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**n.a.** *abbr.* **1.** (*cap.*) National Association. See *national bank* under BANK. **2.** Not applicable. **3.** Not available. **4.** Not allowed.

**NAFTA** (**na**f-tə). *abbr.* NORTH AMERICAN FREE TRADE AGREEMENT.

**naked**, *adj.* (Of a legal act or instrument) lacking confirmation or validation <naked ownership of property>.

**naked authority.** See AUTHORITY (1).

**naked bailment.** See *gratuitous bailment* under BAILMENT.

**naked confession.** See CONFESSION.

**naked contract.** See NUDUM PACTUM.

**naked debenture.** See DEBENTURE (3).

**naked deposit.** See *gratuitous bailment* under BAILMENT, DEPOSIT (5).

**naked expectancy.** See *naked possibility* under POSSIBILITY.

**naked land trust.** See *land trust* under TRUST.

**naked license.** See LICENSE.

**naked licensee.** See *bare licensee* under LICEN-SEE.

**naked option.** See OPTION.

**naked owner.** See OWNER.

**naked possession.** See POSSESSION.

**naked possibility.** See POSSIBILITY.

**naked power.** See POWER.

**naked promise.** See *gratuitous promise* under PROMISE.

**naked trust.** See *passive trust* under TRUST.

**nam** (nam), *n.* [Old English *naam*] *Hist.* The act of distraining property.

**nam** (nam or nahm), *prep.* [Latin] For.

“Nam . . . This particle is frequently used as introductory to the quotation of a maxim, and sometimes erroneously treated as a part of the maxim quoted.” 2 Alexander M. Burrill, *A Law Dictionary and Glossary* 219 (2d ed. 1867).

**namare** (nə-mair-ee), *vb.* [Law Latin] *Hist.* To distrain property.

**namation** (nə-may-shən), *n.* [fr. Old English *nam*] *Hist.* **1.** The act of distraining property. **2.** *Scots law.* The impounding of property. — Also termed *namatio*.

**name**, *n.* A word or phrase identifying or designating a person or thing and distinguishing that person or thing from others.

**alias.** See ALIAS.

**assumed name.** See ASSUMED NAME.

**corporate name.** The registered name under which a corporation conducts legal affairs such as suing, being sued, and paying taxes; the name that a corporation files with a state authority (*usu.* the secretary of state) as the name under which the corporation will conduct its affairs. ● A corporate name *usu.* includes, and in many states is required to include, the word “corporation,” “incorporated,” or “company;” or an abbreviation of one of those words. Cf. ASSUMED NAME.

**distinctive name.** A name, esp. a trade-name, that clearly distinguishes one thing from another. ● To maintain an action for tradename infringement, the plaintiff must prove, among other things, that it owns a distinctive name.

**fictitious name.** See ASSUMED NAME; ALIAS.

**full name.** A person’s first name, middle name (or middle initial), and surname.

**generic name.** See GENERIC NAME.

**legal name.** A person’s full name as recognized in law, consisting of a first name (*usu.*

given at birth or at a baptism or christening) and a last name (*usu.* a family name).

**nickname.** See NICKNAME.

**street name.** See STREET NAME.

**tradename.** See TRADENAME.

**name-and-arms clause.** *Hist.* A clause (*usu.* in a will or settlement transferring property) providing that the property's recipient must assume and continue using the testator's or settlor's surname and coat-of-arms, or else the property will pass to another person.

**named insured.** See INSURED.

**named-insured exclusion.** See EXCLUSION (3).

**named partner.** See *name partner* under PARTNER.

**named-perils policy.** See *multi-peril policy* under INSURANCE POLICY.

**named plaintiff.** See *class representative* under REPRESENTATIVE.

**namely, adv.** By name or particular mention; that is to say <the plaintiff asserted two claims, namely wrongful termination and slander>. • The term indicates what is to be included by name. By contrast, *including* implies a partial list and indicates that something is not listed. See INCLUDE.

**name partner.** See PARTNER.

**namium** (náy-mee-əm), *n.* [Law Latin] *Hist.* The act of distraining property.

**namium vetitum** (náy-mee-əm vet-ə-təm), *n.* [Law Latin "taking prohibited"] *Hist.* A refused or prohibited taking or redelivery. • This term is most often associated with the circumstance in which a lord's bailiff distrained animals or goods, and was ordered by the lord to take them to an unknown place or otherwise not to redeliver them when the sheriff came to replevy them. — Also termed *vetitum namium*.

**nanny tax.** See TAX.

**nantissement** (non-tis-mahn), *n.* [French] *French law.* A security or pledge. • If it involves movable property, it is called "gage." If it involves immovable property such as real estate, it is called "antichrèse."

**Napoleonic Code. 1.** (*usu. pl.*) The codification of French law commissioned by Napoleon in the 19th century, including the *Code civil* (1804), the *Code de procédure civile* (1806), the *Code de commerce* (1807), the *Code pénal* (1810), and the *Code d'instruction crimenelle* (1811). — Also termed *Code Napoléon* (abbr. CN). **2.** Loosely, CIVIL CODE (2).

**NAR.** *abbr.* NATIONAL ASSOCIATION OF REALTORS.

**narcoanalysis** (nahr-koh-ə-nal-ə-sis). The process of injecting a "truth-serum" drug into a patient to induce semiconsciousness, and then interrogating the patient. • This process has been utilized to enhance the memory of a witness.

**narcotic, n. 1.** An addictive drug, esp. an opiate, that dulls the senses and induces sleep. **2.** (*usu. pl.*) A drug that is controlled or prohibited by law. — **narcotic, adj.**

**narr.** *abbr.* NARRATIO.

**narr-and-cognovit law** (nahr-and-kahg-noh-vit). [Latin *narratio* "declaration" and *cognovit* "the person has conceded"] *Hist.* A law providing that a plaintiff will be granted judgment on a note through an attorney's confession that the amount shown on the note, together with interest and costs, constitutes a legal and just claim. Cf. COGNOVIT JUDGMENT; *confession of judgment* under JUDGMENT.

**narratio** (nə-ray-shee-oh), *n.* [Latin "narrative"] *Hist.* A declaration, complaint, or petition in which the plaintiff sets out the facts of a case; an oral narrative by the plaintiff of the facts and legal arguments on which the claim is based. • The term has also been called the "conte" or "tale." — *Abbr. narr.*

"[T]he making of the count, in Latin the *narratio*, was the very centre of the legal process. We do not know how it came about that the litigant was allowed to speak through the mouth of another, though it has been suggested that it was not to prevent mistakes being made but to prevent them being fatal. Certainly the litigant could disavow what was said on his behalf; and perhaps it was only 'said' by him when he formally adopted it. If this is right, our modern barrister began as one who could harmlessly blunder." S.F.C. Milsom, *Historical Foundations of the Common Law* 28 (1969).

**narrative evidence.** See EVIDENCE.

**narrator** (na-ray-tor or na-ray-tər), *n.* [Law Latin] *Hist.* A pleader or counter; a person who prepares pleadings (i.e., *narrs*). • For example,

a serjeant-at-law was also known as *serviens narrator*. Pl. **narratores** (na-rə-tor-eez).

"The Latin *narrator* and its French equivalent *contour* became technical terms. If an English term was in use, it was perhaps *forspeaker*." 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 215 n.1 (2d ed. 1898).

**narrow-channel rule.** The navigational requirement that a vessel traveling down a slim fairway must keep as near to the fairway wall on the vessel's starboard side as is safe and practicable. 33 USCA § 2009(a)(i).

**narrowly tailored**, *adj.* (Of a content-neutral restriction on the time, place, or manner of speech in a designated public forum) being only as broad as is reasonably necessary to promote a substantial governmental interest that would be achieved less effectively without the restriction; no broader than absolutely necessary. See *designated public forum* under PUBLIC FORUM.

**narrow sea.** (*often pl.*) A sea running between two coasts that are close to each another. • The English Channel, for example, is a narrow sea.

**nasciturus** (nas-ə-t[y]oor-əs or -t[y]ər-əs), *n.* [fr. Latin *nascor* "to be born"] *Roman law.* An unborn child.

**NASD.** *abbr.* NATIONAL ASSOCIATION OF SECURITIES DEALERS.

**NASDAQ** (naz-dak). *abbr.* NATIONAL ASSOCIATION OF SECURITIES DEALERS AUTOMATED QUOTATION SYSTEM.

**natale** (nə-tay-lee), *n.* [Latin "of or belonging to birth"] *Hist.* The status a person acquires by birth. • For example, if one or both parents of a child were serfs, the child was generally regarded as a serf, and a child born free rarely became a serf. See NATIVUS.

**nati et nascituri** (nay-ti et nas-ə-t[y]oor-I or -t[y]ər-I), *n. pl.* [Latin "born and to be born"] *Hist.* A person's heirs, near and remote.

**natio** (nay-shee-oh), *n.* [Latin] *Hist.* 1. A nation. 2. A group of students. 3. A native place.

**nation**, *n.* 1. A large group of people having a common origin, language, and tradition and usu. constituting a political entity. • When a nation is coincident with a state, the term *nation-state* is often used. — Also termed *nationality*.

"The nearest we can get to a definition is to say that a nation is a group of people bound together by common history, common sentiment and traditions, and, usually (though not always, as, for example, Belgium or Switzerland) by common heritage. A state, on the other hand, is a society of men united under one government. These two forms of society are not necessarily coincident. A single nation may be divided into several states, and conversely a single state may comprise several nations or parts of nations." John Salmond, *Jurisprudence* 136 (Glanville L. Williams ed., 10th ed. 1947).

2. A community of people inhabiting a defined territory and organized under an independent government; a sovereign political state. Cf. STATE.

**national**, *adj.* 1. Of or relating to a nation <national anthem>. 2. Nationwide in scope <national emergency>.

**national**, *n.* 1. A member of a nation. 2. A person owing permanent allegiance to and under the protection of a state. 8 USCA § 1101(a)(21).

**national of the United States.** A citizen of the United States or a noncitizen who owes permanent allegiance to the United States. 8 USCA § 1101(a)(22). — Also termed *U.S. national*; *U.S. citizen*.

**National Aeronautics and Space Act.** A 1958 federal statute that created the National Aeronautics and Space Administration (NASA), a civilian agency of the federal government whose functions include conducting space research, improving aeronautical travel, building manned and unmanned space vehicles, developing operational space programs, and engaging in other space activities devoted to peaceful purposes for the benefit of all humankind. 42 USCA §§ 2451-2484.

**national association.** See *national bank* under BANK.

**National Association of Realtors.** An association of real-estate brokers and agents promoting education, professional standards, and modernization in areas of real estate such as brokerage, appraisal, and property management. — Abbr. NAR.

**National Association of Securities Dealers.** A group of brokers and dealers empowered by the SEC to regulate the over-the-counter securities market. — Abbr. NASD.

**National Association of Securities Dealers Automated Quotation system.** A computer-

ized system for recording transactions and displaying price quotations for a group of actively traded securities on the over-the-counter market. — Abbr. NASDAQ.

**national bank.** See BANK.

**National Bar Association.** An organization comprised primarily of African-American members of the legal profession, which was founded in 1925 and which seeks to promote education, professionalism, and the protection of civil rights. — Abbr. NBA.

**National Conference of Commissioners on Uniform State Laws.** An organization that drafts and proposes statutes for adoption by individual states, with the goal of making the laws on various subjects uniform among the states. • Founded in 1892 and composed of representatives from all 50 states, the Conference has drafted more than 200 uniform laws, including the Uniform Commercial Code. — Abbr. NCCUSL. — Also termed *Uniform Law Commissioners*. See UNIFORM ACT; MODEL ACT.

**national currency.** Money (both notes and coins) approved by a national government and placed in circulation as a medium of exchange. See LEGAL TENDER.

**National Daily Quotation Service.** See PINK SHEET.

**national debt.** The total financial obligation of the federal government, including such instruments as Treasury bills, notes, and bonds, as well as foreign debt.

**national defense.** 1. All measures taken by a nation to protect itself against its enemies. • A nation's protection of its collective ideals and values is included in the concept of national defense. 2. A nation's military establishment.

**national domicile.** See DOMICILE.

**national emergency.** A state of national crisis or a situation requiring immediate and extraordinary national action.

**National Environmental Policy Act.** A 1969 federal statute establishing U.S. environmental policy. • The statute requires federal agencies to submit an environmental-impact statement with every proposal for a program or law that would affect the environment. 42 USCA

§§ 4321-4347 — Abbr. NEPA. See ENVIRONMENTAL-IMPACT STATEMENT.

**national government.** The government of an entire country, as distinguished from that of a province, state, subdivision, or territory of the country and as distinguished from an international organization.

**National Guard.** The U.S. militia, which is maintained as a reserve for the U.S. Army and Air Force. • Its members are volunteers, recruited and trained on a statewide basis and equipped by the federal government. A state may request the National Guard's assistance in quelling disturbances, and the federal government may order the National Guard into active service in times of war or other national emergency. See MILITIA.

**nationality.** 1. NATION (1). 2. The relationship between a citizen of a nation and the nation itself, customarily involving allegiance by the citizen and protection by the state; membership in a nation. 3. The formal relationship between a ship and the nation under whose flag the ship sails. See FLAG STATE.

“‘Nationality’ is a term which has long been used to define the legal relationship between a state and a ship which is authorized by the state to fly its flag. . . . Discussions in the International Law Commission in 1951 reflected concern that the use of the term ‘nationality’ in reference to ships was misleading as it implied similarity to the term’s use in defining the legal relationship between a state and its citizen. Nonetheless, the term has continued to be the one most often employed in describing the relationship between a ship and its flag state. It is important to realize, however, that in spite of their common names, the legal relationship ascribed to the nationality of ships does differ from that arising from the nationality of natural or juridical persons.” Louis B. Sohn & Kristen Gustafson, *The Law of the Sea in a Nutshell* 1-2 (1984).

**Nationality Act.** See IMMIGRATION AND NATIONALITY ACT.

**nationalization, n.** 1. The act of bringing an industry under governmental control or ownership. 2. The act of giving a person the status of a citizen. See NATURALIZATION.

**nationalize, vb.** 1. To bring (an industry) under governmental control or ownership. 2. To give (a person) the status of a citizen; NATURALIZE.

**National Labor Relations Act.** A federal statute regulating the relations between employers and employees and establishing the National Labor Relations Board. 29 USCA §§ 151-169. •

The statute is also known as the Wagner Act of 1935. It was amended by the Taft-Hartley Act of 1947 and the Landrum-Griffin Act of 1959. — Also termed *Wagner Act*. — Abbr. NLR.A.

**National Labor Relations Board.** A federal agency (created by the National Labor Relations Act) that regulates employer-employee relations by establishing collective bargaining, conducting union elections, and prohibiting unfair labor practices. 29 USCA § 153. — Abbr. NLRB. — Often shortened to *Labor Relations Board*.

**National Lawyers Guild.** An association of lawyers, law students, and legal workers dedicated to promoting a left-wing political and social agenda. • Founded in 1937, it now comprises some 4,000 members. Cf. FEDERALIST SOCIETY.

**National Mediation Board.** A federal agency that, among other things, mediates disputes between rail and air carriers and their employees over wages and working conditions. • It was created by the Railway Labor Act. 45 USCA §§ 154-163. — Abbr. NMB.

**National Motor Vehicle Theft Act.** See DYER ACT.

**national origin.** The country in which a person was born, or from which the person's ancestors came. • This term is used in several anti-discrimination statutes, including Title VII of the Civil Rights Act of 1964, which prohibits discrimination because of an individual's "race, color, religion, sex, or national origin." 42 USCA § 2000e-2.

**National Priorities List.** *Environmental law.* The Environmental Protection Agency's list of the most serious uncontrolled or abandoned hazardous-waste sites that are identified for possible long-term remediation as Superfund sites. 40 CFR § 35.6015. — Abbr. NPL.

**National Quotation Bureau.** A company that publishes daily price quotations (*pink sheets*) of over-the-counter securities.

**National Reporter System.** A series of law-books, published by the West Group, containing every published decision of the federal and state courts in the United States. • For federal courts, the system includes the *Supreme Court Reporter*, *Federal Reporter*, *Federal Claims Reporter*, *Federal Supplement*, *Federal Rules Deci-*

*sions*, *Bankruptcy Reporter*, *Military Justice Reporter*, and *Veterans Appeals Reporter*. For state courts, the system includes the *Atlantic Reporter*, *New York Supplement*, *North Eastern Reporter*, *North Western Reporter*, *Pacific Reporter*, *South Eastern Reporter*, *Southern Reporter*, and *South Western Reporter*.

**National Response Center.** *Environmental law.* A nationwide communication center located in Washington, D.C., responsible for receiving, and relaying to appropriate federal officials, all notices of oil discharges and other releases of hazardous substances. 40 CFR § 310.11.

**national-security privilege.** See *state-secrets privilege* under PRIVILEGE (3).

**national-service life insurance.** A policy, issuable to a person in active U.S. military service on or after October 8, 1940, that provides life insurance at favorable rates. • This insurance was established by the National Service Life Insurance Act of 1940, and is regulated by the Administrator of Veterans Affairs. 38 USCA §§ 1901-1929.

**national synod.** See SYNOD.

**National Transportation Safety Board.** An independent government agency that investigates some transportation accidents, conducts safety studies, hears and rules on licensing appeals, and proposes safety guidelines and improved safety standards for the transportation industry. 49 USCA §§ 1101-1155. — Abbr. NTSB.

**national-treatment clause.** A provision contained in some treaties, usu. commercial ones, according foreigners the same rights, in certain respects, as those accorded to nationals.

**national union.** See UNION.

**nations, law of.** See INTERNATIONAL LAW.

**native, n.** 1. A person who is a citizen of a particular place, region, or nation by virtue of having been born there. 2. A person whose national origin derives from having been born within a particular place. 3. Loosely, a person born abroad whose parents are citizens of the nation and are not permanently residing abroad. 4. Loosely, a person or thing belonging to a group indigenous to a particular place. • The term *Native American* is sometimes shortened to *native*.

**native-born**, *adj.* Born in the nation specified <a native-born Canadian>. • This term is sometimes considered redundant. See NATIVE.

**nativi conventionarii** (nə-tī-vī kən-ven-shee-ə-nair-ee-ī), *n. pl.* [Law Latin] *Hist.* Villeins by contract.

**nativi de stipite** (nə-tī-vī dee stip-ə-tee), *n. pl.* [Law Latin] *Hist.* Villeins by birth. See NATIVUS; NATALE.

**nativitas** (nə-tiv-ə-tas), *n.* [Law Latin] *Hist.* The servitude or bondage of serfs.

**nativo habendo** (nə-tī-voh hə-ben-doh), *n.* DE NATIVO HABENDO.

**nativus** (nə-tī-vəs), *n.* [Law Latin] *Hist.* A person who is born a villein or serf.

“Having seen what serfdom means, we may ask how men become serfs. The answer is that almost always the serf is a born serf; *nativus* and *villanus* were commonly used as interchangeable terms . . .” 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 422 (2d ed. 1898).

**natural**, *adj.* **1.** In accord with the regular course of things in the universe and without accidental or purposeful interference <a natural death as opposed to murder>. **2.** Normal; proceeding from the regular character of a person or thing <it is natural for a duck to fly south in the winter>. **3.** Brought about by nature as opposed to artificial means <a natural lake>. **4.** Inherent; not acquired or assumed <natural talent>. **5.** Indigenous; native <the original or natural inhabitants of a country>. **6.** Of or relating to birth <natural child as distinguished from adopted child>. **7.** Untouched by civilization; wild <only a small part of the forest remains in its natural state>. — **naturally**, *adv.*

**natural**, *n.* **1.** A person who is native to a place. See NATIVE; NATURAL-BORN CITIZEN. **2.** A person or thing especially suited for a particular endeavor.

**natural-accumulation doctrine.** The rule that a governmental entity or other landowner is not required to remove naturally occurring ice or snow from public property, such as a highway, unless the entity has, by taking some affirmative action (such as highway construction), increased the travel hazard to the public.

**natural affection.** The love naturally existing between close relatives, such as parent and

child. • Natural affection may be valid consideration for a completed contract but insufficient to support an unperformed contract. See CONSIDERATION; *executory contract* under CONTRACT.

**natural allegiance.** See ALLEGIANCE.

**natural and probable consequence.** See NATURAL CONSEQUENCE.

**natural-born citizen.** See CITIZEN.

**Natural Born Citizen Clause.** The clause of the U.S. Constitution barring persons not born in the United States from the presidency. U.S. Const. art. II, § 1, cl. 5.

**natural-born subject.** See SUBJECT.

**natural boundary.** See BOUNDARY.

**natural channel.** See CHANNEL.

**natural child.** See CHILD.

**natural cognation.** See COGNATION.

**natural consequence.** Something that predictably occurs as the result of an act <plaintiff's injuries were the natural consequence of the car wreck>. — Also termed *natural and probable consequence*.

**natural day.** See DAY.

**natural death.** See DEATH.

**natural-death act.** A statute that allows a person to issue a written directive instructing a physician to withhold life-sustaining procedures if the person should become terminally ill.

**natural domicile.** See *domicile of origin* under DOMICILE.

**natural duty.** See *moral duty* under DUTY (1).

**natural equity.** See EQUITY (3).

**natural father.** See FATHER.

**natural flood channel.** See CHANNEL.

**natural fruit.** See FRUIT.

**natural guardian.** See GUARDIAN.

**natural heir.** See HEIR.

**natural infancy.** See INFANCY.

**naturalis possessio** (nach-ə-ray-lis pə-zes[h]-ee-oh). Mere detention of an object. • This type of possession exists when the possessor's holding of the object is limited by a recognition of another person's outstanding right. The holder may be a usufructuary, a bailee, or a servant.

**naturalization.** The granting of citizenship to a foreign-born person under statutory authority.

**Naturalization Clause.** The constitutional provision stating that every person born or naturalized in the United States is a citizen of the United States and of the state of residence. U.S. Const. amend. XIV, § 1. See JUS SOLI.

**naturalization court.** A court having jurisdiction to hear and decide naturalization petitions. • Naturalization courts were abolished as a result of the Immigration Act of 1990. Under current U.S. law, the Attorney General has the sole authority to naturalize citizens. But after a hearing before an immigration officer, an applicant may seek review of the denial of an application for naturalization in the federal district court for the district in which the applicant resides. If an applicant is certified to be eligible for naturalization, the oath of allegiance may be administered by the Attorney General, a federal district court, or a state court of record. See *oath of allegiance* under OATH.

**naturalize, vb.** To grant citizenship to (a foreign-born person) under statutory authority. — **naturalization, n.**

**naturalized citizen.** See CITIZEN.

**natural justice.** See JUSTICE (1).

**natural law. 1.** A physical law of nature <gravitation is a natural law>. **2.** A philosophical system of legal and moral principles purportedly deriving from a universalized conception of human nature or divine justice rather than from legislative or judicial action; moral law embodied in principles of right and wrong <many ethical teachings are based on natural law>. — Also termed *law of nature*; *natural justice*; *lex aeterna*; *eternal law*; *lex naturae*; *divine law*; *jus divinum*; *jus naturale*; *jus natu-*

*rae*; *normative jurisprudence*. Cf. FUNDAMENTAL LAW; POSITIVE LAW.

"Natural law, as it is revived today, seeks to organize the ideal element in law, to furnish a critique of old received ideals and give a basis for formulating new ones, and to yield a reasoned canon of values and a technique of applying it. I should prefer to call it philosophical jurisprudence. But one can well sympathize with those who would salvage the good will of the old name as an asset of the science of law." Roscoe Pound, *The Formative Era of American Law* 29 (1938).

"It is true that when medieval writers spoke of natural law as being discoverable by reason, they meant that the best human reasoning could discover it, and not, of course, that the results to which any and every individual's reasoning led him was natural law. The foolish criticism of Jeremy Bentham: 'a great multitude of people are continually talking of the law of nature; and then they go on giving you their sentiments about what is right and what is wrong; and these sentiments, you are to understand, are so many chapters and sections of the law of nature', merely showed a contempt for a great conception which Bentham had not taken the trouble to understand." J.L. Brierly, *The Law of Nations* 20–21 (5th ed. 1955).

"[N]atural law is often an idealization of the opposite to that which prevails. Where inequality or privilege exists, natural law demands its abolition." Morris R. Cohen, *Reason and Law* 96 (1961).

**natural liberty.** See LIBERTY.

**natural life.** A person's physical life span.

**natural monopoly.** See MONOPOLY.

**natural monument.** See MONUMENT.

**natural object. 1.** A person likely to receive a portion of another person's estate based on the nature and circumstances of their relationship. — Also termed *natural object of bounty*; *natural object of one's bounty*; *natural object of testator's bounty*. **2.** NATURAL BOUNDARY. **3.** NATURAL MONUMENT.

**natural obligation.** See OBLIGATION.

**natural person.** See PERSON.

**natural possession.** See POSSESSION.

**natural premium.** See PREMIUM (1).

**natural presumption.** See PRESUMPTION.

**natural resource. 1.** Any material from nature having potential economic value or providing for the sustenance of life, such as timber, minerals, oil, water, and wildlife. **2.** Environmental

features that serve a community's well-being or recreational interests, such as parks.

**natural right.** See RIGHT.

**natural servitude.** See SERVITUDE (1).

**natural succession.** See SUCCESSION (2).

**natural watercourse.** See WATERCOURSE.

**natural wear and tear.** See WEAR AND TEAR.

**natural wrong.** See *moral wrong* under WRONG.

**natural year.** See YEAR.

**nature.** 1. A fundamental quality that distinguishes one thing from another; the essence of something. 2. A wild condition, untouched by civilization. 3. A disposition or personality of someone or something. 4. Something pure or true as distinguished from something artificial or contrived. 5. The basic instincts or impulses of someone or something. 6. The elements of the universe, such as mountains, plants, planets, and stars.

**natus** (nay-təs), *adj.* [Latin] Born; (of a child) alive.

**naucerus** (naw-kleer-əs), *n.* [Latin fr. Greek *naus* "ship" + *kleeros* "allotment"] *Roman law.* A shipmaster.

**naulage** (naw-lij), *n.* [Old French fr. Law Latin *naulagium* "passage money"] The fare for passengers or goods traveling by ship. See NAULUM.

**naulum** (naw-ləm), *n.* [Latin fr. Greek *naus* "ship"] *Roman law.* Fare; freights; a shipowner's fee for carrying people or goods from one place to another. • The term derives from the mythological reference to money placed in the mouths of the dead as a toll so that Charon would lead them across the river Styx to the underworld.

**nauta** (naw-tə), *n.* [Latin fr. Greek *naus* "ship"] *Roman law.* A sailor.

**nautical,** *adj.* Of or relating to ships or shipping, carriage by sea, or navigation.

**nautical assessor.** A person skilled in maritime matters who is summoned in an admiralty case

to assist the judge on points requiring special expertise.

**nautical mile.** A measure of distance for air and sea navigation, equal to one minute of arc of a great circle of the earth. • Different measures have been used by different countries because the earth is not a perfect sphere. Since 1959, however, the United States has used an international measure for a nautical mile, set by the Hydrographic Bureau, equal to 6,076.11549 feet, or 1,852 meters.

**nauticum fenus** (naw-ti-kəm fee-nəs), *n.* [Greek *nautikum* "nautical" + Latin *fenus* "interest"] *Roman & civil law.* A loan on bottomry made to a transporter of merchandise by ship. • The loan is subject to an extremely high rate of interest because it does not have to be repaid unless the ship safely reaches its destination. The *nauticum fenus* is both a loan and marine insurance. The rate, originally unlimited because of the risks of sea travel, was eventually fixed at 12%. The money loaned is *pecunia trajecticia* (money conveyed overseas). — Also spelled *nauticum foenus*. — Also termed *nautica pecunia*; *foenus nauticum*.

**NAV.** *abbr.* NET ASSET VALUE.

**navagium** (na-vay-jee-əm), *n.* [Latin "ship; voyage"] *Hist.* A tenant's duty to transport the lord's goods by ship.

**naval,** *adj.* 1. Of or relating to ships or shipping. 2. Of or relating to a navy. See NAVY.

**naval law.** A system of regulations governing naval forces. See CODE OF MILITARY JUSTICE.

**navarch** (nay-vahrk), *n.* [fr. Greek *naus* "ship" + *archos* "chief"] *Hist.* A master of an armed ship. — Also termed *navarchus*. Cf. NAVICULARIUS.

**navicularius** (nə-vik-yə-lair-ee-əs), *n.* [Latin "shipowner"] *Hist.* A person engaged in the shipping business.

**navigable** (nav-i-gə-bəl), *adj.* 1. Capable of allowing vessels or vehicles to pass, and thereby usable for travel or commerce <the channel was barely navigable because it was so narrow>.

**navigable in fact,** *adj.* Naturally usable for travel or commerce. • A stream is navigable in fact if, in its natural and ordinary state, it can be used for travel or commerce.



**2.** Capable of being steered <navigable aircraft>. See NAVIGABLE WATER.

**navigable airspace.** The area above the legally established minimum flight altitudes, including the area needed to ensure safe takeoffs and landings of aircraft. 49 USCA § 40102(a)(30).

**navigable sea.** *Int'l law.* The ocean waters divided into three zones of control among nations: (1) the inland waters, which are near a nation's shores and over which a nation has complete sovereignty; (2) territorial waters, which are measured from the seaward edge of the inland waters, over which a nation has extensive control but over which innocent parties must be allowed to travel to other nations; and (3) the high seas, which are international waters not subject to the domain of any single nation.

**navigable water. 1.** At early common law, any body of water affected by the ebb and flow of the tide. ● This test was first adopted in England because most of England's in-fact navigable waters are influenced by the tide, unlike the large inland rivers that are capable of supporting commerce in the United States.

"[N]avigable waters in English admiralty law generally were defined as those waters subject to the ebb and flow of the tide. This limitation was acceptable for an American nation composed of states along the Atlantic coast, where inland streams generally were not used for commerce beyond the reach of tidal fluctuations. However, the expansion of the American nation westward resulted in the use for water-borne commerce of a number of important streams — most notably the Mississippi River — to carry goods and people far beyond the effect of tide waters." Frank L. Maraist, *Admiralty in a Nutshell* 18 (2d ed. 1988).

**2.** (*usu. pl.*) A body of water that is used, or typically can be used, as a highway for commerce with ordinary modes of trade and travel on water. ● Under the Commerce Clause, Congress has broad jurisdiction over all navigable waters in the United States.

**navigable water of the United States.**

Navigable water that alone — or in combination with other waters — forms a continuous highway for commerce with other states or foreign countries.

**navigate, vb. 1.** To travel or sail in a vessel on water <to navigate from New York to Bermuda>. **2.** To steer <to navigate the plane>. **3.** To make way through, on, or about something <the plaintiff was unable to navigate the stairs in the dark>.

**navigation. 1.** The act of sailing vessels on water. **2.** The process and business of directing the course of a vessel from one place to another. See RULES OF NAVIGATION.

**navigation servitude. 1.** An easement allowing the federal government to regulate commerce on navigable water without having to pay compensation for interference with private ownership rights. See NAVIGABLE WATER.

"The navigation servitude, because of its link to navigable waters and the protection of navigation, is often confused with the public trust doctrine. The navigation servitude, however, is a paramount federal servitude on navigable waters based on the commerce power rather than on ownership or trust responsibilities." Donna R. Christie, *Coastal and Ocean Management Law in a Nutshell* 34 (1994).

**2.** An easement, based on the state police power or public trust doctrine, that allows a state to regulate commerce on navigable water and provide limited compensation for interference with private ownership rights. ● The state servitude is inferior to the federal servitude.

**navis** (*nay-vis*), *n.* [Latin] A ship; a vessel.

**navy. 1.** A fleet of ships. **2.** The military sea force of a country, including its collective ships and its corps of officers and enlisted personnel; esp. (*usu. cap.*), the division of the U.S. armed services responsible primarily for seagoing forces. ● The U.S. Constitution gives Congress the power to establish a navy and make laws governing the naval forces. U.S. Const. art. I, § 8, cl. 13–14.

**Navy Department.** A division of the Department of Defense that oversees the operation and efficiency of the Navy, including the Marine Corps component (and the U.S. Coast Guard when operating as a naval service). ● Established in 1798, the Department is headed by the Secretary of the Navy, who is appointed by the President and reports to the Secretary of Defense.

**nazeranna** (*naz-ə-ran-ə*). *Hist.* The amount that a person pays to the government as an acknowledgment for public office or a grant of public lands.

**N.B. abbr.** [Latin *nota bene*] Note well; take notice — used in documents to call attention to something important.

**NBA. abbr.** NATIONAL BAR ASSOCIATION.

**NCCUSL** (nə-k[y]oo-səl). *abbr.* NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

**n.c.d.** *abbr.* NEMINE CONTRA DICENTE.

**N.D.** *abbr.* Northern District, in reference to U.S. judicial districts.

**ne admittas** (nee ad-mit-əs), *n.* [Latin “that you admit not”] *Eccles. law.* A writ prohibiting a bishop, usu. in a *quare impedit* action, from admitting the other party’s clerk to be a parson of a church. • After a party institutes a *quare impedit* action to enforce a right to propose a clerk to the position of parson of a vacant church (right of advowson), that party can resort to the *ne admittas* writ if it is believed that the bishop will admit another person’s proposed clerk before the *quare impedit* action concludes. See QUARE IMPEDIT.

**neap tide.** See TIDE.

**near**, *adv.* **1.** Close to; not far away, as a measure of distance <the neighbors’ houses are near one another>. **2.** Almost; close in degree <a near miss>. **3.** Closely tied by blood <my brother is a near relative>. **4.** Familiar; intimate <a near friend>.

**near money.** See *current asset* under ASSET.

**neat**, *adj.* **1.** Clean; pure. **2.** Free from extraneous matter.

**neat weight.** See *net weight* under WEIGHT.

**ne baila pas** (nə bay-lə pah), *n.* [Law French “he or she did not deliver”] In an action for detinue, a defendant’s plea denying the receipt of the property in question.

**necation** (ni-kay-shən), *n.* [fr. Latin *necare* “to kill”] *Hist.* The act of killing.

**necessaries.** **1.** Things that are indispensable to living <an infant’s necessities include food, shelter, and clothing>. — Also termed *necessities of life*. **2.** Things that are essential to maintaining the lifestyle to which one is accustomed <a multimillionaire’s necessities may include a chauffeured limousine and a private chef>. • The term includes whatever is reasonably needed for subsistence, health, comfort, and education, considering the person’s age, station in life, and medical condition, but it excludes (1) anything purely ornamental, (2)

anything solely for pleasure, (3) what the person is already supplied with, (4) anything that concerns someone’s estate or business as opposed to personal needs, and (5) borrowed money.

“Things may be of a useful character, but the quality or quantity supplied may take them out of the character of necessities. Elementary textbooks might be a necessary to a student of law, but not a rare edition of ‘Littleton’s Tenures,’ or eight or ten copies of ‘Stephen’s Commentaries.’ Necessaries also vary according to the station in life of the infant or his peculiar circumstances at the time. The quality of clothing suitable to an Eton boy would be unnecessary for a telegraph clerk; the medical attendance and diet required by an invalid would be unnecessary to one in ordinary health. It does not follow therefore that because a thing is of a useful class, a judge is bound to allow a jury to say whether or no it is a necessary.” William R. Anson, *Principles of the Law of Contract* 172 (Arthur L. Corbin ed., 3d Am. ed. 1919).

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

**necessarius** (ne-sə-sair-ee-əs), *adj.* [Latin] **1.** Necessary; essential. **2.** Unavoidable; obligatory; compelling.

**necessary and proper**, *adj.* Being appropriate and well adapted to fulfilling an objective.

**Necessary and Proper Clause.** The clause of the U.S. Constitution permitting Congress to make laws “necessary and proper” for the execution of its enumerated powers. U.S. Const. art. I, § 8, cl. 18. • The Supreme Court has broadly interpreted this clause to grant Congress the implied power to enact any law reasonably designed to achieve an express constitutional power. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819). — Also termed *Basket Clause*; *Coefficient Clause*; *Elastic Clause*; *Sweeping Clause*.

**necessary damages.** See *general damages* under DAMAGES.

**necessary deposit.** See DEPOSIT (5).

**necessary diligence.** See DILIGENCE.

**necessary domicile.** See DOMICILE.

**necessary implication.** See IMPLICATION.

**necessary improvement.** See IMPROVEMENT.

**necessary inference.** A conclusion that is unavoidable if the premise on which it is based is taken to be true.

**necessary intromission.** See INTROMISSION.

**necessary party.** See PARTY (2).

**necessary repair.** An improvement to property that is both needed to prevent deterioration and proper under the circumstances.

**necessary way.** See *easement by necessity* under EASEMENT.

**necessitas** (nə-sēs-i-tas), *n.* [Latin] *Roman law.*

1. Necessity. 2. A force or influence that compels an unwilling person to act. • The term refers to a lack of free will to do a legal act, as opposed to *libera voluntas* ("free will").

**necessitas culpabilis** (nə-sēs-i-tas kəl-pay-bə-lis). [Latin "culpable necessity"] *Hist.* An unfortunate necessity that, while essentially excusing the act done under its compulsion, does not necessarily relieve the actor from blame.

"And as to the necessity which excuses a man who kills another *se defendendo* lord Bacon entitles it *necessitas culpabilis* . . . For the law intends that the quarrel or assault arose from some unknown wrong . . . and since in quarrels both parties may be, and usually are, in some fault; and it scarce can be tried who was originally in the wrong; the law will not hold the survivor entirely guiltless. But it is clear, in the other case, that where I kill a thief that breaks into my house, the original default can never be upon my side." 4 William Blackstone, *Commentaries on the Laws of England* 186–87 (1769).

**necessities.** 1. Indispensable things of any kind. 2. NECESSARIES.

**necessities of life.** See NECESSARIES (1).

**necessitous, adj.** Living in a state of extreme want; hard up.

**necessitous circumstances.** The situation of one who is very poor; extreme want.

**necessitudo** (nə-sēs-i-t[y]oo-doh), *n.* [Latin "need"] *Hist.* 1. An obligation. 2. A close connection or relationship between persons, such as a family relationship.

**necessity.** 1. *Criminal law.* A justification defense for a person who acts in an emergency that he or she did not create and who commits a harm that is less severe than the harm that would have occurred but for the person's ac-

tions. • For example, a mountain climber lost in a blizzard can assert necessity as a defense to theft of food and blankets from another's cabin. — Also termed *choice of evils*; *duress of circumstances*. 2. *Torts.* A privilege that may relieve a person from liability for trespass or conversion if that person, having no alternative, harms another's property in an effort to protect life or health.

"In some cases even damage intentionally done may not involve the defendant in liability when he is acting under necessity to prevent a greater evil. The precise limits of the defence are not clear, for it has affinities with certain other defences, such as act of God, self-help, duress, or inevitable accident. It is distinguishable from self-defence on the ground that this presupposes that the plaintiff is prima facie a wrongdoer: the defence of necessity contemplates the infliction of harm on an innocent plaintiff. The defence, if it exists, enables a defendant to escape liability for the intentional interference with the security of another's person or property on the ground that the acts complained of were necessary to prevent greater damage to the commonwealth or to another or to the defendant himself, or to their or his property. The use of the term necessity serves to conceal the fact that the defendant always has a choice between two evils. This is what distinguishes the defence of necessity from that of impossibility." R.F.V. Heuston, *Salmond on the Law of Torts* 493 (17th ed. 1977).

**moral necessity.** A necessity arising from a duty incumbent on a person to act in a particular way.

**physical necessity.** A necessity involving an actual, tangible force that compels a person to act in a particular way.

**private necessity.** *Torts.* A necessity that involves only the defendant's personal interest and thus provides only a limited privilege. • For example, if the defendant harms the plaintiff's dock by keeping a boat moored to the dock during a hurricane, the defendant can assert private necessity but must compensate the plaintiff for the dock's damage.

**public necessity.** *Torts.* A necessity that involves the public interest and thus completely excuses the defendant's liability. • For example, if the defendant destroys the plaintiff's house to stop the spread of a fire that threatens the town, the defendant can assert public necessity.

**necessity defense.** See JUSTIFICATION (2).

**neck verse.** *Hist.* A verse, usu. consisting of the opening verse of Psalm 51 (*Miserere mei, Deus* "Have mercy on me, O God"), which was used as a literacy test for an accused who claimed benefit of clergy. • An accused who read the passage satisfactorily would not receive the maximum sentence (the person's neck would be

saved). Although judges could assign any passage, they usu. chose Psalm 51, so that for many years criminals memorized this verse and pretended to read it. Still, the records show that many accused persons failed the test. The reading of the neck verse was abolished in 1707. See BENEFIT OF CLERGY.

"During the fourteenth and fifteenth centuries the judges' attitudes to benefit of clergy changed completely, and they came to see it as a regular means of escape from the mandatory death penalty. Physical appearance was disregarded, and reading became the sole test of clerical status. When a man was convicted of a felony, he would fall on his knees and pray the book; he would then be tendered a passage from the psalter, known as the neck-verse, and if he could read or recite it satisfactorily his clergy was taken to be proved. . . . Strictly speaking, the decision whether the convict read as a clerk' was for the ordinary; but he was subject to the control of the judges, and could be fined for refusing to accept someone. By the end of the sixteenth century as many as half of all men convicted of felony were recorded as having successfully claimed benefit of clergy." J.H. Baker, *An Introduction to English Legal History* 587 (3d ed. 1990).

**necropsy** (nek-rop-see). See AUTOPSY (1).

**ne disturba pas** (nə di-stər-bə pah), *n.* [Law French "did not disturb"] *Eccles. law.* A defendant's general denial (plea of the general issue) in a *quare impedit* action. See QUARE IMPEDIT.

**ne dona pas** (nə doh-nə pah), *n.* [Law French "did not give"] *Hist.* A defendant's general denial (plea of the general issue) in a *formedon* action, alleging that the plaintiff was given the right to land under a gift of tail. — Also termed *non dedit*. See FORMEDON.

**nee** (nay), *adj.* [French] (Of a woman) born. • This term is sometimes used after a married woman's name to indicate her maiden name <Mrs. Robert Jones nee Thatcher>. — Also spelled *née*.

**need**, *n.* **1.** The lack of something important; a requirement. **2.** Indigence. — **need**, *vb.*

**needy**, *adj.* **1.** Needful; necessary. **2.** Indigent; very poor. • *Needy* implies a more permanent and less urgent condition than *necessitous*. See NECESSITOUS.

**ne exeat republica** (nee ek-see-ət [or ek-see-at] ri-pəb-li-kəh), *n.* [Latin "let him not go out of the republic"] **1.** A writ restraining a person from leaving the republic. **2.** A chancery writ ordering the person to whom it is addressed not to leave the jurisdiction of the court or the state. • *Ne exeat* writs — no longer widely

used — are usu. issued to ensure the satisfaction of a claim against the defendant. — Often shortened to *ne exeat*. — Also termed *writ of ne exeat*; *ne exeat regno*.

"The district courts of the United States . . . shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction, and of *ne exeat republica*, orders appointing receivers, and such other orders and processes . . . as may be necessary or appropriate for the enforcement of the internal revenue laws." IRC (26 USCA) § 7402(a).

"Such a writ [*ne exeat*] might be issued upon the commencement of the suit for equitable relief, during the pendency of the suit, or upon issuance of the final decree to secure its enforcement. But such writ related primarily to the person of the defendant and issued only upon satisfactory proof that he planned or intended to remove himself beyond the court's jurisdiction so that he might escape obedience to such command as might be or had been laid upon him. The writ has been frequently termed an equitable bail. It involves taking and keeping the defendant in custody until he gives bail or bond in a designated amount, conditioned upon his keeping himself amenable to the effective processes of the court." William Q. de Funiak, *Handbook of Modern Equity* 21 (2d ed. 1956).

**nefas** (nee-fas), *n.* [Latin *ne* "not" + *fas* "right"] **1.** *Roman law.* Something that the gods forbid. **2.** *Roman law.* Something against the law or custom. **3.** *Hist.* Something that is wicked.

**nefastus** (ni-fas-təs), *n.* [Latin *ne* "not" + *fastus* "lawful for public business"] *Roman law.* A day when it is unlawful to open the courts, administer justice, or hold public assemblies. • The priests in charge of supervising the laws and religious observances established an official calendar, on which certain days, marked "*nefasti*," were to be devoted to religious or public ceremonies. — Also termed *dies nefasti*. Cf. *dies fasti* under DIES.

**negate**, *vb.* **1.** To deny. **2.** To nullify; to render ineffective.

**negative**, *adj.* **1.** Of or relating to something bad; not positive <a negative attitude>. **2.** Of or relating to refusal of consent; not affirmative <a negative answer>.

**negative**, *n.* **1.** A word or phrase of denial or refusal <"no" and "not" are negatives>. **2.** A word expressing the opposite of the positive <two negatives and one positive>. **3.** The original plate of a photograph, on which light and shadows are the opposite of the positive images later created and printed <not only the pictures, but also the negatives, were required to

be returned>. 4. *Archaic*. The power of veto <the king's negative has eroded>.

**negative**, *vb.* To negate; to deny, nullify, or render ineffective <the jury negated fraud>.

**negative act**. See ACT (2).

**negative amortization**. See AMORTIZATION.

**negative averment**. See AVERMENT.

**negative cash flow**. See CASH FLOW.

**negative causation**. See CAUSATION.

**Negative Commerce Clause**. See COMMERCE CLAUSE.

**negative condition**. See CONDITION (2).

**negative contingent fee**. See *reverse contingent fee* under CONTINGENT FEE.

**negative covenant**. See COVENANT (1).

**negative duty**. See DUTY (1).

**negative easement**. See EASEMENT.

**negative evidence**. See EVIDENCE.

**negative externality**. See EXTERNALITY.

**negative misprision**. See MISPRISION.

**negative plea**. See PLEA (3).

**negative-pledge clause**. 1. A provision requiring a borrower, who borrows funds without giving security, to refrain from giving future lenders any security without the consent of the first lender. 2. A provision, usu. in a bond indenture, stating that the issuing entity will not pledge its assets if it will result in less security to the bondholders under the indenture agreement.

**negative pregnant**. A denial implying its affirmative opposite by seeming to deny only a qualification of the allegation and not the allegation itself. • An example is the statement, "I didn't steal the money last Tuesday," the implication being that the theft might have happened on another day. — Also termed *negative pregnant with an affirmative*. Cf. AFFIRMATIVE PREGNANT.

**negative prescription**. See PRESCRIPTION (3).

**negative proof**. See PROOF.

**negative reprisal**. See REPRISAL.

**negative right**. See RIGHT.

**negative servitude**. See SERVITUDE (1).

**negative statute**. See STATUTE.

**negative testimony**. See *negative evidence* under EVIDENCE.

**negative veto**. See *qualified veto* under VETO.

**neglect**, *n.* The omission of proper attention to a person or thing, whether inadvertent, negligent, or willful; the act or condition of disregarding. — **neglect**, *vb.* — **neglectful**, *adj.*

"'Neglect' is not the same thing as 'negligence'. In the present connection the word 'neglect' indicates, as a purely objective fact, that a person has not done that which it was his duty to do; it does not indicate the reason for this failure. 'Negligence,' on the other hand, is a subjective state of mind, and it indicates a particular reason why the man has failed to do his duty, namely because he has not kept the performance of the duty in his mind as he ought to have done. A man can 'neglect' his duty either intentionally or negligently." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 108 n.1 (16th ed. 1952).

**child neglect**. See CHILD NEGLECT.

**culpable neglect**. Censurable or blameworthy neglect; neglect that is less than gross carelessness but more than the failure to use ordinary care.

**excusable neglect**. A failure — which the law will excuse — to take some proper step at the proper time (esp. in neglecting to answer a lawsuit) not because of the party's own carelessness, inattention, or willful disregard of the court's process, but because of some unexpected or unavoidable hindrance or accident or because of reliance on the care and vigilance of the party's counsel or on a promise made by the adverse party.

**inexcusable neglect**. Unjustifiable neglect; neglect that implies more than unintentional inadvertence. • A finding of inexcusable neglect in, for example, failing to file an answer to a complaint will prevent the setting aside of a default judgment.

**willful neglect**. Intentional neglect; deliberate neglect.

**neglected child.** See CHILD.

**neglect hearing.** A judicial hearing involving alleged child abuse or some other situation in which a child has not been properly cared for. • Depending on the jurisdiction, this type of hearing might take place in various types of courts, such as a family court, a juvenile court, a probate court, or a district court.

**negligence, n.** 1. The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregarding of others' rights. • The term denotes culpable carelessness. The Roman-law equivalents are *culpa* and *negligentia*, as contrasted with *dolus* (wrongful intention). — Also termed *actionable negligence*; *ordinary negligence*; *simple negligence*. 2. A tort grounded in this failure, usu. expressed in terms of the following elements: duty, breach of duty, causation, and damages.

"Negligence in law ranges from inadvertence that is hardly more than accidental to sinful disregard of the safety of others." Patrick Dévlin, *The Enforcement of Morals* 36 (1968).

"During the first half of the nineteenth century, negligence began to gain recognition as a separate and independent basis of tort liability. Its rise coincided in a marked degree with the Industrial Revolution; and it very probably was stimulated by the rapid increase in the number of accidents caused by industrial machinery, and in particular by the invention of railways. It was greatly encouraged by the disintegration of the old forms of action, and the disappearance of the distinction between direct and indirect injuries, found in trespass and case . . . Intentional injuries, whether direct or indirect, began to be grouped as a distinct field of liability, and negligence remained as the main basis for unintended torts. Negligence thus developed into the dominant cause of action for accidental injury in this nation today." W. Page Keeton et al., *The Law of Torts* § 28, at 161 (W. Page Keeton ed., 5th ed. 1984).

"Negligence is a matter of risk — that is to say, of recognizable danger of injury . . . In most instances, it is caused by heedlessness or inadvertence, by which the negligent party is unaware of the results which may follow from his act. But it may also arise where the negligent party has considered the possible consequences carefully, and has exercised his own best judgment. The almost universal use of the phrase 'due care' to describe conduct which is not negligent should not obscure the fact that the essence of negligence is not necessarily the absence of solicitude for those who may be adversely affected by one's actions but is instead behavior which should be recognized as involving unreasonable danger to others." W. Page Keeton et al., *The Law of Torts* § 31, at 169 (5th ed. 1984).

**active negligence.** Negligence resulting from an affirmative or positive act, such as driving through a barrier. Cf. *passive negligence*.

**advertent negligence.** Negligence in which the actor is aware of the unreasonable risk that he or she is creating; RECKLESSNESS. — Also termed *willful negligence*.

**collateral negligence.** An independent contractor's negligence, for which the employer is generally not liable. See COLLATERAL-NEGLIGENCE DOCTRINE.

**comparative negligence.** A plaintiff's own negligence that proportionally reduces the damages recoverable from a defendant. — Also termed *comparative fault*. See COMPARATIVE-NEGLIGENCE DOCTRINE.

**concurrent negligence.** The negligence of two or more parties acting independently but causing the same damage. Cf. *joint negligence*.

**contributory negligence.** 1. A plaintiff's own negligence that played a part in causing the plaintiff's injury and that is significant enough (in a few jurisdictions) to bar the plaintiff from recovering damages. • In most jurisdictions, this defense has been superseded by comparative negligence. See CONTRIBUTORY-NEGLIGENCE DOCTRINE. 2. *Rare.* The negligence of a third party — neither the plaintiff nor the defendant — whose act or omission played a part in causing the plaintiff's injury.

"The contributory negligence of a third party is no excuse for the negligence of the defendant." Thomas E. Holland, *The Elements of Jurisprudence* 154 (13th ed. 1924).

**criminal negligence.** Gross negligence so extreme that it is punishable as a crime. • For example, involuntary manslaughter or other negligent homicide can be based on criminal negligence, as when an extremely careless automobile driver kills someone. — Also termed *culpable negligence*; *gross negligence*.

"Though the legislatures and the courts have often made it clear that criminal liability generally requires more fault than the ordinary negligence which will do for tort liability, they have not so often made it plain just what is required in addition to tort negligence — greater risk, subjective awareness of the risk, or both. Statutes are sometimes worded in terms of 'gross negligence' or 'culpable negligence' or 'criminal negligence,' without any further definition of these terms. . . . The courts thus have had to do their best with little guidance from the legislature, with varying results." Wayne R. LaFare & Austin W. Scott, Jr., *Criminal Law* § 3.7, at 235-37 (2d ed. 1986).

**culpable negligence.** Negligent conduct that, while not intentional, involves a disre-

gard of the consequences likely to result from one's actions.

"'Culpable negligence,' while variously defined, has been held incapable of exact definition; it means something more than negligence . . . . In connection with negligence, the word 'culpable' is sometimes used in the sense of 'blamable,' and it has been regarded as expressing the thought of a breach of a duty or the commission of a fault; but culpable negligence has been held to amount to more than 'blameworthy' conduct . . . . It does not involve the element of intent . . . . On the other hand, it has been said to be intentional conduct which the actor may not intend to be harmful but which an ordinary and reasonably prudent man would recognize as involving a strong probability of injury to others." 65 C.J.S. *Negligence* § 1(13) (1966).

**gross negligence.** 1. A lack of slight diligence or care. 2. A conscious, voluntary act or omission in reckless disregard of a legal duty and of the consequences to another party, who may typically recover exemplary damages. — Also termed *reckless negligence*; *wanton negligence*; *willful negligence*; *willful and wanton negligence*; *hazardous negligence*. 3. See *criminal negligence*.

"Negligence is gross if the precautions to be taken against harm are very simple, such as persons who are but poorly endowed with physical and mental capacities can easily take." H.L.A. Hart, "Negligence, *Mens Rea* and Criminal Responsibility," in *Punishment and Responsibility* 136, 149 (1968).

"*Gross Negligence.* As it originally appeared, this was very great negligence, or the want of even slight or scant care. It has been described as a failure to exercise even that care which a careless person would use. Several courts, however, dissatisfied with a term so nebulous . . . have construed gross negligence as requiring willful, wanton, or reckless misconduct, or such utter lack of all care as will be evidence thereof . . . . But it is still true that most courts consider that 'gross negligence' falls short of a reckless disregard of the consequences, and differs from ordinary negligence only in degree, and not in kind." *Prosser and Keeton on the Law of Torts* § 34, at 211-12 (W. Page Keeton ed., 5th ed. 1984).

**hazardous negligence.** 1. Careless or reckless conduct that exposes someone to extreme danger of injury or to imminent peril. 2. See *gross negligence*.

**imputed negligence.** Negligence of one person charged to another; negligence resulting from a party's special relationship with another party who is originally negligent — so that, for example, a parent might be held responsible for some acts of a child.

**inadvertent negligence.** Negligence in which the actor is not aware of the unreasonable risk that he or she is creating, but should have foreseen and avoided it. — Also termed *simple negligence*.

**joint negligence.** The negligence of two or more persons acting together to cause an accident. Cf. *concurrent negligence*.

**legal negligence.** See *negligence per se*.

**negligence in law.** Failure to observe a duty imposed by law. See *negligence per se*; *legal negligence*.

**negligence per se.** Negligence established as a matter of law, so that breach of the duty is not a jury question. • Negligence per se usu. arises from a statutory violation. — Also termed *legal negligence*.

**ordinary negligence.** Lack of ordinary diligence; the failure to use ordinary care. • The term is most commonly used to differentiate between *negligence* and *gross negligence*.

**passive negligence.** Negligence resulting from a person's failure or omission in acting, such as failing to remove hazardous conditions from public property. Cf. *active negligence*.

**professional negligence.** See MALPRACTICE.

**reckless negligence.** See *gross negligence*.

**simple negligence.** See *inadvertent negligence*.

**slight negligence.** The failure to exercise the great care of an extraordinarily prudent person, resulting in liability in special circumstances (esp. those involving bailments or carriers) in which lack of ordinary care would not result in liability; lack of great diligence.

**subsequent negligence.** The negligence of the defendant when, after the defendant's initial negligence and the plaintiff's contributory negligence, the defendant discovers — or should have discovered — that the plaintiff was in a position of danger and fails to exercise due care in preventing the plaintiff's injuries. — Also termed *supervening negligence*. See LAST-CLEAR-CHANCE DOCTRINE.

**tax negligence.** Negligence arising out of the disregard of tax-payment laws, for which the Internal Revenue Service may impose a penalty — 5% of the amount underpaid. IRC (26 USCA) § 6651(a).

**wanton negligence.** See *gross negligence*.

**willful and wanton negligence.** See *gross negligence*.

**willful negligence.** See *advertent negligence*.

**negligence rule.** *Commercial law.* The principle that if a party's negligence contributes to an unauthorized signing or a material alteration in a negotiable instrument, that party is estopped from raising this issue against later

parties who transfer or pay the instrument in good faith. • Examples of negligence include leaving blanks or spaces on the amount line of the instrument, erroneously mailing the instrument to a person with the same name as the payee, and failing to follow internal procedures designed to prevent forgeries.

**negligent**, *adj.* Characterized by a person's failure to exercise the degree of care that someone of ordinary prudence would have exercised in the same circumstance <the negligent driver went through the stop sign> <negligent construction caused the bridge to collapse>. **negligently**, *adv.*

"[A] careful consideration is needed of the differences between the meaning of expressions like 'inadvertently' and 'while his mind was a blank' on the one hand, and 'negligently' on the other. In ordinary English, and also in lawyers' English, when harm has resulted from someone's negligence, if we say of that person that he has acted negligently we are not thereby merely describing the frame of mind in which he acted. 'He negligently broke a saucer' is not the same *kind* of expression as 'he inadvertently broke a saucer'. The point of the adverb 'inadvertently' is merely to inform us of the agent's psychological state, whereas if we say 'He broke it negligently' we are not merely adding to this an element of blame or reproach, but something quite specific, viz. we are referring to the fact that the agent failed to comply with a standard of conduct with which any ordinary reasonable man *could* and *would* have complied: a standard requiring him to take precautions against harm. The word 'negligently', both in legal and in non-legal contexts, makes an essential reference to an omission to do what is thus required: it is not a flatly descriptive psychological expression like 'his mind was a blank'." H.L.A. Hart, "Negligence, *Mens Rea* and Criminal Responsibility," in *Punishment and Responsibility* 136, 147-48 (1968).

**negligent entrustment.** The act of leaving a dangerous article (such as a gun or car) with a person who the lender knows, or should know, is likely to use it in an unreasonably risky manner.

**negligent escape.** See ESCAPE (3).

**negligent homicide.** See HOMICIDE.

**negligentia** (neg-li-jen-shee-ə), *n.* [Latin] *Roman law.* Carelessness; inattentive omission. • *Negligentia* can be of varying degrees, which may or may not result in actionable liability. See CULPA. Cf. DILIGENTIA.

"In the sources *negligentia* is tantamount to *culpa*, and similarly graduated (*magna, lata negligentia*). Precision in terminology is no more to be found here than in the field of *culpa*. One text declares ... 'gross negligence (*magna negligentia*) is *culpa, magna culpa is dolus*'; another says: 'gross negligence (*dissoluta negligentia*) is

near to *dolus (prope dolum)*.' In the saying '*lata culpa* is exorbitant (extreme) negligence, i.e., not to understand (*intelligere*) what all understand' ... *negligentia* is identified with ignorance." Adolf Berger, *Encyclopedic Dictionary of Roman Law* 593 (1953).

**lata negligentia** (lay-tə neg-li-jen-shee-ə). Extreme negligence resulting from an unawareness of something that the actor should have known.

**magna negligentia** (mag-nə neg-li-jen-shee-ə). See *gross negligence* under NEGLIGENCE.

**negligent infliction of emotional distress.**

The tort of causing another severe emotional distress through one's negligent conduct. • Most courts will allow a plaintiff to recover damages for emotional distress if the defendant's conduct results in physical contact with the plaintiff, or, when no contact occurs, if the plaintiff is in the zone of danger. See EMOTIONAL DISTRESS; ZONE-OF-DANGER RULE. Cf. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

**negligent manslaughter.** See *involuntary manslaughter* under MANSLAUGHTER.

**negligent misrepresentation.** See MISREPRESENTATION.

**negligent offense.** See OFFENSE (1).

**négoce** (ni-gohs), *n.* [French] Trade; business.

**negotiability.** The capability of commercial paper to have its title transferred by indorsement and delivery, or by delivery alone, so that the transferee has a rightful claim on it. • Negotiability (which pertains to commercial paper) differs from assignability (which pertains to contracts in general) because an assignee traditionally takes title subject to all equities, and an assignment is not complete without notice to the debtor, whereas an indorsee takes free of all equities and without any notice to the debtor.

**negotiable**, *adj.* **1.** (Of a written instrument) capable of being transferred by delivery or indorsement when the transferee takes the instrument for value, in good faith, and without notice of conflicting title claims or defenses. **2.** (Of a deal, agreement, etc.) capable of being accomplished. **3.** (Of a price or deal) subject to further bargaining and possible change. Cf. NONNEGOTIABLE; ASSIGNABLE.

"The term 'negotiable,' in its enlarged signification, is used to describe any written security which may be transferred by indorsement and delivery, or by delivery



merely, so as to vest in the indorsee the legal title, and thus enable him to bring a suit thereon in his own name. But in a strictly commercial classification, and as the term is technically used, it applies only to those instruments which, like bills of exchange, not only carry the legal title with them by indorsement, or delivery, but carry as well, when transferred before maturity, the right of the transferee to demand the full amounts which their faces call for. 'Assignable' is the more appropriate term to describe bonds, and ordinary notes, or notes of hand as they are most commonly called; as 'negotiable' is the more fitting term to describe the peculiar instruments of commerce." 1 John W. Daniel, *A Treatise on the Law of Negotiable Instruments* § 2, at 3 (Thomas H. Calvert ed., 7th ed. 1933).

**negotiable bill of lading.** See BILL OF LADING.

**negotiable bond.** See BOND (2).

**negotiable certificate of deposit.** A security issued by a financial institution as a short-term source of funds, usu. with a fixed interest rate and maturity of one year or less.

**negotiable document of title.** See DOCUMENT OF TITLE.

**negotiable instrument.** A written instrument that (1) is signed by the maker or drawer, (2) includes an unconditional promise or order to pay a specified sum of money, (3) is payable on demand or at a definite time, and (4) is payable to order or to bearer. UCC § 3-104(a). — Also termed *negotiable paper*; *negotiable note*. • Among the various types of negotiable instruments are bills of exchange, promissory notes, bank checks, certificates of deposit, and other negotiable securities.

"What are called 'negotiable instruments,' or 'paper to bearer,' such as bills of exchange, or promissory notes, do really pass from hand to hand, either by delivery or indorsement, giving to each successive recipient a right against the debtor, to which no notice to the debtor is essential, and which, if the paper is held bona fide and for value, is unaffected by flaws in the title of intermediate assignors." Thomas E. Holland, *The Elements of Jurisprudence* 315-16 (13th ed. 1924).

"One must first understand that a negotiable instrument is a peculiar animal and that many animals calling for the payment of money and others loosely called 'commercial paper' are not negotiable instruments and not subject to the rules of Article 3." James J. White & Robert S. Summers, 2 *Uniform Commercial Code* § 16-1, at 70 (4th ed. 1995).

**negotiable note.** See NEGOTIABLE INSTRUMENT.

**negotiable order of withdrawal.** A negotiable instrument (such as a check) payable on de-

mand and issued against funds deposited with a financial institution. — Abbr. NOW.

**negotiable-order-of-withdrawal account.** See NOW account under ACCOUNT.

**negotiable paper.** See NEGOTIABLE INSTRUMENT.

**negotiable words.** The terms and phrases that make a document a negotiable instrument. — Also termed *words of negotiability*. See NEGOTIABLE INSTRUMENT.

**negotiate, vb.** **1.** To communicate with another party for the purpose of reaching an understanding <they negotiated with their counterparts for weeks on end>. **2.** To bring about by discussion or bargaining <she negotiated a software license agreement>. **3.** To transfer (an instrument) by delivery or indorsement, whereby the transferee takes the instrument for value, in good faith, and without notice of conflicting title claims or defenses <Jones negotiated the check at the neighborhood bank>.

**negotiated market.** See MARKET.

**negotiated offering.** See OFFERING.

**negotiated plea.** See PLEA (1).

**negotiating bank.** A financial institution that discounts or purchases drafts drawn under a letter of credit issued by another bank.

**negotiation, n.** **1.** A consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. • Negotiation usu. involves complete autonomy for the parties involved, without the intervention of third parties.

"Negotiation, we may say, ought strictly to be viewed simply as a means to an end; it is the road the parties must travel to arrive at their goal of mutually satisfactory settlement. But like other means, negotiation is easily converted into an end in itself; it readily becomes a game played for its own sake and a game played with so little reserve by those taken up with it that they will sacrifice their own ultimate interests in order to win it." Lon L. Fuller, *Anatomy of the Law* 128 (1968).

**2.** (*usu. pl.*) Dealings conducted between two or more parties for the purpose of reaching an understanding. **3.** The transfer of an instrument by delivery or indorsement whereby the transferee takes it for value, in good faith, and without notice of conflicting title claims or defenses. — **negotiate, vb.** — **negotiable,**

*adj.* — **negotiability**, *n.* See HOLDER IN DUE COURSE.

**due negotiation.** The transfer of a negotiable document of title so that the transferee takes it free of certain claims enforceable against the transferor. • This is the good-faith-purchase exception to the doctrine of derivative title. UCC §§ 7-501(4); 7-502(1).

**negotiation letter of credit.** See LETTER OF CREDIT.

**negotiorum gestio** (ni-goh-shee-or-əm jes-chee-oh), *n.* [Latin “management of affairs”] *Roman & civil law.* A quasi-contractual situation in which an actor (*negotiorum gestor*) manages or interferes in the business transaction of another person (*dominus negotii*) in that person’s absence, done without authority but out of concern or friendship. • By such conduct, the actor was bound to conduct the matter to a conclusion and to deliver the transaction’s proceeds to the person, who likewise was bound to reimburse the actor for any expenses incurred. A *negotiorum gestio* did not exist if the *gestor* acted self-interestedly or if the owner expressly forbade the *gestor* from acting on the owner’s behalf.

**negotiorum gestor** (ni-goh-shee-or-əm jes-tor), *n.* [Latin “a manager of affairs”] *Roman & civil law.* A person who volunteers to render some necessary service to property, or to a business, in the absence of its owner. • This person has a claim to be compensated by the owner for the trouble taken, and the owner has a claim for any loss that results from the *negotiorum gestor*’s fault. — Sometimes shortened to *gestor*. See NEGOTIORUM GESTIO.

**negotium** (ni-goh-shee-əm), *n.* [Latin] *Roman law.* **1.** A matter; an affair, as in *negotium absentis*, a matter concerning an absent person. **2.** A transaction; an agreement. **3.** A trade; a business. **4.** A civil or criminal trial. Pl. *negotia*.

**n.e.i. abbr.** NON EST INVENTUS.

**neife** (neef), *n.* [Law French] *Hist.* A person born into bondage or serfdom; specif., a female serf. — Also spelled *naif*; *neif*; *nief*.

“For the children of villeins were also in the same state of bondage with their parents; whence they were called in Latin, *nativi*, which gave rise to the female appellation of a villein, who was called a *neife*.” 2 William Blackstone, *Commentaries on the Laws of England* 93–94 (1766).

**neighbor**, *n.* **1.** A person who lives near another <Jensen’s neighbor spotted the fire>. **2.** A person or thing situated near something <Canada is the United States’ neighbor to the north>. **3.** A person in relation to humankind <love thy neighbor>.

**neighborhood.** **1.** The immediate vicinity; the area near or next to a specified place. **2.** People living in a particular vicinity, usu. forming a community within a larger group and having similar economic statuses and social interests. **3.** The condition of being close together.

**neighborhood effect.** See EXTERNALITY.

**neighboring rights.** *Copyright.* The intellectual-property rights of performers, producers of sound recordings, and broadcasters. • Each of these right-holders creates something deserving of copyright protection, but these rights are less central to copyright law than such highly creative productions as novels and sculptures.

**neighbor principle.** The doctrine that one must take reasonable care to avoid acts or omissions that one can reasonably foresee will be likely to injure one’s neighbor. • According to this principle, *neighbor* includes all persons who are so closely and directly affected by the act that the actor should reasonably think of them when engaging in the act or omission in question.

**ne injuste vexes** (nee in-jəs-tee vek-seez), *n.* [Law Latin “do not trouble unjustly”] *Hist.* A writ prohibiting a lord from demanding more services from a tenant than the tenure allowed.

“The writ of *ne injuste vexes* . . . which prohibits distresses for greater services than are really due to the lord; being itself of the prohibitory kind, and yet in the nature of a writ of right. It lies, where the tenant in fee-simple and his ancestors have held of the lord by certain services; and the lord hath obtained seisin of more or greater services, by the inadvertent payment or performance of them by the tenant himself. Here the tenant cannot . . . avoid the lord’s possessory right, because of the seisin given by his own hands; but is driven to this writ, to divest the lord’s possession, and establish the mere right of property, by ascertaining the services, and reducing them to their proper standard.” 3 William Blackstone, *Commentaries on the Laws of England* 234 (1768).

**neither party.** A docket entry reflecting the parties’ agreement not to continue to appear to prosecute and defend a lawsuit. • This entry is equivalent to a dismissal.

**ne luminibus officatur** (nee loo-min-i-bəs ə-fish-ee-ay-tər), *n.* [Latin “not impede light”] *Roman law.* A servitude restraining a homeowner from constructing anything that blocks light to an adjoining house.

**nemine contradicente** (nem-i-nee kahn-trə-di-sen-tee). [fr. Latin *nemo* “nobody” + *contradicere* “contradict”] Without opposition or dissent. • This phrase expresses the lack of opposition by members of a court, legislative body, or other group to a resolution or vote <the motion passed *inemine contradicente*>. It is used in the English House of Commons. — Abbr. *nem. con.*; *n.c.d.* — Also termed *inemine dissentiente*.

**inemine dissentiente** (nem-i-nee di-sen-shee-en-tee). [fr. Latin *nemo* “nobody” + *dissentio* “dissents”] NEMINE CONTRADICENTE. • This phrase is used in the House of Lords. — Abbr. *nem dis.*; *n.d.*

**nemo** (nee-moh), *n.* [Latin] No one; no man. • This term is the first word of many Latin maxims, such as *nemo est supra leges* (“no one is above the law”).

**neonaticide.** See INFANTICIDE.

**NEPA** (nee-pə). *abbr.* NATIONAL ENVIRONMENTAL POLICY ACT.

**nephew.** **1.** The son of a person’s brother or sister; sometimes understood to include the son of a person’s brother-in-law or sister-in-law. • This term is extended in some wills to include a grandnephew. **2.** *Hist.* A grandchild. **3.** *Hist.* A descendant.

“[N]ephew ... a son’s or daughter’s son, a grandson (also ... a granddaughter), later also a brother’s or sister’s son, a nephew, in general a descendant ... The application, as with all other terms denoting relationship beyond the first degree, formerly varied (‘grandson,’ ‘nephew,’ ‘cousin,’ ‘kinsman,’ etc.); its final exclusive use for ‘nephew’ instead of ‘grandson’ is prob. due in part to the fact that, by reason of the great difference in age, a person has comparatively little to do with his grandsons, if he has any, while nephews are proverbially present and attentive, if their uncle is of any importance.” 5 *The Century Dictionary and Cyclopedia* 3968 (1895).

**nepos** (nep-ohs), *n.* [Latin] **1.** *Roman law.* A grandson. **2.** *Hist.* A nephew. • The term *nepos* later became *neveu* and then “nephew.” See NEPHEW.

**nepotism** (nep-ə-tiz-əm), *n.* Bestowal of official favors (esp. in hiring) on one’s relatives. — **nepotistic**, *adj.*

**neptis** (nep-tis), *n.* [Latin] *Hist.* **1.** A granddaughter. **2.** A female descendant.

**ne relessa pas** (nə rə-les-ə pah), *n.* [Law French “did not release”] A plaintiff’s reply to a defendant’s plea of release as a defense to liability in a case.

**nerve-center test.** A method courts sometimes use to determine the location of a company’s principal place of business, by which the principal place of business is determined to be the location where the corporate officers, directors, and (sometimes) shareholders reside, and where they direct and control the corporation’s activities.

**net**, *n.* **1.** An amount of money remaining after a sale, minus any deductions for expenses, commissions, and taxes. **2.** The gain or loss from a sale of stock. **3.** See *net weight* under WEIGHT.

**net assets.** See NET WORTH.

**net asset value.** The market value of a share in a mutual fund, computed by deducting any liabilities of the fund from its total assets and dividing the difference by the number of outstanding fund shares. — Abbr. NAV. — Also termed *asset value*. See MUTUAL FUND.

**net balance.** See *net proceeds* under PROCEEDS.

**net book value.** An asset’s value as that value appears on an organization’s books, less the asset’s depreciation since the last valuation.

**net-capital rules.** *Securities.* Basic financial-responsibility standards adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934. • Under these rules, securities brokers are required to maintain a minimum level of capitalization and to maintain aggregate indebtedness at a level less than a specified multiple of the broker’s net capital. 15 USCA § 780(c)(3); SEC Rule 15c3–1 (17 CFR § 240.15c3–1).

**net cash flow.** See CASH FLOW.

**net cost.** See COST (1).

**net earnings.** See *net income* under INCOME.

**net estate.** See ESTATE.

**nether house of Parliament.** *Hist.* The lower house of Parliament; the English House of

Commons. • This name was given to the House of Commons at the time of Henry VIII.

**net income.** See INCOME.

**net investment.** See INVESTMENT.

**net lease.** See LEASE.

**net level annual premium.** See PREMIUM (1).

**net listing.** See LISTING (1).

**net loss.** See LOSS.

**net national product.** The total value of goods and services produced in a country during a specific period, after deducting capital replacement costs.

**net-net-net lease.** See LEASE.

**net operating asset.** See ASSET.

**net operating income.** See INCOME.

**net operating loss.** See LOSS.

**net position.** **1.** The difference between long and short contracts held by a securities or commodities trader. **2.** The amount gained or lost because of a change in the value of a stock or commodity.

**net premium.** See PREMIUM (1).

**net present value.** See PRESENT VALUE.

**net price.** See PRICE.

**net proceeds.** See PROCEEDS.

**net profit.** See PROFIT.

**net quick assets.** See ASSET; QUICK-ASSET RATIO.

**net realizable value.** **1.** For a receivable, the amount of cash expected from the collection of present customer balances. **2.** For inventory, the selling price less the completion and disposal costs. **3.** An accounting method requiring the value of scrap or by-products to be treated as a reduction in the cost of the primary products.

**net rent.** See RENT (1).

**net return.** See RETURN.

**net revenue.** See *net profit* under PROFIT.

**net sale.** See SALE.

**net sale contract.** See *net listing* under LISTING.

**net single premium.** See PREMIUM (1).

**net valuation premium.** See *net premium* under PREMIUM (1).

**net value.** See VALUE.

**net weight.** See WEIGHT.

**network element.** *Telecommunications.* A facility or piece of equipment used to provide telecommunications service, as by a local-exchange network, and each feature, function, or capability of the service. 47 USCA § 153(29).

**net worth.** A measure of one's wealth, usu. calculated as the excess of total assets over total liabilities. — Also termed *net assets*.

**net-worth method.** The procedure the Internal Revenue Service uses to determine the taxable income of a taxpayer who doesn't keep adequate records. • The change in net worth for the year determines the taxpayer's gross income, after taking into account nontaxable receipts and nondeductible expenses.

**net yield.** See YIELD.

**ne unques** (nee əng-kweez). [Law French] Never.

**ne unques accouple** (nee əng-kweez ə-kəp-əl), *n.* [Law French “never married”] In a dower action by a widow to recover the estate of her deceased husband, a tenant's plea denying the woman's marriage to the decedent. See DOWER.

**ne unques executor** (nee əng-kweez ig-zek-yə-tər), *n.* [Law French “never executor”] A plea that the defendant or plaintiff is not an executor as alleged.

**ne unques seise que dower** (nee əng-kweez see-zee kə dow-ər), *n.* [Law French “never seised of a dowable estate”] *Hist.* In a dower action, the tenant's general denial (plea of gen-

eral issue) that the widow's husband was never seised of a dowable estate of inheritance.

**ne unques son receiver** (nee əng-kweez sawn ri-see-vər), *n.* [Law French "never a receiver"] In an action for an accounting, the defendant's plea denying the receipt of anything from the plaintiff.

**neutral**, *adj.* **1.** Indifferent. **2.** (Of a judge, mediator, arbitrator, or actor in international law) refraining from taking sides in a dispute.

**neutral**, *n.* **1.** A person or country taking no side in a dispute. Cf. BELLIGERENT. **2.** A nonpartisan arbitrator typically selected by two other arbitrators — one of whom has been selected by each side in the dispute.

**neutrality**, *n.* The condition of a nation that in time of war takes no part in the dispute but continues peaceful dealings with the belligerents. — **neutral**, *adj.*

**armed neutrality.** A condition of neutrality that the neutral state is willing to maintain by military force.

**neutrality law.** *Int'l law.* An act that prohibits a nation from militarily aiding either of two or more belligerent powers with which the nation is at peace; esp., a federal statute forbidding acts — such as the equipping of armed vessels or the enlisting of troops — designed to assist either of two belligerents that are at peace with the United States. 22 USCA §§ 441–457.

**neutrality proclamation.** *Int'l law.* At the outbreak of a war between two nations, an announcement by the President that the United States is neutral and that its citizens may not violate the neutrality laws, as in the Neutrality Proclamation of 1793, issued during the war between France and Great Britain.

**neutralization.** **1.** The act of making something ineffective. **2.** The process by which a country's integrity has been permanently guaranteed by international treaty, conditionally on its maintaining a perpetual neutrality except in its own defense. • Switzerland is the only remaining example, having been neutralized by the Treaty of Vienna in 1815 — a provision reaffirmed by the Treaty of Versailles in 1919. **3.** The act of declaring certain persons or property neutral and safe from capture. See NEUTRAL PROPERTY. **4. Evidence.** The cancellation of unexpected harmful testimony from a witness by showing, usu. by cross-examination, that the witness has made conflicting statements. • For example, a

prosecutor may attempt to neutralize testimony of a state witness who offers unexpected adverse testimony. See IMPEACHMENT.

**neutral principles.** *Constitutional law.* Rules grounded in law, as opposed to rules based on personal interests or beliefs. • In this context, the phrase was popularized by Herbert Wechsler. See *Toward Neutral Principles of Constitutional Law*, 73 Harv. L. Rev. 1 (1959).

**neutral property.** Things belonging to citizens of a country that is not a party to a war, as long as the things are properly used and labeled. • For example, harmless neutral property aboard a captured belligerent ship would not normally be subject to seizure. But the hiding of explosives in otherwise neutral property could allow the property to be seized as contraband.

**ne varietur** (nee vair-ee-ee-tər), *n.* [Latin "it must not be altered"] A notation of identity that a person, usu. a notary, places on documents or translations of documents. • In Louisiana, this notation is typically placed on a collateral mortgage note to bind and identify the note with the collateral mortgage.

**never indebted, plea of.** A common-law traverse — or denial — by which the defendant in an action on a contract debt denies that an express or implied contract existed. See TRAVERSE.

**new**, *adj.* **1.** (Of a person, animal or thing) recently come into being <the new car was shipped from the factory this morning>. **2.** (Of any thing) recently discovered <a new cure for cancer>. **3.** (Of a person or condition) changed from the former state <she has a new state of mind>. **4.** Unfamiliar; unaccustomed <she asked for directions because she was new to the area>. **5.** Beginning afresh <a new day in court>.

**new acquisition.** See ACQUISITION.

**new and useful.** *Patents.* Two of the requirements for an invention to be patentable — namely, that the invention be novel and that it have practical utility. 35 USCA § 101. See PATENT (3).

**new asset.** See ASSET.

**new assignment.** See ASSIGNMENT (5).

**new-business rule.** The principle precluding an award of damages for lost profits to a business with no recent record of profitability, because the damages would be too speculative.

**new cause of action.** See CAUSE OF ACTION.

**new-contract dispute.** See *major dispute* under DISPUTE.

**new debtor.** See DEBTOR.

**new-debtor syndrome.** Conduct showing a debtor's bad faith in filing for bankruptcy, as a result of which the court may dismiss the bankruptcy petition. • An example is the debtor's formation of a corporation, immediately before the bankruptcy filing, solely to take advantage of the bankruptcy laws.

**new drug.** See DRUG.

**new-for-old. 1. Marine insurance.** In adjusting a partial marine-insurance loss, the principle that old materials apply toward payment of the new, so that the old material's value is deducted from the total repair expenses, and then from that balance one-third of the cost of repairs (one-third of the new materials for the old on the balance) is deducted and charged against the insured shipowner. — Also termed *deduction for new*. **2.** The principle that a party whose property has been damaged is entitled to recover only the amount necessary to restore the property to the condition it was in before the damage, instead of acquiring a new item to replace one that was old and depreciated.

**New Inn.** *Hist. English law.* One of the Inns of Chancery (collegiate houses) in which law students were placed before entering the Inns of Court. • This practice continued until approximately 1650, when the buildings began to be used only by attorneys and solicitors. See INNS OF CHANCERY. Cf. INNS OF COURT.

**new issue.** See ISSUE (2).

**new-loan fee.** See MORTGAGE DISCOUNT.

**newly discovered evidence.** See EVIDENCE.

**new matter.** See MATTER.

**new promise.** See PROMISE.

**new-rule principle.** *Criminal procedure.* A doctrine barring federal courts from granting ha-

beas corpus relief to a state prisoner because of a rule, not dictated by existing precedent, announced after the prisoner's conviction and sentence became final. — Also termed *nonretroactivity principle*. See HABEAS CORPUS.

**new ruling.** *Criminal procedure.* A Supreme Court ruling not dictated by precedent existing when the defendant's conviction became final and thus not applicable retroactively to habeas cases. • For example, when the Court in *Ford v. Wainwright*, 477 U.S. 399, 106 S.Ct. 2595 (1986), ruled that the Eighth Amendment prohibits execution of insane prisoners, this new ruling was nonretroactive because it departed so widely from prior doctrine. *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060 (1989). See HABEAS CORPUS.

**new series.** See N.S.

**newsman's privilege.** See *journalist's privilege* (1) under PRIVILEGE (3).

**newspaper.** A publication for general circulation, usu. in sheet form, appearing at regular intervals, usu. daily or weekly, and containing matters of general public interest, such as current events.

**daily newspaper.** A newspaper customarily published five to seven days every week. — Often shortened to *daily*.

**legal newspaper.** A newspaper containing matters of legal interest including summaries of cases, legal advertisements, legislative or regulatory changes, and local bankruptcy notices.

**newspaper of general circulation.** A newspaper that contains news and information of interest to the general public, rather than to a particular segment, and that is available to the public within a certain geographic area. • Legal notices (such as a class-action notice) are often required by law to be published in a newspaper of general circulation.

**official newspaper.** A newspaper designated to contain all the public notices, resolves, acts, and advertisements of a state or municipal legislative body.

**newspaper prospectus.** See PROSPECTUS.

**new style.** The modern system for ordering time according to the Gregorian method, introduced by Pope Gregory XIII in 1582 and adopted in England and the American colonies in 1752. • Because the Julian calendar was slightly longer

than the astronomical year, the vernal equinox was displaced by ten days. Pope Gregory reformed the calendar by announcing that October 5, 1582 would be called October 15. And, while generally retaining a leap year for years divisible by 4, he skipped leap years in years divisible by 100 (such as 1800 and 1900), but retained leap years for years divisible by 400 (such as 2000). Thus, the years 2000, 2004, 2008, etc. are leap years, but 2100 is not. — Abbr. n.s. — Also termed *Gregorian calendar*. Cf. OLD STYLE.

**new trial.** A postjudgment retrial or reexamination of some or all of the issues determined in an earlier judgment. • The trial court may order a new trial, either by motion of a party or on the court's own initiative. Also, an appellate court, in reversing the trial court's judgment, may remand the case to the trial court for a new trial on some or all of the issues on which the reversal is based. Fed. R. Civ. P. 59. See MOTION FOR NEW TRIAL; REMAND.

**new value.** See VALUE.

**new works.** See WORKS.

**New York interest.** See *Boston interest* under INTEREST (3).

**New York standard clause.** See MORTGAGE-LOSS CLAUSE.

**New York Stock Exchange.** An unincorporated association of member firms that handle the purchase and sale of securities both for themselves and for customers. • This exchange, the dominant one in the United States, trades in only large companies having at least one million outstanding shares. — Abbr. NYSE.

**New York Supplement.** A set of regional lawbooks that, being part of the West Group's National Reporter System, contain every published decision from intermediate and lower courts of record in New York, from 1888 to date. • The first series ran from 1888 to 1937; the second series is the current one. — Abbr. N.Y.S.; N.Y.S.2d.

**New York Times rule.** A commonsense rule of ethical conduct holding that one should not do anything arguably newsworthy — in public or in private — that one would mind having reported on the front page of a major newspaper. • In various communities, a local newspaper is substituted for the *Times*. — Also termed *New*

*York Times test*; *New York Times v. Sullivan* rule. See *actual malice* under MALICE.

**nexi** (nek-sī), *n. pl.* [Latin] *Roman law.* Debtors given in bondage to creditors until their debts have been paid. See NEXUM.

**next devisee.** See DEVISEE.

**next eventual estate.** See ESTATE.

**next friend.** A person who appears in a lawsuit to act for the benefit of an incompetent or minor plaintiff, but who is not a party to the lawsuit and is not appointed as a guardian. — Also termed *prochein ami*. Cf. *guardian ad litem* under GUARDIAN.

**next-in, first-out.** A method of inventory valuation (but not a generally accepted accounting principle) whereby the cost of goods is based on their replacement cost rather than their actual cost. — Abbr. NIFO. Cf. FIRST-IN, FIRST-OUT; LAST-IN, FIRST-OUT.

**next of kin. 1.** The person or persons most closely related by blood to a decedent. **2.** The person or persons entitled to inherit personal property from a decedent who has not left a will. See HEIR.

**next presentation.** *Hist. Eccles law.* In the law of advowsons, the right to present to the bishop a clerk to fill the first vacancy in a local parsonage. See ADVOWSON.

**nexum** (nek-səm), *n.* [Latin] *Roman law.* A transaction or practice under which a debtor, upon a failure to repay the debt, could be seized and held in bondage until the debt was repaid.

"*Nexum.* This highly controversial matter will be briefly dealt with as *nexum* had long been obsolete in classical law. Little is really known of it: it has been doubted whether there ever was such an institution. No text tells us that there was a contract called *nexum* . . . . But we have texts which speak of *nexum* as creative of obligation . . . and many literary texts dealing with debtors who were *nexi*, so that it may be taken as certain that there was such a transaction . . . which in some way reduced debtors to a sort of slavery, that great hardships resulted and that a *l. Poetelia* . . . practically ended this state of things, presumably by requiring an actual judgment before seizure. The effect was not to abolish *nexum*, but, by depriving it of its chief value, the power of seizure . . . to leave it with no advantages to counterbalance its clumsiness, so that it went out of use." W.W. Buckland, *A Textbook of Roman Law: From Augustus to Justinian* 429-30 (Peter Stein ed., 3d ed. 1963).

**nexus.** A connection or link, often a causal one <cigarette packages must inform consumers of the nexus between smoking and lung cancer>. Pl. **nexuses; nexus.**

**nexus test.** The standard by which a private person's act is considered state action — and may give rise to liability for violating someone's constitutional rights — if the conduct is so closely related to the government's conduct that the choice to undertake it may fairly be said to be that of the state. • While similar to the symbiotic-relationship test, the nexus test focuses on the particular act complained of, instead of on the overall relationship of the parties. Still, some courts use the terms and analyses interchangeably. — Also termed *close-nexus test*. Cf. SYMBIOTIC-RELATIONSHIP TEST. See JOINT PARTICIPATION; STATE-COMPULSION TEST.

"The complaining party must . . . show that there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself. The purpose of this requirement is to assure that constitutional standards are invoked only when it can be said that the State is responsible for the specific conduct of which the plaintiff complains. . . . [O]ur precedents indicate that a State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State." *Blum v. Yaretsky*, 457 U.S. 991, 1004, 102 S.Ct. 2777, 2786 (1982).

**NGO.** *abbr.* NONGOVERNMENTAL ORGANIZATION.

**NGRI.** See *not guilty by reason of insanity* under NOT GUILTY.

**nichil (nich-əl), n.** [Old French *nichil* fr. Latin *nihil* "nothing"] *Hist. English law.* A debt owed to the Exchequer's office but niled by sheriffs as nonleviable. • Once a year, an officer of the Clerk of Nichils enrolled these amounts and sent them to the treasurer's remembrancer's office from which process was issued for their recovery. Both offices were abolished in 1833. — Also spelled *nichill; nichel.*

**nichil, vb.** (Of a sheriff) to make return that a debt is worthless, because the debtor either cannot be found or is unable to pay.

**nickname, n. 1.** A shortened version of a person's name <"Bill" is William's nickname>. **2.** A descriptive or alternative name, in addition to or instead of the actual name <David Smith's nickname is "Red">.

**niece. 1.** The daughter of a person's brother or sister; sometimes understood to include the daughter of a person's brother-in-law or sister-in-law. • This term is extended in some wills to include a grandniece. See NEPHEW.

**nient (nee-ent).** [Law French] Not; nothing.

**nient culpable (nee-ent kəl-pə-bəl), n.** [Law French] *Hist.* A general plea of "not guilty" in a tort or criminal action.

"When the prisoner hath thus pleaded not guilty, *non culpabilis*, or *nient culpable*; which was formerly used to be abbreviated upon the minutes, thus, '*non* (or *nient*) *cul.*' the clerk of the assise, or clerk of the arraigns, on behalf of the crown replies, that the prisoner is guilty, and that he is ready to prove him so." 4 William Blackstone, *Commentaries on the Laws of England* 333 (1769).

**nient dedire (nee-ent də-deer), vb.** [Law French] *Hist.* To deny nothing; to be subject to a default judgment.

**nient le fait (nee-ent lə fay).** [Law French] *Hist.* Not the deed. • This term was the earlier version of *non est factum*. See NON EST FACTUM.

**nient seisi (nee-ent see-zee), n.** [Law French "not seised"] *Hist.* The general denial in a writ to recover an annuity.

**NIFO (ni-foh).** *abbr.* NEXT-IN, FIRST-OUT.

**night. 1.** The time from sunset to sunrise. **2.** Darkness; the time when a person's face is not discernible. • This definition was used in the common-law definition of certain offenses, such as burglary.

"The definition of a burglar, as given by Sir Edward Coke, is, 'he that by night breaketh and entereth into a mansion-house, with intent to commit a felony.' . . . The time must be by night, and not by day; for in the daytime there is no burglary . . . . As to what is reckoned night, and what day, for this purpose anciently the day was accounted to begin only at sunrise, and to end immediately upon sunset; but the better opinion seems to be, that if there be daylight . . . enough, begun or left, to discern a man's face withal, it is no burglary. But this does not extend to moonlight; for then many midnight burglaries would go unpunished: and besides, the malignity of the offence does not so properly arise from its being done in the dark, as at the dead of night when all the creation, except beasts of prey, are at rest; when sleep has disarmed the owner, and rendered his castle defenceless." 4 William Blackstone, *Commentaries on the Laws of England* 224 (1769).

**3.** Thirty minutes after sunset and thirty minutes before sunrise, or a similar definition as set forth by statute, as in a statute requiring



specific authorization for night searches. 4. Evening. — Also termed *nighttime*. Cf. DAY.

**nightwalker.** 1. *Hist.* A person who suspiciously wanders about at night and who might disturb the peace. • Nightwalking was an example of a “common” offense requiring no specific facts to be asserted in the indictment. 2. A sleepwalker. 3. A prostitute who walks the streets at night; streetwalker.

**nihil.** See NIHIL EST.

**nihil capiat per breve** (ni-hil kap-ee-ət pər bree-vee or breev), *n.* [Latin “Let him take nothing by his writ”] A judgment against the plaintiff in an action at bar or in abatement. — Also termed *nihil capiat per billam* (“let him take nothing by his bill”).

**nihil dicit** (ni-hil di-sit), *n.* [Latin “he says nothing”] 1. The failure of a defendant to answer a lawsuit. 2. See *nil-dicit default judgment* under DEFAULT JUDGMENT.

**nihil-dicit default judgment.** See DEFAULT JUDGMENT.

**nihil est** (ni-hil est). [Latin “there is nothing”] A form of return by a sheriff or constable who was unable to serve a writ because nothing was found to levy on. — Often shortened to *nihil*. Cf. NULLA BONA.

**nihil habet** (ni-hil hay-bət). [Latin “he has nothing”] A form of return by a sheriff or constable who was unable to serve a *scire facias* or other writ on the defendant. See SCIRE FACIAS.

**nihilism** (ni-əl-iz-əm). 1. A doctrine maintaining that there is no rational justification for moral principles and that there is no objective truth. 2. The view that traditional beliefs are unfounded and that life is meaningless and useless. 3. A theory that the existing economic, social, or political institutions should be destroyed, regardless of the result, because of the basic undesirability of those institutions. • This theory, featured by Ivan Turgenev in his 1861 novel *Fathers and Sons*, was popular among Russian extremists until the collapse of the czarist government.

**nihilist**, *n.* A person who advocates nihilism. See NIHILISM.

**nil** (nil). [Latin] Nothing. • This word is a contracted form of *nihil*. See NIHIL EST.

**nil debet** (nil deb-ət). [Latin “he owes nothing”] *Hist.* A general denial in a debt action on a simple contract.

“The proper general issue in debt on simple contracts and statutes is ‘nil debet,’ which is a formal denial of the debt. It denies not only the existence of any contract, but under it any matters in excuse or in discharge may also be shown.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 184, at 327 (Henry Winthrop Balandine ed., 3d ed. 1923).

**nil-dicit default judgment.** See DEFAULT JUDGMENT.

**nil habuit in tenementis** (nil hab-yoo-it in ten-ə-men-tis), *n.* [Law Latin “he has nothing in the tenements”] *Hist.* In an action to recover rent on a lease, the defendant’s plea that the landlord has no title or interest in the property at issue.

**nil ligatum** (nil li-gay-təm). [Latin “nothing is bound”] No obligation has been incurred.

**nimble dividend.** See DIVIDEND.

**nimmer.** A petty thief; pilferer; pickpocket.

**Nineteenth Amendment.** The constitutional amendment, ratified in 1920, providing that a citizen’s right to vote cannot be denied or abridged by the United States, or by any state within it, on the basis of sex. — Also termed *Women’s Suffrage Amendment*.

**1933 Act.** See SECURITIES ACT OF 1933.

**1934 Act.** See SECURITIES-EXCHANGE ACT OF 1934.

**ninety-day letter.** Statutory notice of a tax deficiency sent by the IRS to a taxpayer. • During the 90 days after receiving the notice, the taxpayer must pay the taxes (and, if desired, seek a refund) or challenge the deficiency in tax court. IRC (26 USCA) §§ 6212, 6213. — Also written *90-day letter*. — Also termed *notice of deficiency*; *deficiency notice*; *tax-deficiency notice*. Cf. THIRTY-DAY LETTER.

**Ninth Amendment.** The constitutional amendment, ratified with the Bill of Rights in 1791, providing that rights listed in the Constitution must not be construed in a way that denies or disparages unlisted rights, which are retained by the people.

**nisi** (ni-si), *adj.* [Latin “unless”] (Of a court’s *ex parte* ruling or grant of relief) having validity unless the adversely affected party appears and shows cause why it should be withdrawn <a decree *nisi*>. See *decree nisi* under DECREE.

**nisi decree.** See *decree nisi* under DECREE.

**nisi feceris** (ni-si fee-sə-ris), *n.* [Law Latin “unless you have done so”] *Hist.* A clause in a manorial writ providing that the king’s court or officer will do justice if the lords fail. • This provision allowed royal courts to usurp the jurisdiction of manorial courts.

**nisi prius** (ni-si pri-əs). [Latin “unless before then”] A civil trial court in which, unlike in an appellate court, issues are tried before a jury. • The term is obsolete in the United States except in New York and Oklahoma. — Abbr. *n.p.*

**nisi prius clause.** An entry to the record authorizing a jury trial in the designated county. See NISI PRIUS.

**nisi prius roll.** The transcript of a case at nisi prius. — Also termed *nisi prius record*.

**nitroglycerine charge.** See ALLEN CHARGE.

***n.l.* abbr.** NON LIQUET.

**NLRA. abbr.** NATIONAL LABOR RELATIONS ACT.

**NLRB. abbr.** NATIONAL LABOR RELATIONS BOARD.

**NMB. abbr.** NATIONAL MEDIATION BOARD.

**NMI. abbr.** No middle initial.

**no-action clause.** An insurance-policy provision that bars suit against the insurer until the liability of the insured has been determined by a judgment.

**no-action letter.** A letter from the staff of a governmental agency stating that if the facts are as represented in a person’s request for an agency ruling, the staff will advise the agency not to take action against the person. • Typically, a no-action letter is requested from the SEC on such matters as shareholder proposals, resales of stock, and marketing techniques.

**no actus reus** (noh ak-təs ree-əs). A plea in which a criminal defendant either denies involvement with a crime or asserts that the

harm suffered is too remote from the criminal act to be imputable to the defendant.

**no-answer default judgment.** See DEFAULT JUDGMENT.

**no arrival, no sale.** A delivery term, included in some sales contracts, by which the seller assumes the duty to deliver the goods to a specified place, and assumes the risk of loss for the goods while they are in transit. • If the goods arrive damaged or late, the buyer can either avoid the contract or accept the goods at a discount.

**no award.** In an action to enforce an award, the defendant’s plea denying that an award was made.

**nobile officium** (noh-bə-lee ə-fish-ee-əm), *n.* [Latin “noble office or privilege”] *Scots law.* The power of a superior court to give equitable relief when none is possible under law.

**nobility, n. pl. 1.** Persons of social or political preeminence, usu. derived by inheritance or from the sovereign. • In English law, there are various degrees of nobility, or peerage, such as dukes, marquises, earls, viscounts, and barons, and their female counterparts. Nobility is generally created either by a writ of summons to sit in Parliament or by a royal grant through letters patent, and was once usu. accompanied by a large land grant. Nobility by writ descended to a person’s bodily heirs. The modern practice is to grant nobility by letters patent, which provide limitations as to future heirs. The U.S. Constitution prohibits granting a title of nobility. U.S. Const. art. I, § 9, cl. 8.

“In England nobility is apt to be confounded with the peculiar institution of the British peerage. Yet nobility, in some shape or another, has existed in most places and times or the world’s history, while the British peerage is an institution purely local, and one which has actually hindered the existence of a nobility in the sense which the word bears in most other countries. . . . Nobility, then, in the strict sense of the word, is the hereditary handing on from generation to generation of some acknowledged pre-eminence, a pre-eminence founded on hereditary succession, and on nothing else. . . . The pre-eminence so handed on may be of any kind, from substantial political power to mere social respect and precedence.” 17 *Encyclopaedia Britannica* 538 (9th ed. 1907).

**2.** Persons of high or noble character. **3.** The collective body of persons making up the noble class.

**no bill, n.** A grand jury’s notation that insufficient evidence exists for an indictment on a criminal charge <the grand jury returned a no

bill instead of the indictment the prosecutors expected>. — **no-bill**, *vb.* <the grand jury no-billed three of the charges>. Cf. TRUE BILL.

**no-bonus clause.** *Landlord-tenant law.* A lease provision that takes effect upon governmental condemnation, limiting the lessee's damages to the value of any improvements to the property and preventing the lessee from recovering the difference between the lease's fixed rent and the property's market rental value. See CONDEMNATION.

**no cause of action.** See *take-nothing judgement* under JUDGMENT.

**nocent** (**noh**-sənt), *adj.* [fr. Latin *nocere* "harm"] *Archaic* **1.** Injurious; harmful. **2.** Guilty; criminal. • This word is the little-used antonym of *innocent*.

**nocent** (**noh**-sənt), *n.* [fr. Latin *nocere* "harm"] *Hist.* A person who is guilty.

**no-claim**, *n.* The lack of a claim. • Legal philosophers devised this term to denote the opposite of a claim. As one jurist has said apologetically, "there is no word in English which expresses the lack of a claim and therefore the rather barbarous 'no-claim' has been suggested." George Whitecross Paton, *A Textbook of Jurisprudence* 291 (G.W. Paton & David P. Derham eds., 4th ed. 1972).

**no-confidence vote.** The formal legal method by which a legislative body, by a majority vote, forces the resignation of a cabinet or ministry. — Also termed *vote of no confidence*.

**no contest.** A criminal defendant's plea that, while not admitting guilt, the defendant will not dispute the charge. • This plea is often preferable to a guilty plea, which can be used against the defendant in a later civil lawsuit. — Also termed *nolo contendere*; *non vult contendere*.

**no-contest clause.** A testamentary provision conditioning a gift or legacy on the beneficiary's not challenging the will.

**noctanter** (**nok-tan-tər**), *n.* [Latin "by night"] *Hist.* A chancery writ issued to a sheriff as a first step in the recovery of damages for destroying a ditch or hedge. • The neighboring villagers (vills) were held liable for the damages unless they indicted the offender.

**noctem de firma** (**nok-təm dee fər-mə**), *n.* [Law Latin "night of duty (payable)"] *Hist.* The duty or custom of providing entertainment or provisions for a night. • At the time of the Norman Conquest, this was the duty or custom of entertaining the king for one night. — Also termed *noctes*; *firma noctis*.

**nocumentum** (**nok-yə-men-təm**). [fr. Latin *nocere* "to harm"] *Hist.* A nuisance. • There was no remedy at law for a nuisance causing only property damage, but there was a remedy for a nuisance causing injury.

**no-duty**, *n.* Liberty not to do an act. — Also termed *liberty not*.

**no-duty doctrine.** **1.** *Torts.* The rule that a defendant who owes no duty to the plaintiff is not liable for the plaintiff's injury. **2.** The rule that the owner or possessor of property has no duty to warn or protect an invitee from known or obvious hazards.

**Noerr-Pennington doctrine.** The principle that the First Amendment shields from liability (esp. under antitrust laws) companies that join together to lobby the government. • The doctrine derives from a line of Supreme Court cases beginning with *Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 81 S.Ct. 523 (1961), and *United Mine Workers v. Pennington*, 381 U.S. 657, 85 S.Ct. 1585 (1965).

**no evidence.** **1.** The lack of a legally sufficient evidentiary basis for a reasonable fact-finder to rule in favor of the party who bears the burden of proof <there is no evidence in the record about his whereabouts at midnight>. • Under the Federal Rules of Civil Procedure, a party can move for judgment as a matter of law to claim that the other party — who bears the burden of proof — has been fully heard and has not offered sufficient evidence to prove one or more essential elements of the suit or defense. Fed. R. Civ. P. 50. Though such a contention is usu. referred to as a no-evidence motion, the issue is not whether there was actually no evidence, but rather whether the evidence was sufficient for the fact-finder to be able to reasonably rule in favor of the other party.

"Since judgment as a matter of law deprives the party opposing the motion of a determination of the facts by a jury, it should be granted cautiously and sparingly. Nevertheless, the federal courts do not follow the rule that a scintilla of evidence is enough to create an issue for the jury. The question is not whether there is literally no evidence upon which the jury properly could find a verdict for that party." 9A Charles Alan Wright & Ar-

thur Miller, *Federal Practice and Procedure* § 2524, at 252-54 (2d ed. 1995).

**2.** Evidence that has no value in an attempt to prove a matter in issue <that testimony is no evidence of an alibi>.

**no-eyewitness rule.** *Torts.* The largely defunct principle holding that if no direct evidence shows what a dead person did to avoid an accident, the jury may infer that the person acted with ordinary care for his or her own safety. • In a jurisdiction where the rule persists, a plaintiff in a survival or wrongful-death action can assert the rule to counter a defense of contributory negligence.

**no-fault, adj.** Of or relating to a claim that is adjudicated without any determination that a party is blameworthy <no-fault divorce>.

**no-fault auto insurance.** See INSURANCE.

**no-fault divorce.** See DIVORCE.

**no funds.** An indorsement marked on a check when there are insufficient funds in the account to cover the check.

**no goods.** See NULLA BONA.

**n.o.i.b.n., abbr.** NOT OTHERWISE INDEXED BY NAME.

**no-knock search.** See SEARCH.

**no-knock search warrant.** See SEARCH WARRANT.

**NOL.** See *net operating loss* under LOSS.

**nolens volens (noh-lenz voh-lenz), adv. & adj.** [Latin] Willing or unwilling <*nolens volens*, the school district must comply with the court's injunction>.

**no-limit order.** See ORDER (4).

**nolisement (nə-lis-mahn), n.** [French] *French law.* The chartering of a ship; AFFREIGHTMENT.

**nolition (noh-lish-ən).** The absence of volition; unwillingness.

**nolle prosequi (nah-ee prahs-ə-kwi), n.** [Latin "not to wish to prosecute"] **1.** A legal notice that a lawsuit has been abandoned. **2.** A docket entry showing that the plaintiff or the prosecu-

tion has abandoned the action. — Often shortened to *nolle*.

"In America the term [*nolle prosequi*] bears the same meaning as in England, with one exception. The attorney-general has not the same discretion with which English law invests him. Although in some States the prosecuting officer may enter a *nolle prosequi* at his discretion, in others the leave of the court must be obtained." 17 *Encyclopaedia Britannica* 546 (9th ed. 1907).

"Nolle prosequi is a formal entry on the record by the prosecuting officer by which he declares that he will not prosecute the case further, either as to some of the counts of the indictment, or as to part of a divisible count, or as to some of the persons accused, or altogether. It is a judicial determination in favor of accused and against his conviction, but it is not an acquittal, nor is it equivalent to a pardon." 22A C.J.S. *Criminal Law* § 419, at 1 (1989).

**nolle prosequi (nah-ee prahs-ə-kwi), vb.** To abandon (a suit or prosecution); to have (a case) dismissed by a *nolle prosequi* <the state *nolle prosequed* the charges against Johnson>. — Often shortened to *nolle pros*; *nol-pros*; *nol-pro*.

**no-load fund.** See MUTUAL FUND.

**nolo contendere (noh-loh kən-ten-də-ree).** [Latin "I do not wish to contend"] NO CONTEST. — Often shortened to *nolo*.

**no man's land.** *Labor law.* The lack of clear jurisdiction between a state government and the federal government over labor disputes. • This term was common in the 1950s, but its use has declined as later laws have clarified jurisdictional issues.

**NOM clause.** *abbr.* NO-ORAL-MODIFICATION CLAUSE.

**nomen (noh-men or -mən), n.** [Latin] **1.** *Roman law.* A personal name. • A Roman citizen generally had three names: a *praenomen* ("first name"), a *nomen* ("the name of the family group"), and *cognomen* ("a surname"). **2.** *Roman law.* A claim; an obligation. **3.** *Hist.* A person's first name. **4.** More broadly, any name. See AGNOMEN.

**nomen collectivum (noh-men kol-ək-ti-vəm), n.** [Latin] A collective name; a name of a class of things.

**nomen generale (noh-men jen-ə-ray-lee), n.** [Latin] A general name; a *genus*.

**nomen generalissimum (noh-men jen-ə-rə-lis-i-məm), n.** [Law Latin] A name with the most general meaning.

"*Nomen generalissimum*. A very general name: a comprehensive term. Such are the terms crime, demand, draft, estate, goods, grant, heir, house, instrument, interest, land, merchandise, obligation, offense." William C. Anderson, *A Dictionary of Law* 711 (1889).

**nomen juris** (noh-men joor-is), *n.* [Latin] A legal name or designation.

**nomen transcripticum** (noh-men tran-skrip-tish-ee-əm), *n.* [Latin "entry (in an account transferred)"] *Roman law*. A creditor's entry of a money debt into a new account (*expensilatio*) after closing another account, thereby creating, with the debtor's permission, a literal contract from an existing obligation, which may or may not have been enforceable. Pl. **nomina transcripticia**.

"The subject will, perhaps, become clearer by examples: ... A has in the past had dealings by way of sale, exchange, etc., with B, of which an account appears in his *codex* showing a balance against B for 500 *aurei*. A, with B's consent, closes this account by a statement on the opposite page (contrary to fact) that B has paid the *aurei* ... and opens a new account with the statement (contrary to strict fact) that he has advanced to B the sum of 500 *aurei*. Hence the *expensilatio* represents a *nomen transcripticum*; a *nomen* (debt) has been transferred from one account to another ... In effect the old contracts between A and B have been novated, *i.e.* extinguished, one single obligation having been substituted in their place; obviously a course which offered many advantages to both parties, as it simplified the accounts, and saved disputes about the previous transactions." R.W. Leage, *Roman Private Law* 317-18 (C.H. Ziegler ed., 2d ed. 1930).

**no-merit brief**. See ANDERS BRIEF.

**nominal** (nahm-ə-nəl), *adj.* **1.** Existing in name only <the king was a nominal figurehead as he had no power>. **2.** (Of a price or amount) trifling, esp. as compared to what would be expected <the lamp sold for a nominal price of ten cents>. **3.** Of or relating to a name or term <a nominal definition>. — **nominally**, *adv.*

**nominal account**. See ACCOUNT.

**nominal asset**. See ASSET.

**nominal capital**. See CAPITAL.

**nominal consideration**. See CONSIDERATION.

**nominal damages**. See DAMAGES.

**nominal partner**. See PARTNER.

**nominal party**. See PARTY (2).

**nominal-payee rule**. *Commercial law*. The rule that validates any person's indorsement of an instrument (such as a check) when the instrument's drawer intended for the payee to have no interest in the instrument. UCC § 3-404(b).

**nominal rate**. See INTEREST RATE.

**nominal sentence**. See SENTENCE.

**nominal trust**. See *passive trust* under TRUST.

**nominal value**. See PAR VALUE.

**nominal yield**. See YIELD.

**nominate**, *vb.* **1.** To propose (a person) for election or appointment <Steven nominated Jane for president>. **2.** To name or designate (a person) for a position <the testator nominated an executor, who later withdrew because he couldn't perform his duties>.

**nominate contract**. See CONTRACT.

**nominatim** (nah-mi-nay-təm), *adv.* [fr. Latin *nomen* "name"] *Roman law*. By name. • This term refers to mentioning someone or something expressly or specifically by name, so that (for example) to disinherit persons *nominatim* means that there is no doubt who is meant to be excluded.

**nominating and reducing**. *Hist.* A method used, esp. in London, to obtain special jurors from which to select a jury panel. • Under this method, a number representing each person on a sheriff's list is drawn from a box until 48 unchallenged people have been nominated. Each party then strikes 12 people and the remaining 24 constitute the panel.

**nominatio auctoris** (nah-mi-nay-shee-oh awk-tor-is), *n.* [Latin "naming of the originator (or seller)"] **1.** In an action for the recovery of something, such as real estate, the defendant's plea that the property is actually owned by another party. • The true owner is then required to defend the action. **2.** *Roman law*. In an action alleging ownership of an item, the defendant's plea naming the seller, who then must assist in the defense of the action against the plaintiff. — Also termed *laudare auctorem*.

**nomination**. **1.** The act of proposing a person for election or appointment. **2.** The act of naming or designating a person for a position.

**nomination paper.** (*usu. pl.*) A document filed by an independent political group — *usu.* one not qualifying as a political party or able to hold primary elections — to place one or more nominees on a general-election ballot.

**nomination to a living.** *Eccles. law.* A right to offer a clerk to the owner of an advowson for presentation to the bishop of the diocese. ● The owner of an advowson can grant the right to another but is then bound to present whomever the grantee chooses.

***nominativus pendens*** (*nahm-ə-nə-ti-vəs pen-denz*), *n.* [Latin “nominative hanging”] In a sentence, a nominative phrase that is not grammatically connected with the rest of the sentence. — Also termed *nominative absolute*.

“Nominativus pendens . . . The opening words in the form of a deed *inter partes* (“This deed,” etc., down to “whereas”), though an intelligible and convenient part of the deed, having regard to the predicate “witnesseth” or “nor this deed witnesseth,” are sometimes of this kind.” William A. Jowitt, *The Dictionary of English Law* 1230 (1959).

***nomina villarum*** (*nahm-ə-nə vi-lair-əm*), *n.* [Latin “names of the villages”] *Hist.* In the reign of Edward II, a list compiled by sheriffs of the names of the villages and possessors in their respective counties.

***nomine.*** (*nahm-ə-nee*). [fr. Latin *nomen* “name”] *Roman law.* **1.** By name; under the name of, as in *sine nomine edere librum* (“to publish [a book] anonymously”). **2.** On behalf of, as in *proprio (suo) nomine* (“on one’s own behalf”).

**nominee.** **1.** A person who is proposed for an office, position, or duty. **2.** A person designated to act in place of another, *usu.* in a very limited way. **3.** A party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others.

**nominee trust.** See TRUST.

***nomine poenae*** (*nahm-ə-nee pee-nee*), *n.* [Latin “in the name of penalty”] **1.** *Civil law.* A clause in a testament requiring the heir to do something by way of penalty. **2.** At common law, a penalty for nonperformance, such as additional rent to be paid by a tenant to a landlord for failing to perform certain conditions in a lease.

**nomocanon** (*nə-mok-ə-non* or *noh-mə-kan-ən*). **1.** A collection of canon and imperial laws ap-

plicable to ecclesiastical matters in the orthodox churches. ● The first nomocanon is falsely ascribed to Johannes Scholasticus, patriarch of Constantinople, in 553. Later canons consist primarily of the canons of the Quinisext and the ecclesiastical laws of Justinian. **2.** A collection of the ancient canons of the apostles, councils, and fathers, without regard to imperial constitutions.

**nomographer** (*nə-mog-rə-fər*). **1.** A person who drafts laws. **2.** A person skilled in nomography.

**nomography** (*nə-mog-rə-fee*). **1.** The art of drafting laws. **2.** A treatise on the drafting of laws.

***nomothete*** (*noh-mə-theet*), *n.* [fr. Greek *nomos* “law” + *thetes* “a person who prescribes”] *Hist.* A lawgiver. — Also spelled *nomotheta*.

“It was [in ancient Greek law] provided that all motions to repeal or amend an existing law should be brought before the ecclesia or general meeting of citizens, at the beginning of the year. They might be then and there rejected; but if a motion was received favorably, the ecclesia appointed a body of nomothetes, sometimes as many as a thousand in number, before whom the proposal was put on trial according to the regular forms of Athenian judicial procedure. A majority vote of the nomothetes was decisive for acceptance or rejection.” 5 *Century Dictionary and Cyclopedia* 4011 (1895).

**non** (*non*). [Latin] Not; no. ● This term negates, sometimes as a separate word and sometimes as a prefix.

**nonability.** **1.** The lack of legal capacity, esp. to sue on one’s own behalf. **2.** A plea or exception raising a lack of legal capacity.

**nonacceptance.** **1.** The refusal or rejection of something, such as a contract offer. See REJECTION. **2.** A buyer’s rejection of goods because they fail to conform to contractual specifications. See UCC § 2-601(a). **3.** A drawee’s failure or refusal to receive and pay a negotiable instrument.

***non acceptavit*** (*non ak-sep-tay-vit*). [Latin “he did not accept”] In an assumpsit action against the acceptor of a bill of exchange, the defendant’s plea denying acceptance of the bill.

**nonaccess.** *Family law.* Absence of opportunity for sexual intercourse. ● Nonaccess is often used as a defense by the alleged father in paternity cases.

**non accrevit infra sex annos** (non ə-kree-vit in-frə seks an-ohs), *n.* [Latin “it did not accrue in six years”] *Hist.* The general pleading form for the statute-of-limitations defense.

**nonacquiescence** (non-ak-wee-es-ənts). *Administrative law.* An agency’s policy of declining to be bound by lower-court precedent that is contrary to the agency’s interpretation of its organic statute, but only until the Supreme Court has ruled on the issue.

“Too much nonacquiescence, however, would interfere with the courts’ ability to prevent an agency from violating its statutory mandate. The practice is generally upheld, but is considered questionable when an agency adheres to its legal position in a case that could only be reviewed in a circuit that has already rejected the agency’s stance. When the Social Security Administration made frequent use of the latter kind of nonacquiescence in the administration of its disability benefits program in the 1980’s, it was widely criticized.” Ernest Gellhorn & Ronald M. Levin, *Administrative Law and Process in a Nutshell* 98 n2 (4th ed. 1997).

**nonactuarially sound retirement system.** A retirement plan that uses current contributions and assets to pay current benefit obligations, instead of investing contributions to pay future benefits. Cf. ACTUARIALY SOUND RETIREMENT SYSTEM.

**nonadmission.** **1.** The failure to acknowledge something. **2.** The refusal to allow something, such as evidence in a legal proceeding.

**nonadmitted asset.** See ASSET.

**nonae et decimae** (noh-nee et des-ə-mee), *n. pl.* [Law Latin “ninths and tenths”] *Hist.* Two payments that church-farm tenants make to the church, the first being rent for the land and the second being a tithe.

**nonage** (non-ij). **1.** MINORITY (1). **2.** NONAGIUM.

**nonaggression pact.** *Int’l law.* A treaty in which two or more countries agree not to engage in aggressive military operations against one another. — Also termed *nonaggression treaty*.

**nonagium** (noh-nay-jee-əm). [Latin “a ninth”] *Hist.* The ninth part of a decedent’s personal property, sometimes payable to the parish clergy for pious uses. — Also termed *nonage*.

**nonaligned state.** *Int’l law.* A (usu. less developed) country that has banded together with other similarly situated countries to enhance

its political and economic position in the world. ● The movement of nonaligned states formally began at a summit in 1961, and during the Cold War these countries declared their independence from both the western and the Soviet blocs.

**nonancestral estate.** See ESTATE.

**nonapparent easement.** See *discontinuous easement* under EASEMENT.

**nonapparent servitude.** See SERVITUDE (1).

**nonappearance.** The failure to appear in court, esp. to prosecute or defend a lawsuit. See DEFAULT; NONSUIT.

**nonassertive conduct.** See CONDUCT.

**nonassessable insurance.** See INSURANCE.

**nonassessable stock.** See STOCK.

**non assumpsit** (non ə-səm[p]-sit). [Latin “he did not undertake”] *Hist.* A general denial in an action of assumpsit. See ASSUMPSIT.

“‘Non assumpsit’ is the general issue in assumpsit, whether special or general, and is in effect a formal denial of liability on the promise or contract alleged. It denies not only the inducement or statement of the plaintiff’s right, but also the breach, and allows any defense tending to show that there was no debt or cause of action at the time of commencing suit.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 182, at 322 (Henry Winthrop Ballantine ed., 3d ed. 1923).

**non assumpsit infra sex annos** (non ə-səm[p]-sit in-frə seks an-ohs), *n.* [Latin “he did not undertake within six years”] *Hist.* The specific pleading form for the statute-of-limitations defense in an action of assumpsit.

**nonbailable, adj.** **1.** (Of a person) not entitled to bail <the defendant was nonbailable because of a charge of first-degree murder>. **2.** (Of an offense) not admitting of bail <murder is a nonbailable offense>.

**nonbank, adj.** Of, relating to, or being an entity other than a bank <a nonbank depositor> <a nonbank creditor>.

**nonbank bank.** See BANK.

**nonbillable time.** An attorney’s or paralegal’s time that is not chargeable to a client. Cf. BILLABLE HOUR.

**noncallable bond.** See BOND (3).

**noncallable security.** See SECURITY.

**noncancelability clause.** An insurance-policy provision that prevents the insurer from canceling the policy after an insured's loss, as long as the premium has been paid.

**noncapital, adj.** (Of a crime) not involving or deserving of the death penalty <noncapital murder>.

**noncareer vice-consul.** See VICE-CONSUL.

**noncash charge.** See CHARGE.

**non cepit** (non see-pit). [Latin "he did not take"] *Hist.* A general denial in a replevin action that puts at issue both the taking and the place of taking. See REPLEVIN.

"'Non cepit' is the general issue in replevin, and is a formal denial both of the fact and the place of the alleged taking. It denies the taking only, and not the plaintiff's right of possession. Where replevin may be and is brought for goods lawfully obtained, but unlawfully detained, the general issue is 'non detinet,' which is a denial of the detention. It denies the detention only, and not the plaintiff's right." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 178, at 318 (Henry Winthrop Ballantine ed., 3d ed. 1923).

**noncitizen.** A person who is not a citizen of a particular place. See ALIEN.

**nonclaim.** A person's failure to pursue a right within the legal time limit, resulting in that person's being barred from asserting the right. See STATUTE OF LIMITATIONS.

**nonclaim statute.** See STATUTE.

**noncode state.** *Hist.* A state that, at a given time, had not procedurally merged law and equity, so that equity was still administered as a separate system. • The term was current primarily in the early to mid-20th century. — Also termed *common-law state*. Cf. CODE STATE.

**noncombatant, adj.** **1.** Not serving in a fighting capacity <noncombatant personnel>. **2.** Not designed for combat <noncombatant vehicle>.

**noncombatant, n.** **1.** An armed-service member who serves in a non-fighting capacity. **2.** A civilian in wartime.

**noncommercial partnership.** See *nontrading partnership* under PARTNERSHIP.

**noncommissioned officer.** See OFFICER (2).

**noncompete covenant.** See *noncompetition covenant* under COVENANT (1).

**noncompetition covenant.** See COVENANT (1).

**non compos mentis** (non kom-pēs men-tis), *adj.* [Latin "not master of one's mind"] **1.** Insane. **2.** Incompetent. Cf. COMPOS MENTIS.

**non concessit** (non kən-sēs-it), *n.* [Law Latin "he did not grant"] *Hist.* **1. English law.** The plea by which the defendant denies that certain rights were given by letters patent to the plaintiff. • For example, if a plaintiff sues for the infringement of a patent right, the defendant can deny that the Crown granted the plaintiff that right as alleged in the plaintiff's declaration. **2.** A plea by a stranger to a deed, by which the title and operation of the deed are placed in issue.

**nonconforming goods.** See GOODS.

**nonconforming lot.** See LOT (1).

**nonconforming use.** See USE (1).

**nonconformist.** A person who refuses to follow established customs, practices, beliefs, or ideas; esp., a person who refuses to adhere to specific religious doctrines or church requirements.

**nonconformity.** The failure to comply with something, as in a contract specification.

**nonconsensual, adj.** Not occurring by mutual consent <nonconsensual sexual relations>.

**nonconsent. 1.** Lack of voluntary agreement. **2. Criminal law.** In the law of rape, the refusal to engage willingly in sexual intercourse. See CONSENT.

**non constat** (non kon-stat). [Latin "it is not settled"] It is not certain or agreed. • The phrase is generally used to state that some conclusion does not necessarily follow although it might appear on its face to follow. Cf. NON SEQUITUR.

"Non Constat . . . Words frequently used, particularly in argument, to express dissatisfaction with the conclusions of the other party: as, it was moved in arrest of judgment that the declaration was not good, because *non*



*constat* whether AB was seventeen years of age when the action was commenced." 3 John Bouvier, *Bouvier's Law Dictionary* 2355 (8th ed. 1914).

**nonconstitutional**, *adj.* Of or relating to some legal basis or principle other than those of the U.S. Constitution or a state constitution <the appellate court refused — on nonconstitutional procedural grounds — to hear the defendant's argument about cruel and unusual punishment>. Cf. UNCONSTITUTIONAL.

**nonconsumable**, *n.* A thing (such as land, a vehicle, or a share of stock) that can be enjoyed without any change to its substance other than a natural diminishment over time. Cf. CONSUMABLE.

**noncontestability clause**. See INCONTESTABILITY CLAUSE.

**noncontinuing guaranty**. See *limited guaranty* under GUARANTY.

**noncontinuous easement**. See *discontinuous easement* under EASEMENT.

**noncontract**, *adj.* See NONCONTRACTUAL.

**noncontract demurrage**. See DEMURRAGE.

**noncontractual**, *adj.* Not relating to or arising from a contract <a noncontractual obligation>. — Also termed *noncontract*.

**noncontractual duty**. See DUTY (1).

**noncontribution clause**. A fire-insurance-policy provision stating that only the interests of the property owner and the first mortgagee are protected under the policy.

**noncontributory**, *adj.* **1.** Not involved in something. **2.** (Of an employee benefit plan) funded solely by the employer.

**noncontributory pension plan**. See PENSION PLAN.

**noncore proceeding**. See RELATED PROCEEDING.

**noncovered wages**. See WAGE.

**non culpabilis** (non kəl-pay-bə-ləs). [Latin] Not guilty. — Abbr. *non cul.*

**noncumulative dividend**. See DIVIDEND.

**noncumulative preferred stock**. See STOCK.

**noncumulative stock**. See *noncumulative preferred stock* under STOCK.

**noncumulative voting**. See VOTING.

**noncustodial**, *adj.* **1.** (Of an interrogation, etc.) not taking place while a person is in custody. **2.** Of or relating to someone, esp. a parent, who does not have sole or primary custody.

**noncustodial sentence**. See SENTENCE.

**non damnificatus** (non dam-nə-fə-kay-təs). [Latin "he is not damaged"] In an action of debt on a bond that holds the plaintiff harmless, the defendant's plea that the plaintiff has not been damaged.

**nondeadly force**. See FORCE.

**non decimando** (non des-ə-man-doh). See DE NON DECIMANDO.

**non dedit** (non dee-dit), *n.* [Latin "he did not grant"] NE DONA PAS.

**nondelegable** (non-del-ə-gə-bəl), *adj.* (Of a power, function, etc.) not capable of being entrusted to another's care <the duty to maintain the premises is a nondelegable duty>.

**nondelegable duty**. See DUTY (1).

**nondelegation doctrine**. See DELEGATION DOCTRINE.

**nondelivery**. A failure to transfer or convey something, such as goods. Cf. DELIVERY.

**non demiset** (non də-mi-zit). [Latin "he did not demise"] *Hist.* **1.** A defensive plea in an action for rent when the plaintiff failed to plead that the demise was by indenture. • It could not be used if the plaintiff alleged an indenture. **2.** In a replevin action, a plea in bar to an avowry for arrears of rent.

**non detinet** (non det-i-net or det-ə-nət). [Latin "he does not detain"] *Hist.* **1.** The pleading form of a general denial in a detinue action for recovery of goods detained by the defendant. • A *non detinet* denies both the detention and the plaintiff's right of possession or property in the goods claimed. See DETINUE. **2.** Loosely, NON CEPIT.

**nondirection.** The failure of a judge to properly instruct a jury on a necessary point of law.

**nondischargeable debt.** A debt (such as one for delinquent taxes) that is not released through bankruptcy.

**nondisclosure.** The failure or refusal to reveal something that either might be or is required to be revealed.

**nondiscretionary trust.** See *fixed trust* under TRUST.

**non distringendo** (non di-strin-jen-doh). [Law Latin “not to be distrained”] A writ to prevent the distraint of something.

**nondiverse, adj.** **1.** Of or relating to similar types <the attorney’s practice is nondiverse: she handles only criminal matters>. **2.** (Of a person or entity) having the same citizenship as the party or parties on the other side of a lawsuit <the parties are nondiverse because both plaintiff and defendant are California citizens>. See *diversity jurisdiction* under JURISDICTION.

**nones** (nohnz), *n.* [fr. Latin *nonus* “ninth”] **1.** *Roman law.* In the Roman calendar, the ninth day before the ides, being the 7th of March, May, July, and October, and the 5th of the other months. **2.** *Eccles. law.* In religious houses, such as the Roman Catholic church, one of the seven daily canonical hours (about 3:00 p.m.) for prayer and devotion. **3.** *Archaic.* The ninth hour after sunrise, usu. about 3:00 p.m. Cf. CALENDAS.

**nonessential mistake.** See *unessential mistake* under MISTAKE.

**nonessential term.** See *nonfundamental term* under TERM (2).

**non est factum** (non est fak-təm). [Latin “it is not his deed”] *Hist.* A denial of the execution of an instrument sued on.

“The general issue in covenant is ‘non est factum,’ which is a formal denial that the deed is the deed of the defendant.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 187, at 331 (Henry Winthrop Balantine ed., 3d ed. 1923).

**non est inventus** (non est in-ven-təs). [Latin “he is not found”] *Hist.* A statement in a sheriff’s return indicating that the person ordered arrested could not be found in the sheriff’s jurisdiction. — Abbr. *n.e.i.*

“If *non est inventus* was returned to the bill, and the plaintiff had reason to think that the defendant was still in the same county, he might have another *bill*, and after that a third, and so on till the defendant was caught . . . .” 1 George Crompton, *Practice Common-Placed: Rules and Cases of Practice in the Courts of King’s Bench and Common Pleas* xxxv (3d ed. 1787).

**nonexclusive easement.** See *common easement* under EASEMENT.

**nonexclusive listing.** See *open listing* under LISTING (1).

**nonexempt property.** See EXEMPT PROPERTY.

**nonfeasance** (non-feez-ənts), *n.* The failure to act when a duty to act existed. — **nonfeasant, adj.** — **nonfeasor, n.** Cf. MALFEASANCE; MISFEASANCE; FEASANCE.

“Hence there arose very early a difference, still deeply rooted in the law of negligence, between ‘misfeasance’ and ‘nonfeasance’ — that is to say, between active misconduct working positive injury to others and passive inaction or a failure to take steps to protect them from harm.” W. Page Keeton et al., *The Law of Torts* § 56, at 374 (5th ed. 1984).

**non fecit** (non fee-sit). [Latin “he did not make it”] A denial in an assumpsit action on a promissory note.

**non fecit vastum contra prohibitionem** (non fee-sit vas-təm kahn-trə proh-[h]ə-bish-ee-oh-nəm). [Latin “he did not commit waste against the prohibition”] In an estrepement action, a tenant’s denial of any destruction to lands after an adverse judgment but before the sheriff has delivered possession of the lands to the plaintiff.

**nonforfeitable, adj.** Not subject to forfeiture. See FORFEITURE.

**nonforfeiture option.** See OPTION.

**nonfreehold estate.** See ESTATE.

**nonfunctional, n.** *Trademarks.* A feature of a good that, although it might identify or distinguish the good from others, is unrelated to the product’s use.

**nonfundamental term.** See TERM (2).

**nongovernmental organization.** *Int’l law.* Any scientific, professional, business, or public-interest organization that is neither affiliated with nor under the direction of a government;

an international organization that is not the creation of an agreement among countries, but rather is composed of private individuals or organizations. • Examples of these organizations, which are often granted consultative status with the United Nations, include OPEC, Greenpeace, and the Red Cross. — Abbr. NGO.

“This term should not be taken to refer to the membership of the organization: governments or branches of governments are members of many non-governmental organizations. The notion ‘non-governmental’ refers to the *function* of the international organization. Non-governmental organizations are not endowed with government powers. They operate under rules of private and not of public law.” Henry G. Schermers, *International Institutional Law* 12 (1972).

**non impedivit** (non im-pə-dī-vit), *n.* [Latin “he did not impede”] The defendant’s general denial in a *quare impedit* action. • This is the Latin form equivalent to *ne disturba pas*. See NE DISTURBA PAS; QUARE IMPEDIT.

**non implacitando aliquem de libero tenemento sine brevi** (non im-plas-ə-tan-doh al-ə-kwem dee lib-ər-oh ten-ə-men-toh si-nee breevi) [Latin “not impleading anyone of his free tenement without a breve”] *Hist.* A writ that, without a writ from the king, prohibited bailiffs or others from distraining anyone from touching their freehold estates.

**noninfamous crime.** See CRIME.

**non infregit conventionem** (non in-free-jit kən-ven-shee-oh-nəm). [Latin “he committed no breach of covenant”] *Hist.* A defensive plea in an action for breach of covenant.

**noninstallment credit.** See CREDIT (4).

**noninsurable risk.** See RISK.

**nonintercourse.** **1.** The refusal of one country to deal commercially with another. • For example, the Non-Intercourse Act of 1809, a congressional act, prohibited the importation of British or French goods. **2.** The lack of access, communication, or sexual relations between husband and wife.

**non-interest-bearing bond.** See *discount bond* under BOND (3).

**non interfui** (non in-tər-fyoo-ī). [Latin “I was not present”] A reporter’s note.

**noninterpretivism, n.** In constitutional interpretation, the doctrine holding that judges are

not confined to the Constitution’s text or preratification history but may instead look to evolving social norms and values as the basis for constitutional judgments. — **noninterpretivist, n.** Cf. INTERPRETIVISM; ORIGINALISM.

**nonintervention.** *Int’l law.* The principle that a country should not interfere in the internal affairs of another country. • The U.N. Charter binds it from intervening “in matters which are essentially within the domestic jurisdiction of any state. . . .” U.N. Charter art. 2(7). — Also termed *principle of nonintervention*.

**nonintervention executor.** See *independent executor* under EXECUTOR.

**nonintervention will.** See WILL.

**non intromittendo, quando breve praecipie in capite subdole impetratur** (non in-troh-mi-ten-doh, kwon-doh bree-vee pree-sə-pee [or pres-ə-pee] in kap-ə-tee səb-də-lee im-pə-tray-tər), *n.* [Latin “not interfering, when the writ praecipie in capite was obtained by deceit”] *Hist.* A writ issued to the King’s Bench or Eyre, commanding them not to aid a person who obtained a praecipie in capite for lands from the king because that person likely obtained the writ deceitfully, and ordering them to put that person to the writ of right.

**nonintromittent clause** (non-in-troh-mit-ənt). *English law.* A clause in the charter of a borough exempting it from the jurisdiction of the justices of the peace appointed for the borough’s county.

**nonissuable plea.** See PLEA (3).

**nonjoinder.** The failure to bring a person who is a necessary party into a lawsuit. Fed. R. Civ. P. 12(b)(7), 19. Cf. JOINDER; MISJOINDER; DISJOINDER.

**nonjudicial day.** See DAY.

**nonjudicial foreclosure.** See FORECLOSURE.

**nonjudicial punishment.** See PUNISHMENT.

**nonjudicial** (non-juu-rid-i-kəl), *adj.* **1.** Not of or relating to judicial proceedings or to the administration of justice <the dispute was nonjudicial>. **2.** Not of or relating to the law; not legal <a natural person is a nonjudicial entity>. Cf. JURIDICAL.

**non juridicus** (non juu-rid-i-kəs), *adj.* [Latin “not judicial”] Of or relating to a day when courts do not sit or when legal proceedings cannot be conducted, such as a Sunday.

**nonjuror.** **1.** Someone who is not serving as a juror. **2.** *Hist.* A person who refuses to pledge allegiance to the sovereign; specif., in England and Scotland, a clergyman who refused to break the oath to James II and his heirs and successors, and recognize William of Orange as king. • In Scotland, a nonjuror was also recognized by the Presbyterian Church as a clergyman who refused to renounce the Episcopal Church when it was disestablished in favor of Presbyterianism.

**nonjury**, *adj.* Of or relating to a matter determined by a judicial officer, such as a judge, rather than a jury <the plaintiff asked for a nonjury trial>.

**nonjury trial.** See *bench trial* under TRIAL.

**nonjusticiable** (non-jəs-tish-ee-ə-bəl), *adj.* Not proper for judicial determination <the controversy was nonjusticiable because none of the parties had suffered any harm>.

**nonjusticiable question.** See POLITICAL QUESTION.

**nonlapse statute.** See ANTILAPSE STATUTE.

**nonleviable** (non-lev-ee-ə-bəl), *adj.* (Of property or assets) exempt from execution, seizure, forfeiture, or sale, as in bankruptcy. See HOME-STEAD LAW.

**non liquet** (non li-kwet or li-kwet). [Latin “it is not clear”]. **1.** *Civil law.* The principle that a decision-maker may decline to decide a dispute on the ground that the matter is unclear. • Even British judges formerly sometimes said *Non liquet* and found for the defendant. **2.** *Int'l law.* A tribunal's nondecision resulting from the unclarity of the law applicable to the dispute at hand. • In modern usage, the phrase appears almost always in passages stating what a court must not do: tribunals are routinely disallowed from declaring a *non liquet*. — Abbr. *n.l.*

**nonliquidating distribution.** See DISTRIBUTION.

**nonliteral infringement.** See DOCTRINE OF EQUIVALENTS.

**nonmailable**, *adj.* Of or relating to a letter or parcel that cannot be transported by mail for a particular reason such as the package's size, contents, or obscene label.

**nonmarital child.** See *illegitimate child* under CHILD.

**nonmarketable security.** See SECURITY.

**nonmedical policy.** See INSURANCE POLICY.

**nonmember bank.** See BANK.

**non merchandizanda victualia** (non mər-chen-di-zan-də vik-choo-ay-lee-ə), *n.* [Law Latin “not to merchandise victuals”] *Hist.* A writ directing justices of assize to investigate and punish town magistrates who retailed victuals while in office.

**nonmerchtable title.** See *unmarketable title* under TITLE (2).

**non molestando** (non moh-lə-stan-doh), *n.* [Law Latin “by not molesting”] *Hist.* A writ available to a person whose possession of land has been disturbed, contrary to the Crown's protection.

**nonmonetary item.** An asset or liability whose price fluctuates over time (such as land, equipment, inventory, and warranty obligations).

**nonmovant** (non-moov-ənt). A litigating party other than the one that has filed the motion currently under consideration <the court, in ruling on the plaintiff's motion for summary judgment, properly resolved all doubts in the nonmovant's favor>.

**nonnavigable**, *adj.* **1.** (Of a body of water) unaffected by the tide. **2.** (Of a body of water) incapable of allowing vessels to pass for travel or commerce. **3.** (Of any vessel) incapable of being steered.

**nonnegotiable**, *adj.* **1.** (Of an agreement or term) not subject to change <the kidnapper's demands were nonnegotiable>. **2.** (Of an instrument or note) incapable of transferring by indorsement or delivery. Cf. NEGOTIABLE INSTRUMENT.

**nonnegotiable bill of lading.** See *straight bill of lading* under BILL OF LADING.

**nonnegotiable document of title.** See DOCUMENT OF TITLE.

**non obstante** (non a**h**-**st**-**an**-**tee** or **ə**-**st**-**an**-**tee**), *n.* [Latin “notwithstanding”]. **1.** *Hist.* A doctrine used by the Crown of England to give effect to certain documents, such as grants or letters patent, despite any laws to the contrary. • This doctrine was abolished by the Bill of Rights. **2.** A phrase used in documents to preclude any interpretation contrary to the stated object or purpose. **3.** NON OBSTANTE VEREDICTO.

**non obstante veredicto** (non a**h**-**st**-**an**-**tee** [or **ə**-**st**-**an**-**tee**] **ver**-**ə**-**d**-**ik**-**toh**). [Latin] Notwithstanding the verdict. — Often shortened to *non obstante*. — Abbr. *n.o.v.*; NOV. See *judgment notwithstanding the verdict* under JUDGMENT.

**nonobviousness.** *Patents.* **1.** (Of an invention) the quality of being sufficiently different from the prior art that, at the time the invention was made, it would not have been obvious to a person having ordinary skill in the art relevant to the invention. **2.** The requirement that this quality must be demonstrated for an invention to be patentable. • Nonobviousness may be demonstrated with evidence concerning prior art or with other objective evidence, such as commercial success or professional approval. 35 USCA § 103. Cf. NOVELTY.

**nonoccupant visitor.** *Criminal procedure.* A person who owns, coowns, is employed by, or is a patron of a business enterprise where a search is being conducted in accordance with a search warrant.

**nonoccupational, adj.** **1.** Not relating to one's job. **2.** Of or relating to a general-disability policy providing benefits to an individual whose disability prevents that individual from working at any occupation.

**nonoccupier.** One who does not occupy a particular piece of land; esp., an entrant on land who is either an invitee or a licensee. See INVITEE; LICENSEE (2).

**non omittas propter liberatam** (non **ə**-**mit**-**əs** **prop**-**tər** **lib**-**ə**-**ray**-**təm**). [Latin “do not omit because of any liberty”] *Hist.* A clause, usu. contained in writs of execution, directing the sheriff to execute the writ regardless of whether the sheriff had been granted the requisite special authority from a franchise (liberty) or district.

**nonoperating income.** See INCOME.

**nonoperative performance bond.** See PERFORMANCE BOND.

**nonoriginal bill.** See BILL (2).

**nonparticipating, adj.** Of or relating to not taking part in something; specif., not sharing or having the right to share in profits or surpluses. — Often shortened to *nonpar*.

**nonparticipating preferred stock.** See STOCK.

**nonpayment.** Failure to deliver money or other valuables, esp. when due, in discharge of an obligation. Cf. PAYMENT (1).

**nonperformance.** Failure to discharge an obligation (esp. a contractual one). Cf. PERFORMANCE; MISPERFORMANCE.

**nonperforming loan.** See LOAN.

**nonpersonal action.** See ACTION.

**non plevin** (non **plev**-in). [Latin] *Hist.* The failure to timely replevy land after it is taken by the Crown on a default.

**non ponendis in assisis et juratis** (non **pə**-**n**-**en**-**dis** in **ə**-**si**-**zis** et **juu**-**ray**-**tis**), *n.* [Law Latin “not to be put in assizes and juries”] *Hist.* A writ discharging a person from jury duty.

**nonprivity** (non-**priv**-**ə**-**tee**). The fact or state of not being in privity of contract with another; lack of privity. See PRIVACY.

**horizontal nonprivity.** The lack of privity occurring when the plaintiff is not a buyer within the distributive chain, but one who consumes, uses, or is otherwise affected by the goods. • For example, a houseguest who becomes ill after eating meat that her host bought from the local deli is in horizontal nonprivity with the deli.

**vertical nonprivity.** The lack of privity occurring when the plaintiff is a buyer within the distributive chain who did not buy directly from the defendant. • For example, someone who buys a drill from a local hardware store and later sues the drill's manufacturer is in vertical nonprivity with the manufacturer.

**nonprobate, adj.** **1.** Of or relating to some method of estate disposition apart from wills <nonprobate distribution>. **2.** Of or relating to the property so disposed <nonprobate assets>.

**non procedendo ad assisam** (non proh-sə-den-doh ad ə-si-zəm). See DE NON PROCEDENDO AD ASSISAM.

**non procedendo ad assisam rege inconsulto** (non proh-sə-den-doh ad ə-si-zəm ree-jee in-kən-səl-toh). [Latin] *Hist.* A writ to put a stop to the trial of a case (pertaining to one who is in the king's service, etc.) when the king has not been consulted.

**nonprofit association.** A group organized for a purpose other than to generate income or profit, such as a scientific, religious, or educational organization.

**nonprofit corporation.** See CORPORATION.

**nonproliferation treaty.** See TREATY.

**non pros** (non prahs). *abbr.* NON PROSEQUITUR.

**non prosequitur** (non prə-sek-wə-tər or proh-). [Latin "he does not prosecute"] The judgment rendered against a plaintiff who has not pursued the case. — Often shortened to *non pros*.

**nonpublic forum.** *Constitutional law.* Public property that is not designated or traditionally considered an arena for public communication, such as a jail or a military base. ● The government's means of regulating a nonpublic forum need only be reasonable and viewpoint-neutral to be constitutional. Cf. PUBLIC FORUM.

**non-purchase-money, adj.** Not pertaining to or being an obligation secured by property obtained by a loan <non-purchase-money mortgage>. Cf. *purchase-money mortgage* under MORTGAGE.

**nonqualified deferred-compensation plan.** See EMPLOYEE BENEFIT PLAN.

**nonqualified pension plan.** See PENSION PLAN.

**nonqualified stock option.** See STOCK OPTION.

**non quieta movere** (non kwi-ee-tə moh-veer-ee), *n.* [Latin "not to disturb what is settled"] *Stare decisis.* ● *Non quieta movere* expresses the same principle as *stare decisis*. It is part of the longer phrase *stare decisis et non quieta movere* ("to adhere to precedents, and not to unsettle things that are established"). See STARE DECISIS.

**nonrecognition.** *Int'l law.* The refusal of one government to recognize the legitimacy of another government.

**nonrecognition provision.** *Tax.* A statutory rule that allows all or part of a realized gain or loss not to be recognized for tax purposes. ● Generally, this type of provision only postpones the recognition of the gain or loss. See RECOGNITION (3).

**nonrecourse, adj.** Of or relating to an obligation that can be satisfied only out of the collateral securing the obligation and not out of the debtor's other assets.

**nonrecourse loan.** See LOAN.

**nonrecourse note.** See NOTE (1).

**nonrecurring dividend.** See *extraordinary dividend* under DIVIDEND.

**nonrefoulement** (non-ri-fowl-mənt). [French] A refugee's right of not being expelled from one state to another, esp. to one where his or her life or liberty would be threatened. Cf. REFOULEMENT.

**nonrefund annuity.** See ANNUITY.

**nonremovable inmate.** An otherwise deportable alien who cannot be deported because the United States does not maintain diplomatic ties with the alien's country of origin. — Also termed *indefinite detainee; lifer*.

**nonrenewal.** A failure to renew something, such as a lease or an insurance policy.

**nonreporting issuer.** See ISSUER.

**nonresidence, n. 1.** *Eccles. law.* The absence of a spiritual person from the rectory (benefice). ● This was normally an offense punishable by sequestering the benefice and forfeiting part of its income. **2.** The status of living outside the limits of a particular place.

**nonresident, n.** One who does not live within the jurisdiction in question. — *Abbr.* n.r. — **nonresident, adj.**

**nonresident alien.** See ALIEN.

**nonresident decedent.** See DECEDENT.

**non residentia clerici regis** (non rez-i-den-shee-ə kler-ə-si ree-jis). See DE NON RESIDENTIA CLERICI REGIS.

**non residentio pro clerico regis** (non rez-i-den-shee-oh proh kler-ə-koh ree-jis). [Latin “by nonresidence for a royal clerk”] *Hist.* A writ ordering a bishop not to harass a clerk who, being employed in the royal service, has become a nonresident.

**nonresident-motorist statute.** A state law governing the liabilities and obligations of nonresidents who use the state’s highways.

**nonretroactivity principle.** See NEW-RULE PRINCIPLE.

**non sanae mentis** (non say-nee men-tis), *adj.* [Latin] Not of sound mind.

**non-self-governing territory.** See TERRITORY.

**non sequitur** (non sek-wə-tər). [Latin “it does not follow”] **1.** An inference or conclusion that does not logically follow from the premises. **2.** A remark or response that does not logically follow from what was previously said. Cf. NON CONSTAT.

**nonservice.** The failure to serve a summons, warrant, or other process in a civil or criminal case.

**nonshareholder constituency.** A group of nonstockholders, such as employees or the public, who have an interest in the corporation’s business — an interest that the corporation may legally consider, in addition to shareholders’ interests, in making major policy decisions. — Also termed *alternative constituency*.

**nonskip person.** *Tax.* A person who is not a skip person for purposes of the generation-skipping transfer tax. IRC (26 USCA) § 2613(b). See SKIP PERSON.

**non solvendo pecuniam ad quam clericus mulctatur pro non-residentia** (non sol-ven-doh pi-kyoo-nee-əm ad kwam kler-ə-kəs malk-tay-tər proh non-rez-ə-den-shee-ə). [Latin] *Hist.* A writ prohibiting an ordinary from taking a pecuniary mulct imposed on a clerk of the sovereign for nonresidence.

**nonsovereign state.** See STATE (1).

**nonstatutory bond.** See *voluntary bond* under BOND (3).

**nonstock corporation.** See CORPORATION.

**non submissit** (non səb-mis-it). [Latin “he did not submit”] In a debt action on a bond to perform an arbitration award, a defendant’s denial that he or she submitted to the arbitration.

**non sui juris** (non s[y]oo-I or soo-ee joor-is), *adj.* [Latin “not of one’s own right”] Lacking legal age or capacity. Cf. SUI JURIS.

**nonsuit, n. 1.** A plaintiff’s voluntary dismissal of a case or of a defendant, without a decision on the merits. • Under the Federal Rules of Civil procedure, a voluntary dismissal is equivalent to a nonsuit. Fed. R. Civ. P. 41(a). — Also termed *voluntary discontinuance*. **2.** A court’s dismissal of a case or of a defendant because the plaintiff has failed to make out a legal case or to bring forward sufficient evidence. See *judgment of nonsuit* under JUDGMENT. — **non-suit, vb.**

“It did not follow [in the 15th–18th centuries], of course, that the issue in a trial at *nisi prius* would ever get to the jury at all, for it might be that the plaintiff would be ‘non-suited’ on the ground that he had failed to prove something which was essential to his case or that the case which he had proved was different from that which he had pleaded.” Geoffrey Radcliffe & Geoffrey Cross, *The English Legal System* 184 (G.J. Hand & D.J. Bentley eds., 6th ed. 1977).

“Nonsuit . . . is equivalent to a demurrer to the evidence in that, even if all facts that plaintiff presents are true, the evidence is not, as a matter of law, sufficient to entitle plaintiff to a judgment. However, a voluntary nonsuit, unlike a demurrer or a directed verdict which resolves the action on its merits, may result in another trial of the cause.” 75A Am. Jur. 2d *Trial* § 853 (1991).

**compulsory nonsuit.** An involuntary nonsuit.

**non sum informatus** (non səm in-fər-may-təs), *n.* [Latin “I am not informed”] *Hist.* A type of default judgment based on a defense attorney’s statement that the client gave no instructions to answer the lawsuit.

**nonsupport.** The failure to support a person that one is legally obliged to provide for, such as a child, spouse, or other dependent. • Nonsupport is a crime in most states, where it is often termed *criminal nonsupport*.

**non tenent insimul** (non ten-ənt in-sim-əl), *n.* [Latin “they do not hold together”] *Hist.* In a

partition action, the defendant's plea denying a joint tenancy with the plaintiff in the estate at issue.

**non tenuit** (non ten-yuu-wit). [Latin] In an action of replevin, the plaintiff's plea in bar to the defendant's assertion of a rightful taking of property (avowry), whereby the plaintiff denies holding the property in the manner and form alleged.

**nontenure** (non ten-yər). *Hist.* A general denial in a real action, whereby the defendant denies holding some or all of the land in question.

**nonterm.** See NON TERMINUS.

**non terminus** (non ter-mi-nəs), *n.* [Law Latin "not the end"] *Hist.* The vacation between two terms of a court. • In England, it was also called "the time of days of the king's peace." — Also termed *nonterm*; *non term*.

**nontestifying expert.** See *consulting expert* under EXPERT.

**nontrading partnership.** See PARTNERSHIP.

**nontraditional public forum.** See *designated public forum* under PUBLIC FORUM.

**nonunion, adj.** **1.** (Of a person or thing) not belonging to or affiliated with a labor union <a nonunion worker> <a nonunion contract>. **2.** (Of a position or belief) not favoring labor unions <she will not alter her nonunion stance>. **3.** (Of a product) not made by labor-union members <the equipment was of non-union manufacture>.

**nonuse. 1.** The failure to exercise a right <non-use of the easement>. **2.** The condition of not being utilized <the equipment was in nonuse>.

**nonuser.** The failure to exercise a right (such as a franchise or easement), as a result of which the person having the right might lose it <the government may not revoke a citizen's voting right because of nonuser>. Cf. USER (1).

**non usurpavit** (non yoo-sər-pay-vit). [Latin "he has not usurped"] A defendant's denial of an alleged usurpation of an office or franchise.

**non valentia agere** (non və-len-shee-ə aj-ə-ree). [Latin] Inability to sue. See NONABILITY.

**nonverbal testimony.** See TESTIMONY.

**nonvital term.** See *nonfundamental term* under TERM (2).

**nonvoluntary euthanasia.** See EUTHANASIA.

**nonvoting stock.** See STOCK.

**non vult contendere** (non vält kən-ten-də-ree). [Latin "he will not contest it"] NO CONTEST.

**nonwaiver agreement.** *Insurance.* A contract (supplementing a liability-insurance policy) in which the insured acknowledges that the insurer's investigation or defense of a claim against the insured does not waive the insurer's right to contest coverage later. — Also termed *reservation of rights*.

**nook of land.** *Hist.* A variable quantity of land, often 12.5 acres.

**no-oral-modification clause.** A contractual provision stating that the parties cannot make any oral modifications or alterations to the agreement. — Abbr. NOM clause. See INTEGRATION CLAUSE.

**no par.** See *no-par stock* under STOCK.

**no-par stock.** See STOCK.

**no-par-value stock.** See *no-par stock* under STOCK.

**no-pass, no-play rule.** A state law requiring public-school students who participate in extracurricular activities (such as sports or band) to maintain a minimum grade-point average or else lose the right to participate.

**no progress.** See WANT OF PROSECUTION.

**no recourse. 1.** The lack of means by which to obtain reimbursement from, or a judgment against, a person or entity <the bank had no recourse against the individual executive for collection of the corporation's debts>. **2.** A notation indicating that such means are lacking <the bill was indorsed "no recourse">. See *nonrecourse loan* under LOAN; WITHOUT RECOURSE.

**no-retreat rule.** *Criminal law.* The doctrine that the victim of a murderous assault may use deadly force in self-defense if there is no reasonable alternative to avoid the assailant's threatened harm. • A majority of American



jurisdictions have adopted this rule. Cf. RE-TREAT RULE.

**no-right**, *n.* The absence of right against another in some particular respect. • A no-right is the correlative of a privilege. — Also termed *liability*.

“A says to B, ‘If you will agree to pay me \$100 for this horse you may have him and you may indicate your agreement by taking him.’ This is a physical fact, called an offer, consisting of certain muscular acts of A having certain physical results in B. The legal relations immediately following are (in part) as follows: B now has the *privilege* of taking the horse and A has *no-right* that he shall not . . .” William R. Anson, *Principles of the Law of Contract* 321 (Arthur L. Corbin ed., 3d Am. ed. 1919).

“‘No-right’ is sometimes derided as being a purely negative concept. If a no-right is something that is not a right, the class of no-rights must, it is said, include elephants. The answer is that negative terms are often useful as alternative ways of stating propositions involving negatives. For instance, the terms ‘alien,’ ‘cold,’ and ‘dark’ are all negative or privative, because their meaning includes the idea of the absence of something else. The proposition that A is an alien means that A is not a British subject; in the one mode of statement the negative is incorporated in the noun, whereas in the other it is expressed as a separate word. Similarly the word ‘liberty’ is negative, and critics who attack the concept of no-right should logically attack the concept of liberty also. . . . [L]iberty means ‘no-duty not.’ . . . [F]or the sake of clear thinking it is necessary to give each of the four meanings [of right] a separate name. Words like ‘no-right’ and ‘no-duty’ may seem uncouth at first sight, but it is surely a clear and useful statement to say that ‘right’ sometimes means ‘no-duty not.’” John Salmond, *Jurisprudence* 240–41 n.(u) (Glanville L. Williams ed., 10th ed. 1947).

**norm**, 1. A model or standard accepted (voluntarily or involuntarily) by society or other large group, against which society judges someone or something. • An example of a norm is the standard for right or wrong behavior. 2. An actual or set standard determined by the typical or most frequent behavior of a group.

**basic norm**. In the legal theory of Hans Kelsen, the law from which all the other laws in a society derive. • Kelsen’s “pure theory of law” maintains that laws are norms. Therefore, a society’s legal system is made up of its norms, and each legal norm derives its validity from other legal norms. Ultimately, the validity of all laws is tested against the “basic norm,” which may be as simple as the concept that all pronouncements of the monarch are to be obeyed. Or it may be an elaborate system of lawmaking, such as a constitution. — Also termed *grundnorm*. See PURE THEORY.

**normal**, *adj.* 1. According to a regular pattern; natural <it is normal to be nervous in court>. 2. According to an established rule or norm <it is not normal to deface statues>. 3. Setting a standard or norm <a normal curriculum was established in the schools>.

**normal balance**. A type of debit or credit balance that is usu. found in ledger accounts. • For example, assets usu. have debit balances and liabilities usu. have credit balances.

**normal college**. See NORMAL SCHOOL.

**normal law**. The law as it applies to persons who are free from legal disabilities.

**normal market**. See CONTANGO.

**normal mind**. A mental capacity that is similar to that of the majority of people who can handle life’s ordinary responsibilities.

**normal school**. A training school for public-school teachers. • Normal schools first appeared in the United States in the 1800s and were two-year post-high-school training programs for elementary-school teachers. At the turn of the century, normal schools expanded into four-year teaching colleges. Most of these institutions have developed into liberal arts colleges offering a wider variety of education and teaching programs. — Also termed *normal college*.

**Norman French**. A language that was spoken by the Normans and became the official language of English courts after the Norman Conquest in 1066. • The language deteriorated into Law French and continued to be used until the late 17th century. English became the official language of the courts in 1731.

**normative**, *adj.* Establishing or conforming to a norm or standard <Rawls’s theory describes normative principles of justice>.

**normative jurisprudence**. See NATURAL LAW.

**Norris-La Guardia Act** (*nor-is lə gwahr-dee-ə*). A 1932 federal law that forbids federal courts from ruling on labor policy and that severely limits their power to issue injunctions in labor disputes. • The statute was passed to curb federal-court abuses of the injunctive process, to declare the government’s neutrality on labor policy, to curtail employers’ widespread

use of injunctions to thwart union activity, and to promote the use of collective bargaining to resolve disputes. 29 USCA §§ 101-115. — Also termed *Labor Disputes Act*.

**Norroy** (*nor-oy*). *English law*. The third of the three Kings at Arms (and the chief herald), whose province lies on the north side of the river Trent. • The Norroy's duties have included the supervision of weddings and funerals of nobility. See HERALD.

**North American Free Trade Agreement**. A trilateral treaty — entered into on January 1, 1994 between the United States, Canada, and Mexico — that phases out all tariffs and eliminates many nontariff barriers (such as quotas) inhibiting the free trade of goods between the participating nations. — Abbr. NAFTA.

**North Eastern Reporter**. A set of regional lawbooks that, being part of the West Group's National Reporter System, contain every published decision from Illinois, Indiana, Massachusetts, New York, and Ohio, from 1885 to date. • The first series ran from 1885 to 1936; the second series is the current one. — Abbr. N.E.; N.E.2d.

**North Western Reporter**. A set of regional lawbooks that, being part of the West Group's National Reporter System, contain every published decision from Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin, from 1879 to date. • The first series ran from 1879 to 1941; the second series is the current one. — Abbr. N.W.; N.W.2d.

**Northwest Territory**. *Hist.* The first possession of the United States, being the geographical region south of the Great Lakes, north of the Ohio River, and east of the Mississippi River, as designated by the Continental Congress in the late 1700s. • This area includes the present states of Ohio, Indiana, Illinois, Michigan, Wisconsin, and the eastern part of Minnesota.

**noscitur a sociis** (*nos-ə-tər ay [or ah] soh-shee-is*). [Latin "it is known by its associates"] A canon of construction holding that the meaning of an unclear word or phrase should be determined by the words immediately surrounding it. Cf. EJUSDEM GENERIS; EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS; RULE OF RANK.

"The *ejusdem generis* rule is an example of a broader linguistic rule or practice to which reference is made by the Latin tag *noscitur a sociis*. Words, even if they are not general words like 'whatsoever' or 'otherwise' preceded by specific words, are liable to be affected by other

words with which they are associated." Rupert Cross, *Statutory Interpretation* 118 (1976).

**no-setoff certificate**. See WAIVER OF DEFENSES.

**no-shop provision**. A stipulation prohibiting one or more parties to a commercial contract from pursuing or entering into a more favorable agreement with a third party.

**nosocomus** (*nos-ə-koh-məs*), *n.* [Greek "an attendant on the side"] *Hist.* A person who manages a hospital that cares for paupers.

**no-strike clause**. A labor-agreement provision that prohibits employees from striking for any reason and establishes instead an arbitration system for resolving labor disputes.

**nota** (*noh-tə*), *n.* [Latin "mark"] *Hist.* **1.** A promissory note. **2.** A brand placed on a person by law.

**nota bene** (*noh-tə ben-ee or bee-nee or ben-ay*). See N.B.

**notae** (*noh-tee*), *n. pl.* [Latin] *Hist.* Shorthand characters. See NOTARIUS.

**notarial**, *adj.* Of or relating to the official acts of a notary public <a notarial seal>. See NOTARY PUBLIC.

**notarial act**. An official function of a notary public, such as placing a seal on an affidavit. See NOTARY PUBLIC.

**notarial protest certificate**. See PROTEST CERTIFICATE.

**notarial record**. See JOURNAL OF NOTARIAL ACTS.

**notarial register**. See JOURNAL OF NOTARIAL ACTS.

**notarial seal**. See NOTARY SEAL.

**notarial will**. See WILL.

**notarius** (*noh-tair-ee-əs*), *n.* [fr. Latin *nota* "a character or mark"] **1.** *Roman law*. A writer (sometimes a slave) who takes dictation or records proceedings by shorthand. • A *notarius* was later also called a *scriba*. **2.** *Roman law*. An officer who takes a magistrate's dictation by shorthand. **3.** *Hist.* An officer who prepares

deeds and other contracts. **4.** A notary or a scribe.

**notary public** (*noh-tə-ree*), *n.* A person authorized by a state to administer oaths, certify documents, attest to the authenticity of signatures, and perform official acts in commercial matters, such as protesting negotiable instruments. — Often shortened to *notary*. — Abbr. n.p. Pl. **notaries public**. — **notarize**, *vb.* — **notarial**, *adj.*

"A notary public is an officer long known to the civil law, and designated as *registrarius*, *actuarius*, or *scrivarius*." John Proffatt, *A Treatise on the Law Relating to the Office and Duties of Notaries Public* § 1, at 1 (John F. Tyler & John J. Stephens eds., 2d ed. 1892).

"The notary public, or notary, is an official known in nearly all civilized countries. The office is of ancient origin. In Rome, during the republic, it existed, the title being *tabelliones forenses*, or *personae publicae*; and there are records of the appointment of notaries by the Frankish kings and the Popes as early as the ninth century. They were chiefly employed in drawing up legal documents; as scribes or scriveners they took minutes and made short drafts of writings, either of a public or a private nature. In modern times their more characteristic duty is to attest the genuineness of any deeds or writings, in order to render the same available as evidence of the facts therein contained." Benjamin F. Rex, *The Notaries' Manual* § 1, at 1-2 (J.H. McMillan ed., 6th ed. 1913).

**notary record book.** See JOURNAL OF NOTARIAL ACTS.

**notary seal. 1.** The imprint or embossment made by a notary public's seal. **2.** A device, usu. a stamp or embosser, that makes an imprint on a notarized document. — Also termed *notarial seal*.

**embossed seal. 1.** A notary seal that is impressed onto a document, raising the impression above the surface. ● An embossed seal clearly identifies the original document because the seal is only faintly reproducible. For this reason, this type of seal is required in some states and on some documents notarized for federal purposes. **2.** The embossment made by this seal.

**rubber-stamp seal. 1.** In most states, a notary public's official seal, which is ink-stamped onto documents and is therefore photographically reproducible. ● It typically includes the notary's name, the state seal, the words "Notary Public," the name of the county where the notary's bond is filed, and the expiration date of the notary's commission. **2.** The imprint made by this seal.

**notation credit.** A letter of credit specifying that anyone purchasing or paying a draft or demand for payment made under it must note the amount of the draft or demand on the letter. See LETTER OF CREDIT.

**note, n. 1.** A written promise by one party (the *maker*) to pay money to another party (the *payee*) or to bearer. ● A note is a two-party negotiable instrument, unlike a draft (which is a three-party instrument). — Also termed *promissory note*. Cf. DRAFT (1).

**accommodation note.** A note that an accommodating party has signed and thereby assumed secondary liability for; ACCOMMODATION PAPER.

**approved indorsed note.** A note indorsed by a person other than the maker to provide additional security.

**balloon note.** A note requiring small periodic payments but a very large final payment. ● The periodic payments usu. cover only interest, while the final payment (the balloon payment) represents the entire principal.

**banknote.** See BANKNOTE.

**blue note.** A note that maintains a life-insurance policy in effect until the note becomes due.

**bought note.** A written memorandum of a sale delivered to the buyer by the broker responsible for the sale.

**circular note.** See LETTER OF CREDIT.

**coal note. Hist.** A promissory note written according to a statute that required payment for coal out of any vessel in the port of London to be in cash or by promissory note containing the words "value received in coal." ● Noncompliance with the statute resulted in a fine of £100.

**cognovit note.** See COGNOVIT NOTE.

**collateral note.** See *secured note*.

**coupon note.** A note with attached interest coupons that the holder may present for payment as each coupon matures.

**demand note.** A note payable whenever the creditor wants to be paid. See *call loan* under LOAN.

**executed note.** A note that has been signed and delivered.

**floating-rate note.** A note carrying a variable interest rate that is periodically adjusted within a predetermined range, usu. every six months, in relation to an index, such as Treasury bill rates. — Also termed *floater*.

**hand note.** A note that is secured by a collateral note.

**installment note.** A note payable at regular intervals. — Also termed *serial note*.

**inverse-floating-rate note.** A note structured in such a way that its interest rate moves in the opposite direction from the underlying index (such as the London Interbank Offer Rate). • Many such notes are risky investments because if interest rates rise, the securities lose their value and their coupon earnings fall. — Also termed *inverse floater*.

**joint and several note.** A note for which multiple makers are jointly and severally liable for repayment, meaning that the payee may legally look to all the makers, or any one of them, for payment of the entire debt. See *joint and several liability* under LIABILITY.

**joint note.** A note for which multiple makers are jointly, but not severally, liable for repayment, meaning that the payee must legally look to all the makers together for payment of the debt. See *joint liability* under LIABILITY.

**mortgage note.** A note evidencing a loan for which real property has been offered as security.

**negotiable note.** See NEGOTIABLE INSTRUMENT.

**nonrecourse note.** A note that may be satisfied upon default only by means of the collateral securing the note, not by the debtor's other assets. Cf. *recourse note*.

**note of hand.** See *promissory note*.

**premium note.** A promissory note given by an insured to an insurance company for part or all of the premium.

**promissory note.** An unconditional written promise, signed by the maker, to pay absolutely and in any event a certain sum of money either to, or to the order of, the bearer or a designated person. — Also termed *note of hand*.

**recourse note.** A note that may be satisfied upon default by pursuing the debtor's other assets in addition to the collateral securing the note. Cf. *nonrecourse note*.

**reissuable note.** A note that may again be put into circulation after having once been paid.

**renewal note.** A note that continues an obligation that was due under a prior note.

**sale note.** A broker's memorandum on the terms of a sale, given to the buyer and seller.

**savings note.** A short-term, interest-bearing paper issued by a bank or the U.S. government.

**secured note.** A note backed by a pledge of real or personal property as collateral. — Also termed *collateral note*.

**sold note.** A written memorandum of sale delivered to the seller by the broker responsible for the sale, and usu. outlining the terms of the sale. See CONFIRMATION SLIP.

**stock note.** A note that is secured by securities, such as stocks or bonds.

**tax-anticipation note.** A short-term obligation issued by state or local governments to finance current expenditures and that usu. matures once the local government receives individual and corporate tax payments. — Abbr. TAN.

**time note.** A note payable only at a specified time and not on demand.

**treasury note.** See TREASURY NOTE.

**unsecured note.** A note not backed by collateral.

**2.** A scholarly legal essay shorter than an article and restricted in scope, explaining or criticizing a particular set of cases or a general area of the law, and usu. written by a law student for publication in a law review. — Also termed *comment*; *lawnote*. Cf. ANNOTATION. **3.** A minute or memorandum intended for later reference; MEMORANDUM (1).

**note, vb.** **1.** To notice carefully or with particularity <the defendant noted that the plaintiff seemed nervous>. **2.** To put down in writing <the court reporter noted the objection in the record>. **3. Archaic.** To brand <as punishment, the criminal was noted>. See NOTA.

**note broker.** See BROKER.

**note of a fine.** *Hist. English law.* A step in the judicial process for conveying land, consisting of a chirographer's brief of the proceedings before the documents of conveyance are engrossed. — Also termed *abstract of a fine*. See FINE.

**note of allowance.** *English law.* A master's note, upon receiving a party's memorandum of an error of law in a case, allowing error to be asserted.

**note of hand.** See *promissory note* under NOTE (1). Pl. **notes of hand**.

**note of protest.** A notary's preliminary memo, to be formalized at a later time, stating that a negotiable instrument was neither paid nor accepted upon presentment. See **PROTEST**.

**note payable.** See *account payable* under **ACCOUNT**.

**note receivable.** See *account receivable* under **ACCOUNT**.

**note verbal** (noht vər-bəl). *Int'l law.* An unsigned diplomatic note, usu. written in the third person, that sometimes accompanies a diplomatic message or note of protest to further explain the country's position or to request certain action. — Also spelled *note verbale* (vair-bahl).

**not-for-profit corporation.** See *nonprofit corporation* under **CORPORATION**.

**not found.** Words placed on a bill of indictment, meaning that the grand jury has insufficient evidence to support a true bill. See **IGNORAMUS**; **NO BILL**. Cf. **TRUE BILL**.

**not guilty.** **1.** *Criminal law.* A defendant's plea denying the crime charged. **2.** A jury verdict acquitting the defendant because the prosecution failed to prove the defendant's guilt beyond a reasonable doubt.

**not guilty by reason of insanity.** **1.** A not-guilty verdict, based on mental illness, that usu. does not release the defendant but instead results in commitment to a mental institution. **2.** A criminal defendant's plea of not guilty that is based on the insanity defense. — Abbr. **NGRI**. — Also termed *not guilty on the ground of insanity*. See **INSANITY DEFENSE**.

**3. Common-law pleading.** A defendant's plea denying both an act of trespass alleged in a plaintiff's declaration and the plaintiff's right to possess the property at issue.

"In trespass, whether to person or property, the general issue is 'not guilty.' It operates in the first place as a denial that the defendant committed the act of trespass alleged, to wit, the application of force to the plaintiff's person, the entry on his land, or the taking or damages of his goods. It also denies the plaintiff's possession, title, or right of possession of the land or goods." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 170, at 307-08 (Henry Winthrop Ballantine ed., 3d ed. 1923).

**not guilty by statute.** *Hist.* Under certain acts of Parliament, the pleading form for a defendant's general denial in a civil action. ● This pleading form allowed a public officer to

indicate action under a statute. The officer had to write the words "by statute" in the margin along with the year, chapter, and section of the applicable statute, and the defendant could not file any other defense without leave of court. The right to plead "not guilty by statute" was essentially removed by the Public Authorities Protection Act of 1893.

**4.** A general denial in an ejectment action.

"The general issue in ejectment is not guilty. This plea operates as follows: (1) As a denial of the unlawfulness of the withholding; i.e., of the plaintiff's title and right of possession. (2) All defenses in excuse or discharge, including the statute of limitations, are available under the general issue in ejectment." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 188, at 333 (Henry Winthrop Ballantine ed., 3d ed. 1923).

**not-guilty plea.** See **PLEA** (1).

**nothous** (noh-thəs), *adj.* *Archaic.* Spurious; illegitimate.

**nothus** (noh-thəs), *n.* [fr. Greek *nothos* "false"] *Roman law.* An illegitimate child; one of base birth. ● If the child's mother was a Roman citizen, the child was also a Roman citizen. — Also termed *spurius*.

**notice, n.** **1.** Legal notification required by law or agreement, or imparted by operation of law as a result of some fact (such as the recording of an instrument); definite legal cognizance, actual or constructive, of an existing right or title <under the lease, the tenant must give the landlord written notice 30 days before vacating the premises>. ● A person has notice of a fact or condition if that person (1) has actual knowledge of it; (2) has received a notice of it; (3) has reason to know about it; (4) knows about a related fact; or (5) is considered as having been able to ascertain it by checking an official filing or recording. **2.** The condition of being so notified, whether or not actual awareness exists <all prospective buyers were on notice of the judgment lien>. **3.** A written or printed announcement <the notice of sale was posted on the courthouse bulletin board>. Cf. **KNOWLEDGE**.

**actual notice.** Notice given directly to, or received personally by, a party.

**adequate notice.** See *due notice*.

**commercial-law notice.** Under the UCC, notice of a fact arising either as a result of actual knowledge or notification of the fact, or as a result of circumstances under which a person would have reason to know of the fact. UCC § 1-201(25).

**constructive notice.** Notice arising by presumption of law from the existence of facts and circumstances that a party had a duty to take notice of, such as a registered deed or a pending lawsuit; notice presumed by law to have been acquired by a person and thus imputed to that person. — Also termed *legal notice*.

**direct notice.** Actual notice of a fact that is brought directly to a party's attention. — Also termed *positive notice*.

**due notice.** Sufficient and proper notice that is intended to and likely to reach a particular person or the public; notice that is legally adequate given the particular circumstance. — Also termed *adequate notice*; *legal notice*.

**express notice.** Actual knowledge or notice given to a party directly, not arising from any inference, duty, or inquiry.

**fair notice.** 1. Sufficient notice apprising a litigant of the opposing party's claim. 2. The requirement that a pleading adequately apprise the opposing party of a claim. • A pleading must be drafted so that an opposing attorney of reasonable competence would be able to ascertain the nature and basic issues of the controversy and the evidence probably relevant to those issues. 3. FAIR WARNING.

**immediate notice.** 1. Notice given as soon as possible. 2. More commonly, and esp. on notice of an insurance claim, notice that is reasonable under the circumstances.

**implied notice.** Notice that is inferred from facts that a person had a means of knowing and that is thus imputed to that person; actual notice of facts or circumstances that, if properly followed up, would have led to a knowledge of the particular fact in question. — Also termed *indirect notice*; *presumptive notice*.

**imputed notice.** Information attributed to a person whose agent, having received actual notice of the information, has a duty to disclose it to that person. • For example, notice of a hearing may be imputed to a witness because it was actually disclosed to that witness's attorney of record.

**indirect notice.** See *implied notice*.

**inquiry notice.** Notice attributed to a person when the information would lead an ordinarily prudent person to investigate the matter further; esp., the time at which the victim of an alleged securities fraud became aware of facts that would have prompted a reasonable person to investigate.

**judicial notice.** See JUDICIAL NOTICE.

**legal notice.** 1. See *constructive notice*. 2. See *due notice*.

**notice by publication.** See *public notice*.

**personal notice.** Oral or written notice, according to the circumstances, given directly to the affected person.

**positive notice.** See *direct notice*.

**presumptive notice.** See *implied notice*.

**public notice.** Notice given to the public or persons affected, usu. by publishing in a newspaper of general circulation. • This notice is usu. required, for example, in matters of public concern. — Also termed *notice by publication*.

**reasonable notice.** Notice that is fairly to be expected or required under the particular circumstances.

**record notice.** Constructive notice of the contents of an instrument, such as a deed or mortgage, that has been properly recorded.

**notice, vb.** 1. To give legal notice to or of <the plaintiff's lawyer noticed depositions of all the experts that the defendant listed>. 2. To realize or give attention to <the lawyer noticed that the witness was leaving>.

**notice act.** See NOTICE STATUTE.

**notice-and-comment period.** *Administrative law.* The statutory time frame during which an administrative agency publishes a proposed regulation and receives public comment on the regulation. • The regulation cannot take effect until after this period expires. — Often shortened to *comment period*.

**notice-and-comment rulemaking.** See *informal rulemaking* under RULEMAKING.

**notice by publication.** See *public notice* under NOTICE.

**notice doctrine.** The equitable doctrine that when a new owner takes an estate with notice that someone else had a claim on it at the time of the transfer, that claim may still be asserted against the new owner even if it might have been disregarded at law. — Also termed *doctrine of notice*.

**notice filing.** The perfection of a security interest under Article 9 of the UCC by filing only a financing statement, as opposed to a copy or abstract of the security agreement. • The fi-

nancing statement must contain (1) the debtor's signature, (2) the secured party's name and address, (3) the debtor's name and mailing address, and (4) a description of the types of, or items of, collateral.

**notice of appeal.** A document filed with a court and served on the other parties, stating an intention to appeal a trial court's judgment or order. • In most jurisdictions, filing a notice of appeal is the act by which the appeal is perfected. For instance, the Federal Rules of Appellate Procedure provide that an appeal is taken by filing a notice of appeal with the clerk of the district court from which the appeal is taken, and that the clerk is to send copies of the notice to all the other parties' attorneys, as well as the court of appeals. Fed. R. App. P. 3(a), (d). — Also termed *claim of appeal*. See APPEAL.

**notice of appearance.** **1. Procedure.** A party's written notice filed with the court or oral announcement on the record informing the court and the other parties that the party wants to participate in the case. **2. Bankruptcy.** A written notice filed with the court or oral announcement in open court by a person who wants to receive all pleadings in a particular case. • This notice is usu. filed by an attorney for a creditor who wants to be added to the official service list. **3.** A pleading filed by an attorney to notify the court and the other parties that he or she represents one or more parties in the lawsuit.

**notice of deficiency.** See NINETY-DAY LETTER.

**notice of dishonor.** Notice to the indorser of an instrument that acceptance or payment has been refused. • This notice — along with presentment and actual dishonor — is a condition of an indorser's secondary liability. UCC § 3-503(a).

**notice of lis pendens.** See LIS PENDENS (3).

**notice of motion.** Written certification that a party to a lawsuit has filed a motion or that a motion will be heard or considered by the court at a particular time. • Under the Federal Rules of Civil Procedure, the requirement that a motion be made in writing is fulfilled if the motion is stated in a written notice of the hearing on the motion. Also, the courts in most jurisdictions require all motions to include a certificate, usu. referred to as a certificate of service, indicating that the other parties to the suit have been given notice of the motion's filing. Notice of any hearing or other submission of

the motion must usu. be provided to all parties by the party requesting the hearing or submission. Fed. R. Civ. P. 5(d), 7(b)(1); Fed. R. Civ. P. Form 19.

**notice of orders or judgments.** Written notice of the entry of an order or judgment, provided by the court clerk or one of the parties. • Notice of a judgment is usu. provided by the clerk of the court in which the judgment was entered. If the court does not provide notice, a party is usu. required to provide it. Under the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, the clerk is required to provide immediate notice of any order or judgment to any party to the case who is not in default. Fed. R. Civ. P. 77(d); Fed. R. Crim. P. 49(c).

**notice of pendency.** See LIS PENDENS (3).

**notice of protest.** **1.** A statement, given usu. by a notary public to a drawer or indorser of a negotiable instrument, that the instrument was neither paid nor accepted; information provided to the drawer or indorser that protest was made for nonacceptance or nonpayment of a note or bill. See PROTEST (2). **2.** A shipowner's or crew's declaration under oath that damages to their vessel or cargo were the result of perils of the sea and that the shipowner is not liable for the damages. See PERIL OF THE SEA.

**notice of removal.** The pleading by which the defendant removes a case from state court to federal court. • A notice of removal is filed in the federal district court in the district and division in which the suit is pending. The notice must contain a short and plain statement of the grounds for removal and must include a copy of all process, pleadings, and orders that have been served on the removing party while the case has been pending. The removing party must also notify the state court and other parties to the suit that the notice of removal has been filed. A notice of removal must be filed, if at all, within 30 days after the defendant is served with process in the suit. 28 USCA § 1446; *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 119 S.Ct. 1322 (1999).

**notice of trial.** A document issued by a court informing the parties of the date on which the lawsuit is set for trial. • While the court typically provides the notice to all parties, it may instead instruct one party to send the notice to all the others.

**notice pleading.** See PLEADING (2).

**notice-prejudice rule.** A doctrine barring an insurer from using late notice as a reason to deny an insured's claim unless the insurer can show that it was prejudiced by the untimely notice.

**notice-race statute.** See RACE-NOTICE STATUTE.

**notice statute.** A recording act providing that the person with the most recent valid claim, and who purchased without notice of an earlier, unrecorded claim, has priority. • About half the states have notice statutes. — Also termed *notice act*. Cf. RACE STATUTE; RACE-NOTICE STATUTE.

**notice to appear.** A summons or writ by which a person is cited to appear in court. • This is an informal phrase sometimes used to refer to the summons or other initial process by which a person is notified of a lawsuit. The Federal Rules of Civil Procedure require the summons to state that the defendant must appear and defend within a given time and that failure to do so will result in a default judgment. Fed. R. Civ. P. 4(a). See PROCESS; SUMMONS; DEFAULT JUDGMENT; NOTICE TO PLEAD.

**notice to creditors.** *Bankruptcy.* A formal notice to creditors that a creditors' meeting will be held, that proofs of claim must be filed, or that an order for relief has been granted.

**notice to plead.** A warning to a defendant, stating that failure to file a responsive pleading within a prescribed time will result in a default judgment. • The Federal Rules of Civil Procedure require the summons to notify the defendant that failure to appear and defend within a prescribed time will result in a default judgment. Fed. R. Civ. P. 4(a). See PROCESS; SUMMONS; DEFAULT JUDGMENT; NOTICE TO APPEAR.

**notice to produce.** See REQUEST FOR PRODUCTION.

**notice to quit.** **1.** A landlord's written notice demanding that a tenant surrender and vacate the leased property, thereby terminating the tenancy. **2.** A landlord's notice to a tenant to pay any back rent within a specified period (often seven days) or else vacate the leased premises.

**notification.** **1.** *Int'l law.* A formal announcement of a legally relevant fact, action, or intent, such as notice of an intent to withdraw from a treaty. **2.** NOTICE.

**notify, vb.** **1.** To inform (a person or group) in writing or by any method that is understood <I notified the court of the change in address>. **2.** *Archaic.* To give notice of; to make known <to notify the lawsuit to all the defendants>. See NOTICE.

**noting protest.** See PROTEST (2).

**notio** (*noh-shee-oh*), *n.* [fr. Latin *noscere* "to know"] **1.** *Roman law.* An investigation of a case. **2.** *Hist.* The authority of a judge to try a case.

**notitia** (*noh-tish-ee-ə*), *n.* [Latin "knowledge"] **1.** *Roman law.* Knowledge; information. • This term carried over for a time into English practice. **2.** *Roman law.* A list; register; catalogue. • The *notitia dignitatum* (*dig-ni-tay-təm*) was a list of the high offices in the Eastern and Western parts of the empire. **3.** *Hist.* Notice. **4.** A list of ecclesiastical sees.

**not law.** A judicial decision regarded as wrong by the legal profession.

"Even when it is not possible to point out any decision that affects the point in question in any one of the ways enumerated, it sometimes happens that the profession has grown to ignore the old decision as wrong or obsolete; and though this does not happen often, when it does happen, the old decision is very likely not to be followed in case the point is squarely raised again. This is one of the instances in which lawyers rather mystically, though soundly, say that a decision is 'not law.'" William M. Lile et al., *Brief Making and the Use of Law Books* 329 (3d ed. 1914).

**notoriety.** **1.** The state of being generally, and often unfavorably, known and spoken of <the company executive achieved notoriety when she fled the country to avoid paying taxes>. **2.** A person in such a state <the notoriety gave a rare interview>.

**notorious, adj.** **1.** Generally known and spoken of. **2.** (Of the possession of property) so conspicuous as to impute notice to the true owner. — Also termed (in sense 2) *open and notorious*. See ADVERSE POSSESSION.

**notorious cohabitation.** See COHABITATION.

**notorious insolvency.** *Scots law.* A bankruptcy; the stage of insolvency in which the debtor has publicly acknowledged insolvency under the statute. • This stage is usu. followed by sequestration, which is notorious insolvency coupled with the appointment of a trustee for creditors. — Also termed *notour bankruptcy*.



"Bankruptcy, according to the law of Scotland, is public or notorious insolvency. When a debtor in an obligation cannot fulfil his obligation as undertaken . . . a position which constitutes insolvency — and makes public acknowledgment, in manner determined by statute, of his inability, the status or condition of bankruptcy has arisen, and the insolvent debtor is, in the language of the statutes, a 'notour' bankrupt . . . The law of notour bankruptcy is mainly statutory. Legislation has fixed the circumstances which constitute the status, and determined all the most important results." George Watson, *Bell's Dictionary and Digest of the Law of Scotland* 78 (3d ed. 1882).

**notorious possession.** See POSSESSION.

**not otherwise indexed by name.** A phrase used in shipping and tariff construction, usu. to show a classification of something generally rather than specifically. ● For example, a shipment of aircraft and boat engines merely labeled "other articles" is *not otherwise indexed by name*. — Abbr. n.o.i.b.n.

**notour bankruptcy.** See NOTORIOUS INSOLVENCY.

**not possessed.** *Common-law pleading.* In an action in trover, the defendant's plea denying possession of the articles allegedly converted. See TROVER.

**not proven.** An archaic jury verdict — now used only in Scots criminal law — equivalent in result to not guilty, but carrying with it a strong suspicion of wrongdoing. — Also termed *Scotch verdict*.

**not satisfied.** A form of return by a sheriff or constable, on a writ of execution, indicating only that the amount due on a judgment was not paid. ● A general return of this type is usu. viewed as technically deficient because it does not state why the writ was not satisfied. Cf. NULLA BONA.

**not sufficient funds.** The notation of dishonor (of a check) indicating that the drawer's account does not contain enough money to cover payment. — Abbr. NSF. — Also termed *insufficient funds*.

**notwithstanding,** *prep.* Despite; in spite of <notwithstanding the conditions listed above, the landlord can terminate the lease if the tenant defaults>.

**n.o.v. abbr.** NON OBSTANTE VEREDICTO.

***nova causa interveniens.*** See *intervening cause* under CAUSE (1).

***nova custuma*** (noh-və kəs-t[y]ə-mə), *n.* [Law Latin "new custom"] *Hist.* A tax; an imposition. Cf. ANTIQUA CUSTUMA.

***novae narrationes*** (noh-vee nə-ray-shee-oh-nee), *n.* [Law Latin "new counts or tales"] *Hist.* A collection of pleading forms published during the reign of Edward III.

***nova statuta*** (noh-və stə-t[y]oo-tə), *n. pl.* [Law Latin] *Hist.* New statutes. ● This term refers to the statutes passed beginning with the reign of Edward III. Cf. VETERA STATUTA.

**novation** (noh-vay-shən), *n.* The act of substituting for an old obligation a new one that either replaces an existing obligation with a new obligation or replaces an original party with a new party. ● A novation may substitute (1) a new obligation between the same parties, (2) a new debtor, or (3) a new creditor. — Also termed *substituted agreement*; (Roman law) *novatio* (noh-vay-shee-oh). — **novate** (noh-vayt or noh-vayt), *vb.* — **novatory** (noh-və-tor-ee), *adj.* See *substituted contract* under CONTRACT; ACCORD (2).

"The only way in which it is possible to transfer contractual duties to a third party is by the process of novation, which requires the consent of the other party to the contract. In fact novation really amounts to the extinction of the old obligation, and the creation of a new one, rather than to the transfer of the obligation from one person to another. Thus if B owes A £100, and C owes B the same amount, B cannot transfer to C the legal duty of paying his debt to A without A's consent. But if A agrees to accept C as a debtor in place of B, and if C agrees to accept A as his creditor in place of B, the three parties may make a tripartite agreement to this effect, known as novation. The effect of this is to extinguish B's liability to A and create a new liability on the part of C." P.S. Atiyah, *An Introduction to the Law of Contract* 283 (3d ed. 1981).

"The word 'novation' is used in a variety of senses. Courts frequently use it as synonymous with 'substituted contract.' Most academic writers and both contracts restatements, however, restrict its use to describe a substituted contract involving at least one obligor or obligee who was not a party to the original contract. . . . The development of a separate category under the rubric 'novation' is doubtless traceable to problems of consideration formerly thought to be present in such contracts because of the former common law rule that consideration must be supplied by the promisee. This rule has long been laid to rest almost everywhere." John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 11-8, at 444-45 (3d ed. 1987).

**objective novation.** *Civil law.* A novation involving the substitution of a new obligation for an old one.

**subjective novation.** *Civil law.* A novation involving the substitution of a new obligor for a previous obligor who has been discharged by the obligee.

**novel assignment.** See *new assignment* under ASSIGNMENT (5).

**novel disseisin** (nov-əl dis-see-zin), *n.* A recent disseisin. See DISSEISIN; ASSISE OF NOVEL DISSEISIN.

**Novellae** (nə-vel-ee). See NOVELS.

**Novellae Constitutiones.** See NOVELS.

**Novellae Leonis** (nə-vel-ee lee-oh-nis), *n.* [Latin “novels of Leo”] A collection of 113 ordinances issued by Emperor Leo from A.D. 887–893.

**Novels.** A collection of 168 constitutions issued by the Roman emperor Justinian and his immediate successors. • Taken together, the Novels make up one of four component parts of the *Corpus Juris Civilis*. — Also termed *Novellae*; *Novellae Constitutiones*. See CORPUS JURIS CIVILIS.

**novelty.** *Patents.* **1.** The fact that an invention is new in form and in function or performance. **2.** The requirement that this fact must be demonstrated for an invention to be patentable. • If the invention has been previously patented, described in a publication, or known or used by others, it is not novel. 35 USCA § 102. Cf. NON-OBVIOUSNESS.

**noverca** (nə-vər-kə), *n.* [Latin] A stepmother.

**noverint universi per praesentes** (noh-və-rənt yoo-ni-vər-sī pər pri-zen-teez). [Latin] Know all men by these presents. • This is a formal phrase once found at the beginning of deeds of release. In translation, they still sometimes appear on various types of legal documents. See KNOW ALL MEN BY THESE PRESENTS; PATEAT UNIVERSIS PER PRAESENTES.

**novigild** (noh-və-gild), *n.* [fr. Latin *novem* “nine” + Anglo-Saxon *gid* or *geld* “a payment”] *Hist.* The money a person must pay for damaging another person’s property, the amount equaling nine times the purchase price of the property damaged.

**novi operis nuntiatio** (noh-vī ahp-ə-ris nən-shee-ay-shee-oh), *n.* [Latin “new work protest”] *Roman law.* A protest or prohibition against an *opus novum* (“new work”). • A person whose rights were impaired by the building or tearing of down a structure could protest at the worksite and forbid further activity. — Also termed (*edictum*) *de novi operis nuntiatione*.

**noviter perventa** (noh-və-tər pər-ven-tə), *n. pl.* [Law Latin “newly known”] *Eccles. law.* Newly discovered facts, which are usu. allowed to be introduced in a case even after the pleadings are closed.

**novus actus interveniens** (noh-vəs ak-təs in-tər-vee-nee-ənz). See *intervening cause* under CAUSE (1).

**novus homo** (noh-vəs hoh-moh), *n.* [Latin “new man”] *Hist.* A man who has been pardoned for a crime.

**NOW.** *abbr.* **1.** NEGOTIABLE ORDER OF WITHDRAWAL. **2.** National Organization for Women.

**NOW account.** See ACCOUNT.

**now comes.** See COMES NOW.

**noxā** (nok-sə), *n.* [Latin “injury”] *Hist.* **1. Roman law.** An offense such as injury to a person or property, esp. one committed by a slave or son. **2. Roman law.** The obligation to pay for damage committed by a son, slave, or animal. • The father or master generally had to pay for the damages or else surrender the offender to the injured party. **3.** An offense, generally. **4.** The punishment for an offense. **5.** Something that exerts a harmful effect on the body.

**noxal** (nok-səl), *adj.* *Archaic.* Of or relating to a claim against a father or owner for damage done by a son, a slave, or an animal.

**noxal action.** [fr. Latin *actio noxalis* “injurious action”] **1. Roman law.** The claim against a master or father for a tort committed by a son, a slave, or an animal. • The head of the family could be sued either to pay a penalty due or to surrender the tortfeasor to the victim. Roman law also provided for the surrender of animals that caused damage under *actio de pauperie*. **2. Hist.** A person’s claim to recover for damages committed by a person’s son, slave, or animal.

**noxious** (nok-shəs), *adj.* **1.** Harmful to health; injurious. **2.** Unwholesome; corruptive. **3.** *Archaic.* Guilty.

**n.p.** *abbr.* **1.** NISI PRIUS. **2.** NOTARY PUBLIC.

**NPL.** *abbr.* NATIONAL PRIORITIES LIST.

**NPV.** See *net present value* under PRESENT VALUE.

**n.r.** *abbr.* **1.** New reports. **2.** Not reported. **3.** NONRESIDENT.

**n.s.** *abbr.* **1.** New series. • This citation form indicates that a periodical has been renumbered in a new series. **2.** NEW STYLE.

**NSF.** *abbr.* NOT SUFFICIENT FUNDS.

**NTSB.** *abbr.* NATIONAL TRANSPORTATION SAFETY BOARD.

**nubilis** (n[y]oo-bə-lis), *n.* [Latin “marriageable”] *Civil law.* A person, esp. a girl, who is old enough to be married.

**nuclear-nonproliferation treaty.** See *non-proliferation treaty* under TREATY.

**nuda detentio** (n[y]oo-də di-ten-shee-oh). [Latin] See *possessio naturalis* under POSSESSIO.

**nuda patientia** (n[y]oo-də pash-ee-en-shee-ə). [Latin] Mere sufferance.

**nuda possessio** (n[y]oo-də pə-zes[h]-ee-oh). [Latin] Mere possession.

**nude**, *adj.* **1.** Naked; unclothed. **2.** Lacking in consideration or in some essential particular. See NUDUM PACTUM. **3.** Mere; lacking in description.

**nude contract.** See NUDUM PACTUM.

**nude matter.** A mere allegation.

“[N]ude matter is not of so high nature, as either a mater of Record or a speciality, otherwise there called mater in deede; which maketh mee to thinke, that nude mater is a naked allegation of a thing done, to be proved only by witnesses, and not either by Record, or other speciality in writing vnder seale.” John Cowell, *The Interpreter* (1607).

**nude pact.** See NUDUM PACTUM.

**nudum pactum** (n[y]oo-dəm pak-təm). [Latin “bare agreement”] **1.** *Roman law.* An informal agreement that is not legally enforceable, because it does not fall within the specific classes of agreements that can support a legal action. • But a *pactum* could create an exception to or modification of an existing obligation. **2.** An agreement that is unenforceable as a contract because it is not “clothed” with consideration. — Also termed *naked contract*; *nude contract*; *nude pact*.

**nugatory** (n[y]oo-gə-tor-ee), *adj.* Of no force or effect; useless; invalid <the Supreme Court rendered the statute nugatory by declaring it unconstitutional>.

**nuisance.** **1.** A condition or situation (such as a loud noise or foul odor) that interferes with the use or enjoyment of property. • Liability might or might not arise from the condition or situation. — Formerly also termed *annoyance*.

“A nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard.” *Village of Euclid v. Amber Realty Co.*, 272 U.S. 365, 388, 47 S.Ct. 114, 118 (1926).

“A ‘nuisance’ is a state of affairs. To conduct a nuisance is a tort. In torts, the word ‘nuisance’ has had an extremely elastic meaning; sometimes it is little more than a pejorative term, a weasel word used as a substitute for reasoning. . . . The general distinction between a nuisance and a trespass is that the trespass flows from a physical invasion and the nuisance does not.” Roger A. Cunningham et al., *The Law of Property* § 7.2, at 417 (2d ed. 1993).

**2.** Loosely, an act or failure to act resulting in an interference with the use or enjoyment of property. • In this sense, the term denotes the action causing the interference, rather than the resulting condition <the Slocums’ playing electric guitars in their yard constituted a nuisance to their neighbors>.

“There is perhaps no more impenetrable jungle in the entire law than that which surrounds the word ‘nuisance.’ It has meant all things to all people, and has been applied indiscriminately to everything from an alarming advertisement to a cockroach baked in a pie.” *Prosser and Keeton on the Law of Torts* § 86, at 616 (W. Page Keeton ed., 5th ed. 1984).

**3.** The class of torts arising from such conditions, acts, or failures to act when they occur unreasonably. — Also termed *actionable nuisance*.

“Nuisance is really a field of tortious liability rather than a single type of tortious conduct: the feature which gives it unity is the interest invaded — that of the use and enjoyment of land. The tort emphasises the harm to the plaintiff rather than the conduct of the defendant.” R.F.V. Heuston, *Salmond on the Law of Torts* 50–51 (17th ed. 1977).

**abatable nuisance.** A nuisance so easily removable that the aggrieved party may lawfully cure the problem without notice to the liable party, such as overhanging tree branches.

**absolute nuisance.** 1. Interference with a property right that a court considers fixed or invariable, such as a riparian owner's right to use a stream in its natural condition. 2. See *nuisance per se*. 3. Interference in a place where it does not reasonably belong, even if the interfering party is careful. 4. Interference for which a defendant is held strictly liable for resulting harm, esp. in the nature of pollution. Cf. *qualified nuisance*.

Sense (4) has been disapproved: "[T]he use of the term 'nuisance' to describe the tort liability that sometimes results from accidental invasions produces too much confusion." *Prosser and Keeton on the Law of Torts* § 89, at 637 (W. Page Keeton ed., 5th ed. 1984).

**anticipatory nuisance.** A condition that, although not yet at the level of a nuisance, is very likely to become one, so that a party may obtain an injunction prohibiting the condition. — Also termed *prospective nuisance*.

**attractive nuisance.** A dangerous condition that may attract children onto land, thereby causing a risk to their safety. See ATTRACTIVE-NUISANCE DOCTRINE.

"[T]he doctrine acquired the unfortunate misnomer 'attractive nuisance,' a label which persists to this day. It cannot be taken literally, since the courts have now largely rejected the notion that the child must be attracted by that which injures him, and whether or not the condition is in fact a 'nuisance' has nothing at all to do with defendant's liability to the child." Edward J. Kionka, *Torts in a Nutshell* 89 (2d ed. 1992).

**cognate nuisance.** *Rare.* Interference with an easement.

"The term nuisance is applied to torts of two distinct groups, first, acts of wrongful user by an owner or possessor of land resulting in an unreasonable interference with the rights of enjoyment of the owner or possessor of neighboring land, and, second, wrongful interferences with easements or other incorporeal rights." William F. Walsh, *A Treatise on Equity* 170 (1930).

"When an easement was interfered with, an action on the case lay as a matter of course. . . . Such an interference is sometimes called 'cognate nuisance' to distinguish it from interferences with the personal enjoyment of the incidents of occupying the land." J.H. Baker, *An Introduction to English Legal History* 486 (3d ed. 1990).

**common nuisance.** See *public nuisance*.

**continuing nuisance.** A nuisance that is either uninterrupted or frequently recurring. ● It need not be constant or unceasing, but it

must occur often enough that it is almost continuous.

**legalized nuisance.** A nuisance sanctioned by legislative, executive, or other official action and therefore immune from liability, such as a city park.

**mixed nuisance.** A condition that is both a private nuisance and a public nuisance, so that it is dangerous to the community at large but also causes particular harm to private individuals.

**nuisance at law.** See *nuisance per se*.

**nuisance dependent on negligence.** See *qualified nuisance*.

**nuisance in fact.** A nuisance existing because of the circumstances of the use or the particular location. ● For example, a machine emitting high-frequency sound may be a nuisance only if a person's dog lives near enough to the noise to be disturbed by it. — Also termed *nuisance per accidens*.

**nuisance per se** (pər say). Interference so severe that it would constitute a nuisance under any circumstances; a nuisance regardless of location or circumstances of use, such as a leaky nuclear-waste storage facility. — Also termed *nuisance at law*; *absolute nuisance*.

**permanent nuisance.** A nuisance that cannot readily be abated at reasonable expense. Cf. *temporary nuisance*.

**private nuisance.** A condition that interferes with a person's enjoyment of property, but does not involve a trespass. ● The condition constitutes a tort for which the adversely affected person may recover damages or obtain an injunction.

"Trespass and private nuisance are alike in that each is a field of tort liability rather than a single type of tortious conduct. In each, liability may arise from an intentional or an unintentional invasion. For an intentional trespass, there is liability without harm; for a private nuisance, there is no liability without significant harm. . . . In private nuisance an intentional interference with the plaintiff's use or enjoyment is not of itself a tort, and unreasonableness of the interference is necessary for liability." Restatement (Second) of Torts § 821D cmt. d (1979).

"The different ways and combinations of ways in which the interest in the use or enjoyment of land may be invaded are infinitely variable. A private nuisance may consist of an interference with the physical condition of the land itself, as by vibration or blasting which damages a house, the destruction of crops, flooding, raising the water table, or the pollution of a stream or of an underground water supply." *Prosser and Keeton on the Law of Torts* § 87, at 619 (W. Page Keeton ed., 5th ed. 1984).

**prospective nuisance.** See *anticipatory nuisance*.

**public nuisance.** An unreasonable interference with a right common to the general public, such as a condition dangerous to health, offensive to community moral standards, or unlawfully obstructing the public in the free use of public property. • Such a nuisance may lead to a civil injunction or criminal prosecution. — Also termed *common nuisance*.

“Public and private nuisances are not in reality two species of the same genus at all. There is no generic conception which includes the crime of keeping a common gaming-house and the tort of allowing one’s trees to overhang the land of a neighbour. A public nuisance falls within the law of torts only in so far as it may in the particular case constitute some form of tort also. Thus the obstruction of a highway is a public nuisance; but if it causes any special and peculiar damage to an individual, it is also a tort actionable at his suit.” R.F.V. Heuston, *Salmond on the Law of Torts* 49–50 (17th ed. 1977).

“[P]ublic nuisance . . . is an amorphous and unsatisfactory area of the law covering an ill-assorted collection of wrongs, some of which have little or no association with tort and only appear to fill a gap in criminal law. Others cover what could be generally described as ‘noisome trade,’ which could be dealt with under some form of statutory nuisance. Yet a third group deals with what we would generally describe as ‘abuses of the highway’ . . .” R.W.M. Dias & B.S. Markesinis, *Tort Law* 254 (1984).

**qualified nuisance.** A condition that, though lawful in itself, is so negligently permitted to exist that it creates an unreasonable risk of harm and, in due course, actually results in injury to another. • It involves neither an intentional act nor a hazardous activity. — Also termed *nuisance dependent on negligence*. Cf. *absolute nuisance*.

**temporary nuisance.** A nuisance that can be corrected by a reasonable expenditure of money or labor. Cf. *permanent nuisance*.

**nuisance in fact.** See NUISANCE.

**nuisance money.** See *nuisance settlement* under SETTLEMENT.

**nuisance per accidens.** See *nuisance in fact* under NUISANCE.

**nuisance per se.** See NUISANCE.

**nuisance settlement.** See SETTLEMENT.

**nul** (nəl). [Law French] No; none. • This negative particle begins many phrases, such as *nul tiel*.

**nul agard** (nəl ə-gahrd), *n.* [Law French “no award”] In an action to enforce an arbitration award on an arbitration bond, a plea denying the existence of the award. Cf. AGARD.

**nul disseisin** (nəl dis-see-zin). [Law French “no disseisin”] In a real action, a defendant’s plea that the plaintiff was not deprived of the possession of any land and tenements. See DISSEISIN.

**nul fait agard** (nəl fay ə-gahrd). [Law French] No award was made. Cf. AGARD.

**null**, *adj.* Having no legal effect; without binding force; VOID <the contract was declared null and void>. • The phrase *null and void* is a common redundancy.

**nulla bona** (nəl-ə boh-nə). [Latin “no goods”] A form of return by a sheriff or constable upon an execution when the judgment debtor has no seizable property within the jurisdiction. Cf. NIHIL EST.

**nulla poena sine lege** (nəl-ə pee-nə si-nee lee-jee or sin-ay lay-gay). [Latin] No punishment without a law authorizing it.

**nullification** (nəl-i-fi-kay-shən), *n.* **1.** The act of making something void; *specif.*, the action of a state in abrogating a federal law, on the basis of state sovereignty. **2.** The state or condition of being void. See JURY NULLIFICATION.

**nullification doctrine.** The theory — espoused by southern states before the Civil War — advocating a state’s right to declare a federal law unconstitutional and therefore void.

**nullify**, *vb.* To make void; to render invalid.

**nullity** (nəl-ə-tee). **1.** Something that is legally void <the forged commercial transfer is a nullity>. **2.** The fact of being legally void <she filed a petition for nullity of marriage>.

**absolute nullity.** *Civil law.* **1.** An act that is void because it is against public policy, law, or order. **2.** The state of such a nullity. See NULLITY OF MARRIAGE.

**relative nullity.** *Civil law.* **1.** A legal nullity that can be cured by confirmation because

the object of the nullity is valid. **2.** The state of such a nullity.

**nullity of marriage. 1.** The invalidity of a presumed or supposed marriage because it is void on its face or has been voided by court order. ● A void marriage, as in an incestuous marriage, is invalid on its face and requires no formality to end. A voidable marriage, such as a marriage lacking requisite parental consent, requires a court order to invalidate.

“The declaration of nullity is appropriate if the marriage is relatively null or absolutely null yet one or both spouses were in good faith. If the marriage is relatively null, civil effects flow until the declaration of nullity. On the other hand, the marriage that is absolutely null generally produces civil effects only if one or both of the spouses were in good faith and only so long as good faith lasts.” 16 Katherine S. Spaht & W. Lee Hargrave, *Louisiana Civil Law Treatise: Matrimonial Regimes* § 7.6, at 348 (2d ed. 1997).

**2.** A suit brought to nullify a marriage. See ANNULMENT.

**nullius filius** (nə-**lī**-əs **fil**-ee-əs), *n.* [Latin “son of no one”] An illegitimate child.

**nullius in bonis** (nə-**lī**-əs in **boh**-nis), *adj.* [Latin “among the property of no person”] *Hist.* Belonging to no one. ● Wild animals were considered to be *nullius in bonis*. — Also termed *in nullius bonis*.

**nullius juris** (nə-**lī**-əs **joor**-is). [Latin] *Hist.* Of no legal force.

**nullum arbitrium** (nəl-əm ahr-**bi**-tree-əm), *n.* [Law Latin “no decision”] *Hist.* In an action to enforce an arbitration bond, a plea denying the existence of an arbitration award.

**nullum est erratum** (nəl-əm est ə-**ray**-təm), *n.* [Latin “there is no error in the record”] In response to an assignment of error, the common plea that there is no error in the record. ● The effect of the plea is essentially to admit well-pleaded facts.

**nullum fecerunt arbitrium** (nəl-əm fə-**see**-rənt ahr-**bi**-tree-əm). [Latin “they never submitted to arbitration”] *Hist.* In an action to enforce an arbitration award, the defendant’s plea denying that there had been an arbitration.

**Nullum Tempus Act** (nəl-əm **tem**-pəs akt), *n.* [Latin] *Hist. English law.* The Crown Suits Act of 1769 (amended in 1862) that limited the Crown’s time to sue, in land and other specified

matters, to 60 years. ● The statute altered the common-law rule of *nullum tempus aut locus occurrit regi* (“no time or place affects the Crown”), which was based on the idea that the Crown was too busy with governmental affairs to timely attend to its legal affairs.

**nullum tempus occurrit reipublicae** (nəl-əm **tem**-pəs ə-**kār**-it ree-**i-pəb**-lə-see), *n.* [Latin “no time runs against the state”] The principle that a statute of limitations does not apply to a commonwealth or state unless a statute specifically provides that it does. ● The purpose of the rule is to fully protect public rights and property from injury.

**nul tiel** (nəl teel). [Law Latin] No such. ● This phrase typically denotes a plea that denies the existence of something.

**nul tiel corporation**, *n.* [Law French “no such corporation exists”] A plea denying the existence of an alleged corporation. ● The defense of *nul tiel corporation* must usu. be affirmatively pleaded by a defendant before a plaintiff is required to prove its corporate existence.

**nul tiel record**, *n.* [Law French “no such record”] A plea denying the existence of the record on which the plaintiff bases a claim. ● Evidence may generally be introduced to invalidate the record only, not the statements in the record. See *trial by record* under TRIAL.

“The proper general issue in debt on judgments is ‘nul tiel record,’ which denies the existence of the record alleged. Nul tiel record sets up: (1) the defense either that there is no record at all in existence; or (2) one different from that which the defendant has declared of; or (3) that the judgment is void on the face of the record.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 186, at 330 (Henry Winthrop Ballantine ed., 3d ed. 1923).

**nul tort** (nəl tort), *n.* [Law French “no wrong”] *Hist.* A type of general denial in an action to recover lands and tenements, by which the defendant claims that no wrong was done. See NUL DISSEISIN.

“The general issue, or general plea, is what traverses, thwarts, and denies at once the whole declaration; without offering any special matter whereby to evade it . . . . [I]n real actions, *nul tort*, no wrong done; *nul disseisin*, no disseisin; and in a writ of right, that the tenant has more right to hold than the demandant has to demand. These pleas are called the general issue, because, by importing an absolute and general denial of what is alleged in the declaration, they amount at once to an issue; by which we mean a fact affirmed on one side and denied on the other.” 3 William Blackstone, *Commentaries on the Laws of England* 305 (1768).

**nul waste** (nəl wayst), *n.* [Law French “no waste”] *Hist.* The defendant’s general denial in an action to recover damages for the destruction of lands and tenements. See NUL TORT.

**number lottery.** See *Genoese lottery* under LOTTERY.

**numbers game.** A type of lottery in which a person bets that on a given day a certain series of numbers will appear from some arbitrarily chosen source, such as stock-market indexes or the U.S. Treasury balance. • The game creates a fund from which the winner’s share is drawn and is subject to regulation as a lottery.

**numerata pecunia** (n[y]oo-mə-ray-tə pi-kyoo-nee-ə), *n.* [Latin] *Hist.* Money counted or paid.

**numerical lottery.** See *Genoese lottery* under LOTTERY.

**numerosity** (n[y]oo-mər-ahs-ə-tee). The requirement in U.S. district courts that, for a case to be certified as a class action, the party applying for certification must show, among other things, that the class of potential plaintiffs is so large that the joinder of all of them into the suit is impracticable. See CLASS ACTION.

**nummata** (nə-may-tə), *n.* [Law Latin “money”] The monetary price of something.

**nummata terrae** (nə-may-tə ter-ee), *n.* [Law Latin] *Hist.* An acre of land.

**nunciato** (nən-shee-ay-toh). See NUNTIATIO.

**nuncio** (nən-shee-oh), *n.* [Italian, fr. Latin *nunciare* “to announce”] **1.** A papal ambassador to a foreign court or government; a representative of the Vatican in a country that maintains diplomatic relations with it. — Also termed *nuncius*; *nuntio*. Cf. INTERNUNCIO; LEGATE. **2.** *Archaic.* A messenger.

**nunc pro tunc** (nəngk proh təngk or nuəngk proh tuəngk). [Latin “now for then”] Having retroactive legal effect through a court’s inherent power <the court entered a *nunc pro tunc* order to correct a clerical error in the record>.

“When an order is signed ‘nunc pro tunc’ as of a specified date, it means that a thing is now done which should have been done on the specified date.” 35A C.J.S. *Federal Civil Procedure* § 370, at 556 (1960).

**nunc pro tunc amendment.** See AMENDMENT (3).

**nunc pro tunc judgment.** See JUDGMENT.

**nuncupare** (nəng-kyuu-pair-ee), *vb.* [Latin “call by name”] *Hist.* To name or pronounce orally. • *Nuncupare heredem* means to name an heir before public witnesses.

**nuncupate** (nəng-kyə-payt), *vb.* [fr. Latin *nuncupare* “call by name”] **1.** *Hist.* To designate or name. **2.** To vow or declare publicly and solemnly. **3.** To declare orally, as a will. **4.** To dedicate or inscribe (a work).

**nuncupative** (nəng-kyə-pay-tiv or nəng-kyoo-pə-tiv), *adj.* [fr. Latin *nuncupare* “to name”] Stated by spoken word; declared orally.

**nuncupative will.** See WILL.

**nundinae** (nən-də-nee), *n.* [fr. Latin *novem* “nine” + *dies* “day”] **1.** *Roman law.* A fair or market. **2.** *Roman law.* The period between two consecutive markets (usu. eight days). • This period was often fixed for the payment of debts.

**nundination** (nən-di-nay-shən), *n.* [fr. Latin *nundinatio* “the holding of a market or fair”] *Hist.* The act of buying or selling at a fair.

**nunquam indebitatus** (nəng[k]-kwam in-deb-itay-təs), *n.* [Latin “never indebted”] *Hist.* A defensive plea in a debt action, by which the defendant denies any indebtedness to the plaintiff. Cf. CONCESSIT SOLVERE.

**nuntiatio** (nən-shee-ay-shee-oh), *n.* [Latin “a declaration”] *Hist.* A formal declaration or protest. • A *nuntiatio novi operis* was an injunction placed on the construction of a new building by the person protesting the construction. — Also spelled *nunciato*.

**nuntio.** See NUNCIO.

**nuntius** (nən-shee-əs), *n.* [Latin “bearer of news”] **1.** *Roman law.* A messenger. • Declarations through a messenger were usu. as valid as those by letter. **2.** *Hist.* A messenger sent to make an excuse for a party’s absence in court. **3.** *Hist.* An officer of the court. — Also termed *summoner*; *beadle*. **4.** *Eccles. law.* NUNCIO (1).

**nuper obiit** (n[y]oo-pər oh-bee-it), *n.* [Latin “lately died”] *Hist.* A writ available to an heir to establish the equal division of land when, on the death of an ancestor who held the estate in fee simple, a coheir took the land and prevent-

ed the other heirs from possessing it. The writ was abolished in 1833. See COPARCENER.

**nuptiae** (nəp-shee-ee). See MATRIMONIUM.

**nuptiae secundae** (nəp-shee-ee sə-kən-dee), *n.* [Latin] *Eccles. law.* A second or subsequent marriage. ● In canon law, second or subsequent marriages were frowned upon, and priests would not attend those ceremonies.

**nuptial** (nəp-shəl), *adj.* Of or relating to marriage.

**Nuremberg defense** (n[y]ər-əm-bərg). The defense asserted by a member of the military who has been charged with the crime of failing to obey an order and who claims that the order was illegal, esp. that the order would result in a violation of international law. ● The term is sometimes used more broadly to describe situations in which citizens accused of committing domestic crimes, such as degradation of govern-

ment property, claim that their crimes were justified or mandated by international law.

**nurture**, *vb.* **1.** To supply with nourishment. **2.** To train, educate, or develop.

**nurus** (n[y]oor-əs), *n.* [Latin] A daughter-in-law.

**nychthemeron** (nik-thee-mər-ahn), *n.* [Greek] An entire day and night; a 24-hour period.

**NYSE.** *abbr.* NEW YORK STOCK EXCHANGE.

**nystagmus** (ni-stag-məs). A rapid, involuntary jerking or twitching of the eyes, sometimes caused by ingesting drugs or alcohol. ● The "horizontal gaze nystagmus test" is one of the field-sobriety tests given to people suspected of being intoxicated. In the procedure, the suspect is told to focus on an object, such as a pencil, and to track its movement, usu. from side to side, by moving only the eyes. Intoxication is indicated if the eyes jerk or twitch while tracking the object.