

E.**EADEM PERSONA CUM DEFUNCTO**

eadem persona cum defuncto (ee-ay-d<<schwa>>m p<<schwa>>r-soh-n<<schwa>> k<<schwa>>m di-f<<schwa>>ngk-toh). [Law Latin] Hist. The same person as the decedent. • An heir having full title to the decedent's property was legally viewed to be the same person as the decedent.

EA INTENTIONE

ea intentione (ee-<<schwa>> in-ten-shee-oh-nee). [Latin] With that intent.

EAJA

EAJA.abbr.EQUAL ACCESS TO JUSTICE ACT.

E&O INSURANCE

E&O insurance.See errors-and-omissions insurance under INSURANCE.

EARL

earl. A title of nobility, formerly the highest in England but now the third highest, ranking between a marquis and a viscount. • This title corresponds with the French comte and the German graf. Originating with the Saxons, this title is the most ancient of the English peerage. William the Conqueror first made the title hereditary, giving it in fee to his nobles. No territorial, private, or judicial rights now accompany the title; it merely confers nobility and a hereditary seat in the House of Lords.

EARLDOM

earldom. The dignity or jurisdiction of an earl. • Only the dignity remains now, the jurisdiction having been given over to the sheriff. See DIGNITY.

EARLES-PENNY

earles-penny.Hist. Money given in part payment; EARNEST. — Also termed earl's penny.

EARL MARSHAL OF ENGLAND

Earl Marshal of England.A great officer of state, who historically had jurisdiction over several courts, including the court of chivalry and the court of honor. • Under this office is the herald's office, or college of arms. The Earl Marshal was also a judge of the Marshalsea court, now abolished. This office is quite ancient. Since 1672, it has been hereditary in the family of Howards, Dukes of Norfolk. — Often shortened to Earl Marshal.

EARL'S PENNY

earl's penny. See EARLES-PENNY.

EARMARK

earmark, n. 1. Originally, a mark upon the ear — a mode of marking sheep and other animals. [Cases: Animals 5. C.J.S. Animals § 15.]

“When now-a-days we say that ‘money has no ear-mark,’ we are alluding to a practice which in all probability played a large part in ancient law. Cattle were ear-marked or branded, and this enabled their owner to swear that they were his in whosoever hands he might find them. The legal supposition is, not that one ox is indistinguishable from another ox, but that all oxen, or all oxen of a certain large class, are equivalent. The possibility of using them as money has rested on this supposition.” 2 Frederick Pollock & Frederic W. Maitland, *History of English Law Before the Time of Edward I 151–52* (2d ed. 1899).

2. A mark put on something (such as a coin) to distinguish it from another.

earmark, vb. 1. To mark with an earmark. 2. To set aside for a specific purpose or recipient.

EARMARKING DOCTRINE

earmarking doctrine. Bankruptcy. An equitable principle that when a new lender makes a loan to enable a debtor to pay off a specified creditor, the funds are specifically set aside for that creditor so that, if the debtor lacks control over the disposition of the funds, they do not become part of the debtor's estate and thus subject to a preference. [Cases: Bankruptcy 2610. C.J.S. Bankruptcy § 136.]

EARN

earn, vb. 1. To acquire by labor, service, or performance. 2. To do something that entitles one to a reward or result, whether it is received or not.

EARNED INCOME

earned income. See INCOME.

EARNED-INCOME CREDIT

earned-income credit. See TAX CREDIT.

EARNED LAND

earned land. See LAND.

EARNED PREMIUM

earned premium. See PREMIUM(1).

EARNED SURPLUS

earned surplus. See retained earnings under EARNINGS.

EARNED TIME

earned time. See TIME.

EARNER

earner. 1. One who produces income through personal efforts or property or both. 2. Property or an asset that produces income for its owner.

EARNEST

earnest, n. 1. A nominal payment or token act that serves as a pledge or a sign of good faith, esp. as the partial purchase price of property. • Though not legally necessary, an earnest may help the parties come to an agreement. 2. EARNEST MONEY.

EARNEST MONEY

earnest money. A deposit paid (often in escrow) by a prospective buyer (esp. of real estate) to show a good-faith intention to complete the transaction, and ordinarily forfeited if the buyer defaults. • Although earnest money has traditionally been a nominal sum (such as a nickel or a dollar) used in the sale of goods, it is not a mere token in the real-estate context: it may amount to many thousands of dollars. — Also termed earnest; bargain money; caution money; hand money. Cf. BINDER(2); down payment under PAYMENT. [Cases: Vendor and Purchaser 69.1, 182. C.J.S. Vendor and Purchaser §§ 135, 137–138, 425.]

“The amount of earnest money deposited rarely exceeds 10 percent of the purchase price, and its primary purpose is to serve as a source of payment of damages should the buyer default. Earnest money is not essential to make a purchase agreement binding if the buyer's and seller's exchange of mutual promises of performance (that is, the buyer's promise to purchase and the seller's promise to sell at a specified price and terms) constitutes the consideration for the contract.” John W. Reilly, *The Language of Real Estate* 131 (4th ed. 1993).

EARNEST-PENNY

earnest-penny. See GOD'S PENNY.

EARNING ASSET

earning asset. See ASSET.

EARNING CAPACITY

earning capacity. A person's ability or power to earn money, given the person's talent, skills, training, and experience. • Earning capacity is one element considered when measuring the damages recoverable in a personal-injury lawsuit. And in family law, earning capacity is considered when awarding child support and spousal maintenance (or alimony) and in dividing property between spouses upon divorce. — Also termed earning power. See LOST EARNING CAPACITY.

EARNINGS

earnings. Revenue gained from labor or services, from the investment of capital, or from

assets. See INCOME.

appropriated retained earnings. Retained earnings that a company's board designates for a distinct use, and that are therefore unavailable to pay dividends or for other uses. — Also termed appropriated surplus; surplus revenue; suspense reserve.

future earnings. See lost earnings.

gross earnings. See gross income under INCOME.

lost earnings. Wages, salary, or other income that a person could have earned if he or she had not lost a job, suffered a disabling injury, or died. • Lost earnings are typically awarded as damages in personal-injury and wrongful-termination cases. There can be past lost earnings and future lost earnings. Both are subsets of this category, though legal writers sometimes loosely use future earnings as a synonym for lost earnings. Cf. LOST EARNING CAPACITY. [Cases: Damages 37. C.J.S. Damages §§ 54–55.]

net earnings. See net income under INCOME.

ongoing earnings. See operating earnings.

operating earnings. Business income calculated in violation of generally accepted accounting principles by including income items and excluding various business expenses. • Many companies use operating earnings to favorably skew their price-earnings (P/E) ratios. Because the rationales for the underlying calculations vary from company to company, and from period to period within a company, operating earnings are almost always artificially inflated and unreliable. The term operating earnings is meaningless under generally accepted accounting principles. — Also termed pro forma earnings; economic earnings; core earnings; ongoing earnings; earnings excluding special items. See PRICE-EARNINGS RATIO.

pretax earnings. Net earnings before income taxes.

pro forma earnings. See operating earnings.

real earnings. Earnings that are adjusted for inflation so that they reflect actual purchasing power.

retained earnings. A corporation's accumulated income after dividends have been distributed. — Also termed earned surplus; undistributed profit. [Cases: Corporations 151. C.J.S. Corporations § 293.]

surplus earnings. The excess of corporate assets over liabilities within a given period, usu. a year. [Cases: Corporations 152. C.J.S. Corporations §§ 295–299.]

EARNINGS AND PROFITS

earnings and profits. Corporations. In corporate taxation, the measure of a corporation's economic capacity to make a shareholder distribution that is not a return of capital. • The distribution will be dividend income to the shareholders to the extent of the corporation's current and accumulated earnings and profits. Cf. accumulated-earnings tax under TAX; accumulated

taxable income under INCOME. [Cases: Internal Revenue 3830.1–3845. C.J.S. Internal Revenue §§ 381–382.]

EARNINGS EXCLUDING SPECIAL ITEMS

earnings excluding special items. See operating earnings under EARNINGS.

EARNINGS PER SHARE

earnings per share. Corporations. A measure of corporate value by which the corporation's net income is divided by the number of outstanding shares of common stock. • Investors benefit from calculating a corporation's earnings per share, because it helps the investor determine the fair market value of the corporation's stock. — Abbr. EPS.

fully diluted earnings per share. A corporation's net income — assuming that all convertible securities had been transferred to common equity and all stock options had been exercised — divided by the number of shares of the corporation's outstanding common stock.

EARNINGS-PRICE RATIO

earnings-price ratio. See earnings yield under YIELD.

EARNINGS REPORT

earnings report. See INCOME STATEMENT.

EARNINGS YIELD

earnings yield. See YIELD.

EARNOUT AGREEMENT

earnout agreement. An agreement for the sale of a business whereby the buyer first pays an agreed amount up front, leaving the final purchase price to be determined by the business's future profits. • The seller usu. helps manage the business for a period after the sale. — Sometimes shortened to earnout.

EARWITNESS

earwitness. A witness who testifies about something that he or she heard but did not see. Cf. EYEWITNESS.

EASEMENT

easement (eez-m<<schwa>>nt). An interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose (such as to cross it for access to a public road). • The land benefiting from an easement is called the dominant estate; the land burdened by an easement is called the servient estate. Unlike a lease or license, an easement may last forever, but it does not give the holder the right to possess, take from, improve, or sell the land. The primary recognized easements are (1) a right-of-way, (2) a right of entry for any purpose relating to the dominant estate, (3) a right to the support of land and

buildings, (4) a right of light and air, (5) a right to water, (6) a right to do some act that would otherwise amount to a nuisance, and (7) a right to place or keep something on the servient estate. See SERVITUDE(1). Cf. PROFIT à PRENDRE. — Also termed private right-of-way. [Cases: Easements 1. C.J.S. Easements §§ 2–8, 13–14, 21–22, 24, 53–55, 57–58, 89.]

access easement. An easement allowing one or more persons to travel across another's land to get to a nearby location, such as a road. • The access easement is a common type of easement by necessity. — Also termed easement of access; easement of way; easement of passage.

adverse easement. See prescriptive easement.

affirmative easement. An easement that forces the servient-estate owner to permit certain actions by the easement holder, such as discharging water onto the servient estate. — Also termed positive easement. Cf. negative easement.

“Positive easements give rights of entry upon the land of another, not amounting to profits, to enable something to be done on that land. Some are commonplace, examples being rights of way across the land of another and rights to discharge water on to the land of another. Others are more rare, such as the right to occupy a pew in a church, the right to use a kitchen situated on the land of another for the purpose of washing and drying clothes, and the right to use a toilet situated on the land of another.” Peter Butt, *Land Law* 305 (2d ed. 1988).

apparent easement. A visually evident easement, such as a paved trail or a sidewalk. [Cases: Easements 22. C.J.S. Easements §§ 113–115.]

appendant easement. See easement appurtenant.

appurtenant easement. See easement appurtenant.

avigational easement. An easement permitting unimpeded aircraft flights over the servient estate. — Also termed avigation easement; aviation easement; flight easement; navigation easement. [Cases: Aviation 3. C.J.S. Aeronautics and Aerospace §§ 7–9.]

common easement. An easement allowing the servient landowner to share in the benefit of the easement. — Also termed nonexclusive easement. [Cases: Easements 38. C.J.S. Easements §§ 57, 143–144, 146–147, 165–167.]

continuous easement. An easement that may be enjoyed without a deliberate act by the party claiming it, such as an easement for drains, sewer pipes, lateral support of a wall, or light and air. — Also termed (in Louisiana) continuous servitude. Cf. discontinuous easement. [Cases: Easements 38. C.J.S. Easements §§ 57, 143–144, 146–147, 165–167.]

determinable easement. An easement that terminates on the happening of a specific event.

discontinuous easement. An easement that can be enjoyed only if the party claiming it deliberately acts in some way with regard to the servient estate. • Examples are a right-of-way and the right to draw water. — Also termed discontinuing easement; noncontinuous easement; nonapparent easement; (in Louisiana) discontinuous servitude. Cf. continuous easement. [Cases: Easements 38. C.J.S. Easements §§ 57, 143–144, 146–147, 165–167.]

easement appurtenant. An easement created to benefit another tract of land, the use of easement being incident to the ownership of that other tract. — Also termed appurtenant easement; appendant easement; pure easement; easement proper. Cf. easement in gross. [Cases: Easements 3. C.J.S. Easements §§ 4, 10–11, 20.]

easement by estoppel. A court-ordered easement created from a voluntary servitude after a person, mistakenly believing the servitude to be permanent, acted in reasonable reliance on the mistaken belief. [Cases: Estoppel 82. C.J.S. Estoppel § 90.]

easement by implication. See implied easement.

easement by necessity. An easement created by operation of law because the easement is indispensable to the reasonable use of nearby property, such as an easement connecting a parcel of land to a road. — Also termed easement of necessity; necessary way. [Cases: Easements 18. C.J.S. Easements §§ 63, 69, 75–77, 91–97, 99–101, 103–109.]

easement by prescription. See prescriptive easement.

easement in gross. An easement benefiting a particular person and not a particular piece of land. • The beneficiary need not, and usu. does not, own any land adjoining the servient estate. Cf. easement appurtenant. [Cases: Easements 3. C.J.S. Easements §§ 4, 10–11, 20.]

easement of access. See access easement.

easement of convenience. An easement that increases the facility, comfort, or convenience of enjoying the dominant estate or some right connected with it.

easement of natural support. See lateral support under SUPPORT(3).

easement of necessity. See easement by necessity.

easement of passage. See access easement.

easement of way. See access easement.

easement proper. See easement appurtenant.

equitable easement. 1. An implied easement created by equity when adjacent lands have been created out of a larger tract. • Such an easement is usu. created to allow implied privileges to continue. [Cases: Easements 16. C.J.S. Easements §§ 3, 61–65, 68–71, 74, 79–81, 88.] 2. See restrictive covenant (1) under COVENANT(4).

exclusive easement. An easement that the holder has the sole right to use. Cf. common easement. [Cases: Easements 52. C.J.S. Easements §§ 164–167.]

flight easement. See avigational easement.

floating easement. An easement that, when created, is not limited to any specific part of the servient estate. [Cases: Easements 46. C.J.S. Easements § 152.]

flowage easement. A common-law easement that gives the dominant-estate owner the right to

flood a servient estate, as when land near a dam is flooded to maintain the dam or to control the water level in a reservoir. [Cases: Waters and Water Courses 165. C.J.S. Waters §§ 38–42.]

implied easement. An easement created by law after an owner of two parcels of land uses one parcel to benefit the other to such a degree that, upon the sale of the benefited parcel, the purchaser could reasonably expect the use to be included in the sale. — Also termed easement by implication; way of necessity. [Cases: Easements 15–19. C.J.S. Easements §§ 3, 13, 61–88, 90–109, 149.]

intermittent easement. An easement that is usable or used only from time to time, not regularly or continuously.

light-and-air easement. A negative easement preventing an adjoining landowner from constructing a building that would prevent light or air from reaching the dominant estate. See negative easement. Cf. solar easement. [Cases: Easements 11, 19, 45. C.J.S. Easements §§ 51–52, 85–87, 151.]

mineral easement. An easement that permits the holder to enter the property to remove minerals from it. [Cases: Mines and Minerals 55(6). C.J.S. Mines and Minerals §§ 177, 180, 182–185, 428, 434–435.]

navigation easement. 1. An easement giving the federal government the right to regulate navigable waters, even when the regulation interferes with private water rights. [Cases: Navigable Waters 16. C.J.S. Navigable Waters §§ 40–44, 46.] 2. See avigational easement.

negative easement. An easement that prohibits the servient-estate owner from doing something, such as building an obstruction. Cf. affirmative easement. [Cases: Covenants 20; Easements 13. C.J.S. Easements § 59.]

“Negative easements ... confer no right of entry, but consist essentially of the right to prevent something being done; examples are the right to the flow of air through defined aperture, the right to receive light for a building, the right to the support of a building, and (possibly) the right to require a neighbouring landowner to repair fences.” Peter Butt, *Land Law* 305 (2d ed. 1988).

nonapparent easement. See discontinuous easement.

noncontinuous easement. See discontinuous easement.

nonexclusive easement. See common easement.

positive easement. See affirmative easement.

prescriptive easement. An easement created from an open, adverse, and continuous use over a statutory period. — Also termed easement by prescription; adverse easement. See ADVERSE POSSESSION. [Cases: Easements 5–11. C.J.S. Easements §§ 13–51.]

private easement. An easement whose enjoyment is restricted to one specific person or a few specific people. [Cases: Easements 52. C.J.S. Easements §§ 164–167.]

public easement. An easement for the benefit of an entire community, such as the right to

travel down a street or a sidewalk.

pure easement. See easement appurtenant.

quasi-easement. 1. An easement-like right occurring when both tracts of land are owned by the same person. • A quasi-easement may become a true easement if the landowner sells one of the tracts. 2. An obligation or license that relates to land but that is not a true easement — for example, a landowner's obligation to maintain the fence between the landowner's tract and someone else's tract.

reciprocal negative easement. An easement created when a landowner sells part of the land and restricts the buyer's use of that part, and, in turn, that same restriction is placed on the part kept by the landowner. • Such an easement usu. arises when the original landowner creates a common scheme of development for smaller tracts that are carved out of the original tract. [Cases: Covenants 20; Easements 13. C.J.S. Easements § 59.]

reserved easement. An easement created by the grantor of real property to benefit the grantor's retained property and to burden the granted property. [Cases: Easements 14. C.J.S. Easements § 60.]

secondary easement. An easement that is appurtenant to the primary or actual easement; the right to do things that are necessary to fully enjoy the easement itself. [Cases: Easements 38. C.J.S. Easements §§ 57, 143–144, 146–147, 165–167.]

solar easement. An easement created to protect the dominant estate's exposure to the direct rays of the sun. • A solar easement is often created to prevent the servient-estate owner from constructing any building that would cause shadows on the dominant estate, thus interfering with the use of a solar-energy system. Cf. light-and-air easement. [Cases: Easements 11, 19, 45. C.J.S. Easements §§ 51–52, 85–87, 151.]

“Solar easements ... remain difficult to describe because of the relationship of the sun to the earth. Shadow variables include land slope, terrain, solar orientation, latitude, time of day, and height of potential obstructions. Lawyers, engineers, land planners, title companies and others have expressed concern over the complexity required to write a solar easement containing highly detailed, technical information often included in these easements.” Sandy F. Kraemer, *Solar Law* 42 (1978).

timber easement. An easement that permits the holder to cut and remove timber from another's property. — Also termed timber rights. [Cases: Logs and Logging 3. C.J.S. Logs and Logging §§ 9, 20.]

EASTER-OFFERINGS

Easter-offerings. Eccles. law. Small sums of money paid as personal tithes to the parochial clergy by the parishioners at Easter. • Under the Recovery of Small Tithes Act (1695), Easter-offerings were recoverable before justices of the peace. St. 7 & 8 Will. 3, ch. 6. — Also termed Easter-dues.

EASTER SITTINGS

Easter sittings. A term of court beginning on April 15 of each year and usu. ending on May 8, but sometimes extended to May 13. • This was known until 1875 as Easter term. Cf. HILARY SITTINGS; MICHAELMAS SITTINGS; TRINITY SITTINGS .

EAST GREENWICH

East Greenwich (eest gren-ich). Hist. The name of a royal manor in the county of Kent, England. • Historically, this manor was mentioned in royal grants or patents as descriptive of the tenure of free socage.

EAST INDIA COMPANY

East India Company. Hist. The company that was originally established to pursue exclusive trade between England and India, and that later became more active in political affairs than in commerce. • In 1858, by the Government of India Act, the government of the company's territories was transferred to the Crown. The company was dissolved in 1874. St. 21 & 22 Vict., ch. 106.

EAT

EAT. abbr. Earnings after taxes.

EAT INDE SINE DIE

eat inde sine die (ee-<<schwa>>t in-dee sI-nee dI-ee). [Latin] Let him go thence without day. • These words were used on a defendant's acquittal, or when a prisoner was to be discharged, to signify that the matter be dismissed without any further judicial proceedings. See GO HENCE WITHOUT DAY.

EAVES-DRIP

eaves-drip. 1. The dripping of water from the eaves of a house onto adjacent land. 2. An easement permitting the holder to allow water to drip onto the servient estate. See DRIP RIGHTS; STILLICIDIUM. [Cases: Waters and Water Courses 121. C.J.S. Waters § 257.]

EAVESDROPPING

eavesdropping. The act of secretly listening to the private conversation of others without their consent. Cf. BUGGING; WIRETAPPING. [Cases: Telecommunications 494. C.J.S. Telegraphs, Telephones, Radio, and Television §§ 247–249, 254, 264–265.]

EB

EB. abbr. BUREAU OF ECONOMIC AND BUSINESS AFFAIRS.

EBBA ET FLUCTUS

ebba et fluctus (eb-<<schwa>> et fl<<schwa>>k-t<<schwa>>s), n. [Latin “ebb and flow”] Hist. The ebb and flow of tide; ebb and flood. • The time of one ebb and flood, plus an additional 40 days, was anciently granted to a person who was excused from court for being beyond seas.

See EBB AND FLOW; ESSOIN; BEYOND SEAS.

EBB AND FLOW

ebb and flow. The coming and going of the tides. • This expression was formerly used to denote the limits of admiralty jurisdiction. The tidewater limitation was abandoned in *The Genesee Chief v. Fitzhugh*, 53 U.S. (12 How.) 443 (1851).

EBDOMADARIUS

ebdomadarius (eb-dom-*<<schwa>>*-dair-ee-*<<schwa>>*s), n. [Latin “weekly”] Eccles. law. An officer in a cathedral church who supervises the regular performance of divine service and prescribes the duties of choir members.

EBIT

EBIT.abbr. Earnings before interest and taxes.

EBITDA

EBITDA.abbr. Accounting. Earnings before interest, taxes, depreciation, and amortization. • EBITDA differs from cash flow in many ways. For instance, it may not reflect changes in liquidity.

EBRIETY

ebriety, n. Rare. A state or habit of intoxication; inebriation.

EC

EC.abbr. 1. ETHICAL CONSIDERATION. 2. European Community. See EUROPEAN UNION.

ECCLESIA

ecclesia (i-klee-z[h]ee-*<<schwa>>*), n. [Latin fr. Greek ekklesia “assembly”] 1. A place of religious worship. 2. A Christian assembly; a church.

ECCLESIARCH

ecclesiarch (i-klee-zee-ahrk), n. The ruler of a church.

ECCLESIASTIC

ecclesiastic (i-klee-zee-as-tik), n. A clergyman; a priest; one consecrated to the service of the church. [Cases: Religious Societies 27. C.J.S. Religious Societies § 43.]

ECCLESIASTICAL

ecclesiastical (i-klee-zee-as-ti-k*<<schwa>>*l), adj. Of or relating to the church, esp. as an institution. — Also termed ecclesiastic. [Cases: Religious Societies 1. C.J.S. Religious Societies §§ 2–5, 7–13.]

ECCLESIASTICAL AUTHORITIES

ecclesiastical authorities.English law. The church's hierarchy, answerable to the Crown but set apart from the rest of the citizens, responsible for superintending public worship and other religious ceremonies and for administering spiritual counsel and instruction. • In England, the several levels of the clergy are (1) archbishops and bishops, (2) deans and chapters, (3) archdeacons, (4) rural deans, (5) parsons (under whom are included appropriators) and vicars, and (6) curates. Church-wardens, sidesmen, parish clerks, and sextons are also considered types of ecclesiastical authorities because their duties are connected with the church. Cf. ecclesiastical court under COURT.

ECCLESIASTICAL COMMISSIONERS

ecclesiastical commissioners.Hist. English law. A group of people empowered to suggest measures to improve the established church's efficiency, to be ratified by orders in council. • This body of commissioners, established in 1836 by the Ecclesiastical Commissioners Act (St. 6 & 7 Will. 4, ch. 77), has been dissolved. Its functions, rights, and property are now vested in the church commissioners.

ECCLESIASTICAL CORPORATION

ecclesiastical corporation.See CORPORATION.

ECCLESIASTICAL COURT

ecclesiastical court.See COURT.

ECCLESIASTICAL JURISDICTION

ecclesiastical jurisdiction.Jurisdiction over ecclesiastical cases and controversies, such as that exercised by ecclesiastical courts.

ECCLESIASTICAL LAW

ecclesiastical law.1. The body of law derived largely from canon and civil law and administered by the ecclesiastical courts. [Cases: Religious Societies 5. C.J.S. Religious Societies § 6.] 2. The law governing the doctrine and discipline of a particular church; esp., Anglican canon law. — Also termed *jus ecclesiasticum*; law spiritual. Cf. CANON LAW.

ECCLESIASTICAL MATTER

ecclesiastical matter.A matter that concerns church doctrine, creed, or form of worship, or the adoption and enforcement, within a religious association, of laws and regulations to govern the membership, including the power to exclude from such an association those deemed unworthy of membership. [Cases: Religious Societies 5, 28. C.J.S. Religious Societies § 6.]

ECCLESIASTICAL SENTENCE

ecclesiastical sentence.The judgment in an ecclesiastical case.

ECCLESIASTICAL THINGS

ecclesiastical things. Property (such as buildings and cemeteries) given to a church to support the poor or for any other pious use. [Cases: Religious Societies 15. C.J.S. Religious Societies §§ 53–54.]

ECDICUS

eccicus (ek-d<<schwa>>-k<<schwa>>s), n. [Greek ekdikos “legal representative”] Hist. The attorney, proctor, or advocate of an organization. • A church's attorney, for example, was known as an episcoporum eccicus.

E-CHECK

e-check. See CHECK.

ECHEVIN

echevin (esh-<<schwa>>-van), n. [French] French law. A municipal officer corresponding with the position of alderman or burgess, and sometimes having civil jurisdiction to hear and determine certain minor cases.

ECHOUEMENT

echouement (ay-shoo-mawn), n. [French] In French marine law, stranding. See STRANDING.

ECJ

ECJ.abbr.European Court of Justice.

ECO A

ECO A.abbr.EQUAL CREDIT OPPORTUNITY ACT.

ECOLOGY OF CRIME

ecology of crime. See environmental criminology under CRIMINOLOGY.

E-COMMERCE

e-commerce. The practice of buying and selling goods and services through online consumer services on the Internet. • The e, a shortened form of electronic, has become a popular prefix for other terms associated with electronic transactions. See ELECTRONIC TRANSACTION.

E-COMMERCE DIRECTIVE

E-Commerce Directive. See DIRECTIVE ON CERTAIN ASPECTS OF ELECTRONIC COMMERCE IN THE INTERNAL MARKET .

E-COMMERCE INSURANCE

e-commerce insurance. See INSURANCE.

ECONOMETRICS

econometrics (ee-kon-<<schwa>>-me-triks). The branch of economics that expresses

economic theory in mathematical terms and that seeks to verify theory through statistical methods.

ECONOMIC COERCION

economic coercion. See COERCION(2).

ECONOMIC CRIME

economic crime. See CRIME.

ECONOMIC-CURE TRADE EMBARGO

economic-cure trade embargo. See EMBARGO(3).

ECONOMIC DEVELOPMENT ADMINISTRATION

Economic Development Administration. A unit in the U.S. Department of Commerce responsible for helping to develop local economies and distressed areas by making grants for public works and development facilities that are designed to reduce persistent unemployment in economically distressed areas. • The agency was created in 1965 by the Public Works and Economic Development Act. — Abbr. EDA.

ECONOMIC DISCRIMINATION

economic discrimination. Any form of discrimination within the field of commerce, such as boycotting a particular product or price-fixing. See BOYCOTT; PRICE DISCRIMINATION; PRICE-FIXING.

ECONOMIC DURESS

economic duress. See DURESS.

ECONOMIC EARNINGS

economic earnings. See operating earnings under EARNINGS.

ECONOMIC ESPIONAGE ACT

Economic Espionage Act. Trade secrets. A 1996 federal statute criminalizing the misappropriation of trade secrets and providing criminal penalties for industrial espionage by or for a foreign entity. • The Act also applies to one who knowingly receives, purchases, or possesses stolen trade-secret information. 18 USCA §§ 1831–1839. — Sometimes termed Industrial Espionage Act.

ECONOMIC FRUSTRATION

economic frustration. See commercial frustration under FRUSTRATION.

ECONOMIC-HARM RULE

economic-harm rule. See ECONOMIC-LOSS RULE.

ECONOMIC INDICATOR

economic indicator. A statistical measure (such as housing starts) used to describe the state of the economy or to predict its direction. See INDICATOR.

lagging economic indicator. An economic indicator (such as new-home sales) that tends to respond to the direction of the economy. — Often shortened to lagging indicator.

leading economic indicator. An economic indicator (such as interest rates) that tends to predict the future direction of the economy. — Often shortened to leading indicator.

ECONOMIC LIFE

economic life. The duration of an asset's profitability, usu. shorter than its physical life.

ECONOMIC LOSS

economic loss. A monetary loss such as lost wages or lost profits. • The term usu. refers to a type of damages recoverable in a lawsuit. For example, in a products-liability suit, economic loss includes the cost of repair or replacement of defective property, as well as commercial loss for the property's inadequate value and consequent loss of profits or use. [Cases: Damages 36, 40(1). C.J.S. Damages §§ 53, 58, 61; Torts § 26.]

consequential economic loss. Economic loss that proximately results from a defective product and that is beyond direct economic loss. • Examples include lost profits and loss of goodwill or business reputation. [Cases: Damages 36; Products Liability 17.1. C.J.S. Damages § 53; Torts § 26.]

direct economic loss. Economic loss flowing directly from insufficient product quality. • The most common type is loss-of-bargain damages — the difference between the actual value of goods accepted and the value they would have had if they had been delivered as promised or warranted. [Cases: Products Liability 17.1; Torts 5. C.J.S. Torts §§ 24–26.]

ECONOMIC-LOSS RULE

economic-loss rule. Torts. The principle that a plaintiff cannot sue in tort to recover for purely monetary loss — as opposed to physical injury or property damage — caused by the defendant. • Many states recognize an exception to this rule when the defendant commits fraud or negligent misrepresentation, or when a special relationship exists between the parties (such as an attorney–client relationship). — Also termed economic-harm rule; economic-loss doctrine.

“One way the courts have attempted to draw a line between tort and warranty is to bar recovery for ‘economic loss’ in tort. In some states this common law doctrine has achieved the status of the ‘economic loss doctrine,’ meaning that once loss is defined as ‘economic’ it cannot be recovered at least in negligence or strict tort and perhaps not in fraud or misrepresentation.” 1 James J. White & Robert S. Summers, Uniform Commercial Code § 10-5, at 581 (4th ed. 1995).

ECONOMIC OBSOLESCENCE

economic obsolescence. See OBSOLESCENCE.

ECONOMIC-OUT CLAUSE

economic-out clause. See MARKET-OUT CLAUSE.

ECONOMIC-REALITIES TEST

economic-realities test. A method by which a court determines the true nature of a business transaction or situation by examining the totality of the commercial circumstances. • Courts often use this test to determine whether a person is an employee or an independent contractor. Factors include whether the alleged employer controls the details of the work and whether taxes are withheld from payments made to the worker. [Cases: Master and Servant 1, 5. C.J.S. Apprentices §§ 2, 11; Employer–Employee Relationship §§ 2–3, 6–20, 34.]

ECONOMIC RENT

economic rent. 1. The return gained from an economic resource (such as a worker or land) above the minimum cost of keeping the resource in service. 2. Rent that yields a fair return on capital and expenses.

ECONOMIC RESEARCH SERVICE

Economic Research Service. An agency in the U.S. Department of Agriculture responsible for compiling and analyzing information about domestic and international agricultural developments. — Abbr. ERS.

ECONOMIC RIGHT

economic right. (usu. pl.) Copyright. A legal interest and power that concerns a financial benefit from a work, as distinguished from a moral interest that a creator has in a creation. • The term is mostly used in civil-law countries that recognize creators' moral rights.

ECONOMICS

economics. The social science dealing with the production, distribution, and consumption of goods and services.

ECONOMICS AND STATISTICS ADMINISTRATION

Economics and Statistics Administration. A unit in the U.S. Department of Commerce responsible for maintaining high-quality standards of statistical reporting in the federal government and for responding to the needs of the Department of Commerce and the rest of the executive branch for statistical information and analysis. • The unit comprises the Bureau of the Census, the Bureau of Economic Analysis, and STAT-USA. — Abbr. ESA.

ECONOMIC STRIKE

economic strike. See STRIKE.

ECONOMIC SUBSTANTIVE DUE PROCESS

economic substantive due process. See DUE PROCESS.

ECONOMIC WARFARE

economic warfare.See WARFARE.

ECONOMIC WASTE

economic waste.Overproduction or excessive drilling of oil or gas. [Cases: Mines and Minerals 78.1(11), 92.53. C.J.S. Mines and Minerals §§ 268, 364.]

ECONOMIST

economist. A professional who studies economics and the economy; a specialist in economics.

ECONOMY

economy.1. The management or administration of the wealth and resources of a community (such as a city, state, or country).2. The sociopolitical organization of a community's wealth and resources. 3. Restrained, thrifty, or sparing use of resources; efficiency.

balanced economy.An economy in which the monetary values of imports and exports are equal.

black economy.See SHADOW ECONOMY.

judicial economy.See JUDICIAL ECONOMY.

overheated economy.An economy that, although it has a high level of economic activity, has the capacity to cause interest rates and inflation to rise.

political economy.A social science dealing with the economic problems of government and the relationship between political policies and economic processes.

shadow economy.See SHADOW ECONOMY.

underground economy.See SHADOW ECONOMY.

ECONOMY OF SCALE

economy of scale.(usu. pl.) A decline in a product's per-unit production cost resulting from increased output, usu. due to increased production facilities; savings resulting from the greater efficiency of large-scale processes.

E CONTRA

e contra (ee kon-tr<<schwa>>). [Latin] On the contrary.

E-CONTRACT

e-contract,n. 1.POINT-AND-CLICK AGREEMENT. 2. Any type of contract formed in the course of e-commerce by (1) the interaction of two or more individuals using electronic means, such as e-mail, (2) the interaction of an individual with an electronic agent, such as a computer program, or (3) the interaction of at least two electronic agents that are programmed to recognize the existence of a contract. • Sections 202–217 of the Uniform Computer Information Transactions

Act provide rules for the formation, governance, and basic terms of an e-contract. Traditional contract principles and remedies usu. apply to e-contracts. — Also termed electronic contract. See ELECTRONIC AGENT .

e-contract,vb. To form a binding agreement by means of a computer or other electronic or automated technology.

E CONVERSO

e converso (ee k<<schwa>>n-v<<schwa>>r-soh). [Latin] Conversely; on the other hand; on the contrary.

ECU

ECU.abbr.EUROPEAN CURRENCY UNIT.

ECUMENICAL

ecumenical (ek-y<<schwa>>-men-<<schwa>>-k<<schwa>>l), adj.1. General; universal. 2. Interreligious; interdenominational.

E.D.

E.D.abbr.Eastern District, in reference to U.S. judicial districts.

EDA

EDA.abbr.ECONOMIC DEVELOPMENT ADMINISTRATION.

EDGE LEASE

edge lease.See LEASE.

EDI AGREEMENT

EDI agreement.abbr.Electronic Data Interchange agreement; an agreement that governs the transfer or exchange of data, such as purchase orders, between parties by computer. • Electronic data transmitted under an EDI agreement is usu. formatted according to an agreed standard, such as the American National Standards Institute ANSI X12 standard or the U.N. EDIFACT standard.

EDICT

edict (ee-dikt), n.[fr. Latin edictum] A formal decree, demand, or proclamation issued by the sovereign of a country. • In some countries, an edict has legal force equivalent to that of a statute. For Roman-law edicts, see EDICTUM.

perpetual edict.See edictum perpetuum under EDICTUM.

praetorian edict (pri-tor-ee-<<schwa>>n). See edictum praetoris under EDICTUM.

EDICTAL

edictal (ee-dik-t<<schwa>>l), adj. Of, relating to, consisting of, or pronounced in one or

more edicts. — edictally,adv.

EDICTAL CITATION

edictal citation.Scots & Roman Dutch law.A form of summons to appear in court, treated as having been served by public proclamation when personal service is impossible (as when a defendant is out of Scotland or cannot be found). — Also termed edictal intimation. See substituted service under SERVICE.

EDICTAL INTERDICT

edictal interdict.See INTERDICT(1).

EDICTAL INTIMATION

edictal intimation.See EDICTAL CITATION.

EDICTA MAGISTRATUUM

edicta magistratum.See JUS HONORARIUM.

EDICTS OF JUSTINIAN

Edicts of Justinian.Roman law.Thirteen constitutions or laws of Justinian, appended to the Greek collection of the Novels in the Venetian manuscript. • The Edicts were confined to administrative matters in the provinces of the Roman Empire. They were not known to the glossators.

EDICTUM

edictum (ee-dik-t<<schwa>>m), n.[Latin] Roman law.1. In imperial Rome, an edict or mandate; an ordinance or law proclaimed by the emperor. • An edict was a constitution of the emperor acting on his own initiative, differing from a rescript in not being returned in the way of answer; from a decree in not being given in judgment; and from both in not being founded upon solicitation. As an imperial constitution, it had the force of law. 2. A declaration by a magistrate relevant to his jurisdiction or area of competence; esp., the pronouncement of a magistrate of the principles by which he proposed to act in office. See edictum annuum; FORMULA(1). Pl. edicta.

edictum aedilicium (ee-d<<schwa>>-lish-ee-<<schwa>>m). A curule aedile's edict regarding sales in the public market; esp., an edict giving remedies for sales of defective goods, animals, or slaves. • An aedile could, for instance, declare that sellers would be strictly liable for latent defects in goods, and dictate how dogs and wild animals for sale should be confined to protect the public. — Also written aedilitium edictum. Pl. edicta aedilicia.

edictum annuum (an-yoo-<<schwa>>m). An edict issued by a praetor at the beginning of the one-year term of office. Pl. edicta annua.

edictum perpetuum (p<<schwa>>r-pech-oo-<<schwa>>m). The urban praetor's edict in its permanent form, edited by Julian in A.D. 131 and given legislative force. • This term originally had the narrower sense of the praetors' general edicts as opposed to edicts issued in specific cases.

— Also termed perpetual edict. Pl. edicta perpetua.

edictum praetoris (pri-tor-<<schwa>>s). The proclamation issued by a praetor at the start of the year's term, explaining the grounds on which a formula would be granted. — Also termed praetorian edict. See edictum annum; FORMULA (1).

edictum provinciale (pr<<schwa>>-vin-shee-ay-lee). An edict or system of rules for the administration of justice, modeled on edictum praetoris, issued by the provincial governors in the Roman Empire. Pl. edicta provincialia.

edictum repentinum (rep-<<schwa>>n-tI-n<<schwa>>m). [Latin] Roman law. A supplementary edict issued to deal with some emergency. • This term was contrasted with edictum perpetuum. Pl. edicta repentina.

Edictum Theodorici (thee-<<schwa>>-d<<schwa>>-rI-sI). A collection of laws applicable to both Romans and Goths, issued by Theodoric, king of the Ostrogoths, at Rome about A.D. 500, or perhaps by Theodoric III, king of the Visigoths in Gaul about A.D. 460.

edictum tralatitium (tral-<<schwa>>-tish-ee-<<schwa>>m). A praetor's edict that retained all or a principal part of the predecessor's edict, with only such additions as appeared necessary to adapt it to changing social conditions or juristic ideas. • This had become standard practice by the end of the Republic. — Also spelled edictum tralacticium (tral-<<schwa>>k-tish-ee-<<schwa>>m). Pl. edicta tralatitia.

EDILE

edile (ee-dII). See AEDILE.

EDITORIAL PRIVILEGE

editorial privilege. See journalist's privilege (2) under PRIVILEGE(3).

EDITUS

editus (ed-<<schwa>>-t<<schwa>>s), adj. Hist. 1. (Of a statute or rule) enacted; promulgated. 2. (Of a child) born; brought forth.

EDMUNDS–TUCKER ACT

Edmunds–Tucker Act. An 1882 federal law enacted to punish polygamy. 48 USCA § 1480a. — Sometimes shortened to Edmunds Act. [Cases: Bigamy 1.C.J.S. Bigamy §§ 2–6, 8.]

EDUCATIONAL EXPENSE

educational expense. See EXPENSE.

EDUCATIONAL INSTITUTION

educational institution. 1. A school, seminary, college, university, or other educational facility, though not necessarily a chartered institution. [Cases: Schools 11. C.J.S. Schools and School

Districts §§ 4, 74, 76, 396–398.] 2. As used in a zoning ordinance, all buildings and grounds necessary to accomplish the full scope of educational instruction, including those things essential to mental, moral, and physical development. [Cases: Zoning and Planning 288. C.J.S. Zoning and Land Planning §§ 134, 146.]

EDUCATIONAL NEGLECT

educational neglect.See NEGLECT.

EDUCATIONAL TRUST

educational trust.See TRUST.

EDUCATION INDIVIDUAL RETIREMENT ACCOUNT

education individual retirement account.See INDIVIDUAL RETIREMENT ACCOUNT.

EEC

EEC.abbr.European Economic Community. See EUROPEAN UNION.

EEOC

EEOC.abbr.EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

EEZ

EEZ.abbr.EXCLUSIVE ECONOMIC ZONE.

EFFECT

effect,n.1. That which is produced by an agent or cause; a result, outcome, or consequence. 2. The result that an instrument between parties will produce on their relative rights, or that a statute will produce on existing law, as discovered from the language used, the forms employed, or other materials for construing it.

effect,vb. To bring about; to make happen <the improper notice did not effect a timely appeal>.

EFFECTIVE

effective,adj. 1. (Of a statute, order, contract, etc.) in operation at a given time <effective June 1>. • A statute, order, or contract is often said to be effective beginning (and perhaps ending) at a designated time. 2. Performing within the range of normal and expected standards <effective counsel>.3. Productive; achieving a result <effective cause>.

EFFECTIVE ASSIGNMENT

effective assignment.See ASSIGNMENT(2).

EFFECTIVE ASSISTANCE OF COUNSEL

effective assistance of counsel. See ASSISTANCE OF COUNSEL.

EFFECTIVE CAUSE

effective cause. See immediate cause under CAUSE(1).

EFFECTIVE DATE

effective date. The date on which a statute, contract, insurance policy, or other such instrument becomes enforceable or otherwise takes effect, which sometimes differs from the date on which it was enacted or signed.

EFFECTIVE FILING DATE

effective filing date. See DATE.

EFFECTIVE POSSESSION

effective possession. See constructive possession under POSSESSION.

EFFECTIVE RATE

effective rate. See INTEREST RATE.

EFFECTIVE TAX RATE

effective tax rate. See average tax rate under TAX RATE.

EFFECTIVE VOTE

effective vote. See VOTE(1).

EFFECTS

effects, n. pl. Movable property; goods <personal effects>.

personal effects. Items of a personal character; esp., personal property owned by a decedent at the time of death. [Cases: Descent and Distribution 76. C.J.S. Descent and Distribution § 74.]

EFFECTS DOCTRINE

effects doctrine. See AFFECTS DOCTRINE.

EFFEIRS

effeirs (e-feerz), adv. Scots law. As appropriate; correctly. • The term ordinarily appears in the phrase as affeirs.

EFFETS

effets (e-feor e-fets), n. pl. [French] 1. Bills of exchange. 2. Goods; movables; chattels.

effets mobiliers (moh-beel-yayor moh-b<<schwa>>-leerz). Funds; stocks.

EFFICIENT ADEQUATE CAUSE

efficient adequate cause. See proximate cause under CAUSE(1).

EFFICIENT BREACH

efficient breach. See BREACH OF CONTRACT.

EFFICIENT-BREACH THEORY

efficient-breach theory. Contracts. The view that a party should be allowed to breach a contract and pay damages, if doing so would be more economically efficient than performing under the contract. • This relatively modern theory stems from the law-and-economics movement. See BREACH OF CONTRACT. [Cases: Contracts 275. C.J.S. Contracts § 502.]

EFFICIENT CAUSE

efficient cause. See proximate cause under CAUSE(1).

EFFICIENT INTERVENING CAUSE

efficient intervening cause. See intervening cause under CAUSE(1).

EFFICIENT PROXIMATE CAUSE

efficient proximate cause. See proximate cause under CAUSE(1).

EFFIGY

effigy (ef-*<<schwa>>*-jee), n. A figure, image, or other representation; esp., a crude representation of someone who is disliked. • Effigies are sometimes hanged, burned, or otherwise abused to express public disapproval or ridicule.

EFFLUENT

effluent (ef-loo-*<<schwa>>*nt), n. Liquid waste that is discharged into a river, lake, or other body of water. [Cases: Environmental Law 182.]

EFFLUXION OF TIME

effluxion of time (i-fluk-sh*<<schwa>>*n). The expiration of a lease term resulting from the passage of time rather than from a specific action or event. — Also termed efflux of time. [Cases: Landlord and Tenant 93. C.J.S. Landlord and Tenant §§ 89(1, 2), 91.]

EFFORCIALITER

efforcialiter (e-for-shee-ay-l*<<schwa>>*-t*<<schwa>>*r), adv. [Latin] Hist. Forcibly. • This adverb referred primarily to military force.

EFFRACTION

effraction (*<<schwa>>*-frak-sh*<<schwa>>*n). Archaic. A breach made by the use of force.

EFFRACTOR

effractor (i-frak-t*<<schwa>>*r). [Latin] Hist. One who breaks through; a burglar. Pl. effractors,

effractoress (ef-rak-tor-eez). See HOUSEBREAKING.

EFFUSIO SANGUINIS

effusio sanguinis (e-fyoo-zhee-oh sang-gwi-nis). [Latin] Hist.1. The shedding of blood. 2. The fine or penalty imposed for the shedding of blood. • The Crown granted to many lords of manors the power to collect this fine. — Also termed bloodwite; bloodwit. Cf. WERGILD.

EFT

EFT.abbr.Electronic funds transfer. See FUNDS TRANSFER.

E.G.

e.g.abbr.[Latin *exempli gratia*] For example <an intentional tort, e.g., battery or false imprisonment>. Cf. I.E.

EGG DONATION

egg donation.Family law. A type of assisted-reproductive therapy in which eggs are removed from one woman and transplanted into the uterus of another woman, who carries and delivers the child. • In egg donation, the egg is usu. fertilized in vitro. See IN VITRO FERTILIZATION; ASSISTED REPRODUCTIVE TECHNOLOGY .

EGGSHELL-SKULL RULE

eggshell-skull rule.Torts. The principle that a defendant is liable for a plaintiff's unforeseeable and uncommon reactions to the defendant's negligent or intentional act. • Under this rule, for example, if one person negligently scrapes another who turns out to be a hemophiliac, the negligent defendant is liable for the full extent of the plaintiff's injuries even though the harm to another plaintiff would have been minor. — Also termed eggshell-plaintiff rule; thin-skull rule; special-sensitivity rule; old-soldier's rule. [Cases: Damages 33.]

EGO, TALIS

ego, talis (ee-goh, tay-lis). [Latin] I, such a one. • This phrase was used in describing the forms of old deeds.

EGREDIENS ET EXEUNS

egrediens et exeuns (e-gree-dee-enz et ek-see-<<schwa>>nz). [Latin “stepping out and exiting”] Common-law pleading. Going forth and issuing out of (land).

EGREGIOUS

egregious (i-gree-j<<schwa>>s), adj. Extremely or remarkably bad; flagrant <the defendant's egregious behavior>.

EGRESS

egress (ee-gres).1. The act of going out or leaving. 2. The right or ability to leave; a way of exit. Cf. INGRESS.

EI ABEST

ei abest (ee-lab-est). [Latin] Roman law. It is wanting to him. • The phrase appeared in reference to any diminution in a person's assets.

EIGHT-CORNERS RULE

eight-corners rule. Insurance. The principle that a liability insurer's duty to defend its insured — generally triggered if the plaintiff's claims against the insured are within the policy's coverage — is assessed by reviewing the claims asserted in the plaintiff's complaint, without reference to matters outside the four corners of the complaint plus the four corners of the policy. — Also termed allegations-of-the-complaint rule. Cf. FOUR-CORNERS RULE . [Cases: Insurance 2914, 2915. C.J.S. Insurance § 1150.]

EIGHTEENTH AMENDMENT

Eighteenth Amendment. The constitutional amendment — ratified in 1919 and repealed by the 21st Amendment in 1933 — that prohibited the manufacture, sale, transportation, and possession of alcoholic beverages in the United States. See PROHIBITION(3). [Cases: Intoxicating Liquors 17. C.J.S. Intoxicating Liquors § 35.]

EIGHTH AMENDMENT

Eighth Amendment. The constitutional amendment, ratified as part of the Bill of Rights in 1791, prohibiting excessive bail, excessive fines, and cruel and unusual punishment.

EIGHT-HOUR LAW

eight-hour law. A law that sets eight hours as the standard workday for some jobs and that usually requires a higher pay rate for work beyond eight hours. • One example is the federal Fair Labor Standards Act. See WAGE-AND-HOUR LAW.

8-K

8-K. An SEC form that a registered corporation must file if a material event affecting its financial condition occurs between the due dates for regular SEC filings. — Also termed Form 8-K. Cf. 10-K.

EIGNE

eigne (ayn), adj. [Law French] Hist. 1. (Of a child) eldest; first-born. 2. (Of title) superior; prior. 3. (Of an estate) entailed. See ENTAILED. • This adjective traditionally follows the noun it modifies in sense 1 <bastard eigne> but precedes the noun in senses 2 & 3 <eigne title>. — Also spelled eygne; aisne. — Also termed (in Law Latin) einetius.

EIGNESSE

eignesse (ay-nes), n. [French] See ESNECY.

EINECIA

einecia (I-nee-shee-<<schwa>>), n.[Law Latin fr. French einé “being born before”] Eldership. See ESNECY.

EINETIA

einetia. See EISNETIA.

EINETIUS

einetius (I-nee-shee-<<schwa>>s), n. See EIGNE.

EIR

EIR.abbr.Environmental-impact report. See ENVIRONMENTAL-IMPACT STATEMENT.

EIRE

eire (air), n. Hist. A journey; route; circuit. See EYRE.

EIRENARCHA

eirenarcha (I-r<<schwa>>-nahr-k<<schwa>>), n.[from Greek eirene “peace” + archein “to rule”] Roman law. A provincial justice of the peace; a person charged with maintaining order. — Also spelled (in Latin) irenarcha.

EIS

EIS.abbr.ENVIRONMENTAL-IMPACT STATEMENT.

EISNE

eisne (ayn), adj.[Law French] Hist. Eldest; firstborn. — Also spelled eigne, einsne, aisne, eign.

bastard eisne.Hist. An illegitimate son whose parents afterward marry and have a second son (mulier puisne) for lawful issue.

EISNETIA

eisnetia (Iz-nee-shee-<<schwa>>), n.[Law Latin] The share of the oldest son; the portion of an estate acquired by primogeniture. — Also spelled einetia.

EITHER-OR ORDER

either-or order.See alternative order under ORDER(8).

EIUSDEM GENERIS

eiusdem generis.See EJUSDEM GENERIS.

EJECT

eject,vb.1. To cast or throw out. 2. To oust or dispossess; to put or turn out of possession. 3. To expel or thrust out forcibly (e.g., disorderly patrons). — ejector,vb.

EJECTION

ejection,n.1. An expulsion by action of law or by actual or threatened physical force. See OUSTER. 2.EJECTMENT(2).

EJECTIONE CUSTODIAE

ejectione custodiae.See DE EJECTIONE CUSTODIAE.

EJECTIONE FIRMAE

ejectione firmae.See DE EJECTIONE FIRMAE.

EJECTMENT

ejectment.1. The ejection of an owner or occupier from property. 2. A legal action by which a person wrongfully ejected from property seeks to recover possession, damages, and costs. 3. The writ by which such an action is begun. • The essential allegations in an action for ejectment are that (1) the plaintiff has title to the land, (2) the plaintiff has been wrongfully dispossessed or ousted, and (3) the plaintiff has suffered damages. — Also termed action of ejectment; action for the recovery of land; ejection. See FORCIBLE ENTRY AND DETAINER. Cf. EVICTION; OUSTER. [Cases: Ejectment 1. C.J.S. Ejectment §§ 2–3, 5.]

“The evolution of the action of ejectment from its primitive form as a mere action of trespass, enabling a lessee of lands to recover damages when ousted of his possession, through a series of most ingenious fictions, which were afterwards added to enable him to recover possession as well, until its final establishment as the proper method of trying all disputed titles to real property, presents to the student of legal science one of the most interesting studies that the history of the law affords. Few remedies have passed through so many changes of form, both in pleading and practice, and yet retained the same distinctive character that marked their origin.” George W. Warvelle, *A Treatise on the Principles and Practice of the Action of Ejectment* § 4, at 4–5 (1905).

“Any person wrongfully dispossessed of land may sue for the specific restitution of it in an action of ejectment. Originally this action was a special variety of trespass and available only to leaseholders. But in time and by the aid of the most elaborate fictions it came to be used by freeholders also. All these fictions have now been swept away; in theory even the term ejectment has been replaced by the term action for the recovery of land. The older term is, however, replaced in practice.” R.F.V. Heuston, *Salmond on the Law of Torts* 41 (17th ed. 1977).

equitable ejectment.A proceeding brought to enforce specific performance of a contract for the sale of land and for other purposes. • Though in the form of an ejectment action, this proceeding is in reality a substitute for a bill in equity. [Cases: Ejectment 156.]

justice ejectment.A statutory proceeding to evict a tenant who has held over after termination of the lease or breach of its conditions.

EJECTMENT BILL

ejectment bill.Equity practice. A bill in equity brought to recover real property and an

accounting of rents and profits, without setting out a distinct ground of equity jurisdiction (and thus demurrable). [Cases: Ejectment 62. C.J.S. Ejectment § 59.]

EJECTMENT DE GARDE

ejectment de garde. See DE EJECTIONE CUSTODIAE.

EJECTOR

ejector, n. One who ejects, puts out, or dispossesses another.

casual ejector. The nominal defendant in an ejectment action who, under a legal fiction, is supposed to come casually or by accident upon the premises and to eject the lawful possessor. [Cases: Ejectment 46.]

EJECTUM

ejectum (i-jek-t<<schwa>>m), n. Something that is cast out, esp. by the sea. See FLOTSAM. Cf. JETSAM; LAGAN(1) WAVESON.

EJECTUS

ejectus (ee-jek-t<<schwa>>s), n. [Latin] Hist. A whoremonger; a pimp.

EJERCITORIA

ejercitoria (ay-hair-see-tor-ee-<<schwa>>), n. [Spanish] Spanish law. An action lying against a ship's owner upon the contracts or obligations made by the master for repairs or supplies. • This action corresponds to the actio exercitoria of Roman law. See actio exercitoria under ACTIO.

EJIDO

ejido (ay-hee-doh), n. [fr. Latin exitus “a going out”] Spanish law. Common land or pasture; esp., land used in common by inhabitants of a city, pueblo, or town for such things as pasture, wood, and threshing-ground; commons. — Also termed exidos; exedos. See COMMON(2).

EJURATION

ejuration (ej-<<schwa>>-ray-sh<<schwa>>n). The renouncing or resigning of one's place.

EJUSDEM GENERIS

ejusdem generis (ee-j<<schwa>>s-d<<schwa>>m jen-<<schwa>>-ris also ee-joos- or ee-yoos-). [Latin “of the same kind or class”] A canon of construction that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same type as those listed. • For example, in the phrase horses, cattle, sheep, pigs, goats, or any other farm animal, the general language or any other farm animal — despite its seeming breadth — would probably be held to include only four-legged, hooved mammals typically found on farms, and thus would exclude chickens. — Also spelled eiusdem generis. — Also termed ejusdem generis rule; Lord Tenterden's rule. Cf. EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS; NOSCITUR A SOCIIS; RULE OF RANK. [Cases: Contracts 156;

Statutes 194. C.J.S. Contracts § 328; Statutes § 329.]

EJUSDEM NEGOTII

ejusdem negotii (ee-j<<schwa>>s-d<<schwa>>m ni-goh-shee-I). [Latin] Hist. Part of the same transaction.

ELABORARE

elaborare (i-lab-<<schwa>>-rair-ee), vb.[Latin] Hist. To gain, acquire, or purchase, as by labor and industry.

ELABORATUS

elaboratus (i-lab-<<schwa>>-ray-t<<schwa>>s), n.[Latin] Hist. Property acquired by labor.

ELASTIC CLAUSE

Elastic Clause.See NECESSARY AND PROPER CLAUSE.

ELDER ABUSE

elder abuse.See abuse of the elderly under ABUSE.

ELDER BRETHERN

Elder Brethren.A distinguished body of men elected as masters of Trinity House, an institution incorporated in the reign of Henry VIII and charged with many duties in marine affairs, such as superintending lighthouses. • The full title of the corporation is Elder Brethren of the Holy and Undivided Trinity.

ELDER LAW

elder law.The field of law dealing with the elderly, including such issues as estate planning, retirement benefits, social security, age discrimination, and healthcare.

ELDER TITLE

elder title.A title of earlier date but one that becomes operative simultaneously with, and prevails over, a title of newer origin.

ELECTED DOMICILE

elected domicile.See DOMICILE.

ELECTEE

electee.1. A person chosen or elected. 2. A person to whom the law gives a choice about status.

ELECTIO EST CREDITORIS

electio est creditoris (i-lek-shee-oh est kred-i-tor-is). [Law Latin] Scots law. The creditor has the election or choice. • The phrase appeared in reference to the creditor's right to apply payments

to one debt or another. Cf. ELECTIO EST DEBITORIS.

“Electio est creditoris.... This has reference to a creditor's right to apply indefinite payments, made by his debtor, to that debt or obligation which is least secured; but where the debtor at the time of payment appropriates the sum paid, towards extinction of a particular debt, it must be so applied.” John Trayner, Trayner's Latin Maxims 184 (4th ed. 1894).

ELECTIO EST DEBITORIS

electio est debitoris (i-lek-shee-oh est deb-i-tor-is). [Law Latin] Scots law. The debtor has the election or choice. • If the law provided alternative methods of fulfilling an obligation, the debtor could choose the method of payment. Cf. ELECTIO EST CREDITORIS.

ELECTION

election,n.1. The exercise of a choice; esp., the act of choosing from several possible rights or remedies in a way that precludes the use of other rights or remedies <the taxpayers' election to file jointly instead of separately>. See ELECTION OF REMEDIES. 2. The doctrine by which a person is compelled to choose between accepting a benefit under a legal instrument and retaining some property right to which the person is already entitled; an obligation imposed on a party to choose between alternative rights or claims, so that the party is entitled to enjoy only one <the prevailing plaintiff was put to an election between out-of-pocket damages and lost profits>. — Also termed equitable election. See RIGHT OF ELECTION. [Cases: Election of Remedies 1. C.J.S. Election of Remedies §§ 2–3.] 3. The process of selecting a person to occupy an office (usu. a public office), membership, award, or other title or status <the 2004 congressional election>. [Cases: Elections 1. C.J.S. Elections §§ 1(1, 10), , 2.] — elect,vb. — elective,adj.

by-election. An election specially held to fill a vacant post. — Also spelled bye-election. Cf. general election.

election at large.An election in which a public official is selected from a major election district rather than from a subdivision of the larger unit. — Also termed at-large election. [Cases: Elections 12(7).]

free election.An election in which the political system and processes guarantee that each voter will be allowed to vote according to conscience.

general election. 1. An election that occurs at a regular interval of time. — Also termed regular election. 2. An election for all seats, as contrasted with a by-election. Cf. by-election. [Cases: Elections 215.]

municipal election.The election of municipal officers. [Cases: Municipal Corporations 129. C.J.S. Municipal Corporations §§ 350, 353, 367.]

off-year election.An election conducted at a time other than the presidential election year.

popular election.An election by people as a whole, rather than by a select group.

primary election.A preliminary election in which a political party's registered voters nominate

the candidate who will run in the general election. — Often shortened to primary. [Cases: Elections 126. C.J.S. Elections § 111(1).]

recall election. An election in which voters have the opportunity to remove a public official from office.

regular election. See general election.

representation election. An election held by the National Labor Relations Board to decide whether a certain union will represent employees in a bargaining unit. See BARGAINING UNIT. [Cases: Labor Relations 210. C.J.S. Labor Relations §§ 191–192, 195–197, 203, 207–209.]

runoff election. An election held after a general election, in which the two candidates who received the most votes — neither of whom received a majority — run against each other so that the winner can be determined. Cf. two-round voting under VOTING.

special election. An election that occurs in an interim between general elections, usu. to fill a sudden vacancy in office. Cf. by-election.

4. Patents. A patent applicant's choice of a single invention to continue prosecuting under the original application, after an examiner has required a restriction. See RESTRICTION(4).

election of species. A patent applicant's choice of one alternative over others after an examiner determines that a generic claim is not allowable.

ELECTION, DOCTRINE OF

election, doctrine of. See DOCTRINE OF ELECTION.

ELECTION, ESTOPPEL BY

election, estoppel by. See estoppel by election under ESTOPPEL.

ELECTION BOARD

election board. 1. A board of inspectors or commissioners appointed for each election precinct to determine voter qualification, to supervise the polling, and often to ascertain and report the results. 2. A local agency charged with the conduct of elections. [Cases: Elections 49–58. C.J.S. Elections §§ 55–56, 59–60, 63–65.]

ELECTION BY SPOUSE

election by spouse. See RIGHT OF ELECTION.

ELECTION CONTEST

election contest. A challenge by an election's loser against the winner, calling for an analysis of the election returns, which may include reviewing voter qualifications or re-counting the ballots. [Cases: Elections 148, 269–306. C.J.S. Elections §§ 1(10), 120, 139, 219, 245–267, 269–270, 272–277, 279, 281, 283–284, 288–292, 295–296, 298–301, 305–306, 308, 310, 312, 314, 317–318.]

ELECTION DISTRICT

election district.See DISTRICT.

ELECTION DOWER

election dower.See DOWER.

ELECTION FRAUD

election fraud.Illegal conduct committed in an election, usu. in the form of fraudulent voting.

- Examples include voting twice, voting under another person's name (usu. a deceased person), and voting while ineligible. [Cases: Elections 318. C.J.S. Elections § 331.]

ELECTION JUDGE

election judge.1. A person appointed to supervise an election at the precinct level; a local representative of an election board. [Cases: Elections 49. C.J.S. Elections § 56.] 2.English law. One of two puisne judges of the Queen's Bench Division of the High Court selected to try election petitions.

ELECTION OF REMEDIES

election of remedies.1. A claimant's act of choosing between two or more concurrent but inconsistent remedies based on a single set of facts. [Cases: Election of Remedies 1. C.J.S. Election of Remedies §§ 2–3.] 2. The affirmative defense barring a litigant from pursuing a remedy inconsistent with another remedy already pursued, when that other remedy has given the litigant an advantage over, or has damaged, the opposing party. • This doctrine has largely fallen into disrepute and is now rarely applied. 3. The affirmative defense that a claimant cannot simultaneously recover damages based on two different liability findings if the injury is the same for both claims, thus creating a double recovery. Cf. alternative relief under RELIEF.

ELECTION OF SPECIES

election of species.See ELECTION(4).

ELECTION PETITION

election petition.English law. A petition for inquiry into the validity of a Parliament member's election, when the member's return is allegedly invalid for bribery or other reason.

ELECTION RETURNS

election returns.The report made to the board of canvassers or the election board, by those charged with tallying votes, of the number of votes cast for a particular candidate or proposition. [Cases: Elections 126(7), 246. C.J.S. Elections § 119(1).]

ELECTIVE FRANCHISE

elective franchise.See FRANCHISE(1).

ELECTIVE OFFICE

elective office. An office that is filled by popular election rather than by appointment.

ELECTIVE SHARE

elective share. Wills & estates. The percentage of a deceased spouse's estate, set by statute, that a surviving spouse (or sometimes a child) may choose to receive instead of taking under a will or in the event of being unjustifiably disinherited. — Also termed forced share; statutory share; statutory forced share. See RIGHT OF ELECTION. [Cases: Wills 778–803. C.J.S. Wills §§ 1841–1879.]

“In many states today, common-law dower and curtesy have been wholly replaced by statutes that make the surviving spouse an ‘heir’ of the deceased spouse and fix a minimum percentage of the decedent's estate (real and personal) to which the survivor will be entitled regardless of efforts of the deceased spouse to prevent it by will. This statutory minimum — called the statutory forced share — is typically an estate in fee simple, not merely a life estate. A serious disadvantage to the surviving spouse under many of these statutes, however, is that the minimum percentage applies only to property owned by the decedent at death. Both husbands and wives can, under such statutes, defeat their spouses' forced shares by inter vivos transfer.” Thomas F. Bergin & Paul G. Haskell, Preface to *Estates in Land and Future Interests* 37–38 (2d ed. 1984).

ELECTOR

elector. 1. A member of the electoral college chosen to elect the President and Vice President. — Also termed presidential elector. [Cases: United States 25. C.J.S. United States § 46.] 2. A voter. [Cases: Elections 59. C.J.S. Elections § 16.]

qualified elector. A legal voter; a person who meets the voting requirements for age, residency, and registration and who has the present right to vote in an election. See VOTER. [Cases: Elections 59–87. C.J.S. Elections §§ 15–19, 26, 28–29, 32.]

3. A person who chooses between alternative rights or claims. 4. Hist. The title of certain German princes who had a voice in electing the Holy Roman Emperors. • This office sometimes became hereditary and was connected with territorial possessions.

ELECTORAL COLLEGE

electoral college. (often cap.) The body of electors chosen from each state to formally elect the U.S. President and Vice President by casting votes based on the popular vote. [Cases: United States 25. C.J.S. United States § 46.]

ELECTORAL PROCESS

electoral process. 1. A method by which a person is elected to public office. 2. The taking and counting of votes.

ELECTRIC CHAIR

electric chair. A chair that is wired so that electrodes can be fastened to a condemned person's head and one leg and a lethal charge passed through the body for the purpose of carrying out a

death penalty. • The electric chair was first used in 1890 at the Auburn State Prison in New York.

ELECTRONIC AGENT

electronic agent. Any electronic or automated means, such as a computer program, that can independently initiate or respond to an action or message without a human's review.

ELECTRONIC CASH

electronic cash. See e-money under MONEY.

ELECTRONIC CHATTEL PAPER

electronic chattel paper. See CHATTEL PAPER.

ELECTRONIC COMMERCE DIRECTIVE

Electronic Commerce Directive. See DIRECTIVE ON CERTAIN ASPECTS OF ELECTRONIC COMMERCE IN THE INTERNAL MARKET .

ELECTRONIC COMMUNICATIONS PRIVACY ACT

Electronic Communications Privacy Act. A federal statute that limits the circumstances under which the federal and state government may gain access to oral, wire, and electronic communications. 18 USCA § 2510.

ELECTRONIC CONTRACT

electronic contract. See E-CONTRACT.

ELECTRONIC DATA INTERCHANGE AGREEMENT

Electronic Data Interchange agreement. See EDI AGREEMENT.

ELECTRONIC FUNDS TRANSFER

electronic funds transfer. See FUNDS TRANSFER.

ELECTRONIC CURRENCY

electronic currency. See e-money under MONEY.

ELECTRONIC SIGNATURE

electronic signature. See SIGNATURE.

ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

Electronic Signatures in Global and National Commerce Act. See E-SIGN ACT.

ELECTRONIC SURVEILLANCE

electronic surveillance. See EAVESDROPPING; WIRETAPPING.

ELECTRONIC TRANSACTION

electronic transaction. A transaction formed by electronic messages in which the messages of one or both parties will not be reviewed by an individual as an expected step in forming a contract.

ELEEMOSYNAE

eleemosynae (el-*<<schwa>>*-mos-*<<schwa>>*-nee), n. pl. Eccles. law. Possessions belonging to the church. [Cases: Religious Societies 15. C.J.S. Religious Societies §§ 53–54.]

ELEEMOSYNARIA

eleemosynaria (el-*<<schwa>>*-mos-*<<schwa>>*-nair-ee-*<<schwa>>*), n. Hist. 1. The place in a religious house or church where the common alms were deposited, to be distributed to the poor by the almoner. 2. The office of almoner.

ELEEMOSYNARIUS

eleemosynarius (el-*<<schwa>>*-mos-*<<schwa>>*-nair-ee-*<<schwa>>*s), n. Hist. [Law Latin] 1. An almoner, or chief officer, who received the eleemosynary rents and gifts and distributed them to pious and charitable uses. 2. The name of an officer (lord almoner) of the English kings, in former times, who distributed the royal alms or bounty.

ELEEMOSYNARY

eleemosynary (el-*<<schwa>>*-mos-*<<schwa>>*-ner-ee), adj. Of, relating to, or assisted by charity; not-for-profit <an eleemosynary institution>. [Cases: Charities 1. C.J.S. Charities §§ 2–3.]

ELEEMOSYNARY CORPORATION

eleemosynary corporation. See charitable corporation under CORPORATION.

ELEEMOSYNARY DEFENSE

eleemosynary defense. See charitable immunity under IMMUNITY(2).

ELEGANTER

elegant(er) (el-*<<schwa>>*-gan-t-*<<schwa>>*r), adv. Civil law. Accurately; with discrimination; neatly.

ELEGIT

elegit (*<<schwa>>*-lee-jit). [Latin “he has chosen”] Hist. A writ of execution (first given by 13 Edw., ch. 18) either upon a judgment for a debt or damages or upon the forfeiture of a recognizance taken in the king's court. • Under it, the defendant's goods and chattels were appraised and, except for plow beasts, delivered to the plaintiff to satisfy the debt. If the goods were not sufficient to pay the debt, then the moiety of the defendant's freehold lands held at the time of judgment was also delivered to the plaintiff, to hold until the debt was satisfied out of rents and profits or until the defendant's interest expired. During this period the plaintiff was called tenant by elegit, and the estate an estate by elegit. The writ was abolished in England in 1956, and it is no longer used anywhere in the United States.

ELEMENT

element.1. A constituent part of a claim that must be proved for the claim to succeed <Burke failed to prove the element of proximate cause in prosecuting his negligence claim>.2.Patents. A discretely claimed component of a patent claim. • For a prior-art reference to anticipate a claim, it must teach each and every claim element. To recover for patent infringement, the plaintiff must prove that the accused product infringes every element of at least one claim, either literally or under the doctrine of equivalents. — Also termed (in sense 2) limitation. See DOCTRINE OF EQUIVALENTS. [Cases: Patents 101(1). C.J.S. Patents §§ 140–142.]

ELEMENTAL FACT

elemental fact.See ultimate fact under FACT.

ELEMENTS OF CRIME

elements of crime.The constituent parts of a crime — usu. consisting of the actus reus, mens rea, and causation — that the prosecution must prove to sustain a conviction. • The term is more broadly defined by the Model Penal Code in § 1.13(9) to refer to each component of the actus reus, causation, the mens rea, any grading factors, and the negative of any defense.

ELEVENTH AMENDMENT

Eleventh Amendment.The constitutional amendment, ratified in 1795, prohibiting a federal court from hearing an action against a state by a person who is not a citizen of that state. See sovereign immunity under IMMUNITY(1). [Cases: Federal Courts 265–268.]

ELIGIBLE

eligible,adj. Fit and proper to be selected or to receive a benefit; legally qualified for an office, privilege, or status. — eligibility,n.

ELIMINATION

elimination.Hist. The act of banishing or turning out of doors; rejection.

ELINGUATION

elinguation (ee-ling-gway-sh<<schwa>>n).Hist. The punishment of cutting out a person's tongue. — elinguate,vb.

ELISOR

elisor (i-II-z<<schwa>>r). A person appointed by a court to assemble a jury, serve a writ, or perform other duties of the sheriff or coroner if either is disqualified. — Also spelled eslor. [Cases: Sheriffs and Constables 26. C.J.S. Sheriffs and Constables § 48.]

ELKINS ACT

Elkins Act.A 1903 federal law that strengthened the Interstate Commerce Act by prohibiting rebates and other forms of preferential treatment to large carriers.49 USCA §§ 41–43

(superseded).

ELL

ell (el).Hist. A measure of length corresponding to the modern yard.

ELLENBOROUGH'S ACT

Ellenborough's Act (el-<<schwa>>n-br<<schwa>>z). An English law (the Malicious Shooting and Stabbing Act) of 1803 punishing offenses against the person. St. 43 Geo. 3, ch. 58.

ELOGIUM

elogium (i-loh-jee-<<schwa>>m), n. Civil law.1. A will or testament. 2. A clause or provision in a will or testament.

ELOIGN

eloign (i-loyn), vb. 1. To remove (a person or property) from a court's or sheriff's jurisdiction. 2. To remove to a distance; conceal. — Also spelled eloin. — eloigner,n.

ELOIGNMENT

eloignment (i-loyn-m<<schwa>>nt), n. The getting of a thing or person out of the way, or removing it to a distance, so as to be out of reach.

ELONGATA

elongata (ee-lawng-gay-t<<schwa>>). [Latin] 1.adj. Eloigned; carried away to a distance. 2.ELONGATUS.

ELONGATUS

elongatus (ee-lawng-gay-t<<schwa>>s). [Latin “eloigned”] A return made by a sheriff to a writ de homine replegiando, stating that the party to be replevied has been eloigned, or conveyed out of the sheriff's jurisdiction. — Also termed elongata.

ELONGAVIT

elongavit (ee-lawng-gay-vit). [Latin “he has eloigned”] In a proceeding by foreign attachment, the serjeant-at-mace's return that the garnishee has eloigned the goods, so that they cannot be appraised. • Upon such a return, judgment was given for the plaintiff that an inquiry be made into the eloigned goods. The inquiry was then set for trial and an assessment made by a jury.

ELOPE

elope,vb. 1.Archaic. To run away; escape. 2.Archaic. To abandon one's husband and run away with a lover. 3. To run away secretly for the purpose of getting married, often without parental consent. — elopement,n.

ELSEWHERE

elsewhere,adv. In another place. • In shipping articles, this term, following the designation of

the port of destination, must be construed either as void for uncertainty or as subordinate to the principal voyage stated in the preceding words. [Cases: Seamen 7. C.J.S. Seamen §§ 13, 15.]

ELUVIATION

eluviation (i-loo-vee-ay-sh<<schwa>>n). Movement of soil caused by excessive water in the soil.

E-MAIL

e-mail,n. A communication exchanged between people by computer, through either a local area network or the Internet. [Cases: Telecommunications 461.15. C.J.S. Telegraphs, Telephones, Radio, and Television § 221.] — e-mail,vb.

EMANATION

emanation.1. The act of coming or flowing forth from something. 2. That which flows or comes forth from something; an effluence.

EMANCIPATE

emancipate,vb. 1. To set free from legal, social, or political restraint; esp., to free from slavery or bondage. [Cases: Slaves 23.] 2. To release (a child) from the control, support, and responsibility of a parent or guardian. [Cases: Child Support 386–392; Parent and Child 16. C.J.S. Parent and Child §§ 13–37, 158, 180, 183–184, 194, 222.] — emancipative, emancipatory,adj. — emancipator,n.

EMANCIPATED MINOR

emancipated minor.See MINOR.

EMANCIPATIO

emancipatio. See EMANCIPATION(3).

EMANCIPATION

emancipation.1. The act by which one who was under another's power and control is freed. 2. A surrender and renunciation of the correlative rights and duties concerning the care, custody, and earnings of a child; the act by which a parent (historically a father) frees a child and gives the child the right to his or her own earnings. • This act also frees the parent from all legal obligations of support. Emancipation may take place by agreement between the parent and child, by operation of law (as when the parent abandons or fails to support the child), or when the child gets legally married or enters the armed forces. [Cases: Child Support 386–392; Parent and Child 16. C.J.S. Parent and Child §§ 13–37, 158, 180, 183–184, 194, 222.] 3.Roman law.The enfranchisement of a son by his father, accomplished through the formality of an imaginary sale. • Justinian substituted the simpler proceeding of a manumission before a magistrate. — Also termed (in sense 3) emancipatio. Cf. MANCIPATION.

constructive emancipation.Emancipation by law, as opposed to a voluntary act of the parent. •

Constructive emancipation may occur in several ways, as by (1) conduct of the parent that is inconsistent with the performance of parental duties, (2) marriage of the child, or (3) the child's service in the armed forces.

partial emancipation.Emancipation that frees a child for only a part of the period of minority, or from only a part of the parent's rights, or for only some purposes.

EMANCIPATION ACT

emancipation acts.See MARRIED WOMEN'S PROPERTY ACTS.

EMANCIPATION PROCLAMATION

Emancipation Proclamation.An executive proclamation, issued by President Abraham Lincoln on January 1, 1863, declaring that all persons held in slavery in designated states and districts were freed.

EMBARGO

embargo,n.1. A government's wartime or peacetime detention of an offending nation's private ships found in the ports of the aggrieved nation <the President called off the embargo of Iraq's ships after the war ended>. — Also spelled imbargo. — Also termed hostile embargo. [Cases: War and National Emergency 12. C.J.S. War and National Defense §§ 8, 13, 16–22, 84–85.]

“A hostile embargo is a kind of reprisal by one nation upon vessels within its ports belonging to another nation with which a difference exists, for the purpose of forcing it to do justice. If this measure should be followed by war, the vessels are regarded as captured, if by peace, they are restored.” Theodore D. Woolsey, Introduction to the Study of International Law § 118, at 187 (5th ed. 1878).

2. A nation's detention of all ships in its own ports, including its own, to promote safety and to preclude transportation to an offending nation <the embargo of all U.S. ships traveling to Iraq remained in effect until hostilities subsided>. — Also termed civil embargo.“A civil embargo may be laid for the purpose of national welfare or safety, as for the protection of commercial vessels against the rules of belligerent powers which would expose them to capture. Such was the measure adopted by the United States in December 1807, which detained in port all vessels except those which had a public commission, and those that were already laden or should sail in ballast. The right to adopt such a measure of temporary non-intercourse is undoubted.” Theodore D. Woolsey, Introduction to the Study of International Law § 118, at 187 (5th ed. 1878).

3. The unilateral or collective restrictions on the import or export of goods, materials, capital, or services into or from a specific country or group of countries for political or security reasons <for a time, the industrialized nations placed an embargo on all goods from Libya>. — Also termed trade embargo; economic-cure trade embargo. 4. The conscription of private property for governmental use, such as to transport troops <the Army's embargo of the company jet to fly General White to Washington>.5. A temporary prohibition on disclosure <the embargo on the press release expired at 11:59 p.m.>. — embargo,vb.

EMBASSADOR

ambassador. See AMBASSADOR.

EMBASSY

embassy.1. The building in which a diplomatic body is located; esp., the residence of the ambassador. 2. A body of diplomatic representatives headed by an ambassador; a diplomatic mission on the ambassadorial level. 3. The mission, business, and function of an ambassador. Cf. LEGATION. [Cases: Ambassadors and Consuls 3. C.J.S. Ambassadors and Consuls §§ 15–23.]

EMBER DAYS

Ember Days.Eccles. law. The days — which the ancient church fathers called *quatuor tempora jejunii* — that are observed on the Wednesday, Friday, and Saturday following (1) Quadragesima Sunday (the first Sunday in Lent), (2) Whitsuntide, or Holyrood Day, in September, and (3) St. Lucy's day, about the middle of December. • Almanacs refer to the weeks in which these days fall as Ember Weeks; they are now chiefly noticed because, by tradition, the Sundays following Ember Days are used to ordain priests and deacons, although the canon law allows bishops to ordain on any Sunday or holiday.

EMBEZZLEMENT

embezzlement,n. The fraudulent taking of personal property with which one has been entrusted, esp. as a fiduciary. • The criminal intent for embezzlement — unlike larceny and false pretenses — arises after taking possession (not before or during the taking). — Also termed defalcation; peculation. See LARCENY; FALSE PRETENSES. [Cases: Embezzlement 1.C.J.S. Embezzlement §§ 2–3, 5.] — embezzle,vb. — embezzler,n.

“Embezzlement is not a common-law crime. It is the result of legislative efforts to make provision for an unreasonable gap which appeared in the law of larceny as it developed. Under the early English statute embezzlement was made a misdemeanor, but under most modern American statutes it is either a felony or a misdemeanor depending upon the value of the property converted.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 351 (3d ed. 1982).

“Embezzlement can be defined as the fraudulent conversion of the property of another by one who has lawful possession of the property and whose fraudulent conversion has been made punishable by the statute.” Arnold H. Loewy, *Criminal Law in a Nutshell* 94 (2d ed. 1987).

EMBLEM

emblem.1. A flag, armorial bearing, or other symbol of a country, organization, or movement. 2. Loosely, something that is used to symbolize something else.

EMBLEMATA TRIBONIANI

emblemata Triboniani (em-blee-m<<schwa>>-t<<schwa>> tr<<schwa>>-boh-nee-ay-n I). [Latin] Roman law. Alterations, modifications, and additions to the writings of the older jurists that were combined to form the Digest or Pandects, and generally termed interpolations. •

Justinian appointed a commission over which Tribonian presided to harmonize contradictions, delete obsolete matter, and bring the law up to date. This term is considered old-fashioned by modern Romanists. See INTERPOLATION(2).

EMBLEMENTS

emblems (em-bl<<schwa>>-m<<schwa>>nts). 1. The growing crop annually produced by labor, as opposed to a crop occurring naturally. • Emblems are considered personal property that the executor or administrator of a deceased tenant may harvest and take regardless of who may have since occupied the land. — Also termed *fructus industriales*. [Cases: Crops 1. C.J.S. Crops §§ 1–5, 9.] 2. The tenant's right to harvest and take away such crops after the tenancy has ended. [Cases: Landlord and Tenant 139(2). C.J.S. Landlord and Tenant § 349.]

“At common law those products of the earth which are annual, and are raised by yearly manurance and labor, and essentially owe their annual existence to the cultivation by man, [are] termed ‘emblems’ and sometimes ‘fructus industriales.’ ” *Sparrow v. Pond*, 52 N.W. 36, 36 (Minn. 1892).

“The law of emblems has its origin and matrix, in the privilege, recognized at least as early as the fifteenth century, of the tenant for an uncertain term, to harvest and remove, even after the tenancy had terminated, the annual crop, which he had planted and nurtured.” Ray Andrews Brown, *The Law of Personal Property* § 159, at 806 (2d ed. 1955).

EMBLERS DE GENTZ

emblers de gentz (em-bl<<schwa>>rz d<<schwa>> jents). [Law French] A theft from the people. • The phrase occurs in the old English rolls of Parliament — for example, “Whereas divers murders, emblers de gentz, and robberies are committed...”

EMBODIED TECHNOLOGY

embodied technology. Know-how or knowledge that is manifest in products and equipment, including software. Cf. DISEMBODIED TECHNOLOGY.

EMBODIMENT

embodiment. Patents. 1. The tangible manifestation of an invention. [Cases: Patents 99. C.J.S. Patents § 139.] 2. The method for using this tangible form. 3. The part of a patent application or patent that describes a concrete manifestation of the invention. • Embodiments are less common in software or process patents than in manufacturing-related patents.

EMBOSSSED SEAL

embossed seal. See NOTARY SEAL.

EMBRACE

embrace, vb. To attempt to influence (a judge or juror) by corruption, or to behave in a way that might have a corrupting influence on a judge or juror; to engage in embracery.

EMBRACEE

embracee (em-bray-see). The bribe-taker in the offense of embracery.

EMBRACER

embracer (im-brays-*<<schwa>>*r). [fr. Old French *embraseor* “one who kindles or instigates,” fr. *embraser* “to set fire to”] The bribe-giver in the offense of embracery; one who attempts to influence a judge or a juror by means of corruption. — Also spelled *embraceor*.

EMBRACERY

embracery (im-brays-*<<schwa>>*-ree), n. The attempt to corrupt or wrongfully influence a judge or juror, esp. by threats or bribery. — Also spelled *imbracery*. — Also termed *jury-tampering*; *laboring a jury*. Cf. **JURY-FIXING**; **JURY-PACKING**. [Cases: Criminal Law 45.35.]

“The word ‘embracery’ ... has tended to disappear. It is included in some of the codes but the tendency has been to divide this common-law offense into two parts, placing that which is appropriate thereto in sections on bribery and the remainder in provisions dealing with obstruction of justice.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 552 (3d ed. 1982).

EMBRYO

embryo (em-bree-oh). A developing but unborn or unhatched animal; esp., an unborn human from conception until the development of organs (i.e., until about the eighth week of pregnancy). Cf. **FETUS**; **ZYGOTE**.

embryo formatus (for-may-t*<<schwa>>*s). Eccles. law. A human embryo organized into human shape and endowed with a soul. • Though rejected in the early doctrine of the Christian church, the distinction between the *embryo formatus* and *informatus* was accepted by Gratian (regarded as the founder of canon law) in his *Decretum* (ca. 1140), in which he said that abortion is not murder if the fetus has not yet been infused with a soul. Though he did not specify the time of formation or animation, by the 16th century canonists accepted that the time of formation and animation was the 40th day after conception for the male fetus and the 80th day for the female. — Also termed *embryo animatus*.

embryo informatus (in-for-may-t*<<schwa>>*s). Eccles. law. A human embryo before it has been endowed with a soul. — Also termed *embryo inanimatus*.

EMBRYO ADOPTION

embryo adoption. See **ADOPTION**.

EMEND

emend (i-mend), vb. To correct or revise; esp., to edit or change (a text).

EMENDA

emenda (ee-men-d*<<schwa>>*), n. pl. [Latin “amends”] Things given in reparation for a

trespass.

EMENDATIO

emendatio (ee-men-day-shee-oh), n.[Latin] Hist. The power of amending and correcting abuses, according to certain rules and measures.

emendatio panis et cerevisiae (ee-men-day-shee-oh pan-is et ser-<<schwa>>-vizh-ee-ee). [Latin "the correction of bread and ale"] The power of supervising and correcting (assizing) the weights and measures of bread and ale.

EMENDATION

emendation (ee-men-day-sh<<schwa>>n).1. Correction or revision, esp. of a text. 2.Hist. The correction of an error or wrongdoing; atonement for a criminal offense, esp. by the payment of money. • As criminal law developed over time, emendation by payment of wer or wite gradually faded away and was replaced by harsher punishments.

E MERA GRATIA

e mera gratia (ee meer-<<schwa>> gray-shee-<<schwa>>). [Latin] Out of mere grace or favor.

EMERGENCY CIRCUMSTANCES

emergency circumstances.See exigent circumstances under CIRCUMSTANCE.

EMERGENCY COURT OF APPEALS

Emergency Court of Appeals.Hist. A temporary court, established during World War II, whose purpose was to review wage- and price-control matters. • The court was created in 1942 and abolished in 1962. Cf. TEMPORARY EMERGENCY COURT OF APPEALS . [Cases: War and National Emergency 108, 206.]

EMERGENCY DOCTRINE

emergency doctrine.1. A legal principle exempting a person from the ordinary standard of reasonable care if that person acted instinctively to meet a sudden and urgent need for aid. — Also termed imminent-peril doctrine; sudden-emergency doctrine; sudden-peril doctrine. [Cases: Negligence 291. C.J.S. Negligence §§ 69–73.] 2. A legal principle by which consent to medical treatment in a dire situation is inferred when neither the patient nor a responsible party can consent but a reasonable person would do so. — Also termed (in sense 2) emergency-treatment doctrine. Cf. GOOD SAMARITAN DOCTRINE ; RESCUE DOCTRINE. [Cases: Health 909.] 3. The principle that a police officer may conduct a search without a warrant if the officer has probable cause and reasonably believes that immediate action is needed to protect life or property. — Also termed emergency exception. See exigent circumstances under CIRCUMSTANCE.

EMERGENCY-EMPLOYMENT DOCTRINE

emergency-employment doctrine.The principle that an employee may enlist another's help in

dealing with an emergency that falls within the scope of the employee's duties and that could not be overcome without the assistance of the other person.

EMERGENCY EXCEPTION

emergency exception. See EMERGENCY DOCTRINE(3).

EMERGENCY JURISDICTION

emergency jurisdiction. See JURISDICTION.

EMERGENCY PREPAREDNESS AND RESPONSE DIRECTORATE

Emergency Preparedness and Response Directorate. The division of the U.S. Department of Homeland Security responsible for coordinating relief and recovery efforts and for developing and coordinating plans to prevent terrorism and to minimize risks of danger from natural disasters. • The Directorate includes the Federal Emergency Management Agency and also coordinates efforts with the Strategic National Stockpile and the National Disaster Medical System from the Department of Health and Human Services, the Nuclear Incident Response Team from the Department of Energy, the Domestic Emergency Support Teams from the Department of Justice, the National Domestic Preparedness Office of the Federal Bureau of Investigation, and state and local emergency responders. — Abbr. EPR.

EMERGENCY PROTECTIVE ORDER

emergency protective order. See PROTECTIVE ORDER.

EMERGENCY SEARCH

emergency search. See SEARCH.

EMERGENCY-TREATMENT DOCTRINE

emergency-treatment doctrine. See EMERGENCY DOCTRINE(2).

EMERITA

emerita. See EMERITUS.

EMERITUS

emeritus. An honorary title conferred on a former officer who has honorably retired, usu. after serving for an extended period well beyond the norm. • The term is loosely used as an adjective meaning “honored,” but it is not a synonym for “former,” “retired,” or “immediate past” (as in “immediate past president”). Pl. emeriti. Fem. emerita. Fem. pl. emeritae. See HONORARY.

EMIGRANT

emigrant (em-<<schwa>>-gr<<schwa>>nt), n. One who leaves his or her country for any reason with the intent to establish a permanent residence elsewhere. Cf. IMMIGRANT.

EMIGRANT AGENT

emigrant agent. See AGENT(2).

EMIGRATION

emigration (em-⟨schwa⟩-gray-sh⟨schwa⟩n), n. The act of leaving a country with the intent not to return and to reside elsewhere. Cf. IMMIGRATION. — emigrate, vb.

“Emigration is usually defined as the voluntary removal of an individual from his home State with the intention of residing abroad. However, not all emigration is voluntary; there sometimes exists forced emigration, even mass emigration. Emigration may also be due to flight for political reasons or expulsion. One then speaks of refugees or exiles.” Paul Weis, “Emigration,” in 2 *Encyclopedia of Public International Law* 76 (1995).

EMIGRÉ

émigré (em-⟨schwa⟩-gray or em-⟨schwa⟩-gray), n. [French] One who is forced to leave his or her country for political reasons. — Also spelled émigré.

EMINENCE

eminence (em-⟨schwa⟩-n⟨schwa⟩nts). (usu. cap.) Eccles. law. An honorary title given to cardinals of the Catholic Church. • Until the pontificate of Urban VIII, cardinals were called *illustrissimi* and *reverendissimi*.

EMINENT DOMAIN

eminent domain. The inherent power of a governmental entity to take privately owned property, esp. land, and convert it to public use, subject to reasonable compensation for the taking. — Also (rarely) termed compulsory purchase; (in Scots law) compulsory surrender. See CONDEMNATION(2); EXPROPRIATION; TAKING(2). [Cases: Eminent Domain 1, 69. C.J.S. Eminent Domain §§ 2–3, 71–72, 198–199.]

“The term ‘eminent domain’ is said to have originated with Grotius, the seventeenth century legal scholar. Grotius believed that the state possessed the power to take or destroy property for the benefit of the social unit, but he believed that when the state so acted, it was obligated to compensate the injured property owner for his losses. Blackstone, too, believed that society had no general power to take the private property of landowners, except on the payment of a reasonable price. The just compensation clause of the fifth amendment to the Constitution was built upon this concept of a moral obligation to pay for governmental interference with private property.... No provision for the power of eminent domain appears in the federal Constitution. The Supreme Court, however, has said that the power of eminent domain is an incident of federal sovereignty and an ‘offspring of political necessity.’ The Court has also noted that the fifth amendment’s limitation on taking private property is a tacit recognition that the power to take private property exists.” John E. Nowak & Ronald D. Rotunda, *Constitutional Law* § 11.11, at 424–25 (4th ed. 1991) (quoting *Bauman v. Ross*, 167 U.S. 548, 574, 17 S.Ct. 966, 976 (1897)).

EMINENT DOMAIN CLAUSE

Eminent Domain Clause. The Fifth Amendment provision providing that private property

cannot be taken for public use without just compensation. See TAKINGS CLAUSE. [Cases: Eminent Domain 70. C.J.S. Eminent Domain § 72.]

EMISSARY

emissary. One sent on a special mission as another's agent or representative, esp. to promote a cause or to gain information.

EMIT

emit,vb. 1. To give off or discharge into the air <emit light>.2. To issue with authority <emit a new series of currency>. — emission,n.

EMOLUMENT

emolument (i-mol-y<<schwa>>-m<<schwa>>nt), n. (usu. pl.) Any advantage, profit, or gain received as a result of one's employment or one's holding of office. [Cases: Officers and Public Employees 94. C.J.S. Officers and Public Employees §§ 130, 270–274, 286, 313–320.]

EMOLUMENT CLAUSE

Emolument Clause.The clause of the U.S. Constitution prohibiting titles of nobility and the acceptance of a gift, title, or other benefit from a foreign power. U.S. Const. art. I, § 9, cl. 8.

E-MONEY

e-money. See MONEY.

EMOTIONAL ABUSE

emotional abuse.See ABUSE.

EMOTIONAL DISTRESS

emotional distress.A highly unpleasant mental reaction (such as anguish, grief, fright, humiliation, or fury) that results from another person's conduct; emotional pain and suffering. • Emotional distress, when severe enough, can form a basis for the recovery of tort damages. — Also termed emotional harm; mental anguish; mental distress; mental suffering. See INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS . Cf. mental cruelty under CRUELTY. [Cases: Damages 48–56.20. C.J.S. Damages §§ 94–104; Parent and Child § 344; Torts §§ 66–83.]

“Emotional distress passes under various names, such as mental suffering, mental anguish, mental or nervous shock, or the like. It includes all highly unpleasant mental reactions, such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea. It is only where it is extreme that the liability arises. Complete emotional tranquility is seldom attainable in this world, and some degree of transient and trivial emotional distress is a part of the price of living among people. The law intervenes only where the distress inflicted is so severe that no reasonable man could be expected to endure it. The intensity and the duration of the distress are factors to be considered in determining its severity. Severe distress must be proved;

but in many cases the extreme and outrageous character of the defendant's conduct is in itself important evidence that the distress has existed.” Restatement (Second) of Torts § 46 cmt. j (1965).

EMOTIONAL HARM

emotional harm. See EMOTIONAL DISTRESS.

EMOTIONAL INCAPACITY

emotional incapacity. 1. The inability to control one's emotions or express appropriate emotions because of a mental disorder. 2. Hist. Evidence. (Of a witness) hostility or partiality rooted in bias, corruption, or interest. • At common law, an interested witness was not competent to testify on grounds of emotional incapacity. See *State v. Craft*, 41 So. 550, 551 (La. 1906).

EMOTIONAL INSANITY

emotional insanity. See INSANITY.

EMPANEL

empanel, vb. To swear in (a jury) to try an issue or case. — Also spelled impanel. [Cases: Jury 146. C.J.S. Juries §§ 492–493.] — empanelment, empaneling, n.

EMPANELED JURY

empaneled jury. See JURY.

EMPARNOURS

emparnours (em-pahr-n<<schwa>>rz), n. pl. [French] Hist. Persons who undertook lawsuits on behalf of others.

EMPEROR

emperor. 1. The title of the sovereign ruler of an empire. 2. The chief of a confederation of states of which kings are members. • The rulers of the Roman world adopted the designation emperor after the fall of the republic. The title was later assumed by those — including Napoleon — who claimed to be their successors in the Holy Roman Empire. The sovereigns of Japan and Morocco are often called emperors, as were, in Western speech, the former sovereigns of Turkey and China. The title denotes a power and dignity superior to that of a king. It appears to be the appropriate style of the executive head of a federal government constructed on the monarchical principle and comprising several distinct kingdoms or other quasi-sovereign states, as with the German empire from 1871 to 1918.

EMPHASIS ADDED

emphasis added. A citation signal indicating that the writer quoting another's words has italicized or otherwise emphasized some of them. — Also termed emphasis supplied.

EMPHYTEUSIS

emphyteusis (em-fi-t[y]oo-sis), n.[Greek "implanting"] Greek, Roman & civil law. A contract by which one person delivered to another (the emphyteuta) a tract of land, either in perpetuity or for a long period of time, in exchange for the obligation to cultivate the land and to pay annual rental. • In Roman law, the land was state-owned (ager vectigalis). In the 5th century, emphyteusis was officially recognized as distinct from ownership or a lease. The land's lessee or tenant, called an emphyteuta, had to bear any burdens imposed on the land. Although the emphyteusis was alienable, the owner had to consent to the sale. (Cf. SUPERFICIARIUS.) Unlike a usufruct, emphyteusis did not terminate with the death of the emphyteuta. Perpetual emphyteusis was abolished in the 18th century.

EMPHYTEUTA

emphyteuta (em-fi-t[y]oo-t<<schwa>>), n.[Latin] Roman & civil law. The person to whom an emphyteusis is granted; the lessee or tenant under a contract of emphyteusis. See FEE FARM.

EMPHYTEUTIC

emphyteutic (em-fi-t[y]oo-tik), adj.[Latin] Civil law. Founded on, growing out of, or having the character of an emphyteusis; held under an emphyteusis.

EMPIRE

empire. The dominion or jurisdiction of an emperor; the region over which an emperor's dominion extends.

EMPIRICAL

empirical (em-pir-i-k<<schwa>>l), adj. Of, relating to, or based on experience, experiment, or observation <the expert's theory was not supported by empirical data>. — Also termed empiric.

EMPLAZAMIENTO

emplazamiento (em-plah-zah-myen-toh), n.[Spanish] Spanish law. A summons; esp., a court-issued citation requiring the addressee to appear at a designated time and place.

EMPLOI

emploi (om-plwah), n.[French] French law. Equitable conversion. • When property covered by the régime dotal is sold, the purchaser must ensure that the sale proceeds are reinvested for the wife's benefit. See régime dotal under REGIME.

EMPLOY

employ,vb. 1. To make use of. 2. To hire. 3. To use as an agent or substitute in transacting business. 4. To commission and entrust with the performance of certain acts or functions or with the management of one's affairs.

EMPLOYEE

employee. A person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of

work performance. — Also spelled employe. Cf. AGENT(1); INDEPENDENT CONTRACTOR. [Cases: Master and Servant 1. C.J.S. Apprentices §§ 2, 11; Employer–Employee Relationship §§ 2–3, 6–12.]

borrowed employee. An employee whose services are, with the employee's consent, lent to another employer who temporarily assumes control over the employee's work. • Under the doctrine of respondeat superior, the borrowing employer is vicariously liable for the employee's acts. But the employer may also be entitled to assert immunity under workers'-compensation laws. — Also termed borrowed servant; loaned employee; loaned servant; employee pro hac vice; special employee. See RESPONDEAT SUPERIOR. [Cases: Master and Servant 301(4); Workers' Compensation 202. C.J.S. Employer–Employee Relationship §§ 197–200; Workmen's Compensation § 122.]

probationary employee. A recently hired employee whose ability and performance are being evaluated during a trial period of employment.

statutory employee. Workers' compensation. An employee who is covered, or required to be covered, by the employer's workers'-compensation insurance and who therefore has no independent tort claim against the employer for unintentional injuries suffered on the job. See statutory employer under EMPLOYER. [Cases: Workers' Compensation 187. C.J.S. Workmen's Compensation §§ 121, 132.]

EMPLOYEE BENEFIT PLAN

employee benefit plan. A written stock-purchase, savings, option, bonus, stock-appreciation, profit-sharing, thrift, incentive, pension, or similar plan solely for employees, officers, and advisers of a company. • The term includes an employee-welfare benefit plan, an employee-pension benefit plan, or a combination of those two. See 29 USCA § 1002(3). But the term excludes any plan, fund, or program (other than an apprenticeship or training program) in which no employees are plan participants. — Often shortened to plan. Cf. PENSION PLAN.

defined-benefit plan. A plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to employees over a period of years, usu. for life, after retirement; any pension plan that is not a defined-contribution plan. • Retirement benefits under a defined-benefit plan are generally based on a formula that included such factors as years of service and compensation. If the trust funding the plan lacks sufficient assets to pay the promised benefits, ERISA requires the employer to cover the shortfall. 29 USCA § 1002(35). Cf. defined-contribution plan. [Cases: Pensions 28. C.J.S. Pensions and Retirement Plans and Benefits §§ 11–15.]

defined-contribution plan. Under ERISA, an employee retirement plan in which each participant has a separate account — funded by the employee's contributions and the employer's contributions (usu. in a preset amount) — and each participant's benefits are based solely on what has accumulated in the participant's account. 29 USCA § 1002(34). — Also termed defined-contribution pension plan; individual account plan. Cf. defined-benefit plan. [Cases: Pensions 28. C.J.S. Pensions and Retirement Plans and Benefits §§ 11–15.]

disability retirement plan. 1. A plan that is invoked when a covered person is disabled from working to normal retirement age. 2. A plan that provides increased benefits if a person retires because of a disability. [Cases: Pensions 28. C.J.S. Pensions and Retirement Plans and Benefits §§ 11–15.]

employee-stock-ownership plan. A type of profit-sharing plan that invests primarily in the employer's stock. • Employee-stock-ownership plans receive special tax benefits and can borrow money to fund employee stock purchases, which makes them a useful corporate finance tool. IRC (26 USCA) § 4975(e)(7). — Abbr. ESOP. [Cases: Internal Revenue 3578, 4297. C.J.S. Internal Revenue §§ 294–295, 302–304.]

excess-benefit plan. An employee benefit plan maintained by an employer solely for the purpose of providing benefits for certain employees in excess of limitations on contributions and benefits imposed by the Internal Revenue Code. 29 USCA § 1002(36). [Cases: Pensions 28. C.J.S. Pensions and Retirement Plans and Benefits §§ 11–15.]

401(k) plan. A retirement and savings plan that allows an employee to elect to have a portion of his or her pretax salary contributed to a defined contribution plan. • Employers often match all or part of the employee's contributions. Employees usu. can choose investments from a list of options. IRC (26 USCA) § 401(k). [Cases: Internal Revenue 3575. C.J.S. Internal Revenue §§ 160, 291, 299, 306, 327.]

403(b) plan. A retirement plan for employees of public educational systems and certain tax-exempt organizations that is funded by pretax employee contributions much like a 401(k) plan, but may also provide for employer contributions. IRC (26 USCA) § 403(b). — Also termed tax-sheltered annuity; tax-deferred annuity. [Cases: Internal Revenue 3587. C.J.S. Internal Revenue § 313.]

457 plan. A type of deferred-compensation plan for employees of state and local governments and tax-exempt organizations that operates much like a 401(k) plan, but (except for governmental plans) is unfunded. IRC (26 USCA) § 457.

governmental plan. Under ERISA, an employee benefit plan established or maintained for its employees by the federal government, state or local governments, or their agencies or instrumentalities. 29 USCA § 1002(32). • If a collective-bargaining agreement between a labor union and a governmental entity includes a benefit plan, that plan may be a governmental plan if it is funded by and covers only employees of the governmental entity. — Also termed governmental employee benefit plan; government plan.

individual account plan. See defined-contribution plan.

Keogh plan. See KEOGH PLAN.

money-purchase plan. A defined-contribution plan that provides for mandatory employer contributions without regard to employer profits. • Contributions are frequently stated as a percentage of employee compensation. [Cases: Pensions 28. C.J.S. Pensions and Retirement Plans and Benefits §§ 11–15.]

nonqualified deferred-compensation plan. An unfunded compensation arrangement, frequently offered to executives, that defers compensation and the recognition of its accompanying taxable income to a later date. • It is termed “nonqualified” because it does not qualify for favorable tax treatment under IRC (26 USCA) § 401(a). The plan avoids the restrictions on qualified plans, esp. the limits on contributions and benefits and rules against discrimination in favor of highly compensated employees. [Cases: Internal Revenue 3596.]

“Generally, a nonqualified deferred compensation plan is an agreement or promise by an employer to certain individuals to pay compensation to those individuals at some future date. A nonqualified plan may also be a series of deferred compensation agreements between an employer and certain individuals that are considered to be a plan of benefits. These types of plans do not qualify for the special tax treatment afforded to plans that meet the qualification requirements of Section 401(a) of the Internal Revenue Code....” Bruce J. McNeil, *Nonqualified Deferred Compensation Plans* 1 (1994).

pension plan. See PENSION PLAN.

profit-sharing plan. See PROFIT-SHARING PLAN.

qualified plan. 1. See qualified pension plan under PENSION PLAN. 2. See qualified profit-sharing plan under PROFIT-SHARING PLAN.

retirement plan. An employee benefit plan — such as a pension plan or Keogh plan — provided by an employer (or a self-employed person) for an employee's retirement. [Cases: Pensions 28. C.J.S. Pensions and Retirement Plans and Benefits §§ 11–15.]

SIMPLE plan. An arrangement under which an individual retirement account or annuity is established for each eligible employee and funded by elective pretax employee contributions, much as with a 401(k) plan, and certain matching or minimum employer contributions. • The plan can be attractive to employers because it is easier to administer than a 401(k) plan. The name is a loose acronym for “Savings Incentive Match Plan for Employees.” IRC (26 USCA) § 408(p).

simplified employee pension plan. An arrangement under which an individual retirement account or annuity is established for each eligible employee and funded by discretionary employer contributions. IRC (26 USCA) § 408(k). • A simplified employee pension plan operates much like a 401(k) plan, in that the employee contributions can be made by deferred compensation and the employer can contribute. But the plan is attractive to small employers because it is much easier to administer than a 401(k) plan and gives the employer complete discretion on whether to make an annual contribution. IRC (26 USCA) § 408(k). — Abbr. SEP or SEP-IRA. [Cases: Pensions 28. C.J.S. Pensions and Retirement Plans and Benefits §§ 11–15.]

split-funded plan. A retirement plan combining elements of both life-insurance and investment plans.

target benefit plan. A money-purchase plan that sets a “target” benefit for each participant and mandates employer contributions determined by an actuarial cost method designed to fund the target benefit.

welfare plan. Under ERISA, any plan, fund, or program established or maintained by an employer or an employee organization for the purpose of providing to participants or their beneficiaries any number of potential benefits: medical, surgical, or hospital care or benefits; benefits in the event of sickness, accident, disability, death, or unemployment; vacation benefits; apprenticeship or other training programs; daycare centers; scholarship funds; prepaid legal services; or holiday and severance benefits. 29 USCA § 1002(1).

EMPLOYEE GIVEBACKS

employee givebacks. See CONCESSION BARGAINING.

EMPLOYEE-LIABILITY EXCLUSION

employee-liability exclusion. See EXCLUSION(3).

EMPLOYEE PRO HAC VICE

employee pro hac vice. See borrowed employee under EMPLOYEE.

EMPLOYEE RETIREMENT INCOME SECURITY ACT

Employee Retirement Income Security Act. A federal statute that regulates private pension plans and employee benefit plans and that established the Pension Benefit Guaranty Corporation. 29 USCA §§ 1001 et seq. — Abbr. ERISA. [Cases: Pensions 21–23. C.J.S. Insurance § 34; Pensions and Retirement Plans and Benefits §§ 7–10.]

“ERISA was adopted in 1974 in response to highly publicized instances of fraud and mismanagement in employee pension funds, which had resulted in thousands of workers losing retirement benefits accumulated over a lifetime of work. ERISA was intended primarily as an instrument for regulating pensions, as its title suggests, and most of its substantive provisions address protection of retirement benefits. ERISA also, however, applies to employee welfare benefit plans, and thus covers employer provided health insurance, the dominant vehicle for private finance of health care in the United States.” Barry R. Furrow et al., *Health Law* § 2–9, at 48 (2d ed. 2000).

EMPLOYEE STOCK OPTION

employee stock option. See STOCK OPTION(2).

EMPLOYEE-STOCK-OWNERSHIP PLAN

employee-stock-ownership plan. See EMPLOYEE BENEFIT PLAN.

EMPLOYEE'S WITHHOLDING ALLOWANCE CERTIFICATE

Employee's Withholding Allowance Certificate. See W-4 FORM.

EMPLOYER

employer. A person who controls and directs a worker under an express or implied contract of hire and who pays the worker's salary or wages. Cf. PRINCIPAL(1). [Cases: Master and Servant

 1. C.J.S. Apprentices §§ 2, 11; Employer–Employee Relationship §§ 2–3, 6–12.]

equal-opportunity employer. An employer who agrees not to discriminate against any job applicant or employee on the basis of race, color, religion, sex, natural origin, age, or disability. — Abbr. EOE. [Cases: Civil Rights 1101. C.J.S. Civil Rights §§ 22, 26–27, 30–31, 33–34, 37, 41–42, 67.]

general employer. An employer who transfers an employee to another employer for a limited period. See borrowed employee under EMPLOYEE.

special employer. An employer who has borrowed an employee for a limited period and has temporary responsibility for and control over the employee's work.

statutory employer. Workers' compensation. One who employs a statutory employee. See statutory employee under EMPLOYEE. [Cases: Workers' Compensation 187. C.J.S. Workmen's Compensation §§ 121, 132.]

EMPLOYER–EMPLOYEE RELATIONSHIP

employer–employee relationship. See RELATIONSHIP.

EMPLOYERS' LIABILITY

employers' liability. See WORKERS' COMPENSATION.

EMPLOYERS'-LIABILITY INSURANCE

employers'-liability insurance. See INSURANCE.

EMPLOYMENT

employment. 1. The relationship between master and servant. See MASTER AND SERVANT . 2. The act of employing. 3. The state of being employed. 4. Work for which one has been hired and is being paid by an employer.

casual employment. Work that is occasional, irregular, or for a short time.

employment at will. Employment that is usu. undertaken without a contract and that may be terminated at any time, by either the employer or the employee, without cause. — Also termed at-will employment; hiring at will. [Cases: Master and Servant 20. C.J.S. Apprentices § 10; Employer–Employee Relationship §§ 40, 42–43.]

“Surprisingly, the employment at will doctrine is not an ancient one. On the contrary, it dates only from the period in the mid-nineteenth century that saw the transformation of the employment relation from one of status to one of contract. The relentless logic of the contract approach dictated the rule that the employee had only such rights as were expressly agreed to in his contract of employment — no more and no less. This meant that there was no implication that an indefinite hiring would last for a year or any other presumed period, since if the parties had wanted a particular term they would have expressly agreed to it.” 1 Lex K. Larson, Unjust Dismissal § 1.01, at 1–3 (1992).

“The doctrine of employment at will prescribed that an employee without a contract for a fixed term could be hired or fired for any reason or no reason at all.... [The] rule provided that employees categorized as ‘at will’ had no legal interest in continuing job security. Whereas early American masters had some responsibility to the public as well as to their servants when they turned dependent servants out on the world, under [this] formulation, masters could simply fire employees who had no contracts.” Mark A. Rothstein et al., *Employment Law* § 1.4, at 9–10 (1994).

gainful employment. Work that a person can pursue and perform for money.

hazardous employment. High-risk work; work involving extra peril. • In the context of workers' compensation, hazardous employment often requires an employer to carry workers'-compensation coverage or its equivalent, regardless of the number of employees.

joint employment. A job in which the essential terms and conditions of the employee's work are controlled by two or more entities, as when a company hires a contractor to perform a task and retains control over the contractor's employees in matters such as hiring, firing, discipline, conditions of employment, promulgation of work rules, assignment of day-to-day job duties, and issuance of operating instructions.

permanent employment. Work that, under a contract, is to continue indefinitely until either party wishes to terminate it for some legitimate reason.

seasonal employment. An occupation possible only during limited parts of the year, such as a summer-camp counselor, a baseball-park vendor, or a shopping-mall Santa.

EMPLOYMENT AGENCY

employment agency. A business that procures, for a fee, employment for others and employees for employers. • Whether the employer or the employee pays the fee depends on the terms of the agreement. See *FINDER*(1). [Cases: Labor Relations 17. C.J.S. Kidnapping § 25; Labor Relations § 19.]

EMPLOYMENT AND TRAINING ADMINISTRATION

Employment and Training Administration. A unit in the U.S. Department of Labor responsible for developing plans for training dislocated and unemployed workers, including young people and those who are disabled; and for interpreting federal workforce-security laws as they apply to the states.

EMPLOYMENT CONTRACT

employment contract. See *CONTRACT*.

EMPLOYMENT-PRACTICES-LIABILITY INSURANCE

employment-practices-liability insurance. See *INSURANCE*.

EMPLOYMENT-RELATED-PRACTICES EXCLUSION

employment-related-practices exclusion. See EXCLUSION(3).

EMPLOYMENT STANDARDS ADMINISTRATION

Employment Standards Administration. A unit in the U.S. Department of Labor responsible for administering various laws and programs pertaining to minimum-wage and overtime standards, registration of farm-labor contractors, wage rates to be paid and the nondiscrimination and affirmative-action programs to be followed by government contractors and subcontractors, workers'-compensation programs for federal and certain private employers, financial integrity and the internal organizational practices of labor unions, and certification of employee protection for federally sponsored transportation programs. • The Administration operates through four divisions that have regional offices or administrators in various cities: the Office of Federal Contract Compliance Programs, the Wage and Hour Division, the Office of Labor-Management Standards, and the Office of Workers' Compensation Programs. — Abbr. ESA.

EMPORIUM

emporium (em-por-ee-*<<schwa>>*m), n.1. A place for wholesale trade in commodities carried by sea. • The term is sometimes applied to a seaport town, but properly signifies only a particular place in such a town. 2. An important marketplace. 3. A large retail store that sells a wide variety of goods.

EMPRESARIO

empresario (em-pre-sahr-ee-oh), n.[Spanish] 1.Spanish law. A businessperson; one who invests in or manages a business; esp., a land developer. 2.Hist. A person receiving extensive land grants as consideration for bringing people into Mexico (esp. into what would become Texas) and settling them on the land for the purpose of increasing the population, developing the country's resources, and controlling the aboriginal peoples.

EMPTIO

emptio (emp-shee-oh), n.[Latin "purchase"] Roman & civil law. The act of buying; a purchase. — Also spelled emtio. Pl. emptiones.

emptio bonorum (b*<<schwa>>*-nor-*<<schwa>>*m). [Latin "purchase of goods"] A type of forced assignment for the benefit of creditors, involving a public sale of an insolvent debtor's estate whereby the purchaser succeeded to all the debtor's property, rights, and claims, and became responsible for the debtor's debts and liabilities to an extent fixed before the transfer.

emptio et venditio (et ven-dish-ee-oh). [Latin "purchase and sale"] A contract of sale. • The double name reflects that both the buyer and seller had duties and rights in the transaction. In Roman law, agreement on the thing to be sold and its price were essential. The buyer could enforce the contract by *actio empti*, and the seller could enforce by *actio venditi*. — Also termed *emptio venditio*. See VENDITIO.

emptio rei facta a pluribus ementibus (ree-Ifak-t*<<schwa>>* ay pluur-*<<schwa>>*-b*<<schwa>>*s i-men-t*<<schwa>>*-b*<<schwa>>*s). [Latin] Hist. A purchase made by

many buyers. La. Civ. Code art. 2450. • An emptio rei facta a pluribus ementibus did not automatically create a partnership among the purchasers.

emptio rei speratae (ree-I sp<<schwa>>-ray-tee). [Latin “purchase of a hoped-for thing”] The purchase of a thing not yet in existence or not yet in the seller's possession; e.g., a future crop. La. Civ. Code art. 2451. • The price of such a purchase typically depended on the actual yield and thus could fluctuate.

emptio spei (spee-I). [Latin “purchase of a hope”] An emptio rei speratae in which the price is fixed, regardless of actual gain. • Even if the future event, such as the casting of a net, produced nothing, the buyer had to pay.

emptio venditio. See emptio et venditio.

EMPTOR

emptor (emp-tor or -t<<schwa>>r), n. [Latin] Civil law. A buyer; purchaser. — Also spelled emtor. Pl. emptores. See caveat emptor under CAVEAT.

EMPTOR FAMILIAE

emptor familiae. See FAMILIAE EMPTOR.

EMPTRIX

emptrix (em[p]-tr<<schwa>>ks), n. [Latin] Civil law. A female buyer. — Also spelled emtrix. Pl. emptrices.

EMPTY-CHAIR DEFENSE

empty-chair defense. A trial tactic in a multiparty case whereby one defendant attempts to put all the fault on a defendant who plea-bargained or settled before trial or on a person who was neither charged nor named as a party.

EMPTY-CHAIR DOCTRINE

empty-chair doctrine. See ADVERSE-INTEREST RULE.

EMTIO

emtio. See EMPTIO.

EMTOR

emtor. See EMPTOR.

EMTRIX

emtrix. See EMPTRIX.

ENABLE

enable, vb. To give power to do something; to make able.

ENABLEMENT

enablement.Patents. The disclosure in a patent application; specif., the description of the subject matter clear and complete enough to teach a person with ordinary skill in the art how to make and use the invention. • If the artisan would still be unable to work the invention without undue experimentation after reading the description — in light of the information known in the art as of the filing date of the patent application — the patent application will be rejected for lack of enablement. 35 USCA § 112. Cf. NONENABLEMENT. [Cases: Patents 99. C.J.S. Patents § 139.]

ENABLEMENT BY DEPOSIT

enablement by deposit.See DEPOSIT(6).

ENABLEMENT REQUIREMENT

enablement requirement.Patents. The rule that the specification of a patent application must describe the invention so that a person with ordinary skill in the art could make and use the invention without undue experimentation. • A specification that meets this requirement is referred to as enabling. Cf. ENABLING SOURCE. [Cases: Patents 99. C.J.S. Patents § 139.]

ENABLING ACT

enabling act.See enabling statute under STATUTE.

ENABLING CLAUSE

enabling clause.The part of a statute or constitution that gives governmental officials the power and authority to put the law into effect and enforce it. See ENACTING CLAUSE.

ENABLING DISCLOSURE

enabling disclosure.See DESCRIPTION(5).

ENABLING POWER

enabling power.See POWER OF APPOINTMENT.

ENABLING SOURCE

enabling source.Patents. A document that defeats the patentability of an invention because the information provided made it possible — before the patent application was filed — for a person skilled in the art to make the invention. Cf. ENABLEMENT REQUIREMENT.

ENABLING STATUTE

enabling statute.1. See STATUTE. 2.Hist. (cap.) The Lease Act (1540), by which tenants in tail, husbands seised in right of their wives, and others were empowered to make leases for their lives or for 21 years. St. 32 Hen. 8, ch. 28.

ENACT

enact,vb. 1. To make into law by authoritative act; to pass <the statute was enacted shortly before the announced deadline>.2. (Of a statute) to provide <the statute of frauds enacts that no action may be brought on certain types of contracts unless the plaintiff has a signed writing to prove the agreement>. — enactor,n.

ENACTED LAW

enacted law.See LAW.

ENACTED CLAUSE

enacting clause.See CLAUSE.

ENACTING WORDS

enacting words.The statutory phrasing denoting that an act is taking effect as law. • The most common enacting words are Be it enacted that....

ENACTIVE

enactive (en-ak-tiv), adj.1. Having the power to establish a new law; capable of enacting. 2.ENACTORY.

ENACTMENT

enactment,n.1. The action or process of making into law <enactment of a legislative bill>.2. A statute <a recent enactment>.

ENACTOR

enactor (en-ak-t<<schwa>>r), n. A person or body that enacts or decrees; esp., one that establishes a new law.

ENACTORY

enactory, (i-nak-t<<schwa>>-ree), adj.1. Of, relating to, constituting, or by an enactment; esp., instituting a new right or duty by means of enactment. 2.ENACTIVE.

ENAJENACIÓN

enajenación (e-nah-hen-ah-syohn), n.[Spanish] Spanish law. Alienation; the transfer of land.

EN ARERE

en arere (en <<schwa>>-reer). [Law French] In time past.

EN AUTRE DROIT

en autre droit (en oh-tr<<schwa>> droitor onnoh-tr<<schwa>> drwah). [French] In the right of another, as when an executor sues on behalf of the estate. — Also spelled in autre droit. See AUTRE DROIT.

EN BANC

en banc (en bangkor on bongk), adj. & adv.[Law French “on the bench”] With all judges present and participating; in full court<an en banc rehearing> < the court heard the case en banc>. — Also spelled in banc; in bank. — Also termed in banco.

EN BANC SITTING

en banc sitting.See SITTING.

ENBANCWORTHY

enbancworthy,adj. Slang. Worthy of being considered en banc <the Fifth Circuit concluded that two of the four issues are truly enbancworthy>. — enbancworthiness,n.

EN BLOC

en bloc (onblokor en blok), adj. & adv.[French] As a whole; as a unit. • In parliamentary law, this term can refer to a series of resolutions or other motions that are disposed of with a single vote. — Also termed en grosse.

ENBREVER

enbrever (en-bree-v<<schwa>>r), vb. [Law French] 1. To abbreviate. 2. To put into a schedule.

ENCHESON

encheson (en-chee-z<<schwa>>n), n.[Law French] The occasion, cause, or reason for which something is done. — Also spelled encheason.

ENCLAVE

enclave (en-klayv oron-).Int'l law. An isolated part of a country's territory entirely surrounded by the territory of one foreign country, so that any communication with the main part of the country must pass through the territory of the foreign country. • Although international enclaves were once common, they are now relatively rare; examples include Baarle-Hertog, a Belgian enclave in the Netherlands, and Kaliningrad, a Russian enclave between Lithuania and Poland. — Also termed international enclave.

federal enclave.Territory or land that a state has ceded to the United States. • Examples of federal enclaves are military bases, national parks, federally administered highways, and federal Indian reservations. The U.S. government has exclusive authority and jurisdiction over federal enclaves. [Cases: United States 3. C.J.S. United States §§ 9–15.]

quasi-enclave. An isolated part of a country's territory that, though not entirely surrounded by the territory of a foreign country, is inaccessible by way of the country's own territory because of topographical features such as impassable mountains.

ENCLOSE

enclose,vb. 1. To surround or encompass; to fence or hem in on all sides. 2. To place (something) in a parcel or envelope. — Also spelled inclose.

ENCLOSED LAND

enclosed land. See LAND.

ENCLOSED PLEASE FIND

enclosed please find. See TRANSMITTAL LETTER.

ENCLOSURE

enclosure. 1. Something enclosed in a parcel or envelope. 2. Land surrounded by some visible obstruction; CLOSE(1). 3. An artificial fence around one's estate. — Also spelled inclosure. [Cases: Fences 1.]

ENCOMIENDA

encomienda (en-koh-mee-en-dah), n. [Spanish] Spanish law. 1. A royal grant to a private person of a certain portion of territory in the Spanish colonies, together with the concession of a certain number of the native inhabitants, on the feudal principle of commendation. 2. A royal grant of privileges to the military orders of Spain. 3. A mandate for a person to do a specific commission. 4. Something given by mandate; esp., a parcel.

ENCOURAGE

encourage, vb. Criminal law. To instigate; to incite to action; to embolden; to help. See AID AND ABET.

ENCROACH

encroach, vb. 1. To enter by gradual steps or stealth into the possessions or rights of another; to trespass or intrude. 2. To gain or intrude unlawfully upon another's lands, property, or authority. — Formerly also spelled incroach.

ENCROACHMENT

encroachment, n. 1. An infringement of another's rights. 2. An interference with or intrusion onto another's property <the court remedied the encroachment by ordering the defendant to cut down the tree limb hanging over the plaintiff's yard>. — Formerly also spelled incroachment. See TRESPASS. [Cases: Trespass 12. C.J.S. Trespass § 13.]

ENCUMBRANCE

encumbrance, n. A claim or liability that is attached to property or some other right and that may lessen its value, such as a lien or mortgage; any property right that is not an ownership interest. • An encumbrance cannot defeat the transfer of possession, but it remains after the property or right is transferred. — Also spelled incumbrance. [Cases: Mortgages 1; Secured Transactions 1. C.J.S. Mortgages §§ 2–6; Secured Transactions §§ 3, 7–9, 23, 37.] — encumber, vb.

“Encumbrances are not confined to the law of property, but pertain to the law of obligations also. Choses in action may be mortgaged, settled in trust, or otherwise made the subject-matter of

jura in re aliena, no less than land and chattels.” John Salmond, *Jurisprudence* 435–36 n.(k) (Glanville L. Williams ed., 10th ed. 1947).

“ ‘Encumbrance’ means a right, other than an ownership interest, in real property. The term includes a mortgage or other lien on real property.” UCC § 9-102(a)(32).

mesne encumbrance (meen). An intermediate encumbrance; an encumbrance that first occurred both earlier and later than other encumbrances.

ENCUMBRANCER

encumbrancer. One having a legal claim, such as a lien or mortgage, against property.

END

end,n.1. An object, goal, or purpose. 2. A result; a termination point.

ENDANGERED SPECIES

endangered species. See SPECIES(1).

ENDANGERING THE WELFARE OF A CHILD

endangering the welfare of a child. See CHILD ENDANGERMENT.

ENDANGERMENT

endangerment,n. The act or an instance of putting someone or something in danger; exposure to peril or harm. See CHILD ENDANGERMENT; RECKLESS ENDANGERMENT . —
endanger,vb.

ENDEAVOR

endeavor,n. A systematic or continuous effort to attain some goal.

endeavor,vb. To exert physical or intellectual strength toward the attainment of an object or goal.

EN DÉCLARATION DE SIMULATION

en déclaration de simulation (on dek-lah-rah-syaw'n d<<schwa>> sim-[y]<<schwa>>-lah-syaw'n). [French “in order to declare (something) a pretence”] Civil law. An action to void a contract; esp., one brought to remove a cloud from title and bring back, for any legal purpose, to the true owner's estate the thing sold.

EN DEMEURE

en demeure (on d<<schwa>>-myuur). [French “in default”] Civil law. Of a debtor who fails to pay on demand according to the terms of the obligation.

ENDENIZEN

endenizen (en-den-<<schwa>>-z<<schwa>>n), vb. To recognize as a legal resident; to

naturalize. — Also spelled endenize; indenizen; indenize.

ENDLESS-CHAIN SCHEME

endless-chain scheme. See PYRAMID SCHEME.

END LINES

end lines. Mining law. A claim's lines, as platted or laid down on the ground, that mark its boundaries on the shorter dimension, where the claim crosses the vein, in contrast to side lines, which mark the longer dimension and follow the course of the vein. • With reference to the apex rule, if the claim as a whole crosses the vein instead of following its course, the end lines will become the side lines and vice versa. See APEX RULE. Cf. SIDE LINES . [Cases: Mines and Minerals 18. C.J.S. Mines and Minerals §§ 48–49.]

ENDNOTE

endnote. A note that, instead of appearing at the bottom of the page (as a footnote does), appears at the end of the book, chapter, or paper.

ENDOGENOUS INSEMINATION

endogenous insemination. See artificial insemination by husband under ARTIFICIAL INSEMINATION.

ENDORSE

endorse, vb. See INDORSE.

ENDORSED BOND

endorsed bond. See guaranteed bond under BOND(3).

ENDORSEE

endorsee. See INDORSEE.

ENDORSEMENT

endorsement, n. 1. INDORSEMENT. 2. An amendment to an insurance policy; a rider. [Cases: Insurance 1874.] — endorse, vb. — endorseable, adj.

ENDORSER

endorser. See INDORSER.

ENDOW

endow, vb. 1. To give money or property to, esp. as a source of continuing or permanent income. 2. Hist. To provide (a woman) with a dowry.

ENDOWMENT

endowment. 1. A gift of money or property to an institution (such as a university) for a

specific purpose, esp. one in which the principal is kept intact indefinitely and only the interest income from that principal is used. 2.Hist. The assigning or giving of a dower to a woman.

ENDOWMENT INSURANCE

endowment insurance. 1. INSURANCE. 2. See endowment life insurance under LIFE INSURANCE .

ENDOWMENT LIFE INSURANCE

endowment life insurance.See LIFE INSURANCE.

ENDOWMENT POLICY

endowment policy.See INSURANCE POLICY.

END POSITION

end position.One's legal and financial position on the signing of a contract, including the choices now available, such as renewal and renegotiation.

END USER

end user.See USER(2).

ENELOW– ETTELSON RULE

Enelow–Ettelson rule (en-<<schwa>>-loh-et-<<schwa>>l-s<<schwa>>n). The defunct doctrine that an order staying federal-court proceedings pending the determination of an equitable defense (such as arbitration) is an injunction appealable under 28 USCA § 1292(a)(1) if the proceeding stayed was an action that could have been maintained as an action at law before the merger of law and equity. *Enelow v. New York Life Ins. Co.*, 293 U.S. 379, 55 S.Ct. 310 (1935); *Ettelson v. Metropolitan Life Ins. Co.*, 317 U.S. 188, 63 S.Ct. 163 (1942). [Cases: Federal Courts 573.]

ENEMY

enemy.1. One who opposes or inflicts injury on another; an antagonist. 2. An opposing military force. 3. A state with which another state is at war. — Also termed public enemy. 4. A person possessing the nationality of the state with which one is at war. — Also termed enemy subject. 5. A foreign state that is openly hostile to another whose position is being considered.

alien enemy.See ALIEN.

public enemy. 1. A notorious criminal who is a menace to society; esp., one who seems more or less immune from successful prosecution. 2.ENEMY(3).3. A social, health, or economic condition or problem that affects the public at large and is difficult to control <teenage smoking has been declared a public enemy in this country>.

ENEMY ALIEN

enemy alien.See alien enemy under ALIEN.

ENEMY COMBATANT

enemy combatant. See COMBATANT.

ENEMY'S PROPERTY

enemy's property. Int'l law. Property used in illegal commerce or trading with a public enemy, whether that property belongs to an ally or a citizen. • This term is esp. common in prize courts. The illegal traffic makes the property hostile, and allows penal consequences to attach to the property itself.

ENEMY SUBJECT

enemy subject. See ENEMY(4).

ENERGY DEPARTMENT OF

Energy, Department of. See DEPARTMENT OF ENERGY.

EN FAIT

en fait (onfay), adv. [French] In fact; actually.

ENFEOFF

enfeoff (en-fefor en-feef), vb. To put (a person) in legal possession of a freehold interest; to transfer a fief to. — Formerly spelled infeoff. — Also termed feoff; infeudate; (in Law Latin) feoffare.

ENFEOFFMENT

enfeoffment (en-fef-m<<schwa>>nt or en-feef-), n. 1. At common law, the act or process of transferring possession and ownership of an estate in land. — Also termed infeudation; infeudatio. 2. The property or estate so transferred. 3. The instrument or deed by which one obtains such property or estate. — Also spelled infeoffment. — Also termed feoffment; (in Scots law) infefment.

ENFORCE

enforce, vb. 1. To give force or effect to (a law, etc.); to compel obedience to. 2. Loosely, to compel a person to pay damages for not complying with (a contract).

ENFORCEMENT

enforcement, n. The act or process of compelling compliance with a law, mandate, command, decree, or agreement.

extrajudicial enforcement. See SELF-HELP.

law enforcement. See LAW ENFORCEMENT.

remedial enforcement. See secondary right under RIGHT.

sanctional enforcement. See secondary right under RIGHT.

secondary enforcement. See secondary right under RIGHT.

selective enforcement. See SELECTIVE ENFORCEMENT.

specific enforcement. See primary right under RIGHT.

ENFORCEMENT OF FOREIGN JUDGMENTS ACT

Enforcement of Foreign Judgments Act. A uniform law, adopted by most states, that gives the holder of a foreign judgment essentially the same rights to levy and execute on the judgment as the holder of a domestic judgment. • The Act defines a foreign judgment as any judgment, decree, or order (of a court in the United States or of any other court) that is entitled to full faith and credit in the state. See FULL FAITH AND CREDIT. [Cases: Judgment 823. C.J.S. Judgments §§ 969, 971, 983–985.]

ENFORCEMENT POWER

enforcement power. The authority by which Congress may enforce a particular constitutional amendment's provisions by appropriate legislation. • Enforcement power is granted to Congress under the 13th, 14th, 15th, 19th, 23rd, 24th, and 26th Amendments.

ENFRANCHISE

enfranchise, vb. 1. To grant voting rights or other rights of citizenship to (a person or class). 2. To set free, as from slavery.

ENFRANCHISEMENT

enfranchisement (en-fran-chiz-m<<schwa>>nt or -chIz-m<<schwa>>nt), n. 1. The granting of voting rights or other rights of citizenship to a class of persons. [Cases: Elections 59. C.J.S. Elections § 16.] 2. The act of making free, as from slavery.

ENFRANCHISEMENT OF COPYHOLD

enfranchisement of copyhold. Hist. The conversion of copyhold into freehold tenure, by (1) a conveyance of the fee simple from the lord of the manor to the copyholder, (2) a release by the lord of all seigniorial rights, or (3) a release by the copyholder to the lord of the copyholder's interest in the estate. See COPYHOLD.

ENGAGE

engage, vb. To employ or involve oneself; to take part in; to embark on.

ENGAGEMENT

engagement, n. 1. A contract or agreement involving mutual promises. [Cases: Contracts 57. C.J.S. Contracts §§ 108–109.] 2. An agreement to marry; the period after which a couple has agreed to marry but before they do so. — Also termed (in sense 2) betrothal; betrothment. [Cases: Breach of Marriage Promise 1. C.J.S. Breach of Marriage Promise § 3.]

ENGAGEMENT FEE

engagement fee. See **RETAINER**(3).

ENGAGEMENT LETTER

engagement letter. A document identifying the scope of a professional's services to a client and outlining the respective duties and responsibilities of both.

ENGAGEMENT SLIP

engagement slip. A note sent by a lawyer to a court informing the court that the lawyer is professionally engaged in a second court on a given day and thus cannot appear before the first court on that day as scheduled. • The term is used in Pennsylvania.

ENGENDER

engender, vb. To cause; to bring about; to occasion.

ENGINEERING PROCUREMENT AND CONSTRUCTION CONTRACT

engineering, procurement, and construction contract. See **CONTRACT**.

ENGLAND<TT> PROCEDURE

England procedure. A procedure by which — after a federal court has referred a case back to state court under the Pullman abstention doctrine, and the state court has adjudicated the state-court issues — a litigant may return to federal court to have the federal claims adjudicated. *England v. Louisiana State Bd. of Med. Examiners*, 375 U.S. 411, 84 S.Ct. 461 (1964). See Pullman abstention under **ABSTENTION**. [Cases: Federal Courts 65.]

ENGLISH RULE

English rule. The requirement that a losing litigant must pay the winner's costs and attorney's fees. — Also termed loser-pays rule. Cf. **AMERICAN RULE** (1). [Cases: Costs 194.14. C.J.S. Costs § 126.]

ENGLISHRY, PRESENTMENT OF

Englishry, presentment of. **PRESENTMENT OF ENGLISHRY**.

EN GROS

en gros (ongroh). [French] Total; by wholesale; **IN GROSS**. — Also spelled en grosse. Cf. **EN BLOC**.

ENGROSS

engross, vb. 1. Hist. To handwrite a document, esp. a deed, in a style characterized by large letters. • This method of writing, which was derived from ancient court hand, was also used in transcribing wills well into the 19th century. See **COURT HAND**. 2. To prepare a copy of (a legal document, such as a deed) for execution. 3. To prepare a copy of (a bill or mandate) before a final

legislative vote. Cf. ENROLL(2).4.Hist. To buy large quantities of (a stock or commodity) in an effort to corner the market and control the price. 5. To absorb or fully occupy. — Formerly also spelled ingross. — engrossment,n.

ENGROSSED BILL

engrossed bill.See BILL(3).

ENGROSSER

engrosser,n.1. A person who engrosses legal documents. 2.Hist. A person who buys large quantities of a commodity in an effort to control the price.

ENGROSSER OF THE GREAT ROLL

Engrosser of the Great Roll.See CLERK OF THE PIPE.

ENGROSSING

engrossing,n. Hist. The practice of buying large quantities of commodities or merchandise with the intent of gaining a monopoly and selling them at a very high price. • Engrossing was a misdemeanor in England until 1834. — Also termed engrossment. See CORNERING THE MARKET.

“Engrossing ... is the getting into one's possession, or buying up, of corn or other dead victuals, with intent to sell them again. This must of course be injurious to the public, by putting it in the power of one or two rich men to raise the price of provisions at their own discretion.” 4 William Blackstone, Commentaries on the Laws of England 158 (1769).

ENGROSSMENT

engrossment,n.1. The preparation of a legal document (such as a deed) for execution. 2. The drafting of a resolution or bill just before a final vote on the matter in the legislature. 3.ENGROSSING.

ENHANCED

enhanced,adj. Made greater; increased <because of his recidivism, Monte was subject to an enhanced sentence after his latest conviction>.

ENHANCED DAMAGES

enhanced damages.See DAMAGES.

ENHANCEMENT

enhancement. The act of augmenting; the state of being enhanced <the use of a deadly weapon led to an enhancement of the sentence>.

ENHERITANCE

enheritance (on-nair-ee-tahns), n.[Law French] See INHERITANCE.

ENITIA PARS

enitia pars (<<schwa>>-nish-ee-<<schwa>> pahrz). [Latin] The share of the eldest. • In English law, this describes the lot or share chosen by the eldest of coparceners when they make a voluntary partition. The first choice (primer election) belongs to the eldest.

ENJOIN

enjoin,vb. 1. To legally prohibit or restrain by injunction <the company was enjoined from selling its stock>. [Cases: Injunction 1. C.J.S. Injunctions §§ 2–4, 12, 14, 22, 24, 166.] 2. To prescribe, mandate, or strongly encourage <the graduating class was enjoined to uphold the highest professional standards>. — Also spelled injoin. — enjoinder (for sense 1), n. — enjoinder (for sense 2), n.

ENJOINABLE

enjoinable,adj. Capable of being prohibited by injunction <an enjoinable nuisance>. [Cases: Injunction 3. C.J.S. Injunctions § 13.]

ENJOY

enjoy,vb. To have, possess, and use (something) with satisfaction; to occupy or have the benefit of (property).

ENJOYMENT

enjoyment,n.1. Possession and use, esp. of rights or property. 2. The exercise of a right.

adverse enjoyment.The possession or use of land under a claim of right against the property owner. [Cases: Easements 8. C.J.S. Easements §§ 13, 21–22, 31–35, 37, 41, 45–46, 50.]

beneficial enjoyment.The possession and benefit of land or other property, but without legal title.

present enjoyment.The immediate possession and use of land or other property.

quiet enjoyment.The possession of land with the assurance that the possession will not be disturbed by a superior title. See covenant for quiet enjoyment under COVENANT(4). [Cases: Covenants 43, 65. C.J.S. Covenants § 20.]

EN JUICIO

en juicio (en hwee-syoh), adv.[Spanish] Judicially; in a court of law.

ENLARGE

enlarge,vb. 1. To increase in size or extend in scope or duration <the court enlarged the time allotted for closing arguments>.2. To free from custody or imprisonment <at common law, an action for escape lay when a prisoner was wrongly enlarged>. Cf. AT LARGE. — enlargement,n.

ENLARGEMENT OF TIME

enlargement of time. A usu. court-ordered extension of the time allowed to perform an action, esp. a procedural one.

ENLARGER L'ESTATE

enlarger l'estate (en-lahr-j<<schwa>>r l<<schwa>>-stayt). [Law French] Hist. A release that enlarges an estate and consists of a conveyance of the ulterior interest to the tenant. • If an estate was held by a tenant for life or years, with the remainder to another in fee, and if the one in remainder released all rights to the tenant and his or her heirs (through an enlarger l'estate), the tenant then held the estate in fee.

ENLISTED MEMBER

enlisted member. Military law. A person in an enlisted grade; a person in military service below the grade of officer or warrant officer. [Cases: Armed Services 21. C.J.S. Armed Services §§ 29, 42.]

ENLISTMENT

enlistment, n. Voluntary entry into a branch of the armed services. [Cases: Armed Services 17. C.J.S. Armed Services § 42.] — enlist, vb.

EN MASSE

en masse (en mas). [French] In a mass; in a large group all at once; all together.

EN MORT MAYNE

en mort mayne (en mort mayn). [French “in dead hand”] In mortmain. See MORTMAIN.

ENOCH ARDEN LAW

Enoch Arden law (ee-n<<schwa>>k ahrd-<<schwa>>n). A statute that grants a divorce or an exemption from liability so that a person can remarry when his or her spouse has been absent without explanation for a specified number of years (usu. five or seven). • This type of law is named after a Tennyson poem, in which the eponymous hero, having been shipwrecked for years on a desert island, returns home to find that his wife has remarried. He selflessly conceals his identity from her so that she can remain with her new husband. — Also spelled Enoc Arden law. See presumptive death under DEATH; ABANDONMENT(2). [Cases: Divorce 37(5); Marriage 11. C.J.S. Divorce § 46; Marriage § 18.]

ENORMIA

enormia (i-nor-mee-<<schwa>>), n. [Latin] Common-law pleading. Unlawful or wrongful acts; wrongs. • This word, esp. as part of the phrase et alia enormia (“and other outrages”), appeared regularly in writs and declarations of trespass.

ENORMIOUS

enormious (i-nor-mee-<<schwa>>s), adj. Archaic. Made without a rule or against law.

ENORM LESION

enorm lesion (i-norm lee-zh<<schwa>>n). See LAESIO ENORMIS.

ENORMOUS

enormous,adj. Aggravated; excessively large <enormous crimes>.

EN OWEL MAIN

en owel main (en ow-<<schwa>>l mayn). [Law French] In equal hand.

ENPLEET

enpleet (en-pleet), vb. Hist. See IMPLEAD.

ENQUÊTE

enquête (on-ket), n.[French] Eccles. law. An examination of witnesses (taken down in writing) by or before an authorized judge for the purpose of gathering testimony to be used in a trial. — Also termed enquest (on[g]-kwes [t]).

EN RECOUVREMENT

en recouvrement (on ray-koo-vr<<schwa>>-mon). [French “for purpose of recovery”] French law. An indorsement on a bill of exchange that does not transfer the property in the bill of exchange but merely gives the indorsee the authority to recover the amount of the bill.

ENRÉGISTREMENT

enrégistrement (on-ray-zhees-tr<<schwa>>-mon), n.[French] French law. Registration. • This formality is performed by a clerk who inscribes a government register with a summary analysis of a deed or other document. The clerk then puts a stamped or sealed note on the deed or document, indicating the date on which it was registered.

ENRICHMENT

enrichment. The receipt of a benefit. See UNJUST ENRICHMENT.

ENROLL

enroll,vb. 1. To register or transcribe (a legal document, as a deed) into an official record on execution. — Formerly also spelled inroll. 2. To prepare (a bill passed by the legislature) for the executive's signature. Cf. ENGROSS. [Cases: Statutes 37. C.J.S. Statutes §§ 56–58.]

ENROLLED

enrolled,adj. Registered; recorded.

ENROLLED AGENT

enrolled agent.One who, though neither a certified public accountant nor an attorney, has been admitted to practice before the IRS, either by passing an examination or by working for the

IRS in a technical area for at least five years. • The enrolled agent is one of four types of persons who are allowed to practice before the IRS, the other three being attorneys, certified public accountants, and persons who are admitted to represent either themselves or others in a particular case. [Cases: Internal Revenue 4444. C.J.S. Internal Revenue § 615.]

ENROLLED BILL

enrolled bill. See BILL(3).

ENROLLED-BILL RULE

enrolled-bill rule. The conclusive presumption that a statute, once formalized, appears precisely as the legislature intended, thereby preventing any challenge to the drafting of the bill. [Cases: Statutes 283(2). C.J.S. Statutes §§ 74–75, 77.]

“Under the ‘enrolled bill rule,’ an enrolled bill, properly authenticated and approved by the governor, is conclusive as to regularity of its enactment. Ordinarily, the courts will not go behind the enrolled bill to determine its validity. The supreme court can look behind the enrolled bill only to determine whether the constitutional mandate relative to vote and journal entry upon the final passage have been complied with.” National Conference of State Legislatures, *Mason's Manual of Legislative Procedure* § 702, at 497 (2000).

ENROLLMENT

enrollment, n. The act of recording or registering. — Also spelled (archaically) inrollment.

enrollment of vessels. Maritime law. The recording and certification of vessels used in coastal or inland navigation, as distinguished from the “registration” of vessels used in foreign commerce. • Enrollment and registry are used to distinguish certificates granted to two classes of vessels. Enrollment evidences the national character of a vessel engaged in coasting trade or home traffic; registry is used to declare the nationality of a vessel engaged in foreign trade. Cf. REGISTRY(2). [Cases: Shipping 6. C.J.S. Shipping §§ 16–17.]

ENROLLMENT OFFICE

Enrollment Office. Hist. A department of the Court of Chancery responsible for storing enrolled deeds and judgments. • The Enrollment Office was abolished in 1879; its duties were transferred to the Central Office.

EN ROUTE

en route (en or on root). [French] On the way; in the course of transportation or travel.

ENSCHEDULE

enschedule, vb. Archaic. To insert in a list, account, or writing.

ENSEAL

enseal, vb. Archaic. To seal (a document).

ENSERVER

enserver (en-s<<schwa>>r-v<<schwa>>r), vb. [Law French] To make subject to a service or servitude.

ENS LEGIS

ens legis (enz lee-jis). [Law Latin] A creature of the law; an artificial being as opposed to a natural person. • The term describes an entity, such as a corporation, that derives its existence entirely from the law.

ENTAIL

entail,n. A fee abridged or limited to the owner's issue or class of issue rather than descending to all the heirs. — Also termed (in Scots law) tailzie. See BARRING OF ENTAIL; FEE TAIL. [Cases: Estates in Property 12. C.J.S. Estates §§ 22–27.] — entailable,adj.

“Entail is fee entailed, viz; abridged, limited, and tied to certain conditions at the will of the donor; where lands are given to, or settled on others.” The Pocket Lawyer and Family Conveyancer 97 (3d ed. 1833).

quasi-entail. An estate pur autre vie that is granted to a person and the heirs of the person's body. • The interest so granted is not properly an estate-tail (because it is not granted by inheritance), but it is similar enough that the interest will go to the heir of the body as special occupant during the life of the cestui que vie, in the same manner as an estate of inheritance would descend if limited to the grantee and the heirs of his body.

entail,vb. 1. To make necessary; to involve <responding to this onerous discovery will entail countless hours of work>.2. To limit the inheritance of (an estate) to only the owner's issue or class of issue, so that none of the heirs can transfer the estate <the grantor entailed the property through a so-called “tail female”>. See FEE TAIL. [Cases: Wills 604. C.J.S. Wills § 1258.]

ENTAILED

entailed,adj. Settled or limited to specified heirs or in tail <entailed gifts>.

ENTAILED ESTATE

entailed estate.See FEE TAIL.

ENTAILED INTEREST

entailed interest.See INTEREST(2).

ENTAILMENT

entailment,n.1. The act of entailing an estate. 2. An estate so entailed.

ENTENCION

entencion (en-ten-sh<<schwa>>n), n.[Law French] Hist. A plaintiff's count or declaration.

ENTENDMENT

entendment. Archaic. See INTENDMENT.

ENTENTE

entente (ahn-tahnt). [French “intent, understanding”] Int'l law. 1. An understanding that two or more nations have for carrying out a common policy or course of action. • An entente is looser than an alliance but stronger than the nations' merely having good relations. 2. The nations having such an understanding. Cf. ALLIANCE; DÉTENTE.

ENTER

enter, vb. 1. To come or go into; esp., to go onto (real property) by right of entry so as to take possession <the landlord entered the defaulting tenant's premises>. 2. To put formally before a court or on the record <the defendant entered a plea of no contest>. 3. To become a party to <they entered into an agreement>. See ENTRY.

ENTERCEUR

enterceur (en-t<<schwa>>r-s<<schwa>>r), n. [Law French] A party claiming goods; one who has placed goods in the hands of a third party.

ENTERPLEDER

enterpleder. Archaic. See INTERPLEADER(1).

ENTERPRISE

enterprise, n. 1. An organization or venture, esp. for business purposes.

governmental enterprise. An enterprise undertaken by a governmental body, such as a parks department that creates a public park. — Also termed government enterprise.

2. Under federal anti-racketeering law, an individual, partnership, corporation, association, union, other legal entity, or group of individuals associated in fact, although not a legal entity. • The enterprise must be ongoing and must exist as an entity separate from the allegedly illegal activity that it engages in. 18 USCA § 1961(4). See RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT. [Cases: Racketeer Influenced and Corrupt Organizations 33. C.J.S. RICO (Racketeer Influenced and Corrupt Organizations) §§ 8–10.] 3. One or more persons or organizations that have related activities, unified operation or common control, and a common business purpose. • Under the Fair Labor Standards Act, an employee who is employed by an enterprise is entitled to minimum-wage and overtime benefits. 29 USCA §§ 201 et seq.

ENTERPRISE LIABILITY

enterprise liability. See LIABILITY.

ENTERPRISE ORGANIZATION

enterprise organization. See BUSINESS ENTERPRISES.

ENTERTAIN

entertain,vb. 1. To bear in mind or consider; esp., to give judicial consideration to <the court then entertained motions for continuance>.2. To amuse or please. 3. To receive (a person) as a guest or provide hospitality to (a person).4.Parliamentary law. To recognize and state (a motion); to receive and take into consideration <the chair will entertain the motion>.

ENTERTAINMENT EXPENSE

entertainment expense.See EXPENSE.

ENTERTAINMENT LAW

entertainment law.The field of law dealing with the legal and business issues in the entertainment industry (such as film, music, and theater), and involving the representation of artists and producers, the negotiation of contracts, and the protection of intellectual-property rights.

ENTICE

entice,vb. To lure or induce; esp., to wrongfully solicit (a person) to do something.

ENTICEMENT

enticement,n.1. The act or an instance of wrongfully soliciting or luring a person to do something. 2.Hist. The tort of inducing a man's wife to leave him or to remain away from him against his will. [Cases: Seduction 1–26. C.J.S. Torts §§ 88–89.]

ENTICEMENT OF A CHILD

enticement of a child.Criminal law. The act or offense of inviting, persuading, or attempting to persuade a child to enter a vehicle, building, room, or secluded place with the intent of committing an unlawful sexual act against the child. — Often shortened to enticement. [Cases: Infants 13. C.J.S. Infants §§ 5, 92–93, 95–98.]

ENTICEMENT OF A PARENT

enticement of a parent.Torts. Rare. The tortious interference with a child's rights and interests in maintaining the parent–child relationship, usu. caused by a third person who induces a parent to abandon the child. • Actions based on enticement, where they are recognized, are rarely successful because many states do not recognize a child's legal right to a parent's consortium or affection.

ENTIRE

entire,adj.1. Whole; complete in all its parts. 2. Not divisible into parts.

ENTIRE-AGREEMENT CLAUSE

entire-agreement clause.1.INTEGRATION CLAUSE. 2. A provision in an insurance contract stating that the entire agreement between the insured and insurer is contained in the contract, often including the application (if attached), declarations, insuring agreement, exclusions, conditions,

and endorsements. — Also termed entire-contract clause. [Cases: Insurance 1838, 1856. C.J.S. Insurance §§ 373–375.]

ENTIRE BENEFIT

entire benefit. See entire use under USE(4).

ENTIRE BLOOD

entire blood. See full blood under BLOOD.

ENTIRE-CONTRACT CLAUSE

entire-contract clause. See ENTIRE-AGREEMENT CLAUSE.

ENTIRE-CONTROVERSY DOCTRINE

entire-controversy doctrine. The principle that a plaintiff or defendant who does not assert all claims or defenses related to the controversy in a legal proceeding is not entitled to assert those claims or defenses in a later proceeding. — Also termed single-controversy doctrine. Cf. compulsory counterclaim under COUNTERCLAIM; RES JUDICATA(2). [Cases: Action 53; Judgment 591. C.J.S. Actions §§ 177–203; Judgments §§ 761, 764–765.]

ENTIRE DAY

entire day. See DAY.

ENTIRE INTEREST

entire interest. See INTEREST(2).

ENTIRE-OUTPUT CONTRACT

entire-output contract. See output contract under CONTRACT.

ENTIRE TENANCY

entire tenancy. See TENANCY.

ENTIRETY

entirety (en-tī-<<schwa>>r-tee). 1. The whole, as opposed to a moiety or part. 2. Something (such as certain judgments and contracts) that the law considers incapable of being divided into parts.

ENTIRETY, TENANCY BY THE

entirety, tenancy by the. See estate by entirety under ESTATE(1).

ENTIRETY CLAUSE

entirety clause. Oil & gas. A mineral-lease or deed provision specifying that royalties must be apportioned if the property is subdivided after the lease is granted. • For the lessee, the clause makes it clear that the lessee's duties will increase if the lessor transfers a part of the leased

premises. For the lessor, the clause avoids the nonapportionment rule.

ENTIRE USE

entire use. See USE(4).

ENTITLED

entitle, vb. 1. To grant a legal right to or qualify for. 2. Eccles. law. To ordain as a minister. — Formerly also spelled intitle.

ENTITLEMENT

entitlement. An absolute right to a (usu. monetary) benefit, such as social security, granted immediately upon meeting a legal requirement. [Cases: Social Security and Public Welfare 4.10. C.J.S. Social Security and Public Welfare §§ 11, 18.]

ENTITY

entity. An organization (such as a business or a governmental unit) that has a legal identity apart from its members.

corporate entity. A corporation's status as an organization existing independently of its shareholders. • As a separate entity, a corporation can, in its own name, sue and be sued, lend and borrow money, and buy, sell, lease, and mortgage property. [Cases: Corporations 1.3. C.J.S. Corporations § 8.]

public entity. A governmental entity, such as a state government or one of its political subdivisions.

ENTITY ASSUMPTION

entity assumption. The presumption that a business is a unit separate from its owners and from other firms. [Cases: Corporations 1.3. C.J.S. Corporations § 8.]

ENTITY THEORY OF PARTNERSHIP

entity theory of partnership. The theory that a partnership is an entity with a legal existence apart from the partners who make it up. • Under the Uniform Partnership Act, “[a] partnership is an entity distinct from its partners.” UPA § 201 (1994). Cf. AGGREGATE THEORY OF PARTNERSHIP. [Cases: Partnership 63. C.J.S. Partnership § 68.]

ENTRAPMENT

entrapment, n. 1. A law-enforcement officer's or government agent's inducement of a person to commit a crime, by means of fraud or undue persuasion, in an attempt to later bring a criminal prosecution against that person. [Cases: Criminal Law 37. C.J.S. Criminal Law § 58.] 2. The affirmative defense of having been so induced. • To establish entrapment (in most states), the defendant must show that he or she would not have committed the crime but for the fraud or undue persuasion. — entrap, vb.

“Entrapment, so-called, is a relatively simple and very desirable concept which was unfortunately misnamed, with some resulting confusion. It is socially desirable for criminals to be apprehended and brought to justice. And there is nothing whatever wrong or out of place in setting traps for those bent on crime, provided the traps are not so arranged as likely to result in offenses by persons other than those who are ready to commit them. What the State cannot tolerate is having crime instigated by its officers who are charged with the duty of enforcing the law Obviously ‘entrapment’ is not the appropriate word to express the idea of official investigation of crime, but it is so firmly entrenched that it seems wiser to accept it with due explanation than attempt to supplant it” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 1161 (3d ed. 1982).

derivative entrapment. Entrapment in which the government uses a private person, acting either as an agent of the government or as an unwitting participant, to induce the subject of the entrapment to commit a crime. [Cases: Criminal Law 37(5). C.J.S. Criminal Law § 61.]

objective entrapment. Entrapment as judged by focusing on egregious law-enforcement conduct, not on the defendant's predisposition.

sentencing entrapment. Entrapment of a defendant who is predisposed to commit a lesser offense but who is unlawfully induced to commit a more serious offense that carries a more severe sentence. — Also termed sentence-factor manipulation.

ENTREBAT

entreat (on-tr<<schwa>>-ba), n. [Law French] An intruder or interloper.

ENTREPÔT

entrepôt (on-tr<<schwa>>-poh), n. [French] French law. A building or place where goods from abroad may be deposited and from which those goods may then be exported to another country without paying a duty.

ENTREPRENEUR

entrepreneur (on-tr<<schwa>>-pr<<schwa>>-n<<schwa>>r), n. One who initiates and assumes the financial risks of a new enterprise and who usu. undertakes its management.

ENTREPRENEURIAL RIGHTS

entrepreneurial right. See NEIGHBORING RIGHT.

ENTRUST

entrust, vb. To give (a person) the responsibility for something, usu. after establishing a confidential relationship. — Also spelled (archaically) intrust. See NEGLIGENT ENTRUSTMENT. — entrustment, n.

ENTRUSTING

entrusting, n. Commercial law. The transfer of possession of goods to a merchant who deals in

goods of that type and who may in turn transfer the goods and all rights to them to a purchaser in the ordinary course of business. UCC § 2-403. [Cases: Sales 234(7).]

ENTRY

entry,n.1. The act, right, or privilege of entering real property <they were given entry into the stadium>.

forcible entry.See FORCIBLE ENTRY.

lawful entry. 1. The entry onto real property by a person not in possession, under a claim or color of right, and without force or fraud. 2. The entry of premises under a search warrant. See SEARCH WARRANT.

open entry.A conspicuous entry onto real property to take possession; an entry that is neither clandestine nor carried out by secret artifice or stratagem and that (by law in some states) is accomplished in the presence of two witnesses.

reentry. See REENTRY.

unlawful entry. 1. The crime of entering another's real property, by fraud or other illegal means, without the owner's consent. 2. An alien's crossing of a border into a country without proper documents. [Cases: Aliens 56. C.J.S. Aliens §§ 249, 253–254, 260–261.]

2. An item written in a record; a notation <Forney made a false entry in the books on March 3>.

blind entry.An accounting entry that indicates only the debited and credited amounts without any explanation.

compound journal entry.A journal entry requiring more than one debit and credit (as when revenue is received partly in cash and partly in securities).

journal entry.An entry in an accounting journal of equal debits and credits, with occasional explanations of the recorded transactions.

3. The placement of something before the court or on the record. 4.Copyright. The deposit of a title of work with the Register of Copyrights to secure its protection. [Cases: Copyrights and Intellectual Property 50.10. C.J.S. Copyrights and Intellectual Property §§ 38–39.] 5.Immigration. Any entrance of an alien into the United States, whether voluntary or involuntary. [Cases: Aliens 53.6, 56. C.J.S. Aliens §§ 77–78, 97, 102, 118, 249, 253–254, 260–261.] 6.Criminal law. The unlawful coming into a building to commit a crime. [Cases: Burglary 9(2). C.J.S. Burglary §§ 21–22.]

ENTRY, RIGHT OF

entry, right of.See POWER OF TERMINATION.

ENTRY, WRIT OF

entry, writ of.See WRIT OF ENTRY.

ENTRYAD COMMUNEM LEGEM

entry ad communem legem (ad k<<schwa>>-myoo-n<<schwa>>m lee-j<<schwa>>m). [Latin] Hist. 1. Entry at common law. 2. AD COMMUNEM LEGEM.

ENTRYAD TERMINUM QUI PRAETERIIT

entry ad terminum qui praeteriit (ad t<<schwa>>r-m<<schwa>>-n<<schwa>>m kwI pri-ter-ee-it). See AD TERMINUM QUI PRAETERIIT.

ENTRY FOR MARRIAGE IN SPEECH

entry for marriage in speech. See causa matrimonii praelocuti under CAUSA(1).

ENTRY IN CASU CONSIMILI

entry in casu consimili (kay-s[y]oo k<<schwa>>n-sim-<<schwa>>-II). [Latin] See CASU CONSIMILI.

ENTRYMAN

entryman (en-tree-m<<schwa>>n), n. Archaic. A person who enters public land and stakes a claim with the intention of settling.

ENTRY OF JUDGMENT

entry of judgment. The ministerial recording of a court's final decision, usu. by noting it in a judgment book or civil docket. Cf. RENDITION OF JUDGMENT. [Cases: Federal Civil Procedure 2621; Judgment 270–284. C.J.S. Judgments §§ 90, 93, 112–115, 117–132, 135.]

ENTRY ON THE ROLL

entry on the roll. Hist. 1. A clerk's notation on a parchment roll of the proceedings and issues in a particular case. • Before parties began submitting written pleadings, they would appear (in person or through counsel) in open court and state their respective contentions orally until they settled on the issue or precise point in dispute. During the progress of these oral statements, an appointed officer of the court would make minutes of the various proceedings on a parchment roll that then became the official record of the suit. Even after the practice of oral pleadings had fallen into disuse, proceedings continued to be entered “on the roll.” This practice was abolished early in the 19th century. 2. A future interest created in a transferor who conveys an estate on condition subsequent.

ENUMERATE

enumerate (i-n[y]oo-m<<schwa>>-rayt), vb. To count off or designate one by one; to list. — enumeration, n.

ENUMERATED MOTION

enumerated motion. See MOTION(1).

ENUMERATED POWER

enumerated power. See POWER(3).

ENUMERATOR

enumerator. A person appointed to collect census papers or schedules.

ENUNCIATE

enunciate (i-n<<schwa>>n-see-ayt), vb. 1. To state publicly; to announce or proclaim <the court enunciated a new doctrine yesterday>. 2. To articulate or pronounce <enunciate your syllables more clearly when you speak>. — enunciation, n. — enunciable, adj. — enunciator, n.

ENURE

enure. See INURE.

EN VENTRE SA MERE

en ventre sa mere (oni voin-tr<<schwa>> sa mair). [Law French “in utero”] (Of a fetus) in the mother's womb <child en ventre sa mere>. • This phrase refers to an unborn child, usu. in the context of a discussion of that child's rights. If the child is en ventre sa mere at the time of a decedent's death and is subsequently born alive, the child is treated as having been in existence at the time of the decedent's death for purposes of inheritance. — Also spelled in ventre sa mere. See VENTER.

“An infant in ventre sa mere, or in the mother's womb, is supposed in law to be born for many purposes.” 1 William Blackstone, Commentaries on the Laws of England 126 (1765).

EN VIE

en vie (onvee). [Law French “in life”] Alive.

ENVIRONMENTAL AUDIT

environmental audit. See AUDIT.

ENVIRONMENTAL CRIME

environmental crime. A statutory offense involving harm to the environment, such as a violation of the criminal provisions in the Clean Air Act Amendments of 1970, the Federal Water Pollution Control Act of 1972 (commonly called the Clean Water Act), or the Endangered Species Act of 1973. • Although the most significant environmental-crime statutes were passed in the 1970s, they date back to the late 19th century, with statutes such as the Pure Food and Drug Act of 1896 and the assorted statutes that ultimately became the Rivers and Harbors Act of 1899. — Also termed crime against the environment.

ENVIRONMENTAL CRIMINOLOGY

environmental criminology. See CRIMINOLOGY.

ENVIRONMENTAL EFFECT

environmental effect.Environmental law. A natural or artificial disturbance of the physical, chemical, or biological components that make up the environment.

ENVIRONMENTAL-IMPACT STATEMENT

environmental-impact statement.Environmental law. A document that the National Environmental Policy Act (42 USCA § 4332(2)(c)) requires a federal agency to produce for a major project or legislative proposal so that better decisions can be made about the positive and negative environmental effects of an undertaking. — Abbr. EIS. — Also termed environmental-impact report (EIR). [Cases: Environmental Law 571–615.]

ENVIRONMENTAL LAW

environmental law.The field of law dealing with the maintenance and protection of the environment, including preventive measures such as the requirements of environmental-impact statements, as well as measures to assign liability and provide cleanup for incidents that harm the environment. • Because most environmental litigation involves disputes with governmental agencies, environmental law is heavily intertwined with administrative law. [Cases: Environmental Law 1.]

ENVIRONMENTAL PROTECTION AGENCY

Environmental Protection Agency.An independent federal agency in the executive branch responsible for setting pollution-control standards in the areas of air, water, solid waste, pesticides, radiation, and toxic materials; enforcing laws enacted to protect the environment; and coordinating the antipollution efforts of state and local governments. • The commission was created by Reorganization Plan No. 3 of 1970. — Abbr. EPA. [Cases: Environmental Law 15.]

ENVOY

envoy (en-voy).1. A high-ranking diplomat sent to a foreign country to execute a special mission or to serve as a permanent diplomatic representative. — Formerly also termed envoy extraordinary. 2. A messenger or representative.

envoy extraordinary.Int'l law. A person who heads a legation rather than an embassy. • In current usage, the term is honorific and has no special significance.

ENVOY PLENIPOTENTIARY

envoy plenipotentiary.See ambassador plenipotentiary under AMBASSADOR.

EO DIE

eo die (ee-oh di-ee). [Latin] On that day; on the same day.

EOE

EOE.abbr.1. See equal-opportunity employer under EMPLOYER. 2. Errors and omissions excepted. • This phrase is sometimes appended to an account stated to allow for slight errors. See errors-and-omissions insurance under INSURANCE.

EO INSTANTE

eo instante (ee-oh in-stan-tee). [Latin] At that very instant. — Also spelled eo instanti.

EO INTUITU

eo intuitu (ee-oh in-t[y]oo-<<schwa>>-too). [Latin] With or in that view; with that intent or object.

EO IPSO

eo ipso (ee-oh ip-soh). [Latin] By that very act.

EO LOCI

eo loci (ee-oh loh-sI). [Latin] In that state; in that condition.

EO LOCO

eo loco (ee-oh loh-koh). [Latin] 1. In that place. 2. In that state; in that condition.

E.O.M.

E.O.M.abbr.End of month. • This appears as a payment term in some sales contracts.

EO NOMINE

eo nomine (ee-oh nahm-<<schwa>>-nee). [Latin] By or in that name <interest eo nomine>.

EPA

EPA.abbr.ENVIRONMENTAL PROTECTION AGENCY.

EPC

EPC.abbr. 1.EUROPEAN PATENT CONVENTION. 2. Engineering, procurement, and construction. See engineering, procurement, and construction contractUNDER CONTRACT .

EPC CONTRACT

EPC contract.See engineering, procurement, and construction contract under CONTRACT.

EPHEMERAL RECORDING

ephemeral recording.Copyright. A temporary copy of a work that may be created and used by a broadcaster under a license or under a statutory exemption that waives the need to obtain the copyright owner's permission. • A broadcaster must still pay royalties, and usu. must destroy the ephemeral recording within a statutorily defined time after creation or use.

E PILI ANA

e pili ana (ay pee-lee ah-nah). [Hawaiian] Adjoining. • This term usu. refers to land that adjoins a stream.

EPIMENIA

epimēnia (ep-<<schwa>>-mee-nee-<<schwa>>), n. pl.[Latin] Expenses; gifts.

EPIQUEYA

epiqueya (ep-ee-kay-ah), n.[Spanish] Spanish law. An equitable principle calling for the benign and prudent interpretation of the law according to the circumstances of the time, place, and person.

EPISCOPACY

episcopacy (i-pis-k<<schwa>>-p<<schwa>>-see), n. Eccles. law. 1. The office of a bishop. 2. A form of church government by bishops. 3. An office of overlooking or overseeing.

EPISCOPALIA

episcopalia (i-pis-k<<schwa>>-pay-lee-<<schwa>>), n. pl. Eccles. law. Synodals, pentecostals, and other customary payments from the clergy to their diocesan bishop, collected by rural deans and forwarded to the bishop.

EPISCOPATE

episcopate (i-pis-k<<schwa>>-pit), n. Eccles. law. 1. A bishopric. 2. The dignity or office of a bishop.

EPISCOPORUM ECDICUS

episcoporum ecdicus (i-pis-k<<schwa>>-por-<<schwa>>m ek-di-k<<schwa>>s). [Latin] Eccles. law. A bishop's proctor; a church lawyer.

EPISCOPUS

episcopus (i-pis-k<<schwa>>-p<<schwa>>s), n.[Latin fr. Greek] 1.Roman law. An overseer; an inspector, such as the municipal officer responsible for oversight of the bread and other provisions that served as the citizens' daily food. 2. A bishop.

EPISCOPUS PUERORUM

episcopus puerorum (i-pis-k<<schwa>>-p<<schwa>>s pyoo-<<schwa>>r-or-<<schwa>>m). [Latin "bishop of the boys"] Hist Eccles. law. A layperson who would, on certain feasts, braid his hair, dress like a bishop, and act ludicrous. • This English custom outlasted several laws passed to abolish it.

EPISODIC CRIMINAL

episodic criminal. See CRIMINAL.

EPISTLE

epistle (ee-pis-<<schwa>>l), n. Roman & civil law. A rescript replying to a magistrate or official body. See RESCRIPT(3).

EPISTOLA

epistola (i-pis-t<<schwa>>-l<<schwa>>), n.[Latin "letter"] Hist. A charter; a written instrument to convey lands or to assure contracts. See ASSURANCE. — Also spelled epistula.

EPISTULAE

epistulae (i-pis-tyoo-lee), n. pl.[Latin "letters"] Roman law. 1. Rescripts; esp., opinions given by the emperors in cases submitted to them for decision. 2. Opinions of juris consulti, such as Neratius, on questions of law in the form of letters to those consulting them. — Also spelled epistolae.

EPL INSURANCE

EPL insurance.See employment-practices liability insurance under INSURANCE.

E PLURIBUS UNUM

e pluribus unum (ee ploor-<<schwa>>-b<<schwa>>s [y]oo-n<<schwa>>m). [Latin] One out of many. • This is the motto on the official seal of the United States and on several U.S. coins.

EPO

EPO.abbr.1. See emergency protective order under PROTECTIVE ORDER. 2.EUROPEAN PATENT OFFICE.

EPOCH

epoch (ep-<<schwa>>k), n.1. A period of time marked by distinctive features or noteworthy events. 2. A time when a new computation is begun; a time from which memorable dates are counted. — epochal (ep-<<schwa>>-k<<schwa>>l), adj.

EPR

EPR.abbr.EMERGENCY PREPAREDNESS AND RESPONSE DIRECTORATE.

EPS

EPS.abbr.EARNINGS PER SHARE.

EQUAL ACCESS ACT OF 1984

Equal Access Act of 1984.A federal law that prohibits school districts receiving federal funds and allowing extracurricular activities to be held in its facilities from denying secondary-school students the right to meet for religious and other purposes in public-school facilities. 20 USCA § 4071. • The constitutionality of the Act was upheld in Board of Education of Westside Community Schools v. Mergens, 496 U.S. 226, 110 S.Ct. 2356 (1990).

EQUAL-ACCESS RULE

equal-access rule.Criminal law. The doctrine that contraband found on a defendant's premises will not support a conviction if other persons have the same access to the premises as the defendant. • To invoke this defense successfully, the defendant must show that other persons did in fact have equal access to the premises; speculative evidence that trespassers might have come onto

the premises will not bar a conviction. [Cases: Controlled Substances 30.]

EQUAL ACCESS TO JUSTICE ACT

Equal Access to Justice Act. A 1980 federal statute that allows a prevailing party in certain actions against the government to recover attorney's fees and expert-witness fees. Pub. L. No. 96-481, title II, 94 Stat. 2325 (codified as amended in scattered sections of 5, 15, and 28 USCA). — Abbr. EAJA. [Cases: United States 147. C.J.S. United States §§ 193, 268–269.]

EQUAL AND UNIFORM TAXATION

equal and uniform taxation. See TAXATION.

EQUAL CREDIT OPPORTUNITY ACT

Equal Credit Opportunity Act. A federal statute that prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, age, sex, or marital status with respect to any aspect of a credit transaction. 15 USCA §§ 1691 et seq. — Abbr. ECOA. [Cases: Consumer Credit 31. C.J.S. Interest and Usury; Consumer Credit §§ 345–347.]

EQUAL DEGREE

equal degree. See DEGREE.

EQUAL-DIGNITIES RULE

equal-dignities rule. Agency. The doctrine that an agent can perform all acts requiring a writing signed by the principal only if the agent's authority is set forth in a writing. • This rule is an adjunct to the statute of frauds and applies when one or more of the signatories to a contract acted through an agent. [Cases: Principal and Agent 12. C.J.S. Agency § 43.]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Equal Employment Opportunity Commission. An independent federal commission that investigates claims of employment discrimination based on race, color, religion, sex, national origin, or age and enforces antidiscrimination statutes through lawsuits. • It was created by Title VII of the Civil Rights Act of 1964. The EEOC encourages mediation and other nonlitigious means of resolving employment disputes. A claimant must file a charge of discrimination with the EEOC before pursuing a claim under Title VII of the Civil Rights Act and certain other employment-related statutes. — Abbr. EEOC. [Cases: Civil Rights 1503. C.J.S. Civil Rights §§ 159, 165.]

EQUAL-FOOTING DOCTRINE

equal-footing doctrine. The principle that a state admitted to the Union after 1789 enters with the same rights, sovereignty, and jurisdiction within its borders as did the original 13 states.

EQUALITY

equality. The quality or state of being equal; esp., likeness in power or political status. See EQUAL PROTECTION.

“We need not repeat the burning irony of Anatole France: ‘The law in its majesty draws no distinction but forbids rich and poor alike from begging in the streets or from sleeping in the public parks.’ Equality is meaningless under unequal conditions.” Morris R. Cohen, *Reason and Law* 101 (1961).

political equality. The sharing of governmental decisions in such a way that, in the setting of governmental policies, the preference of each citizen is assigned an equal value.

EQUALITY BEFORE THE LAW

equality before the law. The status or condition of being treated fairly according to regularly established norms of justice; esp., in British constitutional law, the notion that all persons are subject to the ordinary law of the land administered by the ordinary law courts, that officials and others are not exempt from the general duty of obedience to the law, that discretionary governmental powers must not be abused, and that the task of superintending the operation of law rests with an impartial, independent judiciary.

“A number of distinct meanings are normally given to the provision that there should be equality before the law. One meaning is that equality before the law only connotes the equal subjection of all to a common system of law, whatever its content.... A second theory asserts that equality before the law is basically a procedural concept, pertaining to the application and enforcement of laws and the operation of the legal system.... A third meaning normally borne by declarations that all are equal before the law, perhaps no more than a variant of the second, is that State and individual before the law should be equal.” Polyvios G. Polyviou, *The Equal Protection of the Laws* 1–2 (1980).

EQUALITY OF STATES

equality of states. Int'l law. The doctrine that all fully independent nations are equal under international law. • This doctrine does not, of course, mean that all nations are equal in power or influence, but merely that, as nations, they all have the same legal rights.

EQUALIZATION

equalization, n. 1. The raising or lowering of assessed values to achieve conformity. 2. Tax. The adjustment of an assessment or tax to create a rate uniform with another. — Also termed equalization of taxes; fair and proper legal assessment. [Cases: Taxation 446.5–450. C.J.S. Taxation §§ 621–641, 643, 724–725.]

EQUALIZATION BOARD

equalization board. A local governmental agency responsible for adjusting the tax rates in different districts to ensure an equitable distribution of the tax burden. — Also termed board of equalization. [Cases: Taxation 446.5–450. C.J.S. Taxation §§ 621–641, 643, 724–725.]

EQUALIZATION OF TAXES

equalization of taxes. See EQUALIZATION(2).

EQUALIZE

equalize, vb. To make equal; to cause to correspond or be the same in amount or degree.

EQUALLY DIVIDED

equally divided.1. (Of property) apportioned per capita — not per stirpes — among heirs on the testator's death. • A provision in a will calling for property to be divided “share and share alike” has the same effect. [Cases: Wills 530. C.J.S. Wills §§ 1015–1016.] 2. (Of a court, legislature, or other group) having the same number of votes on each side of an issue or dispute.

EQUAL-MANAGEMENT RULE

equal-management rule. The doctrine that each spouse alone may manage community property unless the law provides otherwise. Cf. HEAD-AND-MASTER RULE.

EQUAL-OPPORTUNITY EMPLOYER

equal-opportunity employer. See EMPLOYER.

EQUAL PAY ACT

Equal Pay Act. A federal law mandating that all who perform substantially the same work must be paid equally. 29 USCA § 206. [Cases: Labor Relations 1333. C.J.S. Labor Relations § 1184.]

EQUAL PROTECTION

equal protection. The 14th Amendment guarantees that the government must treat a person or class of persons the same as it treats other persons or classes in like circumstances. • In today's constitutional jurisprudence, equal protection means that legislation that discriminates must have a rational basis for doing so. And if the legislation affects a fundamental right (such as the right to vote) or involves a suspect classification (such as race), it is unconstitutional unless it can withstand strict scrutiny. — Also termed equal protection of the laws; equal protection under the law. See RATIONAL-BASIS TEST; STRICT SCRUTINY. [Cases: Constitutional Law 209–250.5. C.J.S. Constitutional Law §§ 700–773, 775–912, 916–917, 919–944; Zoning and Land Planning § 23.]

“Equal protection does not require that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purpose for which the classification is made.” *Baxstrom v. Herold*, 383 U.S. 107, 111, 86 S.Ct. 760, 763 (1966).

“As in all equal protection cases, ... the crucial question is whether there is an appropriate governmental interest suitably furthered by the differential treatment.” *Police Dep't v. Mosley*, 408 U.S. 92, 95, 92 S.Ct. 2286, 2290 (1972).

“[T]he equal protection principle is exclusively associated with written Constitutions and embodies guarantees of equal treatment normally applied not only to the procedural enforcement of laws but also to the substantive content of their provisions. In other words, the equal protection of the laws is invariably treated as a substantive constitutional principle which demands that laws

will only be legitimate if they can be described as just and equal.” Polyvios G. Polyviou, *The Equal Protection of the Laws* 4 (1980).

EQUAL PROTECTION CLAUSE

Equal Protection Clause.The 14th Amendment provision requiring the states to give similarly situated persons or classes similar treatment under the law. Cf. DUE PROCESS CLAUSE. [Cases: Constitutional Law 209–250.5.C.J.S. Constitutional Law §§ 700–773, 775–912, 916–917, 919–944; Zoning and Land Planning § 23.]

EQUAL PROTECTION OF THE LAWS

equal protection of the laws.See EQUAL PROTECTION.

EQUAL PROTECTION UNDER THE LAW

equal protection under the law.See EQUAL PROTECTION.

EQUAL RIGHTS AMENDMENT

Equal Rights Amendment.A failed constitutional amendment that, had it been ratified, would have constitutionally prohibited sex-based discrimination. • Congress passed the Amendment in 1972, but it failed in 1982, having been ratified by only 35 of the required 38 states. — Abbr. ERA.

EQUAL-SHARES CLAUSE

equal-shares clause.**Insurance.** A clause requiring an insurer to pay its proportionate share of a claimed loss.

EQUAL TIME ACT

Equal Time Act.A federal law requiring that a broadcasting-facility licensee who permits a legally qualified candidate for public office to use the facility for broadcasting must afford an equal opportunity to all other candidates for the office. 47 USCA § 315. [Cases: Telecommunications 435. C.J.S. Telegraphs, Telephones, Radio, and Television §§ 178–179, 183–187.]

EQUAL-TIME DOCTRINE

equal-time doctrine.See FAIRNESS DOCTRINE.

EQUES

eques (ee-kweez), n.[Latin] Hist. A knight.

EQUILOCUS

equilocus (ee-kw<<schwa>>-loh-k<<schwa>>s), n.[Latin] An equal.

EQUINOX

equinox (ee-kw<<schwa>>-noks orek-w<<schwa>>-noks), n. One of the two periods of the

year when the time from the sun's rising to its setting is equal to that from its setting to its rising. • The vernal equinox is about March 21, and the autumnal equinox is about September 22.

EQUIP

equip,vb. To furnish for service or against a need or exigency; to fit out; to supply with whatever is necessary for efficient action.

EQUIPMENT

equipment,n. The articles or implements used for a specific purpose or activity (esp. a business operation). • Under the UCC, equipment includes goods if (1) the goods are used in or bought for a business enterprise (including farming or a profession) or by a debtor that is a nonprofit organization or a governmental subdivision or agency, and (2) the goods are not inventory, farm products, or consumer goods. UCC § 9-102(a)(33). [Cases: Secured Transactions 16. C.J.S. Secured Transactions § 15.]

EQUIPMENT TRUST

equipment trust.A financing device commonly used by railroads in which a trustee and the railroad together buy equipment from a manufacturer, with the trustee providing most of the purchase price, and the trustee then leases the equipment to the railroad, which pays a rental fee comprising interest, amortization for serial retirement, and the trustee's fee.

EQUIPMENT TRUST BOND

equipment trust bond.See BOND(3).

EQUIPMENT TRUST CERTIFICATE

equipment trust certificate.A security, usu. issued by a railroad, to pay for new equipment. • Title to the equipment is held by a trustee until the note has been paid off. — Also termed car trust certificate; trust certificate.

EQUITABLE

equitable (ek-wi-t<<schwa>>-b<<schwa>>l), adj.1. Just; consistent with principles of justice and right. 2. Existing in equity; available or sustainable by an action in equity, or under the rules and principles of equity.

EQUITABLE ABSTENTION

equitable abstention.See ABSTENTION.

EQUITABLE ACTION

equitable action.See action in equity under ACTION(4).

EQUITABLE-ADJUSTMENT THEORY

equitable-adjustment theory.The doctrine that in settling a federal contract dispute, the contracting officer should make a fair adjustment within a reasonable time before the contractor

has to settle with its subcontractors, suppliers, and other creditors. [Cases: United States 70(20).C.J.S. United States §§ 120–122.]

EQUITABLE ADOPTION

equitable adoption. See adoption by estoppel under ADOPTION(1).

EQUITABLE ASSET

equitable asset. See ASSET.

EQUITABLE ASSIGNMENT

equitable assignment. See ASSIGNMENT(2).

EQUITABLE-BENEFIT DOCTRINE

equitable-benefit doctrine. Bankruptcy. The principle that allows a bankruptcy court to grant preferred status to claims for service rendered by persons other than bankruptcy officers, to the extent that the service benefited the estate, when the person filing the claim acted primarily for the benefit of the estate as a whole. [Cases: Bankruptcy 2965. C.J.S. Bankruptcy § 255.]

EQUITABLE CONSTRUCTION

equitable construction. See liberal construction under CONSTRUCTION.

EQUITABLE CONVERSION

equitable conversion. See CONVERSION(1).

EQUITABLE DEFENSE

equitable defense. See DEFENSE(1).

EQUITABLE DISSEISIN

equitable disseisin. See DISSEISIN.

EQUITABLE DISTRIBUTION

equitable distribution. Family law. The division of marital property by a court in a divorce proceeding, under statutory guidelines that provide for a fair, but not necessarily equal, allocation of the property between the spouses. • With equitable distribution, when a marriage ends in divorce, property acquired during the marriage is divided equitably between the spouses regardless of who holds title to the property. The courts consider many factors in awarding property, including a spouse's monetary contributions, nonmonetary assistance to a spouse's career or earning potential, the efforts of each spouse during the marriage, and the length of the marriage. The court may take into account the relative earning capacity of the spouses and the fault of either spouse. Equitable distribution is applied in 47 states (i.e., all the states except California, Louisiana, and New Mexico, which are “equal division” community-property states). — Also termed equitable division; assignment of property. Cf. TITLE DIVISION; COMMUNITY PROPERTY. [Cases: Divorce 248. C.J.S. Divorce §§ 508–511, 580–582.]

EQUITABLE DIVISION

equitable division. See EQUITABLE DISTRIBUTION.

EQUITABLE DOCTRINE OF APPROXIMATION

equitable doctrine of approximation. See DOCTRINE OF APPROXIMATION.

EQUITABLE DOWER

equitable dower. See equitable jointure under JOINTURE.

EQUITABLE DUTY

equitable duty. See DUTY(1).

EQUITABLE EASEMENT

equitable easement. See EASEMENT.

EQUITABLE EJECTMENT

equitable ejectment. See EJECTMENT.

EQUITABLE ELECTION

equitable election. See ELECTION(2).

EQUITABLE ESTATE

equitable estate. See ESTATE(1).

EQUITABLE ESTOPPEL

equitable estoppel. See ESTOPPEL.

EQUITABLE FORECLOSURE

equitable foreclosure. See FORECLOSURE.

EQUITABLE FRAUD

equitable fraud. See constructive fraud (1) under FRAUD.

EQUITABLE-FUND DOCTRINE

equitable-fund doctrine. See COMMON-FUND DOCTRINE.

EQUITABLE INTEREST

equitable interest. See INTEREST(2).

EQUITABLE JETTISON

equitable jettison. See JETTISON.

EQUITABLE JOINTURE

equitable jointure. See JOINTURE.

EQUITABLE LEVY

equitable levy. See equitable lien under LIEN.

EQUITABLE LIEN

equitable lien. See LIEN.

EQUITABLE LIFE ESTATE

equitable life estate. An interest in real or personal property that lasts for the life of the holder of the estate and that is equitable as opposed to legal in its creation. • An example is a life estate held by a trust beneficiary. [Cases: Life Estates 21. C.J.S. Estates §§ 138–147, 150.]

EQUITABLE LIFE TENANT

equitable life tenant. See LIFE TENANT.

EQUITABLE MORTGAGE

equitable mortgage. See MORTGAGE.

EQUITABLE OWNER

equitable owner. See beneficial owner (1) under OWNER.

EQUITABLE OWNERSHIP

equitable ownership. See beneficial ownership (1) under OWNERSHIP.

EQUITABLE PARENT

equitable parent. See PARENT.

EQUITABLE-PARENT DOCTRINE

equitable-parent doctrine. Family law. The principle that a spouse who is not the biological parent of a child born or conceived during the marriage may, in a divorce action, be considered the child's natural father or mother if (1) the other spouse and the child both acknowledge a parent–child relationship, esp. when that other spouse has cooperated in the development of this relationship before the divorce action, (2) the nonbiologically related spouse wants parental rights, and (3) he or she is willing to take on the responsibility of paying support. • The doctrine sometimes applies to nonspousal partners as well. Very few jurisdictions apply the doctrine. See Carolee Kvorik Lezuch, *Michigan's Doctrine of Equitable Parenthood*, 45 Wayne L. Rev. 1529 (1999). — Also termed equitable-parenthood doctrine.

EQUITABLE RECOUPMENT

equitable recoupment. 1. Tax. A doctrine allowing a taxpayer to offset previously overpaid taxes against current taxes due, even though the taxpayer is time-barred from claiming a refund on the previous taxes. [Cases: Internal Revenue 4829.10. C.J.S. Internal Revenue §§ 728, 738.]

2. Tax. A doctrine allowing the government to offset taxes previously uncollected from a taxpayer against the taxpayer's current claim for a refund, even though the government is time-barred from collecting the previous taxes. • In both senses, this type of recoupment can be asserted only if the statute of limitations has created an inequitable result. See RECOUPMENT(2). [Cases: Internal Revenue 4845. C.J.S. Internal Revenue § 738.] 3. A principle that diminishes a party's right to recover a debt to the extent that the party holds money or property of the debtor to which the party has no right. • This doctrine is ordinarily a defensive remedy going only to mitigation of damages. The doctrine is sometimes applied so that a claim for a tax refund that is barred by limitations may nonetheless be recouped against a tax claim of the government. — Also termed equitable-recoupment doctrine. See SETOFF(2); RECOUPMENT(3). [Cases: Set-off and Counterclaim 6. C.J.S. Set-off and Counterclaim §§ 2, 11.]

EQUITABLE RELIEF

equitable relief. See equitable remedy under REMEDY.

EQUITABLE REMEDY

equitable remedy. See REMEDY.

EQUITABLE REMUNERATION

equitable remuneration. See compulsory license (1) under LICENSE.

EQUITABLE RESCISSION

equitable rescission. See RESCISSION.

EQUITABLE-RESTRAINT DOCTRINE

equitable-restraint doctrine. See Younger abstention (1) under ABSTENTION.

EQUITABLE REVERSION

equitable reversion. See REVERSION.

EQUITABLE RIGHT

equitable right. See RIGHT.

EQUITABLE RIGHT TO SETOFF

equitable right to setoff. The right to cancel cross-demands, usu. used by a bank to take from a customer's deposit accounts the amount equal to the customer's debts that have matured and that are owed to that bank. See SETOFF. [Cases: Banks and Banking 134; Set-off and Counterclaim 8. C.J.S. Banks and Banking §§ 301–305, 312–313, 316; Set-off and Counterclaim §§ 3, 6.]

EQUITABLE SEISIN

equitable seisin. See SEISIN.

EQUITABLE SERVITUDE

equitable servitude. See restrictive covenant under COVENANT(4).

EQUITABLE SUBROGATION

equitable subrogation. See legal subrogation under SUBROGATION.

EQUITABLE TITLE

equitable title. See TITLE(2).

EQUITABLE TOLLING

equitable tolling. 1. The doctrine that the statute of limitations will not bar a claim if the plaintiff, despite diligent efforts, did not discover the injury until after the limitations period had expired. • Equitable tolling does not require misconduct by the defendant. [Cases: Limitation of Actions 104.5. C.J.S. Limitations of Actions §§ 85–86, 121.] 2. The doctrine that if a plaintiff files a suit first in one court and then refiles in another, the statute of limitations does not run while the litigation is pending in the first court if various requirements are met. • Among those requirements are (1) timely notice to the defendant; (2) no prejudice to the defendant; and (3) reasonable and good-faith conduct on the part of the plaintiff.

EQUITABLE WASTE

equitable waste. See WASTE(1).

EQUITY

equity, n. 1. Fairness; impartiality; evenhanded dealing <the company's policies require managers to use equity in dealing with subordinate employees>. 2. The body of principles constituting what is fair and right; natural law <the concept of “inalienable rights” reflects the influence of equity on the Declaration of Independence>.

“In its popular sense it [equity] is practically equivalent to natural justice. But it would be a mistake to suppose that equity, as administered by the Courts, embraces a jurisdiction as wide and extensive as that which would result from carrying into operation all the principles of natural justice. There are many matters of natural justice wholly unprovided for, from the difficulty of framing any general rules to meet them, and from the doubtful wisdom of a policy of attempting to give a legal sanction to duties of imperfect obligation, such as charity, gratitude and kindness. A large proportion of natural justice in its widest sense is thus not judicially enforced, but is left to the conscience of each individual.” R.E. Megarry, *Snell's Principles of Equity* 1 (23d ed. 1947).

3. The recourse to principles of justice to correct or supplement the law as applied to particular circumstances <the judge decided the case by equity because the statute did not fully address the issue>. — Also termed natural equity. [Cases: Equity 1. C.J.S. Equity §§ 2–5, 7–8, 10.] 4. The system of law or body of principles originating in the English Court of Chancery and superseding the common and statute law (together called “law” in the narrower sense) when the two conflict <in appealing to the equity of the court, she was appealing to the “king's conscience”>; CHANCERY(2). “Equity is that system of justice which was developed in and administered by the High Court of Chancery in England in the exercise of its extraordinary

jurisdiction. This definition is rather suggestive than precise; and invites inquiry rather than answers it. This must necessarily be so. Equity, in its technical and scientific legal sense, means neither natural justice nor even all that portion of natural justice which is susceptible of being judicially enforced. It has, when employed in the language of English law, a precise, definite and limited signification, and is used to denote a system of justice which was administered in a particular court — the nature and extent of which system cannot be defined in a single sentence, but can be understood and explained only by studying the history of that court, and the principles upon which it acts. In order to begin to understand what equity is, it is necessary to understand what the English High Court of Chancery was, and how it came to exercise what is known as its extraordinary jurisdiction. Every true definition of equity must, therefore, be, to a greater or less extent, a history.” George T. Bispham, *The Principles of Equity* 1–2 (Joseph D. McCoy ed., 11th ed. 1931).

“In its technical sense, equity may ... be defined as a portion of natural justice which, although of a nature more suitable for judicial enforcement, was for historical reasons not enforced by the Common Law Courts, an omission which was supplied by the Court of Chancery. In short, the whole distinction between equity and law is not so much a matter of substance or principle as of form and history.” R.E. Megarry, *Snell's Principles of Equity* 2 (23d ed. 1947).

“The term ‘equity’ is an illustration of Mr. Towkington's proposition that some words have a legal meaning very unlike their ordinary one. In ordinary language ‘equity’ means natural justice; but the beginner must get that idea out of his head when dealing with the system that the lawyers call equity. Originally, indeed, this system was inspired by ideas of natural justice, and that is why it acquired its name; but nowadays equity is no more (and no less) natural justice than the common law, and it is in fact nothing else than a particular branch of the law of England. Equity, therefore, is law. The student should not allow himself to be confused by the lawyer's habit of contrasting ‘law’ and ‘equity,’ for in this context ‘law’ is simply an abbreviation for the common law. Equity is law in the sense that it is part of the law of England; it is not law only in the sense that it is not part of the common law.” Glanville Williams, *Learning the Law* 25–26 (11th ed. 1982).

5. A right, interest, or remedy recognizable by a court of equity <there was no formal contract formation, so they sued for breach in equity>. [Cases: Equity 1. C.J.S. Equity §§ 2–5, 7–8, 10.]

contravening equity (kon-tr<<schwa>>-veen-ing). A right or interest that is inconsistent with or contrary to a right sought to be enforced.

countervailing equity (kown-t<<schwa>>r-vayl-ing). A contrary and balancing equity, equally deserving of consideration.

latent equity (lay-t<<schwa>>nt). An equitable claim or right known only by the parties for and against whom it exists, or that has been concealed from one who is interested in the subject matter. — Also termed secret equity.

perfect equity. An equitable title or right that, to be a legal title, lacks only the formal conveyance or other investiture that would make it cognizable at law; esp., the equity of a

real-estate purchaser who has paid the full amount due but has not yet received a deed.

secret equity. See latent equity.

6. The right to decide matters in equity; equity jurisdiction <the court decided that the wrong was egregious enough to ignore the statute of limitations and decide the case in equity>. [Cases: Equity 1. C.J.S. Equity §§ 2–5, 7–8, 10.] 7. The amount by which the value of or an interest in property exceeds secured claims or liens; the difference between the value of the property and all encumbrances upon it <thanks to the real-estate boom, the mortgaged house still had high equity>. — Also termed cushion. 8. An ownership interest in property, esp. in a business <the founders gave her equity in the business in return for all her help>. See OWNERS' EQUITY; BOOK EQUITY; MARKET EQUITY. 9. A share in a publicly traded company <he did not want to cash in his equity>.

EQUITY, BILL IN

equity, bill in. See BILL(2).

EQUITY, COURT OF

equity, court of. See COURT.

EQUITY ACCOUNTING METHOD

equity accounting method. See ACCOUNTING METHOD.

EQUITY CAPITAL

equity capital. See CAPITAL.

EQUITY CONTRA LEGEM

equity contra legem (kon-tr<<schwa>> lee-j<<schwa>>m). Int'l law. The use of equity in derogation of the law, where, under the circumstances of the case, an exception to the law is needed to achieve an equitable and just result. — Sometimes shortened to contra legem. See EX AEQUO ET BONO. Cf. EQUITY INTRA LEGEM .

EQUITY FINANCING

equity financing. See FINANCING.

EQUITY INSOLVENCY

equity insolvency. See INSOLVENCY.

EQUITY INTRA LEGEM

equity intra legem (in-tr<<schwa>> lee-j<<schwa>>m). A court's power to interpret and apply the law to achieve the most equitable result. — Sometimes shortened to intra legem. — Also written equity infra legem. Cf. EQUITY CONTRA LEGEM.

EQUITY JURISDICTION

equity jurisdiction. See JURISDICTION.

EQUITY JURISPRUDENCE

equity jurisprudence. See JURISPRUDENCE.

EQUITY KICKER

equity kicker. See EQUITY PARTICIPATION.

EQUITY LOAN

equity loan. See home equity loan under LOAN.

EQUITY OF EXONERATION

equity of exoneration (eg-zon-<<schwa>>-ray-sh<<schwa>>n). The right of a person who is secondarily liable on a debt to make the primarily liable party discharge the debt or reimburse any payment that the secondarily liable person has made. • One example is the right of a surety to call on the principal for reimbursement after the surety has paid the debt. Unlike contribution, which exists when the parties are equally liable, the equity of exoneration exists when parties are successively liable. — Also termed right of exoneration. See EXONERATION.

EQUITY OF PARTNERS

equity of partners. The right of each partner to have the firm's property applied to the firm's debts. [Cases: Partnership 179. C.J.S. Partnership § 176.]

EQUITY OF REDEMPTION

equity of redemption. Real estate. The right of a mortgagor in default to recover property before a foreclosure sale by paying the principal, interest, and other costs that are due. • A defaulting mortgagor with an equity of redemption has the right, until the foreclosure sale, to reimburse the mortgagee and cure the default. In many jurisdictions, the mortgagor also has a statutory right to redeem within six months after the foreclosure sale, and the mortgagor becomes entitled to any surplus from the sale proceeds above the amount of the outstanding mortgage. — Also termed right of redemption. See CLOG ON THE EQUITY OF REDEMPTION; REDEMPTION(4); STATUTORY RIGHT OF REDEMPTION . [Cases: Mortgages 591, 600. C.J.S. Mortgages §§ 57, 991, 993, 995, 998–999, 1005, 1040–1043, 1045–1046, 1065, 1068.]

“A mortgage is technically a conveyance of title to property as security for a debt. The law courts, with typical technicality, early adopted the rule that if the debt was not paid on the very day it was due, the debtor lost his land. The equity courts, however, with more liberality, and with more of a recognition of the real purpose of the transaction, recognized the fact that the securing of the debt, rather than the act of conveyance of title was the principal thing giving character to the transaction. Accordingly they alleviated the severity of the legal rule by, in effect, giving the land back to the debtor if he would pay the debt, even though it had not been paid on time. This equitable right to redeem, even after default in paying the debt when it was due, was called the ‘equity of redemption.’ ” Charles Herman Kinnane, *A First Book on Anglo-American Law* 309 (2d

ed. 1952).

EQUITY OF SUBROGATION

equity of subrogation. The right of a person who is secondarily liable on a debt, and who pays the debt, to personally enforce any right that the original creditor could have pursued against the debtor, including the right to foreclose on any security held by the creditor and any right that the creditor may have to contribution from others who are liable for the debt. — Also termed right of subrogation; (in Scots law) right of relief. See SUBROGATION. [Cases: Subrogation 1. C.J.S. Subrogation §§ 2–15, 19, 91.]

EQUITY-OF-THE-STATUTE RULE

equity-of-the-statute rule. In statutory construction, the principle that a statute should be interpreted according to the legislators' purpose and intent, even if this interpretation goes beyond the literal meaning of the text. • Under this little-used rule, for example, if a statute defines jury-tampering to include a party's "giving a juror food or drink," the giving of cigars to a juror would also fall within that definition. Cf. GOLDEN RULE; MISCHIEF RULE; PLAIN-MEANING RULE. [Cases: Statutes 189. C.J.S. Statutes § 324.]

EQUITY PARTICIPATION

equity participation. The inclusion of a lender in the equity ownership of a project as a condition of the lender's granting a loan. — Also termed equity kicker.

EQUITY PLEADING

equity pleading. See PLEADING(2).

EQUITY PRAETER LEGEM

equity praeter legem (pree-t<<schwa>>r lee-j<<schwa>>m). The use of equity to fill a gap in the law. — Sometimes shortened to praeter legem.

EQUITY RATIO

equity ratio. 1. The percentage relationship between a purchaser's equity value (esp. the amount of a down payment) and the property value. 2. The measure of a shareholder's equity divided by total equity.

EQUITY SECURITY

equity security. See SECURITY.

EQUITY STOCK

equity stock. See STOCK.

EQUITY TERM

equity term. See TERM(5).

EQUITY TO A SETTLEMENT

equity to a settlement. A wife's equitable right, arising when her husband sues in equity for the reduction of her equitable estate to his own possession, to have all or part of that estate settled upon herself and her children. — Also termed wife's equity; wife's settlement. [Cases: Husband and Wife 12.]

EQUIVALENCE OF ADVANTAGES

equivalence of advantages. See RECIPROCITY(2).

EQUIVALENT

equivalent, adj. 1. Equal in value, force, amount, effect, or significance. 2. Corresponding in effect or function; nearly equal; virtually identical.

equivalent, n. Patents. An element that (1) existed before another element; (2) can perform the same function as the other element; and (3) is recognizable as a substitute for the other element. • For instance, mechanical devices are equivalents when one skilled in the art would have recognized that each device would produce the same result. If the equivalent is known at the time an invention is conceived, the invention's patentability may be questioned. See ANALOG. [Cases: Patents 237. C.J.S. Patents §§ 425–426.]

“If a given substitute is an equivalent under certain circumstances or in certain settings, and is not an equivalent under certain other circumstances or in certain other settings, then the substitution is patentable, provided the claim contains express limitations to the circumstances or settings in which the substitution is nonequivalent.” Roger Sherman Hoar, *Patent Tactics and the Law* 43 (3d ed. 1950).

EQUIVALENTS DOCTRINE

equivalents doctrine. See DOCTRINE OF EQUIVALENTS.

EQUIVOCAL

equivocal (i-kwiv-<<schwa>>-k<<schwa>>l), adj. 1. Of doubtful character; questionable. 2. Having more than one meaning or sense; ambiguous.

EQUIVOCALITY TEST

equivocality test (i-kwiv-<<schwa>>-kal-<<schwa>>-tee). See RES IPSA LOQUITUR TEST.

EQUIVOCATION

equivocation (i-kwiv-<<schwa>>-kay-sh<<schwa>>n). See latent ambiguity under AMBIGUITY.

EQUULEUS

equuleus (i-kwoo-lee-<<schwa>>s), n. [Latin] Roman law. A rack in the shape of a horse,

used for torture.

ERA

ERA.abbr.EQUAL RIGHTS AMENDMENT.

ERASE

erase,vb. 1. To rub or scrape out (something written); to obliterate. 2. To obliterate (recorded material).3. To seal (criminal records) from disclosure. [Cases: Criminal Law 1226(3); Records 32. C.J.S. Records §§ 65, 67–73.] — erasure,n.

ERASTIAN

Erastian (i-ras-ch<<schwa>>n or i-ras-tee-<<schwa>>n).Hist. A follower of Thomas Erastus (1524–1583), who thought that offenses against religion and morality should be punished by the civil power and not by the censures of the church. • As a sect, Erastians had great influence in England, particularly among 17th-century common-law lawyers.

ERASURE OF RECORD

erasure of record.See EXPUNGEMENT OF RECORD.

ERCISCUNDUS

erciscundus (er-sis-k<<schwa>>n-d<<schwa>>s), adj.[Latin] Civil law. To be divided. • A suit *judicium familiae erciscundae* was one to partition an inheritance.

ERECT

erect,vb. 1. To construct. 2. To establish. • In England, erect is one of the formal words of incorporation in a royal charter, being part of the phrase, “We do incorporate, erect, ordain, name, constitute, and establish.” See ERIGIMUS.

ERECTILE DYSFUNCTION

erectile dysfunction.See IMPOTENCE.

E REORGANIZATION

E reorganization.See REORGANIZATION(2).

ERGO

ergo (<<schwa>>r-goh or air-goh). [Latin] Therefore; thus.

ERGOLABUS

ergolabus (<<schwa>>r-goh-lay-b<<schwa>>s), n.[Latin] Civil law. A person who contracts to perform work by personally furnishing the materials and labor.

ERIE<TT>-BOUND

Erie-bound,adj. (Of a federal court) required to apply the Erie doctrine. [Cases: Federal

Courts 372.]

ERIE<TT> DOCTRINE

Erie doctrine (eer-ee). The principle that a federal court exercising diversity jurisdiction over a case that does not involve a federal question must apply the substantive law of the state where the court sits. *Erie R.R. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817 (1938). [Cases: Federal Courts 373.]

ERIE/KLAXON DOCTRINE

Erie/Klaxon doctrine. See KLAXON DOCTRINE.

ERIGIMUS

erigimus (i-rij-<<schwa>>-m<<schwa>>s). [Latin] Hist. We erect. • This was one of the words used in a corporation's royal charter. See ERECT(2).

ERISA

ERISA (ee- or <<schwa>>-ris-<<schwa>>). abbr. EMPLOYEE RETIREMENT INCOME SECURITY ACT .

ERISTIC

eristic (e-ris-tik), adj. Of or relating to controversy or disputation. — Also termed eristical.

ERMINE

ermine (<<schwa>>r-min), n. The station of a judge; judgeship. • The term refers to the fur trimmings (made from the coats of white weasels called “ermine”) adorning official robes of English judges.

EROSION

erosion. The wearing away of something by action of the elements; esp., the gradual eating away of soil by the operation of currents or tides. Cf. ACCRETION(1); DELICTION; AVULSION(2); ALLUVION.

ERR

err (<<schwa>>r), vb. To make an error; to be incorrect or mistaken <the court erred in denying the motion for summary judgment>.

ERRANT

errant (er-<<schwa>>nt), adj. 1. Fallible; incorrect; straying from what is proper <an errant judicial holding>. 2. Traveling <a knight errant>.

ERRATA SHEET

errata sheet. An attachment to a deposition transcript containing the deponent's corrections upon reading the transcript and the reasons for those corrections. — Also termed errata page.

ERRATUM

erratum (i-ray-t<<schwa>>m or i-rah-t<<schwa>>m), n.[Latin "error"] An error that needs correction. Pl. errata (i-ray-t<<schwa>> or i-rah-t<<schwa>>). See CORRIGENDUM.

ERRONEOUS

erroneous (i-roh-nee-<<schwa>>s), adj. Incorrect; inconsistent with the law or the facts.

ERRONEOUS ASSESSMENT

erroneous assessment.See ASSESSMENT.

ERRONEOUS JUDGMENT

erroneous judgment.See JUDGMENT.

ERRONEOUS TAX

erroneous tax.See TAX.

ERRONICE

erronice (i-roh-n<<schwa>>-see), adv.[Law Latin] Erroneously; through error or mistake.

ERROR

error,n.1. An assertion or belief that does not conform to objective reality; a belief that what is false is true or that what is true is false; MISTAKE.

error in corpore (kor-p<<schwa>>-ree). A mistake involving the identity of a particular object, as when a party buys a horse believing it to be the one that the party had already examined and ridden, when in fact it is a different horse.

error in negotio (ni-goh-shee-oh). A mistake about the type of contract that the parties actually wanted to enter.

error in qualitate (kwah-l<<schwa>>-tay-tee). A mistake affecting the quality of the contractual object. [Cases: Sales 36. C.J.S. Sales §§ 45–47.]

error in quantitate (kwahn-t<<schwa>>-tay-tee). A mistake affecting the amount of the contractual object. [Cases: Sales 36. C.J.S. Sales §§ 45–47.]

reissuable error.See REISSUABLE ERROR.

2. A mistake of law or of fact in a tribunal's judgment, opinion, or order. [Cases: Federal Civil Procedure 2653; Judgment 355–356. C.J.S. Judgments §§ 314–315.]

assigned error.An alleged error that occurred in a lower court and is pointed out in an appellate brief as grounds for reversal <appellants' two assigned errors appeared to the court to be harmless errors>. See ASSIGNMENT OF ERROR.

Caldwell error.The constitutionally impermissible error of resting a death sentence on a

determination made by a sentencer who has been led to believe that the responsibility for determining the appropriateness of the defendant's death sentence lies elsewhere. *Caldwell v. Mississippi*, 472 U.S. 320, 105 S.Ct. 2633 (1985). • The error most often occurs when the prosecutor or the judge tells the jury that the death sentence, if inappropriate, may be overturned on appeal.

clear error.A trial judge's decision or action that appears to a reviewing court to have been unquestionably erroneous. • Even though a clear error occurred, it may not warrant reversal. [Cases: Appeal and Error 999(1), 1008.1(5). C.J.S. Appeal and Error §§ 784, 805, 810.]

clerical error.An error resulting from a minor mistake or inadvertence, esp. in writing or copying something on the record, and not from judicial reasoning or determination. • Among the boundless examples of clerical errors are omitting an appendix from a document; typing an incorrect number; mistranscribing a word; and failing to log a call. A court can correct a clerical error at any time, even after judgment has been entered. See Fed. R. Civ. P. 60(a); Fed. R. Crim. P. 36. — Also termed scrivener's error; vitium clerici. See VITIUM SCRIPTORIS. [Cases: Federal Civil Procedure 2653; Judgment 306. C.J.S. Judgments §§ 280–281.]

cross-error. An error brought by the party responding to a writ of error.

cumulative error.The prejudicial effect of two or more trial errors that may have been harmless individually. • The cumulative effect of multiple harmless errors may amount to reversible error. See CUMULATIVE-ERROR ANALYSIS.

error apparent of record.See plain error.

fatal error.See reversible error.

fundamental error.See plain error.

harmful error.See reversible error.

harmless error.An error that does not affect a party's substantive rights or the case's outcome. • A harmless error is not grounds for reversal. See Fed. R. Civ. P. 61; Fed. R. Crim. P. 52. — Also termed technical error; error in vacuo. Cf. substantial error. [Cases: Administrative Law and Procedure 764; Appeal and Error 1025–1074. C.J.S. Appeal and Error §§ 825–830; Juries §§ 421–422; Justices of the Peace § 240; Public Administrative Law and Procedure § 225.]

invited error.An error that a party cannot complain of on appeal because the party, through conduct, encouraged or prompted the trial court to make the erroneous ruling. [Cases: Administrative Law and Procedure 742; Appeal and Error 882; Criminal Law 1137. C.J.S. Appeal and Error §§ 745–747; Public Administrative Law and Procedure § 214.]

manifest constitutional error.An error by the trial court that has an identifiably negative impact on the trial to such a degree that the constitutional rights of a party are compromised. • A manifest constitutional error can be reviewed by a court of appeals even if the appellant did not object at trial.

manifest error.An error that is plain and indisputable, and that amounts to a complete

disregard of the controlling law or the credible evidence in the record. [Cases: Appeal and Error 999(1), 1008.1(7). C.J.S. Appeal and Error §§ 784, 805, 810.]

obvious error. See OBVIOUS ERROR.

plain error. An error that is so obvious and prejudicial that an appellate court should address it despite the parties' failure to raise a proper objection. • A plain error is often said to be so obvious and substantial that failure to correct it would infringe a party's due-process rights and damage the integrity of the judicial process. See Fed. R. Evid. 103(d). — Also termed fundamental error; error apparent of record. [Cases: Appeal and Error 181; Criminal Law 1030. C.J.S. Appeal and Error §§ 202, 207; Criminal Law § 1682.]

reversible error. An error that affects a party's substantive rights or the case's outcome, and thus is grounds for reversal if the party properly objected. — Also termed harmful error; prejudicial error; fatal error. [Cases: Administrative Law and Procedure 764; Appeal and Error 1025–1074; Criminal Law 1162. C.J.S. Appeal and Error §§ 825–830; Criminal Law §§ 1713–1715; Juries §§ 421–422; Justices of the Peace § 240; Public Administrative Law and Procedure § 225.]

scrivener's error. See clerical error.

substantial error. An error that affects a party's substantive rights or the outcome of the case. • A substantial error may require reversal on appeal. Cf. harmless error.

technical error. See harmless error.

3. An appeal <a proceeding in error>.

ERROR, ASSIGNMENT OF

error, assignment of. See ASSIGNMENT OF ERROR.

ERROR, WRIT OF

error, writ of. See WRIT OF ERROR.

ERROR CALCULI

error calculi (er-or kal-kyuu-II). [Latin] Roman & civil law. An error in calculation.

“If it occurs in a judgment and is fully evident, no appeal is necessary. The judge himself may correct it. In public administration, error calculi is without any legal effect. A reexamination and correction (retractatio) is admissible even after ten or twenty years.” Adolf Berger, *Encyclopedic Dictionary of Roman Law* 456 (1953).

ERROR E PERSONA

error de persona (dee p<<schwa>>r-soh-n<<schwa>>). [Latin “error of the person”] A mistake about a person's identity. Cf. ERROR NOMINIS.

ERRORE ACERRIMO NON AFFECTATO INSIMULATOVE

errore acerrimo non affectato insimulatove (e-ror-ee <<schwa>>-ser-i-moh non af-ek-tay-toh in-sim-yuu-l<<schwa>>-toh-vee). [Latin] Hist. Through error of the most pointed or positive character, not merely pretended or feigned.

ERRORE LAPSUS

errore lapsus (e-ror-ee lap-s<<schwa>>s). [Latin] Hist. Mistaken through error. • This type of mistake was usu. not sufficient to invalidate a contract.

ERROR IN FACT

error in fact. See mistake of fact (1) under MISTAKE.

ERROR IN LAW

error in law. See mistake of law (1) under MISTAKE.

ERROR IN VACUO

error in vacuo (in vak-yoo-oh). [Latin “error in a void”] See harmless error under ERROR.

ERROR NOMINIS

error nominis (nahm-<<schwa>>-nis). [Latin “error of name”] A mistake of detail in a person's name. Cf. ERROR DE PERSONA.

ERROR OF FACT

error of fact. See mistake of fact (1) under MISTAKE.

ERROR-OF-JUDGMENT RULE

error-of-judgment rule. The doctrine that a professional is not liable to a client for advice or an opinion given in good faith and with an honest belief that the advice was in the client's best interests, but that was based on a mistake either in judgment or in analyzing an unsettled area of the professional's business. • For example, an attorney who makes an error in trial tactics involving an unsettled area of the law may, under certain circumstances, defeat a malpractice claim arising from the tactical error. — Also termed judgmental immunity.

ERROR OF LAW

error of law. See mistake of law (1) under MISTAKE.

ERRORS-AND-OMISSIONS INSURANCE

errors-and-omissions insurance. See INSURANCE.

ERS

ERS. abbr. ECONOMIC RESEARCH SERVICE.

ESA

ESA. abbr. 1. ECONOMICS AND STATISTICS ADMINISTRATION. 2. EMPLOYMENT

STANDARDS ADMINISTRATION .

ESCALATION CLAUSE

escalation clause. See ESCALATOR CLAUSE.

ESCALATOR CLAUSE

escalator clause. 1. A contractual provision that makes pricing flexible by increasing or decreasing the contract price according to changing market conditions, such as higher or lower taxes or operating costs. [Cases: Contracts 229, 231. C.J.S. Contracts §§ 378, 385, 387–391, 393–398.] 2. A provision in a divorce decree or divorce agreement providing for the automatic increase of alimony payments upon the occurrence of any of various triggering events, such as cost-of-living increases or an increase in the obligor's salary. • Escalation clauses for child support are often unenforceable. 3. Oil & gas. A provision in a long-term gas contract allowing the base price of the gas to be adjusted as the market changes. • The actual adjustment may be up or down. — Also termed escalation clause; fluctuating clause.

ESCAMBIUM

escambium. See CAMBIUM(2).

ESCAPE

escape, n. 1. The act or an instance of breaking free from confinement, restraint, or an obligation. 2. An unlawful departure from legal custody without the use of force. — Also termed actual escape. Cf. PRISON BREACH. [Cases: Escape 1. C.J.S. Escape §§ 2–3, 5–10, 12, 27, 44.]

“In the technical sense an ‘escape’ is an unauthorized departure from legal custody; in a loose sense the word is used to indicate either such an unlawful departure or an avoidance of capture. And while the word is regularly used by the layman in the broader sense it usually is limited to the narrower meaning when used in the law, — although this is not always so.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 559 (3d ed. 1982).

constructive escape. A prisoner's obtaining more liberty than the law allows, while not fully regaining freedom.

3. At common law, a criminal offense committed by a peace officer who allows a prisoner to depart unlawfully from legal custody. — Also termed voluntary escape. [Cases: Escape 3. C.J.S. Escape §§ 3, 5–6.] — escape, vb.

negligent escape. The offense committed by a peace officer who negligently allows a prisoner to depart from legal custody.

“Escapes are either voluntary, or negligent. Voluntary are such as are by the express consent of the keeper, after which he never can retake his prisoner again, (though the plaintiff may retake him at any time) but the sheriff must answer for the debt. Negligent escapes are where the prisoner escapes without his keeper's knowledge or consent; and then upon fresh pursuit the defendant may

be retaken, and the sheriff shall be excused, if he has him again before any action brought against himself for the escape.” 3 William Blackstone, *Commentaries on the Laws of England* 415–16 (1768).

ESCAPE CLAUSE

escape clause. A contractual provision that allows a party to avoid performance under specified conditions; specif., an insurance-policy provision — usu. contained in the “other insurance” section of the policy — requiring the insurer to provide coverage only if no other coverage is available. Cf. EXCESS CLAUSE; PRO RATA CLAUSE.

ESCAPEE

escapee. A prisoner or other inmate who has escaped from lawful custody. [Cases: Escape 1. C.J.S. Escape §§ 2–3, 5–10, 12, 27, 44.]

“The word ‘escapee’ is employed at times by those who are not careful in the use of language. They probably think this word is comparable to ‘arrestee’ or ‘employee.’ But the arrestee did not do the arresting and the employee did not do the employing. The employee does the work but that makes him a worker, not a workee.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 560 (3d ed. 1982).

ESCAPE PERIOD

escape period. Labor law. A time agreed upon in some union contracts during which workers may withdraw from the union near the end of one term covered by the contract and before the start of the next.

ESCAPE WARRANT

escape warrant. See WARRANT(1).

ESCAPIUM

escapium (e-skay-pee-<<schwa>>m), n. [Law Latin] That which comes by chance or accident. • In medieval Latin, the term often referred to the escape of a prisoner or the straying of cattle.

ESCHEAT

escheat (es-cheet), n. 1. Hist. The reversion of land ownership back to the lord when the immediate tenant dies without heirs. See WRIT OF ESCHEAT. 2. Reversion of property (esp. real property) to the state upon the death of an owner who has neither a will nor any legal heirs. [Cases: Escheat 1–8. C.J.S. Escheat §§ 2–23.] 3. Property that has so reverted. See heirless estate under ESTATE(3). — escheat, vb.

“All escheats, under the English law, are declared to be strictly feudal, and to import the extinction of tenure.... The rule [was] that if lands were held in trust and the cestui que trust without heirs, the lands did not escheat to the crown, but the trustee, being in esse and in the legal seisin of the land, took the land discharged of the trust, and bound as owner for the feudal services. But as the feudal tenures do not exist in this country, there are no private persons who succeed to

the inheritance by escheat; and the state steps in the place of the feudal lord, by virtue of its sovereignty, as the original and ultimate proprietor of all the lands within its jurisdiction.” 4 James Kent, Commentaries on American Law *423–24 (George Comstock ed., 11th ed. 1866).

ESCHEAT GRANT

escheat grant. See GRANT.

ESCHEATOR

escheator (es-cheet-*<<schwa>>r*). Hist. A royal officer appointed to assess the value of property escheating to the Crown. • Corrupt officers led many to associate the escheator with fraudulent conduct, giving rise to the word cheat as used in the modern sense. — Also termed cheater.

ESCHEAT PATENT

escheat patent. See escheat grant under GRANT.

ESCHECCUM

escheccum (es-chek-*<<schwa>>m*), n. [Latin] Hist. A jury or inquisition.

ESCOBEDO<TT> RULE

Escobedo rule (es-k*<<schwa>>-bee-doh*). Criminal procedure. The principle that a statement by an unindicted, targeted suspect in police custody is inadmissible at trial unless the police warn the suspect of the right to remain silent and provide an opportunity for the suspect to consult with retained or appointed counsel. • This rule was a precursor to the Miranda rule. *Escobedo v. Illinois*, 378 U.S. 478, 84 S.Ct. 1758 (1964). See MIRANDA RULE. [Cases: Criminal Law 412.2(3), 517.2(3), 518.C.J.S. Criminal Law §§ 918–922.]

ESCOT

escot (e-skot), n. Hist. English law. A tax paid in boroughs and corporations to support the community.

ESCRIBANO

escribano (es-kree-bah-noh), n. [Spanish] Spanish law. A notary; specif., an officer who has authority to set down in writing, and attest to, transactions and contracts between private persons, as well as judicial acts and proceedings.

ESCRITURA

escritura (es-kree-toor-ah), n. [Spanish] Spanish law. A written instrument, such as a contract; esp., a deed that either is prepared by an escribano or notary of a corporation or council (concejo) or is sealed with a monarchical or governmental seal.

ESCRITURA PUBLICA

escritura publica (es-kree-toor-ah p*<<schwa>>b-li-k<<schwa>>*). See PUBLIC

WRITING(2).

ESCROQUERIE

escroquerie (es-kroh-k<<schwa>>-ree), n.[French] Fraud; swindling; cheating.

ESCROW

escrow (es-kroh), n.1. A legal document or property delivered by a promisor to a third party to be held by the third party for a given amount of time or until the occurrence of a condition, at which time the third party is to hand over the document or property to the promisee <the agent received the escrow two weeks before the closing date>. [Cases: Deposits and Escrows 11–26. C.J.S. Depositories §§ 4–5, 8–10, 13–25, 27; Escrows §§ 2–15.] 2. An account held in trust or as security <the earnest money is in escrow>. — Also termed escrow account; impound account; reserve account. See escrow account under ACCOUNT. [Cases: Deposits and Escrows 11. C.J.S. Depositories §§ 4–5, 8–9; Escrows §§ 2–3, 6.] 3. The holder of such a document, property, or deposit <the attorney performed the function of escrow>. — Also termed escrow agent. [Cases: Deposits and Escrows 13. C.J.S. Depositories §§ 15–17; Escrows §§ 8–10.] 4. The general arrangement under which a legal document or property is delivered to a third person until the occurrence of a condition <creating an escrow>. — escrow,vb.

“Like ‘scroll’ and ‘scrawl,’ the word ‘escrow’ is derived from the Norman-French word for a writing or a written instrument. It has come in practice to refer to a security device: one or both parties to a transaction deposit property or an instrument with a third party until some condition has occurred. The property or instrument may be referred to as ‘the escrow’; the delivery is said to be ‘in escrow.’ ” Restatement (Second) of Contracts § 103 cmt. a (1979).

ESCROW ACCOUNT

escrow account.See ACCOUNT.

ESCROW AGENT

escrow agent.See AGENT(2).

ESCROW AGREEMENT

escrow agreement.The instructions given to the third-party depository of an escrow. [Cases: Deposits and Escrows 15. C.J.S. Escrows § 6.]

ESCROW CONTRACT

escrow contract.See CONTRACT.

ESCROW DEPOSIT

escrow deposit.See escrow account under ACCOUNT.

ESCROWEE

escrowee. See escrow agent under AGENT(2).

ESCROW HOLDER

escrow holder. See escrow agent under AGENT(2).

ESCROWL

escrowl (es-krohl), n. Hist. 1. An escrow. 2. A scroll.

ESCROW OFFICER

escrow officer. See escrow agent under AGENT(2).

ESCUAGE

escuage (es-kyoo-ij). [French, fr. Latin escuagium] See SCUTAGE.

E-SIGN ACT

E-Sign Act. The short name for the Electronic Signatures in Global and National Commerce Act, a 2000 federal statute that establishes the legal equivalency of electronic contracts, electronic signatures, and other electronic records with their paper counterparts. • The E-Sign Act applies to all types of transactions, whether in interstate or foreign commerce, unless a specific exception applies. Among the few exceptions are documents related to family law and probate law, most documents required by the Uniform Commercial Code, court documents, and a list of notices that directly affect the lives of consumers (e.g., a notice of termination of utility services or a notice of eviction).

ESKETORES

esketores (es-k<<schwa>>-tor-eez), n. pl. Hist. Robbers; destroyers of others' lands or fortunes.

ESKIPPER

eskipper (<<schwa>>-skip-<<schwa>>r), vb. To ship. — Also termed eskippare (es-k<<schwa>>-pair-ee).

ESKIPPESON

eskippeson (<<schwa>>-skip-[<<schwa>>]-s<<schwa>>n), n. Shippage; passage by sea. — Also termed skippeson.

ESLISOR

eslisor (es-ll-z<<schwa>>r). See ELISOR.

ESNE

esne (ez-nee), n. Hist. A hireling of servile condition; a hired laborer or a slave.

ESNECY

esnecy (es-ni-see), n. Seniority; the condition, right, or privilege of the eldest-born. • The

term esp. applied to the privilege of the eldest among coparceners to make a first choice of shares upon a voluntary partition. — Also termed *aesnecia*.

ESOP

ESOP (ee-sop).abbr. See employee-stock-ownership plan under EMPLOYEE BENEFIT PLAN .

ESPERA

espera (es-p<<schwa>>-r<<schwa>>), n. A period fixed by law or by a court within which certain acts are to be performed (such as payment of a debt).

ESPIONAGE

espionage (es-pee-<<schwa>>-nahzh). The practice of using spies to collect information about what another government or company is doing or plans to do.

industrial espionage.Intellectual property. One company's spying on another to steal trade secrets or other proprietary information.

ESPIONAGE ACT

Espionage Act.A federal law that criminalizes and punishes espionage, spying, and related crimes.18 USCA §§ 793 et seq. • Two Espionage Acts were passed. The 1917 act criminalized false statements intended to interfere with the war effort; to willfully cause or attempt to cause dissension in the armed forces; or to willfully obstruct national recruiting and enlistment activities. This act remains enforceable “when the United States is at war.” The 1918 act criminalized speech intended to obstruct war-bond sales; to generate scorn or contempt for democratic government, the flag, or the uniform of the Army or Navy; to urge reduced production of war materials with the intent to hinder the war effort; or to express support for a national enemy or opposition to the United States' cause. The act's constitutionality was upheld by the U.S. Supreme Court before it was repealed in 1921. [Cases: War and National Emergency 48. C.J.S. War and National Defense § 66.]

ESPLEES

esplees (es-pleez), n. pl. Archaic. 1. Products yielded from land. 2. Rents or other payments derived from land. 3. Land itself. — Also termed *explees*.

ESPOUSALS

espousals (<<schwa>>-spow-z<<schwa>>lz), n. Mutual promises between a man and a woman to marry one another. [Cases: Breach of Marriage Promise 4–5.C.J.S. Breach of Marriage Promise §§ 5–6.]

“Espousals were of two kinds: *sponsalia per verba de futuro*, which take place if man and woman promise each other that they will hereafter become husband and wife; *sponsalia per verba de praesenti*, which take place if they declare that they take each other as husband and wife now, at this very moment.” 2 Frederick Pollock & Frederic W. Maitland, *History of English Law Before*

the Time of Edward I 368 (2d ed. 1899).

ESPOUSE

espouse, vb. To dedicate oneself to and advocate for (a cause).

ESQUIRE

esquire (es-kwIr or e-skwIr). (usu. cap.) A title of courtesy commonly appended after the name of a lawyer. — Abbr. Esq.

ESSENCE, OF THE

essence, of the. See OF THE ESSENCE.

ESSENCE TEST

essence test. Labor law. A test under which an arbitrator's interpretation of a collective-bargaining agreement must be upheld if it derives in any rational way from the agreement, viewed in light of the agreement's language, its context, and any other evidence of the parties' intention. [Cases: Labor Relations 462. C.J.S. Labor Relations § 476.]

ESSENDI QUIETUM DE TOLONIO

essendi quietum de tolonio (e-sen-dI kwI-ee-t<<schwa>>m dee t<<schwa>>-loh-nee-oh). [Latin "a writ to be free of a toll"] Hist. A writ available to a citizen or a burgess of any city or town who, by charter or prescription, is exempt from a particular toll.

ESSENTIAL FINDING

essential finding. See FINDING OF FACT.

ESSENTIALIA

essentialia (e-sen-shee-ay-lee-<<schwa>>). [Law Latin "essentials"] Scots law. Terms or qualities essential to the existence of a particular right or contract. Cf. ACCIDENTALIA.

"Essentialia. This term, applied to a contract, or right, or other subject of law, signifies those things which are essential to the very being of the contract or right, as such, and any alteration in which would make the contract or right resolve into one of another kind." William Bell, *Bell's Dictionary and Digest of the Law of Scotland* 406 (George Watson ed., 7th ed. 1890).

ESSENTIALIA FEUDI

essentialia feudi (e-sen-shee-ay-lee-<<schwa>> fyoo-dI). [Law Latin] Scots law. The essential terms of a feudal right. Cf. ACCIDENTALIA FEUDI.

ESSENTIAL MISTAKE

essential mistake. See MISTAKE.

ESSENTIAL TERM

essential term. See fundamental term under TERM(2).

ESSOIN

essoin (e-soyn), n. [fr. Old French *essoï(g)ne* “excuse”] Hist. 1. An excuse for not appearing in court on an appointed day in obedience to a summons. 2. The offering or presentation of such an excuse. — Also spelled *essoign*.

“The first return-day of every term, properly speaking, is the first day of that term; and on that day the court used formerly to sit ... to hear the *essoigns*, or excuses, of such as did not appear according to the summons of the writ. This day therefore came to be called the *essoign-day* of the term.” 1 George Crompton, *Practice Common-Placed: Rules and Cases of Practice in the Courts of King's Bench and Common Pleas* liv (3d ed. 1787).

essoïn, vb. [fr. Old French *essoï(g)nier* “to excuse”] Hist. To present an excuse for not appearing in court as ordered.

“Upon the summons, the defendant either appeared, or *essoigned*, or made default. If he did the former, the plaintiff declared against him, and the cause was proceeded in by the court; and if he did the latter, the plaintiff had liberty to take out further process against him. But if he *essoigned*, that is, sent an excuse to the court why he could not attend, he was to send it by the return day of the writ which if he did, a further process did not issue against him.” 1 George Crompton, *Practice Common-Placed: Rules and Cases of Practice in the Courts of King's Bench and Common Pleas* liv (3d ed. 1787).

ESSOIN DAY

essoïn day. Hist. English law. The first general return day of the term, when the courts sat to receive *essoins*. • By the Law Terms Act (1830), *essoïn days* were eliminated as a part of the term. St. 11 Geo. 4; 1 Will. 4, ch. 70, § 6.

ESSOINDE MALO VILLAE

essoïn de malo villae (dee mal-oh vil-ee). Hist. A procedure by which a defendant, who was in court the first day but was then taken ill without pleading, would send two *essoiners* to state in court that the defendant was detained by sickness in a particular village and thus unable to attend. • This *essoïn* would be accepted unless the plaintiff could show its falsity.

ESSOINER

essoïner (e-soyn-*<<schwa>>r*), n. Hist. A person making an *essoïn*. — Also termed *essoïniator* (e-soyn-ee-ay-t*<<schwa>>r*).

ESSOIN ROLL

essoïn roll. Hist. A roll upon which *essoins* were entered, together with the day to which they were adjourned.

ESTABLISH

establish,vb. 1. To settle, make, or fix firmly; to enact permanently <one object of the Constitution was to establish justice>.2. To make or form; to bring about or into existence <Congress has the power to establish Article III courts>.3. To prove; to convince <the House managers tried to establish the President's guilt>.

ESTABLISHED ROYALTY

established royalty.See ROYALTY(1).

ESTABLISHMENT

establishment,n.1. The act of establishing; the state or condition of being established. 2. An institution or place of business. 3. A group of people who are in power or who control or exercise great influence over something.

ESTABLISHMENT CLAUSE

Establishment Clause.The First Amendment provision that prohibits the federal and state governments from establishing an official religion, or from favoring or disfavoring one view of religion over another. U.S. Const. amend. I. Cf. FREE EXERCISE CLAUSE. [Cases: Constitutional Law 84.C.J.S. Constitutional Law §§ 513–517.]

ESTADAL

estadal (es-tah-dahl), n.[Spanish] Hist. In Spanish America, a measure of land of 16 square varas, or yards.

ESTADIA

estadia (es-tah-dee-ah), n.[Spanish] Spanish law. 1. A delay in a voyage, or in the delivery of cargo, caused by the charterer or consignee, who becomes liable for demurrage. 2. The time for which the party who has chartered a vessel, or is bound to receive the cargo, must pay demurrage because of a delay in performing the contract. — Also termed sobrestadía (soh-bray-stah-dee-ah).

ESTANDARD

estandard (<<schwa>>-stan-d<<schwa>>rd), n.[Law French] A standard of weights and measures.

EST A SCAVOIR

est a scavoir (ay ah skah-vwahr). [Law French, prob. fr. Latin est sciendum “it is to be known”] It is to be understood or known; to wit. • This expression is common in Sir Thomas de Littleton's 15th-century Treatise on Tenures, written in Law French. See SCIENDUM EST.

ESTATE

estate. 1. The amount, degree, nature, and quality of a person's interest in land or other property; esp., a real-estate interest that may become possessory, the ownership being measured in terms of duration. See periodic tenancy under TENANCY.

“The word ‘estate’ was probably adopted because in early days it was possible to ascertain a man's status or position in life by discovering the particular kind of tenure by which he held his lands. The quality of his tenure gave a clue to his status. The baron for example ought in theory to be the holder of a barony; he has the status of a baron because he has the estate of a baron.... [O]ne of the distinguishing marks of [the] freehold estates was the uncertainty of their duration. They were invariably held either for life, or for some other space of time dependent upon an event which might not happen within a lifetime, and thus a freehold estate came to be regarded as one which involved the performance of free services only, but as one which endured for an uncertain time. In this way, the word ‘estate’ came to denote the quantity of a man's interest in land.” G.C. Cheshire, *Modern Law of Real Property* 26 (3d ed. 1933).

absolute estate. A full and complete estate that cannot be defeated.

“The epithet absolute is used to distinguish an estate extended to any given time, without any condition to defeat or collateral limitation to determine [i.e., terminate] the estate in the mean time, from an estate subject to a condition or collateral limitation. The term absolute is of the same signification with the word pure or simple, a word which expresses that the estate is not determinable by any event besides the event marked by the clause of limitation.” G.C. Cheshire, *Modern Law of Real Property* 54 (3d ed. 1933).

ancestral estate. An estate that is acquired by descent or by operation of law with no other consideration than that of blood.

bankruptcy estate. See BANKRUPTCY ESTATE.

base estate. Hist. An estate held at the will of the lord, as distinguished from a freehold.

concurrent estate. Ownership or possession of property by two or more persons at the same time. • In modern practice, there are three types of concurrent estates: tenancy in common, joint tenancy, and tenancy by the entirety. — Also termed concurrent interest.

“A concurrent estate is simply an estate — whether present or future, defeasible or non-defeasible, in fee simple, in tail, for life, or for years — that is owned by two or more persons at the same time. O transfers ‘to A and B and their heirs.’ A and B own a present concurrent estate in fee simple absolute.” Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 53 (2d ed. 1984).

conditional estate. See estate on condition.

contingent estate. An estate that vests only if a certain event does or does not happen. Cf. estate on condition.

defeasible estate. An estate that may come to an end before its maximum duration has run because of the operation of a special limitation, a condition subsequent, or an executory limitation. • If an estate is defeasible by operation of a special limitation, it is called a determinable estate.

derivative estate. A particular interest that has been carved out of another, larger estate. Cf. original estate.

determinable estate. An estate that is defeasible by operation of a special limitation. — Also termed determinable freehold.

equitable estate. An estate recognized in equity, such as a trust beneficiary's interest. See EQUITY.

“[A] legal estate was a right in rem, an equitable estate a right in personam, that is to say, the former conferred a right enforceable against the whole world, the latter one which could be enforced only against a limited number of persons.” G.C. Cheshire, *Modern Law of Real Property* 54 (3d ed. 1933).

estate ad remanentiam (ad rem-<<schwa>>-nen-shee-<<schwa>>m). An estate in fee simple.

estate at sufferance. See tenancy at sufferance under TENANCY.

estate at will. See tenancy at will under TENANCY.

estate by curtesy. An estate owned by a wife, to which the husband is entitled upon her death. See CURTESY.

estate by elegit. An estate held by a judgment creditor, entitling the creditor to the rents and profits from land owned by the debtor until the debt is paid. See ELEGIT.

estate by entirety. A common-law estate in which each spouse is seized of the whole of the property. • An estate by entirety is based on the legal fiction that a husband and wife are a single unit. The estate consists of five unities: time, title, interest, possession, and marriage. The last of these unities distinguishes the estate by entirety from the joint tenancy. A joint tenancy can exist with any number of persons, while an estate by entirety can be held only by a husband and wife and is not available to any other persons. And it can be acquired only during the marriage. This estate has a right of survivorship, but upon the death of one spouse, the surviving spouse retains the entire interest rather than acquiring the decedent's interest. Most jurisdictions have abolished this estate. — Also termed estate by the entirety; estate by entireties; estate by the entireties; tenancy by the entirety; tenancy by the entireties. Cf. joint tenancy and tenancy in common under TENANCY.

estate by purchase. An estate acquired in any manner other than by descent. See PURCHASE.

estate by statute staple. An estate in a defendant's land held by a creditor under the statute staple until the debt was paid. See STATUTE STAPLE.

estate by the curtesy of England. See CURTESY.

estate for a term. See tenancy for a term under TENANCY.

estate for life. See life estate.

estate for years. See tenancy for a term under TENANCY.

estate in common. See tenancy in common under TENANCY.

estate in fee simple. See FEE SIMPLE.

estate in fee tail.See FEE TAIL.

estate in gage.An estate that has been pledged as security for a debt. See MORTGAGE.

estate in partnership.A joint estate that is vested in the members of a partnership when real estate is purchased with partnership funds and for partnership purposes. [Cases: Partnership 76. C.J.S. Partnership §§ 86–87.]

estate in possession.An estate in which a present interest passes to the tenant; an estate in which the tenant is entitled to receive the rents and other profits arising from the estate. [Cases: Estates in Property 1. C.J.S. Estates §§ 2–5, 8, 15–21, 116–128, 137, 243.]

estate in reversion.See REVERSION.

estate in severalty (sev-*<<schwa>>-r<<schwa>>l-tee*). An estate held by a tenant separately, without any other person being joined or connected in interest.

estate in tail.See FEE TAIL.

estate in vadio (in *vad-ee-oh*). An estate in gage or pledge. See MORTGAGE.

estate less than freehold.An estate for years, an estate at will, or an estate at sufferance.

estate of inheritance.An estate that may descend to heirs.

estate on condition.An estate that vests, is modified, or is defeated upon the occurrence or nonoccurrence of some specified event. • While an estate on limitation can revert without any action by the grantor or the grantor's heirs, an estate on condition requires the entry of the grantor or the grantor's heirs to end the estate whenever the condition occurs. — Also termed estate on conditional limitation; conditional estate.

estate on conditional limitation.See estate on condition.

estate on condition expressed.A contingent estate in which the condition upon which the estate will fail is stated explicitly in the granting instrument.

estate on condition implied.A contingent estate having some condition that is so inseparable from the estate's essence that it need not be expressed in words.

estate on limitation.An estate that automatically reverts back to the grantor according to a provision, usu. regarding the passage of a determined time period, designated by words such as “during,” “while,” and “as long as.” See fee simple determinable under FEE SIMPLE.

estate pur autre vie.See life estate pur autre vie.

estate tail.See FEE TAIL.

estate tail quasi.An estate granted by a life tenant, who, despite using language of conveyance that is otherwise sufficient to create an estate tail, is unable to grant in perpetuity.

executed estate.See REMAINDER(1).

expectant estate. See FUTURE INTEREST.

freehold estate. See FREEHOLD.

future estate. See FUTURE INTEREST.

joint estate. Any of the following five types of estates: (1) a joint tenancy, (2) a tenancy in common, (3) an estate in coparcenary (a common-law estate in which coheirs hold as tenants in common), (4) a tenancy by the entirety, or (5) an estate in partnership. [Cases: Husband and Wife 14.2–14.7; Joint Tenancy 1; Tenancy in Common 1. C.J.S. Estates § 19; Joint Tenancy §§ 2, 4, 7–9; Tenancy in Common §§ 2–5.]

landed estate. An interest in real property, esp. suburban or rural land, as distinguished from real estate situated in a city. — Also termed landed property.

leasehold estate. See LEASEHOLD.

legal estate. An interest enforced in law rather than in equity.

legal life estate. See life estate.

life estate. An estate held only for the duration of a specified person's life, usu. the possessor's. • Most life estates — created, for example, by a grant “to Jane for life” — are beneficial interests under trusts, the corpus often being personal property, not real property. — Also termed estate for life; legal life estate; life tenancy. See LIFE TENANT. [Cases: Life Estates 1. C.J.S. Estates §§ 28–29, 31, 34.]

life estate *pur autre vie* (p<<schwa>>r oh-tr<<schwa>> vee). A life estate for which the measuring life — the life whose duration determines the duration of the estate — is someone other than the possessor's. — Also spelled life estate *per autre vie*. [Cases: Life Estates 1. C.J.S. Estates §§ 28–29, 31, 34.]

minor's estate. A minor's property that must be administered by a court-appointed fiduciary. [Cases: Guardian and Ward 36.]

next eventual estate. An estate taking effect upon an event that terminates the accumulation of undisposed rents and profits; an estate taking effect when the existing estate terminates.

nonancestral estate. An estate from any source other than the owner's ancestors. — Also termed nonancestral property.

nonfreehold estate. Any estate in real property without seisin, such as an estate for years, from period to period, at will, or at sufferance; any estate except a fee simple, fee tail, or life estate.

original estate. An estate that is the first of one or more derivative estates, bearing to each other the relation of a particular estate and a reversion.

particular estate. An estate or interest less than a fee simple, such as a fee tail, a life estate, or a term for years. • It is so called because the estate is a mere part (*particula*) of the fee simple.

periodic estate. See periodic tenancy under TENANCY.

possessory estate. An estate giving the holder the right to possess the property, with or without an ownership interest in the property.

present estate. An estate in immediate possession; one vested at the present time, as distinguished from a future estate. See present interest under INTEREST(2).

qualified estate. Any estate that is not absolute and unconditional; a limited or conditional estate.

reversionary estate. See REVERSION.

settled estate. An estate created or limited under a settlement; an estate in which the powers of alienation, devising, and transmission according to the ordinary rules of descent are restrained by the settlement's terms.

stipendiary estate (stĪ-pen-dee-er-ee). Hist. An estate granted in return for services, usu. of a military kind.

vested estate. An estate with a present right of enjoyment or a present fixed right of future enjoyment.

2. All that a person or entity owns, including both real and personal property. 3. The property that one leaves after death; the collective assets and liabilities of a dead person. [Cases: Executors and Administrators 38–73. C.J.S. Executors and Administrators §§ 2, 121–127, 129–162.]

adjusted gross estate. 1. The total value of a decedent's property after subtracting administration expenses, funeral expenses, creditors' claims, and casualty losses. • The value of the adjusted gross estate is used in computing the federal estate tax. Cf. net probate estate under PROBATE ESTATE. 2. See gross estate (1).

augmented estate. A refinement of the elective share to which a surviving spouse is entitled, whereby the “fair share” is identified as something other than the traditional one-third of the probate estate. • The current version of the Uniform Probate Code uses a sliding scale that increases with each year of marriage. Under the UPC, a surviving spouse has accrued full marital-property rights after 15 years of marriage. This percentage of spousal entitlement is applied to a reconceptualization of the decedent's estate to take into account more than just the assets remaining in the probate estate at death. Also added into the calculation are the value of certain inter vivos transfers that the decedent made to others in a way that depleted the probate estate; the value of similar transfers made to others by the spouse as well as the value of the marital property owned by the spouse at the decedent's death; and the value of inter vivos transfers of property made by the decedent to the spouse. The Uniform Probate Code adopted this version of the augmented-estate concept in an attempt to equalize the treatment of surviving spouses in non-community-property states vis-à-vis community-property states. Unif. Probate Code § 2-202. See ELECTIVE SHARE. [Cases: Wills 778–803. C.J.S. Wills §§ 1841–1879.]

decedent's estate. The real and personal property that a person possesses at the time of death and that passes to the heirs or testamentary beneficiaries. [Cases: Executors and Administrators 38–73. C.J.S. Executors and Administrators §§ 2, 121–127, 129–162.]

gross estate. 1. The total value of a decedent's property without any deductions. 2. Loosely, adjusted gross estate.

heirless estate. The property of a person who dies intestate and without heirs. See ESCHEAT.

marital estate. See marital property under PROPERTY.

separate estate. The individual property of one of two persons who stand in a marital or business relationship. See SEPARATE PROPERTY. [Cases: Husband and Wife 110–202.]

net estate. See net probate estate under PROBATE ESTATE.

net probate estate. See PROBATE ESTATE.

probate estate. See PROBATE ESTATE.

receivership estate. See RECEIVERSHIP ESTATE.

residuary estate. The part of a decedent's estate remaining after payment of all debts, expenses, statutory claims, taxes, and testamentary gifts (special, general, and demonstrative) have been made. — Also termed residual estate; residue; residuary; residuum. [Cases: Wills 586. C.J.S. Wills §§ 1176–1179, 1184.]

taxable estate. A decedent's gross estate reduced by allowable deductions (such as administration costs and ESOP deductions). IRC (26 USCA) § 2051. • The taxable estate is the amount that is subject to the federal unified transfer tax at death. [Cases: Internal Revenue 4168–4182.30. C.J.S. Internal Revenue §§ 500, 512, 525–538, 541–546.]

4. A tract of land, esp. one affected by an easement. “The old definitions of this word [estate] generally confine it to lands or realty. Thus, according to Lord Coke, ‘state or estate signifieth such inheritance, freehold, term for years, & c., as any man hath in lands or tenements.’ Co.Litt. 345a. So Cowell defines it to be ‘that title or interest which a man hath in lands or tenements,’ and the same definition is given in the Termes de la Ley. And this limited sense of the word has been relied on, in argument, in some cases But, according to the settled modern doctrine, the term estate is of much more extensive import and application, being indeed genus generalissimum, and clearly comprehending things personal as well as real; person as well as real estate.” 1 Alexander M. Burrill, *A Law Dictionary and Glossary* 561 (2d ed. 1867).

dominant estate. An estate that benefits from an easement. — Also termed dominant tenement; dominant property; upper estate. Cf. servient estate. [Cases: Easements 1, 38. C.J.S. Easements §§ 2–8, 13–14, 21–22, 24, 53–55, 57–58, 89, 143–144, 146–147, 165–167.]

lower estate. See servient estate.

real estate. See real property under PROPERTY.

servient estate (s<<schwa>>r-vee-<<schwa>>nt). An estate burdened by an easement. — Also termed servient tenement; servient property; lower estate. Cf. dominant estate. [Cases: Easements 1, 38. C.J.S. Easements §§ 2–8, 13–14, 21–22, 24, 53–55, 57–58, 89, 143–144, 146–147, 165–167.]

upper estate. See dominant estate.

ESTATE DUTY

estate duty. See DUTY(4).

ESTATE FREEZE

estate freeze. An estate-planning maneuver whereby an owner of a closely held business exchanges common stock for dividend-paying preferred stock and gives the common stock to his or her children, thus seeking to guarantee an income in retirement and to avoid estate tax on future appreciation in the business's value.

ESTATE FROM PERIOD TO PERIOD

estate from period to period. See periodic tenancy under TENANCY.

ESTATE IN EXPECTANCY

estate in expectancy. See FUTURE INTEREST.

ESTATE IN FREEHOLD

estate in freehold. See FREEHOLD.

ESTATE IN LANDS

estate in lands. 1. Property that one has in lands, tenements, or hereditaments. [Cases: Estates in Property 1. C.J.S. Estates §§ 2–5, 8, 15–21, 116–128, 137, 243.] 2. The conditions or circumstances under which a tenant stands in relation to the leased property.

ESTATE IN REMAINDER

estate in remainder. See REMAINDER(1).

ESTATE PLANNING

estate planning. 1. The preparation for the distribution and management of a person's estate at death through the use of wills, trusts, insurance policies, and other arrangements, esp. to reduce administration costs and transfer-tax liability. [Cases: Wills 1–20. C.J.S. Conflict of Laws § 72; Wills §§ 1–3, 53–87, 93–95, 97–98, 103–104, 106–132, 172, 174, 381.] 2. A branch of law that involves the arrangement of a person's estate, taking into account the laws of wills, taxes, insurance, property, and trusts.

ESTATES OF THE REALM

estates of the realm. 1. The lords spiritual, the lords temporal, and the commons of Great Britain. — Also termed the three estates. 2. In feudal Europe, the clergy, nobles, and commons. • Because the lords spiritual had no separate assembly or negative in their political capacity, some authorities reduce the estates in Great Britain to two, the lords and commons. In England (until about the 14th century), the three estates of the realm were the clergy, barons, and knights. In legal

practice, the lords spiritual and lords temporal are usu. collectively designated simply as lords.

ESTATE'S PROPERTY

estate's property. See PROPERTY OF THE ESTATE.

ESTATE TAX

estate tax. See TAX.

ESTATE TRUST

estate trust. See TRUST.

ESTER IN JUDGMENT

ester in judgment (es-t<<schwa>>r). [Law French] To appear before a tribunal, as either plaintiff or defendant.

ESTIMATED DAMAGES

estimated damages. See liquidated damages under DAMAGES.

ESTIMATED TAX

estimated tax. See TAX.

ESTOP

estop (e-stop), vb. To bar or prevent by estoppel.

ESTOPPAGE

estoppage (e-stop-ij), n. The state or condition of being estopped.

ESTOPPEL

estoppel (e-stop-<<schwa>>l), n.1. A bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true. [Cases: Estoppel 52–59. C.J.S. Estoppel §§ 2–4, 58–64, 66–81, 83–89, 120–121, 153–155, 157, 159–160, 167.] 2. A bar that prevents the relitigation of issues. 3. An affirmative defense alleging good-faith reliance on a misleading representation and an injury or detrimental change in position resulting from that reliance. Cf. WAIVER(1). [Cases: Estoppel 83–87. C.J.S. Estoppel §§ 90–95.] — estop, vb.

“ ‘Estoppe,’ says Lord Coke, ‘cometh of the French word estoupe, from whence the English word stopped; and it is called an estoppel or conclusion, because a man's own act or acceptance stoppeth or closeth up his mouth to allege or plead the truth.’ [Co. Litt. 352a.] Estoppel may also be defined to be a legal result or ‘conclusion’ arising from an admission which has either been actually made, or which the law presumes to have been made, and which is binding on all persons whom it affects.” Lancelot Feilding Everest, *Everest and Strode's Law of Estoppel* 1 (3d ed. 1923).

“In using the term ‘estoppel,’ one is of course aware of its kaleidoscopic varieties. One reads

of estoppel by conduct, by deed, by laches, by misrepresentation, by negligence, by silence, and so on. There is also an estoppel by judgment and by verdict; these, however, obviously involve procedure. The first-named varieties have certain aspects in common. But these aspects are not always interpreted by the same rules in all courts. The institution seems to be flexible.” John H. Wigmore, “The Scientific Role of Consideration in Contract,” in *Legal Essays in Tribute to Orrin Kip McMurray* 641, 643 (1935).

administrative collateral estoppel. See COLLATERAL ESTOPPEL.

assignor estoppel. Patents. Estoppel barring someone who has assigned the rights to a patent from later attacking the patent's validity. *Westinghouse Elec. & Mfg. Co. v. Formica Insulation Co.*, 266 U.S. 342, 45 S.Ct. 117 (1924). • The doctrine was narrowed by *Diamond Scientific Co. v. Ambico, Inc.*, 848 F.2d 1220 (Fed. Cir. 1988), in which the court held that in some circumstances equity may outweigh the public-policy reasons behind the estoppel doctrine. [Cases: Patents 129(2). C.J.S. Patents § 227.]

collateral estoppel. See COLLATERAL ESTOPPEL.

equitable estoppel. 1. A defensive doctrine preventing one party from taking unfair advantage of another when, through false language or conduct, the person to be estopped has induced another person to act in a certain way, with the result that the other person has been injured in some way. • This doctrine is founded on principles of fraud. The five essential elements of this type of estoppel are that (1) there was a false representation or concealment of material facts, (2) the representation was known to be false by the party making it, or the party was negligent in not knowing its falsity, (3) it was believed to be true by the person to whom it was made, (4) the party making the representation intended that it be acted on, or the person acting on it was justified in assuming this intent, and (5) the party asserting estoppel acted on the representation in a way that will result in substantial prejudice unless the claim of estoppel succeeds. — Also termed estoppel by conduct; estoppel in pais. [Cases: Estoppel 52–96. C.J.S. Estoppel §§ 2–4, 55–155, 157, 159–160, 165, 167–200.] 2. See promissory estoppel.

estoppel by conduct. See equitable estoppel.

estoppel by contract. A bar that prevents a person from denying a term, fact, or performance arising from a contract that the person has entered into.

estoppel by deed. Estoppel that prevents a party to a deed from denying anything recited in that deed if the party has induced another to accept or act under the deed; esp., estoppel that prevents a grantor of a warranty deed, who does not have title at the time of the conveyance but who later acquires title, from denying that he or she had title at the time of the transfer. — Also termed estoppel by warranty. See AFTER-ACQUIRED-TITLE DOCTRINE. [Cases: Estoppel 12–51. C.J.S. Estoppel §§ 3, 10–54, 201–204, 206–208, 210–211.]

“The apparent odiousness of some classes of estoppel, chiefly estoppels by deed, seems to result not so much from the nature of an estoppel, as from the highly technical rules of real property law upon which it operated, and with which it was associated. Estoppels by record, indeed, stand upon a considerably higher footing than estoppels by deed” Lancelot Feilding

Everest, Everest and Strode's Law of Estoppel 10 (1923).

estoppel by election.The intentional exercise of a choice between inconsistent alternatives that bars the person making the choice from the benefits of the one not selected.

estoppel by inaction.See estoppel by silence.

estoppel by judgment.See COLLATERAL ESTOPPEL.

estoppel by laches.An equitable doctrine by which some courts deny relief to a claimant who has unreasonably delayed or been negligent in asserting a claim. [Cases: Equity 67. C.J.S. Equity §§ 128–132.]

estoppel by misrepresentation.An estoppel that arises when one makes a false statement that induces another person to believe something and that results in that person's reasonable and detrimental reliance on the belief. [Cases: Estoppel 82–87. C.J.S. Estoppel §§ 90–95.]

estoppel by negligence.An estoppel arising when a negligent person induces someone to believe certain facts, and then the other person reasonably and detrimentally relies on that belief. [Cases: Estoppel 96. C.J.S. Estoppel §§ 68, 114.]

estoppel by record.See COLLATERAL ESTOPPEL.

estoppel by representation.An estoppel that arises when one makes a statement or admission that induces another person to believe something and that results in that person's reasonable and detrimental reliance on the belief; esp., equitable estoppel. [Cases: Estoppel 82–87. C.J.S. Estoppel §§ 90–95.]

estoppel by silence.Estoppel that arises when a party is under a duty to speak but fails to do so. — Also termed estoppel by standing by; estoppel by inaction. [Cases: Estoppel 95. C.J.S. Estoppel § 99.]

estoppel by standing by. See estoppel by silence.

estoppel by verdict.See COLLATERAL ESTOPPEL.

estoppel by warranty.See estoppel by deed.

estoppel in pais.See equitable estoppel.

estoppel on the record.See prosecution-history estoppel.

file-wrapper estoppel.See prosecution-history estoppel.

judicial estoppel.Estoppel that prevents a party from contradicting previous declarations made during the same or an earlier proceeding if the change in position would adversely affect the proceeding or constitute a fraud on the court. — Also termed doctrine of preclusion of inconsistent positions; doctrine of the conclusiveness of the judgment. [Cases: Estoppel 68. C.J.S. Estoppel §§ 138–141, 143–144.]

legal estoppel.Estoppel recognized in law (as distinguished from equitable estoppel or

estoppel in pais), such as an estoppel resulting from a recital or other statement in a deed or official record, and precluding any denial or assertion concerning a fact. [Cases: Estoppel 1–51. C.J.S. Estoppel §§ 3, 5–54, 201–204, 206–208, 210–211.]

marking estoppel. Patents. Estoppel that prevents a party from asserting that a product is not covered by a patent if that party has marked the product with a patent number. • This type of estoppel has been questioned in recent years, and has been sharply limited by some courts. [Cases: Patents 222. C.J.S. Patents §§ 394–395.]

promissory estoppel. The principle that a promise made without consideration may nonetheless be enforced to prevent injustice if the promisor should have reasonably expected the promisee to rely on the promise and if the promisee did actually rely on the promise to his or her detriment. — Also termed (inaccurately) equitable estoppel. [Cases: Estoppel 85. C.J.S. Estoppel §§ 92–93.]

“The doctrine of promissory estoppel is equitable in origin and nature and arose to provide a remedy through the enforcement of a gratuitous promise. Promissory is distinct from equitable estoppel in that the representation at issue is promissory rather than a representation of fact. ‘Promissory estoppel and estoppel by conduct are two entirely distinct theories. The latter does not require a promise.’ ” Ann Taylor Schwing, *California Affirmative Defenses* § 34:16, at 35 (2d ed. 1996) (quoting *Division of Labor Law Enforcement v. Transpacific Transp. Co.*, 88 Cal. App. 3d 823, 829 (1979)).

prosecution-history estoppel. Patents. The doctrine limiting a patentee's invocation of the doctrine of equivalents by eliminating from the claims those elements that the holder surrendered or abandoned during the prosecution of the patent. — Also termed estoppel on the record; file-wrapper estoppel. See DOCTRINE OF EQUIVALENTS. [Cases: Patents 168(2.1). C.J.S. Patents § 296.]

quasi-estoppel. An equitable doctrine preventing one from repudiating an act or assertion if it would harm another who reasonably relied on the act or assertion.

technical estoppel. 1. An estoppel arising from a matter of record or from a deed made by the party who is claimed to be estopped. • Estoppels by deed or by record are called “technical” because the rules of estoppel apply with certainty in appropriate cases. 2. COLLATERAL ESTOPPEL. See estoppel by deed.

ESTOPPEL CERTIFICATE

estoppel certificate. 1. A signed statement by a party (such as a tenant or a mortgagee) certifying for another's benefit that certain facts are correct, as that a lease exists, that there are no defaults, and that rent is paid to a certain date. • A party's delivery of this statement estops that party from later claiming a different state of facts. 2. WAIVER OF DEFENSES.

ESTOPPEL PER REM JUDICATAM

estoppel per rem judicatam (p<<schwa>>r rem joo-di-kay-t<<schwa>>m). See COLLATERAL ESTOPPEL.

ESTOVER

estover (e-stoh-v<<schwa>>r). (usu. pl.) 1. Wood that a tenant is allowed to take for fuel, the manufacture or repair of agricultural instruments, and the erection and maintenance of fences and hedges; necessary supplies. See common of estovers under COMMON. — Also termed botes. See BOTE(1).2. The tenant's right to obtain that wood. 3.ALIMONY.

ESTOVERIIS HABENDIS

estoveriis habendis (es-t<<schwa>>-veer-ee-is h<<schwa>>-ben-dis). [Latin] Hist. See DE ESTOVERIIS HABENDIS.

ESTRANGE

estrangle,vb. 1. To separate, to keep away (a person or thing), or to keep away from (a person or thing).2. To destroy or divert affection, trust, and loyalty. — estrangement,n.

ESTRAY

estray (e-stray), n.1. A valuable tame animal found wandering and ownerless; an animal that has escaped from its owner and wanders about. • At common law, an estray belonged to the Crown or to the lord of the manor, but today the general rule is that it passes to the state in trust for the true owner, who may regain it by proving ownership. An animal cannot be an estray when on the range where it was raised and where its owner permits it to run, and esp. when the owner is known to the party who takes the animal. [Cases: Animals 58. C.J.S. Animals § 123.] 2.FLOTSAM.

ESTREAT

estreat (e-street), n.1. A copy or duplicate of some original writing or record, esp. of a fine or amercement imposed by a court, extracted from the record, and certified to one who is authorized and required to collect it. — Also termed (in Scots law) extract. 2. GREEN WAX.

estreat,vb. To take out a forfeited recognizance from the recordings of a court and return it to the court to be prosecuted.

ESTREPE

estrep (e-streep), vb.1. To strip; to despoil; to commit waste upon an estate, as by cutting down trees or removing buildings. 2. To injure the value of a reversionary interest by stripping or spoiling the estate. See WASTE(1).

ESTREPEMENT

estrepement (e-streep-m<<schwa>>nt), n. A species of aggravated waste, by stripping or devastating land to the injury of the reversioner, esp. pending a suit for possession. See DE ESTREPAMENTO. [Cases: Waste 16.C.J.S. Waste § 23.]

ET

et,conj.[Latin] And. • This conjunction was the introductory word of several Latin and Law French phrases that were once common.

ET ADJOURNATUR

et adjournatur (et aj-<<schwa>>r-nay-t<<schwa>>r). [Latin] Hist. And it is adjourned. • This phrase was used in the old reports, when argument of a case was adjourned to another day, or where a second argument was had.

ET AL.

et al. (et alorahl).abbr.1.[Latin et alii or et alia] And other persons < the office of Thomas Webb et al.>.2. [Latin et alibi] And elsewhere.

ET ALII E CONTRA

et alii e contra (et ay-lee-I ee kon-tr<<schwa>>). [Latin “and others on the other side”] Hist. A phrase often used in the Year Books, describing a joinder in issue.

ET ALIUS

et alius (et ay-lee-<<schwa>>s). [Latin] And another.

ET ALLOCATUR

et allocatur (et al-<<schwa>>-kay-t<<schwa>>r). [Latin] And it is allowed.

ETC.

etc.abbr.ET CETERA.

ET CETERA

et cetera (et set-<<schwa>>r-<<schwa>>). [Latin “and others”] And other things. • The term usu. indicates additional, unspecified items in a series. — Abbr. etc.

ET DE CEO SE METTENT EN LE PAYS

et de ceo se mettent en le pays (ay d<<schwa>> say-oh s<<schwa>> me-tawni oin l<<schwa>> pay). [Law French] Hist. And of this they put themselves upon the country. See CONCLUSION TO THE COUNTRY; GOING TO THE COUNTRY.

ET DE HOC PONIT SE SUPER PATRIAM

et de hoc ponit se super patriam (et dee hok poh-nit see s[y]oo-p<<schwa>>r pay-tree-<<schwa>>m). [Latin] Hist. And of this he puts himself upon the country. • This was the formal conclusion of a common-law plea in bar by way of traverse.

ET EI LEGITUR IN HAEC VERBA

et ei legitur in haec verba (et ee-lee-j<<schwa>>-t<<schwa>>r in heekv<<schwa>>r-b<<schwa>>). [Latin] Hist. And it is read to him in these words. • This phrase was formerly used in entering the prayer of oyer on the record.

ETERNAL LAW

eternal law. See NATURAL LAW.

ET HABEAS IBI TUNC HOC BREVE

et habeas ibi tunc hoc breve (et hay-bee-<<schwa>>s ib-I t<<schwa>>ngk hok bree-vee). [Latin] Hist. And that you have then and there this writ. • These were the formal words directing the return of a writ. The literal translation was retained in the later form of a considerable number of writs.

ET HABUIT

et habuit (et hab-yoo-it). [Latin “and he had [it]”] Hist. A common phrase in the Year Books, indicating that a party's application or demand was granted.

ETHICAL

ethical, adj. 1. Of or relating to moral obligations that one person owes another; esp., in law, of or relating to legal ethics <the ethical rules regarding confidences>. See LEGAL ETHICS. 2. In conformity with moral norms or standards of professional conduct <the judge's recusal was a perfectly ethical act>.

ETHICAL ABSOLUTISM

ethical absolutism. See MORAL ABSOLUTISM.

ETHICAL CONSIDERATION

ethical consideration. (often cap.) An aspirational goal or principle intended to guide a lawyer's professional conduct. • A lawyer's violation of these considerations (which are contained in the Model Code of Professional Responsibility) does not necessarily subject the lawyer to discipline. — Abbr. EC. Cf. DISCIPLINARY RULE. [Cases: Attorney and Client 32.C.J.S. Attorney and Client §§ 6, 43–58, 86.]

ETHICAL DRUG

ethical drug. See DRUG.

ETHICAL JURISPRUDENCE

ethical jurisprudence. See JURISPRUDENCE.

ETHICAL RELATIVISM

ethical relativism. See MORAL RELATIVISM.

ETHICAL WALL

ethical wall. A screening mechanism that protects a client from a conflict of interest by preventing one or more lawyers within an organization from participating in any matter involving that client. • This mechanism is designed to allow a lawyer to move to a new job without the fear of vicariously disqualifying the new employer from representing certain clients. Creating an ethical wall generally entails (1) prohibiting certain lawyers and paralegals from having any

connection with the matter; (2) banning discussions with or the transfer of documents to those individuals; (3) restricting access to files; and (4) educating all members of the firm, corporation, or entity about the separation of the lawyers and paralegals (both organizationally and physically) from the pending matter. — Also termed Chinese wall; screening mechanism. [Cases: Attorney and Client 21.15. C.J.S. Attorney and Client § 164.]

ETHICS

ethics. See LEGAL ETHICS.

ETHNIC CLEANSING

ethnic cleansing. The officially sanctioned forcible and systematic diminution or elimination of targeted ethnic minorities from a geographic area, usu. by confiscating real and personal property, ordering or condoning mass murders and mass rapes, and expelling the survivors. • In theory, the purpose of ethnic cleansing is to drive all members of the victimized group out of a territory. In practice, ethnic cleansing is nearly synonymous with genocide because mass murder is a characteristic of both. Ethnic cleansing additionally includes mass rapes for two cultural reasons: (1) the victims are often put to death by their relatives or commit suicide, and (2) any children born are regarded as belonging to the father's ethnic group, not the mother's. Both acts — murder and rape — are intended to diminish or extinguish the victimized minority. Cf. GENOCIDE.

ETHNIC PROFILING

ethnic profiling. See RACIAL PROFILING.

ET HOC PARATUS EST VERIFICARE

et hoc paratus est verificare (et hok p<<schwa>>-ray-t<<schwa>>s est ver-<<schwa>>-fi-kair-ee). [Latin] And this he is prepared to verify. • This phrase traditionally concluded a plea in confession and avoidance, or any pleading that contained new affirmative matter. A pleading containing this phrase was technically said to “conclude with a verification,” as opposed to a simple denial.

ET HOC PETIT QUOD INQUIRATUR PER PATRIAM

et hoc petit quod inquiratur per patriam (et hok pet-it kwod in-kw<<schwa>>-ray-t<<schwa>>r p<<schwa>>r pay-tree-<<schwa>>m). [Latin “and this he prays may be inquired of by the country”] Archaic. The conclusion of a plaintiff's pleading that tendered an issue to the country. See CONCLUSION TO THE COUNTRY .

ETIAM CAUSA NON COGNITA

etiam causa non cognita (ee-shee-<<schwa>>m kaw-z<<schwa>> non kog-ni-t<<schwa>>). [Latin] Hist. Even where the cause is not known; absent an investigation. • Some decrees could be issued without a full factual inquiry or trial.

ETIAM IN ARTICULO MORTIS

etiam in articulo mortis (ee-shee-<<schwa>>m in ahr-tik-y<<schwa>>-loh mor-tis). [Latin]

Scots law. Even at the point of death. • The phrase appeared in reference to a circumstance under which one could revoke a will.

ETIAM IN LECTO

etiam in lecto (ee-shee-*<<schwa>>*m in lek-toh). [Law Latin] Hist. Even upon deathbed.

ET INDE PETIT JUDICIUM

et inde petit judicium (et in-dee pet-it joo-dish-ee-*<<schwa>>*m). [Latin “and thereupon he prays judgment”] Archaic. A clause found at the end of a pleading, requesting judgment in that party's favor.

ETIQUETTE OF THE PROFESSION

etiquette of the profession. See LEGAL ETHICS(1).

ET MODO AD HUNC DIEM

et modo ad hunc diem (et moh-doh ad h*<<schwa>>*ngk d*<<schwa>>*m). [Latin “and now at this day”] Archaic. The formal beginning of an entry of appearance or of a continuance.

ET NON

et non (et non). [Latin “and not”] Archaic. A phrase formerly used in pleading to introduce the negative averments of a special traverse. See ABSQUE HOC.

ET SEQ

et seq. (et sek). abbr. [Latin et sequens “and the following one,” et sequentes (masc.) “and the following ones,” or et sequentia (neuter) “and the following ones”] And those (pages or sections) that follow <11 USCA §§ 101 et seq.>.

ET SIC

et sic (et sik). [Latin “and so”] Archaic. The introductory words of a special conclusion to a plea in bar, intending to render the plea positive and not argumentative.

ET SIC AD JUDICIUM

et sic ad judicium (et sik ad joo-dish-ee-*<<schwa>>*m). [Latin] Archaic. And so to judgment.

ET SIC AD PATRIAM

et sic ad patriam (et sik ad pay-tree-*<<schwa>>*m). [Latin] Hist. And so to the country. • This phrase was used in the Year Books to record an issue to the country.

ET SIC DE ANNO IN ANNUM QUAMDIU AMBOBUS PARTIBUS PLACUERIT

et sic de anno in annum quamdiu ambobus partibus placuerit (et sik dee an-oh in an-*<<schwa>>*m kwam-dee-yoo am-b*<<schwa>>*-b*<<schwa>>*s pahr-t*<<schwa>>*-b*<<schwa>>*s plak-yoo-air-it). Hist. And so, from year to year, so long as both parties please, or are agreed. • The phrase appeared in reference to tacit relocation. See TACIT RELOCATION.

ET SIC FECIT

et sic fecit (et sik fee-sit). [Latin] Archaic. And he did so.

ET SIC PENDET

et sic pendet (et sik pen-dit). [Latin] Hist. And so it hangs. • This phrase was used in the old reports to signify that a point was left undetermined.

ET SIC ULTERIUS

et sic ulterius (et sik <<schwa>>l-teer-ee-<<schwa>>s). [Latin] Archaic. And so on; and so further; and so forth.

ET UXOR

et uxor (et <<schwa>>k-sor). [Latin] Archaic. And wife. • This phrase was formerly common in case names and legal documents (esp. abstracts of title) involving a husband and wife jointly. It usu. appears in its abbreviated form, et ux. <conveyed the land to Donald Baird et ux.>. See UXOR.

ET VIR

et vir (et veer). [Latin] Archaic. And husband. See VIR.

EU

EU.abbr.EUROPEAN UNION.

EUCLIDEAN ZONING

Euclidean zoning.See ZONING.

EUNDO ET REDEUNDO

eundo et redeundo (ee-<<schwa>>n-doh et red-ee-<<schwa>>n-doh). [Latin] Hist. Going and returning. • This phrase was once used to describe vessels in transit.

EUNDO, MORANDO, ET REDEUNDO

eundo, morando, et redeundo (ee-<<schwa>>n-doh, m<<schwa>>-ran-doh, et red-ee-<<schwa>>n-doh). [Latin] Hist. Going, remaining, and returning. • This phrase was once used to describe a person (for example, a witness or legislator) who is privileged from arrest while traveling to the place where assigned duties are to be performed, while remaining there, and while returning.

EUNOMY

eunomy (yoo-n<<schwa>>-mee), n. A system of good laws that lead to civil order and justice. — Also termed eunomia. Cf. DYSNOMY. — eunomic,adj.

EURATOM

Euratom. A European Union organization that coordinates the development and use of nuclear energy in Europe. • It was created in 1958 and merged with the European Economic Community in 1967. It is governed by the Council of the European Union.

EUREKA MODEL

eureka model. Patents. The view that the inventive process is the product of a stroke of luck rather than labor. • The notion is used to counter labor-based theories justifying intellectual-property rights, since no labor is involved in a “eureka” discovery. Cf. LABOR-DESERT MODEL; LABOR MODEL.

EUREKA MOMENT

eureka moment. Slang. The instant when an inventor realizes the answer to a question or the significance of a discovery. — Also termed flash of genius.

EURIBOR

Euribor. abbr. EURO INTERBANK OFFERED RATE.

EURO

euro (yoor-oh). The official currency of most countries in the European Union. • On January 1, 1999, the euro became the single currency of the participating countries. The present participants are Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, and Spain. Euro notes and coins were issued on January 1, 2002.

EURODOLLAR

Eurodollar. United States currency held in a bank outside the U.S., usu. in Europe, and used to settle international transactions.

EURO INTERBANK OFFERED RATE

Euro Interbank Offered Rate. A measure of what major international banks charge each other for large-volume, short-term loans of euros, based on interest-rate data provided daily by a panel of representative banks across Europe. — Abbr. Euribor. Cf. LONDON INTERBANK OFFERED RATE.

EUROPEAN COMMISSION FOR HUMAN RIGHTS

European Commission for Human Rights. A body of the Council of Europe charged with overseeing the operation of the European Convention on Human Rights. • The commission is based in Strasbourg.

EUROPEAN COMMUNITY

European Community. See EUROPEAN UNION.

EUROPEAN CONVENTION ON HUMAN RIGHTS

European Convention on Human Rights. A 1950 international agreement to protect human

rights. • The European Commission for Human Rights and the European Court for Human Rights were created under the convention's terms.

EUROPEAN COPYRIGHT DIRECTIVE

European Copyright Directive. An official instruction of the European Union designed to promote uniformity in certain aspects of copyright law and related rights, esp. on the Internet. • Officially titled Directive 2001/29 on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society, this is the European Union equivalent of the Digital Millennium Copyright Act. Among other provisions, the directive provides broad exclusive rights of reproduction and distribution to copyright holders, and requires EU member nations to prohibit the circumvention of technical measures and devices intended to prevent the alteration or reproduction of copyrighted works.

EUROPEAN COURT OF HUMAN RIGHTS

European Court of Human Rights. The judicial body of the Council of Europe. • The court was set up in 1959 and was substantially changed in 1994–1998. As of 2003, the court had 41 judges, each elected by the Council of Europe's Parliamentary Assembly. The court adjudicates alleged violations of the civil and political rights enumerated in the Convention for the Protection of Human Rights and Fundamental Freedoms.

EUROPEAN CURRENCY UNIT

European Currency Unit. A monetary unit that was the precursor of the euro. • Created in 1979, it was an artificial currency used by the members of the European Union as their internal accounting unit. It ceased to exist in January 1999, when it was replaced by the euro. — Abbr. ECU; ecu.

EUROPEAN ECONOMIC COMMUNITY

European Economic Community. See EUROPEAN UNION.

EUROPEAN LAW

European law. 1. The law of the European Union. 2. More broadly, the law of the European Union, together with the conventions of the Council of Europe, including the European Convention on Human Rights. 3. More broadly still, all the law current in Europe, including the law of European organizations, the North Atlantic Treaty Organization, and all the bilateral and multilateral conventions in effect, as well as European customary law.

EUROPEAN OPTION

European option. See OPTION.

EUROPEAN PATENT CONVENTION

European Patent Convention. A 1973 treaty allowing a patent applicant to obtain patent protection in all signatory nations, mostly European Union members, through a single blanket filing and examination procedure. • The Community patent is valid in any member nation in which

it is registered. The procedure is administered through the European Patent Office in Munich, Germany, and The Hague, Netherlands. — Abbr. EPC. — Also termed Convention on the Grant of European Patent.

EUROPEAN PATENT OFFICE

European Patent Office. The office that receives filings, conducts examinations, and issues Community patents applied for under the European Patent Convention. • The office is located in Munich, Germany, and The Hague, Netherlands. — Abbr. EPO.

EUROPEAN PATENT ORGANIZATION

European Patent Organization. A centralized patent-grant system, established in 1978, comprising a legislative body (the Administrative Council) and an executive body (the European Patent Office).

EUROPEAN-STYLE OPTION

European-style option. See European option under OPTION.

EUROPEAN UNION

European Union. An association of European nations whose purpose is to achieve full economic unity (and eventual political union) by agreeing to eliminate barriers to the free movement of capital, goods, and labor among the member-nations. • The European Union was formed as the European Economic Community (EEC) by the Treaty of Rome in 1957, and later renamed the European Community (EC). The European Community became the European Union when the Maastricht Treaty on European Union took effect in November 1993. — Abbr. EU.

EUTHANASIA

euthanasia (yoo-th<<schwa>>-nay-zh<<schwa>>), n. The act or practice of killing or bringing about the death of a person who suffers from an incurable disease or condition, esp. a painful one, for reasons of mercy. • Euthanasia is sometimes regarded by the law as second-degree murder, manslaughter, or criminally negligent homicide. In 2001, the Netherlands became the first nation to legalize euthanasia. — Also termed mercy killing. See LIVING WILL; ADVANCE DIRECTIVE. Cf. assisted suicide under SUICIDE; DYATHANASIA. [Cases: Homicide 765.] — euthanasic (yoo-th<<schwa>>-nay-zik), adj.

“The translation of the Greek word euthanasia — ‘easy death’ — contains an ambiguity. It connotes that the means responsible for death are painless, so that the death is an easy one. But it also suggests that the death sought would be a relief from a distressing or intolerable condition of living (or dying), so that death, and not merely the means through which it is achieved, is good or right in itself. Usually, both aspects are intended when the term euthanasia is used; but when that is not the case, there can be consequences in legal analysis.” Alexander Morgan Capron, “Euthanasia,” in 2 Encyclopedia of Crime and Justice 709, 709 (Sanford H. Kadish ed., 1983).

active euthanasia. Euthanasia performed by a facilitator (such as a healthcare practitioner) who not only provides the means of death but also carries out the final death-causing act.

involuntary euthanasia.Euthanasia of a competent, nonconsenting person.

nonvoluntary euthanasia.Euthanasia of an incompetent, and therefore nonconsenting, person.

passive euthanasia.The act of allowing a terminally ill person to die by either withholding or withdrawing life-sustaining support such as a respirator or feeding tube.

voluntary euthanasia.Euthanasia performed with the terminally ill person's consent. [Cases: Health 913.]

EUTHANIZE

euthanize (yoo-th<<schwa>>-nIz), vb. To put to death by euthanasia. • This term is used chiefly in reference to animals. — Also termed euthanatize.

EVALUATIVE FACT

evaluative fact.See FACT.

EVARTS ACT

Evarts Act (ev-<<schwa>>rts). An 1891 federal statute that established the circuit courts of appeals (now U.S. courts of appeals) and fixed the contemporary method of federal appellate review.

EVASION

evasion. See TAX EVASION.

EVASIVE

evasive,adj. Tending or seeking to evade; elusive; shifting. • If a pleading requiring a response is evasive, the responding party may move for a more definite statement. Fed. R. Civ. P. 12(e).

EVASIVE ANSWER

evasive answer.See ANSWER.

EVEN DATE

even date.The same date. • This jargonistic phrase is sometimes used in one instrument to refer to another instrument with the same date, esp. when both relate to the same transaction (as a deed and a mortgage).

EVENINGS

evenings.Hist. The delivery at evening or night to a customary tenant of a gratuity in the form of a portion of the grass, corn, or other crop that the tenant cuts, mows, or reaps for the lord.

EVEN LOT

even lot.See round lot under LOT(3).

EVENT-DRIVEN AUDIT

event-driven audit. See AUDIT.

EVERGREEN CONTRACT

evergreen contract. See CONTRACT.

EVICT

evict, vb. 1. To expel (a person, esp. a tenant) from real property, usu. by legal process. — Also termed put out. 2. Archaic. To recover (property or title) from a person by legal process. [Cases: Landlord and Tenant 171(1). C.J.S. Landlord and Tenant § 445.] — evictor, n.

EVICION

eviction. The act or process of legally dispossessing a person of land or rental property. See FORCIBLE ENTRY AND DETAINER. Cf. EJECTMENT. [Cases: Forcible Entry and Detainer 6; Landlord and Tenant 287.]

actual eviction. A physical expulsion of a person from land or rental property. [Cases: Landlord and Tenant 171(1). C.J.S. Landlord and Tenant § 445.]

constructive eviction. 1. A landlord's act of making premises unfit for occupancy, often with the result that the tenant is compelled to leave. [Cases: Landlord and Tenant 172. C.J.S. Landlord and Tenant §§ 447, 450–451, 453, 455–456, 458.] 2. The inability of a land purchaser to obtain possession because of paramount outstanding title. • Such an eviction usu. constitutes a breach of the covenants of warranty and quiet enjoyment.

eviction by paramount title. An eviction by judicially establishing title superior to that under which the possessor claims. — Also termed eviction by title paramount.

eviction by title paramount. See eviction by paramount title.

partial eviction. An eviction, either constructive or actual, from a portion of a tenant's premises. [Cases: Landlord and Tenant 171(1). C.J.S. Landlord and Tenant § 445.]

retaliatory eviction. An eviction — nearly always illegal — commenced in response to a tenant's complaints or involvement in activities with which the landlord does not agree. [Cases: Landlord and Tenant 171(1). C.J.S. Landlord and Tenant § 445.]

summary eviction. An eviction accomplished through a simplified legal procedure, without the formalities of a full trial. [Cases: Landlord and Tenant 293.]

total eviction. An eviction that wholly deprives the tenant of any right in the premises. [Cases: Landlord and Tenant 171(1). C.J.S. Landlord and Tenant § 445.]

EVIDENCE

evidence, n. 1. Something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact < the bloody glove is the key piece of evidence

for the prosecution>. [Cases: Criminal Law 661; Federal Civil Procedure 2011; Trial 43. C.J.S. Criminal Law §§ 656, 751, 1202; Trial § 162.] 2. See fact in evidence under FACT. 3. The collective mass of things, esp. testimony and exhibits, presented before a tribunal in a given dispute <the evidence will show that the defendant breached the contract>. 4. The body of law regulating the admissibility of what is offered as proof into the record of a legal proceeding <under the rules of evidence, the witness's statement is inadmissible hearsay that is not subject to any exception>. — Also termed (in sense 4) rules of evidence. [Cases: Criminal Law 661; Federal Civil Procedure 2011; Trial 43. C.J.S. Criminal Law §§ 656, 751, 1202; Trial § 162.] — evidence,vb.

“Evidence is any matter of fact which is furnished to a legal tribunal, otherwise than by reasoning or a reference to what is noticed without proof, as the basis of inference in ascertaining some other matter of fact.” James B. Thayer, *Presumptions and the Law of Evidence*, 3 *Harv. L. Rev.* 141, 142 (1889).

“Evidence, broadly defined, is the means from which an inference may logically be drawn as to the existence of a fact; that which makes evident or plain. Evidence is the demonstration of a fact; it signifies that which demonstrates, makes clear, or ascertains the truth of the very fact or point in issue, either on the one side or on the other. In legal acceptance, the term ‘evidence’ includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. ‘Evidence’ has also been defined to mean any species of proof legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, concrete objects, and the like.” 31A C.J.S. *Evidence* § 3, at 67–68 (1996).

adminicular evidence. Rare. Corroborating or auxiliary evidence presented for the purpose of explaining or completing other evidence.

admissible evidence. Evidence that is relevant and is of such a character (e.g., not unfairly prejudicial, based on hearsay, or privileged) that the court should receive it. — Also termed competent evidence; proper evidence; legal evidence. [Cases: Criminal Law 661; Federal Civil Procedure 2011; Trial 43. C.J.S. Criminal Law §§ 656, 751, 1202; Trial § 162.]

autoptic evidence. See demonstrative evidence.

best evidence. Evidence of the highest quality available, as measured by the nature of the case rather than the thing being offered as evidence. • The term is usu. applied to writings and recordings. If the original is available, it must be offered rather than a copy or oral rendition. *Fed. R. Evid.* 1002. — Also termed primary evidence; original evidence. See BEST-EVIDENCE RULE. Cf. secondary evidence. [Cases: Criminal Law 398–403; Evidence 157–187. C.J.S. Criminal Law §§ 833–845; Evidence §§ 1054–1131.]

“In some circumstances, ‘best evidence’ may mean that evidence which is more specific and definite as opposed to that which is merely general and indefinite or descriptive. However, ‘best evidence’ or ‘primary evidence’ is variously defined as that particular means of proof which is indicated by the nature of the fact under investigation as the most natural and satisfactory, or as

that kind of proof which under any possible circumstances affords the greatest certainty of the fact in question; or as evidence which carries on its face no indication that better remains behind.” 32A C.J.S. Evidence § 1054, at 417 (1996).

character evidence. Evidence regarding someone's general personality traits or propensities, of a praiseworthy or blameworthy nature; evidence of a person's moral standing in a community. Fed. R. Evid. 404, 405, 608. • Character evidence is usu., but not always, prohibited if offered to show that the person acted in conformity with that character. [Cases: Criminal Law 375; Evidence 106; Witnesses 333–362. C.J.S. Criminal Law §§ 816–818; Evidence §§ 495–497, 499–502, 504–506; Witnesses §§ 566, 585–617.]

circumstantial evidence. 1. Evidence based on inference and not on personal knowledge or observation. — Also termed indirect evidence; oblique evidence. Cf. direct evidence (1). [Cases: Criminal Law 338(2), 552; Evidence 100, 587. C.J.S. Criminal Law §§ 718, 1103; Evidence §§ 3, 205, 245, 1330.] 2. All evidence that is not given by eyewitness testimony.

“Some circumstantial evidence is very strong, as when you find a trout in the milk.” Henry David Thoreau, *Journal*, 11 Nov. 1850, in 2 *Journal of Henry D. Thoreau* 94 (Bradford Torrey & Francis H. Allen eds., 1962).

“Indirect evidence (called by the civilians, oblique, and more commonly known as circumstantial evidence) is that which is applied to the principal fact, indirectly, or through the medium of other facts, by establishing certain circumstances or minor facts, already described as evidentiary, from which the principal fact is extracted and gathered by a process of special inference” Alexander M. Burrill, *A Treatise on the Nature, Principles and Rules of Circumstantial Evidence* 4 (1868).

“Evidence of some collateral fact, from which the existence or non-existence of some fact in question may be inferred as a probable consequence, is termed circumstantial evidence.” William P. Richardson, *The Law of Evidence* § 111, at 68 (3d ed. 1928).

“Testimonial evidence readily defines itself by its name; it is any assertion by a human being, offered to evidence the truth of the matter asserted. Circumstantial evidence is any and all other evidence. Scientifically the term ‘circumstantial’ is indefensible, for it does not correlate with ‘testimonial’; a more correct equivalent would be ‘nontestimonial.’ But no one has yet invented an acceptable substitute for ‘circumstantial.’ ” John H. Wigmore, *A Students' Textbook of the Law of Evidence* 38 (1935).

clear and convincing evidence. Evidence indicating that the thing to be proved is highly probable or reasonably certain. • This is a greater burden than preponderance of the evidence, the standard applied in most civil trials, but less than evidence beyond a reasonable doubt, the norm for criminal trials. — Also termed clear and convincing proof. See REASONABLE DOUBT. Cf. PREPONDERANCE OF THE EVIDENCE. [Cases: Evidence 596(1). C.J.S. Evidence §§ 1299, 1304–1306, 1308, 1310–1311, 1315–1317.]

communicative evidence. See testimonial evidence.

competent evidence. 1. See admissible evidence. 2. See relevant evidence.

conclusive evidence. 1. Evidence so strong as to overbear any other evidence to the contrary. — Also termed conclusive proof. [Cases: Criminal Law 549; Evidence 584(1). C.J.S. Criminal Law §§ 655, 1094–1095, 1097, 1102; Evidence §§ 226, 729, 1300–1305, 1320, 1324, 1326–1327, 1342, 1345.] 2. Evidence that so preponderates as to oblige a fact-finder to come to a certain conclusion.

concomitant evidence. Evidence that, at the time of the act, the alleged doer of the act was present and actually did it.

conflicting evidence. Evidence that comes from different sources and is often irreconcilable.

corroborating evidence. Evidence that differs from but strengthens or confirms what other evidence shows (esp. that which needs support). — Also termed corroborative evidence. Cf. cumulative evidence.

credible evidence. Evidence that is worthy of belief; trustworthy evidence.

critical evidence. Evidence strong enough that its presence could tilt a juror's mind. • Under the Due Process Clause, an indigent criminal defendant is usu. entitled to an expert opinion of the merits of critical evidence. — Also termed crucial evidence.

crucial evidence. See critical evidence.

cumulative evidence. Additional evidence that supports a fact established by the existing evidence (esp. that which does not need further support). Cf. corroborating evidence. [Cases: Criminal Law 675; Federal Civil Procedure 2011; Trial 56. C.J.S. Criminal Law § 1212; Trial § 183.]

demeanor evidence. The behavior and appearance of a witness on the witness stand, to be considered by the fact-finder on the issue of credibility. [Cases: Criminal Law 553; Evidence 588. C.J.S. Criminal Law §§ 1099, 1101–1102; Evidence §§ 1318–1320, 1322, 1329.]

demonstrative evidence (di-mon-str<<schwa>>-tiv). Physical evidence that one can see and inspect (i.e., an explanatory aid, such as a chart, map, and some computer simulations) and that, while of probative value and usu. offered to clarify testimony, does not play a direct part in the incident in question. • This term sometimes overlaps with and is used as a synonym of real evidence. — Also termed illustrative evidence; autoptic evidence; autoptic proference; real evidence; tangible evidence. See nonverbal testimony under TESTIMONY. Cf. real evidence; testimonial evidence. [Cases: Criminal Law 404.5–404.85; Evidence 188–198. C.J.S. Criminal Law §§ 846–855; Evidence §§ 789–802.]

“There remains a source of proof, distinct from either circumstantial or testimonial evidence, viz., what the tribunal sees or hears by its own senses. Whether this should be termed ‘evidence’ or not is a question of words, open to difference of view. But it is universally conceded to be an available source of proof. Bentham's term for it, ‘real evidence,’ came into wide vogue, but is ambiguous. The term ‘autoptic proference’ (etymologically meaning ‘showing to the tribunal's

own vision') is preferable." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 39 (1935).

derivative evidence. Evidence that is discovered as a result of illegally obtained evidence and is therefore inadmissible because of the primary taint. See EXCLUSIONARY RULE; FRUIT-OF-THE-POISONOUS-TREE DOCTRINE. [Cases: Criminal Law 394.1(3). C.J.S. Criminal Law §§ 771, 773–775.]

direct evidence. 1. Evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption. — Also termed positive evidence. Cf. circumstantial evidence; negative evidence. [Cases: Criminal Law 549; Evidence 587. C.J.S. Criminal Law §§ 655, 1094–1095, 1097, 1102; Evidence § 1330.] 2. See original evidence (1).

“A little reflection shows that no disputed case will ordinarily be proved solely by circumstantial or solely by testimonial evidence. Ordinarily there is evidence of both kinds. The matter has been obscured by the use of the term ‘direct evidence,’ — a term sometimes used to mean testimonial evidence in general, but sometimes also limited to apply only to testimony directly asserting the fact-in-issue.... The term ‘direct’ evidence has no utility.” John H. Wigmore, *A Students' Textbook of the Law of Evidence* 40 (1935).

documentary evidence. Evidence supplied by a writing or other document, which must be authenticated before the evidence is admissible. [Cases: Criminal Law 429–446; Evidence 325–383. C.J.S. Attachment § 145; Criminal Law §§ 1025–1049; Evidence §§ 813–815, 818–822, 824–1036, 1065; Patents § 179.]

downright evidence. See DOWNRIGHT EVIDENCE.

evidence aliunde. See extrinsic evidence (1).

evidence-in-chief. Evidence used by a party in making its case-in-chief. [Cases: Criminal Law 682; Federal Civil Procedure 2015; Trial 61. C.J.S. Criminal Law § 1218; Trial §§ 193–194.]

exclusive evidence. The only facts that have, or are allowed by law to have, any probative force at all on a particular matter in issue.

“[T]here is an important class of rules declaring certain facts to be exclusive evidence, none other being admissible. The execution of a document which requires attestation can be proved in no other way than by the testimony of an attesting witness, unless owing to the death or some other circumstance his testimony is unavailable. A written contract can generally be proved in no other way than by the production of the writing itself, whenever its production is possible.” John Salmond, *Jurisprudence* 485 (Glanville L. Williams ed., 10th ed. 1947).

exculpatory evidence (ek-sk<<schwa>>l-p<<schwa>>-tor-ee). Evidence tending to establish a criminal defendant's innocence. Fed. R. Crim. P. 16. • The prosecution has a duty to disclose exculpatory evidence in its possession or control when the evidence may be material to the outcome of the case. See BRADY MATERIAL. [Cases: Criminal Law 359, 700(2.1). C.J.S. Criminal Law §§ 728–729.]

expert evidence. Evidence about a scientific, technical, professional, or other specialized issue given by a person qualified to testify because of familiarity with the subject or special training in the field. — Also termed expert testimony. Fed. R. Evid. 702–705. See DAUBERT TEST. [Cases: Criminal Law 469–494; Evidence 505–574. C.J.S. Criminal Law §§ 853, 1059–1072, 1076–1088; Evidence §§ 223, 510, 513–514, 521, 523–527, 597–632, 634–660, 662–668, 670–671, 673–688, 691–709, 713–759, 800–812.]

extrajudicial evidence. Evidence that does not come directly under judicial cognizance but nevertheless constitutes an intermediate link between judicial evidence and the fact requiring proof. • It includes all facts that are known to the tribunal only by way of inference from some form of judicial evidence. See JUDICIAL NOTICE. Cf. judicial evidence.

extrinsic evidence. 1. Evidence relating to a contract but not appearing on the face of the contract because it comes from other sources, such as statements between the parties or the circumstances surrounding the agreement. • Extrinsic evidence is usu. not admissible to contradict or add to the terms of an unambiguous document. — Also termed extraneous evidence; parol evidence; evidence aliunde. [Cases: Evidence 384–469. C.J.S. Evidence §§ 1132–1186, 1188–1298.] 2. Evidence that is not legitimately before the court. Cf. intrinsic evidence. 3. Evidence that is calculated to impeach a witness's credibility, adduced by means other than cross-examination of the witness. • The means may include evidence in documents and recordings and the testimony of other witnesses. See Fed. R. Evid. 608(b) & note.

“Under [Federal Rule of Evidence] 608(b), if the witness denies engaging in untruthful misconduct, the cross-examiner must ‘take the witness’ answer,’ meaning the questioner may not introduce extrinsic evidence to contradict the witness’ denial through other witness testimony or the introduction of impeaching documents, or indeed any other evidence than the cross-examination, even if the questioner waits until it is his turn to put on evidence.” Paul F. Rothstein, *The Federal Rules of Evidence* 312 (3d ed. 2003).

fabricated evidence. False or deceitful evidence that is unlawfully created, usu. after the relevant event, in an attempt to achieve or avoid liability or conviction. — Also termed fabricated fact.

false evidence. See false testimony under TESTIMONY.

forensic evidence. Evidence used in court; esp., evidence arrived at by scientific or technical means, such as ballistic or medical evidence. [Cases: Evidence 150. C.J.S. Evidence §§ 216–226.]

foundational evidence. Evidence that determines the admissibility of other evidence.

habit evidence. Evidence of one's regular response to a repeated specific situation. Fed. R. Evid. 406. [Cases: Evidence 138. C.J.S. Evidence §§ 763–765, 768–769, 785.]

hearsay evidence. See HEARSAY.

illegally obtained evidence. Evidence obtained by violating a statute or a person's constitutional or other right, esp. the Fourth Amendment guarantee against unreasonable searches,

the Fifth Amendment right to remain silent, or the Sixth Amendment right to counsel. [Cases: Criminal Law 394.1–394.6; Evidence 154. C.J.S. Criminal Law §§ 770–797; Evidence §§ 252–258.]

illustrative evidence. See demonstrative evidence.

immaterial evidence. 1. Evidence lacking in probative value. 2. Evidence offered to prove a matter that is not in issue. [Cases: Criminal Law 382; Evidence 143. C.J.S. Criminal Law § 749; Evidence §§ 197, 201–204.]

impeachment evidence. Evidence used to undermine a witness's credibility. Fed. R. Evid. 607–610. [Cases: Witnesses 311–409. C.J.S. Witnesses §§ 559–775.]

impertinent evidence. See irrelevant evidence.

incompetent evidence. Evidence that is for any reason inadmissible. [Cases: Criminal Law 385; Evidence 148. C.J.S. Criminal Law §§ 656, 753; Evidence §§ 3–5, 197, 246–247.]

incriminating evidence. Evidence tending to establish guilt or from which a fact-trier can infer guilt.

inculpatory evidence (in-k<<schwa>>l-p<<schwa>>-tor-ee). Evidence showing or tending to show one's involvement in a crime or wrong.

indirect evidence. See circumstantial evidence (1).

indispensable evidence. Evidence without which a particular fact cannot be proved.

insufficient evidence. Evidence that is inadequate to prove or support a finding of something. • This term usu. describes a case that is not strong enough to even get to the fact-finder. [Cases: Evidence 584–601. C.J.S. Evidence §§ 226, 339, 729, 1299–1343, 1345.]

intrinsic evidence. 1. Evidence brought out by the examination of the witness testifying. 2. Evidence existing within a writing. Cf. extrinsic evidence (2).

irrelevant evidence. Evidence not tending to prove or disprove a matter in issue. Fed. R. Evid. 401–403. — Also termed impertinent evidence. See IRRELEVANT. [Cases: Criminal Law 338; Evidence 99. C.J.S. Criminal Law §§ 710, 730; Evidence §§ 2–5, 197–199, 204, 206.]

judicial evidence. Evidence produced in court, consisting of all facts brought to the attention of or admitted into evidence before the tribunal. Cf. extrajudicial evidence.

legal evidence. 1. See admissible evidence. 2. All admissible evidence, both oral and documentary, of such a character that it reasonably and substantially proves the point rather than merely raising suspicion or conjecture.

material evidence. Evidence having some logical connection with the facts of consequence or the issues. Cf. relevant evidence; immaterial evidence. [Cases: Criminal Law 382; Evidence 143. C.J.S. Criminal Law § 749; Evidence §§ 197, 201–204.]

mathematical evidence. 1. Loosely, evidence that establishes its conclusions with absolute

certainty. 2. Evidence pertaining to mathematical or statistical matters, or probabilities.

mediate evidence. See secondary evidence.

medical evidence. Evidence furnished by a doctor, nurse, or other qualified medical person testifying in a professional capacity as an expert, or by a standard treatise on medicine or surgery. [Cases: Evidence 555.10. C.J.S. Evidence §§ 639–643.]

moral evidence. Loosely, evidence that depends on a belief, rather than complete and absolute proof. • Generally, moral evidence is testimonial.

multiple evidence. Evidence with probative or other value on more than one issue but usually admitted into evidence for one specific purpose. • Impeachment evidence, for example, may not be probative on a particular issue but may nonetheless affect the jury's perceptions of several issues.

negative evidence. Evidence suggesting that an alleged fact does not exist, such as a witness's testifying that he or she did not see an event occur. • Negative evidence is generally regarded as weaker than positive evidence because a positive assertion that a witness saw an event is a stronger statement than an assertion that a witness did not see it. But a negative assertion will sometimes be considered positive evidence, depending on the witness's opportunity to see the event. For instance, testimony that the witness watched the entire game and saw no riot in the stands is stronger than testimony stating only that the witness did not see a riot. — Also termed negative testimony. Cf. direct evidence (1). [Cases: Criminal Law 387; Evidence 147, 586. C.J.S. Criminal Law §§ 752, 819; Evidence §§ 3, 209, 339, 508, 1309, 1328.]

newly discovered evidence. Evidence existing at the time of a motion or trial but then unknown to a party, who, upon later discovering it, may assert it as grounds for reconsideration or a new trial. See Fed. R. Civ. P. 60(b). [Cases: Criminal Law 938; Federal Civil Procedure 2350, 2655; New Trial 99. C.J.S. Criminal Law § 1447; New Trial §§ 130, 259.]

no evidence. See NO EVIDENCE.

oblique evidence. See circumstantial evidence (1).

opinion evidence. A witness's belief, thought, inference, or conclusion concerning a fact or facts. Fed. R. Evid. 701–705. See OPINION(3); OPINION RULE. [Cases: Criminal Law 448; Evidence 470–574. C.J.S. Criminal Law § 1050; Evidence §§ 223, 509–759, 800–812; Executions § 435.]

“In a sense all testimony to matter of fact is opinion evidence; i.e. it is a conclusion formed from phenomena and mental impressions.” James B. Thayer, *A Preliminary Treatise on Evidence at the Common Law* 524 (1898).

oral evidence. See testimonial evidence.

original evidence. 1. A witness's statement that he or she perceived a fact in issue by one of the five senses, or that the witness was in a particular physical or mental state. — Also termed direct evidence. Cf. HEARSAY. 2. See best evidence.

parol evidence (p<<schwa>>-rohlorpar-<<schwa>>l). 1. Evidence of oral statements. [Cases: Criminal Law 447; Witnesses 228. C.J.S. Witnesses §§ 396–398, 404–405.] 2. See extrinsic evidence (1). See PAROL-EVIDENCE RULE.

partial evidence. Evidence that establishes one of a series of facts.

personal evidence. See TESTIMONY.

positive evidence. See direct evidence (1).

preappointed evidence. Evidence prescribed in advance (as by statute) for the proof of certain facts.

preliminary evidence. Evidence that is necessary to begin a hearing or trial and that may be received conditionally in anticipation of other evidence linking it to issues in the case. Fed. R. Evid. 104. [Cases: Evidence 117; Federal Civil Procedure 2014. C.J.S. Evidence § 208.]

presumptive evidence. 1. Evidence deemed sufficient to establish another fact unless discredited by other evidence. [Cases: Evidence 53–89. C.J.S. Evidence §§ 2, 130–196, 1341.] 2. Archaic. Circumstantial evidence as distinct from testimonial evidence. — Also termed probable evidence.

prima facie evidence (prI-m<<schwa>> fay-sh<<schwa>>). Evidence that will establish a fact or sustain a judgment unless contradictory evidence is produced. [Cases: Evidence 584(1). C.J.S. Evidence §§ 226, 729, 1300–1305, 1320, 1324, 1326–1327, 1342, 1345.]

“The legislative branch may create an evidential presumption, or a rule of ‘prima facie’ evidence, i.e., a rule which does not shut out evidence, but merely declares that certain conduct shall suffice as evidence until the opponent produces contrary evidence.” John H. Wigmore, *A Students' Textbook of the Law of Evidence* 237 (1935).

primary evidence. See best evidence.

privileged evidence. Evidence that is exempt from production to an opposing party or tribunal (with certain limited exceptions) because it is covered by one or more statutory or common-law protections, such as the attorney–client privilege. See privileged communication under COMMUNICATION. [Cases: Witnesses 184–223. C.J.S. Witnesses §§ 297–389.]

probable evidence. See presumptive evidence.

probative evidence (proh-b<<schwa>>-tiv). Evidence that tends to prove or disprove a point in issue. [Cases: Evidence 99. C.J.S. Evidence §§ 2–5, 197–199, 204, 206.]

proffered evidence (prof-<<schwa>>rd). 1. Evidence that is offered to the court to obtain a ruling on its admissibility. 2. Evidence whose admissibility depends on the existence or nonexistence of a preliminary fact. [Cases: Evidence 117; Federal Civil Procedure 2011. C.J.S. Evidence § 208.]

proper evidence. See admissible evidence.

prospectant evidence (pr<<schwa>>-spek-t<<schwa>>nt). Evidence that, before someone does an act, suggests that the person might or might not do the act. • This evidence typically falls into any of five categories: (1) moral character or disposition, (2) physical and mental capacity, (3) habit or custom, (4) emotion or motive, and (5) plan, design, or intention.

Queen's evidence.English law. Testimony provided by one criminal defendant, usu. under a promise of pardon, against another criminal defendant. — Also termed (when a king reigns) King's evidence. See state's evidence.

real evidence. 1. Physical evidence (such as clothing or a knife wound) that itself plays a direct part in the incident in question. — Also termed physical evidence. [Cases: Criminal Law 405; Evidence 188. C.J.S. Criminal Law § 877; Evidence §§ 789–791, 794, 796.] 2. See demonstrative evidence.

“Anything which is believed for any other reason than that someone has said so, is believed on real evidence.” John Salmond, *Jurisprudence* 480 (Glanville L. Williams ed., 10th ed. 1947).

rebuttal evidence.Evidence offered to disprove or contradict the evidence presented by an opposing party. • Rebuttal evidence is introduced in the rebutting party's answering case; it is not adduced, e.g., through cross-examination during the case-in-chief of the party to be rebutted. — Also termed rebutting evidence. [Cases: Criminal Law 683; Federal Civil Procedure 2015; Trial 62. C.J.S. Criminal Law § 1219; Trial § 195.]

relevant evidence.Evidence tending to prove or disprove a matter in issue. • Relevant evidence is both probative and material and is admissible unless excluded by a specific statute or rule. Fed. R. Evid. 401–403. — Also termed competent evidence. Cf. material evidence. [Cases: Criminal Law 338; Evidence 99. C.J.S. Criminal Law §§ 710, 730; Evidence §§ 2–5, 197–199, 204, 206.]

reputation evidence.Evidence of what one is thought by others to be. • Reputation evidence may be introduced as proof of character when character is in issue or is used circumstantially. Fed. R. Evid. 405(a). — Also termed reputational evidence. [Cases: Criminal Law 375; Evidence 106; Witnesses 333–362. C.J.S. Criminal Law §§ 816–818; Evidence §§ 495–497, 499–502, 504–506; Witnesses §§ 566, 585–617.]

retrospectant evidence (re-tr<<schwa>>-spek-t<<schwa>>nt). Evidence that, although it occurs after an act has been done, suggests that the alleged doer of the act actually did it <when goods have been stolen, and the thief is sought, a person's later possession of those goods amounts to retrospectant evidence that this person took them>. — Also termed traces.

satisfactory evidence.Evidence that is sufficient to satisfy an unprejudiced mind seeking the truth. — Also termed sufficient evidence; satisfactory proof. [Cases: Evidence 584(1). C.J.S. Evidence §§ 226, 729, 1300–1305, 1320, 1324, 1326–1327, 1342, 1345.]

scientific evidence.Fact or opinion evidence that purports to draw on specialized knowledge of a science or to rely on scientific principles for its evidentiary value. See DAUBERT TEST. [Cases: Criminal Law 388; Evidence 150, 505–574. C.J.S. Criminal Law § 761; Evidence §§

216–226, 510, 513–514, 521, 523–527, 597–632, 634–660, 662–668, 670–671, 673–688, 691–709, 713–759, 800–812.]

secondary evidence. Evidence that is inferior to the primary or best evidence and that becomes admissible when the primary or best evidence is lost or inaccessible. • Examples include a copy of a lost instrument and testimony regarding a lost instrument's contents. — Also termed mediate evidence; mediate testimony; substitutionary evidence. See Fed. R. Evid. 1004. Cf. best evidence. [Cases: Evidence 157–187. C.J.S. Evidence §§ 1054–1131.]

secondhand evidence. See HEARSAY.

secret evidence. Classified information that may be used against a defendant in an immigration proceeding but withheld from the defendant, the defendant's lawyer, and the public on national-security grounds. • The use of secret evidence was made easier under the Anti-Terrorism and Effective Death Penalty Act of 1996.

signature evidence. Highly distinctive evidence of a person's prior bad acts. • While ordinarily inadmissible, signature evidence will be admitted if it shows, for example, that two crimes were committed through the same planning, design, scheme, or modus operandi, and in such a way that the prior act and the current act are uniquely identifiable as those of the defendant. See Fed. R. Evid. 404(b). [Cases: Criminal Law 369.15; Evidence 129(5), 133. C.J.S. Criminal Law § 827; Evidence §§ 764–766.]

slight evidence. A small quantity of evidence; esp., the small amount of evidence sufficient to remove a presumption from a case or for a rational fact-finder to conclude that something essential has not been established beyond a reasonable doubt. See SLIGHT-EVIDENCE RULE.

state's evidence. Testimony provided by one criminal defendant — under a promise of immunity or reduced sentence — against another criminal defendant. See TURN STATE'S EVIDENCE.

substantial evidence. 1. Evidence that a reasonable mind could accept as adequate to support a conclusion; evidence beyond a scintilla. See SUBSTANTIAL-EVIDENCE RULE. [Cases: Administrative Law and Procedure 791; Evidence 597. C.J.S. Evidence §§ 1301, 1304, 1306, 1339; Public Administrative Law and Procedure §§ 213, 237–238.] 2. The product of adequately controlled investigations, including clinical studies, carried out by qualified experts that establish the effectiveness of a drug under FSA regulations. 21USCA § 355(e).

substantive evidence (s<<schwa>>b-st<<schwa>>n-tiv). Evidence offered to help establish a fact in issue, as opposed to evidence directed to impeach or to support a witness's credibility. [Cases: Evidence 226. C.J.S. Evidence § 415.]

substitutionary evidence. See secondary evidence.

sufficient evidence. See satisfactory evidence.

tainted evidence. Evidence that is inadmissible because it was directly or indirectly obtained by illegal means. See FRUIT-OF-THE-POISONOUS-TREE DOCTRINE. [Cases: Criminal Law

394; Evidence 154. C.J.S. Criminal Law § 770; Evidence §§ 252–258.]

tangible evidence. Physical evidence that is either real or demonstrative. See demonstrative evidence; real evidence.

testimonial evidence. A person's testimony offered to prove the truth of the matter asserted; esp., evidence elicited from a witness. — Also termed communicative evidence; oral evidence. Cf. demonstrative evidence. [Cases: Trial 43. C.J.S. Trial § 162.]

“An assertion is testimonial evidence whether made out of court or in court, if it is offered with a view to persuading the tribunal of the matter asserted.” John H. Wigmore, *A Students' Textbook of the Law of Evidence* 120 (1935).

traditionary evidence. Evidence derived from a deceased person's former statements or reputation. • Traditionary evidence is admissible to prove ancestry, ancient boundaries, or similar facts, usu. when no living witnesses are available to testify. [Cases: Boundaries 35(2); Evidence 274, 302. C.J.S. Boundaries § 120; Evidence §§ 306, 322.]

unwritten evidence. Evidence given orally, in court or by deposition.

EVIDENCE BY INSPECTION

evidence by inspection. See demonstrative evidence under EVIDENCE.

EVIDENCE CODE

evidence code. A relatively comprehensive set of statutory provisions or rules governing the admissibility of evidence at hearings and trials.

EVIDENCE OF DEBT

evidence of debt. See SECURITY(4).

EVIDENCE OF INDEBTEDNESS

evidence of indebtedness. See SECURITY(4).

EVIDENCE OF INSURABILITY

evidence of insurability. Information — such as medical records or a medical examination — that an insurer may require to establish a potential insured's qualification for a particular insurance policy. [Cases: Federal Civil Procedure 1973; Trial 127. C.J.S. Trial §§ 136–139, 262, 317.]

EVIDENCE OF TITLE

evidence of title. The means by which the ownership of land is satisfactorily demonstrated within a given jurisdiction. See DEED. [Cases: Property 9. C.J.S. Property §§ 35–37.]

“There are four kinds of evidence of title: abstract and opinion, certificate of title, title insurance and Torrens certificate. The certificate of title is used extensively in the Eastern states, and some Southern states. In urban centers in a great many sections of the country, title insurance occupies a dominant position in real estate transactions. In farm areas the abstract and opinion

method is common. To a great extent, the acceptability of a particular kind of evidence of title depends on the local custom.” Robert Kratovil, *Real Estate Law* 170 (6th ed. 1974).

EVIDENCE RULES

evidence rules. See EVIDENCE(4).

EVIDENCING FEATURE

evidencing feature. Evidence. A group of circumstances that, when taken as a whole, form a composite feature that can be reliably associated with a single object. • This term appears more frequently in criminal cases than in civil. In criminal cases, it usu. refers to evidence that establishes a perpetrator's identity, but in civil cases it often refers to evidence that an event did or did not occur. — Also termed evidencing mark; evidential mark.

EVIDENCING MARK

evidencing mark. See EVIDENCING FEATURE.

EVIDENTIA

evidentia (ev-i-den-shee-*<<schwa>>*), n. [Law Latin] Evidence.

EVIDENTIAL

evidential, adj. Of, relating to, relying on, or constituting evidence; EVIDENTIARY(1).

EVIDENTIAL FACT

evidential fact. See evidentiary fact (2) under FACT.

EVIDENTIAL MARK

evidential mark. See EVIDENCING FEATURE.

EVIDENTIARY

evidentiary (ev-i-den-sh*<<schwa>>*-ree), adj. 1. Having the quality of evidence; constituting evidence; evidencing. 2. Pertaining to the rules of evidence or the evidence in a particular case.

EVIDENTIARY FACT

evidentiary fact. See FACT.

EVIDENTIARY HEARING

evidentiary hearing. See HEARING.

EVINCE

evince, vb. To show, indicate, or reveal <in abstaining from the vote, Hariden evinced misgivings about the nomination>.

EVOCATION

evocation (ev-*<<schwa>>-kay-sh<<schwa>>n*). French law. The act of withdrawing a case from an inferior court and bringing it before a superior court.

EVOCATIVE TRADEMARK

evocative trademark. See suggestive trademark under TRADEMARK.

EVOLUTION STATUTE

evolution statute. See ANTI-EVOLUTION STATUTE.

EWAGE

ewage (yoo-ij), n. [Law French] Hist. A toll paid for water passage.

EX

ex. 1. Former *<ex-wife>*. 2. Without *<ex rights>*. 3. From *<ex cathedra>*. 4. (usu. cap.) abbr. Exhibit *<Ex. 4>*. 5. abbr. Example *<this is but one ex. of several that might be cited>*. 6. (cap.) abbr. EXCHEQUER.

EX ABUNDANTI

ex abundanti (eks ab-*<<schwa>>n-dan-tI*). [Latin "out of abundance"] Archaic. Abundantly; superfluously.

EX ABUNDANTI CAUTELA

ex abundanti cautela (eks ab-*<<schwa>>n-dan-tI kaw-tee-l<<schwa>>*). [Latin] Archaic. Out of abundant caution; to be on the safe side.

EXACTA DILIGENTIA

exacta diligentia. See DILIGENTIA.

EXACTION

exaction, n. 1. The act of demanding more money than is due; extortion. 2. A fee, reward, or other compensation arbitrarily or wrongfully demanded. [Cases: Extortion and Threats 7, 25.1. C.J.S. Threats and Unlawful Communications §§ 2–20.] — exact, vb.

EXACTOR

exactor. 1. Civil law. A tax collector; a gatherer or receiver of money. 2. Hist. A collector of public funds; a tax collector.

EX ADVERSO

ex adverso (eks ad-v-*<<schwa>>r-soh*). [Latin] On the other side. • This term is sometimes applied to opposing counsel.

EX AEQUITATE

ex aequitate (eks ee-kw-*<<schwa>>-tay-tee*). [Latin] According to equity; in equity. [Cases:

Equity 3.]

EX AEQUO ET BONO

ex aequo et bono (eks ee-kwoh et boh-noh). [Latin] According to what is equitable and good.

- A decision-maker (esp. in international law) who is authorized to decide ex aequo et bono is not bound by legal rules and may instead follow equitable principles. For example, article 38(2) of the Statute of the International Court of Justice provides that the Court may “decide a case ex aequo et bono if the parties agree thereto.” 37 ILM 999. [Cases: Equity 54.]

EX ALTERA PARTE

ex altera parte (eks al-t<<schwa>>r-<<schwa>> [orawl-] pahr-tee). [Latin] Of the other part.

EXAMEN

examen (eg-zay-m<<schwa>>n), n.[Law Latin] A trial; investigation.

EXAMEN COMPUTI

examen computi (eg-zay-m<<schwa>>n k<<schwa>>m-pyoo-ti). [Latin] The balance of an account.

EXAMINATION

examination.1. The questioning of a witness under oath. See DIRECT EXAMINATION ; CROSS-EXAMINATION. [Cases: Witnesses 224–228. C.J.S. Witnesses §§ 390–394, 396–398, 404–405.] 2.Bankruptcy. The questioning of a debtor, esp. at the first meeting of creditors, concerning such matters as the bankrupt's debts and assets. [Cases: Bankruptcy 3040. C.J.S. Bankruptcy § 204.] 3. An inquiry made at the U.S. Patent and Trademark Office, upon application for a patent, into the alleged invention's novelty and utility, and whether it interferes with any other pending application or in-force patent. [Cases: Patents 104. C.J.S. Patents §§ 145–147, 149–151, 173–175.]

preliminary examination.Patents. A patent office's initial review of an application, usu. to see whether the specification is properly set out and to prepare a search report. [Cases: Patents 104. C.J.S. Patents §§ 145–147, 149–151, 173–175.]

4.PRELIMINARY HEARING. 5. A test, such as a bar examination.

EXAMINATION BEFORE TRIAL

examination before trial.See DEPOSITION(1).

EXAMINATION-IN-CHIEF

examination-in-chief. See DIRECT EXAMINATION.

EXAMINATION ON THE VOIR DIRE

examination on the voir dire.See VOIR DIRE.

EXAMINATIONPRO INTERESSE SUO

examination pro interesse suo (proh in-t<<schwa>>r-es-ee s[y]oo-oh). [Latin “according to his interest”] A judicial inquiry into the merits of a person's claim to sequestered property. [Cases: Sequestration 18. C.J.S. Sequestration §§ 31–32.]

“In practice, an examination pro interesse suo is an inquiry described as follows: When any person claims to be entitled to an estate or other property sequestered, whether by mortgage or judgment, lease or otherwise, or has a title paramount to the sequestration, he should apply to the court to direct an inquiry whether the applicant has any and what interest in the property sequestered.” 79A C.J.S. Sequestration § 31, at 589 (1995).

EXAMINATION SYSTEM

examination system.Patents. A patent system in which an invention is subjected to official scrutiny to determine whether it qualifies for patent protection. Cf. REGISTRATION SYSTEM.

EXAMINED COPY

examined copy.See COPY.

EXAMINER

examiner.1. One authorized to conduct an examination; esp., a person appointed by the court, esp. a court of equity, to administer an oath and take testimony. See MASTER(2). — Also formerly termed examiner in chancery. 2. A patent officer responsible for determining the patentability of an invention submitted to the patent office. [Cases: Patents 104. C.J.S. Patents §§ 145–147, 149–151, 173–175.] 3.MEDICAL EXAMINER.

EXAMINER IN CHANCERY

examiner in chancery.See EXAMINER(1).

EXAMINER-IN-CHIEF

examiner-in-chief.Hist. Patents. 1. A member of the quasi-judicial body in the U.S. Patent and Trademark Office that formerly heard appeals of interference decisions and patent-application rejections. 2. (pl. cap.) The body comprising those members; the predecessor of the Board of Appeals, the Board of Patent Interferences, and the present-day Board of Patent Appeals and Interferences.

EXAMINER'S AMENDMENT

examiner's amendment.Patents & trademarks. Minor changes in the form of a patent or trademark application, made by the examiner rather than the applicant. • For example, the examiner may correct spelling and grammar rather than wait for the applicant to respond. A patent examiner may also amend or cancel claims if authorized by the applicant.

EXAMINER'S ANSWER

examiner's answer.Patents. The brief filed by a patent examiner with the Board of Patent

Appeals and Interferences to rebut the arguments in an appeal brief and to defend the examiner's decision to reject the application. Cf. appeal brief under BRIEF. [Cases: Patents 111. C.J.S. Patents §§ 180–183.]

EXAMINING AUTHORITY

examining authority. See AUTHORITY(3).

EXAMINING BOARD

examining board. An appointed group of public officials responsible for conducting the tests required by those applying for occupational and professional licenses. — Also termed board of examiners. [Cases: Licenses 21. C.J.S. Agriculture §§ 4.5; Architects § 4; Licenses §§ 37–38.]

EXAMINING COURT

examining court. See COURT.

EXAMINING GROUP

examining group. Patents. A committee of patent examiners that specializes in a particular area of technology.

EXAMINING TRIAL

examining trial. See PRELIMINARY HEARING.

EXAMPLE

example. Patents. A detailed description of an invention's embodiment. — Also termed specific example; working example.

EXANNUAL ROLL

exannual roll (eks-an-yoo-*<<schwa>>*l). Hist. In England, a roll into which illeivable fines and desperate debts were transcribed and that was annually read to the sheriff upon his accounting to see what might be gotten.

EX ANTE<TT>

ex ante (eks an-tee), adj. & adv. [Latin “from before”] Based on assumption and prediction, on how things appeared beforehand, rather than in hindsight; subjective; prospective <from an ex ante perspective>. Cf. EX POST.

EX ARBITRIO JUDICIS

ex arbitrio judicis (eks ahr-bi-tree-oh joo-di-sis). [Latin] Civil law. At, from, or upon the discretion of the judge.

EX ASSENSU CURIAE

ex assensu curiae (eks *<<schwa>>*-sen-s[y]oo kyoor-ee-ee or -I). [Latin] By or with the consent of the court.

EX ASSENSU PATRIS

ex assensu patris (eks <<schwa>>-sen-s[y]oo pay-tris). [Latin “by or with the consent of the father”] Hist. A species of dower ad ostium ecclesiae, under which a husband, by his father's express consent, would endow his wife with a parcel of the father's lands. • This type of dower was abolished in England by the Dower Act (1833). St. 3 & 4 Will. 4, ch. 105, § 13.

EX ASSENSU SUO

ex assensu suo (eks <<schwa>>-sen-s[y]oo s[y]oo-oh). [Latin “with his assent”] Formal words in a default judgment for damages.

EX AUDITU

ex auditu (eks aw-di-t[y]oo). [Latin] Hist. By hearsay; by report.

EX BONIS

ex bonis (eks boh-nis). [Latin] Civil law. Of or relating to goods or property.

EX BONIS MATERNIS

ex bonis maternis (eks boh-nis m<<schwa>>-t<<schwa>>r-nis). [Latin] Hist. Out of the goods succeeded to through the mother.

EX BONIS PATERNIS

ex bonis paternis (eks boh-nis p<<schwa>>-t<<schwa>>r-nis). [Latin] Hist. Out of the goods succeeded to through the father.

EXCAMBIATOR

excambiator (eks-kam-bee-ay-t<<schwa>>r), n.[Latin] Hist. An exchanger of lands; a broker.

EXCAMBION

excambion (eks-kam-bee-ahn), n. Scots law. 1. The exchange of one piece of property for another, esp. an exchange of heritable estates. 2.EXCAMBIUM (1).

EXCAMBIUM

excambium (eks-kam-bee-<<schwa>>m), n.[Latin] 1. An exchange; a place where merchants meet to transact their business. — Also termed (in Scots law) excambion. 2. An equivalent in recompense; a recompense in lieu of dower ad ostium ecclesiae.

EX CAPITE

ex capite (eks kap-i-tee). [Latin] On the ground of; by reason of. See LIEGE POUSTIE .

EX CAPITE DOLI

ex capite doli (eks kap-i-tee doh-II). [Law Latin] Hist. On the ground of dole; for the reason of fraud. — Also termed ex capite fraudis.

EX CAPITE INHIBITIONIS

ex capite inhibitionis (eks kap-i-tee in-hi-bish-ee-oh-nis). [Law Latin] Scots law. On the ground of inhibition. See INHIBITION(4).

EX CAPITE INTERDICTIONIS

ex capite interdictionis (eks kap-i-tee in-t<<schwa>>r-dik-shee-oh-nis). [Law Latin] Hist. On the ground of interdiction. See INTERDICTION.

EX CAPITE LECTI

ex capite lecti (eks kap-i-tee lek-tI). [Law Latin] Scots law. On the ground of deathbed. • Under some circumstances, a legal heir could overturn a deed that a grantor made to the heir's detriment if the deed were made within 60 days before the grantor's death.

EX CAPITE METUS

ex capite metus (eks kap-i-tee mee-t<<schwa>>s). [Law Latin] Scots law. On the ground of fear. • A transaction could be rescinded if it were induced by serious threats.

EX CAPITE MINORENNITATIS ET LAESIONIS

ex capite minorennitatis et laesionis (eks kap-i-tee min-or-en-i-tay-tis et lee-z[h]ee-oh-nis). [Law Latin] Scots law. On the ground of minority and lesion. • The phrase appeared in reference to a ground upon which a minor could be restored against deeds granted by him during his minority. The phrase also referred to a basis upon which a minor could set aside a deed (on the ground of lesion) if the deed were substantially onerous.

EX CATHEDRA

ex cathedra (eks k<<schwa>>-thee-dr<<schwa>> orkath-<<schwa>>-dr<<schwa>>), adv. & adj.[Latin "from the chair"] By virtue of one's high office or position; with authority <ex cathedra pronouncements>.

EX CAUSA

ex causa (eks kaw-z<<schwa>>). [Latin] By title.

EX CAUSA LUCRATIVA

ex causa lucrativa (eks kaw-z<<schwa>> loo-kr<<schwa>>-tI-v<<schwa>>). [Latin] Hist. From a lucrative source; gratuitously.

EX CAUSA MANDATI

ex causa mandati (eks kaw-z<<schwa>> man-day-tI). [Latin] Scots law. On account of the mandate; because of the mandate.

"A mandatory is entitled to claim from the mandant reimbursement of all moneys disbursed, as well as relief from all obligations incurred, ex causa mandati — i.e., on account of the matter which the mandate authorised to be done or performed." John Trayner, Trayner's Latin Maxims

195 (4th ed. 1894).

EX CAUSA POTESTATIS

ex causa potestatis (eks kaw-z<<schwa>> poh-tes-tay-tis). Roman law. Because of his position of authority. • Certain men could not marry women who were subject to their guardianship or control, and the reason was said to be *ex causa potestatis*.

“Certain impediments to marriage in the civil law were described as being *ex causa potestatis*. Thus a tutor or curator could not marry his female ward until his office had terminated, or unless his accounts had been passed. A person administering a government or public office in a province, and the members of his family, were not permitted to intermarry with a person domiciled in his province, unless they had been betrothed to each other before he had accepted the office.” Alexander Wood Renton & George Grenville Phillimore, *The Comparative Law of Marriage and Divorce* 6 (1910).

EXCELLENCY

excellency. (usu. cap.) A title of honor given to certain high officials or dignitaries, such as governors, ambassadors, and Roman Catholic bishops or archbishops.

EXCEPTIO

exceptio (ek-sep-shee-oh), n.[Latin] Hist. 1. An exception, plea, or objection. 2. Roman & civil law. A defendant's plea admitting the claim in principle but alleging facts or legal provisions that negate it in this instance. 3. A defense to a claim that is justly brought but that unjustly accuses the particular defendant named. Pl. *exceptiones* (ek-sep-shee-oh-nee-z).

exceptio dilatoria (dil-<<schwa>>-tor-ee-<<schwa>>). A dilatory exception; an exception that defeated the action for a time and created a delay, such as an agreement not to sue within a certain time.

exceptio doli mali (doh-llmal-I). An exception, defense, or plea of fraud. — Sometimes shortened to *exceptio doli*.

exceptio dominii (d<<schwa>>-min-ee-I). A claim of ownership by the defendant in an action to recover property.

exceptio dotis cautae non numeratae (doh-tis kaw-tee non n[y]oo-m<<schwa>>-ray-tee). A defense to an action for the restitution of dowry, asserting that, although promised, dowry was never paid.

exceptio in factum (in fak-t<<schwa>>m). An exception on the facts; an exception or plea founded on the peculiar circumstances of a case.

exceptio in personam (in p<<schwa>>r-soh-n<<schwa>>m). A plea or defense of a personal nature that only the person to whom it is granted by law may assert.

exceptio in rem (in rem). A plea or defense that is not of a personal nature but is connected with the legal circumstances on which the suit is founded, and that may therefore be alleged by

any party in interest, such as an heir or surety of the proper or original debtor.

exceptio jurisjurandi (joor-is-juu-ran-dI). An exception of oath; an exception or plea that the matter had been sworn to. • This kind of exception was allowed if a debtor, at a creditor's instance, had sworn that nothing was due the creditor, but the creditor sued anyway.

exceptio metus (met-<<schwa>>s). An exception, defense, or plea of fear or compulsion.

exceptio non adimpleti contractus (non ad-im-plee-tI k<<schwa>>n-trak-t<< schwa>>s). An exception in a contract action involving mutual duties or obligations, to the effect that the plaintiff may not sue if the plaintiff's own obligations have not been performed.

exceptio non numeratae pecuniae (ek-sep-shee-oh non n[y]oo-m<<schwa>>-ray-tee pi-kyoo-nee-ee). [Latin] Roman law. An exception or defense that money was not paid.

“This was one of the Roman law exceptions, founded on the *obligatio literarum* of the Romans. The *obligatio literarum* was constituted by a writing, the granter of which acknowledged receipt from the creditor of a certain sum of money. But as the obligation was sometimes granted before the money was advanced, *spe numerandae pecuniae*, by the Roman law, the obligation, until the lapse of two years after its date and delivery, did not prove the receipt of the money; and the debtor against whom, within that time, a demand for repayment was made, might plead the *exceptio non numeratae pecuniae*; that is, that the money of which repayment was demanded, was truly never advanced. The exception was sufficient to elide the demand, unless the creditor proved that he had advanced the money.” William Bell, *Bell's Dictionary and Digest of the Law of Scotland* 426 (George Watson ed., 7th ed. 1890).

exceptio non solutae pecuniae (non s<<schwa>>-loo-tee pi-kyoo-nee-ee). A plea that the debt at issue in the suit had not been discharged by payment (as the adverse party alleged), notwithstanding the existence of a receipt or acquittance reflecting payment. Cf. *exceptio pecuniae non numeratae*.

exceptio pacti conventi (pak-tI-k<<schwa>>n-ven-tI). An exception of compact; a defense or plea that the plaintiff had agreed not to sue.

exceptio pecuniae non numeratae (pi-kyoo-nee-ee non n[y]oo-m<<schwa>>-ray-tee). An exception or plea of money not paid; a defense by a party who was sued on a promise to repay money that was never received from the plaintiff. Cf. *exceptio non solutae pecuniae*; **PECUNIA NON NUMERATA**.

exceptio peremptoria (p<<schwa>>r-emp-tor-ee-<<schwa>>). A peremptory exception that forever destroyed the subject matter or ground of the action, such as the *exceptio doli mali* and the *exceptio metus*. — Also termed *exceptio perpetua*.

exceptio plurium concubentium (ploor-ee-<<schwa>>m kon-kyoo-ben-shee-<< schwa>>m). The plea or defense in a paternity action that the plaintiff had several lovers.

exceptio rei judicatae (ree-I joo-d<<schwa>>-kay-tee). An exception or plea of matter adjudged; a plea that the subject matter of the action had been determined in a previous action.

exceptio rei venditae et traditae (ree-Iven-d<<schwa>>-tee et trad-<< schwa>>-tee). An exception or plea of the sale and delivery [of a thing]. • This exception presumes a valid sale but, because no one can transfer a right greater than what is possessed, no valid transfer of property occurred, yet the real owner is nonetheless estopped from contesting the sale.

exceptio senatusconsulti Macedoniani (s<<schwa>>-nay-t<<schwa>>s-k<<schwa>>n-s<<schwa>>l-tI mas-<<schwa>>-doh-nee-ay-nI). A defense to an action for the recovery of money loaned, on the ground that the loan was made to a person who was under another person's paternal power. • This defense is so named from the decree of the senate that forbade the recovery of such loans.

exceptio senatusconsulti Velleiani (s<<schwa>>-nay-t<<schwa>>s-k<<schwa>>n-s<<schwa>>l-tI vel-ee-ay-nI). A defense to an action on a contract of suretyship, on the ground that the surety was a woman and thus incapable of becoming bound for another. • This defense is so named from the decree of the senate forbidding such sureties.

exceptio temporis (tem-p<<schwa>>-ris). An exception or plea that the time prescribed by law for bringing a particular action has expired.

EXCEPTION

exception, n.1. A formal objection to a court's ruling by a party who wants to preserve an overruled objection or rejected proffer for appeal <the prosecutor stated her exception to the court's ruling disallowing the witness's testimony>. • To make an exception or objection, attorneys sometimes say, "I except" or "I object." Exception properly refers only to an objection made after an initial objection or proffer is made and overruled. In most courts, an exception is no longer required to preserve the initial objection. [Cases: Criminal Law 1048–1060; Pleading 228–228.23. C.J.S. Pleading §§ 230–233, 236, 238, 240–242, 256–264, 268, 270–271, 289–291, 307, 317–322.]

The following quotation reflects former practice: "The exception must be distinguished from the objection. Many counsel are heard carelessly saying 'I except' when the thing they are doing is 'I object.' The exception serves an entirely distinct purpose from the objection, — a double purpose, in fact. It warns the judge and the other party that the excepter is not satisfied with the ruling and takes issue with a view to appeal; and it sums up and preserves the precise terms of the ruling. The proponent of the evidence is the excepter if the ruling excludes the evidence; but if it admits the evidence, the opponent of the evidence is the excepter. Thus the excepter and the objector are not necessarily the same parties." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 421 (1935).

declinatory exception (di-klIn-<<schwa>>-tor-ee). An exception to a court's jurisdiction. • Grounds for refusing to submit to a court's jurisdiction include lack of personal jurisdiction and insufficient service of process.

dilatory exception (dil-<<schwa>>-tor-ee). An exception intended to delay but not dismiss an action. [Cases: Pleading 228.6, 228.7. C.J.S. Pleading § 271.]

general exception. 1. An objection pointing out a substantive defect in an opponent's pleading, such as the insufficiency of the claim or the court's lack of subject-matter jurisdiction; an objection to a pleading for want of substance. — Also termed general demurrer. Cf. SPECIAL EXCEPTION(1). [Cases: Pleading 228.13. C.J.S. Pleading § 232.] 2. An objection in which the excepting party does not specify the grounds of the objection.

peremptory exception. A defensive pleading asserting that no legal remedy exists for the plaintiff's alleged injury, that res judicata or prescription bars the claim, or that an indispensable party has not been included in the litigation. [Cases: Pleading 228.8.]

special exception. See SPECIAL EXCEPTION.

2. Something that is excluded from a rule's operation <employers with fewer than five employees are an exception to the rule>.

statutory exception. A provision in a statute exempting certain persons or conduct from the statute's operation. [Cases: Statutes 228. C.J.S. Statutes §§ 370–372.]

3. The retention of an existing right or interest, by and for the grantor, in real property being granted to another. Cf. RESERVATION(1). [Cases: Deeds 137. C.J.S. Deeds §§ 275, 279–282.] — except, vb.

EXCEPTIONABLE

exceptionable (ek-sep-sh<<schwa>>n-<<schwa>>-b<<schwa>>l), adj. Liable to objection; OBJECTIONABLE.

EXCEPTIONAL CHARGE

exceptional charge. See special charge under CHARGE.

EXCEPTION CLAUSE

exception clause. A clause that attempts to modify or exclude the prima facie obligations that arise when a document is signed. Cf. EXEMPTION CLAUSE.

EXCEPTIO PLURIUM CONCUBENTIUM DEFENSE

exceptio plurium concubentium defense. See MULTIPLE ACCESS; exceptio plurium concubentium under EXCEPTIO.

EXCEPTIS EXCIPIENDIS

exceptis excipiendis (ek-sep-tis ek-sip-ee-en-dis). [Latin] With all necessary exceptions.

EXCEPTOR

exceptor, n. One who takes exception; an objector. — Also spelled excepter.

EXCERPTA

excerpta (ek-s<<schwa>>rp-t<<schwa>>), n. pl. [Latin] Extracts.

EX CERTA SCIENTIA

ex certa scientia (eks s<<schwa>>r-t<<schwa>> sI-en-shee-<<schwa>>). [Latin] Of certain or sure knowledge. • This phrase was anciently used in patents, and imported full knowledge of the subject matter on the part of the sovereign.

EXCÈS DE POUVOIR

excès de pouvoir (ek-say d<<schwa>> poo-vwahr). [French “excess of power”] 1.Int'l law. Beyond the powers (of a tribunal).2.Administrative law. Beyond the powers of an official.

EXCESS-BENEFIT PLAN

excess-benefit plan.See EMPLOYEE BENEFIT PLAN.

EXCESS CLAUSE

excess clause.An insurance-policy provision — usu. contained in the “other insurance” section of the policy — that limits the insurer's liability to the amount exceeding other available coverage. • This clause essentially requires other insurers to pay first. Cf. ESCAPE CLAUSE; PRO RATA CLAUSE. [Cases: Insurance 2111(2).]

EXCESS CONDEMNATION

excess condemnation.See CONDEMNATION.

EXCESS DAMAGES

excess damages.See DAMAGES.

EXCESS INSURANCE

excess insurance.See INSURANCE.

EXCESS INSURER

excess insurer.See INSURER.

EXCESSIVE ASSESSMENT

excessive assessment.See ASSESSMENT.

EXCESSIVE BAIL

excessive bail.See BAIL(1).

EXCESSIVE DAMAGES

excessive damages.See DAMAGES.

EXCESSIVE DRUNKENNESS

excessive drunkenness.See DRUNKENNESS.

EXCESSIVE EXECUTION

excessive execution. An exercise of a power of appointment exceeding the limits (express or statutory) set on the use of the power.

EXCESSIVE FINE

excessive fine. See FINE(5).

EXCESSIVE FINES CLAUSE

Excessive Fines Clause. The clause of the Eighth Amendment to the U.S. Constitution prohibiting the imposition of excessive fines. [Cases: Fines 1.3.]

EXCESSIVE FORCE

excessive force. See FORCE.

EXCESSIVE PUNISHMENT

excessive punishment. See PUNISHMENT.

EXCESSIVE SENTENCE

excessive sentence. See SENTENCE.

EXCESSIVE VERDICT

excessive verdict. See VERDICT.

EXCESS JUDGMENT

excess judgment. See JUDGMENT.

EXCESS JURISDICTION

excess jurisdiction. See EXCESS OF JURISDICTION.

EXCESS-LIABILITY DAMAGES

excess-liability damages. See excess damages under DAMAGES.

EXCESS LIMITS

excess limits. Insurance coverage against losses in excess of a specified limit.

EXCESS-LINES INSURANCE

excess-lines insurance. See surplus-lines insurance under INSURANCE.

EXCESS OF JURISDICTION

excess of jurisdiction. 1. A court's acting beyond the limits of its power, usu. in one of three ways: (1) when the court has no power to deal with the kind of matter at issue, (2) when the court has no power to deal with the particular person concerned, or (3) when the judgment or order issued is of a kind that the court has no power to issue. [Cases: Courts 29, 40.C.J.S. Courts §§ 67, 70, 91-92.] 2. A court's departure from recognized and established requirements of law, despite

apparent adherence to procedural form, the effect of which is a deprivation of one's constitutional right. — Also termed excess jurisdiction.

EXCESS OF PRIVILEGE

excess of privilege.1. An excessive publication of a privileged statement — that is, beyond the limits of the privilege. [Cases: Libel and Slander 50.5. C.J.S. Libel and Slander; Injurious Falsehood §§ 47, 63, 66, 77, 99–100, 103, 105–106.] 2. The improper and malicious use of the privilege to publish a statement. [Cases: Libel and Slander 50. C.J.S. Libel and Slander; Injurious Falsehood §§ 47, 66, 85, 97, 105.]

EXCESS POLICY

excess policy. See excess insurance under INSURANCE.

EXCESS-PROFITS TAX

excess-profits tax. See TAX.

EXCESS REINSURANCE

excess reinsurance. See REINSURANCE.

EXCESS THEORY

excess theory. Insurance. The principle that a tortfeasor will be considered underinsured if the injured party's damages exceed the tortfeasor's liability-insurance coverage. • This principle allows an injured party to invoke underinsured-motorist coverage. Cf. GAP THEORY. [Cases: Insurance 2787. C.J.S. Insurance § 1657.]

EXCESS VOTE

excess vote. See VOTE(1).

EXCESS WATER

excess water. See WATER.

EXCHANGE

exchange, n. Commercial law. 1. The act of transferring interests, each in consideration for the other. [Cases: Exchange of Property 1. C.J.S. Exchange of Property §§ 2–3.]

bargained-for exchange. See BARGAINED-FOR EXCHANGE.

like-kind exchange. See LIKE-KIND EXCHANGE.

tax-free exchange. See TAX-FREE EXCHANGE.

1031 exchange. See 1031 EXCHANGE.

2. Money or negotiable instruments presented as payment; CURRENCY. See MEDIUM OF EXCHANGE. 3. The interchange or conversion of money. See FOREIGN EXCHANGE. 4. The

payment of a debt using a bill of exchange or credit rather than money. 5. An organization that brings together buyers and sellers of securities, commodities, and the like to promote uniformity in the customs and usages of merchants, to facilitate the speedy adjustment of business disputes, to gather and disseminate valuable commercial and economic information, and to secure to its members the benefits of cooperation in the furtherance of their legitimate pursuits. • The best-known exchanges are stock, produce, livestock, cotton, and grain exchanges. See RECIPROCAL EXCHANGE. [Cases: Exchanges 1–15; Securities Regulation 40.10–40.16. C.J.S. Exchanges §§ 2–43; Securities Regulation §§ 154–163, 165–168.] 6. The building or hall where members of an exchange meet every business day to buy and sell for themselves, or as brokers for their customers, for present and future delivery. See SECURITIES EXCHANGE(1). — exchange, vb.

EXCHANGE ACT

Exchange Act. See SECURITIES EXCHANGE ACT OF 1934.

EXCHANGE BROKER

exchange broker. One who negotiates money or merchandise transactions for others. [Cases: Brokers 2. C.J.S. Brokers §§ 2–5.]

EXCHANGE RATE

exchange rate. The ratio for converting one country's money into another country's money. See FOREIGN EXCHANGE.

EXCHANGE RATIO

exchange ratio. The number of shares that an acquiring company must give for each share of an acquired company.

EXCHANGE VALUE

exchange value. See VALUE(2).

EXCHEQUER

Exchequer (eks-chek-*<<schwa>>*r oreks-chek-*<<schwa>>*r). 1. English law. The government department charged with collecting the national revenue; the treasury department. • The name is said to have derived from the checkered cloth, resembling a chessboard, that anciently covered the table on which certain of the king's accounts were tallied, the sums being marked and scored with counters. 2. COURT OF EXCHEQUER. — Abbr. Ex.

EXCHEQUER BILL

Exchequer bill. A bill of credit issued in England by the authority of Parliament; an instrument issued at the Exchequer, usu. under the authority of an act of Parliament passed for that specific purpose, containing an engagement on the part of the government to repay, with interest, the principal sums advanced.

EXCHEQUER CHAMBER

Exchequer Chamber. An English court of intermediate appeal from the common-law courts, namely, the Court of King's Bench, the Court of Common Pleas, and the Court of Exchequer. • It was established in 1822. — Also termed *Camera Scaccarii*.

EXCHEQUER DIVISION

Exchequer Division. Hist. A division of the English high court of justice, to which the business of the Court of Exchequer was specially assigned by § 34 of the Judicature Act of 1873, and later merged into the Queen's Bench Division in 1881.

EXCISE

excise, n. A tax imposed on the manufacture, sale, or use of goods (such as a cigarette tax), or on an occupation or activity (such as a license tax or an attorney occupation fee). — Also termed excise tax. Cf. income tax, property tax under TAX. [Cases: Taxation 1201.1.]

EXCISE LIEU PROPERTY TAX

excise lieu property tax. See TAX.

EXCISE TAX

excise tax. See EXCISE.

EXCISION

excision. See FEMALE GENITAL MUTILATION.

EXCITED UTTERANCE

excited utterance. A statement about a startling event made under the stress and excitement of the event. • An excited utterance may be admissible as a hearsay exception. Fed. R. Evid. 803(2). Cf. PRESENT SENSE IMPRESSION. [Cases: Criminal Law 363–368; Evidence 120. C.J.S. Criminal Law §§ 454, 831, 867–876; Evidence § 349.]

EXCLUDABLE

excludable, adj. (Of evidence) subject to exclusion <excludable hearsay>.

EXCLUDE

exclude. See RIGHT TO EXCLUDE.

EXCLUDENDO FISCUM ET RELICTAM

excludendo fiscum et relictam (eks-kloo-den-doh fis-k<<schwa>>m et ri-lik-t<< schwa>>m). [Law Latin] Hist. To the exclusion of the rights of the Crown and of the widow.

EXCLUSION

exclusion, n. 1. Tax. An item of income excluded from gross income. — Also termed income

exclusion. [Cases: Internal Revenue 3110; Taxation 979. C.J.S. Internal Revenue §§ 59–60.]

annual exclusion. The amount (currently as much as \$10,000) allowed as nontaxable gift income during the calendar year. • The purpose of the annual exclusion is both to serve as an estate-planning mechanism (so that gifts made during the donor's lifetime remain nontestamentary and nontaxable) and to eliminate the administrative inconvenience of taxing relatively small gifts. For an individual, the first \$10,000 in gifts can be excluded; for married persons, the exclusion is \$20,000 per donee for joint gifts, regardless of which spouse supplied the donated property. IRC (26 USCA) § 2503. — Also termed annual gift-tax exclusion. [Cases: Internal Revenue 4206.10. C.J.S. Internal Revenue §§ 566–568.]

2. Evidence. A trial judge's determination that an item offered as evidence may not be presented to the trier of fact (esp. the jury). 3. Insurance. An insurance-policy provision that excepts certain events or conditions from coverage. [Cases: Insurance 2098.] — exclude, vb. — exclusionary, adj.

automobile exclusion. A provision in some commercial general liability policies, excluding coverage for damages arising from the use (including loading and unloading) of an automobile, aircraft, or other motor vehicle owned, operated, rented, or borrowed by the insured. [Cases: Insurance 2278(13). C.J.S. Insurance § 938.]

business-risk exclusion. An exclusion in some commercial general liability policies, excluding coverage for common risks of doing business, including harm to the insured's product or work, damages arising from a product recall, damages arising from the insured's failure to perform under a contract, or damages arising from a failure of the insured's product to perform as intended. [Cases: Insurance 2278(20).]

design-defect exclusion. A provision in some umbrella policies and some older commercial general liability policies, excluding coverage for bodily injury arising from the failure of the insured's product to perform its intended function because of a defect or deficiency in its design, formula, specifications, instructions, or advertising materials. [Cases: Insurance 2278(21).]

employee-liability exclusion. A provision in some commercial general liability policies, excluding coverage for injury to an employee (or a member of the employee's family), arising from and in the course of employment with the insured. • This exclusion is generally intended to exclude from coverage all injuries covered by the workers'-compensation laws. [Cases: Insurance 2278(11–12).]

employment-related-practices exclusion. A provision in some commercial general liability policies, excluding coverage for damages arising from an insured's employment practices, including any policy, action, or omission — such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, or discrimination — that is directed at the person injured. [Cases: Insurance 2278(11).]

expected/intended exclusion. A provision in some commercial general liability policies, excluding coverage for property damage or bodily injury that is expected or intended by the insured, except any harm arising from the use of reasonable force to protect a person or property. •

This exclusion is sometimes referred to as “exclusion a” because it is the first exclusion listed on most policies. — Also termed exclusion a; intentional-injury exclusion. [Cases: Insurance 2278(3).]

failure-to-perform exclusion.A provision in some commercial general liability policies, excluding coverage for (1) the loss of use of undamaged property resulting from the insured's delay or failure in performing an obligation, or (2) a design defect or failure in the insured's product. — Also termed loss-of-use exclusion. [Cases: Insurance 2278(21).]

knowledge-of-falsity exclusion.A provision in some commercial general liability policies, excluding coverage for damages arising from an oral or written communication made by the insured with knowledge that it is false. [Cases: Insurance 2303(2), 2313(2).]

named-insured exclusion.An exclusion limiting liability-insurance coverage to a named insured whose injuries were caused by another named insured under the same insurance policy. [Cases: Insurance 2278(1), 2745–2747.]

owned-property exclusion.Insurance. A provision in a comprehensive general liability insurance policy allowing only third parties who are injured on or by the insured's property to make liability claims against the insurer. • The provision ordinarily excludes coverage for (1) property owned, rented, occupied, sold, given away, or abandoned by the insured, (2) personal property in the care, custody, or control of the insured, and (3) property located where the insured and its employees work. [Cases: Insurance 2278(25). C.J.S. Insurance § 947.]

own-product exclusion.A provision in some commercial general liability policies, excluding coverage for property damage to a product that is manufactured, sold, handled, distributed, or disposed of by the insured. [Cases: Insurance 2278(21).]

own-work exclusion.A provision in some commercial general liability policies, excluding coverage for damage to the work or services performed by the insured. [Cases: Insurance 2278(21).]

pollution exclusion.A provision in some commercial general liability policies, excluding coverage for bodily injury or property damages arising from the discharge, dispersal, release, or escape of chemicals, waste, acid, and other pollutants. • Pollution-exclusion clauses may take one of two forms: (1) sudden and accidental, and (2) absolute. The sudden-and-accidental clause, usually limited to policies issued before 1985, contains an exception under which the damages are covered (i.e., exempted from the exclusion) if the discharge or other release was sudden and accidental. The absolute pollution exclusion, in most policies issued since 1985, does not contain this exception. [Cases: Insurance 2278(17). C.J.S. Insurance §§ 954, 1127.]

sistership exclusion.A provision in some commercial general liability policies, excluding coverage for damages arising from the withdrawal, inspection, repair, replacement, or loss of use of the insured's product or work, to the extent that the product or work is withdrawn or recalled from the market because of a known or suspected defect or deficiency. — Also termed recall exclusion. [Cases: Insurance 2278(24).]

EXCLUSION A

exclusion a. See expected/intended exclusion under EXCLUSION(3).

EXCLUSIONARY HEARING

exclusionary hearing. See HEARING.

EXCLUSIONARY RULE

exclusionary rule. 1. Evidence. Any rule that excludes or suppresses evidence < despite many exceptions, hearsay has long been inadmissible under an exclusionary rule>. — Also termed exclusionary evidence rule. [Cases: Evidence 154. C.J.S. Evidence §§ 252–258.] 2. Criminal procedure. A rule that excludes or suppresses evidence obtained in violation of an accused person's constitutional rights <in accordance with the exclusionary rule, the court did not admit the drugs into evidence because they had been obtained during a warrantless search of the defendant's home>. See FRUIT-OF-THE-POISONOUS-TREE DOCTRINE; GOOD-FAITH EXCEPTION. [Cases: Criminal Law 394. C.J.S. Criminal Law § 770.]

“The deterrence of unreasonable searches and seizures is a major purpose of the exclusionary rule.... But the rule serves other purposes as well. There is, for example, ... ‘the imperative of judicial integrity,’ namely, that the courts do not become ‘accomplices in willful disobedience of a Constitution they are sworn to uphold.’ ... A third purpose of the exclusionary rule ... is that of ‘assuring the people — all potential victims of unlawful government conduct — that the government would not profit from its lawless behavior, thus minimizing the risk of seriously undermining popular trust in government.’ ” Wayne R. LaFare & Jerold H. Israel, *Criminal Procedure* § 3.1, at 107 (2d ed. 1992) (quoting *Elkins v. United States*, 364 U.S. 206, 222, 80 S.Ct. 1437, 1447 (1960); *United States v. Calandra*, 414 U.S. 338, 357, 94 S.Ct. 613, 626 (1974) (Brennan, J., dissenting)).

“In the simplest of exclusionary rule cases, the challenged evidence is quite clearly ‘direct’ or ‘primary’ in its relationship to the prior arrest, search, interrogation, lineup or other identification procedure. Such is the case when that evidence is an identification occurring at the confrontation between suspect and victim or witness, a confession or admission made in response to questioning, or physical evidence obtained by search or arrest. Not infrequently, however, challenged evidence is ‘secondary’ or ‘derivative’ in character. This occurs when, for example, a confession is obtained after an illegal arrest, physical evidence is located after an illegally obtained confession, or an in-court identification is made following an illegally conducted pretrial identification. In these situations, it is necessary to determine whether the derivative evidence is ‘tainted’ by the prior constitutional or other violation.” *Id.* § 9.3, at 471.

EXCLUSIONARY ZONING

exclusionary zoning. See ZONING.

EXCLUSIVE AGENCY

exclusive agency. See AGENCY(1).

EXCLUSIVE-AGENCY LISTING

exclusive-agency listing. See LISTING(1).

EXCLUSIVE AUTHORIZATION-TO-SELL LISTING

exclusive authorization-to-sell listing. See exclusive-agency listing under LISTING(1).

EXCLUSIVE CONTRACT

exclusive contract. See EXCLUSIVE-DEALING ARRANGEMENT.

EXCLUSIVE CONTROL

exclusive control. Under the doctrine of *res ipsa loquitur*, a defendant's sole management of and responsibility for the instrumentality causing harm. • Exclusive control is a prerequisite to the doctrine's applicability. See RES IPSA LOQUITUR . [Cases: Negligence 1614. C.J.S. Negligence §§ 763–767.]

EXCLUSIVE-DEALING ARRANGEMENT

exclusive-dealing arrangement. An agreement requiring a buyer to purchase all needed goods from one seller. — Often shortened to exclusive dealing. See requirements contract under CONTRACT. [Cases: Monopolies 17(2.3); Sales 71(4). C.J.S. Monopolies §§ 93–95, 97–99; Sales §§ 178–180.]

EXCLUSIVE EASEMENT

exclusive easement. See EASEMENT.

EXCLUSIVE ECONOMIC ZONE

exclusive economic zone. Int'l law. An area just beyond the territorial sea, extending up to 200 nautical miles from the baseline of the territorial sea, in which the coastal country enjoys special authority for economic purposes. — Abbr. EEZ.

EXCLUSIVE EVIDENCE

exclusive evidence. See EVIDENCE.

EXCLUSIVE FRANCHISE

exclusive franchise. See exclusive agency under AGENCY(1).

EXCLUSIVE JURISDICTION

exclusive jurisdiction. See JURISDICTION.

EXCLUSIVE LICENSE

exclusive license. See LICENSE.

EXCLUSIVE LISTING

exclusive listing. See LISTING(1).

EXCLUSIVE OWNERSHIP

exclusive ownership. See FEE SIMPLE.

EXCLUSIVE POSSESSION

exclusive possession. See POSSESSION.

EXCLUSIVE RIGHT OF SALE

exclusive right of sale. The right to sell a principal's products or to act as the seller's real-estate agent to the exclusion of all others, including the owner. — Also termed exclusive right to sell. Cf. exclusive agency under AGENCY(1).

EXCLUSIVE SALE

exclusive sale. See SALE.

EXCLUSIVE USE

exclusive use. See USE(1).

EX COLORE

ex colore (eks k<<schwa>>-lor-ee). [Latin] By color; under color of; under pretense, show, or protection of.

EX COMITATE

ex comitate (eks kom-<<schwa>>-tay-tee). [Latin] Out of comity or courtesy.

EXCOMMENGEMENT

excommengement (eks-k<<schwa>>-menj-m<<schwa>>nt), n. See EXCOMMUNICATION.

EX COMMODATO

ex commodato (eks kom-<<schwa>>-day-toh). [Latin “out of loan”] Hist. (Of a right of action) arising out of a loan.

EXCOMMUNICANT

excommunicant (eks-k<<schwa>>-myoo-ni-k<<schwa>>nt), n. Eccles. law. 1. An excommunicated person. 2. Rare. An excommunicator.

EXCOMMUNICATION

excommunication, n. Eccles. law. A sentence of censure pronounced by a spiritual court for an offense falling under ecclesiastical cognizance; expulsion from religious society or community. • In England, an excommunicated person was formerly subject to various civil disabilities, such as an inability to be a juror, to be a witness in any court, or to sue to recover lands or money due. These penalties were abolished by the Ecclesiastical Courts Act (1813). St. 53 Geo. 3, ch. 127. —

Also termed excommengement. — excommunicate,vb.

“Closely allied to outlawry is excommunication; it is in fact an ecclesiastical outlawry, and, like temporal outlawry, though once it was the law's last and most terrible weapon against the obstinate offender, it is now regarded as a normal process for compelling the appearance in court of those who are accused. Indeed as regards the laity, since the spiritual courts can not direct a seizure of the body, lands, or goods, those courts must, if mere citations fail to produce an appearance, at once have recourse to their last weapon. Then, as ordained by William the Conqueror, the lay power comes to their aid. If the excommunicate does not seek absolution within forty days (this period seems to be fixed already in the twelfth century), the ordinary will signify this to the kind; a writ for the arrest of the offender will be issued, and he will be kept in prison until he makes his submission.” 2 Frederick Pollock & Frederic William Maitland, *History of English Law Before the Time of Edward I* 500 (2d ed. 1899).

EXCOMMUNICATO CAPIENDO

excommunicato capiendo (eks-k<<schwa>>-myoo-ni-kay-toh kap-ee-en-doh). [Latin] Hist. Eccles. law.A writ that, being founded on a bishop's certificate of excommunication, required the sheriff to arrest and imprison the defendant. • The writ issued out of chancery and was returnable to the King's Bench. Cf. DE CONTUMACE CAPIENDO.

EXCOMMUNICATOR

excommunicator. A person who excommunicates.

EXCOMMUNICATO RECAPIENDO

excommunicato recapiendo (eks-k<<schwa>>-myoo-ni-kay-toh ri-kap-ee-en-doh). [Latin] Hist. Eccles. law.A writ commanding that an excommunicant — who had been committed to prison for obstinacy but who was unlawfully freed before agreeing to obey the church's authority — should be found, retaken, and imprisoned again.

EX COMPARATIONE SCRIPTORUM

ex comparatione scriptorum (eks kom-p<<schwa>>-ray-shee-oh-nee skrip-tor-<<schwa>>m). [Latin] By a comparison of writings or handwritings. • This term was formerly used in the law of evidence.

EX CONCESSIS

ex concessis (eks k<<schwa>>n-ses-is). [Latin] From the premises granted; according to what has already been allowed.

EX CONSULTO

ex consulto (eks k<<schwa>>n-s<<schwa>>l-toh). [Latin] With consultation or deliberation.

EX CONTINENTI

ex continenti (eks kon-t<<schwa>>-nen-tl). [Latin] Civil law.Immediately; without any

interval or delay.

EX CONTRACTU

ex contractu (eks k<<schwa>>n-trak-t[y]oo). [Latin "from a contract"] Arising from a contract <action ex contractu>. Cf. EX DELICTO.

EXCULPATE

exculpate (ek-sk<<schwa>>l-payt or ek-sk<<schwa>>l-payt), vb. To free from blame or accusation. Cf. EXONERATE(1). — exculpation (ek-sk<<schwa>>l-pay-sh<<schwa>>n), n. — exculpatory (ek-sk<<schwa>>l-p<<schwa>>-tor-ee), adj.

EXCULPATORY CLAUSE

exculpatory clause. A contractual provision relieving a party from liability resulting from a negligent or wrongful act. • A will or a trust may contain an exculpatory clause purporting to immunize a fiduciary from a breach of duty; the clause may reduce the degree of care and prudence required of the fiduciary. But courts generally find that if an exculpatory clause in a will or trust seeks to confer absolute immunity, it is void as being against public policy. See EXEMPTION CLAUSE. [Cases: Contracts 114. C.J.S. Contracts § 271.]

EXCULPATORY EVIDENCE

exculpatory evidence. See EVIDENCE.

EXCULPATORY-NO DOCTRINE

exculpatory-no doctrine. Criminal law. The principle that a person cannot be charged with making a false statement for falsely denying guilt in response to an investigator's question. • This doctrine is based on the Fifth Amendment right against self-incrimination. But the U.S. Supreme Court has overruled this doctrine in federal law. *Brogan v. United States*, 522 U.S. 398, 118 S.Ct. 805 (1998). [Cases: Fraud 68.10(1).]

EX CURIA

ex curia (eks kyoor-ee-<<schwa>>). [Latin] Out of court; away from the court.

EXCUSABLE

excusable, adj. (Of an illegal act or omission) not punishable under the specific circumstances <excusable neglect>.

EXCUSABLE ASSAULT

excusable assault. See ASSAULT.

EXCUSABLE HOMICIDE

excusable homicide. See HOMICIDE.

EXCUSABLE NEGLIGENCE

excusable neglect. See NEGLECT.

EXCUSATIO

excusatio (ek-skyoo-zay-shee-oh), n. [Latin] Roman & civil law. An excuse or reason that exempts someone from some duty or obligation.

EXCUSATOR

excusator (ek-skyoo-zay-t<<schwa>>r), n. 1. Hist. An excuser. 2. In old German law, a defendant; one who wholly denies the plaintiff's claim.

EXCUSE

excuse (eks-kyoos), n. 1. A reason that justifies an act or omission or that relieves a person of a duty. 2. Criminal law. A defense that arises because the defendant is not blameworthy for having acted in a way that would otherwise be criminal. • The following defenses are the traditional excuses: duress, entrapment, infancy, insanity, and involuntary intoxication. — Also termed legal excuse. Cf. JUSTIFICATION(2). [Cases: Criminal Law 37–38. C.J.S. Criminal Law §§ 49–53, 58.] — excuse (ek-skyooz), vb. — excusatory (ek-skyooz-<<schwa>>-tor-ee), adj.

EXCUSS

excuss (ek-sk<<schwa>>s), vb. To seize and detain by law.

EXCUSSIO

excussio (ek-sk<<schwa>>-s[h]ee-oh), n. [Latin] Roman & civil law. A diligent prosecution of a remedy against a debtor; the exhausting of a remedy against a principal debtor before resorting to a surety.

EX-DATE

ex-date. See EX-DIVIDEND DATE.

EX DEBITO JUSTITIAE

ex debito justitiae (eks deb-i-toh j<<schwa>>-s-tish-ee-ee). [Latin] From or as a debt of justice; in accordance with the requirement of justice; of right; as a matter of right.

EX DEBITO NATURALI

ex debito naturali (eks deb-i-toh nach-<<schwa>>-ray-II). [Law Latin] Scots law. Arising from natural obligation. • The phrase appeared in reference to an obligation that was moral rather than legal.

EX DEFECTU JURIS

ex defectu juris (eks di-fek-t[y]oo joor-is). [Law Latin] Scots law. From a defect in the right. • A seller had to warrant a purchaser against an eviction based on a defect in the seller's own right.

EX DEFECTU NATALIUM

ex defectu natalium (eks di-fek-t[y]oo n<<schwa>>-tay-lee-<<schwa>>m). [Law Latin] Hist. From defect of parentage. • Formerly, this phrase appeared in reference to a basis upon which the court rejected the will of a bastard who died without issue.

EX DEFECTU SANGUINIS

ex defectu sanguinis (eks di-fek-t[y]oo sang-gw<<schwa>>-nis). [Latin] Hist. From failure of blood; for want of issue.

EX DELECTU FAMILIAE

ex delectu familiae (eks di-lek-t[y]oo f<<schwa>>-mil-ee-ee). [Law Latin] Hist. From choice of a certain family. • The phrase appeared in reference to the sovereign's right to bestow honors on those whom he chose.

EX DELIBERATIONE DOMINORUM CONCILII

ex deliberatione Dominorum Concilii (eks di-lib-<<schwa>>-ray-shee-oh-nee dom-<<schwa>>-nor-<<schwa>>m k<<schwa>>n-sil-ee-I). [Law Latin] Hist. After consideration by the Lords of Council.

“Formerly all writs which passed the signet were procured by presentation of a bill (or petition) for such writ. The bill was perused and considered by the Lord Ordinary on the Bills, and if he was satisfied, the bill was passed and the writ issued: the latter bearing the words *ex deliberatione Dominorum Concilii* to signify that the bill had been considered. These words are still appended to almost all writs which pass the signet, but they are now only words of style, since the writs are now passed *periculo petentis* without being submitted to the Lords.” John Trayner, *Trayner's Latin Maxims* 196–97 (4th ed. 1894).

EX DELICTO

ex delicto (eks d<<schwa>>-lik-toh), adj. & adv. [Latin “from a wrong”] 1. Arising from a crime or tort <action *ex delicto*>. • Although *ex delicto* refers most commonly to a tort in modern usage, it referred historically to both torts and crimes. Cf. *IN DELICTO*; *EX CONTRACTU*. 2. Int'l law. Rare. As a consequence of a crime or tort <because they were counterfeit, the goods were seized and condemned *ex delicto*>.

EX DELICTO TRUST

ex delicto trust. See *TRUST*.

EX DEMISSIONE

ex demissione (eks d<<schwa>>-mish-ee-oh-nee). [Latin “upon the demise”] Hist. A phrase forming part of the title of the old action of ejectment. — Abbr. *ex dem*.

EX DIRECTO

ex directo (eks di-rek-toh). [Latin] Directly; immediately.

EX DISTRIBUTION

ex distribution. Without distribution. • Shares are traded ex distribution when they no longer carry the right to receive a distribution to be made to holders. — Abbr. X; XDIS.

EX DIVERSO

ex diverso (eks di-v<<schwa>>r-soh). [Latin] Hist. On the other hand; conversely.

EX DIVIDEND

ex dividend. Without dividend. • Shares are traded ex dividend when the seller, not the purchaser, is entitled to the next dividend payment because it will be made before the stock transfer is completed. The first day on which shares are traded ex dividend, the stock price will drop by an amount usu. approximating the amount of the dividend. — Abbr. XD.; X. Cf. CUM DIVIDEND.

EX-DIVIDEND DATE

ex-dividend date. The date on or after which the buyer of a security does not acquire the right to receive a recently declared dividend. — Also termed ex-date. Cf. DIVIDEND DATE.

EX DOLO MALO

ex dolo malo (eks doh-loh mal-oh). [Latin] Out of fraud; out of deceitful or tortious conduct.

EXEAT

exeat (ek-see-<<schwa>>t), n. 1. Generally, permission to go outside (a place). 2. Permission that a bishop grants to a priest to go out of his diocese. Cf. NE EXEAT(1).

EXECUTE

execute, vb. 1. To perform or complete (a contract or duty) <once the contract was fully executed, the parties owed no further contractual duties to each other>. [Cases: Contracts 6. C.J.S. Contracts § 8.] 2. To change (as a legal interest) from one form to another <the shifting use was executed into a valid legal estate>. 3. To make (a legal document) valid by signing; to bring (a legal document) into its final, legally enforceable form <each party executed the contract without a signature witness>. 4. To put to death, esp. by legal sentence <Johnson was executed shortly after midnight>. [Cases: Sentencing and Punishment 1795. C.J.S. Criminal Law §§ 1591–1592.] 5. To enforce and collect on (a money judgment) <Williams asked the sheriff to execute on the judgment>. [Cases: Execution 1; Federal Civil Procedure 2691. C.J.S. Executions §§ 2, 15.]

EXECUTED

executed, adj. 1. (Of a document) that has been signed <an executed will>. 2. That has been done, given, or performed <executed consideration>.

“[T]he term ‘executed’ is a slippery word. Its use is to be avoided except when accompanied by explanation.... A contract is frequently said to be executed when the document has been signed, or has been signed, sealed, and delivered. Further, by executed contract is frequently meant one that has been fully performed by both parties.” William R. Anson, *Principles of the Law of*

Contract 26 n.* (Arthur L. Corbin ed., 3d Am. ed. 1919).

EXECUTED CONSIDERATION

executed consideration. See CONSIDERATION(1).

EXECUTED CONTRACT

executed contract. See CONTRACT.

EXECUTED COVENANT

executed covenant. See COVENANT(1).

EXECUTED ESTATE**EXECUTED FINE**

executed fine. See FINE(1).

EXECUTED NOTE

executed note. See NOTE(1).

EXECUTED REMAINDER

executed remainder. See vested remainder under REMAINDER.

EXECUTED TRUST

executed trust. See TRUST.

EXECUTED USE

executed use. See USE(4).

EXECUTIO

executio (ek-s<<schwa>>-kyoo-shee-oh), n. [Latin] 1. The performance or completion of a thing; the act of following through on a commitment. 2. The doing of something thoroughly. 3. Management or administration. 4. Hist. Execution; the final process in an action.

EXECUTIO BONORUM

executio bonorum (b<<schwa>>-nor-<<schwa>>m). [Latin] Hist. The management or administration of goods.

EXECUTION

execution, n. 1. The act of carrying out or putting into effect (as a court order) <execution of the court's decree>. [Cases: Federal Civil Procedure 2691.] 2. Validation of a written instrument, such as a contract or will, by fulfilling the necessary legal requirements <delivery of the goods completed the contract's execution>. [Cases: Contracts 34; Sales 61; Vendor and Purchaser 23; Wills 108–129.] 3. Judicial enforcement of a money judgment, usu. by seizing and selling

the judgment debtor's property <even if the plaintiff receives a judgment against the foreign debtor, execution is unlikely>. — Also termed (in Scots law) diligence. [Cases: Execution 1; Federal Civil Procedure 2691.C.J.S. Executions §§ 2, 15.] 4. A court order directing a sheriff or other officer to enforce a judgment, usu. by seizing and selling the judgment debtor's property <the court issued the execution authorizing seizure of the car>. — Also termed writ of execution; judgment execution; general execution. [Cases: Execution 74; Federal Civil Procedure 2691.C.J.S. Executions § 63.]

“A writ of execution is an authorization to an executive officer, issued from a court in which a final judgment has been rendered, for the purpose of carrying such judgment into force and effect. It is founded upon the judgment, must generally be conformed to it in every respect, and the plaintiff is always entitled to it to obtain a satisfaction of his claim, unless his right has been suspended by proceedings in the nature of an appeal or by his own agreement.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 26, at 50 (Henry Winthrop Ballantine ed., 3d ed. 1923).

alias execution. A second execution issued to enforce a judgment not fully satisfied by the original writ. Cf. alias writ under WRIT. [Cases: Execution 99. C.J.S. Executions §§ 96–99.]

body execution. A court order requiring an officer to take a named person into custody, usu. to bring the person before the court to pay a debt; CAPIAS. [Cases: Execution 421; Federal Civil Procedure 2714. C.J.S. Executions § 24.]

close-jail execution. A body execution stating that the person to be arrested should be confined in jail without the privilege of movement about the jailyard. [Cases: Execution 421. C.J.S. Executions § 24.]

dormant execution. An execution authorizing an officer to seize and hold property rather than sell it, until further notice. [Cases: Execution 15, 149. C.J.S. Executions §§ 18, 128–129.]

junior execution. An execution that is subordinate to another execution issued from an earlier judgment against the same debtor. [Cases: Execution 112. C.J.S. Executions §§ 141, 151.]

malicious execution. An abuse of process by which a person, maliciously and without reasonable cause, issues an execution against the property of a judgment debtor. [Cases: Execution 454. C.J.S. Executions § 425.]

special execution. An execution authorizing a judgment to be satisfied from specified property. [Cases: Execution 15, 420.5. C.J.S. Exchanges § 24; Executions §§ 18, 24.]

speedy execution. An execution issuing quickly (esp. by judges at nisi prius) after a trial. [Cases: Execution 15, 75, 222. C.J.S. Executions §§ 18, 74–75, 225.]

5. Criminal law. The carrying out of a death sentence <the Supreme Court stayed the execution>. [Cases: Sentencing and Punishment 1795–1799. C.J.S. Criminal Law §§ 1547–1548, 1591–1592, 1605–1609, 1687.] — execute, vb.

EXECUTION CLAUSE

execution clause. The part of a deed containing the date, seal (if required), and signatures of the grantor, grantor's spouse, and witnesses. [Cases: Deeds 44–53. C.J.S. Deeds §§ 63–73.]

EXECUTION CREDITOR

execution creditor. See CREDITOR.

EXECUTIONE FACIENDA IN WITHERNAMIIUM

executione facienda in withernamium (ek-s<<schwa>>-kyoo-shee-oh-nee fay-shee-en-d<<schwa>> in with-<<schwa>>r-nay-mee-<<schwa>>m). [Latin] Hist. A writ that lay for taking cattle of a person who had taken someone else's cattle out of the county so that the sheriff could not replevy them.

EXECUTIONE JUDICII

executione judicii (ek-s<<schwa>>-kyoo-shee-oh-nee joo-dish-ee-I). [Latin] Hist. A writ directed to a judge of an inferior court to issue execution upon a judgment in that court, or to return some reasonable cause why the judge has delayed execution.

EXECUTIONER

executioner. A person who puts another person to death to carry out a death sentence; a person who carries out capital punishment on the state's behalf.

EXECUTION LIEN

execution lien. See LIEN.

EXÉCUTION PARÉE

exécution parée (eg-zay-koo-syawn pa-ray). [French] French law. A right founded on an act approved and verified before a notary, by which a creditor may immediately — without citation or summons — seize and cause to be sold the debtor's property and keep the proceeds of the sale (to the extent of the indebtedness).

EXECUTION-PROOF

execution-proof. See JUDGMENT-PROOF.

EXECUTION SALE

execution sale. See SALE.

EXECUTIVE

executive, n. 1. The branch of government responsible for effecting and enforcing laws; the person or persons who constitute this branch. • The executive branch is sometimes said to be the residue of all government after subtracting the judicial and legislative branches. — Sometimes also termed executive department. Cf. LEGISLATURE; JUDICIARY(1). [Cases: Constitutional Law 76–80(4); United States 31. C.J.S. Constitutional Law §§ 215–227; United States § 49.]

chief executive.The head of the executive branch of a government, such as the President of the United States. [Cases: United States 26. C.J.S. United States §§ 45–47.]

2. A corporate officer at the upper levels of management. — Also termed executive officer; executive employee. — executive,adj.

EXECUTIVE ADMINISTRATION

executive administration.Collectively, high public officials who administer the chief departments of the government.

EXECUTIVE AGENCY

executive agency.An executive-branch department whose activities are subject to statute and whose contracts are subject to judicial review. • One example is the Army and Air Force Exchange Service. [Cases: Administrative Law and Procedure 301–513; United States 30. C.J.S. Public Administrative Law and Procedure §§ 49–171; United States§ 49.]

EXECUTIVE AGREEMENT

executive agreement.An international agreement entered into by the President, without approval by the Senate, and usu. involving routine diplomatic or military matters. Cf. TREATY(1). [Cases: United States 28. C.J.S. United States § 48.]

EXECUTIVE BOARD

executive board.See BOARD OF DIRECTORS.

EXECUTIVE BRANCH

executive branch.The branch of government charged with administering and carrying out the law; EXECUTIVE(1). Cf. JUDICIAL BRANCH; LEGISLATIVE BRANCH.

EXECUTIVE CLEMENCY

executive clemency.See CLEMENCY.

EXECUTIVE COMMITTEE

executive committee.See COMMITTEE.

EXECUTIVE DEPARTMENT

executive department.See EXECUTIVE(1).

EXECUTIVE DIRECTOR

executive director.A salaried employee who serves as an organization's chief administrative and operating officer and heads its professional staff. — Also termed executive secretary; staff director.

EXECUTIVE EMPLOYEE

executive employee. An employee whose duties include some form of managerial authority and active participation in the control, supervision, and management of the business. — Often shortened to executive.

EXECUTIVE IMMUNITY

executive immunity. See IMMUNITY(1).

EXECUTIVE OFFICER

executive officer. See EXECUTIVE(2).

EXECUTIVE ORDER

executive order. An order issued by or on behalf of the President, usu. intended to direct or instruct the actions of executive agencies or government officials, or to set policies for the executive branch to follow. — Abbr. ex. ord. [Cases: United States 28. C.J.S. United States § 48.]

EXECUTIVE PARDON

executive pardon. See PARDON.

EXECUTIVE POWER

executive power. Constitutional law. The power to see that the laws are duly executed and enforced. • Under federal law, this power is vested in the President; in the states, it is vested in the governors. The President's enumerated powers are found in the U.S. Constitution, art. II, § 2; governors' executive powers are provided for in state constitutions. The other two great powers of government are the legislative power and the judicial power. [Cases: Constitutional Law 76–80(4). C.J.S. Constitutional Law §§ 215–227.]

EXECUTIVE PRIVILEGE

executive privilege. See PRIVILEGE(3).

EXECUTIVE RIGHT

executive right. Oil & gas. The exclusive right to lease specified land or mineral rights. • The executive right is one of the incidents of the mineral interest.

EXECUTIVE SECRETARY

executive secretary. See EXECUTIVE DIRECTOR.

EXECUTIVE SESSION

executive session. See SESSION(1).

EXECUTOR

executor, n. 1. (ek-s<<schwa>>-kyoo-t<<schwa>>r) One who performs or carries out some act. 2. (eg-zek-y<<schwa>>-t<<schwa>>r) A person named by a testator to carry out the

provisions in the testator's will. Cf. ADMINISTRATOR(2). [Cases: Executors and Administrators 14. C.J.S. Executors and Administrators §§ 17–21.] — Abbr. exor.

acting executor. One who assumes the role of executor — usu. temporarily — but is not the legally appointed executor or the executor-in-fact. — Also termed temporary executor. [Cases: Executors and Administrators 22. C.J.S. Executors and Administrators §§ 951–952, 954–956.]

coexecutor. See joint executor.

executor ab episcopo constitutus (ab <<schwa>>-pis-k<<schwa>>-poh kon-sti-t[y]oo-t<<schwa>>s). [Law Latin] Eccles. law. An executor appointed by a bishop; an administrator to an intestate. — Also termed executor dativus.

executor a lege constitutus (ay [or ah] lee-jee kon-sti-t[y]oo-t<<schwa>>s). [Law Latin] Eccles. law. One authorized by law to be an executor; the ordinary of the diocese.

executor a testatore constitutus (ay [or ah] tes-t<<schwa>>-tor-ee kon-sti-t[y]oo-t<<schwa>>s). [Law Latin] Eccles. law. An executor appointed by a testator. — Also termed executor testamentarius.

executor dative. See DATIVE(1).

executor dativus. See executor ab episcopo constitutus.

executor de son tort (d<<schwa>> sawn [or son] tor[t]). [Law French “executor of his own wrong”] A person who, without legal authority, takes on the responsibility to act as an executor or administrator of a decedent's property, usu. to the detriment of the estate's beneficiaries or creditors. [Cases: Executors and Administrators 538–544.]

“Executor de son tort — or, executor of his own wrong. Is he that takes upon him the office of an executor by intrusion, not being so constituted by the testator.” The Pocket Lawyer and Family Conveyancer 98 (3d ed. 1833).

executor lucratus (loo-kray-t<<schwa>>s). An executor who has assets of the testator, the latter having become liable by wrongfully interfering with another's property.

executor testamentarius. See executor a testatore constitutus.

executor to the tenor. Eccles. law. A person who is not named executor in the will but who performs duties similar to those of an executor.

general executor. An executor who has the power to administer a decedent's entire estate until its final settlement.

independent executor. An executor who, unlike an ordinary executor, can administer the estate with very little supervision by the probate court. • Only a few states — mostly in the West and Southwest — allow testators to designate independent executors. But lawyers routinely write wills that relieve a trusted executor from obtaining appraisals, from providing inventories and surety bonds, and from obtaining court approval “to the maximum extent permitted by law.” The Uniform Probate Code endorses independent administration, and it is the usual process unless a

party demands court-supervised administration. — Also termed nonintervention executor.

joint executor. One of two or more persons named in a will as executor of an estate. — Also termed coexecutor. [Cases: Executors and Administrators 123. C.J.S. Executors and Administrators § 961.]

limited executor. An executor whose appointment is restricted in some way, such as time, place, or subject matter.

literary executor. Copyright. A limited-purpose executor appointed to manage copyrighted materials in an estate.

nonintervention executor. See independent executor.

special executor. An executor whose power is limited to a portion of the decedent's estate. [Cases: Executors and Administrators 22. C.J.S. Executors and Administrators §§ 951–952, 954–956.]

substituted executor. An executor appointed to act in the place of an executor who cannot or will not perform the required duties. [Cases: Executors and Administrators 37. C.J.S. Executors and Administrators §§ 935–936, 946.]

temporary executor. See acting executor.

3. (eg-zek-y<<schwa>>-t<<schwa>>r) Patents. One who represents a legally incapacitated inventor. [Cases: Patents 102. C.J.S. Patents § 142.] — executorial, adj. — executorship, n.

EXECUTOR FUND

executor fund. See FUND(1).

EXECUTOR'S BOND

executor's bond. See BOND(2).

EXECUTORY

executory (eg-zek-y<<schwa>>-tor-ee), adj. 1. Taking full effect at a future time <executory judgment>. 2. To be performed at a future time; yet to be completed <executory contract>.

EXECUTORY ACCORD

executory accord. See ACCORD(2).

EXECUTORY BEQUEST

executory bequest. See BEQUEST.

EXECUTORY CONSIDERATION

executory consideration. See CONSIDERATION(1).

EXECUTORY CONTRACT

executory contract. See CONTRACT.

EXECUTORY COVENANT

executory covenant. See COVENANT(1).

EXECUTORY DEVISE

executory devise. See DEVISE.

EXECUTORY INTEREST

executory interest. A future interest, held by a third person, that either cuts off another's interest or begins after the natural termination of a preceding estate. Cf. REMAINDER. [Cases: Estates in Property 1. C.J.S. Estates §§ 2–5, 8, 15–21, 116–128, 137, 243.]

“What is an executory interest? Here is a pretty good definition: An executory interest is any future interest created in a person other than the transferor that is not a remainder. Here are five classic examples of executory interest: (1) O transfers ‘to A for life; then, one day after A's death, to the heirs of A.’ The transfer creates a springing executory interest in those who will be A's heirs. (2) O transfers ‘to A for 200 years if he shall so long live, then to the heirs of A.’ This transfer also creates a springing executory interest in A's prospective heirs. (3) O transfers ‘to A and his heirs five years from the date of this deed.’ A owns a springing executory interest. (4) O, when B is fifteen, transfers ‘to A for life; then no sooner than one day after A's death, to B and his heirs if B ever reaches 21.’ B owns a springing executory interest. (5) O transfers ‘to A and his heirs; but if A marries X, to B and his heirs.’ B owns a shifting executory interest.” Thomas F. Bergin & Paul G. Haskell, Preface to *Estates in Land and Future Interests* 80 (2d ed. 1984).

shifting executory interest. An executory interest that operates in defeasance of an interest created simultaneously in a third person.

springing executory interest. An executory interest that operates in defeasance of an interest left in the transferor.

EXECUTORY JUDGMENT

executory judgment. See JUDGMENT.

EXECUTORY LIMITATION

executory limitation. See LIMITATION.

EXECUTORY PROCESS

executory process. Civil law. 1. A process that can be resorted to either (1) when the right of a creditor arises from an act importing a confession of judgment, and that contains a privilege or mortgage in the creditor's favor, or (2) when the creditor demands the execution of a judgment that has been rendered by a different tribunal. 2. An accelerated procedure, summary in nature, by which the holder of a mortgage or privilege evidenced by a confession of judgment seeks to effect an ex parte seizure and sale of the subject property. [Cases: Chattel Mortgages 269; Mortgages

499. C.J.S. Mortgages §§ 832–833.]

EXECUTORY REMAINDER

executory remainder. See contingent remainder under REMAINDER.

EXECUTORY SALE

executory sale. See SALE.

EXECUTORY TRUST

executory trust. See TRUST.

EXECUTORY UNILATERAL ACCORD

executory unilateral accord. An offer to enter a contract; OFFER(2).

EXECUTORY USE

executory use. See springing use under USE(4).

EXECUTORY WARRANTY

executory warranty. See WARRANTY(3).

EXECUTRESS

executress. See EXECUTRIX.

EXECUTRIX

executrix (eg-zek-y<<schwa>>-triks), n. Archaic. A female executor. — Abbr. exrx. — Also termed executress. Pl. executrixes (eg-zek-y<<schwa>>-trik-s<< schwa>>z), executrices (eg-zek-y<<schwa>>-trI-seez). See EXECUTOR.

EXEDOS

exedos (e-he-thohs), n. See EJIDOS.

EXEMPLAR

exemplar (eg-zem-pl<<schwa>>r or -plahr), n. 1. An ideal or typical example; a standard specimen <handwriting exemplars>. 2. Nontestimonial identification evidence, such as fingerprints, voiceprints, and DNA samples. See VOICE EXEMPLAR . [Cases: Criminal Law 404.85; Evidence 197. C.J.S. Criminal Law § 853; Evidence §§ 800, 802.]

EXEMPLARY

exemplary, adj. 1. Serving as an ideal example; commendable <exemplary behavior>. 2. Serving as a warning or deterrent; admonitory <exemplary damages>.

EXEMPLARY DAMAGES

exemplary damages. See punitive damages under DAMAGES.

EXEMPLARY SUBSTITUTION

exemplary substitution. See SUBSTITUTION(5).

EXEMPLIFICATION

exemplification, n. An official transcript of a public record, authenticated as a true copy for use as evidence. [Cases: Criminal Law 430; Evidence 338. C.J.S. Criminal Law §§ 1025, 1029–1031; Evidence §§ 879–880, 893, 895.] — exemplify, vb.

EXEMPLIFICATIONE

exemplificatione (eg-zem-pl<<schwa>>-f<<schwa>>-kay-shee-oh-nee). [Latin] A writ granted for the exemplification or transcript of an original record.

EXEMPLIFIED COPY

exemplified copy. See certified copy under COPY.

EXEMPLI GRATIA

exempli gratia (eg-zem-plIgray-shee-<<schwa>> or ek-sem-plee grah-tee-<< schwa>>). [Latin] For example; for instance. — Abbr. e.g. or (rarely) ex. gr.

EXEMPLUM

exemplum (eg-zem-pl<<schwa>>m), n. [Latin] Civil law. A copy; a written authorized copy.

EXEMPT

exempt, adj. Free or released from a duty or liability to which others are held <persons exempt from military service> <property exempt from sequestration>. — exempt, vb. — exemptive, adj.

EXEMPT INCOME

exempt income. See INCOME.

EXEMPTION

exemption. 1. Freedom from a duty, liability, or other requirement; an exception. See IMMUNITY; EXCEPTION(2). 2. A privilege given to a judgment debtor by law, allowing the debtor to retain certain property without liability. [Cases: Exemptions 1; Homestead 1.] 3. Tax. An amount allowed as a deduction from adjusted gross income, used to determine taxable income. Cf. DEDUCTION(2). [Cases: Internal Revenue 3294; Taxation 1031.1, 1048. C.J.S. Internal Revenue §§ 330, 335; Taxation §§ 1736–1739.]

dependency exemption. A tax exemption granted to an individual taxpayer for each dependent whose gross income is less than the exemption amount and for each child who is younger than 19 or, if a student, younger than 24. [Cases: Internal Revenue 3294; Taxation 1031.1, 1048. C.J.S. Internal Revenue §§ 330, 335; Taxation §§ 1736–1739.]

personal exemption. An amount allowed as a deduction from an individual taxpayer's adjusted gross income. [Cases: Internal Revenue 3295; Taxation 1031.1, 1048. C.J.S. Taxation §§ 1736–1739.]

EXEMPTION CLAUSE

exemption clause. A contractual provision providing that a party will not be liable for damages for which that party would otherwise have ordinarily been liable. Cf. EXCEPTION CLAUSE; EXCULPATORY CLAUSE; INDEMNITY CLAUSE. [Cases: Contracts 114. C.J.S. Contracts § 271.]

“An exemption clause may take many forms, but all such clauses have one thing in common in that they exempt a party from a liability which he would have borne had it not been for the clause. In some cases an exemption clause merely relieves a party from certain purely contractual obligations, for example, the duties of a seller in a contract of sale regarding the quality and fitness of the goods. In other cases exemption clauses go further and protect the party not merely from contractual liability but even from liability which would otherwise have arisen in tort. For example, a shipping company's ticket may exempt the company from liability to the passenger for any injuries, however caused. Now if the passenger is injured as a result of the negligence of the company's employees, that would, in the normal way, give rise to an action in tort for negligence, quite apart from the contract.” P.S. Atiyah, *An Introduction to the Law of Contract* 167 (3d ed. 1981).

EXEMPTION EQUIVALENT

exemption equivalent. The maximum value of assets that one can transfer to another before incurring a federal gift and estate tax.

EXEMPTION LAW

exemption law. A law describing what property of a debtor cannot be attached by a judgment creditor or trustee in bankruptcy to satisfy a debt. See EXEMPT PROPERTY(1). [Cases: Exemptions 1; Homestead 1.]

EX EMPTO

ex empto (eks emp-toh). [Latin] Roman & civil law. Out of purchase; founded on purchase.

EXEMPT ORGANIZATION

exempt organization. An organization that is either partially or completely exempt from federal income taxation. See CHARITABLE ORGANIZATION. [Cases: Internal Revenue 4045–4071. C.J.S. Internal Revenue §§ 327, 462–474, 670, 798.]

EXEMPT PROPERTY

exempt property. 1. A debtor's holdings and possessions that, by law, a creditor cannot attach to satisfy a debt. • All the property that creditors may lawfully reach is known as nonexempt property. Many states provide a homestead exemption that excludes a person's house and

household items, up to a certain amount, from the liens of most creditors. The purpose of the exemption is to prevent debtors from becoming destitute. See HOMESTEAD. Cf. NONEXEMPT PROPERTY. [Cases: Exemptions 1; Homestead 1.] 2. Personal property that a surviving spouse is automatically entitled to receive from the decedent's estate. [Cases: Executors and Administrators 53. C.J.S. Executors and Administrators § 124.]

EXEMPT SECURITY

exempt security. See SECURITY.

EXEMPT TRANSACTION

exempt transaction. A sale that falls outside the scope of a certain statute, such as the Securities Act of 1933 or the Securities Exchange Act of 1934. [Cases: Securities Regulation 18.10–18.30. C.J.S. Securities Regulation §§ 62–69, 73.]

EXENNIUM

exennium (eg-zen-ee-<<schwa>>m), n. [Latin] Hist. A gift, esp. one given at the new year.

EX EO QUOD PLERUMQUE FIT

ex eo quod plerumque fit (eks ee-oh kwod pli-r<<schwa>>m-kwee fit). [Latin] Hist. From that which generally happens.

EXEQUATUR

exequatur (ek-s<<schwa>>-kway-t<<schwa>>r). [Latin “let it be executed”] A written official recognition and authorization of a consular officer, issued by the government to which the officer is accredited.

“Consuls on exhibiting proof of their appointment, if not objectionable persons, receive an exequatur, or permission to discharge their functions within the limits prescribed, which permission can be withdrawn for any misconduct.” Theodore D. Woolsey, *Introduction to the Study of International Law* § 100, at 162–63 (5th ed. 1878).

EX EQUITATE

ex equitate (eks ek-w<<schwa>>-tay-tee). [Latin] Hist. According to equitable rules.

EXERCISE

exercise, vb. 1. To make use of; to put into action <exercise the right to vote>. 2. To implement the terms of; to execute <exercise the option to buy the commodities>. — exercise, n.

EXERCISE CLAUSE

Exercise Clause. See FREE EXERCISE CLAUSE.

EXERCISE OF JUDGMENT

exercise of judgment. The use of sound discretion — that is, discretion exercised with regard

to what is right and equitable rather than arbitrarily or willfully.

EXERCISE PRICE

exercise price. See strike price under PRICE.

EXERCISE VALUE

exercise value. The value to an optionholder of using the option.

EXERCITALIS

exercitalis (eg-z<<schwa>>r-si-tay-lis), n. [Latin] A soldier; a vassal.

EXERCITOR

exercitor (eg-z<<schwa>>r-si-tor), n. [Latin “an exercisor”] Civil law. The person to whom the profits of a ship temporarily belong, whether that person is the owner, charterer, or mortgagee. — Also termed exercitor maris; exercitor navis. Cf. SHIP'S HUSBAND.

EXERCITORIA ACTIO

exercitoria actio. See actio exercitoria under ACTIO.

EXERCITORIAL POWER

exercitorial power (eg-z<<schwa>>r-si-tor-ee-<<schwa>>l). The trust given to a shipmaster.

EXERCITOR MARIS

exercitor maris (eg-z<<schwa>>r-si-t<<schwa>>r mar-is). See EXERCITOR.

EXERCITOR NAVIS

exercitor navis (eg-z<<schwa>>r-si-t<<schwa>>r nay-vis). See EXERCITOR.

EXERCITUALE

exercituale (eg-z<<schwa>>r-sich-oo-ay-lee), n. [Law Latin, fr. Latin exercitus “an army”] Hist. A heriot paid only in arms, horses, or military accouterments. See HERIOT.

EXERCITUS

exercitus (eg-z<<schwa>>r-si-t<<schwa>>s), n. [Latin “an army”] Hist. An army; an armed force. • Of indefinite number, the term was applied on various occasions to a gathering of 42 armed men, of 35, or even of 4.

EX EVENTU

ex eventu (eks i-ven-t[y]oo). [Latin] Hist. After the event; following the occurrence.

EX FACIE

ex facie (eks fay-shee-ee or -shee or -sh<<schwa>>). [Latin] Archaic. On the face of it; evidently; apparently. • The phrase typically referred to a defect appearing from the document

itself, without further inquiry.

EX FACTO

ex facto (eks fak-toh). [Latin “from a fact”] From or in consequence of a fact or action; actually; DE FACTO.

EXFESTUCARE

exfestucare (eks-fes-t<<schwa>>-kair-ee), vb.[Latin] Hist. To abdicate or resign; to surrender (an estate, office, or dignity) by the symbolic delivery of a staff or rod (festuca) to the transferee.

EX FICTIONE JURIS

ex fitione juris (eks fik-shee-oh-nee joor-is). [Latin] By a fiction of law.

EX FIGURA VERBORUM

ex figura verborum (eks fi-gyuur-<<schwa>> v<<schwa>>r-bor-<<schwa>>m). [Law Latin] Hist. By the form of the words used. • A defective deed could not be fixed merely by calling it something else.

EX FRAUDE CREDITORUM

ex fraude creditorum (eks fraw-dee kred-i-tor-<<schwa>>m). [Law Latin] Hist. On the ground of fraud toward creditors. • A preference could be set aside if it were made within 60 days of the bankruptcy filing.

EXFREDIARE

exfrediare (eks-free-dee-air-ee), vb.[Latin] To break the peace; to commit open violence.

EX. GR.

ex. gr.abbr.EXEMPLI GRATIA.

EX GRATIA

ex gratia (eks gray-shee-<<schwa>> orgrah-tee-<<schwa>>). [Latin “by favor”] As a favor; not legally necessary. — Also termed a gratia.

EX GRATIA PAYMENT

ex gratia payment.A payment not legally required; esp., an insurance payment not required to be made under an insurance policy. [Cases: Insurance 3615(1).]

EX GRAVI QUERELA

ex gravi querela (eks gray-vI kw<<schwa>>-ree-l<<schwa>>). [Latin “from or on the grievous complaint”] Hist. A writ that lay for a person to whom any lands or tenements in fee were devised by will (within any city, town, or borough in which lands were devisable by custom), against an heir of the devisor who entered and detained them from the devisee. • The writ was abolished by the Real Property Limitation Act (1833). St. 3 & 4 Will. 4, ch. 27, § 36.

EXHAUSTED BALLOT

exhausted ballot. See exhausted vote under VOTE(1).

EXHAUSTED COMBINATION

exhausted combination. See old combination under COMBINATION.

EXHAUSTED-COMBINATION REJECTION

exhausted-combination rejection. See old-combination rejection under REJECTION.

EXHAUSTED VOTE

exhausted vote. See VOTE(1).

EXHAUSTION OF REMEDIES

exhaustion of remedies. The doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. • The doctrine's purpose is to maintain comity between the courts and administrative agencies and to ensure that courts will not be burdened by cases in which judicial relief is unnecessary. — Also termed exhaustion of administrative remedies. [Cases: Administrative Law and Procedure 229. C.J.S. Public Administrative Law and Procedure §§ 38–42.]

“The traditional rule can ... be fairly simply stated. A litigant must normally exhaust state ‘legislative’ or ‘administrative’ remedies before challenging the state action in federal court. He or she need not normally exhaust state ‘judicial’ remedies. The rationale for this distinction is that until the administrative process is complete, it cannot be certain that the party will need judicial relief, but when the case becomes appropriate for judicial determination, he or she may choose whether to resort to a state or federal court for that relief. The word ‘normally’ is required in both branches of the rule.” Charles Alan Wright, *The Law of Federal Courts* § 49, at 313 (5th ed. 1994).

vicarious exhaustion of remedies. The rule that if one member of a class satisfies a requirement to exhaust administrative remedies, that is enough for all others similarly situated to be considered as having exhausted the remedies. — Often shortened to vicarious exhaustion. [Cases: Administrative Law 229.]

EXHAUSTION-OF-RIGHTS DOCTRINE

exhaustion-of-rights doctrine. Int'l law. The principle that once the owner of an intellectual-property right has placed a product covered by that right into the marketplace, the right to control how the product is resold within that internal market is lost. • Within a common market, such as the European Union, the doctrine also applies to the import and export of the goods between member nations. Cf. PATENT-EXHAUSTION DOCTRINE.

EXHAUSTION OF STATE REMEDIES

exhaustion of state remedies. The doctrine that an available state remedy must be exhausted in certain types of cases before a party can gain access to a federal court. • For example, a state

prisoner must exhaust all state remedies before a federal court will hear a petition for habeas corpus. [Cases: Habeas Corpus 319–352.]

EXHIBERE

exhibere (ek-s<<schwa>>-beer-ee), vb.[Latin] 1. To present (a tangible thing) so that it may be handled. 2. To appear personally to defend against an action at law.

EXHIBIT

exhibit,n.1. A document, record, or other tangible object formally introduced as evidence in court. [Cases: Criminal Law 404.5; Evidence 188. C.J.S. Criminal Law § 846; Evidence §§ 789–791, 794, 796.] 2. A document attached to and made part of a pleading, motion, contract, or other instrument.

exhibit,vb. Archaic. To bring a lawsuit by filing (a bill).

EXHIBITIO BILLAE

exhibitio billae (ek-s<<schwa>>-bish-ee-oh bil-ee). [Latin] Hist. The commencement of a suit by presenting or exhibiting a bill to the court.

EXHIBITION

exhibition.Scots law. An action to compel the production or delivery of documents.

EXHIBITIONISM

exhibitionism,n. The indecent display of one's body. — exhibitionist,adj. & n.

EXHIBITION VALUE

exhibition value.In the motion-picture industry, the minimum receipts that distributors expect to realize from showing a particular film. — Also termed minimum sale; price expectancy.

EXHIBIT LIST

exhibit list.1. A pretrial filing that identifies by number and description the exhibits that a party intends to offer into evidence at trial. • Courts often require the exchange of exhibit lists before trial so that evidentiary disputes can be resolved with minimal disruption in the course of a jury trial. [Cases: Federal Civil Procedure 1928, 1941; Pretrial Procedure 744, 752. C.J.S. Trial §§ 51, 59.] 2. A document prepared during trial by the clerk or a courtroom deputy to identify by number and description the exhibits that the parties have entered into evidence.

EXHIBITORY INTERDICT

exhibitory interdict.See INTERDICT(1).

EXHUMATION

exhumation (eks-hyoo-may-sh<<schwa>>n or eg-zyoo-), n. The removal from the earth of something buried, esp. a human corpse; disinterment. [Cases: Dead Bodies 5. C.J.S. Dead

Bodies §§ 7–11, 22–26.]

EX HYPOTHESI

ex hypothesi (eks hI-poth-*<<schwa>>-sI*). [Latin] Hypothetically; by hypothesis; on the assumption *<conviction for a felony is ex hypothesi impossible in the case of suicide>*.

EXIDOS

exidos (e-hee-thohs), n. See EJIDOS.

EXIGENCY

exigency (ek-s*<<schwa>>-j<<schwa>>n-see*), n. A state of urgency; a situation requiring immediate action. — Also termed exigence.

EXIGENDARY

exigendary (ek-s*<<schwa>>-jen-d<<schwa>>-ree*), n. See EXIGENTER.

EXIGENT

exigent,adj. Requiring immediate action or aid; urgent *<exigent circumstances>*.

exigent (ek-s*<<schwa>>-j<<schwa>>nt*), n. Hist. A judicial writ employed in the process of outlawry, commanding the sheriff to demand the defendant's appearance, from county court to county court, until he was outlawed — or, if the defendant appeared, to take him before the court to answer the plaintiff's action. See EXIGI FACIAS.

EXIGENT CIRCUMSTANCES

exigent circumstances. See CIRCUMSTANCE.

EXIGENTER

exigenter (ek-s*<<schwa>>-jen-t<<schwa>>r*), n. Hist. An officer of the court of common pleas responsible for preparing exigents and proclamations in the process of outlawry. • This office was abolished in 1837 by the Superior Courts (Officers) Act, St.7 Will. 4, and 1 Vict., ch. 30. — Also termed exigendary.

EXIGENT LIST

exigent list. A list of cases set down for hearing upon various incidental and ancillary motions and rules.

EXIGENT SEARCH

exigent search. See SEARCH.

EXIGIBLE

exigible (ek-s*<<schwa>>-j<<schwa>>-b<<schwa>>l*), adj. Requirable; demandable (as a debt). Cf. PRESTABLE.

EXIGIBLE DEBT

exigible debt. See DEBT.

EXIGI FACIAS

exigi facias (ek-s<<schwa>>-jlfay-shee-<<schwa>>s). [Latin] That you cause to be demanded. • These were the emphatic words of the Latin form of the writ of exigent; the phrase was sometimes used as the name of the writ. See EXIGENT.

EXILE

exile, n. 1. Expulsion from a country, esp. from the country of one's origin or longtime residence; banishment.

forced exile. Compelled removal or banishment from one's native country.

2. A person who has been banished. — exile, vb.

EXILIUM

exilium (eg-zil-ee-<<schwa>>m), n. [Latin “exile”] Hist. 1. Exile; the act of driving away or despoiling. 2. A type of waste consisting in the driving away of an estate's bondservants and tenants by demolishing their homes or by enfranchising the bondservants and then turning them out of their homes.

EX-IM BANK

Ex-Im Bank. See EXPORT-IMPORT BANK OF THE UNITED STATES.

EX INCOMMODO

ex incommodo (eks in-kom-<<schwa>>-doh). [Latin] Hist. On account of inconvenience. • An argument based solely on inconvenience was usu. rejected.

EX INCONTINENTI

ex incontinenti (eks in-kon-t<<schwa>>-nen-tI). [Latin] Hist. Without delay; in a summary manner.

EX INDUSTRIA

ex industria (eks in-d<<schwa>>s-tree-<<schwa>>). [Latin] With contrivance or deliberation; designedly; on purpose.

EX INGENIO

ex ingenio (eks in-jen-ee-oh). [Latin] Hist. According to the judgment of any one.

EX INSTRUMENTIS DE NOVO REPERTIS

ex instrumentis de novo repertis (eks in-str<<schwa>>-men-tis dee noh-voh rep-<<schwa>>r-tis). [Law Latin] Hist. On account of documents newly or recently found. • The

phrase appeared in reference to a basis for altering a decree. See INSTRUMENTA NOVITER REPERTA.

EX INTEGRO

ex integro (eks in-t<<schwa>>-groh). [Latin] Anew; afresh.

EX INTERVALLO

ex intervallo (eks in-t<<schwa>>r-val-oh). [Latin] Hist. At some interval.

EXISTENT CORNER

existent corner. See CORNER.

EXISTIMATIO

existimatio (eg-zis-t<<schwa>>-may-shee-oh), n. [Latin] Roman law. 1. The civil reputation belonging to a Roman citizen of unimpeached dignity or character; the highest standing of a Roman citizen. 2. The decision or award of an arbiter. Pl. existimationes (eg-zis-t<<schwa>>-may-shee-oh-nee-z).

EXIT

exit, n. 1. A way out. See EGRESS. 2. In a docket entry, an issuance of something (as a writ or process). • For example, exit attachment denotes that a writ of attachment has been issued in the case. — exit, vb.

EXITUS

exitus (ek-si-t<<schwa>>s), n. [Latin] Hist. 1. Children; offspring. 2. The rents, issues, and profits of lands and tenements. 3. An export duty. 4. The conclusion of a pleading.

EX JURE

ex jure (eks juur-ee). [Latin] Of or by legal right.

EX JURE NATURAE

ex jure naturae (eks joor-ee n<<schwa>>-t[y]oor-ee). [Latin] Hist. According to the law of nature.

EX JURE REPRESENTATIONIS

ex jure representationis (eks joor-ee rep-ri-zen-tay-shee-oh-nis). [Law Latin] Hist. According to the law of representation.

EX JUSTA CAUSA

ex justa causa (eks j<<schwa>>s-t<<schwa>> kaw-z<<schwa>>). [Latin] From a just or lawful cause; by a just or legal title.

EX JUSTITIA

ex justitia (eks j<<schwa>>s-tish-ee-<<schwa>>). [Latin] From justice; as a matter of justice.

EXLEGALITAS

exlegalitas (eks-l<<schwa>>-gay-l<<schwa>>-tas), n.[Law Latin] Hist. 1.Outlawry; outside the law's protection. 2. A person who is prosecuted as an outlaw.

EXLEGARE

exlegare (eks-l<<schwa>>-gair-ee), vb. [Law Latin] Hist. To outlaw; to deprive of the benefit and protection of the law.

EX LEGE

ex lege (eks lee-jee orlay-gay). [Latin] By virtue of law; as a matter of law <property forfeited ex lege>.

“Antecedent rights ‘in personam’ ... either arise or do not arise out of a contract.... In the latter case, since they arise from facts of various kinds to which it pleases the Law to affix similar results, we shall describe them as rights ‘ex lege’; and it will be convenient to consider the rights which arise thus variously before treating of those which arise solely from contract.... The rights which we describe as arising ‘ex lege’ were described by the Roman lawyers as arising ‘quasi ex contractu,’ and more simply, ‘ex variis causarum figuris.’ ” Thomas E. Holland, *The Elements of Jurisprudence* 246–47 (13th ed. 1924).

EX LEGIBUS

ex legibus (eks lee-j<<schwa>>-b<<schwa>>s). [Latin “according to the laws”] Hist. To be interpreted according to both the letter and the spirit of the law.

EXLEX

exlex (eks-leks), n.[Law Latin] Hist. An outlaw; one who is outside the law's protection.

EX LICENTIA REGIS

ex licentia regis (eks li-sen-shee-<<schwa>> ree-jis). [Latin] By the king's license.

EX LOCATO

ex locato (eks loh-kay-toh). [Latin] Roman law. From lease; out of letting. • This term referred to an action or right of action arising out of a contract of hiring, bailment for reward, or employment. See *actio locati* under *ACTIO*.

EX MALEFICIO

ex maleficio (eks mal-<<schwa>>-fish-ee-oh), adv.[Latin] By malfeasance.

ex maleficio,adj.[Latin] Tortious.

EX MALITIA

ex malitia (eks m<<schwa>>-lish-ee-<<schwa>>). [Latin] Hist. From malice; maliciously. •

In the law of defamation, the term refers to a publication that is false and without legal excuse.

EX MALO REGIMINE

ex malo regimine (eks mal-oh ri-jim-<<schwa>>-nee). [Latin] Hist. From bad treatment.

EX MANDATO

ex mandato (eks man-day-toh). [Latin] Hist. According to the mandate; arising from a mandate.

EX MERO MOTU

ex mero motu (eks meer-oh moh-tyoo). [Latin “on his mere motion”] Hist. Voluntarily; without suggestion or influence from another person. • The phrase was formerly sometimes used in reference to a court, as an equivalent of sua sponte or on its own motion. See SUA SPONTE.

EX METU CARCERIS

ex metu carceris (eks mee-t[y]oo kahr-s<<schwa>>r-is). [Latin] Hist. From fear of imprisonment.

EX MORA

ex mora (eks mor-<<schwa>>). [Latin] Civil law. From or in consequence of delay. • Interest is allowed ex mora — that is, if there has been delay in repaying borrowed money.

EX MORA DEBITORIS

ex mora debitoris (eks mor-<<schwa>> deb-i-tor-is). [Latin] Hist. On account of the debtor's delay. • The phrase appeared in reference to a basis for charging interest on a debt.

EX MORE

ex more (eks mor-ee). [Latin] According to custom.

EX MUTUO

ex mutuo (eks myoo-choo-oh). [Latin] From or out of loan. • In old English law, a debt was said to arise ex mutuo when one lent another anything that consisted in number, weight, or measure.

EX NATURA

ex natura (eks n<<schwa>>-t[y]oor-<<schwa>>). [Latin] Hist. Naturally; according to nature.

EX NATURA FEUDI

ex natura feudi (eks n<<schwa>>-t[y]oor-<<schwa>> fyoo-dĪ). [Law Latin] Hist. According to the nature of the feudal right.

EX NATURALI JURE

ex naturali jure (eks nach-<<schwa>>-ray-IIjoor-ee), adv. [Latin] By or according to natural law <ex naturali jure some time may be needed after a declaration of war before the war begins>. See NATURAL LAW.

EX NATURA REI

ex natura rei (eks n<<schwa>>-t[y]oor-<<schwa>> ree-I). [Latin] Hist. According to the nature of the thing (or transaction).

EX NECESSITATE

ex necessitate (eks n<<schwa>>-ses-i-tay-tee). [Latin] Of or from necessity.

ex necessitate legis (eks n<<schwa>>-ses-i-tay-tee lee-jis). From or by necessity of law.

ex necessitate rei (eks n<<schwa>>-ses-i-tay-tee ree-I). From the necessity or urgency of the thing or case.

EX NIHILO

ex nihilo (eks nI-hi-loh). [Latin] From nothing.

EX NOBILI OFFICIO

ex nobili officio (eks nob-i-II <<schwa>>-fish-ee-oh). [Latin “by virtue of its noble office”] Scots law. (Of a judicial act) done as a matter of equity. See NOBILI OFFICIUM.

EX OFFICIO

ex officio (eks <<schwa>>-fish-ee-oh), adv. & adj. [Latin] By virtue or because of an office; by virtue of the authority implied by office. • The term is often misused as a synonym for “nonvoting.” Some meetings mistakenly label their regularly invited guests as “ex officio members” when in fact they are not members at all; others mistakenly refer to the nonvoting members as “ex officio members” even though some nonvoting members are present only in an individual capacity and not by virtue of office, or even though some voting members also serve ex officio. But an ex officio member is a voting member unless the applicable governing document provides otherwise.

“Frequently boards include ex-officio members — that is, persons who are members of the board by virtue of an office or committee chairmanship held in the society, or in the parent state or national society or federation or some allied group; or — sometimes in boards outside of organized societies — by virtue of a public office. In the executive board of a society, if the ex-officio member of the board is under the authority of the society (that is, if he is a member, officer, or employee of the society), there is no distinction between him and the other board members. If the ex-officio member is not under the authority of the society, he has all the privileges of board membership, including the right to make motions and to vote, but none of the obligations — just as in a case, for example, where the governor of a state is ex officio a trustee of a private academy.” Henry M. Robert, *Robert's Rules of Order Newly Revised* § 49, at 466 (10th ed. 2000).

EX OFFICIO INFORMATION

ex officio information. English law. A criminal information filed by the attorney general ex officio on behalf of the Crown, in the Court of King's Bench, for offenses more immediately affecting the government, as distinguished from informations in which the Crown is the nominal prosecutor.

EX OFFICIO JUSTICE

ex officio justice. A judge who serves on a commission or board only because the law requires the presence of a judge rather than because the judge was selected for the position.

EX OFFICIO MEMBER

ex officio member. See member ex officio under MEMBER.

EX OFFICIO SERVICE

ex officio service (eks <<schwa>>-fish-ee-oh). A service that the law imposes on an official by virtue of the office held, such as a local sheriff's duty to perform marriage ceremonies. [Cases: Officers and Public Employees 110. C.J.S. Officers and Public Employees §§ 234–245.]

EXOGENOUS INSEMINATION

exogenous insemination. See artificial insemination by donor under ARTIFICIAL INSEMINATION.

EXOINE

exoine (e-soyn), n. [French “excuse”] French law. An act or instrument in writing containing the reasons why a party in a civil suit, or a person accused, has not appeared after being summoned. See ESSOIN.

EXONERATE

exonerate (eg-zon-<<schwa>>-rayt), vb. 1. To free from responsibility < exonerate from the payment of the debt>. Cf. EXCULPATE. 2. To free from encumbrances < exonerate the property from the mortgage lien>. — exonerative (eg-zon-<<schwa>>-r-ay-tiv or -<<schwa>>-tiv), adj.

EXONERATION

exoneration (eg-zon-<<schwa>>-ray-sh<<schwa>>n). 1. The removal of a burden, charge, responsibility, or duty. 2. The right to be reimbursed by reason of having paid money that another person should have paid. 3. The equitable right of a surety — confirmed by statute in many states — to proceed to compel the principal debtor to satisfy the obligation, as when, even though the surety would have a right of reimbursement, it would be inequitable for the surety to be compelled to perform if the principal debtor can satisfy the obligation. • When a testator leaves a gift of property encumbered by a mortgage or lien, the doctrine of exoneration operates to satisfy the encumbrance from the general assets of the estate. Many states have abandoned the common-law rule in favor of exoneration. See EQUITY OF EXONERATION; QUIA TIMET. [Cases: Principal

and Surety 179. C.J.S. Principal and Surety § 227.]

EXONERATION, SUIT FOR

exoneration, suit for. See SUIT FOR EXONERATION.

EXONERATIONE SECTAE

exoneratione sectae (eg-zon-<<schwa>>-ray-shee-oh-nee sek-tee). [Latin] Hist. A writ that lay for the Crown's ward, to be free from all suit during wardship.

EXONERATIONE SECTAE AD CURIAM BARON

exoneratione sectae ad curiam baron (eg-zon-<<schwa>>-ray-shee-oh-nee sek-tee ad kyoor-ee-<<schwa>>m bar-<<schwa>>n). [Latin "by exoneration of the suit to the lord's court"] Hist. A writ issued by the guardian of the Crown's ward, forbidding the sheriff or steward of a particular court from distraining or taking other action against the ward.

EXONERATIVE FACT

exonerative fact. See FACT.

EXONERETUR

exoneretur (eg-zon-<<schwa>>-ree-t<<schwa>>r). Hist. [Latin "let him be relieved or discharged"] An entry made on a bailpiece whereby a surety is relieved or discharged from further obligation when the condition is fulfilled.

EXOR

exor. abbr. EXECUTOR.

EX. ORD

ex. ord. (often cap.) abbr. EXECUTIVE ORDER.

EXORDIUM

exordium (eg-zor-dee-<<schwa>>m). [Latin] An introduction in a discourse or writing, esp. in a will. • In a will, the exordium usu. contains statements of the testator's name and capacity to make the will. — Also termed exordium clause; introductory clause.

EX PARITATE RATIONIS

ex paritate rationis (eks par-<<schwa>>-tay-tee ray-shee-oh-nis or rash-ee-). [Law Latin] Hist. By a parity of reasoning.

EX PARTE

ex parte (eks pah-tee), adv. [Latin "from the part"] On or from one party only, usu. without notice to or argument from the adverse party <the judge conducted the hearing ex parte>.

ex parte, adj. Done or made at the instance and for the benefit of one party only, and without

notice to, or argument by, any person adversely interested; of or relating to court action taken by one party without notice to the other, usu. for temporary or emergency relief <an ex parte hearing> <an ex parte injunction>. • Despite the traditional one-sidedness of ex parte matters, some courts now require notice to the opposition before what they call an “ex parte hearing.” — Sometimes spelled exparte. — ex parte,adv.

EX PARTE APPLICATION

ex parte application. See ex parte motion under MOTION(1).

EX PARTE COMMUNICATION

ex parte communication. See COMMUNICATION.

EX PARTE DIVORCE

ex parte divorce. See DIVORCE.

EX PARTE HEARING

ex parte hearing. See ex parte proceeding under PROCEEDING.

EX PARTE INJUNCTION

ex parte injunction. See INJUNCTION.

EX PARTE MATERNA

ex parte materna (eks pah-tee m<<schwa>>-t<<schwa>>r-n<<schwa>>). [Latin] On the mother's side; of the maternal line.

EX PARTE MOTION

ex parte motion. See MOTION(1).

EX PARTE ORDER

ex parte order. See ORDER(2).

EX PARTE PATERNA

ex parte paterna (eks pah-tee p<<schwa>>-t<<schwa>>r-n<<schwa>>). [Latin] On the father's side; of the paternal line.

EX PARTE PROCEEDING

ex parte proceeding. See PROCEEDING.

EX PARTE QUAYLE ACTION

Ex parte Quayle action. See QUAYLE ACTION.

EX PARTE REEXAMINATION

ex parte reexamination. See REEXAMINATION(2).

EXPATRIATE

expatriate (eks-pay-tree-it), n. An expatriated person; esp., a person who lives permanently in a foreign country.

expatriate (eks-pay-tree-ayt), vb. 1. To withdraw (oneself) from residence in or allegiance to one's native country; to leave one's home country to live elsewhere. [Cases: Citizens 13. C.J.S. Citizens §§ 14, 20.] 2. To banish or exile (a person). — expatriation, n.

EXPECTANCY

expectancy, n. 1. Property. An estate with a reversion, a remainder, or an executory interest. [Cases: Estates in Property 1; Remainders 1; Reversions 1. C.J.S. Estates §§ 2–5, 8, 15–21, 70–71, 77, 79, 81–82, 103–104, 116–128, 137, 243.] 2. Wills & estates. The possibility that an heir apparent, an heir presumptive, or a presumptive next of kin will acquire property by devolution on intestacy, or the possibility that a presumptive beneficiary will acquire property by will. [Cases: Descent and Distribution 68; Wills 7. C.J.S. Descent and Distribution § 68; Wills §§ 58, 63–64, 68.] 3. Insurance. The probable number of years in one's life. See LIFE EXPECTANCY.

EXPECTANCY DAMAGES

expectancy damages. See expectation damages under DAMAGES.

EXPECTANCY TABLE

expectancy table. See ACTUARIAL TABLE.

EXPECTANT

expectant, adj. Having a relation to, or being dependent on, a contingency; CONTINGENT.

EXPECTANT BENEFICIARY

expectant beneficiary. See expectant distributee under DISTRIBUTE.

EXPECTANT DISTRIBUTE

expectant distributee. See DISTRIBUTE.

EXPECTANT ESTATE**EXPECTANT HEIR**

expectant heir. See HEIR.

EXPECTANT RIGHT

expectant right. See RIGHT.

EXPECTATION

expectation, n. 1. The act of looking forward; anticipation. 2. A basis on which something is expected to happen; esp., the prospect of receiving wealth, honors, or the like.

“[E]xpectation does not in itself amount to intention. An operating surgeon may know very well that his patient will probably die of the operation; yet he does not intend the fatal consequence which he expects. He intends the recovery which he hopes for but does not expect.”
John Salmond, *Jurisprudence* 379–80 (Glanville L. Williams ed., 10th ed. 1947).

EXPECTATION DAMAGES

expectation damages. See DAMAGES.

EXPECTATION INTEREST

expectation interest. See INTEREST(2).

EXPECTATION OF LIFE

expectation of life. See LIFE EXPECTANCY.

EXPECTATION OF PRIVACY

expectation of privacy. A belief in the existence of the right to be free of governmental intrusion in regard to a particular place or thing. • To suppress a search on privacy grounds, a defendant must show the existence of the expectation and that the expectation was reasonable. [Cases: Searches and Seizures 26. C.J.S. Searches and Seizures §§ 20–24, 27–28, 30–35, 38, 41, 66, 72.]

EXPECTED/INTENDED EXCLUSION

expected/intended exclusion. See EXCLUSION(3).

EXPEDIENTE

expediente (ek-sped-ee-en-tee), n. [Spanish] Spanish law. 1. The papers or documents constituting a grant or title to land from the government; esp., a historical record of proceedings relating to a grant of land by the sovereign. 2. A legal or administrative case file; esp., the official record of all filings and orders in a lawsuit. 3. A maneuver intended to achieve a particular result.

EXPEDIMENT

expediment (ek-sped-*<<schwa>>*-m*<<schwa>>*nt), n. The whole of one's goods and chattels.

EXPEDITED PROCEEDING

expedited proceeding. See SHOW-CAUSE PROCEEDING.

EXPEDITIO BREVIS

expeditio brevis (ek-sp*<<schwa>>*-dish-ee-oh bree-v*<<schwa>>*s). [Latin] Archaic. The service of a writ.

EXPEL

expel, vb. To drive out or away; to eject, esp. with force. See EJECT; EVICT.

EXPENDITOR

expenditor (ek-spen-d<<schwa>>-t<<schwa>>r). One who expends or disburses certain taxes; a paymaster.

EXPENDITURE

expenditure. 1. The act or process of paying out; disbursement. 2. A sum paid out.

EXPENSAE LITIS

expensae litis (ek-spen-see II-tis). [Latin] Costs or expenses of a lawsuit, for which a successful party is sometimes reimbursed.

EXPENSE

expense, n. An expenditure of money, time, labor, or resources to accomplish a result; esp., a business expenditure chargeable against revenue for a specific period. Cf. COST(1). — expense, vb.

accrued expense. An expense incurred but not yet paid.

administrative expense. See general administrative expense.

business expense. An expense incurred to operate and promote a business; esp., an expenditure made to further the business in the taxable year in which the expense is incurred. • Most business expenses — unlike personal expenses — are tax-deductible. [Cases: Internal Revenue 3314.1–3377.]

capital expense. An expense made by a business to provide a long-term benefit; a capital expenditure. • A capital expense is not deductible, but it can be used for depreciation or amortization. [Cases: Internal Revenue 3319. C.J.S. Internal Revenue §§ 33, 152, 271–273.]

capitalized expense. An amortized expense.

current expense. See operating expense.

deferred expense. A cost incurred by a business when the business expects to benefit from that cost over a period beyond the current year. • An example is a prepaid subscription to a business periodical the cost of which will be recognized as an expense over a multiyear subscription period. [Cases: Internal Revenue 3372.]

educational expense. A deductible expense incurred either to maintain or improve an existing job skill or to meet a legally imposed job requirement. [Cases: Internal Revenue 3357. C.J.S. Internal Revenue §§ 166, 198.]

entertainment expense. An expense incurred while providing entertainment relating directly to or associated with a business purpose. • Entertainment expenses are partially tax-deductible. [Cases: Internal Revenue 3338. C.J.S. Internal Revenue §§ 167, 276–277.]

extraordinary expense. An unusual or infrequent expense, such as a write-off of goodwill or a

large judgment. • As used in a constitutional provision authorizing a state to incur extraordinary expenses, the term denotes an expense for the general welfare compelled by an unforeseen condition such as a natural disaster or war. — Also termed extraordinary item.

fixed expense. See fixed cost under COST.

funeral expense. (usu. pl.) An expense necessarily and reasonably incurred in procuring the burial, cremation, or other disposition of a corpse, including the funeral or other ceremonial rite, a casket and vault, a monument or tombstone, a burial plot and its care, and a visitation (or wake). [Cases: Cemeteries 17–18; Dead Bodies 2. C.J.S. Cemeteries §§ 26–27, 29; Dead Bodies § 4.]

general administrative expense. (usu. pl.) An expense incurred in running a business, as distinguished from an expense incurred in manufacturing or selling; overhead. • Examples include executive and clerical salaries, rent, utilities, and legal and accounting services. — Also termed administrative expense; general expense. — Abbr. G & A.

medical expense. 1. An expense for medical treatment or healthcare, such as drug costs and health-insurance premiums. • Medical expenses are tax-deductible to the extent that the amounts (less insurance reimbursements) exceed a certain percentage of adjusted gross income. [Cases: Internal Revenue 3366. C.J.S. Internal Revenue §§ 165, 201–203.] 2. (usu. pl.) In civil litigation, any one of many possible medical costs that the plaintiff has sustained because of the defendant's allegedly wrongful act, including charges for visits to physicians' offices, medical procedures, hospital bills, medicine, and recuperative therapy, needed in the past and in the future. — Often shortened (in pl.) to medicals.

moving expense. An expense incurred in changing one's residence. • If incurred for business reasons (as when one's job requires relocation), most moving expenses are tax-deductible. [Cases: Internal Revenue 3367. C.J.S. Internal Revenue § 205.]

operating expense. An expense incurred in running a business and producing output. — Also termed current expense.

ordinary and necessary expense. An expense that is normal or usual and helpful or appropriate for the operation of a particular trade or business and that is paid or incurred during the taxable year. • Ordinary and necessary expenses are tax-deductible. — Also termed ordinary and necessary business expense. [Cases: Internal Revenue 3318. C.J.S. Internal Revenue §§ 150, 152, 163, 184.]

organizational expense. An expense incurred while setting up a corporation or other entity.

out-of-pocket expense. An expense paid from one's own funds.

prepaid expense. An expense (such as rent, interest, or insurance) that is paid before the due date or before a service is rendered.

travel expense. An expense (such as for meals, lodging, and transportation) incurred while away from home in the pursuit of a trade or business. See TAX HOME. [Cases: Internal Revenue 3339. C.J.S. Internal Revenue §§ 156, 163, 176, 183, 204.]

EXPENSE LOADING

expense loading. See **LOADING**.

EXPENSE RATIO

expense ratio. Accounting. The proportion or ratio of expenses to income.

EXPENSES OF ADMINISTRATION

expenses of administration. Expenses incurred by a decedent's representatives in administering the estate. [Cases: Executors and Administrators 108. C.J.S. Executors and Administrators § 237.]

EXPENSES OF RECEIVERSHIP

expenses of receivership. Expenses incurred by a receiver in conducting the business, including rent and fees incurred by the receiver's counsel and by any master, appraiser, and auditor. [Cases: Receivers 154. C.J.S. Receivers §§ 291, 321–327, 329–331, 333–345.]

EXPENSE STOP

expense stop. A lease provision establishing the maximum expenses to be paid by the landlord, beyond which the tenant must bear all remaining expenses. [Cases: Landlord and Tenant 39. C.J.S. Landlord and Tenant § 234.]

EXPENSILATIO

expensilatio (ek-spen-sI-lay-shee-oh), n. [Latin] Roman law. An entry to the debit of one party in the account book of another party, esp. as part of a literal contract. See **literal contract** (1) under **CONTRACT**. Pl. **expensilationes** (ek-spen-sI-lay-shee-oh-nee-z).

EXPENSIS MILITUM NON LEVANDIS

expensis militum non levandis (ek-spen-sis mi-lit-*<<schwa>>*m non l*<<schwa>>*-van-dis). [Latin] Hist. A writ to prohibit the sheriff from levying any allowance for knights of the shire on persons who held lands in ancient demesne. See **ancient demesne** under **DEMESNE**.

EXPERIENCE RATING

experience rating. Insurance. A method of determining the amount of the premium by analyzing the insured's loss record over time to assess (1) the risk that covered events will occur, and (2) the amount of probable damages if they do. [Cases: Insurance 1542(2). C.J.S. Insurance § 66.]

EXPERIMENTAL USE

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

EXPERIMENTAL-USE DEFENSE

experimental-use defense. Patents. A defense to a claim of patent infringement raised when

the construction and use of the patented invention was for scientific purposes only. • While still recognized, this defense is narrowly construed and today may apply only to research that tests the inventor's claims. 35 USCA § 271(e)(1). [Cases: Patents 260. C.J.S. Patents § 406.]

EXPERIMENTAL-USE EXCEPTION

experimental-use exception. Patents. An exception to the public-use statutory bar, whereby an inventor is allowed to make public use of an invention for more than one year when that use is necessary to test and improve the invention. [Cases: Patents 75. C.J.S. Patents §§ 107–109.]

EXPERT

expert, n. A person who, through education or experience, has developed skill or knowledge in a particular subject, so that he or she may form an opinion that will assist the fact-finder. Fed. R. Evid. 702. See DAUBERT TEST. [Cases: Criminal Law 478–480; Evidence 535–546. C.J.S. Criminal Law §§ 1070–1071; Evidence §§ 521, 523–527, 599–600, 612–617, 619–625, 628–630, 632, 634–638, 644, 649–653, 656–660, 666–668, 670–671, 673–678, 680–682, 685–686, 688.] — expertise (ek-sp<<schwa>>r-teez), n.

consulting expert. An expert who, though retained by a party, is not expected to be called as a witness at trial. • A consulting expert's opinions are generally exempt from the scope of discovery. — Also termed nontestifying expert. Fed. R. Civ. P. 26(b)(4)(B). [Cases: Federal Civil Procedure 1274; Pretrial Procedure 39.]

impartial expert. An expert who is appointed by the court to present an unbiased opinion. — Also termed court-appointed expert. Fed. R. Evid. 706. [Cases: Federal Civil Procedure 1951; Trial 18. C.J.S. Trial §§ 91–92.]

testifying expert. An expert who is identified by a party as a potential witness at trial. • As a part of initial disclosures in federal court, a party must provide to all other parties a wide range of information about a testifying expert's qualifications and opinion, including all information that the witness considered in forming the opinion. Fed. R. Civ. P. 26(a)(2)(B). [Cases: Federal Civil Procedure 1274; Pretrial Procedure 39.]

EXPERT EVIDENCE

expert evidence. See EVIDENCE.

EXPERT-RELIANCE MATERIALS

expert-reliance materials. Facts, documents, and other sources that provide data or information to an expert witness. — Often shortened to reliance materials.

EXPERT TESTIMONY

expert testimony. See expert evidence under EVIDENCE.

EXPERT WITNESS

expert witness. See WITNESS.

EXPERT-WITNESS FEE

expert-witness fee. See FEE(1).

EX PIETATE

ex pietate (eks pI-⟨schwa⟩-tay-tee). [Latin] Hist. From natural affection and duty.

EXPILARE

expilare (eks-p⟨schwa⟩-lair-ee), vb. [Latin] Roman law. In the law of inheritance, to spoil; to rob; to plunder. See CRIMEN EXPILATAE HEREDITATIS.

EXPILATIO

expilatio (eks-p⟨schwa⟩-lay-shee-oh), n. [Latin] Roman law. The offense of unlawfully appropriating goods belonging to a succession. • This offense was not technically theft (furtum) because the property belonged to neither the decedent nor an heir, since the latter had not yet taken possession. Pl. expilationes (eks-p⟨schwa⟩-lay-shee-oh-neeZ).

EXPILATOR

expilator (eks-p⟨schwa⟩-lay-t⟨schwa⟩r), n. [Latin] Roman law. A robber; a spoiler or plunderer. See EXPILATIO.

EXPIRATION

expiration, n. A coming to an end; esp., a formal termination on a closing date <expiration of the insurance policy>. — expire, vb.

EXPIRATION DATE

expiration date. The date on which an offer, option, or the like ceases to exist.

EXPLANATORY-PHRASE RULE

explanatory-phrase rule. Trademarks. The principle that a senior user of a family-name trademark is entitled to a judicial remedy for unfair competition if the same family name appears on competing goods or services, the remedy being that the junior user must include on signs, labels, and advertisements an explanation that the company is not affiliated with the senior user's company. • The rule resolves two conflicting principles: (1) everyone has the right to use a family name in business, and (2) no one may use a family name in a way that unfairly hurts someone else's business.

EXPLECIA

explecia (ek-splee-shee-⟨schwa⟩). [Law Latin] See EXPLETA.

EXPLEES

explees (eks-pleez). See ESPLEES.

EXPLETA

expleta (ek-splee-t<<schwa>>), n. pl.[Law Latin] Hist. The rents and profits of an estate. — Also termed expletia; explecia.

EXPLICATIO

explicatio (eks-pl<<schwa>>-kay-shee-oh), n.[Law Latin] Civil law. The fourth pleading in an action, consisting of the plaintiff's response to the defendant's rejoinder. • This is the civil-law equivalent of the common-law surrejoinder.

EXPLOITATION

exploitation,n. The act of taking advantage of something; esp., the act of taking unjust advantage of another for one's own benefit. See SEXUAL EXPLOITATION . — exploit,vb. — exploitative,adj.

EXPLORATION MANAGER

exploration manager.See LAND MANAGER.

EXPORT

export,n.1. A product or service created in one country and transported to another.

domestic export.A product originally grown or manufactured in the United States, as distinguished from a product originally imported into the United States and then exported.

2. The process of transporting products or services to another country. Cf. IMPORT(1), (2).

export,vb. 1. To send or carry abroad. 2. To send, take, or carry (a good or commodity) out of the country; to transport (merchandise) from one country to another in the course of trade. 3. To carry out or convey (goods) by sea.

EXPORTATION

exportation. The act of sending or carrying goods and merchandise from one country to another.

EXPORT CLAUSE

Export Clause.See IMPORT-EXPORT CLAUSE.

EXPORT DECLARATION

export declaration.A document — required by federal law — containing details of an export shipment.

EXPORT DRAFT

export draft.See DRAFT.

EXPORT-IMPORT BANK OF THE UNITED STATES

Export-Import Bank of the United States.A federally chartered bank that finances the export

of goods and services by direct lending or by issuing guarantees and insurance so that private banks can extend credit. • The bank was organized by Executive Order 6581 of 2 Feb. 1934. It became independent in 1945.12 USCA §§ 635 et seq. — Often shortened to Ex-Im Bank.

EXPORT LETTER OF CREDIT

export letter of credit.See LETTER OF CREDIT.

EXPORT QUOTA

export quota.See QUOTA.

EXPORT TAX

export tax.See TAX.

EXPOSÉ

exposé (ek-spoh-zay), n.[French] 1. A statement or account; an explanation. • In diplomatic language, the term describes a written explanation of the reasons for a certain act or course of conduct. 2. Exposure of discreditable matter.

EXPOSITIO

expositio (eks-p<<schwa>>-zish-ee-oh), n.[Latin] An explanation or interpretation; an exposition.

EXPOSITION DE PART

exposition de part (eks-poh-zee-syawn d<<schwa>> pahr). [French] French law. The abandonment, in either a public or a private place, of a child that is unable to take care of itself.

EXPOSITORY JURISPRUDENCE

expository jurisprudence.See JURISPRUDENCE.

EXPOSITORY STATUTE

expository statute.See declaratory statute under STATUTE.

EX POST

ex post,adj.[Latin “from after”] Based on knowledge and fact; viewed after the fact, in hindsight; objective; retrospective. Cf. EX ANTE.

EX POST FACTO

ex post facto (eks pohst fak-toh), adv.[Latin “from a thing done afterward”] After the fact; retroactively.

ex post facto,adj. Done or made after the fact; having retroactive force or effect.

EX POST FACTO CLAUSE

Ex Post Facto Clause. One of two clauses in the U.S. Constitution forbidding the enactment of ex post facto laws. U.S. Const. art. I, § 9, cl. 3; art. I, § 10, cl. 1. [Cases: Constitutional Law 197–203. C.J.S. Constitutional Law §§ 409–428.]

EX POST FACTO LAW

ex post facto law. A law that impermissibly applies retroactively, esp. in a way that negatively affects a person's rights, as by criminalizing an action that was legal when it was committed. • Ex post facto criminal laws are prohibited by the U.S. Constitution. But retrospective civil laws may be allowed. See **RETROACTIVE LAW**. [Cases: Constitutional Law 197–203. C.J.S. Constitutional Law §§ 409–428.]

EXPOSURE

exposure. The amount of liability or other risk to which a person is subject < the client wanted to know its exposure before it made a settlement offer>.

dangerous exposure. Maritime law. Exposure that is reasonably foreseeable in the ordinary chances, mistakes, or hazards of navigation.

EXPOSURE OF PERSON

exposure of person. See **INDECENT EXPOSURE**.

EXPOSURE THEORY

exposure theory. Insurance. A theory of coverage providing that an insurer must cover a loss if the insurance was in effect when the claimant was exposed to the product that caused the injury. Cf. **MANIFESTATION THEORY**; **ACTUAL-INJURY TRIGGER** ; **TRIPLE TRIGGER**. [Cases: Insurance 2265. C.J.S. Insurance §§ 429–430.]

EXPRESS

express, adj. Clearly and unmistakably communicated; directly stated. Cf. **IMPLIED**. — **expressly, adv.**

EXPRESS ABANDONMENT

express abandonment. See **ABANDONMENT(9)**.

EXPRESS ABROGATION

express abrogation. The repeal of a law or provision by a later one that refers directly to it; abrogation by express provision or enactment.

EXPRESS ACCEPTANCE

express acceptance. See **ACCEPTANCE(4)**.

EXPRESS ACTIVE TRUST

express active trust. See active trust under **TRUST**.

EXPRESS ACTUAL KNOWLEDGE

express actual knowledge. See actual knowledge under KNOWLEDGE.

EXPRESS AGENCY

express agency. See AGENCY(1).

EXPRESS AIDER

express aider. See AIDER BY SUBSEQUENT PLEADING.

EXPRESS AMNESTY

express amnesty. See AMNESTY.

EXPRESS ASSENT

express assent. See ASSENT.

EXPRESS ASSUMPSIT

express assumpsit. See special assumpsit under ASSUMPSIT.

EXPRESS AUTHORITY

express authority. See AUTHORITY(1).

EXPRESS COLOR

express color. See COLOR.

EXPRESS CONDITION

express condition. See CONDITION(2).

EXPRESS CONSENT

express consent. See CONSENT(1).

EXPRESS CONSIDERATION

express consideration. See CONSIDERATION(1).

EXPRESS CONTRACT

express contract. See CONTRACT.

EXPRESS COVENANT

express covenant. See COVENANT(1).

EXPRESS DEDICATION

express dedication. See DEDICATION.

EXPRESS DISSATISFACTION

express dissatisfaction. Wills & estates. A beneficiary's contesting of a will or objecting to any provision of the will in a probate proceeding.

EXPRESSED

expressed, adj. Declared in direct terms; stated in words; not left to inference or implication.

EXPRESSIO FALSI

expressio falsi (eks-pres[h]-ee-oh fal-slorfawl-sI). [Latin] Hist. A false statement. • Such a statement might result in rescission of a contract. Cf. ALLEGATIO FALSI.

EXPRESSION FREEDOM OF

expression, freedom of. See FREEDOM OF EXPRESSION.

EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS

expressio unius est exclusio alterius (ek-spres[h]-ee-oh yoo-nI-<<schwa>>s est eks-kloo-zhee-oh al-t<<schwa>>-rI-<<schwa>>s). [Law Latin] A canon of construction holding that to express or include one thing implies the exclusion of the other, or of the alternative. • For example, the rule that “each citizen is entitled to vote” implies that noncitizens are not entitled to vote. — Also termed inclusio unius est exclusio alterius; *expressum facit cessare tacitum*. Cf. EJUSDEM GENERIS; NOSCITUR A SOCIIS; RULE OF RANK. [Cases: Contracts 152; Statutes 195. C.J.S. Contracts §§ 307, 318–322, 327, 331; Statutes § 323.]

“Several Latin maxims masquerade as rules of interpretation while doing nothing more than describing results reached by other means. The best example is probably *expressio unius est exclusio alterius*, which is a rather elaborate, mysterious sounding, and anachronistic way of describing the negative implication. Far from being a rule, it is not even lexicographically accurate, because it is simply not true, generally, that the mere express conferral of a right or privilege in one kind of situation implies the denial of the equivalent right or privilege in other kinds. Sometimes it does and sometimes it does not, and whether it does or does not depends on the particular circumstances of context. Without contextual support, therefore, there is not even a mild presumption here. Accordingly, the maxim is at best a description, after the fact, of what the court has discovered from context.” Reed Dickerson, *The Interpretation and Application of Statutes* 234–35 (1975).

“The canon *expressio unius est exclusio alterius* is ... based on the assumption of legislative omniscience, because it would make sense only if all omissions in legislative drafting were deliberate. Although this canon seemed dead for a while, it has been resurrected by the Supreme Court to provide a basis for refusing to create private remedies for certain statutory violations. Its recent disparagement by a unanimous Court [in *Herman & MacLean v. Huddleston*, 459 U.S. 375, 386 n.23, 103 S.Ct. 683, 690 n. 23 (1983)] puts its future in some doubt but more likely confirms that judicial use of canons of construction is opportunistic.” Richard A. Posner, *The Federal Courts: Crisis and Reform* 282 (1985).

EXPRESSIVE ASSOCIATION, FREEDOM OF

expressive association, freedom of. See FREEDOM OF ASSOCIATION.

EXPRESSIVE CRIME

expressive crime. See CRIME.

EXPRESS MALICE

express malice. See MALICE.

EXPRESS NOTICE

express notice. See NOTICE.

EXPRESS OBLIGATION

express obligation. See conventional obligation under OBLIGATION.

EXPRESS PERMISSION

express permission. See PERMISSION.

EXPRESS POWER

express power. See enumerated power under POWER(3).

EXPRESS PRIVATE PASSIVE TRUST

express private passive trust. See TRUST.

EXPRESS REPEAL

express repeal. See REPEAL.

EXPRESS REPUBLICATION

express republication. A testator's repeating of the acts essential to a will's valid execution, with the avowed intent of republishing the will. See REPUBLICATION(2). [Cases: Wills 197, 199. C.J.S. Wills §§ 429, 437-440.]

EXPRESS TRUST

express trust. See TRUST.

EXPRESSUM FACIT CESSARE TACITUM

expressum facit cessare tacitum. See EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS.

EXPRESS WAIVER

express waiver. See WAIVER(1).

EXPRESS WARRANTY

express warranty. See WARRANTY(2).

EXPROMISSIO

expromissio (eks-pr<<schwa>>-mis[h]-ee-oh), n. Roman law. A type of novation by which a creditor accepts a new debtor in place of a former one, who is then released.

EXPROMISSOR

expromissor (eks-pr<<schwa>>-mis-<<schwa>>r), n. Roman law. One who assumes another's debt and becomes solely liable for it, by a stipulation with the creditor.

EXPROMITTERE

expromittere (eks-pr<<schwa>>-mit-<<schwa>>-ree), vb. Roman law. To undertake for another with the view of becoming liable in the other's place.

EX PROPOSITO

ex proposito (eks proh-poz-<<schwa>>-toh). [Latin] Hist. Intentionally; by design.

EXPROPRIATION

expropriation, n. 1. A governmental taking or modification of an individual's property rights, esp. by eminent domain; CONDEMNATION(2). — Also termed (in England) compulsory purchase; (in Scotland) compulsory surrender. Cf. APPROPRIATION. [Cases: Eminent Domain 2. C.J.S. Eminent Domain §§ 6–8, 13, 82–83, 87–88, 106–107.] 2. A voluntary surrender of rights or claims; the act of renouncing or divesting oneself of something previously claimed as one's own. — expropriate, vb. — expropriator, n.

EX PROPRIO MOTU

ex proprio motu (eks proh-pree-oh moh-tyoo). [Latin] Of one's own accord.

EX PROPRIO VIGORE

ex proprio vigore (eks proh-pree-oh vi-gor-ee). [Latin] By their or its own force.

EX PROVISIONE HOMINIS

ex provisione hominis (eks pr<<schwa>>-vizh-ee-oh-nee hom-<<schwa>>-nis). [Latin] By the provision of man; by the limitation of the party, as distinguished from the disposition of the law.

EX PROVISIONE MARITI

ex provisione mariti (eks pr<<schwa>>-vizh-ee-oh-nee m<<schwa>>-ri-tformar-<<schwa>>-tl). [Latin] From the provision of the husband.

EXPULSION

expulsion, n. An ejection or banishment, either through depriving a person of a benefit or by forcibly evicting a person. — expulsive, adj.

EXPUNCTION OF RECORD

expunction of record. See EXPUNGEMENT OF RECORD.

EXPUNGE

expunge (ek-sp<<schwa>>nj), vb. 1. To erase or destroy <the trustee wrongfully expunged the creditor's claim against the debtor>. 2. Parliamentary law. To declare (a vote or other action) null and outside the record, so that it is noted in the original record as expunged, and redacted from all future copies. — Also termed rescind and expunge; rescind and expunge from the minutes; rescind and expunge from the record. — expungement (ek-sp<<schwa>>nj-m<<schwa>>nt), expunction (ek-sp<<schwa>>ngk-sh<<schwa>>n), n.

“Where it is desired not only to rescind an action but to express very strong disapproval, legislative bodies have voted to rescind the objectionable action and expunge it from the record. When a record has been expunged, the chief legislative officer should cross out the words or draw a line around them in the original minutes and write across them the words, ‘Expunged by order of the senate (or house),’ giving the date of the order. This statement should be signed by the chief legislative officer. The word ‘expunged’ must not be so blotted as not to be readable, as otherwise it would be impossible to determine whether more was expunged than ordered. When the minutes are printed or published, the expunged portion is omitted.” National Conference of State Legislatures, *Mason's Manual of Legislative Procedure* § 444, at 296–97 (2000).

EXPUNGEMENT OF RECORD

expungement of record. The removal of a conviction (esp. for a first offense) from a person's criminal record. — Also termed expunction of record; erasure of record. [Cases: Criminal Law 1226(3).]

EXPURGATION

expurgation (ek-sp<<schwa>>r-gay-sh<<schwa>>n), n. The act or practice of purging or cleansing, as by publishing a book without its obscene passages. — expurgate (eks-p<<schwa>>r-gayt), vb. — expurgator (eks-p<<schwa>>r-gay-t<<schwa>>r), n.

EX QUASI CONTRACTU

ex quasi contractu (eks kway-zI k<<schwa>>n-trak-t[y]oo). [Latin] From quasi-contract.

EX REL

ex rel. abbr. [Latin ex relatione “by or on the relation of”] On the relation or information of. • A suit ex rel. is typically brought by the government upon the application of a private party (called a relator) who is interested in the matter. See RELATOR(1).

EX RE NATA

ex re nata (eks ree nay-t<<schwa>>). [Latin] According to a case that has arisen.

EX RIGHTS

ex rights, adv. Without rights. • Shares are traded ex rights when the value of the subscription

privilege has been deducted, giving the purchaser no right to buy shares of a new stock issue. — Abbr. X; XR. — Also termed rights off.

EX-RIGHTS DATE

ex-rights date. The date on which a share of common stock no longer offers privilege subscription rights.

EX RIGORE JURIS

ex rigore juris (eks ri-gor-ee joor-is). [Latin] According to the rigor or strictness of the law; in strictness of law.

EXROGARE

exrogare (eks-r<<schwa>>-gair-ee), vb. [Latin] See ABROGARE.

EXRX

exrx.abbr.EXECUTRIX.

EX SCRIPTIS OLIM VISIS

ex scriptis olim visis (eks skrip-tis oh-l<<schwa>>m vl-zis or -sis). [Latin “from writings formerly seen”] A method of handwriting proof available when a witness has seen other documents purporting to be in the party's handwriting and either has had further correspondence with the party about the documents' subject matter or has had some other type of communication with the party that would lead to a reasonable presumption that the documents were in the party's handwriting.

EX SHIP

ex ship. Of or referring to a shipment of goods for which the liability or risk of loss passes to the buyer once the goods leave the ship.

EX SOLEMNITATE

ex solemnitate (eks s<<schwa>>-lem-ni-tay-tee). [Latin] Hist. On account of its being required as a solemnity. Cf. DE SOLEMNITATE.

EX STATUTO

ex statuto (eks st<<schwa>>-tyoo-toh). [Latin] According to the statute.

EX STIPULATU ACTIO

ex stipulatu actio (eks stip-y<<schwa>>-lay-t[y]oo ak-shee-oh). [Latin] Roman & civil law. An action on a stipulation; an action given to recover marriage portions.

EX SUA NATURA

ex sua natura (eks s[y]oo-<<schwa>> n<<schwa>>-t[y]oor-<<schwa>>). [Latin] Hist. In its own nature (or character).

EX TEMPORE

ex tempore (eks tem-p<<schwa>>-ree), adv.[Latin "out of time"] 1. By lapse of time. 2. Without any preparation; extemporaneously.

EXTEND DEBATE

extend debate.Parliamentary law. To cancel or relax an otherwise applicable limit on debate. — Also termed extend the limits of debate. See DEBATE. Cf. CLOSE DEBATE; LIMIT DEBATE.

EXTENDED-COVERAGE CLAUSE

extended-coverage clause.Insurance. A policy provision that insures against hazards beyond those covered (or excluded) in the basic policy. [Cases: Insurance 2662. C.J.S. Insurance §§ 928, 1049, 1673.]

EXTENDED DEBATE

extended debate.See DEBATE.

EXTENDED FAMILY

extended family.See FAMILY.

EXTENDED FIRST MORTGAGE

extended first mortgage.See wraparound mortgage under MORTGAGE.

EXTENDED INSURANCE

extended insurance.See INSURANCE.

EXTENDED POLICY

extended policy.See INSURANCE POLICY.

EXTENDED SERVICE CONTRACT

extended service contract.See extended warranty under WARRANTY(2).

EXTENDED SERVICE WARRANTY

extended service warranty.See extended warranty under WARRANTY(2).

EXTENDED-TERM INSURANCE

extended-term insurance.See INSURANCE.

EXTENDED WARRANTY

extended warranty.See WARRANTY(2).

EXTENDI FACIAS

extendi facias (ek-sten-difay-shee-*<<schwa>>*s). [Latin “you are to cause to be executed”]
See EXTENT(3).

EXTEND THE LIMITS OF DEBATE

extend the limits of debate. See EXTEND DEBATE.

EXTENSION

extension, n. 1. The continuation of the same contract for a specified period. Cf. RENEWAL(3). [Cases: Contracts 242. C.J.S. Contracts § 407.] 2. Patents. A continuation of the life of a patent for an additional statutorily allowed period. [Cases: Patents 133. C.J.S. Patents §§ 234–235.] 3. Tax. A period of additional time to file an income-tax return beyond its due date. 4. A period of additional time to take an action, make a decision, accept an offer, or complete a task. [Cases: Internal Revenue 4474; Taxation 1079, 1313. C.J.S. Internal Revenue § 633; Taxation §§ 1699, 1758, 2038.] — extend, vb.

EXTENSION AGREEMENT

extension agreement. An agreement providing additional time for the basic agreement to be performed. [Cases: Contracts 242. C.J.S. Contracts § 407.]

EXTENSIVE INTERPRETATION

extensive interpretation. See INTERPRETATION.

EXTENSORES

extensores (ek-sten-sor-eez), n. pl. Hist. Officers appointed to appraise and divide or apportion land; extenders or appraisers.

EXTENT

extent. Hist. 1. A seizure of property in execution of a writ. 2. A writ issued by the Exchequer to recover a debt owed to the Crown, under which the debtor's lands, goods, or body could all be seized to secure payment. — Also termed writ of extent; extent in chief. 3. A writ giving a creditor temporary possession of the debtor's property (esp. land). — Also termed *extendi facias*.

EXTENTA MANERII

extenta manerii (ek-sten-t*<<schwa>>* m*<<schwa>>*-neer-ee-I). [Latin “the extent of a manor”] An English statute (4 Edw., St. 1) directing the making of a survey of a manor and all its appendages.

EXTENT IN AID

extent in aid. Hist. A writ that a Crown debtor could obtain against a person indebted to the Crown debtor so that the Crown debtor could satisfy the debt to the Crown. • This writ, having been much abused because of some peculiar privileges that Crown debtors enjoyed, was abolished in 1947 by the Crown Proceedings Act.

EXTENT IN CHIEF

extent in chief. See **EXTENT(2)**.

EXTENUATE

extenuate (ek-sten-yoo-ayt), vb. To make less severe; to mitigate.

EXTENUATING CIRCUMSTANCE

extenuating circumstance. See mitigating circumstance under **CIRCUMSTANCE**.

EXTENUATION

extenuation (ek-sten-yoo-ay-sh<<schwa>>n), n. The act or fact of making the commission of a crime or tort less severe.

EXTERN

extern. See **CLERK(4)**.

EXTERNAL ACT

external act. See **ACT**.

EXTERNALITY

externality. (usu. pl.) A social or monetary consequence or side effect of one's economic activity, causing another to benefit without paying or to suffer without compensation. — Also termed spillover; neighborhood effect.

negative externality. An externality that is detrimental to another, such as water pollution created by a nearby factory.

positive externality. An externality that benefits another, such as the advantage received by a neighborhood when a homeowner attractively landscapes the property.

EXTERNAL OBSOLESCENCE

external obsolescence. See economic obsolescence under **OBSOLESCENCE**.

EXTERNAL SOVEREIGNTY

external sovereignty. See **SOVEREIGNTY(3)**.

EXTERRITORIAL

extraterritorial. See **EXTRATERRITORIAL**.

EXTERRITORIALITY

extraterritoriality. See **EXTRATERRITORIALITY**.

EXTERUS

exterus (ek-st<<schwa>>r-<<schwa>>s), n.[Latin] A foreigner or alien; one born abroad.

EX TESTAMENTO

ex testamento (eks tes-t<<schwa>>-men-toh), adv.[Latin] By, from, or under a will or testament <succession ex testamento is the mode of devolution that the property of deceased persons ought primarily to follow>. Cf. AB INTESTATO .

EXTINCT

extinct,adj.1. No longer in existence or use. 2. (Of a debt) lacking a claimant.

EXTINCTIVE FACT

extinctive fact.See divestitive fact under FACT.

EXTINCTIVE PRESCRIPTION

extinctive prescription.See PRESCRIPTION(4).

EXTINGUISH

extinguish,vb. 1. To bring to an end; to put an end to. 2. To terminate or cancel. 3. To put out or stifle.

EXTINGUISHMENT

extinguishment,n. The cessation or cancellation of some right or interest. • For example, the extinguishment of a legacy occurs when the item bequeathed no longer exists or no longer belongs to the testator's estate.

EXTINGUISHMENT OF COPYHOLD

extinguishment of copyhold.The destruction of copyhold by a uniting of freehold and copyhold interests in the same person and in the same right. • In England, under the 1922 Law of Property Act, copyholds were enfranchised and became either leasehold or, more often, freehold. See COPYHOLD.

EXTINGUISHMENT OF LEGACY

extinguishment of legacy.See ADEPTION.

EXTINGUISHMENT OF LIEN

extinguishment of lien.A lien's discharge by operation of law. [Cases: Liens 16. C.J.S. Liens §§ 19–28.]

EXTIRPATION

extirpation (ek-st<<schwa>>r-pay-sh<<schwa>>n), n.1. The act of completely removing or destroying something. 2. Damage to land intentionally done by a person who has lost the right to the land.

EXTIRPATIONE

extirpatione (ek-st<<schwa>>r-pay-shee-oh-nee), n.[Latin] Hist. A writ issued either before or after judgment to restrain a person from maliciously damaging any house or extirpating any trees on land that the person had lost the right to possess.

EXTORT

extort,vb. 1. To compel or coerce (a confession, etc.) by means that overcome one's power to resist. 2. To gain by wrongful methods; to obtain in an unlawful manner; to exact wrongfully by threat or intimidation. — extortive,adj.

EXTORTION

extortion,n.1. The offense committed by a public official who illegally obtains property under the color of office; esp., an official's collection of an unlawful fee. — Also termed common-law extortion. [Cases: Extortion and Threats 1.]

“The dividing line between bribery and extortion is shadowy. If one other than the officer corruptly takes the initiative and offers what he knows is not an authorized fee, it is bribery and not extortion. On the other hand, if the officer corruptly makes an unlawful demand which is paid by one who does not realize it is not the fee authorized for the service rendered, it is extortion and not bribery. In theory it would seem possible for an officer to extort a bribe under such circumstances that he would be guilty of either offense whereas the outraged citizen would be excused.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 538 (3d ed. 1982).

2. The act or practice of obtaining something or compelling some action by illegal means, as by force or coercion. — Also termed statutory extortion. [Cases: Extortion and Threats 25.1. C.J.S. Threats and Unlawful Communications §§ 2–20.] — extortionate,adj.“The distinction traditionally drawn between robbery by intimidation and blackmail or extortion is that a person commits robbery when he threatens to do immediate bodily harm, whereas he commits blackmail or extortion when he threatens to do bodily harm in the future.” James Lindgren, “Blackmail and Extortion,” in 1 *Encyclopedia of Crime and Justice* 115, 115 (Sanford H. Kadish ed., 1983).

EXTORTIONATE CREDIT TRANSACTION

extortionate credit transaction.See LOANSHARKING.

EXTRA

extra (ek-str<<schwa>>), prep. [Latin] Beyond; except; without; out of; additional.

EXTRA ALLOWANCE

extra allowance.In New York practice, a sum in addition to costs that may, in the court's discretion, be awarded to the successful party in an unusually difficult case. See ALLOWANCE(5). [Cases: Costs 164(3).]

EXTRA COMMERCIIUM

extra commercium (eks-tr<<schwa>> k<<schwa>>-m<<schwa>>r-shee-<<schwa>>m). [Latin] Outside commerce. • This phrase was used in Roman and civil law to describe property dedicated to public use and not subject to private ownership.

EXTRACT

extract (ek-strakt), n.1. A portion or segment, as of a writing. 2.Scots law.ESTREAT(1).

extract (ek-strakt), vb. To draw out or forth; to pull out from a fixed position.

EXTRACTA CURIAE

extracta curiae (ek-strak-t<<schwa>> kyoor-ee-ee).Hist. The issues or profits of holding a court, arising from customary dues, fees, and amercements.

EXTRACTION

extraction.Intellectual property. The transfer of data from a database from the server where the database resides to a different computer or medium.

“ ‘Extraction’ is something of a misnomer, given that the extracted contents will remain on the original database, and are accordingly copied from, not removed from, it. It is also somewhat illogical that the contents must be removed to another medium. Removal to the same medium should also constitute extraction.” Ingrid Winternitz, *Electronic Publishing Agreements* 28 (2000).

EXTRA CURTEM DOMINI

extra curtem domini (eks-tr<<schwa>> k<<schwa>>r-tem dom-<<schwa>>-nI). [Law Latin] Hist. Beyond the domain of the superior. • A vassal was not usu. required to perform a service (such as transporting grain) beyond the superior's jurisdiction.

EXTRADITE

extradite (ek-str<<schwa>>-dIt), vb. 1. To surrender or deliver (a fugitive) to another jurisdiction. [Cases: Extradition and Detainers 4, 23.] 2. To obtain the surrender of (a fugitive) from another jurisdiction.

EXTRADITION

extradition (ek-str<<schwa>>-dish-<<schwa>>n). The official surrender of an alleged criminal by one state or nation to another having jurisdiction over the crime charged; the return of a fugitive from justice, regardless of consent, by the authorities where the fugitive is found. Cf. RENDITION(2).

international extradition.Extradition in response to a demand made by the executive of one nation on the executive of another nation. • This procedure is generally regulated by treaties. [Cases: Extradition and Detainers 1–20.]

interstate extradition.Extradition in response to a demand made by the governor of one state on the governor of another state. • This procedure is provided for by the U.S. Constitution, by federal statute, and by state statutes. [Cases: Extradition and Detainers 21–42.]

EXTRADITION CLAUSE

Extradition Clause.The clause of the U.S. Constitution providing that any accused person who flees to another state must, on request of the executive authority of the state where the crime was committed, be returned to that state. U.S. Const. art. IV, § 2, cl. 2. [Cases: Extradition and Detainers 22.]

EXTRADITION TREATY

extradition treaty.A treaty governing the preconditions for, and exceptions to, the surrender of a fugitive from justice by the country where the fugitive is found to another country claiming criminal jurisdiction over the fugitive. [Cases: Extradition and Detainers 2.]

EXTRADITION WARRANT

extradition warrant.See WARRANT(1).

EXTRA DIVIDEND

extra dividend.See extraordinary dividend under DIVIDEND.

EXTRADOTAL PROPERTY

extradotal property.See PROPERTY.

EXTRA-ELEMENTS TEST

extra-elements test.Intellectual property. A judicial test for determining whether a state-law claim is preempted by federal intellectual-property statutes under the Sears–Compco doctrine, the criterion being that if the claim requires proof of an extra element that makes the action qualitatively different from an infringement action based on federal law, the state action is not preempted. See SEARS–CAMPCO DOCTRINE.

EXTRA FAMILIAM

extra familiam (eks-tr<<schwa>> f<<schwa>>-mil-ee-<<schwa>>m). [Latin] Hist. Outside the family. • The phrase appeared in reference to the status of a child after forisfiliation. Cf. INTRA FAMILIAM.

EXTRA FEODUM

extra feodum (eks-tr<<schwa>> fee-<<schwa>>-d<<schwa>>m). [Latin] Out of his fee; out of the signiory.

EXTRAHAZARDOUS

extrahazardous,adj. Especially or unusually dangerous. • This term is often applied to exceptionally dangerous railroad crossings. — Also termed ultrahazardous. [Cases: Railroads 303–314. C.J.S. Railroads §§ 998, 1002–1026, 1033.]

EXTRAHAZARDOUS ACTIVITY

extrahazardous activity. See ABNORMALLY DANGEROUS ACTIVITY.

EXTRAHURA

extrahura (ek-str<<schwa>>-hyoor-<<schwa>>), n. [Law Latin] Hist. An animal that wanders about or strays without its owner; ESTRAY.

EXTRAJUDICIAL

extrajudicial, adj. Outside court; outside the functioning of the court system <extrajudicial confessions>. — Also termed out-of-court.

EXTRAJUDICIAL ADMISSION

extrajudicial admission. See ADMISSION(1).

EXTRAJUDICIAL CONFESSION

extrajudicial confession. See CONFESSION.

EXTRAJUDICIAL ENFORCEMENT

EXTRAJUDICIAL EVIDENCE

extrajudicial evidence. See EVIDENCE.

EXTRAJUDICIAL OATH

extrajudicial oath. See OATH.

EXTRAJUDICIAL OPINION

extrajudicial opinion. See OPINION(1).

EXTRAJUDICIAL REMEDY

extrajudicial remedy. See REMEDY.

EXTRAJUDICIAL STATEMENT

extrajudicial statement. Any utterance made outside of court. • It is usu. treated as hearsay under the rules of evidence. [Cases: Evidence 314. C.J.S. Evidence § 259.]

EXTRA JUDICIUM

extra judicium (ek-str<<schwa>> joo-dish-ee-<<schwa>>m). [Latin] Extrajudicial; out of court; beyond the jurisdiction.

EXTRA JUS

extra jus (ek-str<<schwa>> j<<schwa>>s). [Latin] Beyond the law; more than the law requires.

EXTRALATERAL RIGHT

extralateral right. See APEX RULE.

EXTRALEGAL

extralegal, adj. Beyond the province of law.

EXTRA LEGEM

extra legem (ek-str<<schwa>> lee-j<<schwa>>m). [Latin] Out of the law; out of the protection of the law.

EXTRAMURAL POWERS

extramural powers (ek-str<<schwa>>-myuur-<<schwa>>l). Powers exercised by a municipality outside its corporate limits. [Cases: Municipal Corporations 57. C.J.S. Municipal Corporations §§ 104, 106, 108, 110–115, 117–118, 122, 137–138, 143, 145–146.]

EXTRANATIONAL

extranational, adj. Beyond the territorial and governing limits of a country.

EXTRANEOUS

extraneous (ek-stray-nee-<<schwa>>s), adj. See EXTRINSIC.

EXTRANEOUS EVIDENCE

extraneous evidence. See extrinsic evidence (1) under EVIDENCE.

EXTRANEOUS OFFENSE

extraneous offense. See OFFENSE(1).

EXTRANEOUS QUESTION

extraneous question. A question that is beyond or beside the point to be decided.

EXTRANEUS

extraneus (ek-stray-nee-<<schwa>>s), n. & adj. [Latin “outside”] 1. Hist. A person who is foreign-born; a foreigner. 2. Roman law. An heir not born in the family of the testator; a citizen of a foreign state.

EXTRAORDINARY AVERAGE

extraordinary average. See AVERAGE.

EXTRAORDINARY CARE

extraordinary care. See great care under CARE.

EXTRAORDINARY CIRCUMSTANCES

extraordinary circumstances. See CIRCUMSTANCE.

EXTRAORDINARY DANGER

extraordinary danger. See HAZARD(1).

EXTRAORDINARY DILIGENCE

extraordinary diligence. See DILIGENCE.

EXTRAORDINARY DIVIDEND

extraordinary dividend. See DIVIDEND.

EXTRAORDINARY EXPENSE

extraordinary expense. See EXPENSE.

EXTRAORDINARY FLOOD

extraordinary flood. A flood whose occurrence is not predictable and whose magnitude and destructiveness could not have been anticipated or provided against by the exercise of ordinary foresight; a flood so unusual that a person of ordinary prudence and experience could not have foreseen it. See ACT OF GOD.

EXTRAORDINARY GAIN

extraordinary gain. See GAIN(3).

EXTRAORDINARY GRAND JURY

extraordinary grand jury. See special grand jury under GRAND JURY.

EXTRAORDINARY HAZARD

extraordinary hazard. See HAZARD(1).

EXTRAORDINARY ITEM

extraordinary item. See extraordinary expense under EXPENSE.

EXTRAORDINARY LOSS

extraordinary loss. See LOSS.

EXTRAORDINARY MAJORITY

extraordinary majority. See supermajority under MAJORITY.

EXTRAORDINARY REMEDY

extraordinary remedy. See REMEDY.

EXTRAORDINARY REPAIR

extraordinary repair. As used in a lease, a repair that is made necessary by some unusual or unforeseen occurrence that does not destroy the building but merely renders it less suited to its

intended use; a repair that is beyond the usual, customary, or regular kind. [Cases: Landlord and Tenant 150(1).]

EXTRAORDINARY RISK

extraordinary risk. See extraordinary hazard under HAZARD(1).

EXTRAORDINARY SESSION

extraordinary session. See special session under SESSION(1).

EXTRAORDINARY WRIT

extraordinary writ. See WRIT.

EXTRAPAROCHIAL

extraparochial (ek-str<<schwa>>-p<<schwa>>-roh-kee-<<schwa>>l), adj. Out of a parish; not within the bounds or limits of any parish.

EXTRA PATERNAM FAMILIAM

extra paternam familiam (eks-tr<<schwa>> p<<schwa>>-t<<schwa>>-r-n<<schwa>>m f<<schwa>>-mil-ee-<<schwa>>m). [Law Latin] Hist. Outside the father's family. Cf. INTRA PATERNAM FAMILIAM.

EXTRAPOLATE

extrapolate (ek-strap-<<schwa>>-layt), vb. 1. To estimate an unknown value or quantity on the basis of the known range, esp. by statistical methods. 2. To deduce an unknown legal principle from a known case. 3. To speculate about possible results, based on known facts. — extrapolative (-lay-tiv or -l<<schwa>>-tiv), extrapolatory (-l<<schwa>>-tor-ee), adj. — extrapolator (-lay-t<<schwa>>r), n.

EXTRAPOLATION

extrapolation (ek-strap-<<schwa>>-lay-sh<<schwa>>n), n. 1. The process of estimating an unknown value or quantity on the basis of the known range of variables. 2. The process by which a court deduces a legal principle from another case. 3. The process of speculating about possible results, based on known facts.

EXTRA PRAESENTIAM MARITI

extra praesentiam mariti (eks-tr<<schwa>> pri-zen-shee-<<schwa>>m m<<schwa>>-r I-tIormar-<<schwa>>-tl). [Latin] Out of her husband's presence.

EXTRA QUATTUOR MARIA

extra quattuor maria (eks-tr<<schwa>> kwah-too-<<schwa>>r mar-ee-<<schwa>>). [Latin] Beyond the four seas; out of the kingdom of England. • The reference is to the seas surrounding Great Britain. The phrase was tradition when explaining a husband's impossibility of access to his wife at the time of conception.

EXTRA REGNUM

extra regnum (eks-tr<<schwa>> reg-n<<schwa>>m). [Latin] Out of the realm.

EXTRA SESSION

extra session. See special session under SESSION(1).

EXTRATERRITORIAL

extraterritorial, adj. Beyond the geographic limits of a particular jurisdiction. — Also termed exterritorial. [Cases: Courts 29.C.J.S. Courts §§ 67, 70.]

EXTRATERRITORIALITY

extraterritoriality. The freedom of diplomats, foreign ministers, and royalty from the jurisdiction of the country in which they temporarily reside. — Also termed exterritoriality. See diplomatic immunity under IMMUNITY(1).

EXTRATERRITORIAL JURISDICTION

extraterritorial jurisdiction. See JURISDICTION.

EXTRATERRITORIAL RECOGNITION OF RIGHTS

extraterritorial recognition of rights. See private international law under INTERNATIONAL LAW.

EXTRA TERRITORIUM

extra territorium (eks-tr<<schwa>> ter-<<schwa>>-tor-ee-<<schwa>>m). [Latin] Beyond or outside the territory.

EXTRAVAGANTES

Extravagantes (ek-strav-<<schwa>>-gan-teez), n. pl. [Law Latin “wanderings”] Eccles. law. Papal constitutions and decretal epistles of Pope John XXII and certain of his successors. • These epistles were so called because they were not digested or arranged with the other papal decretals, but appeared detached from canon law. The term remained even after the epistles were later included in the body of canon law.

EXTRA VIAM

extra viam (eks-tr<<schwa>> vI-<<schwa>>m). [Latin “out of the way”] A plaintiff's responsive pleading in a trespass action, asserting that the defendant's claim of a right-of-way across the plaintiff's land is not a defense to the action because the defendant strayed from the supposed right-of-way. [Cases: Trespass 42. C.J.S. Trespass § 90.]

EXTRA VIRES

extra vires (eks-tr<<schwa>> vI-reez or veer-eez). See ULTRA VIRES.

EXTRA WORK

extra work. See WORK(1).

EXTREME CRUELTY

extreme cruelty. See CRUELTY.

EXTREME FORCE

extreme force. See deadly force under FORCE.

EXTRINSIC

extrinsic, adj. From outside sources; of or relating to outside matters. — Also termed extraneous.

EXTRINSIC AMBIGUITY

extrinsic ambiguity. See latent ambiguity under AMBIGUITY.

EXTRINSIC EVIDENCE

extrinsic evidence. See EVIDENCE.

EXTRINSIC FRAUD

extrinsic fraud. See FRAUD.

EX TURPI CAUSA

ex turpi causa (eks t<<schwa>>r-plkaw-z<<schwa>>). [Latin] From an immoral consideration. • This phrase, a shortened form of the maxim *ex turpi causa non oritur actio* (“from an immoral consideration an action does not arise”), expresses the principle that a party does not have a right to enforce performance of an agreement founded on a consideration that is contrary to the public interest. [Cases: Action 4; Contracts 138(1). C.J.S. Actions §§ 29–30; Contracts §§ 280–281, 283–284, 290, 292, 300.]

“The doctrine *ex turpi causa* has made its way into the law as an extension of a moral principle. If it is misused, the principle suffers. Moreover, its misuse is a symptom of a disease of thought that debilitates the law and morals. This is the failure to recognize that there is a fundamental difference between the law that expresses a moral principle and the law that is only a social regulation. If only in the growth of English law that distinction had been maintained, much of the arbitrariness and the absurdities in the cases I have cited would have been avoided. There is a dictum of Lord Wright's which may some day be used as a foundation for a change of heart. Speaking of the maxim *ex turpi causa*, he said: ‘In these days there are many statutory offences which are the subject of the criminal law and in that sense are crimes, but which would, it seems, afford no moral justification for a court to apply the maxim’. *Beresford v. Royal Insurance* (1937), 2 KB. at 220.” Patrick Devlin, *The Enforcement of Morals* 60 (1968).

EXUERE PATRIAM

exuere patriam (eg-z[y]oo<<schwa>>-ree pay-tree<<schwa>>m), vb. [Latin] To renounce

one's country or native allegiance; to expatriate oneself.

EXULARE

exulare (eks-[y]<<schwa>>-lair-ee), vb. [Latin] Hist. To exile or banish.

EX UNA PARTE

ex una parte (eks [y]oo-n<<schwa>> pahr-tee). [Latin] Of one part or side; on one side.

EXUPERARE

exuperare (eg-z[y]oo-p<<schwa>>-rair-ee), vb. [Latin] To overcome; to apprehend or take.

EX UTRAQUE PARTE

ex utraque parte (eks yoo-tray-kwee pahr-tee). [Latin] On both sides.

EX UTRIUSQUE PARENTIBUS CONJUNCTI

ex utriusque parentibus conjuncti (eks yoo-tree-<<schwa>>s-kwee p<<schwa>>-ren-ti-b<<schwa>>s k<<schwa>>n-j<<schwa>>ngk-tl). [Latin] Related on the side of both parents; of the whole blood.

EX VI AUT METU

ex vi aut metu (eks vI awt mee-t[y]oo). [Latin] Hist. On the ground of force or fear. • The phrase appeared in reference to a basis for rescinding a transaction.

EX VISCERIBUS

ex visceribus (eks vi-ser-<<schwa>>-b<<schwa>>s). [Latin “from the bowels”] From the vital part; from the very essence of (a thing).

EX VISCERIBUS VERBORUM

ex visceribus verborum (eks vi-ser-<<schwa>>-b<<schwa>>s v<<schwa>>r-bor-<<schwa>>m). [Latin] From the mere words (and nothing else); from the words themselves.

EX VISITATIONE DEI

ex visitatione Dei (eks viz-<<schwa>>-tay-shee-oh-nee dee-I). [Latin] 1. By the dispensation of God; by reason of physical incapacity. • Anciently, when a prisoner who was being arraigned stood silently instead of pleading, a jury was impaneled to inquire whether the prisoner obstinately stood mute or was dumb ex visitatione Dei. 2. By natural causes as opposed to violent ones. • This phrase sometimes appears in a coroner's report when death results from a disease or another natural cause.

EX VISU SCRIPTIONIS

ex visu scriptionis (eks vI-s[y]oo [or -z[y]oo] skrip-shee-oh-nis). [Latin] From the sight of the writing; from having seen a person write. • This phrase describes a method of proving handwriting.

EX VI TERMINI

ex vi termini (eks vIt<<schwa>>r-m<<schwa>>-nI). [Law Latin] From or by the force of the term; from the very meaning of the expression used.

EX VOLUNTATE

ex voluntate (eks vol-<<schwa>>n-tay-tee). [Latin] Voluntarily; from free will or choice.

EXW

EXW.abbr.EX WORKS.

EX WARRANTS

ex warrants,adv. Without warrants. • Shares are traded ex warrants when they no longer carry the right to receive declared warrants that have been distributed to holders. — Abbr. X; XW.

EX WORKS

ex works.From the factory. • This trade term defines the obligations of a buyer and a seller of goods with respect to delivery, payment, and risk of loss. The seller's delivery is complete (and the risk of loss passes to the buyer) when the goods are made available to the buyer at a location of the seller's choice without requiring a collecting vehicle to be loaded, as at the seller's showroom, factory, or warehouse. — Abbr. EXW.

EX-WORKS PRICE

ex-works price.See ex-works price under PRICE.

EYDE

eyde (ayd), n.[Law French] Aid; assistance; relief; subsidy.

EYE FOR AN EYE

eye for an eye.See LEX TALIONIS.

EYE OF THE LAW

eye of the law.The law as a personified thinker; legal contemplation <dead people are no longer persons in the eye of the law>.

EYEWITNESS

eyewitness. One who personally observes an event. Cf. EARWITNESS.

EYEWITNESS IDENTIFICATION

eyewitness identification.A naming or description by which one who has seen an event testifies from memory about the person or persons involved.

EYGNE

eygne (ayn), n. See EIGNE.

EYRE

eyre (air). [Old French eire “journey, march”] Hist. A system of royal courts sent out into the counties by the Crown to investigate allegations of wrongdoing, to try cases, and to raise revenue for the Crown through the levy of fines. • The eyre system was abolished in the 14th century. See ARTICLES OF THE EYRE ; JUSTICE IN EYRE.

“In 1176 the itinerant justices were organised into six circuits.... The justices assigned to these circuits, who numbered as many as twenty or thirty at a time in the 1180s, were known as *justiciae errantes* (later *justiciarii in itinere*, justices in eyre); and the French word ‘eyre’ became the name of one of the most prominent forms of royal justice until the time of Edward III. Every so often a ‘general eyre’ would visit a county, bringing the king’s government with it.... The general eyres were not merely law courts; they were a way of supervising local government through itinerant central government.” J.H. Baker, *An Introduction to English Legal History* 19 (3d ed. 1990).

EYRER

eyrer (air-⟨schwa⟩r), vb. [Law French] Hist. To travel or journey; to go about.