

## F

**F. The sixth letter of the alphabet.**

Under the old English criminal law, this letter was branded upon felons upon their being admitted to clergy; as also upon those convicted of fights or frays, or falsity. Jacob; Cowell; 2 Reeve, Eng.Law, 392; 4 Reeve, Eng.Law, 485.

**F. A. A. Federal Aviation Agency.**

**F. A. A.** In marine insurance. "Free of all average," denoting that the insurance is against total loss only. Wharton.

**F. A. S.** Free alongside ship. Larkin v. Geisenheimer, 201 App.Div. 741, 195 N.Y.S. 577, 578; Iwai & Co. v. Hercules Powder Co., 162 Ga. 795, 134 S.E. 763. The term implies delivery at dock for ship named. Christenson v. Gorton-Pew Fisheries Co., C.C.A.N.Y., 8 F.2d 689, 691.

A lumber contract providing that prices were f. o. b. f. a. s. is too indefinite for enforcement; the expression "f. o. b." designating that the seller should bear the expense of loading onto the vessel, while the expression "f. a. s." denotes that the lumber should merely be placed within reach of the vessel's tackle. McGowin Lumber & Export Co. v. R. J. & B. F. Lumber Co., 192 Ala. 35, 68 So. 263, 264.

The delivery of goods under contract "F. A. S." which means free aside ship, is complete and relieves consignor of liability after the goods have been delivered in good order to dock where ship is to sail. Tex-O-Kan Flour Mills Co. v. Nord, La.App., 18 So.2d 50, 54.

**F. C. A. Farm Credit Administration.****F. C. C. Federal Communications Commission.**

**F. C. L.** means Femme Couleur Libre. Sunseri v. Cassagne, 191 La. 209, 185 So. 1, 4.

**F. D. A. Food and Drug Administration.****F. D. I. C. Federal Deposit Insurance Corporation.**

**F. G. A.** In marine insurance. "Free from general average"; also, sometimes, "foreign general average." The precise meaning of this abbreviation must be gathered from the context. Wharton.

**F. H. A. Federal Housing Administration; Farmers Home Administration.****F. H. L. B. B. Federal Home Loan Bank Board.****F. M. C. S. Federal Mediation and Conciliation Service.****F. N. M. A. Federal National Mortgage Association.**

**F. O. B.** Term "f. o. b." is an abbreviation for "free on board," and means that seller or consignor of goods will deliver them on car, vessel, or other conveyance by which they are to be transported without expense to buyer or consignee. Hatcher v. Ferguson, 33 Idaho, 639, 198 P. 680, 681, 16 A.L.R. 590; Swerdfeger v. United Acceptance Corporation, 9 Cal.App.2d 590, 50 P.2d 818, 820; Olsen v. McMaken & Pentzien, 139 Neb. 506, 297 N.W. 830, 832; Fernholtz Machinery Co. v. Wilson, 118 Cal.App. 573, 5 P.2d 679, 682.

Contract provision for shipment of goods by seller "f. o. b." place of manufacture means that they are to be delivered to carrier by seller without expense to buyer.

State ex rel. Day Pulverizer Co. v. Fitts, 166 Tenn. 156, 60 S.W.2d 167; Humphries v. Frick Co., 56 Ga.App. 124, 192 S.E. 247, 248.

The term "F. O. B." as used in contract for purchase of scrap iron from railroad for overseas shipment, might reasonably be construed as meaning merely that purchase price of scrap iron was fixed on basis that railroad would transport it free of charge and not as indicating the point of passage of title. Expression "F. O. B." signifies generally an intention to pass title. Southern Pac. Co. v. Hyman-Michaels Co., 63 Cal.App.2d 757, 147 P.2d 692, 696.

"F. o. b. factory" means "f. o. b. railroad cars at factory," obligating seller to deliver to carrier without cost to buyer, who takes risk thereafter. Richter v. Zoccolli, 8 N.J.Misc. 289, 150 A. 1, 2.

Generally, place "f. o. b." where goods are sold is regarded as place of delivery, but effect of term "f. o. b." depends on connection in which used. Craig Brokerage Co. v. Joseph A. Goddard Co., 92 Ind.App. 234, 175 N.E. 19, 22.

The initials "f. o. b." are generally construed as an intention that the price is to be paid when the property is delivered to carrier. Rudy-Patrick Seed Co. v. Roseman, 247 Iowa 597, 13 N.W.2d 347, 349, 350.

Under contract to sell sage leaves providing for shipment "f. o. b." Greek port, buyer and not seller had the duty of supplying ship at Greek port. Carvel v. John Kellys (London), Limited, Sup., 53 N.Y.S.2d 640, 641.

When used in connection with the price of goods, the term is commonly construed as fixing only the price, and not as relating to the time, place, or mode of delivery. Lee v. Northway Motor Sales Co., R.I., 121 A. 425; Pond Creek Mill & Elevator Co. v. Clark, C.C.A.Ill., 270 F. 482, 486; Bott v. N. Snellenburg & Co., 177 Va. 331, 14 S.E.2d 372, 374.

**F. P. A.** In marine insurance. "Free from particular average." Wharton. See Average.

**F. R. S. Federal Reserve System.****F. T. C. Federal Trade Commission.**

**FABRIC.** With reference to the reinforcement of concrete, a union of drawn wires made up in rows. Soule v. Northern Construction Co., 33 Cal.App. 300, 165 P. 21, 22.

A woven, felted, or knitted material for wear or ornament, as cloth, felt, hosiery, or lace; also the material used in its making; something that has been fabricated, constructed, or put together; any complex construction; a system built up of correlated parts; structure or edifice. Guaranty Trust Co. of New York v. Johns-Manville Corporation, D.C.N.Y., 14 F.Supp. 792, 797.

Something that has been fabricated, constructed, or put together; the structure of anything or anything manufactured, and in a broad sense includes a flexible sheet metal. Johns-Manville Corporation v. National Tank Seal Co., C.C.A.Okl., 49 F.2d 142, 145.

**FABRIC LANDS.** In English law. Lands given towards the maintenance, rebuilding, or repairing of cathedral and other churches. Cowell; Blount. Called by the Saxons *timber-lands*. Spelman.

It was the custom, says Cowell, for almost every one to give by will more or less to the *fabric* of the cathedral or parish church where he lived. These lands so given were called fabric lands, because given *ad fabricam ecclesie reparandam* (for repairing the fabric of the church).

**FABRICA.** In old English law. The making or coining of money.

## FABRICARE

**FABRICARE.** Lat. To make. Used in old English law of a lawful coining, and also of an unlawful making or counterfeiting of coin. Used in an indictment for forging a bill of lading; 1 Salk. 341.

**FABRICATE.** To invent; to devise falsely. Invent is sometimes used in a bad sense, but fabricate never in any other.

To fabricate a story implies that it is so contrary to probability as to require the skill of a workman to induce belief in it. Crabbe, Syn. The word implies fraud or falsehood; a false or fraudulent concoction, knowing it to be wrong. L.R. 10 Q.B. 162.

To fabricate evidence is to arrange or manufacture circumstances or *indicia*, after the fact committed, with the purpose of using them as evidence, and of deceitfully making them appear as if accidental or undesigned; to devise falsely or contrive by artifice with the intention to deceive. Such evidence may be wholly forged and artificial, or it may consist in so warping and distorting real facts as to create an erroneous impression in the minds of those who observe them and then presenting such impression as true and genuine.

**FABRICATED EVIDENCE.** Evidence manufactured or arranged after the fact, and either wholly false or else warped and discolored by artifice and contrivance with a deceitful intent. See *supra*.

**FABRICATED FACT.** In the law of evidence. A fact existing only in statement, without any foundation in truth. An actual or genuine fact to which a false appearance has been designedly given; a physical object placed in a false connection with another, or with a person on whom it is designed to cast suspicion.

**FABRICATING.** The word "fabricating," in its context, does not mean "manufacturing," but means cutting, carving, dressing, shaping and working over stone. Commonwealth v. Paul W. Bounds Co., 316 Pa. 29, 173 A. 633.

**FABRICATION.** "Manufacture" and "fabrication," are often, in broadest sense, interchangeable in meaning; definition in particular instance depending on environment of particular use of either. Union Wire Rope Corporation v. Atchison, T. & S. F. Ry. Co., C.C.A.Mo., 66 F.2d 965, 970.

The word "fabrication," meaning "making," although not generally synonymous with "reworking," meaning a working over, was expressly so used in railroad tariff in question, as distinguished from "manufacture." Atchison, T. & S. F. R. Co. v. Union Wire Rope Corporation, D.C.Mo., 1 F.Supp. 399.

**FABULA.** In old European law. A contract or formal agreement; particularly used in the Lombardic and Visigothic laws to denote a marriage contract or a will. Burrill.

**FACE.** That which is shown by the mere language employed without any explanation, modification, or addition from extrinsic facts or evidence, the principal sum which it expresses to be due or payable, without any additions in the way of interest and costs. Cunningham v. Great Southern Life Ins. Co., Tex.Civ.App., 66 S.W.2d 765, 773. The outward appearance or aspect of a thing.

For "Regular on its face," see that title.

The surface of anything; especially the front, upper, or outer part or surface; that which particularly offers itself to the view of a spectator. The words of a written paper in their apparent or obvious meaning, as, the face of a note, bill, bond, check, draft, judgment record, or contract; the face of a judgment for which it was rendered exclusive of interest. Cunningham v. Great Southern Life Ins. Co., Tex.Civ.App., 66 S.W.2d 765, 773.

**FACE AMOUNT.** The "face amount" of an instrument is that shown by the mere language employed, and excludes any accrued interest. Burns v. Corn Exch. Nat. Bank of Omaha, Neb., 33 Wyo. 474, 240 P. 683, 687. See Face of instrument.

The face amount of a policy means the amount which is, in all events, payable under the policy as straight life insurance without regard to any additional features, such as accident or disability insurance. Smith v. Equitable Life Assur. Soc. of United States, 232 Mo.App. 935, 107 S.W.2d 191, 195; face values specified in policies plus dividend additions postdating lapse, and exclusive of accidental death benefits, Valenti v. Prudential Ins. Co. of America, C.C.A.Mo., 71 F.2d 229, 233.

**FACE AMOUNT INSURED BY THE POLICY.** Within statute relating to extended life insurance, means the amount which is, in all events, payable under the policy as straight life insurance without regard to additional features such as accident or disability insurance. Wilkins v. Metropolitan Life Ins. Co., 350 Mo. 185, 165 S.W.2d 858, 861, 862; Wilkins v. Metropolitan Life Ins. Co., 236 Mo.App. 586, 159 S.W.2d 354, 356.

**FACE OF BOOK.** Under an act providing that a public or private statute or the proceedings of any legislative body purporting on the face of the book to be printed by authority of the government of the state are evidence without further proof, the "face of the book" and the "title page" need not coincide, as "face" is used in contradistinction to "cover." Pensacola, St. A. & G. S. S. Co. v. Brooks, 14 Ala.App. 364, 70 So. 968, 970.

**FACE OF INSTRUMENT.** That which is shown by the language employed, without any explanation, modification, or addition from extrinsic facts or evidence. Adopted in Re Stoneman, Sur., 146 N.Y.S. 172, 175; Investors' Syndicate v. Willcuts, D.C.Minn., 45 F.2d 900, 902. Thus, if the express terms of the paper disclose a fatal legal defect, it is said to be "void on its face." Regarded as an evidence of debt, the face of an instrument is the principal sum which it expresses to be due or payable, without any additions in the way of interest or costs. Osgood v. Bringolf, 32 Iowa, 265. See, also, State v. Newby, 169 Wis. 208, 171 N.W. 953, 954.

**FACE OF JUDGMENT.** The sum for which it was rendered, exclusive of interest. Osgood v. Bringolf, 32 Iowa, 265. See, also, Face of instrument.

**FACE OF POLICY.** A phrase which, as used in a statute forbidding life insurance policies to contain provision for any mode of settlement at maturity of less value than the amount insured on the "face of the policy," does not mean merely the first page, but denotes the entire insurance contract contained in the policy, including a rider at

tached and referred to on the first page. *Julius v. Metropolitan Life Ins. Co.*, 299 Ill. 343, 132 N.E. 435, 437, 17 A.L.R. 956.

**FACE OF RECORD.** The entire record in a case, not merely what the judgment recites. *Carson v. Taylor*, Tex.Civ.App., 261 S.W. 824; *San Bernardino Townsite Co. v. Hocker*, Tex.Civ.App., 176 S.W. 644, 646.

The "face of the record" means, in a criminal case, the indictment and the verdict. *Jones v. State*, 58 Ga.App. 374, 198 S.E. 566.

The phrases "judgment roll," "judgment record," and "face of the record" are synonymous. Every part of trial proceedings reserved in courts of record under direction of court for purpose of its records constitutes the "judgment roll." *Permian Oil Co. v. Smith*, 129 Tex. 413, 107 S.W.2d 564, 566, 111 A.L.R. 1152.

**FACE VALUE.** This term, in a statute taxing transfers of corporate stock, means par value. *Goodyear Tire & Rubber Co. v. U. S.*, 273 U.S. 100, 47 S.Ct. 263, 71 L.Ed. 558. See, also *In re Stone-man, Sur.*, 146 N.Y.S. 172, 174.

As used in statute concerning acceptance of bonds as ball means that value, written or printed on face of instrument and the unmatured coupons attached thereto, without reference to the actual or market value of bonds. *Wilson v. Justice's Court of Township of San Diego*, 22 Cal.App.2d 278, 70 P.2d 695, 696.

The "face value" of an interest bearing note, is the principal plus accrued interest. *American Nat. Bank of Portsmouth v. Ames*, 169 Va. 711, 194 S.E. 784, 798.

The value which can be ascertained from the language of the instrument without aid from extrinsic facts or evidence. *Investors' Syndicate v. Willcuts*, D.C.Minn., 45 F.2d 900, 902.

**FACERE.** Lat. To do; to make. Thus, *facere defaltam*, to make default; *facere duellum*, to make the duel, or make or do battle; *facere finem*, to make or pay a fine; *facere legem*, to make one's law; *facere sacramentum*, to make oath.

**FACIAL DISFIGUREMENT.** That which impairs or injures the beauty, symmetry, or appearance of a person, that which renders unsightly, misshapen or imperfect or deforms in some manner. *Ferguson v. State Highway Department*, 197 S.C. 520, 15 S.E.2d 775, 778; *Poole v. Saxon Mills*, 192 S.C. 339, 6 S.E.2d 761, 764.

**FACIAS.** That you cause.

Occurring in the phrases "*scire facias*," (that you cause to know,) "*fiat facias*," (that you cause to be made,) etc. Used also in the phrases *Do ut facias* (I give that you may do), *Facio ut facias* (I do that you may do), two of the four divisions of considerations made by Blackstone, 2 Comm. 444. See *Facio ut des*; *Facio ut facias*.

**FACIENDO.** In doing or paying; in some activity.

**FACIES.** Lat. The face or countenance; the exterior appearance or view; hence, contemplation or study of a thing on its external or apparent side.

Thus, *prima facie* means at the first inspection, on a preliminary or exterior scrutiny. When we speak of a "*prima facie* case," we mean one which, on its own showing, on a first examination, or without investigating any alleged defenses, is apparently good and maintainable.

**FACILE.** In Scotch law. Easily persuaded; easily imposed upon. Bell.

**FACILITATE.** To make easy or less difficult, or to free from difficulty or impediment. *Pon Wing Quong v. United States*, C.C.A.Cal., 111 F.2d 751, 756. To make more easy or less difficult; free more or less completely from obstruction or hindrance; lessen the labor of. *United States v. One Dodge Coupe, Motor No. D14-105424, Serial No. 30284066, D.C.N.Y.*, 43 F.Supp. 60, 61.

**FACILITIES.** That which promotes the ease of any action, operation, transaction, or course of conduct. Webster. The term denotes inanimate means rather than human agencies. *Sloss-Sheffield Steel & Iron Co. v. Smith*, 185 Ala. 607, 64 So. 337, 338.

Also, a name formerly given to certain notes of some of the banks in the state of Connecticut, which were made payable in two years after the close of the war of 1812. *Springfield Bank v. Merrick*, 14 Mass. 322.

As applied to carriers, means everything necessary for the convenience of passengers and the safety and prompt transportation of freight; everything incident to the general, prompt, safe, and impartial performance of the duties to the public at large imposed by the state, in the proper exercise of its police power, upon transportation or transmission companies. As applied to a ferry franchise, everything incident to the general, prompt, and safe carriage of passengers, boats in good repair, appliances answering the purpose, and readiness and willingness to perform the services incident to the grant. *Fraters v. Keelling*, 20 Cal. App.2d 490, 67 P.2d 118, 119.

As used in phrase "special facilities within the place of amusement," in statute creating amusement tax, referred to personal accommodations furnished for comfort of patron to enable him to obtain a better view of what he paid for when he entered the ground or to more conveniently do so. *Martin v. F. H. Bee Shows*, 271 Ky. 822, 113 S.W.2d 448, 452.

As used in statute giving Public Service Commission control over service and facilities of public service companies, means something owned by or under the control of a public utility. *Borough of Swarthmore v. Public Service Commission*, 277 Pa. 472, 121 A. 488, 489.

Electric company which transmitted electricity from generating plant through a line to another company which transmitted such electricity in interstate commerce, operated "facilities" subject to jurisdiction of Federal Power Commission. *Jersey Central Power & Light Co. v. Federal Power Commission*, C.C.A.3, 129 F.2d 183, 195.

Electric company's corporate organization, contracts, accounts, memorandum, papers, and other records constituted "facilities" within Federal Power Act. The word "facilities" embraces anything which aids or makes easier the performance of the activities involved in the business of a person or corporation. *Hartford Electric Light Co. v. Federal Power Commission*, C.C.A.2, 131 F.2d 953, 960, 961, 962.

Freight cars are "facilities" of transportation as defined by Interstate Commerce Act. *General American Tank Car Corporation v. El Dorado Terminal Co.*, Cal., 308 U.S. 422, 60 S.Ct. 325, 329, 84 L.Ed. 361.

Sidetracks constituting part of a transportation system are "facilities" of the railroad, even though privately owned. *Lehigh Nav. Coal Co. v. Pennsylvania Public Utility Commission*, 133 Pa.Super. 67, 1 A.2d 540, 544.

Street railroad's "facilities" include tracks and land reasonably necessary for operation of railroad and accommodation of patrons. *Munoz v. Porto Rico Ry., Light & Power Co.*, C.C.A.Puerto Rico, 74 F.2d 816, 821.

**FACILITY.** In Scotch law. Pliancy of disposition. Bell.

A switch engine and crew is a "facility" within statute authorizing rental thereof by railroad. *Nekoosa-Edwards Paper Co. v. Minneapolis, St. P. & S. S. M. Ry. Co.*, 217 Wis. 426, 259 N.W. 618.

## FACILITY

As ordinarily used, is not as narrow a term as "instrumentality." *Nekoosa-Edwards Paper Co. v. Minneapolis, St. P. & S. S. M. Ry. Co.*, 217 Wis. 426, 259 N.W. 618.

Convenient means. *Briggs Mfg. Co. v. U. S.*, D.C.Conn., 30 F.2d 962, 964.

Where electric company transmitted electricity to another company which transmitted it in interstate commerce, the former company's line was a "facility" subject to jurisdiction of Federal Power Commission. *Jersey Central Power & Light Co. v. Federal Power Commission*, 319 U.S. 61, 63 S.Ct. 953, 959, 87 L.Ed. 1258.

**FACILITY OF PAYMENT CLAUSE**, is appointment by assured and beneficiary of persons authorized to receive payment. *French v. Lanham*, App.D.C., 57 F.2d 422; *Fulcher v. Parker*, 169 Va. 479, 194 S.E. 714, 716. It confers on insurer an option as to whom it will make payment, *Metropolitan Life Ins. Co. v. Brown for Use and Benefit of Fleming*, 25 Tenn.App. 514, 160 S.W.2d 434, 438; *Rohde v. Metropolitan Life Ins. Co.*, 233 Mo.App. 865, 111 S.W.2d 1006.

Such clause in group policy giving employer under certain contingencies power to designate beneficiary controls only where no other beneficiary is named. *Potter v. Young*, 193 Ark. 957, 104 S.W.2d 802, 804.

**FACING**. In deed containing building restrictions applicable to lots "facing" and "having a frontage" on named street, quoted words as applied to oblong lots referred to the street which buildings to be erected on the lots were intended to face. *Aller v. Berkeley Hall School Foundation*, 40 Cal.App.2d 31, 103 P.2d 1052, 1054.

**FACINUS QUOS INQUINAT AEUAT**. Guilt makes equal those whom it stains.

**FACIO UT DES**. (Lat. I do that you may give.)

A species of contract in the civil law (being one of the *innominate* contracts) which occurs when a man agrees to perform anything for a price either specifically mentioned or left to the determination of the law to set a value on it: as when a servant hires himself to his master for certain wages or an agreed sum of money. 2 Bl.Comm. 445. Also, the consideration of that species of contract.

**FACIO UT FACIAS**. (Lat. I do that you may do.)

The consideration of that species of contract in the civil law, or the contract itself (being one of the *innominate* contracts), which occurs when I agree with a man to do his work for him if he will do mine for me; or if two persons agree to marry together, or to do any other positive acts on both sides; or it may be to forbear on one side in consideration of something done on the other. 2 Bl.Comm. 444.

**FACSIMILE**. An exact copy, preserving all the marks of the original.

**FACSIMILE PROBATE**. In England, where the construction of a will may be affected by the appearance of the original paper, the court will order the probate to pass in *facsimile*, as it may possibly help to show the meaning of the testator. 1 Williams, Ex'rs, 7th Ed., 331, 386, 566.

**FACT**. A thing done; an action performed or an incident transpiring; an event or circumstance; an actual occurrence. An actual happening in time or space or an event mental or physical. *Fowler-Curtis Co. v. Dean*, 203 App.Div. 317, 196 N.Y.S. 750, 754; *German-American Ins. Co. v. Huntley*, 62 Okl. 39, 161 P. 815, 817; *Rost v. Kessler*, 267 App.Div. 686, 49 N.Y.S.2d 97, 99. That which has taken place, not what might or might

not have taken place. *Churchill v. Meade*, 92 Or. 626, 182 P. 368, 371.

A fact is either a state of things, that is, an existence, or a motion, that is, an event. 1 Benth.Jud.Ev. 48.

Fact (*factum, fait*) stands in lawbooks for: 1. An act; 2. For a completed and operative transaction brought about by sealing and executing a certain sort of writing, and so for the instrument itself, a deed (*factum*); 3. As designating what exists, in contradistinction to what should exist (*de facto* as contrasted with *de jure*); 4. As indicating things, events, actions, conditions, as happening, existing, really taking place. Thayer, Evid. 190.

"Fact" was formerly used almost exclusively in the sense of "action" or "deed." This usage survives in phrases such as "accessory before the fact."

As used in statute providing that malice shall be presumed from publication of matter not privileged, unless the "fact" and the testimony rebut such presumption, means the act, the thing done, the circumstance, the publication itself. *Reininger v. Prickett*, 192 Okl. 486, 137 P.2d 595, 597.

As used in statute requiring statement of facts constituting cause of action, "facts" mean narrative of events, acts, and things done which show legal liability of defendant to plaintiff. *Rhoads v. Columbia Fire Underwriters' Agency*, 128 Neb. 710, 260 N.W. 174.

"Facts" to which Supreme Court is limited on certiorari to quash Court of Appeals' decision for conflict comprise record before Court of Appeals, evidence, documentary and oral, and instructions and pleadings. *State ex rel. Horspool v. Haid*, 328 Mo. 327, 40 S.W.2d 611, 613.

Good reputation of an accused when proved is a "fact". *State v. Fenimore*, 3 Terry 183, 29 A.2d 170, 171. Intent is a "fact". *Majestic Securities Corporation v. Commissioner of Internal Revenue*, C.C.A.8, 120 F.2d 12, 14. "Knowledge" is a "fact", and an "assertion of knowledge", when knowledge does not exist, is an assertion not in accordance with the facts. *Eastern States Petroleum Co. v. Universal Oil Products Co.*, 24 Del.Ch. 11, 3 A.2d 768, 775. Representations as to boundaries of land are representations of "fact". *Algee v. Hillman Inv. Co.*, 12 Wash.2d 672, 123 P.2d 332, 334. Where knowledge is possible, one who represents a mere belief as knowledge misrepresents a "fact". *Sovereign Pocohontas Co. v. Bond*, 74 App.D.C. 175, 120 F.2d 39, 40.

### Law and Fact as Distinguishable

"Fact" is very frequently used in opposition or contrast to "law."

Thus, questions of *fact* are for the jury; questions of *law* for the court. So an attorney *at law* is an officer of the courts of justice; an attorney *in fact* is appointed by the written authorization of a principal to manage business affairs usually not professional. Fraud *in fact* consists in an actual intention to defraud, carried into effect; while fraud imputed by *law* arises from the man's conduct in its necessary relations and consequences.

A "fact", as distinguished from the "law", may be taken as that out of which the point of law arises, that which is asserted to be or not to be, and is to be presumed or proved to be or not to be for the purpose of applying or refusing to apply a rule of law. *Hinckley v. Town of Barnstable*, 311 Mass. 600, 42 N.E.2d 581, 584.

Law is a principle; fact is an event. Law is conceived; fact is actual. Law is a rule of duty; fact is that which has been according to or in contravention of the rule. The distinction is well illustrated in the rule that the existence of foreign laws is matter of fact. Within the territory of its jurisdiction, law operates as an obligatory rule which judges must recognize and enforce; but, in a tribunal outside that jurisdiction, it loses its obligatory force and its claim to judicial notice. The fact that it exists, if important to the rights of parties, must be alleged and proved the same as the actual existence of any other institution. Abbott.

### Law of Evidence

A circumstance, event or occurrence as it actually takes or took place; a physical object or appearance, as it actually exists or existed. An actual and absolute reality, as distinguished from

mere supposition or opinion; a truth, as distinguished from fiction or error. *Burrill, Circ.Ev. 218.*

"Circumstances" are but minor facts, *Scott v. State, 57 Ga.App. 489, 195 S.E. 923, 924.* Facts admitted upon trial of cause become "evidence". *American Extension School of Law v. Ragland, 232 Mo.App. 763, 112 S.W.2d 110, 113.* Facts judicially noticed are equivalent to evidence. *Zickefoose v. Thompson, 347 Mo. 579, 148 S.W.2d 784, 792.*

"Facts" and "evidence" are sometimes used interchangeably. *Mackey v. First Nat. Bank, Mo.App., 293 S.W. 66, 71.* But the terms are not really synonymous; evidence, broadly defined, being means from which an inference may logically be drawn as to existence of a fact. *Tjernstrom v. Ford Motor Co., 285 Mich. 450, 280 N.W. 823, 825.* Yet, although "facts" and the "evidence" are quite different, it sometimes may happen that they constitute one and the same thing. *Gates v. Haw, 150 Ind. 370, 50 N.E. 299.*

Hypothetical question propounded to plaintiff's witness in which an assumed fact was that a test made by another expert had a specified result referred to a "fact" and not an "opinion" of the expert. *Cody v. Toller Drug Co., 232 Iowa 475, 5 N.W.2d 824, 828.*

In rule 41(b), providing for motion for dismissal at close of plaintiff's evidence in nonjury case on ground that upon the facts and the law plaintiff has shown no right to relief, the "facts" referred to are the prima facie facts shown by plaintiff's evidence viewed in light most favorable to him. *Schad v. Twentieth Century-Fox Film Corporation, C.C.A. Pa., 136 F.2d 991, 993.*

Ownership of property is, generally, a "fact" to which a witness may testify. *Diamond v. Grath, 46 Cal.App.2d 443, 116 P.2d 114, 116.*

Statement that cause of death was a gunshot wound was a statement of "fact" but further statements that such wound was self-inflicted and that death was suicide were mere expressions of "opinion". *Kentucky Home Mut. Life Ins. Co. v. Watts, 298 Ky. 471, 183 S.W.2d 499, 502.*

Where person states matter which might otherwise be only an "opinion" as an existing fact material to the transaction, the statement clearly becomes a statement of "fact". *Fidelity & Casualty Co. of New York v. J. D. Pittman Tractor Co., 244 Ala. 354, 13 So.2d 669, 672.*

Words "facts" and "circumstances" are used interchangeably in the phrase circumstantial evidence. *Pulliam v. State, 196 Ga. 782, 28 S.E.2d 139, 147.*

Workmen's compensation claimant's testimony that he was well related to a "fact" and not to an "opinion". *Texas Employers Ins. Ass'n v. Griffis, Tex.Civ.App., 141 S.W.2d 687, 690.*

### Truth and Fact Distinguished

The terms "fact" and "truth" are often used in common parlance as synonymous, but, as employed in reference to pleading, they are widely different. A fact in pleading is a circumstance, act, event, or incident; a truth is the legal principle which declares or governs the facts and their operative effect. Admitting the facts stated in a complaint, the truth may be that the plaintiff is not entitled, upon the face of his complaint, to what he claims. The mode in which a defendant sets up that truth for his protection is a demurrer. *Drake v. Cockroft, 4 E. D. Smith, N.Y., 37.*

For "Collateral Facts," "Dispositive Facts," "Evidentiary Facts," "Finding of Fact," "Immaterial Facts," "Jurisdictional Facts," "Material Fact," "Principal Fact," and "Ultimate Facts," see those heads.

**FACT MATERIAL TO RISK.** See Material Fact.

**FACTA.** In old English law. Deeds. *Facta armorum*, deeds or feats of arms; that is, jousts or tournaments. *Cowell.*

Facts. *Facta et casus*, facts and cases. *Bract. fol. 1b.*

**FACTA SUNT POTENTIORA VERBIS.** Deeds [or facts] are more powerful than words.

**FACTA TENENT MULTA QUÆ FIERI PROHIBENTUR.** 12 Coke, 124. Deeds contain many things which are prohibited to be done.

**FACTIO TESTAMENTI.** In the civil law. The right, power, or capacity of making a will; called "*factio activa.*" *Inst. 2, 10, 6.*

The right or capacity of taking by will; called "*factio passiva.*" *Inst. 2, 10, 6; Vicat, Voc.Jur.*

**FACTO.** In fact; by an act; by the act or fact. *Ipsa facto*, by the act itself; by the mere effect of a fact, without anything superadded, or any proceeding upon it to give it effect. 3 Kent, Comm. 55, 58.

**FACTO ET ANIMO.** In fact and intent. *Northwestern Mortgage & Security Co. v. Noel Const. Co., 71 N.D. 256, 300 N.W. 28, 31.*

**FACTOR.** A commercial agent, employed by a principal to sell merchandise consigned to him for that purpose, for and in behalf of the principal, but usually in his own name, being intrusted with the possession and control of the goods, and being remunerated by a commission, commonly called "factorage." *Howland v. Woodruff, 60 N.Y. 80; In re Rabenau, D.C.Mo., 118 F. 474; Graham v. Duckwall, 8 Bush, Ky., 17; Pal.Ag. 13; Sto.Ag. § 33; Com.Dig. Merchant, B; Malynes, Lex Merc. 81; Beawes, Lex Merc. 44; 3 Chit.Com.L. 193; 2 Kent 622; 1 Bell, Comm. 385, § 408; 2 B. & Ald. 143.*

In Scotch law, a person appointed to transact business or manage affairs for another, but more particularly an estate-agent or one intrusted with the management of a landed estate, who finds tenants, makes leases, collects the rents, etc.

In some of the states, the person who is elsewhere called "garnishee" or "trustee." See Factorizing Process.

A commercial agent to whom the possession of personalty is entrusted by or for the owner, to be sold, for a compensation, in pursuance of the agent's usual trade or business, with title to goods remaining in principal and the "factor" being merely a bailee for the purposes of the agency. *Neill v. District of Columbia, 71 App.D.C. 306, 110 F.2d 246, 259.*

Although a "factor" is in the last analysis an agent, the agency is a limited one. *Falls Rubber Co. v. La Fon, Tex. Civ.App., 256 S.W. 577, 579.*

An agent employed to sell goods for principal, *The Robin Gray, D.C.N.Y., 53 F.2d 1037, 1041.* An agent employed to sell goods for his principal which are in his possession for a commission and ordinary consignment contract create relation of factor and principal. *Robertson v. State, 207 Ind. 374, 192 N.E. 887, 888.*

An agent employed to sell goods or merchandise consigned or delivered to him, by or for his principal, for a compensation, commonly called factorage or commission, and an agent for the sale of goods in his possession or consigned to him. *Hughes v. Young, 17 Tenn.App. 24, 65 S.W.2d 858.*

An agent, who, in pursuance of his usual trade or business, and for compensation, sells goods or merchandise consigned or intrusted to his possession for that purpose by or

## FACTOR

for the owner. *Sams v. Arthur*, 135 S.C. 123, 133 S.E. 205, 207; *M. H. Thomas & Co. v. Hawthorne*, Tex.Civ.App., 245 S.W. 966, 971; *Lemnos Broad Silk Works v. Spiegelberg*, 127 Misc.Rep. 855, 217 N.Y.S. 595, 597.

An agent who, in the pursuit of an independent calling, is employed by another to sell property for him, and is vested by the latter with the possession or control of the property, or authorized to receive payment therefor from the purchaser. Civ.Code Cal. § 2026; Comp.Laws N.D. 1913, § 6145; Comp.Laws S.D. 1929, § 1288; *Leland v. Oliver*, 82 Cal.App. 474, 255 P. 775, 777.

One who, in pursuance of business, receives goods from principal and sells them for compensation called factorage or commission. *Holleman v. Taylor*, 200 N.C. 618, 158 S.E. 88, 89.

One whose business is to receive and sell goods for a commission, being intrusted with the possession of the goods to be sold, and usually selling in his own name. *City of Atlanta v. York Mfg. Co.*, 155 Ga. 33, 116 S.E. 195, 199; *Tyson v. Jennings Produce Co.*, 16 Ala.App. 374, 77 So. 986, 987; *G. H. Hammond Co. v. Joseph Mercantile Co.*, 144 Ark. 108, 222 S.W. 27, 28.

In the old law, one to whom goods are consigned to sell by a merchant at a distance from the place of sale. *Eames v. H. B. Clafin Co.*, C.C.A.N.Y., 239 F. 631, 635.

### Broker and Factor Distinguished

A factor differs from a "broker" in that he is intrusted with the possession, management, and control of the goods, (which gives him a special property in them,); while a broker acts as a mere intermediary without control or possession of the property. A factor may buy and sell in his own name, as well as in that of the principal, while a broker, as such, cannot ordinarily buy or sell in his own name. *Commercial Inv. Trust v. Stewart*, 235 Mich. 502, 209 N.W. 660, 661; *Sutton & Cummins v. Kiel Cheese & Butter Co.*, 155 Ky. 465, 159 S.W. 950, 951; *Hughes v. Young*, 17 Tenn.App. 24, 65 S.W.2d 858; *Gadsden County Tobacco Co. v. Corry*, 103 Fla. 217, 137 So. 255, 257. A factor or commission merchant has a lien upon the goods for his charges, advances, and commissions, while the broker has no control of the property and is responsible only for bad faith. *McCornick & Co., Bankers v. Tolmie Bros.*, 42 Idaho 1, 243 P. 355, 358.

A factor or commission merchant is one who has the actual or technical possession of goods or wares of another for sale. A "merchandise broker" is one who negotiates the sale of merchandise without having it in his possession or control. He is simply an agent with very limited powers. *J. M. Robinson, Norton & Co. v. Cotton Factory*, 124 Ky. 435, 99 S.W. 305, 102 S.W. 869, 8 L.R.A., N.S., 474.

### Commission Merchants and Factors as Synonymous

Factors are also frequently called "commission merchants;" and it is said that there is no difference in the meaning of these terms, the latter being perhaps more commonly used in America. *Thompson v. Woodruff*, 7 Cold. 410; *Duguid v. Edwards*, 50 Barb., N.Y., 288; *Lyon v. Alvord*, 18 Conn. 80. See, also, *Commission Merchant*.

### Domestic and Foreign Factors

Factors are called "domestic" or "foreign" according as they reside and do business in the same state or country with the principal or in a different state or country.

A domestic factor is sometimes called a "home" factor. *Ruffner v. Hewitt*, 7 W.Va. 585; 1 Term 112; 4 Maule & S. 576.

A "foreign factor," as understood in marine matters, was a person who had charge of the cargo to handle it, dispose of it, convert it into money, or exchange it for other property, but who had nothing to do with the management of the boat when he sailed thereon, at which time he was called a "supercargo." *Gilchrist Transp. Co. v. Worthington & Still*, 193 App.Div. 250, 184 N.Y.S. 81, 83; *Beawes*, Lex Merc. 44; *Liverm.Ag.* 69; 1 Domat, b. 1, t. 16, § 3, art. 2.

### Judicial Factor

In Scotch law. A factor appointed by the courts in certain cases where it becomes necessary to intrust the management of property to another than the owner, as, where the latter is insane or imbecile or the infant heir of a decedent.

### Supercargo as a Factor

Where an owner of goods to be shipped by sea consigns them to the care of an agent, who sails on the same vessel, has charge of the cargo on board, sells it abroad, and buys a return cargo out of the proceeds, such agent is strictly and properly a "factor," though in maritime law and usage he is commonly called a "supercargo." *Beawes*, Lex Merc. 44, 47; *Liverm.Ag.* 69, 70.

**FACTORAGE.** The wages, allowance, or commission paid to a factor for his services. *Winne v. Hammond*, 37 Ill. 103; *State v. Thompson*, 25 S.W. 346, 120 Mo. 12.

**FACTORING** is a system involving notice to the trade debtors, and is confined principally to the textile industry. *Corn Exchange Nat. Bank & Trust Co., Philadelphia, v. Klauder, Pa.*, 318 U.S. 434, 63 S.Ct. 679, 682, 87 L.Ed. 884, 144 A.L.R. 1189.

**FACTORIZING PROCESS.** In American law. A process by which the effects of a debtor are attached in the hands of a third person. A term peculiar to the practice in Vermont and Connecticut. Otherwise termed "trustee process," "garnishment," and process by "foreign attachment." *Cross v. Brown*, 19 R.I. 220, 33 A. 147; *Drake, Attach.* § 451.

**FACTORS' ACTS.** The name given to several English statutes (6 Geo. IV. c. 94; 5 & 6 Vict. c. 39; 40 & 41 Vict. c. 39) by which a factor is enabled to make a valid pledge of the goods, or of any part thereof, to one who believes him to be the *bona fide* owner of the goods. Similar legislation is not uncommon in the United States.

### FACTORY.

#### American Law

A building or group of buildings appropriated to the manufacture of goods, including the machinery necessary to produce the goods, and the engine or other power by which the machinery is propelled; the place where workers are employed in fabricating goods, wares, or utensils. Cent. Dict.; *Mayhew v. Hardesty*, 8 Md. 479. A structure where something is made or manufactured. *People v. R. F. Stevens Co.*, 178 App.Div. 306, 165 N.Y.S. 39.

An undertaking in which the business of working at commodities is carried on with power-driven machinery. *Gowey v. Seattle Lighting Co.*, 108 Wash. 479, 184 P. 339.

Any mill, workshop, or any manufacturing or business establishment, and all buildings, sheds, structures, or other places used for or in connection therewith where one or more persons are employed at labor. Under such statute, the term includes a machine shop, *People v. Transit Development Co.*, 165 N.Y.S. 114, 115, 178 App.Div. 288; and a theatrical company; *Ursprung v. Winter Garden Co.*, 169 N.Y.S. 738, 745, 183 App.Div. 718; but not a butcher shop; *O'Connor v. Webber*, 219 N.Y. 439, 114 N.E. 799.

Any premises where steam, water, or other mechanical power is used in the aid of any manufacturing process without reference to whether it is inclosed in a building. *Casey v. Barber Asphalt Paving Co.*, C.C.A.Wash., 202 F. 1, 5.

Any premises wherein power is used in manufacturing, making, altering, adapting, ornamenting, finishing, repairing, or renovating articles for purpose of trade or gain, or of business carried on therein. *Bradley v. Blakley*, La.App., 147 So. 709, 710; *Menke v. Hauber*, 99 Kan. 171, 160 P. 1017, 1018.

The word does not necessarily mean a single building or edifice, but may apply to several, where they are used in connection with each other, for a common purpose, and stand together in the same inclosure. *Liebenstein v. Insurance Co.*, 45 Ill. 303. And see *Hernischel v. Texas Drug Co.*, 26 Tex.Civ.App. 1, 61 S.W. 419; *Schott v. Harvey*, 105 Pa. 227, 51 Am.Rep. 201; *Amberg v. Kinley*, 214 N.Y. 531, 108 N.E. 830, 833, L.R.A.1915E, 519.

To bring acts within statutory definition of "factory" as used in statute relating to employees' rest each week, the acts must be manufacturing ones. *People v. Middletown & U. R. Co.*, 169 Misc. 773, 8 N.Y.S.2d 193, 195, 196.

### English Law and Statutes

The term includes all buildings and premises wherein, or within the close or curtilage of which, steam, water, or any mechanical power is used to move or work any machinery employed in preparing, manufacturing, or finishing cotton, wool, hair, silk, flax, hemp, jute, or tow. So defined by the statute 7 Vict. c. 15, § 73.

By later acts this definition has been extended to various other manufacturing places. *Mozley & Whitley*.

Also a place where a considerable number of factors reside, in order to negotiate for their masters or employers. *Enc.Brit.*

### Scotch Law

A species of contract or employment which falls under the general designation of "agency," but which partakes both of the nature of a mandate and of a bailment of the kind called "*locatio ad operandum*." 1 Bell, Comm. 259.

**FACTORY ACTS.** Laws enacted for the purpose of regulating the hours of work, and the sanitary condition, and preserving the health and morals, of the employés, and promoting the education of young persons employed at such labor.

**FACTORY PRICES.** The prices at which goods may be bought at the factories, as distinguished from the prices of goods bought in the market after they have passed into the hands of third persons or shop-keepers. *Whipple v. Levett*, 2 Mason, 90, Fed.Cas.No.17,518.

**FACTORY RATING.** Of carrying capacity of motortrucks as used in statute imposing license fee means customary public announcement of manufacturer in placing motortrucks on market. *Memphis Steam Laundry Co. v. Crenshaw*, 166 Tenn. 168, 61 S.W.2d 669.

**FACTS.** See Fact.

**FACTS CANNOT LIE.** 18 How.State Tr. 1187; 17 How.State Tr. 1430; but see Best, Ev. 587.

**FACTS IN ISSUE.** Those matters of fact on which the plaintiff proceeds by his action, and which the defendant controverts in his pleadings. *Maeder Steel Products Co. v. Zanello*, 109 Or. 562, 220 P. 155, 158; *King v. Chase*, 15 N.H. 9, 41 Am. Dec. 675; *Caperton v. Schmidt*, 26 Cal. 494, 85 Am.Dec. 187.

**FACTS INCOMPLETE.** A certificate of trial judge to bill of exceptions not certifying to correctness of any recital therein and only certifying that the bill "is facts incomplete", that is, not finished, not perfect, defective, verifies nothing and brings nothing before the Court of Appeals for review. *Loving v. Kamm*, 34 N.E.2d 591.

**FACTS OF THE CASE.** With which Supreme Court will deal in case brought from Court of Appeal by writ of review, are facts that were proved or admitted, not deductions or conclusions as to duty of parties or negligence. *Llorens v. McCann*, 187 La. 642, 175 So. 442, 444.

**FACTS WELL PLEADED** are those of a substantive nature necessary to the framing of the issue submitted. *Bushman v. Barlow*, 321 Mo. 1052, 15 S.W.2d 329, 331.

**FACTUM.** Lat. With respect to change of domicile, "factum" is person's physical presence in new domicile. *Guilfoil v. Hayes*, 169 Va. 548, 194 S.E. 804, 807.

Civil Law. Fact; a fact; a matter of fact, as distinguished from a matter of law. Dig. 41, 2, 1, 3. French Law. A memoir which contains concisely set down the fact on which a contest has happened, the means on which a party founds his pretensions, with the refutation of the means of the adverse party. *Vicat*.

Old English Law. A deed; a person's act and deed. A culpable or criminal act; an act not founded in law. Anything stated or made certain; a deed of conveyance; a written instrument under seal: called, also, *charta*. *Spelman*; 2 Bla. Comm. 295. A fact; a circumstance; particularly a fact in evidence. *Bract. fol. 1b. Factum probandum* (the fact to be proved). 1 Greenl. Ev. § 13.

Old European Law. A portion or allotment of land; otherwise called a hide, *bovata*, etc. *Spelman*.

Testamentary Law. The execution or due execution of a will. The *factum* of an instrument means not barely the signing of it, and the formal publication or delivery, but proof that the party well knew and understood the contents thereof, and did give, will, dispose, and do, in all things, as in the said will is contained. *Weatherhead v. Baskerville*, 11 How. 354, 13 L.Ed. 717.

**FACTUM A JUDICE QUOD AD EJUS OFFICIUM NON SPECTAT NON RATUM EST.** An action of a judge which relates not to his office is of no force. Dig. 50, 17, 170; 10 Coke, 76; *Broom*, Max. 93, n.

## FACTUM

**FACTUM CUIQUE SUUM NON ADVERSARIO, NOCERE DEBET.** Dig. 50, 17, 155. A party's own act should prejudice himself, not his adversary.

**FACTUM INFECTUM FIERI NEQUIT.** A thing done cannot be undone. 1 Kames, Eq. 96, 259.

**FACTUM JURIDICUM.** A juridical fact. Denotes one of the factors or elements constituting an obligation.

**FACTUM NEGANTIS NULLA PROBATIO SIT.** Cod. 4, 19, 23. There is no proof incumbent upon him who denies a fact.

**"FACTUM" NON DICITUR QUOD NON PERSEVERAT.** That is not called a "deed" which does not continue operative. That is not said to be done which does not last. 5 Coke, 96; Shep. Touch., Preston ed. 391.

**FACTUM PROBANDUM.** Lat. In the law of evidence. The fact to be proved; a fact which is in issue, and to which evidence is to be directed. 1 Greenl. Ev. § 13.

**FACTUM PROBANS.** A probative or evidentiary fact; a subsidiary or connected fact tending to prove the principal fact in issue; a piece of circumstantial evidence.

**FACTUM UNUS ALTERI NOCERI NON DEBET.** Co. Litt. 152. The deed of one should not hurt another.

**FACULTAS PROBATIONUM NON EST ANGUSTANDA.** The power of proofs [right of offering or giving testimony] is not to be narrowed. 4 Inst. 279.

**FACULTATIVE COMPENSATION** is that which operates by the will of the parties, when one of them removes an obstacle preventing compensation, resulting from the dispositions of the law. In re Interstate Trust & Banking Co., La.App., 194 So. 35, 40, 42.

**FACULTATIVE REINSURANCE.** Under type designated "facultative", the reinsurer has the option of accepting the tendered part of the original insurer's risk. Lincoln Nat. Life Ins. Co. v. State Tax Commission, 196 Miss. 82, 16 So.2d 369.

**FACULTIES.** In the law of divorce. The capability of the husband to render a support to the wife in the form of alimony, whether temporary or permanent, including not only his tangible property, but also his income and his ability to earn money. 2 Bish. Mar. & Div. § 446; Lovett v. Lovett, 11 Ala. 763; Wright v. Wright, 3 Tex. 168; Fowler v. Fowler, 61 Okl. 280, 161 P. 227, 230, L.R.A.1917C, 89. See Allegation of Faculties.

**FACULTIES, COURT OF.** In English ecclesiastical law. A jurisdiction or tribunal belonging to the archbishop.

It does not hold pleas in any suits, but creates rights to pews, monuments, and particular places, and modes of burial. It has also various powers under 25 Hen. VIII. c. 21, in granting licenses of different descriptions, as a license to marry, a faculty to erect an organ in a parish church, to level a church-yard, to remove bodies previously buried. 4 Inst. 337.

**FACULTIES, MASTER OF THE.** An official in the archdiocese of Canterbury who granted dispensations. 4 Inst. 337. See Arches Court.

## FACULTY.

**Ecclesiastical Law.** A license or authority; a privilege granted by the ordinary to a man by favor and indulgence to do that which by law he may not do; *e. g.*, to marry without banns, to erect a monument in a church, etc. Termes de la Ley.

Faculties are of two kinds: first, when the grant is to a man and his heirs in gross; second, when it is to a person and his heirs as appurtenant to a house which he holds in the parish; 1 Term 429, 432; 12 Co. 106.

**Scotch Law.** A power founded on consent, as distinguished from a power founded on property. 2 Kames, Eq. 265.

**FACULTY OF A COLLEGE OR UNIVERSITY.** The corps of professors, instructors, tutors, and lecturers. To be distinguished from the board of trustees, who constitute the corporation.

The teaching body. West v. Board of Trustees of Miami University and Miami Normal School, 41 Ohio App. 367, 181 N.E. 144, 150.

**FACULTY OF ADVOCATES.** The college or society of advocates in Scotland.

**FADE THE GAME.** Means that spectators of a game of "craps" bet on the success of actual participants. Sullivan v. State, 146 Tex.Cr.R. 79, 171 S.W.2d 353.

**FADERFIUM.** In old English law. A marriage gift coming from the father or brother of the bride. Spelman.

**FÆDER-FEOH.** In old English law. The portion brought by a wife to her husband, and which reverted to a widow, in case the heir of her deceased husband refused his consent to her second marriage; *i. e.*, it reverted to her family in case she returned to them. Wharton.

**FÆSTING-MEN.** Approved men who were strong-armed; *habentes homines* or rich men, men of substance; pledges or bondsmen, who, by Saxon custom, were bound to answer for each other's good behavior. Cowell; Du Cange.

**FAGGOT.** A badge worn in popish times by persons who had recanted and abjured what was then adjudged to be heresy, as an emblem of what they had merited. Cowell.

**FAGGOT VOTE.** A term applied to votes manufactured by nominally transferring land to persons otherwise disqualified from voting for members of parliament.

A faggot vote occurs where a man is formally possessed of a right to vote for members of parliament, without possessing the substance which the vote should represent; as if he is enabled to buy a property, and at the same moment mortgage it to its full value, for the mere sake of the vote. See 7 & 8 Wm. III. c. 25, § 7. Wharton.

**FAIDA.** In Saxon law. Malice; open and deadly hostility; deadly feud.

The word designated the enmity between the family of a murdered man and that of his murderer, which was recognized, among the Teutonic peoples, as justification for vengeance taken by any one of the former upon any one of the latter. Du Cange; Spelman.



**FAIL.** Fault, negligence, or refusal. *Walker v. Sheffield Steel Corporation*, 224 Mo.App. 849, 27 S.W.2d 44, 48; *Anderson v. Commercial Credit Co.*, 110 Mont. 333, 101 P.2d 367, 369.

It also means:

Involuntarily to fall short of success or the attainment of one's purpose. See *Cobb v. Morrison*, 197 Ala. 550, 73 So. 42; *Pennsylvania Co. v. Good*, 56 Ind.App. 562, 103 N.E. 672, 673; *lapse, Gredig v. Sterling*, C.C.A.Tex. 47 F.2d 832, 834; *Wilmington Trust Co. v. Wilmington Trust Co.*, 25 Del.Ch. 204, 15 A.2d 830, 834; to become insolvent and unable to meet one's obligations as they mature. *Davis v. Campbell*, 3 Stew., Ala., 321; *Mayer v. Hermann*, 16 Fed. Cas. 1,242; to come short of; lack; to prove ineffective or inoperative; to become or be found deficient or wanting. *In re Merritt's Will*, 14 N.Y.S.2d 103, 107, 171 Misc. 812; to decline. *Buffalo County v. Phelps County*, 129 Neb. 268, 261 N.W. 360; to keep or cease from an appointed, proper, expected, or required action. *Romero v. Department of Public Works*, 17 Cal.2d 189, 109 P.2d 662, 665; to lapse, as a legacy which has never vested or taken effect. *Sherman v. Richmond Hose Co.*, No. 2, 230 N.Y. 462, 130 N.E. 613; to leave unperformed; to omit; to neglect; to be wanting in action. *Buffalo County v. Phelps County*, 129 Neb. 268, 261 N.W. 360; *A. Widemann Co. v. Digges*, 21 Cal.App. 342, 131 P. 882, 883; *Ginnocchio v. Hydraulic Press Brick Co.*, D.C.Ohio, 266 F. 564, 569.

The difference between "fail" and "refuse" is that the latter involves an act of the will, while the former may be an act of inevitable necessity. *Taylor v. Mason*, 9 Wheat. 344, 6 L.Ed. 101. See *Stallings v. Thomas*, 55 Ark. 326, 18 S.W. 184; *Persons v. Hight*, 4 Ga. 497; *Maestas v. American Metal Co. of New Mexico*, 37 N.M. 203, 20 P.2d 924, 928.

The words "fail to comply," however, have in general the same operation in law as the words "refuse to comply." *Ginnocchio v. Hydraulic Press Brick Co.*, D.C.Ohio, 266 F. 564, 569. And an allegation in an indictment that defendant "failed and refused" to comply with a statute should not be expanded to carry the implication that there was a deliberate, intentional, and inexcusable refusal, especially where the indictment is not good without such expansion. *Mackey v. U. S.*, C.C.A.Tenn., 290 F. 18, 21.

The term may imply an inopportunity to act. *Worthington Pump & Machinery Corporation v. City of Cudahy*, 182 Wis. 8, 195 N.W. 717.

**FAILING CIRCUMSTANCES.** Insolvency, that is, the lack of sufficient assets to pay one's debts. *Brown v. State*, 71 Tex.Cr.R. 353, 162 S.W. 339, 346. A person (or a corporation or institution) is said to be in failing circumstances when he is about to fail, that is, when he is actually insolvent and is acting in contemplation of giving up his business because he is unable to carry it on. *Appeal of Millard*, 62 Conn. 184, 25 A. 658; *Utley v. Smith*, 24 Conn. 310, 63 Am.Dec. 163.

A bank is in "failing circumstances" when, from any cause, it is unable to pay its debts in the ordinary or usual course of business. *Sanders v. Owens*, Mo.App., 47 S.W.2d 132, 134; when in state of uncertainty as to whether it will be able to sustain itself, depending on favorable or unfavorable contingencies, over which its officers have no control. *Graf v. Allen*, 230 Mo.App. 721, 74 S.W.2d 61, 66.

**FAILING OF RECORD.** When an action is brought against a person who alleges in his plea matter of record in bar of the action, and avers to prove it by the record, but the plaintiff saith *nul tiel record*, viz., denies there is any such record, upon which the defendant has a day given him by the court to bring it in, if he fail to do it, then he is said to fail of his record, and the plaintiff is entitled to sign judgment. *Termes de la Ley*.

**FAILLITE.** In French law. Bankruptcy; failure; the situation of a debtor who finds himself unable to fulfill his engagements. *Code de Com. arts. 442, 580*; *Civil Code La. art. 3556, No. 11*; 3 *Massé, Droit Comm.* 171; *Guyot, Répert.*

**FAILS TO ATTEND AT THE TRIAL.** Must be such a prolonged absence and failure to attend as to hinder and delay the orderly business of the court. *Smith v. State*, 42 Okl.Cr. 308, 275 P. 1071, 1072.

**FAILURE.** Abandonment or defeat, *State v. Summers*, 320 Mo. 189, 6 S.W.2d 883, 885. Deficiency, want, or lack; ineffectualness; inefficiency as measured by some legal standard; an unsuccessful attempt. *State v. Butler*, 81 Minn. 103, 83 N.W. 483; *In re Moore*, 79 Ind.App. 470, 138 N.E. 783. *Lapse. Wilmington Trust Co. v. Wilmington Trust Co.*, 25 Del.Ch. 204, 15 A.2d 830, 834. See, also, *Fail*.

As used in municipal charter concerning "failure" to fill certain office by certain methods, the term presupposes efforts that had proved fruitless, and demands a bona fide and reasonable attempt to select by such methods. *Scott v. Sutor*, 103 Vt. 175, 152 A. 801, 802.

Discontinuance of business from insolvency, bankruptcy, or the like. *State v. Thompson*, 333 Mo. 1069, 64 S.W.2d 277.

"Failure" of appeal tax court to reduce assessment giving right of appeal means failure to reduce after application by owner asking that assessment be reduced. *Aejis Co. v. Ray*, 156 Md. 590, 144 A. 842, 844.

Insolvency. *Goess v. A. D. H. Holding Corporation*, C.C.A.N.Y., 85 F.2d 72, 74.

"Failure" is not always synonymous with "insolvency." *State v. Tunncliffe*, 98 Fla. 731, 124 So. 279, 281.

Suspension or abandonment of business by a merchant, manufacturer, bank, etc., in consequence of insolvency. *American Credit Indemnity Co. v. Carrolton Furniture Mfg. Co.*, C.C.A.N.Y., 95 F. 115, 36 C.C.A. 671; *Terry v. Calman*, 13 S.C. 220; *State v. Lewis*, 42 La. Ann. 847, 8 So. 602.

The failure to note action for trial is a "neglect" or "failure" within practice rule relating to dismissal of action without prejudice for want of prosecution. *State ex rel. Woodworth & Cornell v. Superior Court for King County*, 9 Wash.2d 37, 113 P.2d 527, 530.

The neglect of any duty may be a "failure." See *Christ-hill v. City of Baltimore*, 152 Md. 204, 136 A. 527, 528; *Washington v. State*, 22 Okl.Cr. 69, 209 P. 967, 968. Compare, however, *In re Green*, 192 Cal. 714, 221 P. 903, 905. But to constitute a statutory offense, such as the failure to work on public roads, the term may imply willfulness and the absence of sufficient excuse. *Jones v. State*, 7 Ala. App. 180, 62 So. 306, 307.

**FAILURE OF CONSIDERATION.** As applied to notes, contracts, conveyances, etc., this term does not mean a want of consideration, but implies that a consideration, originally existing and good, has since become worthless or has ceased to exist or been extinguished, partially or entirely. *Shirk v. Neible*, 156 Ind. 66, 59 N.E. 281, 83 Am.St.Rep. 150; *Williamson v. Cline*, 40 W.Va. 194, 20 S.E. 920.

It means that sufficient consideration was contemplated by the parties at time contract was entered into, but either on account of some innate defect in the thing to be given or nonperformance in whole or in part of that which the promisee agreed to do or forbear nothing of value can be or is received by the promisee. *Holcomb v. Long Beach Inv. Co.*, 129 Cal.App. 285, 19 P.2d 31, 36.

It occurs where the thing expected to be received by one party and given by the other party cannot be or has not

## FAILURE OF CONSIDERATION

been given without fault of the party contracting to give it. *Edmund D. Cook, Inc. v. Commercial Casualty Ins. Co.*, 15 N.J.Misc. 256, 190 A. 99, 101.

"Fraud" cannot be pleaded as defense to note on ground that it amounts to "failure of consideration." Fraud is in its essence a tort, while "failure of consideration" ordinarily involves no actionable wrong, but occurs by reason of accident or mistake. *Kothmann v. Southwest Co.*, Tex. Civ.App., 92 S.W.2d 272, 276.

*Want of consideration as synonymous or distinguishable*

"Failure of consideration" is in fact simply a want of consideration. *Farrell v. Third Nat. Bank*, 20 Tenn.App. 540, 101 S.W.2d 158, 163.

"Want of consideration" embraces transactions or instances where no consideration was intended to pass while "failure of consideration" implies that a valuable consideration moving from obligee to obligor was contemplated. In re *Conrad's Estate*, 333 Pa. 561, 3 A.2d 697, 699; *Rauschenbach v. McDaniel's Estate*, 122 W.Va. 632, 11 S.E.2d 852, 854.

There is "want of consideration" when nothing of value has ever been received, and "failure of consideration" where something of value was originally received which has since lost its value. *Columbia Restaurant v. Sadnovick*, La.App., 157 So. 280, 282.

**FAILURE OF EVIDENCE.** Judicially speaking, a total "failure of evidence" means not only the utter absence of all evidence, but it also means a failure to offer proof, either positive or inferential, to establish one or more of the many facts, the establishment of *all* of which is indispensable to the finding of the issue for the plaintiff. *Cole v. Hebb*, 7 Gill & J., Md., 28.

**FAILURE OF GOOD BEHAVIOR.** Enumerated in statute as ground for removal of a civil service employee means behavior contrary to recognized standards of propriety and morality, misconduct or wrong conduct. *State ex rel. Ashbaugh v. Bahr*, 68 Ohio App. 308, 40 N.E.2d 677, 680, 682.

**FAILURE OF ISSUE.** The failure at a fixed time, or the total extinction, of issue to take an estate limited over by an executory devise. A definite failure of issue is when a precise time is fixed by the will for the failure of issue, as in the case where there is a devise to one, but if he dies without issue or lawful issue living at the time of his death, etc. An indefinite failure of issue is the period when the issue or descendants of the first taker shall become extinct, and when there is no longer any issue of the issue of the grantee, without reference to any particular time or any particular event. 4 Kent, Comm. 275; *Huxford v. Milligan*, 50 Ind. 546; *Parkhurst v. Harrower*, 142 Pa. 432, 21 A. 826, 24 Am.St.Rep. 507; *Woodlief v. Duckwall*, 19 Ohio Cir.Ct.R. 564.

**FAILURE OF JUSTICE.** The defeat of a particular right, or the failure of reparation for a particular wrong, from the lack or inadequacy of a legal remedy for the enforcement of the one or the redress of the other. The term is also colloquially applied to the miscarriage of justice which occurs when the result of a trial is so palpably wrong as to shock the moral sense.

**FAILURE OF PROOF.** In this phrase, the word "failure" is of broader significance than either "want" or "lack." *State v. Davis*, 154 La. 295, 97 So. 449, 456.

A "failure of proof" consists in failure to prove the cause of action or defense in its entire scope and meaning. *Breslin-Griffitt Carpet Co. v. Asadorian*, Mo.App., 145 S.W.2d 494, 496.

An omission of a material fact from special finding is deemed a "failure of proof". *Kelley, Glover & Vale v. Heitman*, 220 Ind. 625, 44 N.E.2d 981, 984.

As used in a statute authorizing dismissal of suit without prejudice on account of failure of proof, the term does not mean failure to convince the court by preponderance of evidence, but failure to make prima facie case. *Crim v. Thompson*, 112 Or. 399, 229 P. 916, 920; *Wolke v. Schmidt*, 112 Or. 99, 228 P. 921, 923.

Under a statute pertaining to variance, a "failure of proof" results when the evidence offered so far departs from the cause of action pleaded that it may be said fairly that the allegations of the pleading in their general scope and meaning are unproved. *Chealey v. Purdy*, 54 Mont. 489, 171 P. 926, 927; *Nelson v. Dowgiallo*, 73 Or. 342, 143 P. 924, 925.

Where evidence is such as would support either of two contradictory inferences, or presumptions, respecting the ultimate facts, there is a "failure of proof". *Muesenfechter v. St. Louis Car Co.*, Mo.App., 139 S.W.2d 1102, 1106.

Where time is not of essence of offense, showing that crime, which information alleged was committed "on or about" certain day, was committed on next day, was not a failure of proof, even had words "on or about" been omitted. *State v. Woodall*, Mo., 300 S.W. 712, 713.

**FAILURE OF RECORD.** Failure of the defendant to produce a record which he has alleged and relied on in his plea.

See Failing of Record.

**FAILURE OF TITLE.** The inability or failure of a vendor to make good title to the whole or a part of the property which he has contracted to sell. See *Alger-Sullivan Lumber Co. v. Union Trust Co.*, 207 Ala. 138, 92 So. 254, 257.

**FAILURE OF TRUST.** The lapsing or nonefficiency of a proposed trust, by reason of the defect or insufficiency of the deed or instrument creating it, or on account of illegality, indefiniteness, or other legal impediment.

**FAILURE OTHERWISE THAN UPON MERITS.** Imports some action by court by which plaintiff is defeated without a trial upon the merits. *Kimberlin v. Stoley*, 49 Ohio App. 1, 194 N.E. 885.

**FAILURE TO ACT.** Under statute setting up system of classification of offices and giving incumbent right to an administrative appeal in case of any failure to act by officers in charge of the classification plan, the words "failure to act" referred to duties in connection with classification of offices. *Dolan v. Suffolk County*, 310 Mass. 318, 37 N.E.2d 998, 1000.

**FAILURE TO BARGAIN COLLECTIVELY.** An employer's refusal to discuss with union, as employees' bargaining agency, questions involving conditions of employment and interpretation of contract constituted a "failure to bargain collectively" with union. *Rapid Roller Co. v. National Labor Relations Board*, C.C.A.7, 126 F.2d 452, 459.

**FAILURE TO COOPERATE.** Material or intentional, or fraudulent variations of statements, of assured's driver as given at trial and before trial would constitute failure to co-operate with auto-

mobile insurance company. *Brooks Transp. Co. v. Merchants' Mut. Casualty Co.*, 6 W.W.Harr. 40, 171 A. 207.

**FAILURE TO LOOK.** A failure to see an object within range of vision is equivalent. *Brooks v. City of Ste. Genevieve*, Mo.App., 164 S.W.2d 164, 168.

**FAILURE TO MAKE DELIVERY.** Misdelivery is "failure to make delivery". *Coos Bay Amusement Co. v. American Ry. Express Co.*, 129 Or. 216, 277 P. 107, 109. Nondelivery is "failure to make delivery". *Mt. Arbor Nurseries v. American Ry. Express Co.*, 221 Mo.App. 241, 300 S.W. 1051, 1053. This phrase is fully adequate to cover all cases where delivery has not been made as required. *Kahn v. American Railway Express Co.*, 88 W.Va. 17, 106 S.E. 126, 128; *Watts v. Southern Ry. Co.*, 139 S.C. 516, 138 S.E. 290, 293; *Georgia, F. & A. Ry. Co. v. Blish Milling Co.*, 241 U.S. 190, 36 S.Ct. 541, 543, 60 L.Ed. 948.

**FAILURE TO MEET OBLIGATIONS.** Bank's failure to pay depositors on demand constitutes "failure to meet obligations" in most cases. *State of Ohio ex rel. Squire v. Union Trust Co. of Pittsburgh*, 137 Pa.Super. 75, 8 A.2d 476, 480.

Where bank closed its doors and ceased to transact business or make transfers of capital stock, and thereafter ordinary deposits could not be drawn out and checks in process of collection were dishonored, returned unpaid, was "failure to meet obligations". *State of Ohio ex rel. Squire v. Union Trust Co. of Pittsburgh*, 137 Pa.Super. 75, 8 A.2d 476, 480.

**FAILURE TO PERFORM.** As regards reciprocal promises, allegation of defendant's "failure to perform" when demanded is equivalent to allegation of "refusal to perform," unless performance by plaintiff is condition precedent to cause of action. *Brooks v. Scoville*, 81 Utah 163, 17 P.2d 218, 220.

**FAILURES IN REVENUE.** Terms "casual deficits" and "failures in revenue," within provision authorizing Legislature to contract debt to meet such deficits, are synonymous. *State Budget Commission v. Lebus*, 244 Ky. 700, 51 S.W.2d 965.

**FAINT (or FEIGNED) ACTION.** In old English practice. An action was so called where the party bringing it had no title to recover, although the words of the writ were true; a *false* action was properly where the words of the writ were false. *Litt.* § 689; *Co. Litt.* 361.

**FAINT PLEADER.** A fraudulent, false, or collusive manner of pleading to the deception of a third person.

**FAIR, n.** In English law. A greater species of market; a privileged market. *Cowell*; *Cunningham*, *Law Dict.* It is an incorporeal hereditament, granted by royal patent, or established by prescription presupposing a grant from the crown. A public mart or place of buying or selling. 1 *Bla.Comm.* 274.

Though etymologically signifying a market for buying and selling exhibited articles, it includes a place for the

exhibition of agricultural and mechanical products. *State v. Long*, 46 Ohio St. 509, 28 N.E. 1038.

A fair is usually attended by a greater concourse of people than a market, for the amusement of whom various exhibitions are gotten up. *McCulloch*, *Comm.Dict.*; *Whar-ton, Dict.*

A fair is a franchise which is obtained by a grant from the crown. 2d *Inst.* 220; 3 *Mod.* 123; 1 *Ld.Raym.* 341; 2 *Saund.* 172; 1 *Rolle, Abr.* 106; *Tomlin*; *Cunningham*, *Law Dict.*

In the earlier English law, the franchise to hold a fair conferred certain important privileges; and fairs, as legally recognized institutions, possessed distinctive legal characteristics. Most of these privileges and characteristics, however, are now obsolete. In America, fairs, in the ancient technical sense, are unknown, and, in the modern and popular sense, they are entirely voluntary and non-legal, and transactions arising in or in connection with them are subject to the ordinary rules governing sales, etc.

**FAIR, adj.** Equitable as a basis for exchange; reasonable; a fair value. *Utah Assets Corporation v. Dooley Bros. Ass'n*, 92 Utah 577, 70 P.2d 738, 741. *Honest. East Bay Municipal Utility Dist. v. Kieffer*, 99 Cal.App. 240, 278 P. 476, 482. *Impartial, free from suspicion, bias, etc.* *Looney v. Elliott*, *Tex.Civ.App.*, 52 S.W.2d 949, 952. *Just; equitable; even-handed; equal, as between conflicting interests.*

**FAIR ABRIDGMENT.** In copyright law. An abridgment consisting not merely in the arrangement of excerpts, but one involving real and substantial condensation of the materials by the exercise of intellectual labor and judgment. *Folsom v. Marsh*, 9 *Fed.Cas.* 345.

**FAIR AND EQUITABLE.** A proposed plan to dissolve parent public utility holding company and to reclassify its preferred and voting common stock is "fair and equitable", if preferred stockholders' rights are transmuted into their equitable equivalents. In re *Securities and Exchange Commission*, C.C.A.Del., 142 F.2d 411, 419.

As condition of confirmation under provisions of Bankruptcy Act relating to corporate reorganization, signify that the final arrangement must conform to principle that unsecured creditors are entitled to priority over stockholders to full extent of their debts and that any scaling down of claims of creditors without fair compensating advantage to them which is prior to rights of stockholders is inadmissible. *Securities and Exchange Commission v. United States Realty & Improvement Co.*, 310 U.S. 434, 60 S.Ct. 1044, 1051, 84 L.Ed. 1293; In re *Janson Steel & Iron Co.*, D.C.Pa., 47 F.Supp. 652, 655, 656.

Statutory requirements of "fair and equitable" railroad reorganization are satisfied so long as creditors receive full compensatory treatment and each group shares in securities of the whole enterprise on an equitable basis. *Ecker v. Western Pac. R. R. Corporation*, 318 U.S. 448, 63 S.Ct. 692, 713, 87 L.Ed. 892.

**FAIR AND EQUITABLE VALUE.** In a contract to purchase a waterworks plant at fair and equitable value, the amount is to be determined not by capitalization of the earnings nor limited to the cost of reproducing the plant, but allowance should be made for the additional value created by connection with and supply of buildings, although the company did not own the connections. *National Waterworks Co. v. Kansas City, Mo.*, 62 F. 863.

**FAIR AND FEASIBLE.** As test in determining whether corporate reorganization plan should be

## FAIR AND FULL

approved means economically expedient, without discrimination or destruction of vested rights. In re Stanley Drug Co., D.C.Pa., 22 F.Supp. 664, 665.

### FAIR AND FULL EQUIVALENT FOR LOSS.

The same as a full and perfect equivalent. Fonicello Mineral Springs Co. v. City of Richmond, 147 Va. 355, 137 S.E. 458, 460.

**FAIR AND IMPARTIAL JURY** means that every member of the jury must be a fair and impartial juror. City of San Antonio v. McKenzie Const. Co., 136 Tex. 315, 150 S.W.2d 989, 993.

### FAIR AND IMPARTIAL SYSTEM OF SEPARATION FROM SERVICE.

Of employees of department of state involves specific reasons for removal and reasonable hearing before some designated and proper authority. Welch v. State Board of Social Security and Welfare, 53 Ariz. 167, 87 P.2d 109, 112.

**FAIR AND IMPARTIAL TRIAL.** One where accused's legal rights are safeguarded and respected. Floyd v. State, 166 Miss. 15, 148 So. 226, 232; Ranev v. Commonwealth, 287 Ky. 492, 153 S.W.2d 935, 937, 938.

A fair and impartial trial by a jury of one's peers contemplates counsel to look after one's defense, compulsory attendance of witnesses, if need be, and a reasonable time in the light of all prevailing circumstances to investigate, properly prepare, and present the defense. Christie v. State, 94 Fla. 469, 114 So. 450, 451.

One wherein defendant is permitted to be represented by counsel and neither witnesses nor counsel are intimidated. George v. Kanape, 284 Ill.App. 648, 3 N.E.2d 149. One wherein no undue advantage is taken by the district attorney or any one else. People v. Nationwide News Service, 16 N.Y.S.2d 277, 279, 172 Misc. 752. One wherein witnesses of litigants are permitted to testify under rules of court within proper bounds of judicial discretion, and under law governing testimony of witnesses with right in parties to testify, if qualified, and of counsel to be heard. Fessenden v. Fessenden, 32 Ohio App. 16, 165 N.E. 746, 748.

Defendant has a "fair and impartial trial" when opportunity is given him to object and except to what is done to his prejudice upon the trial. State v. Burns, 181 Iowa 1098, 165 N.W. 346, 347.

Such a trial contemplates a trial before a jury of 12 impartial and unbiased men, neither more nor less, in the presence and under the superintendence of a judge having the power to instruct them as to the law and advise them in respect to the facts, and the establishment of guilt by a unanimous verdict of such jury. Baker v. Hudspeth, C.C.A. Kan., 129 F.2d 779, 782, 783. It contemplates counsel, compulsory attendance of witnesses, and time in which to prepare for trial. Wood v. State, 155 Fla. 256, 19 So.2d 872, 875. It excludes jurors who have an opinion on the merits of the case, based on such testimony as may reasonably be expected to be presented on the trial, or an opinion founded on personal ill will towards the accused. Murphy v. State, 72 Okl.Cr. 1, 112 P.2d 438, 453, 454. It includes a reasonable opportunity to prepare for trial. Cruthirds v. State, 190 Miss. 892, 2 So.2d 145, 146.

It requires that the jury of 12 men chosen to sit in judgment shall have no fixed opinion concerning the guilt or innocence of one on trial. Baker v. Hudspeth, C.C.A. Kan., 129 F.2d 779, 782, 783. There must not only be fair and impartial jury, and learned and upright judge, but there should be atmosphere of calm in which witnesses can deliver their testimony without fear and intimidation, in which attorneys can assert accused's rights freely and fully, and in which the truth may be received and given credence without fear of violence. Ranev v. Commonwealth, 287 Ky. 492, 153 S.W.2d 935, 937, 938.

**FAIR AND PROPER LEGAL ASSESSMENT.** Such as places the value of property on a fair,

equal, and uniform basis with other property of like character and value throughout the county and state. Edward Hines Yellow Pine Trustees v. Knox, 144 Miss. 560, 108 So. 907, 911.

### FAIR AND REASONABLE COMPENSATION.

Full compensation. Pfeiffer v. Schee, Mo.App., 107 S.W.2d 170, 175.

### FAIR AND REASONABLE CONTRACT.

One which, when made with an infant, must not be one wasting the infant's estate, but must be a provident one, advantageous to the minor. Berglund v. American Multigraph Sales Co., 135 Minn. 67, 160 N.W. 191, 193.

### FAIR AND REASONABLE MARKET VALUE.

Under statute requiring determination of fair and reasonable market value of mortgaged premises in connection with deficiency judgment, means market value and should be determined by those market conditions prevailing where willing buyers meet willing sellers and deal on that basis. Berkshire Life Ins. Co. of Pittsfield, Mass. v. Van Voorhis, 245 App.Div. 592, 283 N.Y.S. 95, 97, 98.

### FAIR AND REASONABLE TOLLS.

The term is broad enough to include such fair and reasonable charges as may be deemed "fair and reasonable" for value of privilege the toll payer obtains for his money in use of bridge. In re Tolls on St. Johns River Bridge, 108 Fla. 172, 146 So. 99, 100.

### FAIR AND REASONABLE VALUE.

This phrase in a statute imposing a tax on property means the best price obtainable at a voluntary sale, to be paid at once in money, and excluding any additional amount that might be had were credit or terms allowed. State v. Woodward, 208 Ala. 31, 93 So. 826.

Provision of statute for appraisal of farm debtor's property at "fair and reasonable value, not necessarily market value," for purpose of discharging debtor from his obligations, means that market value is minimum value to be found, beyond which other circumstances may be considered to arrive at "fair and reasonable value". Louisville Joint Stock Land Bank v. Radford, C.C.A.Ky., 74 F.2d 576, 582.

### FAIR AND VALUABLE CONSIDERATION.

One which is a substantial compensation for the property conveyed, or which is reasonable, in view of the surrounding circumstances and conditions, in contradistinction to an adequate consideration. Jones v. Wey, 124 Okl. 1, 253 P. 291, 292; Lucas v. Coker, 189 Okl. 95, 113 P.2d 589, 590.

### FAIR CASH MARKET VALUE.

Terms "cash market value", "fair market value", "reasonable market value" or "fair cash market value" are substantially synonymous. Housing Authority of Birmingham Dist. v. Title Guarantee Loan & Trust Co., 243 Ala. 157, 8 So.2d 835, 837. Terms "market value," "fair market value," "cash market value," and "fair cash market value" are synonymous. Fort Worth & D. N. Ry. Co. v. Sugg, Tex.Civ.App., 68 S.W.2d 570, 572.

**FAIR CASH VALUE.** The phrase is practically synonymous with "reasonable value," and "actual cash value," meaning the fair or reasonable

cash price for which the property can be sold on the market. *Montesano Lumber & Mfg. Co. v. Portland Iron Works*, 94 Or. 677, 186 P. 428, 432; *State v. Woodward*, 208 Ala. 31, 93 So. 826, 827.

The words "fair cash value" and the words "fair market value" are frequently treated as synonymous. *Commissioner of Corporations and Taxation v. Boston Edison Co.*, 310 Mass. 674, 39 N.E.2d 584, 593.

"Fair cash value" of dissenting stockholder's stock is the intrinsic worth of the stock and not necessarily its market price. *Miller v. Canton Motor Coach*, 58 Ohio App. 94, 16 N.E.2d 486, 488; *Adams v. U. S. Distributing Corp.*, 184 Va. 134, 34 S.E.2d 244, 250, 162 A.L.R. 1227.

For tax purposes "fair cash value", means the highest price the property would bring free of incumbrances, at a fair and voluntary private sale for cash. *Commonwealth v. Sutcliffe*, 287 Ky. 809, 155 S.W.2d 243, 245. The price that an owner willing but not compelled to sell ought to receive from one willing but not compelled to buy. *Assessors of Quincy v. Boston Consolidated Gas Co.*, 309 Mass. 60, 34 N.E.2d 623, 626. The price that the property would bring at a voluntary sale where the owner is ready, willing and able to sell but not compelled to do so. In re 168 Adams Bldg. Corporation, C.C.A.Ill., 105 F.2d 704, 708; *People ex rel. McGaughey v. Wilson*, 367 Ill. 494, 12 N.E.2d 5, 6; the price which some one will pay for it in open market. *Donovan v. City of Haverhill*, 141 N.E. 564, 565, 247 Mass. 69, 30 A.L.R. 358.

It is ascertained by a consideration of all elements making it attractive for valuable use to one under no compulsion to purchase, but yet willing to buy for a fair price, attributing to each element of value the amount it adds to the price likely to be offered by such a buyer. *Massachusetts General Hospital v. Inhabitants of Belmont*, 233 Mass. 190, 124 N.E. 21, 26.

Taxable "fair cash value", of annuity contract was to be determined according to mortality tables. *Evans v. Boyle County Board of Sup'rs*, 296 Ky. 353, 177 S.W.2d 137, 139.

Under corporate franchise tax statute, the term "fair cash value" meant exchange value, *Commissioner of Corporations and Taxation v. Boston Edison Co.*, 310 Mass. 674, 39 N.E.2d 584, 592, 593.

**FAIR COMMENT.** A term used in the law of libel, applying to statements made by a writer in an honest belief of their truth, relating to official acts, even though the statements are not true in fact. *People v. Hebbard*, 96 Misc. 617, 162 N.Y.S. 80, 92. In a privileged communication the words used, if defamatory and libelous, are excused, while in "fair comment" the words are not a defamation and not libelous. *Van Lonkhuyzen v. Daily News Co.*, 203 Mich. 570, 170 N.W. 93, 99.

Defense of "fair comment" is not destroyed by circumstance that jury may believe that the comment is logically unsound, but it suffices that a reasonable man may honestly entertain such opinion, on facts found. *Cohalan v. New York Tribune*, 172 Misc. 20, 15 N.Y.S.2d 58, 60, 61.

"Fair comment" must be based on facts truly stated, must not contain imputations of corrupt or dishonorable motives except as warranted by the facts, and must be honest expression of writer's real opinion. *Cohalan v. New York World-Telegram Corporation*, 16 N.Y.S.2d 706, 712, 172 Misc. 1061; *Hall v. Binghamton Press Co.*, 33 N.Y.S.2d 840, 848, 263 App.Div. 403.

Imputation to official of corrupt or dishonorable motives is justified as "fair comment" if it is inference which fair-minded man might reasonably draw from facts. *Tanzer v. Crowley Pub. Corporation*, 240 App.Div. 203, 268 N.Y.S. 620.

Mere exaggeration, slight irony, or wit, or all those delightful touches of style going to make article readable, do not push beyond limitations of fair comment. *Briarcliff Lodge Hotel v. Westchester Newspapers*, 260 N.Y. 106, 183 N.E. 193, 197.

**FAIR COMPETITION.** Open, equitable, just competition, which is fair as between competitors and as between any of them and his customers. *U. S. v. Sutherland*, D.C.Mo., 9 F.Supp. 204, 205; *U. S. v. National Garment Co.*, D.C.Mo., 10 F. Supp. 104, 107. Opposite of "unfair competition." *Wilentz v. Crown Laundry Service*, 116 N.J.Eq. 40, 172 A. 331, 333; *State on Complaint of Lief v. Packard-Bamberger & Co.*, 123 N.J.L. 180, 8 A.2d 291, 293.

The words "fair competition" in National Industrial Recovery Act do not include price fixing, since price regulation is the antithesis of competition, fair or otherwise. *Mississippi Valley Hardwood Co. v. McClanahan*, D.C. Tenn., 8 F.Supp. 388.

**FAIR CONSIDERATION.** A fair equivalent. *Farmers' Exchange Bank v. Oneida Motor Truck Co.*, 202 Wis. 266, 232 N.W. 536, 538; *Drury v. State Capitol Bank of Eastern Shore Trust Co.*, 163 Md. 84, 161 A. 176, 179. One which, under all the circumstances, is honest, reasonable, and free from suspicion, whether or not strictly "adequate" or "full." *Ferguson v. Dickson*, C.C.A.N.J., 300 F. 961, 963. Payment of an antecedent debt. *McDougal v. Central Union Conference Ass'n of Seventh Day Adventists*, C.C.A.Colo., 110 F.2d 939, 942. Pre-existing debt. In re *Seim Const. Co.*, D.C.Md., 37 F.Supp. 855, 858. Reasonable in contractual sense, and free from suspicion of intent to evade inheritance tax, though not fraudulent. *Phillips v. Gnichtel*, C.C.A.N.J., 27 F.2d 662, 665.

In bankruptcy law, one which is honest or free from suspicion, or one actually valuable, but not necessarily adequate or a full equivalent. *Myers v. Fultz*, 124 Iowa, 437, 100 N.W. 351.

Under Fraudulent Conveyance Law. An antecedent debt, *Klaseus v. Meester*, 173 Minn. 468, 217 N.W. 593, 594; *Barishefsky v. Cohen*, 299 Mass. 360, 12 N.E.2d 832, 833; *Hollander v. Gautier*, 114 N.J.Eq. 485, 168 A. 860, 862; an enforceable promise by grantee at time of transfer, *Hollander v. Gautier*, 114 N.J.Eq. 485, 168 A. 860, 861; full and adequate consideration, *Klaseus v. Meester*, 173 Minn. 468, 217 N.W. 593, 594; good-faith satisfaction of an antecedent debt, *Bennett v. Rodman & English*, D.C.N.Y., 2 F.Supp. 355, 358; one which fairly represents the value of the property transferred, *Bianco v. Lay*, 313 Mass. 444, 48 N.E.2d 36, 40; one which is not disproportionate to the value of the property conveyed. *Buhl v. McDowell*, 51 S.D. 603, 216 N.W. 346, 347; *Klaseus v. Meester*, 173 Minn. 468, 217 N.W. 593, 594; the test of "fair consideration", is whether conveyance, by debtor, which includes every payment of money, renders the debtor execution proof. *McCaslin v. Schouten*, 294 Mich. 180, 292 N.W. 696, 699.

**FAIR DAMAGES** are something more than nominal damages; and are even more than such damages as would compensate for injury suffered. *Gurfein v. Howell*, 142 Va. 197, 128 S.E. 644, 646.

**FAIR EQUIVALENT.** As used in statute providing that fair consideration is given for property exchanged at fair equivalent means value at time of conveyance; "equivalent" means equal in worth or value; "fair" means equitable as a basis for exchange; reasonable; a fair value. **Utah**

## FAIR EQUIVALENT

**Assets Corporation v. Dooley Bros. Ass'n**, 92 Utah 577, 70 P.2d 738, 741.

As used in Uniform Fraudulent Conveyance Law does not mean that adequacy of consideration is to be determined by weighing value of goods sold and price received in very precise scales. *Bianco v. Lay*, 313 Mass. 444, 48 N.E.2d 36, 40.

The test to be used in determining what constitutes a "fair equivalent" under Fraudulent Conveyance Act, for conveyance by debtor, is whether the conveyance, which includes every payment of money, renders the debtor execution proof. *McCaslin v. Schouten*, 294 Mich. 180, 292 N.W. 696, 699.

**FAIR HEARING.** One in which authority is fairly exercised; that is, consistently with the fundamental principles of justice embraced within the conception of due process of law. U. S. ex rel. Dean, for and on behalf of Mahfood, v. Reynolds, D.C.Ind., 2 F.Supp. 290, 291.

A hearing before the immigration authorities is "fair" if conducted with due regard to those rights of the alien that are embraced in the phrase "due process of law". *United States ex rel. Eng Fon Sing v. Reimer*, D.C.N.Y., 30 F.Supp. 602, 604.

Although rules of evidence and of procedure have not been strictly followed a hearing may be "fair." *Ex parte Bridges*, D.C.Cal., 49 F.Supp. 292, 306; *U. S. ex rel. Shaw v. Van De Mark*, D.C.N.Y., 3 F.Supp. 101, 102.

Fair hearing of an alien's right to enter the United States means a hearing before the immigration officers in accordance with the fundamental principles that inhere in due process of law, and implies that alien shall not only have a fair opportunity to present evidence in his favor, but shall be apprised of the evidence against him, so that at the conclusion of the hearing he may be in a position to know all of the evidence on which the matter is to be decided; it being not enough that the immigration officials meant to be fair. *Ex parte Petkos*, D.C.Mass., 212 F. 275, 277. See, also, *Ex parte Keisuki Sata*, D.C.Cal., 215 F. 173, 176.

The obligation of a local draft board to grant a registrant a "fair hearing" on matter of classification does not mean a trial by court or a trial in strict or formal sense. *Rase v. United States*, C.C.A.Mich., 129 F.2d 204, 210; *Seele v. U. S.*, C.C.A.Mo., 133 F.2d 1015, 1022.

The test of a "fair hearing" before the National Labor Relations Board is whether the issues were clearly defined, so that the employer could address itself to the charges made against it. *National Labor Relations Board v. Air Associates*, C.C.A.2, 121 F.2d 586, 591.

Where students were charged with sale of examination papers and expelled, a "fair hearing" did not contemplate a trial as in a chancery court or court of law. *State ex rel. Sherman v. Hyman*, 180 Tenn. 99, 171 S.W.2d 822, 826.

**FAIR KNOWLEDGE OR SKILL.** A reasonable degree of knowledge or measure of skill. *Jones v. Angell*, 95 Ind. 382.

**FAIR MARKET PRICE** means not only that the price be ascertained by sales, but that the sales so made and the subject-matter of the sales are to be considered. In re *Spitly's Estate*, 124 Cal. App. 642, 13 P.2d 385, 386.

For inheritance tax purposes, "clear market price" is synonymous with "fair market price." In re *Spitly's Estate*, 124 Cal.App. 642, 13 P.2d 385, 386.

For tax purposes, means price fixed by manufacturer for sale of its products where there is no market price other than price so fixed. *Bourjois, Inc., v. McGowan*, D.C.N.Y., 12 F.Supp. 787, 792.

Within statute governing valuation of property for assessment of income tax, resultant of two opposing views of willing seller and willing buyer where seller is not compelled to sell and buyer is not required to buy. *Vale v.*

*du Pont, Del.*, 7 W.W.Harr. 254, 182 A. 668, 673, 674, 103 A. L.R. 946.

Ordinarily, "actual cash value," "fair market price," and "market value" are synonymous terms. *Butler v. Etna Ins. Co. of Hartford, Conn.*, 64 N.D. 764, 256 N.W. 214.

**FAIR MARKET VALUE.** Price at which a willing seller and a willing buyer will trade. *Montrose Cemetery Co. v. Commissioner of Internal Revenue*, C.C.A.7, 105 F.2d 238, 242; *Utah Assets Corporation v. Dooley Bros. Ass'n*, 92 Utah 577, 70 P.2d 738, 741.

It has also been defined to mean: Amount that would in all probability have been arrived at between owner willing to sell and purchaser desiring to buy, *Karlson v. U. S.*, C.C.A.Minn., 82 F.2d 330, 337; *Whitlow v. Commissioner of Internal Revenue*, C.C.A.8, 82 F.2d 569, 572; exchangeable value, *Walls v. Commissioner of Internal Revenue*, C. C.A.Wyo., 60 F.2d 347, 350; price at which a willing seller under no compulsion and a willing buyer under no compulsion will trade, *Rheinstrom v. Willcuts*, D.C.Minn., 26 F. Supp. 306, 310; *State ex rel. Farmers & Merchants State Bank v. Schanke*, 247 Wis. 182, 19 N.W.2d 264, 267; *Talbot v. City of Norfolk*, 158 Va. 387, 163 S.E. 100, 101; price at which specified quantity of a given economic good is actually sold, or general or future power in exchange, *Jenkins v. Smith*, D.C.Conn., 21 F.Supp. 251, 253; price such as a capable and diligent business man could presently obtain from the property after conferring with those accustomed to buy such property, *Appeal of Hickey*, 124 Pa. Super. 213, 188 A. 95, 96; price which a willing purchaser would pay a willing seller, *Ozette Ry. Co. v. Grays Harbor County*, 16 Wash.2d 459, 133 P.2d 983, 988; *Baetjer v. United States*, C.C.A.Puerto Rico, 143 F.2d 391, 396; price which property would bring at a fair sale between parties dealing on equal terms, *Union Nat. Bank of Pittsburgh v. Crump*, 349 Pa. 339, 37 A.2d 733, 735; sum a purchaser willing but not obliged to buy would pay an owner willing but not obliged to sell, *Appeal of Hickey*, 124 Pa.Super. 213, 188 A. 95, 96; *City of Tampa v. Colgan*, 121 Fla. 218, 163 So. 577, 582; *City of Tulsa v. Creekmore*, 167 Okl. 298, 29 P.2d 101, 103; value in money as between one who wishes to purchase and one who wishes to sell, *Wood v. United States*, Ct.Cl., 29 F.Supp. 853, 859, 860; *Stiles v. Commissioner of Internal Revenue*, C.C.A.Fla., 69 F.2d 951, 952.

"Fair market value" assumes agreement between owner willing but not obliged to sell for cash and buyer desirous but not compelled to purchase. *Lewis v. Beall*, 162 Md. 18, 158 A. 354, 356. It implies not only a willing buyer, but a willing seller. *Syracuse Engineering Co. v. Haight*, C.C.A.N.Y., 110 F.2d 468, 471. It means neither panic value, auction value, speculative value, nor a value fixed by depressed or inflated prices. In re *Board of Water Supply of City of New York*, 277 N.Y. 452, 14 N.E.2d 789, 792. It resides in estimate and determination of what is fair, economic, just and equitable value under normal conditions. *State ex rel. Buck v. Rapp*, Sup., 36 N.Y.S.2d 790, 794.

As of a certain date. Fair market value of a given date means amount stock is fairly worth as marketable security or equity to be bought and sold in course of business, *Robertson v. Routzahn*, D.C.Ohio, 1 F.Supp. 355, 356; price that could actually have been realized on that date, *Jenkins v. Smith*, D.C.Conn., 21 F.Supp. 251; price that probably would have resulted had goods been exchanged between willing, informed, and normal buyer and similar seller, *Jenkins v. Smith*, D.C.Conn., 21 F.Supp. 251; price that property would bring at voluntary sale to willing buyer; both seller and buyer having adequate knowledge of material facts affecting value, *Robertson v. Routzahn*, C.C.A. Ohio, 75 F.2d 537, 539; price which intelligent and reasonable buyers and sellers, having due regard for their mercenary interests, would have most likely agreed upon. *Vale v. State School Tax Department*, 6 W.W.Harr. 252, 173 A. 795.

It resides in an estimate and a determination of what is the fair, economic, just, and equitable value under normal conditions. In re Board of Water Supply of City of New York, 277 N.Y. 452, 14 N.E.2d 789, 792.

"Fair market value" of stock received by taxpayer in payment of bonuses was value of stock received in extinguishment of bonus claims and not amount credited for bonuses. Commissioner of Internal Revenue v. Vandever, C.C.A.6, 114 F.2d 719, 722.

Primary evidence of "fair market value" of stock is what willing purchasers pay to willing sellers on open market. Hazeltime Corporation v. Commissioner of Internal Revenue, C.C.A.3, 89 F.2d 513, 518.

Synonymous or identical terms are:

Actual cash value. Stiles v. Commissioner of Internal Revenue, C.C.A.Fla., 69 F.2d 951, 952; actual value, Appeals of Matson, 152 Pa.Super. 424, 33 A.2d 464, 465; cash market value, West Texas Hotel Co. v. City of El Paso, Tex.Civ.App., 83 S.W.2d 772, 775; Housing Authority of Birmingham Dist. v. Title Guarantee Loan & Trust Co., 243 Ala. 157, 8 So.2d 835, 837; cash value, Thomson v. Hillcrest Athletic Ass'n, 9 W.W.Harr. 590, 5 A.2d 236, 238; In re Ryerson's Estate, 239 Wis. 120, 300 N.W. 782, 784, 785; clear market value. In re Ryerson's Estate, 239 Wis. 120, 300 N.W. 782, 784, 785; fair cash market value, Housing Authority of Birmingham Dist. v. Title Guarantee Loan & Trust Co., 243 Ala. 157, 8 So.2d 835, 837; fair cash value, Commissioner of Corporations and Taxation v. Boston Edison Co., 310 Mass. 674, 39 N.E.2d 584, 593; market value, Fort Worth & D. N. Ry. Co. v. Sugg, Tex.Civ.App., 68 S.W.2d 570, 572; United States v. 3969.59 Acres of Land, D.C.Idaho, 56 F.Supp. 831, 837; reasonable market value, Housing Authority of Birmingham Dist. v. Title Guarantee Loan & Trust Co., 243 Ala. 157, 8 So.2d 835, 837; true cash value, Appeals of Matson, 152 Pa.Super. 424, 33 A.2d 464, 465; value, United States v. 3969.59 Acres of Land, D.C. Idaho, 56 F.Supp. 831, 837.

Value of real property for railroad purposes approximated by capitalizing net income considered with other factors, may be accepted as indicative of "fair market value". Appeal of Pitney, 20 N.J.Misc. 448, 28 A.2d 660, 664.

**FAIR ON ITS FACE.** A tax deed "fair on its face," is one which cannot be shown to be illegal without extraneous evidence. Denny v. Stevens, 52 Wyo. 253, 73 P.2d 308, 310, 113 A.L.R. 1337.

A process fair on its face does not mean that it must appear to be perfectly regular or in all respects in accord with proper practice and after the most approved form, but that it shall apparently be process lawfully issued and such as the officer may lawfully serve, and a process is fair on its face which proceeds from a court, magistrate, or body having authority of law to issue process of that nature and which is legal in form and on its face contains nothing to notify or fairly apprise the officer that it is issued without authority. Brown v. Hadwin, 182 Mich. 491, 148 N.W. 693, L.R.A.1915B, 505.

**FAIR PERSUASION** means argument, exhortation, or entreaty addressed to a person without threat of physical harm or economic loss, or persistent molestation or harassment or material and fraudulent misrepresentations. City of Reno v. Second Judicial District Court in and for Washoe County, 59 Nev. 416, 95 P.2d 994, 998, 125 A.L.R. 948.

**FAIR-PLAY MEN.** A local irregular tribunal which existed in Pennsylvania about the year 1769, as to which see Serg. Land Laws Pa. 77; 2 Smith, Laws Pa. 195.

**FAIR PLEADER.** See Beau-pleader.

**FAIR PREPONDERANCE.** In the law of evidence. A "clear" preponderance. M. E. Smith & Co. v. Kimble, 38 S.D. 511, 162 N.W. 162, 163. Evidence sufficient to create in the minds of the

triers of fact the conviction that the party upon whom is the burden has established its case. Jackson Furniture Co. v. Lieberman, 65 R.I. 224, 14 A.2d 27, 32. The greater and weightier evidence, the more convincing evidence. Barbero v. Pellegrino, 108 N.J.L. 156, 156 A. 765. The greater weight of the evidence. Belmont Hotel v. New Jersey Title Guaranty & Trust Co., 22 N.J. Misc. 261, 37 A.2d 681, 682. Weight, credit, and value. Chenery v. Russell, 132 Me. 130, 167 A. 857, 858.

If evidence on any material allegation is equally balanced, verdict should be for defendant. Funk v. Bonham, 204 Ind. 170, 183 N.E. 312, 317.

Such a superiority of evidence on one side that the fact of its outweighing the evidence on the other side can be perceived if the whole evidence is fairly considered. Bryan v. Railroad Co., 63 Iowa, 464, 19 N.W. 295; City Bank's Appeal, 54 Conn. 274, 7 A. 548. Such evidence as when weighed with that which is offered to oppose it, has more convincing power in the minds of the jury. Neely v. Detroit Sugar Co., 138 Mich. 469, 101 N.W. 665, 666.

The probability of truth; In re Oliver's Will, 126 Misc. 511, 214 N.Y.S. 154, 166; not necessarily the largest number of witnesses; Verdi v. Donahue, 91 Conn. 448, 99 A. 1041, 1043; Chenery v. Russell, 132 Me. 130, 167 A. 857, 858.

The term conveys the idea of something more than a preponderance. Bryan v. Chicago, R. I. & P. Ry. Co., 63 Iowa, 464, 19 N.W. 295, 296; De St. Aubin v. Marshall Field & Co., 27 Colo. 414, 62 P. 199, 201; The term is not a technical term, but simply means that evidence which outweighs that which is offered to oppose it, and does not necessarily mean the greater number of witnesses. Devenenzi v. Cassinelli, 28 Nev. 222, 81 P. 41, 42 (quoting and adopting definition in Strand v. Chicago & N. M. Ry. Co., 67 Mich. 380, 34 N.W. 712); Hynes v. Metropolitan St. Ry. Co., 31 Misc. 825, 64 N.Y.S. 382, 383.

**FAIR PRICE.** The words "fair price" have been held to be of an ascertainable valuation. McCormick v. Tissier, 222 Ala. 422, 133 So. 22, 24. For "Fair Market Price," see that title.

**FAIR RENT.** A reasonable rent. Shapiro v. Goldstein, 113 Misc. 258, 185 N.Y.S. 234.

**FAIR RETURN.** A net return upon fair value of property. State ex rel. City of St. Louis v. Public Service Commission, 341 Mo. 920, 110 S.W. 2d 749, 778.

A "fair return" is to be largely measured by usual returns in like investments in the same vicinity over the same period of time. Natural Gas Pipeline Co. of America v. Federal Power Commission, C.C.A.7, 120 F.2d 625, 633, 634.

**FAIR RETURN ON INVESTMENT.** A fair return on value of property used and useful in carrying on the enterprise, performing the service or supplying the thing for which the rates are paid. Lubin v. Finkelstein, 82 N.Y.S.2d 329, 335.

**FAIR SALE.** In foreclosure and other judicial proceedings, this means a sale conducted with fairness and impartiality as respects the rights and interests of the parties affected. Lalor v. McCarthy, 24 Minn. 419. A sale at a price sufficient to warrant confirmation of approval when it is required.

**FAIR TRIAL.** A hearing by an impartial and disinterested tribunal; a proceeding which hears before it condemns, which proceeds upon inquiry,



## FAIR TRIAL

and renders judgment only after trial. *Johnson v. City of Wildwood*, 116 N.J.L. 462, 184 A. 616, 617.

A legal trial or one conducted in all material things in substantial conformity to law. *Stacey v. State*, 79 Okl.Cr. 417, 155 P.2d 736, 739; A trial which insures substantial justice, *Capone v. Union County Park Commission*, 9 N.J. Misc.R. 1105, 156 A. 782, 783; A trial without prejudice to the accused, *State v. Smith*, 119 W.Va. 347, 193 S.E. 573, 574; an orderly trial before an impartial jury, and judge whose neutrality is indifferent to every factor in trial but that of administering justice. *State ex rel. Brown v. Dewell*, 131 Fla. 566, 179 So. 695, 698, 115 A.L.R. 857. One conducted according to due course of law; a trial before a competent and impartial jury. *Railroad Co. v. Cook*, 37 Neb. 435, 55 N.W. 943; *Railroad Co. v. Gardner*, 19 Minn. 136, Gil. 99, 18 Am.Rep. 334. One conducted according to rules of common law except in so far as it has been changed by statute. *Di Maio v. Reid*, 132 N.J.L. 17, 37 A.2d 829, 830. One conducted in substantial conformity to law. *Sunderland v. U. S.*, C.C.A.Neb., 19 F.2d 202, 216; *People v. Ephraim*, 77 Cal.App. 29, 245 P. 769, 774. One where accused's legal rights are safeguarded and respected. *Levinson v. Mooney*, 128 N.J.L. 569, 27 A.2d 9, 10; *Garrett v. State*, 187 Miss. 441, 193 So. 452, 458; *Johnson v. City of Wildwood*, 116 N.J.L. 462, 184 A. 616.

A full and fair trial, required in order that a foreign judgment against a citizen be accorded credit in the courts of the United States, means not a summary proceeding, though sanctioned by the law of the forum, but an opportunity to be heard on the proof, where it is apparent that the cause involves questions of fact, and to have it considered by an unprejudiced court. *Banco Minero v. Ross*, 106 Tex. 522, 172 S.W. 711, 714.

Essential factors are a fair and impartial jury and a learned and upright judge to instruct jury and pass upon legal questions, and an atmosphere of calm in which witnesses can deliver their testimony without fear and intimidation, in which attorneys can assert defendant's rights freely and fully, and in which truth may be received and given credence without fear of violence. *Floyd v. State*, 166 Miss. 15, 148 So. 226, 232. A trial before an impartial judge, an impartial jury, and in an atmosphere of judicial calm; that, while the judge may and should direct and control the proceedings, and may exercise his right to comment on the evidence, yet he may not extend his activities so far as to become in effect either an assisting prosecutor or a thirteenth juror. *Goldstein v. U. S.*, C.C.A.Mo., 63 F.2d 609, 613; an adequate hearing and an impartial tribunal, free from any interest, bias, or prejudice. *The Reno*, C.C. A.N.Y., 61 F.2d 966, 968.

**FAIR USAGE.** The doctrine of "fair usage" means that the matter which was under copyright was neither copied nor adopted, but that the uncopyrightable underlying idea was used, since a theme or idea is not copyrightable. *Towle v. Ross*, D.C.Or., 32 F.Supp. 125, 127.

**FAIR VALUATION.** Present market value; such sum as the property will sell for to a purchaser desiring to buy, the owner wishing to sell; such a price as a capable and diligent business man could presently obtain from the property after conferring with those accustomed to buy such property; the amount the property would bring at a sale on execution shown to have been in all respects fair and reasonable; the fair market value of the property as between one who wants to purchase and one who wants to sell the property. *Market St. Nat. Bank v. Huff*, 319 Pa. 286, 179 A. 582, 583.

As used in Bankruptcy Act the term means fair cash value or fair market value of property as between one who wants to purchase and one who wants to sell. *Harman v. Defatta*, 182 La. 463, 162 So. 44; *Trenton Trust Co. v. Carlisle Tire Corporation*, 110 Conn. 125, 147 A. 366, 367; fair market value, or value that can be made promptly ef-

fective by owner of property for payment of debts. *Nicolai-Neppach Co. v. Smith*, 154 Or. 450, 58 P.2d 1016, 1019, 107 A.L.R. 1124; *In re Sedalia Farmers' Coop. Packing & Produce Co.*, D.C.Mo., 268 F. 898, 900; present market value of property and the value that the debtor might realize thereon if permitted to continue in business, *Arnold v. Knapp*, 75 W.Va. 804, 84 S.E. 895, 899; value of property taken in relation to business of debtor as a going concern, *In re Gibson Hotels*, D.C.W.Va., 24 F.Supp. 859, 863. It is not the value that would or did prevail at sacrificed or forced sale. *Bank of Forest v. Capital Nat. Bank*, 176 Miss. 163, 169 So. 193, 198. Where no definite market value can be established and expert testimony must be relied on, fair valuation is the amount which the property ought to give to a going concern as a fair return, if sold to some one who is willing to purchase under ordinary selling conditions. *In re Kobre*, D.C.N.Y., 224 F. 106, 117. The term is not synonymous with "salable value." *In re Crystal Ice & Fuel Co.*, D.C.Mont., 283 F. 1007, 1009.

In determining "fair valuation" of property, court should consider all elements entering into the intrinsic value, as well as the selling value, and also the earning power of the property. *In re Gibson Hotels*, D.C.W.Va., 24 F.Supp. 859, 863; the "fair valuation" of accounts is what with reasonable diligence can be realized from their collection within a reasonable time, *Matthews v. Concrete Engineering Co.*, 228 Iowa 493, 292 N.W. 64, 65, 133 A.L.R. 1270.

**FAIR VALUE.** Present market value; such sum as the property will sell for to a purchaser desiring to buy, the owner wishing to sell; such a price as a capable and diligent business man could presently obtain from the property after conferring with those accustomed to buy such property; the amount the property would bring at a sale on execution shown to have been in all respects fair and reasonable; fair market value of the property as between one who wants to purchase and one who wants to sell the property. *Market St. Nat. Bank v. Huff*, 319 Pa. 286, 179 A. 582, 583.

"Actual value," "market value," "fair value," and the like, may be used as convertible terms. *Kerr v. Clinchfield Coal Corporation*, 169 Va. 149, 192 S.E. 741, 744.

In determining depreciation, "fair value" implies consideration of all factors material in negotiating sale and purchase of property, such as wear, decay, deterioration, obsolescence, inadequacy, and redundancy. *Idaho Power Co. v. Thompson*, D.C.Idaho, 19 F.2d 547, 566.

Price which a seller, willing but not compelled to sell, would take, and a purchaser, willing but not compelled to buy, would pay, *Masonite Corporation v. Robinson-Slagle Lumber Co.*, D.C.La., 3 F.Supp. 754, 755; *U. S. v. Cray*, D.C.Va., 2 F.Supp. 870, 879. Price which buyers of the class which would be interested in buying property would be justified in paying for it. *In re Crane's Estate*, 344 Pa. 141, 23 A.2d 851, 855. Value which willing purchaser and seller would likely agree on. *In re Aranoff & Son*, D.C.Ga., 1 F.Supp. 708, 710.

As affecting stockholder's right to participate in re-organization plan, "fair value" of corporate debtor's property, connotes fair market value in dealing with certain kinds of property, and in certain cases stock exchange quotations are the best index of value, but bonds of Republic of Cuba, secured by apparently adequate pledges of revenues, should be valued at par rather than market price in absence of specific showing that Cuba might default. *In re Warren Bros. Co.*, D.C.Mass., 39 F.Supp. 381, 384, 385.

Dissenting stockholder is entitled on combination or merger of corporations to "fair value" of stock determined by an ascertainment of all assets and liabilities of corporation, intrinsic value of stock, and not merely its market value, when traded in by the public. *American General Corporation v. Camp*, 171 Md. 629, 190 A. 225, 228.

For purpose of credit upon a deficiency claim arising out of a mortgage foreclosure proceeding, that sum which the mortgagee purchaser ought, under all circumstances, reasonably expect to realize from the acquired premises either by way of sale in the future or upon the basis of



a permanent investment. *Fidelity Union Trust Co. v. Ritz Holding Co.*, 126 N.J.Eq. 148, 8 A.2d 235, 245.

Reproduction cost of a public utility's property is an essential element in ascertainment of its "fair value". *Peoples Natural Gas Co. v. Pennsylvania Public Utility Commission*, 153 Pa.Super. 475, 34 A.2d 375, 380.

Under Deficiency Judgment Act, fair market value at time of execution sale as based on testimony of qualified witnesses. *Market St. Nat. Bank v. Huff*, 319 Pa. 286, 179 A. 582, 583.

Within a Revenue Act levying an excise tax on corporations measured by the fair value of their capital stock, "fair value" is the exact equivalent of "actual value." *Central Union Trust Co. of New York v. Edwards*, C.C.A. N.Y., 287 F. 324, 327.

Within statute requiring fair value of mortgaged premises to be credited on mortgage debt, interest, and costs before confirmation of foreclosure sale or rendition of deficiency judgment, that amount which under all circumstances of case will not shock conscience of court. *Northwestern Loan & Trust Co. v. Bidinger*, 226 Wis. 239, 276 N.W. 645, 648.

*Rate Purposes*

"Fair value" rule requires that consideration be given to original cost of construction, amount expended in permanent improvements, amount and market value of bonds and stock, present cost of construction, probable earning capacity under rates prescribed, operating expenses, accrued depreciation, market value of land, working capital, going concern value, and future costs of construction. *State ex rel. and to Use of City of St. Louis v. Public Service Commission*, 326 Mo. 751, 34 S.W.2d 507, 510.

A "fair value" for rate making is not the value for exchange, but such a value found after considering all relevant facts as will give the public utility a reasonable return and the public a reasonable rate. It is one which will enable the public utility to realize the expense of operating and keeping up its road and meeting its financial obligations for investments with a reasonable excess for dividends and ordinary contingencies. *City of Rochester v. New York State Rys.*, 127 Misc. 766, 217 N.Y.S. 452, 458.

"Fair value" must include increase in value over original cost. *Northern States Power Co. v. Public Service Commission*, 73 N.D. 211, 13 N.W.2d 779, 786, 787.

"Fair value of the property" is not necessarily synonymous with "reconstruction cost depreciated." *State ex rel. Oregon-Washington Water Service Co. v. Department of Public Works of Washington*, 184 Wash. 45, 51 P.2d 610, 612.

Historical cost, provided consideration is given to changes in price level, reproduction cost at time of inquiry, less accrued depreciation, provided reproduction cost of components can be found with reasonable certainty, financial history of utility, and other relevant facts, may be considered in determining "fair value" of a utility's property. *State v. Tri-State Telephone & Telegraph Co.*, 204 Minn. 516, 284 N.W. 294, 306.

Reproduction cost of a utility is an element in ascertainment of "fair value". *Solar Electric Co. v. Pennsylvania Public Utility Commission*, 137 Pa.Super. 325, 9 A.2d 447, 456, 460, 463, 464, 466.

Reproduction cost of telephone company's property, less actual depreciation, is not the legal equivalent of "fair value" but is merely evidence of value. *New York Telephone Co. v. Prendergast*, D.C.N.Y., 36 F.2d 54, 59.

The book cost of a telephone company's exchange plant and the "reproduction cost new" basis are recognized methods of ascertaining "fair value" of the company's property. *Application of Northwestern Bell Tel. Co.*, 69 S.D. 36, 6 N.W.2d 165, 169.

The "fair value" as a rate base and the "value" in money for purposes of taxation of a public utility are not necessarily the same. *State ex rel. Public Service Commission v. Southern Pac. Co.*, 95 Utah 84, 79 P.2d 25, 34.

The "fair value" of a utility's property is the cost of reproduction, less depreciation at time in question, whether more or less than original cost. *Citizens' Gas Co. of Hannibal v. Public Service Commission of Missouri*, D.C.Mo., 8 F.2d 632, 633. It is the reasonable value of property, used and useful, for the service of the public at the time the

property is being so used. *Northern States Power Co. v. Board of Railroad Com'rs*, 71 N.D. 1, 298 N.W. 423, 431.

Value of additions completed and in use by a utility should be allowed in rate case in determining "fair value". *Northern States Power Co. v. Board of Railroad Com'rs*, 71 N.D. 1, 298 N.W. 423, 431.

**FAIRLY.** Equitably, honestly, impartially. *Looney v. Elliott*, Tex.Civ.App., 52 S.W.2d 949, 952. In good faith, *People v. Mancuso*, 255 N.Y. 463, 175 N.E. 177, 179. Justly; rightly. With substantial correctness. Reasonably. *Conway v. Robinson*, 216 Ala. 495, 113 So. 531, 533. Equitably. *Satcher v. Satcher's Adm'r*, 41 Ala. 40, 91 Am.Dec. 498. "Fairly merchantable" conveys the idea of mediocrity in quality, or something just above it. *Warner v. Ice Co.*, 74 Me. 479.

"Fairly" is not synonymous with "truly," and "truly" should not be substituted for it in a commissioner's oath to take testimony fairly. Language may be truly, yet unfairly, reported; that is, an answer may be truly written down, yet in a manner conveying a different meaning from that intended and conveyed. And language may be fairly reported, yet not in accordance with strict truth. *Lawrence v. Finch*, 17 N.J.Eq. 234.

**FAIRWAY.** A strip of land, where the grass is kept mowed, and at the opposite ends of which are a green and a tee. *Page v. Unterreiner*, Mo. App., 106 S.W.2d 528, 532.

The middle and deepest or most navigable channel. Water on which vessels of commerce habitually move; *Horst v. Columbia Contract Co.*, 89 Or. 344, 174 P. 161, 163. The word "thalweg" (*q.v.*), from which it is apparently derived, has reference more particularly to navigable channels as boundaries. *Johannson v. American Tugboat Co.*, 147 P. 1147, 85 Wash. 212.

**FAIT.** L. Fr. Anything done. A deed; act; fact.

A deed lawfully executed. *Com. Dig.*

*Feme (or Femme) de fait.* A wife *de facto*.

**FAIT ENROLLE.** A deed enrolled, as a bargain and sale of freeholds. 1 Keb. 568.

**FAIT JURIDIQUE.** In French law. A juridical fact. One of the factors or elements constitutive of an obligation.

**FAITH.** Confidence; credit; reliance. Thus, an act may be said to be done "on the faith" of certain representations.

Belief; credence; trust. Thus, the constitution provides that "full faith and credit" shall be given to the judgments of each state in the courts of the others.

Purpose; intent; sincerity; state of knowledge or design. This is the meaning of the word in the phrases "good faith" and "bad faith."

Scotch Law. A solemn pledge; an oath. "To make faith" is to swear, with the right hand uplifted, that one will declare the truth. 1 Forb. Inst. pt. 4, p. 235.

**FAITHFUL.** Trusty, honest, trustworthy. *Wright v. Fidelity & Deposit Co. of Maryland*, 176 Okl. 274, 54 P.2d 1084, 1087.

As used in the rule that executors must be "faithful," means that they must act in good faith. *In re McCafferty's Will*, 147 Misc. 179, 264 N.Y.S. 38.

The guaranty required by statute and bond of "faithful" discharge of school district treasurer's duties is a guaranty not only of treasurer's personal honesty but also of his

## FAITHFUL

competency, skill and diligence in discharge of his duties. Thurston County, to Use of Vesely, v. Chmelka, 138 Neb. 696, 294 N.W. 857, 863, 132 A.L.R. 1077.

Where a public officer gives a bond for the "faithful" discharge of his duties, "faithful" implies that he has assumed that measure of responsibility laid on him by law had no bond been given. Thurston County, to Use of Vesely, v. Chmelka, 138 Neb. 696, 294 N.W. 857, 863, 132 A.L.R. 1077; London & Lancashire Indemnity Co. of America v. Community Savings & Loan Ass'n, 102 Ind.App. 665, 4 N.E. 2d 688, 693.

**FAITHFULLY.** Conscientious diligence or faithfulness, adequate to due execution of object of bailment, or just regard of adherence to duty, or due observance of undertaking of contract. Commonwealth v. Polk, 256 Ky. 100, 75 S.W.2d 761, 765. Diligently, and without unnecessary delay;—not synonymous with "fairly" or "impartially." Den v. Thompson, 16 N.J.L. 72, 73. Truthfully, sincerely, accurately. Kansas City, M. & O. R. Co., of Texas v. Whittington & Sweeney, Tex.Civ.App., 153 S.W. 689, 690.

As used in bonds of public and private officers, this term imports not only honesty, but also a punctilious discharge of all the duties of the office, requiring competence, diligence, and attention, without any malfeasance or non-feasance, aside from mere mistakes. State v. Chadwick, 10 Or. 468; Hoboken v. Evans, 31 N.J.L. 343; Harris v. Hanson, 11 Me. 245.

**FAITOURS.** Idle persons; idle livers; vagabonds. *Termes de la Ley*; Cowell; Blount; Cunningham, Law Dict.

**FAKE.** To make or construct. A "faked alibi" is a made, manufactured, or false alibi. U. S. v. Heitler, D.C.Ill., 274 F. 401, 409.

**FAKER.** A petty swindler. National Automobile Ass'n v. Strunk, 122 Neb. 890, 240 N.W. 294.

**FAKIR.** A term applied among the Mohammedans to a kind of religious ascetic or beggar, whose claim is that he "is in need of mercy, and poor in the sight of God, rather than in need of worldly assistance." Hughes, Dict. of Islam.

Sometimes spelled *Faqueer* or *Fakeer*. It is commonly used in English to designate a person engaged in some useless or dishonest business. Fake is also so used and also to designate the quality of such business.

A street peddler who disposes of worthless wares, or of any goods above their value, by means of any false representation, trick, device, lottery, or game of chance. Mills' Ann.St.Colo. § 1400, '35 C.S.A. c. 48, § 227.

**FALANG.** In old English law. A jacket or close coat. Blount.

**FALCARE.** In old English law. To mow. For "Jus Folcandi", see that title.

*Falcare prata*, to mow or cut grass in meadows laid in for hay. A customary service to the lord by his inferior tenants. Kennett, Gloss.

*Falcata*, grass fresh mown, and laid in swaths. That which was mowed. Kennett, Gloss.; Cowell; Jacobs.

*Falcatio*, a mowing. Bract. fols. 35b, 230.

*Falcator*, a mower; a servile tenant who performed the labor of mowing.

*Falcatura*, a day's mowing. *Falcatura una*. Once mowing the grass.

**FALCARIOUS.** See Falsarius.

**FALCIDIA.** In Spanish law. The Falcidian portion; the portion of an inheritance which could not be legally bequeathed away from the heir, viz., one-fourth.

**FALCIDIAN LAW.** In Roman law. A law on the subject of testamentary disposition.

It was enacted by the people during the reign of Augustus, in the year of Rome 714, on the proposition of the tribune Falcidius. By this law, the testator's right to burden his estate with legacies was subjected to an important restriction. It prescribed that no one could bequeath more than three-fourths of his property in legacies, and that the heir should have at least one-fourth of the estate, and that, should the testator violate this prescript, the heir may have the right to make a proportional deduction from each legatee, so far as necessary. Mackeld.Rom.Law, § 771; Inst. 2, 22; Heinecc.Elem. lib. 2, tit. 22.

A similar principle exists in Louisiana. See Legitime. In some of the states the statutes authorizing bequests and devises to charitable corporations limit the amount which a testator may give, to a certain fraction of his estate.

**FALCIDIAN PORTION.** That portion of a testator's estate which, by the Falcidian law, was required to be left to the heir, amounting to at least one-fourth.

**FALD, or FALDA.** A sheep-fold. Cowell.

**FALDA.** Span. In Spanish law. The slope or skirt of a hill. Fossat v. United States, 2 Wall. 673, 17 L.Ed. 739.

**FALDÆ CURSUS.** In old English law. A fold-course; the course (going or taking about) of a fold. Spelman. A sheep walk, or feed for sheep. 2 Vent. 139.

**FALDAGE.** The privilege which anciently several lords reserved to themselves of setting up folds for sheep in any fields within their manors, the better to manure them, and this not only with their own but their tenants' sheep. Called, variously, "*secta faldare*," "fold-course," "free-hold," "*faldagii*." Cowell; Spelman; Cunningham, Law Dict.

**FALDATA.** In old English law. A flock or fold of sheep. Cowell.

**FALDFEY.** Sax. A fee or rent paid by a tenant to his lord for leave to fold his sheep on his own ground. Blount; Cunningham, Law Dict.

**FALDISDORY.** In ecclesiastical law. The bishop's seat or throne within the chancel.

**FALDSOCA.** Sax. The liberty or privilege of foldage.

**FALDSTOOL.** A place at the south side of the altar at which the sovereign kneels at his coronation. Wharton.

A folding seat similar to a camp stool, made either of wood or metal, sometimes covered with silk or other material. It was used by a bishop when officiating in other than his own cathedral church. Encyc.Dic.

**FALDWORTH.** In Saxon law. A person reckoned old enough to become a member of the decennary, and so subject to the law of frank-pledge. Spelman; Du Fresne.

**FALERÆ.** In old English law. The tackle and furniture of a cart or wain. Blount.

**FALESIA.** In old English law. A hill or down by the sea-side. Co. Litt. 5b; Domesday.

**FALK-LAND.** See Folc-Land.

**FALL, n.** One of the four seasons of the year, embracing the three months commencing with the 1st of September and terminating with the last day of November. *Rosenau v. Lansing*, 113 Or. 638, 232 P. 648; *Horn v. State*, 19 Ala.App. 572, 99 So. 58. But a finding that certain persons occupied a house until the fall of each year has been held ambiguous, since "fall" covers a period of time of upward of three months. *Clegg v. Bishop*, 105 Conn. 564, 136 A. 102, 104.

**FALL, v.** In Scotch law. To lose or loose. To fall from a right is to lose or forfeit it. 1 Kam-es, Eq. 228.

As used in fire policy provision that if building or any part thereof "fall," except as result of fire, all insurance on contents of building should immediately cease, includes any situation where building once erect lies prostrate. *Nalley v. Hanover Fire Ins. Co.*, 56 Ga.App. 555, 193 S.E. 619, 622.

The statute provision concerning holding of courts which fall between January and June, both inclusive, includes any term which begins in June, the word "fall" meaning to come, become, occur, or arise. *West v. F. W. Woolworth Co.*, 214 N.C. 214, 198 S.E. 659, 660.

**FALL OF LAND.** In English law. A quantity of land six ells square superficial measure.

**FALLING.** When the one object descends upon the other, we do not speak of it as colliding with the second, but as "falling" upon it. *Atlas Assur. Co. v. Lies*, 70 Ga.App. 162, 27 S.E.2d 791, 794.

**FALLO.** In Spanish law. The final decree or judgment given in a controversy at law.

**FALLOPIAN TUBE.** An essential part of the female reproductive system, consisting of a narrow conduit, some four inches in length, that extends on each side of a woman's body from the base of the womb to the ovary upon that side. *Smith v. Board of Examiners of Feeble-Minded*, 85 N.J.L. 46, 88 A. 936, 965.

**FALLOW.** Barren or unproductive. *May v. American Trust Co.*, 153 Cal.App. 385, 27 P.2d 101.

**FALLOW-LAND.** Land plowed, but not sown, and left uncultivated for a time after successive crops; land left untilled for a year or more.

**FALLUM.** In old English law. An unexplained term for some particular kind of land. *Cowell*; *Jacob*, L. Dic.

**FALSA DEMONSTRATIO.** In the civil law. False designation; erroneous description of a person or thing in a written instrument. Inst. 2, 20, 30.

**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. *Broom*, Max. 629; 6 Term, 676; 11 Mees. & W. 189; *Cleveland v. Smith*, 2 Story, 291, Fed.Cas.No.2,874. See 1 Greenleaf, Evidence, § 301; 2 Pars. Contr. 62, n.; 4 C. B. 328; 14 C. B. 122; *Sargent v. Adams*, 3 Gray (Mass.) 78, 63 Am.Dec. 718.

**FALSA DEMONSTRATIONE LEGATUM NON PERIMI.** A bequest is not rendered void by an erroneous description. Inst. 2, 20, 30; *Broom*, Max. 645; *Roman Catholic Orphan Asylum v. Emmons*, 3 Bradf. Sur., N.Y., 144, 149.

**FALSA GRAMMATICA NON VITIAT CONCESSIONEM.** False or bad grammar does not vitiate a grant. *Shep. Touch.* 55; 9 Coke, 48a. Neither false Latin nor false English will make a deed void when the intent of the parties doth plainly appear. *Shep. Touch.* 87.

**FALSA MONETA.** In the civil law. False or counterfeit money. Cod. 9, 24.

**FALSA ORTHOGRAPHIA NON VITIAT CHARTAM, CONCESSIONEM.** False spelling does not vitiate a deed. *Shep. Touch.* 55, 87; 9 Coke, 48a; *Wing*, Max. 19; *Bart*, Max. 164.

**FALSARE.** In old English law. To counterfeit. *Quia falsavit sigillum*, because he counterfeited the seal. *Bract. fol.* 276b.

**FALSARIUS (or FALCARIOUS).** A counterfeit-er. *Townsh. Pl.* 260.

**FALSE.** Not true. *State v. Arnett*, 338 Mo. 907, 92 S.W.2d 897, 900; *Sentinel Life Ins. Co. v. Blackmer*, C.C.A.Colo., 77 F.2d 347, 352.

It also means:

Artificial. *U. S. v. Darby*, D.C.Md., 2 F.Supp. 378, 379; *Sentinel Life Ins. Co. v. Blackmer*, C.C.A.Colo., 77 F.2d 347, 352; assumed or designed to deceive. *Sentinel Life Ins. Co. v. Blackmer*, C.C.A.Colo., 77 F.2d 347, 352; *North American Accident Ins. Co. v. Tebbs*, C.C.A.Utah, 107 F.2d 853, 855; contrary to fact. In re *Davis*, 349 Pa. 651, 37 A. 2d 498, 499; counterfeit, *Sentinel Life Ins. Co. v. Blackmer*, C.C.A.Colo., 77 F.2d 347, 352; *North American Accident Ins. Co. v. Tebbs*, C.C.A.Utah, 107 F.2d 853, 855; deceitful; deliberately and knowingly false, *People v. Mangan*, 140 Misc. 783, 252 N.Y.S. 44, 52; designedly untrue, *W. T. Rawleigh Co. v. Brantley*, 97 Miss. 244, 19 So.2d 808, 811, 157 A.L.R. 188; erroneous, *Abel v. Paterno*, 153 Misc. 248, 274 N.Y.S. 749; *Gilbert v. Inter-Ocean Casualty Co. of Cincinnati*, Ohio, 41 N.M. 463, 71 P.2d 56, 59; hypocritical; sham; feigned, *Sentinel Life Ins. Co. v. Blackmer*, C.C.A. Colo., 77 F.2d 347, 352; *North American Accident Ins. Co. v. Tebbs*, C.C.A.Utah, 107 F.2d 853, 855; incorrect, *State v. Arnett*, 338 Mo. 907, 92 S.W.2d 897, 900; intentionally untrue. In re *Venturella*, D.C.Conn., 25 F.Supp. 332, 333; In re *Cleveland*, D.C.Mich., 40 F.Supp. 343; not according to truth or reality. *State v. Arnett*, 338 Mo. 907, 92 S.W. 2d 897, 900; *North American Accident Ins. Co. v. Tebbs*, C.C.A.Utah, 107 F.2d 853, 855; not genuine or real; *U. S. v. Darby*, D.C.Md., 2 F.Supp. 378, 379; *North American Accident Ins. Co. v. Tebbs*, C.C.A.Utah, 107 F.2d 853, 855; uttering falsehood; unvarnished; given to deceit; dishonest, *Wilensky v. Goodyear Tire & Rubber Co.*, C.C.A. Mass., 67 F.2d 389, 390; wilfully and intentionally untrue. In re *Brown*, D.C.N.Y., 37 F.Supp. 526, 527; *North American Accident Ins. Co. v. Tebbs*, C.C.A.Utah, 107 F.2d 853, 855.

Court's substitution in charge of term "fraudulent" in place of term "false" held not misleading. *Wood v. Williams*, Tex.Civ.App., 46 S.W.2d 332, 334.

## FALSE

In law, this word usually means something more than untrue; it means something designedly untrue and deceitful, and implies an intention to perpetrate some treachery or fraud. *Hatcher v. Dunn*, 102 Iowa, 411, 71 N.W. 343, 36 L.R.A. 689; *Mason v. Association*, 18 U.C.C.P. 19; *State v. Leonard*, 73 Or. 451, 144 P. 113, 118; *State v. Smith*, 63 Vt. 201, 22 A. 604. It implies either conscious wrong or culpable negligence, and signifies knowingly or negligently untrue. *United States v. Ninety-Nine Diamonds*, C.C.A. Minn., 139 F. 961, 72 C.C.A. 9, 2 L.R.A., N.S., 185.

The word "false" has two distinct and well-recognized meanings: (1) intentionally or knowingly or negligently untrue; (2) untrue by mistake or accident, or honestly after the exercise of reasonable care. *Metropolitan Life Ins. Co. v. Adams*, D.C.Mun.App., 37 A.2d 345, 350. In jurisprudence, "false" and "falsely" are often used to characterize a wrongful or criminal act, such as involves an error or untruth, intentionally or knowingly put forward. A thing is called "false" when it is done, or made, with knowledge, actual or constructive, that it is untrue or illegal, or is said to be done falsely when the meaning is that the party is in fault for its error. *Fouts v. State*, 113 Ohio St. 450, 149 N.E. 551, 554; *Monahan v. Mutual Life Ins. Co. of New York*, 192 Wis. 102, 212 N.W. 269, 271.

The word "false" in its juristic use implies something more than a mere untruth, *Dombroski v. Metropolitan Life Ins. Co.*, 126 N.J.L. 545, 19 A.2d 678, 680.

The word "false" sometimes connotes an intent to deceive, *People v. Wahl*, 39 Cal.App.2d Supp. 771, 100 P.2d 550, 551; *Salt's Textile Mfg. Co. v. Ghent*, 107 Conn. 211, 139 A. 694, 695.

**FALSE ACTION.** See Feigned Action.

**FALSE AND FRAUDULENT.** The phrase "false and fraudulent" in Food and Drugs Act of 1906 means that the statement must have been made with actual intent to deceive. *United States v. Dr. David Roberts Veterinary Co.*, C.C.A.Wis., 104 F.2d 785, 788.

To amount to actionable "false and fraudulent representations", they must have been as to existing fact or known by one making them, from his superior knowledge, to have been untrue when made. *Burlison v. Weis*, Mo. App., 152 S.W.2d 201, 203.

**FALSE AND MISLEADING STATEMENT.** Failure to state material fact made letter a "false and misleading statement" within rule of Securities and Exchange Commission. *Securities and Exchange Commission v. Okin*, C.C.A.N.Y., 132 F.2d 784, 787.

**FALSE ANSWER.** In pleading. A sham answer; one which is false in the sense of being a mere pretense set up in bad faith and without color of fact. *Howe v. Elwell*, 57 App.Div. 357, 67 N.Y. Supp. 1108; *Farnsworth v. Halstead*, Sup., 10 N.Y. S. 763.

**FALSE ARREST.** Any unlawful physical restraint by one of another's liberty, whether in prison or elsewhere. *Gariety v. Fleming*, 121 Kan. 42, 245 P. 1054, 1055; *Russell v. Levinsohn*, 5 N.J. Misc. 765, 138 A. 205; *Great Atlantic & Pacific Tea Co. v. Phillips*, 253 Ky. 126, 69 S.W.2d 5.

**FALSE CHARACTER.** Personating the master or mistress of a servant, or any representative of such master or mistress, and giving a false character to the servant is an offense punishable in England with a fine of £20. St. 32 Geo. III. c. 56.

**FALSE CHECKS.** Obtaining money by means and use of a check upon a bank, in which the drawer at the time had no funds or credit with

which to meet the same, and which he had no reason to believe would honor such check upon presentation at said bank for payment, is obtaining money by use of a false check. *Gunther v. State*, 42 Okl.Cr. 129, 276 P. 237, 238.

**FALSE CLAIM,** in the forest law, was where a man claimed more than his due, and was amerced and punished for the same. Manw. c. 25; Tomlins.

As used in a statute making it a felony to present to any state, county, or city board or officer a false or fraudulent claim, a "false claim" is something more than a merely excessive claim. *Burke v. Knox*, 59 Utah, 596, 206 P. 711, 714. The act of knowingly making untruthful statements of material facts in "reasons for refund" of excise taxes, supported by fictitious copies of letters and cards attached thereto, constitutes "false claim" against government, within Criminal Code, § 35 (18 USCA §§ 80, 82-86). *Evans v. U. S.*, C.C.A.S.C., 11 F.2d 37, 39.

**FALSE DECRETALS.** A collection of canon law, dated about the middle of the 9th century, probably by a Frankish ecclesiastic who called himself Isadon. It continued to be the chief repertory of the canon law till the 15th century when its untrustworthy nature was demonstrated.

**FALSE DEMONSTRATION.** Where description of person or thing in will is partly true and partly false, if part which is true describes subject or object of gift with sufficient certainty, untrue part may be rejected and gift sustained, under doctrine of "false demonstration." *In re Heins' Estate*, 132 Cal.App. 131, 22 P.2d 549.

**FALSE ENTRY.** An entry in books of a bank or trust company which is intentionally made to represent what is not true or does not exist, with intent either to deceive its officers or a bank examiner or to defraud the bank or trust company. *Agnew v. U. S.*, 165 U.S. 36, 17 S.Ct. 235, 41 L.Ed. 624; *Fricke v. State*, 112 Neb. 767, 201 N.W. 667, 670; *Commonwealth v. Bardolph*, 111 Pa.Super. 85, 169 A. 574, 575; *U. S. v. Mulloney*, D.C.Mass., 5 F.Supp. 77, 79.

An untrue statement of items of account by written words, figures, or marks. *United States v. Herrig*, D.C. Mont., 204 F. 124, 125. One making an original false entry makes a false entry in every book which is made up in regular course from the entry or entries from the original book of entry. *State v. Davidson*, 46 N.D. 564, 180 N.W. 31, 32.

Where entry upon books of bank of matter contained in deposit slip is not true it is a "false entry," *Adams v. State*, 179 Ark. 1047, 20 S.W.2d 130, 133.

Entries made by cashier of balance in insurance company's account after deducting unauthorized withdrawals made by cashier as agent of insurance company held "false entries" within statute. 18 U.S.C.A. § 1005. *Laws v. U. S.*, C.C.A.Okl., 66 F.2d 870, 873.

**FALSE FACT.** In the law of evidence. A feigned, simulated, or fabricated fact; a fact not founded in truth, but existing only in assertion; the deceitful semblance of a fact.

**FALSE IMPERSONATION.** To impersonate another falsely, and in such assumed character to do any act whereby any benefit might accrue to the offender or to another person. *People v. Horkans*, 109 Colo. 177, 123 P.2d 824.

**FALSE IMPRISONMENT.** See Imprisonment.

**FALSE INSTRUMENT.** A counterfeit; one made in the similitude of a genuine instrument and purporting on its face to be such. *U. S. v. Howell*, 11 Wall. 435, 20 L.Ed. 195; *U. S. v. Owens*, C.C.Tenn., 37 Fed. 115; *State v. Willson*, 28 Minn. 52, 9 N.W. 28.

**FALSE JUDGMENT.** In old English law. A writ which lay when a false judgment had been pronounced in a court not of record, as a county court, court baron, etc. *Fitzh. Nat. Brev.* 17, 18. In old French law. The defeated party in a suit had the privilege of accusing the judges of pronouncing a false or corrupt judgment, whereupon the issue was determined by his challenging them to the combat or *duellum*. This was called the "appeal of false judgment." *Montesq. Esprit des Loix*, liv. 28, c. 27.

**FALSE LATIN.** When law proceedings were written in Latin, if a word were significant though not good Latin, yet an indictment, declaration, or fine should not be made void by it; but if the word were not Latin, nor allowed by the law, and it were in a material point, it made the whole vicious. (5 Coke, 121; 2 Nels. 830.) Wharton.

**FALSE LIGHTS AND SIGNALS.** Lights and signals falsely and maliciously displayed for the purpose of bringing a vessel into danger. See stat. 24 & 25 Vict. c. 97, § 47; 18 U.S.C.A. § 488.

**FALSE MAKING.** An essential element of forgery, where material alteration is not involved. Term has reference to manner in which writing is made or executed rather than to its substance or effect. A falsely made instrument is one that is fictitious, not genuine, or in some material particular something other than it purports to be and without regard to truth or falsity of facts stated therein. *Wright v. U. S.*, C.A.Ariz., 172 F.2d 310, 311.

**FALSE NEWS.** Spreading false news, whereby discord may grow between the queen of England and her people, or the great men of the realm, or which may produce other mischiefs, still seems to be a misdemeanor, under St. 3 Edw. I. c. 34. *Steph. Cr. Dig.* § 95.

**FALSE OATH.** To defeat discharge in bankruptcy "false oath" must contain all the elements involved in "perjury" at common law, namely, an intentional untruth in matter material to a material issue, *In re Bergman*, D.C.N.Y., 6 F.Supp. 898, 901, it must have been knowingly and fraudulently made. *In re Stone*, D.C.N.H., 52 F.2d 639, 641. See, also, *Perjury*.

**FALSE OR FRAUDULENT CLAIM.** A "false or fraudulent claim" within meaning of statute providing for punishment of any one receiving proceeds of fraudulent audit or payment, since to be "false or fraudulent," must be a claim for services or materials not actually rendered or furnished. *People v. Dally*, 175 Misc. 680, 24 N.Y.S.2d 692, 695.

**FALSE PAPER.** In a statute defining an offense of willfully and knowingly subscribing to "false papers" to deceive bank examiners, the term refers not to one which is forged or spurious, but to a paper duly subscribed by the person purporting to sign it, and containing an untrue statement in the body of the instrument. *State v. Pierson*, 101 Wash. 318, 172 P. 236, 238.

**FALSE PERSONATION.** The criminal offense of falsely representing some other person and acting in the character thus unlawfully assumed, in order to deceive others, and thereby gain some profit or advantage, or enjoy some right or privilege belonging to the one so personated, or subject him to some expense, charge, or liability. See 4 *Steph. Comm.* 181, 290.

**FALSE PLEA.** See Sham Plea.

**FALSE PRETENSES.** Designed misrepresentation of existing fact or condition whereby person obtains another's money or goods. *People v. Gould*, 363 Ill. 348, 2 N.E.2d 324.

Elements of offense include actual fraud, *State v. Nuser*, 199 Minn. 315, 271 N.W. 811, 812; *State v. Mayer*, 196 N.C. 454, 146 S.E. 64, 65; assertion of a present or past fact, *Slaughter v. Commonwealth*, 222 Ky. 225, 300 S.W. 619, 621, 56 A.L.R. 1209; *State v. Nuser*, 199 Minn. 315, 271 N.W. 811, 812, falsity of representation, *State v. Mayer*, 196 N.C. 454, 146 S.E. 64, 65; *People v. Leaverton*, 107 Cal. App. 51, 289 P. 890, 892; intent to cheat and defraud. *Commonwealth v. Campbell*, 116 Pa.Super. 180, 176 A. 246, 250; *State v. Johnson*, 195 N.C. 506, 142 S.E. 775, 776; knowledge of the falsity, fraud. *Couch v. State*, 31 Ala.App. 586, 20 So.2d 57, 58; *Dennis v. Thomson*, 240 Ky. 727, 43 S.W.2d 18, 25; obtaining of property or something of value. *State v. Johnson*, 195 N.C. 506, 142 S.E. 775, 776; *Couch v. State*, 31 Ala.App. 586, 20 So.2d 57, 58; perpetration of fraud by means of such false pretenses, *State v. Hintz*, 200 Wis. 636, 229 N.W. 54, 55; reliance on representation, *State v. Howley*, 220 N.C. 113, 16 S.E.2d 705, 708, 709; use of pretenses or false representations, *Dennis v. Thomson*, 240 Ky. 727, 43 S.W.2d 18, 25; *State v. Mayer*, 196 N.C. 454, 146 S.E. 64, 65.

Other definitions of "false pretenses" include:

False representation of existing fact or condition by which a party obtains property of another, *People ex rel. Courtney v. Sullivan*, 363 Ill. 34, 1 N.E.2d 206, 208; false representation of existing fact, whether by oral or written words or conduct, calculated to deceive, intended to deceive, and does in fact deceive, whereby one person obtains value from another without compensation, *Commonwealth v. Johnson*, 312 Pa. 140, 167 A. 344, 345, 89 A.L.R. 333; *State v. Alick*, 62 S.D. 220, 252 N.W. 644; false representation of existing or past fact calculated to induce confidence on part of one to whom representation is made, and accompanied by or blended with a promise to do something in future, *State v. Parkinson*, 181 Wash. 69, 41 P.2d 1095, 1097; false representation of existing fact, made with knowledge of falsity, with intent that party to whom it is made should act upon it, and acted upon by such party to his detriment. *Griffith v. State*, 93 Ohio St. 294, 112 N.E. 1017, 1018; *State v. Hathaway*, 168 Wis. 518, 170 N.W. 654, 656; *State v. Whitney*, 43 Idaho, 745, 254 P. 525, 526; *Smith v. State*, 74 Fla. 594, 77 So. 274, 276; false representation of past or existing fact, made with knowledge of falsity, with intent to deceive and defraud, and which

## FALSE PRETENSES

is adapted to deceive person to whom made, *State v. Alick*, 62 S.D. 220, 252 N.W. 644; false representations and statements, made with a fraudulent design to obtain money, goods, wares, or merchandise, with intent to cheat, 2 *Bouv. Inst.* no. 2308; false statement made with knowledge of its falsity, which is intended to deceive, and which in fact does deceive, and injury results, *Morris Plan Bank of Richmond v. Henderson*, D.C.N.C., 57 F.2d 326, 327; fraudulent representation of fact by one who knows it not to be true as is adapted to induce person to whom made to part with something of value, *Fisher v. State*, 161 Ark. 586, 256 S.W. 858, 860; *State v. Tanner*, 22 N.M. 493, 164 P. 821, 822, L.R.A.1917E, 849; *State v. Luff*, 1 *Boyce (Del.)* 152, 74 A. 1079, 1080; *State v. Barr*, 63 Idaho 59, 117 P.2d 282, 286; misrepresentation of past fact, knowingly made to induce another to part with his property, *People v. Martin*, 372 Ill. 484, 24 N.E.2d 380, 381, 382; misstatement of fact, *Carr v. State*, 60 Ga.App. 590, 4 S.E.2d 500, 501; representation of some fact or circumstance, calculated to mislead or deceive, which is not true, *State v. Grant*, 86 Iowa 216, 53 N.W. 120; *Commonwealth v. McKnight*, 289 Mass. 530, 195 N.E. 499, 506.

A "false pretense" must be as to an existing or past fact. *State v. Neal*, 350 Mo. 1002, 169 S.W.2d 686, 689; *Commonwealth v. Becker*, 151 Pa.Super. 169, 30 A.2d 195, 197.

A pretense is the holding out or offering to others something false and feigned. This may be done either by words or actions, which amount to false representations. In fact, false representations are inseparable from the idea of a pretense. Without a representation which is false there can be no pretense. *State v. Joaquin*, 43 Iowa, 132.

Gist of offense of "obtaining money by false pretenses" is the fraud and deception by the perpetrator, his motive, and the result—the fact that a person was deceived and defrauded. *Frazier v. Commonwealth*, 291 Ky. 467, 165 S.W.2d 33, 34.

Giving of worthless check is, in itself, "false pretense". *State v. Augustine*, 114 W.Va. 143, 171 S.E. 111, 113; *Laird v. Employers Liability Assur. Corporation, Limited*, of London, England, 2 *Terry* 216, 18 A.2d 861, 862.

In "false pretenses" owner intends to part with his property in money or chattel but it is obtained from him by fraud. *People v. Santora*, 51 Cal.App.2d 707, 125 P.2d 606, 608.

One distinction between "embezzlement" and "false pretenses" is that in the former case the defendant does not have title to the property, while in the latter, he has. *State v. Serkau*, 128 Conn. 153, 20 A.2d 725, 727.

### Confidence game distinguished

A "confidence game" is any swindling operation in which advantage is taken of the confidence reposed by the victim in the swindler. It consists of gaining the possession of money or property by means of some trick, device, or swindling operation in which advantage is taken of the confidence of the victim reposed in the swindler. In obtaining money by "false pretenses," the false pretenses used must have been believed and relied on by the defrauded party and been the means of inducing the victim to part with his property. *People v. Blume*, 345 Ill. 524, 178 N.E. 48, 52.

"Confidence game" is not established by mere proof that property has been obtained by false pretense. *Clark v. State*, 53 Ariz. 416, 89 P.2d 1077, 1080.

### Larceny and false pretenses distinguished

In larceny owner has no intention to part with his property, although he may intend to part with possession, while in false pretenses the owner does intend to part with the property but it is obtained from him by fraud. *People v. Schwartz*, 43 Cal.App. 696, 185 P. 686, 687. *Roberts v. State*, 181 Ind. 520, 104 N.E. 970, 971.

In larceny owner has no intention to part with title to and possession of property taken, while in false pretenses he does so intend, but it is obtained from him by fraud. *Simmons v. State*, 165 Md. 155, 167 A. 60, 64.

Only a very narrow distinction exists between "larceny" and "false pretense"; the character of the crime depending on the intention of the parties. *Riley v. State*, 64 Okl. Cr. 183, 78 P.2d 712, 716.

The intention of owner of property not to part with title when relinquishing possession of property is vital point to be determined in distinguishing between "larceny by fraud" and obtaining property by "false pretenses". *Dobson v. State*, 74 Okl.Cr. 341, 126 P.2d 95, 101.

### Obtaining money or property by false pretenses

Elements are intent to defraud, actual fraud, false pretense, and fraud resulting therefrom, *Simmons v. State*, 165 Md. 155, 167 A. 60, 64; false pretenses, that property was obtained thereby, that false pretenses were made with intent to cheat and defraud, and that money was paid in reliance upon and under inducement of false pretenses, *People v. Sloane*, 165 Misc. 444, 300 N.Y.S. 1032, 1035.

It is sufficient if false pretenses are a part of the moving cause, and, without them, the defrauded party would not have parted with the property. *State v. Faulkner*, 139 Kan. 665, 33 P.2d 175, 177.

The distinction between "obtaining money by false pretenses" and forgery is that in the former, the acquisition of the money is the principal thing, while in forgery the making, altering, uttering, or publishing of the written instrument is the principal part, and money need not necessarily be obtained. *State v. Hobi*, 108 Kan. 261, 194 P. 921, 924.

The false representations may be made by implication. *Johnson v. People*, 110 Colo. 283, 133 P.2d 789, 792.

The "false pretense" may be the failure to speak when it was necessary to do so. *People v. Etzler*, 292 Mich. 489, 290 N.W. 879, 880.

The "false pretense" must relate to existing fact, or to fact which has theretofore occurred. *Jones v. State*, 236 Ala. 30, 182 So. 404, 405.

**FALSE RECORD.** The Fair Labor Standards Act prohibiting the making of "false records" refers to falsification of payroll records customarily made available to a wage and hour inspector. *United States v. Selman-Reinstein, Inc., D.C. Minn.*, 52 F.Supp. 208, 209, 210.

**FALSE REPRESENTATION.** A representation which is untrue, willfully made to deceive another to his injury. See, also, Deceit and Fraud.

A deceitful representation, or one contrary to the fact, made knowingly and with the design and effect of inducing the other party to enter into the contract to which it relates; a declaration of present intention, false when made, to perform act in future, *Pease & Elliman v. Wegeman*, 223 App.Div. 682, 229 N.Y.S. 398, 400; a representation known to be false by person making it, or made without knowledge as a positive statement of known fact upon which another relied and acted, *Platte Valley Bank v. Lemke*, 141 Neb. 218, 3 N.W.2d 396, 399; a representation of what is true, which nevertheless creates an impression which is false. *Newark Trust Co. v. Lackawanna Inv. Co.*, 88 N.J.Eq. 541, 103 A. 168, 169; *McClellan v. Tobin, Ind.*, 219 Ind. 563, 39 N.E.2d 772, 774; an assertion of knowledge which in fact one does not have, *Tone v. Halsey, Stuart & Co.*, 286 Ill.App. 169, 3 N.E.2d 142, 147; an assertion of something as true which one does not know to be true, *Hargrove v. Henderson*, 108 Cal.App. 667, 292 P. 148; such representations as will deceive persons of ordinary prudence. *Union Central Life Ins. Co. v. Kerron*, 128 Or. 70, 264 P. 453, 455; *Holmberg v. Prudential Savings & Loan Ass'n*, 130 Or. 1, 278 P. 943, 945.

A "false representation" may arise from any conduct capable of being turned into a statement of fact. *Bundesen v. Lewis*, 291 Ill.App. 83, 9 N.E.2d 327, 334.

A "false representation" may be made scienter, so as to afford a right of action in damages, in any of the following ways: (1) With actual knowledge of its falsity; (2) without knowledge either of its truth or falsity; or (3) under circumstances in which the person making it ought to have known if he did not know of its falsity. *Horton v. Tyree*,

104 W.Va. 238, 139 S.E. 737, 738; *Sebastian County Bank v. Gann*, 121 Ark. 145, 180 S.W. 754, 755.

A false representation, within Bankruptcy Act not affected by discharge, must involve moral turpitude or intentional wrong. *Hisey v. Lewis-Gale Hospital, D.C.Va.*, 27 F.Supp. 20, 23.

False statements although future in form may be "false representations" of existing facts and conditions. *National Theatre Supply Co. v. Rigney, Mo.App.*, 130 S.W.2d 258, 263.

To maintain an action for damages for "false representation," the plaintiff, in substance, must allege and must prove by a preponderance of the evidence the following elements: (1) What representation was made; (2) that it was false; (3) that the defendant knew it was false, or else made it without knowledge as a positive statement of known fact; (4) that the plaintiff believed the representation to be true; (5) that the plaintiff relied on and acted upon the representation; (6) that the plaintiff was thereby injured; and (7) the amount of the damages. *Peterson v. Schaberg*, 116 Neb. 346, 217 N.W. 586, 587.

**FALSE RETURN.** See Return.

**FALSE STATEMENT.** Under statutory provision, making it unlawful for officer or director of corporation to make any false statement in regard to corporation's financial condition, the phrase means something more than merely untrue or erroneous, but implies that statement is designedly untrue and deceitful, and made with intention to deceive person to whom false statement is made or exhibited. *State v. Johnston*, 149 S.C. 138, 146 S.E. 657, 660.

As used in bankruptcy statute provision concerning discharge, these words denote or connote guilty scenter on part of bankrupt. *In re Krulewitch, D.C.N.J.*, 60 F.2d 1039, 1041; *Wilensky v. Goodyear Tire & Rubber Co., C.C.A. Mass.*, 67 F.2d 389, 390. They mean an incorrect statement made or acquiesced in with knowledge of incorrectness or with reckless indifference to actual facts and with no reasonable ground to believe it correct. *International Shoe Co. v. Lewine, C.C.A. Miss.*, 68 F.2d 517, 518; statement false to bankrupt's knowledge and made with fraudulent intent, *In re Johnson, D.C.Conn.*, 1 F.Supp. 649, 651; statement knowingly false, or made recklessly without honest belief in its truth, and with purpose to mislead or deceive, *Third Nat. Bank v. Schatten, C.C.A. Tenn.*, 81 F.2d 538, 540; *In re Venturella, D.C.Conn.*, 25 F.Supp. 332. They mean more than erroneous or untrue and import intention to deceive, *Schapiro v. Tweede Footwear Corporation, C.C.A. Pa.*, 131 F.2d 876, 878.

Bank's statement which gives result showing bank substantially stronger than it is in fact, constitutes "false statement" within statute defining offense of making or publishing false statement. *Rosenberg v. State*, 212 Wis. 434, 249 N.W. 541.

**FALSE SWEARING.** The essential elements of "false swearing" consist in willfully, knowingly, absolutely and falsely swearing under oath or affirmation on a matter concerning which a party could legally be sworn and on oath administered by one legally authorized to administer it. *Smith v. State*, 66 Ga.App. 669, 19 S.E.2d 168, 169.

To constitute "false swearing", it must appear that matter sworn to was judicially pending or was being investigated by grand jury, or was a subject on which accused could legally have been sworn, or on which he was required to be sworn. *Capps v. Commonwealth*, 294 Ky. 743, 172 S.W.2d 610, 611. The oath need not be taken in a matter judicially pending or any matter material to any point in question. *Capps v. Commonwealth*, 294 Ky. 743, 172 S.W.2d 610, 611. See, also, Perjury.

As used in provision concerning denial of liability under policy, means false statement willfully made with respect to a material matter with intention of thereby deceiving insurer, *Sands v. Bankers' Fire Ins. Co.*, 168 Va. 645, 192 S.E. 617; false statements made knowingly and willfully, with intent to deceive insurer concerning matter material to insurance, *Buccola v. National Fire Ins. Co. of Hartford, Conn.*, 18 La.App. 353, 137 So. 346, 350; knowingly and intentionally stating upon oath what is not true, or statement of a fact as true, which the party does not know to be true, *Harwood v. United States Fire Ins. Co.*, 136 Me. 223, 7 A.2d 899, 902; knowingly and willfully false swearing to deceive or mislead insurers, *Young v. California Ins. Co.*, 55 Idaho 682, 46 P.2d 718, 722; misstatement in proofs of loss willfully made, *Palace Cafe v. Hartford Fire Ins. Co., C.C.A. Ind.*, 97 F.2d 766, 769; statements which are not only untrue but knowingly and intentionally made with knowledge of their untruthfulness or those statements which are made as the truth when party did not know them to be true and had no reasonable grounds for believing them to be true, and statements must be made for purpose of defrauding insurer, *United States Fire Ins. Co. v. Merrick*, 171 Md. 476, 190 A. 335, 342; swearing knowingly and intentionally false and not through mere mistake. *Knight v. Boston Ins. Co.*, 113 N.J.L. 132, 172 A. 594, 595.

"Perjury" and "false swearing" may be interchangeable. *Ray v. Times Pub. Co., Tex.Com.App.*, 12 S.W.2d 165, 166.

The misdemeanor committed in English law by a person who swears falsely before any person authorized to administer an oath upon a matter of public concern, under such circumstances that the false swearing would have amounted to perjury if committed in a judicial proceeding; as where a person makes a false affidavit under the bills of sale acts. *Steph.Cr.Dig.* p. 84. And see *O'Bryan v. State*, 27 Tex.App. 339, 11 S.W. 443. In Texas, it is not necessary, to complete the offense, that the affidavit be used for the purpose for which it was intended. *Welch v. State*, 71 Tex. Cr.R. 17, 157 S.W. 946. Under the Texas and Kentucky statutes, however, "false swearing" is distinct from the common-law crime of perjury; *Commonwealth v. Hinkle*, 177 Ky. 22, 197 S.W. 455, 456; *Shipp v. State*, 81 Tex.Cr.R. 328, 196 S.W. 840, 842; inasmuch as "false swearing" consists in making a false oath on a subject about which the party could legally be sworn, and before a person legally authorized to administer the oath; *Commonwealth v. Bradshaw*, 210 Ky. 405, 276 S.W. 124, 125; it not being necessary, as in perjury, that the testimony be material; *Sullivan v. Commonwealth*, 158 Ky. 536, 165 S.W. 696, 697.

**FALSE TOKEN.** In criminal law. A false document or sign of the existence of a fact,—in general used for the purpose of fraud. See 3 Term, 98; 2 Starkie, Ev. 563; 1 Bish. Cr. L. 585; *People v. Haynes*, 14 Wend., N.Y., 570, 28 Am.Dec. 530; *Smith v. State*, 74 Fla. 594, 77 So. 274, 276; *State v. Renick*, 33 Or. 584, 56 P. 275, 44 L.R.A. 266.

A written release of fictitious claim was a "false token" *People v. Beilfuss*, 59 Cal.App.2d 83, 138 P.2d 332, 339.

**FALSE VERDICT.** See Verdict.

**FALSE WEIGHTS.** False weights and measures are such as do not comply with the standard prescribed by the state or government, or with the custom prevailing in the place and business in which they are used.

**FALSE WITNESS.** One who is intentionally rather than merely mistakenly false. *State v. Weston*, 109 Or. 19, 219 P. 180, 189.

**FALSE WORDS**, which may be eliminated from descriptions in wills, deeds, etc., are misdescriptions of property that are not applicable to any property owned or intended to be devised or conveyed. *Brown v. Ray*, 314 Ill. 570, 145 N.E. 676, 679; *Armstrong v. Armstrong*, 327 Ill. 85, 158 N.E. 356, 358.

## FALSEDAD

**FALSEDAD.** In Spanish law. Falsity; an alteration of the truth. *Las Partidas*, pt. 3, tit. 26, l. 1.

Deception; fraud. *Id.* pt. 3, tit. 32, l. 21.

**FALSEHOOD.** A statement or assertion known to be untrue, and intended to deceive. A willful act or declaration contrary to the truth. *Putnam v. Osgood*, 51 N.H. 207.

The term is perhaps generally used in the second sense here given. It is committed either by the wilful act of the party, or by dissimulation, or by words.

Crabbe thus distinguishes between falsehood and untruth: "The latter is an untrue saying, and may be unintentional, in which case it reflects no disgrace on the agent. A falsehood and a lie are intentional false sayings, differing only in degree of the guilt of the offender; falsehood being not always for the express purpose of deceiving, but a lie always for the worst of purposes." See *Rosc.Cr.Ev.* 362; *Deceit*; *Fraud*; *Misrepresentation*.

A fabrication. *Werner v. Southern Cal. Associated Newspapers*, *Cal.App.*, 206 P.2d 952, 961.

### Scotch Law

A fraudulent imitation or suppression of truth, to the prejudice of another. *Bell*. "Something used and published falsely." An old Scottish *nomen juris*. "Falsehood is undoubtedly a nominate crime, so much so that Sir George Mackenzie and our older lawyers used no other term for the falsification of writs, and the name 'forgery' has been of modern introduction." "If there is any distinction to be made between 'forgery' and 'falsehood,' I would consider the latter to be more comprehensive than the former." 2 *Broun*, 77, 78.

**FALSELY.** In a false manner, erroneously, not truly, perfidiously or treacherously. *Dombroski v. Metropolitan Life Ins. Co.*, 126 N.J.L. 545, 19 A. 2d 678, 680. Knowingly affirming without probable cause. *Hicks v. State*, 67 Ga.App. 475, 21 S.E. 2d 113, 118. See, also, *False*.

As applied to making or altering a writing in order to make it forgery, implies that the paper or writing is not genuine; that in itself it is false or counterfeit. *People v. Kramer*, 352 Ill. 304, 185 N.E. 590, 591.

The use of the word falsely in a statute (against counterfeiting) implies that there must be a fraudulent or criminal intent in the act; *U. S. v. King*, 5 McLean 208, Fed. Cas.No.15,535. See, also, 4 B. & C. 329; 6 Com.Dig. 58; *Stark, Cr.Pl.* 86.

The word "falsely", particularly in a criminal statute, suggests something more than a mere untruth and includes perfidiously or treacherously or with intent to defraud. *United States v. Achtner*, C.C.A.N.Y., 144 F.2d 49, 52.

Usually used in the sense of designedly untrue and deceitful, and as implying an intention to perpetrate some treachery or fraud. *Fouts v. State*, 113 Ohio St. 450, 149 N.E. 551, 554; *State v. Merlo*, 92 Or. 678, 173 P. 317, 319; *McDonald v. McNeil*, 92 Vt. 356, 104 A. 337, 339; *Cro.Ellz.* 201; 7 D. & R. 665. But see 1 *Den.C.C.* 157.

**FALSELY IMPERSONATE.** To "falsely impersonate" may mean to pretend to be a particular person without lawful authority. *People v. Horvans*, 109 Colo. 177, 123 P.2d 824, 826.

**FALSELY MAKE,** means to make an instrument which has no original as such and no genuine maker whose work is copied, although in form it may resemble a type of recognized security. *Pines v. United States*, C.C.A.Iowa, 123 F.2d 825, 828.

**FALSI CRIMEN.** Fraudulent subornation or concealment, with design to darken or hide the truth, and make things appear otherwise than they are. It is committed (1) by words, as when a witness swears falsely; (2) by writing, as when a person antedates a contract; (3) by deed, as selling by false weights and measures. *Wharton*. See *Crimen Falsi*.

**FALSIFICATION.** In equity practice. The showing an item in the debit of an account to be either wholly false or in some part erroneous. 1 *Story*, *Eq. Jur.* § 525. And see *Phillips v. Belden*, 2 *Edw. Ch.* 23; *Pit v. Cholmondeley*, 2 *Ves. Sr.* 565; *Tate v. Gairdner*, 119 Ga. 133, 46 S.E. 73; *Armstrong v. Toler*, 11 *Wheat., U.S.*, 237, 6 L.Ed. 468.

**FALSIFY.** To disprove; to prove to be false or erroneous; to avoid or defeat; spoken of verdicts, appeals, etc. *Co. Litt.* 104b.

To counterfeit or forge; to make something false; to give a false appearance to anything. To make false by mutilation or addition; to tamper with; as, to falsify a record or document. *Pou v. Ellis*, 66 Fla. 358, 63 So. 721, 722.

To show, as in an accounting before a master in chancery, that a charge has been inserted which is wrong; that is, either wholly false or in some part erroneous. *Pull. Accts.* 162; 1 *Story*, *Eq.Jur.* § 525. See *Shores-Mueller Co. v. Bell*, 21 Ga.App. 194, 94 S.E. 83, 84; *Falsification*.

The word "falsify" may be used to convey two distinct meanings—either that of being intentionally or knowingly untrue, made with intent to defraud, or mistakenly and accidentally untrue. *Washer v. Bank of America Nat. Trust & Savings Ass'n*, 21 Cal.2d 822, 136 P.2d 297, 301.

**FALSIFYING A JUDGMENT.** A term sometimes used for reversing a judgment. See 4 *Steph. Com.* 553.

**FALSIFYING A RECORD.** A high offense against public justice, punishable in England by 24 & 25 *Vict. c.* 98, §§ 27, 28, and in the United States, generally, by statute. See *U. S. Rev.Stat.* § 5394, 18 U.S.C.A. § 1506.

**FALSING.** In Scotch law. False making; forgery. "Falsing of *evidentis*." 1 *Pitc. Crim. Tr.* pt. 1, p. 85.

Making or proving false.

**FALSING OF DOOMS.** In Scotch law. The proving the injustice, *falsity*, or error of the *doom* or sentence of a court. *Tomlins*; *Jacob*. The reversal of a sentence or judgment; an action to set aside a decree. *Skene*. Protesting against a sentence and taking an appeal to a higher tribunal. *Bell, Dict.*

**FALSITY** implies more than erroneous or untrue; it indicates knowledge of untruth. *Abercrombie v. Hair*, 185 Ga. 728, 196 S.E. 447, 451.

**FALSO RETORNO BREVIUM.** In old English law. A writ which formerly lay against the sheriff who had execution of process for false returning of writs. *Reg. Jud.* 43b; *Cunningham, Law Dict.*

**FALSONARIUS.** A forger; a counterfeiter. *Hov.* 424.



**FALSUM.** Lat. In the civil law. A false or forged thing; a fraudulent simulation; a fraudulent counterfeit or imitation, such as a forged signature or instrument. Also falsification, which may be either by falsehood, concealment of the truth, or fraudulent alteration, as by cutting out or erasing part of a writing.

**FALSUS.** Lat. False; fraudulent; erroneous. Deceitful; mistaken.

In the sense of "deceiving" or "fraudulent," it is applied to persons in respect to their acts and conduct, as well as to things; and in the sense of "erroneous," it is applied to persons on the question of personal identity.

**FALSUS IN UNO, FALSUS IN OMNIBUS.** False in one thing, false in everything. Commonwealth v. Billings, 97 Mass. 406; Mercer v. Wright, 3 Wis. 645; State v. Williams, 47 N.C. 257; Dawson v. Bertolini, 70 R.I. 325, 38 A.2d 765, 768.

The doctrine means that, if testimony of a witness on a material issue is willfully false and given with an intention to deceive, jury may disregard all the witness' testimony. Hargrave v. Stockloss, 127 N.J.L. 262, 21 A.2d 820, 823.

The maxim deals only with weight of evidence. Metropolitan Life Ins. Co. v. Wright, 190 Miss. 53, 199 So. 289, 290. It does not relieve jury from passing on credibility of the whole testimony of a false swearing witness or excuse jury from weighing the whole testimony. State v. Willard, 346 Mo. 773, 142 S.W.2d 1046, 1052. It is a mere rule of evidence affirming a rebuttable presumption of fact, under which the jury must consider all the evidence of the witness, other than that which is found to be false, and it is their duty to give effect to so much of it, if any, as is relieved from the presumption against it and found to be true. Levine Bros. v. Mantell, 90 W.Va. 166, 111 S.E. 501, 504; Shecil v. United States, C.C.A.Wis., 226 F. 184, 187. It is not a rule of law and false statement, State v. Sturchio, 127 N.J.L. 366, 22 A.2d 235, 237. It is not a rule of the law of evidence, but is merely an aid in weighing and sifting of evidence. Dawson v. Bertolini, 70 R.I. 325, 38 A.2d 765, 768. It is particularly applied to the testimony of a witness who, if he is shown to have sworn falsely in one detail, may be considered unworthy of belief as to all the rest of his evidence. Grimes v. State, 63 Ala. 168; Wilson v. Coulter, 51 N.Y.S. 804, 29 App.Div. 85; White v. Disher, 67 Cal. 402, 7 P. 826.

The rule is merely permissive and not mandatory. Bankers' Health & Life Ins. Co. v. Nichols, 44 Ga.App. 536, 162 S.E. 161.

Where a party is clearly shown to have embezzled one article of property, it is a ground of presumption that he may have embezzled others also. The Boston. 1 Sumn. 328, 356, Fed.Cas.No.1,673; The Santissima Trinidad, 7 Wheat. 339, 5 L.Ed. 454.

**FAMA.** Lat. Fame; character, reputation; report of common opinion.

**FAMA, FIDES ET OCLUS NON PATIUNTUR LUDUM.** 3 Bulst. 226. Fame, faith, and eyesight do not suffer a cheat.

**FAMA QUÆ SUSPICIONEM INDUCIT, ORIRI DEBET APUD BONOS ET GRAVES, NON QUIDEM MALEVOLOS ET MALEDICOS, SED PROVIDAS ET FIDE DIGNAS PERSONAS, NON SEMEL SED SÆPIUS, QUIA CLAMOR MINUIT ET DEFAMATIO MANIFESTAT.** 2 Inst. 52. 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.

**FAMACIDE.** A killer of reputation; a slanderer.

**FAMILIA.**

Old English Law. A household; the body of household servants; a quantity of land, otherwise called "*mansa*," sufficient to maintain one family. Du Cange; Cowell; Cunningham, Law Dict.; Creasy, Church Hist.

Roman Law. A household; a family. On the composition of the Roman family, see Agnati; Cognati; and see Mackeld. Rom. Law, § 144.

Family right: the right or *status* of being the head of a family, or of exercising the *patria potestas* over others. This could belong only to a Roman citizen who was a "man in his own right," (*homo sui juris*.) Mackeld. Rom. Law, §§ 133, 144.

Spanish Law. A family, which might consist of domestics or servants. It seems that a single person owning negroes was the "head of a family," within the meaning of the colonization laws of Coahuila and Texas. State v. Sullivan, 9 Tex. 156.

**FAMILIÆ EMPTOR.** In Roman law. An intermediate person who purchased the aggregate inheritance when sold *per oēs et libram*, in the process of making a will under the Twelve Tables. This purchaser was merely a man of straw, transmitting the inheritance to the *hæres* proper. Brown.

**FAMILIÆ ERCISCUNDÆ.** In Roman law. An action for the partition of the aggregate succession of a *familia*, where that devolved upon *co-hæredes*. It was also applicable to enforce a contribution towards the necessary expenses incurred on the *familia*. See Mackeld. Rom. Law, § 499; Stair, Inst. l. 1, tit. 7, § 15.

**FAMILIAR.** The word is equivalent to the word "know." Smiley v. Lenane, 363 Ill. 66, 1 N.E.2d 213, 216.

**FAMILIARES REGIS.** Persons of the king's household. The ancient title of the "six clerks" of chancery in England. Crabb, Com. Law, 184; 2 Reeve, Eng. Law, 249, 251.

**FAMILIARITY.** Acquaintance expresses less than "familiarity"; familiarity less than intimacy. Acquaintance springs from occasional intercourse, familiarity from daily intercourse, intimacy from unreserved intercourse; acquaintance, having some knowledge, familiarity, from long habit, intimacy, by close connection. Atkins Corporation v. Tourny, 6 Cal.2d 206, 57 P.2d 480, 483.

**FAMILY.** The word is used to designate many relationships. Collins v. Northwest Casualty Co., 180 Wash. 347, 39 P.2d 986, 989, 97 A.L.R. 1235; State ex rel. Kemp v. Arnold, 234 Mo. 154, 113 S.W.2d 143, 146.

In broad or primary sense "family" means: a collective body of any two persons living together in one house as their common home for the time; In re Barnes' Estate, 149 Misc. 149, 267 N.Y.S. 634; a collective body of persons, living together in one home, in a permanent and domestic character, under one head or management,

## FAMILY

*State ex rel. Kemp v. Arnold*, 234 Mo. 154, 113 S.W.2d 143, 146; a collective body of persons who live in one house and under one head or management, *Fratellanza Italiana v. Nugnes*, 114 N.J.Eq. 185, 168 A. 589, 590; a group of blood-relatives; all the relations who descend from a common ancestor, or who spring from a common root, *Civil Code La. art. 3556*, no. 12; 9 Ves. 323; a group of kindred persons, *Hartley v. Bohrer*, 52 Idaho 72, 11 P.2d 616, 618; husband and wife and their children. *Franklin Fire Ins. Co. v. Shadid*, Tex. Com.App., 68 S.W.2d 1030, 1032.

In most common use, the word implies father, mother and children, immediate blood relatives. *Collins v. Northwest Casualty Co.*, 180 Wash. 347, 39 P.2d 986, 989, 97 A.L.R. 1235.

In narrow or restricted sense "family" means: a father, mother, and children, whether living together or not, *Higgins v. Safe Deposit & Trust Co. of Baltimore*, 127 Md. 171, 96 A. 322, 323; group of parents and children founded on principle of monogamy, *In re Schmidt's Estate*, 159 Misc. 373, 289 N.Y.S. 247, 250; husband and wife and their children, *State ex rel. Kemp v. Arnold*, 234 Mo.App. 154, 113 S.W.2d 143, 146.

In ordinary conversation, the word is descriptive of a person's wife and children. *Adams v. Carrie F. Wright Hospital*, 82 N.H. 260, 132 A. 525, 526.

In restricted sense, the word "family" may be used interchangeably with household. *Collins v. Northwest Casualty Co.*, 180 Wash. 347, 39 P.2d 986, 989, 97 A.L.R. 1235.

In secondary meaning, "family" means those who are of the same lineage, or descend from one common progenitor. *Fratellanza Italiana v. Nugnes*, 114 N.J.Eq. 185, 168 A. 589, 590.

The word conveys the notion of some relationship, blood or otherwise. *Collins v. Northwest Casualty Co.*, 180 Wash. 347, 39 P.2d 986, 989, 97 A.L.R. 1235.

The word may mean: a body of persons who live in one house and under one head or manager, *Lumbermens Mut. Casualty Co. v. Pulsifer*, D.C.Me., 41 F.Supp. 249, 252; *Collins v. Northwest Casualty Co.*, 180 Wash. 347, 39 P.2d 986, 989, 97 A.L.R. 1235. A collection of persons living under a common roof, or constituting a domestic circle, *In re Keegan's Estate*, Sur., 37 N.Y.S.2d 368, 370, 371. A collective body of any two persons living together in one house as their common home for the time, *In re Barnes' Estate*, 267 N.Y.S. 634, 149 Misc. 149; a collective body of persons, consisting of parents or children, or other relatives, domestics, or servants, residing together in one house or on the same premises, *Sullivan v. Walburn*, 9 N.J.Misc. 280, 154 A. 617, 619. A collective body of persons living together in one house or within the curtilage. *Sullivan v. Walburn*, 9 N.J.Misc. 280, 154 A. 617, 619. A collective body of persons who form one household under one head and one domestic government. *Sullivan v. Walburn*, 9 N.J.Misc. 280, 154 A. 617, 619. A collective body of persons who form one household under one head and one domestic government and who have reciprocal natural and moral duties to support and care for one another, *Krug v. Mills*, 159 Md. 670, 152 A. 493, 495; *Hartley v. Bohrer*, 52 Idaho 72, 11 P.2d 616, 618. A collective body of persons who live in one home under one head or management. *Dalton v. Poinsett*, Mo.App., 164 S.W.2d 124, 128; *Vaughn v. American Alliance Ins. Co. of New York*, 138 Kan. 731, 27 P.2d 212; a collective body of persons who live in one house or within the same curtilage and under one head or management (thereby including domestic servants, lodgers, boarders, guests, etc.). *Jarboe v. Jarboe*, 106 Mo.App. 459, 79 S.W. 1162; *Wilson v. Else*, 204 Iowa 857, 216 N.W. 33, 37; *City*

*of Mexico v. Gray*, 203 Mo.App. 547, 219 S.W. 707, 709; *Wilson v. Cochran*, 31 Tex. 680, 98 Am.Dec. 553; a group, comprising immediate kindred, consisting of the parents and their children, whether actually living together or not, *Uden v. B. F. Goodrich Co.*, 58 Ohio App. 151, 16 N.E.2d 277, 279; a group of blood relatives; a group of kindred persons, *Hartley v. Bohrer*, 52 Idaho 72, 11 P.2d 616, 618; a household. *Sullivan v. Walburn*, 9 N.J.Misc. 280, 154 A. 617, 619; a household composed of parents or children, or other relatives or domestics and servants, *Sullivan v. Walburn*, 9 N.J.Misc. 280, 154 A. 617, 619; a small select corps attached to an army chief, *Boston-Edison Protective Ass'n v. Paulist Fathers*, 306 Mich. 253, 10 N.W.2d 847, 849, 148 A.L.R. 364; a whole sect, such as Shakers, *Boston-Edison Protective Ass'n v. Paulist Fathers*, 306 Mich. 253, 10 N.W.2d 847, 849, 148 A.L.R. 364; all members of the household living under the authority of the head thereof, *Sullivan v. Walburn*, 9 N.J.Misc. 280, 154 A. 617, 619; all persons of the blood of a common ancestor, *Collins v. Northwest Casualty Co.*, 180 Wash. 347, 39 P.2d 986, 989, 97 A.L.R. 1235; all the relations who descend from a common ancestor or who spring from a common root; all who are descended from a not too distant common progenitor, *In re Lund's Estate*, 26 Cal.2d 472, 159 P.2d 643, 655; an entire household. *Sullivan v. Walburn*, 9 N.J.Misc. 280, 154 A. 617, 619; any group of persons closely related by blood, *In re Schmidt's Estate*, 289 N.Y.S. 247, 250, 159 Misc. 373; any group of persons constituting a distinct domestic body, *Sullivan v. Walburn*, 9 N.J.Misc. 280, 154 A. 617, 619; or social body, *Boston-Edison Protective Ass'n v. Paulist Fathers*, 306 Mich. 253, 10 N.W.2d 847, 849, 148 A.L.R. 364; group of parents and children founded on principles of monogamy, *In re Schmidt's Estate*, 289 N.Y.S. 247, 250, 159 Misc. 373; immediate domestic circle of a particular person, *Collins v. Northwest Casualty Co.*, 180 Wash. 347, 39 P.2d 986, 989, 97 A.L.R. 1235; immediate members of one's household, *Niemes v. Niemes*, 97 Ohio St. 145, 119 N.E. 503, 506; members of the domestic circle, *Sullivan v. Walburn*, 9 N.J.Misc. 280, 154 A. 617, 619; one or more persons living together in same house who are supported by one in whole or in part and are dependent on him therefore, where he is under natural or moral obligation to render such support, *Umbarger v. State Farm Mut. Automobile Ins. Co.*, 218 Iowa 203, 254 N.W. 87; the genealogical stock from which a man and those related to him by blood have sprung, *Albright v. Albright*, 116 Ohio St. 668, 157 N.E. 760, 764; the personnel of the home. *Sullivan v. Walburn*, 9 N.J.Misc. 280, 154 A. 617, 619; those members of the household who are dependent on the householder to whom he owes some duty, *Cheshire v. Burlington*, 31 Conn. 326; those who are of the same lineage, or descend from one common progenitor, *Fratellanza Italiana v. Nugnes*, 114 N.J.Eq. 185, 168 A. 589, 590; those who live in one house, *In re Lund's Estate*, 26 Cal.2d 472, 159 P.2d 643, 655; those who live in same household subject to general management and control of the head thereof, *McGee v. Crawford*, 205 N.C. 318, 171 S.E. 326, 327; those who live with the pater familias, *Vaughn v. American Alliance Ins. Co. of New York*, 138 Kan. 731, 27 P.2d 212; *Indemnity Ins. Co. of North America v. Sanders*, 169 Okl. 378, 36 P.2d 271, 273; those whom it is the natural or moral duty of one to support, or who are dependent on him for support, *Finn v. Eminent Household of Columbia Woodmen*, 163 Ky. 187, 173 S.W. 349, 350.

The word may mean, include or embrace an adult child, *Watson v. Burley*, 105 W.Va. 416, 143 S.E. 95, 96, 64 A.L.R. 839; *Yadon v. Yadon*, 202 Ark. 634, 151 S.W.2d 969, 970; aunts, *In re Schmidt's Estate*, 289 N.Y.S. 247, 250, 159 Misc. 373; blood relatives, *Boston-Edison Protective Ass'n v. Paulist Fathers*, 306 Mich. 253, 10 N.W.2d 847, 849; *In re Keegan's Estate*, Sur., 37 N.Y.S.2d 368, 370, 371; children, *In re Dooling's Will*, 285 N.Y.S. 603, 609, 158 Misc. 333; *In re Schmidt's Estate*, 289 N.Y.S. 247, 250, 159 Misc. 373; cousins, *In re Schmidt's Estate*, 289 N.Y.S. 247, 250, 159 Misc. 373; father and child, *Hinds v. Buck*, 177 Tenn. 444, 150 S.W.2d 1071, 1072; father, mother, and all children, wherever they may reside, *Barrett v. Commercial Standard Ins. Co.*, Tex.Civ.App., 145 S.W.2d 315, 318; group of parents and children founded on principle of monogamy, *In re Schmidt's Estate*, 289 N.Y.S. 247, 250, 159 Misc. 373; husband and wife, *In re De Nisson's Guardianship*, 197 Wash. 265, 84 P.2d 1024, 1027, 1028; *Boston-Edison Protective Ass'n v. Paulist Fathers*, 306 Mich. 253, 10 N.W.2d 847, 849; *Hinds v. Buck*, 177 Tenn. 444, 150 S.W.2d 1071, 1072; husband and wife and their children, *Franklin Fire Ins. Co.*

v. Shadid, Tex.Com.App., 68 S.W.2d 1030, 1032; State ex rel. Kemp v. Arnold, 234 Mo.App. 154, 113 S.W.2d 143, 146; husband or wife and children. In re Keegan's Estate, Sur., 37 N.Y.S.2d 368, 370, 371; parents. In re Schmidt's Estate, 289 N.Y.S. 247, 250, 159 Misc. 373; parents and children. In re Schmidt's Estate, 289 N.Y.S. 247, 250, 159 Misc. 373; Uden v. B. F. Goodrich Co., 58 Ohio App. 151, 16 N.E.2d 277, 279; parents, children, and servants, and, as the case may be, lodgers or boarders. Cleaves v. Funk, D.C.Okl., 3 F.Supp. 804, 805; In re Schmidt's Estate, 289 N.Y.S. 247, 250, 159 Misc. 373; parents or children, or other relatives, or domestics and servants. Sullivan v. Walburn, 9 N.J.Misc. 280, 154 A. 617, 619; parents with their children whether they dwell together or not. In re Schmidt's Estate, 289 N.Y.S. 247, 250, 159 Misc. 373; Higgins v. Safe Deposit & Trust Co. of Baltimore, 127 Md. 171, 96 A. 322, 323; spouse and the issue of designated person, and no other persons. Restatement, Property, § 293; uncles. In re Schmidt's Estate, 289 N.Y.S. 247, 250, 159 Misc. 373.

Sisters of a religious order who were employed in hospital and lived together in a community as members of a "family". Goss v. Klipfel, 112 Colo. 87, 146 P.2d 217, 218.

Son-in-law is not a member of father-in-law's family, nor is his daughter, after she becomes son-in-law's wife. Bryant v. Keen, 43 Ga.App. 251, 158 S.E. 445, 446.

Widow who lived with her children in her father-in-law's house and received board for herself and children for keeping house was member of father-in-law's "family". Hollibaugh v. School Dist. No. 89, 131 Neb. 727, 269 N.W. 819, 820.

*Allowances*

Where marriage between decedent and his widow occurred years before decedent's death, parties lived together for about three weeks and never resumed their relationship as husband and wife, widow was not entitled to statutory allowance for the benefit of decedent's family. In re Feciuch's Estate, Sur., 26 N.Y.S.2d 390, 391.

Widow constitutes "family" within statute providing for allowance for maintenance from husband's estate. In re Hilleware's Estate, 159 Wash. 580, 294 P. 230, 231.

Word "family" in code provision authorizing family allowance where property set apart is insufficient for support of widow and children, does not include husband. Hills v. Superior Court in and for Los Angeles County, 207 Cal. 666, 279 P. 805, 806, 65 A.L.R. 266.

*Beneficial and fraternal associations*

As used in beneficial association's by-law providing that death benefit should be payable to member's family, the word means next of kin, including widow. Fratellanza Italiana v. Nugnes, 114 N.J.Eq. 185, 168 A. 589, 590.

As used in statutes or charters relating to who may become beneficiaries in fraternal associations, the word is not to receive a restrictive construction, and it may include stepchildren. Brotherhood of Locomotive Firemen and Enginemen v. Hogan, D.C.Minn., 5 F.Supp. 598, 603.

When used in constitution of benefit society, declaring its purpose among others as that of aiding the families of members, the word means such persons as habitually reside under one roof and form one domestic circle, or such persons as are dependent on each other for support or among whom there is legal or equitable obligation to furnish support and in its widest scope it would include all descendants of a common progenitor. Logan v. St. Louis Police Relief Ass'n, Mo.App., 133 S.W.2d 1048, 1049, 1050.

*Compensation Law*

A collective body of persons who live in one house and under one head or management is the significance ordinarily attributed to the word "family". Roney's Case, 316 Mass. 732, 56 N.E.2d 859, 864, 866.

Deceased adult son was a member of his parents' "family" though at time of his death he lived apart from his parents but contributed to support of parents. Baker v. Western Power & Light Co., 147 Kan. 571, 78 P.2d 36, 40.

Persons related by kinship or marriage, though not living in same household, may be members of "family". Moore's Case, 294 Mass. 557, 3 N.E.2d 5.

*Descent and descendants*

As used in act changing descent as between relatives of half blood, "family" comprehends only the descendants of ancestor, those who have his blood running in their veins; in that sense is nearly if not quite of same import as the word "issue." Ryder v. Myers, 113 N.J.Eq. 360, 167 A. 22, 24.

The word "family" may mean: all descendants of a common progenitor. Logan v. St. Louis Police Relief Ass'n, Mo.App., 133 S.W.2d 1048, 1049, 1050; In re Lund's Estate, 26 Cal.2d 472, 159 P.2d 643, 645; those who are of the same lineage, or descend from one common progenitor. Fratellanza Italiana v. Nugnes, 114 N.J.Eq. 185, 168 A. 589, 590.

*Homestead and exemption laws*

A "family" is a collection of persons living together under one head. Holsomback v. Slaughter, 177 Miss. 553, 171 So. 542, 543; a collection of persons living together, where there is an obligation, legal or moral, on head of the house to support the others or some of them. Logue v. Von Almen, 379 Ill. 208, 40 N.E.2d 73, 80, 140 A.L.R. 251; a collective body of persons, consisting of parents or children, or other relatives, domestics, or servants, residing together in one house or upon the same premises, and person to be member of family must be member in good faith. Lobban v. Vander Vries Realty & Mortgage Co., 48 Ariz. 180, 60 P.2d 933, 935; a collective body of persons who live in one house and under one head or manager. Hurt v. Perryman, 173 Tenn. 646, 122 S.W.2d 426, 427; a group of two or more persons dwelling together under one head, and which cannot consist of but one person. Zuniga v. Evans, 87 Utah, 198, 48 P.2d 513, 524, 101 A.L.R. 532.

A husband dying leaving a wife from whom he was not judicially separated left a "family". In re Zalewski's Estate, 30 N.Y.S.2d 658, 664, 177 Misc. 384.

An unmarried adult daughter who remains continuously with the "family" is member. Reconstruction Finance Corporation v. Burgess, Tex.Civ.App., 155 S.W.2d 977, 980.

Constitution and statute exempting homestead in each "head of a family" include not only a father, or husband, in his lifetime, but a widow, and after death of both, any minor children. Whitfield v. People's Union Bank & Trust Co., 168 Tenn. 24, 73 S.W.2d 690, 691.

"Family", continues to exist so long as widow lives and remains widow. Miers v. Miers, 160 Miss. 746, 133 So. 133, 134.

Husband who, after wife had abandoned him and remarried without obtaining divorce, purchased release of wife's right in his estate and abandoned her held not entitled to exemption provided on death of person leaving family. In re Schmidt's Estate, 287 N.Y.S. 44, 47, 247 App.Div. 505.

Husband, who had lived apart from wife prior to her death and had not contributed to her support held entitled to exemption provided on death of person having family. In re Gluer's Will, 278 N.Y.S. 994, 155 Misc. 41.

Persons who may constitute a family include: husband and wife. Bigelow v. Dunphe, 144 Fla. 330, 198 So. 13; husband and wife living together. Miller v. Finegan, 26 Fla. 29, 7 So. 140, 6 L.R.A. 813; Oppenheim v. Myers, 99 Va. 582, 39 S.E. 218; Dye v. Cooke, 88 Tenn. 275, 12 S.W. 631, 17 Am.St.Rep. 882; husband and wife so long as marriage continues in existence. In re Brown's Will, 274 N.Y.S. 924, 153 Misc. 282; mother and children living under father's authority. Washington Bank & Trust Co. v. Carrier, 178 La. 902, 152 So. 560, 561; school teacher on whom moral obligation rested to support and care for her sister. Standard Paving Co. v. Tolson, Tex.Civ.App., 86 S.W.2d 789, 791. Sister, owning property, and semi-invalid brother, who was cared for and supported by sister, and younger sister, who contributed to household expenses. Real Estate Land Title & Trust Co. v. Street, Tex.Civ.App., 85 S.W.2d 341, 342; stepchildren and stepfather living together after stepfather's divorce from children's mother. Smith Bros. v. Lucas, Tex.Com.App., 26 S.W.2d 1055, 1056. With particular reference to homestead laws, one parent and his or her children; Carle v. Bamberger, 53 Okl. 777, 158 P. 599, 600; Solnar v. Solnar, 205 Iowa, 701, 216 N.W. 288, 290; and even a widow or widower, though without children; Coleman v. Bosworth, 180 Iowa, 975, 164 N.W. 238, 240; may constitute a "family." See, also, In re Hooper's Estate, 117 Wash. 463, 201 P. 740, 742.

## FAMILY

Test of whether husband has a "family" within statute providing for exemptions to widow if husband dies having a family cannot be measured by number of years husband and wife lived apart nor by distance of miles separating them. In re Brown's Will, 274 N.Y.S. 924, 153 Misc. 282.

To constitute family, status must be social and head of family must be legally or morally obligated to support other members, who must be dependent on such support. United Fidelity Life Ins. Co. v. Plainview Building & Loan Ass'n, Tex.Civ.App., 81 S.W.2d 1092, 1093; Lobban v. Vander Vries Realty & Mortgage Co., 48 Ariz. 180, 60 P.2d 933, 935.

To constitute family there must be one whom law designates or recognizes as head of family who by natural ties or by legal or moral obligation is under duty to support others of the household. Owens v. Altscheller & Co., 263 Ky. 727, 93 S.W.2d 844, 846.

To constitute persons living with another in same house a "family", it must appear that they are being supported by that other in whole or in part, and are dependent on him therefor, and that he is under a natural or moral obligation to render such support. Poffinbarger v. Administrator of Poffinbarger's Estate, 206 Iowa 961, 221 N.W. 550.

Where relatives live together because such arrangement is more convenient or economical, or for reasons of friendship or affection, such relation does not constitute them "family". Rock Island Bank & Trust Co. v. Lamont, 361 Ill. 432, 198 N.E. 430.

### Household

A "family" is a collective body of persons who form one household under one head and one domestic government, Sullivan v. Walburn, 9 N.J.Misc. 280, 154 A. 617, 619; a collective body of persons forming one household under one head and domestic government, having reciprocal, natural and moral duties to care for one another. Hartley v. Bohrer, 52 Idaho 72, 11 P.2d 616, 618; Krug v. Mills, 159 Md. 670, 152 A. 493, 495; a household, Sullivan v. Walburn, 9 N.J.Misc. 280, 154 A. 617, 619; a household composed of parents or children or other relatives, or domestics and servants, Sullivan v. Walburn, 9 N.J.Misc. 280, 154 A. 617, 619; all members of the household living together under the authority of the head thereof, Sullivan v. Walburn, 9 N.J.Misc. 280, 154 A. 617, 619; all persons who dwell together under a common head as a household, Hoff v. Hoff, 132 Pa.Super. 431, 1 A.2d 506, 508; an entire household, Sullivan v. Walburn, 9 N.J.Misc. 280, 154 A. 617, 619; the immediate members of one's household, as wife, children, brothers, and sisters or father and mother. Niemes v. Niemes, 97 Ohio St. 145, 119 N.E. 503, 506; those who live in same household subject to general management and control of the head thereof, McGee v. Crawford, 205 N.C. 318, 171 S.E. 326, 327.

Family and household are substantially synonymous. Umbarger v. State Farm Mut. Automobile Ins. Co., 218 Iowa 203, 254 N.W. 87; the words are often used interchangeably. Indemnity Ins. Co. of North America v. Sanders, 169 Okl. 378, 36 P.2d 271, 273; Brovdy v. Jones & Laughlin Steel Corporation, 145 Pa.Super. 602, 21 A.2d 437, 438; while in a restricted sense the word "family" may be used interchangeably with "household," there is a difference in the ideas suggested by the two words, Collins v. Northwest Casualty Co., 180 Wash. 347, 39 P.2d 986, 989, 97 A.L.R. 1235.

### Insane Persons

Under statute providing for support of family of insane person out of his estate, "family" includes those whom insane person under normal circumstances would be under legal duty to support, such as wife and children, and under some circumstances may include others. Woman who had become insane person's stepmother when he was infant and had cared for him during his infancy and to whose support he had contributed during his minority and until he joined Army held member of his "family" so as to be entitled to support. In re Freeman's Estate, 171 Miss. 147, 157 So. 253.

### Insurance

Accident policy condition that insurer should have opportunity to be present at autopsy performed with consent of insured's "family" held to apply to person who, as surviving wife or husband, or next of kin, had right of possession of body. If insured left no wife, and sister

was nearest kin, sister held "family" within such condition. Sheehan v. Commercial Travelers' Mut. Acc. Ass'n, 283 Mass. 543, 186 N.E. 627, 631, 88 A.L.R. 975.

### Pauper

Duty of town to support "family" of pauper includes only those persons whom head of family is bound by law to support. Town of St. Johnsbury v. Town of Sutton, 102 Vt. 451, 150 A. 133, 135.

### Reservation lands

Words "family" and "heirs," within statute providing for holding of reservation lands by Seneca Indians, mean family and heirs which Indians themselves recognize. Woodin v. Seeley, 141 Misc. 207, 252 N.Y.S. 818, 826.

### Servants

A family is a body of persons who live in one household under one head or management; a household including parents, children and servants, and, as the case may be, lodgers or boarders. Cleaves v. Funk, D.C.Okl., 3 F.Supp. 804, 805.

Domestic servants, when living in establishment, are included in term "family" for purposes of serving summons. Sullivan v. Walburn, 9 N.J.Misc. 280, 154 A. 617, 619.

### Service of Process

A domestic servant may be included in term "family." Sullivan v. Walburn, 9 N.J.Misc. 280, 154 A. 617, 619.

Defendant's mother, who maintained permanent home, but who usually visited in defendant's home during winter months, held not a member of defendant's "family." Cleaves v. Funk, C.C.A.Okl., 76 F.2d 828, 829.

The word "family", as used in acts regulating service of process, is given its restricted meaning and held to include only a father, a mother, and their children, but the relationship between the person receiving a copy of the summons and the person on whom service is attempted must be more confidential and intimate than in most employer and employee or master and servant relationships in order that the receipt by the former may be deemed valid service on the latter. Moore v. Kasishke, 189 Okl. 336, 117 P.2d 113, 115, 136 A.L.R. 1502.

### Support of persons

A "family" is a collection of persons living together under one head, under such circumstances or conditions that the head is under a legal or moral obligation to support the other members, and the other members are dependent upon him for support. Hurt v. Perryman, 173 Tenn. 646, 122 S.W.2d 426, 427; those entitled by law to look to person for support and protection, In re Fulton's Estate, 15 Cal. App.2d 202, 59 P.2d 508, 510; those members of the household who are dependent on the household to whom he owes some duty, Brokaw v. Ogle, 170 Ill. 115, 48 N.E. 394; those whom it is the natural or moral duty of one to support, or who are dependent on him for support, Finn v. Eminent Household of Columbia Woodmen, 163 Ky. 187, 173 S.W. 349, 350.

Bankrupt whose minor children were living separately from him in custody of his divorced wife held person having "family dependent on him for support". In re McFarland, D.C.Wash., 49 F.2d 342, 343.

"Family," within statute imposing liability for articles going to support of "family," held to include wife as well as children. Baledes v. Greenbaum, 112 Conn. 64, 151 A. 333, 334.

He upon whom law imposes duty to support growing out of status and not out of contract, and persons to whom he owes this duty if dwelling together in a domestic establishment constitute a "family" of which he is the head. Owens v. Altscheller & Co., 263 Ky. 727, 93 S.W.2d 844, 846.

Householder's sister and her husband living with householder and dependent upon him may constitute "family". Rock Island Bank & Trust Co. v. Lamont, 361 Ill. 432, 198 N.E. 430.

Moral duty to support arising from ties of blood or possibly other similar relations will be sufficient to support claim that one is head of a family. Owens v. Altscheller & Co., 263 Ky. 727, 93 S.W.2d 844, 846.

Sister on whom moral obligation rested to support her sister and such sister constituted "family." *Standard Paving Co. v. Tolson*, Tex.Civ.App., 86 S.W.2d 789, 791.

To constitute "family" within homestead or exemption provision there must be legal or moral or natural obligation of one to support other members and corresponding dependence of others. *L. E. Whitham & Co. v. Briggs' Estate*, Tex.Com.App., 58 S.W.2d 49; *Lobban v. Vander Vries Realty & Mortgage Co.*, 48 Ariz. 180, 60 P.2d 933, 935; *Wineblood v. Payne*, 129 Okl. 103, 263 P. 669, 671.

Town of residence of head of "family" held not liable to reimburse another town for support furnished step-children. *Town of St. Johnsbury v. Town of Sutton*, 102 Vt. 451, 150 A. 133, 135.

*Wills*

As respects construction of will, the word "family" denotes a group of persons related to each other by marriage or blood living together under a single roof and comprising a household whose head is usually the father or husband, but the word is not one of inflexible meaning and its significance to a large extent depends upon the context and the purpose for which it is employed. The word "family" includes those who have left father's home and have married and established their own homes when context and purpose indicate such significance should be attributed to the word. *Magill v. Magill*, 317 Mass. 89, 56 N.E.2d 892, 894, 896, 154 A.L.R. 1406.

Testamentary precatory trust created in favor of any of testatrix' "family" held to comprehend those who would take under statute of distribution. *Ryder v. Myers*, 113 N. J.Eq. 360, 167 A. 22, 24.

Testatrix in creating trust for benefit of granddaughter during her life and providing that upon granddaughter's death without issue principal should go to then living members of granddaughter's father's "family" did not use word family to designate those who comprised her son's household, where testatrix knew when she executed will that son was dead and that his widow and daughter made their homes with testatrix and his other children lived separate from each other. *Magill v. Magill*, 317 Mass. 89, 56 N.E.2d 892, 894, 896, 154 A.L.R. 1406.

The use of the word "family" disclosed a testamentary intent to make a gift to a class including those who would have been distributees of the deceased brothers of testatrix had such brothers died as of the date of death of testatrix and included therein the widows of such brothers. In *re Keegan's Estate*, Sur., 37 N.Y.S.2d 368, 370, 371.

Under will of widow, providing that "I wish my husband's family to share and share alike the remainder of my property," the word "family" is equivalent to "heirs." In *re McCrum's Estate*, 97 Cal.App. 576, 275 P. 971, 972.

When the word "family" is used to designate those entitled to receive a legacy, the intended meaning of the word depends upon the context of the will and upon a showing as to whom were the objects of the testator's bounty by reason of kinship or friendship. Where a legacy was to a class, consisting of family of testatrix' deceased brother who was survived by widow and three children, each of which children maintained separate households, "family" included widow and three children. In *re Keegan's Estate*, Sur., 37 N.Y.S.2d 368, 370, 371.

Where testatrix created trust for benefit of granddaughter during her life and, knowing that one of granddaughter's brothers was already dead, provided that any issue granddaughter might leave should share equally with then living members of granddaughter's father's "family" in division of principal of trust and thereafter upon death of another grandson leaving a widow and two infant children executed a codicil giving grandson's legacy under another provision of will to his widow, word "family" was used to designate lineal descendants of granddaughter's father where such construction was consistent with provisions of the will and carried out intention of testatrix. *Magill v. Magill*, 317 Mass. 89, 56 N.E.2d 892, 894, 896, 154 A.L.R. 1406.

**FAMILY ARRANGEMENT.** A term denoting an agreement between a father and his children, or between the heirs of a deceased father, to dispose of property, or to partition it in a different manner than that which would result if the law alone

directed it, or to divide up property without administration. In these cases, frequently, the mere relation of the parties will give effect to bargains otherwise without adequate consideration. 1 Chit. Pr. 67; 1 Turn. & R. 13; *Boyd v. Robinson*, 93 Tenn. 1, 23 S.W. 72; *De Hatre v. De Hatre*, 50 Mo. App. 1.

**FAMILY AUTOMOBILE DOCTRINE.** The doctrine is that one who owns and maintains an automobile for the general use of his household makes use of automobile for such purposes a part of his business so that any member using automobile for those purposes under general authority to do so becomes his representative, for whose negligence he is responsible. *Durso v. A. D. Cozzolino, Inc.*, 128 Conn. 24, 20 A.2d 392, 394.

It is an extension of the principle of respondeat superior to the relation created by operation of family use automobile. *Buss v. Wachsmith*, 190 Wash. 673, 70 P.2d 417, 421. See, also, *Family Car Doctrine and Family Purpose Doctrine*.

It is based on theory that members of family were engaged in a joint enterprise or that child was agent of parents. *Paulson v. McMillan*, 8 Wash.2d 295, 111 P.2d 983, 989.

If an automobile is owned and maintained by a family corporation for general use of a family, such as that of corporation's manager and one of its principal stockholders, corporation may be held liable under the "family automobile doctrine" to third parties. *Durso v. A. D. Cozzolino, Inc.*, 128 Conn. 24, 20 A.2d 392, 394.

**FAMILY BIBLE.** A Bible containing a record of the births, marriages, and deaths of the members of a family. As to its admissibility in evidence, see *Whart. Ev. § 219*; *Tayl. Ev. 572*; 1 *Greenl. Ev. § 104*; *L. R. 1 Ex. 255*; *Greenleaf v. R. Co.*, 30 Iowa, 301; *Southern Life Ins. Co. v. Wilkinson*, 53 Ga. 535; *Weaver v. Leiman*, 52 Md. 709.

**FAMILY CAR.** Automobile used to send owner's children to school was "family car." *Coleman v. Rollo*, Tex.Civ.App., 50 S.W.2d 391, 392.

**FAMILY CAR DOCTRINE.** The doctrine rests upon the basis that the automobile is furnished by the husband in his individual capacity and as common-law head of the family for the use of the family, and not as the agent of the community. *Donn v. Kunz*, 52 Ariz. 219, 79 P.2d 965. It rests on theory that operator is husband's agent and runs automobile in husband's "business," *Hart v. Hogan*, 173 Wash. 598, 24 P.2d 99; that wife is husband's agent in carrying out one of the purposes for which the automobile is purchased and owned, *Moffitt v. Krueger*, 11 Wash.2d 658, 120 P. 2d 512, 513.

Under the doctrine, a father furnishing automobile for pleasure and convenience of family makes the use of automobile by family his business and any member of family driving automobile with father's express or implied consent is the father's agent and the father is liable for the member's negligence. *Donn v. Kunz*, 52 Ariz. 219, 79 P.2d 965, 966, 967.

See, also, *Family Automobile Doctrine and Family Purpose Doctrine*.

## FAMILY CAR DOCTRINE

The person upon whom it is sought to fasten liability under the doctrine must own, provide, or maintain an automobile for the general use, pleasure, and convenience of the family. Liability under the doctrine is not confined to owner or driver. It depends upon control and use. A widow, wife, or mother may be liable as well as a husband or father. *Hart v. Hogan*, 173 Wash. 598, 24 P.2d 99. To bring a case within doctrine, it must be shown that automobile was in fact a family pleasure automobile, but automobile purchased and used for business purposes may come within the doctrine, where it is also used for family pleasure. *Dillon v. Burnett*, 197 Wash. 371, 85 P.2d 656, 658.

**FAMILY COUNCIL.** See Family Arrangement; Family Meeting; Conseil de Famille.

**FAMILY DEPENDENT UPON HIM FOR SUPPORT.** Bankrupt whose minor children were living separately from him in custody of his divorced wife held to have "family dependent on him for support." *In re McFarland*, D.C.Wash., 49 F.2d 342, 343.

**FAMILY EXPENSES.** Obligations incurred for something intended for the use or comfort of the collection spoken of as the family, as distinguished from individual or personal expenses. *Vose v. Myott*, 141 Iowa, 506, 120 N.W. 58, 21 L.R.A., N.S., 277.

Purchase price of team of horses used on farm was a "family expense". *Wall v. Crawford*, 103 Colo. 66, 82 P.2d 749, 750.

Tuition for education of children of taxpayer held "family expense". *Channing v. U. S.*, D.C.Mass., 4 F.Supp. 33, 34.

**FAMILY GROUP**, within purview of the family car doctrine, is not confined to persons related to the owner, but includes members of the collective body of persons living in his household for whose convenience the car is maintained and who have authority to use it. *Smart v. Bissonette*, 106 Conn. 447, 138 A. 365, 366; *Hart v. Hogan*, 173 Wash. 598, 24 P.2d 99. See Family Purpose Doctrine, *infra*.

The children of trust settlor including an adult son are members of the settlor's "family group" for income tax purposes. *Commissioner of Internal Revenue v. Wilson*, C. C.A.7, 125 F.2d 307, 310.

**FAMILY HOTEL.** A "family hotel", as distinguished from an ordinary "public hotel", in construction of covenant, is designed primarily for the accommodation of permanent guests. *Kew Gardens Corporation v. Ciro's Plaza*, 175 Misc. 475, 23 N.Y.S.2d 957, 959.

**FAMILY LIBRARY.** Which one spouse cannot mortgage without consent of other may be composed of such books as family or head of family chooses to select. *Lupton v. Merchants' Nat. Bank of Topeka*, 140 Kan. 615, 38 P.2d 125, 127.

**FAMILY MEETING.** An institution of the laws of Louisiana, being a council of the relatives (or, if there are no relatives, of the friends) of a minor, for the purpose of advising as to his affairs and the administration of his property.

The family meeting is called by order of a judge, and presided over by a justice or notary, and must consist of at least five persons, who are put under oath. *In re Botchick*, 44 La. Ann. 1037, 11 So. 712; Civ. Code La. art. 305. It corresponds to the "conseil de famille" of French law, *q. v.* See *Lemoine v. Ducoite*, 45 La. Ann. 857, 12 So. 939; *Commaux v. Barbin*, 6 Mart. La. N.S. 455.

**FAMILY PHYSICIAN.** A physician who regularly attends and is consulted by the members of the family as their medical adviser; but he need not attend in all cases or be consulted by all the members of the family. *Price v. Ins. Co.*, 17 Minn. 519, Gil. 473, 10 Am. Rep. 166; *Reid v. Ins. Co.*, 58 Mo. 424; *Cromeens v. Sovereign Camp, W. O. W.*, Mo. App., 247 S.W. 1033, 1034.

**FAMILY POOL.** A species of contract that must have something to stand on besides wishful thinking, and the parties to it must be conscious that they are in it and contributing to it to be bound by it. *Sherman v. Florida Tar & Creosote Corp.*, 160 Fla. 696, 36 So.2d 267, 269.

**FAMILY PURPOSE DOCTRINE.** A doctrine that the owner of a car, who gives it over to the use of his family and permits it to be operated by the members thereof, is liable for the injuries inflicted while being operated by a member of the family. *Turoff v. Burch*, 60 App. D.C. 221, 50 F.2d 986, 987; *McNamara v. Prother*, 277 Ky. 754, 127 S.W.2d 160, 161; *Schwartz v. Johnson*, 152 Tenn. 586, 280 S.W. 32, 33, 47 A.L.R. 323. The doctrine, that the owner of an automobile purchased or maintained for the pleasure of his family is liable for injuries inflicted by the machine while being used by the members of the family for their own pleasure. *Doss v. Monticello Electric Light & Power Co.*, 193 Ky. 499, 236 S.W. 1046, 1047; *Thompson v. Kansas City Rys. Co.*, 113 Kan. 74, 213 P. 633.

See, also, Family Automobile Doctrine; Family Car Doctrine; Family Group.

The doctrine imputes relationship of principal and agent where one maintains an automobile for pleasure or other use of member of his family. *United States Fidelity & Guaranty Co. v. Brann*, 297 Ky. 381, 180 S.W.2d 102, 104; it is based on theory that each family member in using such car for own pleasure is carrying out the purpose for which it is furnished, and is the owner's agent or servant. *Behseleck v. Andrus*, 60 S.D. 204, 244 N.W. 268, 269, 88 A.L.R. 596; *Hackley v. Robey*, 170 Va. 55, 195 S.E. 689, 692; *Ener v. Gandy*, Tex. Civ. App., 141 S.W.2d 772, 775. It is founded upon principles of agency or of master and servant. *Kallil v. Spivey*, 70 Ga. App. 84, 27 S.E.2d 475, 479; *Baptist v. Slate*, 162 Va. 1, 173 S.E. 512, 515; It is restricted to automobiles maintained by owner for comfort, pleasure, and convenience of members of his family. *Mitchell v. Mullen*, 45 Ga. App. 285, 164 S.E. 278, 280; *Commonwealth of Kentucky, for Use and Benefit of Kern, v. Maryland Casualty Co. of Baltimore, Md.*, C.C.A. Ky., 112 F.2d 352, 356.

A father is not liable merely because he is head of family, but the one who owns or provides the automobile is liable. *McNamara v. Prather*, 277 Ky. 754, 127 S.W.2d 160, 161, 162. A wife may be held liable for the torts of her husband under the doctrine. *Goldstein v. Johnson*, 64 Ga. App. 31, 12 S.E.2d 92, 94. Agency is the very genesis of the doctrine, *Vaughn v. Booker*, 217 N.C. 479, 8 S.E.2d 603, 604, 605; *Grandmother standing in loco parentis to grandson was liable under the doctrine for grandson's negligent operation of her automobile.* *Rutherford v. Smith*, 284 Ky. 592, 145 S.W.2d 533, 536; Where wife owned automobile, husband was not liable under "family purpose doctrine," for minor son's negligent operation of the automobile, notwithstanding husband paid part of gasoline and garage bills. *McNamara v. Prather*, 277 Ky. 754, 127 S.W.2d 160, 161, 162.

It has been said that the family purpose doctrine has been accepted by the courts of about half of the states. *Jacobsen v. Dailey*, 36 N.W.2d 711, 228 Minn. 201. Among those states are Georgia, Nebraska, North Carolina, and Oregon.

On the other hand, the doctrine has been specifically rejected, or not adopted, by fully one-half of the

states, including California, Illinois, Mississippi, New York, Pennsylvania, Virginia, and Wisconsin. In Minnesota it has been held that the doctrine has been superseded by a financial responsibility statute (M.S.A. § 170.54). *Ellingboe v. Guerin*, 36 N.W.2d 598, 228 Minn. 211. For a full discussion of the subject, see *Blashfield, Cyc. of Automobile Law and Prac., Perm.Ed., § 3111 et seq.*

**FAMILY RELATION.** A relationship which may exist between one taken into the family by the head of the family, notwithstanding the absence of blood relationship or of legal adoption. *Nelson v. Poorman's Estate*, Mo.App., 215 S.W. 753, 754.

Such relation exists: between two sisters when there is moral obligation on part of one to support and care for the other and when necessity for such care and support exists, *Standard Paving Co. v. Tolson*, Tex.Civ.App., 86 S.W.2d 789, 791; when child receives from parent services, maintenance, or gifts reasonably frequent to lead to expectation of future enjoyment thereof. *Gaydos v. Domabyl*, 301 Pa. 523, 152 A. 549, 551; Where brother owes moral obligation to support sister and necessity for such support exists, *Central Life Assur. Soc. (Mutual) v. Gray*, Tex.Civ.App., 32 S.W.2d 259, 260. Where father lives on homestead after mother's death with two adult sons, his only heirs, one of whom marries and remains on with father until father's death, *Cumberland & Liberty Mills v. Keggins*, 139 Fla. 133, 190 So. 492, 493. Where there is legal or moral obligation on head of family to support the other members, and there is dependence upon such members for support, *Standard Paving Co. v. Tolson*, Tex.Civ.App., 86 S.W.2d 789, 791.

**FAMILY SERVICE RULE.** Under "family-purpose doctrine" or "family-service rule" or "family-automobile doctrine" or "family-car rule", family head maintaining automobile for use of family is liable for injury resulting from negligence of minor son who is member of family while operating automobile with knowledge and consent of family head for comfort or pleasure of family. *Cohen v. Whiteman*, 75 Ga.App. 286, 43 S.E.2d 184, 186.

**FAMILY SETTLEMENT.** An agreement between members of a family settling the distribution of family property among them. *Fitzgerald v. Nelson*, 159 Or. 264, 79 P.2d 254, 255.

An arrangement or an agreement, between heirs of a deceased person, by which they agree on distribution or management of estate without administration by court having jurisdiction of such administration proceedings. *Wright v. Saltmarsh*, 174 Okl. 226, 50 P.2d 694, 703.

An agreement made between a father and his son or children or between brothers to dispose of property in a different manner from that which would otherwise take place. *Peterson v. Hegna*, 158 Minn. 289, 197 N.W. 484, 487. A term of practically the same signification as "family arrangement," *q. v. supra*. See *Willey v. Hodge*, 104 Wis. 81, 80 N.W. 75, 76 Am.St.Rep. 852.

Where decedent's widow and son were only parties concerned in distribution of decedent's estate, an agreement between the widow and son for division of the estate was a "family settlement". *Stark v. Stark*, 201 Ark. 133, 143 S.W.2d 875, 878.

**FAMILY USE.** That use ordinarily made by and suitable for the members of a household whether as individuals or collectively. *Spring Valley Water Works v. San Francisco*, 52 Cal. 120. The supply of water in a municipal corporation for family use includes the supply of jails, hospitals, almshouses, schools, and other municipal institutions; *id.*

**FAMOSUS.** In the civil and old English law. Relating to or affecting injuriously the character or reputation; defamatory; slanderous; scandalous.

**FAMOSUS LIBELLUS.** A libelous writing. A term of the civil law denoting that species of *injuria* which corresponds nearly to libel or slander.

**FANAL.** Fr. In French marine law. A large lantern, fixed upon the highest part of a vessel's stern.

**FANATIC.** A religious enthusiast; a bigot; a person entertaining wild and extravagant notions, or affected by zeal or enthusiasm, especially upon religious subjects.

Also, a person pretending to be inspired;—formerly applied to Quakers, Anabaptists, and all other sectaries, and factious dissenters from the Church of England. St. 13 Car. II. c. 6. *Jacob*.

**FANCIFUL TRADE-NAME.** Trade-names are "fanciful" when they do not, by their usual and ordinary meaning, denote or describe products to which they are applied, but indicate their purpose by application and association. *Skinner Mfg. Co. v. General Foods Sales Co.*, D.C.Neb., 52 F.Supp. 432, 445.

**FANEGA.** In Spanish law. A measure of land varying in different provinces, but in the Spanish settlements in America consisting of 6,400 square varas or yards. *Diccionario de la Acad.*; 2 White Recop. 49; 138.

**FAQUEER.** See *Fakir*.

**FARANDMAN.** In Scotch law. A traveler or merchant stranger. *Skene*.

**FARDEL OF LAND.** In old English law. The fourth part of a yard-land. *Spelman*. Noy says an eighth only, because, according to him, two fardels make a nook, and four nooks a yard-land. *Wharton*. See *Noy, Complete Lawyer* 57; *Cowell; Cunningham, Law Dict.*

**FARDELLA.** In old English law. A bundle or pack; a fardel. *Fleta*, lib. 1, c. 22, § 10.

**FARDING-DEAL.** The fourth part of an acre of land. *Spelman*.

**FARE.** A voyage or passage by water; also the money paid for a passage either by land or by water. *Cowell*.

The sum paid or to be paid for carrying a passenger. *Chase v. New York Cent. R. Co.*, 26 N.Y. 526; *Clark v. Southern Ry. Co.*, 69 Ind.App. 697, 119 N.E. 539, 543.

As used in connection with interstate transportation, means a rate of charge for the carriage of passengers, as approved by the proper governmental agency. *Krause v. Pacific Mut. Life Ins. Co. of California*, 141 Neb. 844, 5 N.W.2d 229, 232.

In case of a water company it means the tax or compensation which the company may charge for furnishing a supply of water. *McNeal Pipe & Foundry Co. v. Howland*, 111 N.C. 615, 16 S.E. 857, 20 L.R.A. 743.

## FARE

**FARE PAYING PASSENGER** is a passenger who pays the legal fare. *Krause v. Pacific Mut. Life Ins. Co. of California*, 141 Neb. 844, 5 N.W. 2d 229, 232.

**FARINAGIUM**. A mill; a toll of meal or flour. *Jacob; Spelman*.

**FARLEU (or FARLEY)**. Money paid by tenants in lieu of a heriot. It was often applied to the best chattel, as distinguished from *heriot*, the best beast. *Cowell*.

**FARLINGARIL**. Whoremongers; adulterers.

**FARM, n.** A body of land under one ownership, devoted to agriculture, either to raising crops, or pasture, or both. *Dorsett v. Watkins*, 59 Okl. 198, 158 P. 608, 9 A.L.R. 278. With the development particularly of the western states, a large part of whose wealth consists of cattle, the word "farm" has acquired a somewhat broader meaning, and in its generic sense is as applicable to a stock farm as to one where grain is raised. *Porter v. Yakima County*, 77 Wash. 299, 137 P. 466, 467. A certain amount of provision reserved as the rent of a message. *Spelman*. A considerable tract of land cultivated or used in some one of the usually recognized ways of farming. *Mattison v. Dunlap*, 191 Okl. 168, 127 P.2d 140, 141. A term, a lease of lands; a leasehold interest. 2 Bl.Comm. 17; 1 *Reeve*, Eng. Law, 301, note. The land itself, let to farm or rent. 2 Bl.Comm. 368. Rent generally which is reserved on a lease; when it was to be paid in money, it was called "*blanche firme*." *Spelman*; 2 Bl.Comm. 42.

**Old English Law.** A lease of other things than land, as of imposts. There were several of these, such as "the sugar farm," "the silk farm," and farms of wines and currants, called "petty farms." See 2 *How*. State Tr. 1197-1206.

The word has been defined to mean: a considerable tract of land, or a number of small tracts, devoted wholly or partially to agricultural purposes or pasturage of cattle but may also include woodland. *Jones v. Holloway*, 183 Md. 40, 36 A.2d 551, 554, 152 A.L.R. 933; A large tract or portion of land taken by a lease under a yearly rent payable by the tenant, *Tomlin*, Law Dict.; a parcel or group of parcels of land cultivated as a unit, *Supervisors of Manheim Tp., Lancaster County, v. Workman*, 154 Pa.Super. 146, 35 A.2d 747, 749; a piece of land held under lease for cultivation; *Supervisors of Manheim Tp., Lancaster County, v. Workman*, 154 Pa.Super. 146, 35 A.2d 747, 749; a piece of land used wholly or principally for agricultural purposes. *State Industrial Accident Commission v. Eggiman*, 172 Or. 19, 139 P.2d 565, 567; a plot or tract of land devoted to the raising of domestic or other animals; as a chicken farm; a fox farm; *Hagenburger v. City of Los Angeles*, 51 Cal.App.2d 161, 124 P.2d 345, 347; a portion of land used for agricultural purposes, either wholly or in part; a tract of land devoted in part, at least, to cultivation, for agricultural purposes, without reference to its extent, or to the tenure by which it is held. *People ex rel. Rogers v. Caldwell*, 142 Ill. 434, 32 N.E. 691; *Fleckles v. Hille*, 83 Ind.App. 715, 149 N.E. 915.

A tract of land devoted to agricultural purposes. *Hagenburger v. City of Los Angeles*, 51 Cal.App.2d 161, 124 P.2d 345, 347; a tract of land devoted to agriculture, stock raising, or some allied industry, *Winship v. Inspector of Buildings of Town of Wakefield*, 274 Mass. 380, 174 N.E. 476, 477; a tract of land devoted to general or special cultivation under single control. *Supervisors of Manheim Tp., Lancaster County, v. Workman*, 154 Pa.Super. 146, 35 A.2d 747, 749; a tract of land used for raising crops or rearing

animals. *Gordon v. Buster*, 113 Tex. 382, 257 S.W. 220; a wheat, fruit, dairy or market farm, Township of Marple v. *Lynam*, 151 Pa.Super. 288, 30 A.2d 208, 210.

Both grazing and cultivated lands, sold on mortgage foreclosure, constituted "farm," *State ex rel. Wahluke Inv. Co. v. Superior Court for Walla Walla County*, 168 Wash. 142, 10 P.2d 986, 987.

The original meaning of the word was "rent," and by a natural transition it came to mean the land out of which the rent issued.

The term does not necessarily include only the land under cultivation and within a fence. It may include all the land which forms part of the tract, and may also include several connected parcels under one control. *Succession of Williams*, 132 La. 865, 61 So. 852, 853.

The word "farm" within town zoning by-law, means land used for production of crops, livestock grazing, raising of hay for cows to produce milk and other dairy products, raising of poultry and sale of chickens and eggs, or growing of fruit. *Town of Lincoln v. Murphy*, 314 Mass. 16, 49 N.E.2d 453, 455, 146 A.L.R. 1196.

Usually the chief message in a village or town whereto belongs a great demesne of all sorts. *Cowell; Cunningham*, Law Dict.; *Termes de la Ley*.

**FARM, v.** To lease or let; to demise or grant for a limited term and at a stated rental.

**FARM CROSSING.** A roadway over a railroad track at grade for the purpose of reaching tillage land cut off by the track. *True v. Maine Cent. R. Co.*, 113 Me. 375, 94 A. 183, 184. See, also, *In re Colvin Street in City of Buffalo*, 155 App.Div. 808, 140 N.Y.S. 882, 883.

A conveyance of strip of land across farm to railroad as right of way, which reserved to grantor right to maintain two "farm crossings" over right of way, is broad enough to permit installation of an underground conduit for purpose of supplying electricity to farm of grantor for domestic and farm purposes. *New York Cent. R. Co. v. Yarian*, 719 Ind. 477, 39 N.E.2d 604, 607, 139 A.L.R. 455.

A farm crossing is a crossing used in connection with a farm and not property within city limits. *Chicago, M., St. P. & P. R. Co. v. Cross*, 212 Iowa 218, 234 N.W. 569, 572.

**FARM LABOR.** Agricultural employment and farm labor are used as practically synonymous and include all farm work and work incidental thereto. *Smythe v. Phoenix*, 63 Idaho 585, 123 P. 2d 1010, 1012.

Ordinarily, the term "farm labor" connotes the tilling of the soil, its products and the raising and caring for such domestic animals as are usually found in those surroundings. *Tucker v. Newman*, 217 Minn. 473, 14 N.W.2d 767, 771, 772.

Under Unemployment Insurance Law an employee employed on a farm devoted to the raising of fur-bearing animals was engaged in "farm labor". *In re Bridges*, 262 App.Div. 19, 28 N.Y.S.2d 312, 314.

**FARM LABORER.** Generally, a man hired to go on a farm. *Klein v. McCleary*, 154 Minn. 498, 192 N.W. 106, 107. The term "farm laborer" is ordinarily synonymous with the term "hired man." *Lowe v. North Dakota Workmen's Compensation Bureau*, 66 N.D. 246, 264 N.W. 837, 107 A.L.R. 973.

One employed as a laborer on a farm, especially one who does all kinds of farm work, *In re Keaney*, 217 Mass. 5, 104 N.E. 438; one employed in or about business of farming. *Pridgen v. Murphy*, 44 Ga.App. 147, 160 S.E. 701, 702; one employed on a farm in customary types of farm work or employed and paid directly by a farmer in transporting his raw produce. *Cedarburg Fox Farms v. Industrial Commission*, 241 Wis. 604, 6 N.W.2d 687, 689, 690; one who devotes his time to ordinary farm labor as gainful occupation with some reasonable degree of regularity and continuity, *Adams v. Ross*, 230 App.Div. 216, 243 N.Y.S.



464, 466; *Makeever v. Marlin*, 92 Ind.App. 158, 174 N.E. 517, 518; one who labors on a farm in raising crops, or in doing general farm work. *H. Duys & Co. v. Tone*, 125 Conn. 300, 5 A.2d 23, 28; *Wayland v. Kleck*, 57 Ariz. 135, 112 P.2d 207, 208.

On question whether the term as used in Workmen's Compensation Acts includes an employee on a corn husking or a grain threshing outfit, or the like, which goes from one farm to another for compensation, the decisions are conflicting. See *Slycoord v. Horn*, 179 Iowa, 936, 162 N.W. 249, 252, 7 A.L.R. 1285. For cases *contra*, holding that such an employee is not a farm laborer, see *In re Boyer*, 65 Ind. App. 408, 117 N.E. 507, 508; *Industrial Commission of State of Colorado v. Shadowen*, 68 Colo. 69, 187 P. 926, 927, 13 A.L.R. 952.

The term includes a compensation claimant hired to feed and water poultry and clean poultry bins and houses and collect eggs, *Bennett v. Stoneleigh Farms*, 254 App.Div. 790, 4 N.Y.S.2d 255, 256; a ranch laborer, *Gordon v. Buxter*, 113 Tex. 382, 257 S.W. 220; a sheep herder, *Davis v. Industrial Commission*, 59 Utah, 607, 206 P. 267, 268; *Finger v. Northwest Properties*, 63 S.D. 176, 257 N.W. 121; employee injured while carting firewood for domestic use from a farm that employer was operating on shares, *Butterfield v. Brown*, 261 App.Div. 1022, 25 N.Y.S.2d 803, 804; employee of independent contractor engaged in business of spraying trees for owners of citrus orchards, *Maryland Casualty Co. v. Dobbs*, 128 Tex. 547, 100 S.W.2d 349, 350. Employee of owner of farm land employed solely to dig ditch, *Culpepper v. White*, 52 Ga.App. 740, 184 S.E. 349; farm hand injured while cranking tractor furnishing power for buzz saw used to saw wood of employer's neighbor, *McAllister v. Cobb*, 237 App.Div. 674, 263 N.Y.S. 349; nurseryman's helper or employee, held "farm laborer", *Georgia Casualty Co. v. Hill*, Tex.Civ.App., 30 S.W.2d 1055, 1057; *In re Bronxville Nurseries*, 258 App.Div. 1019, 17 N.Y.S.2d 95.

**FARM LAND.** A term applicable to all the land contained in a farm, and not necessarily merely to land which has been plowed. *De Woffe v. Kupers*, 106 Or. 176, 211 P. 927, 930.

**FARM LEASE.** A contract upon a printed lease form, containing all provisions of standard Nebraska farm leases, was a "farm lease," notwithstanding inserted provision that first party employed second party to farm the premises and would pay second party half the corn and hay. *In re Mulligan*, D.C.Neb., 45 F.Supp. 763, 766.

**FARM LET.** Technical words in a lease creating a term for years. *Co. Litt.* 45 b; 1 Washb. R. P. Index, *Lease*. Operative words in a lease, which strictly mean to let upon payment of a certain rent in farm; *i. e.*, in agricultural produce.

**FARM OUT.** To let for a term at a stated rental.

Among the Romans the collection of revenue was farmed out, and the same system existed in France before the revolution of 1789; in England the excise taxes were farmed out, and thereby their evils were greatly aggravated. The farming of the excise was abolished in Scotland by the union, having been before that time abandoned in England. In all these cases the custom gave rise to great abuse and oppression of the people, and in France most of the farmers-general, as they were called, perished on the scaffold.

**FARM PRODUCTS.** Include swine, horses, meat cattle, sheep, manure, cordwood, hay, as well as vegetables, fruit, eggs, milk, butter, lard, and other provisions for the mouth. *Keeney v. Beasman*, 169 Md. 582, 182 A. 566, 569, 103 A.L.R. 1515.

**FARM-TO-MARKET ROADS.** Within act designating purposes for which road funds were allotted to counties, held to mean county public highways leading directly to, or intersecting, state

highways leading to markets. *Hastings v. Pfeiffer*, 184 Ark. 952, 43 S.W.2d 1073, 1074.

**FARM UTENSILS.** A term which, in an insurance policy, is broader than the term garden tools, and includes any instrumentalities within the meaning of the word utensils made use of on a farm, including a stock scale or a new windmill not erected. *Murphy v. Continental Ins. Co.*, 178 Iowa 375, 157 N.W. 855, L.R.A.1917B, 934.

**FARM WAGON.** This term in an exemption statute includes a farm wagon moved by mechanical as well as by animal power. *People v. Corder*, 82 Colo. 318, 259 P. 613.

**FARMER.** A cultivator; a husbandman; an agriculturist. *Kaslovitz v. Reid*, C.C.A.Utah, 128 F.2d 1017, 1018. One who assumes the collection of the public revenues, taxes, excise, etc., for a certain commission or percentage; as a *farmer* of the revenues. The lessee of a farm. It is said that every lessee for life or years, although it be but of a small house and land, is called "farmer." This word implies no mystery, except it be that of husbandman. *Cunningham*; *Cowell*; 3 Sharsw. Bla.Comm. 318. There may also be a farmer of other personal property as well as of revenue and of lands. *Plowd.* 195; *Cunn. Law Dict.*

The word "farmer" also includes: an individual primarily, bona fide, personally engaged in producing products of the soil, in dairy farming, the production of poultry or live stock, the production of poultry or live stock products, or the principal part of whose income is derived from any one or more of the foregoing operations. *In re Davis*, D.C.Iowa, 22 F.Supp. 12, 13; employer cutting valuable timber off land incidental to his occupation of agriculture, *Robinson v. Stockley*, 166 Tenn. 380, 61 S.W.2d 677. One continuously and profitably engaged in farming, though much of his efforts were devoted to unprofitable seed business, *Stoller v. Cleveland Trust Co.*, C.C.A.Ohio, 133 F.2d 180, 181; one engaged exclusively in raising tomato plants to sell to others who actually grow the tomatoes for market, *In re Horner*, C.C.A.Ill., 104 F.2d 600, 602; one engaged in agricultural pursuits as a livelihood or business, *Skinner v. Dingwell*, C.C.A.Iowa, 134 F.2d 391, 393; one engaged in dairy farming and in production of poultry or livestock, *Leonard v. Bennett*, C.C.A.Or., 116 F.2d 128, 131, 132, 134; one engaged in the business of cultivating land or employing it for the purpose of husbandry, *Kaslovitz v. Reid*, C.C.A.Utah, 128 F.2d 1017, 1018; one living on his farm from revenue thereof and personally operating it on large scale as his primary activity, *In re Lindsay*, D.C. Tex., 41 F.Supp. 948, 950, 951; one personally engaged in farming, *Shyvers v. Security-First Nat. Bank of Los Angeles*, C.C.A.Cal., 108 F.2d 611, 612, 613, 126 A.L.R. 674; *In re Davis*, D.C.Iowa, 22 F.Supp. 12, 13; one primarily engaged in agricultural pursuits. *Leonard v. Bennett*, C.C.A.Or., 116 F.2d 128, 131, 132, 134; one who cultivates a considerable tract of land in some one of the usual recognized ways of farming, *Kaslovitz v. Reid*, C.C.A.Utah, 128 F.2d 1017, 1018; *Matteson v. Dunlap*, 191 Okl. 168, 127 P.2d 140, 141; one who cultivates a farm either as owner or lessee. *Kaslovitz v. Reid*, C.C.A.Utah, 128 F.2d 1017, 1018; one who cultivates a farm, whether the land be his own or another's; one who directs the business of a farm and works at farm labor. *Kaslovitz v. Reid*, C.C.A.Utah, 128 F.2d 1017, 1018; *Stoner v. New York Life Ins. Co.*, Mo.App., 90 S.W.2d 784, 795; one who expends his energies and production efforts in tilling the soil, raising crops and marketing them, thereby promoting his financial interest and advancement, *Kaslovitz v. Reid*, C.C.A.Utah, 128 F.2d 1017, 1018; one who is devoted to the tillage of the soil, *Kaslovitz v. Reid*, C.C.A.Utah, 128 F.2d 1017, 1018; one who is primarily, personally, and bona fide engaged in farming although he does not spend all of his time therein, work farm without assistance, or refrain from engaging in secondary activities, *In re Lindsay*, D.C.Tex., 41 F.Supp. 948, 950, 951; one who

## FARMER

owns and resides on a farm, *Kaslovitz v. Reid*, C.C.A.Utah, 128 F.2d 1017, 1018; one who resides on a farm with his family, cultivating such farm, and mainly deriving his support from it, *Kaslovitz v. Reid*, C.C.A.Utah, 128 F.2d 1017, 1018; one who resides on and cultivates a farm, mainly deriving his support therefrom, *State v. Hines*, 94 Or. 607, 186 P. 420, 422.

The term "farmer" in Bankruptcy Act includes an administrator, *Harris v. Zion Sav. Bank & Trust Co.*, 317 U.S. 447, 63 S.Ct. 354, 357, 87 L.Ed. 390; personal representative of a deceased farmer. In re *Stoner*, C.C.A.Pa., 133 F.2d 696, 697.

**FARMER GENERAL.** See *Farm Out*.

**FARMING.** Tillage of the soil. In re *Brown*, D.C.Mo., 284 F. 899, 900; *Hart-Parr Co. v. Barkley*, C.C.A.Okla., 231 F. 913, 914.

Other definitions include:

Act or business of cultivating the land, *Hagenburger v. City of Los Angeles*, 51 Cal.App.2d 161, 124 P.2d 345, 347; business of cultivating land or employing it for the purposes of husbandry, *Kaslovitz v. Reid*, C.C.A.Utah, 128 F.2d 1017, 1018; business of tilling the soil, *Hagenburger v. City of Los Angeles*, 51 Cal.App.2d 161, 124 P.2d 345, 347; commercial production of any plant, even horticultural or annual which has economic value, *Township of Marple v. Lynam*, 151 Pa.Super. 288, 30 A.2d 208, 210; conduct of a farm, *State Industrial Accident Commission v. Eggman*, 172 Or. 19, 139 P.2d 565, 567, 569; cultivation and fertilization of the soil as well as caring for and harvesting the crops, *Kaslovitz v. Reid*, C.C.A.Utah, 128 F.2d 1017, 1018; cultivation of land for production of agricultural crops with incidental enterprises, *Collins v. Mills*, 198 Ga. 18, 30 S.E.2d 866, 870; cultivation of the soil for the production of crops, *Chudnov v. Board of Appeals of Town of Bloomfield*, 113 Conn. 49, 154 A. 161, 162; operation of a farm. In re *McMurray*, D.C.Iowa, 8 F.Supp. 449, 454; operation of a nursery from which no sales were made on lots within zoning district, *Hagenburger v. City of Los Angeles*, 51 Cal.App.2d 161, 124 P.2d 345, 347, 348; stock raising and dairying if in connection with and incidental to tillage of the soil, In re *Brown*, D.C.Wash., 251 F. 365, 370; to produce crops or animals on a farm. *Hagenburger v. City of Los Angeles*, 51 Cal.App.2d 161, 124 P.2d 345, 347.

Cultivation of an indefinite quantity of land, and including gardening or horticulture, fruit growing, raising of vegetables, trees, shrubs, plants and similar products is farming within zoning ordinance. *Hagenburger v. City of Los Angeles*, 51 Cal.App.2d 161, 124 P.2d 345, 347, 348. Pasturing sheep is "farming or agriculture". *Weddle v. Parrish*, 135 Or. 345, 295 P. 454, 455.

"Farming" implies that the operator is dealing with the natural products of the soil in a natural manner, *Dye v. McIntyre Floral Co.*, 176 Tenn. 527, 144 S.W.2d 752, 753.

To be engaged in "farming" within Bankruptcy Act, debtor need not be actually engaged in manual farm work, but may operate farm himself, or may operate many farms through overseers and wage hands. *Florida Nat. Bank v. Evans*, D.C.Ga., 28 F.2d 67, 68.

**FARMING BUSINESS.** A farmer's employee engaged in delivering a farm product to market or to buyer is employed in the "farming business", *Hayes v. Barras*, La.App., 6 So.2d 66, 68; *Robichaux v. Realty Operators*, 195 La. 70, 196 So. 23, 26.

**FARMING OPERATIONS** within statute providing for relief to farm debtors, means production of raw food or other material by natural processes of growth, and includes production of poultry and eggs. In re *Knight*, D.C.Conn., 9 F.Supp. 502.

Clearing wood land, if a mere incident to farming operations, is itself a "farming operation," *Stahl v. Patrick*, 206 Minn. 413, 288 N.W. 854, 855.

Persons employed to pack tobacco in warehouses by corporation which grew its own tobacco were engaged in

"farming operations" where there was no market for tobacco at time it was brought to warehouses. *American Sumatra Tobacco Corporation v. Tone*, 127 Conn. 132, 15 A.2d 80, 82.

**FARMING PRODUCTS.** All things are considered as "farming products" or "agricultural products" which have a situs of their production upon the farm and which are brought into condition for uses of society by labor of those engaged in agricultural pursuits as contradistinguished from manufacturing or other industrial pursuits. In re *Rodgers*, 134 Neb. 832, 279 N.W. 800, 803.

**FARMING PURPOSES.** These words are not limited in meaning to mere cultivation of soil and maintenance of improvements thereon for such purposes, but include raising of live stock, as well as production of farm crops directly from soil. *State v. Superior Court for Walla Walla County*, 168 Wash. 142, 10 P.2d 986, 987.

**FARO.** An unlawful game of cards, in which all the other players play against the banker or dealer, staking their money upon the order in which the cards will lie and be dealt from the pack. *Webster*; *Ward v. State*, 22 Ala. 19; *U. S. v. Smith*, 27 Fed.Cas. 1149; *Patterson v. State*, 12 Tex.App. 224.

**FARO LAY-OUT.** A board commonly covered with green cloth to which the entire spade suit is affixed in a certain order. *State v. Williams*, 157 P. 957, 52 Mont. 369.

**FARRAGO LIBELLI.** Lat. An ill-composed book containing a collection of miscellaneous subjects not properly associated nor scientifically arranged. *Wharton*.

**FARRIER.** One who takes upon himself the public employment of shoeing horses. See 1 *Bl.Comm.* 431; 2 *Salk.* 440; *Hanover, Horses* 215.

**FARTHING.** The fourth part of an English penny.

**FARTHING OF GOLD.** An ancient English coin, containing in value the fourth part of a noble. 9 *Hen. V. c. 7*.

**FARTHING OF LAND.** A great quantity of land, differing much from farding-deal, *q. v.*

**FARVAND.** Standing by itself, this word signifies "passage by sea or water." In charter-parties, it means voyage or passage by water. 18 *C.B.* 880.

**FARYNDON INN.** The ancient designation of Serjeants' Inn, Chancery Lane, London.

**FAS.** Lat. Right; justice; the divine law. 3 *Bl. Comm.* 2; *Calvin*.

In primitive times it was the will of the gods, embodied in rules regulating not only ceremonials but the conduct of all men. *Taylor, Science of Jurispr.* 65.

**FASCISM.** Is defined as the principles and organization of the patriotic and anti-communist movement in Italy started during the great war, culminating in the virtual dictatorship of Signor

Mussolini and imitated by fascist or blackshirt organizations in other countries. *Luotto v. Field*, Sup., 49 N.Y.S.2d 785, 788.

**FASCIST.** A member of the Fascisti, pertaining to, sponsored by or embodying the principles of the Fascisti, which principles are described as nationalist and conservative and embodying principles of syndicalism, whether applied to an Italian party or to a similar party in other countries. *Luotto v. Field*, Sup., 49 N.Y.S.2d 785, 788.

A totalitarian; a believer in the corporate state; one opposed to the exercise of democratic methods or of civil liberties; high handed. A name of opprobrium sometimes given to those who oppose proposed reforms or who are conservative in their political views.

**FASIUS.** In old English law. A faggot of wood.

**FAST BILL OF EXCEPTIONS.** One which may be taken in Georgia in injunction suits and similar cases, at such time and in such manner as to bring the case up for review with great expedition. It must be certified within twenty days from the rendering of the decision. *Sewell v. Edmonston*, 66 Ga. 353.

**FAST-DAY.** A day of fasting and penitence, or of mortification by religious abstinence. As to counting it in legal proceedings, see 1 Chit. Archb. Pr., 12th Ed., 160, et seq.

**FAST ESTATE.** See Estate.

**FASTERMANS, FASTERMANNES, or FASTING-MEN.** Men in repute and substance; pledges, sureties, or bondsmen, who, according to the Saxon polity, were *fast* bound to answer for each other's peaceable behavior. *Spelman*; Enc. Lond.

**FASTI.** In Roman law. Lawful. *Dies fasti*, lawful days; days on which justice could lawfully be administered by the praetor. See *Dies Fasti*.

**FAT SPOT.** A "fat spot" is a spot where there is an excessive amount of bituminous material on the surface of the pavement. *Karl v. State*, 279 N.Y. 555, 18 N.E.2d 852, 853.

**FATAL ERRORS.** Are such only as may reasonably be held to have worked injury to complaining party. *Willard v. Stauffer*, 91 Ind.App. 119, 170 N.E. 332, 334.

**FATAL INJURY.** A term embracing injuries resulting in death, which, as used in accident and disability insurance policies is distinguished from "disability," which embraces injuries preventing the insured from performing the work in which he is usually employed, but not resulting in death. *Provident Life & Accident Ins. Co. v. Johnson*, Tex.Civ.App., 235 S.W. 650, 652.

**FATAL VARIANCE.** A variance tending to mislead defendant in making defense or one preventing plea of former jeopardy. *Burke v. U. S.*, C.C. A.Cal., 58 F.2d 739, 741.

A variance in order to be "fatal" must be material. *Whittier v. Leifert*, 72 N.D. 528, 9 N.W.2d

402, 405; *People v. Mizer*, 37 Cal.App.2d 148, 99 P.2d 333, 335, 336; it must be misleading or serve to mislead the adverse party, *Lorenz v. Santa Monica City High School Dist.*, 51 Cal.App.2d 393, 124 P.2d 846, 851; it must be substantial and material, *Miller v. Arliskas*, 324 Ill.App. 588, 58 N.E. 2d 743.

Attempt to introduce evidence of special damages from breach of tort or breach of contract, under general averment of damage is a "fatal variance". *W. C. Hardesty Co. v. Schaefer*, Mo.App., 139 S.W.2d 1031, 1035.

The general rule with respect to proof of time when an offense is committed is that there is no "fatal variance" from the allegation that it was committed on a particular date, to show that it was actually committed on or about or near that date unless the variance results in misleading defendant so as to prevent him from making his defense to the charge or to deprive him of the benefit of a plea of former jeopardy in event of another trial for the same offense. *People v. Tracy*, 50 Cal.App.2d 460, 123 P.2d 138, 140, 141.

**FATETUR FACINUS QUI JUDICIUM FUGIT.** He who flees judgment confesses his guilt. 3 Inst. 14; 5 Co. 109b. But see *Best*, Pres. § 248.

**FATHER.** A male parent. In re *Clark's Estate*, 228 Iowa 75, 290 N.W. 13, 32. He by whom a child is begotten. Natural father; procreator of a child. In re *Dexheimer's Estate*, 197 Wis. 145, 221 N.W. 737. For "Putative Father," see that title.

As used in law, this term may (according to the context and the nature of the instrument) include a putative as well as a legal father, also a stepfather, an adoptive father, or a grandfather, but is not as wide as the word "parent," and cannot be so construed as to include a female. *Thornburg v. American Strawboard Co.*, 141 Ind. 443, 40 N.E. 1062, 50 Am.St.Rep. 334; *McGaughey v. Grand Lodge*, A. O. U. W. of State of Minnesota, 148 Minn. 136, 180 N.W. 1001; *Flenup v. Stamer*, Mo.App., 28 S.W.2d 437, 439. The term may, however, be so limited as to mean only the father of a legitimate child. *People v. Wolf*, 216 App.Div. 771, 215 N.Y.S. 95, 96; *Howard v. U. S.*, D.C.Ky., 2 F.2d 170, 173.

As used in law, this term may mean natural father and not adoptive parent. *McKinney v. Minkler*, Tex.Civ.App., 102 S.W.2d 273, 279; *Jackson's Adm'x v. Alexiou*, 223 Ky. 95, 3 S.W.2d 177, 178, 56 A.L.R. 1345.

As used in statute providing that father may inherit from his illegitimate children, includes heirs of the father. *State v. Chavez*, 42 N.M. 569, 82 P.2d 900, 906.

As used in statutes relating to duty of a father and other relatives to support adult children likely to become public charges, refers to foster father after adoption. *Betz v. Horr*, 276 N.Y. 83, 11 N.E.2d 548, 550, 114 A.L.R. 491.

The appellation "Father" indicates that the one to whom it is applied is a priest of the Catholic Church. *Sweeney v. Newspaper Printing Corporation*, 177 Tenn. 196, 147 S.W.2d 406, 407.

The word may be used in will as equivalent of "parent," which is defined as meaning father and mother. In re *Frist's Estate*, 18 Del.Ch. 409, 161 A. 918.

**FATHER-IN-LAW.** The father of one's wife or husband.

**FATHOM.** A nautical measure of six feet in length. Occasionally used as a superficial measure of land and in mining, and in that case it means a square fathom or thirty-six square feet. *Na-haolelua v. Kaaahu*, 9 Hawaii, 601.

**FATUA MULIER.** A whore. *Du Fresne*.

## FATUITAS

**FATUITAS.** In old English law. Fatuity; idiocy. Reg. Orig. 266.

**FATUM.** Lat. Fate; a superhuman power; an event or cause of loss, beyond human foresight or means of prevention.

**FATUOUS PERSON.** In Scotch law. One entirely destitute of reason; *is qui omnino desipit*. Ersk. Inst. 1, 7, 48. An idiot. Jacob. One who is incapable of managing his affairs, by reason of a total defect of reason. He is described as having uniform stupidity and inattention of manner and childishness of speech. Bell's Law Dict.

**FATUUM JUDICIUM.** A foolish judgment or verdict. As applied to the latter it is one rather false by reason of folly than criminally so, or as amounting to perjury. Bract. fol. 289.

**FATUUS.** An idiot or fool. Bract. fol. 420b. Foolish; silly; absurd; indiscreet; or ill considered. See *Fatum judicium*.

**FATUUS, APUD JURISCONSULTOS NOSTROS, ACCIPITUR PRO NON COMPOS MENTIS; ET FATUUS DICITUR, QUI OMNINO DESIPIT.** 4 Coke, 128. Fatuous, among our jurisconsults, is understood for a man not of right mind; and he is called "*fatuus*" who is altogether foolish.

**FATUUS PRÆSUMITUR QUI IN PROPRIO NOMINE ERRAT.** A man is presumed to be simple who makes a mistake in his own name. Code, 6, 24, 14; Van Alst v. Hunter, 5 Johns. Ch., N.Y. 148, 161.

**FAUBOURG.** In French law, and in Louisiana. A district or part of a town adjoining the principal city; a suburb. See City Council of Lafayette v. Holland, 18 La. 286.

**FAUCES TERRÆ.** (Jaws of the land.) Narrow headlands and promontories, inclosing a portion or arm of the sea within them. 1 Kent, Comm. 367, and note; Hale, De Jure Mar. 10; The Harriet, 1 Story, 251, 259, Fed. Cas. No. 6,099; 16 Yale L.J. 471.

## FAULT.

**American Law.** Negligence; an error or defect of judgment or of conduct; any deviation from prudence, duty, or rectitude; any shortcoming, or neglect of care or performance resulting from inattention, incapacity, or perversity; a wrong tendency, course, or act; bad faith or mismanagement; neglect of duty. School Dist. v. Boston, H. & E. R. Co., 102 Mass. 553, 3 Am.Rep. 502; Dorr v. Harkness, 49 N.J.Law, 571, 10 A. 400, 60 Am. Rep. 656; Cochrane v. Forbes, 257 Mass. 135, 153 N.E. 566, 570; Continental Oil Co. v. Horsey, 175 Md. 609, 3 A.2d 476, 478; Continental Ins. Co. v. Sabine Towing Co., C.C.A.Tex., 117 F.2d 694, 697.

As respects wife's fault as ground for divorce, it means more than a deviation from the rules of propriety and also means a blemish or impairment of excellence. Barnett v. Barnett, 292 Ky. 672, 167 S.W.2d 845, 847.

As used in statute respecting suits for separate maintenance, means voluntary separation, or failure of duty or misconduct materially contributing to disruption of marital

relation. *Amberson v. Amberson*, 349 Ill. 214, 181 N.E. 825, 826.

As used in Unemployment Compensation Act protecting persons unemployed through no fault of their own, means failure or volition, *White v. Review Board of Indiana Employment Security Division*, 114 Ind.App. 383, 52 N.E.2d 500, 502.

The word "fault," the primary lexical meaning of which is defect or failing, in the language of the law and in the interpretation of statutes signifies a failure of duty, and is the equivalent of negligence. *Milliken v. Fenderson*, 110 Me. 306, 86 A. 174, 175; *Marston v. Pickwick Stages*, 78 Cal.App. 526, 248 P. 930, 933. But see *Liberty Highway Co. v. Callahan*, 24 Ohio App. 374, 157 N.E. 708, 714.

**Civil Law.** Negligence; want of care. An improper act or omission, injurious to another, and transpiring through negligence, rashness, or ignorance.

There are in law three degrees of faults,—the gross, the slight, and the very slight fault. The *gross* fault is that which proceeds from inexcusable negligence or ignorance; it is considered as nearly equal to fraud. The *slight* fault is that want of care which a prudent man usually takes of his business. The *very slight* fault is that which is excusable, and for which no responsibility is incurred. Civil Code La. art. 3556, par. 13.

**Commercial Law.** Defect; imperfection; blemish. See *With All Faults*.

**Mining Law.** A dislocation of strata; particularly, a severance of the continuity of a vein or lode by the dislocation of a portion of it.

**FAUTOR.** Old English law. A favorer or supporter of others; an abettor. Cowell; Jacob. A partisan. One who encouraged resistance to the execution of process.

**Spanish Law.** Accomplice; the person who aids or assists another in the commission of a crime.

## FAUX.

**Civil Law.** The fraudulent alteration of the truth. The same with the Latin *falsum* or *crimen falsi*.

**French Law.** A falsification or fraudulent alteration or suppression of a thing by words, by writings, or by acts without either. Biret.

"*Faux* may be understood in three ways. In its most extended sense it is the alteration of truth, with or without intention; it is nearly synonymous with 'lying.' In a less extended sense, it is the alteration of truth, accompanied with fraud, *mutatio veritatis cum dolo facta*. And lastly, in a narrow, or rather the legal, sense of the word, when it is a question to know if the *faux* be a crime, it is the fraudulent alteration of the truth in those cases ascertained and punished by the law." Touillier, t. 9, n. 188.

**Old English Law.** False; counterfeit. *Faux action*, a false action. Litt. § 688. *Faux money*, counterfeit money. St. Westm. 1, c. 15. *Faux peys*, false weights. Britt. c. 20. *Faux serement*, a false oath. St. Westm. 1, c. 38.

**FAVOR, n.** An act of kindness or generosity, as distinguished from one that is inspired by regard for justice, duty, or right. *Ross v. Davis*, 138 Misc. 863, 248 N.Y.S. 441, 443. Bias; partiality; lenity; prejudice. See *Challenge*.

**FAVOR, v.** To regard with favor; to aid or to have the disposition to aid; to show partiality or unfair bias towards;—practically synonymous with "support." *United States v. Schulze*, D.C.

Cal., 253 F. 377, 379. The word implies a mental attitude or intent. *Schulze v. United States*, C.C.A.Cal., 259 F. 189, 190.

**FAVORABILIA IN LEGE SUNT FISCUS, DOS, VITA, LIBERTAS.** Jenk. Cent. 94. Things favorably considered in law are the treasury, dower, life, liberty.

**FAVORABILIORES REI, POTIUS QUAM ACTORES, HABENTUR.** The condition of the defendant must be favored, rather than that of the plaintiff. In other words, *melior est conditio defendentis*. Dig. 50, 17, 125; Broom, Max. 715. See *Hunt v. Rousmanier's Adm'r*, 8 Wheat. U.S. 195, 196, 5 L.Ed. 589.

**FAVORABILIORES SUNT EXECUTIONES ALIIS PROCESSIBUS QUIBUSCUNQUE.** Co. Litt. 289. Executions are preferred to all other processes whatever.

**FAVORED BENEFICIARY.** Within rule that confidential relations and activity by favored beneficiary in the execution of the will raises a prima facie presumption of undue influence, is one who in the circumstances has been favored over others having equal claims to testator's bounty. *Mindler v. Crocker*, 245 Ala. 578, 18 So.2d 278, 281.

**FAVORES AMPLIANDI SUNT; ODIS RESTRINGENDA.** Jenk. Cent. 186. Favors are to be enlarged; things hateful restrained.

**FEAL.** Faithful; truthful; true. Tenants by knight service swore to their lords to be *feal* and *leal*; i. e., faithful and loyal. *Feal homager*, faithful subject.

**FEAL AND DIVOT.** A right in Scotland, similar to the right of turbary in England, for fuel, etc. Wharton; Ersk. ii. tit. ix. s. 17.

**FEALTY.** In feudal law. Fidelity; allegiance to the feudal lord of the manor; the feudal obligation resting upon the tenant or vassal by which he was bound to be faithful and true to his lord, and render him obedience and service. See *De Peyster v. Michael*, 6 N.Y. 497, 57 Am.Dec. 470; Littleton §§ 117, 131; Wright, Ten. 35; *Termes de la Ley*; 1 Washb. R. P. 19; 1 Poll. & Maitl. 277-287; Stubbs, Const. Hist. § 462 n; Co. Lit. 67b; 3 Kent 510.

This fealty was of two sorts: that which is general, and is due from every subject to his prince; the other special, and required of such only as in respect of their fee are tied by this oath to their landlords; 1 Bla.Comm. 367; Cowell.

Fealty signifies fidelity, the phrase "feal and leal" meaning simply "faithful and loyal." Tenants by knights' service and also tenants in socage were required to take an oath of fealty to the king or others, their immediate lords; and fealty was one of the conditions of their tenure, the breach of which operated a forfeiture of their estates. Brown.

Although foreign jurists considered fealty and homage as convertible terms, because in some continental countries they are blended so as to form one engagement, yet they are not to be confounded in our country, for they do not imply the same thing, *homage* being the acknowledgment of tenure, and *fealty*, the vassal oath of fidelity, being the essential feudal bond, and the animating principle of a feud, without which it could not subsist. Wharton.

**FEAR.** Apprehension of harm; dread; consciousness of approaching danger.

Apprehension of harm or punishment, as exhibited by outward and visible marks of emotion. An evidence of guilt in certain cases. See *Burrill*, Circ. Ev. 476.

The "fear" which renders evidence of female's utmost resistance unnecessary to support conviction of "rape" is a fear of death or great bodily harm, or a fear that so overpowers female that she dares not resist, or a fear and terror so extreme as to preclude resistance, or a fear which renders female's mind well nigh incapable of continuing her resistance. *State v. Hoffman*, 228 Wis. 235, 280 N.W. 357, 359, 361.

Statutes defining crime of extortion and providing punishment therefor must be read together, and "fear," within statute defining term as obtaining of property from another with his consent induced by "fear," must be induced by threats, and hence threat is necessary ingredient of crime. *State v. Anderson*, 66 N.D. 522, 267 N.W. 121, 124.

**FEASANCE.** A doing; the doing of an act; a performing or performance. See *Malfeasance*; *Misfeasance*; *Nonfeasance*.

A making; the making of an indenture, release, or obligation. Litt. § 371; *Dyer*, (Fr. Ed.) 56b. The making of a statute. *Keilw.* 1b.

**FEASANT.** Doing, or making, as, in the term "damage feasant," (doing damage or injury,) spoken of cattle straying upon another's land.

**FEASIBLE.** Capable of being done, executed, or affected. *Lowe v. Chicago Lumber Co. of Omaha*, 135 Neb. 735, 283 N.W. 841, 844.

It also means: capable of being successfully done or accomplished. *Gilmartin v. D. & N. Transp. Co.*, 123 Conn. 127, 193 A. 726, 729, 113 A.L.R. 1322; fit to be dealt with successfully, *Hinchman v. City Water Co.*, 179 Tenn. 545, 167 S.W.2d 986, 990; practically possible or capable of being managed, utilized, or dealt with successfully, *In re Washakie Needles Irr. Dist.*, 52 Wyo. 518, 76 P.2d 617, 621.

A "feasible method of liquidation", as used in section of Bankruptcy Act setting out conditions precedent to confirmation of agricultural extension proposal, means that court must be convinced before confirming proposal that proposal to creditors is one that probably can be carried out by debtor and result in liquidation to secured creditors and rehabilitation for farmer, and that it is to best interests of all creditors. *Heldstab v. Equitable Life Assur. Soc. of United States*, C.C.A.Kan., 91 F.2d 655, 659.

The word "feasible", within meaning of rule that a plan of corporate reorganization must be feasible, does not connote absolute insurance of success but only reasonable assurance of success. *In re Waern Bldg. Corporation*, C.C.A. Ill., 145 F.2d 584, 588.

**FEASOR.** Doer; maker. *Feasors del estatute*, makers of the statute. *Dyer*, 3b. Also used in the compound term, "tort-feasor," one who commits or is guilty of a tort.

**FEASTS.** Certain established festivals or holidays in the ecclesiastical calendar. These days were anciently used as the dates of legal instruments, and in England the quarter-days, for paying rent, are four feast-days. The terms of the courts, in England, before 1875, were fixed to begin on certain days determined with reference to the occurrence of four of the chief feasts.

**FECIAL LAW.** The nearest approach to a system of international law known to the ancient world. It was a branch of Roman jurisprudence, con-

## FECIALES

cerned with embassies, declarations of war, and treaties of peace. It received this name from the *feciales*, (q. v.) who were charged with its administration.

**FECIALES.** Among the ancient Romans, that order of priests who discharged the duties of ambassadors. Subsequently their duties appear to have related more particularly to the declaring war and peace. Calvin.; 1 Kent, Comm. 6.

## FEDERAL.

**American Law.** Belonging to the general government or union of the states. Founded on or organized under the constitution or laws of the United States.

The United States has been generally styled, in American political and judicial writings, a "federal government." The term has not been imposed by any specific constitutional authority, but only expresses the general sense and opinion upon the nature of the form of government. In recent years, there is observable a disposition to employ the term "national" in speaking of the government of the Union. Neither word settles anything as to the nature or powers of the government. "Federal" is somewhat more appropriate if the government is considered a union of the states; "national" is preferable if the view is adopted that the state governments and the Union are two distinct systems, each established by the people directly, one for local and the other for national purposes. See *United States v. Cruikshank*, 92 U.S. 542, 23 L.Ed. 588; *Abbott; Mills*, Representative Government 301; *Freeman*, Fed. Gov't.

**Constitutional Law.** A term commonly used to express a league or compact between two or more states, to become united under one central government. *Montana Auto Finance Corporation v. British & Ins. Federal Underwriters of Norwich Union Fire Ins. Soc.*, 72 Mont. 69, 232 P. 198, 199, 36 A.L.R. 1495.

**FEDERAL CENSUS.** A census of each state or territory or of a certain state or of any subdivision or portion of any state, provided it is taken by and under the direction and supervision of the Census Bureau of the United States, and approved and certified by it as the census of that state or subdivision. In re *Cleveland's Claim*, 72 Okl. 279, 180 P. 852, 885.

**FEDERAL COMMON LAW** is a body of decisional law developed by the federal courts untrammelled by state court decisions. *O'Brien v. Western Union Telegraph Co.*, C.C.A.Mass., 113 F.2d 539, 541.

**FEDERAL COURTS.** The courts of the United States. See *Courts of the United States*.

**FEDERAL GOVERNMENT.** The system of government administered in a state formed by the union or confederation of several independent or quasi independent states; also the composite state so formed.

In strict usage, there is a distinction between a *confederation* and a *federal government*. The former term denotes a league or permanent alliance between several states, each of which is fully sovereign and independent, and each of which retains its full dignity, organization, and sovereignty, though yielding to the central authority a controlling power for a few limited purposes, such as external and diplomatic relations. In this case, the component states are the units, with respect to the confederation, and the

central government acts upon them, not upon the individual citizens. In a *federal government*, on the other hand, the allied states form a union,—not, indeed, to such an extent as to destroy their separate organization or deprive them of quasi sovereignty with respect to the administration of their purely local concerns, but so that the central power is erected into a true state or nation, possessing sovereignty both external and internal,—while the administration of national affairs is directed, and its effects felt, not by the separate states deliberating as units, but by the people of all in their collective capacity, as citizens of the nation. The distinction is expressed, by the German writers, by the use of the two words "*Staatenbund*" and "*Bundesstaat*;" the former denoting a league or confederation of states, and the latter a federal government, or state formed by means of a league or confederation.

**FEDERAL INSTRUMENTALITY.** A means or agency used by the federal government. *Capitol Building & Loan Ass'n v. Kansas Commission of Labor and Industry*, 148 Kan. 446, 83 P.2d 106, 107, 118 A.L.R. 1212. A government agency immune from state control. *Waterbury Sav. Bank v. Danaher*, 128 Conn. 78, 20 A.2d 455, 458.

**FEDERAL PROHIBITION OFFICER.** An officer of the federal government charged with the enforcement of the national prohibition statute. *De Marco v. U. S.*, C.C.A.Va., 296 F. 667, 668.

**FEDERAL QUESTION.** Cases arising under Constitution of United States, Acts of Congress, or treaties, and involving their interpretation and application, and of which jurisdiction is given to federal courts, are commonly described as involving a "federal question." *McAllister v. St. Louis Merchants' Bridge Terminal Ry. Co.*, 324 Mo. 1005, 25 S.W.2d 791, 792.

**FEDERAL TRADE COMMISSION.** An administrative body created by statute, with only the duties and powers granted expressly or by fair implication. *Chamber of Commerce of Minneapolis v. Federal Trade Commission*, C.C.A.8, 13 F.2d 673, 683. See 15 U.S.C.A. §§ 41-51.

**FEDERALIST, THE.** A series of 85 essays by Alexander Hamilton, James Madison, and John Jay, expounding and advocating the adoption of the Constitution of the United States. All but six of the essays were first published in the "Independent Journal" of New York City from October, 1787, to April, 1788. Webster, New Int. Dict. "The opinion of the Federalist has always [been] considered as of great authority." *Cohens v. Virginia*, 6 Wheat. 264, 418, 5 L.Ed. 257.

**FEDERATED STATE.** An independent central organism, having its own machinery absorbing, in view of international law, all the individual states associated together. *Molina v. Comision Reguladora Del Mercado De Henequen*, 91 N.J.L. 382, 103 A. 397, 400.

**FEDERATION.** Ordinarily, an unincorporated association of persons for a common purpose. *Hughes v. State*, 109 Ark. 403, 160 S.W. 209.

**FEE.** A charge fixed by law for services of public officers or for use of a privilege under control of government. *Fort Smith Gas Co. v. Wiseman*, 189 Ark. 675, 74 S.W.2d 789, 790. A recompense for an official or professional service or a charge

or emolument or compensation for a particular act or service. *Craig v. Shelton*, 201 Ky. 790, 258 S.W. 694. A fixed charge or perquisite charged as recompense for labor and trouble, a reward, compensation, or wage given to a person for performance of professional services or something done or to be done. *People v. Goulding*, 275 Mich. 353, 266 N.W. 378, 379.

A contingent fee is a fee stipulated to be paid to an attorney for his services in conducting a suit or other forensic proceeding only in case he wins it; it may be a percentage of the amount recovered. Adopted in *Gray v. Stern*, 85 Wash. 645, 149 P. 26, 28.

For docket fee, see *Docket*.

**Estates**

Ordinarily, word "fee" or "fee simple" is applied to an estate in land, but term is applicable to any kind of hereditament, corporeal or incorporeal, and is all the property in thing referred to or largest estate therein which person may have. In *re Forsstrom*, 44 Ariz. 472, 38 P.2d 878, 888.

A freehold estate in lands, held of a superior lord, as a reward for services, and on condition of rendering some service in return for it. The true meaning of the word "fee" is the same as that of "feud" or "fief," and in its original sense it is taken in contradistinction to "allodium," which latter is defined as a man's own land, which he possesses merely in his own right, without owing any rent or service to any superior. 2 Bl.Comm. 105. See *Wendell v. Crandall*, 1 N.Y. 491.

In modern English tenures, "fee" signifies an estate of inheritance, being the highest and most extensive interest which a man can have in a feud; and when the term is used simply, without any adjunct, or in the form "fee-simple," it imports an absolute inheritance clear of any condition, limitation, or restriction to particular heirs, but descendible to the heirs general, male or female, lineal or collateral. 2 Bl.Comm. 106; *Cowell; Termes de la Ley*; 1 Washb.R.P. 51; *Co.Litt.* 1 b; 1 *Prest.Est.* 420; 3 *Kent* 514.

**Base fee.** A determinable or qualified fee; an estate having the nature of a fee, but not a fee simple absolute. In *re Douglass' Estate*, 94 Neb. 280, 143 N.W. 299, 302.

**Conditional fee.** An estate restrained to some particular heirs, exclusive of others, *Blume v. Pearcy*, 204 S.C. 409, 29 S.E.2d 673, 674, as to the heirs of a man's body, by which only his lineal descendants were admitted, in exclusion of collateral; or to the heirs male of his body, in exclusion of heirs female, whether lineal or collateral. It was called a "conditional fee," by reason of the condition expressed or implied in the donation of it that, if the donee died without such particular heirs, the land should revert to the donor. 2 Bl.Comm. 110. The term includes a fee that is either to commence or determine on some condition, 10 *Co.* 950; *Prest.Est.* 476; *Fearne, Cont.Rem.* 9; and is sometimes used interchangeably with "base fee," that is, one to determine or be defeated on the happening of some contingent event or act. *Citizens' Electric Co. v. Susquehanna Boom Co.*, 270 Pa. 517, 113 A. 559, 561; *Glass v. Johnson*, 297 Ill. 149, 130 N.E. 473, 474.

**Determinable fee.** Also called a "base" or "qualified" fee. *Stubbs v. Abel*, 114 Or. 610, 233 P. 852, 859. One which has a qualification subjoined to it, and which must be determined whenever the qualification annexed to it is at an end. *Littleton* § 254; *Co.Litt.* 27a, 220; 1 *Prest.Est.* 449; 2 *Bla.Comm.* 109; *Cruise, Dig. tit. 1, § 82.* An estate in fee which is liable to be determined by some act or event expressed on its limitation to circumscribe its continuance, or inferred by law as bounding its extent. 1 *Washb. Real Prop.* 62; *McLane v. Bovee*, 35 Wis. 36. An estate which may last forever is a "fee," but if it may end on the happening of a merely possible event, it is a "determinable," or "qualified fee." *Reichard v. Chicago, B. & Q. R. Co.*, 231 Iowa 563, 1 N.W.2d 721, 727.

**Determinable fee or fee simple.** Estate created with special limitation which delimits duration of estate in land.

*P C K Properties, Inc., v. City of Cuyahoga Falls*, 176 N.E.2d 441, 444, 112 Ohio App. 492.

**Fee damages.** See *Damages*.

**Fee expectant.** A name sometimes applied to an estate created where lands are given to a man and his wife and the heirs of their bodies. See also *Frank-Marriage*.

**Fee simple defeasible.** Title created in trustees where legal title in fee simple to active trust estate is by will placed in trustees who are required to distribute property in fee simple upon happening of event. Also called a "determinable fee", "base fee", or "qualified fee". *Kanawha Val. Bank v. Hornbeck*, W.Va., 151 S.E.2d 694, 700.

**Great fee.** In feudal law, the designation of a fee held directly from the crown.

**Knight's fee.** See *Knight's Fee*.

**Limited fee.** An estate of inheritance in lands, which is clogged or confined with some sort of condition or qualification. Such estates are base or qualified fees, conditional fees, and fees-tail. The term is opposed to "fee-simple." 2 *Bl.Comm.* 109; *Lott v. Wyckoff*, 1 *Barb., N.Y.*, 575; *Paterson v. Ellis*, 11 *Wend., N.Y.*, 259.

**Plowman's fee.** In old English law, was a species of tenure peculiar to peasants or small farmers, somewhat like gavelkind, by which the lands descended in equal shares to all the sons of the tenant.

**Qualified fee.** In English law. A fee having a qualification subjoined thereto, and which must be determined whenever the qualification annexed to it is at an end; otherwise termed a "base fee." 2 *Bl.Comm.* 109; 1 *Steph. Comm.* 225. An interest which may continue forever, but is liable to be determined, without the aid of a conveyance, by some act or event, circumscribing its continuance or extent. 4 *Kent, Comm.* 9; *Moody v. Walker*, 3 *Ark.* 190; *U. S. v. Reese*, 27 *Fed.Cas.* 744. An interest given to a man and certain of his heirs at the time of its limitation. See *Kelso v. Stigar*, 75 *Md.* 397, 24 *A.* 18.

**Quasi fee.** An estate gained by wrong. *Wharton*.

Also, the land which is held in fee.

**American Law**

An estate of inheritance without condition, belonging to the owner, and alienable by him or transmissible to his heirs absolutely and simply, and is an absolute estate in perpetuity and the largest possible estate a man can have, being, in fact, allodial in its nature. *Stanton v. Sullivan*, 63 *R.I.* 216, 7 *A.2d* 696, 698, 699.

Every estate which is not for life, for years or at will. *Chance v. Weston*, 96 *Or.* 390, 190 *P.* 155, 157.

Terms "fee," "fee simple," and "fee simple absolute," are equivalent. *Boon v. Boon*, 348 *Ill.* 120, 180 *N.E.* 792, 794.

**FEE AND LIFE-RENT.** In Scotch law, two estates in land—the first of which is the full right of proprietorship, the second the limited right of usufruct during life—may be held together, or may co-exist in different persons at the same time. See *Bell, Prin.* § 1712; *Ersk. Prin.* 420; *Fiar*.

**FEE-FARM.** A species of tenure, where land is held of another in perpetuity at a yearly rent, without fealty, homage, or other services than such as are specially comprised in the feoffment. It corresponds very nearly to the "emphyteusis" of the Roman law. *Cowell*. Fealty, however, was incident to a holding in fee-farm, according to some authors. *Spelman; Termes de la Ley*.

Fee-farm is where an estate in fee is granted subject to a rent in fee of at least one-fourth of the value of the lands at the time of its reservation. Such rent appears to be called "fee-farm" because a grant of lands reserving so

## FEE-FARM

considerable a rent is indeed only letting lands to farm in fee-simple, instead of the usual method of life or years. 2 Bl.Comm. 43; 1 Steph.Comm. 676.

Fee-farms are lands held in fee to render for them annually the true value, or more or less; so called because a farm rent is reserved upon a grant in fee. Such estates are estates of inheritance. They are classed among estates in fee-simple. No reversionary interest remains in the lessor, and they are therefore subject to the operation of the legal principles which forbid restraints upon alienation in all cases where no feudal relation exists between grantor and grantee. *De Peyster v. Michael*, 6 N.Y. 497, 57 Am.Dec. 470.

**FEE-FARM RENT.** The rent reserved on granting a fee-farm. It might be one-fourth the value of the land, according to Cowell; one-third, according to other authors. Spelman; *Termes de la Ley*; 2 Bl. Comm. 43. Fee-farm rent is a rent-charge issuing out of an estate in fee; a perpetual rent reserved on a conveyance in fee-simple. *De Peyster v. Michael*, 6 N.Y. 467, 495, 57 Am.Dec. 470.

### FEE SIMPLE.

#### Absolute

A fee simple absolute is an estate limited absolutely to a man and his heirs and assigns forever without limitation or condition. *Rathbun v. State*, 284 Mich. 521, 280 N.W. 35, 40.

#### Conditional

At the common law, an estate in fee simple conditional was a fee limited or restrained to some particular heirs, exclusive of others. But the statute "De Donis" converted all such estates into estates tail. 2 Bl. Comm. 110.

#### American Law

An absolute or fee-simple estate is one in which the owner is entitled to the entire property, with unconditional power of disposition during his life, and descending to his heirs and legal representatives upon his death intestate. Code Ga. 1882, § 2246 (Civ.Code 1910, § 3657). *Friedman v. Steiner*, 107 Ill. 131; *Woodberry v. Matherson*, 19 Fla. 785; *Lyle v. Richards*, 9 Serg. & R., Pa. 374. Unlimited as to duration, disposition, and descendibility. *Slayden v. Hardin*, 257 Ky. 685, 79 S.W. 2d 11, 12.

The estate which a man has where lands are given to him and to his heirs absolutely without any end or limit put to his estate. 2 Bl. Comm. 106; *Plowd.* 557; 1 *Prest. Est.* 425; *Litt.* § 1. The word "fee," used alone, is a sufficient designation of this species of estate, and hence "simple" is not a necessary part of the title, but it is added as a means of clearly distinguishing this estate from a fee-tail or from any variety of conditional estates.

Fee-simple signifies a pure fee; an absolute estate of inheritance clear of any condition or restriction to particular heirs, being descendible to the heirs general, whether male or female, lineal or collateral. It is the largest estate and most extensive interest that can be enjoyed in land. *Haynes v. Bourn*, 42 Vt. 686; *Powers v. Trustees of Caledonia County Grammar School*, 93 Vt. 220, 106 A. 836, 841; *Smith v. Smith's Ex'r*, 122 Va. 341, 94 S.E. 777, 779. When a person owns in common with another, he does not own

the entire fee,—a fee-simple; it is a fee divided or shared with another. *Brackett v. Ridlon*, 54 Me. 426.

Terms "fee," "fee simple," and "fee simple absolute," are equivalent. *Boon v. Boon*, 348 Ill. 120, 180 N.E. 792, 794.

#### English Law

A freehold estate of inheritance, absolute and unqualified. It stands at the head of estates as the highest in dignity and the most ample in extent; since every other kind of estate is derivable thereout, and mergeable therein. It may be enjoyed not only in land, but also in advowsons, commons, estovers, and other hereditaments, as well as in personality, as an annuity or dignity, and also in an upper chamber, though the lower buildings and soil belong to another. *Wharton*; *Co.Litt.* 1 b; 2 *Bla. Comm.* 106.

**FEE TAIL.** A freehold estate in which there is a fixed line of inheritable succession limited to the issue of the body of the grantee or devisee, and in which the regular and general succession of heirs at law is cut off. *Coleman v. Shoemaker*, 147 Kan. 689, 78 P.2d 905, 907.

An estate tail; an estate of inheritance given to a man and the heirs of his body, or limited to certain classes of particular heirs. It corresponds to the *feudum talliatum* of the feudal law, and the idea is believed to have been borrowed from the Roman law, where, by way of *fidei commissa*, lands might be entailed upon children and freedmen and their descendants, with restrictions as to alienation. 1 *Washb.Real Prop.* \*66. For the varieties and special characteristics of this kind of estate, see *Tail, Estate in*.

**FEED.** To lend additional support; to strengthen *ex post facto*. "The interest when it accrues feeds the estoppel." *Christmas v. Oliver*, 5 *Mood. & R.* 202. Similarly, a subsequent title acquired by the mortgagor is said "to feed the mortgage."

The word is used in its ordinary sense with reference to cattle and hogs which are said to be made marketable by feeding. *Brockway v. Rowley*, 66 Ill. 102.

It is also used in the phrase *feeding of a cow by and on the land* to signify from the land while there is food on it, and with hay by the owner of the land at other times; 2 *Q.B.Div.* 49.

**FEGANGL.** In old English law, a thief caught while escaping with the stolen goods in his possession. *Spelman*.

**FEHMGERICHTE.** The name given to certain secret tribunals which flourished in Germany from the end of the twelfth century to the middle of the sixteenth, usurping many of the functions of the governments which were too weak to maintain law and order, and inspiring dread in all who came within their jurisdiction. *Enc. Brit.* Such a court existed in Westphalia (though with greatly diminished powers) until finally suppressed by Jerome Bonaparte in 1811. See *Bork, Geschichte der Westphaelischen Fehmgerichte*; *Paul Wigand, Das Fehmgericht Westphaleus*.

**FEIGNED.** Fictitious; pretended; supposititious; simulated.

**FEIGNED ACCOMPLICE.** One who pretends to consult and act with others in the planning or commission of a crime, but only for the purpose of discovering their plans and confederates and



securing evidence against them. *State v. Ver-ganadis*, 50 Nev. 1, 248 P. 900, 903; *People v. Bol-anger*, 71 Cal. 17, 11 P. 800.

**FEIGNED ACTION.** In practice, an action brought on a pretended right, when the plaintiff has no true cause of action, for some illegal purpose. In a feigned action the words of the writ are true. It differs from *false action*, in which case the words of the writ are false. Co. Litt. 361.

**FEIGNED DISEASES.** Simulated maladies. Dis-eases are generally feigned from one of three causes,—fear, shame, or the hope of gain.

**FEIGNED ISSUE.** An issue framed to try ques-tions of fact. *Miles v. Layton*, 8 W.W.Harr. 411, 193 A. 567, 574, 112 A.L.R. 786.

An issue made up by the direction of a court of equity, (or by consent of parties,) and sent to a common-law court, for the purpose of obtaining the verdict of a jury on some disputed matter of fact which the court has not jurisdic-tion, or is unwilling, to decide. It rests upon a supposititious wager between the parties. See 3 Bl.Comm. 452. Under the reformed codes of some states issues may be framed in certain exceptional cases. In England, the practice has been disused since the passing of the stat. 8 and 9 Vict. c. 109, s. 19, permitting any court to refer any ques-tion of fact to a jury in a direct form. The act 21 and 22 Vict. c. 27, provided for trial by jury in the court of chan-cery.

**FELAGUS.** In Saxon law, one bound for an-other by oath; a sworn brother. A friend bound in the decennary for the good behavior of an-other. One who took the place of the deceased. Thus, if a person was murdered, the recompense due from the murderer went to the *felagus* of the slain, in default of parents or lord. Cun-ningham; Cowell; Du Cange.

**FELD.** A field; in composition, wild. Blount.

**FELE, FEAL.** L. Fr. Faithful. See Feal.

**FELLATIO, or FELLATION.** The offense com-mitted with the male sexual organ and the mouth. *State v. Murry*, 136 La. 253, 66 So. 963. See Sodo-my.

**FELLOW.** A co-worker; a partaker or sharer of; a companion; one with whom we consort; one joined with another in some legal *status* or relation; a member of a college or corporate body.

**FELLOW-HEIR.** A co-heir; partner of the same inheritance.

**FELLOW SERVANT.** One who serves and is controlled by the same master. *Walsh v. Eu-banks*, 183 Ark. 34, 34 S.W.2d 762, 764.

Those engaged in the same common pursuit, under the same general control. *Cooley*, Torts 541. Those who derive authority and compensation from the same common source, and are engaged in the same general business, though it may be in different grades or departments of it. 2 Thomp. Neg. p. 1026, § 31; *Southern Ry. Co. v. Taylor*, 57 App.D.C. 21, 16 F.2d 517, 519; *Brush Electric Light Co. v. Wells*, 110 Ga. 192, 35 S.E. 365. When servants are employed and paid by the same master, and their duties are such as to bring them into such relation that negligence of one in doing his work may injure other in performance of his, then they are engaged in the same common business, and are "fellow

servants." *Hercules Powder Co. v. Hammack*, 145 Miss. 304, 110 So. 676, 677. But it has been held that an inferior employee is not a "fellow servant" of a superior employee. *McDonald v. Louisville & N. R. Co.*, 232 Ky. 734, 24 S.W.2d 585, 587.

Convicts in involuntary servitude, having no power to refuse to enter upon the service to which they have been hired out by the state, or to quit it, are not "fellow serv-ants." *Sloss-Sheffield Steel & Iron Co. v. Weir*, 179 Ala. 227, 60 So. 851, 853.

**FELLOW-SERVANT RULE.** The rule that the master is not liable for injuries to a servant, caused by the negligence of a fellow servant en-gaged in the same general business, where the master has exercised due care in selection of serv-ants. *Setzkorn v. City of Buffalo*, 219 App.Div. 416, 219 N.Y.S. 351, 352.

**FELO DE SE.** A felon of himself; a suicide or murderer of himself.

Where a man of the age of discretion (14 years at com-mon law) and compos mentis voluntarily kills himself. *Southern Life & Health Ins. Co. v. Wynn*, 29 Ala.App. 207, 194 So. 421, 422. One who commits some unlawful or mal-icious act which results in his own death. *Hale, P.C.* 411; 4 Bl.Comm. 189; *Life Ass'n v. Waller*, 57 Ga. 536.

**FELON.** A person who commits a felony. In re *La Grange*, 153 Misc. 236, 274 N.Y.S. 702. One convicted of felony.

But a person who has committed a felony, been con-victed, served his sentence, and been discharged, may be deemed, at least for some purposes, to be no longer a felon; 3 Exch.Div. 352.

**FELONIA.** Felony. The act or offense by which a vassal forfeited his fee. *Spelman*; *Calvin*. *Per feloniam*, with a criminal intention. Co. Litt. 391.

**FELONIA, EX VI TERMINI SIGNIFICAT QUODLIBET CAPITALE CRIMEN FELLEO AN-IMO PERPETRATUM.** Co. Litt. 391. Felony, by force of the term, signifies any capital crime per-petrated with a malignant mind.

**FELONIA IMPLICATUR IN QUALIBET PROD-ITONE.** 3 Inst. 15. Felony is implied in every treason.

**FELONICE.** Feloniously. *Cunningham*, Law Dict.

Anciently an indispensable word in indictments for fel-ony, and classed by Lord Coke among those *voces artis* (words of art) which cannot be expressed by any periphras-is or circumlocution. 4 Coke, 39; Co.Litt. 391a; 4 Bl.Comm. 307.

**FELONIOUS.** A technical word of law which means done with intent to commit crime; of the grade or quality of a felony; such an assault on the person as, if consummated, would subject party making it, on conviction, to punishment of a felony. *Martin v. State*, 163 Miss. 454, 142 So. 15, 16. Malicious; villainous; traitorous. *People v. Knapp*, 152 Misc. 368, 274 N.Y.S. 85. Malig-nant. *People v. Moore*, 37 Hun, N.Y., 93. Wrong-ful. *State v. Uhler*, 32 N.D. 483, 156 N.W. 220, 226. Proceeding from an evil heart or purpose. *Gatewood v. Commonwealth*, 215 Ky. 360, 285 S.W. 193, 194. Wickedly and against the admonition of the law; unlawfully. *State v. Allister*, 317 Mo.

## FELONIOUS

348, 295 S.W. 754, 757. In the law of larceny, "felonious" is synonymous with fraudulent; State v. Albert, 117 Or. 179, 242 P. 1116, 1117; and means done "animo furandi," that is, with intent to steal. Fountain v. State, 92 Fla. 262, 109 So. 463, 464.

**FELONIOUS ASSAULT.** Such an assault upon the person as, if consummated, would subject the party making it, upon conviction, to the punishment of a felony, that is, to imprisonment in the penitentiary. Hinkle v. State, 94 Ga. 595, 21 S.E. 595.

**FELONIOUS HOMICIDE.** Killing of human being without justification or excuse. State v. Plumlee, 177 La. 687, 149 So. 425, 431. There are two degrees: manslaughter and murder. It may include killing oneself. 4 Bl. Comm. 188, 190; 4 Steph. Comm. 108, 111; State v. Symmes, 40 S.C. 383, 19 S.E. 16.

**FELONIOUSLY.** Of, pertaining to, or having, the quality of felony. People v. Thomas, 58 Cal. App. 308, 208 P. 343, 344.

Means proceeding from an evil heart or purpose done with a deliberate intention of committing a crime. Golden v. Commonwealth, 245 Ky. 19, 53 S.W.2d 185, 186. Without color of right or excuse. State v. Enanno, 96 Conn. 420, 114 A. 386, 387. Malignantly; maliciously. State v. Horne, 62 Utah, 376, 220 P. 378, 381. Wickedly and against the admonition of the law. State v. Young, 314 Mo. 612, 286 S.W. 29, 34. With a felonious intent.

An indispensable word at common law in indictments for felony, as *felonice* was in the Latin forms. 4 Bl. Comm. 307; State v. Jesse, 19 N.C. 300; Com. Dig. *Indictment* (G 6); Bac. Abr. *Indictment* (G 1); 2 Hale, Pl. Cr. 172, 184; 1 Ben. & H. Lead. Cr. Cas. 154. It is still necessary in describing a common-law felony, or where its use is prescribed by statute; Whart. Cr. Pl. § 260; Bowler v. State, 41 Miss. 570; Cain v. State, 18 Tex. 387.

**FELONY.** A crime of a graver or more atrocious nature than those designated as misdemeanors. Ex parte Ramirez, 49 Cal. App. 2d 709, 122 P. 2d 361, 362. Generally an offense punishable by death or imprisonment in penitentiary. People v. Pointer, 348 Ill. 277, 180 N.E. 796, 797, or state prison. State v. Harwood, 206 N.C. 87, 173 S.E. 24, 25. And at common law, an offense occasioning total forfeiture of either land or goods to which capital or other punishment might be superadded according to degree of guilt. Bell v. Commonwealth, 167 Va. 526, 189 S.E. 441, 443.

**Felony, compounding of.** See Compounding Felony.

**Misprision of felony.** See Misprision.

**Reducible felony.** A felony upon conviction of which the offender may be punished as for a misdemeanor, upon recommendation of the jury. Atkins v. State, 154 Ga. 540, 114 S.E. 878.

### American Law

The term has no very definite or precise meaning, except in some cases where it is defined by statute. In general, what is felony under the English common law is such under ours, 1 Bish. Cr. L. § 617; Clark, Cr. L. 33. A crime is not a felony unless so declared by statute, or it was such at the

common law; State v. Murphy, 17 R.I. 698, 24 A. 473, 16 L.R.A. 550.

Whether an offense is a "felony" depends on whether the offense may be punished by confinement in the penitentiary and not on whether such punishment of necessity follows conviction of that offense. Lashley v. State, 236 Ala. 1 180 So. 717, 718, 719. Sentence actually given determines nature of offense. People v. Brown, 52 Cal. App. 2d 428, 126 P. 2d 406, 408.

Under U. S. Cr. Code, § 335, 18 U.S.C.A. § 1, offenses punishable by death or imprisonment for a term exceeding one year are felonies. Joplin Mercantile Co. v. United States, C.C.A. Mo., 213 F. 926, 935, Ann. Cas. 1916C, 470.

### English Law

This term meant originally the state of having forfeited lands and goods to the crown upon conviction for certain offenses, and then, by transition, any offense upon conviction for which such forfeiture followed, in addition to capital or any other punishment prescribed by law; as distinguished from a "misdemeanor," upon conviction for which no forfeiture followed. All indictable offenses are either felonies or misdemeanors, but a material part of the distinction is taken away by St. 33 & 34 Vict. c. 23, which abolishes forfeiture for felony. Wharton; 4 Bla. Comm. 94; 1 Russ. Cr. 78; Co. Litt. 391; 1 Hawk Pl. Cr. c. 37; U. S. v. Smith, 5 Wheat., U. S., 153, 5 L. Ed. 57; 1 Bish. New Cr. L. § 616.

At early common law the term was applied to describe the more serious offenses cognizable in the royal courts, conviction for which entailed forfeiture of life, limb and chattels and escheat of lands to the felon's lord after a year and a day in the king's hands. Subsequently, however, the classification was so greatly enlarged that many offenses not involving moral turpitude were included therein. In re Donegan, 282 N.Y. 285, 26 N.E. 2d 260, 261.

### Feudal Law

An act or offense on the part of the vassal, which cost him his fee, or in consequence of which his fee fell into the hands of his lord; that is, became forfeited. (See Felony.) Perfidy, ingratitude, or disloyalty to a lord.

**FELONY ACT.** The statute 33 & 34 Vict. c. 23, abolishing forfeitures for felony, and sanctioning the appointment of *interim* curators and administrators of the property of felons. Mozley & Whiteley; 4 Steph. Comm. 10, 459.

**FELONY-MURDER RULE.** Any homicide committed while perpetrating or attempting felony is first-degree murder. Payne v. State, 406 P. 2d 922, 924, 81 Nev. 503; Element of legal malice is supplied from the commission of the felony. Com. v. Cater, 152 A. 2d 259, 261, 396 Pa. 172.

**FELTING.** In the process of "felting," as applied to the manufacture of fur felt hats, the fur fibers become interlocked with the wool fibers, or with other fibers of fur, for their whole length. Matteawan Mfg. Co. v. Emmons Bros. Co., C.C.A. Mass., 253 F. 372, 375. See, also, Werk v. Parker, C.C.A. Pa., 231 F. 121, 123.

**FEMALE.** The sex which conceives and gives birth to young. Also a member of such sex. The term is generic, but may have the specific meaning of "woman," if so indicated by the context. State v. Hemm, 82 Iowa, 609, 48 N.W. 971; State v. Phillips, 26 N.D. 206, 144 N.W. 94, 95, 49 L.R.A., N.S., 470, Ann. Cas. 1916A, 320.

*Unmarried female.* is a term descriptive not only of those who have never married, but also of widows and divorced women. People v. Weinstock, 27 N.Y. Cr. R. 53, 140 N.Y.S. 453, 458.

**FEME, FEMME.** L. Fr. A woman. *Ducre v. Milner*, La.App., 146 So. 734, 736. Also, a wife, as in the phrase "*baron et feme*" (q. v.).

**FEME COVERT.** A married woman. Generally used in reference to the legal disabilities of a married woman, as compared with the condition of a *feme sole*. *Hoker v. Boggs*, 63 Ill. 161.

**FEME SOLE.** A single woman, including those who have been married, but whose marriage has been dissolved by death or divorce, and, for most purposes, those women who are judicially separated from their husbands. *Mozley & Whiteley*; 2 Steph. Comm. 250. *Kirkley v. Lacey*, 7 Houst. Del. 213, 30 A. 994.

**FEME SOLE TRADER.** In English law, a married woman, who, by the custom of London, trades on her own account, independently of her husband; so called because, with respect to her trading, she is the same as a *feme sole*. *Jacob*; *Cro. Car.* 68. The term is applied also to women deserted by their husbands, who do business as *femes sole*. *Rhea v. Rhenner*, 1 Pet. 105, 7 L.Ed. 72.

The custom was recognized as common law in South Carolina, but did not extend beyond trading in merchandise; *McDaniel v. Cornwell*, 1 Hill, S.C., 429; *Newbiggin v. Pillans*, 2 Bay, S.C., 164. By statute in several states a similar custom is recognized, as in Pennsylvania, by act of Feb. 22, 1718, 48 P.S. § 41. *Black v. Tricker*, 59 Pa. 13; *People's Sav. Bank v. Denig*, 131 Pa. 241, 18 A. 1083.

**FEMICIDE.** The killing of a woman. *Wharton*. One who kills a woman.

**FEMININE.** Of or belonging to females.

**FEMME COULEUR LIBRE.** Up to the time of Civil War, term applied to all persons not of the white race, including Indians. *Sunseri v. Casagne*, 191 La. 209, 185 So. 1, 4.

**FENATIO (or FEONATIC).** In forest law, the fawning of deer; the fawning season. *Spelman*.

**FENCE, v.** In old Scotch law, to defend or protect by formalities.

To "fence a court" was to open it in due form, and interdict all manner of persons from disturbing their proceedings. This was called "fencing," q. d., defending or protecting the court. *Pitcairn*, Cr.Law, pt. 1, p. 75.

**FENCE, n.** A hedge, structure, or partition, erected for the purpose of inclosing a piece of land, or to divide a piece of land into distinct portions, or to separate two contiguous estates. *Kimball v. Carter*, 95 Va. 77, 27 S.E. 823, 38 L.R.A. 570; *Estes v. Railroad Co.*, 63 Me. 309.

An enclosure about a field or other space, or about any object; especially an enclosing structure of wood, iron or other materials, intended to prevent intrusion from without or straying from within. *Mutual Lumber Co. v. Shepard*, Tex.Civ.App., 173 S.W.2d 494, 499.

A colloquial characterization of a receiver of stolen property. *People v. Fishel*, 270 Mich. 82, 258 N.W. 217.

**FENCE COUNTY.** A county where the stock law has not been adopted. *McKenzie v. Powell*, 68 Ga.App. 285, 22 S.E.2d 735, 736.

**FENCE-MONTH, or DEFENSE-MONTH.** In old English law, a period of time, occurring in the middle of summer, during which it was unlawful to hunt deer in the forest, that being their fawning season. Probably so called because the deer were then *defended* from pursuit or hunting. *Manwood*; *Cowell*; *Spelman*.

**FENCING PATENTS.** Patents procured in an effort to broaden the scope of the invention beyond the article or process which is actually intended to be manufactured or licensed. *Special Equipment Co. v. Coe*, 79 U.S.App.D.C. 133, 144 F.2d 497, 499.

**FENDER.** A guard or protection against danger. *Cape May, D. B. & S. P. R. Co. v. Cape May*, 59 N.J.L. 396, 36 A. 696, 36 L.R.A. 653. A safety device sometimes called life guard, on street cars. *Tampa Electric Co. v. Bazemore*, 85 Fla. 164, 96 So. 297, 298; *Galveston Electric Co. v. Swank*, Tex.Civ.App., 188 S.W. 704, 706.

**FENERATION.** Usury; the gain of interest; the practice of increasing money by lending. Sometimes applied to interest on money lent. See *Colebrook*, Dig. Hindu Law, I. 7.

**FENGELD.** In Saxon law, a tax or imposition, exacted for the repelling of enemies. *Spelman*.

**FENIAN.** A champion, hero, giant. This word, in the plural, is generally used to signify invaders or foreign spoilers. The modern meaning of "Fenian" is a member of an organization of persons of Irish birth, resident in the United States, Canada, and elsewhere, having for its aim the overthrow of English rule in Ireland. *Webster*.

**FEOD.** The same as *feud* or *fief*. 2 Bla. Comm. 45; *Spelman*.

**FEODAL.** Belonging to a fee or feud; feudal. More commonly used by the old writers than *feudal*.

**FEODAL ACTIONS.** Real actions. 3 Bla. Comm. 117.

**FEODAL SYSTEM.** See Feudal System.

**FEODALITY.** Fidelity or fealty. *Cowell*. See Fealty.

**FEODARUM (or FEUDARAM) CONSUETUDINES.** The customs of feuds. The name of a compilation of feudal laws and customs made at Milan in the twelfth century. It is the most ancient work on the subject, and was always regarded, on the continent of Europe, as possessing the highest authority.

**FEODARY.** An officer of the court of wards, appointed by the master of that court, under 32 Hen. VIII. c. 26, whose business it was to be present with the escheator in every county at the finding of offices of lands, and to give evidence for the king, as well concerning the value as the tenure; and his office was also to survey the land of the ward, after the office found, and to rate it

## FEODATORY

He also assigned the king's widows their dower; and received all the rents, etc. Abolished by 12 Car. II. c. 24. Wharton; Kennett, Gloss.; Cowell.

**FEODATORY, or FEUDATORY.** In feudal law, the grantee of a *feod*, *feud*, or fee; the vassal or tenant who held his estate by feudal service. *Termes de la Ley*. Blackstone uses "*feudatory*." 2 Bl. Comm. 46.

**FEODI FIRMA.** In old English law, fee-farm (*q. v.*).

**FEODI FIRMARIUS.** The lessee of a fee-farm.

**FEODUM.** This word (meaning a feud or fee) is the one most commonly used by the older English law-writers, though its equivalent, "*feudum*" (*q. v.*), is used generally by the more modern writers and by the *feudal* law-writers. Litt. § 1; Spelman.

There were various classes of *feoda*, among which may be enumerated the following: *Feodum laicum*, a lay fee. *Feodum militare*, a knight's fee. *Feodum improprium*, an improper or derivative fee. *Feodum proprium*, a proper and original fee, regulated by the strict rules of feudal succession and tenure. *Feodum simplex*, a simple or pure fee; fee-simple. *Feodum talliatum*, a fee-tail. See 2 Bl. Comm. 58, 62; Litt. §§ 1, 13; Bract. fol. 175; Glan. 13, 23.

In old English law, a seigniorship or jurisdiction. *Fleta*, lib. 2, c. 63, § 4. A fee, a perquisite or compensation for a service. *Fleta*, lib. 2, c. 7.

**FEODUM ANTIQUM.** A feud which devolved upon a vassal from his intestate ancestor.

**FEODUM EST QUOD QUIS TENET EX QUACUNQUE CAUSA SIVE SIT TENEMENTUM SIVE REDDITUS.** Co. Litt. 1. A fee is that which any one holds from whatever cause, whether tenement or rent.

**FEODUM NOBILE.** A fief for which the tenant did guard and owed homage. Spelman.

**FEODUM NOVUM.** A feud acquired by a vassal himself.

**FEODUM SIMPLEX QUIA FEODUM IDEM EST QUOD HÆREDITAS, ET SIMPLEX IDEM EST QUOD LEGITIMUM VEL PURUM; ET SIC FEODUM SIMPLEX IDEM EST QUOD HÆREDITAS LEGITIMA VEL HÆREDITAS PURA.** Litt. § 1. A fee-simple, 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 pure inheritance.

**FEODUM TALLIATUM, i. e., HÆREDITAS IN QUANDAM CERTITUDINEM LIMITATA.** Litt. § 13. Fee-tail, *i. e.*, an inheritance limited in a definite descent.

**FEOFFAMENTUM.** A feoffment. 2 Bl. Comm. 310.

**FEOFFARE.** To enfeoff; to bestow a fee. The bestower was called "*feoffator*," and the grantee or feoffee, "*feoffatus*." 1 Reeve, *Hist. Eng. Law*, 91.

**FEOFFATOR.** In old English law, a feoffer or feoffor; one who gives or bestows a fee; one who makes a feoffment. Bract. fols. 12b, 81.

**FEOFFATUS.** In old English law, a feoffee; one to whom a fee is given, or a feoffment made. Bract. fols. 17b, 44b.

**FEOFFEE.** He to whom a fee is conveyed. Litt. § 1; 2 Bl. Comm. 20.

**FEOFFEE TO USES.** A person to whom land was conveyed for the use of a third party. (The latter was called "*cestui que use*.") One holding the same position with reference to a use that a trustee does to a trust. 1 Greenl. *Cruise*, Dig. 333. He answers to the *hæres fiduciarius* of the Roman law.

**FEOFFMENT.** The gift of any corporeal hereditament to another (2 Bl. Comm. 310), operating by transmutation of possession, and requiring, as essential to its completion, that the seisin be passed (Watk. *Conv.* 183), which might be accomplished either by investiture or by livery of seisin. 1 Washb. *Real Prop.* 33. *Thatcher v. Omans*, 3 Pick., Mass., 532; *French v. French*, 3 N.H. 260. A gift of a freehold interest in land accompanied by livery of seisin. The essential part is the livery of seisin. 3 Holdsw. *Hist. E. L.* 187.

Also the deed or conveyance by which such corporeal hereditament is passed.

A feoffment originally meant the grant of a *feud* or *fee*; that is, a barony or knight's fee, for which certain services were due from the feoffee to the feoffor. By custom it came afterwards to signify also a grant (with livery of seisin) of a free inheritance to a man and his heirs, referring rather to the perpetuity of the estate than to the feudal tenure. 1 Reeve, *Eng. Law*, 90, 91. It was for ages the only method (in ordinary use) for conveying the freehold of land in possession, but has now fallen in great measure into disuse, even in England, having been almost entirely supplanted by some of that class of conveyances founded on the statute law of the realm. 1 Steph. *Comm.* 467, 468; Dane, *Abr. c.* 104; Stearn, *Real Act.* 2; *Green v. Lister*, 8 Cranch, U.S., 229, 3 L.Ed. 545.

**FEOFFMENT TO USES.** A feoffment of lands to one person to the use of another.

In such case the feoffee was bound in conscience to hold the lands according to the use, and could himself derive no benefit. Sometimes such feoffments were made to the use of the feoffor. The effect of such conveyance was entirely changed by the statute of uses. See *Wms.R.P.*, 6th Ed., 155; 2 Sand. *Us.* 13; *Watk. Conv.* 288.

**FEOFFOR.** The person making a feoffment, or enfeoffing another in fee. 2 Bl. Comm. 310; Litt. §§ 1, 57.

**FEOH.** This Saxon word meant originally cattle, and thence property or money, and, by a second transition, wages, reward, or fee. It was probably the original form from which the words "*feod*," "*feudum*," "*fief*," "*feu*," and "*fee*" (all meaning a feudal grant of land) have been derived. Spelman, *Feuds*.

**FEONATIO.** In forest law, the fawning season of deer.

**FEORME.** A certain portion of the produce of the land due by the grantee to the lord according to the terms of the charter. *Spel. Feuds, c. 7.*

**FERÆ BESTLÆ.** Wild beasts.

**FERÆ NATURÆ.** Lat. Of a wild nature or disposition.

Animals which are by nature wild are so designated, by way of distinction from such as are naturally tame, the latter being called "*domitæ naturæ.*" *Fleet v. Hegeman, 14 Wend., N.Y., 43; State v. Taylor, 27 N.J.L. 119, 72 Am. Dec. 347; Gillet v. Mason, 7 Johns., N.Y., 17.*

**FERCOSTA.** Ital. A kind of small vessel or boat. Mentioned in old Scotch law, and called "*fercost.*" *Skene.*

**FERDELLA TERRÆ.** A fardel-land; ten acres; or perhaps a yard-land. *Cowell.*

**FERDFARE.** Sax. A summons to serve in the army. An acquittance from going into the army. *Fleta, lib. 1, c. 47, § 23.*

**FERDINGUS.** A term denoting, apparently, a freeman of the lowest class, being named after the *cotseti.* *Anc. Inst. Eng.*

**FERDWITE.** In Saxon law, an acquittance of manslaughter committed in the army; also a fine imposed on persons for not going forth on a military expedition. *Cowell.*

**FERIA.** In old English law, a weekday; a holiday; a day on which process could not be served; a fair; a ferry. *Cowell; Du Cange; Spelman; 4 Reeve, Hist. Eng. Law 17.*

**FERIÆ.** In Roman law, holidays; generally speaking, days or seasons during which free-born Romans suspended their political transactions and their lawsuits, and during which slaves enjoyed a cessation from labor.

All *feriæ* were thus *dies nefasti.* All *feriæ* were divided into two classes,—"*feriæ publicæ*" and "*feriæ privatæ.*" The latter were only observed by single families or individuals, in commemoration of some particular event which had been of importance to them or their ancestors. *Smith, Dict. Antiq.*

Numerous festivals were called by this name in the early Roman empire. In the later Roman empire the single days occurring at intervals of a week apart, commencing with the seventh day of the ecclesiastical year, were so called. *Du Cange.*

**FERIAL DAYS.** Originally and properly, days free from labor and pleading; holidays. In statute 27 Hen. VI. c. 5, working-days; weekdays, as distinguished from Sunday. *Cowell.*

**FERITA.** In old European law, a wound; a stroke. *Spelman.*

**FERLING.** In old records, the fourth part of a penny; also the quarter of a ward in a borough.

**FERLINGATA.** A fourth part of a yard-land.

**FERLINGUS, or FERLINGUM.** A furlong. *Co. Litt. 5 b.*

**FERM, or FEARM.** A house or land, or both, let by lease. *Cowell.*

**FERME.** A farm; a rent; a lease; a house or land, or both, taken by indenture or lease. *Flowd. 195; Vicat; Cowell. See Farm.*

**FERMENTATION.** A decomposition produced in an organic substance by the physiological action of a living organism, or by certain unorganized agents. *U. S. v. Dodson, D.C.Cal., 268 F. 397, 403.*

**FERMENTED LIQUORS.** Beverages produced by, or which have undergone, a process of alcoholic fermentation, to which they owe their intoxicating properties, including beer, wine, hard cider, and the like, but not spirituous or distilled liquors. *State v. Lemp, 16 Mo. 391; State v. Biddle, 54 N. H. 383; People v. Foster, 64 Mich. 715, 31 N.W. 596; Hill v. State, 174 Md. 137, 197 A. 795, 799.*

**FERMER, FERMOR.** A lessee; a farmer. One who holds a term, whether of lands or an incorporeal right, such as customs or revenue.

**FERMIER.** In French law, one who farms any public revenue.

**FERMISONA.** In old English law, the winter season for killing deer.

**FERMORY.** In old records, a place in monasteries, where they received the poor, (*hospicio excipiebant.*) and gave them provisions (*ferm, firma.*) *Spelman.* Hence the modern *infirmary*, used in the sense of a hospital.

**FERNIGO.** In old English law, a waste ground, or place where fern grows. *Cowell.*

**FERRATOR.** A farrier (*q. v.*).

**FERRI.** In the civil law, to be borne; that is on or about the person. This was distinguished from *portari*, (to be carried,) which signified to be carried on an animal. *Dig. 50, 16, 235.*

**FERRIAGE.** The toll or fare paid for the transportation of persons and property across a ferry.

Literally speaking, it is the price or fare fixed by law for the transportation of the traveling public, with such goods and chattels as they may have with them, across a river, bay, or lake. *People v. San Francisco & A. R. Co., 35 Cal. 606.*

**FERRIFODINA.** In old pleading, an iron mine. *Townsh. Pl. 273.*

**FERRUERE, or FERRURA.** The shoeing of horses. *Kelham. See Ferrum.*

**FERRUM.** Iron. In old English law, a horse-shoe. *Ferrura*, shoeing of horses.

**FERRY.** A place of transit across a river or arm of the sea. *Woolr. Ways 217.* In law it is treated as a franchise, and defined as the exclusive right to carry passengers across a river, or arm of the sea, from one vill to another, or to connect a continuous line of road leading from township or vill to another. *Canadian Pac. Ry. Co. v. U. S., C.C.A. Wash., 73 F.2d 831, 832.*

A continuation of the highway from one side of the water over which it passes to the other, for transportation of passengers or of travelers with

## FERRY

their teams and vehicles and such other property as they may carry or have with them. U. S. v. Puget Sound Nav. Co., D.C.Wash., 24 F.Supp. 431, 432.

A liberty to have a boat on a stream, river, arm of the sea, lake, or other body of water for the transportation of men, horses, and vehicles with their contents, for a reasonable toll. Sometimes limited to the landing place. State Highway Commission v. Smith, 250 Ky. 269, 62 S.W.2d 1044.

It may be said to be necessary service by specially constructed boat to carry passengers and property across rivers or bodies of water from place on one shore to point conveniently opposite on other shore and continuation of highway making connection with thoroughfare at each terminus. U. S. v. Canadian Pac. Ry. Co., D.C.Wash., 4 F.Supp. 851, 853. It comprises not merely the exclusive privilege of transportation, but also the use for that purpose of the respective landings, with the outlets therefrom. Hale v. Record, 74 Okl. 77, 176 P. 756, 757.

A public ferry is one to which all the public have the right to resort, for which a regular fare is established, and the ferryman is a common carrier, bound to take over all who apply, and bound to keep his ferry in operation and good repair. Hudspeth v. Hall, 111 Ga. 510, 36 S.E. 770; Broadnax v. Baker, 94 N.C. 681, 55 Am.Rep. 633.

A private ferry is one mainly for the use of the owner, and though he may take pay for ferrriage, he does not follow it as a business. His ferry is not open to the public at its demand, and he may or may not keep it in operation. Hudspeth v. Hall, supra; St. Paul Fire & Marine Ins. Co. v. Harrison, 140 Ark. 158, 215 S.W. 698.

**FERRY FRANCHISE.** The public grant of a right to maintain a ferry at a particular place; a right conferred to land at a particular point and secure toll for the transportation of persons and property from that point across the stream. Mills v. St. Clair County, 7 Ill. 208. A grant to a named person empowering him to continue an interrupted land highway over the interrupting waters. U. S. v. Puget Sound Nav. Co., D.C.Wash., 24 F. Supp. 431, 432.

**FERRYBOAT.** A vessel traversing any of the waters of the state between two constant points regularly employed for the transfer of passengers and freight, authorized by law so to do, and also any boat employed as a part of the system of a railroad for the transfer of passengers and freight plying at regular and stated periods between two points. Pol.Code Cal. § 3643; Lake Tahoe Ry. & Transp. Co. v. Roberts, 168 Cal. 551, 143 P. 786, 789, Ann.Cas.1916E, 1196.

**FERRYMAN.** One employed in taking persons across a river or other stream, in boats or other contrivances, at a ferry. Covington Ferry Co. v. Moore, 8 Dana, Ky., 158; State v. Clarke, 2 McCord, S.C., 48, 13 Am.Dec. 701.

**FESTA IN CAPPIS.** In old English law, grand holidays, on which choirs wore caps. Jacob.

**FESTINATIO JUSTITIAE EST NOVERCA INFORTUNIL.** Hob. 97. Hasty justice is the step-mother of misfortune.

**FESTING-MAN.** In old English law, a bondsman; a surety; a frank-pledge, or one who was surety for the good behavior of another. Monasteries enjoyed the privilege of being "free from

festing-men," which means that they were "not bound for any man's forthcoming who should transgress the law." Cowell. See Frank-Pledge.

**FESTING-PENNY.** Earnest given to servants when hired or retained. The same as *arles-penny*. Cowell.

**FESTINUM REMEDIUM.** Lat. A speedy remedy.

A term applied to those cases where the remedy for the redress of an injury is given without any unnecessary delay. Bacon, Abr. Assise, A. The action of dower is *festinum remedium*. The writ of assise was also thus characterized (in comparison with the less expeditious remedies previously available) by the statute of Westminster 2 (13 Edw. I. c. 24.)

**FESTUCA.** In Frankish law, a rod or staff or (as described by other writers) a stick, on which imprecatory runs were cut, which was used as a gage or pledge of good faith by a party to a contract, or for symbolic delivery in the conveyance or quit-claim of land, before a court of law, anterior to the introduction of written documents by the Romans. 2 Poll. & Maitl. 86, 184, 190; Maitl. Domesday Book and Beyond 323.

**FESTUM.** A feast, holiday, or festival. *Festum stultorum*, the feast of fools.

**FETICIDE.** In medical jurisprudence, destruction of the *fetui*; the act by which criminal abortion is produced. 1 Beck, Med.Jur. 288; Guy, Med. Jur. 133. See, also, Prolicide.

**FETTERS.** Chains or shackles for the feet; irons used to secure the legs of convicts, unruly prisoners, etc. Similar chains securing the wrists are called "handcuffs."

**FEU.** In Scotch law, a holding or tenure where the vassal, in place of military service, makes his return in grain or money. Distinguished from "wardholding," which is the military tenure of the country. Bell; Erskine, Inst. lib. ii. tit. 3, § 7.

**FEU ANNUALS.** In Scotch law, the *reddendo*, or annual return from the vassal to a superior in a feu holding. Wharton, Dict., 2d Lond.Ed.

**FEU ET LIEU.** Fr. In old French and Canadian law, hearth and home. A term importing actual settlement upon land by a tenant.

**FEU HOLDING.** A holding by tenure of rendering grain or money in place of military service. Bell.

**FEUAR.** In Scotch law, the tenant or vassal of a feu; a feu-vassal. Bell.

**FEUD.** Feudal law. An estate in land held of a superior on condition of rendering him services. 2 Bl.Comm. 105. An inheritable right to the use and occupation of lands, held on condition of rendering services to the lord or proprietor, who himself retains the property in the lands. See Spel. Feuds, c. 1.

In this sense the word is the same as "feod," "feodum," "fief," or "fee." 1 Sullivan

Lect. 128; 1 Spence, Eq.Jur. 34; Dalrymple, Feud. Pr. 99; 1 Washb.R.P. 18; Mitch.R.P. 80.

**Saxon and Old German Law**

An enmity, or species of private war, existing between the family of a murdered man and the family of his slayer. In Scotland and the north of England, a combination of all the kin to revenge the death of any of the blood upon the slayer and all his race. *Termes de la Ley*; Whishaw. See Deadly Feud; Faida.

**Military Feuds**

The genuine or original feuds which were in the hands of military men, who performed military duty for their tenures.

**FEUDA.** Feuds or fees.

**FEUDAL.** Pertaining to feuds or fees; relating to or growing out of the feudal system or feudal law; having the quality of a feud, as distinguished from "allodial."

**FEUDAL ACTIONS.** An ancient name for real actions, or such as concern real property only. 3 Bl.Comm. 117.

**FEUDAL COURTS.** In the 12th century a lord *qua* lord had the right to hold a court for his tenants.

In the 13th century, they became of less importance and for three reasons: The feudal principle would have led to a series of courts one above the other, and the dominions of the large landowners were usually scattered, so that great feudal courts became impossible. The growth of the jurisdiction of the king's court removed the necessity for feudal courts. All the incidents of the feudal system came to be regarded in a commercial spirit—as property. Its jurisdiction became merely appendant to landowning. 1 Holdsw.Hist.E.L. 64.

**FEUDAL LAW.** The body of jurisprudence relating to feuds; the real-property law of the feudal system; the law anciently regulating the property relations of lord and vassal, and the creation, incidents, and transmission of feudal estates.

The body of laws and usages constituting the "feudal law" was originally customary and unwritten, but a compilation was made in the twelfth century, called "Feodarum Consuetudines," which has formed the basis of later digests. The feudal law prevailed over Europe from the twelfth to the fourteenth century, and was introduced into England at the Norman Conquest, where it formed the entire basis of the law of real property until comparatively modern times. Survivals of the feudal law, to the present day, so affect and color that branch of jurisprudence as to require a certain knowledge of the feudal law in order to the perfect comprehension of modern tenures and rules of real-property law.

**FEUDAL POSSESSION.** The equivalent of "seisin" under the feudal system.

**FEUDAL SYSTEM.** The system of feuds. A political and social system which prevailed throughout Europe during the eleventh, twelfth, and thirteenth centuries, and is supposed to have grown out of the peculiar usages and policy of the Teutonic nations who overran the continent after the fall of the Western Roman Empire, as developed by the exigencies of their military domination,

and possibly furthered by notions taken from the Roman jurisprudence.

It was introduced into England, in its completeness, by William I., A. D. 1085, though it may have existed in a rudimentary form among the Saxons before the Conquest. It formed the entire basis of the real-property law of England in medieval times; and survivals of the system, in modern days, so modify and color that branch of jurisprudence, both in England and America, that many of its principles require for their complete understanding a knowledge of the feudal system. The feudal system originated in the relations of a military chieftain and his followers, or king and nobles, or lord and vassals, and especially their relations as determined by the bond established by a grant of *land* from the former to the latter. From this it grew into a complete and intricate complex of rules for the tenure and transmission of real estate, and of correlated duties and services; while, by tying men to the land and to those holding above and below them, it created a close-knit hierarchy of persons, and developed an aggregate of social and political institutions. For an account of the feudal system in its juristic relations, see 2 Bl.Comm. 44; 1 Steph.Comm. 160; 3 Kent, Comm. 487; Spel.Feuds; Litt.Ten.; Sull.Lect.; Spence, Eq.Jur.; 1 Washb.Real Prop. 15; Dair.Feu.Prop. For its political and social relations, see Hall, Middle Ages; Maine, Anc.Law; Rob. Car. V.; Montesq. Esprit des Lois, bk. 30; Guizot, Hist.Civilization.

**FEUDAL TENURES.** The tenures of real estate under the feudal system, such as knight-service, socage, villenage, etc.

**FEUDALISM.** The feudal system; the aggregate of feudal principles and usages.

It is a vague term to describe a congeries of customs and legal relations by no means uniform throughout Europe and never static. But feudalism had one basic characteristic traceable through all its variations: It rested on relations to land, the primary factor in a relatively primitive agrarian civilization. United States v. Forness, C.C.A. N.Y., 125 F.2d 928, 933.

**FEUDALIZE.** To reduce to a feudal tenure; to conform to feudalism. Webster.

**FEUDARY.** A tenant who holds by feudal tenure, (also spelled "feodatory" and "feudatory.") Held by feudal service. Relating to feuds or feudal tenures.

**FEUDBOTE.** A recompense for engaging in a feud, and the damages consequent, it having been the custom in ancient times for all the kindred to engage in their kinsman's quarrel. Jacob.

**FEUDE.** An occasional early form of "feud" in the sense of private war or vengeance. *Termes de la Ley*. See Feud.

**FEUDIST.** A writer on feuds, as Cujacius, Spelman, etc.

**FEUDO.** In Spanish law, feud or fee. White, New Recop. b. 2, tit. 2, c. 2.

**FEUDORUM LIBER.** The book of feuds.

This was a compilation of feudal law, prepared by order of the emperor Frederick I., and published at Milan in 1170. It comprised five books, of which only the first two are now extant with fragmentary portions of the others, printed at the end of modern editions of the Corpus Juris Civilis. Giannone, b. 13, c. 3; Cruise, Dig. prel. diss. c. 1, § 31.

**FEUDORUM LIBRI.** The Books of Feuds published during the reign of Henry III., about the year 1152.

## FEUDORUM

The particular customs of Lombardy as to feuds began about the year 1152, to be the standard of authority to other nations, by reason of the greater refinement with which that branch of learning had been there cultivated. This compilation was probably known in England, but does not appear to have had any other effect than to influence English lawyers to the more critical study of their own tenures, and to induce them to extend the learning of real property so as to embrace more curious matter of similar kind. 2 Reeves, Hist. Eng. Law, 55.

**FEUDUM.** L. Lat. A feud, fief, or fee. A right of using and enjoying forever the lands of another, which the lord grants on condition that the tenant shall render fealty, military duty, and other services. Spelman. It is not properly the land, but a right in the land.

This form of the word is used by the feudal writers. The earlier English writers generally prefer the form *feodum*. There was an older word *feum*.

Its use by the Normans is exceedingly obscure. "Feudal" was not in their vocabulary. Usually it denoted a stretch of land, rarely a tenure or mass of rights. It came to be applied to every person who had heritable rights in land. Maitl. Domesday Book and Beyond 152.

**FEUDUM ANTIQUUM.** An ancient feud or fief; a fief descended to the vassal from his ancestors. 2 Bl.Comm. 212, 221. A fief which ancestors had possessed for more than four generations. Spelman; Priest v. Cummings, 20 Wend. N.Y. 349.

**FEUDUM APERTUM.** An open feud or fief; a fief resulting back to the lord, where the blood of the person last seised was utterly extinct and gone or where the tenant committed a crime, or gave other legal cause. Spelman; 2 Bl.Comm. 245.

**FEUDUM FRANCIUM.** A free feud. One which was noble and free from tallage and other subsidies to which the *plebeia feuda* (vulgar feuds) were subject. Spelman.

**FEUDUM HAUBERTICUM.** A fee held on the military service of appearing fully armed at the *ban* and *arriere ban*. Spelman.

**FEUDUM IMPROPRIUM.** An improper or derivative feud or fief. 2 Bl.Comm. 58.

**FEUDUM INDIVIDUUM.** An indivisible or impartible feud or fief; descendible to the eldest son alone. 2 Bl.Comm. 215.

**FEUDUM LAICUM.** A lay fee.

**FEUDUM LIGIUM.** A liege feud or fief; a fief held immediately of the sovereign; one for which the vassal owed fealty to his lord against all persons. 1 Bl.Comm. 367; Spelman.

**FEUDUM MATERNUM.** A maternal fief; a fief descended to the feudatory from his mother. 2 Bl.Comm. 212.

**FEUDUM MILITARE.** A knight's fee, held by knight service and esteemed the most honorable species of tenure. 2 Bl.Comm. 62.

**FEUDUM NOBILE.** A fee for which the tenant did guard and owed fealty and homage. Spelman.

**FEUDUM NOVUM.** A new feud or fief; a fief which began in the person of the feudatory, and did not come to him by succession. Spelman; 2 Bl.Comm. 212; Priest v. Cummings, 20 Wend. N.Y. 349.

**FEUDUM NOVUM UT ANTIQUUM.** A new fee held with the qualities and incidents of an ancient one. 2 Bl.Comm. 212.

**FEUDUM PATERNUM.** A fee which the paternal ancestors had held for four generations. Calvin; Spelman. One descendible to heirs on the paternal side only. 2 Bl.Comm. 223. One which might be held by males only. Du Cange.

**FEUDUM PROPRIUM.** A proper, genuine, and original feud or fief; being of a purely military character, and held by military service. 2 Bl. Comm. 57, 58.

**FEUDUM TALLIATUM.** A restricted fee. One limited to descend to certain classes of heirs. 2 Bl.Comm. 112, note; 1 Washb. Real Prop. 66; Spelman.

**FEUM.** An older form of *feodum*. Maitl. Domesday Book and Beyond 152.

**FEW.** Not many; of small number. U. S. v. Margolis, C.C.A.N.J., 138 F.2d 1002, 1003. An indefinite expression for a small or limited number. Pittsburgh, C., C. & St. L. Ry. Co. v. Broderick, 56 Ind.App. 58, 102 N.E. 887, 893. Indicating a small number of units or individuals which constitute a whole. Provident Loan Bank v. Parham, 137 Tenn. 483, 194 S.W. 570. A relative term of great elasticity of meaning. Klann v. Minn, 161 Wis. 517, 154 N.W. 996.

**FF.** A Latin abbreviation for "Fragmenta," designating the Digest or Pandects in the *Corpus Juris Civilis* of Justinian; so called because that work is made up of fragments or extracts from the writings of numerous jurists. Mackeld. Rom. Law, § 74.

**FI. FA.** An abbreviation for *feri facias*, (which see.)

**FIANCER.** L. Fr. To pledge one's faith. Kelham.

**FIANZA.** Sp. In Spanish law, trust, confidence, and correlatively a legal duty or obligation arising therefrom.

The term is sufficiently broad in meaning to include both a general obligation and a restricted liability under a single instrument. Martinez v. Runkle, 57 N.J.L. 111, 30 A. 593. But in a special sense, it designates a surety or guarantor, or the contract or engagement of suretyship; the contract by which one person engages to pay the debt or fulfil the obligations of another if the latter should fail to do so.

**FIAR.** In Scotch law, he that has the fee or *feu*. The proprietor is termed "fiar," in contradistinction to the life renter. 1 Kames, Eq. Pref. One whose property is charged with a life-rent. Where a right is taken to a husband and wife in conjunct fee and life-rent, the husband, as the *persona dignior*, is the only fiar. Ersk. Prin. 421.



**FIARS PRICES.** The value of grain in the different counties of Scotland, fixed yearly by the respective sheriffs, in the month of February, with the assistance of juries. These regulate the prices of grain stipulated to be sold at the fiar prices, or when no price has been stipulated. Ersk. 1, 4, 6.

**FIAT.** (Lat. "Let it be done.") In English practice, a short order or warrant of a judge or magistrate directing some act to be done; an authority issuing from some competent source for the doing of some legal act. See 1 Tidd Pr. 100.

One of the proceedings in the English bankrupt practice, being a power, signed by the lord chancellor, addressed to the court of bankruptcy, authorizing the petitioning creditor to prosecute his complaint before it. 2 Steph.Comm. 199. By the statute 12 & 13 Vict. c. 116, fiats were abolished.

**Joint fiat.** In English law, a fiat in bankruptcy, issued against two or more trading partners.

**FIAT JUSTITIA.** Let justice be done. On a petition to the king for his warrant to bring a writ of error in parliament, he writes on the top of the petition, "*Fiat justitia*," and then the writ of error is made out, etc. Jacob.

**FIAT JUSTITIA, RUAT CÆLUM.** Let right be done, though the heavens should fall. Branch, Princ. 161.

**FIAT PROUT FIERI CONSUEVIT, (NIL TEMERE NOVANDUM.)** Let it be done as it hath used to be done, (nothing must be rashly innovated.) Jenk. Cent. 116, case 39; Branch, Princ.

**FIAT UT PETITUR.** Let it be done as it is asked. A form of granting a petition.

**FIAUNT.** An order; command. See Fiat.

**FICTIO.** In Roman law, a fiction; an assumption or supposition of the law.

"*Fictio*" in the old Roman law was properly a term of pleading, and signified a false averment on the part of the plaintiff which the defendant was not allowed to traverse; as that the plaintiff was a Roman citizen, when in truth he was a foreigner. The object of the fiction was to give the court jurisdiction. Maine, Anc.Law, 25.

**FICTIO CEDIT VERITATI. FICTIO JURIS NON EST UBI VERITAS.** Fiction yields to truth. Where there is truth, fiction of law exists not. 11 Co. 51.

**FICTIO EST CONTRA VERITATEM, SED PRO VERITATE HABETUR.** Fiction is against the truth, but it is to be esteemed truth.

**FICTIO JURIS NON EST UBI VERITAS.** Where truth is, fiction of law does not exist.

**FICTIO LEGIS INIQUE OPERATUR ALICUI DAMNUM VEL INJURIAM.** A legal fiction does not properly work loss or injury. 2 Coke, 35; 3 Coke, 36; Broom, Max. 129; Gilb. 223. Fiction of law is wrongful if it works loss or injury to anyone.

**FICTIO LEGIS NEMINEM LÆDIT.** A fiction of law injures no one. 2 Rolle, 502; 3 Bl.Comm. 43; Low v. Little, 17 Johns. N.Y. 348.

**FICTIO.** An assumption or supposition of law that something which is or may be false is true, or that a state of facts exists which has never really taken place. New Hampshire Strafford Bank v. Cornell, 2 N.H. 324; Hibberd v. Smith, 67 Cal. 547, 4 P. 473, 56 Am.Rep. 726; Murphy v. Murphy, 190 Iowa 874, 179 N.W. 530, 533. An assumption, for purposes of justice, of a fact that does not or may not exist. Dodo v. Stocker, 74 Colo. 95, 219 P. 222, 223.

A rule of law which assumes as true, and will not allow to be disproved, something which is false, but not impossible. Best, Ev. 419.

These assumptions are of an innocent or even beneficial character, and are made for the advancement of the ends of justice. They secure this end chiefly by the extension of procedure from cases to which it is applicable to other cases to which it is not strictly applicable, the ground of inapplicability being some difference of an immaterial character. Brown.

Fictions are to be distinguished from presumptions of law. By the former, something known to be false or unreal is assumed as true; by the latter, an inference is set up, which may be and probably is true, but which, at any rate, the law will not permit to be controverted. It may also be said that a presumption is a rule of law prescribed for the purpose of getting at a certain conclusion, though arbitrary, where the subject is intrinsically liable to doubt from the remoteness, discrepancy, or actual defect of proofs.

Fictions are also to be distinguished from estoppels; an estoppel being the rule by which a person is precluded from asserting a fact by previous conduct inconsistent therewith on his own part or the part of those under whom he claims, or by an adjudication upon his rights which he cannot be allowed to question.

Best distinguishes legal fictions from presumptions *juris et de jure*, and divides them into three kinds,—affirmative or positive fictions, negative fictions, and fictions by relation. Best, Pres. p. 27, § 24.

**FICTIO OF LAW.** Something known to be false is assumed to be true. Ryan v. Motor Credit Co., 130 N.J.Eq. 531, 23 A.2d 607, 621.

**FICTITIOUS.** Founded on a fiction; having the character of a fiction; pretended; counterfeit. People v. Carmona, 79 Cal.App. 159, 251 P. 315, 317; State v. Tinnin, 64 Utah 587, 232 P. 543, 545, 43 A.L.R. 46. Feigned, imaginary, not real, false, not genuine, nonexistent. Bill alleging that amount of mortgage sought to be canceled was "fictitious" held to allege that mortgage was without consideration. Kinney v. Kinney, 230 Ala. 558, 161 So. 798, 800. Arbitrarily invented and set up, to accomplish an ulterior object. West Virginia Mortgage & Discount Corporation v. Newcomer, 101 W.Va. 292, 132 S.E. 748, 749.

**FICTITIOUS ACTION.** An action brought for the sole purpose of obtaining the opinion of the court on a point of law, not for the settlement of any actual controversy between the parties. Smith v. Junction Ry. Co., 29 Ind. 551.

**FICTITIOUS NAME.** A counterfeit, feigned, or pretended name taken by a person, differing in some essential particular from his true name, (consisting of Christian name and patronymic),

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with the implication that it is meant to deceive or mislead. *Pollard v. Fidelity F. Ins. Co.*, 1 S.D. 570, 47 N.W. 1060; *Carlock v. Cagnacci*, 88 Cal. 600, 26 P. 597; *Mangan v. Schuylkill County*, 273 Pa. 310, 116 A. 920, 921.

**FICTITIOUS PAYEE.** Negotiable instrument is drawn to fictitious payee whenever payee named in it has no right to it, and its maker does not intend that such payee shall take anything by it; whether name of payee used by maker is that of person living or dead or one who never existed is immaterial. *Goodyear Tire & Rubber Co. of California v. Wells Fargo Bank & Union Trust Co.*, 1 Cal.App.2d 694, 37 P.2d 483.

"Fictitiousness" depends on the intention to pay, rather than on the payee's existence. *Norton v. City Bank & Trust Co., C.C.A.Va.*, 294 F. 839, 844; *Mueller & Martin v. Liberty Ins. Bank*, 187 Ky. 44, 218 S.W. 465, 466.

**FICTITIOUS PERSON.** A person, who, though named as payee in a check has no right to it or its proceeds because the drawer of it so intended. *Johnston v. Exchange Nat. Bank of Tampa*, 152 Fla. 228, 9 So.2d 810, 811, 812.

**FICTITIOUS PLAINTIFF.** A person appearing in the writ or record as the plaintiff in a suit, but who in reality does not exist, or who is ignorant of the suit and of the use of his name in it. It is a contempt of court to sue in the name of a fictitious party. See 4 Bl.Comm. 134.

**FICTITIOUS PROMISE.** See Promise.

**FIDE-COMMISSARY.** A term derived from the Latin "*fidei-commissarius*," and occasionally used by writers on equity jurisprudence as a substitute for the law French term "*cestui que trust*," as being more elegant and euphonious. See *Brown v. Brown*, 83 Hun, 160, 31 N.Y.S. 650.

**FIDEI-COMMISSARIUS.** In the civil law, this term corresponds nearly to our "*cestui que trust*." It designates a person who has the real or beneficial interest in an estate or fund, the title or administration of which is temporarily confided to another. See *Story, Eq.Jur.* § 966; 1 *Greenl.Cruise*, Dig. 295.

According to Du Cange, the term was sometimes used to denote the executor of a will.

**FIDEI-COMMISSUM.** In the civil law, a species of trust; being a gift of property (usually by will) to a person, accompanied by a request or direction of the donor that the recipient will transfer the property to another, the latter being a person not capable of taking directly under the will or gift. In *re Courtin*, 144 La. 971, 81 So. 457, 459; *Succession of Reilly*, 136 La. 347, 67 So. 27, 33; *Gortario v. Cantu*, 7 Tex. 44.

**FIDE-JUBERE.** In the civil law, to order a thing upon one's faith; to pledge one's self; to become surety for another. *Fide-jubes? Fide-jubeo: Do you pledge yourself? I do pledge myself.* Inst. 3, 16, 1. One of the forms of stipulation.

**FIDE-JUSSIO.** An act by which any one binds himself as an additional security for another. This giving security does not destroy the liability of the principal, but adds to the security of the surety. *Vicat, Voc.Jur.; Halifax, Annals*, b. 2, c. 16, n. 10.

**FIDE-JUSSOR.** In Roman law, a guarantor; one who becomes responsible for the payment of another's debt, by a stipulation which binds him to discharge it if the principal debtor fails to do so. *Mackeld.Rom.Law*, § 452; 3 *Bl.Comm.* 108. He differs from a co-obligor in this, that the latter is equally bound to a debtor, with his principal, while the former is not liable till the principal has failed to fulfil his engagement; *Dig.* 12, 4, 4; 16, 1, 13; 24, 3, 64; 38, 1, 37; 50, 17, 110; 6, 14, 20; *Hall, Pr.* 33; *Dunl.Adm.Pr.* 300; *Clerke, Prax.* tit. 63.

The obligation of the fide-jussor was an accessory contract; for, if the principal obligation was not previously contracted, his engagement then took the name of mandate. *Lec. Elem.* § 872; *Code Nap.* 2012.

The sureties taken on the arrest of a defendant, in the court of admiralty, were formerly denominated "*fide jussors*." 3 *Bl.Comm.* 108.

**FIDE-PROMISSOR.** See Fide-Jussor.

**FIDELITAS.** Fealty; fidelity. See Fealty.

**FIDELITAS. DE NULLO TENEMENTO, QUOD TENETUR AD TERMINUM, FIT HOMAGII; FIT TAMEN INDE FIDELITATIS SACRAMENTUM.** *Co.Litt.* 676. Fealty. For no tenement which is held for a term is there the oath of homage, but there is the oath of fealty.

**FIDELITY BOND.** Contract of fidelity insurance. *Runcie v. Corn Exchange Bank Trust Co.*, Sup., 6 N.Y.S.2d 616, 620. A guaranty of personal honesty of officer furnishing indemnity against his defalcation or negligence. *Phillips v. Board of Education of Pineville*, 283 Ky. 173, 140 S.W.2d 819, 822.

**FIDELITY INSURANCE.** See Insurance.

**FIDEM MENTIRI.** Lat. To betray faith or fealty. A term used in feudal and old English law of a feudatory or feudal tenant who does not keep that fealty which he has sworn to the lord. *Leg. Hen. I.* c. 53.

**FIDES.** Lat. Faith; honesty; confidence; trust; veracity; honor. Occurring in the phrases "*bona fides*" (good faith), "*mala fides*" (bad faith), and "*uberrima fides*," (the utmost or most abundant good faith.)

**FIDES EST OBLIGATIO CONSCIENTIÆ ALICUIUS AD INTENTIONEM ALTERIUS.** *Bacon.* A trust is an obligation of conscience of one to the will of another.

**FIDES FACTA.** Among the Franks and Lombards undertakings were guaranteed by "making one's faith"—*fides facta*. This was symbolized by such formal acts as the giving of a rod; in suretyship giving the "*festuca*" or "*vadium*." 2 *Holdsw.Hist.E.L.* 73.

**FIDES SERVANDA EST.** Faith must be observed. An agent must not violate the confidence reposed in him. Story, Ag. § 192; Coolidge v. Brigham, 1 Metc., Mass., 551.

**FIDES SERVANDA EST; SIMPLICITAS JURIS GENTIUM PRÆVALEAT.** Faith must be kept; the simplicity of the law of nations must prevail. A rule applied to bills of exchange as a sort of sacred instruments. 3 Burrows, 1672; Story, Bills, § 15.

**FIDUCIA.** In Roman law, an early form of mortgage or pledge, in which both the title and possession of the property were passed to the creditor by a formal act of sale, (properly with the solemnities of the transaction known as *mancipatio*,) there being at the same time an express or implied agreement on the part of the creditor to reconvey the property by a similar act of sale provided the debt was duly paid; but on default of payment, the property became absolutely vested in the creditor without foreclosure and without any right of redemption.

In course of time, this form of security gave place to that known as *hypotheca*, while the contemporary contract of *pignus* or pawn underwent a corresponding development. See Mackeld.Rom.Law, § 334; Tomk. & J. Mod.Rom.Law, 182; Hadley, Rom.Law, 201-203; Pothier, Pand. tit. "*Fiducia*."

**FIDUCIAL.** An adjective having the same meaning as "fiduciary;" as, in the phrase "public or fiducial office." Ky.St. § 3752; Moss v. Rowlett, 112 Ky. 121, 65 S.W. 153.

**FIDUCIARIUS HÆRES.** See Fiduciary Heir.

**FIDUCIARIUS TUTOR.** In Roman law, the elder brother of an emancipated *pupillus*, whose father had died leaving him still under fourteen years of age.

**FIDUCIARY.** The term is derived from the Roman law, and means (as a noun) a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires. Swanoe v. Jurgens, 144 Ill. 507, 33 N.E. 955; Stoll v. King, 8 How.Prac., N.Y., 299. A person having duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking. Haluka v. Baker, 66 Ohio App. 308, 34 N.E.2d 68, 70. As an adjective it means of the nature of a trust; having the characteristics of a trust; analogous to a trust; relating to or founded upon a trust or confidence.

**FIDUCIARY CAPACITY.** One is said to act in a "fiduciary capacity" or to receive money or contract a debt in a "fiduciary capacity," when the business which he transacts, or the money or property which he handles, is not his own or for his own benefit, but for the benefit of another person, as to whom he stands in a relation implying and necessitating great confidence and trust on the one part and a high degree of good faith on the other part. The term is not restricted to technical or express trusts, but includes also such of-

fices or relations as those of an attorney at law, a guardian, executor, or broker, a director of a corporation, and a public officer. Templeton v. Bockler, 73 Or. 494, 144 P. 405, 409; Madison Tp. v. Dunkle, 114 Ind. 262, 16 N.E. 593. As used in the Bankruptcy Act, § 17, subd. 4, 11 U.S.C.A. § 35, however, the term imports a technical trust, actually and expressly constituted, and not such merely as the law implies, and has no application to debts or obligations merely because they were created under circumstances in which trust or confidence in the popular sense of those terms was reposed in debtor. Culp v. Robey, Tex.Civ.App., 294 S.W. 647, 651; American Agricultural Chemical Co. v. Berry, 110 Me. 528, 87 A. 218, 45 L.R.A., N.S., 1106, Ann.Cas.1915A, 1293.

**FIDUCIARY CONTRACT.** An agreement by which a person delivers a thing to another on the condition that he will restore it to him. Cicero, *de Offic.*, lib. 3, cap. 17; *Lec. du Dr.Civ.Rom.* § 237. See Chapman v. Forsyth, 2 How., U.S., 202, 11 L. Ed. 236; Fisk v. Sarber, 6 W. & S., Pa., 18; McGinn v. Shaeffer, 7 Watts, Pa., 415.

**FIDUCIARY DEBT.** A debt founded on or arising from some confidence or trust as distinguished from a "debt" founded simply on contract. Montgomery v. Phillips Petroleum Co., Tex.Civ.App., 49 S.W.2d 967, 973.

**FIDUCIARY DEBTORS.** Only public officers and trustees, not agents, factors, commission men, and the like, within the meaning of Bankruptcy Act, § 14, subd. 4, 11 U.S.C.A. § 32. Keefauver v. Hevener, 163 App.Div. 531, 148 N.Y.S. 434, 435.

**FIDUCIARY HEIR.** The Roman laws called a fiduciary heir the person who was instituted heir, and who was charged to deliver the succession to a person designated by the testament. Merlin, *Répert.* But Pothier, Pand. vol. 22, says that *fiduciarius hæres* properly signifies the person to whom a testator has sold his inheritance under the condition that he should sell it to another.

**FIDUCIARY OR CONFIDENTIAL RELATION.** A very broad term embracing both technical fiduciary relations and those informal relations which exist wherever one man trusts in or relies upon another. State v. Gautier, 108 Fla. 390, 147 So. 240, 242. One founded on trust or confidence reposed by one person in the integrity and fidelity of another. Kerrigan v. O'Meara, 71 Mont. 1, 227 P. 819, 821.

The origin of the confidence and the source of the influence are immaterial. Quinn v. Phipps, 93 Fla. 805, 113 So. 419, 420, 54 A.L.R. 1173. The relations and duties involved need not be legal but may be moral, social, domestic, or merely personal. Trustees of Jesse Parker Williams Hospital v. Nisbet, 191 Ga. 821, 14 S.E.2d 64, 76. See also, Fiduciary Relation.

**FIDUCIARY RELATION.** An expression including both technical fiduciary relations and those informal relations which exist whenever one man trusts and relies upon another. Peckham v. Johnson, Tex.Civ.App., 98 S.W.2d 408, 416. It exists where there is special confidence reposed in one who in equity and good conscience is bound to

## FIDUCIARY

act in good faith and with due regard to interests of one reposing the confidence. *Neagle v. McMullen*, 334 Ill. 168, 165 N.E. 605, 608. A relation subsisting between two persons in regard to a business, contract, or piece of property, or in regard to the general business or estate of one of them, of such a character that each must repose trust and confidence in the other and must exercise a corresponding degree of fairness and good faith.

Out of such a relation, the law raises the rule that neither party may exert influence or pressure upon the other, take selfish advantage of his trust, or deal with the subject-matter of the trust in such a way as to benefit himself or prejudice the other except in the exercise of the utmost good faith and with the full knowledge and consent of that other, business shrewdness, hard bargaining, and astuteness to take advantage of the forgetfulness or negligence of another being totally prohibited as between persons standing in such a relation to each other. Examples of fiduciary relations are those existing between attorney and client, guardian and ward, principal and agent, executor and heir, trustee and *cestui que trust*, landlord and tenant, etc. *Robins v. Hope*, 57 Cal. 497; *Thomas v. Whitney*, 186 Ill. 225, 57 N.E. 808; *Central Nat. Bank v. Connecticut Mut. L. Ins. Co.*, 104 U.S. 68, 26 L.Ed. 693. The relation need not be legal, but may be moral, social, domestic, or merely personal. *Miranovitz v. Gee*, 163 Wis. 246, 157 N.W. 790, 792; *Higgins v. Chicago Title & Trust Co.*, 312 Ill. 11, 143 N.E. 482, 484. It is one in which, if a wrong arise, the same remedy exists against the wrongdoer on behalf of the principal as would exist against a trustee on behalf of a *cestui que trust*. *Smith v. Smith*, 222 Mass. 102, 109 N.E. 830, 832. Sometimes confidential and fiduciary relations are regarded as synonymous; in *re Cover's Estate*, 183 Cal. 133, 204 P. 583, 588; but on the other hand, a technical distinction may be taken between a "fiducial relation" which is more correctly applicable to legal relationships between parties, such as guardian and ward, administrator and heirs, and other similar relationships, and a "confidential relation" which includes the legal relationships, and also every other relationship wherein confidence is rightfully reposed and is exercised. *Roberts v. Parsons*, 195 Ky. 274, 242 S.W. 594, 596.

**FIEF.** A fee, feod, or feud.

**FIEF D'HAUBERT (or D'HAUBERK).** Fr. In Norman feudal law, a fief or fee held by the tenure of knight-service; a knight's fee. 2 Bl.Comm. 62. A fee held on the military tenure of appearing fully armed on the *ban* and *arrière-ban*. *Fewdum hauberticum*. Spelman; Calvinus, Lex.; Du Cange.

**FIEF-TENANT.** In old English law, the holder of a fief or fee; a feeholder or freeholder.

**FIEL.** In Spanish law, a sequestrator; a person in whose hands a thing in dispute is judicially deposited; a receiver. *Las Partidas*, pt. 3, tit. 9, l. 1.

**FIELD.** A cultivated tract of land; *State v. Mack*, 92 Vt. 103, 102 A. 58, 59; but not a one-acre lot used for cultivating vegetables; *Simons v. Lovell*, 7 Heisk., Tenn., 510. This term might well be considered as definite and certain a description as "close," and might be used in law; but it is not a usual description in legal proceedings. 1 Chit.Gen.Pr. 160.

Armies away from the home base on an operational, hostile mission are in the "field". In *re Di Bartolo*, D.C.N.Y., 50 F.Supp. 929, 933.

**FIELD-ALE, or FILKDALE.** An ancient custom in England, by which officers of the forest and bailiffs of hundreds had the right to compel the hundred to furnish them with ale. Tomlins.

**FIELD BOOK.** A description of the courses and distances of the lines, and of the corners of the lots of the town as they were surveyed, and as they appear by number and division on the town plan. *Neill v. Ward*, 103 Vt. 117, 153 A. 219, 225.

**FIELD HOSPITAL.** See Hospital.

**FIELD NOTES.** A description of a survey. *Outlaw v. Gulf Oil Corporation*, Tex.Civ.App., 137 S. W.2d 787, 794.

**FIELD REEVE.** An officer elected, in England, by the owners of a regulated pasture to keep in order the fences, ditches, etc., on the land, to regulate the times during which animals are to be admitted to the pasture, and generally to maintain and manage the pasture subject to the instructions of the owners. (General Inclosure Act, 1845, § 118.) Sweet.

**FIELD VISION.** The general vision used in catching in sight, following and locating objects; —distinguished from "binocular vision" (*q. v.*). *Turpin v. St. Regis Paper Co.*, 199 App.Div. 64, 192 N.Y.S. 85, 87.

**FIELD WORK.** Work in the field, specifically the task of gathering scientific data from the field. Includes the sphere of practical operation, as of an organization or enterprise; also, the place or territory where direct contacts, as with a clientele may be made or first-hand knowledge may be gained; sphere of action or place of contest, either literally or figuratively; hence, any scene of operations or opportunity for activity. *State ex rel. McPherson v. Snell*, 168 Or. 153, 121 P.2d 930, 937.

**FIELDAD.** In Spanish law, sequestration. This is allowed in six cases by the Spanish law where the title to property is in dispute. *Las Partidas*, pt. 3, tit. 3, l. 1.

**FIERDING COURTS.** Ancient Gothic courts of an inferior jurisdiction, so called because *four* were instituted within every inferior district or hundred. 3 Bl.Comm. 34; 3 Steph.Com. 393; *Stiernhook, De Jure Goth.* i. 1, c. 2.

**FIERI.** Lat. To be made; to be done. See *In Fieri*.

**FIERI FACIAS.** Means that you cause to be made. In practice, a writ of execution commanding the sheriff to levy and make the amount of a judgment from the goods and chattels of the judgment debtor.

**FIERI FACIAS DE BONIS ECCLESIASTICIS.** When a sheriff to a common *fi. fa.* returns *nulla bona*, and that the defendant is a beneficed clerk, not having any lay fee, a plaintiff may issue a *fi. fa. de bonis ecclesiasticis*, addressed to the bishop of the diocese or to the archbishop, (during the vacancy of the bishop's see,) commanding him to

make of the ecclesiastical goods and chattels belonging to the defendant within his diocese the sum therein mentioned. 2 Chit.Archb.Pr. (12th Ed.) 1062.

**FERI FACIAS DE BONIS TESTATORIS.** The writ issued on an ordinary judgment against an executor when sued for a debt due by his testator. If the sheriff returns to this writ *nulla bona*, and a *devastavit*, (*q. v.*) the plaintiff may sue out a *feri facias de bonis propriis*, under which the goods of the executor himself are seized. Sweet.

**FERI FECL.** Means I have caused to be made. In practice, the return made by a sheriff or other officer to a writ of *feri facias*, where he has collected the whole, or a part, of the sum directed to be levied. 2 Tidd, Pr. 1018. The return, as actually made, is expressed by the word "Satisfied" indorsed on the writ.

**FERI NON DEBET, (DEBUI,) SED FACTUM VALET.** It ought not to be done, but [if] done, it is valid. Shep. Touch. 6; 5 Coke, 39; T.Raym. 58; 1 Strange, 526. A maxim frequently applied in practice. *Nichols v. Ketcham*, 19 Johns., N.Y., 84, 92.

**FIFTEENTHS.** In English law, this was originally a tax or tribute, levied at intervals by act of parliament, consisting of one-fifteenth of all the movable property of the subject or personalty in every city, township, and borough.

Under Edward III., the taxable property was assessed, and the value of its fifteenth part (then about £29,000) was recorded in the exchequer, whence the tax, levied on that valuation, continued to be called a "fifteenth," although as the wealth of the kingdom increased, the name ceased to be an accurate designation of the proportion of the tax to the value taxed. See 1 Bl.Comm. 309; Co. 2d Inst. 77; 1 Poll. & Maitl. 604; Cowell.

**FIFTH DEGREE OF KINSHIP.** The degree of kinship between a deceased intestate and the children of decedent's first cousin, sometimes designated as "first cousins once removed", was in the "fifth degree". *Simonton v. Edmunds*, 202 S.C. 397, 25 S.E.2d 284, 285.

**FIFTY DECISIONS.** Ordinances of Justinian (529-532) upon the authority of which all moot points were settled in the preparation of the second edition of the Code. Taylor, Science of Jurispr. 144.

**FIGHT.** "Fight" means combat or battle, as hostile encounter or engagement between opposing forces, suggesting primarily the notion of a brawl or unpremeditated encounter, or that of a pugilistic combat. *Gitlow v. Kiely*, D.C.N.Y., 44 F.2d 227, 232.

An encounter, with blows or other personal violence, between two persons. *Carpenter v. People*, 31 Colo. 284, 72 P. 1072; *Coles v. New York Casualty Co.*, 87 App.Div. 41, 83 N.Y.S. 1063. The term does not necessarily imply that both parties should give and take blows. It is sufficient that they voluntarily put their bodies in position with that intent; *State v. Gladden*, 73 N.C. 155; *Tate v. State*, 46 Ga. 148.

**FIGHTWITE.** Sax. A mulct or fine for making a quarrel to the disturbance of the peace. Called

also by Cowell "*forisfactura pugnae*." The amount was one hundred and twenty shillings. Cowell.

A payment to a lord possessing soc over a place where a wrong was done. 2 Holdsw. Hist.E.L. 35.

**FIGURES.** Artificial representations of a form, as in sculpture, drawing, or painting, especially the human body represented by art of any kind. *People v. Eastman*, 89 Misc. 596, 152 N.Y.S. 314, 317.

**NUMERALS.** They are either Roman, made with letters of the alphabet: for example, MDCCLXXVI; or they are Arabic, as follows: 1776.

**FILACER.** An officer of the superior courts at Westminster, whose duty it was to file the writs on which he made process. There were fourteen filacers, and it was their duty to make out all original process. Cowell; Blount; Jacob L.Dict. It is used in 8 Mod. 284. The office was abolished in 1837.

**FILARE.** In old English practice, to file. Townsh.Pl. 67.

**FILCHING.** "Filching" means to steal money, commonly of little value, secretly or underhandedly. *Peck v. Bez*, W.Va., 40 S.E.2d 1, 10.

**FILE, n.** A record of the court. *Milton v. United States*, C.C.A.La., 105 F.2d 253, 255. A thread, string, or wire upon which writs and other exhibits in courts and offices are fastened or filed for the more safe-keeping and ready turning to the same. Spelman; Cowell; Tomlins. Papers put together and tied in bundles. A paper is said also to be filed when it is delivered to the proper officer, and by him received to be kept on file. 13 Vin.Abr. 211; 1 Litt. 113; 1 Hawk.P.C. 7, 207; *Beebe v. Morrell*, 76 Mich. 114, 42 N.W. 1119, 15 Am.St.Rep. 288. But, in general, "file," or "the files," is used loosely to denote the official custody of the court or the place in the offices of a court where the records and papers are kept. The "file" in a cause includes original subpoenas and all papers belonging thereto. *Jackson v. Mobley*, 157 Ala. 408, 47 So. 590.

**FILE, v.** To lay away papers for presentation and reference. *Murphy v. Burlington Overall Co.*, 225 Mo.App. 866, 34 S.W.2d 1035, 1037. In practice, to put upon the files, or deposit in the custody or among the records of a court. To deliver an instrument or other paper to the proper officer for the purpose of being kept on file by him in the proper place. *Gallagher v. Linwood*, 30 N.M. 211, 231 P. 627, 629, 37 A.L.R. 664; *Dillon v. Superior Court of Nevada County*, 24 Cal.App. 760, 142 P. 503, 505; *Pendrey v. Brennan*, 31 Idaho, 54, 169 P. 174, 175. It carries the idea of permanent preservation as a public record. In re *Gubelman*, C.C.A., 10 F.2d 926, 929.

The term "filed" is used to denote the paper placed with the clerk, and assigned by law to his official keeping. Ex parte *Leifeste*, 127 Tex.Cr.R. 445, 77 S.W.2d 675, 676.

"To file" a paper, on the part of a party, is to place it in the official custody of the clerk. "To file," on the part

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of the clerk, is to indorse upon the paper the date of its reception, and retain it in his office, subject to inspection by whomsoever it may concern. *Holman v. Chevallier*, 14 Tex. 339.

"Filing a bill" in equity is an equivalent expression to "commencing a suit."

**FILE WRAPPER ESTOPPEL.** The doctrine depends upon the fact that, when an applicant has accepted the rejection of a broad claim he may not later assert that another claim, deliberately restricted to secure its allowance, is its equivalent. *Tampax, Inc. v. Personal Products Corporation*, C.C.A.N.Y., 123 F.2d 722, 723.

**FILED FOR RECORD.** Left with recorder or registrar for recording. In re *Grodzins*, D.C.Cal., 27 F.Supp. 521, 523, 524.

**FILEINJAD.** Brit. A name given to villeins in the laws of Hoel Dda. *Barring*. Obs.St. 302.

**FILIATE.** To fix a bastard child on some one, as its father. To declare whose child it is. 2 W.Bl. 1017.

**FILIATIO NON POTEST PROBARI.** Co.Litt. 126. Filiation cannot be proved; that is, the husband is presumed to be the father of a child born during coverture. But see 7 & 8 Vict. c. 101.

**FILIATION.** The relation of parent and child, but does not import legitimacy, although often a step to that end. *Rodrigues v. Rodrigues*, 286 Mass. 77, 190 N.E. 20, 22. Correlative to "paternity."

The judicial assignment of an illegitimate child to a designated man as its father.

In the civil law, the descent of son or daughter, with regard to his or her father, mother, and their ancestors.

**FILIATION PROCEEDING.** A special statutory proceeding, criminal in form, but in the nature of a civil action to enforce a civil obligation or duty specifically for the purpose of establishing parentage and the putative father's duty to support his illegitimate child. *State v. Morrow*, 158 Or. 412, 75 P.2d 737, 738, 739, 744.

**FILICETUM.** In old English law, a ferny or brackly ground; a place where fern grows. Co. Lit. 4b; *Shep.Touch*. 95.

**FILIOLUS (or FILIOUS).** In old records, a godson. *Spelman*.

**FILIUS.** Lat. A son; a child.

As distinguished from *heir filius* is a term of nature, *hæres* a term of law. 1 Powell, Dev. 311. In the civil law the term was used to denote a child generally. *Calvinus*, Lex.; *Vicat, Voc.Jur.*

A distinction was sometimes made, in the civil law, between "*filii*" and "*liberi*;" the latter word including grandchildren, (*nepotes*,) the former not. Inst. 1, 14, 5. But, according to *Paulus* and *Julianus*, they were of equally extensive import. Dig. 50, 16, 84; Id. 50, 16, 201.

**FILIUS EST NOMEN NATURÆ, SED HÆRES NOMEN JURIS.** 1 Sid. 193. 1 Pow.Dev. 311. Son is a name of nature, but heir is a name of law.

**FILIUS FAMILIAS.** In the civil law, the son of a family; an unemancipated son. Inst. 2, 12, pr.; Id. 4, 5, 2; *Story, Conf.Laws*, § 61.

**FILIUS IN UTERO MATRIS EST PARS VISCERUM MATRIS.** 7 Coke, 8. A son in the mother's womb is part of the mother's vitals.

**FILIUS MULIERATUS.** In old English law, the eldest legitimate son of a woman, who previously had an illegitimate son by his father. *Glav. lib.* 7, c. 1. Otherwise called "*mulier*." 2 Bl.Comm. 248.

**FILIUS NULLIUS.** An illegitimate child; son of nobody. In re *Ellis' Estate*, 225 Iowa 1279, 282 N.W. 758, 762, 120 A.L.R. 975.

**FILIUS POPULI.** A son of the people. In re *Clark's Estate*, 228 Iowa 75, 290 N.W. 13, 29. Natural child.

**FILL.** To make full; to complete; to satisfy or fulfill; to possess and perform the duties of; to occupy the whole capacity or extent of, so as to leave no space vacant.

Word "fill" in agreement to "take and fill" a certain number of shares, amounts to a promise to pay assessments. *Bangor Bridge Co. v. McMahon*, 10 Me. 478.

To fill a prescription is to furnish, prepare, and combine the requisite materials in due proportion as prescribed. *Ray v. Burbank*, 61 Ga. 505, 34 Am.Rep. 103.

To "fill" embroidery is to stuff out the figure, which is the ornamentation, by covering the stuffing with the silk, cotton, or other threads used by the embroiderer. *G. Reis & Bro. v. Reform Initial Co.*, C.C.A.N.Y., 266 F. 219.

The term "fill," used in relation to shipments of live stock, means feeding and watering stock just prior to sale so as to increase their weight and thus enhance their value. *Texas & P. Ry. Co. v. West Bros.*, *Tex.Com.App.*, 207 S.W. 918, 922.

**FILLED MILK.** Milk to which has been added fat or oil other than milk fat so that the resulting product is in imitation or semblance of milk, cream, or skim milk. *State v. Hershman*, 346 Mo. 892, 143 S.W.2d 1025, 1026.

**FILLING CHAMBER.** A place in which a bottle mouth is held so as to cut off communication with open air while the bottle is being filled with gaseous liquids to be sealed in it under pressure. *Crown Cork & Seal Co. of Baltimore City v. Carper Automatic Bottling Mach. Co. of Baltimore City*, D.C.Md., 229 F. 748, 750.

**FILLING STATION.** A building or structure where motor vehicle fuel is stored for sale to the public. *Hanes v. Carolina Cadillac Co.*, 176 N.C. 350, 97 S.E. 162.

**FILLY.** A young mare; a female colt. An indictment charging the theft of a "filly" is not sustained by proof of the larceny of a "mare." *Lunsford v. State*, 1 Tex.App. 448, 28 Am.Rep. 414.

**FILTHY.** Under Cr.Code, § 211, 18 U.S.C.A. § 1461, an unailable filthy letter is morally foul, polluted, nasty. *United States v. Davidson*, D.C. N.Y., 244 F. 523, 526. Dirty, vulgar, indecent, offensive to the moral sense, morally depraving, de-

basing. *Tyomies Pub. Co. v. United States, C.C.A. Mich.*, 211 F. 385, 390.

In Federal Food, Drug, and Cosmetic Act, § 402(a) (3), 21 U.S.C.A. § 342(a) (3), word "filthy" is used in its usual and ordinary meaning, and is not to be confined to any scientific or medical definition. *U. S. v. Lazere, D.C.Iowa*, 56 F.Supp. 730, 732.

**FILUM.** Lat. In old practice, a file, *i. e.*, a thread or wire on which papers were strung, that being the ancient method of filing.

An imaginary thread or line passing through the middle of a stream or road, as in the titles following.

**FILUM AQUÆ.** A thread of water; a line of water; the middle line of a stream of water, supposed to divide it into two equal parts, and constituting in many cases the boundary between the riparian proprietors on each side. *Ingraham v. Wilkinson, 4 Pick., Mass.*, 273, 16 Am.Dec. 342. *Medium filum* is sometimes used with no additional meaning. Cf. *Thalweg*.

**FILUM FORESTÆ.** The border of the forest. 2 Bla.Comm. 419; 4 Inst. 303; *Manw. Purlieu*.

**FILUM VIÆ.** The thread or middle line of a road. The boundary between the owners of the land on each side of a road. 2 Smith, *Lead.Cas.* Am.Ed., 98, note. *City of Chicago v. Rumsey, 87 Ill.* 348; *Cox v. Freedley, 33 Pa.* 124, 75 Am.Dec. 584.

**FIN.** Fr. An end, or limit; a limitation, or period of limitation.

**FIN DE NON RECEVOIR.** In French law, an exception or plea founded on law, which, without entering into the merits of the action, shows that the plaintiff has no right to bring it, either because the time during which it ought to have been brought has elapsed, which is called "prescription," or that there has been a compromise, accord and satisfaction, or any other cause which has destroyed the right of action which once subsisted. *Poth.Proc. Civile, pt. 1, c. 2, § 2, art. 2; Story, Conf.Laws, § 580.*

**FINAL.** Last; conclusive. *Standard Oil Co. (New Jersey) v. U. S., Ct.Cl.*, 10 F.Supp. 550, 560. Decisive; definitive. *State ex rel. Grodin v. Barns, 119 Fla.* 405, 161 So. 568, 574. Terminating; completed. In its use in jurisprudence, this word is generally contrasted with "interlocutory." *Johnson v. New York, 48 Hun, 620, 1 N.Y.S. 254; Garrison v. Dougherty, 18 S.C.* 488; *U. S. v. Broude, D.C.Minn.*, 299 F. 332, 333.

As to final "Costs," "Decree," "Judgment," "Injunction," "Order," "Process," "Recovery," "Sentence," and "Settlement," see those titles.

**FINAL ARCHITECT'S CERTIFICATE.** One which is issued after a job is done and which finally determines the rights of the parties as to money and disputes. *Johnson v. Hogg, 202 Ill. App.* 253, 255; *Hunt v. Owen Bldg. & Inv. Co., Mo.App.*, 219 S.W. 138, 140.

**FINAL DECISION.** One which leaves nothing open to further dispute and which sets at rest cause of action between parties. *Hammond v. Boston Terminal Co.*, 295 Mass. 566, 4 N.E.2d 328. One which settles rights of parties respecting the subject-matter of the suit and which concludes them until it is reversed or set aside. *Orwig v. Conley, 322 Ill.* 291, 153 N.E. 371, 372; *Pawtucket Cabinet & Builders' Finish Co. v. People's Excursion Line, 45 R.I.* 426, 123 A. 354. See, however, *Wyman v. Hageman, 318 Ill.* 64, 148 N.E. 852, 855. The filing of signed findings and conclusions and order for judgment. *Crane v. First Nat. Bank, 26 N.D.* 268, 144 N.W. 96, 97. Synonymous with final judgment or decree. *In re Tiffany, 252 U.S.* 32, 40 S.Ct. 239, 240, 64 L.Ed. 443. Also, a decision from which no appeal or writ of error can be taken. *Moore v. Mayfield, 47 Ill.* 167; 6 El. & Bl. 408; *U. S. v. Tod, C.C.A.N.Y.*, 1 F.2d 246, 251; *Blanding v. Sayles, 23 R.I.* 226, 49 A. 992.

**FINAL DETERMINATION.** Final judgment is synonymous. The final settling of the rights of the parties to the action beyond all appeal. *Quarture v. Allegheny County, 141 Pa.Super.* 356, 14 A.2d 575, 578. See *Judgment*.

**FINAL DISPOSITION.** Such a conclusive determination of the subject-matter embraced in a submission to arbitrators, that after the award is made nothing further remains to fix the rights and obligations of the parties, and no further controversy or litigation can arise thereon. *Quarture v. Allegheny County, 141 Pa.Super.* 356, 14 A.2d 575, 578. It is such an award that the party against whom it is made can perform or pay it without any further ascertainment of rights or duties. *Colcord v. Fletcher, 50 Me.* 401.

**FINAL HEARING.** Describes that stage of proceedings relating to the determination of a suit upon its merits as distinguished from those of preliminary questions. *Menard v. Bowman Dairy Co., 296 Ill.App.* 323, 15 N.E.2d 1014, 1015. It may also be used with reference to a dismissal on the motion of plaintiff. *Christensen v. General Electric Co., D.C.N.Y.*, 248 F. 284, 286.

**FINAL PASSAGE.** The vote on a passage of a bill or resolution in either house of the legislature after it has received the prescribed number of readings and has been subjected to such action as is required by the fundamental law governing the body or its own rule. *State v. Buckley, 54 Ala.* 613. The actual final vote necessary to a bill becoming a law, regardless of parliamentary fictions. *Roane Iron Co. v. Francis, 130 Tenn.* 694, 172 S. W. 816.

**FINAL RECEIVER'S RECEIPT.** An acknowledgment by the government that it has received full payment for public land, that it holds the legal title in trust for the entryman, and will in due course issue to him a patent. *Bovey-Shute Lumber Co. v. Erickson, 41 N.D.* 365, 170 N.W. 628, 630.

**FINAL SETTLEMENT.** In probate proceeding, a direct adjudication that the estate is fully administered; that the administrator has completely

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executed his trust and has accounted for all moneys received as the law requires. *In re Braun's Estate*, 140 Kan. 188, 34 P.2d 94, 95.

The final determination of amount due contractor by proper governmental authority. Consolidated Indemnity & Insurance Co. v. W. A. Smoot & Co., C.C.A.Va., 57 F.2d 995, 996.

A formal determination by commissioners' court, in cases involving contract with county, of amount finally due under contract. *Austin Bros. Bridge Co. v. Love*, Tex.Com.App., 34 S.W.2d 574, 577.

**FINAL SUBMISSION.** Exists when nothing remains to be done to render submission complete. *Thompson v. Schalk*, 228 Iowa 705, 292 N.W. 851, 852.

Where the whole case, both requested instructions and evidence, is submitted to the court for its ruling and the court takes the case under advisement, there is a "final submission" of the entire case. *Platt v. Helm & Overly Realty Co.*, 342 Mo. 772, 117 S.W.2d 327, 329.

**FINAL TRIAL.** Under a statute such trial in the court having original trial jurisdiction as is the basis of entry of judgment finally disposing of action in that court; the term does not apply to proceedings in the appellate court. *Wynne v. Smith*, 23 Ga.App. 330, 98 S.E. 271, 272.

**FINALIS CONCORDIA.** A final or conclusive agreement.

In the process of "levying a fine," this was a final agreement entered by the litigating parties upon the record, by permission of court, settling the title to the land, and which was binding upon them like any judgment of the court. 1 Washb.Real Prop. \*70.

**FINANCE CHARGE.** The consideration for privilege of deferring payment of purchase price. *Cowart v. Lang*, 252 App.Div. 720, 298 N.Y.S. 875.

**FINANCES.** Money resources generally. The state of the finances of an individual or corporation, being his condition in a monetary point of view. The cash he has on hand, and that which he expects to receive, as compared with the engagements he has made to pay.

The public wealth of a state or government, considered either statically (as the property or money which a state now owns) or dynamically, (as its income, revenue, or public resources.) Monetary affairs, funds in a treasury or accruing to it, etc. *City of Newburgh v. Dickey*, 150 N.Y.S. 175, 177, 164 App.Div. 791.

**FINANCIAL.** Fiscal. *Armstrong v. State Bank of Mayville*, 177 App.Div. 265, 165 N.Y.S. 5, 8. Dealing in money. *Crown Finance Corporation v. McColgan*, 23 Cal.2d 280, 144 P.2d 331, 333.

**FINANCIAL RESPONSIBILITY.** Obligation to pay to a third party. *Christensen v. Hennepin Transp. Co.*, 215 Minn. 394, 10 N.W.2d 406, 415, 147 A.L.R. 945.

**FINANCIAL WORTH.** The value of one's property less what he owes, or the value of his resources less his liabilities. *Boney v. Central Mut. Ins. Co. of Chicago*, 213 N.C. 470, 196 S.E. 837, 841.

**FINANCIALLY ABLE.** Means purchaser must be able to command the necessary funds to close the

deal within the required time. *Hersh v. Garau*, 218 Cal. 460, 23 P.2d 1022.

**FINANCIER.** A person employed in the economical management and application of public money; one skilled in matters appertaining to the judicious management of money affairs.

**FIND.** To come upon by seeking or by effort. *Shields v. Shields*, 115 Mont. 146, 139 P.2d 528, 530. To discover; to determine; to ascertain and declare.

To announce a conclusion, as the result of judicial investigation, upon a disputed fact or state of facts; as a jury are said to "find a will." To determine a controversy in favor of one of the parties; as a jury "find for the plaintiff." *State v. Bulkeley*, 61 Conn. 287, 23 A. 186, 14 L.R.A. 657. The term usually means to ascertain by judicial inquiry, *State ex inf. of Barker v. Crandall*, 269 Mo. 44, 190 S.W. 889, 893; in contradistinction to acts by a clerk of court, *State v. Halaby*, 148 La. 1, 86 So. 561, 563; or by administrative boards, *Union Pac. R. Co. v. Board of Com'rs of Weld County, Colo.*, C.C.A.Colo., 217 F. 540, 541. But the term does not always require a judicial or official finding. *City of Chicago v. Atwood*, 269 Ill. 624, 110 N.E. 127, 128.

**FINDER.** One who discovers and takes possession of another's personal property, which was then lost. *Kincaid v. Eaton*, 98 Mass. 139, 93 Am. Dec. 142.

A searcher employed to discover goods imported or exported without paying custom. *Jacob*.

**FINDER'S FEE.** A sum of money paid by a banker to one who brings to him a deal out of which he makes money. *Cray, McFawn & Co. v. Hegarty, Conroy & Co.*, D.C.N.Y., 27 F.Supp. 93, 97, 98, 100, 101.

**FINDING.** The result of the deliberations of a jury or a court. *Denslow v. Moore*, 2 Day (Conn.) 12; *U. S. v. Moller*, 16 Blatchf. 65, Fed.Cas.No. 15,794. A decision upon a question of fact reached as the result of a judicial examination or investigation by a court, jury, referee, coroner, etc. *Benton v. Roberts*, 53 Ga.App. 121, 185 S.E. 292, 294. A recital of the facts as found. *Crighton v. Jacobs*, 100 Conn. 281, 123 A. 437, 438. The word commonly applies to the result reached by a judge, *Maeder Steel Products Co. v. Zanello*, 109 Or. 562, 220 P. 155, 158; it being sometimes, however, as a matter of interpretation, treated as a ruling of law, *Garden Cemetery Corporation v. Baker*, 218 Mass. 339, 105 N.E. 1070, 1072, Ann.Cas.1916B, 75.

**FINDING OF FACT.** A determination of a fact by the court, averred by one party and denied by the other, and founded on evidence in case. *C.I.T. Corp. v. Elliott*, 66 Idaho 384, 159 P.2d 891, 897. A conclusion by way of reasonable inference from the evidence. *Barker v. Narragansett Racing Ass'n*, 65 R.I. 489, 16 A.2d 495, 497. Also the answer of the jury to a specific interrogatory propounded to them as to the existence or non-existence of a fact in issue. *Miles v. McCallan*, 1 Ariz. 491, 3 P. 610; *Murphy v. Bennett*, 68 Cal. 528, 9 P. 738.

The term is not applicable, with special reference to review on appeal, to a mere conclusion that the evidence is insufficient to authorize relief, *Monetaire Mining Co. v. Columbus Rexall Consol. Mines Co.*, 53 Utah, 413, 174 P.



172, 174; nor to the opinion of the trial court, delivered in announcing judgment, *Rogers v. Harris*, 76 Okl. 215, 184 P. 459, 462; nor to a memorandum of the decision of the trial judge, *Preston v. Preston*, 102 Conn. 96, 128 A. 292, 296; nor to a transcript of the evidence, *State v. Chin Lung*, 106 Conn. 701, 139 A. 91, 97.

A general finding by a court is a general statement that the facts are in favor of a party or entitle him to judgment. It is a complete determination of all matters, and is a finding of every special thing necessary to be found to sustain the general finding. *Miller v. Thompson*, 80 Okl. 70, 194 P. 103, 105.

A special finding is a specific setting forth of the ultimate facts established by the evidence and which are determinative of the judgment which must be given. *Rhodes v. United States Nat. Bank*, Ill., 66 F. 514, 13 C.C.A. 612, 34 L.R.A. 742; *Humphreys v. Third Nat. Bank*, Ohio, 75 F. 856, 21 C.C.A. 538. It is only a determination of the ultimate facts on which the law must be determined, *Societe Nouvelle d'Armement v. Barnaby*, C.C.A.Wash., 246 F. 68, 70. A special finding may also be said to be one limited to the fact issue submitted. *Ex parte Woodward Iron Co.*, 212 Ala. 220, 102 So. 103, 106.

The term "fact" in the phrase "finding of fact" denotes the inferences drawn by the trier from ascertained facts. *Porter v. Industrial Commission of Wisconsin*, 173 Wis. 267, 181 N.W. 317, 318.

**FINE, v.** To impose a pecuniary punishment or mulct.

To sentence a person convicted of an offense to pay a penalty in money. *Goodman v. Durant B. & L. Ass'n*, 71 Miss. 310, 14 So. 146; *State v. Belle*, 92 Iowa 258, 60 N.W. 525.

**FINE, n.** A sum of money paid at the end, to make an end of a transaction, suit, or prosecution; mulct; penalty. *Railroad Co. v. State*, 22 Kan. 15; *Sunderland Bros. Co. v. Chicago, B. & I. R. Co.*, 104 Neb. 319, 177 N.W. 156, 157. A forfeit or forfeiture. *Keinath, Schuster & Hudson v. Reed*, 18 N.M. 358, 137 P. 841, 844; *Bryant v. Rich's Grill*, 216 Mass. 344, 103 N.E. 925, 927, Ann.Cas.1915B, 869.

### Conveyancing

An amicable composition or agreement of a suit, either actual or fictitious, by leave of the court, by which the lands in question become, or are acknowledged to be, the right of one of the parties. 2 Bl.Comm. 349; *Christy v. Burch*, 25 Fla. 942, 2 So. 258; *Hitz v. Jenks*, 123 U.S. 297, 8 S.Ct. 143, 31 L.Ed. 156. Fines were abolished in England by St. 3 & 4 Wm. IV. c. 74, substituting a disentailing deed. (*q. v.*)

A fine is so called because it puts an end not only to the suit thus commenced, but also to all other suits and controversies concerning the same matter. The party who parted with the land, by acknowledging the right of the other, was said to *levy* the fine, and was called the "cognizor" or "conusor," while the party who recovered or received the estate was termed the "cognizee" or "conusee," and the fine was said to be levied to him.

### Criminal Law

A pecuniary punishment imposed by lawful tribunal upon person convicted of crime or misdemeanor. In re *Chester School District's Audit*, 301 Pa. 203, 151 A. 801, 808. A pecuniary penalty. *Hanks v. Shreveport Yellow Cabs*, La.App., 187 So. 817, 819. It may include a forfeiture or penalty recoverable in a civil action. *Vitelli v. Mayor and*

*Council of Wilmington*, 9 W.W.Harr. 336, 199 A. 283, 287.

The word "penalty" is broader than word "fine", which is always a penalty; whereas, a penalty may be a fine or it may designate some other form of punishment. *McHugh v. Placid Oil Co.*, 206 La. 511, 19 So.2d 221.

### Executed Fine

See Executed.

### Joint Fine

In old English law. "If a whole vill is to be fined, a joint fine may be laid, and it will be good for the necessity of it; but, in other cases, fines for offenses are to be severally imposed on each particular offender, and not jointly upon all of them." Jacob.

### Law of Tenure

A money payment made by a feudal tenant to his lord.

The most usual fine is that payable on the admittance of a new tenant, but there are also due in some manors fines upon alienation, on a license to demise the lands, or on the death of the lord, or other events. *Elton*, Copyh. 159; *De Peyster v. Michael*, 6 N.Y. 495, 57 Am.Dec. 470.

**FINE AND RECOVERY ACT.** The English statutes 3 & 4 Wm. IV. c. 74, for abolishing fines and recoveries. 1 Steph.Comm. 514, et seq.

**FINE ANULLANDO LEVATO DE TENEMENTO QUOD FUT DE ANTIQUO DOMINICO.** An abolished writ for disannulling a fine levied of lands in ancient demesne to the prejudice of the lord. Reg.Orig. 15.

**FINE CAPIENDO PRO TERRIS.** An obsolete writ which lay for a person who, upon conviction by jury, had his lands and goods taken, and his body imprisoned, to be remitted his imprisonment, and have his lands and goods redelivered to him, on obtaining favor of a sum of money, etc. Reg. Orig. 142.

**FINE FOR ALIENATION.** A fine anciently payable upon the alienation of a feudal estate and substitution of a new tenant. It was payable to the lord by all tenants holding by knight's service or tenants *in capite* by socage tenure. Abolished by 12 Car. II. c. 24. See 2 Bl.Comm. 71, 89; *De Peyster v. Michael*, 6 N.Y. 467, 495, 57 Am.Dec. 470.

**FINE FOR ENDOWMENT.** A fine anciently payable to the lord by the widow of a tenant, without which she could not be endowed of her husband's lands. Abolished under Henry I., and by *Magna Charta*. 2 Bl.Comm. 135; *Mozley & Whitley*.

**FINE NON CAPIENDO PRO PULCHRE PLACITANDO.** An obsolete writ to inhibit officers of courts to take fines for fair pleading.

**FINE PRO REDISSEISINÀ CAPIENDO.** An old writ that lay for the release of one imprisoned for a re disseisin, on payment of a reasonable fine. Reg.Orig. 222.

**FINE ROLLS.** See Oblate Rolls.

## FINE

**FINE SUR COGNIZANCE DE DROIT, CUM CEO QUE IL AD DE SON DONE.** A fine upon acknowledgment of the right of the cognizee as that which he hath of the gift of the cognizor. By this the deforciant acknowledged in court a former feoffment or gift in possession to have been made by him to the plaintiff. 2 Bl.Comm. 352.

**FINE SUR COGNIZANCE DE DROIT TANTUM.** A fine upon acknowledgment of the right merely, and not with the circumstance of a *preceding gift* from the cognizor.

This was commonly used to pass a *reversionary* interest which was in the cognizor, of which there could be no feoffment supposed. 2 Bl.Comm. 353; 1 Steph.Comm. 519; Jacob, Law Dict.; Com., Dig.

**FINE SUR CONCESSIT.** A fine upon *concessit* (he hath granted). A species of fine, where the cognizor, in order to make an end of disputes, though he acknowledged no precedent right, yet *granted* to the cognizee an estate *de novo*, usually for life or years, by way of supposed composition. 2 Bl.Comm. 353; 1 Steph.Comm. 519.

**FINE SUR DONE GRANT ET RENDER.** A double fine, comprehending the fine *sur cognizance de droit come ceo* and the fine *sur concessit*.

It might be used to convey particular limitations of estates, whereas the fine *sur cognizance de droit come ceo*, etc., conveyed nothing but an absolute estate, either of inheritance, or at least freehold. In this last species of fines, the cognizee, after the right was acknowledged to be in him, granted back again or rendered to the cognizor, or perhaps to a stranger, some other estate in the premises. 2 Bl.Comm. 353; Viner, Abr. *Fine*; Comyns, Dig. *Fine*.

**FINE-FORCE.** An absolute necessity or inevitable constraint. Plowd. 94; 6 Coke, 11; Cowell; Old N.B. 78.

**FINEM FACERE.** To make or pay a fine. Bract. 106; Skene.

**FINES LE ROY.** In old English law, the king's fines. Fines formerly payable to the king for any contempt or offense, as where one committed any trespass, or falsely denied his own deed, or did anything in contempt of law. Termes de la Ley.

**FINGER.** The loss of the use of a thumb cannot be considered the loss of a finger within Workmen's Compensation Law. Doris v. James Butler, Inc., 199 App.Div. 116, 192 N.Y.S. 515.

**FINGER PRINTS.** See Anthropometry.

**FINIRE.** In old English law, to fine, or pay a fine. Cowell. To end or finish a matter.

**FINIS.** Lat. An end; a fine; a boundary or terminus; a limit. Also in L. Lat., a fine (*q. v.*).

**FINIS EST AMICABILIS COMPOSITIO ET FINALIS CONCORDIA EX CONCENSU ET CONCORDIA DOMINI REGIS VEL JUSTICIARUM.** Glan. lib. 8, c. 1. 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. 3 Inst. 78.

**FINIS REI ATTENDENDUS EST.** 3 Inst. 51. The end of a thing is to be attended to.

**FINIS UNIUS DIEI EST PRINCIPIUM ALTERIUS.** 2 Bulst. 305. The end of one day is the beginning of another.

**FINITIO.** An ending; death, as the end of life. Blount; Cowell.

**FINIUM REGUNDORUM ACTIO.** In the civil law, action for regulating boundaries. The name of an action which lay between those who had lands bordering on each other, to settle disputed boundaries. Mackeld.Rom.Law, § 499.

**FINORS.** Those that purify gold and silver, and part them by fire and water from coarser metals; and therefore, in the statute of 4 Hen. VII. c. 2, they are also called "parters." Termes de la Ley.

**FIRDFARE.** Sax. In old English law, a summoning forth to a military expedition, (*indictio ad profectorem militarem.*) Spelman.

**FIRDIRINGA.** Sax. A preparation to go into the army. Leg. Hen. I.

**FIRDSOCNE.** Sax. In old English law, exemption from military service. Spelman.

**FIRDWITE.** In old English law, a fine for refusing military service (*mulcta detrectantis militiam.*) Spelman. A mulct or penalty imposed on military tenants for their default in not appearing in arms or coming to an expedition. Cowell.

A fine imposed for murder committed in the army; an acquittance of such fine. Fleta, lib. 1, c. 47.

**FIRE.** The effect of combustion. The juridical meaning of the word does not differ from the vernacular. 1 Pars.Mar.Law, 231, et seq.

The word "fire," as used in insurance policies, does not have the technical meaning developed from analysis of its nature, but more nearly the popular meaning, being an effect rather than an elementary principle, and is the effect of combustion, being equivalent to ignition or burning, but heat is not fire, though fire may proximately cause loss from heat. Lavitt v. Hartford County Mut. Fire Ins. Co., 105 Conn. 729, 136 A. 572.

The ordinary meaning of the word as used in an insurance policy includes the idea of visible heat or light. Security Ins. Co. of New Haven, Conn., v. Choctaw Cotton Oil Co., 149 Okl. 140, 299 P. 882, 884. Damage to wool by spontaneous combustion with smoke and great heat, but without any visible flame or glow, is held not to be fire. The "fire is always caused by combustion, but combustion does not always cause fire." Western Woolen Mill Co. v. Assurance Co., Kan., 139 F. 637, 72 C.C.A. 1.

Under a fire policy it must be a "hostile fire," that is one which becomes uncontrollable or breaks out from where it was intended to be and becomes a hostile element. Mode, Limited, v. Fireman's Fund Ins. Co., 62 Idaho 270, 110 P.2d 840, 842, 133 A.L.R. 791.

**FIRE AND SWORD, LETTERS OF.** In old Scotch law, letters issued from the privy council in Scotland, addressed to the sheriff of the county, authorizing him to call for the assistance of the county to dispossess a tenant retaining possession, contrary to the order of a judge or the sentence of a court. Wharton; Bell, Dict.

**FIREARM.** An instrument used in the propulsion of shot, shell, or bullets by the action of gunpowder exploded within it. A weapon which acts by force of gunpowder. *People v. Simons*, 124 Misc. 28, 207 N.Y.S. 56, 57. This word comprises all sorts of guns, fowling-pieces, blunderbusses, pistols, etc.; *Harris v. Cameron*, 81 Wis. 239, 51 N.W. 437, 29 Am.St.Rep. 891; *Atwood v. State*, 53 Ala. 509; *Whitney Arms Co. v. Barlow*, 38 N.Y.Super.Ct. 563; fountain pen primarily intended for discharge of tear gas, *People v. Anderson*, 236 App.Div. 586, 260 N.Y.S. 329; but not an air pistol. *People v. Schmidt*, 221 App.Div. 77, 222 N.Y.S. 647, 650.

**FIREBARE.** A beacon or high tower by the seaside, wherein are continual lights, either to direct sailors in the night, or to give warning of the approach of an enemy. *Cowell*.

**FIREBOTE.** Allowance of wood or *estovers* to maintain competent firing for the tenant. A sufficient allowance of wood to burn in a house. 1 Washb.Real Prop. 99.

**FIREBUG.** A popular phrase referring to persons guilty of the crime of arson; commonly understood to mean an incendiary or pyromaniac. *Blechner v. Kraser, Co.Ct.*, 157 N.Y.S. 256.

**FIRE DAMP.** "Fire damp" consists of light carburated hydrogen, and is so called from its tendency to explode when mixed with atmospheric air and brought into contact with flame. *Wells' Adm'r v. Sutherland Coal & Coke Co.*, 116 Va. 1003, 83 S.E. 384, 385.

**FIRE DISTRICT.** One of the districts into which a city may be (and commonly is) divided for the purpose of more efficient service by the fire department in the extinction of fires. *Des Moines v. Gilchrist*, 67 Iowa 210, 25 N.W. 136. Under a statute, a territorial subdivision of the state, established to provide protection against fire within its limits, maintain street lights, etc., and, although composed of one or more towns, it is in substance a quasi municipal corporation of definitely restricted powers, and as such it may raise money by taxation for its legitimate uses. *President, etc., of Williams College v. Inhabitants of Town of Williamstown*, 219 Mass. 46, 106 N.E. 687, 688.

**FIRE DOOR.** A fireproof barrier for closing openings to prevent the spread of fire. *People v. One Hundred and Thirty-One Boerum St. Co.*, 233 N.Y. 268, 135 N.E. 327, 328.

**FIRE ESCAPE.** An apparatus constructed to afford a safe and convenient method of escape from a burning building. The term includes fire ladders of such sort and location as to permit safe descent of persons caught in a building on fire, but not a balcony or an interior staircase in a hotel. *West v. Spratling*, 204 Ala. 478, 86 So. 32, 36.

**FIRE EXIT.** A reasonable, practicable, safe exit. *Keefe v. Annpaul Realty Co.*, 215 App.Div. 301, 213 N.Y.S. 637, 642.

**FIRE FIGHTING MACHINE.** An instrument of public utility designed and used exclusively for putting out fires; the average or normal fire-fighting machine is in all its parts essentially designed for that purpose. *American-La France Fire Engine Co. v. Riordan, C.C.A.N.Y.*, 6 F.2d 964, 966.

**FIRE INSURANCE.** See Insurance.

**FIREMAN.** A person engaged in the fighting and extinguishment of fires. *City of Galveston v. Fredrickson, Tex.Civ.App.*, 174 S.W.2d 994, 995.

**FIRE ORDEAL.** See Ordeal.

**FIRE POLICY.** A contract for payment of indemnity to insured in case of loss. *Converse v. Boston Safe Deposit & Trust Co.*, 315 Mass. 544, 53 N.E.2d 841, 843. See Insurance.

**FIRE-PROOF.** Incombustible; not in danger from the action of fire.

To say of a building that it is fire-proof excludes the idea that it is of wood, and necessarily implies that it is of some substance fitted for the erection of fire-proof buildings. To say of a certain portion of a building that it is fire-proof warrants conclusion that it is of a different material. *Hickey v. Morrell*, 102 N.Y. 459, 7 N.E. 321, 55 Am.Rep. 824. A "fire-proof safe" within an insurance policy is one which, in the judgment of prudent men in locality of property insured, is sufficient, *National Liberty Ins. Co. of America v. Spharler*, 172 Ark. 715, 290 S.W. 594, 596; or one which is of the kind commonly regarded as fire-proof; *Knoxville Fire Ins. Co. v. Hird*, 4 Tex.Civ.App. 82, 23 S.W. 393.

**FIRE RAISING.** In Scotch law, the wilfully setting on fire buildings, growing or stored cereals, growing wood, or coalheughs. *Ersk.Pr.* 577. See Arson.

**FIRE WALL.** This term, as used in a municipal building code, has been held to refer to a wall that is noncombustible, and to require that such quality adhere to the openings in the wall as well as the solid wall itself. *Robenson v. Turner*, 199 Ky. 642, 251 S.W. 857, 860.

**FIRE-WOOD.** Wood suitable for fuel, not including standing or felled timber which is suitable and valuable for other purposes. *Hogan v. Hogan*, 102 Mich. 641, 61 N.W. 73.

**FIREWORKS.** Contrivances of inflammable and explosive materials combined of various proportions for purpose of producing in combustion beautiful or amusing scenic effects, or to be used as night signal, on land or sea or for various purposes in war. *Henderson v. Massachusetts Bonding & Ins. Co.*, 337 Mo. 1, 84 S.W.2d 922, 925.

**FIRKIN.** A measure of capacity, equal to nine gallons. The word is also used to designate a weight, used for butter and cheese, of fifty-six pounds avoirdupois.

**FIRLOT.** A Scotch measure of capacity, containing two gallons and a pint. *Spelman*.

**FIRM.** The word "firm" is conventional term, applicable only to persons who are members of firm on particular occasion when name is used,

## FIRM

and means name, title, or style under which a company transacts business, a partnership of two or more persons, or a commercial house, and is synonymous with "company", "house", "partnership", and "concern". *Firestone Tire & Rubber Co. v. Webb*, 207 Ark. 820, 182 S.W.2d 941, 943; 1 Chitty, Bailm. 49.

**FIRM NAME.** The name or title of a firm in business.

**FIRMA.** In old English law, the contract of lease or letting; also the rent (or farm) reserved upon a lease of lands, which was frequently payable in provisions, but sometimes in money, in which latter case it was called "*alba firma*," white rent. Spelman, Gloss.; Cunningham, Law Dict.

A message with the house, garden, or lands, etc., connected therewith. Co.Litt. 5 a; Shepp. Touchst. 93.

A banquet; supper; provisions for the table. Du Cange.

A tribute or custom paid towards entertaining the king for one night. Domesday; Cowell.

**FIRMA BURGI.** The right, in medieval days, to take the profits of a borough, paying for them a fixed sum to the crown or other lord of the borough. 2 Holdsw.Hist.E.L. 276.

**FIRMA FEODI.** In old English law, a farm or lease of a fee; a fee-farm.

**FIRMAN.** A Turkish word denoting a decree or grant of privileges, or passport to a traveler. A passport granted by the Great Mogul to captains of foreign vessels to trade within the territories over which he has jurisdiction; a permit.

**FIRMARATIO.** The right of a tenant to his lands and tenements. Cowell.

**FIRMARIUM.** In old records, a place in monasteries, and elsewhere, where the poor were received and supplied with food. Spelman. Hence the word "infirmary."

**FIRMARIUS.** L. Lat. A fermor. A lessee of a term. *Firmarii* comprehend all such as hold by lease for life or lives or for year, by deed or without deed. 2 Inst. 144, 145; 1 Washb.Real Prop. 107; Sackett v. Sackett, 8 Pick. (Mass.) 312; 7 Ad. & E. 637.

**FIRMATIO.** The doe season. Also a supplying with food. Cowell.

**FIRME.** In old records, a farm.

**FIRMIOR ET POTENTIOR EST OPERATIO LEGIS QUAM DISPOSITIO HOMINIS.** The operation of the law is firmer and more powerful [or efficacious] than the disposition [or will] of man. Co.Litt. 102a.

**FIRMITAS.** In old English law, an assurance of some privilege, by deed or charter.

**FIRMLY.** A statement that an affiant "firmly believes" the contents of the affidavit imports a

strong or high degree of belief, and is equivalent to saying that he "verily" believes it. *Bradley v. Eccles*, 1 Browne, Pa., 258; *Thompson v. White*, 4 Serg. & R., Pa., 137. The operative words in a bond or recognizance, that the obligor is held and "firmly bound," are equivalent to an acknowledgment of indebtedness and promise to pay. *Shattuck v. People*, 5 Ill. 477.

**FIRMURA.** In old English law, liberty to scour and repair a mill-dam, and carry away the soil, etc. Blount.

**FIRST.** Preceding all others; foremost; used as an ordinal of one, as earliest in time or succession or foremost in position; in front of or in advance of all others. *Colgate-Palmolive-Peet Co. v. U. S.*, C.C.A.Del., 130 F.2d 913, 915. Initial; leading; chief; entitled to priority or preference above others. *Redman v. Railroad Co.*, 33 N.J.Eq. 165; *Thompson v. Grand Gulf R. & B. Co.*, 3 How. Miss. 247, 34 Am.Dec. 81; *Hapgood v. Brown*, 102 Mass. 452.

The word commonly, but not necessarily, connotes precedence. Hill v. Prior, 79 N.H. 188, 106 A. 641; *Beckley v. Alling*, 91 Conn. 362, 99 A. 1034, 1035. Thus, under a contract that, if the purchaser should "first" make payment, the vendor would convey, payment was to precede the execution of the conveyance. *Walker v. Hewitt*, 109 Or. 366, 220 P. 147, 151, 35 A.L.R. 100. But in a will the word "first" may not import precedence of one bequest over another. *Everett v. Carr*, 59 Me. 330; *Swasey v. American Bible Society*, 57 Me. 523.

As to first "Cousin," "Distress," and "Mortgage," see those titles.

**FIRST BLUSH.** By the phrase "first blush," within the rule that damages, to justify reversal, must be so great as to strike the mind at first blush as having been superinduced by passion or prejudice on the part of the jury, is meant that immediately the judicial mind is shocked and surprised at the great disproportion of the size of the verdict to what the facts of the case would authorize. *Cole & Crane v. May*, 185 Ky. 135, 214 S.W. 885, 887.

**FIRST-CLASS.** Of the most superior or excellent grade or kind; belonging to the head or chief or numerically precedent of several classes into which the general subject is divided. See *Pacific Feed Co. v. Kennel*, 63 Cal.App. 108, 218 P. 274, 275.

**FIRST-CLASS MAIL-MATTER.** In the postal laws, all mailable matter containing writing and all else that is sealed against inspection.

**FIRST-CLASS MISDEMEANANT.** In English law. Under the prisons act (28 & 29 Vict. c. 126, § 67) prisoners in the county, city, and borough prisons convicted of misdemeanor, and not sentenced to hard labor, are divided into two classes, one of which is called the "first division;" and it is in the discretion of the court to order that such a prisoner be treated as a misdemeanant of the first division, usually called "first-class misdemeanant," and as such not to be deemed a criminal prisoner, *i. e.*, a prisoner convicted of a crime.

**FIRST-CLASS TITLE.** A marketable title, shown by a clean record, or at least not depending on pre-

sumptions that must be overcome or facts that are uncertain. *Vought v. Williams*, 120 N.Y. 253, 24 N.E. 195, 8 L.R.A. 591, 17 Am.St.Rep. 634.

**FIRST DEGREE BURN.** One which produces an inflammation of the outer layer of the skin, like a sunburn. *Smith v. Beard*, 56 Wyo. 375, 110 P. 2d 260, 261, 262.

**FIRST DEVISEE.** The person to whom the estate is first given by the will, term "next devisee" referring to the person to whom the remainder is given. *Young v. Robinson*, 5 N.J.L. 689; *Wilcox v. Heywood*, 12 R.I. 198.

**FIRST DOMESTIC PROCESSING.** Refining or saponification of coconut oil is a "processing" or use thereof, and if the refining or saponification is the first processing or use of the oil in the United States, and occurs in the course of the manufacture or production of any article intended for sale, it is the "first domestic processing" within the statute taxing the first domestic processing. *Revenue Act of 1934*, § 602½ (a), 26 U.S.C.A. § 2470(a). *Cincinnati Soap Co. v. U. S.*, D.C.Ohio, 22 F.Supp. 141.

**FIRST FRUITS.** In English ecclesiastical law, the first year's whole profits of every benefice or spiritual living, anciently paid by the incumbent to the pope, but afterwards transferred to the fund called "Queen Anne's Bounty," for increasing the revenue from poor livings.

In feudal law, one year's profits of land which belonged to the king on the death of a tenant *in capite*; otherwise called "*primer seisin*." One of the incidents to the old feudal tenures. 2 Bl. Comm. 66, 67.

**FIRST HEIR.** The person who will be first entitled to succeed to the title to an estate after the termination of a life estate or estate for years. *Winter v. Perratt*, 5 Barn. & C. 48.

**FIRST IMPRESSION.** First examination. First presentation to a court for examination or decision. A case is said to be "of the first impression" when it presents an entirely novel question of law for the decision of the court, and cannot be governed by any existing precedent.

**FIRST IN, FIRST OUT RULE.** It is not a rule of law nor of logic, but a rule of thumb. It is a presumption of fact and really a regulation of the burden of proof. What is first sold is presumed to be what was first bought. *Ninth Bank & Trust Co. v. U. S.*, D.C.Pa., 15 F.Supp. 951, 952.

**FIRST INVENTOR.** Within the meaning of that phrase as used in the fourth paragraph of Rev.St. § 4920 (35 U.S.C.A. § 69), providing that it shall be a defense to a suit for infringement that the patentee was not the original or first inventor, a person who perfects his invention, the only evidence of such perfected invention ordinarily derivable from any patent being a union of disclosure and claim. *Davis-Bournonville Co. v. Alexander Milburn Co.*, C.C.A.N.Y., 1 F.2d 227, 232.

**FIRST LIEN.** One which takes priority or precedence over all other charges or incumbrances upon the same piece of property, and which must be satisfied before such other charges are entitled to participate in the proceeds of its sale.

**FIRST MEETING.** As used in a statute providing that, for insulting words or conduct to reduce homicide to manslaughter, killing must occur immediately or at "first meeting" after slayer is informed thereof, quoted words mean first time parties are in proximity under such circumstances as would enable slayer to act in the premises. *Smith v. State*, 288 S.W. 458, 462, 105 Tex.Cr.R. 327.

**FIRST OF EXCHANGE.** Where a set of bills of exchange is drawn in duplicate or triplicate, for greater safety in their transmission, all being of the same tenor, and the intention being that the acceptance and payment of any one of them (the first to arrive safely) shall cancel the others of the set, they are called individually the "first of exchange," "second of exchange," etc. See *Bank of Pittsburgh v. Neal*, 22 How. 96, 110, 16 L.Ed. 323.

**FIRST POLICY YEAR.** This phrase in a statute eliminating suicide of insured after such year as defense, means year for which policy, annually renewed, was first issued. *Carter v. Standard Acc. Ins. Co.*, 65 Utah, 465, 238 P. 259, 267, 41 A.L.R. 1495. The year beginning with the issuance of the policy. *American Nat. Ins. Co. v. Thompson*, Tex.Civ.App., 186 S.W. 254, 255.

**FIRST PROCESSING.** The processing that first results in a marketable product. *Hendricks v. Di Giorgio Fruit Corporation*, D.C.Cal., 49 F.Supp. 573, 575, 576.

**FIRST PURCHASER.** In the law of descent, this term signifies the ancestor who first acquired (in any other manner than by inheritance) the estate which still remains in his family or descendants. *Blair v. Adams*, C.C.Tex., 59 F. 247.

**FIRST RETURN.** The "first return", within statute as to depletion deduction is a first return listing items of gross income and deductions arising out of the property. *Commissioner of Internal Revenue v. Alta Mines*, C.C.A.10, 139 F.2d 580, 582.

**FIRST TRIAL.** Under a statute providing when a case at law is tried by a jury, and the successful party excepts to the granting of a new trial for insufficiency of the evidence, and the evidence is certified, the appellate court, if there have been two trials below, shall first look to the evidence and proceedings on the first trial, and, if the setting aside of the first verdict was error, all proceedings subsequent thereto shall be annulled, and judgment rendered thereon, the "first trial" means the first at which exceptions to the granting of a new trial were taken. *Chesapeake & O. Ry. Co. v. Parker's Adm'r*, 116 Va. 368, 82 S.E. 183, 187.

## FISC

**FISC.** A treasury of a kingdom or state; a money chest. *Daly v. Beery*, 45 N.D. 287, 178 N.W. 104, 109. An Anglicized form of the Latin "*fuscus*," (which see.)

**FISCAL.** Of or pertaining to the public treasury or revenue, of or pertaining to financial matters generally. *Wall v. Close*, 203 La. 345, 14 So. 2d 19, 26. Belonging to the fisc, or public treasury. Relating to accounts or the management of revenue. Of or pertaining to the public finances of a government. *Daly v. Beery*, 45 N.D. 287, 178 N.W. 104, 109. Financial. *Armstrong v. State Bank of Mayville*, 177 App.Div. 265, 165 N.Y.S. 5, 8.

**FISCAL AGENT.** This term does not necessarily imply a depository of the public funds, so as, by the simple use of it in a statute, without any directions in this respect, to make it the duty of the state treasurer to deposit with him any moneys in the treasury. *State v. Dubuclet*, 27 La. Ann. 29.

**FISCAL COURT.** A ministerial and executive body in some states. *Stone v. Winn*, 165 Ky. 9, 176 S.W. 933, 941.

**FISCAL JUDGE.** A public officer named in the laws of the Ripuarians and some other Germanic peoples, apparently the same as the "*Graf*," "*reeve*," "*comes*," or "*count*," and so called because charged with the collection of public revenues, either directly or by the imposition of fines. See *Spelman*, voc. "*Grafio*."

**FISCAL OFFICERS.** Those charged with the collection and distribution of public money, as, the money of a state, county, or municipal corporation.

**FISCAL YEAR.** The year by or for which accounts are reckoned, or the year between one annual time of settlement or balancing of accounts and another. *People ex rel. Pollastrini v. Whealan*, 353 Ill. 500, 187 N.E. 491, 494. An accounting period of 12 months. *U. S. v. Mabel Elevator Co.* D.C.Minn., 17 F.2d 109, 110; *U. S. v. Carroll Chain Co.*, D.C.Ohio, 8 F.2d 529, 530. A period of twelve months (not necessarily concurrent with the calendar year) with reference to which appropriations are made and expenditures authorized, and at the end of which accounts are made up and the books balanced. *Shaffner v. Lipinsky*, 194 N.C. 1, 138 S.E. 418, 419.

**FISCUS.** Roman law. The treasury of the prince or emperor, as distinguished from "*ærarium*," which was the treasury of the state. *Spelman*; *Paillet*, *Droit Public*, 21, n. This distinction was not observed in France. In course of time the *fuscus* absorbed the *ærarium* and became the treasury of the state. *Gray*, *Nature and Sources of Law* 58. See *Law* 10, ff. *De jure Fisci*.

The treasury or property of the state, as distinguished from the private property of the sovereign.

English law. The king's treasury, as the repository of forfeited property.

The treasury of a noble, or of any private person. *Spelman*.

**FISH.** An animal which inhabits the water, breathes by means of gills, swims by the aid of fins, and is oviparous. The term includes crabs, *State v. Savage*, 96 Or. 53, 184 P. 567, 570; scallops, *State v. Dudley*, 182 N.C. 822, 109 S.E. 63, 65; and mussels and other shellfish, *Gratz v. McKee*, C.C.A.Mo., 258 F. 335, 336.

The object to be removed from oil well is known as a "fish." *Raymond v. Wickersham*, Cust. & Pat.App., 110 F.2d 863, 864.

**FISH COMMISSIONER.** A public officer of the United States, created by act of congress of February 9, 1871, R.S. § 4395, whose duties principally concerned the preservation and increase throughout the country of fish suitable for food. Office of Commissioner of Fisheries was abolished and functions were transferred to the U. S. Fish and Wildlife Service, 16 U.S.C.A. § 241 notes.

**FISH POTS.** Contrivances in the nature of screens and traps, placed at the junction of low dams or walls extending out from each shore and somewhat down stream, in such a way as to collect the water and send it through the pot, so that fish may be screened out there. *Middlekauff v. Le Compte*, 149 Md. 621, 132 A. 48.

Cf. *Pound Net*.

**FISH ROYAL.** These were the whale and the sturgeon, which, when thrown ashore or caught near the coast of England, became the property of the king by virtue of his prerogative and in recompense for his protecting the shore from pirates and robbers. *Brown*; 1 Bl.Comm. 290. *Arnold v. Mundy*, 6 N.J.L. 86, 10 Am.Dec. 356. Some authorities include the porpoise. *Hale*, *De Jure Mar.* pt. 1, c. 7; *Plowd.* 305; *Bracton*, l. 3, c. 3.

**FISHERY.** A place prepared for catching fish with nets or hooks. This is commonly applied to the place of drawing a seine or net. *Hart v. Hill*, 1 Whart., Pa., 131, 132.

A right or liberty of taking fish; a species of incorporeal hereditament, anciently termed "piscary," of which there are several kinds. 2 Bl. Comm. 34, 39; 3 Kent, Comm. 409-418; *Arnold v. Mundy*, 6 N.J.L. 22, 10 Am.Dec. 356; *Gould v. James*, 6 Cow., N.Y., 376; *Hart v. Hill*, 1 Whart., Pa., 124.

*Common fishery.* A fishing ground where all persons have a right to take fish. *Bennett v. Costar*, 8 Taunt. 183; *Albright v. Park Com'n*, 68 N.J.L. 523, 53 A. 612. Not to be confounded with "common of fishery," as to which see *Common*, n.

*Free fishery.* A franchise in the hands of a subject, existing by grant or prescription, distinct from an ownership in the soil. It is an exclusive right, and applies to a public navigable river, without any right in the soil. 3 Kent, Comm. 410. *Arnold v. Mundy*, 6 N.J.L. 87, 10 Am. Dec. 356.

*Right of fishery.* The general and common right of the citizens to take fish from public waters, such as the sea, great lakes, etc. *Shively v. Bowlby*, 152 U.S. 1, 14 S.Ct. 548, 38 L.Ed. 331.

*Several fishery.* A fishery of which the owner is also the owner of the soil, or derives his right from the owner

of the soil. 2 Bl.Com. 39, 40; 1 Steph.Comm. 671, note. One by which the party claiming it has the right of fishing, independently of all other, so that no person can have a coextensive right with him in the object claimed; but a partial and independent right in another, or a limited liberty, does not derogate from the right of the owner. 5 Burr. 2814.

**FISHERY LAWS.** A series of statutes passed in England for the regulation of fishing, especially to prevent the destruction of fish during the breeding season, and of small fish, spawn, etc., and the employment of improper modes of taking fish. 3 Steph.Comm. 165.

**FISHGARTH.** A dam or weir in a river for taking fish. Cowell.

**FISHING BANKS.** A fishing ground of comparative shoal water in the sea. Parker v. Thomson, 21 Or. 523, 28 P. 502.

**FISHING BILL.** A bill showing no cause of action and endeavoring to compel defendants to disclose one in plaintiff's favor. White v. National Paving Co., Tex.Civ.App., 101 S.W.2d 588, 590. Or seeking disclosure by adversary of facts supporting suit. Puget Sound Nav. Co. v. Associated Oil Co., D.C.Wash., 56 F.2d 605, 606. A discovery sought on general, loose, and vague allegations. Story, Eq.Pl. § 325; In re Pacific Ry. Com'n, C.C.Cal., 32 F. 263; or on suspicion, surmise, or vague guesses. Marietta Mfg. Co. v. Hedges-Walsh-Weidner Co., 9 W.W.Harr. 511, 2 A.2d 922, 926.

Where purpose of proposed examination of witness was to examine books and records to determine status of an account on which petitioner expected to sue, the proceeding was a "fishing expedition". State ex rel. Pitcher v. District Court of Fifth Judicial Dist. in and for Madison County, 114 Mont. 128, 133 P.2d 350, 353.

**FISK.** In Scotch law, the *fiscus* or *fisc*. The revenue of the crown. Generally used of the personal estate of a rebel which has been forfeited to the crown. Bell.

**FISSURE VEIN.** In mining law, a vein or lode of mineralized matter filling a pre-existing fissure or crack in the earth's crust extending across the *strata* and generally extending indefinitely downward. See Crocker v. Manley, 164 Ill. 282, 45 N.E. 577, 56 Am.St.Rep. 196.

**FISTUCA, or FESTUCA.** In old English law, the rod or wand, by the delivery of which the property in land was formerly transferred in making a feoffment. Called, also, "*baculum*," "*virga*," and "*fustis*." Spelman. See Festuca.

**FISTULA.** In the civil law, a pipe for conveying water. Dig. 8, 2, 18.

**FIT.** Suitable or appropriate. Whisnant v. State, 39 Okl.Cr. 214, 264 P. 837, 839. Conformable to a duty. Adapted to, designed, prepared. Thomas v. State, 34 Okl.Cr. 49, 244 P. 816. Proper. Hanes v. Southern Public Utilities Co., 191 N.C. 13, 131 S.E. 402, 406.

**FIT, n.** In medical jurisprudence, an attack or spasm of muscular convulsions, generally attended with loss of self-control and of consciousness;

particularly, such attacks occurring in epilepsy. In a more general sense, the period of an acute attack of any disease, physical or mental, as, a fit of insanity. See Gunter v. State, 83 Ala. 96, 3 So. 600. Also used in the plural, in which sense it is a layman's term for epilepsy. Westphall v. Metropolitan Life Ins. Co., 27 Cal.App. 734, 151 P. 159, 162.

**FITZ.** A Norman word, meaning "son." It is used in law and genealogy; as *Fitzherbert*, the son of Herbert; *Fitzjames*, the son of James; *Fitzroy*, the son of the king. It was originally applied to illegitimate children.

**FIVE-MILE ACT.** An act of parliament, passed in 1665, against non-conformists, whereby ministers of that body who refused to take the oath of non-resistance were prohibited from coming within five miles of any corporate town, or place where they had preached or lectured since the passing of the act of oblivion in 1660, nullified by act of 1689. Brown.

**FIX.** Adjust or regulate. McKann v. Town of Irvington, 133 N.J.L. 63, 42 A.2d 391, 393. Determine; settle. Bunn v. Kingsbury County, 3 S.D. 87, 52 N.W. 673; In re McLure's Estate, 68 Mont. 556, 220 P. 527, 530. Make permanent. Kendall v. Stafford, 178 N.C. 461, 101 S.E. 15, 17. It imports finality and stability. MacNeill v. Bazemore, 194 Ga. 406, 21 S.E.2d 414, 416. Certainty and definiteness. Commercial Casualty Ins. Co. v. State Board of Tax Appeals, 119 N.J.L. 94, 194 A. 390, 391.

To liquidate or render certain. To fasten a liability upon one. To transform a possible or contingent liability into a present and definite liability. Zimmerman v. Canfield, 42 Ohio St. 468; Polk v. Minnehaha County, 5 Dak. 129, 37 N.W. 93; Logansport & W. V. Gas Co. v. Peru, C.C.Ind., 89 F. 187.

**FIX UP.** A promise by a debtor to visit his creditor and "fix it up" with him was not a sufficient promise to pay to toll the statute of limitations, as the expression "fix it" would ordinarily be understood as meaning "make some kind of agreement or adjustment that may dispose of it." Shaw v. Bubier, 119 Me. 83, 109 A. 373, 374.

**FIXED.** In a charter entered into by the captain of a ship, containing the condition, "Provided ship not fixed previously," "fixed" was equivalent to "tied up," "closed," "not free." Richichi v. James B. Drake & Sons, D.C.Me., 280 F. 421, 424.

Prices are "fixed" when they are agreed upon. United States v. Masonite Corporation, N.Y., 316 U.S. 265, 62 S.Ct. 1070, 1076, 86 L.Ed. 1461.

**FIXED ASSET.** An asset essential to continuance of undertaking and proper operation of business. Ruden v. City of Platte, 62 S.D. 175, 252 N.W. 32.

**FIXED CAPITAL.** Cost of total plant and general equipment. Lindheimer v. Illinois Bell Telephone Co., Ill., 292 U.S. 151, 54 S.Ct. 658, 78 L.Ed. 1182.

## FIXED

**FIXED INDEBTEDNESS.** An established or settled indebtedness; not contingent. *State ex rel. Hawkins v. State Board of Examiners*, 97 Mont. 441, 35 P.2d 116, 120.

**FIXED LIABILITIES.** Those certain and definite as to both obligation and amount. *National Commercial Title & Mortgage Guaranty Co. v. City of Newark*, 18 N.J.Misc. 186, 11 A.2d 759, 763.

**FIXED OPINION.** A conviction, prejudgment, disqualifying juror to impartially consider whole evidence and apply free from bias law as given in charge by court. *Peterson v. State*, 227 Ala. 361, 150 So. 156, 159.

**FIXED PRICES.** Agreed prices. *United States v. Food and Grocery Bureau of Southern California*, D.C.Cal., 43 F.Supp. 966, 972.

**FIXED SALARY.** One which is definitely ascertained and prescribed as to amount and time of payment, and does not depend upon the receipt of fees or other contingent emoluments; not necessarily a salary which cannot be changed by competent authority. *Sharpe v. Robertson*, 5 Grat., Va., 518; *Hedrick v. U. S.*, 16 Ct.Cl. 101. Established or settled, to remain for a time. *Board of Sup'rs of Yavapai County v. Stephens*, 177 P. 261, 262, 20 Ariz. 115.

**FIXING BAIL.** In practice, rendering absolute the liability of special bail.

**FIXTURE.** A chattel attached to realty, In re *Triborough Bridge Approach*, City of New York, 159 Misc. 617, 288 N.Y.S. 697, 707. Becoming accessory to it and part and parcel of it. *Farmers & Merchants Bank v. Sawyer*, 26 Ala.App. 520, 163 So. 657. And ordinarily the property of the owner of the land. *Hill*; *Atlantic Refining Co. v. Feinberg*, 1 W.W.Harr., Del., 183, 112 A. 685, 687; *Red Diamond Clothing Co. v. Steidemann*, 169 Mo. App. 306, 152 S.W. 609, 617.

A thing is deemed to be affixed to land when it is attached to it by roots, imbedded in it, permanently resting upon it, or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws. *Civ.Code Cal. § 660*; *Big Sespe Oil Co. v. Cochran*, C.C.A.Cal., 276 F. 216, 225.

Ordinarily, requisites are actual annexation to realty, or something appurtenant thereto, appropriation to use or purpose of realty, and intention to make article permanent accession to freehold as gathered from nature of articles affixed, relation and situation of person making annexation, structure and mode of annexation, and purpose or use for which it has been made. *Bankers Life Ins. Co. v. Ohrt*, 131 Neb. 858, 270 N.W. 497, 502.

It has been said, however, that a "fixture" formerly meant any chattel which on becoming affixed to the soil became a part of the realty; but it now means those things which formed an exception to that rule and can be removed by the person who affixed them to the soil, L.R. 4 Ex. 328; if they can be taken away without material injury to the realty. *Boise Ass'n of Credit Men v. Ellis*, 26 Idaho, 438, 144 P. 6, 9, L.R.A.1915E, 917.

It has also been said that it is generally understood to comprehend any article which a tenant has the power to remove. *Sheen v. Rickie*, 5 Mees. & W. 174; *Rogers v. Gilinger*, 30 Pa. 185, 189, 72 Am.Dec. 694.

The general result seems to be that three views have been taken. One is that "fixture" means something which has been affixed to the realty, so as to become a part of it;

it is fixed, irremovable. An opposite view is that "fixture" means something which appears to be a part of the realty, but is not fully so; it is only a chattel fixed to it, but removable. An intermediate view is that "fixture" means a chattel annexed, affixed, to the realty, but imports nothing as to whether it is removable; that is to be determined by considering its circumstances and the relation of the parties. *Abbott*; *New Castle Theater Co. v. Ward*, 57 Ind.App. 473, 104 N.E. 526, 527; *Review Printing Co. v. Hartford Fire Ins. Co.*, 133 Minn. 213, 158 N.W. 39, 40.

Things fixed or affixed to other things. The rule of law regarding them is that which is expressed in the maxim, "*accessio cedit principali*," "the accessory goes with, and as part of, the principal subject-matter." *Brown*.

That which is fixed or attached to something permanently as an appendage, and not removable. *Webster*. Something fixed or immovable. *Webster*.

A piece of metal having the same function as a jig, except that the operation upon the casting, which it is designed to facilitate, is an operation of grooving and planing, instead of drilling holes. *Commonwealth Trust Co. of Pittsburgh v. Harkins*, 312 Pa. 402, 167 A. 278, 280.

*Agricultural fixtures.* Those annexed for the purpose of farming. In re *Shelar*, D.C.Pa., 21 F.2d 136, 138.

*Domestic fixtures.* All such articles as a tenant attaches to a dwelling house in order to render his occupation more comfortable or convenient, and which may be separated from it without doing substantial injury, such as furnaces, stoves, cupboards, shelves, bells, gas fixtures, or things merely ornamental, as painted wainscots, pier and chimney glasses, although attached to the walls with screws, marble chimney pieces, grates, beds nailed to the walls, window blinds and curtains. *Wright v. Du Bignon*, 40 S.E. 747, 114 Ga. 765, 57 L.R.A. 669.

*Trade fixtures.* Articles placed in or attached to rented buildings by the tenant, to prosecute the trade or business for which he occupies the premises, or to be used in connection with such business, or promote convenience and efficiency in conducting it. *Herkimer County L. & P. Co. v. Johnson*, 37 App.Div. 257, 55 N.Y.Supp. 924; *Brown v. Reno Electric L. & P. Co.*, C.C.Nev., 55 F. 231; *Northwestern Lumber & Wrecking Co. v. Parker*, 125 Minn. 107, 145 N.W. 964, 965. Such chattels as merchants usually possess and annex to the premises occupied by them to enable them to store, handle, and display their goods, which are generally removable without material injury to the premises. *Lovett v. Birmingham-Seaman-Patrick Co.*, 192 Mich. 372, 158 N.W. 881, 883.

**FLACO.** A place covered with standing water.

**FLAG.** A national standard on which are certain emblems; an ensign; a banner.

It is carried by soldiers, ships, etc., and commonly displayed at forts and many other suitable places.

In common parlance, the word "flag," when used as denoting a signal, does not necessarily mean the actual use of a flag, but by figure of speech the word is used in the secondary sense and signifies a signal given as with a flag, that is to say, as by a waiving of the hand for the purpose of communicating information. *Bergfeld v. Kansas City Rys. Co.*, 285 Mo. 654, 227 S.W. 106, 110.

**FLAG, DUTY OF THE.** This was an ancient ceremony in acknowledgment of British sovereignty over the British seas, by which a foreign vessel struck her flag and lowered her top-sail on meeting the British flag.

**FLAG, LAW OF.** In maritime law. The law of that nation or country whose flag is flown by a particular vessel.

A shipowner who sends his vessel into a foreign port gives notice by his flag to all who enter into contracts with the master that he intends the law of that flag to regulate such contracts, and that they must either submit



to its operation or not contract with him. *Ruhrstrat v. People*, 185 Ill. 133, 57 N.E. 41, 49 L.R.A. 181, 76 Am.St.Rep. 30.

**FLAG OF THE UNITED STATES.** By the act entitled "An act to establish the flag of the United States," (Rev.St. §§ 1791, 1792), it was provided "that, from and after the fourth day of July next, the flag of the United States be thirteen horizontal stripes, alternate red and white; that the union be twenty stars, white in a blue field; that, on the admission of every new state into the Union, one star be added to the union of the flag; and that such addition shall take effect on the fourth day of July then next succeeding such admission." See Act July 30, 1947, c. 389, §§ 1, 2, 61 Stat. 641; 4 U.S.C.A. §§ 1, 2.

**FLAG OF TRUCE.** A white flag displayed by one of two belligerent parties to notify the other party that communication and a cessation of hostilities are desired.

**FLAGELLAT.** Whipped; scourged. An entry on old Scotch records. 1 Pitc.Crim.Tr. pt. 1, p. 7.

**FLAGRANS.** Lat. Burning; raging; in actual perpetration.

**FLAGRANS BELLUM.** A war actually going on.

**FLAGRANS CRIMEN.** In Roman law, a fresh or recent crime. This term designated a crime in the very act of its commission, or while it was of recent occurrence.

**FLAGRANT DELIT.** In French law, a crime which is in actual process of perpetration or which has just been committed. Code d'Instr. Crim. art. 41.

**FLAGRANT NECESSITY.** A case of urgency rendering lawful an otherwise illegal act, as an assault to remove a man from impending danger.

**FLAGRANTE BELLO.** During an actual state of war.

**FLAGRANTE DELICTO.** In the very act of committing the crime. 4 Bl.Comm. 307.

**FLAGRANTLY AGAINST EVIDENCE.** Without any substantial support in evidence. *Williams v. Commonwealth*, 276 Ky. 754, 125 S.W.2d 221, 223. So much against weight of evidence as to shock conscience and clearly indicate passion and prejudice of jury. *Smith v. Commonwealth*, 216 Ky. 813, 288 S.W. 752, 754.

**FLASH CHECK.** A check drawn upon a banker by a person who has no funds at the banker's and knows that such is the case.

**FLAT.** A place covered with water too shallow for navigation with vessels ordinarily used for commercial purposes. The space between high and low water mark along the edge of an arm of the sea, bay, tidal river, etc. *Thomas v. Hatch*, 23 F.Cas. 946; *Church v. Meeker*, 34 Conn. 424; *Jones v. Janney*, 8 Watts & S., Pa., 443, 42 Am.Dec. 309.

A floor or separate division of a floor, fitted for housekeeping and designed to be occupied by a

single family. Cent.Dict. A building, the various floors of which are fitted up as flats, either residential or business.

A contrivance upon which lumber is piled and is not movable by wheels affixed thereto but must be moved by the use of jacks. *Mengel Co. v. Parker*, 192 Miss. 634, 7 So.2d 521, 522.

**FLATTERY.** False or excessive praise, insincere complimentary language or conduct. *Smith v. State*, 13 Ala.App. 399, 69 So. 402, 404.

**FLAVIANUM JUS.** In Roman law, the title of a book containing the forms of actions, published by Cneius Flavius, A. U. C. 449. *Mackeld.Rom.Law*, § 39. Calvin.

**FLECTA.** A feathered or fleet arrow. Cowell.

**FLEDWITE.** A discharge or freedom from amercements where one, having been an outlawed fugitive, cometh to the place of our lord of his own accord. *Termes de la Ley*.

The liberty to hold court and take up the amercements for beating and striking. Cowell.

The fine set on a fugitive as the price of obtaining the king's freedom. *Spelman*.

**FLEE FROM JUSTICE.** Removing one's self from or secreting one's self within jurisdiction wherein offense was committed, *Renner v. Renner*, 13 N.J.Misc. 749, 181 A. 191, or leaving one's home, residence, or known place of abode, or concealing one's self therein, with intent, in either case, to avoid detection or punishment for some public offense. *Streep v. U. S.*, 160 U.S. 128, 16 S.Ct. 244, 40 L.Ed. 365; *Lay v. State*, 42 Ark. 110; *U. S. v. O'Brian*, 3 Dill. 381, F.Cas.No.15,908.

**FLEE TO THE WALL.** A metaphorical expression, used in connection with homicide done in self-defense, signifying the exhaustion of every possible means of escape, or of averting the assault, before killing the assailant.

**FLEET.** A place where the tide flows; a creek, or inlet of water; a company of ships or navy; a prison in London (so called from a river or ditch formerly in its vicinity,) now abolished by 5 & 6 Vict. c. 22. See *Fleta*.

**FLEM.** In Saxon and old English law, a fugitive bondman or villein. *Spelman*.

The privilege of having the goods and fines of fugitives.

**FLEMENE FRIT, FLEMENES FRINTHE, OR FLYMENA FRYNTHE.** (A corrupt pseudo-archaic form is *flemens-firth*, representing the old law Latin form, *flemenafirth*, of the Anglo-Saxon *flyman fyrmth* or *flymena fyrmth*. Cent. Dict.) The reception or relief of a fugitive or outlaw. *Jacob*.

**FLEMESWITE.** The possession of the goods of fugitives. *Fleta*, lib. 1, c. 147.

**FLET.** In Saxon law, land; a house; home.

**FLETA.** The name given to an ancient treatise on the laws of England, founded mainly upon the

## FLEXIBLE

writings of Bracton and Glanville, and supposed to have been written in the time of Edw. I. The author is unknown, but it is surmised that he was a judge or learned lawyer who was at that time confined in the Fleet prison, whence the name of the book.

**FLEXIBLE PARTICIPATION BANK NIGHT.** A scheme whereby some method is employed by means of which some persons obtain chances to win without purchasing theater tickets. *Commonwealth v. Lund*, 142 Pa.Super. 208, 15 A.2d 839, 842.

**FLEXIBLE PARTICIPATION SCHEME.** A scheme whereby sum of money is given to member of audience holding registered number drawn from a hopper at theater. The scheme is one form of a lottery. *Commonwealth v. Lund*, 142 Pa.Super. 208, 15 A.2d 839, 846.

**FLICHWITE.** In Saxon law, a fine on account of brawls and quarrels. *Spelman*.

**FLIGHT.** The evading of the course of justice by voluntarily withdrawing one's self in order to avoid arrest or detention, or the institution or continuance of criminal proceedings, regardless of whether one leaves jurisdiction. *Commonwealth v. Myers*, 131 Pa.Super. 258, 200 A. 143, 146. Also comprehends continued concealment. *Commonwealth v. Fusci*, 153 Pa.Super. 617, 35 A.2d 93, 95.

**FLIM-FLAM.** "Flim-flam" is a form of bunco or confidence game. *Commonwealth v. Townsend*, 149 Pa.Super. 337, 27 A.2d 462, 463.

**FLOAT.** Checks in process of collection. *Lewis v. West Side Trust & Savings Bank*, 376 Ill. 23, 32 N.E.2d 907, 914; *Hillmer v. Chicago Bank of Commerce*, 375 Ill. 266, 31 N.E.2d 309, 316.

In American land law, especially in the western states, a certificate authorizing the entry, by the holder, of a certain quantity of land not yet specifically selected or located. *U. S. v. Central Pac. R. Co.*, C.C.Cal., 26 F. 480; *Hays v. Steiger*, 76 Cal. 555, 18 P. 670; *Wisconsin Cent. R. Co. v. Price County*, 133 U.S. 496, 10 S.Ct. 341, 33 L.Ed. 687.

**FLOATABLE.** Used for floating. A floatable stream is a stream used for floating logs, rafts, etc. *Gerrish v. Brown*, 51 Me. 260, 81 Am.Dec. 569; *Gaston v. Mace*, 33 W.Va. 14, 10 S.E. 60, 5 L.R.A. 392, 25 Am.St.Rep. 848; *Fortson Shingle Co. v. Skagland*, 77 Wash. 8, 137 P. 304, 305.

**FLOATING BOG.** A mass of grass reeds or other aquatic vegetation growing and floating on the water. *Attorney General v. Bay Boom Wild Rice & Fur Farm*, 172 Wis. 363, 178 N.W. 569, 572.

**FLOATING CAPITAL** (or circulating capital). Capital retained for the purpose of meeting current expenditure.

The capital which is consumed at each operation of production and reappears transformed into new products.

At each sale of these products the capital is represented in cash, and it is from its transformations that profit is derived. Floating capital includes raw materials destined for

fabrication, such as wool and flax, products in the warehouses of manufacturers or merchants, such as cloth and linen, and money for wages, and stores. *De Laveleye*, *PoI.Ec.*

**FLOATING CHARGE.** A continuing charge on the assets of the company creating it, but permitting the company to deal freely with the property in the usual course of business until the security holder shall intervene to enforce his claim. *Pennsylvania Co. for Insurance on Lives and Granting Annuities v. United Railways of Havana & Regla Warehouses*, D.C.Me., 26 F.Supp. 379, 387, 388.

**FLOATING DEBT.** Loans for which no permanent provision was required to be made, which have been obtained for temporary purposes, with intention of paying them off within a brief period. *State Budget Commission v. Lebus*, 244 Ky. 700, 51 S.W.2d 965.

Lawful and valid claims against the corporation for the payment of which there is no money in the corporate treasury specifically designed, nor any taxation nor other means of providing money to pay particularly provided. *People v. Wood*, 71 N. Y. 374; *City of Huron v. Second Ward Sav. Bank*, S.D., 30 C.C.A. 38, 86 F. 276, 49 L.R.A. 534.

Debt not in the form of bonds or stocks bearing regular interest. *Pub.St.Mass.1882*, p. 1290. *State v. Faran*, 24 Ohio St. 541; *People v. Carpenter*, 31 App.Div. 603, 52 N.Y.S. 781.

**FLOATING POLICY.** A policy intended to supplement specific insurance on property and attaches only when the latter ceases to cover the risk, and the purpose of such policy is to provide indemnity for property which cannot, because of its frequent change in location and quantity, be covered by specific insurance. *Davis Yarn Co. v. Brooklyn Yarn Dye Co.*, 293 N.Y. 236, 56 N.E.2d 564, 570.

**FLOATING SECURITY.** An equitable charge on the assets for the time being of a going concern. *Lord Macnaghten in Government Stock Inv. Co. v. Manila Ry. Co.*, [1897] A.C. 81. *Pennsylvania Co. for Insurance on Lives and Granting Annuities v. United Railways of Havana & Regla Warehouses*, D.C.Me., 26 F.Supp. 379, 387.

**FLODE-MARK.** Flood-mark, high-water mark. The mark which the sea, at flowing water and highest tide, makes on the shore. *Blount*.

**FLOGGING.** Thrashing or beating with a whip or lash.

**FLOOD.** An inundation of water over land not usually covered by it. Such an accident is an Act of God. *McHenry v. R. Co.*, 4 Harr. (Del.) 449. See Act of God. Of variable meaning. *City of Tulsa v. Grier*, 114 Okl. 93, 243 P. 753, 757.

*Ordinary and extraordinary floods.* Extraordinary or unprecedented floods are floods which are of such unusual occurrence that they could not have been foreseen by men of ordinary experience and prudence. Ordinary floods are those, the occurrence of which may be reasonably anticipated from the general experience of men residing in the region where such floods happen. *Soules v. Northern Pac. Ry. Co.*, 34 N.D. 7, 157 N.W. 823, 830, L.R.A.1917A, 501; *Elkland v. Casey*, C.C.A.Alaska, 12 A.L.R. 179, 266 F. 821, 823; *Clements v. Phoenix Utility Co.*, 119 Kan. 190, 237 P. 1062, 1065.

**FLOOD WATERS.** Waters which escape from stream or other body of water and overflow adjacent territory, *Poole v. Sun Underwriters Ins. Co.* of New York, 65 S.D. 422, 274 N.W. 658, 660; under conditions which do not usually occur. *Thomson v. Public Service Commission*, 241 Wis. 243, 5 N.W.2d 769, 771; *Everett v. Davis*, 18 Cal. 2d 389, 115 P.2d 821, 823, 824.

Where a stream coming out of the mouth of a canyon has left a cone of detritus and flows down one side thereof, but in a time of high water it breaks out of its channel to flow down the other slope of the cone, such waters are "flood waters", it being immaterial that the escaping waters have made for themselves a channel or follow some natural channel, gully, or depression. *Horton v. Goodenough*, 184 Cal. 451, 194 P. 34, 35; *Moti v. Boyd*, 116 Tex. 82, 286 S.W. 458, 468; *Herminghaus v. Southern California Edison Co.*, 200 Cal. 81, 252 P. 607, 610.

**FLOOR.** A section of a building between horizontal planes. *Lowell v. Strahan*, 145 Mass. 1, 12 N.E. 401, 1 Am.St.Rep. 422. A story, including outer walls. *Leominster Fuel Co. v. Scanlon*, 243 Mass. 126, 137 N.E. 271, 24 A.L.R. 1459.

The word "floor" may mean the mere bottom plane of an inclosure or artificial structure, the surface on which we walk, ride, or travel, or it may mean such surface or plane, together with the timbers, framework, and materials which enter into and form part of its construction. So of the word "flooring." If used without reference to a structure in its completed form, it would ordinarily convey the idea of materials suitable for use in constructing a floor, or in a narrower sense the boards or planks for covering the framework of a floor. When used with reference to a completed structure, it may mean either the materials of which the floor is composed, or the completed floor structure. When not attempting to speak with technical exactness, the words "floor" and "flooring" may be, and often are, used as synonymous or interchangeable terms. *Cedar Rapids & M. C. R. Co. v. City of Cedar Rapids*, 173 Iowa 386, 155 N.W. 842; *Missouri Pac. R. Co. v. Holt*, C.C.A. Ark. 293 F. 155, 157.

A term used metaphorically, in parliamentary practice, to denote the exclusive right to address the body in session.

A member who has been recognized by the chairman, and who is in order, is said to "have the floor," until his remarks are concluded. Similarly, the "floor of the house" means the main part of the hall where the members sit, as distinguished from the galleries, or from the corridors or lobbies.

In England, the floor of a court is that part between the judge's bench and the front row of counsel. Litigants appearing in person, in the high court or court of appeal, are supposed to address the court from the floor.

**FLOOR BROKER.** Broker's sub-agent. *Helfhat v. Whitehouse*, 258 N.Y. 274, 179 N.E. 493, 496.

**FLOOR PLAN.** A horizontal section drawing showing the thickness of walls and partitions, arrangement of passages, apartments, and openings at any floor of a building. *Webster*.

**FLOOR PLAN RULE.** Rule by which an owner who has placed an automobile on the floor of a retail dealer's showroom for sale is estopped to deny the title of an innocent purchaser from such dealer in the ordinary retail dealing, without knowledge of any conflicting claim. *National Guarantee & Finance Co. v. Russell*, Ohio App., 36 N.E.2d 1015, 1018.

**FLOOR PLAN SERVICE.** The buying and financing of automobiles by finance company and plac-

ing them on the floor of the dealer, so that dealer may resell automobiles to his retail trade. *Associates Discount Corporation v. Haynes Garage*, 304 Mass. 526, 24 N.E.2d 685, 687.

**FLOOR PLANNING.** Financing automobiles for dealers. *Associates Discount Corporation v. Haynes Garage*, 304 Mass. 526, 24 N.E.2d 685, 687.

**FLOORED.** In automobile law. An automobile is *floored* when it is financed under a trust receipt or similar title retention document, whereby retail dealer obtains possession of automobile from distributor for exhibition and sale through payment to distributor by finance company. *Commercial Credit Co. v. Barney Motor Co.*, 10 Cal.2d 718, 76 P.2d 1181, 1183; *Blashfield, Cyc. of Automobile Law and Prac.*, Perm. Ed., § 4755.

**FLORENTINE PANDECTS.** A copy of the Pandects discovered accidentally about the year 1137, at Amalphi, a town in Italy, near Salerno.

**FLORIN.** A coin originally made at Florence, now of the value of about two English shillings.

**FLOTAGES.** Such things as by accident float on the top of great rivers or the sea. *Blount*.

A commission paid to water bailiffs. *Cun.Dict.*

**FLOTERIAL DISTRICT.** A legislative district which includes within its boundaries several separate districts or political subdivisions which independently would not be entitled to additional representation but whose conglomerate population entitles the entire area to another seat in the particular legislative body being apportioned. *Kilgarlin v. Martin*, D.C.Tex., 252 F.Supp. 404, 419; *Davis v. Mann*, Va., 84 S.Ct. 1441, 1446, 377 U.S. 678, 12 L.Ed.2d 609.

**FLOTSAM, FLOTSAN.** A name for the goods which float upon the sea when cast overboard for the safety of the ship, or when a ship is sunk. Distinguished from "jetsam" and "ligan." *Bract. lib.* 2, c. 5; 5 Coke, 106; 1 Bl.Comm. 292.

**FLOOD-MARKE.** In old English law, high-water mark; flood-mark. 1 And. 88, 89.

**FLOURISH.** The act of brandishing or waving; a swinging or whirling movement as flourish of a whip or sword; to fling or whirl about while holding in the hand, brandish, flaunt, as, he flourished his whip. *State v. Boyles*, 24 N.M. 464, 174 P. 423.

**FLOWAGE.** The natural flow or movement of water from an upper estate to a lower one is a servitude which the owner of the latter must bear, though the flowage be not in a natural water course with well defined banks. *Leidlein v. Meyer*, 95 Mich. 586, 55 N.W. 367; *Ogburn v. Connor*, 46 Cal. 346, 13 Am.Rep. 213; *Gray v. McWilliams*, 98 Cal. 157, 32 P. 976, 21 L.R.A. 593, 35 Am.St.Rep. 163.

**FLOWING.** Movement, as if in a current or stream. *Homer Brooke Glass Co. v. Hartford Fairmont Co.*, C.C.A.Conn., 262 F. 427, 431.

## FLOWING

**FLOWING LANDS.** Imports raising and setting back water on another's land, by a dam placed across a stream or water course which is the natural drain and outlet for surplus water on such land. Call v. Middlesex County Com'rs, 2 Gray, Mass., 235.

**FLUCTUS.** Flood; flood-tide. Bract. fol. 255.

**FLUME.** Primarily, a stream or river, but usually used to designate an artificial channel applied to some definite use, and may mean either an open or a covered aqueduct. Talbot v. Joseph, 79 Or. 308, 155 P. 184, 186.

### FLUMEN.

In Roman law, a servitude which consists in the right to conduct the rain-water, collected from the roof and carried off by the gutters, onto the house or ground of one's neighbor. Mackeld.Rom. Law, § 317; Ersk.Inst. 2, 9, 9. Also a river or stream.

In old English law, flood; flood-tide.

**FLUMINA ET PORTUS PUBLICA SUNT, IDEOQUE JUS PISCANDI OMNIBUS COMMUNE EST.** Rivers and ports are public. Therefore the right of fishing there is common to all. Day. Ir. K. B. 55; Branch, Princ.

**FLUMINÆ VOLUCRES.** Wild fowl; waterfowl. 11 East, 571, note.

**FLUVIUS.** Lat. A river; a public river; flood; flood-tide.

**FLUXUS.** In old English law, flow. *Per fluxum et refluxum maris*, by the flow and reflow of the sea. Dal. pl. 10.

**FLY FOR IT.** Anciently, it was the custom in a criminal trial to inquire after a verdict, "Did he fly for it?" After the verdict, even if not guilty, forfeiture of goods followed conviction upon such inquiry. Abolished by 7 & 8 Geo. IV. c. 28. Whar-ton.

**FLYING MACHINE.** A heavier-than-air machine capable of soaring in the air and susceptible to being guided by a pilot into different altitudes when aloft. Myers v. United States, Ct.Cl., 25 F. Supp. 500, 501.

**FLYING SWITCH.** In railroading, a flying switch is made by uncoupling the cars from the engine while in motion, and throwing the cars onto the side track, by turning the switch, after the engine has passed it upon the main track. Greenleaf v. Illinois Cent. R. Co., 29 Iowa 39, 4 Am.Rep. 181; Hanson v. Chicago, M. & St. P. R. Co., 157 Wis. 455, 146 N.W. 524, 525.

**FLYMA.** In old English law, a runaway; fugitive; one escaped from justice, or who has no "hlaforð."

**FLYMAN-FRYMTH.** See Flemene Frit.

**FLY-POWER.** A written assignment in blank, whereby, on being attached to a stock certificate, the stock may be transferred. Carlisle v. Norris,

215 N.Y. 400, 109 N.E. 564, 565, Ann.Cas.1917A, 429; Carlisle v. Norris, 157 App.Div. 313, 142 N. Y.S. 393, 396.

**FOAL, v.** To bring forth young; said of animals of the horse family. O'Rear v. Richardson, 17 Ala.App. 87, 81 So. 865, 866.

**FOCAGE.** House-bote; fire-bote. Cowell.

**FOCALE.** In old English law, firewood. The right of taking wood for the fire. Fire-bote. Cunningham.

**FODDER.** Food for horses or cattle. In feudal law, the term also denoted a prerogative of the prince to be provided with corn, etc., for his horses by his subjects in his wars.

**FODERTORIUM.** Provisions to be paid by custom to the royal purveyors. Cowell.

**FODERUM.** See Fodder.

**FODINA.** A mine. Co.Litt. 6a.

**FŒDUS.** In international law, a treaty; a league; a compact.

**FŒMINA VIRO CO-OPERTA.** A married woman; a *feme covert*.

**FŒMINÆ AB OMNIBUS OFFICIIS CIVILIBUS VEL PUBLICIS REMOTÆ SUNT.** Women are excluded from all civil and public charges or offices. Dig. 50, 17, 2; 1 Exch. 645; 6 Mees. & W. 216.

**FŒMINÆ NON SUNT CAPACES DE PUBLICIS OFFICIIS.** Jenk.Cent. 237. Women are not admissible to public offices.

**FŒNERATION.** Lending money at interest; the act of putting out money to usury.

**FŒNUS.** Lat. In the civil law, interest on money; the lending of money on interest.

**FŒNUS NAUTICUM.** Nautical or maritime interest.

**FŒNUS UNCIARIUM.** Interest of one-twelfth, that is, interest amounting annually to one-twelfth of the principal, hence at the rate of eight and one-third per cent. per annum. This was the highest legal rate of interest in the early times of the Roman republic. See Mackeld.Rom.Law, § 382.

An extraordinary rate of interest agreed to be paid for the loan of money on the hazard of a voyage; sometimes called "*usura maritima*." Dig. 22, 2; Code, 4, 33; 2 Bl. Comm. 458. The extraordinary rate of interest, proportioned to the risk, demanded by a person, lending money on a ship, or on "bottomry," as it is termed. The agreement for such a rate of interest is also called "*fœnus nauticum*." (2 Bl.Comm. 458; 2 Steph.Comm. 93.) Mozley & Whitley.

**FOESA.** In old records, grass; herbage. 2 Mon. Angl. 906b; Cowell.

**FOETICIDE.** See Feticide.

**FOETURA.** In the civil law, the produce of animals, and the fruit of other property, which are

acquired to the owner of such animals and property by virtue of his right. Bowyer, Mod.Civil Law, c. 14, p. 81

**FOETUS.** In medical jurisprudence, an unborn child. An infant *in ventre sa mère*.

**FOG.** In maritime law, any atmospheric condition (including not only fog properly so called, but also mist or falling snow) which thickens the air, obstructs the view, and so increases the perils of navigation. Flint & P. M. R. Co. v. Marine Ins. Co., C.C.Mich., 71 F. 210; Dolner v. The Monticello, 7 F.Cas. 859.

**FOGAGIUM.** In old English law, foggage or fog; a kind of rank grass of late growth, and not eaten in summer. Spelman; Cowell.

**FOI.** In French feudal law, faith; fealty. Guyot, Inst.Feod. c. 2.

**FOINESUN.** In old English law, the fawning of deer. Spelman.

**FOIRFAULT.** In old Scotch law, to forfeit. 1 How.State Tr. 927.

**FOIRTHOCHT.** In old Scotch law, forethought; premeditated. 1 Pitt.Crim.Tr. pt. 1, p. 90.

**FOITERERS.** Vagabonds. Blount.

**FOLC-GEMOTE** (spelled, also, *folknote*, *folcmote*, *folkgemote*; from *folc*, people, and *gemote*, an assembly). In Saxon law, a general assembly of the people in a town or shire.

It appears to have had judicial functions of a limited nature, and also to have discharged political offices, such as deliberating upon the affairs of the commonwealth or complaining of misgovernment, and probably possessed considerable powers of local self-government. The name was also given to any sort of a popular assembly. See Spelman; Manwood; Cunningham.

**FOLC-LAND.** In Saxon law, land of the folk or people. Land belonging to the people or the public.

Folc-land was the property of the community. It might be occupied in common, or possessed in severalty; and, in the latter case, it was probably parceled out to individuals in the folc-gemote or court of the district, and the grant sanctioned by the freemen who were there present. But, while it continued to be folc-land, it could not be alienated in perpetuity; and therefore, on the expiration of the term for which it had been granted, it reverted to the community, and was again distributed by the same authority. It was subject to many burdens and exactions from which boc-land was exempt. Wharton.

**FOLC-MOTE.** A general assembly of the people, under the Saxons. See Folc-Gemote.

**FOLC-RIGHT.** The common right of all the people. 1 Bl.Comm. 65, 67.

The *jus commune*, or common law, mentioned in the laws of King Edward the Elder, declaring the same equal right, law, or justice to be due to persons of all degrees. Wharton.

**FOLD-COURSE.** In English law, land to which the sole right of folding the cattle of others is appurtenant. Sometimes it means merely such

right of folding. The right of folding on another's land, which is called "common foldage." Co.Litt. 6a, note 1.

**FOLD-SOKE.** A feudal service which consisted in the obligation of the tenant not to have a fold of his own but to have his sheep lie in the lord's fold.

He was said to be *consuetus ad foldam*, tried to his lord's fold. The basis of his service is thus expressed by a recent writer: "It is manure that the lord wants; the demand for manure has played a large part in the history of the human race." Maitland, Domesday Book 76. In East Anglia the peasants had sheep enough to make this an important social institution; *id.* 442.

**FOLDAGE.** A privilege possessed in some places by the lord of a manor, which consists in the right of having his tenant's sheep to feed on his fields, so as to manure the land. The name of foldage is also given in parts of Norfolk to the customary fee paid to the lord for exemption at certain times from this duty. Elton, Com. 45, 46.

**FOLGARI.** Menial servants; followers. Bract.

**FOLGERE.** In old English law, a freeman, who has no house or dwelling of his own, but is the follower or retainer of another, (*heorthfæst*), for whom he performs certain predial services.

**FOLGERS.** Menial servants or followers. Cowell.

**FOLGOTH.** Official dignity.

**FOLIE BRIGHTIQUE.** See Insanity.

**FOLIE CIRCULAIRE.** See Insanity.

**FOLIO.** A leaf. In the ancient lawbooks it was the custom to number the leaves, instead of the pages; hence a folio would include both sides of the leaf, or two pages. The references to these books are made by the number of the folio, the letters "a" and "b" being added to show which of the two pages is intended; thus "Bracton, fol. 100a."

A large size of book, the page being obtained by folding the sheet of paper once only in the binding. Many of the ancient lawbooks are folios.

When used in connection with legal documents, it means a certain number of words varying from 72 to 100, but generally in the United States consisting of 100. Reed v. Sackett, 135 Okl. 69, 273 P. 1002, 1004.

In pleading denying allegations of a specified folio, it refers to a division in a document for purpose of measurement or reference. Mahin v. Mahin, 131 Fla. 546, 179 So. 651.

**FOLK-LAND; FOLK-MOTE.** See Folc-Land; Folc-Gemote.

**FOLLOW.** To conform to, comply with, or be fixed or determined by; as in the expressions "costs follow the event of the suit," "the *situs* of personal property follows that of the owner," "the offspring follows the mother," (*partus sequitur ventrem*).

## FOLLOW

To walk in, to attend upon closely, as a profession or calling. *Spears v. Ford*, 247 S.W. 713, 197 Ky. 575.

**FOLLOWS THE PROPERTY.** Synonymous with "adheres to the property." *Tonopah Mining Co. v. Nevada v. Commissioner of Internal Revenue*, C.C.A.3, 127 F.2d 239, 244.

**FONDS ET BIENS.** Fr. In French law, goods and effects. *Adams v. Akerlund*, 168 Ill. 632, 48 N.E. 454.

Including realty. *Erickson v. Carlson*, 95 Neb. 182, 145 N.W. 352, approved and followed. *Engen v. Union State Bank of Harvard*, 118 Neb. 105, 223 N.W. 664, 666.

**FONDS PERDUS.** In French law, a capital is said to be invested *à fonds perdus* when it is stipulated that in consideration of the payment of an amount as interest, higher than the normal rate, the lender shall be repaid his capital in this manner. The borrower, after paying the interest during the period determined, is free as regards the capital itself. *Arg.Fr.Merc.Law*, 560.

**FONSADERA.** In Spanish law, any tribute or loan granted to the king for the purpose of enabling him to defray the expenses of a war.

**FONTANA.** A fountain or spring. *Bract. fol. 233*.

**FOOT.** A measure of length containing twelve inches or one-third of a yard. *Spicer v. Hartford Fire Ins. Co. of Hartford, Conn.*, 171 Va. 428, 199 S.E. 499, 501.

The base, bottom, or foundation of anything; and, by metonymy, the end or termination; as the foot of a fine.

The terminal part of the leg. *Reno v. Holmes*, 238 Mich. 572, 214 N.W. 174, 175. That part of leg at or below ankle joint. *Mills v. Mills & Connelly*, 214 Ky. 675, 283 S.W. 1010, 1011. Embraces the arch. *Trustees for Arch Preserver Shoe Patents v. James McCreery & Co.*, *Cust. & Pat.App.*, 49 F.2d 1068, 1071.

**FOOT ACRE.** One acre of coal one foot thick. *In re Hudson Coal Co.*, 327 Pa. 247, 193 A. 8, 10.

**FOOT DROP.** A loss of ability to turn the foot inward, a loss of ability to extend the toes and to raise them, and a loss of sensation in the lower frontal portions of the leg below the knee, and the greater portion of the top of the foot. *Engelking v. Carlson*, *Cal.App.*, 80 P.2d 96, 97.

**FOOT-FRONTAGE RULE.** Under rule, assessment is confined to actual frontage on line of improvement, and depth of lot, number or character of improvements, or value thereof, is immaterial. *Borough of Berwick v. Smethers*, 105 Pa.Super. 40, 160 A. 148.

**FOOTGELD.** In the forest law, an amercement for not cutting out the ball or cutting off the claws of a dog's feet, (expediting, him.) To be quit

of *footgeld* is to have the privilege of keeping dogs in the forest *unlawed* without punishment or control. *Manwood*.

**FOOT OF THE FINE.** The fifth part of the conclusion of a fine. It includes the whole matter, reciting the names of the parties, day, year, and place, and before whom it was acknowledged or levied. 2 Bl.Comm. 351.

**FOOT POUND.** A unit of energy, or work, equal to work done in raising one pound avoirdupois against the force of gravity to the height of one foot. *Webster, Dict.* *Healey v. Moran Towing & Transportation Co.*, C.C.A.N.Y., 253 F. 334, 337.

**FOOTPRINTS.** In the law of evidence, impressions made upon earth, snow, or other surface by the feet of persons, or by the shoes, boots, or other covering of the feet. *Burrill, Circ.Ev.* 264.

**FOR.** Fr. In French law, a tribunal. *Le for interieur*, the interior forum; the tribunal of conscience. *Poth.Obl. pt. 1, c. 1, § 1, art. 3, § 4*.

**FOR.** In behalf of, in place of, in lieu of, instead of, representing, as being which, or equivalent to which, and sometimes imports agency. *Medler v. Henry*, 44 N.M. 63, 97 P.2d 661, 662.

During; throughout; for the period of; as, where a notice is required to be published "for" a certain number of weeks or months. *Wilson v. Northwestern Mut. L. Ins. Co.*, C.C.A.Kan., 65 F. 39, 12 C.C.A. 505; *Northrop v. Cooper*, 23 Kan. 432; *Burdine v. Sewell*, 92 Fla. 375, 109 So. 648, 653. Duration, when put in connection with time. *Progressive Building & Loan Ass'n v. McIntyre*, 169 Tenn. 491, 89 S.W.2d 336, 337.

In consideration for; as an equivalent for; in exchange for; in place of; as where property is agreed to be given "for" other property or "for" services. *Norton v. Woodruff*, 2 N.Y. 153; *Duncan v. Franklin Tp.*, 10 A. 546, 43 N.J.Eq. 143; *Mudge v. Black, Sheridan & Wilson*, C.C.A.Mo., 224 F. 919, 921.

Belonging to, exercising authority or functions within; as, where one describes himself as "a notary public in and for the said county."

By reason of; with respect to; for benefit of; for use of; in consideration of. *Basler v. Sacramento Electric, Gas & Ry. Co.*, 166 Cal. 33, 134 P. 993, 994; *Elmore-Schultz Grain Co. v. Stonebraker*, 202 Mo.App. 81, 214 S.W. 216, 221; *Work v. U. S.*, ex rel. *Rives*, 54 App.D.C. 84, 295 F. 225, 226. The cause, motive or occasion of an act, state or condition. *American Ins. Co. v. Naylor*, 103 Colo. 461, 87 P.2d 260, 265. Used in sense of "because of," "on account of," or "in consequence of." *Kelly v. State Personnel Board of California*, 31 Cal.App.2d 443, 88 P.2d 264, 266. By means of, or growing out of. *Cormier v. Hudson*, 284 Mass. 231, 187 N.E. 625, 626.

It connotes the end with reference to which anything is, acts, serves, or is done. *Bates v. Schillinger*, 128 Me. 14, 145 A. 395, 399. In consideration of which, in view of which, or with reference to which, anything is done or takes place.

**Fleming v. Atlantic Co.**, D.C.Ga., 40 F.Supp. 654, 660. In direction of; with view of reaching; with reference to needs, purposes or uses of; appropriate or adapted to; suitable to purpose, requirement, character or state of. **Robert v. Clapp Co. v. Fox**, 124 Ohio St. 331, 178 N.E. 586, 588.

**FOR ACCOUNT OF.** Introduces name of person entitled to receive proceeds of indorsed note or draft. **Freiberg v. Stoddard**, 161 Pa. 259, 28 A. 1111; **White v. Miners' Nat. Bank**, 102 U.S. 658, 26 L.Ed. 250; **Equitable Trust Co. of New York v. Rochling**, 275 U.S. 248, 48 S.Ct. 58, 59, 72 L.Ed. 264.

**FOR AND DURING SUCH TIME, FOR SO LONG AS.** Temporarily. **Burdine v. Sewell**, 92 Fla. 375, 109 So. 648, 653.

**FOR AT LEAST.** As applied to a number of days required for notice this phrase includes either the first or last day, but not both. **Stroud v. Water Co.**, 56 N.J.L. 422, 28 A. 578.

**FOR CAUSE.** Means for reasons which law and public policy recognize as sufficient warrant for removal and such cause is "legal cause" and not merely a cause which the appointing power in the exercise of discretion may deem sufficient. **State ex rel. Nagle v. Sullivan**, 98 Mont. 425, 40 P.2d 995, 998, 99 A.L.R. 321.

**FOR COLLECTION.** A form of indorsement on a note or check where it is not intended to transfer title to it or to give it credit or currency, but merely to authorize the transferee to collect the amount of it. **Central R. Co. v. Bank**, 73 Ga. 383; **Sweeny v. Easter**, 1 Wall. 166, 17 L.Ed. 681. But see **In re Ziegenhein**, Mo.App., 187 S.W. 893, 895.

**FOR HIRE OR REWARD.** To transport passengers or property of other persons than owner or operator of the vehicle for a reward or stipend, to be paid by such passengers, or persons for whom such property is transported, to owner or operator. **Michigan Consol. Gas Co. v. Sohio Petroleum Co.**, 32 N.W.2d 353, 356, 321 Mich. 102.

**FOR PURPOSE OF.** With the intention of. **State v. Derrickson**, 1 W.W.Harr., Del., 342, 114 A. 286, 288.

**FOR THAT.** In pleading, words used to introduce the allegations of a declaration. "For that" is a positive allegation; "For that whereas" is a recital. **Ham. N.P. 9.**

**FOR THAT WHEREAS.** In pleading, formal words introducing the statement of the plaintiff's case, by way of recital, in his declaration, in all actions except trespass. 1 Instr.Cler. 170; 1 **Burrill**, Pr. 127. In trespass, where there was no recital, the expression used was, "For that." **Id.**; 1 **Inst.Cler.** 202.

**FOR USE.** (1) For the benefit or advantage of another. Thus, where an assignee is obliged to sue in the name of his assignor, the suit is entitled "A. for use of B. v. C." (2) For enjoyment or employment without destruction.

A loan "for use" is one in which the bailee has the right to use and enjoy the article, but without consuming or destroying it, in which respect it differs from a loan "for consumption." **In re Houk's Estate**, 186 Cal. 643, 200 P. 417, 418.

**FOR VALUE.** See **Holder.**

**FOR VALUE RECEIVED.** See **Value Received.**

**FOR WHOM IT MAY CONCERN.** Phrase creates presumption of intention on part of named insured to cover any persons who may have an insurable interest in the property. **Allemannia Fire Ins. Co. v. Winding Gulf Collieries**, D.C.W. Va., 60 F.Supp. 65, 68.

**FORAGE.** Hay and straw for horses, particularly in the army. **Jacob.**

**FORAGIUM.** Straw when the corn is threshed out. **Cowell.**

**FORAKER ACT.** A name usually given to the act of congress of April 12, 1900, 31 Stat.L. 77, c. 191 (48 U.S.C.A. § 731 et seq.), which provided civil government for Porto Rico. See a synopsis of it by **Harlan, J.**, in **Downes v. Bidwell**, 182 U.S. 244, 390, 21 S.Ct. 770, 45 L.Ed. 1088.

**FORANEUS.** One from without; a foreigner; a stranger. **Calvin.**

**FORATHE.** In forest law, one who could make oath, i. e., bear witness for another. **Cowell; Spelman.**

**FORBALCA.** In old records, a forebalk; a balk (that is, an unplowed piece of land) lying forward or next the highway. **Cowell.**

**FORBANNITUS.** A pirate; an outlaw; one banished.

**FORBARRER.** L.Fr. To bar out; to preclude; hence, to estop.

**FORBATUDUS.** In old English law, the aggressor slain in combat. **Jacob.**

**FORBEARANCE.** Act by which creditor waits for payment of debt due him by debtor after it becomes due. **Upton v. Gould**, 64 Cal.App.2d 814, 149 P.2d 731, 733. A delay in enforcing rights. **Shaw v. Philbrick**, 129 Me. 259, 151 A. 423, 74 A. L.R. 290. Indulgence granted to a debtor. **Dry Dock Bank v. American Life Ins., etc., Co.**, 3 N. Y. 354.

Refraining from action. The term is used in this sense in general jurisprudence, in contradistinction to "act."

Within usury law, term signifies contractual obligation of lender or creditor to refrain, during given period of time, from requiring borrower or debtor to repay loan or debt then due and payable. **Hafer v. Spaeth**, 22 Wash.2d 378, 156 P.2d 408, 411.

**FORCE.** Power dynamically considered, that is, in motion or in action; constraining power, compulsion; strength directed to an end. Usually the word occurs in such connections as to show that unlawful or wrongful action is meant. **Watson v. Railway Co.**, 7 Misc.Rep. 562, 28 N.Y.S. 84; **Plank**

## FORCE

Road Co. v. Robbins, 22 Barb., N.Y., 667; Temple Lumber Co. v. Living, Tex.Civ.App., 289 S.W. 746, 749; Hafner Mfg. Co. v. City of St. Louis, 262 Mo. 621, 172 S.W. 28, 34.

Unlawful violence. It is either *simple*, as entering upon another's possession, without doing any other unlawful act; *compound*, when some other violence is committed, which of itself alone is criminal; or *implied*, as in every trespass, rescous, or disseisin. Lambert v. Helena Adjustment Co., 69 Mont. 510, 222 P. 1057, 1058.

It may mean either exact pressure times exact area to which the pressure is applied, or it may mean simply an operative physical power without taking account of the exact quantity applied. Hydraulic Press Corporation v. Coe, 77 U.S.App.D.C. 251, 134 F.2d 49, 56.

Such display of physical power as is reasonably calculated to inspire fear of physical harm to those opposing possession of premises by trespasser. Smith v. Sinclair Refining Co., Tex.Civ.App., 77 S.W.2d 894, 895.

Terms "violence" and "force" are synonymous when used in relation to assault. People v. James, 9 Cal.App.2d 162, 48 P.2d 1011, 1012.

Power statically considered; that is at rest, or latent, but capable of being called into activity upon occasion for its exercise. Efficacy; legal validity. This is the meaning when we say that a statute or a contract is "in force."

As used in divorce statute, "force" or "coercion" are synonymous. Santer v. Santer, 115 Pa.Super. 1, 174 A. 651, 652.

In old English law, a technical term applied to a species of accessory before the fact.

In Scotch law, coercion; duress. Bell.

—Of force. See that title.

**FORCE AND ARMS.** A phrase used in declarations of trespass and in indictments, but now unnecessary in declarations, to denote that the act complained of was done with violence. 2 Chit.Pl. 846, 850.

**FORCE AND FEAR,** called also "*vi metuque*," means that any contract or act extorted under the pressure of force (*vis*) or under the influence of fear (*metus*) is voidable on that ground, provided, of course, that the force or the fear was such as influenced the party. Brown.

**FORCE MAJESTURE.** Includes lightnings, earthquakes, storms, flood, sunstrokes, freezing, etc., wherein latter two can be considered hazards in contemplation of employer within Compensation Act. Fogg v. Van Saun Coal Co., N.J.Dept. Labor, 12 N.J.Misc. 680, 174 A. 419, 420.

**FORCE MAJEURE.** Fr. In the law of insurance, superior or irresistible force. Emerig. Tr. des Ass. c. 1<sup>o</sup>

**FORCED HEIRS.** Those persons whom the testator or donor cannot deprive of the portion of his estate reserved for them by law, except in cases where he has a just cause to disinherit them. Civil Code La. art. 1495. And see Crain v. Crain, 17 Tex. 90; Hagerty v. Hagerty, 12 Tex. 456; Miller v. Miller, 105 La. 257, 29 So. 802.

**FORCED SALE.** In practice, a sale made at the time and in the manner prescribed by law, in virtue of execution issued on a judgment already rendered by a court of competent jurisdiction; a sale made under the process of the court, and in the mode prescribed by law. Sampson v. Williamson, 6 Tex. 110, 55 Am.Dec. 762.

A sale against the consent of the owner. The term should not be deemed to embrace a sale under a power in a mortgage. Patterson v. Taylor, 15 Fla. 336.

**FORCES.** The military and naval power of the country.

**FORCHEAPUM.** Pre-emption; forestalling the market. Jacob.

**FORCIBLE DETAINER.** Exists where one originally in rightful possession of realty refuses to surrender it at termination of his possessory right. Sayers & Muir Service Station v. Indian Refining Co., 266 Ky. 779, 100 S.W.2d 687, 689.

The offense of violently keeping possession of lands and tenements, with menaces, force, and arms, and without the authority of law. 4 Bl.Comm. 148; 4 Steph.Comm. 280.

Forcible detainer may ensue upon a peaceable entry, as well as upon a forcible entry; but it is most commonly spoken of in the phrase "forcible entry and detainer."

**FORCIBLE ENTRY.** Violently taking possession of lands and tenements with menaces, force, and arms, against the will of those entitled to the possession, and without the authority of law. 4 Bl. Comm. 148; 4 Steph. Comm. 280; Code Ga. 1882, § 4524 (Pen. Code, 1910, § 344). Accompanied with circumstances tending to excite terror in the occupant, and to prevent him from maintaining his rights. Barbee v. Winnsboro Granite Corporation, 190 S.C. 245, 2 S.E.2d 737, 739. Angry words and threats of force may be sufficient. Calidino Hotel Co. of San Bernardino v. Bank of America Nat. Trust & Savings Ass'n, 31 Cal.App. 2d 295, 87 P.2d 923, 931.

Every person is guilty of forcible entry who either (1) by breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror, enters upon or into any real property; or (2) who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct the party in possession. Code Civil Proc.Cal. § 1159.

In many states, an entry effected without consent of rightful owner, or against his remonstrance, or under circumstances which amount to no more than a mere trespass, is now technically considered "forcible," while a detainer of the property consisting merely in the refusal to surrender possession after a lawful demand, is treated as a "forcible" detainer, the "force" required at common law being now supplied by a mere fiction. See Vernon's Tex. Ann.Civ.St. art. 3975; Goldsberry v. Bishop, 2 Duv., Ky., 144; Wells v. Darby, 13 Mont. 504, 34 P. 1092; Willard v. Warren, 17 Wend., N.Y. 261; California Products v. Mitchell, 52 Cal.App. 312, 198 P. 646.

**FORCIBLE ENTRY AND DETAINER.** A summary proceeding for restoring to possession of land one who is wrongfully kept out or has been wrongfully deprived of the possession. Wein v. Albany Park Motor Sales Co., 312 Ill.App. 357, 38 N.E.2d 556, 559.

The title cannot be inquired into for any purpose. Davis v. Robinson, 374 Ill. 553, 30 N.E.2d 52, 54. The inquiry is confined to the actual and peaceable possession of the plaintiff and the unlawful or forcible ouster or detention



by defendant; the object of the law being to prevent the disturbance of the public peace by the forcible assertion of a private right. *Gore v. Altice*, 33 Wash. 335, 74 P. 556; *Eveleth v. Gill*, 97 Me. 315, 54 A. 757; *Harris v. Harris*, 190 Ala. 619, 67 So. 465, 466; *Long v. Bagwell*, 38 Okl. 312, 133 P. 50, 51.

**FORCIBLE TRESPASS.** In North Carolina, this is an invasion of the rights of another with respect to his personal property, of the same character, or under the same circumstances, which would constitute a "forcible entry and detainer" of real property at common law. It consists in taking or seizing the personal property of another by force, violence, or intimidation or in forcibly injuring it. *State v. Lawson*, 123 N.C. 740, 31 S.E. 667, 68 Am.St.Rep. 844; *State v. Holder*, 188 N.C. 561, 125 S.E. 113, 114.

There must be actual violence used, or such demonstration of force as is calculated to intimidate or tend to a breach of the peace. It is not necessary that the person be actually put in fear. *State v. Stinnett*, 167 S.E. 63, 64, 203 N.C. 829.

**FORDA.** In old records, a ford or shallow, made by damming or penning up the water. *Cowell*.

**FORDAL.** A butt or headland, jutting out upon other land. *Cowell*.

**FORDANNO.** In old European law, he who first assaulted another. *Spelman*.

**FORDIKA.** In old records, grass or herbage growing on the edge or bank of dykes or ditches. *Cowell*.

**FORE.** Sax. Before. Fr. Out. *Kelham*.

**FORE-MATRON.** In a jury of women this word corresponds to the foreman of a jury. She was sworn in separately; 8 Carr. & P. 264.

**FORE-OATH.** Before the Norman Conquest, an oath required of the complainant in the first instance (in the absence of manifest facts) as a security against frivolous suits. *Pollock*, 1 Sel. Essays Anglo-Amer. Leg. Hist. 93.

**FOREBALK.** See *Headland*.

**FORECLOSE.** To shut out; to bar; to terminate. *State v. Darling*, 39 S.D. 558, 165 N.W. 536, 537.

Method of terminating mortgagor's right of redemption. *Hibernia Savings & Loan Soc. v. Lauffer*, 41 Cal.App.2d 725, 107 P.2d 494, 497.

**FORECLOSURE.** To shut out, to bar, to destroy an equity of redemption. *Anderson v. Barr*, 178 Okl. 508, 62 P.2d 1242, 1246. A termination of all rights of the mortgagor or his grantee in the property covered by the mortgage. *Levin v. Century Indemnity Co.*, 279 Mass. 256, 181 N.E. 223, 225.

A process in chancery by which all further right existing in a mortgagor to redeem the estate is defeated and lost to him, and the estate becomes the absolute property of the mortgagee; being applicable when the mortgagor has forfeited his estate by non-payment of the money due on the mortgage at the time appointed, but still retains the equity of redemption. 2 Washb. Real Prop. 237. *Goodman v. White*, 26 Conn. 322; *Trustees of Schools v. St. Paul Fire & Marine Ins. Co.*, 296 Ill. 99, 129 N.E. 567, 568.

The term is also loosely applied to any of the various methods, statutory or otherwise, known in different jurisdictions, of enforcing payment of the debt secured by a mortgage, by taking and selling the mortgaged estate. *Dikeman v. Jewel Gold Mining Co.*, C.C.A.Alaska, 13 F.2d 118; *Realty Mortgage Co. v. Moore*, 80 Fla. 2, 85 So. 155, 156.

Foreclosure is also applied to proceedings founded upon some other liens; thus there are proceedings to foreclose a mechanic's lien. *Insurance Co. of North America v. Cheatham*, 221 Ky. 668, 299 S.W. 545, 547. It is a proceeding in court or out of court, when provided for by a valid contract, to subject property or part thereof covered by a lien to payment of debt secured by the lien, and it has effect of extinguishing all right, title, or interest, if any, of defendants in the property. *Southwestern Peanut Growers Ass'n v. Womack*, Tex.Civ.App., 179 S.W.2d 371, 373.

**Statutory foreclosure.** The term is sometimes applied to foreclosure by execution of a power of sale contained in the mortgage, without recourse to the courts, as it must conform to the provisions of the statute regulating such sales. See *Mowry v. Sanborn*, 11 Hun, N.Y., 548.

**Strict foreclosure.** A decree of strict foreclosure of a mortgage finds the amount due under the mortgage, orders its payment within a certain limited time, and provides that, in default of such payment, the debtor's right and equity of redemption shall be forever barred and foreclosed: its effect is to vest the title of the property absolutely in the mortgagee, on default in payment, without any sale of the property. *Champion v. Hinkle*, 45 N.J.Eq. 162, 16 A. 701; *Lightcap v. Bradley*, 186 Ill. 510, 58 N.E. 221; *Warner Bros. Co. v. Freud*, 138 Cal. 651, 72 P. 345.

**FORECLOSURE DECREE.** Properly speaking, a decree ordering the strict foreclosure of a mortgage; but the term is also loosely and conventionally applied to a decree ordering the sale of the mortgaged premises and the satisfaction of the mortgage out of the proceeds. *Hanover F. Ins. Co. v. Brown*, 77 Md. 64, 25 A. 989, 39 Am.St. Rep. 386.

**FORECLOSURE SALE.** A sale of mortgaged property to obtain satisfaction of the mortgage out of the proceeds, whether authorized by a decree of the court or by a power of sale contained in the mortgage. *Johnson v. Cook*, 96 Mo.App. 442, 70 S.W. 526.

**FORECLOSURE SUIT.** A proceeding for legal determination of existence of lien, ascertainment of its extent, and subjection to sale of estate pledged for its satisfaction, and to settle conflicting claims by selling equity of redemption. *Reichert v. McCool*, 92 Ind.App. 406, 169 N.E. 86, 88.

**FOREFAULT.** In Scotch law, to forfeit; to lose.

**FOREGIFT.** A premium for a lease.

**FOREGOERS.** Royal purveyors. 26 Edw. III. c. 5.

**FOREHAND RENT.** In English law, rent payable in advance; or, more properly, a species of premium or bonus paid by the tenant on the making of the lease, and particularly on the renewal of leases by ecclesiastical corporations.

**FOREIGN.** Belonging to another nation or country; belonging or attached to another jurisdiction; made, done, or rendered in another state or jurisdiction; subject to another jurisdiction; operating or solvable in another territory; extrinsic; outside; extraordinary. Nonresident.

## FOREIGN

**Blanchette v. New England Telephone & Telegraph Co.**, 90 N.H. 207, 6 A.2d 161, 162.

As to foreign "Administrator," "Assignment," "Attachment," "Bill of Exchange," "Charity," "Commerce," "Corporation," "County," "Creditor," "Divorce," "Document," "Domicile," "Factor," "Judgment," "Jury," "Minister," "Plea," "Port," "State," "Vessel," and "Voyage," see those titles.

**FOREIGN ANSWER.** In old English practice, an answer which was not triable in the county where it was made. (St. 15 Hen. VI. c. 5.) Blount.

**FOREIGN APOSER.** An officer in the exchequer who examines the sheriff's *estreats*, comparing them with the records, and apposeth (interrogates) the sheriff what he says to each particular sum therein. 4 Inst. 107; Blount; Cowell.

**FOREIGN BOUGHT AND SOLD.** A custom in London which, being found prejudicial to sellers of cattle in Smithfield, was abolished. Wharton.

**FOREIGN COINS.** Coins issued as money under the authority of a foreign government. As to their valuation in the United States, see 46 Stat. 739, 31 U.S.C.A. § 372.

**FOREIGN COURTS.** The courts of a foreign state or nation. In the United States, this term is frequently applied to the courts of one of the states when their judgments or records are introduced in the courts of another.

**FOREIGN DOMINION.** In English law this means a country which at one time formed part of the dominions of a foreign state or potentate, but which by conquest or cession has become a part of the dominions of the British crown. 5 Best & S. 290.

**FOREIGN ENLISTMENT ACT.** The statute 59 Geo. III. c. 69, prohibiting the enlistment, as a soldier or sailor, in any foreign service. 4 Steph. Comm. 226. A later and more stringent act is that of 33 & 34 Vict. c. 90.

**FOREIGN EXCHANGE.** Drafts drawn on a foreign state or country.

**FOREIGN-GOING SHIP.** By the English merchant shipping act, 1854, (17 & 18 Vict. c. 104,) § 2, any ship employed in trading, going between some place or places in the United Kingdom and some place or places situate beyond the following limits, that is to say: The coasts of the United Kingdom, the islands of Guernsey, Jersey, Sark, Alderney, and Man, and the continent of Europe, between the river Elbe and Brest, inclusive. Home-trade ship includes every ship employed in trading and going between places within the last-mentioned limits.

**FOREIGN JUDGMENT.** See Judgment.

**FOREIGN JURISDICTION.** Any jurisdiction foreign to that of the forum. Also the exercise by

a state or nation of jurisdiction beyond its own territory, the right being acquired by treaty or otherwise.

**FOREIGN LAWS.** The laws of a foreign country, or of a sister state. *People v. Martin*, 38 Misc. Rep. 67, 76 N.Y.S. 953; *Bank of Chillicothe v. Dodge*, 8 Barb., N.Y., 233. Foreign laws are often the suggesting occasions of changes in, or additions to, our own laws, and in that respect are called "*jus receptum*." Brown.

**FOREIGN MATTER.** In old practice, matter triable or done in another county. Cowell.

**FOREIGN OFFICE.** The department of state through which the English sovereign communicates with foreign powers. A secretary of state is at its head. Till the middle of the last century, the functions of a secretary of state as to foreign and home questions were not disunited.

**FOREIGN SERVICE,** in feudal law, was that whereby a mesne lord held of another, without the compass of his own fee, or that which the tenant performed either to his own lord or to the lord paramount out of the fee. (Kitch. 299.) Foreign service seems also to be used for knight's service, or escuage uncertain. (Perk. 650.) Jacob.

**FOREIGN TRADE.** Commercial interchange of commodities from different countries; export and import trade. *Standard Oil Co. of New Jersey v. United States*, 29 Cust. & Pat.App. 82, 120 F.2d 340, 342.

**FOREIGN WILL.** Will of person not domiciled within state at time of death. *De Tray v. Hardgrove*, Tex.Com.App., 52 S.W.2d 239, 240.

**FOREIGNER.** In old English law, this term, when used with reference to a particular city, designated any person who was not an inhabitant of that city. According to later usage, it denotes a person who is not a citizen or subject of the state or country of which mention is made, or any one owing allegiance to a foreign state or sovereign.

For the distinctions, in Spanish law, between "domiciliated" and "transient" foreigners, see *Yates v. Iams*, 10 Tex. 168.

**FOREIN.** An old form of *foreign* (*q. v.*). Blount.

**FOREJUDGE.** In old English law and practice, to expel from court for some offense or misconduct. When an officer or attorney of a court was expelled for any offense, or for not appearing to an action by bill filed against him, he was said to be *forejudged the court*. Cowell.

To deprive or put out of a thing by the judgment of a court. To condemn to lose a thing.

To expel or banish.

**FOREJUDGER.** In English practice, a judgment by which a man is deprived or *put out* of a thing; a judgment of expulsion or banishment.

**FOREMAN.** The presiding member of a grand or petit jury, who speaks or answers for the jury.

Person designated by master to direct work of employees; superintendent, overseer. *White v. Kansas City Stockyards Co.*, 104 Kan. 90, 177 P. 522; *Browning v. Smiley-Lampert Lumber Co.*, 68 Or. 502, 137 P. 777, 780; *Brokaw v. Cottrell*, 114 Neb. 858, 211 N.W. 184, 187.

**FORENSIC.** Belonging to courts of justice.

**FORENSIC MEDICINE**, or medical jurisprudence, as it is also called, is "that science which teaches the application of every branch of medical knowledge to the purposes of the law; hence its limits are, on the one hand, the requirements of the law, and, on the other, the whole range of medicine. Anatomy, physiology, medicine, surgery, chemistry, physics, and botany lend their aid as necessity arises; and in some cases all these branches of science are required to enable a court of law to arrive at a proper conclusion on a contested question affecting life or property." *Tayl. Med. Jur.* 1.

**FORENSIS.**

In Civil law, belonging to or connected with a court; forensic. *Forensis homo*, an advocate; a pleader of causes; one who practices in court. *Calvin.*

In old Scotch law, a strange man or stranger; an out-dwelling man; an "unfreeman," who dwells not within burgh.

**FORESAID.** Used in Scotch law as *aforsaid* is in English, and sometimes, in a plural form, *foresaid*s. 2 How. State Tr. 715. *Forsaidis* occurs in old Scotch records. "The Loirdis assesouris *forsaidis*." 1 Pitc. Crim. Tr. pt. 1, p. 107.

**FORESCHOKE.** Foresaken; disavowed. 10 Edw. II. c. 1.

**FORESEEABILITY.** The ability to see or know in advance, hence, the reasonable anticipation that harm or injury is a likely result of acts or omissions. *Emery v. Thompson*, 347 Mo. 494, 148 S.W.2d 479, 480.

**FORESHORE.** The strip of land that lies between the high and low water marks and that is alternately wet and dry according to the flow of the tide. *Tenenbaum v. Sea Gate Ass'n*, 253 App. Div. 166, 1 N.Y.S.2d 224, 227. According to the medium line between the greatest and least range of tide (spring tides and neap tides). *Sweet. See, also, Shore.*

**FORESIGHT.** Heedful thought for the future; reasonable anticipation of result of certain acts or omissions. *Emery v. Thompson*, 347 Mo. 494, 148 S.W.2d 479.

**FOREST.** A tract of land covered with trees and one usually of considerable extent. *Forest Preserve Dist. of Cook County v. Jirsa*, 336 Ill. 624, 168 N.E. 690, 691.

In old English law, a certain territory of wooded ground and fruitful pastures, privileged for wild beasts and fowls

of forest, chase, and warren, to rest and abide in the safe protection of the prince for his princely delight and pleasure, having a peculiar court and officers. *Manw. For. Laws*, c. 1, no. 1; *Termes de la Ley*; 1 Bl.Comm. 289.

A royal hunting-ground which lost its peculiar character with the extinction of its courts, or when the franchise passed into the hands of a subject. *Spelman*; *Cowell.*

The word is also used to signify a franchise or right, being the right of keeping, for the purpose of hunting, the wild beasts and fowls of forest, chase, park, and warren, in a territory or precinct of woody ground or pasture set apart for the purpose. 1 Steph.Comm. 665.

**FOREST COURTS.** In English law. Courts instituted for the government of the king's forest in different parts of the kingdom, and for the punishment of all injuries done to the king's deer or *venison*, to the *vert* or greensward, and to the *covert* in which such deer were lodged. They consisted of the courts of attachments, of regard, of swainmote, and of justice-seat; but in later times these courts are no longer held. 3 Bl. Comm. 71.

**FOREST LAW.** The system or body of old law relating to the royal forests.

**FORESTAGE.** A duty or tribute payable to the king's foresters. *Cowell.*

**FORESTAGIUM.** A duty or tribute payable to the king's foresters. *Cowell.*

**FORESTALL.** To intercept or obstruct a passenger on the king's highway. *Cowell.* To beset the way of a tenant so as to prevent his coming on the premises. 3 Bl. Comm. 170. To intercept a deer on his way to the forest before he can regain it. *Cowell.*

**FORESTALLER.** In old English law, obstruction; hindrance; the offense of stopping the highway; the hindering a tenant from coming to his land; intercepting a deer before it can regain the forest. Also one who forestalls; one who commits the offense of forestalling. 3 Bl. Comm. 170; *Cowell.*

**FORESTALLING.** Obstructing the highway. Intercepting a person on the highway.

**FORESTALLING THE MARKET.** Securing control of commodities on way to market. *Raney v. Montgomery County Com'rs*, 170 Md. 183, 183 A. 548, 551.

The act of the buying or contracting for any merchandise or provision on its way to the market, with the intention of selling it again at a higher price; or the dissuading persons from bringing their goods or provisions there; or persuading them to enhance the price when there. 4 Bl. Comm. 158. *Barton v. Morris*, 10 Phila., Pa., 361. This was formerly an indictable offense in England, but is now abolished by St. 7 & 8 Vict. c. 24. 4 Steph.Comm. 291, note.

**FORESTARIUS.**

In English law, a forester. An officer who takes care of the woods and forests. *De forestario apponendo*, a writ which lay to appoint a forester to prevent further commission of waste when a tenant in dower had committed waste. *Bract.* 316; *Du Cange.*

In Scotch law, a forester or keeper of woods, to whom, by reason of his office, pertains the bark

## FORESTER

and the hewn branches. And, when he rides through the forest, he may take a tree as high as his own head. Skene de Verb. Sign.

**FORESTER.** A sworn officer of the *forest*, appointed by the king's letters patent to walk the forest, watching both the vert and the venison, attaching and presenting all trespassers against them within their own bailiwick or walk. These letters patent were generally granted during good behavior; but sometimes they held the office in fee. Blount.

**FORETHOUGHT FELONY.** In Scotch law, murder committed in consequence of a previous design. Ersk. Inst. 4, 4, 50; Bell.

**FORFANG.** In old English law, the taking of provisions from any person in fairs or markets before the royal purveyors were served with necessaries for the sovereign. Cowell. Also the seizing and rescuing of stolen or strayed cattle from the hands of a thief, or of those having illegal possession of them; also the reward fixed for such rescue.

**FORFEIT.** To lose, or lose the right to, by some error, fault, offense, or crime, or to subject, as property, to forfeiture or confiscation. State v. Cowen, 231 Iowa 1117, 3 N.W.2d 176, 180. To lose, in consequence of breach of contract, neglect of duty, or offense, some right, privilege, or property to another or to the State. United States v. Chavez, C.C.A.N.M., 87 F.2d 16, 19.

To incur a penalty; to become liable to the payment of a sum of money, as the consequence of a certain act. Sands v. Holbert, 93 W.Va. 574, 117 S.E. 896, 899; Ford v. Ellison, 287 Mo. 683, 230 S.W. 637, 640.

To lose an estate, a franchise, or other property belonging to one, by the act of the law, and as a consequence of some misfeasance, negligence, or omission. Cassell v. Crothers, 193 Pa. 359, 44 A. 446; State v. De Gress, 72 Tex. 242, 11 S.W. 1029; State v. Baltimore & O. R. Co., 12 Gill & J., Md., 432, 38 Am.Dec. 319. The further ideas connoted by this term are that it is a deprivation, (that is, against the will of the losing party,) and that the property is either transferred to another or resumed by the original grantor.

**FORFEITABLE.** Liable to be forfeited; subject to forfeiture for non-user, neglect, crime, etc.

**FORFEITURE.** Something to which the right is lost by the commission of a crime or fault or the losing of something by way of penalty. Ridge-way v. City of Akron, Ohio App., 42 N.E.2d 724, 726. A deprivation or destruction of a right in consequence of the nonperformance of some obligation or condition. Connellan v. Federal Life & Casualty Co., 134 Me. 104, 182 A. 13, 14.

1. A punishment annexed by law to some illegal act or negligence in the owner of land, tenements, or hereditaments whereby he loses all interest therein. Hammond v. Johnson, 94 Utah 20, 66 P.2d 894, 900. And which go to the party injured as a recompense for the wrong which he alone, or the public together with himself, hath sustained. 2 Bl.Comm. 267. Wiseman v. McNulty, 25 Cal. 237; Stephenson v. Calliham, Tex.Civ.App., 289 S.W. 158, 159; Fratt v. Daniels-Jones Co., 47 Mont. 487, 133 P. 700, 701.

2. The loss of land by a tenant to his lord, as the consequence of some breach of fidelity. 1 Steph.Comm. 166.

3. The loss of lands and goods to the state, as the consequence of crime. 4 Bl.Comm. 381, 387; 4 Steph.Comm. 447, 452; 2 Kent, Comm. 385; 4 Kent, Comm. 426; Avery v. Everett, 110 N.Y. 317, 18 N.E. 148, 1 L.R.A. 264, 6 Am. St.Rep. 368.

4. The loss of goods or chattels, as a punishment for some crime or misdemeanor in the party forfeiting, and as a compensation for the offense and injury committed against him to whom they are forfeited. 2 Bl.Comm. 420.

5. The loss of office by abuser, non-user, or refusal to exercise it. City of Williamsburg v. Weesner, 164 Ky. 769, 176 S.W. 224, 225.

6. The loss of a corporate franchise or charter in consequence of some illegal act, or of malfeasance or non-feasance. Murphy v. Missouri & Kansas Land & Loan Co., 28 N.D. 519, 149 N.W. 957, 959; Village of Fredonia v. Fredonia Natural Gas Light Co., 87 Misc. 592, 149 N.Y.S. 964, 965.

7. The loss of the right to life, as the consequence of the commission of some crime to which the law has affixed a capital penalty. In re New Jersey Court of Pardons, 97 N.J.Eq. 555, 129 A. 624, 630.

8. The incurring a liability to pay a definite sum of money as the consequence of violating the provisions of some statute, or refusal to comply with some requirement of law. State v. Marion County Com'rs, 85 Ind. 493.

9. A thing or sum of money forfeited. Something imposed as a punishment for an offense or delinquency. The word in this sense is frequently associated with the word "penalty." Van Buren v. Digges, 11 How. 477, 13 L.Ed. 771; Bryant v. Rich's Grill, 216 Mass. 344, 103 N.E. 925, 927, Ann.Cas.1915B, 869; Miller v. Bopp, 136 La. 788, 67 So. 831; Missouri, K & T. Ry. Co. v. Dewey Portland Cement Co., 113 Okl. 142, 242 P. 257, 259.

10. In mining law, the loss of a mining claim held by location on the public domain (unpatented) in consequence of the failure of the holder to make the required annual expenditure upon it within the time allowed. McKay v. McDougall, 25 Mont. 258, 64 P. 669, 87 Am.St.Rep. 395; St. John v. Kidd, 26 Cal. 271.

**FORFEITURE OF BOND.** A failure to perform the condition upon which obligor was to be excused from the penalty in the bond. Hall v. Browning, 71 Ga.App. 835, 32 S.E.2d 424, 427.

**FORFEITURE OF MARRIAGE.** A penalty incurred by a ward in chivalry who married without the consent or against the will of the guardian. See Duplex Valor Maritagii.

**FORFEITURE OF SILK,** supposed to lie in the docks, used, in times when its importation was prohibited, to be proclaimed each term in the exchequer.

**FORFEITURES ABOLITION ACT.** Another name for the felony act of 1870, abolishing forfeitures for felony in England.

**FORGABULUM, or FORGAVEL.** A quit-rent; a small reserved rent in money. Jacob.

**FORGE.** To fabricate by false imitation. Carter v. State, 135 Tex.Cr.R. 457, 116 S.W.2d 371, 377. To fabricate, construct, or prepare one thing in imitation of another thing, with the intention of substituting the false for the genuine, or otherwise deceiving and defrauding by the use of the spurious article. To counterfeit or make falsely. Especially, to make a spurious written instrument with the intention of fraudulently substituting it for another, or of passing it off as genuine; or to fraudulently alter a genuine instrument to another's prejudice; or to sign another person's

name to a document, with a deceitful and fraudulent intent. In *re Cross*, D.C.N.C., 43 F. 520; *U. S. v. Watkins*, 28 Fed.Cas. 445; *Johnson v. State*, 9 Tex.App. 251; *Longwell v. Day*, 1 Mich. N.P. 290.

To forge (a metaphorical expression, borrowed from the occupation of the smith) means, properly speaking, no more than to make or form, but in our law it is always taken in an evil sense. 2 East, P. C. p. 852, c. 19, § 1.

To forge is to make in the likeness of something else; to counterfeit is to make in imitation of something else, with a view to defraud by passing the false copy for genuine or original. Both words, "forged" and "counterfeit-ed," convey the idea of similitude. *State v. McKenzie*, 42 Me. 392.

In common usage, however, *forgery* is almost always predicated of some private instrument or writing, as a deed, note, will, or a signature; and *counterfeiting* denotes the fraudulent imitation of coined or paper money or some substitute therefor.

**FORGERY.**

**Criminal Law**

The false making or material altering, with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability. *People v. Routson*, 354 Ill. 573, 188 N.E. 883, 885; 2 Bish. Crim. Law, § 523; *McCornack v. Central State Bank*, 203 Iowa 833, 211 N.W. 542, 545, 52 A.L.R. 1297. A fraudulent making and alteration of writing to prejudice of another man's right, or a false making, a making *malo animo* of any instrument, for the purpose of fraud or deceit. *Iberville Trust & Saving Bank v. City Café*, La.App., 143 So. 73. See *Forge*.

The thing itself, so falsely made, imitated or forged; especially a forged writing. A forged signature is frequently said to be "*a forgery*."

**Evidence**

The fabrication or counterfeiting of evidence. The artful and fraudulent manipulation of physical objects, or the deceitful arrangement of genuine facts or things, in such a manner as to create an erroneous impression or a false inference in the minds of those who may observe them. See *Burrill*, Circ. Ev. 131, 420.

**FORGERY ACT, 1870.** The statute 33 & 34 Vict. c. 58, was passed for the punishment of forgers of stock certificates, and for extending to Scotland certain provisions of the forgery act of 1861. *Mozley & Whitley*.

**FORHERDA.** In old records, a herdland, headland, or foreland. *Cowell*.

**FORI DISPUTATIONES.** In the civil law, discussions or arguments before a court. 1 Kent, Comm. 530.

**FORINSECUS.** Lat. Foreign; exterior; outside; extraordinary.

*Servitium forinsecum*, the payment of aid, scutage, and other extraordinary military services. *Forinsecum manerium*, the manor, or that part of it which lies outside the bars or town, and is not included within the liberties of it. *Cowell*; *Blount*; *Jacob*; 1 *Reeve*, Eng.Law, 273.

**FORINSIC.** In old English law, exterior; foreign; extraordinary.

In feudal law, the term "forinsic services" comprehended the payment of extraordinary aids or the rendition of extraordinary military services, and in this sense was opposed to "intrinsic services." 1 *Reeve*, Eng. Law, 273.

**FORIS.** Lat. Abroad; out of doors; on the outside of a place; without; extrinsic.

**FORISBANITUS.** In old English law, banished.

**FORISFACERE.** Lat. To forfeit; to lose an estate or other property on account of some criminal or illegal act. To confiscate.

To act beyond the law, *i. e.*, to transgress or infringe the law; to commit an offense or wrong; to do any act against or beyond the law. See *Co. Litt. 59a*; *Du Cange*; *Spelman*.

**FORISFACERE, i. e., EXTRA LEGEM SEU CONSUETUDINEM FACERE.** *Co. Litt. 59. Forisfacere, i. e.*, to do something beyond law or custom.

**FORISFACTUM.** Forfeited. *Bona forisfacta*, forfeited goods. 1 *Bl. Comm.* 299. A crime. *Du Cange*; *Spelman*.

**FORISFACTURA.** A crime or offense through which property is forfeited.

A fine or punishment in money.

Forfeiture. The loss of property or life in consequence of crime.

**FORISFACTURA PLENA.** A forfeiture of all a man's property. Things which were forfeited. *Du Cange*; *Spelman*.

**FORISFACTUS.** A criminal. One who has forfeited his life by commission of a capital offense. *Spelman*.

**FORISFACTUS SERVUS.** A slave who has been a free man, but has forfeited his freedom by crime. *Du Cange*.

**FORISFAMILIARE.** In old English and Scotch law, literally, to put out of a family (*foris familiam ponere*). To portion off a son, so that he could have no further claim upon his father. *Glanv. lib. 7, c. 3*.

To emancipate, or free from paternal authority.

**FORISFAMILIATED.** In old English law, portioned off.

A son was said to be forisfamiated (*forisfamiliari*) if his father assigned him part of his land, and gave him seisin thereof, and did this at the request or with the free consent of the son himself, who expressed himself satisfied with such portion. 1 *Reeve*, Eng. Law, 42, 110.

**FORISFAMILIATUS.** In old English law, put out of a family; portioned off; emancipated; forisfamiated. *Bract. fol. 64*.

**FORISJUDICATIO.** In old English law, forejudger. A forejudgment. A judgment of court whereby a man is put out of possession of a thing. *Co. Litt. 100b*.

## FORISJUDICATUS

**FORISJUDICATUS.** Forejudged; sent from court; banished. Deprived of a thing by judgment of court. Bract. fol. 250*b*; Co. Litt. 100*b*; Du Cange.

**FORISJURARE.** To forswear; to abjure; to abandon.

**Provinciam forisjurare.** To forswear the country. Spelman.

**FORISJURARE PARENTILAM.** To remove oneself from parental authority. The person who did this lost his rights as heir. Du Cange.

**FORJUDGE.** See Forejudge.

**FORJURER.** L. Fr. In old English law, to forswear; to abjure.

**FORJURER ROYALME.** To abjure the realm. Britt. cc. 1, 16.

**FORLER-LAND.** Land in the diocese of Hereford, which had a peculiar custom attached to it, but which has been long since disused, although the name is retained. But. Surv. 56.

**FORM.** A model or skeleton of an instrument to be used in a judicial proceeding, containing the principal necessary matters, the proper technical terms or phrases, and whatever else is necessary to make it formally correct, arranged in proper and methodical order, and capable of being adapted to the circumstances of the specific case.

In contradistinction to "substance," "form" means the legal or technical manner or order to be observed in legal instruments or juridical proceedings, or in the construction of legal documents or processes.

Antithesis of "substance." Phoenix Building & Homestead Ass'n v. Meraux, 189 La. 819, 180 So. 648, 649.

**Common Form, Solemn Form.** See Probate.

**Forms of Action.** This term is the general designation of the various species or kinds of personal actions known to the common law, such as trover, trespass, debt, *assumpsit*, etc. These differ in their pleadings and evidence, as well as in the circumstances to which they are respectively applicable. Truax v. Parvis, 7 Houst. (Del.) 330, 32 A. 227.

**Matter of Form.** In pleadings, in indictments, in affidavits, conveyances, etc., matter of form (as distinguished from matter of substance) is all that relates to the mode, form, or style of expressing the facts involved, the choice or arrangement of words, and other such particulars, without affecting the substantial validity or sufficiency of the instrument, or without going to the merits. Railway Co. v. Kurtz, 10 Ind.App. 60, 37 N.E. 303; Meath v. Mississippi Levee Com'rs, 109 U.S. 268, 3 S.Ct. 284, 27 L.Ed. 930; State v. Amidon, 58 Vt. 524, 2 A. 154.

**Form of the Statute.** This expression means the words, language, or frame of a statute, and

hence the inhibition or command which it may contain; used in the phrase (in criminal pleading) "against the form of the statute in that case made and provided."

**FORMA.** Lat. Form; the prescribed form of judicial proceedings.

**FORMA DAT ESSE.** Form gives being. Called "the old physical maxim." Lord Henley, Ch., 2 Eden, 99.

**FORMA ET FIGURA JUDICII.** The form and shape of judgment or judicial action. 3 Bl. Comm. 271.

**FORMA LEGALIS FORMA ESSENTIALIS.** Legal form is essential form. 10 Coke, 100.

**FORMA NON OBSERVATA, INFERTUR ADNULLATIO ACTUS.** Where form is not observed, a nullity of the act is inferred. 12 Coke, 7. Where the law prescribes a form, the non-observance of it is fatal to the proceeding, and the whole becomes a nullity. Best, Ev. Introd. § 59.

**FORMA PAUPERIS.** See In Forma Pauperis.

**FORMAL.** Relating to matters of form; as, "formal defects"; inserted, added, or joined *pro forma*. See Parties.

**FORMALITIES.** In England, robes worn by the magistrates of a city or corporation, etc., on solemn occasions. Enc. Lond.

**FORMALITY.** The conditions, in regard to method, order, arrangement, use of technical expressions, performance of specific acts, etc., which are required by the law in the making of contracts or conveyances, or in the taking of legal proceedings, to insure their validity and regularity. Succession of Seymour, 48 La. Ann. 993, 20 So. 217.

**FORMATA.** In canon law, canonical letters. Spelman.

**FORMATA BREVIA.** Formed writs; writs of form. See Brevia Formata.

**FORMED ACTION.** An action for which a set form of words is prescribed, which must be strictly adhered to. 10 Mod. 140, 141.

**FORMED DESIGN.** In criminal law, and particularly with reference to homicide, this term means a deliberate and fixed intention to kill, whether directed against a particular person or not. Mitchell v. State, 60 Ala. 33; Wilson v. State, 128 Ala. 17, 29 So. 569; Ake v. State, 30 Tex. 473.

**FORMEDON.** An ancient writ in English law which was available for one who had a right to lands or tenements by virtue of a gift in tail.

It was in the nature of a writ of right, and was the highest action that a tenant in tail could have; for he could not have an absolute writ of right, that being confined to such as claimed in fee-simple, and for that reason this writ of formedon was granted to him by the statute

*de donis*, (Westm. 2, 13 Edw. I. c. 1,) and was emphatically called "his" writ of right. The writ was distinguished into three species, viz.: Formedon in the descender, in the remainder, and in the reverter. It was abolished in England by St. 3 & 4 Wm. IV. c. 27. See 3 Bl.Comm. 191; Co. Litt. 316; Fitzh.Nat.Brev. 255.

**FORMEDON IN THE DESCENDER.** A writ of formedon which lay where a gift was made in tail, and the tenant in tail alienated the lands or was disseised of them and died, for the heir in tail to recover them, against the actual tenant of the freehold. 3 Bl. Comm. 192.

**FORMEDON IN THE REMAINDER.** A writ of formedon which lay where a man gave lands to another for life or in tail, with remainder to a third person in tail or in fee, and he who had the particular estate died without issue inheritable, and a stranger intruded upon him in remainder, and kept him out of possession. In this case he in remainder, or his heir, was entitled to this writ. 3 Bl. Comm. 192.

**FORMEDON IN THE REVERTER.** A writ of formedon which lay where there was a gift in tail, and afterwards, by the death of the donee or his heirs without issue of his body, the reversion fell in upon the donor, his heirs or assigns. In such case, the *reversioner* had this writ to recover the lands. 3 Bl. Comm. 192.

**FORMELLA.** A certain weight of above 70 lbs., mentioned in 51 Hen. III. Cowell.

**FORMER ACQUITTAL.** See Autrefois.

**FORMER ADJUDICATION.** An adjudication in a former action. See Res Judicata.

Either a final determination of the rights of the parties or an adjudication of certain questions of fact. *Johnson v. Fontana County Fire Protection Dist.*, 101 P.2d 1092, 1097, 15 Cal.2d 380; *Johnson v. Fontana County Fire Protection Dist.*, Cal.App., 87 P.2d 426, 430.

**FORMER JEOPARDY.** Plea of "former jeopardy," that a man cannot be brought into danger of his life or limb for the same offense more than once, is fundamental common law and constitutional right of defendant, affording protection against his being again tried for the same offense, and not against the peril of second punishment. *State v. Fredlund*, 200 Minn. 44, 273 N.W. 353, 355, 113 A.L.R. 215.

**FORMER RECOVERY.** Recovery in a former action. See Res Judicata.

**FORMIDO PERICULI.** Lat. Fear of danger. 1 Kent, Comm. 23.

**FORMS OF ACTION.** This term comprehends the various classes of personal action at common law, viz.: trespass, case, trover, detinue, replevin, covenant, debt, assumpsit, *scire facias*, and reverter, as well as the nearly obsolete actions of account and annuity, and the modern action of mandamus.

They are now abolished in England by the Judicature Acts of 1873 and 1875, and in many of the states of the

United States, where a uniform course of proceeding under codes of procedure has taken their place. But the principles regulating the distinctions between the common-law actions are still found applicable even where the technical forms are abolished.

**FORMULA.** In common-law practice, a set form of words used in judicial proceedings.

In the civil law, an action. Calvin.

**FORMULA DEAL.** An agreement between motion picture distributors and independent or affiliated circuits to exhibit a feature in all theatres at specified percentage of national gross receipts realized from such feature by all theatres in the United States. *U. S. v. Paramount Pictures, D.C. N.Y.*, 66 F.Supp. 323, 333, 347.

**FORMULA INSTRUCTION.** An instruction intended to be complete statement of law upon which jury may base verdict. *Harvey v. Aceves*, 115 Cal.App. 333, 1 P.2d 1043, 1045.

**FORMULÆ.** In Roman law, when the *legis actiones* were proved to be inconvenient, a mode of procedure called "*per formulas*," (i. e., by means of *formulae*,) was gradually introduced, and eventually the *legis actiones* were abolished by the *Lex Æbutia*, B. C. 164, excepting in a very few exceptional matters.

The *formulae* were four in number, namely: (1) The *Demonstratio*, wherein the plaintiff stated, i. e., showed, the facts out of which his claim arose; (2) the *Intentio*, where he made his claim against the defendant; (3) the *Adjudicatio*, wherein the judex was directed to assign or adjudicate the property or any portion or portions thereof according to the rights of the parties; and (4) the *Condemnatio*, in which the judex was authorized and directed to condemn or to acquit according as the facts were or were not proved. These *formulae* were obtained from the magistrate, (*in jure*,) and were thereafter proceeded with before the judex, (*in judicio*). Brown. See Mackeld.Rom. Law, § 204.

**FORMULARIES.** Collections of *formulae*, or forms of forensic proceedings and instruments used among the Franks, and other early continental nations of Europe. Among these the formula of Marculphus may be mentioned as of considerable interest. Butl. Co. Litt. note 77, lib. 3.

**FORNAGIUM.** The fee taken by a lord of his tenant, who was bound to bake in the lord's common oven (*in furno domini*), or for a commission to use his own.

**FORNICATION.** Unlawful sexual intercourse between two unmarried persons. Further, if one of the persons be married and the other not, it is fornication on the part of the latter, though adultery for the former. In some jurisdictions, however, by statute, it is adultery on the part of both persons if the woman is married, whether the man is married or not. *Banks v. State*, 96 Ala. 78, 11 So. 404; *Hood v. State*, 56 Ind. 263, 26 Am. Rep. 21; *State v. Phillips*, 26 N.D. 206, 144 N.W. 94, 95, 49 L.R.A., N.S., 470, Ann.Cas.1916A, 320; *State v. Ling*, 91 Kan. 647, 138 P. 582, Ann.Cas. 1915D, 374.

**FORNIX.** Lat. A brothel; fornication.

## FORNO

**FORNO.** In Spanish law, an oven. *Las Partidas*, pt. 3, tit. 32, l. 18.

**FORO.** In Spanish law, the place where tribunals hear and determine causes,—*exercendarum litium locus*.

**FOROS.** In Spanish law, emphyteutic rents. *Schm. Civil Law*, 309.

**FORPRISE.** An exception; reservation; excepted; reserved. Anciently, a term of frequent use in leases and conveyances. *Cowell*; *Blount*.

In another sense, the word is taken for any exaction.

**FORSCHEL.** A strip of land lying next to the highway.

**FORSES.** Waterfalls. *Camden, Brit.*

**FORSPEAKER.** An attorney or advocate in a cause. *Blount*; *Whishaw*.

**FORSPECA.** In old English law, prolocutor; paronymphus.

**FORSTAL.** See *Forestall*.

**FORSTELLARIUS EST PAUPERUM DEPRESSOR ET TOTIUS COMMUNITATIS ET PATRIÆ PUBLICUS INIMICUS.** 3 *Inst.* 196. A forestaller is an oppressor of the poor, and a public enemy of the whole community and country.

**FORSWEAR.** In criminal law, to make oath to that which the deponent knows to be untrue.

This term is wider in its scope than "perjury," for the latter, as a technical term, includes the idea of the oath being taken before a competent court or officer, and relating to a material issue, which is not implied by the word "for swear." *Fowle v. Robbins*, 12 *Mass.* 501; *Tomlinson v. Bittlebank*, 4 *Barn. & A.* 632; *Railway Co. v. McCurdy*, 114 *Pa.* 554, 8 *A.* 230, 60 *Am.Rep.* 363.

**FORT.** This term means "something more than a mere military camp, post, or station. The term implies a fortification, or a place protected from attack by some such means as a moat, wall, or parapet." *U. S. v. Tichenor*, *C.C.Or.*, 12 *F.* 424.

**FORTALICE, or FORTELACE.** A fortress or place of strength, which anciently did not pass without a special grant. 11 *Hen. VII. c.* 18.

**FORTALITUM.** In old Scotch law, a fortalice; a castle. Properly a house or tower which has a battlement or a ditch or moat about it.

**FORTAXED.** Wrongly or extortionately taxed.

**FORTHCOMING.** In Scotch law, the action by which an arrestment (garnishment) is made effectual. It is a decree or process by which the creditor is given the right to demand that the sum arrested be applied for payment of his claim. 2 *Kames, Eq.* 288, 289; *Bell*.

**FORTHCOMING BOND.** A bond conditioned on the forthcoming of property to answer such judg-

ment as may be entered. If the property be forthcoming, no liability ensues. *U. S. Fidelity & Guaranty Co. v. Sabbath*, 286 *Ill.App.* 320, 3 *N.E.2d* 330, 335.

A bond given to a sheriff who has levied on property, conditioned that the property shall be forthcoming, *i. e.*, produced, when required. On the giving of such bond, the goods are allowed to remain in the possession of the debtor. *Hill v. Manser*, 11 *Grat., Va.* 522; *Nichols v. Chittenden*, 14 *Colo.App.* 49, 59 *P.* 954; *Burnham-Munger-Root Dry Goods Co. v. Strahl*, 102 *Neb.* 142, 166 *N.W.* 266.

**FORTHWITH.** Immediately; without delay, directly, hence within a reasonable time under the circumstances of the case; promptly and with reasonable dispatch. *State ex rel. Board of Education of City of Tulsa v. Morley*, 168 *Okl.* 259, 34 *P.2d* 258, 261; 1 *Chit. Archb. Pr.* (12th Ed.) 164. Within such time as to permit that which is to be done, to be done lawfully and according to the practical and ordinary course of things to be performed or accomplished. *Harris v. Stewart*, 187 *Miss.* 489, 193 *So.* 339, 342. The first opportunity offered. *Abbott v. State*, 117 *Neb.* 350, 220 *N.W.* 578, 579.

**FORTIA.** Force. In old English law. Force used by an accessory, to enable the principal to commit a crime, as by binding or holding a person while another killed him, or by aiding or counseling in any way, or commanding the act to be done. *Bract. fols.* 138, 138b.

According to Lord Coke, *fortia* was a word of art, and properly signified the furnishing of a weapon of force to do the fact, and by force whereof the fact was committed, and he that furnished it was not present when the fact was done. 2 *Inst.* 182.

**FORTIA FRISCA.** Fresh force (*q. v.*).

**FORTILITY.** In old English law, a fortified place; a castle; a bulwark. *Cowell*; 11 *Hen. VII. c.* 18.

**FORTIOR.** Lat. Stronger. A term applied, in the law of evidence, to that species of presumption, arising from facts shown in evidence, which is strong enough to shift the burden of proof to the opposite party. *Burrill, Circ.Ev.* 64, 66.

**FORTIOR EST CUSTODIA LEGIS QUAM HOMINIS.** 2 *Rolle*, 325. 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 of greater force and effect than that of man. *Co.Litt.* 234a; *Shep.Touch.* 302; 15 *East*, 178. The law in some cases overrides the will of the individual, and renders ineffective or futile his expressed intention or contract. *Broom, Max.* 697.

**FORTIORI.** See *A Fortiori*.

**FORTIS.** Lat. Strong. *Fortis et sana*, strong and sound; staunch and strong; as a vessel. *Townsh.Pl.* 227.

**FORTLETT.** A place or port of some strength; a little fort. *Old Nat. Brev.* 45.



**FORTUIT.** In French law, accidental; fortuitous. *Cas fortuit*, a fortuitous event. *Fortuitement*, accidentally; by chance; casually.

**FORTUITOUS.** Happening by chance or accident. *Kermari v. Insurance Co. of North America*, 142 Misc. 542, 255 N.Y.S. 687, 689. Occurring unexpectedly, or without known cause. *Stanton v. Minneapolis St. Ry. Co.*, 195 Minn. 457, 263 N.W. 433, 434. Accidental; undesigned; adventitious. Resulting from unavoidable physical causes. *Zappala v. Industrial Ins. Commission*, 82 Wash. 314, 144 P. 54, L.R.A.1916A, 295.

**FORTUITOUS COLLISION.** In maritime law, the accidental running foul of vessels. *Peters v. Warren Ins. Co.*, 14 Pet. 112, 10 L.Ed. 371.

**FORTUITOUS EVENT.** In the civil law, that which happens by a cause which cannot be resisted. An unforeseen occurrence, not caused by either of the parties, nor such as they could prevent.

In French it is called "*cas fortuit*." Civ. Code La. art. 3556, no. 15.

There is a difference between a fortuitous event, or inevitable accident, and irresistible force. By the former, commonly called the "act of God," is meant any accident produced by physical causes which are irresistible; such as a loss by lightning or storms, by the perils of the seas, by inundations and earthquakes, or by sudden death or illness. By the latter is meant such an interposition of human agency as is, from its nature and power, absolutely uncontrollable. Of this nature are losses occasioned by the inroads of a hostile army, or by public enemies. *Story*, *Bailm.* § 25. In Workmen's Compensation Acts fortuitous event is accidental happening, or accident that takes place without design or expectation, or thing that happens from irresistible cause. The term is expressly defined in several acts. *Stolp v. Department of Labor and Industries*, 138 Wash. 685, 245 P. 20, 21; *Sertz v. Industrial Insurance Commission of Washington*, 91 Wash. 588, 158 P. 256, 259, *Ann.Cas.*1918B, 354; *Zappala v. Industrial Ins. Commission*, 82 Wash. 314, 144 P. 54, L.R.A.1916A, 295.

**FORTUNA.** Lat. Fortune; also treasure-trove. *Jacob*.

**FORTUNAM FACIUNT JUDICEM.** They make fortune the judge. *Co. Litt.* 167. Spoken of the process of making partition among coparceners by drawing lots for the several purparts.

**FORTUNE TELLER.** One who professes to tell future events in the life of another. *People v. Plaskett*, 171 Misc. 563, 13 N.Y.S.2d 682, 684.

In English law, persons pretending or professing to tell fortunes, and punishable as rogues and vagabonds or disorderly persons. 4 Bl.Comm. 62.

**FORTUNIUM.** In old English law, a tournament or fighting with spears, and an appeal to fortune therein.

**FORTY.** In land laws and conveyancing, in those regions where grants, transfers, and deeds are made with reference to the subdivisions of the government survey, this term means forty acres of land in the form of a square, being the tract obtained by quartering a section of land (640 acres) and again quartering one of the quarters. *Lente v. Clarke*, 22 Fla. 515, 1 So. 149.

**FORTY-DAYS COURT.** In old English forest law, the court of attachment in forests, or woodmote court.

**FORUM.** Lat. A court of justice, or judicial tribunal; a place of jurisdiction; a place of litigation. 3 *Story*, 347. Place where remedy is pursued. *Rubin v. Gallagher*, 294 Mich. 124, 292 N.W. 584, 586.

In Roman law, the market place, or public paved court, in the city of Rome, where such public business was transacted as the assemblies of the people and the judicial trial of causes, and where also elections, markets, and the public exchange were held.

**FORUM ACTUS.** The forum of the act. The forum of the place where the act was done which is now called in question.

**FORUM BOVARIUM.** See *Bovarius*.

**FORUM CONSCIENTIÆ.** The forum or tribunal of conscience.

**FORUM CONTENTIOSUM.** A contentious forum or court; a place of litigation; the ordinary court of justice, as distinguished from the tribunal of conscience. 3 Bl.Comm. 211.

**FORUM CONTRACTUS.** The forum of the contract; the court of the place where a contract is made; the place where a contract is made, considered as a place of jurisdiction. 2 *Kent*, *Comm.* 463.

**FORUM CONVENIENS.** Place where testamentary trustee may be reached by process. In re *Knox' Estate*, 52 Cal.App.2d 338, 126 P.2d 108, 113.

**FORUM DOMESTICUM.** A domestic forum or tribunal. The visitatorial power is called a "*forum domesticum*," calculated to determine, *sine strepitu*, all disputes that arise within themselves. 1 W.Bl. 82.

**FORUM DOMICILII.** The forum or court of the domicile; the domicile of a defendant, considered as a place of jurisdiction. 2 *Kent*, *Comm.* 463.

**FORUM ECCLESIASTICUM.** An ecclesiastical court. The spiritual jurisdiction, as distinguished from the secular.

**FORUM LIGEANTIÆ REI.** The forum of defendant's allegiance. The court or jurisdiction of the country to which he owes allegiance.

**FORUM NON CONVENIENS.** The doctrine is patterned upon the right of the court in the exercise of its equitable powers to refuse the imposition upon its jurisdiction of the trial of cases even though the venue is properly laid if it appears that for the convenience of litigants and witnesses and in the interest of justice the action should be instituted in another forum where the action might have been brought. *Hayes v. Chicago, R. I. & P. R. Co.*, D.C.Minn., 79 F.Supp. 821, 824. The doctrine presupposes at least two forums in which the defendant is amenable to process and fur-

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nishes criteria for choice between such forums. *Wilson v. Seas Shipping Co.*, D.C.Pa., 78 F.Supp. 464, 465; *Neal v. Pennsylvania R. Co.*, D.C.N.Y., 77 F.Supp. 423, 424. The application of the doctrine rests in the sound discretion of the court and the factors to be considered in the doctrine are the private interests of the litigant and the interest of the public. *Cullinan v. New York Cent. R. Co.*, D.C.N.Y., 83 F.Supp. 870, 871. And a court, either state or federal, will generally decline to interfere with or control by injunction or otherwise the management of internal affairs of a corporation organized under the laws of another state, leaving controversies as to such matters to courts of state of domicile. *Garrett v. Phillips Petroleum Co.*, Tex.Civ.App., 218 S.W.2d 238, 240; *Murray v. Union Pac. R. Co.*, D.C.Ill., 77 F.Supp. 219; *Kelley v. American Sugar Refining Co.*, C.C.A.Mass., 139 F.2d 76; *Tiuoli Realty v. Interstate Circuit*, C.C.A. Tex., 167 F.2d 155; *Rogers v. Guaranty Trust Co.*, 288 U.S. 123, 53 S.Ct. 295, 77 L.Ed. 652, 89 A.L.R. 720.

The rule is an equitable one embracing the discretionary power of a court to decline to exercise jurisdiction which it has over a transitory cause of action when it believes that the action may be more appropriately and justly tried elsewhere. *Leet v. Union Pac. R. Co.*, 155 P.2d 42, 44, 25 Cal.2d 605.

In determining whether doctrine should be applied, court should consider relative ease of access to sources of proof, availability of compulsory process for attendance of unwilling witnesses, cost of obtaining attendance of willing witnesses, possibility of view of premises, and all other practical problems that make trial easy, expeditious and inexpensive. *Di Lella v. Lehigh Val. R. Co.*, D.C.N.Y., 7 F.R.D. 192, 193.

**FORUM ORIGINIS.** The court of one's nativity. The place of a person's birth, considered as a place of jurisdiction.

**FORUM REGIUM.** The king's court. St. Westm. 2; c. 43.

**FORUM REI.** This term may mean either (1) the forum of the defendant, that is, of his residence or domicile; or (2) the forum of the *res* or thing in controversy, that is, of the place where the property is situated. The ambiguity springs from the fact that *rei* may be the genitive of either *reus* or *res*.

**FORUM REI GESTÆ.** The forum or court of a *res gesta* (thing done;) the place where an act is done, considered as a place of jurisdiction and remedy. 2 Kent, Comm. 463.

**FORUM REI SITÆ.** The court where the thing in controversy is situated. The place where the subject-matter in controversy is situated, considered as a place of jurisdiction. 2 Kent, Comm. 463.

**FORUM SECLARE.** A secular, as distinguished from an ecclesiastical or spiritual, court.

**FORURTH.** In old records, a long slip of ground. Cowell.

**FORWARD.** To send forward; to send toward the place of destination; to transmit. *Nicoletti v. Bank of Los Banos*, 190 Cal. 637, 214 P. 51, 52,

27 A.L.R. 1479; *Katcher v. American Express Co.*, 94 N.J.L. 165, 109 A. 741, 742.

### **FORWARDING MERCHANT, or FORWARDER.**

One who receives and forwards goods, taking upon himself the expenses of transportation, for which he receives a compensation from the owners, having no concern in the vessels or wagons by which they are transported, and no interest in the freight, and not being deemed a common carrier, but a mere warehouseman and agent. *Story*, Bailm. §§ 502, 509. *Schloss v. Wood*, 11 Colo. 287, 17 P. 910; *Bush v. Miller*, 13 Barb. N.Y. 488.

**FOSSA.** In the Civil law, a ditch; a receptacle of water, made by hand. Dig. 43, 14, 1, 5.

In Old English law, a ditch. A pit full of water, in which women committing felony were drowned. A grave or sepulcher. *Spelman*.

**FOSSAGIUM.** In old English law, the duty levied on the inhabitants for repairing the moat or ditch round a fortified town.

**FOSSATORUM OPERATIO.** In old English law, fosse-work; or the service of laboring, done by inhabitants and adjoining tenants, for the repair and maintenance of the ditches round a city or town, for which some paid a contribution, called "*fossagium*." *Cowell*.

**FOSSATUM.** A dyke, ditch, or trench; a place inclosed by a ditch; a moat; a canal.

**FOSSE-WAY, or FOSSE.** One of the four ancient Roman ways through England. *Spelman*.

**FOSSELLUM.** A small ditch. *Cowell*.

**FOSTER PARENT.** One who has performed the duties of a parent to the child of another by rearing the child as his own child; "foster child." In *re Norman's Estate*, 209 Minn. 19, 295 N.W. 63, 66.

**FOSTERAGE.** Care of a foster child, brother, sister, parent, etc.—one considered as holding the relationship indicated in consequence of nursing and rearing, though not related by blood. In *re Norman's Estate*, 295 N.W. 63, 66, 209 Minn. 19.

**FOSTERING.** A ancient custom in Ireland, in which persons put away their children to fosterers. Fostering was held to be a stronger alliance than blood, and the foster children participated in the fortunes of their foster fathers. *Mozley & Whitley*.

**FOSTERLAND.** Land given, assigned, or allotted to the finding of food or victuals for any person or persons; as in monasteries for the monks, etc. *Cowell*; *Blount*.

**FOSTERLEAN.** The remuneration fixed for the rearing of a foster child; also the jointure of a wife. *Jacob*.

**FOUJDAR.** In Hindu law, under the Mogul government a magistrate of the police over a large district, who took cognizance of all criminal mat-

ters within his jurisdiction, and sometimes was employed as receiver general of the revenues. Wharton.

**FOUJDARRY COURT.** In Hindu law, a tribunal for administering criminal law.

**FOUND.** A person is said to be found within a state when actually present therein. Patient removed to a sanitarium in county was "found" in county. In re Cash, 383 Ill. 409, 50 N.E.2d 487, 490. But only if a person is in a place voluntarily and not by reason of plaintiff's fraud, artifice, or trick for purpose of obtaining service. Shields v. Shields, 115 Mont. 140, 139 P.2d 528, 530, 531. It does not necessarily mean physical presence: defendant who, after removal of action for breach of contract to federal court, entered general appearance, defended on the merits, and filed counterclaim, was "found" in the district. Freeman v. Bee Mach. Co., Mass., 319 U.S. 448, 63 S.Ct. 1146, 1149, 87 L.Ed. 1509.

As applied to a corporation it is necessary that it be doing business in such state through an officer or agent or by statutory authority in such manner as to render it liable then to suit and to constructive or substituted service of process. Romaine v. Ins. Co., C.C.Tenn., 55 F. 751; Venner v. Pennsylvania Steel Co. of New Jersey, D.C.N.J., 250 F. 292, 295; Haskell v. Aluminum Co. of America, D.C.Mass., 14 F.2d 864, 867. And to such an extent that actual presence is established. Westor Theatres v. Warner Bros. Pictures, D.C.N.J., 41 F.Supp. 757, 760.

**FOUNDATION.** The founding or building of a college or hospital. The incorporation or endowment of a college or hospital is the foundation; and he who endows it with land or other property is the founder. Dartmouth College v. Woodward, 4 Wheat. 667, 4 L.Ed. 629; Seagrave's Appeal, 125 Pa. 362, 17 A. 412; Union Baptist Ass'n v. Hunn, 7 Tex.Civ.App. 249, 26 S.W. 755.

**FOUNDED.** Based upon; arising from, growing out of, or resting upon; as in the expressions "founded in fraud," "founded on a consideration," "founded on contract," and the like. In re Grant Shoe Co., C.C.A.N.Y., 130 F. 881, 66 C.C.A. 78; Palmer v. Preston, 45 Vt. 158, 12 Am.Rep. 191; Steele v. Hoe, 14 Adol. & El. 431; In re Morales, D.C.Fla., 105 F. 761.

**FOUNDED ON.** To serve as a base or basis for. Keen v. Mid-Continent Petroleum Corp., D.C.Iowa, 58 F.Supp. 915, 922.

**FOUNDER.** The person who endows an eleemosynary corporation or institution, or supplies the funds for its establishment. See Foundation.

**FOUNDERS' SHARES.** In English Company Law, shares issued to the founders of (or vendors to) a public company as a part of the consideration for the business, or concession, etc., taken over, and not forming a part of, the ordinary capital. As a rule, such shares only participate in profits after the payment of a fixed minimum dividend on paid-up capital. Encyc. Dict.

**FOUNDEROSA.** Founderos; out of repair, as a road. Cro. Car. 366.

**FOUNDLING.** A deserted or exposed infant; a child found without a parent or guardian, its relatives being unknown. It has a settlement in the district where found. State ex rel. Wilson v. Pierre, 155 La. 510, 99 So. 421.

**FOUNDLING HOSPITALS.** Charitable institutions which exist in most countries for taking care of infants forsaken by their parents, such being generally the offspring of illegal connections. The foundling hospital act in England is the 13 Geo. II. c. 29.

**FOUR.** Fr. In old French law, an oven or bakehouse. *Four banal*, an oven, owned by the seignior of the estate, to which the tenants were obliged to bring their bread for baking. Also the proprietary right to maintain such an oven.

**FOUR CORNERS.** The face of a written instrument.

That which is contained on the face of a deed (without any aid from the knowledge of the circumstances under which it is made) is said to be within its four corners, because every deed is still supposed to be written on one entire skin, and so to have but four corners.

To look at the *four corners* of an instrument is to examine the whole of it, so as to construe it as a whole, without reference to any one part more than another. 2 Smith, Lead.Cas. 295.

**FOUR SEAS.** The seas surrounding England. These were divided into the Western, including the Scotch and Irish; the Northern, or North sea; the Eastern, being the German ocean; the Southern, being the British channel.

**FOURCHER.** Fr. To fork. This was a method of delaying an action anciently resorted to by defendants when two of them were joined in the suit. Instead of appearing together, each would appear in turn and cast an *essoin* for the other, thus postponing the trial.

**FOURIERISM.** A form of socialism. See 1 Mill, Pol. Ec. 260.

**FOURTEENTH AMENDMENT.** The Fourteenth Amendment of the constitution of the United States.

It became a part of the organic law July 28, 1868, and its importance entitles it to special mention. It creates or at least recognizes for the first time a citizenship of the United States, as distinct from that of the states; forbids the making or enforcement by any state of any law abridging the privileges and immunities of citizens of the United States; and secures all "persons" against any state action which is either deprivation of life, liberty, or property without due process of law or denial of the equal protection of the laws.

**FOWLS OF WARREN.** Such fowls as are preserved under the game laws in warrens. According to Manwood, these are partridges and pheasants. According to Coke, they are partridges, rails, quails, woodcocks, pheasants, mallards, and herons. Co. Litt. 233.

**FOX'S LIBEL ACT.** In English law, this was the statute 52 Geo. III. c. 60, which secured to juries,

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upon the trial of indictments for libel, the right of pronouncing a general verdict of guilty or not guilty upon the whole matter in issue, and no longer bound them to find a verdict of guilty on proof of the publication of the paper charged to be a libel, and of the sense ascribed to it in the indictment. Wharton.

**FOY.** L. Fr. Faith; allegiance; fidelity.

**FR.** A Latin abbreviation for "fragmentum," a fragment, used in citations to the Digest or Pandects in the *Corpus Juris Civilis* of Justinian, the several extracts from juristic writings of which it is composed being so called.

**FRACTIO.** Lat. A breaking; division; fraction; a portion of a thing less than the whole.

**FRACTION.** A breaking, or breaking up; a fragment or broken part; a portion of a thing, less than the whole. *Jory v. Palace Dry Goods Co.*, 30 Or. 196, 46 P. 786.

**FRACTION OF A DAY.** A portion of a day. The dividing a day. Generally, the law does not allow the fraction of a day. 2 Bl.Comm. 141.

**FRACTIONAL.** As applied to tracts of land, particularly townships, sections, quarter sections, and other divisions according to the government survey, and also mining claims, this term means that the exterior boundary lines are laid down to include the whole of such a division or such a claim, but that the tract in question does not measure up to the full extent or include the whole acreage, because a portion of it is cut off by an overlapping survey, a river or lake, or some other external interference. *Tolleston Club v. State*, 38 N.E. 214, 141 Ind. 197; *Parke v. Meyer*, 28 Ark. 287; *Goltermann v. Schiermeyer*, 111 Mo. 404, 19 S.W. 487. Any irregular division whether containing more or less than conventional amount of acreage. *Graysonia-Nashville Lumber Co. v. Wright*, 117 Ark. 151, 175 S.W. 405; *South Florida Farms Co. v. Goodno*, 84 Fla. 532, 94 So. 672, 675.

**FRACTIONEM DIEI NON RECIPIT LEX.** I. offit, 572. The law does not take notice of a portion of a day.

**FRACTITIUM.** Arable land. Mon. Angl.

**FRACTURA NAVIUM.** Lat. The breaking or wreck of ships; the same as *nafragium*, (q. v.)

**FRAGMENTA.** Lat. Fragments. A name sometimes applied (especially in citations) to the Digest or Pandects in the *Corpus Juris Civilis* of Justinian, as being made up of numerous extracts or "fragments" from the writings of various jurists. Mackeld. Rom. Law, § 74.

**FRAIS.** Fr. Expense; charges; costs. *Frais d'un procès*, costs of a suit.

**FRAIS DE JUSTICE.** In French and Canadian law, costs incurred incidentally to the action.

**FRAIS JUSQU'À BORD.** Fr. In French commercial law, expenses to the board; expenses incurred

on a shipment of goods, in packing, cartage, commissions, etc., up to the point where they are actually put on board the vessel. *Bartels v. Redfield*, C.C.N.Y., 16 F. 336.

**FRAME-UP.** Conspiracy or plot, especially for evil purpose, as to incriminate person on false evidence. *State v. Bissell*, 106 Vt. 80, 170 A. 102, 108.

**FRAMED.** When used to describe evidence, word is generally accepted as implying that willful perjurers, suborned by and conspiring with parties in interest to litigation, are swearing or have sworn to matters without any basis in fact. *Tri-State Transit Co. of Louisiana v. Westbrook*, 207 Ark. 270, 180 S.W.2d 121, 125.

**FRANC.** A French coin of the value of a little over eighteen cents. *Levy v. Cleveland, C., C. & St. L. Ry. Co.*, 210 App.Div. 422, 206 N.Y.S. 261, 262.

**FRANC ALEU.** In French feudal law, an allod; a free inheritance; or an estate held free of any services except such as were due to the sovereign.

**FRANC TENANCIER.** In French law, a freeholder.

**FRANCHILANUS.** A freeman. Chart. Hen. IV. A free tenant. Spelman.

**FRANCHISE.** A special privilege conferred by government on individual or corporation, and which does not belong to citizens of country generally of common right. *Elliott v. City of Eugene*, 135 Or. 108, 294 P. 358, 360. In England it is defined to be a royal privilege in the hands of a subject.

A "franchise," as used by Blackstone in defining quo warranto, (3 Com. 262 [4th Am. Ed.] 322), had reference to a royal privilege or branch of the king's prerogative subsisting in the hands of the subject, and must arise from the king's grant, or be held by prescription, but today we understand a franchise to be some special privilege conferred by government on an individual, natural or artificial, which is not enjoyed by its citizens in general. *State v. Fernandez*, 106 Fla. 779, 143 So. 638, 639, 86 A.L.R. 240.

In this country a franchise is a privilege or immunity of a public nature, which cannot be legally exercised without legislative grant. To be a corporation is a franchise. The various powers conferred on corporations are franchises. The execution of a policy of insurance by an insurance company, and the issuing a bank-note by an incorporated bank, are franchises. *People v. Utica Ins. Co.*, 15 Johns., N.Y., 387, 8 Am.Dec. 243. But it does not embrace the property acquired by the exercise of the franchise. *Bridgeport v. New York & N. H. R. Co.*, 36 Conn. 255, 4 Am.Rep. 63. Nor involve interest in land acquired by grantee. *Whitbeck v. Funk*, 140 Or. 70, 12 P.2d 1019, 1020. In a popular sense, the political rights of subjects and citizens are franchises, such as the right of suffrage, etc. *Pierce v. Emery*, 32 N.H. 484; *State v. Black Diamond Co.*, 97 Ohio St. 24, 119 N.E. 195, 199, L.R.A.1918E, 352.

**Elective Franchise.** The right of suffrage; the right or privilege of voting in public elections.

**Exclusive Franchise.** See Exclusive Privilege or Franchise.

**General and Special.** The charter of a corporation is its "general" franchise, while a "special" franchise consists in any rights granted by the public to use property for a public use but with private profit. *Lord v. Equitable Life Assur. Soc.*, 194 N.Y. 212, 87 N.E. 443, 22 L.R.A., N.S., 420.

**Personal Franchise.** A franchise of corporate existence, or one which authorizes the formation and existence of a

corporation, is sometimes called a "personal" franchise, as distinguished from a "property" franchise, which authorizes a corporation so formed to apply its property to some particular enterprise or exercise some special privilege in its employment, as, for example, to construct and operate a railroad. See *Sandham v. Nye*, 9 Misc.Rep. 541, 30 N.Y.S. 552.

**Secondary Franchises.** The franchise of corporate existence being sometimes called the "primary" franchise of a corporation, its "secondary" franchises are the special and peculiar rights, privileges, or grants which it may receive under its charter or from a municipal corporation, such as the right to use the public streets, exact tolls, collect fares, etc. *State v. Topeka Water Co.*, 61 Kan. 547, 60 P. 337; *Virginia Canon Toll Road Co. v. People*, 22 Colo. 429, 45 P. 398, 37 L.R.A. 711. The franchises of a corporation are divisible into (1) corporate or general franchises; and (2) "special or secondary franchises." The former is the franchise to exist as a corporation, while the latter are certain rights and privileges conferred upon existing corporations. *Gulf Refining Co. v. Cleveland Trust Co.*, 166 Miss. 759, 108 So. 158, 160.

**Special Franchises.** See *Secondary Franchises, supra*.

**FRANCHISE TAX.** A tax on the franchise of a corporation, that is, on the right and privilege of carrying on business in the character of a corporation, for the purposes for which it was created, and in the conditions which surround it. In re *Commercial Safe Deposit Co. of Buffalo*, 148 Misc. 527, 266 N.Y.S. 626.

Though the value of the franchise, for purposes of taxation, may be measured by the amount of business done, or the amount of earnings or dividends, or by the total value of the capital or stock of the corporation in excess of its tangible assets, a franchise tax is not a tax on either property, capital, stock, earnings, or dividends. *Home Ins. Co. v. New York*, 134 U.S. 594, 10 S.Ct. 593, 33 L.Ed. 1025; *Worth v. Petersburg R. Co.*, 89 N.C. 305; *People v. Knight*, 174 N.Y. 475, 67 N.E. 65, 63 L.R.A. 87; *Greene v. Louisville & I. R. Co.*, 244 U.S. 499, 37 S.Ct. 673, 678, 61 L.Ed. 1280, Ann.Cas.1917E, 88; *American Refining Co. v. Staples*, Tex.Com.App., 269 S.W. 420, 421. Nor a tax on franchise in technical sense, but on all intangible property of such a corporation, not otherwise taxed, used in state as component part of corporation's entire system. *Western Union Telegraph Co. v. Weaver*, D.C.Neb., 5 F.Supp. 493, 497.

It is tax on intangible values inhering to business and added value given to tangible property, being "ad valorem" as distinguished from "excise" or "privilege" tax. *State Tax Commission v. Petroleum Exploration*, 253 Ky. 119, 68 S.W.2d 777.

**FRANCIA.** France. Bract. fol. 427b.

**FRANCIGENA.** A man born in France. A designation formerly given to aliens in England.

See *Frenchman*.

**FRANCUS.** L. Lat. Free; a freeman; a Frank. Spelman.

**FRANCUS BANCUS.** Free bench (*q. v.*).

**FRANCUS HOMO.** In old European law. A free man. Domesday.

**FRANCUS PLEGIUS.** In old English law, a frank pledge, or free pledge. See *Frank-Pledge*.

**FRANCUS TENENS.** A freeholder. See *Frank-Tenement*.

**FRANK, v.** To send matter through the public mails free of postage, by a personal or official privilege.

**FRANK, adj.** In old English law, free. Occurring in several compounds.

**FRANK-ALMOIGNE.** In English law, free alms. A spiritual tenure whereby religious corporations, aggregate or sole, held lands of the donor to them and their successors forever.

They were discharged of all other except religious services, and the *trinoda necessitas*. It differs from tenure by divine service, in that the latter required the performance of certain divine services, whereas the former, as its name imports, is free. This tenure is expressly excepted in the 12 Car. II. c. 24, § 7, and therefore still subsists in some few instances. 2 *Broom & H. Comm.* 203.

**FRANK BANK.** In old English law, free bench. Litt. § 166; Co. Litt. 110b. See *Free-Bench*.

**FRANK-CHASE.** A liberty of free chase enjoyed by any one, whereby all other persons having ground within that compass are forbidden to cut down wood, etc., even in their own demesnes, to the prejudice of the owner of the liberty. *Cowell*. See *Chase*.

**FRANK-FEE.** Freehold lands exempted from all services, but not from homage; lands held otherwise than in ancient demesne. That which a man holds to himself and his heirs, and not by such service as is required in ancient demesne, according to the custom of the manor. *Cowell*.

**FRANK FERM.** In English law, a species of estate held in socage, said by Britton to be "lands and tenements whereof the nature of the fee is changed by feoffment out of chivalry for certain yearly services, and in respect whereof neither homage, ward, marriage, nor relief can be demanded." *Britt. c. 66*; 2 *Bl.Comm.* 80.

**FRANK-FOLD.** In old English law, free-fold; a privilege for the lord to have all the sheep of his tenants and the inhabitants within his seignory, in his fold, in his demesnes, to manure his land. *Keilw.* 198.

**FRANK-LAW.** An obsolete expression signifying the rights and privileges of a citizen, or the liberties and civic rights of a freeman.

**FRANK-MARRIAGE.** A species of entailed estates, in English law, now grown out of use, but still capable of subsisting.

When tenements are given by one to another, together with a wife, who is a daughter or cousin of the donor, to hold in frank-marriage, the donees shall have the tenements to them and the heirs of their two bodies begotten, *i. e.*, in special tail. For the word "frank-marriage," *ex vi termini*, both creates and limits an inheritance, not only supplying words of descent, but also terms of procreation. The donees are liable to no service except fealty, and a reserved rent would be void, until the fourth degree of consanguinity be passed between the issues of the donor and donee, when they were capable by the law of the church of intermarrying. Litt. § 19; 2 *Bl.Comm.* 115.

**FRANK-PLEDGE.** In old English law, a pledge or surety for freemen; that is, the pledge, or corporate responsibility, of all the inhabitants of a tithing for the general good behavior of each free-born citizen above the age of fourteen, and for his being forthcoming to answer any infraction of the law. *Termes de la Ley*; *Cowell*.

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**FRANK-TENANT.** A freeholder. Litt. § 91.

**FRANK-TENEMENT.** In English law, a free tenement, freeholding, or freehold. 2 Bl.Comm. 61, 62, 104; 1 Steph.Comm. 217; Bract. fol. 207. Used to denote both the tenure and the estate.

**FRANKING PRIVILEGE.** The privilege of sending certain matter through the public mails without payment of postage, in pursuance of a personal or official privilege.

**FRANKLEYN** (spelled, also, "Francling" and "Franklin"). A freeman; a freeholder; a gentleman. Blount; Cowell.

**FRASSETUM.** In old English law, a wood or wood-ground where ash-trees grow. Co. Litt. 4b.

**FRATER.** In the civil law, a brother. *Frater consanguineus*, a brother having the same father, but born of a different mother. *Frater uterinus*, a brother born of the same mother, but by a different father. *Frater nutricius*, a bastard brother.

**FRATER FRATRI UTERINO NON SUCCEDET IN HÆREDITATE PATERNA.** A brother shall not succeed a uterine brother in the paternal inheritance. 2 Bl.Comm. 223; Fortes. de Laud. c. 5. A maxim of the common law of England, now superseded by the statute 3 & 4 Wm. IV. c. 106, § 9. See Broom, Max. 530.

**FRATERIA.** In old records, a fraternity, brotherhood, or society of religious persons, who were mutually bound to pray for the good health and life, etc., of their living brethren, and the souls of those that were dead. Cowell.

**FRATERNAL.** Brotherly; relating or belonging to a fraternity or an association of persons formed for mutual aid and benefit, but not for profit. In re Mason Tire & Rubber Co., 56 App.D.C. 170, 11 F. 2d 556, 557.

**FRATERNAL BENEFIT ASSOCIATION.** One whose members have adopted the same, or a very similar, calling, avocation, or profession, or who are working in unison to accomplish some worthy object, and who for that reason have banded themselves together as an association or society to aid and assist one another, and to promote the common cause. Alpha Rho Alumni Ass'n v. City of New Brunswick, 126 N.J.L. 233, 18 A.2d 68, 70. An association having a representative form of government and a lodge system with a ritualistic form of work for the meeting of its chapters, or other subordinate bodies. Fain v. Feldman, 191 Ga. 519, 13 S.E.2d 179, 181. A society or voluntary association organized and carried on for the mutual aid and benefit of its members, not for profit; which ordinarily has a lodge system, a ritualistic form of work, and a representative government, makes provision for the payment of death benefits, and (sometimes) for benefits in case of accident, sickness, or old age, the funds therefor being derived from dues paid or assessments levied on the members. National Union v. Marlow, Mo., 74 F. 778, 21 C.C.A. 89; Walker v. Giddings, 103 Mich. 344, 61 N.W. 512.

**FRATERNAL INSURANCE.** The form of life (or accident) insurance furnished by a fraternal beneficial association, consisting in the payment to a member, or his heirs in case of death, of a stipulated sum of money, out of funds raised for that purpose by the payment of dues or assessments by all the members of the association.

**FRATERNIA.** A fraternity or brotherhood.

**FRATERNITY.** A body of men associated for their common interest, business or pleasure. Woman's Club of Little Falls v. Township of Little Falls, 20 N.J.Misc. 278, 26 A.2d 739, 741; Alpha Rho Alumni Ass'n v. City of New Brunswick, 126 N.J.L. 233, 18 A.2d 68, 71. Organizations composed of either or both sexes. State v. Allen, 189 Ind. 369, 127 N.E. 145, 146. Brotherly regard and sympathy for others. Donnelly v. Sovereign Camp W. O. W., 111 Neb. 499, 197 N.W. 125, 127.

In American colleges, a student organization, either a nationally chartered society comprising many affiliated chapters or a single chapter in one institution formed chiefly to promote friendship and welfare among the members, and usually having secret rites and a name consisting of Greek letters. Woman's Club of Little Falls v. Township of Little Falls, 20 N.J.Misc. 278, 26 A.2d 739, 741; Alpha Rho Alumni Ass'n v. City of New Brunswick, 126 N.J.L. 233, 18 A.2d 68, 71.

In old English law, "some people of a place united together in respect to a mystery or business into a company, and their laws and ordinances cannot bind strangers." Cuddon v. Eastwick, 1 Salk. 192.

**FRATRES CONJURATI.** Sworn brothers or companions for the defense of their sovereign, or for other purposes. Hoved. 445.

**FRATRES PYES.** In old English law, certain friars who wore white and black garments. Walsingham, 124.

**FRATRIAGE.** A younger brother's inheritance.

**FRATRICIDE.** One who has killed a brother or sister; also the killing of a brother or sister.

**FRAUD.** An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right; a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Brainerd Dispatch Newspaper Co. v. Crow Wing County, 196 Minn. 194, 264 N.W. 779, 780. Any kind of artifice employed by one person to deceive another. Goldstein v. Equitable Life Assur. Soc. of U. S., 160 Misc. 364, 289 N.Y.S. 1064, 1067. A generic term, embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated. Johnson v. McDonald, 170 Okl. 117, 39 P.2d 150. "Bad faith" and "fraud" are synonymous, and also synonyms of dishonesty, infidelity, faithlessness, perfidy, unfair-

ness, etc. *Joiner v. Joiner*, Tex.Civ.App., 87 S.W. 2d 903, 914, 915.

It consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. *Maier v. Hibernia Ins. Co.*, 67 N.Y. 292; *Alexander v. Church*, 53 Conn. 561, 4 A. 103; *Studer v. Bleistein*, 115 N.Y. 316, 22 N.E. 243, 7 L.R.A. 702; *McNair v. Southern States Finance Co.*, 191 N.C. 710, 133 S.E. 85, 88. It comprises all acts, omissions, and concealments involving a breach of a legal or equitable duty and resulting in damage to another. *Coppo v. Coppo*, 163 Misc. 249, 297 N.Y.S. 744, 750. And includes anything calculated to deceive, whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or by silence, by word of mouth, or by look or gesture. *People v. Gilmore*, 345 Ill. 28, 177 N.E. 710, 717. Fraud, as applied to contracts, is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. Civil Code La. art. 1847. *Strauss v. Insurance Co. of North America*, 157 La. 661, 102 So. 861, 865; *Jesse French Plano & Organ Co. v. Gibbon*, Tex.Civ.App., 180 S.W. 1185, 1187.

Fraud, in the sense of a court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another. 1 Story, Eq.Jur. § 187; *Howard v. West Jersey & S. S. R. Co.*, 102 N.J.Eq. 517, 141 A. 755, 757.

Fraud is either *actual* or *constructive*. Actual fraud consists in deceit, artifice, trick, design, some direct and active operation of the mind; it includes cases of the intentional and successful employment of any cunning, deception, or artifice used to circumvent or cheat another; it is something said, done, or omitted by a person with the design of perpetrating what he knows to be a cheat or deception. Constructive fraud consists in any act of commission or omission contrary to legal or equitable duty, trust, or confidence justly reposed, which is contrary to good conscience and operates to the injury of another. Or, as otherwise defined, it is an act, statement or omission which operates as a virtual fraud on an individual, or which, if generally permitted, would be prejudicial to the public welfare, and yet may have been unconnected with any selfish or evil design. Or, according to Story, constructive frauds are such acts or contracts as, though not originating in any actual evil design or contrivance to perpetrate a positive fraud or injury upon other persons, are yet, by their tendency to deceive or mislead other persons, or to violate private or public confidence, or to impair or injure the public interests, deemed equally reprehensible with actual fraud. 1 Story, Eq.Jur. § 258. Code Ga.1882, § 3173 (Civ.Code 1910, § 4622); *People v. Kelly*, 35 Barb., N.Y., 457; *Jackson v. Jackson*, 47 Ga. 99; *Massachusetts Ben. L. Ass'n v. Robinson*, 104 Ga. 256, 30 S.E. 918, 42 L.R.A. 261; *Allen v. United States Fidelity & Guaranty Co.*, 269 Ill. 234, 109 N.E. 1035, 1038.

Fraud is also classified as *fraud in fact* and *fraud in law*. The former is actual, positive, intentional fraud. Fraud disclosed by matters of fact, as distinguished from constructive fraud or fraud in law. *McKibbin v. Martin*, 64 Pa. 356, 3 Am.Rep. 588; *Cook v. Burnham*, 3 Kan.App. 27, 44 P. 447. Fraud in law is fraud in contemplation of law; fraud implied or inferred by law; fraud made out by construction of law, as distinguished from fraud found by a jury from matter of fact; constructive fraud (*q. v.*). See 2 Kent, Comm. 512-532; *Delaney v. Valentine*, 154 N.Y. 692, 49 N.E. 65; *Lovato v. Catron*, 20 N.M. 168, 148 P. 490, 492, L.R.A.1915E, 451; *Furst & Thomas v. Merritt*, 190 N.C. 397, 130 S.E. 40, 43.

Fraud is also said to be *legal* or *positive*. The former is fraud made out by legal construction or inference, or the same thing as constructive fraud. *Newell v. Wagness*, 1 N.D. 62, 44 N.W. 1014. Positive fraud is the same thing as actual fraud. *Douthitt v. Applegate*, 33 Kan. 395, 6 P. 575, 52 Am.Rep. 533; *Nocatee Fruit Co. v. Fosgate*, C.C.A. Fla., 12 F.2d 250, 252.

*Actionable fraud*. See Actionable.

*Extrinsic* or *collateral fraud* justifying equitable relief against a judgment or decree means some intentional act or conduct by which the prevailing party has prevented the unsuccessful party from having a fair submission of the controversy. *Farley v. Davis*, 10 Wash.2d 62, 116 P.2d 263, 268.

*Pious fraud* is a subterfuge or evasion considered morally justifiable on account of the ends sought to be promoted; particularly applied to an evasion or disregard of the laws in the interests of religion or religious institutions, such as circumventing the statutes of mortmain.

*Statute of Frauds*. This is the common designation of a very celebrated English statute, (29 Car. II. c. 3,) passed in 1677, and which has been adopted, in a more or less modified form, in nearly all of the United States. Its chief characteristic is the provision that no suit or action shall be maintained on certain classes of contracts or engagements unless there shall be a note or memorandum thereof in writing signed by the party to be charged or by his authorized agent. Its object was to close the door to the numerous frauds and perjuries. It is more fully named as the "statute of frauds and perjuries." *Smith v. Morton*, 70 Okl. 157, 173 P. 520, 521; *Housley v. Strawn Merchandise Co.*, Tex.Com.App., 291 S.W. 864, 867; *Norman v. Bullock County Bank*, 187 Ala. 33, 65 So. 371, 372; *Garber v. Goldstein*, 92 Conn. 226, 102 A. 605, 606.

**FRAUD IN TREATY.** Arises where a person is induced by some fraudulent representation or pretense to execute the very instrument intended to be executed but under a misrepresentation as to the contents thereof. *Meyers v. Murphy*, 181 Md. 98, 28 A.2d 861, 862.

**FRAUD ORDER.** A name given to orders issued by the postmaster general, under Rev.St. §§ 3929, 4041, 39 U.S.C.A. §§ 259, 732, for preventing the use of the mails as an agency for conducting schemes for obtaining money or property by means of false or fraudulent pretences, etc.

They are not restricted to schemes which lack all the elements of legitimate business, but the statute applies "when a business, even if otherwise legitimate, is systematically and designedly conducted upon the plan of inducing its patrons by means of false representations to part with their money in the belief that they are purchasing something different from, superior to, and worth more than, what is actually sold;" *Harris v. Rosenberger*, Mo., 145 F. 449, 16 C.C.A. 225, 13 L.R.A., N.S., 762.

The fraud order is issued to the postmaster of the office through which the person affected by it receives his mail. It forbids the postmaster to pay any postal money order to the specified person, and instructs the postmaster to return all letters to the senders if practicable, or if not, to the dead letter office, stamped in either case with the word "fraudulent." The method of testing the validity of the fraud order is to apply to the federal court for an injunction to restrain the postmaster from executing it. The decision of the postmaster-general is not the exercise of a judicial function; if he exceeds his jurisdiction, the party injured may have relief in equity; *Degge v. Hitchcock*, 229 U.S. 162, 33 S.Ct. 639, 57 L.Ed. 1135.

**FRAUDARE.** Lat. In the civil law, to deceive, cheat, or impose upon; to defraud.

**FRAUDULENT.** Based on fraud; proceeding from or characterized by fraud; tainted by fraud; done, made, or effected with a purpose or design to carry out a fraud. For "False and Fraudulent" and "False or Fraudulent Claim," see those titles.

**FRAUDULENT ALIENATION.** In a general sense, the transfer of property with an intent to defraud creditors, lienors, or others. In a particular sense, the act of an administrator who wastes

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the assets of the estate by giving them away or selling at a gross undervalue. *Rhame v. Lewis*, 13 Rich.Eq., S.C., 269.

**FRAUDULENT ALIENEE.** One who knowingly receives from an administrator assets of the estate under circumstances which make it a fraudulent alienation on the part of the administrator. *Rhame v. Lewis*, 13 Rich.Eq., S.C., 269.

**FRAUDULENT CONCEALMENT.** The hiding or suppression of a material fact or circumstance which the party is legally or morally bound to disclose. *Magee v. Insurance Co.*, 92 U.S. 93, 23 L.Ed. 699; *Small v. Graves*, 7 Barb., N.Y., 578.

The test of whether failure to disclose material facts constitutes fraud is the existence of a duty, legal or equitable, arising from the relation of the parties; failure to disclose a material fact with intent to mislead or defraud under such circumstances being equivalent to an actual "fraudulent concealment." *Newell Bros. v. Hanson*, 97 Vt. 297, 123 A. 208, 210.

Fraudulent concealment justifying a rescission of a contract is the intentional concealment of some fact known to the party charged, which is material for the party injured to know to prevent being defrauded; the concealment of a fact which one is bound to disclose being the equivalent of an indirect representation that such fact does not exist. *Long v. Martin*, Tex.Civ.App., 234 S.W. 91, 94.

To suspend running of limitations, it means employment of artifice, planned to prevent inquiry or escape investigation and mislead or hinder acquirement of information disclosing a right of action, and acts relied on must be of an affirmative character and fraudulent. *McNaughton v. Rockford State Bank*, 261 Mich. 265, 246 N.W. 84, 86.

**FRAUDULENT CONVERSION.** Receiving into possession money or property of another and fraudulently withholding, converting, or applying the same to or for one's own use and benefit, or to use and benefit of any person other than the one to whom the money or property belongs. *Commonwealth v. Mitchneck*, 130 Pa.Super. 433, 198 A. 463, 464.

**FRAUDULENT CONVEYANCE.** A conveyance or transfer of property, the object of which is to defraud a creditor, or hinder or delay him, or to put such property beyond his reach. *Seymour v. Wilson*, 14 N.Y. 569; *Lockyer v. De Hart*, 6 N.J.L. 458; *Surratt v. Eskridge*, 131 Va. 325, 108 S.E. 677, 679; *Dean v. Davis*, 242 U.S. 438, 37 S.Ct. 130, 61 L.Ed. 419. Conveyance made with intent to avoid some duty or debt due by or incumbent on person making transfer. *Farmers Elevator Co. v. Peck*, 134 Neb. 305, 278 N.W. 499, 501.

**FRAUDULENT CONVEYANCES, STATUTES OF, OR AGAINST.** The name given to two celebrated English statutes,—the statute 13 Eliz. c. 5, made perpetual by 29 Eliz. c. 5; and the statute 27 Eliz. c. 4, made perpetual by 29 Eliz. c. 18.

**FRAUDULENT OR DISHONEST ACT.** One which involves bad faith, a breach of honesty, a want of integrity, or moral turpitude. *Hartford Acc. & Indem. Co. v. Singer*, 185 Va. 620, 39 S.E. 2d 505, 507, 508.

**FRAUDULENT PREFERENCES.** In English law, every conveyance or transfer of property or charge thereon made, every judgment made, every

obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own moneys, in favor of any creditor, with a view of giving such creditor a preference over other creditors, shall be deemed fraudulent and void if the debtor become bankrupt within three months. 32 & 33 Vict. c. 71, § 92.

**FRAUDULENT REPRESENTATION.** A false statement as to material fact, made with intent that another rely thereon, which is believed by other party and on which he relies and by which he is induced to act and does act to his injury, and statement is fraudulent if speaker knows statement to be false or if it is made with utter disregard of its truth or falsity. *Osborne v. Simmons*, Mo.App., 23 S.W.2d 1102, 1104.

As basis for law action, establishment of representation, falsity, scienter, deception, and injury, is required. *Gray v. Shell Petroleum Corporation*, 212 Iowa, 825, 237 N.W. 460, 463.

But a promise made without intent, to perform constitutes "fraudulent representation," which generally affords ground for rescission. *Mitchell v. Mitchell*, 206 N.C. 546, 174 S.E. 447, 448.

**FRAUNC, FRAUNCHE, FRAUNKE.** See Frank.

**FRAUNCHISE.** L. Fr. A franchise.

**FRAUS.** Lat. Fraud. More commonly called, in the civil law, "*dolus*," and "*dolus malus*" (*q. v.*). A distinction, however, was sometimes made between "*fraus*" and "*dolus*," the former being held to be of the most extensive import. Calvin.

**FRAUS DANS LOCUM CONTRACTUI.** A misrepresentation or concealment of some fact that is material to the contract, and had the truth regarding which been known the contract would not have been made as made, is called a "*fraud dans locum contractui*;" *i. e.*, a fraud occasioning the contract, or giving place or occasion for the contract.

**FRAUS EST CELARE FRAUDEM.** It is a fraud to conceal a fraud. 1 Vern. 240; 1 Story, Eq. Jur. §§ 389, 390.

**FRAUS EST ODIOSA ET NON PRÆSUMENDA.** Fraud is odious, and not to be presumed. Crø. Car. 550.

**FRAUS ET DOLUS NEMINI PATROCINARI DEBENT.** Fraud and deceit should defend or excuse no man. 3 Coke, 78; *Fleta*, lib. 1, c. 13, § 15; *Id.* lib. 6, c. 6, § 5.

**FRAUS ET JUS NUNQUAM COHABITANT.** *Wing*. 680. Fraud and justice never dwell together.

**FRAUS LATET IN GENERALIBUS.** Fraud lies hid in general expressions.

**FRAUS LEGIS.** Lat. In the civil law, fraud of law; fraud upon law. See In Fraudem Legis.



**FRAUS MERETUR FRAUDEM.** Plowd. 100.  
Fraud merits fraud.

**FRAXINETUM.** In old English law, a wood of ashes; a place where ashes grow. Co. Litt. 4b; Shep. Touch. 95.

**FRAY.** See Affray.

**FRECTUM.** In old English law, freight. *Quoad frectum navium suarum*, as to the freight of his vessels. Blount.

**FREDNITE.** In old English law, a liberty to hold courts and take up the fines for beating and wounding. To be free from fines. Cowell.

**FREDSTOLE.** Sanctuaries; seats of peace.

**FREDUM.** A fine paid for obtaining pardon when the peace had been broken. Spelman; Blount. A sum paid the magistrate for protection against the right of revenge.

**FREDWIT, or FREDWITE.** A liberty to hold courts and take up the fines for beating and wounding. Jacob, Law Dict.

**FREE.** Not subject to legal constraint of another.

Unconstrained; having power to follow the dictates of his own will. Not subject to the dominion of another. Not compelled to involuntary servitude. Used in this sense as opposed to "slave."

Not bound to service for a fixed term of years; in distinction to being bound as an apprentice.

Enjoying full civic rights.

Available to all citizens alike without charge; as a free school.

Available for public use without charge or toll; as a free bridge.

Not despotic; assuring liberty; defending individual rights against encroachment by any person or class; instituted by a free people; said of governments, institutions, etc. Webster.

Certain, and also consistent with an honorable degree in life; as free services, in the feudal law.

Confined to the person possessing, instead of being shared with others; as a free fishery.

Not engaged in a war as belligerent or ally; neutral; as in the maxim, "Free ships make free goods."

**FREE ALMS.** The name of a species of tenure. See Frank-almoigne.

**FREE AND CLEAR** (and like phrases). The title to property is said to be "free and clear" when it is not incumbered by any liens; but it is said that an agreement to convey land "free and clear" is satisfied by a conveyance passing a good title. Meyer v. Madreperla, 68 N.J.L. 258, 53 A. 477, 96 Am.St.Rep. 536; Smith v. Toth, 61 Ind.App. 42, 111 N.E. 442, 444; Grisso v. Milsey, 104 Okl. 173, 230 P. 883, 889.

**FREE AND EQUAL.** As used in a constitutional provision that election shall be free and equal, the

word "free" means that every one entitled to vote should have a reasonable opportunity to do so, a reasonable manner of doing so, etc., and the word "equal" means that every vote cast should have its decisive effect in the selection or choice to be made at the election. McKinney v. Barker, 180 Ky. 526, 203 S.W. 303, 304, L.R.A.1918E, 581. The term means that the voter shall not be physically restrained in the exercise of his right of franchise, by either civil or military authority, and that every voter shall have the same right as every other voter. Asher v. Arnett, 280 Ky. 347, 132 S.W.2d 772, 775.

A "free and equal" election is one at which every person entitled to vote may do so if he desires, although it can hardly be said that, if only a few are prevented from voting, the election is not free and equal in the constitutional sense. Wallbrecht v. Ingram, 164 Ky. 463, 175 S.W. 1022, 1026.

It is the essence of free elections that the right of suffrage be untrammelled and unfettered, and that the ballot represent and express the electors' own intelligent judgment and conscience, and there can be no "free election" unless there is freedom of opinion. An election to be free must be without coercion of any description or any deterrent from the elector's exercise of his free will by means of any intimidation or influence whatever, although there is no violence or physical coercion. Neelley v. Farr, 61 Colo. 485, 158 P. 458, 467, Ann.Cas.1918A, 23.

**FREE-BENCH.** A widow's dower out of copyholds to which she is entitled by the custom of some manors. It is regarded as an excrescence growing out of the husband's interest, and is indeed a continuance of his estate. Wharton.

**FREE-BORD.** In old records, an allowance of land over and above a certain limit or boundary, as so much beyond or without a fence. Cowell; Blount. The right of claiming that quantity. Termes de la Ley.

**FREE BOROUGH MEN.** Such great men as did not engage, like the frank-pledge men, for their decennier. Jacob.

**FREE CHAPEL.** In English ecclesiastical law, a place of worship, so called because not liable to the visitation of the ordinary. It is always of royal foundation, or founded at least by private persons to whom the crown has granted the privilege. 1 Burn, Ecc. Law, 298.

**FREE COURSE.** In admiralty law, a vessel having the wind from a favorable quarter is said to sail on a "free course," or said to be "going free" when she has a fair (following) wind and her yards braced in. The Queen Elizabeth, D.C.N.Y., 100 F. 876.

**FREE ELECTION.** Where each voter is allowed to cast his ballot as his own conscience dictates. Moran v. Bowley, 347 Ill. 148, 179 N.E. 526, 531.

See Free and Equal, *supra*.

**FREE ENTERPRISE.** The right to conduct a legitimate business for profit. Lafayette Dramatic Productions v. Ferentz, 305 Mich. 193, 9 N.W.2d 57, 62, 145 A.L.R. 1158.

**FREE ENTRY, EGRESS, AND REGRESS.** An expression used to denote that a person has the

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right to go on land again and again as often as may be reasonably necessary. Thus, in the case of a tenant entitled to emblements.

**FREE FISHERY.** See Fishery.

**FREE ICE.** All ice in navigable streams not included within that authorized to be appropriated is sometimes called "free" ice, and does not belong to the adjacent riparian owners, but to the person who first appropriates it. *Hudson River Ice Co. v. Brady*, 158 App.Div. 142, 142 N.Y.S. 819, 821.

**FREE LAW.** A term formerly used in England to designate the freedom of civil rights enjoyed by freemen. It was liable to forfeiture on conviction of treason or an infamous crime. *McCafferty v. Guyer*, 59 Pa. 116.

**FREE LOVE.** Consorting with opposite sex at pleasure without marriage. *Robinson v. Casey*, Tex.Civ.App., 272 S.W. 536, 538.

**FREE MEN.** Before the Norman Conquest, a free man might be a man of small estate dependent on a lord. Every man, not himself a lord, was bound to have a lord or be treated as unworthy of a free man's right. Among free men there was a difference in their estimation for *Wergild*. See *Liber Homo*.

**FREE ON BOARD.** Means that the subject of sale is to be loaded for shipment without expense to the buyer. *Olsen v. McMaken & Pentzien*, 139 Neb. 506, 297 N.W. 830, 832.

**FREE PASS.** The power of riding over a railroad without payment of the customary fare. *Coco v. Oden*, 143 La. 718, 79 So. 287, 288, 8 A.L.R. 679; *Tripp v. Michigan Cent. R. Co.*, C.C.A.Mich., 238 F. 449, 458, L.R.A.1918A, 758.

**FREE SCHOOL.** Where no charge is made for tuition. *Vincent v. County Board of Education of Talladega County*, 222 Ala. 216, 131 So. 893, 894.

**FREE SERVICES.** In feudal and old English law, such feudal services as were not unbecoming the character of a soldier or a freeman to perform; as to serve under his lord in the wars, to pay a sum of money, and the like. 2 Bl.Comm. 60, 61.

**FREE SHAREHOLDERS.** The free shareholders of a building and loan association are subscribers to its capital stock who are not borrowers from the association. *Steinberger v. Independent B. & S. Ass'n*, 84 Md. 625, 36 A. 439.

**FREE SHIPS.** In international law, ships of a neutral nation. The phrase "free ships shall make free goods" is often inserted in treaties, meaning that goods, even though belonging to an enemy, shall not be seized or confiscated, if found in neutral ships. *Wheat. Int. Law*, 507, et seq.

**FREE SOCAGE.** See Socage.

**FREE TENURE.** Tenure by free services; freehold tenure.

**FREE TIME.** Period that railroad car may remain unloaded before demurrage charges begin

to accrue. *Lehigh Valley R. Co. v. Maas & Waldstein Co.*, 102 N.J.L. 332, 131 A. 884; *Central of Georgia Ry. Co. v. Leverette*, 34 Ga.App. 304, 129 S.E. 292, 293.

**FREE WARREN.** See Warren.

**FREE WHITE PERSONS.** "Free white persons" referred to in Naturalization Act, as amended by Act July 14, 1870, has meaning naturally given to it when first used in 1 Stat. 103, c. 3, meaning all persons belonging to the European races then commonly counted as white, and their descendants, including such descendants in other countries to which they have emigrated.

It includes all European Jews, more or less intermixed with peoples of Celtic, Scandinavian, Teutonic, Iberian, Latin, Greek, and Slavic descent. It includes Magyars, Lapps, and Finns, and the Basques and Albanians. It includes the mixed Latin, Celtic-Iberian, and Moorish inhabitants of Spain and Portugal, the mixed Greek, Latin, Phoenician, and North African inhabitants of Sicily, and the mixed Slav and Tarter inhabitants of South Russia. It does not mean Caucasian race, Aryan race, or Indo-European races, nor the mixed Indo-European, Dravidian, Semitic and Mongolian peoples who inhabit Persia. A Syrian of Asiatic birth and descent will not be entitled to become a naturalized citizen of the United States as being a free white person. *Ex parte Shahid*, D.C.S.C., 205 F. 812, 813; *United States v. Cartozian*, D.C.Or., 6 F.2d 919, 921; *Ex parte Dow*, D.C.S.C., 211 F. 486, 487; *In re En Sk Song*, D.C.Cal., 271 F. 23. Nor a native-born Filipino. *U. S. v. Javier*, 22 F.2d 879, 880, 57 App.D.C. 303. Nor a native of India who belonged to Hindu race. *Kharatf Ram Samras v. United States*, C.C.A.Cal., 125 F.2d 879, 881.

**FREE WOMAN OF COLOR.** Term, up to the time of the Civil War, applied to all persons not of the white race, including Indians. *Sunseri v. Cassagne*, 191 La. 209, 185 So. 1, 4.

**FREEDMAN.** In Roman law, one who was set free from a state of bondage; an emancipated slave. The word is used in the same sense in the United States, respecting negroes who were formerly slaves. *Fairfield v. Lawson*, 50 Conn. 513, 47 Am.Rep. 669; *Davenport v. Caldwell*, 10 S.C. 333.

**FREEDOM.** The state of being free; liberty; self-determination; absence of restraint; the opposite of slavery.

The power of acting, in the character of a moral personality, according to the dictates of the will, without other check, hindrance, or prohibition than such as may be imposed by just and necessary laws and the duties of social life.

The prevalence, in the government and constitution of a country, of such a system of laws and institutions as secure civil liberty to the individual citizen.

**FREEDOM OF RELIGION.** Embraces the concept of freedom to believe and freedom to act, the first of which is absolute, but the second of which remains subject to regulation for protection of society. *Oney v. Oklahoma City*, C.C.A.Okla., 120 F. 2d 861, 865.

**FREEDOM OF SPEECH AND OF THE PRESS.** See Liberty.

**FREEDOM OF THE CITY.** In English law, this phrase signifies immunity from county juris-

diction, and the privilege of corporate taxation and self-government held under a charter from the crown. This freedom is enjoyed of right, subject to the provision of the charter, and is often conferred as an honor on princes and other distinguished individuals. The freedom of a city carries the parliamentary franchise. Encyc. Dict. The rights and privileges possessed by the burgesses or freemen of a municipal corporation under the old English law; now of little importance, and conferred chiefly as a mark of honor. See 11 Chic. L. J. 357.

The phrase has no place in American law, and as frequently used in addresses of welcome made to organizations visiting an American city, particularly by mayors, has no meaning whatever except as an expression of good will.

The form of the grant made by the city of New York to Andrew Hamilton of Philadelphia as quoted at large in 13 Law Notes 150.

**FREEHOLD.** An estate for life or in fee. Inter-mountain Realty Co. v. Allen, 60 Idaho 228, 90 P. 2d 704, 706, 122 A.L.R. 647.

A "freehold estate" is a right of title to land Cohn v. Litwin, 311 Ill.App. 55, 35 N.E.2d 410, 413.

An estate in land or other real property, of uncertain duration; that is, either of inheritance or which may possibly last for the life of the tenant at the least, (as distinguished from a leasehold;) and held by a free tenure, (as distinguished from copyhold or villeinage.) Nevitt v. Woodburn, 175 Ill. 376, 51 N.E. 593; Railroad Co. v. Hemphill, 35 Miss. 22; Ralston Steel Car Co. v. Ralston, 112 Ohio St. 306, 147 N.E. 513, 516, 39 A.L.R. 334; Lakeside Irr. Co. v. Markham Irr. Co., 116 Tex. 65, 285 S.W. 593, 596.

An oil and gas lease. Cravens v. Hubble, 375 Ill. 51, 30 N.E.2d 622, 623.

A 99-year lease renewable forever is a "freehold estate". Baltimore & O. R. Co. v. Carman, 71 Ohio App. 508, 50 N.E.2d 358, 359.

Such an interest in lands of frank-tenement as may endure not only during the owner's life, but which is cast after his death upon the persons who successively represent him, according to certain rules elsewhere explained. Such persons are called "heirs," and he whom they thus represent, the "ancestor." When the interest extends beyond the ancestor's life, it is called a "freehold of inheritance," and, when it only endures for the ancestor's life, it is a freehold not of inheritance.

An estate to be a freehold must possess these two qualities: (1) Immobility, that is, the property must be either land or some interest issuing out of or annexed to land; and (2) indeterminate duration, for, if the utmost period of time to which an estate can endure be fixed and determined, it cannot be a freehold. Wharton.

Freehold *in deed* is the real possession of land or tenements in fee, fee-tail, or for life. Freehold *in law* is the right to such tenements before entry. The term has also been applied to those offices which a man holds in fee or for life. Mozl. & W. Dict.; 1 Washb. R. P. 71, 637. See Gage v. Scales, 100 Ill. 221; State v. Ragland, 75 N.C. 12, L.R. 11 Eq. 454; *Liberum Tenementum*.

*Determinable freeholds* are estates for life, which may determine upon future contingencies before the life for which they are created expires, as if an estate be granted to a woman during her widowhood, or to a man until he be promoted to a benefice. In these and similar cases, whenever the contingency happens,—when the widow marries, or when the grantee obtains the benefice,—the respective estates are absolutely determined and gone. Yet, while they

subsist, they are reckoned estates for life; because they may by possibility last for life, if the contingencies upon which they are to determine do not sooner happen. 2 Bl. Comm. 121.

*Freehold in law* is a freehold which has descended to a man, upon which he may enter at pleasure, but which he has not entered on. *Termes de la Ley*.

**FREEHOLD LAND SOCIETIES.** Societies in England designed for the purpose of enabling mechanics, artisans, and other workmen to purchase at the least possible price a piece of freehold land of a sufficient yearly value to entitle the owner to the elective franchise for the county in which the land is situated. Wharton.

**FREEHOLDER.** One having title to realty. State ex rel. Peterson v. City of Fraser, 191 Minn. 427, 254 N.W. 776. Either of inheritance or for life. Warren v. Chouteau County, 82 Mont. 115, 265 P. 676, 680. Either legal or equitable title. Daniels v. Fossas, 152 Wash. 516, 278 P. 412, 413.

A person who possesses a freehold estate. Shively v. Lankford, 174 Mo. 535, 74 S.W. 835. Statutory meaning not infrequently differs from common law meaning of the term. Payne v. Fiscal Court of Carlisle County, 200 Ky. 41, 252 S.W. 127, 129; In re Consolidation of School Dist. in Blue Earth County, 140 Minn. 475, 168 N.W. 552; Gordon v. White, 33 S.D. 234, 145 N.W. 439.

**FREEMAN.** A person in the possession and enjoyment of all the civil and political rights accorded to the people under a free government.

In the Roman law, it denoted one who was either born free or emancipated, and was the opposite of "slave." In feudal law, it designated an allodial proprietor, as distinguished from a vassal or feudal tenant. (And so in Pennsylvania colonial law. Fry's Election Case, 71 Pa. 308, 10 Am.Rep. 698.) In old English law, the word described a freeholder or tenant by free services; one who was not a villein. In modern legal phraseology, it is the appellation of a member of a city or borough having the right of suffrage, or a member of any municipal corporation invested with full civic rights.

**FREEMAN'S ROLL.** A list of persons admitted as burgesses or freemen for the purposes of the rights reserved by the municipal corporation act, (5 & 6 Wm. IV. c. 76.) Distinguished from the Burgess Roll. 3 Steph.Comm. 197. The term was used, in early colonial history, in some of the American colonies.

**FREIGHT.** Freight is properly the price or compensation paid for the transportation of goods by a carrier, at sea, from port to port. The Bill, D. C.Md., 55 F.Supp. 780, 783. But the term is also used to denote the hire paid for the carriage of goods on land from place to place, (usually by a railroad company, not an express company,) or on inland streams or lakes. The name is also applied to the goods or merchandise transported by any of the above means. Brittan v. Barnaby, 21 How. 533, 16 L.Ed. 177; Christie v. Davis Coal Co., D.C.N.Y., 95 F. 837, 838; Paradise v. Sun Mut. Ins. Co., 6 La. Ann. 596.

The sum agreed on for the hire of a ship, entirely or in part, for the carriage of goods from one port to another. 13 East, 300. All rewards or compensation paid for the use of ships. Giles v. Cynthia, 1 Pet. Adm. 206, Fed. Cas. No. 5,424.

The reward, if any, to be paid for its carriage is called "freightage;" the person who delivers the freight to the carrier is called the "consignor;" and the person to whom

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It is to be delivered is called the "consignee." Civil Code Cal. § 2110; Comp.Laws N.D.1913, § 6197; Comp.Laws S.D. 1929, § 1119.

Property carried is called "freight" Lyman-Richey Sand & Gravel Co. v. State, 123 Neb. 674, 243 N.W. 891, 893, 83 A.L.R. 1301.

"Dead freight" is money payable by a person who has chartered a ship and only partly loaded her, in respect of the loss of freight caused to the ship-owner by the deficiency of cargo. L.R. 2 H.L. Sc. 128; The Rosemary, C. C.A.Miss., 277 F. 674, 678.

**FREIGHT BOOKING.** The making of specific arrangements for the transportation of goods by particular vessel in advance of its sailing day. Iwai & Co., Limited, v. Hercules Powder Co., 162 Ga. 795, 134 S.E. 763, 765.

**FREIGHT CAR.** A railroad car adapted to the transportation from one point to another of movable articles of every kind, character, and description, and a box car while so used is at least temporarily a car carrying freight. State v. Jones, 84 W.Va. 85, 99 S.E. 271, 274.

**FREIGHT IS THE MOTHER OF WAGES.** 2 Show. 283; 3 Kent, Comm. 196. Where a voyage is broken up by *vis major*, and no freight earned, no wages, *eo nomine*, are due.

**FREIGHT THEN PENDING.** Earnings of the voyage. The C. F. Coughlin, D.C.N.Y., 25 F.Supp. 649, 650.

**FREIGHT TRAIN.** A train that carries freight alone, having a caboose attached for use of crew. Arizona Eastern R. Co. v. State, 29 Ariz. 446, 242 P. 870, 871; Mammoth Cave R. Co. v. Commonwealth, 176 Ky. 747, 197 S.W. 406, 407.

**FREIGHTER.** In maritime law, the party by whom a vessel is engaged or chartered; otherwise called the "charterer." 2 Steph. Comm. 148. In French law, the owner of a vessel is called the "freighter" (*fréteur*); the merchant who hires it is called the "affreighter" (*affréteur*). Emerig. Tr. des Ass. ch. 11, § 3.

**FRENCH POOL.** A system of gambling, especially on horse races, now generally known as "pari mutuel" (q. v.).

**FRENCHMAN.** In early times, in English law, this term was applied to every stranger or "outlandish" man. Bract. lib. 3, tr. 2, c. 15.

**FRENDELSMAN.** Sax. An outlaw. So called because on his outlawry he was denied all help of friends after certain days. Cowell; Blount.

**FRENDWITE.** In old English law, a mulct or fine exacted from him who harbored an outlawed friend. Cowell; Tomlins.

**FRENETICUS.** In old English law, a madman, or person in a frenzy. Fleta, lib. 1, c. 36.

**FREOBORGH.** A free-surety, or free-pledge. Spelman. See Frank-Pledge.

**FREOLING.** (Sax. *freoh*, free, plus *ling*, progeny.) A freeman born. Wharton. See Frilingi.

**FREQUENT, v.** To visit often; to resort to often or habitually. Green v. State, 109 Ind. 175, 9 N.E. 781; Ex parte Werner, 46 R.I. 1, 124 A. 195, 196.

**FREQUENTER.** Any person not an employee who may go in or be in place of employment or public building under circumstances which render him other than trespasser. Tomlin v. Chicago, M., St. P. & P. Ry. Co., 220 Wis. 325, 265 N.W. 72.

**FREQUENTIA ACTUS MULTUM OPERATUR.** The frequency of an act effects much. 4 Coke, 78; Wing. Max. p. 719, max. 192. A continual usage is of great effect to establish a right.

**FRÈRE.** Fr. A brother. *Frère eyné*, elder brother. *Frère puisné*, younger brother. Britt. c. 75.

**FRESCA.** In old records, fresh water, or rain and land flood.

**FRESH.** Immediate; recent; following without any material interval.

**FRESH DISSEISIN.** By the ancient common law, where a man had been disseised, he was allowed to right himself by force, by ejecting the disseisor from the premises, without resort to law, provided this was done forthwith, while the disseisin was *fresh*, (*flagrante disseisina*.) Bract. fol. 162b. No particular time was limited for doing this, but Bracton suggested it should be fifteen days. Id. fol. 163. See Britt. cc. 32, 43, 44, 65.

**FRESH FINE.** In old English law, a fine that had been levied within a year past. St. Westm. 2, c. 45; Cowell.

**FRESH FORCE.** Force done within forty days. Fitzh. Nat. Brev. 7; Old Nat. Brev. 4. The heir or reversioner in a case of disseisin by *fresh force* was allowed a remedy in chancery by bill before the mayor. Cowell.

**FRESH PURSUIT.** A pursuit instituted immediately and with intent to reclaim or recapture, after an animal escaped, a thief flying with stolen goods, etc. People v. Pool, 27 Cal. 578; White v. State, 70 Miss. 253, 11 So. 632.

**FRESH SUIT.** In old English law, immediate and unremitting pursuit of an escaping thief. "Such a present and earnest following of a robber as never ceases from the time of the robbery until apprehension." Staundef, P. C. lib. 3, cc. 10, 12; 1 Bl. Comm. 297.

**FRESHET.** A flood, or overflowing of a river, by means of rains or melted snow; an inundation. Stover v. Insurance Co., 3 Phila., Pa., 42; Harris v. Social Mfg. Co., 9 R.I. 99, 11 Am.Rep. 224.

**FRET.** Fr. In French marine law, freight. Ord. Mar. liv. 3, tit. 3.

**FRÉTER.** Fr. In French marine law, to freight a ship; to let it. Emerig. Tr. des Ass. c. 11, § 3.

**FRÉTEUR.** Fr. In French marine law, freighter. The owner of a ship, who lets it to the merchant. Emerig. Tr. des Ass. c. 11, § 3.

**FRETTUM, FRECTUM.** In old English law, the freight of a ship; freight money. Cowell.

**FRETUM.** Lat. A strait.

**FRETUM BRITANNICUM.** The strait between Dover and Calais.

**FRIARS.** An order of religious persons, of whom there were four principal branches, viz.: (1) Minors, Grey Friars, or Franciscans; (2) Augustines; (3) Dominicans, or Black Friars; (4) White Friars, or Carmelites, from whom the rest descend. Wharton.

**FRIBURGH.** (Also, Frithborg, Frithborgh, Fri-borg, Froborg, and Freoburgh.) (Sax.) A kind of frank-pledge whereby the principal men were bound for themselves and servants. Fleta, lib. 1, cap. 47. Cowell says it is the same as frank-pledge.

**FRIBUSCULUM.** In the civil law, a temporary separation between husband and wife, caused by a quarrel or estrangement, but not amounting to a divorce, because not accompanied with an intention to dissolve the marriage.

**FRIDBORG, FRITHBORG.** Frank-pledge. Cowell. Security for the peace. Spelman.

**FRIDHBURGUS.** In old English law, a kind of frank-pledge, by which the lords or principal men were made responsible for their dependents or servants. Bract. fol. 124b.

**FRIEND.** One favorably disposed. Ned v. Robinson, 181 Okl. 507, 74 P.2d 1156. Varying in degree from greatest intimacy to acquaintance more or less casual. United States Trust Co. of Newark v. Montclair Trust Co., 133 N.J.Eq. 579, 33 A.2d 901, 903.

**FRIEND OF THE COURT.** See Amicus Curiae.

**FRIENDLESS MAN.** In old English law, an outlaw; so called because he was denied all help of friends. Bract. lib. 3, tr. 2, c. 12.

**FRIENDLY FIRE.** Fire burning in place where it was intended to burn, although damages may result. Progress Laundry & Cleaning Co. v. Reciprocal Exchange, Tex.Civ.App., 109 S.W.2d 226, 227.

**FRIENDLY SOCIETIES.** In English law, associations supported by subscription, for the relief and maintenance of the members, or their wives, children, relatives, and nominees, in sickness, infancy, advanced age, widowhood, etc. The stat-

utes regulating these societies were consolidated and amended by St. 38 & 39 Vict. c. 60. Wharton.

**FRIENDLY SUIT.** A suit brought by a creditor in chancery against an executor or administrator, being really a suit by the executor or administrator, in the name of a creditor, against himself, in order to compel the creditors to take an equal distribution of the assets. 2 Williams, Ex'rs, 1915.

Also any suit instituted by agreement between the parties to obtain the opinion of the court upon some doubtful question in which they are interested.

**FRIGIDITY.** Impotence. Johnson. The term in this sense is obsolete. Webster's New Int. Dict.

**FRILINGL.** Persons of free descent, or freemen born; the middle class of persons among the Saxons. Spelman. See Freoling.

**FRISCUS.** Fresh uncultivated ground. Mon. Angl. t. 2, p. 56. Fresh; not salt. Reg. Orig. 97. Recent or new. See Fresh, and subtitles thereunder.

**FRISK, v.** The running of hands rapidly over another's person, as distinguished from "search," which is to strip and examine contents more particularly. Kalwin Business Men's Ass'n v. McLaughlin, 126 Misc. 698, 214 N.Y.S. 99, 102.

**FRITH.** Sax. Peace, security, or protection. This word occurs in many compound terms used in Anglo-Saxon law.

**FRITHBORG.** Frank-pledge. Cowell.

**FRITHBOTE.** A satisfaction or fine, for a breach of the peace.

**FRITHBREACH.** The breaking of the peace.

**FRITHGAR.** The year of jubilee, or of meeting for peace and friendship.

**FRITHGILDA.** Guildhall; a company or fraternity for the maintenance of peace and security; also a fine for breach of the peace. Jacob.

**FRITHMAN.** A member of a company or fraternity.

**FRITHSOCNE.** Surety of defense. Jurisdiction of the peace. The franchise of preserving the peace. Also spelled "*frithsoken*."

**FRITHSPLOT.** A spot or plot of land, encircling some stone, tree, or well, considered sacred, and therefore affording sanctuary to criminals.

**FRITHSTOOL.** The stool of peace. A stool or chair placed in a church or cathedral, and which was the symbol and place of sanctuary to those who fled to it and reached it.

**FRIVOLOUS.** An answer is "frivolous" where it appears from bare inspection to be lacking in legal sufficiency, and, where in any view of the facts pleaded, it does not present a defense. Neefus v. Neefus, 209 Minn. 495, 296 N.W. 579, 581. Any pleading is called "frivolous" when it is clear-

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ly insufficient on its face, and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the opponent. *Erwin v. Lowery*, 64 N.C. 321; *Strong v. Sproul*, 53 N.Y. 499; *Gray v. Gidiere*, 4 Strob., S.C., 442; *In re Beam*, 93 N.J.Eq. 593, 117 A. 613, 614; *Milberg v. Keuthe*, 98 N.J.L. 779, 121 A. 713, 714.

"Frivolous pleas" are those which are so clearly and palpably bad as to require no argument to convince the court thereof, and which would be pronounced by the court indicative of bad faith in the pleader on a mere inspection. *U. S. v. Delaney*, D.C.N.J., 8 F.Supp. 224, 227.

A frivolous demurrer has been defined to be one which is so clearly untenable, or its insufficiency so manifest upon a bare inspection of the pleadings, that its character may be determined without argument or research. *Cottrill v. Cramer*, 40 Wis. 558.

A "frivolous appeal" is one presenting no justiciable question and so readily recognizable as devoid of merit on face of record that there is little prospect that it can ever succeed. *Treat v. State ex rel. Mitton*, 121 Fla. 509, 163 So. 883.

A sham plea is good on its face, but false in fact; it may, to all appearances, constitute a perfect defense, but is a pretense because false and because not pleaded in good faith. A frivolous plea may be perfectly true in its allegations, but yet is liable to be stricken out because totally insufficient in substance. *Andrae v. Bandler*, Sup., 56 N.Y. S. 614; *Brown v. Jenison*, 1 Code R.N.S., N.Y., 157; *Sheets v. Ramer*, 125 Minn. 98, 145 N.W. 787. See, further, *Answer*.

**FRODMORTEL, or FREOMORTEL.** An immunity for committing manslaughter. *Mon. Angl. t. 1, p. 173.*

**FROM.** Implies a starting point, whether it be of time, place, or condition; and meaning: Having a starting point of motion; noting the point of departure, origin, withdrawal, etc.; out of, starting at, as, he traveled "from" New York to Chicago. *Silva v. MacAuley*, 135 Cal.App. 249, 26 P.2d 887. Word "from" or "after" an event or day does not have an absolute and invariable meaning, but each should receive an inclusion or exclusion construction according to intention with which such word is used. *Acme Life Ins. Co. v. White*, Tex.Civ.App., 99 S.W.2d 1059, 1060. Words "from" and "to," used in contract, may be given meaning to which reason and sense entitles them, under circumstances of case. *Woodruff v. Adams*, 134 Cal.App. 490, 25 P.2d 529.

As to whether the word was to be treated as inclusive or exclusive of a *terminus a quo*, whether of time or place, a critical writer formulated a rule that when referring to a certain point as a *terminus a quo*, though in vulgar acceptation it were capable of being taken indifferently, either inclusively or exclusively, yet in law it has obtained a certain fixed import and is always taken as exclusive of the *terminus a quo*. *Powell, Powers* 449. It generally excludes the day to which it relates, but the general rule will yield to the intent of parties; *Kendall v. Kingsley*, 120 Mass. 94. The views of Lord Mansfield, in *Cowp. 714* (overruling his own decision of three years before, *id.* 189), was that it is either exclusive or inclusive according to context and subject-matter, and the court will construe it to effectuate the intent of parties and not to destroy it. *Lowman v. Shotkoski*, 106 Neb. 540, 184 N.W. 107, 108;

*Allen v. Effer*, 144 Tenn. 685, 235 S.W. 67, 68; *Martin v. Travelers' Ins. Co.*, 310 Mo. 411, 276 S.W. 380, 382, 41 A.L.R. 1372; *Platt v. Flaherty*, 96 Kan. 42, 149 P. 734.

As to time, after an examination of authorities, *Washington, J.*, laid down what he considered the settled principles to be deduced from them: (1) When time is computed from an act done, the day of its performance is included; (2) when the words are from the date, if a present interest is to commence, the day is included, if it is a terminus from which to impute time the day is excluded; *Pearpoint v. Graham*, 4 Wash.C.C. 240, Fed.Cas.No.10,877; where the latter principle was applied to a lease, as it was also in *Lord Raym. 84*; and to a bond; *Lysle v. Williams*, 15 S. & R., Pa., 135; and the first proposition has been laid down with reference to the words "from and after the passage of this act;" *Arnold v. U. S.*, 9 Cra., U.S., 104, 3 L.Ed. 671; *U. S. v. Williams*, 1 Paine 261, Fed.Cas.No. 16,723; *contra*, *Lorent v. Ins. Co.*, 1 Nott. & McC., S.C., 505. See *U. S. v. Heth*, 3 Cra., U.S., 399, 2 L.Ed. 479. *From* is generally held a word of exclusion; *Wilcox v. Wood*, 9 Wend., N.Y., 346; *Ordway v. Remington*, 12 R.I. 319, 34 Am.Rep. 646. But a promise made November 1st, 1811, and sued November 1st, 1817, was held barred by statute of limitation; *Presbrey v. Williams*, 15 Mass. 193. Where an act was to be done in a given number of days from the time of the contract, the day on which the contract was made was included; *Brown v. Buzan*, 24 Ind. 194; but if the contract merely says in so many days it means so many days from the day of date, and that is excluded; *Blake v. Crowninshield*, 9 N.H. 304. A fire policy from one given date to another includes the last day; whether the first is included was not decided; *L.R. 5 Exch. 296*. In most cases when something is required to be done in a given time from the day on which an event has happened, that day is excluded, as in case of proving claims against the estate of a decedent or insolvent; *Weeks v. Hull*, 19 Conn. 376, 50 Am.Dec. 249; enrolling deeds, after execution; *Seawell v. Williams*, 5 Hayw., Tenn., 283; appeal from arbitrators, afterward; *Browne v. Browne*, 3 S. & R., Pa., 496; issuing a *scire facias* to revive a judgment, after entry; *Appeal of Green*, 6 W. & S., Pa., 327; the time an execution runs, after its date; *Homan v. Liswell*, 6 Cow., N.Y., 659; redemption from execution sale; *id.* 518; allowing appeal from a justice; *Ex parte Dean*, 2 Cow., N.Y., 605, 14 Am.Dec. 521. The principle is thus well expressed. When time is to be computed from a particular day or a particular event, as when an act is to be performed within a specified period from or after a day named, that day is excluded and the last day included; *Sheets v. Selden*, 2 Wall., U.S., 177, 17 L.Ed. 822. But it was held that in considering the question of barring a writ of error, the day of the decree is included; *Chiles v. Smith's Heirs*, 13 B.Monr., Ky., 460. Six months from testator's death allowed a legatee to give security not to marry, are exclusive of that day; 15 Ves. 248.

Whenever they are used with respect to places it is said that "from," "to," and "at" are taken inclusively according to the subject-matter; *Union Pac. R. Co. v. Hall*, 91 U.S. 343, 23 L.Ed. 428 (fixing the terminus of a railroad under an act of congress). *From an object to an object* in a deed excludes the terminus referred to; *Bonney v. Morrill*, 52 Me. 252; *State v. Bushey*, 84 Me. 459, 24 A. 940. *From place to place* means from one place in a town to another in the same town; *Com. v. Inhabitants of Cambridge*, 7 Mass. 158; *Com. v. Waters*, 11 Gray, Mass., 81. *From a street* means from any part of it according to circumstances; *City of Pittsburg v. Cluley*, 74 Pa. 259. *From a town* is not always and indeed is seldom exclusive of the place named; it generally means from some indefinite place within the town; *Chesapeake & O. Canal Co. v. Key*, 3 Cra.C.C. 599, 606, Fed.Cas.No.2,649. Authority in a railroad charter to construct a railroad from a city to another point gives power to construct the road from any point within the city; *Hazlehurst v. Freeman*, 52 Ga. 244; *contra* *North-Eastern R. Co. v. Payne*, 8 Rich.L., S.C., 177. But from a town to another in an indictment for transportation of liquor does not charge it as done within the town; *State v. Bushey*, 84 Me. 459, 24 A. 940. To construe reasonably the expression a road from a village to a creek within the same village, in a statute, requires that it be taken inclusively; *Smith v. Helmer*, 7 Barb., N.Y., 416. Sailing from a port means out of it; *U. S. v. La Coste*, 2 Mass. 129, Fed.Cas.No.15,548.

Descent from a parent cannot be construed to mean through a parent, it must be immediate, from the person

designated; *Gardner v. Collins*, 2 Pet., U.S., 58, 86, 7 L.Ed. 347; but the words *from the part of the father* include a descent, either immediately from the father or from any person in the line of the father; *Shippen v. Izard*, 1 S. & R., Pa., 222.

*From the loading* in a marine policy ordinarily means that the risk is covered after the goods are on board, but this meaning may be qualified by any words in the policy indicating a different intention, 16 East 240; L.R. 7 Q.B. 580, 702.

*From day to day*, in reference to adjournments, usually means to the next day but, under a statute authorizing the adjournment of a sale from day to day, a sale is good if made by adjournment to a day, certain, which did not immediately succeed the first, *Burns v. Lyon*, 4 Watts, Pa., 363. *From henceforth* in a lease means from the delivery; 5 Co. 1; so also does one from March 25th last past (the execution being March 25th); 4 B. & C. 272; or one from an impossible date (as February 30th), or no date, but if it has a sensible date, the word date in other parts of it means date, not delivery; 4 B. & C. 908.

**FROM ONE PLACE TO ANOTHER.** From premises owned by one person to premises owned by another person in some legal subdivision or from one legal subdivision to another. *Liquor Transportation Cases*, 140 Tenn. 582, 205 S.W. 423, 426; *Ready v. State*, 155 Tenn. 15, 290 S.W. 28, 29; *State v. White*, 111 Kan. 196, 206 P. 903, 904.

**FROM PERSON.** Includes taking from presence of person assaulted as well as taking of property in actual contact with person of one robbed. *People v. Kubish*, 357 Ill. 531, 192 N.E. 543, 545.

**FROM, THROUGH, OR UNDER.** The term refers to origin or devolution of property, and unless some title to or interest therein has been derived by assignment or otherwise from party adverse to decedent's estate, statute barring testimony is inapplicable. In *re Iwers' Estate*, 225 Iowa 389, 280 N.W. 579, 582.

**FROM TIME TO TIME.** Occasionally, at intervals, now and then. *Spade v. Hawkins*, 60 Ind. App. 388, 110 N.E. 1010, 1012. See *From*.

**FRONT.** Forepart, as opposed to the back or rear. *State v. Read*, 162 Iowa, 572; 144 N.W. 310, 311; *Howland v. Andrus*, 81 N.J.Eq. 175, 86 A. 391, 393.

Any side or face of a building is a front, although the word is more commonly used to denote the entrance side. In *re McInerney*, 47 Wyo. 258, 34 P.2d 35, 43. As applied to a bare lot, it is that side of lot towards which, in ordinary circumstances, house, when built, will most likely face, and very general usage of building houses with their main entrance toward shorter street line results in common understanding that this is side intended when front of lot is referred to. *Rhinehart v. Leitch*, 107 Conn. 400, 140 A. 763.

**FRONT FOOT.** As respects assessment, synonymous with "abutting foot." *Moberly v. Hogan*, 131 Mo. 19, 32 S.W. 1014.

The rate of assessment is obtained by having the total cost of the work divided by the total number of square feet of paving done under the contract; and the quotient multiplied by one-half of the number of linear feet in the width of the pavement opposite the property lines. *City of Crowley v. Police Jury of Acadia Parish*, 138 La. 488, 70 So. 487, 488.

**FRONT-FOOT RULE.** One by which cost of improvement is to be apportioned among several properties in proportion to their frontage on im-

provement and without regard to benefits conferred. *Davy v. McNeill*, 31 N.M. 7, 240 P. 482, 488.

**FRONTAGE, FRONTAGER.** Frontage denotes line of property on street. *Smidt v. McKee*, 262 N.Y. 373, 186 N.E. 869, 870. Extent of front along road or street. *Tzeses v. Barbahenn*, 125 N.J.L. 643, 17 A.2d 539, 540. Space available for erection of buildings, and does not include cross streets or space occupied by sidewalk or any ornamental spaces in plat between sidewalks and curb. *Wallace v. Kramer*, 296 Mich. 680, 296 N.W. 838, 842.

In English law a frontager is a person owning or occupying land which abuts on a highway, river, seashore, or the like. The term is generally used with reference to the liability of frontagers on streets to contribute towards the expense of paving, draining, or other works on the highway carried out by a local authority, in proportion to the frontage of their respective tenements. *Sweet*.

The term is also in a similar sense in American law, the expense of local improvements made by municipal corporations (such as paving, curbing, and sewerage) being generally assessed on abutting property owners in proportion to the "frontage" of their lots on the street or highway, and an assessment so levied being called a "frontage assessment." *Neenan v. Smith*, 50 Mo. 531; *Lyon v. Tonawanda*, C.C.N.Y., 98 F. 366; *City of Youngstown v. Fishel*, 89 Ohio St. 247, 104 N.E. 141, 143, 50 L.R.A., N.S., 921, Ann.Cas. 1915D, 1073; *Standard Oil Co. of Indiana v. Kamradt*, 319 Ill. 51, 149 N.E. 538, 539.

**FRONTING AND ABUTTING.** Very often, "fronting" signifies abutting, adjoining, or bordering on, depending largely on the context. *Rombauer v. Compton Heights Christian Church*, 328 Mo. 1, 40 S.W.2d 545, 551. As used in statutes relating to assessment for improvements, property between which and the improvement there is no intervening land. *Oklahoma Ry. Co. v. Severns Paving Co.*, 67 Okl. 206, 170 P. 216-218, 10 A.L.R. 157; *Flynn v. Chiappari*, 191 Cal. 139, 215 P. 682, 686.

**FRONTIER.** In international law, that portion of the territory of any country which lies close along the border line of another country, and so "fronts" or faces it. The term means something more than the boundary line itself, and includes a tract or strip of country, of indefinite extent, contiguous to the line. *Stoughton v. Mott*, 15 Vt. 169.

**FROZEN SNAKE.** A term used to impute ingratitude and held libelous, the court taking judicial notice of its meaning without an innuendo. 12 Ad. & El. 624.

**FRUCTUARIUS.** Lat. In the civil law, one who had the usufruct of a thing; *i. e.*, the use of the fruits, profits, or increase, as of land or animals. Inst. 2, 1, 36, 38. *Bracton* applies it to a lessee, fermor, or farmer of land, or one who held lands *ad firmam*, for a farm or term. *Bract. fol.* 261.

**FRUCTUS.** Lat. In the civil law, fruit, fruits; produce; profit or increase; the organic productions of a thing.

The right to the fruits of a thing belonging to another.

The compensation which a man receives from another for the use or enjoyment of a thing, such

## FRUCTUS

as interest or rent. See Mackeld. Rom. Law, § 167; Inst. 2, 1, 35, 37; Dig. 7, 1, 33; Id. 5, 3, 29; Id. 22, 1, 34.

**FRUCTUS AUGENT HÆREDITATEM.** The yearly increase goes to enhance the inheritance. Dig. 5, 3, 20, 3.

**FRUCTUS CIVILES.** All revenues and recompenses which, though not *fruits*, properly speaking, are recognized as such by the law. The term includes such things as the rents and income of real property, interest on money loaned, and annuities. Civ.Code La. 1900, art. 545.

**FRUCTUS FUNDI.** The fruits (produce or yield) of land.

**FRUCTUS INDUSTRIALES.** Industrial fruits, or fruits of industry. Those fruits of a thing, as of land, which are produced by the labor and industry of the occupant, as crops of grain; as distinguished from such as are produced solely by the powers of nature. Emblements are so called in the common law. 2 Steph. Comm. 258; 1 Chit. Gen. Pr. 92. Sparrow v. Pond, 49 Minn. 412, 52 N.W. 36, 16 L.R.A. 103, 32 Am.St.Rep. 571; Twin Falls Bank & Trust Co. v. Weinberg, 44 Idaho 332, 257 P. 31, 33, 54 A.L.R. 1527. Annual crops obtained by yearly labor and cultivation. Koerner v. Wilson, 85 Colo. 140, 274 P. 737, 738, 63 A.L.R. 227.

**FRUCTUS LEGIS.** The fruit of the law, *i. e.* execution.

**FRUCTUS NATURALES.** Those products which are produced by the powers of nature alone; as wool, metals, milk, the young of animals. Sparrow v. Pond, 49 Minn. 412, 52 N.W. 36, 16 L.R.A. 103, 32 Am.St.Rep. 571; Clark v. Strohbeen, 190 Iowa 989, 181 N.W. 430, 433, 13 A.L.R. 1419.

**FRUCTUS PECUDUM.** The produce or increase of flocks or herds.

**FRUCTUS PENDENTES.** Hanging fruits; those not severed. The fruits united with the thing which produces them. These form a part of the principal thing.

**FRUCTUS PENDENTES PARS FUNDI VIDENTUR.** Hanging fruits make part of the land. Dig. 6, 1, 44; 2 Bouv. Inst. no. 1578.

**FRUCTUS PERCEPTOS VILLÆ NON ESSE CONSTAT.** Gathered fruits do not make a part of the farm. Dig. 19, 1, 17, 1; 2 Bouv. Inst. no. 1578.

**FRUCTUS REI ALIENÆ.** The fruits of another's property; fruits taken from another's estate.

**FRUCTUS SEPARATI.** Separate fruits; the fruits of a thing when they are separated from it. Dig. 7, 4, 13.

**FRUCTUS STANTES.** Standing fruits; those not yet severed from the stalk or stem.

**FRUGES.** In the civil law, anything produced from vines, underwood, chalk-pits, stone-quarries. Dig. 50, 16, 77.

Grains and leguminous vegetables. In a more restricted sense, any esculent growing in pods. Vicat, Voc. Jur.; Calvin.

**FRUIT.** The produce of a tree or plant which contains the seed or is used for food. Klas v. Kuehl, 159 Wis. 561, 150 N.W. 973, 975.

This term, in legal acceptance, is not confined to the produce of those trees which in popular language are called "fruit trees," but applies also to the produce of oak, elm, and walnut trees. Bullen v. Denning, 5 Barn. & C. 847.

**Fruit fallen.** The produce of any possession detached therefrom, and capable of being enjoyed by itself. Thus, a next presentation, when a vacancy has occurred, is a fruit fallen from the advowson. Wharton.

**FRUITS, FRUITS OF THE LAND.** In replevy bond, "fruits" includes natural accession to livestock. Southern Surety Co. v. Adams, Tex.Civ. App., 278 S.W. 943, 946. Includes the increase and the clip of replevied goats and sheep; "offspring" and "that which is produced." Southern Surety Co. v. Adams, 119 Tex. 489, 34 S.W.2d 789, 798. The right of a possessor to "fruits of the land" does not permit possessor to extract mineral oil and gas from land. Elder v. Ellerbe, 135 La. 990, 66 So. 337.

**Civil fruits,** in the civil law, (*fructus civiles*) are such things as the rents and income of real property, the interest on money loaned, and annuities. Civ.Code La. art. 545. Rents and revenues of an immovable. Posey v. Fargo. 187 La. 122, 174 So. 175, 179.

**Natural fruits.** The produce of the soil, or of fruit-trees, bushes, vines, etc., which are edible or otherwise useful or serve for the reproduction of their species. The term is used in contradistinction to "artificial fruits," *i. e.*, such as by metaphor or analogy are likened to the fruits of the earth. Of the latter, interest on money is an example. See Civ.Code La. art. 545.

**FRUITS OF CRIME.** In the law of evidence. material objects acquired by means and in consequence of the commission of crime, and sometimes constituting the subject-matter of the crime. Burrill, Circ. Ev. 445; 3 Benth. Jud. Ev. 31.

**FRUMENTA QUÆ SATA SUNT SOLO CEDERE INTELLIGUNTUR.** Grain which is sown is understood to form a part of the soil. Inst. 2, 1, 32.

**FRUMENTUM.** In the civil law, grain. That which grows in an ear. Dig. 50, 16, 77.

**FRUMGYLD.** Sax. The first payment made to the kindred of a slain person in recompense for his murder. Blount.

**FRUMSTOLL.** Sax. In Saxon law, a chief seat, or mansion house. Cowell.



**FRUSCA TERRA.** In old records, uncultivated and desert ground. 2 Mon. Angl. 327; Cowell.

**FRUSSURA.** A breaking; plowing. Cowell.

**FRUSTRA.** Lat. Without effect, in vain, to no purpose, uselessly; without reason or cause, groundlessly; in error. Harpers' Lat. Dict.

**FRUSTRA AGIT QUI JUDICIUM PROSEQUI NEQUIT CUM EFFECTU.** He sues to no purpose who cannot prosecute his judgment with effect, [who cannot have the fruits of his judgment.] Fleta, lib. 6, c. 37, § 9.

**FRUSTRA [VANA] EST POTENTIA QUÆ NUNQUAM VENIT IN ACTUM.** That power is to no purpose which never comes into act, or which is never exercised. 2 Coke, 51.

**FRUSTRA EXPECTATUR EVENTUS CUJUS EFFECTUS NULLUS SEQUITUR.** An event is vainly expected from which no effect follows.

**FRUSTRA FERUNTUR LEGES NISI SUBDITIS ET OBEDIENTIBUS.** Laws are made to no purpose, except for those that are subject and obedient. Branch, Princ.

**FRUSTRA FIT PER PLURA, QUOD FIERI POTEST PER PAUCIORA.** That is done to no purpose by many things which can be done by fewer. Jenk.Cent. p. 68, case 28. The employment of more means or instruments for effecting a thing than are necessary is to no purpose.

**FRUSTRA LEGIS AUXILIUM INVOCAT [QUÆRIT] QUI IN LEGEM COMMITTIT.** He vainly invokes the aid of the law who transgresses the law. Fleta, lib. 4, c. 2, § 3; 2 Hale, P.C. 386; Broom, Max. 279, 297.

**FRUSTRA PETIS QUOD MOX ES RESTITUTUS.** In vain you ask that which you will have immediately to restore. 2 Kames, Eq. 104; 5 Man. & G. 757.

**FRUSTRA PETIS QUOD STATIM ALTERI REDDERE COGERIS.** Jenk.Cent. 256. You ask in vain that which you might immediately be compelled to restore to another.

**FRUSTRA PROBATUR QUOD PROBATUM NON RELEVAT.** That is proved to no purpose which, when proved, does not help. Halk.Lat.Max. 50.

**FRUSTRATION.** Where, from nature of contract and surrounding circumstances, parties from beginning must have known it could not be fulfilled unless, when time thereof arrived, some particular condition continued to exist, under doctrine of "frustration", in absence of warranty that such condition of things shall exist, contract is to be construed as subject to implied condition that parties shall be excused in case, before breach, performance becomes impossible or purpose frustrated from such condition ceasing to exist without default of either. Johnson v. Atkins, 53 Cal. App.2d 430, 127 P.2d 1027, 1028, 1029, 1030.

**FRUSTRUM TERRÆ.** A piece or parcel of land lying by itself. Co.Litt. 5b.

**FRUTECTUM.** In old records, a place overgrown with shrubs and bushes. Spelman; Blount.

**FRUTOS.** In Spanish law, fruits; products; produce; grains; profits. White, New Recop. b. 1, tit. 7, c. 5, § 2.

**FRYMITH.** In old English law, the affording harbor and entertainment to any one.

**FRYTHER.** Sax. In old English law, a plain between woods. Co.Litt. 5b.

An arm of the sea, or a strait between two lands. Cowell.

**FUAGE, FOUAGE, or FEUAGE.** Hearth money. A tax laid upon each fire-place or hearth. An imposition of a shilling for every hearth, levied by Edward III. in the dukedom of Aquitaine. Spelman; 1 Bl.Comm. 324.

**FUER.** In old English law, flight. It is of two kinds: (1) *Fuer in fait*, or *in facto*, where a person does apparently and corporally flee; (2) *fuer in ley*, or *in lege*, when, being called in the county court, he does not appear, which legal interpretation makes flight. Wharton.

**FUERO.** In Spanish law, a law; a code.

A general usage or custom of a province, having the force of law. Strother v. Lucas, 12 Pet. 446, 9 L.Ed. 1137. *Ir contra fuero*, to violate a received custom.

A grant of privileges and immunities. *Conceder fueros*, to grant exemptions.

A charter granted to a city or town. Also designated as "*cartas pueblas*."

An act of donation made to an individual, a church, or convent, on certain conditions.

A declaration of a magistrate, in relation to taxation, fines, etc.

A charter granted by the sovereign, or those having authority from him, establishing the franchises of towns, cities, etc.

A place where justice is administered.

A peculiar *forum*, before which a party is amenable.

The jurisdiction of a tribunal, which is entitled to take cognizance of a cause; as *fuero ecclesiastico*, *fuero militar*. See Schm.Civil Law, Introd. 64.

**FUERO DE CASTILLA.** The body of laws and customs which formerly governed the Castilians.

**FUERO DE CORREOS Y CAMINOS.** A special tribunal taking cognizance of all matters relating to the post-office and roads.

**FUERO DE GUERRA.** A special tribunal taking cognizance of all matters in relation to persons serving in the army.

**FUERO DE MARINA.** A special tribunal taking cognizance of all matters relating to the navy and to the persons employed therein.

## FUERO

**FUERO JUZGO.** The *Forum Judicium*; a code of laws established in the seventh century for the Visigothic kingdom in Spain. Some of its principles and rules are found surviving in the modern jurisprudence of that country. Schm.Civil Law, Introd. 28.

**FUERO MUNICIPAL.** The body of laws granted to a city or town for its government and the administration of justice.

**FUERO REAL.** The title of a code of Spanish law promulgated by Alphonso the Learned, (*el Sabio*), A.D. 1255. It was the precursor of the Partidas. Schm.Civil Law, Introd. 67.

**FUERO VIEJO.** The title of a compilation of Spanish law, published about A.D. 992. Schm. Civil Law, Introd. 65.

**FUGA CATALLORUM.** In old English law. A drove of cattle. Blount.

**FUGACIA.** A chase. Blount.

**FUGAM FECIT.** Lat. He has made flight; he fled. A clause inserted in an inquisition, in old English law, meaning that a person indicted for treason or felony had fled. The effect of this is to make the party forfeit his goods absolutely, and the profits of his lands until he has been pardoned or acquitted.

**FUGATOR.** In old English law, a privilege to hunt. Blount.

A driver. *Fugatores carrucarum*, drivers of wagons. Fleta, lib. 2, c. 78.

**FUGITATE.** In Scotch practice, to outlaw by the sentence of a court; to outlaw for non-appearance in a criminal case. 2 Alis. Crim. Pr. 350.

**FUGITATION.** When a criminal does not obey the citation to answer, the court pronounces sentence of fugitation against him, which induces a forfeiture of goods and chattels to the crown.

**FUGITIVE.** One who flees; always used in law with the implication of a flight, evasion, or escape from some duty or penalty or from the consequences of a misdeed.

**FUGITIVE FROM JUSTICE.** A person who, having committed a crime, flees from jurisdiction of court where crime was committed or departs from his usual place of abode and conceals himself within the district. United States ex rel. Demarois v. Farrell, C.C.A.Minn., 87 F.2d 957, 960. State v. Clough, 71 N.H. 594, 53 A. 1086, 67 L.R.A. 946; People v. Hyatt, 172 N.Y. 176, 64 N.E. 825, 60 L.R.A. 774, 92 Am.St.Rep. 706.

To be regarded as a "fugitive from justice," it is not necessary that one shall have left the state for the very purpose of avoiding prosecution; it being sufficient that, having committed there an act constituting a crime, he afterwards has departed from its jurisdiction, and when sought to be prosecuted is found in another state. Hogan v. O'Neill, 255 U.S. 52, 41 S.Ct. 222, 65 L.Ed. 497; People ex rel. Gottschalk v. Brown, 237 N.Y. 483, 143 N.E. 653, 654, 32 A.L.R. 1164; State v. Hayes, 162 La. 917, 111 So. 327, 329 (one who did not flee).

No matter for what purpose or with what motive or under what belief he leaves state, and even though at time of leaving he had no belief he had violated criminal laws and did not contemplate fleeing from justice to avoid prosecution for crime with which he is charged. Ex parte Morris, 131 Tex.Cr.R. 596, 101 S.W.2d 259.

**FUGITIVE OFFENDERS.** In English law, where a person accused of any offense punishable by imprisonment, with hard labor for twelve months or more, has left that part of his majesty's dominions where the offense is alleged to have been committed, he is liable, if found in any other part of his majesty's dominions, to be apprehended and returned in manner provided by the fugitive offenders' act, 1831, to the part from which he is a fugitive. Wharton.

**FUGITIVE OIL.** Oil escaping from well which was out of control and flowing down creek to point 10 or 12 miles below the well where it was picked up was "fugitive" or "waste oil" and belonged to the first taker who might reduce it to his possession. Linkenhoger v. Brown, Tex.Civ. App., 128 S.W.2d 163, 164.

**FUGITIVE SLAVE.** One who, held in bondage, flees from his master's power.

**FUGITIVE SLAVE LAW.** An act of congress passed in 1793 (and also one enacted in 1850) providing for the surrender and deportation of slaves who escaped from their masters and fled into the territory of another state, generally a "free" state.

**FUGITIVE'S GOODS.** Under the old English Law, where a man fled for felony, and escaped, his own goods were not forfeited as *bona fugitivorum* until it was found by proceedings of record (*e. g.* before the coroner in the case of death) that he fled for the felony. Foxley's Case, 5 Co. 109 a.

**FUGITIVUS.** In the civil law, a fugitive; a runaway slave. Dig. 11, 4; Cod. 6, 1. See the various definitions of this word in Dig. 21, 1, 17.

**FUGUES.** Fr. In medical jurisprudence. Ambulatory automatism. See Automatism.

**FULL.** Abundantly provided, sufficient in quantity or degree, complete, entire, and detailed. City of Orlando v. Evans, 132 Fla. 609, 182 So. 264, 268. Having no open space. In re California Land Buyers Syndicate, D.C.Cal., 22 F.Supp. 183, 186. Ample; perfect; mature; not wanting in any essential quality. Mobile School Com'rs v. Putnam, 44 Ala. 537; McCrary v. McCrary, Tex.Civ.App., 230 S.W. 187, 207.

**FULL AGE.** The age of legal majority, twenty-one years at common law, twenty-five in the civil law. 1 Bl.Comm. 463; Inst. 1, 23, pr.

**FULL ANSWER.** In pleading, a complete and meritorious answer, not wanting in any essential requisite. Frizell v. Northern Trust Co. of Chicago, Ill., 144 Kan. 481, 61 P.2d 1344, 1345, 1346.

**FULL BLOOD.** Relations of the "full blood," "whole blood," or "entire blood" are those derived not only from the same ancestor, but from the

same couple of ancestors. In re Skidmore's Estate, 148 Misc. 569, 266 N.Y.S. 312.

Brothers and sisters of *full blood* are those who are born of the same father and mother, or, as Justinian calls them, "*ex utroque parente conjuncti*." Nov. 118, cc. 2, 3; Mackeld.Rom.Law, § 145. The more usual term in modern law is "whole blood" (*q. v.*).

**FULL COPY.** In equity practice, a complete and unabbreviated transcript of a bill or other pleading, with all indorsements, and including a copy of all exhibits. *Finley v. Hunter*, 2 Strob. Eq., S. C., 210, note.

**FULL COURT.** In practice, a court *in banc*. A court duly organized with all the judges present.

Court containing permissible complement of judges, as distinguished from a quorum of two. *Textile Mills Securities Corporation v. Commissioner of Internal Revenue*, 314 U.S. 326, 62 S.Ct. 272, 277, 86 L.Ed. 249.

**FULL COUSIN.** Son or daughter of one's uncle or aunt. *Culver v. Union & New Haven Trust Co.*, 120 Conn. 97, 179 A. 487, 489, 99 A.L.R. 663.

**FULL COVENANTS.** See Covenant.

**FULL DEFENSE.** In pleading, the formula of defense in a plea, stated at length and without abbreviation, thus: "And the said C. D., by E. F., his attorney, comes and defends the force (or wrong) and injury when and where it shall behoove him, and the damages, and whatsoever else he ought to defend, and says," etc. *Steph. Pl.* p. 481.

**FULL FAITH AND CREDIT.** "Full faith and credit" clause of Const. U. S. art. 4, § 1, requires that foreign judgment be given such faith and credit as it had by law or usage of state of its origin. *First Nat. Bank v. Terry*, 103 Cal.App. 501, 285 P. 336, 337. That foreign statutes are to have force and effect to which they are entitled in home state. *Flahive v. Missouri, K. & T. R. Co.*, 131 Misc. 586, 227 N.Y.S. 587, 588. And that a judgment or record shall have the same faith, credit, conclusive effect, and obligatory force in other states as it has by law or usage in the state from whence taken. *Christmas v. Russell*, 5 Wall. 302, 18 L.Ed. 475; *McElmoyle v. Cohen*, 13 Pet. 326, 10 L.Ed. 177; *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Min. & Mill. Co.*, 243 U.S. 93, 37 S.Ct. 344, 61 L.Ed. 610.

**FULL HEARING.** Embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party, and to meet them. *Morgan v. U. S.*, 304 U.S. 1, 58 S.Ct. 773, 776, 777, 82 L.Ed. 1129.

One in which ample opportunity is afforded to all parties to make, by evidence and argument, a showing fairly adequate to establish the propriety or impropriety from the standpoint of justice and law of the step asked to be taken. *Akron, C. & Y. Ry. Co. v. U. S.*, 261 U.S. 184, 43 S.Ct. 270, 67 L.Ed. 605; *State v. Hunt*, 137 Tenn. 243, 192 S.W. 931, 932.

**FULL INDORSEMENT.** See Indorsement.

**FULL JURISDICTION.** Complete jurisdiction over a given subject-matter or class of actions (as,

in equity) without any exceptions or reservations. *Bank of Mississippi v. Duncan*, 52 Miss. 740.

**FULL LIFE.** Life in fact and in law. See *In Full Life*.

**FULL-PAID STOCK.** Stock on which no further payments can be demanded by the issuing company. *Middleton v. Wooster*, 184 App.Div. 165, 171 N.Y.S. 593, 595.

**FULL PARTICULARS.** Where contract of insurance requires giving "full particulars" of an accident as a condition precedent to liability, unnecessary details are not required, but only such as enables insurer to determine, whether a claim was likely to be made, and the insured was not required to make an exhaustive investigation of all the attendant circumstances or decide what the facts were on conflicting evidence. *Silberstein v. Vellerman*, 241 Mass. 80, 134 N.E. 395, 397.

**FULL POWERS.** A document issued by the government of a state empowering its diplomatic agent to conduct special business with a foreign government.

**FULL PROOF.** In the civil law, proof by two witnesses, or a public instrument. *Hallifax, Civil Law*, b. 3, c. 9, nn. 25, 30; 3 Bl.Comm. 370. Evidence which satisfies the minds of the jury of the truth of the fact in dispute, to the entire exclusion of every reasonable doubt. *Kane v. Hibernia Mut. F. Ins. Co.*, 38 N.J.L. 450, 20 Am.Rep. 409.

**FULL RIGHT.** The union of a good title with actual possession.

**FULL SETTLEMENT.** Implies an adjustment of all pending matters, the mutual release of all prior obligations existing between the parties. *Hickox v. Hickox*, *Tex.Civ.App.*, 151 S.W.2d 913, 918.

**FULLUM AQUÆ.** A fleam, or stream of water. *Blount*.

**FULLY ADMINISTERED.** The English equivalent of the Latin phrase "*plene administravit*," being a plea by an executor or administrator that he has completely and legally disposed of all the assets of the estate, and has nothing left out of which a new claim could be satisfied. See *Ryans v. Boogher*, 169 Mo. 673, 69 S.W. 1048.

**FUMAGE.** In old English law, the same as *fuage*, or smoke farthings. 1 Bl.Comm. 324. See *Fuage*.

**FUNCTION.** Derived from Latin "*functus*," the past participle of the verb "*fungor*" which means to perform, execute, administer. *McNamara v. Powell, Sup.*, 52 N.Y.S.2d 515, 551.

The nature and proper action of anything; activity appropriate to any business or profession. *Rosenblum v. Anglim, D.C.Cal.*, 43 F.Supp. 889, 892.

Office; duty; fulfillment of a definite end or set of ends by the correct adjustment of means. The occupation of an office. By the performance of its duties, the officer is said to fill his function.

## FUNCTIONAL

Dig. 32, 65, 1. *State v. Hyde*, 121 Ind. 20, 22 N.E. 644. The proper activities or duties of municipality. *Bean v. City of Knoxville*, 180 Tenn. 448, 175 S.W.2d 954, 955.

**FUNCTIONAL CLAIM.** One which claims function. In re *Tucker*, Cust. & Pat. App., 46 F.2d 214, 216. See Claim.

**FUNCTIONAL DEPRECIATION.** Results from necessary replacement of equipment before it is worn out, by reason of invention and improved appliances which render more efficient and satisfactory service. *Guaranty Trust Co. of New York v. Grand Rapids, G. H. & M. Ry. Co.*, D.C.Mich., 7 F.Supp. 511, 521.

**FUNCTIONAL DISEASE.** In medical jurisprudence, one which prevents, obstructs, or interferes with the due performance of its special functions by any organ of the body, without anatomical defect or abnormality in the organ itself. See *Higbee v. Guardian Mut. L. Ins. Co.*, 66 Barb., N.Y. 472. Distinguished from "organic" disease, which is due to some injury to, or lesion or malformation in, the organ in question.

**FUNCTIONARY.** A public officer or employee. An officer of a private corporation is also sometimes so called.

**Functus officio.** Lat. A task performed. *Board of School Trustees of Washington City Administrative Unit v. Benner*, 222 N.C. 566, 24 S.E.2d 259, 263.

Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority. Applied to an officer whose term has expired, and who has consequently no further official authority; and also to an instrument, power, agency, etc., which has fulfilled the purpose of its creation, and is therefore of no further virtue or effect. *Blanton Banking Co. v. Taliaferro*, Tex.Civ.App., 262 S.W. 196.

**FUND, v.** To capitalize with a view to the production of interest. *Stephen v. Milnor*, 24 N.J. Eq. 376. Also, to put into the form of bonds, stocks, or other securities, bearing regular interest, and to provide or appropriate a fund or permanent revenue for the payment thereof. *Merrill v. Monticello, C.C.Ind.*, 22 F. 596. *City of Long Beach v. Lisenby*, 180 Cal. 52, 179 P. 198, 201.

To fund a debt is to pledge a specific fund to keep down the interest and reduce the principal.

**Funded debt.** As applied to states or municipal corporations, a funded debt is one for the payment of which (interest and principal) some fund is appropriated, either specifically, or by provision made for future taxation and the quasi pledging in advance of the public revenue. *Ketchum v. Buffalo*, 14 N.Y. 356; *People v. Carpenter*, 52 N.Y.S. 781, 31 App.Div. 603. As applied to the financial management of corporations (and sometimes of estates in course of administration or properties under receivership) funding means the borrowing of a sufficient sum of money to discharge a variety of floating or unsecured debts, or debts evidenced by notes or secured by bonds but maturing within a short time, and creating a new debt in lieu thereof, secured by a general mortgage, a series of bonds, or an issue of stock, generally maturing at a more remote period, and often at a lower rate of interest. The new debt thus substituted for the pre-existing debts is called the "funded debt." *Ketchum v. Buffalo*, 14 N.Y. 356; *Lawrey v. Sterling*, 41 Or. 518, 69 P. 460. This term is very seldom applied to the debts of a private individual; but when so

used it must be understood as referring to a debt embodied in securities of a permanent character and to the payment of which certain property has been applied or pledged. *Wells v. Wells, Super.N.Y.*, 24 N.Y.S. 874.

**Funding system.** The practice of borrowing money to defray the expenses of government, and creating a "sinking fund," designed to keep down interest, and to effect the gradual reduction of the principal debt. *Merrill v. Monticello, C.C.Ind.*, 22 F. 596.

**FUND, n.** A generic term and all-embracing as compared with term "money," etc., which is specific. *Bivins v. State*, 47 Ga.App. 391, 170 S.E. 513, 516.

A sum of money set apart for a specific purpose, or available for the payment of debts or claims. *State v. Finney*, 141 Kan. 12, 40 P.2d 411, 421.

In its narrower and more usual sense, "fund" signifies "capital," as opposed to "interest" or "income;" as where we speak of a corporation funding the arrears of interest due on its bonds, or the like, meaning that the interest is capitalized and made to bear interest in its turn until it is repaid. Sweet.

In the plural, this word has a variety of slightly different meanings, as follows:

Moneys and much more, such as notes, bills, checks, drafts, stocks and bonds, and in broader meaning may include property of every kind. *State v. Finney*, 141 Kan. 12, 40 P.2d 411, 421.

Money in hand; assets; cash; money available for the payment of a debt, legacy, etc. *Galena Ins. Co. v. Kupfer*, 28 Ill. 335, 81 Am.Dec. 284; *U. S. v. Jenks, D.C.Pa.*, 264 F. 697, 698; *Johnson v. State*, 37 Ga.App. 129, 139 S.E. 118, 119.

The proceeds of sales of real and personal estate, or the proceeds of any other assets converted into money. *Doane v. Insurance Co.*, 43 N.J. Eq. 533, 11 A. 739; *Illinois Christian Missionary Soc. v. American Christian Missionary Soc.*, 277 Ill. 193, 115 N.E. 118, 120.

Corporate stocks or government securities; in this sense usually spoken of as the "funds."

Assets, securities, bonds, or revenue of a state or government appropriated for the discharge of its debts. *State v. Hudson*, 93 W.Va. 435, 117 S.E. 122, 126; *Broadway Bank of St. Louis, Mo.*, v. *McGee Creek Levee & Drainage Dist.*, 292 Ill. 560, 127 N.E. 165, 166; *State v. Board of Education of Sharples Village School Dist.*, 114 Ohio St. 602, 151 N.E. 669, 670.

**Current funds.** Current money, whatever is receivable and current by law as money. *Henderson v. Farmers' Sav. Bank of Harper*, 199 Iowa 496, 202 N.W. 259, 261; *Feder v. Elliott*, 198 Iowa 447, 199 N.W. 288, 289, 36 A.L.R. 1353.

**General fund.** This phrase, in New York, is a collective designation of all the assets of the state which furnish the means for the support of government and for defraying the discretionary appropriations of the legislature. *People v. Orange County Sup'rs*, 27 Barb., N.Y., 575, 588. It has also been used in Delaware in the messages of the governor and other state papers to distinguish such funds as are available in the hands of the state treasurer for general purposes from assets of a special character, such as the school fund.

**General revenue fund.** As used in connection with municipal finances, the usual, ordinary, running, and incidental expenses of a municipality. *Athlison, T. & S. F. Ry. Co. v. City of Topeka*, 95 Kan. 747, 149 P. 697.

**No funds.** This term denotes a lack of assets or money for a specific use. It is the return made by a bank to a

check drawn upon it by a person who has no deposit to his credit there; also by an executor, trustee, etc., who has no assets for the specific purpose.

**Public funds.** An untechnical name for (1) the revenue or money of a government, state, or municipal corporation; (2) the bonds, stocks, or other securities of a national or state government. Money, warrants, or bonds, or other paper having a money value, and belonging to the state, or to any county, city, incorporated town or school district. *Crawford & Moses' Dig.* (Ark.) § 2835; *Bank of Blytheville v. State*, 148 Ark. 504, 230 S.W. 550, 553. The term applies to funds of every political subdivision of state wherein taxes are levied for public purposes. *Ætna Casualty & Surety Co. v. Bramwell*, D.C.Or., 12 F.2d 307, 309.

**Revolving fund.** Usually, a renewable credit over a defined period. In simple parlance it relates usually to a situation where a banker or merchant extends credit for a certain amount which can be paid off from time to time and then credit is again given not to exceed the same amount. It may also mean a fund, which, when reduced, is replenished by new funds from specified sources. *U. S. v. Butterworth-Judson Corporation*, C.C.A.N.Y., 297 F. 971, 979.

**Sinking fund.** The aggregate of sums of money (as those arising from particular taxes or sources of revenue) set apart and invested, usually at fixed intervals, for the extinguishment of the debt of a government or corporation, by the accumulation of interest. *Elser v. Ft. Worth, Tex.Civ. App.*, 27 S.W. 740; *Brooke v. Philadelphia*, 162 Pa. 123, 29 A. 387, 24 L.R.A. 781. A fund arising from particular taxes, imposts, or duties, which is appropriated towards the payment of the interest due on a public loan and for the gradual payment of the principal. *Union Pac. R. Co. v. Buffalo Co.*, 9 Neb. 453, 4 N.W. 53; *Sidney Spitzer & Co. v. Commissioners of Franklin County*, 188 N.C. 30, 123 S.E. 636, 639. A fund created for extinguishing or paying a funded debt. *Ketchum v. Buffalo*, 14 N.Y. 379, cited in *Chicago & I. R. Co. v. Pyne*, C.C.N.Y., 30 F. 89.

**Sinking fund tax.** A tax raised to be applied to the payment of interest on, and principal of public loan. *Sidney Spitzer & Co. v. Commissioners of Franklin County*, 188 N.C. 30, 123 S.E. 636, 639; *Union Pac. R. Co. v. York County*, 10 Neb. 612, 7 N.W. 270.

**FUNDAMENTAL ERROR.** See **Error**.

**FUNDAMENTAL LAW.** The law which determines the constitution of government in a state, and prescribes and regulates the manner of its exercise; the organic law of a state; the constitution.

**FUNDAMUS.** We found. One of the words by which a corporation may be created in England. 1 Bl.Comm. 473; 3 Steph.Comm. 173.

**FUNDATIO.** Lat. A founding or foundation. Particularly applied to the creation and endowment of corporations.

As applied to eleemosynary corporations such as colleges and hospitals, it is said that "*fundatio incipiens*" is the incorporation or grant of corporate powers, while "*fundatio perficiens*" is the endowment or grant or gift of funds or revenues. *Dartmouth College v. Woodward*, 4 Wheat. 667, 4 L.Ed. 629.

**FUNDATOR.** A founder (*q. v.*).

**FUNDI PATRIMONIALES.** Lands of inheritance.

**FUNDI PUBLICI.** Public lands.

**FUNDITORES.** Pioneers. *Jacob*.

**FUNDUS.** In the civil and old English law, land; land or ground generally; land, without considering its specific use; land, including buildings generally; a farm.

**FUNERAL EXPENSES.** Money expended in procuring the interment, cremation, or other disposition of a corpse, including suitable monument, perpetual care of burial lot and entertainment of those participating in wake. *Gooch v. Beasley*, 137 Tenn. 407, 193 S.W. 132, 133; *Nelson v. Schoonover*, 89 Kan. 388, 131 P. 147, 149; *In re Borchart's Will*, 184 Wis. 561, 200 N.W. 461, 464; *Oster's Ex'r v. Ohlman*, 187 Ky. 341, 219 S.W. 187, 190; *In re Gilchrist's Estate*, 110 N.J.Eq. 666, 128 A. 876.

**FUNGIBLE THINGS.** Movable goods which may be estimated and replaced according to weight, measure, and number. Things belonging to a class, which do not have to be dealt with *in specie*. *Standard Bank of Canada v. Lowman*, D.C.Wash., 1 F.2d 935, 940; *Edwards v. Cleveland Mill & Power Co.*, 193 N.C. 780, 138 S.E. 131, 134, 53 A.L.R. 1404.

Those things one specimen of which is as good as another, as is the case with half-crowns, or pounds of rice of the same quality. Horses, slaves, and so forth, are non-fungible things, because they differ individually in value, and cannot be exchanged indifferently one for another. *Holl.Jur.* 88.

Where a thing which is the subject of an obligation (which one man is bound to deliver to another) must be delivered *in specie*, the thing is not fungible; that very individual thing, and not another thing of the same or another class, in lieu of it, must be delivered. Where the subject of the obligation is a thing of a given class, the thing is said to be fungible; *i. e.*, the delivery of any object which answers to the generic description will satisfy the terms of the obligation. *Aust.Jur.* 483, 484.

**FUNGIBLES RES.** Lat. In the civil law, fungible things. See that title.

**FUR.** Lat. A thief. One who stole secretly or without force or weapons, as opposed to robber.

**FUR MANIFESTUS.** In the civil law, a manifest thief. A thief who is taken in the very act of stealing.

**FURANDI ANIMUS.** Lat. An intention of stealing.

**FURCA.** In old English law, a fork. A gallows or gibbet. *Bract. fol.* 56.

**FURCA ET FLAGELLUM.** Gallows and whip. *Tenure ad furcam et flagellum*, tenure by gallows and whip. The meanest of servile tenures, where the bondman was at the disposal of his lord for life and limb. *Cowell*.

**FURCA ET FOSSA.** Gallows and pit, or pit and gallows. A term used in ancient charters to signify a jurisdiction of punishing thieves, viz., men by hanging, women by drowning. *Spelman; Cowell*.

**FURIAN LAW.** See *Lex Furia Caninia*.

**FURIGELDUM.** A fine or mulct paid for theft.

**FURIOSI NULLA VOLUNTAS EST.** A madman has no will. *Dig.* 50, 17, 40; *Broom, Max.* 314.

**FURIOSITY.** In Scotch law, madness, as distinguished from fatuity or idiocy.

## FURIOSUS

**FURIOSUS.** Lat. An insane man; a madman; a lunatic.

**FURIOSUS ABSENTIS LOCO EST.** A madman is the same with an absent person, [that is, his presence is of no effect.] Dig. 50, 17, 24, 1.

**FURIOSUS NULLUM NEGOTIUM CONTRAHERE POTEST.** A madman can contract nothing, [can make no contract]. Dig. 50, 17, 5.

**FURIOSUS SOLO FURORE PUNITUR.** A madman is punished by his madness alone; that is, he is not answerable or punishable for his actions. Co.Litt. 247b; 4 Bl.Comm. 24, 396; Broom, Max. 15.

**FURIOSUS STIPULARE NON POTEST NEC ALIQUID NEGOTIUM AGERE, QUI NON INTELLIGIT QUID AGIT.** 4 Coke, 126. A madman who knows not what he does cannot make a bargain, nor transact any business.

**FURLINGUS.** A furlong, or a furrow one-eighth part of a mile long. Co.Litt. 5b.

**FURLONG.** A measure of length, being forty poles, or one-eighth of a mile.

**FURLOUGH.** A leave of absence. *Smith v. Sovereign Camp, W. O. W.*, 204 S.C. 193, 28 S.E.2d 808, 811. A temporary leave of absence to one in the armed service of the country, or to a government official or an employee, indicating some voluntary act on part of employee as contrasted with the phrase "lay-off" which contemplates action by employer. *Jones v. Metropolitan Life Ins. Co.*, 156 Pa.Super. 156, 39 A.2d 721, 725. Also the document granting leave of absence.

In United States army furloughs are given only to enlisted men, officers being given leaves of absence. In United States navy furlough is an extended leave of absence, or a suspension from duty by an executive order, on half leave-of-absence pay, given only to an officer. A permit or passport. As a transitive verb, it means "to grant a furlough to; broadly, to allow leave of absence to." *Ex parte Roach, D.C.Ala.*, 244 F. 625, 628.

**FURNAGE.** See *Fornagium*; *Four*.

**FURNISH.** To supply or provide. *Talbot v. Caudill*, 58 S.W.2d 385, 248 Ky. 146. For use in the accomplishment of a particular purpose. *William M. Graham Oil & Gas Co. v. Oil Well Supply Co.*, 128 Okl. 201, 264 P. 591, 599. Implying some degree of active effort to accomplish the designated end. In *re Opinion of the Justices, Mass.*, 304 Mass. 172, 14 N.E.2d 392, 393, 115 A.L.R. 1158. To provide for, to provide what is necessary for, to give, or afford. *Juno v. Northland Elevator Co.*, 56 N.D. 223, 216 N.W. 562, 563. Equip synonymous. *State ex rel. Davis v. Barber*, 139 Fla. 706, 190 So. 809. To deliver, whether gratuitously or otherwise. *Delp v. Brewing Co.*, 123 Pa. 42, 15 A. 871; *Wyatt v. Larimer & W. Irr. Co.*, 1 Colo. App. 480, 29 P. 906. As used in the liquor laws, "furnish" means to provide in any way, and includes giving as well as selling. *State v. Freeman*, 27 Vt. 520; *State v. Tague*, 76 Vt. 118, 56 A. 535; *Creel v. U. S.*, C.C.A.Okl., 21 F.2d 690; In *re American Lime Co.*, D.C.Tenn., 201 F. 433, 434.

To supply or provide in any way other than by sale. *State v. McDermott*, 108 Vt. 58, 182 A. 191, 192.

**FURNITURE.** This term includes that which furnishes, or with which anything is furnished or supplied; whatever must be supplied to a house, a room, place of business, or public building or the like, to make it habitable, convenient, or agreeable; goods, vessels, utensils, and other appendages necessary or convenient for housekeeping; whatever is added to the interior of a house or apartment, for use or convenience. *Bell v. Golding*, 27 Ind. 173; *C. Ludwig Baumann & Co., Brooklyn, v. Manwit Corporation*, 213 App.Div. 300, 207 N.Y.S. 437, 439; *Fire Ass'n of Philadelphia v. Powell, Tex.Civ.App.*, 188 S.W. 47, 49; *Smalley v. Dent County, Mo.Sup.*, 177 S.W. 620, 623.

The word comprehends only such furniture as is intended for use and ornament of apartments, but not libraries which happen to be there, nor plate. *Civ.Code La. art. 477.*

The term embraces everything about the house that has been usually enjoyed therewith, including plate, linen, china, and pictures, rugs, draperies and furnishings. *Endicott v. Endicott*, 41 N.J.Eq. 96, 3 A. 157; In *re Kathan's Estate*, 153 N.Y.S. 366, 368, 90 Misc.Rep. 540; *Peckham v. Peckham*, 97 N.J.Eq. 174, 127 A. 93. Readily movable articles which would be serviceable generally as household furniture. *Farm & Home Savings & Loan Ass'n of Missouri v. Empire Furniture Co., Tex.Civ.App.*, 87 S.W.2d 1111, 1112.

*Household furniture* includes all personal chattels that may contribute to the use or convenience of the householder, or the ornament of the house; as plate, linen, china, both useful and ornamental, and pictures. But goods in trade, books, and wines will not pass by a bequest of household furniture. 1 *Rop.Leg.* 203.

**FURNITURE OF A SHIP.** This term includes everything with which a ship requires to be furnished or equipped to make her seaworthy; it comprehends all articles furnished by ship chandlers, which are almost innumerable. *Weaver v. The S. G. Owens*, 1 Wall.Jr. 369, Fed.Cas.No.17,310.

**FURNIVAL'S INN.** Formerly an inn of chancery. See *Inns of Chancery*.

**FUROR BREVIS.** A sudden transport of passion. *Mosby v. Commonwealth*, 168 Va. 688, 190 S.E. 152, 155.

**FUROR CONTRAHI MATRIMONIUM NON SINIT, QUIA CONSENSU OPUS EST.** Insanity prevents marriage from being contracted, because consent is needed. Dig. 23, 2, 16, 2; 1 *Ves. & B.* 140; 1 *Bl.Comm.* 439; *Wightman v. Wightman*, 4 *Johns.Ch., N.Y.*, 343, 345.

**FURST AND FONDUNG.** In old English law, time to advise or take counsel. *Jacob*.

**FURTA.** A right derived from the king as supreme lord of a state to try, condemn, and execute *thieves* and felons within certain bounds or districts of an honour, manor, etc. Cowell seems to be doubtful whether this word should not read *furca*, which means directly a gallows. *Cowell; Holthouse, L.Dict.*

**FURTHER.** Not word of strict legal or technical import, and may be used to introduce negation

or qualification of some precedent matter, but generally when used as an adverb it is word of comparison, and means "additional," and is equivalent to "moreover, or furthermore, something beyond what has been said or likewise, or also." *Hollman v. Hollman*, 88 Cal.App. 748, 264 P. 289, 290. Wider, or fuller, or something new. In re *Andrus' Will*, 156 Misc. 268, 281 N.Y.S. 831. Occasionally it may mean any, future, or other. *London & S. F. Bank v. Parrott*, 125 Cal. 472, 58 P. 164, 73 Am.St.Rep. 64; *Galpin v. City of Chicago*, 269 Ill. 27, 109 N.E. 713, 717, L.R.A.1917B, 176; *Smith v. Craig*, 211 N.Y. 456, 105 N.E. 798, 800, Ann.Cas.1915B, 937.

**FURTHER ADVANCE.** A second or subsequent loan of money to a mortgagor by a mortgagee, either upon the same security as the original loan was advanced upon, or an additional security. Equity considers the arrears of interest on a mortgage security converted into principal, by agreement between the parties, as a further advance. *Wharton*.

**FURTHER ASSURANCE, COVENANT FOR.** See *Covenant*.

**FURTHER CONSIDERATION.** In English practice, upon a motion for judgment or application for a new trial, the court may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for *further consideration*, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, as it may think fit. *Rules Sup. Ct.* xl, 10.

**FURTHER DIRECTIONS.** Where a master made a separate report, or one not in pursuance of a decree or decretal order, a petition for consequential directions had to be presented, since the cause could not be set down for further directions under such circumstances. See 2 *Daniell, Ch.Pr.* (5th Ed.) 1233, note.

**FURTHER HEARING, or FURTHER PROCEEDINGS.** In practice, hearing at another time; new trial; or other proceedings directed by appellate court. *C. W. Hunt Co. v. Boston Elevated Ry. Co.*, 217 Mass. 319, 104 N.E. 728, 729; *Morgan Engineering Co. v. Cache River Drainage Dist.*, 122 Ark. 491, 184 S.W. 57, 59. Not a new proceeding but rather a continuation of an existing proceeding. In re *Mills' Estate*, 171 Misc. 42, 11 N.Y.S.2d 929, 932.

**FURTHER INSTRUCTIONS.** Additional instructions given to jury after they have once been instructed and have retired. *White v. Sharpe*, 219 Mass. 393, 107 N.E. 56.

**FURTHER MAINTENANCE OF ACTION, PLEA TO.** A plea grounded upon some fact or facts which have arisen since the commencement of the suit, and which the defendant puts forward for the purpose of showing that the plaintiff should not further maintain his action. *Brown*.

**FURTHERANCE.** Act of furthering, helping forward, promotion, advancement, or progress. *Maryland Casualty Co. v. Smith*, Tex.Civ.App., 40 S.W.2d 913, 914.

**FURTHERANCE OF BUSINESS OF EMPLOYER.** Discharge of duties of employment, as respects employer's liability for employees' torts. *West v. F. W. Woolworth Co.*, 215 N.C. 211, 1 S.E. 2d 546, 548.

**FURTIVE.** In old English law, stealthily; by stealth. *Fleta*, lib. 1, c. 38, § 3.

**FURTUM.** Lat. Theft. The fraudulent appropriation to one's self of the property of another, with an intention to commit theft without the consent of the owner. *Fleta*, l. 1, c. 36; *Bract. fol.* 150; 3 *Inst.* 107.

The thing which has been stolen. *Bract. fol.* 151.

**FURTUM CONCEPTUM.** In Roman law, the theft which was disclosed where, upon searching any one in the presence of witnesses in due form, the thing stolen was discovered in his possession.

**FURTUM EST CONTRECTATIO REI ALIENÆ FRAUDULENTA, CUM ANIMO FURANDI, INVITO ILLO DOMINO CUIUS RES ILLA FUERAT.** 3 *Inst.* 107. Theft is the fraudulent handling of another's property, with an intention of stealing, against the will of the proprietor, whose property it was.

**FURTUM GRAVE.** In Scotch law, an aggravated degree of theft, anciently punished with death. It still remains an open point what amount of value raises the theft to this serious denomination. 1 *Broun*, 352, note. See 1 *Swint.* 467.

**FURTUM MANIFESTUM.** Open theft. Theft where a thief is caught with the property in his possession. *Bract. fol.* 150b.

**FURTUM NON EST UBI INITIUM HABET DETENTIONIS PER DOMINIUM REI.** 3 *Inst.* 107. There is no theft where the foundation of the detention is based upon ownership of the thing.

**FURTUM OBLATUM.** In the civil law, offered theft. *Oblatum furtum dicitur cum res furtiva ab aliquo tibi oblata sit, eaque apud te concepta sit.* Theft is called "*oblatum*" when a thing stolen is offered to you by any one, and found upon you. *Inst.* 4, 1, 4.

**FUSE PLUG LEVEES.** Under Mississippi Flood Control Act lower points for possible flood spillways were designated "fuse plug levees." *U. S. v. Sponenbarger, Ark.*, 308 U.S. 256, 60 S.Ct. 225, 227, 84 L.Ed. 230.

**FUSEL OIL.** A volatile oily liquid obtained in the rectification of spirituous liquors made from the fermentation of grain, potatoes, the marc of grapes, and other material; its chief constituent being amyl alcohol, a direct nerve poison. *Cal-*

## FUST

**kins v. National Travelers' Ben. Ass'n of Des Moines**, 200 Iowa 60, 204 N.W. 406, 407, 41 A.L.R. 363.

**FUST.** See Fuz.

**FUSTIGATIO.** In old English law, a beating with sticks or clubs; one of the ancient kinds of punishment of malefactors. Bract. fol. 104b, lib. 3, tr. 1, c. 6.

**FUSTIS.** In old English law, a staff, used in making livery of seisin. Bract. fol. 40.

A baton, club, or cudgel.

**FUTHWITE, or FITHWITE.** A fine for fighting or breaking the peace. Cowell; Cun.L.Dict.

**FUTURE ACQUIRED PROPERTY.** Mortgages, especially of railroad companies are frequently made in terms to cover after-acquired property; such as rolling stock, etc. Philadelphia, W. & B. R. Co. v. Woelpper, 64 Pa. 366, 3 Am.Rep. 596; Shaw v. Bill, 95 U.S. 10, 24 L.Ed. 333; L.R. 16 Eq. 383. This may include future net earnings; Dunham v. Isett, 15 Iowa 284; the proceeds to be received from the sale of surplus lands; L.R. 2 Ch. 201; a ditch or flume in process of construction, which was held to cover all improvements and fixtures thereafter to be put on the line thereof; De Arguello v. Greer, 26 Cal. 620; rolling stock etc.; Philadelphia, W. & B. R. Co. v. Woelpper, 64 Pa. 366, 3 Am.Rep. 596; Benjamin v. R. Co., 49 Barb., N.Y., 441. Future calls of assessments on stock cannot be mortgaged; L.R. 10 Eq. 681; but calls already made can be; *id.*

A will speaks as of the death of the testator and ordinarily passes property acquired after its date.

**FUTURE DEBT.** In Scotch law, a debt which is created, but which will not become due till a future day. 1 Bell, Comm. 315.

**FUTURE EARNINGS.** A convenient way of designating earnings which, if it had not been for injury, could have been made in future, but which were lost as result of injury. Nowlin v. Kansas City Public Service Co., Mo.App., 58 S.W.2d 324.

**FUTURE ESTATE.** See Estate.

**FUTURE INTERESTS.** Interests in land or other things in which the privilege of possession or of enjoyment is future and not present. Commissioner of Internal Revenue v. Wells, C.C.A.6, 132 F.2d 405, 407.

**FUTURES.** This term has grown out of those purely speculative transactions, in which there is a nominal contract of sale for future delivery, but where in fact none is ever intended or executed.

The nominal seller does not have or expect to have the stock or merchandise he purports to sell, nor does the nominal buyer expect to receive it or to pay the price. Instead of that, a percentage or margin is paid, which is increased or diminished as the market rates go up or down, and accounted for to the buyer. King v. Quidnick Co., 14 R.I. 138; Lemonius v. Mayer, 71 Miss. 514, 14 So. 33; Plank v. Jackson, 128 Ind. 424, 26 N.E. 568; S. M. Weld & Co. v. Austin, 107 Miss. 279, 65 So. 247, 248.

**FUTURI.** Lat. Those who are to be. Part of the commencement of old deeds. "*Sciant præsentes et futuri, quod ego talis, dedi et concessi,*" etc., (Let all men now living and to come know that I, A. B., have, etc.) Bract. fol. 34b.

**FUZ, or FUST.** A Celtic word, meaning a wood or forest.

**F. W. C.** Free Woman of Color, up to the time of Civil War, applied to all persons not of the white race, including Indians. Sunseri v. Casagne, 191 La. 209, 185 So. 1, 4.

**FYHTWITE.** One of the fines incurred for homicide.

**FYKE.** A fish-trap consisting of several successive conical nets with widestretched mouths. Mitchell v. Curtis, 135 Or. 595, 296 P. 1078. A bow-net for catching fish. Pub.St.Mass.1882, p. 1291. Cf. Pound Net.

**FYLE.** In old Scotch law, to defile; to declare foul or defiled. Hence, to find a prisoner guilty.

**FYLIT.** In old Scotch practice, fyled; found guilty. See Fyle.

**FYNDERINGA.** (Sax.) An offense or trespass for which the fine or compensation was reserved to the king's pleasure. Leges Hen. I. c. 10. Its nature is not known. Spelman reads *fynderinga*, and interprets it *treasure trove*; but Cowell reads *fyrderinga*, and interprets it a joining of the king's *fird* or host, a neglect to do which was punished by a fine called *firdwite*. See Spelman, Gloss. Du Cange agrees with Cowell.

**FYRD.** Sax. In Anglo-Saxon law, the military array or land force of the whole country. Contribution to the fyrd was one of the imposts forming the *trinoda necessitas*. (Also spelled "ferd" and "fird.")

**FYRDFARE.** A summoning forth to join a military expedition; a summons to join the *fyrd* or army.

**FYRDSOCNE, (or fyrdsoken.)** Exemption from military duty; exemption from service in the *fyrd*.

**FYRDWITE.** A fine imposed for neglecting to join the *fyrd* when summoned. Also a fine imposed for murder committed in the army; also an acquittance of such fine.