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a. **1.** (*usu. cap. & often ital.*) A hypothetical person <A deeds Blackacre to B>. **2.** [Latin] From; by; in; on; of; at. **3.** [Law Latin] With. **4.** [Law French] Of; at; to; for; in; with. **5.** *Securities*. A letter used in a newspaper stock-transaction table to indicate that a cash payment in addition to regular dividends was paid during the year. **6.** *Securities*. A letter used in a newspaper mutual-fund transaction table to indicate a yield that may include capital gains and losses as well as current interest. **7.** (*cap.*) *Securities*. A letter used in a newspaper corporate earnings report to identify the American Stock Exchange as the primary market of a firm's common stock. **8.** (*cap.*) *Securities*. An above-average grade given to a debt obligation by a rating agency. • The grades, as ranked by Standard & Poor's, range from AAA (highest) down to C. The equivalent standards from Moody's are Aaa, Aa, A, Baa, and so on down to C. **9.** *Marine insurance*. A rating assigned in *Lloyd's Register of Shipping* to ships considered to be in first-class condition. **10.** *abbr.* ADVERSUS. **11.** (*cap.*) *Hist.* A scarlet letter worn as punishment by a person convicted of adultery. **12.** *Roman law*. An abbreviation for *absolvo* written on wooden tablets by criminal-court judges to indicate a vote for acquittal. **13.** *Roman law*. An abbreviation for *antiquo* ("for the old law") written on wooden tablets by the participants in a popular assembly to indicate a vote against a proposed bill.

AAA. *abbr.* **1.** AMERICAN ARBITRATION ASSOCIATION. **2.** AMERICAN ACCOUNTING ASSOCIATION. **3.** AMERICAN ACADEMY OF ACTUARIES. **4.** AGRICULTURAL ADJUSTMENT ACT. **5.** See *accumulated-adjustments account* under ACCOUNT.

A.A.C. *abbr.* ANNO ANTE CHRISTUM.

A.A.C.N. *abbr.* ANNO ANTE CHRISTUM NATUM.

AALS. *abbr.* ASSOCIATION OF AMERICAN LAW SCHOOLS.

a aver et tener (ay ay-vər [or ah ah-vər] et ten-ər). [Law French] To have and to hold. See HARBENDUM CLAUSE.

AB. See *able-bodied seaman* under SEAMAN.

ab, prep. [Latin] From; by; of.

ABA. *abbr.* **1.** AMERICAN BAR ASSOCIATION. **2.** AMERICAN BANKERS ASSOCIATION.

abacinate (ə-bas-ə-nayt), *vb.* To blind (a person) by placing a red-hot iron or metal plate in front of the eyes.

abaction (ab-ak-shən). See ABIGEATUS.

ab actis (ab ak-tis), *n.* [Latin "in relation to proceedings"] *Roman law*. An officer responsible for public records (*acta*), registers, journals, or minutes; a court clerk; a notary.

abactor (ab-ak-tər or -tor). See ABIGEUS.

ab agendo (ab ə-jen-doh), *adj.* [Latin] Unable to act; incapacitated for business or transactions of any kind.

abalienation (ab-ayl-yə-nay-shən), *n.* [fr. Latin *abalienare* "to alienate"] *Civil law*. The transfer of an interest or title in property; ALIENATION (2). • In Roman law, the term was *abalienatio* ("a perfect conveyance from one Roman citizen to another"), which was anglicized to *abalienation*. — **abalienate**, *vb.*

abamita (ə-bam-ə-tə). [Latin] *Civil law*. A great-great-great aunt.

abandoned property. See PROPERTY.

abandonee (ə-ban-də-nee). One to whom property rights are relinquished; one to whom something is formally or legally abandoned.

abandonment, *n.* **1.** The relinquishing of a right or interest with the intention of never again claiming it. • In the context of contracts for the sale of land, courts sometimes use the term *abandonment* as if it were synonymous with *rescission*, but the two should be distinguished. An abandonment is merely the acceptance by one party of the situation that a

nonperforming party has caused. But a rescission due to a material breach by the other party is a termination or discharge of the contract for all purposes. **2. Family law.** The act of leaving a spouse or child willfully and without an intent to return. Cf. DESERTION.

"The lines of distinction between abandonment and the many forms of child neglect are often not very clear so that failure to support or to care for a child may sometimes be characterized as abandonment and sometimes as neglect." Homer H. Clark, Jr., *The Law of Domestic Relations in the United States* § 20.6, at 895 (1988).

malicious abandonment. The desertion of a spouse without just cause. See *criminal desertion* under DESERTION.

voluntary abandonment. **1.** As a ground for divorce, a final departure without the consent of the other spouse, without sufficient reason, and without the intention to return. **2.** In the law of adoption, a natural parent's willful act or course of conduct that implies a conscious disregard of or indifference to a child, as if no parental obligation existed.

3. Criminal law. RENUNCIATION (2). **4. Bankruptcy.** A trustee's court-approved release of property that is burdensome or of inconsequential value to the estate, or the trustee's release of nonadministered property to the debtor when the case is closed. **5. Contracts.** RESCISSION (2). **6. Intellectual property.** Disuse of a trademark, copyright, or patent, with or without an intent to resume use, resulting in loss of the protected right. **7. Insurance.** An insured's relinquishing of damaged or lost property to the insurer as a constructive total loss. Cf. SALVAGE (2). — **abandon, vb.**

abandum (ə-ban-dəm), *n.* [Law Latin] *Hist.* A thing that has been forfeited. — Also spelled *abandun; abandonum.*

ab ante (ab an-tee), *adv.* [Latin] *Hist.* Before; beforehand; in advance. — Also termed *ab antecedente.*

ab antiquo (ab an-ti-kwoh), *adv.* [Law Latin] *Hist.* From ancient times; of old. — Also termed *ab antiqua.*

abarnare (ab-ahr-nair-ee), *vb.* [Law Latin] *Hist.* To detect or disclose a secret crime; to bring to judgment.

abatable nuisance. See NUISANCE.

abatamentum (ə-bay-tə-men-təm), *n.* [Law Latin] *Hist.* See ABATEMENT (5).

abatere (ab-ə-tair-ee), *vb.* [Law Latin] *Hist.* To abate.

abatement (ə-bayt-mənt), *n.* **1.** The act of eliminating or nullifying <abatement of a nuisance> <abatement of a writ>. **2.** The suspension or defeat of a pending action for a reason unrelated to the merits of the claim <the defendant sought abatement of the suit because of misnomer>. See *plea in abatement* under PLEA.

"Although the term 'abatement' is sometimes used loosely as a substitute for 'stay of proceedings,' the two may be distinguished on several grounds. For example, when grounds for abatement of an action exist, the abatement of the action is a matter of right, but a stay is granted in the court's discretion. And in proper circumstances a court may stay a proceeding pending the outcome of another proceeding although a strict plea in abatement could not be sustained." 1 Am. Jur. 2d *Abatement, Survival, and Revival* § 3 (1994).

3. The act of lessening or moderating; diminution in amount or degree <abatement of the debt>. **4.** The reduction of a legacy, general or specific, as a result of the estate's being insufficient to pay all debts and legacies <the abatement of legacies resulted from the estate's insolvency>. **5. Archaic.** The act of thrusting oneself tortiously into real estate after the owner dies and before the legal heir enters <abatement of freehold>. — Also termed (in sense 5) *abatamentum*. — **abate, vb.** — **abatable, adj.**

abatement clause. A lease provision that releases the tenant from the rent obligation when an act of God precludes occupancy.

abator (ə-bay-tər or -tor), **1.** A person who eliminates a nuisance. See ABATEMENT (1). **2. Hist.** A person who tortiously intrudes on an heir's freehold before the heir takes possession. See ABATEMENT (5).

abatuda (ab-ə-t[y]oo-də), *n.* [fr. Law Latin *abatudus* "debased"] *Hist.* A thing diminished, such as money reduced in value by clipping (*moneta abatuda*).

abavia (ə-bay-vee-ə), *n.* [Latin] *Civil law.* A great-great-great grandmother.

abavunculus (ab-ə-vəŋg-kyə-ləs), *n.* [Latin] *Civil law.* A great-great-great uncle. — Also termed *avunculus maximus*.

abavus (ab-ə-vəs), *n.* [Latin] *Civil law.* A great-great grandfather.

abbacy (ab-ə-see). *Eccles. law.* An abbot's jurisdiction or term of tenure.

abbess (ab-is). *Eccles. law.* A female spiritual superior of a convent. Cf. ABBOT.

abbey (ab-ee). *Eccles. law.* A monastery governed by an abbot, or a convent governed by an abbess.

abbey land. (*usu pl.*) *Hist.* Real property held by an abbey in mortmain and therefore exempt from tithes. See MORTMAIN.

abbot (ab-ət). *Eccles. law.* A spiritual superior or governor of an abbey. Cf. ABBESS.

abbreviated term sheet. See TERM SHEET.

Abbreviatio Placitorum (ə-bree-vee-ay-sheeh-oh plas-i-tor-əm), *n.* [Law Latin "summary of the pleas"] *Hist.* An abstract of pleadings culled from the rolls of the *Curia Regis*, Parliament, and common-law courts from the 12th to 14th centuries, compiled in the 17th century, printed in 1811, attributed to Arthur Agarde, Deputy Chamberlain of the Exchequer, and other keepers of the records. Cf. YEAR BOOKS.

abbreviator. **1.** One who abbreviates, abridges, or shortens. **2.** *Eccles. law.* An officer in the court of Rome appointed as assistant to the vice-chancellor for drawing up the Pope's briefs and reducing petitions, when granted, into proper form to be converted into papal bulls.

abbroachment (ə-brohch-mənt), *n.* *Hist.* The act of forestalling the market by buying wholesale merchandise to sell at retail as the only vendor. — Also spelled *abbrochment*; *abbrochement*. — **abbroach**, *vb.*

ABC test. The rule that an employee is not entitled to unemployment insurance benefits if the employee (A) is free from the control of the employer, (B) works away from the employer's place of business, and (C) is engaged in an established trade. • The name derives from the A, B, and C commonly used in designating the three parts of the test.

ABC transaction. *Oil & gas.* A sale of a working interest from an owner (A) to an operator (B) in return for a cash payment and the right to another (*usu. larger*) payment when the well produces, followed by A's sale of the right to the production payment to a corporation (C), which pays A in cash borrowed from a lender

on C's pledge of the production payment. • Thus A receives cash taxed at capital-gains rates, and B pays part of the purchase price with nontaxable production income. The tax advantages of this transaction were eliminated by the Tax Reform Act of 1969.

abdication (ab-di-kay-shən), *n.* The act of renouncing or abandoning privileges or duties, esp. those connected with high office <Edward VIII's abdication of the Crown in 1936> <the court's abdication of its judicial responsibility>. — **abdicate** (ab-di-kayt), *vb.* — **abdicable** (ab-di-kə-bəl), *adj.* — **abdicator** (ab-di-kay-tər), *n.*

abditory (ab-di-tor-ee), *n.* [Law Latin *abditorium* "box, receptacle"] A repository used to hide and preserve goods or money. — Also termed *abditorium* (ab-di-tor-ee-əm).

abduction (ab-dək-shən), *n.* **1.** The act of leading someone away by force or fraudulent persuasion. • Some jurisdictions have various elements added to this basic definition, such as that the abductor must have the intent to marry or defile the person, that the abductee must be an underage child, or that the abductor must have the intent to subject the abductee to concubinage or prostitution. **2.** *Archaic.* At common law, the crime of taking away a female person without her consent by use of persuasion, fraud, or violence, for the purpose of marriage, prostitution, or illicit sex. — **abduct**, *vb.* — **abductor**, *n.* — **abductee**, *n.* See KIDNAPPING.

"There was no such crime as abduction known to the English common law, but a statute [3 Hen. 7, ch. 2 (1487)], passed a few years before Columbus discovered America, created a felony which is the forerunner of all the present statutes on abduction." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 183 (3d ed. 1982).

abearance (ə-bair-ənts), *n.* *Archaic.* Behavior; conduct.

"The other species of recognizance, with sureties, is for the good *abearance*, or good *behaviour*. This includes security for the peace . . ." 4 William Blackstone, *Commentaries on the Laws of England* 253 (1769).

ab epistolis (ab ee-pis-tə-lis), *n.* [Latin] *Hist.* An officer who maintained the correspondence (*epistolae*) for a superior; a secretary.

aberrant behavior (a-ber-ənt). A single act of unplanned or thoughtless criminal behavior. • Many courts have held that aberrant behavior justifies a downward departure — that is, a more lenient sentence — under the federal

sentencing guidelines, based on a comment in the introduction to the *Guidelines Manual* to the effect that the guidelines do not deal with single acts of aberrant behavior. *U.S. Sentencing Guidelines Manual*, ch. 1, pt. A, ¶ 4.

abesse (ab-es-ee), *vb.* [Law Latin] *Roman & civil law.* To be absent; to be away from a place where one is supposed to be (as before a court). Cf. ADESSE.

abet (ə-bet), *vb.* **1.** To encourage and assist (someone), esp. in the commission of a crime <abet a known felon>. **2.** To support (a crime) by active assistance <abet a burglary>. — **abetment**, *n.* See AID AND ABET. Cf. INCITE.

abettator (ab-ə-tay-tər), *n.* [Law Latin] *Archaic.* See ABETTOR.

abettor. A person who encourages or assists in the commission of a crime. — Also spelled *abetter*. — Also termed *principal in the second degree*; (archaically) *abettator*.

ab extra (ab ek-strə), *adv.* [Latin] From outside; extra; beyond.

abeyance (ə-bay-ənts), *n.* **1.** Temporary inactivity; suspension. **2. Property.** A lapse in succession during which no person is vested with title. — **abeyant**, *adj.*

“Abeyance, from the French *bayer*, to expect, is that which is in expectation, remembrance, and intendment of law. By a principle of law, in every land there is a fee simple in somebody, or else it is in *abeyance*; that is, though for the present it be in no man, yet it is in expectancy belonging to him that is next to enjoy the land.” 1 Richard Burn, *A New Law Dictionary* 4 (1792).

abiaticus (ab-ee-ay-tə-kəs), *n.* [Law Latin “descended from a grandfather”] *Hist.* A grandson in the male line; a son’s son. — Also spelled *aviaticus*.

abide, *vb.* **1.** To tolerate or withstand <the widow found it difficult to abide the pain of losing her husband>. **2.** To obey <try to abide the doctor’s order to quit smoking>. **3.** To await <the death-row prisoners abide execution>. **4.** To perform or execute (an order or judgment) <the trial court abided the appellate court’s order>. **5.** To stay or dwell <the right to abide in any of the 50 states>.

abide by, *vb.* To act in accordance with or in conformity to.

abiding conviction. See CONVICTION.

abigeatus (ə-bij-ee-ay-təs), *n.* [Latin] *Roman law.* The act of stealing cattle by driving them away (*abigere*). • This was known in the later civil law as *abaction*.

abigeus (ə-bij-ee-əs), *n.* [Latin] *Roman law.* One who steals cattle, esp. in large numbers; a cattle rustler. • This was known in the later civil law as an *abactor*.

ability. The capacity to perform an act or service; esp., the power to carry out a legal act <ability to enter into a contract>.

present ability. The actual, immediate power to do something (esp. to commit a crime).

ab inconvenienti (ab in-kən-vee-nee-en-ti), *adv.* [Law Latin] From hardship or inconvenience. See *argumentum ab inconvenienti* under ARGUMENTUM.

ab initio (ab i-nish-ee-oh), *adv.* [Latin] From the beginning <the injunction was valid *ab initio*>. Cf. IN INITIO.

ab intestato (ab in-tes-tay-toh), *adv.* [Latin] By intestacy <succession *ab intestato* is often treated as being necessary because of the neglect or misfortune of the deceased proprietor>. Cf. EX TESTAMENTO.

ab invito (ab in-vi-toh), *adv.* [Latin] By or from an unwilling party; against one’s will <a transfer *ab invito*>. Cf. IN INVITUM.

ab irato (ab I-ray-toh), *adv.* [Latin] By one who is angry. • This phrase usu. refers to a gift or devise made adversely to an heir’s interests, out of anger. An action to set aside this type of conveyance was known at common law as an action *ab irato*.

abishering. See MISKERING.

abjudge (ab-jəj), *vb.* *Archaic.* To take away or remove (something) by judicial decision. Cf. ADJUDGE.

“As a result of the trial a very solemn judgment is pronounced. The land is adjudged to the one party and his heirs, and adjudged (*abiudicata*) from the other party and his heirs for ever.” 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 63 (2d ed. 1899).

abjudicatio (ab-joo-di-kay-shee-oh), *n.* [Law Latin] The act of depriving a person of a thing by judicial decision.

abjuration (ab-juu-ray-shən), *n.* A renouncing by oath.

abjuration of the realm. An oath taken to leave the realm forever.

oath of abjuration. *English law.* An oath renouncing all right of descendants of a pretender to the Crown.

abjure (ab-juor), *vb.* **1.** To renounce formally or on oath <abjure one's citizenship>. **2.** To avoid or abstain from <abjure one's civic duties>. — **abjuratory** (ab-juor-ə-tor-ee), *adj.*

ablative fact. See *divestitive fact* under FACT.

able-bodied seaman. See SEAMAN.

ablegate (ab-lə-gayt), *n.* A papal envoy on a special mission, such as carrying a newly appointed cardinal's insignia of office.

able seaman. See *able-bodied seaman* under SEAMAN.

able to work. *Labor law.* (Of a worker) released from medical care and capable of employment; esp., not qualified to receive unemployment benefits on grounds of illness or injury.

ablocation (ab-loh-kay-shən). *Archaic.* The leasing of property for money. Cf. LOCATIO.

abmatertera (ab-mə-tər-tər-ə), *n.* [Latin] *Civil law.* A great-great-great aunt. See MATERTERA MAXIMA.

abnepos (ab-nep-ahs or -ohs), *n.* [Latin] *Civil law.* A great-great grandson; the grandson of a grandson or granddaughter.

abneptis (ab-nep-tis), *n.* [Latin] *Civil law.* A great-great granddaughter; the granddaughter of a grandson or granddaughter.

abnormal law. The law as it applies to persons who are under legal disabilities such as infancy, alienage, insanity, criminality, and (formerly) coverture.

abnormally dangerous activity. An undertaking that cannot be performed safely even if reasonable care is used while performing it, and for which the actor may face strict liability for any harm caused; esp., an activity (such as dynamiting) for which the actor is held strictly liable because the activity (1) involves the risk of serious harm to persons or property, (2)

cannot be performed without this risk, regardless of the precautions taken, and (3) does not ordinarily occur in the community. • Under the *Restatement (Second) of Torts*, determining whether an activity is abnormally dangerous includes analyzing whether there is a high degree of risk of harm, whether any harm caused will be substantial, whether the exercise of reasonable care will eliminate the risk, whether the activity is a matter of common usage, whether the activity is appropriate to the place in which it occurs, and whether the activity's value to society outweighs its dangerousness. *Restatement (Second) of Torts* § 520 (1977). — Also termed *ultrahazardous activity*. See *strict liability* under LIABILITY.

abode. A home; a fixed place of residence. See DOMICILE.

abogado (ah-boh-gah-thoh), *n.* [Spanish] *Spanish law.* An advocate; a lawyer.

ab olim (ab oh-lim), *adj.* [Law Latin] Of old.

abolish, *vb.* To annul or destroy, esp. an ongoing practice or thing.

abolition. **1.** The act of abolishing. **2.** The state of being annulled or abrogated. **3.** (*usu. cap.*) The legal termination of slavery in the United States. **4.** *Civil law.* A sovereign's remission of punishment for a crime.

abominable and detestable crime against nature. See SODOMY.

a bon droit (ay or a bawn drwah), *adv.* [Law French] With good reason; justly; rightfully.

aboriginal cost. See COST (1).

aboriginal title. See INDIAN TITLE.

abortee (ə-bor-tee). A woman who undergoes an abortion.

abortifacient (ə-bor-tə-fay-shənt), *n.* A drug, article, or other thing designed or intended for producing an abortion. — **abortifacient**, *adj.*

abortion, *n.* **1.** The spontaneous or artificially induced expulsion of an embryo or fetus. • In *Roe v. Wade*, the Supreme Court first recognized a woman's right to choose to end her pregnancy as a privacy right stemming from the Due Process Clause of the 14th Amendment. 410 U.S. 113, 93 S.Ct. 1409 (1973). **2.**

Archaic. At common law, the misdemeanor of causing a miscarriage or premature delivery of a fetus by means of any instrument, medicine, drug, or other means. • Many American states made this a statutory felony until the *Roe v. Wade* decision. — Also termed *procuring an abortion*. — **abort**, *vb.* — **abortionist**, *n.*

“The word ‘abortion,’ in the dictionary sense, means no more than the expulsion of a fetus before it is capable of living. In this sense it is a synonym of ‘miscarriage.’ With respect to human beings, however, it has long been used to refer to an intentionally-induced miscarriage as distinguished from one resulting naturally or by accident. There has been some tendency to use the word to mean a criminal miscarriage, and there would be distinct advantages in assigning this meaning to it; but there are so many references to lawful abortion or justification for abortion that it is necessary to speak of ‘criminal abortion’ or the ‘crime of abortion’ to emphasize the element of culpability.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 186–87 (3d ed. 1982).

therapeutic abortion. An abortion carried out for medical reasons.

“Until recently it was common to speak of ‘therapeutic abortion.’ The literal meaning of the term is an abortion induced for medical reasons, but it was commonly understood to mean one for the purpose of saving the mother’s life” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 193 (3d ed. 1982).

aboutissement (a-boo-tees-mahn), *n.* [Law French] An abuttal or abutment.

above, *adv.* In a higher court <the court above>. Cf. BELOW.

above-mentioned, *adj.* See AFORESAID.

above-stated, *adj.* See AFORESAID.

above-the-line, *adj.* (Of a deduction) taken after calculating gross income and before calculating adjusted gross income. • Examples of above-the-line deductions are IRA contributions and moving expenses. Formerly, individual tax returns had a dark line above which these deductions were written. Cf. BELOW-THE-LINE.

abpatruus (ab-pa-troo-əs), *n.* [Latin] *Roman & civil law.* A great-great-great uncle. — Also termed *patruus maximus*.

abridge, *vb.* **1.** To reduce or diminish <abridge one’s civil liberties>. **2.** To condense (as a book or other writing) <the author abridged the treatise before final publication>. — **abridgment**, *n.*

abridgment. *Hist.* A legal digest or encyclopedia.

abridgment of damages. The right of a court to reduce the damages in certain cases. Cf. REMITTITUR.

abroad, *adv.* Outside a country; esp., other than in a forum country.

abrogate (ab-rə-gayt), *vb.* To abolish (a law or custom) by formal or authoritative action; to annul or repeal. — **abrogation**, *n.* Cf. OBROGATE.

ABS. See *able-bodied seaman* under SEAMAN.

abscond (ab-skond), *vb.* To depart secretly or suddenly, esp. to avoid service of process; to conceal oneself. — **abscondence** (ab-skondənts), *n.*

absconding debtor. See DEBTOR.

absence, *n.* **1.** The state of being away from one’s usual place of residence. **2.** A failure to appear when expected.

absente (ab-sen-tee). [Latin] In the absence of. • This term formerly appeared in law reports to note the absence of a judge <the court, *absente* Ellis, J., was unanimous>.

absentee, *n.* **1.** A person who is away from his or her usual residence; a person who is absent. **2.** A person who is not present where expected.

absentee, *adj.* Having the characteristics of an absentee <absentee voter>.

absentee, *adv.* In an absentee manner <Debby voted absentee>.

absentee ballot. See BALLOT (3).

absentee landlord. See LANDLORD.

absentee management. See *absentee landlord* under LANDLORD.

absentee voting. See VOTING.

absente reo (ab-sen-tee ree-oh). [Latin] The defendant being absent.

absoile (ab-soyl), *vb.* See ASSOIL.

absolute, *adj.* **1.** Free from restriction, qualification, or condition <absolute ownership>. **2.** Conclusive and not liable to revision <absolute delivery>. **3.** Unrestrained in the exercise of governmental power <absolute monarchy>.

absolute assignment. See ASSIGNMENT (2).

absolute auction. See *auction without reserve* under AUCTION.

absolute-bar rule. The principle that, when a creditor sells collateral without giving reasonable notice to the debtor, the creditor may not obtain a deficiency judgment for any amount of the debt that is not satisfied by the sale.

absolute contraband. See CONTRABAND.

absolute conveyance. See CONVEYANCE.

absolute covenant. See COVENANT (1).

absolute deed. See DEED.

absolute defense. See *real defense* under DEFENSE (4).

absolute delivery. See DELIVERY.

absolute disparity. *Constitutional law.* The difference between the percentage of a group in the general population and the percentage of that group in the pool of prospective jurors on a venire. • For example, if African-Americans make up 12% of a county's population and 8% of the potential jurors on a venire, the absolute disparity of African-American veniremembers is 4%. The reason for calculating the disparity is to analyze a claim that the jury was not impartial because the venire from which it was chosen did not represent a fair cross-section of the jurisdiction's population. Some courts criticize the absolute-disparity analysis, favoring instead the comparative-disparity analysis, in the belief that the absolute-disparity analysis understates the deviation. See FAIR-CROSS-SECTION REQUIREMENT; DUREN TEST; STATISTICAL-DECISION THEORY. Cf. COMPARATIVE DISPARITY.

absolute duty. See DUTY (1).

absolute estate. See ESTATE.

absolute gift. See *inter vivos gift* under GIFT.

absolute guaranty. See GUARANTY.

absolute immunity. See IMMUNITY (1).

absolute interest. See INTEREST (2).

absolute law. A supposed law of nature thought to be unchanging in principle, although circumstances may vary the way in which it is applied. See NATURAL LAW.

absolute legacy. See LEGACY.

absolute liability. See *strict liability* under LIABILITY.

absolute majority. See MAJORITY.

absolute martial law. See MARTIAL LAW.

absolute nuisance. See NUISANCE.

absolute nullity. See NULLITY.

absolute obligation. See OBLIGATION.

absolute pardon. See PARDON.

absolute pollution exclusion. See *pollution exclusion* under EXCLUSION (3).

absolute presumption. See *conclusive presumption* under PRESUMPTION.

absolute-priority rule. *Bankruptcy.* The rule that a confirmable reorganization plan must provide for full payment to a class of dissenting unsecured creditors before a junior class of claimants will be allowed to receive or retain anything under the plan. • Some jurisdictions recognize an exception to this rule when a junior class member, usu. a partner or shareholder of the debtor, contributes new capital in exchange for an interest in the debtor. 11 USCA § 1129(b)(2)(B)(ii).

absolute privilege. See PRIVILEGE (1).

absolute property. See PROPERTY.

absolute right. See RIGHT.

absolute sale. See SALE.

absolute title. See TITLE (2).

absolute veto. See VETO.

absolution (ab-sə-loo-shən). **1.** Release from a penalty; the act of absolving. **2.** *Civil law.* An acquittal of a criminal charge. **3.** *Eccles. law.* Official forgiveness of sins.

absolutism (ab-sə-loo-tiz-əm), *n.* In politics, the atmosphere surrounding a dictator whose power has no restrictions, checks, or balances; the belief in such a dictator. — **absolutist** (ab-sə-loo-tist), *adj. & n.*

absolve (ab- or əb-zolv), *vb.* **1.** To release from an obligation, debt, or responsibility. **2.** To free from the penalties for misconduct.

absorbable risk. See RISK.

absorption, *n.* **1.** The act or process of including or incorporating a thing into something else; esp., the application of rights guaranteed by the U.S. Constitution to actions by the states. **2.** *Int'l law.* The merger of one nation into another, whether voluntarily or by subjugation. **3.** *Labor law.* In a post-merger collective-bargaining agreement, a provision allowing seniority for union members in the resulting entity. **4.** *Real estate.* The rate at which property will be leased or sold on the market at a given time. **5.** *Commercial law.* A sales method by which a manufacturer pays the seller's freight costs, which the manufacturer accounts for before quoting the seller a price. — Also termed (in sense 5) *freight absorption*. — **absorb**, *vb.*

absque (abs-kwee), *adv.* [Latin] Without.

absque aliquo inde reddendo (abs-kwee al-ə-kwoh in-dee ri-den-doh), *adv.* [Law Latin] *Hist.* Without rendering anything therefrom. • This phrase appeared in royal grants in which no tenure was reserved.

absque consideratione curiae (abs-kwee kan-sid-ə-ray-shee-oh-nee kyoor-ee-ee), *adv.* [Law Latin] Without the consideration of the court; without judgment.

absque dubio (abs-kwee d[y]oo-bee-oh), *adv.* [Latin] Without doubt.

absque hoc (abs-kwee hok), *adv.* [Latin] *Archaic.* Without this. • The phrase was formerly used in common-law pleading to introduce the denial of allegations. — Also termed *sans ce que*. See TRAVERSE.

absque impetitione vasti (abs-kwee im-pə-tish-ee-oh-nee vas-ti), *adv.* [Law Latin] *Hist.* See WITHOUT IMPEACHMENT OF WASTE.

absque tali causa (abs-kwee tay-li kaw-zə), *adv.* [Law Latin] Without such cause. • In common-law pleading, this was part of the larger phrase *de injuria sua propria, absque tali causa* (“of his own wrong, without such cause”) appearing in a reply that a trespass plaintiff made to counter a defendant's claim of excuse. In an assault case, for example, if a defendant pleaded that he had struck the plaintiff in self-defense, the plaintiff could reply that the defendant was guilty of his own wrong committed without such cause as alleged. Cf. DE INJURIA.

abstain, *vb.* **1.** To refrain from doing something. **2.** (Of a federal court) to refrain from exercising jurisdiction over a matter.

abstention. **1.** The act of withholding or keeping back (something or oneself). **2.** A federal court's relinquishment of jurisdiction when necessary to avoid needless conflict with a state's administration of its own affairs. **3.** The legal principle underlying such a relinquishment of jurisdiction. Cf. COMITY.

Burford abstention. A federal court's refusal to review a state court's decision in cases involving a complex regulatory scheme and sensitive areas of state concern. *Burford v. Sun Oil Co.*, 319 U.S. 315, 63 S.Ct. 1098 (1943).

Colorado River abstention. A federal court's decision to abstain while relevant and parallel state-court proceedings are underway. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 96 S.Ct. 1236 (1976).

equitable abstention. A federal court's refraining from interfering with a state administrative agency's decision on a local matter when the aggrieved party has adequate relief in the state courts.

permissive abstention. Abstention that a bankruptcy court can, but need not, exercise in a dispute that relates to the bankruptcy estate but that can be litigated, or is being litigated, in another forum. • In deciding whether to abstain, the bankruptcy court must consider (1) the degree to which state law governs the case, (2) the appropriateness of the procedure to be followed in the other forum, (3) the remoteness of the dispute to the issues in the bankruptcy case, and (4) the

presence of nondebtor parties in the dispute. 28 USCA § 1334(c)(1).

Pullman abstention. A federal court's decision to abstain so that state courts will have an opportunity to settle an underlying state-law question whose resolution may avert the need to decide a federal constitutional question. *Railroad Comm'n v. Pullman Co.*, 312 U.S. 496, 61 S.Ct. 643 (1941).

Thibodaux abstention (tib-ə-doh). A federal court's decision to abstain so that state courts can decide difficult issues of public importance that, if decided by the federal court, could result in unnecessary friction between state and federal authorities. *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25, 79 S.Ct. 1070 (1959).

Younger abstention. 1. A federal court's decision not to interfere with an ongoing state criminal proceeding by issuing an injunction or granting declaratory relief, unless the prosecution has been brought in bad faith or merely as harassment. *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746 (1971). — Also termed *equitable-restraint doctrine*. 2. By extension, a federal court's decision not to interfere with a state-court civil proceeding used to enforce the criminal law, as to abate an obscene nuisance. See OUR FEDERALISM.

abstinence (ab-stə-nənts). The practice of refraining completely from indulgence in some act; esp., the practice of not having sex or of not consuming alcoholic beverages.

abstract, *n.* A concise statement of a text, esp. of a legal document; a summary. See ABSTRACT OF JUDGMENT; ABSTRACT OF TITLE.

abstract compromis. See *general compromis* under COMPROMIS.

abstracter. See ABTRACTOR.

abstraction (ab- or əb-strak-shən), *n.* 1. The mental process of considering something without reference to a concrete instance <jurisprudence is largely the abstraction of many legal particulars>. 2. A theoretical idea not applied to any particular instance <utopia in any form is an abstraction>. 3. The summarizing and recording of a legal instrument in public records <abstraction of the judgment in Tarrant County>. 4. The act of taking with the intent to injure or defraud <the abstraction of funds was made possible by the forged signature on the check>. — **abstract** (ab-strakt), *vb.*

abstraction-filtration-comparison test.

Copyright. A judicially created test for determining whether substantial similarity exists between the nonliteral elements of two or more computer programs. • Under this test, a program is first dissected according to its varying levels of generality ("abstractions test"). Then each level of abstraction is examined to filter out program elements that are unprotectable, such as ideas, processes, facts, public-domain information, merger material, scenes a faire, and other unprotectable elements ("filtration test"). Finally, the remaining protectable elements are compared with the allegedly infringing program to determine whether substantial elements of the plaintiff's program have been misappropriated ("comparison test").

abstractions test. *Copyright.* A means of comparing copyrighted material with material that is claimed to infringe on the copyright, by examining whether the actual substance has been copied or whether the two works merely share the same abstract ideas. • The primary authority for the abstractions test is Judge Learned Hand's opinion in *Nichols v. Universal Pictures Corp.*, 45 F.2d 119 (2d Cir. 1930).

abstract of a fine. See NOTE OF A FINE.

abstract of conviction. A summary of the court's finding on an offense, esp. a moving violation.

abstract of judgment. A copy or summary of a judgment that, when filed with the appropriate public office, creates a lien on the judgment debtor's nonexempt property. See *judgment lien* under LIEN.

abstract of record. An abbreviated case history that is complete enough to show an appellate court that the questions presented for review have been preserved.

abstract of title. A concise statement, usu. prepared for a mortgagee or purchaser of real property, summarizing the history of a piece of land, including all conveyances, interests, liens, and encumbrances that affect title to the property. — Also termed *brief*.

good and merchantable abstract of title.

An abstract of title showing clear, good, and marketable title, rather than showing only the history of the property. See *clear title*, *good title*, and *marketable title* under TITLE (2).

abstractor (ab- or əb-strak-tər). A person who prepares abstracts of title. — Also spelled *ab-stracter*.

abstract question. See HYPOTHETICAL QUESTION.

ab urbe condita (ab ər-bee kon-di-tə). [Latin] From the founding of the city (esp. Rome in 753 B.C.). • This term is sometimes used in abbreviated form in classical dates. For example, the date “23 A.U.C.” means “23 years after the founding of Rome,” or 730 B.C. — Abbr. A.U.C.

abuse (ə-byoos), *n.* **1.** A departure from legal or reasonable use; misuse. **2.** Physical or mental maltreatment.

abuse of the elderly. Physical or psychological abuse of an elderly person by a caretaker. • Examples include deprivation of food or medication, beatings, oral assaults, and isolation. — Also termed *elder abuse*.

carnal abuse. See *sexual abuse*.

child abuse. An intentional or neglectful physical or emotional injury imposed on a child, including sexual molestation. — Also termed *cruelty to a child*; *cruelty to children*. See BATTERED-CHILD SYNDROME.

elder abuse. See *abuse of the elderly*.

sexual abuse. **1.** An illegal sex act, esp. one performed against a minor by an adult. — Also termed *carnal abuse*. **2.** RAPE (2).

spousal abuse. Physical, sexual, or psychological abuse inflicted by one spouse on the other spouse. See BATTERED-WOMAN SYNDROME.

abuse (ə-byooz), *vb.* **1.** To depart from legal or reasonable use in dealing with (a person or thing); to misuse. **2.** To injure (a person) physically or mentally. **3.** To damage (a thing).

abuse excuse. *Criminal law.* The defense that a defendant is unable to tell right from wrong, having been physically or mentally abused as a child. • Like the traditional criminal-law excuse of insanity, the abuse excuse is asserted by a defendant in an effort to avoid all culpability for the crime charged.

abuse of discovery. See DISCOVERY ABUSE.

abuse of discretion. **1.** An adjudicator's failure to exercise sound, reasonable, and legal decision-making. **2.** An appellate court's standard for reviewing a decision that is asserted to be

grossly unsound, unreasonable, or illegal. See DISCRETION.

abuse of process. The improper and tortious use of a legitimately issued court process to obtain a result that is either unlawful or beyond the process's scope. — Also termed *abuse of legal process*; *malicious abuse of process*; *malicious abuse of legal process*; *wrongful process*; *wrongful process of law*. Cf. MALICIOUS PROSECUTION.

abuse of rights. *Int'l law.* A country's exercise of a right either in a way that impedes the enjoyment by other countries of their own rights or for a purpose different from that for which the right was created (e.g., to harm another country).

abuse-of-rights doctrine. *Civil law.* The principle that a person may be liable for harm caused by doing something the person has a right to do, if the right (1) is exercised for the purpose or primary motive of causing harm, (2) is exercised without a serious and legitimate interest that is deserving of judicial protection, (3) is exercised against moral rules, good faith, or elementary fairness, or (4) is exercised for a purpose other than the one it was granted for.

abuse of the elderly. See ABUSE.

abuse-of-the-writ doctrine. *Criminal law.* The principle that a petition for a writ of habeas corpus may not raise claims that could have been, but were not, asserted in a previous petition.

abusive (ə-byoo-siv), *adj.* **1.** Characterized by wrongful or improper use <abusive discovery tactics>. **2.** (Of a person) that treats another badly <abusive parent>. — **abusively**, *adv.*

abut (ə-bət), *vb.* To join at a border or boundary; to share a common boundary with <the company's land in Arizona abuts the Navajo Indian reservation>. — **abutment** (ə-bət-mənt), *n.*

abuttals (ə-bət-əlz). Land boundaries; the boundary lines of a piece of land in relation to other contiguous lands. — Also termed (archaically) *buttals*.

abutter (ə-bət-ər). **1.** The owner of adjoining land; one whose property abuts another's.

“The major right of [an abutter] is that of access to his property — a right of reasonable ingress and egress. He

is entitled to compensation for any substantial impairment of this reasonable access. The right normally includes the right to have, at some point, a driveway onto his premises. An abutter does *not* have the right to the continued flow of traffic in the same amount or pattern past his premises." Osborne M. Reynolds, Jr., *Handbook of Local Government Law* § 180, at 620 (1982).

2. Land that adjoins the land in question.

abutting foot. See FRONT FOOT.

a/c. abbr. ACCOUNT (1).

academic, adj. **1.** Of or relating to a school or a field of study; esp., of or relating to a field of study that is not vocational or commercial, such as the liberal arts <academic courses>. **2.** Theoretical; specif., not practical or immediately useful <academic question>.

academic freedom. The right (esp. of a university teacher) to speak freely about political or ideological issues without fear of loss of position or other reprisal.

academic lawyer. A law professor, usu. one who maintains a law practice on the side.

Académie de Droit International de La Haye. See HAGUE ACADEMY OF INTERNATIONAL LAW.

academy. **1.** An institution of higher learning. **2.** An association dedicated to the advancement of knowledge in a particular field, such as the American Academy of Matrimonial Lawyers. **3.** A private high school. **4.** (*cap.*) A garden near Athens where Plato taught; hence, the school of philosophy that he led.

a cancellando (ay kan-sə-lan-doh). [Law Latin] From canceling.

"It has its name of chancery, *cancellaria*, from the judge who presides here, the lord chancellor or *cancellarius*; who, Sir Edward Coke tells us, is so termed *a cancellando*, from cancelling the king's letters patents when granted contrary to law..." 3 William Blackstone, *Commentaries on the Laws of England* 46 (1768).

a cancellis (ay kan-sel-is), *n.* [Law Latin] *Hist.* A chancellor, so called because he performed the duties of office behind a *cancelli* ("lattice").

a cancellis curiae explodi (ay kan-sel-is kyoor-ee-I ek-splōh-di). [Law Latin] *Hist.* To be expelled from the bar of the court.

a cause de cy (ay kaw-zə də see), *adv.* [Law French] For this reason.

accedas ad curiam (ak-see-dəs ad kyoor-ee-əm), *n.* [Law Latin "you are to go to the court"] *Hist.* An original writ for removing a replevin action to a royal court from either of two feudal courts — a court baron or a hundred court. • It is a *recordare facias loquelam* for replevin actions. See RECORDARE FACIAS LOQUELAM.

accede (ak-seed), *vb.* To consent or agree. — **accession**, *n.* — **accedence** (ak-see-dənts), *n.*

Accelerated Cost Recovery System. An accounting method that is used to calculate asset depreciation and that allows for the faster recovery of costs by assigning the asset a shorter useful life than was previously permitted under the Internal Revenue Code. • This system applies to property put into service from 1981 to 1986. It was replaced in 1986 by the Modified Accelerated Cost Recovery System. — *Abbr.* ACRS.

accelerated depreciation method. See DEPRECIATION METHOD.

accelerated remainder. See REMAINDER.

acceleration, n. **1.** The advancing of a loan agreement's maturity date so that payment of the entire debt is due immediately. **2.** The shortening of the time for vesting in possession of an expectant interest. — Also termed *acceleration of remainder*. **3. Property.** The hastening of an owner's time for enjoyment of an estate because of the failure of a preceding estate. **4. Securities.** The SEC's expediting of a registration statement's effective date so that the registrant bypasses the required 20-day waiting period. — **accelerate**, *vb.*

acceleration clause. A loan-agreement provision that requires the debtor to pay off the balance sooner than the due date if some specified event occurs, such as failure to pay an installment or to maintain insurance. Cf. INSECURITY CLAUSE.

acceleration of remainder. See ACCELERATION (2).

acceptance, n. **1.** An agreement, either by express act or by implication from conduct, to the terms of an offer so that a binding contract is formed. • If an acceptance modifies the terms or adds new ones, it generally operates as a counteroffer. Cf. OFFER.

acceptance by silence. Acceptance of an offer not by explicit words but through the lack of an offeree's response in circumstances in which the relationship between the offeror and the offeree justifies both the offeror's expectation of a reply and the offeror's reasonable conclusion that the lack of one signals acceptance. ● Ordinarily, silence does not give rise to an acceptance of an offer, but this exception arises when the offeree has a duty to speak.

qualified acceptance. A conditional or partial acceptance that varies the original terms of an offer and operates as a counteroffer; esp., in negotiable instruments, an acceptor's variation of the terms of the instrument.

2. A buyer's assent that the goods are to be taken in performance of a contract for sale. ● Under UCC § 2-606, a buyer's acceptance consists in (1) signifying to the seller that the goods are conforming ones or that the buyer will take them despite nonconformities, (2) not making an effective rejection, or (3) taking any action inconsistent with the seller's ownership. If the contract is for the sale of goods that are not identified when the contract is entered into, there is no acceptance until the buyer has had a reasonable time to examine the goods. But if the buyer deals with them as owner, as by reselling them, a court may find constructive acceptance.

"Acceptance means communicated acceptance... [It] must be something more than a mere mental assent." William R. Anson, *Principles of the Law of Contract* 34 (Arthur L. Corbin ed., 3d Am. ed. 1919). [But Corbin adds:] "This use of the word 'communicated' is open to some objection. To very many persons the word means that knowledge has been received. Frequently a contract is made even though the offeror has no such knowledge. In such case the acceptance is not 'communicated' and yet it consummates the contract." *Id.* n.2.

"Acceptance of a conveyance or of a document containing a promise is a manifestation of assent to the terms thereof made, either before or after delivery, in accordance with any requirements imposed by the grantor or promisor. If the acceptance occurs before delivery and is not binding as an option contract, it is revocable until the moment of delivery." Restatement (Second) of Contracts § 106 (1981).

3. The formal receipt of and agreement to pay a negotiable instrument. 4. A negotiable instrument, esp. a bill of exchange, that has been accepted for payment.

acceptance au besoin (oh bə-zwan). [French "in case of need"] An acceptance by one who has agreed to pay the draft in case the drawee fails to do so.

acceptance for honor. An acceptance or undertaking not by a party to the instrument,

but by a third party, for the purpose of protecting the honor or credit of one of the parties, by which the third party agrees to pay the debt when it becomes due if the original drawee does not. ● This type of acceptance inures to the benefit of all successors to the party for whose benefit it is made. — Also termed *acceptance supra protest*.

accommodation acceptance. The acceptance of an offer to buy goods for current or prompt shipment by shipping nonconforming goods after notifying the buyer that the shipment is intended as an accommodation. ● This type of "acceptance" is not truly an acceptance under contract law, but operates instead as a counteroffer if the buyer is duly notified.

banker's acceptance. A bill of exchange drawn on and accepted by a commercial bank. ● Banker's acceptances are often issued to finance the sale of goods in international trade. — Abbr. BA. — Also termed *bank acceptance*.

blank acceptance. Acceptance by a bill-of-exchange drawee before the bill is made, as indicated by the drawee's signature on the instrument.

conditional acceptance. An agreement to pay a draft on the occurrence or nonoccurrence of a particular event.

express acceptance. A written or oral expression indicating that the drawee has seen the instrument and does not dispute its sufficiency. ● While a written acceptance is typically signified by the stamped or written word "accepted" or "presented" usu. on the instrument itself, an oral acceptance must be made directly to a drawer or holder who has waived the right to a written acceptance.

implied acceptance. An acceptance implied by a drawee whose actions indicate an intention to comply with the request of the drawer; conduct by the drawee from which the holder is justified in concluding that the drawee intends to accept the instrument.

special acceptance. An acceptance that departs from either the terms of a bill or the terms added to but not otherwise expressed in a bill. ● An example is an acceptance of a draft as payable in a particular place even though the draft contains no such limitation.

trade acceptance. A bill of exchange for the amount of a specific purchase, drawn on and accepted by the buyer for payment at a specified time.

5. An insurer's agreement to issue a policy of insurance. — **accept**, *vb.*

"And in some instances, insurance companies have even specified in the application forms that acceptance of an applicant's offer will not occur until the insurance policy is literally delivered to the applicant — that is, the insurer chooses to structure the arrangement so that acceptance is to be manifested by the physical delivery of the insurance policy to the applicant." Robert E. Keeton & Alan I. Widiss, *Insurance Law: A Guide to Fundamental Principles, Legal Doctrines, and Commercial Practices* § 2.1, at 39-40 (1988).

acceptance au besoin. See ACCEPTANCE (4).

acceptance by silence. See ACCEPTANCE (1).

acceptance company. See *sales finance company* under FINANCE COMPANY.

acceptance credit. See *time letter of credit* under LETTER OF CREDIT.

acceptance doctrine. *Construction law.* The principle that, once an owner accepts the work of a contractor, the contractor is not liable to third parties for an injury arising from the contractor's negligence in performing under the contract, unless the injury results from a hidden, imminently dangerous defect that the contractor knows about and the owner does not know about. — Also termed *accepted-work doctrine*.

acceptance for honor. See ACCEPTANCE (4).

acceptance-of-the-benefits rule. The doctrine that a party may not appeal a judgment after having voluntarily and intentionally received the relief provided by it.

acceptance sampling. The practice of examining only a few items from a shipment to determine the acceptability of the whole shipment.

acceptance supra protest. See *acceptance for honor* under ACCEPTANCE.

acceptare (ak-sep-tair-ee), *vb.* [Latin] *Civil law.* To accept or assent to, as a promise made by another.

accepted-work doctrine. See ACCEPTANCE DOCTRINE.

acceptilation (ak-sep-tə-lay-shən). *Civil law.* An oral release from an obligation even though payment has not been made in full; a complete discharge. Cf. APOCHA.

acceptor. A person or entity that accepts a negotiable instrument and agrees to be primarily responsible for its payment or performance.

acceptor supra protest. One who accepts a bill that has been protested, for the honor of the drawer or an indorser.

access, *n.* **1.** An opportunity or ability to enter, approach, pass to and from, or communicate with <access to the courts>. **2.** *Copyright.* An opportunity to view or copy a copyrighted work <the duplication of the error proved that the defendant had access>. — **access**, *vb.*

"Since direct evidence of copying is rarely available, a plaintiff can rely upon circumstantial evidence to prove this essential element; the most important component of such circumstantial evidence to support a copyright infringement claim is proof of access. Evidence of access and substantial similarity create an inference of copying and establish a prima facie case of copying." 18 Am. Jur. 2d *Copyright and Literary Property* § 206 (1985).

multiple access. *Family law.* In a paternity suit, the defense that the mother had lovers other than the defendant around the time of conception.

access easement. See EASEMENT.

accession (ak-sesh-ən). **1.** The act of acceding or agreeing <the family's accession to the kidnapper's demands>. **2.** A coming into possession of a right or office <as promised, the state's budget was balanced within two years after the governor's accession>. **3.** *Int'l law.* The process by which a nation becomes a party to a treaty that has already been agreed on by other nations <Italy became a party to the nuclear-arms treaty by accession>. — Also termed *adherence*; *adhesion*. **4.** The acquisition of title to personal property by bestowing labor on a raw material to convert it to another thing <the owner's accession to the lumber produced from his land>. — Also termed (in Roman law) *accessio*. See ADJUNCTION (2).

"*Accessio* is the combination of two chattels belonging to different persons into a single article: as when A's cloth is used to patch B's coat, or a vehicle let on hire-purchase has new accessories fitted to it." R.F.V. Heuston, *Salmond on the Law of Torts* 113 (17th ed. 1977).

5. A property owner's right to all that is added to the land, naturally or by labor, including land left by floods and improvements made by others <the newly poured concrete driveway became the homeowner's property by accession>. Cf. ANNEXATION. **6.** An improvement to existing personal property, such as new shafts on golf clubs.

"The problem of accessions arises infrequently, judging from reported cases, but an obvious instance of the difficulty arises where a motor vehicle is being financed by a secured party and the debtor in possession of necessity acquires a new engine or new tires for the vehicle. . . . If the seller of the engine or tires reserved a security interest at the time the goods were installed, the seller should prevail over the vehicle's secured party, with a right to remove the accessions. Conversely, if the sale were on open credit with no security interest reserved, or if the seller acquired a security interest after installation of the goods, then the financier of the vehicle should prevail." Ray D. Henson, *Handbook on Secured Transactions Under the Uniform Commercial Code* § 4-22, at 93 (2d ed. 1979).

7. ACCESSORYSHIP.

accessorial (ak-sə-sor-ee-əl), *adj.* **1.** (Of a promise) made for the purpose of strengthening another's credit <an accessorial pledge by way of guaranty>. — Also termed *accessory*. **2.** *Criminal law.* Of or relating to the accessory in a crime <accessorial guilt>.

accessorial obligation. See COLLATERAL OBLIGATION.

accessory (ak-ses-ə-ree), *n.* **1.** Something of secondary or subordinate importance. **2.** A person who aids or contributes in the commission of a crime. • An accessory is usu. liable only if the crime is a felony. — **accessory, *adj.*** — **accessoryship, *n.*** Cf. PRINCIPAL (2).

"In most jurisdictions, the common-law distinctions between principals and accessories have largely been abolished, although the pertinent statutes vary in form and substance. Conceptually, the common-law pattern remains the same: The person who aids, abets, commands, counsels, or otherwise encourages another to commit a crime is still regarded as a party to the underlying crime as at common law, even though the labels principal in the first degree, principal in the second degree, and accessory before the fact are no longer used, and even though it usually does not matter whether the aider and abettor is or is not present at the scene of the crime." 1 Charles E. Torcia, *Wharton's Criminal Law* § 35, at 202-03 (15th ed. 1993).

accessory after the fact. An accessory who knows that a crime has been committed and who helps the offender try to escape arrest or punishment. • The liability of such an accessory is still treated separately under most penal statutes. There are four requirements: (1) someone else must have committed a felony, and it must have been completed before the accessory's act; (2) the accessory must not be guilty as a principal; (3) the accessory must personally help the principal try to avoid the consequences of the felony; and (4) the accessory's assistance must be rendered

with guilty knowledge. — Sometimes shortened to *accessory after*.

"At common law, an accessory after the fact is one who, knowing that a felony has been committed by another, receives, relieves, comforts, or assists the felon, or in any manner aids him to escape arrest or punishment. To be guilty as an accessory after the fact one must have known that a completed felony was committed, and that the person aided was the guilty party. The mere presence of the defendant at the scene of the crime will not preclude a conviction as an accessory after the fact, where the evidence shows the defendant became involved in the crime after its commission." 21 Am. Jur. 2d *Criminal Law* § 209, at 275-76 (1998).

accessory at the fact. See *principal in the second degree* under PRINCIPAL (2).

"A principal in the second degree is one by whom the actual perpetrator of the felony is aided and abetted at the very time when it is committed; for instance, a car-owner sitting beside the chauffeur who kills someone by over-fast driving, or a passenger on a clandestine joy-riding expedition which results in manslaughter; or a bigamist's second 'wife', if she *knows* he is committing bigamy. (In early law he was not ranked as a principal at all, but only as a third kind of accessory — the accessory at the fact.)" J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 86 (16th ed. 1952).

accessory before the fact. An accessory who assists or encourages another to commit a crime but who is not present when the offense is actually committed. • Most jurisdictions have abolished this category of accessory and instead treat such an offender as an accomplice. — Sometimes shortened to *accessory before*. See ACCOMPLICE.

"An accessory before the fact is a person who procures or advises one or more of the principals to commit the felony. This definition requires from him an instigation so active that a person who is merely shown to have acted as the stake-holder for a prize-fight, which ended fatally, would not be punishable as an accessory. The fact that a crime has been committed in a manner different from the mode which the accessory had advised will not excuse him from liability for it. Accordingly if A hires B to poison C, but B instead kills C by shooting him, A is none the less liable as accessory before the fact to C's murder. But a man who has counselled a crime does not become liable as accessory if, instead of any form of the crime suggested, an entirely different offence is committed." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 88 (16th ed. 1952).

accessory contract. See CONTRACT.

accessory obligation. See OBLIGATION.

accessory right. See RIGHT.

accessoryship. The status or fact of being an accessory. — Also termed (loosely) *accession*.

accessory use. See USE (1).

access to counsel. See RIGHT TO COUNSEL.

accident, n. **1.** An unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated. **2.** *Equity practice.* An unforeseen and injurious occurrence not attributable to mistake, neglect, or misconduct. — **accidental, adj.**

“The word ‘accident,’ in accident policies, means an event which takes place without one’s foresight or expectation. A result, though unexpected, is not an accident; the means or cause must be accidental. Death resulting from voluntary physical exertions or from intentional acts of the insured is not accidental, nor is disease or death caused by the vicissitudes of climate or atmosphere the result of an accident; but where, in the act which precedes an injury, something unforeseen or unusual occurs which produces the injury, the injury results through accident.” 1A John Alan Appleman & Jean Appleman, *Insurance Law and Practice* § 360, at 455 (rev. vol. 1981).

“Policies of liability insurance as well as property and personal injury insurance frequently limit coverage to losses that are caused by ‘accident.’ In attempting to accommodate the layman’s understanding of the term, courts have broadly defined the word to mean an occurrence which is unforeseen, unexpected, extraordinary, either by virtue of the fact that it occurred at all, or because of the extent of the damage. An accident can be either a sudden happening or a slowly evolving process like the percolation of harmful substances through the ground. Qualification of a particular incident as an accident seems to depend on two criteria: 1. the degree of foreseeability, and 2. the state of mind of the actor in intending or not intending the result.” John F. Dobbyn, *Insurance Law in a Nutshell* 128 (3d ed. 1996).

culpable accident. An accident due to negligence. • A culpable accident, unlike an unavoidable accident, is no defense except in those few cases in which wrongful intent is the exclusive and necessary basis for liability.

unavoidable accident. An accident that cannot be avoided because it is produced by an irresistible physical cause that cannot be prevented by human skill or reasonable foresight. • Examples include accidents resulting from lightning or storms, perils of the sea, inundations or earthquakes, or sudden illness or death. Unavoidable accident has been considered a means of avoiding both civil and criminal liability. — Also termed *inevitable accident*; *pure accident*; *unavoidable casualty*. Cf. ACT OF GOD.

“An unavoidable accident is an occurrence which was not intended and which, under all the circumstances, could not have been foreseen or prevented by the exercise of reasonable precautions. That is, an accident is considered unavoidable or inevitable at law if it was not

proximately caused by the negligence of any party to the action, or to the accident.” W. Page Keeton et al., *The Law of Torts* § 29, at 162 (5th ed. 1984).

accidental-death benefit. An insurance-policy provision that allows for a payment (often double the face amount of the policy) if the insured dies as a result of some mishap or sudden external force. — Abbr. ADB.

accidental injury. See INJURY.

accidental killing. Homicide resulting from a lawful act performed in a lawful manner under a reasonable belief that no harm would be possible. — Also termed *death by misadventure*; *homicide by misadventure*; *killing by misadventure*; *homicide per infortunium*. See *justifiable homicide* under HOMICIDE. Cf. *involuntary manslaughter* under MANSLAUGHTER.

accidental stranding. See STRANDING.

accident and health insurance. See *health insurance* under INSURANCE.

accident insurance. See INSURANCE.

accident policy. See INSURANCE POLICY.

accidere (ak-sid-ər-ee), *vb.* [Latin] *Civil law.* **1.** To fall down. **2.** By extension, to befall or happen to.

accipere (ak-sip-ər-ee), *vb.* [Latin] *Civil law.* To receive; esp., to take under a will.

accipitare (ak-sip-ə-tair-ee), *vb.* [Law Latin] *Hist.* To pay (a lord) in order to become a vassal; esp., to pay relief upon succeeding to an estate.

accola (ak-ə-lə), *n.* [Latin “person living nearby”] **1.** *Roman law.* A person who inhabits or occupies land near a certain place, such as one who dwells near a river. **2.** *Hist.* An agricultural tenant; a tenant of a manor.

accomenda (ak-ə-men-də). *Hist. Maritime law.* A contract between a cargo owner and a shipmaster whereby the parties agree to sell the cargo and divide the profits (after deducting the owner’s costs). • This contract actually consists of two agreements: a *mandatum*, by which the owner gives the shipmaster the power to dispose of the cargo, and a partnership contract, by which the parties divide any profits arising from the sale. See MANDATE (5).

accommodated party. A party for whose benefit an accommodation party signs and incurs liability. Cf. ACCOMMODATION PARTY.

accommodation, n. **1.** A loan or other financial favor. **2.** The act of signing an accommodation paper as surety for another. See ACCOMMODATION PAPER. **3.** The act or an instance of making a change or provision for someone or something; an adaptation or adjustment. See PUBLIC ACCOMMODATION; REASONABLE ACCOMMODATION.

accommodation acceptance. See ACCEPTANCE (4).

accommodation bill. See ACCOMMODATION PAPER.

accommodation indorsement. See INDORSEMENT.

accommodation indorser. See INDORSER.

accommodation land. See LAND.

accommodation line. Insurance. One or more policies that an insurer issues to retain the business of a valued agent, broker, or customer, even though the risk would not be accepted under the insurer's usual standards.

accommodation loan. See LOAN.

accommodation maker. See MAKER.

accommodation note. See NOTE (1).

accommodation paper. A negotiable instrument that one party cosigns, without receiving any consideration, as surety for another party who remains primarily liable. • An accommodation paper is typically used when the cosigner is more creditworthy than the principal debtor. — Also termed *accommodation bill*; *accommodation note*.

accommodation party. A person who, without recompense or other benefit, signs a negotiable instrument for the purpose of being a surety for another party (called the *accommodated party*) to the instrument. • The accommodation party can sign in any capacity (i.e., as maker, drawer, acceptor, or indorser). An accommodation party is liable to all parties except the accommodated party, who impliedly agrees to pay the note or draft and to indemnify the accommodation party for all losses incurred in having to pay it. See SURETY.

accommodation surety. See *voluntary surety* under SURETY.

accommodatum (ə-kom-ə-day-təm), *n.* See COMMODATUM.

accompany, vb. To go along with (another); to attend. • In automobile-accident cases, an unlicensed driver is not considered accompanied by a licensed driver unless the latter is close enough to supervise and help the former.

accomplice (ə-kom-plis). **1.** A person who is in any way concerned with another in the commission of a crime, whether as a principal in the first or second degree or as an accessory. • Although the definition includes an accessory before the fact, not all authorities include an accessory after the fact.

“There is some authority for using the word ‘accomplice’ to include all principals and all accessories, but the preferred usage is to include all principals and accessories before the fact, but to exclude accessories after the fact. If this limitation is adopted, the word ‘accomplice’ will embrace all perpetrators, abettors and inciters.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 727 (3d ed. 1982).

“A person is an ‘accomplice’ of another in committing a crime if, with the intent to promote or facilitate the commission of the crime, he solicits, requests, or commands the other person to commit it, or aids the other person in planning or committing it.” 1 Charles E. Torcia, *Wharton’s Criminal Law* § 38, at 220 (15th ed. 1993).

2. A person who knowingly, voluntarily, and intentionally unites with the principal offender in committing a crime and thereby becomes punishable for it. See ACCESSORY. Cf. PRINCIPAL (2).

“By definition an accomplice must be a person who acts with the purpose of promoting or facilitating the commission of the substantive offense for which he is charged as an accomplice. *State v. White*, N.J. 1984, 484 A.2d 691, 98 N.J. 122.” Model Penal Code § 2.06 annot. (1997).

accomplice liability. See LIABILITY.

accomplice witness. See WITNESS.

accord, n. **1.** An amicable arrangement between parties, esp. between peoples or nations; COMPACT; TREATY. **2.** An offer to give or to accept a stipulated performance in the future to satisfy an obligor's existing duty, together with an acceptance of that offer. • The performance becomes what is known as a *satisfaction*. — Also termed *executory accord*; *accord executory*. See ACCORD AND SATISFACTION; SATISFACTION. Cf. NOVATION.

"An accord is a contract under which an obligee promises to accept a stated performance in satisfaction of the obligor's existing duty. Performance of the accord discharges the original duty." Restatement (Second) of Contracts § 281(1) (1981).

"The term *executory accord* is sometimes used to underscore the point that the accord itself does not discharge the duty. It also reflects an historical anachronism, now generally rejected, under which an unperformed accord was not a defense to an action on the underlying duty." E. Allan Farnsworth, *Contracts* § 4.24, at 285 n.8 (1982).

3. A signal used in a legal citation to introduce a case clearly supporting a proposition for which another case is being quoted directly.

accord, *vb.* **1.** To furnish or grant, esp. what is suitable or proper <accord the litigants a stay of costs pending appeal>. **2.** To agree <they accord in their opinions>.

accord and satisfaction. An agreement to substitute for an existing debt some alternative form of discharging that debt, coupled with the actual discharge of the debt by the substituted performance. ● The new agreement is called the *accord*, and the discharge is called the *satisfaction*. Cf. NOVATION; SETTLEMENT.

"'Accord and satisfaction' means an agreement between the parties that something shall be given to, or done for, the person who has the right of action, in satisfaction of the cause of action. There must be not only agreement ('accord') but also consideration ('satisfaction'). Such an arrangement is really one of substituted performance." 1 E.W. Chance, *Principles of Mercantile Law* 101 (P.W. French ed., 13th ed. 1950).

accordant (ə-kor-dənt), *adj.* In agreement <accordant with these principles>.

accouchement (ə-koosh-mənt or ak-oosh-mawnt). [French] Childbirth.

account, *n.* **1.** A detailed statement of the debits and credits between parties to a contract or to a fiduciary relationship; a reckoning of monetary dealings <the trustee balanced the account at the end of each month>. ● In wills and estates, an account is a brief financial statement of the manner in which an executor or administrator has performed the official duties of collecting the estate's assets and paying those who are entitled. An account charges the executor or administrator with the value of the estate as shown by the inventory, plus any increase, and credits the executor with expenses and costs, duly authorized disbursements, and the executor's commission. — Abbr. acct.; a/c. **2.** A course of business dealings or other relations for which records must be kept <open a brokerage account>. **3.** ACCOUNTING (3)

<the principal filed an action for account against his agent>. — Also spelled (archaically) *accompt*.

"The action of account lies where one has received goods or money for another in a fiduciary capacity, to ascertain and recover the balance due. It can only be maintained where there is such a relationship between the parties, as to raise an obligation to account, and where the amount due is uncertain and unliquidated." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 56, at 144 (Henry Winthrop Ballantine ed., 3d ed. 1923).

4. ACCOUNTING (4) <the contractor filed an action for account against the nonpaying customer>. **5.** A statement by which someone seeks to explain an event <Fred's account of the holdup differed significantly from Martha's>.

account in trust. An account established by an individual to hold the account's assets in trust for someone else.

account payable. (*usu. pl.*) An account reflecting a balance owed to a creditor; a debt owed by an enterprise in the normal course of business dealing. — Often shortened to *payable*. — Also termed *note payable*. Pl. *accounts payable*.

account receivable. (*usu. pl.*) An account reflecting a balance owed by a debtor; a debt owed by a customer to an enterprise for goods or services. — Often shortened to *receivable*. — Also termed *note receivable*. Pl. *accounts receivable*.

account rendered. An account produced by the creditor and presented for the debtor's examination and acceptance.

account settled. An account with a paid balance.

account stated. **1.** A balance that parties to a transaction or settlement agree on, either expressly or by implication. ● The phrase also refers to the agreement itself or to the assent giving rise to the agreement.

"An account stated is a manifestation of assent by debtor and creditor to a stated sum as an accurate computation of an amount due the creditor." Restatement (Second) of Contracts § 282(1) (1981).

"If a creditor and a debtor wish to compromise or liquidate a disputed or unliquidated debt, they may do so by either a substituted contract or an accord. If, however, their agreement is in the nature of a computation, it is called an *account stated*. An account stated, then, is a manifestation of assent by both parties to the stated sum as an accurate computation of the debt." E. Allan Farnsworth, *Contracts* § 4.24, at 286 (1982).

2. A plaintiff's claim in a suit for such a balance. **3.** *Equity practice.* A defendant's plea in response to an action for an accounting. ● The defendant states that the balance due on

the statement of the account has been discharged and that the defendant holds the plaintiff's release. — Also termed *stated account*.

accumulated-adjustments account. *Tax.* An item on the books of an S corporation (usu. an equity item on the corporation's balance sheet) to account for taxable-income items passed through to shareholders, such as accumulated earnings — earned before the corporation converted from a C corporation to an S corporation — that would have been distributed as a dividend to the shareholders if the corporation had remained a C corporation. • One of the theories underlying the accumulated-adjustments account is that the shareholders should not be permitted to avoid dividend-tax treatment on a corporation's accumulated earnings just because the corporation converts from C status to S status. IRC (26 USCA) § 1368(e)(1). — Abbr. AAA.

adjunct account. An account that accumulates additions to another account.

assigned account. A pledge of an account receivable to a bank or factor as security for a loan.

bank account. A deposit or credit account with a bank, such as a demand, time, savings, or passbook account. UCC § 4-104(a).

blocked account. An account at a bank or other financial institution, access to which has been restricted either by the government or by an authorized person. • An account may be blocked for a variety of reasons, as when hostilities erupt between two countries and each blocks access to the other's accounts. — Also termed *frozen account*.

book account. A detailed statement of debits and credits giving a history of an enterprise's business transactions.

capital account. An account on a partnership's balance sheet representing a partner's share of the partnership capital.

charge account. See CHARGE ACCOUNT.

closed account. An account that no further credits or debits may be added to but that remains open for adjustment or setoff.

community account. An account consisting of commingled and community funds. See COMMUNITY PROPERTY.

contra account (*kon-trə*). An account that serves to reduce the gross valuation of an asset.

custodial account. An account opened on behalf of someone else, such as one opened by a parent for a minor child.

deposit account. A demand, time, savings, passbook, or similar account maintained with a bank, savings-and-loan association, credit union, or like organization, other than investment property or an account evidenced by an instrument. UCC § 9-102(a)(20). — Abbr. D.A.

escrow account. **1.** A bank account, generally held in the name of the depositor and an escrow agent, that is returnable to the depositor or paid to a third person on the fulfillment of specified conditions. — Also termed *escrow deposit*. See ESCROW. **2.** See *impound account*.

frozen account. See *blocked account*.

impound account. An account of accumulated funds held by a lender for payment of taxes, insurance, or other periodic debts against real property. — Also termed *escrow*; *escrow account*; *reserve account*. See ESCROW.

intermediate account. An account filed by an executor, administrator, or guardian after the initial account and before the final account.

joint account. A bank or brokerage account opened by two or more people, by which each party has a present right to all funds in the account and, upon the death of one party, the survivors become the owners of the account, with no right of the deceased party's heirs or devisees to share in it. — Abbr. JA. — Also termed *joint-and-survivorship account*.

lien account. A statement of claims that fairly informs the owner and public of the amount and nature of a lien.

long account. An account involving numerous items or complex transactions in an equitable action, usu. referred to a master or commissioner.

margin account. A brokerage account that allows an investor to buy or sell securities on credit, with the securities usu. serving as collateral for the broker's loan.

multiple-party account. An account that has more than one owner with a current interest in the account. • Multiple-party accounts include joint accounts, payable-on-death (P.O.D.) accounts, and trust accounts. Uniform Probate Code § 6-201(5).

mutual account. An account showing mutual transactions between parties, as by showing debits and credits on both sides of the account.

“[E]ach party to a mutual account occupies both a debtor and creditor relation with regard to the other party. A mutual account arises where there are mutual dealings,

and the account is allowed to run with a view to an ultimate adjustment of the balance. In order to establish a mutual account, it is not enough that the parties to the account have cross demands or cross open accounts; there must be an actual mutual agreement, express or implied, that the claims are to be set off against each other." 1 Am. Jur. 2d *Accounts and Accounting* § 6, at 564 (1994).

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

nominal account (nahm-ə-nəl). An income-statement account that is closed into surplus at the end of the year when the books are balanced.

NOW account (now). An interest-bearing savings account on which the holder may write checks. — Also termed *negotiable-order-of-withdrawal account*.

offset account. One of two accounts that balance against each other and cancel each other out when the books are closed.

open account. 1. An unpaid or unsettled account. 2. An account that is left open for ongoing debit and credit entries and that has a fluctuating balance until either party finds it convenient to settle and close, at which time there is a single liability.

pledged account. A mortgagor's account pledged to a lender in return for a loan bearing interest at a below-market rate.

profit-and-loss account. A transfer account of all income and expense accounts, closed into the retained earnings of a corporation or the capital account of a partnership.

real account. An account that records assets and liabilities rather than receipts and payments.

reserve account. See *impound account*.

revolving charge account. See *revolving credit* under CREDIT (4).

running account. An open, unsettled account that exhibits the reciprocal demands between the parties.

sequestered account. An account (such as a joint bank account) that a court has ordered to be separated, frozen, and impounded.

share-draft account. An account that a member maintains at a credit union and that can be drawn on through the use of share drafts payable to third parties. • A share-draft account operates much like a checking account operates at a bank. — Also termed *share account*.

accountable, *adj.* Responsible; answerable <the company was held accountable for the employee's negligence>. — **accountability**, *n.*

accountable receipt. See RECEIPT.

accountant. 1. A person authorized under applicable law to practice public accounting; a person whose business is to keep books or accounts, to perform financial audits, to design and control accounting systems, and to give tax advice. • For some purposes, the term includes a professional accounting association, a corporation, and a partnership, if they are so authorized.

certified public accountant. An accountant who has satisfied the statutory and administrative requirements to be registered or licensed as a public accountant. — Abbr. CPA.

2. A defendant in an action of account.

accountant-client privilege. See PRIVILEGE (3).

accountant's lien. See LIEN.

account book. A journal in which a business's transactions are recorded. See SHOP BOOKS.

account debtor. See DEBTOR.

account executive. See STOCKBROKER.

account for. 1. To furnish a good reason or convincing explanation for; to explain the cause of. 2. To render a reckoning of (funds held, esp. in trust). 3. To answer for (conduct).

accounting. 1. The act or a system of establishing or settling financial accounts; esp., the process of recording transactions in the financial records of a business and periodically extracting, sorting, and summarizing the recorded transactions to produce a set of financial records. — Also termed *financial accounting*. 2. A rendition of an account, either voluntarily or by court order. • The term frequently refers to the report of all items of property, income, and expenses prepared by a personal representative, trustee, or guardian and given to heirs, beneficiaries, and the probate court. 3. A legal action to compel a defendant to account for and pay over money owed to the plaintiff but held by the defendant (often the plaintiff's agent); ACCOUNTING FOR PROFITS. — Also termed *account render*; *account*. 4. More broadly, an action for the recovery of money for services performed, property sold and delivered, money

loaned, or damages for the nonperformance of simple contracts. • Such an action is available when the rights of parties will be adequately protected by the payment of money. — Also termed *action on account*; *account*; *action of book debt*. **5. Commercial law.** An equitable proceeding for a complete settlement of all partnership affairs, usu. in connection with partner misconduct or with a winding up. See WINDING UP. **6. Secured transactions.** A record that (1) is authenticated by a secured party, (2) indicates the aggregate unpaid secured obligation as of a date no more than 35 days before or after the date of the record, and (3) identifies the components of the obligations in reasonable detail. UCC § 9-102(a)(2).

accounting for profits. An action for equitable relief against a person in a fiduciary relationship to recover profits taken in a breach of the relationship. — Often shortened to *accounting*.

“The term accounting, or accounting for profits, is used in several ways. In its most important meaning, it is a restitutionary remedy based upon avoiding unjust enrichment. In this sense it reaches monies owed by a fiduciary or other wrongdoer, including profits produced by property which in equity and good conscience belonged to the plaintiff. It resembles a constructive trust in that tracing may be used to reach profits. But even if tracing fails, the plaintiff may recover a judgment for the profits due from use of his property.” Dan B. Dobbs, *Law of Remedies* § 4.3(5), at 408 (2d ed. 1993).

accounting method. A system for determining income and expenses for tax purposes.

accrual accounting method (ə-kroo-əl). An accounting method that records entries of debits and credits when the liability arises, rather than when the income or expense is received or disbursed.

capitalization accounting method. A method of determining an asset's present value by discounting its stream of expected future benefits at an appropriate rate.

cash-basis accounting method. An accounting method that considers only cash actually received as income and cash actually paid out as an expense.

completed-contract accounting method. A method of reporting profit or loss on certain long-term contracts by recognizing gross income and expenses in the tax year that the contract is completed.

cost accounting method. The practice of recording the value of assets in terms of their cost. — Also termed *cost accounting*.

direct charge-off accounting method. A system of accounting by which a deduction

for bad debts is allowed when an account has become partially or completely worthless.

equity accounting method. A method of accounting for long-term investment in common stock based on acquisition cost, investor income, net losses, and dividends.

fair-value accounting method. The valuation of assets at present actual or market value.

installment accounting method. A method by which a taxpayer can spread the recognition of gains from a sale of property over the payment period by computing the gross-profit percentage from the sale and applying it to each payment.

percentage-of-completion method. An accounting method in which revenue is recognized gradually during the completion of the subject matter of the contract.

physical-inventory accounting method. A method of counting a company's goods at the close of an accounting period.

purchase accounting method. A method of accounting for mergers whereby the total value paid or exchanged for the acquired firm's assets is recorded on the acquiring firm's books, and any difference between the fair market value of the assets acquired and the purchase price is recorded as goodwill.

accounting period. A regular span of time used for accounting purposes; esp., a period used by a taxpayer in determining income and related tax liability.

Accounting Research Bulletin. A publication containing accounting practices recommended by the American Institute of Certified Public Accountants. — Abbr. ARB.

Accounting Series Release. A bulletin providing the Securities and Exchange Commission's requirements for accounting and auditing procedures to be followed in reports filed with that agency. — Abbr. ASR.

account in trust. See ACCOUNT.

account party. The customer in a letter-of-credit transaction. — Also termed *applicant*.

account payable. See ACCOUNT.

account receivable. See ACCOUNT.

account render. See ACCOUNTING (3).

account rendered. See ACCOUNT.

account representative. See STOCKBROKER.

account settled. See ACCOUNT.

accounts-receivable insurance. See INSURANCE.

account stated. See ACCOUNT.

account statement. See STATEMENT OF ACCOUNT.

accouple, vb. *Archaic.* To unite; to marry.

accredit (ə-kred-it), *vb.* **1.** To give official authorization or status to. **2.** To recognize (a school) as having sufficient academic standards to qualify graduates for higher education or for professional practice. **3.** *Int'l law.* To send (a person) with credentials as an envoy. — **accreditation** (ə-kred-i-tay-shən), *n.*

accredited investor. An investor treated under the Securities Act of 1933 as being knowledgeable and sophisticated about financial matters, esp. because of the investor's large net worth. • In a securities offering that is exempt from registration, an accredited investor (which can be a person or an entity) is not entitled to protection under the Act's disclosure provisions, although the investor does keep its remedies for fraud.

accredited law school. See LAW SCHOOL.

accredited representative. See REPRESENTATIVE.

accredulitare (ə-kred-yə-lə-tair-ee), *vb.* [Law Latin] *Hist.* To purge an offense by an oath.

accretion (ə-kree-shən). **1.** The gradual accumulation of land by natural forces, esp. as alluvium is added to land situated on the bank of a river or on the seashore. Cf. ALLUVION; AVULSION (2); DELICTION; EROSION. **2.** *Civil law.* The right of heirs or legatees to unite their shares of the estate with the portion of any coheirs or legatees who do not accept their portion, fail to comply with a condition, or die before the testator. **3.** Any increase in trust property other than increases ordinarily considered as income.

accroach (ə-krohch), *vb.* To exercise power without authority; to usurp. — **accroachment** (ə-krohch-mənt), *n.*

accrocher (a-kroh-shay), *vb.* [Law French] **1.** ACCROACH. **2.** To delay.

accrocher un procès (a-kroh-shay ən proh-say). [French] To stay the proceedings in a suit.

accrual, clause of. See CLAUSE OF ACCRUAL.

accrual accounting method. See ACCOUNTING METHOD.

accrual bond. See BOND (3).

accrue (ə-kroo), *vb.* **1.** To come into existence as an enforceable claim or right; to arise <the plaintiff's cause of action for silicosis did not accrue until the plaintiff knew or had reason to know of the disease>.

"The term 'accrue' in the context of a cause of action means to arrive, to commence, to come into existence, or to become a present enforceable demand or right. The time of accrual of a cause of action is a question of fact." 2 Ann Taylor Schwing, *California Affirmative Defenses* § 25:3, at 17-18 (2d ed. 1996).

2. To accumulate periodically <the savings-account interest accrues monthly>. — **accrual**, *n.*

accrued asset. See ASSET.

accrued compensation. See COMPENSATION.

accrued depreciation. See *accumulated depreciation* under DEPRECIATION.

accrued dividend. See *accumulated dividend* under DIVIDEND.

accrued expense. See EXPENSE.

accrued income. See INCOME.

accrued interest. See INTEREST (3).

accrued liability. See LIABILITY.

accrued right. See RIGHT.

accrued salary. See SALARY.

accrued tax. See TAX.

accruer. See CLAUSE OF ACCRUAL.

accruing costs. See COST (3).

acct. abbr. ACCOUNT (1).

accumulated-adjustments account. See ACCOUNT.

accumulated depreciation. See DEPRECIATION.

accumulated dividend. See DIVIDEND.

accumulated-earnings credit. See CREDIT (7).

accumulated-earnings tax. See TAX.

accumulated income. See INCOME.

accumulated legacy. See LEGACY.

accumulated profit. See PROFIT.

accumulated surplus. See SURPLUS.

accumulated taxable income. See INCOME.

accumulation, n. The increase of a thing by repeated additions to it; esp., the increase of a fund by the repeated addition of the income that it creates. — **accumulate, vb.**

accumulations, rule against. A rule rendering void any accumulation of income beyond the period of perpetuities.

accumulation trust. See TRUST.

accumulative (ə-kyoo-myə-lay-tiv or -lə-tiv), *adj.* Increasing by successive addition; cumulative.

accumulative damages. See DAMAGES.

accumulative dividend. See *cumulative dividend* under DIVIDEND.

accumulative judgment. See JUDGMENT.

accumulative legacy. See LEGACY.

accumulative sentences. See *consecutive sentences* under SENTENCE.

accusation, n. 1. A formal charge of criminal wrongdoing. • The accusation is usu. presented

to a court or magistrate having jurisdiction to inquire into the alleged crime. **2.** An informal statement that a person has engaged in an illegal or immoral act.

malicious accusation. An accusation against another for an improper purpose and without probable cause. See MALICIOUS PROSECUTION.

accusator (ak-yoo-say-tər), *n.* [Latin] *Roman law.* A complainant in a criminal prosecution.

accusatorial system. See ADVERSARY SYSTEM.

accusatory (ə-kyoo-zə-tor-ee), *adj.* Accusing; having the nature of an accusation.

accusatory body. A body, such as a grand jury, charged with the duty to hear evidence and determine whether a person should be charged with a crime.

accusatory instrument. See CHARGING INSTRUMENT.

accusatory part. The section of an indictment in which the offense is named.

accusatory pleading. See PLEADING (1).

accusatory procedure. See ADVERSARY SYSTEM.

accusatory stage. The point in a criminal proceeding when the suspect's right to counsel attaches. • This occurs usu. after arrest and once interrogation begins.

accuse, vb. To charge (a person) judicially or publicly with an offense; to make an accusation against <she accused him of the crime> <he was accused as an accomplice>.

accused, n. 1. A person who has been blamed for wrongdoing <many people believed that the accused was incapable of committing such a brutal act>. **2.** Specifically, a person who has been subjected to actual restraints on liberty through an arrest or a person against whom a formal indictment or information has been returned <although Jordan was being vigorously questioned, he did not actually become an accused until the officer arrested him>.

accuser. A person who accuses another of a crime.

accusing jury. See GRAND JURY.

a ce (a sə), *adv.* [Law French] For this purpose.

a cel jour (ə sel zhoor), *adv.* [Law French] At this day.

ac etiam (ak ee-shee-əm or esh-ee-əm). [Law Latin] **1.** And also. • These words introduced a genuine claim in a pleading in a common-law case in which a fictitious claim had to be alleged to give the court jurisdiction. In other words, the phrase *ac etiam* directed the court to the real cause of action. — Also spelled *acetiam*.

“[T]o remedy this inconvenience, the officers of the king’s bench devised a method of adding what is called a clause of *ac etiam* to the usual complaint of trespass; the bill of Middlesex commanding the defendant to be brought in to answer the plaintiff of a plea of trespass, and also to a bill of debt: the complaint of trespass giving cognizance to the court, and that of debt authorizing the arrest.” 3 William Blackstone, *Commentaries on the Laws of England* 288 (1768).

2. Common-law pleading. The clause that introduced the real allegation after a fictitious allegation of trespass. — Also termed (in sense 2) *ac etiam clause*.

acid-test ratio. See QUICK-ASSET RATIO.

acknowledge, vb. **1.** To recognize (something) as being factual <acknowledge the federal court’s jurisdiction>. **2.** To show that one accepts responsibility for <acknowledge paternity of the child>. **3.** To make known the receipt of <acknowledged the plaintiff’s letter>. **4.** To confirm as genuine before an authorized officer <acknowledged before a notary public>. **5.** (Of a notary public or other officer) to certify as genuine <the notary acknowledged the genuineness of the signature>.

acknowledgment. **1.** A recognition of something as being factual. **2.** An acceptance of responsibility. **3.** The act of making it known that one has received something. **4.** A formal declaration made in the presence of an authorized officer, such as a notary public, by someone who signs a document and confirms that the signature is authentic. • In most states, the officer certifies that (1) he or she personally knows the document signer or has established the signer’s identity through satisfactory evidence, (2) the signer appeared before the officer on the date and in the place (*usu.* the county) indicated, and (3) the signer acknowledged signing the document freely. Cf. VERIFICATION (1).

“An acknowledgment is a verification of the fact of execution, but is not a verification of the contents of the instrument executed; in other words, an acknowledgment is the method of authenticating an instrument by showing it was the act of the person executing it, while a verification is a sworn statement as to the truth of the facts stated within an instrument.” 1A C.J.S. *Acknowledgments* § 2 (1985).

5. The officer’s certificate that is affixed to the document. — Also termed (in sense 5) *certificate of acknowledgment*; (loosely) *verification*. See PROOF OF ACKNOWLEDGMENT.

acknowledgment money. See LAUDEMIMUM.

ACLU. *abbr.* AMERICAN CIVIL LIBERTIES UNION.

a confectioe (ay kən-fek-shee-oh-nee). [Law Latin] From the making.

a confectioe praesentium (ay kən-fek-shee-oh-nee pri-zen-shee-əm). [Law Latin] From the making of the indentures.

a consiliis (ay kən-sil-ee-is), *n.* [Law Latin “of counsel”] See APOCRISARIUS.

a contrario sensu (ay kən-trair-ee-oh sens[y]oo), *adv.* [Law Latin] On the other hand; in the opposite sense.

acquaintance rape. See *date rape* under RAPE.

acquest (ə-kwest). See ACQUET.

acquet (a-kay or ə-kwet). [French *acquêt* “acquisition”] (*usu. pl.*) *Civil law.* Property acquired by purchase, gift, or any means other than inheritance; profits or gains of property between husband and wife. — Also termed *acquest*.

acquiesce (ak-wee-es), *vb.* To accept tacitly or passively; to give implied consent to (an act) <in the end, all the partners acquiesced in the settlement>. — **acquiescent, adj.**

acquiescence (ak-wee-es-ənts). **1.** A person’s tacit or passive acceptance; implied consent to an act. **2. Int’l law.** Passivity and inaction on foreign claims that, according to customary international law, *usu.* call for protest to assert, preserve, or safeguard rights. • The result is that binding legal effect is given to silence and inaction. Acquiescence, as a principle of substantive law, is grounded in the concepts of good faith and equity.

acquietandis plegiis (ə-kwɪ-ə-tan-dis plee-jee-is), *n.* [Law Latin “for acquitting sureties”] *Hist.* A writ to force a creditor to discharge a surety when the debt has been satisfied.

acquietatus (ə-kwɪ-ə-tay-təs), *adj.* [Law Latin] *Hist.* Pronounced innocent by a jury; acquitted.

acquieto. See ADQUIETO.

acquire, vb. To gain possession or control of; to get or obtain.

acquired allegiance. See ALLEGIANCE.

acquired corporation. See CORPORATION.

acquired right. See RIGHT.

acquired servitude. See SERVITUDE (1).

acquired surplus. See SURPLUS.

acquisition, n. 1. The gaining of possession or control over something <acquisition of the target company’s assets>. 2. Something acquired <a valuable acquisition>.

derivative acquisition. An acquisition obtained from another, as by sale or gift.

new acquisition. An estate not originating from descent, devise, or gift from the parental or maternal line of the owner. • For example, an estate acquired from a nonrelative is a new acquisition. See *nonancestral estate* under ESTATE.

original acquisition. An acquisition that has never been the property of anyone else, such as a copyright owned by an author.

acquisition cost. See COST (1).

acquisitive offense. See OFFENSE (1).

acquisitive prescription. See PRESCRIPTION (2).

acquit, vb. To clear (a person) of a criminal charge. 2. To pay or discharge (a debt or claim).

acquittal, n. 1. The legal certification, usu. by jury verdict, that an accused person is not guilty of the charged offense.

acquittal in fact. An acquittal by a jury verdict of not guilty.

acquittal in law. An acquittal by operation of law, as of someone who has been charged

merely as an accessory after the principal has been acquitted.

implied acquittal. An acquittal in which a jury convicts the defendant of a lesser-included offense without commenting on the greater offense. • Double jeopardy bars the retrial of a defendant who has received an implied acquittal.

2. *Contracts.* A release or discharge from debt or other liability; ACQUITTANCE. 3. *Hist.* The obligation of a middle lord to protect a tenant from a claim, entry, or molestation by a paramount lord arising out of service that the middle lord owes the paramount lord.

acquittance, n. A document by which one is discharged from a debt or other obligation; a receipt or release indicating payment in full. — **acquit, vb.**

acquitted, adj. 1. Judicially discharged from an accusation; absolved. 2. Released from a debt.

acre. An area of land measuring 43,560 square feet.

acre-foot. A volume measurement in irrigation, equal to the amount of water that will cover one acre of land in one foot of water (325,850 gallons).

acre right. *Hist.* In New England, a citizen’s share in the common lands. • The value of the acre right varied among towns but was fixed in each town. A 10-acre lot in a certain town was equivalent to 113 acres of upland and 12 acres of meadow, and an exact proportion was maintained between the acre right and salable land.

across-the-board, adj. Applying to all classes, categories, or groups <an across-the-board tax cut>.

ACRS. *abbr.* ACCELERATED COST-RECOVERY SYSTEM.

act, n. 1. Something done or performed, esp. voluntarily; a deed.

“[A]ct’ or ‘action’ means a bodily movement whether voluntary or involuntary . . .” Model Penal Code § 1.13.

2. The process of doing or performing; an occurrence that results from a person’s will being exerted on the external world; ACTION (1). — Also termed *positive act*; *act of commission*.

“The term act is one of ambiguous import, being used in various senses of different degrees of generality. When it

is said, however, that an act is one of the essential conditions of liability, we use the term in the widest sense of which it is capable. We mean by it any event which is subject to the control of the human will. Such a definition is, indeed, not ultimate, but it is sufficient for the purpose of the law." John Salmond, *Jurisprudence* 367 (Glanville L. Williams ed., 10th ed. 1947).

"The word 'act' is used throughout the Restatement of this Subject to denote an external manifestation of the actor's will and does not include any of its results, even the most direct, immediate, and intended." Restatement (Second) of Torts § 2 (1965).

act in pais (in pay). [Law French] An act performed out of court, such as a deed made between two parties on the land being transferred. See IN PAIS.

act in the law. An act that is intended to create, transfer, or extinguish a right and that is effective in law for that purpose; the exercise of a legal power. — Also termed *juristic act*; *act of the party*; *legal act*.

act of omission. See *negative act*.

act of the law. The creation, extinction, or transfer of a right by the operation of the law itself, without any consent on the part of the persons concerned. — Also termed *legal act*.

act of the party. See *act in the law*.

administrative act. An act made in a management capacity; esp., an act made outside the actor's usual field (as when a judge supervises court personnel). • An administrative act is often subject to a greater risk of liability than an act within the actor's usual field. See IMMUNITY (1).

bilateral act. An act that involves the consenting wills of two or more distinct parties, as with a contract, a conveyance, a mortgage, or a lease; AGREEMENT (1).

external act. An act involving bodily activity, such as speaking.

intentional act. An act resulting from the actor's will directed to that end. • An act is intentional when foreseen and desired by the doer, and this foresight and desire resulted in the act through the operation of the will.

internal act. An act of the mind, such as thinking.

judicial act. An act involving the exercise of judicial power.

"The distinction between a judicial and a legislative act is well defined. The one determines what the law is, and what the rights of parties are, with reference to transactions already had; the other prescribes what the law shall be in future cases arising under it." *Union Pacific R.R. v. United States*, 99 U.S. 700, 721 (1878) (Field, J., dissenting).

jural act (joor-əl). An act taken in the context of or in furtherance of a society's legal system. — Also termed *jural activity*.

"In order to identify an act as a jural act, it must be the kind of act that would be engaged in by someone who is enforcing a law, determining an infraction of the law, making or changing a law, or settling a dispute." Martin P. Golding, *Philosophy of Law* 23 (1975).

juristic act. See *act in the law*.

negative act. The failure to do something that is legally required; a nonoccurrence that involves the breach of a legal duty to take positive action. • This takes the form of either a forbearance or an omission. — Also termed *act of omission*.

unilateral act. An act in which there is only one party whose will operates, as in a testamentary disposition, the exercise of a power of appointment, or the avoidance of a voidable contract.

unintentional act. An act not resulting from the actor's will toward what actually takes place.

verbal act. An act performed through the medium of words, either spoken or written.

3. The formal product of a legislature or other deliberative body; esp., STATUTE.

construction act. A legislative directive included in a statute, intended to guide or direct a court's interpretation of the statute. • A construction act can, for example, be a simple statement such as "The word 'week' means seven consecutive days" or a broader directive such as "Words and phrases are to be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, are to be construed accordingly."

acta diurna (ak-tə dī-ər-nə), *n.* [Latin "daily proceedings"] *Roman law.* A public register of the daily proceedings of the senate, assemblies of the people, or the courts.

acta publica (ak-tə pəb-li-kə), *n.* [Latin] *Roman & civil law.* Things of general knowledge and concern; matters transacted before certain public officers.

acte (akt), *n.* [French] *French law.* 1. An instrument; a proof in writing, such as a deed, bill of sale, or birth certificate.

acte authentique (akt oh-tawn-teek). A deed executed with certain prescribed formal-

ities, in the presence of a notary or other official.

acte de décès (akt də day-say). A death certificate.

acte de francisation (akt də frangk-ə-zasyawn). A certificate confirming that a ship is of French nationality.

acte de mariage (akt də mar-yahzh). A marriage certificate.

acte de naissance (akt də nay-sənts). A birth certificate.

acte extrajudiciaire (akt eks-trə-zhuu-deesyair). A document served by a *huissier* at the request of one party on another party without legal proceedings. See HUISSIER (1).

l'acte de l'état civil (lakt də lay-tah see-veel). A public document relating to status (e.g., birth, divorce, death).

2. An act; conduct.

acte d'héritier (akt day-ri-tyay). [French "act of an heir"] Conduct by an heir indicating an intent to accept the succession.

acting, *adj.* Holding an interim position; serving temporarily <an acting director>.

acting chargé d'affaires. See CHARGÉ D'AFFAIRES.

acting executor. See EXECUTOR.

acting officer. See OFFICER (1).

act in pais. See ACT (2).

act in the law. See ACT (2).

actio (ak-shee-oh also ak-tee-oh), *n.* [Latin] 1. *Roman & civil law.* An action; a right or claim. 2. A right of action. 3. *Hist.* At common law, a lawsuit. Pl. *actiones*.

actio ad exhibendum (ak-shee-oh ad ek-siben-dəm). An action to compel a defendant to produce property so as to establish that it is in the defendant's possession.

actio aestimatoria. See DE AESTIMATO.

actio arbitraria (ak-shee-oh ahr-bi-trair-ee-ə). An action in which the judge orders the defendant to do something (such as restoring property to the plaintiff) on pain of a monetary judgment payable to the plaintiff.

actio bonae fidei (ak-shee-oh boh-nee fi-dee-i). One of a class of actions in which a

judge could take equitable considerations into account in rendering a decision.

actio calumniae (ak-shee-oh kə-ləm-nee-ee). An action to retrain, or collect damages for, a malicious civil suit.

actio civilis (ak-shee-oh sə-vi-lis). A civil action.

actio commodati (ak-shee-oh kom-ə-day-ti). [Latin "action on loan"] *Roman law.* An action for the recovery of a thing gratuitously lent but not returned to the lender. — Also termed *commodati actio*. See COMMODATUM.

actio commodati contraria (ak-shee-oh kom-ə-day-ti kən-trair-ee-ə). An action by a gratuitous borrower against a lender to compel the performance of, or for damages for the breach of, the contract.

actio commodati directa (ak-shee-oh kom-ə-day-ti di-rek-tə). An action by a lender against a borrower for restitution for an item gratuitously lent to another.

actio condictio indebiti (ak-shee-oh kən-dik-shee-oh in-deb-ə-ti). See *condictio indebiti* under CONDUCTIO. • Strictly speaking, the headword is a solecism, since a *condictio* is a type of *actio*, but it is occasionally found in legal literature.

actio conducti (ak-shee-oh kən-dək-ti). [Latin "action for the thing hired"] *Roman law.* An action that a hirer of a thing (the *conductor*) might have against a lessor. Cf. *actio locati*.

actio confessoria (ak-shee-oh kon-fə-sor-ee-ə). [Latin "action based on an admission"] *Roman law.* 1. See *vindicatio servitutis* under VINDICATIO. 2. An action in which the defendant admits liability but does not express it in a fixed sum. • A judge therefore assesses the damages.

actio contraria (ak-shee-oh kən-trair-ee-ə). A counterclaim. Cf. *actio directa*.

actio criminalis (ak-shee-oh kri-mə-nay-lis). A criminal action.

actio damni injuriae (ak-shee-oh dam-ni in-joor-ee-ə). An action for damages for tortiously causing pecuniary loss.

actio de communi dividendo. See DE COMMUNI DIVIDUNDO.

actio de dolo malo (ak-shee-oh dee doh-loh mal-oh). An action of fraud. • This type of action was widely applied in cases involving deceitful conduct. — Also termed *actio doli*.

actio de in rem verso (ak-shee-oh dee in rem vər-soh). See *action de in rem verso* under ACTION.

actio de peculio (ak-shee-oh dee pə-kyoo-lee-oh). An action against a paterfamilias or slave owner concerning the child or slave's separate fund (*peculium*).

actio de pecunia constituta (ak-shee-oh dee pə-kyoo-nee-ə kon-sti-t[y]oo-tə). An action on a promise to pay a preexisting debt.

actio depositi contraria (ak-shee-oh di-poz-ə-ti kən-trair-ee-ə). An action that a depositary has against the depositor for unpaid expenses.

actio depositi directa (ak-shee-oh di-poz-ə-ti di-rek-tə). An action that a depositor has against a depositary for the return of the deposited item.

actio de tigno juncto (ak-shee-oh dee tignoh jəngk-toh). An action by the owner of material incorporated without payment into the defendant's building.

actio directa (ak-shee-oh di-rek-tə). 1. An action founded on strict law and conducted according to fixed forms; an action based on clearly defined obligations actionable at law. 2. A direct action, as opposed to a counterclaim (*actio contraria*). Cf. *actio utilis*.

actio empti (ak-shee-oh emp-ti). An action by a buyer to compel a seller to deliver the item sold or for damages for breach of contract.

actio ex conducto (ak-shee-oh eks kən-dəkt-toh). An action by the lessee of a thing or the hirer of another's services to enforce the contract or claim damages for breach.

actio ex contractu (ak-shee-oh eks kən-trak-t[y]oo). An action arising out of a contract. • This term had a similar meaning at common law.

actio ex delicto (ak-shee-oh eks də-lik-toh). An action founded on a tort. — Also termed *actio poenalis*.

actio exercitoria (ak-shee-oh eg-zər-si-tor-ee-ə). An action against the owner or lessee (*exercitor*) of a vessel, esp. for contracts made by the master. — Also termed *exercitoria actio*.

actio ex locato. See *actio locati*.

actio ex stipulatu (ak-shee-oh eks stip-yə-lay-t[y]oo). An action brought to enforce a *stipulatio*. See STIPULATIO.

actio familiae erciscundae (ak-shee-oh fə-mil-ee-ee ə-r-sis-kən-dee). [Latin "to divide an estate"] *Roman law*. An action for the partition of the inheritance among heirs. — Sometimes shortened to *familiae erciscundae*.

actio furti (ak-shee-oh fər-ti). *Roman law*. An action by which the owner of stolen goods can recover twice their value from the thief by way of penalty, without prejudice to a further action to recover the goods themselves or their value.

actio honoraria (ak-shee-oh on-ə-rair-ee-ə). A praetorian action; a class of equitable actions introduced by the praetors to prevent injustices.

actio in factum (ak-shee-oh in fak-təm). *Roman law*. An action granted by the praetor when no standard action was available. • The closest Anglo-American equivalent is *action on the case* or *trespass on the case*. See *trespass on the case* under TRESPASS.

actio in personam (ak-shee-oh in pər-soh-nəm). See *action in personam* under ACTION.

actio in rem (ak-shee-oh in rem). See *action in rem* under ACTION.

actio institoria (ak-shee-oh in-sti-tor-ee-ə). [Latin] *Roman law*. An action against a principal by one who contracted with the principal's business agent. See INSTITOR.

actio iudicati (ak-shee-oh joo-di-kay-ti). An action to enforce a judgment by execution on the defendant's property.

actio legis Aquiliae (ak-shee-oh lee-jis ə-kwil-ee-ee). An action under the Aquilian law; an action to recover damages for intentional or negligent injury to another's property.

actio locati (ak-shee-oh loh-kay-ti). [Latin "action for what has been hired out"] *Roman law*. An action that a lessor of a thing (the *locator*) might have against the hirer. — Also termed *actio ex locato*. Cf. *actio conducti*.

actio mandati (ak-shee-oh man-day-ti). An action to enforce a contract for gratuitous services (i.e., a *mandatum*).

actio mixta (ak-shee-oh mik-stə). A mixed action; an action in which two or more features are combined, as an action for damages and for a penalty, or an action *in rem* and *in personam*.

actio negatoria (ak-shee-oh neg-ə-tor-ee-ə). An action brought by a landowner against anyone claiming a servitude in the landowner's property. — Also termed *actio negativa*.

actio negotiorum gestorum (ak-shee-oh nə-goh-shee-ər-əm jes-tor-əm). An action either by a *gestor* for the recovery of expenses incurred in looking after another's property or against the *gestor* for the mismanagement of the person's property. See NEGOTIORUM GESTOR.

actio non accrevit infra sex annos (ak-shee-oh non ə-kree-vit seks an-ohs), *n.* [Latin "the action did not accrue within six years"] *Hist.* A plea to the statute of limitations by which the defendant asserts that the plaintiff's cause of action has not accrued within the last six years.

actio non ulterius (ak-shee-oh non əl-teer-ee-əs), *n.* [Latin "an action no further"] *Hist.* The distinctive clause in a plea to abate further maintenance of the action. • This plea replaced the *puis darrein continuance*. Cf. *plea to further maintenance to the action* under PLEA; PUIS DARREIN CONTINUANCE.

actio perpetua (ak-shee-oh pər-pech-oo-ə). An action that is not required to be brought within a specified time. Cf. *actio temporalis*.

actio personalis (ak-shee-oh pər-sə-nay-lis). A personal action.

actio pignoratitia (ak-shee-oh pig-nə-rə-tish-ee-ə). An action of pledge; an action founded on a contract of pledge. See PIGNUS.

actio poenalis. See *actio ex delicto*.

actio praejudicialis (ak-shee-oh pree-joo-dish-ee-ay-lis). A preliminary action; an action begun to determine a preliminary matter on which other litigated matters depend.

actio praetoria (ak-shee-oh pri-tor-ee-ə). A praetorian action; one introduced by a praetor.

actio pro socio (ak-shee-oh proh soh-shee-oh). An action brought by one partner against another.

actio Publiciana (ak-shee-oh pə-blish-ee-ay-nə). An action allowing a person who had acquired bonitarian ownership of property to recover it, so that the person would in due course acquire full title by prescription. • This action is named for Publicius, the praetor who first granted it. — Also termed *actio Publiciana in rem*. See *bonitarian ownership* under OWNERSHIP.

actio quod jussu (ak-shee-oh kwod jəs-[y]oo). An action against a master for enforcement of a debt contracted on the master's behalf by a slave.

actio quod metus causa (ak-shee-oh kwod mee-təs kaw-zə). An action to penalize someone who wrongfully compelled the plaintiff to assume an obligation. • The plaintiff could obtain damages of four times the value of the extorted property.

actio realis (ak-shee-oh ree-ay-lis). [Law Latin] A real action.

actio redhibitoria (ak-shee-oh red-i-bi-tor-ee-ə). An action to cancel a sale because of defects in the thing sold.

actio rerum amotarum (ak-shee-oh reer-əm am-ə-tair-əm). An action to recover items stolen by a spouse shortly before a divorce.

actio rescissoria (ak-shee-oh re-si-sor-ee-ə). An action to restore the plaintiff to property lost by prescription. • This action was available to minors and other persons exempt from prescriptive claims against their property.

actio serviana (ak-shee-oh sər-vee-ay-nə). An action by which a lessor could seize, in satisfaction of unpaid rent, the lessee's personal property brought onto the leased premises.

actio stricti juris (ak-shee-oh strik-ti joor-is). A class of personal actions enforceable exactly as stated in the *formula* without taking equitable considerations into account; an action of strict right. See FORMULA (1).

actio temporalis (ak-shee-oh tem-pə-ray-lis). An action that must be brought within a specified time. Cf. *actio perpetua*.

actio tutelae (ak-shee-oh t[y]oo-tee-lee). An action arising from a breach of the duty owed by a guardian (*tutor*) to the ward, such as mismanagement of the ward's property.

actio utilis (ak-shee-oh yoo-tə-lis). An action founded on utility rather than strict right, available esp. to persons having an interest in property less than ownership. • This type of action was modeled after the *actio directa*. Cf. *actio directa* (1).

actio venditi (ak-shee-oh ven-də-ti). An action by which a seller could enforce a contract of sale.

actio vi bonorum raptorum (ak-shee-oh vi bə-nor-əm rap-tor-əm). A penal action to recover goods taken by force. • A successful plaintiff would also receive three times the value of the taken property. Cf. INTERDICTUM QUOD VI AUT CLAM.

actio vulgaris (ak-shee-oh vəl-gair-is). An ordinary action, as opposed to one granted in special circumstances.

action. 1. The process of doing something; conduct or behavior. 2. A thing done; ACT (1). 3. A civil or criminal judicial proceeding.

"An action has been defined to be an ordinary proceeding in a court of justice, by which one party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense. But in some sense this

definition is equally applicable to special proceedings. More accurately, it is defined to be any judicial proceeding, which, if conducted to a determination, will result in a judgment or decree. The action is said to terminate at judgment." 1 Morris M. Estee, *Estee's Pleadings, Practice, and Forms* § 3, at 1 (Carter P. Pomeroy ed., 3d ed. 1885).

"The terms 'action' and 'suit' are nearly if not quite synonymous. But lawyers usually speak of proceedings in courts of law as 'actions,' and of those in courts of equity as 'suits.' In olden time there was a more marked distinction, for an action was considered as terminating when judgment was rendered, the execution forming no part of it. A suit, on the other hand, included the execution. The word 'suit,' as used in the Judiciary Act of 1784 and later Federal statutes, applies to any proceeding in a court of justice in which the plaintiff pursues in such court the remedy which the law affords him." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 3 (2d ed. 1899).

"'Action' in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity, and any other proceedings in which rights are determined." UCC § 1-201(1).

action de die in diem (dee di-ee in di-em). [Law Latin "from day to day"] *Hist.* 1. An action occurring from day to day; a continuing right of action. 2. An action for trespass for each day that an injury continues.

"That trespass by way of personal entry is a continuing injury, lasting as long as the personal presence of the wrongdoer, and giving rise to actions *de die in diem* so long as it lasts, is sufficiently obvious." R.F.V. Heuston, *Salmond on the Law of Torts* 42 (17th ed. 1977).

action de in rem verso (dee in rem vær-soh). [Latin "action for money applied to the defendant's advantage"] *Roman & civil law.* An action for unjust enrichment, in which the plaintiff must show that an enrichment was bestowed, that the enrichment caused an impoverishment, that there is no justification for the enrichment and impoverishment, and that the plaintiff has no other adequate remedy at law, including no remedy under an express or implied contract. — Also termed *actio de in rem verso*.

action ex contractu (eks kən-trak-t[y]oo). A personal action arising out of a contract.

"*Actions ex contractu* were somewhat illogically classified thus: *covenant, debt, assumpsit, detinue, and account.* The *action of covenant* lay where the party claimed damages for a breach of contract or promise under seal. The *writ of debt* lay for the recovery of a debt; that is, a liquidated or certain sum of money alleged to be due from defendant to plaintiff. The *writ of detinue* was the ancient remedy where the plaintiff claimed the specific recovery of goods, chattels, deeds, or writings detained from him. This remedy fell into disuse by reason of the unsatisfactory mode of trial of 'wager of law,' which the defendant could claim; and recourse was had to the action of replevin. In the American States an action of replevin founded upon statute provisions is almost uni-

versally the remedy for the recovery of specific personal property." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 5 (2d ed. 1899).

action ex delicto (eks də-lik-toh). A personal action arising out of a tort.

"The actions *ex delicto* were originally the action of *trespass* and the action of *replevin*." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 5 (2d ed. 1899).

action for money had and received. At common law, an action by which the plaintiff could recover money paid to the defendant, the money usu. being recoverable because (1) the money had been paid by mistake or under compulsion, or (2) the consideration was insufficient.

"The *action for money had and received* lay to recover money which the plaintiff had paid to the defendant, on the ground that it had been paid under a mistake or compulsion, or for a consideration which had wholly failed. By this action the plaintiff could also recover money which the defendant had received from a third party, as when he was accountable or had attorned to the plaintiff in respect of the money, or the money formed part of the fruits of an office of the plaintiff which the defendant had usurped." Robert Goff & Gareth Jones, *The Law of Restitution* 3 (3d ed. 1986).

action for money paid. At common law, an action by which the plaintiff could recover money paid to a third party — not to the defendant — in circumstances in which the defendant had benefited.

"The *action for money paid* was the appropriate action when the plaintiff's claim was in respect of money paid, not to the defendant, but to a third party, from which the defendant had derived a benefit. Historically, the plaintiff had to show that the payment was made at the defendant's request; but we shall see that the law was prepared to 'imply' such a request on certain occasions, in particular where the payment was made under compulsion of law or, in limited circumstances, in the course of intervention in an emergency on the defendant's behalf, which in this book we shall call necessitous intervention." Robert Goff & Gareth Jones, *The Law of Restitution* 3 (3d ed. 1986).

action for poinding. *Hist.* A creditor's action to obtain sequestration of the land rents and goods of the debtor to satisfy the debt or enforce a distress.

action for the loss of services. *Hist.* A husband's lawsuit against one who has taken away, imprisoned, or physically harmed his wife in circumstances in which (1) the act is wrongful to the wife, and (2) the husband is deprived of her society or services.

action for the recovery of land. See EJECTMENT.

action in equity. An action that seeks equitable relief, such as an injunction or specific performance, as opposed to damages.

action in personam (in pər-sōh-nəm). An action determining the rights and interests of the parties themselves in the subject matter of the case. — Also termed *personal action*; (in Roman law) *actio in personam*; *actio personalis*. See IN PERSONAM.

action in rem (in rem). An action determining the title to property and the rights of the parties, not merely among themselves, but also against all persons at any time claiming an interest in that property. — Also termed (in Roman law) *actio in rem*; *actio realis*. See IN REM.

action of assize. *Hist.* A real action by which the plaintiff proves title to land merely by showing an ancestor's possession. See ASSIZE.

action of book debt. See ACCOUNTING (4).

action of reprobator. See REPROBATOR.

action on account. See ACCOUNTING (4).

action on expenditure. An action for payment of the principal debt by a personal surety.

action on the case. See *trespass on the case* under TRESPASS.

action per quod servitium amisit (pər kwod sər-vish-ee-əm ə-mi-sit). [Latin] *Hist.* An action for the loss of a servant's services.

action quasi in rem (kway-sī in rem or kway-zī). An action brought against the defendant personally, with jurisdiction based on an interest in property, the objective being to deal with the particular property or to subject the property to the discharge of the claims asserted. See *quasi in rem* under IN REM.

action to quiet title. A proceeding to establish a plaintiff's title to land by compelling the adverse claimant to establish a claim or be forever estopped from asserting it. — Also termed *quiet-title action*.

amicable action. See *test case* (1) under CASE.

civil action. An action brought to enforce, redress, or protect a private or civil right; a noncriminal litigation.

"The code of New York, as originally adopted, declared, 'the distinctions between actions at law and suits in equity, and the forms of all such actions and heretofore existing, are abolished; and there shall be in this State hereafter but one form of action for the enforcement or protection of private rights and the redress of private wrongs, which shall be denominated a civil action.' With slight verbal changes the above provision has been enacted in most of the States and Territories which have adopted the reformed procedure." Edwin E. Bryant, *The*

Law of Pleading Under the Codes of Civil Procedure 106 (2d ed. 1899).

class action. See CLASS ACTION.

collusive action. An action between two parties who have no actual controversy, being merely for the purpose of determining a legal question or receiving a precedent that might prove favorable in related litigation. — Also termed *fictional action*.

common-law action. An action governed by common law, rather than statutory, equitable, or civil law.

criminal action. An action instituted by the government to punish offenses against the public.

derivative action. See DERIVATIVE ACTION.

direct action. See DIRECT ACTION.

fictional action. See *collusive action*.

fictitious action. An action, usu. unethical, brought solely to obtain a judicial opinion on an issue of fact or law, rather than for the disposition of a controversy.

joint action. 1. An action brought by two or more plaintiffs. 2. An action brought against two or more defendants.

local action. An action that can be brought only in the jurisdiction where the cause of action arose, as when the action's subject matter is a piece of real property.

matrimonial action. An action relating to the state of marriage, such as an action for separation, annulment, or divorce.

mixed action. An action that has some characteristics of both a real action and a personal action.

"In early times the only mixed actions were those for the partition of lands, for which a writ was provided in the common-law courts. The remedy was further enlarged by the statute of 31 Hen. VII c. 1, and 32 Hen. VIII c. 32, which gave compulsory partition, by writ at common law. These statutes formed the basis of partition in the American States; but in England and here courts of Chancery have been found most convenient, and their procedure most favorable for the division of estates in land. The statutes at the present time, in most of the States, prescribe a procedure which is quite similar to that in equity practice." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 10-11 (2d ed. 1899).

nonpersonal action. An action that proceeds within some category of territorial jurisdiction other than in personam — that is, jurisdiction in rem, quasi in rem, or over status.

penal action. 1. A criminal prosecution. 2. A civil proceeding in which either the state or a common informer sues a defendant who has

violated a statute and seeks to recover a penalty. • Although civil in nature, a penal action resembles a criminal proceeding because the result of a successful action is a monetary penalty intended, like a fine, to punish the defendant. See COMMON INFORMER.

“At one time it was a frequent practice, when it was desired to repress some type of conduct thought to be harmful, to do so by the machinery of the civil rather than of the criminal law. The means so chosen was called a penal action, as being brought for the recovery of a penalty; and it might be brought, according to the wording of the particular statute creating the penal action, either by the Attorney-General on behalf of the state, or by a common informer on his own account. A common informer was anyone who should first sue the offender for the penalty. Penal actions are still possible in a few cases, and their existence renders invalid several suggested distinctions between civil wrongs and crimes.” John Salmond, *Jurisprudence* 107 (Glanville L. Williams ed., 10th ed. 1947).

“For in ‘penal actions’, unless the statute expressly authorizes private persons to act as informers, the State alone can sue and recover the penalty; and yet there is full authority for ranking such suits by it as merely civil proceedings.” J.W. Cecil Turner, *Kenny’s Outlines of Criminal Law* 538 (16th ed. 1952).

3. A civil lawsuit by an aggrieved party seeking recovery of a statutory fine or a penalty, such as punitive damages.

“[T]here exists a well-known class of proceedings called ‘penal actions’, by which pecuniary penalties can be recovered — in some cases by any person who will sue for them — from the doers of various prohibited acts; these acts being thus prohibited, and visited with penalties, solely on account of their tendency to cause evil to the community at large, ‘considered as a community.’ For example, a person who, in advertising a reward for the return of lost property, adds that ‘no questions will be asked’ incurs by the Larceny Act, 1861, a penalty of £50 recoverable by anyone who will sue for it.” J.W. Cecil Turner, *Kenny’s Outlines of Criminal Law* 533–34 (16th ed. 1952).

personal action. 1. An action brought for the recovery of debts, personal property, or damages arising from any cause.

“*Personal actions* are those brought (1) for specific recovery of goods or chattels, (2) or for damages or other redress for breach of contract, (3) or every other kind of injury. They are *ex contractu* when they arise out of contract, *ex delicto* when they arise out of the wrong or delict of the defendant.” Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 5 (2d ed. 1899).

“Personal actions are subdivided into those brought for the recovery of a debt or of damages for the breach of a contract, or for tort, for some injury to the person or to relative rights or to personal or real property. The most common of these actions are debt, covenant, assumpsit, detinue, trespass, trespass on the case, trover, and replevin.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 34, at 65 (Henry Winthrop Ballantine ed., 3d ed. 1923).

2. See action in personam.

petitory action (*pet-ə-tor-ee*). An action to establish and enforce title to property independently of the right to possession. — Also termed *petitorium*.

plenary action (*plee-nə-ree* or *plen-*). A full hearing or trial on the merits, as opposed to a summary proceeding. Cf. *summary proceeding* under PROCEEDING.

possessory action (*pə-zes-ə-ree*). 1. An action to obtain, recover, or maintain possession of property but not title to it, such as an action to evict a nonpaying tenant. — Also termed *possessorium*.

“The possessory action affords a remedy against a disturbance, in fact or in law, of possession. The function of the possessory action is to aid the ‘disturbed’ possessor of immovable property or a real right in maintaining his possession of the property or the enjoyment of the right, or to restore the ‘evicted’ possessor to the possession of the property or enjoyment of the right.” James D. Johnson, Jr., *Guide to Louisiana Real Actions, Ten Year and Thirty Year Prescriptions* 5 (1961).

2. Maritime law. An action brought to recover possession of a ship under a claim of title.

real action. An action brought for the recovery of land or other real property; specif., an action to recover the possession of a freehold estate in real property, or seisin. See SEISIN.

“If the question be asked why it was that a large part of the really English law which Bracton undertook to expound is found in connection with the subject of real actions, while in Blackstone’s treatise only the personal actions are deemed worthy of attention, the answer must be that the former were dying out. When Chitty wrote (1808) the old real actions were practically obsolete, and in the succeeding generation such vestiges of them as remained were abolished by statute.” Hannis Taylor, *The Science of Jurisprudence* 574 (1908).

“The principal real actions formerly in use were (1) the writs of right; (2) the writs of entry; (3) the possessory assizes, such as novel disseisin and mort d’ancestor. Real actions are those in which the demandant seeks to recover seisin from one called a tenant, because he holds the land. They are real actions at common law because the judgment is in rem and awards the seisin or possession.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 32, at 63 (Henry Winthrop Ballantine ed., 3d ed. 1923).

redhibitory action. *Civil law.* An action brought to void a sale of an item having a defect that renders it either useless or so flawed that the buyer would not have bought it in the first place. See REDHIBITION.

remedial action. See REMEDIAL ACTION.

representative action. 1. CLASS ACTION. 2. DERIVATIVE ACTION (1).

separate action. 1. An action brought alone by each of several complainants who are all

involved in the same transaction but cannot legally join the suit. **2.** One of several distinct actions brought by a single plaintiff against each of two or more parties who are all liable to a plaintiff with respect to the same subject matter. — Also termed *several action*.

several action. See *separate action*.

statutory action. An action governed by statutory law rather than equitable, civil, or common law.

test action. See *test case* (2) under CASE.

third-party action. An action distinct from the main claim, whereby the defendant brings in an entity that is not directly involved in the lawsuit but that may be liable to the defendant for all or part of the plaintiff's claim. • A common example is an action for indemnity or contribution.

transitory action. An action that can be brought in any venue where the defendant can be personally served with process.

"Transitory actions are universally founded on the supposed violation of rights which, in contemplation of law, have no locality. They are personal actions, that is, they are brought for the enforcement of purely personal rights or obligations. If the transaction on which the action is founded could have taken place anywhere, the action is generally regarded as transitory; but if the transaction could only have happened in a particular place . . . the action is local. Some authorities, considering the effect of the distinction, define transitory actions as actions which may be tried wherever defendant may be found and served." 92 C.J.S. *Venue* § 8, at 678-79 (1955).

action, cause of. See CAUSE OF ACTION.

action, form of. See FORM OF ACTION.

action, right of. See RIGHT OF ACTION.

actionable, *adj.* Furnishing the legal ground for a lawsuit or other legal action <intentional interference with contractual relations is an actionable tort>.

actionable negligence. See NEGLIGENCE.

actionable nuisance. See NUISANCE (3).

actionable word. A term that is defamatory in itself. See *libel per se* under LIBEL.

actionare (ak-shee-ə-nair-ee), *vb.* [Law Latin] To bring an action; to sue.

action de die in diem. See ACTION.

action de in rem verso. See ACTION.

actio negativa. See *actio negatoria* under ACTIO.

actio negatoria. See ACTIO.

actio negotiorum gestorum. See ACTIO.

actiones legis (ak-shee-oh-nee-z lee-jis), *n. pl.* [Latin] *Roman law.* Legal or lawful actions; actions at law requiring the use of fixed forms of words. • This phrase is the plural of *actio legis* (more commonly termed *legis actio*).

actiones nominatae (ak-shee-oh-nee-z nom-ə-nay-tee), *n. pl.* [Latin "named actions"] *Hist.* Actions for which the Chancery had well-established forms. See CONSIMILI CASU.

actiones poenales (ak-shee-oh-nee-z pee-nay-leez), *n. pl.* [Latin "penal actions"] *Roman law.* Actions in which a plaintiff sues for a penalty.

action ex contractu. See ACTION.

action ex delicto. See ACTION.

action for money had and received. See ACTION.

action for money paid. See ACTION.

action for pointing. See ACTION.

action for the loss of services. See ACTION.

action for the recovery of land. See EJECTMENT.

action in equity. See ACTION.

action in personam. See ACTION.

action in rem. See ACTION.

action of assize. See ACTION.

action of book debt. See ACCOUNTING (4).

action of reprobator. See REPROBATOR.

actio non (ak-shee-oh non). [Latin "an action not"] *Hist.* A declaration in a special plea denying the plaintiff's right to maintain the action. See *special plea* under PLEA.

action on account. See ACCOUNTING (4).

actio non accrevit infra sex annos. See ACTIO.

action on decision. A legal memorandum from attorneys in the Internal Revenue Service's litigation division to the Service's Chief Counsel, containing advice on whether the Service should acquiesce, appeal, or take some other action regarding a court's decision that is unfavorable to the Service. — Abbr. AOD.

action on expenditure. See ACTION.

action on the case. See *trespass on the case* under TRESPASS.

actio non ulterius. See ACTIO.

actio noxalis (ak-shee-oh nok-say-lis), *n.* See NOXAL ACTION.

action per quod servitium amisit. See ACTION.

action quasi in rem. See ACTION.

action to quiet title. See ACTION.

actio perpetua. See ACTIO.

actio pignoratitia. See ACTIO.

actio poenalis. See *actio ex delicto* under ACTIO.

actio praejudicialis. See ACTIO.

actio praetoria. See ACTIO.

actio pro socio. See ACTIO.

actio Publiciana. See ACTIO.

actio Publiciana in rem. See *actio Publiciana* under ACTIO.

actio quod jussu. See ACTIO.

actio quod metus causa. See ACTIO.

actio realis. See ACTIO.

actio redhibitoria. See ACTIO.

actio rerum amotarum. See ACTIO.

actio rescissoria. See ACTIO.

actio serviana. See ACTIO.

actio stricti juris. See ACTIO.

actio temporalis. See ACTIO.

actio tutelae. See ACTIO.

actio utilis. See ACTIO.

actio venditi. See ACTIO.

actio vi bonorum raptorum. See ACTIO.

actio vulgaris. See ACTIO.

active breach of contract. See BREACH OF CONTRACT.

active case. See CASE.

active concealment. See CONCEALMENT.

active-control-of-vessel duty. See ACTIVE-OPERATIONS DUTY.

active debt. See DEBT.

active duty. *Military law.* The full-time status of being in any of the U.S. armed forces.

active euthanasia. See EUTHANASIA.

active income. See INCOME.

active inducement. See INDUCEMENT.

active negligence. See NEGLIGENCE.

active-operations duty. *Maritime law.* A shipowner's obligation to provide safe working conditions, in the work areas controlled by the shipowner, for the stevedore and longshoremen who are loading or unloading the ship. — Also termed *active-control-of-vessel duty*. Cf. TURN-OVER DUTY; INTERVENTION DUTY.

active supervision. *Antitrust.* Under the test for determining whether a private entity may claim a state-action exemption from the anti-trust laws, the right of the state to review the entity's anticompetitive acts and to disapprove those acts that do not promote state policy. See STATE-ACTION DOCTRINE; MIDCAL TEST.

"The active supervision requirement stems from the recognition that where a private party is engaging in the anticompetitive activity, there is a real danger that he is acting to further his own interests, rather than the governmental interests of the State. The requirement is designed to ensure that the state-action doctrine will shelter only the particular anticompetitive acts that, in the judgment of the State, actually further state regulatory policies. To accomplish this purpose, the active supervision requirement mandates that the State exercise ultimate control over the challenged anticompetitive conduct." *Patrick v. Burget*, 486 U.S. 94, 100-01, 108 S.Ct. 1658, 1663 (1988).

active trust. See TRUST.

active waste. See *commissive waste* under WASTE.

activity. See MARKET VOLUME.

activity incident to service. An act undertaken by a member of the armed forces as a part of a military operation or as a result of the actor's status as a member of the military. • For example, if a member of the military takes advantage of that status by flying home on a military aircraft, the flight is activity incident to service, and a claim against the government for any injuries received may be barred under the *Feres* doctrine. See FERES DOCTRINE.

act of attainder. See BILL OF ATTAINDER.

act of bankruptcy. An event, such as a debtor's fraudulent conveyance of property, that triggers an involuntary bankruptcy proceeding against a debtor. • The 1978 Bankruptcy Reform Act abolished this requirement as a condition to an involuntary bankruptcy proceeding.

act of commission. See ACT (2).

act of Congress. A law that is formally enacted in accordance with the legislative power granted to Congress by the U.S. Constitution. • To become a law, or an act of Congress, a bill or resolution must be passed by a majority of the members of both the House of Representatives and the Senate. Bills or resolutions may generally be introduced in either chamber, except that bills for generating revenue must be introduced in the House of Representatives. When a bill or resolution is introduced in a chamber, it is usu. assigned to a committee. If it is passed by the committee, it is reported to the full chamber. If it passes in the full chamber, it is reported to the other chamber, which then usu. assigns it to a committee in that chamber. If it passes by majority votes of the committee and

full body in that chamber, it is reported back to the originating chamber. If its terms have changed in the second chamber, it is submitted to a conference committee, consisting of members from both chambers, to work out a compromise. When the bill or resolution is passed, with the same terms, by both chambers, it is signed by the Speaker of the House and the President of the Senate (usu. the President Pro Tempore), and is presented to the President of the United States for signature. If the President signs it or fails to return it to Congress within ten days, the bill or resolution becomes law. But if the President vetoes the bill or resolution, it must be passed by a two-thirds majority of the House of Representatives and the Senate to become law. U.S. Const. art. I, § 7; 3 *The Guide to American Law* 165-66 (West 1983).

act of God. An overwhelming, unpreventable event caused exclusively by forces of nature, such as an earthquake, flood, or tornado. • The definition has been statutorily broadened to include all natural phenomena that are exceptional, inevitable, and irresistible, the effects of which could not be prevented or avoided by the exercise of due care or foresight. 42 USCA § 9601(1). — Also termed *act of nature*; *act of providence*. Cf. FORCE MAJEURE; *unavoidable accident* under ACCIDENT.

"[A]ll natural agencies, as opposed to human activities, constitute acts of God, and not merely those which attain an extraordinary degree of violence or are of very unusual occurrence. The distinction is one of kind and not one of degree. The violence or rarity of the event is relevant only in considering whether it could or could not have been prevented by reasonable care; if it could not, then it is an act of God which will relieve from liability, howsoever trivial or common its cause may have been. If this be correct, then the unpredictable nature of the occurrence will go only to show that the act of God in question was one which the defendant was under no duty to foresee or provide against. It is only in such a case that the act of God will provide a defence." R.F.V. Heuston, *Salmond on the Law of Torts* 330 (17th ed. 1977).

act of grace. An act of clemency; esp., such an act performed at the beginning of a monarch's reign or at some other significant occasion.

act of honor. *Commercial law.* A transaction, memorialized in an instrument prepared by a notary public, evidencing a third person's agreement to accept, for the credit of one or more of the parties, a bill that has been protested. • The UCC eliminated this type of transaction.

act of nature. See ACT OF GOD.

act of omission. See *negative act* under ACT (2).

act of Parliament. A law made by the British sovereign, with the advice and consent of the lords and the commons; a British statute.

act of Parliament of Scotland. 1. A law passed by the Parliament of Scotland between its creation about the 17th century and 1707. **2.** A law passed (from 1999 onward) by the new Parliament of Scotland created by the Scotland Act of 1998.

act of petition. *Hist.* A summary proceeding in which litigants provide brief statements supported by affidavit. • This procedure was used in the English High Court of Admiralty.

act of possession. Conduct indicating an intent to claim the property in question as one's own; esp., conduct that supports a claim of adverse possession.

act of providence. See ACT OF GOD.

act of sale. An official record of a sale of property; esp., a document drawn up by a notary, signed by the parties, and attested by witnesses.

Act of Settlement. *Hist.* An act of Parliament (12 & 13 Will. 3, ch. 2, 1700) that resolved the question of royal succession unsettled after the Glorious Revolution of 1688. • The question was resolved by limiting the Crown to members of the House of Hanover who were Protestant. The Act also provided that the sovereign must be a member of the Church of England, and it established that judges would hold office during good behavior rather than at the will of the sovereign.

act-of-state doctrine. The common-law principle that prevents U.S. courts from questioning the validity of a foreign country's sovereign acts within its own territory. • As originally formulated by the U.S. Supreme Court in 1897, the doctrine provides that "the courts of one country will not sit in judgment on the acts of the government of another done within its own territory." *Underhill v. Hernandez*, 168 U.S. 250, 252, 18 S.Ct. 83, 84 (1897).

Act of Supremacy. *Hist.* A statute that named the English sovereign as supreme head of the Church of England (26 Hen. 8, ch. 1). • The Act was passed in 1534 during Henry VIII's reign and confirmed in 1559 (1 Eliz., ch. 1) to

counteract pro-Catholic legislation enacted during the reign of Mary Tudor.

act of the law. See ACT (2).

act of the party. See *act in the law* under ACT (2).

Act of Uniformity. *Hist.* Any of several 16th- and 17th-century acts mandating uniform religious practices in England and Ireland; specif., an act requiring the use of the *Book of Common Prayer*.

Act of Union. Any of several acts of Parliament uniting various parts of Great Britain. • The term applies to (1) the Laws in Wales Act (1535), which united Wales with England and made that principality subject to English law, and (2) the Union with Ireland Act (1800), which abolished the Irish Parliament and incorporated Ireland into the United Kingdom of Great Britain and Ireland. It is also, but quite mistakenly, used in reference to the Union with Scotland in 1707, which was not made by statute but by treaty, approved by separate acts of Parliament of Scotland and of England, which by the treaty dissolved themselves and created the new state of Great Britain with one parliament, the Parliament of Great Britain.

actor. 1. One who acts; a person whose conduct is in question. **2.** *Archaic.* A male plaintiff. **3.** *Hist.* An advocate or pleader; one who acted for another in legal matters. Cf. REUS (1).

actrix (ak-triks). *Archaic.* A female plaintiff.

acts of assembly. See SESSION LAWS.

actual, adj. Existing in fact; real <actual malice>. Cf. CONSTRUCTIVE.

actual agency. See AGENCY (1).

actual allegiance. See ALLEGIANCE.

actual authority. See AUTHORITY (1).

actual bailment. See BAILMENT.

actual capital. See CAPITAL.

actual cash value. See *fair market value* under VALUE.

actual cause. See *but-for cause* under CAUSE (1).

actual change of possession. A real, rather than constructive, transfer of ownership. • A creditor of the transferor cannot reach property that has actually changed possession.

actual controversy. See CONTROVERSY (2), (3).

actual damages. See DAMAGES.

actual delivery. See DELIVERY.

actual escape. See ESCAPE (2).

actual eviction. See EVICTION.

actual-evidence test. See SAME-EVIDENCE TEST.

actual force. See FORCE.

actual fraud. See FRAUD.

actual-injury trigger. *Insurance.* The point at which an insured suffers damage or injury (such as the time of an automobile accident), so that there is an occurrence invoking coverage under an insurance policy. — Also termed *injury-in-fact trigger*. Cf. EXPOSURE THEORY; MANIFESTATION THEORY; TRIPLE TRIGGER.

actual innocence. See INNOCENCE.

actual knowledge. See KNOWLEDGE.

actual loss. See LOSS.

actually litigated. (Of a claim that might be barred by collateral estoppel) properly raised in an earlier lawsuit, submitted to the court for a determination, and determined. • A party is barred by the doctrine of collateral estoppel from relitigating an issue that was actually litigated — usu. including by summary judgment but not necessarily by default judgment — in an earlier suit involving the same parties, even if that suit involved different claims. Restatement (Second) of Judgments § 27 cmt. d (1982).

actual malice. See MALICE.

actual market value. See *fair market value* under VALUE.

actual notice. See NOTICE.

actual physical control. Direct bodily power over something, esp. a vehicle. • Many jurisdic-

tions require a showing of “actual physical control” of a vehicle by a person charged with driving while intoxicated.

actual possession. See POSSESSION (3).

actual reduction to practice. See REDUCTION TO PRACTICE.

actual-risk test. The doctrine that, for an injured employee to be entitled to workers’-compensation benefits, the employee must prove that the injury arose from, and occurred in the course and scope of, employment.

actual seisin. See *seisin in deed* under SEISIN.

actual service. See PERSONAL SERVICE (1).

actual taking. See TAKING (2).

actual total loss. See LOSS.

actual value. See *fair market value* under VALUE.

actuarial equivalent. The amount of accrued pension benefits to be paid monthly or at some other interval so that the total amount of benefits will be paid over the expected remaining lifetime of the recipient.

actuarially sound retirement system. A retirement plan that contains sufficient funds to pay future obligations, as by receiving contributions from employees and the employer to be invested in accounts to pay future benefits. Cf. NONACTUARIALLY SOUND RETIREMENT SYSTEM.

actuarial method. A means of determining the amount of interest on a loan by using the loan’s annual percentage rate to separately calculate the finance charge for each payment period, after crediting each payment, which is credited first to interest and then to principal.

actuarial present value. The amount of money necessary to purchase an annuity that would generate a particular monthly payment, or whatever periodic payment the plan provides, for the expected remaining life span of the recipient.

actuarial surplus. An estimate of the amount by which a pension plan’s assets exceed its expected current and future liabilities, including the amount expected to be needed to fund future benefit payments.

actuarial table. An organized chart of statistical data indicating life expectancies for people in various categories (such as age, family history, and exposure to chemicals). • Actuarial tables are usu. admissible in evidence. — Also termed *expectancy table*; *mortality table*; *mortuary table*. Cf. LIFE TABLE.

actuarius (ak-choo-air-ee-əs or ak-tyoo-), *n.* [Latin] *Roman law*. **1.** A notary or clerk; a shorthand writer. **2.** A keeper of public records.

actuary (ak-choo-air-ee), *n.* A statistician who determines the present effects of future contingent events; esp., one who calculates insurance and pension rates on the basis of empirically based tables. — **actuarial** (ak-choo-air-ee-əl), *adj.*

actum (ak-təm), *n.* [Latin] A thing done; an act or deed.

actus (ak-təs), *n.* [Latin] **1.** An act or action; a thing done. **2. Hist.** An act of Parliament; esp., one passed by both houses but not yet approved by the monarch. Cf. STATUTUM (1). **3. Roman law.** A servitude for driving cattle or a carriage across another's land. Cf. ITER (1).

actus reus (ak-təs ree-əs also ray-əs). [Law Latin "guilty act"] The wrongful deed that comprises the physical components of a crime and that generally must be coupled with *mens rea* to establish criminal liability; a forbidden act <the *actus reus* for theft is the taking of or unlawful control over property without the owner's consent>. — Also termed *deed of crime*; *overt act*. Cf. MENS REA.

"The word *actus* connotes a 'deed', a physical result of human conduct. When criminal policy regards such a deed as sufficiently harmful it prohibits it and seeks to prevent its occurrence by imposing a penalty for its commission. It has long been the custom of lawyers to describe a deed so prohibited by law in the words *actus reus*. Thus *actus reus* may be defined as 'Such result of human conduct as the law seeks to prevent'. It is important to note that the *actus reus*, which is the result of conduct, and therefore an event, must be distinguished from the conduct which produced the result. For example, in a simple case of murder it is the victim's death (brought about by the conduct of the murderer) which is the *actus reus*; the *mens rea* is the murderer's intention to cause that death. In other words, the crime is constituted by the event, and not by the activity (or in certain cases, as we shall see, by the omission to act) which caused the event." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 13 (16th ed. 1952).

"The phrase 'deed of crime' [= *actus reus*] as so used does not indicate the crime itself but merely one of the ingredients of crime; and this ingredient may be present without any crime at all, just as hydrogen is one of the

ingredients of water but may be present without water. The words 'deed of crime' are so suggesting of the crime itself, however, that perhaps the Latin phrase '*actus reus*' is less likely to cause confusion. The *actus reus* is essential to crime but is not sufficient for this purpose without the necessary *mens rea*, just as *mens rea* is essential to crime but is insufficient without the necessary *actus reus*." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 831 (3d ed. 1982).

A.D. abbr. ANNO DOMINI.

ad (ad), *prep.* [Latin] At; by; for; near; on account of; to; until; upon; with relation to; concerning.

ADA. abbr. AMERICANS WITH DISABILITIES ACT.

ad abundantiore[m] cautelam (ad ab-ən-dan-shee-ər-əm kaw-tee-ləm). [Law Latin] *Hist.* For more abundant caution. — Also termed *ad cautelam ex superabundanti* (ad kaw-tee-ləm eks s[y]oo-pər-ab-ən-dan-ti).

ad admittendum clericum (ad ad-mi-ten-dəm kler-ə-kəm). [Law Latin] See DE CLERICO ADMITTENDO.

ad aliud examen (ad ay-lee-əd eg-zay-mən), *adv.* [Law Latin] To another tribunal.

ad alium diem (ad ay-lee-əm di-əm), *adv.* [Law Latin] To another day.

adaptation right. *Copyright.* A copyright holder's exclusive right to prepare derivative works based on the protected work. • For example, before a movie studio can make a film version of a book, it must secure the author's adaptation right. See DERIVATIVE WORK.

ad assisas capiendas (ad ə-siz-əs kap-ee-ən-dəs). [Law Latin] To take assizes; to hold assizes.

a dato (ay day-toh), *adv.* [Law Latin] From the date. — Also termed *a datu*.

ad audiendam considerationem curiae (ad aw-dee-ən-dəm kən-sid-ə-ray-shee-oh-nəm kyoor-ee-i), *vb.* [Law Latin] To hear the judgment of the court.

ad audiendum et determinandum (ad aw-dee-ən-dəm et di-tər-mi-nan-dəm), *vb.* [Law Latin] To hear and determine. See OYER ET TERMINER.

ADB. abbr. ACCIDENTAL-DEATH BENEFIT.

ad barram (ad **bahr**-əm), *adv.* [Law Latin] To the bar; at the bar.

ad barram evocatus (ad **bahr**-əm ee-voh-**kay**-təs). [Law Latin] Called to the bar. See CALL TO THE BAR.

ad campi partem (ad **kam**-pī **pahr**-təm or -təm). [Law Latin] For a share of the field or land.

ad captum vulgi (ad **kap**-təm **vəl**-jī). [Law Latin] Adapted to the common understanding.

ad colligendum (ad kol-i-**jen**-dəm). [Law Latin] For collecting <administrator *ad colligendum*>.

ad colligendum bona defuncti (ad kol-i-**jen**-dəm **boh**-nə di-**fəngk**-tī). [Law Latin “for collecting the goods of the deceased”] Special letters of administration authorizing a person to collect and preserve a decedent’s property.

ad communem legem (ad **kə-myoo**-nəm **lee**-jəm), *n.* [Law Latin “to common law”] *Hist.* A writ of entry available after the death of a life tenant to recover a reversionary interest in land alienated by the tenant. — Also termed *entry ad communem legem*.

ad commune nocumentum (ad **kə-myoo**-nee nok-**yə-men**-təm), *adv.* [Law Latin] To the common nuisance.

ad comparendum (ad kom-pə-**ren**-dəm), *vb.* [Law Latin] To appear. • This term is part of the larger phrase *ad comparendum, et ad standum juri* (“to appear and to stand to the law”). — Also termed (in standard Latin) *ad comparandum*.

ad computum reddendum (ad **kəm-pyoo**-təm ri-**den**-dəm), *vb.* [Law Latin] To render an account.

adcordabilis denarii (ad-kor-**day**-bə-lis di-**nair**-ee-ī), *n.* [Latin] *Hist.* Money paid by a vassal to the lord upon the sale or exchange of a feud.

ad culpam (ad **kəl**-pəm), *adv.* [Law Latin] Until misconduct.

ad curiam (ad **kyoor**-ee-əm), *adv.* [Law Latin] At a court; to court.

ad curiam vocare (ad **kyoor**-ee-əm voh-**kair**-ee), *vb.* [Law Latin] To summon to court.

ad custagia (ad **kə-stay**-jee-ə), *adv.* [Law Latin] At the costs.

ad custum (ad **kəs**-təm), *adv.* [Law Latin] At the cost.

ad damnum clause (ad **dam**-nəm). [Latin “to the damage”] A clause in a prayer for relief stating the amount of damages claimed. See PRAYER FOR RELIEF.

“Where the amount the plaintiff is entitled to recover appears from the statement of facts — as where the amount due the plaintiff is alleged on breach of a money demand, the demand of judgment may take the place of an *ad damnum* clause.” Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 209 (2d ed. 1899).

added damages. See *punitive damages* under DAMAGES.

ad defendendum (ad di-fen-**den**-dəm), *vb.* [Latin] To defend.

addendum (ə-**den**-dəm). Something to be added, esp. to a document; a supplement.

addicere (ə-**dis**-ər-ee), *vb.* [Latin] *Roman law.* To adjudge, allot, or condemn.

addict (a-**dikt**), *n.* A person who habitually uses a substance, esp. a narcotic drug. — **addict** (ə-**dikt**), *vb.* — **addictive**, *adj.* — **addiction**, *n.*

drug addict. A person who is psychologically or physiologically dependent on a narcotic drug.

addictio (ə-**dik**-shee-oh), *n.* [Latin] *Roman law.* The awarding by a magistrate of a person or thing to another, as the property of a debtor to a creditor.

addictive drug. See DRUG.

ad diem (ad **dī**-əm). [Latin] At a day; at the appointed day.

addition. 1. A structure that is attached to or connected with another building that predates the structure; an extension or annex. • Although some courts have held that an addition is merely an appurtenant structure that might not actually be in physical contact with the other building, most courts hold that there must be physical contact. **2.** A title or appella-

tion appended to a person's name to show rank, occupation, or place of residence. • In English law, there are traditionally four kinds of additions: (1) those of estate, such as yeoman, gentleman, or esquire; (2) those of degree (or dignity), such as knight, baron, earl, marquis, or duke; (3) those of trade or occupation, such as scrivener, painter, mason, or carpenter; and (4) those of place of residence, such as London, Bath, or Chester. It was formerly required by the statute of additions (1 Hen. 5, ch. 5) that original writs and indictments state a person's addition, but the practice has long since been abolished.

additional-consideration rule. *Employment law.* An exception to the employment-at-will principle, whereby an employee who does not have a written contract but who undertakes substantial hardship in addition to the normal job duties — as by relocating to a different city based on oral assurances of job security — can maintain a breach-of-contract claim if the employer does not fulfill its agreement.

additional damages. See DAMAGES.

additional extended coverage. *Insurance.* A policy endorsement providing supplemental residential coverage for a variety of perils, including vandalism, damage from falling trees, and water damage from the plumbing system.

additional grand jury. See *special grand jury* under GRAND JURY.

additional instruction. See JURY INSTRUCTION.

additional insurance. See INSURANCE.

additional insured. See INSURED.

additional legacy. See LEGACY.

additional servitude. See SERVITUDE (1).

additional standard deduction. See DEDUCTION.

additional term. See TERM (5).

additional work. See WORK.

additur (ad-ə-tur). [Latin "it is added to"] A trial court's order, issued usu. with the defendant's consent, that increases the damages awarded by the jury to avoid a new trial on grounds of inadequate damages. • The term

may also refer to the increase itself, the procedure, or the court's power to make the order. — Also termed *increscitur*. Cf. REMITTITUR.

add-on clause. An installment-contract provision that converts earlier purchases into security for new purchases.

addone (ə-doh-nee), *p.pl.* [Law French] Given to. — Also spelled *addonne*.

add-on interest. See INTEREST (3).

add-on loan. See LOAN.

address, n. **1.** The place where mail or other communication is sent. **2.** In some states, a legislature's formal request to the executive to do a particular thing, as to remove a judge from office. **3. Equity practice.** The part of a bill in which the court is identified. See DIRECTION (5).

address to the Crown. Upon a reading of a royal speech in Parliament, the ceremonial resolution by Parliament expressing thanks to the sovereign for the gracious speech. • Formerly, two members were selected in each house for moving and seconding the address. With the commencement of the 1890–1891 session, a single resolution was adopted.

adduce (ə-d[y]oos), *vb.* To offer or put forward for consideration (something) as evidence or authority <adduce the engineer's expert testimony>. — **adduction** (ə-dək-shən), *n.* — **adducible** (ə-d[y]oo-sə-bəl), *adj.*

ADEA. *abbr.* AGE DISCRIMINATION IN EMPLOYMENT ACT.

ad effectum (ad i-fek-təm). [Law Latin] To the effect.

ad effectum sequentem (ad i-fek-təm si-kwen-təm). [Law Latin] To the effect following.

ademptio (ə-demp-shee-oh), *n.* [Latin] *Roman law.* See ADEPTION.

ademption (ə-demp-shən), *n.* *Wills & estates.* The destruction or extinction of a legacy or bequest by reason of a bequeathed asset's ceasing to be part of the estate at the time of the testator's death; a beneficiary's forfeiture of a legacy or bequest that is no longer operative. — Also termed *extinguishment of legacy*. — **adeem** (ə-deem), *vb.* Cf. ADVANCEMENT; LAPSE (2).

ademption by extinction. An ademption that occurs because the property specifically described in the will is not in the estate at the testator's death.

ademption by satisfaction. An ademption that occurs because the testator, while alive, has already given property to the beneficiary with the intention of rendering the testamentary gift inoperative.

adeo (ad-ee-oh). [Latin] So; as.

adequacy test. See IRREPARABLE-INJURY RULE.

adequate, adj. Legally sufficient <adequate notice>.

adequate assurance. *Bankruptcy.* Evidence that a debtor will probably be able to perform its obligations under a contract, such as the posting of a bond or a showing that the debtor will generate sufficient income to pay any arrearages and future payment obligations.

adequate care. See *reasonable care* under CARE.

adequate cause. See ADEQUATE PROVOCATION.

adequate compensation. See *just compensation* under COMPENSATION.

adequate consideration. See CONSIDERATION.

adequate notice. See *due notice* under NOTICE.

adequate protection. *Bankruptcy.* The protection afforded to a holder of a secured claim against the debtor, such as a periodic cash payment or an additional lien <the bankruptcy court permitted the lender to foreclose on the debtor's home after finding a lack of adequate protection of the lender's property interest>. 11 USCA § 361.

"Bankruptcy intends to safeguard secured creditors' encumbrances, but the stay threatens them by preventing the secured creditors from foreclosing or taking other actions to apply the property's value against the secured debt. Bankruptcy aims to guard against this threat by ordering relief . . . for lack of adequate protection of the secured interest." David G. Epstein et al., *Bankruptcy* § 3-27, at 140 (1993).

adequate provocation. Something (such as the heat of passion) that affects a person's reason and self-control, causing the person to impulsively commit a crime. • In certain circumstances, adequate provocation can reduce a

charge from murder to manslaughter. — Also termed *adequate cause*. Cf. SELF-DEFENSE (1).

adequate remedy at law. See REMEDY.

adequate representation. A close alignment of interests between actual parties and potential parties in a lawsuit, so that the interests of potential parties are sufficiently protected by the actual parties. • The concept of adequate representation is often used in procedural contexts. For example, if a case is to be certified as a class action, there must be adequate representation by the named plaintiffs of all the potential class members. Fed. R. Civ. P. 23(a)(4). And if a nonparty is to intervene in a lawsuit, there must not already be adequate representation of the nonparty by an existing party. Fed. R. Civ. P. 24(a)(2).

adequate-state-grounds doctrine. A judge-made principle that prevents the Supreme Court from reviewing a state-court decision based partially on state law if a decision on a federal issue would not change the result.

adequate warning. *Products liability.* Notice of the potential dangers involved in using a product, provided in a way that is reasonably calculated to reach the product's consumers and to catch their attention, and written so that it is comprehensible to the average user of the product and fairly conveys the nature and extent of any danger involved in using the product and the way to avoid the danger. Restatement (Third) of Torts: Products Liability § 2(c) cmt. i (1998).

adesse (ad-es-ee), *vb.* *Civil law.* To be present. Cf. ABESSE.

adeu (ə-dyoo), *adv.* [Law French] Without day. • This is a common term in the Year Books, indicating a final dismissal from court (*alez adeu* "go hence without day"). See GO HENCE WITHOUT DAY; ALLER SAN JOUR.

ad eversioem juris nostri (ad i-vər-shee-oh-nəm joor-is nos-tri). [Law Latin] To the overthrow of our right.

ad excambium (ad eks-kam-bee-əm). [Law Latin] For exchange; for compensation.

ad exhaeredationem (ad eks-heer-ə-day-shee-oh-nəm). [Law Latin] To the disinheritance; to the injury of the inheritance.

"The writ of waste calls upon the tenant to appear and shew cause why he hath committed waste and destruction in the place named, *ad exhaeredationem*, to the disinherison of the plaintiff." 3 William Blackstone, *Commentaries on the Laws of England* 228 (1768).

ad exitum (ad ek-si-təm). [Law Latin] At issue; at the end (usu. of pleadings).

ad faciendam juratam illam (ad fay-shee-en-dəm jə-ray-təm il-əm). [Law Latin] To make up that jury.

ad faciendum (ad fay-shee-en-dəm). [Latin] To do; to make.

ad feodi firmam (ad fee-ə-di fər-məm). [Law Latin] To fee farm. See FEE FARM.

ad fidem (ad fi-dəm), *adv.* [Law Latin] In allegiance; under allegiance; owing allegiance. ● This term appeared in a variety of phrases, including *ad fidem regis* ("under the king's allegiance") and *natus ad fidem regis* ("born in allegiance to the king").

ad filum aquae (ad fi-ləm ak-wee), *adv.* [Law Latin] To the thread of the water; to the central line or middle of a stream. ● This refers to the ownership reach of a riparian proprietor. — Also termed *ad medium filum aquae*.

ad filum viae (ad fi-ləm vi-ee), *adv.* [Law Latin] To the middle of the way; to the central line of the road. — Also termed *ad medium filum viae*.

ad finem (ad fi-nəm), *adv.* [Latin] To the end. ● This citation signal, abbreviated in text *ad fin.*, formerly provided only the first page of the section referred to, but now usu. directs the reader to a stated span of pages.

ad firmam tradidi (ad fər-məm tray-də-di), *n.* [Law Latin] See FARM LET.

ad fundandam jurisdictionem (ad fən-dan-dəm joor-is-dik-shee-oh-nəm), *vb.* [Law Latin] To make the basis of jurisdiction.

ad gaolam deliberandam (ad jay-ləm di-lib-ə-ran-dəm), *vb.* [Law Latin] To deliver the jail; to make jail delivery. See COMMISSION OF GAOL DELIVERY; JAIL DELIVERY.

ad gravamen (ad grə-vay-mən), *adv.* [Latin] To the grievance, injury, or oppression of (another person).

adherence. See ACCESSION (3).

adhesion. See ACCESSION (3).

adhesionary contract. See *adhesion contract* under CONTRACT.

adhesion contract. See CONTRACT.

adhesory contract. See *adhesion contract* under CONTRACT.

adhibere (ad-hə-bair-ee), *vb.* [Latin] *Civil law.* To apply; to use; to exercise.

adhibere diligentiam (ad-hə-bair-ee dil-ə-jen-shee-əm), *vb.* [Latin] *Civil law.* To use care.

ad hoc (ad hok), *adj.* [Latin "for this"] Formed for a particular purpose <the board created an ad hoc committee to discuss funding for the new arena>. — **ad hoc**, *adv.*

ad hoc arbitration. See ARBITRATION.

ad hoc compromis. See COMPROMIS.

ad hominem (ad hom-ə-nəm), *adj.* [Latin "to the person"] Appealing to personal prejudices rather than to reason; attacking an opponent's character rather than the opponent's assertions <the brief was replete with ad hominem attacks against opposing counsel>. — **ad hominem**, *adv.*

ad hunc diem (ad hɒŋk di-əm), *adv.* [Law Latin] To this day.

ad idem (ad i-dəm). [Latin] To the same point or matter; of the same mind <the parties reached a consensus *ad idem* and agreed to consummate a sale>.

a die confectionis (ay di-ee kən-fek-shee-oh-nis), *adv.* [Law Latin] From the day of the making.

a die datus (ay di-ee day-təs), *n.* [Latin "given from (such-and-such) a day"] A lease provision establishing the beginning of the rental period.

adieu (ə-dyoo). [Law French "to God"] Farewell. ● This term, although etymologically distinct, appears sometimes in the Year Books in place of *adeu*. See ADEU; ALLER A DIEU.

ad inde (ad in-dee), *adv.* [Law Latin] To that or them; thereto.

ad infinitum (ad in-fə-ni-təm). [Latin “without limit”] To an indefinite extent <a corporation has a duration *ad infinitum* unless the articles of incorporation specify a shorter period>.

ad inquirendum (ad in-kwə-ren-dəm), *n.* [Law Latin “to inquire”] *Hist.* A writ instructing the recipient to investigate something at issue in a pending case.

ad instantiam partis (ad in-stan-shee-əm pahr-tis), *adv.* [Law Latin] At the instance of a party.

ad interim (ad in-tər-im), *adv.* [Latin] In the meantime; temporarily.

adiratus (ad-ə-ray-təs), *adj.* [Law Latin] Lost; strayed; removed.

adjacent, *adj.* Lying near or close to, but not necessarily touching. Cf. ADJOINING.

adjective law (aj-ik-tiv). The body of rules governing procedure and practice; PROCEDURAL LAW. — Also termed *adjectival law*.

“The body of law in a State consists of two parts, *substantive* and *adjective* law. The former prescribes those rules of civil conduct which declare the rights and duties of all who are subject to the law. The latter relates to the remedial agencies and procedure by which rights are maintained, their invasion redressed, and the methods by which such results are accomplished in judicial tribunals.” Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 1 (2d ed. 1899).

adjoining (ə-joyn-ing), *adj.* Touching; sharing a common boundary; CONTIGUOUS. — **adjoin** (ə-joyn), *vb.* Cf. ADJACENT.

adjoining owner. See OWNER.

adjourn (ə-jərn), *vb.* To recess or postpone.

adjourn sine die (si-nee [or sin-ay] di-ee). [Latin “without date”] To postpone action of a convened court or legislative body indefinitely.

adjournatur (aj-ər-nay-tər). [Latin] It is adjourned. • This word formerly appeared at the end of reported decisions.

adjourned term. See TERM (5).

adjournment (ə-jərn-mənt), *n.* **1.** A putting off of a court session or other meeting or assembly until a later time. **2.** The period or interval during which a session is put off.

adjournment day. See DAY.

adjournment day in error. See DAY.

adjudge (ə-jəj), *vb.* **1.** ADJUDICATE (1). **2.** To deem or pronounce to be. **3.** To award judicially.

adjudicate (ə-joo-di-kayt), *vb.* **1.** To rule upon judicially. **2.** ADJUDGE (2). **3.** ADJUDGE (3).

adjudicatee (ə-joo-di-kə-tee). *Civil law.* A purchaser at a judicial sale.

adjudicatio (ə-joo-di-kay-shee-oh), *n.* [Latin] *Roman & civil law.* A part of a formula (i.e., the praetor’s statement of an issue for a *judex*) directing the *judex* to apportion property in a divisory action such as an *actio de communi dividundo*. See FORMULA (1).

adjudication (ə-joo-di-kay-shən), *n.* **1.** The legal process of resolving a dispute; the process of judicially deciding a case. **2.** JUDGMENT. **3.** *Scots law.* A method of transferring heritable land to a creditor as security for or in satisfaction of a debt.

adjudicative (ə-joo-di-kə-tiv), *adj.* **1.** Of or relating to adjudication. **2.** Having the ability to judge. — Also termed *adjudicatory*; *judicative*.

adjudicative-claims arbitration. See ARBITRATION.

adjudicative fact. See FACT.

adjudicative law. See CASELAW.

adjudicator (ə-joo-di-kay-tər). A person whose job is to render binding decisions; one who makes judicial pronouncements.

adjudicatory. See ADJUDICATIVE.

adjudicatory hearing. See HEARING.

ad iudicium provocare (ad joo-dish-ee-əm proh-və-kair-ee), *vb.* [Latin] To summon to court; to commence an action.

adjunct (aj-əngkt), *adj.* Added as an accompanying object or circumstance; attached in a subor-

dinate or temporary capacity <an adjunct professor>. — **adjunct**, *n.*

adjunct account. See ACCOUNT.

adjunction (ə-jəŋk-shən). **1.** The act of adding to. **2. Civil law.** The union of an item of personal property owned by one person with that owned by another. See ACCESSION (4).

adjunctum accessorium (ə-jəŋk-təm ak-sə-sor-ee-əm), *n.* [Law Latin] An accessory or appurtenance.

ad jungendum auxilium (ad jən-jen-dəm awg-zil-ee-əm), *vb.* [Law Latin] To join in aid.

ad jura regis (ad joor-ə ree-jis), *n.* [Law Latin “for the rights of the king”] *Hist.* A writ brought against a person seeking to eject the holder of a royal benefice. • The writ was available to the holder of the benefice.

adjure (ə-juur), *vb.* To charge or entreat solemnly <the President adjured the foreign government to join the alliance>. — **adjuration** (ə-jə-ray-shən), *n.* — **adjuratory** (ə-juur-ə-tor-ee), *adj.* — **adjurer, adjuror** (ə-juur-ər), *n.*

adjust, *vb.* **1.** To determine the amount that an insurer will pay an insured to cover a loss. **2.** To arrive at a new agreement with a creditor for the payment of a debt.

adjustable-rate mortgage. See MORTGAGE.

adjusted basis. See BASIS.

adjusted book value. See BOOK VALUE.

adjusted cost basis. See BASIS.

adjusted gross estate. See ESTATE.

adjusted gross income. See INCOME.

adjusted ordinary gross income. See INCOME.

adjusted present value. See PRESENT VALUE.

adjuster. One appointed to ascertain, arrange, or settle a matter; esp., an independent agent or employee of an insurance company who negotiates and settles claims against the insurer. — Also termed *claims adjuster*.

independent adjuster. An adjuster who solicits business from more than one insurance

ad lucrandum vel perdendum

company; one who is not employed by, and does not work exclusively for, one insurance company.

adjusting entry. An accounting entry made at the end of an accounting period to record previously unrecognized revenue and expenses, as well as changes in assets and liabilities.

adjustment board. An administrative agency charged with hearing and deciding zoning appeals. — Also termed *board of adjustment; board of zoning appeals*.

adjustment bond. See BOND (3).

adjustment security. See SECURITY.

adjutant general (əj-ə-tənt), *n.* (*usu. cap.*) **1.** The administrative head of a military unit having a general staff. **2.** An officer in charge of the National Guard of a state.

ad largum (ad lahr-gəm), *adj.* [Law Latin] At large; at liberty; unconfined.

adlegiare (ad-lee-jee-air-ee), *vb.* [Law Latin] To purge (oneself) of a crime by oath. See PURGATION.

ad libellum rescribere (lə-bel-əm ri-skri-bə-ree), *vb.* [Latin] *Roman law.* To write an answer to a petition, esp. one to the emperor.

ad libitum (ad lib-i-təm), *adv.* [Law Latin] At pleasure. • The modern term *ad-lib* (*adj.* & *vb.*), borrowed from drama and music, is essentially the same; it means “at the performer’s pleasure,” and allows the performer discretion in innovating a part impromptu.

“[B]ut in actions where the damages are precarious, being to be assessed *ad libitum* by a jury, as in actions for words, ejectment, or trespass, it is very seldom possible for a plaintiff to swear to the amount of his cause of action; and therefore no special bail is taken thereon....” 3 William Blackstone, *Commentaries on the Laws of England* 292 (1768).

ad litem (ad li-tem or -təm). [Latin “for the suit”] For the purposes of the suit; pending the suit. See GUARDIAN AD LITEM.

ad lucrandum vel perdendum (ad loo-kran-dəm vel pər-den-dəm), *adv.* [Law Latin] For gain or loss. • These were emphatic words in a warrant of attorney. It is sometimes expressed “to lose and gain.” See WARRANT OF ATTORNEY.

ad majorem cautelam (ad mə-jor-əm kaw-tee-ləm), *adv.* [Law Latin] For greater security.

admanuensis (ad-man-yoo-en-sis), *n.* [Law Latin fr. Latin *ad-* + *manus* "a hand"] *Hist.* An oath-taker who places a hand on the Bible.

ad manum (ad may-nəm), *adj.* [Latin] At hand; ready for use.

admeasurement (ad-mezh-ər-mənt), *n.* **1.** Ascertainment, assignment, or apportionment by a fixed quantity or value, or by certain limits <the ship's admeasurement is based on its crew, engine, and capacity>. **2.** A writ obtained for purposes of ascertaining, assigning, or apportioning a fixed quantity or value or to establish limits; esp., a writ available against persons who usurp more than their rightful share of property. — **admeasure** (ad-mezh-ər), *vb.*

admeasurement of dower. *Hist.* A writ to recover property from a widow who held more than she was entitled to. — Also termed *admensuratione dotis*.

admeasurement of pasture. *Hist.* A writ against a person whose cattle have overgrazed a common pasture.

ad medium filum aquae. See AD FILUM AQUAE.

ad medium filum viae. See AD FILUM VIAE.

ad melius inquirendum (ad mee-lee-əs in-kwə-ren-dəm), *n.* [Law Latin "for making better inquiry"] *Hist.* A writ commanding a coroner to hold a second inquest.

admensuratio (ad-men-shə-ray-shee-oh), *n.* [Law Latin] *Hist.* Admeasurement.

admensuratione dotis. See *admeasurement of dower* under ADMEASUREMENT.

adminicle (ad-min-i-kəl), *n.* Corroborative or explanatory proof. — Also termed *adminiculum*.

adminicular (ad-mə-nik-yə-lər), *adj.* Corroborative or auxiliary <adminicular evidence>.

adminiculate (ad-mə-nik-yə-layt), *vb.* *Scots law.* To give corroborating evidence.

adminiculum (ad-mə-nik-yə-ləm), *n.* [Latin "support"] *Roman law.* Legal or evidentiary means of supporting one's case; ADMINICLE.

administration, *n.* **1.** The management or performance of the executive duties of a government, institution, or business. **2.** In public law, the practical management and direction of the executive department and its agencies. **3.** A judicial action in which a court undertakes the management and distribution of property. ● Examples include the administration of a trust, the liquidation of a company, and the realization and distribution of a bankrupt estate. **4.** The management and settlement of the estate of an intestate decedent, or of a testator who has no executor, by a person legally appointed and supervised by the court. — **administer**, *vb.* — **administrative**, *adj.* — **administrator**, *n.*

administration cum testamento annexo (kəm tes-tə-men-toh ə-nek-soh). [Latin "with the will annexed"] An administration granted when a testator's will does not name any executor or when the executor named is incompetent to act, is deceased, or refuses to act. — Abbr. c.t.a. — Also termed *administration with the will annexed*.

administration de bonis non (dee boh-nis non). [Latin "of the goods not administered"] An administration granted for the purpose of settling the remainder of an estate that was not administered by the former executor or administrator. — Abbr. d.b.n.

administration de bonis non cum testamento annexo (de boh-nis non kəm tes-tə-men-toh ə-neks-oh). An administration granted to settle the remainder of an estate not settled by a previous administrator or executor. ● This type of administration arises when there is a will, as opposed to an *administration de bonis non*, which is granted when there is no will. — Abbr. d.b.n. c.t.a.

administration durante absentia (d[y]uu-ran-tee ab-sen-shee-ə). An administration granted during the absence of either the executor or the person who has precedence as administrator.

administration durante minore aetate (d[y]uu-ran-tee mi-nor-ee ee-tay-tee). An administration granted during the minority of either a child executor or the person who has precedence as administrator.

administration pendente lite (pen-den-tee li-tee). An administration granted during the pendency of a suit concerning a will's validity. — Also termed *pendente lite administration*; *special administration*. See PENDENTE LITE.

administration with the will annexed. See *administration cum testamento annexo*.

ancillary administration (an-sə-ler-ee). An administration that is auxiliary to the administration at the place of the decedent's domicile, such as one in a foreign state, the purpose being to collect assets and pay debts in that locality. — Also termed *foreign administration*.

"The object of ancillary administration is to collect assets of nonresident decedents found within the state and remit the proceeds to the domiciliary executor or administrator, and historically it has been the only feasible way of doing this, although statutes in some jurisdictions permit simpler solutions today, such as permitting the domiciliary representative to act as local representative if he complies with certain requirements . . ." 31 Am. Jur. 2d *Executors and Administrators* § 1168, at 558 (1989).

caeterorum administration (set-ə-ror-əm). [Latin "of the rest"] An administration granted when limited powers previously granted to an administrator are inadequate to settle the estate's residue.

domiciliary administration (dom-ə-sil-ee-er-ee). The handling of an estate in the state where the decedent was domiciled at death.

foreign administration. See *ancillary administration*.

general administration. An administration with authority to deal with an entire estate. Cf. *special administration*.

limited administration. An administration for a temporary period or for a special purpose.

pendente lite administration. See *administration pendente lite*.

public administration. In some jurisdictions, an administration by an officer appointed to administer for an intestate who has left no person entitled to apply for letters (or whose possible representatives refuse to serve).

special administration. 1. An administration with authority to deal with only some of a decedent's effects, as opposed to administering the whole estate. 2. See *administration pendente lite*. Cf. *general administration*.

temporary administration. An administration in which the court appoints a fiduciary to administer the affairs of a decedent's estate for a short time before an administrator or executor can be appointed and qualified.

administration expense. *Tax.* A necessary expenditure made by an administrator in managing and distributing an estate. • These expenses are deductible even if not actually incurred by the time the return is filed.

administration letters. See LETTERS OF ADMINISTRATION.

administration of justice. The maintenance of right within a political community by means of the physical force of the state; the state's application of the sanction of force to the rule of right.

administration pendente lite. See ADMINISTRATION.

administration with the will annexed. See *administration cum testamento annexo* under ADMINISTRATION.

administrative act. See ACT (2).

administrative adjudication. The process used by an administrative agency to issue regulations through an adversary proceeding. Cf. RULEMAKING.

administrative agency. See AGENCY (3).

administrative collateral estoppel. See COLLATERAL ESTOPPEL.

administrative-control rule. *Tax.* The rule making the grantor of a trust liable for tax if the grantor retains control that may be exercised primarily for the grantor's own benefit. IRC (26 USCA) § 675.

administrative-convenience exception. *Bankruptcy.* A provision permitting a bankruptcy plan to have a separate classification for small, unsecured claims, to the extent that the separate classification will assist in a more efficient disposition of the estate, as by paying or eliminating the small claims earlier than other claims. 11 USCA § 1122(b).

administrative crime. See CRIME.

administrative deviation. A trustee's unauthorized departure from the terms of the trust.

administrative discharge. See DISCHARGE (8).

administrative discretion. See DISCRETION.

administrative expense. 1. OVERHEAD. 2. *Bankruptcy.* A cost incurred by the debtor, after filing a bankruptcy petition, that is necessary for the debtor to continue operating its business. • Administrative expenses are entitled to payment on a priority basis when the

estate is distributed. 11 USCA § 503(b). See *general administrative expense* under EXPENSE.

administrative freeze. *Bankruptcy.* The refusal by a debtor's bank to permit withdrawals from the debtor's bank account after the bank learns that the debtor has filed bankruptcy, usu. because the debtor owes money to the bank in addition to maintaining funds on deposit.

administrative hearing. An administrative-agency proceeding in which evidence is offered for argument or trial.

administrative interpretation. See INTERPRETATION.

administrative law. The law governing the organization and operation of the executive branch of government (including independent agencies) and the relations of the executive with the legislature, the judiciary, and the public. • Administrative law is divided into three parts: (1) the statutes endowing agencies with powers and establishing rules of substantive law relating to those powers; (2) the body of agency-made law, consisting of administrative rules, regulations, reports or opinions containing findings of fact, and orders; and (3) the legal principles governing the acts of public agents when those acts conflict with private rights.

"Administrative law deals with the field of legal control exercised by law-administering agencies other than courts, and the field of control exercised by courts over such agencies." Felix Frankfurter, *The Task of Administrative Law*, 75 U. Pa. L. Rev. 614, 615 (1927).

international administrative law. 1. The internal law and rules of international organizations. 2. The substantive rules of international law that directly refer to the administrative matters of individual states. 3. Domestic administrative law specifically concerned with international problems or situations. — Also termed *administrative international law*.

administrative-law judge. An official who presides at an administrative hearing and who has the power to administer oaths, take testimony, rule on questions of evidence, and make factual and legal determinations. 5 USCA § 556(c). — Abbr. ALJ. — Also termed *hearing examiner*; *hearing officer*; *trial examiner*.

Administrative Office of the United States Courts. A federal agency that carries out the nonjudicial business of the federal courts. •

The Administrative Office collects statistics on the courts, supervises the administrative personnel, disburses the payroll, and performs other similar functions.

administrative officer. See OFFICER (1).

administrative order. See ORDER (2).

administrative procedure. See PROCEDURE.

Administrative Procedure Act. 1. A federal statute establishing practices and procedures to be followed in rulemaking and adjudication. • The Act was designed to give citizens basic due-process protections such as the right to present evidence and to be heard by an independent hearing officer. 2. A similar state statute.

administrative proceeding. A hearing, inquiry, investigation, or trial before an administrative agency, usu. adjudicatory in nature but sometimes quasi-legislative. — Also termed *evidentiary hearing*; *full hearing*; *trial-type hearing*; *agency adjudication*.

administrative process. 1. The procedure used before administrative agencies. 2. The means of summoning witnesses to an agency hearing.

administrative remedy. See REMEDY.

administrative review. See REVIEW.

administrative rule. A broadly applicable agency statement that interprets a law or policy or describes the agency's requirements.

administrative rulemaking. See RULEMAKING.

administrative search. See SEARCH.

administrative tribunal. An administrative agency before which a matter may be heard or tried, as distinguished from a purely executive agency; an administrative agency exercising a judicial function.

administrative warrant. See WARRANT (1).

administrator (ad-min-ə-stray-tər). 1. A person appointed by the court to manage the assets and liabilities of an intestate decedent. • This term once referred to males only (as opposed to *administratrix*), but legal writers now generally use *administrator* to refer to someone of either sex. Cf. EXECUTOR (2).

administrator ad litem (ad lī-tem or -təm). A special administrator appointed by the court to represent the estate's interest in an action usu. either because there is no administrator of the estate or because the current administrator has an interest in the action adverse to that of the estate.

administrator ad prosequendum (ad prahs-ə-kwen-dəm). An administrator appointed to prosecute or defend a certain action or actions involving the estate.

administrator c.t.a. See *administrator cum testamento annexo*.

administrator cum testamento annexo (kəm tes-tə-men-toh ə-nek-soh). An administrator appointed by the court to carry out the provisions of a will when the testator has named no executor, or the executors named refuse, are incompetent to act, or have died before performing their duties. — Also termed *administrator c.t.a.*; *administrator with the will annexed*.

administrator de bonis non (dee boh-nis non). An administrator appointed by the court to administer the decedent's goods that were not administered by an earlier administrator or executor. • If there is no will, the administrator bears the name *administrator de bonis non* (abbr. *administrator d.b.n.*), but if there is a will, the full name is *administrator de bonis non cum testamento annexo* (abbr. *administrator d.b.n. c.t.a.*).

administrator pendente lite. See *special administrator*.

administrator with the will annexed. See *administrator cum testamento annexo*.

ancillary administrator (an-sə-ler-ee). A court-appointed administrator who oversees the distribution of the part of a decedent's estate located in a jurisdiction other than that of the main administration, where the decedent was domiciled.

foreign administrator. An administrator appointed in another jurisdiction.

general administrator. A person appointed to administer an intestate decedent's entire estate.

public administrator. A state-appointed officer who administers intestate estates that are not administered by the decedent's relatives. • This officer's right to administer is usu. subordinate to the rights of creditors, but in a few jurisdictions the creditors' rights are subordinate.

special administrator. 1. A person appointed to administer only a specific part of

an intestate decedent's estate. 2. A person appointed to serve as administrator of an estate solely because of an emergency or an unusual situation, such as a will contest. — Also termed (in sense 2) *administrator pendente lite*.

2. A person who manages or heads a business, public office, or agency.

court administrator. An official who supervises the nonjudicial functions of a court, esp. the court's calendar, judicial assignments, budget, and nonjudicial personnel.

administrator ad litem. See ADMINISTRATOR (1).

administrator ad prosequendum. See ADMINISTRATOR (1).

administrator c.t.a. See *administrator cum testamento annexo* under ADMINISTRATOR (1).

administrator cum testamento annexo. See ADMINISTRATOR (1).

administrator d.b.n. See *administrator de bonis non* under ADMINISTRATOR (1).

administrator de bonis non. See ADMINISTRATOR (1).

administrator pendente lite. See *special administrator* (2) under ADMINISTRATOR (1).

administrator's deed. See DEED.

administrator with the will annexed. See *administrator cum testamento annexo* under ADMINISTRATOR (1).

administratrix (ad-min-ə-stray-triks or ad-min-ə-strə-triks). *Archaic.* A female administrator. See ADMINISTRATOR (1).

admiralitas (ad-mə-ral-ə-tas), *n.* [Law Latin] 1. Admiralty; an admiralty court. 2. SOCIETAS NAVALIS.

admiralty (ad-mə-rəl-tee), *n.* 1. A court that exercises jurisdiction over all maritime contracts, torts, injuries, or offenses. • The federal courts are so called when exercising their admiralty jurisdiction, which is conferred by the U.S. Constitution (art. III, § 2, cl. 1). — Also termed *admiralty court*; *maritime court*. 2. The system of jurisprudence that has grown out of the practice of admiralty courts; MARITIME LAW. 3. Narrowly, the rules governing contract, tort,

and workers' compensation claims arising out of commerce on or over water. — Also termed (in senses 2 & 3) *admiralty law*. — **admiralty**, *adj.*

Admiralty, First Lord. See FIRST LORD OF THE ADMIRALTY.

Admiralty Clause. The clause of the U.S. Constitution giving the federal courts jurisdiction over maritime cases. U.S. Const. art. III, § 2, cl. 1.

admiralty court. See ADMIRALTY (1).

admiralty law. See MARITIME LAW.

admissibility (ad-mis-ə-bil-ə-tee), *n.* The quality or state of being allowed to be entered into evidence in a hearing, trial, or other proceeding.

“‘Admissibility’ can best be thought of as a concept consisting of two quite different aspects: disclosure to the trier of fact and express or implied permission to use as ‘evidence.’ If we think of admissibility as a question of disclosure or nondisclosure, it is usually easy to say whether or not an item of evidence has been admitted. When we consider the question of permissible use, the concept seems much more complex. In the first place, evidence may be ‘admissible’ for one purpose but not for another. . . . In the second place, questions of the permissible use of evidence do not arise only at the time of disclosure to the trier of fact. The court may have to consider admissibility in deciding whether to give the jury a limiting instruction, whether or not an opponent’s rebuttal evidence is relevant, and whether or not counsel can argue to the jury that the evidence proves a particular point.” 22 Charles Alan Wright & Kenneth W. Graham, Jr., *Federal Practice and Procedure* § 5193, at 184 (1978).

conditional admissibility. The evidentiary rule that when a piece of evidence is not itself admissible, but is admissible if certain other facts make it relevant, the evidence becomes admissible on condition that counsel later introduce the connecting facts. ● If counsel does not satisfy this condition, the opponent may ask the judge to strike from the record the conditionally admitted piece of evidence and to instruct the jury to disregard it.

curative admissibility. The rule that an inadmissible piece of evidence may be admitted if offered to cure or counteract the effect of some similar piece of the opponent’s evidence that itself should not have been admitted.

limited admissibility. The principle that testimony or exhibits may be admitted into evidence for a restricted purpose. ● Common examples are admitting prior contradictory

testimony to impeach a witness but not to establish the truth, and admitting evidence against one party but not another. The trial court must instruct the jury properly about the applicable limits when admitting the evidence. Fed. R. Evid. 105.

multiple admissibility. The evidentiary rule that, though a piece of evidence is inadmissible under one rule for the purpose given in offering it, it is nevertheless admissible if relevant and offered for some other purpose not forbidden by the rules of evidence.

admissible (ad-mis-ə-bəl), *adj.* **1.** Allowable; permissible <admissible evidence>. **2.** Worthy of gaining entry or being admitted <a person is admissible to the bar upon obtaining a law degree and passing the bar exam>.

admissible evidence. See EVIDENCE.

admission (ad-mish-ən), *n.* **1.** A voluntary acknowledgment of the existence of facts relevant to an adversary’s case. — **admit**, *vb.* Cf. CONFESSION.

admission against interest. A person’s statement acknowledging a material fact that is harmful to the person’s position as a litigant. ● An admission against interest must be made either by a litigant or by one in privity with or occupying the same legal position as the litigant; as an exception to the hearsay rule, it is admissible whether or not the person is available as a witness. A declaration against interest, by contrast, is made by a nonlitigant who is not in privity with a litigant; a declaration against interest is also admissible as an exception to the hearsay rule, but only when the declarant is unavailable as a witness.

admission by employee or agent. An admission made by a party-opponent’s agent during employment and concerning a matter either within the scope of the agency or authorized by the party-opponent.

admission by party-opponent. An opposing party’s admission, which is not considered hearsay if it is offered against that party and is (1) the party’s own statement, in either an individual or a representative capacity; (2) a statement of which the party has manifested an adoption or belief in its truth; (3) a statement by one authorized by the party to make such a statement; (4) a statement by the party’s agent concerning a matter within the scope of the agency or employment and made during the existence of the relationship; or (5) a statement by a coconspirator of the party

during the course of and in furtherance of the conspiracy. Fed. R. Evid. 801(d)(2).

admission by silence. The failure of a party to speak after an assertion of fact by another party that, if untrue, would naturally compel a person to deny the statement.

admission in judicio. See *judicial admission*.

adoptive admission. An action by a party that indicates approval of a statement made by another, and thereby acceptance of the truth of the statement.

extrajudicial admission. An admission made outside court proceedings.

implied admission. An admission reasonably inferable from a party's action or statement, or a party's failure to act or speak. — Also termed *tacit admission*.

incidental admission. An admission made in some other connection or involved in the admission of some other fact.

incriminating admission. An admission of facts tending to establish guilt.

judicial admission. A formal waiver of proof that relieves an opposing party from having to prove the admitted fact and bars the party who made the admission from disputing it. — Also termed *solemn admission*; *admission in judicio*; *true admission*.

quasi-admission. An act or utterance, usu. extrajudicial, that creates an inconsistency with and discredits, to a greater or lesser degree, a present claim or other evidence of the person creating the inconsistency.

solemn admission. See *judicial admission*.

tacit admission. See *implied admission*.

true admission. See *judicial admission*.

2. Acceptance of a lawyer by the established licensing authority, such as a state bar association, as a member of the practicing bar, usu. after the lawyer passes a bar examination and supplies adequate character references <admission to the bar>.

admission on motion. Permanent admission of a lawyer who is in good standing in the bar of a different state without the need for a full bar examination.

admission pro hac vice (proh hak vi-see or proh hak vee-chay). Temporary admission of an out-of-jurisdiction lawyer to practice before a court in a specified case or set of cases. See PRO HAC VICE.

admission against interest. See ADMISSION (1).

admission by employee or agent. See ADMISSION (1).

admission by party-opponent. See ADMISSION (1).

admission by silence. See ADMISSION (1).

admission in judicio. See *judicial admission* under ADMISSION.

admission tax. See TAX.

admission to sufficient facts. See SUBMISSION TO A FINDING.

admittance. 1. The act of entering a building, locality, or the like. **2.** Permission to enter. **3.** *Hist.* The act of giving seisin of a copyhold estate. • Admittance corresponded with livery of seisin of a freehold. Copyhold estates were abolished by the Law of Property Act of 1922. See COPYHOLD.

admitted asset. See ASSET.

admitted corporation. See CORPORATION.

admittendo clericus (ad-mi-ten-doh kler-ə-koh). See DE CLERICO ADMITTENDO.

admittendo in socium (ad-mi-ten-doh in soh-shee-əm). [Latin] *Hist.* A writ for associating certain persons, such as knights, to justices of assize on the circuit.

admixture (ad-miks-chər). **1.** The mixing of things. **2.** A substance formed by mixing.

admonition (ad-mə-nish-ən), *n.* **1.** Any authoritative advice or caution from the court to the jury regarding their duty as jurors or the admissibility of evidence for consideration <the judge's admonition that the jurors not discuss the case until they are charged>. **2.** A reprimand or cautionary statement addressed to counsel by a judge <the judge's admonition that the lawyer stop speaking out of turn>. — **admonish** (ad-mon-ish), *vb.* — **admonitory** (ad-mon-ə-tor-ee), *adj.*

admonitio trina (ad-mə-nish-ee-oh tri-nə), *n.* [Law Latin "triple warning"] *Hist.* A threefold warning advising a defendant charged with a capital crime that refusal to answer questions about the offense would in itself be considered a capital crime punishable by death. See PEINE FORT ET DURE.

ad mordendum assuetus (ad mor-den-dəm ə-swēe-təs), *adj.* [Law Latin] *Hist.* Accustomed to bite. • This phrase was a common charge in a declaration of damage done by a dog to a person or to another animal.

admortization (ad-mor-tə-zay-shən). *Hist.* The reduction of property of lands or tenements to mortmain.

adnepos (ad-nep-ohs), *n.* [Latin] A great-great grandson.

adneptis (ad-nep-tis), *n.* [Latin] A great-great granddaughter.

adnihilare (ad-ni-hə-lair-ee), *vb.* [Law Latin] To annul; to make void.

ad nocumentum (ad nok-yoo-men-təm), *adv.* [Law Latin] To the nuisance; to the hurt or injury.

ad non executata (ad non ek-sə-kyoo-tə), *adv.* [Latin] For the things not executed (as by an executor).

adnotatio (ad-noh-tay-shee-oh), *n.* [Latin] *Roman law.* A note written in the margin of a document; esp., the reply of the emperor in his own hand to a petition addressed to him. See **RESCRIPT** (3).

adoption, *n.* **1.** *Family law.* The statutory process of terminating a child's legal rights and duties toward the natural parents and substituting similar rights and duties toward adoptive parents.

adoption by estoppel. An equitable adoption of a child by a person's promises and acts that preclude the person and his or her estate from denying adopted status to the child. — Also termed *equitable adoption*; *virtual adoption*.

de facto adoption. An adoption that falls short of the statutory requirements in a particular state. • The adoption agreement may ripen to a *de jure* adoption when the statutory formalities have been met.

2. Contracts. The process by which a person agrees to assume a contract previously made for that person's benefit, such as a newly formed corporation's acceptance of a preincorporation contract. — **adopt**, *vb.* — **adoptive**, *adj.*

adoption by reference. See **INCORPORATION BY REFERENCE**.

adoptive admission. See **ADMISSION** (1).

adoptive parent. See **PARENT**.

ad opus (ad oh-pəs), *adv.* [Law Latin] For the benefit; for the use. • This term indicated an intent to create a use to benefit another. See **USE** (4).

ad ostendum (ad ah-sten-den-dəm), *vb.* [Law Latin] To show.

ad ostium ecclesiae (ad ah-stee-əm e-klee-z[h]ee-ee), *adv.* [Law Latin] At the church door. See *dower ad ostium ecclesiae*.

ad pios usus (ad pi-ohs yoo-səs or yoo-zəs), *adv.* [Law Latin] For pious (religious or charitable) uses or purposes. • This phrase was used in reference to gifts and bequests.

adpromission (ad-prə-mish-ən). *Roman law.* **1.** A suretyship contract. • Roman law had five types of adpromission: (1) sponson; (2) fidepromission; (3) fidejussion; (4) mandatam; and (5) pactum de constituto. **2.** A suretyship relation. — Also termed *adpromissio*. — **adpromissor**, *n.*

ad prosequendam (ad prahs-ə-kwen-dəm), *vb.* [Law Latin] To prosecute.

ad punctum temporis (ad pəngk-təm tem-pə-ris), *adv.* [Law Latin] At the point of time.

ad quaerimoniam (ad kweer-ə-moh-nee-əm), *adv.* [Law Latin] On complaint of.

ad quem (ad kwem), *adv.* [Latin] To whom. • This term is used as a correlative to *a quo* in computation of time or distance. For example, the *terminus a quo* is the point of beginning or departure; the *terminus ad quem* is the end of the period or point of arrival.

ad quod curia concordavit (ad kwod kyooree-ə kon-kor-day-vit). [Law Latin] To which the court agreed.

ad quod damnum (ad kwod dam-nəm). [Latin "to what damage"] *Hist.* A writ directing the sheriff to inquire of jurors under oath to what damage a grant (as of a fair, market, liberty, or other franchise) would be to various people if the king were to make the grant. • The writ

was issuable from the court of chancery. — Also termed *writ of ad quod damnum*.

ad quod non fuit responsum (ad kwod non fyoo-it ri-**spon**-səm). [Law Latin] To which there was no answer. • This phrase was used in law reports to indicate an unresponded-to argument or objection.

ADR. *abbr.* **1.** ALTERNATIVE DISPUTE RESOLUTION. **2.** ASSET-DEPRECIATION RANGE. **3.** AMERICAN DEPOSITORY RECEIPT.

ad rationem ponere (ad ray-shee-oh-nəm **poh**-nə-ree), *vb.* [Law Latin “to give a reason”] To cite (a person) to appear. • The Exchequer summoned persons to appear and explain a charge with this phrase.

ad recognoscendum (ad ree-kog-nə-**sen**-dəm), *vb.* [Law Latin] To recognize. • These were formal words in writs.

adrectare (ad-**rek-tair**-ee), *vb.* [Law Latin] *Hist.* To do right; to satisfy.

ad rectum (ad **rek**-təm), *vb.* [Law Latin] To right; to meet an accusation.

ad reparationem et sustentationem (ad rep-ə-ray-shee-oh-nəm et sə-sten-tay-shee-oh-nəm), *adv.* [Law Latin] For repairing and keeping in suitable condition.

ad respondendum (ad ree-spon-**den**-dəm). [Latin] To answer. See *capias ad respondendum* under *CAPIAS*; *habeas corpus ad respondendum* under *HABEAS CORPUS*.

adrogate (ad-roh-gayt), *vb.* *Roman law.* (Of a man) to adopt a son or daughter who is not already under another father’s power (*patria potestas*).

adrogation (ad-roh-gay-shən), *n.* *Roman law.* An adoption of a person of full capacity (*sui juris*) into another family. — Also termed *adrogatio* (ad-roh-**gay**-shee-oh).

ads. *abbr.* AD SECTAM.

ad satisfaciendum (ad sat-is-fay-shee-**en**-dəm). [Latin] To satisfy. See *capias ad satisfaciendum* under *CAPIAS*.

adscendentes (ad-sen-**den**-teez), *n. pl.* [Latin] *Civil law.* Ascendants.

adscripti glebae (ad-**skrip**-tī **glee**-bee), *n.* [Latin “(tenants) tied to the soil”] *Roman law.* Tenants or serfs bound to the land. • If the land was conveyed, the serfs were conveyed along with it. — Also termed *glebae ascriptitii*.

adscriptitius (ad-**skrip**-tish-ee-əs), *n.* [Latin] *Roman law.* **1.** A supernumerary soldier. **2.** A tenant bound to the land. — Also spelled *ascripticius*.

adscriptus (ad-**skrip**-təs), *adj.* [Latin] *Roman law.* Added, annexed, or bound by or in writing; enrolled or registered; generally bound, as in *servus colonae adscriptus* (a tenant bound to an estate as a cultivator) or *fundus adscriptus* (an estate bound to or burdened with a duty).

ad sectam (ad **sek**-təm), *adj.* [Law Latin] At the suit of. • This term, in abbreviated form, was used in indexing the names of cases by defendant — for example, “B *ads.* A” if B is the defendant. — *Abbr.* *ads.*

adessor (ad-**ses**-ər), *n.* [Latin] **1.** *Roman law.* A legally qualified assistant or adviser to a judge. **2.** *Hist.* Assessor. • This was a title of a master in chancery.

adstipulator (ad-**stip**-yə-lay-tər), *n.* [Latin] *Roman law.* An additional party to a contract who could enforce the contract along with the principal (i.e., the *stipulator*). • An *adstipulator* who enforced an agreement would have to, in turn, pay the *stipulator*. An *adstipulator* was brought in to avoid the rule that a person could not directly stipulate for payment after death.

ad terminum annorum (ad **tər**-mə-nəm ə-**nor**-əm), *adv.* [Law Latin] For a term of years.

ad terminum qui praeteriit (ad **tər**-mə-nəm kwī pri-**ter**-ee-it). [Law Latin “for a term which has passed”] A writ of entry to recover land leased out to a holdover tenant. — Also termed *entry ad terminum qui praeteriit*.

ad testificandum (ad tes-ti-fi-**kan**-dəm). [Latin] To testify. See *habeas corpus ad testificandum* under *HABEAS CORPUS*; *subpoena ad testificandum* under *SUBPOENA*.

ad tunc et ibidem (ad **təngk** et i-**bi**-dəm or **ib**-i-dəm), *adv.* [Latin] *Hist.* Then and there being found. • This phrase was formerly used in indictments.

adult (ə-dɒlt or ɒd-ɒlt), *n.* A person who has attained the legal age of majority, generally 18.
 • In criminal cases, the age of majority is typically 17. — Also termed *major*. — **adult** (ə-dɒlt), *adj.*

adult correctional institution. See PRISON.

adulter (ə-dɒl-tər), *n.* [Latin] *Roman law.* An adulterer; a man guilty of adultery.

adultera (ə-dɒl-tə-rə), *n.* [Latin] *Roman law.* An adulteress; a woman guilty of adultery.

adulterate (ə-dɒl-tə-rayt), *vb.* To debase or make impure by adding a foreign or inferior substance. — **adulteration**, *n.*

adulterated drug. See DRUG.

adulterator (ə-dɒl-tə-ray-tər), *n.* [Latin fr. *adulterare* “to adulterate”] *Civil law.* A corrupter; a forger; a counterfeiter, as in *adulteratores monetæ* (“counterfeiters of money”).

adulterine (ə-dɒl-tə-rin), *adj.* **1.** Characterized by adulteration. **2.** Illegal; unlicensed. **3.** Born of adultery. **4.** Of or involving adultery.

adulterine, *n.* *Archaic.* An illegitimate child.

adulterine guild. *Hist.* A group of traders who act like a corporation without a charter and who pay an annual fine for permission to exercise their usurped privileges.

adulterini (ə-dɒl-tə-ri-ni). [Law Latin] *Hist.* Children begotten adulterously. Cf. INCESTUOSI.

adulterium (ad-əl-teer-ee-əm), *n.* [Latin] *Roman & civil law.* **1.** The crime of adultery. **2.** A punishment imposed for the offense of adultery.

“Adulterium. A statutory punishment of adultery, which was considered a criminal offense only when committed by a married woman (*adultera*) . . . [Before the statute *Lex Julia de adulteriis coercendis* of 18 B.C.], customary law admitted only immediate revenge of the husband . . . Under the Julian statute, the father of the adulterous woman was permitted to kill her and her partner (*adulter*) if he surprised them in his or her husband’s house. The husband’s rights were rather limited; he was forced to divorce her, for otherwise he made himself guilty of matchmaking . . . Besides, he or his father had to accuse the adulteress of *adulterium* which now became a public crime prosecuted before a criminal court.” Adolf Berger, *Encyclopedic Dictionary of Roman Law* 352 (1953).

adultery (ə-dɒl-tə-ree), *n.* Voluntary sexual intercourse between a married person and a person other than the offender’s spouse. — Formerly also termed *spouse-breach*. — **adulterous**, *adj.* Cf. FORNICATION; INFIDELITY.

“Returning to the question of adultery, evidently this word cannot be interpreted today in precisely the meaning it bore for the Old Testament patriarchs. On Old Testament principles one may marry several wives, even two sisters; and a married man may and should beget children for his dead brother. When Sarah found herself childless, she advised her husband Abraham to go in unto her maid, so that she might obtain children by the maid. Such acts, though evidently not adulterous within the original meaning of the Decalogue, would be regarded as adulterous by the laws and customs of Western society at the present day.” Glanville Williams, *The Sanctity of Life and the Criminal Law* 134 (1957).

“If a statute provided for the punishment of adultery without definition of the term, this gave rise to a difficulty as to the meaning of the word. In England, (1) the common-law meaning of the word was sex with another’s wife, but this was not a common-law offense; (2) as the name of an offense it referred to sex by a married person with one other than the spouse, but that was recognized only in the ecclesiastical court.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 455 (3d ed. 1982).

“In some states, sexual intercourse between two married persons, who are not married to each other, constitutes adultery on the part of both; sexual intercourse between a married person and an unmarried person likewise constitutes adultery on the part of both. In other states, adultery can be committed only by a married person. Thus, sexual intercourse between two married persons, who are not married to each other, constitutes adultery on the part of both; but if only one party to the sexual intercourse is married, the intercourse constitutes adultery on the part of the married person and fornication on the part of the unmarried person. In other states, sexual intercourse constitutes adultery only where the woman is the married party. Thus, sexual intercourse between a married woman and a married man other than her spouse or sexual intercourse between a married woman and an unmarried man constitutes adultery on the part of both; but if the woman is unmarried, neither party is guilty of adultery even if the man is married.” 2 Charles E. Torcia, *Wharton’s Criminal Law* § 211, at 531 (15th ed. 1994).

double adultery. Adultery between persons who are both married to other persons.

incestuous adultery. Adultery between relatives; adultery committed by persons who are closely related.

open and notorious adultery. *Archaic.* An offense in which the parties reside together publicly, as if conjugal relations existed between them, and the community is generally aware of the living arrangement and the fact that the couple is not married.

single adultery. Adultery in which only one party is married to another person.

adult offender. See OFFENDER.

ad usum et commodum (ad yoo-səm [or -zəm] et kom-ə-dəm), *adv.* [Law Latin] To the use and benefit.

ad valentiam (ad və-len-shee-əm), *adv.* [Law Latin] To the value.

ad valorem (ad və-lor-əm), *adj.* [Latin “according to the value”] (Of a tax) proportional to the value of the thing taxed. — **ad valorem**, *adv.*

ad valorem tax. See TAX.

advance, *n.* 1. The furnishing of money or goods before any consideration is received in return. 2. The money or goods furnished.

advance bill. See BILL (6).

advance-decline index. See INDEX (2).

advance directive. 1. A durable power of attorney that takes effect upon one’s incompetency and designates a surrogate decision-maker for healthcare matters. See POWER OF ATTORNEY. 2. A legal document explaining one’s wishes about medical treatment if one becomes incompetent or unable to communicate. — Also termed *medical directive*; *physician’s directive*; *written directive*. Cf. LIVING WILL.

advancement, *n.* A payment or gift to an heir (esp. a child) during one’s lifetime as an advance share of one’s estate, with the intention of extinguishing the heir’s claim to the estate under intestacy laws. — **advance**, *vb.* Cf. ADEMPMENT.

advance payment. See PAYMENT.

advance premium. See PREMIUM (1).

advance sheets. A softcover pamphlet containing recently reported opinions by a court or set of courts. • Advance sheets are published during the interim between an opinion’s announcement and its inclusion in a bound volume of law reports. Cf. *slip opinion* (1) under OPINION; REPORT (3).

“As a bound volume of any series of reports is not published until sufficient matter has accumulated to fill it, it necessarily results in the holding of the first decisions rendered after the preceding volume has been issued, until there are enough more to justify the publication of the next volume. Even after enough material has been accumulated to fill a volume, there is necessari-

ly considerable time consumed in its printing, indexing, and binding before the book is ready for delivery. Hence, it is customary, as soon as a part of the volume has come from the press, to issue such part in pamphlet form; and these paper-bound copies are known as ‘advance sheets.’ They are portions of the next volume issued in advance of final publication, being paged as they will appear in the bound volume. Advance sheets enable the enterprising lawyer to obtain the decisions right down almost to the date of his search for the law.” Frank Hall Childs, *Where and How to Find the Law* 21 (1922).

advancing market. See *bull market* under MARKET.

advantagium (ad-van-tay-jee-əm), *n.* [Law Latin] *Hist.* An advantage.

advena (ad-və-nə), *n.* [Latin] *Roman law.* One who has come from abroad, esp. for a temporary stay; a sojourner. — Also termed *albanus*.

adventitia bona (ad-ven-tish-ee-ə boh-nə), *n.* [Latin] 1. *Roman law.* Goods acquired by free persons in some way other than through their paterfamilias, or by slaves in a way other than through their owner. 2. *Civil law.* Goods acquired fortuitously, but not by inheritance.

adventitia dos (ad-ven-tish-ee-ə dohs), *n.* [Latin] *Civil law.* A dowry given by someone other than the wife’s paterfamilias.

ad ventrem inspiciendum (ad ven-trəm in-spish-ee-en-dəm), *n.* [Latin] See DE VENTRE INSPICIENDO.

adventura (ad-ven-t[y]oor-ə), *n.* [Law Latin] *Hist.* An adventure. • Flotsam, jetsam, and lagan were styled *adventuræ maris* (“adventures of the sea”).

adventure. 1. A commercial undertaking that has an element of risk; a venture. Cf. JOINT VENTURE. 2. *Marine insurance.* A voyage involving financial and insurable risk, as to a shipment of goods.

gross adventure. A loan on bottomry, so called because the lender will be liable for the gross (or general) average. See BOTTOMRY.

joint adventure. See JOINT ADVENTURE.

adventurer. A person who undertakes a hazardous action or enterprise; one with a stake in a commercial adventure.

adversarius (ad-vər-sair-ee-əs), *n.* [Latin] *Roman law.* An adversary in a lawsuit.

adversary (ad-vər-ser-ee), *n.* An opponent; esp., opposing counsel. — **adversary, adversarial, adj.**

adversary procedure. See ADVERSARY SYSTEM.

adversary proceeding. **1.** A hearing involving a dispute between opposing parties <Judge Adams presided over the adversary proceeding between the landlord and tenant>. **2. Bankruptcy.** A lawsuit that is brought within a bankruptcy proceeding, governed by special procedural rules, and based on conflicting claims usu. between the debtor (or the trustee) and a creditor or other interested party <the Chapter 7 trustee filed an adversary proceeding against the party who received \$100,000 from the debtor one week before the bankruptcy filing>.

adversary system. A procedural system, such as the Anglo-American legal system, involving active and unhindered parties contesting with each other to put forth a case before an independent decision-maker. — Also termed *adversary procedure* and (in criminal cases) *accusatorial system* or *accusatory procedure*. Cf. INQUISITORIAL SYSTEM.

adverse-agent doctrine. The rule that an agent's knowledge will not be imputed to the principal if the agent is engaged in fraudulent activities that are concealed as part of the fraud.

adverse authority. See AUTHORITY (4).

adverse-domination doctrine. The equitable principle that the statute of limitations on a breach-of-fiduciary-duty claim against officers and directors is tolled as long as a corporate plaintiff is controlled by the alleged wrongdoers. • The statute is tolled until a majority of the disinterested directors discover or are put on notice of the claim against the wrongdoers. This doctrine is available to benefit only the corporation.

adverse dominion. The doctrine that tolls the limitations period for claims against wrongdoing directors and officers of a corporation while they are in control of the corporation. • The purpose of this doctrine is to prevent a director or officer from successfully hiding wrongful or fraudulent conduct during the limitations period. *FDIC v. Shrader & York*, 991 F.2d 216, 227 (5th Cir. 1993).

adverse easement. See *prescriptive easement* under EASEMENT.

adverse employment action. An employer's decision that substantially and negatively affects an employee's job, such as a termination, demotion, or pay cut. — Also termed *adverse job action*.

adverse enjoyment. See ENJOYMENT.

adverse impact. See DISPARATE IMPACT.

adverse-inference rule. See ADVERSE-INTEREST RULE.

adverse interest. An interest that is opposed or contrary to that of someone else.

adverse-interest rule. The principle that if a party fails to produce a witness who is within its power to produce and who should have been produced, the judge may instruct the jury to infer that the witness's evidence is unfavorable to the party's case. — Also termed *empty-chair doctrine*; *adverse-inference rule*.

adverse job action. See ADVERSE EMPLOYMENT ACTION.

adverse opinion. See OPINION (2).

adverse party. See PARTY (2).

adverse possession. A method of acquiring title to real property by possession for a statutory period under certain conditions, esp. a non-permissive use of the land with a claim of right when that use is continuous, exclusive, hostile, open, and notorious. Cf. PRESCRIPTION (2).

constructive adverse possession. Adverse possession in which the claim arises from the claimant's payment of taxes under color of right rather than by actual possession of the land.

adverse title. See TITLE (2).

adverse use. See USE (1).

adverse witness. See *hostile witness* under WITNESS.

adversus (ad-vər-səs), *prep.* [Latin] Against. • The first letter of this term was formerly used in law reports in place of the more commonly used *v.* ("versus"). — Abbr. a.

adversus bonos mores. See CONTRA BONOS MORES.

advertent negligence. See NEGLIGENCE.

advertising. **1.** The action of drawing the public's attention to something to promote its sale. **2.** The business of producing and circulating advertisements.

comparative advertising. Advertising that specifically compares the advertised brand with another brand of the same product.

competitive advertising. Advertising that contains little information about the advertised product, and that is used only to help a producer maintain a share of the market for that product.

informative advertising. Advertising that gives information about the suitability and quality of a product.

advertising substantiation. A doctrine of the Federal Trade Commission making it an unfair and deceptive act to put out an advertisement unless the advertiser first has a reasonable basis for believing that each claim in the advertisement is true.

advice (ad-vis). **1.** Guidance offered by one person, esp. a lawyer, to another. See ADVICE OF COUNSEL. **2.** Notice of the drawing of a draft for goods or services. See LETTER OF ADVICE. — **advise (ad-viz), vb.**

remittance advice. Notice that a sum of money has been sent (esp. by mail) for goods or services. See REMITTANCE.

advice and consent. The right of the U.S. Senate to participate in making treaties and appointing federal officers, provided by U.S. Const. art II, § 2. • As to treaties, the Senate's advice and consent generally includes Senate involvement in the negotiation process, and the need for a two-thirds majority of the Senate for ratification. As to public officers, the Senate's advice and consent generally includes the right to vote on approval of an appointment.

advice of counsel. **1.** The guidance given by lawyers to their clients. **2.** In a malicious-prosecution lawsuit, a defense requiring both a complete presentation of facts by the defendant to his or her attorney and honest compliance with the attorney's advice. **3.** A defense in which a party seeks to avoid liability by claiming that he or she acted reasonably and in good faith on the attorney's advice. • Such a defense usu. requires waiver of the attorney-client privilege, and the attorney cannot have knowingly participated in implementing an illegal plan.

"Advice of counsel is a defense to a limited number of torts involving lack of probable cause, bad faith, or malice as an element of the cause of action. By far the most frequent cause of action against which the defense is asserted is malicious prosecution. The defense may also be asserted to avoid liability for punitive damages on the reasoning that good faith reliance on advice of counsel defeats the malice necessary to an award of punitive damages. In civil matters, the advice is typically obtained from the defendant's own attorney; when the underlying proceeding is criminal, the advice may be obtained from the district attorney's office or similar source and may take the form of action by that officer rather than advice followed by action by the defendant." 4 Ann Taylor Schwing, *California Affirmative Defenses* § 41:26, at 82 (2d ed. 1996).

advice of credit. Notice by an advising bank of the issuance of a letter of credit.

advisare (ad-vi-zair-ee), vb. [Law Latin] To consult, deliberate, or consider. See CURIA ADVISARI VULT.

advisement (ad-viz-mənt). Careful consideration; deliberation <the judge took the matter under advisement and promised a ruling by the next day>.

advising bank. See BANK.

advisory committee. A committee formed to make suggestions to some other body or to an official; esp., any one of five committees that propose to the Standing Committee on Rules of Practice and Procedure amendments to federal court rules, the five committees being responsible for appellate, bankruptcy, civil, criminal, and evidence rules.

advisory counsel. See COUNSEL.

advisory jury. See JURY.

advisory opinion. See OPINION (1).

ad vitam (ad vi-təm), adj. [Latin] For life.

ad vitam aut culpam (ad vi-təm awt kəl-pəm), adj. [Law Latin] For life or until misbehavior. • This phrase described a tenure of office.

advocacy. **1.** The work or profession of an advocate. **2.** The act of pleading for or actively supporting a cause or proposal.

advocare (ad-və-kair-ee), vb. [Law Latin] **1.** To advocate, defend, or protect. **2.** To acknowledge or admit openly, as to acknowledge a child (*advocare filium*).

advocassie (ad-və-kə-see), *n.* [Law French] Advocacy.

advocata (ad-və-kay-tə), *n.* [Law Latin] *Hist.* A patroness; a woman holding the right to present to a church.

advocate (ad-və-kit), *n.* **1.** A person who assists, defends, pleads, or prosecutes for another.

public advocate. An advocate who purports to represent the public at large in matters of public concern, such as utility rates or environmental quality.

2. Civil & Scots law. A barrister. See BARRISTER. — **advocate** (ad-və-kayt), *vb.* — **advocacy** (ad-və-kə-see), *n.*

advocate-witness rule. See LAWYER-WITNESS RULE.

advocati ecclesiae (ad-və-kay-ti e-klee-z[h]ee-ee), *n. pl.* [Latin “church advocates”] *Hist. Eccles. law.* **1.** Church patrons who had a right to present a clerk to a benefice. See ADVOWSON. **2.** Legal advocates retained to argue cases relating to a church.

advocatio (ad-və-kay-shee-oh), *n.* [Law Latin] *Hist.* **1.** An inferior’s management of a business for a superior. **2.** The defense of a religious establishment. **3.** ADVOWSON. **4. Civil law.** The quality, function, privilege, or office of an advocate.

advocatione decimarum (ad-və-kay-shee-oh-nee des-ə-mair-əm), *n.* [Law Latin] *Hist.* A writ to collect a tithe belonging to the church.

advocator (ad-voh-kay-tər), *n.* [Law Latin] *Hist.* **1.** A person who calls on another to warrant a title. **2.** A warrantor. **3.** The patron of a benefice.

advocatus (ad-voh-kay-təs). [Latin “advocate”] **1. Roman law.** A legal adviser; a person who assists clients with cases before judicial tribunals. Cf. CAUSIDICUS. **2. Hist.** The patron who has an advowson; PATRONUS. — Also termed *advowee*; *avowee*. See ADVOWSON. **3. Hist.** A person called on by another to warrant a title.

advocatus diaboli (ad-voh-kay-təs di-ab-ə-li), *n.* [Latin “devil’s advocate”] *Eccles. law.* An official who argues against a person’s beatification or canonization.

advocatus fisci (ad-voh-kay-təs fisk-i), *n.* [Latin] *Roman law.* An official responsible for representing the emperor in cases involving the public fisc.

ad voluntatem (ad vol-ən-tay-təm), *adv. & adj.* [Law Latin] At will.

advoutrer (ad-vow-trər), *n.* [Law French] *Hist.* An adulterer. — Also termed *advouter*; *advouterer*; *advoutre*.

advoutry (ad-vow-tree), *n.* [Law French] *Hist.* Adultery between two married persons. — Also spelled *advoutry*.

advowee (ad-vow-ee). A patron who holds an advowson; ADVOCATUS (2). — Also spelled *avowee*.

advowee paramount. The sovereign, or highest patron.

advowson (ad-vow-zən). *Eccles. law.* The right of presenting or nominating a person to a vacant benefice in the church. • The person enjoying this right is called the “patron” (*patronus*) of the church, and was formerly termed “advocatus,” the advocate or defender, or in English, the “advowee.” The patron presents the nominee to the bishop (or, occasionally, another church dignitary). If there is no patron, or if the patron neglects to exercise the right within six months, the right lapses and a title is given to the ordinary (a diocesan officer) to appoint a cleric to the church. Cf. PRESENTATION; INSTITUTION.

“Advowson is the right of presentation to a church, or ecclesiastical benefice. . . . For, when lords of manors first built churches on their own demesnes, and appointed the tithes of those manors to be paid to the officiating ministers, which before were given to the clergy in common . . . the lords, who thus built a church, and endowed it with glebe or land, had of common right a power annexed of nominating such minister as he pleased . . . to officiate in that church of which he was the founder, endower, maintainer, or, in one word, the patron. This instance of an advowson will completely illustrate the nature of an incorporeal hereditament. It is not itself the bodily possession of the church and its appendages; but it is a right to give some other man a title to such bodily possession. The advowson is the object of neither the sight, nor the touch; and yet it perpetually exists in the mind’s eye, and in contemplation of law. . . . The patronage can therefore be only conveyed by operation of law. . . .” 2 William Blackstone, *Commentaries on the Laws of England* 21–22 (1766).

advowson appendant (ə-pen-dənt). An advowson annexed to a manor, and passing as incident to it, whenever the manor is con-

veyed to another. • The advowson passes with the manor even if it is not mentioned in the grant.

advowson collative (kə-lay-tiv). An advowson for which there is no separate presentation to the bishop because the bishop happens to be the patron as well. • In this case, the one act by which the benefice is conferred is called "collation."

advowson donative (don-ə-tiv or doh-nə-tiv). An advowson in which the patron has the right to put a cleric in possession by a mere gift, or deed of donation, without any presentation to the bishop. • This type of advowson was converted into the *advowson presentative* by the Benefices Act of 1898. — Also termed *donative advowson*.

"An advowson donative is when the king, or any subject by his licence, doth found a church or chapel, and ordains that it shall be merely in the gift or disposal of the patron; subject to his visitation only, and not to that of the ordinary; and vested absolutely in the clerk by the patron's deed of donation, without presentation, institution, or induction. This is said to have been anciently the only way of conferring ecclesiastical benefices in England; the method of institution by the bishop not being established more early than the time of archbishop Becket in the reign of Henry II." 2 William Blackstone, *Commentaries on the Laws of England* 23 (1766).

advowson in gross. An advowson that is separated from the manor and annexed to a person. • All advowsons that have been separated from their original manors are advowsons in gross.

advowson presentative (pri-zen-tə-tiv). The usual kind of advowson, in which the patron has the right to make the presentation to the bishop and to demand that the nominee be instituted, if the bishop finds the nominee canonically qualified.

aedes (ee-deez), *n.* [Latin] *Roman law*. A building; esp., a temple (*aedes sacra*).

aedificare (ee-də-fi-kair-ee), *vb.* [Latin] *Roman law*. To erect a building.

aedile (ee-dil). *Roman law*. A magistrate charged with policing the city, managing public buildings and services, supervising markets, and arranging public games. — Also spelled *edile*.

aedilitium edictum (ee-də-lish-ee-əm ee-dik-təm), *n.* [Latin] *Roman law*. An edict giving remedies for fraudulent sales; the Aedilician Edict. • This edict was enforced by the *aediles curules*, who were municipal officers with police duties and jurisdiction over markets.

aegrotus (ee-groh-təs), *adj.* [Latin] Sick; indisposed by illness.

aequitas (ek-wə-tas or ee-kwə-tas), *n.* [Latin] *Roman law*. Equity, as opposed to *jus strictum* or *jus summum*.

aequus (ee-kwəs), *adj.* [Latin] Equal; even. • A provision in a will, for example, might divide the residuary estate *ex aequis* (the adverbial form) among the legatees.

aerarium (i-rair-ee-əm), *n.* [Latin fr. *aes* "money"] *Roman law*. The treasury.

aes (ees), *n.* [Latin] *Roman law*. Metallic money, including gold.

aes alienum (eez ay-lee-ee-nəm or al-ee-), *n.* [Latin "another's money"] *Roman law*. Money owed to another; borrowed money.

aesneicia (ees-neesh-ee-ə). [Law Latin] See ESNECY.

aes suum (ees s[y]oo-əm), *n.* [Latin "one's own money"] *Roman law*. Money lent to a borrower.

aesthetic functionality. See FUNCTIONALITY.

aesthetic zoning. See ZONING.

aetas (ee-tas), *n.* [Latin] *Roman law*. Age.

aetas infantiae proxima (ee-tas in-fan-shee-ee prok-sə-mə), *n.* [Latin] *Roman law*. The first part of the period of childhood between infancy (up to 7 years) and puberty (12 to 14 years); esp., for males, the period between 7 and 10½ years of age. Cf. AETAS PUBERTATI PROXIMA; PUERITIA.

aetas legitima (ee-tas lə-jit-ə-mə), *n.* [Latin] *Roman law*. Lawful age.

aetas perfecta (ee-tas pər-fek-tə), *n.* [Latin] *Roman law*. Complete age; the age of majority.

aetas prima (ee-tas pri-mə), *n.* [Latin] *Roman law*. First age. See INFANTIA.

aetas pubertati proxima (ee-tas pyoo-bər-tay-ti prok-sə-mə), *n.* [Latin] *Roman law*. The second period of childhood, (for males) from 10½ to 14 years of age. Cf. AETAS INFANTIAE PROXIMA; PUERITIA.

aetate probanda (ee-tay-tee proh-ban-də). See DE AETATE PROBANDA.

aff'd. *abbr.* Affirmed.

affectation doctrine. See AFFECTS DOCTRINE.

affecting commerce. (Of an industry, activity, etc.) touching or concerning business, industry, or trade; esp., under the Labor-Management Relations Act, burdening or obstructing commerce, or having led or tending to lead to a labor dispute that burdens or obstructs the free flow of commerce. 29 USCA § 152(7).

affectation. **1.** Fond attachment, devotion, or love <alienation of affections>. **2.** *Hist.* The pawning or mortgaging of a thing to ensure the payment of money or performance of some other obligation.

affects doctrine. *Constitutional law.* The principle allowing Congress to regulate intrastate activities that have a substantial effect on interstate commerce. • The doctrine is so called because the test is whether a given activity “affects” interstate commerce. — Also termed *affects doctrine* or (erroneously) *affectation doctrine*.

affectus (ə-fek-təs), *n.* [Latin] *Hist.* Intent; disposition of mind.

affeer (ə-feer), *vb.* *Hist.* To fix the amount of an amercement.

affeeror (ə-feer-ər), *n.* *Hist.* An official responsible for assessing amercements in cases in which no precise penalty is given by statute.

affermer (a-fər-may), *vb.* [Law French] **1.** To let to farm. **2.** To make sure; to confirm.

aff'g. *abbr.* Affirming.

affiance (ə-fi-ənts). **1.** *Archaic.* The act of confiding. **2.** The pledging of faith; specif., the act of promising to wed.

affiant (ə-fi-ənt). **1.** One who makes an affidavit. — Also termed *deponent*. **2.** COMPLAINANT (2).

affidare (af-ə-dair-ee), *vb.* [Law Latin] To swear faith to; esp., a tenant's pledge of faith to a lord.

affidatio dominorum (af-ə-day-shee-oh dom-ə-nor-əm), *n.* [Law Latin] *Hist.* An oath taken by lords in Parliament.

affidatus (af-ə-day-təs), *n.* [Law Latin] *Hist.* A tenant by fealty.

affidavit (af-ə-day-vit). A voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths. • A great deal of evidence is submitted by affidavit, esp. in pretrial matters such as summary-judgment motions. Cf. DECLARATION (8).

affidavit of defense. See *affidavit of merits*.

affidavit of increase. *Hist.* An affidavit that lists — and seeks reimbursement from the opposing party for — the additional costs (above the filing fee and other basic fees charged by the court clerk) incurred by a party in taking a matter through trial. • Attorney fees, witness payments, and the like were included in this affidavit. See COSTS OF INCREASE.

affidavit of inquiry. An affidavit, required in certain states before substituted service of process on an absent defendant, in which the plaintiff's attorney or a person with knowledge of the facts indicates that the defendant cannot be served within the state.

affidavit of merits. An affidavit in which a defendant asserts that he or she has a meritorious defense. — Also termed *affidavit of defense*.

affidavit of notice. An affidavit stating that the declarant has given proper notice of hearing to other parties to the action.

affidavit of service. An affidavit certifying the service of a notice, summons, writ, or process.

counteraffidavit. An affidavit made to contradict and oppose another affidavit.

IFP affidavit. See *poverty affidavit*.

in forma pauperis affidavit. See *poverty affidavit*.

pauper's affidavit. See *poverty affidavit*.

poverty affidavit. An affidavit made by an indigent person seeking public assistance, appointment of counsel, waiver of court fees, or other free public services. 28 USCA § 1915. — Also termed *pauper's affidavit*; *in forma pauperis affidavit*; *IFP affidavit*.

self-proving affidavit. An affidavit attached to a will and signed by witnesses, indicating that the testator was of sound mind and

under no duress when signing the will. • The effect is to make live testimony or other evidence unnecessary when the will is offered for probate.

sham affidavit. An affidavit that contradicts clear testimony previously given by the same witness, usu. used in an attempt to create an issue of fact in response to a motion for summary judgment.

supplemental affidavit. An affidavit made in addition to a previous one, usu. to supply additional facts.

affidavit of defense. See *affidavit of merits* under AFFIDAVIT.

affilare (af-ə-lair-ee), *vb.* [Law Latin] To put on record; to file.

affile (ə-fil), *vb.* Archaic. To file.

affiliate (ə-fil-ee-it), *n.* 1. A corporation that is related to another corporation by shareholdings or other means of control; a subsidiary, parent, or sibling corporation. 2. *Securities.* One who controls, is controlled by, or is under common control with an issuer of a security. SEC Rule 10b-18(a)(1) (17 CFR § 240.10b-18(a)(1)). See CONTROL PERSON. — **affiliate** (ə-fil-ee-ayt), *vb.* — **affiliation** (ə-fil-ee-ay-shən), *n.*

affiliated director. See *outside director* under DIRECTOR.

affiliated group. A chain of corporations that can elect to file a consolidated tax return because at least 80% of each corporation is owned by others in the group.

affiliated purchaser. See PURCHASER (1).

affine (ə-fin), *A relative by marriage.*

affinitas (ə-fin-ə-tas). [Latin] *Roman law.* Relationship by marriage.

affinitas affinitatis (ə-fin-i-tas ə-fin-i-tay-tis), *n.* [Latin] *Civil law.* The connection between parties arising from marriage; remote relationship by marriage.

affinity (ə-fin-ə-tee). 1. A close agreement. 2. The relation that one spouse has to the blood relatives of the other spouse; relationship by marriage. 3. Any familial relation resulting from a marriage. Cf. CONSANGUINITY.

“There is no affinity between the blood relatives of one spouse and the blood relatives of the other. A husband is related by affinity to his wife’s brother, but not to the wife of his wife’s brother. There is no affinity between the husband’s brother and the wife’s sister; this is called *affinitas affinitatis*.” 2 Charles E. Torcia, *Wharton’s Criminal Law* § 242, at 573 (15th ed. 1994).

collateral affinity. The relationship of a spouse’s relatives to the other spouse’s relatives. • An example is a wife’s brother and her husband’s sister.

direct affinity. The relationship of a spouse to the other spouse’s blood relatives. • An example is a wife and her husband’s brother.

quasi-affinity. *Civil law.* The affinity existing between two persons, one of whom has been engaged to a relative of the other.

secondary affinity. The relationship of a spouse to the other spouse’s marital relatives. • An example is a wife and her husband’s sister-in-law.

affirm, *vb.* 1. To confirm (a judgment) on appeal. 2. To solemnly declare rather than swear under oath.

affirmance, *n.* 1. A ratification, reacceptance, or confirmation.

“A party who has the power of avoidance may lose it by action that manifests a willingness to go on with the contract. Such action is known as ‘affirmance’ and has the effect of ratifying the contract. See Restatement of Restitution § 68. The rule stated in this Section is a special application of that stated in § 85, under which a promise to perform a voidable duty is binding. On ratification, the affirming party is bound as from the outset and the other party continues to be bound.” *Restatement (Second) of Contracts* § 380 cmt. a (1981).

2. The formal approval by an appellate court of a lower court’s judgment, order, or decree. — **affirm**, *vb.*

affirmance day general. See DAY.

affirmant. A person who testifies under affirmation and not under oath.

affirmation, *n.* A pledge equivalent to an oath but without reference to a supreme being or to “swearing.” • While an oath is “sworn to,” an affirmation is merely “affirmed,” but either type of pledge may subject the person making it to the penalties for perjury. — **affirm**, *vb.* — **affirmatory**, *adj.* Cf. OATH.

affirmative, *adj.* 1. That supports the existence of certain facts <affirmative evidence>. 2.

That involves or requires effort <an affirmative duty>.

affirmative action. A set of actions designed to eliminate existing and continuing discrimination, to remedy lingering effects of past discrimination, and to create systems and procedures to prevent future discrimination. See *reverse discrimination* under DISCRIMINATION.

affirmative charge. See *affirmative instruction* under JURY INSTRUCTION.

affirmative condition. See *positive condition* under CONDITION (2).

affirmative converse instruction. See JURY INSTRUCTION.

affirmative covenant. See COVENANT (1), (4).

affirmative defense. See DEFENSE (1).

affirmative duty. See DUTY (1).

affirmative easement. See EASEMENT.

affirmative injunction. See *mandatory injunction* under INJUNCTION.

affirmative instruction. See JURY INSTRUCTION.

affirmative misconduct. See MISCONDUCT.

affirmative plea. See *pure plea* under PLEA (2).

affirmative pregnant. A positive statement that ambiguously implies a negative; a statement that does not explicitly deny a charge, but instead answers an unasked question and thereby implies culpability, as when a person says "I returned your car yesterday" to the charge "You stole my car!" Cf. NEGATIVE PREGNANT.

affirmative proof. See PROOF.

affirmative relief. See RELIEF.

affirmative representation. See REPRESENTATION.

affirmative statute. See STATUTE.

affirmative testimony. See TESTIMONY.

affirmative warranty. See WARRANTY (3).

affirmative waste. See *commissive waste* under WASTE (1).

affix (ə-fiks), *vb.* To attach, add to, or fasten on permanently. — **affixation** (af-ik-say-shən), *n.* See FIXTURE.

affixus (ə-fik-səs). [Latin] *Roman law.* Affixed or fastened to.

afforare (af-ə-rair-ee), *vb.* [Law Latin] To set a price or value on a thing.

afforce (ə-fors), *vb.* To strengthen (a jury) by adding new members.

afforcement (ə-fors-mənt), *n.* [Law Latin] *Hist.*
1. A reinforcement or fortification; esp., the reinforcing of a court on a solemn or extraordinary occasion. **2.** A fortress. — Also termed *afforciament* (ə-for-shə-mənt); *afforciamentum* (ə-for-shee-ə-men-təm).

afforcing the assize. *Hist.* A method of securing a jury verdict from a hung jury either by denying food and drink to the members until they reached a verdict or by bringing in new jurors until 12 would agree.

afforest, *vb.* To convert (land) into a forest, esp. by subjecting it to forest law. — **afforestation**, *n.*

affranchir (a-frahn-sheer). See AFFRANCHISE.

affranchise (ə-fran-chiz), *vb.* *Archaic.* To set free; to liberate from servitude or an obligation.
 • The equivalent verb in Law French was *af-franchir*.

affray (ə-fray). The fighting, by mutual consent, of two or more persons in some public place, to the terror of onlookers. • The fighting must be mutual. If one person unlawfully attacks another who resorts to self-defense, the first is guilty of assault and battery, but there is no affray. — Also termed *fray*.

"The word 'affray' comes from the same source as the word 'afraid,' and the tendency to alarm the community is the very essence of this offense." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 479 (3d ed. 1982).

casual affray. See CHANCE-MEDLEY.

mutual affray. See MUTUAL COMBAT.

affrextamentum (ə-frek-tə-men-təm). See AFFREIGHTMENT.

affreightment (ə-frayt-mənt). The hiring of a ship to carry cargo. — Also termed (in French law) *affretement*; (in Law Latin) *affrextamentum*. See CONTRACT OF AFFREIGHTMENT.

affretement. See AFFREIGHTMENT.

a fine force (ay fɪn fɔrs). [Law French] Of pure necessity.

AFL-CIO. *abbr.* AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS.

a force (ay fɔrs). [Law French] Of necessity.

a force et armes (ay fɔrs et ahr-mis). [Law French] With force and arms. — Also spelled *a force et armis*. See VI ET ARMIS.

aforsaid (ə-for-sed), *adj.* Mentioned above; referred to previously. — Also termed *aforementioned*; *above-mentioned*; *above-stated*; *said*.

aforethought (ə-for-thawt), *adj.* Thought of in advance; deliberate; premeditated <malice aforethought>. See MALICE AFORETHOUGHT.

a fortiori (ay for-shee-or-I or ah for-shee-or-ee), *adv.* [Latin] By even greater force of logic; even more so <if a 14-year-old child cannot sign a binding contract, then, *a fortiori*, a 13-year-old cannot>. Cf. A MULTO FORTIORI.

after-acquired domicile. See DOMICILE.

after-acquired-evidence doctrine. *Employment law*. The rule that, if an employer discharges an employee for an unlawful reason and later discovers misconduct sufficient to justify a lawful discharge, the employee cannot win reinstatement. • The doctrine either shields the employer from liability or limits the available relief when, after an employee has been terminated, the employer learns for the first time that the employee engaged in wrongdoing that would have resulted in a discharge anyway. *McKennon v. Nashville Banner Publ'g Co.*, 513 U.S. 352, 115 S.Ct. 879 (1995).

after-acquired property. 1. *Secured transactions*. A debtor's property that is acquired after a security transaction and becomes additional security for payment of the debt. UCC § 9-204. — Also termed *future-acquired property*. 2. *Bankruptcy*. Property that the bankrupt-

cy estate acquires after commencement of the bankruptcy proceeding. 11 USCA § 541(a)(7). 3. *Wills & estates*. Property acquired by a person after making a will. • The old rule was that a testamentary gift of personal property spoke at the time of the testator's death, whereas a gift of lands spoke from the date of the will's execution (so that after-acquired property was not disposed of), but this has been changed by legislation in most states.

after-acquired-property clause. A mortgage provision that makes any later-acquired real estate subject to the mortgage.

after-acquired title. See TITLE.

after-acquired-title doctrine. The principle that title to property automatically vests in a person who bought the property from a seller who acquired title only after purporting to sell the property to the buyer.

after-born child. See CHILD.

after-born heir. See HEIR.

aftercare. See *juvenile parole* under PAROLE.

after cost. See COST (1).

aftermarket. See *secondary market* under MARKET.

after the fact. Subsequent to an event of legal significance <accessory after the fact>.

AG. *abbr.* ATTORNEY GENERAL.

against the form of the statute. Contrary to the statutory requirements. • This formal phrase, which traditionally concludes an indictment, indicates that the conduct alleged contravenes the cited statute and therefore constitutes a criminal offense. In modern contexts, the full conclusion often reads: "against the form of the statute in such case made and provided." The phrase is a translation of the Law Latin *contra formam statuti*.

against the peace and dignity of the state. A concluding phrase in an indictment, used to condemn the offending conduct generally (as opposed to the specific charge of wrongdoing contained in the body of the instrument). • This phrase derives from the Law Latin *contra pacem domini regis* ("against the peace of the lord the king"), a charging phrase formerly

used in indictments and in civil actions of trespass. See KING'S PEACE.

against the weight of the evidence. (Of a verdict or judgment) contrary to the credible evidence; not sufficiently supported by the evidence in the record. See WEIGHT OF THE EVIDENCE.

against the will. Contrary to a person's wishes.
• Indictments use this phrase to indicate that the defendant's conduct was without the victim's consent.

agalma (ə-gal-mə). A figure or design on a seal.

agard (ə-gahrd). [Law French] An award. See NUL FAIT AGARD.

agarder (ah-gahr-day), *vb.* [Law French] To award, adjudge, or determine; to sentence or condemn.

age, n. A period of time; esp., a period of individual existence or the duration of a person's life.

age of capacity. The age, usu. defined by statute as 18 years, at which a person is legally capable of agreeing to a contract, executing a will, maintaining a lawsuit, or the like. — Also termed *age of majority*; *legal age*; *lawful age*. See CAPACITY.

age of consent. The age, usu. defined by statute as 16 years, at which a person is legally capable of agreeing to marriage (without parental consent) or to sexual intercourse. See CONSENT.

age of majority. 1. The age, usu. defined by statute as 18 years, at which a person attains full legal rights, esp. civil and political rights such as the right to vote. — Also termed *lawful age. 2.* See *age of capacity*.

age of reason. The age at which a person becomes able to distinguish right from wrong and is thus legally capable of committing a crime or tort. • The age of reason varies from jurisdiction to jurisdiction, but 7 years is usu. the age below which a child is conclusively presumed not to have committed a crime or tort, while 14 years is usu. the age below which a rebuttable presumption applies.

fighting age. The age at which a person becomes eligible to serve in (or liable to conscription into) a military unit.

lawful age. 1. See *age of capacity. 2.* See *age of majority (1)*.

age discrimination. See DISCRIMINATION.

Age Discrimination in Employment Act. A federal law prohibiting job discrimination based on a person's age, esp. unfair and discriminatory employment decisions that negatively affect someone who is 40 years old or older. 29 USCA §§ 621–634. • Passed in 1967, the Act applies to businesses with more than 20 employees and to all governmental entities. — Abbr. ADEA.

agency. 1. A fiduciary relationship created by express or implied contract or by law, in which one party (the *agent*) may act on behalf of another party (the *principal*) and bind that other party by words or actions. See AUTHORITY (1).

“The basic theory of the agency device is to enable a person, through the services of another, to broaden the scope of his activities and receive the product of another's efforts, paying such other for what he does but retaining for himself any net benefit resulting from the work performed.” Harold Gill Reuschlein & William A. Gregory, *The Law of Agency and Partnership* § 1, at 3 (2d ed. 1990).

actual agency. An agency in which the agent is in fact employed by a principal.

agency by estoppel. An agency created by operation of law and established by a principal's actions that would reasonably lead a third person to conclude that an agency exists. — Also termed *apparent agency*; *ostensible agency*; *agency by operation of law*.

agency by necessity. See *agency of necessity*.

agency by operation of law. See *agency by estoppel*.

agency coupled with an interest. An agency in which the agent is granted not only the power to act on behalf of a principal but also a legal interest in the estate or property involved. See *power coupled with an interest* under POWER.

agency from necessity. See *agency of necessity*.

agency in fact. An agency created voluntarily, as by a contract. • Agency in fact is distinguishable from an agency relationship created by law, such as agency by estoppel.

agency of necessity. An agency arising during an emergency that necessitates the agent's acting without authorization from the principal; the relation between a person who in exigent circumstances acts in the interest of another without being authorized to do so. • It is a quasi-contractual relation formed by the operation of legal rules and not by the agreement of the parties. — Also termed *agency from necessity*; *agency by necessity*. See NEGOTIORUM GESTIO.

apparent agency. See *agency by estoppel*.

exclusive agency. The right to represent a principal — esp. either to sell the principal's products or to act as the seller's real-estate agent — within a particular market free from competition. — Also termed *exclusive franchise*.

"Contracts involving the element of exclusive agency generally fall into three classes: (1) where the contract does not prevent the principal from making direct sales but deprives him of the right to appoint other agents; (2) where the agent is the only one with any right to sell; and (3) where the exclusive agency is accompanied with a stipulated right to commissions on all sales whether made through the agent or not." 3 Am. Jur. 2d *Agency* § 268, at 768 (1986).

express agency. An actual agency arising from the principal's written or oral authorization of a person to act as the principal's agent. Cf. *implied agency*.

financing agency. A bank, finance company, or other entity that in the ordinary course of business (1) makes advances against goods or documents of title, or (2) by arrangement with either the seller or the buyer intervenes to make or collect payment due or claimed under a contract for sale, as by purchasing or paying the seller's draft, making advances against it, or taking it for collection, regardless of whether documents of title accompany the draft. UCC § 2-102(a)(20).

general agency. A principal's delegation to an agent, without restriction, to take any action connected with a particular trade, business, or employment. — Also termed *universal agency*.

implied agency. An actual agency arising from the conduct by the principal that implies an intention to create an agency relationship. Cf. *express agency*.

ostensible agency. See *agency by estoppel*.

special agency. An agency in which the agent is authorized only to conduct a single transaction or a series of transactions not involving continuous service.

undisclosed agency. An agency relationship in which an agent deals with a third party who has no knowledge that the agent is acting on a principal's behalf. • The fact that the agency is undisclosed does not prohibit the third party from seeking redress from the principal or the agent.

universal agency. See *general agency*.

2. An agent's place of business. 3. A governmental body with the authority to implement and administer particular legislation. — Also termed (in sense 3) *government agency*; *admin-*

istrative agency; *public agency*; *regulatory agency*.

federal agency. A department or other instrumentality of the executive branch of the federal government, including a government corporation and the Government Printing Office. • The Administrative Procedure Act defines the term *agency* negatively as being any U.S. governmental authority that does not include Congress, the courts, the government of the District of Columbia, the government of any territory or possession, courts-martial, or military authority. 5 USCA § 551. The caselaw on this definition focuses on authority: generally, an entity is an agency if it has authority to take binding action. Other federal statutes define agency to include any executive department, government corporation, government-controlled corporation, or other establishment in the executive branch, or federal regulatory board.

independent agency. A federal agency, commission, or board that is not under the direction of the executive, such as the Federal Trade Commission or the National Labor Relations Board. — Also termed *independent regulatory agency*; *independent regulatory commission*.

quasi-governmental agency. A government-sponsored enterprise or corporation (sometimes called a *government-controlled corporation*), such as the Federal National Mortgage Corporation.

agency adjudication. See ADMINISTRATIVE PROCEEDING.

agency by operation of law. See *agency by estoppel* under AGENCY (1).

agency records. Under the Freedom of Information Act, documents that are created or obtained by a government agency, and that are in the agency's control at the time the information request is made. 5 USCA § 552; *United States Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 109 S.Ct. 2841 (1989).

agency regulation. See REGULATION (2).

agency security. See *government security* under SECURITY.

agency shop. See SHOP.

agenda. A list of things to be done, as items to be discussed at a meeting.

agens (ay-jenz). [Latin] **1.** One who acts or does an act; an agent. Cf. PATIENS. **2.** A plaintiff.

agent. **1.** One who is authorized to act for or in place of another; a representative <a professional athlete's agent>. Cf. PRINCIPAL (1); EMPLOYEE. **2.** Something that produces an effect <an intervening agent>. See CAUSE (1).

"Generally speaking, anyone can be an agent who is *in fact* capable of performing the functions involved. The agent normally binds not himself but his principal by the contracts he makes; it is therefore not essential that he be legally capable to contract (although his duties and liabilities to his principal might be affected by his status). Thus an infant or a lunatic may be an agent, though doubtless the court would disregard either's attempt to act as if he were so young or so hopelessly devoid of reason as to be completely incapable of grasping the function he was attempting to perform." Floyd R. Mechem, *Outlines of the Law of Agency* 8-9 (Philip Mechem ed., 4th ed. 1952).

"The etymology of the word agent or agency tells us much. The words are derived from the Latin verb, *ago, agere*; the noun *agens, agentis*. The word agent denotes one who acts, a doer, force or power that accomplishes things." Harold Gill Reuschlein & William A. Gregory, *The Law of Agency and Partnership* § 1, at 2-3 (2d ed. 1990).

apparent agent. A person who reasonably appears to have authority to act for another, regardless of whether actual authority has been conferred. — Also termed *ostensible agent*.

bargaining agent. A labor union in its capacity of representing employees in collective bargaining.

co-agent. A person who shares with another agent the authority to act for the principal. — Also termed *dual agent*.

corporate agent. An agent authorized to act on behalf of a corporation; broadly, all employees and officers who have the power to bind the corporation.

del credere agent (del kred-ə-ray or kray-də-ray). An agent who guarantees the solvency of the third party with whom the agent makes a contract for the principal. ● A del credere agent receives possession of the principal's goods for purposes of sale and guarantees that anyone to whom the agent sells the goods on credit will pay promptly for them. For this guaranty, the agent receives a higher commission for sales. The promise of such an agent is almost universally held not to be within the statute of frauds. — Also termed *del credere factor*.

diplomatic agent. A national representative in one of four categories: (1) ambassadors, (2) envoys and ministers plenipotentiary, (3)

ministers resident accredited to the sovereign, or (4) chargés d'affaires accredited to the minister of foreign affairs.

dual agent. See *co-agent*.

emigrant agent. One engaged in the business of hiring laborers for work outside the country or state.

fiscal agent. A bank or other financial institution that collects and disburses money and services as a depository of private and public funds on another's behalf.

foreign agent. A person who registers with the federal government as a lobbyist representing the interests of a foreign nation or corporation.

forwarding agent. **1.** A person or company whose business is to receive and ship goods for others. — Also termed *freight-forwarder*. **2.** A freight-forwarder who assembles less-than-carload shipments (small shipments) into carload shipments, thus taking advantage of lower freight rates.

general agent. An agent authorized to transact all of the principal's business of a particular kind or in a particular place. ● Among the common types of general agents are factors, brokers, and partners.

"Although the distinction between general and special agents can be difficult to apply, the terminology is sometimes used by courts and the distinction plays a major role in the Restatement of Agency. A general agent . . . is an integral part of the principal's business and does not need fresh authorization for each separate transaction. A manager of a store is an example of a general agent." J. Dennis Hynes, *Agency, Partnership, and the LLC in a Nutshell* 21 (1997).

government agent. **1.** An employee or representative of a governmental body. **2.** A law-enforcement official, such as a police officer or an FBI agent. **3.** An informant, esp. an inmate, hired by law enforcement to obtain incriminating statements from another inmate. ● An accused's Sixth Amendment right to counsel is triggered when the accused is questioned by a government agent.

high-managerial agent. An agent of a corporation or other business, having authority to formulate corporate policy or supervise employees. — Also termed *superior agent*.

independent agent. An agent who exercises personal judgment and is subject to the principal only for the results of the work performed.

local agent. An agent appointed to act as another's (esp. a company's) representative and to transact business within a specified district.

managing agent. A person with general power involving the exercise of judgment and discretion, as opposed to an ordinary agent who acts under the direction and control of the principal. — Also termed *business agent*.

mercantile agent. An agent employed to sell goods or merchandise on behalf of the principal.

ostensible agent. See *apparent agent*.

private agent. An agent acting for an individual in that person's private affairs.

process agent. A person authorized to accept service of process on behalf of another.

public agent. A person appointed to act for the public in matters pertaining to governmental administration or public business.

real-estate agent. An agent who represents a buyer or seller (or both, with proper disclosures) in the sale or lease of real property. • A real-estate agent can be either a broker (whose principal is a buyer or seller) or a salesperson (whose principal is a broker).

registered agent. A person authorized to accept service of process for another person, esp. a corporation, in a particular jurisdiction. — Also termed *resident agent*.

soliciting agent. 1. *Insurance.* An agent with limited authority relating to the solicitation or submission of applications to an insurance company but usu. without authority to bind the insurer, as by accepting the applications on behalf of the company. 2. An agent who solicits orders for goods or services for a principal. 3. A managing agent of a corporation for purposes of service of process.

special agent. An agent employed to conduct a particular transaction or to perform a specified act.

statutory agent. An agent designated by law to receive litigation documents and other legal notices for a nonresident corporation. • In most states, the secretary of state is the statutory agent for such corporations.

stock-transfer agent. An organization that oversees and maintains records of transfers of shares for a corporation.

subagent. A person appointed by an agent to perform some duty relating to the agency. — Also termed *subservant*.

superior agent. See *high-managerial agent*.

transfer agent. An organization (such as a bank or trust company) that handles transfers of shares for a publicly held corporation by issuing new certificates and overseeing the cancellation of old ones and that usu. also

maintains the record of shareholders for the corporation and mails dividend checks. • Generally, a transfer agent ensures that certificates submitted for transfer are properly indorsed and that the right to transfer is appropriately documented.

undercover agent. 1. An agent who does not disclose his or her role as an agent. 2. A police officer who gathers evidence of criminal activity without disclosing his or her identity to the suspect.

universal agent. An agent authorized to perform all acts that the principal could personally perform.

agent provocateur (ay-jənt prə-vok-ə-tər or a-zhawn praw-vaw-kə-tuər), *n.* 1. An undercover agent who instigates or participates in a crime, often by infiltrating a group involved in suspected illegal conduct, to expose and punish criminal activity. 2. A person who entraps or entices another to break the law and then informs against the other as a lawbreaker.

agent's lien. See LIEN.

age of capacity. See AGE.

age of consent. See AGE.

age of majority. See AGE.

age of reason. See AGE.

ager (ay-jər), *n.* [Latin] *Roman law.* Land or territory; esp., a portion of land enclosed by definite boundaries.

ager publicus (ay-jər pəb-li-kəs). Land of the people; public land.

aggravated, *adj.* 1. (Of a crime) made worse or more serious by circumstances such as violence, the presence of a deadly weapon, or the intent to commit another crime <aggravated robbery>. Cf. SIMPLE (1). 2. (Of a tort) made worse or more serious by circumstances such as intention to cause harm or reckless disregard for another's safety <the defendant's negligence was aggravated by malice>. 3. (Of an injury) harmful to a part of the body previously injured or debilitated <an aggravated bone fracture>. See AGGRAVATION RULE.

aggravated arson. See ARSON.

aggravated assault. See ASSAULT.

aggravated battery

aggravated battery. See BATTERY.

aggravated damages. See *punitive damages* under DAMAGES.

aggravated kidnapping. See KIDNAPPING.

aggravated larceny. See LARCENY.

aggravated robbery. See ROBBERY.

aggravated sodomy. See SODOMY.

aggravating circumstance. See CIRCUMSTANCE.

aggravation rule. *Workers' compensation.* The principle that when an on-the-job injury combines with a preexisting injury, resulting in a greater disability than that which would have resulted from the on-the-job injury alone, the entire disability is compensable as if it had occurred at work.

aggregate (ag-rə-git), *adj.* Formed by combining into a single whole or total <aggregate income>.

aggregate (ag-rə-git), *n.* An assemblage of particulars; an agglomeration <aggregate of interests>.

aggregate (ag-rə-gayt), *vb.* To collect into a whole <aggregate the claims>.

aggregate concept. An approach to taxing business organizations whereby an organization is viewed as a collection of its individual owners, not as a separate taxable entity.

aggregate corporation. See CORPORATION.

aggregate demand. See DEMAND (3).

aggregate income. See INCOME.

aggregate sentence. See SENTENCE.

aggregate supply. See SUPPLY.

aggregate theory of partnership. The theory that a partnership does not have a separate legal existence (as does a corporation), but rather is only the totality of the partners who make it up. Cf. ENTITY THEORY OF PARTNERSHIP.

aggregatio mentium (ag-rə-gay-shee-oh men-shee-əm). [Latin "gathering together of minds"] See MEETING OF THE MINDS.

aggregation. *Patents.* A combination of two or more elements in a patent claim, each one unrelated and each one performing separately and without cooperation — as a result of which the combination does not define a composite integrated mechanism. — Also termed *juxtaposition*.

aggregation doctrine. The rule that precludes a party from totaling all claims for purposes of meeting the minimum amount necessary to give rise to federal diversity jurisdiction under the amount-in-controversy requirement. See *diversity jurisdiction* under JURISDICTION; AMOUNT IN CONTROVERSY.

aggression. *Int'l law.* The use of armed force by a country against the sovereignty, territorial integrity, or political independence of another country, or in a manner inconsistent with the Charter of the United Nations. • Acts falling within this definition include declaring war against, invading, attacking, blockading, or landing troops on another country's territory.

aggressor corporation. See CORPORATION.

aggressor doctrine. *Civil law.* The principle precluding tort recovery for a plaintiff who acts in a way that would provoke a reasonable person to use physical force for protection from the plaintiff, unless the defendant uses excessive force to repel the plaintiff.

aggrieved party. See PARTY (2).

AGI. See *adjusted gross income* under INCOME.

agillarius (aj-ə-lair-ee-əs), *n.* [Law Latin] *Hist.* A keeper of a herd of cattle in a common field; a hayward.

aging of accounts. A process of classifying accounts receivable by the time elapsed since the claim came into existence for the purpose of estimating the balance of uncollectible accounts as of a given date.

agio (aj-ee-oh or ay-jee-oh). The premium paid for the exchange of one kind of money for another, such as paper currency for coin or one country's currency for another's.

agiotage (aj-ee-ə-tij). **1.** The business of dealing in foreign exchange. **2.** Speculative buying and selling of securities.

agist (ə-jist), *vb.* To allow animals to graze on one's pasture for a fee.

agister (ə-jis-tər). One who takes and pastures grazing animals for a fee; a person engaged in the business of agistment. • An agister is a type of bailee for hire. — Also spelled *agistor*.

agister's lien. See LIEN.

agistment (ə-jist-mənt). **1.** A type of bailment in which a person, for a fee, allows animals to graze on his or her pasture; the taking in of cattle or other livestock to feed at a per-animal rate. **2.** A charge levied upon the owner or occupier of land. See TITHE OF AGISTMENT.

agistment of sea-banks. *Hist.* A charge on land used to pay for the upkeep of dikes that prevent the encroachment of the sea.

agnate (ag-nayt), *adj.* Related or akin through male descent or on the father's side.

agnate, *n.* A blood relative whose connection is through the male line. Cf. COGNATE.

agnatic, *adj.* (Of a relationship) restricted to affiliations through the male line.

agnatio (ag-nay-shee-oh). [Latin] *Roman law.* A relationship extended to a person through males only; an affiliation of free persons of either sex in the power (*patria potestas*) of the senior living male or of a male who would be in his power if he were living. • An agnatic relationship could be created either by adoption or by a blood relationship (*cognatio*) traced solely through the male side of a family. See COGNATIO; *patria potestas* under POTESTAS.

agnatus (ag-nay-təs), *n.* [Latin] *Roman law.* A person related through the male line. Cf. COGNATUS.

"[Agnati were] all individuals subject for the time being to the same *patria potestas*, or who would be so subject were the common ancestor alive. Brothers and sisters, with their uncles, aunts, nephews, nieces, and other collaterals (not having been received into another family), if related through males, were agnates. The civil issue of the state was the Agnatic Family. Cognates were all persons who could trace their blood to a single ancestor or ancestress, and agnates were those cognates who traced their connection exclusively through males." John Bouvier, *Bouvier's Law Dictionary* (8th ed. 1914).

agnomen (ag-noh-mən). [Latin] **1.** An additional name or title; a nickname. **2.** *Roman law.* An additional name, given in recognition of some achievement or to reflect adoption by a different *gens*. See NOMEN.

agrarian (ə-grair-ee-ən), *adj.* Of or relating to land, land tenure, or a division of landed property. — **agrarian**, *n.*

agrarian law. *Roman & civil law.* The body of law governing the ownership, use, and distribution of land.

agrarium (ə-grair-ee-əm). [Law Latin] *Hist.* A tax upon, or tribute payable out of, land.

a gratia (ay gray-shee-ə). [Law Latin] EX GRATIA.

agreementum (ə-gree-ə-men-təm). [Law Latin] Agreement; an agreement.

agreed-amount clause. An insurance-policy provision that the insured will carry a stated amount of coverage.

agreed-boundary doctrine. The principle that owners of contiguous land may agree on the boundary between the parcels, as long as the actual boundary is uncertain, there is agreement between the two owners about the boundary line, there is acquiescence in the agreed line for a time exceeding the statute of limitations, and the agreed boundary is identifiable on the ground.

agreed judgment. See JUDGMENT.

agreed price. See PRICE.

agreed statement of facts. See STATEMENT OF FACTS.

agreed statement on appeal. See *agreed statement of facts* under STATEMENT OF FACTS.

agreed value. See VALUE.

agreement. **1.** A mutual understanding between two or more persons about their relative rights and duties regarding past or future performances; a manifestation of mutual assent by two or more persons. **2.** The parties' actual bargain as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance. UCC § 1-201(3).

"An agreement, as the courts have said, 'is nothing more than a manifestation of mutual assent' by two or more parties legally competent persons to one another. Agreement is in some respects a broader term than contract, or even than bargain or promise. It covers executed sales, gifts, and other transfers of property." Samuel Williston, *A Treatise on the Law of Contracts* § 2, at 6 (Walter H.E. Jaeger ed., 3d ed. 1957).

agreement of sale. An agreement that obligates someone to sell and that may include a corresponding obligation for someone else to purchase.

agreement to agree. 1. An unenforceable agreement that purports to bind two parties to negotiate and enter into a contract; esp., a proposed agreement negotiated with the intent that the final agreement will be embodied in a formal written document and that neither party will be bound until the final agreement is executed. 2. A fully enforceable agreement containing terms that are sufficiently definite as well as adequate consideration, but leaving some details to be worked out by the parties.

"[I]t has been many times reiterated that the law does not recognize 'an agreement to agree' as a valid contract. So an agreement under which a builder was to construct a building for a developer was held not to be binding because no price was fixed, it being simply agreed that fair and reasonable sums would be negotiated. An 'agreement to agree' would be unobjectionable if the parties had definitely agreed to enter into a contract on terms which were themselves sufficiently definite. What they cannot do is to bind themselves to negotiate *and reach agreement*, for the negotiations may quite genuinely fail to lead to an agreement." P.S. Atiyah, *An Introduction to the Law of Contract* 89 (3d ed. 1981).

agreement to sell. An agreement that obligates someone to sell.

binding agreement. An enforceable contract. See CONTRACT.

closing agreement. *Tax.* A written contract between a taxpayer and the Internal Revenue Service to resolve a tax dispute.

formal agreement. An agreement in which the law requires not only the consent of the parties but also a manifestation of the agreement in some particular form, in default of which the agreement is null.

integrated agreement. See INTEGRATED CONTRACT.

invalid agreement. See *invalid contract* under CONTRACT.

outsourcing agreement. See OUTSOURCING AGREEMENT.

point-and-click agreement. See POINT-AND-CLICK AGREEMENT.

simple agreement. An agreement in which the law requires nothing for its effective operation beyond some manifestation that the parties have consented.

subordination agreement. An agreement by which one who holds an otherwise senior interest agrees to subordinate that interest to a normally lesser interest, usu. when a seller agrees to subordinate a purchase-money mortgage so that the buyer can obtain a first-mortgage loan to improve the property.

unconscionable agreement (ən-kon-shə-nə-bəl). An agreement that no promisor with any sense, and not under a delusion, would make, and that no honest and fair promisee would accept. — Also termed *unconscionable contract*.

underwriting agreement. An agreement between a corporation and an underwriter covering the terms and conditions of a new securities issue.

valid agreement. See *valid contract* under CONTRACT.

voidable agreement. See *voidable contract* under CONTRACT.

void agreement. See *void contract* under CONTRACT.

agreement of imperfect obligation. See *unenforceable contract* under CONTRACT.

agreement of rescission. See RESCISSION (2).

agreement of sale. See AGREEMENT.

Agreement Relating to Liability Limitation of the Warsaw Convention and The Hague Protocol. See MONTREAL AGREEMENT.

agreement to agree. See AGREEMENT.

agreement to sell. See AGREEMENT.

agri (ag-rī), *n. pl.* [Latin] Lands.

agribusiness. The pursuit of agriculture as an occupation or profit-making enterprise, including labor, land-use planning, and financing the cost of land, equipment, and other necessary expenses.

Agricultural Adjustment Act. A federal statute, enacted in 1933, that paid farmers to not produce crops in an effort to raise crop prices. ● The U.S. Supreme Court declared the act unconstitutional in 1936 on grounds that Con-

gress had overstepped its power to regulate commerce. A second, more limited Agricultural Adjustment Act was enacted in 1938. — Abbr. AAA.

agricultural labor. Work that is performed on a farm or ranch, or that pertains to the production of commodities, such as harvesting crops, raising livestock, or obtaining milk, honey, or other animal products. • Agricultural labor is often excluded from certain labor laws, such as unemployment insurance and workers' compensation.

agricultural lien. See LIEN.

agriculture. The science or art of cultivating soil, harvesting crops, and raising livestock.

"'Agriculture' is broader in meaning than 'farming'; and while it includes the preparation of soil, the planting of seeds, the raising and harvesting of crops, and all their incidents, it also includes gardening, horticulture, viticulture, dairying, poultry, bee raising, and ranching." 3 Am. Jur. 2d *Agriculture* § 1, at 934-35 (1986).

agri limitati (ag-rī lim-i-tay-tī). [Latin "fields limited" or "lands enclosed by boundaries"] *Roman & civil law.* Lands whose boundaries have been fixed by a surveyor. • They included land belonging to the state by right of conquest, and granted and sold in individual plots.

Aguilar-Spinelli test (ah-gee-lahr spi-nel-ee or ag-wə-lahr). *Criminal procedure.* A standard for determining whether hearsay (such as an informant's tip) is sufficiently reliable to establish probable cause for an arrest or search warrant. • Under this two-pronged test — which has been replaced by a broader, totality-of-the-circumstances approach — the reliability of both the information and the informant must be independently shown. *Aguilar v. Texas*, 378 U.S. 108, 84 S.Ct. 1509 (1964); *Spinelli v. United States*, 393 U.S. 410, 89 S.Ct. 584 (1969). Cf. TOTALITY-OF-THE-CIRCUMSTANCES TEST.

ahupuaa (ah-hoo-poo-ah-ah). A variable measure of Hawaiian land, traditionally understood to stretch from the sea to the mountains, to allow the people to obtain the various materials needed for subsistence offered at different elevations. — Also spelled *ahupua'a*.

AICPA. *abbr.* American Institute of Certified Public Accountants.

aid, n. Hist. 1. A subsidy or tax granted to the king for an extraordinary purpose. — Also

termed *grant-in-aid*. **2.** A benevolence or tribute (i.e., a sum of money) granted by the tenant to his lord in times of difficulty and distress. • Over time, these grants grew from being discretionary to matters of right. The three principal aids were: (1) to ransom the lord's person if he was taken prisoner; (2) to contribute toward the ceremony of knighting the lord's eldest son; and (3) to provide a suitable portion to the lord's eldest daughter when she married. **3.** Assistance in defending a lawsuit in which the plaintiff also has a claim against an unsued third party having a joint interest in the defense.

aid and abet, vb. To assist or facilitate the commission of a crime, or to promote its accomplishment. • Aiding and abetting is a crime in most jurisdictions. — Also termed *aid or abet; counsel and procure*. — **aider and abettor, n.**

"The phrase 'aid and abet' and 'aider and abettor' seem unnecessarily verbose. . . . [A]ny aid given with mens rea is abetment; hence to add the word 'aid' to the word 'abet' is not necessary and is sometimes misleading." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 724-25 (3d ed. 1982).

"In connection with the principal in the second degree or accessory before the fact, the terms 'aid' and 'abet' are frequently used interchangeably, although they are not synonymous. To 'aid' is to assist or help another. To 'abet' means, literally, to bait or excite, as in the case of an animal. In its legal sense, it means to encourage, advise, or instigate the commission of a crime." 1 Charles E. Torcia, *Wharton's Criminal Law* § 29, at 181 (15th ed. 1993).

aid and comfort. Help given by someone to a national enemy in such a way that the help amounts to treason.

"Aid and comfort may be given in various ways, such as buying a vessel and fitting it for service in aid of the enemy, delivering prisoners and deserters to the enemy, or selling critical materials with knowledge of the fact that the purchaser buys them to use in the manufacture of gunpowder for the enemy, or otherwise to aid him in his prosecution of the war. And the courts have given short shrift to the claim that such a sale was not intended to aid the enemy but only to make a profit." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 502 (3d ed. 1982).

aide-mémoire (ayd-mem-wahr). *Int'l law.* A diplomatic document that a diplomatic agent leaves with the receiving state's department of foreign affairs on the occasion of a *démarche*. • The *aide-mémoire* presents the receiving state with a precise record of the substance of the diplomatic agent's mission. It is typically written in an impersonal style, without mentioning either the addressee or the author. It appears on printed letterhead and is dated, but it is not

signed, initialed, or embossed with a seal. See DÉMARCHE.

aider, *n.* **1.** An act of aiding; the curing of a defect. **2.** One who aids another.

aider by pleading over. The cure of a pleading defect by an adversary's answering the pleading without an objection, so that the objection is waived.

aider by verdict. The cure of a pleading defect by a trial verdict, based on the presumption that the record contains adequate proof of the necessary facts even if those facts were not specifically alleged.

"AIDER BY VERDICT. Wherever a pleading states the essential requisites of a cause of action or ground of defense, it will be held sufficient after a general verdict in favor of the party pleading, though the statement be informal or inaccurate; but a verdict will never aid the statement of a title or cause of action inherently defective." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 332, at 531 (Henry Winthrop Ballantine ed., 3d ed. 1923).

aiding an escape. The crime of helping a prisoner escape custody.

aid of the king. *Hist.* A request of the king made by a tenant for relief from another's demand for rent.

aid or abet. See AID AND ABET.

aid prayer. *Hist.* A plea by a life tenant or other holder of less than a fee simple to bring into the action another who holds an interest in the estate (such as a reversioner or remainderman) to help defend the title. — Also termed *prayer in aid*.

aids. See AID (2).

aiel (ay-əl), *n.* [Law French] *Hist.* **1.** A grandfather. **2.** A writ by an heir of a grandfather for recovery of the grandfather's estate, which had been wrongfully possessed by a stranger. — Also termed (in sense 2) *writ of aiel*. — Also spelled *aile*; *ayel*; *ayle*. Cf. BESAYEL; COSINAGE.

aimable compositeur (ay-mah-blə kon-poh-zee-tuur). [French] See AMIABLE COMPOSITOR.

airbill. A document serving as a bill of lading for goods transported by air. • The term includes air consignment notes and air waybills.

aircraft piracy. See *air piracy* under PIRACY (2).

air law. The part of law, esp. international law, relating to civil aviation.

airman's certificate. A license that every aircraft pilot must have to operate an aircraft in U.S. airspace. 49 USCA §§ 44701-44711; 14 CFR § 61.3.

Airman's Information Manual. A publication of the Federal Aviation Administration, providing the fundamental requirements of any pilot who flies in national airspace.

air piracy. See PIRACY.

air pollution. Any harmful substance or energy emitted directly or indirectly into the air, esp. if the harm is to the environment or to the public health or welfare.

air-quality-control region. *Environmental law.* A federally designated area in which communities share an air-pollution problem, often involving several states; an interstate area or major intrastate area that the Environmental Protection Agency designates for monitoring and ameliorating ambient air-quality standards. 42 USCA § 7407(c).

air-quality criteria. *Environmental law.* The legal limits that the Environmental Protection Agency sets for pollutants in a defined area and at a specified time.

air right. The right to use all or a portion of the airspace above real property.

air-services agreement. See AIR-TRANSPORT AGREEMENT.

air-transport agreement. A contract governing the operation of air services; esp., an intergovernmental agreement governing the operation of international air services between their territories. — Also termed *air-services agreement*.

aisiamentum (ay-shee-ə-men-təm). [Law Latin] An easement or privilege.

aisne. See EIGNE.

a issue (ah is[h]-yoo). [Law French] At issue.

a.k.a. *abbr.* Also known as.

al (ahl), *prep.* [Law French] At.

a la grande grevaunce (ah lə **grawnd** grə-vawns). [Law French] To the great grievance.

a large (ah lahrzh). [Law French] Free; at large.

a latere (ay lat-ə-ree). [Latin] From the side; collaterally. • This term was formerly used to denote collateral succession rather than lineal succession.

alba firma (al-bə fər-mə). [Law Latin] See WHITE RENT.

albanus (al-bay-nəs), *n.* [Law Latin] See ADVENA.

al barre (ahl bahr). [Law French] At the bar.

album breve (al-bəm breev or bree-vee). See BREVE.

albus liber (al-bəs lī-bər). [Law Latin “white book”] *Hist.* An ancient book containing a compilation of the laws and customs of the city of London. — Also termed *White Book*.

alcalde (al-kal-dee or ahl-kahl-thay). [fr. Arabic *al-qadi* “the Cadi” or “the judge”] *Spanish law*. **1.** *Hist.* A judicial officer. • The alcalde’s functions typically resembled those of a justice of the peace. **2.** The mayor of a Spanish or Spanish-American town, usu. with a judicial element. • This is the modern sense.

alcoholometer. See BREATHALYZER.

alderman. A member of a city council or other local governing body. — Also termed *alderperson*.

aldermannus (al-dər-man-əs). [Law Latin] *Hist.* An alderman.

aldermannus civitatis vel burgi (siv-i-tay-tis vel bər-ji). An alderman of a city or borough.

aldermannus hundredi seu wapentachii (hən-dri-dī syoo wahp-ən-tay-kee-ī). An alderman of a hundred or wapentake.

aldermannus regis (ree-jis). An alderman of the king, so called because he is appointed by the king or gives the king’s judgment in the premises allotted to him.

aldermannus totius Angliae (toh-shee-əs ang-gee-ee). An alderman of all England, similar to the chief justiciary of England in later times. See JUSTICIARY.

alderperson. See ALDERMAN.

alderwoman. A female member of a city council or other local governing body.

alea (ay-lee-ə), *n.* [Latin] *Roman law*. **1.** A game of chance. **2.** The chance of gain or loss in a contract.

aleator (ay-lee-ay-tər). [Latin] *Roman law*. A gambler; dice player.

aleatory (ay-lee-ə-tor-ee), *adj.* Dependent on uncertain contingencies. — Also termed *aleatoric*.

aleatory contract. See CONTRACT.

aleatory promise. See PROMISE.

alegal, *adj.* Outside the sphere of law; not classifiable as being legal or illegal <the law often treats the promises of unmarried cohabitants as contractual words rather than alegal words of commitment>. — **alegality**, *n.*

aler a dieu. See ALLER A DIEU.

aler sans jour. See ALLER SANS JOUR.

ale silver. *Hist.* A rent or tribute paid annually to the lord mayor of London by persons who sold ale within the city.

alez adeu (ah-lay ah-duu). See ADEU.

alfet (al-fet). *Hist.* A cauldron filled with boiling water, used to scald the arm of a person undergoing an ordeal. See *ordeal by water* (2) under ORDEAL.

Alford plea. A guilty plea entered into by a defendant in connection with a plea bargain, without actually admitting guilt. • This plea is not considered compelled within the language of the Fifth Amendment if the plea represents a voluntary, knowing, and intelligent choice between the available options <the defendant — realizing the strength of the prosecution’s evidence and not wanting to risk receiving the death penalty — entered into an *Alford* plea>. *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160 (1970).

algorithm. *Patents.* A statement or conclusion based on a sequence of steps involving mathematical, logical, or natural rules or principles.

ALI. *abbr.* AMERICAN LAW INSTITUTE.

alia enormia (ay-lee-ə i-nor-mee-ə). [Law Latin "other serious wrongs"] *Hist.* A general allegation of injuries made at the conclusion of the declaration by a plaintiff in a trespass action.

aliamenta (al-ee-ə-men-tə). [Latin] A liberty of passage or open way, such as a path through another's hedge or drainage for a waterway.

alias (ay-lee-əs), *adv.* **1.** Otherwise called or named; also known as <James Grimsley, alias the Grim Reaper>. **2.** At another time.

alias, n. **1.** An assumed or additional name that a person has used or is known by. — Also termed *assumed name*. **2. Hist.** A second writ issued after the first has failed. See *alias writ* under WRIT.

alias, adj. Issued after the first instrument has not been effective or resulted in action.

alias dictus (ay-lee-əs dik-təs), *adv.* [Latin] Otherwise called; ALIAS (1).

alias execution. See EXECUTION.

alias subpoena. See SUBPOENA.

alias summons. See SUMMONS.

alias writ. See WRIT.

a libellis (ay li-bel-is). [Law Latin] *Roman law.* **1.** An officer having charge of petitions (*libelli*) addressed to the emperor or sovereign. **2.** CHANCELLOR OF THE EXCHEQUER.

alibi (al-ə-bi), *n.* [Latin "elsewhere"] **1.** A defense based on the physical impossibility of a defendant's guilt by placing the defendant in a location other than the scene of the crime at the relevant time. Fed. R. Crim. P. 12.1. **2.** The fact or state of having been elsewhere when an offense was committed.

alibi, vb. To offer or provide an alibi for <the conspirators alibied for each other>.

alibi witness. See WITNESS.

alien (ay-lee-ən or ayl-yən), *n.* A person who resides within the borders of a country but is not a citizen or subject of that country; a person not owing allegiance to a particular

nation. • In the United States, an alien is a person who was born outside the jurisdiction of the United States, who is subject to some foreign government, and who has not been naturalized under U.S. law.

alien ami. See *alien friend*.

alien amy. See *alien friend*.

alien enemy. A citizen or subject of a country at war with the country in which the citizen or subject is living or traveling. — Also termed *enemy alien*.

"In its natural meaning, the term 'alien enemy' indicates a subject of a State with which this country is at war; but in considering the enforcement of civil rights, the test is not nationality, but residence or place of business. Hence, if a person is voluntarily resident in or is carrying on business in an enemy country, then he is an alien enemy even though he be a British subject or the subject of a neutral State . . ." 1 E.W. Chance, *Principles of Mercantile Law* 52-53 (P.W. French ed., 13th ed. 1950).

alien friend. An alien who is a citizen or subject of a friendly power. — Also termed (in Law French) *alien amy*; *alien ami*.

alien immigrant. See IMMIGRANT.

enemy alien. See *alien enemy*.

illegal alien. An alien who enters a country at the wrong time or place, eludes an examination by officials, obtains entry by fraud, or enters into a sham marriage to evade immigration laws. — Also termed *undocumented alien*.

nonresident alien. A person who is neither a resident nor a citizen of the United States.

resident alien. An alien who has a legally established domicile in the United States. See NATURALIZATION.

undocumented alien. See *illegal alien*.

alien, vb. See ALIENATE.

alienable, adj. Capable of being transferred to the ownership of another; transferable <an alienable property interest>. — **alienability, n.**

alienage (ay-lee-ə-nij or ayl-yə-nij), *n.* The condition or status of being an alien.

declaration of alienage. The declaration of a citizen or subject having dual citizenship that the person wishes to renounce the citizenship of one state. • For the declaration to be effective, the person making it must be of full age and not under any disability.

alien ami. See *alien friend* under ALIEN.

alien amy. See *alien friend* under ALIEN.

Alien and Sedition Acts. *Hist.* Four statutes passed in 1798 designed to silence critics of the Federalist party by tightening residency requirements for citizenship, granting to the President the power to jail aliens considered dangerous to the country, and restricting freedoms of the press and speech by criminalizing speech hostile to the government. • All the acts had expired or been repealed by 1802.

alienate (ay-lee-ə-nayt or ayl-yə-nayt), *vb.* To transfer or convey (property or a property right) to another. — Also termed *alien*.

alienation (ay-lee-ə-nay-shən or ayl-yə-nay-shən), *n.* **1.** Withdrawal from former attachment; estrangement <alienation of affections>. **2.** Conveyance or transfer of property to another <alienation of one's estate>. — **alienative** (ay-lee-ə-nay-tiv), *adj.*

"[A]ny transfer of real estate short of a conveyance of the title is not an alienation of the estate." 4A John Alan Appleman & Jean Appleman, *Insurance Law and Practice* § 2741, at 325 n.12 (rev. vol. 1969).

involuntary alienation. Alienation against the wishes of the transferor, as by attachment. — Also termed *involuntary conveyance*.

alienation clause. **1.** A deed provision that either permits or prohibits the further conveyance of the property. **2.** A clause in an insurance policy voiding coverage if the policyholder alienates the insured property.

alienation of affections. A tort claim for willful or malicious interference with a marriage by a third party without justification or excuse. • The tort has been abolished in most states. See CONSORTIUM.

alienation office. See OFFICE.

alienative fact. See FACT.

alien corporation. See *foreign corporation* under CORPORATION.

alienee (ay-lee-ə-nee or ayl-yə-nee), *n.* One to whom property is transferred or conveyed. — Also termed *disponee*.

fraudulent alienee. One who knowingly receives an asset by means of fraudulent alienation.

alien enemy. See ALIEN.

alien friend. See ALIEN.

alienigena (ay-lee-ə-nij-ə-nə). [Latin] *Hist.* An alien. Cf. INDIGENA.

alieni generis (ay-lee-ee-ni [or al-ee-] jen-ə-ris). [Latin] Of another kind; of a foreign kind.

alieni juris (ay-lee-ee-ni [or al-ee-] joor-is), *adj.* [Latin] *Roman law.* Subject to the power or authority of another. — Also spelled *alieni iuris*.

alien immigrant. See IMMIGRANT.

alienism. The state, condition, or character of an alien.

alienist. A psychiatrist, esp. one who assesses a criminal defendant's sanity or capacity to stand trial.

alienor (ay-lee-ə-nər or -nor), *n.* One who transfers or conveys property to another. — Also termed *disponor*.

alienus (ay-lee- or al-ee-ee-nəs), *adj.* [Latin] *Roman law.* Belonging to another. • *Alienus homo* means "another's slave."

alimenta (al-ə-men-tə). [Latin] *Roman law.* Things necessary to sustain life, such as food and clothing.

alimony (al-ə-moh-nee). A court-ordered allowance that one spouse pays to the other spouse for maintenance and support while they are separated, while they are involved in a matrimonial lawsuit, or after they are divorced. — Also termed *spousal support*; *maintenance*; *estover*. Cf. CHILD SUPPORT.

alimony in gross. Alimony in the form of a single and definite sum not subject to modification. — Also termed *lump-sum alimony*.

alimony pendente lite (pen-den-tee li-tee). See *temporary alimony*.

lump-sum alimony. See *alimony in gross*.

permanent alimony. Alimony payable in usu. weekly or monthly installments either indefinitely or until a time specified by court order. • This kind of alimony may usu. be modified for changed circumstances of either party. — Also termed *periodic alimony*.

rehabilitative alimony. Alimony necessary to assist a divorced person in regaining a

useful and constructive role in society through vocational or other training.

reimbursement alimony. Alimony designed to repay a spouse who during the marriage made financial contributions that directly enhanced the future earning capacity of the other spouse. • An example is alimony for a wife who worked full-time supporting herself and her husband while he attended medical school and earned a medical degree.

temporary alimony. Temporary alimony ordered by the court pending an action for divorce or separation. — Also termed *alimony pendente lite*; *allowance pendente lite*.

alimony trust. See TRUST.

alio intuitu (ay-lee-oh in-t[y]oo-ə-t[y]oo), *adv.* [Latin “under a different aspect”] In a different view; with respect to another case or condition.

aliquot (al-ə-kwot), *adj.* Contained in a larger whole an exact number of times; fractional <5 is an aliquot part of 30>.

aliquot-part rule. The principle that a person must intend to acquire a fractional part of the ownership of property before a court can declare a resulting trust in the person’s favor.

aliter (al-ə-tər). [Latin] Otherwise; it would be otherwise.

“If I trespass on another’s land, and make an excavation there without leaving any rubbish on the land, the trespass ceases as soon as I leave the land, and does not continue until I have filled the excavation up again. Consequently only one action will lie, and in it full damages are recoverable for both the past and the future. *Aliter* if I have brought a heap of soil and left it on the plaintiff’s land.” R.F.V. Heuston, *Salmond on the Law of Torts* 42 (17th ed. 1977).

ALI test. See SUBSTANTIAL-CAPACITY TEST.

aliud (ay-lee-əd). [Latin] Something else; another thing.

aliud examen (ay-lee-əd ig-zay-mən). [Latin “another investigation” or “another trial”] A different or foreign mode of trial.

aliunde (ay-lee-yən-dee), *adj.* [Latin] From another source; from elsewhere <evidence aliunde>. See *extrinsic evidence* under EVIDENCE.

aliunde rule. The doctrine that a verdict may not be impeached by evidence of a juror unless

a foundation to introduce such evidence is first made by competent evidence from another source.

ALJ. *abbr.* ADMINISTRATIVE-LAW JUDGE.

all and singular. Collectively and individually.

allegata (al-ə-gay-tə). [Latin] *pl.* ALLEGATUM.

allegation, n. 1. The act of declaring something to be true. 2. Something declared or asserted as a matter of fact, esp. in a legal pleading; a party’s formal statement of a factual matter as being true or provable, without its having yet been proved. — **allege, vb.**

disjunctive allegation. A statement in a pleading or indictment that expresses something in the alternative, usu. with the conjunction “or” <a charge that the defendant murdered or caused to be murdered is a disjunctive allegation>.

material allegation. In a pleading, an assertion that is essential to the claim or defense <a material allegation in a battery case is harmful or offensive contact with a person>.

primary allegation. 1. The principal charge made against an adversary in a legal proceeding. 2. *Eccles. law.* The opening pleading in an action in ecclesiastical court. — Also termed *primary plea*.

allegation of faculties. *Family law.* A statement of the husband’s property, made by the wife to obtain alimony. See FACULTIES.

allegations-of-the-complaint rule. See EIGHT-CORNERS RULE.

allegatum (al-ə-gay-təm), *n.* [Latin] A fact alleged in a pleading; ALLEGATION. *Pl.* **allegata.** *Cf.* PROBATUM.

alleged (ə-lejd), *adj.* 1. Asserted to be true as described <alleged offenses>. 2. Accused but not yet tried <alleged murderer>.

allegiance. 1. A citizen’s obligation of fidelity and obedience to the government or sovereign in return for the benefits of the protection of the state. • Allegiance may be either an absolute and permanent obligation or a qualified and temporary one.

acquired allegiance. The allegiance owed by a naturalized citizen.

actual allegiance. The obedience owed by one who resides temporarily in a foreign country to that country's government. • Foreign sovereigns, their representatives, and military personnel are typically excepted from this requirement. — Also termed *local allegiance*.

natural allegiance. The allegiance that native-born citizens or subjects owe to their nation.

permanent allegiance. The lasting allegiance owed to a state by citizens or subjects.

temporary allegiance. The impermanent allegiance owed to a state by a resident alien during the period of residence.

2. Hist. A vassal's obligation to the liege lord. See LIEGE.

Allen charge. *Criminal procedure.* A supplemental jury instruction given by the court to encourage a deadlocked jury, after prolonged deliberations, to reach a verdict. *Allen v. United States*, 164 U.S. 492, 17 S.Ct. 154 (1896). — Also termed *dynamite charge*; *dynamite instruction*; *nitroglycerine charge*; *shotgun instruction*; *third-degree instruction*.

aller a dieu (a-lay ə dyoo or dyoo). [Law French] To go to God. • This phrase prays for the case to be dismissed from court. — Sometimes spelled *aler a dieu*. Cf. ADIEU.

aller sans jour (a-lay san zhoor). [Law French] To go without day. • This phrase prays for a final dismissal of a case. — Also spelled *aler sans jour*. See GO HENCE WITHOUT DAY; ADEU.

all-events test. *Tax.* A requirement that all events fixing an accrual-method taxpayer's right to receive income or incur expense must occur before the taxpayer can report an item of income or expense.

alleviare (ə-lee-vee-air-ee), *vb.* [Law Latin] To levy or pay a fine or composition.

all faults, with. See AS IS.

all fours. See ON ALL FOURS.

all-holders rule. **1.** An SEC rule that prohibits a public offering by the issuer of shares to some, but fewer than all, of the holders of a class of shares. **2.** An SEC rule requiring a tender offeror to make its offer to all the target company's shareholders.

alliance. **1.** A bond or union between persons, families, states, or other parties. **2. Int'l law.** A union or association of two or more states or nations, formed by league or treaty, esp. for jointly waging war or mutually protecting against and repelling hostile attacks. Cf. DE-TENTE; ENTENTE. See STRATEGIC ALLIANCE.

allied offenses. *Criminal law.* Two or more crimes with elements so similar that the commission of one is automatically the commission of the other.

all-inclusive mortgage. See *wraparound mortgage* under MORTGAGE.

allision (ə-lizh-ən), *n.* *Maritime law.* The sudden impact of a vessel with a stationary object such as an anchored vessel or a pier. — **allide** (ə-lid), *vb.* Cf. COLLISION.

allocable (al-ə-kə-bəl), *adj.* That can be assigned or allocated.

allocation, *n.* A designation or apportionment for a specific purpose; esp., the crediting of a receipt or the charging of a disbursement to an account <allocation of funds>. — **allocate**, *vb.* — **allocable**, *adj.* — **allocator**, *n.*

allocatione facienda (al-ə-kay-shee-oh-nee fay-shee-en-də), *n.* See DE ALLOCATIONE FACIENDA.

allocatur (al-ə-kay-tər). [Law Latin] It is allowed. • This word formerly indicated that a writ, bill, or other pleading was allowed. It is still used today in Pennsylvania to denote permission to appeal. — Also termed *allogatur*.

special allocatur. An allowance of a writ (such as a writ of error) that is legally required in certain cases.

allocute (al-ə-kyoot), *vb.* To deliver in court a formal, exhortatory address; to make an allocution.

allocution (al-ə-kyoo-shən), *n.* *Criminal procedure.* **1.** A trial judge's formal address to a convicted defendant, asking him or her to speak in mitigation of the sentence to be imposed. • This address is required under Fed. R. Crim. P. 32(c)(3)(C). **2.** An unsworn statement from a convicted defendant to the sentencing judge or jury in which the defendant can ask for mercy, explain his or her conduct, apologize for the crime, or say anything else in an effort to lessen the impending sentence. • This statement is not subject to cross-examination.

victim allocation. A crime victim's address to the court before sentencing, usu. urging a harsher punishment.

allocutory (ə-lɒk-yə-tor-ee), *adj.* Of or relating to an allocation <allocutory pleas for mercy>.

allod (al-əd), *n. Hist.* The domain of a household.

allodial (ə-lɒh-dee-əl), *adj.* Held in absolute ownership; pertaining to an allodium. — **allodially**, *adv.*

allodium (ə-lɒh-dee-əm), *n.* An estate held in fee simple absolute. — Also spelled *alodium*. — Also termed *alod*; *alode*.

"In this country, one who has full ownership of land is said to own it allodially — that is, free of feudal services and incidents." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 18 (2d ed. 1984).

allogatur. See ALLOCATUR.

allograph (al-ə-graf). An agent's writing or signature for the principal.

allonge (a-lawnzɪh). A slip of paper sometimes attached to a negotiable instrument for the purpose of receiving further indorsements when the original paper is filled with indorsements.

all-or-none offering. See OFFERING.

all-or-none order. See ORDER (4).

all-or-nothing rule. A gloss on the rule against perpetuities holding that a class gift is invalid in its entirety if it is invalid in part. • The effect of this principle is to invalidate a class member's interest if it vests in interest within the period of the rule because it may be subject to partial divestment by the remote interest of another class member.

allotment, *n.* **1.** A share or portion of something, such as property previously held in common or shares in a corporation. **2.** In American Indian law, the selection of specific land awarded to an individual allottee from a common holding. — **allot**, *vb.*

allotment certificate. *Securities.* A document that records the essential elements of a subscription of shares, as how many shares are to

be purchased, the price to be paid, and the payment and delivery schedule.

allotment note. *English law.* A seaman's written assignment of a portion of his wages to a wife, parent, grandparent, or sibling. • These notes are governed by the Merchant Shipping Act of 1970, § 13(1).

allotment system. *English law.* The practice of dividing land into small portions for cultivation by agricultural laborers and others.

allottee. One to whom an allotment is made; a recipient of an allotment.

allowance. **1.** A share or portion, esp. of money that is assigned or granted.

backhaul allowance. A price discount given to customers who get their goods from a seller's warehouse as a reflection of the seller's freight-cost savings.

family allowance. A portion of a decedent's estate set aside by statute for a surviving spouse, children, or parents, regardless of any testamentary disposition or competing claims.

gratuitous allowance. A pension voluntarily granted by a public entity. • The gratuitous (rather than contractual) nature of this type of allowance gives the pensioner no vested rights in the allowance.

spousal allowance. A portion of a decedent's estate set aside by statute for a surviving spouse, regardless of any testamentary disposition or competing claims. • This allowance is superior to the claims of general creditors. In some states, it is even preferred to the expenses of administration, funeral, and last illness of the spouse. — Also termed *widow's allowance*; *widower's allowance*.

2. The sum awarded by a court to a fiduciary as payment for services. **3.** A deduction.

depletion allowance. A tax deduction for the owners of oil, gas, mineral, or timber resources corresponding to the reduced value of the property resulting from the removal of the resource.

allowance pendente lite. See *alimony pendente lite* under ALIMONY.

alloynour (ə-loi-nər). [Law French] *Hist.* One who conceals, steals, or furtively carries off something.

all-risk insurance. See INSURANCE.

all-the-estate clause. *English law.* The provision in a conveyance transferring "all the estate, right, title, interest, claims, and demand" of the grantor in the property conveyed.

allurement. *Torts.* An attractive object that tempts a trespassing child to meddle when the child ought to abstain.

alluvial mining. The practice of removing sand and gravel from a riverbed.

alluvio maris (ə-loo-vee-oh mar-is). [Latin "alluvion of the sea"] The formation of soil or land from the sea.

alluvion (ə-loo-vee-ən). [fr. Latin *alluvio* "flood"] *Roman & civil law.* **1.** Strictly, the flow or wash of water against a shore or riverbank. **2.** A deposit of soil, clay, or other material caused by running water; esp., in land law, an addition of land caused by the buildup of deposits from running water, the added land then belonging to the owner of the property to which it is added. — Also termed (in sense 2) *alluvium*. Cf. ACCRETION (1); AVULSION (2); DELICITION; EROSION.

alluvium. See ALLUVION (2).

All Writs Act. A federal statute that gives the U.S. Supreme Court and all courts established by Congress the power to issue writs in aid of their jurisdiction and in conformity to the usages and principles of law. 28 USCA § 1651(a).

ally. *Int'l law.* **1.** A nation tied to another by treaty or alliance. **2.** A citizen or subject of an allied nation.

almaria (al-mair-ee-ə). [Latin "cupboard, bookcase"] The archives of a church or library. — Also termed *armaria*.

almoign (al-moyn). [Law French "alms"] **1.** Alms; a church treasury; an ecclesiastical possession. **2.** FRANKALMOIN.

almoign. See FRANKALMOIN.

almoner (al-mə-nər). A person charged with distributing the alms of a monarch, religious house, or other institution. • This office was first instituted in religious houses and although formerly one of importance is now almost a sinecure.

alms (ahmz). Charitable donations; any type of relief bestowed on the poor.

almshouse. *Archaic.* A dwelling for the publicly or privately supported poor of a city or county.

alnager (al-nə-jər). [Law Latin] *Hist.* A royal official responsible for collecting taxes (the *alnage*) on woolen cloth. • The tax was abolished in 1699.

alod. See ALLODIUM.

alode. See ALLODIUM.

alodium. See ALLODIUM.

a lour foy (ah loor fwah). [Law French "in their faith"] In their allegiance.

ALTA. *abbr.* American Land Title Association.

alta proditio (al-tə proh-dish-ee-oh). [Law Latin] See TREASON.

altarage (awl-tər-ij). *Eccles. law.* **1.** The offerings made upon an altar or to a church. **2.** An endowment or honorarium received by a priest for services performed at the altar.

alta via (al-tə vi-ə). [Law Latin] A highway.

alteration. **1.** A substantial change to real estate, esp. to a structure, not involving an addition to or removal of the exterior dimensions of a building's structural parts. • Although any addition to or improvement of real estate is by its very nature an alteration, real-estate lawyers habitually use *alteration* in reference to a lesser change. Still, to constitute an alteration, the change must be substantial — not simply a trifling modification. **2.** An act done to an instrument, after its execution, whereby its meaning or language is changed; esp., the changing of a term in a negotiable instrument without the consent of all parties to it. • Material alterations void an instrument, but immaterial ones do not. An alteration is material if it (1) changes the burden of a party (as by changing the date, time, place, amount, or rate of interest), (2) changes the liabilities or duties of any party (as by adding or removing the name of a maker, drawer, indorser, payee, or co-surety), or (3) changes the operation of the instrument or its effect in evidence (as by adding words or negotiability, changing the form of an indorsement, or changing the liability from joint to several).

"With respect to written instruments, 'alteration' generally means a change in an instrument's sense of language caused by a party to the instrument, and does not include such changes by non-parties or 'strangers' to the instrument. Although the distinction is not always observed, technically an alteration by a non-party or stranger to the instrument is a 'spoliation,' not an alteration, which does not invalidate it or change the rights or liabilities of the parties in interest, so long as the original writing remains legible." 4 Am. Jur. 2d *Alteration of Instruments* § 1 (1995).

material alteration. 1. A significant change in something; esp., a change in a legal instrument sufficient to alter the instrument's legal meaning or effect. 2. An unauthorized change in an instrument or an addition to an incomplete instrument resulting in the modification of a party's obligations. UCC § 3-407.

structural alteration. A significant change to a building or other structure, essentially creating a different building or structure.

altercation. A vehement dispute; a noisy argument.

"**altercation.** The traditional view is that this word refers to 'a noisy brawl or dispute,' not rising to the seriousness of physical violence. . . . But in AmE, the word now often denotes some type of scuffling or fighting, especially in police jargon." Bryan A. Garner, *A Dictionary of Modern American Usage* 34 (1998).

alter ego. A corporation used by an individual in conducting personal business, the result being that a court may impose liability on the individual by piercing the corporate veil when fraud has been perpetrated on someone dealing with the corporation. See PIERCING THE CORPORATE VEIL.

alter-ego rule. 1. *Corporate law.* The doctrine that shareholders will be treated as the owners of a corporation's property, or as the real parties in interest, whenever it is necessary to do so to prevent fraud or to do justice. 2. *Criminal law.* The common-law doctrine limiting the use of force when defending another person to the amount of force that the other person would be privileged to use in self-defense.

altering or amending a judgment. A trial court's act of correcting a substantive mistake in a judgment, as by correcting a manifest error of law or fact. Fed. R. Civ. P. 59(e).

alternat (awl-tar-nit or al-ter-nah). [French] The rotation in precedence among states, diplomats, etc., esp. in the signing of treaties. • This practice gives each diplomat a copy of the treaty

with the diplomat's signature appearing first.

alternate legacy. See LEGACY.

alternate valuation date. *Tax law.* The date six months after a decedent's death. • Generally, the estate can elect to appraise the decedent's property either on the date of the decedent's death or on the alternate valuation date. See BASIS.

alternatim (al-tar-nay-tim or awl-), *adv.* [Latin] Interchangeably; by turns.

alternative constituency. See NONSHAREHOLDER CONSTITUENCY.

alternative contract. See CONTRACT.

alternative dispute resolution. A procedure for settling a dispute by means other than litigation, such as arbitration, mediation, or minitrial. — Abbr. ADR.

alternative judgment. See JUDGMENT.

alternative liability. See LIABILITY.

alternative mandamus. See MANDAMUS.

alternative-means doctrine. *Criminal law.* The principle that, when a crime may be committed in more than one way, jury unanimity is required on the defendant's guilt, but is not required on the possible different methods of committing the crime, as long as each possible method is supported by substantial evidence.

alternative-methods-of-performance contract. See *alternative contract* under CONTRACT.

alternative minimum tax. See TAX.

alternative obligation. See OBLIGATION.

alternative order. See ORDER (4).

alternative pleading. See PLEADING (2).

alternative promise. See PROMISE.

alternative relief. See RELIEF.

alternative remainder. See REMAINDER.

alternative writ. See WRIT.

alterum non laedere (al-tər-əm [or awl-] non lee-də-ree). [Latin “not to injure another”] *Roman & civil law*. To hurt no one by word or deed. • This is a fundamental principle of tort law and, according to Justinian, of law in general. Cf. HONESTE VIVERE; SUUM CUIQUE TRIBUERE.

alteruter (al-tər-yoo-tər or awl-). [Law Latin] One of two; either.

altius non tollendi (al-shee-əs non tə-len-dī). [Latin “of not raising higher”] *Roman & civil law*. A servitude prohibiting a landowner from building a house above a certain height.

altius tollendi (al-shee-əs tə-len-dī). [Latin “of raising higher”] *Roman & civil law*. A servitude that allows a landowner to build a house as high as desired.

alto et basso. See DE ALTO ET BASSO.

altum mare (al-təm mair-ee or mahr-ee), *n.* [Law Latin] *Hist.* The high seas; the deep seas.

a lui et a ses heritiers pour toujours (a lwee ay a sayz e-ree-tyay poor too-zhoor). [Law French] To him and his heirs forever. See *and his heirs* under HEIR.

alveus (al-vee-əs), *n.* [Law Latin] *Hist.* The bed or channel through which a stream flows in its ordinary course.

a.m. abbr. ANTE MERIDIEM.

AMA. abbr. American Medical Association.

a ma intent (ah mah an-tawn). [Law French] On my action.

amalgamation (ə-mal-gə-may-shən), *n.* The act of combining or uniting; consolidation <amalgamation of two small companies to form a new corporation>. — **amalgamate**, *vb.* — **amalgamator**, *n.* See MERGER.

Amalphitan Code (ə-mal-fə-tən). *Hist.* A code of maritime law compiled late in the 11th century at the port of Amalfi near Naples. • The Code was regarded as a primary source of maritime law throughout the Mediterranean to the end of the 16th century. — Also termed *Amalphitan Table*; *Laws of Amalfi*.

a manibus (ay man-ə-bəs), *n.* [Law Latin] *Hist.* A royal scribe.

amanuensis (ə-man-yoo-en-sis), *n.* [fr. Latin *ab-* “from” + *manus* “hand”] One who takes dictation; a scribe or secretary.

a manu servus (ay man-yoo sər-vəs). [Latin] A handservant; scribe; secretary.

ambactus (am-bak-təs). [Latin] *Hist.* **1.** A messenger. **2.** A servant whose services are hired out by the master.

ambasciator (am-bash-ee-ay-tər). [Law Latin] *Hist.* A person sent about in the service of another; an ambassador.

ambassador. 1. A diplomatic officer of the highest rank, usu. designated by a government as its resident representative in a foreign state. • Ambassadors represent the sovereign as well as the nation and enjoy many privileges while abroad in their official capacity, including immunity. Ambassadors are distinguished from ministers and envoys, who represent only the state where they are from and not the sovereign. Ambassadors are also generally distinguished from certain legates who have only ecclesiastical authority. But the papal nuncio and some legates, such as the *legate a latere*, bear the rank of ambassador. See NUNCIO; LEGATE. **2.** A representative appointed by another. **3.** An unofficial or nonappointed representative. — Also spelled (archaically) *embassador*. — **ambassadorial**, *adj.* — **ambassadorship**, *n.*

ambiguitas latens (am-bi-gyoo-ə-tas lay-tenz). See *latent ambiguity* under AMBIGUITY.

ambiguitas patens (am-bi-gyoo-ə-tas pay-tenz). See *patent ambiguity* under AMBIGUITY.

ambiguity (am-bi-gyoo-ə-tee), *n.* An uncertainty of meaning or intention, as in a contractual term or statutory provision. — **ambiguous** (am-big-yoo-əs), *adj.*

“In the context of statutory interpretation the word most frequently used to indicate the doubt which a judge must entertain before he can search for and, if possible, apply a secondary meaning is ‘ambiguity’. In ordinary language this term is often confined to situations in which the same word is capable of meaning two different things, but, in relation to statutory interpretation, judicial usage sanctions the application of the word ‘ambiguity’ to describe any kind of doubtful meaning of words, phrases or longer statutory provisions. *Hinchy’s* case prompted the suggestion that if, in a particular context, words convey to different judges a different range of meanings ‘derived from, not fanciful speculations or mistakes about linguistic usage, but from true knowledge

about the use of words, they are ambiguous.'” Rupert Cross, *Statutory Interpretation* 76-77 (1976).

ambiguity on the factum. An ambiguity relating to the foundation of an instrument, such as a question relating to whether a testator intended for a particular clause to be part of an agreement, whether a codicil was intended to republish a former will, or whether the residuary clause was accidentally omitted.

latent ambiguity. An ambiguity that does not readily appear in the language of a document, but instead arises from a collateral matter when the document's terms are applied or executed <the contract contained a latent ambiguity because the shipping terms stated that the goods would arrive on the ship *Peerless*, but two ships have that name>. — Also termed *extrinsic ambiguity*; *equivocation*; *ambiguitas latens*.

“Instead of this word ‘equivocation,’ the phrase ‘latent ambiguity’ is sometimes used by courts, — ‘latent’ because it does not develop until we seek to apply it and then discover the equivocation. This phrase was invented by Lord Bacon, in one of his maxims, and it long held sway; but it has only served to confuse discussion, and his other word for the same thing, ‘equivocation,’ is more suitable, and has come into general use since Professor Thayer’s masterly analysis of the subject some fifty years ago.” John H. Wigmore, *A Students’ Textbook of the Law of Evidence* 529 (1935). — In fact, the usual term today is *latent ambiguity*. — Eds.

patent ambiguity (*payt-ənt*). An ambiguity that clearly appears on the face of a document, arising from the language itself <the nonperformance was excused because the two different prices expressed in the contract created a patent ambiguity>. — Also termed *intrinsic ambiguity*; *ambiguitas patens*.

“[L]atent ambiguity . . . must be carefully distinguished from patent ambiguity, where words are omitted, or contradict one another; for in such cases explanatory evidence is not admissible. Where a bill of exchange was expressed in words to be drawn for ‘two hundred pounds’ but in figures for ‘£245,’ evidence was not admitted to show that the figures expressed the intention of the parties.” William R. Anson, *Principles of the Law of Contract* 401 (Arthur L. Corbin ed., 3d Am. ed. 1919).

ambiguity doctrine. See CONTRA PROFERENTEM.

ambiguity on the factum. See AMBIGUITY.

ambit (*am-bit*). **1.** A space surrounding a house or town. **2.** A boundary line; an enclosing line or limit.

ambitus (*am-bi-təs*), *n.* [Latin *ambitus* “deviousness, corruption”] *Hist.* The procuring of a

public office by money or gifts; the unlawful buying and selling of a public office.

ambulance chaser. **1.** A lawyer who approaches victims of accidents in hopes of persuading them to sue for damages. **2.** A lawyer’s agent who engages in this activity. — **ambulance-chasing**, *n.*

ambulatory (*am-byə-lə-tor-ee*), *adj.* **1.** Able to walk <the accident victim is still ambulatory>. **2.** Capable of being altered or revised <a will is ambulatory because it is revocable until the testator’s death>.

ambulatory automatism. See AUTOMATISM.

ambulatory disposition. See DISPOSITION.

ambulatory will. See WILL.

a me (*ay mee*). [Latin] From *me*. • This phrase was used in feudal grants to denote tenure held directly of the chief lord. The phrase is short for *a me de superiore meo* (*ay mee dee slyoo-peer-ee-or-ee mee-oh*), meaning “from me of my superior.” Cf. DE ME.

ameliorate (*ə-meel-yə-rayt*), *vb.* **1.** To make better <the charity tries to ameliorate the conditions of the homeless>. **2.** To become better <with time, the situation ameliorated>.

ameliorating waste. See WASTE (1).

amelioration, *n.* **1.** The act of improving something; the state of being made better. **2.** An improvement. — **ameliorative**, *adj.*

ameliorative waste. See *ameliorating waste* under WASTE (1).

amenable (*ə-mee-nə-bəl* or *-men-*), *adj.* Legally answerable; liable to being brought to judgment <amenable to process>. — **amenability**, *n.*

amend, *vb.* **1.** To make right; to correct or rectify <amend the order to fix a clerical error>. **2.** To change the wording of; specif., to alter (a statute, constitution, etc.) formally by adding or deleting a provision or by modifying the wording <amend the legislative bill>.

amendatory (*ə-men-də-tor-ee*), *adj.* Designed or serving to amend; corrective <an amendatory rider to an insurance policy>.

amended complaint. See COMPLAINT.

amended pleading. See PLEADING (1).

amended return. See TAX RETURN.

amende honorable (ə-mend on-ə-rə-bəl or a-mawnd on-ə-rah-bəl). [French “honorable reparation”] *Hist.* A formal reparation for an offense or injury, done by making an open and usu. humiliating acknowledgment and apology so as to restore the victim’s honor. • This apology could be accomplished, for example, by walking into church with a rope around the neck and a torch in hand, begging forgiveness from the injured party.

amendment. 1. A formal revision or addition proposed or made to a statute, constitution, or other instrument.

hostile amendment. A legislative amendment intended to antagonize potential supporters of a bill.

killer amendment. A legislative amendment that has the effect (intended or not) of antagonizing potential supporters of a bill.

perfecting amendment. A legislative amendment that either corrects one or more minor problems with a bill or makes minor adjustments to attract more support for the bill.

substitute amendment. A legislative amendment that seeks to change provisions in a bill.

2. The process of making such a revision. 3. A change made by addition, deletion, or correction; an alteration in wording. — Abbr. amend.

amendment on court’s own motion. A change to a pleading or other document by the judge without a motion from a party.

nunc pro tunc amendment (nəŋk proh təŋk or nuŋk proh tuŋk). An amendment that is given retroactive effect, usu. by court order.

amendment of indictment. The alteration of the charging terms of an indictment, either literally or in effect, after the grand jury has made a decision on it. • The indictment usu. cannot legally be amended at trial in a way that would prejudice the defendant by having a trial on matters that were not contained in the indictment.

amendment on court’s own motion. See AMENDMENT (3).

amends, n. Compensation given for a loss or injury; reparation.

amenity. [fr. Latin *amoenitas* “pleasantness”] Something tangible or intangible that increases the enjoyment of real property, such as location, view, landscaping, security, or access to recreational facilities.

a mensa et thoro (ay men-sə et thor-oh). [Latin “from board and hearth”] (Of a divorce decree) effecting a separation of the parties rather than a dissolution of the marriage <a separation *a mensa et thoro* was the usual way for a couple to separate under English law up until 1857>. See *divorce a mensa et thoro* under DIVORCE; SEPARATION; A VINCULO MATRIMONII.

amerce (ə-mərs), *vb.* 1. To impose a fine or penalty that is not fixed but is left to the court’s discretion; to punish by amercement. 2. To fine or punish in any manner. — **amerceable** (ə-mər-sə-bəl), **amerciable** (ə-mər-see-ə-bəl), *adj.*

amercement (ə-mərs-mənt), *n.* [fr. Law French *estre à merci* “to be at the mercy (of another),” fr. Latin *merces* “payment”] 1. The imposition of a discretionary fine or penalty by a court, esp. on an official for misconduct <an amercement proceeding>. 2. The fine or penalty so imposed <an amercement charged to the sheriff for failing to return the writ of execution>. — Also termed *cashlite*; (archaically) *amerciament*; *merciament*.

American Academy of Actuaries. A national organization of actuaries who must meet specified educational requirements and have at least three years of actuarial work experience. • Created in 1965, the Academy promotes public awareness of the actuarial profession, represents the profession before federal and state governments, and sponsors continuing-education conferences. — Abbr. AAA. See ACTUARY.

American Accounting Association. An organization of accounting practitioners, educators, and students. • The Association, founded in 1916, promotes accounting as an academic discipline by sponsoring research projects and continuing-education seminars. — Abbr. AAA.

American Arbitration Association. A national organization that maintains a panel of arbitrators to hear labor and commercial disputes. — Abbr. AAA.

American Bankers Association. A voluntary trade association of banking institutions, including banks, trust companies, and savings banks and associations, whose members represent the vast majority of banking deposits in the United States. • The association was founded in 1875. Abbr. ABA.

American Bar Association. A voluntary national organization of lawyers. • Among other things, it participates in law reform, law-school accreditation, and continuing legal education in an effort to improve legal services and the administration of justice. — Abbr. ABA.

American Bar Foundation. An outgrowth of the American Bar Association involved with sponsoring and funding projects in law-related research, education, and social studies.

American Civil Liberties Union. A national organization whose primary purpose is to help enforce and preserve individual rights and liberties guaranteed by federal and state constitutions. — Abbr. ACLU.

American clause. *Marine insurance.* A policy provision that prevents an insurer from claiming contribution from a policy later purchased by the insured.

American depository receipt. A receipt issued by an American bank as a substitute for stock shares in a foreign-based corporation. • ADRs are the most common method by which foreign companies secure American shareholders. Companies that offer ADRs maintain a stock listing in their domestic market in their domestic currency, while the ADRs are held in U.S. dollars and listed on a U.S. stock exchange, usu. the New York Stock Exchange. — Abbr. ADR. — Also termed *American depository receipt*.

American Experience Table of Mortality. *Insurance.* A chart developed by insurers in the 1860s to predict mortality rates and thereby more accurately set insurance rates. • The Table was widely used by insurers to establish rates until the 1950s.

American Federation of Labor and Congress of Industrial Organizations. A voluntary affiliation of more than 100 labor unions that operate autonomously yet benefit from the affiliation's political activities and its establishment of broad policies for the national labor movement. — Abbr. AFL-CIO.

American Inns of Court Foundation. See INN OF COURT (2).

American Law Institute. An organization of lawyers, judges, and legal scholars who promote consistency and simplification of American law by publishing restatements of the law and other model codes and treatises, as well as promoting continuing legal education. — Abbr. ALI.

American Law Institute test. See SUBSTANTIAL-CAPACITY TEST.

American Lloyd's. See LLOYD'S UNDERWRITERS.

American rule. 1. The requirement that each litigant must pay its own attorney's fees, even if the party prevails in the lawsuit. • The rule is subject to bad-faith and other statutory and contractual exceptions. Cf. ENGLISH RULE. 2. The doctrine that a witness cannot be questioned on cross-examination about any fact or circumstance not connected with the matters brought out in the direct examination.

American Stock Exchange. An organized stock exchange and self-regulating organization under the Securities Exchange Act of 1934, located in New York City and engaged in national trading of corporate stocks. • It often trades in the securities of young or small companies because its listing requirements are less strict than those of the New York Stock Exchange. — Abbr. AMEX; ASE.

Americans with Disabilities Act. A federal statute that prohibits discrimination — in employment, public services, and public accommodations — against any person with a disability ("a physical or mental impairment that substantially limits one or more of the major life activities"). 42 USCA §§ 12101-12213. • Under the ADA, major life activities include any activity that an average person in the general population can perform with little or no difficulty, such as seeing, hearing, sleeping, eating, walking, traveling, and working. The statute applies to both private and governmental entities. — Abbr. ADA.

AMEX (am-eks). *abbr.* AMERICAN STOCK EXCHANGE.

amiable compositor. *Int'l law.* An unbiased third party, often a king or emperor, who suggests a solution that disputing countries might accept of their own volition; a mediator in a dispute between subjects of international law. — Also termed *aimable compositeur*.

"When the King of the Netherlands, to whom Great Britain and the United States resorted in the Northeast Boundary Dispute, by a treaty of 1827, handed down an award in the manner of an 'amiable compositor,' both parties agreed to reject the award on the ground that under the treaty he had been authorized merely to decide on the legal merits of the respective territorial claims." Philip C. Jessup, *The Use of International Law* 35 (1959).

amicable action. See *test case* (1) under CASE.

amicable compounder. See COMPOUNDER (1).

amicable scire facias to revive a judgment.
See SCIRE FACIAS.

amicus curiae (ə-mee-kəs **kyoor-ee-I** or ə-mi-kəs **kyoor-ee-ee** also am-i-kəs). [Latin "friend of the court"] A person who is not a party to a lawsuit but who petitions the court or is requested by the court to file a brief in the action because that person has a strong interest in the subject matter. — Often shortened to *amicus*. — Also termed *friend of the court*. Pl. **amici curiae** (ə-mee-kee or ə-mi-si or ə-mi-ki).

amita (am-ə-tə). [Latin] *Civil law*. The sister of one's father; an aunt on the father's side.

amitina (am-ə-ti-nə). [Latin] *Civil law*. The daughter of a paternal aunt or maternal uncle; a female first cousin.

amitinus (am-ə-ti-nəs). [Latin] *Civil law*. The son of a paternal aunt or maternal uncle; a male first cousin.

amittere curiam (ə-mit-ə-ree **kyoor-ee-əm**), *vb.* [Law Latin] *Hist.* To lose the privilege of attending court.

amittere legem terrae (ə-mit-ə-ree **lee-jəm ter-ee**). See LIBERAM LEGEM AMITTERE.

amittere liberam legem (ə-mit-ə-ree **lib-ər-əm lee-jəm**). See LIBERAM LEGEM AMITTERE.

amnesty, *n.* A pardon extended by the government to a group or class of persons, usu. for a political offense; the act of a sovereign power officially forgiving certain classes of persons who are subject to trial but have not yet been convicted <the 1986 Immigration Reform and Control Act provided amnesty for undocumented aliens already present in the country>. • Unlike an ordinary pardon, amnesty is usu. addressed to crimes against state sovereign-

ty — that is, to political offenses with respect to which forgiveness is deemed more expedient for the public welfare than prosecution and punishment. Amnesty is usu. general, addressed to classes or even communities. — Also termed *general pardon*. — **amnesty**, *vb.* See PARDON.

express amnesty. Amnesty granted in direct terms.

implied amnesty. Amnesty indirectly resulting from a peace treaty executed between contending parties.

amnesty clause. A clause, esp. one found in a peace treaty, that wipes out past offenses such as treason, sedition, rebellion, and even war crimes. • A sovereign may grant amnesty to all guilty persons or only to certain categories of offenders.

Amnesty International. An international non-governmental organization founded in the early 1960s to protect human rights throughout the world. • Its mission is to "secure throughout the world the observance of the Universal Declaration of Human Rights." Amnesty Int'l Statute, art. 1.

amortization (am-ər-tə-zay-shən), *n.* **1.** The act or result of gradually extinguishing a debt, such as a mortgage, usu. by contributing payments of principal each time a periodic interest payment is due.

negative amortization. An increase in a loan's principal balance caused by monthly payments insufficient to pay accruing interest.

2. The act or result of apportioning the initial cost of a usu. intangible asset, such as a patent, over the asset's useful life. Cf. DEPRECIATION.

amortization reserve. See RESERVE.

amortization schedule. A schedule of periodic payments of interest and principal owed on a debt obligation; specif., a loan schedule showing both the amount of principal and interest that is due at regular intervals over the loan term and the remaining unpaid principal balance after each scheduled payment is made.

amortize, *vb.* **1.** To extinguish (a debt) gradually, often by means of a sinking fund. **2.** To arrange to extinguish (a debt) by gradual increments. **3. Hist.** To alienate or convey lands to a

corporation (that is, in mortmain). — Also spelled *amortise*. See MORTMAIN.

amortized loan. See LOAN.

amortized mortgage. See MORTGAGE.

amotion. 1. A turning out, as the eviction of a tenant or the removal of a person from office. **2.** The common-law procedure available to shareholders to remove a corporate director for cause. **3.** The wrongful moving or carrying away of another's personal property.

amount in controversy. The damages claimed or relief demanded by the injured party in a lawsuit. • For a federal court to have diversity jurisdiction, the amount in controversy must exceed \$75,000. 28 USCA § 1332(a). — Also termed *jurisdictional amount*; *matter in controversy*. See DIVERSITY OF CITIZENSHIP; AGGREGATION DOCTRINE.

amount realized. *Tax.* The amount received by a taxpayer for the sale or exchange of an asset, such as cash, property, services received, or debts assumed by a buyer. Cf. GAIN (3); LOSS (4).

amove, vb. To remove (a person) from an office or position.

amoveas manus (ay-moh-vee-əs man-əs). [Law Latin “that you remove your hands”] *Hist. 1.* A judgment ordering the Crown to relinquish possession of land to the complainant. • The judgment is so called from the emphatic words *quod manus domini regis amoveantur* (“that the hands of the king be removed”). **2.** The writ issued on the judgment.

ampliatio (am-plee-ay-shee-oh). [Latin] *Roman law. 1.* The act of deferring or reserving judgment. **2.** In a criminal trial, the repeating of evidence at the jury's request.

ampliation (am-plee-ay-shən). *Civil law.* A postponement of the decision in a case.

amplius (am-plee-əs). [Latin] *Roman law.* More; further. • This word prefaced a statement made by a praetor to defer a case to a later date if an obscurity prevented the judex from reaching a decision.

AMT. See *alternative minimum tax* under TAX.

a multo fortiori (ay mäl-toh for-shee-or-I). [Latin] By far the stronger reason. Cf. A FORTIORI.

amusement tax. See TAX.

anaconda clause. See MOTHER HUBBARD CLAUSE (1).

anacrisis (an-ə-krī-sis). *Civil law.* An investigation or inquiry, esp. one conducted by torture.

analogous art. See ART.

analytical jurisprudence. See JURISPRUDENCE.

anarchist, n. One who advocates the overthrow of organized government by force or who believes in the absence of government as a political ideal. — **anarchism** (the philosophy), *n.*

anarchy, n. Absence of government; lawlessness. — **anarchic, adj.**

anathema (ə-nath-ə-mə), *n.* An ecclesiastical curse that prohibits a person from receiving communion (as in excommunication) and bars the person from contact with members of the church. — **anathematize, vb.**

anatocism (ə-nat-ə-siz-əm). *Civil law.* Compound interest.

anatomical gift. See GIFT.

ancestor. See ASCENDANT.

ancestral debt. See DEBT.

ancestral estate. See ESTATE.

ancestry. A line of descent; lineage.

anchorage. A duty paid by shipowners for the use of a port; a toll for anchoring.

ancient, adj. Evidence. Existing for a long time, usu. at least 20 to 30 years <ancient deed> <ancient map>. • Ancient items are usu. presumed to be valid even if proof of validity cannot be made. Fed. R. Evid. 901(b)(8).

ancient, n. A senior member of an Inn of Court or of Chancery.

ancient demesne. See DEMESNE.

ancient document. See DOCUMENT.

ancient house. See HOUSE.

ancient law. The law of antiquity, considered esp. either from an anthropological standpoint or from the standpoint of tracing precursors to modern law.

"Ancient law uniformly refuses to dispense with a single gesture, however grotesque; with a single syllable, however its meaning may have been forgotten; with a single witness, however superfluous may be his testimony. The entire solemnities must be scrupulously completed by persons legally entitled to take part in them, or else the conveyance is null, and the seller is re-established in the rights of which he had vainly attempted to divest himself." Henry S. Maine, *Ancient Law* 225-26 (17th ed. 1901).

ancient-lights doctrine. The common-law principle by which a landowner acquired, after 20 years of uninterrupted use, an easement preventing a neighbor from building an obstruction that blocks light from passing through the landowner's window. • The window (or other opening) is termed an *ancient light*. This doctrine has rarely been applied in the United States. — Also termed *ancient-windows doctrine*.

"Under the English doctrine of ancient lights, which has been soundly repudiated in this country, if a landowner had received sunlight across adjoining property for a specified period of time, the landowner was entitled to continue to receive unobstructed access to sunlight across the adjoining property; the landowner acquired a negative prescriptive easement and could prevent the adjoining landowner from obstructing access to light." 1 Am. Jur. 2d *Adjoining Landowners* § 90, at 889 (1994).

ancient readings. *Hist.* Lectures on ancient English statutes, formerly having substantial legal authority.

ancient rent. *Hist.* The rent reserved at the time the lease is made, if the estate was not then under lease.

ancients. *Hist.* Certain members of seniority in the Inns of Court and Chancery. • In Gray's Inn, the society consisted of benchers, ancients, barristers, and students under the bar, with the ancients being the oldest barristers. In the Middle Temple, those who passed the readings were termed *ancients*. The Inns of Chancery consisted of both ancients and students or clerks.

ancient serjeant. *Hist. English law.* The eldest of the Crown's serjeants. • The last serjeant to hold this office died in 1866.

ancient wall. See WALL.

ancient watercourse. See WATERCOURSE.

ancient-windows doctrine. See ANCIENT-LIGHTS DOCTRINE.

ancient writing. See *ancient document* under DOCUMENT.

ancilla (an-sil-ə), *n.* [Latin] *Hist.* A female auxiliary or assistant.

ancillary (an-sə-ler-ee), *adj.* Supplementary; subordinate <ancillary claims>. — **ancillarity** (an-sə-la[i]r-ə-tee), *n.*

ancillary administration. See ADMINISTRATION.

ancillary administrator. See ADMINISTRATOR (1).

ancillary attachment. See ATTACHMENT (3).

ancillary bill. See *ancillary suit* under SUIT.

ancillary claim. A claim that is collateral to, dependent on, or auxiliary to another claim, such as a state-law claim that is sufficiently related to a federal claim to permit federal jurisdiction over it. • The concept of ancillary federal jurisdiction is now contained in the supplemental-jurisdiction statute, 28 USCA § 1367. See *ancillary jurisdiction* and *supplemental jurisdiction* under JURISDICTION.

ancillary jurisdiction. See JURISDICTION.

ancillary legislation. See LEGISLATION.

ancillary proceeding. See *ancillary suit* under SUIT.

ancillary process. See *ancillary suit* under SUIT.

ancillary receiver. See RECEIVER.

ancillary suit. See SUIT.

ancipitis usus. See *conditional contraband* under CONTRABAND.

Anders brief. *Criminal procedure.* A brief filed by a court-appointed defense attorney who wants to withdraw from the case on appeal

based on a belief that the appeal is frivolous. • In an *Anders* brief, the attorney seeking to withdraw must identify anything in the record that might arguably support the appeal. The court then decides whether the appeal is frivolous and whether the attorney should be permitted to withdraw. *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967). — Also termed *no-merit brief*.

"*Anders* requires an attorney to assume two somewhat contradictory roles when filing a no-merit brief. The first, and most important, role is that of an advocate. *Anders* makes clear that the first duty of appellate counsel is to study the record and to consult with the defendant to ascertain whether there is anything in the record to support an appeal. Counsel should not consider the case with a view toward finding no merit or of acting as a neutral party. Only if counsel can find no issue of even arguable merit does he change hats and become an *amicus curiae*." Jonathan M. Purver & Lawrence E. Taylor, *Handling Criminal Appeals* § 138, at 285 (1980).

and his heirs. See HEIR.

and other good and valuable consideration.
See *other consideration* under CONSIDERATION.

androlepsy (an-drə-lep-see). [fr. Greek "seizure of men"] *Hist.* The taking by one nation of citizens or subjects of another nation either in reprisal or to enforce some claim (as to surrender or punish a fugitive). — Also termed *androlepsia* (an-drə-lep-see-ə).

anecius (ə-nee-shee-əs), *n.* [Law Latin] *Hist.* The eldest; the firstborn; the senior, as contrasted with *puisne* ("the younger").

angaria (ang-gair-ee-ə). **1.** ANGARY. **2.** *Roman law.* A compulsory service consisting in the transport of goods or persons for the imperial post. **3.** *Hist.* A service exacted by a lord beyond what is due.

angary (ang-gə-ree). *Int'l law.* A country's right, in war or other urgent circumstances, to seize — for temporary use — neutral merchant ships in its inland or territorial waters as well as aircraft within its territory, with full indemnity by the country. — Also termed *right of angary*; *jus angariae*.

"In many respects the content and scope of the right of angary remain unclear and there is little evidence of State practice on several controversial questions. In practice, the right has been exercised mainly in wartime. Nevertheless, several writers consider it to be applicable in times of peace and in cases of absolute necessity, such as the evacuation of the population in the event of a national emergency." Rainer Lagoni, "Angary, Right of," in *1 Encyclopedia of Public International Law* (1992).

Anglicé (ang-glə-see), *adv.* [French] In English.

• This term formerly appeared in pleadings to signal an English translation or restatement of a previous Latin word or phrase <*panis, Anglicé, bread*>.

Anglo-Saxon law. The body of royal decrees and customary laws developed by the Germanic peoples who dominated England from the 5th century to 1066.

anhote, n. *Hist.* A single tribute or tax paid according to custom, such as scot and lot. See SCOT AND LOT.

aniente (an-ee-ənt or an-ee-ent), *adj.* [Law French] (Of a law, etc.) having no force or effect; void. — Also spelled *anient*. — Also termed *aniens*.

animo (an-ə-moh). [Latin] See ANIMUS (2).

animo et corpore (an-ə-moh et kor-pə-ree), *adv.* [Latin] By the mind and by the body; by the intention and by the physical act <possession is acquired *animo et corpore*>.

animo felonico (an-ə-moh fə-lon-ə-koh), *adv.* [Latin] With felonious intent; with the intention to commit a felony.

animus (an-ə-məs). [Latin] **1.** Ill will; animosity.

class-based animus. A prejudicial disposition toward a discernible, usu. constitutionally protected, group of persons. • A *class-based animus* is an essential element of a civil-rights conspiracy case.

2. Intention. • All the following Latin "animus" phrases have analogous adverbial forms beginning with "animus" (the definition merely needing "with" at the outset) — for example, *animus furandi* means "with the intention to steal," *animus testandi* means "with testamentary intention," etc.

animus belligerendi (an-ə-məs bə-lij-ə-ren-di). The intention to wage war.

animus cancellandi (an-ə-məs kan-sə-lan-di). [Latin] The intention to cancel. • This phrase usu. refers to a will.

animus capiendi (an-ə-məs kap-ee-en-di). [Latin] The intention to take or capture.

animus dedicandi (an-ə-məs ded-ə-kan-di). [Latin] The intention to donate or dedicate.

animus defamandi (an-ə-məs def-ə-man-di). [Latin] The intention to defame.

animus derelinquendi (an-ə-məs dee-rel-ing-kwen-dī). [Latin] The intention to abandon.

animus deserendi (an-ə-məs des-ə-ren-dī). [Latin] The intention to desert (usu. a spouse, child, etc.).

animus differendi (an-ə-məs dif-ə-ren-dī). [Latin] The intention to obtain delay.

animus domini (an-ə-məs dom-ə-nī). [Latin] *Roman law*. The intent to exercise dominion over a thing; the intent to own something. Cf. *animus possidendi*.

"All possession has two elements, a physical and a mental, which the Romans distinguish as *corpus* and *animus*. The first is the physical relation of the possessor to the object. The second is his sense of that relation. If he is minded to deal with the thing as his own (*animus domini* — *animus sibi habendi*), no matter whether rightfully or wrongfully, he possesses in the fullest sense." R.W. Lee, *The Elements of Roman Law* 179–80 (4th ed. 1956).

animus donandi (an-ə-məs doh-nan-dī). The intention to give.

animus et factum (an-ə-məs et fak-təm). [Latin "mind and deed"] The intention and the deed. • This phrase can refer to a person's intent to reside in a given country permanently or for an indefinite period.

animus felonius (an-ə-məs fe-loh-ni-kəs). The intention to commit a felony.

animus furandi (an-ə-məs fyuu-ran-dī). The intention to steal. — Also termed *furandi animus*.

"[An] intent to deprive the owner of his property permanently, or an intent to deal with another's property unlawfully in such a manner as to create an obviously unreasonable risk of permanent deprivation, [is] all that is required to constitute the *animus furandi* — or intent to steal." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 332–33 (3d ed. 1982).

animus injuriandi (an-ə-məs in-joor-ee-an-dī). The intention to injure, esp. to insult.

animus lucrandi (an-ə-məs loo-kran-dī). [Latin] The intention to make a gain or profit.

animus malus (an-ə-məs mal-əs). [Latin] Evil intent.

animus manendi (an-ə-məs mə-nen-dī). [Latin "will to remain"] The intention to remain; the intention to establish a permanent residence.

animus morandi (an-ə-məs mə-ran-dī). [Latin "will to tarry"] The intention to remain. • Although *animus morandi* is broadly synonymous with *animus manendi*, *morandi* suggests less permanency.

animus nocendi (an-ə-məs noh-sen-dī). [Latin] The intention to harm.

animus possidendi (an-ə-məs pah-sə-den-dī). [Latin] *Roman law*. The intent to possess a thing. Cf. *animus domini*.

animus quo (an-ə-məs kwoh). [Latin] The intent with which.

animus recipiendi (an-ə-məs ri-sip-ee-en-dī). [Latin] The intention to receive.

animus recuperandi (an-ə-məs ri-k[y]oo-pə-ran-dī). [Latin] The intention to recover.

animus republicandi (an-ə-məs ree-pub-lə-kan-dī). [Latin] The intention to republish.

animus restituendi (an-ə-məs rə-sti-tyoo-en-dī). [Latin] The intention to restore.

animus revertendi (an-ə-məs ree-vər-ten-dī). The intention to return (to a place).

animus revocandi (an-ə-məs rev-oh-kan-dī). [Latin] The intention to revoke (a will) <her destruction of the will indicated that she had *animus revocandi*>.

animus signandi (an-ə-məs sig-nan-dī). [Latin] The intention to sign.

animus testandi (an-ə-məs tes-tan-dī). [Latin] Testamentary intention.

ann, jour, et wast (an, zhoor, ay wayst). [Law French] See YEAR, DAY, AND WASTE.

annates (an-ayts or an-its), *n.* [fr. Law Latin *annata*] *Hist. Eccles. law*. First fruits paid out of spiritual benefices, initially to the Pope and later to the Crown under Henry VIII.

annex, *n.* Something that is attached, such as a document to a report or an addition to a building.

annexation, *n.* **1.** The act of attaching; the state of being attached. **2.** *Property*. The point at which a fixture becomes a part of the realty to which it is attached. **3.** A formal act by which a nation, state, or municipality incorporates land within its dominion. • In international law, the usual formalities of announcing annexation involve having specially commissioned officers hoist the national flag and read a proclamation. **4.** The annexed land itself. — **annex**, *vb.* Cf. ACCESSION (5).

cherry-stem annexation. **1.** Annexed land that resembles (on a map) a cherry because the annexed territory — the cherry — is not contiguous to the acquiring municipality, and the narrow corridor of annexed land leading to the targeted area resembles a stem. **2.** The

process of annexing land with this configuration.

anniversary date. *Insurance.* The annually recurring date of the initial issuance of a policy. Cf. POLICY YEAR.

anno ante Christum (an-oh an-tee kris-təm), *adv.* [Latin] In the year before Christ. — Abbr. A.A.C.

anno ante Christum natum (an-oh an-tee kris-təm nay-təm), *adv.* [Latin] In the year before the birth of Christ. — Abbr. A.A.C.N.

Anno Domini (an-oh dom-ə-nī or -nee). [Latin] "in the year of the Lord" Of the modern era. • This phrase denotes the method of calculating time from the birth of Christ <A.D. 1776>. — Abbr. A.D. — Also termed *Year of Our Lord*.

annonae civiles (ə-noh-nee sə-vī-leez), *n.* [Latin] *Hist.* Yearly rents issuing out of particular lands and payable to certain monasteries.

anno orbis conditi (an-oh or-bis kon-di-ti), *n.* [Latin] The year of the creation of the world. — Abbr. A.O.C.

Anno Regni (an-oh reg-nī). [Latin] In the year of the reign. • A.R.V.R. 22, for example, is an abbreviated reference to *Anno Regni Victoriae Reginae vicesimo secundo* ("in the twenty-second year of the reign of Queen Victoria"). — Abbr. A.R.

annotatio (an-oh-tay-shee-oh). [Latin] RESCRIPT (3).

annotation (an-ə-tay-shən), *n.* **1.** A brief summary of the facts and decision in a case, esp. one involving statutory interpretation. **2.** A note that explains or criticizes a source of law, usu. a case. • Annotations appear, for example, in the *United States Code Annotated* (USCA). **3.** A volume containing such explanatory or critical notes. — **annotate** (an-ə-tayt), *vb.* — **annotative** (an-ə-tay-tiv), *adj.* — **annotator** (an-ə-tay-tər), *n.* Cf. NOTE (2).

"One of the most important classes of Search Books is those included in the category of Annotations. They are important and valuable, in that they often purport to give, in very condensed form, some indication of the law, deduced from the cases or statutes, as well as to point out where similar cases can be found." William M. Lile et al., *Brief Making and the Use of Law Books* 84 (3d ed. 1914).

announce, *vb.* To make publicly known; to proclaim formally <the judge announced her decision in open court>.

annoyance. See NUISANCE (1).

annual depreciation. See DEPRECIATION.

annual exclusion. See EXCLUSION (1).

annual gift-tax exclusion. See *annual exclusion* under EXCLUSION.

annual meeting. See MEETING.

annual message. See MESSAGE.

annual percentage rate. See INTEREST RATE.

annual permit. A permit, required by some states, that must be paid each year by a corporation that does business in the state. • In some states, the permit fee is set according to the corporation's capitalization.

annual report. A yearly corporate financial report for shareholders and other interested parties. • The Securities Exchange Act of 1934 requires registered corporations to file an annual report on the SEC's Form 10-K. An annual report includes a balance sheet, income statement, statement of changes in financial position, reconciliation of changes in owners' equity accounts, a summary of significant accounting principles, other explanatory notes, the auditor's report, and comments from management about prospects for the coming year. — Also termed *annual statement*; *financial report*.

annual value. See VALUE.

annua pensione. See DE ANNUA PENSIONE.

annuitant (ə-n[y]oo-ə-tənt), *n.* A beneficiary of an annuity.

annuity (ə-n[y]oo-ə-tee). **1.** An obligation to pay a stated sum, usu. monthly or annually, to a stated recipient. • These payments terminate upon the death of the designated beneficiary. **2.** A fixed sum of money payable periodically. **3.** A right, often acquired under a life-insurance contract, to receive fixed payments periodically for a specified duration. Cf. PENSION. **4.** A savings account with an insurance company or investment company, usu. established for retirement income. • Payments into the account

accumulate tax-free, and the account is taxed only when the annuitant withdraws money in retirement.

annuity certain. An annuity payable over a specified period, regardless of whether the annuitant dies.

annuity due. An annuity that makes payments at the beginning of each pay period. Cf. *ordinary annuity*.

cash-refund annuity. An annuity providing for a lump-sum payment after the annuitant's death of the difference between the total received and the price paid.

contingent annuity. 1. An annuity that begins making payments when some future event occurs, such as the death of a person other than the annuitant. 2. An annuity that makes an uncertain number of payments, depending on the outcome of a future event.

deferred annuity. An annuity that begins making payments on a specified date if the annuitant is alive at that time. — Also termed *deferred-payment annuity*. Cf. *immediate annuity*.

fixed annuity. An annuity that guarantees fixed payments, either for life or for a specified period.

group annuity. An annuity payable to members of a group, esp. employees, who are covered by a single annuity contract, such as a group pension plan.

immediate annuity. An annuity paid for with a single premium and that begins to pay benefits within the first payment interval. Cf. *deferred annuity*.

joint annuity. An annuity payable to two annuitants until one of them dies, at which time the annuity terminates for the survivor (unless the annuity also provides for survivorship rights). See *survivorship annuity*.

life annuity. An annuity payable only during the annuitant's lifetime, even if the annuitant dies prematurely.

life-income period-certain annuity. An annuity that pays a specified number of payments even if the annuitant dies before the minimum amount has been paid.

nonrefund annuity. An annuity with guaranteed payments during the annuitant's life, but with no refund to anyone at death. — Also termed *straight life annuity*; *pure annuity*.

ordinary annuity. An annuity that makes payments at the end of each pay period. Cf. *annuity due*.

private annuity. An annuity from a private source rather than from a public or life-insurance company.

pure annuity. See *nonrefund annuity*.

refund annuity. An annuity that, upon the annuitant's death, pays to the annuitant's estate the difference between the purchase price and the total payments received during the annuitant's lifetime.

retirement annuity. An annuity that begins making payments only after the annuitant's retirement. • If the annuitant dies before retirement, an agreed amount will usu. be refunded to the annuitant's estate.

straight annuity. An annuity that makes payments in fixed amounts at periodic intervals. Cf. *variable annuity*.

straight life annuity. See *nonrefund annuity*.

survivorship annuity. An annuity providing for continued payments to a survivor, usu. a spouse, after the original annuitant dies.

tax-deferred annuity. See 403(b) plan under EMPLOYEE BENEFIT PLAN.

variable annuity. An annuity that makes payments in varying amounts depending on the success of investment strategy. Cf. *straight annuity*. See *variable annuity contract* under CONTRACT.

annuity bond. See BOND (3).

annuity certain. See ANNUITY.

annuity depreciation method. See DEPRECIATION METHOD.

annuity due. See ANNUITY.

annuity insurance. See INSURANCE.

annuity policy. An insurance policy providing for monthly or periodic payments to the insured to begin at a fixed date and continue through the insured's life.

annuity trust. See TRUST.

annulment (ə-nəl-mənt), *n.* 1. The act of nullifying or making void. 2. A judicial or ecclesiastical declaration that a marriage is void. • Unlike a divorce, an annulment establishes that marital status never existed in law. — **annul** (ə-nəl), *vb.* Cf. DIVORCE.

annum luctus (an-əm lək-təs), *n.* [Latin “year of mourning”] *Roman law*. The year following the death of a married man during which his widow could not remarry, because of the confusion that would ensue in determining the parentage of a child born a few months after a second marriage within that year. — Also sometimes termed *year in mourning*.

annus (an-əs). [Latin] A year.

annus, dies, et vastum (an-əs, di-eez, et vas-təm). [Law Latin] See YEAR, DAY, AND WASTE.

annus et dies (an-əs et di-eez). [Law Latin] A year and a day. See YEAR-AND-A-DAY RULE.

annus utilis (an-əs yoo-tə-lis), *n.* [Latin] *Roman law*. A year made up of the available days for conducting legal business and deducting the remaining days, such as days when the courts are closed or when the opposing party is absent.

annuus reditus (an-əs red-ə-təs). [Law Latin] A yearly rent.

anomalous indorsement. See *irregular indorsement* under INDORSEMENT.

anomalous jurisdiction. See JURISDICTION.

anomalous-jurisdiction rule (ə-nom-ə-ləs). The principle that a court of appeals has provisional jurisdiction to review the denial of a motion to intervene in a case, and if the court of appeals finds that the denial was correct, then its jurisdiction disappears — and it must dismiss the appeal for want of jurisdiction — because an order denying a motion to intervene is not a final, appealable order. • This rule has been criticized by courts and commentators. Many appellate courts, upon finding that the trial court properly denied a motion to intervene, will affirm the denial instead of dismissing the appeal for want of jurisdiction. — Also termed *anomalous rule*.

anomalous plea. See PLEA (3).

anomalous pleading. See PLEADING (1).

anomalous rule. See ANOMALOUS-JURISDICTION RULE.

anonymous, *adj.* Not named or identified <the police arrested the defendant after a tip from

an anonymous informant>. — **anonymity** (an-ə-nim-ə-tee), *n.*

anoysance (ə-noy-zənts), *n.* [Law French] *Hist.* An annoyance or nuisance. See NUISANCE.

answer, *n.* A defendant's first pleading that addresses the merits of the case, usu. by denying the plaintiff's allegations. • An answer usu. sets forth the defendant's defenses and counterclaims.

answer, *vb.* **1.** To respond to a pleading or a discovery request <the company failed to answer the interrogatories within 30 days>. **2.** To assume the liability of another <a guarantor answers for another person's debt>. **3.** To pay (a debt or other liability) <she chose to promise to answer damages out of her own estate>.

answer date. See *answer day* under DAY.

answer day. See DAY.

antapocha (ant-ap-ə-kə). [Latin “counter-receipt”] *Roman & civil law*. A counterpart to a receipt (i.e., an *apocha*), signed by the debtor and delivered to the creditor. Cf. APOCHA.

ante (an-tee), *prep.* [Latin] Before. Cf. POST.

antea (an-tee-ə), *adv.* [Latin] Formerly; heretofore.

antecedent (an-tə-seed-ənt), *adj.* Earlier; preexisting; previous. — **antecedent** (preceding thing), *n.* — **antecedence** (quality or fact of going before), *n.*

antecedent claim. A preexisting claim. • Under the UCC, a holder takes an instrument for value if it is taken for an antecedent claim. UCC § 3-303.

antecedent debt. See DEBT.

antecessor (an-tə-ses-ər or an-), *n.* [Latin] **1.** *Roman law*. A professor of law. **2.** *Hist.* An ancestor. **3.** *Hist.* A predecessor to an office.

antedate (an-ti-dayt), *vb.* **1.** To affix with a date earlier than the true date; BACKDATE (1) <antedate a check>. **2.** To precede in time <the doctrine antedates the *Smith* case by many years>. — Also termed *predate*. — **antedate**, *n.* Cf. POSTDATE.

ante exhibitionem billae (an-tee ek-si-bish-ee-oh-nəm bil-ee). Before the exhibition of the bill; i.e., before a suit has begun.

ante litem motam (an-tee li-təm moh-təm). [Law Latin "before the lawsuit was started"] Before a legal dispute arose — i.e., at a time when the declarant has no motive to lie.

ante meridiem (an-tee mə-rid-ee-əm). [Latin] Before noon. — Abbr. a.m.; A.M.

ante mortem interest (an-tee mor-təm). [Latin] An interest existing before (but not after) a transferor's death.

ante natus (an-tee nay-təs). [Law Latin] A person born before a certain political event that affected the person's political rights; esp., a person born before the signing of the Declaration of Independence. Cf. POST NATUS.

antenuptial (an-ti-nəp-shəl), *adj.* See PRENUPTIAL.

antenuptial agreement. See PRENUPTIAL AGREEMENT.

antenuptial gift. See *prenuptial gift* under GIFT.

antenuptial will. See *prenuptial will* under WILL.

anthropometry (an-thrə-pom-ə-tree). A system of measuring the human body, esp. the size relationships among the different parts. • Before the advent of fingerprinting, minute measurements of the human body — taken and compared to other persons' measurements — were used to identify criminals and deceased persons. Cf. BERTILLON SYSTEM.

antichresis (an-ti-kree-sis). [Latin "in place of interest"] *Roman & civil law.* A mortgage in which the mortgagee retains possession of the mortgaged property and takes the fruits (such as rents) of the property in lieu of interest on the debt.

anticipated compromis. See *general compromis* under COMPROMIS.

anticipation. *Patents.* The previous use, knowledge, documentation, or patenting of an invention. • Any of these will negate the invention's novelty, thereby preventing a patent or provid-

ing a defense to an infringement claim. See NOVELTY.

anticipatory breach. See BREACH OF CONTRACT.

anticipatory nuisance. See NUISANCE.

anticipatory offense. See *inchoate offense* under OFFENSE.

anticipatory replication. See REPLICATION.

anticipatory repudiation. See REPUDIATION.

anticipatory search warrant. See SEARCH WARRANT.

anticompetitive conduct. *Antitrust.* An act that harms or seeks to harm the market or the process of competition among businesses, and that has no legitimate business purpose.

antideficiency legislation. See LEGISLATION.

antidestruction clause. A provision in a security protecting a shareholder's conversion rights, in the event of a merger, by granting the shareholder a right to convert the securities into the securities that will replace the company's stock when the merger is complete. — See *convertible security* under SECURITY.

antidilution provision. A convertible-security provision that safeguards the conversion privilege from share splits, share dividends, or other transactions that might affect the conversion ratio. See CONVERSION RATIO; DILUTION (2).

antidumping law. A statute designed to protect domestic companies by preventing the sale of foreign goods at less than fair value, as defined in the statute (for example, at a price below that of the domestic market). See DUMPING.

antidumping tariff. See TARIFF (2).

antifraud rule. See RULE 10B-5.

antigraph (an-ti-graf). *Archaic.* A copy or counterpart of an instrument.

antigraphus (an-tig-rə-fəs), *n.* [Law Latin] *Hist.* An officer who maintains tax revenues; a comptroller.

Anti-Injunction Act. A federal statute providing that a federal court may not enjoin state-

court proceedings unless an injunction is (1) expressly authorized by Congress, (2) necessary for the federal court's in rem jurisdiction, or (3) necessary to prevent relitigation of a judgment rendered by the federal court. 28 USCA § 2283.

anti-john law. A criminal-law statute punishing prostitutes' customers.

antilapse statute. *Wills & estates.* A statute that passes a bequest to the heirs of the beneficiary if the beneficiary dies before the testator dies. — Also termed *lapse statute*; *nonlapse statute*.

antimanifesto. *Int'l law.* A proclamation in which a belligerent power asserts that the war is a defensive one for that power.

antimarital-facts privilege. See *marital privilege* (2) under PRIVILEGE (3).

antinomia (an-ti-noh-mee-ə). [Greek] *Roman law.* See ANTINOMY.

antinomy (an-tin-ə-mee), *n.* A contradiction in law or logic; esp., a conflict of authority, as between two decisions <antinomies in the case-law>. — **antinomic** (an-ti-nom-ik), *adj.*

antiqua custuma (an-ti-kwə kəs-t[y]oo-mə), *n.* [Law Latin "ancient customs"] *Hist.* A tax on wool, woolfells, and leather, under St. 3 Edw. ● The distinction between *antiqua custuma* and *nova custuma* arose when the king imposed new taxes on the same articles in the 22nd year of his reign. Cf. NOVA CUSTUMA.

antiquare (an-ti-kwair-ee), *vb.* [Latin] *Roman law.* **1.** To reject a proposal for a new law. ● Those who voted against a proposed law wrote on their ballots the letter "A" for *antiquo* ("I am for the old law"). **2.** To repeal a law.

antiqua statuta (an-ti-kwə stə-t[y]oo-tə). See VETERA STATUTE.

antiquum dominicum (an-ti-kwəm də-min-i-kəm). [Law Latin] Ancient demesne. See DEMESNE.

antisubrogation rule (an-tee-səb-roh-gay-shən). *Insurance.* The principle that an insurance carrier has no right of subrogation — that is, no right to assert a claim on behalf of the insured or for payments made under the policy — against its own insured for the risk covered by the policy. See SUBROGATION.

antitakeover statute. A state law designed to protect companies based in the state from hostile takeovers.

antithetarius (an-tith-ə-tair-ee-əs). [Law Latin] *Hist.* An accused person who asserts that his or her accuser is guilty of the crime. Cf. APPROVER (1).

Antitrust Civil Process Act. A federal law prescribing the procedures for an antitrust action by way of a petition in U.S. District Court. 15 USCA §§ 1311 et seq.

antitrust law. The body of law designed to protect trade and commerce from restraints, monopolies, price-fixing, and price discrimination. ● The principal federal antitrust laws are the Sherman Act (15 USCA §§ 1-7) and the Clayton Act (15 USCA §§ 12-27).

"As legislative history and case law both disclose, the general objective of the antitrust laws is the maintenance of competition. Competition per se thus becomes a goal of the legal order. Yet, competition is not a concept which defines itself; notions about the desirability of competition may shape judgments about how the law should apply, at least at its indistinct edges." Lawrence A. Sullivan, *Handbook of the Law of Antitrust* § 5, at 20 (1977).

A.O.C. abbr. **1.** ANNO ORBIS CONDITI. **2.** And other consideration. See *other consideration* under CONSIDERATION.

AOD. abbr. ACTION ON DECISION.

AOGL. See *adjusted ordinary gross income* under INCOME.

a pais (ah pay or pays). [Law French] *Hist.* At or to the country; at issue.

apartheid (ə-pahrt-hayt or ə-pahr-tīt). Racial segregation; specif., a policy of discrimination and segregation against blacks in South Africa.

apertum breve. See BREVE.

apertum factum (ə-pər-təm fak-təm). [Latin "open deed"] An overt act.

apertura testamenti (ap-ər-t[y]oor-ə tes-tə-men-ti), *n.* [Latin "opening of the testament"] *Roman law.* A procedure for proving a will by which the witnesses acknowledged their signatures and seal before a magistrate and the will was opened and publicly read.

apex deposition. See DEPOSITION.

apex juris (ay-peks joor-is). [Latin "summit of law"] *Roman law*. An extreme point or subtlety of law, such as a merely technical objection in pleading or an extreme interpretation of a doctrine. Cf. APICES LITIGANDI.

apex rule. *Mining law*. The principle that a vein of ore may be mined if it extends beyond the vertical boundaries of the surface claim on which the vein apexes. — Also termed *extralateral right*. Cf. INTRALIMINAL RIGHT.

apices litigandi (ay-pi-seez lit-i-gan-di). [Law Latin] Extremely fine points (or subtleties) of litigation. Cf. APEX JURIS.

apocha (ap-ə-kə). *Roman & civil law*. A receipt acknowledging payment. • An apocha discharges only the obligation represented by the payment, in contrast to an acceptilation, which discharges an entire debt. — Also spelled *apoca*. Cf. ACCEPTILATION; ANTAPOCHA.

apochae oneratoriae (ap-ə-kee oh-nər-ay-tor-ee-ee). [Law Latin "cargo receipt"] *Hist.* Bills of lading.

apocrisarius (ə-pok-ri-sair-ee-əs), *n.* [Latin] *Hist. Eccles. law*. **1.** An ambassador; a messenger, such as a Pope's legate. **2.** One who answers for another; esp., an officer who presented church matters to the emperor and conveyed the answers to the petitioners. **3.** One who, upon consultation, gives advice in ecclesiastical matters. — Also termed *responsalis*; *a responsis*; *secretarius*; *consiliarius*; *referendarius*; *a consiliis*.

apographa (ə-pog-rə-fə), *n.* [fr. Greek *apographēin* "to copy"] **1.** *Civil law*. An examination and enumeration of things possessed, an inventory. **2.** Copies; transcripts. — **apographal**, *adj.*

apostasy (ə-pos-tə-see). *Hist.* A crime against religion consisting in the total renunciation of Christianity by one who had previously embraced it.

apostata capiendo. See DE APOSTATA CAPIENDO.

apostate (ə-pos-tayt). A person who has forsaken religion or a particular religion. — Also termed (archaically) *apostata* (ap-ə-stay-tə).

a posteriori (ay pos-teer-ee-or-I or ah pos-teer-ee-or-ee), *adv.* [Latin "from what comes after"] Inductively; from the particular to the general,

or from known effects to their inferred causes <as a legal analyst, she reasoned a posteriori — from countless individual cases to generalized rules that she finally applied>. — **a posteriori**, *adj.* Cf. A PRIORI.

apostille (ə-pos-til). [French "postscript, footnote"] *Int'l law*. A marginal note or observation; esp., a standard certification provided under the Hague Convention for authenticating documents used in foreign countries. — Also spelled *apostil*. See CERTIFICATE OF AUTHORITY.

apostle (ə-pos-əl), *n.* *Civil & maritime law*. **1.** A letter sent from a trial court to an appellate court, stating the case for the appeal. **2.** The record or papers sent up on appeal. — Also termed *apostoli*.

apostolus (ə-pos-tə-ləs), *n.* [fr. Greek *apostolos* "one sent from another"] *Hist.* A messenger, ambassador, legate, or nuncio. Pl. **apostoli** (ə-pos-tə-li).

apotheca (ap-ə-thee-kə), *n.* [fr. Greek *apothēke* "store"] *Civil law*. A repository, as for wine or books.

apparent, *adj.* Visible; manifest; obvious.

apparent agency. See *agency by estoppel* under AGENCY (1).

apparent agent. See AGENT.

apparent authority. See AUTHORITY (1).

apparent danger. See DANGER.

apparent defect. See *patent defect* under DEFECT.

apparent easement. See EASEMENT.

apparent heir. See *heir apparent* under HEIR.

apparent servitude. See SERVITUDE (1).

apparent title. See COLOR OF TITLE.

apparitor (ə-par-ə-tər or -tor). **1.** *Roman law*. An officer who served a court, esp. as secretary, messenger (*viator*), or herald. — Also termed *viator*. **2.** *Civil law*. An officer who attends court to execute judicial orders. **3.** *Eccles. law*. An officer who executes orders and decrees, esp. by serving summonses.

apparlement (ə-pahrĭ-mənt), *n.* [Law French] *Hist.* Likelihood, as in the *apparlement* of war.

apparura (ap-ə-ruur-ə), *n.* [fr. Law Latin *apparare* "to furnish"] *Hist.* Furniture, apparel, implements, or tackle.

appeal, *n.* A proceeding undertaken to have a decision reconsidered by bringing it to a higher authority; esp., the submission of a lower court's or agency's decision to a higher court for review and possible reversal <the case is on appeal>. Cf. CERTIORARI.

appeal as of right. See *appeal by right*.

appeal by application. An appeal for which permission must first be obtained from the reviewing court. — Also termed *appeal by leave*.

appeal by right. An appeal to a higher court from which permission need not be first obtained. — Also termed *appeal as of right*; *appeal of right*.

appeal de novo. An appeal in which the appellate court uses the trial court's record but reviews the evidence and law without deference to the trial court's rulings. — Also termed *de novo review*.

appeal in forma pauperis (in for-mə paw-pər-is). An appeal by an indigent party, for whom court costs are waived. Fed. R. App. P. 24. See IN FORMA PAUPERIS.

consolidated appeal. An appeal in which two or more parties, whose interests were similar enough to make a joinder practicable, proceed as a single appellant.

cross-appeal. An appeal by the appellee, usu. heard at the same time as the appellant's appeal.

delayed appeal. An appeal that takes place after the time for appealing has expired, but only when the reviewing court has granted permission because of special circumstances.

devolutive appeal (di-vol-yə-tiv). An appeal that does not suspend the execution of the underlying judgment.

direct appeal. An appeal from a trial court's decision directly to the jurisdiction's highest court, thus bypassing review by an intermediate appellate court. • Such an appeal may be authorized, for example, when the case involves the constitutionality of a state law.

duplicitous appeal. An appeal from two separate judgments, from a judgment and an order, or from two orders.

interlocutory appeal. An appeal that occurs before the trial court's final ruling on the entire case. • Some interlocutory appeals involve legal points necessary to the determination of the case, while others involve collateral orders that are wholly separate from the merits of the action. Cf. FINAL-JUDGMENT RULE.

limited appeal. An appeal from only certain portions of a decision, usu. only the adverse or unfavorable portions.

suspensive appeal. An appeal that stays the execution of the underlying judgment.

appeal, *vb.* To seek review (from a lower court's decision) by a higher court <petitioner appeals the conviction>. — **appealability**, *n.*

appealable decision. See DECISION.

appeal as of right. See *appeal by right* under APPEAL.

appeal bond. See BOND (2).

appeal by leave. See *appeal by application* under APPEAL.

appeal court. See *appellate court* under COURT.

appeal de novo. See APPEAL.

appeler. *Archaic.* APPELLANT.

appeal in forma pauperis. See APPEAL.

appeal of felony. *Hist.* A procedure by which a person accused another of a crime, demanded proof of innocence by wager of battle, or informed against an accomplice. — Also termed *appellum de feloniam*.

appeal of right. See *appeal by right* under APPEAL.

appeals council. A commission that hears appeals of rulings by administrative-law judges in social-security matters.

appeals court. See *appellate court* under COURT.

appearance, *n.* *Procedure.* A coming into court as a party or interested person, or as a lawyer on behalf of a party or interested person. — **appear**, *vb.*

"The English courts did not, until modern times, claim jurisdiction over the person of the defendant merely by

service of summons upon him. It was deemed necessary to resort to further process by attachment of his property and arrest of his person to compel 'appearance,' which is not mere presence in court, but some act by which a person who is sued submits himself to the authority and jurisdiction of the court. Any steps in the action, such as giving bail upon arrest, operated as an appearance or submission." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 5, at 24 (Henry Winthrop Ballantine ed., 3d ed. 1923).

"The term 'appearance' is used particularly to signify or designate the overt act by which one against whom suit has been commenced submits himself to the court's jurisdiction, although in a broader sense it embraces the act of either plaintiff or defendant in coming into court An appearance may be expressly made by formal written or oral declaration, or record entry, or it may be implied from some act done with the intention of appearing and submitting to the court's jurisdiction." 4 Am. Jur. 2d *Appearance* § 1, at 620 (1995).

appearance de bene esse. See *special appearance*.

appearance pro hac vice (proh hak vi-see or proh hahk vee-chay). [Latin] An appearance made by an out-of-state lawyer for one particular case, usu. by leave of court. ● For more on the pronunciation of this term, see PRO HAC VICE.

compulsory appearance. An appearance by one who is required to appear by having been served with process.

general appearance. An appearance for general purposes, which waives a party's ability later to dispute the court's personal jurisdiction.

initial appearance. A criminal defendant's first appearance in court to hear the charges read, to be advised of his or her rights, and to have bail determined. ● The initial appearance is usu. required by statute to occur without undue delay. In a misdemeanor case, the initial appearance may be combined with the arraignment. See ARRAIGNMENT.

special appearance. 1. A defendant's pleading that either claims that the court lacks personal jurisdiction over the defendant or objects to improper service of process. 2. A defendant's showing up in court for the sole purpose of contesting the court's assertion of personal jurisdiction over the defendant. — Also termed *limited appearance*; *appearance de bene esse*.

voluntary appearance. An appearance entered by a party's own will, without the service of process.

appearance bond. See *bail bond* under BOND (2).

appearance date. See *answer day* under DAY.

appearance day. See *answer day* under DAY.

appearance de bene esse. See *special appearance* under APPEARANCE.

appearance docket. See DOCKET (1).

appearance doctrine. In the law of self-defense, the rule that a defendant's use of force is justified if the defendant reasonably believed it to be justified.

appearance pro hac vice. See APPEARANCE.

appellant (ə-pel-ənt). A party who appeals a lower court's decision, usu. seeking reversal of that decision. — Formerly also termed *appeller*. Cf. APPELLEE.

appellate (ə-pel-it), *adj.* Of or relating to an appeal or appeals generally.

appellate counsel. See COUNSEL.

appellate court. See COURT.

appellate division. A department of a superior court responsible for hearing appeals; an intermediate appellate court in some states, such as New York and New Jersey.

appellate jurisdiction. See JURISDICTION.

appellate record. See RECORD ON APPEAL.

appellate review. See REVIEW.

appellate rules. A body of rules governing appeals from lower courts.

appellatio (ap-ə-lay-shee-oh). [Latin] *Roman law.* An appeal from a lower court.

appellator (ap-ə-lay-tər). [Latin] *Roman & civil law.* 1. An appellant. 2. The judge to whom an appeal is taken.

appellee (ap-ə-lee). A party against whom an appeal is taken and whose role is to respond to that appeal, usu. seeking affirmance of the lower court's decision. Cf. APPELLANT.

appello (ə-pel-oh). [Latin] *Roman law.* I appeal. ● This was the form of making an appeal *apud acta* (in the presence of the judge).

appellor (ə-pel-or or ap-ə-lor). *Hist. English law.* A person who formally accuses another of a crime, challenges a jury, or informs against an accomplice.

appellum de feloniam. See APPEAL OF FELONY.

appendant (ə-pen-dənt), *adj.* Attached or belonging to property as an additional but subsidiary right. — **appendant, n.**

appendant easement. See *easement appurtenant* under EASEMENT.

appendant power. See POWER (5).

appenditia (ap-en-dish-ee-ə), *n.* [Law Latin] *Hist.* The appendages or appurtenances of an estate.

appendix, n. A supplementary document attached to the end of a writing <the brief includes an appendix of exhibits>. Pl. **appendixes, appendices.**

appensura (ap-en-s[y]oor-ə), *n.* [fr. Latin *appendere* “to weigh out”] *Hist.* The payment of money by weight rather than by count.

applicant. 1. One who requests something; a petitioner, such as a person who applies for letters of administration. **2.** ACCOUNT PARTY.

application. 1. MOTION. **2.** *Bankruptcy.* A request for an order not requiring advance notice and an opportunity for a hearing before the order is issued.

application for leave to appeal. A motion requesting an appellate court to hear a party's appeal from a judgment when the party has no appeal by right or when the party's time limit for an appeal by right has expired. • The reviewing court has discretion whether to grant or reject such a motion.

applied cost. See COST (1).

apply, vb. 1. To make a formal request or motion <apply for a loan> <apply for injunctive relief>. **2.** To employ for a limited purpose <apply the payments to a reduction in interest>. **3.** To put to use with a particular subject matter <apply the law to the facts> <apply the law only to transactions in interstate commerce>.

appointee. 1. One who is appointed. **2.** One who receives the benefit of a power of appointment. See POWER OF APPOINTMENT.

permissible appointee. A person to whom appointive property may be assigned under a power of appointment. — Also termed *object of the power of appointment; object of the power.*

appointive asset. See ASSET.

appointive property. A property interest that is subject to a power of appointment.

appointment, n. 1. The act of designating a person, such as a nonelected public official, for a job or duty <Article II of the U.S. Constitution grants the President the power of appointment for principal federal officials, subject to senatorial consent>.

public appointment. An appointment to a public office.

2. An office occupied by someone who has been appointed <a high appointment in the federal government>. **3.** The act of disposing of property, in exercise of a power granted for that purpose <the tenant's appointment of lands>. See POWER OF APPOINTMENT. — **appoint, vb.** — **appointer** (for senses 1 & 2), *n.* — **appointor** (for sense 3), *n.*

illusory appointment. A nominal, unduly restrictive, or conditional transfer of property under a power of appointment.

“Like many other theories which are very plausible in the abstract, experience has shown that the doctrine of illusory appointments is difficult in application, since the term ‘illusory’ is vague and indefinite. And, because of the difficulty of formulating rules for determining what is an illusory appointment and the evils resulting from attempts to substitute the judicial will for the intent of the donor and donee of the power, the doctrine has been condemned or rejected by many courts.” 62 Am. Jur. 2d *Powers of Appointment* § 186 (1990).

Appointments Clause. The clause of the U.S. Constitution giving the President the power to nominate federal judges and various other officials. U.S. Const. art. II, § 2.

apport (ə-port), *n.* [Law French] *Hist.* A tax, expense, tribute, or payment.

apportionment, n. 1. Division into proportionate shares. **2.** The act of allocating or attributing moneys or expenses in a given way, as when a taxpayer allocates part of profits to a particular tax year or part of the use of a personal asset to a business. **3.** Distribution of

legislative seats among districts that are entitled to representation; esp., the allocation of congressional representatives among the states based on population, as required by the 14th Amendment. • The claim that a state is denying the right of representation to its citizens through improper apportionment presents a justiciable issue. — Also termed *legislative apportionment*. See REAPPORTIONMENT. 4. The division (by statute or by the testator's instruction) of an estate-tax liability among persons interested in an estate. — **apportion, vb.**

apportionment clause. *Insurance.* A policy provision that distributes insurance proceeds in proportion to the total coverage.

apportionment of liability. *Torts.* The parceling out of liability for an injury among multiple tortfeasors, and possibly the plaintiff as well. • Apportionment of liability encompasses such legal doctrines as joint and several liability, comparative responsibility, indemnity, and settlements. See Restatement (Third) of Torts: Apportionment of Liability (1999).

apportum (ə-por-təm), *n.* [Law Latin] *Hist.* The revenue, profit, or emolument that something brings to its owner. • This was often used in reference to a pension.

apposer. See FOREIGN APPOSER.

apposite (ap-ə-zit), *adj.* Suitable; appropriate.

appraisal, n. 1. The determination of what constitutes a fair price; valuation; estimation of worth. 2. The report of such a determination. — Also termed *appraisement*. — **appraise, vb.** Cf. ASSESSMENT (3).

appraisal clause. An insurance-policy provision allowing either the insurer or the insured to demand an independent estimation of a claimed loss.

appraisal remedy. The statutory right of corporate shareholders who oppose some extraordinary corporate action (such as a merger) to have their shares judicially appraised and to demand that the corporation buy back their shares at the appraised value. — Also termed *appraisal right*; *dissenters' right*; *right of dissent and appraisal*.

appraisal trinity. The three most commonly accepted methods of appraising real property: the market approach, the cost approach, and

the income approach. See MARKET APPROACH; COST APPROACH; INCOME APPROACH.

appraisement. 1. APPRAISAL. 2. An ADR method used for resolving the amount or extent of liability on a contract when the issue of liability itself is not in dispute. • Unlike arbitration, appraisement is not a quasi-judicial proceeding but instead an informal determination of the amount owed on a contract.

appraiser. An impartial person who estimates the value of something, such as real estate, jewelry, or rare books. — Also termed *valuer*.

appreciable, adj. Capable of being measured or perceived.

appreciate, vb. 1. To understand the significance or meaning of. 2. To increase in value.

appreciation, n. An increase in an asset's value, usu. because of inflation. — **appreciate, vb.** — **appreciable, adj.** Cf. DEPRECIATION.

appreciation surplus. See *revaluation surplus* under SURPLUS.

appreciation test. *Criminal law.* A test for the insanity defense requiring proof by clear and convincing evidence that at the time of the crime, the defendant suffered from a severe mental disease or defect preventing him or her from appreciating the wrongfulness of the conduct. • This test, along with the accompanying plea of *not guilty by reason of insanity*, was established by the Insanity Defense Reform Act of 1984. 18 USCA § 17. — Also termed *Insanity Defense Reform Act of 1984 test*. See INSANITY DEFENSE.

apprehensio (ap-ri-hen-see-oh). [Latin] 1. APPREHENSION (1). 2. *Civil law.* A mode of acquisition of things belonging to no one; a type of *occupatio*.

apprehension, n. 1. Seizure in the name of the law; arrest <apprehension of a criminal>. 2. Perception; comprehension <the tort of assault requires apprehension by the plaintiff of imminent contact>. 3. Fear; anxiety <most people approach public speaking with some apprehension>. — **apprehend, vb.**

apprentice. 1. *Hist.* A person bound by an indenture to work for an employer for a specified period to learn a craft, trade, or profession.

2. A learner in any field of employment or business.

apprentice of the law. *Hist.* **1.** A law student. **2.** A barrister. — Also termed *apprentice en la ley*; *apprenticius ad legem*.

apprenticius ad legem (a-pren-tish-ee-əs ad lee-jəm). [Law Latin] APPRENTICE OF THE LAW.

approach, right of. See RIGHT OF APPROACH.

appropriated retained earnings. See EARNINGS.

appropriated surplus. See SURPLUS; *appropriated retained earnings* under EARNINGS.

appropriation, n. **1.** The exercise of control over property; a taking of possession. **2.** A legislative body's act of setting aside a sum of money for a public purpose. **3.** The sum of money so voted. **4. Torts.** An invasion of privacy whereby one person takes the name or likeness of another for commercial gain. — **appropriate, vb.** — **appropriable, adj.** — **appropriator, n.** Cf. EXPROPRIATION; MISAPPROPRIATION.

appropriation bill. See BILL (3).

appropriator, n. *Hist.* The possessor of an appropriated benefice, that is, a benefice that has been perpetually annexed to a spiritual corporation.

approval sale. See *sale on approval* under SALE.

approve, vb. To give formal sanction to; to confirm authoritatively. — **approval, n.**

approved indorsed note. See NOTE (1).

approved list. See LEGAL LIST.

approvalment. 1. English law. The right of an owner of common lands to enclose them partially and receive income arising from them. • This right — originally granted by the Statute of Merton (1235) — is still available, but a landowner seeking to approve land must receive the government's consent to do so. **2. Hist.** The act of avoiding a capital conviction by accusing an accomplice; turning king's evidence.

approver (ə-proo-vər), *n.* *Hist.* **1.** One who offers proof; esp., a criminal who confesses and

testifies against his or her accomplices. Cf. AN-TITHETARIUS. **2.** An agent or bailiff; esp., one who manages a farm or estate for another.

approximation, doctrine of. See DOCTRINE OF APPROXIMATION.

appruare (ap-roo-air-ee), *vb.* [Law Latin] *Hist.* To obtain a benefit from land by making improvements.

appurtenance (ə-pərt-[ə-]nənts), *n.* Something that belongs or is attached to something else <the garden is an appurtenance to the land>.

appurtenant, adj. Annexed to a more important thing.

appurtenant easement. See *easement appurtenant* under EASEMENT.

APR. See *annual percentage rate* under INTEREST RATE.

à prendre (ah prawn-drə or -dər). [French] For taking; for seizure. See PROFIT À PRENDRE.

a priori (ay pri-or-i or ah pree-or-ee), *adv.* [Latin "from what is before"] Deductively; from the general to the particular <as an analyst, he reasoned a priori — from seemingly self-evident propositions to particular conclusions>. — **a priori, adj.** Cf. A POSTERIORI.

a provisione viri (ay prə-vizh-ee-oh-nee vi-ri). [Latin] By the provision of a man (i.e., a husband).

apud acta (ap-əd ak-tə). [Latin] *Roman & civil law.* Among the acts; among the judicial proceedings recorded in writing. • This phrase refers to appeals taken orally in the presence of the judge.

apud iudicem. See IN JUDICIO.

APV. See *adjusted present value* under PRESENT VALUE.

a qua (ay kway or kwah). [Latin] See A QUO.

aqua (ak-wə), *n.* [Latin] *Roman law.* **1.** Water. **2.** A watercourse. Pl. **aquae** (ak-wee).

aqua aestiva (ak-wə es-ti-və), *n.* Summer water; water used only in the summer.

aqua currens (ak-wə kər-enz). See *aqua profluens*.

aqua dulcis (ak-wə däl-sis), *n.* Fresh water. — Also termed *aqua frisca*.

aqua fontanea (ak-wə fon-tay-nee-ə), *n.* Springwater.

aqua profluens (ak-wə prof-loo-enz), *n.* Flowing or running water. — Also termed *aqua currens*.

aqua quotidiana (ak-wə kwoh-tid-ee-ay-nə), *n.* Daily water; water that can be drawn at all times of the year.

aqua salsa (ak-wə sal-sə), *n.* Salt water.

aquaeductus (ak-wee-dək-təs), *n.* [Latin “conveying of water”] A servitude consisting in the right to conduct water (as through pipes) over or through another’s land.

aquaehaustus (ak-wee-haws-təs), *n.* [Latin “drawing of water”] A servitude consisting in the right to draw water from a well, pool, spring, or stream on another’s land.

aquae immittendae (ak-wee im-ə-ten-dee), *n.* [Latin “waters to be thrown out”] A servitude consisting in the right of one whose house is surrounded by other buildings to cast wastewater on the neighboring roofs or yards. • This is similar to common-law drip rights. — Also termed *stillicidium*. Cf. *servitus stillicidii* under SERVITUS; DRIP RIGHTS.

aqua frisca. See *aqua dulcis* under AQUA.

aquagium (ə-kway-jee-əm), *n.* [Law Latin] *Hist.* 1. A canal for draining water, esp. from marshy land. 2. A payment for supplying water to a mill or carrying goods by water.

aquatic right. See WATER RIGHT.

Aquilian law. See LEX AQUILIA.

a quo (ah or ay kwoh), *adv.* [Latin] From which. — Also termed *a qua*. See AD QUEM; *court a quo* under COURT.

A.R. *abbr.* ANNO REGNI.

arabant (ə-ray-bənt). [Latin] They plowed. • This term was applied to those who held by the tenure of plowing and tilling the lord’s lands within the manor.

arable land. See LAND.

arator (ə-ray-tər), *n.* [Law Latin] *Hist.* A farmer of arable land.

aratrum terrae (ə-ray-trəm ter-ee), *n.* [Law Latin] *Hist.* The amount of land that can be plowed with a single plow; plowland.

araturia (ar-ə-t[y]oor-ee-ə), *n.* [Law Latin] See *arable land* under LAND.

ARB. *abbr.* ACCOUNTING RESEARCH BULLETIN.

arbiter (ahr-bə-tər). One with the power to decide disputes, such as a judge <the Supreme Court is the final arbiter of legal disputes in the United States>. Cf. ARBITRATOR.

arbitrage (ahr-bə-trahzh), *n.* The simultaneous buying and selling of identical securities in different markets, with the hope of profiting from the price difference in those markets. — Also termed *space arbitrage*. — **arbitrager** (ahr-bə-trahz-ər), **arbitrageur** (ahr-bə-trahz-ər), *n.*

kind arbitrage. Purchase of a security that, having no restriction other than the payment of money, is exchangeable or convertible within a reasonable time to a second security, with a simultaneous offsetting sale of the second security. — Also termed *convertible arbitrage*.

risk arbitrage. Arbitrage of assets that are probably, but not necessarily, equivalent; esp., arbitrage of corporate stock in a potential merger or takeover, whereby the target company’s stock is bought and the acquiring company’s stock is sold simultaneously.

time arbitrage. Purchase of a commodity against a present sale of the identical commodity for a future delivery; esp., the simultaneous buying and selling of securities for immediate delivery and future delivery, with the hope of profiting from the difference in prices.

arbitrage bond. See BOND (3).

arbitrament (ahr-bi-trə-mənt). 1. The power to decide for oneself or others; the power to decide finally and absolutely. 2. The act of deciding or settling a dispute that has been referred to arbitration. 3. AWARD. — Also spelled (archaically) *arbitrement*.

arbitrament and award. A plea that the same matter has already been decided in arbitration.

arbitrary, *adj.* **1.** Depending on individual discretion; specif., determined by a judge rather than by fixed rules, procedures, or law. **2.** (Of a judicial decision) founded on prejudice or preference rather than on reason or fact. ● This type of decision is often termed *arbitrary and capricious*.

arbitrary mark. See *arbitrary trademark* under TRADEMARK.

arbitrary trademark. See TRADEMARK.

arbitration, *n.* A method of dispute resolution involving one or more neutral third parties who are usu. agreed to by the disputing parties and whose decision is binding. — Also termed (redundantly) *binding arbitration*. — **arbitrate**, *vb.* — **arbitral**, *adj.* Cf. MEDIATION (1).

ad hoc arbitration. Arbitration of only one issue.

adjudicative-claims arbitration. Arbitration designed to resolve matters usu. handled by courts (such as a tort claim), in contrast to arbitration of labor issues, international trade, and other fields traditionally associated with arbitration.

compulsory arbitration. Arbitration required by law or forced by law on the parties.

final-offer arbitration. Arbitration in which both parties are required to submit their “final offer” to the arbitrator, who may choose only one. ● This device gives each party an incentive to make a reasonable offer or risk the arbitrator’s accepting the other party’s offer. The purpose of this type of arbitration is to counteract arbitrators’ tendency to make compromise decisions halfway between the two parties’ demands.

grievance arbitration. **1.** Arbitration that involves the violation or interpretation of an existing contract. ● The arbitrator issues a final decision regarding the meaning of the contractual terms. **2. Labor law.** Arbitration of an employee’s grievance, usu. relating to an alleged violation of the employee’s rights under a collective-bargaining agreement. ● The arbitration procedure is set out in the collective-bargaining agreement. Grievance arbitration is the final step in grievance procedure. — Also termed *rights arbitration*. See GRIEVANCE PROCEDURE.

“The great majority of today’s collective bargaining agreements provide for an impartial arbitrator to hear and decide grievances under the bargaining agreement. The details of grievance arbitration vary considerably among agreements.” Douglas L. Leslie, *Labor Law in a Nutshell* 264 (3d ed. 1992).

interest arbitration. Arbitration that involves settling the terms of a contract being negotiated between the parties; esp., in labor law, arbitration of a dispute concerning what provisions will be included in a new collective-bargaining agreement. ● When the parties cannot agree on contractual terms, an arbitrator decides. This type of arbitration is most common in public-sector collective bargaining.

judicial arbitration. Court-referred arbitration that is final unless a party objects to the award.

rights arbitration. See *grievance arbitration*.

voluntary arbitration. Arbitration by the agreement of the parties.

arbitration act. A federal or state statute providing for the submission of disputes to arbitration.

arbitration and award. An affirmative defense asserting that the subject matter of the action has already been settled in arbitration.

arbitration board. A panel of arbitrators appointed to hear and decide a dispute according to the rules of arbitration.

arbitration clause. A contractual provision mandating arbitration — and thereby avoiding litigation — of disputes about the contracting parties’ rights, duties, and liabilities.

arbitration of exchange. The simultaneous buying and selling of bills of exchange in different international markets, with the hope of profiting from the price difference of the currencies in those markets. See ARBITRAGE; DRAFT (1).

arbitrator, *n.* A neutral person who resolves disputes between parties, esp. by means of formal arbitration. — **arbitratorship**, *n.* Cf. ARBITER.

arbitrement. *Archaic.* See ARBITRAMENT.

arbitrium (ahr-bi-tree-əm). [Law Latin] An award; a decision of an arbitrator.

arbor civilis (ahr-bər siv-ə-lis). [Latin “civil tree”] A genealogical tree.

arbor finalis (ahr-bər fi-nay-lis). [Latin] *Hist.* A boundary tree; a tree used for marking a boundary line.

arcana imperii (ahr-kay-nə im-peer-ee-i). [Latin] State secrets.

arcarius (ahr-kair-ee-əs). [Latin] *Hist.* A treasurer; a keeper of public money.

Archaionomia (ahr-kee-ə-noh-mee-ə). A Latin translation of Saxon laws, published in 1568 by William Lambarde.

archdeaconry. *Eccles. law.* **1.** The circuit of an archdeacon's jurisdiction. **2.** The office or rank of an archdeacon.

Archdeacon's Court. See COURT OF ARCHDEACON.

Archdiaconal Court. See COURT OF ARCHDEACON.

Arches Court of Canterbury. See COURT OF ARCHES.

archicapellanus (ahr-kee-kap-ə-lay-nəs). [Law Latin] *Hist.* A chief or high chancellor.

architect's lien. See LIEN.

architectural review. See DESIGN REVIEW.

architectural work. *Copyright.* The design of a building, as embodied in any tangible medium of expression, including plans and drawings (which are protected as pictorial or graphic works) or the building itself (which is protected, if built after December 1, 1990, under the Berne Convention).

arcifinious (ahr-sə-fin-ee-əs), *adj.* [fr. Latin *arcifinius* "having irregular boundaries"] *Civil law.* (Of a landed estate) having natural boundaries such as woods, mountains, or rivers.

arcta et salva custodia (ahrk-tə et sal-və kə-stoh-dee-ə). [Law Latin] *Hist.* In close and safe custody. • A defendant arrested under the writ of *capias ad satisfaciendum* was said to be kept *arcta et salva custodia*.

ardour. [Law French] *Hist.* An arsonist.

area bargaining. Negotiation by a union of collective-bargaining agreements with several employers in a particular geographic area.

area-standards picketing. *Labor law.* The practice that a union undertakes to protect its members in a particular region by picketing employers that may undercut the market through the potentially lower labor costs of a nonunion workforce.

area variance. See VARIANCE (2).

Areeda-Turner test. *Antitrust.* An economic test for predatory pricing whereby a price below average variable cost is presumed to be predatory and therefore illegal. • This test is widely accepted by federal courts. Its name derives from the coauthors of an influential law-review article: Phillip Areeda & Donald F. Turner, *Predatory Pricing and Practices Under Section 2 of the Sherman Act*, 88 Harv. L. Rev. 692 (1975). They reformulated their test in 3 Phillip Areeda & Donald F. Turner, *Antitrust Law* ¶¶ 710-722 (1978). See PREDATORY PRICING.

à rendre (ah rawn-drə or -dər). [Law French] To render; to yield.

arentare (ar-ən-tair-ee). [Law Latin] To rent out; to let out at a certain rent.

A reorganization. See REORGANIZATION (2).

arere (ə-reer), *adj.* [Law French] Behind in payment (as of rent); in arrears.

a responsis (ay ri-spon-sis), *n.* [Law Latin] See APOCRISARIUS.

arg. *abbr.* ARGUENDO (2).

argentarius (ahr-jən-tair-ee-əs). [Latin] *Roman law.* A moneylender; a banker.

argentarius miles (ahr-jən-tair-ee-əs mi-leez), *n.* [Law Latin] *Hist.* A money porter who carries money from the lower to the upper Exchequer to be examined and tested.

argentum (ahr-jen-təm), *n.* [Latin] Silver; esp., silver coinage.

argentum dei (ahr-jen-təm dee-i), *n.* [Law Latin] See DENARIUS DEI.

arguendo (ahr-gyoo-en-doh). [Latin "in arguing"] **1.** For the sake of argument <assuming arguendo that discovery procedures were correctly followed, the court still cannot grant the defendant's motion to dismiss>. **2.** During the course of argument <counsel mentioned arguendo that the case has been followed in three other decisions>. — Abbr. arg.

argument. **1.** A statement that attempts to persuade; esp., the remarks of counsel in analyzing and pointing out or repudiating a desired inference, for the assistance of a decision-maker. **2.** The act or process of attempting to persuade. See ORAL ARGUMENT; CLOSING ARGUMENT.

argumentative, adj. **1.** Of or relating to argument or persuasion <an argumentative tone of voice>. **2.** Stating not only facts, but also inferences and conclusions drawn from facts <the judge sustained the prosecutor's objection to the argumentative question>.

argumentative instruction. See JURY INSTRUCTION.

argumentative question. A question in which the examiner interposes a viewpoint under the guise of asking a question. • This is considered an abuse of interrogation.

argumentum (ahr-gyoo-men-təm), *n.* [Latin] An argument. Pl. **argumenta.**

argumentum ab auctoritate (ahr-gyoo-men-təm ab awk-tor-ə-tay-tee). [Latin] An argument from authority (of a statute or case).

argumentum ab impossibili (ahr-gyoo-men-təm ab im-pah-sib-ə-lī). [Latin] An argument from impossibility.

argumentum ab inconvenienti (ahr-gyoo-men-təm ab in-kən-vee-nee-en-tī). [Latin] An argument from inconvenience; an argument that emphasizes the harmful consequences of failing to follow the position advocated.

argumentum a contrario (ahr-gyoo-men-təm ay kən-trair-ee-oh). [Latin] An argument for contrary treatment.

argumentum ad baculum (ahr-gyoo-men-təm ad bak-yə-ləm). [Latin] An argument depending on physical force to back it up.

argumentum ad captandum (ahr-gyoo-men-təm ad kap-tan-dəm). [Latin] An argument appealing to the emotions of a crowd.

argumentum ad crumenam (ahr-gyoo-men-təm ad kroo-mee-nəm). [fr. Latin

crumena "purse"] An argument appealing to the purse (or one's desire to save money).

argumentum ad hominem (ahr-gyoo-men-təm ad hom-ə-nəm). [Latin "argument to the man"] An argument based on disparagement or praise of another in a way that obscures the real issue.

argumentum ad ignorantiam (ahr-gyoo-men-təm ad ig-nə-ran-shee-əm). [Latin] An argument based on an adversary's ignorance of the matter in dispute.

argumentum ad invidiam (ahr-gyoo-men-təm ad in-vid-ee-əm). [Latin] An argument appealing to one's hatreds or prejudices.

argumentum ad iudicium (ahr-gyoo-men-təm ad joo-dish-ee-əm). [Latin] An argument addressed to the judgment; a proof based on knowledge or probability.

argumentum ad misericordiam (ahr-gyoo-men-təm ad miz-ə-ri-kor-dee-əm). [Latin] An argument appealing to pity.

argumentum ad populum (ahr-gyoo-men-təm ad pop-yə-ləm). [Latin] An argument appealing to the crowd.

argumentum ad rem (ahr-gyoo-men-təm ad rem). [Latin] An argument on the point at issue.

argumentum ad verecundiam (ahr-gyoo-men-təm ad ver-ə-kən-dee-əm). [Latin] An argument appealing to the listener's modesty; an argument based on the opinions of people who are considered authorities.

argumentum a simili (ahr-gyoo-men-təm ay sim-ə-lī). [Latin "argument from a like case"] An argument by analogy or similarity.

argumentum baculinum (ahr-gyoo-men-təm bak-yə-lī-nəm). [fr. Latin *baculus* "a rod or scepter"] An argument appealing to force.

argumentum ex concessio (ahr-gyoo-men-təm eks kən-ses-oh). [Latin] An argument based on an earlier admission by the adversary.

argumentum ex silentio (ahr-gyoo-men-təm eks si-len-shee-oh). [Latin] An argument from silence — i.e., based on the absence of express evidence to the contrary.

arimanni (ar-ə-man-ī), *n.* [Law Latin] *Hist.* A fine for not joining the army when summoned.

arise, vb. **1.** To originate; to stem (from) <a federal claim arising under the U.S. Constitution>. **2.** To result (from) <litigation routinely arises from such accidents>. **3.** To emerge in

one's consciousness; to come to one's attention <the question of appealability then arose>.

arising-in jurisdiction. See JURISDICTION.

aristocracy. **1.** A privileged class of persons, esp. the hereditary nobility. **2.** A government ruled by a privileged class.

aristocracy. A government consisting of both democratic and aristocratic elements; a government in which power is divided between the nobility (or more powerful group) and the rest of the people.

Arkansas rule. *Secured transactions.* The principle that the collateral securing a loan is presumed to be worth at least as much as the loan's balance, and that the creditor has the burden to prove that a sale of the collateral would not satisfy the loan amount. *Norton v. National Bank of Commerce*, 398 S.W.2d 538 (Ark. 1966).

ARM. See *adjustable-rate mortgage* under MORTGAGE.

arma (ahr-mə), *n.* [Latin] *Roman law.* **1.** Arms; weapons. **2.** Military service.

arma moluta (ahr-mə mə-loo-tə), *n.* [Law Latin] Sharp weapons that cut, as contrasted with blunt instruments that bruise or break.

arma reversata (ahr-mə ree-vər-say-tə), *n.* [Law Latin] Reversed arms. • This was a punishment for a felon or traitor.

arma vis (ahr-mə vis), *n.* [Latin] Armed force.

armaria. See ALMARIA.

armed, *adj.* **1.** Equipped with a weapon <an armed robber>. **2.** Involving the use of a weapon <armed robbery>.

armed neutrality. See NEUTRALITY.

armed peace. See PEACE.

armed robbery. See ROBBERY.

armiger (ahr-mə-jər), *n.* [Latin fr. *arma* "arms" + *gerere* "to bear"] *Hist.* **1.** One who bears arms; an armor-bearer; an esquire. **2.** A servant who carried the armor of a knight. **3.** A tenant by scutage; a valet.

arm-in-arm, *adj.* Of, relating to, or involving a transaction between parties whose personal interests are involved. Cf. ARM'S-LENGTH.

armiscara (ahr-mə-skair-ə), *n.* [Law Latin] *Hist.* **1.** A punishment consisting of carrying a saddle on one's back as a sign of subjection. **2.** A fine.

armistice. See TRUCE.

arm of the sea. The portion of a river or bay in which the tide ebbs and flows. • It may extend as far into the interior as the water of the river is propelled backward by the tide.

arm of the state. An entity created by a state and operating as an alter ego or instrumentality of the state, such as a state university or a state department of transportation. • The 11th Amendment of the U.S. Constitution generally bars suits in federal court by individuals against states. The Amendment has been interpreted as protecting arms of the state as well as the state itself. Courts usu. find an entity to be an arm of the state if it operates without substantial autonomy from state regulation. For example, cities and local school districts have been held not to be arms of the state.

arms, law of. **1.** Rules concerning conditions of war, such as the treatment of prisoners. **2.** The law relating to the right to bear arms. **3.** The law relating to armorial bearings, i.e., coats of arms granted by the College of Heraldry in England, Lord Lyon King of Arms in Scotland, and corresponding officers in some other countries.

arms, right to bear. See RIGHT TO BEAR ARMS.

arms control. *Int'l law.* A policy of minimizing instabilities in the military field by lessening the possibility of the outbreak of war while reducing in number a country's weapons of mass destruction. Cf. DISARMAMENT.

arm's-length, *adj.* Of or relating to dealings between two parties who are not related or not on close terms and who are presumed to have roughly equal bargaining power; not involving a confidential relationship <an arm's-length transaction does not create fiduciary duties between the parties>. Cf. ARM-IN-ARM.

army. **1.** A military force, esp. of ground troops. **2.** Any substantial group of individuals armed for combat. **3.** A vast, organized group.

regular army. The permanent military establishment, maintained during both war and peacetime.

arra (ar-ə), *n.* [Latin "earnest, deposit"] *Roman & civil law.* Earnest money; evidence of a completed bargain. See DENARIUS DEI.

arraignment, *n.* The initial step in a criminal prosecution whereby the defendant is brought before the court to hear the charges and to enter a plea. — **arraign**, *vb.* Cf. PRELIMINARY HEARING; *initial appearance* under APPEARANCE.

arrangement with creditors. *Bankruptcy.* A debtor's agreement with creditors for the settlement, satisfaction, or extension of time for payment of debts. See BANKRUPTCY PLAN.

arranger for disposal. *Environmental law.* An entity that owns or possesses hazardous substances, and either disposes of them or has an obligation to control them. • An arranger for disposal can be held liable for environmental cleanup costs under CERCLA.

array, *n.* **1.** A panel of potential jurors; VENIRE (1) <the array of mostly wealthy professionals seemed to favor the corporate defendant>. **2.** The jurors actually impaneled <the array hearing the case consisted of seven women and five men>. **3.** A list or roster of impaneled jurors <the plaintiff obtained a copy of the array to help prepare for voir dire>. **4.** Order; arrangement <the array of jurors from oldest to youngest>. **5.** A militia <the array organized antigovernment rallies>. **6.** A series of statistics or a group of elements <a mathematical array>.

array, *vb.* **1.** To impanel a jury for trial. **2.** To call out the names of jurors, one by one, as they are impaneled.

arrear, *n.* (*usu. pl.*) **1.** The state of being behind in the payment of a debt or the discharge of an obligation <the creditor filed a lawsuit against the debtor who was in arrears>. — Also termed *arrears*. **2.** An unpaid or overdue debt <the creditor reached an agreement with the debtor on settling the arrears>. **3.** An unfinished duty <the arrears of work have accumulated>. See IN ARREARS.

arrears. See ARREAR (1).

arrent (ə-rent), *vb.* *Hist.* To let at a fixed rent; specif., royal permission to enclose a portion of public land in exchange for annual rent.

arrest, *n.* **1.** A seizure or forcible restraint. **2.** The taking or keeping of a person in custody by legal authority, esp. in response to a criminal charge. — **arrest**, *vb.*

arrest in execution. See *arrest on final process*.

arrest in quarters. *Military law.* A nonjudicial punishment that can be given to officers and warrant officers only by a general, a flag officer in command, or an officer exercising general court-martial jurisdiction. See BREACH OF ARREST.

arrest on final process. *Hist.* Arrest in a civil case after the conclusion of a trial. — Also termed *arrest in execution*.

arrest on mesne process (meen). *Hist.* Arrest in a civil case before trial takes place.

citizen's arrest. An arrest of a private person by another private person on grounds that (1) a public offense was committed in the arrester's presence, or (2) the arrester has reasonable cause to believe that the arrestee has committed a felony.

civil arrest. *Hist.* An arrest and detention of a civil-suit defendant until bail is posted or a judgment is paid. • Civil arrest is prohibited in most states.

false arrest. An arrest made without proper legal authority. Cf. FALSE IMPRISONMENT.

house arrest. See HOUSE ARREST.

lawful arrest. The taking of a person into legal custody either under a valid warrant or on probable cause that the person has committed a crime.

malicious arrest. An arrest made without probable cause and for an improper purpose; esp., an abuse of process by which a person procures the arrest (and often the imprisonment) of the plaintiff by means of judicial process, without any reasonable cause. • Malicious arrest can be grounds for an action for abuse of process, false imprisonment, or malicious prosecution.

parol arrest (pə-rohl or par-əl). An arrest ordered by a judge or magistrate from the bench, without written complaint, and executed immediately, such as an arrest of a person who breaches the peace in open court. See CONTEMPT.

pretextual arrest. An arrest of a person for a minor offense for the opportunity to investigate the person's involvement in a more serious offense for which there are no lawful grounds to make an arrest. — Also termed *pretext arrest*.

rearrest. A warrantless arrest of a person who has escaped from custody, violated parole or probation, or failed to appear in court as ordered.

warrantless arrest. An arrest, without a warrant, based on probable cause of a felony, or for a misdemeanor committed in a police officer's presence. See WARRANT.

3. Maritime law. The taking of a ship into custody by virtue of a court's warrant.

arrestable offense. See OFFENSE (1).

arrestandis bonis ne dissipentur. See DE ARRESTANDIS BONIS NE DISSIPENTUR.

arrestando ipsum qui pecuniam recepit. See DE ARRESTANDO IPSUM QUI PECUNIAM RECEPIT.

arrestatio (ar-ə-stay-shee-oh), *n.* [Law Latin] *Hist.* An arrest.

arrest in execution. See *arrest on final process* under ARREST.

arrest in quarters. See ARREST.

arresto facto super bonis mercatorum alienigenorum (ə-res-toh fak-toh s[y]oo-pər boh-nis mər-kə-tor-əm ay-lee-ee-ni-jə-nor-əm or al-ee-). [Latin "seizure of the goods of foreign merchants"] *Hist.* A writ to seize the goods of an alien, taken in recompense of goods taken from an English subject living abroad.

arrest of inquest. A plea that a matter proposed for inquiry has already been investigated and should therefore not be reexamined.

arrest of judgment. The staying of a judgment after its entry; esp., a court's refusal to render or enforce a judgment because of a defect apparent from the record. • At common law, courts have the power to arrest judgment for intrinsic causes appearing on the record, as when the verdict differs materially from the pleadings or when the case alleged in the pleadings is legally insufficient. Today, this type of defect must typically be objected to before trial or before judgment is entered, so that the motion in arrest of judgment has been largely superseded.

"An arrest of judgment [under common law] was the technical term describing the act of a trial judge refusing to enter judgment on the verdict because of an error appearing on the face of the record that rendered the judgment invalid." *United States v. Sisson*, 399 U.S. 267, 280-81, 90 S.Ct. 2117, 2125 (1970).

arrest on final process. See ARREST.

arrest on mesne process. See ARREST.

arrest record. **1.** A form completed by a police officer when a person is arrested. **2.** A cumulative list of the instances when a person has been arrested. — Also termed *police blotter*; *bench blotter*; *blotter*.

arrest warrant. See WARRANT (1).

arret (ah-ret or -ray). [French] *Civil law.* A judgment, sentence, or decree of a court with competent jurisdiction.

arretted (ə-ret-id), *adj.* [Law French] (Of an accused) brought before a judge and charged with a crime.

arriage and carriage (ar-ij). *Hist.* Indefinite services formerly demandable from tenants, but prohibited by statute in the 18th century.

arrière-ban (ah-ree-air-bahn or ar-ee-air-ban), *n.* [French] *Hist.* **1.** A king's proclamation summoning vassals to military service. **2.** The group of vassals so summoned.

arriere fee. See *arriere fee* under FEE (2).

arriere fief. See FIEF.

arriere vassal. See VASSAL.

arrogation (ar-ə-gay-shən), *n.* **1.** The act of claiming or taking something without the right to do so <some commentators argue that limited military actions unilaterally ordered by the President are an arrogation of Congress's power to declare war>. **2. Roman & civil law.** The adoption of an adult; specif., the adoption of a person sui juris, as a result of which the adoptee loses independence and comes within the paternal power (*patria potestas*) of the adopting father. — **arrogate**, *vb.*

arser in le main (ahr-say an lə man or an lə man), *n.* [French "burning in the hand"] *Hist.* A punishment of burning or branding the left thumb of a lay offender who falsely claimed and was allowed the benefit of clergy, so that the offender would be distinguished if he tried to claim the benefit again. — Also termed *arsure en le main* (ahr-soor awn lə man or awn lə man).

arson, n. **1.** At common law, the malicious burning of someone else's dwelling house or out-house that is either appurtenant to the dwelling house or within the curtilage.

"At common law, arson is the wilful and malicious burning of the dwelling house of another. It may occur during the nighttime or the daytime, and it is an offense against the security of habitation or occupancy, rather than against ownership or property." 3 Charles E. Torcia, *Wharton's Criminal Law* § 334, at 324-25 (15th ed. 1995).

2. Under modern statutes, the intentional and wrongful burning of someone else's property (as to destroy a building) or one's own property (as to fraudulently collect insurance). — Also termed (in sense 2) *statutory arson*. Cf. HOUSEBURNING.

"The term 'statutory arson' is employed to designate the entire area of statutory proscription which is analogous to, but does not constitute, common-law arson. It is important to have mutually-exclusive labels here not only for the reasons mentioned in the preceding section, but because some of the state statutes provide a penalty for arson without defining the word and hence adopt the common-law definition." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 287 (3d ed. 1982).

"(1) Arson. A person is guilty of arson, a felony of the second degree, if he starts a fire or causes an explosion with the purpose of: (a) destroying a building or occupied structure of another; or (b) destroying or damaging any property, whether his own or another's, to collect insurance for such loss. It shall be an affirmative defense to prosecution under this paragraph that the actor's conduct did not recklessly endanger any building or occupied structure of another or place any other person in danger of death or bodily injury." Model Penal Code § 220.1 (1997).

aggravated arson. Arson accompanied by some aggravating factor, as when the offender foresees or anticipates that one or more persons will be in or near the property being burned.

arsonable, adj. (Of property) of such a nature as to give rise to a charge of arson if maliciously burned <only real property, and not personal property, is arsonable>.

arson clause. An insurance-policy provision that excludes coverage of a loss due to fire if the insured intentionally started the fire.

arsonist. One who commits arson; INCENDIARY (1).

arsonous, adj. Of, relating to, or involving arson <an arsonous purpose>.

arsura (ahr-s[y]oor-ə), *n.* [Law Latin] *Hist.* **1.** The trial of money by heating it after it is coined. **2.** The loss in weight from this process.

arsure en la main (ahr-soor awn lah man), *n.* [Law French] See ARSER IN LE MAIN.

art. 1. The methodical application of knowledge or skill in creating something. **2.** An occupation or business that requires skill; a craft. **3. Patents.** A process or method that produces a beneficial physical effect.

analogous art. The technique or method that is reasonably related to the problem addressed by the invention, and with which the inventor is assumed to be familiar. — Also termed *pertinent art*. See NONOBVIOUSNESS.

prior art. Knowledge that is available, including what would be obvious from it, at a given time to a person of ordinary skill in an art; esp., the body of previously patented inventions that the patent office or court analyzes before granting or denying a patent to a comparable invention.

relevant art. Art to which one can reasonably be expected to look for a solution to the problem that a patented device attempts to solve. ● The term includes not only knowledge about a problem in a particular industry, but also knowledge accumulated in scientific fields whose techniques have been commonly employed to solve similar problems. — Also termed *pertinent art*.

4. Hist. In a seduction case, the skillful and systematic coaxing of another to engage in sexual activity.

artful pleading. See PLEADING (2).

article, n. **1.** Generally, a particular item or thing <article of clothing>.

proprietary article. (*often pl.*) A product manufactured under an exclusive right to sell it.

2. A separate and distinct part (as a clause or stipulation) of a writing, esp. in a contract, statute, or constitution <Article III>. **3. (pl.)** An instrument containing a set of rules or stipulations <articles of war> <articles of incorporation>. **4.** A nonfictional literary composition forming an independent part of a publication, such as a law review or journal <a well-researched article>.

article, vb. **1.** To bring charges against by an exhibition of articles. **2.** To be an articulated clerk.

Article I court. See *legislative court* under COURT.

Article II judge. A U.S. bankruptcy judge or magistrate judge appointed for a term of years as authorized by Congress under Article II of the U.S. Constitution. 28 USCA §§ 151 et seq., 631 et seq.

Article III Court. A federal court that, deriving its jurisdiction from U.S. Const. art. III, § 2, hears cases arising under the Constitution and the laws and treaties of the United States, cases in which the United States is a party, and cases between the states and between citizens of different states.

Article III judge. A U.S. Supreme Court, Court of Appeals, or District Court judge appointed for life under Article III of the U.S. Constitution.

Article 15. See *nonjudicial punishment* under PUNISHMENT.

articled clerk. *English law.* A clerk who works for a solicitor in exchange for learning the profession; a clerk bound by articles of apprenticeship.

article of manufacture. See MANUFACTURE.

articles of amendment. A document filed to effectuate an amendment or change to a corporation's articles of incorporation.

articles of apprenticeship. *Hist.* A contract under which a minor agrees to work for a master for a specified time in exchange for learning a trade.

articles of association. 1. ARTICLES OF INCORPORATION. **2.** A document — similar to articles of incorporation — that legally creates a non-stock or nonprofit organization.

Articles of Confederation. The instrument that governed the association of the 13 original states from March 1, 1781 until the adoption of the U.S. Constitution. • They were prepared by the Continental Congress, submitted to the states in 1777, and later ratified by representatives of the states empowered by their respective legislatures for that purpose.

articles of dissolution. A document that a dissolving corporation must file with the appropriate governmental agency, usu. the secretary

of state, after the corporation has settled all its debts and distributed all its assets.

articles of impeachment. A formal document alleging the specific charges against a public official and the reasons for removing that official from office. • It is similar to an indictment in a criminal proceeding. See IMPEACHMENT.

articles of incorporation. A document that sets forth the basic terms of a corporation's existence, including the number and classes of shares and the purposes and duration of the corporation. • In most states, the articles of incorporation are filed with the secretary of state as part of the process of forming the corporation. In some states, the articles serve as a certificate of incorporation and are the official recognition of the corporation's existence. In other states, the government issues a certificate of incorporation after approving the articles and other required documents. — Also termed *articles of association; articles of organization; certificate of incorporation*. Cf. BYLAW (1); CHARTER (3).

articles of organization. See ARTICLES OF INCORPORATION.

articles of partnership. See PARTNERSHIP AGREEMENT.

Articles of the Clergy. *Hist.* A statute enacted in 1315 to settle the jurisdictions of the ecclesiastical and temporal courts. — Also termed *Articuli Cleri*.

articles of the eyre (air). *Hist.* A series of questions put to the members of a community by the justices in eyre to discover what breaches of the law had occurred during the court's absence. • The inquiry enabled the justices to fine criminal behavior and to raise revenue for the Crown through the levying of penalties. See EYRE. Cf. CHAPTER.

articles of the peace. *English law.* A sworn complaint in which a person alleges that a named person poses a threat to the complainant's person, family, or property.

articles of union. *Hist.* The 25 articles agreed to by the English and Scottish parliaments in 1707 for the union of the two kingdoms.

Articles of War. The body of laws and procedures that governed the U.S. military until replaced in 1951 by the Uniform Code of Military Justice.

articulated pleading. See PLEADING (1).

articuli (ahr-tik-yə-lī), *n.* [Latin] Articles; items. • This term was applied to several English statutes and treatises.

Articuli Cleri (ahr-tik-yə-lī kleeer-ī). [Law Latin] See ARTICLES OF THE CLERGY.

articuli magnae chartae (ahr-tik-yə-lī mag-nee kahr-tee), *n.* [Latin] *Hist.* The 49 preliminary articles on which Magna Carta was founded.

Articuli super Cartas (ahr-tik-yə-lī s[y]oo-pər kahr-təs). [Law Latin “articles upon the charters”] *Hist.* A statute passed in 1300 to confirm and enlarge many particulars of Magna Carta and the Forest Charter.

articulo mortis. See IN ARTICULO MORTIS.

artifice (ahr-tə-fis). A clever plan or idea, esp. one intended to deceive.

artificer. **1.** A skilled worker, such as a mechanic or craftsman; an artisan. **2.** One who builds or contrives; an inventor.

artificial condition. See CONDITION (5).

artificial day. See DAY.

artificial force. *Patents.* A natural force so transformed in character or energies by human power that it is something new.

artificial person. See PERSON.

artificial presumption. See *presumption of law* under PRESUMPTION.

artificial succession. See SUCCESSION (4).

artificial watercourse. See WATERCOURSE.

artisan's lien. See *mechanic's lien* under LIEN.

a rubro ad nigrum (ay roo-broh ad nī-grəm). [Latin] From the red to the black — i.e., from the title of a statute (formerly often printed in red letters) to its body (often printed in black letters).

as. [Latin] **1.** *Roman law.* A pound weight or a coin weighing a pound, divisible into 12 parts, called *unciae*. • *As* and the multiples of its

unciae were used to denote interest rates. See UNCIA. **2.** *Roman & civil law.* A whole inheritance; the whole of an asset.

as-applied challenge. See CHALLENGE (1).

ascendant (ə-sen-dənt), *n.* One who precedes in lineage, such as a parent or grandparent. — Also termed *ancestor*. — **ascendant**, *adj.* Cf. DESCENDANT.

collateral ascendant. Loosely, an aunt, uncle, or other relative who is not strictly an ancestor. — Also termed *collateral ancestor*.

ascent. The passing of an estate upwards to an heir in the ascending line. Cf. DESCENT.

ascriptitius (as-krip-tish-ee-əs), *n.* [Latin] *Roman law.* An alien who had been registered and naturalized in the colony where the person resided. — Also spelled *ascripticius*.

ASE. *abbr.* AMERICAN STOCK EXCHANGE.

as-extracted collateral. See COLLATERAL.

Ashwander rules. A set of principles outlining the U.S. Supreme Court's policy of deciding constitutional questions only when necessary, and of avoiding a constitutional question if the case can be decided on the basis of another issue. • These rules were outlined in Justice Brandeis's concurring opinion in *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 56 S.Ct. 466 (1936). They include the policy that the court should not decide a constitutional question in a friendly suit, should not anticipate a question of constitutional law, should not create a rule of constitutional law that is broader than that called for by the facts of the case, should not decide a constitutional issue if the case can be decided on another ground, should not rule on the constitutionality of a statute unless the plaintiff is harmed by the statute or if the plaintiff has accepted the benefits of the statute, and should not rule on the constitutionality of an act of Congress without first analyzing whether the act can be fairly construed in a way that would avoid the constitutional question. — Also termed *Brandeis rules*.

as is, *adv. & adj.* In the existing condition without modification <the customer bought the car as is>. • Under UCC § 2-316(3)(a), a seller can disclaim all implied warranties by stating that the goods are being sold “as is” or “with all faults.” Generally, a sale of property

"as is" means that the property is sold in its existing condition, and use of the phrase *as is* relieves the seller from liability for defects in that condition. — Also termed *with all faults*.

as-is warranty. See WARRANTY (2).

asked price. See PRICE.

asking price. See PRICE.

as of. On; at. • This is often used to signify the effective legal date of a document, as when the document is backdated or the parties sign at different times <the lease commences as of June 1>.

as of right. By virtue of a legal entitlement <the case is not one triable to a jury as of right>.

as per. In accordance with; PER (3). • This phrase has traditionally been considered a barbarism, *per* being the preferred form in commercialese <per your request>. But even *per* can be improved on <as you requested>.

asportation (as-pər-tay-shən), *n.* The act of carrying away or removing (property or a person). • Asportation is a necessary element of larceny. — Also termed *carrying away*. — **asport**, *vb.* See LARCENY.

"There is no larceny unless the personal goods of another which have been taken by trespass are 'carried away,' but this technical requirement may be satisfied by a very slight movement. There must be 'asportation,' to use the word commonly found in the early cases, but the slightest start of the carrying-away movement constitutes asportation." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 323 (3d ed. 1982).

"To constitute larceny, there must be a taking or caption and carrying away or asportation of the property of another. There is a caption when the defendant takes possession. He takes possession when he exercises dominion and control over the property. There is an asportation when he carries away the property; any carrying away movement, however slight, is sufficient. An asportation presupposes a prior caption; therefore, there can be no asportation unless there has first been a caption." 3 Charles E. Torcia, *Wharton's Criminal Law* § 357, at 412-13 (15th ed. 1995).

asportavit (as-por-tay-vit). [Law Latin] He carried away.

ASR. *abbr.* ACCOUNTING SERIES RELEASE.

assart. *Hist.* 1. The action of pulling up trees and bushes in a forest to make the land arable. • This was a crime if done without a license. 2.

A piece of land made arable by clearing a forest.

assassination, *n.* The act of deliberately killing someone, esp. a public figure, usu. for hire or for political reasons. — **assassinate**, *vb.* — **assassin**, *n.*

assault, *n.* 1. *Criminal & tort law.* The threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact; the act of putting another person in reasonable fear or apprehension of an immediate battery by means of an act amounting to an attempt or threat to commit a battery. 2. *Criminal law.* An attempt to commit battery, requiring the specific intent to cause physical injury. — Also termed (in senses 1 and 2) *simple assault*. 3. Loosely, a battery. 4. Popularly, any attack. — **assault**, *vb.* — **assaultive**, *adj.* Cf. BATTERY.

"Ordinary usage creates a certain difficulty in pinning down the meaning of 'assault.' Etymologically, the word is compounded of the Latin *ad* + *saltare*, to jump at. In popular language, it has always connoted a physical attack. When we say that D assaults V, we have a mental picture of D attacking V, by striking or pushing or stabbing him. In the middle ages, however, the terms 'assault' and 'battery' were given technical meanings which they have retained ever since. It became settled that though an assault could be committed by physical contact, it did not require this, since a show of force raising an apprehension in the mind of the victim was sufficient. Also, a 'battery' did not require an actual beating; the use of any degree of force against the body would suffice. The acts of spitting on a person and kissing without consent are both batteries." Glanville Williams, *Textbook of Criminal Law* 135-36 (1978).

"In addition to the classic definitions of assault, some jurisdictions have used assault as a generic term to describe either assault or battery. Thus, a defendant who intentionally injures somebody may be convicted of assault rather than battery." Arnold H. Loewy, *Criminal Law in a Nutshell* 57 (2d ed. 1987).

aggravated assault. Criminal assault accompanied by circumstances that make it more severe, such as the use of a deadly weapon, the intent to commit another crime, or the intent to cause serious bodily harm.

"The common law did not include any offense known as 'aggravated assault.' However, it did make provision for certain situations in this field, under other names. If, for example, the intended application of force to the person would have resulted in murder, mayhem, rape or robbery, if successful, and the scheme proceeded far enough to constitute an attempt the prosecution was for an attempt to commit the intended felony." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 180 (3d ed. 1982).

assault purpensé (ə-sawlt poor-pawn-say). *Hist.* Premeditated assault. — Also termed

assultus premeditatus (ə-səl-təs pree-med-ə-tay-tis).

"Even before the conquest, . . . deliberately planned assassinations came to be distinguished and put into the list of Crown pleas as *forsteal*. The original sense of this word was lying in wait to ambush the victim. After the conquest this is expressed in various terms in French and Latin, but frequently takes the form of *assault purpensé*, or *assultus premeditatus*. In time this yields before *malitia excogitata*, and so introduces us to the very troublesome word 'malice'." Theodore F.T. Plucknett, *A Concise History of the Common Law* 444 (5th ed. 1956).

assault to rape. See *assault with intent to commit rape*.

assault with a deadly weapon. An aggravated assault in which the defendant, controlling a deadly weapon, threatens the victim with death or serious bodily injury. — Also termed *felonious assault*.

assault with intent. Any of several assaults that are carried out with an additional criminal purpose in mind, such as assault with intent to murder, assault with intent to rob, assault with intent to rape, and assault with intent to inflict great bodily injury. • These are modern statutory inventions that are often found in state criminal codes.

assault with intent to commit rape. An assault carried out with the additional criminal purpose of intending to rape the victim. — Also termed *assault to rape*.

attempted assault. An attempt to commit an assault. — Also termed *attempt to assault*.

"[I]t is apparent that reference may be made to an 'attempt to assault' without logical absurdity. There is nothing absurd in referring to an attempt to frighten, which would constitute, if successful, a criminal assault in most jurisdictions. . . . It is not surprising, therefore, that there is a tendency to break away from the ancient view that there is no such offense known to the law as an attempt to commit an assault." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 168 (3d ed. 1982).

"By far the most interesting cases in this area are the attempted assault cases. Where assault is defined as intentionally putting another in fear of a battery, there is of course no basis for denying the possibility of an attempt. Where, however, assault is defined as an attempted battery, attempted assault looks very much like the forbidden 'attempt to attempt' a battery. For this reason some courts have held that there is no such crime as attempted assault. Other courts, however, have held that an attempted assault can exist, defining it as an attempted battery which has not progressed far enough to be an assault." Arnold H. Loewy, *Criminal Law in a Nutshell* 223-24 (2d ed. 1987).

civil assault. An assault considered as a tort and not as a crime. • Although the same assaultive conduct can be both a tort and a

crime, this term isolates the legal elements that give rise to civil liability.

conditional assault. An assault expressing a threat on condition, such as "your money or your life."

criminal assault. An assault considered as a crime and not as a tort. • This term isolates the legal elements that give rise to criminal liability even though the act might also have been tortious.

excusable assault. An assault committed by accident or while doing a lawful act by lawful means, with ordinary caution and without any unlawful intent.

felonious assault. An assault that is of sufficient severity to be classified and punished as a felony. See *aggravated assault*.

indecent assault. See *sexual assault*.

malicious assault with a deadly weapon. An aggravated assault in which the victim is threatened with death or serious bodily harm from the defendant's use of a deadly weapon. • Malice is inferred from both the nature of the assault and the weapon used.

sexual assault. 1. Sexual intercourse with another person without that person's consent. • Several state statutes have abolished the crime of rape and replaced it with the offense of sexual assault. 2. Offensive sexual contact with another person, exclusive of rape. — Also termed (in sense 2) *indecent assault*. Cf. RAPE.

simple assault. 1. ASSAULT (1). 2. ASSAULT (2).

"(1) Simple Assault. A person is guilty of assault if he: (a) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or (b) negligently causes bodily injury to another with a deadly weapon; or (c) attempts by physical menace to put another in fear of imminent serious bodily injury." Model Penal Code § 211.1 (1997).

assault and battery. Loosely, a criminal battery. See BATTERY.

assaultee. A person who is assaulted.

assaulter. A person who assaults another.

assault purpensé. See ASSAULT.

assault to rape. See *assault with intent to commit rape* under ASSAULT.

assault with a deadly weapon. See ASSAULT.

assault with intent. See ASSAULT.

assault with intent to commit rape. See ASSAULT.

assay, n. 1. A proof or trial, by chemical experiments, of the purity of metals, esp. gold and silver. 2. An examination of weights and measures.

assayator regis. See ASSAYER OF THE KING.

assayer. One who makes assays of precious metals.

assayer of the king. *Hist.* An officer of the royal mint, appointed by St. 2 Hen. 6, ch. 12, who receives and tests bullion taken in for coining. — Also termed *assayator regis*.

assurare (ə-sek-yə-rair-ee), *vb.* [Law Latin] *Hist.* To make secure, as by pledges.

assurance (ə-sek-yə-ray-shən). *Marine insurance.* Insurance.

assuror (ə-sek-yə-ray-tər). *Marine insurance.* An insurer.

assembly. 1. A group of persons organized and united for some common purpose.

riotous assembly. *Hist.* An unlawful assembly of 12 or more persons causing a disturbance of the peace.

unlawful assembly. A meeting of three or more persons who intend either to commit a violent crime or to carry out some act, lawful or unlawful, that will constitute a breach of the peace. Cf. RIOT.

"An unlawful assembly differs from a riot in that if the parties assemble in a tumultuous manner, and actually execute their purpose with violence, it is a riot; but if they merely meet on a purpose, which, if executed, would make them rioters, and, having done nothing, they separate without carrying their purpose into effect, it is an unlawful assembly." 77 C.J.S. *Riot; Insurrection* § 2, at 565 (1994).

2. In many states, the lower house of a legislature.

assembly, right of. See RIGHT OF ASSEMBLY.

assent, n. Agreement, approval, or permission. — **assent, vb.** See CONSENT.

"The requirement of 'assent,' which is fundamental to the formation of a binding contract, implies in a general way that both parties to an exchange shall have a reasonably clear conception of what they are getting and what they are giving up." Marvin A. Chirelstein, *Con-*

cepts and Case Analysis in the Law of Contracts 66 (1990).

constructive assent. Assent imputed to someone based on conduct.

express assent. Assent that is clearly and unmistakably communicated.

implied assent. Assent inferred from one's conduct rather than from direct expression.

mutual assent. See MUTUAL ASSENT.

assented stock. See STOCK.

assenting-silence doctrine. The principle that an accusation will be taken as true, despite silence by the accused, if the accusation was made under circumstances in which silence can be fairly said to be an agreement. • This doctrine is usu. held to be invalid as a measure of a criminal defendant's guilt.

assertion, n. A declaration or allegation. — **assert, vb.** — **assertor, n.**

assertive conduct. See CONDUCT.

assertive question. *Civil law.* A question asked of a witness at a criminal trial, by which inadmissible evidence is sought, to provide the jury with details regarding another crime. Cf. INTERROGATIVE QUESTION.

assertory covenant. See COVENANT (1).

assertory oath (ə-sər-tə-ree). See OATH.

assessable insurance. See INSURANCE.

assessable policy. See INSURANCE POLICY.

assessable security. See SECURITY.

assessable stock. See STOCK.

assessed valuation. See VALUATION.

assessment, n. 1. Determination of the rate or amount of something, such as a tax or damages <assessment of the losses covered by insurance>. 2. Imposition of something, such as a tax or fine, according to an established rate; the tax or fine so imposed <assessment of a luxury tax>.

"There is a distinction between public improvements, which benefit the entire community, and local improvements, which benefit particular real estate or limited areas of land. The latter improvements are usually fi-

nanced by means of special, or local, assessments. These assessments are, in a certain sense, taxes. But an assessment differs from a general tax in that an assessment is levied only on property in the immediate vicinity of some local municipal improvement and is valid only where the property assessed receives some special benefit differing from the benefit that the general public enjoys." Robert Kratovil, *Real Estate Law* 465 (6th ed. 1974).

assessment for benefits. See *special assessment*.

deficiency assessment. An assessment by the IRS — after administrative review and tax-court adjudication — of additional tax owed by a taxpayer who underpaid. See TAX DEFICIENCY.

erroneous assessment. An assessment that deviates from the law and creates a jurisdictional defect, and that is therefore invalid.

excessive assessment. A tax assessment that is grossly disproportionate as compared with other assessments.

jeopardy assessment. An assessment by the IRS — without the usual review procedures — of additional tax owed by a taxpayer who underpaid, based on the IRS's belief that collection of the deficiency would be jeopardized by delay.

local assessment. A tax to pay for improvements (such as sewers and sidewalks) in a designated area, levied on property owners who will benefit from the improvements. — Also termed *local-improvement assessment*.

"Since there is [an] important and fundamental distinction between the tax in the more limited sense and the local assessment, the question often arises whether provisions in constitutions and statutes which refer by name to taxes, include also local assessments. This is primarily a question of legislative intention. In the absence of anything to show the specific intention of the legislature, the general rule is that the local assessment possesses such marked peculiarities differentiating it from the tax in the more limited sense of the term, that the use of the term 'tax' does not *prima facie* show an intention to include local assessments." 1 William H. Page & Paul Jones, *A Treatise on the Law of Taxation by Local and Special Assessments* § 39, at 67 (1909).

maintenance assessment. A charge for keeping an improvement in working condition or a residential property in habitable condition. — Also termed *maintenance fee*.

political assessment. *Hist.* A charge levied on officeholders and political candidates by a political party to defray the expenses for a political canvass.

special assessment. The assessment of a tax on property that benefits in some important way from a public improvement. — Also termed *assessment for benefits*.

3. Official valuation of property for purposes of taxation <assessment of the beach house>. — Also termed *tax assessment*. Cf. APPRAISAL. **4.** An audit or review <internal financial assessment> <environmental site assessment>. — **assess, vb.**

assessment bond. See BOND (3).

assessment company. An association that offers its members life insurance, and then pays for death losses by levying an assessment on the surviving members of the association.

assessment contract. See CONTRACT.

assessment district. See DISTRICT.

assessment for benefits. See *special assessment* under ASSESSMENT.

assessment fund. The balance of the assessments of a mutual benefit association, minus expenses, from which beneficiaries are paid.

assessment insurance. See INSURANCE.

assessment list. See ASSESSMENT ROLL.

assessment period. A taxable period.

assessment ratio. For property tax purposes, the ratio of assessed value to fair market value.

assessment roll. A record of taxable persons and property, prepared by a tax assessor. — Also termed *assessment list*.

assessment work. *Mining law.* The annual labor (such as improvements) that must be performed on an unpatented mining claim to continue to hold the claim.

assessor. 1. One who evaluates or makes assessments, esp. for purposes of taxation. — Also termed (specif.) *tax assessor. 2.* A person who advises a judge or magistrate about scientific or technical matters during a trial. See MASTER (2). — **assessorial** (as-ə-sor-ee-əl), *adj.* — **assessorship, n.**

asset. 1. An item that is owned and has value. **2.** (*pl.*) The entries on a balance sheet showing the items of property owned, including cash, inventory, equipment, real estate, accounts receivable, and goodwill. **3.** (*pl.*) All the property of a person (esp. a bankrupt or deceased person) available for paying debts.

accrued asset. An asset arising from revenues earned but not yet due.

admitted asset. An asset that by law may be included in evaluating the financial condition of an insurance company. Cf. *nonadmitted asset*.

appointive asset. An asset distributed under a power of appointment.

assets by descent. The portion of an estate that passes to an heir and is sufficient to charge the heir with the decedent's specialty debts. — Also termed *assets per descent*.

assets in hand. The portion of an estate held by an executor or administrator for the payment of debts chargeable to the executor or administrator. — Also termed *assets entre main; assets entre mains*.

asset under management. A securities portfolio for which an investment adviser provides ongoing, regular supervisory or management services.

capital asset. 1. A long-term asset used in the operation of a business or used to produce goods or services, such as equipment, land, or an industrial plant. — Also termed *fixed asset*. 2. For income-tax purposes, any of most assets held by a taxpayer except those assets specifically excluded by the Internal Revenue Code. • Excluded from the definition are, among other things, stock in trade, inventory, and property held by the taxpayer primarily for sale to customers in the ordinary course of trade or business.

commercial assets. The aggregate of available property, stock in trade, cash, and other assets belonging to a merchant.

current asset. An asset that is readily convertible into cash, such as a marketable security, a note, or an account receivable. — Also termed *liquid asset; quick asset; near money*.

"Current assets are assets expected to be converted to cash, sold, or consumed during the next twelve months, or within the business's normal operating cycle if the cycle is longer than a year. The *operating cycle* is the period from the time that cash is used to acquire goods and services, these goods and services are sold to customers, and the accounts receivable from these customers are collected in cash. For a small retail store, the operating cycle may be only a few weeks or months. For a shipbuilding company, however, the normal operating cycle could run several years." Jay Alix & Elmer E. Heupel, *Financial Handbook for Bankruptcy Professionals* § 9.2, at 354 (1991).

dead asset. A worthless asset that has no realizable value, such as an uncollectible account receivable.

earning asset. (*usu. pl.*) An asset (esp. of a bank) on which interest is received. • Banks consider loans to be earning assets.

equitable asset. An asset that is subject to payment only in a court of equity.

frozen asset. An asset that is difficult to convert into cash because of court order or other legal process.

hidden asset. An asset carried on the books at a substantially reduced or understated value that is considerably less than market value.

illiquid asset. An asset that is not readily convertible into cash, *usu.* because of (1) the lack of demand, (2) the absence of an established market, or (3) the substantial cost or time required for liquidation (such as for real property, even when it is desirable).

individual asset. (*usu. pl.*) Property belonging to a member of a partnership as personal property, apart from the firm's property.

intangible asset. An asset that is not a physical object, such as a patent, a trademark, or goodwill.

legal asset. A decedent's asset that by law is subject to the claims of creditors or legacies. — Also termed *probate asset*.

liquid asset. See *current asset*.

mass asset. An intangible asset, such as a dominant market position, that is made up of several components but that is considered a single entity for purposes of depreciation, because the loss of any component of the asset is replaced by new components, so that the whole asset has little or no fluctuation in value. • An entity with a dominant market position might lose a vendor, but because of its dominant market position is able to replace the loss with a new vendor. The market position is therefore considered a mass asset.

net assets. See NET WORTH.

net quick assets. The excess of quick assets less current liabilities. See QUICK-ASSET RATIO.

new asset. *Wills & estates.* In the administration of a decedent's estate, property that the administrator or executor receives after the time has expired to file claims against the estate.

nominal asset. An asset whose value is difficult to assess, such as a judgment or claim.

nonadmitted asset. An asset that by law may not be included in evaluating the financial condition of an insurance company because it cannot be converted quickly into cash without a financial loss. Cf. *admitted asset*.

- personal asset.** An asset in the form of money or chattels.
- probate asset.** See *legal asset*.
- quick asset.** 1. Cash and other current assets other than inventory. 2. See *current asset*.
- real asset.** An asset in the form of land.
- tangible asset.** An asset that has a physical existence and is capable of being assigned a value.
- wasting asset.** An asset exhausted through use or the loss of value, such as an oil well or a coal deposit.
- asset acquisition.** Acquisition of a corporation by purchasing all its assets directly from the corporation itself, rather than by purchasing shares from its shareholders. — Also termed *asset purchase*. Cf. SHARE ACQUISITION.
- asset allocation.** The spreading of funds between different types of investments with the intention of decreasing risk and increasing return.
- asset-backed security.** See SECURITY.
- asset-based financing.** See FINANCING.
- asset-coverage test.** *Accounting.* A bond-indenture restriction that permits additional borrowing only if the ratio of assets (typically net tangible assets) to debt (typically long-term debt) does not fall below a specified minimum.
- asset-depreciation range.** The IRS's range of depreciation lifetimes allowed for assets placed in service between 1970 and 1980 and for assets depreciated under the Modified Accelerated Cost Recovery System under the Tax Reform Act of 1986. — Abbr. ADR. See ACCELERATED COST RECOVERY SYSTEM.
- asset dividend.** See DIVIDEND.
- asset purchase.** See ASSET ACQUISITION.
- assets by descent.** See ASSET.
- assets entre main.** See *assets in hand* under ASSET.
- assets in hand.** See ASSET.
- assets per descent.** See *assets by descent* under ASSET.

asset under management. See ASSET.

asset value. See NET ASSET VALUE.

asseverate (ə-sev-ə-rayt), *vb.* To state solemnly or positively; to aver. — **asseveration** (ə-sev-ə-ray-shən), *n.* See AVERMENT.

assign, n. (*usu. pl.*) See ASSIGNEE.

assignable, adj. That can be assigned; transferable from one person to another, so that the transferee has the same rights as the transferor had <assignable right>. Cf. NEGOTIABLE.

assignable lease. See LEASE.

assigned account. See ACCOUNT.

assigned counsel. See COUNSEL.

assigned risk. See RISK.

assignee (ə-si-nee or as-ə-nee). One to whom property rights or powers are transferred by another. • Use of the term is so widespread that it is difficult to ascribe positive meaning to it with any specificity. Courts recognize the protean nature of the term and are therefore often forced to look to the intent of the assignor and assignee in making the assignment — rather than to the formality of the use of the term *assignee* — in defining rights and responsibilities. — Also termed *assign*.

absolute assignee. A person who is assigned an unqualified interest in property in a transfer of some or all of the incidents of ownership.

assignee ad interim. An assignee appointed between the time of bankruptcy and the appointment of a regular assignee.

collateral assignee. A lender who is assigned an interest in property (*usu. real property*) as security for a loan.

assignee clause. A provision of the Judiciary Act of 1789 that prevented a litigant without diversity of citizenship from assigning a claim to another who did have the required diversity. • In 1948 the assignee clause was replaced by 28 USCA § 1359, which denies federal jurisdiction when a party is improperly or collusively joined, by assignment or otherwise, merely to invoke jurisdiction.

assigner. See ASSIGNOR.

assignment, *n.* 1. The transfer of rights or property <assignment of stock options>. 2. The rights or property so transferred <the creditor took the assignment>.

"An *assignment* is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the *act* of transfer, but also the instrument by which it is effected. In these senses the word is variously applied in law." Alexander M. Burrill, *A Treatise on the Law and Practice of Voluntary Assignments for the Benefit of Creditors* § 1, at 1 (James Avery Webb ed., 6th ed. 1894).

"Negotiability differs from assignment, with which it has obvious affinities, in at least two respects. In the first place no notice need be given of the transfer of a negotiable instrument, and in the second place the transfer of such an instrument is not subject to equities. Thus whereas an assignor only transfers his rights subject to any defences which could be pleaded against him, a transfer of a negotiable instrument to someone in good faith passes a good title, free from any such defences. For instance a person who receives a cheque in good faith obtains a good title, even though the cheque may have been stolen. It is not, of course, any document which has the attributes of negotiability. Only those documents recognized by the custom of trade to be transferable by delivery (or endorsement) are negotiable. Other documents can only be transferred by assignment." P.S. Atiyah, *An Introduction to the Law of Contract* 278-79 (3d ed. 1981).

absolute assignment. An assignment that leaves the assignor no interest in the assigned property or right.

assignment in gross. A transfer of a company's trademark separately from the goodwill of the business. • Courts often hold that such an assignment passes nothing of value to the transferee.

assignment of account. An assignment that gives the assignee the right to funds in an account, usu. to satisfy a debt.

assignment of dower (*dow-ər*). The act of setting apart a widow's share of her deceased husband's real property.

assignment of income. See *assignment of wages*.

assignment of lease. An assignment in which a lessee transfers the entire unexpired remainder of the lease term, as distinguished from a sublease transferring only a portion of the remaining term.

assignment of wages. A transfer of the right to collect wages from the wage earner to a creditor. — Also termed *assignment of income*.

assignment pro tanto. An assignment that results when an order is drawn on a third party and made payable from a particular fund that belongs to the drawer. • The draw-

ee becomes an assignee with respect to the drawer's interest in that fund.

collateral assignment. An assignment of property as collateral security for a loan.

common-law assignment. An assignment for the benefit of creditors made under the common law, rather than by statute.

conditional assignment. An assignment of income (such as rent payments or accounts receivable) to a lender, made to secure a loan. • The lender receives the assigned income only if the assignor defaults on the underlying loan.

effective assignment. An assignment that terminates the assignor's interest in the property and transfers it to the assignee.

equitable assignment. An assignment that, although not legally valid, will be recognized and enforced in equity — for example, an assignment of a chose in action or of future acquisitions of the assignor. • To accomplish an "equitable assignment," there must be an absolute appropriation by the assignor of the debt or fund sought to be assigned.

fly-power assignment. A blank written assignment that, when attached to a stock certificate, renders the stock transferable.

foreign assignment. An assignment made in a foreign country or in another jurisdiction.

general assignment. Assignment of a debtor's property for the benefit of all the assignor's creditors, instead of only a few. — Also termed *voluntary assignment*. See ASSIGNMENT FOR THE BENEFIT OF CREDITORS.

gratuitous assignment. An assignment given or taken in either of two ways: (1) in exchange for a performance or return promise that would be consideration for a promise; or (2) as security for — or in total or partial satisfaction of — a preexisting obligation.

mesne assignment (*meen*). A middle or intermediate assignment; any assignment before the last one.

partial assignment. The immediate transfer of part but not all of the assignor's right.

preferential assignment. See PREFERENTIAL TRANSFER.

total assignment. An assignment empowering the assignee to enforce the entire right for the benefit of the assignor or others. • Examples are assignment to secure an obligation and assignment to a trustee.

voluntary assignment. See *general assignment*.

wage assignment. An assignment by an employee of a portion of the employee's pay to another (such as a creditor).

3. The instrument of transfer <the assignment was appended to the contract>. 4. A task, job, or appointment <the student's math assignment> <assignment as ambassador to a foreign country>. 5. In litigation practice, a point that a litigant advances <the third assignment of error>.

new assignment. *Hist.* A plaintiff's restatement of a claim because the first complaint did not contain sufficient details. • The purpose was to allow a plaintiff to reply to a defendant's responsive plea that did not address the plaintiff's specific claim because the complaint was too general. New assignment has been replaced by amended pleadings. — Also termed *novel assignment*.

"A new assignment is a restatement in the replication of the plaintiff's cause of action. Where the declaration in an action is ambiguous and the defendant pleads facts which are literally an answer to it, but not to the real claim set up by the plaintiff, the plaintiff's course is to reply by way of new assignment; that is, to allege that he brought his action, not for the cause supposed by the defendant, but for some other cause, to which the plea has no application." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 214, at 370 (Henry Winthrop Ballantine ed., 3d ed. 1923).

assignment for the benefit of creditors. Assignment of a debtor's property to another person in trust so as to consolidate and liquidate the debtor's assets for payment to creditors, any surplus being returned to the debtor. • This procedure serves as a state-law substitute for federal bankruptcy proceedings. The debtor is not discharged from unpaid debts by this procedure since creditors do not agree to any discharge.

assignment of error. A specification of the trial court's alleged errors on which the appellant relies in seeking an appellate court's reversal, vacation, or modification of an adverse judgment. Pl. **assignments of error.** See ERROR. Cf. WRIT OF ERROR.

assignment of income. See *assignment of wages* under ASSIGNMENT (2).

assignment of lease. See ASSIGNMENT (2).

assignment-of-rents clause. A mortgage provision or separate agreement that entitles the lender to collect rents from the mortgaged premises if the borrower defaults.

assignment of rights. *Contracts.* The transfer of rights from a party to a contract to a third party.

assignment of wages. See ASSIGNMENT (2).

assignment pro tanto. See ASSIGNMENT (2).

assignor (as-ə-nor or ə-si-nər or ə-si-nor). One who transfers property rights or powers to another. — Also spelled *assigner*.

assignor estoppel. See ESTOPPEL.

assisa armorum (ə-si-zə ahr-mor-əm). [Law Latin "assize of arms"] *Hist.* A statute requiring the keeping of arms for the common defense.

assisa cadere (ə-si-zə kad-ə-ree), *vb.* [Law Latin] *Hist.* To fail in the assize, as by being nonsuited.

assisa continuanda (ə-si-zə kən-tin-yoo-an-də) [Law Latin] *Hist.* A writ addressed to the justices of assize for the continuation of a case.

assisa de foresta (ə-si-zə dee for-es-tə), *n.* [Law Latin "assize of the forest"] *Hist.* A statute concerning orders to be observed in the royal forest. — Also termed *ordinatio forestae*; *assisa forestae*.

assisa de mensuris (ə-si-zə dee men-s[y]oor-is), *n.* [Law Latin "assize of measures"] *Hist.* A common rule for weights and measures, established by Richard I in the eighth year of his reign.

assisa de morte antecessoris. See *assize of mort d'ancestor* under ASSIZE (6).

assisa de nocumento (ə-si-zə dee nok-yə-men-toh), *n.* [Law Latin "assize of nuisance"]. See *assize of nuisance* under ASSIZE (8).

assisa de utrum (ə-si-zə dee yoo-trəm), *n.* [Law Latin "assize of utrum"] See ASSIZE UTRUM.

assisa forestae. See ASSISA DE FORESTAE.

assisa friscæ fortiae. See *assize of fresh force* under ASSIZE (7).

assisa mortis d'ancestoris (ə-si-zə mor-tis dan-ses-tor-is), *n.* [Law Latin] See *assize of mort d'ancestor* under ASSIZE (6).

assisa novae disseysinae (ə-si-zə noh-vee di-see-zin-ee), *n.* [Law Latin] See ASSIZE OF NOVEL DISSEISIN.

assisa panis et cerevisiae (ə-si-zə pan-is et ser-ə-vish-ee-ee), *n.* [Law Latin "assize of bread and ale"] *Hist.* A statute passed in the 51st year of the reign of Henry III, regulating the sale of bread and ale. — Also termed *statute of bread and ale*.

assisa proroganda. See DE ASSISA PROROGANDA.

assisa ultimae praesentationis (ə-si-zə əl-tim-ee pree-zən-tay-shee-oh-nis or prez-ən-), *n.* [Law Latin] See *assize of darrein presentment* under ASSIZE (7).

assisa venalium (ə-si-zə və-nay-lee-əm), *n.* [Law Latin] *Hist.* The assize of salable commodities.

assise. See ASSIZE.

assiser. See ASSIZER.

assistance, writ of. See WRIT OF ASSISTANCE.

assistance of counsel. Representation by a lawyer, esp. in a criminal case. See RIGHT TO COUNSEL.

effective assistance of counsel. A conscientious, meaningful legal representation, whereby the defendant is advised of all rights and the lawyer is given reasonable opportunity to perform assigned tasks.

ineffective assistance of counsel. A representation in which the lawyer cannot devote full effort to the defendant, usu. because of a conflict of interest.

"The Sixth Amendment right to assistance of counsel has been held to imply the 'right to the effective assistance of counsel.' The Court has often said that the converse — ineffective assistance of counsel — is a constitutional denial of the Sixth Amendment right, even if the lawyer has been retained by rather than appointed for the defendant. 'Ineffective' does not necessarily mean incompetent or unprepared; it means an inability to perform as an independent lawyer devoted to the defendant. . . . However, counsel's assistance is not necessarily ineffective because the lawyer made mistakes. Only very serious errors, such as would likely have produced an entirely different outcome at trial, will suffice to require a new trial." Jethro K. Lieberman, *The Evolving Constitution* 263–64 (1992).

assisted self-determination. See *assisted suicide* under SUICIDE.

assisted suicide. See SUICIDE.

assize (ə-siz), *n.* **1.** A session of a court or council.

maiden assize. *Hist.* **1.** An assize in which no prisoner is sentenced. **2.** An assize in which the sheriff presents the judges with white gloves because there are no prisoners to try. • This practice stemmed from a custom in which a prisoner who was convicted of murder but pardoned by the Crown presented gloves to the judges as a fee.

2. A law enacted by such a body, usu. one setting the measure, weight, or price of a thing.

Assize of Clarendon (klar-ən-dən). *Hist.* A decree issued in 1166 by Henry II to the justices in eyre and sheriffs concerning criminal procedure. • The Assize expanded the reach of the king's courts by asserting royal jurisdiction over serious crimes. See CONSTITUTIONS OF CLARENDON.

Assize of Northampton. *Hist.* A decree issued in 1176 by Henry II as an expansion and reissue of the Assize of Clarendon, instructing judges esp. on questions of tenure, relief, and dower.

3. The procedure provided for by such an enactment. **4.** The court that hears cases involving that procedure. **5.** A jury.

grand assize. (*often cap.*) A sworn panel summoned by judicial writ to resolve disputes concerning real property. • Henry II instituted the Grand Assize in the 12th century as an alternative to trial by battle. — Also termed *magna assisa*.

petite assize. A jury convened to decide questions of possession.

6. A jury trial.

assize of mort d'ancestor (mor[t] dan-ses-tar). An action for the recovery of land belonging to the claimant's ancestor. • Mort d'ancestor was abolished in the early 19th century. — Also termed *assisa mortis d'ancestoris*; *assisa de morte antecessoris*.

judicial assize. An assize begun by judicial writ and deriving from pleas of *gage*, *mort d'ancestor*, and *darrein presentment*.

petty assize. An assize begun by an original writ. • Petty assizes were characterized by the form of the writ, which specified the questions to be put to the panel, and ordered that a panel be assembled. The petty assizes were *novel disseisin*, *mort d'ancestor*, *utrum*, and *darrein presentment*.

"The word 'Assisa' means originally the sitting of a court or assembly. It then comes to denote the things done, the enactments passed, at such a court or assembly. Thus we speak of the Assize of Clarendon, or the Assize of Northampton. Certain of these enactments in Henry II's reign introduced a new procedure for the trial of questions as to the ownership or possession of lands held by free tenure. The Grand Assize introduced this new procedure for the determination of questions of ownership; the possessory assizes for the determination of question of possession." 1 William Holdsworth, *A History of English Law* 275 (7th ed. 1956).

7. A jury's finding. 8. A writ. — Also spelled *assise*; *assisa*.

assize of darrein presentment (*dar-ayn pri-zen-t-mənt*), *n.* [fr. French *dernier présentation* "last presentment"] *Hist.* A writ of assize allowing a person with a right of advowson that has been disturbed by another claimant to have a jury determine who had the last right to present a clerk to a benefice and then to allow that person to present again and to recover damages for interference. • This was abolished by the Real Property Limitation Act of 1833 and was replaced by the *quare impedit* action. — Also termed *darreign presentment*; *assize of last presentation*; *assisa ultimae praesentationis*; *assize de ultima presentatione*. — Also spelled *darreign*. See ADVOWSON; QUARE IMPEDIT.

"An assise of *darrein presentment*, or last presentation, lies when a man, or his ancestors, under whom he claims, have presented a clerk to a benefice, who is instituted; and afterwards upon the next avoidance a stranger presents a clerk, and thereby disturbs him that is the real patron. In which case the patron shall have this writ, directed to the sheriff to summon an assise or jury, to enquire who was the last patron that presented to the church now vacant, of which the plaintiff complains that he is deformed by the defendant: and, according as the assise determines that question, a writ shall issue to the bishop; to institute the clerk of that patron, in whose favour the determination is made, and also to give damages . . ." 3 William Blackstone, *Commentaries on the Laws of England* 245 (1768).

"[A]t some time or another during his reign Henry gave a possessory action, the assize of darrein presentment . . . which stands to the writ of right of advowson in somewhat the same relation as that in which the novel disseisin stands to the writ of right for land. If the church is vacant and two persons are quarrelling about the advowson, it is very necessary that some provisional, some possessory judgment should be given . . . The principle of the new assize is, simply stated, this: 'He who presented last time, let him present this time also; but this without prejudice to any question of right.' An inquest of neighbours is summoned to declare who it was that presented the last parson." 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 148–49 (2d ed. 1898).

assize of fresh force. *Hist.* A writ available in urban areas to disseise another's land. •

This writ is so called because it was available only within the first 40 days after title accrued to the person seeking it. — Also termed *assisa friscaë fortiaë*.

assize of novel disseisin. *Hist.* A writ for a tenant who has been disseised of lands and tenements. — Also termed *assisa novae disseisinae*.

assize of nuisance. *Hist.* A judicial writ directing a sheriff of the county where an alleged nuisance occurred to summon a jury to view the premises and do justice. • A successful plaintiff is entitled to abate the nuisance and recover damages. — Also termed *assisa de nocumento*.

assizer, n. *Hist.* 1. A member of a grand assize. See *grand assize* under ASSIZE (5). 2. *Scots law.* A juror. 3. One having custody of the standards of weight and measure; esp., one who fixes the assize of bread, ale, and other items of general consumption. — Also spelled *assizor*; *assiser*; *assisor*.

Assizes de Jerusalem (ə-siz-əz də jə-roo-sə-ləm). A code of feudal law intended to serve as the law of the lands conquered by the Crusaders. • The code was prepared in the 12th century after the 1099 conquest of Jerusalem.

assize utrum (*yoo-trəm*). [Latin] *Hist.* A writ to determine whether land claimed by a church was a lay or spiritual tenure. • This writ is named after its emphatic word, which required the fact-finder to determine whether (*utrum*) the land belonged to the church. — Also termed (erroneously) *assize of utrum*.

"In the assize utrum a jury was summoned to decide whether land was held by lay or spiritual tenure — a preliminary question to any litigation about it, for the Church claimed jurisdiction over spiritual land. Later the Church was to lose this jurisdiction, and the assize utrum became the parson's substitute for the writ of right. This curious development was brought about in this way. A parson could not use the writs of right, for, like a life tenant, he could not trace his title back to the seisin of an ancestor. The assize utrum could be made to serve the parson, however, for the question asked in the writ was whether certain land in a parish was 'the free alms of the Church of X.' If the answer was 'yes,' then it followed that it was the parson of the parish's land." Brian Simpson, *An Introduction to the History of the Land Law* 30–31 (1961).

"[T]he 'assize utrum' . . . is important as being the first instance known to us of the general use of the royal procedure by way of inquest in a matter of private litigation. If the answer of the inquest was that this land was held in frankalmoign, then the case went to the ecclesiastical court; if that it was lay fee, then to the appropriate lay tribunal. In the course of the thirteenth century the ecclesiastical courts lost their jurisdiction

over land held by spiritual tenure, and the 'assize utrum' came to be used not as a merely preliminary procedure but as a mode of deciding in royal courts a question of title to glebe land." Geoffrey Radcliffe & Geoffrey Cross, *The English Legal System* 33-34 (G.J. Hand & D.J. Bentley eds., 6th ed. 1977).

assizor. See ASSIZER.

associate, n. **1.** A colleague or companion. **2.** A junior member of an organization or profession; esp., a lawyer in a law firm, usu. with fewer than a certain number of years in practice, who may, upon achieving the requisite seniority, receive an offer to become a partner or shareholder. **3. English law.** An officer of a common-law court responsible for maintaining the court's records, attending jury trials, and entering verdicts. • In 1894, associates' duties were taken over by the staff of the Central Office. See CLERK OF ASSIZE; CENTRAL OFFICE.

associated person. Securities. **1.** A partner, officer, director, branch manager of a broker or dealer, or any person performing similar functions or occupying a similar status, any person directly or indirectly controlling, controlled by, or under common control with the broker or dealer, or any employee of the broker or dealer — with two exceptions: (1) those whose functions are solely clerical or ministerial, and (2) those required to register under state law as a broker or dealer solely because they are issuers of securities. **2.** A natural person who is a partner, officer, director, or employee of: (1) the issuer; (2) a general partner of a limited partnership issuer; (3) a company or partnership that controls, is controlled by, or is under common control with the issuer; or (4) a registered investment adviser to a registered investment company issuer.

associate judge. See JUDGE.

associate justice. See JUSTICE (2).

association. 1. The process of mentally collecting ideas, memories, or sensations. **2.** A gathering of people for a common purpose; the persons so joined. **3.** An unincorporated business organization that is not a legal entity separate from the persons who compose it. • If an association has sufficient corporate attributes, such as centralized management, continuity of existence, and limited liability, it may be classified and taxed as a corporation. — Also termed *unincorporated association*; *voluntary association*.

benevolent association. An unincorporated, nonprofit organization that has a philanthropic or charitable purpose. — Also termed *beneficial association*, *benefit association*, *benevolent society*, *fraternal society*, *friendly society*.

homeowners' association. 1. An association of people who own homes in a given area and have united to improve or maintain the area's quality. **2.** An association formed by a land developer or homebuilder to manage and maintain property in which they own an undivided, common interest. • Homeowners' associations — which are regulated by statute in many states — are commonly formed by restrictive covenant or a declaration of restrictions. — Also spelled *homeowners association*.

professional association. 1. A group of professionals organized to practice their profession together, though not necessarily in corporate or partnership form. **2.** A group of professionals organized for education, social activity, or lobbying, such as a bar association. — Abbr. P.A.

trade association. An association of business organizations having similar concerns and engaged in similar fields, formed for mutual protection, the interchange of ideas and statistics, and the establishment and maintenance of industry standards. • A trade association may be composed of members of a single industry (e.g., the Chemical Manufacturers Association) or members having a common interest or purpose (e.g., the Consumer Mortgage Coalition). Among the joint actions that a trade association often takes are collecting industry data, advertising, marketing, and engaging in public relations and government relations.

association-in-fact enterprise. Under RICO, a group of people or entities that have not formed a legal entity, but that have a common or shared purpose, and maintain an ongoing organizational structure through which the associates function as a continuing unit. • A RICO violation is not shown merely by proving that an enterprise, including an association-in-fact, exists. A pattern of racketeering activity must also be proved. 18 USCA § 1961(4); *United States v. Turkette*, 452 U.S. 576, 101 S.Ct. 2524 (1981).

Association of American Law Schools. An organization of law schools that have each graduated at least three annual classes of students. — Abbr. AALS.

assoil (ə-soyl), *vb.* [Law French] *Hist.* To acquit or absolve; to deliver from excommunication. — Also spelled *assoile*. — Also termed *absoile*; *assoilye*.

assultus premeditatus. See *assault purpensé* under ASSAULT.

assumed bond. See *guaranteed bond* under BOND (3).

assumed name. 1. ALIAS (1). 2. The name under which a business operates or by which it is commonly known <Antex Corporation's assumed name is Computer Warehouse>. • Many states require an individual or business operating under an assumed name to file an assumed-name certificate, usu. in the secretary of state's office or the county clerk's office where the principal place of business is located. See D/B/A. Cf. *corporate name* under NAME.

assumpsit (ə-səm[p]-sit). [Law Latin "he undertook"] 1. An express or implied promise, not under seal, by which one person undertakes to do some act or pay something to another <an assumpsit to pay a debt>. 2. A common-law action for breach of such a promise or for breach of a contract <the creditor's assumpsit against the debtor>.

"It was early known as 'trespass on the case upon promises,' but in time came to be designated *assumpsit* (he assumed or promised), and lies for damages for breach of all contracts, parol or simple, whether written or verbal, express or implied." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 9-10 (2d ed. 1899).

"In its origin an action of tort, [assumpsit] was soon transformed into an action of contract, becoming afterwards a remedy where there was neither tort nor contract. Based at first only upon an express promise, it was afterwards supported upon an implied promise, and even upon a fictitious promise. Introduced as a special manifestation of the action on the case, it soon acquired the dignity of a distinct form of action, which superseded Debt, became concurrent with Account, with Case upon a bailment, a warranty, and bills of exchange, and competed with Equity in the case of the essentially equitable quasi-contracts growing out of the principle of unjust enrichment. Surely, it would be hard to find a better illustration of the flexibility and power of self-development of the Common Law." James Barr Ames, "The History of Assumpsit," in 3 *Select Essays in Anglo-American Legal History* 298 (1909).

general assumpsit. An action based on the defendant's breach of an implied promise to pay a debt to the plaintiff. — Also termed *common assumpsit*; *indebitatus assumpsit*.

"General assumpsit is brought for breach of a fictitious or implied promise raised by law from a debt founded upon an executed consideration. The basis of the action

is the promise implied by law from the performance of the consideration, or from a debt or legal duty resting upon the defendant." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 59, at 153 (Henry Winthrop Ballantine ed., 3d ed. 1923).

indebitatus assumpsit (in-deb-i-tay-təs ə-səm[p]-sit). [Latin "being indebted, he undertook"] 1. *Hist.* A form of action in which the plaintiff alleges that the defendant contracted a debt and, as consideration, had undertaken (i.e., promised) to pay. • The action was equivalent to the common-law action for debt (an action based on a sealed instrument), but could be used to enforce an oral debt. *Indebitatus assumpsit* was abolished in 1873 by the Judicature Act. See CONCESSIT SOLVERE. 2. See *general assumpsit*.

"[I]f I verbally agree to pay a man a certain price for a certain parcel of goods, and fail in the performance, an action of debt lies against me; for this is a *determinate* contract: but if I agree for no settled price, I am not liable to an action of debt, but a special action on the case, according to the nature of my contract. And indeed actions of debt are now seldom brought but upon special contracts under seal . . . [T]he plaintiff must recover the whole debt he claims, or nothing at all. For the debt is one single cause of action, fixed and determined; and which therefore, if the proof varies from the claim, cannot be looked upon as the same . . . action of debt. . . . But in an action on the case, on what is called an *indebitatus assumpsit*, which is not brought to compel a specific performance of the contract, but to recover damages for its non-performance, the implied *assumpsit*, and consequently the damages for the breach of it, are in their nature indeterminate; and will therefore adapt and proportion themselves to the truth of the case which shall be proved, without being confined to the precise demand stated in the declaration." 3 William Blackstone, *Commentaries on the Laws of England* 154 (1768).

special assumpsit. An action based on the defendant's breach of an express contract. — Also termed *express assumpsit*.

"Special assumpsit lies for the recovery of damages for the breach of simple contract, either express or implied in fact. The term 'special contract' is often used to denote an express or explicit contract as contrasted with a promise implied in law." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 58, at 148 (Henry Winthrop Ballantine ed., 3d ed. 1923).

assumption, n. 1. A fact or statement taken for granted; a supposition <a logical assumption>. 2. The act of taking (esp. someone else's debt or other obligation) for or on oneself; the agreement to so take <assumption of a debt>. — **assume, vb.**

implied assumption. The imposition of personal liability on a land purchaser who buys subject to a mortgage and who deducts the mortgage amount from the purchase price, so that the purchaser is treated as having assumed the debt.

assumption clause. **1.** A mortgage provision that prohibits another from assuming the mortgage without the permission of the mortgagee. **2.** A provision by which the transferee of an instrument agrees to assume an obligation of the transferor.

assumption fee. A lender's charge for processing records for a new buyer's assumption of an existing mortgage.

assumption of the risk. *Torts.* **1.** The act or an instance of a prospective plaintiff's taking on the risk of loss, injury, or damage <the skydiver's assumption of the risk>. — Also termed *assumption of risk*.

"[Assumption of risk] has been a subject of much controversy, and has been surrounded by much confusion, because 'assumption of risk' has been used by the courts in several different senses, which traditionally have been lumped together under the one name, often without realizing that any differences exist. There are even courts which have limited the use of the term 'assumption of risk' to cases in which the parties stand in the relation of master and servant, or at least some other contractual relation; but they have been compelled to invent other names for other cases, such as 'incurred risk,' or 'volenti non fit injuria.' This appears to be largely a distinction without a difference; and most courts have made general use of the one term. . . . In its most basic sense, assumption of risk means that the plaintiff, in advance, has given his express consent to relieve the defendant of an obligation of conduct toward him, and to take his chances of injury from a known risk arising from what the defendant is to do or leave undone." W. Page Keeton et al., *The Law of Torts* § 68, at 480-81 (5th ed. 1984).

2. The principle that one who has taken on oneself the risk of loss, injury, or damage consequently cannot maintain an action against the party having caused the loss <assumption of the risk was not a valid defense>. • Assumption of the risk was originally an affirmative defense, but in most jurisdictions it has now been wholly or largely subsumed by the doctrine of contributory or comparative negligence. The risk assumed by the person was often termed an *incurred risk*.

assurance, n. **1.** Something that gives confidence; the state of being confident or secure <self-assurance>. **2.** A pledge or guarantee <adequate assurances of the borrower's solvency>. **3.** The act of transferring real property; the instrument by which it is transferred <the owner's assurance of the farm to his son>. **4.** *English law.* See *life insurance* under INSURANCE <she obtained assurance before traveling abroad, naming her husband as the beneficiary>. — **assure, vb.**

collateral assurance. A pledge made in addition to the principal assurance of an agreement.

common assurance. See MUNIMENT OF TITLE.

further assurance. A covenant contained in a warranty deed whereby the grantor promises to execute any document that might be needed in the future to perfect the title that the original deed purported to transfer.

assured, n. *Insurance.* One who is indemnified against loss; INSURED.

assurer. See INSURER.

as their interests may appear. See ATIMA.

astipulation (as-tip-yə-lay-shən). *Archaic.* Agreement; assent.

astitution (as-tə-t[y]oo-shən). *Archaic.* See ARRIGNMENT.

astrarius (as-trair-ee-əs), *n.* [Law Latin "hearth owner"] *Hist.* The owner or occupant of a house. — Also termed *astrer* (as-trər). See *heres astrarius* under HERES.

astronomical day. See *solar day* (2) under DAY.

asylee (ə-sī-lee). A refugee applying for asylum; an asylum-seeker.

asylum. **1.** A sanctuary or shelter. **2.** Protection of usu. political refugees from arrest by a foreign jurisdiction; a nation or embassy that affords such protection. — Also termed *political asylum*. **3.** An institution for the protection and relief of the unfortunate, esp. the mentally ill. — Also termed (in sense 3) *insane asylum*.

atamita (ə-tam-i-tə), *n.* [Latin] *Civil law.* A great-great-great-grandfather's sister.

atavia (ə-tay-vee-ə), *n.* [Latin] *Roman & civil law.* A great-great-great-grandmother.

atavunculus (at-ə-vəŋk-yə-ləs), *n.* [Latin] *Civil law.* A great-great-great-grandfather's brother.

atavus (at-ə-vəs), *n.* [Latin] *Roman & civil law.* The male ascendant in the fifth degree; a great-grandfather's or great-grandmother's grandfather; a fourth grandfather.

at bar. Now before the court <the case at bar>. — Also termed *at bench*; *at the bar*.

at bench. See AT BAR.

at equity. According to equity; by, for, or in equity.

a terme (a *tairm*). [Law French] For a term.

a terme de sa vie (a *tairm* də sa *vee*). [Law French] For the term of his life.

a terme que n'est mye encore passe (a *tairm* kə nay mee *awn-kor pahs*). [Law French] For a term that has not yet passed.

a terme que passe est (a *tairm* kə *pahs ay*). [Law French] For a term that has passed.

Atilian law. See LEX ATILIA.

ATIMA (ə-*tee*-mə). *abbr.* As their interests may appear. • The phrase is sometimes used in insurance policies to show that the named insured has an interest, usu. an unspecified one, in the property covered by the policy and is entitled to benefits to the extent of that interest. The phrase is also used in a policy's mortgage clause to protect the mortgagee's real-property interest. See INSURABLE INTEREST; MORTGAGE CLAUSE.

Atinian law. See LEX ATINIA.

at issue. Taking opposite sides; under dispute; in question <the federal appeals courts are at issue over a question of law>.

at-issue waiver. An exemption from the attorney-client privilege, whereby a litigant is considered to have waived the privilege by taking a position that cannot be effectively challenged without analyzing privileged information. Cf. OFFENSIVE-USE WAIVER.

Atlantic Reporter. A set of regional lawbooks that, being part of the West Group's National Reporter System, contain every published decision from Connecticut, Delaware, Maine, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, and Vermont, as well as the decisions of the District of Columbia Municipal Court of Appeals, from 1885 to date. • The first series ran from 1885 to 1938; the second series is the current one. — *Abbr.* A.; A.2d.

at large. 1. Free; unrestrained; not under control <the suspect is still at large>. 2. Not

limited to any particular place, person, matter, or question <at-large election>. 3. Chosen by the voters of an entire political entity, such as a state, county, or city, rather than from separate districts within the entity <councilmember at large>. 4. Not ordered in a topical way; at random <statutes at large>. 5. Fully; in detail; in an extended form <there wasn't time to discuss the issue at large>.

at-large election. See *election at large* under ELECTION.

at law. According to law; by, for, or in law.

atmatertera (at-may-tər-tər-ə), *n.* [Latin] *Civil law.* A great-great-grandmother's sister. — Also termed *abmatertera magna* (ab-may-tər-tər-ə *mag-nə*).

atort (a-*tor*), *adv.* [Law French] *Hist.* Wrongfully.

a tort et a travers (a *tor* tay a tra-*vair*). [Law French] Without consideration or discernment.

a tort ou a droit (a *tor* oo a *drwah*). [Law French] Right or wrong.

at par, *adj.* (Of a stock or bond) issued or selling at face value.

atpatruus (at-*pa*-trō-əs), *n.* [Latin] *Civil law.* A brother of a great-great-grandfather.

at-risk rules, *n. pl.* Statutory limitations of a taxpayer's deductible losses to the amount the taxpayer could actually lose, to prevent the taxpayer from sheltering income.

ATS. *abbr.* At the suit of.

attach, *vb.* 1. To annex, bind, or fasten <attach the exhibit to the pleading>. 2. To take or seize under legal authority <attach the debtor's assets>. 3. To become attributed; to adhere <jeopardy attaches when the jury is sworn>.

attaché (at-ə-*shay* or a-ta-*shay*), *n.* A person who serves as a technical adviser to an embassy.

attachamenta bonorum (ə-tach-ee-ə-men-tə bə-*nor*-əm), *n.* [Law Latin] *Hist.* A distress taken on goods and chattels by bailiffs, as security to answer an action for debt.

attachiamentum (ə-tach-ee-ə-men-təm), *n.*
[Law Latin] An attachment. Pl. **attachiamen-
ta**.

attaching creditor. See CREDITOR.

attachment. 1. The seizing of a person's prop-
erty to secure a judgment or to be sold in
satisfaction of a judgment. — Also termed (in
civil law) *provisional seizure*. Cf. GARNISHMENT;
SEQUESTRATION (1).

attachment of wages. The attachment by a
plaintiff of a defendant's earnings as an em-
ployee. • In some jurisdictions, an attach-
ment-of-earnings order requires the defend-
ant's employer to deduct a specified sum
from the defendant's wages or salary and to
pay the money into court. The court then
sends the money to the plaintiff. — Also
termed *attachment of earnings*. Cf. GARNISH-
MENT.

provisional attachment. A prejudgment at-
tachment in which the debtor's property is
seized so that if the creditor ultimately pre-
vails, the creditor will be assured of recover-
ing on the judgment through the sale of the
seized property. • Ordinarily, a hearing must
be held before the attachment takes place,
and most courts require the creditor to post a
bond for any damages that result from the
seizure (esp. if the creditor ultimately loses in
the lawsuit).

2. The arrest of a person who either is in
contempt of court or is to be held as security
for the payment of a judgment. 3. A writ
ordering legal seizure of property (esp. to satis-
fy a creditor's claim) or of a person. — Also
termed *writ of attachment*.

ancillary attachment. An attachment that
results in seizure and holding of property
pending a resolution of the plaintiff's claim.

4. The creation of a security interest in prop-
erty, occurring when the debtor agrees to the
security, receives value from the secured party,
and obtains rights in the collateral. UCC
§ 9-203. Cf. PERFECTION. 5. The act of affixing
or connecting; something (as a document) that
is affixed or connected to something else.

attachment bond. See BOND (2).

attachment lien. See LIEN.

attachment of earnings. See *attachment of
wages* under ATTACHMENT (1).

attachment of risk. The point when the risk of
loss of purchased goods passes from the seller
to the buyer. UCC § 2-509.

attachment of wages. See ATTACHMENT (1).

attainder (ə-tayn-dər), *n.* At common law, the
act of extinguishing a person's civil rights when
sentenced to death or declared an outlaw for
committing a felony or treason. — **attaint** (ə-
taynt), *vb.* See BILL OF ATTAINDER.

"The word *attainder* is derived from the Latin term
attinctus, signifying *stained* or *polluted*, and includes, in
its meaning, all those disabilities which flow from a
capital sentence. On the attainder, the defendant is
disqualified to be a witness in any court; he can bring no
action, nor perform any of the legal functions which
before he was admitted to discharge; he is, in short,
regarded as dead in law." 1 Joseph Chitty, *A Practical
Treatise on the Criminal Law* 725 (2d ed. 1826).

attaint (ə-taynt), *adj.* Stained or blackened rep-
utationally; under an attainder for crime.

attaint, n. Hist. A writ to inquire whether a
12-member jury gave a false verdict. • If it was
so found (by a 24-member jury), the judgment
based on the verdict was overturned. The writ
was abolished in England in 1826.

attempt, n. 1. The act or an instance of making
an effort to accomplish something, esp. without
success. 2. *Criminal law.* An overt act that is
done with the intent to commit a crime but
that falls short of completing the crime. • At-
tempt is an inchoate offense distinct from the
attempted crime. — Also termed (in sense 2)
criminal attempt; *offer*. See DANGEROUS-PROXIM-
ITY TEST; INDISPENSABLE-ELEMENT TEST; LAST-
PROXIMATE-ACT TEST; PHYSICAL-PROXIMITY TEST;
PROBABLE-DESISTANCE TEST. Cf. CONSPIRACY; SO-
LICITATION (2). — **attempt, vb.**

"An attempt to commit an indictable offence is itself a
crime. Every attempt is an act done with intent to
commit the offence so attempted. The existence of this
ulterior intent or motive is the essence of the at-
tempt. . . . [Yet] [a]lthough every attempt is an act done
with intent to commit a crime, the converse is not true.
Every act done with this intent is not an attempt, for it
may be too remote from the completed offence to give
rise to criminal liability, notwithstanding the criminal
purpose of the doer. I may buy matches with intent to
burn a haystack, and yet be clear of attempted arson; but
if I go to the stack and there light one of the matches,
my intent has developed into a criminal attempt." John
Salmond, *Jurisprudence* 387 (Glanville L. Williams ed.,
10th ed. 1947).

"Attempt . . . is the most common of the preliminary
crimes. It consists of steps taken in furtherance of an
indictable offence which the person attempting intends
to carry out if he can. As we have seen there can be a

long chain of such steps and it is necessary to have some test by which to decide that the particular link in the chain has been reached at which the crime of attempt has been achieved; that link will represent the *actus reus* of attempt . . .” J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 79 (16th ed. 1952).

attempted assault. See ASSAULT.

attempted monopolization. See MONOPOLIZATION.

attempted suicide. See SUICIDE.

attempt to assault. See *attempted assault* under ASSAULT.

attendance officer. See TRUANCY OFFICER.

attendant, *adj.* Accompanying; resulting <attendant circumstances>.

attendant term. See TERM (4).

attenuation doctrine (ə-ten-yə-way-shən). *Criminal procedure.* The rule providing — as an exception to the fruit-of-the-poisonous-tree doctrine — that evidence obtained by illegal means may nonetheless be admissible if the connection between the evidence and the illegal means is sufficiently attenuated or remote. See FRUIT-OF-THE-POISONOUS-TREE DOCTRINE.

atterminare (ə-tər-mi-nair-ee), *vb.* [Law Latin]
 1. To put off to a succeeding term; to adjourn.
 2. To prolong the time to pay a debt.

atterminement (ə-tər-min-mənt). The granting of a delay for some purpose; esp., the extension of time to pay a debt.

attermoient (at-ər-moy-ə-mənt). [Law French] *Eccles. law.* COMPOSITION (1).

attest (ə-test), *vb.* 1. To bear witness; testify <attest to the defendant's innocence>. 2. To affirm to be true or genuine; to authenticate by signing as a witness <attest the will>. — **attestation** (a-te-stay-shən), *n.* — **attestative** (ə-tes-tə-tiv), *adj.*

attestation clause. A provision at the end of an instrument (esp. a will) that is signed by the instrument's witnesses and that recites the formalities required by the jurisdiction in which the instrument might take effect (such as where the will might be probated). ● The attestation strengthens the presumption that all the

statutory requirements for executing the will have been satisfied. Cf. TESTIMONIUM CLAUSE.

attested copy. See *certified copy* under COPY.

attester (ə-tes-tər). One who attests or vouches for. — Also spelled *attestant*; *attestator*; *attestor*.

attesting witness. See WITNESS.

at the bar. See AT BAR.

at the courthouse door. (Of the posting of a notice of judicial sale, etc.) on the courthouse door, or in direct proximity to the door, as on a bulletin board that is located just outside the door and that is regularly used for the posting of legal notices. ● Some statutes may specify that the notice be actually posted on the door. See POSTING (5).

at-the-market price. See PRICE.

attorn (ə-törn), *vb.* 1. To agree to be the tenant of a new landlord. 2. To transfer (money, goods, etc.) to another.

attornatus (at-ər-nay-təs). [Law Latin] One who is attorned, or put in the place of another; an attorney.

attorney. 1. Strictly, one who is designated to transact business for another; a legal agent. — Also termed *attorney-in-fact*; *private attorney*. 2. A person who practices law; LAWYER. — Also termed (in sense 2) *attorney-at-law*; *public attorney*. Cf. COUNSEL. — Abbr. att'y. Pl. **attorneys.**

attorney, power of. See POWER OF ATTORNEY.

attorney-at-law. See ATTORNEY (2).

attorney-client privilege. See PRIVILEGE (3).

attorney fees. See ATTORNEY'S FEES.

attorney general. The chief law officer of a state or of the United States, responsible for advising the government on legal matters and representing it in litigation. — Abbr. AG. Pl. **attorneys general.**

attorney general's opinion. 1. An opinion furnished by the U.S. Attorney General to the President or another executive official on a request concerning a question of law. 2. A

written opinion by a state attorney general, usu. given at the request of a public official, interpreting a legal provision.

attorney in charge. See *lead counsel* under COUNSEL.

attorney-in-fact. See ATTORNEY (1).

attorney malpractice. See *legal malpractice* under MALPRACTICE.

attorney of record. The lawyer who appears for a party in a lawsuit and who is entitled to receive, on the party's behalf, all pleadings and other formal documents from the court and from other parties. — Also termed *counsel of record*. See OF RECORD (1).

attorney's fees. The charge to a client for services performed for the client, such as an hourly fee, a flat fee, or a contingent fee. — Also spelled *attorneys' fees*. — Also termed *attorney fees*. Cf. RETAINER (2).

attorney's lien. See LIEN.

attorney-witness rule. See LAWYER-WITNESS RULE.

attorney work product. See WORK PRODUCT.

attornment (ə-torn-mənt), *n.* **1.** A tenant's agreement to hold the land as the tenant of a new landlord. **2.** A constructive delivery involving the transfer of mediate possession while a third person has immediate possession; esp., a bailee's acknowledgment that he or she will hold the goods on behalf of someone other than the bailor. • For the other two types of constructive delivery, see CONSTITUTUM POSSESSORIUM; TRADITIO BREVI MANU. — **attorn**, *vb.*

"[Another] form of constructive delivery is that which is known to English lawyers as attornment. . . . The mediate possessor of a thing may deliver it by procuring the immediate possessor to agree with the transferee to hold it for the future on his account, instead of on account of the transferor. Thus if I have goods in the warehouse of A and sell them to B, I have effectually delivered them to B so soon as A has agreed with B to hold them for him, and no longer for me." John Salmond, *Jurisprudence* 306-07 (Glanville L. Williams ed., 10th ed. 1947).

attractive nuisance. See NUISANCE.

attractive-nuisance doctrine. *Torts.* The rule that a person who owns property on which there is a dangerous thing or condition that will foreseeably lure children to trespass is

under a duty to protect those children from the danger <the attractive-nuisance doctrine imposed a duty on the school to protect the children from the shallow, polluted pond on school property>. — Also termed *turntable doctrine*; *torpedo doctrine*. See DANGEROUS INSTRUMENTALITY.

attribution, n. The process — outlined in the Internal Revenue Code — by which a person's or entity's stock ownership is assigned to a related family member or entity for tax purposes. — Also termed *stock attribution*. — **attribute, vb.** — **attributive, adj.**

attribution right. See MORAL RIGHT.

att'y. abbr. ATTORNEY.

at will. Subject to one's discretion; as one wishes or chooses; esp. (of a legal relationship), able to be terminated or discharged by either party without cause <employment at will>.

at-will employment. See *employment at will* under EMPLOYMENT.

at-will tenancy. See *tenancy at will* under TENANCY.

Atwood doctrine. The principle that, to the extent an ERISA plan and its summary-plan description conflict regarding the circumstances under which benefits may be denied, the summary-plan description controls. *Atwood v. Newmont Gold Co.*, 45 F.3d 1317 (9th Cir. 1995); 29 USCA § 1022. See SUMMARY-PLAN DESCRIPTION.

au besoin (oh bæ-zwan). [French "in case of need"] A designation in a bill of exchange stating who is responsible for payment if the drawee fails or refuses to pay. • *Au besion* is part of the phrase *au besion, chez Messrs. Garnier et DuCloux* (meaning "in case of need, apply to Messrs. Garnier and DuCloux").

A.U.C. abbr. AB URBE CONDITA.

auction, n. A sale of property to the highest bidder. • Under the UCC, a sale at auction is complete when the auctioneer so announces in a customary manner, as by pounding a hammer. — Also termed *auction sale*. — **auction, vb.**

auction without reserve. An auction in which the property will be sold to the highest bidder, no minimum price will limit bidding,

the owner may not withdraw property after the first bid is received, the owner may not reject any bids, and the owner may not nullify the bidding by outbidding all other bidders. • In an auction without reserve, the owner essentially becomes an offeror, and each successively higher bid creates a contingent contract, with the highest bid creating an enforceable agreement. — Also termed *absolute auction*. See WITHOUT RESERVE.

auCTION with reserve. An auction in which the property will not be sold unless the highest bid exceeds a minimum price. See WITH RESERVE.

Dutch auCTION. 1. An auction in which property is initially offered at an excessive price that is gradually lowered until the property is sold. 2. A method of tendering stock shares, by which a corporation provides a price range, shareholders indicate how many shares they will sell and at what price, and the corporation buys however many shares it wants at the lowest prices offered. — Also termed *Dutch-auction tender method*.

auCTIONeer, n. A person legally authorized to sell goods or lands of other persons at public auction for a commission or fee. • The auctioneer is the property owner's agent up to the moment when a purchaser's bid is accepted, when the auctioneer becomes the purchaser's agent. — Formerly also termed *vendue master*.

auCTION market. See MARKET.

auCTION sale. See AUCTION.

auDIENCE, n. A hearing before judges. See RIGHT OF AUDIENCE.

auDIT, n. A formal examination of an individual's or organization's accounting records, financial situation, or compliance with some other set of standards. — **auDIT, vb.** — **auDITOR, n.** See GENERALLY ACCEPTED AUDITING STANDARDS.

auDIT of return. See *tax audit*.

compliance auDIT. An audit conducted by a regulatory agency, an organization, or a third party to assess compliance with one or more sets of laws and regulations.

correspondence auDIT. An IRS audit of a taxpayer's return conducted by mail or telephone.

desk auDIT. A review of a civil-service position to determine whether its duties and responsibilities fit the prescribed job classification and pay scale.

field auDIT. An IRS audit conducted at the taxpayer's business premises or lawyer's offices.

independent auDIT. An audit conducted by an outside person or firm not connected with the person or organization being audited.

internal auDIT. An audit performed by an organization's personnel to ensure that internal procedures, operations, and accounting practices are in proper order.

office auDIT. An IRS audit of a taxpayer's return conducted in the IRS agent's office.

post auDIT. An audit of funds spent on a completed capital project, the purpose being to assess the efficiency with which the funds were spent and to compare expected cash-flow estimates with actual cash flows.

tax auDIT. The review of a taxpayer's return by the IRS, including an examination of the taxpayer's books, vouchers, and records supporting the return. — Also termed *audit of return*.

audita querela (aw-dī-tə kwə-ree-lə). [Law Latin "the complaint having been heard"] A writ available to a judgment debtor who seeks a rehearing of a matter on grounds of newly discovered evidence or newly existing legal defenses.

"The writ of audita querela (= quarrel having been heard) . . . , introduced during the time of Edward III, was available to re-open a judgment in certain circumstances. It was issued as a remedy to defendant where an important matter concerning his case had arisen since the judgment. Its issue was based on equitable, rather than common law principles." L.B. Curzon, *English Legal History* 103 (2d ed. 1979).

"Audita querela is distinguished from coram nobis in that coram nobis attacks the judgment itself, whereas audita querela may be directed against the enforcement, or further enforcement, of a judgment which when rendered was just and unimpeachable." 7A C.J.S. *Audita Querela* § 2, at 901 (1930).

auDIT letter. A client's written request for its attorney to give its financial auditors information about matters such as pending or threatened litigation. • The attorney usu. sends the response (called an *audit response*) directly to the financial auditors. See AUDIT RESPONSE.

auDIT-letter response. See AUDIT RESPONSE.

auDIT of return. See *tax audit* under AUDIT.

auDIT opinion. See OPINION (2).

auditor. A person or firm, usu. an accountant or an accounting firm, that formally examines an individual's or entity's financial records or status.

county auditor. An official who examines a county's accounts and financial records.

audit report. An outside auditor's written statement, usu. accompanying a company's financial statement, expressing the auditor's opinion of the accuracy of the company's financial condition as set forth in the financial statement.

audit response. A letter that an attorney provides to a client's financial auditors, usu. at the client's request, regarding matters such as pending or threatened litigation. • Audit responses should comply with the American Bar Association's Statement of Policy Regarding Lawyer's Responses to Auditors' Requests for Information, published in December 1975. — Also termed *audit-letter response*. See AUDIT LETTER.

audit trail. The chain of evidence connecting account balances to original transactions and calculations.

augmented estate. See ESTATE.

aula regis (aw-lə ree-jis). [Latin "king's hall"]
Hist. See CURIA REGIS.

Aunt Jemima doctrine. *Trademarks.* The principle that a trademark is protected not only from an act of direct copying, but also from the use of any similar mark that would likely make a buyer think that the item bearing the similar mark comes from the same source as the trademarked item. *Aunt Jemima Mills Co. v. Rigney & Co.*, 247 F. 407 (2d Cir. 1917); 15 USCA § 1114.

aural acquisition. *Criminal law.* Under the Federal Wiretapping Act, hearing or tape-recording a communication, as opposed to tracing its origin or destination. 18 USCA § 2510(4).

Australian ballot. See BALLOT (4).

authentic act. *Civil law.* 1. A writing signed before a notary public or other public officer. 2. A certified copy of a writing.

authenticate, vb. 1. To prove the genuineness of (a thing). 2. To render authoritative or au-

thentic, as by attestation or other legal formality. See UCC § 9-102(a)(5).

authentication, n. 1. Broadly, the act of proving that something (as a document) is true or genuine, esp. so that it may be admitted as evidence; the condition of being so proved <authentication of the handwriting>. 2. Specif., the assent to or adoption of a writing as one's own.

self-authentication. Authentication without extrinsic evidence of truth or genuineness. • In federal courts, certain writings, such as notarized documents and certified copies of public records, may be admitted into evidence by self-authentication. Fed. R. Evid. 902.

authentic interpretation. See INTERPRETATION.

authenticum (aw-then-tə-kəm). *Roman & civil law.* 1. An original instrument. 2. A collection of Justinian's laws from A.D. 535 to 556.

authoritative precedent. See *binding precedent* under PRECEDENT.

authority. 1. The right or permission to act legally on another's behalf; the power delegated by a principal to an agent <authority to sign the contract>. See AGENCY.

"The term 'authority,' like the term 'contract,' may easily be used in three senses, and is therefore a term to be avoided when accurate reasoning is desirable. It may be used to mean (1) the operative acts of the principal, (2) a physical document executed by the principal, or (3) the legal relations consequent upon the preceding operative facts (1) and (2), and especially the legal power conferred upon the agent to bring the principal into new legal relations without any further action by the principal. The operative facts may be spoken words, a document together with the acts necessary to execute it, or other conduct by the principal apparently expressing an intention to create a power. Hereafter, the word 'authority' will be used to denote these operative facts; in other cases the word *power* will usually be substituted. This latter word is not so likely to be taken in shifting senses, in spite of the fact that 'power of attorney' generally means a physical document under seal." William R. Anson, *Principles of the Law of Contract* 508 n.1 (Arthur L. Corbin ed., 3d Am. ed. 1919).

actual authority. Authority that a principal intentionally confers on an agent, including the authority that the agent reasonably believes he or she has as a result of the agent's dealings with the principal. • Actual authority can be either express or implied. — Also termed *real authority*.

"Actual authority is such as a principal intentionally confers upon the agent, or intentionally, or by want of

ordinary care, allows the agent to believe himself to possess." Cal. Civ. Code § 2316.

apparent authority. Authority that a third party reasonably believes an agent has, based on the third party's dealings with the principal. • Apparent authority can be created by law even when no actual authority has been conferred. — Also termed *ostensible authority*; *authority by estoppel*.

"The term 'apparent authority' means that a legal power is vested in the agent in the absence of any intention by the principal that it should exist, or even in spite of his intention that it should *not* exist. The operative facts causing this power to exist are acts of the principal which, considered along with surrounding facts, induce the third person with whom the agent deals to believe reasonably that the principal intended the power to exist. The power is real and not merely *apparent*. The agent is indeed a wrongdoer in exercising the power. He possesses the power but not the legal privilege of using it. Likewise, the *authority* (meaning the action of the principal creating the agent's power) is real. It is only the intention of the principal to create such a power that is merely apparent (i.e., *non-existent*)." William R. Anson, *Principles of the Law of Contract* 510 n.1 (Arthur L. Corbin ed., 3d Am. ed. 1919).

"'Apparent authority' of an insurance agent means such authority as an insurer knowingly permits the agent to assume, or which it holds him out as possessing, that is, such authority as he appears to have by reason of actual authority or such authority as a reasonably prudent man would suppose the agent to possess." John Alan Appleman & Jean Appleman, *Insurance Law and Practice* § 8674 (1981).

authority coupled with an interest. Authority given to an agent for valuable consideration. • This authority cannot be unilaterally terminated by the principal.

constructive authority. Authority that is inferred because of an earlier grant of authority.

express authority. Authority given to the agent by explicit agreement, either orally or in writing. — Also termed *stipulated authority*.

general authority. A general agent's authority, intended to apply to all matters arising in the course of business.

implied authority. Authority given to the agent as a result of the principal's conduct, such as the principal's earlier acquiescence to the agent's actions. — Also termed *presumptive authority*.

incidental authority. Authority needed to carry out actual or apparent authority. • For example, the actual authority to borrow money includes the incidental authority to sign commercial paper to bring about the loan. — Also termed *inferred authority*.

inherent authority. Authority of an agent arising from the agency relationship.

naked authority. Authority delegated solely for the principal's benefit, without giving any consideration to the agent. • This authority can be revoked by the principal at any time.

ostensible authority. See *apparent authority*.

presumptive authority. See *implied authority*.

real authority. See *actual authority*.

special authority. Authority limited to an individual transaction.

stipulated authority. See *express authority*.

2. Governmental power or jurisdiction <within the court's authority>. 3. A governmental agency or corporation that administers a public enterprise <transit authority>. — Also termed *public authority*.

constituted authority. (*often pl.*) The legislative, executive, and judicial departments officially and rightfully governing a nation, people, municipality, or other governmental unit; an authority properly appointed or elected under organic law, such as a constitution or charter.

examining authority. A self-regulatory organization registered with the Securities and Exchange Commission and vested with the authority to examine, inspect, and otherwise oversee the activities of a registered broker or dealer.

4. A legal writing taken as definitive or decisive; esp., a judicial or administrative decision cited as a precedent <that case is good authority in Massachusetts>. • The term includes not only the decisions of tribunals but also statutes, ordinances, and administrative rulings.

adverse authority. Authority that is unfavorable to an advocate's position. • Most ethical codes require counsel to disclose adverse authority in the controlling jurisdiction even if the opposing counsel has not cited it.

imperative authority. Authority that is absolutely binding on a court. — Also termed *binding authority*. Cf. *binding precedent* under PRECEDENT.

persuasive authority. Authority that carries some weight but is not binding on a court.

"It may be well to call attention to the fact that the word 'authority' is used by lawyers in at least two senses, one abstract and the other concrete. The word [in its concrete sense] refer[s] to the book or other repository to

which one resorts to find propositions of law, and sometimes the word is used in an even narrower sense to mean reported cases. In its abstract sense, however, 'authority' is substantially equivalent to 'influence' or 'power,' and in this sense 'authority' may be divided into two grades, in that the force of a statement of law is either imperative (that is to say, absolutely binding upon the courts) or simply persuasive. The use of the terms 'primary' and 'secondary' authority, as applied in the concrete sense, must not be confused with the use of the terms 'imperative' and 'persuasive' authority, as used in the abstract sense. That is to say, a book of primary authority may be either imperative or persuasive, according to the circumstances . . . , or it may be of no force at all. Books of secondary authority are, in the nature of things, usually merely of persuasive authority." William M. Lile et al., *Brief Making and the Use of Law Books* 12 (3d ed. 1914).

primary authority. Authority that issues directly from a law-making body; legislation and the reports of litigated cases.

secondary authority. Authority that explains the law but does not itself establish it, such as a treatise, annotation, or law-review article.

5. A source, such as a statute, case, or treatise, cited in support of a legal argument <the brief's table of authorities>.

authority by estoppel. See *apparent authority* under AUTHORITY (1).

authority coupled with an interest. See AUTHORITY (1).

authorize, vb. 1. To give legal authority; to empower <he authorized the employee to act for him>. 2. To formally approve; to sanction <the city authorized the construction project>. — **authorization, n.**

authorized capital. See *nominal capital* under CAPITAL.

authorized capital stock. See *capital stock* (1) under STOCK.

authorized committee. See SPECIAL LITIGATION COMMITTEE.

authorized shares. See *capital stock* (1) under STOCK.

authorized stock. See *capital stock* (1) under STOCK.

autocracy (aw-tok-rə-see), *n.* Government by one person with unlimited power and authori-

ty; unlimited monarchy. — **autocratic** (aw-tə-krat-ik), *adj.* — **autocrat** (aw-tə-krat), *n.*

autolimitation, n. An authority's establishment of rules that, in effect, limit the authority's own power. — **autolimit, vb.**

"The theory of Jellinek (*Allgemeine Staatslehre*), so far as the writer understands it, is not an explanation either. In his view something which he calls the State, not defined, but, as it seems, a group of persons, finds itself in possession of power, and establishes rules. These are the law. This process he calls 'autolimitation.' It is true that a body with supreme power does make law. An autocrat, man or group, without rules, may do justice, though it probably will not, but it does not make law — there is no *Rechtsstaat*. But autolimitation is, as Professor Brierly notes . . . , a contradiction in terms. If the State's power is limited, it must be by some superior power. But even accepting the analysis, we are no better off." W.W. Buckland, *Some Reflections on Jurisprudence* 24 (1945).

automated transaction. A contract formed or performed, in whole or in part, by electronic means or by electronic messages in which either party's electronic actions or messages establishing the contract are not intended to be reviewed in the ordinary course by an individual. UCC § 2A-102(a)(3).

automatic-adjustment clause. A provision in a utility-rate schedule that allows a public utility to increase its rates without a public hearing or state review, if certain operating costs, such as the price of fuel, increase. *Federal Energy Regulatory Comm'n v. Mississippi*, 456 U.S. 742, 102 S.Ct. 2126 (1982).

automatic perfection. See PERFECTION.

automatic stay. See STAY.

automatic suspension. See *automatic stay* under STAY.

automatism (aw-tom-ə-tiz-əm), *n.* 1. Action or conduct occurring without will, purpose, or reasoned intention, such as sleepwalking; behavior carried out in a state of unconsciousness or mental dissociation without full awareness. ● Automatism may be asserted as a defense to negate the requisite mental state of voluntariness for commission of a crime. 2. The state of a person who, though capable of action, is not conscious of his or her actions. — **automaton, n.**

"How far is automatism a defence? It has been defined as involuntary action performed in a state of unconsciousness not amounting to insanity. Theoretically the defence is that no act in the legal sense took place at

all — the plea is that there was no volition or psychic awareness.” George Whitecross Paton, *A Textbook of Jurisprudence* 315 (G.W. Paton & David P. Derham eds., 4th ed. 1972).

ambulatory automatism. Automatism that consists in irresponsible or purposeless wanderings.

automobile exception. An exemption from the requirement of a search warrant, whereby the police may search a vehicle without a warrant when there is probable cause to suspect that the vehicle contains contraband or evidence of a crime. *Carroll v. United States*, 267 U.S. 132, 45 S.Ct. 280 (1925); *California v. Acevedo*, 500 U.S. 565, 111 S.Ct. 1982 (1991).

automobile exclusion. See EXCLUSION (3).

automobile guest statute. See GUEST STATUTE.

automobile insurance. See INSURANCE.

autonomic law (aw-tə-nom-ik). The type of enacted law that has its source in various forms of subordinate and restricted legislative authority possessed by private persons and bodies of persons. • Examples are corporate bylaws, university regulations, and the rules of the International Monetary Fund.

autonomous tariff. See TARIFF (2).

autonomy (aw-tahn-ə-mee), *n.* **1.** The right of self-government. **2.** A self-governing state. — **autonomous** (aw-tahn-ə-məs), *adj.*

autopsy (aw-top-see). **1.** An examination of a dead body to determine the cause of death, esp. in a criminal investigation. — Also termed *post-mortem*; *necropsy*. **2.** The evidence of one's own senses.

“To a rational man of perfect organization, . . . the best and highest proof of which any fact is susceptible is the evidence of his own senses. Hence *autopsy*, or the evidence of one's own senses, furnishes the strongest probability and indeed the only perfect and indubitable certainty of the existence of any sensible fact.” *Gentry v. McMinnis*, 3 Dana 382 (1835) (as quoted in John H. Wigmore, *A Students' Textbook of the Law of Evidence* 214 (1935)).

autoptic evidence (aw-top-tik). See *demonstrative evidence* under EVIDENCE.

autoptic preference (proh-fər-ənts). The presentation of an item for inspection by the court. See *demonstrative evidence* under EVIDENCE.

“Yet another form of proof that may present difficulties in defining evidence is what Wigmore calls ‘autoptic preference.’ By this barbarism, the learned author was referring to those few cases in which it is possible to bring before the jury the material fact itself, rather than evidence of the fact.” 22 Charles Alan Wright & Kenneth W. Graham, Jr., *Federal Practice and Procedure* § 5163, at 33 (1978).

autre action pendant (oh-trə ak-see-awn pah-n-dahn). [Law French] Another action pending. • This phrase was formerly used in pleas of abatement.

autre droit (oh-trə drwah). [Law French] In right of another. • This phrase describes the manner in which a trustee holds property for a beneficiary.

autrefois (oh-trə-fwah or oh-tər-foyz). [Law French] On another occasion; formerly.

autrefois acquit (ə-kwit or a-kee). A plea in bar of arraignment that the defendant has been acquitted of the offense. — Also termed *former acquittal*. See DOUBLE JEOPARDY.

“Suppose that a transgressor is charged and acquitted for lack of evidence, and evidence has now come to light showing beyond doubt that he committed the crime. Even so, he cannot be tried a second time. He has what is termed, in legal French, the defence of *autrefois acquit*. Similarly, if he is convicted, even though he is let off very lightly, he cannot afterwards be charged on fresh evidence, because he will have the defence of *autrefois convict*. These uncouth phrases have never been superseded, though they might well be called the defence of ‘previous acquittal’ and ‘previous conviction’; and ‘double jeopardy’ makes an acceptable generic name for both.” Glanville Williams, *Textbook of Criminal Law* 24 (1978).

autrefois attain (ə-taynt). *Hist.* A plea in bar that the defendant has already been attainted for one felony and therefore cannot be prosecuted for another.

autrefois convict. A plea in bar of arraignment that the defendant has been convicted of the offense. See DOUBLE JEOPARDY.

autre vie (oh-trə vee). [Law French] Another's life. See PUR AUTRE VIE; VIE.

auxiliary, adj. **1.** Aiding or supporting. **2.** Subsidiary.

auxiliary covenant. See COVENANT (1).

auxiliator (awg-zil-ee-ay-tər), *n.* [Latin] *Hist.* A helper; an assistant.

auxilium (awg-zil-ee-əm), *n.* [Latin] *Hist.* Aid; esp., compulsory aid such as a tax or tribute to be paid by a vassal to a lord as an incident of the tenure by knight's service.

auxilium ad filium militem faciendum et filiam maritandam (awg-zil-ee-əm ad fil-ee-əm mil-ə-tem fay-shee-en-dəm et fil-ee-əm mar-ə-tan-dəm), *n.* [Law Latin] *Hist.* A writ ordering a sheriff to levy a tax toward the knighting of a son and the marrying of a daughter of tenants *in capite* of the Crown.

auxilium curiae (awg-zil-ee-əm kyoor-ee-I or kyoor-ee-ee), [Latin] *Hist.* A court order summoning a party to appear and assist a party already before the court.

auxilium regis (awg-zil-ee-əm ree-jis), *n.* [Latin] *Hist.* The Crown's tax levied for royal use and public service, such as a tax granted by Parliament.

auxilium vice comiti (awg-zil-ee-əm vi-see kom-ə-ti), *n.* [Latin] *Hist.* An ancient tax paid to sheriffs.

avail, *n.* **1.** Use or advantage <of little or no avail>. **2.** (*pl.*) Profits or proceeds, esp. from a sale of property <the avails of the trust fund>.

available for work, *adj.* (Of a person) ready, willing, and able to accept temporary or permanent employment when offered.

availment, *n.* The act of making use or taking advantage of something for oneself <availment of the benefits of public office>. — **avail**, *vb.*

avail of marriage. See VALOR MARITAGII.

aver (ə-vər), *vb.* To assert positively, esp. in a pleading; to allege.

average, *n.* **1.** A single value that represents a broad sample of subjects; esp., in mathematics, the mean, median, or mode of a series. **2.** The ordinary or typical level; the norm. **3.** *Maritime law.* Liability for partial loss or damage to an insured ship or its cargo during a voyage; the apportionment of such liability. — **average**, *vb.* & *adj.*

extraordinary average. A contribution by all the parties concerned in a commercial voyage — whether for vessel or cargo — toward a loss sustained by some of the parties in interest for the benefit of all.

general average. Average resulting from an intentional partial sacrifice of ship or cargo to avoid total loss. ● The liability is shared by all parties who had an interest in the voyage. — Abbr. GA. — Also termed *gross average*; *general-average contribution*.

“[G]eneral average refers to certain extraordinary sacrifices made or expenses incurred to avert a peril that threatens the entire voyage. In such a case the party sustaining the loss confers a common benefit on all the parties to the maritime venture. As a result the party suffering the loss has a right — apart from contract or tort — to claim contribution from all who participate in the venture. The doctrine of general average is thus an equitable principle derived from the general maritime law. General average is an exception to the principle of particular average that losses lie where they fall; rather the loss becomes ‘general,’ meaning that it is spread ratably among all the parties involved in the maritime adventure. The doctrine of general average is of ancient vintage, and can be traced back to remotest antiquity.” Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 16-1, at 522-23 (1987).

particular average. Average resulting from an accidental partial loss or damage. ● The liability is borne solely by the person who suffered the loss. — Also termed *simple average*; *partial average*.

average bond. See BOND (2).

average cost. See COST (1).

average daily balance. See DAILY BALANCE.

average gross sales. See SALE.

average tax rate. See TAX RATE.

average variable cost. The average cost per unit of output, arrived at by dividing the total cost (fixed cost and variable cost) by output. Cf. LONG-RUN INCREMENTAL COST.

averaging down. *Securities.* An investment strategy in which shares in the same company are purchased at successively lower prices to achieve a lower average cost than the first purchase.

averaging up. *Securities.* An investment strategy in which shares in the same company are purchased at successively higher prices to accumulate an increasingly larger position at an average cost that is lower than the market price. ● The investor will earn significant profits only if the stock's price continues to rise.

averment (ə-vər-mənt), *n.* A positive declaration or affirmation of fact; esp., an assertion or

allegation in a pleading <the plaintiff's averment that the defendant ran a red light>. Cf. ASSEVERATE.

immaterial averment. An averment that alleges something in needless detail; a statement that goes far beyond what is in issue. • This type of averment may be ordered struck from the pleading.

negative averment. An averment that is negative in form but affirmative in substance and that must be proved by the alleging party. • An example is the statement "she was not old enough to enter into the contract," which is more than just a simple denial. Cf. TRAVERSE.

averment of notice. A statement in a pleading that someone else has been properly notified about some fact. See NOTICE.

aviation easement. See *avigational easement* under EASEMENT.

aviation insurance. See INSURANCE.

avigational easement. See EASEMENT.

avigation easement. See *avigational easement* under EASEMENT.

a vinculo matrimonii (ay vīng-kyə-loh ma-trə-moh-nee-i). [Latin] From the bond of matrimony. See *divorce a vinculo matrimonii* under DIVORCE.

avoid, vb. To render void <because the restrictive covenant was overbroad, the court avoided it>. • Because this legal use of *avoid* can be easily confused with the ordinary sense of the word, the verb *to void* is preferable.

avoidable-consequences doctrine. See MITIGATION-OF-DAMAGES DOCTRINE.

avoidable cost. See COST (1).

avoidance, n. 1. The act of evading or escaping <avoidance of tax liability>. See TAX AVOIDANCE. 2. The act of refraining from (something) <avoidance of an argument>. 3. VOIDANCE <avoidance of the agreement>. 4. CONFESSION AND AVOIDANCE <the defendant filed an avoidance in an attempt to avert liability>. — **avoid, vb.**

avoucher (ə-vow-cher). *Hist.* A tenant's calling upon a warrantor of title to the land to help the tenant defend the title.

avowal (ə-vow-əl), *n.* 1. An open declaration. 2. OFFER OF PROOF. — **avow, vb.**

avowant (ə-vow-ənt), *n.* A person who makes avowry in an action of replevin.

avowee. See ADVOCATUS.

avowry (ə-vow-ree), *n.* *Common-law pleading.* An acknowledgment — in an answer to a replevin action — that one has taken property, and a justification for that taking <the defendant's avowry was based on alleged damage to the property by the plaintiff>. — **avow, vb.** Cf. COGNIZANCE (4).

avulsion (ə-vəl-shən), *n.* 1. A forcible detachment or separation. 2. A sudden removal of land caused by change in a river's course or by flood. • Land removed by avulsion remains the property of the original owner. Cf. ALLUVION; ACCRETION (1); DELICTION; EROSION. 3. A tearing away of a body part surgically or accidentally. — **avulse, vb.**

avunculus (ə-vəŋk-yə-ləs), *n.* [Latin] *Roman & civil law.* A maternal uncle; one's mother's brother.

avunculus maximus (mak-sə-məs). See ABAVUNCULUS.

avus (av-əs or ay-vəs), *n.* [Latin] *Roman & civil law.* A grandfather.

award, n. A final judgment or decision, esp. one by an arbitrator or by a jury assessing damages. — Also termed *arbitrament*.

award, vb. To grant by formal process or by judicial decree <the company awarded the contract to the low bidder> <the jury awarded punitive damages>.

AWOL. *abbr.* Absent without leave; missing without notice or permission.

axiom (ak-see-əm), *n.* An established principle that is universally accepted within a given framework of reasoning or thinking <"innocent until proven guilty" is an age-old axiom of criminal law>. — **axiomatic** (ak-see-ə-mat-ik), *adj.*

ayant cause (ay-ənt). *Civil law.* One to whom a right has been assigned by will, gift, sale, or exchange; an assignee.

ayel (ay-əl). See AIEL.

ayle (ayl). See AIEL.