tax Purposes Act. A uniform law, adopted by some states, that provides criteria to assist in assigning the total taxable income of a multistate corporation among the various states. — Abbr. UDITPA. [Cases: Taxation ⚷3477.]

Uniform Divorce Recognition Act. A 1947 model code adopted by some states regarding full-faith-and-credit issues that arise in divorces. — Abbr. UDRA. [Cases: Divorce ⚷351.]

Uniform Durable Power of Attorney Act. A 1979 model statute that provides a simple way for a person to deal with his or her property by providing a power of attorney that will survive after the incompetence of the principal. • The Act was revised in 1987 and has been adopted in almost every state. [Cases: Principal and Agent ⚷42.]

Uniformed Services Former Spouses' Protection Act. A federal statute that governs the disposition of military pension benefits to former spouses of persons in the armed services. 10 USCA §§ 1401 et seq. • The Act permits state courts to treat military-retirement pay as marital property and to order payment of up to 50% of the retirement pay directly to the former spouse if the spouses were married for at least ten years while the employee served in the military. — Abbr. USFSPA. [Cases: Divorce ⚷252.3(4).]

Uniform Electronic Transactions Act. A 1999 model law designed to support electronic commerce by providing means for legally recognizing and retaining electronic records, establishing how parties can bind themselves in an electronic transaction, and providing for the use of electronic records by governmental agencies. • UETA covers electronic records and digital signatures but applies only if all parties agree to do business electronically. — Abbr. UETA.

Uniform Enforcement of Foreign Judgments Act. A uniform state law giving the holder of a foreign judgment the right to levy and execute as if it were a domestic judgment. [Cases: Judgment ⚷814–830.]

Uniform Fraudulent Conveyances Act. A model act adopted in 1918 to deal with issues arising from fraudulent conveyances by insolvent persons. • This act differentiated between conduct that was presumed fraudulent and conduct that required an actual intent to commit fraud. — Abbr. UFCA. [Cases: Fraudulent Conveyances ⚷2.]

Uniform Fraudulent Transfer Act. A model act designed to bring uniformity among the states regarding the definition of, and penalties for, fraudulent transfers. • This act was adopted in 1984 to replace the Uniform Fraudulent Conveyances Act. — Abbr. UFTA. [Cases: Fraudulent Conveyances ⚷2.]

Uniform Gifts to Minors Act. See UNIFORM TRANSFERS TO MINORS ACT. — Abbr. UGMA.

Uniform Health-Care Decisions Act. A 1993 model statute that facilitates and encourages adults to make advance directives. — Abbr. UHCDA. See ADVANCE DIRECTIVE; LIVING WILL. [Cases: Health ⚷912.]

Uniform Interstate Family Support Act. A 1992 model statute establishing a one-order system by which an alimony or child-support decree issued by one state can be enforced against a former spouse who resides in another state. • This statute has been adopted in every state and is the basis of jurisdiction in child-support suits. The purpose of the Act is to make the pursuit of interstate child support and paternity more effective, consistent, and efficient by requiring all states to recognize and enforce consistently support orders issued in other states. Before its enactment, there was considerable disparity among the states in the way they handled interstate child-support proceedings, since each state had differing versions of the earlier uniform law, the Uniform Reciprocal Enforcement of Support Act. The Act was revised in 1996 and again in 2001. — Abbr. UIFSA. [Cases: Child Support ⚷500–510.]

Uniform Interstate Juvenile Compact. An agreement that regulates the treatment of juveniles who are not under proper supervision or control, or who have run away or escaped, and who are likely to endanger their own or others' health, morals, or welfare. • The Compact is relied on by the state to transport juvenile runaways back to their home states. It has now been universally adopted in the United States, but not always in its entirety. — Abbr. UIJC.

Uniformity Clause. (1881) The clause of the U.S. Constitution requiring the uniform collection of federal taxes. U.S. Const. art. I, § 8, cl. 1. [Cases: Internal Revenue ⚷3022.]

Uniform Juvenile Court Act. A 1968 model statute designed to (1) provide for the care, protection, and moral, mental, and physical development of the children who come under its provisions, (2) provide juvenile delinquents with treatment, training, and rehabilitation rather than criminal punishment, (3) attempt to keep families together unless separation of parents and children is necessary for the children's welfare or is in the public interest, (4) provide a judicial procedure for a fair hearing and protection of juvenile delinquents' constitutional and other legal rights, and (5) provide simple interstate procedures to carry out cooperative measures among the juvenile courts of different states. — Abbr. UJCA. [Cases: Infants ⚷131–254.]

uniform law. An unofficial law proposed as legislation for all the states to adopt exactly as written, the purpose being to promote greater consistency among the states. • All the uniform laws are promulgated by the National Conference of Commissioners on Uniform State Laws. For a complete collection, see *Uniform Laws Annotated*. See *uniform statute* under STATUTE. Cf. MODEL ACT. [Cases: Statutes ⚷226.]

Uniform Law Commissioners. See NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

Uniform Limited Partnership Act. A model law promulgated in 1916 for adoption by state legislatures to govern the relationship between the partners of a limited partnership. • At one time it was adopted in all states except Louisiana. The National Conference of Commissioners on Uniform State Laws promulgated the Revised Uniform Limited Partnership Act (RULPA) in 1976, and made substantial amendments to it in 1985. The amended RULPA has been adopted by most states. — Abbr. ULPA. [Cases: Partnership ⚷351.]

Uniform Mandatory Disposition of Detainers Act. A 1958 model statute requiring a state to timely dispose of any untried charges against a prisoner in that state, on the prisoner's written request. • The Act has been adopted by several states. See INTERSTATE AGREEMENT ON DETAINERS ACT. [Cases: Extradition and Detainers ⚷51.]

Uniform Marriage and Divorce Act. A 1970 model statute that defines marriage and divorce. • Extensively amended in 1973, the Act was an attempt by the National Conference of Commissioners on Uniform State Laws to make marriage and divorce laws more uniform. The Act's greatest significance is that it introduced, as the sole ground for divorce, irreconcilable differences. Although the UMDA has been enacted in part in only a handful of states, it has had an enormous impact on marriage and divorce laws in all states. — Abbr. UMDA. — Also termed *Model Marriage and Divorce Act*. See IRRECONCILABLE DIFFERENCES.

Uniform Parentage Act. A 1973 model statute that provides a means for determining parenthood for the general welfare of the child and for assigning child support. • The Act abolishes distinctions between legitimate and illegitimate status for children. Instead, it directs courts to determine rights and responsibilities based on the existence of a parent–child relationship. The Act has been adopted in all states. The Act was revised in 2000 and amended in 2002. Among other changes, the revisions provided frameworks for establishing the parentage (esp. paternity) of children born to married or unmarried couples, and set standards and rules for genetic testing. A minority of states have enacted a version of the revised Act. [Cases: Children Out-of-Wedlock ⚷31.]

Uniform Partnership Act. A 1914 model statute intended to bring uniformity to state laws governing general and limited partnerships. • The Act was adopted by almost all the states, but has been superseded in several of them by the Revised Uniform Partnership Act (1994). — Abbr. UPA. [Cases: Partnership ⚷351.] [Cases: Partnership ⚷1, 351.]

Uniform Premarital Agreement Act. A 1983 model statute that governs the drafting of prenuptial contracts and provides a more certain framework for drafting complete and enforceable agreements. • Under the UPAA, a premarital agreement must be in writing and signed by the parties. It becomes effective only upon marriage. The agreement may govern the parties' assets, support, and obligations during the marriage, at death, and upon divorce. The UPAA has been adopted in some form in about one-third of the states. — Abbr. UPAA. [Cases: Husband and Wife ⚷29.]

Uniform Principal and Income Act. A uniform code adopted by some states governing allocation of principal and income in trusts and estates. [Cases: Executors and Administrators ⚷502; Trusts ⚷272; Wills ⚷684.]

Uniform Probate Code. A 1969 model statute that modernizes the rules and doctrines governing intestate succession, probate, and the administration of estates. • It has been extensively amended many times since 1969 and has been enacted in a majority of states. — Abbr. UPC. [Cases: Wills ⚷3, 204.]

Uniform Prudent Investor Act. A 1994 model statute that sets a standard for the acts of a trustee, adopts a prudent-investor standard, and prefers a modern portfolio approach to investing. • Under the Uniform Prudent Investor Act, the trustee is given significant power to delegate the selection of investments. The prudent-investor standard replaces the prudent-person standard of investing. The portfolio approach provides that no investment will be viewed in isolation; rather, it will be viewed as part of the entire portfolio. Under this theory, even though an investor loses trust assets on an investment, if there is an overall positive return, the investor will not be liable to the beneficiaries. — Abbr. UPIA. See PRUDENT-INVESTOR RULE.

Uniform Putative and Unknown Fathers Act. A 1988 model statute aimed at codifying Supreme Court decisions on the rights of an unwed father in relation to his child. • The Act deals primarily with an unwed father's right to notice of a termination and adoption proceeding, to adjudication of paternity, to visitation, and to custody. — Abbr. UPUFA. — Also termed *Model Putative Fathers Act*; *Putative Fathers Act*.

Uniform Reciprocal Enforcement of Support Act. A 1950 model statute (now superseded) that sought to unify the way in which interstate support matters were processed and the way in which one jurisdiction's orders were given full faith and credit in another jurisdiction. • This Act, which was amended in 1958 and 1960, was replaced in 1997 with the Uniform Interstate Family Support Act. — Abbr. URESA. See UNIFORM INTERSTATE FAMILY SUPPORT ACT. [Cases: Child Support ☞ 500–510.]

Uniform Simultaneous Death Act. A 1940 model statute creating a rule that a person must survive a decedent by at least 120 hours in order to avoid disputes caused by simultaneous deaths (as in a common disaster) or by quickly successive deaths of persons between whom property or death benefits pass on the death of one survived by the other. • In the absence of the 120-hour period of survival, each person is presumed to have survived the other for purposes of distributing their respective estates. The Act was revised in 1993 and has been adopted in some form by almost every state. See COMMORIENTES. [Cases: Death ☞ 5, 6.]

Uniform Status of Children of Assisted Conception Act. A 1988 model statute aimed at ensuring certainty of legal parentage when assisted conception has been used. • The adopting state has the option of regulating or prohibiting contracts with surrogate mothers.

uniform statute. See STATUTE.

Uniform Trade Secrets Act. A 1979 model statute, enacted by most states, defining *trade secret* differently from the common law by being at once broader (because there is no continuous-use requirement) and narrower (because information "readily ascertainable by proper means" cannot qualify). • The Act has three elements: (1) the information must qualify as a trade secret; (2) it must be misappropriated, either through wrongful means or by breaching a duty of confidentiality; and (3) the owner must have taken reasonable precautions to keep the information secret. — Abbr. UTSA. — Also termed *Uniform Trade Secrets Protection Act*. [Cases: Antitrust and Trade Regulation ☞ 411.]

Uniform Transfers to Minors Act. A 1983 model statute providing for the transfer of property to a minor and permitting a custodian who acts in a fiduciary capacity to manage investments and apply the income from the property to the minor's support. • The Act has been adopted in most states. It was revised in 1986. — Abbr. UTMA. — Also termed *Transfers to Minors Act*. — Formerly also termed *Uniform Gifts to Minors Act*; *Gifts to Minors Act*. [Cases: Infants ☞ 28.]

unify, *vb.* To cause to become one; to form into a single unit.

unigeniture (yoo-nə-**jen**-ə-chər). *Archaic.* The fact of being an only child.

unilateral (yoo-nə-**lat**-ər-əl), *adj.* (1802) One-sided; relating to only one of two or more persons or things <unilateral mistake>.

unilateral act. See ACT (2).

unilateral advance pricing agreement. See ADVANCE PRICING AGREEMENT.

unilateral contract. See CONTRACT.

unilateral mistake. See MISTAKE.

unimproved land. See LAND.

unincorporated association. See ASSOCIATION (3).

unindicted coconspirator. See COCONSPIRATOR.

unindicted conspirator. See *unindicted coconspirator* under COCONSPIRATOR.

uninstructed delegate. See DELEGATE.

uninsured-motorist coverage. Insurance that pays for the insured's injuries and losses negligently caused by a driver who has no liability insurance. Cf. UNDERINSURED-MOTORIST COVERAGE. [Cases: Insurance ☞ 2772.]

unintelligible vote. See VOTE (1).

unintentional act. See ACT (2).

unintentional murder. See MURDER.

uninterrupted-adverse-use principle. See CONTINUOUS-ADVERSE-USE PRINCIPLE.

unio (**yoo**-nee-oh). *Eccles. law.* A consolidation of two churches into one.

union, *n.* An organization formed to negotiate with employers, on behalf of workers collectively, about job-related issues such as salary, benefits, hours, and working conditions. • Unions generally represent skilled workers in trades and crafts. — Also termed *labor union*; *labor organization*; *organization*. See TRADE COUNCIL. [Cases: Labor and Employment ☞ 998.] — **unionize,** *vb.* — **unionist,** *n.*

closed union. A union with restrictive membership requirements, such as high dues and long apprenticeship periods. Cf. *closed shop* under SHOP.

company union. **1.** A union whose membership is limited to the employees of a single company. **2.** A union under company domination.

craft union. A union composed of workers in the same trade or craft, such as carpentry or plumbing, regardless of the industry in which they work. — Also termed *horizontal union*.

federal labor union. A local union directly chartered by the AFL-CIO. See AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS.

horizontal union. See *craft union*.

independent union. A union that is not affiliated with a national or international union.

industrial union. A union composed of workers in the same industry, such as shipbuilding or automobile manufacturing, regardless of their particular trade or craft. — Also termed *vertical union.*

international union. A parent union with affiliates in two or more countries.

local union. A union that serves as the local bargaining unit for a national or international union.

multicraft union. A union composed of workers in different industries.

national union. A parent union with locals in various parts of the United States.

open union. A union with minimal membership requirements. Cf. *open shop* under SHOP.

trade union. A union composed of workers of the same or of several allied trades; a craft union.

vertical union. See *industrial union.*

union certification. A determination by the National Labor Relations Board or a state agency that a particular union qualifies as the bargaining representative for a segment of a company's workers — a bargaining unit — because it has the support of a majority of the workers in the unit. — Also termed *certification of bargaining agent; certification of labor union.*

union contract. See COLLECTIVE-BARGAINING AGREEMENT.

union givebacks. See CONCESSION BARGAINING.

Union Jack. The common name of the national flag of the United Kingdom, combining the national flags of England, Scotland, and Ireland. • The Union Jack was originally a small union flag flown from the jack-staff at the bow of a vessel. It is different from the Royal Standard, which bears the royal arms and is the Queen's personal flag.

union-loss clause. See MORTGAGE-LOSS CLAUSE.

union mortgage clause. See *standard mortgage clause* under MORTGAGE CLAUSE.

union rate. See RATE.

union-security clause. A provision in a union contract intended to protect the union against employers, nonunion employees, and competing unions. [Cases: Labor and Employment ☞1264.]

union shop. See SHOP.

union steward. See STEWARD (2).

unique chattel. See CHATTEL.

unissued stock. See STOCK.

unit. The number of shares, often 100, in which a given stock is normally traded.

unital (**yoo**-nə-təl), *adj.* (1860) Of or relating to legal relations that exist between only two persons. Cf. MULTITAL.

"The relations of the *cestui que trust* with the trustee are *in personam* or 'unital,' and the same is true of a contract beneficiary and the promisor . . . ." William R. Anson, *Principles of the Law of Contract* 326 n.1 (Arthur L. Corbin ed., 3d Am. ed. 1919).

unitary business (**yoo**-nə-ter-ee). *Tax.* A business that has subsidiaries in other states or countries and that calculates its state income tax by determining what portion of a subsidiary's income is attributable to activities within the state, and paying taxes on that percentage. [Cases: Taxation ☞3477.]

unitary state. See STATE.

unitary tax. See TAX.

unitas actus (**yoo**-ni-tas **ak**-təs). [Latin] *Roman law.* Unity of action, esp. in the execution of a will, which must not be interrupted by any intervening act.

unitas juris (**yoo**-ni-tas **joor**-is). [Latin] *Hist.* Unity of right.

unit cost. See COST (1).

unit depreciation method. See DEPRECIATION METHOD.

unite, *vb.* **1.** To combine or join to form a whole. **2.** To act in concert or in a common cause.

United Kingdom. A country in Europe comprising England, Scotland, Wales, and Northern Ireland, but not the Isle of Man or the Channel Islands. — Abbr. U.K.

United Nations. An international organization established in 1945 to promote and ensure international peace and security, to promote friendly relations between nations, and to contribute in resolving international problems related to economic, social, cultural, and humanitarian conditions. — Abbr. U.N. [Cases: International Law ☞10.45.]

United Nations Convention on the Rights of the Child. An international instrument covering children's civil, political, economic, social, and cultural rights. • The Convention was adopted by the United Nations General Assembly on November 20, 1989. Only a few nations, including the United States, have not ratified the convention. — Abbr. UNCRC. [Cases: Treaties ☞8.]

United Nations Educational, Scientific, and Cultural Organization. The arm of the United Nations charged with promoting the exchange of educational, scientific, and cultural enterprises among nations. • Its Copyright Law Division administers the Universal Copyright Convention. — Abbr. UNESCO.

United Nations Environment Programme. An organization created in 1972 to encourage education in and employment of environmentally sound practices in all nations. — Abbr. UNEP.

United Nations Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space. See OUTER SPACE TREATY.

United States. Abbr. U.S. See UNITED STATES OF AMERICA.

United States Agency for International Development. The independent federal agency that administers U.S. foreign-aid programs to give economic and humanitarian assistance to developing nations. • The agency became independent by the Foreign Affairs and Restructuring Act of 1998, although its administrator is under the direct authority and foreign-policy guidance of the Secretary of State. — Abbr. AID; USAID.

United States Air Force. The aviation branch of the United States armed forces, made up of the Regular Air Force (standing air force), the Air Force Reserve, and the Air National Guard. • The United States Air Force is under the authority of the U.S. Department of the Air Force. — Abbr. USAF. [Cases: Armed Services ⚷4.]

United States Air Force Academy. An institution of higher learning in the United States Department of the Air Force responsible for educating and training commissioned officers for service in the United States Air Force. • Founded in 1954, the academy is located near Colorado Springs, Colorado. — Abbr. USAFA. — Occasionally also termed (informally) the *Colorado Air Force School*. [Cases: Armed Services ⚷16.]

United States Arbitration Act. See FEDERAL ARBITRATION ACT. — Abbr. USAA.

United States Army. The land-combat and land-operations branch of the United States armed forces. • This branch includes supporting air- and water-transport services such as the Army Air Corps. The Army includes the Regular Army (the standing force), the Army Reserve, and the Army National Guard when in active federal service, as in time of war or other national emergency. The United States Army is under the authority of the U.S. Department of the Army. — Also termed *land forces*. — Abbr. USA. [Cases: Armed Services ⚷4.]

United States Attorney. A lawyer appointed by the President to represent, under the direction of the Attorney General, the federal government in civil and criminal cases in a federal judicial district. • One U.S. Attorney is assigned to each of the federal judicial districts, except for the Northern Mariana Islands and Guam. — Abbr. USA. — Also termed *United States District Attorney*. Cf. DISTRICT ATTORNEY. [Cases: District and Prosecuting Attorneys ⚷6.]

Assistant United States Attorney. A lawyer appointed by the Attorney General to act under the direction of the United States Attorney and represent the federal government in civil and criminal cases filed in federal courts. — Abbr. AUSA. [Cases: District and Prosecuting Attorneys ⚷6.]

Special Assistant to the United States Attorney. An attorney appointed by the Attorney General for a limited period to assist a United States Attorney in specific cases. 28 USCA § 543. — Abbr. SAUSA. [Cases: District and Prosecuting Attorneys ⚷6.]

United States Bankruptcy Court. See BANKRUPTCY COURT.

United States Botanic Garden. An enclosed garden on the U.S. Capitol grounds where plants are cultivated for ceremonial use, public display, and research. • Many rare botanical specimens are available for study by students and scientists at the Garden.

United States Claims Court. See UNITED STATES COURT OF FEDERAL CLAIMS.

United States Coast Guard. A military service and armed-forces branch that enforces the federal laws applicable to waters subject to U.S. jurisdiction, administers laws and promulgates regulations for the safety of lives and property on waters under U.S. jurisdiction, carries out maritime rescue operations, performs oceanographic research, and at times serves as a specialized branch of the Navy. • The Coast Guard was established in 1915. 14 USCA § 1. It has been part of the U.S. Department of the Treasury and the U.S. Department of Transportation. Today it is part of the U.S. Department of Homeland Security during peacetime, and the U.S. Department of Defense during wartime. — Abbr. USCG. [Cases: Armed Services ⚷4.]

United States Coast Guard Academy. An institution of higher learning responsible for educating and training commissioned officers for service in the United States Coast Guard. • The academy began in 1876 as the School of Instruction of the Revenue Cutter Service near New Bedford, Massachusetts. In 1915, the academy acquired its current name and, in 1932, moved to New London, Connecticut. — Abbr. USCGA. [Cases: Armed Services ⚷16.]

United States Code. A multivolume published codification of federal statutory law. — Abbr. U.S.C.; USC.

United States Code Annotated. A multivolume publication of the complete text of the United States Code with historical notes, cross-references, and casenotes of federal and state decisions construing specific Code sections. — Abbr. USCA.

United States Commissioner. See COMMISSIONER.

United States Commission on Civil Rights. The agency that compiles information about discrimination based on race, color, religion, sex, age, disability, or national origin, and about the denial of equal protection of the laws in voting, education, employment, and housing. • The agency makes findings and recommendations to Congress but has no enforcement power. It was established by the Civil Rights Act of 1957. — Abbr. CCR.

United States Copyright Office. A branch of the Library of Congress that is responsible for implementing federal copyright laws. • In addition to processing applications for copyrights, the U.S. Copyright Office stores deposited copyrighted materials and issues opinions (by request) on questions of copyright protection. Materials deposited with this agency are not automatically added to the Library of Congress collection; a separate and direct submission to the Library may be required. The Office also administers various licensing provisions of the statute, including collecting and distributing royal-

ties. [Cases: Copyrights and Intellectual Property ⚷ 50.30.]

United States court. See *federal court* under COURT.

United States Court of Appeals. A federal appellate court having jurisdiction to hear cases in one of the 13 judicial circuits of the United States (the First Circuit through the Eleventh Circuit, plus the District of Columbia Circuit and the Federal Circuit). — Also termed *circuit court*. [Cases: Federal Courts ⚷ 521.]

United States Court of Appeals for the Armed Forces. The primary civilian appellate tribunal responsible for reviewing court-martial convictions from all the military services. 10 USCA §§ 941–950. — Formerly also termed *Court of Military Appeals*. [Cases: Military Justice ⚷ 1435.]

United States Court of Appeals for the Federal Circuit. An intermediate-level appellate court with jurisdiction to hear appeals in patent cases, various actions against the United States to recover damages, cases from the U.S. Court of Federal Claims, the U.S. Court of International Trade, the U.S. Court of Appeals for Veterans Claims, the Merit Systems Protection Board, and some administrative agencies. • The Court originated in the 1982 merger of the Court of Customs and Patent Appeals and the U.S. Court of Claims (although the trial jurisdiction of the Court of Claims was given to a new U.S. Claims Court). Among the purposes of its creation were ending forum-shopping in patent suits, settling differences in patent-law doctrines among the circuits, and allowing a single forum to develop the expertise needed to rule on complex technological questions that arise in patent suits. — Abbr. CAFC, Fed. Cir. — Often shortened to *Federal Circuit*. [Cases: Federal Courts ⚷ 521.]

United States Court of Appeals for Veterans Claims. An Article I federal appellate court that has exclusive jurisdiction to review decisions of the Board of Veterans Appeals. • The Court was created in 1988 as the United States Court of Veterans Appeals; its name was changed in 1998. Its seven judges are appointed by the President and confirmed by the Senate; they serve 15-year terms. Appeals from its decisions are to the U.S. Court of Appeals for the Federal Circuit. 38 USCA §§ 7251 et seq. — Also termed *United States Court of Veterans Appeals*. [Cases: Armed Services ⚷ 154.]

United States Court of Federal Claims. A specialized federal court created under Article I of the Constitution in 1982 (with the name *United States Claims Court*) as the successor to the Court of Claims, and renamed in 1992 as the United States Court of Federal Claims. • It has original, nationwide jurisdiction to render a money judgment on any claim against the United States founded on the Constitution, a federal statute, a federal regulation, an express or implied-in-fact contract with the United States, or any other claim for damages not sounding in tort. — Abbr. Cl. Ct.; (formerly) Ct. Cl. — Also termed *Court of Claims*. [Cases: Federal Courts ⚷ 1071.]

United States Court of International Trade. A court with jurisdiction over any civil action against the United States arising from federal laws governing import transactions or the eligibility of workers, firms, and communities for adjustment assistance under the Trade Act of 1974 (19 USCA §§ 2101–2495). • Its exclusive jurisdiction also includes actions to recover customs duties, to recover on a customs bond, and to impose certain civil penalties for fraud or negligence. See 28 USCA §§ 1581–1584. — Abbr. USCIT; CIT. — Also termed *International Trade Court*; *Court of International Trade*; (formerly) *U.S. Customs Court*.

United States Court of Veterans Appeals. See UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS.

United States currency. See CURRENCY.

United States Customs Court. A court that formerly heard cases involving customs and duties. • Abolished in 1980, its responsibilities have been taken over by the United States Court of International Trade. See UNITED STATES COURT OF INTERNATIONAL TRADE.

United States Customs Service. An agency in the U.S. Department of Homeland Security responsible for collecting import duties on goods, wares, and merchandise, and for enforcing customs and related laws. • The Customs Service was created in 1863. 12 Stat. 665. It was transferred from the Department of the Treasury in 2003. — Also termed *Bureau of Customs*. [Cases: Customs Duties ⚷ 53–60.]

United States District Attorney. See UNITED STATES ATTORNEY.

United States District Court. A federal trial court having jurisdiction to hear civil and criminal cases within its judicial district. • The United States is divided into nearly 100 federal judicial districts. Each state has at least one judicial district. Also, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands each have one district. — Abbr. U.S.D.C. [Cases: Federal Courts ⚷ 971, 973.]

United States Fish and Wildlife Service. A unit in the U.S. Department of the Interior responsible for managing more than 93 million acres of land and water consisting of more than 500 national wildlife refuges and thousands of small wetlands. • It also administers or enforces laws relating to migratory birds, endangered species, certain marine mammals, and sports fisheries. — Abbr. FWS; USFWS. [Cases: Environmental Law ⚷ 525; Fish ⚷ 11; Game ⚷ 3.5.]

United States Foreign Intelligence Surveillance Court. An 11-judge court that hears requests from the Attorney General for surveillance warrants under the Foreign Intelligence Surveillance Act. • The court's proceedings and records are normally closed to the public. Its rulings may be reviewed by the Foreign Intelligence Court of Review. — Abbr. FISC. [Cases: War and National Emergency ⚷ 32.]

United States Foreign Intelligence Surveillance Court of Review. A panel comprising three federal judges appointed by the Chief Justice to review decisions of

the United States Intelligence Surveillance Court. • The Court was established in 1978 by the Foreign Intelligence Surveillance Act. [Cases: War and National Emergency ⚷32.]

United States Foreign Service. A division of the State Department responsible for maintaining diplomatic and consular offices and personnel in foreign countries. — Often shortened to *Foreign Service*. [Cases: Ambassadors and Consuls ⚷5.]

United States Geological Survey. A unit in the U.S. Department of the Interior responsible for preparing and publishing maps, technical reports, and fact sheets, and for compiling information about energy and mineral resources and the use and quality of the nation's water resources. — Abbr. USGS.

United States Institute of Peace. An independent federal institution created to develop and disseminate knowledge about international peace and conflict resolution. • The Institute was established in 1984.

United States International Trade Commission. An independent federal agency that compiles information on international trade and tariffs; reports its findings and recommendations to the President, the U.S. Trade Representative, and Congressional Committees; and conducts investigations into international-trade relief. — Abbr. USITC. [Cases: Customs Duties ⚷21.5, 72.]

United States Magistrate Judge. A federal judicial officer who hears civil and criminal pretrial matters and who may conduct civil trials or criminal misdemeanor trials. 28 USCA §§ 631–639. • Magistrate judges are appointed to renewable eight-year terms under Article I of the U.S. Constitution. — Also termed *federal magistrate*; (before 1990) *United States Magistrate*; *parajudge*. [Cases: United States Magistrates ⚷11, 12.]

United States Marine Corps. The military service within the United States Navy whose forces are trained for land, sea, and air combat. • The United States Marine Corps is a separate service within the United States Navy under the authority of the U.S. Department of the Navy. — Abbr. USMC. [Cases: Armed Services ⚷4.]

United States Marshal. See MARSHAL.

United States Marshals Service. The unit in the U.S. Department of Justice responsible for protecting federal courts and ensuring effective operation of the judicial system. • U.S. marshals make arrests, serve court papers, and enforce court orders. — Abbr. USMS. [Cases: United States Marshals ⚷28, 29.]

United States Merchant Marine Academy. A military-affiliated institution of higher learning responsible for educating and training commissioned officers for service on civilian merchant vessels or in the armed forces. • The academy was founded in 1938, and since 1943 has been located at King's Point, New York. — Abbr. USMMA. [Cases: Armed Services ⚷16.]

United States Military Academy. An institution of higher learning in the U.S. Department of the Army responsible for educating and training officers for service in the U.S. Army. • Founded in 1802, the academy is located on the Hudson River in West Point, New York. — Abbr. USMA. — Often termed *West Point*. [Cases: Armed Services ⚷16.]

United States Mint. A unit in the U.S. Department of the Treasury responsible for producing coins to be used in trade and commerce, numismatic coins, gold and silver coins, and national medals. • It also operates the gold-storage facility at Fort Knox, Kentucky. It was formerly termed the Bureau of the Mint. [Cases: United States ⚷34.]

United States Naval Academy. An institution of higher learning in the United States Department of the Navy responsible for educating and training commissioned officers for service in the United States Navy and the United States Marine Corps. • Founded in 1845, the academy is located in Annapolis, Maryland. — Abbr. USNA. — Often also termed (informally) *Annapolis*. [Cases: Armed Services ⚷16.]

United States Navy. The naval-operations branch of the United States armed forces, including naval aviation and the United States Marine Corps, and the United States Coast Guard when operating as a service in the Navy. • The United States Navy is under the authority of the U.S. Department of the Navy. — Abbr. USN. [Cases: Armed Services ⚷4.]

United States of America. A federal republic formed after the War of Independence and made up of 48 conterminous states, plus the state of Alaska and the District of Columbia in North America, plus the state of Hawaii in the Pacific. — Abbr. USA; U.S. [Cases: United States ⚷1.]

United States officer. See OFFICER (1).

United States Patent and Trademark Office. The Department of Commerce agency that examines patent and trademark applications, issues patents, registers trademarks, and furnishes patent and trademark information and services to the public. — Abbr. PTO; USPTO. — Often shortened to *Patent Office*; *Trademark Office*.

United States person. A U.S. resident or national (except a national living outside the United States who is employed by someone other than a United States person), a domestic American concern, and any foreign subsidiary or affiliate of a domestic concern with operations controlled by the domestic concern. • Under anti-boycott regulatory controls, no United States person may participate in a secondary boycott or discrimination against Jews and others by members of the League of Arab States. 50 USCA app. § 2415(2).

United States Postal Service. An independent establishment in the executive branch responsible for operating post offices, safeguarding and delivering mail, and enforcing the laws affecting the integrity and security of the mail. • The Postal Reorganization Act of 1970 replaced the cabinet-level Post Office Department

with the United States Postal Service. 39 USCA § 101 et seq. — Abbr. USPS. [Cases: Postal Service ⚷1–5.]

United States Reports. The official printed record of U.S. Supreme Court cases. • In a citation, it is abbreviated as U.S., as in 388 U.S. 14 (1967). [Cases: Reports ⚷3.]

United States Secret Service. A law-enforcement agency in the U.S. Department of Homeland Security responsible for providing security for the President, Vice President, certain other government officials, and visiting foreign diplomats, and for protecting U.S. currency by enforcing the laws relating to counterfeiting, forgery, and credit-card fraud. • The Service was transferred from the Department of the Treasury in 2003. — Often shortened to *Secret Service*. [Cases: United States ⚷34.]

United States Sentencing Commission. An independent commission in the judicial branch of the federal government responsible for setting and regulating guidelines for criminal sentencing in federal courts and for issuing policy statements about their application. • The President appoints its members with the advice and consent of the Senate. It was created under the Sentencing Reform Act 1984. 28 USCA § 991.

United States Sentencing Guidelines. A detailed set of instructions for judges to determine appropriate sentences for federal crimes. — Abbr. USSG. — Also termed *federal sentencing guidelines*. [Cases: Sentencing and Punishment ⚷651.]

United States Supreme Court. See SUPREME COURT OF THE UNITED STATES.

United States Tax Court. See TAX COURT, U.S.

United States Trade and Development Agency. An independent federal agency in the executive branch responsible for promoting trade between the United States and developing countries to create jobs in the United States and to promote economic progress in poorer nations. • It was established in 1961 as the Trade and Development Program and was renamed in 1992. — Abbr. TDA; USTDA.

United States Trade Representative. The top U.S. trade negotiator and adviser to the President on foreign-trade policy. • The Cabinet-level office is responsible for making annual reports on nations that do not act diligently to stop piracy of copyrighted material. The Trade Representative holds the rank of ambassador. — Abbr. USTR. See OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE; SPECIAL 301.

United States trustee. A federal official who is appointed by the Attorney General to perform administrative tasks in the bankruptcy process, such as appointing bankruptcy trustees in Chapter 7 and Chapter 11 cases. See TRUSTEE (2). [Cases: Bankruptcy ⚷3001–3011.]

unities doctrine of marriage. See LEGAL-UNITIES DOCTRINE.

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism. See USA PATRIOT ACT.

unit-investment trust. See TRUST.

unitization. *Oil & gas.* The collection of producing wells over a reservoir for joint operations such as enhanced-recovery techniques. • Unitization is usu. carried out after primary production has begun to fall off substantially, in order to permit efficient secondary-recovery operations. It is also done to comply with well-spacing requirements established by state law or regulation. Pooling, by contrast, is usu. associated with drilling a single well and operating that well by primary-production techniques. Cf. POOLING. [Cases: Mines and Minerals ⚷92.78.] — **unitize** (yoo-nə-tiz), *vb.*

compulsory unitization. Unitization done by order of a regulatory agency. — Also termed *forced unitization*. [Cases: Mines and Minerals ⚷92.78.]

forced unitization. See *compulsory unitization*.

voluntary unitization. Unitization arranged by agreement of the owners of mineral interests. [Cases: Mines and Minerals ⚷78.1(7), 79.1(5).]

unitization clause. *Oil & gas.* A provision in an oil-and-gas lease granting the lessee the right to unitize the leased premises, generally for enhanced-recovery operations. [Cases: Mines and Minerals ⚷78.1(7).]

unit-ownership act. A state law governing condominium ownership. [Cases: Condominium ⚷2.]

unit price. See PRICE.

unit pricing. A system in which contract items are priced per unit rather than on the basis of a flat contract price. [Cases: Contracts ⚷231(1); Sales ⚷77(1).]

unit rule. 1. *Securities.* A method of valuing securities by multiplying the total number of shares held by the sale price of one share sold on a licensed stock exchange, ignoring all other facts about value. **2.** *Parliamentary law.* A convention's rule that lets a delegation's majority cast the entire delegation's votes. Cf. *instructed delegate* under DELEGATE.

unitrust. See TRUST.

units-of-output depreciation method. See DEPRECIATION METHOD.

units-of-production method. *Tax.* An accounting method in which the depreciation provision is computed at a fixed rate per product unit, based on an estimate of the total number of units that the property will produce during its service life. • This method is used in the oil-and-gas industry when the total number of units of production (i.e., barrels in a reserve) can be accurately estimated.

unity, *n.* (13c) **1.** The fact or condition of being one in number; oneness. **2.** Jointness in interest, possession, time, or title. • At common law, all four of these unities were required for the creation of a joint tenancy. See *joint tenancy* under TENANCY. [Cases: Joint Tenancy ⚷1, 3.] — **unitary,** *adj.*

unity of interest. (18c) The requirement that all joint tenants' interests must be identical in nature, extent,

and duration. — Also termed *interest unity*. [Cases: Joint Tenancy ⚷1, 3.]

unity of possession. (18c) The requirement that each joint tenant must be entitled to possession of the whole property. — Also termed *possession unity*. [Cases: Joint Tenancy ⚷1, 3.]

unity of time. (18c) The requirement that all joint tenants' interests must vest at the same time. — Also termed *time unity*. [Cases: Joint Tenancy ⚷1, 3.]

unity of title. (18c) The requirement that all joint tenants must acquire their interests under the same instrument. — Also termed *title unity*. [Cases: Joint Tenancy ⚷1, 3.]

unity of art. *Copyright*. The inseparable nature of utilitarian and functional aspects of applied art. • France uses the unity-of-art approach to applied art and industrial design, but stops short of protecting strictly utilitarian design under copyright. — Also termed *cumulative approach*. Cf. DUALITY OF ART.

unity of seisin (see-zin). (1800) The merging of seisin in one person, brought about when the person becomes seised of a tract of land on which he or she already has an easement. [Cases: Easements ⚷27.]

universal agency. See *general agency* under AGENCY (1).

universal agent. See AGENT.

Universal Copyright Convention. A 1952 treaty binding signatories to give citizens of other member nations the same copyright protection that their own citizens receive. 25 U.S.T. 1341, T.I.A.S. No. 7868. • Administered by the United Nations Educational, Scientific, and Cultural Organization, the Convention does not apply between nations that are also signatories of the Berne Convention. The United States signed the treaty in 1955. — Abbr. UCC. [Cases: Copyrights and Intellectual Property ⚷34.]

Universal Declaration of Human Rights. An international bill of rights proclaimed by the United Nations in December 1948, being that body's first general enumeration of human rights and fundamental freedoms. • The preamble states that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." The Declaration contains a lengthy list of rights and fundamental freedoms. For the full text of the Declaration, see Appendix C. [Cases: International Law ⚷10.45(1).]

> "The Universal Declaration is the first comprehensive human rights instrument to be proclaimed by a universal international organization. Because of its moral status and the legal and political importance it has acquired over the years, the Declaration ranks with the Magna Carta, the French Declaration of the Rights of Man and the American Declaration of Independence as a milestone in mankind's struggle for freedom and human dignity. Its debt to all these great historical documents is unmistakable." Thomas Buergenthal et al., *International Human Rights in a Nutshell* 35–36 (3d ed. 2002).

universal defense. See *real defense* under DEFENSE (4).

universal inheritance. See INHERITANCE.

universal-inheritance rule. *Wills & estates*. A doctrine holding that an intestate estate escheats to the state only if the decedent leaves no surviving relatives, no matter how distant. • Through the first half of the 20th century, this rule was broadly followed in American jurisdictions. The Uniform Probate Code abandons the universal-inheritance rule and provides that if no member of the third or a nearer parentela survives the decedent, the intestate estate escheats to the state. — Also termed *rule of universal inheritance*. See PARENTELA. Cf. *laughing heir* under HEIR; GRADUAL METHOD. [Cases: Escheat ⚷3.]

universalist movement. *Copyright*. A 19th-century campaign in Europe to recognize a worldwide copyright law based on an author's moral rights.

> "The universalist movement evolved both in and out of France, starting with an international Congress of Authors and Artists in Brussels in 1858, attended by delegates of literary societies and universities, as well as by authors, artists, journalists, librarians, and lawyers. The movement gained momentum at an 1878 international literary congress in Paris presided over by Victor Hugo." Paul Goldstein, *International Copyright: Principles, Law, and Practice* 19 (2001).

universality. 1. Equality of applicability. **2.** *Copyright*. A nation's policy or practice of protecting artists' rights in their creations irrespective of the creator's nationality or where the work was created. • Universality, the most generous approach to international intellectual-property rights, is generally favored in countries that treat copyright as a moral right. Cf. RECIPROCITY; NATIONAL TREATMENT. [Cases: Copyrights and Intellectual Property ⚷34.]

universal legacy. See LEGACY.

universal legatee. See LEGATEE.

universal life insurance. See LIFE INSURANCE.

universal malice. See MALICE.

universal partnership. See PARTNERSHIP.

universal succession. See SUCCESSION (2).

universal successor. See SUCCESSOR.

universal synod. See *general synod* under SYNOD.

universal title. See TITLE (2).

universitas (yoo-ni-**vər**-sə-tas), *n*. [Latin] *Roman law*. A union of persons or things considered as a whole; a corporation.

universitas facti (yoo-ni-**vər**-sə-tas **fak**-tī). [Law Latin] A plurality of corporeal things of the same kind regarded as a whole, such as a herd of cattle.

universitas juris (yoo-ni-**vər**-sə-tas **joor**-is). [Latin] *Roman & civil law*. The whole of a person's rights and liabilities; the totality of a person's legal relations.

> "A *universitas juris* is a collection of rights and duties united by the single circumstance of their having belonged at one time to some one person." Henry S. Maine, *Ancient Law* 148 (17th ed. 1901).

universitas personarum (yoo-ni-**vər**-sə-tas pər-sə-**nay**-rəm). [Latin] *Roman & civil law.* A group of people that are legally considered an entity, such as a college or corporation. Pl. ***universitates personarum.***

universitas rerum (yoo-ni-**vər**-sə-tas **reer**-əm). [Latin] *Roman & civil law.* A whole collection of things; a variety of individual things that are together regarded by the law as a whole. See JUS RERUM.

> "In the time of Justinian the *universitas rerum*, or *universitas iuris* (both expressions are used) is a somewhat abstract conception: it means the sum or whole of a man's legal position so far as it concerns the *ius rerum*. The conception is important in law only on the occasions, of which death is by far the most important, on which the *universitas* passes from one to another. . . . The expression *universitas rerum* is also used in another sense, to denote any collection of objects considered as a whole." W.W. Buckland, *A Manual of Roman Private Law* 172 (2d ed. 1953).

universus (yoo-ni-**vər**-səs). [Latin] The whole; all together.

unjudicial, *adj.* (16c) Not becoming of or appropriate to a judge. [Cases: Judges ⇨11.]

unjust, *adj.* (14c) Contrary to justice; not just.

unjust enrichment. (1897) **1.** The retention of a benefit conferred by another, without offering compensation, in circumstances where compensation is reasonably expected. [Cases: Implied and Constructive Contracts ⇨3.] **2.** A benefit obtained from another, not intended as a gift and not legally justifiable, for which the beneficiary must make restitution or recompense. **3.** The area of law dealing with unjustifiable benefits of this kind.

unlaw, *n.* **1.** A violation of law; an illegality. **2.** Lawlessness.

> "But lawlessness is often a superficial phenomenon and whenever the duke was strong enough to keep the peace then law revived. We hear the same of England: times of 'unlaw' alternate with times of law." 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 68–69 (2d ed. 1898).

3. *Scots law.* An illegal act. **4.** *Scots law.* A fine; a penalty.

unlawful, *adj.* (14c) **1.** Not authorized by law; illegal <in some cities, jaywalking is unlawful>. **2.** Criminally punishable <unlawful entry>. **3.** Involving moral turpitude <the preacher spoke to the congregation about the unlawful activities of gambling and drinking>. — **unlawfully,** *adv.*

unlawful act. (16c) Conduct that is not authorized by law; a violation of a civil or criminal law.

unlawful arrest. See ARREST.

unlawful assembly. See ASSEMBLY.

unlawful condition. See CONDITION (2).

unlawful detainer. See DETAINER.

unlawful-detainer proceeding. (1879) An action to return a wrongfully held tenancy (as one held by a tenant after the lease has expired) to its owner. See *unlawful detainer* under DETAINER. [Cases: Landlord and Tenant ⇨287.1.]

unlawful entry. See ENTRY (1).

unlawful force. See FORCE.

unlawful interest. See USURY.

unlawful interference with contractual relations. See TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS.

unlawful picketing. See PICKETING.

unlawful sexual conduct with a minor. See IMPAIRING THE MORALS OF A MINOR.

unlawful sexual intercourse. See RAPE.

"unless" lease. See LEASE.

unlimited, *adj.* Without restriction or limitation.

unliquidated, *adj.* (18c) Not previously specified or determined <unliquidated damages>.

unliquidated claim. See CLAIM (3).

unliquidated damages. See DAMAGES.

unliquidated debt. See DEBT.

unlisted security. See SECURITY.

unlisted stock. See *unlisted security* under SECURITY.

unlivery. *Maritime law.* The unloading of cargo at its intended destination.

unmarketable title. See TITLE (2).

unmarried, *adj.* Not married; single.

unmerchantable title. See *unmarketable title* under TITLE (2).

unnatural offense. See SODOMY.

unnatural will. See WILL.

unnavigable, *adj.* See INNAVIGABLE.

unnecessary, *adj.* Not required under the circumstances; not necessary.

unnecessary hardship. See HARDSHIP (4).

uno actu (**yoo**-noh **ak**-t[y]oo). [Latin] In a single act; by one and the same act.

unoccupied, *adj.* **1.** (Of a building) not occupied; vacant. **2.** (Of a person) not busy; esp., unemployed.

unofficious payment. See PAYMENT.

unofficious will. See *inofficious testament* under TESTAMENT.

uno flatu (**yoo**-noh **flay**-t[y]oo). [Latin] In one breath.

unpaid dividend. See DIVIDEND.

unpatentable over art. *Patents.* (Of an invention) ineligible for patent protection because of obviousness or the lack of novelty. [Cases: Patents ⇨16(2).]

unperfected security interest. See SECURITY INTEREST.

unprecedented (ən-**pres**-ə-den-tid), *adj.* Never before known; without any earlier example.

unpremeditation. The lack of premeditation; the absence of planning.

unprofessional conduct. See CONDUCT.

unpublished opinion. See OPINION (1).

unqualified indorsement. See INDORSEMENT.

unqualified opinion. See OPINION (2).

unqualified ownership. See OWNERSHIP.

unques (ən[g]-kweez), *adv.* [Law French] Ever; always.

unques prist (ən[g]-kweez **prist**). [Law French] Always ready. • This is another form of *tout temps prist*. See TOUT TEMPS PRIST ET ENCORE PRIST.

unrealized loss. See *paper loss* under LOSS.

unrealized profit. See *paper profit* under PROFIT (1).

unrealized receivable. See RECEIVABLE.

unreasonable, *adj.* (14c) **1.** Not guided by reason; irrational or capricious. **2.** Not supported by a valid exception to the warrant requirement <unreasonable search and seizure>. [Cases: Searches and Seizures ⇨24.]

unreasonable compensation. See COMPENSATION.

unreasonable decision. See DECISION.

unreasonable deviation. See DEVIATION.

unreasonable refusal to submit to operation. *Workers' compensation.* An injured employee's refusal to submit to a necessary surgical procedure. • This refusal is grounds for terminating the employee's workers'-compensation benefits. [Cases: Workers' Compensation ⇨947, 2003.]

unreasonable restraint of trade. See RESTRAINT OF TRADE.

unreasonable restraint on alienation. See RESTRAINT ON ALIENATION (1).

unreasonable search. See SEARCH.

unreasonably dangerous conduct. See CONDUCT.

unrebuttable, *adj.* Not rebuttable <an unrebuttable presumption>.

unrecorded, *adj.* (16c) Not recorded; esp., not filed in the public record <unrecorded deed>.

unregistered security. See *restricted security* under SECURITY.

unrelated-business income. See INCOME.

unrelated-business-income tax. See TAX.

unrelated-business taxable income. See *unrelated-business income* under INCOME.

unrelated offense. See OFFENSE (1).

unresponsive answer. See ANSWER (2).

unrestricted indorsement. See *unrestrictive indorsement* under INDORSEMENT.

unrestrictive indorsement. See INDORSEMENT.

unrestrictive interpretation. See INTERPRETATION.

unreviewable, *adj.* (1877) Not subject to legal or judicial review <the claim is unreviewable on appeal>.

unsafe, *adj.* (Of a verdict or judgment) likely to be overturned on appeal because of a defect.

unsatisfied-judgment fund. See FUND (1).

unseated, *adj.* (Of land) vacant and neither developed nor cultivated.

unseaworthy, *adj.* (Of a vessel) unable to withstand the perils of an ordinary voyage. Cf. SEAWORTHY. [Cases: Seamen ⇨9; Shipping ⇨80.]

unsecured bail bond. See BOND (2).

unsecured bond. See DEBENTURE (3).

unsecured claim. See CLAIM (5).

unsecured creditor. See CREDITOR.

unsecured debt. See DEBT.

unsecured note. See NOTE (1).

unskilled work. See WORK (1).

unsolemn war. See WAR (1).

unsolemn will. See WILL.

unsolicited commercial e-mail. See SPAM. — Abbr. UCE.

unsound, *adj.* (14c) **1.** Not healthy; esp., not mentally well <unsound mind>. [Cases: Mental Health ⇨3.] **2.** Not firmly made; impaired <unsound foundation>. **3.** Not valid or well founded <unsound argument>.

unspeakable crime. See SODOMY.

unsworn, *adj.* (16c) Not sworn <an unsworn statement>.

unsworn declaration under penalty of perjury. See DECLARATION (8).

untenantable (ən-**ten**-ən-tə-bəl), *adj.* (17c) Not capable of being occupied or lived in; not fit for occupancy <the city closed the untenantable housing project>. [Cases: Landlord and Tenant ⇨125(1).]

unthrift. *Archaic.* A prodigal; a spendthrift.

untimely, *adj.* (13c) Not timely <an untimely answer>; at an inappropriate time, either too soon or too late.

untrue, *adj.* **1.** (Of something said) not correct; inaccurate. **2.** (Of a person) not faithful or true (to a standard or belief).

unum quid (**yoo**-nəm **kwid**). [Latin] *Hist.* One thing. • The phrase implied that several items (such as movables) were, for whatever purpose, considered as one (e.g., a set of glasses).

unus nullus **rule** (**yoo**-nəs **nəl**-əs). [Latin "one is nobody" + rule] *Civil law.* The evidentiary principle that the testimony of only one witness is given no weight. Cf. HALF-PROOF (1).

unusual charge. See *special charge* under CHARGE.

unvalued policy. See INSURANCE POLICY.

unworthy, *adj. Civil law.* (Of an heir) not entitled to inherit from a person because of a failure in a duty to that person.

unwritten constitution. See CONSTITUTION.

unwritten evidence. See EVIDENCE.

unwritten law. See LAW.

unwritten will. See *nuncupative will* under WILL.

UPA. *abbr.* UNIFORM PARTNERSHIP ACT.

UPAA. *abbr.* UNIFORM PREMARITAL AGREEMENT ACT.

up before. *Informal.* In the presence of (a particular court or judge) <for the bail hearing you'll come up before Judge Franklin>.

UPC. *abbr.* UNIFORM PROBATE CODE.

up-front performance bond. See PERFORMANCE BOND.

UPIA. *abbr.* UNIFORM PRUDENT INVESTOR ACT.

UPL. *abbr.* Unauthorized practice of law <the state bar's UPL committee>. See *unauthorized practice of law* under PRACTICE OF LAW. [Cases: Attorney and Client ⇨11.]

Upper Bench. See *bancus superior* under BANCUS.

upper chamber. See CHAMBER.

upper court. See *court above* under COURT.

upper estate. See *dominant estate* under ESTATE (4).

upper management. See *top management* under MANAGEMENT.

UPREIT (**əp**-rit). See *umbrella-partnership real-estate investment trust* under REAL-ESTATE INVESTMENT TRUST.

upset bid. See BID (1).

upset price. See PRICE.

upside. *Securities.* **1.** An upward movement in stock prices. **2.** The potential of an upward movement in stock prices. Cf. DOWNSIDE.

upstream guaranty. See GUARANTY.

upstreaming. A parent corporation's use of a subsidiary's cash flow or assets for purposes unrelated to the subsidiary.

upstream merger. See MERGER.

UPUFA. *abbr.* UNIFORM PUTATIVE AND UNKNOWN FATHERS ACT.

upward departure. See DEPARTURE.

u.r. *abbr.* UTI ROGAS.

urban, *adj.* Of or relating to a city or town; not rural.

urban-fear syndrome. See URBAN-SURVIVAL SYNDROME.

Urban Mass Transit Administration. A unit in the U.S. Department of Transportation responsible for making grants to help states, regional and local governmental bodies, and public agencies to acquire or improve capital equipment and facilities for urban mass-transit systems; for providing technical assistance and funds for demonstration projects; for making educational grants for urban mass-transit research and training; and for making training grants to mass-transit systems for training. • The agency also awards grants for transit operations in nonurban areas. — Abbr. UMTA. [Cases: United States ⇨82(2).]

urban planning. See LAND-USE PLANNING.

urban prefect, *n. Roman law.* See PRAEFECTUS URBI.

urban-psychosis defense. See URBAN-SURVIVAL SYNDROME.

urban renewal. (1954) The process of redeveloping urban areas by demolishing or repairing existing structures or by building new facilities on areas that have been cleared in accordance with an overall plan. [Cases: Municipal Corporations ⇨267.]

urban servitude. See SERVITUDE (2).

urban-survival syndrome. A self-defense theory holding that a defendant who uses unreasonable force may be acquitted if the defendant lives in a dangerous environment that heightens the defendant's fears of injury to life or limb so much that the force used seemed reasonable and necessary to the defendant. — Also termed *urban-survival defense; urban-fear syndrome; urban-psychosis defense; inner-city post-traumatic-stress defense.*

urbs (ərbz), *n.* [Latin] *Roman law.* **1.** A city or town. **2.** The city of Rome.

ure (yoor). [fr. Old French *oeuvre*] Custom; practice; exercise.

URESA (yə-**ree**-sə). *abbr.* UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT.

urgent deficiency bill. See *deficiency bill* under BILL (3).

Urheberrecht (oo-re-**bair**-rekt), *n.* [German] AUTHOR'S RIGHT.

Uruguay Round. The 1994 negotiations of the General Agreement on Tariffs and Trade. • The negotiations resulted in the TRIPs agreement that established the World Trade Organization and made member nations' patent laws more uniform. See TRIPS. [Cases: Customs Duties ⇨3, 10.]

U.S. *abbr.* **1.** United States. See UNITED STATES OF AMERICA. **2.** UNITED STATES REPORTS.

USA. *abbr.* **1.** UNITED STATES OF AMERICA. **2.** UNITED STATES ARMY. **3.** UNITED STATES ATTORNEY.

USAA. *abbr.* United States Arbitration Act. See FEDERAL ARBITRATION ACT.

USAF. *abbr.* UNITED STATES AIR FORCE.

USAFA. *abbr.* See UNITED STATES AIR FORCE ACADEMY.

usage. (13c) **1.** A well-known, customary, and uniform practice, usu. in a specific profession or business. See CUSTOM (1). Cf. CONVENTION (6). [Cases: Customs and Usages ⇨1–22.]

> "A 'usage' is merely a customary or habitual practice; a 'convention' is a practice that is established by general tacit consent. 'Usage' denotes something that people are accustomed to do; 'convention' indicates that they are accustomed to do it because of a general agreement that it is the proper thing to do." Herbert W. Horwill, *The Usages of the American Constitution* 22 (1925).

> "Although rules of law are often founded on usage, usage is not in itself a legal rule but merely habit or practice in fact. A particular usage may be more or less widespread. It may prevail throughout an area, and the area may be small or large — a city, a state or a larger region. A usage may prevail among all people in the area, or only in a

special trade or other group. Usages change over time, and persons in close association often develop temporary usages peculiar to themselves." Restatement (Second) of Contracts § 219 cmt. a (1979).

custom and usage. See CUSTOM AND USAGE.

general usage. (16c) A usage that prevails throughout a country or particular trade or profession; a usage that is not restricted to a local area. [Cases: Customs and Usages ⇨1.]

immemorial usage. (17c) A usage that has existed for a very long time; longstanding custom. See TIME IMMEMORIAL. [Cases: Customs and Usages ⇨1.]

local usage. (18c) A practice or method regularly observed in a particular place, sometimes considered by a court in interpreting a document. UCC § 1-205(2)(3). See CUSTOM AND USAGE. [Cases: Customs and Usages ⇨9.]

trade usage. (1864) A practice or method of dealing having such regular observance in a region, vocation, or trade that it justifies an expectation that it will be observed in a given transaction; a customary practice or set of practices relied on by persons conversant in, or connected with, a trade or business. • While a course of performance or a course of dealing can be established by the parties' testimony, a trade usage is usu. established by expert testimony. — Also termed *usage of trade*; *course of trade*. Cf. COURSE OF DEALING; COURSE OF PERFORMANCE. [Cases: Customs and Usages ⇨1.]

"The existence and scope of a usage of trade are to be determined as questions of fact. If a usage is embodied in a written trade code or similar writing the interpretation of the writing is to be determined by the court as a question of law. Unless otherwise agreed, a usage of trade in the vocation or trade in which the parties are engaged or a usage of trade of which they know or have reason to know gives meaning to or supplements or qualifies their agreement." Restatement (Second) of Contracts § 222 (1979).

2. See *conventional custom* under CUSTOM.

USAID. *abbr.* UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT.

usance (**yoo**-zənts). The time allowed for the payment of a foreign bill of exchange, sometimes set by custom but now usu. by law.

usance credit. See *time letter of credit* under LETTER OF CREDIT.

USA Patriot Act. A statute enacted in response to the terrorist attacks of September 11, 2001, giving law-enforcement agencies broader authority to collect information on suspected terrorists, to share that information among domestic and foreign intelligence agencies, to make the country's borders more secure, to detain suspects on new types of criminal charges using new criminal procedures, and to give the Treasury Department more authority to investigate and regulate financial institutions that participate in foreign money-laundering. • The title is an acronym of Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism. — Often shortened to *Patriot Act*. [Cases: War and National Emergency ⇨50.]

USC. *abbr.* UNITED STATES CODE.

USCA. *abbr.* UNITED STATES CODE ANNOTATED.

USCG. *abbr.* UNITED STATES COAST GUARD.

USCGA. *abbr.* See UNITED STATES COAST GUARD ACADEMY.

USCIS. *abbr.* U.S. CITIZENSHIP AND IMMIGRATION SERVICE.

USCIT. *abbr.* See UNITED STATES COURT OF INTERNATIONAL TRADE.

U.S. citizen. See *national of the United States* under NATIONAL.

U.S. Citizenship and Immigration Service. A unit in the U.S. Department of Homeland Security responsible for enforcing the nation's immigration laws. • Its functions were transferred from the former Immigration and Naturalization Service of the U.S. Department of Justice in 2003. — Abbr. USCIS. [Cases: Aliens, Immigration, and Citizenship ⇨501.]

USDA. *abbr.* DEPARTMENT OF AGRICULTURE.

U.S.D.C. *abbr.* UNITED STATES DISTRICT COURT.

use (yoos), *n.* (bef. 12c) **1.** The application or employment of something; esp., a long-continued possession and employment of a thing for the purpose for which it is adapted, as distinguished from a possession and employment that is merely temporary or occasional <the neighbors complained to the city about the owner's use of the building as a dance club>.

accessory use. *Zoning.* A use that is dependent on or pertains to a main use. [Cases: Zoning and Planning ⇨301–308.]

adverse use. A use without license or permission. Cf. ADVERSE POSSESSION.

beneficial use. *Property.* The right to use property and all that makes that property desirable or habitable, such as light, air, and access, even if someone else owns the legal title to the property.

collateral use. *Intellectual property.* The legal use of a trademark by someone other than the trademark owner, whereby the other party must clearly identify itself, the use of the trademark, and the absence of affiliation with the trademark owner.

commercial use. A use that is connected with or furthers an ongoing profit-making activity. Cf. *noncommercial use*.

conditional use. *Zoning.* A use of property subject to special controls and conditions. • A conditional use is one that is suitable to a zoning district, but not necessarily to every location within that district. — Also termed *special exception*. See SPECIAL EXCEPTION (2). [Cases: Zoning and Planning ⇨382.]

conforming use. *Zoning.* The use of a structure or of the land in conformity with the uses permitted under the zoning classifications of a particular area, such as the

building of a single-family dwelling in a residential zone. [Cases: Zoning and Planning ⇨271.]

double use. *Patents.* An application of a known principle or process to a new use without leading to a new result or product. [Cases: Patents ⇨27.]

exclusive use. **1.** *Trademarks.* The right to use a specific mark without exception, and to prevent another from using a confusingly similar mark. [Cases: Trademarks ⇨1182.] **2.** *Property.* The right of an adverse user to a property, exercised independently of any similar rights held by others; one of the elements of a prescriptive easement. See USER. [Cases: Adverse Possession ⇨36, 37; Easements ⇨8(4).]

experimental use. *Patents.* **1.** The use or sale of an invention by the inventor for experimental purposes. **2.** A defense to liability for patent infringement when the infringement took place only to satisfy curiosity or to complete an experiment, rather than for profit. [Cases: Patents ⇨260.]

highest and best use. *Real estate.* In valuing property, the use that will generate the most profit. • This standard is used esp. to determine the fair market value of property subject to eminent domain. — Often shortened to *best use.* — Also termed *most suitable use.* [Cases: Eminent Domain ⇨134; Taxation ⇨2515.]

incidental use. *Zoning.* Land use that is dependent on or affiliated with the land's primary use. [Cases: Zoning and Planning ⇨301–308.]

most suitable use. See *highest and best use.*

noncommercial use. A use for private pleasure or business purposes that non involving the generation of income or bestowing a reward or other compensation. Cf. *commercial use.*

nonconforming use. *Zoning.* Land use that is impermissible under current zoning restrictions but that is allowed because the use existed lawfully before the restrictions took effect. [Cases: Zoning and Planning ⇨321–338.]

pious use. The designation and actual use of property for recognized religious or charitable purposes. Cf. *superstitious use.*

popular use. A person's imperfect right to enjoy public land. • A popular use is not legally enforceable. It is dependent on the government's will to allow access to the land.

public use. **1.** *Property.* The public's beneficial right to use property or facilities subject to condemnation. See CONDEMNATION (2). [Cases: Eminent Domain ⇨12–42.] **2.** *Patents.* Any use of or offer to use a completed or operative invention in a nonsecret, natural, and intended manner. • A patent is invalid if the invention was in public use more than one year before the patent's application date. [Cases: Patents ⇨75.]

"The term '*public* use' is misleading, for any use from which the public is not excluded, even though none comes, is held to be public. Similarly, an actual public use of a machine, even though the invention feature be effectively concealed from inspection, is held to be public. It makes no difference whether the patent or other publication is that of the inventor or someone else." Roger Sherman Hoar, *Patent Tactics and the Law* 48 (3d ed. 1950) (citing *Gillman v. Stern*, 114 F.2d 28, 31 (2d Cir. 1940)).

reasonable use. Use of one's property for an appropriate purpose that does not unreasonably interfere with another's use of property. See REASONABLE-USE THEORY.

regular use. *Insurance.* A use that is usual, normal, or customary, as opposed to an occasional, special, or incidental use. • This term often appears in automobile-insurance policies in the definition of a *nonowned automobile* — that is, an automobile not owned by or furnished for the regular use of the insured. Nonowned automobiles are excluded from coverage under most liability policies. [Cases: Insurance ⇨2657.]

superstitious use. A designation or use of property for religious purposes not legally recognized or tolerated (such as gifts either favoring an unrecognized religion or supporting the saying of prayers for the dead). Cf. *pious use.*

2. A habitual or common practice <drug use>. **3.** A purpose or end served <the tool had several uses>. **4.** A benefit or profit; esp., the right to take profits from land owned and possessed by another; the equitable ownership of land to which another person holds the legal title <cestui que use>. See CESTUI QUE USE. — **use** (yooz), *vb.*

contingent use. (17c) A use that would be a contingent remainder if it had not been limited by way of use. • An example is a transfer "to A, to the use of B for life, with the remainder to the use of C's heirs." — Also termed *future use.*

entire use. A use of property solely for the benefit of a married woman. • When used in the habendum of a trust deed for the benefit of a married woman, this phrase operates to keep her husband from taking anything under the deed. — Also termed *entire benefit; sole use; sole and separate use.*

executed use. *Hist.* A use resulting from combining the equitable title and legal title of an estate, done to comply with the Statute of Uses' mandate that the holder of an estate be vested with legal title to ensure the holder's liability for feudal dues. See STATUTE OF USES.

executory use. See *springing use.*

future use. See *contingent use.*

official use. *Hist.* A use imposing a duty on a person holding legal title to an estate on behalf of another, such as a requirement that a feoffee to uses sell the estate and apportion the proceeds among several beneficiaries. • The Statute of Uses eliminated this type of use.

permissive use. *Hist.* A passive use resorted to before passage of the Statute of Uses in 1535 to avoid an oppressive feudal law (such as mortmain) by naming one person as the legal owner of property while allowing another to possess the property and enjoy the benefits arising from it.

present use. *Hist.* A use that has an immediate existence and is subject to the Statute of Uses.

resulting use. (18c) A use created by implication and remaining with the grantor when the conveyance lacks consideration.

secondary use. See *shifting use.*

shifting use. (18c) A use arising from the occurrence of a certain event that terminates the preceding use. • In the following example, C has a shifting use that arises when D makes the specified payment: "to A for the use of B, but then to C when D pays $1,000 to E." This is a type of conditional limitation. — Also termed *secondary use.* See *conditional limitation* under LIMITATION. [Cases: Trusts ⇨131; Wills ⇨625.]

sole and separate use. See *entire use.*

springing use. (17c) A use arising on the occurrence of a future event. • In the following example, B has a springing use that vests when B marries: "to A for the use of B when B marries." — Also termed *executory use.* [Cases: Trusts ⇨131; Wills ⇨625.]

use-based license. See LICENSE.

use/derivative-use immunity. See *use immunity* under IMMUNITY (3).

usee. See USE PLAINTIFF.

useful, *adj. Patents.* (Of an invention) having a practical application. [Cases: Patents ⇨46.]

> "[M]ere curiosities of invention, which do not have any intelligent purpose, are not useful in a patentable sense." Roger Sherman Hoar, *Patent Tactics and the Law* 37 (3d ed. 1950).

> "When applied to a machine, 'useful' means that the machine will accomplish its purpose practically when applied in industry. The word is given a practical and not a speculative meaning." 60 Am. Jur. 2d *Patents* § 131 (1987).

useful-article doctrine. See APPLIED-ART DOCTRINE.

useful life. (1923) The estimated length of time that depreciable property will generate income. • Useful life is used to calculate depreciation and amortization deductions. — Also termed *depreciable life.* See DEPRECIATION METHOD.

use immunity. See IMMUNITY (3).

use in commerce. *Trademarks.* Actual use of a trademark in the advertising, marketing, promotion, sale, or distribution of goods or services. • Use of a trademark in commerce is a prerequisite to trademark registration. Regular use demonstrates that the trademark has become associated with currently available goods or services, as contrasted with a token use intended to reserve some right to use the trademark in the future. For goods, a trademark is used in commerce if it is displayed on or with goods offered for sale, or placed on documents related to the goods. For services, a mark is used in commerce if it appears in advertising or on documents related to the services. In addition, the goods must be used or the services rendered in more than one state, because use of a trademark in interstate commerce is a prerequisite to federal trademark registration. [Cases: Trademarks ⇨1136, 1142.]

useless-gesture exception. (1970) *Criminal procedure.* An exception to the knock-and-announce rule whereby police are excused from having to announce their purpose before entering the premises to execute a warrant when it is evident from the circumstances that people inside the premises are of aware of the police officers' authority and purpose. See KNOCK-AND-ANNOUNCE RULE. [Cases: Searches and Seizures ⇨54, 143.1.]

use plaintiff. *Common-law pleading.* A plaintiff for whom an action is brought in another's name. • For example, when the use plaintiff is an assignee ("A") of a chose in action and sues in the assignor's name ("B"), the assignor's name appears first on the petition's title: "B for the Use of A against C." — Also termed *usee.* [Cases: Federal Civil Procedure ⇨131; Parties ⇨4.]

user (**yooz**-ər). (15c) **1.** The exercise or employment of a right or property <the neighbor argued that an easement arose by his continuous user over the last 15 years>. Cf. NONUSER.

user de action (**yoo**-zər **dak**-shən). [Law French] The pursuing or bringing of an action.

2. Someone who uses a thing <the stapler's last user did not put it away>.

end user. (1963) The ultimate consumer for whom a product is designed.

user agreement. See POINT-AND-CLICK AGREEMENT.

user confusion. See CONSUMER CONFUSION.

user fee. (1967) A charge assessed for the use of a particular item or facility.

Uses, Statute of. See STATUTE OF USES.

use tax. See TAX.

use value. See VALUE (2).

use variance. See VARIANCE (2).

use zoning. See *Euclidean zoning* under ZONING.

USFSPA. *abbr.* UNIFORMED SERVICES FORMER SPOUSE PROTECTION ACT.

USFWS. *abbr.* UNITED STATES FISH AND WILDLIFE SERVICE.

USGS. *abbr.* UNITED STATES GEOLOGICAL SURVEY.

usher, *n. English law.* A court officer responsible for maintaining silence and order in some English courts, swearing in jurors and witnesses, and otherwise aiding the judge.

USIP. *abbr.* UNITED STATES INSTITUTE OF PEACE.

USITC. *abbr.* UNITED STATES INTERNATIONAL TRADE COMMISSION.

USMA. *abbr.* UNITED STATES MILITARY ACADEMY.

U.S. Magistrate. See UNITED STATES MAGISTRATE JUDGE.

USMC. *abbr.* UNITED STATES MARINE CORPS.

USMMA. *abbr.* See UNITED STATES MERCHANT MARINE ACADEMY.

USMS. *abbr.* UNITED STATES MARSHALS SERVICE.

USN. *abbr.* UNITED STATES NAVY.

USNA. *abbr.* See UNITED STATES NAVAL ACADEMY.

U.S. national. See *national of the United States* under NATIONAL.

U.S.-owned foreign corporation. See CORPORATION.

USPS. *abbr.* UNITED STATES POSTAL SERVICE.

USPTO. *abbr.* UNITED STATES PATENT AND TRADEMARK OFFICE.

usque ad (**əs**-kwee ad). [Law Latin] As far as; up to; until.

usque ad coelum (**əs**-kwee ad **see**-ləm). [Latin] Up to the sky <the owner of land also owns the space above the surface *usque ad coelum*>. Cf. *ab orco usque ad coelum*.

usque ad sententiam (**əs**-kwee ad sen-**ten**-shee-əm). [Law Latin] *Hist.* Until the pronouncing of judgment. • Executors could be granted certain powers exercisable only *usque ad sententiam*.

USSG. *abbr.* UNITED STATES SENTENCING GUIDELINES.

USTDA. *abbr.* UNITED STATES TRADE AND DEVELOPMENT AGENCY.

USTR. *abbr.* UNITED STATE TRADE REPRESENTATIVE.

usual, *adj.* (14c) **1.** Ordinary; customary. **2.** Expected based on previous experience, or on a pattern or course of conduct to date.

usuary (**yoo**-zhoo-er-ee), *n. Civil law.* A person who has the use (*usus*) of a thing to satisfy personal and family needs; a beneficiary. — Also termed (in Roman law) *usuarius*.

usucapio (yoo-zə-**kay**-pee-oh), *n. Roman & civil law.* The acquisition of ownership by long, continuous possession begun in good faith; esp., the acquisition of ownership by prescription. • In classical law, the minimum periods required were one year for movables and two for land. Under Justinian law, the minimum periods were three years for movables and ten years for land. See PRESCRIPTION (5). — Also termed *usus* (**yoo**-zoos); *usucaption* (yoo-zə-**kap**-shən); *usucapion* (yoo-zə-**kay**-pee-on *or* -ən). [Cases: Adverse Possession ⚷1.] — **usucapt,** *vb.*; **usucaption,** *n.*

> "There is no principle in all law which the moderns, in spite of its beneficial character, have been so loath to adopt and to carry to its legitimate consequences as that which was known to the Romans as Usucapion, and which has descended to modern jurisprudence under the name of Prescription." Henry S. Maine, *Ancient Law* 236 (17th ed. 1901).

usufruct (**yoo**-zə-frəkt), *n.* [fr. Latin *usufructus*] *Roman & civil law.* A right for a certain period to use and enjoy the fruits of another's property without damaging or diminishing it, but allowing for any natural deterioration in the property over time. • In Roman law, the usufruct was considered a personal servitude, resulting in a real right. In modern civil law, the owner of the usufruct is similar to a life tenant, and the owner of the property burdened is known as the *naked owner*. La. Civ. Code art. 535. — Also termed *perfect usufruct*; *usufructus*; (in Scots law) *liferent*. Cf. HABITATION (3). [Cases: Estates in Property ⚷1.]

> "*Usufructus* is . . . the right of using and enjoying property belonging to another provided the substance of the property remained unimpaired. More exactly, a usufruct was the right granted to a man personally to use and enjoy, usually for his life . . . , the property of another which, when the usufruct ended, was to revert intact to the *dominus* or his heir. It might be for a term of years, but even here it was ended by death, and in the case of a corporation (which never dies) Justinian fixed the period at 100 years. A usufruct might be in land or buildings, a slave or beast of burden, and in fact in anything except things which were destroyed by use . . . , the reason, of course, being that it was impossible to restore such things at the end of the usufruct intact . . . ." R.W. Leage, *Roman Private Law* 181–82 (C.H. Ziegler ed., 2d ed. 1930).

legal usufruct. A usufruct established by operation of law, such as the right of a surviving spouse to property owned by the deceased spouse. La. Civ. Code art. 890. [Cases: Executors and Administrators ⚷176; Husband and Wife ⚷273(2); Wills ⚷11.]

quasi-usufruct. **1.** A right to use property that cannot be used without being expended or consumed, such as money or food. • Unlike an ordinary usufruct, a quasi-usufruct actually involves alteration and diminution of the property used. — Also termed *imperfect usufruct*. **2.** *Louisiana law.* A usufruct over consumable things, such as money or harvested crops, the value of which must be delivered to the naked owner at the end of the usufruct's term. La. Civ. Code art. 538. • The usufructuary has the right to consume or alienate the consumables and, at the end of the usufruct, to deliver to the naked owner either the value that the things had when the usufruct began or things of the same quantity and quality. [Cases: Executors and Administrators ⚷176.]

> "The Roman jurists, therefore, would not acknowledge a usufruct of money; though, in their desire to carry out the wishes of testators, they came at length to recognize a quasi-usufruct. For testators, being seldom learned in the law, would often set forth as legacies in their wills the usufruct of a designated sum . . . . In such a case the person named as legatee was allowed to receive the amount . . . on giving security that when he died the same amount should be paid out of his own estate to the *heres*, the heir of the testator. The relation here, though bearing some resemblance to the usufruct, was really quite different; the person who received the money became absolute owner of it; the heir had no ownership, nothing but the assurance of receiving an equal amount at some future time." James Hadley, *Introduction to Roman Law* 193 (1881).

usufructuary (yoo-zə-**frək**-choo-er-ee), *adj. Roman & civil law.* Of or relating to a usufruct; of the nature of a usufruct.

usufructuary, *n. Roman & civil law.* One having the right to a usufruct; specif., a person who has the right to the benefits of another's property; a life-renter. [Cases: Estates in Property ⟹1.]

usufructus. See USUFRUCT.

usura (yoo-**s**[y]**oor**-ə *or* yoo-**z**[y]**oor**-ə). [Latin] *Civil law.* **1.** The amount paid for the use of money; interest. **2.** USURY. Pl. ***usurae*** (yoo-**s**[y]**oor**-ee).

usurae centesimae (yoo-**s**[y]**oor**-ee [*or* yoo-**z**[y]**oor**-ee] sen-**tes**-ə-mee). [Latin] Interest at the rate of 12% per year (1% per month), usu. the highest rate allowed by law. • The Romans calculated interest rates by dividing the principal sum into one hundred parts, with one part being payable monthly as interest.

usura manifesta (yoo-**s**[y]**oor**-ə [*or* yoo-**z**[y]**oor**-ə] man-ə-**fes**-tə). [Latin] Manifest or open usury. Cf. USURA VELATA.

usura maritima (yoo-**s**[y]**oor**-ə [*or* yoo-**z**[y]**oor**-ə] mə-**rit**-ə-mə). [Latin] Interest taken on a bottomry or respondentia bond, proportioned to the risk and so not restricted by any usury laws.

usurarius (yoo-s[y]ə-**rair**-ee-əs *or* yoo-z[y]ə-). [Law Latin] *Hist.* A usurer.

usura velata (yoo-**s**[y]**oor**-ə [*or* yoo-**z**[y]**oor**-ə] və-**lay**-tə). [Latin] Veiled or concealed usury. • A creditor was guilty of *usura velata* when the creditor added unlawfully high interest to the principal sum as if the interest amount were part of the original loan. Cf. UBI ABERAT ANIMUS FOENERANDII; USURA MANIFESTA.

usurious (yoo-**z**[y]**oor**-ee-əs *or* yoo-**zhuu**-ree-əs), *adj.* (17c) **1.** Practicing usury <a usurious lender>. **2.** Characterized by usury <a usurious contract>. [Cases: Usury ⟹1, 10–42.]

usurpatio (yoo-sər-**pay**-shee-oh), *n.* [Latin] *Roman law.* The interruption of usucaption by reason of loss of physical possession or a lawsuit by the true legal owner. Pl. ***usurpationes*** (yoo-sər-pay-shee-**oh**-neez).

usurpation (yoo-sər-**pay**-shən *or* yoo-zər-**pay**-shən), *n.* (14c) The unlawful seizure and assumption of another's position, office, or authority. [Cases: Officers and Public Employees ⟹86.] — **usurp** (yoo-**sərp** *or* yoo-**zərp**), *vb.*

usurpation of advowson (ad-**vow**-zən). *Hist.* An injury consisting in the absolute ouster or dispossession of the patron from the advowson. • This happens when a stranger, without the right to do so, presents a clerk who is installed in office. See ADVOWSON.

usury (**yoo**-zhə-ree), *n.* (14c) **1.** Historically, the lending of money with interest. **2.** Today, the charging of an illegal rate of interest as a condition to lending money. **3.** An illegally high rate of interest. — Also termed *illegal interest*; *unlawful interest.* [Cases: Banks and Banking ⟹181; Building and Loan Associations ⟹33; Usury ⟹1.] — **usurer** (**yoo**-zhər-ər), *n.*

usury law. A law prohibiting moneylenders from charging illegally high interest rates. [Cases: Usury ⟹1.]

usus (**yoo**-səs *or* **yoo**-zəs), *n.* [Latin "use"] *Roman law.* **1.** The right to use another's property, without the right to receive or retain the benefits or fruits (*fructus*) produced by the property. • *Usus* was a personal servitude; it gave the holder a right in rem. Cf. USUFRUCT.

> "It is essentially a fraction of a usufruct, *usus* without the *fructus*. In strictness, there was no right to any fruits but this was somewhat relaxed in practice. The usuary of a house might consume the fruits of the gardens in his household, but he might not sell them, as a usufructuary might." W.W. Buckland, *A Manual of Roman Private Law* 165 (2d ed. 1953).

2. The factual possession required for *usucapio.* **3.** Lapse of time by which a wife was brought into the husband's family and under his marital power. See MANUS (1). Cf. COEMPTIO; CONFARREATIO.

> "*Usus* is the acquisition of [power over] a wife by *possession* and bears the same relation to *coemptio* as usucapion to a mancipation. A Roman citizen who bought some object of property and got possession of it, but not ownership, because he neglected to go through the mancipation prescribed by *jus civile*, might nevertheless become owner by usucapion, *i.e.* lapse of time; thus if the object was a movable, continuous possession for one year made him *dominus*. In like manner, if a man lived with a woman whom he treated as his wife, but whom he had not married by *coemptio* (or *confarreatio*), and the cohabitation lasted without interruption for a year, then at the end of that period the man acquired [power over] the woman as his wife, she passed to him *in manum* . . . ." R.W. Leage, *Roman Private Law* 100 (C.H. Ziegler ed., 2d ed. 1930).

usus bellici (**yoo**-səs [*or* -zəs] **bel**-ə-sɪ). [Latin] *Int'l law.* Warlike objects or uses. • This phrase refers to items that, while not inherently of a military nature, are considered contraband because they are used by a belligerent to support its war effort.

Usus Feudorum (**yoo**-səs [*or* -zəs] fyoo-**dor**-əm). See FEUDORUM LIBRI.

ut currere solebat (ət **kər**-ər-ee sə-**lee**-bat). [Latin] As it was wont to run. • This referred to the course of a stream.

ut de feodo (ət dee **fee**-ə-doh *or* **fyoo**-doh). [Law Latin] As of fee.

uterine (**yoo**-tər-in), *adj.* Born of the same mother but having different biological fathers.

uterine brother. See BROTHER.

uterine sister. See SISTER.

uterque (yoo-**tər**-kwee). [Latin] Each of two; both (considered separately).

uterque nostrum (yoo-**trəm**-kwee **nos**-trəm). See UTRUMQUE NOSTRUM.

utfangthief (ət-fang-theef). See OUTFANGTHIEF.

ut hospites (ət **hos**-pə-teez). [Latin] As guests.

uti (**yoo**-tɪ), *vb.* [Latin] *Civil law.* To use.

uti frui (**yoo**-tɪ **froo**-ɪ). [Latin] *Civil law.* To have the full use and enjoyment of a thing, without damage to its substance.

utilis (**yoo**-tə-lis), *adj.* [Latin] *Civil law.* Useful; beneficial; equitable. • This word appeared in phrases such as

actio utilis (**ak**-shee-oh **yoo**-tə-lis), meaning "equitable action."

utilitarian-deterrence theory. (1983) The legal theory that a person should be punished only if the punishment benefits society — that is, only if the punishment would help to deter future harmful conduct. See *hedonistic utilitarianism* under UTILITARIANISM. Cf. RETRIBUTIVISM.

utilitarianism. (1827) The philosophical and economic doctrine that the best social policy is that which does the most good for the greatest number of people; esp., an ethical theory that judges the rightness or wrongness of actions according to the pleasure they create or the pain they inflict and recommends whatever action creates the greatest good for the greatest number of people. • This is a type of consequentialism. For example, utilitarianism analyzes intellectual-property rights from the point of view of society rather than the individual inventor, author, or artist, and justifies the rights as an incentive for social and technological progress. See CONSEQUENTIALISM. Cf. LOCKEAN LABOR THEORY; PERSONALITY THEORY. — **utilitarian,** *adj.* & *n.*

hedonistic utilitarianism. (1943) The theory that the validity of a law should be measured by determining the extent to which it promotes the greatest happiness to the greatest number of citizens. • This theory is found most prominently in the work of Jeremy Bentham, whose "Benthamite utilitarianism" greatly influenced legal reform in nineteenth-century Britain. Hedonistic utilitarianism generally maintains that pleasure is intrinsically good and pain intrinsically bad. Therefore, inflicting pain on an individual, as by punishing a criminal, is justified only if it results in a net increase of pleasure for society by deterring future harmful behavior. — Also termed *Benthamism.* See *utilitarian-deterrence theory*; BENTHAMITE. Cf. RETRIBUTIVISM.

utiliter et equivalenter (yoo-**til**-ə-tər et i-kwiv-ə-**len**-tər). [Law Latin] *Hist.* Duly and with equal effect.

utiliter impensum (yoo-**til**-ə-tər im-**pen**-səm). [Latin] *Hist.* Usefully expended.

utility. (14c) **1.** The quality of serving some function that benefits society; meritoriousness. **2.** *Patents.* Capacity to perform a function or attain a result for which the patent applicant or holder claims protection as intellectual property. • In patent law, utility is one of the three basic requirements of patentability, the others being nonobviousness and novelty. In the calculation of damages for patent infringement, utility is the benefit or advantage of the patented product or process over the products or processes, if any, that previously had been used to produce similar results. [Cases: Patents ☞47.]

> "[T]he utility requirement does not mandate that the invention be superior to existing products and processes in order to qualify for a patent. The utility standard reflects the judgment that society is better served by access to a library of issued patents describing as many inventions as possible, even if many of them do not achieve better results than public domain technology. This liberal view of utility allows subsequent inventors access to a greater variety of previous technologies, some of which may yet be judged the superior solution when employed within a different context." Roger E. Schechter & John R. Thomas, *Intellectual Property* § 15.1, at 316 (2003).

3. A business enterprise that performs an essential public service and that is subject to governmental regulation.

public utility. (1895) **1.** A company that provides necessary services to the public, such as telephone lines and service, electricity, and water. • Most utilities operate as monopolies but are subject to governmental regulation. [Cases: Public Utilities ☞101.] **2.** A person, corporation, or other association that carries on an enterprise for the accommodation of the public, the members of which are entitled as a matter of right to use the enterprises's facilities.

utility fund. See MUTUAL FUND.

utility model. *Patents.* A system of patent registration giving patent-like rights in some countries, usu. for a shorter term than a patent but with little or no search required. • Utility-model registration is not available in the U.S. or Great Britain, but is offered in Japan and many European countries, including Germany and France. They are available for machines only, and not for chemicals. — Also termed *petty patent*; *second-tier patent*; *small invention.*

utility patent. See PATENT (3).

uti mos est in feudifirmis (**yoo**-tɪ **mahs** est in fyoo-di-**fər**-mis). [Law Latin] *Scots law.* As is the custom in feu-holdings.

ut infra (ət **in**-frə *also* uut). [Latin] *Hist.* As below.

uti possidetis (**yoo**-tɪ pah-si-**dee**-tis). [Latin] **1.** *Int'l law.* The doctrine that the administrative boundaries will become international boundaries when a political subdivision or colony achieves independence. **2.** *Roman law.* An interdict ordering each party to a lawsuit to maintain the possession of real property as it stands pending an official decision on who owns the property. Cf. UTRUBI. **3.** The doctrine that personal property captured during wartime and still held by the captor when the war ends becomes the captor's legal property.

> "The restoration of peace put an end . . . to all force, and then the general principle applied, that things acquired in war remain, as to title and possession, precisely as they stood when the peace took place. The uti possetidis is the basis of every treaty of peace, unless it be otherwise agreed. Peace gives a final and perfect title to captures without condemnation; and as it forbids all force, it destroys all hopes of recovery as much as if the vessel was carried infra presidia, and condemned." James Kent, 1 *Commentaries on American Law* *173 (George Comstock ed., 11th ed. 1866).

uti rogas (**yoo**-tɪ **roh**-gas *or* -gəs). [Latin] *Roman law.* As you ask. • This phrase was inscribed on a ballot to indicate a vote in favor of a bill or candidate. — Abbr. *u.r.*

utitur jure auctoris (**yoo**-ti-tər **joor**-ee awk-**tor**-is). [Latin] *Hist.* He exercises the right of his predecessor in title.

utitur jure communi (**yoo**-ti-tər **joor**-ee kə-**myoo**-nī). [Latin] *Hist.* He relies on the common law.

utitur jure privato (**yoo**-ti-tər **joor**-ee prī-**vay**-toh). [Latin] *Hist.* He relies on his own private right.

utitur jure suo (**yoo**-ti-tər **joor**-ee **s**[**y**]**oo**-oh). [Latin] *Hist.* He exercises his own right.

> "The exercise of rights of property on the part of a proprietor . . . cannot be interfered with, even where they are injurious in their effects to the adjoining property. In such case the proprietor is only doing that which he has a right to do, *utitur jure suo.*" John Trayner, *Trayner's Latin Maxims* 618–19 (4th ed. 1894).

utlagare (**ət**-lag-ə-ree *or* ət-lə-**gair**-ee), *vb.* [Law Latin] *Hist.* To put (an offender) outside the protection of the law. Cf. INLAGARE; OUTLAWRY (2).

utlagation (ət-lə-**gay**-shən), *n.* [Law Latin] *Hist.* The act of placing an offender outside the protection of the law; outlawry. — Also termed *utlagatio.* Cf. INLAGATION; OUTLAWRY (2).

utlagatus (ət-lə-**gay**-təs), *n.* [Latin] *Hist.* An outlawed person; an outlaw.

utlage (**ət**-lahzh *or* -lij), *n.* [Law French] An outlaw.

utlagh (**ət**-law). [Old English] *Hist.* A person outside the protection of the law; an outlaw.

utland (**ət**-lənd) [Old English] *Hist.* The outer portion of a lord's demesne, used to support the lord's tenants. — Also termed *delantal* (di-**lan**-təl). Cf. INLAND (2).

utlesse. *Hist.* A felon's escape from prison.

UTMA. *abbr.* UNIFORM TRANSFERS TO MINORS ACT.

utmost care. See *great care* under CARE.

ut nihil illi desit (ət **nī**-hil **il**-ī **dee**-sit). [Latin] *Hist.* That nothing may be wanting to him.

UTPCPL. *abbr.* UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW.

ut prosint ad veritatem indagandam (ət **proh**-sint ad ver-ə-**tay**-təm in-də-**gan**-dəm). [Law Latin] *Hist.* That they be of service for investigating the truth.

ut res magis valeat quam pereat (rays [*or* reez *or* rez] **may**-jis **vay**-lee-at kwam **peer**-ee-at). [Latin "to give effect to the matter rather than having it fail"] A maxim of document construction applied when alternative readings are possible, one of which (usu. the broader reading) would achieve the manifest purpose of the document and the other of which (usu. the narrower reading) would reduce the document's purpose to futility or absurdity, whereby the interpreter chooses the construction that gives greater effect to the document's primary purpose.

ut res valeat potius quam pereat (ət **rays** [*or* **reez** *or* **rez**] **vay**-lee-at **poh**-shee-əs kwam **peer**-ee-at). [Latin] *Hist.* That the thing may avail rather than perish; that the transaction may be valid rather than invalid.

utrubi (**ət**-rə-bī), *n.* [Latin] *Roman law.* An interdict for maintaining the status quo of possession of movable property pending a ruling to determine the property's rightful owner. • In Roman law, this interdict gave possession of movable property to the party who had held the property longer during the previous year. Justinian applied the rule of *uti possidetis* to movables. Cf. UTI POSSIDETIS (2).

utrumque nostrum (yoo-**trəm**-kwee **nos**-trəm). [Latin] Each of us. • This phrase usu. appeared in bonds. The accusative form is *uterque nostrum.*

UTSA. *abbr.* UNIFORM TRADE SECRETS ACT.

ut supra (ət **s**[**y**]**oo**-prə *also* uut). [Latin] *Hist.* As above.

utter, *adj.* (15c) Complete; absolute; total <an utter denial>.

utter, *vb.* (15c) **1.** To say, express, or publish <don't utter another word until your attorney is present>. **2.** To put or send (a document) into circulation; esp., to circulate (a forged note) as if genuine <she uttered a counterfeit $50 bill at the grocery store>. [Cases: Counterfeiting ⇨9; False Pretenses ⇨6; Forgery ⇨16.] — **utterance** (for sense 1), **uttering** (for sense 2), *n.*

utter bar. See OUTER BAR.

utter barrister. See *outer barrister* under BARRISTER.

uttering. (18c) The crime of presenting a false or worthless instrument with the intent to harm or defraud. — Also termed *uttering a forged instrument.* See FORGERY. [Cases: Counterfeiting ⇨9; False Pretenses ⇨6; Forgery ⇨16.]

ut voluntas testatoris sortiatur effectum (ət və-**lən**-tas tes-tə-**tor**-is sor-shee-**ay**-tər i-**fek**-təm). [Latin] *Hist.* That the will of the testator may be effectuated.

uxor (**ək**-sor), *n.* [Latin] Wife. — Abbr. *ux.* See ET UXOR. Cf. VIR.

uxore rapta et abducta (ək-**sor**-ee [*also* əg-**zor**-ee] **rap**-tə et ab-**dək**-tə). See DE UXORE RAPTA ET ABDUCTA.

uxorial (ək-**sor**-ee-əl *or* əg-**zor**-), *adj.* Of, relating to, or characteristic of a wife <uxorial property>.

uxoricide (ək-**sor**-ə-sīd *or* əg-**zor**-), *n.* (18c) **1.** The murder of one's wife. **2.** A man who murders his wife. Cf. MARITICIDE. — **uxoricidal,** *adj.*

V

v. *abbr.* **1.** VERSUS. — Also abbreviated *vs.* **2.** Volume. — Also abbreviated *vol.* **3.** Verb. — Also abbreviated *vb.* **4.** (*cap.*) Victoria — the Queen of England from 1837 to 1901. **5.** *Vide.* • This Latin term, meaning "see," is used in phrases such as *quod vide* ("which see," abbreviated *q.v.*). **6.** *Voce* (**voh**-see). • This Latin term means "voice."

VA. *abbr.* DEPARTMENT OF VETERANS AFFAIRS.

vacancy, *n.* **1.** The state or fact of a lack of occupancy in an office, post, or piece of property. [Cases: Officers and Public Employees ⚷55.] **2.** The time during which an office, post, or piece of property is not occupied. **3.** An unoccupied office, post, or piece of property; an empty place. • Although the term sometimes refers to an office or post that is temporarily filled, the more usual reference is to an office or post that is unfilled even temporarily. An officer's misconduct does not create a vacancy even if a suspension occurs; a vacancy, properly speaking, does not occur until the officer is officially removed.

vacancy clause. *Insurance.* A special indorsement allowing premises to be unoccupied beyond the period stipulated in the original insurance policy, so that the insurance remains in effect during policy extensions, often for a reduced amount. [Cases: Insurance ⚷2133, 3049(5).]

vacant, *adj.* (13c) **1.** Empty; unoccupied <a vacant office>. • Courts have sometimes distinguished *vacant* from *unoccupied*, holding that *vacant* means completely empty while *unoccupied* means not routinely characterized by the presence of human beings. **2.** Absolutely free, unclaimed, and unoccupied <vacant land>. **3.** (Of an estate) abandoned; having no heir or claimant. — The term implies either abandonment or nonoccupancy for any purpose.

vacantia (və-**kan**-sh[ee]-ə). See *bona vacantia* under BONA.

vacantia bona (və-**kan**-sh[ee]-ə **boh**-nə). See *bona vacantia* under BONA.

vacant succession. See SUCCESSION (2).

vacate, *vb.* (17c) **1.** To nullify or cancel; make void; invalidate <the court vacated the judgment>. Cf. OVERRULE. **2.** To surrender occupancy or possession; to move out or leave <the tenant vacated the premises>.

vacatio (və-**kay**-shee-oh). *Civil law.* Exemption; immunity; privilege; dispensation.

vacation, *n.* (15c) **1.** The act of vacating <vacation of the office> <vacation of the court's order>. **2.** The period between the end of one term of court and the beginning of the next; the space of time during which a court holds no sessions. [Cases: Courts ⚷69.] • The traditional vacations in England were Christmas vacation, beginning December 24 and ending January 6; Easter vacation, beginning Good Friday and ending Easter Tuesday; Whitsun vacation, beginning on the Saturday immediately before and ending the Tuesday immediately after Whitsunday (i.e., Pentecost, the seventh Sunday after Easter); and the long vacation, beginning August 13 and ending October 23. **3.** Loosely, any time when a given court is not in session. [Cases: Courts ⚷69.] **4.** *Eccles. law.* The act or process by which a church or benefice becomes vacant, as on the death or resignation of the incumbent, until a successor is appointed. — Also termed (in sense 4) *vacatura.*

vacation barrister. See BARRISTER.

vacatur (və-**kay**-tər), *n.* [Law Latin "it is vacated"] (17c) **1.** The act of annulling or setting aside. **2.** A rule or order by which a proceeding is vacated.

vacatura (vay-kə-**t[y]oor**-ə), *n.* [Latin] VACATION (4).

vacua possessio (**vak**-yoo-ə pə-**zes[h]**-ee-oh). [Latin "a vacant possession"] *Roman & civil law.* Free and unburdened possession, which a seller must convey to a purchaser.

vacuus (**vak**-yoo-əs), *adj.* [Latin] *Hist.* Empty; void; vacant; unoccupied.

vades. See VAS.

vadiare duellum (vad-ee-**air**-ee d[y]oo-**el**-əm), *vb.* [Law Latin "to wage the duellum"] *Hist.* To give pledges mutually for engaging in trial by combat.

vadiare legem (vad-ee-**air**-ee **lee**-jəm), *vb.* [Law Latin "to wage law"] *Hist.* (Of a defendant in a debt action) to give security to make one's law on a day assigned — that is, the defendant would pledge, upon giving the security, to do two things on the appointed day in court: (1) take an oath in open court that the debt was not owed, and (2) bring 11 compurgators who would swear that they believed what the defendant said.

vadiatio (vad-ee-**ay**-shee-oh), *n.* [Law Latin] *Hist.* Wager. Cf. INVADIATIO. Pl. ***vadiationes*** (vad-ee-ay-shee-**oh**-neez).

vadiatio duelli (vad-ee-**ay**-shee-oh d[y]oo-**el**-ī). [Law Latin "wager of battle"] See TRIAL BY COMBAT.

vadiatio legis (vad-ee-**ay**-shee-oh **lee**-jis). [Law Latin "wager of law"] See WAGER OF LAW.

vadimonium (vad-ə-**moh**-nee-əm), *n. Roman law.* **1.** A guarantee (originally backed by sureties) that a litigant would appear in court. **2.** A solemn promise to this effect. — Also termed *vadimony.*

vadium (**vay**-dee-əm), *n.* [Law Latin "pledge, bail, security"] *Hist.* **1.** Security by a pledge of property.

vadium mortuum (**vay**-dee-əm **mor**-choo-əm). [Law Latin "dead pledge"] A mortgage. • This was considered a "dead pledge" because an estate was given as security by the borrower, who granted to the lender the estate in fee, on the condition that if the money were not repaid at the specified time, the pledged estate would continue as the lender's — it would be gone from, or "dead" to, the borrower (mortgagor). — Also termed *mortuum vadium*. See MORTGAGE. [Cases: Mortgages ⇨1.]

vadium vivum (**vay**-dee-əm **vi**-vəm). [Law Latin "live pledge"] A living pledge, which exists when an estate is granted by a borrower to a lender until a debt is paid out of the estate's proceeds. • The pledge was so called because neither the money nor the lands were lost; it was a "living pledge" because the profits of the land were constantly paying off the debt. — Also termed *vivum vadium*; *vif-gage*.

2. Wages; salary.

vadium ponere (**vay**-dee-əm **poh**-nə-ree), *vb. Hist.* To take bail for the appearance of a person in court.

vagabond (**vag**-ə-bond), *n. Archaic.* A homeless wanderer without any means or an honest livelihood; VAGRANT. • This term became archaic over the course of the 20th century, as vagrants won the right not to be forcibly removed from cities in such cases as *Papachristou v. City of Jacksonville*, 405 U.S. 156, 92 S.Ct. 839 (1972). In the 1980s and 1990s, vagabonds came to be known as *street people* and *homeless people*, or *the homeless*. — Also termed *vagabundus* (vag-ə-**bən**-dəs).

"[A]ll idle persons or vagabonds [are] . . . divided into three classes, *idle* and *disorderly* persons, *rogues* and *vagabonds*, and *incorrigible rogues*; — all these are offenders against the good order, and blemishes in the government, of any kingdom. They are therefore all punished . . . rogues and vagabonds with whipping and imprisonment not exceeding six months . . . ." 4 William Blackstone, *Commentaries on the Laws of England* 170 (1769).

vagabondage (**vag**-ə-bon-dij). **1.** The condition of a vagabond. **2.** Vagabonds as a class. — Also termed (in sense 1) *vagabondism*; (in senses 1 & 2) *vagabondry*.

vagabundus (vag-ə-**bən**-dəs). [Law Latin] See VAGABOND.

vagrancy (**vay**-grən-see), *n.* (17c) **1.** The state or condition of wandering from place to place without a home, job, or means of support. • Vagrancy is generally considered a course of conduct or a manner of living, rather than a single act. But under some statutes, a single act has been held sufficient to constitute vagrancy. One court held, for example, that the act of prowling about and creeping up on parked cars and their occupants at night, under circumstances suggesting an intent to commit a crime, constitutes vagrancy. See *Smith v. Drew*, 26 P.2d 1040 (Wash. 1933). Many state laws prohibiting vagrancy have been declared unconstitutionally vague. — Also termed *vagrantism*. [Cases: Vagrancy ⇨1.] **2.** An instance of such wandering. Cf. LOITERING.

"Vagrancy is a status resulting from misconduct and in the form of a socially harmful condition or mode of life which has been defined and made punishable by law. Until recently it was a misdemeanor, or group of misdemeanors, in most states." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 494 (3d ed. 1982).

vagrant, *adj.* (15c) **1.** Of, relating to, or characteristic of a vagrant; inclined to vagrancy. **2.** Nomadically homeless. [Cases: Vagrancy ⇨1.]

vagrant, *n.* (15c) **1.** At common law, anyone belonging to the several classes of idle or disorderly persons, rogues, and vagabonds. **2.** One who, not having a settled habitation, strolls from place to place; a homeless, idle wanderer. • The term often refers to one who spends time in idleness, lacking any property and without any visible means of support. Under some statutes, a vagrant is an offender against or menace to the public peace, usu. liable to become a public burden. Cf. VAGABOND. [Cases: Vagrancy ⇨1.]

vagrantism. See VAGRANCY.

vague, *adj.* (16c) **1.** Imprecise; not sharply outlined; indistinct; uncertain.

unconstitutionally vague. **1.** (Of a penal legislative provision) so unclear and indefinite as not to give a person of ordinary intelligence the opportunity to know what is prohibited, restricted, or required. [Cases: Criminal Law ⇨13.1(1); Statutes 47.] **2.** (Of a statute) impermissibly delegating basic policy matters to administrators and judges so such a degree as to lead to arbitrary and discriminatory application. [Cases: Statutes 47.]

2. (Of language) describing a distribution around a central norm, as opposed to a neatly bounded class; broadly indefinite; not clearly or concretely expressed. **3.** Characterized by haziness of thought.

vague-and-indefinite rejection. See REJECTION.

vagueness. (18c) **1.** Uncertain breadth of meaning <the phrase "within a reasonable time" is plagued by vagueness — what is reasonable?>. • Though common in writings generally, vagueness raises due-process concerns if legislation does not provide fair notice of what is required, restricted, or prohibited, because enforcement may become arbitrary. **2.** Loosely, ambiguity. See AMBIGUITY.

vagueness doctrine. (1957) *Constitutional law.* The doctrine — based on the Due Process Clause — requiring that a criminal statute state explicitly and definitely what acts are prohibited or restricted, so as to provide fair warning and preclude arbitrary enforcement. — Also termed *void-for-vagueness doctrine*. See *void for vagueness* under VOID. Cf. OVERBREADTH DOCTRINE. [Cases: Constitutional Law ⇨4506.]

valeat quantum (**vay**-lee-at [*or* -ət] **kwon**-təm). [Law Latin] *Hist.* For as much as it is worth.

valens agere (**vay**-lenz **aj**-ər-ee). [Law Latin] *Hist.* Able to act.

"A person is said to be *valens agere* when, from age and position, he is able to protect his rights against the invasion of them by others: against such a person not protecting his rights prescription runs, while prescription does not

run against one who is *non valens agere*." John Trayner, *Trayner's Latin Maxims* 621 (4th ed. 1894).

valentia (və-**len**-shee-ə), *n.* [Law Latin from Latin *valere* "to be of value"] *Hist.* Value; worth. • In old indictments for larceny, this term often appeared to express the value of the things taken.

valentia agendi (və-**len**-shee-ə ə-**jen**-dı). [Law Latin] *Hist.* The power of acting. See VALENS AGERE.

valere seipsum (və-**leer**-ee see-**ip**-səm). [Law Latin] *Hist.* To be of its own value. • The phrase usu. referred to land.

valid, *adj.* (16c) **1.** Legally sufficient; binding <a valid contract>. **2.** Meritorious <that is a valid conclusion based on the facts presented in this case>. — **validate,** *vb.* — **validation, validity,** *n.*

valid agreement. See *valid contract* under CONTRACT.

validating statute. See STATUTE.

valid contract. See CONTRACT.

validity opinion. See OPINION (2).

validity search. An exhaustive search for prior art or any other facts that can be used to invalidate a patent. See BREAKING A PATENT. Cf. INFRINGEMENT SEARCH; PATENTABILITY SEARCH.

valid judgment. See JUDGMENT.

valid marriage. See MARRIAGE (1).

valid warrant. See WARRANT (1).

valise diplomatique (və-**lees** di-ploh-ma-**teek**). See DIPLOMATIC POUCH.

***Vallescura* rule.** *Maritime law.* The holding that when a maritime loss is due to more than one cause, and the carrier is exempt from liability for at least one of them, the burden is on the carrier to prove what loss is due to the exempt cause. • If the carrier fails to prove the exemption, it is liable for the entire loss. *Schnell v. The Vallescura*, 293 U.S. 296, 55 S.Ct. 194 (1934).

VA loan. See *veteran's loan* under LOAN.

valor (**val**-ər), *n.* [Latin] *Hist.* Value; worth; rate; a valuation. — Also spelled (esp. in BrE) *valour*. See AD VALOREM.

valor beneficiorum (**val**-ər ben-ə-fish-ee-**or**-əm). [Law Latin] *Hist.* The value of all ecclesiastical benefices and spiritual preferments.

valor maritagii (**val**-ər mar-ə-**tay**-jee-ı). [Latin] *Hist.* The value of a marriage. • Under ancient tenures, this was the amount that a female ward forfeited to a guardian when the guardian had offered her a marriage without disparagement (inequality), and she refused. Likewise in feudal law, the guardian in chivalry had the right of tendering to a minor ward a suitable match, without disparagement. If the ward refused, she had to compensate the guardian for the value of the marriage (*valor maritagii*). — Also termed (in the accusative) *valorem maritagii*; (Scots law) *avail of marriage*.

"If an infant ward of a guardian in chivalry refused a match tendered by the guardian, he or she forfeited the value of the marriage (*valorem maritagii*) to the guardian; that is, so much as a jury would assess, or any one would *bona fide* give to the guardian for such an alliance." 2 Alexander M. Burrill, *A Law Dictionary and Glossary* 572-73 (2d ed. 1867).

valuable, *adj.* Worth a good price; having financial or market value.

valuable consideration. See CONSIDERATION (1).

valuable improvement. See IMPROVEMENT.

valuable papers. Documents that, upon a person's death, are important in carrying out the decedent's wishes and in managing the estate's affairs. • Examples include a will, title documents, stock certificates, powers of attorney, letters to be opened on one's death, and the like. Some statutes require that, to be effective, a holographic will devising realty must be found among the decedent's valuable papers.

valuable-papers insurance. See INSURANCE.

valuation, *n.* (16c) **1.** The process of determining the value of a thing or entity. **2.** The estimated worth of a thing or entity. — **value, valuate,** *vb.*

assessed valuation. (1825) The value that a taxing authority gives to property and to which the tax rate is applied. [Cases: Taxation ⚷2512, 2520.]

special-use valuation. (1976) An executor's option of valuating real property in an estate, esp. farmland, based on its current use rather than for its highest potential value. [Cases: Internal Revenue ⚷4183; Taxation ⚷3350.]

valuation date. See ALTERNATE VALUATION DATE.

valuation list. *Hist.* An inventory of all the ratable hereditaments in a parish, each item in the inventory recording the name of the occupier, the owner, the property, the extent of the property, the gross estimated rental, and the ratable value. • The list was traditionally prepared by the overseers of each parish.

value, *n.* (14c) **1.** The significance, desirability, or utility of something.

social value. The significance, desirability, or utility of something to the general public.

2. The monetary worth or price of something; the amount of goods, services, or money that something commands in an exchange.

actual cash value. *Insurance.* **1.** Replacement cost minus normal depreciation. [Cases: Insurance ⚷2181.] **2.** See *fair market value*.

actual market value. See *fair market value*.

actual value. See *fair market value*.

agreed value. A property's value that is fixed by agreement of the parties, esp. the property's owner and the person or entity valuating the property. • An example is a list of property values contained in an insurance policy. [Cases: Insurance ⚷2171.]

annual value. **1.** The net yearly income derivable from a given piece of property. **2.** One year's rental value of

property, less the costs and expenses of maintaining the property.

assessed value. The value of an asset as determined by an appraiser for tax purposes. [Cases: Taxation ⚷ 2510.]

book value. See BOOK VALUE.

cash surrender value. *Insurance.* The amount of money payable when an insurance policy having cash value, such as a whole-life policy, is redeemed before maturity or death. — Abbr. CSV. — Also termed *surrender value*; *cash value.* [Cases: Insurance ⚷ 1957, 2037.]

cash value. **1.** See *fair market value.* **2.** See *full cash value.* **3.** See *cash surrender value.*

clear annual value. The net annual value of property, after payment of taxes, interest on mortgages, and other charges.

clear market value. See *fair market value.*

clear value. *Tax.* For purposes of an inheritance tax, whatever remains of an estate after all claims against it have been paid. [Cases: Taxation ⚷ 3351.]

commuted value (kə-**myoo**-tid). **1.** In the assessment of damages, the present value of a future interest in property. **2.** The value of future payments when discounted to their present value.

enterprise value. A measure of a company's market value, calculated by aggregating the value of the company's market capitalization, debt, and preferred stock, and subtracting cash and cash equivalents.

exchange value. The amount of money for which property or services could be exchanged or procured if there is a ready market continually resorted to by traders — or, in the absence of such a market, the amount that could be obtained in the usual course of finding a purchaser or hirer of similar property or services. [Cases: Evidence ⚷ 113(20).]

fair market value. (18c) The price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's-length transaction; the point at which supply and demand intersect. — Abbr. FMV. — Also termed *actual value*; *actual cash value*; *actual market value*; *cash value*; *clear market value*; *fair and reasonable value*; *fair cash market value*; *fair cash value*; *fair market price*; *fair value*; *full value*; *just value*; *market value*; *salable value*; *true value.* [Cases: Taxation ⚷ 2515.]

> "[A] forced sale price is not fair value though it may be used as evidence on the question of fair value. Likewise, the fair value of saleable assets is not what they would sell for in the slow process of the debtor's trade as if the debtor were continuing business unhampered. The general idea of fair value is the amount of money the debtor could raise from its property in a short period of time, but not so short as to approximate a forced sale, if the debtor operated as a reasonably prudent and diligent businessman with his interests in mind, especially a proper concern for the payment of his debts." David G. Epstein et al., *Bankruptcy* § 6-18, at 307 (1993).

fair value. See *fair market value.*

full cash value. Market value for property tax purposes; estimated value derived by standard appraisal methods. — Also termed *cash value.* [Cases: Taxation ⚷ 2515.]

full value. See *fair market value.*

future value. The value, at some future time, of a present sum or a series of monetary payments, calculated at a specific interest rate.

going-concern value. The value of a commercial enterprise's assets or of the enterprise itself as an active business with future earning power, as opposed to the liquidation value of the business or of its assets. • Going-concern value includes, for example, goodwill. — Also termed *going value.* Cf. GOODWILL.

highest proved value. In a trover action, the greatest value (as proved by the plaintiff) that the converted property reached from the time of the conversion until trial. • It is the highest amount that a plaintiff is entitled to recover. [Cases: Trover and Conversion ⚷ 44.]

insurable value. See INSURABLE VALUE.

intrinsic value. The inherent value of a thing, without any special features that might alter its market value. • The intrinsic value of a silver coin, for example, is simply the value of the silver within it.

just value. See *fair market value.*

liquidation value. **1.** The value of a business or of an asset when it is sold in liquidation, as opposed to being sold in the ordinary course of business. **2.** See *liquidation price* under PRICE.

market value. See *fair market value.*

most-suitable-use value. See *optimal-use value.*

net value. **1.** *Insurance.* The excess of a policyholder payments over the yearly cost of insurance; the part of an insured's annual premium that, according to actuarial tables, the insurer must set aside to meet the insurer's obligations to the insured. — Also termed *reserve.* [Cases: Insurance ⚷ 2037.] **2.** The fair market value of shares of stock. [Cases: Corporations ⚷ 182.4(5), 584.]

new value. **1.** A value that is newly given or freshly calculated. **2.** The value obtained by taking a security, such as collateral, for any debt other than a preexisting one.

optimal-use value. *Tax.* The highest and best use of a thing from an economic standpoint. • If a farm would be worth more as a shopping center than as a farm, the shopping-center value will control even if the transferee (that is, a donee or heir) continues to use the property as a farm. — Also termed *most-suitable-use value.* [Cases: Taxation ⚷ 2515.]

par value. See PAR VALUE.

policy value. See POLICY VALUE.

present value. See PRESENT VALUE.

residual value. See *salvage value.*

salable value. See *fair market value.*

salvage value. (1917) The value of an asset after it has become useless to the owner; the amount expected to be obtained when a fixed asset is disposed of at the end of its useful life. • Salvage value is used, under some depreciation methods, to determine the allowable tax deduction for depreciation. And under the UCC, when a buyer of goods breaches or repudiates the contract of sale, the seller may, under certain circumstances, either complete the manufacture of any incomplete goods or cease the manufacture and sell the partial product for scrap or salvage value. UCC § 2-704(2). — Also termed *residual value; scrap value.* See DEPRECIATION. [Cases: Sales ⇨384(6).]

scrap value. See *salvage value.*

settlement value. The value of a claim if the claimant settles immediately as opposed to pursuing the claim further through litigation.

surrender value. See *cash surrender value.*

true value. See *fair market value.*

use value. A value established by the utility of an object instead of its sale or exchange value.

value received. See VALUE RECEIVED.

3. Sufficient contractual consideration. — **value,** *vb.* — **valuation,** *n.*

> "Value also includes paying or securing a preexisting debt, and in this regard value is broader than common-law consideration. Thus, a debtor receives value in satisfying an antecedent claim (as by paying an overdue account or an outstanding loan or by transferring property to vindicate a preexisting interest in it) or in providing collateral for a previously unsecured creditor. It makes no difference that the debtor got nothing new, in terms of property added to her estate, at the time of the transfer." David G. Epstein et al., *Bankruptcy* § 6-49, at 374 (1993).

value-added card. See STORED-VALUE CARD.

value-added model. See LABOR-DESERT MODEL.

value-added tax. See TAX.

value date. The date when the proceeds of a bill of exchange (e.g., a check) or of a foreign-exchange transaction (e.g., a sale of dollars for euros) become available for use. — Also termed *here and there.*

valued policy. See INSURANCE POLICY.

valued-policy law. A statute requiring insurance companies to pay the full amount of the insurance to the insured in the event of a total loss, regardless of the true value of the property at the time of loss. [Cases: Insurance ⇨2171.]

value fund. See MUTUAL FUND.

valuer. See APPRAISER.

value received. (17c) Consideration that has been delivered. • This phrase is commonly used in a bill of exchange or promissory note to show that it was supported by consideration. [Cases: Bills and Notes ⇨12, 40, 90, 98.]

valuta (və-**loo**-tə), *n.* [Italian fr. Latin] Value; worth; esp., the value of a currency in relation to that of the currency of some other country.

valvasor (**valv**-ə-sor), *n.* [Law Latin] *Hist.* A principal vassal who, though not holding directly of the sovereign, held of those who did so; a vassal of the second degree or rank. — Also spelled *valvassor.* See VAVASOR.

VA mortgage. See MORTGAGE.

vandal. [fr. Latin *Vandalus,* a member of the Germanic tribe known as Vandals] (17c) A malicious destroyer or defacer of works of art, monuments, buildings, or other property.

vandalism, *n.* (18c) **1.** Willful or ignorant destruction of public or private property, esp. of artistic, architectural, or literary treasures. **2.** The actions or attitudes of one who maliciously or ignorantly destroys or disfigures public or private property; active hostility to anything that is venerable or beautiful. — **vandalize,** *vb.* — **vandalistic,** *adj.*

vara (**vah**-rah). *Spanish-Am. law.* A measure of length equal to about 33 inches. • Local usage varies, so that a vara may sometimes be more and sometimes less than 33 inches. In Mexican land grants, the measure is equal to 32.9927 inches. The term is often found in old land grants in states that were formed from land governed by Spain or Mexico.

variable annuity. See ANNUITY.

variable annuity contract. See CONTRACT.

variable cost. See COST (1).

variable life insurance. See LIFE INSURANCE.

variable rate. See INTEREST RATE.

variable-rate mortgage. See *adjustable-rate mortgage* under MORTGAGE.

variance. (14c) **1.** A difference or disparity between two statements or documents that ought to agree; esp., in criminal procedure, a difference between the allegations in a charging instrument and the proof actually introduced at trial. — Also termed *variation.* [Cases: Indictment and Information ⇨171.]

fatal variance. (18c) A variance that either deprives the defendant of fair notice of the charges or exposes the defendant to the risk of double jeopardy. • A fatal variance is grounds for reversing a conviction. [Cases: Indictment and Information ⇨171.]

immaterial variance. (18c) A variance too slight to mislead or prejudice the defendant and is thus harmless error. [Cases: Indictment and Information ⇨171.]

2. A license or official authorization to depart from a zoning law. — Also termed (in sense 2) *zoning variance.* See HARDSHIP (4). Cf. SPECIAL EXCEPTION (2); SPECIAL-USE PERMIT. [Cases: Zoning and Planning ⇨481–549.]

area variance. A variance permitting deviation from zoning requirements about construction and

placement, but not from requirements about use. [Cases: Zoning and Planning ⇨503.]

use variance. A variance permitting deviation from zoning requirements about use. [Cases: Zoning and Planning ⇨481.]

varrantizatio (və-ran-ti-**zay**-shee-oh), *n.* [Law Latin] *Hist. Scots law.* A warranty.

vas (vas), *n.* [Latin "surety"] A pledge, surety, bail; esp., in early law, security for a criminal defendant's appearance in court. • In Roman law under the *legis actio* procedure, a *vas* was a special surety for the defendant if there was an adjournment *in jure*. Pl. ***vades*** (**vay**-deez). See IN JURE (2); LEGIS ACTIO.

vassal (**vas**-əl), *n.* [fr. Law Latin *vassallus*] *Hist.* The grantee of a fief, feud, or fee; a feudal tenant. Cf. FREEMAN (5).

arriere vassal (a-ree-**air vas**-əl). *Hist.* The vassal of a vassal.

vassalage (**vas**-əl-ij), *n. Hist.* **1.** The state of being a vassal or feudatory. — Also termed *vasseleria*. **2.** The service required of a vassal. — Also termed *vassaticum*; *mainrent*. **3.** The territory held by a vassal; a fief or fee. **4.** Vassals collectively. **5.** The dominion or authority of a feudal superior over vassals. **6.** Political servility; subjection.

vassalli ligii (**vas**-ə-lɪ **lij**-ee-ɪ). [Law Latin] *Hist.* Vassals holding immediately of the Crown.

vassallo et quibus dederit (**vas**-ə-loh et **kwib**-əs **dee**-dər-it). [Law Latin] *Hist.* To the vassal and to whomsoever he shall have given it. • The phrase was included in feudal grants.

> "If the original grant had been destined to the vassal, 'and his heirs and assignees whomsoever,' this only bound the superior to receive the proper heirs of the vassal and not his assignee; but if the destination bore . . . [vassal] 'et quibus dederit,' this was construed as a consent on the part of the superior to alienation, and under which he was bound to receive as vassal his vassal's disponee. This distinction . . . was practically abolished by the Act 20 Geo. II. c. 50, which introduced a mode by which either an heir or disponee could force an entry from the superior." John Trayner, *Trayner's Latin Maxims* 622 (4th ed. 1894).

vassallo faciendo superiori quod de jure facere oportet (**vas**-ə-loh fay-shee-**en**-doh s[y]oo-peer-ee-**or**-ɪ kwod dee **joor**-ee **fay**-sə-ree ə-**por**-tet). [Law Latin] *Hist.* Upon the vassal performing that to the superior which, according to law, he ought to perform.

vassallus (**vas**-ə-ləs), *n.* [Law Latin] *Hist.* A feudal tenant. Cf. VASSUS.

vassal state. *Int'l law.* A state that possesses only those rights and privileges that have been granted to it by a more powerful state.

vassaticum (və-**sat**-ə-kəm). [Law Latin] See VASSALAGE (2).

vasseleria (vas-ə-**leer**-ee-ə). [Law Latin] See VASSALAGE (1).

vassus (**vas**-əs), *n.* [Law Latin] *Hist.* A feudal tenant who held immediately of the king. Cf. VASSALLUS.

vasto. See DE VASTO.

vastum (**vas**-təm), *n. Hist.* WASTE.

vastum forestae vel bosci (**vas**-təm for-**es**-tee vel **bahs**-ɪ). *Hist.* Waste of a forest or wood.

VAT. See *value-added tax* under TAX.

vauderie (**vaw**-dər-ee). *Hist.* Sorcery; witchcraft.

***Vaughn* index.** A comprehensive list of all documents that the government wants to shield from disclosure in Freedom of Information Act (FOIA) litigation, each document being accompanied by a statement of justification for nondisclosure. • Supported by one or more affidavits, a *Vaughn* index has three purposes: (1) forcing the government to scrutinize all material withheld; (2) enabling the trial court to fulfill its duty of ruling on the factual basis of each claimed FOIA exemption; and (3) enabling the adversary system to operate by giving the requester as much information as possible. 5 USCA § 552 et seq. The name derives from *Vaughn v. Reese*, 484 F.2d 820 (D.C. Cir. 1973). [Cases: Records 62.]

vavasor (**vav**-ə-sor), *n.* [Law Latin] *Hist.* The vassal or tenant of a baron; one who held under a baron and also had subtenants. — Also spelled *vavasour* (**vav**-ə-suur). Cf. VALVASOR.

vavasory (**vav**-ə-sor-ee), *n.* [fr. Law Latin *vavasoria*] *Hist.* The lands held by a vavasor.

VAWA. *abbr.* VIOLENCE AGAINST WOMEN ACT.

VC. *abbr.* VICE-CHANCELLOR.

VCC. *abbr.* VICE-CHANCELLOR'S COURT.

v.e. *abbr.* VENDITIONI EXPONAS.

veal-money. *Hist.* The annual rent paid by tenants of the manor of Bradford, in the county of Wiltshire, in lieu of veal formerly paid in kind.

vectigal (vek-**tɪ**-gəl), *n. Roman & civil law.* **1.** A tax, esp. an import or export duty, paid to the state. **2.** An annual ground rent paid in kind or in money. Pl. ***vectigalia*** (vek-tə-**gay**-lee-ə).

vectigal judiciarium (vek-**tɪ**-gəl joo-dish-ee-**air**-ee-əm), *n.* A tax or fine to defray the expenses of maintaining courts of justice. Pl. ***vectigalia judiciaria.***

vectura (vek-t[y]**oor**-ə). *Hist. Maritime law.* Freight.

veggie-libel law. *Slang.* See AGRICULTURAL-DISPARAGEMENT LAW.

vehicle (**vee**-ə-kəl), *n.* **1.** An instrument of transportation or conveyance. **2.** Any conveyance used in transporting passengers or things by land, water, or air.

vehicular (vee-**hik**-yə-lər), *adj.* Of, relating to, or caused by a vehicle or vehicles.

vehicular homicide. See HOMICIDE.

veil-piercing. See PIERCING THE CORPORATE VEIL.

vein, *n. Mining law.* A continuous body of mineral or mineralized rock, filling a seam or fissure in the earth's crust, within defined boundaries that clearly separate it from surrounding rock.

discovery vein. The primary vein for the purpose of locating a mining claim. [Cases: Mines and Minerals ☞16, 30–33.]

vejour (və-**zhoor**), *n.* [Law French fr. Law Latin *visores* "viewers"] *Hist.* **1.** One of several persons sent by the court to examine a place in question to help in the decision-making process. **2.** A person sent to visit persons who claim they are unable to appear in court on account of illness, to see whether they are actually so sick that they cannot appear or whether they are malingering. — Also spelled *veyor*; *veyour*; *vayowr*; *veiour*; *veighor.*

vel faciendo vel delinquendo (vel fay-shee-**en**-doh vel dee-ling-**kwen**-doh). [Law Latin] *Hist.* Either by doing something or by leaving something undone. • The phrase appeared in reference to what was accomplished by act or omission.

vel non (vel **non**). [Latin "or not"] (1895) Or the absence of it (or them) <this case turns solely on the finding of discrimination vel non>.

venal (**vee**-nəl), *adj.* (17c) **1.** (Of a person) capable of being bribed. **2.** Ready to sell one's services or influence for money or other valuable consideration, usu. for base motives. **3.** Of, relating to, or characterized by corrupt bargaining. **4.** Broadly, purchasable; for sale.

vend, *vb.* (17c) **1.** To transfer to another for money or something else of value. • The term is not commonly applied to real estate, although its derivatives (*vendor* and *vendee*) are. **2.** To make an object of trade, esp. by hawking or peddling. **3.** To utter publicly; to say or state; to publish broadly.

vendee. (16c) A purchaser, usu. of real property; a buyer. [Cases: Vendor and Purchaser ☞1.]

vendee's lien. See LIEN.

vendetta (ven-**det**-ə), *n.* (1855) A private blood feud in which family members seek revenge on one or more persons outside the family (often members of another family); esp., a private war in which the nearest of kin seek revenge for the slaying of a relative.

vend. ex. *abbr.* VENDITIONI EXPONAS.

vendible, *adj.* Salable; fit or suitable to be sold.

venditae (**ven**-də-tee). [fr. Latin *vendere* "to sell"] *Hist.* A tax on things sold in markets and at public fairs.

venditio (ven-**dish**-ee-oh). [Latin] *Roman & civil law.* **1.** A sale; VENDITION. **2.** A contract of sale. • In this sense, the term is short for *emptio et venditio.* See EMPTIO. **3.** Broadly, any contract by which the ownership of something may be transferred for value. Pl. ***venditiones.***

venditio corporis (ven-**dish**-ee-oh **kor**-pə-ris). A sale of a specific thing. — Also termed *venditio speciei.*

venditio generis (ven-**dish**-ee-oh **jen**-ə-ris). A sale of goods of a class or general kind.

venditio nominis (ven-**dish**-ee-oh **nom**-ə-nis). A sale or conveyance of a debt.

venditio speciei (ven-**dish**-ee-oh **spee**-shee-ī). See *venditio corporis.*

vendition, *n.* The act of selling; a sale. — Also termed *venditio.*

venditioni exponas (ven-dish-ee-**oh**-nī eks-**poh**-nəs). [Latin "you are to expose for sale"] A writ of execution requiring a sale of particular goods to be made. • The writ is directed to a sheriff who has levied upon goods under a *fieri facias* but has reported that the goods remain unsold for lack of buyers. In some jurisdictions, a *venditioni exponas* is issued to require a sale of property seized under an earlier writ, after the property has been condemned or passed upon by inquisition. — Abbr. *vend. ex.*; *v.* [Cases: Execution ☞217.]

venditor (**ven**-də-tər), *n. Hist.* See VENDOR.

venditor regis (**ven**-də-tər **ree**-jis). [Latin] *Hist.* The king's seller; esp., the person who sold goods and chattels that had been seized or distrained to answer a debt due to the king.

venditrix (**ven**-də-triks), *n. Hist.* A female vendor.

vendor. A seller, usu. of real property. — Also termed *venditor.* [Cases: Vendor and Purchaser ☞1.]

itinerant vendor. A vendor who travels from place to place selling goods. [Cases: Licenses ☞15(2).]

vendor's lien. See LIEN.

vendue (ven-**d**[y]**oo** *or* **ven**-d[y]oo). *Hist.* **1.** A sale; esp., a sale at public auction. **2.** See *execution sale* under SALE.

vendue master. *Hist.* See AUCTIONEER.

venereal disease. See SEXUALLY TRANSMITTED DISEASE.

venery (**ven**-ə-ree). *Archaic.* **1.** Hunting. **2.** Sexual intercourse.

Venetian patent statute. *Hist.* A law enacted in Venice in 1474, giving an inventor the exclusive right to make and use an invention for 10 years. • This was the first known patent law, with procedures for securing and enforcing the inventor's right to exclude others from working, using, or benefiting from the invention.

venia (**vee**-nee-ə), *n.* [Latin] *Hist.* **1.** A penitent's kneeling or assuming a prostrate position on the ground. **2.** A pardon. **3.** The granting of a privilege. Pl. ***veniae.***

venia aetatis (**vee**-nee-ə i-**tay**-tis). *Roman & civil law.* A privilege granted by a prince or sovereign by virtue of which an underage person is entitled to legally act and be treated as if he or she were of full age.

venial (**vee**-nee-əl), *adj.* (14c) (Of a transgression) forgivable; pardonable.

venire (və-**nī**-ree *or* -**neer**-ee *or* -**nīr** *or* -**neer**). (1807) **1.** A panel of persons selected for jury duty and from among whom the jurors are to be chosen. — Also termed *array*; *jury panel*; *jury pool.* [Cases: Jury ☞60–69.]

special venire. A panel of citizens summoned when there is an unexpected need for a larger pool from which to select jurors, or a panel summoned for a particular (usu. capital) case. [Cases: Jury ☞70.]

2. VENIRE FACIAS.

venire de novo. See *venire facias de novo* under VENIRE FACIAS.

venire facias (və-**nɪ**-ree [*or* -**neer**-ee *or* -**nɪr** *or* -**neer**] **fay**-shee-əs). (15c) A writ directing a sheriff to assemble a jury. — Often shortened to *venire*. — Also termed *venire facias juratores* (juur-ə-**tor**-eez). [Cases: Jury ☞67.]

venire facias ad respondendum (ad ree-spon-**den**-dəm). A writ requiring a sheriff to summon a person against whom an indictment for a misdemeanor has been issued. • A warrant is now more commonly used.

venire facias de novo (dee *or* di **noh**-voh). (18c) A writ for summoning a jury panel anew because of some impropriety or irregularity in the original jury's return or verdict such that a judgment cannot be entered on it. • The result of a new venire is a new trial. In substance, the writ is a motion for a new trial, but when the party objects to the verdict because of a procedural error (and not an error on the merits), the form of motion was traditionally for a venire facias de novo. — Often shortened to *venire de novo*.

venire facias tot matronas (tot mə-**troh**-nəs). A writ requiring a sheriff to summon a jury of matrons to execute a writ *de ventre inspiciendo*. See DE VENTRE INSPICIENDO.

veniremember (və-**nɪ**-ree-mem-bər *or* və-**neer**-ee- *or* və-**neer**-). (1966) A prospective juror; a member of a jury panel. — Also termed *venireman*; *venireperson*; *talesman*. See TALESMAN.

venit et defendit (**vee**-nit et di-**fen**-dit). [Latin] Comes and defends. • The phrase appeared in old-style defensive pleadings.

venit et dicit (**vee**-nit et **dɪ**-sit). [Latin] Comes and says. • The phrase appeared in old-style pleadings. Remnants of the phrase still occur in some American jurisdictions: *Now comes the plaintiff, and respectfully says . . . .*

vente (vawnt *or* vont). [French] *French law.* A sale; contract of sale.

vente aléatoire (a-lay-ə-**twahr**). A sale subject to an uncertain event.

vente à réméré (ah ray-may-**ray**). A conditional sale, in which the seller reserves the right to redeem or repurchase the property at the same price. • The term is used in Louisiana and in some parts of Canada.

vente aux enchères (oh-zaw*n*-**shair**). An auction. See AUCTION.

venter (**ven**-tər), *n.* [Latin "womb"] **1.** The womb of a wife or mother. **2.** One of two or more women who are sources of the same man's offspring.

> "**venter** . . . is a term nowadays considered objectionable, as it refers to the woman merely as the possessor of a birth canal." Bryan A. Garner, *A Dictionary of Modern Legal Usage* 910 (2d ed. 1995).

ventre inspiciendo. **1.** See DE VENTRE INSPICIENDO;. **2.** See *venire facias tot matronas* under VENIRE FACIAS.

venture. (16c) An undertaking that involves risk; esp., a speculative commercial enterprise. Cf. JOINT VENTURE.

venture capital. See CAPITAL.

venturer, *n.* (16c) **1.** One who risks something, and hopes to gain more, in a business enterprise. **2.** One who participates in an association of two or more parties in a business enterprise. See JOINT VENTURE.

venue (**ven**-yoo). [Law French "coming"] (16c) *Procedure.* **1.** The proper or a possible place for a lawsuit to proceed, usu. because the place has some connection either with the events that gave rise to the lawsuit or with the plaintiff or defendant. [Cases: Federal Courts ☞71; Venue ☞1.5.] **2.** The territory, such as a country or other political subdivision, over which a trial court has jurisdiction. Cf. JURISDICTION (1), (2). **3.** Loosely, the place where a conference or meeting is being held. **4.** In a pleading, the statement establishing the place for trial. [Cases: Federal Courts ☞94.] **5.** In an affidavit, the designation of the place where it was made.

> "Venue must be carefully distinguished from jurisdiction. Jurisdiction deals with the power of a court to hear and dispose of a given case; in the federal system, it involves questions of a constitutional dimension concerning the basic division of judicial power among the states and between state and federal courts. Venue is of a distinctly lower level of importance; it is simply a statutory device designed to facilitate and balance the objectives of optimum convenience for parties and witnesses and efficient allocation of judicial resources." Jack H. Friedenthal et al., *Civil Procedure* § 2.1, at 10 (2d ed. 1993).

> "The distinction must be clearly understood between jurisdiction, which is the power to adjudicate, and venue, which relates to the place where judicial authority may be exercised and is intended for the convenience of the litigants. It is possible for jurisdiction to exist though venue in a particular district is improper, and it is possible for a suit to be brought in the appropriate venue though it must be dismissed for lack of jurisdiction. The most important difference between venue and jurisdiction is that a party may consent to be sued in a district that otherwise would be an improper venue, and it waives its objection to venue if it fails to assert it promptly. This is in striking contrast to subject-matter jurisdiction, which cannot be conferred by the parties, if it has not been granted by Congress, whether by consent, waiver, or estoppel." Charles Alan Wright, *The Law of Federal Courts* § 42, at 257 (5th ed. 1994).

venue, change of. See CHANGE OF VENUE.

venue facts. (1936) Facts that need to be pleaded or established in a hearing to determine whether venue is proper in a given court. [Cases: Federal Courts ☞96; Venue ☞68.]

venville (**ven**-vil), *n. Hist.* A tenure peculiar to the area of Dartmoor forest in Devonshire, whereby tenants have certain rights in the forest.

veracious (və-**ray**-shəs), *adj.* (17c) Truthful; accurate. — Also termed *veridical*.

veracity (və-**ras**-ət-ee), *n.* (17c) **1.** Truthfulness <the witness's fraud conviction supports the defense's challenge to his veracity>. **2.** Accuracy <you called into question the veracity of Murphy's affidavit>. — **veracious** (və-**ray**-shəs), *adj.*

veray (və-**ray**), *adj.* [Law French] *Hist.* True. • This word is an older form of the French *vrai*.

verba (**vər**-bə). [Latin] *n. pl.* Words — esp. oral as opposed to written words.

verba concepta. **1.** See FORMULA (1). **2.** See FORMULAE.

verba jactantia (**vər**-bə jak-**tan**-shee-ə). [Law Latin] *Hist.* Boastful words. • These words — esp. in a marriage declaration — are not usu. binding. See JACTITATION OF MARRIAGE.

verbal, *adj.* (15c) **1.** Of, relating to, or expressed in words. **2.** Loosely, of, relating to, or expressed in spoken words.

verbal, *n. English law. Slang.* A statement, usu. oral and often incriminating, allegedly made by a criminal defendant and offered as evidence against the defendant at trial. • The term often implies that a police officer inaccurately recorded or invented a defendant's statement <the defense counsel challenged the verbals presented by the police>.

verbal, *vb. English law. Slang.* To improperly pressure a person to make a statement, esp. one that is damaging or false <the defendant recanted and claimed that he had been verbaled>.

verbal abuse. See ABUSE.

verbal act. See ACT (2).

verbal-act doctrine. (1901) The rule that utterances accompanying conduct that might have legal effect are admissible when the conduct is material to the issue and is equivocal in nature, and when the words help give the conduct its legal significance. [Cases: Criminal Law ☞419(2.10); Evidence ☞267.]

verbal contract. See *parol contract* (1) under CONTRACT.

verbal note. *Diplomacy.* An unsigned memorandum informally reminding an official of a pending request, an unanswered question, or the like.

vertical stare decisis. See STARE DECISIS.

verbal will. See *nuncupative will* under WILL.

verba precaria (**vər**-bə pri-**kair**-ee-ə). [Latin] *Civil law.* **1.** Precatory words. **2.** Words of trust; words of request used in creating a trust.

verba solennia (**vər**-bə sə-**len**-ee-ə). [Latin] *Hist.* Solemn words; formal words. — Also termed *verba solemnia* (sə-**lem**-nee-ə).

verbatim (vər-**bay**-təm), *adj.* & *adv.* [fr. Latin *verbum* "word"] Word for word. • Courts have repeatedly held that, in the context of the requirement that a trial record must be "verbatim," absolute word-for-word accuracy is not necessary — and insubstantial omissions do not make a transcript "nonverbatim." [Cases: Military Justice 1354, 1356.]

verbatim ac litteratim (vər-**bay**-tim ak lit-ə-**ray**-tim), *adv.* (vər-**bay**-tim ak li-tər-**ay**-tim). [Latin] Word for word and letter for letter. — Also spelled *verbatim ac literatim*; *verbatim et literatim.* — Also termed *verbatim et litteratim.*

verbi gratia (**vər**-bɪ **gray**-shee-ə). [Latin "for example"] Words for the sake of example. — Abbr. V.G.

verbruikleening (ver-**bruuk**-layn-ing), *n. Roman Dutch law.* A loan for use; COMMODATUM.

verderer (**vər**-dər-ər), *n.* [fr. French *verdier* "caretaker of green things"] *Hist.* A judicial officer who, being in charge of the king's forest, is sworn to preserve the vert (foliage) and venison, to keep the assizes, and to view, receive, and enroll attachments and presentments on matters involving trespass. — Also spelled *verderor.*

> "In all the forests there were a varying number of officers (usually four) elected in the county court, and styled Verderers. Manwood says that they should be 'gentlemen of good account, ability, and living, and well learned in the laws of the forest.' Their chief duty was to attend the forest courts; they served gratuitously; and they were immediately responsible to the crown. Possibly they were regarded as a check upon the Warden, as the coroner was upon the sheriff." 1 William Holdsworth, *A History of English Law* 96 (7th ed. 1956).

verdict. (15c) **1.** A jury's finding or decision on the factual issues of a case. [Cases: Criminal Law ☞870–894; Federal Civil Procedure ☞2191; Trial ☞318.] **2.** Loosely, in a nonjury trial, a judge's resolution of the issues of a case. [Cases: Federal Civil Procedure ☞2251; Trial ☞387.]

chance verdict. (1820) A now-illegal verdict, arrived at by hazard or lot. — Also termed *gambling verdict*; *verdict by lot.* [Cases: Criminal Law ☞798(2), 866; Federal Civil Procedure ☞1974.1; Trial ☞315.]

compromise verdict. (1851) A verdict reached when jurors, to avoid a deadlock, concede some issues so that other issues will be resolved as they want. [Cases: Criminal Law ☞866; Federal Civil Procedure ☞1974.1; Trial ☞315.]

defective verdict. (18c) A verdict on which a judgment cannot be based because of irregularities or legal inadequacies.

directed verdict. (1912) A ruling by a trial judge taking a case from the jury because the evidence will permit only one reasonable verdict. — Also termed *instructed verdict.* [Cases: Criminal Law ☞753; Federal Civil Procedure ☞2117; Trial ☞167.]

excessive verdict. (1817) A verdict resulting from the jury's passion or prejudice and thereby shocks the court's conscience. [Cases: Damages ☞127.9; Federal Civil Procedure ☞2194.1, 2345; New Trial ☞77(2).]

false verdict. *Archaic.* A verdict so contrary to the evidence and so unjust that the judge may set it aside.

gambling verdict. See *chance verdict.*

general verdict. (17c) A verdict by which the jury finds in favor of one party or the other, as opposed to resolving specific fact questions. Cf. *special verdict.* [Cases: Criminal Law ☞881; Federal Civil Procedure ☞2191; Trial ☞318.]

general verdict subject to a special case. *Archaic.* A court's verdict rendered without regard to the jury's general verdict, given when a party does not want to put the legal question on the record but merely wants the court to decide on the basis of a written statement of all the facts in the case, prepared for the opinion of the court by counsel on either side, according to the principles of a special verdict, whereupon the court decides the special case submitted and gives judgment accordingly.

general verdict with interrogatories. (1878) A general verdict accompanied by answers to written interrogatories on one or more issues of fact that bear on the verdict. [Cases: Federal Civil Procedure ⇨2211; Trial ⇨348.]

guilty verdict. (18c) A jury's finding that a defendant is guilty of the offense charged.

instructed verdict. See *directed verdict.*

joint verdict. (1825) A verdict covering two or more parties to a lawsuit.

legally inconsistent verdict. (1975) A verdict in which the same element is found to exist and not to exist, as when a defendant is acquitted of one offense and convicted of another, even though the offenses arise from the same set of facts and an element of the second offense requires proof that the first offense has been committed. — Also termed *legal inconsistency.* Cf. *repugnant verdict.* [Cases: Criminal Law ⇨878(4); Federal Civil Procedure ⇨2237; Trial ⇨358.]

majority verdict. A verdict agreed to by all but one or two jury members. • In some jurisdictions, a civil verdict supported by 10 of 12 jurors is acceptable. [Cases: Federal Civil Procedure ⇨2191; Trial ⇨321.5.]

open verdict. A verdict of a coroner's jury finding that the subject "came to his death by means to the jury unknown" or "came to his death at the hands of a person or persons to the jury unknown." • This verdict leaves open either the question whether any crime was committed or the identity of the criminal.

partial verdict. (1829) A verdict by which a jury finds a criminal defendant not guilty of some charges and guilty of other charges.

perverse verdict. (1870) A jury verdict so contrary to the evidence that it justifies the granting of a new trial. [Cases: Federal Civil Procedure ⇨2338; New Trial ⇨68.1.]

privy verdict (**priv**-ee). *Hist.* A verdict given after the judge has left or adjourned the court, and the jury, having agreed, obtains leave to give its verdict privately to the judge out of court so that the jurors can be delivered from their confinement. • Such a verdict was of no force unless afterwards affirmed in open court. This practice has been superseded by that of rendering a sealed verdict. See *sealed verdict.*

public verdict. (17c) A verdict delivered by the jury in open court.

quotient verdict. (1867) An improper damage verdict that a jury arrives at by totaling what each juror would award and dividing by the number of jurors. [Cases: Federal Civil Procedure ⇨1974.1; Trial ⇨315.]

repugnant verdict. (1883) A verdict that contradicts itself in that the defendant is convicted and acquitted of different crimes having identical elements. • Sometimes the inconsistency occurs in a single verdict (*repugnant verdict*), and sometimes it occurs in two separate verdicts (*repugnant verdicts*). Both terms are used mainly in New York. Cf. *legally inconsistent verdict.* [Cases: Criminal Law ⇨878(4).]

responsive verdict. *Civil law.* A verdict that properly answers the indictment with specific findings prescribed by statute, the possible findings being guilty, not guilty, and guilty of a lesser included offense.

sealed verdict. (18c) A written verdict put into a sealed envelope when the jurors have agreed on their decision but court is not in session or the jury is continuing to deliberate other counts. • Upon delivering a sealed verdict, the jurors may separate. When court convenes again, this verdict is officially returned with the same effect as if the jury had returned it in open court before separating. [Cases: Trial ⇨324.]

special verdict. (17c) A verdict in which the jury makes findings only on factual issues submitted to them by the judge, who then decides the legal effect of the verdict. *See* Fed. R. Civ. P. 49. Cf. *general verdict.* [Cases: Criminal Law ⇨870; Federal Civil Procedure ⇨2231; Trial ⇨347.]

split verdict. (1886) **1.** A verdict in which one party prevails on some claims, while the other party prevails on others. **2.** *Criminal law.* A verdict finding a defendant guilty on one charge but not guilty on another. [Cases: Criminal Law ⇨878.] **3.** *Criminal law.* A verdict of guilty for one defendant and of not guilty for a codefendant. [Cases: Criminal Law ⇨877.]

true verdict. (16c) A verdict that is reached voluntarily — even if one or more jurors freely compromise their views — and not as a result of an arbitrary rule or order, whether imposed by the jurors themselves, the court, or a court officer. [Cases: Trial ⇨314, 315.]

verdict by lot. See *chance verdict.*

verdict contrary to law. (18c) A verdict that the law does not authorize a jury to render because the conclusion drawn is not justified by the evidence. — Also termed *wrong verdict.* Cf. JURY NULLIFICATION. [Cases: Federal Civil Procedure ⇨2338; New Trial ⇨66.]

verdict subject to opinion of court. (1820) A verdict that is subject to the court's determination of a legal issue reserved to the court upon the trial, so that judgment is ultimately entered depending on the court's ruling on a point of law. [Cases: Judgment ⇨199(4).]

wrong verdict. See *verdict contrary to law.*

veredicto. See NON OBSTANTE VEREDICTO.

veredictum (ver-ə-**dik**-təm), *n. Hist.* A verdict; a declaration of the truth of a matter in issue, submitted to a jury for trial.

verge (vərj), *n. Hist.* **1.** The area within 12 miles of the place where the king held his court and within which the king's peace was enforced. • This area was commonly referred to as being *in the verge*. The verge got its name from the staff (called a "verge") that the marshal bore. **2.** The compass of the royal court, within which the lord steward and marshal of the king's household had special jurisdiction. — Also termed (in senses 1 & 2) *Court of Verge*. **3.** The neighborhood of Whitehall, the section of London in which British government offices have traditionally been located. **4.** An uncertain quantity of land from 15 to 30 acres. **5.** A stick or rod by which a person, after holding the stick and swearing fealty, is admitted as a tenant to a copyhold estate. — Also spelled *virge*. For *tenant by the verge*, see COPYHOLDER.

vergens ad inopiam (**vər**-jenz ad in-**oh**-pee-əm), *adj.* [Latin "verging on poverty"] *Civil law.* Tending to become insolvent.

> "When a debtor is clearly *vergens ad inopiam*, a creditor may legally resort to certain measures, for the purpose of protecting his interests, which would not otherwise be competent to him. Thus if the debtor be bound under a bill, the creditor may, in consideration of his debtor's circumstances, obtain a precept of arrestment on the bill before it becomes due, on which he may arrest any funds due to his debtor. As this proceeding is only allowed, however, as a protective measure . . . he cannot . . . render the arrested funds available to himself until the bill falls due . . . . The fact of the debtor's being *vergens ad inopiam* will be inferred from different circumstances in different cases, and the proof of that fact will also, necessarily, be varied." John Trayner, *Trayner's Latin Maxims* 627 (4th ed. 1894).

verger, *n.* One who carries a verge (a rod) as an emblem of office; esp., an attendant on a bishop or justice.

veridical (və-**rid**-ə-kəl). See VERACIOUS.

verification, *n.* (16c) **1.** A formal declaration made in the presence of an authorized officer, such as a notary public, or (in some jurisdictions) under oath but not in the presence of such an officer, whereby one swears to the truth of the statements in the document. • Traditionally, a verification is used as a conclusion for all pleadings that are required to be sworn. Cf. ACKNOWLEDGMENT (4). — Also termed *affidavit of verification*. [Cases: Acknowledgment ⟹8; Federal Civil Procedure ⟹662; Pleading ⟹289–304.] **2.** An oath or affirmation that an authorized officer administers to an affiant or deponent. **3.** Loosely, ACKNOWLEDGMENT (5). **4.** See *certified copy* under COPY. **5.** CERTIFICATE OF AUTHORITY (1). **6.** Any act of notarizing. Cf. JURAT (1). — **verify,** *vb.* — **verifier,** *n.*

verified copy. See *certified copy* under COPY.

verified *non est factum*. See NON EST FACTUM.

verify, *vb.* **1.** To prove to be true; to confirm or establish the truth or truthfulness of; to authenticate. **2.** To confirm or substantiate by oath or affidavit; to swear to the truth of.

verily, *adv. Archaic.* Truly; in fact; certainly.

veritas (**ver**-i-tas *or* -tahs), *n.* [Latin] **1.** Truth. **2.** (*cap.*) An international institution of maritime underwriters for the survey and rating of vessels. • Founded in Belgium in 1828, it moved to Paris in 1832 and has long been represented all over the world. — Also termed *Bureau Veritas*.

veritas convicii (**ver**-i-tas kən-**vish**-ee-ī). [Law Latin] *Hist.* The truth of the accusation. • The phrase appeared in reference to a defense in a defamation action.

verity (**ver**-ə-tee). (14c) Truth; truthfulness; conformity to fact.

vermenging (vər-**meng**-ing), *n.* [Dutch "mingling"] The extinction of a debt when the debtor's and the creditor's interests merge, as in a corporate merger.

verna (**vər**-nə). *Hist.* A slave born in the slaveholder's house.

versans in illicito (**vər**-sanz in i-**lis**-i-toh). [Latin] *Hist.* Engaged in some unlawful occupation.

versari (vər-**sair**-ī), *vb.* [Latin] **1.** To be employed. **2.** To be conversant.

versari in re illicita (vər-**sair**-ī in ree i-**lis**-ə-tə). [Latin] To be engaged in an unlawful activity (as a bar to a claim for damages).

versus, *prep.* (15c) Against. — Abbr. v.; vs.

vert (vərt). *Hist.* **1.** Anything that grows and bears green leaves within a forest. **2.** A power, given by royal grant, to cut green wood in a forest.

vertical competition. See COMPETITION.

vertical equality. In per capita distribution of an estate, parity of distribution among children's families. See PER CAPITA. Cf. HORIZONTAL EQUALITY.

vertical integration. See INTEGRATION (5).

vertical merger. See MERGER.

vertical nonprivity. See NONPRIVITY.

vertical price-fixing. See PRICE-FIXING.

vertical privity. See PRIVITY.

vertical restraint. See RESTRAINT OF TRADE.

vertical stare decisis. See STARE DECISIS.

vertical trust. *Antitrust.* A combination that gathers together under a single ownership a number of businesses or plants engaged in successive stages of production or marketing. [Cases: Antitrust and Trade Regulation ⟹629.]

vertical union. See *industrial union* under UNION.

verus (**veer**-əs), *adj.* [Latin] True; truthful; genuine; actual.

very heavy work. See WORK (1).

VESA. *abbr.* VIDEO ELECTRONICS STANDARDS ASSOCIATION.

vessel. A ship, brig, sloop, or other craft used — or capable of being used — to navigate on water. • To qualify as a vessel under the Jones Act, the structure's purpose

must to some reasonable degree be to transport passengers, cargo, or equipment from place to place across navigable waters. [Cases: Shipping ⇨1.]

"Despite the important role a 'vessel' plays in maritime law, there is no settled definition of the term. Congress has defined a vessel as including 'every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.' 1 U.S.C.A. § 3. The Supreme Court has defined vessels as 'all navigable structures intended for transportation.' *Cope v. Vallette Dry-Dock Co.*, 119 U.S. 625 (1887)." Frank L. Maraist, *Admiralty in a Nutshell* 14 (3d ed. 1996).

"The term *vessel* is defined in 1 U.S.C. § 3 as follows: 'The word "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.' This definition has not been very influential in admiralty and maritime cases. Litigants contending for vessel status often invoke its remarkable breadth. Those opposing vessel status typically respond, 'But the present context indicates otherwise.' When courts mention the definition favorably, it usually seems to be a makeweight argument." David W. Robertson, Steven F. Friedell & Michael F. Sturley, *Admiralty and Maritime Law in the United States* 59 (2001).

foreign vessel. A vessel owned by residents of, or sailing under the flag of, a foreign nation. [Cases: Shipping ⇨2.]

Jones Act vessel. A vessel whose crew members can qualify as seamen under the Jones Act; esp., a craft designed or used for transporting cargo or people on navigable waters, or that was being used for navigation at the time of a worker's injury. See JONES ACT. [Cases: Shipping ⇨1.]

public vessel. A vessel owned and used by a nation or government for its public service, whether in its navy, its revenue service, or otherwise. See PUBLIC VESSELS ACT. [Cases: United States ⇨125(11).]

seagoing vessel. A vessel that — considering its design, function, purpose, and capabilities — is normally expected both to carry passengers for hire and to engage in substantial operations beyond the boundary line (set by the Coast Guard) dividing inland waters from the high seas. • Typically excluded from the definition are pleasure yachts, tugs and towboats, fishing boats, and other vessels that do not carry passengers for hire. [Cases: Shipping ⇨204.]

seaworthy vessel. A vessel that can withstand the ordinary stress of the wind, waves, and other weather that seagoing vessels might ordinarily be expected to encounter. • In some legal contexts, the question whether a vessel is seaworthy includes the question whether it is fit to carry an intended cargo properly. Under federal maritime law, a vessel's owner has the duty to provide a crew with a seaworthy vessel. See SEAWORTHY. [Cases: Seamen ⇨9; Shipping ⇨42, 121, 207.]

vest, *vb.* (15c) **1.** To confer ownership (of property) upon a person. **2.** To invest (a person) with the full title to property. **3.** To give (a person) an immediate, fixed right of present or future enjoyment. **4.** *Hist.* To put (a person) into possession of land by the ceremony of investiture. — **vesting,** *n.*

vested, *adj.* (18c) Having become a completed, consummated right for present or future enjoyment; not contingent; unconditional; absolute <a vested interest in the estate>. [Cases: Estates in Property ⇨1.]

"[U]nfortunately, the word 'vested' is used in two senses. Firstly, an interest may be vested *in possession*, when there is a right to present enjoyment, e.g. when I own and occupy Blackacre. But an interest may be vested, even where it does not carry a right to immediate possession, if it does confer a fixed right of taking possession in the future." George Whitecross Paton, *A Textbook of Jurisprudence* 305 (G.W. Paton & David P. Derham eds., 4th ed. 1972).

"A future interest is *vested* if it meets two requirements: first, that there be no *condition precedent* to the interest's becoming a present estate other than the *natural expiration* of those estates that are prior to it in possession; and second, that it be *theoretically* possible to identify who would get the right to possession if the interest should become a present estate *at any time*." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 66–67 (2d ed. 1984).

vested in interest. (18c) Consummated in a way that will result in future possession and use. • Reversions, vested remainders, and any other future use or executory devise that does not depend on an uncertain period or event are all said to be vested in interest. [Cases: Wills ⇨628–638.]

vested in possession. (18c) Consummated in a way that has resulted in present enjoyment.

vested estate. See ESTATE (1).

vested gift. See GIFT.

vested interest. See INTEREST (2).

vested legacy. See LEGACY.

vested ownership. See OWNERSHIP.

vested pension. See PENSION.

vested remainder. See REMAINDER.

vested right. See RIGHT.

vested-rights doctrine. *Constitutional law.* The rule that the legislature cannot take away a right that has been vested by a court's judgment; specif., the principle that it is beyond the province of Congress to reopen a final judgment issued by an Article III court. — Also termed *doctrine of vested rights.* [Cases: Constitutional Law ⇨2384, 2630–2655.]

vestigial words (ve-**stij**-ee-əl). Statutory words and phrases that, through a succession of amendments, have been made useless or meaningless. • Courts do not allow vestigial words to defeat the fair meaning of a statute.

vestigium (ve-**stij**-ee-əm). *Archaic.* A vestige, mark, or sign; a trace, track, or impression left by a person or a physical object.

vesting order. (1873) A court order passing legal title in lieu of a legal conveyance.

vestita manus (ves-**tī**-tə **may**-nəs), *n.* [Latin "vested hand"] *Hist.* The right hand used in the ceremony of investiture.

vestita viro (ves-**tɪ**-tə **vɪ**-roh). [Law Latin] *Hist.* Clothed with a husband.

> "A married woman is said to be *vestita viro*, and so long as this coverture exists her person cannot be attached on civil diligence, unless that diligence proceeds upon a decree *ad factum praestandum*, for the performance of some act which she is bound to perform, and which cannot be validly performed except by herself, *ex. gr.*, to enter the heir of her vassal, to produce or exhibit as a haver writings in her own custody, &c." John Trayner, *Trayner's Latin Maxims* 628 (4th ed. 1894).

vestitive fact (**ves**-tə-tiv). See *dispositive fact* (1) under FACT.

vestitus et mundus muliebris (ves-**tɪ**-təs et **mən**-dəs myoo-lee-**ee**-bris). [Latin] *Hist.* A woman's wearing of apparel and ornaments.

vestry (**ves**-tree). *Eccles. law.* **1.** The place in a church where the priest's robes are kept. — Also termed *sacristy.* **2.** An assembly of the minister, church wardens, and parishioners to conduct church business.

vestry clerk. *Eccles. law.* An officer appointed to attend a vestry and to take minutes of the proceedings.

vesture (**ves**-chər). *Hist.* **1.** The corn, grass, underwood, stubble, or other growth — apart from trees — that covers the land. — Also termed *vestura* (ves-**t**[**y**]**oor**-ə); *vestura terrae* (**ter**-ee); *vesture of land.* **2.** Seisin; investiture.

veteran. A person who has been honorably discharged from military service.

Veterans Administration. See DEPARTMENT OF VETERANS AFFAIRS.

Veterans Affairs, Department of. See DEPARTMENT OF VETERANS AFFAIRS.

Veterans Appeals, U.S. Court of. See UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS.

Veterans Benefits Administration. A unit in the U.S. Department of Veterans Affairs responsible for advising and assisting veterans and their families who apply for veterans' benefits. [Cases: Armed Services ☞102.]

Veterans' Employment and Training Service. A unit in the U.S. Department of Labor responsible for administering various programs relating to veterans' employment and training. • The agency protects the reemployment rights of veterans and the employment and retention rights of members of the Reserve and National Guard. Its regional administrators work with state employment-security agencies and with recipients of grants under the Job Training Partnership Act to ensure that veterans are provided the priority services required by law. — Abbr. VETS.

Veterans Health Administration. A unit in the U.S. Department of Veterans Affairs responsible for providing hospital, nursing-home, and medical care to eligible veterans of military service. [Cases: Armed Services ☞102.]

veteran's loan. See LOAN.

vetera statuta (**vet**-ə-rə sta-**t**[**y**]**oo**-tə), *n. pl.* [Law Latin "ancient statutes"] The statutes from Magna Carta (1215) to the end of Edward II's reign (1327). — Also termed *antiqua statuta* (an-**tɪ**-kwə stə-**t**[**y**]**oo**-tə). Cf. NOVA STATUTA.

vetitive (**vet**-ə-tiv), *adj.* Of, relating to, or having the power to veto.

vetitum namium (**vet**-ə-təm **nay**-mee-əm), *n.* [Law Latin "a prohibited taking"] *Hist.* See NAMIUM VETITUM.

veto (**vee**-toh), *n.* [Latin "I forbid"] (17c) **1.** A power of one governmental branch to prohibit an action by another branch; esp., a chief executive's refusal to sign into law a bill passed by the legislature. [Cases: Statutes ☞25.] **2.** VETO MESSAGE. *Pl.* **vetoes.** — **veto,** *vb.*

absolute veto. (1852) An unrestricted veto that is not subject to being overridden.

item veto. See *line-item veto.*

legislative veto. (1850) *Hist.* A veto allowing Congress to block a federal executive or agency action taken under congressionally delegated authority. • The Supreme Court held the legislative veto unconstitutional in *INS v. Chadha*, 462 U.S. 919, 103 S.Ct. 2764 (1983). See DELEGATION DOCTRINE.

liberum veto (**lib**-ər-əm). *Hist.* Formerly in Poland, the right of any single member of the diet to invalidate a measure.

limited veto. See *qualified veto.*

line-item veto. (1858) The executive's power to veto some provisions in a legislative bill without affecting other provisions. • The U.S. Supreme Court declared the presidential line-item veto unconstitutional in 1998. See *Clinton v. City of New York*, 524 U.S. 417, 118 S.Ct. 2091 (1998). — Also termed *item veto.* [Cases: Statutes ☞33.]

negative veto. See *qualified veto.*

overridden veto. (1971) A veto that the legislature has superseded by again passing the vetoed act, usu. by a supermajority of legislators. • In the federal government, a bill vetoed by the President must receive a two-thirds majority in Congress to override the veto and enact the measure into law. [Cases: Statutes ☞35.]

pocket veto. (1842) A veto resulting from the President's failure to sign a bill passed within the last ten days of the congressional session. [Cases: Statutes ☞34.]

qualified veto. (1853) A veto that is conclusive unless overridden by an extraordinary majority of the legislature. • This is the type of veto power that the President of the United States has. — Also termed *limited veto*; *negative veto.*

suspensory veto (sə-**spen**-sə-ree). (1911) A veto that suspends a law until the legislature reconsiders it and then allows the law to take effect if repassed by an ordinary majority. — Also termed *suspensive veto.*

vetoer, *n.* One who vetoes. — Also termed *vetoist.*

veto message. (1830) A statement communicating the reasons for the executive's refusing to sign into law a

bill passed by the legislature. — Sometimes shortened to *veto*.

veto power. (1883) An executive's conditional power to prevent a bill that has passed the legislature from becoming law.

veto-proof majority. See MAJORITY.

VETS. *abbr.* VETERANS' EMPLOYMENT AND TRAINING SERVICE.

vetus jus (**vee**-təs **jəs**). *Roman & civil law.* **1.** The law of the Twelve Tables. See TWELVE TABLES. **2.** Long-established or ancient law. **3.** A law in force before the passage of a later law.

vex, *vb.* (15c) **1.** To harass, disquiet, or annoy. **2.** To cause physical or emotional distress. — **vexatious,** *adj.* — **vexation,** *n.*

vexari (vek-**sair**-ī), *vb.* [Latin] To be harassed, vexed, or annoyed.

vexata quaestio (vek-**say**-tə **kwes**-chee-oh). See VEXED QUESTION.

vexation. (15c) The damage that results from trickery or malice.

vexatious (vek-**say**-shəs), *adj.* (16c) (Of conduct) without reasonable or probable cause or excuse; harassing; annoying.

vexatious delay. An insurance company's unjustifiable refusal to satisfy an insurance claim, esp. based on a mere suspicion but no hard facts that the claim is ill-founded. — Also termed *vexatious refusal to pay*; *refusal to pay.* [Cases: Insurance ☞3336.]

vexatious lawsuit. See VEXATIOUS SUIT.

vexatious litigant. See LITIGANT.

vexatious proceeding. See VEXATIOUS SUIT.

vexatious refusal to pay. See VEXATIOUS DELAY.

vexatious suit. (17c) A lawsuit instituted maliciously and without good grounds, meant to create trouble and expense for the party being sued. — Also termed *vexatious lawsuit*; *vexatious litigation*; *vexatious proceeding.* Cf. MALICIOUS PROSECUTION. [Cases: Action ☞9; Federal Civil Procedure ☞2737.3.]

vexed question. (17c) **1.** A question often argued about but seemingly never settled. **2.** A question or point that has been decided differently by different tribunals and has therefore been left in doubt. — Also termed *vexata quaestio* (vek-**say**-tə **kwes**-tee-oh).

v.g. *abbr.* VERBI GRATIA.

via (**vī**-ə), *n.* [Latin "way, road"] *Roman & civil law.* **1.** A road, way, or right-of-way.

via publica (**vī**-ə **pəb**-li-kə). [Latin] *Roman & civil law.* A public way or road. • The land itself belongs to the public.

2. *Roman law.* A type of rural servitude that gave the holder the right to walk, ride, or drive over another's land; SERVITUS VIAE. • It was broader than and included the *servitus itineris* and the *servitus actus*; that is, *via* encompassed both *iter* (a footpath) and *actus* (a driveway). **3.** *Civil law.* The way in which legal procedures are followed.

via executiva (**vī**-ə eg-zek-yə-**tī**-və). *Civil law.* Executory process by which the debtor's property is seized, without previous citation, for some reason specified by law, usu. because of an act or title amounting to a confession of judgment.

via juris (**vī**-ə **joor**-is). [Latin] *Hist.* By means of law; by means of legal process.

via ordinaria (**vī**-ə or-di-**nair**-ee-ə). *Civil law.* The ordinary way or process by which a citation is served and all the usual forms of law are followed.

via actionis (**vī**-ə ak-shee-**oh**-nis). [Latin] *Hist.* By way of an action.

viable (**vī**-ə-bəl), *adj.* (1832) **1.** Capable of living, esp. outside the womb <a viable fetus>. **2.** Capable of independent existence or standing <a viable lawsuit>. **3.** Capable of succeeding <a viable option>. — **viability** (vī-ə-**bil**-ə-tee), *n.*

viae servitus (**vī**-ee **sər**-və-təs). **1.** See SERVITUS VIAE. **2.** See VIA (2).

via executiva. See VIA (3).

via facti (**vī**-ə **fak**-tī), *adv.* [Law Latin "by way of deed"] By force; in a forcible way.

viagère rente. See RENTE VIAGÈRE.

via juris. See VIA (3).

via ordinaria. See VIA (3).

via publica. See VIA (1).

via regia (**vī**-ə **ree**-jee-ə). [Latin "the king's highway"] *Hist.* The highway or common road — called the "king's highway" because the king authorized and protected it.

viatical settlement. See SETTLEMENT (3).

viatication (vī-at-ə-**kay**-shən). [fr. Latin *viaticus* "relating to a road or journey"] The purchase of a terminally or chronically ill policyholder's life insurance in exchange for a lump-sum payment equal to a percentage of the policy's full value. See *viatical settlement* under SETTLEMENT.

viator (vī-**ay**-tər). **1.** APPARITOR (1). **2.** A terminally or chronically ill life-insurance policyholder who sells the policy to a third party in return for a lump-sum payment equal to a percentage of the policy's face value. [Cases: Insurance ☞1994.]

viatorial privilege. See PRIVILEGE (1).

vi aut clam (**vī** awt **klam**), *adv.* [Latin] *Roman law.* By force or by stealth.

vi aut metu (**vī** awt **mee**-t[y]oo), *adv.* [Latin] *Hist.* By force or fear.

vicar. 1. One who performs the functions of another; a substitute. **2.** The incumbent of an ecclesiastical benefice. Cf. RECTOR.

vicarage (**vik**-ər-ij). **1.** The benefice of a vicar. **2.** The house or household of a vicar. **3.** VICARSHIP.

vicar general. An ecclesiastical officer who helps the bishop or archbishop in the discharge of his office.

vicarial tithe (**vɪ-kair**-ee-əl). See TITHE.

vicarious (vɪ-**kair**-ee-əs), *adj.* (17c) Performed or suffered by one person as substitute for another; indirect; surrogate.

vicarious disqualification. See DISQUALIFICATION.

vicarious exhaustion of remedies. See EXHAUSTION OF REMEDIES.

vicarious infringement. See INFRINGEMENT.

vicarious liability. See LIABILITY.

vicarious performance. See PERFORMANCE.

vicarious reduction to practice. See REDUCTION TO PRACTICE.

vicarius apostolicus (vɪ-**kair**-ee-əs ap-əs-**tahl**-ə-kəs), *n.* [Latin "apostolic vicar"] *Eccles. law.* An officer through whom the Pope exercises authority in remote regions. • This officer is sometimes sent with episcopal functions into provinces where there is no bishop resident or where there has long been a vacancy in the see.

vicarship. The office, function, or duty of a vicar. — Also termed *vicarage.*

vice (vɪs), *n.* (14c) **1.** A moral failing; an ethical fault. **2.** Wickedness; corruption. **3.** Broadly, any defect or failing.

vice (**vɪ**-see *or* **vɪ**-sə), *prep.* (18c) In the place of; in the stead of. • As a prefix, *vice-* (vɪs) denotes one who takes the place of.

vice-admiral. *Hist.* A civil officer exercising admiralty jurisdiction within a specific locale.

vice-admiralty. 1. The office of a vice-admiral. **2.** The district over which a vice-admiral has jurisdiction.

vice-admiralty court. *Hist.* A tribunal established in British possessions beyond the seas, with jurisdiction over maritime cases, including those related to prize. • The governor of the colony, in the capacity of "vice-admiral," exercised judicial authority in this court.

vice-chamberlain. *Hist.* A great officer under the lord chamberlain. • In the lord chamberlain's absence, the vice-chamberlain would control and command the officers attached to the part of the royal household called the "chamber."

vice-chancellor. A judge appointed to act for the chancellor, esp. in a chancery court. — Abbr. VC.

vice-comes (vɪ-sə-**koh**-meez), *n.* [Law Latin] *Hist.* **1.** VISCOUNT. **2.** SHERIFF. — Also spelled *vicecomes.*

vicecomes non misit breve. *Hist.* An entry in a continued case's record noting that a sheriff has not yet returned a writ. — Also written *vice comes non misit breve*; *vicecomes non misit breve.*

vicecomital (vɪ-sə-**kom**-ə-təl). See VICONTIEL.

vice-comitissa (vɪ-sə-kom-ə-**tis**-ə). See VISCOUNTESS.

vice-commercial agent. See AGENT.

vice-consul. A consular officer subordinate to a consul; esp., one who is substituted temporarily to fill the place of a consul who is absent or has been relieved from duty. [Cases: Ambassadors and Consuls ☞1–8.]

career vice-consul. A vice-consul who is a member of the Foreign Service. — Also termed *vice-consul of career.*

noncareer vice-consul. A vice-consul who is not a member of the Foreign Service and who is appointed without examination.

vice crime. See CRIME.

vice-dominus episcopi (vɪ-sə-**dom**-ə-nəs ə-**pis**-kə-pɪ). **1.** A vicar general. **2.** A commissary of a bishop.

vicegerent (vɪs-**jeer**-ənt). A deputy; lieutenant.

vice-governor, *n.* A deputy or lieutenant governor.

vice-judex (vɪs-**joo**-deks). *Hist.* A deputy judge.

vice-marshal. An officer appointed to assist the earl marshal. See EARL MARSHAL OF ENGLAND.

vicem fructuum obtinere (**vɪ**-sem **frək**-choo-əm ob-ti-**nee**-ree). [Latin] *Hist.* To take the place of fruits. • The phrase typically referred to interest as the produce of money.

vice president, *n.* (16c) **1.** An officer selected in advance to fill the presidency if the president dies, resigns, is removed from office, or cannot or will not serve. • The Vice President of the United States, who is elected at the same time as the President, serves as presiding officer of the Senate but may cast a vote only to break a tie. On the death, incapacity, resignation, or removal of the President, the Vice President succeeds to the presidency. **2.** A corporate officer of mid-level to high rank, usu. having charge of a department. — Abbr. V.P.; VP. — Also written *vice-president.* [Cases: United States ☞26.] — **vice presidency,** *n.* — **vice-presidential,** *adj.*

vice principal. See FELLOW-SERVANT RULE.

viceregent, *n.* **1.** A deputy regent; esp., one who acts in the place of a ruler, governor, or sovereign. **2.** More broadly, an officer deputed by a superior or by proper authority to exercise the powers of the higher authority; one with delegated power.

viceroy, *n.* The governor of a kingdom or colony, who rules as the deputy of a monarch. — **viceroyal, vice-regal,** *adj.*

vice-sheriff. See *deputy sheriff* under SHERIFF.

vice-treasurer, *n.* A deputy or assistant treasurer.

vicinage (**vis**-ə-nij). [Law French "neighborhood"] (14c) **1.** Vicinity; proximity. **2.** The place where a crime is committed or a trial is held; the place from which jurors are to be drawn for trial; esp., the locale from which the accused is entitled to have jurors selected. — Also termed *vicinetum* (vis-ə-**nee**-təm). [Cases: Criminal Law ☞108; Jury ☞33(3).]

> "Whereas venue refers to the locality in which charges will be brought and adjudicated, vicinage refers to the locality from which jurors will be drawn. . . . The vicinage concept

requires that the jurors be selected from a geographical district that includes the locality of the commission of the crime, and it traditionally also mandates that such district not extend too far beyond the general vicinity of that locality." Wayne R. LaFave & Jerold H. Israel, *Criminal Procedure* § 16.1, at 738-39 (2d ed. 1992).

3. A right of common that neighboring tenants have in a barony or fee.

vicious animal. See ANIMAL.

vicious intromission. See *vitious intromission* under INTROMISSION.

vicious propensity. (1835) An animal's tendency to endanger the safety of persons or property. See *vicious animal* under ANIMAL. [Cases: Animals ⚷66.2, 66.5(2).]

vicontiel (vi-**kon**-tee-əl), *adj.* (17c) **1.** Of or relating to a viscount. **2.** Of or relating to a sheriff. — Also spelled *vicountiel.* — Also termed *vicecomital.*

vicontiel rent. *Hist.* Rent that a viscount or sheriff pays for the use of a royal farm.

vicontiels (vi-**kon**-tee-əlz). *Hist.* **1.** Money payable by a viscount or sheriff to the Crown. **2.** Vicontiel rents.

vicontiel writ. See WRIT.

victim, *n.* (15c) A person harmed by a crime, tort, or other wrong. — **victimize,** *vb.* — **victimization,** *n.*

victim allocution. See ALLOCUTION.

victim-impact statement. (1981) A statement read into the record during sentencing to inform the judge or jury of the financial, physical, and psychological impact of the crime on the victim and the victim's family. [Cases: Sentencing and Punishment ⚷361, 1763.]

victimless crime. See CRIME.

victim-precipitated homicide. See HOMICIDE.

victim-related adjustment. An increase in punishment available under federal sentencing guidelines when the defendant knew or should have known that the victim bore a particular characteristic — e.g., the victim was unusually vulnerable (because of age or condition) — or was otherwise particularly susceptible to the criminal conduct. See USSG §§ 3A1.1, 1.2. [Cases: Sentencing and Punishment ⚷754.]

Victims of Child Abuse Laws. An organization of persons who claim to have been wrongly accused of sexually abusing children. — Abbr. VOCAL. Cf. FALSE MEMORY SYNDROME FOUNDATION.

victualer (**vit**-əl-ər). *Hist.* **1.** A person authorized by law to keep a house of entertainment for the public; a publican. [Cases: Public Amusement and Entertainment ⚷16.] **2.** A person who serves food or drink prepared for consumption on the premises. — Also spelled *victualler.* [Cases: Food ⚷0.5, 3.]

victual rent (**vit**-[ə]l). *Scots law.* A rent paid in grain or its monetary equivalent.

victus (**vik**-təs). *Civil law.* Sustenance; support; a means of living.

vidame (vee-**dam**). [French] *Hist.* In French feudal law, an officer who represented the bishop. • Over time, these officers erected their offices into fiefs and became feudal nobles, such as the *vidame* of Chartres, Rheims, etc. They continued to take their titles from the seat of the bishop whom they represented, even though the lands held by virtue of their fiefs might be situated elsewhere.

vide (**vi**-dee *also* **vee**-day). [Latin] See. • This is a citation signal still seen in some texts, esp. in the abbreviated form *q.v.* (*quod vide* "which see"). *Vide ante* or *vide supra* refers to a previous passage in a text; *vide post* or *vide infra* refers to a later passage.

videlicet (vi-**del**-ə-set *or* -sit). [Latin] (15c) To wit; that is to say; namely; SCILICET. • The term is used primarily to point out, particularize, or make more specific what has been previously stated in general (or occas. obscure) language. One common function is to state the time, place, or manner when that is the essence of the matter at issue. — Abbr. *viz.* See VIZ.

Video Electronics Standards Association. A nonprofit organization that promotes and develops industry-wide standards for computers to ensure interoperability, and encourage innovation and market growth. — Abbr. VESA.

video piracy. See PIRACY (3).

Video Privacy Protection Act. A federal statute that bars video stores from disclosing to third parties the names of customers' rentals. 18 USCA § 2710.

vidimus (**vid**-ə-məs), *n.* [Latin "we have seen"] **1.** An inspection of documents, etc. **2.** An abstract, syllabus, or summary. **3.** An attested copy of a document. **4.** INSPEXIMUS.

Vidi scivi et audivi (**vi**-di **si**-vi et aw-**di**-vi). *Hist.* I saw, knew, and heard. • This was formerly an essential part of the notary's docket attached to the end of an instrument of seisin, by which the notary claimed to have been personally present on the ground when seisin was given and thus to have known the facts to be true by having heard the words spoken and seen the acts done.

vidua regis (**vij**-oo-ə **ree**-jis), *n.* [Latin] **1.** The widow of the king. **2.** The widow of a tenant in capite. • In sense 2, she was so called because she was not allowed to marry a second time without the king's permission. She obtained her dower from the king, who was her patron and defender.

viduitatis professio (və-d[y]oo-ə-**tay**-tis prə-**fes**[**h**]-ee-oh), *n.* [Latin] *Hist.* A woman's solemn act of professing that she will live as a single, chaste woman.

viduity (vi-**d**[**y**]**oo**-ə-tee). *Archaic.* Widowhood.

vie (vee). [French] Life. • The term occurs in such Law French phrases as *cestui que vie* and *pur autre vie.*

vi et armis (**vi** et **ahr**-mis). [Latin] *Hist.* By or with force and arms. See *trespass vi et armis* under TRESPASS.

"The words '*with force and arms*,' anciently '*vi et armis*,' were, by the common law, necessary in indictments for

offences which amount to an actual disturbance of the peace, or consist, in any way, of acts of violence; but it seems to be the better opinion, that they were never necessary where the offence consisted of a cheat, or non-feazance, or a mere consequential injury." 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 240 (2d ed. 1826).

"***vi et armis*** . . . was a necessary part of the allegation, in medieval pleading, that a trespass had been committed with force and therefore was a matter for the King's Court because it involved a breach of the peace. In England, the term survived as a formal requirement of pleading until 1852." Bryan A. Garner, *A Dictionary of Modern Legal Usage* 916 (2d ed. 1995).

view, *n.* **1.** The common-law right of prospect — that is, an outlook from the windows of one's house. **2.** An urban servitude that prohibits the obstruction of the outlook from a person's house. [Cases: Adjoining Landowners ☞10; Easements ☞11, 19, 45.] **3.** A jury's trip to inspect a place or thing relevant to the case it is considering; the act or proceeding by which a tribunal goes to observe an object that cannot be produced in court because it is immovable or inconvenient to remove. • The appropriate procedures are typically regulated by state statute. At common law, and today in many civil cases, the trial judge's presence is not required. The common practice has been for the jury to be escorted by "showers" who are commissioned for this purpose. Parties and counsel are generally permitted to attend, although this is a matter typically within the trial judge's discretion. Cf. VIEW OF AN INQUEST. [Cases: Criminal Law ☞651; Federal Civil Procedure ☞1968; Trial ☞28.] **4.** In a real action, a defendant's observation of the thing at issue to ascertain its identity and other circumstances surrounding it. Cf. DEMAND OF VIEW.

viewer. (15c) A person, usu. one of several, appointed by a court to investigate certain matters or to examine a particular locality (such as the proposed site of a new road) and to report to the court.

view of an inquest. (1837) A jury's inspection of a place or property to which an inquiry or inquest refers. Cf. VIEW (3).

view of frankpledge. *Hist.* The twice-yearly gathering and inspection of every freeman within the district who was more than 12 years old to determine whether each one had taken the oath of allegiance and had found nine freeman pledges for his peaceable demeanor. See FRANKPLEDGE.

viewpoint discrimination. See DISCRIMINATION.

viewpoint-neutral. See NEUTRAL.

vif-gage (**veef**-gayj *or* **vif**-). [Law French] See *vadium vivum* under VADIUM.

vigil. *Eccles. law.* The day before any solemn feast.

vigilance. (16c) Watchfulness; precaution; a proper degree of activity and promptness in pursuing one's rights, in guarding them from infraction, and in discovering opportunities for enforcing one's lawful claims and demands.

vigilant, *adj.* (15c) Watchful and cautious; on the alert; attentive to discover and avoid danger.

vigilante (vij-ə-**lan**-tee). (1856) A person who seeks to avenge a crime by taking the law into his or her own hands.

vigilantism (vij-ə-**lan**-tiz-əm). The act of a citizen who takes the law into his or her own hands by apprehending and punishing suspected criminals.

viis et modis (vI-is et **moh**-dis). [Latin] *Eccles. law.* By all ways and means. • In ecclesiastical courts, service of a decree or citation *viis et modis* is equivalent to substituted service in temporal courts. It requires posting of a notice where a person is likely to be found. This type of service is contrasted with personal service.

vi laica amovenda. See DE VI LAICA AMOVENDA.

vill (vil). *Hist.* **1.** A part into which a hundred or wapentake was divided. **2.** A town or village.

village. 1. Traditionally, a modest assemblage of houses and buildings for dwellings and businesses. **2.** In some states, a municipal corporation with a smaller population than a city. — Also termed (in sense 2) *town*; *borough*. [Cases: Municipal Corporations ☞1.1.]

villanis regis subtractis reducendis (vi-**lay**-nis **ree**-jis səb-**trak**-tis ree-d[y]oo-**sen**-dis), *n.* [Latin "for returning the king's villeins who have been removed"] *Hist.* A writ that lay for the bringing back of the king's bondmen who had been carried away by others out of his manors, where they belonged.

villanum servitium (vi-**lay**-nəm sər-**vish**-ee-əm), *n.* [Latin] *Hist.* See VILLEINAGE.

villein (**vil**-ən). *Hist.* A person entirely subject to a lord or attached to a manor, but free in relation to all others; a serf. • At the time of the Domesday Inquest (shortly after the Norman Conquest), about 40% of households were marked as belonging to villeins: they were the most numerous element in the English population. Cf. FREEMAN.

villein in gross. A villein who was annexed to the person of the lord, and transferable by deed from one owner to another.

villein regardant (ri-**gahr**-dənt). A villein annexed to the manor of land.

villeinage (**vil**-ə-nij). *Hist.* **1.** The holding of property through servitude to a feudal lord; a servile type of tenure in which a tenant was obliged to render base services to a lord. Cf. KNIGHT SERVICE; SOCAGE. **2.** A villein's status, condition, or service. — Also spelled *villenage*; *villainage*; *villanage*. — Also termed *villein tenure*.

"The typical tenant in villeinage does not know in the evening what he will have to do in the morning. . . . [T] here is a large element of real uncertainty; the lord's will counts for much; when they go to bed on Sunday night they do not know what Monday's work will be; it may be threshing, ditching, carrying: they cannot tell. This seems the point that is seized by law and that general opinion of which law is the exponent: any considerable uncertainty as to the amount or kind of the agricultural services makes the tenure unfree. The tenure is unfree, not because the

tenant 'holds at the will of the lord,' in the sense of being removable at a moment's notice, but because his services, though in many respects minutely defined by custom, cannot be altogether defined without frequent reference to the lord's will." 1 Frederick Pollock & Frederic William Maitland, *History of English Law Before the Time of Edward I* 371 (2d ed. 1898).

"At the lower level the services were not always defined. The duties of the peasant were chiefly agricultural. If they were unfixed, so that the lord might in theory demand all manner of work, the tenure was 'unfree' and was called *villeinage*." J.H. Baker, *An Introduction to English Legal History* 260 (3d ed. 1990).

privileged villeinage. Villeinage in which the services to be performed were certain, though of a base and servile nature.

pure villeinage. Villeinage in which the services were not certain, but the tenant was obliged to do whatever he was commanded whenever the command came.

villein in gross. See VILLEIN.

villein regardant. See VILLEIN.

villein service. *Hist.* A base service that a villein performed, such as working on the lord's land on certain days of the week (usu. two to four). • These services were not considered suitable to a man of free and honorable rank. — Also termed *villein servitium*. See WEEK-WORK.

villein socage (**sok**-ij). See SOCAGE.

villenous judgment (**vil**-ə-nəs). *Hist.* A judgment that deprived a person of his *libera lex*, as a result of which he was discredited and disabled as a juror and witness, forfeited his goods and chattels and land, had his houses razed and trees uprooted, and went to prison. — Also spelled *villainous judgment*.

vinagium (vi-nay-**jee**-əm). A payment in kind of wine as rent for a vineyard.

vinculación (vin-koo-lah-**syohn**). *Spanish law.* A linking or encumbering; esp., an entail.

vinculo (**ving**-kyə-loh), *n.* [Latin "by bond"] *Spanish law.* **1.** A tie or bond; esp., the bond of marriage. See *divorce a vinculo matrimonii* under DIVORCE. **2.** An entail.

vinculum juris (**ving**-kyə-ləm **joor**-is). [Latin "a bond of the law"] *Roman law.* The tie that legally binds one person to another; legal bond; obligation. Cf. SOLUTIO OBLIGATIONIS.

vinculum personarum ab eodem stirpite descendentium (**ving**-kyə-ləm pər-sə-**nair**-əm ab ee-**oh**-dəm **sti**-pə-tee dee-sen-**den**-shee-əm). [Law Latin] *Hist.* The bond uniting persons descended from the same stock.

vindex (**vin**-deks), *n.* [Latin] *Civil law.* One who guaranteed the appearance of a defendant in court on pain of being liable for the judgment debt.

vindicare (vin-di-**kair**-ee), *vb.* [Latin "to claim or challenge"] *Roman law* & *Hist.* To demand as one's own; to assert a right in or to (a thing); to assert or claim ownership of (a thing).

vindicate, *vb.* (16c) **1.** To clear (a person or thing) from suspicion, criticism, blame, or doubt <DNA tests vindicated the suspect>. **2.** To assert, maintain, or affirm (one's interest) by action <the claimants sought to vindicate their rights through a class-action suit>. **3.** To defend (one's interest) against interference or encroachment <the borrower vindicated its interest in court when the lender tried to foreclose>. **4.** *Roman & civil law.* To assert a legal right to (a thing); to seek recovery of (a thing) by legal process <Antony Honoratus attempted to vindicate the sword he had lent his cousin>. — **vindication,** *n.* — **vindicator,** *n.*

vindicatio (vin-di-**kay**-shee-oh), *n.* [Latin "claim"] *Roman law.* **1.** An action by the owner to claim property.

vindicatio servitutis (vin-di-**kay**-shee-oh sər-və-**t**[y] **oo**-tis). [Latin "claim of servitude"] *Roman law.* An action against the owner of land over which the plaintiff claims that a servitude exists. — Also termed *actio confessoria*.

2. The claiming of a thing as one's own; the assertion of a right in or title to a thing. Pl. ***vindicationes*** (vin-di-kay-shee-**oh**-neez).

vindicatory part (**vin**-də-kə-tor-ee). (1881) The portion of a statute setting forth the penalty for committing a wrong or neglecting a duty.

vindicta (vin-**dik**-tə), *n. Roman law.* **1.** A rod or wand. **2.** The assertion of freedom or ownership by symbolically touching the person or thing with a rod. See FESTUCA.

vindictive damages. See *punitive damages* under DAMAGES.

vindictive prosecution (vin-**dik**-tiv). See PROSECUTION.

viol (vyohl), *n.* [French] *French law.* Rape; indecent assault.

violation, *n.* (15c) **1.** An infraction or breach of the law; a transgression. See INFRACTION. **2.** The act of breaking or dishonoring the law; the contravention of a right or duty. **3.** Rape; ravishment. **4.** Under the Model Penal Code, a public-welfare offense. • In this sense, a violation is not a crime. See Model Penal Code § 1.04(5). — **violate,** *vb.* — **violative** (**vi**-ə-lay-tiv), *adj.* — **violator,** *n.*

violation warrant. See WARRANT (1).

violence. (14c) The use of physical force, usu. accompanied by fury, vehemence, or outrage; esp., physical force unlawfully exercised with the intent to harm. • Some courts have held that violence in labor disputes is not limited to physical contact or injury, but may include picketing conducted with misleading signs, false statements, erroneous publicity, and veiled threats by words and acts.

domestic violence. **1.** Violence between members of a household, usu. spouses; an assault or other violent act committed by one member of a household against another. See BATTERED-CHILD SYNDROME; BATTERED-WOMAN SYNDROME. [Cases: Assault and Battery ☞48.] **2.** The infliction of physical injury, or

the creation of a reasonable fear that physical injury or harm will be inflicted, by a parent or a member or former member of a child's household, against a child or against another member of the household. — Also termed *domestic abuse*; *family violence*. **3.** *Archaic.* Insurrection or unlawful force fomented from within a country.

Violence Against Women Act. A federal statute that established a federal civil-rights action for victims of gender-motivated violence, without the need for a criminal charge. 42 USCA § 13981. • In 2000, the Supreme Court invalidated the statute, holding that neither the Commerce Clause nor the Enforcement Clause of the 14th Amendment authorized Congress to enact the civil-remedy provision of this Act. *United States v. Morrison*, 120 S.Ct. 1740 (2000). — Abbr. VAWA. [Cases: Civil Rights ☞1035.]

violent, *adj.* (14c) **1.** Of, relating to, or characterized by strong physical force <violent blows to the legs>. **2.** Resulting from extreme or intense force <violent death>. **3.** Vehemently or passionately threatening <violent words>.

violent crime. See CRIME.

violent death. See DEATH.

violent felony. See *violent offense* under OFFENSE (1).

violent offense. See OFFENSE (1).

violent profits. *Scots law.* Penal damages imposed against a tenant who refused to surrender rented property to the landlord.

vir (veer), *n.* [Latin] **1.** An adult male; a man. **2.** A husband. • In the Latin phrases and maxims that once pervaded English law, *vir* generally means "husband," as in the expression *vir et uxor* (husband and wife). See ET VIR. Cf. UXOR.

vires (**vi**-reez), *n.* (18c) **1.** Natural powers; forces. **2.** Granted powers, esp. when limited. See ULTRA VIRES; INTRA VIRES.

vir et uxor (**veer** et **ək**-sor). [Latin] Husband and wife.

virga (**vər**-gə). *Hist.* A rod or staff; esp., a rod as an ensign of office.

virgata (vər-**gay**-tə). **1.** A quarter of an acre of land. See ACRE. **2.** A quarter of a hide of land. See HIDE (1).

virgata regia (vər-**gay**-tə **ree**-jee-ə). [Latin "king's verge"] *Hist.* The bounds of the king's household, within which the court of the steward had jurisdiction.

virga terrae (**vər**-gə **ter**-ee), *n.* [Latin "branch of land"] *Hist.* A variable measure of land ranging from 20 to 40 acres. — Also termed *virgata terrae*. See YARDLAND.

virge. See VERGE.

viridario eligendo (vir-ə-**dair**-ee-oh el-ə-**jen**-doh). *Hist.* A writ for choice of a verderer in the forest.

virile share. *Civil law.* An amount that an obligor owes jointly and severally with another. La. Civ. Code art. 1804. — Also termed *virile portion*.

virtual adoption. See *adoption by estoppel* under ADOPTION.

virtual child pornography. See PORNOGRAPHY.

virtual representation. See REPRESENTATION (3).

virtual-representation doctrine. (1945) The principle that a judgment may bind a person who is not a party to the litigation if one of the parties is so closely aligned with the nonparty's interests that the nonparty has been adequately represented by the party in court. • Under this doctrine, for instance, a judgment in a case naming only the husband as a party can be binding on his wife as well. See RES JUDICATA. [Cases: Judgment ☞677.]

virtue ethics. *Ethics.* An ethical theory that focuses on the character of the actor rather than on the nature of the act or its consequences. • This approach received its first and perhaps its fullest expression in the works of Aristotle, esp. in his *Ethics*. Cf. CONSEQUENTIALISM.

virtute cujus (vər-**t**[y]**oo**-tee **k**[y]**oo**-jəs), *adv.* [Latin] *Hist.* By virtue whereof. • This phrase began the clause in a pleading that attempted to justify an entry onto land by alleging that it was by virtue of an order from one entitled that the entry took place.

virtute officii (vər-**t**[y]**oo**-tee ə-**fish**-ee-ī), *adv.* [Latin] *Hist.* By virtue of one's office; by the authority invested in one as the incumbent of a particular office. • An officer acts *virtute officii* when carrying out some official authority as the incumbent of an office.

vis (vis). [Latin "power"] (17c) **1.** Any force, violence, or disturbance relating to a person or property.

> "*Vis*, as a legal term, was understood to denote the organizing and arming of tumultuous bodies of men for the purpose of obstructing the constituted authorities in the performance of their duty, and thus interrupting the ordinary administration of the laws. No such offence was recognised by the Criminal Code until the last century of the republic, when violent riots by hired mobs became so frequent, that M. Plautius Silvanus, Tribune of the Plebs, B.C. 89, [secured the passing of] the *lex Plautia de Vi*, in terms of which, those convicted of such practices were banished." William Ramsay, *A Manual of Roman Antiquities* 347 (Rodolfo Lanciani ed., 15th ed. 1894).

2. The force of law. • Thus *vim habere* ("to have force") is to be legally valid. Pl. ***vires***.

visa (**vee**-zə). An official indorsement made on a passport, showing that it has been examined and that the bearer is permitted to proceed; a recognition by the country in which a passport-holder wishes to travel that the holder's passport is valid. • A visa is generally required for the admission of aliens into the United States. 8 USCA §§ 1181, 1184. — Also termed (archaically) *visé* (**vee**-zay *or* vi-**zay**). [Cases: Aliens, Immigration, and Citizenship ☞170–207.]

vis ablativa (**vis** ab-lə-**ti**-və), *n.* [Latin "ablative force"] *Civil law.* Force exerted in taking something away from another. Pl. ***vires ablativae***.

vis absoluta (**vis** ab-sə-**loo**-tə). Physical compulsion.

> The difference is between compulsion of the will (*vis compulsiva*) which results in an act though not of free volition, and physical compulsion (*vis absoluta*) in which the

unavoidable movement is no act at all." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 1054-55 (3d ed. 1982).

vis armata (**vis** ahr-**may**-tə). [Latin "armed force"] *Hist.* Force exerted by means of weapons. Cf. VIS INERMIS. — Also termed *armata vis.*

vis aut metus qui cadit in constantem virum (vis awt **mee**-təs kwi **kay**-dit [*or* **kad**-it] in kən-**stan**-təm **vi**-rəm). [Latin] *Hist.* A force or fear sufficient to overcome a man of firmness and resolution.

vis-à-vis (**veez**-ə-**vee**). [French "face to face"] (18c) In relation to; opposite to <the creditor established a preferred position vis-à-vis the other creditors>.

Visby, laws of. See LAWS OF VISBY.

vis clandestina (**vis** klan-des-**ti**-nə), *n.* [Latin "clandestine force"] *Hist.* Force furtively used, esp. at night.

vis compulsiva (**vis** kom-pəl-**si**-və), *n.* [Latin "compulsive force"] *Hist.* Force exerted to compel another to do something involuntarily; menacing force exerted by terror.

viscount (**vi**-kownt). **1.** The title of the fourth rank of European nobility. • In the British peerage, viscount is placed between the dignity of earl and baron. **2.** *Hist.* A sheriff.

viscountess (**vi**-kown-tis). **1.** The wife of a viscount. — Also termed *vice-comitissa.* **2.** A woman who holds the rank of viscount in her own right.

vis divina (**vis** di-**vi**-nə), *n. Civil law.* Divine or superhuman force; ACT OF GOD; VIS MAJOR.

visé. See VISA.

vis expulsiva (**vis** eks-pəl-**si**-və), *n.* [Latin "expulsive force"] *Hist.* Force used to expel or dispossess another.

vis exturbativa (**vis** eks-tər-bə-**ti**-və), *n.* [Latin "eliminating force"] *Hist.* Force used to thrust out another, esp. when two claimants are contending for possession.

vis fluminis (**vis floo**-mə-nis), *n.* [Latin "the force of a river"] *Civil law.* The force exerted by a stream or river; waterpower.

visible, *adj.* **1.** Perceptible to the eye; discernible by sight. **2.** Clear, distinct, and conspicuous.

visible crime. See *street crime* under CRIME.

visible means of support. (1846) An apparent method of earning a livelihood. • Vagrancy statutes have long used this phrase to describe those who have no ostensible ability to support themselves.

vis illicita (**vis** il-**lis**-ə-tə). See VIS INJURIOSA.

vis impressa (**vis** im-**pres**-ə), *n.* [Latin "impressed force"] The original act of force from which an injury arises, as distinguished from the proximate (or immediate) force.

vis inermis (**vis** in-**ər**-mis), *n.* [Latin] Unarmed force. Cf. VIS ARMATA.

vis injuriosa (**vis** in-joor-ee-**oh**-sə), *n.* [Latin "injurious force"] *Hist.* Wrongful force. — Also termed *vis illicita.*

vis inquietativa (**vis** in-kwi-ə-tə-**ti**-və), *n.* [Latin "disquieting force"] *Civil law.* Force that prevents another from using his or her possession quietly and in peace.

visit, *n. Int'l law.* A naval officer's boarding an ostensibly neutral merchant vessel from another state to exercise the right of search. • This right is exercisable when suspicious circumstances exist, as when the vessel is suspected of involvement in piracy. — Also termed *visitation.* See RIGHT OF SEARCH. [Cases: War and National Emergency ⇨20.]

visitation (viz-ə-**tay**-shən). (14c) **1.** Inspection; superintendence; direction; regulation. **2.** *Family law.* A relative's, esp. a noncustodial parent's, period of access to a child. — Also termed *parental access; access; parenting time; residential time.* [Cases: Child Custody ⇨175–231.] **3.** The process of inquiring into and correcting corporate irregularities. [Cases: Corporations ⇨394.] **4.** VISIT.

grandparent visitation. A grandparent's court-approved access to a grandchild. • The Supreme Court recently limited a grandparent's right to have visitation with his or her grandchild if the parent objects, citing a parent's fundamental right to raise his or her child and to make all decisions concerning the child free from state intervention absent a threat to the child's health and safety. *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054 (2000). [Cases: Child Custody ⇨282.]

restricted visitation. See *supervised visitation.*

stepped-up visitation. Visitation, usu. for a parent who has been absent from the child's life, that begins on a very limited basis and increases as the child comes to know the parent. — Also termed *step-up visitation.*

supervised visitation. Visitation, usu. court-ordered, in which a parent may visit with the child or children only in the presence of some other individual. • A court may order supervised visitation when the visiting parent is known or believed to be prone to physical abuse, sexual abuse, or violence. — Also termed *restricted visitation.* [Cases: Child Custody ⇨217.]

visitation books. *Hist.* Books compiled by the heralds, when royal progresses were solemnly and regularly made into every part of the kingdom, to inquire into the state of families and to register whatever marriages and descents were verified to them upon oath.

visitation credit. *Family law.* A child-support reduction that reflects the amount of time the child lives with the noncustodial parent. [Cases: Child Support ⇨165.]

visitation order. (1944) *Family law.* **1.** An order establishing the visiting times for a noncustodial parent with his or her child. [Cases: Child Custody ⇨525.] **2.** An order establishing the visiting times for a child and a person with a significant relationship to the child. • Such an order may allow for visitation between (1) a grandparent and a grandchild, (2) a child and another relative, (3) a child and a stepparent, or (4) occasionally,

a child and the child's psychological parent. — Also termed *access order.*

visitation right. (1935) **1.** *Family law.* A noncustodial parent's or grandparent's court-ordered privilege of spending time with a child or grandchild who is living with another person, usu. the custodial parent. • The noncustodial parent with visitation rights may sometimes be a parent from whose custody the child has been removed because of abuse or neglect. [Cases: Child Custody ⇨175–231, 282.] **2.** *Int'l law.* A belligerent nation's right to search a neutral vessel to find out whether it is carrying contraband or is otherwise engaged in nonneutral service. • If the searched vessel is doing either of these things, the searchers may seize the contraband and carry out an appropriate punishment. — Also termed (in both senses) *right of visitation.*

visitatorial (viz-ə-tə-**tor**-ee-əl), *adj.* Of or relating to on-site inspection or supervision. — Also termed *visitorial.*

> "To eleemosynary corporations, a visitatorial power is attached as a necessary incident. . . . [P]rivate and particular corporations, founded and endowed by individuals for charitable purposes, are subject to the private government of those who are the efficient patrons and founder. If there be no visitor appointed by the founder, the law appoints the founder himself, and his heirs, to be the visitors. The visitatorial power arises from the property which the founder assigned to support the charity; and as he is the author of the charity, the laws give him and his heirs a visitatorial power; that is, an authority to inspect the actions and regulate the behavior of the members that partake of the charity. This power is judicial and supreme, but not legislative." 2 James Kent, *Commentaries on American Law* *300-01 (George Comstock ed., 11th ed. 1866).

visitatorial power. See POWER (3).

visiting judge. See JUDGE.

visitor. 1. A person who goes or comes to a particular person or place.

business visitor. See BUSINESS VISITOR.

2. A person appointed to visit, inspect, inquire into, and correct corporate irregularities. [Cases: Corporations ⇨394.]

visitorial. See VISITATORIAL.

visitorial power. See *visitatorial power* under POWER (3).

visitor of manners. A regarder's office in the forest.

vis laica (**vis lay**-ə-kə), *n.* [Latin "lay force"] *Hist.* An armed force used in holding possession of a church.

vis licita (**vis lis**-ə-tə), *n.* [Latin] Lawful force.

vis major (**vis may**-jər), *n.* [Latin "a superior force"] (17c) **1.** A greater or superior force; an irresistible or overwhelming force of nature; FORCE MAJEURE. Cf. ACT OF GOD. **2.** A loss resulting immediately from a natural cause without human intervention and that could not have been prevented by the exercise of prudence, diligence, and care. — Also termed *act of nature; act of providence; superior force; irresistible force; vis divina.* [Cases: Carriers ⇨119; Negligence ⇨440; Shipping ⇨120, 179.]

vis major naturae (vis **may**-jor nə-**tyoor**-ee). [Latin] *Hist.* The superior force of nature. See FORCE MAJEURE.

visne (veen *or* **veen**-ee). [Law French fr. Latin *visnetum*] Neighborhood; at common law, the district from which juries were drawn; VICINAGE.

vis perturbativa (**vis** pər-tər-bə-**tɪ**-və), *n.* [Latin "perturbing force"] *Hist.* Force used between persons contending for possession of something.

vis proxima (**vis prahk**-sə-mə), *n.* [Latin "proximate force"] *Hist.* Immediate force.

vis simplex (**vis sim**-pleks), *n.* [Latin "simple force"] *Hist.* Mere force; sheer force.

VISTA (**vis**-tə). *abbr.* (1964) Volunteers in Service to America, a federal program established in 1964 to provide volunteers to help improve the living conditions of people in the poorest areas of the United States, its possessions, and Puerto Rico. [Cases: United States ⇨82(4).]

vi statuti (vɪ stə-**t[y]oo**-tɪ). [Law Latin] *Hist.* By force of statute.

Visual Artists Rights Act. *Copyright.* A 1990 federal law giving a visual artist nontransferable moral rights of integrity and attribution in original and limited-edition creations. • Passed in order to meet Berne Convention standards, the Act protects the original artist — not the owner of the copyright — by granting some rights to prevent the work from being changed or destroyed, and by guaranteeing that the artist may claim authorship of the original work but may deny authorship if the work is modified. 17 USCA §§ 106A, 113. — Abbr. VARA. [Cases: Copyrights and Intellectual Property ⇨6.]

visus (**vɪ**-səs *or* **vɪ**-zəs), *n.* [Latin] *Hist.* An inspection of a place, person, or thing. See VIEW (3), (4).

vital statistics. (1837) Public records — usu. relating to matters such as births, marriages, deaths, diseases, and the like — that are statutorily mandated to be kept by a city, state, or other governmental division or subdivision. • On the admissibility of vital statistics, see Fed. R. Evid. 803(9). [Cases: Health ⇨395.]

vital term. See *fundamental term* under TERM (2).

vitiate (**vish**-ee-ayt), *vb.* (16c) **1.** To impair; to cause to have no force or effect <the new statute vitiates any common-law argument that the plaintiffs might have>. **2.** To make void or voidable; to invalidate either completely or in part <fraud vitiates a contract>. **3.** To corrupt morally <Mr. Lawrence complains that his children were vitiated by their governess>. — **vitiation,** *n.* — **vitiator,** *n.*

vitilitigate (vit-ə-**lit**-ə-gayt), *vb.* [fr. Latin *vitilitigare* "to quarrel disgracefully"] *Archaic.* To litigate merely from quarrelsome motives; to carry on a lawsuit in an unduly contentious, wrangling way. — **vitilitigation,** *n.* — **vitilitigious** (vit-ə-li-**tij**-əs), *adj.*

vitious intromission. See INTROMISSION.

vitium clerici (**vish**-ee-əm **kler**-ə-sī). [Latin] See *clerical error* under ERROR.

vitium reale (**vish**-ee-əm ree-**ay**-lee). [Latin "true error"] *Hist. & Scots law.* A defect in a title that renders the movable property nontransferable; specif., an inherent vice in the title of anyone who holds a stolen thing, even if acquired honestly, so that the true owner can reclaim it. Cf. LABES REALIS QUAE REI INHAERET.

> "A person who comes into possession of moveable property without any title to retain custody thereof is obliged to restore it to the person truly entitled to the possession thereof. . . . [P]roperty so acquired is affected by an inherent *vitium reale* which prevents the thief or fraudulent person from conferring a good title on anyone, even a taker from him in good faith, who has given value and taken without notice of the thief's defective title; such a person must return the property to the true owner, or pay compensation therefor. . . . An exception to the rule of *vitium reale* exists in the cases of money, bank-notes and negotiable instruments . . . ." 2 David M. Walker, *Principles of Scottish Private Law: Law of Obligations* 505-06 (1988).

vitium scriptoris (**vish**-ee-əm skrip-**tor**-is), *n.* [Latin "the mistake of a scribe"] *Hist.* A clerical error in writing.

vitricus (**vi**-trə-kəs), *n.* [Latin] *Hist.* A stepfather.

viva aqua (VI-və **ak**-wə), *n.* [Latin "living water"] *Hist.* Running water; water that comes from a spring or fountain.

viva pecunia (VI-və pi-**kyoo**-nee-ə), *n.* [Latin "living money"] *Hist.* Cattle, which obtained this name during the Saxon period, when they were received as money, usu. at regulated prices.

viva voce (VI-və **voh**-see *also* **vee**-və **voh**-chay), *adv.* [Law Latin "with living voice"] (16c) By word of mouth; orally. • In reference to votes, the term means a voice vote was held rather than a vote by ballot. In reference to the examination of witnesses, the term means that oral rather than written testimony was taken. See *voice vote* under VOTE (4). [Cases: Elections ☞214.]

viva voce vote. See *voice vote* under VOTE (4).

vivisection, *n.* **1.** Physiological or pathological experimentation on or investigation of living vertebrate animals using procedures likely to cause severe pain. **2.** By extension, questioning or criticism that is intense, minute, and merciless.

vivum vadium (VI-vəm **vay**-dee-əm). See *vadium vivum* under VADIUM.

viz. (viz). *abbr.* [Latin *videlicet*] (16c) Namely; that is to say <the defendant engaged in fraudulent activities, viz., misrepresenting his gross income, misrepresenting the value of his assets, and forging his wife's signature>. See VIDELICET.

vocabula artis (voh-**kab**-yə-lə **ahr**-tis), *n.* [Latin] Words of art. See TERM OF ART.

VOCAL. *abbr.* VICTIMS OF CHILD ABUSE LAWS.

vocare ad curiam (voh-**kair**-ee ad **kyoor**-ee-əm), *vb.* [Latin] To summon to court.

vocatio in jus (voh-**kay**-shee-oh in **jəs**). [Latin] *Roman law.* A plaintiff's oral summoning of a defendant to go before a magistrate. • The *vocatio in jus* occurred when the plaintiff would summon the defendant in formal words to accompany the plaintiff.

vocation. A person's regular calling or business; one's occupation or profession.

vociferatio (voh-sif-ə-**ray**-shee-oh), *n.* [Latin] *Hist.* An outcry; HUE AND CRY.

voco (**voh**-koh). [Latin "I call"] *Hist.* I summon; I vouch. See VOCATIO IN JUS.

Voconian law (və-**koh**-nee-in). See LEX VOCONIA.

voice exemplar. (1954) A sample of a person's voice used for the purpose of comparing it with a recorded voice to determine whether the speaker is the same person. • Although voiceprint identification was formerly inadmissible, the trend in recent years has been toward admissibility. *See* Fed. R. Evid. 901. [Cases: Criminal Law ☞339.6; Evidence ☞150.]

voiceprint. (1962) A distinctive pattern of curved lines and whorls made by a machine that measures human vocal sounds for the purpose of identifying an individual speaker. • Like fingerprints, voiceprints are thought to be unique to each person. [Cases: Criminal Law ☞339.6; Evidence ☞150.]

voice vote. See VOTE (4).

void, *adj.* (14c) **1.** Of no legal effect; null. • The distinction between *void* and *voidable* is often of great practical importance. Whenever technical accuracy is required, *void* can be properly applied only to those provisions that are of no effect whatsoever — those that are an absolute nullity. — **void, avoid,** *vb.* — **voidness,** *n.*

facially void. (1969) (Of an instrument) patently void upon an inspection of the contents. — Also termed *void on its face.*

void ab initio (ab i-**nish**-ee-oh). (17c) Null from the beginning, as from the first moment when a contract is entered into. • A contract is void ab initio if it seriously offends law or public policy, in contrast to a contract that is merely voidable at the election of one party to the contract. [Cases: Contracts ☞98, 136.]

void for vagueness. (1814) **1.** (Of a deed or other instrument affecting property) having such an insufficient property description as to be unenforceable. [Cases: Deeds ☞37.] **2.** (Of a penal statute) establishing a requirement or punishment without specifying what is required or what conduct is punishable, and therefore void because violative of due process. — Also termed *void for indefiniteness.* See VAGUENESS DOCTRINE. [Cases: Constitutional Law ☞4506; Criminal Law ☞13.1.]

2. VOIDABLE. • Although sense 1 above is the strict meaning of *void,* the word is often used and construed as bearing the more liberal meaning of "voidable."

voidable, *adj.* (15c) Valid until annulled; esp., (of a contract) capable of being affirmed or rejected at the option of one of the parties. • This term describes a valid act that may be voided rather than an invalid act

that may be ratified. — Also termed *avoidable*. [Cases: Contracts ⟹98, 136.] — **voidability,** *n.*

"Most of the disputed questions in the law of infancy turn upon the legal meaning of the word 'voidable' as applied to an infant's acts. The natural meaning of the word imports a valid act which may be avoided, rather than an invalid act which may be confirmed, and the weight of authority as well as reason points in the same direction. Certainly, so far as executed transfers of property are concerned the authority of the decisions clearly supports this view." 1 Samuel Williston, *The Law Governing Sales of Goods* § 12, at 28 (3d ed. 1948).

"The promise of an infant surety is voidable as distinguished from void. The infant may expressly disaffirm or assert the defense of infancy when sued at any time before the expiration of a reasonable time after majority." Laurence P. Simpson, *Handbook on the Law of Suretyship* 82 (1950).

voidable agreement. See *voidable contract* under CONTRACT.

voidable contract. See CONTRACT.

voidable judgment. See JUDGMENT.

voidable marriage. See MARRIAGE (1).

voidable preference. See PREFERENTIAL TRANSFER.

voidable process. See PROCESS.

voidable promise. See PROMISE.

voidable transfer. See PREFERENTIAL TRANSFER.

void agreement. See *void contract* under CONTRACT.

voidance, *n.* (14c) The act of annulling, canceling, or making void. — Also termed *avoidance*.

void contract. See CONTRACT.

void for indefiniteness. See *void for vagueness* under VOID.

void for vagueness. See VOID.

void-for-vagueness doctrine. 1. See VAGUENESS DOCTRINE. **2.** See *void for vagueness* under VOID.

void judgment. See JUDGMENT.

void legacy. See LEGACY.

void marriage. See MARRIAGE (1).

void on its face. See *facially void* under VOID.

void process. See PROCESS.

voir dire (vwahr **deer** *also* vor **deer** *or* vor **dir**), *n.* [Law French "to speak the truth"] (17c) **1.** A preliminary examination of a prospective juror by a judge or lawyer to decide whether the prospect is qualified and suitable to serve on a jury. • Loosely, the term refers to the jury-selection phase of a trial. [Cases: Jury ⟹131.] **2.** A preliminary examination to test the competence of a witness or evidence. [Cases: Witnesses ⟹77.] **3.** *Hist.* An oath administered to a witness requiring that witness to answer truthfully in response to questions. — Also spelled *voire dire*. — Also termed *voir dire exam*; *examination on the voir dire*. — **voir dire,** *vb.*

voiture (vwah-**t**[**y**]**oor**), *n.* Carriage; transportation by carriage.

volatile stock. See STOCK.

volatility. In securities markets, the quality of having sudden and extreme price changes.

volens (**voh**-lenz), *adj.* [Latin] (1872) Willing. See NOLENS VOLENS.

volenti non fit injuria (voh-**len**-ti non fit in-**joor**-ee-ə). [Law Latin "to a willing person it is not a wrong," i.e., a person is not wronged by that to which he or she consents] (17c) The principle that a person who knowingly and voluntarily risks danger cannot recover for any resulting injury. • This is the type of affirmative defense that must be pleaded under Fed. R. Civ. P. 8(c). — Often shortened to *volenti*. See ASSUMPTION OF THE RISK. [Cases: Negligence ⟹550; Torts ⟹126.]

"[T]he maxim 'Volenti non fit injuria' . . . is certainly of respectable antiquity. The idea underlying it has been traced as far back as Aristotle, and it was also recognised in the works of the classical Roman jurists, and in the Canon Law. In English law, Bracton in his *De Legibus Angliae* (ca. A.D. 1250–1258) uses the maxim, though not with the technicality that attached to it later, and in a Year Book case of 1305 it appears worded exactly as it is now. So far as actual citation of the maxim goes, most of the modern cases use it in connexion with harm to the person rather than to property." P.H. Winfield, *A Textbook of the Law of Tort* § 13, at 24 (5th ed. 1950).

volition (və-**lish**-ən *or* voh-), *n.* (17c) **1.** The ability to make a choice or determine something. **2.** The act of making a choice or determining something. **3.** The choice or determination that someone makes. — **volitional,** *adj.*

volitional test. See IRRESISTIBLE-IMPULSE TEST.

Volksgerictshof. See PEOPLE'S COURT (2)

Volstead Act (**vol**-sted). A federal statute enacted in 1919 to prohibit the manufacture, sale, or transportation of liquor. • Sponsored by Andrew Joseph Volstead of Minnesota, a famous Prohibitionist, the statute was passed under the 18th Amendment to the U.S. Constitution. When the 21st Amendment repealed the 18th Amendment in 1933, the Volstead Act was voided. [Cases: Intoxicating Liquors ⟹17.]

volume discount. See DISCOUNT.

volumen (vol-**yoo**-mən), *n.* [Latin "a rolled-up thing"] *Civil law.* A volume. Pl. ***volumina.***

volumus (**vol**-ə-məs), *vb.* [Latin] *Hist.* We will; it is our will. • This was the first word of a clause in royal writs of protection and letters patent. It uses the royal *we* — the plural first person by which monarchs have traditionally spoken.

voluntariae jurisdictionis (vol-ən-**tair**-ee-ee juur-is-dik-shee-**oh**-nis). [Latin] *Hist.* Of or pertaining to voluntary jurisdiction. See *voluntary jurisdiction* under JURISDICTION.

voluntarily, *adv.* Intentionally; without coercion.

voluntarius daemon (vol-ən-**tair**-ee-əs **dee**-mən), *n.* [Law Latin "voluntary madman"] *Hist.* A drunkard; one who has voluntarily contracted madness by intoxication.

voluntary, *adj.* (14c) **1.** Done by design or intention <voluntary act>. **2.** Unconstrained by interference; not

impelled by outside influence <voluntary statement>. **3.** Without valuable consideration or legal obligation; gratuitous <voluntary gift>. [Cases: Contracts ⇨47.] **4.** Having merely nominal consideration <voluntary deed>. — **voluntariness,** *n.*

voluntary abandonment. See ABANDONMENT (3).

voluntary appearance. See APPEARANCE.

voluntary arbitration. See ARBITRATION.

voluntary assignment. See *general assignment* under ASSIGNMENT (2).

voluntary association. See ASSOCIATION (3).

voluntary assumption of the risk. See ASSUMPTION OF THE RISK.

voluntary bankruptcy. See BANKRUPTCY.

voluntary bar. See BAR.

voluntary bond. See BOND (3).

voluntary commitment. See COMMITMENT.

voluntary confession. See CONFESSION.

voluntary consent. See CONSENT (1).

voluntary contract. See *gratuitous contract* (2) under CONTRACT.

voluntary conveyance. See CONVEYANCE.

voluntary courtesy. (17c) An act of kindness performed by one person toward another, from the free will of the doer, without any previous request or promise of reward made by the person who is the object of the act. • No promise of remuneration arises from such an act.

voluntary deposit. See DEPOSIT (5).

voluntary disclosure of offense. See DISCLOSURE (1).

voluntary discontinuance. See NONSUIT (1).

voluntary dismissal. See DISMISSAL (1).

voluntary dissolution. See DISSOLUTION.

voluntary escape. See ESCAPE (3).

voluntary euthanasia. See EUTHANASIA.

voluntary exposure to unnecessary danger. (1883) An intentional act that, from the standpoint of a reasonable person, gives rise to an undue risk of harm. • The phrase suggests that the actor was consciously willing to take the risk. [Cases: Insurance ⇨2592.]

voluntary ignorance. (1836) Willful obliviousness; an unknowing or unaware state resulting from the neglect to take reasonable steps to acquire important knowledge. [Cases: Insurance ⇨2965; Negligence ⇨212.]

voluntary improvement. See IMPROVEMENT.

voluntary intoxication. See INTOXICATION.

voluntary jurisdiction. See JURISDICTION.

voluntary lien. See LIEN.

voluntary manslaughter. See MANSLAUGHTER.

voluntary oath. See *nonjudicial oath* (1) under OATH.

voluntary petition. See PETITION.

voluntary pilot. See PILOT.

voluntary pooling. See POOLING.

voluntary-registry law. See ADOPTION-REGISTRY STATUTE.

voluntary respite. See RESPITE.

voluntary sale. See SALE.

voluntary search. See SEARCH.

voluntary settlement. See SETTLEMENT (1).

voluntary statement. See STATEMENT.

voluntary stranding. See STRANDING.

voluntary surety. See SURETY.

voluntary suretyship. See SURETYSHIP.

voluntary trust. See TRUST.

voluntary unitization. See UNITIZATION.

voluntary waste. See WASTE (1).

voluntas (və-**lən**-tas), *n.* [Latin] *Hist.* **1.** Volition, purpose, or intention; a feeling or impulse that prompts the commission of an act. **2.** A will by which a testator plans to dispose of an estate; WILL.

voluntas testatoris (və-**lən**-tas tes-tə-**tor**-is). [Latin] *Hist.* The intention of a testator.

voluntatis non necessitatis (vol-ən-**tay**-tis non nə-ses-i-**tay**-tis). [Latin] *Hist.* A matter of choice, not of necessity.

volunteer. (16c) **1.** A voluntary actor or agent in a transaction; esp., a person who, without an employer's assent and without any justification from legitimate personal interest, helps an employee in the performance of the employer's business. **2.** The grantee in a voluntary conveyance; a person to whom a conveyance is made without any valuable consideration. See *voluntary conveyance* under CONVEYANCE. **3.** *Military law.* A person who enters military service voluntarily and is then subject to the same rules as other soldiers. Cf. DRAFT (2). **4.** *Archaic.* See OFFICIOUS INTERMEDDLER.

Volunteers in Service to America. See VISTA.

vote, *n.* (15c) **1.** The expression of one's preference or opinion in a meeting or election by ballot, show of hands, or other type of communication <the Republican candidate received more votes than the Democratic candidate>.

absentee vote. See *absentee voting* under VOTING.

bullet vote. A vote cast for fewer nominees than are being elected. • A bullet vote slightly enhances the ballot's effect on the outcome. — Also termed *bullet ballot.*

casting vote. A deciding vote cast by the chair of a deliberative assembly when the votes are tied. • The U.S. Constitution gives the Vice President the casting vote in the Senate. U.S. Const. art. I, § 3. [Cases: United States ⇨18.]

"One is, that to secure at all times the possibility of a definite resolution of the body, it is necessary that the

President should have only a casting vote. And to take the senator of any State from his seat as senator, to place him in that of President of the Senate, would be to exchange, in regard to the State from which he came, a constant for a contingent vote." The Federalist No. 68 (Alexander Hamilton).

effective vote. A vote that counts toward a winning candidate, to the extent needed to win. • A vote that goes to a winning candidate is "effective" to the extent needed to win, and "excess" beyond that point. For example, if a candidate needs 100 votes and gets 150, then 50 votes are excess votes and each vote is two-thirds effective and one-third excess. Cf. *excess vote*; *wasted vote.*

excess vote. A vote that counts toward a winning candidate, beyond the extent needed to win. Cf. *effective vote.*

exhausted vote. A preferential vote on which all the ranked candidates have already been elected or eliminated. — Also termed *exhausted ballot.*

illegal vote. A vote that does not count because it was cast by someone not entitled to vote or for an ineligible choice, or in a form or manner that does not comply with the applicable rules. See *spoiled ballot* under BALLOT (2). [Cases: Elections ☞227.]

legal vote. A vote cast in the proper form and manner for an eligible choice by someone entitled to vote.

paired vote. An abstention resulting from a pairing. See PAIR.

preferential vote. A vote that ranks the choices in order of preference. • A preferential vote may be transferable or weighted. — Also termed *preferential ballot.* Cf. *single transferable vote*; *weighted vote.* [Cases: Elections ☞237.]

single transferable vote. A preferential vote that will migrate or "transfer" away from a candidate whom it will no longer help. • Under transferable voting, a candidate wins if his or her first-choice votes reach the number needed to win, or the "threshold." If no candidate reaches the threshold, the least-preferred candidate is dropped and his or her votes transfer to the next-preferred candidate on each ballot. If a candidate reaches the threshold with an excess, that excess still transfers — after being discounted by the non-excess fraction needed to reach the threshold — among the surviving candidates. Each transfer preserves each vote as long as at least one candidate that the voter ranked survives. The redistribution continues until enough candidates reach the threshold or the number of surviving candidates equals the number of representatives still to be elected. See DROOP QUOTA. — Also termed *STV*; *transferable vote*; *choice voting.* [Cases: Elections ☞237.]

transferable vote. See *single transferable vote.*

unintelligible vote. An otherwise legal vote cast in a form from which the tellers cannot ascertain the voter's intent. • On a secret ballot, no voter may properly claim an unintelligible vote for the purpose of explaining it since the vote may have been cast by another voter who cannot contradict the claimant without sacrificing his or her right to secrecy.

vote of no confidence. See NO-CONFIDENCE VOTE.

wasted vote. A vote that does not count toward any winning candidate. Cf. *effective vote*; *excess vote.*

weighted vote. A nontransferable preferential vote whose strength is allocated among the ranked preferences either by the voter or according to a series of fixed weights. [Cases: Elections ☞237.]

2. The total number of votes cast in an election <the incumbent received 60% of the vote>. [Cases: Elections ☞1.] **3.** The majority or supermajority needed for a certain question <a two-thirds vote>. [Cases: Elections ☞237.]

majority vote. See MAJORITY (2).

plurality vote. See PLURALITY.

tie vote. An equally divided vote. • A tie vote is not a deadlock unless the assembly is obliged to act, for example when electing an officer to an office that will otherwise be vacant. Cf. DEADLOCK. [Cases: Elections ☞238.]

unanimous vote. A vote in which every voter concurs. See UNANIMOUS (2).

winner-take-all vote. An election in which the majority (or sometimes the plurality) elects all the representatives. Cf. UNIT RULE; PROPORTIONAL REPRESENTATION; *proportional voting* under VOTING. [Cases: Elections ☞237.]

4. The act of voting, usu. by a deliberative assembly <the Senate postponed the vote on the gun-control bill>. [Cases: States ☞35.] — **vote,** *vb.*

counted vote. *Parliamentary law.* A vote taken in a way that individually counts each voter. • Examples of a counted vote are a show of hands, a standing vote, a roll-call vote, or a written ballot. See DIVISION (1).

division vote. See DIVISION (1).

lobby vote. A counted vote taken by each voter passing through a lobby between tellers. — Also termed *teller vote.*

rising vote. **1.** See *standing vote.* **2.** A vote of appreciation demonstrated by the members standing, sometimes silently but usu. with applause. — Also termed *rising vote of thanks.*

roll-call vote. A counted vote by roll call, in which the secretary calls each member's name, in answer to which the member casts aloud his or her vote. • The U.S. Constitution provides that "the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal." U.S. Const. art. I, § 5, cl. 3. — Also termed *vote by yeas and nays*; *yeas and nays.* See *roll call* under CALL (1). [Cases: United States ☞18.]

serpentine vote. A standing vote in which the voters count off and sit down, with the count progressing up

one row and down the next until each member on the side of the question being counted has voted.

standing vote. A counted vote taken by each voter standing up when his or her side of the question is counted. — Also termed *rising vote*; *standing division*.

teller vote. See *lobby vote*.

viva voce vote. See *voice vote*.

voice vote. A vote taken by the voters collectively answering aloud, usu. with "aye" or "nay," when their side of the question is called. — Also termed *viva voce vote*. [Cases: Elections ☞214.]

vote by show of hands. A vote taken by the voters raising their hands when their side of the question is counted. — Often shortened to *show of hands*.

vote by yeas and nays. See *roll-call vote*.

vote dilution. See DILUTION (3).

vote immediately. See CLOSE DEBATE.

vote of no confidence. See NO-CONFIDENCE VOTE.

voter. (16c) **1.** A person who engages in the act of voting. **2.** A person who has the qualifications necessary for voting. — Also termed (in sense 2) *legal voter*; *qualified voter*. [Cases: Elections ☞59–87.]

registered voter. A person who is qualified to vote and whose name is recorded in the voting district where he or she resides. [Cases: Elections ☞95–119.]

voting. (16c) The casting of votes for the purpose of deciding an issue.

absentee voting. (1932) **1.** Participation in an election by a qualified voter who is unable to appear at the polls on election day. **2.** The practice of allowing voters to participate in this way. — Also termed (in sense 1) *absentee ballot*; *absentee vote*. See *absentee ballot* under BALLOT (2). Cf. *early voting*. [Cases: Elections ☞126(6), 216.1.]

choice voting. See *single transferable vote* under VOTE (1).

class voting. (1941) A method of shareholder voting in which different classes of shares vote separately on fundamental corporate changes that affect the rights and privileges of that class. — Also termed *voting by class*; *voting by voting group*. [Cases: Corporations ☞197.]

cumulative voting. (1884) A system in which each voter may cast more than one vote for the same candidate. • Cumulative voting helps a minority elect at least one representative. It is common in shareholder elections. [Cases: Corporations ☞200, 283(2).]

early voting. (1984) Voting before the day of an election, esp. during a period designated for that purpose. • Unlike with absentee voting, taking advantage of early voting does not require the voter to swear to the inability to come to the polling place on election day. Cf. *absentee voting*. [Cases: Elections ☞205.1.]

first-past-the-post voting. See *plurality voting*.

Hare–Ware voting. See *instant-runoff voting*.

instant-runoff voting. A system of preferential voting that mimics a runoff election by using each voter's ranked preferences instead of a second round of voting. See *runoff election* under ELECTION (3). — Also termed *Hare–Ware voting*; *West Australian plan*. Abbr. IRV. [Cases: Elections ☞237.]

limited voting. A system in which each voter must cast fewer votes than the number of representatives being elected.

low-total voting. A system of weighted preferential voting that adds up the ranked preferences — "1" for a first choice, "2" for a second choice, and so forth — so that the most-preferred candidate wins by having the lowest total. See *preferential voting*; *weighted vote* under VOTE (1). [Cases: Elections ☞237.]

majority voting. A system in which each voter may cast one vote per representative being elected, and a simple majority is required for election. [Cases: Corporations ☞283(2).]

noncumulative voting. (1956) A corporate voting system in which a shareholder is limited in board elections to voting no more than the number of shares that he or she owns for a single candidate. • The result is that a majority shareholder will elect the entire board of directors. — Also termed *straight voting*. [Cases: Corporations ☞283(2).]

plurality voting. Election by plurality. See PLURALITY. — Also termed *first-past-the-post voting*.

preferential voting. A system in which each voter ranks the choices in order of preference. • A preferential vote may be transferable or weighted. — Also termed *rank-order voting*. See *single transferable vote* under VOTE (1); *weighted vote* under VOTE (1). [Cases: Elections ☞237.]

proportional voting. A system of transferable preferential voting in a multi-representative election. See *preferential vote* under VOTE (1); *single transferable vote* under VOTE (1). — Also termed *proportional representation*. [Cases: Elections ☞237.]

rank-order voting. See *preferential voting*.

straight voting. See *noncumulative voting*.

two-round voting. A system in which the voting occurs in two rounds, with the first round determining the candidate's eligibility for the second round. • The second round may be a runoff between the top two candidates from the first round, an election by plurality among candidates who won their political parties' nominations in the first round, or an election by plurality among the candidates from the first round who reached a certain threshold. See *runoff election* under ELECTION (3). [Cases: Elections ☞237.]

voting by class. See *class voting*.

voting by voting group. See *class voting*.

voting by yeas and nays. See *roll-call vote* under VOTE (4).

voting agreement. See POOLING AGREEMENT.

voting by class. See *class voting* under VOTING.

voting by voting group. See *class voting* under VOTING.

voting group. (1972) **1.** A classification of shareholders by the type of stock held for voting on corporate matters. **2.** Collectively, the shareholders falling within such a classification.

voting member. See MEMBER.

Voting Rights Act. The federal law that guarantees a citizen's right to vote, without discrimination based on race, color, or previous condition of servitude. 42 USCA §§ 1971–1974. [Cases: Elections ⚷12.]

voting security. See *voting stock* under STOCK.

voting stock. See STOCK.

voting-stock rights. A stockholder's right to vote stock in the affairs of the company. • Typically, holders of common stock have one vote for each share. Holders of preferred stock usu. have the right to vote when preferred dividends are in default for a specified period. [Cases: Corporations ⚷197.]

voting trust. See TRUST.

voting-trust certificate. A certificate issued by a voting trustee to the beneficial holders of shares held by the voting trust. • A voting-trust certificate may be as readily transferable as the underlying shares; it carries with it all the incidents of ownership except the power to vote. See *voting trust* under TRUST. [Cases: Corporations ⚷198.1(3).]

votum (**voh**-təm), *n.* [Latin] *Hist.* A vow; a promise. See *dies votorum* under DIES.

votum captandae mortis alienae (**voh**-təm kap-**tan**-dee **mor**-tis ay-lee-**ee**-nee *or* al-ee-). [Latin] *Hist.* An earnest desire for another's death. • An heir could not sell his or her rights to an ancestor's estate because such a transaction would likely induce *votum captandae mortis alienae.*

vouch, *vb.* (14c) **1.** To answer for (another); to personally assure <the suspect's mother vouched for him>. **2.** To call upon, rely on, or cite as authority; to substantiate with evidence <counsel vouched the mathematical formula for determining the statistical probability>. **3.** *Hist.* To call into court to warrant and defend, usu. in a fine and recovery. See FINE (1). **4.** *Hist.* To authenticate (a claim, etc.) by vouchers.

vouchee (vow-**chee**), *n. Hist.* **1.** A person vouched into court; one who has been vouched over. See VOUCH OVER. **2.** A person cited as authority in support of some fact.

voucher, *n.* (17c) **1.** Confirmation of the payment or discharge of a debt; a receipt. **2.** A written or printed authorization to disburse money. **3.** *Hist.* A person who calls on another person (the vouchee) as a witness, esp. in support of a warranty of title. **4.** *Hist.* The tenant in a writ of right.

voucher to warranty. *Hist.* The calling into court of a person who has warranted lands, by the person warranted, to come and defend a lawsuit.

vouching-in. (1849) **1.** At common law, a procedural device by which a defendant may give notice of suit to a third party who may be liable to the defendant on the subject-matter of the suit, so that the third party will be bound by the court's decision. • Although this device has been largely replaced by third-party practice, it remains available under the Federal Rules of Civil Procedure. *Humble Oil & Refining Co. v. Philadelphia Ship Maintenance Co.*, 444 F.2d 727, 735 (3d Cir. 1971). [Cases: Federal Civil Procedure ⚷281; Parties ⚷49.] **2.** The invitation of a person who is liable to a defendant in a lawsuit to intervene and defend so that, if the invitation is denied and the defendant later sues the person invited, the latter is bound by any determination of fact common to the two lawsuits. See UCC § 2-607. [Cases: Indemnity ⚷40, 79.] **3.** IMPLEADER.

vouch over, *vb.* (16c) To cite (a person) into court in one's stead. See VOUCHEE (1).

vox signata (vahks sig-**nay**-tə). [Law Latin] *Hist.* A technical word; a formal word. Pl. ***voces signatae.***

voyage. *Maritime law.* The passing of a vessel by sea from one place, port, or country to another. • Courts generally hold that the term includes the entire enterprise, not just the route. [Cases: Shipping ⚷165.]

foreign voyage. A voyage to a port or place within the territory of a foreign nation. • If the voyage is from one port in a foreign country to another port in the same country, it is considered a foreign voyage. [Cases: Seamen ⚷18.]

freighting voyage. A voyage that involves a vessel's transporting cargo between terminal points.

trading voyage. A voyage that contemplates a vessel's touching and stopping at various ports to traffic in, buy and sell, or exchange commodities on the owners' and shippers' account.

voyage charter. See CHARTER (8).

voyage insurance. See INSURANCE.

voyage policy. See INSURANCE POLICY.

voyeur (voy-**yər** *also* vwah-**yər**), *n.* (1900) A person who observes something without participating; esp., one who gains pleasure by secretly observing another's genitals or sexual acts. [Cases: Disorderly Conduct ⚷123.]

voyeurism, *n.* (1900) Gratification derived from observing the genitals or sexual acts of others, usu. secretly. [Cases: Disorderly Conduct ⚷123.] — **voyeuristic,** *adj.*

V.P. *abbr.* See VICE PRESIDENT.

vs. *abbr.* VERSUS.

vulgar abuse. See *verbal abuse* under ABUSE.

vulgaris purgatio (vəl-**gair**-is pər-**gay**-shee-oh), *n.* [Law Latin] See ORDEAL (1).

vulgar purgation. See PURGATION.

vulgar substitution. See SUBSTITUTION (4).

vulgo concepti (**vəl**-goh kən-**sep**-tī), *n.* [Latin] *Hist.* Illegitimate children; bastards.

vulgo quaesiti (**vəl**-goh kwi-**sī**-tī), *n.* [Latin] *Hist.* Spurious children; the offspring of promiscuity, so that the true fathers are unknowable.

vulnerable adult. See ADULT.

vulture fund. See MUTUAL FUND.

W

W-2 form. (18c) (1948) *Tax.* A statement of earnings and taxes withheld (including federal, state, and local income taxes and FICA tax) during a given tax year. • The W-2 is prepared by the employer, provided to each employee, and filed with the Internal Revenue Service. Cf. W-4 FORM. [Cases: Internal Revenue ⇨4849.]

W-4 form. (1955) *Tax.* A form indicating the number of personal exemptions an employee is claiming and that is used by the employer in determining the amount of income to be withheld from the employee's paycheck for federal-income tax purposes. — Also termed *Employee's Withholding Allowance Certificate.* Cf. W-2 FORM. [Cases: Internal Revenue ⇨4849.]

wacreour (wah-**kroor**), *n.* [Law French] *Hist.* A vagrant.

***Wade* hearing.** (1969) *Criminal law.* A pretrial hearing in which the defendant contests the validity of his or her out-of-court identification. • If the court finds that the identification was tainted by unconstitutional methods, the prosecution cannot use the identification and must link the defendant to the crime by other means. *United States v. Wade*, 388 U.S. 218, 87 S.Ct. 1926 (1967). [Cases: Criminal Law ⇨339.11(2).]

wadia (**way**-dee-ə), *n.* [Law Latin] *Hist.* Pledges.

wadset, *n. Scots law.* **1.** A mortgage. — Also termed (in Roman law) *fiducia.* **2.** A pledge or pawn.

wadset, *vb. Scots law.* **1.** To mortgage. **2.** To pledge.

wafer seal. See SEAL.

wafter (**waf**-tər), *n.* [Middle English "convoyer"] *Hist.* An English naval officer appointed under Edward IV to protect fishermen, esp. on the coast of Norfolk and Suffolk. — Also spelled *waftor.*

waga (**way**-gə), *n.* [Law Latin] *Hist.* A measure of weight; a measure of goods.

wage, *n.* (*usu. pl.*) (14c) Payment for labor or services, usu. based on time worked or quantity produced; specif., compensation of an employee based on time worked or output of production. • Wages include every form of remuneration payable for a given period to an individual for personal services, including salaries, commissions, vacation pay, bonuses, and the reasonable value of board, lodging, payments in kind, tips, and any similar advantage received from the employer. An employer usu. must withhold income taxes from wages. Cf. SALARY. [Cases: Labor and Employment ⇨168.]

covered wages. Wages on which a person is required to pay social-security taxes. [Cases: Internal Revenue ⇨4374.]

current wages. Wages for the current period; wages that are not past due.

front wages. Prospective compensation paid to a victim of job discrimination until the denied position becomes available. [Cases: Civil Rights ⇨1471, 1571, 1583(2).]

minimum wage. The lowest permissible hourly rate of compensation for labor, as established by federal statute and required of employers engaged in interstate commerce. 29 USCA § 206. [Cases: Labor and Employment ⇨2337.]

noncovered wages. Wages on which a person is not required to pay social-security taxes. [Cases: Internal Revenue ⇨4374.]

real wages. Wages representing the true purchasing power of the dollar, derived by dividing a price index into money wages.

wage, *vb.* **1.** To engage in (a war, etc.). **2.** *Archaic.* To give security for (a performance, etc.). Cf. GAGE.

Wage and Hour Division. The division of the Employment Standards Administration in the U.S. Department of Labor responsible for enforcing the Fair Labor Standards Act, the Family and Medical Leave Act, the Employee Polygraph Protection Act, and other workplace-related statutes and regulations. — Abbr. WHD. See EMPLOYMENT STANDARDS ADMINISTRATION.

wage-and-hour law. A law (such as the federal Fair Labor Standards Act) governing minimum wages and maximum working hours for employees. [Cases: Labor and Employment ⇨2215.]

wage-and-price controls. A system of government-mandated maximum prices that can be charged for different goods and services or paid to various workers in different jobs.

wage-and-price freeze. See FREEZE.

wage assignment. **1.** See *attachment of wages* under ATTACHMENT (1). **2.** INCOME-WITHHOLDING ORDER. **3.** ASSIGNMENT (2).

wage-assignment order. See INCOME-WITHHOLDING ORDER.

wage-earner's plan. See CHAPTER 13.

wager, *n.* (14c) **1.** Money or other consideration risked on an uncertain event; a bet or gamble. **2.** A promise to pay money or other consideration on the occurrence of an uncertain event. **3.** See *wagering contract* under CONTRACT. [Cases: Gaming ⇨1.] — **wager,** *vb.* — **wagerer,** *n.*

wagering contract. See CONTRACT.

wager of battle. See TRIAL BY COMBAT.

wager of law. *Hist.* A method of proof in which a person defends against a claim by swearing that the claim is groundless, and by enlisting others (*compurgators*) to

swear to the defendant's credibility. — Also termed *gager del ley* (**gay**-jər del **lay**); *vadiatio legis* (vad-ee-**ay**-shee-oh **lee**-jis). See COMPURGATION.

wager policy. See INSURANCE POLICY.

wages. See WAGE.

wage-withholding. See *attachment of wages* under ATTACHMENT (1).

wage-withholding order. See INCOME-WITHHOLDING ORDER.

Wagner Act. See NATIONAL LABOR RELATIONS ACT.

wagonage (**wag**-ə-nij). **1.** Transportation by a wagon. **2.** The fee for carriage by wagon. **3.** A group of wagons.

waif, *n.* (14c) **1.** An abandoned article whose owner is unknown, esp. something stolen and thrown away by the thief in flight, usu. through fear of apprehension. • At common law, if a waif, whether stolen or merely abandoned, was seized before the owner reclaimed it, the title vested in the Crown. The owner was thus punished for leaving the property or for failing to pursue the thief and attempting to recover the property. Today, however, the general rule is that a waif passes to the state in trust for the true owner, who may regain it by proving ownership.

> "Waifs, *bona waviata*, are goods stolen, and waived or thrown away by the thief in his flight, for fear of being apprehended. These are given to the king by the law, as a punishment upon the owner, for not himself pursuing the felon, and taking away his goods from him. And therefore if the party robbed do his diligence immediately to follow and apprehend the thief (which is called making fresh *suit*) or do convict him afterwards, or procure evidence to convict him, he shall have his goods again." 1 William Blackstone, *Commentaries on the Laws of England* 286–87 (1765).

2. *Hist.* A homeless person, esp. a woman or child; a social outcast. See WAIVERY.

> "[In the thirteenth century] a woman, though she cannot be outlawed, can be 'waived,' declared a 'waif,' and 'waiver' seems to have all the effects of outlawry." 1 Frederick Pollock & Frederic William Maitland, *History of English Law Before the Time of Edward I* 482 (2d ed. 1898).

wainable (**way**-nə-bəl), *adj. Archaic.* (Of land) plowable; tillable.

wainage (**way**-nij), *n. Hist.* **1.** The plow, team, and other implements used by a person (esp. a villein) to cultivate the soil; instruments of husbandry. **2.** Cultivated land or the profits from it. — Also termed *wainagium*; *waynagium* (way-**nay**-jee-əm); (in sense 2) *gainage*.

wainbote. See BOTE (1).

wait-and-see principle. (1989) A modification to the rule against perpetuities, under which a court may determine the validity of a contingent future interest based on whether it actually vests within the perpetuities period, rather than on whether it possibly could have vested outside the period. — Also termed *second-look doctrine*. [Cases: Perpetuities ⇨4.]

waiting clerk. *Hist.* An officer who waits in attendance on the court of chancery. • The office of the waiting clerk was abolished in 1842 by the Court of Chancery Act. St. 5 & 6 Vict. ch. 103.

waiting period. (1897) A period that must expire before some legal right or remedy can be enjoyed or enforced. • For example, many states have waiting periods for the issuance of marriage licenses or the purchase of handguns.

waive (wayv), *n. Archaic.* A woman who has by her conduct deprived herself of the protection of the law; a female outlaw. • The term "outlaw" usu. referred only to a male. See OUTLAW (1), (2).

waive, *vb.* (14c) **1.** To abandon, renounce, or surrender (a claim, privilege, right, etc.); to give up (a right or claim) voluntarily. • Ordinarily, to waive a right one must do it knowingly — with knowledge of the relevant facts. [Cases: Estoppel ⇨52.10.] **2.** To refrain from insisting on (a strict rule, formality, etc.); to forgo. **3.** *Hist.* To declare someone a waif. See WAIF (2).

waiver (**way**-vər), *n.* (17c) **1.** The voluntary relinquishment or abandonment — express or implied — of a legal right or advantage; FORFEITURE (2) <waiver of notice>. • The party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it. Cf. ESTOPPEL. [Cases: Estoppel ⇨52.10.]

> "The term *waiver* is one of those words of indefinite connotation in which our legal literature abounds; like a cloak, it covers a multitude of sins." William R. Anson, *Principles of the Law of Contract* 419 (Arthur L. Corbin ed., 3d Am. ed. 1919).

> "'Waiver' is often inexactly defined as 'the voluntary relinquishment of a known right.' When the waiver is reinforced by reliance, enforcement is often said to rest on 'estoppel.' . . . Since the more common definition of estoppel is limited to reliance on a misrepresentation of an existing fact, reliance on a waiver or promise as to the future is sometimes said to create a 'promissory estoppel.' The common definition of waiver may lead to the incorrect inference that the promisor must know his legal rights and must intend the legal effect of the promise. But . . . it is sufficient if he has reason to know the essential facts." Restatement (Second) of Contracts § 84 cmt. b (1979).

> "Waiver is often asserted as the justification for a decision when it is not appropriate to the circumstances." Robert E. Keeton & Alan I. Widiss, *Insurance Law* § 6.8, at 719 (1998).

> "Although it has often been said that a waiver is 'the intentional relinquishment of a known right,' this is a misleading definition. What is involved is not the relinquishment of a right and the termination of the reciprocal duty but the excuse of the nonoccurrence of or a delay in the occurrence of a condition of a duty." E. Allan Farnsworth, *Contracts* § 8.5, at 561 (3d ed. 1999).

express waiver. (18c) A voluntary and intentional waiver. [Cases: Estoppel ⇨52.10(2).]

implied waiver. (18c) A waiver evidenced by a party's decisive, unequivocal conduct reasonably inferring the intent to waive. [Cases: Estoppel ⇨52.10(3).]

> "An implied waiver may arise where a person has pursued such a course of conduct as to evidence an intention to waive a right, or where his conduct is inconsistent with any other intention than to waive it. Waiver may be inferred from conduct or acts putting one off his guard and leading him to believe that a right has been waived. Mere silence,

however, is no waiver unless there is an obligation to speak." 28 Am. Jur. 2d *Estoppel and Waiver* § 160, at 845-46 (1966).

prospective waiver. (1889) A waiver of something that has not yet occurred, such as a contractual waiver of future claims for discrimination upon settlement of a lawsuit.

subject-matter waiver. A waiver that may result when a party voluntarily discloses a communication or privileged material about a particular topic to a third party. • A party's voluntary disclosure may lead a court to find an implied waiver that extends to all other communications relating to the same subject matter. [Cases: Witnesses ⟹219.]

waiver of notice. *Parliamentary law.* The waiver that occurs when a defective notice for a meeting is issued but every member attends and participates without objecting to the defect.

2. The instrument by which a person relinquishes or abandons a legal right or advantage <the plaintiff must sign a waiver when the funds are delivered>.

jury waiver. A form signed by a criminal defendant who relinquishes the right to have the trial conducted before a jury. [Cases: Jury ⟹29(6).]

lien waiver. A written and signed waiver of a subcontractor's mechanic's lien rights, usu. submitted to enable the owner or general contractor to receive a draw on a construction loan. [Cases: Mechanics' Liens ⟹208.]

waiver by election of remedies. (1873) A defense arising when a plaintiff has sought two inconsistent remedies and by a decisive act chooses one of them, thereby waiving the other. [Cases: Election of Remedies ⟹1.]

waiver hearing. See *transfer hearing* under HEARING.

waiver of claims and defenses. (1975) **1.** The intentional relinquishment by a maker, drawer, or other obligor under a contract of the right to assert against the assignee any claims or defenses the obligor has against the assignor. [Cases: Assignments ⟹103; Bills and Notes ⟹314; Secured Transactions ⟹185.] **2.** The contractual clause providing for such a waiver.

waiver of counsel. (1870) A criminal defendant's intentional relinquishment of the right to legal representation. • To be valid, a waiver of counsel must be made voluntarily, knowingly, and intelligently. [Cases: Criminal Law ⟹1750-1757.]

waiver of defenses. *Real estate.* A document by which a mortgagor acknowledges that the mortgage is good and valid for the full amount of the mortgage note. • This document ensures that the mortgagor has no defenses to the mortgage. — Also termed *estoppel certificate*; *no-setoff certificate*; *declaration of no defenses*. [Cases: Mortgages ⟹415.]

waiver of exemption. (1846) **1.** A debtor's voluntary relinquishment of the right to an exemption from a creditor's levy or sale of any part of the debtor's personal property by judicial process. [Cases: Exemptions ⟹89-99; Homestead ⟹169-176.] **2.** The contractual clause expressly providing for such a waiver. [Cases: Exemptions ⟹92; Homestead ⟹170.]

waiver of immunity. (1883) The act of giving up the right against self-incrimination and proceeding to testify. See IMMUNITY (3). [Cases: Witnesses ⟹305.]

waiver of notice. See WAIVER (1).

waiver-of-premium clause. *Insurance.* A provision for a waiver of premium payments after the insured has been disabled for a specified length of time, such as six months. [Cases: Insurance ⟹2035.]

waiver of protest. A relinquishment by a party to a negotiable instrument of the formality of protest in case of dishonor. See PROTEST (2). [Cases: Bills and Notes ⟹422.]

waiver of service. A defendant's voluntary submission to the jurisdiction made by signing an acknowledgment of receipt of the petition and stating that he or she waives all further service. [Cases: Process ⟹67.]

waiver of tort. (1815) The election to sue in quasi-contract to recover the defendant's unjust benefit, instead of suing in tort to recover damages. See *implied-in-law contract* under CONTRACT. [Cases: Action ⟹28.]

"A person upon whom a tort has been committed and who brings an action for the benefits received by the tortfeasor is sometimes said to 'waive the tort.'" Restatement of Restitution § 525 (1937).

"'Waiver of tort' is a misnomer. A party only waives a tort in the sense that he elects to sue in quasi-contract to recover the defendant's unjust benefit rather than to sue in tort to recover damages; he has a choice of alternative remedies. But the tort is not extinguished. Indeed it is said that it is a *sine qua non* of both remedies that he should establish that a tort has been committed." Lord Goff of Chieveley & Gareth Jones, *The Law of Restitution* 605 (3d ed. 1986).

waivery. *Hist.* The act of putting a woman outside the protection of the law. • At common law, a woman could not be "outlawed" because she was not considered "in law" — that is, she could not undertake legal proceedings on her own. By Bracton's day, the effect of outlawing a woman was achieved by "waiving" her — the act being called *waivery*.

wakening. *Scots law.* The revival of an action in which no steps had taken for at least a year and a day.

walk, *vb.* (1958) *Slang.* **1.** To be acquitted <though charged with three thefts, Robinson walked each time>. **2.** To escape any type of real punishment <despite the seriousness of the crime, Selvidge paid only $750: he walked>.

walker, *n. Hist.* A forester who inspects an assigned area of land.

***Walker Process* claim.** *Patents.* A counterclaim in an infringement suit, seeking a declaratory judgment that the patent is invalid because its owner defrauded the Patent Office. • The claim is based on antitrust law, alleging that the patentee wrongfully tried to monopolize a market. *Walker Process Equip., Inc. v. Food Mach.*

& Chem., 382 U.S. 172, 86 S.Ct. 347 (1965). — Also termed *Walker Process defense.*

walkout. 1. STRIKE (1). 2. The act of leaving a work assignment, meeting, or other event as a show of protest. [Cases: Labor Relations ⇨290.]

wall. An erection of stone, brick, or other material raised to varying heights, esp. inside or surrounding a building, for privacy, security, or enclosure.

ancient wall. A party wall that has stood for at least 20 years, thus giving each party an easement right to refuse to allow the other party to remove or substantially change the wall.

party wall. A wall that divides two adjoining, separately owned properties and that is shared by the two property owners as tenants in common. — Also termed *common wall.* [Cases: Party Walls ⇨1–10.]

"There appears to be no precise legal definition of the term 'party wall.' Four possible meanings are as follows: (a) *Tenancy in common*: the two adjoining owners are tenants in common of the wall. (b) *Divided*: the wall is divided longitudinally into two strips, one belonging to each of the neighbouring owners. (c) *Divided with easements*: the wall is divided as in (b), but each half is subject to an easement of support in favour of the owner of the other half. (d) *Ownership subject to easement*: the wall belongs entirely to one of the adjoining owners, but is subject to an easement or right in the other to have it maintained as a dividing wall." Robert E. Megarry & M.P. Thompson, *A Manual of the Law of Real Property* 303–04 (6th ed. 1993).

wallia (**wahl**-ee-ə), *n.* [Law Latin] *Hist.* A wall (such as a mound or bank) erected in marshy areas for protection against the sea; a seawall.

Walsh Act. A statute, originally enacted in 1926, giving federal courts the power to subpoena and compel the return, testimony, and (if requested) production of documents or other items of U.S. citizens or residents who are abroad. • The subpoena is available for criminal proceedings, including grand-jury proceedings. 28 USCA § 1783. [Cases: Grand Jury ⇨36.2; Witnesses ⇨6.]

Walsh–Healey Act. A federal law, enacted in 1936, stipulating that government contractors must: (1) pay their workers no less than the prevailing minimum wage; (2) observe the eight-hour day and 40-hour workweek (with time-and-a-half for work exceeding those hours); (3) employ no convict labor and no females under 18 or males under 16 years of age; and (4) maintain sanitary working conditions. 41 USCA §§ 35 et seq. — Also termed *Public Contracts Act*; *Walsh–Healey Public Contracts Act.*

wampum (**wom**-pəm), *n. Hist.* Indian money consisting of shells, beads, or animal pelts. • In 1637, it became the first medium of exchange for the New England colonies by order of the General Court of Massachusetts, because England had not provided the colonies with a standard of exchange. The Court ordered that "wampampege should passe at 6 a penny for any sum under 12d." Wampum was used as the medium of exchange, esp. for small transactions, until 1652, when the General Court ordered the first metallic currency. The last recorded exchange in wampum was in New York in 1701.

***Wands* test.** *Patents.* A judicial test of "undue experimentation" for determining if a patent application's specification teaches one skilled in the art how to make and work the claimed invention. *In re Wands*, 858 F.2d 731 (Fed. Cir. 1988). • The test takes account of eight factors: (1) how much experimentation would be needed, (2) how much guidance is given, (3) whether there is a working example, (4) the nature of the invention, (5) the state of the prior art, (6) the level of skill of those in the art, (7) how predictable or unpredictable the art is, and (8) the breadth of the claims. The factors (often called *Wands factors*) are illustrative rather than mandatory. See UNDUE EXPERIMENTATION. [Cases: Patents ⇨99.]

wanlass (**wahn**-ləs). *Hist.* An ancient form of tenure requiring the tenant to drive deer to a stand so that the lord can take a shot. — Also spelled *wanlace.*

wantage (**wahnt**-ij), *n.* A deficiency of something; specif., a vessel's deficiency of not being full, due to leakage.

wanted person. A person sought by a law-enforcement agency because the person has escaped from custody or an arrest warrant has been issued for the person's arrest.

want of amicable demand. *Louisiana law.* A defensive pleading by a defendant who seeks to avoid, delay, or defeat the plaintiff's petition. • A defendant may (1) refuse to participate in the suit (a *declinatory exception*), (2) seek to delay the litigation in the suit (a *dilatory exception*), or (3) seek to dismiss or defeat the suit (a *peremptory exception*). See *declinatory exception*, *dilatory exception*, *peremptory exception* under EXCEPTION (1).

want of consideration. (18c) The lack of consideration for a contract. See CONSIDERATION (1). Cf. FAILURE OF CONSIDERATION. [Cases: Contracts ⇨54(1), 84; Sales ⇨21.]

want of jurisdiction. A court's lack of power to act in a particular way or to give certain kinds of relief. • A court may have no power to act at all, may lack authority over a person or the subject matter of a lawsuit, or may have no power to act until the prerequisites for its jurisdiction have been satisfied. — Also termed *lack of jurisdiction.* See JURISDICTION. [Cases: Courts ⇨39, 40; Federal Courts ⇨30.]

want of prosecution. (17c) Failure of a litigant to pursue the case <dismissal for want of prosecution>. — Also termed *lack of prosecution*; *no progress.* — Abbr. w.o.p. [Cases: Federal Civil Procedure ⇨1758; Pretrial Procedure ⇨581.]

want of repair. (17c) A defective condition, such as a condition on a highway making it unsafe for ordinary travel. [Cases: Automobiles ⇨252; Municipal Corporations ⇨757(1).]

wanton (**wahn**-tən), *adj.* (14c) Unreasonably or maliciously risking harm while being utterly indifferent

to the consequences. • In criminal law, *wanton* usu. connotes malice (in the criminal-law sense), while *reckless* does not. Cf. RECKLESS; WILLFUL. [Cases: Criminal Law ⇨23; Negligence ⇨275.]

> "Wanton differs from reckless both as to the actual state of mind and as to the degree of culpability. One who is acting recklessly is fully aware of the unreasonable risk he is creating, but may be trying and hoping to avoid any harm. One acting wantonly may be creating no greater risk of harm, but he is not trying to avoid it and is indifferent to whether harm results or not. Wanton conduct has properly been characterized as 'vicious' and rates extreme in the degree of culpability. The two are not mutually exclusive. Wanton conduct is reckless plus, so to speak." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 879-80 (3d ed. 1982).

wanton and reckless misconduct. See *wanton misconduct* under MISCONDUCT.

wanton misconduct. See MISCONDUCT.

wanton negligence. See *gross negligence* under NEGLIGENCE.

wantonness, *n.* (14c) Conduct indicating that the actor is aware of the risks but indifferent to the results. • Wantonness usu. suggests a greater degree of culpability than recklessness, and it often connotes malice in criminal-law contexts. Cf. RECKLESSNESS. [Cases: Criminal Law ⇨20, 23; Damages ⇨87(1), 91.5(1); Negligence ⇨275.] — **wanton,** *adj.*

wapentake (**wahp**-ən-tayk *or* **wap**-), *n.* [fr. Saxon *waepen* "weapons" + *tac* "touch"] *Hist.* **1.** In some English counties, a division corresponding to the hundred or ward in other counties. See HUNDRED. **2.** The court within such a division. **3.** A bailiff who works in such a court.

war. 1. Hostile conflict by means of armed forces, carried on between nations, states, or rulers, or sometimes between parties within the same nation or state; a period of such conflict <the Gulf War>. • A state of war may also exist without armed conflict; for example, the treaty formally ending the World War II state of war between the United States and Japan was signed seven years after the fighting ended in 1945. [Cases: War and National Emergency ⇨1.]

civil war. An internal armed conflict between people of the same nation; esp. (usu. cap.), the war from 1861 to 1865, resulting from the Confederate states' attempted secession from the Union.

imperfect war. A war limited in terms of places, persons, and things.

mixed war. A war between a nation and private individuals.

perfect war. A war involving an entire nation against another.

private war. A war between private persons.

public war. A war between two nations under authority of their respective governments.

solemn war. A war formally declared — esp. by public declaration — by one country against another.

war of aggression. A war that the attacking nation initiates for reasons other than self-defense. • This type of war is considered a crime against international peace under customary international law.

2. A dispute or competition between adversaries <fare wars are common in the airline industry>. **3.** A struggle to solve a pervasive problem <America's war against drugs>.

warantizare. See WARRANTIZARE.

War Clause. (1943) U.S. Const. art. I, § 8, cl. 11–14, giving Congress the power to declare war. — Also termed *War Powers Clause.* See WAR POWER. [Cases: War and National Emergency ⇨2.]

war contribution. *Int'l law.* An extraordinary payment imposed by an occupying power on the population of an occupied territory during wartime. — Often shortened to *contribution.* [Cases: War and National Emergency ⇨14.]

war crime. Conduct that violates international laws governing the conduct of international armed conflicts. • Examples of war crimes are the killing of hostages, abuse of civilians in occupied territories, abuse of prisoners of war, and devastation that is not justified by military necessity. [Cases: War and National Emergency ⇨11.]

ward. (15c) **1.** A person, usu. a minor, who is under a guardian's charge or protection. See GUARDIAN (1). [Cases: Guardian and Ward ⇨1, 9.5.]

permanent ward. (1927) A ward who has been assigned a permanent guardian, the rights of the natural parents having been terminated by a juvenile court. [Cases: Guardian and Ward ⇨9.5; Infants ⇨155.]

temporary ward. (1901) A minor who is under the supervision of a juvenile court but whose parents' parental rights have not been terminated. [Cases: Infants ⇨154.1.]

ward-in-chancery. *Hist.* An infant under the superintendence of the chancellor.

ward of admiralty. A seaman — so called because of the legal view that a seaman, in contractual matters, should be treated as a beneficiary and the other contracting party as a fiduciary because of the perceived inequitability of their bargaining positions. [Cases: Seamen ⇨1.]

ward of the state. (1832) A person who is housed by, and receives protection and necessities from, the government. — Also termed *state's ward.*

2. A territorial division in a city, usu. defined for purposes of city government. [Cases: Municipal Corporations ⇨40.] **3.** The act of guarding or protecting something or someone. **4.** *Archaic.* One who guards. **5.** CASTLE-GUARD. — Formerly also termed *warda.*

warda (**wor**-də), *n.* [Law Latin] *Hist.* Wardship; guardianship.

wardage. See WARDPENNY.

warden. (13c) **1.** A person in charge of something <game warden> <port warden>; esp., the official in charge of a prison, jail, or park <prison warden> <game warden>. [Cases: Prisons ⇨390.] **2.** SERGEANT-AT-ARMS (4).

warden of the cinque ports (singk ports). *Hist.* A magistrate with jurisdiction over the five cinque ports. • This office was created in imitation of the Roman policy of strengthening coasts against enemies. The warden, formally called the Lord Warden, presided over the Court of the Lord Warden of the Cinque Ports, which was created in the 14th century and, over time, variously exercised civil, equity, and admiralty jurisdiction. — Formerly termed *guardian of the cinque ports.* See CINQUE PORTS.

ward holding. *Scots law.* The feudal tenure known in England as knight service. See KNIGHT SERVICE.

ward-horn. *Hist.* The duty of keeping watch and ward with a horn to blow in the event of a surprise. See WATCH AND WARD.

ward-in-chancery. See WARD.

wardite. *Hist.* A fine that a tenant was required to pay upon failing to fulfill the duty of castle-guard. See CASTLE-GUARD.

wardmote (**word**-moht). *Hist.* **1.** A court maintained in every London ward. — Also termed *wardmote court; inquest.* **2.** A meeting of a ward.

ward of admiralty. See WARD.

ward of the state. See WARD.

wardpenny, *n. Hist.* **1.** Money paid in lieu of military service. **2.** Money paid to the sheriff or castellans in exchange for watching and warding a castle. — Also termed *wardage; warth.*

wardship. (15c) **1.** Guardianship of a person, usu. a minor. [Cases: Guardian and Ward ⇨1.] **2.** The condition of being a ward. **3.** *Hist.* The right of the feudal lord to guardianship of a deceased tenant's minor heir until the heir reached the age of majority. — Also termed (in senses 1 & 3) *guardage.*

wardship in chivalry. Wardship as a feudal incident to the tenure of knight-service.

wardship in copyholds. Wardship by which the lord is guardian of an infant tenant by special custom.

wardstaff, *n. Hist.* A staff carried by an authority; esp., a constable's or watchman's staff.

wardwit, *n. Hist.* **1.** An immunity or exemption from the duty of warding or contributing to warding. **2.** A fine for failing to watch and ward. — Also termed *warwit; wardwite.*

warectare (wor-ək-**tair**-ee), *vb.* [Law Latin "to let lie fallow"] *Hist.* To plow land in the spring and then let it lie fallow for a better wheat crop the next year.

warehouse. A building used to store goods and other items.

bonded warehouse. A special type of private warehouse used to store products subject to customs duties. See WAREHOUSE SYSTEM.

warehouse book. A book used by merchants to account for quantities of goods received, shipped, and in stock.

warehouseman. See WAREHOUSER.

warehouseman's lien. See *warehouser's lien* under LIEN.

warehouser. One who, as a business, keeps or stores the goods of another for a fee. • The transaction in which a warehouser engages is a bailment for the benefit of both parties, and the bailee is liable for ordinary negligence. — Also termed *warehouseman.* See BAILEE. [Cases: Warehousemen ⇨3.]

warehouse receipt. A document evidencing title to goods stored with someone else; esp., a receipt issued by a person engaged in the business of storing goods for a fee. • A warehouse receipt, which is considered a document of title, may be a negotiable instrument and is often used for financing with inventory as security. See BAILMENT. [Cases: Warehousemen ⇨11.]

warehouser's lien. See LIEN.

warehouse system. A system of maintaining bonded warehouses so that importers can either store goods for reexportation without paying customs duties or store the goods without paying duties until the goods are removed for domestic consumption. See *bonded warehouse* under WAREHOUSE.

warehouse-to-warehouse cover. Insurance coverage for goods protecting against damage at any time during the shipping process, including the loading and unloading of the goods. See COMPLETE-OPERATION RULE. Cf. COMING-TO-REST DOCTRINE. [Cases: Insurance ⇨2681.]

warehousing. 1. A mortgage banker's holding of mortgages until the resale market improves. **2.** A corporation's giving of advance notice of a tender offer to institutional investors, who can then buy stock in the target company before public awareness of the takeover inflates the stock's price. See TENDER OFFER.

warfare. 1. The act of engaging in war or military conflict. See WAR. [Cases: War and National Emergency ⇨9.] **2.** Loosely, the act of engaging in any type of conflict.

biological warfare. The use of biological or infectious agents in war, usu. by delivering them via airplanes or ballistic missiles. Cf. *chemical warfare.*

biochemical warfare. Warfare in which both biological and chemical weapons are used. See *biological warfare, chemical warfare.*

chemical warfare. Warfare in which deadly chemical agents, such as nerve gas, are used as weapons, usu. by delivering the chemicals via shells, missiles, or bombs. • Chemical weapons were first used in World War I. The first international treaty forbidding the use of both chemical and biological weapons, the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Biological Methods

of Warfare was signed in 1925 and came into force in 1928. The United States is a signatory but with reservations. Cf. *biological warfare*.

economic warfare. **1.** A hostile relationship between two or more countries in which at least one tries to damage the other's economy for economic, political, or military ends. **2.** The collective measures that might be taken to achieve such ends. [Cases: War and National Emergency ☞12, 14.]

guerrilla warfare. Hostilities that are conducted by individuals or small groups who are usu. not part of an organized army and who fight by means of surprise attacks, ambushes, and sabotage. • Formerly, it was thought that the hostilities had to be conducted in enemy-occupied territory. Typically, guerrilla warfare is carried out only when geographical conditions are favorable and when the civilian population is at least partly cooperative.

land warfare. Hostilities conducted on the ground, as opposed to at sea or in the air.

war-mongering propaganda. See PROPAGANDA.

WARN (worn). *abbr.* WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT.

warning. (bef. 12c) The pointing out of a danger, esp. to one who would not otherwise be aware of it. • State and federal laws (such as 21 USCA § 825) require warning labels to be placed on potentially dangerous materials, such as drugs and equipment. [Cases: Products Liability ☞133.]

adequate warning. (1885) A warning that reasonably alerts a product's average user to a potential hazard, and the nature and extent of the danger. • Four elements have been articulated as comprising an adequate warning: (1) notice that a severe hazard exists, (2) a description of the hazard's nature, (3) a description of the hazard's possible consequences, and (4) instructions on how to avoid the hazard. In addition, the warning must be prominently displayed, and may have to illustrate the nature and severity of the hazard with pictographs. [Cases: Products Liability ☞133.]

warnistura (wor-nə-**st**[**y**]**oor**-ə), *n.* [Law Latin] *Hist.* Furniture; provision.

warnoth (**wor**-noht). *Hist.* A defunct custom by which a tenant who failed to pay rent on a set day had to pay double the amount due, and on failing a second time had to pay triple (and so on).

war of aggression. See WAR.

war power. (18c) The constitutional authority of Congress to declare war and maintain armed forces (U.S. Const. art. I, § 8, cls. 11–14), and of the President to conduct war as commander-in-chief (U.S. Const. art. II, § 2, cl. 1). [Cases: War and National Emergency ☞2.]

War Powers Clause. See WAR CLAUSE.

war-powers resolution. (1954) A resolution passed by Congress in 1973 (over the President's veto) restricting the President's authority to involve the United States in foreign hostilities without congressional approval, unless the United States or one of its territories is attacked. 50 USCA §§ 1541–1548. [Cases: War and National Emergency ☞37.]

warrandice (**wahr**-ən-dis *or* -dıs). *Scots law.* An obligation to indemnify the grantee or buyer of land if another person establishes a superior title and takes possession.

personal warrandice. An obligation to indemnify that binds the grantor and the grantor's heirs.

real warrandice. An obligation by which certain lands are made over as security for lands conveyed to the grantee and will be transferred to the grantee if he or she is evicted from the conveyed lands by a third party.

warrant, *n.* (14c) **1.** A writ directing or authorizing someone to do an act, esp. one directing a law enforcer to make an arrest, a search, or a seizure.

administrative warrant. (1951) A warrant issued by a judge at the request of an administrative agency. • This type of warrant is sought to conduct an administrative search. See *administrative search* under SEARCH. — Also termed *administrative search warrant*. [Cases: Searches and Seizures ☞129.]

anticipatory search warrant. See SEARCH WARRANT.

arrest warrant. (1894) A warrant, issued only on probable cause, directing a law-enforcement officer to arrest and bring a person to court. — Also termed *warrant of arrest*. [Cases: Criminal Law ☞215–220.]

bench warrant. (17c) A writ issued directly by a judge to a law-enforcement officer, esp. for the arrest of a person who has been held in contempt, has been indicted, has disobeyed a subpoena, or has failed to appear for a hearing or trial. • A bench warrant is often issued for the arrest of a child-support obligor who is found in contempt for not having paid the support obligation. [Cases: Criminal Law ☞263.]

blanket search warrant. See SEARCH WARRANT.

border warrant. A writ of arrest or other warrant concerning debts owed, issued on one side of a national border for execution on the other side; esp., such a warrant issued on either side of the border between England and Scotland.

commitment warrant. See *warrant of commitment*.

death warrant. (18c) A warrant authorizing a warden or other prison official to carry out a death sentence. • A death warrant typically sets the time and place for a prisoner's execution. [Cases: Sentencing and Punishment ☞1795.]

distress warrant. (18c) **1.** A warrant authorizing a court officer to distrain property. See DISTRESS. **2.** A writ allowing an officer to seize a tenant's goods for failing to pay rent due to the landlord. [Cases: Landlord and Tenant ☞270(6).]

escape warrant. (18c) **1.** A warrant directing a peace officer to rearrest an escaped prisoner. **2.** *Hist.* A warrant granted to retake a prisoner who had escaped from a royal prison after being committed there. • The warrant was obtained on affidavit from the judge of the court in which the action had been brought, and was directed to all sheriffs throughout England, commanding them to retake and commit the prisoner to the nearest jail.

extradition warrant. (1876) A warrant for the return of a fugitive from one jurisdiction to another. Cf. *rendition warrant.* [Cases: Extradition and Detainers ⇨ 12, 36.]

fugitive warrant. (1900) A warrant authorizing law-enforcement officers to take into custody a person who has fled from one state to another to avoid prosecution or punishment.

general warrant. (16c) **1.** *Hist.* A warrant issued by the English Secretary of State for the arrest of the author, printer, or publisher of a seditious libel, without naming the persons to be arrested. • General warrants were banned by Parliament in 1766.

> "A practice had obtained in the secretaries office ever since the restoration, grounded on some clauses in the acts for regulating the press, of issuing *general* warrants to take up (without naming any person in particular) the authors, printers and publishers of such obscene or seditious libels, as were particularly specified in the warrant. When those acts expired in 1694, the same practice was inadvertently continued, in every reign and under every administration, except the four last years of queen Anne, down to the year 1763: when such a warrant being issued to apprehend the authors, printers and publishers of a certain seditious libel, its validity was disputed; and the warrant was adjudged by the whole court of king's bench to be void, in the case of Money *v.* Leach. *Trin.* 5 *Geo. III. E.R.* After which the issuing of such general warrants was declared illegal by a vote of the house of commons." 4 William Blackstone, *Commentaries on the Laws of England* 288 n.i (1769).

2. A warrant giving a law-enforcement officer broad authority to search and seize unspecified places or persons; a search or arrest warrant that lacks a sufficiently particularized description of the person or thing to be seized or the place to be searched. • General warrants are unconstitutional because they fail to meet the Fourth Amendment's specificity requirements.

> "But though there are precedents of general warrants to search all suspected places for stolen goods, these are not at common law legal, because it would be extremely dangerous to leave it to the discretion of a common officer to arrest what person, or search what houses he thinks fit. And in the great case of Money v. Leach, it was declared by Lord Mansfield, that a warrant to search for, and secure the person and papers of the author, printer and publisher of a libel, is not only illegal in itself, but is so improper on the face of it, that it will afford no justification to an officer acting under its sanction. And by two resolutions of the House of Commons such general warrants were declared to be invalid." 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 66 (2d ed. 1826).

John Doe warrant. (1900) A warrant for the arrest of a person whose name is unknown. • A John Doe warrant may be issued, for example, for a person known by sight but not by name. This type of warrant is permitted in a few states, but not in federal practice.

justice's warrant. See *peace warrant.*

landlord's warrant. (1824) A type of distress warrant from a landlord to seize the tenant's goods, to sell them at public sale, and to compel the tenant to pay rent or observe some other lease stipulation. See DISTRAIN; DISTRESS.

no-knock search warrant. See SEARCH WARRANT.

outstanding warrant. (1899) An unexecuted arrest warrant.

peace warrant. (18c) A warrant issued by a justice of the peace for the arrest of a specified person. — Also termed *justice's warrant.*

possessory warrant. (1850) A process, similar to a search warrant, used under certain circumstances by a plaintiff to search for and recover property wrongfully taken or held by another.

preliminary warrant. (1859) A warrant to bring a person to court for a preliminary hearing on probable cause.

probation-violation warrant. See *violation warrant.*

rendition warrant. (1881) A warrant requesting the extradition of a fugitive from one jurisdiction to another. Cf. *extradition warrant.* [Cases: Extradition and Detainers ⇨ 16, 36.]

search warrant. See SEARCH WARRANT.

surreptitious-entry warrant. (1985) A warrant authorizing a law officer to enter and observe an ongoing criminal operation (such as an illegal drug lab).

tax warrant. (18c) An official process issued for collecting unpaid taxes and under which property may be seized and sold.

valid warrant. A warrant that is regular in form and is issued by a court, body, or official having both the authority to issue the warrant for the purpose stated and jurisdiction over the person named, all the requisite proceedings for its proper issuance having taken place. [Cases: Searches and Seizures ⇨ 101.]

violation warrant. A warrant issued for the arrest of a convict who has violated the terms of probation, parole, or supervised release. — Also termed (narrowly) *probation-violation warrant.* [Cases: Pardon and Parole ⇨ 81; Sentencing and Punishment ⇨ 2012.]

warrant of arrest. See *arrest warrant.*

warrant of commitment. A warrant committing a person to custody. — Also termed *commitment warrant.*

warrant upon indictment or information. (1903) An arrest warrant issued at the request of the prosecutor for a defendant named in an indictment or information. Fed. R. Crim. P. 9.

2. A document conferring authority, esp. to pay or receive money.

deposit warrant. A warehouse receipt used as security for a loan.

dock warrant. See DOCK RECEIPT.

interest warrant. **1.** An order by a corporation directing a bank to pay the interest due on a note, bond, or other debt to a corporate creditor. **2.** A document by which a creditor, usu. a company, asks an insurer to pay all the interest due on the insurer's notes, bonds, or other debts held by the creditor.

municipal warrant. An order to draw money from a municipality's treasury for the payment of the municipality's expenses or debts. [Cases: Municipal Corporations ☞895.]

tax-anticipation warrant. A warrant that is issued to raise public money and that is payable out of tax receipts when collected.

treasury warrant. An order in the form of a check on which government disbursements are paid. [Cases: United States ☞87.]

3. An order by which a drawer authorizes someone to pay a particular sum of money to another. [Cases: Bills and Notes ☞1.]

county warrant. A warrant drawn by a county official, directing the county treasurer to pay a sum of money out of county funds to bearer, to a named individual, or to the named individual's order. [Cases: Counties ☞163.]

4. *Securities.* An instrument granting the holder a long-term (usu. a five- to ten-year) option to buy shares at a fixed price. • It is commonly attached to preferred stocks or bonds. — Also termed *stock warrant*; *subscription warrant.* [Cases: Corporations ☞72.]

warrant, *vb.* (14) **1.** To guarantee the security of (realty or personalty, or a person) <the store warranted the safety of the customer's jewelry>. **2.** To give warranty of (title); to give warranty of title to (a person) <the seller warrants the property's title to the buyer>. [Cases: Covenants ☞45, 67.] **3.** To promise or guarantee <warrant payment>.

> "Even today lawyers use the verb 'to warrant' meaning to promise without necessarily indicating that the promise is a warranty." P.S. Atiyah, *An Introduction to the Law of Contract* 145 n.1 (3d ed. 1981).

4. To justify <the conduct warrants a presumption of negligence>. **5.** To authorize <the manager warranted the search of the premises>.

warrant arrest. See *lawful arrest* under ARREST.

Warrant Clause. (1962) The clause of the Fourth Amendment to the U.S. Constitution requiring that warrants be issued only on probable cause. [Cases: Arrest ☞63.1; Searches and Seizures ☞23, 24.]

warrant creditor. See CREDITOR.

warranted arrest. See ARREST.

warranted search. See SEARCH.

warrantee (wor-ən-**tee** *or* wahr-). A person to whom a warranty is given; esp., a person who receives a written warranty. • The term also sometimes applies to the beneficiary of an implied warranty.

warrantia chartae. See DE WARRANTIA CHARTAE.

warrantia custodiae (wə-**ran**-shee-ə kə-**stoh**-dee-ee), *n.* [Law Latin] *Hist.* A writ for a purchaser of land held in knight's service against the seller (and heirs), who had warranted that the land was free of wardship when a wardship was later claimed.

warrantia diei. See DE WARRANTIA DIEI.

warrantizare (wor-ən-tə-**zair**-ee), *vb.* [Law Latin] *Hist.* To warrant by covenant (in a deed of conveyance) to defend the grantee's title and possession. — Also spelled *warantizare.*

warrantless arrest. See ARREST.

warrantless search. See SEARCH.

warrant of arrest. See *arrest warrant* under WARRANT (1).

warrant of attorney. 1. POWER OF ATTORNEY (1). **2.** *Archaic.* Written authority given by a client to a lawyer to appear in court and to confess judgment in favor of a specified party. • It usu. instructed the attorney not to bring any action, seek a writ of error, or file a bill in equity that might delay the judgment. The warrant was typically given as security for an obligation on which judgment was authorized. Cf. CONFESSION OF JUDGMENT; COGNOVIT. [Cases: Federal Civil Procedure ☞2396; Judgment ☞43.]

> "A warrant of attorney was not required to be under seal, though it generally was so. In order to guard against any imposition in procuring debtors to execute warrants of attorney or *cognovits* in ignorance of the effect of such instruments, it is provided that a warrant of attorney to confess judgment in any personal action, or *cognovit actionem*, given by any person, shall not be of any force, unless there is present some attorney of one of the superior courts on behalf of such person, expressly named by him and attending at his request, to inform him of the nature and effect of such warrant or cognovit, before the same is executed . . . ." Joshua Williams, *Principles of the Law of Personal Property* 125 (11th ed. 1881).

warrant of commitment. See WARRANT (1).

warrant of confession. See CONFESSION OF JUDGMENT.

warrant officer. 1. OFFICER (2). **2.** SERGEANT-AT-ARMS (4).

warrantor (**wor**-ən-tor *or* -tər *or* **wahr**-). (15c) A person who gives a written warranty or becomes obligated under an implied warranty. See 15 USCA § 2301(5).

warrant recall, *n.* A procedure for removing from government computers information about canceled warrants in order to avoid repeated or mistaken arrests.

warrant to sue and defend. *Hist.* **1.** Written authority given by a client to a lawyer to authorize commencement or defense of a lawsuit. **2.** A special warrant from the Crown authorizing a party to appoint an attorney to sue or defend on the party's behalf.

warrant upon indictment or information. See WARRANT (1).

warranty (**wor**-ən-tee *or* **wahr**-), *n.* (14c) **1.** *Property.* A covenant by which the grantor in a deed promises to secure to the grantee the estate conveyed in the deed, and pledges to compensate the grantee if the grantee is evicted by someone having better title. • The covenant is binding on the grantor's heirs. Historically, a warrantor was expected to turn over land. But cash compensation could be substituted. See COVENANT (4). Cf. *quitclaim deed* under DEED. [Cases: Covenants ⇨45, 67.]

collateral warranty. (16c) A warranty that is made by a stranger to the title, and that consequently runs only to the covenantee and not with the land. [Cases: Covenants ⇨45, 67.]

general warranty. (17c) A warranty against the claims of all persons. [Cases: Covenants ⇨47, 67.]

lineal warranty. *Hist.* A warranty existing when an heir derives title to land from the warrantor; a warranty from the same ancestor as the one from whom the land derived.

special warranty. (17c) A warranty against any person's claim made by, through, or under the grantor or the grantor's heirs. [Cases: Covenants ⇨48, 67.]

2. *Contracts.* An express or implied promise that something in furtherance of the contract is guaranteed by one of the contracting parties; esp., a seller's promise that the thing being sold is as represented or promised. • Although a court may treat a misrepresentation as an implied warranty, in general a warranty differs from a representation in four principal ways: (1) a warranty is conclusively presumed to be material, while the burden is on the party claiming breach to show that a representation is material; (2) a warranty must be strictly complied with, while substantial truth is the only requirement for a representation; (3) a warranty is an essential part of a contract, while a representation is usu. only a collateral inducement; and (4) an express warranty is usu. written on the face of the contract, while a representation may be written or oral. Cf. CONDITION (2), (3); GUARANTEE (1). [Cases: Contracts ⇨205.5; Sales ⇨246–288.5.]

> "[T]wo points must be borne in mind. In the first place, the words 'condition' and 'warranty' are not invariably kept as distinct as accuracy of definition demands; and in insurance law especially 'warranty' is very commonly used in the sense ascribed to 'condition' . . . . In the second place, the injured party, if he chooses to waive his right to repudiate the contract on breach of a condition, may still bring an action for such damages as he has sustained." William R. Anson, *Principles of the Law of Contract* 223 (Arthur L. Corbin ed., 3d Am. ed. 1919).

> "The terms 'warranty' and 'condition' are generally used interchangeably, for all practical purposes, and they refer to representations or promises by the insureds, incorporated into the contract itself, on the truthfulness or fulfillment of which it is agreed that the rights of the insured shall depend. The primary differences between a mere representation and a warranty or condition are (1) while the insurer has the burden of proving the materiality of a misrepresentation before it will be grounds for avoidance, the materiality of a warranty or condition is conclusively presumed; and (2) while a representation will not be grounds for avoidance as long as it is substantially true, a warranty or condition must be strictly complied with in order to preclude avoidance. As with the majority view in representations, good or bad faith on the part of the insured is irrelevant." John F. Dobbyn, *Insurance Law in a Nutshell* 201 (3d ed. 1996).

as-is warranty. (1976) A warranty that goods are sold with all existing faults. See AS IS. [Cases: Sales ⇨267.]

construction warranty. (1968) A warranty from the seller or building contractor of a new home that the home is free of structural, electrical, plumbing, and other defects and is fit for its intended purpose. [Cases: Contracts ⇨205.35(2).]

deceptive warranty. (1975) A warranty containing false or fraudulent representations or promises. [Cases: Antitrust and Trade Regulation ⇨204.]

express warranty. (17c) A warranty created by the overt words or actions of the seller. • Under the UCC, an express warranty is created by any of the following: (1) an affirmation of fact or promise made by the seller to the buyer relating to the goods that becomes the basis of the bargain; (2) a description of the goods that becomes part of the basis of the bargain; or (3) a sample or model made part of the basis of the bargain. UCC § 2-313. [Cases: Contracts ⇨205.10; Sales ⇨259.]

> "An *express warranty* arises from the contract itself, from the 'dickered' aspects of the individual bargain. Any affirmation or promise relating to the goods, any description of the goods, and any sample or model of the goods becomes an express warranty if it is 'part of the basis of the bargain.'" 1 Julian B. McDonnell & Elizabeth J. Coleman, *Commercial and Consumer Warranties* ¶ 1.02[1], at 1-7 (1991).

extended warranty. (1936) An additional warranty often sold with the purchase of consumer goods (such as appliances and motor vehicles) to cover repair costs not otherwise covered by a manufacturer's standard warranty, by extending either the standard-warranty coverage period or the range of defects covered. — Also termed *extended service warranty*; *extended service contract*. [Cases: Sales ⇨279.]

full warranty. A warranty that fully covers labor and materials for repairs. • Under federal law, the warrantor must remedy the consumer product within a reasonable time and without charge after notice of a defect or malfunction. 15 USCA § 2304. See MAGNUSON–MOSS WARRANTY ACT. Cf. *limited warranty.* [Cases: Antitrust and Trade Regulation ⇨204.]

implied warranty. (18c) An obligation imposed by the law when there has been no representation or promise; esp., a warranty arising by operation of law because of the circumstances of a sale, rather than by the seller's express promise. [Cases: Contracts ⇨205.15; Sales ⇨262.5.]

implied warranty of fitness for a particular purpose. (1923) A warranty — implied by law if the seller has reason to know of the buyer's special purposes for the

item — that the item is suitable for those purposes. — Sometimes shortened to *warranty of fitness.* [Cases: Contracts ⚷205.15(3); Sales ⚷273(1).]

"Those unfamiliar with the differences between the warranty of merchantability (fitness for the *ordinary* purposes for which such goods are used) and the warranty of fitness for a *particular* purpose often confuse the two; one can find many opinions in which the judges used the terms 'merchantability' and 'fitness for a particular purpose' interchangeably. Such confusion under the Code is inexcusable." 1 James J. White & Robert S. Summers, *Uniform Commercial Code* § 9-10, at 527 (4th ed. 1995).

implied warranty of habitability. (1900) In a residential lease, a warranty from the landlord to the tenant that the leased property is fit to live in and that it will remain so during the term of the lease. — Also termed *covenant of habitability.* • This warranty usu. applies to residential property, but a few courts, esp. in Utah, have applied it to commercial property as well. [Cases: Landlord and Tenant ⚷125(1).]

implied warranty of merchantability. (1896) A merchant seller's warranty — implied by law — that the thing sold is fit for its ordinary purposes. • Under the UCC, an implied warranty of merchantability arises whenever a merchant sells goods unless the agreement expressly provides otherwise. UCC 2-314. — Sometimes shortened to *warranty of merchantability.* [Cases: Contracts ⚷205.15(3); Sales ⚷272.]

"The *implied warranty of merchantability* attaches when the seller is a merchant with respect to the goods involved in the exchange. Accordingly, the product must meet certain standards; it must pass without objection in the trade under the contract description and it must be fit for the ordinary purposes for which such goods are used. The concepts of marketability, operability, and repairability have emerged as varying criteria for merchantable goods." 1 Julian B. McDonnell & Elizabeth J. Coleman, *Commercial and Consumer Warranties* ¶ 1.02[1], at 1-7 (1991).

limited warranty. (1871) A warranty that does not fully cover labor and materials for repairs. • Under federal law, a limited warranty must be clearly labeled as such on the face of the warranty. See MAGNUSON-MOSS WARRANTY ACT. Cf. *full warranty.* [Cases: Sales ⚷279.]

personal warranty. (18c) A warranty arising from an obligation to pay all or part of the debt of another.

presentment warranty. (1965) An implied promise concerning the title and credibility of an instrument, made to a payor or acceptor upon presentment of the instrument for payment or acceptance. UCC §§ 3-417, 3-418. [Cases: Banks and Banking ⚷149, 174; Bills and Notes ⚷296, 326.]

transfer warranty. (1964) **1.** An implied promise concerning the title and credibility of an instrument, made by a transferor to a transferee and, if the transfer is by indorsement, to remote transferees. UCC §§ 3-417, 4-207. [Cases: Banks and Banking ⚷149, 174; Bills and Notes ⚷296, 326.] **2.** A warranty made by a transferee of a document of title upon a transfer of the document for value to the immediate transferee. UCC § 7-507. [Cases: Carriers ⚷58.]

warranty ab initio (ab i-**nish**-ee-oh). (12006) An independent subsidiary promise whose breach does not discharge the contract, but gives to the injured party a right of action for the damage sustained as a result of the breach. • *Ab initio* means that the warranty existed from the contract's inception. Cf. *warranty ex post facto.* [Cases: Contracts ⚷318; Sales ⚷282.]

warranty against infringement. A merchant's warranty that the goods being sold or licensed do not violate any patent, copyright, trademark, or other intellectual-property claim. • The warranty does not arise if the buyer provides the seller with the specifications for the goods purchased. Under § 2-312(3) of the Uniform Commercial Code, the warranty against infringement is a part of the warranty of title unless it is explicitly disclaimed.

warranty ex post facto (eks pohst **fak**-toh). (1961) A broken condition for which the injured party could void the contract, but decides instead to continue the contract, with a right of action for the broken condition (which amounts to a breached warranty). • The warranty is *ex post facto* because it was not originally part of the contract. It arises only after the injured party elects to continue the contract, thereby reducing the broken condition to a breached warranty. See CONDITION (2). Cf. *warranty ab initio.* [Cases: Contracts ⚷318; Sales ⚷282.]

warranty of actual title. See *warranty of title.*

warranty of assignment. (18c) An assignor's implied warranty that he or she (1) has the rights assigned, (2) will do nothing to interfere with those rights, and (3) knows of nothing that impairs the value of the assignment. [Cases: Assignments ⚷97.]

warranty of authorship. *Copyright.* An author's contractual warranty that the work is an original work by that author. [Cases: Copyrights and Intellectual Property ⚷49.]

warranty of fitness. See *implied warranty of fitness for a particular purpose.*

warranty of merchantability. See *implied warranty of merchantability.*

warranty of title. (18c) A warranty that the seller or assignor of property has title to that property, that the transfer is rightful, and that there are no liens or other encumbrances beyond those that the buyer or assignee is aware of at the time of contracting. • This warranty arises automatically whenever anyone sells goods. — Also termed *warranty of actual title.* [Cases: Covenants ⚷38–48, 62–67; Sales ⚷263.]

written warranty. (1807) A warranty made in writing; specif., any written affirmation or promise by a supplier of a consumer product to a buyer (for purposes other than resale), forming the basis of the bargain and providing that the material or workmanship is free of defects or will be repaired or replaced free of charge if the product fails to meet the required specifications. 15 USCA § 2301. [Cases: Sales ⚷260.]

Y2K warranty. See Y2K WARRANTY.

3. *Insurance.* A pledge or stipulation by the insured that the facts relating to the person insured, the thing insured, or the risk insured are as stated. [Cases: Insurance ⇨2967, 3036.]

affirmative warranty. A warranty — express or implied — that facts are as stated at the beginning of the policy period. • An affirmative warranty is usu. a condition precedent to the policy taking effect. [Cases: Insurance ⇨2967.]

executory warranty. A warranty that arises when an insured undertakes to perform some executory stipulation, such as a promise that certain acts will be done or that certain facts will continue to exist. [Cases: Insurance ⇨3036.]

promissory warranty. A warranty that facts will continue to be as stated throughout the policy period, such that a failure of the warranty provides the insurer with a defense to a claim under the policy. — Also termed *continuing warranty.* [Cases: Insurance ⇨3036.]

warranty clause. 1. A contractual clause containing a warranty. **2.** *Oil & gas.* A provision in an oil-and-gas lease by which the lessor guarantees that title is without defect and agrees to defend it. • If the warranty is breached, the lessor may be held liable to the lessee to the extent that the lessor has received payments under the lease. Presence of a warranty in an oil-and-gas lease may also cause after-acquired interests to pass from the lessor to the lessee by application of estoppel by deed. [Cases: Estoppel ⇨23; Mines and Minerals ⇨73.1(5).]

warranty deed. See DEED.

warren (**wor**-ən *or* **wahr**-ən). **1.** A place for the preservation of certain wildlife (such as pheasants, partridges, or rabbits). **2.** A privilege to keep wildlife or game in a warren. **3.** The area to which the privilege extends.

free warren. A warren privilege giving the grantee the sole right to kill the wildlife to the extent of the grantee's warren area. — Also termed *libera warrena.*

> "*Free warren* is a . . . franchise, erected for preservation or custody . . . of beasts and fowls of warren; which being *ferae naturae*, every one had a right to kill as he could; but upon the introduction of the forest laws . . . these animals being looked upon as royal game and the sole property of our savage monarchs, this franchise of free warren was invented to protect them; by giving the grantee a sole and exclusive power of killing such game . . . on condition of his preventing other persons. A man therefore that has the franchise of warren is in reality no more than a royal gamekeeper; but no man, not even a lord of a manor, could by common law justify sporting on another's soil, or even on his own, unless he had the liberty of free warren." 2 William Blackstone, *Commentaries on the Laws of England* 38-39 (1766).

war-risk insurance. See INSURANCE.

Warsaw Convention. *Int'l law.* A treaty (to which the United States is a party) negotiated in Warsaw, Poland, in 1929, consisting of uniform rules governing claims made for personal injuries arising out of international air travel. Cf. MONTREAL AGREEMENT. [Cases: Carriers ⇨307; Treaties ⇨8.]

> "Under the [Warsaw] Convention . . . air carriers are absolutely liable up to a preset monetary ceiling for any accident in which a passenger suffers bodily injury or death, as long as the accident took place on board the aircraft or in the process of any of the operations of embarking or disembarking. The Convention limits the liability of the carrier for each passenger to the sum of 125,000 francs, unless the carrier and passenger by special contract agree to a higher limit of liability, or unless it can be established that the carrier has been guilty of 'willful misconduct.' The Convention contains a two-year time limitation for bringing suit, and also absolves the carrier from liability upon a showing of due care on its part." 8A Am. Jur. 2d *Aviation* § 149, at 160-61 (1997).

warship. *Int'l law.* A ship commissioned by a nation's military, operating with a military command and crew and displaying the nation's flag or other external marks indicating its country of origin. • Under international maritime laws, warships are not subject to many of the safety and environmental regulations that apply to shipping vessels and passenger ships.

warth. See WARDPENNY.

warwit. See WARDWIT.

war zone. *Int'l law.* A designated area, on land or at sea, within which the rights of neutral countries are not respected by belligerent countries. [Cases: War and National Emergency ⇨32.]

wash, *n.* **1.** A situation in which two effects offset each other. • For example, if an event produces gross income and also a deduction in the same amount so that taxable income is unchanged, the event creates a wash. **2.** The shallow part of a river or the arm of a sea; the sand, rocks, and gravel washed down by a mountain stream and deposited on level land near the mouth of a canyon.

wash sale. See SALE.

wash transaction. See *wash sale* under SALE.

waste, *n.* (15c) **1.** Permanent harm to real property committed by a tenant (for life or for years) to the prejudice of the heir, the reversioner, or the remainderman. • In the law of mortgages, any of the following acts by the mortgagor may constitute waste: (1) physical damage, whether intentional or negligent, (2) failure to maintain and repair, except for repair of casualty damage or damage caused by third-party acts, (3) failure to pay property taxes or governmental assessments secured by a lien having priority over the mortgage, so that the payments become delinquent, (4) the material failure to comply with mortgage covenants concerning physical care, maintenance, construction, demolition, or casualty insurance, or (5) keeping the rents to which the mortgagee has the right of possession. — Also termed *devastation*; *vastum.* [Cases: Waste ⇨1.]

> "The old action of waste was a mixed action, being founded in part on the statute of Gloucester (A.D. 1278), which provided that 'he which shall be attainted of waste shall lose the thing wasted, and moreover shall recompense thrice as much as the waste shall be taxed at.' The action was to recover the land in which waste had been done and the treble damages. The statute of Gloucester was

imported into this country, but many variant statutes now regulate the subject." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 13 (2d ed. 1899).

active waste. See *commissive waste.*

affirmative waste. See *commissive waste.*

ameliorating waste (ə-**meel**-yə-ray-ting). (1927) A lessee's unauthorized change to the physical character of a lessor's property — technically constituting waste, but in fact resulting in improvement of the property. • Generally, equity will not enjoin such waste. — Also termed *ameliorative waste.*

commissive waste (kə-**mis**-iv). (1868) Waste caused by the affirmative acts of the tenant. — Also termed *active waste*; *affirmative waste*; *voluntary waste.* [Cases: Landlord and Tenant ☞55(2).]

double waste. *Hist.* The destruction occurring when a tenant having a duty to repair allows a house to deteriorate, and then unlawfully cuts down timber to repair it.

economic waste. See ECONOMIC WASTE.

equitable waste. (1842) Waste that abuses a privilege of nonimpeachability at common law, for which equity will restrain the commission of willful, destructive, malicious, or extravagant waste; esp., waste caused by a life tenant who, although ordinarily not responsible for permissive waste, flagrantly damages or destroys the property. [Cases: Waste ☞4.]

"A life tenant with the benefit of an express exemption from liability for voluntary waste will nevertheless be restrained in equity from committing acts of flagrant destruction to the premises; hence the (seemingly paradoxical) term, 'equitable waste'. A life tenant who has engaged in, or who threatens to engage in, reprehensible acts of voluntary waste will not be permitted unconscientiously to shield behind his legal right to commit waste to the detriment of those next entitled to enjoyment of the property, for this would be to abuse the legal right." Peter Butt, *Land Law* 114-15 (2d ed. 1988).

permissive waste. (17c) A tenant's failure to make normal repairs to property so as to protect it from substantial deterioration. [Cases: Waste ☞3.]

voluntary waste. (16c) Waste resulting from some positive act of destruction. See *commissive waste.* [Cases: Waste ☞1.]

"*Voluntary waste.* This involves some positive act of injury to the property, diminishing its value for the person next in succession; it is a deliberate and active change to the property. Examples are altering the character of premises by demolishing internal walls and fittings or opening and working a mine on the land (but not working a mine already opened, for the pre-existence of the mine shows an intention on the part of the grantor that the profits from the mine are to be enjoyed by the life tenant). A life tenant is liable for voluntary waste, unless the instrument conferring the interest expressly exempts liability for voluntary waste." Peter Butt, *Land Law* 114 (2d ed. 1988).

2. Refuse or superfluous material, esp. that remaining after a manufacturing or chemical process <toxic waste>.

hazardous waste. (1974) Waste that — because of its quantity, concentration, or physical, chemical, or infectious characteristics — may cause or significantly contribute to an increase in mortality or otherwise harm human health or the environment. 42 USCA § 6903(5). — Also termed *hazardous substance.* [Cases: Environmental Law ☞427.]

toxic waste. (1964) Hazardous, poisonous substances, such as dichlorodiphenyltrichloroethane (DDT). • Most states regulate the handling and disposing of toxic waste, and several federal statutes (such as the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), 42 USCA §§ 9601–9657) regulate the use, transportation, and disposal of toxic waste. [Cases: Environmental Law ☞427.]

waste book. A merchant's book for making rough entries of transactions before posting them into a journal. — Also termed *blotter.*

wasted vote. See VOTE (1).

wastewater. See WATER.

wasting asset. See ASSET.

wasting property. See PROPERTY.

wasting trust. See TRUST.

wastor, *n. Hist.* A type of thief, classified in a statute of Edward III with marauding vagabonds and burglars who entered premises by lifting door latches. 5 Edw. 3, ch. 14.

watch, *n. Maritime law.* **1.** A division of a ship's crew <port or starboard watch>. [Cases: Collision ☞77, 81, 99.] **2.** The division of the day into time periods of service by officers and the crew <four-hour watch>.

watch, *vb. Hist.* To stand guard during the night.

watch and ward, *n. Hist.* A feudal duty that some tenants had to keep guard through continuous vigilance. • The phrase denotes keeping guard by night (*watch*) and by day (*ward*). — Also termed *watching and warding.*

water. 1. The transparent liquid that is a chemical compound of hydrogen and oxygen (H_2O). **2.** A body of this liquid, as in a stream, river, lake, or ocean.

backwater. Water in a stream that, because of a dam or obstruction, cannot flow forward and sometimes flows back. [Cases: Waters and Water Courses ☞53, 159–175.]

coast water. Tidewater navigable by an ocean vessel; all water opening directly or indirectly into the ocean and navigable by a vessel coming in from the ocean. — Also termed *coastal water.*

developed water. Water brought to the surface and made available for use by the party claiming the water rights.

diffused surface water. Water, such as rainfall runoff, that collects and flows on the ground but does not form a watercourse. • Surface water is usu. subject to different regulations from water flowing in a watercourse. — Often shortened to *surface water.* See COMMON-ENEMY DOCTRINE; WATERCOURSE. [Cases: Waters and Water Courses ☞115.]

excess water. Water that is flowing in a stream in addition to what may be termed adjudicated waters; any water not needed for the reasonable beneficial uses of those having priority rights. — Also termed *surplus water.*

floodwater. Water that escapes from a watercourse in large volumes and flows over adjoining property in no regular channel.

foreign water. Water belonging to another nation or subject to another jurisdiction.

groundwater. Water found in layers of permeable rock or soil.

inland waters. See INTERNAL WATERS.

internal waters. See INTERNAL WATERS.

navigable water. See NAVIGABLE WATER.

navigable water of the United States. See NAVIGABLE WATER.

percolating water. Water that oozes or seeps through the soil without a defined channel (such as rainwater or other water that has lost its status as part of a stream). • Percolating water usu. constitutes part of the land on which it is found. [Cases: Waters and Water Courses ☞101.]

posted water. (*usu. pl.*) A body of water that is reserved for the exclusive use of the person who owns the land surrounding it. • The owner secures the exclusive use by posting a notice prohibiting others from using the water.

private water. Nonnavigable water owned and controlled by one or more individuals and not subject to public use. • If a body of water is small and of little or no practical value for general public use, it is considered private.

public water. Water adapted for purposes of navigation or public access.

subterranean water. Water that lies or flows beneath the earth's surface and that is not artificially confined. [Cases: Waters and Water Courses ☞99.]

surface water. **1.** Water lying on the surface of the earth but not forming part of a watercourse or lake. • Surface water most commonly derives from rain, springs, or melting snow. [Cases: Waters and Water Courses ☞115.] **2.** See *diffused surface water.*

surplus water. **1.** Water running off irrigated ground; water not consumed by the irrigation process. **2.** See *excess water.*

territorial waters. The waters under a state's or nation's jurisdiction, including both inland waters and surrounding sea (traditionally within three miles of the coastline). — Also termed *territorial sea; marine belt; maritime belt.*

tidewater. See TIDEWATER.

wastewater. **1.** Water that escapes from the canals, ditches, or other receptacles of the lawful claimant; water that is not used by the appropriator and is permitted to run off the appropriator's property. **2.** Water that is left over, esp. after a chemical or manufacturing process.

water bayley (**bay**-lee). *Hist.* An officer (mentioned in the colony laws of New Plymouth in A.D. 1671) who primarily collects dues for fish taken out of the colony's waters.

waterboarding. A form of torture in which water is poured over the face of a supine, immobilized victim whose head is pulled back so that the victim cannot avoid inhaling water, and thus experiences the sensation of drowning. • In some variations, fabric or plastic may be draped over the victim's face or the victim may be gagged before the water is poured. See TORTURE.

watercourse. (16c) A body of water, usu. of natural origin, flowing in a reasonably definite channel with bed and banks. • The term includes not just rivers and creeks, but also springs, lakes, and marshes in which such flowing streams originate or through which they flow. — Also termed *waterway.* [Cases: Waters and Water Courses ☞38.]

> "Once water joins a watercourse it becomes subject to state control; in appropriation states it becomes available for appropriation to private uses according to state law . . . . [A] watercourse could be defined to include not only rivers and lakes, but every tiny brook flowing into them, all the gullies through which water flows to the brooks, the snowpack and rainfall that feed them, and the evaporating or transpiring water in the process of forming clouds. But we need not require scientists to trace water to such remote sources because it would be beyond the ability of governments to regulate these sources. Legal definitions are intended to define a point beyond which a state does not regulate water use. Usually that point is when water is not in a 'natural stream'." David H. Getches, *Water Law in a Nutshell* 106-107 (3d ed. 1997).

ancient watercourse. A watercourse in a channel that has existed from time immemorial.

artificial watercourse. A man-made watercourse, usu. to be used only temporarily. • If the watercourse is of a permanent character and has been maintained for a sufficient length of time, it may be considered a natural watercourse to which riparian rights can attach. [Cases: Waters and Water Courses ☞168.]

> "An artificial waterway or stream may, under some circumstances, have the characteristics and incidents of a natural watercourse. In determining the question, three things seem generally to be taken into consideration by the courts: (1) whether the way or stream is temporary or permanent; (2) the circumstances under which it was created; and (3) the mode in which it has been used and enjoyed." 78 Am. Jur. 2d *Waters* § 196, at 644 (1975).

natural watercourse. A watercourse with its origin in the forces of nature. • A *natural watercourse* does not include surface water, which often flows intermittently and in an indefinite channel. In addition, a natural stream is distinguished from an artificial ditch or canal, which is typically not the subject of riparian rights. See RIPARIAN RIGHTS; WATER. [Cases: Waters and Water Courses ☞38.]

water district. See DISTRICT.

watered stock. See STOCK.

waterfront, *n.* Land or land with buildings fronting a body of water.

watergage, *n.* **1.** A seawall. **2.** An instrument used to measure the height of water.

watergavel, *n. Hist.* A fee paid for a benefit (such as fishing) obtained from a body of water.

watermark. 1. A mark indicating the highest or lowest point to which water rises or falls.

high-water mark. **1.** The shoreline of a sea reached by the water at high tide. • The high-water mark is usu. computed as a mean or average high tide and not as the extreme height of the water. **2.** In a freshwater lake created by a dam in an unnavigable stream, the highest point on the shore to which the dam can raise the water in ordinary circumstances. **3.** In a river not subject to tides, the line that the river impresses on the soil by covering it long enough to deprive it of agricultural value. — Also termed *high-water line.*

low-water mark. **1.** The shoreline of a sea marking the edge of the water at the lowest point of the ordinary ebb tide. **2.** In a river, the point to which the water recedes at its lowest stage.

2. The transparent design or symbol seen when paper is held up to the light, usu. to indicate the genuineness of the document or the document's manufacturer.

water ordeal. See *ordeal by water* under ORDEAL.

waterpower. 1. The force obtained by converting water into energy. **2.** The riparian owner's right consisting of the fall in the stream as it passes over or through the riparian owner's land; the difference of the level between the surface where the stream first touches one's land and the surface where the water leaves the land. [Cases: Waters and Water Courses ☞42.]

water right. (*often pl.*) (18c) The right to use water from a natural stream or from an artificial canal for irrigation, power, domestic use, and the like; RIPARIAN RIGHT. — Also termed *aquatic right.* [Cases: Navigable Waters ☞39; Waters and Water Courses ☞40–47, 141, 168.]

waterscape, *n.* (1842) An aqueduct or passage for water.

waterway. See WATERCOURSE.

waveson (**wayv**-sən), *n. Hist.* Goods that float on the sea after a shipwreck. Cf. FLOTSAM; JETSAM; LAGAN (1).

wax scot (wak **skot**), *n. Hist.* A duty on wax candles used in churches, usu. paid twice a year. — Also termed *cerage* (**seer**-ij); *ceratium* (si-**ray**-shee-əm).

way. (bef. 12c) **1.** A passage or path. **2.** A right to travel over another's property. See RIGHT-OF-WAY. [Cases: Easements ☞1.]

private way. (17c) **1.** The right to pass over another's land. [Cases: Easements ☞1.] **2.** A way provided by local authorities primarily to accommodate particular individuals (usu. at the individual's expense) but also for the public's passage. [Cases: Private Roads ☞1.]

way of necessity. See *implied easement* under EASEMENT.

waybill. *Maritime law.* A document acknowledging the receipt of goods by a carrier or by the shipper's agent and the contract for the transportation of those goods. • Unlike a bill of lading, a waybill is not a document of title and is nonnegotiable. — Abbr. WB. Cf. BILL OF LADING. [Cases: Shipping ☞106(1).]

air waybill. A waybill for goods shipped by air. Cf. *overseas bill of lading* under BILL OF LADING. [Cases: Carriers ☞51, 153.]

way-going crop. A grain crop, formerly sown by a tenant during a tenancy (esp. in Pennsylvania), that did not ripen until after expiration of the lease. • In the absence of an express agreement to the contrary, the tenant was entitled to the crop. [Cases: Landlord and Tenant ☞139(2).]

way-leave, *n.* (15c) **1.** A right-of-way (usu. created by an express grant) over or through land for the transportation of minerals from a mine or quarry. **2.** The royalty paid for such a right.

waynagium (way-**nay**-jee-əm). See WAINAGE.

way of necessity. See *implied easement* under EASEMENT.

ways-and-means committee. (1840) A legislative committee that determines how money will be raised for various governmental purposes. [Cases: United States ☞23.]

WB. *abbr.* WAYBILL.

WC. *abbr.* WORKERS' COMPENSATION.

WCT. *abbr.* WIPO COPYRIGHT TREATY.

W.D. *abbr.* Western District, in reference to U.S. judicial districts.

weak mark. See *descriptive trademark* under TRADEMARK.

weak trademark. See *descriptive trademark* under TRADEMARK.

wealreaf (**weel**-reef), *n. Archaic.* The robbery of a dead person in a grave.

wealth. 1. A large quantity of something. **2.** The state of having abundant financial resources; affluence.

wealth maximization. A situation resulting from a change in the allocation of resources if the change benefits the winner — i.e., the one who benefits from the change — more than it harms the loser. • A situation in which all possible wealth-maximizing changes have occurred is described as *Kaldor-Hicks efficient* or as being *potentially Pareto superior.* See PARETO OPTIMALITY; PARETO SUPERIORITY.

weapon. (bef. 12c) An instrument used or designed to be used to injure or kill someone. [Cases: Weapons ☞4, 8.]

concealed weapon. (1833) A weapon that is carried by a person but that is not visible by ordinary observation. [Cases: Weapons ☞10.]

dangerous weapon. (17c) An object or device that, because of the way it is used, is capable of causing serious bodily injury. [Cases: Weapons ⇨8.]

deadly weapon. (16c) Any firearm or other device, instrument, material, or substance that, from the manner in which it is used or is intended to be used, is calculated or likely to produce death. • In some states, the definition encompasses the likelihood of causing either death or serious physical injury. — Also termed *lethal weapon*. Cf. DANGEROUS INSTRUMENTALITY. [Cases: Assault and Battery ⇨56.]

deadly weapon per se. (1872) A weapon that is deadly in and of itself or would ordinarily result in death by its use <a gun is a deadly weapon per se>. — Also termed *per se deadly weapon*. [Cases: Assault and Battery ⇨56.]

lethal weapon. See *deadly weapon*.

nondeadly weapon. See LESS-LETHAL.

nonlethal weapon. See LESS-LETHAL.

weapon of mass destruction. (*usu. pl.*) A weapon that is intended to kill human beings, without discriminating between combatants and noncombatants, on a massive scale. • Among the most frequently cited examples are nuclear weapons and chemical weapons. — Abbr. WMD.

wear, *n.* [fr. Saxon *were* "a taking"] *Hist.* A dam made of stakes interlaced by twigs of willows that are placed across a river to more easily accommodate the netting of fish. — Also termed *weir*.

wear and tear. (17c) Deterioration caused by ordinary use; the depreciation of property resulting from its reasonable use <the tenant is not liable for normal wear and tear to the leased premises>. — Also termed *fair wear and tear*; *natural wear and tear*. [Cases: Landlord and Tenant ⇨55, 160.]

> "'Fair wear' is the deterioration caused by the reasonable use of the premises; 'fair tear' is the deterioration caused by the ordinary operation of natural forces. A tenant's repairing covenant commonly exempts the tenant from the obligation to repair damage characterisable as 'fair wear and tear' (sometimes called 'reasonable wear and tear'). In the absence of such an exempting provision, a covenant to repair requires the repairing of damage characterisable as fair wear and tear. Where a covenant to repair exempts the tenant from liability for 'fair wear and tear', he is not responsible for deterioration or dilapidation caused by 'the reasonable use of the house by the tenant and the ordinary operation of natural forces.'" Peter Butt, *Land Law* 256 (2d ed. 1988).

Webb–Pomerene Act. A federal law, originally enacted in 1918, that provides a qualified exemption for an export business against the prohibitions of the antitrust laws. 15 USCA §§ 61 et seq.

> "The Webb-Pomerene Act was passed to aid and encourage our manufacturers and producers to extend our foreign trade. Congress believed that American firms needed the power to form joint export associations in order to compete with foreign cartels, but while Congress was willing to create an exemption from the antitrust laws to serve this narrow purpose, the exemption created by the Webb-Pomerene Act was carefully hedged in to avoid substantial injury to domestic interests. Organization under the Webb-Pomerene Act does not give an export association the right to agree with foreign competitors to fix prices . . . or establish exclusive markets . . . ." 54 Am. Jur. 2d *Monopolies and Restraints of Trade* § 262, at 298 (1996).

website-user agreement. See POINT-AND-CLICK AGREEMENT.

web-wrap agreement. See POINT-AND-CLICK AGREEMENT.

wedding. See MARRIAGE CEREMONY.

wedge principle. (1951) The argument that relaxation of a constitutionally imposed restraint under specific circumstances may justify further relaxation in broader circumstances. • This principle is most often raised in the context of legalized human euthanasia. But it has frequently been invoked in other contexts, such as the right to protection from unreasonable search and seizure. — Also termed *slippery-sloped principle*; *parade-of-horrors objection*.

> "[T]here is the familiar argument from the 'wedge principle,' which is used to deny the possibility of looking at particular circumstances in applying moral rules." Glanville Williams, *The Sanctity of Life and the Criminal Law* 315 (1957).

wedlock. The state of being married; matrimony.

week. 1. A period of seven consecutive days beginning on either Sunday or Monday. 2. Any consecutive seven-day period. [Cases: Time ⇨6.]

weekend sentence. See *intermittent sentence* under SENTENCE.

week-work. *Hist.* In feudal times, the obligation of a tenant to work two to four days in every week for his lord during the greater part of the year, and four or five during the summer months. See VILLEIN SERVICE.

wehading. See TRIAL BY COMBAT.

weighage (way-ij). A duty or other payment required in return for weighing merchandise.

weight. A measure of heaviness; a measure of the quantity of matter. [Cases: Weights and Measures ⇨3.]

gross weight. The total weight of a thing, including its contents and any packaging.

net weight. The total weight of a thing, after deducting its container, its wrapping, and any other extraneous matter.— Also termed *neat weight*.

weighted vote. See VOTE (1).

weight of the evidence. (17c) The persuasiveness of some evidence in comparison with other evidence <because the verdict is against the great weight of the evidence, a new trial should be granted>. See BURDEN OF PERSUASION. Cf. MANIFEST WEIGHT OF THE EVIDENCE; PREPONDERANCE OF THE EVIDENCE. [Cases: Criminal Law ⇨549; Evidence ⇨584.]

***Weingarten* right.** *Labor law.* A union member's right to have a union representative present during an employment meeting that the member reasonably believes will result in disciplinary action. *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251, 95 S.Ct. 959 (1975). •

In July 2000, the NLRB extended *Weingarten* rights to nonunion employees. [Cases: Labor and Employment ⇨1469(1).]

weir. See WEAR.

welching. See WELSHING.

welfare. (14c) **1.** Well-being in any respect; prosperity.

general welfare. (17c) The public's health, peace, morals, and safety.

public welfare. (16c) A society's well-being in matters of health, safety, order, morality, economics, and politics.

2. A system of social insurance providing assistance to those who are financially in need, as by providing food stamps and family allowances. — Also termed (historically) *poor relief.* [Cases: Agriculture ⇨2.6; Social Security and Public Welfare ⇨4.]

corporate welfare. Governmental financial assistance given to a large company, usu. in the form of a subsidy.

Welfare Clause. See GENERAL WELFARE CLAUSE.

welfare plan. See EMPLOYEE BENEFIT PLAN.

welfare state. (1894) A nation in which the government undertakes various social insurance programs, such as unemployment compensation, old-age pensions, family allowances, food stamps, and aid to the blind or deaf. — Also termed *welfare-regulatory state.*

well, *adj. Marine insurance.* (Of a vessel) in good condition; safe and sound <the vessel was warranted well on January 1>.

well, *adv.* (bef. 12c) In a legally sufficient manner; unobjectionable <well-pleaded complaint>.

well, *n.* A hole or shaft sunk into the earth to obtain a fluid, such as water, oil, or natural gas.

limited-capacity well. An oil or gas well that is limited to producing only a portion of its monthly allowable because of market demand.

stripper well. An oil or gas well that produces only small quantities. • In some states, such as Kansas and Illinois, stripper wells are common.

well-completion clause. *Oil & gas.* A provision in an oil-and-gas lease specifying that a lessee who starts drilling before the lease terminates has the right to complete the well and to maintain the lease if the drilling achieves production. See OPERATIONS CLAUSE. [Cases: Mines and Minerals ⇨78.1(9).]

well-knowing, *adj.* (17c) Intentional <a well-knowing act or omission>. • This term was formerly used in a pleading to allege scienter. See SCIENTER.

well-pleaded complaint. See COMPLAINT.

welshing. (1857) **1.** The act or an instance of evading an obligation, esp. a gambling debt. **2.** The common-law act of larceny in which one receives a deposit to be paid back with additional money depending on the outcome of an event (such as a horse race) but at the time of the deposit the depositee intends to cheat and defraud the depositor by absconding with the money. • Although this term is sometimes thought to be a slur against those hailing from Wales, etymologists have not been able to establish this connection. Authoritative dictionaries record the origin of the term as being unknown. — Also termed *welching.* — **welsh,** *vb.* — **welsher,** *n.*

Welsh mortgage. See MORTGAGE.

wend, *n. Hist.* A large section of land; a perambulation; a circuit.

wer. See BLOOD MONEY (1).

wergild (wər-gild). *Hist.* The fixed value of a person's life, being the amount that a homicide's kindred must pay to the kindred of the slain person so as to avoid a blood feud. — Also spelled *wergeld; weregild; wehrgeld.* See EFFUSIO SANGUINIS; LEODES.

West Australian plan. See *instant-runoff voting* under VOTING.

Westlaw. A West Group database for computer-assisted legal research, providing online access to legal resources, including federal and state caselaw, statutes, regulations, legal treatises, legal periodicals, and general and business news. — Abbr. WL.

Westminster Confession of Faith (west-min-stər). *Hist.* A document containing a statement of the religious doctrines of the Presbyterian Church, originating at a conference of British and continental Protestant divines at Westminster in 1643. • It was adopted by the General Assembly of the Kirk of Scotland and the Scottish Parliament, so becoming the basis of the Scottish Presbyterian Church. — Sometimes shortened to *Westminster Confession.*

Westminster the First, Statute of. *Hist.* An English statute divided into 51 chapters (later correlating to separate acts of Parliament), including provisions (1) protecting the property of the church from the violence and spoliation of the Crown and nobles; (2) providing for the freedom of popular elections; (3) enforcing the rules contained in Magna Carta against excessive fines; (4) enumerating and correcting the abuses of tenures (esp. concerning marriages of wards); (5) regulating the levying of tolls; (6) correcting and restraining the powers of the royal escheator and other officers; (7) amending the criminal law (esp. by classifying rape as a most grievous, though not capital, offense); and (8) making criminal and civil procedures more expeditious and less costly. 3 Edw. (1275).

West Point. See UNITED STATES MILITARY ACADEMY.

West-Saxon law. *Hist.* A system of rules introduced by the West Saxons and one of the three principal legal systems prevailing in England in the beginning of the 11th century. • It was observed primarily in southern English counties from Kent to Devonshire. — Also termed *West-Saxon lage.* See MERCENLAGE; DANELAW.

Wetterling Act. See JACOB WETTERLING CRIMES AGAINST CHILDREN AND SEXUALLY VIOLENT OFFENDER REGISTRATION ACT.

wharf. A structure on the shores of navigable waters, to which a vessel can be brought for loading or unloading. [Cases: Wharves ⇨4.]

private wharf. One that can be used only by its owner or lessee. [Cases: Wharves ⇨4.]

public wharf. One that can be used by the public. [Cases: Wharves ⇨4.]

wharfage (**worf**-ij), *n. Hist.* **1.** The fee paid for landing, loading, or unloading goods on a wharf. [Cases: Wharves ⇨15.] **2.** The accommodation for loading or unloading goods on a wharf.

wharfinger (**wor**-fin-jər), *n. Hist.* The owner or occupier of a wharf; one who keeps a wharf to receive merchandise for forwarding or delivery to a consignee. [Cases: Wharves ⇨20(1).]

wharfing out, right of. See RIGHT OF WHARFING OUT.

Wharton's rule ([**h**]**wor**-tən). (1940) *Criminal law.* The doctrine that an agreement by two or more persons to commit a particular crime cannot be prosecuted as a conspiracy if the crime could not be committed except by the actual number of participants involved. • But if an additional person participates so as to enlarge the scope of the agreement, all the actors may be charged with conspiracy. The doctrine takes its name from the influential criminal-law author Francis Wharton (1820–1889). — Also termed *Wharton rule; concert-of-action rule.* [Cases: Conspiracy ⇨28(1).]

> "Wharton's Rule applies only to offenses that *require* concerted criminal activity, a plurality of criminal agents. In such cases, a closer relationship exists between the conspiracy and the substantive offense because *both* require collective criminal activity. The substantive offense therefore presents some of the same threats that the law of conspiracy normally is thought to guard against, and it cannot automatically be assumed that the Legislature intended the conspiracy and the substantive offense to remain as discrete crimes upon consummation of the latter. Thus, absent legislative intent to the contrary, the Rule supports a presumption that the two merge when the substantive offense is proved. . . . More important, as the Rule is essentially an aid to the determination of legislative intent, it must defer to a discernible legislative judgment." *Iannelli v. United States*, 420 U.S. 770, 785–86, 95 S.Ct. 1284, 1293–94 (1975).

WHD. *abbr.* WAGE AND HOUR DIVISION.

wheel. *Hist.* **1.** An instrument of torture used in medieval Europe, consisting of a wheel or cross on which a criminal was bound with arms and legs extended, while the criminal's bones were broken one by one with an iron bar, usu. until death. **2.** The torture itself.

wheelage ([**h**]**weel**-ij), *n. Hist.* A duty or toll for a vehicle to pass over certain property.

wheel conspiracy. See CONSPIRACY.

when-issued security. See SECURITY.

whereabouts, *n.* (17c) The general locale where a person or thing is <her whereabouts are unknown> <the Joneses' present whereabouts is a closely guarded secret>. • As the examples illustrate, this noun, though plural in form, may be construed with either a plural or a singular verb. — **whereabouts,** *adv.* & *conj.*

whereas, *conj.* (14c) **1.** While by contrast; although <McWilliams was stopped at 10:08 p.m. wearing a green hat, whereas the assailant had been identified at 10:04 p.m. wearing a black hat>. **2.** Given the fact that; since <Whereas, the parties have found that their 1994 agreement did not adequately address incidental expenses . . . ; and Whereas, the parties have now decided in an equitable sharing of those expenses . . . ; Now, Therefore, the parties agree to amend the 1994 agreement as follows . . . >. • In sense 2, *whereas* is used to introduce contractual recitals and the like, but modern drafters increasingly prefer a simple heading, such as "Recitals" or "Preamble," and in that way avoid the legalistic *whereas*es. — **whereas** (recital or preamble), *n.*

whereas clause. 1. See PREAMBLE (1). **2.** See RECITAL (2).

whereat, *conj.* (14c) **1.** At or toward which <the point whereat he was aiming>. **2.** As a result of which; whereupon <Pettrucione called Bickley a scurrilous name, whereat a fistfight broke out>.

whereby, *conj.* (13c) By which; through which; in accordance with which <the treaty whereby the warring nations finally achieved peace>.

wherefore, premises considered. (1867) For all these reasons; for the reason or reasons mentioned above. • The phrase is often used to begin the final paragraph of a motion, judgment, contract, or agreement.

wherefrom, *conj.* (14c) From which <the students sent two faxes to the president's office, wherefrom no reply ever came>.

wherein, *conj.* (14c) **1.** In which; where <the jurisdiction wherein Lynn practices>. **2.** During which <they listened intently at the concert, wherein both of them became convinced that the composer's "new" work was a fraud>. **3.** How; in what respect <Fallon demanded to know wherein she had breached any duty>. — **wherein,** *adv.*

whereof, *conj.* (13c) **1.** Of what <Judge Wald knows whereof she speaks>. **2.** Of which <citations whereof even the most responsible are far afield from the true issue>. **3.** Of whom <judges whereof only the most glowing words might be said>.

whereon, *conj.* (13c) On which <the foundation whereon counsel bases this argument>. — Also termed *whereupon.*

whereto, *conj.* (14c) To what place or time <at first, Campbell did not know whereto he was being taken>. — Also termed *whereunto.* — **whereto,** *adv.*

whereupon, *conj.* (14c) **1.** WHEREON <the precedent whereupon the defense bases its argument>. **2.** Soon after and as a result of which; and then <a not-guilty verdict was announced, whereupon a riot erupted>.

wherewith, *conj.* (14c) By means of which <the plaintiff lacked a form of action wherewith to state a compensable claim>.

whim. A passing fancy; an impulse <the jury was instructed to render a verdict based solely on the evidence, not on a whim>.

whipping, *n.* A method of corporal punishment formerly used in England and a few American states, consisting of inflicting long welts on the skin, esp. with a whip.

whipsaw strike. See STRIKE.

whisper stock. See STOCK.

whistleblower, *n.* (1970) An employee who reports employer wrongdoing to a governmental or law-enforcement agency. • Federal and state laws protect whistleblowers from employer retaliation. [Cases: Labor and Employment ⇨775; Officers and Public Employees ⇨66. — **whistleblowing,** *n.*

whistleblower act. (1984) A federal or state law protecting employees from retaliation for properly disclosing employer wrongdoing such as violating a law or regulation, mismanaging public funds, abusing authority, or endangering public health or safety. • Federal laws containing whistleblower provisions include the Whistleblower Protection Act (5 USCA § 1211), the Occupational Safety and Health Act (29 USCA § 660), CERCLA (42 USCA § 9610), and the Air Pollution and Control Act (42 USCA § 7622). [Cases: Labor and Employment ⇨775; Officers and Public Employees ⇨69.7.]

Whiteacre. (17c) A fictitious tract of land used in legal discourse (esp. law-school hypotheticals) to discuss real-property issues. See BLACKACRE.

white bonnet. *Scots law.* A fictitious bidder at an auction; a shill.

white book. 1. *Hist.* (*cap.*) ALBUS LIBER. **2.** A government report bound in white, common esp. in European and papal affairs.

whitecapping. (1900) *Criminal law.* The criminal act of threatening a person — usu. a member of a minority group — with violence in an effort to compel the person either to move away or to stop engaging in a certain business or occupation. • Whitecapping statutes were originally enacted to curtail the activities of the Ku Klux Klan. [Cases: Extortion and Threats ⇨25.1.]

white-collar crime. (1940) A nonviolent crime usu. involving cheating or dishonesty in commercial matters. • Examples include fraud, embezzlement, bribery, and insider trading.

whitehorse case. (1971) *Slang.* A reported case with facts virtually identical to those of the instant case, so that the disposition of the reported case should determine the outcome of the instant case. — Also termed *horse case*; *goose case*; *gray mule case*; *red-cow case.* Cf. ON ALL FOURS.

white knight. A person or corporation that rescues the target of an unfriendly corporate takeover, esp. by acquiring a controlling interest in the target corporation or by making a competing tender offer. — Also termed *friendly suitor.* See TAKEOVER. Cf. CORPORATE RAIDER.

Whiteley rule. See FELLOW-OFFICER RULE.

White model. *Labor law.* A method for determining whether a union member's state-law claim against the employer is preempted by federal law, by focusing on whether state law permits the claim to be waived by a private contract. • In *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399, 108 S.Ct. 1877 (1988), the Supreme Court held that a union member's state-law retaliatory-discharge claim was not preempted by the Labor-Management Relations Act because the claim could be resolved without interpreting the collective-bargaining agreement. There are at least two models for applying the *Lingle* test: the White model, which focuses on whether the claim is negotiable or nonnegotiable (that is, whether state law allows the claim to be waived by a private contract) and the Marcus model, which focuses on the independence of the claim in relation to the collective-bargaining agreement. Under the White model, all negotiable claims (those waivable by private contract) are necessarily preempted because their resolution will require an interpretation of the collective-bargaining agreement. A nonnegotiable claims (one that state law does not permit to be waived by private contract) will be preempted only if its resolution requires an interpretation of the collective-bargaining agreement. The White model is named for the author of the law-review article in which it was proposed. Rebecca Homer White, *Section 301's Preemption of State Law Claims: A Model for Analysis*, 41 Ala. L. Rev. 377 (1990). See LINGLE TEST. Cf. MARCUS MODEL.

white rent. *Hist.* A feudal rent paid in silver, rather than in work, grain, or money baser than silver. Cf. BLACK RENT.

white slavery. The practice of forcing a female (or, rarely, a male) to engage in commercial prostitution. • Trafficking in persons for prostitution is prohibited by the Mann Act (18 USCA §§ 2421–2424). [Cases: Prostitution ⇨15.]

White Slave Traffic Act. See MANN ACT.

Whitsunday. See *quarter day* under DAY.

whole blood. See *full blood* under BLOOD.

whole law. The law applied by a forum court in a multistate or multinational case after referring to its own choice-of-law rules. [Cases: Action ⇨17.]

whole life insurance. See LIFE INSURANCE.

wholesale, *n.* The sale of goods or commodities usu. to a retailer for resale, and not to the ultimate consumer. Cf. RETAIL. — **wholesale,** *vb.* — **wholesale,** *adj.*

wholesale arrest. See *dragnet arrest* under ARREST.

wholesale dealer. One who sells goods in gross to retail dealers rather than selling in smaller quantities directly to consumers.

wholesale price. See PRICE.

wholesale price index. See PRODUCER PRICE INDEX.

wholesaler. One who buys large quantities of goods and resells them in smaller quantities to retailers or other merchants, who in turn sell to the ultimate consumer.

whole-statute rule. The principle of statutory construction that a statute should be considered in its entirety, and that the words used within it should be given their ordinary meanings unless there is a clear indication to the contrary. [Cases: Statutes ⟹188, 205.]

wholly, *adv.* Not partially; fully; completely.

wholly and permanently disabled, *adj. Insurance.* (Of an insured) completely and continuously unable to perform work for compensation or profit. [Cases: Insurance ⟹2035, 2553.]

wholly dependent, *adj. Workers' compensation.* (Of a person) deriving full support from a worker's wages. [Cases: Workers' Compensation ⟹412–486.]

wholly destroyed, *adj. Insurance.* (Of a building) so damaged that it is no longer capable of being classified as a building, although some parts may remain intact. [Cases: Insurance ⟹2171.]

wholly disabled, *adj. Insurance.* (Of a person) unable to perform the substantial and material acts necessary to carry on a business or occupation in the customary and usual manner. [Cases: Insurance ⟹2561.]

whorehouse. See BROTHEL.

widow, *n.* A woman whose husband has died and who has not remarried. [Cases: Death ⟹31(6); Descent and Distribution ⟹52(1); Dower and Curtesy ⟹1–118; Executors and Administrators ⟹180.]

widower, *n.* A man whose wife has died and who has not remarried.

widower's allowance. See *spousal allowance* under ALLOWANCE (1).

widow's allowance. See *spousal allowance* under ALLOWANCE (1).

widow's election. See RIGHT OF ELECTION.

wifa (wɪ-fə), *n.* [Old English] *Hist.* A mark or sign; esp., a landmark showing exclusive occupation or to prohibit an entry.

wife. A married woman; a woman who has a lawful spouse living. [Cases: Bigamy ⟹1.]

common-law wife. **1.** The wife in a common-law marriage; a woman who contracts an informal marriage with a spouse and then holds herself out to the community as being married to that spouse. See *common-law marriage* under MARRIAGE (1). **2.** *Archaic.* Loosely, a concubine. [Cases: Marriage ⟹22.]

plural wife. One of two or more women married simultaneously to the same spouse in a polygamous marriage. [Cases: Marriage ⟹22.]

wife beating. See *spousal abuse* under ABUSE.

wife's equity. See EQUITY TO A SETTLEMENT.

wife's settlement. See EQUITY TO A SETTLEMENT.

wild animal. See ANIMAL.

wildcat strike. See STRIKE.

wild creature. See *wild animal* under CREATURE.

wild deed. See DEED.

Wild's Case, Rule in. See RULE IN WILD'S CASE.

wilful. See WILLFUL.

will, *n.* (bef. 12c) **1.** Wish; desire; choice <employment at will>. **2.** The legal expression of an individual's wishes about the disposition of his or her property after death; esp., a document by which a person directs his or her estate to be distributed upon death <there was no mention of his estranged brother in the will>. — Also termed *testament*; *will and testament*; (archaically) *testamentary instrument*. [Cases: Wills ⟹1–202.] — **will,** *vb.*

> "The word 'will' has two distinct meanings. The first, and strict, meaning is metaphysical, and denotes the sum of what the testator wishes, or 'wills,' to happen on his death. The second, and more common, meaning is physical, and denotes the document or documents in which that intention is expressed." Anthony R. Mellows, *The Law of Succession* 6 (3d ed. 1977).

ambulatory will. (1909) A will that can be altered during the testator's lifetime. [Cases: Wills ⟹78.]

antenuptial will. See *prenuptial will.*

attested will. A will that has been signed by a witness. [Cases: Wills ⟹113.]

bogus will. An unauthentic will, esp. one involving fraud or unauthorized changes.

closed will. See *mystic will.*

conditional will. A will that depends on the occurrence of an uncertain event for the will to take effect. • Most jurisdictions hold a conditional will valid even though the testator's death does not result from or on the occasion of the condition mentioned in the will. The courts generally hold that the condition is the inducement for making the will rather than a condition precedent to its operation. See *Eaton v. Brown*, 193 U.S. 411, 24 S.Ct. 487 (1904); *In re Will of Cohen*, 491 A.2d 1292 (N.J. Super. Ct. App. Div. 1985). Cf. *contingent will.* [Cases: Wills ⟹80.]

conjoint will. See *joint will.*

contingent will. A will that takes effect only if a specified event occurs. Cf. *conditional will.* [Cases: Wills ⟹80.]

counter will. See *mutual will.*

double will. See *mutual will.*

duplicate will. (1855) A will executed in duplicate originals by a testator who retains one copy and gives the second copy to another person. • The rules applicable to wills apply to both wills, and upon application for probate, both copies must be tendered into the registry of the probate court. [Cases: Wills ⟹175.]

holographic will (hol-ə-graf-ik). (1850) A will that is handwritten by the testator. • Such a will is typically

unattested. Holographic wills are rooted in the civil-law tradition, having originated in Roman law and having been authorized under the Napoleonic Code. French and Spanish settlers introduced holographic wills in America, primarily in the South and West. Today they are recognized in about half the states. — Also termed *olographic will*. See HOLOGRAPH. [Cases: Wills ⟹130–135.]

inofficious will. See *inofficious testament* under TESTAMENT.

international will. A will that is executed according to formalities provided in an international treaty or convention, and that will be valid although it may be written in a foreign language by a testator domiciled in another country. [Cases: Wills ⟹238–246.]

invalid will. (18c) A will that fails to make an effective disposition of property.

joint and mutual will. (1841) A single will executed by two or more people — to dispose of property they own separately, in common, or jointly — requiring the surviving testator to dispose of the property in accordance with the terms of the will. • A joint and mutual will is drafted to be contractually binding on the survivor. The word "joint" indicates the form of the will. The word "mutual" describes the substantive provisions. — Also termed *joint and reciprocal will*. [Cases: Wills ⟹56–68, 100.]

joint and reciprocal will. See *joint and mutual will*.

joint will. (18c) A single will executed by two or more testators, usu. disposing of their common property by transferring their separate titles to one devisee. — Also termed *conjoint will*. [Cases: Wills ⟹56–68, 100.]

last will. (16c) The most recent will of a deceased; the instrument ultimately fixing the disposition of real and personal property at the testator's death. — Also termed *last will and testament*.

> "A will is the disposition of real and personal property to take effect after the death of the testator. When the will operates upon personal property, it is sometimes called a *testament*, and when upon real estate, a *devise*; but the more general and the more popular denomination of the instrument, embracing equally real and personal estate, is that of *last will and testament*." 4 James Kent, *Commentaries on American Law* *501 (George Comstock ed., 11th ed. 1866).

last will and testament. See *last will*.

living will. See LIVING WILL.

lost will. An executed will that cannot be found at the testator's death. • Its contents can be proved by parol evidence in many jurisdictions. But the overwhelming majority of American jurisdictions follow the common-law presumption of revocation if a will is proved to have been in the possession of the testator and has since been lost. [Cases: Wills ⟹234, 293(4), 302(8).]

mancipatory will (**man**-sip-i-tor-ee). *Roman law.* In early and classical law, a formal will sealed by seven witnesses and submitted to the praetor. See TESTAMENTUM.

mariner's will. See *soldier's will*.

mutual will. (*usu. pl.*) (1837) One of two separate wills in which two persons, usu. a husband and wife, establish identical or similar testamentary provisions disposing of their estates in favor of each other. • It is also possible (though rare) for the testators to execute a single mutual will, as opposed to separate ones. And it is possible (though, again, rare) for more than two parties to execute mutual wills. — Also termed *reciprocal will*; *counter will*; *double will*; *mutual testament*. [Cases: Wills ⟹56–68.]

mystic will. *Civil law.* A secret will signed by the testator, sealed and delivered to a notary in the presence of three to seven witnesses, accompanied by the testator's declaration that it is a valid will. • The notary is then required to indorse on the envelope containing the will a statement of all the facts surrounding the transaction, and this is signed by the notary and all the witnesses. — Also termed *mystic testament*; *secret will*; *secret testament*; *closed will*; *closed testament*; *sealed will*; *sealed testament*. [Cases: Wills ⟹124.]

nonintervention will. A will that authorizes an independent executor. See *independent executor* under EXECUTOR.

notarial will. A will executed by a testator in the presence of two witnesses and a notary public.

nuncupative will (**nəng**-kyə-pay-tiv *or* nəng-**kyoo**-pə-tiv). (18c) An oral will made in contemplation of imminent death, esp. from a recent injury. • Nuncupative wills are invalid in most states. Even in states allowing them, the amount that may be conveyed is usu. limited by statute. Traditionally, only personal property may be conveyed. — Also termed *oral will*; *unwritten will*; *verbal will*. [Cases: Wills ⟹136–150.]

> "Nuncupative (i.e., oral) wills are by statute in almost all States required to be proved by two (sometimes three) witnesses, who were present and heard the testamentary words." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 299 (1935).

nuncupative will by public act. *Hist. Louisiana law.* A will dictated by the testator to a notary in the presence of a specified number of witnesses. • The notary had to read the will back to the testator. The testator and the witnesses then signed the will. If the testator was physically unable to sign, another person could sign in the testator's presence on the testator's behalf. The number of required witnesses varied depending on the circumstances. This type of will was abolished in 1997. *See* La. Civ. Code art. 1574. — Also termed *nuncupative testament by public act*.

olographic will. See *holographic will*.

oral will. (1853) A will made by the spoken declaration of the testator and usu. dependent on oral testimony for proof. See *nuncupative will*. [Cases: Wills ⟹136–150.]

parliamentary will. *Slang.* The legislation that governs the distribution of an intestate's property. • The term arose because the legislature effectively makes an intestate's will by passing statutes regulating descent and distribution. The terms of the parliamentary will are gathered from the statutes in effect when the intestate died.

postnuptial will (pohst-**nəp**-shəl). A will executed after marriage.

pourover will (**por**-oh-vər). (1946) A will giving money or property to an existing trust. Cf. *pourover trust* under TRUST.

prenuptial will (pree-**nəp**-shəl). (1914) A will executed before marriage. • At common law, marriage automatically revoked a spouse's will, but modern statutes usu. provide that marriage does not revoke a will (although divorce does). But if this marriage was not contemplated by the will and there is nothing otherwise on its face to indicate that the testator intentionally left nothing to any future spouse, the pretermitted spouse may be entitled to a special forced share of the estate. Uniform Probate Code § 2-508. — Also termed *antenuptial will.* [Cases: Wills ⇨60.]

reciprocal will. See *mutual will.*

sealed will. See *mystic will.*

seaman's will. See *soldier's will.*

secret will. See *mystic will.*

self-proved will. (1963) A will proved by a self-proving affidavit. See *self-proving affidavit* under AFFIDAVIT. • This method of proof, recognized in a growing number of states, eliminates the practical problems of obtaining the live testimony of witnesses. [Cases: Wills ⇨113.]

soldier's will. A soldier's informal oral or written will that is usu. valid despite its noncompliance with normal statutory formalities, as long as the soldier was in actual service at the time the will was made. — Also termed *seaman's will; mariner's will; military testament; soldier's and sailor's will.*

undutiful will. *Civil law.* See *unnatural will.*

unnatural will. (1854) A will that distributes the testator's estate to strangers rather than to the testator's relatives, without apparent reason. — Also termed (in civil law) *undutiful will.* [Cases: Wills ⇨82.]

unofficious will. See *inofficious testament* under TESTAMENT.

unsolemn will. *Civil law.* A will in which an executor is not named.

unwritten will. See *nuncupative will.*

verbal will. See *nuncupative will.*

will and testament. See WILL.

will contest. *Wills & estates.* The litigation of a will's validity, usu. based on allegations that the testator lacked capacity or was under undue influence. [Cases: Wills ⇨203–434.]

willful, *adj.* (13c) Voluntary and intentional, but not necessarily malicious. — Sometimes spelled *wilful.* Cf. WANTON. — **willfulness,** *n.*

> "The word 'wilful' or 'wilfully' when used in the definition of a crime, it has been said time and again, means only intentionally or purposely as distinguished from accidentally or negligently and does not require any actual impropriety; while on the other hand it has been stated with equal repetition and insistence that the requirement added by such a word is not satisfied unless there is a bad purpose or evil intent." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 875-76 (3d ed. 1982).

> "Almost all of the cases under [Bankruptcy Code § 523(a)(6)] deal with the definition of the two words 'willful' and 'malicious.' Initially one might think that willful and malicious mean the same thing. If they did, Congress should have used one word and not both. Most courts feel compelled to find some different meaning for each of them." David G. Epstein et al., *Bankruptcy* § 7-30, at 531 (1993).

willful and malicious injury. See INJURY.

willful and wanton misconduct. See MISCONDUCT.

willful and wanton negligence. See *gross negligence* under NEGLIGENCE.

willful blindness. (1927) Deliberate avoidance of knowledge of a crime, esp. by failing to make a reasonable inquiry about suspected wrongdoing despite being aware that it is highly probable. • A person acts with willful blindness, for example, by deliberately refusing to look inside an unmarked package after being paid by a known drug dealer to deliver it. Willful blindness creates an inference of knowledge of the crime in question. *See* Model Penal Code § 2. [Cases: Criminal Law ⇨20, 314.]

willful-blindness instruction. See JURY INSTRUCTION.

willful, continued, and obstinate desertion. See *obstinate desertion* under DESERTION.

willful homicide. See HOMICIDE.

willful indifference to the safety of others. See *willful and wanton misconduct* under MISCONDUCT.

willful infringement. See INFRINGEMENT.

willful misconduct. See MISCONDUCT.

willful misconduct of an employee. See MISCONDUCT.

willful murder. See MURDER.

willful neglect. See NEGLECT.

willful negligence. 1. See *advertent negligence* under NEGLIGENCE. **2.** See *gross negligence* (2) under NEGLIGENCE.

willfulness. (13c) **1.** The fact or quality of acting purposely or by design; deliberateness; intention. • Willfulness does not necessarily imply malice, but it involves more than just knowledge. **2.** The voluntary, intentional violation or disregard of a known legal duty. — Also termed *legal willfulness.* [Cases: Negligence ⇨275.]

willful tort. See *intentional tort* under TORT.

willful wrong. See *intentional wrong* under WRONG.

Williams Act. A federal statute, enacted in 1968, that amended the Securities Exchange Act of 1934 by

requiring investors who own more than 5% of a company's stock to furnish certain information to the SEC and to comply with certain requirements when making a tender offer. [Cases: Securities Regulation ⇨52.10–52.50.]

Wills Act. 1. STATUTE OF WILLS (1). **2.** An 1837 English statute that allowed people to dispose of every type of property interest by will and that had an elaborate set of requirements for valid execution. • Some states today continue to adhere to these stringent requirements. Cf. Uniform Probate Code § 2-502. — Also termed (in sense 2) *Lord Langdale's Act.*

will substitute. A document or instrument that allows a person, upon death, to dispose of an estate in the same or similar manner as a will but without the formalities and expense of a probate proceeding. • The most common will substitutes are trusts, life-insurance plans, and retirement-benefits contracts. The creation of will substitutes has been one of the most important developments in the area of decedents' estates in the past 50 years. Cf. *nonprobate asset* under ASSET. [Cases: Wills ⇨86.]

Winchester, Statute of. *Hist.* A statute passed in the 13th year of the reign of Edward I, requiring every man to provide himself with armor to keep the peace, recognizing and regulating the offices of high and petty constables, organizing the police, and enforcing the old Saxon police laws. • It was repealed in 1827 by the Criminal Statutes (England) Repeal Act. St. 7 & 8 Geo. 4, ch. 27.

Winchester measure. *Hist.* The standard weights and measures of England, originally kept at Winchester.

windfall. (15c) An unanticipated benefit, usu. in the form of a profit and not caused by the recipient.

windfall-profits tax. See TAX.

winding up, *n.* (1858) The process of settling accounts and liquidating assets in anticipation of a partnership's or a corporation's dissolution. Cf. DISSOLUTION (4). [Cases: Corporations ⇨618; Partnership ⇨277.] — **wind up,** *vb.* — **wind up,** *n.*

window-dressing. (1898) The deceptive arrangement of something, usu. facts or appearances, to make it appear more attractive or favorable. • The term is often used to describe the practice of some financial managers, esp. some managers of mutual funds, to sell certain positions at the end of a quarter to make an investment's quarterly performance appear better than it actually was. See PORTFOLIO PUMPING.

window tax. See TAX.

winner-take-all vote. See VOTE (3).

wipe. See SWIPE (3).

WIPO. *abbr.* WORLD INTELLECTUAL PROPERTY ORGANIZATION.

WIPO Copyright Treaty. A 1996 treaty that made changes in the Berne Convention in light of the TRIPs Agreement and dealt with new copyright issues raised by the emergence of the Internet and other digital technology. • The WIPO Treaty expressly protects computer software and databases and expressly excludes from protection "ideas, procedures, methods of operation or mathematical concepts as such." The WIPO Copyright Treaty was adopted simultaneously with the WIPO Performances and Phonograms Treaty. — Abbr. WCT.

WIPO digital agenda. See DIGITAL AGENDA.

WIPO Performances and Phonograms Treaty. A 1996 treaty giving performers the rights of attribution and integrity in their performances, and giving producers the rights of reproduction, distribution, rental, and availability. — Abbr. WPPT.

wire fraud. See FRAUD.

wiretapping, *n.* (1904) Electronic or mechanical eavesdropping, usu. done by law-enforcement officers under court order, to listen to private conversations. • Wiretapping is regulated by federal and state law. — Often shortened to *tapping.* See BUGGING; EAVESDROPPING. Cf. PEN REGISTER. [Cases: Telecommunications ⇨1434–1441, 1460–1479.] — **wiretap,** *vb.* — **wiretap,** *n.*

Wisby, laws of. See LAWS OF VISBY.

wish, *vb.* **1.** To desire; to hope. **2.** To will; to devise; to give.

witan (**wit**-ən). [Anglo-Saxon "wise men"] *Hist.* The members of the king's council who sat to assist the king in administrative and judicial matters. • Among the members were ealdormen, bishops, abbots, high officers, and occasionally the king's friends and relatives.

witchcraft. The practices of a witch, esp. in black magic; sorcery. • Under the Witchcraft Act of 1541 (33 Hen. 8, ch. 8) and the Witchcraft Act of 1603 (1 Jac. ch. 12), witchcraft was a felony punishable by death without benefit of clergy. The last execution in England for witchcraft occurred in 1716. The Acts were repealed in 1736. In the United States, the most conspicuous (and nearly the last) persecution for witchcraft occurred in Salem, Massachusetts, where 19 people were hanged for this offense in 1692.

wite (WIT). *Hist.* A penal fine exacted by the Crown or other authority for a serious crime, such as murder. — Also spelled *wyte.*

witenagemot (**wit**-ə-nə-gə-moht). [Anglo-Saxon "a meeting of the wise"] *Hist.* A national assembly of noblemen, high ecclesiastics, and other great thanes of England who advised and aided the king in the general administration of the government. • Its composition depended on the will of the king. It passed out of existence with the Norman Conquest (1066). Although it was a precursor to the British Parliament, that was a separate growth — not a continuation of the witenagemot. — Also spelled *witenagemot*; *wittenagemot*; *witanagemote.*

> "[T]he ancient Anglo-Saxon general assembly of the notables [was] called the Witenagemot. . . . At first the power of the Anglo-Saxon Witenagemot appears to have been considerable, and in fact so much so that the kings

were dependent on appointment to that office by the Witan in the early period before the royal succession became hereditary. With the tenth century centralization of power in the Alfredian line of kings, it appears that the power of the Witan began to decline." Charles Herman Kinnane, *A First Book on Anglo-American Law* 262 (2d ed. 1952).

witepenny. *Hist.* In early English law, money paid in satisfaction of a wite.

with all deliberate speed. See DELIBERATE SPEED, WITH ALL.

with all faults. See AS IS.

withdraw, *vb.* **1.** (*vt.*) To take back (something presented, granted, enjoyed, possessed, or allowed) <withdraw blame>. **2.** (*vt.*) To retract (one's words) <withdraw the objection>. **3.** (*vt.*) To refrain from prosecuting or proceeding with (an action) <withdraw the petition for divorce>. **4.** (*vi.*) (Of a lawyer) to terminate one's representation of a client before a matter is complete <withdraw from representation>. [Cases: Attorney and Client ⇨76(1).] **5.** (*vt.*) To remove a juror <withdraw a biased juror>. **6.** (*vi.*) To leave or retire (from a community or society). **7.** (*vi.*) (Of a condition or immaterial thing) to vanish, depart.

withdrawal, *n.* (18c) **1.** The act of taking back or away; removal <withdrawal of consent>. **2.** The act of retreating from a place, position, or situation <withdrawal from the moot-court competition>. **3.** The removal of money from a depository <withdrawal of funds from the checking account>. **4.** RENUNCIATION (3) <withdrawal from the conspiracy to commit arson>. **5.** RETRACTION (4). **6.** *Parliamentary law.* A motion's removal from consideration by its mover. • The mover controls a motion only until the chair states the question, after which the motion belongs to the assembly and the mover cannot withdraw it without the assembly's permission. See *request for permission to withdraw a motion* under REQUEST. **7.** *Parliamentary law.* See DISCHARGE (9). — **withdraw,** *vb.*

withdrawal of charges. (1842) The removal of charges by the one bringing them, such as a prosecutor. See NOLLE PROSEQUI. [Cases: Criminal Law ⇨303.5.]

withdrawal of counsel. (1875) An attorney's termination of his or her role in representing a party in a case. • Normally, the attorney must have the court's permission to withdraw from a case. Permission is usu. sought by a written motion (1) explaining the reason for the requested withdrawal (often, a conflict between attorney and client over a matter such as strategy or fees), and (2) stating whether the client agrees. — Also termed *withdrawing of counsel.* [Cases: Attorney and Client ⇨76(1).]

withdrawing a juror. (18c) The act or an instance of removing a juror, usu. to obtain a continuance in a case or, sometimes in English practice, to end the case, as when the case has settled, the parties are too anxious to proceed to verdict, or the judge recommends it because the action is not properly before the court.

withdrawing of record. 1. With the court's permission, taking the record or any portion of it out of the office of the clerk of the court. **2.** *Hist.* A plaintiff's removing of the *nisi prius* or trial record to prevent the case from being tried, usu. either before the jury is sworn or afterwards with the consent of defense counsel.

withdrawn land. 1. See *reserved land* under LAND. **2.** See RESERVATION (3).

withernam (wi<u>th</u>-ər-nahm), *n.* [fr. Saxon *weder* "other" + *naam* "a taking"] *Hist.* A reciprocal taking or distress in place of a previous one. See *capias in withernam* under WITHERNAM.

withersake (wi<u>th</u>-ər-sayk). *Archaic.* An enemy; esp., a deliberately faithless renegade.

with full power. See *committee with power* under COMMITTEE (1).

withheld sentence. See *suspended sentence* under SENTENCE.

withholding, *n.* (1940) **1.** The practice of deducting a certain amount from a person's salary, wages, dividends, winnings, or other income, usu. for tax purposes; esp., an employer's practice of taking out a portion of an employee's gross earnings and paying that portion to the government for income-tax and social-security purposes. [Cases: Internal Revenue ⇨4849; Taxation ⇨3560.] **2.** The money so deducted. — Also termed *income-tax withholding.* — **withhold,** *vb.*

withholding of evidence. (1848) The act or an instance of obstructing justice by stifling or suppressing evidence knowing that it is being sought in an official investigation or a judicial proceeding. See OBSTRUCTION OF JUSTICE. [Cases: Obstructing Justice ⇨5.]

withholding tax. See TAX.

without day. See GO HENCE WITHOUT DAY.

without delay. (13c) **1.** Instantly; at once. **2.** Within the time reasonably allowed by law.

without dissent. See WITHOUT OBJECTION.

without impeachment of waste. (16c) (Of a tenant) not subject to an action for waste; not punishable for waste. • This clause is inserted in a lease to give a tenant the right to take certain actions (such as cutting timber) without being held liable for waste. But a tenant cannot abuse the right and will usu. be held liable for maliciously committing waste. — Also termed *absque impetitione vasti.* [Cases: Landlord and Tenant ⇨55(2).]

without notice. (16c) Lacking actual or constructive knowledge. • To be a bona fide purchaser, one must buy something "without notice" of another's claim to the item or of defects in the seller's title. To be a holder in due course, one must take a bill or note "without notice" that it is overdue, has been dishonored, or is subject to a claim. UCC § 3-302(a)(2). See NOTICE; *bona fide purchaser* under PURCHASER. [Cases: Bills and Notes ⇨331, 336; Sales ⇨234(1), 473; Vendor and Purchaser ⇨220.]

without objection. With general consent. — Also termed *without dissent.* See *general consent* under CONSENT (2).

without prejudice, *adv.* (15c) Without loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party <dismissed without prejudice>. See *dismissal without prejudice* under DISMISSAL (1).

without recourse. (18c) (In an indorsement) without liability to subsequent holders. • With this stipulation, one who indorses an instrument indicates that he or she has no further liability to any subsequent holder for payment. — Also termed *sans recours*. [Cases: Bills and Notes ⇨293.]

without reserve. Of or relating to an auction at which an item will be sold for the highest bid price. [Cases: Auctions and Auctioneers ⇨7.]

without this, that. See ABSQUE HOC.

with power. See *committee with power* under COMMITTEE (1).

with prejudice, *adv.* With loss of all rights; in a way that finally disposes of a party's claim and bars any future action on that claim <dismissed with prejudice>. See *dismissal with prejudice* under DISMISSAL (1).

with recourse, *adv.* (In an indorsement) with liability to subsequent holders. • With this stipulation, one who indorses an instrument indicates that he or she remains liable to the holder for payment. [Cases: Bills and Notes ⇨280, 286.]

with reserve. Of or relating to an auction at which an item will not be sold unless the highest bid exceeds a minimum price. [Cases: Auctions and Auctioneers ⇨7.]

with strong hand. With force. • In common-law pleading, this term implies a degree of criminal force, esp. as used in forcible-entry statutes.

witness, *n.* (bef. 12c) **1.** One who sees, knows, or vouches for something <a witness to a testator's signature>. **2.** One who gives testimony under oath or affirmation (1) in person, (2) by oral or written deposition, or (3) by affidavit <the witness to the signature signed the affidavit.>. • A witness must be legally competent to testify. [Cases: Witnesses ⇨224.] — **witness,** *vb.*

> "The term 'witness,' in its strict legal sense, means one who gives evidence in a cause before a court; and in its general sense includes all persons from whose lips testimony is extracted to be used in any judicial proceeding, and so includes deponents and affiants as well as persons delivering oral testimony before a court or jury." 97 C.J.S. *Witnesses* § 1, at 350 (1957).

> "Every witness is an editor: he tells you not everything he saw and heard, for that would be impossible, but what he saw and heard and found significant, and what he finds significant depends on his preconceptions." Patrick Devlin, *The Criminal Prosecution in England* 66 (1960).

accomplice witness. (1853) A witness who is an accomplice in the crime that the defendant is charged with. • A codefendant cannot be convicted solely on the testimony of an accomplice witness. [Cases: Criminal Law ⇨507–512.]

adverse witness. See *hostile witness*.

alibi witness. (1897) A witness who testifies that the defendant was in a location other than the scene of the crime at the relevant time; a witness who supports the defendant's alibi.

attesting witness. (18c) One who vouches for the authenticity of another's signature by signing an instrument that the other has signed <proof of the will requires two attesting witnesses>. — Also termed *subscribing witness*. [Cases: Evidence ⇨374; Wills ⇨113.]

character witness. (1893) A witness who testifies about another person's character traits or community reputation. See *character evidence* under EVIDENCE. [Cases: Witnesses ⇨37(4), 274.]

competent witness. (17c) A witness who is legally qualified to testify. • A lay witness who has personal knowledge of the subject matter of the testimony is competent to testify. Fed. R. Evid. 601–602. [Cases: Witnesses ⇨35–79.]

corroborating witness. (1853) A witness who confirms or supports someone else's testimony. [Cases: Witnesses ⇨410.]

court witness. A witness called or re-called to testify by the judge. • The witness called to testify by the court usu. has expertise in the subject matter of the trial and is considered necessary to resolve a conflict in the testimony. The court's discretion to call its own witnesses exists in both civil and criminal cases. [Cases: Witnesses ⇨246(2).]

credible witness. (16c) A witness whose testimony is believable.

disinterested witness. (18c) A witness who has no private interest in the matter at issue. [Cases: Witnesses ⇨91.]

expert witness. (1858) A witness qualified by knowledge, skill, experience, training, or education to provide a scientific, technical, or other specialized opinion about the evidence or a fact issue. Fed. R. Evid. 702–706. — Also termed *skilled witness*. See EXPERT; DAUBERT TEST; *expert opinion* under OPINION (3). [Cases: Criminal Law ⇨478–480; Evidence ⇨535–546.]

going witness. *Archaic.* A witness who is about to leave a court's jurisdiction, but not the country. • An example is the witness who leaves one state to go to another.

grand-jury witness. (1947) A witness who is called to testify before a grand jury. [Cases: Grand Jury ⇨36.]

hostile witness. (1852) A witness who is biased against the examining party, who is unwilling to testify, or who is identified with an adverse party. • A hostile witness may be asked leading questions on direct examination. Fed. R. Evid. 611(c). — Also termed *adverse witness*. See *adverse party* under PARTY (2). [Cases: Witnesses ⇨244.]

interested witness. (18c) A witness who has a direct and private interest in the matter at issue. • Most jurisdictions provide that a person witnessing a will may not be a devisee under the will. The Uniform Probate Code, however, has abrogated this rule. [Cases: Witnesses ⚷91.]

lay witness. (1853) A witness who does not testify as an expert and who is therefore restricted to giving an opinion or making an inference that (1) is based on firsthand knowledge, and (2) is helpful in clarifying the testimony or in determining facts. Fed. R. Evid. 701. [Cases: Criminal Law ⚷448–467; Evidence ⚷470–503.]

material witness. (17c) A witness who can testify about matters having some logical connection with the consequential facts, esp. if few others, if any, know about those matters. [Cases: Witnesses ⚷4.]

percipient witness. (1913) A witness who has perceived the things about which he or she testifies. See EYEWITNESS; EARWITNESS.

prosecuting witness. (1823) A person who files the complaint that triggers a criminal prosecution and whose testimony the prosecution usu. relies on to secure a conviction. [Cases: Criminal Law ⚷210.]

qualified witness. (1845) A witness who, by explaining the manner in which a business records are made and kept, is able to lay the foundation for the admission of those records under an exception to the hearsay rule. Fed. R. Evid. 803(6). [Cases: Criminal Law ⚷444.9; Evidence ⚷373.]

rebuttal witness. (1891) A witness who contradicts or attempts to contradict evidence previously presented.

res gestae witness. (1894) A witness who, having been at the scene of an incident, can give a firsthand account of what happened. See RES GESTAE. [Cases: Criminal Law ⚷363; Evidence ⚷120.]

skilled witness. **1.** See *expert witness.* **2.** A witness whose degree of knowledge in a particular subject or field is short of the standard for an expert but greater than the knowledge possessed by a typical layperson. [Cases: Criminal Law ⚷452, 478; Evidence ⚷474, 536.]

subscribing witness. (17c) One who witnesses the signatures on an instrument and signs at the end of the instrument to that effect. See *attesting witness.* [Cases: Evidence ⚷373; Wills ⚷123.]

supernumerary witness. An unrequired witness, such as a third witness to a will where only two are required. [Cases: Wills ⚷712.]

swift witness. See *zealous witness.*

target witness. (1965) **1.** The person who has the knowledge that an investigating body seeks. [Cases: Grand Jury ⚷37.] **2.** A witness who is called before a grand jury and against whom the government is also seeking an indictment.

turncoat witness. (1947) A witness whose testimony was expected to be favorable but who becomes (usu. during the trial) a hostile witness.

ultroneous witness. *Scots law.* A witness who comes forward without being summoned to appear in court.

zealous witness (zel-əs). (1868) A witness who shows partiality toward the litigant that called him or her to testify and who seems eager to help that side in the lawsuit. — Also termed *swift witness.*

witness box. See WITNESS STAND.

witness clause. See TESTIMONIUM CLAUSE.

witnesseth, *vb.* Shows; records. • This term, usu. set in all capitals, commonly separates the preliminaries in a contract, up through the recitals, from the contractual terms themselves. Modern drafters increasingly avoid it as an antiquated relic. Traditionally, the subject of this verb was *This Agreement*: the sentence, boiled down, was *This Agreement witnesseth* [i.e., shows or records] *that, whereas* [*the parties have agreed to contract with one another*], *the parties therefore agree as follows* . . . . Many modern contracts erroneously retain the *Witnesseth* even though a new verb appears in the preamble: *This Agreement is between* [one party and the other party]. After the preamble is a period, followed by an all-capped WITNESSETH. It is an example of a form retained long after its utility, and most lawyers do not know what it means or even what purpose it once served.

witness fee. See FEE (1).

witnessing part. 1. See ATTESTATION CLAUSE. **2.** See TESTATUM (2).

witness jurat. See JURAT.

witness-protection program. (1970) A federal or state program in which a person who testifies against a criminal is assigned a new identity and relocated to another part of the country to avoid retaliation by anyone convicted as a result of that testimony. • The Federal Witness Protection Program was established by the Organized Crime Control Act of 1970 and is administered by the marshals of the U.S. Justice Department.

witness stand. (1853) The space in a courtroom, usu. a boxed area, occupied by a witness while testifying. — Often shortened to *stand.* — Also termed *witness box.* [Cases: Witnesses ⚷228.]

witness-tampering. (1924) The act or an instance of obstructing justice by intimidating, influencing, or harassing a witness before or after the witness testifies. • Several state and federal laws, including the Victim and Witness Protection Act of 1982 (18 USCA § 1512), provide criminal penalties for tampering with witnesses or other persons in the context of a pending investigation or official proceeding. See OBSTRUCTION OF JUSTICE. [Cases: Obstructing Justice ⚷5.]

witword (**wit**-wərd). *Hist.* **1.** A legally allowed claim; esp., the right to vindicate ownership or possession by one's affirmation under oath. **2.** A will or testament.

W.L. *abbr.* WESTLAW.

wobbler. *Slang.* A crime that can be charged as either a felony or a misdemeanor. [Cases: Criminal Law ⇨ 27.]

wolf's head. *Hist.* An outlaw, who was formerly often referred to as carrying a wolf's head (*caput lupinum*) and to be no more than a wild beast or wolf who could be slain and whose head could be carried to the king. — Also termed *woolferthfod*. See OUTLAW.

> "Outlawry is the last weapon of ancient law, but one that it must often use. As has been well said, it is the sentence of death pronounced by a community which has no police constables or professional hangmen. To pursue the outlaw and knock him on the head as though he were a wild beast is the right and duty of every law-abiding man. 'Let him bear the wolf's head:' this phrase is in use even in the thirteenth century." 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 476 (2d ed. 1898).

Women's Bureau. A unit in the U.S. Department of Labor responsible for formulating policies and standards to promote the welfare of wage-earning women.

women's shelter. See SHELTER.

Women's Suffrage Amendment. See NINETEENTH AMENDMENT.

wood-corn, *n. Hist.* A quantity of oats or grain paid by customary tenants to a lord for the privilege of picking up dead or broken wood.

wood-geld (**wuud**-geld). *Hist.* **1.** Money paid for the privilege of taking wood from a forest. **2.** Immunity from paying money for this privilege. — Also termed *pudzeld*.

wood-leave. *Hist.* A license or right to cut down, remove, and use standing timber.

wood-mote (**wuud**-moht). See COURT OF ATTACHMENTS.

Wood-Plea Court. *Hist.* A court held twice a year in Clun Forest, in Shropshire, to determine matters of wood and agistments.

woodshedding. See HORSESHEDDING.

woodward (**wuud**-word), *n. Hist.* A forest officer who patrols and protects the forest. [Cases: Woods and Forests ⇨ 7.]

woolferthfod. See WOLF'S HEAD.

w.o.p. *abbr.* WANT OF PROSECUTION.

word of art. See TERM OF ART.

words actionable in themselves. (18c) Language that is libelous or slanderous per se. See *slander per se* under SLANDER; *libel per se* under LIBEL. [Cases: Libel and Slander ⇨ 33.]

words of limitation. (16c) Language in a conveying instrument — often nonliteral language — describing the extent or quality of an estate. • For example, under long-standing principles of property law, the phrase "to A and her heirs" creates a fee simple in A but gives nothing to A's heirs. See LIMITATION (4). [Cases: Deeds ⇨ 120–136; Wills ⇨ 591, 597(4).]

> "'Words of limitation' is the phrase used to describe the words which limit (i.e., delimit or mark out) the estate to be taken. Thus in a conveyance today 'to A in fee simple,' the words 'in fee simple' are words of limitation, for they show what estate A is to have." Robert E. Megarry & M.P. Thompson, *A Manual of the Law of Real Property* 29 (6th ed. 1993).

words of negotiability. See NEGOTIABLE WORDS.

words of procreation (proh-kree-**ay**-shən). (18c) Language in a deed essential to create an estate tail, such as an estate "to A and the heirs of his body. [Cases: Deeds ⇨ 127.]

words of purchase. (17c) Language in a deed or will designating the persons who are to receive the grant. • For example, the phrase "to A for life with a remainder to her heirs" creates a life estate in A and a remainder in A's heirs. See PURCHASE (2). [Cases: Deeds ⇨ 105, 120–136; Wills ⇨ 597(4).]

words of severance. In a grant of lands, words showing that the tenants were each to take a distinct share in the property as opposed to undivided portions. • Typical words of severance are *share and share alike, to be divided among, equally,* and *between*. [Cases: Deeds ⇨ 123, 136.]

work, *n.* **1.** Physical and mental exertion to attain an end, esp. as controlled by and for the benefit of an employer; labor.

additional work. **1.** Work that results from a change or alteration in plans concerning the work required, usu. under a construction contract; added work necessary to meet the performance goals under a contract. [Cases: Contracts ⇨ 232(1).] **2.** See *extra work*.

extra work. In construction law, work not required under the contract; something done or furnished in addition to the contract's requirements; work entirely outside and independent of the contract and not contemplated by it. • A contractor is usu. entitled to charge for extra work consisting of labor and materials not contemplated by or subsumed within the original contract, at least to the extent that the property owner agrees to a change order. Materials and labor not contemplated by the contract, but that are required by later changes in the plans and specifications, are considered to be extra work. — Also termed *additional work*. [Cases: Contracts ⇨ 232(1).]

heavy work. Work involving frequent lifting and carrying of large items. • Under the Social Security Administration regulations for describing a worker's physical limitations, heavy work involves lifting no more than 100 pounds, with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR § 404. [Cases: Social Security and Public Welfare ⇨ 140.40, 143.70–143.80.]

inherently dangerous work. Work that can be carried out only by the exercise of special skill and care and that involves a grave risk of serious harm if done

unskillfully or carelessly. [Cases: Labor and Employment ⚷2872.]

light work. Work involving some limited lifting and moving. • Under the Social Security Administration regulations for describing a worker's physical limitations, light work includes walking, standing, sitting while pushing or pulling arm or leg controls, and lifting no more than 20 pounds, with frequent lifting or carrying of objects that weigh up to 10 pounds. 20 CFR § 404. [Cases: Social Security and Public Welfare ⚷140.40, 143.85.]

medium work. Work involving some frequent lifting and moving. • Under the Social Security Administration regulations for describing a worker's physical limitations, medium work includes lifting up to 50 pounds, with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR § 404. [Cases: Social Security and Public Welfare ⚷140.40, 143.70–143.80.]

sedentary work. Work involving light lifting and only occasional walking or standing. • Under the Social Security Administration regulations for describing a worker's physical limitations, sedentary work involves lifting of no more than ten pounds, occasionally carrying small items such as docket files and small tools, and occasional standing or walking. 20 CFR § 404. [Cases: Social Security and Public Welfare ⚷140.40, 143.85.]

semi-skilled work. Work that may require some alertness and close attention, such as inspecting items or machinery for irregularities, or guarding property or people against loss or injury. 20 CFR § 404.1568(b). — Also written *semiskilled work*. [Cases: Social Security and Public Welfare ⚷140.40, 143.70–143.85.]

skilled work. Work requiring the worker to use judgment, deal with the public, analyze facts and figures, or work with abstract ideas at a high level of complexity. 20 CFR § 404. [Cases: Social Security and Public Welfare ⚷140.40, 143.70–143.85.]

unskilled work. Work requiring little or no judgment, and involving simple tasks that can be learned quickly on the job. 20 CFR § 404. [Cases: Social Security and Public Welfare ⚷140.40, 143.70–143.85.]

very heavy work. Work involving frequent lifting of very large objects and frequent carrying of large objects. • Under the Social Security Administration regulations for describing a worker's physical limitations, very heavy work involves lifting 100 pounds or more, and frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR § 404.1567(e). [Cases: Social Security and Public Welfare ⚷140.40, 143.70–143.80.]

work of necessity. Work reasonably essential to the public's economic, social, or moral welfare as determined by the community standards at a particular time, and (formerly) excepted from the operation of blue laws. See BLUE LAW. [Cases: Sunday ⚷7.]

2. *Copyright.* An original expression, in fixed or tangible form (such as paper, audiotape, or computer disk), that may be entitled to common-law or statutory copyright protection. • A work may take many different forms, including art, sculpture, literature, music, crafts, software, and photography. [Cases: Copyrights and Intellectual Property ⚷3.]

anonymous work. A work that, on copies or phonorecords, does not identify any natural person as the author. 17 USCA § 101.

architectural work. The copyrightable design of a building, as fixed in tangible media such as plans, drawings, and the building itself. 17 USCA § 102(8). • Only the overall design is protected, not each design element. This category of works was added to U.S. law by the Berne Convention Implementation Act of 1988. It is one of eight categories eligible for copyright protection. [Cases: Copyrights and Intellectual Property ⚷6.]

artistic work. Any visual representation, such as a painting, drawing, map, photograph, sculpture, engraving, or architectural plan. [Cases: Copyrights and Intellectual Property ⚷6.]

audiovisual work. A work consisting of related images that are presented in a series, usu. with the aid of a machine, and accompanied by sound. • An example of an audiovisual work is a lecture illustrated with a film strip, or a movie with a soundtrack. [Cases: Copyrights and Intellectual Property ⚷10.1.]

collective work. (1870) **1.** A publication (such as a periodical issue, anthology, or encyclopedia) in which several contributions, constituting separate and independent works in themselves, are assembled into a copyrightable whole. [Cases: Copyrights and Intellectual Property ⚷41(3).] **2.** A selection and arrangement of brief portions of different movies, television shows, or radio shows into a single copyrightable work. • If the selecting and arranging involves any originality, the person who selects and arranges the clips may claim a copyright even if copyright cannot be claimed in the individual component parts. Cf. COMPILATION (1). [Cases: Copyrights and Intellectual Property ⚷12(3).]

> "If a work is not joint and not derivative but nevertheless consists of works of authorship created by more than one person, it is a compilation of some sort except for the possibility that it is a work for hire. . . . If the component parts have an independent identity, that is, they are works of authorship, then the compilation is a collective work, a type of compilation." Arthur R. Miller & Michael H. Davis, *Intellectual Property in a Nutshell* 374 (2d ed. 1990).

composite work (kəm-**poz**-it). (1910) An original publication that relates to a variety of subjects and includes discrete selections from many authors. • Although the distinguishable parts are separately protectable, the owner of the composite work — not the individual authors — owns the renewal term, if any. 17 USCA § 304(a). [Cases: Copyrights and Intellectual Property ⚷38.]

creative work. See *work of authorship*.

derivative work. (1965) A copyrightable creation that is based on a preexisting product; a translation, musical arrangement, fictionalization, motion-picture version, abridgment, or any other recast or adapted form of an original work. • Only the holder of the copyright on the original form can produce or permit someone else to produce a derivative work. 17 USCA § 101. — Sometimes shortened to *derivative*. Cf. COMPILATION (1). [Cases: Copyrights and Intellectual Property ⇨ 12(3).]

"[W]hile a compilation consists merely of the selection and arrangement of pre-existing material without any internal changes in such material, a derivative work involves recasting or transformation, i.e., changes in the pre-existing material, whether or not it is juxtaposed in an arrangement with other pre-existing materials. A catalog constitutes a compilation, and a translation of a pre-existing work constitutes a derivative work." 1 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 3.02, at 3-5 (Supp. 1997).

dramatic work. Any form of nonliterary work created for performance and viewing. • The term includes plays, scripts, films, choreographic works, and similar creations. [Cases: Copyrights and Intellectual Property ⇨ 7.]

joint work. A work created or developed by two or more people whose contributions blend inseparably or interdependently into the whole work. • The cocreators have equal legal rights to register and enjoy the copyright, but this does not affect any other contractually unequal ownership arrangements. [Cases: Copyrights and Intellectual Property ⇨ 41(3).]

literary work. (18c) A nonaudiovisual work that is expressed in verbal, numerical, or other symbols, such as words or musical notation, and embodied in some type of physical object. • Literary works are one of eight general categories that are eligible for copyright protection. 17 USCA § 102. Cf. LITERARY COMPOSITION. [Cases: Copyrights and Intellectual Property ⇨ 5.]

"Copyright protection extends to literary works which are defined as works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards in which they are embodied. The term 'literary work' does not connote any criterion of literary merit or qualitative value and includes catalogs and directories; similar factual, reference or instructional works; compilations of data; computer data bases, and computer programs." 18 Am. Jur. 2d *Copyright and Literary Property* § 25, at 360 (1985).

pictorial, graphic, and sculptural work. Two- or three-dimensional works of graphic, fine, or applied art that are eligible for copyright protection. • This is one of eight general classifications covered by copyright law. Examples include globes, architectural drawings, photographs, and models. 17 USCA § 102. — Abbr. PGS. [Cases: Copyrights and Intellectual Property ⇨ 6.]

posthumous work. The product of an author who died before publication. [Cases: Copyrights and Intellectual Property ⇨ 33.]

pseudonymous work. A work done by an author who uses a fictitious name.

work for hire. A copyrightable work produced either by an employee within the scope of employment or by an independent contractor under a written agreement; esp., a work specially ordered or commissioned for use as (1) a contribution to a collective work, (2) a translation, (3) a supplementary work, (4) a part of a movie or other audiovisual work, (5) a compilation, (6) an instructional text, (7) a test, (8) answer material for a test, or (9) an atlas. • If the work is produced by an independent contractor, the parties must agree expressly in writing that the work will be a work for hire. The employer or commissioning party owns the copyright. 17 USCA § 101. — Also termed *work made for hire*. [Cases: Copyrights and Intellectual Property ⇨ 41(2).]

work of authorship. The product of creative expression, such as literature, music, art, and graphic designs. • Copyright protects a work of authorship if it meets three criteria. First, the work must be original, not a copy. Second, the work must be presented in a fixed medium, such as a computer disk, a canvas, or paper. Finally, some creativity must have been involved in the work's creation, although the amount of creativity required depends on the particular work. — Also termed *creative work*. [Cases: Copyrights and Intellectual Property ⇨ 4.]

work of the United States government. A work created by a U.S. government officer or employee in the course of performing official duties. • By statute, federal-government works may not be copyrighted. [Cases: Copyrights and Intellectual Property ⇨ 10.3.]

work, *vb.* **1.** To exert effort; to perform, either physically or mentally <lawyers work long hours during trial>. **2.** To function properly; to produce a desired effect <the strategy worked>. **3.** *Patents.* To develop and use (a patented invention, esp. to make it commercially available) <the patentee failed to work the patent>. • Failure to work a patent in a specified amount of time is grounds for a compulsory license in some countries. [Cases: Patents ⇨ 191.]

"A patentee has the *exclusive* right to *make*, *use*, or *sell* the invention. 35 U.S.C.A. § 154. The right includes the right to *refrain* from making, using, or selling the invention. In many foreign countries, the inventor is obliged to 'work' the patent and if he does not do so, he can be required to grant a compulsory license to others who wish to exploit the invention. But an American patentee is under no such duty, although there are antitrust implications involved in the failure to work a patent." Arthur R. Miller & Michael H. Davis, *Intellectual Property in a Nutshell* 128-29 (2d ed. 1990).

work and labor. *Hist.* A common count in an action of *assumpsit* for the work and labor performed and materials furnished by the plaintiff. See ASSUMPSIT. [Cases: Assumpsit, Action of ⇨ 5.]

worker. 1. One who labors to attain an end; esp., a person employed to do work for another. **2.** A person who offers to perform services for compensation in the employ of

another, whether or not the person is so employed at a given time.

Worker Adjustment and Retraining Notification Act. A federal law that requires an employer to provide notice of a plant closing or mass layoff, 60 days before the closing or layoff, to the employees, the state-dislocated-workers unit, and the chief elected official of the unit of local government where the plant closing or layoff is to occur. 29 USCA §§ 2101–2109. — Abbr. WARN. [Cases: Labor and Employment ⟹3202.]

workers' compensation. A system of providing benefits to an employee for injuries occurring in the scope of employment. • Most workers'-compensation statutes both hold the employer strictly liable and bar the employee from suing the employer in tort. — Abbr. WC. — Also termed *workmen's compensation; employers' liability.* [Cases: *Workers' Compensation* ⟹11.]

> "Workers' compensation laws were designed to provide employees with expansive protection against the consequences of employment-related injuries. Injured workers no longer had to establish negligence attributable to their employer in order to obtain legal redress. They merely had to demonstrate that their conditions arose out of and during the course of their employment." Mark A. Rothstein et al., *Employment Law* § 7.3, at 406 (1994).

workers'-compensation act. A statute by which employers are made responsible for bodily harm to their workers arising out of and in the course of their employment, regardless of the fault of either the employee or the employer. [Cases: Workers' Compensation ⟹1, 6.]

workers'-compensation board. An agency that reviews cases arising under workers'-compensation statutes and administers the related rules and regulations. — Also termed *workers'-compensation commission.* [Cases: Workers' Compensation ⟹1076–1096.10.]

> "Workers' compensation boards . . . are tribunals . . . of limited and special jurisdiction and have only such authority and power as have been conferred upon them by express grant, or by implication as necessary and incidental to the full exercise of their authority. The functions of such agencies may include the settlement of disputes with respect to the right to and the amount of compensation, the supervision of voluntary settlements or agreements, the collection and administration of compensation funds, and the supervision and regulation of matters pertaining to compensation insurance." 82 Am. Jur. 2d *Workers' Compensation* § 56, at 65 (1992).

workers'-compensation lien. See LIEN.

workers'-compensation subrogation lien. See *workers'-compensation lien* under LIEN.

workfare. (1969) A system of requiring a person receiving a public-welfare benefit to earn that benefit by performing a job provided by a government agency or undergoing job training. [Cases: Social Security and Public Welfare ⟹4.15.]

work for hire. See WORK (2).

work furlough (fər-loh). (1960) A prison-treatment program allowing an inmate to be released during the day to work in the community. See WORK-RELEASE PROGRAM. [Cases: Prisons ⟹174.]

work-furlough program. See WORK-RELEASE PROGRAM.

workhouse. (17c) A jail for criminals who have committed minor offenses and are serving short sentences. [Cases: Prisons ⟹213.]

working capital. See CAPITAL.

working capital acceptance. See *finance bill* under BILL (6).

working control. See CONTROL.

working example. See EXAMPLE.

working interest. *Oil & gas.* The rights to the mineral interest granted by an oil-and-gas lease, so called because the lessee acquires the right to work on the leased property to search, develop, and produce oil and gas, as well as the obligation to pay all costs. See ROYALTY (2). — Also termed *leasehold interest; operating interest.* [Cases: Mines and Minerals ⟹73.1(2).]

working model. *Patents.* A sample of an invention, usu. built for testing and for displaying to potential buyers. • The building of a working model is called "actual reduction to practice." It is not required for a patent, but it can help the applicant to clarify the description and to establish a date of invention in the event of an interference. [Cases: Patents ⟹90(6).]

working papers. **1.** WORK PERMIT; esp., an employment certificate or permit required of an employer in some states before a minor may be hired. **2.** *Accounting.* The records kept by an independent auditor of the procedures followed, tests performed, information obtained, and conclusions reached in an audit. • A reviewer may evaluate the quality of an audit by examining the working papers.

work-in-process. A product being manufactured or assembled but not yet completed. — Abbr. WIP. — Also termed *work-in-progress.*

work made for hire. See *work for hire* under WORK (2).

workmen's compensation. See WORKERS' COMPENSATION.

work of authorship. See WORK (2).

work of necessity. See WORK (1).

work of the United States government. See WORK (2).

workout, *n.* **1.** The act of restructuring or refinancing overdue loans. **2.** *Bankruptcy.* A debtor's agreement, usu. negotiated with a creditor or creditors out of court, to reduce or discharge the debt. — **work out,** *vb.*

work permit. An alien's documentary work authorization from the Immigration and Naturalization Service. • Under the Immigration Reform and Control Act of 1986, it is illegal for an employer to hire an alien who lacks a work permit. 8 USCA § 1324(a)(1). — Also termed *working papers.*

workpiece. *Patents.* The embodiment of an invention, usu. a device, as the patent claims describe how to make and use it. [Cases: Patents ⟹165(4).]

workplace. A person's place of employment or work setting in general. See SAFE WORKPLACE.

work product. (1947) Tangible material or its intangible equivalent — in unwritten or oral form — that was either prepared by or for a lawyer or prepared for litigation, either planned or in progress. • Work product is generally exempt from discovery or other compelled disclosure. The term is also used to describe the products of a party's investigation or communications concerning the subject matter of a lawsuit if made (1) to assist in the prosecution or defense of a pending suit, or (2) in reasonable anticipation of litigation. Fed. R. Evid. 26. — Also termed *attorney work product*. [Cases: Criminal Law ⚷627.5(6); Federal Civil Procedure ⚷1604; Pretrial Procedure ⚷35, 358.]

core work product. See *opinion work product*.

fact work product. A lawyer's tangible work product that includes facts but not the lawyer's mental impressions. • Fact work product is subject to a qualified privilege. It is not discoverable unless the party seeking discovery can show (1) a substantial need for the materials and (2) an inability to acquire the information by any other means without undue hardship. *See* Fed. R. Evid. 26(b)(3). — Also termed *ordinary work product*. [Cases: Criminal Law ⚷627.5(6); Federal Civil Procedure ⚷1604; Pretrial Procedure ⚷35, 358.]

opinion work product. A lawyer's opinions, mental impressions, conclusions, and legal theories arising from a client's case. • An adversary usu. cannot gain access to this work product despite showing substantial need and undue hardship. Fed. R. Evid. 26(b)(3). — Also termed *core work product*. [Cases: Criminal Law ⚷627.5(6); Federal Civil Procedure ⚷1604; Pretrial Procedure ⚷35, 358.]

ordinary work product. See *fact work product*.

work-product rule. (1954) The rule providing for qualified immunity of an attorney's work product from discovery or other compelled disclosure. Fed. R. Civ. P. 26(b)(3). • The exemption was primarily established to protect an attorney's litigation strategy. *Hickman v. Taylor*, 329 U.S. 495, 67 S.Ct. 385 (1947). — Also termed *work-product immunity*; *work-product privilege*; *work-product exemption*; *attorney-work-product privilege*. [Cases: Criminal Law ⚷627.5(6); Federal Civil Procedure ⚷1604; Pretrial Procedure ⚷35.]

> "Although the work-product rule has often been spoken of as creating a 'privilege,' it is a qualified one that does not grant full immunity from discovery. To the extent the term 'privilege' causes confusion between the work-product rule and the absolute privilege for confidential communications between attorney and client, it is important to keep in mind this distinction. . . . Rule 26(b)(3) provides that work-product material is subject to discovery 'only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.'" 8 Charles Alan Wright et al., *Federal Practice and Procedure* § 2025, at 371, 373-74 (2d ed. 1994).

work-release program. (1964) A correctional program allowing a prison inmate — primarily one being readied for discharge — to hold a job outside prison. — Also termed *work-furlough program*. See HALFWAY HOUSE. [Cases: Prisons ⚷174.]

works. 1. A mill, factory, or other establishment for manufacturing or other industrial purposes; a manufacturing plant; a factory. **2.** Any building or structure on land. • Some states also include structures built in the sea, such as offshore-drilling platforms.

new works. *Civil law.* A structure newly commenced on a particular estate. • A denunciation of new works is a remedy allowed for an adjacent landowner whose property will be injured if the structure is completed.

public works. Structures (such as roads or dams) built by the government for public use and paid for by public funds. [Cases: States ⚷83.]

work stoppage. A cessation of work; STRIKE.

world. 1. The planet Earth <the world has limited natural resources>. **2.** All the Earth's inhabitants; the public generally <the world will benefit from this discovery>. **3.** All persons who have a claim or acquire an interest in a particular subject matter <a judgment *in rem* binds all the world>.

World Bank. A U.N. specialized agency established in 1945 to provide loans that aid in economic development, through economically sustainable enterprises. • Its capital derives from both U.N. member states and loans on the open market. — Also termed *International Bank for Reconstruction and Development*. [Cases: International Law ⚷10.45(2).]

World Court. See INTERNATIONAL COURT OF JUSTICE.

world fund. See *global fund* under MUTUAL FUND.

World Intellectual Property Organization. An agency of the United Nations Educational, Scientific, and Cultural Organization formed in 1967 to (1) promote intellectual-property protection worldwide through cooperation among nations, and (2) administer multilateral treaties dealing with legal and administrative aspects of intellectual property. • The organization's headquarters are in Geneva, Switzerland. — Abbr. WIPO.

worldly, *adj.* Of or relating to the present state of existence; temporal; earthly <worldly possessions>. See SECULAR.

World Trade Organization. The body charged with enforcing intellectual-property provisions of the GATT treaty. • WTO comprises the signatories of the Uruguay Round of GATT negotiations. — Abbr. WTO. See TRIPS.

worldwide military-locator service. A search service that locates the current duty station of a member of any branch of the United States military services, esp. for enforcing the service member's child-support obligations. • Each branch of the armed forces maintains a worldwide locator service that is available to military and nonmilitary persons, their counsel, and Title IV-D agencies. Use of the locator service requires the member's full name and social-security number.

worship. **1.** Any form of religious devotion, ritual, or service showing reverence, esp. for a divine being or supernatural power <freedom of worship>. [Cases: Religious Societies ⇨1.]

public worship. **1.** Worship conducted by a religious society according to the society's system of ecclesiastical authority, ritual propriety, and rules and regulations. **2.** Worship under public authority. **3.** Worship in a public place, without privacy or concealment. **4.** Worship allowed by all members of the public equally.

2. *English law.* A title of honor or dignity used in addressing certain magistrates or other high officers. • The title is always preceded by a possessive pronoun, usu. *your* <your worship>.

wort (wərt), *n. Archaic.* A country farm; a curtilage. — Also termed *worth.*

worth, *n.* (bef. 12c) **1.** The monetary value of a thing; the sum of the qualities that render a thing valuable and useful, expressed in the current medium of exchange. **2.** The emotional or sentimental value of something. **3.** The total wealth held by a person or entity.

net tangible worth. A corporation's net physical value, calculated by subtracting the liabilities from the value of the tangible assets then dividing by the number of outstanding shares.

net worth. A measure of one's wealth, usu. calculated as the excess of total assets over total liabilities. — Also termed *net assets.* [Cases: Internal Revenue ⇨4530.]

tangible worth. The amount of wealth held in the form of physical, valuable assets, such as cash and equipment.

4. WORT.

worthier-title doctrine. (1935) **1.** *Hist.* The common-law doctrine that if a beneficiary of a will would receive an identical interest as an heir under the laws of intestacy, the person takes the interest as an heir rather than as a beneficiary. • The doctrine has been abolished in most states. [Cases: Wills ⇨713.] **2.** *Property.* The doctrine that favors a grantor's intent by construing a grant as a reversion in the grantor instead of as a remainder in the grantor's heirs. — Also termed *doctrine of worthier title.* See REMAINDER; REVERSION.

worthiest of blood, *n. Hist.* Of or relating to males, because of the preference given them in the laws of descent. See PRIMOGENITURE.

> "Thus sons shall be admitted before daughters; or, as our male lawgivers have somewhat uncomplaisantly expressed it, the worthiest blood shall be preferred. As if John Stiles hath two sons, Matthew and Gilbert, and two daughters, Margaret and Charlotte, and dies; first Matthew, and (in case of his death without issue) then Gilbert shall be admitted to the succession in preference to both the daughters." 2 William Blackstone, *Commentaries on the Laws of England* 213 (1766).

worthless, *adj.* Totally lacking worth; of no use or value.

worthless check. See *bad check* under CHECK.

worthless person. *Archaic.* A person who owns nothing.

worthless security. See SECURITY.

worthy, *adj.* Having worth; possessing merit; valuable.

wounded feelings. (18c) Injuries resulting from insults, indignity, or humiliation, as distinguished from the usual mental pain and suffering consequent to physical injury. [Cases: Damages ⇨57.11, 57.17, 57.24.]

wounding. (14c) **1.** An injury, esp. one involving a rupture of the skin. **2.** An injury to feelings or reputation. **3.** *Hist.* An aggravated type of assault and battery in which one person seriously injures another.

wrap account. See ACCOUNT.

wraparound mortgage. See MORTGAGE.

wrap-fee account. See *wrap account* under ACCOUNT.

wreck, *n.* **1.** SHIPWRECK. **2.** Goods cast ashore from a wrecked vessel and not claimed by the owner within a specified period (such as one year).

wreckfree, *adj.* (Of a port, etc.) exempt from the forfeiture of shipwrecked goods and vessels to the Crown.

writ (rit). (bef. 12c) A court's written order, in the name of a state or other competent legal authority, commanding the addressee to do or refrain from doing some specified act. [Cases: Injunction ⇨202.]

> "[W]rits have a long history. We can trace their formal origin to the Anglo-Saxon formulae by which the king used to communicate his pleasure to persons and courts. The Anglo-Norman writs, which we meet with after the Conquest, are substantially the Anglo-Saxon writs turned into Latin. But what is new is the much greater use made of them, owing to the increase of royal power which came with the Conquest." W.S. Holdsworth, *Sources and Literature of English Law* 20 (1925).

alias writ. (18c) An additional writ issued after another writ of the same kind in the same case. • It derives its name from a Latin phrase that formerly appeared in alias writs: *sicut alias praecipimus,* meaning "as we at another time commanded." Cf. *alias execution* under EXECUTION. [Cases: Process ⇨45.]

alternative writ. (1827) A common-law writ commanding the person against whom it is issued either to do a specific thing or to show cause why the court should not order it to be done. [Cases: Mandamus ⇨158.]

close writ. *Hist.* **1.** A royal writ sealed because the contents were not deemed appropriate for public inspection. Cf. *patent writ;* CLAUSE ROLLS. **2.** A writ directed to a sheriff instead of to a lord.

concurrent writ. A duplicate of an original writ (esp. a summons), issued either at the same time as the original writ or at any time while the original writ is valid.

counterpart writ. (1841) A copy of an original writ, to be sent to a court in another county where the defendant is located.

extraordinary writ. (17c) A writ issued by a court exercising unusual or discretionary power. • Examples are certiorari, habeas corpus, mandamus, and prohibition. — Also termed *prerogative writ.* Cf. *extraordinary relief* under RELIEF. [Cases: Courts ☞207.]

ground writ. *Hist.* A writ issued in a county having venue of an action in order to allow a writ of *capias ad satisfaciendum* or of *fieri facias* to be executed in a county where the defendant or the defendant's property was found. • These two writs could not be executed in a county other than the county having venue of the action until a ground writ and then a *testatum* writ were first issued. This requirement was abolished in 1852. Cf. TESTATUM.

judicial writ. (16c) **1.** A writ issuing from the court to which the original writ was returnable; a writ issued under the private seal of the court and not under the great seal of England. Cf. *original writ.* **2.** Any writ issued by a court.

junior writ. (1839) A writ issued at a later time than a similar writ, such as a later writ issued by a different party or a later writ on a different claim against the same defendant.

optional writ. (18c) At common law, an original writ issued when the plaintiff seeks specific damages, such as payment of a liquidated debt. • The writ commands the defendant either to do a specified thing or to show why the thing has not been done.

original writ. (16c) A writ commencing an action and directing the defendant to appear and answer. • In the United States, this writ has been largely superseded by the summons. At common law, this type of writ was a mandatory letter issuing from the court of chancery under the great seal, and in the king's name, directed to the sheriff of the county where the injury was alleged to have occurred, containing a summary statement of the cause of complaint, and requiring the sheriff in most cases to command the defendant to satisfy the claim or else appear in court to account for not satisfying it. — Sometimes shortened to *original.* See SUMMONS. [Cases: Process ☞8.]

patent writ (**pay**-tənt). *Hist.* An open writ; one not closed or sealed up. Cf. *close writ.*

peremptory writ (pər-**emp**-tə-ree). (18c) At common law, an original writ issued when the plaintiff seeks only general damages, as in an action for trespass. • The writ, which is issued only after the plaintiff gives security for costs, directs the sheriff to have the defendant appear in court. [Cases: Mandamus ☞179.]

pluries writ. See PLURIES.

prerogative writ. See *extraordinary writ.*

testatum writ (tes-**tay**-təm). See TESTATUM.

vicontiel writ (vi-**kon**-tee-əl). *Hist.* A writ triable in the county court. • In the 13th–14th centuries, civil litigation could originate in the county court either by oral plaint or by a writ from the Chancery ordering the sheriff to do justice in a case. The writ that began such a proceeding was called *vicontiel* because it was addressed to the sheriff. See VICONTIEL (2).

> "*Vicontiel writs* were of two sorts, the one founded on *Torts*, the other on *Contracts*. The *vicontiel* writs adapted for torts, were those of *trespass*, *replegiari facias*, *nuisance*, and others of the like nature; and those of matters of contract were called writs of *justicies*, which was a command to the sheriff to do justice between the parties . . . ." 1 George Crompton, *Practice Common-Placed: Rules and Cases of Practice in the Courts of King's Bench and Common Pleas* vii–viii (3d ed. 1787).

writ of capias. See CAPIAS.

writ *de haeretico comburendo.* See DE HAERETICO COMBURENDO.

write down, *vb. Accounting.* To transfer part of the balance (of an asset account) to an expense or loss account to reflect the asset's diminished value.

write off, *vb. Accounting.* To transfer the entire balance (of an asset account) to an expense or loss account to reflect the asset's total loss of value <the partnership wrote off the bad debt>. — **write-off,** *n.* See TAX WRITE-OFF. — **write-off,** *n.*

writer. *Securities.* **1.** A person or institution that sells securities or futures option contracts. **2.** See *insurance underwriter* (1) under UNDERWRITER.

writer of the tallies. *English law.* An officer of the Exchequer who writes on the tallies the letters of tellers' bills. See TALLY.

Writer to the Signet. *Scots law.* **1.** *Hist.* A member of the College of Justice, founded in 1532. **2.** A member of an Edinburgh society of solicitors who hold a few special privileges in the preparation of official documents.

write-up, *n.* **1.** A memorandum of a conference between an employer and an employee, usu. held to discuss the employee's poor work performance or a disciplinary action against the employee. **2.** A publication (such as a newspaper article) about a particular person, thing, or event.

write-up, *vb. Accounting.* To increase the valuation of an asset in a financial statement to reflect current value. • With a few minor exceptions, this is generally not permitted.

writ *fi fa.* See TESTATUM (1).

writing, *n.* Any intentional recording of words that may be viewed or heard with or without mechanical aids. • This includes hard-copy documents, electronic documents on computer media, audio and videotapes, e-mails, and any other media on which words can be recorded.

signed writing. A writing to which a person's signature has been affixed in some form. See SIGNATURE.

writing obligatory, *n.* A bond; a written obligation, as technically described in a pleading.

writ of *ad quod damnum.* See AD QUOD DAMNUM.

writ of aiel (**ay**-əl). See AIEL (2).

writ of assistance. **1.** A writ to enforce a court's decree transferring real property, the title of which has been

previously adjudicated. [Cases: Assistance, Writ of ⇨ 1.] **2.** *Hist.* A writ issued by the Court of Exchequer ordering the sheriff to assist in collecting a debt owed the Crown. **3.** *Hist.* In colonial America, a writ issued by a superior colonial court authorizing an officer of the Crown to enter and search any premises suspected of containing contraband. • The attempted use of this writ in Massachusetts — defeated in 1761 — was one of the acts that led to the American Revolution.

writ of association. *Hist. English law.* A writ whereby certain persons (usu. the clerk of assize and subordinate officers) were directed to associate themselves with the justices and serjeants so that there would be an adequate supply of commissioners for the assizes.

writ of attachment. See ATTACHMENT (3).

writ of *audita querela*. See AUDITA QUERELA.

writ of capias. See CAPIAS.

writ of *capias ad respondendum*. See CAPIAS.

writ of *capias ad satisfaciendum*. See CAPIAS.

writ of certiorari. See CERTIORARI.

writ of conspiracy. *Hist.* A writ against one who conspired to injure the plaintiff, esp. by indicting the plaintiff for treason or felony. • Under common law, all other circumstances of conspiracy were actions on the case. [Cases: Conspiracy ⇨ 15.]

writ of consultation. An extraordinary writ issued by an appellate court ordering a lower court to proceed in a matter that the lower court previously refused to hear. Cf. PROHIBITION (2).

writ of *coram nobis*. See CORAM NOBIS.

writ of *coram vobis*. See CORAM VOBIS.

writ of course. (17c) A writ issued as a matter of course or granted as a matter of right. — Also termed *writ of right*; *breve de cursu*.

writ of covenant. *Hist.* A writ for one claiming damages as a result of a breach of a promise under seal or other covenant. — Also termed *breve de conventione* (breev *or* **bree**-vee dee kən-ven-shee-**oh**-nee).

> "The writ of covenant (*breve de conventione*) is not mentioned by Glanvill; but it appears within a short time after the publication of his book and already in the early years of Henry III. It can be had 'as of course,' at all events when the tenement that is in question is of small value. Before Henry's death it has become a popular writ . . . . The great majority of actions of covenant are brought merely in order that they may be compromised. We doubt whether any principle was involved in the choice; but may infer that the procedure instituted by this writ was cheap and expeditious for those who wished to get to their final concord." 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 216–17 (2d ed. 1899).

writ of debt. See DEBT (4).

writ of deceit. *Hist.* A writ against one who deceives and damages another by acting in the other's name.

writ of deliverance. See DELIVERANCE (3).

writ of detinue. (17c) A writ in an action for detinue. See DETINUE. [Cases: Detinue ⇨ 1.]

writ of dower. 1. DE DOTE UNDE NIHIL HABET. **2.** A widow's writ of *right of dower* providing her the remainder of the dower to which she is entitled after part of it had been assigned by the tenant. [Cases: Dower and Curtesy ⇨ 70.1.]

writ of ejectment. (17c) The writ in an action of ejectment for the recovery of land. See EJECTMENT. [Cases: Ejectment ⇨ 120.]

writ of elegit. See ELEGIT.

writ of entry. (16c) A writ that allows a person wrongfully dispossessed of real property to enter and retake the property.

writ of error. (15c) **1.** A writ issued by an appellate court directing a lower court to deliver the record in the case for review. Cf. ASSIGNMENT OF ERROR. [Cases: Appeal and Error ⇨ 5, 398.]

> "The writ of error is the most common of all the forms of remedial process available to an unsuccessful party after a final determination of the merits of the action, and is in common use in this country at the present time, where the common-law modes of procedure are followed. Its object . . . is to obtain a reversal of the judgment, either by reason of some error in fact affecting the validity and regularity of the legal decision itself, or on account of some mistake or error in law, apparent upon the face of the record, from which the judgment appears to have been given for the wrong party." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 337, at 538 (Henry Winthrop Ballantine ed., 3d ed. 1923).

***writ of error coram nobis*.** See CORAM NOBIS.

***writ of error coram vobis*.** See CORAM VOBIS.

2. *Hist.* A writ issued by a chancery court, at the request of a party who was unsuccessful at trial, directing the trial court either to examine the record itself or to send it to another court of appellate jurisdiction to be examined, so that some alleged error in the proceedings may be corrected.

writ of escheat. *Hist.* A writ allowing a lord to take possession of lands that had escheated to him. See ESCHEAT (1).

writ of estrepement (e-**streep**-mənt). See DE ESTREPAMENTO.

writ of execution. See EXECUTION (4).

writ of exigent. See EXIGENT, *n.*

writ of *exigi facias*. See EXIGI FACIAS.

writ of extent. See EXTENT (2).

writ of false judgment. See FALSE JUDGMENT.

writ of *fieri facias*. See FIERI FACIAS.

writ of formedon. See FORMEDON.

writ of habeas corpus. See HABEAS CORPUS.

writ of *habere facias possessionem*. See HABERE FACIAS POSSESSIONEM.

writ of *habere facias seisinam*. See HABERE FACIAS SEISINAM.

writ of injunction. See INJUNCTION.

writ of inquiry. *Hist.* A writ ordering the sheriff to empanel a jury and act as judge in a trial held to determine the amount of damages suffered by a plaintiff who has won a default judgment on an unliquidated claim. [Cases: Damages ☞197.]

writ of *latitat*. See LATITAT.

writ of *levari facias*. See LEVARI FACIAS.

writ of mainprise. See MAINPRISE (3).

writ of mandamus. See MANDAMUS.

writ of mandate. See MANDATE (2).

writ of mesne (meen). See DE MEDIO.

writ of mesne process. See *mesne process* under PROCESS.

writ of monstravunt. See MONSTRAVUNT.

writ of ne exeat. See NE EXEAT.

writ of perambulation. *Hist.* A common-law writ issued by agreement of both parties when they are in doubt about the bounds of their respective properties, directing the sheriff to walk the jury around the property to set the boundaries with certainty. See PERAMBULATION. [Cases: Boundaries ☞26.]

writ of possession. (17c) A writ issued to recover the possession of land. [Cases: Ejectment ☞120.]

writ of praecipe. See PRAECIPE (1).

writ of prevention. (17c) A writ to prevent the filing of a lawsuit. See QUIA TIMET.

writ of privilege. *Hist.* An action to enforce or maintain a privilege, usu. one granted by statute or by a court. • Traditionally, the writ was used to protect legislators from arrest in civil suits during a legislative session. Parties and witnesses who did not reside within a court's jurisdiction were also privileged against service of process in civil suits while attending the court and while traveling to or from it.

> "The privilege of a suitor or witness to be exempt from service of process while without the jurisdiction of his residence for the purpose of attending court in an action to which he is a party, or in which he is to be sworn as a witness, is a very ancient one. It has always been held to extend to every proceeding of a judicial nature taken in or emanating from a duly-constituted tribunal which directly relates to the trial of the issues involved. It is not simply a personal privilege, but it is also the privilege of the court, and is deemed necessary for the maintenance of its authority and dignity and in order to promote the due and efficient administration of justice. At common law a writ of privilege or protection would be granted to the party or witness by the court in which the action was pending, which would be respected by all other courts. . . . [T]he writ may still be granted by courts possessing a common law jurisdiction; but while the granting of the writ is proper, it is not necessary for the enjoyment of the privilege, and the only office which it can is to afford convenient and authentic notice to those about to do what would be a violation of the privilege, and to set it forth and command due respect to it. The tendency has been not to restrict, but to enlarge, the right of privilege so as to afford full protection to parties and witnesses from all forms of civil process during their attendance at court , and for a reasonable time in going and returning." *Parker v. Marco* 32 N.E. 989, 989 (N.Y. 1893) (citations omitted).

writ of probable cause. See CERTIFICATE OF APPEALABILITY.

writ of proclamation. *Hist.* A writ, issued at the time an *exigent* was issued, ordering the sheriff of the county of a defendant's residence to make three proclamations of outlawry in a public and notorious place a month before the outlawry is declared. See OUTLAW.

writ of prohibition. See PROHIBITION (2).

writ of protection. (17c) **1.** A writ to protect a witness in a judicial proceeding who is threatened with arrest. **2.** A writ exempting anyone in the Crown's service from arrest in a civil proceeding for a year and a day.

writ of *quare impedit*. See QUARE IMPEDIT.

writ of quominus. See QUOMINUS.

writ of *quorum nobis*. See CORAM NOBIS.

writ of *quo warranto*. See QUO WARRANTO (1).

writ of rebellion. See COMMISSION OF REBELLION.

writ of recaption. *Hist.* A writ allowing a plaintiff to recover goods and damages from a defendant who makes a second distress while a replevin action for a previous distress is pending. See RECAPTION.

writ of replevin. See REPLEVIN (2).

writ of restitution. (17c) **1.** The process of enforcing a civil judgment in a forcible-entry-and-detainer action or enforcing restitution on a verdict in a criminal prosecution for forcible entry and detainer. [Cases: Forcible Entry and Detainer ☞41; Landlord and Tenant ☞291(17).]

> "In some states, following the British statutes, the prosecutor may have a writ of restitution for the premises immediately on the rendition of a verdict of guilty on an indictment for forcible entry and detainer; and the operation of such writ of restitution is not suspended by an appeal by the defendant." 35 Am. Jur. 2d *Forcible Entry and Detainer* § 61, at 931 (1967).

2. A common-law writ issued when a judgment is reversed, whereby all that was lost as a result of the judgment is restored to the prevailing party. [Cases: Appeal and Error ☞1179.]

writ of review. (18c) A general form of process issuing from an appellate court to bring up for review the record of the proceedings in the court below; the common-law writ of certiorari. [Cases: Courts ☞207.1; Review ☞1.]

writ of right. See WRIT OF COURSE.

writ of second deliverance. See *second deliverance* under DELIVERANCE.

writ of sequestration. (18c) A writ ordering that a court be given custody of something or that something not be taken from the jurisdiction, such as the collateral for a promissory note. • Such a writ is usu. issued during litigation, often so that the object will be available for attachment or execution after judgment. [Cases: Sequestration ☞13.]

writ of summons. *English law.* A writ by which, under the Judicature Acts of 1873–1875, all actions were commenced. See SUMMONS.

writ of supersedeas. See SUPERSEDEAS.

writ of supervisory control. (1901) A writ issued to correct an erroneous ruling made by a lower court either when there is no appeal or when an appeal cannot provide adequate relief and the ruling will result in gross injustice. [Cases: Courts ⇨207.1.]

writ of testatum *fieri facias*. See TESTATUM (1).

writ of threats. See SECURITATE PACIS.

writ of tolt (tohlt). See TOLT.

writ of trial. *Hist. English law.* By the Civil Procedure Act of 1835, a writ ordering an action brought in a superior court to be tried in an inferior court or before the undersheriff. • It was superseded by the County Courts Act of 1867, ch. 142, § 6 authorizing a defendant, in certain cases, to obtain an order that an action is to be tried in a county court. St. 3 & 4 Will. 4, ch. 42.

writ of *venire facias*. See VENIRE FACIAS.

writ of waste. *Hist.* A writ to recover damages against a tenant who committed waste. See WASTE (1). [Cases: Waste ⇨14.]

> "After waste had been actually committed, the ancient corrective remedy, in a court of common law, was by a writ of waste for the recovery of the place wasted, and treble damages as a compensation for the injury done to the inheritance." 78 Am. Jur. 2d *Waste* § 29, at 417 (1975).

writ of withernam. See *capias in withernam* under WITHERNAM.

writ *pro retorno habendo* (proh ri-**tor**-noh hə-**ben**-doh), *n.* [Law Latin "for return to be had"] *Hist.* A writ ordering the return of goods to a defendant who, upon the plaintiff's default, obtained a favorable judgment in a replevin action. See DELIVERANCE (4).

writ system. (1890) The common-law procedural system under which a plaintiff commences an action by obtaining the appropriate type of original writ.

written contract. See CONTRACT.

written description. See DESCRIPTION (5).

written directive. See ADVANCE DIRECTIVE (2).

written law. See LAW.

written testimony. See TESTIMONY.

written warranty. See WARRANTY (2).

wrong, *n.* (bef. 12c) Breach of one's legal duty; violation of another's legal right. [Cases: Torts ⇨107.] — **wrong,** *vb.*

> "A wrong may be described, in the largest sense, as anything done or omitted contrary to legal duty, considered in so far as it gives rise to liability." Frederick Pollock, *A First Book of Jurisprudence* 68 (1896).

> "A wrong is simply a wrong act — an act contrary to the rule of right and justice. A synonym of it is injury, in its true and primary sense of *injuria* (that which is contrary to *jus*) . . . ." John Salmond, *Jurisprudence* 227 (Glanville L. Williams ed., 10th ed. 1947).

civil wrong. (17c) A violation of noncriminal law, such as a tort, a breach of contract or trust, a breach of statutory duty, or a defect in performing a public duty; the breach of a legal duty treated as the subject matter of a civil proceeding. See TORT (1). Cf. CRIME.

continuing wrong. (1846) An ongoing wrong that is capable of being corrected by specific enforcement. • An example is the nonpayment of a debt.

intentional wrong. (18c) A wrong in which the *mens rea* amounts to intention, purpose, or design. — Also termed *willful wrong.*

legal wrong. (18c) An act that is a violation of the law; an act authoritatively prohibited by a rule of law.

moral wrong. (18c) An act that is contrary to the rule of natural justice. — Also termed *natural wrong.*

personal wrong. An invasion of a personal right.

positive wrong. (18c) A wrongful act willfully committed.

private wrong. (16c) An offense committed against a private person and dealt with at the instance of the person injured.

public wrong. (16c) An offense committed against the state or the community at large, and dealt with in a proceeding to which the state is itself a party. • Not all public wrongs are crimes. For example, a person that breaches a contract with the government commits a public wrong, but the offense is a civil one, not a criminal one.

real wrong. An injury to the freehold.

transitory wrong. (2004) A wrong that, once committed, belongs to the irrevocable past. • An example is defamation.

willful wrong. See *intentional wrong.*

wrong of negligence. (1902) A wrong in which the *mens rea* is a form of mere carelessness, as opposed to wrongful intent.

wrong of strict liability. (1986) A wrong in which a *mens rea* is not required because neither wrongful intent nor culpable negligence is a necessary condition of responsibility.

wrongdoer, *n.* (15c) One who violates the law <both criminals and tortfeasors are wrongdoers>. — **wrongdoing,** *n.*

wrongful, *adj.* (14c) **1.** Characterized by unfairness or injustice <wrongful military invasion>. **2.** Contrary to law; unlawful <wrongful termination>. **3.** (Of a person) not entitled to the position occupied <wrongful possessor>. — **wrongfully,** *adv.*

wrongful act. See *wrongful conduct* under CONDUCT.

wrongful adoption. 1. An adoption in which the adoption agency fails to provide adoptive parents with full or accurate information regarding the child's physical or psychological background. • The adoptive parents normally do not seek to nullify the adoption. Rather, they seek damages, usu. for medical care and

for emotional distress. **2.** An adoptive parent's legal claim against an adoption agency for not fully or accurately disclosing the child's physical or psychological background. Cf. ABROGATION OF ADOPTION. [Cases: Infants ⇨17.]

wrongful-birth action. (1972) A lawsuit brought by parents against a doctor for failing to advise them prospectively about the risks of their having a child with birth defects. [Cases: Health ⇨687.]

wrongful-conception action. See WRONGFUL-PREGNANCY ACTION.

wrongful conduct. See CONDUCT.

wrongful-death action. (1926) A lawsuit brought on behalf of a decedent's survivors for their damages resulting from a tortious injury that caused the decedent's death. — Also termed *death action*; *death case*. Cf. SURVIVAL ACTION. [Cases: Death ⇨7–33.]

wrongful-death statute. (1904) A statute authorizing a decedent's personal representative to bring a wrongful-death action for the benefit of certain beneficiaries. — Formerly also termed *death-damage statute*. [Cases: Death ⇨11.]

wrongful discharge. See DISCHARGE (7).

wrongful-discharge action. (1957) A lawsuit brought by an ex-employee against the former employer, alleging that the termination of employment violated a contract or was illegal. — Also termed *wrongful-termination action*. [Cases: Labor and Employment ⇨850.]

wrongful dishonor, *n.* (1895) A refusal to accept or pay (a negotiable instrument) when it is properly presented and is payable. Cf. DISHONOR (1).

wrongful-eviction action. A lawsuit brought by a former tenant or possessor of real property against one who has put the plaintiff out of possession, alleging that the eviction was illegal. [Cases: Landlord and Tenant ⇨180, 278, 278.17, 292, 318.]

wrongful garnishment. See GARNISHMENT.

wrongful levy. See LEVY.

wrongful-life action. (1963) A lawsuit brought by or on behalf of a child with birth defects, alleging that but for the doctor-defendant's negligent advice, the parents would not have conceived the child or, if they had, would have aborted the fetus to avoid the pain and suffering resulting from the child's congenital defects. • Most jurisdictions reject these claims. [Cases: Health ⇨687.]

wrongful-pregnancy action. (1979) A lawsuit brought by a parent for damages resulting from a pregnancy following a failed sterilization. — Also termed *wrongful-conception action*. [Cases: Health ⇨686.]

wrongful process. See ABUSE OF PROCESS.

wrongful-termination action. See WRONGFUL-DISCHARGE ACTION.

wrong of negligence. See WRONG.

wrong of strict liability. See WRONG.

wrong verdict. See *verdict contrary to law* under VERDICT.

WTO. See WORLD TRADE ORGANIZATION.

wyte (WIT). *Hist.* **1.** An immunity from an amercement. See AMERCEMENT. **2.** See WITE.

X

X. *abbr.* **1.** EX DIVIDEND. **2.** EX RIGHTS. **3.** EX DISTRIBUTION. **4.** EX WARRANTS.

X. 1. A mark serving as the signature of a person who is physically handicapped or illiterate. • The signer's name usu. appears near the mark, and if the mark is to be notarized as a signature, two signing witnesses are ordinarily required in addition to the notary public. [Cases: Signatures ⇨5.] **2.** A symbol equivalent to "by" when used in giving dimensions, as in 3 x 5 inches. **3.** A mark placed on a document (such as an application) to indicate a selection, such as "yes" or "no"; esp., a mark on a ballot to indicate a vote.

XD. *abbr.* EX DIVIDEND.

XDIS. *abbr.* EX DISTRIBUTION.

xenodochium (zen-ə-də-kɪ-əm *or* -**dok**-ee-əm), *n.* [fr. Greek *xenos* "a guest" + *dochein* "to receive"] *Roman law.* **1.** An inn. **2.** A hospital. • This was a charitable institution to which donations and legacies might validly be given. — Also termed *xenodochion*; *xenodocheum*; *xenodochy.*

X-patent. *Patents.* An early U.S. patent, granted before the numbering system set up in the Patent Act of 1836 and so named because an *X* was added to the numbers of existing patents to avoid duplicate numbers.

XQ. See *cross-question* under QUESTION (1).

XR. *abbr.* EX-RIGHTS.

XW. *abbr.* EX-WARRANTS.

xylon (**zɪ**-lon), *n.* [fr. Greek *xulon* "wood"] *Archaic.* A Greek punishment apparatus similar to stocks.

XYY-chromosome defense. *Criminal law.* A defense, usu. asserted as the basis for an insanity plea, whereby a male defendant argues that his criminal behavior is due to the genetic abnormality of having an extra Y chromosome, which causes him to have uncontrollable aggressive impulses. • Most courts have rejected this defense because its scientific foundations are uncertain. — Also termed *XYY defense.* See INSANITY DEFENSE.

> "As one commentator has suggested . . . 'an attorney defending an XYY individual will be required to call upon both a geneticist and a psychiatrist to give expert testimony. The geneticist's role would be to testify with respect to the individual's genetic structure, any distinguishing characteristics which are relevant to an insanity defense, and the result of family studies designated to determine the influence of genetics and environment on the development of this individual. The psychiatrist's testimony would focus upon the defendant's mental capacity or condition.' But in the absence of sound medical support for an XYY defense, courts are understandably unsympathetic to defense efforts to obtain such expert testimony." Wayne R. LaFave & Austin W. Scott Jr., *Criminal Law* § 4.8, at 380 (2d ed. 1986) (quoting Note, 57 Geo. L.J. 892, 902–03 (1969)).

XYY syndrome. The abnormal presence of an extra Y chromosome in a male, theoretically resulting in increased aggressiveness and antisocial behavior sometimes resulting in criminal conduct. See XYY-CHROMOSOME DEFENSE.

Y

Y2K warranty. *abbr.* Year 2000 warranty; a warranty that software, hardware, or a product having computer hardware or software components will function properly on and after January 1, 2000. • These warranties were common in the late 1990s.

yank-cheating, *n.* The illegal practice of inserting paper money into a vending machine, then pulling the money out again after the machine has recognized it, thereby retaining the cash and unlawfully obtaining merchandise.

yardland, *n. Hist.* A variable quantity of land, often 20 acres. — Also termed *virgata terrae* (vər-**gay**-tə **ter**-ee).

yardstick theory. *Antitrust.* A method of determining damages for lost profits (and sometimes overcharges) whereby a corporate plaintiff identifies a company similar to the plaintiff but without the impact of the antitrust violation. Cf. BEFORE-AND-AFTER THEORY; MARKET-SHARE THEORY.

> "To the extent that either the markets or firms being compared are dissimilar, the yardstick theory will not produce a trustworthy estimate of what the plaintiff would have earned but for the defendant's conduct. The method therefore works best in markets that are both local and relatively homogeneous." Herbert Hovenkamp, *Economics and Federal Antitrust Law* § 16.7, at 454 (1985).

yea, *n. Parliamentary law.* An affirmative vote.

yea and nay (**yay / nay**). Yes and no. • In old records, this was a mere assertion and denial without the necessity of an oath.

year. 1. Twelve calendar months beginning January 1 and ending December 31. — Also termed *calendar year.* **2.** A consecutive 365-day period beginning at any point; a span of twelve months. [Cases: Time ⇨4.]

fiscal year. An accounting period of 12 consecutive months <the company's fiscal year is October 1 to September 30>. • A fiscal year is often different from the calendar year, esp. for tax purposes. — Also termed *fiscal period.*

half-year. In legal computation, a period of 182 days.

natural year. *Hist.* The period of 365 days and about 6 hours, or the time it takes the earth to orbit the sun.

tax year. The period used for computing federal or state income-tax liability, usu. either the calendar year or a fiscal year of 12 months ending on the last day of a month other than December. — Also termed *taxable year.* [Cases: Internal Revenue ⇨3075–3093; Cases: Taxation ⇨3509, 3538.]

Year 2000 warranty. See Y2K WARRANTY.

year and a day. The common-law time limit fixed for various purposes, such as claiming rights, exemptions, or property (such as rights to wreckage or estrays), or for prosecuting certain acts — so called because a year was formerly counted to include the first and last day, meaning that a year from January 1 was December 31, so a year and a day would then mean a full year from January 1 through January 1. — Also termed *year and day*; (formerly in Scots law) *zeir and day.* See YEAR-AND-A-DAY RULE; YEAR, DAY, AND WASTE.

year-and-a-day rule. (1876) *Criminal law.* The common-law principle that an act causing death is not homicide if the death occurs more than a year and a day after the act was committed. • In Latin, the phrase *year and a day* was commonly rendered *annus et dies.* [Cases: Homicide ⇨510.]

> "It has long been the rule that no one can be convicted of the murder or manslaughter of another person who does not die within a year and a day of the blow received or other cause of death. 'Day' was here added merely to indicate that the 365th day after that of the injury must be included. Such an indication was rendered necessary by an old rule (now obsolete) that, in *criminal* law, in reckoning a period 'from' the doing of any act, the period was (in favour of prisoners) to be taken as beginning on the very day when this act was done." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 105 (16th ed. 1952).

> "The phrase 'year and a day,' in this test [for proving causation of a person's death], means no more than a year. The accepted method of computing time today is by excluding the first day and including the last. Thus a year from January first is the first day of the following January. In ancient times, however, there was a tendency to include both the first day and the last day so that a year from January first was thought of as the thirty-first of the following December, and 'the day was added that there might be a whole year.' The use of this peculiar phrase to mean just a year in the homicide cases has found expression in some of the statutes. Other enactments have wisely dropped this ancient jingle." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 778 (3d ed. 1982).

> "Several centuries ago, when doctors knew very little about medicine, the judges created an absolute rule of law: one cannot be guilty of murder if the victim lives for a year and a day after the blow. The difficulty in proving that the blow caused the death after so long an interval was obviously the basis of the rule. Now that doctors know infinitely more, it seems strange that the year-and-a-day rule should survive to the present, but it has done so in most of the American states, either by judicial decision or by statute." Wayne R. LaFave & Austin W. Scott Jr., *Criminal Law* § 3.12, at 299 (2d ed. 1986).

> "The year and a day rule is widely viewed as an outdated relic of the common law." *Rogers v. Tennessee*, 532 U.S. 451, 462, 121 S.Ct. 1693, 1701 (2001) (O'Connor, J.).

year and day. See YEAR AND A DAY.

Year Books. *Hist.* Books of cases anonymously and fairly regularly reported covering primarily the period from the reign of Edward I to the time of Henry VIII. • The title "Year Books" derives from their being grouped under the regnal years of the sovereigns in whose reigns the reported cases were cited. The reports were probably

originally prepared by law teachers and students and later by professional reporters or scribes. — Also written *Year-Books*; *year-books*; *yearbooks*. — Also termed *terms*. Cf. ABBREVIATIO PLACITORUM.

"[F]rom 1300 there is a continuous stream of reports of arguments in the common Pleas. The reports were written in Anglo-French, the language of courtly speech. Their authorship is unknown, and they are referred to by the generic name 'year-books' . . . . If we have to account for their beginning, the most likely explanation is that they arose from a case-method of instruction in the law school which served the apprentices of the Bench before the emergence of the inns of court . . . . For the same reason, the contemporary value of the earliest reports lay not in their historical authenticity as precedents but in the ideas and suggestions which they contained . . . . Once the age of experiment was over, the reports settled into a more uniform and at times apparently single series . . . . The year-books did not end at any fixed date. What has usually been taken as their end is the result of two concurrent factors: the advent of printing, and the practice of identifying reports by the name of the author." J.H. Baker, *An Introduction to English Legal History* 205–07 (3d ed. 1990).

year, day, and waste. *Hist.* A right of the Crown to the profits and waste for a year and a day of the land of persons convicted of petty treason or felony (unless the lord made redemption), after which the Crown had to restore the property to the lord of the fee. The right was abrogated by the Corruption of Blood Act of 1814. — Also termed (in Law French) *ann, jour, et wast*; (in Law Latin) *annus, dies, et vastum*.

year-end dividend. See DIVIDEND.

year in mourning. See ANNUS LUCTUS.

Year of Our Lord. See ANNO DOMINI.

year-to-year tenancy. See *periodic tenancy* under TENANCY.

yeas and nays. The affirmative and negative votes on a bill or resolution before a deliberative assembly. See *roll-call vote* under VOTE (4). [Cases: Statutes ⚷19.]

yellow-dog contract. An employment contract forbidding membership in a labor union. • Such a contract is generally illegal under federal and state law.

yeoman (**yoh**-mən). **1.** *Hist.* An attendant in a royal or noble household. **2.** *Hist.* A commoner; a freeholder (under the rank of gentleman) who holds land yielding 40 shillings per year.

"A *yeoman* is he that hath free land of forty shillings by the year; who was thereby qualified to serve on juries, vote for knights of the shire, and do any other act, where the law requires one that is *probus et legalis homo* [an upright and law-abiding man]." 1 William Blackstone, *Commentaries on the Laws of England* 394 (1765).

3. *English law.* One who owns and cultivates property. **4.** A petty officer performing clerical work in the U.S. Navy. — Also sometimes spelled *yoman*.

yeoman of the guard. A member of a corps of officers whose primary duties are to ceremonially guard the English royal household. • A yeoman is usu. at least six feet tall, is of the best rank under the gentry, and is generally exempt from arrest on civil process. — Also termed *yeoman of the guard of the royal household*.

yeomanry (**yoh**-mən-ree). **1.** The collective body of yeomen. **2.** Volunteer cavalry units in Great Britain, later transferred to the Territorial Army.

yeven (**yev**-ən *or* **yiv**-ən). *Hist.* Given; dated. — Also spelled *yeoven* (**yoh**-vən).

***Yick Wo* doctrine** (yik **woh**). (1958) The principle that a law or ordinance giving a person or entity absolute discretion to give or withhold permission to carry on a lawful business violates the 14th Amendment to the U.S. Constitution. *Yick Wo v. Hopkins*, 118 U.S. 356, 6 S.Ct. 1064 (1886).

yield, *n.* (bef. 12c) Profit expressed as a percentage of the investment. — Also termed *yield on investment*; *return*. See RATE OF RETURN.

coupon yield. The annual interest paid on a security (esp. a bond) divided by the security's par value. — Also termed *nominal yield*.

current yield. The annual interest paid on a security (esp. a bond) divided by the security's current market price.

discount yield. The yield on a security sold at a discount.

earnings yield. The earnings per share of a security divided by its market price. • The higher the ratio, the better the investment yield. — Also termed *earnings-price ratio*. Cf. PRICE-EARNINGS RATIO.

net yield. The profit or loss on an investment after deducting all appropriate costs and loss reserves.

nominal yield. See *coupon yield*.

yield, *vb.* **1.** To give up, relinquish, or surrender (a right, etc.) <yield the floor>. **2.** *Parliamentary law.* (Of a motion) to give way to a higher-ranking motion. Cf. PRECEDENCE (3).

"If two motions 'A' and 'B' are related under rules of parliamentary procedure in such a way that motion 'B' can be made while motion 'A' is pending and, when stated by the chair, can thus temporarily replace 'A' as the immediately pending question, motion 'B' *takes precedence over* (or *takes precedence of*) motion 'A,' and motion 'A' *yields to* motion 'B.' A secondary motion thus takes precedence over the main motion; and a main motion takes precedence over nothing and yields to all applicable secondary motions." Henry M. Robert, *Robert's Rules of Order Newly Revised* § 5, at 57–58 (10th ed. 2000).

3. *Hist.* To perform a service owed by a tenant to a lord <yield and pay>. See YIELDING AND PAYING.

yield on investment. See YIELD.

yield spread. The differences in yield between various securities issues.

yield to maturity. The rate of return from an investment if the investment is held until it matures. — Abbr. YTM. Cf. TIME VALUE.

yokelet (**yohk**-lit), *n. Hist.* A small farm requiring only one yoke of oxen to till it.

yoman. See YEOMAN.

York, custom of. *Hist.* A custom prevalent in York whereby a male intestate's effects were divided

according to the doctrine of *pars rationabilis* ("a reasonable part") — that is, one-third each to the widow, children, and administrator, one-half to the administrator if the man was married but had no children or was single but had children, or all to the administrator if the man was single with no children.

York, Statute of. *Hist.* An English statute passed in York in the twelfth year of Edward II's reign, and including provisions on the subject of attorneys, witnesses, and the taking of inquests by nisi prius.

York–Antwerp rules. *Maritime law.* A set of rules relating to the settlement of maritime losses and disputes arising from bills of lading. • Although these rules have no statutory authority, they are incorporated into almost all bills of lading. The Rules are maintained and updated by the Comité Maritime International (CMI). [Cases: Shipping ⚷186, 187, 197.]

***Younger* abstention.** See ABSTENTION.

younger-generation devise. See DEVISE.

young offender. See *youthful offender* under OFFENDER.

your Honor. (16c) A title customarily used when directly addressing a judge or other high official. Cf. HIS HONOR.

your witness. See TAKE THE WITNESS.

Youth Correction Authority Act. A model act, promulgated by the American Law Institute in 1940, that proposed the creation of central state commissions responsible for setting up appropriate agencies that would determine the proper treatment for each youthful offender committed to the agency by the courts. • The Act is noteworthy for its emphasis on rehabilitating juvenile offenders, as opposed to punishing them.

youth court. See *teen court* under COURT.

youthful offender. 1. See OFFENDER. **2.** JUVENILE DELINQUENT.

youth shelter. See SHELTER.

yo-yo stock. See *volatile stock* under STOCK.

YTM. *abbr.* YIELD TO MATURITY.

Z

zap. See INTERSUBJECTIVE ZAP.

ZBA. *abbr.* ZERO-BRACKET AMOUNT.

Z-bond. See *accrual bond* under BOND (3).

zealous witness. See WITNESS.

zeir and day (yeer). See YEAR AND DAY. • *Zeir* is an obsolete graphic variant of *year*.

zero-bracket amount. A tax deduction formerly available to all individual taxpayers, regardless of whether they itemized their deductions. • In 1944 this was replaced by the standard deduction. — Abbr. ZBA. See *standard deduction* under DEDUCTION.

zero-coupon bond. See BOND (3).

zero-coupon security. See SECURITY.

zero-rate mortgage. See MORTGAGE.

zero-tolerance policy. (1990) An established plan or method of action stating that certain acts will not be permitted or condoned. • School districts often have a zero-tolerance policy regarding the use of drugs and alcohol on school premises or at school-sponsored functions. In 1995 Congress enacted a nationwide zero-tolerance statute to combat underage drinking.

zetetic (zi-tet-ik), *adj. Hist.* Proceeding by inquiry; investigative. — Also spelled *zetetick*.

ZIFT. *abbr.* ZYGOTE INTRAFALLOPIAN TRANSFER.

zipper clause. *Contracts.* A contractual provision that operates both as an integration clause and as a no-oral-modification clause. See INTEGRATION CLAUSE; NO-ORAL-MODIFICATION CLAUSE.

> "[A] 'zipper clause' . . . so called because the combination of the integration clause and the no-oral-modification clause is intended to foreclose claims of any representations outside the written contract . . . ." *Pace v. Honolulu Disposal Serv.*, 227 F.3d 1150, 1159 (9th Cir. 2000).

zone. 1. An area that is different or is distinguished from surrounding areas <zone of danger>. **2.** An area in a city or town that, through zoning regulations, is under particular restrictions as to building size, land use, and the like <the capitol is at the center of the height-restriction zone>. [Cases: Zoning and Planning ⇨31.]

floating zone. An amount of land assigned for a particular use but in no particular location. • An applicant who owns the specified amount of land can apply for a use permit in a specific location. See *floating zoning* under ZONING.

holding zone. Temporary, low-density zoning used until a community determines how the area should be rezoned.

zone-of-danger rule. (1966) *Torts.* The doctrine allowing the recovery of damages for negligent infliction of emotional distress if the plaintiff was both located in the dangerous area created by the defendant's negligence and frightened by the risk of harm. [Cases: Damages ⇨57.10, 57.16(2), 57.23(2), 57.27.]

zone of employment. *Workers' compensation.* The physical place of employment within which an employee, if injured there, can receive compensation. Cf. COURSE OF EMPLOYMENT; SCOPE OF EMPLOYMENT. [Cases: Workers' Compensation ⇨604–618, 704–770.]

zone of interests. (1969) The class or type of interests or concerns that a statute or constitutional guarantee is intended to regulate or protect. • To have standing to challenge a ruling (esp. of an administrative agency), the plaintiff must show that the specific injury suffered comes within the zone of interests protected by the statute on which the ruling was based. [Cases: Action ⇨13; Administrative Law and Procedure ⇨666; Federal Civil Procedure ⇨103.2.]

zone of privacy. (1964) *Constitutional law.* A range of fundamental privacy rights that are implied in the express guarantees of the Bill of Rights. See PENUMBRA; RIGHT OF PRIVACY. [Cases: Constitutional Law ⇨1210–1275.]

zone search. See SEARCH.

zoning, *n.* (1912) The legislative division of a region, esp. a municipality, into separate districts with different regulations within the districts for land use, building size, and the like. [Cases: Zoning and Planning ⇨1, 4.] — **zone,** *vb.*

aesthetic zoning. Zoning designed to preserve the aesthetic features or values of an area. [Cases: Zoning and Planning ⇨36.]

bonus zoning. See *incentive zoning.*

cluster zoning. Zoning that favors planned-unit development by allowing a modification in lot size and frontage requirements under the condition that other land in the development be set aside for parks, schools, or other public needs. — Also termed *density zoning.* See PLANNED-UNIT DEVELOPMENT. [Cases: Zoning and Planning ⇨85, 245.]

conditional zoning. Zoning in which a governmental body (without definitively committing itself) grants a zoning change subject to conditions that are usu. not imposed on similarly zoned property. [Cases: Zoning and Planning ⇨382, 382.1.]

> "Conditions imposed are designed to protect adjacent land from the loss of use value which might occur if the newly authorized use was permitted without restraint of any kind. Thus, conditional zoning seeks to minimize the potentially deleterious effect of a zone change on neighboring properties through reasonably conceived conditions which harmonize the landowner's need for rezoning with the

public interest." 83 Am. Jur. 2d *Zoning and Planning* § 218, at 193 (1992).

contextual zoning. An approach to zoning that considers appropriate use of a lot based on the scale and types of nearby buildings. • Contextual zoning has been used, for example, to prevent the destruction of older, smaller residences to make room for larger houses disparagingly called "monster homes" or "mc mansions." in established neighborhoods.

contract zoning. **1.** Zoning according to an agreement, by which the landowner agrees to certain restrictions or conditions in exchange for more favorable zoning treatment. • This type of contract zoning is usu. considered an illegal restraint of the government's police power, because by private agreement, the government has committed itself to a particular type of zoning. **2.** Rezoning of property to a less restrictive classification subject to the landowner's agreement to observe specified limitations on the use and physical development of the property that are not imposed on other property in the zone. • This device is esp. used when property is located in a more restrictive zone that borders on a less restrictive zone. [Cases: Zoning and Planning ⚷160.]

cumulative zoning. A method of zoning in which any use permitted in a higher-use, less intensive zone is permissible in a lower-use, more intensive zone. • For example, under this method, a house could be built in an industrial zone but a factory could not be built in a residential zone.

density zoning. See *cluster zoning.*

Euclidean zoning (yoo-**klid**-ee-ən). Zoning by specific and uniform geographical division. • The purpose of Euclidean zoning is to ensure a municipality's orderly development by detailing what uses are permitted and where, and seeing that conflicting land uses are clearly separated. Its name comes from the Supreme Court case that approved it: *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 114 (1926). — Also termed *use zoning.* Cf. *non-Euclidean zoning.* [Cases: Zoning and Planning ⚷1, 31.]

"Operating from the premise that everything has its place, zoning is the comprehensive division of a city into different use zones. Use zoning is also known as Euclidean zoning, taking the name from the leading case of Euclid v. Ambler Realty Co., which upheld its validity. . . . In the typical zoning ordinance each zone has three varieties of uses: permitted, accessory and conditional. Ordinances may also specifically prohibit some uses." Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Development Regulation Law* § 4.2, at 69 (2003).

exclusionary zoning. Zoning that excludes a specific class or type of business from a district. [Cases: Zoning and Planning ⚷1.]

floating zoning. Zoning that allots land for particular uses but does not specify the geographic locations for those uses. • This is a type of non-Euclidean zoning. It allows a zoning board to make individual rulings on every application for a particular use and take into account the community's current feelings about where or if the use should be allowed. See *non-Euclidean zoning.*

incentive zoning. A relaxation in zoning restrictions (such as density limits) that offers an incentive to a developer to provide certain public benefits (such as building low-income housing units). — Also termed *bonus zoning.* [Cases: Zoning and Planning ⚷382.1.]

interim zoning. Temporary emergency zoning pending revisions to existing ordinances or the development of a final zoning plan. — Also termed *stopgap zoning.* [Cases: Zoning and Planning ⚷22.]

inverse zoning. Zoning that attempts to disperse particular types of property use rather than concentrate them.

non-Euclidean zoning. Zoning that allows a mix of land uses in the same area if the uses are or can be made nonconflicting • For example, a business might be permitted to operate in a residential area if the business adopts a certain architecture to blend in with other structures and has sufficient landscaping and setback to guarantee that nearby residents will not suffer excessive noise, pollution, or other nuisances. Cf. *Euclidean zoning.*

partial zoning. Zoning that affects only a portion of a municipality's territory, and that is usu. invalid because it contradicts the comprehensive zoning plan. — Also termed *piecemeal zoning.* [Cases: Zoning and Planning ⚷35, 162.]

private zoning. The use of restrictive covenants in private agreements to restrict the use and occupancy of real property. • Private zoning often covers such things as lot size, building lines, architectural specifications, and property uses. [Cases: Covenants ⚷1, 49, 69.]

reverse spot zoning. Zoning of a large area of land without regard for the zoning of a small piece of land within that area. [Cases: Zoning and Planning ⚷35, 162.]

"When parcels around a given property are rezoned to allow for higher uses leaving an island of less intensive use, reverse spot zoning is the result." Donald G. Hagman & Julian Conrad Juergensmeyer, *Urban Planning and Land Development Control Law* § 5.4, at 136 (2d ed. 1986).

spot zoning. Zoning of a particular piece of land without regard for the zoning of the larger area surrounding the land. [Cases: Zoning and Planning ⚷35, 162.]

"To the popular mind, spot zoning means the improper permission to use an 'island' of land for a more intensive use than permitted on adjacent properties. The popular definition needs several qualifications . . . . The set of facts usually involves an 'island' of more intensive use than surrounding property . . . . Usually the 'island' is small . . . . Furthermore, the term is not properly applied to development permission that comes about by variance or special exception. Rather, the term refers to a legislative act, such as a rezoning, or to a situation in which the 'island' is created by the original ordinance." Donald G. Hagman & Julian Conrad Juergensmeyer, *Urban Planning and Land Development Control Law* § 5.4, at 136 (2d ed. 1986).

stopgap zoning. See *interim zoning.*

use zoning. See *Euclidean zoning.*

zoning map. The map that is created by a zoning ordinance and shows the various zoning districts. [Cases: Zoning and Planning ⇨30.]

zoning ordinance. (1919) A city ordinance that regulates the use to which land within various parts of the city may be put. • It allocates uses to the various districts of a municipality, as by allocating residences to certain parts and businesses to other parts. A comprehensive zoning ordinance usu. regulates the height of buildings and the proportion of the lot area that must be kept free from buildings. [Cases: Zoning and Planning ⇨4, 21.]

zoning variance. See VARIANCE (2).

zygnomic (zig-**noh**-mik), *adj.* Of, relating to, or involving an act whose evolution directly abridges the freedom of a person who bears a duty in the enjoyment of a legal advantage. • This rather abstract term was coined by the philosopher Albert Kocourek in his book *Jural Relations* (1927). Cf. MESONOMIC.

zygocephalum (zī-gə-**sef**-ə-ləm), *n.* [Greek fr. *zygo-* "yoke, pair" + *kephalos* "head"] *Hist.* A measure of land, esp. the amount that can be plowed in one day.

zygostates (zī-goh-**stay**-teez), *n.* [Greek] *Roman law.* An officer who resolved controversies over weight; a public weigher.

zygote. A two-celled organism formed by the joining of egg and sperm. Cf. EMBRYO; FETUS.

zygote intrafallopian transfer. A procedure in which mature eggs are fertilized in a test tube or petri dish and then injected into a woman's fallopian tubes. — Abbr. ZIFT. — Also termed *zygote intrafallopian-tube transfer.* Cf. ARTIFICIAL INSEMINATION; GAMETE INTRAFALLOPIAN TRANSFER; IN VITRO FERTILIZATION.

Appendix A

Table of Legal Abbreviations

L. Kurt Adamson*

This table is a working table of abbreviations, i.e. abbreviations cited in American cases, books, articles, and texts, and not restricted to standard abbreviations found in legal citation manuals. The scope of abbreviations includes the names of common federal and state primary sources, legal periodicals, treatises, and organizations, as well as selected words or phrases commonly found in American publications from the 19th century forward. There are also selected abbreviations for English, Canadian, Australian, and international sources.

The table has unique features in its two-part format. The main table lists fuller publication titles than may be found in other abbreviation tables. The second part lists the full names of individual authors referred to in the main abbreviation table. These fuller titles and author names may help in finding publications through a library catalog.

Not every variation for a publication's abbreviation is listed. But the table can be used to interpret abbreviations not listed. First, the same publication or organization may be abbreviated with or without periods, such as "UPA" or "U.P.A." This table lists only one version. Second, standardized citations and abbreviations were not adopted until the 20th century. For example, Willard Phillips's *Treatise on the Law of Evidence* is cited in various sources as:

Phillips, Law of Evidence

Phillips on Evidence

Phillips, Evidence

Phillips, Ev.

Phil. Ev.

So the reader may use this table's information to interpret other variations of a publication's abbreviation. Many 19th-century treatises were published in numerous editions. Other parts of the citation are therefore essential to identify which edition of a work is being cited. Furthermore, the format "author on ____" (such as *Phillips on Evidence*) was a common citation practice throughout the 19th and early 20th centuries, even though it was only a common shorthand for the work or perhaps the title that appeared on its spine, but not the formal title of the work as found on its title page. Thus, this table provides at least the beginning portion of titles to treatises.

The table is arranged in alphabetical order as if each abbreviation is one word without punctuation or spacing. Organizations are commonly cited without periods in the abbreviation. If an author's name is abbreviated, the full last name precedes the listed title. An author's initials are also included if there is more than one author with the same last name in the table. Finally, the ampersand (&) is treated, for purposes of order, as the word "and" in the abbreviation.

This table is not intended to be comprehensive. Other abbreviations may be found in the following sources, Mary M. Prince, *Bieber's Dictionary of Legal Abbreviations: A Reference Guide for Attorneys, Legal Secretaries, Paralegals and Law Students*, 5th ed. (2001), Donald Raistrick, *Index to Legal Citations and Abbreviations*, 2d ed. (1993), Charles C. Soule, *The Lawyer's Reference Manual* (1884), or John G. Marvin, *Legal Bibliography, or A Thesaurus of American, English, Irish and Scotch Law Books* (1847). For non-English language abbreviations, see Bieber and Raistrick, above, but also Igor I. Kavass and Mary M. Prince, *A World Dictionary of Legal Abbreviations* (1991–) or Arturo L. Torres and Francisco Avalos, *Latin American Legal Abbreviations: A Comprehensive Spanish/Portuguese Dictionary with English Translations* (1989).

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A

A. — Atlantic Reporter
A.2d — Atlantic Reporter, Second Series
AALS — American Association of Law Schools
A. & E. Ann. Cas. — American & English Annotated Cases
A. & E. Enc. L. — American & English Encyclopedia of Law
A. & E. Enc. L. & Prac. — American & English Encyclopedia of Law and Practice
A. &. E. Ency. — American & English Encyclopedia of Law
A.B.A. — American Bar Association
A.B.A. J. — American Bar Association Journal
A.B.A. Rep. — American Bar Association Reports
Abb. N. Cas. — Abbott's New Cases (N.Y.)
Abb. Pr. — Abbott's Practice Reports (N.Y.)
Abb. Pr. (n.s.) — Abbott's Practice Reports, New Series (N.Y.)
A.B.F. Res. J. — American Bar Foundation Research Journal
A.B.F. Research Rep.. — American Bar Foundation Research Reporter
ACCA Docket — ACCA Docket: the Journal of American Corporate Counsel Association
Accountancy L. Rep. (CCH) — Accountancy Law Reporter
acq. — Acquiescence
acq. in result — Acquiescence in result
A.D. — Appellate Division Reports (N.Y.)
A.D.2d — Appellate Divisions Reports, Second Series (N.Y.)
Adams, Eq. — The Doctrine of Equity: A Commentary on the Law as Administered by the Court of Chancery
Adams, Equity — The Doctrine of Equity: A Commentary on the Law as Administered by the Court of Chancery
Adams L.J. — Adams County Law Journal (Pa.)
AD Cas. (BNA) — Americans with Disabilities Cases
Addison on Contracts — Addison on Contracts: Being a Treatise on the Law of Contracts
Add. Torts — Addison, A Treatise on the Law of Torts
Adel. L. Rev. — Adelaide Law Review
Adelphia L.J. — Adelphia Law Journal
Ad. L.B. — Administrative Law Bulletin
Ad. L. Bull. — Administrative Law Bulletin
Ad. L. News — Administrative Law News
Admin. & Reg. L. News — Administrative and Regulatory Law News
Admin. L. 3d — Pike & Fischer Administrative Law, Third Series
Admin. L.J. — Administrative Law Journal
Admin. L.J. Am. U. — Administrative Law Journal of American University
Admin. L. Rev. — Administrative Law Review
Adm. L. Rev. — Administrative Law Review
Advoc. — Advocate (Idaho)
Advoc. Q. — Advocates' Quarterly
Advocates' Q. — Advocates' Quarterly
Adv. Sh. — Advance Sheet
A.E.C. — Atomic Energy Commission Reports
A.E.L.R. — All England Law Reports
Aff. Action Compl. Man. (BNA) — Affirmative Action Compliance Manual for Federal Contractors
aff'd — affirmed
aff'g — affirming
A.F. JAG L. Rev. — Air Force JAG Law Review
A.F. L. Rev. — Air Force Law Review
Afr.-Am. L. & Pol'y Rep. — African-American Law and Policy Report
Afr. L. Stud. — African Law Studies
A.F.T.R. (P-H) — American Federal Tax Reports
A.F.T.R.2d (RIA) — American Federal Tax Reports, Second Series
Agric. Dec. — Agriculture Decisions
AICPA Prof. Stand. (CCH) — AICPA Professional Standards
AID — Agency for International Development
AIDS L. & Litig. Rep. — AIDS Law and Litigation Reporter (Univ. Pub. Group)
Aik. — Aikens (Vt.)
AIPLA — American Intellectual Property Law Association
AIPLA Q.J. — AIPLA Quarterly Journal
Air & Space L. — Air and Space Law
Air & Space Law. — Air and Space Lawyer
Air. L. — Air Law
Air L. Rev. — Air Law Review
A.K. Marsh. — A.K. Marshall (Ky.)
Akron L. Rev. — Akron Law Review
Akron Tax. J. — Akron Tax Journal
Ala. — Alabama Reports
Ala. Acts — Acts of Alabama
Ala. Admin. Code — Alabama Administrative Code
Ala. App. — Alabama Appellate Courts Reports
Ala. Code — Code of Alabama
Ala. Law. — Alabama Lawyer
Ala. L.J. — Alabama Law Journal
Ala. L. Rev. — Alabama Law Review
Alaska — Alaska Reports
Alaska Admin. Code — Alaska Administrative Code
Alaska Fed. — Alaska Federal Reports

Alaska L. Rev. — Alaska Law Review
Alaska Sess. Laws — Alaska Session Laws
Alaska Stat. — Alaska Statutes
Ala. St. B. Found. Bull. — Alabama State Bar Foundation Bulletin
Alberta L. Rev. — Alberta Law Review
Alb. L. Envtl. Outlook — Albany Law Environmental Outlook
Alb. L.J. Sci. & Tech. — Albany Law Journal of Science & Technology
Alb. L. Rev. — Albany Law Review
Aldrich, Eq. Pl. & Pr. — Equity Pleadings and Practice in the Courts of Massachusetts
A.L.I. — American Law Institute
ALI-ABA Bus. L. Course Mat. J. — ALI-ABA Business Law Course Materials Journal
ALI-ABA Course Mat. J. — ALI-ABA Course Materials Journal
Allen — Allen (Mass.)
All E.R. — All England Law Reports
Allnat on Partition — A Practical Treatise on the Law of Partition
All St. Tax Guide (CCH) — All States Tax Guide
A.L.R. — American Law Reports
A.L.R.2d — American Law Reports, Second Series
A.L.R.3d — American Law Reports, Third Series
A.L.R.4th — American Law Reports, Fourth Series
A.L.R.5th — American Law Reports, Fifth Series
A.L.R.Fed. — American Law Reports, Federal
ALSA — American Legal Studies Association
ALSA F. — ALSA Forum
Alta. L. Rev. — Alberta Law Review
Alternative L.J. — Alternative Law Journal
ALWD — Association of Legal Writing Directors
Am. Acad. Psych. & L. Bull. — American Academy of Psychiatry and Law Bulletin
Am. Bankr. Inst. J. — American Bankruptcy Institute Journal
Am. Bankr. Inst. L. Rev. — American Bankruptcy Institute Law Review
Am. Bankr. L.J. — American Bankruptcy Law Journal
Am. Bankr. Rep. — American Bankruptcy Reports
Am. Bankr. Rep. N.S. — American Bankruptcy Reports, New Series
Am. B. Found. Res J. — American Bar Foundation Research Journal
Am. Bus. L.J. — American Business Law Journal
A.M.C. — American Maritime Cases
Am. Crim L. Rev. — American Criminal Law Review
Am. Dec. — American Decisions
Am. Dig. — American Digest
Amer. Rep. — American Reports
Amer. St. Rep. — American State Reports
Amer. State Reps. — American State Reports
Ames & Smith, Cases on Torts — A Selection of Cases on the Law of Torts
Ames, Cas. on B. & N. — Selection of Cases on the Law of Bills and Notes and Other Negotiable Paper
Ames, Cas. on Bills & Notes — Selection of Cases on the Law of Bills and Notes and Other Negotiable Paper
Ames, Cas. on Trusts — A Selection of Cases on the Law of Trusts
Ames, Cas. Par. — A Selection of Cases on the Law of Partnership
Ames, Cas. Pl. — A Selection of Cases on Pleading at Common Law
Ames, Cas. Sur. — A Selection of Cases on the Law of Suretyship
Ames on Trusts — A Selection of Cases on the Law of Trusts
Am. Indian J. — American Indian Journal
Am. Indian L. Rev. — American Indian Law Review
Am. Ins. Rep. — American Insolvency Reports
Am. J. Comp. L. — American Journal of Comparative Law
Am. J. Crim. L. — American Journal of Criminal Law
Am. J. Fam. L. — American Journal of Family Law
Am. J. Int'l. Arb. — American Journal of International Arbitration
Am. J. Int'l L. — American Journal of International Law
Am. J. Juris. — American Journal of Jurisprudence
Am. J.L. & Med. — American Journal of Law & Medicine
Am. J. Legal Hist. — American Journal of Legal History
Am. J. Tax Pol'y — American Journal of Tax Policy
Am. J. Trial Advoc. — American Journal of Trial Advocacy
Am. Jur. — American Jurisprudence
Am. Jur. 2d — American Jurisprudence, Second Edition
Am. L. & Econ. Rev. — American Law and Economics Review
Am. Law. — American Lawyer
Am. Law Inst. — American Law Institute
Am. Law J. — American Law Journal
Am. Law Mag. — American Law Magazine
Am. Law Rev. — American Law Review
Am. Lead. Cas. — Hare & Wallace, American Leading Cases
Am. L. Mag. — American Law Magazine
Am. L. Register — American Law Register

Am. L. Register & Rev. — American Law Register and Review
Am. L. Rev. — American Law Review
Amos & F. — The Law of Fixtures and Other Property
Amos & F. Fixt. — The Law of Fixtures and Other Property
Am. R. — American Reports
Am. Rep. — American Reports
Am. Rev. Int'l Arb. — American Review of International Arbitration
Am. Rev. Pub. Admin. — American Review of Public Administration
Am. Samoa — American Samoa Reports
Am. Samoa 2d — American Samoa Reports, Second Series
Am. Samoa Admin. Code — American Samoa Administrative Code
Am. Samoa Code Ann. — American Samoa Code Annotated
Am. Soc'y Int'l L. Proc. — American Society of International Law Proceedings
Am. Stock Ex. Guide (CCH) — American Stock Exchange Guide
Am. St. Papers — American State Papers
Am. St. R. — American State Reports
Am. St. Rep. — American State Reports
Am. U. Int'l L. Rev. — American University International Law Review
Am. U. Int. L. Rev. — American University Intramural Law Review
Am. U. Intra. L. Rev. — American University Intramural Law Review
Am. U. J. Gender & L. — American University Journal of Gender and the Law
Am. U. J. Gender Soc. Pol'y & L. — American University Journal of Gender, Social Policy & the Law
Am. U. J. Int'l L. & Pol'y — American University Journal of International Law and Policy
Am. U. L. Rev. — American University Law Review
Angell & Ames on Corps. — Treatise on the Law of Private Corporations Aggregate
Angell, Lim. — A Treatise on the Law of Limitation of Actions
Angell on Limitations — A Treatise on the Law of Limitations of Actions
Angell on Tide Waters — A Treatise in the Right of Property in Tide Waters
Angell on Watercourses — A Treatise on the Common Law of Watercourses *or* A Treatise on the Law of Watercourses
Anglo-Am. L. Rev. — Anglo-American Law Review
Animal L. — Animal Law
Annals Air & Space L. — Annals of Air and Space Law
Annals Am. Acad. Pol. & Soc. Sci. — Annals of the American Academy of — Political & Social Science
Annals Health L. — Annals of Health Law
Ann. Cas. — American and English Annotated Cases
Ann. Code — Annotated Code
Ann. Inst. on Sec. Reg. — Annual Institute on Securities Regulation
Ann. Inst. Sec. Reg. — Annual Institute on Securities Regulation
Ann. Indus. Prop. L. — Annual of Industrial Property Law
Ann. Law Reg. — Annual Law Register of the United States
Ann. Rev. Banking L. — Annual Review of Banking Law
Ann. Rev. L. Sch. N.Y.U. — Annual Review of the Law School of New York University
Ann. St. — Annotated Statutes
Ann. Surv. Am. L. — Annual Survey of American Law
Ann. Surv. Commonw. L. — Annual Survey of Commonwealth Law
Ann. Surv. Int'l & Comp. L. — Annual Survey of International and Comparative Law
Ann. Surv. Mass. L. — Annual Survey of Massachusetts Law
Anson, Contracts — Principles of the English Law of Contract and of Agency in its Relation to Contract
Antioch L.J. — Antioch Law Journal
Antitrust & Trade Reg. Rep. (BNA) — Antitrust and Trade Regulation Report
Antitrust Bull. — The Antitrust Bulletin
Antitrust L. & Econ. Rev. — Antitrust Law and Economics Review
Antitrust L.J. — Antitrust Law Journal
Antitrust Newsl. — Antitrust Newsletter (ABA)
Ant. N.P. Cas. — Anthon's Nisi Prius Cases (N.Y.)
APLA Q. — American Patent Law Association Quarterly
APLA Q. J. — American Patent Law Quarterly Journal
app. — appendix
Appalachian J. L. — Appalachian Journal of Law
App. Ct. Admin. Rev. — Appellate Court Administration Review
App. D.C. — Appeal Cases, District of Columbia
Arab L.Q. — Arab Law Quarterly
Arb. Int'l — Arbitration International
Arb. J. — Arbitration Journal (ABA)
Ariz. — Arizona Reports
Ariz. Admin. Code — Arizona Administrative Code
Ariz. Admin. Reg. — Arizona Administrative Register
Ariz. App. — Arizona Appeals Reports
Ariz. Att'y — Arizona Attorney

Ariz. B.J. — Arizona Bar Journal
Ariz. J. Int'l & Comp. L. — Arizona Journal of International and Comparative Law
Ariz. Legis. Serv. — Arizona Legislative Service
Ariz. L. Rev. — Arizona Law Review
Ariz. B.J. — Arizona Bar Journal
Ariz. Rev. Stat. — Arizona Revised Statutes
Ariz. Rev. Stat. Ann. — Arizona Revised Statutes Annotated
Ariz. Sess. Laws — Arizona Session Laws
Ariz. St. L.F. — Arizona State Law Forum
Ariz. St. L.J. — Arizona State Law Journal
Ark. — Arkansas Reports
Ark. Acts — General Acts of Arkansas
Ark. Adv. Legis. Serv. — Arkansas Advance Legislative Service
Ark. App. — Arkansas Appellate Reports
Ark. Code Ann. — Arkansas Code of 1987 Annotated
Ark. Law. — Arkansas Lawyer
Ark. Law. Q. — Arkansas Lawyer Quarterly
Ark. L. Notes — Arkansas Law Notes
Ark. L. Rev. — Arkansas Law Review
Ark. L. Rev. & B. Assn. J. — Arkansas Law Review and Bar Association Journal
Ark. Reg. — Arkansas Register
Ark. Stats. — Arkansas Statutes
Army Law. — Army Lawyer
Arn. Ins. — Maclachlan, Arnould on the Law of Marine Insurance
A.R.S. — Arizona Revised Statutes
Art & L. — Art and the Law
Artificial Intelligence & L. — Artificial Intelligence and Law
A.S. — Alaska Statutes
ASCAP — American Society of Composers, Authors, and Publishers
A.S.C.A.P. Copyright L. Symp. — ASCAP Copyright Law Symposium
Asia Bus. L. Rev. — Asia Business Law Review
Asia L. — Asia Law
Asia L. & Prac. — Asia Law and Practice
Asia-Pac. Const. Y.B. — Asia-Pacific Constitutional Yearbook
Asian Am. Pac. Is. L.J. — Asian American Pacific Islands Law Journal
Asian L.J. — Asian Law Journal
Asian Pac. Am. L.J. — Asian Pacific American Law Journal
Asian-Pac. L. & Pol'y J. — Asian-Pacific Law & Policy Journal
Asian-Pac. Tax & Investment Bull. — Asian-Pacific Tax and Investment Bulletin
Asia Pac. J. Envtl. L. — Asia Pacific Journal of Environmental Law
Asia-Pac. J. Hum. Rts. & L. — Asia-Pacific Journal of Human Rights and the Law
Asia-Pac. J. Pub. Health — Asia-Pacific Journal of Public Health
Asia Pac. L. Rev. — Asia Pacific Law Review
Asia-Pac. Tax Bull. — Asia-Pacific Tax Bulletin
ASIL Proc. — American Society of International Law Proceedings
ASILS — Association of Student International Law Societies
ASILS Int'l L.J. — ASILS International Law Journal
ASIR L. Rev. — Association for the Study of International Relations Law Review
A.S.R. — American State Reports
Atherly on Marriage Settlements — A Practical Treatise on the Law of Marriage and Other Family Settlements
ATLA — Association of Trial Lawyers of America
A.T.L.A. J. — American Trial Lawyers Association Journal
Atl. Rep. — Atlantic Reporter
Atom. Energy L.J. — Atomic Energy Law Journal
Atom. En. L. Rep. (CCH) — Atomic Energy Law Reporter
Att'y Gen. Rep. — United States Attorneys General's Reports
Auckland U. L. Rev. — Auckland University Law Review
Austin's Jurisprudence — Austin, Lectures on Jurisprudence, or, The Philosophy of Positive Law
Austl. B. Rev. — Australian Bar Review
Austl. Bus. L. Rev. — Australian Business Law Review
Austl. Disp. Resol. J. — Australian Dispute Resolution Journal
Austl. J. Asian L. — Australian Journal of Asian Law
Austl. J. Corp. L. — Australian Journal of Corporate Law
Austl. J. For. Sci. — Australian Journal of Forensic Sciences
Austl. J. Hum. Rts. — Australian Journal of Human Rights
Austl. J. Int'l Aff. — Australian Journal of International Affairs
Austl. J. Lab. L. — Australian Journal of Labour Law
Austl. J.L. & Soc'y — Australian Journal of Law and Society
Austl. J. Legal Hist. — Australian Journal of Legal History
Austl. L.J. — Australian Law Journal
Austl. Tax F. — Australian Tax Forum
Austl. Tax Rev. — Australian Tax Review

Austl. Y.B. Int'l L. — Australian Yearbook of International Law

Australasian Gay & Lesbian L.J. — Australasian Gay and Lesbian Law Journal

Auto. Cas. (CCH) — Automobile Cases

Auto. Cas. 2d (CCH) — Automobile Cases, Second Series

Auto. Ins. Cas. (CCH) — Automobile Insurance Cases

Auto. Ins. Rep. (CCH) — Automobile Insurance Reporter

Av. Cases (CCH) — Aviation Cases

Ave Maria L. Rev. — Ave Maria Law Review

Av. Ins. Rep. — Aviation Insurance Reports

Av. L. Rep. (CCH) — Aviation Law Reporter / Aviation Law Reports

B

Babington on Auctions — A Treatise on the Law of Auctions

Babington on Set-Off — A Treatise on the Law of Set-Off and Mutual Credit

Bail. — Bailey (S.C.)

Bail. Eq. — Bailey's Equity Reports (S.C.)

Baker, Quar. — The Laws Relating to Quarantine of Her Majesty's Dominions at Home and Abroad, and of the Principle Foreign States

Ballantine on Limitations — A Treatise on the Statute of Limitations

Banking L.J. — Banking Law Journal

Banking Pol'y Rep. — Banking Policy Report

Banking Rep. (BNA) — Banking Report

Bankr. — Bankruptcy Reporter

Bankr. Code — Bankruptcy Code

Bankr. Ct. Dec. (CRR) — Bankruptcy Court Decisions

Bankr. Dev. J. — Bankruptcy Developments Journal

Bankr. Form — Bankruptcy Form

Bankr. L. Rep. (CCH) — Bankruptcy Law Reports

Bankr. Rule — Bankruptcy Rule

Barb. — Barbour's Supreme Court Reports (N.Y.)

Barb. Ch. — Barbour's Chancery Reports (N.Y.)

Bates' Dig. — Bates' Digest, Ohio

BATF — Bureau of Alcohol, Tobacco, and Firearms

Bay — Bay (S.C.)

Bayley, Bills — Summary of the Law of Bills of Exchange, Cash Bills, and Promissory Notes

Baylor L. Rev. — Baylor Law Review

B.B.J. — Boston Bar Journal

B.C.A. (CCH) — Board of Contract Appeals Decisions

B.C. Envtl. Aff. L. Rev. — Boston College Environmental Affairs Law Review

B.C. Ind. & Com. L. Rev. — Boston College Industrial and Commercial Law Review

B.C. Int'l & Com. L.J. — Boston College International and Comparative Law Journal

B.C. Int'l & Comp. L. Rev. — Boston College International and Comparative Law Review

B.C. L. Rev. — Boston College Law Review

B.C. Tax Rep. (CCH) — British Columbia Tax Reporter

B.C. Third World L.J. — Boston College Third World Law Journal

Beach, Priv. Corp. — Commentaries on the Law of Private Corporations

Beach, Pub. Corp. — Commentaries on the Law of Public Corporations, with Municipal Corporations and Political or Government Corporations of Every Class

Beale, Cas. Crim. Law — A Selection of Cases and Other Authorities on Criminal Law

Beaver — Beaver County Legal Journal (Pa.)

Behav. Sci. & L. — Behavioral Sciences and the Law

Belli's Mod. Trials — Belli, Modern Trials

Bench & Bar — Bench and Bar of Minnesota

Bench & B. Minn. — Bench and Bar of Minnesota

Benefits L.J. — Benefits Law Journal

Ben. Rev. Bd. Serv. (MB) — Benefits Review Board Service

Berkeley J. Emp. & Lab. L. — Berkeley Journal of Employment and Labor Law

Berkeley J. Health Care L. — Berkeley Journal of Health Care Law

Berkeley J. Int'l L. — Berkeley Journal of International Law

Berkeley La Raza L.J. — Berkeley La Raza Law Journal

Berkeley Tech. L.J. — Berkeley Technology Law Journal

Berkeley Women's L.J. — Berkeley Women's Law Journal

Berks — Berks County Law Journal (Pa.)

Best, Ev. — The Principles of the Law of Evidence with Elementary Rules for Conducting the Examination and Cross-examination of Witnesses

Best Jur. Tr. — An Exposition of the Practice Relative to the Right to Begin and Reply in Trials by Jury

Best, Pres. — A Treatise on Presumptions of Law and Fact, with the Theory and Rules of Presumptive or Circumstantial Proof in Criminal Cases

Bevans — Treaties and Other International Agreements of the United States of America, 1776-1949

Beven, Negligence — Negligence in Law

Beverly Hills B.A. J. — Beverly Hills Bar Association Journal

BIA — Bureau of Indian Affairs

Bibb — Bibb (Ky.)

Bigelow, Estop. — A Treatise on the Law of Estoppel and Its Application in Practice

Big. Torts — Bigelow, The Law of Torts

Bill Rts. J. — Bill of Rights Journal (ABA)

Binn. — Binney (Pa.)

Bish. Cont. — Bishop, Commentaries on the Law of Contracts upon a New and Condensed Method

Bish. Crim. Law — Bishop, Commentaries on the Criminal Law

Bish. Crim. Proc. — Bishop, New Criminal Procedure, or, New Commentaries on the Law of Pleading and Practice in Criminal Cases

Bishop, Non-Contract Law — Commentaries on the Non-contract Law and Especially as to Common Affairs Not of Contract or the Every-day Rights and Torts

Bishop on Marriage & Divorce — Commentaries on the Law of Marriage and Divorce

Black — Black, U.S. Supreme Court Reports

Blackburn on Sales — A Treatise on the Effect of the Contract of Sale on the Legal Rights of Property and Possession of Goods, Wares and Merchandise

Black. Com. — Blackstone, Commentaries on the Laws of England

Blackf. — Blackford's Reports (Ind.)

Black, Interp. Laws — Handbook on the Construction and Interpretation of the Laws

Black, Judg. — A Treatise on the Law of Judgments, Including the Doctrine of Res Judicata

Black, Law. Dict. — Black, Law Dictionary

Black L.J. — Black Law Journal

Blackst. Com. — Blackstone, Commentaries on the Laws of England

Black, Tax Titles — A Treatise on the Law of Tax Titles

Blanshard on Limitations — A Treatise on the Statute of Limitations

Bl. Comm. — Blackstone, Commentaries on the Laws of England

B. Leader — Bar Leader (ABA)

Bliss, Ins. — The Law of Life Insurance, with a Chapter on Accident Insurance

BLM — Bureau of Land Management

BLS — Bureau of Labor Statistics

Blue Sky L. Rep. (CCH) — Blue Sky Law Reporter / Blue Sky Law Reports

Blume Unrep. Op. — Blume's Unreported Opinions (Mich.)

Blume Sup. Ct. Trans. — Blume's Supreme Court Transactions

B. Mon. — Ben Monroe (Ky.)

BNA — Bureau of National Affairs

Bond L. Rev. — Bond Law Review

Booth, Real Act. — The Nature and Practice of Real Actions in Their Writs and Process

Boston B.J. — Boston Bar Journal

Boston L.R. — Boston Law Reporter

Bouvier, Law Dictionary — A Law Dictionary, Adapted to the Constitution and Laws of the United States

Bouv. Inst. — Bouvier, Institutes of American Law

Bowstead — Digest of the Law of Agency

Bowstead on Agency — Digest of the Law of Agency

Boyce — Boyce (Del.)

B.R. — West's Bankruptcy Reporter

Bradf. — Bradford (Iowa)

Bract. — Bracton

Bracton's Note Book — Bracton's Note Book: A Collection of Cases Decided in the King's Court During the Reign of Henry the Third

Brandeis J. Fam. L. — Brandeis Journal of Family Law

Brandeis L.J. — Brandeis Law Journal

Brayt. — Brayton (Vt.)

BRBS — Benefits Review Board Service (MB)

Breese — Breese (Ill.)

Brev. — Brevard (S.C.)

Brice, Ultra Vires — Brice, A Treatise on the Doctrine of Ultra Vires

Brick. Dig. — Brickell, Digest of the Decisions of the Supreme Court of the State of Alabama

Bridgeport L. Rev. — Bridgeport Law Review

Brief Times Rptr. — Brief Times Reporter (Colo.)

Bright. Dig. — Brightly, An Analytical Digest of the Laws of the United States

Brit. J.L. & Soc'y — British Journal of Law and Society

Brit. Tax Rev. — British Tax Review

Brit. Y.B. Int'l L. — British Yearbook of International Law

Brook. L. Rev. — Brooklyn Law Review

Brooklyn B. — Brooklyn Bar

Brooklyn Barr. — Brooklyn Barrister

Brooklyn Daily Rec. — Brooklyn Daily Record

Brooklyn J. Int'l L. — Brooklyn Journal of International Law

Brooklyn L. Rev. — Brooklyn Law Review

Brown, Adm. — Cases on the Law of Admiralty

Browne, Div. — G. Browne, A Treatise on the Principles and Practice of the Court for Divorce & Matrimonial Causes

Browne on Statute of Frauds — A Treatise on the Construction of the Statute of Frauds

Browne, Prob. — G. Browne, A Treatise on the Principles and Practice of the Court of Probate in Contentious and Non-contentious Business

Bryce's Am. Com. — Bryce, American Commonwealth

B.T.A. — Reports of the United States Board of Tax Appeals

B.T.A. (CCH) — Board of Tax Appeals Decisions

B.T.A.M. (P-H) — Board of Tax Appeals Memorandum Decisions

Bucks — Bucks County Law Reporter (Pa.)

Buffalo L. Rev. — Buffalo Law Review

Buff. Crim. L. Rev. — Buffalo Criminal Law Review

Buff. Envtl. L.J. — Buffalo Environmental Law Journal

Buff. Hum. Rts. L. Rev. — Buffalo Human Rights Law Review

Buff. J. Int'l L. — Buffalo Journal of International Law

Buff. J. Pub. Int. L. — Buffalo Journal of Public Interest Law

Buff. L. Rev. — Buffalo Law Review

Buff. Pub. Int. L.J. — Buffalo Public Interest Law Journal: In the Public Interest

Buff. Women's L.J. — Buffalo Women's Law Journal

B.U. Int'l. L.J. — Boston University International Law Journal

B.U. J. Sci. & Tech. L. — Boston University Journal of Science & Technology Law

B.U. J. Tax Law — Boston University Journal of Tax Law

Bull. Am. Acad. Psych. & L. — Bulletin of the American Academy of Psychiatry and Law

Bull. Copy. Soc'y — Bulletin of the Copyright Society of the U.S.A.

Bull. Copyright Soc'y — Bulletin of the Copyright Society of the U.S.A.

Bull. Copyright Soc'y U.S.A. — Bulletin of the Copyright Society of the U.S.A.

Bull. L. Sci. & Tech. — Bulletin of Law, Science and Technology (ABA)

Bull. L. Sec. St. B. Tex. — Bulletin of the Business Law Section State Bar of Texas

B.U. L. Rev. — Boston University Law Review

Bump, B'k'cy — Law and Practice of Bankruptcy

Bump, Comp. — Composition in Bankruptcy

Bump, Const. Dec. — Notes of Constitutional Decisions: Being a Digest of the Judicial Interpretations of the Constitution of the United States...

Bump, Fed. Pr. — Federal Procedure: The Title Judiciary in the Revised Statutes of the United States, and the Rules Promulgated by the Supreme Court...

Bump, Fraud. Conv. — Fraudulent Conveyances: A Treatise upon Conveyances Made By Debtors to Defraud Creditors

Bump, Int. Rev. — Internal Revenue Laws

Bump, Pat. — The Law of Patents, Trade-Marks, and Copy-Rights: Consisting of Sections of the Revised Statutes of the United States with Notes under Each Section...

B.U. Pub. Int. L.J. — Boston University Public Interest Law Journal

Bur. — Burnett (Wis.)

Burns' Ann. St. — Burns' Annotated Statutes (Ind.)

Burns' Rev. St. — Burns' Revised Statues (Ind.)

Burrill, Assignm. — A Treatise on the Law and Practice of Voluntary Assignments for the Benefit of Creditors

Burrill, Circ. Ev. — A Treatise on the Nature, Principles and Rules of Circumstantial Evidence

Burrill, Pr. — A Treatise on the Practice of the Supreme Court of the State of New York in Personal Actions: with an Appendix Practical Forms

Busb. — Busbee's Law Reports (N.C.)

Busb. Eq. — Busbee's Equity Reports (N.C.)

Busb. Law — Busbee's Law Reports (N.C.)

Bus. Franchise Guide (CCH) — Business Franchise Guide

Bush — Bush (Ky.)

Bus. Law. — Business Lawyer

Bus. L.J. — Business Law Journal

Bus. L. Rev. — Business Law Review

Bus. L. Today — Business Law Today

Buswell on Personal Injuries — The Civil Liability for Personal Injuries Arising Out of Negligence

Bus. Wk. — Business Week

Bx. County Adv. — Bronx Bar Association Advocate

Byles, Bills — A Treatise on the Law of Bills of Exchange, Promissory Notes, Bank-Notes and Checks

BYU Educ. & L.J. — Brigham Young University Education and Law Journal

BYU J. Pub. L. — Brigham Young University Journal of Public Law

BYU L. Rev. — Brigham Young University Law Review

C

C.A. — California Appellate Reports

C.A.A.F. — United State Court of Appeals for the Armed Forces

CAB — Civil Aeronautics Board Reports

Cai. Cas. — Caines' Cases (N.Y.)

Cai. R. — Caines' Reports (N.Y.)

Cal. — California Reports (Supreme Court)

Cal. 2d — California Reports, Second Series

Cal. 3d — California Reports, Third Series

Cal. 4th — California Reports, Fourth Series

Cal. Adv. Legis. Serv. — California Advance Legislative Service

Cal. App. — California Appellate Reports

Cal. App. Dec. — California Appellate Decisions

Cal. App. Supp. — California Appellate Reports Supplement
Cal. App. 2d — California Appellate Reports, Second Series
Cal. App. 2d Supp. — California Appellate Reports Supplement, Second Series
Cal. App. 3d — California Appellate Reports, Third Series
Cal. App. 3d Supp. — California Appellate Reports, Fourth Series
Cal. App. 4th — California Appellate Reports Supplement, Fourth Series
Cal. Bankr. J. — California Bankruptcy Journal
Cal. Code — California Code
Cal. Code Regs. — California Code of Regulations
Cal. Crim. L. Rev. — California Criminal Law Review
Cal. Dec. — California Decisions
Calif. L. Rev. — California Law Review
Cal. Jur. — California Jurisprudence
Cal. Jur. 2d — California Jurisprudence 2d
Cal. Jur. 3d — California Jurisprudence 3d
Call — Call (Va.)
Cal. Law. — California Lawyer
Cal. Legis. Serv. — California Legislative Service
Cal. Leg. Rec. — California Legal Record
Cal. L.J. — California Law Journal (San Francisco)
Cal. L. Rev. — California Law Review
Cal. Real Prop. J. — California Real Property Journal
Cal. Reg. L. Rep. — California Regulatory Law Reporter
Cal. Regulatory Notice Reg. — California Regulatory Notice Register
Cal. Rptr. — West's California Reporter
Cal. Rptr. 2d — West's California Reporter, Second Series
Cal. Stat. — Statutes of California
Cal. St. B.J. — California State Bar Journal
Cal. Unrep. — California Unreported Cases
Cal. W. Int'l L.J. — California Western International Law Journal
Cal. W. L. Rev. — California Western Law Review
Cam. & Nor. — Conference by Cameron & Norwood (N.C.)
Cambridge L.J. — Cambridge Law Journal
Campbell L. Rev. — Campbell Law Review
Can. B. Rev. — Canadian Bar Review
Can. Bus. L.J. — Canadian Business Law Journal
Can. Com. L. Guide (CCH) — Canadian Commercial Law Guide
Can. Fam. L.Q. — Canadian Family Law Quarterly
Can. Intell. Prop. Rev. — Canadian Intellectual Property Review
Can. J. Fam. L. — Canadian Journal of Family Law
Can. J.L. & Juris. — Canadian Journal of Law and Jurisprudence
Can. J.L. & Soc'y — Canadian Journal of Law and Society
Can. J. Women & L. — Canadian Journal of Women and the Law
Can. Tax J. — Canadian Tax Journal
Can. Tax Rep. (CCH) — Canadian Tax Reporter
Can.-U.S. L.J. — Canada-United States Law Journal
Can. Y.B. Int'l L. — Canadian Yearbook of International Law
CAP — Civil Air Patrol
Cap. Def. Dig. — Capital Defense Digest
Cap. Def. J. — Capital Defense Journal
Cap. U. L. Rev. — Capital University Law Review
Cardozo Arts & Ent. L.J. — Cardozo Arts and Entertainment Law Journal
Cardozo J. Int'l & Comp. L. — Cardozo Journal of International and Comparative Law
Cardozo L. Rev. — Cardozo Law Review
Cardozo Online J. Conflict Resol. — Cardozo Online Journal of Conflict Resolution
Cardozo Stud. L. & Lit. — Cardozo Studies in Law and Literature
Cardozo Women's L.J. — Cardozo Women's Law Journal
Car. L. Rep. — Carolina Law Repository (N.C.)
Carv. Carr. — Carver, A Treatise on the Law Relating to the Carriage of Goods by Sea
Case & Com. — Case and Comment
Case W. Res. J. Int'l L. — Case Western Reserve Journal of International Law
Case W. Res. L. Rev. — Case Western Reserve Law Review
Cas. On Trusts — Ames, A Selection of Cases on the Law of Trusts
Cath. Law. — Catholic Lawyer
Cath. U. Am. L. Rev. — Catholic University of America Law Review
Cath. U. L. Rev. — Catholic University Law Review
C.B. — Cumulative Bulletin
CBA Rec. — Chicago Bar Association Record
CBC — Clark Boardman Callaghan
C.B.C. — Collier's Bankruptcy Cases (MB)
CBO — Congressional Budget Office
C.C.A. — Circuit Court of Appeals
CCC — Commodity Credit Corporation
CCH — Commerce Clearing House
C.C.L.J. — Centre County Legal Journal (Pa.)
C.C.N. — Chief Counsel Notice (IRS)

C.C.P. — Code of Civil Procedure / Code of Criminal Procedure

C.C.P.A. — Court of Customs and Patent Appeals Reports

CCR — Commission on Civil Rights

CDC — Centers for Disease Control and Prevention

CEB — California Continuing Education of the Bar

CEC (CCH) — European Community Cases

Cent. Dig. — Century Digest

Cent. Law J. — Century Law Journal

CEQ — Council on Environmental Quality

cert. — certiorari

cert. denied — certiorari denied

C.F.R. — Code of Federal Regulations

CFTC — Commodity Futures Trading Commission

C.G.S.A. — Connecticut General Statutes Annotated

ch. — chapter

Chamberlain's Stare Decisis — Chamberlain, The Doctrine of Stare Decisis: Its Reasons and Extent

Chand. — Chandler (Wis.)

Chandler's Criminal Trials — Chandler, American Criminal Trials

Chap. L. Rev. — Chapman Law Review

Chapman L. Rev. — Chapman Law Review

Ch. D. — Law Reports Chancery Division (Eng.)

Chem. Reg. Rep. (BNA) — Chemical Regulation Reporter

Chester Co. Rep. — Chester County Reports (Pa.)

Chev. — Cheves (S.C.)

Chev. Eq. — Cheves' Equity Reports (S.C)

Chi. B. Rec. — Chicago Bar Record

Chicago Bar Rec. — Chicago Bar Record

Chicago Bd. Options Ex. Guide (CCH) — Chicago Board of Options Exchange Guide

Chicago L.B. — Chicago Law Bulletin

Chicago L.J. — Chicago Law Journal

Chicago L. Rec. — Chicago Law Record

Chicago L.T. — Chicago Law Times

Chicano-Latino L. Rev. — Chicano-Latino Law Review

Chicano L. Rev. — Chicano Law Review

Chi. J. Int'l L. — Chicago Journal of International Law

Chi.-Kent L. Rev. — Chicago-Kent Law Review

Child. Legal Rts. J. — Children's Legal Rights Journal

Chi. Leg. N. — Chicago Legal News

China L. Rep. — China Law Reporter (ABA)

Chi. Trib. — Chicago Tribune

Chitty, Bl. Comm. — Commentaries on the Laws of England by Sir Wm. Blackstone (Chitty ed.)

Chitty, Com. Law — Treatise on the Laws of Commerce and Manufacturing and the Contracts Relating Thereto

Chitty, Contracts — A Practical Treatise on the Law of Contracts

Chitty, Criminal Law — A Practical Treatise on Criminal Law

Chitty, Pl. — A Practical Treatise on Pleading, and on the Parties to Actions

Chitty, Prerogative — A Treatise on the Law of Prerogatives of the Crown and the Relative Duties and Rights of the Subject

Christian, Bankruptcy — Practical Instructions for Suing Out and Prosecuting a Commission of Bankruptcy, With the Best Modern Precedents, and a Digest of Supplemental Cases

CIA — Central Intelligence Agency

CIC — Consumer Information Center

Cin. L. Rev. — Cincinnati Law Review

C.I.R. — Commissioner of Internal Revenue

Cir. — Circuit Court of Appeals (federal)

Circles: Buff. Women's J.L. & Soc. Pol'y. — Circles: The Buffalo Women's Journal of Law and Social Policy

Cir. Ct. Rule — Circuit Court Rule

City L. — NYLS Citylaw

Civ. App. — Civil Appeals Reports

Civ. Code — Civil Code

Civ. Code Practice — Civil Code of Practice

Civ. Prac. Act — Civil Practice Act

Civ. St. — Civil Statutes

C.J. — Corpus Juris

C.J.S. — Corpus Juris Secundum

Cl. — Clause

C.L.A.I.T. — Constitutions and Laws of the American Indian Tribes

Clay's Dig. — Clay, A Digest of the Laws of the State of Alabama

Cl. Ch. — Clarke's Chancery Reports (N.Y.)

Cl. Ct. — United States Claims Court Reporter

Clearinghouse Rev. — Clearinghouse Review

C. Leg. Rec. — California Legal Record

Clev. B.J. — Cleveland Bar Journal

Clev. Insan. — Clevenger, Medical Jurisprudence of Insanity or Forensic Psychiatry

Clev. Law Rec. — Cleveland Law Recorder

Clev. Law Rep. — Cleveland Law Reporter

Clev.-Mar. L. Rev. — Cleveland-Marshall Law Review

Clev.-Marshall L. Rev. — Cleveland-Marshall Law Review

Clev. St. L. Rev. — Cleveland State Law Review

Clinical L. Rev. — Clinical Law Review: A Journal of Lawyering and Legal Education

C.L.J. — California Law Journal

C.L.J. & Lit. Rev. — California Law Journal and Literary Review

C.L.N. — Chicago Legal News
C.L.R. — California Law Review
CLS — Christian Legal Society
CLS Q. — CLS Quarterly
C.L.U. — Chartered Life Underwriters
CLU J. — CLU Journal
C.M.A. — Decisions of the United States Court of Military Appeals
C.M.L.R. — Common Market Law Reports
C.M.R. — Court Martial Reports
Cobb, Dig. — Cobb, A Digest of the Statute Laws of the State of Georgia
Cobb, Slav. — An Inquiry into the Law of Negro Slavery in the United States of America
Code Civ. Proc. — Code of Civil Procedure
Code Cr. Proc. — Code of Criminal Procedure
Code Gen. Laws — Code of General Laws
Code Me. R. — Code of Maine Rules
Code Prac. — Code of Practice
Code Proc. — Code of Procedure
Code Pub. Gen. Laws — Code of Public General Laws
Code Supp. — Supplement to a Code
Cod. St. — Codified Statutes
Cold. — Coldwell (Tenn.)
Cole. & Cai. Cas. — Coleman and Caines' Cases (N.Y.)
Cole. Cas. — Coleman's Cases (N.Y.)
Co. Inst. — Coke, Institutes of the Laws of England (four parts)
Co. Lit. — Coke, First Part of the Institutes of the Laws of England, or A Commentary Upon Littleton
Collective Bargaining Negot. & Cont. (BNA) — Collective Bargaining Negotiations and Contracts
College L. Dig. (Nat'l Ass'n College & Univ. Att'ys) — College Law Digest
Collier Bankr. Cas. (MB) — Collier Bankruptcy Cases
Collier Bankr. Cas. 2d (MB) — Collier Bankruptcy Cases, Second Series
Collyer, Partnership — A Practical Treatise on the Law of Partnership
Colo. — Colorado Reports
Colo. App. — Colorado Court of Appeals Reports
Colo. Code Regs. — Code of Colorado Regulations
Colo. J. Int'l Envtl. L. & Pol'y — Colorado Journal of International Environmental Law and Policy
Colo. Law. — Colorado Lawyer
Colo. Law Rep. — Colorado Law Reporter
Colo. Legis. Serv. — Colorado Legislative Service
Colo. Reg. — Colorado Register
Colo. Rev. Stat. — Colorado Revised Statutes
Colo. Rev. Stat. Ann. — Colorado Revised Statutes Annotated
Colo. Sess. Laws — Session Laws of Colorado
Colum. Bus. L. Rev. — Columbia Business Law Review
Colum. Hum. Rts. L. Rev. — Columbia Human Rights Law Review
Colum. J. Asian L. — Columbia Journal of Asian Law
Colum. J. E. Eur. L. — Columbia Journal of East European Law
Colum. J. Envtl. L. — Columbia Journal of Environmental Law
Colum. J. Eur. L. — Columbia Journal of European Law
Colum. J. Gender & L. — Columbia Journal of Gender and Law
Colum. J.L. & Arts — Columbia Journal of Law & the Arts
Colum. J.L. & Soc. Probs. — Columbia Journal of Law and Social Problems
Colum. J. Transnat'l L. — Columbia Journal of Transnational Law
Colum. L. Rev. — Columbia Law Review
Colum. Sci. & Tech. L. Rev. — Columbia Science and Technology Law Review
Colum. Surv. Hum. Rts. L. Rev. — Columbia Survey of Human Rights Law Review
Colum.-VLA J.L. & Arts — Columbia-VLA Journal of Law and the Arts
Com. & L. — Communications and the Law
Com. L.B. — Commercial Law Bulletin
Com. L. J. — Commercial Law Journal
COMM/ENT — COMM/ENT: A Journal of Entertainment and Communications Law
Comm. Fut. L. Rep. (CCH) — Commodity Futures Law Reporter Commodity Futures Law Reports
Comm. Law. — **1.** Commercial Lawyer. **2.** Communications Lawyer.
CommLaw Conspectus — CommLaw Conspectus: Journal of Communications Law and Policy
Comm. L.J. — Commercial Law Journal
Common Mkt. L. Rep. (CCH) — Common Market Law Reports
Common Mkt. L. Rev. — Common Market Law Review
Communications Reg. (P & F) — Communications Regulations
Community Prop. J. — Community Property Journal
Comp. Gen. — Decisions of the Comptroller General (U.S.)
Comp. Gen. Laws — Compiled General Laws
Comp. Lab. L. — Comparative Labor Law
Comp. Lab. L. & Pol'y J. — Comparative Labor Law & Policy Journal
Comp. Lab. L.J. — Comparative Labor Law Journal
Comp. Laws — Compiled Laws
Compleat Law. — Compleat Lawyer (ABA)

Comp. St. — Compiled Statutes
Comptr. Treas. Dec. — Comptroller Treasury Decisions
Computer & Internet Law. — The Computer and Internet Lawyer
Computer Law — The Computer Lawyer
Computer L. J. — Computer Law Journal
Computer/L.J. — Computer/Law Journal
Comyn on Cont. — **1.** The Law of Contracts and Promises in Various Subjects
Cong. — Congress. **2.** Congressional.
Cong. Dig. — Congressional Digest
Cong. Globe — Congressional Globe
Cong. Index (CCH) — Congressional Index
Cong. Rec. — Congressional Record
Conn. — Connecticut Reports
Conn. Acts — Connecticut Public & Special Acts
Conn. Agencies Regs. — Regulations of Connecticut State Agencies
Conn. App. — Connecticut Appellate Reports
Conn. B.J. — Connecticut Bar Journal
Conn. Cir. Ct. — Connecticut Circuit Court Reports
Conn. Gen. Stat. — General Statutes of Connecticut
Conn. Gen. Stat. Ann. — Connecticut General Statutes Annotated
Conn. Ins. L.J. — Connecticut Insurance Law Journal
Conn. J. Int'l L. — Connecticut Journal of International Law
Conn. Legis. Serv. — Connecticut Legislative Service
Conn. L.J. — Connecticut Law Journal
Conn. L. Rev. — Connecticut Law Review
Conn. L. Rptr. — Connecticut Law Reporter
Conn. Prob. L.J. — Connecticut Probate Law Journal
Conn. Pub. Acts — Connecticut Public Acts
Conn. Spec. Acts — Connecticut Special Acts
Conn. Super. Ct. — Connecticut Superior Reports
Conn. Supp. — Connecticut Supplement
Conn. Surr. — Connecticut Surrogate
Consol. T.S. — Parry's Consolidated Treaty Series
Con. St. — Consolidated Statutes
Const. — Constitution
Const. Amend. — Amendment to Constitution
Const. Comm. — Constitutional Commentary
Const. Comment. — Constitutional Commentary
Const. F. — Constitutional Forum
Construction Law. — Construction Lawyer
Const. U.S. Amend. — Amendment to the Constitution of the United States
Consumer Cred. Guide (CCH) — Consumer Credit Guide
Consumer Fin. L.Q. Rep. — Consumer Finance Law Quarterly Report
Consumer Prod. Safety Guide (CCH) — Consumer Product Safety Guide
Cont. — Contracts
Cont. App. Dec. (CCH) — Contract Appeals Decisions
Cont. Cas. Fed. (CCH) — Contracts Cases, Federal
Cont. of Banking (P-H) — Control of Banking
Conv. & Prop. Law. — Conveyancer and Property Lawyer
Conv. & Prop. Law. (n.s.) — Conveyancer and Property Lawyer (new series)
Cooke — Cooke (Tenn.)
Cooke, Ins. — The Law of Life Insurance, Including Accident Insurance and Insurance by Mutual Benefit Societies
Cooley, Const. Law — General Principles of Constitutional Law in the United States
Cooley, Const. Lim. — Treatise on the Constitutional Limitations Which Rest Upon
the Legislative Power of the States of the American Union
Cooley L. Rev. — Cooley Law Review
Cooley, Princ. Const. Law — General Principles of Constitutional Law in the United States
Cooley's Blackstone — Commentaries on the Laws of England by Sir Wm. Blackstone (Cooley ed.)
Cooley, Tax'n — A Treatise on the Law of Taxation: Including the Law of Local Assessments
Cooley, Torts — Treatise on the Law of Torts, Or Wrongs Which Arise Independent of Contracts
Copy. Bull. — Copyright Bulletin
Copy. Dec. — Copyright Decisions
Copyright L. Dec. (CCH) — Copyright Law Decisions
Copyright L. Rep. (CCH) — **1.** Copyright Law Reporter. **2.** Copyright Law Reports.
Copyright L. Symp. (ASCAP) — Copyright Law Symposium (American Society of Composers, Authors, & Publishers)
Cornell Int'l. L.J. — Cornell International Law Journal
Cornell J.L. & Pub. Pol'y — Cornell Journal of Law and Public Policy
Cornell L.F. — Cornell Law Forum
Cornell L.J. — Cornell Law Journal
Cornell L.Q. — Cornell Law Quarterly
Cornell L. Rev. — Cornell Law Review
Corp. Couns. — Corporate Counsel
Corp. Couns. Q. — Corporate Counsel Quarterly
Corp. Couns. Wkly (BNA) — Corporate Counsel Weekly
Corp. Guide (Aspen Law & Bus.) — Corporation Guide
Corp. L. Rev. — Corporation Law Review

Corp. Tax'n — Corporate Taxation
Cost Accounting Stand. Guide (CCH) — Cost Accounting Standards Guide
Cow. — Cowen's Reports (N.Y.)
Cow. Cr. R. — Cowen's Criminal Reports (N.Y.)
C.P. — Common Pleas
C.P.A. — Certified Public Accountant
CPSC — Consumer Product Safety Commission
Cr. Act — Criminal Act
Cranch — **1.** Cranch, U.S. Supreme Court Reports. **2.** Cranch (D.C.).
Cranch, Pat. Dec. — Cranch's Patent Decisions
Cr. Code — Criminal Code
Creighton L. Rev. — Creighton Law Review
Crime & Delinq. — Crime and Delinquency
Crime & Just. — Crime and Justice
Crim. Just. — Criminal Justice (ABA)
Crim. Just. & Behav. — Criminal Justice and Behavior
Crim. Just. Ethics — Criminal Justice Ethics
Crim. Justice Q. — Criminal Justice Quarterly
Crim. Just. J. — Criminal Justice Journal
Crim. Law Bull. — Criminal Law Bulletin
Crim. L. Bull. — Criminal Law Bulletin
Crim. L.F. — Criminal Law Forum
Crim. L.J. — Criminal Law Journal
Crim. L.Q. — Criminal Law Quarterly
Crim. L. Rep. (BNA) — Criminal Law Reporter
Crim. L. Rev. — Criminal Law Review
Crim. L. Rptr. (BNA) — Criminal Law Reporter
Crim. Rpts. — Criminal Reports
Cr. Prac. Act — Criminal Practice Act
Cr. Proc. Act — Criminal Procedure Act
CRR — Corporate Reorganization Reporter, Inc.
C.R.S. — Colorado Revised Statutes
Cr. St. — Criminal Statutes
CSC — Civil Service Commission
CTBTO — Comprehensive Nuclear Test-Ban-Treaty Organization
Ct. Cl. — Court of Claims Reports
Ct. Cust. — Court of Customs Appeals Reports
Ct. Int'l Trade — Court of International Trade Reports
Ct. Rev. — Court Review (American Judges Assoc.)
C.U. — California Unreported Cases
Cumb. L.J. — Cumberland Law Journal
Cumb. L. Rev. — Cumberland Law Review
Cumb.-Sam. L. Rev. — Cumberland-Samford Law Review
Current Ct. Dec. — Current Court Decisions
Current Legal Probs. — Current Legal Problems
Current Med. for Att'ys — Current Medicine for Attorneys
Currents: Int'l Trade L.J. — Currents: The International Trade Law Journal
Curtis on History of the Constitution — Curtis, History of the Origin, Formation, and Adoption of the Constitution of the United States
Cush. — Cushing (Mass.)
Cust. B. & Dec. — Customs Bulletin and Decisions
Cust. Ct. — Customs Court Reports
C.W.L.R. — California Western Law Review
C.Z. Code — Canal Zone Code (Panama)

D

Daily Lab. Rep. (BNA) — Daily Labor Report
Dak. — Dakota Reports (Territorial)
Dakota — Dakota Reports
Dak. L. Rev. — Dakota Law Review
Dalhousie J. Legal Stud. — Dalhousie Journal of Legal Studies
Dalhousie L.J. — Dalhousie Law Journal
Dall. — **1.** Dallas, U.S. Supreme Court Reports. **2.** Dallas (Pa.).
Dallam — **1.** Digest of the Laws of Texas. **2.** Dallam's Opinions (Tex.).
Dana — Dana (Ky.)
D. & C. — Pennsylvania District & County Reports
D. & C. 2d — Pennsylvania District & County Reports, Second Series
D. & C. 3d — Pennsylvania District & County Reports, Third Series
D. & C. 4th — Pennsylvania District & County Reports, Fourth Series
Daniel, Neg. Inst. — A Treatise on the Law of Negotiable Instrument
Dart, Vend. — A Treatise on the Law and Practice Relating to Vendors and Purchasers of Real Estate
Davis, Cr. Law — A Treatise on Criminal Law, with an Exposition on the Office and Authority of Justices of the Peace in Virginia
Day — Day (Conn.)
D.C.B.J. — District of Columbia Bar Journal
D.C.C.E. — District of Columbia Code Encyclopedia
D.C. Code Ann. — District of Columbia Code Annotated
D. Chip. — D. Chipman (Vt.)
D.C. L. Rev. — District of Columbia Law Review
D.C. Mun. Regs. — District of Columbia Municipal Regulations
D.C. Reg. — District of Columbia Register
D.C. Stat. — District of Columbia Statutes
DEA — Drug Enforcement Administration
Decalogue J. — Decalogue Journal
Dec. Comm'r Pat. — Decisions of the Commissioner of Patents

Dec. Dig. — Decennial Digest
Dec. U.S. Mar. Comm'n — Decisions of the United States Maritime Commission
Def. — Defense
Def. Couns. J. — Defense Counsel Journal
Defense L.J. — Defense Law Journal
Del. — Delaware Reports
Del. Cas. — Delaware Cases
Del. Ch. — Delaware Chancery Reports
Del. Code Ann. — Delaware Code Annotated
Del. County — Delaware County Reports
Del. J. Corp. L. — Delaware Journal of Corporate Law
Del. Law. — Delaware Lawyer
Del. Laws — Laws of Delaware
Del. Term R. — Delaware Term Reports
Denio — Denio's Reports (N.Y.)
Den. J. Int'l L. & Pol'y — Denver Journal of International Law and Policy
Den. L. J. — Denver Law Journal
Den. L.N. — Denver Legal News
Denver L. N. — Denver Legal News
Denv. J. Int'l L. & Pol'y — Denver Journal of International Law and Policy
Denv. L. Ctr. J. — Denver Law Center Journal
Denv. L.J. — Denver Law Journal
Denv. U. L. Rev. — Denver University Law Review
DePaul Bus. L.J. — DePaul Business Law Journal
DePaul Dig. Int'l L. — DePaul Digest of International Law
DePaul J. Health Care L. — DePaul Journal of Health Care Law
DePaul-LCA J. Art & Ent. L. — DePaul-LCA Journal of Art and Entertainment Law
DePaul L. Rev. — DePaul Law Review
Dep't St. Bull. — Department of State Bulletin
Des. — Desausssure's Equity Reports (S.C.)
Desty, Tax'n — The American Law of Taxation as Determined in the Courts of Last Resort in the United States
Det. C.L. Mich. St. U. L. Rev. — Detroit College of Law at Michigan State University Law Review
Det. C. L. Rev. — Detroit College Law Review
Det. L.J. — Detroit Law Journal
Detroit B.Q. — Detroit Bar Quarterly
Detroit Law. — Detroit Lawyer
Detroit Leg. N. — Detroit Legal News
Detroit L. Rev. — Detroit Law Review
Dev. — Devereux's Law Reports (N.C.)
Dev. & Bat. — Devereux & Battle's Law Reports (N.C.)
Dev. & Bat. Eq. — Devereux & Battle's Equity Reports (N.C.)
Devlin, Deeds — Treatise on the Law of Deeds: Their Form, Requisites, Execution, Acknowledgement, Registration, Construction, and Effect
DHHS — Department of Health and Human Services
DIA — Defense Intelligence Agency
Dicey, Constitution — Introduction to the Study of the Law of the Constitution
Dicey, Parties — A Treatise on the Rules for the Selection of the Parties to an Action
Dick. J. Envtl. L. & Pol'y — Dickinson Journal of Environmental Law & Policy
Dick. J. Int'l L. — Dickinson Journal of International Law
Dick. L. Rev. — Dickinson Law Review
Dig. — Digest
Dig. & Dec. Empl. Comp. App. Bd. — Digest & Decisions of the Employees' Compensation Appeals Board
Dig. Int'l L. — Digest of International Law
Dillon, Mun. Corp. — Treatise on the Law of Municipal Corporations
Disp. Res. J. — Dispute Resolution Journal
Disp. Resol. J. — Dispute Resolution Journal
Dist. Law. — District Lawyer
D.L.R. — Dominion Law Reports (Can.)
D.L.R. 2d — Dominion Law Reports, Second Series
D.L.R. 3d — Dominion Law Reports, Third Series
D.L.R. 4th — Dominion Law Reports, 4th Series
DOD — Department of Defense
DOE — Department of Energy
DOJ Alert — Department of Justice Alert
Dominion Tax. Cas. (CCH) — Dominion Tax Cases
DOT — Department of Transportation
Doug. — Douglass (Mich.)
Drake J. Agric. L. — Drake Journal of Agricultural Law
Drake L. Rev. — Drake Law Review
Drone on Copyright — Drone, A Treatise on the Law of Property in Intellectual Productions in Great Britain and the United States: Embracing Copyright in Works of Literature and Art and Playright in Dramatic and Musical Compositions
Dud. — Dudley (S.C.)
Dud. Eq. — Dudley's Equity Reports (S.C.)
Duer, Mar. Ins. — The Law and Practice of Marine Insurance
Duer, Rep. — A Lecture on the Law of Representations in Marine Insurance
Duke Envtl. L. & Pol'y F. — Duke Environmental Law & Policy Forum
Duke Int'l & Comp. L. Ann. — Duke International and Comparative Law Annual

Duke J. Comp. & Int'l L. — Duke Journal of Comparative & International Law

Duke J. Gender L. & Pol'y — Duke Journal of Gender Law & Policy

Duke L.J. — Duke Law Journal

Du Ponceau, Const. — A Brief View of the Constitution of the United States

Duq. Bus. L. J. — Duquesne Business Law Journal

Duq. L. Rev. — Duquesne Law Review

Duv. — Duvall (Ky.)

DWI — Driving while intoxicated

D.W.I. — Descriptive Word Index

E

E.A.S. — Executive Agreement Series

ECA — Economic Commission for Africa

ECE — Economic Commission for Europe

ECLAC — Economic Commission for Latin America and the Caribbean

Ecology L.Q. — Ecology Law Quarterly

Ed. Law Rep. — West's Education Law Reporter

Edm. Sel. Cas. — Edmond's Selected Cases (N.Y.)

Edw. Ch. — Edward's Chancery Reports (N.Y.)

E.E.C. — European Economic Community

EEOC — Equal Employment Opportunity Commission

EEOC Compl. Man. (BNA) — EEOC Compliance Manual

EEOC Compl. Man. (CCH) — EEOC Compliance Manual

E. Eur. Const. Rev. — East European Constitutional Review

EIPR — European Intellectual Property Review

Elder L.J. — Elder Law Journal

Elder's Advisor — Elder's Advisor: The Journal of Elder Law and Post-Retirement Planning

ELI — Environmental Law Institute

Ell. Deb. — Elliot's Debates: The Debates in the Several State Conventions on the Adoption of the Federal Constitution: As Recommended by the General Convention at Philadelphia in 1787.

Elm. Dig. — Elmer, A Digest of the Laws of New Jersey

Elmer, Lun. — J. Elmer, The Practice of Lunacy Under Commissions and Inquisitions

Emerging Issues St. Const. L. — Emerging Issues in State Constitutional Law

E. Min. L. Inst. — Eastern Mineral Law Institute

Emory Int'l L. Rev. — Emory International Law Review

Emory J. Int'l Disp. Resol. — Emory Journal of International Dispute Resolution

Emory L.J. — Emory Law Journal

Empl. & Training Rep. (BNA) — Employment and Training Reporter

Empl. Comp. App. Bd. — Decisions of the Employees' Compensation Appeals Board

Empl. Coord. (RIA) — Employment Coordinator

Empl. Coordinator (RIA) — Employment Coordinator

Employee Benefits Cas. (BNA) — Employee Benefits Cases

Employee Rel. L.J. — Employee Relations Law Journal

Employee Rts. & Emp. Pol'y J. — Employee Rights & Employment Policy Journal

Empl. Prac. Dec. (CCH) — Employment Practices Decisions

Empl. Prac. Guide (CCH) — Employment Practices Guide

Empl. Safety & Health Guide (CCH) — Employment Safety and Health Guide

Emp. Rel. L.J. — Employee Relations Law Journal

Energy & Min. L. Inst. — Energy & Mineral Law Institute

Energy L.J. — Energy Law Journal

Energy Mgmt. (CCH) — Energy Management

Eng. Rep. — English Reports–Full Reprint

Ent. & Sp. L.J. — Entertainment & Sports Law Journal

Ent. & Sports Law — Entertainment & Sports Lawyer (ABA)

Ent. L. J. — Entertainment Law Journal

Environs Envtl. L. & Pol'y J. — Environs Environmental Law & Policy Journal

Env. L. Rep. (ELI) — Environmental Law Reporter

Envtl. Aff. — Environmental Affairs

Envtl. & Plan. L.J. — Environmental and Planning Law Journal

Envtl. Claims J. — Environmental Claims Journal

Envtl. F. — Environmental Forum

Envtl. L. — Environmental Law

Envtl. L. & Litig. — Environmental Law and Litigation

Envtl. Law. — Environmental Lawyer

Envtl. L.Q. Newsl. — Environmental Law Quarterly Newsletter (ABA)

Envtl. L. Rep. (Envtl. L. Inst.) — Environmental Law Reporter (Environmental Law Institute)

Envtl. Prac. News — Environmental Practice News

Env't Rep. (BNA) — Environment Reporter

Env't Rep. Cas. (BNA) — Environment Reporter Cases

EO — Executive Order

EPA — Environmental Protection Agency

Eq. Empl. Compl. Man. (CBC) — Equal Employment Compliance Manual

Eq. Jur. — **1.** Equitable Jurisdiction. **2.** Equity Jurisprudence.

Eq. Pl. — Equity Pleading

ERDA — Energy Research and Development Administration
Erie — Erie County Legal Journal, Pa.
ERISA — Employee Retirement Income Security Act
ERISA Litig. Rep. — ERISA Litigation Reporter
ESCAP — Economic and Social Commission for Asia and the Pacific
ESCOR — Economic and Social Council Official Record (UN)
ESCWA — Economic and Social Commission for Western Asia
ESOP — Employee Stock Ownership Plan
Est. Plan. — Estate Planning
EU — European Union
EURATOM — European Atomic Energy Commission
Eur. Bus. L. Rev. — European Business Law Review
Eur. Ct. H.R. — European Court on Human Rights
Eur. H.R. Rep. — European Human Rights Reports
Eur. L. Rev. — European Law Review
Ex. D. — Law Reports, Exchequer Division (Eng.)
Exec. Disclosure Guide (CCH) — Executive Disclosure Guide
Exec. Ord. — Executive Order
Exempt Org. Rep. (CCH) — Exempt Organizations Reports
EXIMBANK — Export-Import Bank of the United States

F

F. — Federal Reporter
F.2d. — Federal Reporter, Second Series
F.3d. — Federal Reporter, Third Series
FAA — Federal Aviation Administration
Fair Empl. Prac. Cas. (BNA) — Fair Employment Practice Cases
Fam. Advoc. — Family Advocate (ABA)
Fam. Advocate — Family Advocate (ABA)
Fam. & Conciliation Cts. Rev. — Family and Conciliation Courts Review
Fam. Ct. Rev. — Family Court Review
Fam. L. Newsl. — Family Law Newsletter (ABA)
Fam. L.Q. — Family Law Quarterly (ABA)
Fam. L. Rep. (BNA) — Family Law Reporter
Fam. L. Tax. Guide (CCH) — Family Law Tax Guide
FAO — Food and Agriculture Organization of the United Nations
Farwell, Powers — A Concise Treatise on Powers
FASB — Financial Accounting Standards Board
FBI — Federal Bureau of Investigation
F.B.I.S. — Foreign Broadcast Information Service
FCA — Farm Credit Administration
F. Cas. — Federal Cases
F.C.C. — **1.** Federal Communications Commission. **2.** Federal Communications Commission Reports.
F.C.C.2d — Federal Communications Commission Reports, 2d Series
F.C.C.R. — Federal Communications Commission Record
F.C.C. Rec. — Federal Communications Commission Record
FCIA — Foreign Credit Insurance Associatoin
FCIC — Federal Crop Insurance Corporation
FDA — Food and Drug Administration
FDAA — Federal Disaster Assistance Administration
FDIC — Federal Deposit Insurance Corporation
FEA — Federal Energy Administration
FEC — Federal Election Commission
Fed. Audit Guide (CCH) — Federal Audit Guide
Fed. Banking L. Rep. (CCH) — **1.** Federal Banking Law Reporter. **2.** Federal Banking Law Reports.
Fed. B.A. Sec. Tax'n Rep. — Federal Bar Association Section of Taxation Report
Fed. B.J. — Federal Bar Journal
Fed. B. News. — Federal Bar News
Fed. B. News & J. — Federal Bar News and Journal
Fed. Carr. Cas. (CCH) — Federal Carriers Cases
Fed. Carr. Rep. (CCH) — Federal Carriers Reports
Fed. Cas. — Federal Cases (U.S.)
Fed. Cas. No. — Federal Cases Number
Fed. Cir. B.J. — Federal Circuit Bar Journal
Fed. Cl. — Federal Claims Reporter
Fed. Com. L.J. — Federal Communications Law Journal
Fed. Comm. L.J. — Federal Communications Law Journal
Fed. Cont. Rep. (BNA) — Federal Contracts Report
Fed. Cts. L. Rev. — Federal Courts Law Review (Internet)
Fed. Election Camp. Fin. Guide (CCH) — Federal Election Campaign Financing Guide
Fed. Energy Reg. Comm'n Rep. (CCH) — Federal Energy Regulatory Commission Reports
Fed. Est. & Gift Tax Rep. (CCH) — **1.** Federal Estate and Gift Tax Reporter. **2.** Federal Estate and Gift Tax Reports.
Fed. Ex. Tax Rep. (CCH) — Federal Excise Tax Reporter
Fed. Home Loan Bank Bd. J. — Federal Home Loan Bank Board Journal
Fed. Inc. Gift & Est. Tax'n (MB) — Federal Income, Gift and Estate Taxation
Fed. Law. — Federal Lawyer
Fed. L. Rev. — Federal Law Review
Fed'n Ins. & Corp. Couns. Q. — Federation of Insurance and Corporate Counsel Quarterly

Fed'n Ins. Counsel Q. — Federation of Insurance Counsel Quarterly
Fed'n Ins. Couns. Q. — Federation of Insurance Counsel Quarterly
Fed. Probation — Federal Probation
Fed. R. App. P. — Federal Rules of Appellate Procedure
Fed. R. Civ. P. — Federal Rules of Civil Procedure
Fed. R. Crim. P. — Federal Rules of Criminal Procedure
Fed. Reg. — Federal Register
Fed. Rep. — Federal Reporter
Fed. Res. Bull. — Federal Reserve Bulletin
Fed. R. Evid. — Federal Rules of Evidence
Fed. R. Serv. (CBC) — Federal Rules Service
Fed. R. Serv. 2d (CBC) — Federal Rules Service, 2d Series
Fed. R. Serv. 3d (CBC) — Federal Rules Service, 3d Series
Fed. Sec. L. Rep. (CCH) — Federal Securities Law Reporter
Fed. Sec. L. Serv. (CCH) — Federal Securities Law Service
Fed. Serv. Imp. Pan. Rels. — Federal Service Impasses Panel Releases
Fed. Tax Coord. 2d (RIA) — Federal Tax Coordinator, Second Edition
Fed. Taxes (P-H) — Federal Taxes
Fed. Tax Guide Rep. (CCH) — Federal Tax Guide Reports
Fell, Guar. — A Treatise on the Law of Mercantile Guaranties, and of Principal and Surety in General
FEP (BNA) — Fair Employment Practice Cases
FEP Cas. (BNA) — Fair Employment Practice Cases
F.E.R.C. — Federal Energy Guidelines: FERC Reports
FET — Federal Estate Tax
Fett. Carr. — Fetter, A Treatise on the Law of Carriers of Passengers
FHA — Federal Housing Administration
FHLB — Federal Home Loan Bank
FHLBB — Federal Home Loan Bank Board
FHLMC — Federal Home Loan Mortgage Corporation (Freddie Mac)
FHWA — Federal Highway Administration
FIA — Federal Insurance Administration
FICA — Federal Insurance Contribution Act
Fiduciary — Fiduciary Reporter (Pa.)
Field, Corp. — A Treatise on the Law of Private Corporations
Fire & Casualty Cas. (CCH) — Fire and Casualty Cases
Fisher, Mort. — The Law of Mortgage and Other Securities upon Property
Fla. — Florida Reports
Fla. Admin. Code Ann. — Florida Administrative Code Annotated
Fla. Admin. Weekly — Florida Administrative Weekly
Fla. B.J. — Florida Bar Journal
Fla. Coastal L.J. — Florida Coastal Law Journal
Fla. Ent. Art & Sport L.J. — Florida Entertainment, Art & Sport Law Journal
Fla. Int'l L.J. — Florida International Law Journal
Fla. J. Int'l L. — Florida Journal of International Law
Fla. Jur. — Florida Jurisprudence
Fla. Jur. 2d — Florida Jurisprudence 2d
Fla. Laws — Laws of Florida
Fla. L.J. — Florida Law Journal
Fla. L. Rev. — Florida Law Review
Fla. L. Weekly — Florida Law Weekly
Fla. L. Weekly Supp. — Florida Law Weekly Supplement
Fland. Const. — Flanders, An Exposition on the Constitution of the United States
Flanders, Fire Ins. — A Treatise on the Law of Fire Insurance
Fla. Sess. Law Serv. — Florida Session Law Service
Fla. Stat. — Florida Statutes
Fla. Stat. Ann. — Florida Statutes Annotated
Fla. St. U.J. Land Use & Envtl. L. — Florida State University Journal of Land Use and Environmental Law
Fla. St. U. J. Transnat'l L. & Pol'y — Florida State University Journal of Transnational Law and Policy
Fla. St. U. L. Rev. — Florida State University Law Review
Fla. Supp. — Florida Supplement
Fla. Supp. 2d. — Florida Supplement, Second Series
Fla. Tax Rev. — Florida Tax Review
Fletcher F. — Fletcher Forum
Fletcher F. World Aff. — Fletcher Forum of World Affairs
Flood, Lib. — A Treatise on the Law Concerning Libel and Slander
Flood, Wills — An Elementary Treatise on the Law Relating to Wills of Personal Property
F.L.R.A. — Decisions of the Federal Labor Relations Authority
F.M.C. — Federal Maritime Commission Reports
FMCS — Federal Mediation and Conciliation Service
FmHA — Farmers Home Administration
F.M.S.H.R.C. — Federal Mine Safety & Health Review Commission Reports
FNMA — Federal National Mortgage Association (Fannie Mae)
FOIA — Freedom of Information Act

Food & Drug L.J. — Food & Drug Law Journal
Food Drug Cosm. L.J. — Food Drug Cosmetic Law Journal
Food Drug Cosm. L. Rep. (CCH) — 1. Food Drug Cosmetic Law Reporter. 2. Food Drug Cosmetic Law Reports.
Foote, Priv. Int. Jur. — Foreign and Domestic Law: A Concise Treatise on Private International Jurisprudence
For. Def. — For the Defense
Fordham Ent. Media & Intell. Prop. L. F. — Fordham Entertainment, Media and Intellectual Property Law Forum
Fordham Envtl. L.J. — Fordham Environmental Law Journal
Fordham Envtl. L. Rep. — Florida Environmental Law Report
Fordham Fin. Sec. & Tax L.F. — Fordham Finance, Securities & Tax Law Forum
Fordham Intell. Prop. Media & Ent. L.J. — Fordham Intellectual Property, Media & Entertainment Law Journal
Fordham Int'l L.F. — Fordham International Law Forum
Fordham Int'l L.J. — Fordham International Law Journal
Fordham J. Corp. & Fin. L. — Fordham Journal of Corporate and Financial Law
Fordham L. Rev. — Fordham Law Review
Fordham Urb. L.J. — Fordham Urban Law Journal
For the Def. — For the Defense
Forum — The Forum
Foster, Fed. Prac. — A Treatise on Federal Practice, Civil and Criminal...
F.P.C. — Federal Power Commission Reports
F.R. — Federal Register
Franchise L.J. — Franchise Law Journal (ABA)
FRB — Federal Reserve Board
F.R.D. — Federal Rules Decisions
"Freddie Mae" — Federal National Mortgage Association
"Freddie Mac" — Federal Home Loan Mortgage Corporation
Freeman, Judgments — A Treatise on the Law of Judgments: including All Final Determinations of the Rights of Parties in Actions or Proceedings in Law or in Equity
FRS — Federal Reserve System
Fry, Sp. Perf. — A Treatise on the Specific Performance of Contracts
F.S.A. — Florida Statues Annotated
FSLIC — Federal Savings and Loan Insurance Corporation
FSIS — Food Safety and Inspection Service
F. Supp. — Federal Supplement
F. Supp.2d. — Federal Supplement, Second Series
F.T.C. — Federal Trade Commission Reports
FUTA — Federal Unemployment Tax Act
FWS — Fish and Wildlife Service

G

Ga. — Georgia Reports
GAAP — Generally accepted accounting principles
Ga. App. — Georgia Appeals Reports
Ga. B.J. — Georgia Bar Journal
Ga. Bus. Law. — Georgia Business Lawyer
Ga. Code Ann. — Code of Georgia Annotated
Ga. Comp. R. & Regs. — Official Compilation of Rules & Regulations of the State of Georgia
Ga. Dec. — Georgia Decisions
Ga. J. Int'l & Comp. L. — Georgian Journal of International and Comparative Law
Ga. J. S. Legal Hist. — Georgia Journal of Southern Legal History
Ga. Laws — Georgia Laws
Gale, Eas. — A Treatise on the Law of Easements
Ga. L.J. — Georgia Law Journal
Gall. — Gallison (U.S. Circuit Court)
Ga. L. Rep. — Georgia Law Reporter
Ga. L. Rev. — Georgia Law Review
G.& J. — Gill and Johnson (Md.)
GAO — General Accounting Office
GAOR — General Assembly Official Record (U.N.)
Ga. St. B.J. — Georgia State Bar Journal
Ga. St. U. L. Rev. — Georgia State University Law Review
Ga. Supp. — Georgia Supplement
GATT — General Agreement on Tariffs and Trade
Gavel — Gavel-Milwaukee Bar Assoc.
Gaz. — Weekly Law Gazette (U.S.)
Gaz. Bankr. — Gazette of Bankruptcy
Gaz. L.R. — Gazette Law Reports
G.C.M. — General Counsel Memorandum (IRS)
Gen. Couns. Mem. — General Counsel Memorandum (IRS)
Gen. Dig. U.S. — General Digest of the United States
Gen. Laws — General Laws
Gen. St. — General Statutes
Geo. Immigr. L.J. — Georgetown Immigration Law Journal
Geo. Int'l Envtl. L. Rev. — Georgetown International Environmental Law Review
Geo. J. Gender & L. — Georgetown Journal of Gender and the Law

Geo. J. Int'l Aff. — Georgetown Journal of International Affairs

Geo. J. Legal Ethics — Georgetown Journal of Legal Ethics

Geo. J. on Fighting Pov. — Georgetown Journal on Fighting Poverty

Geo. J. on Fighting Poverty — Georgetown Journal on Fighting Poverty

Geo. J. on Poverty L. & Pol'y — Georgetown Journal on Poverty Law and Policy

Geo. L. J. — Georgetown Law Journal

Geo. J. L. & Pub. Pol'y — Georgetown Journal of Law & Public Policy

Geo. Mason Indep. L. Rev. — George Mason Independent Law Review

Geo. Mason L. Rev. — George Mason Law Review

Geo. Mason U. Civ. Rts. L.J. — George Mason University Civil Rights Law Journal

Geo. Mason U. L. Rev. — George Mason University Law Review

Geo. Pub. Pol'y Rev. — Georgetown Public Policy Review

Geo. U.L. Ctr. Immig. Rep. — Georgetown University Law Center Immigration Reporter

Geo. Wash. J. Int'l L. & Econ. — George Washington Journal of International Law and Economics

Geo. Wash. Int'l L. Rev. — George Washington International Law Review

Geo. Wash. L. Rev. — George Washington Law Review

Gild. — Gildersleeve Reports (N.M.)

Gill — Gill (Md.)

Gilm. — Gilman (Ill.)

Gilmer — Gilmer (Va.)

"Ginnie Mae" — Government National Mortgage Association

Glasser CLE. — Glasser LegalWorks Seminars

Glendale L. Rev. — Glendale Law Review

GMU L. Rev. — George Mason University Law Review

GNMA — Government National Mortgage Association (Ginnie Mae)

GNP — Gross National Product

Godd. Easem. — Goddard, A Treatise on the Law of Easements

Golden Gate L. Rev. — Golden Gate Law Review

Golden Gate U. L. Rev. — Golden Gate University Law Review

Gonz. L. Rev. — Gonzaga Law Review

Gould on Waters — J.M. Gould, A Treatise on the Law of Waters, including Riparian Rights, and Public and Private Rights

Gould, Pl. — Jam. Gould, A Treatise on the Principles of Pleading in Civil Actions

Gould's Dig. — Jos. Gould, A Digest of the Statutes of Arkansas

Gov't Cont. Rep. (CCH) — **1.** Government Contracts Reports. **2.** Government Contracts Reporter.

Gov't Empl. Rel. Rep (WG&L) — Government Employee Relations Report

Gov't Pub. Rev. — Government Publications Review

GPO — Government Printing Office

GP Solo & Small Firm Law. — GP, Solo and Small Firm Lawyer (ABA)

Grant — Grant (Pa.)

Grant, Bank. — A Treatise on the Law Relating to Bankers and Banking

Grant on Corp. — A Practical Treatise on the Law of Corporations In General

Gratt. — Grattan (Va.)

Graven Images — Graven Images: A Journal of Culture, Law and the Sacred

Gray — Gray (Mass.)

Gray on Perpetuities — The Rule Against Perpetuities

Gray, Perp. — The Rule Against Perpetuities

Great Plains Nat. Resources J. — Great Plains Natural Resources Journal

Green Bag 2d. — Green Bag, Second Series

Greene — Greene (Iowa)

Greenl. Ev. — A Treatise on the Law of Evidence

Greenleaf on Evidence — A Treatise on the Law of Evidence

Gresley, Eq. Ev. — A Treatise on the Law of Evidence in Courts of Equity

Gross, Guild Merchant — The Gild Merchant: A Contribution to British Municipal History

GSA — General Services Administration

Guam — Guam Reports

Guam Admin. R. & Regs. — Administrative Rules & Regulations of the Government of Guam

Guam Civ. Code — Guam Civil Code

Guam Civ. P. Code — Guam Code of Civil Procedure

Guam Code Ann. — Guam Code Annotated

Guam Gov't Code — Guam Government Code

Guam Sess. Laws — Guam Session Laws

Guild Prac. — Guild Practitioner

Gunby — Gunby's Reports (La.)

Guy, Med. Jur. — Principles of Medical Jurisprudence: with So Much Anatomy, Physiology, Pathology, and the Practice of Medicine and Surgery as are Essential to be Known by Lawyers, Coroners, Magistrates, Officers of the Army and Navy, etc., etc.

H

Hale, Precedents and Proceedings — A Series of Precedents and Proceedings in Criminal Causes Extending from the Year 1475 to 1640...

Hall, Adm. Practice — J. Hall, The Practice and Jurisdiction of the Court of Admiralty

Hall, Int. Law — A Treatise on International Law

Halleck, Int. Law — International Law, or Rules Regulating the Intercourse of States in Peace and War

Halsbury — **1.** Halsbury's Laws of England. **2.** Halsbury's Statutes of England.

Halsbury's S.I.s. — Halsbury's Statutory Instruments

Ham. Cont. — Hammon, The General Principles of the Law of Contract

Ham. Fed. — Hamilton, The Federalist [Papers]

Hamline J. Pub. L. — Hamline Journal of Public Law

Hamline J. Pub. L. & Pol'y — Hamline Journal of Public Law and Policy

Hamline L. Rev. — Hamline Law Review

H. & G. — Harris and Gill (Md.)

H. & J. — Harris and Johnson (Md.)

H. & McH. — Harris and McHenry (Md.)

Hanh. Mar. Wom. — Hanhart, A Treatise on the Law Relating to the Property of Married Women

Hard. — Hardin (Ky.)

Hare, Am. Const. Law — American Constitutional Law

Hare, Disc. — A Treatise on Discovery of Evidence, By Bill and Answer in Equity

Hare, Ev. — A Treatise on Discovery of Evidence, By Bill and Answer in Equity

Hare on Discovery — A Treatise on Discovery of Evidence, By Bill and Answer in Equity

Harm. Pen. Man. — Harmon, A Manual of the Pension Laws of the United States of America

Harp. — Harper (S.C.)

Harp. Eq. — Harper's Equity Reports (S.C.)

Harr. — Harrington (Del.)

Harr. Cr. L. — Harris, Principles of the Criminal Law

Hart. Dig. — Hartley, A Digest of the Laws of Texas

Harvard L.R. — Harvard Law Review

Harv. BlackLetter J. — Harvard BlackLetter Journal

Harv. BlackLetter L.J. — Harvard BlackLetter Law Journal

Harv. Bus. Rev. — Harvard Business Review

Harv. C.R.-C.L. L. Rev. — Harvard Civil Rights-Civil Liberties Law Review

Harv. Envtl. L. Rev. — Harvard Environmental Law Review

Harv. Hum. Rts. J. — Harvard Human Rights Journal

Harv. Hum. Rts. Y.B. — Harvard Human Rights Yearbook

Harv. Int'l. L.J. — Harvard International Law Journal

Harv. J.L. & Pub. Pol'y — Harvard Journal of Law and Public Policy

Harv. J.L. & Tech. — Harvard Journal of Law & Technology

Harv. J. on Legis. — Harvard Journal on Legislation

Harv. Latino L. Rev. — Harvard Latino Law Review

Harv. L. Rev. — Harvard Law Review

Harv. L.S. Bull. — Harvard Law School Bulletin

Harv. Negot. L. Rev. — Harvard Negotiation Law Review

Harv. Women's L.J. — Harvard Women's Law Journal

Harv. W. Tax Ser. — Harvard World Tax Series

Hastings Comm. & Ent. L.J. — Hastings Communications and Entertainment Law Journal

Hastings COMM/ENT L.J. — Hastings Communications and Entertainment Law Journal

Hastings Const. L.Q. — Hastings Constitutional Law Quarterly

Hastings Int'l & Comp. L. Rev. — Hastings International and Comparative Law Review

Hastings J. — Hastings Journal

Hastings L.J. — Hastings Law Journal

Hasting W.-Nw. J. Envtl. L. & Pol'y — Hastings West-Northwest Journal of Environmental Law and Policy

Hastings W.-N.W. J. Envtl. L. & Pol'y — Hastings West-Northwest Journal of Environmental Law and Policy

Hastings Women's L.J. — Hastings Women's Law Journal

Haw. — Hawaii Reports

Haw. App. — Hawaii Appellate Reports

Haw. B.J. — Hawaii Bar Journal

Hawkins on Construction of Wills — Hawkins, A Concise Treatise on the Construction of Wills

Hawks — Hawks (N.C.)

Haw. Rev. Stat. — Hawaii Revised Statutes

Haw. Rev. Stat. Ann. — Hawaii Revised Statutes Annotated

Haw. Sess. Laws — Hawaii Session Laws

Hay & Haz. — Hayward & Hazleton (D.C.)

Hayw. — **1.** Haywood (N.C.). **2.** Haywood (Tenn.).

H. Bl. — Henry Blackstone's English Common Pleas Reports

HCFA — Heath Care Financing Administration

H.C.L.M. — Health Care Labor Manual

Head — Head (Tenn.)

Health Law. — Health Lawyer

Health Matrix — Health Matrix: The Journal of Law-Medicine

Heckerling Inst. on Est. Plan. — Phillip E. Heckerling Institute on Estate Planning (U. Miami)

Heisk. — Heiskell (Tenn.)
Hen. Am. Pl. — Hening, The American Pleader and Lawyer's Guide
Hen. & M. — Hening & Munford (Va.)
Hennepin Law. — Hennepin Lawyer
HEW — Department of Health, Education and Welfare
HHS — Department of Health and Human Services
High, Inj. — A Treatise on the Law of Injunctions
High, Rec. — A Treatise on the Law of Receivers
High Tech. L.J. — High Technology Law Journal
Hill — (Hill (S.C.)
Hill & Den. — Hill and Denio's Supplement (N.Y.)
Hill. Cont. — Hilliard, The Law of Contracts
Hill Eq. — Hill's Chancery Reports (S.C.)
Hill. Inj. — Hilliard, The Law of Injunctions
Hill. Mortg. — Hilliard, The Law of Mortgages of Real and Personal Property
Hill. Real Prop. — Hilliard, The American Law of Real Property
Hill. Rem. — Hilliard, The Law of Remedies for Torts, including Replevin, Real Action, Pleading, Evidence, Damages
Hill. Sales — Hilliard, The Law of Sales of Personal Property
Hill. Tax. — Hilliard, The Law of Taxation
Hill. Torts — Hilliard, The Law of Torts or Private Wrongs
Hispanic L.J. — Hispanic Law Journal
H.L.N.R. — Health Lawyers News Report
Hoff. Ch. — Hoffman's Chancery Reports (N.Y.)
Hofstra Lab. & Emp. L.J. — Hofstra Labor & Employment Law Journal
Hofstra Lab. L.F. — Hofstra Labor Law Forum
Hofstra Lab. L.J. — Hofstra Labor Law Journal
Hofstra L. & Pol'y Symp. — Hofstra Law & Policy Symposium
Hofstra L. Rev. — Hofstra Law Review
Hofstra Prop. L.J. — Hofstra Property Law Journal
Holland, Jurisprudence — The Elements of Jurisprudence
Holmes, Com. Law — Holmes, The Common Law
Holt, Shipp. — A System of the Shipping and Navigation Laws of Great Britain and...
Hong Kong L.J. — Hong Kong Law Journal
Hopk. Ch. — Hopkin's Chancery Reports (N.Y.)
Hopk. Mar. Ins. — Hopkins, A Manual of Marine Insurance
Hough, Am. Const. — American Constitutions, Comprising the Constitution of Each State in the Union, and the United States ...
Hous. & Dev. Rep. (BNA) — Housing and Development Reporter
Hous. Bus. & Tax L. J. — Houston Business and Tax Law Journal
Hous. J. Health L. & Pol'y — Houston Journal of Health Law and Policy
Hous. J. Int'l L. — Houston Journal of International Law
Hous. Law. — Houston Lawyer
Hous. L. Rev. — Houston Law Review
Houst. — Houston (Del.)
Houst. L. Rev. — Houston Law Review
How. — Howard, U.S. Supreme Court Reports
How. L.J. — Howard Law Journal
How. Pr. — Howard's Practice Reports (N.Y.)
How. Pr. (n.s.) — Howard's Practice Reports, New Series (N.Y.)
How. Scroll. — Howard Scroll: The Social Justice Review
H.R. L.J. — Human Rights Law Journal
HRS — Hawaii Revised Statutes
HSA — Health Services Administration
HUD — Department of Housing and Urban Development
Hud. Wills — Hudson, A Practical Guide to Making and Proving Wills and Obtaining Grants of Letters of Administration
Hugh. Ins. — D. Hughes, A Treatise on the Law of Insurance in Three Parts...
Hughes — Hughes (Ky.)
Hughes, Fed. Prac. — Federal Practice, Jurisdiction & Procedure, Civil and Criminal with Forms
Hum. — Humphrey's (Tenn.)
Human Reprod. & L. Rep. (Legal-Medical Studies) — Reporter on Human Reproduction and the Law
Hum. Rts. — Human Rights (ABA)
Hum. Rts. Ann. — Human Rights Annual
Hum. Rts. Q. — Human Rights Quarterly
Hum. Rts. Rev. — Human Rights Review
Hung. L. Rev. — Hungarian Law Review
Hurd's Rev. St. — Hurd's Revised Statutes, Ill.
Hybrid: J.L. & Soc. Change U. Pa. — Hybrid: Journal of Law and Social Change University of Pennsylvania

I

IAEA — International Atomic Energy Agency
I. & N. Dec. — Administrative Decisions Under Immigration and Nationality Laws
IBRD — International Bank for Reconstruction and Development
I.C. — Idaho Code; Indiana Code; Iowa Code
ICA. — Iowa Code Annotated
ICAO — International Civil Aviation Organization

ICC — **1.** Indian Claims Commission. **2.** Interstate Commerce Commission.
I.C.C. — Interstate Commerce Commission Reports
I.C.C.2d — Interstate Commerce Commission Reports, 2d Series
I.C.C. Prac. J. — I.C.C. Practitioners' Journal
I.C.C. Valuation Rep. — Interstate Commerce Commission Valuation Reports
I.C.J. — International Court of Justice Reports of Judgments, Advisory Opinions, and Orders
I.C.J. Pleadings — Pleadings, Oral Arguments, Documents
ICSID — International Centre for Settlement of Investment Disputes
ICSID Rev. — ICSID Review
I.D. — Interior Department Decisions, Public Land
IDA — International Development Association
Idaho. — Idaho Reports
Idaho Code — Idaho Official Code
Idaho L.J. — Idaho Law Journal
Idaho L. Rev. — Idaho Law Review
Idaho Sess. Laws — Idaho Session Laws
IDEA — IDEA: The Journal of Law & Technology
IER Cas. (BNA) — Individual Employment Rights Cases
IFAD — International Fund for Agricultural Development
IFC — International Finance Corporation
IHS — Indian Health Service
IIC — International Review of Industrial Property and Copyright Law
I.L.C. Newsl. — International Legal Center Newsletter
Ill. — Illinois Reports
Ill. 2d. — Illinois Reports, Second Series
Ill. Admin. Code — Illinois Administrative Code
Ill. Ann. Stat. — Smith-Hurd Illinois Annotated Statutes
Ill. App. — Illinois Appellate Court Reports
Ill. App. 2d. — Illinois Appellate Court Reports, Second Series
Ill. App. 3d. — Illinois Appellate Court Reports, Third Series
Ill. B.J. — Illinois Bar Journal
Ill. Comp. Stat. — Illinois Compiled Statutes
Ill. Comp. Stat. Ann. — Illinois Compiled Statutes Annotated
Ill. Ct. Cl. — Illinois Court of Claims Reports
Ill. Dec. — Illinois Decisions
Ill. L.B. — Illinois Law Bulletin
Ill. Legis. Serv. — Illinois Legislative Service
Ill. L.Q. — Illinois Law Quarterly
Ill. L. Rev. — Illinois Law Review
Ill. L. Rev. Nw. U. — **1.** Illinois Law Review/ Northwestern University. **2.** Illinois Law Review of Northwestern University.
Ill. Reg. — Illinois Register
Ill. Rev. St. — Illinois Revised Statutes
I.L.M. — International Legal Materials
ILO — International Labour Organization
I.L.R. — International Law Reports
ILSA J. Int'l & Comp. L. — ILSA Journal of International & Comparative Law
ILSA J. Int'l L. — ILSA Journal of International Law
IMF — International Monetary Fund
Immigr. & Nat'lity L. Rev. — Immigration and Nationality Law Review
Immigr. Briefings — Immigration Briefings
Immigr. J. — Immigration Journal
Immigr. L. & Bus. News — Immigration Law & Business News
Immigr. Newsl. — Immigration Newsletter
IMO — International Maritime Organization
Inc. — Incorporated
I.N.C.L. Brief — INCL Brief (ABA)
Ind. — Indiana Reports
Ind. Acts — Acts, Indiana
Ind. Admin. Code — Indiana Administrative Code
Ind. Adv. Legis. Serv. — Burns Indiana Advance Legislative Service
Ind. Advocate — Indian Advocate
Ind. & Lab. Rel. Rev. — Industrial and Labor Relations Review
Ind. App. — Indiana Court of Appeals Reports
Ind. Code. — Indiana Code
Ind. Code Ann. — Indiana Statutes Annotated; Annotated Indiana Code
Indian Terr. — Indian Territory Reports
Ind. Int'l & Comp. L. Rev. — Indiana International & Comparative Law Review
Ind. J. Global Legal Stud. — Indiana Journal of Global Legal Studies
Ind. J. Int'l L. — Indian Journal of International Law
Ind. Leg. Forum — Indiana Legal Forum
Ind. Legis. Serv. — Indiana Legislative Service
Ind. L.J. — Indiana Law Journal
Ind. L. Reg. — Indiana Legal Register
Ind. L. Rep. — Indiana Law Reporter
Ind. L. Rev. — Indiana Law Review
Ind. Reg. — Indiana Register
Ind. Super. — Indiana Superior Court Reports
Ind. T. Ann. St. — Indian Territory Annotated Statutes
Indus. & Lab. Rel. F. — Industrial and Labor Relations Forum

Indus. & Lab. Rel. Rev. — Industrial and Labor Relations Review
Indus. L.J. — Industrial Law Journal
Indus. L. Rev. — Industrial Law Review
Indus. Prop. Q. — Industrial Property Quarterly
Indus. Rel. J. — Industrial Relations Journal
Indus. Rel. J. Econ. & Soc. — Industrial Relations: Journal of Economy and Society
Indus. Rel. L.J. — Industrial Relations Law Journal
Ind. Y.B. Int'l Aff. — Indian Yearbook of International Affairs
Inher. Est. & Gift Tax Rep. (CCH) — Inheritance, Estate, and Gift Tax Reports
In Pub. Interest — In the Public Interest
INS — Immigration and Naturalization Service
Ins. Counsel J. — Insurance Counsel Journal
Inside Litig. — Inside Litigation
Insights. — Insights
Ins. Liability Rep. — Insurance Liability Reporter
Ins. L.J. — Insurance Law Journal
Ins. L. Rep. (CCH) — Insurance Law Reports
Inst. Min. L. — Institute on Mineral Law
Inst. on Est. Plan. — Institute on Estate Planning
Inst. on Fed. Tax'n. — Institute on Federal Taxation
Inst. on Min. L. — Institute on Mineral Law
Inst. on Oil & Gas L. & Tax'n — Institute on Oil and Gas Law and Taxation
Inst. on Plan. Zoning & Eminent Domain — Institute on Planning, Zoning, and Eminent Domain
Inst. on Priv. Inv. & Inv. Abroad — Institute on Private Investments and Investors Abroad
Inst. on Sec. Reg. — Institute on Securities Regulation
INSTRAW — International Research and Training Institute for the Advancement of Women
Int. Com. Commn. — Interstate Commerce Commission
Int. Com. Rep. — Interstate Commerce Reports
Intell. Prop. L. Rev. — Intellectual Property Law Review
Inter Alia — Inter Alia (State Bar of Nevada)
Inter-Am. L. Rev. — Inter-American Law Review
Interior Dec. — Decisions of the United States Department of the Interior
Internet L. & Reg. (P & F) — Internet Law and Regulation
INTERPOL — International Criminal Police Organization
Interst. Com. R. — Interstate Commerce Reports
Int'l & Comp. L. Bull. — International and Comparative Law Bulletin
Int'l & Comp. L.Q. — International & Comparative Law Quarterly
Int'l Arb. J. — International Arbitration Journal
Int'l Arb. L. Rev. — International Arbitration Law Review
Int'l B.J. — International Bar Journal
Int'l Bus. & Trade L. Rep. — International Business & Trade Law Reporter
Int'l Bus. Law. — International Business Lawyer
Int'l Bus. Lawyer — International Business Lawyer
Int'l Bus. Ser. — International Business Service
Int'l Comm. Jurists Rev. — International Commission of Jurists Review
Int'l Dig. Health Leg. — International Digest of Health Legislation
Int'l Dimensions — International Dimensions
Int'l Encycl. Comp. L. — International Encyclopedia of Comparative Law
Int'l Envtl. Aff. — International Environmental Affairs
Int'l Env't Rep. (BNA) — International Environment Reporter
Int'l J. — International Journal
Int'l J. Comp. & Applied Crim. Just. — International Journal of Comparative and Applied Criminal Justice
Int'l J. Cultural Prop. — International Journal of Cultural Property
Int'l J.L. & Fam. — International Journal of Law and Family
Int'l J.L. & Psych. — International Journal of Law and Psychiatry
Int'l J. Legal Info. — International Journal of Legal Information
Int'l J. Legal Prof. — International Journal of the Legal Profession
Int'l J.L. Lib. — International Journal of Law Libraries
Int'l J. Marine & Coastal L. — International Journal of Marine and Coastal Law
Int'l J. Offender Therapy & Comp. Criminology — International Journal of Offender Therapy and Comparative Criminology
Int'l J. Soc. L. — International Journal of the Sociology of the Law
Int'l Lab. Rev. — International Labor Review
Int'l L. & Trade Persp. — International Law & Trade Perspective
Int'l Law. — International Lawyer (ABA)
Int'l L. Doc. — International Law Documents
Int'l Legal Persp. — International Legal Perspectives
Int'l L.N. — International Law Notes
Int'l. L. News — International Law News
Int'l L. Persp. — International Law Perspective
Int'l L. Prac. — International Law Practicum
Int'l L.Q. — International Law Quarterly

Int'l Org. — International Organization
Int'l Prop. Inv. J. — International Property Investment Journal
Int'l Q. — International Quarterly
Int'l Rev. L. & Econ. — International Review of Law and Economics
Int'l Tax & Bus. Law. — International Tax & Business Lawyer
Int'l Tax J. — International Tax Journal
Int'l Trade L.J. — International Trade Law Journal
Int'l Trade Rep. (BNA) — International Trade Reporter
Int. Rev. Bull. — Internal Revenue Bulletin
Int. Rev. Code — Internal Revenue Code
I.O.C.C. Bull. — Interstate Oil Compact Commission Bulletin
Iowa. — Iowa Reports
Iowa Acts — Acts & Joint Resolutions of the State of Iowa
Iowa Admin. Bull. — Iowa Administrative Bulletin
Iowa Admin. Code — Iowa Administrative Code
Iowa B. News Bull. — Bulletin of the Iowa State Bar Association
Iowa Code — Code of Iowa
Iowa Code Ann. — Iowa Code Annotated
Iowa L.B. — Iowa Law Bulletin
Iowa L. Bull. — Iowa Law Bulletin
Iowa Legis. Serv. — Iowa Legislative Service
Iowa L. Rev. — Iowa Law Review
IRA — Individual Retirement Account
I.R.B. — Internal Revenue Bulletin
I.R.C. — Internal Revenue Code
Ired. — Iredell's Law Reports (N.C.)
Ired. Eq. — Iredell's Equity Reports (N.C.)
I.R.M. — Internal Revenue Manual (IRS)
I.R.R. Newsl. — Individual Rights and Responsibilities Newsletter
I.R.S. — **1.** Illinois Revised Statutes. **2.** Internal Revenue Service.
IRS Pos. (CCH) — Internal Revenue Service Positions
ISL L. Rev. — ISL Law Review
Issues L. & Med. — Issues in Law & Medicine
ITA — International Trade Administration
ITC — International Trade Centre (UNCTAD)
I.T.R.D. — International Trade Reporter Decisions (BNA)
ITU — International Telecommunication Union

J

J. Accountancy — Journal of Accountancy
J. Affordable Housing & Community Dev. L. — Journal of Affordable Housing & Community Development Law
J. Afr. L. — Journal of African Law
JAG. — Judge Advocate General
JAG Bull. — JAG Bulletin (USAF)
Jagg. Torts — Jaggard, Hand-book of the Law of Torts
JAG J. — JAG Journal
JAG L. Rev. — United States Air Force JAG Law Review
J. Agric. L. — Journal of Agricultural Law
J. Agric. Tax'n & L. — Journal of Agricultural Taxation & Law
J. Air L. — Journal of Air Law
J. Air L. & Com. — Journal of Air Law and Commerce
JALC — Journal of Air Law and Commerce
JAMA. — Journal of the American Medical Association
J. Am. Acad. Matrim. Law — Journal of the American Academy of Matrimonial Lawyers
J. Am. Acad. Psych. & L. — Journal of the American Academy of Psychiatry and the Law
J. Am. Jud. Soc'y — Journal of the American Judicature Society
J. Am. Soc'y CLU — Journal of the American Society of Chartered Life Underwriters
J. Am. Soc'y CLU & ChFC — Journal of the American Society of Chartered Life Underwriters & Chartered Financial Consultants
J. App. Prac. & Process — Journal of Appellate Practice and Process
Jarm., Wills — Jarman, Treatise on Wills
J. Art. & Ent. L. — Journal of Art and Entertainment Law
J. Arts Mgmt. & L. — Journal of Arts Management and Law
J. Arts Mgmt. L. & Soc'y — Journal of Arts Management, Law and Society
J. Bankr. L. & Prac. — Journal of Bankruptcy Law and Practice
J. Bev. Hills B.A. — Journal of the Beverly Hills Bar Association
J. Biolaw & Bus. — Journal of Biolaw and Business
J. Bus. L. — Journal of Business Law
J.C. & U.L. — Journal of College and University Law
J. Chinese L. — Journal of Chinese Law
J. Church & St. — Journal of Church and State
J. Comp. Leg. & Int'l L. 3d. — Journal of Comparative Legislation and International Law, Third Series
J. Confl. Res. — Journal of Conflict Resolution
J. Cons. Affairs — Journal of Consumer Affairs
J. Const. & Parl. Stud. — Journal of Constitutional and Parliamentary Studies
J. Const. L. — Journal of Constitutional Law

J. Const. L. E. & Cent. Eur. — Journal of Constitutional Law in Eastern & Central Europe
J. Contemp. Health L. & Pol'y — Journal of Contemporary Health Law and Policy
J. Contemp. L. — Journal of Contemporary Law
J. Contemp. Legal Issues. — Journal of Contemporary Legal Issues
J. Cont. L. — Journal of Contract Law
J. Copyright Entertainment Sports L. — Journal of Copyright Entertainment and Sports Law
J. Copyright Soc'y. — Journal of the Copyright Society of the U.S.A.
J. Copyright Soc'y U.S.A. — Journal of the Copyright Society of the U.S.A.
J. Copy. Soc'y — Journal of the Copyright Society of the U.S.A.
J. Corp. L. — Journal of Corporation Law (Iowa)
J. Corp. Tax. — Journal of Corporate Taxation
J. Corp. Tax'n. — Journal of Corporate Taxation
J. Crim. Just. — Journal of Criminal Justice
J. Crim. L. & Criminology — Journal of Criminal Law & Criminology
J.D. — Juris Doctor
J. Disp. Resol. — Journal of Dispute Resolution
J. Energy & Devel. — Journal of Energy and Development
J. Energy & Nat. Resources L. — Journal of Energy & Natural Resources Law
J. Energy L. & Pol'y. — Journal of Energy Law & Policy
J. Energy Nat. Resources & Envtl. L. — Journal of Energy, Natural Resources & Environmental Law
J. Envtl. L. & Litig. — Journal of Environmental Law and Litigation
Jeremy, Eq. Jur. — A Treatise on the Equity Jurisdiction of the High Court of Chancery
Jeremy on Carriers — H. Jeremy, The Law of Carriers, Inn-keepers, Warehousemen, and Other Depositories of Goods for Hire
J. Fam. L. — Journal of Family Law
J. Fin. Serv. Prof. — Journal of Financial Service Professionals
J. Forensic Document Examination — Journal of Forensic Document Examination
J. Forensic Econ. — Journal of Forensic Economics
J. Gender Race & Just. — Journal of Gender, Race & Justice
J. Health & Hosp. L. — Journal of Health and Hospital Law
J. Health Care L. & Pol'y. — Journal of Health Care Law & Policy
J. Health L. — Journal of Health Law
J. Health Pol. Pol'y & L. — Journal of Health, Politics, Policy & Law
J. Inst. for Study Legal Ethics. — Journal of the Institute for the Study of Legal Ethics
J. Inst. Study Legal Ethics — Journal of the Institute for the Study of Legal Ethics
J. Intell. Prop. — Journal of Intellectual Property
J. Intell. Prop. L. — Journal of Intellectual Property Law
J. Int'l Aff. — Journal of International Affairs
J. Int'l & Comp. L. — Journal of International and Comparative Law
J. Int'l Arb. — Journal of International Arbitration
J. Int'l Banking L. — Journal of International Banking Law
J. Int'l Comm. Jur. — Journal of the International Commission of Jurists
J. Int'l Fin. Markets — Journal of International Financial Markets
J. Int'l L. & Com. Reg. — Journal of International Law and Commercial Regulation
J. Int'l L. & Dipl. — Journal of International Law and Diplomacy
J. Int'l L. & Econ. — Journal of International Law and Economics
J. Int'l L. & Pol. — Journal of International Law and Politics
J. Int'l L. & Prac. — Journal of International Law and Practice
J. Int'l Legal Stud. — Journal of International Legal Studies
J. Int'l Tax'n. — Journal of International Taxation
J. Int'l Wildlife L. & Pol'y — Journal of International Wildlife Law and Policy
J. John Bassett Moore Soc'y Int'l L. — Journal of the John Bassett Moore Society of International Law
J.J. Marsh. — J. J. Marshall (Ky.)
J. Juv. L. — Journal of Juvenile Law
J. Kan. B.A. — Journal of the Kansas Bar Association
J.L. & Com. — Journal of Law and Commerce
J.L. & Econ. — Journal of Law and Economics
J.L. & Econ. Dev. — Journal of Law and Economic Development
J.L. & Educ. — Journal of Law and Education
J.L. & Fam. Stud. — Journal of Law and Family Studies
J.L. & Health. — Journal of Law and Health
J.L. & Info. Sci. — Journal of Law and Information Science
J.L. & Pol. — Journal of Law and Politics
J.L. & Pol'y. — Journal of Law and Policy
J.L. & Relig. — Journal of Law and Religion
J.L. & Religion. — Journal of Law and Religion
J. Land Res. & Envtl. L. — Journal of Land, Resources and Environmental Law

J. Land Resources & Envtl. L. — Journal of Land, Resources and Environmental Law
J.L. & Social Pol'y. — Journal of Law and Social Policy
J.J. & Soc. Pol'y — Journal of Law and Social Policy
J.L. & Soc'y — Journal of Law and Society
J.L. & Tech. — Journal of Law & Technology (ceased publication)
J.L. & Trade Am. — Journal of Law and Trade in the Americas
J. Land Use & Envtl. L. — Journal of Land Use & Environmental Law
J.L. Econ. & Org. — Journal of Law, Economics & Organization
J. Legal Econ. — Journal of Legal Economics
J. Legal Educ. — Journal of Legal Education
J. Legal Hist. — Journal of Legal History
J. Legal Med. — Journal of Legal Medicine
J. Legal Prof. — Journal of the Legal Profession
J. Legal Stud. — Journal of Legal Studies
J. Legal Stud. Educ. — Journal of Legal Studies Education
J. Legis. — Journal of Legislation
J. Leg. Stud. — Journal of Legal Studies
J.L. Fam. Stud. — Journal of Law and Family Studies
J.L. Med. & Ethics — Journal of Law, Medicine & Ethics
J.L. Ref. — Journal of Law Reform
J.L. Reform — Journal of Law Reform
J.L. Soc'y — Journal of Law in Society
J. Mar. L. & Com. — Journal of Maritime Law and Commerce
J. Mar. L.R. — John Marshall Law Review
J. Mar. L. Rev. — John Marshall Law Review
J. Marshall J. Computer & Info. L. — John Marshall Journal of Computer & Information Law
J. Marshall J. Prac. & Proc. — John Marshall Journal of Practice and Procedure
J. Marshall L.Q. — John Marshall Law Quarterly
J. Marshall L. Rev. — John Marshall Law Review
J. Med. & L. — Journal of Medicine and Law
J. Min. L. & Pol'y — Journal of Mineral Law & Policy
J. Minn. Pub. L. — Journal of Minnesota Public Law
J. Mo. B. — Journal of the Missouri Bar
J. Nat'l Ass'n Admin. L. Judges — Journal of the National Association of Administrative Law Judges
J. Nat'l Sec. L. — Journal of National Security Law
J. Nat. Resources & Envtl. L. — Journal of Natural Resources & Environmental Law
J.O. — Journal Officiel des Communautés Européennes
Johns. — Johnson's Reports (N.Y.)
Johns. Cas. — Johnson's Cases (N.Y.)
Johns. Ch. — Johnson's Chancery Reports (N.Y.)
Jones — Jones' Law Reports (N.C.)
Jones, Chat. Mortg. — A Treatise on the Law of Mortgages of Personal Property
Jones, Easem. — A Treatise on the Law of Easements
Jones Eq. — Jones' Equity (N.C.)
Jones, Liens — Treatise on the Law of Liens: Common Law, Statutory, Equitable and Maritime
Jones, Mortg. — A Treatise on the Law of Mortgages of Real Property
Jones on Bailments — W. Jones, An Essay on the Law of Bailments
Jones, Pledges — A Treatise on the Law of Pledges, including Collateral Securities
J.P. — Justice of the Peace
J. Partnership Tax'n — Journal of Partnership Taxation
J. Passthrough Entities — Journal of Passthrough Entities
J. Pat. & Trademark Off. Soc'y — Journal of the Patent and Trademark Office Society
J. Pat. Off. Soc'y — Journal of the Patent Office Society
J. Pension Plan. & Compliance — Journal of Pension Planning and Compliance
J. Pharmacy & L. — Journal of Pharmacy & Law
J. Police Sci. & Ad. — Journal of Police Science and Administration
J. Prod. Liab. — Journal of Products Liability
J. Proprietary Rts. — Journal of Proprietary Rights
J. Psych. & L. — Journal of Psychiatry and Law
J. Pub. L. — Journal of Public Law
J. Real Est. Tax'n. — Journal of Real Estate Taxation
J. Sci. & Tech. L. — Journal of Science and Technology Law
J. S. Corp. Tax'n — Journal of S Corporation Taxation
J. S. Ct. Hist. — Journal of Supreme Court History
J.S. Legal Hist. — Journal of Southern Legal History
J. Small & Emerging Bus. L. — Journal of Small & Emerging Business Law
J. Space L. — Journal of Space Law
J. State Tax'n — Journal of State Taxation
J. St. Tax'n — Journal of State Taxation
J. Suffolk Acad. L. — Journal of the Suffolk Academy of Law
J. Sup. Ct. Hist. — Journal of Supreme Court History
J. Tax. — Journal of Taxation
J. Tax'n. — Journal of Taxation
J. Tax'n Inv. — Journal of Taxation of Investments
J. Tax'n Investments — Journal of Taxation of Investments
J. Tech. L. & Pol'y — Journal of Technology Law and Policy
J. Telecomms. & High Tech. L. — Journal on Telecommunications & High Technology Law

J. Tex. Ins. L. — Journal of Texas Insurance Law
J. Transnat'l L. & Pol'y — Journal of Transnational Law & Policy
J. Transp. L., Logistics & Pol'y — Journal of Transportation Law, Logistics and Policy
Jud. Conduct Rep. — Judicial Conduct Reporter
Judges. J. — Judges Journal (ABA)
J. Urb. L. — Journal of Urban Law
Jurid. Rev. — Juridical Review
Jurimetrics J. — Jurimetrics Journal
Jurimetrics J. L. Sci. & Tech. — Jurimetrics Journal of Law, Science and Technology (ABA)
Juris Dr. — Juris Doctor
Juris Mag. — Juris Magazine
Jurist — The Jurist
Jur. Rev. — Juridical Review
Just. Sys. J. — Justice System Journal
J. U. Tex. Int'l L. — Journal of the University of Texas International Law
Juv. & Fam. Ct. J. — Juvenile and Family Court Journal

K

Kan. — Kansas Reports
Kan. Admin. Regs. — Kansas Administrative Regulations
Kan. App. — Kansas Court of Appeals Reports
Kan. App. 2d. — Kansas Court of Appeals Reports, Second Series
Kan. B.A.J. — Kansas Bar Association Journal
Kan. City L. Rev. — Kansas City Law Review
Kan. C. L. Rep. — Kansas City Law Reporter
Kan. J.L. & Pub. Pol'y — Kansas Journal of Law & Public Policy
Kan. Law. — Kansas Lawyer
Kan. L.J. — Kansas Law Journal
Kan. L. Rev. — Kansas Law Review
Kan. Reg. — Kansas Register
Kan. Stat. Ann. — Kansas Statutes Annotated
Kan. Sess. Laws — Session Laws of Kansas
K.B. — King's Bench (Eng.)
K.B.J. — Kansas Bar Journal
Keener, Quasi-Contracts — A Treatise on the Law of Quasi-Contracts
Kent — Commentaries on American Law
Kent, Comm. — Commentaries on American Law
Kent's Com. — Kent, Commentaries on American Law
Kerr, Rec. — The Law and Practice as to Receivers
Kirby — Kirby (Conn.)
KRS — Kentucky Revised Statutes
K.S.A. — Kansas Statutes Annotated
Ky. — Kentucky Reports
Ky. Acts — Kentucky Acts
Ky. Admin. Reg. — Administrative Register of Kentucky
Ky. Admin. Regs. — Kentucky Administrative Regulations
Ky. App. Rptr. — Kentucky Appellate Reporter
Ky. Bench & B. — Kentucky Bench and Bar
Ky. Children's Rts. J. — Kentucky Children's Rights Journal
Kyd, Bills — A Treatise on the Law of Bills of Exchange and Promissory Notes
Kyd, Corporations — Kyd, A Treatise on the Law of Corporations
Ky. Dec. — Kentucky Decisions
Ky. Law Rep. — Kentucky Law Reporter
Ky. L.J. — Kentucky Law Journal
Ky. L. Rptr. — Kentucky Law Reporter
Ky. L. Summary — Kentucky Law Summary
Ky. Op. — Kentucky Opinions
Ky. Rev. Stat. & R. Serv. — Baldwin's Official Edition, Kentucky Revised Statutes & Rules Service
Ky. Rev. Stat. Ann. — Kentucky Revised Statutes Annotated
Ky. St. B.J. — Kentucky State Bar Journal

L

L. — Laws (of state)
La. — Louisiana Reports
La. Acts — State of Louisiana: Acts of the Legislature
La. Admin. Code — Louisiana Administrative Code
La. Ann. — Louisiana Annual Reports
La. App. — Louisiana Court of Appeals Reports
Lab. Arb. Awards (CCH) — Labor Arbitration Awards
Lab. Arb. Rep. (BNA) — Labor Arbitration Reports
L.A. Bar Bull. — Los Angeles Bar Bulletin
Lab. Cas. (CCH) — Labor Cases
La. B.J. — Louisiana Bar Journal
Lab. Law. — Labor Lawyer
Lab. L.J. — Labor Law Journal
Lab. L. Rep. (CCH) — Labor Law Reporter
Lab. L. Serv. (CCH) — Labor Law Service
Lab. Rel. & Empl. News — Labor Relations and Employment News (ABA)
Lab. Rel. Rep. (BNA) — Labor Relations Reporter
La. Civ. Code Ann. — Louisiana Civil Code Annotated
Lack. Bar — Lackawanna Bar
Lack. Jur. — Lackawanna Jurist
Lack. Jurist — Lackawanna Jurist
Lack. Legal N. — Lackawanna Legal News
Lack. Leg. News — Lackawanna Legal News
Lack. Leg. Rec. — Lackawanna Legal Record

L.A. Law. — Los Angeles Lawyer
La. L.J. — Louisiana Law Journal
La. L. Rev. — Louisiana Law Review
L. & Contemp. Probs. — Law and Contemporary Problems
L. & Critique — Law and Critique
L. & Hist. Rev. — Law and History Review
L. & Soc. Inquiry. — Law & Social Inquiry
L. & Soc. Order — Law and Social Order
L. & Soc'y Rev. — Law and Society Review
Land & Water L. Rev. — Land & Water Law Review
Land Use & Env. L. Rev. — Land Use and Environment Law Review
Langdell, Contracts — Summary of the Law of Contracts
Langdell, Eq. Pl. — A Summary of Equity Pleading
Langdell, Sel. Cas. Sales — Selection of Cases on the Sales of Personal Property
Langdell, Summary — A Summary of the Law of Contracts
Langdell, Summary of Contracts — A Summary of the Law of Contracts
Lang. Sales — Langdell, Selection of Cases on the Sales of Personal Property
Lans. — Lansing's Reports (N.Y.)
Lans. Ch. — Lansing's Chancery Reports (N.Y.)
La Raza L.J. — La Raza Law Journal
La. Reg. — Louisiana Register
La. Rev. Stat. Ann. — Louisiana Revised Statutes Annotated
La. Sess. Law Serv. — Louisiana Session Law Service
Law. Americas — Lawyer of the Americas
Law & Contemp. Probs. — Law & Contemporary Problems
Law & Hist. Rev. — Law and History Review
Law & Hum. Behav. — Law and Human Behavior
Law & Ineq. — Law and Inequality: A Journal of Theory and Practice
Law & Ineq. J.. — Law & Inequality Journal
Law & Phil. — Law and Philosophy
Law & Pol'y Int'l Bus. — Law & Policy in International Business
Law & Psychol. Rev. — Law and Psychology Review
Law & Psych. Rev. — Law and Psychology Review
Law & Sex. — Law & Sexuality: A Review of Lesbian & Gay Legal Issues
Law & Sexuality — Law & Sexuality: A Review of Lesbian & Gay Legal Issues
Law & Soc. Inquiry — Law and Social Inquiry
Law & Soc'y Rev. — Law and Society Review
Law. Competitive Edge — Lawyers Competitive Edge: The Journal of Law Office Economics and Management
Law Forum — Law Forum (U. of Baltimore)
Law Inst. J. — Law Institute Journal
Law Lib. J. — Law Library Journal
Law Libr. J. — Law Library Journal
Law. Man. on Prof. Conduct (ABA/BNA) — Lawyers Manual on Professional Conduct
Law Off. Econ. & Mgt. — Law Office Economics and Management
Laws. Man. on Prof. Conduct (ABA/BNA) — Lawyers Manual on Professional Conduct
Lawson, Exp. Ev. — The Law of Expert and Opinion Evidence Reduced to Rules
Lawson, Rights, Rem. & Pr. — Rights, Remedies, and Practice, at Law, in Equity, and Under the Codes
LC — Library of Congress
LEAA — Law Enforcement Assistance Administration
Leake, Cont. — The Elements of the Law of Contracts
Lea, Sup. and Force — Superstition and Force: Essays on Wager of Law, the Wager of Battle, the Ordeal, Torture
Lebanon — Lebanon County Legal Journal (Pa.)
L. Ed. — U.S. Supreme Court Reports, Lawyer's Edition
L. Ed. 2d. — U.S. Supreme Court Reports, Lawyer's Edition, Second Series
Leg. — Acts of the Legislature
Leg. Aff. — Legal Affairs
Legal Econ. — Legal Economics (ABA)
Legal Educ. Newsl. — Legal Education Newsletter (ABA)
Legal Reference Services Q. — Legal Reference Services Quarterly
Legal Ref. Serv. Q. — Legal Reference Services Quarterly
Legal Services Bull. — Legal Services Bulletin
Legal Stud. F. — Legal Studies Forum
Leg. Gaz. R. — Legal Gazette Reports (Pa.)
Legis. Stud. Q. — Legislative Studies Quarterly
Leg. Writing — Legal Writing: The Journal of the Legal Writing Institute
Leh. L.J. — Lehigh Law Journal, Pa
Leigh — Leigh (Va.)
LERC Monograph Ser. — LERC Monograph Series
Lewis, Em. Dom. — J. Lewis, A Treatise on the Law of Eminent Domain in the United States
Lewis, Perp. — W. Lewis, A Practical Treatise on the Law of Perpetuity
Lewis U. L. Rev. — Lewis University Law Review
Liberty, Life & Fam. — Liberty, Life and Family

Life Health & Accid. Ins. Cas. (CCH) — Life Health and Accident Insurance Cases

Life Health & Accid. Ins. Cas. 2d (CCH) — Life Health and Accident Insurance Cases, Second Series

Lincoln L. Rev. — Lincoln Law Review

Lindley, Comp. — A Treatise on the Law of Companies

Lindley, Part. — A Treatise on the Law of Partnerhip

L. in Japan — Law in Japan

Liquor Cont. L. Rep. (CCH) — Liquor Control Law Reports

Litig. — Litigation (ABA)

Litigation — Litigation (ABA)

Litt. — Littell (Ky.)

Litt. Sel. Cas. — Littell Selected Cases (Ky.)

L. Lib. J. — Law Library Journal

L. Lib. News — Law Library News

L. Libr. J. — Law Library Journal

LL.B. — Legum Baccalaureus (Bachelor of Laws)

LL.D. — Legum Doctor (Doctor of Laws)

LL.M. — Legum Magister (Master of Laws)

Lloyd's Mar. & Com. L.Q. — Lloyd's Maritime and Commercial Law Quarterly

L. Med. & Health Care — Law, Medicine and Health Care

L.N.T.S. — League of Nations Treaty Series

Lock. Rev. Cas. — Lockwood's Reversed Cases (N.Y.)

Los Angeles Bar J. — Los Angeles Bar Journal

Lowell, Transfer of Stock — The Transfer of Stock in Private Corporations

Loy. Consumer L. Rep. — Loyola Consumer Law Reporter

Loy. Consumer L. Rev. — Loyola Consumer Law Review

Loy. Ent. L.J. — Loyola Entertainment Law Journal

Loy. Intell. Prop. & High Tech. J. — Loyola Intellectual Property & High Technology Journal

Loy. L.A. Ent. L.J. — Loyola of Los Angeles Entertainment Law Journal

Loy. L.A. Ent. L. Rev. — Loyola of Los Angeles Entertainment Law Review

Loy. L.A. Int'l & Comp. L. Ann. — Loyola of Los Angeles International and Comparative Law Annual

Loy. L.A. Int'l & Comp. L.J. — Loyola of Los Angeles International and Comparative Law Journal

Loy. L.A. Int'l & Comp. L. Rev. — Loyola of Los Angeles International and Comparative Law Review

Loy. L.A. L. Rev. — Loyola of Los Angeles Law Review

Loy. L. Rev. — Loyola Law Review (New Orleans)

Loy. Intell. Prop. & High Tech. L.Q. — Loyola Intellectual Property & High Technology Law Quarterly

Loy. Mar. L. J. — Loyola Maritime Law Journal

Loy. Poverty L.J. — Loyola Poverty Law Journal

Loy. U. Chi. L.J. — Loyola University of Chicago Law Journal

Loy. U. New Orleans J. Pub. Int. L. — Loyola University of New Orleans Journal of Public Interest Law

L.P.R.A. — Laws of Puerto Rico Annotated

L. Prac. Mgmt. — Law Practice Management (ABA)

LQR — Law Quarterly Review

L.R. — Law Reports, U.S

L.R.A. — Lawyers' Reports Annotated

L.R.A. N.S. — Lawyers' Reports Annotated New Series

L. Rev. Mich. St. U.-Det. C.L. — Law Review of Michigan State University-Detroit College of Law

LRP — Labor Relations Press

L.R.R.M. (BNA) — Labor Relations Reference Manual

LSA. — Louisiana Statutes Annotated

LSA-C.C. — Louisiana Statutes Annotated—Civil Code

LSA-C.C.P. — Louisiana Statutes Annotated—Code of Civil Procedure

LSA-C.J.P. — Louisiana Statutes Annotated—Code of Juvenile Procedure

LSA-R.S. — Louisiana Statutes Annotated—Revised Statutes

Ltd. — Limited

M

MA — Maritime Administration

Mackey — Mackey (D.C.)

Maine, Ancient Law — Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas

Maine, Anc. Law — Ancient Law: Its Connection with the Early History of Society...

Maine B.J. — Maine Bar Journal

Maine, Early Hist. Inst. — Lectures on the Early History of Institutions

Maine, Early Law and Custom — Dissertations on Early Law and Custom

Maine L. Rev. — Maine Law Review

Maine, Village Communities — Village Communities in the East and West, Six Lectures Delivered at Oxford

Major Tax Plan. — Major Tax Planning

Malloy — Treaties, Conventions, International Acts, Protocols, and Agreements Between the United States and Other Powers

Man. L.J. — Manitoba Law Journal

Mar. — Martin (N.C.)

Markby, Elements of Law — Elements of Law Considered with Reference to Principles of General Jurisprudence

Mar. Law. — Maritime Lawyer
Marq. Intell. Prop. L. Rev. — Marquette Intellectual Property Law Review
Marq. L. Rev. — Marquette Law Review
Marq. Sports L.J. — Marquette Sports Law Journal
Marsden, Law of Collisions — A Treatise on the Law of Collisions at Sea
Marshall on Insurance — A Treatise on the Law of Insurance
Mart. & Yer. — Martin & Yerger (Tenn.)
Mart. Ex. — Martin, A Treatise on the Powers and Duties of Executors and Administrators
Mart. (n.s.) — Martin Louisiana Term Reports, New Series (La.)
Mart. (o.s.) — Martin Louisiana Term Reports, Old Series (La.)
Marv. — Marvel (Del.)
Mass. — Massachusetts Reports
Mass. Acts — Acts and Resolves of Massachusetts
Mass. Adv. Legis. Serv. — Massachusetts Advance Legislative Service
Mass. Ann. Laws — Annotated Laws of Massachusetts
Mass. App. Ct. — Massachusetts Appeals Court Reports
Mass. App. Dec. — Massachusetts Appellate Decisions
Mass. App. Div. — Massachusetts Appellate Division Reports
Mass. Gen. Laws — General Laws of the Commonwealth of Massachusetts
Mass. Gen. Laws Ann. — Massachusetts General Laws Annotated
Mass. Legal Hist. — Massachusetts Legal History: A Journal of the Supreme Judicial Court Legal History Society
Mass. Legis. Serv. — Massachusetts Legislative Service
Mass. L.Q. — Massachusetts Law Quarterly
Mass. L. Rev. — Massachusetts Law Review
Mass. Reg. — Massachusetts Register
Mass. Regs. Code — Code of Massachusetts Regulations
Mass. Supp. — Massachusetts Reports Supplement
May, Ins. — Law of Insurance, as Applied to Fire, Accident, Guarantee, and Other Non-maritime Risks
MB — Matthew Bender
M.C.A. — Mississippi Code Annotated; Montana Code Annotated
McAdam, Landl. & T. — The Rights, Duties, Remedies, and Incidents Belonging to and Growing Out of the Relation of Landlord and Tenant
M.C.C. — Interstate Commerce Commission: Motor Carrier Cases
McCahon — McCahon (Kan.)
McCord — McCord (S.C.)
McCord Eq. — McCord's Chancery Reports (S.C.)
McCrary, Elections — Treatise on the American Law of Elections
McGeorge L. Rev. — McGeorge Law Review
McGill L.J. — McGill Law Journal
McGl. — McGloin (La.)
McKelvey, Ev. — Handbook of the Law of Evidence
M.C.L.A. — Michigan Compiled Laws Annotated
McMul. — McMullen (S.C.)
McMul. Eq. — McMullen's Equity Reports (S.C.)
Md. — Maryland Reports
Md. App. — Maryland Appellate Reports
Md. B.J. — Maryland Bar Journal
Md. Ch. — Maryland Chancery
Md. Code Ann. — Annotated Code of Maryland
Md. J. Contemp. Legal Issues — Maryland Journal of Contemporary Legal Issues
Md. J. Int'l L. & Trade — Maryland Journal of International Law and Trade
Md. Laws — Laws of Maryland
Md. L.F. — Maryland Law Forum
Md. L. Rep. — Maryland Law Reporter, Baltimore
Md. L. Rev. — Maryland Law Review
Md. Reg. — Maryland Register
Me. — Maine Reports
Me. Acts — Maine Acts
Me. B.J. — Maine Bar Journal
Mechem, Ag. — Treatise on the Law of Agency Including Not Only a Discussion of the General Subject, but also Special Chapters on Attorneys, Auctioneers, Brokers and Factors
Mechem, Part. — Elements of the Law of Partnership
Med. & L. — Medicine & Law
Med. Devices Rep. (CCH) — **1.** Medical Devices Reporter. **2.** Medical Devices Reports.
Media L. & Pol'y. — Media Law & Policy
Media L. Rep. (BNA) — Media Law Reporter
Mediation Q. — Mediation Quarterly: Journal of the Academy of Family Mediators
Medicare & Medicaid Guide (CCH) — Medicare and Medicaid Guide
Med. Leg. J. — Medico-Legal Journal
Med. Trial Tech. Q. — Medical Trial Technique Quarterly
Meigs — Meigs (Tenn.)
Me. Laws — Maine Laws
Melb. J. Int'l L. — Melbourne Journal of International Law
Melb. U. L. Rev. — Melbourne University Law Review
Me. Legis. Serv. — Maine Legislative Service
Me. L. Rev. — Maine Law Review

Memphis L.J. — Memphis Law Journal, Tenn
Memphis St. U. L. Rev. — Memphis State University Law Review
Mental & Phys. Disab. L. Rep. — Mental & Physical Disability Law Reporter (ABA)
Mental Disab. L. Rep. — Mental Disability Law Reporter (ABA)
Mercer L. Rev. — Mercer Law Review
Me. Rev. Stat. Ann. — Main Revised Statutes Annotated
Merg. & Acq. — Mergers and Acquisitions
Met. — **1.** Metcalf (Ky.). **2.** Metcalf (Mass.).
M.F.P.D. — Modern Federal Practice Digest
MGIC. — Mortgage Guaranty Insurance Corporation
M.G.L.A. — Massachusetts General Laws Annotated
Miami L.Q. — Miami Law Quarterly
Mich. — Michigan Reports
Mich. Admin. Code — Michigan Administrative Code
Mich. App. — Michigan Appeals Reports
Mich. B.J. — Michigan State Bar Journal
Mich. Bus. L.J. — Michigan Business Law Journal
Mich. Comp. Laws — Michigan Compiled Laws
Mich. Comp. Laws Ann. — Michigan Compiled Laws Annotated
Mich. Ct. Cl. — Michigan Court of Claims Reports
Mich. J. Gender & L. — Michigan Journal of Gender & Law
Mich. J. Int'l L. — Michigan Journal of International Law
Mich. J.L. Ref. — University of Michigan Journal of Law Reform
Mich. J. Race & L. — Michigan Journal of Race & Law
Mich. L. & Pol'y Rev. — Michigan Law & Policy Review
Mich. Legis. Serv. — Michigan Legislative Service
Mich. L. Rev. — Michigan Law Review
Mich. Pub. Acts — Public and Local Laws of the Legislature of the State of Michigan
Mich. Reg. — Michigan Register
Mich. Stat. Ann. — Michigan Statutes Annotated
Mich. St. U. - DCL J. Int'l L. — Michigan State University–Detroit College of Law Journal of International Law
Mich. Tax Law. — Michigan Tax Lawyer
Mich. Tax L.J. — Michigan Tax Law Journal
Mich. Telecomm. & Tech. L. Rev. — Michigan Telecommunications and Technology Law Review
Mich. Y.B. Int'l Legal Stud. — Michigan Yearbook of International Legal Studies
MIGA — Multilateral Investment Guarantee Agency
Mill — Mill (Constitutional)
Miller — H. Miller, Treaties and Other International Acts of the United States
Miller, Const. — S. Miller, Lectures on the Constitution of the United States
Mill, Log. — A System of Logic, Ratiocinative and Inductive, Being a Connected View of the Principles of Evidence and the Methods of Scientific Investigation
Mil. L. Rev. — Military Law Review
Mills, Em. Dom. — A Treatise on the Law of Eminent Domain
Minn. — Minnesota Reports
Minn. Code Agency — Minnesota Code of Agency Rules
Minn. Intell. Prop. Rev. — Minnesota Intellectual Property Review
Minn. J. Global Trade — Minnesota Journal of Global Trade
Minn. Laws — Laws of Minnesota
Minn. L. Rev. — Minnesota Law Review
Minn. R. — Minnesota Rules
Minn. Reg. — Minnesota State Register
Minn. Sess. Law Serv. — Minnesota Session Law Service
Minn. Stat. — Minnesota Statutes
Minn. Stat. Ann. — Minnesota Statutes Annotated
Minn. Trial Law. — Minnesota Trial Lawyer
Minor — Minor (Ala.)
Misc. — New York Miscellaneous Reports
Misc. 2d — New York Miscellaneous Reports, Second Series
Miss. — Mississippi Reports
Miss. C. L. Rev. — Mississippi College Law Review
Miss. Code Ann. — Mississippi Code Annotated
Miss. Dec. — Mississippi Decisions
Miss. Law. — Mississippi Lawyer
Miss. Laws — General Laws of Mississippi
Miss. L.J. — Mississippi Law Journal
Miss. Reg. — Mississippi Official and Statistical Register
Miss. St. Cas. — Mississippi State Cases
Mitf. Eq. Pl. — Mitford's Equity Pleading
M.J. — Military Justice Reporter
M.L.R. — Military Law Review
MLS. — Multiple Listing Service
Mo. — Missouri Reports
Mo. Ann. Stat. — Annotated Missouri Statutes
Mo. App. — Missouri Appeals Reports
Mo. B.J. — Missouri Bar Journal
Mo. Code Regs. Ann. — Missouri Code of State Regulations Annotated
Mod. Am. Law — Modern American Law

Mod. L. Rev. — Modern Law Review

Mo. Envtl. L. & Pol'y Rev. — Missouri Environmental Law & Policy Review

Mo. J. Disp. Resol. — Missouri Journal of Dispute Resolution

Mo. Laws — Laws of Missouri

Mo. Legis. Serv. — Missouri Legislative Service

Mo. L. Rev. — Missouri Law Review

Monag. — Monaghan (Pa.)

Monash U. L. Rev. — Monash University Law Review

Mont. — Montana Reports

Mont. Admin. R. — Administrative Rules of Montana

Mont. Admin. Reg. — Montana Administrative Register

Mont. Code Ann. — Montana Code Annotated

Monthly Lab. Rev. — Monthly Labor Review

Mont. Law. — Montana Lawyer

Mont. Laws — Laws of Montana

Mont. L. Rev. — Montana Law Review

Mont. Rev. Code Ann. — Revised Codes of Montana Annotated

Morawetz, Corporations — A Treatise on the Law of Private Corporations

Mor. Corp. — Morawetz, A Treatise on the Law of Private Corporations

Mo. Reg. — Missouri Register

Mo. Rev. Stat. — Missouri Revised Statutes

Morris — Morris (Iowa)

Morse, Banks — A Treatise on the Law of Banks and Banking

Mo. St. Ann. — Missouri Statutes Annotated

Moyle, Contract of Sale — The Contract of Sale in Civil Law, with References to the Laws of England, Scotland, and France

MPC — Model Penal Code

M.P.E.P. — Manual of Patent Examining Procedure

M.R.S.A. — Model Revised Statutes Annotated

M.S.A. — **1.** Minnesota Statutes Annotated. **2.** Michigan Statutes Annotated.

MSL L. Rev. — MSL Law Review

MSL Rev. — MSL Review: A Journal for Practitioners and Judges

M.S.P.B. — Decisions of the United States Merit Systems Protection Board

M.U.L.L. — MULL: Modern Uses of Logic in Law

Mun. Att'y — Municipal Attorney

Munf. — Munford (Va.)

Mur. — Murphey (N.C.)

Mut. Funds Guide (CCH) — Mutual Funds Guide

N

NACUA — National Association of College and University Attorneys

NAFTA: L. & Bus. Rev. Am. — NAFTA: Law & Business Review of the Americas

N. Am. Rev. — North American Review

NAS — National Academy of Science

NASA — National Aeronautics and Space Administration

NASD — National Association of Securities Dealers

Nat. Gas Law. J. — Natural Gas Lawyer's Journal

Nation Code — Navajo Nation Code

Nat'l Black L.J. — National Black Law Journal

Nat'l J. Crim. Def. — National Journal of Criminal Defense

Nat'l Jewish L. Rev. — National Jewish Law Review

Nat'l Pub. Empl. Rep. (LRP) — National Public Employment Reporter

Nat'l Rep. Legal Ethics (UPA) — National Reporter on Legal Ethics

Nat'l Tax J. — National Tax Journal

NATO — North Atlantic Treaty Organization

Nat. Res. Law. — Natural Resources Lawyer

Nat. Resources & Env't. — Natural Resources & Environment (ABA)

Nat. Resources J. — Natural Resources Journal

Nat. Resources Law. — Natural Resources Lawyer

Nat. Resources L. Newsl. — Natural Resources Law Newsletter (ABA)

Navajo Rptr. — Navajo Reporter

Naval L. Rev. — Naval Law Review

NBA Nat'l B.A. Mag. — NBA National Bar Association Magazine

NBS — National Bureau of Standards

N.C. — North Carolina Reports

N.C. Admin. Code — North Carolina Administrative Code

N.C. Adv. Legis. Serv. — Advance Legislative Service to the General Statutes of North Carolina

N.C. App. — North Carolina Court of Appeals Reports

N.C.B. — North Carolina Bar

N.C. Banking Inst. — North Carolina Banking Institute

N.C. Bar — North Carolina Bar

NCCDL — National College of Criminal Defense Lawyers and Public Defenders

N.C. Cent. L.J. — North Carolina Central Law Journal

NCDA — National College of District Attorneys

N.C. Gen. Stat. — General Statutes of North Carolina

N. Chip. — N. Chipman (Vt.)

N.C. J. Int'l L. & Com. Reg. — North Carolina Journal of International Law & Commercial Regulation

N.C. J. L. & Tech. — North Carolina Journal of Law and Technology
N.C. L. Rev. — North Carolina Law Review
N.C. Reg. — North Carolina Register
N.C.S.B. Quarterly — North Carolina State Bar Quarterly
N.C. Sess. Laws — Session Laws of North Carolina
N.C. Term R. — North Carolina Term Reports
N.D. — North Dakota Reports
NDAA — National District Attorneys Association
N.D. Admin. Code — North Dakota Administrative Code
N. Dak. L. Rev. — North Dakota Law Review
N.D. B. Br. — North Dakota Bar Briefs
N.D. Cent. Code — North Dakota Century Code
N.D. Laws — Laws of North Dakota
N.D. L. Rev. — North Dakota Law Review
N.E. — North Eastern Reporter
N.E.2d. — North Eastern Reporter, Second Series
Neb. — Nebraska Reports
Neb. Admin. R. & Regs. — Nebraska Administrative Rules & Regulations
Neb. Ct. App. — Nebraska Court of Appeals Reports
Neb. Laws — Laws of Nebraska
Neb. L.B. — Nebraska Law Bulletin
Neb. L. Bull. — Nebraska Law Bulletin
Neb. L. Rev. — Nebraska Law Review
Neb. Rev. Stat. — Revised Statutes of Nebraska
Neb. Rev. Stat. Ann. — Revised Statutes of Nebraska Annotated
Neb. St. B.J. — Nebraska State Bar Journal
Negot. J. — Negotiation Journal
Nev. — Nevada Reports
Nev. Admin. Code — Nevada Administrative Code
Nev. Law. — Nevada Lawyer
Nev. Rev. Stat. — Nevada Revised Statutes
Nev. Rev. Stat. Ann. — Nevada Revised Statutes Annotated
Nev. Stat. — Statutes of Nevada
New Eng. Int'l & Comp. L. Ann. — New England International and Comparative Law Annual
New Eng. J. Med. — New England Journal of Medicine
New Eng. J. on Crim. & Civ. Confinement — New England Journal on Criminal & Civil Confinement
New. Eng. J. on Prison L. — New England Journal on Prison Law
New Eng. J. Prison L. — New England Journal on Prison Law
New Eng. L. Rev. — New England Law Review
New Eur. L. Rev. — New Europe Law Review
New L.J. — New Law Journal
Newsl. — Newsletter
News Media & L. — News Media & the Law
NEXUS — NEXUS: A Journal of Opinion
N.H. — New Hampshire Reports
N.H.B.J. — New Hampshire Bar Journal
N.H. Code Admin. R. Ann. — New Hampshire Code of Administrative Rules Annotated
N.H. Laws — Laws of the State of New Hampshire
N.H. Rev. Stat. Ann. — New Hampshire Revised Statutes Annotated
N.H. Rulemaking Reg. — New Hampshire Rulemaking Register
NHTSA — National Highway Transportation Safety Administration
N. Ill. U. L. Rev. — Northern Illinois University Law Review
N.J. — New Jersey Reports
N.J. Admin. — New Jersey Administrative Reports
N.J. Admin. 2d — New Jersey Administrative Reports, 2d Series
N.J. Admin. Code — New Jersey Administrative Code
N.J. Eq. — New Jersey Equity Reports
N.J.L. — **1.** New Jersey Law Reports. **2.** New Jersey Lawyer.
N.J. Law. — New Jersey Lawyer
N.J. Laws — Laws of New Jersey
N.J.L.J. — New Jersey Law Journal
N.J. Misc. — New Jersey Miscellaneous Reports
N.J. Reg. — New Jersey Register
N.J. Rev. Stat. — New Jersey Revised Statutes
N.J.S.A. — New Jersey Statutes Annotated
N.J. Sess. Law Serv. — New Jersey Session Law Service
N.J. Stat. Ann. — New Jersey Statutes Annotated
N.J. St. B.J. — New Jersey State Bar Journal
N.J. Super. — New Jersey Superior Court Reports
N.J. Tax — New Jersey Tax Court Reports
N. Ky. L. Rev. — Northern Kentucky Law Review
N. Ky. St. L. F. — Northern Kentucky State Law Forum
N.L.R.B. — Decisions & Orders of the National Labor Relations Board
NLRB Dec. (CCH) — NLRB Decisions
N.M. — New Mexico Reports
N.M. Admin. Code — New Mexico Administrative Code
N.M. Adv. Legis. Serv. — New Mexico Advance Legislative Service
N. Mar. I. — Northern Mariana Islands Reporter
N. Mar. I. Code — Northern Mariana Islands Commonwealth Code
N. Mar. I. Commw. Rptr. — Northern Mariana Islands Commonwealth Reporter
N. Mar. I. Reg. — Northern Mariana Islands Commonwealth Register

N.M.B. — Determinations of the National Mediation Board
N.M. Bar Bull. — New Mexico Bar Bulletin
N.M. Laws — Laws of New Mexico
N.M. L. Rev. — New Mexico Law Review
N.M. Reg. — New Mexico Register
N.M. Stat. Ann. — New Mexico Statutes Annotated
Noise Reg. Rep. — Noise Regulation Report
nonacq. — Nonacquiescence
Notre Dame Est. Plan. Inst. — Notre Dame Estate Planning Institute
Notre Dame Est. Plan. Inst. Proc. — Notre Dame Estate Planning Institute Proceedings
Notre Dame J. Legis. — Notre Dame Journal of Legislation
Notre Dame J.L. Ethics & Pub. Pol'y — Notre Dame Journal of Law, Ethics, & Public Policy
Notre Dame Law. — Notre Dame Lawyer
Notre Dame L. Rev. — Notre Dame Law Review
Nott. & McC. — Nott & McCord (S.C.)
Nova L.J. — Nova Law Journal
Nova L. Rev. — Nova Law Review
N.R.A.B. — National Railroad Adjustment Board
N.R.C. — Nuclear Regulatory Commission Issuances
N.R.S. — Nevada Revised Statutes
n.s. — New Series
NSA — National Security Agency
NSC — National Security Council
NSF — National Science Foundation
N.T.S.B. — National Transportation Safety Board Decisions
Nuclear Reg. Rep. (CCH) — Nuclear Regulation Reports
NU Forum — NU Forum: A Cooperative Law Journal of Northeastern University School of Law
N.W. — North Western Reporter
N.W.2d. — North Western Reporter, Second Series
Nw. J. Int'l L. & Bus. — Northwestern Journal of International Law & Business
Nw. U. L. Rev. — Northwestern University Law Review
N.Y. — New York Reports
N.Y.2d. — New York Reports, Second Series
N.Y. A.D. — New York Appellate Division Reports
N.Y. A.D.2d. — New York Appellate Division Reports, Second Series
N.Y. Ann. Cas. — New York Annotated Cases
N.Y. App. Div. — New York Supreme Court, Appellate Division
N.Y. Cass. Err. — New York Cases in Error, Caine's Cases
N.Y. Ch. Ann. — New York Chancery Reports Annotated
N.Y. Ch. Sent. — New York Chancery Sentinel
N.Y. City Ct. Suppl. — New York City Court Supplement
N.Y. City H. Rec. — New York City Hall Recorder
N.Y. City L. Rev. — New York City Law Review
N.Y. Civ. Proc. R., N.S. — New York Civil Procedure Reports, New Series
N.Y. Civ. Pr. Rep. — New York Civil Procedure Reports
N.Y.C. L. Rev. — New York City Law Review
N.Y. Code Rep. — New York Code Reporter
N.Y. Code Reports, N.S. — New York Code Reports, New Series
N.Y. Comp. Codes R. & Regs. — Official Compilation of Codes, Rules & Regulations of the State of New York
N.Y. Cond. — New York Condensed Reports
N.Y. Cr. R. — New York Criminal Reports
N.Y. Daily L. Gaz. — New York Daily Law Gazette
N.Y. Daily Reg. — New York Daily Register
N.Y. Elect. Cas. — New York Election Cases
N.Y. Int'l L. Rev. — New York International Law Review
N.Y. Laws — Laws of New York
N.Y. Law B. Bull. — New York Lawyer Bar Bulletin
N.Y. Law B.J. — New York Lawyer Bar Journal
N.Y. Law J. — New York Law Journal
N.Y. L.C. Ann. — New York Leading Cases Annotated
N.Y. Leg. N. — New York Legal News
N.Y. Leg. Obs. — New York Legal Observer
N.Y. Leg. Reg. — New York Legal Register
N.Y. L.F. — New York Law Forum
N.Y. L. Gaz. — New York Law Gazette
N.Y. L.J. — New York Law Journal
N.Y. L. Rec. — New York Law Record
N.Y. L. Rev. — New York Law Review
N.Y. L. Sch. Hum. Rts. Ann. — New York Law School Human Rights Annual
N.Y.L. Sch. J. Hum. Rts. — New York Law School Journal of Human Rights
N.Y.L. Sch. Int'l L. Soc'y J. — New York Law School International Law Society Journal
N.Y.L. Sch. J. Int'l & Comp. L. — New York Law School Journal of International & Comparative Law
N.Y.L. Sch. L. Rev. — New York Law School Law Review
NYLS Citylaw — New York Law School Citylaw
N.Y. Misc. — New York Miscellaneous Reports
N.Y. Misc.2d. — New York Miscellaneous Reports, Second Series
N.Y. Month. L. Bul. — New York Monthly Law Bulletin

N.Y. Month. L.R. — New York Monthly Law Reports
N.Y. Mun. Gaz. — New York Municipal Gazette
N.Y. Ops. Atty. Gen. — Opinions of the Attorney General of New York
N.Y. Pr. Rep. — New York Practice Reports
N.Y. Rec. — New York Record
N.Y.S. — New York Supplement Reporter
N.Y.S.2d. — New York Supplement Reporter, Second Series
N.Y.S.E. Guide (CCH) — New York Stock Exchange Guide
N.Y. Sea Grant L. & Pol'y — New York Sea Grant Law and Policy
N.Y. State Bar J. — New York State Bar Journal
N.Y. St. B.A. Antitrust L. Symp. — New York State Bar Association Antitrust Law Symposium
N.Y. St. B.J. — New York State Bar Journal
N.Y. St. Reg. — New York State Register
N.Y. St. Rep. — New York State Reporter
N.Y. Sup. Ct. — New York Supreme Court Reports
N.Y.U. Ann. Surv. Am. L. — New York University Annual Survey of American Law
N.Y.U. Envtl. L.J. — New York University Environmental Law Journal
N.Y.U. J. Int'l L. & Pol. — New York University Journal of International Law and Politics
N.Y.U. J. Legis. & Pub. Pol'y — New York University Journal of Legislation and Public Policy
N.Y.U. L.Q. Rev. — New York University Law Quarterly Review
N.Y.U. L. Rev. — New York University Law Review
N.Y.U. Rev. L. & Soc. Change. — New York University Review of Law and Social Change
N.Z. L.J. — New Zealand Law Journal
N.Z. U. L. Rev. — New Zealand Universities Law Review

O

OAS — Organization of American States
OASDI — Old Age, Survivors and Disability Insurance Benefits
O.C.D. — Ohio Circuit Decisions
Ocean & Coastal L.J. — Ocean & Coastal Law Journal
Ocean Dev. & Int'l L.J. — Ocean Development and International Law Journal
Odgers, Libel and Slander — The Law of Libel and Slander, and of Actions on the Case for Words Causing Damage
OECD — Organization for Economic Cooperation and Development
OFCC. — Office of Federal Contract Compliance
OFCCP Fed. Cont. Compl. Man (CCH) — OFCCP Federal Contract Compliance Manual
OFDI — Office of Foreign Direct Investment
Off. Gaz. — **1.** Official Gazette of the United States Patent Office, Patents. **2.** Official Gazette of the United States Patent Office, Trademarks.
Off. Gaz. Pat. Office — Official Gazette of the United States Patent Office
OFPP. — Office of Federal Procurement Policy
OFR — Office of the Federal Register
O.G. — Official Gazette of the United States Patent Office
OHCHR — Office of the United Nations High Commissioner for Human Rights
Ohio. — Ohio Reports
Ohio Admin. Code — Ohio Administrative Code
Ohio App. — Ohio Appellate Reports
Ohio App.2d. — Ohio Appellate Reports, Second Series
Ohio App.3d. — Ohio Appellate Reports, Third Series
Ohio App. Unrep. — Unreported Ohio Appellate Cases (Anderson)
Ohio B. — Ohio Bar Reports
Ohio C.C. — Ohio Circuit Court Reports
Ohio C.C. (n.s.) — Ohio Circuit Court Reports, New Series
Ohio Cir. Ct. R. — Ohio Circuit Court Reports
Ohio Cir. Ct. R., N.S. — Ohio Circuit Court Reports, New Series
Ohio Cir. Dec. — Ohio Circuit Decisions
Ohio Dec. — Ohio Decisions
Ohio Dec. Reprint. — Ohio Decisions, Reprint
Ohio Dep't — Ohio Department Reports
Ohio F. Dec. — Ohio Federal Decisions
Ohio Gov't — Ohio Government Reports
Ohio Jur. — Ohio Jurisprudence
Ohio Jur. 2d — Ohio Jurisprudence 2d
Ohio Law. — Ohio Lawyer
Ohio Law Abs. — Ohio Law Abstracts
Ohio Law Bul. — Ohio Law Bulletin
Ohio Law J. — Ohio Law Journal
Ohio Law Rep. — Ohio Law Reporter
Ohio Laws — State of Ohio Legislative Acts Passed and Joint Resolutions Adopted
Ohio Legis. Bull. — Page's Ohio Legislative Bulletin
Ohio Legis. Serv. — Baldwin's Ohio Legislative Service
Ohio Leg. N. — Ohio Legal News
Ohio Misc. — Ohio Miscellaneous
Ohio Misc. 2d — Ohio Miscellaneous, Second Series
Ohio Monthly Rec. — Ohio Monthly Record
Ohio N.P. — Ohio Nisi Prius
Ohio N.P., (n.s.) — Ohio Nisi Prius, New Series
Ohio N.U. L. Rev. — Ohio Northern University Law Review

Ohio O. — Ohio Opinions
Ohio O. 2d — Ohio Opinions, Second Series
Ohio Op. — Ohio Opinions
Ohio Op. 2d. — Ohio Opinions, Second Series
Ohio Op. 3d — Ohio Opinions, Third Series
Ohio Prob. — Ohio Probate
Ohio Rev. Code Ann. — Ohio Revised Code Annotated
Ohio S. & C.P. Dec. — Ohio Superior and Common Pleas Decisions
Ohio St. — Ohio State Reports
Ohio St.2d. — Ohio State Reports, Second Series
Ohio St.3d. — Ohio State Reports, Third Series
Ohio St. B.A. Rep. — Ohio State Bar Association Report
Ohio St. J. on Disp. Resol. — Ohio State Journal on Dispute Resolution
Ohio St. L.J. — Ohio State Law Journal
Ohio Supp. — Ohio Supplement
Oil & Gas Tax Q. — Oil & Gas Tax Quarterly
Oil, Gas & Energy Q. — Oil, Gas and Energy Quarterly
O.J. — Official Journal of the European Communities
Okla. — Oklahoma Reports
Okla. Admin. Code — Oklahoma Administrative Code
Okla. B.J. — Oklahoma Bar Journal
Okla. City U.L. Rev. — Oklahoma City University Law Review
Okla. Crim. — Oklahoma Criminal Reports
Okla. L.J. — Oklahoma Law Journal
Okla. L. Rev. — Oklahoma Law Review
Okla. Sess. — Oklahoma Session Laws
Okla. Sess. Law Serv. — Oklahoma Session Law Service
Okla. Stat. — Oklahoma Statutes
Okla. Stat. Ann. — Oklahoma Statutes Annotated
Oliver on Conveyancing — Practical Conveyancing, A Selection of Forms of General Utility with Notes Interspersed
OLMS — Office of Labor-Management Standards
OMB — Office of Management and Budget
O.O. — Ohio Opinions
Op. Atty. Gen. — Opinions of the Attorney General
OPCW — Organization for the Prohibition of Chemical Weapons (UN)
OPM — Office of Personnel Management
Op. Off. Legal Counsel — Opinions of Office of Legal Counsel of Department of Justice
Op. Solic. P.O. Dep't — Official Opinions of the Solicitor for the Post Office Department
Or. — Oregon Reports
Or. Admin. R. — Oregon Administrative Rules
Or. Admin. R. Bull. — Oregon Administrative Rules Bulletin
Orange County B.J. — Orange County Bar Journal
Orange County Law. — Orange County Lawyer
Or. App. — Oregon Reports, Court of Appeals
Or. Bar Bull. — Oregon Bar Bulletin
ORC. — Ohio Revised Code
Or. Laws — Oregon Laws and Resolutions
Or. Laws. Adv. Sh. — Oregon Laws and Resolutions Advance Sheet
Or. Laws Spec. Sess. — Oregon Laws and Resolutions Special Session
Orleans App. — Orleans Appeals, La.
Or. L. Rev. — Oregon Law Review
Or. Rev. Int'l L. — Oregon Review of International Law
Or. Rev. Stat. — Oregon Revised Statutes
Or. St. B. Bull. — Oregon State Bar Bulletin
Or. Tax — Oregon Tax Reports
O.S. — **1.** Oklahoma Statutes. **2.** Old Series.
OSG — Office of the Secretary-General (UN)
Osgoode Hall L.J. — Osgoode Hall Law Journal
OSHA — Occupational Safety and Health Administration
OSHA Compl. Guide (CCH) — Human Resources Management OSHA Compliance Guide
O.S.H. Cas. (BNA) — Occupational Health and Safety Cases
O.S.H. Dec. (CCH) — Occupational Safety and Health Decisions
OSHRC — Occupational Safety and Health Review Commission
O.S.H. Rep. (BNA) — Occupational Safety and Health Reporter
Otago L. Rev. — Otago Law Review
OTS — Office of Thrift Supervision
Ottawa L. Rev. — Ottawa Law Review
Overt. — Overton (Tenn.)
Oxford J. Legal Stud. — Oxford Journal of Legal Studies

P

P. — Pacific Reporter
P.2d. — Pacific Reporter, Second Series
P.3d — Pacific Reporter, Third Series
Pa. — Pennsylvania State Reports
Pa. B.A.Q. — Pennsylvania Bar Association Quarterly
Pa. Bull. — Pennsylvania Bulletin
Pa. C. — Pennsylvania County Court Reports
Pace Envtl. L. Rev. — Pace Environmental Law Review
Pace Int'l L. Rev. — Pace International Law Review
Pace L. Rev. — Pace Law Review

Pace Y.B. Int'l L. — Pace Yearbook of International Law
Pacific C. L.J. — Pacific Coast Law Journal, San Francisco
Pac. L.J. — Pacific Law Journal
Pa. Co. Ct. R. — Pennsylvania County Court Reports
Pa. Code — Pennsylvania Code
Pa. Commw. — Pennsylvania Commonwealth Court Reports
Pa. Com. Pl. — Pennsylvania Common Pleas Reporter
Pa. Cons. Stat. — Pennsylvania Consolidated Statutes
Pa. Cons. Stat. Ann. — Pennsylvania Consolidated Statutes Annotated
Pa. Corp. — Pennsylvania Corporation Reporter
Pac. Rim L. & Pol'y J. — Pacific Rim Law & Policy Journal
Pa. C.S.A. — Pennsylvania Consolidated Statutes Annotated
Pa. D. — Pennsylvania District Reports
Pa. D. & C. — Pennsylvania District and County Reports
Pa. D. & C.2d — Pennsylvania District and County Reports, Second Series
Pa. D. & C.3d — Pennsylvania District and County Reports, Third Series
Pa. D. & C.4th — Pennsylvania District and County Reports, Fourth Series
Paige Ch. — Paige's Chancery Reports (N.Y.)
Pa. Law. — Pennsylvania Lawyer
Pa. Law J. — Pennsylvania Law Journal
Pa. Laws — Laws of Pennsylvania
Pa. Law Ser. — Pennsylvania Law Series
Pa. L. Rec. — Pennsylvania Law Record
Pa. Leg. Gaz. — Legal Gazette Reports, (Campbell) Pa.
Pa. Legis. Serv. — Purdon's Pennsylvania Legislative Service
Pa. Misc. — Pennsylvania Miscellaneous Reports
Pamph. Laws — Pamphlet Laws, Acts
P & F — Pike and Fischer
Parker Sch. J. E. Eur. L. — Parker School Journal of East European Law
Pars. Bill & N. — Parsons, A Treatise on the Law of Promissory Notes and Bills of Exchange
Pars. Cont. — Parsons, The Law of Contracts
Pars. Mar. Ins. — Parsons, Treatise on the Law of Maritime Insurance and General Average
Pars. Mar. Law — Parsons, Treatise on Maritime Law
Pars. Merc. Law — Parsons, Elements of Mercantile Law
Pars. Shipp. & Adm. — Parsons, A Treatise on the Law of Shipping and the Law and Practice of Admiralty
Pa. Stat. Ann. — Pennsylvania Statutes Annotated
Pa. Super. — Pennsylvania Superior Court Reports
Pat. L. Ann. — Patent Law Annual
Pat. L. Devs. — Patent Law Developments
Pat. Procur. & Exploitation — Patent Procurement and Exploitation
Pat. Off. Gaz. — Patent Office Gazette
Pat. Off. Rep. — Patent Office Reports
Pat. Trademark & Copyright J. (BNA) — Patent Trademark and Copyright Journal
PBGC — Pension Benefit Guaranty Corporation
P.C. — Penal Code
P.C.I.J. — Permanent Court of International Justice Reports of Judgments, Advisory Opinions, and Orders
Peck — Peck (Tenn.)
Pelt. — Peltier's Decisions, Parish at Orleans (La.)
Pen. & W. — Penrose & Watts (Pa.)
Pen. Code — Penal Code
Pen. Laws. — Penal Laws
Penne. — Pennewill (Del.)
Pennyp. — Pennypacker (Pa.)
Pens. & Ben. Rep. (BNA) — Pensions and Benefits Reporter
Pens. & Profit Sharing 2d (RIA) — Pension and Profit Sharing, Second Edition
Pens. Plan Guide (CCH) — Pension Plan Guide
Pens. Rep. (BNA) — Pension Reporter
Pepp. Disp. Resol. L.J. — Pepperdine Dispute Resolution Law Journal
Pepp. L. Rev. — Pepperdine Law Review
Perf. Arts Rev. — Performing Arts Review
Perry, Trusts — A Treatise on the Law of Trusts and Trustees
Pers. Fin. L. Q. Rep. — Personal Finance Law Quarterly Report
Personal Fin. L. Q. Rep. — Personal Finance Law Quarterly Report
Personnel Mgmt. (BNA) — Personnel Management
Perspectives — Perspectives: Teaching Legal Research and Writing
Pet. — Peters, U.S. Supreme Court Reports
P-H — Prentice-Hall
Phila. Leg. Int. — Philadelphia Legal Intelligencer, Pa.
Phil. & Pub. Aff. — Philosophy & Public Affairs
Phil. Eq. — Phillip's Equity Reports (N.C.)
Phil. Ev. — Phillips, A Treatise on the Law of Evidence
Phil. Ins. — Phillips, A Treatise on the Law of Insurance
Philippine — Philippine Reports
Philippine L.J. — Philippine Law Journal
Phil. Law — Phillip's Law Reports (N.C.)
Phillimore, Int. Law — Commentaries Upon International Law

Phillip E. Heckerling Inst. on Est. Plan. — Phillip E. Heckerling Institute on Estate Planning (U. Miami)

Phil. Pat. — Phillips, The Law of Patents of Inventions Including the Remedies and Legal Proceedings in Relation to Patent Rights

PHS. — Public Health Service

Pick. — Pickering (Mass.)

Pierce L. Rev. — Pierce Law Review

Pierce, R.R. — American Railroad Law

Pin. — Pinney (Wis.)

Ping. Chat. Mortg. — Pingrey, A Treatise on the Law of Chattel Mortgages

Pitm. Prin. & Sur. — Pitman, A Treatise on the Law of Principal and Surety

Pitt. L.J. — Pittsburgh Legal Journal

Pittsb. R. — Pittsburgh Reports, Pa.

Pitts. Leg. J. — Pittsburgh Legal Journal, Pa.

Pitts. Leg. J., N.S. — Pittsburgh Legal Journal, New Series, Pa.

Phelps, Juridical Equity — Elements of Juridical Equity

P.L. — Public Law

Pl. — Pleading

Platt, Cov. — A Practical Treatise on the Law of Covenants

Platt, Leases — A Treatise on the Law of Leases, with Forms and Precedents

PLI. — Practicing Law Institute

P.L.J. — **1.** Pacific Law Journal. **2.** Pittsburgh Legal Journal, Pa.

P.L.R. — Private Letter Rulings (IRS)

Poe, Pl. — Pleading and Practice in Courts of Common Law

Pollock, Contracts — Principles of Contract, A Treatise on the General Principles Concerning the Validity of Agreements in the Law of England

Pollock, Torts — The Law of Torts, A Treatise on the Principles of Obligations Arising from Civil Wrongs in the Common Law

Pom. Const. Law — Pomeroy, Introduction to the Constitutional Law of the United States

Pom. Eq. Jur. — Pomeroy, A Treatise on Equity Jurisprudence, as Administered in the United States

Pomeroy, Code Rem. — Code Remedies: Remedies and Remedial Rights by the Civil Action

Pomeroy, Int. Law — Lectures on International Law in Time of Peace

Pomeroy, Rem. — Remedies and Remedial Rights by the Civil Action According to the Reformed American Procedure

Pom. Spec. Perf. — Pomeroy, Treatise on the Specific Performance of Contracts

Poore, Const. — Poore, Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States

Poore's Charters and Constitutions — Poore, Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States

Pope, Lunacy — A Treatise on the Law and Practice of Lunacy

Port. — Porter (Ala.)

Portia L.J. — Portia Law Journal

Port. Ins. — Porter, Laws of Insurance: Fire, Life, Accident and Guarantee...

Portland U. L. Rev. — Portland University Law Review

Pothier, Obligations — A Treatise on the Law of Obligations, or Contracts

Potomac L. Rev. — Potomac Law Review

Pow. Cont. — Powell, Essay on the Law of Contracts and Agreements

Pow. Mortg. — Powell, A Treatise on the Law of Mortgages

Prac. Act — Practice Act

Prac. Law. — Practical Lawyer

Prac. Litigator — Practical Litigator

Prac. Real Est. Law. — The Practical Real Estate Lawyer (ABA)

Prac. Tax Law. — The Practical Tax Lawyer (ABA)

P.R. Dec. — Decisiones de Puerto Rico

Prest. Conv. — Preston, A Treatise on Conveyancing

Prest. Est. — Preston, An Elementary Treatise on Estates

Preventive L. Rep. — Preventive Law Reporter

Preview U.S. Sup. Ct. Cas. — Preview of United States Supreme Court Cases

Priv. Ltr. Rul. — Private Letter Ruling (IRS)

P.R. Laws — Laws of Puerto Rico

P.R. Laws Ann. — Laws of Puerto Rico Annotated

Prob. — **1.** Probate. **2.** Probation.

Prob. & Prop. — Probate & Property (ABA)

Prob. Law. — Probate Lawyer

Prob. L.J. — Probate Law Journal

Proc. N.Y.U. Nat'l Conf. on Lab. — Proceedings of the New York University National Conference on Labor

Procurement Law — Procurement Lawyer

Prod. Liab. L.J. — Products Liability Law Journal

Prod. Liab. Rep. (CCH) — **1.** Products Liability Reporter. **2.** Products Liability Reports.

Prod. Safety & Liab. Rep. (BNA) — Product Safety and Liability Reporter

Prof. Law. — The Professional Lawyer (ABA)

P.R. Offic. Trans. — Official Translations of the Opinions of the Supreme Court of Puerto Rico

Prop. Treas. Reg. — Proposed Treasury Regulation

Prosecutor: J. Nat'l District Atty's Ass'n — Prosecutor: Journal of the National District Attorneys Association

Prospectus — Prospectus: A Journal of Law Reform

Prov. Rep. (CCH) — Provincial Reporter

P.R.R. — Puerto Rico Supreme Court Reports

P.R. Sent. — Sentencias del Tribunal Supremo de Puerto Rico

P.S. — **1.** Pennsylvania Statutes. **2.** Pennsylvania Unconsolidated Statutes Annotated.

PSAA — Public Sector Arbitration Awards

Psychol. Pub. Pol'y & L. — Psychology, Public Policy & Law

PTO — Patent and Trademark Office

Pub. Acts — Public Acts

Pub. Admin. Rev. — Public Administration Review

Pub. Ad. Rev. — Public Administrative Review

Pub. Cont. L.J. — Public Contract Law Journal (ABA)

Pub. Cont. Newsl. — Public Contract Newsletter (ABA)

Pub. Ent. Advert. & Allied Fields L.Q. — Publishing, Entertainment, Advertising & Allied Fields Law Quarterly

Pub. Gen. Laws — Public General Laws

Pub. Int. L. Rev. — Public Interest Law Review

Pub. L. — Public Law

Pub. Land & Resources L. Rev. — Public Land & Resources Law Review

Pub. Land L. Rev. — Public Land Law Review

Pub. Lands Dec. — Decisions of the Dept. of Interior and General Land Office in Cases Relating to Public Lands

Pub. Laws — Public Laws

Pub. L. F. — Public Law Forum

Pub. L. Forum — Public Law Forum

Pub. L. No. — Public Law Number

Pub. Util. Fort. — Public Utilities Fortnightly

Pub. Util. Rep. (PUR) — Public Utilities Reports

PUD — Planned Unit Development

Puerto Rico. — Puerto Rico Reports

Puget Sound L. Rev. — Puget Sound Law Review

PUR — Public Utilities Reports

PWA — Public Works Administration

PWBA — Pension and Welfare Benefits Administration

Q

Q.B. — Queen's Bench (Eng.)

Q.B. Div. — Queen's Bench Division (Eng.)

QLR — QLR (Quinnipiac Law Review)

Queen's L.J. — Queen's Law Journal

Quinnipiac Health L.J. — Quinnipiac Health Law Journal

Quinnipiac L. Rev. — Quinnipiac Law Review

Quinnipiac Prob. L.J. — Quinnipiac Probate Law Journal

R

Race & Ethnic Ancestry L. Dig. — Race & Ethnic Ancestry Law Digest

Rad. Reg. (P & F) — Radio Regulation

Rad. Reg. 2d (P & F) — Radio Regulation, Second Series

Rand. — Randolph (Va.)

Rap. Lar. — Rapalje, A Treatise on the Law of Larceny and Kindred Offenses

Rap. Wit. — Rapalje, A Treatise on the Law of Witnesses

Rawle — Rawle (Pa.)

Rawle, Const. U.S. — A View of the Constitution of the United States of America

Rawle, Cov. — A Practical Treatise on the Law of Covenants for Title

Ray, Med. Jur. — A Treatise on the Medical Jurisprudence of Insanity

R.C. — Revised Code

R.C.L. — Ruling Case Law

R.C.M. — Revised Code of Montana

RCWA. — Revised Code of Washington Annotated

Real Est. Fin. L.J. — Real Estate Finance Law Journal

Real Est. L.J. — Real Estate Law Journal

Real Est. L. Rep. — Real Estate Law Report

Real Est. Rev. — Real Estate Review

Real Est. Tax'n — Real Estate Taxation

Real Prop. Prob. & Tr. J. — Real Property, Probate & Trust Journal (ABA)

Rec. Ass'n Bar City of N.Y. — Record of the Association of the Bar of the City of New York

Record — Record, Association of the Bar of the City of New York

Redf. Carr. — I. Redfield, The Law of Carriers of Goods and Passengers

Reeve, Law of Baron and Femme — The Law of Baron and Femme, of Parent and Child, of Guardian and Ward, of Master and Servant, and the Powers of the Courts of Chancery

Reeve on Descents — A Treatise on the Law of Descents in the Several United States of America

Reeves, Hist. Com. Law (Finl. ed.) — Reeves' History of the English Law (Finlason edition)

Regent U. L. Rev. — Regent University Law Review

REIT — Real Estate Investment Trust

rem'g — remanding

Remington, Bankr. — A Treatise on the Bankruptcy Law of the United States

Rep. Atty. Gen. — Attorneys General's Reports

Rep. Pat. Des. & Tr. Cas. — Reports of Patents Designs and Trademark Cases

Repub. Tex. Laws — Laws of the Republic of Texas

Research in L. & Econ. — Research in Law and Economics: A Research Annual

Res Gestae — Res Gestae (Ind. State Bar Assoc.)

RESPA — Real Estate Settlement Procedures

Rev. Civ. Code. — Revised Civil Code

Rev. Civ. St. — Revised Civil Statutes

Rev. Code — Revised Code

Rev. Code Civ. Proc. — Revised Code Civil Procedure

Rev. Code Cr. Proc. — Revised Code of Criminal Procedure

Rev. Cr. Code. — Revised Criminal Code

rev'd — reversed

Rev. Der. P.R. — Revista de Derecho Puertorriqueno

Rev. Int'l Bus. L. — Review of International Business Law

Rev. Int'l Comm. Jur. — Review of the International Commission of Jurists

Rev. Jur. U.I.P.R. — Revista Juridica de la Universidad Interamericana de Puerto Rico

Rev. Jur. U.P.R. — Revista Juridica Universidad de Puerto Rico

Rev. Laws — Revised Laws

Rev. Litig. — Review of Litigation

Rev. Mun. Code — Revised Municipal Code

Rev. Ord. — Revised Ordinances

Rev. Pen. Code — Revised Penal Code

Rev. Pol. Code — Revised Political Code

Rev. Proc. — Revenue Procedure

Rev. Rul. — Revenue Ruling

Rev. St. — Revised Statutes

Rev. Stat. — Revised Statutes

R.I. — Rhode Island Reports

RIA — Research Institute of America

RIAA — Reports of International Arbitration Awards (UN)

R.I. Acts & Resolves — Acts and Resolves of Rhode Island and Providence Plantations

R.I. B.J. — Rhode Island Bar Journal

Rice — Rice (S.C.)

Rice Eq. — Rice's Equity Reports (S.C.)

Rich. — Richardson (S.C.)

Rich. Cas. — Richardson's Cases (S.C.)

Rich. Eq. — Richardson's Equity Reports (S.C.)

Rich. J. Global L. & Bus. — Richmond Journal of Global Law and Business

Rich. J.L. & Pub. Int. — Richmond Journal of Law and the Public Interest

Rich. J.L. & Tech. — Richmond Journal of Law & Technology

R.I. Code R. — Code of Rhode Island Rules

R.I. Gen. Laws — General Laws of Rhode Island

R.I. Gov't Reg. — Rhode Island Government Register

Ril. — Riley (S.C.)

Ril. Eq. — Riley's Chancery Reports (S.C.)

R.I. Pub. Laws — Public Laws of Rhode Island and Providence Plantations

RISK — RISK: Health, Safety & Environment

Risk: Health Safety & Env't. — Risk: Health, Safety & Environment

R.L. — Revised Laws

RMMLF — Rocky Mountain Mineral Law Foundation

Rob. — **1.** Robinson (La.). **2.** Robinson (Va.).

Robards — Synopses of the Decisions of the Supreme Court of Texas Arising from Restraints by Conscript & Other Military Authorities

Roberts on Frauds — A Treatise on the Statute of Frauds

Robinson, Patents — The Law of Patents for Useful Inventions

Rob. Pat. — Robinson, The Law of Patents for Useful Inventions

Rocky Mtn. L. Rev. — Rocky Mountain Law Review/ University of Colorado

Rocky Mtn. Min. L. Inst. — Rocky Mountain Mineral Law Institute

Roger Williams U. L. Rev. — Roger Williams University Law Review

Root — Root (Conn.)

Roper, Husb. & Wife — A Treatise on the Law of Property Arising from the Relation of Husband and Wife

Rose Notes — Rose's Notes on the United States Supreme Court Reports

RRB. — Railroad Retirement Board

R.S. — Revised Statutes

R.S.N. — Revised Statutes of Nebraska

RTC. — Resolution Trust Corporation

Russ. Fac. — Russell, A Treatise on the Laws Relating to Factors and Brokers

Russ. Merc. Ag. — Russell, A Treatise on Mercantile Agency

Rut.-Cam. L.J. — Rutgers-Camden Law Journal

Rutgers Computer & Tech. L.J. — Rutgers Computer and Technology Law Journal

Rutgers J. Computers & L. — Rutgers Journal of Computers and the Law

Rutgers J. Computer Tech. & L. — Rutgers Journal of Computers, Technology and the Law

Rutgers J. Computers Tech & L. — Rutgers Journal of Computers, Technology and the Law
Rutgers L.J. — Rutgers Law Journal
Rutgers L. Rev. — Rutgers Law Review
Rutgers Race & L. Rev. — Rutgers Race and the Law Review
Rutgers U. L. Rev. — Rutgers University Law Review

S

Sadler — Sadler (Pa.)
SALT — Strategic Arms Limitation Talks
Samoan Pac. L.J. — Samoan Pacific Law Journal
Sandars, Just. Inst. — The Institutes of Justinian: with English Introduction, Translation, and Notes
Sand. Ch. — Sandford's Chancery Reports (N.Y.)
Sanders, Uses — An Essay on Uses and Trusts
San Diego Int'l L.J. — San Diego International Law Journal
San Diego Just. J. — San Diego Justice Journal
San Diego L. Rev. — San Diego Law Review
S & L — Savings and Loan Association
San Fern. V.L. Rev. — San Fernando Valley Law Review
San Fran. Atty. — San Francisco Attorney
San Joaquin Agric. L. Rev. — San Joaquin Agricultural Law Review
Santa Clara Comp. & High Tech. L.J. — Santa Clara Computer & High Technology Law Journal
Santa Clara Computer & High Tech. L.J. — Santa Clara Computer & High Technology Law Journal
Santa Clara Law. — Santa Clara Lawyer
Santa Clara L. Rev. — Santa Clara Law Review
Sara. Ch. Sent. — Saratoga Chancery Sentinel (N.Y.)
Sask. L. Rev. — Saskatchewan Law Review
Saund. War. — Saunders, A Treatise on the Law of Warranties and Representations Upon the Sale of Personal Chattels
SBA — Small Business Administration
S. Bar. J. — Journal of the State Bar of California
SBIC — Small Business Investment Companies
S.C. — South Carolina Reports
S.C. Acts — Acts and Joint Resolutions, South Carolina
S. Cal. Interdisc. L.J. — Southern California Interdisciplinary Law Journal
S. Cal. L. Rev. — Southern California Law Review
S. Cal. Rev. L. & Women's Stud. — Southern California Review of Law and Women's Studies
Scam. — Scammon (Ill.)
S.C. Code Ann. — Code of Laws of South Carolina 1976 Annotated
S.C. Code Ann. Regs. — Code of Laws of South Carolina 1976 Annotated, Code of Regulations
S.C. Envtl. L.J. — South Carolina Environmental Law Journal
S.C. Eq. — South Carolina Equity Reports
Sch. L. Bull. — School Law Bulletin
Scholar — The Scholar: St. Mary's Law Review on Minority Issues
School L. Bull. — School Law Bulletin
School L. Rep. — School Law Reporter (National Organization on Legal Problems in Education)
Schouler, Bailm. — The Law of Bailments, Including Pledge, Innkeepers and Carriers
Schouler, Dom. Rel. — Law of Domestic Relations
Schouler, Pers. Prop. — A Treatise on the Law of Personal Property
Schouler, U.S. Hist. — History of the United States of America Under the Constitution
Schouler, Wills — Law of Wills, Executors and Administrators
Sci. Am. — Scientific American
S.C. L. — South Carolina Law Reports
S.C. Law. — South Carolina Lawyer
S.C. L.Q. — South Carolina Law Quarterly
S.C.L. Rev. — South California Law Review
SCOR — Security Council Official Record (U.N.)
Scots L. T. — Scots Law Times
Scots L. Times — Scots Law Times
S.C. Reg. — South Carolina State Register
Scribes J. Leg. Writing — Scribes Journal of Legal Writing
S. Ct. — U.S. Supreme Court Reporter
S. Ct. Bull. (CCH) — Supreme Court Bulletin
S. Ct. Hist. Soc'y Y.B. — Supreme Court Historical Society Yearbook
S. Ct. Rev. — Supreme Court Review
S.D. — South Dakota Reports
S.D. Admin. R. — Administrative Rules of South Dakota
S.D. Adv. Legis. Serv. — South Dakota Advance Legislative Service
S. Dak. L. Rev. — South Dakota Law Review
S.D.C.L. — South Dakota Codified Laws
S.D. Codified Laws — South Dakota Codified Laws
S.D. Codified Laws Ann. — South Dakota Codified Laws Annotated
S.D. Laws — Laws of South Dakota
S.D. L. Rev. — South Dakota Law Review
S.D. Reg. — South Dakota Register
S.E. — South Eastern Reporter
S.E.2d. — South Eastern Reporter, Second Series
Search & Seizure Bull. (Quinlan) — Search and Seizure Bulletin
SEATO — Southeast Asia Treaty Organization

Seattle J. Soc. Just. — Seattle Journal for Social Justice
Seattle U. L. Rev. — Seattle University Law Review
S.E.C. — **1.** Securities and Exchange Commission. **2.** Securities and Exchange Commission Decisions and Reports.
SEC Accounting R. (CCH) — SEC Accounting Rules
Sec. & Fed. Corp. L. Rep. (CBC) — Securities & Federal Corporate Law Report
SEC Compl. (P-H) — Securities and Exchange Commission Compliance
SEC Docket — Securities and Exchange Commission Docket
Sec. Int'l & Comp. L. Bull. — Section of International and Comparative Law Bulletin (ABA)
Sec. L. Rev. — Securities Law Review
Sec. Reg. & L. Rep. (BNA) — Securities Regulation and Law Report
Sec. Reg. Guide (P-H) — Securities Regulation Guide
Sec. Reg. L.J. — Securities Regulation Law Journal
Secured Transactions Guide (CCH) — Secured Transactions Guide
Sedg. & W. Tr.Title Land — Sedgwick & Wait, A Treatise on the Trial of Title to Law
Sedg. Dam. — Sedgwick, A Treatise on the Measure of Damages
Seld. Soc. — Selden Society
Serg. & Rawle — Sergeant & Rawle (Pa.)
Sess. Acts. — Session Acts
Sess. Laws. — Session Laws
Seton, Decrees — Forms of Decrees, Judgments, and Order
Seton Hall Const. L.J. — Seton Hall Constitutional Law Journal
Seton Hall J. Sport L. — Seton Hall Journal of Sport Law
Seton Hall L. J. — Seton Hall Law Journal
Seton Hall L. Rev. — Seton Hall Law Review
Seton Hall Leg. J. — Seton Hall Legislative Journal
Seton Hall Legis. J. — Seton Hall Legislative Journal
S.F.L.R. — San Francisco Law Review
S.H.A. — Smith-Hurd Illinois Annotated Statutes
Shearman and Redfield on Negligence — A Treatise on the Law of Negligence
Shear. R. Prop. — Shearwood, A Concise Abridgment of the Law of Real Property and an Introduction to Conveyancing
Sheld. Subr. — Sheldon, The Law of Subrogation
Shelf. Lun. — Shelford, A Practical Treatise on the Law Concerning Lunacy, Idiots, and Persons of Unsound Mind
Shelford, Mar. & Div. — A Practical Treatise on the Law of Marriage and Divorce
Shelford on Marriage — A Practical Treatise on the Law of Marriage and Divorce
Shipping Reg. (P & F) — Shipping Regulation
S.I. — Statutory Instrument
S. Ill. U. L.J. — Southern Illinois University Law Journal
S.J.D. — Scientiae Juridicae Doctor (Doctor of Juridical Science)
S. L.Q. — Southern Law Quarterly
Smith-Hurd Ann. St. — Smith-Hurd Illinois Annotated Statutes
Smith, Merc. Law — John W. Smith, A Compendium of Mercantile Law
Smith on Negligence — H. Smith, A Treatise on the Law of Negligence
Smith's Master and Servant — C. Smith, A Treatise on the Law of Master and Servant Including Therein Masters and Workmen, in Every Description of Trade or Occupation: With an Appendix of Statutes
SMU L. Rev. — Southern Methodist University Law Review
Sneed — **1.** Sneed (Ky.). **2.** Sneed (Tenn.).
Snyder, Mines & Mining — Mines and Mining: A Commentary on the Law of Mines and Mining Rights
So. — Southern Reporter
So.2d. — Southern Reporter, Second Series
So. Cal. L. Rev. — Southern California Law Review
So. Car. L.J. — Southern Carolina Law Journal, Columbia
So. Car. L. Rev. — South Carolina Law Review
Soc. Resp.: Bus., Journalism, L. Med. — Social Responsibility, Business, Journalism, Law, Medicine
Soc. Resp.: Journalism, L. Med. — Social Responsibility, Journalism, Law, Medicine
Soc. Sec. Bull. — Social Security Bulletin
Soc. Sec. Rep. Ser. — Social Security Reporting Service (West)
Soc. Serv. Rev. — Social Service Review
So. Dak. L. Rev. — South Dakota Law Review
Software L.J. — Software Law Journal
So. Ill. L.J. — Southern Illinois University Law Journal
Solar L. Rep. — Solar Law Reporter
Sol. J. — **1.** Solicitors' Journal. **2.** Solicitors' Journal & Reporter.
Solicitor's J. — Solicitor's Journal
Sol. Op. — Solicitors Opinion
So. L.Q. — Southern Law Quarterly
So. U. L. Rev. — Southern University Law Review (La.)
South Texas L. Rev. — South Texas Law Review
Southwestern L. Rev. — Southwestern University Law Review (Calif.)
Space Pol'y — Space Policy

Sp. Acts. — Special Acts
Speers — Speers (S.C.)
Speers Eq. — Speers' Equity Reports (S.C.)
Spence, Eq. Jur. — The Equitable Jurisdiction of the Court of Chancery
Sp. Laws. — Special Laws
Sports Law. J. — Sports Lawyers Journal
Sp. Sess. — Special Session
SSA — Social Security Administration
SSI — Supplementary Security Income Program
S.S.R. — Social Security Ruling
SSS — Selective Service System
Stand. Fed. Tax Rep. (CCH) — **1.** Standard Federal Tax Reporter. **2.** Standard Federal Tax Reports.
Stan. Envtl. L. Ann. — Stanford Environmental Law Annual
Stan. Envtl. L.J. — Stanford Environmental Law Journal
Stan. J. Int'l L. — Stanford Journal of International Law
Stan. J. Int'l Stud. — Stanford Journal of International Studies
Stan. J. L. Bus. & Fin. — Stanford Journal of Law, Business & Finance
Stan. L. & Pol'y Rev. — Stanford Law & Policy Review
Stan. Law. — Stanford Lawyer
Stan. L. Rev. — Stanford Law Review
Starkie, Ev. — A Practical Treatise on the Law of Evidence
Starkie, Sland. & L. — A Treatise on the Law of Slander, Libel, Scandalum Magnatum, and False Rumours
Stat. — United States Statutes at Large
Stat. At L. — United States Statutes at Large
State Court J. — State Court Journal
State Loc. & Urb. L. Newsl. — State, Local and Urban Law Newsletter (ABA)
State Rptr. — State Reporter (Mont.)
State Tax Cas. Rep. (CCH) — State Tax Cases Reporter
State Tax Guide (CCH) — State Tax Guide
State Tax Rev. (CCH) — State Tax Review
St. B. Tex. Envtl. L.J. — State Bar of Texas Environmental Law Journal
Stearns, Real Act. — A Summary of the Law and Practice of Real Actions
Stephen, Hist. Crim. Law — J. F. Stephen, A History of the Criminal Law of England
Stephen, Pleading (Tyler's ed.) — A Treatise on the Principles of Pleading in Civil Actions (Tyler's ed.)
Steph. Pl. (Tyler's ed.) — A Treatise on the Principles of Pleading in Civil Actions (Tyler's ed.)
Stetson L.F. — Stetson Law Forum
Stetson L. Rev. — Stetson Law Review
Stew. — Stewart (Ala.)
Stew. & P. — Stewart & Porter (Ala.)
S. Tex. L. J. — South Texas Law Journal
S. Tex. L. Rev. — South Texas Law Review
St. John's J. Legal Comment. — St. John's Journal of Legal Commentary
St. John's L. Rev. — St. John's Law Review
St. Louis L. Rev. — St. Louis Law Review
St. Louis U. L.J. — St. Louis University Law Journal
St. Louis U. Pub. L. Rev. — Saint Louis University Public Law Review
St. Louis-Warsaw Transatlantic L.J. — Saint Louis-Warsaw Transatlantic Law Journal
St. Mary's L.J. — St. Mary's Law Journal
Story, Agency — Commentaries on the Law of Agency as a Branch of Commercial and Maritime Jurisprudence
Story, Bailments — Commentaries on the Law of Bailments...
Story, Bills — Commentaries on the Law of Bills of Exchange, Foreign and Inland as Administered in England and America
Story, Comm. Const. — Commentaries on the Constitution of the United States
Story, Confl.. Laws — Commentaries on the Conflict of Laws, Foreign and Domestic
Story, Constitution — Commentaries on the Constitution of the United States
Story, Cont. — W. Story, Treatise on the Law of Contracts
Story, Eq. Jur. — Commentaries on Equity Jurisprudence, as Administered in England and America
Story, Eq. Pl. — Commentaries on Equity Pleadings, and the Incidents Thereof...
Story, Partn. — Commentaries on the Law of Partnership
Story, Prom. Notes — Commentaries on the Law of Promissory Notes, and Guaranties of Notes, and Checks on Banks and Bankers
Story, Sales — W. Story, Treatise on the Law of Sale of Personal Property
St. Rep. — State Reporter
Strob. — Strobhart (S.C.)
Strob. Eq. — Strobhart's Equity Reports (S.C.)
St. Tax Rep. (CCH) — State Tax Reports
St. Thomas L.F. — St. Thomas Law Forum/St. Thomas University School of Law
St. Thomas L. Rev. — Saint Thomas Law Review
Stubbs, Charters — Select Charters and Other Illustrations of English Constitutional History from the Earliest Times to the Reign of Edward the First
Stubbs, Const. Hist. Eng. — Constitutional History of England in its Origins and Development

Student Law. — Student Lawyer
Stud. L. & Econ. Dev. — Studies in Law and Economic Development
Stud. L. Pol. & Soc'y — Studies in Law, Politics & Society
SuDoc — Superintendent of Documents
Suffolk J. Trial & App. Advoc. — Suffolk Journal of Trial & Appellate Advocacy
Suffolk Transnat'l L.J. — Suffolk Transnational Law Journal
Suffolk Transnat'l L. Rev. — Suffolk Transnational Law Review
Suffolk U. L. Rev. — Suffolk University Law Review
Sugden, Powers — A Practical Treatise of Powers
Sullivan, Land Titles — The History of Land Titles in Massachusetts
S.U. L. Rev. — Southern University Law Review (La.)
Summers, Oil & Gas — Treatise on the Law of Oil and Gas
Sup. Ct. Econ. Rev. — Supreme Court Economic Review
Sup. Ct. Hist. Soc'y Y.B. — Supreme Court Society Yearbook
Sup. Ct. Rev. — Supreme Court Review
Supp. Code. — Supplement to Code
Supp. Gen. St. — Supplement to the General Statutes
Supp. Rev. — Supplement to the Revision
Supp. Rev. Code. — Supplement to the Revised Code
Supp. Rev. St. — Supplement to the Revised Statutes
S.W. — South Western Reporter
S.W.2d. — South Western Reporter, Second Series
S.W.3d — South Western Reporter, Third Series
Swan — Swan (Tenn.)
Sw. J. L. & Trade Am. — Southwestern Journal of Law & Trade in the Americas
Sw. L.J. — Southwestern Law Journal
S.W.L.J. — Southwestern Law Journal
Sw. Legal Found. Inst. On Oil & Gas L. & Tax. — Southwestern Legal Foundation Institution on Oil and Gas Law and Taxation
S.W.R. — South Western Reporter
S.W. Rep. — South Western Reporter
Sw. U. L. Rev. — Southwestern University Law Review
Sydney L. Rev. — Sydney Law Review
Symp. Priv. Invest. Abroad — Symposium, Private Investment Abroad
Syracuse J. Int'l L. & Com. — Syracuse Journal of International Law and Commerce
Syracuse J. Legis. & Pol'y — Syracuse Journal of Legislation & Policy
Syracuse L. Rev. — Syracuse Law Review

T

T. — Texas Reports
TAC — Texas Administrative Code
T.A.M. — Technical Advice Memorandum (IRS)
Tax Adviser — Tax Adviser
Tax Ct. Mem. Dec. (CCH) — Tax Court Memorandum Decisions
Tax Ct. Rep. (CCH) — Tax Court Reports
Tax Ct. Rep. Dec. (RIA) — Tax Court Reported Decisions
Taxes — Taxes- The Tax Magazine
Tax-Exempt Org. (RIA) — Tax-Exempt Organizations
Tax Law. — Tax Lawyer
TaxL. Rev. — Tax Law Review
Tax Mgmt. Compensation Plan. J. — Tax Management Compensation Planning Journal
Tax Mgmt. Est., Gifts & Trusts J. — Tax Management Estates, Gifts & Trusts Journal
Tax Mgmt. Fin. Plan. J. — Tax Management Financial Planning Journal
Tax Mgmt. Int'l J. — Tax Management International Journal
Tax Mgmt. Memo. — Tax Management Memorandum
Tax Mgmt. Real Est. J. — Tax Management Real Estate Journal
Tax'n for Acct. — Taxation for Accountants
Tax Notes — Tax Notes
Tax Notes Int'l — Tax Notes International
Tax Treaties (CCH) — Tax Treaties
Tay. — Taylor (N.C.)
Tayl. Ev. — A Treatise on the Law of Evidence as Administered in England and Ireland
Taylor — Taylor's North Carolina Term Reports
T.B.M. — Advisory Tax Board Memorandum
T.B. Mon. — T.B. Monroe (Ky.)
T.C. — Reports of the United States Tax Court
T.C.A. — Tennessee Code Annotated
T.C.M. (CCH) — Tax Court Memorandum Decisions
T.C.M. (P-H) — Tax Court Memorandum Decisions
T.C.M. (RIA) — Tax Court Memorandum Decisions
TCOR — Trusteeship Council Official Record (U.N.)
T.D. — Treasury Department Decision
TDBOR — Trade and Development Board Official Record (U.N.)
TDC — Treasury Department Circular
TDO — Treasury Department Order
Tech. Ad. Mem. — Technical Advice Memorandum
Tech. Mem. — Technical Memorandum
Teiss. — Teisser's Orleans Court of Appeals (La.)
Temp. Envtl. L. & Tech. J. — Temple Environmental Law & Technology Journal

Temp. Int'l & Comp. L.J. — Temple International and Comparative Law Journal
Temp. L.Q. — Temple Law Quarterly
Temp. L. Rev. — Temple Law Review
Temp. Pol. & Civ. Rts. L. Rev. — Temple Political & Civil Rights Law Review
Temp. Treas. Reg. — Temporary Treasury Regulation
Temp. U. L.Q. — Temple University Law Quarterly
Tenn. — Tennessee Reports
Tenn. Admin. Reg. — Tennessee Administrative Register
Tenn. App. — Tennessee Appeals
Tenn. B.J. — Tennessee Bar Journal
Tenn. Cas. — Shannon's Tennessee Cases
Tenn. Ch. — Tennessee Chancery
Tenn. Ch. A. — Tennessee Chancery Appeals
Tenn. Civ. A. — Tennessee Civil Appeals
Tenn. Code Ann. — Tennessee Code Annotated
Tenn. Comp. R. & Regs. — Official Compilation of Rules & Regulations of the State of Tennessee
Tenn. Crim. App. — Tennessee Criminal Appeals Reports
Tenn. J. Prac. & Proc. — Tennessee Journal of Practice and Procedure
Tenn. Leg. Rep. — Tennessee Legal Reporter, Nashville, Tenn
Tenn. L. Rev. — Tennessee Law Review
Tenn. Priv. Acts — Private Acts of the State of Tennessee
Tenn. Pub. Acts — Public Acts of the State of Tennessee
Ter. Laws. — Territorial Laws
Terr. Sea J. — Territorial Sea Journal
Tex. — Texas Reports
Tex. Admin. Code — Texas Administrative Code
Tex. App. — Texas Appeals Reports
Tex. B.J. — Texas Bar Journal
Tex. Civ. App. — Texas Civil Appeals Reports
Tex. Code Ann. — Texas Code Annotated
Tex. Com. App. — Texas Commission of Appeals
Tex. Crim. — Texas Criminal Reports
Tex. Ct. App.. — Texas Court of Appeals Reports
Tex. F. on Civ. Lib. & Civ. Rts. — Texas Forum on Civil Liberties & Civil Rights
Tex. F. on C.L. & C.R. — Texas Forum on Civil Liberties & Civil Rights
Tex. Gen. Laws — General and Special Laws of the State of Texas
Tex. Hisp. J.L. & Pol'y — Texas Hispanic Journal of Law and Policy
Tex. Intell. Prop. L.J. — Texas Intellectual Property Law Journal
Tex. Int'l L.F. — Texas International Law Forum
Tex. Int'l L.J. — Texas International Law Journal
Tex. J. Bus. L. — Texas Journal of Business Law
Tex. Jur. — Texas Jurisprudence
Tex. Jur. 2d — Texas Jurisprudence 2d
Tex. Jur. 3d — Texas Jurisprudence 3d
Tex. J. Women & L. — Texas Journal of Women & the Law
Tex. L. & Legis. — Texas Law and Legislation
Tex. L.J. — Texas Law Journal
Tex. L. Rev. — Texas Law Review
Tex. Reg. — Texas Register
Tex. Rev. Civ. Stat. Ann. — Texas Revised Civil Statutes Annotated
Tex. Rev. Ent. & Sports L. — Texas Review of Entertainment and Sports Law
Tex. Rev. L. & Pol. — Texas Review of Law & Politics
Tex. Sess. Law Serv. — Texas Session Law Service
Tex. So. U. L. Rev. — Texas Southern University Law Review
Tex. Tech J. Tex. Admin. L. — Texas Tech Journal of Texas Administrative Law
Tex. Tech L. Rev. — Texas Tech Law Review
Tex. Wesleyan L. Rev. — Texas Wesleyan Law Review
Third World Legal Stud. — Third World Legal Studies
Thomas Jefferson L. Rev. — Thomas Jefferson Law Review
Thomas M. Cooley L. Rev. — Thomas M. Cooley Law Review
Thomas, Mortg. — A Treatise on the Law of Mortgages of Real and Personal Property in the State of New York
Thomas, Negl. — E. Thomas, The Law of Negligence
Thompson, Negligence — The Law of Negligence in Relations Not Resting in Contract Illustrated by Leading Cases and Notes
Thomp. Trials — Thompson, A Treatise on the Law of Trials in Actions Civil and Criminal
Thur. Marshall L.J. — Thurgood Marshall Law Journal
T.I.A.S. — United States Treaties and Other Agreements Series
Tidd, Prac. — The Practice of the Courts of King's Bench and Common Pleas in Personal Actions and Ejectment
Tiedeman, Real Prop. — An Elementary Treatise on the American Law of Real Property
Tied. Lim. Police Power — Tiedeman, A Treatise on the Limitations of Police Power in the United States
Tied. Mun. Corp. — Tiedeman, A Treatise on the Law of Municipal Corporations in the United States
T.I.F. — Treaties in Force
Tiffany, Landl. & Ten. — The Law of Landlord and Tenant

Tiffany, Real Prop. — A Treatise on the Modern Law of Real Property and Other Interests in Law

T.I.R. — Technical Information Release

T. Jefferson L. Rev. — Thomas Jefferson Law Review

T.M. — Technical Memorandum (IRS)

T. Marshall L.J. — Thurgood Marshall Law Journal

T. Marshall L. Rev. — Thurgood Marshall Law Review

T.M. Cooley J. Prac. & Clinical L. — Thomas M. Cooley Journal of Practical & Clinical Law

T.M. Cooley J. Prac. & Clin. L. — Thomas M. Cooley Journal of Practical & Clinical Law

T.M. Cooley L. Rev. — Thomas M. Cooley Law Review

T.M.E.P. — Trademark Manual of Examining Procedure

T.M.R. — TradeMark Reports

Tol. J. Great Lakes' L. Sci. & Pol'y — Toledo Journal of Great Lakes' Law, Science & Policy

Tort & Ins. L.J. — Tort & Insurance Law Journal

Tort Trial & Ins. Prac. L.J. — Tort Trial & Insurance Practice Law Journal (ABA)

Touro Envtl. L.J. — Touro Environmental Law Journal

Touro Int'l L. Rev. — Touro International Law Review

Touro J. Transnat'l L. — Touro Journal of Transnational Law

Touro L. Rev. — Touro Law Review

Townshend, Slander & Libel — A Treatise on the Wrongs Called Slander and Libel, and on the Remedy by Civil Action

Tr. — Trial

Trade Cas. (CCH) — Trade Cases

Trademark Rep. — Trademark Reporter

Trade Reg. Rep. (CCH) — Trade Regulation Reports

Tr. & Est. — Trusts and Estates

Transnat'l L. & Contemp. Probs. — Transnational Law & Contemporary Problems

Transnat'l Law. — Transnational Lawyer

Transp. L.J. — Transportation Law Journal

Transp. Prac. J. — Transportation Practitioners Journal

Tread. — Treadway (S.C.)

Treas. Dec. — Treasury Decisions

Treas. Dec. Int. Rev. — Treasury Decisions under Internal Revenue Laws

Treas. Reg. — Treasury Regulation

Trial — Trial (ATLA)

Trial Advoc. Q. — Trial Advocate Quarterly

Trial Law. Guide — Trial Lawyer's Guide

Trial Law Q. — Trial Lawyers Quarterly

Troubat, Lim. Part. — The Law Commandatary and Limited Partnership in the United States

Trusts & Est. — Trusts & Estates

T.S. — United States Treaty Series

Tuck. & Cl. — Tucker & Clephane (D.C.)

Tucker's Blackstone — Tucker, Notes on Blackstone's Commentaries for the Use of Students

Tudor, Char. Trusts — The Law of Charitable Trusts with the Statutes, and the Orders, Regulations, and Instructions, Issued Pursuant Thereto

Tudor, Lead. Cas. Real Prop. — A Selection of Leading Cases on Real Property, Conveyancing, and the Construction of Wills and Deeds

Tul. Civ. L.F. — Tulane Civil Law Forum

Tul. Envtl. L.J. — Tulane Environmental Law Journal

Tul. Eur. & Civ. L.F. — Tulane European & Civil Law Forum

Tul. J. Int'l & Comp. L. — Tulane Journal of International & Comparative Law

Tul. J.L. & Sexuality — Tulane Journal of Law and Sexuality

Tul. J. Tech. & Intell. Prop. — Tulane Journal of Technology and Intellectual Property

Tul. L. Rev. — Tulane Law Review

Tul. Mar. L.J. — Tulane Maritime Law Journal

Tulsa J. Comp. & Int'l L. — Tulsa Journal of Comparative & International Law

Tulsa L.J. — Tulsa Law Journal

Tulsa L. Rev. — Tulsa Law Review

TVA — Tennessee Valley Authority

Tyl. — Tyler (Vt.)

Tyler, Ej. — R. Tyler, Remedy by Ejectment and the Law of Adverse Enjoyment in the United States

Tyng — Tyng (Mass.)

U

UAGA — Uniform Anatomical Gift Act

U. Ark. Little Rock L.J. — University of Arkansas at Little Rock Law Journal

U. Ark. Little Rock L. Rev. — University of Arkansas at Little Rock Law Review

U. Balt. Intell. Prop. L.J. — University of Baltimore Intellectual Property Law Journal

U. Balt. J. Envtl. L. — University of Baltimore Journal of Environmental Law

U. Balt. L.F. — University of Baltimore Law Forum

U. Balt. L. Rev. — University of Baltimore Law Review

U. Bridgeport L. Rev. — University of Bridgeport Law Review

U. Brit. Colum. L. Rev. — University of British Columbia Law Review

U.C.A. — Utah Code Annotated

U.C.C. — Uniform Commercial Code

U.C.C.J.A. — Uniform Child Custody Jurisdiction Act

U.C.C.L.J. — Uniform Commercial Code Law Journal

UCC Rep.-Dig. — Uniform Commercial Code Reporter-Digest

U.C.C. Rep. Serv. (CBC) — Uniform Commercial Code Reporting Service
U.C. Davis J. Int'l L. & Pol'y — U.C. Davis Journal of International Law & Policy
U.C. Davis L. Rev. — University of California Davis Law Review
U.C.D. L. Rev. — UCD Law Review
U. Chi. Legal F. — University of Chicago Legal Forum
U. Chi. L. Rev. — University of Chicago Law Review
U. Chi. L. Sch. Rec. — University of Chicago Law School Record
U. Chi. L. Sch. Roundtable — University of Chicago Law School Roundtable
U. Cin. L. Rev. — University of Cincinnati Law Review
UCLA — University of California Los Angeles
UCLA-Alaska L. Rev. — UCLA-Alaska Law Review
UCLA Asian Pac. Am. L. J. — UCLA Asian Pacific American Law Journal
UCLA Bull. L. & Tech. — UCLA Bulletin of Law and Technology
UCLA Ent. L. Rev. — UCLA Entertainment Law Review
UCLA J. Envtl. L. & Pol'y — UCLA Journal of Environmental Law & Policy
UCLA J. Int'l L. & Foreign Aff. — UCLA Journal of International Law & Foreign Affairs
UCLA J. Islamic & Near E. L. — UCLA Journal of Islamic and Near Eastern Law
UCLA L. Rev. — UCLA Law Review
UCLA Pac. Basin L.J. — UCLA Pacific Basin Law Journal
UCLA Women's L.J. — UCLA Women's Law Journal
U.C.M.J. — Uniform Code of Military Justice
U. Colo. L. Rev. — University of Colorado Law Review
U.C.R. — Uniform Crime Reports
U. Dayton Intra. L. Rev. — University of Dayton Intramural Law Review
U. Dayton L. Rev. — University of Dayton Law Review
UDC/DCSL L. Rev. — University of the District of Columbia David Clarke School of Law Review
U.D.C. L. Rev. — University of the District of Columbia Law Review
U. Denv. Water L. Rev. — University of Denver Water Law Review
U. Det. J. Urb. L. — University of Detroit Journal of Urban Law
U. Det. L.J. — University of Detroit Law Journal
U. Det. L. Rev. — University of Detroit Law Review
U. Det. Mercy L. Rev. — University of Detroit Mercy Law Review
UDPAA — Uniform Durable Power of Attorney Act
U. Fla. J. L. & Pub. Pol'y — University of Florida Journal of Law and Public Policy
U. Fla. L. Rev. — University of Florida Law Review
U. Haw. L. Rev. — University of Hawaii Law Review
U. Ill. J. Tech. & Pol'y — University of Illinois Journal of Law, Technology and Policy
U. Ill. L.F. — University of Illinois Law Forum
U. Ill. L. Rev. — University of Illinois Law Review
U. Kan. City L. Rev. — University of Kansas City Law Review
U. Kan. L. Rev. — University of Kansas Law Review
U.L.A. — Uniform Laws Annotated
U. Louisville J. Fam. L. — University of Louisville Journal of Family Law
U.L.P.A. — Uniform Limited Partnership Act
U. Maine L. Rev. — University of Maine Law Review
U. Mem. L. Rev. — University of Memphis Law Review
U. Miami Bus. L.J. — University of Miami Business Law Journal
U. Miami Bus. L. Rev. — University of Miami Business Law Review
U. Miami Ent. & Sports L. Rev. — University of Miami Entertainment & Sports Law Review
U. Miami Heckerling Inst. on Est. Plan. — University of Miami Phillip E. Heckerling Institute on Estate Planning
U. Miami Inter-Am. L. Rev. — University of Miami Inter-American Law Review
U. Miami Int'l & Comp. L. Rev. — University of Miami International & Comparative Law Review
U. Miami L. Rev. — University of Miami Law Review
U. Miami Y.B. Int'l L. — University of Miami Yearbook of International Law
U. Mich. J.L. Ref. — University of Michigan Journal of Law Reform
U. Mich. J.L. Reform — University of Michigan Journal of Law Reform
UMKC L. Rev. — University of Missouri-Kansas City Law Review
U. Mo. B., Law Ser. — University of Missouri Bulletin, Law Series
U. Mo. Kan. City L. Rev. — University of Missouri at Kansas City Law Review
Unauth. Prac. News — Unauthorized Practice News (ABA)
U.N.B.L.J. — University of New Brunswick Law Journal
UNCITRAL — United Nations Commission on International Trade Law
UNCTAD — United Nations Conference on Trade & Development
UNDCP — United Nations Drug Control Programme
Underhill, Ev. — H. Underhill, A Treatise on the Law of Evidence
Underh. Torts — Underhill, Principles of the Law of Torts, or Wrongs Independent of Contracts

UNDP — United Nations Development Programme
Unempl. Ins. Rep. (CCH) — Unemployment Insurance Reports
UNEP — United Nations Environment Programme
UNESCO — United Nations Educational, Scientific and Cultural Organization
U. New Brunswick L.J. — University of New Brunswick Law Journal
U. New South Wales L.J. — University of New South Wales Law Journal
U. New S. Wales L.J. — University of New South Wales Law Journal
UNFPA — United Nations Population Fund
UNHCR — Office of the United Nations High Commissioner for Refugees
UNHSP — United Nations Human Settlements Programme
UNICEF — United Nations Children's Fund
UNICRI — United Nations Interregional Crime and Justice Research Institute
UNIDIR — United Nations Institute for Disarmament Research
UNIDO — United Nations Industrial Development Organization
UNIFEM — United Nations Development Fund for Women
Union Lab. Rep. (BNA) — Union Labor Report
UNITAR — United Nations Institute for Training and Research
UN Monthly Chron. — UN Monthly Chronicle
UNOPS — United Nations Office for Project Services
UNRISD — United Nations Research Institute for Social Development
UNRWA — United Nations Relief and Works Agency for Palestine Refugees in the Near East
U.N.T.S. — United Nations Treaty Series
UNU — United Nations University
UNV — United Nations Volunteers
UPA — **1.** Uniform Partnership Act. **2.** University Press of America.
U. Pa. J. Const. L. — University of Pennsylvania Journal of Constitutional Law
U. Pa. J. Int'l Bus. L. — University of Pennsylvania Journal of International Business Law
U. Pa. J. Int'l Econ. L. — University of Pennsylvania Journal of International Economic Law
U. Pa. J. Lab. & Emp. L. — University of Pennsylvania Journal of Labor and Employment Law
U. Pa. L. Rev. — University of Pennsylvania Law Review
U. Pa. L. Rev. & Am. L. Register — University of Pennsylvania Law Review and American Law Register
UPC — Uniform Probate Code
U. Pitt. L. Rev. — University of Pittsburgh Law Review
UPU — Universal Postal Union
U. Puget Sound L. Rev. — University of Puget Sound Law Review
Urban L.J. — University of Detroit, Urban Law Journal
Urb. L. Ann. — Urban Law Annual
Urb. Law. — Urban Lawyer
Urb. L. Rev. — Urban Law Review
U. Rich. L. Notes — University of Richmond Law Notes
U. Rich. L. Rev. — University of Richmond Law Review
U.S. — United States Supreme Court Reports
U.S. A.F. Acad. J. Legal Stud. — United States Air Force Academy Journal of Legal Studies
U. San Fernando Valley L Rev. — University of San Fernando Valley Law Review
U. San Fernando V. L. Rev. — University of San Fernando Valley Law Review
U.S. App. D.C. — United States Court of Appeals Reports
U.S. Aviation Rep. — Aviation Reports, U.S
U.S.C. — United States Code
U.S.C.A. — United States Code Annotated
U.S. Cal. Sch. L. Tax Inst. — University of Southern California School of Law Tax Institute
U.S.C.C.A.N. — United States Code Congressional and Administrative News
U.S. Code Cong. & Ad. News — United States Code Congressional and Administrative News
U.S.C.S. — United States Code Service
USDA — United States Department of Agriculture
U. Seattle L. Rev. — University of Seattle Law Review
USES — United States Employment Service
U.S.F. J.L. & Soc. Challenges — University of San Francisco Journal of Law and Social Challenges
U.S.F. L. Rev. — University of San Francisco Law Review
U.S.F. Mar. L.J. — University of San Francisco Maritime Law Journal
USIA — United States Information Agency
USIS — United States Information Service
USITC. — United States International Trade Commission
U.S. L.Ed. — Supreme Court Reports, Lawyers' Ed
U.S.L.W. — United States Law Week (BNA)
U.S.-Mex. L.J. — United States-Mexico Law Journal
U.S. P.Q. (BNA) — United States Patent Quarterly
USSB — United States Shipping Board
U.S.T. — United States Treaties and Other International Agreements
U.S. Tax Cas. (CCH) — United States Tax Cases

USTC (CCH). — United States Tax Cases
Utah. — Utah Reports
Utah 2d. — Utah Reports, Second Series
Utah Admin. Code — Utah Administrative Code
Utah B.J. — Utah Bar Journal
Utah Bull. — Utah State Bulletin
Utah Code Ann. — Utah Code Annotated
Utah Laws — Laws of Utah
Utah L. Rev. — Utah Law Review
U. Tasmania L. Rev. — University of Tasmania Law Review
Util. L. Rep. (CCH) — Utilities Law Reports
Util. Sect. Newsl. — Utility Section Newsletter (ABA)
U. Toledo L. Rev. — University of Toledo Law Review
U. Tol. Intra. L. Rev. — University of Toledo Intramural Law Review '67-68
U. Tol. L. Rev. — University of Toledo Law Review
U. Tor. Fac. L. Rev. — University of Toronto Faculty Law Review
U. Toronto Fac. L. Rev. — University of Toronto Faculty Law Review
U. Toronto L.J. — University of Toronto Law Journal
U. Wash. L. Rev. — University of Washington Law Review
U. W. Austl. L. Rev. — University of Western Australia Law Review
U. Western Ont. L. Rev. — University of Western Ontario Law Review
U. West L.A. L. Rev. — University of West Los Angeles Law Review
UWLA L. Rev. — University of West Los Angeles Law Review
U. W. Ont. L. Rev. — University of Western Ontario Law Review

V

Va. — Virginia Reports
VA — Department of Veterans Affairs
Va. Acts — Acts of the General Assembly of the Commonwealth of Virginia
Va. App. — Virginia Court of Appeals Reports
Va. B. Ass'n J. — Virginia Bar Association Journal
Va. B. News — Virginia Bar News
Va. Cas. — Virginia Cases
vac'g — vacating
Va. Code Ann. — Code of Virginia Annotated
Va. Dec. — Virginia Decisions
Va. Envtl. L.J. — Virginia Environmental Law Journal
Va. J. Int'l L. — Virginia Journal of International Law
Va. J.L. & Tech. — Virginia Journal of Law and Technology
Va. J. Nat. Res. L. — Virginia Journal of Natural Resources Law
Va. J. Nat. Resources L. — Virginia Journal of Natural Resources Law
Va. J. Soc. Pol'y & L. — Virginia Journal of Social Policy & Law
Va. J. Sports & L. — Virginia Journal of Sports and the Law
Va. Law. — Virginia Lawyer
Va. L. Rev. — Virginia Law Review
Val. U. L. Rev. — Valparaiso University Law Review
V.A.M.R. — Vernon's Annotated Missouri Rules
V.A.M.S. — Vernon's Annotated Missouri Statutes
Vand. J. Ent. L. & Prac. — Vanderbilt Journal of Entertainment Law and Practice
Vand. J. Transnat'l L. — Vanderbilt Journal of Transnational Law
Vand. L. Rev. — Vanderbilt Law Review
Va. Regs. Reg. — Virginia Register of Regulations
Va. Sports & Ent. L.J. — Virginia Sports & Entertainment Law Journal
Va. Tax Rev. — Virginia Tax Review
V.A.T.S. — Vernon's Annotated Texas Statutes
Vernon's Ann. C.C.P. — Vernon's Annotated Texas Code of Criminal Procedure
Vernon's Ann. Civ. St. — Vernon's Annotated Texas Civil Statutes
Vernon's Ann. P.C. — Vernon's Annotated Texas Penal Code
Vernon's Ann. Rules Civ. Proc. — Vernon's Annotated Texas Rules of Civil Procedure
Vet. App. — Veterans Appeals Reporter
V.I. — Virgin Island Reports
V.I.C. — Virgin Islands Code
V.I. Code Ann. — Virgin Islands Code Annotated
Vict. U. Wellington L. Rev. — Victoria University of Wellington Law Review
Vict. U. Well. L. Rev. — Victoria University of Wellington Law Review
Vill. Envtl. L.J. — Villanova Environmental Law Journal
Vill. Info. L. Chron. — Villanova Information Law Chronicle
Vill. J.L. & Inv. Mgmt. — Villanova Journal of Law & Investment Management
Vill. L. Rev. — Villanova Law Review
Vill. Sports & Ent. L.F. — Villanova Sports and Entertainment Law Forum
Vill. Sports & Ent. L.J. — Villanova Sports and Entertainment Law Journal
V.I. R. & Regs. — Virgin Islands Rules and Regulations
V.I. Sess. Laws — Session Laws of the Virgin Islands
V.S. — Vermont Statutes

V.S.A. — Vermont Statutes Annotated
Vt. — Vermont Reports
Vt. Acts & Resolves — Acts of Resolves of Vermont
Vt. B.J. & L. Dig. — Vermont Bar Journal & Law Digest
V.T.C.A. — Vernon's Texas Codes Annotated
Vt. Code R. — Code of Vermont Rules
Vt. Gov't Reg. — Vermont Government Register
Vt. L. Rev. — Vermont Law Review
V.T.S.A. — Vernon's Texas Statutes Annotated
Vt. Stat. Ann. — Vermont Statutes Annotated

W

Wade, Am. Mining Law — Manual of American Mining Law as Practiced in the Western States and Territories
Wade, Attachm. — A Treatise on the Law of Attachment and Garnishment
Wage & Hour Cas. (BNA) — Wage and Hour Cases
Wake Forest L. Rev. — Wake Forest Law Review
Walk. — Walker (Pa.)
Walk. Am. Law — J. Walker, Introduction to American Law
Walker, Pat. — Text-Book of the Patent Laws of the United States of America
Walk. Int. — J. Walker, Introduction to American Law
Wall. — Wallace, U.S. Supreme Court Reports
Wall. St. J. — Wall Street Journal
Warv. Abst. — Warvelle, A Practical Treatise on Abstracts and Examinations of Title to Real Property
Wash. — Washington (Va.)
Wash. — Washington Reports
Wash.2d. — Washington Reports, Second Series
Wash. Admin. Code — Washington Administrative Code
Wash. & Lee L. Rev. — Washington and Lee Law Review
Wash. App. — Washington Appellate Reports
Washburn L.J. — Washburn Law Journal
Washburn, Real Prop. — A Treatise on the American Law of Real Property
Wash. C.C. — Washington Circuit Court, U.S
Wash. Law. — Washington Lawyer
Wash. Law Rep. — Washington Law Reporter, D.C
Wash. Laws — Laws of Washington
Wash. Legis. Serv. — Washington Legislative Service
Wash. L. Rev. — Washington Law Review
Wash. Monthly — Washington Monthly
Wash. Rev. Code. — Revised Code of Washington
Wash. Rev. Code Ann. — Revised Code of Washington Annotated
Wash. St. B. News — Washington State Bar News
Wash. Terr. — Washington Territory Reports
Wash. U. Global Stud. L. Rev. — Washington University Global Studies Law Review
Wash. U. J.L. & Pol'y — Washington University Journal of Law and Policy
Wash. U. J. Urb. & Contemp. L. — Washington University Journal of Urban & Contemporary Law
Wash. U. L.Q. — Washington University Law Quarterly (Missouri)
Watkins, Descents — An Essay Towards the Further Elucidation of the Law of Descents
Wat. Set-Off — Waterman, A Treatise on the Law of Set-Off, Recoupment, and Coumterclaim
Watts — Watts (Pa.)
Watts & Serg. — Watts and Sergeant (Pa.P
Wayne L. Rev. — Wayne Law Review
WD — Written Determination
Weeks, Attys. at Law — A Treatise on Attorneys and Counselors at Law
Wells, Repl. — A Treatise on the Law of Replevin, as Administered in the Courts of the United States and England
Wend. — Wendell's Reports (N.Y.)
Wesk. Ins. — Weskett, Complete Digest of the Theory, Laws and Practice of Insurance
Westchester B.J. — Westchester Bar Journal
Westlake, Prin. Int. Law — Chapters on the Principles of International Law
WEU — Western European Union
WFP — World Food Programme (UN)
WG&L — Warren, Gorham & Lamont
W.H. — Wage and Hour Cases (BNA)
Whart. — Wharton (Pa.)
Whart. & S. Med. Jur. — Wharton & Stille, A Treatise on Medical Jurisprudence
Wharton, Agency — A Commentary on the Law of Agency and Agents
Wharton, Am. Cr. Law — A Treatise on the Criminal Law of the United States...
Wharton, Conf. Laws — A Treatise on the Conflict of Laws
Wharton, Cr. Ev. — A Treatise on the Law of Evidence in Criminal Issues
Wharton, Cr. Pl. & Prac. — Treatise on Criminal Pleading and Practice
Wharton, Dig. Int. Law — A Digest of the International Law of the United States
Wharton, Ev. — A Commentary on the Law of Evidence in Civil Issues
Wharton, Homicide — A Treatise on the Law of Homicide in the United States
Wharton, Maxims — G. Wharton, Legal Maxims with Observations and Cases

Wharton, Negligence — A Treatise on the Law of Negligence

Wheat. — Wheaton, U.S. Supreme Court Reports

Wheaton, International Law — The Elements of International Law

Wheaton on Maritime Captures — A Digest of the Law of Maritime Captures and Prizes

Whitak. Liens — Whitaker, A Treatise Relative to the Rights of Lien and Stoppage in Transitu

White & W. — White & Willson's Reports (Tex.)

Whittier L. Rev. — Whittier Law Review

Whitt. L. Rev. — Whittier Law Review

W.H. Man. — Wage and Hour Manual (BNA)

WHO — World Health Organization

Widener J. Pub. L. — Widener Journal of Public Law

Widener L. Symp. J. — Widener Law Symposium Journal

Wigm. Ev. — **1.** A Treatise on the System of Evidence in Trials at Common Law. **2.** A Treatise on the Anglo-American System of Evidence in Trials at Common Law.

Wigmore, Evidence — **1.** A Treatise on the System of Evidence in Trials at Common Law. **2.** A Treatise on the Anglo-American System of Evidence in Trials at Common Law.

Wigram, Wills — A Treatise on Extrinsic Evidence in Aid of the Interpretation of Wills

Will. — Williams (Mass.)

Willamette Bull. Int'l L. & Pol'y — Willamette Bulletin of International Law and Policy

Willamette J. Int'l L. & Disp. Resol. — Willamette Journal of International Law and Dispute Resolution

Willamette L.J. — Willamette Law Journal

Willamette L. Rev. — Willamette Law Review

Willcock, Mun. Corp. — The Law of Municipal Corporations, together with a Brief Sketch of Their History

Will. Eq. Jur. — Willard, A Treatise on Equity Jurisprudence

Williams & B., Adm. Jur. — R. G. Williams & Bruce, The Jurisdiction and Practice of the High Court of Admiralty

Williams, Executors — E. Williams, A Treatise on the Law of Executors and Administrators

Williams, Ex'rs R. & T. ed. — E. Williams, A Treatise on the Law of Executors and Administrators, Randolph & Talcott ed.

Williams, Pers. Prop. — Jos. Williams, A Treatise on the Law of Personal Property

Williams, Real Prop. — Jos. Williams, Principles of the Law of Real Property

Williams, Seis. — Jos. Williams, Seisin of the Freehold

Willis, Trustees — A Practical Treatise on the Duties and Responsibilities of Trustees

Williston, Contracts — The Law of Contracts

Williston, Sales — The Law Governing Sales of Goods a Common Law and Under the Uniform Sales Act

Willson — Willson's Reports (Tex.)

Win. — Winston (N.C.)

WIPO — World Intellectual Property Organization

Wis. — Wisconsin Reports

Wis.2d. — Wisconsin Reports, Second Series

Wis. Admin. Code — Wisconsin Administrative Code

Wis. Admin. Reg. — Wisconsin Administrative Register

Wis. B. Bull. — Wisconsin Bar Bulletin

Wis. Envtl. L.J. — Wisconsin Environmental Law Journal

Wis. Int'l L.J. — Wisconsin International Law Journal

Wis. Law. — Wisconsin Lawyer

Wis. Laws — Laws of Wisconsin

Wis. Legis. Serv. — Wisconsin Legislative Service

Wis. L.N. — Wisconsin Legal News

Wis. L. Rev. — Wisconsin Law Review

Wis. Stat. — Wisconsin Statutes

Wis. Stat. Ann. — Wisconsin Statutes Annotated

Wis. Women's L.J. — Wisconsin Women's Law Journal

With. Corp. Cas. — Withrow, American Corporation Cases

Witthaus & Becker, Med. Jur. — Medical Jurisprudence, Forensic Medicine, and Toxicology

W. Legal Hist. — Western Legal History: the Journal of the Ninth Judicial Circuit Historical Society

Wm. & Mary Bill Rts. J. — William & Mary Bill of Rights Journal

Wm. & Mary Envtl. L. & Pol'y Rev. — William & Mary Environmental Law and Policy Review

Wm. & Mary J. Envtl. L. — William & Mary Journal of Environmental Law

Wm. & Mary J. Women & L. — William & Mary Journal of Women and the Law

Wm. & Mary L. Rev. — William & Mary Law Review

Wm. & Mary Rev. Va. L. — William & Mary Review of Virginia Law

Wm. Mitchell L. Rev. — William Mitchell Law Review

WMO — World Meteorological Organization

Wms. P.P. — J. Williams, Principles of the Law of Personal Property

Wms. R.P. — J. Williams, Principles of the Law of Real Property

W. New Eng. L. Rev. — Western New England Law Review

Woener, Adm'n — A Treatise on the American Law of Administration

Women & Crim. Just. — Women and Criminal Justice

Women Law. J. — Women Lawyers Journal

Women's L.J. — Women's Law Journal

Women's Rts. L. Rep. — Women's Rights Law Reporter

Wood, Lim. — A Treatise on the Limitation of Actions at Law and In Equity

Wood, Master & Serv. — Law of Master and Servant, Covering the Relation, Duties and Liabilities of Employers and Employees

Wood, Nuis. — A Practical Treatise on the Law of Nuisances in Their Various Forms

Wood, Ry. Law — A Treatise on the Law of Railroads

Woolr. Waters — Woolrych, A Treatise of the Law of Waters

Work. Comp. Bus. Mgmt. Guide (CCH) — Workers' Compensation Business Management Guide

Works, Pr. — Practice, Pleading and Forms Adapted to the New revised Code of Indiana

W. Res. L. Rev. — Western Reserve Law Review

Wright, Ten. — Introduction to the Law of Tenures

W.S. — Wyoming Statutes

W.S.A. — Wisconsin Statutes Annotated

W. St. L. Rev. — Western State Law Review

W.St. U. L. Rev. — Western State University Law Review

WTO — **1.** World Trade Organization. **2.** World Tourism Organization.

W. Va. — West Virginia Reports

W. Va. Acts — Acts of the Legislature of West Virginia

W. Va. B. — West Virginia Bar

W. Va. Code — West Virginia Code

W. Va. Cod. State R. — West Virginia Code of State Rules

W. Va. Law. — West Virginia Lawyer

W. Va. L. Q. & B. — West Virginia Law Quarterly and the Bar

W. Va. L. Rev. — West Virginia Law Review

WVC. — West Virginia Code

Wyo. — Wyoming Statutes, Wyoming Reports

Wyo. Law. — Wyoming Lawyer

Wyo. L. Rev. — Wyoming Law Review

Wyo. Sess. Laws — Session Laws of Wyoming

Wyo. Stat. Ann. — Wyoming Statutes Annotated

Y

Yale Hum. Rts. & Dev. L.J. — Yale Human Rights and Development Law Journal

Yale J. Int'l L. — Yale Journal of International Law

Yale J.L. & Feminism — Yale Journal of Law & Feminism

Yale J.L. & Human. — Yale Journal of Law and the Humanities

Yale J.L. & Lib. — Yale Journal of Law and Liberation

Yale J. on Reg. — Yale Journal on Regulation

Yale J. World Pub. Ord. — Yale Journal of World Public Order

Yale L. & Pol'y Rev. — Yale Law & Policy Review

Yale Law J. — Yale Law Journal

Yale L.J. — Yale Law Journal

Yale Stud. World Pub. Order — Yale Studies in World Public Order

Yates Sel. Cas. — Yates' Select Cases

Y.B. Eur. Conv. On H.R. — Yearbook of the European Convention on Human Rights

Yeates — Yeates (Pa.)

Yer. — Yerger (Tenn.)

Z

Zoning & Plan. L. Rep. — Zoning and Planning Law Report

Authors Commonly Cited in American Sources During the 19th and Early 20th Centuries

Adams ..... John Adams
Addison ..... Charles G. Addison
Aldrich ..... Peleg Emory Aldrich
Allnat ..... Charles Blake Allnat
Ames ..... James Barr Ames
Ames ..... Samuel Ames
Amos ..... Andrew Amos
Angell ..... Joseph K. Angell
Anson ..... William Reynell Anson
Arnould ..... Sir Joseph Arnould
Atherly ..... Edmund Gibson Atherly
Austin ..... John Austin
Babington ..... Richard Babington
Baker ..... Sir Sherston Baker
Ballantine ..... William Ballantine
Bayley ..... Sir John Bayley
Beach ..... Charles F. Beach
Beale ..... Joseph Henry Beale
Becker ..... Tracy Chatfield Becker
Belli ..... Melvin M. Belli, Sr.
Best ..... William M. Best
Bevans ..... Charles I. Bevans
Beven ..... Thomas Beven
Bigelow ..... Melville M. Bigelow
Bishop ..... Joel Prentiss Bishop
Black ..... Henry Campbell Black
Blackburn ..... Lord Colin Blackburn
Blackstone ..... Sir William Blackstone
Blanshard ..... William Blanshard
Booth ..... George Booth
Bouvier ..... John Bouvier
Bracton ..... Henry de Bracton
Brice ..... Seward Brice
Brickell ..... Robert C. Brickell

Brightly ..... Frederick C. Brightly
Brown ..... Henry Billings Brown
Browne ..... Causten Browne
Browne ..... George Browne
Bowstead ..... William Bowstead
Bruce ..... Gainsford Bruce
Bryce ..... Viscount James Bryce
Bump ..... Orlando F. Bump
Burrill ..... Alexander M. Burrill
Buswell ..... Henry Foster Buswell
Byles ..... Sir John Barnard Byles
Carver ..... Thomas G. Carver
Chamberlain ..... Daniel H. Chamberlain
Chandler ..... Peleg W. Chandler
Chitty ..... Joseph Chitty
Christian ..... Edward Christian
Clay ..... Clement Comer Clay
Clevenger ..... Shobal V. Clevenger
Cobb ..... Thomas R.R. Cobb
Coke ..... Sir Edward Coke
Collyer ..... John Collyer
Comyn ..... Samuel Comyn
Cooke ..... Frederick Hale Cooke
Curtis ..... George Ticknor Curtis
Daniel ..... John Warwick Daniel
Dart ..... Joseph Henry Dart
Davis ..... John Anthony Gardner Davis
Desty ..... Robert Desty
Devlin ..... Robert Thomas Devlin
Dicey ..... Albert Venn Dicey
Dillon ..... John Forrest Dillon
Drone ..... Eaton S. Drone
Duer ..... John Duer
Du Ponceau ..... Peter Stephen Du Ponceau
Elliot ..... Jonathan Elliot
Elmer ..... Joseph Elmer
Elmer ..... Lucius Q.C. Elmer
Farwell ..... Sir George Farwell
Fell ..... Walter William Fell
Ferard ..... Joseph Ferard
Fetter ..... Norman Fetter
Field ..... George W. Field
Finlason ..... William Francis Finlason
Fisher ..... William R. Fisher
Flanders ..... Henry Flanders
Flood ..... John Charles Henry Flood
Foote ..... John Alderson Foote
Foster ..... Roger Foster
Freeman ..... A. C. (Abraham Clark) Freemen
Fry ..... Sir Edward Fry
Gale ..... Charles James Gale
Goddard ..... John Leybourn Goddard
Gould ..... James Gould
Gould ..... John M. Gould
Gould ..... Josiah Gould
Grant ..... James Grant
Gray ..... John Chipman Gray
Greenleaf ..... Simon Greenleaf
Gresley ..... Richard Newcombe Gresley
Gross ..... Charles Gross
Guy ..... William A. Guy
Hale ..... William Hale
Hall ..... John Elihu Hall
Hall ..... William E. Hall
Halleck ..... Henry Wager Halleck
Hamilton ..... Alexander Hamilton
Hammon ..... Louis Lougee Hammon
Hanhart ..... Nicolas Hanhart
Harmon ..... Henry Clay Harmon
Hare ..... J. I. Clark Hare
Harris ..... Seymour F. Harris
Hartley ..... Oliver C. Hartley
Hawkins ..... Francis V. Hawkins
Hening ..... William W. Hening
High ..... James L.High
Hilliard ..... Francis Hilliard
Holland ..... Thomas Erskine Holland
Holt ..... Francis Ludlow Holt
Holmes ..... Oliver Wendell Holmes
Hopkins ..... Manley Hopkins
Hough ..... Franklin Benjamin Hough
Hughes ..... David Hughes
Hughes ..... William J. Hughes
Jaggard ..... Edwin A. Jaggard
Jarman ..... Thomas Jarman
Jeremy ..... George Jeremy
Jeremy ..... Henry Jeremy
Jones ..... Leonard A. Jones
Jones ..... Sir William Jones
Keener ..... William Albert Keener
Kent ..... James Kent
Kerr ..... William Williamson Kerr
Kyd ..... Stewart Kyd
Langdell ..... Christopher Columbus Langdell
Lawson ..... John Davison Lawson
Lea ..... Henry Charles Lea
Leake ..... Stephen Martin Leake
Lewis ..... John Lewis
Lewis ..... William David Lewis
Lindley ..... Sir Nathaniel Lindley
Lowell ..... A. Lawrence Lowell
Maclachlan ..... David Maclachlan
Maine ..... Sir Henry Sumner Maine
Malloy ..... William M Malloy
Markby ..... Sir William Markby
Marsden ..... Reginald G. Marsden
Martin ..... Francois Xavier Martin
Marshall ..... Samuel Marshall
McAdam ..... David McAdam
McCrary ..... George W. McCrary
McKelvey ..... John Jay McKelvey
Mechem ..... Floyd R. Mechem
Mill ..... John Stuart Mill
Miller ..... Hunter Miller

Miller ..... Samuel Freeman Miller
Mills ..... Henry Edmund Mills
Morawetz ..... Victor Morawetz
Morse ..... John Torrey Morse, Jr.
Moyle ..... John B. Moyle
Odgers ..... W. Blake Odgers
Oliver ..... Benjamin Lynde Oliver
Parsons ..... Theophilus Parsons
Perry ..... Jarius W. Perry
Phelps ..... Charles Edward Phelps
Phillimore ..... Sir Robert Phillimore
Phillips ..... Willard Phillips
Pierce ..... Edward Lillie Pierce
Pitman ..... Edward Dix Pitman
Platt ..... Thomas Platt
Poe ..... John Prentiss Poe
Pollock ..... Sir Frederick Pollock
Pomeroy ..... John Norton Pomeroy
Poore ..... Benjamin P. Poore
Pope ..... Henry M. R. Pope
Porter ..... James Biggs Porter
Pothier ..... Robert J. Pothier
Powell ..... John Joseph Powell
Preston ..... Richard Preston
Randolph ..... Joseph Fitz Randolph
Rapalje ..... Stewart Rapalje
Rawle ..... William Rawle
Ray ..... Charles Andrew Ray
Redfield ..... Amasa A Redfield
Redfield ..... Isaac F. Redfield
Reeve ..... Tapping Reeve
Reeves ..... John Reeves
Remington ..... Harold Remington
Roberts ..... William Roberts
Robinson ..... William Callyhan Robinson
Roper ..... Stote Donnison Roper
Rose ..... Walter Malins Rose
Russell ..... John Archibald Russell
Sandars ..... Thomas C. Sandars
Sanders ..... Francis Williams Sanders
Saunders ..... Thomas William Saunders
Schouler ..... James Schouler
Sedgwick ..... Arthur George Sedgwick
Seton ..... Henry Wilmot Seton
Shearman ..... Thomas G. Shearman
Sheldon ..... Henry Newton Sheldon
Shelford ..... Leonard Shelford
Smith ..... Charles M. Smith
Smith ..... Horace Smith
Smith ..... Jeremiah Smith (with Ames)
Smith ..... John William Smith
Snyder ..... Wilson Isaac Snyder
Spence ..... George Spence
Starkie ..... Thomas Starkie
Stearns ..... Asahel Stearns
Stephen ..... Henry John Stephen
Stephen ..... James Fitzjames Stephen
Stille ..... Alfred Stille
Story ..... Joseph Story
Story ..... William W. Story
Stubbs ..... William Stubbs
Sugden ..... Edward Burtenshaw Sugden
Sullivan ..... James Sullivan
Summers ..... Walter L. Summers
Talcott ..... William Talcott
Taylor ..... Pitt Taylor
Thomas ..... Abner Charles Thomas
Thomas ..... Edward Beers Thomas
Thompson ..... Seymour D. Thompson
Tidd ..... William Tidd
Tiedeman ..... Christopher Gustavua Tiedeman
Tiffany ..... Herbert Thorndike Tiffany
Townshend ..... John Townshend
Troubat ..... Francis Joseph Troubat
Tucker ..... Henry St. George Tucker
Tudor ..... Owen Davies Tudor
Tyler ..... Ransom Hebbard Tyler
Tyler ..... Samuel Tyler
Underhill ..... Arthur Underhill
Underhill ..... Henry Clay Underhill
Wade ..... William Pratt Wade
Wait ..... Frederick Scott Wait
Walker ..... Albert Henry Walker
Walker ..... James Bryant Walker
Wallace ..... Horace Binney Wallace
Warvelle ..... George William Warvelle
Washburn ..... Emory Washburn
Waterman ..... Thomas Whitney Waterman
Watkins ..... Charles Watkins
Weeks ..... Edward P. Weeks
Wells ..... Edward Hyde Wells
Weskett ..... John Weskett
Westlake ..... John Westlake
Wharton ..... Francis Wharton
Wharton ..... George Frederick Wharton
Wheaton ..... Henry Wheaton
Whitaker ..... Richard Whitaker
Wigmore ..... John Henry Wigmore
Wigram ..... Sir James Wigram
Willard ..... John Willard
Willcock ..... John William Willcock
Williams ..... Edward Vaughan Williams
Williams ..... Joshua Williams
Williams ..... Robert Griffith Williams
Willis ..... John Walpole Willis
Williston ..... Samuel Williston
Withrow ..... Thomas Foster Withrow
Witthaus ..... Rudolph August Witthaus
Woerner ..... John Gabriel Woerner
Wood ..... Horace Gay Wood
Woolrych ..... Humphry William Woolrych
Works ..... John Downey Works
Wright ..... Sir Martin Wright

Appendix B

Legal Maxims

In the first edition of this dictionary, published in 1891, Henry Campbell Black remarked that the book contained "a complete collection of legal maxims," adding: "These have not been grouped in one body, but distributed in their proper alphabetical order through the book. This is believed to be the more convenient arrangement" (p. iv). Although it might indeed have been more convenient for readers who knew the maxims they wanted to look up — as 19th-century readers might have been apt to — spreading Latin sentences throughout the book is decidedly inconvenient for most dictionary users today. We have therefore collected them for ease of reference. A bibliography of works cited appears on page 1909.

Of course, many scholars have long been intolerant with those who use maxims to decide cases. As James Fitzjames Stephen, one of the great 19th-century legal scholars, incisively put it before Black's work appeared:

> It seems to me that legal maxims in general are little more than pert headings of chapters. They are rather minims than maxims, for they give not a particularly great but a particularly small amount of information. As often as not, the exceptions and disqualifications to them are more important than the so-called rules.[1]

Other scholars have been equally derisive.[2]

But there is an element of fun in legal maxims: they sometimes express surprising insights — and these from ancient writers. Though they will not clinch arguments, they will delight many readers who have a historical bent.

—B.A.G.

1. 2 James Fitzjames Stephen, *History of the Criminal Law of England* 94 n.1 (1883).
2. For a collection of critical comments, see Garner, *A Dictionary of Modern Legal Usage* 552 (2d ed. 1995).

Ab abusu ad usum non valet consequentia. A conclusion about the use of a thing from its abuse is invalid.

Ab assuetis non fit injuria. No injury is done by things long acquiesced in.

Abbreviationum ille numerus et sensus accipiendus est ut concessio non sit inanis. Such number and sense is to be given to abbreviations that the grant may not be void.

Absentem accipere debemus eum qui non est eo loco in quo petitur. We must consider a person absent who is not in that place in which he is sought.

Absentia ejus qui reipublicae causa abest neque ei neque alii damnosa esse debet. The absence of a person who is abroad in service to the state ought to be prejudicial neither to that person nor to another. • Dig. 50.17.140.

Absoluta sententia expositore non indiget. A simple proposition needs no expositor.

Abundans cautela non nocet. Abundant caution does no harm.

Accessorium non ducit, sed sequitur, suum principale. An accessory does not lead, but follows, its principal.

Accessorium non trahit principale. The accessory does not carry the principal with it.

Accessorius sequitur naturam sui principalis. An accessory follows the nature of his principal.

Accipere quid ut justitiam facias non est tam accipere quam extorquere. To accept anything as a reward for doing justice is rather extorting than accepting.

Accusare nemo debet se, nisi coram Deo. No one is obliged to accuse himself, except before God.

Accusator post rationabile tempus non est audiendus, nisi se bene de omissione excusaverit. A person who makes an accusation after a reasonable time has passed is not to be heard unless the person makes a satisfactory excuse for the omission.

A communi observantia non est recedendum. Common observance (or usage) is not to be departed from.

A communi observantia non est recedendum et minime mutandae sunt quae certam interpretationem habent. Common observance is not to be departed from, and things that have certain meaning are to be changed as little as possible.

Acta exteriora indicant interiora secreta. Outward acts indicate the thoughts hidden within.

Acta in uno judicio non probant in alio nisi inter easdem personas. Things done in one action cannot be taken as evidence in another, unless it is between the same parties.

Actio non datur non damnificato. An action is not given to one who is not injured.

Actio non facit reum, nisi mens sit rea. An act does not make a person guilty unless the mind is guilty. • Properly, *Actus non reum* (q.v.).

Actionum genera maxime sunt servanda. The kinds of actions are especially to be preserved.

Actio personalis moritur cum persona. A personal action dies with the person.

Actio quaelibet it sua via. Every action proceeds in its own course.

Actore non probante, reus absolvitur. If the plaintiff does not prove his case, the defendant is acquitted.

Actori incumbit onus probandi. The burden of proof rests on the plaintiff.

Actor qui contra regulam quid adduxit non est audiendus. A pleader ought not to be heard who advances a proposition contrary to the rule (of law).

Actor sequitur forum rei. The plaintiff follows the forum of the defendant.

Actus curiae neminem gravabit. An act of the court will prejudice no one.

Actus Dei nemini facit injuriam. An act of God does wrong to no one. • That is, no one is responsible in damages for inevitable accidents.

Actus Dei nemini nocet. An act of God does wrong to no one.

Actus inceptus cujus perfectio pendet ex voluntate partium revocari potest; si autem pendet ex voluntate tertiae personae, vel ex contingenti, revocari non potest. An act already begun whose completion depends on the will of the parties may be recalled; but if it depends on consent of a third person or on a contingency, it cannot be recalled.

Actus judiciarius coram non judice irritus habetur; de ministeriali autem a quocunque provenit ratum esto. A judicial act before one not a judge (or without jurisdiction) is void; as to a ministerial act, from whomsoever it proceeds, let it be valid.

Actus legis nemini est damnosus. An act of the law prejudices no one.

Actus legis nemini facit injuriam. An act of the law does no one wrong.

Actus legitimi non recipiunt modum. Acts required by law admit of no qualification.

Actus me invito factus non est meus actus. An act done (by me) against my will is not my act.

Actus non facit reum nisi mens sit rea. An act does not make a person guilty unless the mind is guilty; an act does not make the doer criminal unless his mind is criminal. • Coke gives the maxim in a slightly different form: *Actus non reum facit nisi mens sit rea.* 3 Co. Inst. 54; 107.

Actus repugnans non potest in esse produci. A repugnant act cannot be brought into being (that is, cannot be made effectual).

Actus servi, in iis quibus operae ejus communiter adhibita est, actus domini habetur. The act of a servant in those

things in which he is usually employed is considered the act of his master.

Additio probat minoritatem. An addition proves inferiority. • That is, if it be said that a person has a fee tail, it is less than if the person has the fee.

Ad ea quae frequentius accidunt jura adaptantur. The laws are adapted to those cases that occur more frequently.

A digniori fieri debet denominatio et resolutio. The denomination and explanation ought to be derived from the more worthy.

Adjuvari quippe nos, non decipi, beneficio oportet. Surely we ought to be helped by a benefit, not be entrapped by it.

Ad officium justiciariorum spectat unicuique coram eis placitanti justitiam exhibere. It is the duty of justices to administer justice to everyone pleading before them.

Ad proximum antecedens fiat relatio, nisi impediatur sententia. A relative is to be referred to the nearest antecedent, unless prevented by the sense.

Ad quaestiones facti non respondent judices; ad quaestiones legis non respondent juratores. Judges do not answer questions of fact; jurors do not answer questions of law.

Ad quaestiones legis judices, et non juratores, respondent. Judges, and not jurors, answer questions of law.

Ad recte docendum oportet primum inquirere nomina, quia rerum cognitio a nominibus rerum dependet. In order rightly to comprehend a thing, it is necessary first to inquire into the names, for a right knowledge of things depends on their names.

Ad reges enim potestas omnium pertinet; ad singulos, proprietas. Kings have (political) power over all things, while individuals own them.

Adversus extraneos vitiosa possessio prodesse solet. Possession though faulty is usually sufficient against outsiders. • Prior possession is a good title of ownership against all who cannot show a better.

Ad vim majorem vel ad casus fortuitos non tenetur quis, nisi sua culpa intervenerit. No one is held to answer for the effects of superior force or accidents, unless his own fault has contributed.

Aedificare in tuo proprio solo non licet quod alteri noceat. It is not lawful to build on one's own land what may be injurious to another.

Aedificatum solo solo cedit. What is built on the land goes with the land.

Aedificia solo cedunt. Buildings go with the land.

Aequior est dispositio legis quam hominis. The law's disposition is more impartial than man's.

Aequitas agit in personam. Equity acts on the person.

Aequitas est correctio legis generaliter latae qua parte deficit. Equity is the correction of some part of the law where by reason of its generality it is defective.

Aequitas est perfecta quaedam ratio quae jus scriptum interpretatur et emendat; nulla scriptura comprehensa, sed sola ratione consistens. Equity is a sort of perfect reason that interprets and amends written law; comprehended in no written text, but consisting of reason alone.

Aequitas est quasi equalitas. Equity is as it were equality.

Aequitas ignorantiae opitulatur, oscitantiae non item. Equity assists ignorance but not complacency (or carelessness).

Aequitas non facit jus, sed juri auxiliatur. Equity does not create a right, but aids the right.

Aequitas nunquam contravenit leges. Equity never contravenes the laws.

Aequitas sequitur legem. Equity follows the law. [Cases: Equity ⇨62.]

Aequitas supervacua odit. Equity abhors superfluous things.

Aequum et bonum est lex legum. What is equitable and good is the law of laws.

Aestimatio praeteriti delicti ex postremo facto nunquam crescit. The assessment of a past offense never increases from a subsequent fact.

Affectio tua nomen imponit operi tuo. Your motive gives a name to your act.

Affectus punitur licet non sequatur effectus. The intention is punished even if the object is not achieved.

Affinis dicitur, cum duae cognationes, inter se divisae, per nuptias copulantur, et altera ad alterius fines accidit. Persons are said to be bound by affinity when two families, divided from one another, are united by marriage, and each approaches the borders of the other.

Affinis mei affinis non est mihi affinis. A person connected by marriage to someone connected by marriage to me is no connection of mine.

Affirmanti, non neganti, incumbit probatio. The proof is incumbent on the one who affirms, not on the one who denies.

Affirmantis est probare. The person who affirms must prove.

Agentes et consentientes pari poena plectentur. Acting and consenting parties will be liable to the same punishment.

A jure suo cadunt. They fall from their right. • That is, they lose their right.

A justitia (quasi a quodam fonte) omnia jura emanant. From justice, as from a fountain, all rights flow.

Aliena negotia exacto officio geruntur. The business of another is conducted with scrupulous attention.

Alienatio licet prohibeatur, consensu tamen omnium in quorum favorem prohibita est potest fieri; et quilibet potest renunciare juri pro se introducto. Even if

alienation is prohibited, it may yet take place by the consent of all in whose favor it is prohibited; it is in the power of anyone to renounce a right introduced for his own benefit.

Alienatio rei praefertur juri accrescendi. Alienation of property is favored over the right to accumulate.

A l'impossible nul n'est tenu. No one is bound to do what is impossible.

Aliquid conceditur ne injuria remaneat impunita quod alias non concederetur. Something is conceded that otherwise would not be conceded, so that a wrong not remain unpunished.

Aliquis non debet esse judex in propria causa, quia non potest esse judex et pars. A person ought not to be judge in his own cause, because he cannot act both as judge and party.

Aliud est celare, aliud tacere. To conceal is one thing, to be silent another.

Aliud est distinctio, aliud separatio. Distinction is one thing, separation another.

Aliud est possidere, aliud esse in possessione. It is one thing to possess, another to be in possession.

Aliud est vendere, aliud vendenti consentire. To sell is one thing, to give consent to the seller another.

Allegans contraria non est audiendus. A person making contradictory allegations is not to be heard.

Allegans suam turpitudinem non est audiendus. A person alleging his own wrong is not to be heard. [Cases: Contracts ☞138]

Allegari non debuit quod probatum non relevat. What is not relevant if proved ought not to have been alleged.

Allegatio contra factum non est admittenda. An allegation contrary to the deed (or fact) is not admissible.

Alterius circumventio alii non praebet actionem. A deception practiced on one person does not give a cause of action to another.

Alternativa petitio non est audienda. An alternative petition is not to be heard.

Ambigua responsio contra proferentem est accipienda. An ambiguous answer is to be taken against the party who offers it.

Ambiguis casibus semper praesumitur pro rege. In doubtful cases the presumption is always in favor of the king.

Ambiguitas contra stipulatorem est. A dubious expression is construed against the party using it. [Cases: Contracts ☞155.]

Ambiguitas verborum latens verificatione suppletur; nam quod ex facto oritur ambiguum verificatione facti tollitur. A latent ambiguity in wording is resolved by evidence; for whatever ambiguity arises from an extrinsic fact is resolved by extrinsic evidence.

Ambiguitas verborum patens nulla verificatione excluditur. A patent ambiguity is not removed by extrinsic evidence (or is never helped by averment).

Ambiguum placitum interpretari debet contra proferentem. An ambiguous plea ought to be interpreted against the party pleading it.

Ambulatoria est voluntas defuncti usque ad vitae supremum exitum. The will of a decedent is ambulatory (that is, can be altered) until the last moment of life.

Ancupia verborum sunt judice indigna. Quibbling over words is unworthy of a judge.

Angliae jura in omni casu libertati dant favorem. The laws of England are favorable in every case to liberty.

Animus ad se omne jus ducit. The mind brings every right unto itself. • Often explained: It is to the intention that all law applies. [Cases: Deeds ☞93.]

Animus hominis est anima scripti. The intention of the person is the soul of the instrument.

Anniculus trecentesimo sexagesimo-quinto die dicitur, incipiente plane non exacto die, quia annum civiliter non ad momenta temporum sed ad dies numeramur. We call a child a year old on the 365th day, when the day is clearly begun but not ended, because we calculate the civil year not by moments, but by days.

Annua nec debitum judex non separat ipse. Even the judge apportions neither annuities nor debt.

Annus est mora motus quo suum planeta pervolvat circulum. A year is the duration of the motion by which a planet revolves through its orbit.

Annus inceptus pro completo habetur. A year begun is held as completed. • Said to be of very limited application.

A non posse ad non esse sequitur argumentum necessarie negative, licet non affirmative. From impossibility to nonexistence the inference follows necessarily in the negative, though not in the affirmative.

Apices juris non sunt jura. Legal niceties are not law.

A piratis aut latronibus capti liberi permanent. Those captured by pirates or robbers remain free.

A piratis et latronibus capta dominium non mutant. Things captured by pirates or robbers do not change their ownership.

Applicatio est vita regulae. The application is the life of a rule.

Aqua cedit solo. The water goes with the ground. • A grant of the land includes the water on it.

Aqua currit et debet currere ut currere solebat. Water runs and ought to run as it is wont to run. [Cases: Waters and Water Courses ☞51.]

Arbitramentum aequum tribuit cuique suum. A just arbitration renders to each his own.

Arbitrium est judicium. An award is a judgment.

Arbor dum crescit; lignum dum crescere nequit. It is a tree while it is growing; wood when it cannot grow.

A rescriptis valet argumentum. An argument from rescripts (i.e., original writs in the register) is valid.

Argumentum ab auctoritate est fortissimum in lege. An argument drawn from authority is the strongest in law.

Argumentum ab impossibili plurimum valet in lege. An argument deduced from an impossibility has the greatest validity in law.

Argumentum ab inconvenienti plurimum valet in lege. An argument drawn from what is unsuitable (or improper) has the greatest validity in law. Co. Litt. 66a.

Argumentum a communiter accidentibus in jure frequens est. An argument from things commonly happening is frequent in law.

Argumentum a divisione est fortissimum in jure. An argument based on a subdivision of the subject is most powerful in law.

Argumentum a majori ad minus negative non valet; valet e converso. An argument from the greater to the lesser is of no force in the negative; conversely (in the affirmative) it is valid.

Argumentum a simili valet in lege. An argument by analogy (from a similar case) has force in law.

Arma in armatos sumere jura sinunt. The laws permit taking up arms against the armed.

Assignatus utitur jure auctoris. An assignee is clothed with the rights of the principal.

A summo remedio ad inferiorem actionem non habetur regressus neque auxilium. From the highest remedy to an inferior action there is no recourse or assistance.

Auctoritates philosophorum, medicorum et poetarum sunt in causis allegandae et tenendae. The authoritative opinions of philosophers, physicians, and poets are to be adduced and regarded in causes.

Audi alteram partem. Hear the other side. • No one should be condemned unheard.

A verbis legis non est recedendum. From the words of the law there is to be no departure.

Baratriam committit qui propter pecuniam justitiam baractat. A person is guilty of barratry who sells justice for money.

Bastardus non potest habere haeredem nisi de corpore suo legitime procreatum. A bastard cannot have an heir unless it be one lawfully begotten of his own body.

Bastardus nullius est filius, aut filius populi. A bastard is nobody's son, or the son of the people.

Bello pacta cedunt reipublicae. In war contracts give way to the state.

Benedicta est expositio quando res redimitur a destructione. Blessed is the exposition when a thing is saved from destruction.

Beneficium invito non datur. A privilege or benefit is not granted against a person's will.

Beneficium non datum nisi propter officium. A remuneration is not given, unless on account of a duty performed.

Beneficium non datur nisi officii causa. A benefice is not granted except on account or in consideration of duty.

Beneficium principis debet esse mansurum. The benefaction of a prince ought to be lasting.

Benigne faciendae sunt interpretationes chartarum, ut res magis valeat quam pereat; et quaelibet concessio fortissime contra donatorem interpretanda est. Deeds should be subject to liberal interpretation, so that the matter may take effect rather than fail; and every grant is to be taken most strongly against the grantor.

Benigne faciendae sunt interpretationes propter simplicitatem laicorum, ut res magis valeat quam pereat; et verba intentioni, non e contra, debent inservire. Constructions (of written instruments) are to be made liberally, for the simplicity of laymen, in order that the matter may have effect rather than fail (or become void); and words must be subject to the intention, not the intention to the words.

Benignior sententia in verbis generalibus seu dubiis est preferenda. The more favorable construction is to be preferred in general or doubtful expressions.

Benignius leges interpretandae sunt quo voluntas earum conservetur. Laws are to be more liberally interpreted so that their intent may be preserved.

Bigamus seu trigamus, etc., est qui diversis temporibus et successive duas seu tres uxores habuit. A bigamus or trigamus, etc., is one who has had two or more wives in succession, each at a different time. 3 Co. Inst. 88.

Bis dat qui cito dat. He pays twice who pays promptly.

Bis idem exigi bona fides non patitur, et in satisfactionibus non permittitur amplius fieri quam semel factum est. Good faith does not allow the same thing to be exacted twice; and in satisfying claims, it is not permitted that more should be done after satisfaction has once been rendered.w

Bonae fidei non congruit de apicibus juris disputare. It is incompatible with good faith to insist on the extreme subtleties of the law.

Bonae fidei possessor in id tantum quod ad se pervenerit tenetur. A possessor in good faith is liable only for that which he himself has obtained (literally, what has come to him). 2 Co. Inst. 285.

Bona fide possessor facit fructus consumptos suos. A possessor in good faith is entitled to the fruits (or produce) that he consumes.

Bona fides exigit ut quod convenit fiat. Good faith demands that what is agreed on shall be done.

Bona fides non patitur ut bis idem exigatur. Good faith does not allow payment to be exacted twice for the same thing.

Boni judicis est ampliare jurisdictionem (or justitiam). It is the role of a good judge to enlarge (or use liberally) his jurisdiction (or remedial authority). [Cases: Courts ⇨200.5.]

Boni judicis est ampliare justitiam. It is the role of a good judge to enlarge or extend justice.

Boni judicis est causas litium dirimere. It is the role of a good judge to remove causes of litigation.

Boni judicis est judicium sine dilatione mandare executioni. It is the role of a good judge to render judgment for execution without delay.

Boni judicis est lites dirimere, ne lis ex lite oriatur. It is the role of a good judge to dispose of litigations so that one suit should not grow from another. 5 Coke 31a.

Bonum defendentis ex integra causa; malum ex quolibet defectu. A good outcome for the defendant comes from a sound case; a bad outcome from some defect.

Bonum necessarium extra terminos necessitatis non est bonum. A thing good from necessity is not good beyond the limits of the necessity.

Bonus judex secundum aequum et bonum judicat, et aequitatem stricto juri praefert. A good judge decides according to fairness and the good and prefers equity to strict law.

Breve ita dicitur, quia rem de qua agitur, et intentionem petentis, paucis verbis breviter enarrat. A writ is called a "breve" because it briefly states, in few words, the matter in dispute, and the object of the party seeking relief.

Breve judiciale debet sequi suum originale, et accessorium suum principale. A judicial writ ought to follow its original, and an accessory its principal.

Breve judiciale non cadit pro defectu formae. A judicial writ does not fail for a defect of form.

Brevia, tam originalia quam judicialia, patiuntur anglica nomina. Writs, original as well as judicial, bear English names.

Cancellarii angliae dignitas est, ut secundus a rege in regno habetur. The dignity of the chancellor of England is (such) that he is considered second in the realm from the sovereign.

Carcer ad homines custodiendos, non ad puniendos, dari debet. Imprisonment should be imposed for keeping people in confinement, not for punishing them (further). Co. Litt. 260a.

Carcer non supplicii causa sed custodiae constitutus. A prison is established not for the sake of punishment, but for detention under guard.

Casus fortuitus non est sperandus, et nemo tenetur divinare. A chance event is not to be expected, and no one is bound to foresee it. [Cases: Carriers ⇨119.]

Casus fortuitus non est supponendus. A chance event is not to be presumed.

Casus omissus et oblivioni datus dispositioni communis juris relinquitur. A case omitted and forgotten (not provided for in statute) is left to the disposal of the common law.

Casus omissus pro omisso habendus est. A case omitted is to be held as (intentionally) omitted.

Catalla juste possessa amitti non possunt. Chattels rightly possessed cannot be lost.

Catalla reputantur inter minima in lege. Chattels are considered in law among things of least consequence.

Causa causae est causa causati. The cause of a cause is the cause of the effect.

Causa causantis causa est causati. The cause of the thing causing is the cause of the effect.

Causa ecclesiae publicis aequiparatur; et summa est ratio quae pro religione facit. The cause of the church is equal to public causes; and paramount is the reason that acts in favor of religion.

Causae dotis, vitae, libertatis, fisci sunt inter favorabilia in lege. Causes of dower, life, liberty, revenue are among the things favored in law.

Causae ecclesiae publicis causis aequiparantur. The causes of the church are equal to public causes.

Causa et origo est materia negotii. The cause and origin of a matter are the substance of it. • "The law regards the original act": as in the case of a man who attempts suicide in madness, but dies after regaining sanity; such is not suicide. 1 Coke 99.

Causa patet. The reason is obvious.

Causa proxima non remota spectatur. The immediate and not the remote cause is considered. [Cases: Damages ⇨17; Insurance ⇨2165 (1), 2230, 2590(1).]

Causa vaga et incerta non est causa rationabilis. A vague and uncertain cause is not a reasonable cause.

Caveat emptor. Let the buyer beware. [Cases: Sales ⇨41; Vendor and Purchaser ⇨37.]

Caveat emptor qui ignorare non debuit quod jus alienum emit. Let the buyer beware; for he ought not act in ignorance when he buys what another has right to. [Cases: Sales ⇨43, 269.]

Caveat venditor. Let the seller beware.

Caveat viator. Let the traveler beware.

Cavendum est a fragmentis. Beware of fragments.

Certa debet esse intentio et narratio et certum fundamentum et certa res quae deducitur in judicium. The design and narration ought to be certain, the foundation certain, and the matter certain that is brought into court to be tried.

Certum est quod certum reddi potest. That is certain which can be rendered certain. [Cases: Contracts ⇨9; Deeds ⇨38.]

Cessante causa, cessat effectus. The cause ceasing, the effect ceases.

Cessante ratione legis cessat et ipsa lex. When the reason of the law ceases, the law itself also ceases.

Cessante statu primitivo, cessat derivativus. When the original estate comes to an end, the derivative estate is also at an end.

Cessa regnare, si non vis judicare. Cease to reign if you wish not to adjudicate.

C'est le crime qui fait la honte, et non pas véchafaud. It is the crime that causes the shame, and not the scaffold.

Cestuy que doit inheriter al pére doit inheriter al fils. The person who should have inherited from the father should also inherit from the son.

Chacea est ad communem legem. A chase (or hunting ground) exists by common law.

Charta de non ente non valet. A deed of a thing not in being is not valid.

Charta non est nisi vestimentum donationis. A deed is nothing else than the vestment (or clothing) of a gift.

Chartarum super fidem, mortuis testibus, ad patriam de necessitudine recurrendum est. (A dispute) regarding the veracity of deeds, with the witnesses dead, must necessarily be referred to the country (or jury).

Chirographum apud debitorem repertum praesumitur solutum. When the evidence (or voucher) is found in the debtor's possession, the debt is presumed to be paid.

Chirographum non extans praesumitur solutum. When the evidence of a debt is not in existence, it is presumed to have been discharged.

Circuitus est evitandus. Circuity (roundabout proceeding) is to be avoided.

Circuitus est evitandus; et boni judicis est lites dirimere, ne lis ex lite oriatur. Circuity is to be avoided; and it is the role of a good judge to determine (or dispose of) litigations so that one lawsuit may not arise from another.

Citatio est de juri naturali. A summons is by natural right.

Citationes non concedantur priusquam exprimatur super qua re fieri debet citatio. Citations should not be granted before it is stated about what matter the citation is to be made.

Clam delinquens magis punitur quam palam. A person who does wrong secretly is punished more severely than one who acts openly. 8 Coke 127.

Clam factum id videtur esse, quod quisque, quum controversiam haberet, habiturumve se putaret, fecit. That is considered done secretly which someone did when he had a legal dispute or thought he would have one.

Clausulae inconsuetae semper inducunt suspicionem. Unusual clauses always arouse suspicion.

Clausula generalis de residuo non ea complectitur quae non ejusdem sint generis cum iis quae specialim dicta fuerant. A general clause of remainder does not embrace those things that are not of the same kind as those that had been specially mentioned.

Clausula generalis non refertur ad expressa. A general clause does not refer to things expressly mentioned.

Clausula quae abrogationem excludit ab initio non valet. A clause that precludes abrogation is invalid from the beginning.

Clausula vel dispositio inutilis per praesumptionem remotam vel causam ex post facto non fulcitur. A useless clause or disposition is not supported by a remote presumption or by a cause arising afterwards. • A useless clause or disposition is one that expresses no more than the law by intendment would have supplied; it is not supported by a remote presumption or foreign intendment of some purpose, in regard whereof it might be material, or by a cause arising afterwards that may induce an operation of those idle words.

Clerici non ponentur in officiis. The clergy should not be placed in temporal offices.

Cogitationis poenam nemo meretur. No one deserves punishment for his thoughts.

Cogitationis poenam nemo patitur. No one is punished for his thoughts.

Cognomen majorum est ex sanguine tractum, hoc intrinsecum est; agnomen extrinsecum ab eventu. The cognomen is derived from the blood of ancestors and is intrinsic; an agnomen (or honorary title) arises from an event, and is extrinsic.

Cohaeredes sunt quasi unum corpus aut una persona censentur, propter unitatem juris quod habent. Coheirs are deemed as one body, or one person, on account of the unity of right that they possess.

Cohaeredes una persona censentur, propter unitatem juris quod habent. Coheirs are deemed as one person, on account of the unity of right that they possess.

Collegium est societas plurium corporum simul habitantium. A college is a society of several people dwelling together.

Commenda est facultas recipiendi et retinendi beneficium contra jus positivum a suprema potestate. A commendam is the power of receiving and retaining a benefice contrary to positive law, by supreme authority.

Commercium jure gentium commune esse debet et non in monopolium et privatum paucorum quaestum convertendum. Commerce, by the law of nations, ought to be common and not converted into a monopoly and the private gain of a few.

Commodum ex injuria sua non habere debet. (The wrongdoer) should not derive any benefit from his own wrong.

Communis error facit jus. A common error (one often repeated) makes law.

Communis error non facit jus. A common error does not make law. • This maxim expresses a view directly contradictory to the view of the immediately preceding maxim. Both are attested in legal literature.

Compendia sunt dispendia. Abridgments are hindrances. Shortcuts or time-saving measures are often a loss. • Coke continues, *Melius est petere fontes.* Co. Litt. 305b.

Compromissarii sunt judices. Arbitrators are judges.

Compromissum ad similitudinem judiciorum redigitur. A compromise is brought into affinity with judgments.

Conatus quid sit non definitur in jure. What an attempt is, is not defined in law.

Concessio per regem fieri debet de certitudine. A grant by the king ought to be made of a certainty. • Coke explains, "If the king grants to me that I shall not be sheriff, without showing of what county, it is void for uncertainty." 9 Coke 46b.

Concessio versus concedentem latam interpretationem habere debet. A grant ought to have a liberal interpretation against the grantor.

Concordare leges legibus est optimus interpretandi modus. To make laws agree with laws is the best mode of interpreting them.

Concordia parvae res crescunt et opulentia lites. Small means increase by concord and litigations by opulence.

Conditio beneficialis, quae statum construit, benigne secundum verborum intentionem est interpretanda; odiosa autem quae statum destruit stricte, secundum verborum proprietatem, accipienda. A beneficial condition that creates an estate ought to be construed favorably, according to the intention of the words; but a condition that destroys an estate is odious and ought to be construed according to the strict sense of the words.

Conditio dicitur cum quid in casum incertum qui potest tendere ad esse aut non esse confertur. It is called a condition when something is given for an uncertain event that may or may not come into existence.

Conditio illicita habetur pro non adjecta. An unlawful condition is considered unconnected.

Conditiones quaelibet odiosae; maxime autem contra matrimonium et commercium. Any conditions are odious, but especially those against matrimony and commerce.

Conditio praecedens adimpleri debet prius quam sequatur effectus. A condition precedent ought to be fulfilled before the effect can follow.

Confessio facta in judicio omni probatione major est. A confession made in court is of greater effect than any proof.

Confessus in judicio pro judicato habetur et quodammodo sua sententia damnatur. A person who has confessed his guilt when arraigned is considered to have been tried and is, as it were, condemned by his own sentence.

Confirmare est id quod prius infirmum fuit simul firmare. To confirm is to make firm at once what before was not firm.

Confirmare nemo potest priusquam jus ei acciderit. No one can confirm before the right accrues to him.

Confirmatio est nulla ubi donum praecedens est invalidum. A confirmation is null where the preceding gift is invalid.

Confirmatio omnes supplet defectus, licet id quod actum est ab initio non valuit. Confirmation supplies all defects, even if that which has been done was not valid at the beginning.

Confirmat usum qui tollit abusum. One confirms a use who removes an abuse.

Conjunctio mariti et feminae est de jure naturae. The union of husband and wife derives from the law of nature.

Conscientia dicitur a con et scio, quasi scire cum Deo. Conscience is so called from con and scio, to know, as it were, with God.

Consecratio est periodus electionis; electio est praeambula consecrationis. Consecration is the termination of election; election is the preamble of consecration.

Consensus est voluntas plurium ad quos res pertinet, simul juncta. Consent is the conjoint will of several people to whom the thing belongs.

Consensus facit legem. Consent makes law. • A contract constitutes law between the parties agreeing to be bound by it.

Consensus, non concubitus, facit matrimonium. Consent, not coition (or sharing a bed), constitutes marriage.

Consensus, non concubitus, facit nuptias vel matrimonium, et consentire non possunt ante annos nubiles. Consent, and not coition (or sharing a bed), constitutes nuptials or marriage, and persons cannot consent before marriageable years.

Consensus tollit errorem. Consent removes an error. • A person cannot object to something he has consented to. [Cases: New Trial ☞10.]

Consensus voluntas multorum ad quos res pertinet simul juncta. Consent is the united will of several interested in one subject matter.

Consentientes et agentes pari poena plectentur. Those consenting and those perpetrating will receive the same punishment.

Consentire matrimonio non possunt infra (ante) annos nubiles. Persons cannot consent to marriage before marriageable years.

Consequentiae non est consequentia. The consequence of a consequence does not exist.

Consilia multorum quaeruntur (requiruntur) in magnis. The advice of many is sought in great affairs.

Consortio malorum me quoque malum facit. The company of wicked men makes me also wicked.

Constitutiones tempore posteriores potiores sunt his quae ipsas praecesserunt. Later laws prevail over those that preceded them.

Constitutum esse eam domum unicuique nostrum debere existimari, ubi quisque sedes et tabulas haberet, suarumque rerum constitutionem fecisset. It is a settled principle that what ought to be considered the home of each of us is where he has his dwelling, keeps his records, and has established his business.

Constructio legis non facit injuriam. The construction of the law does not work an injury.

Consuetudo contra rationem introducta potius usurpatio quam consuetudo appellari debet. A custom introduced against reason ought rather to be called a usurpation than a custom.

Consuetudo debet esse certa. Custom ought to be fixed.

Consuetudo debet esse certa, nam incerta pro nulla (nullius) habetur. Custom ought to be fixed, for if variable it is held as null (or of no account).

Consuetudo debet esse certa, nam incerta pro nullis habentur. A custom should be certain, for uncertain things are held as nothing. • This maxim is sometimes written *Consuetudo debet esse certa, nam incerta pro nulla (nullius) habetur* (meaning "custom should be certain, for if uncertain it is held as nothing").

Consuetudo est altera lex. Custom is another law.

Consuetudo est optimus interpres legum. Custom is the best expounder of the law.

Consuetudo et communis assuetudo vincit legem non scriptam, si sit specialis; et interpretatur legem scriptam, si lex sit generalis. Custom and common usage overcome the unwritten law if it is special; and interpret the written law if the law is general.

Consuetudo ex certa causa rationabili usitata privat communem legem. Custom observed by reason of a certain and reasonable cause supersedes the common law.

Consuetudo, licet sit magnae auctoritatis, nunquam tamen praejudicat manifestae veritati. A custom, even if it is of great authority, is never prejudicial to plain truth.

Consuetudo loci observanda est. The custom of the place is to be observed.

Consuetudo manerii et loci observanda est. The custom of a manor and place is to be observed.

Consuetudo neque injuria oriri neque tolli protest. A custom can neither arise nor be abolished by a wrong.

Consuetudo non habitur (trahitur) in consequentiam. Custom is not held as (or drawn into) a precedent.

Consuetudo praescripta et legitima vincit legem. A prescriptive and lawful custom overrides the law.

Consuetudo regni Angliae est lex Angliae. The custom of the kingdom of England is the law of England.

Consuetudo semel reprobata non potest amplius induci. A custom once disallowed cannot again be introduced.

Consuetudo tollit communem legem. Custom takes away the common law.

Consuetudo vincit communem legem. Custom overrules common law.

Consuetudo volentes ducit, lex nolentes trahit. Custom leads the willing; law drags the unwilling.

Contemporanea expositio est optima et fortissima in lege. A contemporaneous exposition is the best and most powerful in the law. • A statute is best explained by following the construction put on it by judges who lived at the time it was made, or soon after.

Contestatio litis eget terminos contradictarios. An issue requires terms of contradiction. • That is, there can be no issue without an affirmative on one side and a negative on the other).

Contractus est quasi actus contra actum. A contract is, as it were, act against act.

Contractus ex turpi causa vel contra bonos mores nullus est. A contract founded on a wrongful consideration or against good morals is null.

Contractus legem ex conventione accipiunt. Contracts receive legal validity from the agreement of the parties.

Contra legem facit qui id facit quod lex prohibit; in fraudem vero qui, salvis verbis legis, sententiam ejus circumvenit. A person acts contrary to the law who does what the law prohibits; a person acts in fraud of the law who, without violating the wording, circumvents the intention. Dig. 1.3.29.

Contra negantem principia non est disputandum. There is no disputing against one who denies first principles.

Contra non valentem agere nulla currit praescriptio. No prescription runs against a person unable to act (or bring an action). [Cases: Limitation of Actions ⇨ 43, 70, 95.]

Contrariorum contraria est ratio. The reason of contrary things is contrary.

Contra veritatem lex nunquam aliquid permittit. The law never allows anything contrary to truth.

Contrectatio rei alienae animo furandi est furtum. Touching or taking another's property with an intention of stealing is theft.

Conventio omnis intelligitur clausula rebus sic stantibus. Every contract is to be understood as being based on the assumption of things remaining as they were (that is, at the time of its conclusion).

Conventio privatorum non potest publico juri derogare. An agreement of private persons cannot derogate from public right. • That is, it cannot prevent the application of general rules of law, or render valid any contravention of law.

Conventio vincit legem. The express agreement of the parties overrides the law.

Convicia si irascaris tua divulgas; spreta exolescunt. If you are moved to anger by insults, you spread them abroad; if despised, they die out.

Copulatio verborum indicat acceptationem in eodem sensu. Coupling words together shows that they ought to be understood in the same sense.

Corporalis injuria non recipit aestimationem de futuro. A personal injury does not receive satisfaction from proceedings yet in the future.

Corpus humanum non recipit aestimationem. The person of a human being can have no price put on it.

Creditorum appellatione non hi tantum accipiuntur qui pecuniam crediderunt, sed omnes quibus ex qualibet causa debetur. Under the name of creditors are included not only those who have lent money, but also all to whom a debt is owed from any cause.

Crescente malitia crescere debet et poena. With increase of malice, punishment ought also to increase.

Crimen falsi dicitur, cum quis illicitus, cui non fuerit ad hoea data auctoritas, de sigillo regis rapto vel invento brevia cartasve consignaverit. It is called "crimen falsi" when anyone to whom power has not been given for such purposes has illicitly signed writs or grants with the king's seal, either stolen or found.

Crimen laesae majestatis omnia alia crimina excedit quoad poenam. The crime of treason exceeds all other crimes in its punishment.

Crimen omnia ex se nata vitiat. Crime taints everything that springs from it.

Crimen trahit personam. The crime brings with it the person. • That is, the commission of a crime gives the courts of the place where it is committed jurisdiction over the person of the offender.

Crimina morte extinguuntur. Crimes are extinguished by death.

Cuicunque aliquis quid concedit concedere videtur et id sine quo res ipsa esse non potuit. One who grants something to another grants also that without which the thing granted could not exist. • This maxim is also sometimes written *Cuicunque aliquid conceditur, conceditur etiam et id sine quo res ipsa non esse potuit* (meaning "To whomever anything is granted, that also is granted without which the thing itself could not exist").

Cui jurisdictio data est, ea quoque concessa esse videntur sine quibus jurisdictio explicari non potest. To whom jurisdiction is given, those things also are considered to be granted without which the jurisdiction cannot be exercised. • That is, the grant of jurisdiction implies the grant of all powers necessary to its exercise.

Cui jus est donandi eidem et vendendi et concedendi jus est. A person who has a right to give has also a right to sell and to grant.

Cuilibet in arte sua perito est credendum. Credence should be given to a person skilled in his art (that is, when speaking of matters connected with that art).

Cuilibet licet juri pro se introducto renunciare. Anyone may waive or renounce the benefit of a principle or rule of law that exists only for his protection.

Cui licet quod majus non debet quod minus est non licere. A person who has authority to do the more important act ought not to be debarred from doing what is of less importance.

Cui pater est populus non habet ille patrem. That person to whom the people is father has not a father.

Cuique in sua arte credendum est. Everyone is to be believed in his own area of expertise. [Cases: Evidence ☞508.]

Cujus est commodum, ejus debet esse incommodum. The person who has the advantage should also have the disadvantage.

Cujus est commodum, ejus est onus. The person who has the benefit has also the burden.

Cujus est dare, ejus est disponere. The person who has a right to give has the right of disposition. • That is, the bestower of a gift has a right to regulate its disposal.

Cujus est divisio, alterius est electio. When one of two parties has the division (of an estate), the other has the choice (of the shares). • In partition between coparceners, where the division is made by the eldest, the rule in English law is that she shall choose her share last.

Cujus est dominium, ejus est periculum. The risk lies on the owner.

Cujus est instituere, ejus est abrogare. Whoever can institute can also abrogate.

Cujus est solum, ejus est usque ad coelum. The person who owns the soil owns up to the sky. • One who owns the surface of the ground owns, or has an exclusive right to everything that is on or above it to an indefinite height. [Cases: Property ☞7.]

Cujus est solum, ejus est usque ad coelum et ad inferos. Whoever owns the soil owns everything up to the sky and down to the depths. [Cases: Mines and Minerals ☞47; Property ☞7; Waters and Water Courses ☞101.]

Cujus juris (i.e., jurisdictionis) est principale, ejusdem juris erit accessorium. An accessory matter is subject to the same jurisdiction as its principal.

Cujus per errorem dati repetitio est, ejus consulto dati donatio est. A thing given by mistake can be recovered; if given purposely, it is a gift. Dig. 50.17.53.

Cujusque rei potissima pars est principium. The principal part of everything is the beginning.

Culpa caret qui scit sed prohibere non potest. A person is free of blame who knows but cannot prevent.

Culpae poena par esto. Let the punishment be equal to the crime.

Culpa est immiscere se rei ad se non pertinenti. It is a fault for anyone to meddle in a matter not pertaining to him.

Culpa lata dolo aequiparatur. Gross negligence is equivalent to fraud.

Culpa tenet (teneat) suos auctores. A fault binds (or should bind) its own authors.

Cum actio fuerit mere criminalis, institui poterit ab initio criminaliter vel civiliter. When an action is purely criminal, it can be instituted from the beginning either criminally or civilly.

Cum adsunt testimonia rerum, quid opus est verbis? When the proofs of facts are present, what need is there of words?

Cum aliquis renunciaverit societati, solvitur societas. When any partner has renounced the partnership, the partnership is dissolved.

Cum confitente sponte mitius est agendum. One making a voluntary confession is to be dealt with more leniently.

Cum de lucro duorum quaeritur melior est causa possidentis. When there is a question of gain between two people, the cause of the possessor is the better.

Cum duo inter se pugnantia reperiuntur in testamento, ultimum ratum est. When two clauses in a will are found to be contradictory, the last in order prevails.

Cum duo jura concurrunt in una persona, aequum est ac si essent in duobus. When two rights meet in one person, it is the same as if they were in two persons.

Cum in corpore dissentitur, apparet nullam esse acceptionem. When there is a disagreement in the substance, there is clearly no acceptance.

Cum in testamento ambigue aut etiam perperam scriptum, est benigne interpretari, et secundum id quod credible est cogitatum credendum est. When an ambiguous or even an erroneous expression occurs in a will, it should be construed liberally, and in accordance with the testator's probable meaning.

Cum legitimae nuptiae factae sunt, patrem liberi sequuntur. Children born under a legitimate marriage follow the condition of the father.

Cum par delictum est duorum, semper oneratur petitor, et melior habetur possessoris causa. Where two parties are equally at fault, the claimant always is at the disadvantage, and the party in possession has the better cause.

Cum quod ago non valet ut ago, valeat quantum valere potest. When that which I do is of no effect as I do it, let it have as much effect as it can (that is, in some other way).

Curatus non habet titulum. A curate has no title (to tithes).

Curia cancellariae officina justitiae. The court of chancery is the workshop of justice.

Curia parliamenti suis propriis legibus subsistit. The court of parliament is governed by its own laws.

Curiosa et captiosa interpretatio in lege reprobatur. An overnice and captious interpretation in the law is rejected.

Currit tempus contra desides et sui juris contemptores. Time runs against the indolent and those who are not mindful of their rights.

Cursus curiae est lex curiae. The practice of the court is the law of the court.

Custome serra prise stricte. Custom shall be construed strictly.

Custos statum haeredis in custodia existentis meliorem, non deteriorem, facere potest. A guardian can make the estate of an heir living under his guardianship better, not worse.

Damnum sentit dominus. The damage falls on the owner.

Damnum sine injuria esse potest. There can be damage without any act of injustice.

Dans et retinens nihil dat. One who gives and yet retains (possession) does not give effectually (literally, gives nothing).

Da tua dum tua sunt, post mortem tunc tua non sunt. Give the things which are yours while they are yours; after death they are not yours.

Datur digniori. It is given to the more worthy.

Debet esse finis litium. There ought to be a limit to litigation.

Debet quis juri subjacere ubi delinquit. Any offender should be subject to the law of the place where he offends.

Debet sua cuique domus esse perfugium tutissimum. Every person's house should be his safest refuge.

Debile fundamentum fallit opus. A weak foundation frustrates the work (built on it).

Debita sequuntur personam debitoris. Debts follow the person of the debtor. • That is, debts belong to no locality and may be collected wherever the debtor can be found.

Debitor non praesumitur donare. A debtor is not presumed to make a gift.

Debitorum pactionibus creditorum petitio nec tolli nec minui potest. The creditors' suit can be neither quashed nor diminished by the contracts of their debtors.

Debitum et contractus sunt nullius loci. Debt and contract belong to no particular place.

Deceptis, non decipientibus, jura subveniunt. The laws help persons who have been deceived, not those deceiving.

Decet (tamen) principem servare leges quibus ipse servatus est. It is proper (nonetheless) for the prince to preserve the laws by which he himself is preserved.

Decimae de decimatis solvi non debent. Tithes ought not to be paid from that which is given for tithes.

Decimae de jure divino et canonica institutione pertinent ad personam. Tithes belong to the parson by divine right and canonical institution.

Decimae non debent solvi ubi non est annua renovatio, et ex annuatis renovantibus simul semel. Tithes ought not to be paid where there is not an annual renovation, and from annual renovations once only.

Decipi quam fallere est tutius. It is safer to be deceived than to deceive.

Decreta conciliorum non ligant reges nostros. The decrees of councils do not bind our kings.

De facto jus oritur. From fact springs law; law arises from fact.

Deficiente uno sanguine, non potest esse haeres. For lack of one blood, he cannot be heir. • Coke explains, "The blood of the father and of the mother are but one inheritable blood, and both are necessary to procreation of an heir." 3 Coke 41.

De fide et officio judicis non recipitur quaestio, sed de scientia sive sit error juris sive facti. The good faith and honesty of purpose of a judge cannot be questioned, but his knowledge may be impugned if there is an error either of law or of fact.

De jure decimarum, originem ducens de jure patronatus, tunc cognitio spectat at legem civilem, i.e., communem. With regard to the right of tithes, deducing its origin from the right of the patron, then the cognizance of them belongs to the civil law, i.e., common law.

De jure judices, de facto juratores, respondent. The judges answer regarding the law, the jury on the facts.

Delegata potestas non potest delegari. A delegated authority cannot be delegated.

Delegatus non potest delegare. A delegate (or deputy) cannot appoint another. [Cases: Officers and Public Employees ☞110; Principal and Agent ☞54.]

Deliberandum est diu quod statuendum est semel. What is to be resolved once and for all should be long deliberated on.

Delicatus debitor est odiosus in lege. A luxurious debtor is hateful in the law.

Delinquens per iram provocatus puniri debet mitius. A wrongdoer provoked by anger ought to be punished less severely. 3 Co. Inst. 55.

De majori et minori non variant jura. Concerning greater and lesser, rights do not vary (or justice does vary).

De minimis non curat lex. The law does not notice or concern itself with trifling matters. [Cases: Common Law ☞9.]

De molendino de novo erecto non jacet prohibitio. A prohibition does not lie against a newly erected mill.

De morte hominis nulla est cunctatio longa. When the death of a human being is concerned, no delay is long.

Denominatio fieri debet a dignioribus. Denomination should be made from the more worthy.

De nomine proprio non est curandum cum in substantia non erretur; quia nomina mutabilia sunt, res autem immobiles. As to the proper name, it is not to be regarded when there is no error in substance; because names are changeable, but things are immutable.

De non apparentibus et non existentibus eadem est ratio. The rule is the same respecting things that do not appear and things that do not exist.

De nullo quod est sua natura indivisibile et divisionem non patitur nullam partem habebit vidua, sed satisfaciat ei ad valentiam. A widow shall have no part from that which in its own nature is indivisible and is not susceptible of division; but let (the heir) satisfy her with an equivalent.

De nullo tenemento, quod tenetur ad terminum, fit homagii; fit tamen inde fidelitatis sacramentum. For no tenement that is held for a term is there the oath of homage, but there is the oath of fealty.

Derivativa potestas non potest esse major primitiva. Power that is derived cannot be greater than that from which it is derived.

Derogatur legi cum pars detrahitur; abrogatur legi, cum prorsus tollitur. There is derogation from a law when part of it is taken away; there is abrogation of a law when it is abolished entirely.

Designatio justiciariorum est a rege; jurisdictio vero ordinaria a lege. The appointment of justices is by the king, but their ordinary jurisdiction is by the law.

Designatio unius est exclusio alterius, et expressum facit cessare tacitum. The designation of one is the exclusion of the other; and what is expressed prevails over what is implied.

De similibus ad similia eadem ratione procedendum est. From like things to like things we are to proceed by the same rule. • That is, we are allowed to argue from the analogy of cases.

De similibus idem est judicium. Concerning like things the judgment is the same.

Destruere, id quod prius structum, et factum fuit, penitus evertere et diruere. To destroy that which was previously built and made is utterly to overturn and wreck it; to destroy is to overturn and demolish what was built and done before. • This is a maxim cited against any type of revolutionary action.

Deus solus haeredem facere potest, non homo. God alone, and not man, can make an heir.

Dies dominicus non est juridicus. Sunday is not a judicial day. [Cases: Sunday ☞1, 30.]

Dies inceptus pro completo habetur. A day begun is held as complete.

Dies incertus pro conditione habetur. An uncertain day is considered as a condition.

Dilationes in lege sunt odiosae. Delays in law are odious.

Discretio est discernere per legem quid sit justum. Discretion is to discern through law what is just.

Discretio est scire per legem quid sit justum. Discretion consists in knowing what is just in law.

Disparata non debent jungi. Dissimilar things ought not to be joined.

Dispensatio est mali prohibiti provida relaxatio, utilitate seu necessitate pensata; et est de jure domino regi concessa, propter impossibilitatem praevidendi de omnibus particularibus. A dispensation is the provident relaxation of a malum prohibitum weighed from utility or necessity; and it is conceded by law to the king on account of the impossibility of foreknowledge concerning all particulars.

Dispensatio est vulnus, quod vulnerat jus commune. A dispensation is a wound, because it wounds a common right.

Disseisinam satis facit qui uti non permittit possessorem, vel minus commode, licet omnino non expellat. A person commits disseisin if he does not permit the possessor to enjoy, or makes the possessor's enjoyment less useful, even if the disseisor does not expel the possessor altogether. Co. Litt. 331.

Dissimilium dissimilis est ratio. Of dissimilars the rule is dissimilar.

Dissimulatione tollitur injuria. Injury is wiped out by reconciliation.

Distinguenda sunt tempora; aliud est facere, aliud perficere. Times must be distinguished; it is one thing to do a thing, another to complete it.

Distinguenda sunt tempora; distingue tempora, et concordabis leges. Times are to be distinguished; distinguish times, and you will harmonize laws.

Divinatio, non interpretatio, est quae omnino recedit a litera. It is a guess, not interpretation, that altogether departs from the letter.

Divortium dicitur a divertendo, quia vir divertitur ab uxore. Divorce is so called from divertendo, because a man is diverted from his wife.

Dolo facit qui petit quod redditurus est. A person acts with deceit who seeks what he will have to return.

Dolo malo pactum se non servabit. A pact made with evil intent will not be upheld. • This maxim is sometimes written *Dolo malo pactum se non servaturum* (meaning "an agreement induced by fraud will not stand").

Dolosus versatur in generalibus. A deceiver deals in generalities.

Dolum ex indiciis perspicuis probari convenit. Fraud should be proved by clear proofs.

Dolus auctoris non nocet successori. The fraud of a predecessor does not prejudice the successor.

Dolus circuitu non purgatur. Fraud is not purged by circuity.

Dolus est machinatio, cum aliud dissimulat aliud agit. Deceit is an artifice, since it pretends one thing and does another.

Dolus et fraus nemini patrocinentur (patrocinari debent). Deceit and fraud should excuse or benefit no one (they themselves require some excuse).

Dolus et fraus una in parte sanari debent. Deceit and fraud should always be remedied.

Dolus latet in generalibus. Fraud lurks in generalities. • This maxim is also sometimes written *Dolus versatur in generalibus* (meaning "fraud deals in generalities").

Dominium non potest esse in pendenti. The right of property cannot be in abeyance.

Dominus capitalis loco haeredis habetur, quoties per defectum vel delictum extinguitur sanguis sui tenentis. The supreme lord takes the place of the heir, as often as the blood of the tenant is extinct through deficiency or crime.

Dominus non maritabit pupillum nisi semel. A lord cannot give a ward in marriage but once.

Dominus rex nullum habere potest parem, multo minus superiorem. The king cannot have an equal, much less a superior.

Domus sua cuique est tutissimum refugium. Everyone's house is his safest refuge.

Domus tutissimum cuique refugium atque receptaculum sit. Everyone's house should be his safest refuge and shelter.

Dona clandestina sunt semper suspiciosa. Clandestine gifts are always suspicious.

Donari videtur quod nullo jure cogente conceditur. That is considered to be given which is granted when no law compels.

Donatio non praesumitur. A gift is not presumed.

Donationum alia perfecta, alia incepta et non perfecta; ut si donatio lecta fuit et concessa, ac traditio nondum fuerit subsecuta. Some gifts are perfect, others incipient and not perfect; for example, if a gift were read and agreed to, but delivery had not then followed.

Donatio perficitur possessione accipientis. A gift is rendered complete by the possession of the receiver.

Donatio principis intelligitur sine praejudicio tertii. A gift of the prince is understood without prejudice to a third party.

Donator nunquam desinit possidere antequam donatarius incipiat possidere. A donor never ceases to have possession until the donee obtains possession.

Dormiunt aliquando leges, nunquam moriuntur. Laws sometimes sleep but never die.

Dos de dote peti non debet. Dower ought not to be sought from dower.

Dos rationabilis vel legitima est cujuslibet mulieris de quocunque tenemento tertia pars omnium terrarum et tenementorum, quae vir suus tenuit in dominio suo ut de feodo, etc. Reasonable or legitimate dower belongs to every woman of a third part of all the lands and tenements of which her husband was seised in his demesne, as of fee, etc.

Doti lex favet; praemium pudoris est, ideo parcatur. The law favors dower; it is the reward of chastity; therefore let it be preserved.

Do ut des. I give that you may give.

Do ut facias. I give that you may do.

Droit ne done pluis que soit demaunde. The law gives no more than is demanded.

Droit ne poet pas morier. Right cannot die.

Duas uxores eodem tempore habere non licet. It is not lawful to have two wives at one time.

Duo non possunt in solido unam rem possidere. Two cannot possess one thing each in entirety.

Duorum in solidum dominium vel possessio esse non potest. Ownership or possession in entirety cannot belong to two persons.

Duo sunt instrumenta ad omnes res aut confirmandas aut impugnandas, ratio et auctoritas. There are two instruments for confirming or impugning everything: reason and authority.

Duplicationem possibilitatis lex non patitur. The law does not allow a duplication of possibility.

Eadem causa diversis rationibus coram judicibus ecclesiasticis et secularibus ventilatur. The same cause is argued on different principles before ecclesiastical and secular judges.

Eadem est ratio, eadem est lex. (If) the reason is the same, the law is the same.

Eadem mens praesumitur regis quae est juris et quae esse debet, praesertim in dubiis. The mind of the sovereign is presumed to be the same as that of the law, and the same as what it ought to be, especially in ambiguous matters.

Ea est accipienda interpretatio quae vitio caret. That interpretation is to be received that is free from fault.

Ea quae commendandi causa in venditionibus dicuntur, si palam appareant venditorem non obligant. Those things that, by way of commendation, are stated at sales, if they are openly apparent, do not bind the seller.

Ea quae dari impossibilia sunt, vel quae in rerum natura non sunt, pro non adjectis habentur. Those things that cannot be given, or that are not in the nature of things, are considered as not added (as no part of the agreement).

Ea quae in curia nostra rite acta sunt debitae executioni demandari debent. Those things that are properly transacted in our court ought to be committed to a due execution.

Ea quae raro accidunt non temere in agendis negotiis computantur. Those things that rarely happen are not to be taken into account in the transaction of business, without sufficient reason.

Ecclesia ecclesiae decima solvere non debet. A church should not pay tithes to a church.

Ecclesia est domus mansionalis omnipotentis dei. The church is the mansion house of the omnipotent God.

Ecclesia est infra aetatem et in custodia domini regis, qui tenetur jura et haereditates ejusdem manu tenere et defendere. The church is underage and in the custody of the king, who is bound to uphold and defend its rights and inheritances.

Ecclesia fungitur vice minoris; meliorem conditionem suam facere potest, deteriorem nequaquam. The church enjoys the privilege of a minor; it can make its own condition better but not worse.

Ecclesiae magis favendum est quam personae. The church is to be more favored than the parson (or an individual).

Ecclesia meliorari non deteriorari potest. A church can (lawfully) be improved but not made worse.

Ecclesia non moritur. The church does not die.

Effectus sequitur causam. The effect follows the cause.

Ei incumbit probatio qui dicit, non qui negat. The burden of the proof rests on the person who affirms, not the one who denies. [Cases: Evidence ☞92.]

Ei nihil turpe, cui nihil satis. Nothing is immoral to the person to whom nothing is enough.

Eisdem modis dissolvitur obligatio quae nascitur ex contractu, vel quasi, quibus contrahitur. An obligation that arises from a contract or quasi contract is dissolved in the same ways in which it is contracted.

Ejus est interpretari cujus est condere. It is that person's to interpret whose it is to enact.

Ejus est nolle, qui potest velle. A person who can will (exercise volition) has a right to refuse to will (withhold consent).

Ejus est non nolle qui potest velle. A person may consent tacitly who can consent expressly.

Ejus est periculum cujus est dominium aut commodum. He who has the dominion or advantage has the risk.

Ejus nulla culpa est cui parere necesse sit. No guilt attaches to a person who is compelled to obey.

Electa una via, non datur recursus ad alteram. When one way has been chosen, no recourse is given to another.

Electio est interna libera et spontanea separatio unius rei ab alia, sine compulsione, consistens in animo et voluntate. Choice is an internal, free, and spontaneous

separation of one thing from another, without compulsion, consisting in intention and will.

Electiones fiant rite et libere sine interruptione aliqua. Let choices be made in due form and freely, without any interruption.

Electio semel facta, et placitum testatum, non patitur regressum. A choice once made, and a plea witnessed (or intent shown), allows no going back.

Electio semel facta non patitur regressum. An election once made cannot be recalled.

Emptor emit quam minimo potest; venditor vendit quam maximo potest. The buyer buys for as little as possible; the vendor sells for as much as possible.

En eschange il covient que les estates soient egales. In an exchange it is desirable that the estates be equal.

Enitia pars semper praeferenda est propter privilegium aetatis. The part of the elder sister is always to be preferred on account of the privilege of age.

Enumeratio infirmat regulam in casibus non enumeratis. Enumeration disaffirms the rule in cases not enumerated.

Enumeratio unius est exclusio alterius. Specification of one thing is an exclusion of the other.

Eodem ligamine quo ligatum est dissolvitur. An obligation is dissolved by the same bond by which it is contracted.

Eodem modo quo oritur, eodem modo dissolvitur. It is discharged in the same way as it is created.

Eodem modo quo quid constituitur, dissolvitur. In the same way as anything is constituted, it is dissolved (or destroyed). 6 Coke 53.

Eodem modo quo quid constituitur, eodem modo destruitur. In the same way in which something is constituted, it may be destroyed.

Episcopus alterius mandato quam regis non tenetur obtemperare. A bishop need not obey any mandate save the king's.

Equitas sequitur legem. Equity follows the law.

Errores ad sua principia referre est refellere. To refer errors to their origin is to refute them.

Errores scribentis nocere non debent. The mistakes of the scribe (or copyist) ought to do no harm.

Error fucatus nuda veritate in multis est probabilior; et saepenumero rationibus vincit veritatem error. Error artfully colored is in many instances more probable than naked truth; and frequently error conquers truth by argumentation.

Error juris nocet. An error of law injures.

Error nominis nunquam nocet, si de identitate rei constat. Mistake in the name never injures if the identity of the thing is certain.

Error qui non resistitur approbatur. An error that is not resisted is approved.

Error scribentis nocere non debet. The error of a scribe (or copyist) ought not to injure.

Erubescit lex filios castigare parentes. The law blushes when children correct their parents.

Est aliquid quod non oportetetiam si licet; quicquid vero non licet certe non oportet. There is that which is not proper, even though permitted; but whatever is not permitted is certainly not proper.

Est autem jus publicum et privatum quod ex naturalibus praeceptis aut gentium aut civilibus est collectum; et quod in jure scripto jus appellatur, id in lege Angliae rectum esse dicitur. Public and private law is that which is collected either from natural precepts of the (law of) nations or from civil precepts; and that which in the civil law is called jus is said in the law of England to be right. Co. Litt. 558.

Est autem vis legem simulans. Violence may also put on the mask of law.

Est boni judicis ampliare jurisdictionem. It is the role of a good judge to extend the jurisdiction.

Est ipsorum legislatorum tanquam viva vox. The voice of the legislators themselves is like a living voice. • That is, the provisions of a statute are to be understood and interpreted as practical rules for real circumstances. Coke adds, *Rebus et non verbis legem imponimus.* 10 Coke 101.

Estoveria sunt ardendi, arandi, construendi et claudendi. Estovers (tenants' rights to material at hand) are for burning, plowing, building, and fencing.

Est quiddam perfectius in rebus licitis. There is something more perfect in things that are permitted.

Eum qui nocentem infamat, non est aequum et bonum ob eam rem condemnari; delicta enim nocentium nota esse oportet et expedit. It is not just and proper that one who speaks ill of a bad person should be condemned on that account; for it is fitting and expedient that the wrongdoings of bad people should be known.

Eventus est qui ex causa sequitur; et dicitur eventus quia ex causis evenit. An event is what follows from a cause; and is called an event, because it results from causes.

Eventus varios res nova semper habet. A novel matter always produces various results.

Ex antecedentibus et consequentibus fit optima interpretatio. The best interpretation is made from what precedes and what follows. [Cases: Wills ☞ 470.]

Exceptio ejus rei cujus petitur dissolutio nulla est. There is no exception based on the very matter for which a solution is being sought.

Exceptio falsi est omnium ultima. The exception for falsehood is last of all.

Exceptio firmat regulam in casibus non exceptis. An exception affirms the rule in cases not excepted.

Exceptio firmat regulam in contrarium. An exception affirms a rule to the contrary.

Exceptio nulla est versus actionem quae exceptionem perimit. There is no exception against an action that extinguishes the exception.

Exceptio probat regulam de rebus non exceptis. An exception proves a rule concerning things not excepted.

Exceptio quae firmat legem exponit legem. An exception that confirms the law expounds the law.

Exceptio quoque regulam declarat. The exception also declares the rule.

Exceptio semper ultima ponenda est. An exception is always to be put last.

Excessus in jure reprobatur. Excess in law is condemned.

Excessus in re qualibet jure reprobatur communi. Excess in anything at all is condemned by common law.

Excusat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus. That excuses or extenuates a wrong in capital causes which does not have the same effect in civil suits.

Ex diuturnitate temporis omnia praesumuntur solenniter esse acta. From length of time, all things are presumed to have been done in due form.

Ex dolo malo non oritur actio. An action does not arise from a fraud. [Cases: Action ☞4.]

Executio est executio juris secundum judicium. Execution is the execution of the law according to the judgment.

Executio est finis et fructus legis. Execution of the law is its end and fruition.

Executio legis non habet injuriam. Execution of the law cannot work an injury.

Exempla illustrant, non restringunt, legem. Examples make the law clearer, and do not restrict it.

Ex facto jus oritur. The law arises out of the fact.

Ex frequenti delicto augetur poena. Punishment increases with repeated offense. 2 Co. Inst. 479.

Ex maleficio non oritur contractus. A contract does not arise out of an illegal act.

Ex malis moribus bonae leges natae sunt. Good laws are born from evil morals.

Ex multitudine signorum colligitur identitas vera. From a great number of signs true identity is ascertained.

Ex nihilo nihil fit. From nothing nothing comes.

Ex non scripto jus venit quod usus comprobavit. Unwritten law is that which custom has sanctioned.

Ex nudo pacto non oritur actio. No action arises on a contract without a consideration. [Cases: Contracts ☞47.]

Ex pacto illicito non oritur actio. From an illicit contract no action arises.

Expedit rei publicae ne sua re quis male utatur. It is to the advantage of the state that a person should not make bad use of his own property.

Expedit rei publicae ut sit finis litium. It is to the advantage of the state that there should be a limit to litigation.

Experientia per varios actus legem facit. Experience through various acts makes law.

Expositio quae ex visceribus causae nascitur, est aptissima et fortissima in lege. An exposition that springs from the vitals of a cause is the fittest and most powerful in law.

Ex praecedentibus et consequentibus est optima interpretatio. The best interpretation takes account of what precedes and follows.

Expressa nocent, non expressa non nocent. Things expressed do harm; things not expressed do not.

Expressa non prosunt quae non expressa proderunt. There is no benefit in expressing what will benefit when unexpressed.

Expressio eorum quae tacite insunt nihil operatur. The expression of those things that are tacitly implied is of no consequence.

Expressio unius est exclusio alterius. The expression of one thing is the exclusion of another. • Also termed *Inclusio unius est exclusio alterius* or *enumeratio unius est exclusio alterius.* [Cases: Contracts ☞152; Statutes ☞195.]

Expressum facit cessare tacitum. Something expressed nullifies what is unexpressed. [Cases: Constitutional Law ☞594; Statutes ☞195.]

Ex procedentibus et consequentibus optima fit interpretatio. The best interpretation is made from things proceeding and following (i.e., the context). [Cases: Wills ☞470.]

Exterus non habet terras. An alien holds no lands.

Extincto subjecto, tollitur adjunctum. When the substance is gone, the adjunct disappears.

Extortio est crimen quando quis colore officii extorquet quod non est debitum, vel supra debitum, vel ante tempus quod est debitum. Extortion is a crime when, by color of office, any person extorts what is not due, or more than due, or before the time when it is due.

Ex tota materia emergat resolutio. The construction or explanation should arise out of the whole subject matter.

Extra legem positus est civiliter mortuus. An outlaw is dead as a citizen.

Extraneus est subditus qui extra terram, i.e. potestam regis, natus est. A foreigner is a subject who is born out of the territory — that is, the jurisdiction — of the king.

Extra territorium jus dicenti impune non paretur. One who gives a judgment outside his jurisdiction is disobeyed with impunity. • There is no punishment for disobeying. Dig. 2.1.20.

Extra territorium jus dicenti non paretur impune. One who gives a judgment outside his jurisdiction is not

obeyed with impunity. • Anyone who executes such a judgment may be punished. 10 Coke 77.

Extremis probatis praesumuntur media. Extremeshaving been proved, intermediate things are presumed.

Ex turpi causa non oritur actio. No action arises out of a wrongful consideration. [Cases: Action ☞4; Contracts ☞138.]

Ex turpi contractu non oritur actio. No action arises from a wrongful contract.

Facinus quos inquinat aequat. Guilt makes equal those whom it stains.

Facio ut des. I do that you may give.

Facio ut facias. I do that you may do.

Facta sunt potentiora verbis. Deeds (or facts) are more powerful than words.

Facta tenent multa quae fieri prohibentur. Deeds contain many things that are prohibited to be done.

Factum a judice quod ad ejus officium non spectat, non ratum est. A judge's act that does not pertain to his office is of no force.

Factum cuique suum, non adversario, nocere debet. Anyone's act should injure himself, not his adversary.

Factum infectum fieri nequit. What is done cannot be undone.

Factum negantis nulla probatio. No proof is incumbent on a person who denies a fact.

Factum non dicitur quod non perseverat. That is not said to be done which does not last.

Factum unius alteri nocere non debet. The deed of one should not hurt the other.

Facturi quod ad justitiam pertinet secundum legem, et consuetudinem Angliae. (One is bound) to do justice according to the law and custom of England. • This was once a part of judicial oaths.

Facultas probationum non est angustanda. The capability of offering proofs is not to be narrowed.

Falsa causa non nocet. A false motive does no injury. • Generally, an erroneous motive does not invalidate.

Falsa demonstratione legatum non perimi. A legacy is not destroyed by an incorrect description. • This maxim is sometimes written *Falsa demonstratione legatum non perimitur* (same sense).

Falsa demonstratio non nocet, cum de corpore (persona) constat. False description does not injure or vitiate, provided the thing or person intended has once been sufficiently described. • Mere false description does not make an instrument inoperative. [Cases: Deeds ☞42; Wills ☞520, 581.]

Falsa grammatica non vitiat chartam. False grammar does not vitiate a charter.

Falsa grammatica non vitiat concessionem. False or bad grammar does not vitiate a grant. • Neither false Latin nor false English will make a deed void when the intent of the parties plainly appears.

Falsa orthographia sive falsa grammatica non vitiat concessionem. Error in spelling or grammar does not vitiate a grant.

Falsus in uno, falsus in omnibus. False in one thing, false in everything. [Cases: Trial ☞236(2); Witnesses ☞317.]

Fama, fides, et oculus non patiuntur ludum. Reputation, plighted faith, and eyesight do not endure deceit.

Fama, quae suspicionem inducit, oriri debet apud bonos et graves, non quidem malevolos et maledicos, sed providas et fide dignas personas, non semel sed saepius, quia clamor minuit et defamatio manifestat. Report, which induces suspicion, ought to arise from good and grave men; not, indeed, from malevolent and malicious men, but from cautious and credible persons; not only once, but frequently, for clamor diminishes, and defamation manifests.

Fatetur facinus qui judicium fugit. A person who flees judgment confesses guilt.

Fatuus, apud jurisconsultos nostros, accipitur pro non compos mentis; et fatuus dicitur, qui omnino desipit. "Fatuous," among our jurisconsults, is applied to a man not of sound mind; one is also called "fatuous" who is altogether foolish.

Fatuus praesumitur qui in proprio nomine errat. A person is presumed to be incompetent who makes a mistake in his own name (that is, does not know his own name).

Favorabilia in lege sunt fiscus, dos, vita, libertas. The treasury, dower, life, and liberty are things favored in law.

Favorabiliores rei potius quam actores habentur. Defendants are rather to be favored than plaintiffs.

Favorabiliores sunt executiones aliis processibus quibuscunque. Executions are preferred to all other processes whatever.

Favores ampliandi sunt; odia restringenda. Favorable inclinations are to be enlarged; animosities restrained.

Felix qui potuit rerum cognoscere causas. Happy is he who could apprehend the causes of things.

Felonia, ex vi termini, significat quodlibet capitale crimen felleo animo perpetratum. Felony, by force of the term, signifies any capital crime perpetrated with a malicious intent.

Felonia implicatur in quolibet proditione. Felony is implied in every treason.

Feodum est quod quis tenet ex quacunque causa, sive sit tenementum sive redditus. A fee is what anyone holds from whatever cause, whether tenement or rent.

Feodum simplex quia feodum idem est quod haereditas, et simplex idem est quod legituum vel purum; et sic feodum simplex idem est quod haereditas legitima vel haereditas pura. "Fee simple" is so called because fee is the same as inheritance and simple is the same

as lawful or pure; and thus fee simple is the same as a lawful inheritance or a pure inheritance.

Fere secundum promissorem interpretamur. We generally interpret in favor of the promisor.

Festinatio justitiae est noverca infortunii. The hurrying of justice is the stepmother of misfortune.

Fiat justitia pereat mundus. Let justice be done though the world perish.

Fiat justitia ruat caelum. Let justice be done though the heavens fall. • The word *caelum* sometimes appears *coelum*, but the form *caelum* is considered better Latin.

Fiat prout fieri consuevit, nil temere novandum. Let it be done as it is accustomed to be done; let no innovation be made rashly.

Fictio cedit veritati; fictio juris non est ubi veritas. Fiction yields to truth; where the truth appears, there is no fiction of law.

Fictio est contra veritatem, sed pro veritate habetur. Fiction is contrary to the truth, but it is regarded as truth.

Fictio juris non est ubi veritas. Where truth is, fiction of law does not exist.

Fictio legis inique operatur alicui damnum vel injuriam. Fiction of law works unjustly if it works loss or injury to anyone.

Fictio legis neminem laedit. A fiction of law injures no one.

Fides est obligatio conscientiae alicujus ad intentionem alterius. Faith is an obligation of conscience of one to the will of another.

Fides servanda est. Faith must be observed. • An agent must not violate the confidence reposed in him or her.

Fides servanda est; simplicitas juris gentium praevaleat. Faith is to be preserved; the simplicity of the law of nations should prevail.

Fieri non debet, sed factum valet. It ought not to be done, but if done it is valid.

Filiatio non potest probari. Filiation cannot be proved. • That is, the husband is presumed to be the father of a child born during coverture.

Filius est nomen naturae, sed haeres nomen juris. "Son" is a name of nature, but "heir" a name of law.

Filius in utero matris est pars viscerum matris. A child in the mother's womb is part of the mother's vitals.

Finis est amicabilis compositio et finalis concordia ex concensu et concordia domini regis vel justiciarum. A fine is an amicable settlement and decisive agreement by consent and agreement of our lord, the king, or his justices.

Finis finem litibus imponit. A fine puts an end to litigation.

Finis rei attendendus est. The end of a thing is to be attended to.

Finis unius diei est principium alterius. The end of one day is the beginning of another.

Firmior et potentior est operatio legis quam dispositio hominis. The operation of law is firmer and more powerful than the will of man.

Flumina et portus publica sunt, ideoque jus piscandi omnibus commune est. Rivers and ports are public; and therefore the right of fishing is common to all.

Foeminae ab omnibus officiis civilibus vel publicis remotae sunt. Women are excluded from all civil and public charges or offices.

Foeminae non sunt capaces de publicis officiis. Women are not qualified for public offices.

Forma dat esse. Form gives being.

Forma legalis forma essentialis. Legal form is essential form.

Forma non observata, infertur adnullatio actus. When form is not observed, a nullity of the act is inferred.

Forstellarius est pauperum depressor, et totius communitatis et patriae publicus inimicus. A forestaller is an oppressor of the poor, and a public enemy of the whole community and the country.

Fortior est custodia legis quam hominis. The custody of the law is stronger than that of man.

Fortior et potentior est dispositio legis quam hominis. The disposition of the law is stronger and more powerful than that of man.

Fractionem diei non recipit lex. The law does not regard a fraction of a day.

Frater fratri uterino non succedit in haereditate paterna. A brother shall not succeed a uterine brother in the paternal inheritance.

Fraus est celare fraudem. It is a fraud to conceal a fraud.

Fraus est odiosa et non praesumenda. Fraud is odious and not to be presumed.

Fraus et dolus nemini patrocinari debent. Fraud and deceit should excuse no one.

Fraus et jus nunquam cohabitant. Fraud and justice never dwell together.

Fraus latet in generalibus. Fraud lies hidden in general expressions.

Fraus meretur fraudem. Fraud deserves fraud.

Frequentia actus multum operatur. The frequency of an act has much effect. • Continual usage establishes a right.

Fructus augent haereditatem. Fruits enhance an inheritance.

Fructus pendentes pars fundi videntur. Hanging fruits are considered part of the parcel of land.

Fructus perceptos villae non esse constat. It is agreed that gathered fruits are not a part of the farm.

Frumenta quae sata sunt solo cedere intelliguntur. Grain that has been sown is understood to belong to the soil.

Frustra agit qui judicium prosequi nequit cum effectu. A person sues in vain who cannot prosecute his judgment with effect.

Frustra est potentia quae nunquam venit in actum. Power that never comes to be exercised is useless.

Frustra expectatur eventus cujus effectus nullus sequitur. An event is vainly awaited from which no effect follows.

Frustra feruntur leges nisi subditis et obedientibus. Laws are made to no purpose except for those who are subject and obedient.

Frustra fit per plura quod fieri potest per pauciora. That is done vainly through many measures if it can be accomplished through fewer.

Frustra legis auxilium quaerit qui in legem committit. Vainly does a person who offends against the law seek the help of the law.

Frustra petis quod mox es restiturus. Vainly you seek what you are soon to restore.

Frustra petis quod statim alteri reddere cogeris. Vainly you seek what you will immediately be compelled to give back to another.

Frustra probatur quod probatum non relevat. It is useless to prove what if proved would not aid the matter in question.

Furiosi nulla voluntas est. An insane person has no will.

Furiosus absentis loco est. An insane person is considered as absent.

Furiosus nullum negotium contrahere (gerere) potest (quia non intelligit quod agit). An insane person cannot make a contract (because he does not understand what he is doing).

Furiosus solo furore punitur. An insane person is punished by insanity alone.

Furiosus stipulari non potest nec aliquod negotium agere, qui non intelligit quid agit. An insane person who knows not what he does cannot make a bargain or transact any business.

Furor contrahi matrimonium non sinit, quia consensu opus est. Insanity prevents marriage from being contracted, because consent is needed.

Furtum est contrectatio rei alienae fraudulenta, cum animo furandi, invito illo domino cujus res illa fuerat. Theft is the fraudulent handling of another's property, with an intention of stealing, against the will of the proprietor, whose property it had been.

Furtum non est ubi initium habet detentionis per dominium rei. There is not theft where the holder has a beginning of detention (began holding the object) through ownership of the thing.

Generale dictum generaliter est interpretandum. A general expression is to be construed generally.

Generale dictum generaliter est interpretandum: generalia verba sunt generaliter intelligenda. A general statement is to be construed generally: general words are to be understood generally.

Generale nihil certi implicat. A general expression implies nothing certain.

Generale tantum valet in generalibus quantum singulare in singulis. What is general has as much validity among things general as what is particular does among things particular.

Generalia praecedunt, specialia sequuntur. Things general precede; things special follow.

Generalia specialibus non derogant. Things general do not restrict (or detract from) things special. [Cases: Statutes ⇨162, 194.]

Generalia sunt praeponenda singularibus. General things are to be put before particular things.

Generalia verba sunt generaliter intelligenda. General words are to be understood in a general sense.

Generalibus specialia derogant. Things special restrict things general.

Generalis clausula non porrigitur ad ea quae antea specialiter sunt comprehensa. A general clause does not extend to those things that have been previously provided for specifically.

Generalis regula generaliter est intelligenda. A general rule is to be understood generally.

Glossa viperina est quae corrodit viscera textus. It is a poisonous gloss that gnaws away the vitals of the text.

Grammatica falsa non vitiat chartam. False grammar does not vitiate a deed.

Gravius est divinam quam temporalem laedere majestatem. It is more serious to hurt divine than temporal majesty.

Habemus optimum testem, confitentem reum. We have the best witness, a confessing defendant.

Haeredem Deus facit, non homo. God, and not man, makes the heir.

Haeredipetae suo propinquo vel extraneo, periculoso sane custodi, nullus committatur. Let no ward be entrusted to the next heir in succession, whether his own relation or a stranger, as the next heir is surely a dangerous guardian. Co. Litt. 88b.

Haereditas est successio in universum jus quod defunctus habuerat. Inheritance is the succession to every right possessed by the late possessor.

Haereditas nihil aliud est quam successio in universum jus, quod defunctus habuerat. The right of inheritance is nothing other than the faculty of succeeding to all the rights of the deceased.

Haereditas nunquam ascendit. An inheritance never ascends.

Haeredum appellatione veniunt haeredes haeredum in infinitum. By the title of heirs, come the heirs of heirs to infinity.

Haeres est alter ipse, et filius est pars patris. An heir is another self, and a son is a part of the father.

Haeres est aut jure proprietatis aut jure representationis. A person is an heir by either right of property or right of representation.

Haeres est eadem persona cum antecessore. The heir is the same person as the ancestor.

Haeres est nomen collectivum. "Heir" is a collective noun.

Haeres est nomen juris, filius est nomen naturae. "Heir" is a term of law; "son" is one of nature.

Haeres est pars antecessoris. An heir is a part of the ancestor.

Haeres haeredis mei est meus haeres. The heir of my heir is my heir.

Haeres legitimus est quem nuptiae demonstrant. The lawful heir is the one whom the marriage indicates (i.e., who is born in wedlock).

Haeres minor uno et viginti annis non respondebit, nisi in casu dotis. An heir under 21 years of age is not answerable, except in the matter of the dower.

Hoc servabitur quod initio convenit. That shall be preserved which is useful in the beginning.

Home ne sera puny pur suer des briefes en court le roy, soit il a droit ou a tort. A person shall not be punished for suing out writs in the king's court, whether the person is right or wrong.

Hominum causa jus constitutum est. Law was established for the benefit of humankind.

Homo et capax et incapax esse potest in diversis temporibus. A person may be capable and incapable at different times. • This maxim is sometimes written *Homo potest esse habilis et inhabilis diversis temporibus* (same sense).

Homo vocabulum est naturae; persona juris civilis. "Man" (homo) is a term of nature; "person" (persona), a term of civil law.

Hora non est multum de substantia negotii, licet in appello de ea aliquando fiat mentio. The hour is not of much consequence to the substance of business, although in appeal it is sometimes mentioned.

Hostes sunt qui nobis vel quibus nos bellum decernimus; caeteri proditores vel praedones sunt. Enemies are those on whom we declare war, or who declare it against us; all others are traitors or pirates.

Ibi semper debet fieri triatio ubi juratores meliorem possunt habere notitiam. A trial should always be held where the jurors can have the best information.

Id certum est quod certum reddi potest. That is certain which can be made certain.

Id certum est quod certum reddi potest, sed id magis certum est quod de semetipso est certum. That is certain which can be made certain, but that is more certain which is certain of itself.

Idem agens et patiens esse non potest. The same person cannot be both agent and patient (i.e., the doer and person to whom the thing is done).

Idem est facere et nolle prohibere cum possis. It is the same thing to commit an act and to refuse to prohibit it when you can.

Idem est facere et non prohibere cum possis; et qui non prohibit cum prohibere possit in culpa est (aut jubet). It is the same thing to commit an act and not to prohibit it when you can; and he who does not prohibit when he can prohibit is at fault (or does the same as ordering it to be done).

Idem est nihil dicere et insufficienter dicere. It is the same thing to say nothing and not to say enough. • To say a thing in an insufficient manner is the same as not to say it at all. Applied to the plea of a prisoner.

Idem est non esse et non apparere. It is the same thing not to be as not to appear. • What does not appear on the record is considered nonexistent.

Idem est non probari et non esse; non deficit jus sed probatio. It is the same thing not to be proved and not to exist; the law is not deficient but the proof.

Idem est scire aut scire debere aut potuisse. To be bound to know or to have been able to know is the same as to know.

Idem non esse et non apparere. It is the same thing not to exist and not to appear.

Idem semper antecedenti proximo refertur. Idem (the same) always refers to the nearest antecedent.

Identitas vera colligitur ex multitudine signorum. True identity is collected from a great number of signs.

Id perfectum est quod ex omnibus suis partibus constat. That is perfect which is complete in all its parts.

Id perfectum est quod ex omnibus suis partibus constat; et nihil perfectum est dum aliquid restat agendum. That is perfect which is complete in all its parts; and nothing is perfect while anything remains to be done.

Id possumus quod de jure possumus. We are able to do that which we can do lawfully.

Id quod est magis remotum non trahit ad se quod est magis junctum, sed e contrario in omni casu. That which is more removed does not draw to itself what is more closely joined, but to the contrary in every case.

Id quod nostrum est sine facto nostro ad alium transferri non potest. What belongs to us cannot be transferred to another without our act (or deed).

Id solum nostrum quod debitis deductis nostrum est. That alone is ours which is ours after debts have been deducted.

Id tantum possumus quod de jure possumus. We can do only what we can lawfully do.

Ignorantia eorum quae quis scire tenetur non excusat. Ignorance of those things that anyone is bound to know does not excuse.

Ignorantia excusatur non juris sed facti. Ignorance of fact is excused but not ignorance of law.

Ignorantia facti excusat, ignorantia juris non excusat. Ignorance of fact excuses; ignorance of law does not excuse. • Every person must be considered cognizant of the law; otherwise, there is no limit to the excuse of ignorance. [Cases: Contracts ⇨93; Criminal Law ⇨33; Equity ⇨6.]

Ignorantia judicis est calamitas innocentis. The ignorance of the judge is the misfortune of the innocent.

Ignorantia juris non excusat. Ignorance of the law does not excuse. [Cases: Criminal Law ⇨32; Equity ⇨7.]

Ignorantia juris quod quisque scire tenetur neminem excusat. Ignorance of the law, which everyone is bound to know, excuses no one.

Ignorantia juris sui non praejudicat juri. Ignorance of one's right does not prejudice the right.

Ignorantia legis neminem excusat. Ignorance of law excuses no one.

Ignorantia praesumitur ubi scientia non probatur. Ignorance is presumed where knowledge is not proved.

Ignorare legis est lata culpa. To be ignorant of the law is gross neglect of it.

Ignoratis terminis artis, ignoratur et ars. Where the terms of an art are unknown, the art is also unknown.

Ignoscitur ei qui sanguinem suum qualiter redemptum voluit. A person is forgiven who chose to purchase his own blood (or life) on any terms whatsoever. • Whatever a person may do under the fear of losing life or limb will not be held binding on him in law. 1 Bl. Com. 127.

Illud quod alias licitum non est, necessitas facit licitum, et necessitas inducit privilegium quod jure privatur. That which is not otherwise lawful, necessity makes lawful; and necessity brings in as a privilege what is denied by right. 10 Coke 61.

Illud quod alteri unitur extinguitur, neque amplius per se vacare licet. That which is united to another is extinguished, nor can it again be detached.

Immobilia situm sequuntur. Immovables follow (the law of) their locality.

Imperii majestas est tutelae salus. The majesty of the empire is the safety of its protection.

Imperitia culpae annumeratur. Unskillfulness is reckoned as a fault (as blameworthy conduct or neglect). • Also termed *Imperitia enumeratur culpae.*

Imperitia est maxima mechanicorum poena. Unskillfulness is the greatest punishment of mechanics (i.e., from its effect in making them liable to those by whom they are employed).

Impersonalitas non concludit nec ligat. Impersonality neither concludes nor binds.

Impius et crudelis judicandus est qui libertati non favet. A person is to be judged impious and cruel who does not favor liberty.

Impossibilium nulla obligatio est. There is no obligation to perform impossible things.

Impotentia excusat legem. Powerlessness excuses (or dispenses with) law. • The impossibility of doing what is required by the law excuses nonperformance or nonenforcement. 2 Bl. Com. 127.

Improbi rumores dissipati sunt rebellionis prodromi. Wicked rumors spread abroad are the forerunners of rebellion.

Impunitas continuum affectum tribuit delinquendi. Impunity provides a constant inclination to wrongdoing. 4 Coke 45.

Impunitas semper ad deteriora invitat. Impunity invites (an offender) to ever worse offenses.

In aequali jure melior est conditio possidentis. When the parties have equal rights, the condition of the possessor is the better.

In alta proditione nullus potest esse accessorius sed principalis solummodo. In high treason no one can be an accessory but only a principal.

In alternativis electio est debitoris. The debtor has the choice among alternatives.

In ambigua voce legis ea potius accipienda est significatio quae vitio caret; praesertim cum etiam voluntas legis ex hoc colligi possit. In an ambiguous expression of the law, the meaning will be preferred that is free of defect, especially when the intent of the law can be gathered from it.

In ambiguis casibus sempter praesumitur pro rege. In doubtful cases the presumption is always in favor of the king.

In ambiguis orationibus maxime sententia spectanda est ejus qui eas protulisset. In ambiguous expressions, the opinion (or meaning) of the person who made them is chiefly to be regarded.

In ambiguo sermone non utrumque dicimus sed id duntaxat quod volumus. When the language we use is ambiguous, we do not use it in a double sense, but merely in the sense that we intend.

In Anglia non est interregnum. In England there is no interregnum. • The heir to the throne is understood to succeed from the instant of his predecessor's death or removal.

In atrocioribus delictis punitur affectus licet non sequatur effectus. In the more atrocious crimes, the intent (or attempt) is punished even if the effect does not follow.

In casu extremae necessitatis omnia sunt communia. In a case of extreme necessity, everything is in common.

Incaute factum pro non facto habetur. An alteration done carelessly (inadvertently) will be taken as not done. Dig. 28.4.1.

Incendium aere alieno non exuit debitorem. A fire does not release a debtor from his debt.

Incerta pro nullis habentur. Things uncertain are considered as nothing.

Incerta quantitas vitiat actum. An uncertain quantity vitiates the act.

Incivile est, nisi tota lege prospecta, una aliqua particula ejus proposita, judicare vel respondere. It is improper, unless the whole law has been examined, to give judgment or advice on any single clause of it.

Incivile est, nisi tota sententia inspecta, de aliqua parte judicare. It is improper to give an opinion on any part of a passage without examining the whole.

In civilibus ministerium excusat, in criminalibus non item. In civil matters, agency (or service) excuses, but not so in criminal matters.

In claris non est locus conjecturis. In obvious instances there is no room for conjectures.

Inclusio unius est exclusio alterius. See *Expressio unius est exclusio alterius.*

Incolas domicilium facit. Literally, the domicile makes the residents. • That is, the principal place of residence establishes legal residency. Often rendered conversely, *Incola domicilium facit* (residence creates domicile).

In commodato haec pactio, ne dolus praestetur, rata non est. In a loan for use (*commodatum*), a pact excluding liability for fraud is invalid. • Often extended to contracts for loans in general. Dig. 13.6.17.

Incommodum non solvit argumentum. An inconvenience does not solve (or demolish) an argument.

In conjunctivis oportet utramque partem esse veram. In conjunctive constructions, each part must be true.

In consimili casu consimile debet esse remedium. In a similar case, the remedy should be similar.

In consuetudinibus non diuturnitas temporis sed soliditas rationis est consideranda. In customs, not length of time but the soundness of the reason should be considered.

In contractibus, benigna; in testamentis, benignior; in restitutionibus, benignissima interpretatio facienda est. In contracts, the interpretation or construction should be liberal; in wills, more liberal; in restitutions, most liberal.

In contractibus, rei veritas potius quam scriptura perspici debet. In contracts, the truth of the matter ought to be regarded rather than the writing.

In contractibus tacite insunt quae sunt moris et consuetudinis. In contracts, matters of custom and usage are tacitly implied. • A contract is understood to contain the customary clauses, although they are not expressed.

In contrahenda venditione, ambiguum pactum contra venditorem interpretandum est. In the contract of sale, an ambiguous agreement is to be interpreted against the seller.

In conventionibus, contrahentium voluntas potius quam verba spectari placuit. In agreements, the intention of the contracting parties should be regarded more than their words.

Incorporalia bello non adquiruntur. Incorporeal things are not acquired by war.

In criminalibus probationes debent esse luce clariores. In criminal cases, the proofs ought to be clearer than light.

In criminalibus sufficit generalis malitia intentionis cum facto paris gradus. In criminal cases, a general wickedness of intention is sufficient if combined with an act of equal or corresponding degree.

In criminalibus voluntas reputabitur pro facto. In criminal matters, the intent will be reckoned as the deed. • In criminal attempts or conspiracy, the intention is considered in place of the act. 3 Inst. 106.

Inde datae leges ne fortior omnia posset. Laws were made lest the stronger should have unlimited power.

Indefinitum aequipollet universali. The undefined is equivalent to the whole.

Indefinitum supplet locum universalis. The undefined supplies the place of the whole.

Independenter se habet assecuratio a viaggio navis. The route insured is distinct from the voyage of the ship.

Index animi sermo. Speech is the index of the mind. • This maxim is also sometimes written *Index animi sermo est* (and can also be translated as, "Speech is an indication of thought").

Indictment de felony est contra pacem domini regis, coronam et dignitatem suam, in genere et non in individuo; quia in Anglia non est interregnum. Indictment for felony is against the peace of our lord the king, his crown and dignity, in general and not in his individual person; because in England there is no interregnum.

In disjunctivis sufficit alteram partem esse veram. In disjunctive constructions, it is sufficient if either part is true.

In dubiis benigniora praeferenda sunt. In doubtful cases, the more liberal constructions are to be preferred.

In dubiis magis dignum est accipiendum. In doubtful cases, the more worthy is to be accepted.

In dubiis non praesumitur pro testamento. In doubtful cases, there is not presumption in favor of the will.

In dubio, haec legis constructio quam verba ostendunt. In a doubtful case, the construction of the law is what the words indicate.

In dubio, pars mitior est sequenda. In a doubtful case, the gentler course is to be followed.

In dubio, pro lege fori. In a doubtful case, the law of the forum (is to be favored).

In dubio, sequendum quod tutius est. In a doubtful case, the safer course is to be followed.

In eo quod plus sit semper inest et minus. The lesser is always included in the greater.

Inesse potest donationi modus, conditio sive causa; ut modus est; si conditio; quia causa. In a gift there may be manner, condition, or cause; as (*ut*) introduces a manner; if (*si*), a condition; because (*quia*), a cause.

In expositione instrumentorum, mala grammatica, quod fieri potest, vitanda est. In the construction of instruments, bad grammar is to be avoided as much as possible.

In facto quod se habet ad bonum et malum magis de bona quam de malo lex intendit. In an act (or deed) that may be considered good or bad, the law looks more to the good than to the bad.

Infans non multum a furioso distat. An infant does not differ much from a lunatic.

In favorabilibus magis attenditur quod prodest quam quod nocet. In things favored, what does good is more regarded than what does harm.

In favorem vitae, libertatis, et innocentiae omnia praesumuntur. All presumptions are in favor of life, liberty, and innocence.

In fictione juris semper aequitas existit. In a fiction of law there is always equity. • A legal fiction is always consistent with equity.

In fictione juris semper subsistit aequitas. In a legal fiction equity always abides (or prevails).

Infinitum in jure reprobatur. That which is endless is condemned in law.

In generalibus latet error. Error lurks in general expressions. • This maxim is sometimes written *In generalibus versatur error* (meaning "error dwells in general expressions").

In genere quicunque aliquid dicit, sive actor sive reus, necesse est ut probat. In general, whoever alleges anything, whether plaintiff or defendant, must prove it.

In haeredes non solent transire actiones quae poenales ex maleficio sunt. Penal actions arising from anything of a criminal nature do not pass to heirs.

In his enim quae sunt favorabilia animae, quamvis sunt damnosa rebus, fiat aliquando extentio statuti. In things that are favorable to the spirit, though injurious to property, an extension of the statute should sometimes be made.

In his quae de jure communi omnibus conceduntur, consuetudo alicujus patriae vel loci non est alleganda. In those things that by common right are conceded to all, the custom of a particular country or place is not to be adduced.

Iniquissima pax est anteponenda justissimo bello. The most unjust peace is to be preferred to the justest war.

Iniquum est alios permittere, alios inhibere mercaturam. It is inequitable to permit some to trade and to prohibit others to do so.

Iniquum est aliquem rei sui esse judicem. It is unjust for anyone to be judge in his own cause.

Iniquum est ingenuis hominibus non esse liberam rerum suarum alienationem. It is unjust for freeborn individuals not to have the free disposal of their own property.

In judiciis minori aetati succurritur. In judicial proceedings, allowance is made for a minor (in age).

In judicio non creditur nisi juratis. In court no one is trusted except those sworn.

In jure non remota causa, sed proxima, spectatur. In law, the proximate, and not the remote, cause is regarded. [Cases: Negligence ☞383.]

In jure omnis definitio periculosa est. In law every definition is dangerous.

Injuria fit ei cui convicium dictum est, vel de eo factum carmen famosum. An injury is done to the person of whom an insult was said, or concerning whom an infamous song was made.

Injuria illata judici, seu locum tenenti regis, videtur ipsi regi illata, maxime si fiat in exercente officium. An injury offered to a judge, or person representing the king, is considered as offered to the king himself, especially if it is done in the exercise of his office.

Injuria non excusat injuriam. A wrong does not excuse a wrong.

Injuria non praesumitur. A wrong is not presumed.

Injuria propria non cadet beneficium facientis. No benefit shall accrue to a person from his own wrongdoing.

Injuria servi dominum pertingit. The servant's wrongdoing reaches the master. • The master is liable for injury done by his servant.

Injustum est, nisi tota lege inspecta, de una aliqua ejus particula proposita judicare vel respondere. It is unjust to give judgment or opinion concerning any particular clause of a law without having examined the whole law.

In majore summa continetur minor. In the greater sum is contained the less.

In maleficiis voluntas spectatur, non exitus. In criminal offenses, the intention is regarded, not the event.

In maleficio ratihabitio mandato comparatur. In delict (or tort), ratification is equivalent to authorization. Dig. 43.16.1.15.

In maxima potentia minima licentia. In the greatest power there is the least license.

In mercibus illicitis non sit commercium. Let there be no commerce in illicit goods.

In novo casu novum remedium apponendum est. In a novel case a new legal remedy must be applied.

In obscuris inspici solere quod verisimilius est, aut quod plerumque fieri solet. In obscure cases it is usual to regard what is more probable or what is more often done.

In obscuris quod minimum est sequimur. In obscure cases, we follow what is least so.

In odium spoliatoris omnia praesumuntur. Everything is presumed to the prejudice of the despoiler. [Cases: Evidence ☞78.]

In omni actione ubi duae concurrunt districtiones, videlicet in rem et in personam, illa districtio tenenda est quae magis timetur et magis ligat. In every action where two distresses (or forms of distraint) concur, that is in rem and in personam, the distraint is to be chosen that is more dreaded and that binds more firmly. Bracton 372.

In omnibus contractibus, sive nominatis sive innominatis, permutatio continetur. In all contracts, whether express or implied, there must be something given in exchange. 2 Bl. Com. 444.

In omnibus (fere) poenalibus judiciis, et aetati et imprudentiae succurritur. In almost all penal judgments, allowance is made for age (or youth) and lack of discretion. Dig. 50.17.108.

In omnibus obligationibus, in quibus dies non ponitur, praesenti die debetur. In all obligations, when no date is fixed (for performance), the thing is due the same day.

In omnibus quidem, maxime tamen in jure, aequitas spectanda sit. In all affairs indeed, but especially in those that concern the administration of justice, equity should be regarded.

In omni re nascitur res quae ipsam rem exterminat. In everything, the thing is born that ends the thing itself.

In pari causa possessor potior haberi debet. When two parties have equal claims, the possessor should be considered the stronger. • The phrase is also translated in this way: in an equal case the possessor ought to be preferred.

In pari causa potior est conditio possidentis. When two parties have equal claims, the position of the possessor is the stronger.

In pari delicto melior est conditio possidentis. When both parties are equally at fault, the position of the possessor is the better.

In pari delicto potior est conditio defendentis. Where both parties are equally in the wrong, the position of the defendant is the stronger. [Cases: Action ☞4; Equity ☞65.]

In poenalibus causis benignius interpretandum est. In penal cases, the more liberal interpretation is to be made.

In praeparatoriis ad judicium favetur actori. In things preparatory to trial, the plaintiff is favored.

In praesentia majoris cessat potentia minoris. In the presence of the superior, the power of the inferior ceases. • This maxim is sometimes written *In praesentia majoris potestatis, minor potestas cessat* (meaning "in the presence of the superior power, the minor power ceases").

In pretio emptionis et venditionis naturaliter licet contrahentibus se circumvenire. In setting the price for buying and selling, it is naturally allowed to the contracting parties to get the better of each other.

In propria causa nemo judex. No one can be judge in his own cause.

In quo quis delinquit, in eo de jure est puniendus. In whatever matter one offends, in that the person is rightfully to be punished. • Coke refers to forfeiture of the office abused. Co. Litt. 233b.

In rebus manifestis errat qui auctoritates legum allegat; quia perspicua vera non sunt probanda. A person errs who adduces authorities on the law in matters self-evident; because obvious truths need not be proved.

In rebus quae sunt favorabilia animae, quamvis sunt damnosa rebus, fiat aliquando extensio statuti. In things that are favorable to people, though injurious to the things, a statute should sometimes be extended.

In re communi neminem dominorum jure facere quicquam, invito altero, posse. In common property no one of the coproprietors can do (or make) anything against the will of the other. Dig. 10.3.28.

In re dubia benigniorem interpretationem sequi non minus justius est quam tutius. In a doubtful matter, to follow the more liberal interpretation is as much the more just as it is the safer course.

In re dubia magis infitiatio quam affirmatio intelligenda. In a doubtful matter, the negation is to be understood rather than the affirmation.

In re lupanari testes lupanares admittentur. In a matter concerning a brothel, prostitutes will be admitted as witnesses.

In re pari potiorem causam esse prohibentis constat. Where the parties have equal rights (in common property), it is an established principle that the one prohibiting has the stronger cause. Dig. 10.3.28.

In re propria iniquum admodum est alicui licentiam tribuere sententiae. It is extremely unjust to assign anyone the privilege of judgment in his own cause.

In republica maxime conservanda sunt jura belli. The laws of war must be especially preserved in the state.

In restitutionem, non in poenam, haeres succedit. The heir succeeds to the restitution, not the penalty.

In restitutionibus benignissima interpretatio facienda est. The most favorable construction is to be made in restitutions.

Insanus est qui, abjecta ratione, omnia cum impetu et furore facit. The person is insane who, having cast aside reason, does everything with violence and rage.

In satisfactionibus non permittitur amplius fieri quam semel factum est. In payments, it is not permitted that more be received than has been received once for all (i.e., after payment in full).

Instans est finis unius temporis et principium alterius. An instant is the end of one time and the beginning of another.

In stipulationibus cum quaeritur quid actum sit, verba contra stipulatorem interpretanda sunt. In agreements, when there is a question whether action has been taken, the terms are to be interpreted against the party offering them.

In stipulationibus id tempus spectatur quo contrahimus. In agreements, there is regard to the time at which we reach agreement.

In suo quisque negotio hebetior est quam in alieno. Everyone is less perceptive (of flaws) in his own business than in that of another.

Intentio caeca mala. A concealed intention is an evil one.

Intentio inservire debet legibus, non leges intentioni. The intention ought to be subject to the laws, not the laws to the intention.

Intentio mea imponit nomen operi meo. My intent gives a name to my act.

Inter alios res gestas aliis non posse praejudicium facere saepe constitutum est. It has been often decided that matters transacted between other parties cannot cause prejudice (to those who were not involved).

Inter arma silent leges. Amid the arms of war the laws are silent.

Interdum venit ut exceptio quae prima facie justa videtur tamen inique noceat. It sometimes happens that a plea that seems prima facie just is nevertheless injurious and unfair.

Interest reipublicae ne maleficia remaneant impunita. It is in the interest of the state that crimes not remain unpunished.

Interest reipublicae ne sua quis male utatur. It is in the interest of the state that no one misuse his own property.

Interest reipublicae quod homines conserventur. It is in the interest of the state that people should be protected.

Interest reipublicae res judicatas non rescindi. It is in the interest of the state that judgments already given not be rescinded.

Interest reipublicae suprema hominum testamenta rata haberi. It is in the interest of the state that a person's last will should be held valid.

Interest reipublicae ut carceres sint in tuto. It is in the interest of the state that prisons should be secure.

Interest reipublicae ut pax in regno conservetur et quaecunque paci adversentur provide declinentur. It is in the interest of the state to preserve peace in the kingdom and prudently to decline whatever is adverse to it.

Interest reipublicae ut quilibet re sua bene utatur. It is in the interest of the state that each person make good use of his own property.

Interest reipublicae ut sit finis litium. It is in the interest of the state that there be a limit to litigation.

Interpretare et concordare leges legibus est optimus interpretandi modus. To interpret and reconcile laws so they harmonize is the best mode of construction.

Interpretatio chartarum benigne facienda est ut res magis valeat quam pereat. The construction of a deed is to be made liberally, that the thing may rather take effect than perish.

Interpretatio fienda est ut res magis valeat quam pereat. Such a construction should be made that the measure may take effect rather than fail.

Interpretatio talis in ambiguis semper fienda est ut evitetur inconveniens et absurdum. In ambiguities, a construction should always be found such that what is unsuitable and absurd may be avoided.

Interruptio multiplex non tollit praescriptionem semel obtentam. Repeated interruptions do not remove a prescription (or acquisition by long use) once it has been obtained.

In testamentis plenius testatoris intentionem scrutamur. In wills we diligently examine the testator's intention.

In testamentis plenius voluntates testantium interpretantur. In wills the intentions of the testators are more fully (or liberally) construed.

Intestatus decedit qui aut omnino testamentum non fecit aut non jure fecit, aut id quod fecerat ruptum irritumve factum est, aut nemo ex eo haeres exstitit. A person dies intestate who either has made no will at all or has not made it legally, or when the will that he had made has been annulled or become ineffectual, or when there is no living heir.

In toto et pars continetur. In the whole the part also is included.

In traditionibus scriptorum (chartarum) non quod dictum est, sed quod gestum (factum) est, inspicitur. In the delivery of writings (deeds), not what is said but what is done is to be considered.

Inutilis labor et sine fructu non est effectus legis. Useless and fruitless labor is not the effect of law.

Inveniens libellum famosum et non corrumpens punitur. A person who discovers a libel and does not destroy it is punished.

In veram quantitatem fidejussor teneatur, nisi pro certa quantitate accessit. Let the surety be held for the true amount unless he agreed for a certain amount.

In verbis non verba sed res et ratio quaerenda est. In wording, it is not the words but the substance and the meaning that is to be sought.

Invito beneficium non datur. No benefit is given to one unwilling. • No one is obliged to accept a benefit against his consent. Dig. 50.17.69.

In vocibus videndum non a quo sed ad quid sumatur. In discourse it is not the point from which but the end to which it is drawn that should be regarded.

Ipsae leges cupiunt ut jure regantur. The laws themselves desire that they should be governed by right.

Ira furor brevis est. Anger is a short insanity.

Ita lex scripta est. So the law is written.

Ita semper fiat relatio ut valeat dispositio. Let the relation be so made that the disposition may stand.

Iter est jus eundi, ambulandi hominis; non etiam jumentum agendi vel vehiculum. A way is a right of going or walking for a human being, and does not include the right of driving a beast of burden or a carriage.

Judex aequitatem semper spectare debet. A judge ought always to regard equity.

Judex ante oculos aequitatem semper habere debet. A judge ought always to have equity before his eyes.

Judex bonus nihil ex arbitrio suo faciat nec propositione domesticae voluntatis, sed juxta leges et jura pronunciet. A good judge should do nothing from his own preference or from the prompting of his private desire; but he should pronounce according to law and justice.

Judex damnatur cum nocens absolvitur. The judge is condemned when the guilty party is acquitted.

Judex debet judicare secundum allegata et probata. The judge ought to give judgment according to the allegations and the proofs.

Judex est lex loquens. The judge is the speaking law.

Judex habere debet duos sales, salem sapientiae, ne sit insipidus, et salem conscientiae, ne sit diabolus. A judge should have two salts: the salt of wisdom, lest he be foolish; and the salt of conscience, lest he be devilish.

Judex non potest esse testis in propria causa. A judge cannot be a witness in his own cause.

Judex non potest injuriam sibi datum punire. A judge cannot punish a wrong done to himself.

Judex non reddit plus quam quod petens ipse requirit. The judge does not give more than the plaintiff himself demands.

Judicandum est legibus non exemplis. Judgment must be given by the laws, not by examples.

Judices non tenentur exprimere causam sententiae suae. Judges are not bound to explain the reason of their judgments.

Judicia in curia regis non adnihilentur, sed stent in robore suo quousque per errorem aut attinctam adnullentur. Let judgments in the king's court not be invalidated but remain in force until annulled by error or attaint. 2 Inst. 360.

Judicia in deliberationibus crebro maturescunt, in accelerato processu nunquam. Judgments often ripen in the course of deliberation, never in hurried proceeding. 2 Inst. 210.

Judicia posteriora sunt in lege fortiora. The later decisions are stronger in law.

Judicia sunt tanquam juris dicta, et pro veritate accipiuntur. Judgments are, as it were, the dicta (or sayings) of the law, and are received as truth.

Judiciis posterioribus fides est adhibenda. Trust should be put in the later decisions.

Judici officium suum excedenti non paretur. A judge who exceeds his office (or jurisdiction) is not obeyed.

Judici satis poena est quod Deum habet ultorem. It is punishment enough for a judge that he has God to take vengeance on him.

Judicis est in pronuntiando sequi regulam, exceptione non probata. It is the proper role of a judge in rendering his decision to follow the rule, when the exception has not been proved.

Judicis est judicare secundum allegata et probata. It is the proper role of a judge to decide according to the allegations and proofs.

Judicis est jus dicere, non dare. It is the proper role of a judge to state the right, not to endow it. • Generally interpreted, it is the duty of the judge to administer justice and not to make law.

Judicis officium est opus diei in die suo perficere. It is the duty of a judge to finish the work of each day within that day.

Judicis officium est ut res ita tempora rerum quaerere; quaesito tempore tutus eris. It is the duty of a judge to inquire into the timing of events as much as the matters themselves; by inquiring into the time, you will be safe.

Judicium a non suo judice datum nullius est momenti. A judgment given by a person who is not its proper judge (not in the proper jurisdiction) is of no consequence. 10 Coke 76.

Judicium est quasi juris dictum. Judgment is, as it were, a pronouncement of the right (or a saying of the law).

Judicium non debet esse illusorium, suum effectum habere debet. A judgment ought not to be illusory (or deceptive); it ought to have its proper effect. 2 Co. Inst. 341.

Judicium redditur in invitum, in praesumptione legis. In presumption of law, a judgment is given against one's will.

Judicium semper pro veritate accipitur. A judgment is always taken for truth.

Juncta juvant. Things joined together are helpful.

Jura ecclesiastica limitata sunt infra limites separatos. Ecclesiastical laws are limited within separate bounds.

Jura eodem modo destituuntur quo constituuntur. Laws are abrogated or repealed by the same means by which they are made.

Juramentum est indivisibile, et non est admittendum in parte verum et in parte falsum. An oath is indivisible; it is not to be accepted as partly true and partly false.

Jura naturae sunt immutabilia. The laws of nature are unchangeable.

Jura publica anteferenda privatis. Public rights are to be preferred to private.

Jura publica ex privato promiscue decidi non debent. Public rights ought not to be determined in confusion, from private considerations. • In Coke's example, the validity of a sheriff's warrant is not affected by a dispute among the parties. Co. Litt. 181b.

Jurare est Deum in testem vocare, et est actus divini cultus. To swear is to call God to witness, and is an act of religion.

Jura regis specialia non conceduntur per generalia verba. The special rights of the king are not granted by general words.

Jura sanguinis nullo jure civili dirimi possunt. The rights of blood (or kinship) cannot be destroyed by any civil law.

Jurato creditur in judicio. In judgment credit is given to the swearer.

Juratores debent esse vicini, sufficientes et minus suspecti. Jurors ought to be neighbors, of sufficient means and free from suspicion (literally, less suspected).

Juratores sunt judices facti. The jurors are the judges of fact.

Juratus creditur in judicio. In judgment a person who has sworn an oath is believed.

Jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiorem. By the law of nature, it is just that no one should be enriched to the detriment and injury of another.

Juri non est consonum quod aliquis accessorius in curia regis convincatur antequam aliquis de facto fuerit attinctus. It is not consonant to justice that any accessory should be convicted in the king's court before anyone has been attainted of the fact (i.e., under sentence of attainder for committing the act). • The accessory should not be convicted before the principal is proved guilty. 2 Co. Inst. 183.

Jurisdictio est potestas de publico introducta, cum necessitate juris dicendi. Jurisdiction is a power introduced for the public good, on account of the necessity of dispensing justice.

Juris effectus in executione consistit. The effect of law (or of a right) consists in the execution.

Juris ignorantia est cum jus nostrum ignoramus. It is ignorance of law when we do not know our own right.

Juris praecepta sunt haec, honeste vivere, alterum non laedere, suum cuique tribuere. These are the precepts of the law: to live honorably, not to injure another, to render to each person his due. Just. Inst. 1.1.

Jurisprudentia est divinarum atque humanarum rerum notitia, justi atque injusti scientia. Jurisprudence is the knowledge of things divine and human, the science of the just and the unjust. Just. Inst. 1.1.1.

Jurisprudentia legis communis Angliae est scientia socialis et copiosa. The jurisprudence of the common law of England is a social science comprehensive in scope.

Juris quidem ignorantiam cuique nocere, facti verum ignorantiam non nocere. Ignorance of law is prejudicial to everyone, but ignorance of fact is not.

Jus accrescendi inter mercatores locum non habet, pro beneficio commercii. For the good of commerce, the right of survivorship has no place among merchants. [Cases: Partnership ☞76.]

Jus accrescendi inter mercatores, pro beneficio commercii locum non habet. For the benefit of commerce, there is no right of accrual among merchants.

Jus accrescendi praefertur oneribus. The right of survivorship is preferred to incumbrances.

Jus accrescendi praefertur ultimae voluntati. The right of survivorship is preferred to a last will.

Jus civile est quod sibi populus constituit. The civil law is what a people has established for itself.

Jus constitui oportet in his quae ut plurimum accidunt, non quae ex inopinato. Law ought to be made with a view to the cases that happen most frequently, and not to those that are unexpected.

Jus descendit, et non terra. A right descends, and not the land.

Jus dicere (et) non jus dare. To state the right (and) not to endow it. • Generally interpreted, to declare the law (and) not to make it.

Jus est ars boni et aequi. Law is the science of what is good and just.

Jus est norma recti; et quicquid est contra normam recti est injuria. The law is the rule of right; and whatever is contrary to the rule of right is an injury.

Jus et fraus nunquam cohabitant. Right and fraud never abide together.

Jus ex injuria non oritur. A right does not arise from a wrong.

Jus in re inhaerit ossibus usufructuarii. A right in the thing cleaves to the person (literally, the bones) of the usufructuary.

Jusjurandi forma verbis differt, re convenit; hunc enim sensum habere debet, ut Deus invocetur. The form of taking an oath differs in language, but agrees in meaning; for it ought to have this sense, that God is invoked.

Jusjurandum inter alios factum nec nocere nec prodesse debet. An oath made between third parties ought neither to hurt nor to profit.

Jus naturale est quod apud homines eandem habet potentiam. Natural right is that which has the same force among (all) mankind.

Jus non habenti tute non paretur. It is safe not to obey a person who has no right.

Jus publicum privatorum pactis mutari non potest. A public right cannot be changed by agreements of private parties.

Jus publicum et privatum est quod ex naturalibus praeceptis, aut gentium, aut civilibus est collectum et quod in jure scripto jus appellatur, id in lege Angliae rectum esse dicitur. Public and private law is that which is collected from the precepts of nature, of peoples in general, or of particular states; and what in written law is called "*jus*" by the law of England is said to be "right."

Jus quo universitates utuntur est idem quod habent privati. The right that corporations exercise is the same as the right that individuals possess.

Jus respicit aequitatem. Law regards equity.

Jus superveniens auctori accrescit successori. An additional or enhanced right for the possessor accrues to the successor.

Justitia debet esse libera, quia nihil iniquius venali justitia; plena, quia justitia non debet claudicare; et celer, quia dilatio est quaedam negatio. Justice ought not to be bought, for nothing is more hateful than venal justice; full, for justice ought not to be defective; and quick, for delay is a certain denial.

Justitia est constans et perpetua voluntas jus suum cuique tribuendi. Justice is a steady and unceasing disposition to render to every person his due.

Justitia est duplex: severe puniens et vere praeveniens. Justice is double: punishing with severity, and truly preventing.

Justitia est virtus excellens et Altissimo complacens. Justice is an excellent virtue and pleasing to the Most High.

Justitia firmatur solium. By justice the throne is strengthened.

Justitia nemini neganda est. Justice is to be denied to no one.

Justitia non est neganda, non differenda. Justice is not to be denied or delayed.

Justitia non novit patrem nec matrem, solum veritatem spectat justitia. Justice knows neither father nor mother; justice looks to truth alone.

Justum non est aliquem antenatum mortuum facere bastardum, qui pro tota vita sua pro legitimo habetur. It is not just to make a bastard after his death an elder child who all his life has been accounted legitimate.

Jus vendit quod usus approbavit. The law dispenses what use has approved.

La conscience est la plus changeante des régles. Conscience is the most changing of rules.

La ley favour la vie d'un home. The law favors a man's life.

La ley favour l'inheritance d'un home. The law favors a man's inheritance.

La ley voit plus tost suffer un mischiefe que un inconvenience. The law will sooner suffer a mischief than an inconvenience.

Lata culpa dolo aequiparatur. Gross negligence is equivalent to fraud.

Le contrat fait la loi. The contract makes the law.

Legatos violare contra jus gentium est. It is contrary to the law of nations to do violence to ambassadors.

Legatum morte testatoris tantum confirmatur, sicut donatio inter vivos traditione sola. A legacy is confirmed by the death of the testator, in the same manner as a gift from a living person is by delivery alone.

Legatus regis vice fungitur a quo destinatur et honorandus est sicut ille cujus vicem gerit. An ambassador fills the place of the king by whom he is appointed, and is to be honored in the same way as the person whose place he fills.

Legem enim contractus dat. The contract gives the law.

Legem terrae amittentes perpetuam infamiae notam inde merito incurrunt. Those who lose the law of the land thereby justly incur an eternal stigma of infamy.

Leges Angliae sunt tripartitae: jus commune, consuetudines, ac decreta comitiorum. The laws of England are threefold: common law, customs, and decrees of parliament.

Leges et constitutiones futuris certum est dare formam negotiis non ad facta praeterita revocari; nisi nominatim et de praeterito tempore et adhuc pendentibus negotiis cautum sit. Laws and statutes are regarded as regulating future negotiations not past transactions; unless they are expressly made to apply to both past and to pending matters.

Leges figendi et refigendi consuetudo est periculosissima. The practice of adding and annulling laws is a most dangerous one. 4 Coke pref.

Leges fixit pretio atque refixit. He shaped and reshaped laws for a price; he promulgated and annulled laws at a price. • The reference is to a judge who took bribes.

Leges humanae nascuntur, vivunt, et moriuntur. Laws that humans have made are born, live, and die.

Leges naturae perfectissimae sunt et immutabiles; humani vero juris conditio semper in infinitum decurrit, et nihil est in eo quod perpetuo stare possit. The laws of nature are most perfect and immutable; but the condition of human law is an unending succession, and there is nothing in it that can stand forever.

Leges non verbis sed rebus sunt impositae. Laws are imposed on affairs, not words.

Leges posteriores priores contrarias abrogant. Subsequent laws repeal prior conflicting ones. [Cases: Statutes ⇨159, 162.]

Leges suum ligent latorem. Laws should bind their own author.

Leges vigilantibus, non dormientibus subveniunt. The laws aid those who keep watch, not those who sleep (that is, the vigilant, not the negligent). [Cases: Action ⇨63; Equity ⇨64.]

Legibus sumptis desinentibus, lege naturae utendum est. Where man made laws fail, the law of nature must be used.

Legis constructio non facit injuriam. The construction of law does not do wrong.

Legis interpretatio legis vim obtinet. The interpretation of law obtains the force of law. [Cases: Courts ⇨108.]

Legislatorum est viva vox, rebus et non verbis legem imponere. The voice of legislators is a living voice, to impose laws on (actual) affairs and not on (mere) words.

Legis minister non tenetur, in executione officii sui, fugere aut retrocedere. The minister of the law is not bound, in the execution of his office, either to flee or to retreat.

Legitime imperanti parere necesse est. One who commands lawfully must be obeyed.

Legitimus haeres et filius est quem nuptiae demonstrant. A lawful son and heir is he whom the marriage declares to be lawful.

Le ley de Dieu et ley de terre sont tout un, et l'un et l'autre preferre et favour le common et publique bien del terre. The law of God and the law of the land are all one; and both promote and favor the common and public good of the land.

Le ley est le plus haut enheritance que le roy ad, car par le ley, il mesme et touts ses sujets sont rules, et si le ley ne fuit, nul roy ne nul enheritance serra. The law is the highest inheritance that the king possesses; for by the law both he and all his subjects are ruled; and if there were no law, there would be neither king nor inheritance.

Le salut du peuple est la suprême loi. The safety of the people is the highest law.

Les fictions naissent de la loi, et non la loi des fictions. Fictions arise from the law, and not law from fictions.

Les lois ne se chargent de punir que les actions exterieures. Laws undertake to punish only outward actions.

Lex aequitate gaudet. Law delights in equity.

Lex aequitate gaudet; appetit perfectum; est norma recti. The law delights in equity: it covets perfection; it is a rule of right.

Lex aliquando sequitur aequitatem. The law sometimes follows equity.

Lex Angliae est lex misericordiae. The law of England is a law of mercy.

Lex Angliae lex terrae est. The law of England is the law of the land.

Lex Angliae non patitur absurdum. The law of England does not allow an absurdity.

Lex Angliae nunquam matris sed semper patris conditionem imitari partum judicat. The law of England rules that the offspring always follows the condition of the father, never that of the mother.

Lex Angliae nunquam sine parliamento mutari potest. The law of England can never be changed without (act of) parliament. • This maxim is sometimes written *Lex Angliae sine Parliamento mutari non potest* (also translatable as "the law of England cannot be changed but by Parliament").

Lex beneficialis rei consimili remedium praestat. A beneficial law affords a remedy in a similar case.

Lex citius tolerare vult privatum damnum quam publicum malum. The law would sooner endure a private loss than a public evil.

Lex contra id quod praesumit probationem non recipit. The law accepts no proof against that which it presumes.

Lex deficere non potest in justitia exhibenda. The law cannot fail in dispensing justice.

Lex de futuro, judex de praeterito. The law (provides) for the future, the judge for the past.

Lex dilationes semper exhorret. The law always abhors delays.

Lex est ab aeterno. The law is from eternity.

Lex est dictamen rationis. Law is the dictate of reason.

Lex est exercitus judicum tutissimus ductor. The law is the safest leader of the army of judges.

Lex est norma recti. Law is a rule of right.

Lex est ratio summa, quae jubet quae sunt utilia et necessaria, et contraria prohibet. Law is the highest form of reason, which commands what is useful and necessary and forbids the contrary.

Lex est sanctio sancta, jubens honesta et prohibens contraria. Law is a sacred sanction, commanding what is right and prohibiting the contrary.

Lex est summa ratio. Law is the highest reason.

Lex est tutissima cassis; sub clypeo legis nemo decipitur. Law is the safest helmet; under the shield of the law no one is deceived.

Lex facit regem. Law makes the king (i.e., makes the monarch king).

Lex favet doti. The law favors dower.

Lex fingit ubi subsistit aequitas. Law creates a fiction where equity abides.

Lex intendit vicinum vicini facta scire. The law presumes that one neighbor knows the actions of another.

Lex judicat de rebus necessario faciendis quasi re ipsa factis. The law judges of things that must necessarily be done as if actually done.

Lex necessitatis est lex temporis, i.e., instantis. The law of necessity is the law of time, i.e., time present.

Lex neminem cogit ad vana seu inutilia peragenda. The law forces no one to do vain or useless things. [Cases: Specific Performance ⇨13.]

Lex neminem cogit ostendere quod nescire praesumitur. The law forces no one to make known what he is presumed not to know.

Lex nemini facit injuriam. The law does wrong to no one. [Cases: Equity ⇨54.]

Lex nemini operatur iniquum, nemini facit injuriam. The law works an injustice to no one and does wrong to no one. [Cases: Equity ⇨54.]

Lex nil facit frustra, nil jubet frustra. The law does nothing in vain and commands nothing in vain.

Lex non a rege est violanda. The law is not to be violated by the king.

Lex non cogit ad impossibilia. The law does not compel to impossible ends.

Lex non curat de minimis. The law is not concerned with matters of least consequence. [Cases: Appeal and Error ⇨1171; Equity ⇨34.]

Lex non debet deficere conquerentibus in justitia exhibenda. The law ought not to fail in dispensing justice to those with a grievance.

Lex non deficit in justitia exhibenda. The law does not fail in showing justice.

Lex non exacte definit, sed arbitrio boni viri permittit. The law does not define exactly, but trusts in the judgment of a good man.

Lex non favet votis delicatorum. The law does not favor the wishes of the fastidious.

Lex non intendit aliquid impossibile. The law does not intend anything impossible.

Lex non novit patrem, nec matrem; solam veritatem. The law knows neither father nor mother; only the truth.

Lex non oritur ex injuria. The law does not arise from an unlawful act.

Lex non patitur fractiones et divisiones statuum. The law does not tolerate fractions and divisions of estates. 1 Coke 87a.

Lex non praecipit inutilia, quia inutilis labor stultus. The law does not command useless things, because useless labor is foolish. [Cases: Mandamus ⇨16.]

Lex non requirit verificari quod apparet curiae. The law does not require that to be proved which is apparent to the court.

Lex plus laudatur quando ratione probatur. The law is more praised when it is consonant with reason.

Lex posterior derogat priori. A later statute repeals an earlier one.

Lex prospicit, non respicit. The law looks forward, not backward.

Lex punit mendaciam. The law punishes falsehood.

Lex rejicit superflua, pugnantia, incongrua. The law rejects superfluous, contradictory, and incongruous things.

Lex reprobat moram. The law disapproves of delay.

Lex respicit aequitatem. Law regards equity.

Lex scripta si cesset, id custodiri oportet quod moribus et consuetudine inductum est; et, si qua in re hoc defecerit, tunc id quod proximum et consequens ei est; et, si id non appareat, tunc jus quo urbs Romana utitur servari oportet. If the written law is silent, that which is drawn from manners and custom ought to be observed; and, if that is in any manner defective, then what is next and consistent with it; and, if that does not appear, then the law that Rome uses should be followed.

Lex semper dabit remedium. The law will always give a remedy.

Lex semper intendit quod convenit rationi. The law always intends what is agreeable to reason.

Lex spectat naturae ordinem. The law regards the order of nature.

Lex succurrit ignoranti. The law assists the ignorant.

Lex succurrit minoribus. The law assists minors.

Lex uno ore omnes alloquitur. The law speaks to all with one mouth.

Lex vigilantibus, non dormientibus, subvenit. Law aids the watchful, not the sleeping.

Liberata pecunia non liberat offerentem. The return of money does not free the party presenting it (from liability).

Libertas est naturalis facultas ejus quod cuique facere libet, nisi quod de jure aut vi prohibetur. Liberty is the natural power of doing whatever one pleases, except what is prevented by law or force.

Libertas est res inestimabilis. Liberty is an inestimable thing.

Libertas inaestimabilis res est. Liberty is a priceless good.

Libertas non recipit aestimationem. Freedom does not admit of valuation.

Libertas omnibus rebus favorabilior est. Liberty is more favored than all things.

Libertates regales ad coronam spectantes ex concessione regum a corona exierunt. Royal franchises relating to the Crown have emanated from the Crown by grant of kings.

Libertinum ingratum leges civiles in pristinam servitutem redignunt; sed leges Angliae semel manumissum semper liberum judicant. The civil laws reduce an ungrateful freedman to his original slavery; but the laws of England regard a person once manumitted as ever after free.

Liberum corpus nullam recipit aestimationem. The body of a free person allows no price to be set on it. Dig. 9.3.7.

Liberum est cuique apud se explorare an expediat sibi consilium. Everyone is free to ascertain for himself whether a recommendation is advantageous to him.

Librorum appellatione continentur omnia volumina, sive in charta, sive in membrana sint, sive in quavis alia materia. Under the name of books are contained all volumes, whether on paper, or on parchment, or on any other material.

Licet dispositio de interesse futuro sit inutilis, tamen potest fieri declaratio praecedens quae sortiatur effectum interveniente novo actu. Even if the grant of a future interest is inoperative, yet a declaration precedent may be made that may take effect, provided a new act intervenes.

Licita bene miscentur, formula nisi juris obstet. Lawful acts are well joined together, unless some form of law prevents it.

Ligeantia est quasi legis essentia; est vinculum fidei. Allegiance is, as it were, the essence of the law; it is the bond of faith.

Ligeantia est vinculum fidei; ligeantia est legis essentia. Allegiance is the bond of fealty and the essence of law.

Ligeantia naturalis nullis claustris coercetur, nullis metis refraenatur, nullis finibus premitur. Natural allegiance is restrained by no barriers, curbed by no bounds, compressed by no limits.

Ligna et lapides sub armorum appellatione non continentur. Sticks and stones are not contained under the name of arms.

Linea recta est index sui et obliqui; lex est linea recta. A right line is an index of itself and of an oblique; law is a right line. Co. Litt. 158b.

Linea recta semper praefertur transversali. The right line is always preferred to the collateral.

Literae patentes regis non erunt vacuae. Letters patent of the king will not be void.

Literae scriptae manent. Written words last.

Litis nomen omnem actionem significat, sive in rem, sive in personam sit. The word "lis" (a lawsuit) signifies every action, whether it is in rem or in personam.

Litus est quousque maximus fluctus a mari pervenit. The shore is where the highest wave from the sea has reached.

L'obligation sans cause, ou sur une fausse cause, ou sur cause illicite, ne peut avoir aucun effet. An obligation without consideration, or on a false consideration, or on unlawful consideration, cannot have any effect.

Locus contractus regit actum. The place of the contract governs the act. [Cases: Contracts ☞144.]

Locus pro solutione reditus aut pecuniae secundum conditionem dimissionis aut obligationis est stricte observandus. The place for the payment of rent or money is to be strictly observed according to the condition of the lease or obligation.

Longa patientia trahitur ad consensum. Long sufferance is construed as consent.

Longa possessio est pacis jus. Long possession is a right of peace.

Longa possessio jus parit. Long possession begets a right.

Longa possessio parit jus possidendi et tollit actionem vero domino. Long possession produces the right of possession and deprives the true owner of his action.

Longum tempus et longus usus qui excedit memoriam hominum sufficit pro jure. Long time and long use beyond the memory of men suffice for right.

Loquendum ut vulgus, sentiendum ut docti. We should speak as the common people; we should think as the learned.

L'ou le ley done chose, la ceo done remedie a vener a ceo. Where the law gives a right, it gives a remedy to recover.

Lubricum linquae non facile trahendum est in poenam. A slip of the tongue ought not to be easily subject to punishment.

Lucrum facere ex pupilli tutela tutor non debet. A guardian ought not to make money out of the guardianship of his ward.

Lunaticus, qui gaudet in lucidis intervallis. A person is (still) a lunatic who enjoys lucid intervals.

Magis de bono quam de malo lex intendit. The law favors a good rather than a bad construction. • When an agreement's words are susceptible of both a favorable and unfavorable meaning, the former is adopted. Thus, a bond conditioned to assign all offices will be construed to apply to assignable offices.

Magister rerum usus; magistra rerum experientia. Use is the master of things; experience is the mistress of things.

Magna Charta et Charta de Foresta sont appelés les deux grandes charters. Magna Carta and the Charter of the Forest are called the two great charters.

Magna culpa dolus est. Great fault (or gross negligence) is equivalent to fraud.

Magna negligentia culpa est; magna culpa dolus est. Great negligence is fault; great fault is fraud.

Maihemium est homicidium inchoatum. Mayhem is incipient homicide.

Maihemium est inter crimina majora minimum, et inter minora maximum. Mayhem is the least of great crimes, and the greatest among small.

Maihemium est membri mutilatio, et dici poterit, ubi aliquis in aliqua parte sui corporis effectus sit inutilis ad pugnandum. Mayhem is the mutilation of a limb, and can be said (to occur) when a person is injured in any part of his body so as to be useless in a fight.

Major continet in se minus. The greater includes the less.

Majore poena affectus quam legibus statuta est non est infamis. A criminal afflicted with a greater punishment than is provided by law is not infamous. 4 Co. Inst. 66.

Major haereditas venit unicuique nostrum a jure et legibus quam a parentibus. A greater inheritance comes to every one of us from right and the laws than comes from parents.

Majori summae minor inest. The lesser is included in the greater sum.

Major numerus in se continet minorem. The greater number contains in itself the less.

Majus continet minus. The greater contains the less.

Majus dignum trahit ad se minus dignum. The more worthy draws to itself the less worthy.

Majus est delictum seipsum occidere quam alium. It is a greater crime to kill one's self than another.

Mala grammatica non vitiat chartam; sed in expositione instrumentorum mala grammatica quoad fieri possit evitanda est. Bad grammar does not vitiate a deed; but in the construction of instruments, bad grammar, as far as possible, is to be avoided.

Maledicta expositio quae corrumpit textum. It is a cursed construction that corrupts the text.

Maleficia non debent remanere impunita, et impunitas continuum affectum tribuit delinquendi. Evil deeds ought not to remain unpunished, and impunity affords continual incitement to wrongdoing. 4 Coke 45.

Maleficia propositis distinguuntur. Misdeeds are distinguished from proposals; crimes are distinguished by the intention (with which they are committed).

Malitia est acida, est mali animi affectus. Malice is sour; it is the quality of a bad mind.

Malitia supplet aetatem. Malice makes up for age.

Malitiis hominum est obviandum. The malicious designs of men must be thwarted. • Also found as *Malum hominum est obviandum.*

Malum non habet efficientem sed deficientem causam. Evil has not an efficient but a deficient cause.

Malum non praesumitur. Evil is not presumed.

Malum quo communius eo pejus. The more common the evil, the worse.

Malus usus est abolendus. An evil custom ought to be abolished; a bad usage should be abolished.

Malus usus est abolendus, quia in consuetudinibus, non diuturnitas temporis, sed soliditas rationis est consideranda. An evil custom is to be abolished, because, in customs, not length of time, but solidity of reason, is to be considered.

Mandata licita strictam recipiunt interpretationem, sed illicita latam et extensam. Lawful commands receive a strict interpretation, but unlawful ones receive a wide and an expansive interpretation.

Mandatarius terminos sibi positos transgredi non potest. A mandatary cannot exceed the bounds of his authority.

Mandatum nisi gratuitum nullum est. Unless a mandate is gratuitous (without payment), it is not a mandate.

Manifesta probatione non indigent. Obvious facts are not in need of proof.

Maris et faeminae conjunctio est de jure naturae. The union of male and female is founded on the law of nature.

Matrimonia debent esse libera. Marriages ought to be free.

Matrimonium subsequens legitimos facit quoad sacerdotium non quoad successionem propter consuetudinem regni quae se habet in contrarium. Subsequent marriage legitimates as regards priesthood but not as regards succession because of the custom of the kingdom, which is to the contrary.

Matrimonium subsequens tollit peccatum praecedens. A subsequent marriage removes preceding fault.

Matter en ley ne serra mise en bouche del jurors. Matter of law shall not be put into the mouths of jurors.

Maturiora sunt vota mulierum quam virorum. The wishes of women are of quicker maturity than those of men. • That is, women arrive earlier at eligibility for marriage. 6 Coke 71.

Maxime ita dicta quia maxima est ejus dignitas et certissima auctoritas, atque quod maxime omnibus probetur. A maxim is so called because its dignity is chiefest and its authority is the most certain, and because it is most approved by all.

Maxime paci sunt contraria vis et injuria. The greatest enemies to peace are force and wrong.

Maximus erroris populus magister. The people are the greatest master of error.

Meliorem conditionem suam facere potest minor, deterioremnequaquam. A minor can improve or make his condition better, but in no way worse. • This maxim is sometimes written *Meliorem conditionem facere potest minor, deteriorem nequaquam* (also translatable as "a minor can make his condition better, but by no means worse").

Melior est causa possidentis. The cause of the possessor is preferable.

Melior est conditio defendentis. The condition of the defendant is the better.

Melior est conditio possidentis et rei quam actoris. Better is the condition of the possessor, and that of the defendant (is better) than that of the plaintiff.

Melior est conditio possidentis, ubi neuter jus habet. Better is the condition of the possessor where neither of the two has the right.

Melior est justitia vere praeveniens quam severe puniens. Justice that truly prevents a crime is better than that which severely punishes it.

Melius est in tempore occurrere quam post causam vulneratum remedium quaerere. It is better to oppose in time than to seek a remedy after a wrong has been inflicted. • Coke introduces this maxim with the phrase *ne per negligentiam damnum incurrat*: "lest he incur damage through negligence." 2 Co. Inst. 299.

Melius est jus deficiens quam jus incertum. Law that is deficient is better than law that is uncertain.

Melius est omnia mala pati quam malo consentire. It is better to suffer every wrong than to consent to wrong.

Melius est petere fontem quam sectari rivulos. It is better to go to the fountainhead than to follow the streams.

Melius est recurrere quam male currere. It is better to run back than to run wrong (or badly). • It is better to retrace one's steps than to proceed improperly.

Mens testatoris in testamentis spectanda est. In wills, the intention of the testator is to be regarded.

Mentiri est contra mentem ire. To lie is to go against the mind.

Mercis appellatio ad res mobiles tantum pertinet. The term "merchandise" belongs to movable things only.

Mercis appellatione homines non contineri. Under the name of merchandise human beings are not included.

Merito beneficium legis amittit qui legem ipsam subvertere intendit. A person deservedly loses the protection of the law who attempts to overturn the law itself.

Merito retribuat Rex legi quod lex attribuat ei. The king rightly repays the law what (i.e., the power that) the law ascribes to him; let the king repay to the law what the law attributes to him.

Merx est quidquid vendi potest. Merchandise is whatever can be sold.

Meum est promittere, non dimittere. It is mine to promise, not to discharge.

Minatur innocentibus qui parcit nocentibus. A person threatens the innocent who spares the guilty.

Minima poena corporalis est major qualibet pecuniaria. The smallest bodily punishment is greater than any pecuniary one.

Minime mutanda sunt quae certam habuerunt interpretationem. Things that have had a fixed interpretation are to be altered as little as possible.

Minimum est nihilo proximum. The least is next to nothing.

Minor ante tempus agere non potest in casu proprietatis, nec etiam convenire. A minor before majority cannot act in a case of property, not even to agree.

Minor ante tempus agere non potest in casu proprietatis, nec etiam convenire; differetur usque aetatem; sed non cadit breve. A minor before majority cannot act in a case of property, not even to agree; it will be deferred until majority; but a writ does not fail.

Minor jurare non potest. A minor cannot take an oath.

Minor minorem custodire non debet; alios enim praesumitur male regere qui seipsum regere nescit. A minor ought not be guardian of a minor, for he is presumed to govern others ill who does not know how to govern himself.

Minor non tenetur respondere durante minori aetati, nisi in causa dotis, propter favorem. A minor is not bound to answer during his minority, except as a matter of favor in a cause of dower.

Minor qui infra aetatem 12 annorum fuerit utlagari non potest nec extra legem poni, quia ante talem aetatem, non est sub lege aliqua nec in decenna. A minor who is under 12 years of age cannot be outlawed nor placed beyond the law, because before that age he is not under any law nor in a decennary.

Minor septemdecim annis non admittitur fore executorem. A person under 17 years of age is not admitted to be an executor.

Minus solvit qui tardius solvit; nam et tempore minus solvitur. A person pays too little who pays too late; for, from the delay, the payment is less.

Misera est servitus ubi jus est vagum aut incertum. It is a miserable slavery where the law is vague or uncertain.

Mitius imperanti melius paretur. The more mildly one commands, the better is he obeyed.

Mobilia non habent situm. Movables have no fixed site or locality.

Mobilia personam sequuntur, immobilia situm. Movable things follow the person; immovable ones, their locality.

Mobilia sequuntur personam. Movables follow the person. [Cases: Taxation ⚲98.]

Modica circumstantia facti jus mutat. A small circumstance attending an act alters the right.

Modus de non decimando non valet. A prescription not to pay tithes is void.

Modus et conventio vincunt legem. Customary form and the agreement of the parties overcome the law. • One of the first principles relative to the law of contract. 2 Coke 73.

Modus legem dat donationi. Custom (or form) gives law to a gift.

Moneta est justum medium et mensura rerum commutabilium, nam per medium monetae fit omnium rerum conveniens et justa aestimatio. Money is the just medium and measure of all exchangeable things, for by the medium of money a suitable and just estimation of all things is made.

Monetandi jus comprehenditur in regalibus quae nunquam a regio sceptro abdicantur. The right of coining is included among those rights of royalty that are never relinquished by the kingly scepter.

Monumenta quae nos recorda vocamus sunt veritatis et vetustatis vestigia. The monuments that we call records are the vestiges of truth and antiquity.

Mora debitoris non debet esse creditori damnosa. Delay by a debtor ought not to be injurious to a creditor.

Mora reprobatur in lege. Delay is disapproved of in law.

Mors dicitur ultimum supplicium. Death is called the extreme penalty.

Mors omnia solvit. Death dissolves all things.

Mortis momentum est ultimum vitae momentum. The moment of death is the last moment of life.

Mortuus exitus non est exitus. A dead issue is not issue. • That is, a child born dead is no child.

Mos retinendus est fidelissimae vetustatis. A custom of the truest antiquity is to be retained.

Mulcta damnum famae non irrogat. A fine does not impose a loss of reputation.

Multa conceduntur per obliquum quae non conceduntur de directo. Many things are conceded indirectly that are not allowed directly.

Multa fidem promissa levant. Many promises lessen confidence.

Multa ignoramus quae nobis non laterent si veterum lectio nobis fuit familiaris. We are ignorant of many things that would not be hidden from us if the reading of old authors were familiar to us.

Multa in jure communi contra rationem disputandi pro communi utilitate introducta sunt. Many things have been introduced into the common law, with a view to the public good, that are contrary to logical reasoning. Co. Litt. 70b.

Multa multo exercitatione facilius quam regulis percipies. You will perceive many things much more easily by practice than by rules.

Multa non vetat lex quae tamen tacite damnavit. The law does not forbid many things that yet it has silently condemned.

Multa transeunt cum universitate quae non per se transeunt. Many things pass with the whole that would not pass separately.

Multi multa, nemo omnia novit. Many men know many things; no one knows everything.

Multiplex et indistinctum parit confusionem; et quaestiones quo simpliciores, eo lucidiores. Multiplicity and indistinctness produce confusion: the simpler questions are, the more lucid they are.

Multiplicata transgressione crescat poenae inflictio. The infliction of punishment should increase with the repetition of the offense. Coke continues, *Ex frequenti delicto augetur poena* (q.v.). 2 Co. Inst. 479.

Multitudinem decem faciunt. Ten make a multitude.

Multitudo errantium non parit errori patrocinium. The multitude of those who err does not produce indulgence for error.

Multitudo imperitorum perdit curiam. A multitude of ignorant practitioners destroys a court.

Multo utilius est pauca idonea effundere, quam multis inutilibus homines gravari. It is much more useful to pour forth a few suitable things than to burden mankind with many useless things.

Nasciturus pro jam nato habetur quamdiu agitur de ejus commodo. One about to be born is held as already born as long as the issue is to his benefit; a child conceived is treated as born to the extent that it is to his or her benefit.

Natura appetit perfectum, ita et lex. Nature aspires to perfection, and so does the law.

Naturae vis maxima; natura bis maxima. The force of nature is greatest; (and, as some say,) nature is doubly greatest. 2 Co. Inst. 564.

Natura fide jussionis sit strictissimi juris et non durat vel extendatur de re ad rem, de persona ad personam, de tempore ad tempus. The nature of the contract of suretyship is strictissimi juris, and does not endure or should not be extended from thing to thing, from person to person, or from time to time.

Naturale est quidlibet dissolvi eo modo quo ligatur. It is natural for a thing to be dissolved in the same way in which it is bound.

Natura non facit saltum, ita nec lex. Nature makes no leap, and neither does the law.

Natura non facit vacuum, nec lex supervacuum. Nature makes no vacuum, and the law nothing purposeless.

Nec curia deficeret in justitia exhibenda. Nor should the court be deficient in showing justice.

Necessarium est quod non potest aliter se habere. That is necessary which cannot be otherwise.

Necessitas est lex temporis et loci. Necessity is the law of time and place.

Necessitas excusat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus. Necessity excuses or extenuates delinquency in capital cases, but does not have the same effect in civil cases.

Necessitas facit licitum quod alias non est licitum. Necessity makes lawful what otherwise is unlawful. [Cases: Criminal Law ☞38.]

Necessitas inducit privilegium quoad jura privata. Necessity creates a privilege with regard to private rights.

Necessitas non habet legem. Necessity has no law.

Necessitas publica major est quam privata. Public necessity is greater than private necessity.

Necessitas quod cogit defendit. Necessity defends what it compels.

Necessitas sub lege non continetur, quia quod alias non est licitum necessitas facit licitum. Necessity is not restrained by law; since what otherwise is not lawful necessity makes lawful.

Necessitas vincit legem. Necessity overcomes the law.

Necessitas vincit legem; legum vincula irridet. Necessity overcomes the law; it laughs at the fetters of laws.

Nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum. Nor shall we go upon him, nor send upon him, except by the lawful judgment of his peers; we will not go against him or send against him except by the lawful judgment of his peers. • This language appears in Magna Carta, ch. 39.

Nec tempus nec locus occurrit regi. Neither time nor place thwarts the king.

Nec veniam effuso sanguine casus habet. Where blood has been spilled, the case is unpardonable.

Nec veniam, laeso numine, casus habet. Where the Divinity has been insulted, the case is unpardonable.

Negatio conclusionis est error in lege. The denial of a conclusion is error in law.

Negatio destruit negationem, et ambae faciunt affirmationem. A negative destroys a negative, and both make an affirmative.

Negatio duplex est affirmatio. A double negative is an affirmative.

Negligentia semper habet infortuniam comitem. Negligence always has misfortune for a companion.

Neminem laedit qui jure suo utitur. A person who exercises his own rights injures no one.

Neminem oportet esse sapientiorem legibus. No one ought to be wiser than the laws.

Nemo admittendus est inhabilitare seipsum. No one is allowed to incapacitate himself.

Nemo agit in seipsum. No one acts against himself.

Nemo alienae rei, sine satisdatione, defensor idoneus intelligitur. No one is considered a competent defender of another's property, without security.

Nemo alieno nomine lege agere potest. No one can sue at law in the name of another.

Nemo aliquam partem recte intelligere potest, antequam totum iterum atque iterum perlegerit. No one can properly understand any part of a thing until he has read through the whole again and again.

Nemo allegans suam turpitudinem audiendus est. No one testifying to his own wrong is to be heard as a witness. [Cases: Estoppel ☞59.]

Nemo auditur propriam turpitudinem allegans. No one is heard when alleging his own wickedness; no one can be heard whose claim is based on his own disgraceful behavior.

Nemo bis punitur pro eodem delicto. No one is punished twice for the same offense.

Nemo cogitationis poenam patitur. No one suffers punishment for his thoughts.

Nemo cogitur rem suam vendere, etiam justo pretio. No one is bound to sell his property, even for a just price.

Nemo commodum capere potest de injuria sua propria. No one can derive benefit from his own wrong.

Nemo contra factum suum (proprium) venire potest. No one can contradict his own deed. 2 Co. Inst. 66.

Nemo damnum facit, nisi qui id fecit quod facere jus non habet. No one does damage except the person who did what he has no right to do.

Nemo dare potest quod non habet. No one can give that which he does not have.

Nemo dat qui non habet. No one gives who does not possess.

Nemo dat quod non habet. No one gives what he does not have; no one transfers (a right) that he does not possess. • According to this maxim, no one gives a better title to property than he himself possesses. A variation of this maxim is *Nemo dat qui non habet* (no one gives who does not have).

Nemo debet bis puniri pro uno delicto. No one ought to be punished twice for the same offense.

Nemo debet bis vexari pro eadem causa. No one should be twice troubled for the same cause. [Cases: Judgment ☞540.]

Nemo debet bis vexari pro una et eadem causa. No one ought to be twice troubled for one and the same cause. [Cases: Judgment ☞540.]

Nemo debet bis vexari, si constet curiae quod sit pro una et eadem causa. No one ought to be twice troubled, if it appears to the court that it is for one and the same cause of action.

Nemo debet esse judex in propria causa. No one should be judge in his own cause. [Cases: Judges ☞42.]

Nemo debet immiscere se rei alienae ad se nihil pertinenti. No one should interfere in another's business that does not at all concern him.

Nemo debet in communione invitus teneri. No one should be retained in a partnership against his will.

Nemo debet locupletari aliena jactura. No one ought to be enriched at another's expense.

Nemo debet locupletari ex alterius incommodo. No one ought to be enriched out of another's disadvantage.

Nemo debet rem suam sine factu aut defectu suo amittere. No one should lose his property without his own act or negligence.

Nemo de domo sua extrahi potest. No one can be dragged (taken by force) from his own house. Dig. 50.17.103.

Nemo duobus utatur officiis. No one should exercise two offices.

Nemo ejusdem tenementi simul potest esse haeres et dominus. No one can be both heir and owner of the same land at the same time.

Nemo enim aliquam partem recte intelligere possit antequam totum iterum atque iterum perlegerit. No one may be able rightly to understand one part before he has again and again read through the whole.

Nemo est haeres viventis. No one is an heir of someone living. [Cases: Descent and Distribution ☞68; Wills ☞506(6).]

Nemo est supra leges. No one is above the laws.

Nemo ex alterius facto praegravari debet. No one ought to be burdened in consequence of another's act.

Nemo ex consilio obligatur. No one is bound for the advice he gives.

Nemo ex dolo suo proprio relevetur aut auxilium capiat. Let no one be relieved or gain advantage by his own fraud.

Nemo ex proprio dolo consequitur actionem. No one acquires a right of action from his own wrong (or deception). [Cases: Action ☞4.]

Nemo ex suo delicto meliorem suam conditionem facere potest. No one can improve his condition by his own wrong.

Nemo inauditus condemnari debet, si non sit contumax. No one ought to be condemned unheard, unless for contempt. • This maxim is sometimes written *Nemo inauditus nec insummonitus condemnari debet, si non sit contumax* (meaning "no one should be condemned unheard and unsummoned, unless for contempt").

Nemo in communione potest invitus detineri. No one can be held (to act) in common against his will; no one can be forced to remain in common ownership against his will. • This maxim states the premise that a coowner can always insist on the division of the property owned.

Nemo in propria causa testis esse debet. No one can be a witness in his own cause.

Nemo jus sibi dicere potest. No one can give judgment for himself.

Nemo militans Deo implicetur secularibus negotiis. No one warring for God should be troubled by secular business.

Nemo nascitur artifex. No one is born an expert. • Wisdom in the law is acquired only through diligent study. Co. Litt. 97b.

Nemo patriam in qua natus est exuere, nec ligeantiae debitum ejurare possit. No one can cast off his native land or refuse the obligation of allegiance to it.

Nemo plus commodi haeredi suo relinquit quam ipse habuit. No one leaves a greater asset to his heir than he had himself.

Nemo plus juris ad alienum transferre potest quam ipse haberet. No one can transfer to another a greater right than he himself might have. Dig. 50.17.54. [Cases: Sales ☞226.]

Nemo potest contra recordum verificare per patriam. No one can verify by the country against a record. • Certain matters of record cannot be contested in court. 2 Co. Inst. 380.

Nemo potest esse dominus et haeres. No one can be both owner and heir.

Nemo potest esse simul actor et judex. No one can be at the same time suitor and judge.

Nemo potest esse tenens et dominus. No one can be at the same time tenant and landlord (of the same tenement).

Nemo potest exuere patriam. No one can cast off his own country.

Nemo potest facere per alium quod per se non potest. No one can do through another what he cannot do by himself.

Nemo potest facere per obliquum quod non potest facere per directum. No one can do indirectly what he cannot do directly.

Nemo potest mutare consilium suum in alterius injuriam. No one can change his purpose to the injury of another.

Nemo potest nisi quod de jure potest. No one is able to do a thing, unless he can do it lawfully.

Nemo potest plus juris ad alium transferre quam ipse habet. No one can transfer to another a greater right than he himself (actually) has. Co. Litt. 309.

Nemo potest praecise cogi ad factum. No one can be compelled to perform a specific act. • The effect of this maxim is that an order of specific performance is not available.

Nemo potest sibi debere. No one can owe to himself.

Nemo praesens nisi intelligat. One is not present unless he understands.

Nemo praesumitur alienam posteritatem suae praetulisse. No one is presumed to have preferred another's posterity to his own.

Nemo praesumitur donare. No one is presumed to make a gift.

Nemo praesumitur esse immemor suae aeternae salutatis, et maxime in articulo mortis. No one is presumed to be forgetful of his eternal welfare, and especially at the point of death.

Nemo praesumitur ludere in extremis. No one is presumed to trifle at the point of death.

Nemo praesumitur malus. No one is presumed to be bad.

Nemo prohibetur plures negotiationes sive artes exercere. No one is prohibited from exercising several kinds of business or arts.

Nemo prohibetur pluribus defensionibus uti. No one is forbidden to employ several defenses.

Nemo prudens punit ut praeterita revocentur, sed ut futura praeveniantur. No one who is wise gives punishment so that past deeds may be revoked, but so that future deeds may be prevented.

Nemo punitur pro alieno delicto. No one is punished for the crime or wrong of another.

Nemo punitur sine injuria, facto, seu defalta. No one is punished unless for some wrong, act, or default.

Nemo qui condemnare potest absolvere non potest. No one who can condemn is unable to acquit.

Nemo sibi esse judex vel suis jus dicere debet. No one ought to be his own judge or to administer justice in cases where his relations are concerned.

Nemo sine actione experitur, et hoc non sine breve sive libello conventionali. No one goes to trial without an action, and no one can bring an action without a writ or bill.

Nemo tenetur ad impossibile. No one is bound to an impossibility.

Nemo tenetur armare adversarium contra se. No one is bound to arm his adversary against himself.

Nemo tenetur divinare. No one is bound to foretell the future.

Nemo tenetur edere instrumenta contra se. No one is bound to produce writings against himself.

Nemo tenetur informare qui nescit sed quisquis scire quod informat. No one who is ignorant of a thing is bound to give information of it, but everyone is bound to know what he gives information of.

Nemo tenetur jurare in suam turpitudinem. No one is bound to swear to his own criminality.

Nemo tenetur prodere seipsum. No one is bound to betray himself. • In other words, no one can be compelled to incriminate himself.

Nemo tenetur seipsum accusare. No one is bound to accuse himself. • This is a formulation of the privilege against self-incrimination. In good Latin, *se ipsum* appears as two words; but in law the phrase is usually combined to one (*seipsum*).

Nemo tenetur seipsum infortuniis et periculis exponere. No one is bound to expose himself to misfortune and dangers.

Nemo tenetur seipsum prodere. No one is bound to betray himself.

Nemo unquam judicet in se. Let no one ever be a judge in his own cause.

Nemo unquam vir magnus fuit sine aliquo divino afflatu. No one was ever a great man without some divine inspiration.

Nemo videtur fraudare eos qui sciunt et consentiunt. No one is considered as deceiving those who know and consent.

Neque leges neque senatus consulta ita scribi possunt ut omnes casus qui quandoque inciderint comprehendantur; sed sufficit ea quae plerumque accidunt contineri. Neither laws nor acts of senate can be so written as to include all cases that have happened at any time; it is sufficient that those things that usually occur are encompassed. Dig. 1.3.10. pr.

Ne quid in loco publico vel itinere fiat. Let nothing be done (put or erected) in a public place or way. • The title of an interdict in the Roman law.

Nigrum nunquam excedere debet rubrum. The black should never go beyond the red. • That is, the text of a statute should never be read in a sense more comprehensive than the rubric, or title.

Nihil aliud potest rex quam quod de jure potest. The king can do nothing but what he can do legally; the king can do nothing except by law.

Nihil consensui tam contrarium est quam vis atque metus. Nothing is so opposite to consent as force and fear.

Nihil dat qui non habet. A person gives nothing who has nothing.

Nihil de re accrescit ei qui nihil in re quando jus accresceret habet. Nothing from a property accrues to a person who had no interest in the property when the right accrued. Co. Litt. 188.

Nihil dictum quod non dictum prius. Nothing is said that was not said before.

Nihil est enim liberale quod non idem justum. For there is nothing generous that is not at the same time just.

Nihil est magis rationi consentaneum quam eodem modo quodque dissolvere quo conflatum est. Nothing is more consonant to reason than that everything should be dissolved in the same way as it was made.

Nihil facit error nominis cum de corpore constat. An error in the name is nothing when there is certainty as to the person.

Nihil habet forum ex scena. The court has nothing to do with what is not before it.

Nihil infra regnum subditos magis conservat in tranquillitate et concordia quam debita legum administratio. Nothing better preserves the subjects of the realm in tranquillity and concord than a due administration of the laws. 2 Co. Inst. 158.

Nihil iniquius quam aequitatem nimis intendere. Nothing is more unjust than to extend equity too far.

Nihil in lege intolerabilius est (quam) eandem rem diverso jure censeri. Nothing in law is more intolerable than that the same case should be subject (in different courts) to different views of the law.

Nihil magis justum est quam quod necessarium est. Nothing is more just than what is necessary.

Nihil nequam est praesumendum. Nothing wicked is to be presumed.

Nihil perfectum est dum aliquid restat agendum. Nothing is perfect while something remains to be done.

Nihil peti potest ante id tempus quo per rerum naturam persolvi possit. Nothing can be demanded before the time when, in the nature of things, it can be paid.

Nihil possumus contra veritatem. We have no power against truth.

Nihil praescribitur nisi quod possidetur. There is no prescription for what is not possessed.

Nihil quod est contra rationem est licitum. Nothing that is against reason is lawful.

Nihil quod est inconveniens est licitum. Nothing that is improper is lawful. Co. Litt. 66a.

Nihil quod est licitum est inconveniens. Nothing that is lawful is improper.

Nihil simul inventum est et perfectum. Nothing is invented and perfected at the same moment.

Nihil tam conveniens est naturali aequitati quam unumquodque dissolvi eo ligamine quo ligatum est. Nothing is so consonant with natural equity as that each thing should be dissolved by the same means as it was bound.

Nihil tam conveniens est naturali aequitati quam voluntatem domini volentis rem suam in alium transferre ratam haberi. Nothing is more consistent with natural equity than to confirm the will of an owner who desires to transfer his property to another.

Nihil tam naturale est quam eo genere quidque dissolvere quo colligatum est. Nothing is so natural as that an obligation should be dissolved by the same principle by which it was contracted.

Nihil tam naturale est quam eo genere quidque dissolvere quo colligatum est; ideo verborum obligatio verbis tollitur; nudi consensus obligatio contrario consensu dissolvitur. Nothing is so natural as to dissolve anything in the way in which it was bound together; therefore the obligation of words is taken away by words; the obligation of mere consent is dissolved by the contrary consent.

Nihil tam proprium imperio quam legibus vivere. Nothing is so becoming to authority as to live according to the law.

Nil agit exemplum litem quod lite resolvit. A precedent accomplishes nothing if it settles one dispute by raising another.

Nil facit error nominis cum de corpore vel persona constat. An error in the name is immaterial when the body or person is certain.

Nil sine prudenti fecit ratione vetustas. Antiquity did nothing without a good reason.

Nil temere novandum. Nothing should be rashly changed.

Nimia certitudo certitudinem ipsam destruit. Too great certainty destroys certainty itself.

Nimia subtilitas in jure reprobatur. Too much subtlety in law is condemned.

Nimia subtilitas in jure reprobatur, et talis certitudo certitudinem confundit. Too great subtlety is disapproved of in law, and such certainty confounds certainty.

Nimium altercando veritas amittitur. By too much quarreling truth is lost.

Nobiles magis plectuntur pecunia, plebes vero in corpore. The higher classes are more punished in money, but the lower in person.

Nobiles sunt qui arma gentilitia antecessorum suorum proferre possunt. The gentry are those who are able to produce the heraldic arms of their own ancestors.

Nobiliores et benigniores praesumptiones in dubiis sunt praeferendae. When in doubt, the more generous and kind presumptions are to be preferred.

Nobilitas est duplex, superior et inferior. There are two sorts of nobility, the higher and the lower.

Nomen est quasi rei notamen. A name is, as it were, the distinctive sign (or signifier) of a thing.

Nomen non sufficit si res non sit de jure aut de facto. A name does not suffice if the thing does not exist by law or by fact.

Nomina si nescis, perit cognitio rerum. If you do not know the names of things, the knowledge of things themselves perishes.

Nomina si nescis, perit cognitio rerum; et nomina si perdas, certe distinctio rerum perditur. If you do not know the names of things, the knowledge of things themselves perishes; and, if you lose the names, the distinction of the things is certainly lost.

Nomina sunt mutabilia, res autem immobiles. Names are mutable, but things immutable.

Nomina sunt notae rerum. Names are the marks of things.

Nomina sunt symbola rerum. Names are the symbols of things.

Non accipi debent verba in demonstrationem falsam, quae competunt in limitationem veram. Words ought

not to be accepted to import a false description when they are consistent with a true definition.

Non alio modo puniatur aliquis, quam secundum quod se habet condemnatio. A person may not be punished otherwise than according to what the sentence enjoins.

Non aliter a significatione verborum recedi oportet quam cum manifestum est aliud sensisse testatorem. We must depart from the (ordinary) significance of words only when it is evident that the testator had a different understanding. Dig. 32.69. pr.

Non auditur perire volens. One who wishes to perish is not heard.

Non bis in idem (or imperative, ne bis in idem). Not twice for the same thing. • That is, a person shall not be twice tried for the same crime. This maxim of the civil law expresses the same principle as the familiar rule against "double jeopardy. [Cases: Double Jeopardy ☞183.1.]

Non concedantur citationes priusquam exprimatur super qua re fieri decet citatio. Summonses should not be granted before it is expressed on what ground a summons should be issued.

Non consentit qui errat. A person who errs does not consent.

Non dat qui non habet. A person who does not have does not give.

Non debeo melioris conditionis esse quam auctor meus a quo jus in me transit. I ought not to be in better condition than the person to whose rights I succeed.

Non deberet alii nocere quod inter alios actum esset. A person ought not to be injured by what has taken place between other parties.

Non debet actori licere quod reo non permittitur. What is not permitted to the defendant ought not to be allowed to the plaintiff.

Non debet adduci exceptio ejus rei cujus petitur dissolutio. An exception (or plea) should not be made on the very matter of which a determination is sought (in the case at hand).

Non debet alii nocere quod inter alios actum est. A person ought not to be prejudiced by what has been done between others.

Non debet alteri per alterum iniqua conditio inferri. An unfair condition ought not to be brought on one person by the act of another.

Non debet cui plus licet quod minus est non licere. A person who is permitted to do the greater thing ought not to be forbidden to do the lesser.

Non debet dici tendere in praejudicium ecclesiasticae liberatatis quod pro rege et republica necessarium videtur. What seems necessary for the king and the state ought not to be said to tend to the prejudice of spiritual liberty.

Non decet homines dedere causa non cognita. It is unbecoming to surrender people when no cause has been shown.

Non decipitur qui scit se decipi. A person is not deceived who knows himself to be deceived.

Non definitur in jure quid sit conatus. What an attempt is, is not defined in law.

Non differunt quae concordant re, tametsi non in verbis iisdem. Those things that agree in substance, even if not in the same words, do not differ.

Non dubitatur, etsi specialiter venditor evictionem non promiserit, re evicta, ex empto competere actionem. It is certain that even if the vendor has not given a special guarantee, an action ex empto lies against him, if the purchaser is evicted.

Non efficit affectus nisi sequatur effectus. The intention amounts to nothing unless some effect follows.

Non erit alia lex Romae, alia Athaenis; alia nunc, alia posthac; sed et omnes gentes, et omni tempore, una lex, et sempiterna, et immortalis continebit. There will not be one law at Rome, another at Athens; one law now, another hereafter; but one eternal and immortal law shall bind together all nations throughout all time.

Non est arctius vinculum inter homines quam jusjurandum. There is no closer (or firmer) link among men than an oath.

Non est certandum de regulis juris. There is no disputing rules of law.

Non est consonum rationi quod cognitio accessorii in curia christianitatis impediatur, ubi cognitio causae principalis ad forum ecclesiasticum noscitur pertinere. It is unreasonable that the cognizance of an accessory matter should be impeded in an ecclesiastical court, when the cognizance of the principal cause is admitted to appertain to an ecclesiastical court.

Non est disputandum contra principia negantem. There is no disputing against a person who denies first principles.

Non est justum aliquem antenatum post mortem facere bastardum qui toto tempore vitae suae pro legitimo habebatur. It is not just to make an elderborn a bastard after his death, who during his lifetime was accounted legitimate.

Non est novum ut priores leges ad posteriores trahantur. It is not an innovation to adapt earlier laws to later ones. Dig. 1.3.26.

Non est recedendum a communi observantia. There should be no departure from a common observance.

Non est regula quin fallat. There is no rule that may not deceive (or disappoint).

Non est reus nisi mens sit rea. A person is not guilty unless his mind is guilty. [Cases: Criminal Law ☞20.]

Non est singulis concedendum quod per magistratum publice possit fieri, ne occasio sit majoris tumultus

faciendi. That is not to be conceded to private persons which can be publicly done by the magistrate, lest it be the occasion of greater tumult.

Non exemplis sed legibus judicandum est. Not by examples but by the laws must judgment be made.

Non ex opinionibus singulorum, sed ex communi usu, nomina exaudiri debent. Names of things ought to be understood according to common usage, not according to the opinions of individuals.

Non facias malum ut inde veniat bonum. You are not to do evil that good may come of it.

Non impedit clausula derogatoria quo minus ab eadem potestate res dissolvantur a qua constituuntur. A derogatory clause does not prevent things from being dissolved by the same power by which they were originally made.

Non in legendo sed in intelligendo leges consistunt. The laws consist not in reading but in understanding.

Non in tabulis est jus. It is not in books that the law is to be found.

Non jus ex regula, sed regula ex jure. The law does not arise from the rule (or maxim), but the rule from the law.

Non jus, sed seisina facit stipitem. Not right, but seisin, makes a stock (from which the inheritance must descend).

Non licet quod dispendio licet. That which is permitted only at a loss is not permitted.

Non nasci et natum mori paria sunt. Not to be born and to be born dead are equivalent.

Non obligat lex nisi promulgata. A law is not binding unless it has been promulgated.

Non observata forma, infertur adnullatio actus. When the form has not been observed, an annulment of the act is inferred.

Non officit affectus nisi sequatur effectus. Sed in actrocioribus delictis punitur affectus, licet non sequatur effectus. The intention is not an offense unless an effect follow. But in the most atrocious crimes the intention is punished, although no effect follow.

Non officit conatus nisi sequatur effectus. An attempt does not harm unless a consequence follows.

Non omne damnum inducit injuriam. Not every loss produces an injury (i.e., gives a right to action).

Non omne quod licet honestum est. Not everything that is lawful is honorable; not everything that is allowable is morally right.

Non omnium quae a majoribus nostris constituta sunt ratio reddi potest. Reason cannot always be given for the institutions of our ancestors.

Non pertinet ad judicem secularem cognoscere de iis quae sunt mere spiritualia annexa. It belongs not to the secular judge to take cognizance of things that are merely spiritual.

Non possessori incumbit necessitas probandi possessiones ad se pertinere. It is not incumbent on the possessor of property to prove that his possessions belong to him.

Non potest adduci exceptio ejusdem rei cujus petitur dissolutio. An exception cannot be brought on the same matter whose determination is at issue (in the action at hand).

Non potest probari quod probatum non relevat. That cannot be proved which, when proved, is irrelevant.

Non potest quis sine brevi agere. No one can sue without a writ.

Non potest rex gratiam facere cum injuria et damno aliorum. The king cannot confer a favor that occasions injury and loss to others.

Non potest rex subditum renitentem onerare impositionibus. The king cannot load a subject with impositions against his consent.

Non potest videri desisse habere qui nunquam habuit. A person cannot be considered as having ceased to have a thing who never had it.

Non praestat impedimentum quod de jure non sortitur effectum. A thing that has no effect in law is not an impediment.

Non quod dictum est, sed quod factum est, inspicitur. Not what has been said but what has been done is regarded. [Cases: Wills ⇨108.]

Non quod voluit testator, sed quod dixit in testamento inspicitur. Not what the testator wanted, but what he said in the will, is regarded.

Non refert an quis assensum suum praefert verbis an rebus ipsis et factis. It is immaterial whether a person gives assent by words or by acts themselves and deeds.

Non refert quid ex aequipollentibus fiat. It does not matter which of two equivalents happens.

Non refert quid notum sit judici, si notum non sit in forma judicii. It matters not what is known to the judge if it is not known to him judicially.

Non refert verbis an factis fit revocatio. It does not matter whether a revocation is made by words or by acts.

Non respondebit minor, nisi in causa dotis, et hoc pro favore doti. A minor shall not answer except in a case of dower, and here in favor of dower.

Non solent quae abundant vitiare scripturas. Superfluous expressions do not usually vitiate writings.

Non solum quid licet sed quid est conveniens considerandum, quia nihil quod inconveniens est licitum. Not only what is permitted but what is proper is to be considered, because nothing improper is lawful.

Non sunt longa ubi nihil est quod demere possis. There is no prolixity where there is nothing that you can omit.

Non temere credere est nervus sapientae. Not to believe rashly is the sinew of wisdom.

Non valebit felonis generatio nec ad haereditatem paternam vel maternam; si autem ante feloniam generationem fecerit, talis generatio succedit in haereditate patris vel matris a quo non fuerit felonia perpetrata. The offspring of a felon cannot succeed either to a maternal or paternal inheritance; but if the felon had offspring before the felony, the offspring may succeed to the inheritance of the father or mother by whom no felony was committed.

Non valet confirmatio, nisi ille, qui confirmat, sit in possessione rei vel juris unde fieri debet confirmatio; et eodem modo, nisi ille cui confirmatio fit sit in possessione. Confirmation is not valid unless the person who confirms is in possession either of the thing or of the right of which confirmation is to be made, and, in like manner, unless that person to whom confirmation is made is in possession.

Non valet donatio nisi subsequatur traditio. A gift is not valid unless delivery (or transference) follows.

Non valet exceptio ejusdem rei cujus petitur dissolutio. An exception based on the very matter of which the determination is sought is not valid.

Non valet impedimentum quod de jure non sortitur effectum. An impediment that does not derive its effect from the law has no force.

Non verbis sed ipsis rebus leges imponimus. Not on words, but on affairs themselves do we impose laws.

Non videntur qui errant consentire. They who err are not considered as consenting. [Cases: Contracts ☞93.]

Non videntur rem amittere quibus propria non fuit. They are not considered as losing a thing if it was not their own.

Non videtur consensum retinuisse si quis ex praescripto minantis aliquod immutavit. If a person has changed anything at the demand of a party threatening, he is not considered to have maintained his consent.

Non videtur perfecte cujusque id esse quod ex casu auferri potest. A thing is not considered completely to belong to anyone if it can be taken from him by chance (or occasion).

Non videtur quisquam id capere quod ei necesse est alii restituere. A person is not considered to acquire property in a thing that he must restore to another. Dig. 50.17.51.

Non videtur vim facere qui jure suo utitur et ordinaria actione experitur. A person is not judged to use force who exercises his own right and proceeds by ordinary action.

Noscitur a sociis. It is known from its associates. [Cases: Contracts ☞152; Statutes ☞193.]

Noscitur ex socio qui non cognoscitur ex se. A person who is not known for himself is known from his associate.

Notitia dicitur a noscendo; et notitia non debet claudicare. Notice is named from knowledge; and notice ought not to limp (that is, be imperfect).

Nova constitutio futuris formam imponere debet, non praeteritis. A new enactment ought to impose form on what is to come, not on what is past. • A new regulation should not apply retroactively but from its enactment. 2 Co. Inst. 292.

Novatio non praesumitur. A novation is not presumed.

Novitas non tam utilitate prodest quam novitate perturbat. Novelty does not as much benefit by its utility as it disturbs by its novelty.

Novum judicium non dat novum jus, sed declarat antiquum. A new judgment does not make a new right, but declares the old.

Novum judicium non dat novum jus, sed declarat antiquum; quia judicium est juris dictum, et per judicium jus est noviter revelatum quod diu fuit velatum. A new judgment does not make a new right, but declares the old; because adjudication is the declaration of a right, and by adjudication the right is newly revealed which has long been hidden. 10 Coke 42.

Noxa caput sequitur. The liability follows the head or person. • Liability to make good an injury caused by a slave attaches to the master. Dig. 2.14.7.4.

Nuda pactio obligationem non parit. A naked agreement (i.e., without consideration) does not create an obligation. Dig. 2.14.7.4.

Nuda ratio et nuda pactio non ligant aliquem debitorem. Bare reason and naked agreement do not bind any debtor.

Nudum pactum est ubi nulla subest causa praeter conventionem; sed ubi subest causa, fit obligatio, et parit actionem. Naked agreement (nudum pactum) is where there is no consideration besides the agreement; but when there is a consideration, an obligation is created and it gives a right of action.

Nudum pactum ex quo non oritur actio. Naked agreement (nudum pactum) is that from which no action arises. [Cases: Contracts ☞75.]

Nul charter, nul vente, ne nul done vault perpetualment, si le donor n'est seise al temps de contracts de deux droits, sc. del droit de possession et del droit de properite. No grant, no sale, no gift, is valid forever unless the donor, at the time of the contract, is seised of two rights, namely, the right of possession and the right of property.

Nulla curia quae recordum non habet potest imponere finem neque aliquem mandare carceri; quia ista spectant tantummodo ad curias de recordo. No court that does not have a record can impose a fine or commit any person to prison; because those powers look only to courts of record.

Nulla emptio sine pretio esse potest. There can be no sale without a price.

Nulla impossibilia aut inhonesta sunt praesumenda; vera autem et honesta et possibilia. No impossible or dishonorable things are to be presumed; but things true, honorable, and possible.

Nulla pactione effici potest ne dolus praestetur. No agreement is sufficient to effect that there be no liability for fraud. Dig. 2.14.27.3.

Nulla virtus, nulla scientia locum suum et dignitatem conservare potest sine modestia. Without moderation, no virtue, no knowledge can preserve its place and dignity.

Nulle régle sans faute. There is no rule without fault.

Nulle terre sans seigneur. No land without a lord.

Nulli enim res sua servit jure servitutis. No one can have a servitude over his own property.

Nullius hominis auctoritas apud nos valere debet, ut meliora non sequeremur si quis attulerit. The authority of no person ought to have (such) power among us that we should not follow better (opinions) if anyone presents them.

Nulli vendemus, nulli negabimus, aut differemus rectum vel justitiam. We shall sell to no one, deny to no one, or delay to no one, equity or justice. • This language appeared in Magna Carta.

Nullum crimen majus est inobedientia. No crime is greater than disobedience.

Nullum exemplum est idem omnibus. No example is the same for all purposes.

Nullum iniquum est praesumendum in jure. Nothing unjust is to be presumed in law.

Nullum matrimonium, ibi nulla dos. No marriage, there no dower.

Nullum simile est idem. Nothing that is like another is the same. • That is, no likeness is exactly identical.

Nullum simile est idem nisi quatuor pedibus currit. Nothing similar is identical, unless it run on all fours.

Nullum simile quatuor pedibus currit. No simile runs on four feet (on all fours). • No simile holds in every respect.

Nullum tempus aut locus occurrit regi. No time or place bars the king.

Nullum tempus occurrit regi. No period of time bars the Crown; no length of time runs against the king. • This maxim expresses the idea that the king is not bound by any statute of limitations. [Cases: Limitation of Actions ⇨11.]

Nullum tempus occurrit reipublicae. No time runs against the commonwealth (or state). [Cases: Limitation of Actions ⇨11.]

Nullus alius quam rex possit episcopo demandare inquisitionem faciendam. No other than the king can command the bishop to make an inquisition.

Nullus commodum capere potest de injuria sua propria. No one can gain advantage by his own wrong.

Nullus debet agere de dolo, ubi alia actio subest. Where another form of action is given, no one ought to sue in the action de dolo.

Nullus dicitur accessorius post feloniam sed ille qui novit principalem feloniam fecisse, et illum receptavit et comfortavit. No one is called an accessory after the fact but that person who knew the principal to have committed a felony, and received and comforted him.

Nullus dicitur felo principalis nisi actor aut qui praesens est, abettans aut auxilians actorem ad feloniam faciendam. No one is called a principal felon except the party actually committing the felony, or the party who was present aiding and abetting the perpetrator in its commission.

Nullus idoneus testis in re sua intelligitur. No one is understood to be a competent witness in his own cause.

Nullus jus alienum forisfacere potest. No one can forfeit another's right.

Nullus liber homo capiatur, aut imprisonetur. Let no free man be taken or imprisoned. • This expression derives from Magna Carta, ch. 39

Nullus recedat e curia cancellaria sine remedio. Let no one depart from the court of chancery without a remedy.

Nullus videtur dolo facere qui suo jure utitur. No one is to be regarded as acting by fraud who exercises his legal right.

Nul ne doit s'enrichir aux depens des autres. No one ought to enrich himself at the expense of others.

Nul prendra advantage de son tort demesne. No one shall take advantage of his own wrong.

Nul sans damage avera error ou attaint. No one shall have error or attaint unless there has been damage.

Nunquam crescit ex post facto praeteriti delicti aestimatio. The valuation (or assessment of damage) for a past offense is never increased by what happens subsequently. Dig. 50.17.138.1.

Nunquam decurritur ad extraordinarium sed ubi deficit ordinarium. One never resorts to the extraordinary but when the ordinary fails.

Nunquam fictio sine lege. There is no fiction without law.

Nunquam nimis dicitur quod nunquam satis dicitur. What is never sufficiently said is never said too much.

Nunquam praescribitur in falso. There is never prescription in case of falsehood (or forgery).

Nunquam res humanae prospere succedunt ubi negliguntur divinae. Human affairs never prosper when divine ones are neglected.

Nuptias non concubitus sed consensus facit. Not sharing a bed but consent makes the marriage.

Obedientia est legis essentia. Obedience is the essence of the law.

Obtemperandum est consuetudini rationabili tanquam legi. A reasonable custom is to be obeyed like law.

Occultatio thesauri inventi fraudulosa. The concealment of discovered treasure is fraudulent.

Occupantis fiunt derelicta. Things abandoned become the property of the (first) occupant.

Odiosa et inhonesta non sunt in lege praesumenda. Odious and dishonest acts are not to be presumed in law.

Odiosa non praesumuntur. Odious things are not presumed.

Officia judicialia non concedantur antequam vacent. Judicial offices ought not to be granted before they are vacant.

Officia magistratus non debent esse venalia. The offices of magistrates ought not to be sold.

Officit conatus si effectus sequatur. The attempt becomes of consequence if the effect follows.

Officium nemini debet esse damnosum. An office ought to be injurious to no one.

Omissio eorum quae tacite insunt nihil operatur. The omission of those things that are silently implied is of no consequence.

Omne actum ab intentione agentis est judicandum. Every act is to be judged by the intention of the doer.

Omne crimen ebrietas et incendit et detegit. Drunkenness both inflames and reveals every crime.

Omne jus aut consensus fecit, aut necessitas constituit, aut firmavit consuetudo. Every right has been derived from consent, established by necessity, or confirmed by custom.

Omne magis dignum trahit ad se minus dignum, quamvis minus dignum sit antiquius. Every worthier thing draws to it the less worthy, even if the less worthy is more ancient.

Omne magnum exemplum habet aliquid ex iniquo, quod publica utilitate compensatur. Every great example has some portion of evil, which is compensated by its public utility.

Omne majus continet in se minus. Every greater thing contains in itself the less. [Cases: Indictment and Information ☞189.]

Omne majus dignum continet in se minus dignum. Every more worthy thing contains in itself the less worthy.

Omne majus minus in se complectitur. Every greater thing embraces in itself the lesser.

Omne principale trahit ad se accessorium. Every principal thing draws to itself the accessory.

Omne quod solo inaedificatur solo cedit. Everything that is built on the soil belongs to the soil.

Omne sacramentum debet esse de certa scientia. Every oath ought to be founded on certain knowledge.

Omnes actiones in mundo infra certa tempora habent limitationem. All actions in the world are limited within certain periods.

Omnes licentiam habere his quae pro se indulta sunt renunciare. All have liberty to renounce these things that have been granted in their favor.

Omnes prudentes illa admittere solent quae probantur iis qui in arte sua bene versati sunt. All prudent people are accustomed to admit those things that are approved by those who are skilled in their profession.

Omnes sorores sunt quasi unus haeres de una haereditate. All sisters are as it were one heir to one inheritance.

Omnes subditi sunt regis servi. All subjects are the king's servants.

Omne testamentum morte consummatum est. Every will is consummated by death.

Omnia delicta in aperto leviora sunt. All crimes committed openly are considered lighter.

Omnia praesumuntur contra spoliatorem. All presumptions are against one who wrongfully dispossesses another (a despoiler). [Cases: Evidence ☞8.]

Omnia praesumuntur legitime facta donec probetur in contrarium. All things are presumed to be done legitimately until the contrary is proved.

Omnia praesumuntur rite ac sollemniter esse acta. All things are presumed to be done in proper and regular form; all things are presumed to have been rightly and regularly done. • *Solemniter* is sometimes written *sollenniter.* — Also written *Omnia praesumuntur rite et sollemniter acta.*

Omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium. All things are presumed to have been done regularly and with due formality until the contrary is proved.

Omnia quae jure contrahuntur contrario jure pereunt. All obligations contracted under a law are destroyed by a law to the contrary.

Omnia quae sunt uxoris sunt ipsius viri. All things that are the wife's belong to her husband.

Omnia rite esse acta praesumuntur. All things are presumed to have been done in due form. [Cases: Evidence ☞82, 83.]

Omnis actio est loquela. Every action is a complaint.

Omnis conclusio boni et veri judicii sequitur ex bonis et veris praemissis et dictis juratorum. Every conclusion of a good and true judgment follows from good and true premises and the verdicts of jurors.

Omnis consensus tollit errorem. Every consent removes an error. 2 Co. Inst. 123. [Cases: New Trial ☞10.]

Omnis definitio in jure civili periculosa est, parum est enim ut non subverti possit. Every definition in the civil law is dangerous, for there is very little that cannot be overthrown.

Omnis exceptio est ipsa quoque regula. Every exception is itself also a rule.

Omnis indemnatus pro innoxio legibus habetur. Every uncondemned person is held by the law as innocent.

Omnis innovatio plus novitate perturbat quam utilitate prodest. Every innovation disturbs by its novelty more than it benefits by its usefulness.

Omnis interpretatio si fieri potest ita fienda est in instrumentis, ut omnes contrarietates amoveantur. Every interpretation of instruments is to be made, if it can be, so that all contradictions may be removed.

Omnis interpretatio vel declarat, vel extendit, vel restringit. Every interpretation explains, or extends, or restricts.

Omnis nova constitutio futuris formam imponere debet, et non praeteritis. Every new enactment should regulate future, not past transactions; every new law must impose its form on future cases and not past ones. • This maxim states the presumption against retroactivity. The phrase is sometimes written *Omnis nova constitutio futuris (temporibus) formam imponere debet, non praeteritis.*

Omnis persona est homo, sed non vicissim. Every person is a human being, but not every human being a person.

Omnis privatio praesupponit habitum. Every privation presupposes possession. • "Every discontinuance is a privation . . . and he cannot discontinue that estate which he never had." Co. Litt. 339a.

Omnis querela et omnis actio injuriarum limitata est infra certa tempora. Every plaint and every action for injuries is limited within fixed times.

Omnis ratihabitio retrotrahitur et mandato priori aequiparatur. Every subsequent ratification has a retrospective effect and is equivalent to a prior command. [Cases: Principal and Agent ⇨175(3); Torts ⇨130.]

Omnis regula suas patitur exceptiones. Every rule of law allows its own exceptions.

Omnium contributione sarciatur quod pro omnibus datum est. What has been given for all should be compensated by the contribution of all.

Omnium rerum quarum usus est, potest esse abusus, virtute solo excepta. Of everything of which there is a use, there can be abuse, virtue alone excepted.

Opinio quae favet testamento est tenenda. That opinion is to be followed which favors the will.

Oportet quod certa res deducatur in judicium. A thing, to be brought to judgment, must be definite.

Oportet quod certa sit res quae venditur. A thing, to be sold, must be definite.

Optima enim est legium interpres consuetudo. Custom is the best interpreter of laws. Dig. 1.3.37.

Optima est lex quae minimum relinquit arbitrio judicis; optimus judex qui minimum sibi. It is the best law that leaves the least to the discretion of the judge; the best judge is he who leaves least to himself.

Optima legum interpres est consuetudo. Custom is the best interpreter of law.

Optimam esse legem quae minimum relinquit arbitrio judicis; id quod certitudo ejus praestat. The law is the best that leaves the least discretion to the judge; this advantage results from its certainty.

Optima statuti interpretatrix est (omnibus particulis ejusdem inspectis) ipsum statutum. The best interpreter of a statute is (when all the separate parts of it have been considered) the statute itself.

Optimus interpres rerum usus. Usage is the best interpreter of things.

Optimus interpretandi modus est sic leges interpretare ut leges legibus accordant. The best mode of interpreting laws is to make laws agree with laws.

Optimus judex qui minimum sibi. He is the best judge who (leaves) the least to his own discretion.

Optimus legum interpres consuetudo. Custom is the best interpreter of laws.

Ordine placitandi servato, servatur et jus. When order of pleading has been preserved, the law is also preserved.

Origine propria neminem posse voluntate sua eximi manifestum est. It is manifest that no one by his own will can be stripped of his origin (or be banished from his place of origin).

Origo rei inspici debet. The origin of a thing ought to be regarded.

Pacta conventa quae neque contra leges neque dolo malo inita sunt, omni modo observanda sunt. Contracts that have been entered neither illegally nor with fraud must in all respects be observed.

Pacta dant legem contractui. Agreements give law to the contract.

Pacta privata juri publico derogare non possunt. Private contracts cannot restrict (or take away from) public law.

Pacta quae contra leges constitutionesque vel contra bonos mores fiunt nullam vim habere, indubitati juris est. It is a matter of unquestionable law that contracts against the laws and statutes, or against moral standards, have no force.

Pacta quae turpem causam continent non sunt observanda. Contracts founded on an immoral consideration are not to be observed.

Pactis privatorum juri publico non derogatur. There is no derogation from public law by private contracts.

Pacto aliquid licitum est quod sine pacto non admittitur. By agreement (or contract) something is permitted that, without agreement, is not allowed. • Coke continues, "but not in violation of public law." Co. Litt. 166.

Parens est nomen generale ad omne genus cognationis. "Parent" is a general name for every kind of relationship.

Parentum est liberos alere etiam nothos. It is the role of parents to support their children even when illegitimate.

Paria copulantur paribus. Similar things unite with similar.

Paribus sententiis reus absolvitur. When opinions are evenly divided, the defendant is acquitted. 4 Co. Inst. 64.

Par in parem imperium non habet. An equal has no power over an equal.

Partem aliquam recte intelligere nemo potest, antequam totum iterum atque iterum perlegerit. No one can rightly understand any part until he has read the whole again and again.

Parte quacumque integrante sublata, tollitur totum. When any essential part has been removed, the whole is removed (or destroyed).

Partus ex legitimo thoro non certius noscit matrem quam genitorem suum. The offspring of a legitimate bed does not know his mother more certainly than his father.

Partus sequitur ventrem. The offspring follows the condition of the mother (literally, the womb).

Parum est latam esse sententiam, nisi mandetur executioni. It is not enough that judgment has been given if it is not committed to execution.

Parum proficit scire quid fieri debet si non cognoscas quomodo sit facturum. It does little good to know what ought to happen, if you do not know how it will take effect.

Pater est quem nuptiae demonstrant. The father is the man whom the marriage indicates. • This expresses the idea that a child born to a married woman is presumed begotten by her husband. [Cases: Children Out-of-Wedlock ⇦3.]

Pater is est quem nuptiae demonstrant. The father is he whom the marriage indicates.

Patria laboribus et expensis non debet fatigari. A jury ought not to be wearied with labors and expenses.

Patria potestas in pietate debet, non in atrocitate consistere. Parental authority should consist in devotion, not dread.

Peccata contra naturam sunt gravissima. Offenses against nature are the most serious.

Peccatum peccato addit qui culpae quam facit patrocinium defensionis adjungit. A person adds one offense to another, who, when he commits a crime, joins to it the protection of a defense.

Pendente lite nihil innovetur. During litigation, let nothing be changed.

Per alluvionem id videtur adici, quod ita paulatim adicitur ut intelligere non possimus quantum quoque momento temporis adiciatur. That is considered "added by alluvion" which accumulates so gradually that we cannot tell how much is added at any one moment of time. Dig. 41.1.7.1.

Perfectum est cui nihil deest secundum suae perfectionis vel naturae modum. That is perfect which lacks nothing according to the measure of its perfection or nature.

Periculosum est res novas et inusitatas inducere. It is dangerous to introduce new and unaccustomed things.

Periculum rei venditae, nondum traditae, est emptoris. The purchaser assumes the risk for a thing sold, but not yet delivered.

Perjuri sunt qui servatis verbis juramenti decipiunt aures eorum qui accipiunt. Those who preserve the words of an oath but deceive the ears of those who accept it are perjurors. • Coke adds, "By ancient law of England, in all oathes equivocation is utterly condemned." 3 Co. Inst. 166.

Perpetua lex est nullam legem humanam ac positivam perpetuam esse; et clausula quae abrogationem excludit ab initio non valet. It is a perpetual law that no human or positive law can be perpetual; and a clause in a law that precludes abrogation is void from the outset.

Per rationes pervenitur ad legitimam rationem. By reasoning we come to legal reason.

Per rerum naturam factum negantis nulla probatio est. By the nature of things, a person who denies a fact is not bound to give proof.

Persona conjuncta aequiparatur interesse proprio. A personal connection is equivalent to one's own interest.

Persona est homo cum statu quodam consideratus. A person is a human being considered with reference to a certain status.

Personae vice fungitur municipium et decuria. Towns and boroughs act in the role of persons.

Personalia personam sequuntur. Personal things follow the person.

Perspicua vera non sunt probanda. Plain truths are not to be proved.

Per varios actus legem experientia facit. In the course of various acts, experience frames the law.

Pirata est hostis humani generis. A pirate is an enemy of the human race.

Placita negativa duo exitum non faciunt. Two negative pleas do not form an issue.

Plena et celeris justitia fiat partibus. Let the parties have full and speedy justice.

Pluralis numerus est duobus contentus. The plural number is satisfied with two.

Plures cohaeredes sunt quasi unum corpus, propter unitatem juris quod habent. Several coheirs are as one body, by reason of the unity of right that they possess.

Plures participes sunt quasi unum corpus in eo quod unum jus habent. Several coheirs (or parceners) are as one body in that they have one right. Co. Litt. 164.

Plus exempla quam peccata nocent. Examples hurt more than offenses.

Plus peccat auctor quam actor. The instigator of a crime is a worse offender than the perpetrator.

Plus valet unus oculatus testis quam auriti decem. One eyewitness is better than ten earwitnesses.

Plus valet vulgaris consuetudo quam regalis concessio. Common custom is better than royal grant.

Plus vident oculi quam oculus. Several eyes see more than one.

Poena ad paucos, metus ad omnes perveniat. Let punishment be inflicted on a few, dread on all.

Poenae potius molliendae quam exasperandae sunt. Punishments should rather be softened than aggravated.

Poenae sunt restringendae. Punishments should be restrained.

Poena ex delicto defuncti haeres teneri non debet. The heir ought not to be penalized for the wrong (or crime) of the decedent.

Poena non potest, culpa perennis erit. Punishment cannot be, guilt will be, perpetual.

Poena suos tenere debet actores et non alios. Punishment should take hold of the guilty (who commit the wrong), and not others. Bracton 380b.

Poena tolli potest, culpa perennis erit. The punishment can be removed, but the guilt will be perpetual.

Politiae legibus, non leges politiis, adaptandae. Politics are to be adapted to the laws, not the laws to politics.

Polygamia est plurium simul virorum uxorumve connubium. Polygamy is being married to more than one husband or wife at one time.

Ponderantur testes, non numerantur. Witnesses are weighed, not counted.

Posito uno oppositorum negatur alterum. One of two opposite positions having been affirmed, the other is denied.

Possessio est quasi pedis positio. Possession is, as it were, the position of the foot.

Possessio fratris de feodo simplici facit sororem esse haeredem. Possession by the brother in fee simple makes the sister an heir.

Possessio pacifica per annos 60 facit jus. Peaceable possession for 60 years gives a right.

Posteriora derogant prioribus. Later things restrict (or detract from) earlier ones.

Posthumus pro nato habetur. A posthumous child is considered as though born (before the father's death).

Postliminium fingit eum qui captus est semper in civitate fuisse. Postliminy (restoration of rights) imagines that a person who has been captured has never left the state. • A person captured by the enemy, who later returns, is restored to all his former rights. Just. Inst. 1.12.5.

Potentia debet sequi justitiam, non antecedere. Power ought to follow, not to precede, justice.

Potentia inutilis frustra est. Useless power is in vain.

Potentia non est nisi ad bonum. Power is not conferred but for the (public) good.

Potestas stricte interpretatur. A power should be strictly interpreted.

Potestas suprema seipsum dissolvere potest, ligare non potest. Supreme power can dissolve (or release), but cannot bind, itself.

Potest quis renunciare, pro se et suis, jus quod pro se introductum est. A person may relinquish, for himself and his heirs, a right that was introduced for his own benefit.

Potior est conditio defendentis. Stronger is the condition of the defendant (than that of the plaintiff).

Potior est conditio possidentis. Stronger is the condition of the possessor.

Praedium servit praedio. Land is under servitude to land. • A servitude is not a personal right, but attaches to the dominant tenement.

Praepropera consilia raro sunt prospera. Hasty counsels are seldom prosperous.

Praescriptio est titulus ex usu et tempore substantiam capiens ab auctoritate legis. Prescription is a title derived from usage and time, given substance by the authority of law. Co. Litt. 113.

Praescriptio et executio non pertinent ad valorem contractus, sed ad tempus et modum actionis instituendae. Prescription and execution do not affect the validity of the contract, but affect the time and manner of bringing an action.

Praesentare nihil aliud est quam praesto dare seu offerre. To present is nothing other than to give or offer on the spot.

Praesentia corporis tollit errorem nominis, et veritas nominis tollit errorem demonstrationis. The presence of the body cancels an error in the name; the truth of the name cancels an error in the description.

Praestat cautela quam medela. Prevention is better than cure.

Praesumatur pro justitia sententiae. Let there be a presumption of sentence's justice.

Praesumitur pro legitimatione. There is a presumption in favor of legitimacy.

Praesumptio cedit veritati. A presumption yields to the truth.

Praesumptio ex eo quod plerumque fit. A presumption arises from what generally happens.

Praesumptiones sunt conjecturae ex signo verisimili ad probandum assumptae. Presumptions are conjectures

based on indications of probable truth, assumed for the purpose of establishing proof.

Praesumptio opponitur probationi. A presumption is distinguished from proof.

Praesumptio violenta plena probatio. Forceful presumption is full proof.

Praesumptio violenta valet in lege. Forceful presumption is effective in law.

Praetextu liciti non debet admitti illicitum. What is illegal ought not to be admitted under pretext of legality.

Praxis judicum est interpres legum. The practice of the judges is the interpreter of the laws.

Pretium succedit in locum rei. The price takes the place of the thing sold.

Prima pars aequitatis aequalitas. The first part of equity is equality.

Primo executienda est verbi vis, ne sermonis vitio obstruatur oratio, sive lex sine argumentis. The force of a word is to be first examined, lest by the fault of diction the sentence be destroyed or the law be without arguments.

Princeps et respublica ex justa causa possunt rem meam auferre. The king and the commonwealth can take away my property for just cause.

Princeps legibus solutus est. The emperor is not bound by statutes. Dig. 1.3.31.

Principalis debet semper excuti antequam perveniatur ad fideijussores. The principal should always be exhausted before resorting to the sureties.

Principia probant, non probantur. Principles prove; they are not proved.

Principiis obsta. Oppose beginnings. • Oppose a thing in its inception in order to have any success against it.

Principiorum non est ratio. There is no reasoning of principles.

Principium est potissima pars cujusque rei. The beginning is the most powerful part of each thing.

Prior tempore, potior jure. Earlier in time, stronger in right.

Privatio praesupponit habitum. Deprivation presupposes possession.

Privatis pactionibus non dubium est non laedi jus caeterorum. There is no doubt that the rights of others (not party to the agreement) cannot be prejudiced by private agreements.

Privatorum conventio juri publico non derogat. An agreement of private persons does not derogate from public law.

Privatum commodum publico cedit. Private yields to public advantage.

Privatum incommodum publico bono pensatur. Private disadvantage is made up for by public good.

Privilegium est beneficium personale et extinguitur cum persona. A privilege is a benefit belonging to a person, and it dies with the person.

Privilegium est quasi privata lex. A privilege is, as it were, a private law.

Privilegium non valet contra rempublicam. A privilege has no force against the commonwealth.

Probandi necessitas incumbit illi qui agit. The necessity of proving rests on the one who sues (or claims some right). Just. Inst. 2.20.5.

Probationes debent esse evidentes, (id est) perspicuae et faciles intelligi. Proofs ought to be evident, (that is) clear and easily understood.

Probatis extremis, praesumitur media. When the extremes have been proved, the intermediate proceedings are presumed.

Processus legis est gravis vexatio; executio legis coronat opus. The process of the law is heavy hardship; the execution of the law crowns (or rewards) the work.

Prohibetur ne quis faciat in suo quod nocere possit alieno. It is prohibited for anyone to do on his own property what may injure another's.

Proles sequitur sortem paternam. The offspring follows the condition of the father.

Propinquior excludit propinquum; propinquus remotum; et remotus remotiorem. A nearer relation excludes a near one; a near relation excludes one distant (or removed); a distant relative excludes one yet more removed. Co. Litt. 10.

Propositio indefinita aequipollet universali. An indefinite proposition is equal to a general one.

Pro possessione praesumitur de jure. From possession arises a presumption of right.

Pro possessore habetur qui dolo injuriave desiit possidere. A person is considered a possessor who has ceased possession through fraud or injury.

Proprietas totius navis carinae causam sequitur. The property of the whole ship follows the condition of the keel.

Proprietates verborum observandae sunt. The proprieties (i.e., proper meanings) of words are to be observed.

Prosecutio legis est gravis vexatio; executio legis coronat opus. Litigation is a heavy hardship, but execution of the law crowns (or rewards) the work.

Protectio trahit subjectionem, subjectio protectionem. Protection brings submission; submission (brings) protection.

Proviso est providere praesentia et futura, non praeterita. A proviso is to provide for things present and future, not past.

Prudenter agit qui praecepto legis obtemperat. A person acts prudently who obeys the precept of law.

Pueri sunt de sanguine parentum, sed pater et mater non sunt de sanguine puerorum. Children are of the blood

of their parents, but the father and mother are not of the blood of their children.

Pupillus pati posse non intelligitur. A pupil is not considered able to suffer. • That is, a pupil is not competent to permit or do what would be prejudicial to him. Dig. 50.17.110.2.

Quae ab hostibus capiuntur, statim capientium fiunt. Things taken from public enemies immediately become the property of the captors.

Quae ab initio inutilis fuit institutio, ex post facto convalescere non potest. An institution void in the beginning cannot acquire validity by a subsequent act.

Quae ab initio non valent, ex post facto convalescere non possunt. Things invalid from the beginning cannot be made valid by a subsequent act.

Quae accessionum locum obtinent, extinguuntur cum principales res peremptae fuerint. When the principal is extinguished, those things that are accessory to it are also extinguished. Dig. 33.8.2.

Quae ad unum finem locuta sunt, non debent ad alium detorqueri. What speaks to one purpose ought not to be twisted to another.

Quae cohaerent personae a persona separari nequeunt. Things that belong to the person cannot be separated from the person.

Quae communi legi derogant stricte interpretantur. (Statutes) that derogate from the common law should be strictly construed.

Quae contra rationem juris introducta sunt, non debent trahi in consequentiam. Things introduced contrary to the reason of the law ought not to be drawn into precedents. • "We do find divers precedents . . . which are utterly against law and reason and for that void." 12 Coke 75.

Quaecunque intra rationem legis inveniuntur, intra legem ipsam esse judicantur. Whatever appears within the reason of the law is considered within the law itself.

Quae dubitationis causa tollendae inseruntur communem legem non laedunt. Whatever is inserted for the purpose of removing doubt does not hurt the common law.

Quae dubitationis tollendae causa contractibus inseruntur jus commune non laedunt. Clauses inserted in agreements to remove ambiguity do not prejudice the general law. Dig. 50.17.81.

Quae incontinenti (vel certo) fiunt inesse videntur. Things that are done immediately (or with certainty) are considered part of the same transaction. Co. Litt. 236b.

Quae in curia acta sunt rite agi praesumuntur. What is done in court is presumed to be rightly done.

Quae in curia regis acta sunt rite agi praesumuntur. Things that are done in the king's court are presumed to be rightly done.

Quae in partes dividi nequeunt solida a singulis praestantur. Things (such as services) that cannot be divided into parts are rendered entire by each severally.

Quae inter alios acta sunt nemini nocere debent, sed prodesse possunt. Transactions between others can benefit, but should not injure, anyone who is not party to them.

Quae in testamento ita sunt scripta ut intelligi non possint, perinde sunt ac si scripta non essent. Things that are so written in a will that they cannot be understood are as if they had not been written.

Quae legi communi derogant non sunt trahenda in exemplum. Things that derogate (or detract) from the common law are not to be drawn into precedent.

Quae legi communi derogant stricte interpretantur. Things that derogate (or detract) from the common law are construed strictly.

Quaelibet concessio fortissime contra donatorem interpretanda est. Every grant is to be construed most strongly against the grantor.

Quaelibet jurisdictio cancellos suos habet. Every jurisdiction has its boundaries.

Quaelibet poena corporalis, quamvis minima, major est qualibet poena pecuniaria. Every corporal punishment, although the very least, is greater than any pecuniary punishment.

Quae mala sunt inchoata in principio vix bono peraguntur exitu. Things bad in the commencement seldom end well.

Quae non fieri debent, facta valent. Things that ought not to be done are held valid when they have been done.

Quae non valeant singula, juncta juvant. Things that may not avail individually have effect when united.

Quae praeter consuetudinem et morem majorum fiunt, neque placent neque recta videntur. What is done contrary to the custom and usage of our ancestors neither pleases nor is considered right.

Quae propter necessitatem recepta sunt, non debent in argumentum trahi. Things that are accepted as a matter of necessity ought not to be brought into the argument. Dig. 50.17.162.

Quaeras de dubiis, legem bene discere si vis. Inquire into doubtful points if you wish to understand the law well.

Quaere de dubiis, quia per rationes pervenitur ad legitimam rationem. Inquire into doubtful points, because through reasoning we arrive at legal reason.

Quaerere dat sapere quae sunt legitima vere. To investigate is the way to know what things are truly lawful.

Quae rerum natura prohibentur nulla lege confirmata sunt. What is prohibited by the nature of things can be confirmed by no law.

Quae singula non prosunt, juncta juvant. Things that are of no advantage individually are helpful when taken together.

Quae sunt minoris culpae sunt majoris infamiae. Offenses that are of lesser guilt are of greater infamy.

Qualitas quae inesse debet, facile praesumitur. A quality that ought to be inherent is easily presumed.

Quam longum debet esse rationabile tempus, non definitur in lege, sed pendet ex discretione justiciariorum. How long a time should be "reasonable" the law does not define; it depends on the discretion of the judges.

Quam rationabilis debet esse finis, non definitur, sed omnibus circumstantiis inspectis pendet ex justiciariorum discretione. How reasonable a fine should be is not defined, but depends on the discretion of the judges, after all the circumstances have been considered.

Quamvis aliquid per se non sit malum, tamen si sit mali exempli, non est faciendum. Although in itself a thing may not be bad, yet if it serves as a bad example, it is not to be done.

Quamvis lex generaliter loquitur, restringenda tamen est, ut cessante ratione et ipsa cessat. Although a law speaks generally, it must bear some restriction, since the law ceases (or loses effect) when the reason ceases.

Quando aliquid conceditur, conceditur id sine quo illud fieri non possit. When anything is granted, that also is granted without which it cannot take effect.

Quando aliquid mandatur, mandatur et omne per quod pervenitur ad illud. When anything is commanded, everything by which it can be accomplished is also commanded.

Quando aliquid per se non sit malum, tamen si sit mali exempli, non est faciendum. When anything by itself is not evil, and yet if it is an example for evil, it is not to be done.

Quando aliquid prohibetur ex directo, prohibetur et per obliquum. When anything is prohibited directly, it is also prohibited indirectly.

Quando aliquid prohibetur, prohibetur omne per quod devenitur ad illud. When anything is prohibited, everything by which it is arrived at is prohibited.

Quando aliquis aliquid concedit, concedere videtur et id sine quo res uti non potest. When a person grants a thing, he is supposed to grant that also without which the thing cannot be used.

Quando charta continet generalem clausulam, posteaque descendit ad verba specialia quae clausulae generali sunt consentanea, interpretanda est charta secundum verba specialia. When a deed contains a general clause, and afterwards descends to special words that are consistent with the general clause, the deed is to be construed according to the special words.

Quando de una et eadem re, duo onerabiles existunt, unus, pro insufficientia alterius, de integro onerabitur. When two persons are liable concerning one and the same thing, if one makes default, the other must bear the whole liability.

Quando dispositio referri potest ad duas res, ita quod secundum relationem unam vitiatur et secundum alteram utilis sit, tum facienda est relatio ad illam ut valeat dispositio. When a disposition can refer to two matters, so that according to one reference it would be void and by another it would be effective, reference must be made to the latter, so that the disposition may take effect.

Quando diversi desiderantur actus ad aliquem statum perficiendum, plus respicit lex actum originalem. When different acts are required to the formation of any estate, the law chiefly regards the original act.

Quando duo jura concurrunt in una persona, aequum est ac si essent in diversis. When two rights run together in one person, it is the same as if they were in separate persons.

Quando jus domini regis et subditi concurrunt, jus regis praeferri debet. When the right of the sovereign king and of the subject run together (or clash), the right of the king ought to be preferred.

Quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest. When the law grants anything to anyone, it is considered to grant that without which the thing itself cannot be (the sine qua non). 5 Coke 47.

Quando lex aliquid alicui concedit, omnia incidentia tacite conceduntur. When the law gives anything to anyone, it gives tacitly all that is incident to it.

Quando lex est specialis, ratio autem generalis, generaliter lex est intelligenda. When the law is special, but its reason is general, the law is to be understood generally.

Quando licit id quod majus, videtur licere id quod minus. When the greater is allowed, the lesser is considered to be allowed also.

Quando mulier nobilis nupserit ignobili desinit esse nobilis nisi nobilitas nata fuit. When a noble woman marries a man not noble, she ceases to be noble, unless she was born noble.

Quando plus fit quam fieri debet, videtur etiam illud fieri quod faciendum est. When more is done than ought to be done, that at least is considered as performed that should have been performed.

Quando quod ago non valet ut ago, valeat quantum valere potest. When what I do does not have effect as I do it, let it have as much effect as it can.

Quando res non valet ut ago, valeat quantum valere potest. When the thing is of no force as I do it, let it have as much as it can have.

Quando verba et mens congruunt, non est interpretationi locus. When the words and the mind agree, there is no room for interpretation.

Quando verba statuti sunt specialia, ratio autem generalis, generaliter statutum est intelligendum. When the words of a statute are special, but the reason for it general, the statute is to be construed generally.

Quemadmodum ad quaestionem facti non respondent judices, ita ad quaestionem juris non respondent juratores. In the same manner that judges do not answer questions of fact, so jurors do not answer questions of law.

Qui accusat integrae famae sit et non criminosus. Let the one who accuses be of honest reputation and not implicated in a crime.

Qui acquirit sibi acquirit haeredibus. A person who acquires for himself acquires for his heirs.

Qui adimit medium dirimit finem. A person who takes away the means destroys the end.

Qui aliquid statuerit parte inaudita altera, aequum licet dixerit, haud aequum fecerit. One who has decided anything without hearing the other party, even though he has said what is right, has done wrong.

Qui alterius jure utitur, eodem jure uti debet. A person who uses the right of another ought to use the same right.

Qui bene distinguit bene docet. One who distinguishes well teaches well.

Qui bene interrogat bene docet. One who questions well teaches well.

Qui cadit a syllaba cadit a tota causa. One who fails in a syllable fails in his whole cause.

Qui concedit aliquid, concedere videtur et id sine quo res ipsa esse non potuit (sine quo concessio est irrita). A person who grants anything is considered as granting that without which the thing itself could not be (without which the grant is invalid). • More precisely, *Cuicunque aliquis quid concedit* (q.v.). 11 Coke 52. The maxim is sometimes written *Qui concedit aliquid concedere videtur et id sine quo concessio est irrita, sine quo res ipsa esse non potuit* (meaning "he who concedes anything is considered as conceding that without which his concession would be of no effect, without which the thing itself could not exist").

Qui confirmat nihil dat. A person who confirms gives nothing.

Qui contemnit praeceptum, contemnit praecipientem. A person who shows contempt for the precept shows contempt for the author (or advocate) or it.

Quicquid acquiritur servo, acquiritur domino. Whatever is acquired by the servant is acquired for the master.

Quicquid demonstratae rei additur satis demonstratae frustra est. Whatever is added to the description of a thing already sufficiently described is of no effect.

Quicquid est contra normam recti est injuria. Whatever is against the rule of right is a wrong.

Quicquid in excessu actum est, lege prohibetur. Whatever is done in excess is prohibited by law.

Quicquid judicis auctoritati subjicitur, novitati non subjicitur. Whatever is subject to the authority of a judge is not subject to innovation.

Quicquid plantatur solo, solo cedit. Whatever is affixed to the soil belongs to it. [Cases: Mortgages ☞203; Property ☞4.]

Quicquid recipitur, recipitur secundum modum recipientis. Whatever is received is received according to the direction of the recipient.

Quicquid solvitur, solvitur secundum modum solventis. Whatever is paid is paid according to the direction of the payer.

Qui cum alio contrahit, vel est vel debet esse non ignarus conditionis ejus. A party who contracts with another either is or ought to be cognizant of that party's condition. • Otherwise, he is not excusable. Dig. 50.17.19.

Qui dat finem dat media ad finem necessaria. A person who gives an end gives the necessary means to that end.

Qui destruit medium destruit finem. A person who destroys the means destroys the end.

Qui doit inheriter al pére, doit inheriter al fitz. One who ought to inherit from the father ought to inherit from the son.

Quidquid enim sive dolo et culpa venditoris accidit in eo venditor securus est. For concerning anything that occurs without deceit and guilt on the part of the vendor, the vendor is secure.

Quid sit jus, et in quo consistit injuria, legis est definire. What constitutes right, and wherein lies the injury, it is the function of the law to declare.

Quid turpi ex causa promissum est non valet. A promise arising from a wrongful cause is invalid.

Quieta non movere. Not to disturb what is settled. [Cases: Courts ☞89–90.]

Qui evertit causam evertit causatum futurum. One who overthrows the cause overthrows its future effects.

Qui ex damnato coitu nascuntur, inter liberos non computentur. They who are born of an illicit union should not be counted among children.

Qui facit id quod plus est, facit id quod minus est, sed non convertitur. A person who does that which is more does that which is less, but not vice versa.

Qui facit per alium facit per se. A person who acts through another acts himself. • The acts of an agent are considered the acts of the principal. [Cases: Labor and Employment ☞3026; Principal and Agent ☞92.]

Qui habet jurisdictionem absolvendi, habet jurisdictionem ligandi. One who has jurisdiction for dissolving (an obligation) has jurisdiction to bind.

Qui haeret in litera, haeret in cortice. One who clings to the letter clings to the shell (or surface).

Qui ignorat quantum solvere debeat, non potest improbus videri A person who does not know what he ought to pay cannot be regarded as dishonest. • Also in reverse order: *Non potest improbus videri qui ignorat quantum solvere debeat.* Dig. 50.17.99.

Qui in jus dominiumve alterius succedit jure ejus uti debet. One who succeeds to another's right or property ought to use that person's right. • That is, the successor has the same rights and liabilities as attached to that property or interest in the hands of the assignor.

Qui inscienter peccat, scienter emendet. One who offends unwittingly must make good knowingly.

Qui in utero est, pro jam nato habetur quoties de ejus commodo quaeritur. A child in the womb is considered as born, whenever there is a question of benefit to the child.

Qui jure suo utitur, nemini facit injuriam. A person who exercises his proper right harms no one. • This maxim is sometimes written *Qui jure suo utitur neminem laedit* (meaning "he who exercises his right injures no one").

Qui jussu judicis aliquod fecerit non videtur dolo malo fecisse, quia parere necesse est. A person who has done anything by order of a judge is not considered to have acted in fraud, because it is necessary to obey.

Quilibet potest renunciare juri pro se inducto. Anyone may renounce a right introduced for his own benefit.

Qui male agit odit lucem. A person who does wrong hates the light (of discovery).

Qui mandat ipse fecisse videtur. A person who commands (a thing to be done) is considered to have done it himself.

Qui melius probat, melius habet. The party who gives better proof has the better (right). • Often rendered, he who proves more recovers more.

Qui nascitur sine legitimo matrimonio, matrem sequitur. A child who is born out of lawful matrimony follows the condition of the mother.

Qui non cadunt in constantem virum, vani timores sunt aestimandi. Those fears are considered vain (or frivolous) that do not affect a man of stable character.

Qui non habet, ille non dat. Who has not gives not.

Qui non habet in aere, luat in corpore, ne quis peccetur impune. Let him who has not (the wherewithal to pay) in money pay in his person (i.e., by corporal punishment), lest anyone be wronged with impunity.

Qui non habet in aere, luet in corpore. What a man cannot pay with his purse, he must suffer in person.

Qui non habet potestatem alienandi habet necessitatem retinendi. A person who has not the power of alienating is obliged to retain.

Qui non improbat approbat. A person who does not disapprove approves.

Qui non negat fatetur. A person who does not deny admits.

Qui non obstat quod obstare potest, facere videtur. A person who does not prevent what he can prevent is considered to act.

Qui non prohibet cum prohibere possit, jubet. A person who does not forbid when he can forbid commands.

Qui non prohibet quod prohibere potest, assentire videtur. A person who does not forbid what he can forbid is considered to assent.

Qui non propulsat injuriam quando potest infert. A person who does not repel an injury when he can brings it on.

Qui obstruit aditum destruit commodum. A person who obstructs an entrance destroys a conveniency.

Qui omne dicit nihil excludit. A person who says all excludes nothing.

Qui parcit nocentibus innocentes punit. A person who spares the guilty punishes the innocent.

Qui peccat ebrius, luat sobrius. Let him who offends while drunk be punished when sober; one who offends when drunk must pay when sober. • The phrase is sometimes taken to mean that one who sins ignorantly must correct it knowingly.

Qui per alium facit per seipsum facere videtur. A person who does anything through another is considered as doing it himself.

Qui per fraudem agit frustra agit. A person who acts fraudulently acts in vain.

Qui potest et debet vetare, tacens jubet. A person who can and ought to forbid a thing (as much as) orders it, if he keeps silent.

Qui primum peccat ille facit rixam. Who first offends causes the quarrel.

Qui prior est tempore potior est jure. The person who is prior in time is stronger in right. [Cases: Courts ⇨ 475; Equity ⇨60.]

Qui pro me aliquid facit, mihi fecisse videtur. A person who does something in my behalf is considered to have done it to me (for me). • "To do a service for a man is to do it to him." 2 Co. Inst. 500.

Qui providet sibi, providet haeredibus. A person who provides for himself provides for his heirs.

Qui rationem in omnibus quaerunt rationem subvertunt. They who seek a reason for everything subvert reason.

Qui sciens solvit indebitum donandi consilio id videtur fecisse. A person who knowingly pays what is not due is considered to have done it with the intention of making a gift.

Qui semel actionem renunciaverit, amplius repetere non potest. A litigant who has once renounced his action cannot bring it any longer.

Qui semel malus, semper praesumitur esse malus in eodem genere. A person who is once bad is always presumed to be bad in the same kind of affair.

Qui sentit commodum, sentire debet et onus. A person who enjoys the benefit ought also to bear the burden. [Cases: Tenancy in Common ⇨30.]

Qui sentit commodum sentire debet et onus; et e contra. A person who enjoys the benefit ought also to bear the burden; and the contrary.

Qui sentit onus, sentire debet et commodum. A person who feels the burden ought also to feel the benefit.

Quisquis est qui velit jurisconsultus haberi, continuet studium, velit a quocunque doceri. Whoever there is who wishes to be regarded as a jurisconsult (legal expert) should prolong his study and be willing to be taught by everyone.

Qui tacet consentire videtur. A party who is silent appears to consent. [Cases: Contracts ⇨22(1).]

Qui tacet consentire videtur ubi tractatur de ejus commodo. A party who is silent is considered as assenting, when his advantage is debated.

Qui tacet non utique fatetur, sed tamen verum est eum non negare. A person who is silent does not indeed confess, but yet it is true that he does not deny.

Qui tardius solvit minus solvit. A person who pays too late pays less (than he ought).

Qui vult decipi, decipiatur. Let one who wishes to be deceived be deceived. [Cases: Sales ⇨41.]

Quod ab initio non valet, (in) tractu temporis non convalescet. What is ill from the outset will not be cured by passage of time.

Quod ad jus naturale attinet, omnes homines aequales sunt. All men are equal as far as natural law is concerned.

Quod aedificatur in area legata cedit legato. Whatever is built on land given by will passes with the gift of the land.

Quod alias bonum et justum est, si per vim vel fraudem petatur, malum et injustum efficitur. What is otherwise good and just, if it is sought by force or fraud, becomes bad and unjust.

Quod alias non fuit licitum necessitas licitum facit. Necessity makes lawful what otherwise was unlawful.

Quod approbo non reprobo. What I approve I do not disapprove.

Quod a quoque poenae nomine exactum est id eidem restituere nemo cogitur. What has been exacted from someone as a penalty no one is obliged to restore to him.

Quod attinet ad jus civile, servi pro nullis habentur, non tamen et jure naturali, quia, quod ad jus naturale attinet, omnes homines aequali sunt. So far as the civil law is concerned, slaves are not reckoned as nonentities, but not so by natural law, for so far as regards natural law, all men are equal.

Quod constat clare, non debet verificari. What is clearly agreed need not be proved.

Quod constat curiae, opere testium non indiget. What appears true to the court needs not the help of witnesses.

Quod contra juris rationem receptum est, non est producendum ad consequentias. What has been admitted against the reason of the law ought not to be drawn into precedents.

Quod contra legem fit, pro infecto habetur. What is done contrary to the law is considered as not done.

Quod contra rationem juris receptum, non est producendum ad consequentias. That which is received against the reason of the law is not to be extended to its logical consequences.

Quodcunque aliquis ob tutelam corporis sui fecerit jure id fecisse videtur. Whatever one does in defense of his person, he is considered to have done legally.

Quod datum est ecclesiae, datum est Deo. What has been given to the church has been given to God.

Quod demonstrandi causa additur rei satis demonstratae, frustra fit. What is added for the sake of demonstration to a thing sufficiently demonstrated is done to no purpose.

Quod dubitas, ne feceris. When in doubt, do not do it.

Quod enim semel aut bis existit, praetereunt legislatores. Legislators pass by that which happens but once or twice.

Quod est ex necessitate nunquam introducitur, nisi quando necessarium. What is introduced of necessity is never introduced except when necessary.

Quod est inconveniens aut contra rationem non permissum est in lege. What is unsuitable or contrary to reason is not allowed in law.

Quod est necessarium est licitum. What is necessary is lawful.

Quod fieri debet facile praesumitur. That which ought to be done is easily presumed.

Quod fieri non debet, factum valet. What ought not to be done, when done, is valid.

Quod inconsulto fecimus, consultius revocemus. What we have done without due consideration we should revoke with better consideration.

Quod initio non valet, tractu temporis non valet. What is void in the beginning does not become valid by passage of time.

Quod initio vitiosum est non potest tractu temporis convalescere. What is defective in origin cannot be mended by passage of time.

Quod in jure scripto jus appellatur, id in lege Angliae rectum esse dicitur. What in the civil law (literally, written law) is called jus, in the law of England is said to be rectum (right).

Quod in minori valet, valebit in majori; et quod in majori non valet, nec valebit in minori. What avails in the less will avail in the greater; and what does not avail in the greater will not avail in the less.

Quod in uno similium valet, valebit in altero. What avails in one of two similar things will avail in the other.

Quod ipsis, qui contraxerunt, obstat, et successoribus eorum obstabit. That which bars those who have contracted will bar their successors also.

Quod jussu alterius solvitur pro eo est quasi ipsi solutum esset. That which is paid at the bidding of another has the same effect as if it had been paid to that person himself. • The party who has a debt paid for him is in the same position as though the money were paid to him directly. Dig. 17.180.

Quod meum est sine facto meo vel defectu meo amitti vel in alium transferri non potest. What is mine cannot be lost or transferred to another without my act or through my forfeiture.

Quod meum est, sine facto sive defectu meo amitti seu in alium transferri non potest. What is mine cannot be lost or transferred to another without my own act or default.

Quod meum est sine me auferri non potest. What is mine cannot be taken away without me (i.e., my consent).

Quod minus est in obligationem videtur deductum. That which is the lesser is held to be imported into the contract.

Quod naturalis ratio inter omnes homines constituit, vocatur jus gentium. What natural reason has established among all men is called the law of nations.

Quod necessarie intelligitur id non deest. What is necessarily understood is not lacking.

Quod necessitas cogit, defendit. What necessity compels, it justifies.

Quod non apparet non est, et non apparet judicialiter ante judicium. What appears not does not exist, and nothing appears judicially before judgment.

Quod non capit Christus, capit fiscus. What Christ (or the church) does not take, the treasury takes.

Quod non habet principium non habet finem. What has no beginning has no end.

Quod non legitur non creditur. What is not read is not believed.

Quod non valet in principali, in accessorio seu consequenti non valebit; et quod non valet in magis propinquo, non valebit in magis remoto. What is not valid in the principal will not be valid in the accessory or consequence; and what has no effect in the nearer instance will be of no effect in the more remote.

Quod nostrum est, sine facto sive defectu nostro, amitti seu in alium transferri non potest. That which is ours cannot be lost or transferred to another without our own act, our own default.

Quod nullius esse potest, id ut alicujus fieret nulla obligatio valet efficere. What can belong to no one no agreement (or obligation) can make property of anyone. Dig. 50.17.182.

Quod nullius est, est domini regis. That which belongs to nobody belongs to our lord the king.

Quod nullius est id ratione naturali occupanti conceditur. What belongs to no one, by natural reason becomes property of the first occupant. Dig. 41.1.3.

Quod nullum est, nullum producit effectum. That which is null produces no effect.

Quod omnes tangit, ab omnibus debet supportari. What touches (or concerns) all ought to be supported by all.

Quod per me non possum, nec per alium. What I cannot do in person, I also cannot do through the agency of another.

Quod per recordum probatum non debet esse negatum. What is proved by the record ought not to be denied.

Quod populus postremum jussit, id jus ratum esto. What the people have last enacted, let that be the established law.

Quod principi placuit legis habet vigorem; utpote cum lege regia, quae de imperio ejus lata est, populus ei et in eum omne suum imperium et potestatem conferat. A decision of the emperor has the force of law; for, by the royal law that has been made concerning his authority, the people have conferred on him all their sovereignty and power. Dig. 1.4.1.

Quod prius est verius est; et quod prius est tempore potius est jure. What is prior is truer; and what comes earlier in time is stronger in right.

Quod privilegia quae re vera sunt in praejudicium reipublicae, magis tamen speciosa habent frontispicia, et boni publici praetextum, quam bonae et legales concessiones, sed praetextu liciti non debet admitti illicitum. There are privileges that are really detrimental to the state, but that have a more colorful appearance and show of public good than good and lawful concessions. But the unlawful should not be accepted as valid on the ground of a showing of legality.

Quod pro minore licitum est et pro majore licitum est. What is lawful in the lesser is also lawful in the greater.

Quod pure debetur praesenti die debetur. That which is due unconditionally is due the same day.

Quodque dissolvitur eodem modo quo ligatur. In the same manner that anything is bound, it is unbound.

Quod quis ex culpa sua damnum sentit, non intelligitur damnum sentire. The damage that any person suffers by his own fault he is not considered to suffer as damage. Dig. 50.17.203.

Quod quisquis norit, in hoc se exerceat. Let every one employ himself in what he knows.

Quod quis sciens indebitum dedit hac mente, ut postea repeteret, repetere non potest. What one has paid knowing that it is not owed, with the intention of reclaiming it afterwards, he cannot recover. Dig. 12.6.50.

Quod remedio destituitur ipsa re valet si culpa absit. What is without a remedy is by that very fact valid if there is no fault.

Quod semel aut bis existit praetereunt legislatores. Legislators pass over what happens (only) once or twice.

Quod semel meum est amplius meum esse non potest. What is once mine cannot be any more completely mine.

Quod semel placuit in electione, amplius displicere non potest. That which in making his election a man has once decided, he cannot afterwards disavow.

Quod solo inaedificatur solo cedit. Whatever is built on the soil goes with the soil.

Quod sub certa forma concessum vel reservatum est, non trahitur ad valorem vel compensationem. That which has been granted or reserved under a certain form is not to be drawn into valuation or compensation.

Quod subintelligitur non deest. What is understood is not lacking.

Quod tacite intelligitur deesse non videtur. What is tacitly understood does not appear to be lacking.

Quod vanum et inutile est, lex non requirit. The law does not require what is vain and useless.

Quod vero contra rationem juris receptum est, non est producendum ad consequentias. But what has been admitted contrary to the reason of law ought not to be drawn into precedents.

Quo ligatur, eo dissolvitur. As a thing is bound, so it is unbound.

Quo modo quid constituitur eodem modo dissolvitur. In whatever mode a thing is constituted, in the same manner it is dissolved.

Quorum praetextu nec auget nec minuit sententiam, sed tantum confirmat praemissa. "Quorum praetextu" neither increases nor diminishes the meaning, but only confirms what went before.

Quotiens dubia interpretatio libertatis est, secundum libertatem respondendum erit. Whenever there is an interpretation doubtful as to liberty (or slavery), the decision must be in favor of liberty.

Quotiens idem sermo duas sententias exprimit, ea potissimum accipiatur quae rei gerendae aptior est. Whenever the same words express two meanings, that is to be taken most strongly which is the better fitted for carrying out the proposed end.

Quoties in stipulationibus ambigua oratio est, commodissimum est id accipi quo res de quo agitur in tuto sit. Whenever in stipulations the expression is ambiguous, it is most proper to give it that interpretation by which the subject matter may be in safety.

Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba expressa fienda est. Whenever there is no ambiguity in the words, then no exposition contrary to the words is to be made.

Quum de lucro duorum quaeratur, melior est conditio possidentis. When there is a question of gain (to one) of two parties, the condition of the possessor is the better.

Quum in testamento ambigue aut etiam perperam scriptum est, benigne interpretari et secundum id quod credible est cogitatum, credendum est. When in a will an ambiguous or even an erroneous expression occurs, it should be construed liberally and in accordance with what is thought the probable meaning (of the testator).

Quum principalis causa non consistit, ne ea quidem quae sequuntur locum habent. When the principal cause does not stand, neither do the accessories (or consequences) obtain.

Ratihabitio mandato aequiparatur. Ratification is equal to a command. • This maxim is sometimes written *Ratihabitio mandato comparatur* (meaning "ratification is equivalent to a command").

Ratio est formalis causa consuetudinis. Reason is the source and formal cause of custom.

Ratio est legis anima, mutata legis ratione mutatur et lex. Reason is the soul of the law; when the reason of the law has been changed, the law is also changed. [Cases: Common Law ☞9.]

Ratio et auctoritas duo clarissima mundi lumina. Reason and authority are the two brightest lights in the world.

Ratio in jure aequitas integra. Reason in law is perfect equity.

Ratio legis est anima legis. The reason of the law is the soul of the law. [Cases: Statutes ☞184.]

Ratio non clauditur loco. Reason is not confined to any place.

Ratio potest allegari deficiente lege, sed vera et legalis et non apparens. A reason can be adduced when the law is defective, but it must be a true and legal reason, and not specious (or apparent).

Receditur a placitis juris potius quam injuriae et delicta maneant impunita. One departs from settled rules of law, rather than let crimes and wrongs remain unpunished.

Recipitur in modum recipientis. A thing is received in the way the recipient intends.

Recorda sunt vestigia vetustatis et veritatis. Records are vestiges of antiquity and truth.

Recurrendum est ad extraordinarium quando non valet ordinarium. We must have recourse to what is extraordinary when what is ordinary fails.

Reddenda singula singulis. Each must be put in each separate place. • That is, the several terms or items apply distributively, or each to its proper object.

Regnum non est divisibile. The kingdom is not divisible.

Regula est, juris quidem ignorantiam cuique nocere, facti vero ignorantiam non nocere. The rule is that ignorance of the law is harmful (or prejudicial) to anyone, but ignorance of a fact is not. • Ignorance of

a fact may excuse a party from the legal consequences of his conduct, but not ignorance of law.

Regula pro lege, si deficit lex. If the law is inadequate, the maxim serves in its place.

Regulariter non valet pactum de re mea non alienanda. As a rule, a contract not to alienate my property is not binding.

Reipublicae interest voluntates defunctorum effectum sortiri. It is in the interest of the state that the wills of the dead should have their (intended) effect.

Rei turpis nullum mandatum est. There is no mandate for a thing immoral (or illegal). • Hence, there is no action for failing to act on such a mandate. Dig. 17.1.6.3.

Relatio est fictio juris et intenta ad unum. Relation is a fiction of law, and intended for one thing. • Coke explains, "Relatio is a fiction of law to make a nullity of a thing ab initio"; obstacles are removed for the one purpose, *ut res magis valeat*, that the matter have effect. 3 Coke 28.

Relatio semper fiat ut valeat dispositio. Reference should always be made in such a manner that a disposition (in a will) may have effect.

Relativorum cognito uno, cognoscitur et alterum. Of things relating to each other, one being known, the other is also known.

Religio sequitur patrem. Religion follows the father. • The father's religion is prima facie the infant's religion.

Remissius imperanti melius paretur. A person commanding not too strictly is better obeyed.

Remoto impedimento, emergit actio. When the impediment has been removed, the action arises.

Repellitur a sacramento infamis. An infamous person is prevented from taking an oath.

Repellitur exceptione cedendarum actionum. (The litigant) is defeated by the plea that the actions have been assigned.

Reprobata pecunia liberat solventem. Money refused releases the person paying (or offering payment).

Reputatio est vulgaris opinio ubi non est veritas. Reputation is a common opinion where there is no certain knowledge.

Rerum ordo confunditur, si unicuique jurisdictio non servetur. The order of things is confounded if the proper jurisdiction of each is not maintained.

Rerum progressus ostendunt multa, quae in initio praecaveri seu praevideri non possunt. The course of events reveals many things that in the beginning could not be guarded against or foreseen.

Rerum suarum quilibet est moderator et arbiter. Every one is the manager and disposer of his own matters.

Res accendent lumina rebus. Matters will throw light on (other) matters.

Res accessoria sequitur rem principalem. An accessory follows its principal.

Rescriptum principis contra jus non valet. The prince's rescript, if contrary to law, is of no avail.

Res denominatur a principaliori parte. A thing is named from its more essential (or primary) part.

Reservatio non debet esse de proficuis ipsis quia ea conceduntur, sed de redditu novo extra proficua. A reservation ought not to be of the annual increase itself, because it is granted, but of new rent apart from the annual increase.

Res est misera ubi jus est vagum et incertum. It is a miserable state of things where the law is vague and uncertain.

Res generalem habet significationem, quiatam corporea, quam incorporea, cujuscunque sunt generis naturae sive speciei, comprehendit. The word "things" has a general signification, because it comprehends corporeal as well as incorporeal objects, of whatever sort, nature, or species.

Resignatio est juris proprii spontanea refutatio. Resignation is the spontaneous rejection of one's own right.

Res inter alios acta aliis non nocet. A thing done between two parties does not damage other parties; a matter transacted between parties (e.g., to a contract) does not prejudice nonparties.

Res inter alios acta alteri nocere non debet. Things done between others ought not to injure an outsider (not party to them). [Cases: Evidence ☞130; Judgment ☞665.]

Res inter alios judicatae nullum aliis praejudicium faciunt. Matters adjudged in the lawsuits of others do not prejudice those who were not parties to them.

Res judicata facit ex albo nigrum, ex nigro album, ex curvo rectum, ex recto curvum. A matter adjudged makes white black; black white; the crooked straight; the straight crooked.

Res judicata pro veritate accipitur. A matter adjudged is taken for truth.

Res nullius naturaliter fit primi occupantis. A thing that has no owner naturally belongs to the first taker.

Resoluto jure concedentis, resolvitur jus concessum. When the right of the grantor has been extinguished, the right granted is extinguished.

Res periit domino suo. The destruction of the thing is a loss to its owner.

Res per pecuniam aestimatur, et non pecunia per res. The value of a thing is estimated by its worth in money, and the value of money is not estimated by reference to things.

Respiciendum est judicanti nequid aut durius aut remissius constituatur quam causa deposcit; nec enim aut severitatis aut clementiae gloria affectanda est. The person judging must see to it that nothing should be either more severely or more leniently construed than the cause itself demands; neither for severity nor clemency is glory to be sought after.

Respondeat raptor, qui ignorare non potuit quod pupillum alienum abduxit. Let the ravisher answer, for he could not be ignorant that he has taken away another's ward.

Respondeat superior. Let the principal answer. [Cases: Principal and Agent ☞159(1).]

Responsio unius non omnino audiatur. The answer of one witness should not be heard at all.

Res propria est quae communis non est. A thing is private that is not common.

Res quae intra praesidia perductae nondum sunt quanquam ab hostibus occupatae, ideo postliminii non egent, quia dominum nondum mutarunt ex gentium jure. Things that have not yet been brought within the enemy's camp, although held by the enemy, do not need the fiction of postliminy on this account, because their ownership by the law of nations has not yet changed.

Res sacra non recipit aestimationem. A sacred thing does not admit of valuation.

Res sua nemini servit. No one can have a servitude over his own property. [Cases: Easements ☞27.]

Res transit cum suo onere. The thing passes with its burden.

Reus excipiendo fit actor. The defendant by a plea (or exception) becomes plaintiff.

Reus laesae majestatis punitur, ut pereat unus ne pereant omnes. A traitor is punished that one may die lest all perish.

Re, verbis, scripto, consensu, traditione, junctura vestes sumere pacta solent. Compacts usually take their clothing from the thing itself, from words, from writings, from consent, from delivery, from the joining together.

Reversio terrae est tanquam terra revertens in possessione donatori sive haeredibus suis post donum finitum. A reversion of land is as it were the return of the land to the possession of the donor or his heirs after the termination of the gift.

Rex est caput et salus reipublicae. The king is the head and safety of the commonwealth.

Rex est legalis et politicus. The king is (the fount of) both law and policy.

Rex est major singulis, minor universis. The king is greater than any single person: less than all.

Rex non debet esse sub homine sed sub Deo et lege. The king should not be under the authority of man, but of God and the law.

Rex non debet judicare sed secundum legem. The king ought to judge only according to law.

Rex non potest fallere nec falli. The king cannot deceive or be deceived.

Rex non potest gratiam facere cum injuria et damno aliorum. The king cannot confer a favor on anyone to the injury and damage of others.

Rex non potest peccare. The king can do no wrong. [Cases: United States ☞125(1).]

Rex nunquam moritur. The king never dies.

Rex quod injustum est facere non potest. The king cannot do what is unjust.

Rex semper praesumitur attendere ardua regni pro bono publico omnium. The king is always presumed to attend to the business of the realm, for the public good of all.

Riparum usus publicus est jure gentium, sicut ipsius fluminis. The use of riverbanks is by the law of nations public, like that of the stream itself.

Roy n'est lie per ascun statute, si il ne soit expressement nosme. The king is not bound by any statute, if he is not expressly named.

Sacramentum habet in se tres comites, veritatem justitiam et judicium: veritas habenda est in jurato; justitia et judicium in judice. An oath has in it three components — truth, justice, and judgment: truth in the party swearing, justice and judgment in the judge (administering the oath).

Sacramentum si fatuum fuerit, licet falsum, tamen non committit perjurium. A foolish oath, though false, does not make perjury.

Sacrilegus omnium praedonum cupiditatem et scelerem superat. A sacrilegious person surpasses the greed and wickedness of all other robbers.

Saepe constitutum est res inter alios judicatas aliis non praejudicare. It has often been settled that matters adjudged between others ought not to prejudice those who were not parties.

Saepenumero ubi proprietas verborum attenditur, sensus veritatis amittitur. Frequently where propriety of words is given attention, the meaning of truth is lost.

Saepe viatorem nova, non vetus, orbita fallit. Often it is the new track, not the old one, that deceives the traveler.

Salus populi (est) suprema lex. The safety of the people is the supreme law. • The phrase is sometimes put in the imperative: *Salus populi suprema lex esto* (let the safety of the people be the supreme law). [Cases: Common Law ☞9.]

Salus reipublicae suprema lex. The safety of the state is the supreme law.

Salus ubi multi consiliarii. Where there are many counselors, there is safety.

Sanguinis conjunctio benevolentia devincit homines et caritate. A tie of blood overcomes human beings through benevolence and family affection.

Sapiens incipit a fine, et quod primum est in intentione, ultimum est in executione. A wise person begins from

the end, and what is first in intention is last in execution.

Sapiens omnia agit cum consilio. A wise man does everything advisedly.

Sapientia legis nummario pretio non est aestimanda. No price in money is to be put on the wisdom of the law.

Sapientis judicis est cogitare tantum sibi esse permissum, quantum commissum et creditum. It is the mark of a wise judge to suppose that he is permitted only so much as has been committed and entrusted to him.

Satius est petere fontes quam sectari rivulos. It is better to seek the sources than to follow tributaries.

Scientia sciolorum est mixta ignorantia. The knowledge of smatterers is ignorance diluted.

Scientia utrimque par pares contrahentes facit. Equal knowledge on both sides makes the contracting parties equal.

Scienti et volenti non fit injuria. A wrong is not done to one who knows and assents to it.

Scire debes cum quo contrahis. You ought to know with whom you make an agreement.

Scire et scire debere aequiparantur in jure. To know a thing and to be bound to know it are regarded in law as equivalent.

Scire leges non hoc est verba earum tenere, sed vim et potestatem. To know the laws is to observe not their (mere) words, but their force and power.

Scire proprie est rem ratione et per causam cognoscere. To know properly is to know a thing in its reason and by its cause.

Scribere est agere. To write is to act.

Scriptae obligationes scriptis tolluntur, et nudi consensus obligatio contrario consensu dissolvitur. Written obligations are undone by writing, and the obligation of mere consent (or naked agreement) is dissolved by a bare consent to the contrary.

Scripta litera manet. The written word endures.

Secta est pugna civilis, sicut actores armantur actionibus, et quasi accinguntur gladiis, ita rei (e contra) muniuntur exceptionibus, et defenduntur quasi clypeis. A suit is a civil battle; just as the plaintiffs are armed with actions and, as it were, girded with swords, so (against them) the defendants are fortified with pleas, and defended as though by shields.

Secta quae scripto nititur a scripto variari non debet. A suit that relies on a writing ought not to vary from the writing.

Secundum naturam est commoda cujusque rei eum sequi quem sequentur incommoda. It is according to nature that the advantages in any matter should come to the person to whom the disadvantages will attend.

Securius expediuntur negotia commissa pluribus, et plus vident oculi quam oculus. Business entrusted to several people is done more reliably, and (several) eyes see more than (one) eye does.

Seisina facit stipitem. Seisin makes the stock. [Cases: Descent and Distribution ⇨11.]

Semel civis semper civis. Once a citizen, always a citizen.

Semel malus semper praesumitur esse malus in eodem genere. Whoever is once bad is presumed to be so always in the same kind of affair.

Semper in dubiis benigniora praeferenda sunt. In dubious cases, the more favorable constructions are always to be preferred.

Semper in dubiis id agendum est, ut quam tutissimo loco res sit bona fide contracta, nisi quum aperte contra leges scriptum est. Always in doubtful cases that is to be done by which a bona fide contract may be in the safest condition, except when it has been drawn up clearly contrary to law.

Semper in obscuris quod minimum est sequimur. In obscure cases we always follow what is least obscure.

Semper in stipulationibus et in caeteris contractibus id sequimur quod actum est. In stipulations and other contracts, we always follow what was done (or agreed to). Dig. 50.17.34.

Semper ita fiat relatio ut valeat dispositio. Let the reference always be so made that the disposition may avail.

Semper necessitas probandi incumbit ei qui agit. The necessity of proving always rests on the claimant.

Semper praesumitur pro legitimatione puerorum, et filiatio non potest probari. The presumption is always in favor of legitimacy of children, and filiation cannot be proved.

Semper praesumitur pro negante. The presumption is always in favor of the one who denies.

Semper praesumitur pro sententia. The presumption is always in favor of a judgment (or sentence).

Semper pro matrimonio praesumitur. There is always a presumption in favor of marriage.

Semper qui non prohibet pro se intervenire mandare creditur. A person who does not prohibit the intervention of another in his behalf is always believed to authorize it. [Cases: Principal and Agent ⇨119(2).]

Semper sexus masculinus etiam faemininum continet. The masculine gender always includes the feminine as well. Dig. 32.63.

Semper specialia generalibus insunt. Special clauses are always included in general ones.

Senatores sunt partes corporis regis. Senators are part of the body of the king.

Sensus verborum est anima legis. The meaning of words is the spirit of the law.

Sensus verborum est duplex, mitis et asper, et verba semper accipienda sunt in mitiore sensu. The meaning

of words is twofold, mild and harsh; and words are always to be received in their milder sense.

Sensus verborum ex causa dicendi accipiendus est, et sermones semper accipiendi sunt secundum subjectam materiam. The sense of words is to be taken from the occasion of speaking them, and discourses are always to be interpreted according to the subject matter.

Sententia a non judice lata nemini debet nocere. A judgment pronounced by one who is not a judge should harm no one.

Sententia contra matrimonium nunquam transit in rem judicatam. A sentence against marriage never becomes a final judgment (i.e., res judicata).

Sententia facit jus, et legis interpretatio legis vim obtinet. The judgment creates the right, and the interpretation of the law obtains the force of law.

Sententia facit jus, et res judicata pro veritate accipitur. The judgment creates the right, and what is adjudicated is taken for truth.

Sententia interlocutoria revocari potest, definitiva non potest. An interlocutory judgment may be revoked, but not a final one.

Sententia non fertur de rebus non liquidis. Judgment is not given on matters that are not clear.

Sequi debet potentia justitiam, non praecedere. Power should follow justice, not precede it.

Sermo index animi. Speech is an index of the mind.

Servanda est consuetudo loci ubi causa agitur. The custom of the place where the action is brought is to be observed.

Servitia personalia sequuntur personam. Personal services follow the person (of the lord). • Such "personal services" were those "annexed to the person of the Mesne, as homage, fealty, etc." 2 Co. Inst. 374.

Si aes pro auro veneat non valet. If bronze is sold for gold (the contract) is invalid.

Si a jure discedas, vagus eris et erunt omnia omnibus incerta. If you depart from the law, you will wander (without a guide), and everything will be in a state of uncertainty to everyone.

Si alicujus rei societas sit et finis negotio impositus est, finitur societas. If there is a partnership in any matter, and the business is ended, the partnership ceases.

Si aliquid ex solemnibus deficiat, cum aequitas poscit subveniendum est. If anything is lacking from formal requirements, when equity requires, it will be supplied.

Si assuetis mederi possis, nova non sunt tentanda. If you can be relieved by accustomed remedies, new ones should not be tried.

Sic enim debere quem meliorem agrum suum facere, ne vicini deteriorem faciat. Everyone ought so to improve his land as not to injure his neighbor's.

Sic interpretandum est ut verba accipiantur cum effectu. Such an interpretation is to be made that the words may be taken with effect.

Sic utere tuo ut alienum non laedas. Use your property so as not to damage another's; so use your own as not to injure another's property. [Cases: Negligence ☞ 1010; Nuisance ☞ 3.]

Sicut natura nil facit per saltum, ita nec lex. Just as nature does nothing with a leap, so neither does the law.

Si duo in testamento pugnantia reperientur, ultimum est ratum. If two conflicting provisions are found in a will, the latter is decisive.

Sigillum est cera impressa, quia cera sine impressione non est sigillum. A seal is a piece of wax impressed, because wax without an impression is not a seal.

Si judicas, cognosce. If you judge, understand.

Silentium in senatu est vitium. Silence in the senate is a fault.

Silent leges inter arma. Laws are silent amid arms.

Si meliores sunt quos ducit amor, plures sunt quos corrigit timor. If the better are those whom love leads, the greater number are those whom fear corrects.

Similitudo legalis est casuum diversorum inter se collatorum similis ratio; quod in uno similium valet, valebit in altero. Legal similarity is a similar reason that governs various cases when compared with each other, for what avails in one similar case will avail in the other.

Simonia est voluntas sive desiderium emendi vel vendendi spiritualia vel spiritualibus adhaerentia. Contractus ex turpi causa est et contra bonos mores. Simony is the will or desire of buying or selling spiritualities, or things pertaining to them. It is a contract founded on a bad cause, and against morality.

Simplex commendatio non obligat. A simple recommendation does not bind. [Cases: Sales ☞ 261(5).]

Simplex et pura donatio dici poterit ubi nulla est adjecta conditio nec modus. A gift is said to be pure and simple when no condition or qualification has been annexed.

Simplicitas est legibus amica, et nimia subtilitas in jure reprobatur. Simplicity is a friend to the laws, and too much subtlety in law is condemned.

Sine possessione usucapio procedere non potest. Without possession, prescription (Roman usucapio) cannot proceed.

Singuli in solidum tenentur. Each individual is bound for the whole.

Si non appareat quid actum est, erit consequens ut id sequamur quod in regione in qua actum est frequentatur. If it is not clear what was done (or agreed on), the consequence will be that we follow what is commonly done in the place where the agreement was made. ▶ig. 50.17.34.

Si nulla sit conjectura quae ducat alio, verba intelligenda sunt ex proprietate, non grammatica sed populari ex usu. If there is no inference that leads to a different result, words are to be understood according to their proper meaning, not in a grammatical but in a popular and ordinary sense.

Si plures conditiones ascriptae fuerunt donationi conjunctim, omnibus est parendum; et ad veritatem copulative requiritur quod utraque pars sit vera, si divisim, quilibet vel alteri eorum satis est obtemperare; et in disjunctivis, sufficit alteram partem esse veram. If several conditions are conjunctively written in a gift, the whole of them must be complied with; and with respect to their truth, it is necessary that every part be true, taken jointly: if the conditions are separate, it is sufficient to comply with either one or the other of them; and being disjunctive, that one or the other be true.

Si plures sint fidejussores, quotquot erunt numero, singuli in solidum tenentur. If there are more sureties than one, however many they will be in number, they are individually liable for the whole.

Si quidem in nomine, cognomine, praenomine, agnomine legatarii testator erraverit, cum de persona constat, nihilominus valet legatum. If the testator has erred in the name, cognomen, praenomen, or title of the legatee, when there is certainty about the person, the legacy is nonetheless valid.

Si quid universitati debetur, singulis non debetur, nec quod debet universitas singuli debent. If anything is due to a corporation, it is not due to the individual members of it, nor do the members individually owe what the corporation owes.

Si quis cum totum petiisset partem petat, exceptio rei judicatae vocet. If anyone sues for a part when he should have sued for the whole, the judgment should constitute res judicata (against another suit). [Cases: Judgment ☞592.]

Si quis custos fraudem pupillo fecerit, a tutela removendus est. If a guardian commits fraud against his ward, he is to be removed from the guardianship.

Si quis praegnantem uxorem reliquit, non videtur sine liberis decessisse. If anyone dies leaving his wife pregnant, he is not considered as having died childless.

Si quis unum percusserit cum alium percutere vellet, in felonia tenetur. If a person kills one when he meant to kill another, he is held guilty of felony.

Si suggestio non sit vera, literae patentes vacuae sunt. If the suggestion is not true, the letters patent are void.

Sive tota res evincatur, sive pars, habet regressum emptor in venditorem. If the property is taken from the purchaser by eviction, whether whole or in part, he has an action against the vendor. Dig. 21.2.1.

Socii mei socius meus socius non est. The partner of my partner is not my partner.

Socii plures sunt quasi unum corpus, in eo quod unum jus habent, et oportet quod corpus sit integrum et quod in nulla parte sit defectus. Several partners are as one body, since they have one right, and it is necessary that the body be perfect, and that there be defect in no part.

Sola ac per se senectus donationem, testamentum aut transactionem non vitiat. ●ld age does not alone and of itself vitiate gift, will or transaction.

Solemnitates juris sunt observandae. The solemnities of law must be observed.

Solo cedit quod solo implantatur. What is planted in the soil belongs to the soil. • This maxim is sometimes written *Solo cedit, quicquid solo plantatur* (translatable as "what is affixed to the soil belongs to the soil").

Solo cedit quod solo inaedificatur. Whatever is built on the soil belongs to the soil.

Solus Deus haeredem facit. God alone makes the heir.

Solutio pretii emptionis loco habetur. The payment of the price stands in the place of a sale.

Solvendo esse nemo intelligitur nisi qui solidum potest solvere. No one is understood to be in a state of solvency except the one who can pay all that he owes. Dig. 50.16.114.

Solvitur adhuc societas etiam morte socii. A partnership is also dissolved by the death of a partner.

Solvitur eo ligamine quo ligatur. It is released by the bond with which it is bound.

Solvitur in modo solventis. A payment is made for the purpose the payer intends.

Sommonitiones aut citationes nullae liceant fieri infra palatium regis. No summonses or citations should be permitted to be served within the king's palace.

Specilia generalibus derogant. Special words derogate from general ones.

Spes impunitatis continuum affectum tribuit delinquendi. The hope of impunity supplies a constant inclination to wrongdoing.

Spoliatus debet ante omnia restitui. A party forcibly deprived of possession ought first of all to have restitution.

Spoliatus episcopus ante omnia debet restitui. A bishop despoiled of his see ought, above all, to be restored.

Spondet peritiam artis. He promises (to use) the skill of his art. • That is, he engages to do the work in a skillful manner.

Sponsalia dicuntur futurarum nuptiarum conventio et repromissio. A betrothal is the agreement and promise of a future marriage.

Sponte virum fugiens mulier et adultera facta, doti sua careat, nisi sponsi sponte retracta. A woman leaving her husband of her own accord and committing adultery should lose her dower, unless she is taken back by her husband of his own accord.

Stabit praesumptio donec probetur in contrarium. A presumption will stand until proof is given to the contrary.

Stare decisis et non quieta movere. Literally, to stand by previous decisions and not to disturb settled matters. - To adhere to precedents, and not to depart from established principles. [Cases: Courts ⇨89, 90.]

Stat pro ratione voluntas. The will stands in place of a reason. [Cases: Wills ⇨82.]

Stat pro ratione voluntas populi. The will of the people stands in place of a reason.

Statuta pro publico commodo late interpretantur. Statutes made for the public advantage ought to be broadly construed.

Statuta suo clauduntur territorio, nec ultra territorium disponunt. Statutes are confined to their own territory and have no extraterritorial effect.

Statutum affirmativum non derogat communi legi. An affirmative statute does not take away from the common law.

Statutum generaliter est intelligendum quando verba statuti sunt specialia, ratio autem generalis. A statute is to be understood generally when the words of the statute are special but its reason is general.

Statutum speciale statuto speciali non derogat. ●ne special statute does not take away from another special statute.

Sublata causa tollitur effectus. Remove the cause and the effect ceases.

Sublata veneratione magistratuum, respublica ruit. When respect for magistrates has been destroyed, the commonwealth perishes.

Sublato fundamento, cadit opus. When the foundation has been removed (or demolished), the structure collapses. [Cases: Principal and Surety ⇨112.]

Sublato principali, tollitur adjunctum. When the principal has been taken away, the adjunct is also taken away.

Subsequens matrimonium tollit peccatum praecedens. A subsequent marriage removes the previous sin.

Succurritur minori; facilis est lapsus juventutis. Aid is given to a minor; easy is the slip-up of youth (i.e., youth is liable to err).

Summa caritas est facere justitiam singulis et omni tempore quando necesse fuerit. The greatest charity is to do justice to each individual and at every time when it is necessary.

Summa est lex quae pro religione facit. The highest law is the one that acts on behalf of religion.

Summa ratio est quae pro religione facit. The highest reason is that which acts in favor of religion. ● Also found in indirect form, *Summam esse rationem quae pro religione facit.*

Summum jus, summa injuria. The highest right is the utmost injury. ● That is, law too rigidly interpreted produces the greatest injustice.

Super falso et certo fingitur, super incerto et vero jure sumitur. A fiction assumes that the thing feigned is certainly untrue.

Superficies solo cedit. The surface goes with the land. - That is, whatever is attached to the land forms part of it.

Super fidem chartarum, mortuis testibus, erit ad patriam de necessitate recurrendum. The truth of charters is necessarily to be referred to a jury when the witnesses are dead.

Superflua non nocent. Superfluities do no injury.

Suppressio veri, expressio falsi. Suppression of the truth (is equivalent to) the expression of what is false. [Cases: Deeds ⇨70(4); Fraud ⇨16.]

Suppressio veri, suggestio falsi. Suppression of the truth (is equivalent to) the suggestion of what is false.

Surplusagium non nocet. Extraneous matter does no harm. ● Superfluous allegations, not proper to the case, should have no effect.

Tacita quaedam habentur pro expressis. Certain things though unexpressed are considered as expressed.

Talis interpretatio semper fienda est ut evitetur absurdum, et inconveniens, et ne judicium sit illusorium. Interpretation is always to be made in such a manner that what is absurd and improper is avoided, and so that the judgment is not a mockery.

Talis non est eadem, nam nullum simile est idem. "Such" is not "the same," for nothing similar is the same thing.

Tantum bona valent, quantum vendi possunt. Things are worth as much as they can be sold for.

Tantum concessum quantum scriptum. So much is granted as is written.

Tantum habent de lege, quantum habent de justitia. (Precedents) have value in the law to the extent that they represent justice.

Tantum operatur fictio in casu ficto quantum veritas in casu vero. A legal fiction operates to the same extent and effect in the supposed case as the truth does in a real case.

Tantum praescriptum quantum possessum. There is only prescription insofar as there has been possession.

Tempus enim modus tollendi obligationes et actiones, quia tempus currit contra desides et sui juris contemptores. For time is a means of destroying obligations and actions, because time runs against those who are inactive and show little respect for their own rights.

Tempus ex suapte natura vim nullam effectricem habet. Time, of its own nature, has no effectual force.

Tempus mortis inspiciendum. (One must) look to the time of death.

Tenor est pactio contra communem feudi naturam ac rationem in contractu interposita. The tenure (of an agreement) is a compact contrary to the common nature and reason of the fee, put into a contract.

Tenor est qui legem dat feudo. It is the tenor that gives law to the fee. • That is, the tenor of the feudal grant regulates its effect and extent.

Terminus annorum certus debet esse et determinatus. A term of years ought to be certain and definite (with a fixed end).

Terminus et (ac) feodum non possunt constare simul in una eademque persona. Term and fee cannot both be vested in one and the same person at the same time.

Terra manens vacua occupanti conceditur. Land lying unoccupied is given to the occupant.

Terra transit cum onere. Land passes with the incumbrances.

Testamenta, cum duo inter se pugnantia reperiuntur, ultimum ratum est; sic est, cum duo inter se pugnantia reperiuntur in eodem testamento. When two conflicting wills are found, the last prevails; so it is when two conflicting clauses occur in the same will.

Testamenta latissimam interpretationem habere debent. Wills ought to have the broadest interpretation.

Testamentum est voluntatis nostrae justa sententia, de eo quod quis post mortem suam fieri velit. A testament is the just expression of our will concerning that which anyone wishes done after his death. • Or, as Blackstone renders it, a testament is "the legal declaration of a man's intentions which he wills to be performed after his death." 2 Bl. Com. 499.

Testamentum omne morte consummatum. Every will is completed by death.

Testatoris ultima voluntas est perimplenda secundum veram intentionem suam. The last will of a testator is to be fulfilled according to his true intention.

Testibus deponentibus in pari numero, dignioribus est credendum. When the number of witnesses giving testimony is equal on both sides, the more trustworthy are to be believed.

Testibus, non testimoniis, credendum est. The witnesses must be believed, not (simply) their testimony.

Testimonia ponderanda sunt, non numeranda. Testimonies are to be weighed, not counted.

Testis de visu praeponderat aliis. An eyewitness outweighs others.

Testis lupanaris sufficit ad factum in lupanari. Someone from a brothel is a sufficient witness to a happening in a brothel.

Testis nemo in sua causa esse potest. No one can be a witness in his own cause.

Testis oculatus unus plus valet quam auriti decem. One eyewitness is worth more than ten earwitnesses.

Testmoignes ne poent testifier le negative, mes l'affirmative. Witnesses cannot testify to a negative; they must testify to an affirmative.

Thesaurus inventus est vetus dispositio pecuniae, &c., cujus non extat modo memoria, adeo ut jam dominum non habeat. Treasure trove is an ancient hiding of money, etc., of which no recollection exists, so that it now has no owner.

Thesaurus non competit regi, nisi quando nemo scit qui abscondit thesaurum. Treasure does not belong to the king, unless no one knows who hid it.

Timores vani sunt aestimandi qui non cadunt in constantem virum. Those fears must be considered vain (or frivolous) that do not affect a man of steady character.

Titius haeres esto. Let Titius be my heir. • Titius was the Roman counterpart of John Doe.

Titulus est justa causa possidendi id quod nostrum est. Title is the just cause of possessing that which is ours.

Tolle voluntatem et erit omnis actus indifferens. Take away the will, and every action will be indifferent.

Totum praefertur unicuique parti. The whole is preferred to any single part.

Tout ce que la loi ne defend pas est permis. Everything that the law does not forbid is permitted.

Toute exception non surveillée tend à prendre la place du principe. Every exception not watched tends to assume the place of the principle.

Tractent fabrilia fabri. Let smiths perform the work of smiths.

Traditio loqui facit chartam. Delivery makes the deed (document) speak.

Traditionibus et usucapionibus, non nudis pactis, transferuntur rerum dominia. Rights of property are transferred by delivery and by prescription (founded on lengthy possession), not by naked agreements.

Traditio nihil amplius transferre debet vel potest ad eum qui accipit quam est apud eum qui tradit. Delivery neither can nor should transfer anything more to the recipient than is in possession of the one who delivers.

Trado tibi ecclesiam. I deliver this church (or living) to you.

Transgressione multiplicata, crescat poenae inflictio. When transgression is repeated, let the infliction of punishment be increased. 2 Co. Inst. 479.

Transit in rem judicatam. It passes into a judgment. [Cases: Judgment ⇨582.]

Transit terra cum onere. The land passes with its burdens.

Tres faciunt collegium. Three form a corporation.

Triatio ibi semper debet fieri ubi juratores meliorem possunt habere notitiam. Trial ought always to be held where the jurors can have the better information.

Triennalis pacificus possessor beneficii est inde securus. The undisturbed possessor of a benefice for three years is thereafter secure (from challenge).

Turpis est pars quae non convenit cum suo toto. The part is bad that does not accord with its whole.

Tuta est custodia quae sibimet creditur. The guardianship is secure that is entrusted to itself alone.

Tutius erratur ex parte mitiori. It is safer to err on the gentler side (or on the side of leniency).

Tutius est rei incumbere quam personae. It is safer to rely on a thing than on a person. • Real security is safer than personal security.

Tutius semper est errare in acquietando quam in puniendo, ex parte misericordiae quam ex parte justitiae. It is always safer to err in acquitting than in punishing, (and) on the side of mercy than of justice.

Tutor incertus dari non potest. An uncertain person cannot be given or appointed as tutor.

Tutor in rem suam auctor fieri non potest. A tutor cannot act for his own interest.

Tutor praesumitur intus habere, ante redditas rationes. A tutor is presumed to have funds in his own hands until his accounts have been rendered.

Tutor rem pupilli emere non potest. A tutor cannot purchase the property of his ward.

Ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest. When anything is granted, that also is granted without which the thing itself cannot exist.

Ubi aliquid impeditur propter unum, eo remoto, tollitur impedimentum. When anything is impeded by reason of one thing, when that is removed, the impediment is removed.

Ubi cessat remedium ordinarium, ibi decurritur ad extraordinarium. When a common remedy ceases to be of service, recourse is had to an extraordinary one.

Ubi culpa est, ibi poena subesse debet. Where the fault is, there the punishment should be imposed.

Ubicunque est injuria, ibi damnum sequitur. Wherever there is a legal wrong, there damage follows.

Ubi damna dantur victus victori in expensis condemnari debet. Where damages are awarded, the party that did not succeed ought to be adjudged to pay expenses for the party that prevailed.

Ubi eadem ratio, ibi idem jus. Where there is the same reason, there is the same law. — Also rendered *Ubi eadem est ratio, ibi idem est jus.*

Ubi eadem ratio, ibi idem jus; et de similibus idem est judicium. Where there is the same reason, there is the same law; and the same judgment should be rendered on comparable facts.

Ubi est forum, ibi ergo est jus. Where the forum (or place of jurisdiction) is, there accordingly is the law.

Ubi et dantis et accipientis turpitudo versatur, non posse repeti dicimus; quotiens autem accipientis turpitudo versatur, repeti posse. Where there is misconduct on the part of both giver and receiver, we say the thing cannot be recovered; but as often as the misconduct is on the side of the receiver (alone), it can be recovered.

Ubi factum nullum, ibi fortia nulla. Where there is no fact, there are no strong points.

Ubi jus, ibi remedium. Where there is a right, there is a remedy. [Cases: Equity ⇦55.]

Ubi jus incertum, ibi jus nullum. Where the right is uncertain, there is no right.

Ubi lex aliquem cogit ostendere causam, necesse est quod causa sit justa et legitima. Where the law compels someone to show cause, it is necessary that the cause be just and legal.

Ubi lex deest, praetor supplet. Where the law is deficient, the praetor supplies the deficiency.

Ubi lex est specialis et ratio ejus generalis, generaliter accipienda est. Where the law is special and the reason of it is general, it ought to be taken as general.

Ubi lex non distinguit, nec nos distinguere debemus. Where the law does not distinguish, we ought not to distinguish.

Ubi major pars est, ibi totum. Where the greater part is, there is the whole.

Ubi matrimonium, ibi dos. Where there is marriage there is dower.

Ubi non adest norma legis, omnia quasi pro suspectis habenda sunt. Where there is no rule of law, everything must be held, as it were, suspect.

Ubi non est condendi auctoritas, ibi non est parendi necessitas. Where there is no authority to establish (a rule), there is no necessity to obey.

Ubi non est directa lex, standum est arbitrio judicis, vel procedendum ad similia. Where there is not direct law, one must rely on the judgment of the judge or refer to similar cases.

Ubi non est lex, ibi non est transgressio quoad mundum. Where there is not law, there is not transgression, as far as this world is concerned.

Ubi non est manifesta injustitia, judices habentur pro bonis viris, et judicatum pro veritate. Where there is no manifest injustice, the judges are to be regarded as honest men, and their judgment as truth.

Ubi non est principalis, non potest esse accessorius. Where there is no principal, there can be no accessory.

Ubi nulla est conjectura quae ducat alio, verba intelligenda sunt ex proprietate non grammatica sed populari ex usu. Where there is no inference that would lead in another direction, the words are to be understood according to their proper meaning, not strictly according to grammar but according to popular usage.

Ubi nullum matrimonium, ibi nulla dos. Where there is no marriage, there is no dower.

Ubi onus ibi emolumentum. Where the burden is, there is the profit or advantage.

Ubi periculum, ibi et lucrum collocatur. Where the risk is, there also the profit accrues.

Ubi pugnantia inter se in testamento juberentur, neutrum ratum est. When two directions conflicting with each other were given in a will, neither is held valid.

Ubi quid generaliter conceditur, inest haec exceptio, si non aliquid sit contra jus fasque. Where a thing is granted in general terms, this exception is implied: if there is not anything contrary to law and right.

Ubi quis delinquit ibi punietur. Where anyone commits an offense, there will he be punished.

Ubi remedium, ibi ius. Where there is a remedy, there is a right.

Ubi verba conjuncta non sunt, sufficit alterutrum esse factum. Where words are not conjoined, it is enough that one or another (of the things enumerated) has been done.

Ultima voluntas testatoris est perimplenda secundum veram intentionem suam. The last will of a testator is to be fulfilled according to his true intention.

Ultimum supplicium esse mortem solam interpretamur. We consider death alone to be the extreme punishment.

Ultra posse non potest esse et vice versa. What is beyond possibility cannot exist, and the reverse (what cannot exist is not possible).

Una persona vix potest supplere vices duarum. One person can scarcely supply the place of two.

Unaquaeque gleba servit. Every lump of earth (on the land) is subject to the servitude.

Uniuscujusque contractus initium spectandum est et causa. The beginning and cause of each and every contract must be considered.

Unius omnino testis responsio non audiatur. Let the evidence of one witness not be heard at all.

Universalia sunt notiora singularibus. Things universal are better known than things particular.

Universitas vel corporatio non dicitur aliquid facere nisi id sit collegialiter deliberatum, etiamsi major pars id faciat. A university or corporation is not said to take any action unless the action was resolved by it as a body, even if a greater part of the body should act.

Un ne doit prise advantage de son tort demesne. One should not take advantage from his own wrong.

Uno absurdo dato, infinita sequuntur. When one absurdity has been allowed, an infinity follows.

Unumquodque dissolvitur eodem ligamine quo ligatur. Everything is dissolved by the same binding by which it is bound together.

Unumquodque eodem modo dissolvitur quo colligatur. Any obligation is discharged in the same manner as it is constituted.

Unumquodque eodem modo quo colligatum est dissolvitur. In the same manner in which anything was bound, it is loosened.

Unumquodque est id quod est principalius in ipso. That which is the principal part of a thing is the thing itself.

Unumquodque ligamen dissolvitur eodem ligamine qui et ligatur. Every obligation is dissolved in the same manner in which it is contracted.

Unumquodque principiorum est sibimet ipsi fides; et perspicua vera non sunt probanda. Each and every one of the general principles is its own pledge of trust, and plain truths need not be proved.

Unusquisque debet esse gnarus conditionis ejus cum quo contrahit. Everyone ought to be cognizant of the condition of the person with whom he makes contract.

Usucapio constituta est ut aliquis litium finis esset. Prescription (Roman usucapio) was instituted that there might be some end to lawsuits. Dig. 41.10.5.

Usus est dominium fiduciarium. Use is a fiduciary ownership.

Usus fit ex iteratis actibus. Usage arises from repeated acts.

Utile per inutile non vitiatur. What is useful is not vitiated by the useless. [Cases: Trial ☞336.]

Utlagatus est quasi extra legem positus: caput gerit lupinum. An outlaw is, as it were, put out of the protection of the law: he carries the head of a wolf.

Ut poena ad paucos, metus ad omnes perveniat. So that punishment afflict few, (and) fear affect all. • Blackstone cites Cicero (pro Cluentio 46) emphasizing deterrence. 4 Bl. Com. 11.

Ut res magis valeat quam pereat. (Interpret the law, contract, etc.) so that the transaction is upheld rather than lost (or so that a matter may avail rather than perish). • The phrase can be literally translated as "that the matter may have effect rather than fail." [Cases: Contracts ☞153; Patents ☞157(2); Wills ☛449.]

Uxor et filius sunt nomina naturae. Wife and son are names of nature.

Uxor non est sui juris sed sub potestate viri. A wife is not in her own right (i.e., she cannot act independently), but under the power of her husband.

Uxor sequitur domicilium viri. A wife follows the domicile of her husband.

Vagabundum nuncupamus eum qui nullibi domicilium contraxit habitationis. We call the person a vagabond who has acquired nowhere a domicile of residence.

Valeat quantum valere potest. Let it have effect as far as it can have effect.

Vana est illa potentia quae nunquam venit in actum. Vain is that power that never comes into action.

Vani timores sunt aestimandi, qui non cadunt in constantem virem. Those fears are to be considered groundless that do not affect a man of steady character.

Vani timoris justa excusatio non est. There is no legal excuse based on a groundless fear.

Velle non creditur qui obsequitur imperio patris vel domini. A person is not presumed to act of his own will who obeys the orders of his father or his master.

Vendens eandem rem duobus falsarius est. A vendor is fraudulent if he sells the same thing to two (separate) buyers.

Veniae facilitas incentivum est delinquendi. Ease of winning pardon is an incentive to committing crime.

Verba accipienda sunt secundum subjectam materiam. Words are to be interpreted according to the subject matter.

Verba accipienda ut sortiantur effectum. Words are to be taken so that they may have some effect.

Verba aequivoca ac in dubio sensu posita intelliguntur digniori et potentiori sensu. Equivocal words and those in a doubtful sense are understood in the more suitable and more effective sense.

Verba aliquid operari debent — debent intelligi ut aliquid operentur. Words ought to have some effect — words ought to be understood so as to have some effect.

Verba aliquid operari debent; verba cum effectu sunt accipienda. Words ought to have some effect; words must be taken so as to have effect.

Verba artis ex arte. Terms of art (should be explained) from the art.

Verba chartarum fortius accipiuntur contra proferentem. The words of deeds are taken most strongly against the person offering them.

Verba cum effectu accipienda sunt. Words must be taken so as to have effect.

Verba currentis monetae tempus solutionis designant. The words "current money" refer to the time of payment.

Verba debent intelligi cum effectu. Words ought to be understood with effect.

Verba debent intelligi ut aliquid operentur. Words ought to be so understood that they may have some effect.

Verba dicta de persona intelligi debent de conditione personae. Words spoken of the person are to be understood of the condition of the person.

Verba fortius accipiuntur contra proferentem. Words are interpreted more strongly against the party who puts them forward; words are most readily accepted against the one putting them forward.

Verba generalia generaliter sunt intelligenda. General words are to be understood generally.

Verba generalia restringuntur ad habilitatem rei vel aptitudinem personae. General words are limited to the capability of the subject matter or the aptitude of the person.

Verba generalia restringuntur ad habilitatem rei vel personae. General words are limited to the capability of the subject matter or of the person. [Cases: Release ☞31.]

Verba illata (relata) inesse videntur. Words referred to are considered as if incorporated.

Verba in differenti materia per prius, non per posterius, intelligenda sunt. Words referring to a different subject are to be understood by what goes before, not by what follows.

Verba intelligenda sunt in casu possibili. Words are to be understood in reference to a possible case.

Verba intentioni, et non e contra, debent inservire. Words should be subject to the intention, not the reverse.

Verba ita sunt intelligenda, ut res magis valeat quam pereat. Words are to be so understood that the matter may have effect rather than fail.

Verba mere aequivoca, si per communem usum loquendi in intellectu certo sumuntur, talis intellectus praeferendus est. When words are purely equivocal, if by common usage of speech they are taken in a certain meaning, such meaning is to be preferred.

Verba nihil operari melius est quam absurde. It is better that words should have no effect than an absurd effect.

Verba non tam intuenda quam causa et natura rei, ut mens contrahentium ex eis potius quam ex verbis appareat. The words (of a contract) are not to be looked to so much as the cause and nature of the matter, so that the intention of the contracting parties may appear from these rather than from the (mere) words.

Verba offendi possunt, immo ab eis recedere licet, ut verba ad sanum intellectum reducantur. The words can be faulted — indeed, it is permitted to depart from them, in order that the words may be restored to a sensible meaning.

Verba ordinationis, quando verificari possunt in sua vera significatione, trahi ad extraneum intellectum non debent. When the words of an ordinance can be made true in their true signification, they ought not to be warped to a foreign meaning.

Verba posteriora propter certitudinem addita, ad priora quae certitudine indigent, sunt referunda. Later words added for the purpose of certainty are to be referred to preceding words in which certainty is wanting.

Verba pro re et subjecta materia accipi debent. Words should be taken most in favor of the thing and the subject matter.

Verba quae aliquid operari possunt non debent esse superflua. Words that can have some effect ought not to be (treated as) superfluous.

Verba quantumvis generalia ad aptitudinem restringuntur, etiamsi nullam aliam paterentur restrictionem. Words, howsoever general, are confined to fitness (i.e., to harmonize with the subject matter), even if they would bear no other restriction.

Verba relata hoc maxime operantur per referentiam ut in eis inesse videntur. Words to which reference is made have, by the reference, this particular effect, that they are considered to be incorporated in those (clauses). • Words to which reference is made in an instrument have the same effect and operation as if they were inserted in the clause referring to them.

Verba relata inesse videntur. Words to which reference is made are considered incorporated.

Verba secundum materiam subjectam intelligi nemo est qui nescit. There is no one who does not know that words should be understood according to the subject matter.

Verba semper accipienda sunt in mitiori sensu. Words are always to be taken in their milder sense.

Verba strictae significationis ad latam extendi possunt, si subsit ratio. Words of a strict signification can be given a wide signification if there is reason for it.

Verba sunt indices animi. Words are indications of the intention.

Verbis standum ubi nulla ambiguitas. One must abide by the words where there is no ambiguity. [Cases: Statutes ⇨190.]

Verborum obligatio verbis tollitur. An obligation verbally incurred is verbally extinguished.

Verbum imperfecti temporis rem adhuc imperfectam significat. The verb in the imperfect tense indicates a matter as yet incomplete.

Veredictum quasi dictum veritatis; ut judicium quasi juris dictum. A verdict is, as it were, the saying of the truth, in the same manner that a judgment is the saying of the law (or right).

Veritas, a quocunque dicitur, a Deo est. Truth, by whomsoever pronounced, is from God.

Veritas demonstrationis tollit errorem nominis. The truth of the description removes the error of the name.

Veritas est justitiae mater. Truth is the mother of justice.

Veritas habenda est in juratore; justitia et judicium in judice. Truth is the desideratum in a juror; justice and judgment in a judge.

Veritas nihil veretur nisi abscondi. Truth fears nothing but to be hidden.

Veritas nimium altercando amittitur. By too much quarreling the truth is lost.

Veritas nominis tollit errorem demonstrationis. The truth of the name takes away the error of the description.

Veritatem qui non libere pronunciat, proditor est veritatis. One who does not speak the truth freely is a traitor to the truth.

Via antiqua via est tuta. The old way is the safe way.

Via trita est tutissima. The beaten road is the safest.

Via trita, via tuta. The beaten way is the safe way.

Vicarius non habet vicarium. A deputy does not have a deputy.

Vicini viciniora praesumuntur scire. Neighbors are presumed to know things of the immediate vicinity.

Videtur qui surdus et mutus ne poet faire alienation. A deaf and mute person is considered not to be able to alienate.

Vigilantibus et non dormientibus jura subveniunt. The laws aid the vigilant, not those who sleep. [Cases: Equity ⇨64.]

Vim vi repellere licet, modo fiat moderamine inculpatae tutelae, non ad sumendam vindictam, sed ad propulsandam injuriam. It is lawful to repel force by force; but let it be done with the self-control of blameless defense — not to take revenge, but to repel injury.

Violenta praesumptio aliquando est plena probatio. A very powerful presumption is sometimes full proof.

Viperina est expositio quae corrodit viscera textus. That is a viperous exposition that gnaws away the innards of the text.

Vir et uxor censentur in lege una persona. Husband and wife are considered one person in law.

Vis legibus est inimica. Force is inimical to the laws.

Vitium clerici nocere non debet. A clerical error ought not to prejudice.

Vitium est quod fugi debet, ne, si rationem non invenias, mox legem sine ratione esse clames. It is a fault that ought to be avoided, that if you do not discover the reason, you quickly exclaim that the law is without reason.

Vix ulla lex fieri potest quae omnibus commoda sit, sed si majori parti prospiciat, utilis est. Scarcely any law can be made that is advantageous to all; but if it benefits the majority, it is useful.

Vocabula artium explicanda sunt secundum definitiones prudentium. Terms of art are to be explained according to the definitions of those who are experienced in that art.

Volenti non fit injuria. There is no injury to one who consents. [Cases: Negligence ⇨550.]

Voluit sed non dixit. The person willed but did not say.

Voluntas donatoris in charta doni sui manifeste expressa observetur. The will of the donor, if clearly expressed in the deed of his gift, should be observed.

Voluntas et propositum distinguunt maleficia. The will and the purpose distinguish crimes.

Voluntas facit quod in testamento scriptum valeat. The will (of the testator) gives validity to what is written in the will (testament).

Voluntas in delictis non exitus spectatur. In offenses, the will and not the outcome is regarded.

Voluntas reputatur pro facto. The will is to be taken for the deed.

Voluntas testatoris ambulatoria est usque ad mortem. The will of a testator is changeable right up until death. • That is, the testator may change the will at any time. This maxim is sometimes written *Voluntas testatoris est ambulatoria usque ad extremum vitae exitum* (same sense).

Voluntas testatoris habet interpretationem latam et benignam. The will of the testator should receive a broad and liberal interpretation.

Voluntas ultima testatoris est perimplenda secundum veram intentionem suam. The last will of a testator is to be fulfilled according to his true intention.

Vox emissa volat; litera scripta manet. The uttered voice flies; the written letter remains. [Cases: Libel and Slander ⇨15.]

Vulgaris opinio est duplex: orta inter graves et discretos, quae multum veritatis habet, et opinio orta inter leves et vulgares homines, absque specie veritatis. Common opinion is double: that proceeding from grave and discreet men, which has much truth in it, and that proceeding from foolish vulgar men, without any semblance of truth in it.

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The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of Honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to the House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases

the Votes of both Houses shall be determined by yeas and nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article II

Section 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States,

directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article III

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under the Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article IV

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State

from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article VI

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article VII

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Articles in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the Several States pursuant to the Fifth Article of the original Constitution.

Amendment I [1791]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II [1791]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III [1791]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV [1791]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V [1791]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI [1791]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII [1791]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII [1791]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX [1791]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X [1791]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment XI [1798]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Amendment XII [1804]

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest Number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Amendment XIII [1865]

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV [1868]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and

Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV [1870]

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XVI [1913]

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Amendment XVII [1913]

[1] The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

[2] When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

[3] This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment XVIII [1919]

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XIX [1920]

[1] The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

[2] Congress shall have power to enforce this article by appropriate legislation.

Amendment XX [1933]

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If the President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Amendment XXI [1933]

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. The article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XXII [1951]

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years

of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

Amendment XXIII [1961]

Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXIV [1964]

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXV [1967]

Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of

either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Amendment XXVI [1971]

Section 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXVII [1992]

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

Appendix D

Universal Declaration of Human Rights

On December 10, 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights, the full text of which appears in the following pages. Following this historic act, the Assembly called upon all Member countries to publicize the text of the Declaration and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore
THE GENERAL ASSEMBLY
proclaims
THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS
as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3. Everyone has the right to life, liberty and security of person.

Article 4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6. Everyone has the right to recognition everywhere as a person before the law.

Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9. No one shall be subjected to arbitrary arrest, detention or exile.

Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11. (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13. (1) Everyone has the right to freedom of movement and residence within the borders of each State.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14. (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from nonpolitical crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15. (1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17. (1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 18. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20. (1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21. (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right to equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23. (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26. (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27. (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29. (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Appendix E

Members of the United States Supreme Court

Chief Justices

Name	State	Appointed By	Tenure
Jay, John	New York	Washington	Oct. 19, 1789–June 29, 1795
Rutledge, John	South Carolina	Washington	Aug. 12, 1795–Dec. 15, 1795
Ellsworth, Oliver	Connecticut	Washington	Mar. 8, 1796–Dec. 15, 1800
Marshall, John	Virginia	Adams, John	Feb. 4, 1801–July 6, 1835
Taney, Roger Brooke	Maryland	Jackson	Mar. 28, 1836–Oct. 12, 1864
Chase, Salmon Portland	Ohio	Lincoln	Dec. 15, 1864–May 7, 1873
Waite, Morrison Remick	Ohio	Grant	Mar. 4, 1874–Mar. 23, 1888
Fuller, Melville Weston	Illinois	Cleveland	Oct. 8, 1888–July 4, 1910
White, Edward Douglass	Louisiana	Taft	Dec. 19, 1910–May 19, 1921
Taft, William Howard	Connecticut	Harding	July 11, 1921 Feb. 3, 1930
Hughes, Charles Evans	New York	Hoover	Feb. 24, 1930–June 30, 1941
Stone, Harlan Fiske	New York	Roosevelt, F.	July 3, 1941–Apr. 22, 1946
Vinson, Fred Moore	Kentucky	Truman	June 24, 1946–Sept. 8, 1953
Warren, Earl	California	Eisenhower	Oct. 5, 1953–June 23, 1969
Burger, Warren Earl	Virginia	Nixon	June 23, 1969–Sept. 26, 1986
Rehnquist, William H.	Virginia	Reagan	Sept. 26, 1986–Sept. 3, 2005
Roberts, John G., Jr.	Maryland	Bush, G.W.	Sept. 29, 2005–

Associate Justices

Name	State	Appointed By	Tenure
Rutledge, John	South Carolina	Washington	Feb. 15, 1790–Mar. 5, 1791
Cushing, William	Massachusetts	Washington	Feb. 2, 1790–Sept. 13, 1810
Wilson, James	Pennsylvania	Washington	Oct. 5, 1789–Aug. 21, 1798
Blair, John	Virginia	Washington	Feb. 2, 1790–Oct. 25, 1795
Iredell, James	North Carolina	Washington	May 12, 1790–Oct. 20, 1799
Johnson, Thomas	Maryland	Washington	Aug. 6, 1792–Jan. 16, 1793
Paterson, William	New Jersey	Washington	Mar. 11, 1793–Sept. 9, 1806
Chase, Samuel	Maryland	Washington	Feb. 4, 1796–June 19, 1811
Washington, Bushrod	Virginia	Adams, John	Feb. 4, 1799–Nov. 26, 1829
Moore, Alfred	North Carolina	Adams, John	Apr. 21, 1800–Jan. 26, 1804
Johnson, William	South Carolina	Jefferson	May 7, 1804–Aug. 4, 1834
Livingston, Henry Brockholst	New York	Jefferson	Jan. 20, 1807–Mar. 18, 1823
Todd, Thomas	Kentucky	Jefferson	May 4, 1807–Feb. 7, 1826
Duvall, Gabriel	Maryland	Madison	Nov. 23, 1811–Jan. 14, 1835
Story, Joseph	Massachusetts	Madison	Feb. 3, 1812–Sept. 10, 1845
Thompson, Smith	New York	Monroe	Sept. 1, 1823–Dec. 18, 1843
Trimble, Robert	Kentucky	Adams, J.Q.	June 16, 1826–Aug. 25, 1828
McLean, John	Ohio	Jackson	Jan. 11, 1830–Apr. 4, 1861
Baldwin, Henry	Pennsylvania	Jackson	Jan. 18, 1830–Apr. 21, 1844

Name	State	Appointed By	Tenure
Wayne, James Moore	Georgia	Jackson	Jan. 14, 1835–July 5, 1867
Barbour, Philip Pendleton	Virginia	Jackson	May 12, 1836–Feb. 25, 1841
Catron, John	Tennessee	Jackson	May 1, 1837–May 30, 1865
McKinley, John	Alabama	Van Buren	Jan. 9, 1838–July 19, 1852
Daniel, Peter Vivian	Virginia	Van Buren	Jan. 10, 1842–May 31, 1860
Nelson, Samuel	New York	Tyler	Feb. 27, 1845–Nov. 28, 1872
Woodbury, Levi	New Hampshire	Polk	Sept. 23, 1845–Sept. 4, 1851
Grier, Robert Cooper	Pennsylvania	Polk	Aug. 10, 1846–Jan. 31, 1870
Curtis, Benjamin Robbins	Massachusetts	Fillmore	Oct. 10, 1851–Sept. 30, 1857
Campbell, John Archibald	Alabama	Pierce	Apr. 11, 1853–Apr. 30, 1861
Clifford, Nathan	Maine	Buchanan	Jan. 21, 1858–July 25, 1881
Swayne, Noah Haynes	Ohio	Lincoln	Jan. 27, 1862–Jan. 24, 1881
Miller, Samuel Freeman	Iowa	Lincoln	July 21, 1862–Oct. 13, 1890
Davis, David	Illinois	Lincoln	Dec. 10, 1862–Mar. 4, 1877
Field, Stephen Johnson	California	Lincoln	May 20, 1863–Dec. 1, 1897
Strong, William	Pennsylvania	Grant	Mar. 14, 1870–Dec. 14, 1880
Bradley, Joseph P.	New Jersey	Grant	Mar. 23, 1870–Jan. 22, 1892
Hunt, Ward	New York	Grant	Jan. 9, 1873–Jan. 27, 1882
Harlan, John Marshall	Kentucky	Hayes	Dec. 10 1877–Oct. 14, 1911
Woods, William Burnham	Georgia	Hayes	Jan. 5, 1881–May 14, 1887
Matthews, Stanley	Ohio	Garfield	May 17, 1881–Mar. 22, 1889
Gray, Horace	Massachusetts	Arthur	Jan. 9, 1882–Sept. 15, 1902
Blatchford, Samuel	New York	Arthur	Apr. 3, 1882–July 7, 1893
Lamar, Lucius Quintus C.	Mississippi	Cleveland	Jan. 18, 1888–Jan. 23, 1893
Brewer, David Josiah	Kansas	Harrison	Jan. 6, 1890–Mar. 28, 1910
Brown, Henry Billings	Michigan	Harrison	Jan. 5, 1891–May 28, 1906
Shiras, George, Jr.	Pennsylvania	Harrison	Oct. 10, 1892–Feb. 23, 1903
Jackson, Howell Edmunds	Tennessee	Harrison	Mar. 4, 1893–Aug. 8, 1895
White, Edward Douglass	Louisiana	Cleveland	Mar. 12, 1894–Dec. 18, 1910*
Peckham, Rufus Wheeler	New York	Cleveland	Jan. 6, 1896–Oct. 24, 1909
McKenna, Joseph	California	McKinley	Jan. 26, 1898–Jan. 5, 1925
Holmes, Oliver Wendell	Massachusetts	Roosevelt, T.	Dec. 8, 1902–Jan. 12, 1932
Day, William Rufus	Ohio	Roosevelt, T.	Mar. 2, 1903–Nov. 13, 1922
Moody, William Henry	Massachusetts	Roosevelt, T.	Dec. 17, 1906–Nov. 20, 1910
Lurton, Horace Harmon	Tennessee	Taft	Jan. 3, 1910–July 12, 1914
Hughes, Charles Evans	New York	Taft	Oct. 10, 1910–June 10, 1916
Van Devanter, Willis	Wyoming	Taft	Jan. 3, 1911–June 2, 1937
Lamar, Joseph Rucker	Georgia	Taft	Jan. 3, 1911–Jan. 2, 1916
Pitney, Mahlon	New Jersey	Taft	Mar. 18, 1912–Dec. 31, 1922
McReynolds, James Clark	Tennessee	Wilson	Oct. 12, 1914–Jan. 31, 1941
Brandeis, Louis Dembitz	Massachusetts	Wilson	June 5,1916–Feb. 13, 1939
Clarke, John Hessin	Ohio	Wilson	Oct. 9, 1916–Sept. 18, 1922
Sutherland, George	Utah	Harding	Oct. 2, 1922–Jan. 17, 1938
Butler, Pierce	Minnesota	Harding	Jan. 2, 1923–Nov. 16, 1939
Sanford, Edward Terry	Tennessee	Harding	Feb. 19, 1923–Mar. 8, 1930
Stone, Harlan Fiske	New York	Coolidge	Mar. 2, 1925–July 2, 1941*
Roberts, Owen Josephus	Pennsylvania	Hoover	June 2, 1930–July 31, 1945
Cardozo, Benjamin Nathan	New York	Hoover	Mar. 14, 1932–July 9, 1938
Black, Hugo Lafayette	Alabama	Roosevelt, F.	Aug. 19, 1937–Sept. 17, 1971

Name	State	Appointed By	Tenure
Reed, Stanley Forman	Kentucky	Roosevelt, F.	Jan. 31, 1938–Feb. 25, 1957
Frankfurter, Felix	Massachusetts	Roosevelt, F.	Jan. 30, 1939–Aug. 28, 1962
Douglas, William Orville	Connecticut	Roosevelt, F.	Apr. 17, 1939–Nov. 12, 1975
Murphy, Frank	Michigan	Roosevelt, F.	Feb. 5, 1940–July 19, 1949
Byrnes, James Francis	South Carolina	Roosevelt, F.	July 8, 1941–Oct. 3, 1942
Jackson, Robert Houghwout	New York	Roosevelt, F.	July 11, 1941–Oct. 9, 1954
Rutledge, Wiley Blount	Iowa	Roosevelt, F.	Feb. 15, 1943–Sept. 10, 1949
Burton, Harold Hitz	Ohio	Truman	Oct. 1, 1945–Oct. 13, 1958
Clark, Tom Campbell	Texas	Truman	Aug. 24, 1949–June 12, 1967
Minton, Sherman	Indiana	Truman	Oct. 12, 1949–Oct. 15, 1956
Harlan, John Marshall	New York	Eisenhower	Mar. 28, 1955–Sept. 23, 1971
Brennan, William J., Jr.	New Jersey	Eisenhower	Oct. 16, 1956–July 20, 1990
Whittaker, Charles Evans	Missouri	Eisenhower	Mar. 25, 1957–Mar. 31, 1962
Stewart, Potter	Ohio	Eisenhower	Oct. 14, 1958–July 3, 1981
White, Byron Raymond	Colorado	Kennedy	Apr. 16, 1962–June 28, 1993
Goldberg, Arthur Joseph	Illinois	Kennedy	Oct. 1, 1962–July 25, 1965
Fortas, Abe	Tennessee	Johnson, L.	Oct. 4, 1965–May 14, 1969
Marshall, Thurgood	New York	Johnson, L.	Oct. 2, 1967–Oct. 1, 1991
Blackmun, Harry A.	Minnesota	Nixon	June 9, 1970–Aug. 3, 1994
Powell, Lewis F., Jr.	Virginia	Nixon	Jan. 7, 1972–June 26, 1987
Rehnquist, William H.	Arizona	Nixon	Jan. 7, 1972–Sept. 26, 1986*
Stevens, John Paul	Illinois	Ford	Dec. 19, 1975–
O'Connor, Sandra Day	Arizona	Reagan	Sept. 25, 1981–Jan. 31, 2006
Scalia, Antonin	Virginia	Reagan	Sept. 26, 1986–
Kennedy, Anthony M.	California	Reagan	Feb. 18, 1988–
Souter, David H.	New Hampshire	Bush, G.H.W.	Oct. 9, 1990–
Thomas, Clarence	Georgia	Bush, G.H.W.	Oct. 23, 1991–
Ginsburg, Ruth Bader	New York	Clinton	Aug. 10, 1993–
Breyer, Stephen G.	Massachusetts	Clinton	Aug. 3, 1994–
Alito, Samuel A., Jr.	New Jersey	Bush, G.W.	Jan. 31, 2006–

*Elevated to Chief Justice

Appendix G

British Regnal Years

Sovereign	Date of Accession	Years in Reign
William I	Oct. 14, 1066	21
William II	Sept. 26, 1087	13
Henry I	Aug. 5, 1100	36
Stephen	Dec. 26, 1135	19
Henry II	Dec. 19, 1154	35
Richard I	Sept. 23, 1189	10
John	May 27, 1199	18
Henry III	Oct. 28, 1216	57
Edward I	Nov. 20, 1272	35
Edward II	July 8, 1307	20
Edward III	Jan. 25, 1326	51
Richard II	June 22, 1377	23
Henry IV	Sept. 30, 1399	14
Henry V	Mar. 21, 1413	10
Henry VI	Sept. 1, 1422	39
Edward IV	Mar. 4, 1461	23
Edward V	Apr. 9, 1483	—
Richard III	June 26, 1483	3
Henry VII	Aug. 22, 1485	24
Henry VIII	Apr. 22, 1509	38
Edward VI	Jan. 28, 1547	7
Mary	July 6, 1553	6
Elizabeth I	Nov. 17, 1558	45
James I	Mar. 24, 1603	23
Charles I	Mar. 27, 1625	24
The Commonwealth	Jan. 30, 1649	11
Charles II	May 29, 1660	37
James II	Feb. 6, 1685	4
William and Mary	Feb. 13, 1689	14
Anne	Mar. 8, 1702	13
George I	Aug. 1, 1714	13
George II	June 11, 1727	34
George III	Oct. 25, 1760	60
George IV	Jan. 29, 1820	11
William IV	June 26, 1830	7
Victoria	June 20, 1837	64
Edward VII	Jan. 22, 1901	9
George V	May 6, 1910	25
Edward VIII	Jan. 20, 1936	1
George VI	Dec. 11, 1936	15
Elizabeth II	Feb. 6, 1952	—

Appendix H

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