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**C.—ct.—cts.** These abbreviations stand for “cent” or “cents,” and any one of them, placed at the top or head of a column of figures, sufficiently indicates the denomination of the figures below.

**CAA.** See Clean Air Acts.

**C.A.B.** Civil Aeronautics Board.

**Cabal** /kəbəl/. A small association for the purpose of intrigue; an intrigue. This name was given to that ministry in the reign of Charles II, formed by Clifford, Ashley, Buckingham, Arlington, and Lauderdale, who concerted a scheme for the restoration of the Pope. The initials of these five names form the word “cabal;” hence the appellation.

**Cabalist** /kəbəlɪst/. In French commercial law, a factor or broker.

**Caballaria** /kəbəlér(i)yə/. Pertaining to a horse. It was a feudal tenure of lands, the tenant furnishing a horseman suitably equipped in time of war, or when the lord had occasion for his service.

**Caballeria** /kəbayeriyə/. In Spanish law, an allotment of land acquired by conquest, to a horse soldier. A quantity of land, varying in extent in different provinces. In those parts of the United States which formerly belonged to Spain, it is a lot of one hundred feet front, two hundred feet depth, and equivalent to five peonias.

**Caballero** /kəbayérow/kəvolyérow/. In Spanish law, a knight. So called on account of its being more honorable to go on horseback (*a caballo*) than on any other beast.

**Cabana.** Cabin or small house.

**Cabaret** /kəbərəy/. A room where musical entertainment is permitted in connection with restaurant business.

**Cabaret tax.** Tax imposed on operation of cabaret by government authorities.

**Cabinet.** The advisory board or counsel of a king or other chief executive; *e.g.* President’s Cabinet. The select or secret council of a prince or executive government; so called from the apartment in which it was originally held.

The President’s Cabinet is a creation of custom and tradition, going back to the First President, and functions at the pleasure of the President. Its purpose is to advise the President on any matter concerning which he wishes such advice (pursuant to Article II, section 2, of the Constitution). The Cabinet is composed of the heads

of the thirteen executive departments—the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Education, the Secretary of Energy, the Secretary of Housing and Urban Development, and the Secretary of Transportation. Certain other officials of the executive branch have been accorded Cabinet rank. The Vice President participates in all Cabinet meetings. Others are invited from time to time for discussion of particular subjects. The Secretary to the Cabinet is designated to provide for orderly handling and followup of matters brought before the Cabinet.

**Kitchen cabinet.** Informal body of non-cabinet advisors which President turns to for advice.

**Cabinet council.** In English politics, a private and confidential assembly of the most considerable ministers of state, with the function of deciding, in association with the Prime Minister, government policy and the activities of all government departments; first established by Charles I.

**Cable casting.** The distribution on a community antenna television system of television programs by means of high antenna or microwave transmission amplified and distributed by coaxial cable to the premises of its subscribers. *Hoffman v. Capitol Cablevision Systems, Inc.*, 82 Misc.2d 986, 372 N.Y.S.2d 482, 484.

**Cabotage** /kəbətəj/. A nautical term from the Spanish, denoting strictly navigation from cape to cape along the coast without going out into the open sea. In International Law, cabotage is identified with *coasting-trade* so that it means navigating and trading along the coast between the ports thereof.

**Cachepolus** /kæch(iy)póləs/ or **cacherellas** /kæchərələs/. An inferior bailiff, or catchpoll.

**Cachet, lettres de** /létrə də kəshéy/. Letters issued and signed by the kings of France, and countersigned by a secretary of state, authorizing the imprisonment of a person. Abolished during the revolution of 1789. See *Lettres de cachet*.

**Cacicazgos** /kəsiykáskows/. In Spanish-American law, property entailed on the *caciques*, or heads of Indian villages, and their descendants.

**Cadastre** /kədəstər/kədəstrey/. Tax inventory and assessment of real property. List of appraised property values in a locality used to determine tax assessments.

**Cadastu.** In French law, an official statement of the quantity and value of realty made for purposes of taxation; same as *cadastre* (q.v.).

**Cadaver** /kədəvər/. A dead human body; a corpse. *Cadaver nullius in bonis*, no one can have a right of property in a corpse.

**Cadena** /kədəynə/. In Spanish, literally, "a chain." In Spanish law, an afflictive penalty consisting of imprisonment at "hard and laborious work," originally with a chain hanging from the waist to the ankle and carrying with it the accessory penalties of civil interdiction, perpetual, absolute disqualification from office, and, in the case of "cadena temporal," surveillance by the authorities during life; sometimes described as "imprisonment in chains." The carrying of chains, however, by convicts sentenced to "cadena" has long fallen into disuse, in the Philippines, and in fact no such punishment has been inflicted since the earliest days of the military occupation of the Philippines by American troops; and so, commonly, the term has come to mean imprisonment, although it has also been contrasted with, or distinguished from, "prisión," the Spanish technical name for simple imprisonment.

*Cadena perpetua.* Life imprisonment.

*Cadena temporal.* Imprisonment for a term less than life.

**Cadere** /kədəriy/. Lat. To end; cease; fail; as in phrases such as *cadit actio* (or *breve*), the action (or writ) fails; *cadit assisa*, the assise abates; *cadit quaestio*, the discussion ends, there is no room for further argument; *cadere ab actione* (literally, to fall from an action), to fail in an action; *cadere in partem*, to become subject to a division.

To be changed; to become; to be turned into. *Cadit assisa in juratum*, the assise is changed into a jury.

**Cadet** /kədət/. Students in the military academy at West Point are styled "cadets;" students in the naval academy at Annapolis, "cadet midshipmen."

Younger brother or son.

In England, a younger brother; the younger son of a gentleman; particularly applied to a volunteer in the army, waiting for some post.

**Cadit** /kədət/kədət/. Lat. It falls, abates, fails, ends, ceases. *See* Cadere.

**Caduca** /kədə(y)úwkə/. In the civil law, property of an inheritable quality; property such as descends to an heir. Also the lapse of a testamentary disposition or legacy. Also an escheat; escheated property.

**Caducary** /kədə(y)úwkəriy/. Relating to or of the nature of escheat, forfeiture, or confiscation. 2 Bl.Comm. 245.

**Cæteris tacentibus** /sètəras tásentəbəs/. The others being silent; the other judges expressing no opinion.

**Cæterorum** /sètəróram/. When a limited administration has been granted, and all the property cannot be administered under it, administration *cæterorum* (as to the residue) may be granted.

**C.A.F.** Cost and Freight.

**Cafeteria plan.** Type of fringe benefit plan whereby employee, in addition to receiving certain basic fringe benefits, is permitted to also select and structure certain other types of benefits up to a specified dollar amount.

**Cahier** /kə(hi)yéy/. In old French law, a list of grievances prepared for deputies in the states-general. A petition for the redress of grievances enumerated.

**Cahoots** /kəhúwts/. Partnership, teaming up, or combining efforts. *City of Abilene v. Luhn*, Tex.Civ.App., 65 S.W.2d 370, 371. *See* Conspiracy.

**Cairns' Act.** An English statute for enabling the court of chancery to award damages. Repealed as having been superseded by the Judicature Act of 1873.

**Cajolery.** A deliberate attempt at persuading or deceiving an accused with false promises, inducements or information, into relinquishing his rights and responding to questions posed by law enforcement officers. *State v. Davis*, 73 Wash.2d 271, 438 P.2d 185, 191.

**Calaboose** /kələbuws/. A term used to designate a jail or prison, particularly a town or city jail or lock-up. Supposed to be a corruption of the Spanish *calabozo*, a dungeon.

**Calamity.** A state of extreme distress or misfortune, produced by some adverse circumstance or event. Any great misfortune or cause of loss or misery, often caused by natural forces (e.g. hurricane, flood, or the like). *See* Act of God; Disaster.

**Calcutum, calcea** /kəlsiyət/kəlsiyə/. A causeway.

**Calculated.** Adapted by calculation, forethought or contrivance to accomplish a purpose; likely to produce a certain effect. *Kansas City v. Graham*, Mo.App., 502 S.W.2d 411, 415. Thought-out, premeditated. *See* Premeditation.

**Cale.** In old French law, a punishment of sailors, resembling "keelhauling."

**Calefagium** /kələféyiyəm/. In old law, a right to take fuel yearly.

**Calendar.** The established order of the division of time into years, months, weeks, and days; or a systematized enumeration of such arrangement; an almanac.

*Calendar call.* A court session given to calling the cases awaiting trial to determine the present status of each case and commonly to assign a date for trial. *See also* Trial calendar.

*Calendar days.* A calendar day contains 24 hours; but "calendar days" may be synonymous with "working days." *Sherwood v. American Sugar Refining Co.*, C.C. A.N.Y., 8 F.2d 586, 588. The time from midnight to midnight. *Lanni v. Grimes*, 173 Misc. 614, 18 N.Y.S.2d

322, 327. So many days reckoned according to the course of the calendar.

*Calendar month.* Period terminating with day succeeding month, numerically corresponding to day of its beginning, less one. *State v. Jones*, 208 Neb. 641, 305 N.W.2d 355, 358.

*Calendar week.* A block of seven days registered on calendar beginning with Sunday and ending with Saturday. Term may consist of any seven days of given month. *Gapeau v. Stillman*, 18 Ohio St.2d 63, 247 N.E.2d 461, 462.

*Calendar year.* The period from January 1 to December 31 inclusive. Ordinarily calendar year means 365 days except leap year, and is composed of 12 months varying in length. *See also* Accounting period.

*Court calendar.* A list of cases awaiting trial or other disposition; sometimes called "trial list" or "docket."

*Special calendar.* A calendar or list of causes, containing those set down specially for hearing, trial, or argument.

**Calends** /kæləndz/. Among the Romans the first day of every month, being spoken of by itself, or the very day of the new moon, which usually happen together. And if *pridie*, the day before, be added to it, then it is the last day of the foregoing month, as *pridie calend. Septemb.* is the last day of August. If any number be placed with it, it signifies that day in the former month which comes so much before the month named, as the tenth calends of October is the 20th day of September; for if one reckons backwards, beginning at October, that 20th day of September makes the 10th day before October. In March, May, July, and October, the calends begin at the sixteenth day, but in other months at the fourteenth; which calends must ever bear the name of the month following, and be numbered backwards from the first day of the said following months.

**Calends, Greek.** A metaphorical expression for a time never likely to arrive, inasmuch as the Greeks had no calends.

**Call, n.** A request or command to come or assemble; a demand for payment of money.

*Banking.* Demand for repayment of loan.

*Contract.* As used in contract, means demand for payment of, especially by formal notice.

*Conveyance.* A visible natural object or landmark designated in a patent, entry, grant, or other conveyance of lands, as a limit or boundary to the land described, with which the points of surveying must correspond. Also the courses and distances designated. *See also* Metes and bounds.

*Corporation law.* A demand by directors upon subscribers for shares for payment of a portion or installment; in this sense, it is capable of three meanings: (1) The resolution of the directors to levy the assessment; (2) its notification to the persons liable to pay; (3) the time when it becomes payable.

*Securities.* An option or contract giving the holder the right to purchase a stated number of shares of stock at a specified price on or before a certain fixed date. *Cohn, Ivers & Co. v. Gross*, 56 Misc.2d 491, 289 N.Y.S.2d 301. *See also* Call option; Put.

**Call, v.** To make a request or demand; to summon or demand by name; to demand payment of debt or loan immediately or at a specified time, to demand shareholders to pay additional capital; to redeem bonds before scheduled maturity; to demand the presence and participation of a number of persons by calling aloud their names, either in a pre-arranged and systematic order or in a succession determined by chance.

**Callable.** Option to pay before maturity on call. A security (e.g. bond) issue, all or part of which may be redeemed by the issuing corporation under definite conditions before maturity. The term also applies to preferred shares which may be redeemed by the issuing corporation.

**Callable bonds.** Bonds which may be called for payment before their maturity. A bond for which the issuer reserves the right to pay a specific amount, the call price, to retire the obligation before maturity date. If the issuer agrees to pay more than the face amount of the bond when called, the excess of the payment over the face amount is the call premium. *See also* Redemption.

**Called upon to pay.** Compelled or required to pay.

**Call feature.** A provision in a bond that allows it to be redeemed by the issuer before maturity. *See* Callable bonds.

**Call girl.** A prostitute whose bookings are normally made through the use of telephone.

**Calling.** One's business, occupation, profession, trade or vocation.

**Calling the plaintiff.** In old English law, the method of non-suiting a plaintiff who did not appear when called by the crier.

**Calling to the bar.** In English practice, conferring the dignity or degree of barrister at law upon a member of one of the inns of court.

**Calling upon a prisoner.** When a prisoner has been found guilty on an indictment, the clerk of the court addresses him and calls upon him to say why judgment should not be passed upon him.

**Call loan.** Loan which is callable by lender at any time; usually on 24 hours notice.

**Call option.** A negotiable instrument whereby writer of option, for a certain sum of money (the "premium"), grants to the buyer of option the irrevocable right to demand, within a specified time, the delivery by the writer of a specified number of shares of a stock at a fixed price (the "exercise" or "striking" price). *Gordon & Co. v. Board of Governors of Federal Reserve System*, D.C.Mass., 317 F.Supp. 1045, 1046. An option permitting its holder (who has paid a fee for the option) to call

for a certain commodity or security at a fixed price in a stated quantity within a stated period. *See* Option.

**Call patent.** One whose corners are all stakes, or all but one, or whose lines were not run out and marked at time. *Combs v. Combs*, 238 Ky. 362, 38 S.W.2d 243, 244.

**Call premium.** The difference between a bond's call price and its par value. Amount paid by issuer over par or face value upon calling a security in for payment or redemption.

**Call price.** The price at which a bond may be retired, or called, prior to its maturity. *See also* Redemption.

**Calumnia** /kəlámniyə/. In the civil law, calumny, malice, or ill design; a false accusation; a malicious prosecution.

In the old common law, a claim, demand, challenge to jurors.

**Calumniæ jusjurandum** /kəlámniyiy jəsɜərændəm/. The oath of (against) calumny. An oath imposed upon the parties to a suit that they did not sue or defend with the intention of calumniating (*calumniandi animo*), i.e., with a malicious design, but from a firm belief that they had a good cause. The object was to prevent vexatious and unnecessary suits. It was especially used in divorce cases, though of little practical utility. A somewhat similar provision is to be bound in the requirement made in some states that the defendant shall file an affidavit of merits.

**Calumniator** /kəlámniyeytər/. In the civil law, one who accused another of a crime without cause; one who brought a false accusation.

**Calumny** /kəlámniy/. Defamation; slander; false accusation of a crime or offense. *See* Calumnia.

**Calvin's case.** *Calvin v. Smith*, 7 Rep. 1; 2 S.T. 559, decided in 1608, in which it was held that persons born in Scotland after the accession of James I to the crown of England in 1603 were not aliens but were capable of inheriting land in England.

**Calvo doctrine.** The doctrine stated by the Argentine jurist, Carlos Calvo, that a government is not bound to indemnify aliens for losses or injuries sustained by them in consequence of domestic disturbances or civil war, where the state is not at fault, and that therefore foreign states are not justified in intervening, by force or otherwise, to secure the settlement of claims of their citizens on account of such losses or injuries. Such intervention, Calvo says, is not in accordance with the practice of European States towards one another, and is contrary to the principle of state sovereignty. The Calvo Doctrine is to be distinguished from the Drago Doctrine (*q.v.*).

**Cambiale jus** /kəmbiyéyliy jəs/. The law of exchange.

**Cambiator** /kəmbiyéytər/. In old English law, an exchanger. *Cambiatores monetæ*, exchangers of money; money-changers.

**Cambio** /kəmbiyow/. In Spanish law, exchange.

**Cambipartia** /kəmbəpársh(iy)ə/. Champerty; from *campus*, a field, and *partus*, divided.

**Cambiparticeps** /kəmbəpártəsèps/. A champertor.

**Cambist.** In mercantile law, a person skilled in exchanges; one who trades in promissory notes or bills of exchange; a broker.

**Cambium** /kəmbiyəm/. In the civil law, change or exchange. A term applied indifferently to the exchange of land, money, or debts.

*Cambium reale* or *manuale* was the term generally used to denote the technical common-law exchange of lands; *cambium locale*, *mercantile*, or *trajectitium*, was used to designate the modern mercantile contract of exchange, whereby a man agrees, in consideration of a sum of money paid him in one place, to pay a like sum in another place.

**Camera** /kém(ə)rə/. In old English law, a chamber, room, or apartment; a judge's chamber; a treasury; a chest or coffer. Also, a stipend payable from vassal to lord; an annuity. *See* In camera.

**Cameralistics** /kəmərəlistəks/. The science of finance or public revenue, comprehending the means of raising and disposing of it.

**Camera regis** /kémərə riyjəs/. In old English law, a chamber of the king; a place of peculiar privileges especially in a commercial point of view. The city of London was so called.

**Camerarius** /kəmərəriyəs/. A chamberlain; a keeper of the public money; a treasurer. Also a bailiff or receiver.

**Camera scaccarii** /kémərə skəkəriyay/. The old name of the exchequer chamber.

**Camera stellata** /kémərə stələytə/. The star chamber (*q.v.*).

**Campaign** /kəmpéyn/. All the things and necessary legal and factual acts done by a candidate and his adherents to obtain a majority or plurality of the votes to be cast. Running for office, or candidacy for office. *Norris v. United States*, C.C.A.Neb., 86 F.2d 379, 382. Any organized effort to promote a cause or to secure some definite result with any group of persons. *State ex rel. Green v. City of Cleveland*, Ohio App., 33 N.E.2d 35, 36.

**Campartum** /kəmpártəm/. A part of a larger field or ground, which would otherwise be in gross or in common. *See* Champert; Champerty.

**Campbell's (Lord) Acts.** English statutes, for amending the practice in prosecutions for libel, 9 & 10 Vict., c. 93; also 6 & 7 Vict., c. 96, providing for compensation to relatives in the case of a person having been killed through negligence; also 20 & 21 Vict., c. 83, in regard to the sale of obscene books, etc.

**Campers.** A share; a champertor's share; a champertous division or sharing of land.

**Campfight.** In old English law, the fighting of two champions or combatants in the field; the judicial combat, or *duellum*.

**Campum partere** /kæmpəm pɑrtəri/. To divide the land. *See* Champerty.

**Can.** As a verb, to be enabled by law, agreement, or custom; to have a right to; to have permission to. Often used interchangeably with "may."

**Canal.** Artificial waterway used for navigation, drainage or irrigation of land.

**Cancel** /kænsəl/. To obliterate; to strike or cross out. To destroy the effect of an instrument by defacing, obliterating, expunging, or erasing it. To revoke or recall; to annul or destroy, make void or invalid, or set aside. To rescind; abandon; repeal; surrender; waive; terminate. The term is sometimes equivalent to "discharge" or "pay." *Debes v. Texas Nat. Bank of Beaumont, Tex.Civ.App., 92 S.W.2d 476, 479. See also* Abrogation; Cancellation; Redemption; Rescind; Rescission of contract; Revocation; Termination.

**Cancellaria** /kænsələriyəs/. Chancery; the court of chancery. *Curia cancellaria* is also used in the same sense. 4 Bl.Comm. 46.

**Cancellarii anglia dignitas est, ut secundus a rege in regno habetur** /kænsələriyay ængliiy dignətəs est, ət səkəndəs èy ri:jy in régnow həbiytər/. The dignity of the chancellor of England is that he is deemed the second from the sovereign in the kingdom.

**Cancellarius** /kænsələriyəs/. A chancellor; a scrivener, or notary. A janitor, or one who stood at the door of the court and was accustomed to carry out the commands of the judges.

In early English law, the keeper of the king's seal. In this sense only, the word chancellor seems to have been used in the English law. 3 Bl.Comm. 46.

**Cancellation.** To destroy the force, effectiveness, or validity of. To annul, abrogate, or terminate. Defacement or mutilation of instrument. Words of revocation written across instrument.

A means whereby a holder discharges a party's liability on an instrument by physically demonstrating on the face of the instrument the intention to discharge, as by writing "CANCELLED" across the instrument's face, striking out the party's signature, or destroying or mutilating the signature or the instrument. As applied to documents of title, the term refers to the act of the bailee voiding a negotiable document upon its surrender by the holder in taking possession of the goods.

Occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance. U.C.C. § 2-106(4).

As used in insurance law, term refers to the termination of an insurance policy by an act of either or both of the parties to it, prior to the ending of the policy

period. *Morey v. Educator & Executive Insurers, Inc., 45 Ohio St.2d 196, 342 N.E.2d 691.*

*See also* Abrogation; Cancel; Revocation; Termination.

**Cancellation clause.** A provision in a contract or lease which permits the parties to cancel or discharge their obligations thereunder.

**Cancellatura** /kænsələtyúra/. In old English law, a canceling.

**Cancelled check.** A check which bears the notation of cancellation of the drawee bank as having been paid and charged to the drawer. Used as evidence of payment of an obligation to the payee.

**Cancelli** /kænsələy/. The lines drawn on the face of a will or other writing, with the intention of revoking or annulling it.

**Candidate.** One who seeks or offers himself, or is put forward by others, for an office, privilege, or honor. *State ex rel. Ranney v. Corey, Ohio App., 47 N.E.2d 799, 800. A nominee.*

**Canfara.** A trial by hot iron, formerly used in England.

**Cannabis** /kænəbəs/. Commonly called marihuana; cannabis sativa L embraces all marihuana-producing cannabis. *U. S. v. Honneus, C.A.Mass., 508 F.2d 566, 574.* All parts of the plant Cannabis sativa L, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, are included in the term "marihuana." 21 U.S.C.A. § 802(16). *See also* Controlled substance; Marihuana.

**Cannon rule.** Purchase or ownership of stock, even of a controlling interest, in a domestic corporation by a foreign corporation does not constitute doing business by the foreign parent sufficient to subject it to service of process in state of subsidiary's operation. *Mid-Continent Tel. Corp. v. Home Tel. Co., D.C.Miss., 307 F.Supp. 1014, 1019.*

**Cannot.** Denotes that one is not able (to do some act). But the term is often equivalent to "shall not."

**Canon** /kænən/. A law, rule, or ordinance in general, and of the church in particular. An ecclesiastical law or statute. A rule of doctrine or discipline. A criterion or standard of judgment. A body of principles, standards, rules, or norms.

In England, a cathedral dignitary, appointed sometimes by the Crown and sometimes by the bishop.

**Canon law.** A body of Roman ecclesiastical jurisprudence compiled in the twelfth, thirteenth and fourteenth centuries from the opinions of the ancient Latin fathers, the decrees of General Councils, and the decretal epistles and bulls of the Holy See. The canon law is contained in two principal parts,—the decrees or ecclesiastical constitutions made by the popes and cardinals; and the decretals or canonical epistles written by the pope, or by the pope and cardinals, at the suit of one or more persons. As the decrees set out the origin of the

canon law, and the rights, dignities, and decrees of ecclesiastical persons, with their manner of election, ordination, etc., so the decretals contain the law to be used in the ecclesiastical courts. The canon law forms no part of the law of England, unless it has been brought into use and acted on there.

*Canons of construction.* The system of fundamental rules and maxims which are recognized as governing the construction or interpretation of written instruments.

*Canons of descent.* The legal rules by which inheritances are regulated, and according to which estates are transmitted by descent from the ancestor to the heir.

*Canons of ethics.* See *Code of Professional Responsibility*, below.

*Canons of inheritance.* The legal rules by which inheritances are regulated, and according to which estates are transmitted by descent from the ancestor to the heir. 2 Bl.Comm. 208.

*Canons of judicial ethics.* Standards of ethical conduct for members of the judiciary. Such were initially adopted by the American Bar Association and later by most states.

*Canons of taxation.* Tax criteria used in the selection of a tax base originally discussed by Adam Smith in his "Wealth of Nations." Canons of taxation include the following: equality; convenience; certainty; and economy.

*Code of professional responsibility.* "Canons" of the Code of Professional Responsibility are statements of axiomatic norms expressing in general terms the standards of professional conduct expected of lawyers in their relationship with the public, the legal system and with the legal profession. Such were initially adopted by the American Bar Association and later by most states. See now Model Rules of Professional Conduct, *infra*.

**Canonical** /kə'nɒnəkəl/. Pertaining to, or in conformity to, the canons of the church.

**Canonical disability.** Incurable physical impotency or incapacity for copulation.

**Canonical obedience.** That duty which a clergyman owes to the bishop who ordained him, to the bishop in whose diocese he is beneficed, and also to the metropolitan of such bishop.

**Canonicus** /kə'nɒnəkəs/. In old English law, a canon.

**Canonist.** One versed and skilled in the canon law; a professor of ecclesiastical law.

**Canonry.** In English ecclesiastical law, an ecclesiastical benefice, attaching to the office of canon.

**Cant.** In the civil law, a method of dividing property held in common by two or more joint owners. It may be avoided by the consent of all of those who are interested, in the same manner that any other contract or agreement may be avoided.

**Canterbury, Archbishop of.** In English ecclesiastical law, the primate of all England; the chief ecclesiastical dignitary in the church. Also known as the Spiritual Lord of Parliament. His customary privilege is to crown the kings and queens of England. Has also, by 25 Hen. VIII, c. 21, the power to grant dispensations.

**Cantred** /kæntred/. In old English law, a district comprising a hundred villages; a hundred. A term used in Wales in the same sense as "hundred" is in England.

**Canum** /kéynəm/. In feudal law, a species of duty or tribute payable from tenant to lord, usually consisting of produce of the land.

**Canvass.** The act of examining and counting the returns of votes cast at a public election to determine authenticity. Personal solicitation of votes or survey to determine probable vote outcome.

**Canvasser.** Any of certain persons, as officers of a state, county, or district, intrusted with the duty of examining the returns of votes cast at an election. See *Canvass*.

One who, in a given town, city, or county, goes from house to house in an effort to take orders for goods; in this sense, to be distinguished from traveling salesmen.

**Cap.** Term variously applied to statutorily imposed limits on recovery of noneconomic damages in tort actions; to limits on amount interest rates can increase annually on adjustable rate mortgages. See also *Rate (Rate cap)*.

**Capable.** Susceptible; competent; qualified; fitting; possessing legal power or capacity. Able, fit or adapted for. See *Capacity*.

**Capacity.** Legal qualification (*i.e.* legal age), competency, power or fitness. Mental ability to understand the nature and effects of one's acts.

*Capacity to sue.* The legal ability of a particular individual or entity to sue in, or to be brought into, the courts of a forum. *Johnson v. Helicopter & Airplane Services Corp.*, D.C.Md., 404 F.Supp. 726, 729.

*Criminal capacity.* Accountability for committing crime; *e.g.*, child under 7 years of age lacks criminal capacity. Application of *Gault*, 387 U.S. 1, 87 S.Ct. 1428, 1438, 18 L.Ed.2d 527.

See also *Competency*; *Disability*; *Earning capacity*; *Fiduciary capacity*; *Incapacity*; *Legal age*; *Legal capacity to sue*; *Mental capacity or competence*; *Standing to sue doctrine*; *Substantial capacity test*; *Testamentary (Testamentary capacity)*.

**Capacity defense.** Generic term to describe lack of fundamental ability to be accountable for actions, as one under duress lacks the capacity to contract and hence when sued on such contract he interposes defense of lack of capacity. Similarly, a child accused of crime committed when he was under age of 7, his defense being lack of criminal capacity. As a defense, it tends to negate some essential element of the action required for responsibility. See also *Competency proceedings*; *Competency to stand trial*; *Defense*; *Insanity*; *Intoxication*.

**Capax doli** /kéypæks dówlay/. Lat. Capable of committing crime, or capable of criminal intent. The phrase describes the condition of one who has sufficient intelligence and comprehension to be held criminally responsible for his deeds.

**Capax negotii** /kéypæks nəgówshiyay/. Competent to transact affairs; having business capacity.

**Cape** /kéyp(iy)/. In English practice, a judicial writ, now abolished, touching a plea of lands or tenements. It was divided into *cape magnum*, or the *grand cape*, which lay before appearance to summon the tenant to answer the default, and also over to the demandant and *cape parvum*, or *petit cape*, after appearance or view granted, summoning the tenant to answer the default only. It was called a "cape," from the word with which it commenced, and a "grand cape" (or *cape magnum*) to distinguish it from the *petit cape*, which lay after appearance.

Extension of land jutting out into water as a peninsula.

**Cape ad valentiam** /kéypiy æd vələnsh(iy)əm/. A species of *cape magnum*.

**Capella** /kəpələ/. A box, cabinet, or repository in which were preserved the relics of martyrs. A small building in which relics were preserved; an oratory or chapel.

**Capers** /kéypərz/. Vessels of war owned by private persons, and different from ordinary privateers only in size, being smaller.

**Capias** /kéypiyəs/kəpiyəs/. Lat. "That you take." The general name for several species of writs, the common characteristic of which is that they require the officer to take a named defendant into custody.

In English practice, the process on an indictment when the person charged is not in custody, and in cases not otherwise provided for by statute.

See also *Cepi*.

**Capias ad audiendum iudicium** /kéypiyəs æd odiyéndəm juwdish(iy)əm/. A writ issued, in a case of misdemeanor, after the defendant has appeared and is found guilty, to bring him to hear judgment if he is not present when called.

**Capias ad computandum** /kéypiyəs æd kòm-pyutəndəm/. In the action of account render, after judgment of *quod computet*, if the defendant refuses to appear personally before the auditors and make his account, a writ by this name may issue to compel him. The writ is now disused.

**Capias ad respondendum** /kéypiyəs æd rə-spondəndəm/. A judicial writ (usually simply termed a "*capias*," and commonly abbreviated to *ca. resp.*) by which actions at law were frequently commenced; and which commands the sheriff to *take* the defendant, and him safely keep, so that he may have his body before the court on a certain day, to *answer* the plaintiff in the action. It notifies defendant to defend suit and procures his arrest until security for plaintiff's claim is furnished.

**Capias ad satisfaciendum** /kéypiyəs æd səsəsfəy-shiyéndəm/. A writ of execution (usually termed, for

brevis, a "*ca. sa.*"), which commands the sheriff to *take* the party named, and keep him safely, so that he may have his body before the court on a certain day, to *satisfy* the damages or debt and damages in certain actions. It deprives the party taken of his liberty until he makes the satisfaction awarded. A body execution enabling judgment creditor in specified types of actions to cause arrest of judgment debtor and his retention in custody until he either pays judgment or secures his discharge as insolvent debtor. *Perlmutter v. DeRowe*, 58 N.J. 5, 274 A.2d 283, 286.

**Capias extendi facias** /kéypiyəs əksténday féyshiyəs/. A writ of execution issuable in England against a debtor to the crown, which commands the sheriff to "take" or arrest the body, and "cause to be extended" the lands and goods of the debtor.

**Capias in withernam** /kéypiyəs in wíðərnəm/. A writ, in the nature of a reprisal, which lies for one whose goods or cattle, taken under a distress, are removed from the county, so that they cannot be replevied, commanding the sheriff to seize other goods or cattle of the distrainer of equal value.

**Capias pro fine** /kéypiyəs pròw fáyniy/. (That you take for the fine or in mercy.) Formerly, if the verdict was for the defendant, the plaintiff was adjudged to be amerced for his false claim; but, if the verdict was for the plaintiff, then in all actions *vi et armis*, or where the defendant, in his pleading, had falsely denied his own deed, the judgment contained an award of a *capiatur pro fine*; and in all other cases the defendant was adjudged to be amerced. The insertion of the *misericordia* or of the *capiatur* in the judgment is now unnecessary. A writ in all respects an execution for collection of fine. *Board of Councilmen of City of Frankfort v. Rice*, 249 Ky. 771, 61 S.W.2d 614, 615.

**Capias ullagatum** /kéypiyəs ə(t)ləgéytəm/. (You take the outlaw.) In English practice, a writ which lies against a person who has been *outlawed* in an action, by which the sheriff is commanded to *take* him, and keep him in custody until the day of the return, and then present him to the court, there to be dealt with for his contempt. 3 Bl.Comm. 284.

**Capiatur pro fine** /kəypiyéytər pròw fáyniy/. (Let him be taken for the fine.) In English practice, a clause inserted at the end of old judgment records in actions of debt, where the defendant denied his deed, and it was found against him upon his false plea, and the jury were troubled with the trial of it.

**Capita** /kəpətə/. Heads, and, figuratively, entire bodies, whether of persons or animals.

Persons individually considered, without relation to others (polls); as distinguished from *stirpes* or stocks of descent. The term in this sense, making part of the common phrases, *in capita*, *per capita*, is derived from the civil law.

**Capital**. Accumulated goods, possessions, and assets, used for the production of profits and wealth. Owners' equity in a business. Often used equally correctly to

mean the total assets of a business. Sometimes used to mean capital assets.

In accounting, the amount invested in a business. In economic theory there are several meanings. "Capital" may be used to mean: capital goods, that is, the tools of production; the money available for investment, or invested; the discounted value of the future income to be received from an investment; the real or money value of total assets; money or property used for the production of wealth; sum total of corporate stock.

See also Fixed capital; Floating or circulating capital; Impaired capital; Legal capital; Stated capital.

*Authorized capital.* See Stock (*Authorized stock*).

*Capital account.* A term used in accounting to describe the equity of a business. In a partnership, each partner has a capital account which represents his contribution or investment in the partnership. In a corporation, the capital account represents the amount invested by shareholders, both as stock and as additional paid-in capital. In a sole proprietorship, the amount contributed by the owner to start the business represents the owner's capital account.

*Capital assets.* See Assets.

*Capital budget.* A plan for the acquisition of long-term assets (such as plant and equipment), showing planned expenditures by object and date.

*Capital case or crime.* One in or for which death penalty may, but need not necessarily, be imposed.

*Capital contribution.* Cash, property, or services contributed by partners to partnership.

Various means by which a shareholder makes additional funds available to the corporation (*i.e.*, placed at the risk of the business) without the receipt of additional stock. Such contributions are added to the basis of the shareholder's existing stock investment and do not generate income to the corporation. I.R.C. § 118.

*Capital costs.* Costs for improvements to property; such are depreciable over the useful life of the improvements.

*Capital expenditure.* An outlay of funds for the acquisition or improvement of a fixed asset which extends the life or increases the productivity of the asset. The expenditure for the acquisition of an asset should be capitalized and depreciated over the estimated useful life of the asset. I.R.C. § 263.

*Capital gain.* The profit realized on the sale or exchange of a capital asset. I.R.C. § 1201. The gain is the difference between the cost or the adjusted basis of an asset and the net proceeds from the sale or exchange of such asset.

*Capital gains tax.* A provision formerly in the income tax laws that profits from the sale of capital assets are taxed at separate (lower) rates than the rate applicable to ordinary income. The Tax Reform Act of 1986 changed the tax treatment of long term capital gains, and effective in 1987, long term capital gains are taxed to individuals as ordinary income.

*Capital goods.* Durable goods used by business to produce other goods and services; examples of capital goods are machines and equipment.

*Capital impairment.* Reduction of assets of corporation below aggregate of outstanding shares of capital stock.

*Capital improvement.* See *Capital expenditure*, above.

*Capital increase.* An increase not attributable to earnings.

*Capital investment.* Acquisition price of a "capital asset", *Commissioner of Internal Revenue v. Rowan Drilling Co.*, C.C.A.Tex., 130 F.2d 62, 64, 65; capital stock, surplus and undivided profits, *O'Connor v. Bankers Trust Co.*, 159 Misc. 920, 289 N.Y.S. 252, 276; money spent to increase an asset, *Peerless Stages v. Commissioner of Internal Revenue*, 125 F.2d 869, 871. See also *Capital expenditure*, above.

*Capital lease.* A contract that transfers ownership of property to the lessee at the end of the lease term. A contract for the lease of property which possesses the characteristics of a purchase.

*Capital leverage.* A company's ability to generate an additional return for stockholders by borrowing, then using the borrowed funds to obtain a return greater than the interest rate.

*Capital loss.* A tax term used in reference to a loss incurred in the sale or exchange of a capital asset. Beginning in 1988, the classification as to short or long term capital losses is no longer relevant.

*Capital markets.* Financial markets in which long term securities are bought and sold.

*Capital offense.* See *Capital case or crime*, above.

*Capital outlay.* Money expended in acquiring, equipping, and promoting an enterprise.

*Capital punishment.* Punishment by death for capital crimes.

*Capital ratio.* Ratio of capital to assets.

*Capital recovery.* Collection of charged-off bad debt previously written off against the allowance for doubtful accounts.

*Capital return.* In tax accounting, payments received by taxpayer which represent the individual's cost or capital and hence not taxable as income. *Commissioner v. Liftin*, C.A.4th, 317 F.2d 234.

*Capital stock.* The shares of stock representing ownership of a business. The types of stock include preferred stock and common stock. Amount of stock that a corporation may issue; amount subscribed, contributed or secured to be paid in. *Haggard v. Lexington Utilities Co.*, 260 Ky. 261, 84 S.W.2d 84, 87. Corporate assets or property contributed by shareholders. *Bates v. Daley's Inc.*, 5 Cal.App.2d 95, 42 P.2d 706, 709. Liability of the corporation to its shareholders, after creditors' claims have been liquidated. Valuation of the corporation as a business enterprise.



**Capital stock tax.** A state-level tax, usually imposed on out-of-state corporations for the privilege of doing business in the state. The tax may be based on the entity's apportionable income or payroll, or on its apportioned net worth as of a specified date. Such tax was repealed at the federal level by the Revenue Act of 1945, §§ 201, 202.

**Capital structure.** The composition of a corporation's equities; the relative proportions of short-term debt, long-term debt, and owners' equity. In finance the total of bonds (or long-term money) and ownership interests in a corporation; that is, the stock accounts and surplus. *See also* Capitalization.

**Capital surplus.** Amounts paid to a corporation in excess of the par value of stock, generally referred to as additional paid-in capital.

An equity or capital account which reflects the capital contributed for shares not allocated to stated capital. The excess of issuance price over the par value of issued shares or the consideration paid for no par shares allocated specifically to capital surplus.

**Capital transactions.** Purchases, sales and exchanges of capital assets.

**Paid-in-capital.** Amount paid for stock of corporation that has been sold.

**Stated capital.** The sum of (a) the par value of all shares with par value that have been issued, (b) the amount of the consideration received for all shares without par value that have been issued, except such part of the consideration therefor as may have been allocated to surplus in a manner permitted by law, and (c) such other amounts as have been transferred to stated capital, whether upon the distribution of shares or otherwise, minus all reductions from such sums as have been effected in a manner permitted by law and surplus.

**Capitale** /kæpətɛyli/. A thing which is stolen, or the value of it.

**Capitalis** /kæpətɛyləs/. In old English law, chief; principal; at the *head*. A term applied to persons, places, judicial proceedings, and some kinds of property.

**Capitalis baro** /kæpətɛyləs bərow/. In old English law, chief baron. *Capitalis baro scaccarii domini regis*, chief baron of the exchequer.

**Capitalis custos** /kæpətɛyləs kóstows/. Chief warden or magistrate; mayor.

**Capitalis debitor** /kæpətɛyləs débətər/. The chief or principal debtor, as distinguished from a surety (*plegius*).

**Capitalis dominus** /kæpətɛyləs dómənəs/. Chief lord.

**Capitalis justiciarius** /kæpətɛyləs jəstishiyériyəs/. The chief justiciary; the principal minister of state, and guardian of the realm in the king's absence. This office originated under William the Conqueror; but its power was greatly diminished by *Magna Charta*, and finally distributed among several courts by Edward I. 3 Bl. Comm. 38.

**Capitalis justiciarius ad placita coram rege tenenda** /kæpətɛyləs jəstishiyériyəs æd plásətə kórəm ríyjij tənéndə/. Chief justice for holding pleas before the king. The title of the chief justice of the king's bench, first assumed in the latter part of the reign of Henry III.

**Capitalis justiciarius banci** /kæpətɛyləs jəstishiyériyəs bənsay/. Chief justice of the bench. The title of the chief justice of the (now) court of common pleas, first mentioned in the first year of Edward I.

**Capitalis justiciarius totius Angliæ** /kæpətɛyləs jəstishiyériyəs toʊshiyəs ængliiy/. Chief justice of all England. The title of the presiding justice in the court of *aula regis*. 3 Bl. Comm. 38.

**Capitalis plegius** /kæpətɛyləs pléjijəs/. A chief pledge; a head borough.

**Capitalis reditus** /kæpətɛyləs rédətəs/. A chief rent.

**Capitalist.** One exclusively dependent on accumulated property, whether denoting a person of large wealth or one having an income from investments. An individual who owns all or part of an income-producing asset.

**Capitalis terra** /kæpətɛyləs téhrə/. A head-land. A piece of land lying at the head of other land.

**Capitalization** /kæpətələzéyshən/. Capitalization represents the total amount of the various securities issued by a corporation. Capitalization may include bonds, debentures, preferred and common stock and surplus. Bonds and debentures are usually carried on the books of the issuing company in terms of their par or face value. Preferred and common shares may be carried in terms of par or stated value. Stated value may be an arbitrary figure decided upon by the directors or it may represent the amount received by the company from the sale of the securities at the time of issuance.

To record an expenditure that may benefit a future period as an asset rather than to treat the expenditure as an expense of the period of its occurrence.

*See* Capitalize; Thin capitalization.

**Capitalization accounting method.** A method of determining the present value of an asset that is expected to produce a stream of future benefits. This involves *discounting* the stream of expected future benefits at an appropriate rate.

A method of measuring values of realty for purpose of determining values of mortgages by expertly estimating the gross income which property should realize, and separately the expenses reasonably required to carry it, and thus arriving at a fair estimate of net income and using a capitalization figure or factor, expertly chosen. Depreciation must be taken into consideration in use of such method. In re New York Title & Mortgage Co. (Series B-K), 21 N.Y.S.2d 575, 594, 595.

**Capitalization rate.** The rate of interest used in calculating the present value of future periodic payments.

**Capitalize.** To convert periodic payments into an equivalent sum or sum in hand. To compute the present value of income extended over a period of time. To record an expenditure as an asset when the expenditure

benefits a period in excess of one year. An example includes improvements to a commercial building. The cost of the improvements is recorded as an asset on the balance sheet and written off over the estimated useful life of the improvement.

**Capitaneus** /kəpətēniyəs/. A tenant *in capite*. He who held his land or title directly from the king himself. A captain; a naval commander. This latter use began A.D. 1264. *Capitaneus, Admiralius*. A commander or ruler over others, either in civil, military, or ecclesiastical matters.

**Capita, per** /pər kəpətə/. By heads; by the poll; as individuals. In the distribution of an intestate's personality, the persons legally entitled to take are said to take *per capita*, that is, equal shares, when they claim, each in his own right, as in equal degree of kindred; in contradistinction to claiming by right of representation, or *per stirpes*. See *Per capita*.

**Capitare** /kəpətəri/. In old law and surveys. To head, front, or abut; to touch at the head, or end.

**Capitatum** /kəpətétəm/. Lat. By the head; by the poll; severally to each individual.

**Capitation tax**. A poll tax (*q.v.*). A tax or imposition upon the person. It is a very ancient kind of tribute, and answers to what the Latins called "*tributum*," by which taxes on persons are distinguished from taxes on merchandise, called "*vectigalia*."

**Capite** /kəpəti/. Lat. By the head. Tenure *in capite* was an ancient feudal tenure, whereby a man held lands of the king immediately. It was of two sorts,—the one, principal and general, or of the king as the source of all tenure; the other, special and subaltern, or of a particular subject. It is now abolished. As to distribution *per capita*, see *Capita, per*.

**Capite minutus** /kəpəti mənuywtəs/. In the civil law, one who had suffered *capitis diminutio*, one who lost status or legal attributes.

**Capitis diminutio** /kəpətəs dimən(y)úwsh(iy)ow/. In Roman law, a diminishing or abridgment of personality; a loss or curtailment of a man's status or aggregate of legal attributes and qualifications.

**Capitis diminutio maxima** /kəpətəs dimən(y)úwsh(iy)ow mæksəmə/. The highest or most comprehensive loss of status. This occurred when a man's condition was changed from one of freedom to one of bondage, when he became a slave. It swept away with it all rights of citizenship and all family rights.

**Capitis diminutio media** /kəpətəs dimən(y)úwsh(iy)ow miydiyəs/. A lesser or medium loss of status. This occurred where a man lost his rights of citizenship, but without losing his liberty. It carried away also the family rights.

**Capitis diminutio minima** /kəpətəs dimən(y)úwsh(iy)ow mínəmə/. The lowest or least comprehensive degree of loss of status. This occurred where a man's family relations alone were changed. It happened upon the arrogation of a person who had been his own master

(*sui juris*), or upon the emancipation of one who had been under the *patria potestas*. It left the rights of liberty and citizenship unaltered.

**Capitium** /kəpətish(iy)əm/. A covering for the head, mentioned in St. 1 Hen. IV, and other old statutes, which prescribe what dresses shall be worn by all degrees of persons.

**Capitula** /kəpityələ/. Collections of laws and ordinances drawn up under heads of divisions. The term is used in the civil and old English law, and applies to the ecclesiastical law also, meaning chapters or assemblies of ecclesiastical persons. The *Royal and Imperial Capitula* were the edicts of the Frankish Kings and Emperors.

**Capitula coronæ** /kəpityələ kərówniy/. Chapters of the crown. Chapters or heads of inquiry, resembling the *capitula itineris* (*infra*) but of a more minute character.

**Capitula de judæis** /kəpityələ diy juwdiyəs/. A register of mortgages made to the Jews. 2 Bl.Comm. 343.

**Capitula itineris** /kəpityələ aytinərəs/. Articles of inquiry which were anciently delivered to the justices in eyre when they set out on their circuits. These schedules were designed to include all possible varieties of crime.

**Capitula ruralia** /kəpityələ ruréyliyəs/. Assemblies or chapters, held by rural deans and parochial clergy, within the precinct of every deanery; which at first were every three weeks, afterwards once a month, and subsequently once a quarter.

**Capitulary** /kəpityələríy/. In French law, a collection and code of the laws and ordinances promulgated by the kings of the Merovingian and Carolingian dynasties.

Any orderly and systematic collection or code of laws. See *Code*.

In ecclesiastical law, a collection of laws and ordinances orderly arranged by divisions. A book containing the beginning and end of each Gospel which is to be read every day in the ceremony of saying mass.

**Capitulation** /kəpityələyshən/. The act or agreement of surrendering upon negotiated or stipulated terms.

**Capituli agri** /kəpityələy égray/. Head-fields; lands lying at the head or upper end of furrows, etc.

**Capitulum** /kəpityələm/. Lat. A leading division of a book or writing; a chapter; a section.

**Capper** /kəpər/. A decoy or lure for purpose of swindling. *Barron v. Board of Dental Examiners of California*, 109 Cal.App. 382, 293 P. 144, 145.

**Caprice** /kəpriys/. Whim, arbitrary, seemingly unfounded motivation. Disposition to change one's mind impulsively.

**Capricious disregard**. A wilful and deliberate disregard of competent testimony and relevant evidence which one of ordinary intelligence could not possibly have avoided in reaching the result. *Unemployment Compensation Bd. of Review v. Kessler*, 27 Pa.Cmwltth. 1, 365 A.2d 459, 462.

**Captain.** A head-man; commander; commanding officer of troops, ship, etc.

**Captain of the ship doctrine.** This doctrine imposes liability on surgeon in charge of operation for negligence of his assistants during period when those assistants are under surgeon's control, even though assistants are also employees of hospital. This concept is an adaptation of the "borrowed servant" principle in law of agency to operating room of hospital. *Thomas v. Hutchinson*, 442 Pa. 118, 275 A.2d 23, 27.

**Captation.** In French law, the act of one who succeeds in controlling the will of another, so as to become master of it; used in an invidious sense. It was formerly applied to the first stage of the hypnotic or mesmeric trance.

**Captator** /kæptéytər/. A person who obtains a gift or legacy through artifice. *See* Captation.

**Captio** /kæpshiyow/. In old English law and practice, a taking or seizure; arrest; receiving; holding of court.

**Caption** /kæpshən/. The heading or introductory part of a pleading, motion, deposition, or other legal instrument which indicates the names of the parties, name of the court, docket or file number, title of the action, etc. Fed.R. Civil P. 10(a).

**Captive.** Prisoner of war.

**Captive audience.** Any group subject to a speaker or to a performance and which is not free to depart without adverse consequences.

**Captor.** In international law, one who takes or seizes property in time of war; one who takes the property of an enemy. In a stricter sense, one who takes a prize at sea. *Oakes v. U. S.*, 174 U.S. 778, 19 S.Ct. 864, 43 L.Ed. 1169. The term also designates a belligerent who has captured the person of an enemy.

**Capture.** Act of catching or controlling by force, threats or strategy. In international law, the taking or wresting of property from one of two belligerents by the other. Also a taking of property by a belligerent from an offending neutral. Capture, in technical language, is a taking by military power; a *seizure* is a taking by civil authority.

**Caput** /kæpət/. A head; the head of a person; the whole person; the life of a person; one's personality; status; civil condition.

At common law, a head. *Caput comitatis*, the head of the county; the sheriff; the king. A person; a life. The upper part of a town. A castle.

*Capitis æstimatio* /kæpətəs ɛstəméysh(iy)ow/. In Saxon law, the estimation or value of the head, that is, the price or value of a man's life.

*Caput anni* /kæpət énay/. The first day (or beginning) of the year.

*Caput baroniæ* /kæpət bərówniyiy/. The castle or chief seat of a baron.

*Caput jejunii* /kæpət jəjúwniyay/. The beginning of the Lent fast, *i.e.*, Ash Wednesday.

*Caput loci* /kæpət lówsay/. The head or upper part of a place.

*Caput lupinum* /kæpət lúwpənam/. In old English law, a wolf's head. An outlawed felon was said to be *caput lupinum*, and might be knocked on the head like a wolf. 4 Bl.Comm. 284, 320.

*Caput mortuum* /kæpət mórtuywəm/. A dead head; dead; obsolete.

*Caput portus* /kæpət pórtəs/. In old English law, the head of a port. The town to which a port belongs, and which gives the denomination to the port, and is the head of it.

*Caput, principium, et finis* /kæpət, prinsípiyəm, ɛt fáynəs/. The head, beginning, and end. A term applied in English law to the king, as head of parliament. 1 Bl.Comm. 188.

In civil law, it signified a person's civil condition or status, and among the Romans, consisted of three component parts or elements,—*libertas*, liberty; *civitas*, citizenship; and *familia*, family.

**Caputagium** /kæpətéj(iy)əm/. In old English law, head or poll money, or the payment of it.

**Caputium** /kæpyúwsh(iy)əm/. In old English law, a head of land; a headland.

**Carat** /kærət/. A measure of weight for diamonds and other precious stones, equivalent to three and one-sixth grains Troy, though divided by jewelers into four parts called "diamond grains." Also a standard of fineness of gold, twenty-four carats being conventionally taken as expressing absolute purity, and the proportion of gold to alloy in a mixture being represented as so many carats.

**Carcan** /kárkən/. In French law, an instrument of punishment, somewhat resembling a pillory. It sometimes signifies the punishment itself.

**Carcanum** /karkéynəm/. A gaol; a prison.

**Carcare** /karkériy/. In old English law, to load; to load a vessel; to freight.

**Carcatus** /karkéytəs/. Loaded; freighted, as a ship.

**Carcelage** /kársəlaj/. Gaol-dues; prison-fees.

**Carcer** /kársər/. A prison or gaol. Strictly, a place of detention and safe-keeping, and not of punishment.

**Carcer ad homines custodiendos, non ad puniendos, dari debet** /kársər æd hóməniyz kəstówdiyéndows, nòn æd pyúwniyéndows, déray débat/. A prison should be used for keeping persons, not for punishing them.

**Carcer non supplicii causa sed custodiae constitutus** /kársər nòn səplisiyay kóza sèd kəstówdiyiy konstatyúwtəs/. A prison is ordained not for the sake of punishment, but of detention and guarding.

**Cardholder.** A member of a group such as a union wherein the card is the symbol and identification of membership.

**Care.** Watchful attention; concern; custody; diligence; discretion; caution; opposite of negligence or carelessness; prudence; regard; preservation; security; support; vigilance. To be concerned with, and to attend to, the needs of oneself or another.

In the law of negligence, the amount of care demanded by the standard of reasonable conduct must be in proportion to the apparent risk. As the danger becomes greater, the actor is required to exercise caution commensurate with it. *Foy v. Friedman*, 280 F.2d 724.

There are three degrees of care which are frequently recognized, corresponding (inversely) to the three degrees of negligence, viz.: slight care, ordinary care, and great care. This division into three degrees of care, however, does not command universal assent.

*Slight care* is such as persons of ordinary prudence usually exercise about their own affairs of slight importance. Or it is that degree of care which a person exercises about his own concerns, though he may be a person of less than common prudence or of careless and inattentive disposition.

*Ordinary care* is that degree of care which persons of ordinary care and prudence are accustomed to use and employ, under the same or similar circumstances. Or it is that degree of care which may reasonably be expected from a person in the party's situation, that is, reasonable care. *See also* Ordinary.

*Reasonable care* is such a degree of care, precaution, or diligence as may fairly and properly be expected or required, having regard to the nature of the action, or of the subject-matter, and the circumstances surrounding the transaction. It is such care as an ordinarily prudent person would exercise under the conditions existing at the time he is called upon to act. Substantially synonymous with ordinary or due care.

*Great care* is such as persons of ordinary prudence usually exercise about affairs of their own which are of great importance; or it is that degree of care usually bestowed upon the matter in hand by the most competent, prudent, and careful persons having to do with the particular subject.

A high degree of care is not the legal equivalent of reasonable care. It is that degree of care which a very cautious, careful, and prudent person would exercise under the same or similar circumstances; a degree of care commensurate with the risk of danger.

Highest degree of care and utmost degree of care have substantially the same meaning. "Highest degree of care" only requires the care and skill exacted of persons engaged in the same or similar business. It means the highest degree required by law where human safety is at stake, and the highest degree known to the usage and practice of very careful, skillful, and diligent persons engaged in the same business by similar means or agencies.

*See also* Diligence; Due care; Reasonable care; Support.

**Careless.** Absence of care; negligent; reckless.

**Carena** /kəriynə/. A term used in the old ecclesiastical law to denote a period of forty days.

**Carence** /kàróns/. In French law, lack of assets; insolvency.

**Careta** (spelled, also, *Carreta* and *Carecta*) /kəriytə/. A cart; a cart-load.

**Caretorius** /kàrətóriyəs/ or **carectarius** /kàrəktériyəs/. A carter.

**Carga** /kárgə/. In Spanish law, an incumbrance; a charge.

**Cargaison** /kàrgéyzó(w)n/. In French commercial law, cargo; lading.

**Cargare** /kàrgériy/. In old English law, to charge.

**Cargo.** The load (*i.e.* freight) of a vessel, train, truck, airplane or other carrier. *See* Freight.

**Cariagium** /kəriyéjjiyəm/. In old English law, carriage; the carrying of goods or other things for the king.

**Caristia** /kàrist(i)yə/. Dearth, scarcity, dearth.

**Cark.** In old English law, a quantity of wool, whereof thirty made a sarplar. (The latter is equal to 2,240 pounds in weight or one English ton).

**Carlisle tables.** A mortality table for actuarial use compiled between 1779 and 1787 so named for the city in England where the statistics were compiled.

**Carload.** The quantity usually contained in an ordinary freight car used for transporting the particular commodity involved. A commercial unit which by commercial usage is a single whole for purposes of sale and division. U.C.C. § 2-105(6).

**Carmack Act.** Amendment to Interstate Commerce Act prescribing liability of carrier for loss, damage, or injury to property carried in interstate commerce.

**Carmen** /kàrmən/. In the Roman law, literally, a verse or song. A formula or form of words used on various occasions, as of divorce.

**Car mile.** Movement of loaded freight car one mile.

**Carnal** /kàrnəl/. Pertaining to the body, its passions and its appetites; animal; fleshly; sensual; impure; sexual. *People v. Battilana*, 52 Cal.App.2d 685, 126 P.2d 923, 928.

**Carnal abuse.** An act of debauchery of the female sexual organs by those of the male which does not amount to penetration; the offense commonly called statutory rape consists of carnal abuse. An injury to the genital organs in an attempt at carnal knowledge, falling short of actual penetration. Carnal knowledge of a female child of tender age includes abuse. Carnal abuse and "carnal knowledge" are synonymous in many statutes. *See also* Carnal knowledge.

**Carnaliter** /kàrnéyltər/. In old criminal law, carnally. *Carnaliter cognovit*, carnally knew. Technical words in indictments for rape; formerly held to be essential.

**Carnal knowledge.** Coitus; copulation; the act of a man having sexual bodily connections with a woman;

sexual intercourse. Carnal knowledge of a child is unlawful sexual intercourse with a female child under the age of consent. It is a statutory crime, usually a felony. Such offense is popularly known as "statutory rape". See Rape.

While penetration is an essential element, there is "carnal knowledge" if there is the slightest penetration of the sexual organ of the female by the sexual organ of the male. *State v. Cross*, 200 S.E.2d 27, 29. It is not necessary that the vagina be entered or that the hymen be ruptured; the entering of the vulva or labia is sufficient. *De Armond v. State*, Okl.Cr., 285 P.2d 236.

**Carnet.** An international customs document allowing duty-free temporary exportation of merchandise from one participating country into another participating country, return to the country of origin being contemplated. *U.S. v. Dunn*, C.A.Cal., 564 F.2d 348.

**Carriage.** Transportation of goods, freight or passengers.

**Carriage of Goods by Sea Act.** Federal act governing the most important of the rights, responsibilities, liabilities and immunities arising out of the relation of issuer to holder of the ocean bill of lading, with respect to loss or damage of goods. 46 U.S.C.A. § 1300 et seq.

**Carrier.** Individual or organization engaged in transporting passengers or goods for hire.

"Carrier" means any person engaged in the transportation of passengers or property by land, as a common, contract, or private carrier, or freight forwarder as those terms are used in the Interstate Commerce Act, as amended, and officers, agents and employees of such carriers. 18 U.S.C.A. § 831.

See also Certified carriers; Connecting carrier; Contract carrier.

**Common carrier.** Common carriers are those that hold themselves out or undertake to carry persons or goods of all persons indifferently, or of all who choose to employ it. *Merchants Parcel Delivery v. Pennsylvania Public Utility Commission*, 150 Pa.Super. 120, 28 A.2d 340, 344. Those whose occupation or business is transportation of persons or things for hire or reward. Common carriers of passengers are those that undertake to carry all persons indifferently who may apply for passage, so long as there is room, and there is no legal excuse for refusal.

**Private carrier.** Private carriers are those who transport only in particular instances and only for those they choose to contract with.

**Carrier's lien.** The right to hold the consignee's cargo until payment is made for the work of transporting it.

**Carroll doctrine.** Rule of law to effect that existing licensee has standing to contest the grant of a competitive license because economic injury to an existing station becomes important when on the facts it spells diminution or destruction of service. *Carroll Broadcasting Co. v. F. C. C.*, 103 U.S.App.D.C. 346, 258 F.2d 440.

**Carry.** To bear, bear about, sustain, transport, remove, or convey. To have or bear upon or about one's person,

as a watch or weapon; locomotion not being essential. As applied to insurance, means "possess" or "hold."

**Carry a member.** To pay the assessments against a sick or indigent member, as of a beneficial association, the payment being made by the other members or the local lodge or camp on his behalf.

**Carry an election.** For a candidate to be elected, or a measure carried, at an election, he or it must receive a majority or a plurality of the legal votes cast.

**Carry arms or weapons.** To wear, bear, or carry them upon the person or in the clothing or in a pocket, for the purpose of use, or for the purpose of being armed and ready for offensive or defensive action in case of a conflict with another person.

**Carry-back.** A provision in the tax law which allows a taxpayer to apply a net operating loss in one year to the three immediately preceding tax years, beginning with the earliest year. A net operating loss must be carried back unless the taxpayer elects to forego the carry-back and carry the loss forward. I.R.C. § 172(b). Compare to Carry-over.

**Carry costs.** A verdict is said to carry costs when the party for whom the verdict is given becomes entitled to the payment of his costs as incident to such verdict.

**Carrying away.** The act of removal or asportation, by which the crime of larceny is completed, and which is essential to constitute it. See also Larceny.

**Carrying charge.** Charge made by creditor, in addition to interest, for carrying installment credit. Under consumer credit protection statutes, full disclosure of all such service charges is required. See Truth-in-Lending Act. See also Carrying costs.

**Carrying concealed weapon.** Such act is a criminal offense in most all jurisdictions; though concealment is not universally an element of the crime. See e.g. Model Penal Code § 5.06.

**Carrying costs.** All costs associated with holding items in inventory for a period of time. See also Carrying charge.

**Carry on trade or business.** To conduct, prosecute or continue a particular avocation or business as a continuous operation or permanent occupation. The repetition of acts may be sufficient. To hold one's self out to others as engaged in the selling of goods or services. *Helvering v. Highland*, C.C.A.4, 124 F.2d 556, 561.

Term which has multiple meanings depending on the context, but it is commonly used in connection with the degree of activity of a foreign corporation in a given state and the consequent right of that state to regulate such enterprise and the exposure of such foreign corporation to suit within that state. In this connection, so called "long arm" statutes define what constitutes carrying on business.

**Carry-over.** A provision in the tax law which allows a taxpayer to apply a net operating loss in one year to the years following the loss. Net operating losses incurred after 1975 are carried forward 15 years; and losses

incurred prior to 1976 are carried forward five years. I.R.C. § 172(b). *Compare* to Carry-back.

**Carry passengers for a consideration.** Transportation of persons under such conditions that operator owes them duty of carrier for hire.

**Carry stock.** To provide funds or credit for its payment for the period agreed upon from the date of purchase.

**Carry the iron.** *See Fire ordeal* under the title Ordeal.

**Carta** /kártə/. In old English law, a charter, or deed. Any written instrument.

In Spanish law, a letter; a deed; a power of attorney.

**Carta mercatoria** /kártə mærkətóriə/. A grant (1303) to certain foreign merchants, in return for custom duties, of freedom to deal wholesale in all cities and towns of England, power to export their merchandise, and liberty to dwell where they pleased, together with other rights pertaining to speedy justice.

**Cart bote** /kárt bōwt/. In old English law, wood or timber which a tenant is allowed by law to take from an estate, for the purpose of repairing instruments (including necessary vehicles), of husbandry. 2 Bl.Comm. 35. *See* Bote, bot.

**Carte.** In French marine law, a chart.

**Carte blanche** /kàrt blónsh/. A white sheet of paper; an instrument signed, but otherwise left blank. A sheet given to an agent, with the principal's signature appended, to be filled up with any contract or engagement as the agent may see fit. Term is commonly used to mean unlimited authority; full discretionary power.

**Cartel** /kartél/. A combination of producers of any product joined together to control its production, sale, and price, so as to obtain a monopoly and restrict competition in any particular industry or commodity. Such exist primarily in Europe, being restricted in United States by antitrust laws. Also, an association by agreement of companies or sections of companies having common interests, designed to prevent extreme or unfair competition and allocate markets, and to promote the interchange of knowledge resulting from scientific and technical research, exchange of patent rights, and standardization of products.

An agreement between two hostile powers for the delivery of prisoners or deserters, or authorizing certain non-hostile intercourse between each other which would otherwise be prevented by the state of war; for example, agreements for intercommunication by post, telegraph, telephone, railway.

**Car trust certificates, or securities.** A class of investment securities based upon the conditional sale or hire of railroad cars or locomotives with a reservation of title or lien in the vendor or bailor until the property is paid for. *See also* Equipment trust.

**Cartulary** /kártyəlry/. A place where papers or records are kept.

**Carucage** /kérəkəj/. In old English law, a kind of tax or tribute anciently imposed upon every plow (*carue* or plow-land) for the public service.

**Carucata, carucate** /kærəkéytə/kérəkéyt/. In old English law, a certain quantity of land used as the basis for taxation. A cartload. As much land as may be tilled by a single plow in a year and a day. A plow land of one hundred acres.

**Carucatarius** /kærəkətériyəs/. One who held lands in *carvage*, or plow-tenure.

**Carue** /kéruw/. A carve of land; plow-land.

**Carvage.** The same as *carucage* (*q.v.*).

**Carve.** In old English law, a *carucate* or plow-land.

**Ca. Sa.** An abbreviation of *capias ad satisfaciendum*.

**Casata** /kəséytə/. In old English law, a house with land sufficient for the support of one family. Otherwise called "*hida*," a hide of land, and "*familia*."

**Casatus** /kæzéytəs/. A vassal or feudal tenant possessing a *casata*; that is, having a house, household, and property of his own.

**Case.** A general term for an action, cause, suit, or controversy, at law or in equity; a question contested before a court of justice; an aggregate of facts which furnishes occasion for the exercise of the jurisdiction of a court of justice. A judicial proceeding for the determination of a controversy between parties wherein rights are enforced or protected, or wrongs are prevented or redressed; any proceeding judicial in its nature.

Criminal act requiring investigation by police. Dis-ease or injury requiring treatment by physician.

Surveillance or inspection of residence, business, etc. by potential burglar or robber.

The word "case" may include applications for divorce, applications for the establishment of highways, applications for orders of support of relatives, and other special proceedings unknown to the common law. *S. D. Warren Co. v. Fritz*, 138 Me. 279, 25 A.2d 645, 648.

In ordinary usage, the word "case" means "event", "happening", "situation", "circumstances".

A statement of facts involved in a transaction or series of transactions, or occurrence, or other matter in dispute, drawn up in writing in a technical form, for submission to a court or judge for decision or opinion. *See below Case agreed on; Case on appeal; Case reserved; Case stated.*

*See also* Cause of action.

**Case agreed on.** A formal written enumeration of the facts in a case, assented to by both parties as correct and complete, and submitted to the court by their agreement, in order that decision may be rendered without a trial, upon the court's conclusions of law upon the facts as stated. For agreed case, or case stated, parties must agree on all material ultimate facts on which their rights are to be determined by law. *See also* Stipulation.

*Case made. See Case reserved, below.*

*Case of actual controversy.* The phrase in Federal Declaratory Judgment Act connotes controversy of justiciable nature, excluding advisory decree on hypothetical facts. *John P. Agnew & Co., Inc. v. Hoage*, 69 App.D.C. 116, 99 F.2d 349, 351. *See Cases and controversies, below.*

*Case of first impression.* *See* First impression case.

*Case on appeal.* Status of case after it leaves trial court for appellate review and is on appellate docket.

*Case reserved.* A statement in writing of the facts proved on the trial of a cause, drawn up and settled by the attorneys and counsel for the respective parties under the supervision of the judge, for the purpose of having certain points of law, which arose at the trial and could not then be satisfactorily decided, determined upon full argument before the court *in banc*. This is otherwise called a "special case"; and it is usual for the parties, where the law of the case is doubtful, to agree that the jury shall find a general verdict for the plaintiff, subject to the opinion of the court upon such a case to be made, instead of obtaining from the jury a special verdict.

*Cases and controversies.* This term, as used in the Constitution of the United States, embraces claims or contentions of litigants brought before the court for adjudication by regular proceedings established for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs; and whenever the claim or contention of a party takes such a form that the judicial power is capable of acting upon it, it has become a case or controversy. *Interstate Commerce Com'n v. Brimson*, 154 U.S. 447, 14 S.Ct. 1125, 38 L.Ed. 1047. The federal courts will only consider questions which arise in a "case or controversy"; *i.e.*, only justiciable cases. Art. III, Sec. 2, U.S.Const. The case or controversy must be definite and concrete, touching the legal relations of parties having adverse interests. The questions involved must not be moot or academic, nor will the courts consider collusive actions. *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 229, 240, 241, 57 S.Ct. 461, 464, 81 L.Ed. 617. The facts in controversy, under all the circumstances, must show a substantial issue between the parties having adverse legal interests of sufficient immediacy and reality to warrant issuance of a judgment. *Adams v. Morton*, C.A.Mont., 581 F.2d 1314, 1319. *See also* Controversy; Justiciable controversy; Ripeness doctrine; Standing to sue doctrine.

*Case stated.* *See* Case agreed on, above.

*Case sufficient to go to a jury.* A case that has proceeded upon sufficient proof to that stage where it must be submitted to jury and not decided against the state as a matter of law. *State v. McDonough*, 129 Conn. 483, 29 A.2d 582, 584.

*Form of action.* That category into which a case falls such as contract or tort, though under Rules of Civil Procedure, all actions are "civil" actions. Fed.R. Civil P. 2.

**Casebook.** Type of book used in law school containing text of leading court decisions in particular field of law (e.g., contracts, torts), together with commentary and other features useful for class discussion and further understanding of subject as prepared by author. *Compare* Hornbook.

**Case in chief.** That part of a trial in which the party with the initial burden of proof presents his evidence after which he rests.

**Case law.** The aggregate of reported cases as forming a body of jurisprudence, or the law of a particular subject as evidenced or formed by the adjudged cases, in distinction to statutes and other sources of law. It includes the aggregate of reported cases that interpret statutes, regulations, and constitutional provisions. *See* Common law.

**Case or controversy.** *See* Case; Standing to sue doctrine.

**Case system.** A method of teaching or studying the science of the law by a study of the cases historically, or by the inductive method. It was introduced in the Law School of Harvard University in 1869-70 by Christopher C. Langdell, Dane Professor of Law. *See* Casebook.

**Caseworker.** Generally, a social worker whose clients are called cases and whose work is mainly in the field.

**Cas fortuit /ká fortwiy/. Fr.** In the law of insurance, a fortuitous event; an inevitable accident.

**Cash.** Money or the equivalent; usually ready money. Currency and coins, negotiable checks, and balances in bank accounts. That which circulates as money. *See* Legal tender; Petty cash.

**Cash account.** A record, in bookkeeping, of all cash transactions; a summary of moneys received and expended.

**Cash bail.** Sum of money posted by a criminal defendant to insure his presence in court; used in place of surety bond and real estate. *See* Bail.

**Cash basis accounting.** A method of accounting that reflects deductions as paid and income as received in any one tax year. That system of accounting which treats as income only cash which is actually received and as expense only cash which is actually paid out, in contrast to accrual basis which records income when due though not received and expense when incurred though not yet paid.

**Cash book.** In bookkeeping, an account book in which is kept a record of all cash transactions, or all cash received and expended.

**Cash budget.** A period-by-period statement of opening cash on hand, estimated cash receipts, estimated cash disbursements, and estimated cash balance at the end of each period. A projection of the company's cash receipts and disbursements over some future period of time.

**Cash cycle.** The time lapse between purchase of materials and collection of accounts receivable for finished product sold.

**Cash discount.** A deduction from billed price which seller allows for payment within a certain time; e.g. 10% discount for payment within 10 days. A discount offered for early payment of an invoice.

**Cash dividend.** That portion of profits and surplus paid to stockholders by a corporation in form of cash. To be contrasted with "stock" dividend.

**Cash equivalent doctrine.** Generally, a cash basis taxpayer does not report income until cash is constructively or actually received. Under the cash equivalent doctrine, cash basis taxpayers are required to report income even though no cash is actually received in a transaction if the equivalent of cash is received e.g., property is received instead of cash in a taxable transaction.

**Cash flow.** The cash generated from property, business, etc. It is different from net income; cash flow looks to the amount of cash left after all payments are made, whether they are tax deductible or not. Cash receipts minus disbursements from a given asset, or group of assets, for a given period. An analysis of the movement of cash through a venture as contrasted with the earnings of the venture.

*Negative cash flow.* Refers to a situation where the cash needs of a business exceed its cash intake.

**Cashier, v.** To dismiss dishonorably from service.

**Cashier, n.** Executive officer of bank or trust company responsible for banking transactions. One who collects and records payments at store, restaurant, business, or the like.

**Cashiered.** Dismissal with ignominy or dishonor, or in disgrace.

**Cashier's check.** A check drawn by the bank upon itself and issued by an authorized officer of a bank, directed to another person evidencing fact that payee is authorized to demand and receive from the bank, upon presentation, the amount of money represented by the check. *National Newark and Essex Bank v. Giordano*, 111 N.J.Super. 347, 268 A.2d 327, 328. *See also* Check.

**Cashlite.** An amercement or fine; a mulct.

**Cash market value.** Price which property would bring if offered for sale by one who desired to sell but was under no obligation to sell, and was bought by one who desired to buy but was under no necessity to buy. *Urban Renewal Agency of City of Lubbock v. Trammel*, Tex., 407 S.W.2d 773, 777. "Fair market value," "reasonable market value" or "fair cash market value" are synonymous. *Housing Authority of Birmingham Dist. v. Title Guarantee Loan & Trust Co.*, 243 Ala. 157, 8 So.2d 835, 837. For Fair market value, and Fair cash market value, see those titles.

**Cash note.** In England, a bank-note of a provincial bank or of the Bank of England.

**Cash out.** Exists when seller of property takes the entire amount of equity in cash rather than retaining some interest in property.

**Cash position.** Degree of liquidity; amount of quick or liquid assets.

**Cash price.** A price payable in cash at the time of sale of property, in opposition to a barter or a sale on credit.

**Cash sale.** A sale for money in hand. A sale conditioned on payment concurrent with delivery. *Weyerhaeuser Timber Co. v. First Nat. Bank*, 150 Or. 172, 43 P.2d 1078, 1081. *See* Sale; Time-price differential.

**Cash surrender value.** The amount of money that an insurance policy would yield if cashed in with the insurance company that issued the policy. The cash surrender value of a life insurance policy is the reserve less a surrender charge. Amount which the insurer will pay upon cancellation of the policy before death. *See* Cash value option.

**Cash value.** The cash value of an article or piece of property is the price which it would bring at private sale (as distinguished from a forced or auction sale); the terms of sale requiring the payment of the whole price in ready money, with no deferred payments.

Actual value or market value. *Fort Worth & D. N. Ry. Co. v. Sugg*, Tex.Civ.App., 68 S.W.2d 570, 572. Clear market value or fair market value. Price property will bring on sale by one desiring, but not compelled, to sell to one desiring but not compelled, to purchase. *Insurance Co. of North America, v. McCraw*, 255 Ky. 839, 75 S.W.2d 518, 520. Saleable value. *In re Lang Body Co.*, C.C.A.Ohio, 92 F.2d 338, 340. Value at which property would be taken in payment of just debt from solvent debtor. *Bank of Fairfield v. Spokane County*, 173 Wash. 145, 22 P.2d 646, 652.

*See also* Actual cash value; Cash surrender value; Fair cash value; Fair market value; Market value.

**Cash value option.** The right of an owner of life insurance policy to take the cash value of a policy which is a predetermined amount at a given point in time; generally limited to a specified period after default in premium payments.

**Cassare.** To quash; to render void; to break.

**Cassation.** In French law, annulling; reversal; breaking the force and validity of a judgment. A decision emanating from the sovereign authority, by which a decree or judgment in the court of last resort is broken or annulled.

**Cassation, court of.** (Fr. *cour de cassation*.) The highest court in France; so termed from possessing the power to quash (*casser*) the decrees of inferior courts. It is a court of appeal in criminal as well as civil cases.

**Cassetur billa** /kəsiytər bilə/. (Lat. That the bill be quashed.) The form of the judgment for the defendant on a plea in abatement, where the action was commenced by bill (*billa*). 3 Bl.Comm. 303. The form of an entry made by a plaintiff on the record, after a plea in abatement, where he found that the plea could not be confessed and avoided, nor traversed nor demurred to; amounting in fact to a discontinuance of the action.



**Cassetur breve** /kəsiytər bríyviy/. (Lat. That the writ be quashed.) The form of the judgment for the defendant on a plea in abatement, where the action was commenced by original writ (*breve*). 3 Bl.Comm. 303.

A judgment sometimes entered against a plaintiff at his request when, in consequence of allegations of the defendant, he can no longer prosecute his suit with effect.

**Cast.** To deposit formerly or officially, as to cast a ballot. The form in which a thing is constructed. To get rid of; to discard.

**Cast away.** Rejected; thrown away. Cast ashore or adrift, as a shipwrecked person.

**Castel, or castle.** A fortress in a town; the principal mansion of a nobleman.

**Castellain** /késtələn/. In old English law, the lord, owner, or captain of a castle; the constable of a fortified house; a person having the custody of one of the crown mansions; an officer of the forest.

**Castellanus** /késtələynəs/. A castellain; the keeper or constable of a castle.

**Castellarium, castellatus** /késtələriyəm/késtələytəs/. In old English law, the precinct or jurisdiction of a castle.

**Castellorum operatio** /késtəlórəm opəréysh(iy)ow/. In Saxon and old English law, castle work. Service and labor done by inferior tenants for the building and upholding of castles and public places of defense. One of the three necessary charges (*trinoda necessitas*) to which all lands among the Saxons were expressly subject. Towards this some gave them personal service, and others, a contribution of money or goods. 1 Bl. Comm. 263.

**Castigatory.** An engine used to punish women who had been convicted of being common scolds. It was sometimes called the trebucket, tumbrel, ducking-stool, or cucking-stool.

**Casting vote.** Deciding vote cast by presiding officer to break tie. Act of voting by ballot or voting machine.

**Castle doctrine.** A man's home is his castle and, hence, he may use all manner of force including deadly force to protect it and its inhabitants from attack. Doctrine is usually attributed to Coke, Third Institute, 1644, but similar phrases are found in Roman law. *See* Self-defense.

**Castleguard.** In feudal law, an imposition anciently laid upon such persons as lived within a certain distance of any castle, towards the maintenance of such as watched and warded the castle.

**Castleguard rents.** In old English law, rents paid by those that dwelt within the precincts of a castle, towards the maintenance of such as watched and warded it.

**Castrensis** /kəstrénsəs/. In the Roman law, relating to the camp or military service.

*Castrense peculium*, a portion of property which a son acquired in war, or from his connection with the camp.

**Casual** /káz(h)yuwəl/. Occurring without regularity, occasional; impermanent, as employment for irregular periods.

Happening or coming to pass without design and without being foreseen or expected; unforeseen; uncertain; unpremeditated.

**Casual bettor.** An occasional and irregular bettor who is not guilty of crime of engaging in betting and gambling organized and carried on as a systematic business. *Bamman v. Erickson*, 288 N.Y. 133, 41 N.E.2d 920, 922.

**Casual deficiency of revenue.** An unforeseen or unexpected deficiency, or an insufficiency of funds to meet some unforeseen and necessary expense.

**Casual deficit.** A deficit happening by chance or accident and without design. *State Budget Commission v. Lebus*, 244 Ky. 700, 51 S.W.2d 965.

**Casual ejector.** The nominal defendant in an action of ejectment.

**Casual employment.** Employment at uncertain or irregular times. Employment for short time and limited and temporary purpose. Occasional, irregular or incidental employment. Such employee does not normally receive seniority rights nor, if hours worked are below a certain number each week, fringe benefits. By statute in many states, such employment may or may not be subject to workers' compensation at the election of the employer. The test is the nature of the work or the scope of the contract of employment or the continuity of employment.

**Casual sale.** A sale which is not made customarily or in the regular course of business; an occasional sale.

**Casualty** /káz(h)yuwəltiy/. A serious or fatal accident. A person or thing injured, lost or destroyed. A disastrous occurrence due to sudden, unexpected or unusual cause. Accident; misfortune or mishap; that which comes by chance or without design. A loss from such an event or cause; as by fire, shipwreck, lightning, etc. *See also* Accident; Loss; Unavoidable casualty.

**Casualty insurance.** *See* Insurance.

**Casualty loss.** A casualty loss is defined for tax purposes as "the complete or partial destruction of property resulting from an identifiable event of a sudden, unexpected or unusual nature"; *e.g.*, floods, storms, fires, auto accidents. Individuals may deduct business casualty losses in full. Losses include those in a trade or business or incurred in a transaction entered into for a profit. Personal or nonbusiness casualty losses are deductible by individuals as itemized deductions. Such loss deductions are reduced by \$100 and 10% of the taxpayer's adjusted gross income.

**Casu consimili** /kéys(y)uw kənsiməlay/. In old English law, a writ of entry, granted where tenant by the curtesy, or tenant for life, alienated in fee, or in tail, or for another's life, which was brought by him in reversion against the party to whom such tenant so alienated to his prejudice, and in the tenant's lifetime. *See* Consimili casu.

**Casu proviso** /kéys(y)uw prəváyzoʷ/. Lat. In the case provided for. A writ of entry framed under the provisions of the statute of Gloucester (6 Edw. I) c. 7, which lay for the benefit of the reversioner when a tenant in dower aliened in fee or for life.

**Casus** /kéysəs/. Lat. Chance; accident; an event; a case; a case contemplated.

**Casus belli** /kéysəs bélay/. An occurrence giving rise to or justifying war.

**Casus foederis** /kéysəs fydəras, °fédəras/. In international law, the case of the treaty. The particular event or situation contemplated by the treaty, or stipulated for, or which comes within its terms. In commercial law, the case or event contemplated by the parties to an individual contract or stipulated for by it, or coming within its terms.

**Casus fortuitus** /kéysəs fortyúwətəs/. An inevitable accident, a chance occurrence, or fortuitous event. A loss happening in spite of all human effort and sagacity.

**Casus fortuitus non est sperandus, et nemo tenetur devinare** /kéysəs fortyúwətəs nón est spərándəs, èt nymow tənýtər devənériy/. A fortuitous event is not to be expected, and no one is bound to foresee it.

**Casus fortuitus non est supponendus** /kéysəs fortyúwətəs nón est səpónéndəs/. A fortuitous event is not to be presumed.

**Casus major** /kéysəs méyjər/. In the civil law, a casualty; an extraordinary casualty, as fire, shipwreck, etc.

**Casus omissus** /kéysəs əmísəs/. A case omitted; an event or contingency for which no provision is made; particularly a case not provided for by the statute on the general subject, and which is therefore left to be governed by the common law.

**Casus omissus et oblivioni datus dispositioni juris communis relinquitur** /kéysəs əmísəs èt əbliviyónnay déytəs dispəzishiyónnay júras kəmyúwnəs rəlínkwətər/. A case omitted and given to oblivion (forgotten) is left to the disposal of the common law. A particular case, left unprovided for by statute, must be disposed of according to the law as it existed prior to such statute.

**Casus omissus pro omissis habendus est** /kéysəs əmísəs pròw əmísow həbéndəs ést/. A case omitted is to be held as (intentionally) omitted.

**Catalla** /kətélə/. In old English law, chattels. The word among the Normans primarily signified only beasts of husbandry, or, as they are still called, "cattle," but, in a secondary sense, the term was applied to all movables in general, and not only to these, but to whatever was not a fief or feud.

**Catalla juste possessa amitti non possunt** /kətélə jástiy pəzészə èymítay nón pósənt/. Chattels justly possessed cannot be lost.

**Catalla otiosa** /kətélə òwshiyówsə/. Dead goods or chattels as distinguished from animals. Idle cattle, that is,

such as were not used for working, as distinguished from beasts of the plow; called also *animalia otiosa*.

**Catalla reputantur inter minima in lege** /kətélə repywtántər intər mínəmə in liyyiy/. Chattels are considered in law among the least (or minor) things.

**Catallis captis nomine districtionis** /kətéləs kəptəs nómaniý dəstriksihiyónnəs/. An obsolete writ that lay where a house was within a borough, for rent issuing out of the same, and which warranted the taking of doors, windows, etc., by way of distress.

**Catallis reddendis** /kətéləs rədéndəs/. For the return of the chattels; an obsolete writ that lay where goods delivered to a man to keep till a certain day were not upon demand redelivered at the day.

**Catallum** /kətéləm/. A chattel. Most frequently used in the plural form, *catalla* (*q.v.*).

**Catals** /kətəlz/. Goods and chattels. *See* Catalla.

**Cataneus** /kəténiyəs/. A tenant *in capite*. A tenant holding immediately of the crown.

**Catascopus** /kətəskəpəs/. An old name for an archdeacon.

**Catastrophe** /kətəstrəfiy/. A notable disaster; a more serious calamity than might ordinarily be understood from the term "casualty." Utter or complete failure.

**Catching bargain**. *See* Bargain.

**Catchings**. Things caught (*e.g.* fish), and in the possession, custody, power, and dominion of the party, with a present capacity to use them for his own purposes.

**Catchpoll**. A name formerly given to a sheriff's deputy, or to a constable, or other officer whose duty it is to arrest persons. He was a sort of serjeant. The word is no longer in use as an official designation.

**Catch time charter**. One under which compensation is paid for the time the boat is actually used. *Schoonmaker-Conners Co. v. New York Cent. R. Co., D.C.N.Y., 12 F.2d 314, 315. See also* Bareboat charter.

**Cater cousin**. (From Fr. *Quatre cousin*.) A cousin in the fourth degree; hence any distant or remote relative.

**Cathedral**. In English ecclesiastical law, a tract set apart for the service of the church. The church of the bishop of the diocese, in which is his *cathedra*, or throne, and his special jurisdiction; in that respect the principal church of the diocese.

**Cathedral preferments**. In English ecclesiastical law, all deaneries, archdeaconries, and canonries, and generally all dignities and offices in any cathedral or collegiate church, below the rank of a bishop.

**Cathedralic** /kəθədrətək/. In English ecclesiastical law, a sum of 2s. paid to the bishop by the inferior clergy; but from its being usually paid at the bishop's *synod*, or visitation, it is commonly named *synodals*.

**Catholic Emancipation Act**. The statute of 10 Geo. IV, c. 7, by which Roman Catholics were restored, in general, to the full enjoyment of all civil rights, except that of

holding ecclesiastical offices, and certain high appointments in the state.

**Catoniana regula** /kætòwniyéynə régyələ/. In Roman law, the rule which is commonly expressed in the maxim, *Quod ab initio non valet tractu temporis non convalebit*, meaning that what is at the beginning void by reason of some technical (or other) legal defect will not become valid merely by length of time. The rule applied to the institution of *hæredes*, the bequest of legacies, and such like. The rule is not without its application also in English law; e.g., a married woman's will (being void when made) is not made valid merely because she lives to become a widow.

**Cats and dogs.** Colloquial expression for highly speculative securities.

**Cattle gate.** In old English law, a customary proportionate right of pasture enjoyed in common with others. A right to pasture cattle in the land of another. It was a distinct and several interest in the land, passing by lease and release.

**Cattle rustling.** Stealing of cattle.

**CATV.** Community Antenna Television Systems.

**Caucasian** /kokéyzhən/. Of or pertaining to the white race.

**Caucus** /kókəs/. A meeting of the legal voters of any political party assembled for the purpose of choosing delegates or for the nomination of candidates for office.

**Cauda terræ** /kódə téry/. A land's end, or the bottom of a ridge in arable land.

**Caursines** /k(ə)rsənz/. Italian merchants who came into England in the reign of Henry III, where they established themselves as money lenders, but were soon expelled for their usury and extortion.

**Causa** /kózá/kówzə/. Lat. A cause, reason, occasion, motive, or inducement. As used with the force of a preposition, it means by virtue of, on account of, in contemplation of; e.g. *causa mortis*, in anticipation of death. A condition; a consideration; motive for performing a juristic act.

In the Civil and old English law the word signified a source, ground, or mode of acquiring property; hence a title; one's title to property. Thus, "*titulus est justa causa possidendi id quod nostrum est*," title is the lawful ground of possessing that which is ours. Also a cause; a suit or action pending; e.g. *Causa testamentaria*, a testamentary cause. *Causa matrimonialis*, a matrimonial cause.

See also Cause; Cause of action.

**Causa causæ est causa causati** /kózá kózy èst kózá kozéytay/. The cause of a cause is the cause of the thing caused. The cause of the cause is to be considered as the cause of the effect also.

**Causa causans** /kózá kózánz/. The immediate cause; the last link in the chain of causation.

**Causa causantis, causa est causati** /kózá kozántəs, kózá èst kozéytay/. The cause of the thing causing is the cause of the effect.

**Causa data et non secuta** /kózá déytə èt nòn səkyúwtə/. In the civil law, consideration given and not followed, that is, by the event upon which it was given. The name of an action by which a thing given in the view of a certain event was reclaimed if that event did not take place.

**Causa ecclesiæ publicis æquiparatur; et summa est ratio quæ pro religione facit** /kózá əklízyiy pəbləsəs əkwəpəréytər; èt sámə èst réysh(iy)ow kwiy prów rəlijyówniy féysət/. The cause of the church is equal to public cause; and paramount is the reason which makes for religion.

**Causæ dotis, vitæ, libertatis, fisci sunt inter favorabilia in lege** /kózy dówtəs, váytiy, libértéytəs, fiskay sənt întər féyvəbilyə in líjyiy/. Causes of dower, life, liberty, revenue, are among the things favored in law.

**Causa et origo est materia negotii** /kózá èd órəgow èst mətíryə nəgówshiyay/. The cause and origin is the substance of the thing, the cause and origin of a thing are a material part of it. The law regards the original act.

**Causa hospitandi** /kózá hòspətánday/. For the purpose of being entertained as a guest.

**Causa jactitationis maritagii** /kózá jəktéyshiyównəs mərətéyiyay/. A form of action which anciently lay against a party who boasted or gave out that he or she was married to the plaintiff, whereby a common reputation of their marriage might ensue. 3 Bl.Comm. 93. See Jactitation (*Jactitation of marriage*).

**Causa list** /kózá list/. See Cause list.

**Causal relation.** See Proximate cause.

**Causa matrimonii prælocuti** /kózá mätəməwniyay priyləkyúwtay/. A writ lying where a woman has given lands to a man in fee-simple with the intention that he shall marry her, and he refuses so to do within a reasonable time, upon suitable request. Now obsolete. 3 Bl.Comm. 183.

**Causam nobis significes quare** /kózámə nówbəs signífəsiyz kwéry/. A writ addressed to a mayor of a town, etc., who was by the king's writ commanded to give seisin of lands to the king's grantee, on his delaying to do it, requiring him to show cause why he so delayed the performance of his duty.

**Causa mortis** /kózá mórtəs/. In contemplation of approaching death.

**Causa mortis donatio** /kózá mórtəs danéysh(iy)ow/. See Causa mortis gift; Donatio mortis causa.

**Causa mortis gift.** A gift made by a donor in contemplation of his or her imminent death. If the donor does not die of that ailment, the gift is revoked.

**Causa patet** /kózá pátət/°péytət/. The reason is open, obvious, plain, clear, or manifest. A common expression in old writers.

**Causa proxima** /kóza próksəmə/. The immediate, nearest, or latest cause. The efficient cause; the one that necessarily sets the other causes in operation. *Insurance Co. v. Boon*, 95 U.S. 117, 130, 24 L.Ed. 395. See Proximate cause.

**Causa proxima non remota spectatur** /kóza próksəmə non rəməwta spektétər/. An efficient adequate cause being found, it must be considered the true cause unless some other independent cause is shown to have intervened between it and the result. The immediate (or direct), not the remote, cause, is looked at, or considered. For a distinction, however, between immediate and proximate cause, see Cause; Proximate cause.

**Causare** /kozériy/. In the civil and old English law, to be engaged in a suit; to litigate; to conduct a cause.

**Causa rei** /kóza ríyay/. In the civil law, things accessory or appurtenant. The accessions, appurtenances, or fruits of a thing; comprehending all that the claimant of a principal thing can demand from a defendant in addition thereto, and especially what he would have had, if the thing had not been withheld from him.

**Causa remota** /kóza rəməwta/. A remote or mediate cause; a cause operating indirectly by the intervention of other causes.

**Causa sine qua non** /kóza sáyniy kwèy nón/. A necessary or inevitable cause; a cause without which the effect in question could not have happened. *Hayes v. Railroad Co.*, 111 U.S. 228, 4 S.Ct. 369, 28 L.Ed. 410. A cause without which the thing cannot be. With reference to negligence, it is the cause without which the injury would not have occurred. See Proximate cause.

**Causation**. The fact of being the cause of something produced or of happening. The act by which an effect is produced. An important doctrine in fields of negligence and criminal law.

**Causator** /kozéytər/. A litigant; one who takes the part of the plaintiff or defendant in an action.

In old European law, one who manages or litigates another's cause.

**Causa turpis** /kóza túrpəs/. A base (immoral or illegal) cause or consideration.

**Causa vaga et incerta non est causa rationabilis** /kóza véyga èt insértə nón est kóza ràsh(iy)ənéybəlis/. A vague and uncertain cause is not a reasonable cause.

**Cause, v.** To be the cause or occasion of; to effect as an agent; to bring about; to bring into existence; to make to induce; to compel.

**Cause, n.** (Lat. *causa*.) Each separate antecedent of an event. Something that precedes and brings about an effect or a result. A reason for an action or condition. A ground of a legal action. An agent that brings something about. That which in some manner is accountable for condition that brings about an effect or that produces a cause for the resultant action or state. *State v. Fabritz*, 276 Md. 416, 348 A.2d 275, 280.

A suit, litigation, or action. Any question, civil or criminal, litigated or contested before a court of justice. See Cause of action.

See also Cause; Causation; Concurrent causes; Contributing cause; Dependent intervening cause; Efficient cause; Efficient intervening cause; Good cause; Immediate cause; Independent intervening cause; Intervening act; Intervening agency; Intervening cause; Legal cause; Natural and probable consequences; Negligence (*Contributory negligence*); Probable cause; Procuring cause; Producing cause; Proximate cause; Remote cause; Sole cause; Sufficient cause.

*Direct or immediate cause.* See Proximate cause.

*Dismissal for cause.* See For cause.

*Intervening cause.* That occurrence which comes between the initial force or occurrence and the ultimate effect. See also Intervening act.

*Superseding cause.* That occurrence or force which not only intervenes, but which also breaks the chain of causation between the initial occurrence and the ultimate effect so as to render the initial force or occurrence causatively harmless.

**Cause in fact.** That particular cause which produces an event and without which the event would not have occurred. *Medallion Stores, Inc. v. Eidt*, Tex.Civ.App., 405 S.W.2d 417, 422. Courts express this in the form of a rule commonly referred to as the "but for" rule: the injury to an individual would not have happened but for the conduct of the wrongdoer. See Proximate cause; *Res (Res ipsa loquitur)*.

**Cause list.** In English practice, a printed roll of actions, to be tried in the order of their entry, with the names of the solicitors for each litigant, made out for each day during the sittings of the courts. Similar to the calendar of cases, or docket, used in American courts.

**Cause of action.** The fact or facts which give a person a right to judicial redress or relief against another. The legal effect of an occurrence in terms of redress to a party to the occurrence. A situation or state of facts which would entitle party to sustain action and give him right to seek a judicial remedy in his behalf. *Thompson v. Zurich Ins. Co.*, D.C.Minn., 309 F.Supp. 1178, 1181. Fact, or a state of facts, to which law sought to be enforced against a person or thing applies. Facts which give rise to one or more relations of right-duty between two or more persons. Failure to perform legal obligation to do, or refrain from performance of, some act. Matter for which action may be maintained. Unlawful violation or invasion of right. The right which a party has to institute a judicial proceeding. See also Case; Claim; Failure to state cause of action; Justiciable controversy; Right of action; Severance of actions; Splitting cause of action; Suit.

**Cause of injury.** That which actually produces it.

**Causes célèbres** /kówz séléb(rə)/. Celebrated cases. A work containing reports of the decisions of interest and importance in French courts in the seventeenth and eighteenth centuries. Secondly, a single trial or decision is sometimes called a "*cause célèbre*," when it is remarkable on account of the parties involved or the unusual, interesting, or sensational character of the facts.

**Cause suit to be brought.** Commence or begin. *See* Cause; Concurrent causes; Efficient cause; Probable cause; Proximate cause.

**Causeway.** A raised roadbed through low lands or across wet ground or water.

**Causidicus** /kösídəkəs/. In the civil law, a speaker or pleader; one who argued a cause *ore tenus*. *See* Advocate.

**Cautela** /kótələ/. Lat. Care; caution; vigilance; provision.

**Cautio** /kósh(iy)ow/. In the civil and French law, security given for the performance of any thing; bail; a bond or undertaking by way of surety. Also the person who becomes a surety.

**Cautio fidejussoria** /kósh(iy)ow fäydiyəsóriyə/. Security by means of bonds or pledges entered into by third parties.

**Cautio muciana** /kósh(iy)ow myuwshiyéynə/. Security given by an heir or legatee, to obtain immediate possession of inheritance or legacy, for observance of a condition annexed to the bequest, where the act which is the object of the condition is one which he must avoid committing during his whole life, *e.g.*, that he will never marry, never leave the country, never engage in a particular trade, etc.

**Caution.** To warn, exhort, to take heed, or give notice of danger.

**Cautionary instruction.** That part of a judge's charge to a jury in which he instructs them to consider certain evidence only for a specific purpose, *e.g.* evidence that a criminal defendant committed crimes other than the crime for which he is on trial may be admitted to prove a scheme or to show intent as to this crime but not to prove that he committed this particular crime and such evidence requires cautionary instructions. *Com. v. Campbell, Mass.*, 353 N.E.2d 740. *Also*, instruction by judge to jury to not be influenced by extraneous matters on outside forces, or to talk about case to anyone outside of trial. Other examples of cautionary instructions are: an instruction to the jurors at the outset of a case against talking with any witness, *Lamons v. State*, 176 Ga.App. 290, 335 S.E.2d 652; an instruction on the inherent weakness of eyewitness identification, *State v. Jonas, Utah*, 725 P.2d 1378, an instruction for the jury not to consider a witness's actions as bearing on the guilt or innocence of any of the defendants. *Lindsey v. United States*, 484 U.S. 934, 108 S.Ct. 310, 98 L.Ed.2d 268.

**Cautione admittenda** /koshiyówniy ædməténdə/. In English ecclesiastical law, a writ that lies against a bishop who holds an excommunicated person in prison for contempt, notwithstanding he offers sufficient caution or security to obey the orders and commandment of the church for the future.

**Cautio pignoratitia** /kósh(iy)ow pignəratish(iy)ə/. Security given by pledge, or deposit, as plate, money, or other goods.

**Cautio pro expensis** /kósh(iy)ow prów ækspénsəs/. Security for costs, charges, or expenses.

**Cautious.** Careful; prudent; circumspect; discreet in face of danger or risk.

**Cautio usufructuaria** /kósh(iy)ow yúwz(h)yuwfrəktyuwériyə/. Security, which tenants for life give, to preserve the property rented free from waste and injury.

**C.A.V.** An abbreviation for *curia advisari vult*, the court will be advised, will consider, will deliberate.

**Caveat** /kæviyət/kéyviyət/. Lat. Let him beware. Warning to one to be careful. A formal notice or warning given by a party interested to a court, judge, or ministerial officer against the performance of certain acts within his power and jurisdiction. This process may be used in the proper courts to prevent (temporarily or provisionally) the proving of a will or the grant of administration, or to arrest the enrollment of a decree in chancery when the party intends to take an appeal, to prevent the grant of letters patent, etc.

Used in writing to warn the reader of an interpretation different from the one proposed or advanced.

*See also* Warning.

**Caveat actor** /kæviyət æktər/. Let the doer, or actor, beware.

**Caveat emptor** /kæviyət ém(p)tər/kéyviyət°. Let the buyer beware. This maxim summarizes the rule that a purchaser must examine, judge, and test for himself. This maxim is more applicable to judicial sales, auctions, and the like, than to sales of consumer goods where strict liability, warranty, and other consumer protection laws protect the consumer-buyer. *See also* Warning.

**Caveat emptor, qui ignorare non debuit quod jus alienum emit** /kæviyət ém(p)tər, kwáy ignerériy nòn débyuwət kwòd jés æliyiynəm émət/. Let a purchaser beware, who ought not to be ignorant that he is purchasing the rights of another. Let a buyer beware; for he ought not to be ignorant of what they are when he buys the rights of another.

**Caveator** /kæviyéytər/. One who files a caveat.

**Caveat to will.** A demand that will be produced and probated in open court. An attack on validity of alleged will.

**Caveat venditor** /kæviyət véndətər/. Let the seller beware.

**Caveat viator** /kæviyət viyéytər/. Let the wayfarer beware. This phrase has been used as a concise expres-

sion of the duty of a traveler on the highway to use due care to detect and avoid defects in the way.

**Cavendum est a fragmentis** /kævéndəm ést èy frægméntəs/. Beware of fragments.

**Cavere** /kæviri:/ . Lat. In the civil and common law, to take care; to exercise caution; to take care or provide for; to provide by law; to provide against; to forbid by law; to give security; to give caution or security on arrest.

**Cayagium** /keyéyjiəm/. In old English law, cayage or kayage; a toll or duty anciently paid the king for landing goods at a quay or wharf.

**C.B.** In English reports and legal documents, an abbreviation for the ancient court of Common Bench. Also an abbreviation for Chief Baron of the Court of Exchequer.

**C.B.O.E.** Chicago Board of Options Exchange.

**C.C.** Various terms or phrases may be denoted by this abbreviation; such as circuit court (or city or county court); criminal cases (or crown or civil or chancery cases); civil code; chief commissioner; and *cepi corpus*, I have taken his body.

**C.C.; B.B.** I have taken his body; bail bond entered. *See Capias (Capias ad respondendum).*

**C.C.C.** Commodity Credit Corporation.

**C.C. & C.** I have taken his body and he is held.

**C Corporation.** A regular corporation governed by Subchapter C of the Internal Revenue Code. Distinguished from S corporations, which fall under Subchapter S of the Code. *See Corporation.*

**C.D.** Certificate of deposit.

**Ceap** /chiyp/. In English law, a bargain; anything for sale; a chattel; also cattle, as being the usual medium of barter. Sometimes used instead of ceapgild (*q.v.*).

**Ceapgild** /chiypgild/. Payment or forfeiture of an animal. An ancient species of forfeiture.

**Cease.** To stop; to become extinct; to pass away; to suspend or forfeit. To leave off; bring to an end; to come to an end; break off or taper off to a stop; to give over or bring to an end an activity or action. Liller v. Logsdon, 261 Md. 367, 275 A.2d 469, 470.

**Cease and desist order.** An order of an administrative agency or court prohibiting a person or business firm from continuing a particular course of conduct, *e.g.* Fed. Trade Commission may order a business to cease and desist from misbranding or misadvertising its products. *F. T. C. v. Mandel Bros., Inc.*, 359 U.S. 385, 79 S.Ct. 818, 3 L.Ed.2d 893. Ruling issued in an unfair labor practice case requiring the charged party (respondent) to stop the conduct found illegal and take specified affirmative action designed to remedy the unfair labor practice. *See Injunction; Restraining order.*

**Cede.** To yield up; to assign; to grant; to surrender; to withdraw. Generally used to designate the transfer of territory from one government to another.

**Cedo** /siydow/. I grant. The word ordinarily used in Mexican conveyances to pass title to lands.

**Cedula** /O.En./sédyala/séjala/Sp./séyduwla/. In old English law, a schedule. In Spanish law, an act under private signature, by which a debtor admits the amount of the debt, and binds himself to discharge the same on a specified day or on demand. Also the notice or citation affixed to the door of a fugitive criminal requiring him to appear before the court where the accusation is pending.

**Cedule** /sədyúwl/. In French law, the technical name of an act under private signature.

**Celation** /sələyshən/. Concealment of pregnancy or delivery.

**Celebration of marriage** /sələbréyshən əv mərəj/. The formal act by which a man and woman take each other for husband and wife, according to law; the solemnization of a marriage. The term is usually applied to a marriage ceremony attended with ecclesiastical functions; *i.e.* a church wedding.

**Celibacy.** The condition or state of life of an unmarried person, particularly of one who vows never to marry.

**Celler-Kefauver Act.** A federal law enacted in 1950 dealing with restrictions on mergers and expanding the Clayton Act of 1914 in this regard.

**Cemetery.** A graveyard; burial ground. Place or area set apart for interment of the dead. Term includes not only lots for depositing the bodies of the dead, but also avenues, walks, and grounds for shrubbery and ornamental purposes.

**Cenegild** /kéynægild/. In Saxon law, an expiatory mulct or fine paid to the relations of a murdered person by the murderer or his relations.

**Cenninga.** A notice given by a buyer to a seller that the things which had been sold were claimed by another, in order that he might appear and justify the sale. But the exact significance of this term is somewhat doubtful.

**Censaria** /sən(t)səriyə/. In old English law, a farm, or house and land let at a standing rent.

**Censarii** /sən(t)səriyà/. In old English law, farmers, or such persons as were liable to pay a census (tax).

**Censere** /sen(t)sérey/. In the Roman law, to ordain; to decree.

**Censo** /sénsow/. In Spanish and Mexican law, an annuity, a ground rent. The right which a person acquires to receive a certain annual pension, for the delivery which he makes to another of a determined sum of money or of an immovable thing.

**Censo al quitar** /sénsow àl kiytár/. A redeemable annuity; otherwise called "censo redimible."

**Censo consignativo** /sénsow kənsignatíyvw/. A *censo* (*q.v.*) is called "*consignativo*" when he who receives the money assigns for the payment of the pension (annuity) the estate the fee in which he reserves.

**Censo enfiteúatico** /sénsow ènfiytéwtikow/. In Spanish and Mexican law, an emphyteutic annuity. That species of *censo* (annuity) which exists where there is a right to require of another a certain canon or pension annually, on account of having transferred to that person forever certain real estate, but reserving the fee in the land. The owner who thus transfers the land is called the "*censualisto*," and the person who pays the annuity is called the "*centatario*."

**Censor** /sénsər/. One who examines publications, films and the like for objectionable content. Roman officers who acted as census takers, assessors and reviewers of public morals and conduct. Officer of armed forces who reads letters and other communications of servicemen and deletes material considered to be harmful or of a danger to security. *See also* Censorship; Prior restraint.

**Censo reservatio** /sénsow reysèrvatíyow/. In Spanish and Mexican law, the right to receive from another an annual pension by virtue of having transferred land to him by full and perfect title.

**Censorship**. Review of publications, movies, plays, and the like for the purpose of prohibiting the publication, distribution, or production of material deemed objectionable as obscene, indecent, or immoral. Such actions are frequently challenged as constituting a denial of freedom of press and speech. *Near v. Minnesota*, 283 U.S. 697, 716, 51 S.Ct. 625, 75 L.Ed. 1357; *Roth v. United States*, 354 U.S. 476, 77 S.Ct. 1304, 1 L.Ed.2d 1498; *Miller v. California*, 413 U.S. 15, 22, 93 S.Ct. 2607, 37 L.Ed.2d 419. *See also* Obscenity; Prior restraint.

**Censuales** /sensyuwéyliyz/. In old European law, a species of oblati or voluntary slaves of churches or monasteries; those who, to procure the protection of the church, bound themselves to pay an annual tax or quit-rent only of their estates to a church or monastery.

**Censuere** /sènsyuwíriy/. In Roman law, they have decreed. The term of art, or technical term for the judgment, resolution, or decree of the senate.

**Censumethidus** /sènsəméθəðəs/ or **censumorthidus** /sènsəməóθəðəs/. A dead rent, like that which is called "mortmain."

**Censure** /sènsər/. The formal resolution of a legislative, administrative, or other body reprimanding a person, normally one of its own members, for specified conduct. An official reprimand or condemnation. *See also* Censor; Reprimand.

**Census** /sénsəs/. The official counting or enumeration of people of a state, nation, district, or other political subdivision. Such contains classified information relating to sex, age, family, social and economic conditions, and public record thereof. *City of Compton v. Adams*, 33 Cal.2d 596, 203 P.2d 745, 746. The national census has been compiled decennially since 1790, and has increasingly listed a great variety of social and economic data. A primary use of such data is to apportion or reapportion legislative districts. *See also* Census bureau; Federal census.

In Roman law, a numbering or enrollment of the people, with a valuation of their fortunes.

In old European law, a tax, or tribute; a toll.

**Census bureau**. The Bureau of the Census was established as a permanent office by act of Congress on March 6, 1902 (32 Stat. 51). The major functions of the Bureau are authorized by the Constitution (Art. I, Sec. 2, Cl. 3), which provides that a census of population shall be taken every 10 years, and by laws codified as title 13, U.S. Code. The law also provides that the information collected by the Bureau from individual persons, households, or establishments be kept strictly confidential and be used only for statistical purposes.

**Census regalis** /sénsəs rægéyləs/. In English law, the annual revenue or income of the crown.

**Cent**. A coin of the United States, the least in value of those now minted. It is the hundredth part of a dollar.

**Cental**. A weight of 100 pounds avoirdupois, used at Liverpool for corn. Usually called *hundredweight* in the United States.

**Centena** /səntíynə/. A hundred. A district or division containing originally a hundred freemen, established among the Goths, Germans, Franks, and Lombards, for military and civil purposes, and answering to the Saxon "hundred." *Also*, in old records and pleadings, a hundred weight.

**Centenarii** /səntənériyay/. Petty judges, under-sheriffs of counties, that had rule of a hundred (*centena*), and judged smaller matters among them.

**Centeni** /səntíynay/. The principal inhabitants of a *centena*, or district composed of different villages, originally in number a hundred, but afterwards only called by that name.

**Center**. This term is often used, not in its strict sense of a geographical or mathematical center, but as meaning the middle or central point or portion of anything. The center of a section of land is the intersection of a straight line from the north quarter corner to the south quarter corner with a straight line from the east quarter corner to the west quarter corner. Similarly, the center of a street intersection refers to the point where the center lines of the two streets cross. The center of the main channel of a river, is the middle of broad and distinctly defined bed of main river.

**Center of gravity doctrine**. Choice of law questions in conflicts of law are resolved by application of the law of the jurisdiction which has the most significant relationship to or contact with event and parties to the litigation and the issues therein. Term is used synonymously with most significant relationship or grouping of contacts theory. *Mitchell v. Craft*, Miss., 211 So.2d 509; *Baffin Land Corp. v. Monticello Motor Inn*, 70 Wash.2d 893, 425 P.2d 623, 625.

**Centesima** /səntézəmə/. In Roman law, the hundredth part.

*Usurix centesimix*. Twelve per cent. per annum; that is, a hundredth part of the principal was due each month,

—the month being the unit of time from which the Romans reckoned interest. 2 Bl.Comm. 462.

**Centime** /sòntiym/. The name of a denomination of French money, being the one-hundredth part of a franc.

**Central criminal court.** Also known as “Old Bailey”. The name given to the English Crown Court by the Courts Act of 1971 that has sat in central London since 1834.

**Central Intelligence Agency.** An agency of the Federal government charged with responsibility of coordinating all information relating to security of the country. All such intelligence information, recommendations, etc. are reported to the National Security Council, to whom the CIA is responsible to and under the direction of.

**Centralization.** Concentration of power and authority in a central organization or government. For example, power and authority over national and international matters is centralized in the federal government.

**Centumviri** /sentámvrày/. In Roman law, the name of an important court consisting of a body of one hundred and five judges. 3 Bl.Comm. 515.

**Century.** One hundred. A body of one hundred men. The Romans were divided into *centuries* as the English were divided into hundreds. Also a cycle of one hundred years.

**CEO.** Abbreviation for “chief executive officer” of a corporation.

**Ceorl** /chéyarl/. In Anglo Saxon law, a class of freemen personally free, but possessing no landed property. A tenant at will of free condition, who held land of the thane on condition of paying rent or services. A freeman of inferior rank occupied in husbandry. Under the Norman rule, this term, as did others which denoted workmen, especially those which applied to the conquered race, became a term of reproach, as is indicated by the popular signification of churl.

**Cepi** /síypay/. Lat. I have taken. This word was of frequent use in the returns of sheriffs when they were made in Latin, and particularly in the return to a writ of *capias*.

The full return (in Latin) to a writ of *capias* was commonly made in one of the following forms: *Cepi corpus*, I have taken the body, *i.e.*, arrested the body of the defendant; *Cepi corpus et bail*, I have taken the body and released the defendant on a bail-bond; *Cepi corpus et committitur*, I have taken the body and he has been committed (to prison); *Cepi corpus et est in custodia*, I have taken the defendant and he is in custody; *Cepi corpus et est languidus*, I have taken the defendant and he is sick, *i.e.*, so sick that he cannot safely be removed from the place where the arrest was made; *Cepi corpus et paratum habeo*, I have taken the body and have it (him) ready, *i.e.*, in custody and ready to be produced when ordered.

**Cepit** /síypət/. He took. This was the characteristic word employed in (Latin) writs of trespass for goods taken, and in declarations in trespass and replevin. In

criminal practice, formerly a technical word necessary in an indictment for larceny.

**Cepit et abduxit** /síypət ət əbdáksət/. He took and led away. The emphatic words in writs in trespass or indictments for larceny, where the thing taken was a living chattel, *i.e.*, an animal.

**Cepit et asportavit** /síypət ət əspərtéyvet/. He took and carried away. Applicable in a declaration in trespass or an indictment for larceny where the defendant has carried away goods without right. 4 Bl.Comm. 231.

**Cepit in alio loco** /síypət ən élyiow lówkow/. In old pleading, a plea in replevin, by which the defendant alleges that he took the thing replevied in another place than that mentioned in the declaration.

**Cera impressa** /síərə əmprésə/. Lat. An impressed seal. It may include an impression made on wafers or other adhesive substances capable of receiving an impression, or even paper.

**CERCLA.** Comprehensive Environmental Response, Compensation, and Liability Act of 1980. *See* Superfund.

**Certa debet esse intentio, et narratio, et certum fundamentum, et certa res quæ deducitur in iudicium** /sərdə débət ésiy inténs(iy)ow èt nəréysh(iy)ow, èt sərtəm fəndəméntəm, èt sərdə ríy kwíy dəd(y)úwsətər in juwdíshiyəm/. The design and narration ought to be certain, and the foundation certain, and the matter certain, which is brought into court to be tried.

**Certain.** Ascertained; precise; identified; settled; exact; definitive; clearly known; unambiguous; or, in law, capable of being identified or made known, without liability to mistake or ambiguity, from data already given. Free from doubt.

**Certain services.** In feudal and old English law, such services as were stinted (limited or defined) in quantity, and could not be exceeded on any pretense; as to pay a stated annual rent, or to plow such a field for three days. 2 Bl.Comm. 61.

**Certainty.** Absence of doubt; accuracy; precision; definite. The quality of being specific, accurate, and distinct. *See* Certain.

**Cert. den.** Certiorari denied. *See* Certiorari.

**Certificando de recognitione stapulæ** /sərtəfəkəndow díy rəkəgníshiyówníy stéyppəliy/. In English law, a writ commanding the mayor of the staple to certify to the lord chancellor a statute-staple taken before him where the party himself detains it, and refuses to bring in the same. There is a like writ to certify a statute-merchant, and in diverse other cases.

**Certificate** /sərtífəkət/. A written assurance, or official representation, that some act has or has not been done, or some event occurred, or some legal formality has been complied with. A written assurance made or issuing from some court, and designed as a notice of things done therein, or as a warrant or authority, to some other court, judge, or officer. A statement of some fact in a writing signed by the party certifying. A declara-



tion in writing. A "certificate" by a public officer is a statement written and signed, but not necessarily sworn to, which is by law made evidence of the truth of the facts stated for all or for certain purposes. A document certifying that one has fulfilled the requirements of and may practice in a field. *See also* Affidavit; Birth certificate; License; Permit.

**Certificate for costs.** In English practice, a certificate or memorandum drawn up and signed by the judge before whom a case was tried, setting out certain facts the existence of which must be thus proved before the party is entitled, under the statutes, to recover costs.

**Certificate into chancery.** In English practice, a document containing the opinion of the common-law judges on a question of law submitted to them for their decision by the chancery court.

**Certificate lands.** In Pennsylvania, in the period succeeding the revolution, lands set apart in the western portion of the state, which might be bought with the certificates which the soldiers of that state in the revolutionary army had received in lieu of pay.

**Certificate of acknowledgment.** The certificate of a notary public, justice of the peace, or other authorized officer, attached to a deed, mortgage, or other instrument, setting forth that the parties thereto personally appeared before him on such a date and acknowledged the instrument to be their free and voluntary act and deed. A verification of the act of the maker of an instrument. *Thane v. Dallas Joint Stock Land Bank of Dallas, Tex.Civ.App., 129 S.W.2d 795, 799.*

**Certificate of amendment.** Document filed with state corporation authority (*e.g.* Secretary of State) disclosing amendment to articles of corporate organization or charter or agreement of association.

**Certificate of assize.** A writ granted for the re-examination or retrial of a matter passed by assize before justices. It is now entirely obsolete. 3 Bl.Comm. 389.

**Certificate of authority.** Document issued by state corporation authority (*e.g.* Secretary of State) on application of foreign corporation granting such corporation right to do business in state.

**Certificate of competency.** Required of business by Small Business Administration to perform a specific government procurement contract.

**Certificate of convenience and necessity.** Certificate of administrative agency (*e.g.* Public Service Commission; I.C.C.) granting operating authority for utilities and transportation companies.

**Certificate of deposit.** A written acknowledgment by a bank or banker of a deposit with promise to pay to depositor, to his order, or to some other person or to his order. U.C.C. § 3-104(2)(c). Bank document evidencing existence of a time deposit, normally paying interest.

**Certificate of discharge.** *See* Satisfaction piece.

**Certificate of election.** Issued by governor, board of elections, or other competent authority that the person or persons named have been duly elected.

**Certificate of good conduct.** An official written document which determines that a person is a law-abiding citizen of good repute and character to operate licensed premises, *e.g.* retail liquor store. *City of Chattanooga v. Tenn. Alcoholic Bev. Comm., Tenn., 525 S.W.2d 470, 480.*

**Certificate of holder of attached property.** A certificate required by statute, in some states, to be given by a third person who is found in possession of property subject to an attachment in the sheriff's hands, setting forth the amount and character of such property and the nature of the defendant's interest in it.

**Certificate of incorporation.** In most states is the document prepared by the Secretary of State that evidences the acceptance of articles of incorporation and the commencement of the corporate existence. In some states the certificate of incorporation is the name given to the document filed with the Secretary of State, *i.e.*, the articles of incorporation. The Revised Model Business Corporation Act has eliminated certificates of incorporation, requiring only a fee receipt. *See also* Articles of incorporation.

**Certificate of indebtedness.** An obligation sometimes issued by corporations having practically the same force and effect as a bond, though not usually secured on any specific property. It may, however, create a lien on all the property of the corporation issuing it, superior to the rights of general creditors. *Compare* Debenture. In banking, same as a certificate of deposit; as a government security, same as a treasury certificate.

**Certificate of insurance.** Document evidencing fact that an insurance policy has been written and includes a statement of the coverage of the policy in general terms.

**Certificate of interest.** An instrument evidencing a fractional or percentage interest in oil and gas production. *People v. Sidwell, 27 Cal.2d 121, 162 P.2d 913, 915.*

**Certificate of need.** Many states have enacted certificate-of-need laws designed to combat spiraling health care costs and the unnecessary duplication and maldistribution of health care facilities and services. Under these laws, a health care provider seeking to establish or modify a health care facility or to provide new or different institutional health care services must normally apply to the appropriate state agency for a certificate of need.

**Certificate of occupancy.** Document certifying that premises comply with provisions of zoning and/or building ordinances. Such document, as issued by local government agency, is commonly required before premises can be occupied and title transferred. Document that certifies that what has been done actually conforms substantially to approved plans and specifications.

A number of cities require a "certificate of occupancy" for apartments, which aims at preventing their deterioration in the first place. After each vacancy, the apart-

ment must be newly inspected to make sure it's up to standard.

**Certificate of participation.** A certificate issued instead of shares of stock to show a proportionate interest in an unincorporated business or in the ownership of debt of a corporation.

**Certificate of public convenience and necessity.** *See* Certificate of convenience and necessity, *supra*.

**Certificate of purchase.** A certificate issued by public officer to successful bidder at a judicial sale (such as a tax sale), which will entitle him to a deed upon confirmation of sale by the court, or (as the case may be) if the land is not redeemed within the time limited.

**Certificate of redemption.** Evidence of redeeming a property by the owner after losing it through a judicial sale.

**Certificate of registry.** In maritime law, a certificate of the registration of a vessel according to the registry acts, for the purpose of giving her a national character.

**Certificate of sale.** The same as Certificate of purchase, *supra*.

**Certificate of stock.** A certificate of a corporation or joint-stock company that named person is owner of designated number of shares of stock. It is merely written evidence of ownership of stock, and of the rights and liabilities resulting from such ownership. It is a document representation of an incorporeal right, and stands on the footing similar to that of other muniments of title.

**Certificate of title.** Document evidencing ownership; commonly associated with sale of motor vehicles. *See also* Insurance (*Title insurance*).

**Certificate, trial by.** A mode of trial now little in use; it is resorted to in cases where the fact in issue lies out of the cognizance of the court, and the judges, in order to determine the question, are obliged to rely upon the solemn averment or information of persons in such a station as affords them the clearest and most competent knowledge of the truth.

**Certification** /sɜrtəfəkəyʃən/. The formal assertion in writing of some fact. The act of certifying or state of being certified. Formal designation by NLRB that a labor organization represents a majority of employees in a particular bargaining unit. *See* Attestation; Certificate.

**Certification mark.** The term "certification mark" means any word, name, symbol, or device, or any combination thereof—(1) used by a person other than its owner, or (2) which its owner has a bona fide intention to permit a person other than the owner to use in commerce and files an application to register on the principal register established by the Trademark Act, to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of such person's goods or services was performed by members of a union or other organization. 15 U.S.C.A. § 1127.

**Certification of assize.** In English practice, a writ anciently granted for the re-examining or retrial of a matter passed by assize before justices, now entirely superseded by the remedy afforded by means of a new trial. *See* Certificate of assize.

**Certification of check.** *See* Certified check.

**Certification of labor union.** Declaration by labor board (*e.g.* N.L.R.B.) that a union is bargaining agent for group of employees.

**Certification of questions of law.** *See* Certification to federal court; Certification to state court.

**Certification of record on appeal.** Formal acknowledgment of questions for appellate review commonly signed by trial justice.

**Certification to federal court.** Method of taking case from U.S. Court of Appeals to Supreme Court in which former court may certify any question of law in any civil or criminal case as to which instructions are requested. 28 U.S.C.A. § 1254(2).

**Certification to state court.** Procedure by which a Federal Court abstains from deciding a state law question until the highest court of the state has had an opportunity to rule on the question so certified by the Federal Court. *Clay v. Sun Insurance Office Ltd.*, 363 U.S. 207, 80 S.Ct. 1222, 4 L.Ed.2d 1170. State statutes and court rules providing for such certification are generally patterned on the "Uniform Certification of Questions of Law Act."

**Certificats de coutume** /sɜrtifiká də kuwtyúwm/. In French law, certificates given by a foreign lawyer, establishing the law of the country to which he belongs upon one or more fixed points. These certificates can be produced before the French courts, and are received as evidence in suits upon questions of foreign law.

**Certified carriers.** Carriers using highways of state to whom certificates of public convenience and necessity have been issued. *People v. Henry*, 131 Cal.App. 82, 21 P.2d 672.

**Certified check.** The check of a depositor drawn on a bank on the face of which the bank has written or stamped the words "accepted" or "certified" with the date and signature of a bank official. The check then becomes an obligation of the bank. The certification of a check is a statement of fact, amounting to an estoppel of the bank to deny liability; a warranty that sufficient funds are on deposit and have been set aside. It means that bank holds money to pay check and is liable to pay it to proper party.

Certification of a check is acceptance of check by drawee-bank. Where a holder procures certification the drawer and all prior indorsers are discharged. Unless otherwise agreed a bank has no obligation to certify a check. A bank may certify a check before returning it for lack of proper indorsement. If it does so the drawer is discharged. U.C.C. § 3-411. *Compare* Cashier's check.

**Certified copy.** A copy of a document or record, signed and certified as a true copy by the officer to whose custody the original is intrusted.

**Certified mail.** Form of mail similar to registered mail by which sender may require return receipt from addressee.

**Certified public accountant (CPA).** See Accountant.

**Certified question.** See Certification to federal court; Certification to state court.

**Certify.** To authenticate or vouch for a thing in writing. To attest as being true or as represented. See Certificate; Certification.

**Certiorari** /səʁsh(i)yərəray/səʁshərəriy/. Lat. To be informed of. A writ of common law origin issued by a superior to an inferior court requiring the latter to produce a certified record of a particular case tried therein. The writ is issued in order that the court issuing the writ may inspect the proceedings and determine whether there have been any irregularities. It is most commonly used to refer to the Supreme Court of the United States, which uses the writ of certiorari as a discretionary device to choose the cases it wishes to hear. See 28 U.S.C.A. § 1254. The Supreme Court denies most writs of certiorari (i.e. "cert. den."). The trend in state practice has been to abolish such writ. See also Writ of certiorari.

**Certiorari, bill of.** In English chancery practice, an original bill praying relief. It was filed for the purpose of removing a suit pending in some inferior court of equity into the court of chancery, on account of some alleged incompetency or inconvenience.

**Certiorari facias** /səʁsh(i)yərəray féysh(i)yəs/. Cause to be certified. The command of a writ of certiorari.

**Cert money** /səʁt məniy/. In old English law, head money or common fine. Money paid yearly by the residents of several manors to the lords thereof for the certain keeping of the leet (*pro certo letæ*); and sometimes to the hundred.

**Certum est quod certum reddi potest** /səʁtəm èst kwòd səʁtəm rədày pówtəst/. That is certain which can be rendered certain.

**Cesionario** /sès(i)yənàriyow/. In Spanish law, an assignee.

**Cess** /sés/, *v.* In old English law, to cease, stop, determine, fail.

**Cess** /sés/, *n.* An assessment or tax. In Ireland, it was anciently applied to an exaction of victuals, at a certain rate, for soldiers in garrison.

**Cessante causa, cessat effectus** /səsəntiý kózá, sésət əféktəs/. The cause ceasing, the effect ceases.

**Cessante ratione legis, cessat et ipsa lex** /səsəntiý ràshiyówniy líyjes, sésət et ípsə léks/. The reason of the law ceasing, the law itself also ceases.

**Cessante statu primitivo, cessat derivativus** /səsəntiý stéyt(y)uw primətáyvow sésət dərivətáyvəs/. When the

primitive or original estate determines, the derivative estate determines also.

**Cessare** /səsəriy/. L. Lat. To cease, stop, or stay.

**Cessa regnare, si non vis judicare** /sésə rəgnəriý sàý non vív juwdəkəriy/. Cease to reign, if you wish not to adjudicate.

**Cessavit per biennium** /səséyvat pəʁ bayéniyəm/. An obsolete writ, which could formerly have been sued out when the defendant had for two years *ceased* or neglected to perform such service or to pay such rent as he was bound to do by his tenure, and had not upon his lands sufficient goods or chattels to be distrained. It also lay where a religious house held lands on condition of performing certain spiritual services which it failed to do. 3 Bl.Comm. 232.

**Cesse** /sés/. An assessment or tax. A tenant of land was said to *cesse* when he neglected or *ceased* to perform the services due to the lord.

**Cesser** /sésər/. Neglect; a ceasing from, or omission to do, a thing. 3 Bl.Comm. 232. The determination of an estate. The determination or ending of a term, annuity, etc.

**Cesser, proviso for.** A provision in a settlement creating long terms that when the trusts are satisfied, the term should cease and determine. This proviso generally expresses three events: (1) The trusts never arising; (2) their becoming unnecessary or incapable of taking effect; (3) the performance of them.

**Cesset executio** /sésət èksəkyúwsh(i)yow/. (Let execution stay.) A stay of execution; or an order for such stay; the entry of such stay on record.

**Cesset processus** /sésət prəsésəs/. (Let process stay.) A stay of proceedings entered on the record. Formal order for stay of process or proceedings.

**Cessio** /sés(h)(i)yow/. Lat. A cession; a giving up, or relinquishment; a surrender; an assignment.

**Cessio bonorum** /sés(h)(i)yow bənórəm/. In Roman law, cession of goods. A surrender, relinquishment, or assignment of all his property and effects made by an insolvent debtor for the benefit of his creditors. The term is commonly employed in continental jurisprudence to designate a bankrupt's assignment of property to be distributed among his creditors.

**Cessio in jure** /séshiyow ín júriy/. In Roman law, a fictitious suit, in which the person who was to acquire the thing claimed (*vindicabat*) the thing as his own, the person who was to transfer it acknowledged the justice of the claim, and the magistrate pronounced it to be the property (*addicebat*) of the claimant.

**Cession** /sésən/. The act of ceding; a yielding or giving up; surrender; relinquishment of property or rights. The assignment, transfer, or yielding up of territory by one state or government to another. Municipality of Ponce v. Church, 210 U.S. 296, 28 S.Ct. 737, 52 L.Ed. 1068.

- In ecclesiastical law*, a giving up or vacating a benefice, by accepting another without a proper dispensation. 1 Bl.Comm. 392.
- In the civil law*, an assignment. The act by which a party transfers property to another. The surrender or assignment of property for the benefit of one's creditors. *See Cessio bonorum.*
- Cession des biens** /sèsýówn dáy byén/. In French law, the voluntary or compulsory surrender which a debtor in insolvent circumstances makes of all his goods to his creditors.
- Cession of goods** /sés'hən əv gúdz/. The surrender of property; the relinquishment that a debtor makes of all his property to his creditors, when he finds himself unable to pay his debts. *See* Bankruptcy proceedings.
- Cessment.** An assessment, or tax.
- Cessor** /sésər/. One who ceases or neglects so long to perform a duty that he thereby incurs the danger of the law.
- Cessure.** L. Fr. A receiver; a bailiff.
- C'est ascavoir** /set əskəvwar/. L. Fr. That is to say, or to-wit. Generally written as one word, *cestascavoir*, *cestascavoire*.
- C'est le crime qui fait la honte, et non pas l'échafaud** /sèy lə kríym kiy fáy la ónt, ey nown pá leyshafó/. Fr. It is the offense which causes the shame, and not the scaffold.
- Cestui, cestuy** /sétiy/sè(s)twiy/. He who. Used frequently in composition in law French phrases.
- Cestui que trust** /sétiy kə tróst/. He who has a right to a beneficial interest in and out of an estate the legal title to which is vested in another. The person who possesses the equitable right to property and receives the rents, issues, and profits thereof; the legal estate of which is vested in a trustee. The beneficiary of a trust.
- Cestui que use** /sétiy kə yúwz/. He for whose use and benefit lands or tenements are held by another. The *cestui que use* has the right to receive the profits and benefits of the estate, but the legal title and possession (as well as the duty of defending the same) reside in the other.
- Cestui que vie** /sétiy kə víy/. The person whose life measures the duration of a trust, gift, estate, or insurance contract. Person on whose life insurance is written. The person for whose life any lands, tenements, or hereditaments are held.
- Cestuy que doit inheriter al père doit inheriter al fils** /sè(s)twiy kə dwó ənhèriytéy owpér dwó ənhèriytéy ow fiys/. He who would have been heir to the father of the deceased shall also be heir of the son. 2 Bl.Comm. 239, 250.
- Cf.** An abbreviated form of the Latin word *confer*, meaning "compare." Directs the reader's attention to another part of the work, to another volume, case, etc., where contrasted, analogous, or explanatory views or statements may be found.
- C. & F. or C.F.** Term in sales contract means that the price so includes cost and freight to the named destination. U.C.C. § 2-320(1).
- C.F. & I. or C.F.I.** *See* C.I.F.
- CFR.** Code of Federal Regulations.
- C.F.T.C.** Commodity Futures Trading Commission.
- Ch.** This abbreviation most commonly stands for "chapter," or "chancellor," but it may also mean "chancery," or "chief."
- Chace** /chéysh(iy)ə/. In old English law, a station of game, more extended than a park, and less than a forest; also the liberty of chasing or hunting within a certain district; also the way through which cattle are driven to pasture, otherwise called a "droveway."
- Chacer** /chèsýy/. L. Fr. To drive, compel, or oblige; also to chase or hunt.
- Chafewax** /chéyfwæks/. An officer in the English chancery whose duty was to prepare wax to seal the writs, commissions, and other instruments thence issuing. The office was abolished by St. 15 & 16 Vict., c. 87, § 23.
- Chaffers** /cháfərz/. An ancient term for goods, wares, and merchandise; hence the word *chaffering*, which is yet used for buying and selling, or beating down the price of an article.
- Chaffery.** Traffic; the practice of buying and selling.
- Chain.** As regards land measure, such equals 66 feet, 100 links, or 4 rods. *See also* Chains and links; Land measure.
- Chain-certificate method.** Method of authenticating of foreign official record. *See* Fed.R.Civil P. 44(a)(2).
- Chain conspiracy.** Exists where different activities are carried on with the same subject of the conspiracy in chain-like manner such that each conspirator performs a separate function which serves in the accomplishment of the overall conspiracy. *Bolden v. State*, 44 Md.App. 643, 410 A.2d 1085, 1091.
- Chain of custody.** In evidence, the one who offers real evidence, such as the narcotics in a trial of drug case, must account for the custody of the evidence from the moment in which it reaches his custody until the moment in which it is offered in evidence, and such evidence goes to weight not to admissibility of evidence. *Com. v. White*, 353 Mass. 409, 232 N.E.2d 335. For example, "chain of custody" is proven if an officer is able to testify that he or she took control of the item of physical evidence, identified it, placed it in a locked or protected area, and retrieved the item being offered on the day of trial. *McEntyre v. State*, Tex.App.-Hous. (14 Dist.), 717 S.W.2d 140, 147.
- Chain of possession.** *See* Chain of custody.
- Chain of title.** Record of successive conveyances, or other forms of alienation, affecting a particular parcel of land, arranged consecutively, from the government or original source of title down to the present holder. *See* Abstract of title.

**Chains and links.** Used in real estate measurement; chain is 66' long or 100 links. *See also* Chain; Land measure.

**Chain stores.** Number of stores under common name, ownership and management; normally selling same general line of merchandise or products.

**Chairman.** A name given to the presiding officer of an assembly, public meeting, convention, deliberative or legislative body, board of directors, committee, etc.

**Chairman of committees of the whole house.** In English parliamentary practice, in the commons, this officer, always a member, is elected by the house on the assembling of every new parliament. When the house is in committee on bills introduced by the government, or in committee of ways and means, or supply, or in committee to consider preliminary resolutions, it is his duty to preside.

**Challenge.** To object or except to; to prefer objections to a person, right, or instrument; to question formerly the legality or legal qualifications of; to invite into competition; to formally call into question the capability of a person for a particular function, or the existence of a right claimed, or the sufficiency or validity of an instrument; to call or put in question; to put into dispute; to render doubtful. For example, to challenge the personal qualification of a judge or magistrate about to preside at the trial of a cause, as on account of personal interest, his having been of counsel, bias, etc.; or to challenge a juror for cause. *See* Jury challenge; Objection.

*Challenge for cause.* A request from a party to a judge that a certain prospective juror not be allowed to be a member of the jury because of specified causes or reasons. *See e.g.* 28 U.S.C.A. § 1870.

*Challenge to jury array.* An exception to the whole panel in which the jury are arrayed, upon account of partiality, or some default in the sheriff or other officer who arrayed the panel or made the return. A challenge to the form and manner of making up the panel. A challenge that goes to illegality of drawing, selecting, or impaneling array. *See e.g.* Fed.R.Crim.P. 6(b) (grand jury).

*General challenge.* A species of challenge for cause, being an objection to a particular juror, to the effect that the juror is disqualified from serving in any case.

*Peremptory challenge.* A request from a party that a judge not allow a certain prospective juror to be a member of the jury. No reason or "cause" need be stated for this type of challenge. The number of peremptory challenges afforded each party is normally set by statute or court rule; *e.g.* Fed.R.Crim.P. 24; Fed.R. Civ.P. 47; 28 U.S.C.A. § 1870.

**Challenge to fight.** A summons or invitation, given by one person to another, to engage in a personal combat; a request to fight.

**Chamber.** A room or apartment in a house. A private repository of money; a treasury. A compartment; a hollow or cavity.

*Judges chambers.* The private room or office of a judge; any place in which a judge hears motions, signs papers, or does other business pertaining to his office, when he is not holding a session of court. Business so transacted is said to be done "in chambers."

*Legislative body.* The lower chamber of a bicameral legislature is normally the larger of the two (*e.g.* House of Representatives). The upper chamber is generally the smaller (*e.g.* Senate).

**Chamber business.** A term applied to all such judicial business as may properly be transacted by a judge at his chambers or elsewhere, as distinguished from such as must be done by the court in session.

**Chamberlain.** In old English law, keeper of the chamber. Originally the chamberlain was the keeper of the treasure chamber (*camera*) of the prince or state; otherwise called "treasurer."

The name of several high officers of state in England, as the lord great chamberlain of England, lord chamberlain of the household, chamberlain of the exchequer.

The word was formerly used in some American cities as the title of an officer corresponding to "treasurer."

**Chamberlaria** /chëymbərlériyə/. Chamberlainship; the office of a chamberlain.

**Chamber of accounts.** A sovereign court, of great antiquity, in France, which took cognizance of and registered the accounts of the king's revenue; nearly the same as the English court of exchequer.

**Chamber of commerce.** A board or association of businessmen and merchants organized to promote the commercial interests of a locality, county, or the like, or a society of a city who meet to promote the general trade and commerce of the locality. Chambers of commerce exist in most cities, and are loosely affiliated with the national organization of the same name. Particular trades may also have their own organizations or boards to promote the interests of their own trade. Organizations with functions similar to that of chambers of commerce may be known under various other names; *e.g.* Board of Trade.

**Chamber, widow's.** In old English law, a portion of the effects of a deceased person, reserved for the use of his widow, and consisting of her apparel, and the furniture of her bed-chamber. This custom in London of reserving her apparel and furniture for the widow of a freeman was abolished by 19 & 20 Vict., c. 94.

**Champart** /shòmpár/. In French law, the grant of a piece of land by the owner to another, on condition that the latter would deliver to him a portion of the crops.

**Champert** /chämpərt/. In old English law, a share or division of land; champerty.

**Champertor** /chämpərtər/. In criminal law, one who makes or brings suits, or causes them to be moved or brought, either directly or indirectly, and maintains them at his own cost, upon condition of having a part of the gains or of the land in dispute. One guilty of champerty (*q.v.*).

**Champertous** /chämpərtəs/. Of the nature of champerty; affected with champerty.

**Champerty** /chämpərtiy/. A bargain between a stranger and a party to a lawsuit by which the stranger pursues the party's claim in consideration of receiving part of any judgment proceeds; it is one type of "maintenance," the more general term which refers to maintaining, supporting, or promoting another person's litigation. *Alexander v. Unification Church of America*, C.A. N.Y., 634 F.2d 673, 677. "Maintenance" consists of maintaining, supporting, or promoting the litigation of another. *See also* Maintenance.

**Champion**. A person who fights a combat in his own cause, or in place of another. At common law, the person who, in the trial by battle, fought either for the tenant or demandant. One who acts or speaks in behalf of a person, or a cause; defender; an advocate.

**Champion of the king or queen**. In English law, an ancient officer, whose duty it was at the coronation to challenge "that if any man shall deny the king's title to the crown, he is there ready to defend it in single combat".

**Chance**. Absence of explainable or controllable causation; accident; fortuity; hazard; result or issue of uncertain and unknown conditions or forces; risk; unexpected, unforeseen, or unintended consequence of an act. The opposite of intention, design, or contrivance. *See* Act of God.

**Chance bargain**. The entering into a contract for better or worse, accompanied by the taking of chances as to the true facts and situation of the thing or article bargained about. *Marr v. Lawson*, 290 Ky. 342, 161 S.W.2d 42, 44.

**Chancellor**. The name given in some states to the judge (or the presiding judge) of a court of chancery. A university president, or chief executive officer of higher education system in certain states.

*Chancellor of the Exchequer*. In England, an officer who formerly sat in the Court of Exchequer, but now is minister who has control over national revenues and expenditures.

*Lord High Chancellor*. The highest judicial functionary in England. Also known as Lord Chancellor. Appointed by the Crown upon the advice of the Prime Minister, sits as Speaker of the House of Lords, a member of the Cabinet, and presides at appellate judicial proceedings.

**Chance-medley**. In criminal law, a sudden affray. This word is sometimes applied to any kind of homicide by misadventure, but in strictness it is applicable to such killing only as happens in defending one's self. 4 Bl. Comm. 184.

**Chancer**. To adjust according to principles of equity, as would be done by a court of chancery. The practice arose in parts of New England when the courts, without equity jurisdiction, were compelled to act upon equitable principles.

**Chancery**. Equity; equitable jurisdiction; a court of equity; the system of jurisprudence administered in courts of equity. *See* Court of Chancery; Equity.

**Chance verdict**. *See* Verdict.

**Chandler Act**. Federal act of 1938 making major amendments to Bankruptcy Act (11 U.S.C.A.). Included in amendments was provision for a debtor to arrange payments with creditors without total liquidation of debtor's assets. *See* Bankruptcy Code.

**Change, n.** An alteration; a modification or addition; substitution of one thing for another. Exchange of money against money of a different denomination.

**Change, v.** Alter; cause to pass from one place to another; exchange; make different in some particular; put one thing in place of another; vacate.

**Change in accounting method**. A change in the taxpayers method of accounting is an overall change in the plan of accounting, e.g. a change from the cash to the accrual method, or a change in the method of valuing inventories. Such change normally requires prior approval from the Internal Revenue Service. Generally, a request to the Internal Revenue Service must be filed within 180 days after the beginning of the taxable year of the desired change. In some instances, the permission for change will not be granted unless the taxpayer agrees to certain terms or adjustments which are prescribed by the Internal Revenue Service.

**Change of beneficiary**. A divesting of beneficial interest held by one person and a vesting of that interest in another.

**Change of circumstances**. In domestic relations law, condition used to show need for modification of custody or support orders. *Betts v. Betts*, 18 Or.App. 35, 523 P.2d 1055. With reference to custody issues, this term refers to a change relevant to the capacity of the moving party or custodial parent to properly take care of the child. It must be a change which was not contemplated at the time of the original decree and which has occurred since the last custody order and would enhance or have an adverse impact on the welfare of the child. *Matter of Marriage of Padbury*, 46 Or.App. 533, 612 P.2d 321, 322. This term is also used interchangeable with "changed circumstances."

**Change of domicile**. Change of abode or residence and intention to remain.

**Change of grade**. Usually understood as an elevation or depression of the surface of a street, or a change of the natural contour of its face so as to facilitate travel over it. It is essential that there shall have been a previously established grade and that a new grade be physically made.

**Change of location**. Removal or transfer from old to new location. *Weber County v. Ritchie*, 98 Utah 272, 96 P.2d 744. *See* Change of domicile; Change of venue.

**Change of venue**. The removal of a suit begun in one county or district to another county or district for trial, though the term is also sometimes applied to the remov-

al of a suit from one court to another court of the same county or district. In criminal cases a change of venue will be permitted if for example the court feels that the defendant cannot receive a fair trial in a given venue because of prejudice. Fed.R.Crim.P. 21. In civil cases a change *may* be permitted in the interests of justice or for the convenience of the parties. 28 U.S.C.A. §§ 1404(a), 1406(a), 1631. *See also* Forum non conveniens; Plea of privilege; Venue.

**Changer.** In England, an officer formerly belonging to the king's mint whose business was chiefly to *exchange* coin for bullion brought in by merchants and others.

**Channel.** The bed in which the main stream of a river flows, rather than the deep water of the stream as followed in navigation. The deeper part of a river, harbor or strait. It may also be used as a generic term applicable to any water course, whether a river, creek, slough, or canal. The "channel" of a river is to be distinguished from a "branch".

A means of expression or communication.

*Main channel.* That bed of the river over which the principal volume of water flows. The main channel of a navigable stream, called for as a boundary between states, means the "thalweg", or deepest and most navigable channel as it then existed.

*Natural channel.* The channel of a stream as determined by the natural conformation of the country through which it flows. The floor or bed on which the water flows, and the banks on each side thereof as carved out by natural causes.

**Chantry** /chǎntri/. A church or chapel endowed with lands for the maintenance of priests to say Mass daily for the souls of the donors.

**Chapel.** A place of worship; a lesser or inferior church, sometimes a part of or subordinate to another church.

*Chapel of ease.* In English ecclesiastical law, a chapel built in aid of original church for parishioners who had fixed their residence at some distance.

*Private chapels.* Chapels owned by private persons, and used by themselves and their families.

*Proprietary chapels.* In English law, those belonging to private persons who have purchased or erected them with a view to profit or otherwise.

*Public chapels.* In English law, chapels founded later than the church for parishioners who fixed their residence at a distance; and chapels so circumstanced were described as "chapels of ease."

**Chapelry** /chǎpəlri/. The precinct and limits of a chapel. The same thing to a chapel as a parish is to a church.

**Chapitre** /chǎp(ə)tər/. In English law, a summary of matters to be inquired of or presented before justices in eyre, justices of assise, or of the peace, in their sessions. Also articles delivered by the justice in his charge to the inquest.

**Chaplain.** A clergyman officially attached to a unit of the armed services, or to some public institution, for the purpose of performing religious services.

**Chapman.** An itinerant vendor of small wares. A trader who trades from place to place.

**Chapter.** In England, a body of dignitaries called canons attached to a cathedral church and presided over by a dean. This body constitutes the council of the bishop in both spiritual and temporal affairs. Also, a local branch of a society or fraternity.

**Chapter 7 (liquidation) bankruptcy.** *See* Bankruptcy proceedings (*Straight bankruptcy*).

**Chapter 11 (reorganization) bankruptcy.** *See* Bankruptcy proceedings (*Business reorganizations*).

**Chapter 12 (farmer) bankruptcy.** *See* Bankruptcy proceedings (*Family farmer bankruptcy*).

**Chapter 13 (wage earner's) bankruptcy.** *See* Bankruptcy proceedings (*Wage earner's plan*).

**Character.** The aggregate of the moral qualities which belong to and distinguish an individual person; the general result of the one's distinguishing attributes. That moral predisposition or habit, or aggregate of ethical qualities, which is believed to attach to a person, on the strength of the common opinion and report concerning him. A person's fixed disposition or tendency, as evidenced to others by his habits of life, through the manifestation of which his general reputation for the possession of a character, good or otherwise, is obtained. The estimate attached to an individual or thing in the community. The opinion generally entertained of a person derived from the common report of the people who are acquainted with him. Although "character" and "reputation" are often used synonymously, the terms are distinguishable. "Character" is what a man is, and "reputation" is what he is supposed to be in what people say he is. "Character" depends on attributes possessed, and "reputation" on attributes which others believe one to possess. The former signifies reality and the latter merely what is accepted to be reality at present. *See* Bad character; Good character; Reputation.

Class or division to which claim belongs.

**Character and habit.** The moral traits of a person gleaned from his habitual conduct. *People v. Coleman*, 19 Mich.App. 250, 172 N.W.2d 512. *See* Character.

**Character evidence.** Evidence of person's moral standing in community based on reputation.

Admissibility of character evidence in federal trials is governed by Fed.Evid. Rules 404 and 405, and with respect to witnesses by Rules 607-609.

**Characterization.** In conflicts, the classification, qualification, and interpretation of laws applicable to a case. Restatement, Second, Conflicts, § 7.

**Character witness.** *See* Witness.

**Charge, v.** To impose a burden, duty, obligation, or lien; to create a claim against property; to assess; to demand; to accuse; to instruct a jury on matters of law.

To impose a tax, duty, or trust. To entrust with responsibilities and duties (e.g. care of another). In commercial transactions, to bill or invoice; to purchase on credit. In criminal law, to indict or formally accuse.

**Charge, n.** An incumbrance, lien, or claim; a burden or load; an obligation or duty; a liability; an accusation. A person or thing committed to the care of another. The price of, or rate for, something. *See also* Charged; Charges; Floating charge; Rate; Surcharge.

*Charge to jury.* The final address by judge to jury before verdict, in which he sums up the case, and instructs jury as to the rules of law which apply to its various issues, and which they must observe. The term also applies to the address of court to grand jury, in which the latter are instructed as to their duties. *See also* Jury instructions.

*General charge.* The charge or instruction of the court to the jury upon the case, as a whole, or upon its general features and characteristics.

*Special charge.* A charge or instruction given by the court to the jury, upon some particular point or question involved in the case, and usually in response to counsel's request for such instruction.

*Criminal law.* In a criminal case, the specific crime the defendant is accused of committing. Accusation of a crime by a formal complaint, information or indictment.

*Public charge.* An indigent. A person whom it is necessary to support at public expense by reason of poverty alone or illness and poverty.

**Chargeable.** This word, in its ordinary acceptance, as applicable to the imposition of a duty or burden, signifies capable of being charged, subject to be charged, liable to be charged, or proper to be charged.

**Charge account.** System of purchasing goods and services on credit, under which customer agrees to settle or make payments on his balance within a specified time or periodically. *See* Consumer Credit Protection Act.

*Revolving charge account.* An arrangement between a seller and a buyer pursuant to which: (1) the seller may permit the buyer to purchase goods or services on credit either from the seller or pursuant to a seller credit card, (2) the unpaid balances of amounts financed arising from purchases and the credit service and other appropriate charges are debited to an account, (3) a credit service charge if made is not precomputed but is computed on the outstanding unpaid balances of the buyer's account from time to time, and (4) the buyer has the privilege of paying the balances in installments. Uniform Consumer Credit Code, § 2.108.

**Charge and discharge.** Under former equity practice, in taking an account before a master, a written statement of items for which plaintiff asked credit and a counterstatement, exhibiting claims or demands defendant held against plaintiff.

**Charge back.** The action of a bank in deducting or otherwise revoking a credit given to a customer's account, which credit usually has been given for a check

deposited in the account. *See* U.C.C. §§ 4-212(1) (collecting bank's right of charge back) & 4-212(3) (payor bank's right of charge back).

**Charged.** Accusation of crime by complaint, indictment, or information. With respect to "notice", a person is charged with such if he has information sufficient to apprise him of the subject, e.g. under land recording acts, a person is charged with notice of a lien or attachment if it is on record.

**Charge des affaires, or charge d'affaires** /shàrzhéy deyz afér(z)/'dâfêr(z)/. The title of a diplomatic representative of inferior rank. In re Baiz, 135 U.S. 403, 10 S.Ct. 854, 34 L.Ed. 222.

**Charge-off.** Anything manifesting intent to eliminate an item from assets. Write-off of asset or other item, e.g. uncollectible account receivable or debt. To treat as a loss or expense an amount originally recorded as an asset; usually the term is used when the charge is not in accord with original expectations. *See* Bad debt.

**Charges.** The expenses which have been incurred, or disbursements made, in connection with a contract, suit, or business transaction. *See also* Charge; Costs; Fee; Fixed charges.

**Charge-sheet.** A record kept at a police station to receive the names of the persons brought and given custody, the nature of the accusation, and the name of the accuser in each case.

**Charging lien.** A lien is a charging lien where the debt is a charge upon the specific property although it remains in the debtor's possession. *See* Floor plan financing.

The right of an attorney to have expenses and compensation due for services in a suit secured to the attorney in a judgment, decree or award for a client. The lien attaches to judgment but relates back and takes effect from the time of the commencement of services rendered in the action. *Miles v. Katz*, Fla.App., 405 So.2d 750, 752.

**Charging order.** A statutorily created means for a creditor of a judgment debtor who is a partner of others to reach the debtor's beneficial interest in the partnership, without risking dissolution of the partnership. Uniform Partnership Act, § 28.

**Charitable.** Having the character or purpose of a charity. The word "charitable", in a legal sense includes every gift for a general public use, to be applied consistent with existing laws, for benefit of an indefinite number of persons, and designed to benefit them from an educational, religious, moral, physical or social standpoint. *American Soc. for Testing and Materials v. Board of Revision of Taxes*, Philadelphia County, 423 Pa. 530, 225 A.2d 557. This term is synonymous with "beneficent", "benevolent", and "eleemosynary". *See also* Charity; Eleemosynary.

**Charitable bequest.** A bequest is charitable if its aims and accomplishments are of religious, educational, political, or general social interest to mankind and if the



ultimate recipients constitute either the community as a whole or an unascertainable and indefinite portion thereof.

**Charitable contributions.** Contributions of money, securities, etc. to organizations engaged in charitable purposes. Such contributions are deductible for tax purposes (subject to various restrictions and ceiling limitations) if made to qualified nonprofit charitable organizations. A cash basis taxpayer is entitled to a deduction solely in the year of payment. Accrual basis corporations may accrue contributions at year-end if payment is authorized by the Board of Directors prior to the end of the year and payment is made within time specified by I.R.C. before the end of the year. *See also* Charitable deduction; Charitable organizations.

**Charitable corporation.** Non-profit corporation organized for charitable purposes; *i.e.* for purpose, among other things, of promoting welfare of mankind at large, or of a community, or of some class forming part of it indefinite as to numbers and individuals and is one created for or devoted to charitable purposes. *Lynch v. Spilman*, 67 Cal.2d 251, 62 Cal.Rptr. 12, 18, 431 P.2d 636. Such corporations must meet certain criteria to receive tax "exempt" status. I.R.C. § 501(c)(3). *See* Charitable organizations, *infra*.

**Charitable deduction.** In taxes, a contribution to a qualified charity or other tax exempt institution for which taxpayer may claim a deduction on his tax return. I.R.C. § 170(c). Also applicable to trusts. I.R.C. § 512(b)(11). As regards tax exempt status of recipient organization, *see* Charitable organizations. *See also* Charitable contributions.

**Charitable foundation.** An organization dedicated to education, health, relief of the poor, etc.; organized for such purposes and not for profit and recognized as such for tax purposes under I.R.C. § 509(a). *See also* Charitable organizations, *infra*.

**Charitable gift.** *See* Charitable deduction, *supra*.

**Charitable immunity.** A doctrine which relieves a charity of liability in tort; long recognized, but currently most states have abrogated or restricted such immunity.

**Charitable institution.** One which dispenses charity to all who need and apply for it, does not provide gain or profit in private sense to any person connected with it, and does not appear to place obstacles of any character in way of those who need and would avail themselves of charitable benefits it dispenses. Distinctive features are that it has no capital stock or shareholders and earns no profits or dividends; but rather derives its funds mainly from public and private charity and holds them in trust for objects and purposes expressed in its charter. *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149, 233 N.E.2d 537, 541, 542; *People ex rel. Nordlund v. Association of Winnebago Home for Aged*, 40 Ill.2d 91, 237 N.E.2d 533, 539.

**Charitable organizations.** As regards "exempt" tax status, such includes: "Corporations, and any communi-

ty chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." I.R.C. § 501(c)(3). *See also* Benevolent associations; Benevolent corporation; Charitable corporation; Charitable foundation; Charitable institution.

**Charitable purpose.** Term as used for purpose of tax exemption has as its common element the accomplishment of objectives which are beneficial to community or area, and usually recognized charitable purposes, not otherwise limited by statute, are generally classified as: relief of poverty; advancement of education; advancement of religion; protection of health; governmental or municipal purposes; and other varied purposes the accomplishment of which is beneficial to community. *Bank of Carthage v. U. S.*, D.C.Mo., 304 F.Supp. 77, 80.

A gift is for charitable purposes if it is for religious, scientific, charitable, literary, or educational purposes under tax law. I.R.C. § 170(c)(4). These purposes are also required for a trust to qualify as a charitable trust.

*See also* Charitable deduction; Charitable use.

**Charitable remainder.** A gift over after an intervening estate to a qualified charity; qualifies as a tax deduction under certain conditions.

**Charitable remainder annuity trust.** A trust which must pay the noncharitable income beneficiary or beneficiaries a sum certain annually, or more frequently, if desired, which is not less than 5% of the initial net fair market value of all property placed in the trust as finally determined for federal tax purposes. I.R.C. § 664(d)(1). In *re Danforth's Will*, 81 Misc.2d 452, 366 N.Y.S.2d 329, 330.

**Charitable trust.** One in which property held by a trustee must be used for charitable purposes (advancement of health, religion, etc.). Fiduciary relationship with respect to property arising as a result of a manifestation of an intention to create it, and subjecting the person by whom the property is held to equitable duties to deal with the property for a charitable purpose. *Restatement, Second, Trusts*, § 348. *See* Charitable purpose.

**Charitable use.** Charitable uses are defined as those of religious, educational, political or general social interest to mankind, or as those for the relief of poverty, advancement of education or religion, or beneficial to the community generally. *Thomason v. State*, 245 C.A.2d 793, 54 Cal.Rptr. 229, 232. *See also* Charitable purpose.

**Charity.** A gift for, or institution engaged in, public benevolent purposes. A gift for benefit of indefinite number of persons under influence of religion or education, relief from disease, assisting people to establish themselves in life, or erecting or maintaining public works. *Johnson v. South Blue Hill Cemetery Ass'n*, Me., 221 A.2d 280, 287. A "charity", in absence of legislative definition, is attempt in good faith, spiritually, physically, intellectually, socially and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources and without hope or expectation, if not with positive abnegation, of gain or profit by donor or by instrumentality of charity. *Planned Parenthood Ass'n v. Tax Commissioner*, 5 Ohio St.2d 117, 214 N.E.2d 222, 225. *See also* Benevolence; Benevolent; Charitable; Charitable organizations.

**Public charity.** A charity wherein the benefit is conferred on indefinite persons composing the public or some part of the public.

**Charlatan** /shárlætən/. One who pretends to more knowledge or skill than he possesses; a quack; a faker.

**Charre of lead.** A quantity consisting of 36 pigs of lead, each pig weighing about 70 pounds.

**Chart.** A map used by navigators.

**Charta** /kártə/. In old English law, a charter or deed; an instrument written and sealed; the formal evidence of conveyances and contracts. Also any signal or token by which an estate was held.

The term came to be applied, by way of eminence, to such documents as proceeded from the sovereign, granting liberties or privileges, and either where the recipient of the grant was the whole nation, as in the case of *Magna Charta*, or a public body, or private individual, in which case it corresponded to the modern word "charter."

In the civil law, a paper suitable for inscription of documents or books; hence, any instrument or writing.

*See also* Charter.

**Charta communis** /kártə kəmyúwnəs/. In old English law, an indenture; a common or mutual charter or deed; one containing mutual covenants, or involving mutuality of obligation; one to which both parties might have occasion to refer, to establish their respective rights.

**Charta cyrographata** /kártə kəyrowgráféytə/. In old English law, a chirographed charter; a charter executed in two parts, and cut through the middle (*scinditur per medium*), where the word "cyrographum," or "chirographum," was written in large letters. *See* Chirograph.

**Charta de foresta** /kártə diy foréstə/. A collection of the laws of the forest, made in the 9th Hen. III, and said to have been originally a part of *Magna Charta*.

The *charta de foresta* was called the Great Charter of the woodland population, nobles, barons, freemen, and slaves, loyally granted by Henry III, early in his reign (A.D. 1217). There is a difference of opinion as to the

*original* charter of the forest similar to that which exists respecting the true and original *Magna Carta* (*q.v.*), and for the same reason, viz., that both required repeated confirmation by the kings, despite their supposed inviolability. This justifies the remark of recent historians as to the great charter that "this theoretical sanctity and this practical insecurity are shared with 'the Great Charter of Liberties' by the Charter of the Forest which was issued in 1217." It is asserted with great positiveness by Inderwick that no forest charter was ever granted by King John, but that Henry III issued the charter of 1217 (which he puts in the third year of the reign, which, however, only commenced Oct. 28, 1216), in pursuance of the promises of his father; and Lord Coke, referring to it as a charter on which the lives and liberties of the woodland population depended, says that it was confirmed at least thirty times between the death of John and that of Henry V.

**Charta de una parte** /kártə diy yúwnə pártiy/. A deed-poll; a deed of one part. Formerly used to distinguish a *deed poll*—that is, an agreement made by one party only—from a deed *inter partes*.

**Charta partita** /kártə partáytə/. A charter-party.

**Charta de non ente non valet** /kártə diy non éntiy non vèlæt/. A deed of a thing not in being is not valid.

**Chartæ libertatum** /kártiy libértéytəm/chártiy/. The charters (grants) of liberties. These are *Magna Charta* and *Charta de Foresta*.

**Charta non est nisi vestimentum donationis** /kártə non ést náysiy vèstéméntəm dənéyshiyównəs/. A deed is nothing else than the vestment of a gift.

**Chartarum super fidem, mortuis testibus, ad patriam de necessitudine recurrendum est** /kartérəm s(y)úwpər fáydəm, mórtiyuwəs téstəbəs, əd pátriyəm diy nəsèsətyúwdəniy rəkúréndəm èst/. The witnesses being dead, the truth of charters must of necessity be referred to the country, i.e., a jury.

**Charte** /shárt/. Fr. A chart, or plan, which mariners use at sea.

**Chartel** /kartél/. A variant of "cartel" (*q.v.*).

**Charte-partie** /shárt-partiy/. Fr. In French marine law. A charter-party.

**Charter, v.** To hire, rent or lease for a temporary use; e.g. to hire or lease a vessel for a voyage.

**Charter, n.** An instrument emanating from the sovereign power, in the nature of a grant, either to the whole nation, or to a class or portion of the people, to a corporation, or to a colony or dependency, assuring to them certain rights, liberties, or powers. Such was the "Great Charter" or "*Magna Charta*," and such also were the charters granted to certain of the English colonies in America.

A charter differs from a constitution, in that the former is granted by the sovereign, while the latter is established by the people themselves.

A city's organic law. Charter of municipal corporation consists of the creative act of incorporation, together with all those laws in force which relate to the incorporation, whether defining the powers of the corporation or regulating the mode of exercise thereof, and statute does not fail to become part of charter simply because it is not labeled as such. Opinion of the Justices, Del., 276 A.2d 736, 739.

An act of a legislature creating a business corporation, or creating and defining the franchise of a corporation. Under modern statutes, a charter is usually granted by the state secretary of state, who acts under general statutory authority conferred by the state legislature. Also a corporation's constitution or organic law; that is to say, the articles of incorporation taken in connection with the law under which the corporation was organized. The authority by virtue of which an organized body acts. A contract between the state and the corporation, between the corporation and the stockholders, and between the stockholders and the state. *See* Corporate charter.

Leasing or hiring of airplane, vessel, or the like. *See* Charter-party.

In old English law, a deed or other written instrument under seal; a conveyance, covenant, or contract.

*Bank charter.* Document issued by governmental authority permitting a bank to operate and transact business.

*Bareboat charter.* Charter where ship owner only provides ship, with charterer providing personnel, insurance and other necessary materials and expenses. *See also* Bareboat charter.

*Blank charter.* In old English law, a document given to the agents of the crown in the reign of Richard II with power to fill up as they pleased.

*Charter agreement.* *See* Charter-party.

*Charter of affreightment.* *See* Affreightment.

*Gross charter.* Charter where ship owner provides all personnel and equipment and incurs other expenses such as port costs.

*Time charter.* Charter wherein vessel is leased for specified time rather than for specified trip or voyage. *See also* Time charter).

**Chartered Life Underwriter (C.L.U.).** A designation conferred by the American College of Life Underwriters in recognition of the attainment of certain standards of education and proficiency in the art and science of life underwriting.

**Chartered ship.** A ship hired or freighted; a ship which is the subject-matter of a charter-party.

**Charterer.** One who charters (*i.e.*, hires, leases or engages) a vessel, airplane, etc. for transportation or voyage.

**Charter-land.** In English law, otherwise called "book-land." Property held by deed under certain rents and free services. It, in effect, differs nothing from the free

socage lands, and hence have arisen most of the freehold tenants, who hold of particular manors, and owe suit and service to the same. 2 Bl.Comm. 90.

**Charter-party.** A contract by which a ship, or some principal part thereof, is let to a merchant for the conveyance of goods on a determined voyage to one or more places.

The term "charter party" or "charter agreement", often shortened to "charter," designates the document in which are set forth the arrangements and contractual engagements entered into when one person (the "charterer") takes over the use of the whole, or a substantial portion, of a ship belonging to another (the "owner").

**Chartis reddendis** /kártəs rədéndəs/. (For returning the charters.) An ancient writ which lay against one who had charters of feoffment intrusted to his keeping and refused to deliver them.

**Chartophylax** /kartófəlæks/. In old European law, a keeper of records or public instruments; a chartulary; a registrar.

**Chase.** To pursue or follow rapidly with the intention of catching or driving away. *See* Fresh pursuit.

In English law, the liberty or franchise of hunting, one's self, and keeping protected against all other persons, beasts of the chase within a specified district, without regard to the ownership of the land. The act of acquiring possession of animals *feræ naturæ* by force, cunning, or address. A privileged place for preservation of deer and beasts of the forest. It is commonly less than a forest and of larger compass than a park. Every forest is a chase, but every chase is not a forest. It differs from a park in that it is not inclosed, yet it must have certain metes and bounds. In old English law, a "common" chase was a place where all alike were entitled to hunt wild animals.

**Chaste.** Never voluntarily having had unlawful sexual intercourse.

**Chaste character.** Denoting purity of mind and innocence of heart; not limited merely to unlawful sexual intercourse.

**Chastity.** Purity; continence. Quality or state of being chaste. It means that virtue which prevents the unlawful intercourse of the sexes; the state of purity or abstinence from unlawful sexual connection.

**Chattel** /chătəl/. An article of personal property, as distinguished from real property. A thing personal and movable. It may refer to animate as well as inanimate property. *See also* Goods; Property (*Personal property*).

*Personal chattel.* Movable things. Personal property which has no connection with real estate. *See* Goods; Property (*Personal Property*).

*Real chattels.* Such as concern real property, such as leasehold estates; interests issuing out of, or annexed to, real estate; such chattel interests as devolve after the manner of realty. An interest in real estate less than freehold or fee. *See also* Fixture.

**Chattel lien.** Chattel liens exist in favor of persons expending labor, skill or materials on any chattel or furnishing storage thereof at request of owner, his agent, reputed owner, or lawful possessor. *See e.g.* Artisan's lien.

**Chattel mortgage.** A pre-Uniform Commercial Code security device whereby a security interest was taken by the mortgagee in personal property of the mortgagor. A transfer of some legal or equitable right in personal property or creation of a lien thereon as security for payment of money or performance of some other act, subject to defeasance on performance of the conditions. Such security device has generally been superseded by other types of security agreements under U.C.C. Article 9 (Secured Transactions). *See* Secured transaction; Security agreement.

**Chattel paper.** A writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods. In many instances chattel paper will consist of a negotiable instrument coupled with a security agreement. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper. U.C.C. § 9-105(1)(b). *See* Secured transaction; Security agreement.

**Chaud-medley** /shòwdmédli/. A homicide committed in the heat of an affray and while under the influence of passion; it is thus distinguished from *chance-medley*, which is the killing of a man in a casual affray in self-defense. It has been said, however, that the distinction is of no great importance. *See* Homicide.

**Chauffeur.** A person employed to operate and attend motor vehicle for another.

**Chantry rents** /chóntriy rénts/. In old English law, money paid to the Crown by the servants or purchasers of chantry-lands. *See* Chantry.

**Chaussée** /shòwséy/. Fr. A levee of earth, made to retain the water of a river or pond; a levee made in low, wet, and swampy places to serve as a road.

**Cheat, v.** To deceive and defraud. It necessarily implies a fraudulent intent. The words "cheat and defraud" usually mean to induce a person to part with the possession of property by reason of intentionally false representations relied and acted upon by such person to his harm. They include not only the crime of false pretenses, but also all civil frauds, and include all tricks, devices, artifices, or deceptions used to deprive another of property or other right. *See* Fraud.

**Cheat, n.** Swindling; defrauding. The act of fraudulently deceiving. *See* Fraud.

Cheats, punishable at common law, were such cheats (not amounting to felony) as were effected by deceitful or illegal symbols or tokens which may affect the public at large, and against such common prudence could not have guarded.

**Cheaters, or escheators.** In old English law, officers appointed to look after the king's escheats (*q.v.*), a duty which gave them great opportunities of fraud and oppression, and in consequence many complaints were made of their misconduct. Hence it seems that a *cheater* came to signify a fraudulent person, and thence the verb to *cheat* was derived.

**Check, v.** To control or restrain; to hold within bounds. To verify or audit, as to examine the books and records of another or a business for accuracy and proper accounting practices. Particularly used with reference to the control or supervision of one department, bureau, office, or person over another.

**Check, n.** A draft drawn upon a bank and payable on demand, signed by the maker or drawer, containing an unconditional promise to pay a sum certain in money to the order of the payee. *State v. Perrigou*, 81 Wash.2d 640, 503 P.2d 1063, 1066. U.C.C. § 3-104(2)(b).

The Federal Reserve Board defines a check as "a draft or order upon a bank or banking house purporting to be drawn upon a deposit of funds for the payment at all events of a certain sum of money to a certain person therein named or to him or his order or to bearer and payable instantly on demand." It must contain the phrase "pay to the order of."

*See also* Bad check; Bogus check; Cancelled check; Cashier's check; Depository transfer check (DTC); Draft; Raised check; Registered check; Stale check; Travelers check.

**Blank check.** Check which is signed by drawer but left blank as to payee and/or amount.

**Cashier's check.** A bank's own check drawn on itself and signed by the cashier or other authorized official. It is a direct obligation of the bank. One issued by an authorized officer of a bank directed to another person, evidencing that the payee is authorized to demand and receive upon presentation from the bank the amount of money represented by the check. A form of a check by which the bank lends its credit to the purchaser of the check, the purpose being to make it available for immediate use in banking circles. A bill of exchange drawn by a bank upon itself, and accepted by the act of issuance. In its legal effect, it is the same as a certificate of deposit, certified check or draft. An acknowledgment of a debt drawn by bank upon itself. *See also* Certified check.

**Memorandum check.** A check given by a borrower to a lender, for the amount of a short loan, with the understanding that it is not to be presented at the bank, but will be redeemed by the maker himself when the loan falls due. This understanding is evidenced by writing the word "Mem." on the check.

**Personal check.** An individual's own check drawn on his own account.

**Post-dated check.** A check which bears a date after the date of its issue. Its negotiability is not affected by being postdated and it is payable on its stated date. U.C.C. § 3-114.

**Traveler's check.** *See* Traveler's check.

**Checkerboard system.** This term, with reference to entries on lands, means one entry built on another, and a third on the second.

**Check kiting.** Practice of writing a check against a bank account where funds are insufficient to cover it and hoping that before it is deposited the necessary funds will have been deposited. *First State Bank & Trust Co. of Edinburg v. George*, Tex.Civ.App., 519 S.W.2d 198, 204. Transfer of funds between two or more banks to obtain unauthorized credit from a bank during the time it takes the checks to clear. *State v. Woodington*, 31 Wis.2d 151, 142 N.W.2d 810, 820. In effect, a kite is a bad check used temporarily to obtain credit. *See* Bad check.

**Check-off system.** Procedure whereby employer deducts union dues directly from pay of employees and remits such sums to union.

**Check register.** Journal used to record checks issued.

**Check-roll.** In English law, a list or book, containing the names of such as are attendants on, or in the pay of, the queen or other great personages, as their household servants.

**Checks and balances.** Arrangement of governmental powers whereby powers of one governmental branch check or balance those of other branches. *See also* Separation of powers.

**Chefe.** In Anglo-Norman law, were or weregild; the price of the head or person (*capitis pretium*).

**Chemerage** /shēm(ə)rāzh/. In old French law, the privilege or prerogative of the eldest. A provincial term derived from *chemier*.

**Chemical analysis.** Any form of examination through use of chemicals as in blood tests to determine a person's sobriety, the presence of drugs, etc. *See, e.g.*, Blood test evidence; Breathalyzer test; DNA identification; Intoxilyzer; Intoximeter.

**Chemier** /shemyéy/. In old French law, the eldest born.

**Chemin** /sh(ə)mæn/. Fr. The road wherein every man goes; the king's highway.

**Cheque** /chék/. A variant of check (*q.v.*).

**Cherokee Nation.** One of the civilized Indian tribes. *See* Indian tribe.

**Chevage** /chíyvj/. In old English law, a sum of money paid by villeins to their lords in acknowledgment of their bondage. It was exacted for permission to marry, and also permission to remain without the dominion of the lord. When paid to the king, it was called subjection. *Chevage* seems also to have been used for a sum of money yearly given to a man of power for his countenance and protection as a chief or leader.

**Chevantia** /chəvəns(h)yə/. A loan or advance of money upon credit.

**Chevisance** /chévəzəns/. An agreement or composition; an end or order set down between a creditor or debtor;

an indirect gain in point of usury, etc. Also, an unlawful bargain or contract.

**Cheze.** A homestead or homesfall which is accessory to a house.

**Chicago Board of Trade.** Commodities exchange where futures contracts in a large number of agricultural products are transacted.

**Chicane** /shəkéyn/. Swindling; shrewd cunning. The use of tricks and artifice.

**Chickasaw Nation.** One of the civilized Indian tribes. *See* Indian tribe.

**Chief.** One who is put above the rest. Principal; leading; head; eminent in power or importance; the best or most important or valuable of several; paramount; of leading importance.

*Declaration in chief* is a declaration for the principal cause of action.

*Examination in chief* is the first examination of a witness by the party who produces him.

*Tenant in chief.* *See* Chief, tenant in, *infra*.

**Chief baron.** Formerly, the presiding judge of the English court of exchequer; answering to the chief justice of other courts. Superseded by Lord Chief Justice of England.

**Chief clerk.** The principal clerical officer of a court, bureau or department, who is generally charged, subject to the direction of his superior officer, with the superintendence of the administration of the business of the office.

**Chief executive.** *See* Chief magistrate.

**Chief Judge.** *See* Chief Justice.

**Chief Justice.** The presiding, most senior, or principal judge of a court. *Compare* Associate justices.

**Chief Justice of England.** The title formerly given to the presiding judge in the Queen's Bench Division of the high court of justice, and, in the absence of the Lord Chancellor, president of the high court, and also an *ex officio* judge of the court of appeals. Now superseded by the "Lord Chief Justice of England" who is President of the Queen's Bench Division.

**Chief Justice of the Common Pleas.** In England, the presiding judge in the court of common pleas, and afterwards in the common pleas division of the high court of justice, and one of the *ex officio* judges of the high court of appeal. Office disappeared in 1881.

**Chief justiciar** /chíyf jəstishiyər/. In old English law, a high judicial officer and special magistrate, who presided over the *aula regis* of the Norman kings, and who was also the principal minister of state, the second man in the kingdom, and, by virtue of his office, guardian of the realm in the king's absence. 3 Bl.Comm. 38.

**Chief lord.** The immediate lord of the fee, to whom the tenants were directly and personally responsible.

**Chief magistrate.** The head of the executive department of government of a nation, state, or municipal corporation. The President is the chief executive of the United States.

**Chief office.** Office of paramount importance or the leading office.

**Chief pledge.** In old English law, the borsholder, or chief of the borough.

**Chief rents.** In old English law, the annual payments of freeholders of manors; also called "quit-rents," because by paying them the tenant was freed from all other rents or services. Abolished by Law of Property Act of 1922.

**Chief use.** In customs law, for purposes of determining the proper tariff classification, this refers to the use by users, as a whole, of the type of commodity involved, and not merely individual use. *Gleeson v. U.S.*, 432 F.2d 1403, 1407, 58 C.C.P.A. 17.

**Chiefrie.** In feudal law, a small rent paid to the lord paramount.

**Chief, tenant in.** In English feudal law, all the land in the kingdom was supposed to be holden mediately or immediately of the king, who was styled the "Lord Paramount," or "Lord Above All," and those that held immediately under him, in right of his crown and dignity, were called his tenants "*in capite*" or "in chief," which was the most honorable species of tenure, but at the same time subjected the tenant to greater and more burdensome services than inferior tenures did. One who held directly of the king.

**Child; Children.** Progeny; offspring of parentage. Unborn or recently born human being. *Wilson v. Weaver*, 358 F.Supp. 1147, 1154. At common law one who had not attained the age of fourteen years, though the meaning now varies in different statutes; e.g. child labor, support, criminal, etc. statutes. The term "child" or "children" may include or apply to: adopted, after-born, or illegitimate child; step-child; child by second or former marriage; issue.

*See also* Delinquent child; Disobedient child; Foster child; Illegitimate child; Infancy; Juvenile; Minor; Neglected child; Person; Posthumous child; Pretermitted heir; Viable child. For negligence of child, *see* Parental liability.

**Childs part.** A "child's part," which a widow, by statute in some states, is entitled to take in lieu of dower or the provision made for her by will, is a full share to which a child of the decedent would be entitled, subject to the debts of the estate and the cost of administration up to and including distribution.

**Illegitimate child.** Child born out of lawful wedlock.

**Legitimate child.** Child born in lawful wedlock.

**Natural child.** Child by natural relation or procreation. Child by birth, as distinguished from a child by adoption. Illegitimate children who have been acknowledged by the father.

**Posthumous child.** One born after the father's death.

**Quasi-posthumous child.** In the civil law, one who, born during the life of his grandfather, or other male ascendant, was not his heir at the time he made his testament, but who by the death of his father became his heir in his life-time.

**Rights of unborn child.** The rights of an unborn child are recognized in various different legal contexts; e.g. in criminal law, murder includes the unlawful killing of a fetus (Cal.Penal Code § 187), and the law of property considers the unborn child in being for all purposes which are to its benefit, such as taking by will or descent. After its birth, it has been held that it may maintain a statutory action for the wrongful death of the parent. In addition, the child, if born alive, is permitted to maintain an action for the consequences of prenatal injuries, and if he dies of such injuries after birth an action will lie for his wrongful death. While certain states have allowed recovery even though the injury occurred during the early weeks of pregnancy, when the child was neither viable nor quick, *Sinkler v. Kneale*, 401 Pa. 267, 164 A.2d 93; *Smith v. Brennan*, 31 N.J. 353, 157 A.2d 497, other states require that the fetus be viable before a civil damage action can be brought on behalf of the unborn child. *See*, Viable child; Wrongful birth; Wrongful conception; Wrongful life.

**Child abuse.** Any form of cruelty to a child's physical, moral or mental well-being. Also used to describe form of sexual attack which may or may not amount to rape. Such acts are criminal offenses in most states. *See also* Abuse (*Female child*); Abused and neglected children; Battered child syndrome; Protective order.

**Child labor laws.** Network of laws on both federal and state levels prescribing working conditions for children in terms of hours and nature of work which may be performed, all designed to protect the child. Included are restrictions on number of hours that teen-agers can work during school year on school days and weekends; also specific hours during day that they can work. *See also* Fair Labor Standards Act; Working papers.

**Children's court.** *See* Juvenile courts.

**Child support.** The legal obligation of parents to contribute to the economic maintenance, including education, of their children; enforceable in both civil and criminal contexts. In a dissolution or custody action, money paid by one parent to another toward the expenses of children of the marriage. *See also* Nonsupport.

**Child's income tax.** *See* Clifford trust; Kiddie tax.

**Child welfare.** A generic term which embraces the totality of measures necessary for a child's well being; physical, moral and mental.

**Childwit.** In Saxon law, the right which a lord had of taking a fine of his bondwoman gotten with child without his license.

The custom in Essex county, England, whereby every reputed father of a bastard child was obliged to pay a small fine to the lord.

**Chilling a sale.** The act of bidders or others who combine or conspire to suppress fair competition at a sale,

for the purpose of acquiring the property at less than its fair value.

**Chilling effect doctrine.** In constitutional law, any law or practice which has the effect of seriously discouraging the exercise of a constitutional right, *e.g.* the right of appeal. *North Carolina v. Pearce*, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656. The deterrent effect of governmental action that falls short of a direct prohibition against the exercise of First Amendment rights. To constitute an impermissible chilling effect the constrictive impact must arise from the present or future exercise or threatened exercise of coercive power. *Reporters Comm. for Freedom of the Press v. American Telephone & Telegraph Co. et al.*, C.A.D.C., 593 F.2d 1030, 1052; *Sec. of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 104 S.Ct. 2389, 2847, 81 L.Ed.2d 786.

**Chiltern hundreds** /chiltərn hʌndrədz/. In English law, the offices of steward or bailiff of His Majesty's three Chiltern Hundreds of Stoke, Desborough, and Bonenham; or the steward of the Manor of Northsted. Chiltern Hundreds is an appointment under the hand and seal of the Chancellor of the Exchequer. The stewardship of the Chiltern Hundreds is a nominal office in the gift of the crown, usually accepted by members of the house of commons desirous of vacating their seats. By law a member once duly elected to parliament is compelled to discharge the duties of the trust conferred upon him, and is not enabled at will to resign it. But by statute, if any member accepts any office of profit from the crown (except officers in the army or navy accepting a new commission), his seat is vacated. If, therefore, any member wishes to retire from the representation of the county or borough by which he was sent to parliament, he applies to the lords of the treasury for the stewardship of one of the Chiltern Hundreds, which having received, and thereby accomplished his purpose, he again resigns the office.

**Chimin** /chimən/. In old English law, a road, way, highway. It is either the king's highway (*chiminus regis*) or a private way. The first is that over which the subjects of the realm, and all others under the protection of the crown, have free liberty to pass, though the property in the soil itself belong to some private individual; the last is that in which one person or more have liberty to pass over the land of another, by prescription or charter. *See* Chemin.

**Chiminage** /chimənəj/. A toll for passing on a way through a forest; called in the civil law "*pedagium*."

**Chiminus** /chimənəs/. The way by which the king and all his subjects and all under his protection have a right to pass, though the property of the soil of each side where the way lieth may belong to a private man.

**Chimney money, or hearth money.** A tax upon chimneys or hearth; an ancient tax or duty upon houses in England, now repealed.

**Chinese wall.** A fictional device used as a screening procedure which permits an attorney involved in an earlier adverse role to be screened from other attorneys

in the firm so as to prevent disqualification of the entire law firm simply because one member of firm previously represented a client who is now an adversary of the client currently represented by the firm. *Weglarz v. Bruck*, 1 Dist., 128 Ill.App.3d 1, 83 Ill.Dec. 266, 269, 470 N.E.2d 21, 24.

**Chippingavel** /chɪpɪŋəvəl/. In old English law, a tax upon trade; a toll imposed upon traffic, or upon goods brought to a place to be sold; a toll for buying and selling.

**Chirgemot, chirchgemot** /chɜr(ch)gəmɔwt/. (Also spelled Chirgemote, Chirchgemote, Cirgemote, Kirkmote.) In Saxon law, an ecclesiastical assembly or court. A synod or meeting in a church or vestry.

**Chirograph** /kəɪrɔgrəf/. In civil and canon law, an instrument written out and subscribed by the hand of the party who made it, whether the king or a private person.

In old English law, a deed or indenture; also the last part of a fine of land, called more commonly, perhaps, the foot of the fine. An instrument of gift or conveyance attested by the subscription and crosses of the witnesses, which was in Saxon times called "*chirographum*," and which, being somewhat changed in form and manner by the Normans, was by them styled "*charta*." Anciently when they made a chirograph or deed which required a counterpart, as we call it, they engrossed it twice upon one piece of parchment contrariwise, leaving a space between, in which they wrote in capital letters the word "chirograph," and then cut the parchment in two through the middle of the word, giving a part to each party. 2 Bl.Comm. 296.

**Chirographa** /kəɪrɔgrəfə/. In Roman law, writings emanating from a single party, the debtor.

**Chirographer of fines** /kəɪrɔgrəfər əv faynz/. In English law, the title of the officer of the common pleas who engrossed fines in that court so as to be acknowledged into a perpetual record.

**Chirographum** /kəɪrɔgrəfəm/. In Roman law, a hand-writing; that which was written with a person's own hand. An obligation which a person wrote or subscribed with his own hand; an acknowledgment of debt, as of money received, with a promise to repay. An evidence or voucher of debt; a security for debt. A right of action for debt.

**Chirographum apud debitorem repertum præsuntur solutum** /kəɪrɔgrəfəm əpəd debətɔrəm rəpɜrtəm prəz(y)úwmətər səl(y)úwtəm/. An evidence of debt found in the debtor's possession is presumed to be paid.

**Chirographum non extans præsuntur solutum** /kəɪrɔgrəfəm non ɛkstənz prəz(y)úwmətər səl(y)úwtəm/. An evidence of debt not existing is presumed to have been discharged.

**Chiropody.** Study and treatment of ailments of the foot.

**Chiropactic, chiropractics** /kəɪrɔpræktək(s)/. The practice of "chiropractic" is a method of detecting and correcting by manual or mechanical means structural

imbalance, distortion or subluxations in the human body to remove nerve interferences where such is the result of or related to distortion, misalignment or subluxations of or in the vertebral column. *Chiropractic Ass'n of New York, Inc. v. Hilleboe*, 16 A.D.2d 285, 228 N.Y.S.2d 358, 360. A system of therapeutic treatment, through adjusting of articulations of human body, particularly those of the spine. *Walkenhorst v. Kesler*, 92 Utah 312, 67 P.2d 654, 662. The specific science that removes pressure on the nerves by the adjustment of the spinal vertebrae.

**Chiropractor** /káyɹəpræktər/. One who practices the system of chiropractic (*q.v.*).

**Chirurgeon** /káyɹərjən/. The ancient denomination of a surgeon.

**Chivalry**. In feudal law, knight-service. Tenure in chivalry was the same as tenure by knight-service. 2 Bl. Comm. 61, 62.

**Chivalry, court of**. See Court of Chivalry.

**Chivalry, tenure by**. Tenure by knight-service.

**Choate** /kówət/. That which has become perfected or ripened as *e.g.* a choate lien (*q.v.*).

**Choate lien** /kówət líyn/. Lien which is perfected so that nothing more need be done to make it enforceable. Identity of lienor, property subject to lien and amount of lien are all established. *Walker v. Paramount Engineering Co.*, C.A.Mich., 353 F.2d 445, 449; *U. S. v. City of New Britain, Conn.*, 347 U.S. 81, 74 S.Ct. 367, 369, 98 L.Ed. 520. The lien must be definite and not merely ascertainable in the future by taking further steps. *Gower v. State Tax Commission*, 207 Or. 288, 295 P.2d 162.

**Choice of law**. In conflicts of law, the question presented in determining what law should govern. There are a number of different choice of law principles used by courts in determining the applicable law to apply; *e.g.* substantive vs. procedure distinction, center of gravity, renvoi, lex fori, grouping-of-contacts, place of most significant relationship. See also Conflict of laws.

**Choice of law clause**. A contractual provision wherein the parties designate the state whose law will govern disputes arising out of their agreement.

**Choral**. In ancient times a person admitted to sit and worship in the choir; a chorister.

**Chorepiscopus** /kòrəpískəpəs/. In old European law, a rural bishop, or bishop's vicar.

**Chose** /shówz/. Fr. A thing; an article of personal property. A chose is a chattel personal, and is either in action or in possession. See *Chose in action*; *Chose in possession*, *infra*.

**Chose local**. A local thing; a thing annexed to a place, as a mill.

**Chose transitory**. A thing which is movable, and may be taken away or carried from place to place.

**Chose in action**. A thing in action; a right of bringing an action or right to recover a debt or money. Right of proceeding in a court of law to procure payment of sum of money, or right to recover a personal chattel or a sum of money by action. *Gregory v. Colvin*, 235 Ark. 1007, 363 S.W.2d 539, 540. A personal right not reduced into possession, but recoverable by a suit at law. A right to personal things of which the owner has not the possession, but merely a right of action for their possession. The phrase includes all personal chattels which are not in possession; and all property in action which depends entirely on contracts express or implied. A right to receive or recover a debt, demand, or damages on a cause of action *ex contractu* or for a tort or omission of a duty. *Moran v. Adkerson*, 168 Tenn. 372, 79 S.W.2d 44, 45. A right to recover by suit a personal chattel. Assignable rights of action *ex contractu* and perhaps *ex delicto*. *Coty v. Cogswell*, 100 Mont. 496, 50 P.2d 249, 250. Personalty to which the owner has a right of possession in future, or a right of immediate possession, wrongfully withheld. See *Cause of action*.

**Chose in possession**. A personal thing of which one has possession. A thing in possession, as distinguished from a thing in action. Taxes and customs, if paid, are a chose in possession; if unpaid, a chose in action. See also *Chose in action*, *supra*.

**Chosen freeholders**. Name for county or township boards in certain eastern states.

**Chrenecruda** /kriynkrúwdə/. Under the Salic law, a ceremony performed by a person who was too poor to pay his debt or fine, whereby he applied to a rich relative to pay it for him. It consisted (after certain preliminaries) in throwing green herbs upon the party, the effect of which was to bind him to pay the whole demand.

**Christian**. Pertaining to Jesus Christ or the religion founded by him; professing Christianity. As a noun, it signifies one who accepts and professes to live by the doctrines and principles of the Christian religion; it does not include Mohammedans, Jews, pagans, or infidels. One who believes or professes or is assumed to believe in Jesus Christ, and the truth as taught by Him.

**Christianitatis curia** /kristiyənətéytəs kyúriyə/. The court Christian. An ecclesiastical court, as opposed to a civil or lay tribunal. See also *Court Christian*.

**Christianity**. The religion founded and established by Jesus Christ.

**Christian name**. The baptismal name as distinct from the surname. The name which is given one after his birth or at baptism, or is afterward assumed by him in addition to his family name. Such name may consist of a single letter.

**Christmas Day**. A festival of the Christian church, observed on the 25th of December, in memory of the birth of Jesus Christ.

**Chronic** /krónək/. With reference to diseases, of long duration, or characterized by slowly progressive symp-



toms; deepseated and obstinate, or threatening a long continuance;—distinguished from acute.

**Chronic alcoholism.** A medically diagnosable disease characterized by chronic, habitual or periodic consumption of alcoholic beverages resulting in the (1) substantial interference with an individual's social or economic functions in the community, or (2) the loss of powers of self-control with respect to the use of such beverages.

**Church.** In its most general sense, the religious society founded and established by Jesus Christ, to receive, preserve, and propagate His doctrines and ordinances. It may also mean a body of communicants gathered into church order; body or community of Christians, united under one form of government by the profession of the same faith and the observance of the same ritual and ceremonies; place where persons regularly assemble for worship; congregation; organization for religious purposes; religious society or body; the clergy or officialdom of a religious body.

*Church courts.* Tribunals within the structure of a church charged with adjudicating disputes of an ecclesiastical nature which may not be adjudicated in civil courts.

*Church of England.* The established episcopal Church of England. Organized into 43 dioceses and 2 provinces (York and Canterbury). Governed by the General Synod. Membership is defined by Patronage (Benefices) Measure Act, 1986, § 39(1).

*Church property.* Within constitutional exemption from taxation it means property used principally for religious worship and instruction. *Church of the Holy Faith v. State Tax Commission*, 39 N.M. 403, 48 P.2d 777, 784.

*Church register.* Parish record of baptisms, marriages, deaths, etc.

*Church school.* Church supported school providing general education in addition to religious instruction.

**Churl** /chɜrl/. In Saxon law, a freeman of inferior rank, chiefly employed in husbandry. A tenant at will of free condition, who held land from a thane, on condition of rents and services. *See* Ceorl.

**Churning.** Churning occurs when a broker, exercising control over the volume and frequency of trades, abuses his customer's confidence for personal gain by initiating transactions that are excessive in view of the character of account and the customer's objectives as expressed to the broker. As a scheme, the essence of which is deception of a relying customer, churning, as a matter of law, is considered a violation of federal securities law proscribing fraud in connection with the purchase and sale of securities. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b). *Costello v. Oppenheimer & Co., Inc.*, C.A.Ill., 711 F.2d 1361, 1366.

**Ci.** Fr. So; here. *Ci Dieu Vous eyde*, so help you God. *Ci devant*, heretofore. *Ci bien*, as well.

**C.I.A.** Central Intelligence Agency.

**Cibaria** /səbəriyə/. Lat. In the civil law, food; victuals.

**Cicatrix** /səkéytræks/sikətriiks/. The mark left in the flesh or skin after the healing of a wound, and having the appearance of a seam or of a ridge of flesh.

**C.I.F.** This term in a sales contract means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination.

**Cigarette tax.** An excise tax imposed on sale of cigarettes by both federal and state governments.

**C.I.O.** Congress of Industrial Organizations. Merged with AFL (American Federation of Labor) in 1955.

**Cipher** /sáyfər/. Ordinarily, a secret or disguised written communication, unintelligible to one without a key. As applied to telegrams, a "cipher" message is one that is unintelligible.

**Cippi** /sipay/. An old English law term for the stocks, an instrument in which the wrists or ankles of petty offenders were confined.

**Circa** /sərkə/. Lat. About; around; also, concerning; with relation to. Commonly used before a given date when the exact time is not known; as, *circa* 1800. Abbreviated *circ.* or *c.*

**Circada** /sərkéytə/. A tribute anciently paid to the bishop or archbishop for visiting churches.

**Circuit** /sərkət/. Judicial divisions of the United States (*e.g.* thirteen judicial circuits wherein U.S. Courts of Appeal sit) or a state, originally so called because the judges traveled from place to place within the circuit, holding court in various locations.

**Circuit courts of appeals.** Former name for federal intermediate appellate courts, changed in 1948 to present designation of United States Courts of Appeals. *See* 28 U.S.C.A. §§ 41–48. *See* Courts of Appeals, U.S.

**Circuit courts.** Courts whose jurisdiction extends over several counties or districts, and of which terms are held in the various counties or districts to which their jurisdiction extends.

In several of the states, the name given to a tribunal, the territorial jurisdiction of which may comprise several counties or districts, and whose sessions are held in such counties or districts alternately. These courts usually have general original jurisdiction.

*See also* Courts of Appeals, U.S.

**Circuit paper.** In English practice, a paper containing a statement of the time and place at which the several assises will be held, and other statistical information connected with the assises.

**Circuitus est evitandus; et boni iudicis est lites dirimere, ne lis ex lite oriatur** /sərkýwətəs èst èvətəndəs, et bównay júwdəsəs èst láytiyz dəríməriy, nìy láys èks láytiy òriyéytər/. Circuity is to be avoided; and it is the duty of a good judge to determine litigations, lest one lawsuit arise out of another.

**Circuity of action.** A complex, indirect, or roundabout course of legal proceeding, making two or more actions necessary in order to effect that adjustment of rights between all the parties concerned in the transaction

which, by a more direct course, might have been accomplished in a single suit. Former problems of circuitry of action have been remedied by Rules of Civil Procedure.

**Circular letter of credit.** A letter authorizing one person to pay money or extend credit to another on the credit of the writer. *Pines v. United States*, C.C.A.Iowa, 123 F.2d 825, 828. *See also* Letter of credit.

**Circular notes.** Instruments, similar to "letters of credit," drawn by resident bankers upon their foreign correspondents, in favor of persons traveling abroad.

**Circulated.** A thing is "circulated" when it passes, as from one person or place to another, or spreads, as a report or tale. *Willard v. State*, 129 Tex.Cr.R. 384, 87 S.W.2d 269, 270.

**Circulation.** Transmission from person to person or place to place; *e.g.* interchange of money. Extent or degree of dissemination; *e.g.* total readers or issues sold of given publication.

**Circumspecte agatis** /sɜrkəmspɛktɪy əgɛytəs/. The title of an English statute passed 13 Edw. I (1285) and so called from the initial words of it, the object of which was to ascertain the boundaries of ecclesiastical jurisdiction in some particulars, or, in other words, to regulate the jurisdiction of the ecclesiastical and temporal courts. *See* Articles of the clergy.

**Circumstances.** Attendant or accompanying facts, events or conditions. Subordinate or accessory facts; *e.g.* evidence that indicates the probability or improbability of an event.

As used in a statute for an allowance for the wife in a divorce action, having regard to the "circumstances" of the parties, it includes practically everything which has a legitimate bearing on present and prospective matters relating to the lives of both parties. *See also* Change of circumstances.

*See also* Extenuating circumstances; Extraordinary circumstances.

**Circumstantial evidence.** Testimony not based on actual personal knowledge or observation of the facts in controversy, but of other facts from which deductions are drawn, showing indirectly the facts sought to be proved. *People v. Yokum*, 145 C.A.2d 245, 302 P.2d 406, 410. The proof of certain facts and circumstances in a given case, from which jury may infer other connected facts which usually and reasonably follow according to the common experience of mankind. *Foster v. Union Starch & Refining Co.*, 11 Ill.App.2d 346, 137 N.E.2d 499, 502. Evidence of facts or circumstances from which the existence or nonexistence of fact in issue may be inferred. Inferences drawn from facts proved. Process of decision by which court or jury may reason from circumstances known or proved, to establish by inference the principal fact. It means that existence of principal facts is only inferred from circumstances. *Twin City Fire Ins. Co. v. Lonas*, 255 Ky. 717, 75 S.W.2d 348, 350.

The proof of various facts or circumstances which usually attend the main fact in dispute, and therefore tend to prove its existence, or to sustain, by their con-

sistency, the hypothesis claimed. Or as otherwise defined, it consists in reasoning from facts which are known or proved to establish such as are conjectured to exist.

**Circumstantibus, tales de.** *See* Tales.

**Ciric** /kɪrək/. In Anglo-Saxon and old English law, a church.

**Ciric-bryce** /kɪrək-brych/. Any violation of the privileges of a church.

**Ciric sceat** /kɪrək shiyt/. Church-scot, or shot; an ecclesiastical due, payable on the day of St. Martin, consisting chiefly of corn.

**Cirliscus** /sɜrlɪskəs/. A ceorl (*q.v.*).

**Cista** /sɪstə/. A box or chest for the deposit of charters, deeds, and things of value.

**Citaci6n** /sɪytɔsɔwn/. In Spanish law, citation; summons; an order of a court requiring a person against whom a suit has been brought to appear and defend within a given time. It is synonymous with the term *emplazamiento* in the old Spanish law, and the *in jus vocatio* of the Roman law.

**Citatio** /saytɛysh(iy)ow/. Lat. A citation or summons to court. *See* Citation.

**Citatio ad reassumendam causam** /saytɛysh(iy)ow əd rɪyæsyuwmɛndəm kɔzəm/. A summons to take up the cause. A process, in the civil law, which issued when one of the parties to a suit died before its determination for the plaintiff against the defendant's heir, or for the plaintiff's heir against the defendant, as the case might be; analogous to a bill of revivor, which is probably borrowed from this proceeding.

**Citatio est de juri naturali** /saytɛysh(iy)ow ɛst diy juri nætɪrɛylay/. A summons is by natural right.

**Citation** /saytɛyshən/. A writ issued out of a court of competent jurisdiction, commanding a person therein named to appear on a day named and do something therein mentioned, or show cause why he should not. An order, issued by the police, to appear before a magistrate or judge at a later date. A citation is commonly used for minor violations (*e.g.* traffic violations); thus avoiding having to take the suspect into immediate physical custody. *See also* Citation of authorities; Cite.

**Citationes non concedantur priusquam exprimat** *super qua re fieri debet citatio* /saytɛyshiyɔwnɪz non kɔnsɛdɛntər prɪyɔskwəm ɛksprɛmɛytər sɔwpər kwɛy rɪy fɛyɛrɪy dɛbət saytɛysh(iy)ow/. Citations should not be granted before it is stated about what matter the citation is to be made. (A maxim of ecclesiastical law.)

**Citation of authorities.** The reading, or production of, or reference to, legal authorities and precedents (such as constitutions, statutes, reported cases, and treatises), in arguments to courts, in legal textbooks, law review articles, briefs, motions, and the like to substantiate or fortify the propositions advanced. *See also* Cite.

**Citations, law of.** In Roman law, an act of Valentinian, passed A.D. 426, providing that the writings of only five

jurists, viz., Papinian, Paul, Gaius, Ulpian, and Modestinus, should be quoted as authorities. The majority was binding on the judge. If they were equally divided the opinion of Papinian was to prevail; and in such a case, if Papinian was silent upon the matter, then the judge was free to follow his own view of the matter.

**Citators.** A set of books which provide, through letter-form abbreviations or words, the subsequent judicial history and interpretation of reported decisions. The citators also denote the legislative and amendment history, and cases that have cited or construed, constitutions, statutes, rules, regulations, etc. The most widely used set of citators is *Shepard's Citations*.

**Cite.** L. Fr. City; a city. *Cite de Loundr'*, city of London.

**Cite.** To summon; to command the presence of a person; to notify a person of legal proceedings against him and require his appearance thereto. To read or refer to legal authorities, in an argument to a court or elsewhere, in support of propositions of law sought to be established. To name in citation. To mention in support, illustration, or proof of. *See* Citation; Citation of authorities.

**Citizen.** One who, under the Constitution and laws of the United States, or of a particular state, is a member of the political community, owing allegiance and being entitled to the enjoyment of full civil rights. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. U.S.Const., 14th Amend. *See* Citizenship.

"Citizens" are members of a political community who, in their associated capacity, have established or submitted themselves to the dominion of a government for the promotion of their general welfare and the protection of their individual as well as collective rights. *Herriott v. City of Seattle*, 81 Wash.2d 48, 500 P.2d 101, 109.

The term may include or apply to children of alien parents born in United States, *Von Schwerdtner v. Piper*, D.C.Md., 23 F.2d 862, 863; *U. S. v. Minoru Yasui*, D.C.Or., 48 F.Supp. 40, 54; children of American citizens born outside United States, *Haaland v. Attorney General of United States*, D.C.Md., 42 F.Supp. 13, 22; *Indians, United States v. Hester*, C.C.A.Okl., 137 F.2d 145, 147; *National Banks, American Surety Co. v. Bank of California*, C.C.A.Or., 133 F.2d 160, 162; nonresident who has qualified as administratrix of estate of deceased resident, *Hunt v. Noll*, C.C.A.Tenn., 112 F.2d 288, 289. However, neither the United States nor a state is a citizen for purposes of diversity jurisdiction. *Jizemerjian v. Dept. of Air Force*, 457 F.Supp. 820. On the other hand, municipalities and other local governments are deemed to be citizens. *Rieser v. District of Columbia*, 563 F.2d 462. A corporation is not a citizen for purposes of privileges and immunities clause of the Fourteenth Amendment. *D. D. B. Realty Corp. v. Merrill*, 232 F.Supp. 629, 637.

Under the diversity statute, which mirrors U.S. Const. Article III's diversity clause, a person is a "citizen of a state" if he or she is a citizen of the United States and a domiciliary of a state of the United States. *Gibbons v. Udaras na Gaeltachta*, D.C.N.Y., 549 F.Supp. 1094, 1116.

**Citizen-informant.** An eye witness who, with no motive but public service, and without expectation of payment, identifies himself or herself and volunteers information to the police. *People v. Press*, Colo.App., 633 P.2d 489, 492.

**Citizen's arrest.** A private citizen as contrasted with a police officer may, under certain circumstances, make an arrest, generally for a felony or misdemeanor amounting to a breach of the peace. A private person may arrest another: 1. For a public offense committed or attempted in his presence. 2. When the person arrested has committed a felony, although not in his presence. 3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it. *Calif.Penal Code*, § 837.

**Citizenship.** The status of being a citizen. There are four ways to acquire citizenship: by birth in the United States, by birth in U.S. territories, by birth outside the U.S. to U.S. parents, and by naturalization. *See* Corporate citizenship; Diversity of citizenship; Dual citizenship; Federal citizenship; Naturalization; Jus sanguinis; Jus soli.

**City.** A municipal corporation; in most states, of the largest and highest class. Also, the territory within the corporate limits. A political entity or subdivision for local governmental purposes; commonly headed by a mayor, and governed by a city council.

**City council.** The principal governmental body of a municipal corporation with power to pass ordinances, levy taxes, appropriate funds, and generally administer city government. The name of a group of municipal officers constituting primarily a legislative and administrative body, but which is often charged with judicial or quasi judicial functions, as when sitting on charges involving the removal of an officer for cause.

**City courts.** Court which tries persons accused of violating municipal ordinances and has jurisdiction over minor civil or criminal cases, or both.

**City real estate.** Property owned and used for municipal purposes. *McSweeney v. Bazinet*, 269 A.D. 213, 55 N.Y.S.2d 558, 561.

**Civic.** Pertaining to a city or citizen, or to citizenship.

**Civic enterprise.** A project or undertaking in which citizens of a city co-operate to promote the common good and general welfare of the people of the city.

**Civil.** Of or relating to the state or its citizenry. Relating to private rights and remedies sought by civil actions as contrasted with criminal proceedings.

The word is derived from the Latin *civilis*, a citizen. Originally, pertaining or appropriate to a member of a *civitas* or free political community; natural or proper to a *citizen*. Also, relating to the community, or to the

policy and government of the citizens and subjects of a state.

As to *civil* Bail; Commitment; Commotion; Conspiracy; Contempt; Corporation; Death; Injury; Liberty; Obligation; Officer; Possession; Remedy; Right; and War, see those titles. *See, also*, the titles which follow.

**Civil action.** Action brought to enforce, redress, or protect private rights. In general, all types of actions other than criminal proceedings. *Gilliken v. Gilliken*, 248 N.C. 710, 104 S.E.2d 861, 863.

The term includes all actions, both those formerly known as equitable actions and those known as legal actions, or, in other phraseology, both suits in equity and actions at law. *Thomason v. Thomason*, 107 U.S. App.D.C. 27, 274 F.2d 89, 90.

In the great majority of states which have adopted rules or codes of civil procedure as patterned on the Federal Rules of Civil Procedure, there is only one form of action known as a "civil action." The former distinctions between actions at law and suits in equity, and the separate forms of those actions and suits, have been abolished. Rule of Civil Proc. 2; New York CPLR § 103(a).

*Compare* Penal action.

**Civil Aeronautics Board.** The Civil Aeronautics Board, an independent regulatory commission, was originally established under the Civil Aeronautics Act of 1938. Its functions were terminated or transferred to other agencies beginning in 1966, with remaining functions transferred to Transportation Secretary in 1985. *See* Federal Aviation Administration.

**Civil authority clause.** Provision in fire insurance policy protecting insured from damages caused by firemen, police, and other civil authorities.

**Civil bail.** A bond, deposit of money or of property, to secure the release of a person who is under civil arrest for failing to pay a debt which has been reduced to court order and its effect is to insure payment of such order. *See also* Bail.

**Civil Code.** *See* Code Civil.

**Civil commitment.** A form of confinement order used in the civil context for those who are mentally ill, incompetent, alcoholic, drug addicted, etc. as contrasted with the criminal commitment of a sentence. Also applicable to confinement for failing to pay a debt which has been converted to a court order for payment; the failure to pay being contempt of court. *See also* Commitment.

**Civil conspiracy.** A combination of two or more persons who, by concerted action, seek to accomplish an unlawful purpose or to accomplish some purpose, not in itself unlawful, by unlawful means. *Lake Mortgage Co., Inc. v. Federal Nat. Mortgage Ass'n*, 159 Ind.App. 605, 308 N.E.2d 739, 744. *See* Conspiracy.

**Civil contempt.** A species of contempt of court which generally arises from a wilful failure to comply with an order of court such as an injunction as contrasted with

criminal contempt which consists generally of contumelious conduct in the presence of the court. Punishment for civil contempt may be a fine or imprisonment, the object of such punishment being compliance with the order of the court. Such contempt is committed when a person violates an order of court which requires that person in specific and definite language to do or refrain from doing an act or series of acts. *Lichtenstein v. Lichtenstein*, C.A.Pa., 425 F.2d 1111, 1113. It commonly consists of failing to do something ordered by the court in a civil action for the benefit of the opposing litigant, and the proceedings are instituted to compel or coerce obedience to the order or decree. *Hoga v. Clark*, 5 Dist., 113 Ill.App.3d 1050, 69 Ill.Dec. 736, 448 N.E.2d 196, 201. *See also* Contempt.

**Civil Damage Acts.** *See* Dram Shop Acts.

**Civil death.** The state of a person who, though possessing natural life, has lost all civil rights and as to them is considered civilly dead. *Hiroko Kawakita Hayashi v. Lorenz*, Cal.App., 258 P.2d 1039, 1042. In some states, persons convicted of serious crimes are declared to be civilly dead which means that certain civil rights and privileges of the convicted offender including the right to vote and contract and to sue and be sued are forfeited. *See also* Civil disabilities, *infra*.

A corporation which has formally dissolved or become bankrupt leaving an estate to be administered for the benefit of its shareholders and creditors becomes civilly "dead." *In re Great Plains Royalty Corp.*, C.A.N.D., 471 F.2d 1261, 1265.

**Civil disabilities.** Apart from the sentence which is imposed upon a convicted offender, numerous civil disabilities are also often imposed. These disabilities, which adversely affect an offender both during his incarceration and after his release, include denial of such privileges as voting, holding public office, obtaining many jobs and occupational licenses, entering judicially-enforceable agreements, maintaining family relationships, and obtaining insurance and pension benefits. A form of civil disability resulting from a DWI conviction is the revocation or suspension of driver's license. *See also* Civil death.

**Civil disobedience.** A form of lawbreaking employed to demonstrate the injustice or unfairness of a particular law and indulged in deliberately to focus attention on the allegedly undesirable law. *See* Civil disorder.

**Civil disorder.** Any public disturbance involving acts of violence by assemblages of three or more persons, which causes an immediate danger of or results in damage or injury to the property or person of any other individual. 18 U.S.C.A. § 232. *See also* Riot.

**Civil fraud.** In taxation, the specific intent to evade a tax which taxpayer believes to be owing is an essential element of civil fraud. May also be applied to the tort of deceit or fraud in contrast to criminal fraud. *See also* Fraud.

**Civilian.** Private citizen, as distinguished from such as belong to the armed services, or (in England) the church. One who is skilled or versed in the civil law.

**Civilis** /sivələs/. Lat. Civil, as distinguished from criminal. *Civilis actio*, a civil action.

**Civilista** /sivəlistə/. In old English law, a civil lawyer, or civilian.

**Civiliter** /səvilətər/. Civilly. In a person's civil character or position, or by civil (not criminal) process or procedure. This term is used in distinction or opposition to the word "*criminaliter*,"—criminally,—to distinguish civil actions from criminal prosecutions.

**Civiliter mortuus** /səvilətər mórtyuwəs/. Civilly dead; dead in the view of the law. The condition of one who has lost his civil rights and capacities, and is considered civilly dead in law. *See* Civil death.

**Civilization.** A law, an act of justice, or judgment which renders a criminal process civil.

A term which covers several states of society; it is relative, and has no fixed sense, but implies an improved and progressive condition of the people, living under an organized government. It consists not merely in material achievements, in accomplishment and accumulation of wealth, or in advancement in culture, science, and knowledge, but also in doing of equal and exact justice.

**Civil jury trial.** Trial of civil action before a jury rather than before a judge. In suits at common law in Federal court where value in controversy exceeds \$20.00, there is constitutional right to jury trial. U.S.Const., 7th Amend.; Fed.R.Civil P. 38. *See also* Jury trial.

**Civil law.** That body of law which every particular nation, commonwealth, or city has established peculiarly for itself; more properly called "municipal" law, to distinguish it from the "law of nature," and from international law. Laws concerned with civil or private rights and remedies, as contrasted with criminal laws.

The system of jurisprudence held and administered in the Roman empire, particularly as set forth in the compilation of Justinian and his successors,—comprising the Institutes, Code, Digest, and Novels, and collectively denominated the "*Corpus Juris Civilis*,"—as distinguished from the common law of England and the canon law. The civil law (Civil Code) is followed in Louisiana. *See* Code Civil.

**Civil liability.** The amenability to civil action as distinguished from amenability to criminal prosecution. A sum of money assessed either as general, special or liquidated damages; may be either single, double or treble for violations such as overcharges.

**Civil liability acts.** *See* Dram Shop Acts.

**Civil liberties.** Personal, natural rights guaranteed and protected by Constitution; *e.g.* freedom of speech, press, freedom from discrimination, etc. Body of law dealing with natural liberties, shorn of excesses which invade equal rights of others. Constitutionally, they are restraints on government. *Sowers v. Ohio Civil Rights Commission*, 20 Ohio Misc. 115, 252 N.E.2d 463, 476.

State law may recognize liberty interests more extensive than those independently protected by the Federal Constitution. *Mills v. Rogers*, 457 U.S. 291, 300, 102 S.Ct. 2442, 2449, 73 L.Ed.2d 16 (1982). *See also* Bill of Rights; Civil Rights Acts; Fundamental rights.

**Civil nuisance.** At common law, anything done to hurt or annoyance of lands, tenements, or hereditaments of another. *See* Nuisance.

**Civil obligation.** One which binds in law, and may be enforced in a court of justice.

**Civil offense.** Term used to describe violations of statutes making the act a public nuisance. Also describes an offense which is *malum prohibitum* and not considered reprehensible.

**Civil office.** A non-military public office; one which pertains to the exercise of the powers or authority of government.

**Civil officer.** *See* Officer.

**Civil penalties.** Represents punishment for specific activities; *e.g.* violation of antitrust or securities laws, usually in the form of fines or money damages. *See* Damages (*exemplary or punitive damages*); Penal action; Statutory penalty; Treble damages.

**Civil possession.** *See* Possession.

**Civil procedure.** Body of law concerned with methods, procedures and practices used in civil litigation, *e.g.* Federal Rules of Civil Procedure; Title 28 of United States Code.

**Civil process.** *See* Process.

**Civil responsibility.** The liability to be called upon to respond to an action at law for an injury caused by a delict or crime, as opposed to criminal responsibility, or liability to be proceeded against in a criminal tribunal.

**Civil rights.** *See* Civil liberties.

**Civil Rights Acts.** Federal statutes enacted after Civil War, and more recently in 1957 and 1964, intended to implement and give further force to basic personal rights guaranteed by Constitution. Such Acts prohibit discrimination based on race, color, age, or religion.

**Civil rules.** *See* Federal Rules of Civil Procedure.

**Civil servant.** *See* Civil service.

**Civil service.** Term generally means employment in federal, state, city and town government with such positions filled on merit as a result of competitive examinations. Such employment carries with it certain statutory rights to job security, advancement, benefits, etc. *See* Civil Service Commission; Competitive civil service examination; Merit Systems Protection Board; Office of Personnel Management.

**Civil Service Commission.** The United States Civil Service Commission (CSC) was created by act of Congress on January 16, 1883. Authority is codified under 5 U.S.C.A. § 1101.

The Civil Service Act was designed to establish a merit system under which appointments to Federal jobs are made on the basis of fitness—as determined by open

and competitive examination—rather than personal preference or political considerations. Over the years, additional legislation and Executive orders have broadened the Commission's role to include such Federal personnel management activities as job classification, status and tenure, pay comparability, awards, training, labor-management relations, equal employment opportunity, health and life insurance programs, and retirement. The Commission was reorganized and restructured under the Civil Service Reform Act of 1978. Among the features of the Reform Act were the establishment of an independent and equitable appeals process, protections against abuses of the merit system, and incentives for good work and skilled management. Additionally, the functions of the former Commission were divided between two new agencies—Office of Personnel Management and an independent Merit Systems Protection Board (*q.v.*).

Similar commissions exist in most states covering state and local public employment.

**Civil side.** When the same court has jurisdiction of both civil and criminal matters, proceedings of the first class are often said to be on the civil side; those of the second, on the criminal side.

**Civil suits.** *See* Civil action.

**Civil trials.** Trials of civil as distinguished from criminal cases.

**Civil war.** In general, any internal armed conflict between persons of same country. War Between the States in which Federal government contended against seceding Confederate states from 1861 to 1865. Also, in England, war between Parliamentarians and Royalists from 1642 to 1652.

**Civil year.** *See* Year.

**Civis** /sívæs/. Lat. In the Roman law, a citizen; as distinguished from *incola* (an inhabitant); origin or birth constituting the former, domicile the latter.

**Civitas** /sívætàs/. Lat. In the Roman law, any body of people living under the same laws; a state. *Jus civitatis*, the law of a state; civil law. *Civitates foederatae*, towns in alliance with Rome, and considered to be free. Citizenship; one of the three *status*, conditions, or qualifications of persons.

**C.J.** An abbreviation for chief justice; also for circuit judge; Corpus Juris.

**C.J.S.** Corpus Juris Secundum.

**C.L.** An abbreviation for civil law.

**Claffin trust.** A type of trust in which donor or settlor makes specific provisions for termination and the courts respect such provisions by denying the beneficiary the right to terminate. Called an indestructible trust, deriving its name from the case. *Claffin v. Claffin*, 149 Mass. 19, 20 N.E. 454.

**Claim.** To demand as one's own or as one's right; to assert; to urge; to insist. A cause of action. Means by or through which claimant obtains possession or enjoy-

ment of privilege or thing. Demand for money or property as of right, *e.g.* insurance claim. *U.S. v. Tieger*, D.C.N.J., 138 F.Supp. 709, 710.

With respect to claims to a negotiable instrument of which a holder in due course takes free, the term "claim" means any interest or remedy recognized in law or equity that creates in the claimant a right to the interest or its proceeds.

Right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured. Bankruptcy Code, § 101.

In conflicts of law, a receiver may be appointed in any state which has jurisdiction over the defendant who owes a claim. Restatement, Second, Conflicts, § 369.

In patent law, a claim is an assertion of what the invention purports to accomplish, and claims of a patent define the invention and the extent of the grant; any feature of an invention not stated in the claim is beyond the scope of patent protection. *Smith v. ACME General Corp.*, C.A.Ohio, 614 F.2d 1086, 1088.

*See also* Antecedent claim; Cause of action; Community debt; Complaint; Counterclaim; Cross-claim; False claim; Joinder; Liability; Liquidated claim; Third party complaint. For proof of claim, *see* Proof; for joinder of claims, *see* Joinder.

**Claim adjuster.** Independent agent or employee of insurance company who negotiates and settles claims against the insurer. *See* Adjuster; Claimant adjuster.

**Claim and delivery.** Action at law for recovery of specific personal property wrongfully taken and detained, with damages which the taking or detention has caused. A modification of common-law action of replevin. *See also* Replevin.

**Claimant.** One who claims or asserts a right, demand or claim. *See* Claim; Plaintiff.

**Claimant adjuster.** One who will obtain, secure, enforce, or establish a right, claim, or demand for an individual against an insurance company.

**Claim check.** Form of receipt for bailed or checked property, which normally must be surrendered when such property is recovered.

**Claim in equity.** In English practice, in simple cases, the summary proceeding by claim was sometimes adopted. This summary practice was created by orders 22d April, 1850. By *Consolid.Ord.1860*, viii, r. 4, such claims were abolished. *See* Equity jurisdiction.

**Claim jumping.** The location on ground, knowing it to be excess ground, within the staked boundaries of another mining claim initiated prior thereto, because law governing manner of making location had not been

complied with, so that location covers the workings of the prior locators. Filing of duplicate mining claims hoping that prior claim will be invalid.

**Claim of cognizance or of consuance.** An intervention by a third person, claiming jurisdiction or demanding judicature in cause, which plaintiff has commenced out of the claimant's court. Now obsolete. 2 Bl.Comm. 350, note; 3 Bl.Comm. 298.

**Claim of liberty.** In English practice, a suit or petition to the queen, in the former court of exchequer, to have liberties and franchises confirmed there by the attorney general.

**Claim of ownership, right and title.** As regards adverse possession, claim of land as one's own to hold it for oneself. Claim of right, claim of title and claim of ownership are synonymous. Claimant's intention to claim in hostility to real owner. Color of title and claim of title are synonymous. Intention of disseisor to appropriate and use land as his own, irrespective of any semblance of color, or right, or title. *See* Adverse possession.

**Claim of right doctrine.** As contemplated under doctrine of adverse possession is simply that claimant is in possession as owner, with intent to claim the land as his or her own, and not in recognition of or subordination to record title owner. *Sisson v. Koelle*, 10 Wash.App. 746, 520 P.2d 1380, 1384. In taxation, a judicially imposed doctrine applicable to both cash and accrual basis taxpayers which holds that an amount is includible in income upon actual or constructive receipt if the taxpayer has an unrestricted claim to such amounts. A payment received under a claim of right is includible in income even though there is a possibility that all or part of it may have to be returned. *North American Oil Consolidated v. Burnet*, 286 U.S. 417, 52 S.Ct. 613, 76 L.Ed. 1197.

**Claim preclusion.** *See* Res (*Res judicata*).

**Claim property bond.** A bond filed by a defendant in cases of replevin and of execution to procure return of goods.

**Claims Collection Act.** Federal Act which requires that each agency of the federal government attempt to collect claims of the government (*e.g.* overpayments) arising out of the activities of the agency.

**Claims court.** *See* Claims Court, U.S.; Court of Claims; Small Claims Court.

**Claims Court, U.S.** This federal court was established in 1982 and succeeds to all the original jurisdiction formerly exercised by the Court of Claims, as now provided for in 28 U.S.C.A. 1491 et seq. The court has jurisdiction to render money judgments upon any claim against the United States founded either upon the Constitution, or any act of Congress or any regulation of an executive department, or upon any express or implied in fact contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort. Judgments of the Court are final and conclusive on both the claimant and the United States subject to an appeal

as of right to the U.S. Court of Appeals for the Federal Circuit. Authority also rests with the court to furnish reports on any bill that may be referred by either House of Congress. Jurisdiction of the Court is nationwide, and jurisdiction over the parties is obtained when suit is filed and process is served on the United States through the Attorney General. *See also* Court of Claims; Tucker Act.

**Clam** /klám/. Lat. In the civil law, covertly; secretly.

**Clam delinquentes magis puniuntur quam palam** /klám dəlɪŋkwéntiəz méyʒəs pyüwniyántər kwəm pələm/. Those sinning secretly are punished more severely than those sinning openly.

**Clamea admittenda in itinere per attornatum** /kléymiyə ædməténdə in aytínəriy pər atörnétəm/. An ancient writ by which the king commanded the justices in eyre to admit the claim by attorney of a person who was in the royal service, and could not appear in person.

**Clam factum id videtur esse, quod quisque, quum controversiam haberet, habiturumve se putaret, fecit** /klám fæktəm id vədýtər ésiy kwöd kwiskwiy, kəm kòntrovérsh(iy)əm həbírət, həbət(y)ərémviy siy pyətérət, fíysət/. That appears to be covertly (secretly) done, which anyone did, when he had a legal dispute, or thought he would have one.

**Clamor.** In old English law, a claim or complaint; an outcry; clamor.

In the civil law, a claimant; a debt; anything claimed from another; a proclamation; an accusation.

**Clam, vi, aut precario** /klám, váy, òt prəkériyow/. A technical phrase of the Roman law, meaning by force, stealth, or importunity.

**Clandestine.** Secret, hidden, concealed; usually for some illegal or illicit purpose. For example, a clandestine marriage is one contracted without observing the conditions precedent prescribed by law, such as publication of banns, procuring a license, or the like.

**Clarendon, assize of** /əsáyz əv klárəndən/. English statute (1166) the principal feature of which was an improvement of judicial procedure in the case of criminals. It was a part of the same scheme of reform as the Constitution of Clarendon.

**Clarendon, constitutions of** /kònstətyúwshənz əv klárəndən/. Certain statutes made in the reign of Henry II of England, at a parliament held at Clarendon (A.D. 1164), by which the king checked the power of the pope and his clergy, and greatly narrowed the exemption they claimed from secular jurisdiction. 4 Bl.Comm. 422.

**Class.** A group of persons, things, qualities, or activities, having common characteristics or attributes. In re Kanawha Val. Bank, 144 W.Va. 346, 109 S.E.2d 649, 670. The order or rank according to which persons or things are arranged or assorted. Securities having similar features. Also, a body of persons uncertain in number.

A "class" within rule relating to class action must be taken in broad colloquial sense of group of people ranked together as having common characteristics, and the function of the enumerated requirements of rule is to assure that from those characteristics there arises a common legal position vis-à-vis the opposing party, the legal right or obligations of which the court can efficiently and fairly adjudicate in a single proceeding. *Ridgeway v. International Broth. of Elec. Workers, Local No. 134, D.C.Ill., 74 F.R.D. 597, 601.*

**Class action.** See *Class or representative action.*

**Class directors.** System whereby terms of corporate board of directors are staggered, thus making takeover attempt difficult.

**Classes of stock.** Issuance of common stock in two or more general classes; e.g., Class A and Class B. Normally, only one class has voting rights. See *Stock.*

**Class gift.** A gift of an aggregate sum to a body of persons uncertain in number at time of gift, to be ascertained at a future time, who are all to take in equal, or other definite proportions, the share of each being dependent for its amount upon the ultimate number. In *re Clarke's Estate*, 460 Pa. 41, 331 A.2d 408, 410.

**Classiarius** /klāsīyēriyəs/. A seaman or soldier serving at sea.

**Classici** /klāsēsay/. In the Roman law, persons employed in servile duties on board of vessels.

**Classification.** Arrangement into groups or categories on the basis of established criteria. The word may have two meanings, one primarily signifying a division required by statutes, fundamental and substantial, and the other secondary, signifying an arrangement or enumeration adopted for convenience only.

**Classification of crimes.** A grouping of crimes. Taxonomy which may be based on the seriousness of the crime, e.g. felony or misdemeanor, or on the nature of the crime, e.g. malum prohibitum or malum in se, or on the objects of the crime, e.g. crimes against property or crimes against the person. Felonies and misdemeanors are also classified under federal statutes and sometimes in state statutes as Class A, B, etc., with punishments set for each class. 18 U.S.C.A. § 3559. Crimes are also commonly classified into degrees; e.g., first and second degree murder; and also as voluntary or involuntary (e.g. manslaughter). See also *Degrees of crime; Offenses.*

**Classification of risks.** Term used in fire insurance to designate the nature and situation of the articles insured, and in accident insurance to the occupation of the applicant.

**Classified.** Grouped into classes. See *Classification.*

**Classified tax.** Tax system where different rates are assessed to each group of property.

**Class legislation.** Legislation limited in operation to certain persons or classes of persons, natural or artifi-

cial, or to certain districts of territory or state. Legislation operating upon portion of particular class of persons or things.

The term is applied to enactments which divide the people or subjects of legislation into classes, with reference either to the grant of privileges or the imposition of burdens, upon an arbitrary, unjust, or invidious principle, or which make arbitrary discriminations between those persons or things coming within the same class. Such laws commonly violate equal protection guarantees of Fourteenth Amendment.

**Class or representative action.** A class action provides a means by which, where a large group of persons are interested in a matter, one or more may sue or be sued as representatives of the class without needing to join every member of the class. This procedure is available in federal court and in most state courts under Rule of Civil Procedure 23. See also *New York C.P.L.R. § 901.*

There are general requirements for the maintenance of any class suit. These are that the persons constituting the class must be so numerous that it is impracticable to bring them all before the court, and the named representatives must be such as will fairly insure the adequate representation of them all. In addition, there must be an ascertainable class and there must be a well defined common interest in the questions of law and fact involved affecting the parties to be represented. The trial court must also certify the lawsuit as a class action. *Daar v. Yellow Cab Co.*, 67 Cal.2d 695, 63 Cal.Rptr. 724, 731, 433 P.2d 732.

Prior to the revision of Federal Civil Procedure Rule 23 in 1966, there were three categories of class actions, popularly known as "true", "hybrid", and "spurious." These categories no longer exist under present Rule 23.

See *Hybrid class action; Spurious class action. Compare Multidistrict litigation.*

**Class voting.** See *Voting group.*

**Clause** /klóz/. A single paragraph or subdivision of a pleading or legal document, such as a contract, deed, will, constitution, or statute. Sometimes a sentence or part of a sentence. See *Paragraph.*

**Clause potestative.** In French law, the name given to the clause whereby one party to a contract reserves to himself the right to annul it.

**Clause rolls.** In old English law, rolls which contain all such matters of record as were committed to close writs; these rolls are preserved in the Tower.

**Clausula** /klóz(h)yələ/. A clause; a sentence or part of a sentence in a written instrument or law.

**Clausula derogativa** /klózhələ dərōgətáyvə/. A clause in a will which provides that no will subsequently made is to be valid. The latter would still be valid, but there would be ground for suspecting undue influence.

**Clausula inconsuetæ semper inducunt suspicionem** /klózhəliy iŋkənswiytiy sémpər ənd(y)úwkənt səspishiyównəm/. Unusual clauses [in an instrument] always induce suspicion.



**Clausula generalis de residuo non ea complectitur quæ non ejusdem sint generis cum iis quæ speciatim dicta fuerant** /klózhələ jénaréyləs diy rəzidyuwow nòn iyə kəmpléktətər kwiy nòn əjəsdəm sint jénarəs kəm áyəs kwiy spəshiyéytəm dikta f(y)úwərənt/. A general clause of remainder does not embrace those things which are not of the same kind with those which had been specially mentioned.

**Clausula generalis non refertur ad expressa** /klózhələ jénaréyləs nòn rəfártər əd əksprəsə/. A general clause does not refer to things expressed.

**Clausula quæ abrogationem excludit ab initio non valet** /klózhələ kwiy əbrəgəyshiyównəm əkskl(y)úwdət əb ənish(iy)ow nòn vələt/. A clause [in a law] which precludes its abrogation is void from the beginning.

**Clausula rebus sic stantibus** /klózhələ ríybəs sik stántəbəs/. A tacit condition said to attach to all contracts meaning that they cease to be obligatory as soon as the state of facts out of which they arose has changed. This principle was used to demand payment on a contract value for value when the currency in which payment had been specified had become worthless through inflation/depreciation.

**Clausula vel dispositio inutilis per præsumptionem remotam, vel causam ex post facto non fulcitur** /klózhələ vəl dispəzish(iy)ow inyúwtələs pər prəzəm(p)shiyównəm rəmówtəm, vəl kózəm éks pówst fáktow nòn fəlsətər/. A useless clause or disposition [one which expresses no more than the law by intentment would have supplied] is not supported by a remote presumption [or foreign intentment of some purpose, in regard whereof it might be material], or by a cause arising afterwards [which may induce an operation of those idle words].

**Clausum** /klózəm/. Lat. Close, closed up, sealed. Inclosed, as a parcel of land. A writ was either *clausum* (close) or *apertum* (open). Grants were said to be by *literæ patentæ* (open grant) or *literæ clausæ* (close grant); 2 Bl.Comm. 346. Occurring in the phrase *quare clausum fregit* it denotes in this sense only realty in which the plaintiff has some exclusive interest, whether for a limited or unlimited time or for special or for general purposes.

**Clausum fregit** /klózəm frijət/. L. Lat. (He broke the close.) In pleading and practice, technical words formerly used in certain actions of trespass, and still retained in the phrase *quare clausum fregit* (q.v.).

**Clausum paschiæ** /klózəm pəskiyy/. In English law, the morrow of the *utas*, or eight days of Easter; the end of Easter; the Sunday after Easter-day.

**Clausura** /kləzhúra/. In old English law, an inclosure. *Clausura heyce*, the inclosure of a hedge.

**Clavia** /klévyiə/. In old English law, a club or mace; tenure *per serjeantiam claviæ*, by the serjeanty of the club or mace.

**Clawa.** A close, or small inclosure.

**Clayton Act.** A Federal law enacted in 1914 as amendment to the Sherman Antitrust Act dealing with anti-trust regulations and unfair trade practices. 15 U.S.C.A. §§ 12-27. The Act prohibits price discrimination, tying and exclusive dealing contracts, mergers, and interlocking directorates, where the effect may be substantially to lessen competition or tend to create a monopoly in any line of commerce.

**Clean.** Irreproachable; innocent of fraud or wrongdoing; free from defect in form or substance; free from exceptions or reservations. It is a very elastic adjective, however, and is particularly dependent upon context.

**Clean Air Acts.** Federal and state environmental statutes enacted to regulate and control air pollution. See e.g. 42 U.S.C.A. § 7401 et seq.

**Clean bill.** Bill of exchange without documents attached.

**Clean bill of health.** One certifying that no contagious or infectious disease exists, or certifying as to healthy conditions generally without exception or reservation. See Bill (*Maritime law*).

**Clean bill of lading.** One without exception or reservation as to the place or manner of stowage of the goods, and importing that the goods are to be (or have been) safely and properly stowed under deck. One which contains nothing in the margin qualifying the words in the bill of lading itself.

**Clean hands doctrine.** Under this doctrine, equity will not grant relief to a party, who, as actor, seeks to set judicial machinery in motion and obtain some remedy, if such party in prior conduct has violated conscience or good faith or other equitable principle. *Franklin v. Franklin*, 365 Mo. 442, 283 S.W.2d 483, 486. One seeking equitable relief cannot take advantage of one's own wrong. *Fair Automotive Repair, Inc. v. Car-X Service Systems, Inc.*, 2 Dist., 128 Ill.App.3d 763, 84 Ill.Dec. 25, 471 N.E.2d 554, 558.

**Clean Water Acts.** Federal and state environmental statutes enacted to regulate and control water pollution. See e.g. 33 U.S.C.A. § 1251 et seq.

**Clear.** Obvious; beyond reasonable doubt; perspicuous; plain. Free from all limitation, qualification, question or shortcoming. Free from incumbrance, obstruction, burden, limitation, etc. Plain, evident, free from doubt or conjecture, unequivocal, also unincumbered. Free from deductions or drawbacks.

In banking, collection of funds on which check is drawn and payment of such funds to holder of check.

**Clearance.** In maritime law, the right of a ship to leave port. The act of clearing or leaving port. The certificate issued by the collector of a port evidencing the power of the ship to leave port. In contract for exhibition of motion pictures, the interval of time between conclusion of exhibition in one theater and commencement of exhibition at another theater. *Waxmann v. Columbia Pictures Corporation*, D.C.Pa., 40 F.Supp. 108, 111.

**Clearance card.** A letter given to an employee by his employer, at the time of his discharge or end of service, showing the cause of such discharge or voluntary quit-tance, the length of time of service, his capacity, and such other facts as would give to those concerned information of his former employment.

**Clearance certificate.** Issued to ship's captain showing that customs requirements have been made.

**Clear and convincing proof.** That proof which results in reasonable certainty of the truth of the ultimate fact in controversy. *Lepre v. Caputo*, 131 N.J.Super. 118, 328 A.2d 650, 652. Proof which requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. Clear and convincing proof will be shown where the truth of the facts asserted is highly probable. In re *Estate of Lobe*, Minn.App., 348 N.W.2d 413, 414. *See also* Beyond a reasonable doubt; Burden of proof; Clear evidence or proof.

**Clear and present danger doctrine.** Doctrine in constitutional law, first formulated in *Schenck v. U. S.*, 249 U.S. 47, 39 S.Ct. 247, 63 L.Ed. 470, providing that governmental restrictions on First Amendment freedoms of speech and press will be upheld if necessary to prevent grave and immediate danger to interests which government may lawfully protect.

Speech which incites to unlawful action falls outside the protection of the First Amendment where there is a direct connection between the speech and violation of the law; this is the "clear and present danger test". *People v. Winston*, 64 Misc.2d 150, 314 N.Y.S.2d 489, 495.

**Clear annual value.** The net yearly value to the possessor of the property, over and above taxes, interest on mortgages, and other charges and deductions.

**Clear annuity.** The devise of an annuity "clear" means an annuity free from taxes or free or clear of legacy or inheritance taxes.

**Clear chance.** A "clear chance" to avoid accident with-in meaning of last clear chance doctrine involves the element of sufficient time to appreciate peril of the party unable to extricate himself therefrom, and to take necessary steps to avoid injuring him. *Klouse v. Northern Pac. Ry. Co.*, 50 Wash.2d 432, 312 P.2d 647, 650. *See also* Last clear chance doctrine.

**Clear days.** If a certain number of clear days be given for the doing of any act, the time is to be reckoned exclusively, as well of the first day as the last.

**Clear evidence or proof.** Evidence which is positive, precise and explicit, which tends directly to establish the point to which it is adduced and is sufficient to make out a prima facie case. It necessarily means a clear preponderance. It may mean no more than a fair preponderance of proof but may also be construed as requiring a higher degree of proof. It may convey the idea, under emphasis, of certainty, or understood as meaning beyond doubt. *See also* Beyond a reasonable doubt; Clear and convincing proof.

**Clearing.** The departure of a vessel from port, after complying with the customs and health laws and like local regulations. *See also* Clearance; Clearance certificate.

In banking, a method of making exchanges and settling balances, adopted among banks and bankers. *See* Clearinghouse.

**Clearing account.** An account containing amounts to be transferred to another account(s) before the end of the accounting period.

**Clearing corporation.** A corporation, all of the capital stock of which is held by or for a national securities exchange or association registered under a statute of the U.S., such as the Securities Exchange Act of 1934. U.C.C. § 8-102(3).

**Clearinghouse.** An association or place where banks exchange checks and drafts drawn on each other, and settle their daily balances. *See* U.C.C. § 4-104(d).

With respect to a stock or commodities exchange, a facility which provides for the daily clearance of all transactions. With regard to futures transactions, a clearinghouse performs the following functions: confirms that trades made each day are acknowledged by both parties; settles amounts owed daily on futures contracts due to changes in contract prices during the trading session; insures the financial worth of all futures contracts that it has accepted.

**Clearing loan.** One made to a bond dealer while an issue of bonds is being sold.

**Clearings.** Method of making exchanges and settling balances among banks and bankers.

**Clearing title.** Acts or proceedings necessary to render title marketable.

**Clear legal right.** A right inferable as a matter of law from uncontroverted facts.

**Clearly.** Visible, unmistakable, in words of no uncertain meaning. Beyond a question or beyond a reasonable doubt; honestly, straightforwardly, and frankly; plainly. Without obscurity, obstruction, entanglement, confusion, or uncertainty. Unequivocal.

**Clearly erroneous.** For purposes of rule providing that findings of trial court shall not be set aside unless "clearly erroneous," refers to findings when based upon substantial error in proceedings or misapplication of law, *Kauk v. Anderson*, C.C.A.N.D., 137 F.2d 331, 333; or when unsupported by substantial evidence, or contrary to clear weight of evidence or induced by erroneous view of the law. *Smith v. Porter*, C.C.A.Ark., 143 F.2d 292, 294. As a basis for appellate review, a finding is "clearly erroneous" when, although there is evidence to support it, the reviewing court on entire evidence is left with definite and firm conviction that a mistake has been committed. *United States v. United States Gypsum*, 333 U.S. 364, 395, 68 S.Ct. 525, 542. *See also* Error.

**Clearly proved.** Proof by preponderance of the evidence. *Olson v. Union Oil Co. of California*, 25 Cal. App.2d 627, 78 P.2d 446, 447. Proof sufficient to satisfy

mind of finder of facts that its weight is such as to cause a reasonable person to accept the fact as established. In re Frihauf, 58 Wyo. 479, 135 P.2d 427, 433. See Beyond a reasonable doubt; Clear and convincing proof.

**Clear market price.** Fair market price. See Fair market value.

**Clear market value.** Sum which property would bring on a fair sale by a willing seller not obliged to sell to a willing buyer not obliged to buy, or fair market value, or cash value. With regard to inheritance tax, highest price obtainable. See Fair market value.

**Clear reflection of income.** The Internal Revenue Service has the authority to redetermine a taxpayer's income using a method which clearly reflects income if the taxpayer's method does not do so. I.R.C. § 446(b). In addition, the I.R.S. may apportion or allocate income among various related business if income is not "clearly reflected". I.R.C. § 482.

**Clear residue.** Addition of income from funds, used to pay decedent's debts, administration expenses, and general legacies, to residue of estate.

**Clear title.** Good title; marketable title; one free from incumbrance, obstruction, burden, or limitation. Frank v. Murphy, 64 Ohio App. 501, 29 N.E.2d 41, 43. See Marketable title.

**Clear title of record.** Freedom from apparent defects, grave doubts, and litigious uncertainties. Such title as a reasonably prudent person, with full knowledge, would accept. Tull v. Milligan, 173 Okl. 131, 48 P.2d 835, 842. See Marketable title; Quiet title action.

**Clear view doctrine.** See Plain view doctrine.

**Clemency** /klémənsiy/. Kindness, mercy, forgiveness, leniency; usually relating to criminal acts. Used e.g. to describe act of governor of state when he commutes death sentence to life imprisonment, or grants pardon. See also Amnesty; Pardon; Reprimand.

**Clementines** /kléməntiynz/. In canon law, the collection of decretals or constitutions of Pope Clement V, made by order of John XXII, his successor, who published it in 1317.

**Clement's inn.** In English law, an inn of chancery. See Inns of chancery.

**Clergy.** The whole of clergymen or ministers of religion. Also an abbreviation for "benefit of clergy". See Benefit of clergy.

**Clergyable.** In old English law, allowing of, or entitled to, the benefit of clergy (*privilegium clericale*). Used of persons or crimes. 4 Bl.Comm. 371. See Benefit of clergy.

**Clergyman.** Member of the clergy. Spiritual representative of church.

**Clergy privilege.** Formerly, exemption given to clergy from being tried in civil courts because of availability of trial in canonical court. See Benefit of clergy.

**Clerical.** Pertaining to clergymen; or pertaining to the office or labor of a clerk. See also Clerk; Ministerial act.

**Clericale privilegium** /klèhrəkéyliy prīvəlyjijəm/. In old English law, the clerical privilege; the privilege or benefit of clergy.

**Clerical error.** Generally, a mistake in writing or copying. Los Angeles Shipbuilding & Dry Dock Corporation v. Los Angeles County, 22 Cal.App.2d 418, 71 P.2d 282.

It may include error apparent on face of instrument, record, indictment or information. In re Goldberg's Estate, 10 Cal.2d 709, 76 P.2d 508, 512; error in respect of matters of record, Shotwell v. State, 135 Tex.Cr.R. 366, 120 S.W.2d 97; errors, mistakes, or omissions by clerk, writer, counsel, or judge which are not the result of exercise of judicial function, Pacific Finance Corporation of California v. La Monte, 64 Idaho 438, 133 P.2d 921, 922; Wilson v. City of Fergus Falls, 181 Minn. 329, 232 N.W. 322, 323; failure of clerk to enter order, Keller v. Cleaver, 20 Cal.App.2d 364, 67 P.2d 131, 133; omission in statutory provision, Craig v. State, 204 Ark. 798, 164 S.W.2d 1007, 1008; order fixing tax rate below statutory rate, In re Jagnow's Estate, 148 Misc. 657, 266 N.Y.S. 785, 788; placing of case on calendar without notice, New England Furniture & Carpet Co. v. Willcuts, D.C. Minn., 55 F.2d 983, 987; purported order incongruous and irrelevant to surrounding recitals, Carpenter v. Pacific Mut. Life Ins. Co. of California, 14 Cal.2d 704, 96 P.2d 796, 799; signature by judge to judgment which does not express judicial desire or intention, Bastajian v. Brown, 19 Cal.2d 209, 120 P.2d 9, 12.

As applied to judgments and decrees is a mistake or omission by a clerk, counsel, judge or printer which is not the result of exercise of judicial function. In re Humboldt River System, 77 Nev. 244, 362 P.2d 265, 267.

Clerical errors may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Fed.R. Civil P. 60(a).

**Clerical misprision.** Mistake or fraud perpetrated by clerk of court which is susceptible of demonstration by face of record, or a clerical error, which is an error by clerk in transcribing or otherwise apparent on the face of the record. Ballew v. Fowler, 285 Ky. 149, 147 S.W.2d 65, 66.

**Clerical tonsure.** In old English law, the practice of having the head shaven, which was formerly peculiar to clerks, or persons in orders, and which the coifs worn by serjeants at law are supposed to have been introduced to conceal. 1 Bl.Comm. 24, note t; 4 Bl.Comm. 367.

**Clerici de cancellaria; clerici de cursu** /klèhrəsəy diy kənsəlériyə, 'kərs(y)uw/. Clerks of the chancery. See Cursitors.

**Clerici non ponantur in officiis** /klèhrəsəy nòn pənəntər in əfis(h)iyays/. Clergymen should not be placed in offices; i.e., in secular offices.

**Clerici prənotarii** /klèhrəsəy prīnətériyay/. The six clerks in chancery.

**Clerico admittendo** /klèhrəkow ədmətəndow/. See Admittendo clerico.

**Clerico capto per statutum mercatorum** /kléhrəkow kăptow pər stătýúwtəm mərkatóram/. A writ for the delivery of a clerk out of prison, who was taken and incarcerated upon the breach of a statute merchant.

**Clerico convicto commisso gaolæ in defectu ordinarii deliberando** /kléhrəkow kənvíktow kəmisow jéyliy in dăfěkt(y)uw órdənériyay dəlībărəndow/. An ancient writ, that lay for the delivery to his ordinary of a clerk convicted of felony, where the ordinary did not challenge him according to the privilege of clerks.

**Clerico infra sacros ordines constituto, non eligendo in officium** /kléhrəkow ínfřə səkrows órdəniz kònstătýúwtow, nòn elájəndow, in əfis(h)iyəm/. A writ directed to those who had thrust a bailiwick or other office upon one in holy orders, charging them to release him.

**Clericus** /kléhrəkəs/. In old English law, a clerk or priest; a person in holy orders; a secular priest; a clerk of a court. An officer of the royal household, having charge of the receipt and payment of moneys, etc. In Roman law, a minister of religion in the Christian church; an ecclesiastic or priest. A general term, including bishops, priests, deacons, and others of inferior order. Also of the amanuenses of the judges or courts of the king.

**Clericus et agricola et mercator, tempore belli, ut orēt, colat, et commutet, pace fruuntur** /klérəkəs ɛd əgríkələ ɛt mərkéytər, témpəriy bəlay, ət órət kówlət ɛt kómyətət, péysiy fruwántər/. Clergymen, husbandmen, and merchants, in order that they may preach, cultivate, and trade, enjoy peace in time of war.

**Clericus mercati** /kléhrəkəs mərkéytay/. In old English law, clerk of the market.

**Clericus non connumeretur in duabus ecclesiis** /kléhrəkəs nòn kən(y)úwmməriytər in d(y)uwéybəs əklízyiəs/. A clergyman should not be appointed to two churches.

**Clericus parochialis** /kléhrəkəs pərówkiyéləs/. In old English law, a parish clerk.

**Clérigos** /klériygows/. In Spanish law, clergy; men chosen for the service of God.

**Clerk.** Officer of court who files pleadings, motions, judgments, etc., issues process, and keeps records of court proceedings. Functions and duties of clerks of court are usually specified by statute or court rules; *e.g.* Fed.R. Civil P. 77, 79.

Person employed in public office whose duties include keeping records or accounts.

One who sells goods, waits on customers, or engages in clerical work such as bookkeeping, copying, transcribing, letter writing, tabulating, stenography, etc.

A person in holy orders; a clergyman; a cleric; an individual attached to the ecclesiastical state, and who has the clerical tonsure. See 4 Bl.Comm. 366, 367.

A *law clerk* assists an attorney or judge with legal research, brief writing, and other legal tasks. Is commonly a recent law school graduate or law student.

**Clerk of Arraigns.** In English law, an assistant to the clerk of assise. His duties were in the crown court on circuit.

**Clerk of Assize.** In English law, officers who officiated as associates on the circuits. They recorded all judicial proceedings done by the judges on the circuit.

**Clerk of Enrollments.** In English law, the former chief officer of the English enrollment office (*q.v.*). He now forms part of the staff of the central office.

**Clerk of the Crown in Chancery.** See Crown office in chancery.

**Clerk of the House of Commons.** An officer of the English House of Commons appointed by the crown for life. He sits at the table below the chair of the Speaker of the House. He makes entries, remembrances, and journals of the things done and passed in the house. He signs all orders of the house, indorses the bills sent or returned to the lords, and reads whatever is required to be read in the house. He has the custody of all records and other documents.

**Clerk of the Market.** In English law, the overseer or superintendent of a public market, with jurisdiction over weights and measures. In old English law, he was a *quasi* judicial officer, having power to settle controversies arising in the market between persons dealing there. Called "*clericus mercati*." 4 Bl.Comm. 275.

**Clerk of the Parliaments.** In England, one of the chief officers of the House of Lords. He is appointed by the Crown, by letters patent. On entering office he makes a declaration to make true entries and records of the things done and passed in the parliaments, and to keep secret all such matters as shall be treated therein. Assists in the ceremonial Royal Assent to passage of bills and statutes.

**Clerk of the Peace.** In English law, an officer whose duties are to officiate at sessions of the peace, to prepare indictments, and to record the proceedings of the justices, and to perform a number of special duties in connection with the affairs of the county. Office abolished in 1971 when Quarter Sessions' jurisdiction was transferred to the Crown Courts.

**Clerk of the Privy Seal.** In England, these officers attend the lord privy seal, or, in absence of the lord privy seal, the principal secretary of state. Their duty is to write and make out all things that are sent by warrant from the signet to the privy seal, and which are to be passed to the great seal; and also to make out privy seals (as they are termed) upon any special occasion of his majesty's affairs.

**Clerk of the Signet.** An officer, in England, whose duty it is to attend on the king's principal secretary, who has the custody of the privy signet, as well for the purpose of sealing his majesty's private letters, as also grants which pass his majesty's hand by bill signed.

**Clerk of the Table.** An official of the British House of Commons who advises the speaker on all questions of order.

**Clerkship.** The period which formerly must have been spent by a law-student in the office of a practicing attorney before admission to the bar. Term now generally refers to law student who clerks for an attorney, law firm, or judge, or recent law school graduate who clerks for a judge.

**Clerks of Indictments.** Officers attached to the central criminal court in England, and to each circuit. They prepare and settle indictments against offenders, and assist the clerk of arraigns.

**Clerks of Records and Writs.** Officers formerly attached to the English court of chancery, whose duties consisted principally in sealing bills of complaint and writs of execution, filing affidavits, etc. By the judicature (officers') act, 1879, they were transferred to the central office of the supreme court, under the title of "Masters of the Supreme Court," and the office has been abolished.

**Clerks of Seats.** In the principal registry of the probate division of the English high court, they discharge the duty of preparing and passing the grants of probate and letters of administration, take bonds from administrators, receive *caveats* against a grant being made, etc.

**Clients** /kláyanz/. Lat. In the Roman law, a client or dependent. One who depended upon another as his patron or protector, adviser or defender, in suits at law and other difficulties.

**Client.** An individual, corporation, trust, or estate that employs a professional to advise or assist it in the professional's line of work. Professionals include but are not limited to: attorneys, accountants, architects, etc. A person who employs or retains an attorney, or counsellor, to appear for him in courts, advise, assist, and defend him in legal proceedings, and to act for him in any legal business.

**Clientela** /kláyantíyl/. In old English law, clientship, the state of a client; and, correlatively, protection, patronage, guardianship.

**Client security fund.** A fund set up by many state bar associations to cover losses incurred by persons as a result of dishonest conduct of member-attorneys.

**Client's privilege.** Right of client to require attorney to not disclose confidential communications made to him in the attorney-client relationship, including disclosure on the witness stand. *U. S. v. United Shoe Mach. Corp.*, D.Mass., 89 F.Supp. 357. See Attorney-client privilege; Communication (*Confidential communications*).

**Clifford Trust.** A trust established for a period of at least 10 years and one day whereby title to income producing assets is transferred and then reclaimed when the trust expires. The objective of a Clifford trust was to shift income from parents in a high income tax bracket to children in a lower bracket. The Tax Reform Act of 1986 repealed the Clifford trust rules for transfers made after March 1, 1986 and the income of the trust is taxed at the grantor's rate. For Clifford trusts established prior to March 2, 1986, income is taxed at the

grantor's rate only if the child is under the age of 14. See also Kiddie tax.

**Clinical legal studies.** Includes law student performance in live cases, or in simulation of the lawyer's role, for the mastery of basic lawyering skills and the better understanding of professional responsibility, substantive and procedural law, and the theory of legal practice. Report Of The AALS-ABA Comm. On Guidelines for Clinical Legal Education 12 (1980).

**Clinical tests.** Tests involving direct observation of the patient, including laboratory and diagnostic examinations.

**Clipped sovereignty.** In the relations of the several states of the United States to other nations, the states have what is termed a clipped sovereignty. *Anderson v. N. V. Transandine Handelmaatschappij*, Sup., 28 N.Y. S.2d 547, 552.

**Clito** /kláytow/. In Saxon law, the son of a king or emperor. The next heir to the throne; the Saxon adeling.

**Cloere.** A jail; a prison or dungeon.

**Close, v.** To finish, bring to an end, conclude, terminate, complete, wind up; as, to "close" an account, a bargain, a trial, an estate, or public books, such as tax books.

In accounting, to transfer the balance of a temporary or contra or adjunct account to the main account to which it relates.

To shut up, so as to prevent entrance or access by any person; as in statutes requiring liquor establishments to be "closed" at certain times, which further implies an entire suspension of business. To go out of business. To bar access to. To suspend or stop operations of.

To finalize a real estate transaction. See Closing.

**Close, n.** A portion of land, as a field, inclosed as by a hedge, fence, or other visible inclosure, or by an invisible ideal boundary founded on limit of title. The interest of a person in any particular piece of land, whether actually inclosed or not. Final price of stock at end of trading day on securities exchange.

**Close, adj.** Closed or sealed up. Restricted to a particular class. Decided by a narrow margin.

**Close copies.** Copies of legal documents which might be written closely or loosely at pleasure; as distinguished from *office* copies.

**Close or closely held corporation.** See Corporation.

**Closed court.** A term sometimes used to designate the Common Pleas Court of England when only serjeants could argue cases, which practice persisted until 1883.

**Closed-end investment trust.** Trust wherein only original prescribed shares can be distributed.

**Closed-end mortgage.** A mortgage that does not permit additional borrowing pledging the same collateral nor prepayment. In contrast to open-end mortgage, which allows for the amortization of the mortgage and can be increased to its original mortgage amount.

**Closed insurance policy.** Insurance contract, the terms and rates of which cannot be changed.

**Closed primary.** Exists where members of each political party participate in nominating candidates of that party, and the voters of one party are not allowed to nominate candidates for another party.

**Closed season.** The same as "close season" (*q.v.*).

**Closed shop.** Exists where workers must be members of union as condition of their employment. *Miners in General Group v. Hix*, 123 W.Va. 637, 17 S.E.2d 810, 813. This practice was made unlawful by the Taft-Hartley Act. *Contrast* Open shop. *See also* Right to work laws.

**Closed shop contract.** A contract requiring employer to hire only union members and to discharge non-union members and requiring that employees, as a condition of employment, remain union members. *Silva v. Mercier*, Cal.App., 187 P.2d 60, 64. "Closed shop" provision in collective bargaining agreement requires membership in the contracting union before a job applicant can be employed and for the duration of his employment. *Higgins v. Cardinal Mfg. Co.*, 188 Kan. 11, 360 P.2d 456, 461.

**Closed transaction.** Term used in tax law to describe a taxable event which has been consummated. For example, diminution in value of goodwill of business is not a closed transaction so as to permit deduction of the diminution of value as ordinary loss. *Joffre v. U. S.*, D.C.Ga., 331 F.Supp. 1177.

**Closed union.** A labor union whose membership rolls have closed. *See also* Closed shop.

**Close-hauled.** In admiralty law, this nautical term means the arrangement or trim of a vessel's sails when she endeavors to make progress in the nearest direction possible towards that point of the compass from which the wind blows. But a vessel may be considered as close-hauled, although she is not quite so near to the wind as she could possibly lie.

**Close jail execution.** A body execution which has in-dorsed in or upon it the statement that the defendant ought to be confined in close jail.

**Close relatives.** Kinfolk who bear a close relationship to another such as mother, father, brother, sister, husband, wife and children.

**Close rolls.** Rolls containing the record of the close writs (*literæ clausæ*) and grants of the king, kept with the public records. 2 Bl.Comm. 346. *See* Writ.

**Close season.** The season of the year or period of time in which the taking of particular game or fish is prohibited, or in which all hunting or fishing is forbidden by law. *See also* Fence-month, or defense-month.

**Close to.** Near; very near; immediately adjoining.

**Close writ.** *See* Writ.

**Closing.** As regards sale of real estate, refers to the final steps of the transaction whereat the consideration is paid, mortgage is secured, deed is delivered or placed in escrow, etc. Such closings, which normally take

place at a bank or savings and loan institution, are regulated by the federal Real Estate Settlement Procedures Act (RESPA). *See* Closing costs; Closing statement.

**Closing argument.** The final statements by the attorneys to jury or court summarizing the evidence that they think they have established and the evidence that they think the other side has failed to establish. Such is made before judge's charge to jury. Such does not constitute evidence and may be limited in time by rule of court.

In federal criminal cases, after the closing of evidence the prosecution opens the closing argument; the defense then replies. The prosecution is then permitted to reply in rebuttal. Fed.R.Crim.P. 29.1.

**Closing costs.** Expenses which must be paid in addition to the purchase price on the sale of real estate. Closing costs with respect to a debt secured by an interest in land include: (a) fees or premiums for title examination, title insurance, or similar purposes including surveys, (b) fees for preparation of a deed, settlement statement, or other documents, (c) escrows for future payments of taxes and insurance, (d) fees for notarizing deeds and other documents, (e) appraisal fees, and (f) credit reports. Uniform Consumer Credit Code, Section 1.301(5). The full disclosure of such costs is regulated by the federal Real Estate Settlement Procedures Act (RESPA). *See also* Closing statement.

**Closing entries.** In accounting, the entries that accomplish the transfer of balances in temporary accounts to the related balance sheet accounts.

**Closing estates.** Winding up of estates by paying legacies and inheritances, taxes, and filing necessary probate accounts.

**Closing statement.** Written analysis of closing (*i.e.* final steps) of real estate transaction setting forth purchase price less deductions for such items as mortgage payoff, tax adjustments, etc. and adding credits to arrive at net amount due seller. Detailed statement is required under federal Real Estate Settlement Procedures Act (RESPA). *See also* Closing; Closing costs; Settlement statement.

*See* Closing argument, *supra*, regarding closing statement at trial.

**Cloture.** Legislative rule or procedure whereby unreasonable debate (*i.e.* filibuster) is ended to permit vote to be taken.

**Cloud on title.** An outstanding claim or encumbrance which, if valid, would affect or impair the title of the owner of a particular estate, and on its face has that effect, but can be shown by extrinsic proof to be invalid or inapplicable to the estate in question. *Best Inv. Co. v. Parkhill*, Tex.Civ.App., 429 S.W.2d 531, 534. A conveyance, mortgage, judgment, tax-levy, etc., may all, in proper cases, constitute a cloud on title. *Newpar Estates, Inc. v. Barilla*, 161 N.Y.S.2d 950, 952. The remedy for removing a cloud on title is usually the means of an action to quiet title. *See* Quiet title action.

**Clough.** A valley. Also an allowance for the turn of the scale, on buying goods wholesale by weight.

**C. L. P.** Common law procedure, in reference to the English acts so entitled.

**C.L.U.** Chartered Life Underwriter.

**Club.** A voluntary, incorporated or unincorporated association of persons for common purposes of a social, literary, investment, political nature, or the like. Association of persons for promotion of some common object, such as literature, science, politics, good fellowship, etc., especially one jointly supported and meeting periodically, and membership is usually conferred by ballot and carries privilege of exclusive use of club quarters, and word also applies to a building, apartment or room occupied by a club.

**Club-law.** Rule of violence; regulation by force; the law of arms.

**Clue.** Suggestion or piece of evidence which may or may not lead to solution of crime or puzzle.

**Cluster housing.** Exists where houses are built close together with little individual yard space, but large common area.

**Cluster zoning.** Such zoning modifies lot size and frontage requirements on certain conditions involving setting aside of land by the developer for parks, schools, or other public needs. *Steel Hill Development, Inc. v. Town of Sanbornton, C.A.N.H., 469 F.2d 956, 958. See Planned unit development (PUD); Zoning.*

**Clypeus, or clipeus** /klípíyəs/. In old English law, a shield; metaphorically one of a noble family. *Clypei prostrati*, noble families extinct.

**C/o.** Symbol meaning "care of".

**Co.** A prefix meaning with, in conjunction, joint, jointly, unitedly, and not separately, e.g., cotrustees, co-executors, co-brokers. Also, an abbreviation for "county" and "company."

**Co-adjutor** /kōwájútər/. An assistant, helper, or ally; particularly a person appointed to assist a bishop who from age or infirmity is unable to perform his duty. Also an overseer (co-adjutor of an executor), and one who disseises a person of land not to his own use, but to that of another.

**Co-administrator.** One who is a joint administrator (e.g. of an estate) with one or more others.

**Coadunatio** /kōwəjənáysh(iy)ow/. A uniting or combining together of persons; a conspiracy.

**Co-adventurer.** One who takes part with others in an adventure or in a venture or business undertaking attended with risk. *Easter Oil Corporation v. Strauss, Tex.Civ.App., 52 S.W.2d 336, 344. See also Adventure; Joint venture.*

**Co-agent.** *See Agent.*

**Coal note.** A species of promissory note, formerly in use in the port of London, containing the phrase "value received in coals." By the statute 3 Geo. II, c. 26, §§ 7,

8, these were to be protected and noted as inland bills of exchange. But this was repealed by the statute 47 Geo. III, sess. 2, c. 68, § 28.

**Coal notice.** In Pennsylvania, every deed, agreement of sale, title insurance policy and other instrument with respect to sale or conveyance of surface land, excepting mortgages or quitclaim conveyances, must include a statutory coal notice in each case involving a prior or contemporaneous severance of title to coal or right of surface support under any part of such surface land.

**Co-assignee.** One of two or more assignees of the same subject-matter.

**Coast.** The edge or margin of a country bounding on the sea. The term includes small islands and reefs naturally connected with the adjacent land, and rising above the surface of the water, but not shoals perpetually covered by water. This word is particularly appropriate to the edge of the sea, while "shore" may be used of the margins of inland waters. In precise modern usage, the term "shore" denotes line of low-water mark along mainland, while term "coast" denotes line of shore plus line where inland waters meet open sea. *U. S. v. State of La., La., 363 U.S. 1, 121, 80 S.Ct. 961, 997, 4 L.Ed.2d 1025, 1096.*

**Coaster.** A vessel plying exclusively between domestic ports, and usually engaged in domestic trade; not including pleasure yachts. *Belden v. Chase, 150 U.S. 674, 14 S.Ct. 264, 37 L.Ed. 1218.*

**Coast Guard.** The Coast Guard is responsible for enforcing Federal laws on the high seas and navigable waters of the United States and its possessions. Navigation and vessel inspection laws are specific responsibilities. Under provisions of the Federal Boating Act of 1958, Coast Guard boarding teams inspect small boats to insure compliance with required safety measures. The Coast Guard cooperates with other agencies in their law enforcement responsibilities, including enforcement of drug, conservation and marine environmental laws.

**Coasting trade.** In maritime law, commerce and navigation between different places along the coast of the United States. Commercial intercourse between different districts in different states, different districts in same state, or different places in same district, on sea-coast or on navigable river. *Shannon v. Streckfus Steamers, 279 Ky. 649, 131 S.W.2d 833, 836.*

**Coast waters.** Tide waters navigable from the ocean by sea-going craft, the term embracing all waters opening directly or indirectly into the ocean and navigable by ships coming in from the ocean of draft as great as that of the larger ships which traverse the open seas. *The Britannia, 153 U.S. 130, 14 S.Ct. 795, 38 L.Ed. 660.*

**Coastwise.** Vessels "plying coastwise" are those engaged in domestic trade, or plying between port and port in the United States.

**Coat of arms.** Heraldic ensigns, introduced by Richard I from the Holy Land, where they were first invented. Originally painted on shields of the Christian knights

who went to the Holy Land during the crusades, to identify them. *See* Insignia.

**Cocaine.** A white crystalline narcotic alkaloid extracted from coca leaves. Used as a local anesthetic. A "controlled substance" as included in narcotic laws.

**Cocket.** In English law, a seal belonging to the customhouse, or rather a scroll of parchment, sealed and delivered by the officers of the customhouse to merchants, as a warrant that their merchandises are entered; likewise a sort of measure.

**Cockpit.** In England, a name which used to be given to the judicial committee of the privy council, the council-room being built on the old cockpit of Whitehall Place.

**Cocksetus** /kòksiytəs/. A boatman; a cockswain.

**Co-conspirator.** One who engages in an illegal confederacy with others. *See* Conspiracy.

**Co-conspirator's rule.** Under the "co-conspirator exception" to the hearsay rule, acts and declarations of a co-conspirator made in furtherance of the conspiracy are admissible against a defendant even when they are made out of the defendant's presence. *People v. Columbo*, 118 Ill.App.3d 882, 74 Ill.Dec. 304, 455 N.E.2d 733, 779. *See also* Wharton Rule.

**Cocotte** /kəkòt/. A prostitute.

**C. O. D.** "Collect on delivery." These letters import the carrier's liability to the consignor to collect the cost of the goods from the consignee, and, if not collected, to return the goods to the consignor.

**Code.** A systematic collection, compendium or revision of laws, rules, or regulations (*e.g.*, Uniform Commercial Code). A private or official compilation of all permanent laws in force consolidated and classified according to subject matter (*e.g.* United States Code). Many states have published official codes of all laws in force, including the common law and statutes as judicially interpreted, which have been compiled by code commissions and enacted by the legislatures (*e.g.* California Codes). *See also* Codification.

**Code Civil.** The code which embodies the civil law of France. It was promulgated in 1804. When Napoleon became emperor, the name was changed to "Code Napoleon," by which it is still often designated though it is now officially styled by its original name of "Code Civil." A great part of the Louisiana Civil Code is derived from the Code Napoleon.

**Code de commerce.** A French code, enacted in 1807, as a supplement to the Code Napoleon, regulating commercial transactions, the laws of business, bankruptcies, and the jurisdiction and procedure of the courts dealing with these subjects.

**Code de procedure civil.** That part of the Code Napoleon which regulates the system of courts, their organization, civil procedure, special and extraordinary remedies, and the execution of judgments.

**Code d'instruction criminelle.** A French code, enacted in 1808, regulating criminal procedure.

**Code noir.** The black code. A body of laws which formerly regulated the institution of slavery in the French colonies.

**Code of Justinian.** The Code of Justinian (*Codex Justinianus*) was a collection of imperial constitutions, compiled, by order of that emperor, by a commission, and promulgated A.D. 529. It comprised twelve books, and was the first of the four compilations of law which make up the *Corpus Juris Civilis*. This name is often met in a connection indicating that the entire *Corpus Juris Civilis* is intended, or, sometimes, the Digest; but its use should be confined to the *Codex*.

**Code penal.** The penal or criminal code of France, enacted in 1810. *See also* Criminal law; Penal code.

**Co-defendant.** More than one defendant being sued in the same litigation; or, more than one person charged in same complaint or indictment with same crime.

**Code Napoleon.** *See* Code Civil.

**Code of criminal procedure.** Body of federal or state law dealing with procedural aspects of trial of criminal cases; *e.g.* 18 U.S.C.A. § 3001 et seq. Such procedural laws are supplemented by Rules of Criminal Procedure and Rules of Evidence.

**Code of ethics.** *See* Code of Professional Responsibility.

**Code of Federal Regulations.** The Code of Federal Regulations (CFR) is the annual cumulation of executive agency regulations published in the daily Federal Register, combined with regulations issued previously that are still in effect. Divided into 50 titles, each representing a broad subject area, individual volumes of the Code of Federal Regulations are revised at least once each calendar year and issued on a staggered quarterly basis. The CFR contains the general body of regulatory laws governing practice and procedure before federal administrative agencies.

**Code of Military Justice.** This Code, which is uniformly applicable in all its parts to the Army, the Navy, the Air Force, and the Coast Guard, covers both the substantive and the procedural law governing military justice and its administration in all of the armed forces of the United States. The Code established a system of military courts, defines offenses, authorizes punishment, provides broad procedural guidance, and statutory safeguards which conform to the due process safeguards preserved and established by the constitution. As an additional safeguard for an accused person, the Code also provides for a system of automatic appellate review. A Court of Military Review is established within each service to review all court-martial cases where the sentence includes death, a punitive discharge, or confinement for one year or more. Appellate review in this court is automatic. No approved sentence of a court-martial may be executed unless such findings and sentence are affirmed by a Court of Military Review. In addition, the Court of Military Appeals was established to review certain cases from all the Armed Forces. The latter Court consists of three civilian judges. Automatic review before the Court is provided for all cases in



which the sentence, as affirmed by a Court of Military Review, affects a general or flag officer or extends to death. In addition, the Judge Advocate General of each service may direct that a case be reviewed by the Court. An accused may petition the Court for review. 10 U.S.C.A. § 801 et seq.

**Uniform Code.** Many states have adopted the Uniform Code of Military Justice, and others have adopted acts substantially following the Uniform Code.

**Code of Professional Responsibility.** The Model Code of Professional Responsibility of the American Bar Association consisted of basic Canons of professional conduct for attorneys together with Ethical Considerations and Disciplinary Rules for each Canon covering specific attorney conduct. Most states adopted similar professional responsibility codes as based on the ABA model. In 1983 the ABA replaced the Code of Professional Responsibility with the Model Rules of Professional Conduct. *See also* Canon; Disciplinary rules; Model Rules of Professional Conduct.

**Code pleading.** *See* Pleadings.

**Codex.** Lat. A code or collection of laws; particularly the Code of Justinian. Also a roll of volume, and a book written on paper or parchment.

**Codex Gregorianus** /kówdèks grəgòriyéynəs/. A collection of imperial constitutions made by Gregorius, a Roman jurist of the fifth century, about the middle of the century. It contained the constitutions from Hadrian down to Constantine.

**Codex Hermogenianus** /kówdèks hərmajiniyéynəs/. A collection of imperial constitutions made by Hermogenes, a jurist of the fifth century. It was nothing more than a supplement to the Codex Gregorianus (*supra*), containing the constitutions of Diocletian and Maximilian.

**Codex Justinianus** /kówdèks jəstiniyéyn(iy)əs/. A collection of imperial constitutions, made by a commission of ten persons appointed by Justinian, A.D. 528.

**Codex Repetitæ Prælectionis** /kówdèks rəpətishiyi prələkshiyównəs/. The new code of Justinian; or the new edition of the first or old code, promulgated A.D. 534, being the one now extant.

**Codex Theodosianus** /kówdèks θiyədóws(h)iyéynəs/. A code compiled by the emperor Theodosius the younger, A.D. 438. 1 Bl.Comm. 81. It was a collection of all the imperial constitutions then in force. It was the only body of civil law publicly received as authentic in the western part of Europe till the twelfth century, the use and authority of the Code of Justinian being during that interval confined to the East. 1 Bl.Comm. 81.

**Codex Vetus** /kówdèks viytəs/. The old code. The first edition of the Code of Justinian; now lost.

**Codicil.** A supplement or an addition to a will; it may explain, modify, add to, subtract from, qualify, alter, restrain or revoke provisions in existing will. Such does not purport to dispose of entire estate or to contain the entire will of testator, nor does it ordinarily expressly or

by necessary implication revoke in toto a prior will. In *re Crooke Estate*, 388 Pa. 125, 130 A.2d 185, 187.

**Codicillus** /kòdəsíləs/. In the Roman law, a codicil; an informal and inferior kind of will, in use among the Romans.

**Codification** /kòdəfəkéyshən/. The process of collecting and arranging systematically, usually by subject, the laws of a state or country, or the rules and regulations covering a particular area or subject of law or practice; *e.g.* United States Code; Code of Military Justice; Code of Federal Regulations; California Evidence Code. The end product may be called a code, revised code or revised statutes. *See also* Code; Compilation; Compiled statutes.

**Coemptio** /kowém(p)shiyow/. One of the modes in which marriage was contracted among the Romans.

**Co-emption.** The act of purchasing the whole quantity of any commodity.

**Co-equal.** To be or become equal to. To have the same quantity, the same value, the same degree or rank, or the like, with. To be commensurate with. *State ex rel. Com'rs of Land Office v. Board of Com'rs of Nowata County*, 166 Okl. 78, 25 P.2d 1074, 1077.

**Coerce** /kowárs/. Compelled to compliance; constrained to obedience, or submission in a vigorous or forcible manner. *See* Coercion.

**Coercion** /kowárshən/. Compulsion; constraint; compelling by force or arms or threat. *General Motors v. Blevins*, D.C. Colo., 144 F.Supp. 381, 384. It may be actual, direct, or positive, as where physical force is used to compel act against one's will, or implied, legal or constructive, as where one party is constrained by subjugation to other to do what his free will would refuse. As used in testamentary law, any pressure by which testator's action is restrained against his free will in the execution of his testament. "Coercion" that vitiates confession can be mental as well as physical, and question is whether accused was deprived of his free choice to admit, deny, or refuse to answer. *Garrity v. State of N. J.*, U.S.N.J., 385 U.S. 493, 87 S.Ct. 616, 618, 17 L.Ed.2d 562.

A person is guilty of criminal coercion if, with purpose to unlawfully restrict another's freedom of action to his detriment, he threatens to: (a) commit any criminal offense; or (b) accuse anyone of a criminal offense; or (c) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or (d) take or withhold action as an official, or cause an official to take or withhold action. *Model Penal Code*, § 212.5.

*See also* Duress; Extortion; Threat; Undue influence.

**Co-executor.** One who is a joint executor of an estate with one or more others. *See also* Joint executors.

**Cofferer of the queen's household** /kófərər əv ðə kwíynz háws-howld/. In English law, a principal officer of the royal establishment, next under the controller, who, in the countinghouse and elsewhere, had a special

charge and oversight of the other officers, whose wages he paid.

**Cogitationis pœnam nemo patitur** /kòjtèyshiyówns piynəm niymow pædtər/. No one is punished for his thoughts.

**Cognate offense.** An offense which contains some elements not contained in the greater offense but which is related to the greater offense by fact that it shares several of the elements of the greater offense and is of the same class or category. *People v. Ross*, 73 Mich. App. 588, 252 N.W.2d 526, 528.

**Cognati** /kògnéytay/. Lat. In the civil law, cognates; relations by the mother's side. 2 Bl.Comm. 235. Relations in the line of the mother. Relations by or through females.

**Cognatio** /kògnéysh(iy)ow/. Lat. In the civil law, cognation; relationship, or kindred generally. Relationship through females, as distinguished from *agnatio*, or relationship through males. *Agnatio a patre sit, cognatio a matre*. See *Agnatio*.

In canon law, consanguinity, as distinguished from affinity. Consanguinity, as including affinity.

**Cognition** /kògnéyshən/. In the civil law, signifies generally the kindred which exists between two persons who are united by ties of blood or family, or both.

*Civil cognition* is that which proceeds alone from the ties of families, as the kindred between the adopted father and the adopted child.

*Mixed cognition* is that which unites at the same time the ties of blood and family, as that which exists between brothers the issue of the same lawful marriage.

*Natural cognition* is that which is alone formed by ties of blood; such is the kindred of those who owe their origin to an illicit connection, either in relation to their ascendants or collaterals.

**Cognatus** /kògnéytəs/. Lat. In the civil law, a relation by the mother's side; a cognate. A relation, or kinsman, generally.

**Cognitio** /kògnish(iy)ow/. In old English law, the acknowledgment of a fine; the certificate of such acknowledgment. In the Roman law, the judicial examination or hearing of a cause.

**Cognitiones** /kognishiyówniyz/. Ensigns and arms, or a military coat painted with arms.

**Cognitionibus mittendis** /kognishiyównəbəs məténdəs/. In English law, a writ to a justice of the common pleas, or other, who has power to take a fine, who, having taken the fine, defers to certify it, commanding him to certify it. Now abolished.

**Cognitive.** The mental process of comprehension, judgment, memory and reasoning, as opposed to emotional and volitional processes.

**Cognitor** /kògnətər/. In the Roman law, an advocate or defender in a private cause; one who defended the cause of a person who was present.

**Cognizable** /kò(g)nəzəbəl/. Capable of being tried or examined before a designated tribunal; within jurisdiction of court or power given to court to adjudicate controversy. *Samuel Goldwyn, Inc. v. United Artists Corporation*, C.C.A.Del., 113 F.2d 703, 707.

In criminal law, for a group to be "cognizable" so as to render jury selection process which excludes such group unconstitutional, the group must have a definite composition. *Wilkins v. State*, 16 Md.App. 587, 300 A.2d 411, 415. The defendant must show that the group is defined and limited by some factor, that a common thread or basic similarity in attitude or ideas or experience runs through the group, and that there is a community of interest among members of the group such that the group's interests cannot be adequately represented if the group is excluded from the jury selection process. *U.S. v. Gruberg*, D.C.N.Y., 493 F.Supp. 234, 245.

**Cognizance** /kò(g)nəzən(t)s/. Jurisdiction, or the exercise of jurisdiction, or power to try and determine causes; judicial examination of a matter, or power and authority to make it. Judicial notice or knowledge; the judicial hearing of a cause; acknowledgment; confession; recognition.

*Claim of cognizance or of consuance.* See *Claim of cognizance or of consuance*.

*Judicial cognizance.* See *Judicial*.

**Cognizee** /kògnəziy/. The party to whom a fine was levied. 2 Bl.Comm. 351.

**Cognizor** /kògnəzər/. In old conveyancing, the party levying a fine. 2 Bl.Comm. 350, 351.

**Cognomen** /kògnówmən/. In English law, a surname. A name added to the *nomen* proper, or name of the individual; a name descriptive of the family.

In Roman law, a man's family name.

The first name (*prænomen*) was the proper name of the individual; the second (*nomen*) indicated the *gens* or tribe to which he belonged; while the third (*cognomen*) denoted his family or house. The *agnomen* was added on account of some particular event, as a further distinction.

**Cognomen majorum est ex sanguine tractum, hoc intrinsecum est; agnomen extrinsecum ab eventu** /kògnówmən məjórəm èst èks sǎngwǎniy trǎktəm, hók intrinzəkəm èst; əgnówmən ekstrinzəkəm, èks əvént(y)uw/. The cognomen is derived from the blood of ancestors, and is intrinsic; an agnomen arises from an event, and is extrinsic.

**Cognovit actionem** /kògnóvvət əkshiyównəm/. (He has confessed the action). A defendant's written confession of action against him. It is usually upon condition; is supposed to be given in court; and impliedly authorizes plaintiff's attorney to sign judgment and issue execution.

**Cognovit judgment** /kògnóvvət/. Confession of judgment by debtor. Written authority of debtor and his direction for entry of judgment against him in the event he shall default in payment. Such provision in a debt

instrument or agreement permits the creditor or his attorney on default to appear in court and confers judgment against the debtor. Such agreements are prohibited, or greatly restricted, in many states; though, where permitted, the constitutionality of such has been upheld. *D. H. Overmyer Co., Inc. v. Frick Co.*, 405 U.S. 174, 92 S.Ct. 775, 31 L.Ed.2d 124. See *Cognovit note*; *Judgment (Confession of judgment)*.

**Cognovit note.** An extraordinary note which authorizes an attorney to confess judgment against person or persons signing it. It is written authority of a debtor and a direction by him for entry of a judgment against him if obligation set forth in note is not paid when due. Such judgment may be taken by any person holding the note, which cuts off every defense which maker of note may otherwise have and it likewise cuts off all rights of appeal from any judgment taken on it. *Jones v. John Hancock Mut. Life Ins. Co.*, D.C.Mich., 289 F.Supp. 930, 935. See *Cognovit judgment*; *Judgment (Confession of judgment)*.

**C.O.G.S.A.** See *Carriage of Goods by Sea Act*.

**Cohabitation.** To live together as husband and wife. The mutual assumption of those marital rights, duties and obligations which are usually manifested by married people, including but not necessarily dependent on sexual relations. *Boyd v. Boyd*, 228 Cal.App. 374, 39 Cal.Rptr. 400, 404. See also *Notorious cohabitation*; *Palimony*.

**Cohabitation agreement.** Contract between a man and a woman who are living together in contemplation of sexual relations and out of wedlock, relating to the property and financial relations of the parties. MN.ST. §§ 513.075, 513.076.

**Cohæredes una persona censentur, propter unitatem juris quod habent** /kôwhîrædiy zúwnə pərsównə sənsəntər, prôptər yúwnətétəm júrs kwòd héybənt/. Co-heirs are deemed as one person, on account of the unity of right which they possess.

**Cohan Rule.** Taxpayer is required to substantiate by accurate records or by sufficient evidence his claim for deduction for travel, entertainment and business gifts. I.R.C. § 274(d) (1962 Act); *Cohan v. Commissioner*, C.C. A.N.Y., 39 F.2d 540. Where part of expenditures by taxpayers that are of deductible nature as ordinary and necessary business expense are unidentifiable, 50% of expenditures are allowed as deduction. *Poletti v. C. I. R.*, C.A.Mo., 351 F.2d 345, 349.

**Co-heir.** One of several to whom an inheritance descends.

**Co-heiress.** A joint heiress. A woman who has an equal share of an inheritance with another woman.

**Cohort analysis.** A method used in employment discrimination suits to test for race discrimination whereby all employees who start together at the same level are surveyed over the course of an observation period and their comparative progress in salary and promotion is evaluated. *Segar v. Smith*, C.A., 738 F.2d 1249, 1285, 238 U.S.App.D.C. 103.

**Coif** /kóyf/. A title given to serjeants at law, who are called "serjeants of the coif," from the coif they wear on their heads. The use of this coif at first was to cover the clerical tonsure, many of the practicing serjeants being clergymen who had abandoned their profession. It was a thin linen cover, gathered together in the form of a skull or helmet; the material being afterwards changed into white silk, and the form eventually into the black patch at the top of the forensic wig, which is now the distinguishing mark of the degree of serjeant at law.

**Order of the coif.** Honorary legal fraternity made up of law students with high standing in law school class.

**Coin, v.** To fashion pieces of metal into a prescribed shape, weight, and degree of fineness, and stamp them with prescribed devices, by authority of government, in order that they may circulate as money. *Legal Tender Cases*, 79 U.S. 457, 12 Wall. 457, 20 L.Ed. 287; *Thayer v. Hedges*, 22 Ind. 282. To invent words or phrases.

**Coin, n.** Pieces of gold, silver, or other metal, fashioned into a prescribed shape, weight, and degree of fineness, and stamped, by authority of government, with certain marks and devices, and put into circulation as money at a fixed value. Metal money.

**Coinage.** The process or the function of coining metallic money; also the great mass of metallic money in circulation.

**Coinage clause.** Provision in U.S. Constitution granting to Congress the power to coin money, Art. I, § 8, par. 5.

**Coinsurance.** A relative division of risk between the insurer and the insured, dependent upon the relative amount of the policy and the actual value of the property insured, and taking effect only when the actual loss is partial and less than the amount of the policy; the insurer being liable to the extent of the policy for a loss equal to or in excess of that amount. Insurance policies that protect against hazards such as fire or water damage often specify that the owner of the property may not collect the full amount of insurance for a loss unless the insurance policy covers at least some specified percentage, usually about 80 percent, of the replacement cost of the property.

**Coinsurance clause.** Provision in insurance policy requiring property owner to carry insurance up to an amount determined in accordance with the provisions of the policy.

**Coinsurer.** Insurer who shares losses sustained under policy.

**Coitus.** Sexual intercourse; carnal copulation; coition.

**Cojudices** /kôwjúwdəsiyz/. Lat. In old English law, associate judges having equality of power with others.

**Coke's institutes.** See *Institutes*.

**COLA.** Cost of Living Adjustment. See *Cost of living clause*.

**Cold blood.** Used in common parlance to designate a willful, deliberate, and premeditated homicide. See also *Cool state of blood*.

**Cold water ordeal.** The trial which was anciently used for the common sort of people, who, having a cord tied about them under their arms, were cast into a river; if they sank to the bottom until they were drawn up, which was in a very short time, then were they held guiltless; but such as did remain upon the water were held culpable, being, as they said, of the water rejected and kept up.

**Colibertus** /kòwlabértəs/. In feudal law, one who, holding in free socage, was obliged to do certain services for the lord. A middle class of tenants between servile and free, who held their freedom of tenure on condition of performing certain services. Said to be the same as the *conditionales*.

**Collaboration.** The act of working together in a joint project; commonly used in connection with treasonably cooperative efforts with the enemy. *See also* Conspiracy.

**Collapsible corporation.** A corporation formed or availed of principally for the manufacture, construction, or production of property, for the purchase of property, or for the holding of stock in a corporation so formed or availed of, with a view to the sale or exchange of stock by its shareholders (whether in liquidation or otherwise), or a distribution to its shareholders, before the realization by the corporation of a substantial part of the taxable income to be derived from such property, and the realization by such shareholders of gain attributable to such property. I.R.C. §§ 337(c), 341(b)(1). These I.R.C. provisions prevent the prearranged use of a corporation to convert ordinary income into capital gain.

**Collapsible partnership.** A partnership formed with the intention to dissolve before any income is realized; however, the amount of money or the fair market value of any property received by a transferee partner in exchange for all or a part of his interest in the partnership attributable to unrealized receivables of the partnership, or inventory items of the partnership which have appreciated substantially in value shall be considered as an amount realized from the sale or exchange of property other than a capital asset. I.R.C. § 751(a).

**Collateral**, *n.* /kəlétərəl/. Property which is pledged as security for the satisfaction of a debt. Collateral is additional security for performance of principal obligation, or that which is by the side, and not in direct line. *Shaffer v. Davidson*, Wyo., 445 P.2d 13, 16. Property subject to a security interest; includes accounts, contract rights, and chattel paper which have been sold. U.C.C. § 9-105(c). *See also* Collateral security.

**Collateral**, *adj.* By the side; at the side; attached upon the side. Not lineal, but upon a parallel or diverging line. Additional or auxiliary; supplementary; co-operating; accompanying as a secondary fact, or acting as a secondary agent. Related to, complementary; accompanying as a co-ordinate. As to *collateral* Consanguinity; Descent; Estoppel; Guaranty; Issue; Limitation; Negligence; Power; Proceeding; *and* Warranty, see those titles. *See also* Pledge; Security.

**Collateral act.** Formerly, name given to any act (except the payment of money) for the performance of which a bond, recognizance, etc., was given as security.

**Collateral actions.** Any action which is subsidiary to another action. *See* Collateral attack.

**Collateral ancestors.** A phrase sometimes used to designate uncles and aunts, and other collateral ancestors, who are not strictly ancestors.

**Collateral assignment.** Assignment of property as collateral security for loans.

**Collateral assurance.** That which is made over and above the principal assurance or deed itself.

**Collateral attack.** With respect to a judicial proceeding, an attempt to avoid, defeat, or evade it, or deny its force and effect, in some incidental proceeding not provided by law for the express purpose of attacking it. *May v. Casker*, 188 Okl. 448, 110 P.2d 287, 289. An attack on a judgment in any manner other than by action or proceeding, whose very purpose is to impeach or overturn the judgment; or, stated affirmatively, a collateral attack on a judgment is an attack made by or in an action or proceeding that has an independent purpose other than impeaching or overturning the judgment. *Travis v. Travis' Estate*, 79 Wyo. 329, 334 P.2d 508, 510. *Compare* Direct attack.

**Collateral consanguinity.** Persons are related collaterally when they have a common ancestor. *See also* Collateral heir.

**Collateral contract.** A contract made prior to or contemporaneous with another contract and if oral and not inconsistent with written contract is admissible within exception to parol evidence rule. *High Knobb Inc. v. Allen*, 205 Va. 503, 138 S.E.2d 49.

**Collateral covenant.** A covenant in a deed or other sealed instrument which does not pertain to the granted premises.

**Collateral estoppel doctrine.** Prior judgment between same parties on different cause of action is an estoppel as to those matters in issue or points controverted, on determination of which finding or verdict was rendered. *E. I. duPont de Nemours & Co. v. Union Carbide Corp.*, D.C.Ill., 250 F.Supp. 816, 819. When an issue of ultimate fact has been determined by a valid judgment, that issue cannot be again litigated between the same parties in future litigation. *City of St. Joseph v. Johnson*, Mo.App., 539 S.W.2d 784, 785.

As a bar to relitigating an issue which has already been tried between the same parties or their privies, it must be pleaded affirmatively. Fed.R. Civil P. 8(c). It is applicable to criminal cases. *Ashe v. Swenson*, 397 U.S. 436, 443-444, 90 S.Ct. 1189, 1194, 25 L.Ed.2d 469.

*Offensive and defensive collateral estoppel.* "Offensive collateral estoppel" is used by plaintiff to prevent relitigation of issues previously lost against another plaintiff by a defendant, in contrast to "defensive collateral estoppel" which prevents relitigation by plaintiff of issues

previously lost against another defendant. *Collins v. Seaboard Coastline R. Co.*, C.A.Ga., 681 F.2d 1333, 1334.

*See also* Administrative estoppel; Defensive collateral estoppel; Direct estoppel; Issue preclusion; Judicial estoppel; *Res (Res judicata)*; Verdict, estoppel by.

**Collateral facts.** Such as are outside the controversy, or are not directly connected with the principal matter or issue in dispute.

**Collateral fraud.** *See* Fraud.

**Collateral heir.** One who is not of the direct line of deceased, but comes from a collateral line, as a brother, sister, an uncle, an aunt, a nephew, a niece, or a cousin of deceased. *Ferraro v. Augustine*, 45 Ill.App.2d 295, 196 N.E.2d 16, 19.

**Collateral impeachment.** *See* Collateral attack.

**Collateral inheritance tax.** A tax levied upon the collateral devolution of property by will or under the intestate law.

**Collateralis et socii** /kələtərəyləs èt sóws(h)iyay/. The ancient title of masters in chancery.

**Collateral issues.** Question or issues which are not directly involved in the matter.

**Collateral kinsmen.** Those who descend from one and the same common ancestor, but not from one another.

**Collateral line.** *See* Descent.

**Collateral loan.** Loan secured by pledge of specific property.

**Collateral matter.** A "matter" is "collateral" to the principal issues being tried and therefore unavailable to purposes of impeachment if the matter, as to which error is predicated, could not have been shown in evidence for any purpose independently of the contradiction. *State v. Oswalt*, 62 Wash.2d 118, 381 P.2d 617, 618.

**Collateral mortgage.** A mortgage designed, not directly to secure an existing debt, but to secure a mortgage note pledged as collateral security for debt or succession of debts. *McLendon v. Brewster*, La.App., 286 So.2d 513, 516.

**Collateral negligence.** *See* Negligence.

**Collateral note.** Loan secured by pledge of specific property.

**Collateral order doctrine.** Doctrine which allows appeal from an interlocutory order which conclusively determines issue completely separate from merits of action, and which cannot be given effective review on appeal from subsequent final judgment; such order is, for purposes of appellate jurisdiction, a "final order." *Clemence v. Clemence*, 8 Kan.App.2d 377, 658 P.2d 368.

**Collateral promise.** A promise ancillary or superadded to the primary (principal) promise of another; the other remaining primarily liable. One in which the promisor is merely acting as surety; the promisor receives no benefit by way of promise and the original debtor re-

mains liable on the debt. A collateral promise is within the statute of frauds and must be in writing. *Dolin v. Colonial Meadows, Ltd.*, D.C.W.V., 635 F.Supp. 786, 788.

**Collateral relatives.** Next of kin who are not in the direct line of inheritance, such as a cousin. *See also* Collateral heir.

**Collateral security.** A security given in addition to the direct security, and subordinate to it, intended to guaranty its validity or convertibility or insure its performance; so that, if the direct security fails, the creditor may fall back upon the collateral security. Concurrent security for another debt, whether antecedent or newly created and is subsidiary to the principal debt running parallel with and collateral to the debt. *Shaffer v. Davidson, Wyo.*, 445 P.2d 13, 16.

**Collateral source rule.** Under this rule, if an injured person receives compensation for his injuries from a source wholly independent of the tort-feasor, the payment should not be deducted from the damages which he would otherwise collect from the tort-feasor. *Kirtland & Packard v. Superior Court for County of Los Angeles*, 59 Cal.App.3d 140, 131 Cal.Rptr. 418, 421. In other words, a defendant tortfeasor may not benefit from the fact that the plaintiff has received money from other sources as a result of the defendant's tort, e.g. sickness and health insurance.

**Collateral trust bonds.** Bonds of one corporation secured by its holdings of stocks, bonds, and/or notes of another corporation.

**Collateral warranty.** Generally applicable to real estate transactions in which a stranger warrants title and hence his warranty runs only to the covenantee, and not with the land.

**Collatio bonorum** /kələysh(iy)ow bənórəm/. Lat. In the civil law, the obligation on successors to an inheritance to return to the common inheritance gifts received from the ancestor during his lifetime. A joining together or contribution of goods into a common fund. This occurs where a portion of money, advanced by the father to a son or daughter, is brought into *hotchpot*, in order to have an equal distributive share of his personal estate at his death. *See* Collation.

**Collation** /kələyshən/. The comparison of a copy with its original to ascertain its correctness; or the report of the officer who made the comparison. The bringing into the estate of an intestate an estimate of the value of advancements made by the intestate to his or her children in order that the whole may be divided in accordance with the statute of descents. It is synonymous with "hotchpot."

In the civil law, the collation of goods is the supposed or real return to the mass of the succession which an heir makes of property which he received in advance of his share or otherwise, in order that such property may be divided together with the other effects of the succession. The fundamental basis of doctrine is legal presumption that ancestor intended absolute equality among his descendants in final distribution of his prop-

erty, that donation by him during his lifetime to any one of them was merely advancement d'hoirie or advance on donee's hereditary share to establish him in life or for some other useful purpose, and that ancestor intended to reestablish equality among his descendants in final partition of his estate.

**Collatione factâ uni post mortem alterius** /kələyshiýówniy fáktə yúwnay pówst mórtəm oltaráyəs/. A writ directed to justices of the common pleas, commanding them to issue their writ to the bishop, for the admission of a clerk in the place of another presented by the crown, where there had been a demise of the crown during a suit; for judgment once passed for the king's clerk, and he dying before admittance, the king may bestow his presentation on another.

**Collatione heremitagii** /kələyshiýówniy hərə(ə)mətéyjiyay/. In old English law, a writ whereby the king conferred the keeping of an hermitage upon a clerk.

**Collation of seals.** When upon the same label one seal was set on the back or reverse of the other. Comparison of seals.

**Collation to a benefice** /kələyshən tùw ə bənáfəs/. In ecclesiastical law, this occurs where the bishop and patron are one and the same person, in which case the bishop cannot present the clergyman to himself, but does, by the one act of collation or conferring the benefice, the whole that is done in common cases both by presentation and institution. 2 Bl.Comm. 22.

**Collatio signorum** /kələysh(iy)ow signórəm/. In old English law, a comparison of marks or seals. A mode of testing the genuineness of a seal, by comparing it with another known to be genuine.

**Collect.** To gather together; to bring scattered things (assets, accounts, articles of property) into one mass or fund; to assemble. To receive payment.

To collect a debt or claim is to obtain payment or liquidation of it, either by personal solicitation or legal proceedings.

**Collectible.** Debts, obligations, demands, liabilities that one may be made to pay by means of legal process.

Rare or antique objects, commonly collected for investment.

**Collecting bank.** In the check collection process, any bank handling the item for collection except the payor bank. U.C.C. § 4-105(d).

**Collection.** Process through which an item passes in a payor bank. Uniform Commercial Code, Article 4. *See also* Collection indorsement.

**Collection indorsement.** An indorsement on an item that is restrictive because it signifies a purpose of deposit or collection by including words such as "for collection", "for deposit", "pay any bank", or like terms. U.C.C. § 3-205(c). *See also* For collection.

**Collection item.** An item that a bank takes for its customer's account for which credit is not given until

payment for the item is actually received. A documentary draft is ordinarily treated as a collection item.

**Collection of illegal fees.** Collection by public official of fees in excess of those fixed by law for certain services. *See* Extortion.

**Collective bargaining.** As contemplated by National Labor Relations Act, is a procedure looking toward making of collective agreements between employer and accredited representative of union employees concerning wages, hours, and other conditions of employment, and requires that parties deal with each other with open and fair minds and sincerely endeavor to overcome obstacles existing between them to the end that employment relations may be stabilized and obstruction to free flow of commerce prevented. National Labor Relations Act § 8(5), 29 U.S.C.A. § 158(5). *Rapid Roller Co. v. National Labor Relations Board*, C.C.A.7, 126 F.2d 452, 460. Negotiation between an employer and organized employees as distinguished from individuals, for the purpose of determining by joint agreement the conditions of employment. *See also* Area bargaining; Labor dispute; Sixty-day notice.

**Collective bargaining agreement.** Agreement between an employer and a labor union which regulates terms and conditions of employment. The joint and several contract of members of union made by officers of union as their agents establishing, in a general way, the reciprocal rights and responsibilities of employer, employees collectively, and union. Such is enforceable by and against union in matters which affect all members alike or large classes of members, particularly those who are employees of other party to contract. *Bogue Elec. Co. v. Board of Review of Division of Employment Sec. of Dept. of Labor and Industry*, 21 N.J. 431, 122 A.2d 615, 618. *See also* Collective labor agreement; Trade agreement.

**Collective bargaining unit.** All of the employees of a single employer unless the employees of a particular department or division have voted otherwise. *Re International Ass'n of Machinists*, 249 Wis. 112, 23 N.W.2d 489.

**Collective labor agreement.** Also called "trade agreement". Bargaining agreement as to wages and conditions of work entered into by groups of employees, usually organized into a brotherhood or union on one side and groups of employers or corporations on the other side. *See also* Collective bargaining agreement.

**Collective mark.** The term "collective mark" means a trademark or service mark—(1) used by the members of a cooperative, an association, or other collective group or organization, or (2) which such cooperative, association, or other collective group or organization has a bona fide intention to use in commerce and applies to register on the principal register established by the Trademark Act, and includes marks indicating membership in a union, an association, or other organization. 15 U.S.C.A. § 1127.

**Collective work.** In copyright law, "collective work" is a work, such as a periodical issue, anthology, or ency-

lopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole. Copyright Act, 17 U.S.C.A. § 101. *See also* Compilation.

**Collect on delivery.** *See* C. O. D.

**Collector.** One appointed or authorized to receive taxes or other impositions, as: collector of taxes, collector of customs, etc. A person appointed by a private person to collect the debts due him.

**Collector of decedent's estate.** A person temporarily appointed by the probate court to collect rents, assets, interest, bills receivable, etc., of a decedent's estate, and act for the estate in all financial matters requiring immediate settlement. Such collector is usually appointed when there is protracted litigation as to the probate of the will, or as to the person to take out administration, and his duties cease as soon as an executor or administrator is qualified.

**Collega** /kəliyə/. In the civil law, one invested with joint authority. A colleague; an associate.

**Collegatarius** /kələgətəriyəs/. Lat. In the civil law, a co-legatee.

**Collegatary** /kə(w)ləgétəriy/. A co-legatee; a person who has a legacy left to him in common with other persons.

**College.** An organized assembly or collection of persons, established by law, and empowered to co-operate for the performance of some special function or for the promotion of some common object, which may be educational, political, ecclesiastical, or scientific in its character.

The assemblage of the cardinals at Rome is called a "college." So, in the United States, the body of presidential electors is called the "electoral college" (*q.v.*).

In the most common use of the word, it designates an institution of learning (usually incorporated) which offers instruction in the liberal arts and humanities and in scientific branches, but not in the technical arts or those studies preparatory to admission to the professions. Also applied to all kinds of institutions from universities, or departments thereof, to "business colleges," "barber colleges," etc. that have degree-conferring power.

In England, it is a civil corporation, company or society of men, having certain privileges, and endowed with certain revenues, founded by royal license. An assemblage of several of these colleges is called a "university."

**Collegia** /kəlijiyə/. In the civil law, the guild of a trade.

**Collegialiter** /kəlijiyéyltər/. In a corporate capacity.

**Collegiate church.** In English ecclesiastical law, a church built and endowed for a society or body corporate of a dean or other president, and secular priests, as canons or prebendaries in the said church; such as the churches of Westminster, Windsor, and others, which are independent of a cathedral.

**Collegium** /kəliyj(iy)əm/. Lat. In the civil law, a word having various meanings; *e.g.*, an assembly, society, or company; a body of bishops; an army; a class of men. But the principal idea of the word was that of an association of individuals of the same rank and station, or united for the pursuit of some business or enterprise. Sometimes, a corporation, as in the maxim "tres faciunt collegium" (1 Bl.Comm. 469), though the more usual and proper designation of a corporation was "universitas."

**Collegium ammiralitatís** /kəliyj(iy)əm əmərələtétəs/. The college or society of the admiralty.

**Collegium est societas plurium corporum simul habitantium** /kəliyj(iy)əm èst səsáyətəs plúriyəm kórpəram símal hăbətəns(iy)əm/. A college is a society of several persons dwelling together.

**Collegium illicitum** /kəliyj(iy)əm əlísətəm/. One which abused its right, or assembled for any other purpose than that expressed in its charter.

**Collegium licitum** /kəliyj(iy)əm lísətəm/. An assemblage or society of men united for some useful purpose or business, with power to act like a single individual.

**Collide.** To strike or dash against; to come into collision; to clash. *Collins v. Leahy*, Mo.App., 102 S.W.2d 801, 809. *See* Collision.

**Colligendum bona defuncti** /kələjéndəm bównə dəfəŋktay/. *See* Ad colligendum, etc.

**Collision.** Striking together of two objects, one of which may be stationary. Act or instance of colliding; state of having collided. The term implies an impact or sudden contact of a moving body with an obstruction in its line of motion, whether both bodies are in motion or one stationary and the other, no matter which, in motion.

**Collistrigium** /kələstríjiyəm/. The pillory.

**Collocation** /kələkékýshən/. In French law, the arrangement or marshaling of the creditors of an estate in the order in which they are to be paid according to law.

**Colloquium** /kələwkwiyəm/. One of the usual parts of the declaration in an action for slander. It is a general averment that the words complained of were spoken "of and concerning the plaintiff", or concerning the extrinsic matters alleged in the inducement, and its office is to connect the whole publication with the previous statement. An averment in the complaint that the words in question are spoken of or concerning some usage, report, or fact which gives to words otherwise indifferent the peculiar defamatory meaning assigned to them.

**Collusion** /kəl(y)úwzhən/. An agreement between two or more persons to defraud a person of his rights by the forms of law, or to obtain an object forbidden by law. It implies the existence of fraud of some kind, the employment of fraudulent means, or of lawful means for the accomplishment of an unlawful purpose. *Tomiyosu v. Golden*, 81 Nev. 140, 400 P.2d 415, 417. A secret combination, conspiracy, or concert of action between two or more persons for fraudulent or deceitful purpose. *See* Conspiracy.

In divorce proceedings, collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or be represented in court as having committed, acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce. But it also means connivance or conspiracy in initiating or prosecuting the suit, as where there is a compact for mutual aid in carrying it through to a decree. *Bizik v. Bizik*, Ind.App., 111 N.E.2d 823, 828. With the enactment of "no-fault" divorce statutes by most states, agreements or acts of collusion are no longer necessary.

**Collusive action.** An action not founded upon an actual controversy between the parties to it, but brought for purpose of securing a determination of a point of law for the gratification of curiosity or to settle rights of third persons not parties. Such actions will not be entertained for the courts will only decide "cases or controversies". *City and County of San Francisco v. Boyd*, 22 Cal.2d 685, 140 P.2d 666, 669, 670. *See also* Collusion.

**Collusive joinder.** *See* Joinder.

**Collybista** /kóləbístə/. In the civil law, a money-changer; a dealer in money.

**Collybum** /kóləbəm/. In the civil law, exchange.

**Colne.** In Saxon and old English law, an account or calculation.

**Colonists.** Persons who have emigrated from their mother country to settle in another place but who remain loyal to mother country.

**Colonus** /kəlównəs/. In old European law, a husbandman; an inferior tenant employed in cultivating the lord's land. A term of Roman origin, corresponding with the Saxon ceorl.

**Colony.** A dependent political community, consisting of a number of citizens of the same country who have emigrated therefrom to people another, and remain subject to the mother country. Territory attached to another nation, known as the mother country, with political and economic ties; *e.g.* possessions or dependencies of the British Crown (*e.g.* thirteen original colonies of United States).

**Colonial charter.** A document issued by a colonial government which permits operation of a business or school or college, *e.g.* charters granted by England to institutions or business in this country before War of Independence.

**Colonial laws.** The body of law in force in the thirteen original colonies before the Declaration of Independence.

**Color.** An appearance, semblance, or *simulacrum*, as distinguished from that which is real. A *prima facie* or apparent right. Hence, a deceptive appearance; a plausible, assumed exterior, concealing a lack of reality; a disguise or pretext. *See also* Colorable.

In pleading, ground of action admitted to subsist in the opposite party by the pleading of one of the parties to an action, which is so set out as to be apparently valid, but which is in reality legally insufficient. A

term of the ancient rhetoricians, and early adopted into the language of pleading. It was an apparent or *prima facie* right; and the meaning of the rule that pleadings in confession and avoidance should give color was that they should confess the matter adversely alleged, to such an extent, at least, as to admit some apparent right in the opposite party, which required to be encountered and avoided by the allegation of new matter. Color was either express, *i.e.* inserted in the pleading, or implied, which was naturally inherent in the structure of the pleading. *Wheeler v. Nickels*, 168 Or. 604, 126 P.2d 32, 36.

**Colorable.** That which is in appearance only, and not in reality, what it purports to be, hence counterfeit, feigned, having the appearance of truth. *Windle v. Flinn*, 196 Or. 654, 251 P.2d 136, 146.

**Colorable alteration.** One which makes no real or substantial change, but is introduced only as a subterfuge or means of evading the patent or copyright law.

**Colorable cause or invocation of jurisdiction.** With reference to actions for malicious prosecution, a "colorable cause or invocation of jurisdiction" means that a person, apparently qualified, has appeared before a justice and made a complaint under oath and in writing, stating some facts which in connection with other facts constitute a criminal offense or bear a similitude thereto.

**Colorable claim.** In bankruptcy law, a claim made by one holding the property as an agent or bailee of the bankrupt; a claim in which as a matter of law, there is no adverseness. *See also* Color.

**Colorable imitation.** In the law of trademarks, this phrase denotes such a close or ingenious limitation as to be calculated to deceive ordinary persons.

**Colorable transaction.** One presenting an appearance which does not correspond with the reality, and, ordinarily, an appearance intended to conceal or to deceive.

**Colored.** By common usage in America, this term, in such phrases as "colored persons," "the colored race," "colored men," and the like, is used to designate negroes or persons of the African race, including all persons of mixed blood descended from negro ancestry.

**Colore officii** /kəlóríy əfíshiyay/. Lat. By color of office. Officer's acts unauthorized by officer's position, though done in form that purports that acts are done by reason of official duty and by virtue of office. *See also* Color of office.

**Color of authority.** That semblance or presumption of authority sustaining the acts of a public officer which is derived from his apparent title to the office or from a writ or other process in his hands apparently valid and regular. *See* Color of law; Color of office.

**Color of law.** The appearance or semblance, without the substance, of legal right. Misuse of power, possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state, is action



taken under "color of state law." *Atkins v. Lanning*, D.C.Okla., 415 F.Supp. 186, 188.

When used in the context of federal civil rights statutes or criminal law, the term is synonymous with the concept of "state action" under the Fourteenth Amendment, *Timson v. Weiner*, D.C.Ohio, 395 F.Supp. 1344, 1347; and means pretense of law and includes actions of officers who undertake to perform their official duties, *Thompson v. Baker*, D.C.Ark., 133 F.Supp. 247; 42 U.S.C.A. § 1983. See *Tort (Constitutional tort)*.

Action taken by private individuals may be "under color of state law" for purposes of 42 U.S.C.A. § 1983 governing deprivation of civil rights when significant state involvement attaches to action. *Wagner v. Metropolitan Nashville Airport Authority*, C.A.Tenn., 772 F.2d 227, 229.

Acts "under color of any law" of a State include not only acts done by State officials within the bounds or limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of an official to be done "under color of any law", the unlawful acts must be done while such official is purporting or pretending to act in the performance of his official duties; that is to say, the unlawful acts must consist in an abuse or misuse of power which is possessed by the official only because he is an official; and the unlawful acts must be of such a nature or character, and be committed under such circumstances, that they would not have occurred but for the fact that the person committing them was an official then and there exercising his official powers outside the bounds of lawful authority. 42 U.S.C.A. § 1983.

**Color of office.** Pretense of official right to do act made by one who has no such right. *Kiker v. Pinson*, 120 Ga.App. 784, 172 S.E.2d 333, 334. An act under color of office is an act of an officer who claims authority to do the act by reason of his office when the office does not confer on him any such authority. *Maryland Cas. Co. v. McCormack*, Ky., 488 S.W.2d 347, 352. See also *Color of law*.

**Color of state law.** See *Color of law*.

**Color of title.** The appearance, semblance, or *simulacrum* of title. Also termed "apparent title." Any fact, extraneous to the act or mere will of the claimant, which has the appearance, on its face, of supporting his claim of a present title to land, but which, for some defect, in reality falls short of establishing it. *Howth v. Farrar*, C.C.A.Tex., 94 F.2d 654, 658. That which is a semblance or appearance of title, but is not title in fact or in law. *McCoy v. Lowrie*, 42 Wash.2d 24, 253 P.2d 415, 418. Any instrument having a grantor and grantee, and containing a description of the lands intended to be conveyed, and apt words for their conveyance, gives color of title to the lands described. Such an instrument purports to be a conveyance of the title, and because it does not, for some reason, have that effect, it passes only color or the semblance of a title.

**Color of Title Act.** Federal law which gives Secretary of Interior the right to issue a patent for land, exclusive of minerals, to one who has occupied it adversely and under color of right for period of time for a nominal amount of money. 43 U.S.C.A. §§ 1068-1068B.

**Com.** Abbreviation for "company" or "Commonwealth."

**Co-maker.** Surety under a loan.

**Combarones** /kɔ̃mbəroʊniyz/. In old English law, fellow-barons; fellow-citizens; the citizens or freemen of the Cinque Ports being anciently called "barons;" the term "*combarones*" is used in this sense in a grant of Henry III, to the barons of the port of Fevresham.

**Combat.** A forcible encounter between two or more persons; a battle; a duel. To fight with; to struggle against.

**Mutual Combat.** Such combat as will, upon sufficient provocation, reduce a killing committed with a deadly weapon from murder to manslaughter, is defined as one into which both parties enter willingly, or in which two persons, upon a sudden quarrel, and in hot blood, mutually fight upon equal terms. *People v. Matthews*, 21 Ill.App.3d 249, 314 N.E.2d 15, 18.

**Combaterre** /kɔ̃mbətéhriy/. A valley or piece of low ground between two hills.

**Combe.** A small or narrow valley.

**Combination.** The union or association of two or more persons for the attainment of some common end. *Albrecht v. Herald Co.*, C.A.Mo., 367 F.2d 517, 523. See *Joint venture*. As used in criminal context, means a conspiracy or confederation for unlawful or violent acts. See *Conspiracy*.

**Combination in restraint of trade.** An agreement or understanding between two or more persons, in the form of a contract, trust, pool, holding company, or other form of association, for the purpose of unduly restricting competition, monopolizing trade and commerce in a certain commodity, controlling its production, distribution, and price, or otherwise interfering with freedom of trade without statutory authority. Such combinations are prohibited by the Sherman Antitrust Act. See also *Clayton Act*; *Sherman Antitrust Act*.

**Combination patent.** Patents in which the claimed invention resides in a specific combination or arrangement of elements, rather than in the elements themselves. *Kinnear-Weed Corp. v. Humble Oil & Refining Co.*, D.C.Tex., 150 F.Supp. 143, 162. One in which none of parts or components are new, and none are claimed as new, nor is any portion of combination less than whole claimed as new or stated to produce any given result. *Borden, Inc. v. Occidental Petroleum Corp.*, D.C.Tex., 381 F.Supp. 1178, 1202.

**Combustio** /kəmbəst(i)yow/. Burning. In old English law, the punishment inflicted upon apostates.

**Combustio domorum** /kəmbəst(i)yow dəmórəm/. Houseburning; arson. 4 Bl.Comm. 272.

**Combustio pecuniæ** /kəmbóst(i)yow pəkýúwniyiy/. Burning of money; the ancient method of testing mixed and corrupt money, paid into the exchequer, by melting it down.

**Come.** To present oneself; to appear in court.

**Comes** /kómz/, *v.* A word used in a pleading to indicate the defendant's presence in court.

**Comes** /kówniyz/, *n.* Lat. A follower, companion, or attendant; a count or earl.

**Comes and defends.** This phrase, anciently used in the language of pleading, and still surviving in some jurisdictions, occurs at the commencement of a defendant's plea or demurrer; and of its two verbs the former signifies that he appears in court, the latter that he defends the action.

**Comfort.** Benefit, consolation, contentment, ease, enjoyment, happiness, pleasure, or satisfaction.

**Comfort letter.** A letter generally requested by securities underwriters to give "comfort" on the financial information included in an SEC registration statement.

**Coming and going rule.** See Going and coming rule.

**Coming to rest doctrine.** Under this doctrine with respect to loading and unloading clauses used in automobile liability policies, coverage afforded by loading-unloading clause ceases when goods have actually come to rest and every connection of motor vehicle with process of unloading has ceased. Johnson, Drake & Piper, Inc. v. Liberty Mut. Ins. Co., D.C.Minn., 258 F.Supp. 603, 606.

**Cominus** /kómənəs/. Lat. Immediately; hand-to-hand; in personal contact.

**Comitas** /kómətəs/. Lat. Courtesy; civility; comity. An indulgence or favor granted another nation, as a mere matter of indulgence, without any claim of right made. *Comitas inter communitates*; or *comitas inter gentes*; comity between communities or nations; comity of nations.

**Comitatu commisso** /kómətét(y)uw kəmish(iy)ow/. In old English law, a writ or commission, whereby a sheriff was authorized to enter upon the charges of a county.

**Comitatu et castro commisso** /kómətét(y)uw ət kástrɔw kəmisow/. A writ by which the charge of a county, together with the keeping of a castle, was committed to the sheriff.

**Comitatus** /kómətétəs/. In old English law, a county or shire; the body of a county. The territorial jurisdiction of a *comes*, *i.e.*, count or earl. 1 Bl.Comm. 116. An earldom. The county court, a court of great antiquity and of great dignity in early times. Also, the retinue or train of a prince or high governmental official. The retinue which accompanied a Roman proconsul to his province. The personal following of professional warriors.

**Comites** /kómətiyz/. Counts or earls. Attendants or followers. Persons composing the retinue of a high functionary.

Persons who are attached to the suite of a public minister.

**Comites paleys** /kómətiyz pələys/. Counts or earls palatine; those who had the government of a county palatine.

**Comitia** /kəmish(iy)ə/. In Roman law, an assembly, either (1) of the Roman curiæ, in which case it was called the "*comitia curiata vel calata*"; or (2) of the Roman centuries, in which case it was called the "*comitia centuriata*" (called also *comitia majora*); or (3) of the Roman tribes, in which case it was called the "*comitia tributa*." Only patricians were members of the first *comitia*, and only plebians of the last; but the *comitia centuriata* comprised the entire populace, patricians and plebians both, and was the great legislative assembly passing the *leges*, properly so called, as the senate passed the *senatus consulta*, and the *comitia tributa* past the *plebiscita*. Under the *Lex Hortensia*, 287 B.C., the *plebiscitum* acquired the force of a *lex*.

**Comitissa** /kómətísə/. In old English law, a countess; an earl's wife.

**Comitiva** /kómətáyvə/. In old English law, the dignity and office of a *comes* (count or earl); the same with what was afterwards called "*comitatus*." Also a companion or fellow-traveler; a troop or company of robbers.

**Comity** /kómətiy/. Courtesy; complaisance; respect; a willingness to grant a privilege, not as a matter of right, but out of deference and good will. Recognition that one sovereignty allows within its territory to the legislative, executive, or judicial act of another sovereignty, having due regard to rights of its own citizens. Nowell v. Nowell, Tex.Civ.App., 408 S.W.2d 550, 553. In general, principle of "comity" is that courts of one state or jurisdiction will give effect to laws and judicial decisions of another state or jurisdiction, not as a matter of obligation but out of deference and mutual respect. Brown v. Babbitt Ford, Inc., 117 Ariz. 192, 571 P.2d 689, 695. See also Full faith and credit clause.

*Comity of nations.* The recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws.

*Judicial comity.* The principle in accordance with which the courts of one state or jurisdiction will give effect to the laws and judicial decisions of another, not as a matter of obligation, but out of deference and respect.

**Command.** An order, imperative direction, or behest. To direct, with authority. Power to dominate and control.

**Commandement** /komònd(ə)món/. In French law, a writ served by the *huissier* pursuant to a judgment or to an executory notarial deed. Its object is to give notice to the debtor that if he does not pay the sum to which he has been condemned by the judgment, or which he

engaged to pay by the notarial deed, his property will be seized and sold.

**Commander in Chief.** One who holds supreme or highest command of armed forces. By Article II, § 2, of the Constitution it is declared that the President shall be commander in chief of the army and navy of the United States. The term implies supreme control of military operations not only with respect to strategy and tactics, but also in reference to the political and international aspects of the war.

**Commandery.** In old English law, a manor or chief messuage with lands and tenements thereto appertaining, which belonged to the priory of St. John of Jerusalem, in England; he who had the government of such a manor or house was styled the "commander," who could not dispose of it, but to the use of the priory, only taking thence his own sustenance, according to his degree. The manors and lands belonging to the priory of St. John of Jerusalem were given to Henry the Eighth by 32 Hen. VIII, c. 20, about the time of the dissolution of abbeys and monasteries; so that the name only of commanderies remains, the power being long since extinct.

**Commanditaires** /kəmændətérz/. Special partners; partners *en commandité*. See *Commandité*.

**Commandité** /komòndíté/. In French law, a partnership in which some furnish money, and others furnish their skill and labor in place of capital.

A special or limited partnership, where the contract is between one or more persons who are general partners, and jointly and severally responsible, and one or more other persons who merely furnish a particular fund or capital stock, and thence are called "*commanditaires*," or "*commanditaires*," or "partners *en commandité*," the business being carried on under the social name or firm of the general partners only, composed of the names of the general or complementary partners, the partners in *commandité* being liable to losses only to the extent of the funds or capital furnished by them. The term includes a partnership containing dormant rather than special partners.

**Commandment.** In old English law, an authoritative order of a judge or magisterial officer. Also, the act or offense of one who commanded another to transgress the law, or do anything contrary to law, as theft, murder, or the like. Particularly applied to the act of an accessory before the fact in inciting, procuring, setting on, or stirring up another to do the fact or act. See also *Command*.

**Commence.** To initiate by performing the first act or step. To begin, institute or start.

*Civil action* in most jurisdictions is commenced by filing a complaint with the court. Fed.R. Civil P. 3.

*Commencement of building or improvement*, within the meaning of mechanic's lien statute, is the visible commencement of actual operations on the ground for the erection of the building, which every one can readily recognize as commencement of a building, and which is done with intention to continue the work until building

is completed. *Diversified Mortgage Investors v. Gepada, Inc.*, 401 F.Supp. 682, 685.

*Criminal action* is commenced within statute of limitations at time preliminary complaint or information is filed with magistrate in good faith and a warrant issued thereon. *Knott v. State*, Okl.Cr., 387 P.2d 142, 144. A criminal prosecution is "commenced" (1) when information is laid before magistrate charging commission of crime, and a warrant of arrest is issued, or (2) when grand jury has returned an indictment. *Halberstadt v. Nelson*, 34 Misc.2d 472, 226 N.Y.S.2d 100, 103.

**Commencement of action.** See *Commence*.

**Commencement of prosecution.** See *Commence*.

**Commenda** /kəméndə/. In French law, the delivery of a benefice to one who cannot hold the legal title, to keep and manage it for a time limited and render an account of the proceeds. In commercial law, an association in which the management of the property was intrusted to individuals.

**Commenda est facultas recipiendi et retinendi beneficium contra jus positivum a suprema potestate** /kəméndə ést fəkáltās rəsipiyénday ét rətənénday bənəfish(iy)əm kóntrə jəs pözətáyvəm èy s(y)əpriymə pòwtəstétytí/. A commendam is the power of receiving and retaining a benefice contrary to positive law, by supreme authority.

**Commendam** /kəméndəm/. In ecclesiastical law, the appointment of a suitable clerk to hold a void or vacant benefice or church living until a regular pastor be appointed.

In commercial law, a species of limited partnership. The limited partnership (or *société en commandité*) of the French law has been introduced into the Code of Louisiana under the title of "*Partnership in Commendam*." Civ.Code La. art. 2810 (Civ.Code, art. 2839).

**Commendatio** /kòməndéysh(iy)ow/. In the civil law, commendation, praise, or recommendation, as in the maxim "simplex commendatio non obligat," meaning that mere recommendation or praise of an article by the seller of it does not amount to a warranty of its qualities.

**Commendation.** In feudal law, the act by which an owner of alodial land placed himself and his land under the protection of a lord, so as to constitute himself his vassal or feudal tenant.

**Commandators** /kóməndèytərz/. Secular persons upon whom ecclesiastical benefices were bestowed; called so because the benefices were commended and intrusted to their supervision. They are merely trustees.

**Commendatory.** He who holds a church living or preferment *in commendam*.

**Commendatory letters.** In ecclesiastical law, such as are written by one bishop to another on behalf of any of the clergy, or others of his diocese traveling thither, that they may be received among the faithful, or that the clerk may be promoted, or necessities administered to others, etc.

**Commendatus** /kòmandéytàs/. In feudal law, one who intrusts himself to the protection of another. A person who, by voluntary homage, put himself under the protection of a superior lord.

**Comment.** The expression of the judgment passed upon certain alleged facts by a person who has applied his mind to them, and who while so commenting assumes that such allegations of fact are true. The assertion of a fact is not a "comment."

**Comment on the evidence.** An instruction by judge to jury on the probative value of the evidence. *Cox v. Gustafson*, 261 Or. 159, 493 P.2d 52, 53. A statement by a trial judge will constitute such a comment only if the trial court's attitude towards the merits of the cause is reasonably inferable from the nature or manner of the judge's statement. *State v. Carr*, 13 Wash.App. 704, 537 P.2d 844, 849, 850.

**Commerce.** The exchange of goods, productions, or property of any kind; the buying, selling, and exchanging of articles. *Anderson v. Humble Oil and Refining Co.*, 226 Ga. 252, 174 S.E.2d 415, 417. The transportation of persons and property by land, water and air. *Union Pacific R. Co. v. State Tax Commissioner*, 19 Utah 2d 236, 429 P.2d 983, 984.

Intercourse by way of trade and traffic between different peoples or states and the citizens or inhabitants thereof, including not only the purchase, sale, and exchange of commodities, but also the instrumentalities and agencies by which it is promoted and the means and appliances by which it is carried on, and transportation of persons as well as of goods, both by land and sea. *Brennan v. Titusville*, 153 U.S. 289, 14 S.Ct. 829, 38 L.Ed. 719; *Railroad Co. v. Fuller*, 84 U.S. (17 Wall.) 568, 21 L.Ed. 710; *Hoke v. United States*, 227 U.S. 308, 33 S.Ct. 281, 57 L.Ed. 523. Also interchange of ideas, sentiments, etc., as between man and man.

The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country. National Labor Relations Act, § 2.

For purposes of Fair Labor Standards Act, "commerce" means trade, commerce, transportation, transmission, or communication among several states or between any state and any place outside thereof. *Wirtz v. B. B. Saxon Co.*, C.A.Fla., 365 F.2d 457, 460.

See also Affecting commerce; Chamber of Commerce; Interstate and foreign commerce; Interstate commerce; Interstate Commerce Act; Interstate Commerce Commission; Intrastate commerce.

**Commerce among the states.** Transportation and transacting business from one state to another, and also all component parts of such intercourse. *Dahnke-Walker*

*Milling Co. v. Bondurant*, 257 U.S. 282, 42 S.Ct. 106, 108, 66 L.Ed. 239. See Interstate commerce.

**Commerce with foreign nations.** Commerce between citizens of the United States and citizens or subject governments; commerce which, either immediately or at some stage of its progress, is extraterritorial. *U. S. v. Holliday*, 70 U.S. 407, 3 Wall. 407, 18 L.Ed. 182; *Veazie v. Moor*, 55 U.S. 568, 14 How. 568, 14 L.Ed. 545; *Lord v. Steamship Co.*, 102 U.S. 541, 26 L.Ed. 224. The same as *foreign commerce*, which see *below*. Power of Congress to regulate "commerce with foreign nations" comprehends every species of commercial intercourse. U.S. C.A.Const. Art. I, § 8, cl. 3. *Board of Trustees of University of Illinois v. U. S.*, Cust. & Pat.App., 289 U.S. 48, 53 S.Ct. 509, 77 L.Ed. 1025.

**Commerce with Indian tribes.** Commerce with individuals belonging to such tribes, in the nature of buying, selling, and exchanging commodities, without reference to the locality where carried on, though it be within the limits of a state. *U. S. v. Holliday*, 3 Wall. 407, 18 L.Ed. 182.

**Domestic commerce.** Commerce carried on wholly within the limits of the United States, as distinguished from foreign commerce. Also, commerce carried on within the limits of a single state, as distinguished from interstate commerce.

**Foreign commerce.** Commerce or trade between the United States and foreign countries. The term is sometimes applied to commerce between ports of two sister states not lying on the same coast, e.g., New York and San Francisco.

**Internal commerce.** Such as is carried on between individuals within the same state, or between different parts of the same state. Now more commonly called "intra-state" commerce.

**International commerce.** Commerce between states or nations entirely foreign to each other.

**Interstate commerce.** Such as is carried on between different states of the Union or between points lying in different states. See Interstate commerce.

**Intrastate commerce.** Such as is begun, carried on, and completed wholly within the limits of a single state. Contrasted with "interstate commerce" (*q.v.*).

**Commerce clause.** The provision of U.S.Const. (Art. I, § 8, cl. 3) which gives Congress exclusive powers over interstate commerce. This power is the basis for a considerable amount of federal legislation and regulation. See Commerce; Cooley doctrine; Interstate commerce.

**Commerce court.** A federal court in existence from 1910 to 1913 which had power to review and enforce determinations of the Interstate Commerce Commission.

**Commerce Department.** Part of executive branch of federal government headed by cabinet member (Secretary of Commerce) which is concerned with promoting domestic and international business and commerce;

may also be a department of state government with similar functions.

**Commerce power.** *See* Commerce clause.

**Commercía belli** /kəmársh(i)yə bélay/. War contracts. Contracts between nations at war, or their subjects. Agreements entered into by belligerents, either in time of peace to take effect in the event of war, or during the war itself, by which arrangement is made for non-hostile intercourse. They may take the form of armistices, truces, capitulations, cartels, passports, safe-conducts, safeguards.

**Commercial** /kəmárshəl/. Relates to or is connected with trade and traffic or commerce in general; is occupied with business and commerce. *Anderson v. Humble Oil & Refining Co.*, 226 Ga. 252, 174 S.E.2d 415, 416. Generic term for most all aspects of buying and selling.

**Commercial activity.** Term includes any type of business or activity which is carried on for a profit. *Lanski v. Montealegre*, 361 Mich. 44, 104 N.W.2d 772, 774. Activity relating to or connected with trade and traffic or commerce in general. *Steinbeck v. Gerosa*, 4 N.Y.2d 302, 175 N.Y.S.2d 1, 6, 151 N.E.2d 170, 173.

**Commercial agency.** An office for the collection of debts for clients; also an agency for gathering credit information.

**Commercial agent.** An officer in the consular service of the United States, of rank inferior to a consul. Also used as equivalent to commercial broker, *see infra*.

**Commercial bank.** An institution authorized to receive both demand and time deposits, to make loans of various types, to engage in trust services and other fiduciary funds, to issue letters of credit, to accept and pay drafts, to rent safety deposit boxes, and to engage in many similar activities. Formerly, such banks were the only institutions authorized to receive demand deposits, though today many other types of financial institutions are legally permitted to offer checking accounts and other similar services. *U.S. v. Philadelphia Nat. Bank*, D.C.Pa., 201 F.Supp. 348, 360.

**Commercial bribery.** A form of corrupt and unfair trade practice in which an employee accepts a gratuity to act against the best interests of his employer. *People v. Davis*, 33 Cr.R. 460, 160 N.Y.S. 769. May assume any form of corruption in which an employee is induced to betray his employer or to compete unfairly with a competitor. *Freedman v. U. S.*, 437 F.Supp. 1252, 1260. *See also* Bribery.

**Commercial broker.** One who negotiates the sale of merchandise without having the possession or control of it, being distinguished in the latter particular from a commission merchant (*q.v.*).

**Commercial code.** *See* Uniform Commercial Code.

**Commercial corporation.** One engaged in commerce in the broadest sense of that term.

**Commercial court.** In England, a court constituted as part of the Queen's Bench Division of the High Court, to

take causes and matters entered in the commercial list. Supreme Court Act, 1981, § 6.

**Commercial credit.** A letter of credit used to facilitate sales of goods (especially in international transactions) by insuring payment of the price to the seller-beneficiary upon her compliance with the terms of the credit procured by the buyer-customer.

**Commercial credit company.** Company which extends credit and finances dealers and manufacturers.

**Commercial domicile.** *See* Domicile.

**Commercial establishment.** A place where commodities are exchanged, bought or sold. *State ex rel. Kansas City Power & Light Co. v. Smith*, 342 Mo. 75, 111 S.W.2d 513, 515. The term contemplates a profit-making establishment.

**Commercial frustration.** Excuse of party from performance if contract depends on existence of given person or thing and such person or thing perishes, and if contract is rendered impossible by act of God, the law, or other party. *Wood v. Bartolino*, 48 N.M. 175, 146 P.2d 883, 885, 890. In theory it amounts to no more than a condition or term of a contract which the law implies to take the place of a covenant that it is assumed would have been inserted by the parties had the contingency which arose occurred to them at the time they made the contract. *Lloyd v. Murphy*, Cal.App., 142 P.2d 939, 942, 943. And doctrine is predicated upon premise of giving relief in a situation where parties could not reasonably protect themselves by terms of a contract against happening of subsequent events. *Berline v. Waldschmidt*, 159 Kan. 585, 156 P.2d 865, 867. Hence doctrine has no application where events were reasonably foreseeable and controllable by the parties. U.C.C. § 2-613. *See* Commercial impracticability; Impossibility (*Impossibility of performance of contract*).

**Commercial impracticability.** U.C.C. § 2-615 excuses either party from performing a contract where three conditions exist: (1) a contingency must occur, (2) performance must thereby be made "impracticable," and (3) the nonoccurrence of the contingency must have been a basic assumption on which the contract was made. *Neal-Cooper Grain Co. v. Texas Gulf Sulphur Co.*, C.A. Ill., 508 F.2d 283. *See also* Commercial frustration.

**Commercial insolvency.** Inability of a business to pay its debts as they become due in the regular and ordinary course of business. *See also* Bankrupt; Insolvency.

**Commercial instrument.** *See* Commercial paper.

**Commercial insurance.** *See* Insurance.

**Commercial law.** A phrase used to designate the whole body of substantive jurisprudence (*e.g.* Uniform Commercial Code; Truth in Lending Act) applicable to the rights, intercourse, and relations of persons engaged in commerce, trade, or mercantile pursuits. *See* Uniform Commercial Code.

**Commercial letter of credit.** *See* Letter of credit.

**Commercial loan.** Loans made to businesses, as distinguished from personal-consumer credit loans. The direct loan from a bank to a business customer for the purpose of providing funds needed by the customer in its business. *Board of Governors FRS v. Dimension Financial Corp.*, 471 U.S. 1065, 105 S.Ct. 2137, 85 L.Ed.2d 495. *See also* Loan.

**Commercial motor vehicle.** Those used primarily for business and industry as contrasted with pleasure vehicles, *e.g.* trucks.

**Commercial name.** *See* Trade name.

**Commercial paper.** Bills of exchange (*i.e.*, drafts), promissory notes, bank-checks, and other negotiable instruments for the payment of money, which, by their form and on their face, purport to be such instruments. Short-term, unsecured promissory notes, generally issued by large, well-known corporations and finance companies. U.C.C. Article 3 is the general law governing commercial paper. *See also* Bearer instrument; Instrument; Negotiable instruments; Note; Trade acceptance.

*Securities law.* Commercial paper is a "security" under the Glass-Steagall Act and therefore is subject to its proscriptions on commercial banks marketing "stocks, bonds, debentures, notes, or other securities." *Securities Industry Association v. Board of Governors of the Federal Reserve System et al.*, 468 U.S. 137, 104 S.Ct. 2979, 92 L.Ed.2d 107.

**Commercial property.** Income producing property (*e.g.* office buildings, apartments, etc.) as opposed to residential property.

**Commercial reasonableness.** May refer to goods which meet the warranty of merchantability. U.C.C. § 2-314.

In the context of UCC provisions relating to disposition of collateral upon lawful repossession, means that the qualifying disposition of the chattel must be made in a good faith attempt to dispose of the collateral to the parties' mutual best advantage. *Central Budget Corp. v. Garrett*, 48 A.D.2d 825, 368 N.Y.S.2d 268, 270.

**Commercial set.** Primary documents covering shipment of goods: invoice, bill of lading, bill of exchange, certificate of insurance.

**Commercial speech doctrine.** Speech that was categorized as "commercial" in nature (*i.e.* speech that advertised a product or service for profit or for business purpose) was formerly not afforded First Amendment freedom of speech protection, and as such could be freely regulated by statutes and ordinances. *Valentine v. Chrestensen*, 316 U.S. 52, 62 S.Ct. 920, 86 L.Ed. 1262. This doctrine, however, has been essentially abrogated. *Pittsburgh Press Co. v. Pittsburgh Comm. on Human Rights*, 413 U.S. 376, 93 S.Ct. 2553, 37 L.Ed.2d 669; *Bigelow v. Virginia*, 421 U.S. 809, 95 S.Ct. 2222, 44 L.Ed.2d 600; *Virginia State Bd. of Pharmacy v. Virginia Citizen Council*, 425 U.S. 748, 96 S.Ct. 1817, 48 L.Ed.2d 346.

**Commercial traveler.** A drummer; a traveling salesman who simply exhibits samples of goods kept for sale by his principal, and takes orders from purchasers for such goods, which goods are afterwards to be delivered by the principal to the purchasers, and payment for the goods is to be made by the purchasers to the principal on such delivery.

**Commercial unit.** Means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture, or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole. U.C.C. § 2-105(6).

**Commercial use.** Term implies use in connection with or for furtherance of a profit-making enterprise. *Roberts Enterprises, Inc. v. Secretary of Transp.*, 237 Kan. 276, 699 P.2d 479, 483.

**Commercium** /kəmɔːr(h)ɪjəm/. Lat. In the civil law, commerce; business; trade; dealings in the nature of purchase and sale; a contract.

**Commercium jure gentium commune esse debet, et non in monopolium et privatum paucorum quæstum convertendum** /kəmɔːr(h)ɪjəm júriy jénsh(i)yəm kəmyúwniy ésiy débət èt nón in mònəpów(i)yəm èt prəvéytəm pəkórəm kwéstəm kɔnvérténdəm/. Commerce, by the law of nations, ought to be common, and not converted to monopoly and the private gain of a few.

**Comminality** /kómənəltiy/. The commonality or the people.

**Comminatorium** /kəminətóriyəm/kòmənətóriyəm/. In old practice, a clause sometimes added at the end of writs, admonishing the sheriff to be faithful in executing them.

**Commingle** /kəmíngəl/. To put together in one mass; *e.g.* to combine funds or properties into common fund or stock.

**Commingling of funds.** Act of fiduciary in mingling funds of his beneficiary, client, employer, or ward with his own funds. Such act is generally considered to be a breach of his fiduciary relationship. May be applied to lawyer who mixes client's funds with his own and as a result is subject to disciplinary action under Model Rules of Professional Conduct.

**Commise** /kəmiyz/. In old French law, forfeiture; the forfeiture of a fief; the penalty attached to the ingratitude of a vassal.

**Commissaire** /kòmísér/. In French law, a person who receives from a meeting of shareholders a special authority, *viz.*, that of checking and examining the accounts of a manager or of valuing the *apports en nature* (*q.v.*). The name is also applied to a judge who receives from a court a special mission, *e.g.*, to institute an inquiry, or to examine certain books, or to supervise the operations of a bankruptcy.

**Commissaires-priseurs** /kòmísér-priyzár/. In French law, auctioneers, who possess the exclusive right of selling personal property at public sale in the towns in which they are established; and they possess the same right concurrently with notaries, *greffiers*, and *huissiers*, in the rest of the arrondissement.

**Commissaria lex** /kòmésériyá léks/. A principle of the Roman law relative to the forfeiture of contracts.

**Commissariat** /kòmésériyat/. The whole body of officers who make up the commissaries' department of an army.

**Commissary**. One who is sent or delegated to execute some office or duty as the representative of his superior; an officer of the bishop, who exercises spiritual jurisdiction in distant parts of the diocese. A general store, especially on a military base; a lunchroom, especially at a movie or T.V. studio.

**Commission**. A warrant or authority or letters patent, issuing from the government, or one of its departments, or a court, empowering a person or persons named to do certain acts, or to exercise the authority of an office (as in the case of an officer in the army or navy).

The authority or instructions under which one person transacts business or negotiates for another. In a derivative sense, a body of persons to whom a commission is directed. A body composed of several persons acting under lawful authority to perform some public service. *Standard Securities Service Corp. v. King*, 161 Tex. 448, 341 S.W.2d 423, 426. A board or committee officially appointed and empowered to perform certain acts or exercise certain jurisdiction of a public nature or relation; as a "Public Service Commission".

An authority or writ issuing from a court, in relation to a cause before it, directing and authorizing a person or persons named to do some act or exercise some special function; usually to take the depositions of witnesses.

**Civil law**. A species of bailment, being an undertaking, without reward, to do something in respect to an article bailed; equivalent to "mandate".

**Compensation**. The recompense, compensation or reward of an agent, salesman, executor, trustee, receiver, factor, broker, or bailee, when the same is calculated as a percentage on the amount of his transactions or on the profit to the principal. *Weiner v. Swales*, 217 Md. 123, 141 A.2d 749, 750. A fee paid to an agent or employee for transacting a piece of business or performing a service. *Fryar v. Currin*, App., 280 S.C. 241, 312 S.E.2d 16, 18. Compensation to an administrator or other fiduciary for the faithful discharge of his duties.

**Criminal law**. Doing or perpetration of a criminal act.

**Commission agent**. See Commission merchant; Factor.

**Commission broker**. Member of stock or commodity exchange who executes buy and sell orders.

**Commission del credere**. In commercial law, exists where an agent of a seller undertakes to guaranty to his principal the payment of the debt due by the buyer.

The phrase "*del credere*" is borrowed from the Italian language, in which its signification is equivalent to our word "guaranty" or "warranty."

**Commissioned office**. Officers in the armed forces who hold their rank by virtue of a commission from the President.

**Commissioner**. A person to whom a commission is directed by the government or a court. A person with a commission. An officer who is charged with the administration of the laws relating to some particular subject-matter, or the management of some bureau or agency of the government. Member of a commission or board. Specially appointed officer of court.

The administrative head of an organized professional sport.

In the commission form of municipal government, the term is applied to any of the several officers constituting the commission.

**Commissioners of bail**. Officers appointed to take recognizances of bail in civil cases.

**Commissioners of deeds**. Officers empowered by the government of one state to reside in another state, and there take acknowledgments of deeds and other papers which are to be used as evidence or put on record in the former state.

**Commissioners of highways**. Officers appointed in many of the states with power to take charge of the altering, opening, repair, and vacating of highways.

**County commissioners**. See County.

**Court Commissioners**. Term used variously to designate a lawyer appointed to hear facts and report to court. Specially appointed officer of court. A person appointed to conduct judicial sales. In admiralty, an officer appointed to hear and determine certain issues. See also *Magistrates (U.S. Magistrates)*.

**United States Commissioners**. The functions of U.S. Commissioners have been taken over by U.S. Magistrates. See *Magistrates (U.S. Magistrates)*.

**Commissioner's court**. In certain states, such court has jurisdiction over county affairs.

**Commission government**. A method of municipal government in which the legislative power is in the hands of a few persons.

**Commission merchant**. A term which is synonymous with "factor." It means one who receives goods, chattels, or merchandise for sale, exchange, or other disposition, and who is to receive a compensation for his services, to be paid by the owner, or derived from the sale, etc., of the goods. One whose business is to receive and sell goods for a commission, being intrusted with the possession of the goods to be sold, and usually selling in his own name. *Hughes v. Young*, 17 Tenn.App. 24, 65 S.W.2d 858, 864. See also Factor.

**Broker distinguished**. A "factor" or "commission merchant" is one who has the actual or technical possession of goods or wares of another for sale, while a "merchan-

dise broker" is one who negotiates the sale of merchandise without having it in his possession or control, being simply an agent with very limited powers. *Hughes v. Young*, 17 Tenn.App. 24, 65 S.W.2d 858, 864.

**Commission of anticipation.** In English law, an authority under the great seal to collect a tax or subsidy before the day. Legalized by Provisional Collection of Taxes Acts, 1913, 1968.

**Commission of appraisal and sale.** Where property has been arrested in an admiralty action *in rem* and ordered by the court to be sold, the order is carried out by a commission of appraisal and sale. In some cases (as where the property is to be released on bail and the value is disputed) a commission of appraisal only is required.

**Commission of array.** In old English law, a commission issued to send into every county officers to muster or set in military order the inhabitants. The introduction of commissions of lieutenancy, which contained, in substance, the same powers as these commissions, superseded them.

**Commission of assize** /kəmɪʃən əv əsáyz/. In English practice, a commission which formerly issued from the king, appointing certain persons as commissioners or judges of assize to hold the assizes in association with discreet knights during those years in which the justices in eyre did not come. A commission issued to judges of the high court or court of appeal, authorizing them to sit at the assizes for the trial of civil actions.

**Commission of charitable uses.** In old English law, this commission issued out of chancery to the bishop and others, where lands given to charitable uses were misemployed, or there was any fraud or dispute concerning them, to inquire of and redress the same, etc.

**Commission of delegates.** In old English law, when any sentence was given in any ecclesiastical cause by the archbishop, this commission, under the great seal, was directed to certain persons, usually lords, bishops, and judges of the law, to sit and hear an appeal of the same to the king, in the court of chancery. Abolished in 1832. Its jurisdiction was transferred to the Judicial Committee of the Privy Council.

**Commission of partition.** In the former English equity practice, this was a commission or authority issued to certain persons, to effect a division of lands held by tenants in common desiring a partition; when the commissioners reported, the parties were ordered to execute mutual conveyances to confirm the division. Commissioners appointed to make partition are in the nature of arbitrators. A separate commission is issued for each county. Administration of Justice Act, 1973, § 1.

**Commission of rebellion.** In English law, an attaching process, formerly issuable out of chancery, to enforce obedience to a process or decree; abolished in August, 1841.

**Commission of review.** In English ecclesiastical law, a commission formerly sometimes granted in extraordinary cases, to revise the sentence of the court of del-

egates. 3 Bl.Comm. 67. Now out of use, the privy council being substituted for the court of delegates, as the great court of appeal in all ecclesiastical causes.

**Commission of the peace.** In English law, a commission from the crown, appointing certain persons therein named, jointly and severally, to keep the *peace*, etc. Justices of the peace are appointed by special commission under the great seal; a separate commission being issued for each county and for the city of London.

**Commission to examine witnesses.** A commission issued out of the court in which an action is pending, to direct the taking of the depositions of witnesses who are beyond the territorial jurisdiction of the court. Fed.R. Civil P. 28.

**Commit.** To perpetrate, as a crime; to perform as an act; to entrust; to pledge.

To send a person to prison by virtue of a lawful authority, for any crime or contempt, or to a mental health facility, workhouse, reformatory, or the like, by authority of a court or magistrate.

To refer to a committee for action; *e.g.* a legislative bill.

**Commitment.** A warrant, order, or process by which court or magistrate directs ministerial officer to take person to penal institution or mental health facility. *Schildhaus v. City of New York*, 7 Misc.2d 859, 163 N.Y.S.2d 201, 206. Also, the act of taking or sending to the prison, mental health facility, or the like. A person is committed when he is actually sentenced to confinement by a court as contrasted with a suspended sentence or probation. *See also* *Mittimus*.

The proceedings directing confinement of a mentally ill or incompetent person for treatment. Commitment proceedings may be either civil or criminal; and voluntary or involuntary. Due process protections are afforded to persons involuntarily committed; *e.g.* periodic judicial review of continued confinement. *Fasulo v. Arafah*, 173 Conn. 473, 378 A.2d 553. *See* *Civil commitment*.

Agreement or pledge to do something; *e.g.* a statement by a lender that a loan will be made under certain terms. Commitments may be of various types, that is, a conditional commitment, subject to certain items being met, or a firm commitment, which is binding on the lender without conditions.

**Commitment fee.** Amount paid to lender by borrower for loan commitment in addition to interest. Such are common in real estate transactions.

**Committee.** A person, or an assembly or board of persons, to whom the consideration, determination, or management of any matter is committed or referred, as by a court or legislature. An individual or body to whom others have delegated or committed a particular duty, or who have taken on themselves to perform it in the expectation of their act being confirmed by the body they profess to represent or act for.

In legislatures a standing committee considers all bills, resolutions, and other items of legislative business falling within the category of matters over which it has



been given jurisdiction. Membership and rank on standing committees are largely determined by the seniority rule. A special (or select) committee investigates and reports on specific matters and terminates when that function has been rendered. A joint committee of a legislative body comprising two chambers is a committee consisting of representatives of each of the two houses, meeting and acting together as one committee.

**Committing magistrate.** An inferior judicial officer who is invested with authority to conduct the preliminary hearing of persons charged with crime, and either to discharge them for lack of sufficient *prima facie* evidence or to commit them to jail to await trial or (in some jurisdictions) to accept bail and release them thereon. The term is said to be synonymous with "examining court."

**Committitur** /kəmítətər/. An order or minute, setting forth that the person named in it *is committed* to the custody of the sheriff.

**Committitur piece** /kəmítətər piys/. In old English law, an instrument in writing on paper or parchment, which charged a person, already in prison, in execution at the suit of the person who arrested him.

**Commixtio** /kəmíksh(iy)ow/, or **commixtion** /kəmíkshən/. In the civil law, the mixing together or confusion of things, dry or solid, belonging to different owners, as distinguished from *confusio*, which has relation to liquids.

**Commodate.** Exists where property is loaned gratuitously by owner for sole benefit, accommodation, and use of borrower, and specific thing loaned is to be returned. *See also* Commodatum.

**Commodati actio** /kòmədətyat æksh(iy)ow/. Lat. In the civil law, an action of loan; an action for a thing lent. An action given for the recovery of a thing loaned (*commodatum*), and not returned to the lender.

**Commodatum** /kòmədətyəm/. A gratuitous loan of goods to be temporarily used by the bailee, and returned in specie. He who lends to another a thing for a definite time, to be enjoyed and used under certain conditions, without any pay or reward, is called "*commodans*"; the person who receives the thing is called "*commodatarius*", and the contract is called "*commodatum*". It differs from *locatio* and *conductio*, in this: that the use of the thing is gratuitous.

**Commodities** /kəmódətiyz/. Those things which are useful or serviceable, particularly articles of merchandise movable in trade. Goods, wares, and merchandise of any kind; articles of trade or commerce. Movable articles of value; things that are bought and sold. This word is a broader term than merchandise, and, in referring to commerce may include almost any article of movable or personal property.

Staples such as wool, cotton, etc. which are traded on a commodity exchange and on which there is trading in futures.

**Commodity.** *See* Commodities.

**Commodity Credit Corporation.** The Commodity Credit Corporation (CCC) was organized October 17, 1933, pursuant to Executive Order 6340 of October 16, 1933, under the laws of the State of Delaware, as an agency of the United States. From October 17, 1933, to July 1, 1939, the CCC was managed and operated in close affiliation with the Reconstruction Finance Corporation. On July 1, 1939, the CCC was transferred to the Department of Agriculture by the President's Reorganization Plan 1 of 1939. Approval of the Commodity Credit Corporation Charter Act on June 29, 1948 (62 Stat. 1070; 15 U.S.C.A. § 714), subsequently amended, established the CCC, effective July 1, 1948, as an agency and instrumentality of the United States under a permanent Federal charter. The purpose of CCC is to stabilize and protect farm income and prices, to assist in maintaining balanced and adequate supplies of agricultural commodities and their products, and to facilitate the orderly distribution of commodities.

**Commodity future.** A speculative transaction involving the sale for future delivery of a staple such as wool or cotton at a predetermined price. *See* Futures contract.

**Commodity futures contract.** *See* Futures contract.

**Commodity Futures Trading Commission.** An independent agency of the U.S. Government established to administer the Commodity Exchange Act; an Act designed to insure fair practices and honest dealing on the commodity futures exchanges and to provide a measure of control over speculative activity.

**Commodity option.** *See* Option.

**Commodity paper.** Commercial documents representing loans secured by bills of lading or warehouse receipts covering commodities.

**Commodity rate.** With reference to railroads, a rate which applies to a specific commodity alone;—distinguished from a "class rate", meaning a single rate which applies to a number of articles of the same general character.

**Commodum ex injuria sua nemo habere debet** /kómədəm eks ənjúriyə s(y)uwə níymow hábíriy débət/. No person ought to have advantage from his own wrong.

**Common, n.** Belonging or shared equally by more than one. Of frequent occurrence. Without special or distinguishing characteristics.

An incorporeal hereditament which consists in a profit which one man has in connection with one or more others in the land of another. *See* Profit (*Profit à prendre*).

Tract of land set apart by city or town for use by general public. Formerly, such land was to be used for common pasturage. Now usually called "parks."

**Common appendant.** In old English law, a right annexed to the possession of arable land, by which the owner is entitled to feed his beasts on the lands of another, usually of the owner of the manor of which the lands entitled to common are a part. 2 Bl.Comm. 33.

*Common appurtenant.* A right of feeding one's beasts on the land of another (in common with the owner or with others), which is founded on a grant, or a prescription which supposes a grant.

*Common in gross, or at large.* A species of common which is neither appendant nor appurtenant to *land*, but is annexed to a man's *person*, being granted to him and his heirs by deed; or it may be claimed by prescriptive right, as by a person of a church or the like corporation sole. 2 Bl.Comm. 34. It is a separate inheritance, entirely distinct from any other landed property, vested in the person to whom the common right belongs.

*Common of estovers.* A liberty of taking necessary wood for the use or furniture of a house or farm from off another's estate, in common with the owner or with others. 2 Bl.Comm. 35. It may be claimed, like common of pasture, either by grant or prescription.

*Common of piscary.* The right or liberty of fishing in another man's water, in common with the owner or with other persons. 2 Bl.Comm. 34. A liberty or right of fishing in the water covering the soil of another person, or in a river running through another's land. *Hardin v. Jordan*, 140 U.S. 371, 11 S.Ct. 808, 35 L.Ed. 428.

*Common, tenants in.* See *Tenant (Tenant in common)*.

**Common, adj.** Usual, ordinary, accustomed; shared among several; owned by several jointly. Belonging or pertaining to many or to the majority. Generally or prevalent, of frequent or ordinary occurrence or appearance; familiar by reason of frequency. *Webb v. New Mexico Pub. Co.*, 47 N.M. 279, 141 P.2d 333, 335. Also, usual, customary, and habitual, professed, or confessed, and used indefinitely in various terms implying illegal or criminal conduct, such as common scold, common thief, etc.

As to *common* Bail; Barretor; Carrier; Chase; Condit; Council; Day; Debtor; Diligence; Drunkard; Error; Fishery; Highway; Informer; Inn; Intendment of law; Intent; Jury; Labor; Nuisance; Occupant; Property; School; Scold; Seal; Sergeant; Stock; Traverse; Vouchee; Wall, see those titles.

*Common ancestor.* A person through whom two or more persons claim lineage.

*Common appearance.* The manner in which something generally appears; e.g. by common appearance blood is red.

*Common area.* In law of landlord-tenant, the portion of demised premises used in common by tenants over which landlord retains control (e.g. hallways, stairs) and hence for whose condition he is liable, as contrasted with areas of which tenant has exclusive possession. Term also refers to areas in common ownership and use by residents of condominium, subdivision, or planned unit development.

*Common assurances.* The several modes or instruments of conveyance established or authorized by the law of England. Called "common" because thereby every man's estate is assured to him.

*Common carrier.* Any carrier required by law to convey passengers or freight without refusal if the approved fare or charge is paid in contrast to private or contract carrier. One who holds himself out to the public as engaged in business of transportation of persons or property from place to place for compensation, and who offers services to the public generally. *Tilson v. Ford Motor Co.*, D.C.Mich., 130 F.Supp. 676, 678. Such is to be distinguished from a *contract* or *private* carrier. See *Carrier*.

*Common causes or suits.* A term anciently used to denote civil actions, or those depending between subject and subject, as distinguished from *pleas of the crown*.

*Common condidit.* See *Condit*.

*Common counts.* Old forms of pleading by which pleader sets forth in account form the basis of his claim such as money had and received, goods sold and delivered, etc. Traditionally, the various forms of action of assumpsit.

*Common defense.* In joint trial of two or more defendants, a defense asserted by all defendants.

*Common design.* Community of intention between two or more persons to do an unlawful act. Generally used in criminal context to describe an action taken by two or more persons after joint planning. Actions and declarations of one participant during existence of common design are chargeable to all participants. *Com. v. Dahlstrom*, 345 Mass. 130, 185 N.E.2d 759. See *Combination in restraint of trade*; *Conspiracy*.

*Common disaster.* Situation in which the insured and beneficiary appear to die simultaneously with no clear indication or evidence of which died first. See *Simultaneous Death Act*.

*Common disaster clause.* In insurance or will, a clause that provides for an alternative beneficiary in event both the insured (testator) and beneficiary (legatee) die in a common disaster. See *Simultaneous death clause*.

*Common enterprise.* See *Joint enterprise*.

*Common good.* Generic term to describe the betterment of the general public.

*Common knowledge.* Information widely shared by substantial number of people. See *Judicial notice*.

*Common prayer.* The liturgy, or public form of prayer prescribed by the Church of England to be used in all churches and chapels, and which the clergy are enjoined to use under a certain penalty.

*Common repute.* The prevailing belief in a given community as to the existence of a certain fact or aggregation of facts.

*Common right.* A term applied to rights, privileges, and immunities appertaining to and enjoyed by all citizens equally and in common, and which have their foundation in the common law.

*Common school.* A public elementary school.

**Common seller.** A common seller of any commodity is one who sells it frequently, usually, customarily, or habitually.

**Common sense.** Sound practical judgment; that degree of intelligence and reason, as exercised upon the relations of persons and things and the ordinary affairs of life, which is possessed by the generality of mankind, and which would suffice to direct the conduct and actions of the individual in a manner to agree with the behavior of ordinary persons.

**Common weal.** The public or common good or welfare.

**Commonable.** Entitled to common. Commonable beasts are either beasts of the plow, as horses and oxen, or such as manure the land, as kine and sheep. Beasts not commonable are swine, goats, and the like. 2 Bl. Comm. 33.

**Commonalty** /kómənəltiy/. The great body of citizens; the mass of the people, excluding the nobility. The body of people composing a municipal corporation, excluding the corporate officers. The body of a society or corporation, as distinguished from the officers.

**Commonance.** The commoners, or tenants and inhabitants, who have the right of common or commoning in open field.

**Common bar.** (Otherwise called "blank bar"). A common law plea to compel the plaintiff to assign the particular place where the trespass had been committed.

**Common bench.** The ancient name for the English court of common pleas. Its original title appears to have been simply "The Bench", but it was designated "Common Bench" to distinguish it from the "King's Bench", and because in it were tried and determined the causes of *common* persons, *i.e.*, causes between subject and subject, in which the crown had no interest.

**Common descriptive name.** Generic trademark; as used in the Lanham Act, this refers to a particular genus or class of which an individual article or service is but a member, and suggests the basic nature of the article or services. *Soweco, Inc. v. Shell Oil Co.*, C.A. Tex., 617 F.2d 1178, 1182.

**Common elements.** In condominium law, all portions of a condominium other than the units, *i.e.* physical portion of the condominium designated for separate ownership or occupancy. Uniform Condominium Act, 1-103(4), (25).

**Common enemy doctrine.** Under "common enemy doctrine" each landowner has an unqualified right, by operations on his own land, to fend off surface waters as he sees fit without being required to take into account the consequences to other landowners who also have the duty and right to protect themselves as best they can. *Reutner v. Vouga*, Mo.App., 367 S.W.2d 34, 41.

**Common enterprise.** Under securities law, a venture in which the fortunes of an investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties. S.E.C. v.

*Goldfield Deep Mines Co. of Nevada*, C.A.Cal., 758 F.2d 459, 463.

**Commoners.** In old English law, persons having a right of *common*. So called because they have a right to pasture on the waste, in common with the lord.

**Common fund doctrine.** This doctrine provides that a private plaintiff, or plaintiff's attorney, whose efforts create, discover, increase, or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of his litigation, including attorneys' fees. *Vincent v. Hughes Air West, Inc.*, C.A.Cal., 557 F.2d 759, 769.

**Common humanity doctrine.** Where a passenger becomes sick or is injured while en route, carrier owes duty under "common humanity doctrine" to render to passenger such reasonable care and attention as common humanity would dictate.

**Common knowledge.** Refers to what court may declare applicable to action without necessity of proof. It is knowledge that every intelligent person has, and includes matters of learning, experience, history, and facts of which judicial notice may be taken. *Shelley v. Chilton's Adm'r*, 236 Ky. 221, 32 S.W.2d 974, 977. *See also* Judicial notice.

**Common law.** As distinguished from statutory law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England. In general, it is a body of law that develops and derives through judicial decisions, as distinguished from legislative enactments. The "common law" is all the statutory and case law background of England and the American colonies before the American revolution. *People v. Rehman*, 253 C.A.2d 119, 61 Cal. Rptr. 65, 85. It consists of those principles, usage and rules of action applicable to government and security of persons and property which do not rest for their authority upon any express and positive declaration of the will of the legislature. *Bishop v. U. S.*, D.C.Tex., 334 F.Supp. 415, 418.

As distinguished from ecclesiastical law, it is the system of jurisprudence administered by the purely secular tribunals.

Calif. Civil Code, Section 22.2, provides that the "common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in all the courts of this State."

In a broad sense, "common law" may designate all that part of the positive law, juristic theory, and ancient custom of any state or nation which is of general and universal application, thus marking off special or local rules or customs.

For Federal common law, see that title.

As a compound adjective "common-law" is understood as contrasted with or opposed to "statutory," and sometimes also to "equitable" or to "criminal." See examples below.

**Common-law action.** Action governed by common law, rather than statutory, equitable, or civil law.

**Common-law assignments.** Such forms of assignments for the benefit of creditors as were known to the common law, as distinguished from such as are of modern invention or authorized by statute.

**Common-law cheat.** The obtaining of money or property by means of a false token, symbol, or device; this being the definition of a cheat or "cheating" at common law.

**Common-law contempt.** A name sometimes applied to proceedings for contempt which are criminal in their nature, as distinguished from those which are intended as purely civil remedies ordinarily arising out of the alleged violation of some order entered in the course of a chancery proceeding.

**Common-law copyright.** Authors' proprietary interest in his creation before it has been published. An intangible, incorporeal right in an author of literary or artistic productions to reproduce and sell them exclusively and arises at the moment of their creation as distinguished from federal or statutory copyrights which exist for the most part only in published works. Common law copyright is perpetual while statutory copyright is for term of years. Equitable relief is available for violation of common law copyright. *Edgar H. Wood Associates Inc. v. Skene*, 347 Mass. 351, 197 N.E.2d 886. The distinction which formerly existed between common law copyrights and statutory copyrights was abolished by the 1976 Copyright Act revision; though § 301 of the new Act specifically preserves common law copyrights accruing prior to January 1, 1978. See also Copyright.

**Common-law courts.** In England, those administering the common law.

**Common-law crime.** One punishable by the force of the common law, as distinguished from crimes created by statute.

**Common-law dedication.** See Dedication.

**Common-law extortion.** Corrupt collection of unlawful fee by an office under color of office.

**Common-law jurisdiction.** Jurisdiction of a court to try and decide such cases as were cognizable by the courts of law under the English common law. The jurisdiction of those courts which exercise their judicial powers according to the course of the common law.

**Common-law larceny.** See Larceny.

**Common-law lien.** One known to or granted by the common law, as distinguished from statutory, equitable, and maritime liens; also one arising by implication of law, as distinguished from one created by the agreement of the parties. It is a right extended to a person to

retain that which is in his possession belonging to another, until the demand or charge of the person in possession is paid or satisfied. *Whiteside v. Rocky Mountain Fuel Co.*, C.C.A.Colo., 101 F.2d 765, 769.

**Common-law marriage.** One not solemnized in the ordinary way (*i.e.* non-ceremonial) but created by an agreement to marry, followed by cohabitation. A consummated agreement to marry, between persons legally capable of making marriage contract, *per verba de praesenti*, followed by cohabitation. Such marriage requires a positive mutual agreement, permanent and exclusive of all others, to enter into a marriage relationship, cohabitation sufficient to warrant a fulfillment of necessary relationship of man and wife, and an assumption of marital duties and obligations. *Marshall v. State*, Okl.Cr., 537 P.2d 423, 429. Such marriages are invalid in many states; *e.g.* Missouri (after 1921), Indiana (after 1958), Maryland, Massachusetts, Nebraska (after 1939), Nevada, New Hampshire, New Jersey, New Mexico, New York (after 1933), North Dakota, Oregon, South Dakota (after 1959), Virginia, Washington, W. Virginia, Wisconsin, Wyoming.

**Common-law state.** See Community property.

**Common-law trademark.** One appropriated under common-law rules, regardless of statutes. *Stratton & Terstege Co. v. Stiglitz Furnace Co.*, 258 Ky. 678, 81 S.W.2d 1, 3.

**Common-law trust.** A business trust which has certain characteristics in common with corporations and in which trustees hold the property and manage the business and the shareholders are the trust beneficiaries or *cestui que trust*; sometimes known as a Massachusetts trust. See Massachusetts trust.

**Common-law wife.** A woman who was party to a common-law marriage; or one who, having lived with a man in a relation of concubinage during his life, asserts a claim, after his death, to have been his wife according to the requirements of the common law.

**Common lawyer.** A lawyer learned in the common law. This term is now generally obsolete.

**Common market.** An economic union established by the Treaty of Rome, 1957, which originally included Belgium, France, Italy, Luxembourg, the Netherlands and West Germany. Its official title is European Economic Community.

**Common nuisance.** A nuisance is a "common nuisance" or a "public nuisance", the terms being synonymous, where it affects the rights enjoyed by citizens as part of the public, that is, the rights to which every citizen is entitled. *Dahlstrom v. Roosevelt Mills, Inc.*, 27 Conn.Sup. 355, 238 A.2d 431, 432. See also Nuisance.

**Common pleas court.** See Court of Common Pleas.

**Common property.** Property held by two or more persons in common with each other; *e.g.* as tenants in common. Portion of rented premises over which landlord retains control but which may be used by tenants

such as hallways, stairways, etc. *See also* Community property.

**Common recovery.** In conveyancing, a species of common assurance, or mode of conveying lands by matter of record, formerly in frequent use in England. It was in the nature and form of an action at law, carried regularly through, and ending in a *recovery* of the lands against the tenant of the freehold; which recovery, being a supposed adjudication of the right, bound all persons, and vested a free and absolute fee-simple in the recoverer. 2 Bl.Comm. 357. Common recoveries were abolished by the statutes 3 & 4 Wm. IV, c. 74.

**Common right.** Right derivative from common law. *Strother v. Lucas*, 37 U.S. (12 Pet.) 410, 437, 9 L.Ed. 1137. Right peculiar to certain people is not a common right. *Perdue v. Zoning Bd. of Appeals of City of Norwalk*, 118 Conn. 174, 171 A. 26, 28.

**Commons.** The class of subjects in Great Britain exclusive of the royal family and the nobility. They are represented in parliament by the house of commons.

Part of the demesne land of a manor (or land the property of which was in the lord), which, being uncultivated, was termed the "lord's waste," and served for public roads and for common of pasture to the lord and his tenants. 2 Bl.Comm. 90.

Squares; pleasure grounds and spaces or open places for public use or public recreation owned by towns or cities—in modern usage usually called "parks."

**Commons, House of.** *See* House (*House of Commons*).

**Common stock.** Class of corporate stock which represents the residual ownership of the corporation. Holders of common stock have voting powers (to, for example, select directors of corporation) and to participate in the profits of the corporation by way of dividends (but only after preferred stockholders have been paid their dividends). Such stock is last to share in property of corporation on dissolution (after demands of creditors and senior security holders are satisfied).

**Common tenancy.** Type of tenancy in which tenants hold property in common without right of survivorship. May be holding of unequal shares among tenants. Such tenancy is subject to partition. *See also* Tenancy.

**Common thief.** One who by practice and habit is a thief. An adjudication of a person which may be made after a person has been convicted more than once of larceny. It generally carries an additional sentence beyond that for larceny. Sometimes known as common and notorious thief.

**Common trust fund.** One composed of funds contributed by estates, trusts and guardianships, maintained and operated by a bank or trust company for exclusive use of its own estates, trusts and guardianships, under permission of law of state in which it is located and according to rules and regulations promulgated by Federal Reserve System. *Mechanicks Nat. Bank of Concord v. D'Amours*, 100 N.H. 461, 129 A.2d 859, 862. Type of trust fund in which funds of many persons are commingled for purposes of economy of administration and

counselling and in which a bank or other financial institution is trustee; regulated almost entirely by statute. Several states have adopted the Uniform Common Trust Fund Act.

**Common wall.** *See* Party wall.

**Commonwealth.** The public or common weal or welfare. This cannot be regarded as a technical term of public law, though often used in political science. It generally designates, when so employed, a republican frame of government,—one in which the welfare and rights of the entire mass of people are the main consideration, rather than the privileges of a class or the will of a monarch; or it may designate the body of citizens living under such a government.

Sometimes it may denote the corporate entity, or the government, of a jural society (or state) possessing powers of self-government in respect of its immediate concerns, but forming an integral part of a larger government (or nation). In this latter sense, it is the official title of several of the United States (as Pennsylvania, Massachusetts, Virginia, and Kentucky), and would be appropriate to them all. In the former sense, the word was used to designate the English government during the protectorate of Cromwell.

Any of the individual States of the United States and the body of people constituting a state or politically organized community, a body politic, hence, a state, especially one constituted by a number of persons united by compact or tacit agreement under one form of government and system of laws. *Detres v. Lions Bldg. Corp.*, C.A.Ill., 234 F.2d 596, 600.

*See* Government; Nation; State.

**Commonwealth court.** In Pennsylvania, the Commonwealth Court has original jurisdiction of all civil actions or proceedings against Commonwealth or its officer (except habeas corpus or postconviction relief not ancillary to its appellate jurisdiction, and eminent domain); all civil actions or proceedings by Commonwealth or any officer, except eminent domain; and under numerous specified regulatory acts. Its original jurisdiction is exclusive, except in civil actions or proceedings brought by Commonwealth or its officers, which is concurrent with common pleas.

**Commorancy** /kómərənsiy/. In English law, the dwelling in any place as inhabitant; which consists in usually lying there. 4 Bl.Comm. 273. In American law, it is used to denote a mere temporary residence.

**Commorant** /kómərənt/. Staying or abiding; dwelling temporarily in a place. One residing in a particular town, city, or district.

**Commorientes** /kəmōriyéntiyz/. Several persons who perish at the same time in consequence of the same calamity. *See* Common (*Common disaster*).

**Commonth, or comorth** /kómərθ/. A contribution which has gathered at marriages, and when young priests said or sung the first masses. Prohibited by 26 Hen. VIII, c. 6.

**Commote** /kómət/. Half a cantred or hundred in Wales, containing fifty villages. Also a great seignory or lordship, and may include one or divers manors.

**Commotion** /kəmwʃən/. A condition of turmoil, civil unrest or insurrection. A civil commotion is an uprising among a mass of people which occasions a serious and prolonged disturbance and infraction of civil order not attaining the status of war or an armed insurrection; it is a wild and irregular action of many persons assembled together.

**Commune** /kəmyúwn/, *v.* To talk; to communicate.

**Commune** /kəmyúwniy/, *adj.* Lat. *See* Communis.

**Commune** /komyuwn/, *n.* A self-governing town or village. Smallest administrative district of many European countries. The name given to the committee of the people in the French revolution of 1793; and again, in the revolutionary uprising of 1871, it signified the attempt to establish absolute self-government in Paris, or the mass of those concerned in the attempt. In old French law, it signified any municipal corporation. And in old English law, the commonalty or common people.

Small community of people, usually with common interests, who own and share property in common.

**Commune concilium** /kəmyúwniy kənsil(i)yəm/. The King's Council. *See* Privy council.

**Commune concilium regni** /kəmyúwniy kənsil(i)yəm régnay/. The common council of the realm. One of the names of the English parliament. *See* *Communitas regni anglia*.

**Commune forum** /kəmyúwniy fórem/. The common place of justice. The seat of the principal courts, especially those that are fixed.

**Commune placitum** /kəmyúwniy plásətəm/. In old English law, a common plea or civil action, such as an action of debt.

**Commune vinculum** /kəmyúwniy vɪŋkyələm/. In old English law, a common or mutual bond. Applied to the common stock of consanguinity, and to the feudal bond of fealty, as the common bond of union between lord and tenant. 2 Bl.Comm. 250; 3 Bl.Comm. 230.

**Communia** /kəmyúwniyə/. In old English law, common things, *res communes*. Such as running water, the air, the sea, and sea shores.

**Communiæ** /kəmyúwniyiy/. In feudal law on the continent of Europe, this name was given to towns enfranchised by the crown, about the twelfth century, and formed into free corporations by grants called "charters of community".

**Communia placita** /kəmyúwniyə plásətə/. In old English law, common pleas or actions; those between one subject and another, as distinguished from pleas of the crown.

**Communia placita non tenenda in scaccario** /kəmyúwniyə plásətə nɒn tənəndə in skəkəriyow/. An ancient writ directed to the treasurer and barons of the exchequer, forbidding them to hold pleas between com-

mon persons (*i.e.*, not debtors to the king, who alone originally sued and were sued there) in that court, where neither of the parties belonged to the same.

**Communibus annis** /kəmyúwnəbəs éns/. In ordinary years; on the annual average.

**Communicate**. To bestow, convey, make known, recount, impart; to give by way of information; to talk over; to transmit information. *See also* Utter.

**Communication**. Information given; the sharing of knowledge by one with another; conference; consultation or bargaining preparatory to making a contract. Intercourse; connection. Act of or system of transmitting information. A "communication" is ordinarily considered to be a deliberate interchange of thoughts or opinions between two or more persons, as distinguished from "res gestae" expressions which are spontaneously or instinctively provoked, or made while under such shock or excitement as to preclude the possibility of design. *Gulf Oil Corp. v. Harris, Okl., 425 P.2d 957, 962.*

**Confidential communications**. These are certain classes of communications, passing between persons who stand in a confidential or fiduciary relation to each other (or who, on account of their relative situation, are under a special duty of secrecy and fidelity), which the law will not permit to be divulged, or allow them to be inquired into in a court of justice, for the sake of public policy and the good order of society. Examples of such privileged relations are those of husband and wife, doctor and patient, and attorney and client. Such are privileged at the option of the spouse-witness, patient-witness, client-witness. For purpose of rule that the attorney-client privilege is limited to "communication" between the attorney and the client, "communication" is not restricted to oral or written matters but extends to information communicated by the client to the attorney by other means. *State v. Hardin, Mo.App., 558 S.W.2d 804, 807. Fed.Evid.R. 501. See* Privileged communications.

**Libel or slander**. As an essential element of tort liability for libel or slander, such communication (*i.e.* publication) may be either printed, written, oral, or conveyed by means of gestures, or exhibition of a picture or statue. *See* Libel; Publication; Slander.

**Communi custodia** /kəmyúwnay kəstówdiyə/. In English law, an obsolete writ which anciently lay for the lord, whose tenant, holding by knight's service, died, and left his eldest son under age, against a stranger that entered the land, and obtained the ward of the body.

**Communi dividundo** /kəmyúwnay divədándow/. In the civil law, an action which lies for those who have property in common, to procure a division. It lies where parties hold land in common but not in partnership.

**Communio bonorum** /kəmyúwn(i)yow bənorəm/. In the civil law, a community of goods.

**Communis** /kəmyúwnəs/, **commune** /kəmyúwniy/, *adj.* Lat. Common. *See* Commune.

**Communis error facit jus** /kəmyúwnəs éhrər féysət jəs/. Common error, repeated many times, makes law.

**Communism.** A system of social organization in which goods are held in common, the opposite of the system of private property; communalism, any theory or system of social organization involving common ownership of agents of production of industry, the latter of which theories is referred to in the popular use of the word "communism" while the scientific usage sometimes conforms to the first alone and sometimes alternates between the first and second; also the principles and theories of the Communist Party. A system by which the state controls the means of production and the distribution and consumption of industrial products.

**Communis opinio** /kəmyúwnəs əpín(i)yow/. Common opinion; general professional opinion. According to Lord Coke (who places it on the footing of observance or usage), common opinion is good authority in law.

**Communis paries** /kəmyúwnəs páriyiyz/. In the civil law, a common or party wall.

**Communis rixatrix** /kəmyúwnəs ríksətrəks/. In old English law, a common scold (*q.v.*). 4 Bl.Comm. 168.

**Communis scriptura** /kəmyúwnəs skript(y)úra/. In old English law, a common writing; a writing common to both parties; a chirograph.

**Communis stipes** /kəmyúwnə stáypiyz/. A common stock of descent; a common ancestor.

**Communist.** Member of the Communist party or movement. Adherent or advocate of Communism.

**Communitas regni anglia** /kəmyúwnətəs régnay éngli-yiy/. The general assembly of the kingdom of England. One of the ancient names of the English parliament. 1 Bl.Comm. 148. *See also* Commune concilium regni.

**Community.** Neighborhood; vicinity; synonymous with locality. Conley v. Valley Motor Transit Co., C.C.A. Ohio, 139 F.2d 692, 693. People who reside in a locality in more or less proximity. A society or body of people living in the same place, under the same laws and regulations, who have common rights, privileges, or interests. Sacred Heart Academy of Galveston v. Karsch, 173 Tenn. 618, 122 S.W.2d 416, 417. It connotes a congeries of common interests arising from associations—social, business, religious, governmental, scholastic, recreational. Lukens Steel Co. v. Perkins, 70 App.D.C. 354, 107 F.2d 627, 631.

**Community account.** A bank account consisting of separate and community funds commingled in such manner that neither can be distinguished from the other. Smith v. Buss, 135 Tex. 566, 144 S.W.2d 529, 532.

**Community antenna television (CATV).** System of television reception in which signals from distant stations are picked up by large antenna and transmitted by cable to individual paying customers.

**Community debt.** One chargeable to the community (of husband and wife) rather than to either of the parties individually.

**Community house.** A house occupied by two or more persons or families. A tenement.

**Community lease.** Exists where a number of lessors owning interests in separate tracts execute a lease in favor of a single lessee. Howell v. Union Producing Co., C.A.Tex., 392 F.2d 95.

**Community of interest.** Term as applied to *relation of joint adventure* means interest common to both or all parties, that is, mixture or identity of interest in venture wherein each and all are reciprocally concerned and from which each and all derive material benefit and sustain a mutual responsibility. Carboneau v. Peterson, 1 Wash.2d 347, 95 P.2d 1043, 1055. *See* Joint venture.

In *class actions*, this refers to whatever grievance unites members of the class against the defendant but it must predominate. Nebel v. City of Chicago, 53 Ill. App.3d 890, 11 Ill.Dec. 620, 369 N.E.2d 74, 83.

In *labor law*, to determine the appropriate bargaining unit, this term includes such factors as bargaining history, operational integration, geographic proximity, common supervision, similarity in job function and degree of employee interchange. N.L.R.B. v. G.H.R. Energy Corp., C.A.La., 707 F.2d 110, 114.

**Community of profits.** This term, as used in the definition of a partnership (to which a community of profits is essential), means a proprietorship in them as distinguished from a personal claim upon the other associate as much as in the other. Moore v. Williams, 26 Tex.Civ. App. 142, 62 S.W. 977.

**Community property.** Property owned in common by husband and wife each having an undivided one-half interest by reason of their marital status. The nine states with community property systems are Louisiana, Texas, New Mexico, Arizona, California, Washington, Idaho, Nevada, and Wisconsin (with adoption of Uniform Marital Property Act). The rest of the states are classified as common law jurisdictions. The difference between common law and community property systems centers around the property rights possessed by married persons. In a common law system, each spouse owns whatever he or she earns. Under a community property system, one-half of the earnings of each spouse is considered owned by the other spouse.

**Community service.** A criminal sentence requiring that the offender perform some specific service to the community for some specified period of time.

**Commutation** /kòmýətéyshən/. Alteration; change; substitution; the act of substituting one thing for another.

In criminal law, the change of a punishment to one which is less severe; as from execution to life imprisonment. The President of the United States has the power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. U.S. Constitution, Art. 2, Sec. 2, cl. 1. With respect to state offenses, the governor of a state has the power to grant commutations. Sherwood v. Murphy, 123 N.Y.S.2d 360. *Compare* Amnesty; Pardon.

In commercial law, substituting one form of payment for another.

In civil law, the conversion of the right to receive a variable or periodical payment into the right to receive a fixed or gross payment; a substitution of one sort of payment for another, or of money payment in lieu of a performance of a compulsory duty or labor. Commutation may be effected by private agreement, but it is usually done under a statute.

**Commutation of taxes.** Payment of a designated lump sum (permanent or annual) for the privilege of exemption from taxes, or the settlement in advance of a specific sum in lieu of an ad valorem tax.

**Commutation of tithes.** Signifies the conversion of tithes into a fixed payment in money.

**Commutation ticket.** A railroad ticket giving the holder the right to travel at a certain rate for a limited number of trips (or for an unlimited number within a certain period of time) for a less amount than would be paid in the aggregate for so many separate trips.

**Commutative contract.** In civil law, one in which each of the contracting parties gives and receives an equivalent; *e.g.*, the contract of sale. *See* Contract.

**Commutative justice.** *See* Justice.

**Commuted value.** The present value of a future interest in property used in taxation and in evaluating damages. Present value of future payments when discounted.

**Comodato** /kōmōdátow/. In Spanish law, a contract by which one person lends gratuitously to another some object not consumable, to be restored to him in kind at a given period; the same contract as *commodatum* (*q.v.*).

**Compact, n.** An agreement or contract between persons, nations or states. Commonly applied to working agreements between and among states concerning matters of mutual concern. A contract between parties, which creates obligations and rights capable of being enforced, and contemplated as such between the parties, in their distinct and independent characters. A mutual consent of parties concerned respecting some property or right that is the object of the stipulation, or something that is to be done or forborne. *See also* Compact clause; Confederacy; Interstate compact; Treaty.

**Compact, adj.** Closely or firmly united or packed, as the particles of solid bodies; firm; solid; dense, as a compact texture in rocks; also, lying in a narrow compass or arranged so as to economize space; having a small surface or border in proportion to contents or bulk; close, as a compact estate, or a compact order or formation of troops.

**Compact clause.** Art. I, Section 10, Cl. 3, of U.S. Constitution provides: "No State shall, without the consent of Congress, . . . enter into any Agreement or *Compact* with another State . . ."

**Compact school district.** One so closely united and so nearly adjacent to the school building that all the students residing in the district may conveniently travel from their homes to the school building and return the same day in a reasonable length of time and with a

reasonable degree of comfort. *People ex rel. Frailey v. McNeely*, 376 Ill. 64, 32 N.E.2d 608, 610.

**Companage.** All kinds of food, except bread and drink.

**Companies Clauses Consolidation Act.** An English statute (8 Vict. c. 16), passed in 1845, which consolidated the clauses of previous laws still remaining in force on the subject of public companies. It is considered as incorporated into all subsequent acts authorizing the execution of undertakings of a public nature by companies, unless expressly excepted by such later acts. Its purpose is declared by the preamble to be to avoid repeating provisions as to the constitution and management of the companies, and to secure greater uniformity in such provisions. In England, companies are generally governed by the Companies Act, 1985.

**Companies court.** Collective title of those judges of the Chancery Division of the High Court with jurisdiction over all matters pertaining to companies registered in England. Companies Act, 1985, § 501.

**Company.** Union or association of persons for carrying on a commercial or industrial enterprise; a partnership, corporation, association, joint stock company.

**Company town.** A residential and commercial community opened by a company for public use and operated under color of state law. *Illinois Migrant Council v. Campbell Soup Co.*, C.A.Ill., 519 F.2d 391. Community exists primarily because of company; with major part of housing and stores owned by company.

**Company union.** Union whose membership is limited to the employees of a single company. Union under company domination.

**Joint stock company.** An association of individuals for purposes of profit, possessing a common capital contributed by the members composing it, such capital being commonly divided into shares which each member possesses one or more, and which are transferable by the owner. One having a joint stock or capital, which is divided into numerous transferable shares, or consists of transferable stock. A partnership whereof the capital is divided, or agreed to be divided, into shares so as to be transferable without the express consent of the co-partners.

**Limited company.** A company in which the liability of each shareholder is limited by the number of shares he has taken, so that he cannot be called on to contribute beyond the amount of his shares. In England, the memorandum of association of such company may provide that the liability of the directors, manager, or managing director thereof shall be unlimited.

**Comparable accommodation.** Within the rule that it is the rent generally prevailing on the freeze date for comparable accommodations in a defense-rental area that determines rent that may be charged, two accommodations are "comparable" if they are sufficiently similar to be regarded by an expert as of substantially equal rental value or if they are sufficiently similar so that an expert taking as a standard the rent prevailing for one and making allowances for such differences as would be



reflected in rental value would be able to determine the appropriate corresponding rent for the other. *Sirianni v. Bowles*, Em.App., 148 F.2d 343, 344.

**Comparables.** Properties used as comparisons to determine value of a specific property.

**Comparable sales.** As evidence of market value of condemned property, sales from a willing seller to a willing buyer of similar property in the vicinity or at about the same time as the taking. *U.S. v. 33.90 Acres of Land, Situated in Bexar County, C.A.Tex.*, 709 F.2d 1012, 1013.

**Comparable worth.** Term used to describe a class of wage discrimination claims based on the employer's use of different criteria in establishing the wage rates for male- and female-dominated jobs. Several states have enacted laws establishing comparable worth policies and processes for implementing pay adjustments for state employees.

**Comparatio literarum** /kòmperáysh(iy)ow lidərəm/. In the civil law, comparison of writings, or handwritings. A mode of proof allowed in certain cases.

**Comparative.** Proceeding by the method of comparison; founded on comparison; estimated by comparison.

**Comparative interpretation.** That method of interpretation which seeks to arrive at the meaning of a statute or other writing by comparing its several parts and also by comparing it as a whole with other like documents proceeding from the same source and referring to the same general subject.

**Comparative jurisprudence.** The study of the principles of legal science by the comparison of various systems of law.

**Comparative negligence.** Under comparative negligence statutes or doctrines, negligence is measured in terms of percentage, and any damages allowed shall be diminished in proportion to amount of negligence attributable to the person for whose injury, damage or death recovery is sought. Many states have replaced contributory negligence acts or doctrines with comparative negligence. Where negligence by both parties is concurrent and contributes to injury, recovery is not barred under such doctrine, but plaintiff's damages are diminished proportionately, provided his fault is less than defendant's, and that, by exercise of ordinary care, he could not have avoided consequences of defendant's negligence after it was or should have been apparent.

**Comparative rectitude.** Doctrine wherein relief by divorce is granted to the party least in fault when both have shown grounds for divorce. *Weber v. Weber*, 256 Ark. 549, 508 S.W.2d 725, 729.

**Comparative stylistics.** An evidential technique focusing on nonidentity of typist of questioned writings. Matter-of-fact solutions are premised on comparisons of the numerous stylistic alternatives in grammar and format, and the individualized habits and routine practices inherent in the repetitive reduction of like writings to paper, with emphasis on typewritings. In re Ciaffo-

ni's Estate, 498 Pa. 267, 446 A.2d 225, cert.den. *Cowden v. Ciaffoni*, 103 S.Ct. 447. See Fed. and Uniform Rules of Evid. 406 and 901. See also Comparative interpretation; Comparison of handwriting; Forensic linguistics.

**Comparison of handwriting.** A comparison by the juxtaposition of two writings, in order, by such comparison, to ascertain whether both were written by the same person.

A method of proof resorted to where the genuineness of a written document is disputed; it consists in comparing the handwriting of the disputed paper with that of another instrument which is proved or admitted to be in the writing of the party sought to be charged, in order to infer, from their identity or similarity in this respect, that they are the work of the same hand. Expert testimony with respect to such proof is permitted by Fed.Evid. Rule 702, and non-expert testimony is governed by Rule 901.

See also Comparative stylistics.

**Compascuum** /kəmpəskyuwəm/. Belonging to commonage *Jus compascuum*, the right of common pasture.

**Compassing.** Imagining or contriving, or plotting. In English law, "compassing the king's death" is treason. 4 Bl.Comm. 76.

**Compaternitas** /kòmpətərnətəs/. In the canon law, a kind of spiritual relationship contracted by baptism.

**Compaternity.** Spiritual affinity, contracted by sponsorship in baptism.

**Compatibility.** As applied to offices, such relation and consistency between the duties of two offices that they may be held and filled by one person. Harmonious relationship as between husband and wife.

**Compel.** To urge forcefully; under extreme pressure. Word "compel" as used in constitutional right to be free from being compelled in a criminal case to be a witness against one's self means to be subjected to some coercion, fear, terror, inducement, trickery or threat—either physically or psychologically, blatantly or subtly; the hallmark of compulsion is the presence of some operative force producing an involuntary response. *U. S. v. Escandar*, C.A.Fla., 465 F.2d 438, 442.

**Compellativus** /kòmpèlătáyvəs/. An adversary or accuser.

**Compelling state interest.** One which the state is forced or obliged to protect. *Coleman v. Coleman*, 32 Ohio St.2d 155, 291 N.E.2d 530, 534. Term used to uphold state action in the face of attack grounded on Equal Protection or First Amendment rights because of serious need for such state action. Also employed to justify state action under police power of state. *Printing Industries of Gulf Coast v. Hill*, 382 F.Supp. 801 (D.C.Tex.).

**Compensable.** Entitled to compensation. See, e.g., Compensable injury.

**Compensable death.** Within worker's compensation acts is one which results to employee from injury by accident arising out of and in course of employment.

**Compensable injury.** Such injury within workers' compensation act is one caused by an accident arising out of and in the course of the employment and for which the injured employee is entitled to receive compensation under such law. *Seymour v. Journal-Star Printing Co.*, 174 Neb. 150, 116 N.W.2d 297, 299. *See Workers' Compensation Acts.*

**Compensación** /kòmpensas(i)yówn/. In Spanish law, compensation; set-off. The extinction of a debt by another debt of equal dignity between persons who have mutual claims on each other.

**Compensate.** To make equivalent return to, to recompense, or to pay. *Hunt v. Hospital Service Plan of N.J.*, 59 N.J.Super. 219, 157 A.2d 575, 577. *See Compensation.*

**Compensating balance.** The balance a borrower from a bank is required to keep on deposit as a condition of the loan or for continuing line of credit.

**Compensating tax.** *See Use tax.*

**Compensatio** /kòmpənséysh(i)yow/. Lat. In the civil law, compensation, or set-off. A proceeding resembling a set-off in the common law, being a claim on the part of the defendant to have an amount due to him from the plaintiff deducted from his demand. 3 Bl.Comm. 305.

**Compensatio criminis** /kòmpənséysh(i)yow krimənəs/. (Set-off of crime or guilt). The compensation or set-off of one crime against another; the plea or defense of re-primination in a suit for a divorce; that is, that the complainant is guilty of the same kind of offense with which the respondent is charged.

**Compensation.** Indemnification; payment of damages; making amends; making whole; giving an equivalent or substitute of equal value. That which is necessary to restore an injured party to his former position. Remuneration for services rendered, whether in salary, fees, or commissions. Consideration or price of a privilege purchased.

Equivalent in money for a loss sustained; equivalent given for property taken or for an injury done to another; giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; recompense in value; recompense or reward for some loss, injury, or service, especially when it is given by statute; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or satisfaction for injury or damage of every description (including medical expenses). An act which a court orders to be done, or money which a court or other tribunal orders to be paid, by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person damaged may receive equal value for his loss, or be made whole in respect of his injury. *Hughson Condensed Milk Co. v. State Board of Equalization*, 23 Cal.App.2d 281, 73 P.2d 290, 292. *See also Damages.*

*See also* Accrued compensation; Commission; Daily rate of pay; Deferred compensation; Fee; Golden para-

chute; Incentive pay plans; Profit-sharing plan; Salary; Unreasonable compensation; Wages.

**Eminent domain.** Payment to owners of lands taken or injured by the exercise of the power of eminent domain. *See Just compensation.*

**Unemployment and workers' compensation.** Payments to an unemployed or injured worker or his dependents. *See Workers' Compensation Acts.*

**Compensation period.** Period fixed by unemployment or worker's compensation statutes during which unemployed or injured worker is to receive compensation.

**Compensatory damages.** *See Damages.*

**Comperendinatio** /kòmpərəndənéysh(i)yow/. In the Roman law, the adjournment of a cause, in order to hear the parties or their advocates a second time; a second hearing of the parties to a cause.

**Compertorium** /kòmpərtóriyəm/. In the civil law, a judicial inquest made by delegates or commissioners to find out and relate the truth of a cause.

**Comperuit ad diem** /kəmpəruwət əd dəyəm/. A plea in bar of an action of a debt on a bail bond that the defendant appeared at the day required.

**Compete.** To contend emulously; to strive for the position, reward, profit, goal, etc., for which another is striving. To contend in rivalry. *See Competition.*

**Competency.** In the law of evidence, the presence of those characteristics, or the absence of those disabilities, which render a witness legally fit and qualified to give testimony in a court of justice; applied, in the same sense, to documents or other written evidence. Evidence which is admissible as being able to assist the trier of fact (*i.e.* jury) in determining questions of fact, though it may not be believed. Competency differs from credibility. The former is a question which arises before considering the evidence given by the witness; the latter concerns the degree of credit to be given to his testimony. The former denotes the personal qualification of the witness; the latter his veracity. A witness may be competent, and yet give incredible testimony; he may be incompetent, and yet his evidence, if received, be perfectly credible. Competency is for the court; credibility for the jury. Yet in some cases the term "credible" is used as an equivalent for "competent". In law of contracts, of legal age without mental disability or incapacity. *See also* Ability; Authority; Capacity; Competent; Competent evidence; Competent witness; Duly qualified; Incompetency; Power; Qualified.

**Competency proceedings.** Hearings conducted to determine a person's mental capacity. Such may be held within criminal context to determine competency to stand trial, or to be sentenced, or to determine whether at time of offense the accused was legally sane. *See e.g.* 18 U.S.C.A. §§ 4241 et seq. Such may also be held in civil context to determine whether person should be committed for treatment.

**Competency to stand trial.** A person lacks competency to stand trial if he or she lacks capacity to understand

the nature and object of the proceedings, to consult with counsel, and to assist in preparing his or her defense. *Drope v. Missouri*, 420 U.S. 162, 95 S.Ct. 896, 43 L.Ed.2d 103. To be "competent to stand trial" a defendant must have, at time of trial, sufficient present ability to consult with his or her lawyer with a reasonable degree of understanding and a rational as well as factual understanding of the proceedings against him or her. *U.S. v. Taylor, C.A.Va.*, 437 F.2d 371, 375. Due process prohibits the government from prosecuting a defendant who is legally incompetent to stand trial. *Drope v. Missouri*, 420 U.S. 162, 95 S.Ct. 896, 43 L.Ed.2d 103; *Pate v. Robinson*, 383 U.S. 375, 385, 86 S.Ct. 836, 15 L.Ed.2d 815. The issue of competency is collateral to the issue of guilt. *Dusky v. United States*, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824. *See* Insanity.

**Competent.** Duly qualified; answering all requirements; having sufficient capacity, ability or authority; possessing the requisite physical, mental, natural or legal qualifications; able; adequate; suitable; sufficient; capable; legally fit. A testator may be said to be "competent" if he or she understands (1) the general nature and extent of his property; (2) his relationship to the people named in the will and to any people he disinherits; (3) what a will is; and (4) the transaction of simple business affairs. *See also* Capacity; Competency; Incompetency.

**Competent authority.** As applied to courts and public officers, this term imports jurisdiction and due legal authority to deal with the particular matter in question.

**Competent court.** A court, either civil or criminal, having lawful jurisdiction.

**Competent evidence.** That which the very nature of the thing to be proven requires, as, the production of a writing where its contents are the subject of inquiry. Also, generally, admissible (*i.e.* relevant and material) as opposed to "incompetent" or "inadmissible" evidence. *Frick v. State, Okl.Cr.*, 509 P.2d 135, 136. *See also* Competency; Evidence; Relevant evidence.

**Competent witness.** One who is legally qualified to be heard to testify in a cause. A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. *Fed.Evid.R.* 602.

As used in statutes relating to the execution of wills, the term means a person who, at the time of making the attestation, could legally testify in court to the facts which he attests by subscribing his name to the will. *See also* Competency.

**Competition.** Contest between two rivals. The effort of two or more parties, acting independently, to secure the business of a third party by the offer of the most favorable terms; also the relations between different buyers or different sellers which result from this effort. *Ingram Corp. v. Circle, Inc., La.App.*, 188 So.2d 96, 98. It is the struggle between rivals for the same trade at the same time; the act of seeking or endeavoring to gain what another is endeavoring to gain at the same time.

The term implies the idea of endeavoring by two or more to obtain the same object or result. *See also* Compete.

**Unfair competition in trade.** *See* Combination in restraint of trade; Price-fixing; Sherman Antitrust Act; Unfair competition.

**Competitive bidding.** Such bidding generally encompasses the submission of bids to complete a project and an award of the contract to the responsible bidder best able to complete the project in a manner which is financially most advantageous to community. *Marriott Corp. v. Metropolitan Dade County, Fla.App.*, 383 So.2d 662, 665.

**Competitive civil service examination.** Examination which conforms to measures or standards which are sufficiently objective to be capable of being challenged and reviewed by other examiners of equal ability and experience. Such exam may be open in which case all may take it or may be promotional in which case only those in service may compete against others in service.

**Competitive traffic.** Traffic which, as to any one carrier, originates at a point served also by another carrier, which other carrier handles the traffic at equal line-haul rates from origin to destination.

**Competitors.** Persons endeavoring to do the same thing and each offering to perform the act, furnish the merchandise, or render the service better or cheaper than his rival.

**Compilation** /kòmpeleyshən/. A bringing together of preexisting statutes in the form in which they were enacted, with the removal of sections which have been repealed and the substitution of amendments in an arrangement designed to facilitate their use. A literary production composed of the works or selected extracts of others and arranged in methodical manner. *Compare* Code; Codification. *See also* Compiled statutes; Revised statutes.

In accounting, a term used in connection with the presentation of financial statements when the accountant has accumulated or compiled the financial information of an entity and does not give assurance that the financial statements are presented in conformity with generally accepted accounting principles. The accountant's responsibility in a compiled set of financial statements is limited to reviewing the statements for obvious errors.

In copyright law, a "compilation" is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term "compilation" includes collective works. Copyright Act, 17 U.S.C.A. § 101. *See also* Collective work.

**Compile.** *See* Compilation.

**Compiled statutes.** A collection of the statutes existing and in force in a given state, with all laws and parts of laws relating to each subject-matter being brought together under one head and the whole arranged system-

atically, either under an alphabetical arrangement or some other plan of classification. *Compare* Code; Codification. *See also* Compilation; Revised statutes.

**Complainant.** One who applies to the courts for legal redress by filing complaint (*i.e.* plaintiff). Also, one who instigates prosecution or who prefers accusation against suspected person.

**Complaint.** The original or initial pleading by which an action is commenced under codes or Rules of Civil Procedure. *E.g.* Fed.R. Civil P. 3. The pleading which sets forth a claim for relief. Such complaint (whether it be the original claim, counterclaim, cross-claim, or third-party claim) shall contain: (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded. Fed.R. Civil P. 8(a). The complaint, together with the summons, is required to be served on the defendant. Rule 4. *See also* Counterclaim; Cross-claim; Supplemental complaint; Third party complaint.

In criminal law, a charge, preferred before a magistrate having jurisdiction, that a person named (or an unknown person) has committed a specified offense, with an offer to prove the fact, to the end that a prosecution may be instituted. The complaint can be "taken out" by the victim, the police officer, the district attorney, or other interested party. Although the complaint charges an offense, an indictment or information may be the formal charging document. The complaint is a written statement of the essential facts constituting the offense charged. In the federal courts, it is to be made upon oath before a magistrate. Fed.R.Crim.P. 3. If it appears from the complaint that probable cause exists that the person named in the complaint committed the alleged crime, a warrant (*q.v.*) for his arrest will be issued. Fed.R.Crim.P. 4.

**Complete, v.** To finish; accomplish that which one starts out to do.

**Complete, adj.** Full; entire; including every item or element of the thing spoken of, without omissions or deficiencies; as, a "complete" copy, record, schedule, or transcript.

Perfect; consummate; not lacking in any element or particular; as in the case of a "complete legal title" to land, which includes the possession, the right of possession, and the right of property (*i.e.* fee simple title). *Versailles Tp. v. Ulm*, 152 Pa.Super. 384, 33 A.2d 265, 267.

**Completed.** Finished; nothing substantial remaining to be done; state of a thing that has been created, erected, constructed or done substantially according to contract.

**Completed contract method.** A method used in accounting to report profit or loss on long term contracts

in the year the contract is complete, except that losses must be recognized in the year incurred. This method differs from the percent of completion method where revenues and expenses are recorded over the life of the contract in accordance with the level of progress. The completed contract method is not allowed for tax purposes for long term contracts entered into after February 28, 1986. The acceptable methods for contracts entered into after February 28, 1986 include; percent of completion and percent of completion—capitalized cost method which combines the elements of the completed contract and percent of completion methods. *See also* Percentage of completion method.

**Complete determination of cause.** Determination of every issue so as to render decree or judgment *res judicata*.

**Complete in itself.** In reference to a legislative act, means covering entire subject; not amendatory.

**Completeness rule.** Rule of evidence which permits further use of a document to explain portion of document already in evidence. *Camps v. N. Y. City Transit Authority*, C.A.N.Y., 261 F.2d 320. *See also* Open (*Open the door*).

**Complete operation rule.** This doctrine holds that an unloading clause in insurance policy covers the entire process involved in the moving of goods from the moment the goods are in the insured's possession and until they are given, at the place of destination, to the party to whom delivery is to be made. *Aetna Cas. & Sur. Co. v. State Farm Mut. Auto. Ins. Co.*, D.C.App., 380 A.2d 1385, 1387.

**Complete payment.** On a contract, the final payment.

**Completion.** The finishing or accomplishing in full of something theretofore begun. *See also* Substantial performance doctrine.

**Completion bond.** *See* Bond; Performance bond.

**Complex trust.** A trust with elaborate provisions as distinguished from a simple trust. May refer to trust in which trustees have complete discretion as to accumulating or distributing trust income, *i.e.* trustee need not distribute income annually, or make distributions other than from income. *Hay v. U. S.*, D.C.Tex., 263 F.Supp. 813. *See also* Trust.

**Compliance.** Submission; obedience; conformance.

**Complicated.** Consisting of many parts or particulars not easily severable in thought; hard to understand or explain; involved, intricate, confused.

**Complice.** One who is united with others in an ill design; an associate, confederate, accomplice, or accessory (*q.v.*). *See also* Conspiracy.

**Complicity** /kəmplisətɪy/. A state of being an accomplice; participation in guilt. *State v. Scheuering*, 226 La. 660, 76 So.2d 921, 924. Involvement in crime as principal or as accessory before fact. May also refer to activities of conspirators. *See* Accomplice; Conspiracy.

**Comply.** To yield; to accommodate, or to adapt oneself to; to act in accordance with; to accept.

**Composed of.** Formed of; consisting of.

**Composite work.** Within Copyright Act means work to which a number of authors have contributed distinguishable parts. Works containing distinguishable parts which are separately copyrightable. *Markham v. A.E. Borden Co.*, C.A.Mass., 206 F.2d 199, 201. See Copyright Act §§ 101, 103 (17 U.S.C.A.). See also Collective work; Compilation.

**Compositio mensurarum** /kòmpəzish(iy)ow men-shə-rérəm/. The ordinance of measures. The title of an ancient ordinance, not printed, mentioned in the statute 23 Hen. VIII, c. 4; establishing a standard of measures. 1 Bl.Comm. 275.

**Composition deed.** An agreement embodying the terms of a composition between a debtor and his creditors.

**Composition of matter.** In patent law, a substance composed of two or more different substances, without regard to form. A mixture or chemical combination of materials.

**Composition of tithes, or real composition.** This arises in English ecclesiastical law, when an agreement is made between the owner of lands and the incumbent of a benefice, with the consent of the ordinary and the patron, that the lands shall, for the future, be discharged from payment of tithes, by reason of some land or other real recompense given in lieu and satisfaction thereof. 2 Bl.Comm. 28.

**Composition with creditors.** An agreement, made upon a sufficient consideration, between an insolvent or embarrassed debtor and his creditors, whereby the latter, for the sake of immediate or sooner payment, agree to accept a payment less than the whole amount of their claims, to be distributed *pro rata*, in discharge and satisfaction of the whole. It constitutes an agreement not only between the debtor and his creditors but also one between the creditors themselves that each shall accept the lesser sums from the assets of the embarrassed debtor. Under the former Bankruptcy Act, if such a composition agreement expressly or secretly favored certain creditors, it was considered a preferential transfer and, as such, treated as an "act of bankruptcy." See Act of bankruptcy. Such arrangements are generally provided for under the federal Bankruptcy Code. See Bankruptcy proceedings (*Business reorganizations; Wage earner's plan*).

"Composition" should be distinguished from "accord." The latter properly denotes an arrangement between a debtor and a single creditor for a discharge of the obligation by a part payment or on different terms. The former designates an arrangement between a debtor and the whole body of his creditors (or at least a considerable proportion of them) for the liquidation of their claims by the dividend offered.

See also Arrangement with creditors; Assignment (*Assignment for benefit of creditors*).

**Compositio ulnarum et perticarum** /kòmpəzish(iy)ow əlnérəm ət pərtəkérəm/. The statute of ells and perch- es. The title of an English statute establishing a standard of measures. 1 Bl.Comm. 275.

**Compos mentis** /kòmpəs méntəs/. Sound of mind. Having use and control of one's mental faculties.

**Compos sui** /kòmpəs s(y)úway/. Having the use of one's limbs, or the power of bodily motion. *Si fuit ita compos sui quod itinerare potuit de loco in locum*, if he had so far the use of his limbs as to be able to travel from place to place.

**Computarius** /kòmpətériyəs/. In old English law, a party accounting.

**Compound, v.** To compromise; to effect a composition with a creditor; to obtain discharge from a debt by the payment of a smaller sum. To put together as elements, ingredients, or parts, to form a whole; to combine, to unite. To form or make up as a composite product by combining different elements, ingredients, or parts, as to combine a medicine. See Compounding crime.

**Compound, n.** A combination of two or more elements or things by means of human agency; an artificial or synthetic product.

**Compounder.** In Louisiana, the maker of a composition, generally called the "amicable compounder."

**Compounding a felony.** See Compounding crime.

**Compounding crime.** Compounding crime consists of the receipt of some property or other consideration in return for an agreement not to prosecute or inform on one who has committed a crime. There are three elements to this offense at common law, and under the typical compounding statute: (1) the agreement not to prosecute; (2) knowledge of the actual commission of a crime; and (3) the receipt of some consideration.

The offense committed by a person who, having been directly injured by a felony, agrees with the criminal that he will not prosecute him, on condition of the latter's making reparation, or on receipt of a reward or bribe not to prosecute.

The offense of taking a reward for forbearing to prosecute a felony; as where a party robbed takes his goods again, or other amends, upon an agreement not to prosecute.

See Conceal; Misprision of felony; Receiving stolen goods or property; Withholding of evidence.

**Compound interest.** Interest that is paid not only on the principal, but also on any interest earned but not withdrawn during earlier periods. Interest upon interest; *i.e.*, when the interest of a sum of money is added to the principal, and then bears interest, which thus becomes a sort of secondary principal.

**Compound larceny.** See Compounding crime; Larceny.

**Compra y venta** /kòmprə iy véntə/. In Spanish law, purchase and sale.

**Comprehensive zoning plan.** A general plan to control and direct the use and development of property in a municipality or in a large part thereof by dividing it into

districts according to the present and potential use of the properties. *Damick v. Planning and Zoning Commission of Town of Southington*, 158 Conn. 78, 256 A.2d 428. *See also* Planned unit development (PUD).

**Compremesso** /kòmpreμέςow/. In Italian law, the instrument whereby parties agree to submit to arbitration a dispute between them. The equivalent of "compromissum" under the Roman Law, the principles of which have been carried into the common law and are to be found in agreements of accord and satisfaction and compromise and settlement.

**Comprint.** A surreptitious printing of another book-seller's copy of a work, to make gain thereby, which was contrary to common law, and is illegal. *See* Infringement.

**Comprise.** To comprehend; include; contain; embrace; cover.

**Comprivigni** /kòmprəvignay/. In the civil law, children by a former marriage, (individually called "*privigni*," or "*privignæ*") considered relatively to each other. Thus, the son of a husband by a former wife, and the daughter of a wife by a former husband, are the *comprivigni* of each other.

**Compromise and settlement.** Settlement of a disputed claim by mutual concession to avoid a lawsuit. *Newsom v. Miller*, 42 Wash.2d 727, 258 P.2d 812, 814. An arrangement arrived at, either in court or out of court, for settling a dispute upon what appears to the parties to be equitable terms, having regard to the uncertainty they are in regarding the facts or the law and the facts together. An agreement or arrangement by which, in consideration of mutual concessions, a controversy is terminated. *Putnam v. Otsego Mut. Fire Ins. Co.*, 41 A.D.2d 981, 343 N.Y.S.2d 736, 738. *See* Alternative dispute resolution; Arbitration; Mediation; Settlement.

*Offer of compromise. See Offer, n.*

**Compromise verdict.** One which is reached only by the surrender of conscientious convictions on one material issue by some jurors in return for a relinquishment of matters in their like settled opinion on another issue, and the result is one which does not hold the approval of the entire panel. *See also* Allen charge; Verdict.

**Compromissarii sunt iudices** /kòmprəməsəriyay sənt júwdəsiyz/. Arbitrators are judges.

**Compromissarius** /kòmprəməsəriyəs/. In the civil law, an arbitrator.

**Compromissum** /kòmprəmisəm/. A submission to arbitration.

**Compromissum ad similitudinem iudiciorum redigitur** /kòmprəmisəm əd simələtyúwdənəm jədishiýörəm rədijətər/. A compromise is brought into affinity with judgments.

**Compte arrêté** /kóm(p)t əreytéy/. Fr. An account stated in writing, and acknowledged to be correct on its face by the party against whom it is stated.

**Comptroller** /kóm(p)trowlər/kəntrówlər/kóntr°. A public officer of a state or municipal corporation, or an officer of a business, charged with certain duties in relation to the fiscal affairs of the same, principally to examine and audit the accounts, to keep records, and report the financial situation from time to time. There are also officers bearing this name in the Treasury Department of the United States.

**Comptroller General.** Government official (head of G. A. O.) whose main function is to audit governmental agencies.

**Comptroller of Currency.** The Office of the Comptroller of the Currency was created by act of Congress approved February 25, 1863 (12 Stat. 665), as an integral part of the national banking system. The Comptroller, as the administrator of national banks, is responsible for the execution of laws relating to national banks and promulgates rules and regulations governing the operations of national and District of Columbia banks. Approval of the Comptroller is required for the organization of new national banks, conversion of State-chartered banks into national banks, consolidations or mergers of banks where the surviving institution is a national bank, and the establishment of branches by national banks.

**Compulsa** /kəmpəlsə/. A judicially attested copy of a testimonio.

**Compulsion.** Constraint; objective necessity; duress. Forcible inducement to the commission of an act. The act of compelling or the state of being compelled; the act of driving or urging by force or by physical or moral constraint; subjection to force. The compulsion which will excuse a criminal act must be present, imminent and impending and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm. To constitute "compulsion" or "coercion" rendering payment involuntary, there must be some actual or threatened exercise of power possessed, or supposedly possessed, by payee over payer's person or property, from which payer has no means of immediate relief except by advancing money. *See* Coercion; Duress.

**Compulsory, n.** In ecclesiastical procedure, a compulsory is a kind of writ to compel the attendance of a witness, to undergo examination.

**Compulsory, adj.** Involuntary; forced; coerced by legal process or by force of statute.

**Compulsory arbitration.** *See* Arbitration.

**Compulsory attendance.** Refers to legal obligation to attend; *e.g.* school attendance is compulsory up to certain age.

**Compulsory counterclaim.** *See* Counterclaim.

**Compulsory disclosure.** Term with variety of meanings; may refer to court order compelling disclosure of matters within scope of discovery rules (*see* Fed.R. Civil P. 26, 37, 45; Fed.R.Crim.P. 16, 17). May also refer to obligation of public officers or candidates for public

office to reveal assets and income from private sources. *See also* Subpoena.

**Compulsory insurance.** Motor vehicle liability coverage which is required in most states as a condition to registration of such vehicle.

**Compulsory license.** Licenses created under the Copyright Act to allow certain parties to make certain uses of copyrighted material without the explicit permission of the copyright owner, on payment of a specified royalty. *See e.g.* 17 U.S.C.A. § 115.

**Compulsory nonsuit.** An involuntary nonsuit. *See* Nonsuit.

**Compulsory payment.** One not made voluntarily, but exacted by duress, threats, the enforcement of legal process, or unconscionably taking advantage of another. May also refer to legal obligations, such as payment of taxes or support; or to creditor remedies such as garnishment or attachment.

**Compulsory process.** Process to compel the attendance in court of a person wanted there as a witness or otherwise; including not only the ordinary subpoena, but also a warrant of arrest or attachment if needed. A defendant's right, guaranteed by the federal Constitution, to compel the attendance of witnesses at trial and elicit testimony on behalf of the defense. *State v. Fort*, 197 N.J.Super. 113, 484 A.2d 323, 324. *See e.g.* Fed.R. Civil P. 45.

The 6th Amend., U.S.Const., provides that the accused shall have the right to "have compulsory process for obtaining witnesses in his favor".

*See* Bench warrant; Subpoena.

**Compulsory removal.** A term of art in admiralty law referring to a situation in which a hull has been abandoned by the owner and the hull underwriter, pursuant to government order, must be removed from navigable waters; under those circumstances the protection and indemnity underwriter, absorbing costs which no one else remains liable to pay, must remove the wreck or reimburse the government for removal. *Seaboard Shipping Corp. v. Jocharanne Tugboat Corp.*, C.A.N.Y., 461 F.2d 500, 504.

**Compulsory sale or purchase.** Term used to characterize the transfer of title to property under the exercise of the power of eminent domain, or by reason of judicial sale for nonpayment of taxes, or the like.

**Compulsory self-incrimination.** Any form of coercion, physical or psychological, which renders a confession of crime or an admission involuntary, is in violation of the 5th Amend., U.S.Const. and due process clause of 14th Amend. Such practices contravene the very basis of our criminal jurisprudence which is accusatorial not inquisitorial. *Rogers v. Richmond*, 365 U.S. 534, 81 S.Ct. 735, 5 L.Ed.2d 760. *See* Confession; Interrogation.

**Compurgation.** A method of trial used before the thirteenth century whereby a person charged with a crime could be absolved by swearing to innocence and produc-

ing a number of other persons willing to swear that they believed the accused's declaration of innocence.

**Compurgator** /kómpérgeytər/. One of several neighbors of a person accused of a crime, or charged as a defendant in a civil action, who appeared and swore that they believed him on his oath. 3 Bl.Comm. 341. *See* Wager of law.

**Computation.** The act of computing, numbering, reckoning, or estimating. The account or estimation of time by rule of law, as distinguished from any arbitrary construction of the parties.

**Computation of time.** For the purpose of calculating time under the Rules of Civil Procedure, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of some paper in court, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. Fed.R. Civ.P. 6(a); Fed.R.Crim.P. 45.

**Computo** /kəmpjútow/. Lat. To compute, reckon, or account. Used in the phrases *insimul computassent*, "they reckoned together," (*see* *Insimul*); *plene computavit*, "he has fully accounted," (*see* *Plene*); *quod computet*, "that he account," (*see* *Quod computet*).

**Computus** /kómpjədəs/. A writ to compel a guardian, bailiff, receiver, or accountant to yield up his accounts. It is founded on the statute Westm. 2, c. 12.

**Comte** /kównt/. Fr. A count or earl. In the ancient French law, the *comte* was an officer having jurisdiction over a particular district or territory, with functions partly military and partly judicial.

**Con.** *Adj.* A slang or cant abbreviation for confidence, as a *con* man or a *con* game.

**Con.** *Prep.* With.

**Con-** A prefix meaning with, together.

**Conatus quid sit, non definitur in jure** /kənétəs kwid sit nòn defənáytər in júriy/. What an attempt is, is not defined in law.

**Con buena fe** /kòn bwéynə féy/. In Spanish law, with (or in) good faith.

**Conceal.** To hide, secrete, or withhold from the knowledge of others. To withhold from utterance or declaration. To cover or keep from sight. To hide or withdraw from observation, or prevent discovery of. *People v. Eddington*, 201 Cal.App.2d 574, 20 Cal.Rptr. 122, 124. *See* Concealment.

*See* Compounding crime; Harbor; Misprision of felony; Withholding of evidence.

**Accessory after the fact.** A person who conceals the principal felon or the accessory before the fact is an accessory after the fact if he knows of the felony and of the identity of the felon. *See* 18 U.S.C.A. § 3. *See also* Accessory.

**Concealers** /kənsiylərz/. In old English law, such as find out concealed lands; that is, lands privily kept from the king by common persons having nothing to show for them. They are called "a troublesome, disturbant sort of men; turbulent persons."

**Concealment.** To conceal. A withholding of something which one knows and which one, in duty, is bound to reveal (e.g. assets in bankruptcy or divorce proceeding; health condition in insurance application). A "concealment" in law of insurance implies an intention to withhold or secrete information so that the one entitled to be informed will remain in ignorance. *Indiana Ins. Co. v. Knoll*, 142 Ind.App. 506, 236 N.E.2d 63, 70. See also Active concealment; Conceal; Fraudulent concealment.

**Concealment may be basis of estoppel.** Elements of such estoppel are concealment of material facts with knowledge thereof, ignorance thereof on part of person to whom representations are made, or from whom facts are concealed, intention that such person shall act thereon, and action induced thereby on his part. *Rhoads v. Rhoads*, 342 Mo. 934, 119 S.W.2d 247, 252; *Rosser v. Texas Co.*, 173 Okl. 309, 48 P.2d 327, 330. The doctrine of "estoppel by concealment and suppression" applies only where there has been reduction to practice of invention. *Bogoslowsky v. Huse*, 31 C.C.P.A. (Patents) 1034, 142 F.2d 75, 76.

**Concéder** /kònsédéy/. Fr. In French law, to grant. See Concession.

**Concedo** /kənsiyow/. Lat. I grant. A word used in old Anglo-Saxon grants, and in statutes merchant.

**Conception.** The beginning of pregnancy. As to human beings, the fecundation of the female ovum by the male spermatozoon resulting in human life capable of survival and maturation under normal conditions. Also, a plan, idea, thought or design.

Conception of invention is formation in mind of inventor of definite and permanent idea of complete and operative invention as it is thereafter to be applied in practice. *Radio Corp. of America v. Philco Corp.*, D.C. Pa., 201 F.Supp. 135, 149.

**Conceptum** /kənséptəm/. In the civil law, a theft (*furtum*) was called "*conceptum*," when the thing stolen was searched for, and found upon some person in the presence of witnesses.

**Concern.** To pertain, relate, or belong to; be of interest or importance to; have connection with; to have reference to; to involve; to affect the interest of. *People v. Photocolor Corporation*, 156 Misc. 47, 281 N.Y.S. 130.

**Concerning, concerned.** Relating to; pertaining to; affecting; involving; being substantially engaged in or taking part in.

**Concert.** A person is deemed to act in concert when he acts with another to bring about some preconceived result. See Accomplice; Conspiracy.

**Concerted action (or plan).** Action that has been planned, arranged, adjusted, agreed on and settled between parties acting together pursuant to some design

or scheme. Mutually contrived or planned activity, as, for example, a joint action by employees, such as a strike or picketing, with the intended purpose of furthering their bargaining demands or other mutual interests. See Accomplice; Combination in restraint of trade; Conspiracy; Joint tort-feasors.

**Concert of action rule.** A rule providing that an agreement by two persons to commit a particular crime cannot be prosecuted as a conspiracy when the crime is of such a nature as to necessarily require participation of two persons for its commission. *Robinson v. State*, 229 Md. 503, 184 A.2d 814, 820. See Wharton Rule.

**Concessi** /kənsésay/. Lat. I have granted. At common law, in a feoffment or estate of inheritance, this word does not imply a warranty; it only creates a covenant in a lease for years.

**Concessimus** /kənsésəməs/. Lat. We have granted. A term used in conveyances, the effect of which was to create a joint covenant on the part of the grantors.

**Concessio** /kənsés(h)i(yow)/. In old English law, a grant. One of the old common assurances, or forms of conveyance.

**Concession.** A grant, ordinarily applied to the grant of specific privileges by a government; e.g., French and Spanish grants in Louisiana. A voluntary grant, or a yielding to a claim or demand (e.g., when each side in a labor dispute reduces its demands to effect a settlement). A rebate or abatement (e.g., reduced rent for first year as inducement to lease property).

**Concessio per regem fieri debet de certitudine** /kənsés(h)i(yow) pər riyjəm fáyərəy débət diy sɔrtət(y)úwdəniy/. A grant by the king ought to be made from certainty.

**Concessio versus concedentem latam interpretationem habere debet** /kənsés(h)i(yow) vɔrsəs kònsədéntəm léytəm intəprətèyshiýównəm heybiriý débət/. A grant ought to have a broad interpretation (to be liberally interpreted) against the grantor.

**Concessit solvere** /kənsésət sólvəriy/. He granted and agreed to pay. In English law, an action of debt upon a simple contract.

**Concessor** /kənsésər/. In old English law, a grantor.

**Concessum** /kənsésəm/. Accorded; conceded. This term, frequently used in the old reports, signifies that the court admitted or assented to a point or proposition made on the argument.

**Concessus** /kənsésəs/. A grantee.

**Conciergerie** /kònsyerzhəriy/. The office or lodge of the concierge or janitor. A famous prison attached to the Palais de Justice in Paris.

**Conciliation.** The adjustment and settlement of a dispute in a friendly, unantagonistic manner. Used in courts before trial with a view towards avoiding trial and in labor disputes before arbitration. See Arbitration;



Court of Conciliation; Mediation; Pre-trial conference; Settlement.

**Concilium** /kənsiliyəm/. Lat. A council.

In Roman law, a meeting of a section of the people to consider and decide matters especially affecting itself. Also argument in a cause, or the sitting of the court to hear argument; a motion for a day for the argument of a cause; a day allowed to a defendant to present his argument; an imparlance.

**Concilium ordinarium** /kənsiliyəm ordənəriyəm/. In Anglo-Norman times, an executive and residuary judicial committee of the *Aula Regis* (q.v.).

**Concilium regis** /kənsiliyəm rijsəs/. An ancient English tribunal existing during the reigns of Edward I and Edward II, to which were referred cases of extraordinary difficulty.

**Concionator** /kónshəneytər/. In old records, a common council man; a freeman called to a legislative hall or assembly.

**Conclude.** To finish; determine; to estop; to prevent.

**Concluded.** Ended; determined; estopped; prevented from.

**Conclusion.** The end; the termination; the act of finishing or bringing to a close. The conclusion of a declaration or complaint is all that part which follows the statement of the plaintiff's cause of action. In trial practice, it signifies making the final or concluding address to the jury or the court; i.e. the summation; closing argument.

**Conclusion against the form of the statute.** In common law pleading, the proper form for the conclusion of an indictment for an offense created by statute was the technical phrase "against the form of the statute in such case made and provided"; or, in Latin, *contra formam statuti*.

**Conclusion of fact.** An inference drawn from the subordinate or evidentiary facts. See also Interference.

**Conclusion of law.** Statement of court as to law applicable on basis of facts found by jury. Finding by court as determined through application of rules of law. The final judgment or decree required on basis of facts found or verdict. *Peoples v. Peoples*, 10 N.C.App. 402, 179 S.E.2d 138, 141. Propositions of law which judge arrives at after, and as a result of, finding certain facts in case tried without jury or an advisory jury and as to these he must state them separately in writing. Fed.R. Civil P. 52(a). See also Judgment.

**Conclusive.** Shutting up a matter; shutting out all further evidence; not admitting of explanation or contradiction; putting an end to inquiry; final; irrefutable; decisive. Beyond question or beyond dispute; manifest; plain; clear; obvious; visible; apparent; indubitable; palpable.

As to conclusive proof, see Proof.

**Conclusive evidence.** That which is incontrovertible, either because the law does not permit it to be contra-

dicted, or because it is so strong and convincing as to overbear all proof to the contrary and establish the proposition in question beyond any reasonable doubt. See Conclusive presumption; Judicial notice; Presumption; Proof.

**Conclusive presumption.** Exists when an ultimate fact is presumed to be true upon proof of another fact, and no evidence, no matter how persuasive, can rebut it; an example is the presumption that a child less than a specified age is unable to consent to sexual intercourse. *McInerney v. Berman*, D.C.Mass., 473 F.Supp. 187, 188. Sometimes referred to as irrebuttable presumption. See Presumption.

**Concomitant actions.** Civil actions which are brought together generally for some type of relief.

**Concord.** An agreement between two persons, one of whom has a right of action against the other, settling what amends shall be made for the breach or wrong. A compromise or an accord.

In the old process of levying a fine of lands, the concord was an agreement between the parties (real or feigned) in which the deforciant (or he who keeps the other out of possession) acknowledges that the lands in question are the right of complainant; and, from the acknowledgment or admission of right thus made, the party who levies the fine is called the "cognizor," and the person to whom it is levied the "cognizee." 2 Bl.Comm. 350. An agreement between two or more, upon a trespass committed, by way of amends or satisfaction for it.

**Concordare leges legibus est optimus interpretandi modus** /kəŋkərdəriy liyjiyz liyjbəs est óptəməs əntərpətəndəy mówdəs/. To make laws agree with laws is the best mode of interpreting them.

**Concordat.** A compact, covenant or convention between two or more independent governments.

An agreement made by a temporal sovereign with the pope, relative to ecclesiastical matters.

**Concordia** /kəŋkórdriyə/. Lat. In old English law, an agreement, or concord. The agreement or unanimity of a jury. *Compellere ad concordiam*.

**Concordia discordantium canonum** /kəŋkórdriyə diskordəŋsh(iy)əm kənənəm/. The harmony of the discordant canons. A collection of ecclesiastical constitutions made by Gratian, an Italian monk, A.D. 1151; more commonly known by the name of "*Decretum Gratiani*."

**Concordia parvæ res crescunt et opulentia lites** /kəŋkórdriyə párvuiy riyz kréskənt èd opyləŋsh(iy)ə láytiyz/. Small means increase by concord and litigations by opulence.

**Concubinage** /kəŋkyúwbənej/. Living together (i.e. cohabitation) of persons not legally married.

**Concubinatus** /kəŋkyúwbənéytəs/. In Roman law, an informal, unsanctioned, or "natural" marriage, as contradistinguished from the *justæ nuptiæ*, or *justum matrimonium*, the civil marriage.

**Concubine** /kónkyábàyn/. A woman who cohabits with a man to whom she is not married. A mistress. A sort of inferior wife, among the Romans, upon whom the husband did not confer his rank or quality.

**Concur.** To agree; accord; act together; consent. To agree with the result reached by another, but not necessarily with the reasoning or the logic used in reaching such a result. In the practice of appellate courts, a "concurring opinion" is one filed by one of the judges or justices, in which he agrees with the conclusions or the result of another opinion filed in the case (which may be either the opinion of the court or a dissenting opinion) though he states separately his views of the case or his reasons for so concurring.

In Louisiana law, to join with other claimants in presenting a demand against an insolvent estate.

**Curator** /kónkyúrətər/. In the civil law, a joint or co-curator, or guardian.

**Concurrence.** A meeting or coming together; agreement or union in action; meeting of minds; union in design; consent. *Babyak v. Alten*, 106 Ohio App. 191, 154 N.E.2d 14, 18.

**Concurrence déloyale.** A term of the French law nearly equivalent to "unfair trade competition;" and used in relation to the infringement of rights secured by trademarks, etc. It signifies a dishonest, perfidious, or treacherous rivalry in trade, or any manœuvre calculated to prejudice the good will of a business or the value of the name of a property or its credit or renown with the public, to the injury of a business competitor.

**Concurrent.** Running together; having the same authority; acting in conjunction; agreeing in the same act or opinion; pursuit of same course; contributing to the same event; contemporaneous. Co-operating, accompanying, conjoined, associated, concomitant, joint and equal, existing together, and operating on the same subject. United in agreement. *State ex rel. School Dist. No. 8 v. Lensman*, 108 Mont. 118, 88 P.2d 63, 68.

As to *concurrent* Covenant; Insurance; Lease; Resolution; and Writ, see those titles.

**Concurrent causes.** Causes acting contemporaneously and together causing injury, which would not have resulted in absence of either. Two distinct causes operating at the same time to produce a given result, which might be produced by either, are "concurrent causes"; but two distinct causes, successive and unrelated in an operation, cannot be concurring, and one will be regarded as the proximate and efficient and responsible cause, and the other will be regarded as the remote cause. *See also* Cause.

**Concurrent conditions.** Conditions which must occur or be performed at the same time; they are mutually dependent. No obligations arise until these conditions are simultaneously performed. When each party to a transaction is subject to mutual conditions precedent, these are concurrent conditions. *McFadden v. Wilder*, 6 Ariz.App. 60, 429 P.2d 694. *See also* Conditions concurrent.

**Concurrent estates.** Ownership or possession of property by two or more persons at the same time; *e.g.* joint tenancy, tenancy in common.

**Concurrent interests.** *See* Concurrent estates.

**Concurrent jurisdiction.** The jurisdiction of several different tribunals, each authorized to deal with the same subject-matter at the choice of the suitor. Authority shared by two or more legislative, judicial, or administrative officers or bodies to deal with the same subject matter. Jurisdiction exercised by different courts, at same time, over same subject matter, and within same territory, and wherein litigants may, in first instance, resort to either court indifferently. *State v. Stueve*, 260 Iowa 1023, 150 N.W.2d 597, 602. For example, some cases can be heard in a federal or state court. When a case can only be tried in federal court, or only in state court, jurisdiction is "exclusive."

**Concurrent liens.** Two or more liens or possessory rights in the nature of liens on the same property and possessing the same priority.

**Concurrent negligence.** Consists of the negligence of two or more persons concurring, not necessarily in point of time, but in point of consequence, in producing a single indivisible injury. *Travelers Indemnity Co. v. Towbridge*, Com.Pl., 38 Ohio Misc. 55, 311 N.E.2d 901, 905. *See also* Comparative negligence; Concurrent tortfeasors; Contributory negligence.

**Concurrent power.** The power of either Congress or the State legislatures, each acting independently of the other, to make laws on the same subject matter.

**Concurrent sentences.** Two or more terms of imprisonment, all or part of each term of which is served simultaneously and the prisoner is entitled to discharge at the expiration of the longest term specified. *State ex rel. Lillemo v. Tahash*, 280 Minn. 176, 159 N.W.2d 99, 102. The existence of one valid conviction may make unnecessary review of other convictions when concurrent sentences have been given. *U.S. v. Montemayor*, C.A.Tex., 703 F.2d 109, 114.

**Concurrent tortfeasors.** Those whose independent, negligent acts combined or concurred at one point in time to injure a third party. *Radford-Shelton & Associates Dental Laboratory, Inc. v. Saint Francis Hospital, Inc.*, Okl.App., 569 P.2d 506, 509. *See also* Comparative negligence; Concurrent negligence.

**Concurring opinion.** A separate opinion delivered by one or more judges which agrees with the decision of the majority of the court but offering own reasons for reaching that decision. *See also* Concur.

**Concurso** /kəŋkərsow/. In the law of Louisiana, the name of a suit or remedy to enable creditors to enforce their claims against an insolvent or failing debtor. Litigation or opportunity of litigation between various creditors, each claiming adversely to one another to share in a fund or an estate, object being to assemble in one accounting all claimants on the fund.

**Concursus** /kəŋkərsəs/. In the civil law, a running together; a collision, as *concursus creditorum*, a conflict among creditors. A concurrence, or meeting, as *concursum actionum*, concurrence of actions. A proceeding in Louisiana similar to interpleader.

**Concussio** /kəŋkəsh(iy)ow/. In the civil law, the offense of extortion by threats of violence.

**Concussion.** In the civil law, the unlawful forcing of another by threats of violence to give something of value. It differs from robbery, in this: That in robbery the thing is taken by force, while in concussion it is obtained by threatened violence.

Loss or alteration of consciousness from a direct, closed head injury.

**Conditio** /kəndiədət/. In ecclesiastical law, the name of a plea entered by a party to a libel filed in the ecclesiastical court, in which it is pleaded that the deceased made the will which is the subject of the suit, and that he was of sound mind.

**Condemn.** To adjudge or sentence. To find or adjudge guilty; especially with reference to pronouncement of sentence of death for capital offense. To declare a building, ship, or the like, unfit for habitation, use or occupation. To adjudge (as an admiralty court) that a vessel is a prize, or that she is unfit for service. To set apart or expropriate property for public use, in the exercise of the power of eminent domain. *See also* Condemnation.

**Condemnation** /kəndəmnéyshən/. Process of taking private property for public use through the power of eminent domain. "Just compensation" must be paid to owner for taking of such (5th Amend., U.S. Constitution). *See also* Constructive taking; Damages; Eminent domain; Expropriation; Just compensation; Public use; Similar sales; Taking.

**Admiralty law.** The judgment or sentence of a court having jurisdiction and acting *in rem*, by which: (1) it is declared that a vessel which has been captured at sea as a prize was lawfully so seized and is liable to be treated as prize; or (2) that property which has been seized for an alleged violation of the revenue laws, neutrality laws, navigation laws, etc., was lawfully so seized, and is, for such cause, forfeited to the government; or (3) that the vessel which is the subject of inquiry is unfit and unsafe for navigation.

**Civil law.** A sentence or judgment which condemns some one to do, to give, or to pay something, or which declares that his claim or pretensions are unfounded. *State v. Harr*, 24 Tenn.App. 298, 143 S.W.2d 893, 895.

**Excess condemnation.** Taking of property not strictly needed for a public use, or taking of more property than is needed for a public use.

**Inverse condemnation.** Condemnation of property near a parcel so as to cause the parcel to lose much of its value. In such a case the parcel is, in effect, constructively condemned, and just compensation must be paid to the owner, even though formal eminent domain pro-

ceedings were not actually taken against that particular parcel.

**Quick condemnation.** Under this procedure the municipality takes immediate possession of owner's property with estimated just compensation placed in escrow until actual compensation has been ascertained.

**Condemnation money.** Former term for damages which the party failing in an action was adjudged or *condemned* to pay; sometimes simply called the "condemnation."

**Condemnee.** Owner of property taken by condemnation.

**Condemner.** Party taking property by condemnation.

**Condictio** /kəndi(k)sh(iy)ow/. In Roman law, a general term for actions of a personal nature, founded upon an obligation to give or do a certain and defined thing or service. It is distinguished from *vindicatio rei*, which is an action to vindicate one's right of property in a thing by regaining (or retaining) possession of it against the adverse claim of the other party.

**Condictio certi** /kəndi(k)sh(iy)ow sɔrtay/. An action which lies upon a promise to do a thing, where such promise or stipulation is certain (*si certa sit stipulatio*).

**Condictio ex lege** /kəndi(k)sh(iy)ow èks liyjy/. An action arising where the law gave a remedy, but provided no appropriate form of action.

**Condictio indebitati** /kəndi(k)sh(iy)ow əndəbətéytay/. An action which lay to recover anything which the plaintiff had given or paid to the defendant, by mistake, and which he was not bound to give or pay, either in fact or in law.

**Condictio rei furtivæ** /kəndi(k)sh(iy)ow riay fərtáyvy/. An action which lay to recover a thing stolen, against the thief himself, or his heir.

**Condictio sine causa** /kəndi(k)sh(iy)ow sáyniy kózə/. An action which lay in favor of a person who had given or promised a thing without consideration (*causa*).

**Conditio** /kəndish(iy)ow/. Lat. A condition.

**Conditio beneficiæ, quæ statum construit, benigne secundum verborum intentionem est interpretanda; odiosa autem, quæ statum destruit, stricte secundum verborum proprietatem accipienda** /kəndish(iy)ow bənəfishiyéləs kwiy stéytəm kónstruwət bənigniy səkəndəm vərbórəm intənsiyównəm èst intərpətəndə; ówdiyówsə ótəm, kwiy stéytəm dèstruwət, stríktiy səkəndəm vərbórəm prəpráyétéytəm əksipiyéndə/. A beneficial condition, which creates an estate, ought to be construed favorably, according to the intention of the words; but a condition which destroys an estate is odious, and ought to be construed strictly according to the letter of the words.

**Conditio dicitur, cum quid in casum incertum qui potest tendere ad esse aut non esse, confertur** /kəndish(iy)ow disətər kəm kwid in kéysəm insórtəm kwày pówtəst téndəriy əd èsiy òt nón èsiy kənfərtər/. It is called a "condition" when something is given on an

uncertain event, which may or may not come into existence.

**Conditio illicita habetur pro non adjecta** /kændiʃ(i)lɔw əlɪsətə həbiytər prɔw non ədʒektə/. An unlawful condition is deemed as not annexed.

**Condition.** A future and uncertain event upon the happening of which is made to depend the existence of an obligation, or that which subordinates the existence of liability under a contract to a certain future event. Provision making effect of legal instrument contingent upon an uncertain event. *See also* Constructive condition; Contingency; Contingent; Proviso.

A clause in a contract or agreement which has for its object to suspend, rescind, or modify the principal obligation, or, in case of a will, to suspend, revoke, or modify the devise or bequest. A qualification, restriction, or limitation modifying or destroying the original act with which it is connected; an event, fact, or the like that is necessary to the occurrence of some other, though not its cause; a prerequisite; a stipulation.

A qualification or restriction annexed to a conveyance of lands, whereby it is provided that in case a particular event does or does not happen, or in case the grantor or grantee does or omits to do a particular act, an estate shall commence, be enlarged, or be defeated.

An "estate on condition" arises where an estate is granted, either in fee simple or otherwise, with an express qualification annexed, whereby the estate granted shall either commence, be enlarged, or be defeated, upon performance or breach of such qualification or condition.

In insurance parlance, the printed conditions on the inside of the policy which serve generally as a limitation of risk or of liability or impose various conditions requiring compliance by the insured.

Mode or state of being; state or situation; essential quality; property; attribute; status or rank.

**Civil law.** Conditions in the civil law are of the following types:

The *casual* condition is that which depends on chance, and is in no way in the power either of the creditor or of the debtor. Civ.Code La. art. 2023.

A *mixed* condition is one that depends at the same time on the will of one of the parties and on the will of a third person, or on the will of one of the parties and also on a casual event. Civ.Code La. art. 2025.

The *potestative* condition is that which makes the execution of the agreement depend on an event which it is in the power of the one or the other of the contracting parties to bring about or to hinder. Civ.Code La. art. 2024.

A *resolutive* or *dissolving* condition is that which, when accomplished, operates the revocation of the obligation, placing matters in the same state as though the obligation had not existed. It does not suspend the execution of the obligation. It only obliges the creditor to restore what he has received in case the event provid-

ed for in the condition takes place. Civ.Code La. art. 2045.

A *suspensive* condition is that which depends, either on a future and uncertain event, or on an event which has actually taken place, without its being yet known to the parties. In the former case, the obligation cannot be executed till after the event; in the latter, the obligation has its effect from the day on which it was contracted, but it cannot be enforced until the event be known. Civ.Code La. art. 2043; *New Orleans v. Railroad Co.*, 171 U.S. 312, 18 S.Ct. 875, 43 L.Ed. 178. A condition which prevents a contract from going into operation until it has been fulfilled.

**Classification.** Conditions are either *express* or *implied*, the former when incorporated in express terms in the deed, contract, lease, or grant; the latter, when inferred or presumed by law, from the nature of the transaction or the conduct of the parties, to have been tacitly understood between them as a part of the agreement, though not expressly mentioned.

They are *possible* or *impossible*: the former when they admit of performance in the ordinary course of events; the latter when it is contrary to the course of nature or human limitations that they should ever be performed.

They are *lawful* or *unlawful*: the former when their character is not in violation of any rule, principle, or policy of law; the latter when they are such as the law will not allow to be made.

They are *consistent* or *repugnant*: the former when they are in harmony and concord with the other parts of the transaction; the latter when they contradict, annul, or neutralize the main purpose of the "contract". Repugnant conditions are also called "insensible".

They are *affirmative* or *negative*: the former being a condition which consists in doing a thing, as provided that the lessee shall pay rent, etc.; the latter being a condition that consists in not doing a thing, as provided that the lessee shall not alien, etc.

They are *precedent* or *subsequent*. A condition precedent is one which must happen or be performed before the estate to which it is annexed can vest or be enlarged; or it is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed. A fact other than mere lapse of time which must exist or occur before a duty of immediate performance of a promise arises. *U. S. v. Schaeffer*, C.A.Wash., 319 F.2d 907, 911. A "condition precedent" is one that is to be performed before the agreement becomes effective, and which calls for the happening of some event or the performance of some act after the terms of the contract have been arrested on, before the contract shall be binding on the parties; *e.g.* under disability insurance contract, insured is required to submit proof of disability before insurer is required to pay. *Sherman v. Metropolitan Life Ins. Co.*, 297 Mass. 330, 8 N.E.2d 892. A condition subsequent is one annexed to an estate already vested, by the performance of which such estate is kept and continued, and by the failure or non-performance of which it is defeated; or it is a

condition referring to a future event, upon the happening of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the condition. Co.Litt. 201; Carroll v. Carroll's Ex'r, 248 Ky. 386, 58 S.W.2d 670, 672. A condition subsequent is any condition which divests liability which has already attached on the failure to fulfill the condition as applied in contracts, a provision giving one party the right to divest himself of liability and obligation to perform further if the other party fails to meet condition, e.g., submit dispute to arbitration. In property law, a condition which causes defeasance of estate on failure to perform, e.g. fee simple on condition. In lease, a provision giving lessor right to terminate for tenant's failure to perform condition.

Conditions may also be *positive* (requiring that a specified event shall happen or an act be done) and *restrictive* or *negative*, the latter being such as impose an obligation not to do a particular thing, as, that a lessee shall not alien or sub-let or commit waste, or the like.

They may be *single*, *copulative*, or *disjunctive*. Those of the first kind require the performance of one specified thing only; those of the second kind require the performance of divers acts or things; those of the third kind require the performance of one of several things.

Conditions may also be *independent*, *dependent*, or *mutual*. They belong to the first class when each of the two conditions must be performed without any reference to the other; to the second class when the performance of one condition is not obligatory until the actual performance of the other; and to the third class when neither party need perform his condition unless the other is ready and willing to perform his, or, in other words, when the mutual covenants go to the whole consideration on both sides and each is precedent to the other.

The following varieties may also be noted: A condition *collateral* is one requiring the performance of a collateral act having no necessary relation to the main subject of the agreement. A *compulsory* condition is one which expressly requires a thing to be done, as, that a lessee shall pay a specified sum of money on a certain day or his lease shall be void. *Concurrent* conditions are those which are mutually dependent and are to be performed at the same time or simultaneously. A condition *inherent* is one annexed to the rent reserved out of the land whereof the estate is made, or rather, to the estate in the land, in respect of rent.

*French law.* Conditions in French law are of the following types:

The following peculiar distinctions are made: (1) A condition is *casuelle* when it depends on a chance or hazard; (2) a condition is *potestative* when it depends on the accomplishment of something which is in the power of the party to accomplish; (3) a condition is *mixte* when it depends partly on the will of the party and partly on the will of others; (4) a condition is *suspensive* when it is a future and uncertain event, or present but unknown event, upon which an obligation takes or fails to take effect; (5) a condition is *resolutoire* when it is the event

which undoes an obligation which has already had effect as such.

*Synonymous distinguished.* A "condition" is to be distinguished from a *limitation*, in that the latter may be to or for the benefit of a stranger, who may then take advantage of its determination, while only the grantor, or those who stand in his place, can take advantage of a condition. Also, a limitation ends the estate without entry or claim, which is not true of a condition. It also differs from a *conditional limitation*. In determining whether, in the case of estates greater than estates for years, the language constitutes a "condition" or a "conditional limitation," the rule applied is that, where an estate is so expressly limited by the words of its creation that it cannot endure for any longer time than until the condition happens on which the estate is to fail, this is limitation, but when the estate is expressly granted on condition in deed, the law permits it to endure beyond the time of the contingency happening, unless the grantor takes advantage of the breach of condition, by making entry. It differs also from a *covenant*, which can be made by either grantor or grantee, while only the grantor can make a condition. The chief distinction between a condition subsequent in a deed and a covenant pertains to the remedy in event of breach, which, in the former case, subjects the estate to a forfeiture, and in the latter is merely a ground for recovery of damages. A *charge* is a devise of land with a bequest out of the subject-matter, and a charge upon the devisee personally, in respect of the estate devised, gives him an estate on condition. A condition also differs from a *remainder*; for, while the former may operate to defeat the estate before its natural termination, the latter cannot take effect until the completion of the preceding estate.

**Conditional.** That which is dependent upon or granted subject to a condition.

As to *conditional* Acceptance; Appearance; Bequest; Contract; Delivery; Devise; Fee; Guaranty; Judgment; Legacy; Limitation; Obligation; Pardon; Privilege; Use; and Zoning, see those titles.

**Conditional assault.** A threatening gesture with words accompanying it expressing a threat on condition, e.g. "your money or your life".

**Conditional creditor.** In the civil law, a creditor having a future right of action, or having a right of action in expectancy.

**Conditional indorsement.** See Indorsement.

**Conditional intent.** Intent to do or not to do something if some condition exists.

**Conditionally privileged communication.** One made in good faith on any subject matter in which the person publishing has an interest, or in reference to which he has a duty, if made to a person having a corresponding interest or duty, even though it contains matter which otherwise would be actionable. Cook v. East Shore Newspapers, 327 Ill.App. 559, 64 N.E.2d 751, 760. The essential elements of a conditionally privileged communication are good faith, an interest to be upheld, a

statement limited in its scope to such purpose, a proper occasion, and publication in a proper manner to proper persons. *Cook v. East Shore Newspapers*, 327 Ill.App. 559, 64 N.E.2d 751.

**Conditional payment.** Payment of an obligation only on condition that something be done. Generally, right is reserved to demand back payment if condition fails.

**Conditional promise.** In law of contracts, a promise to perform based on condition; held to be valid consideration even if condition fails.

**Conditional release.** A discharge of obligation based on some condition, the failure of which defeats the release. Term may also be applied to a substituted form of release from custody subject to applicable statutes and rules and regulations of board of parole. *Humphrey v. Wilson*, D.C.Mo., 281 F.Supp. 937, 941.

**Conditional right.** Right to something subject to a condition, e.g. parent has right to chastise child on condition that the punishment is reasonable.

**Conditional sale contract.** Form of sales contract in which seller reserves title until buyer pays for goods or land, at which time, the condition having been fulfilled, title passes to buyer. Such contract under Uniform Commercial Code is a purchase money security agreement. § 9-105(h). *See also* Sale.

**Conditional sentence.** A sentence to confinement if defendant fails to fulfill conditions of probation.

**Conditional will.** A will so drawn that it takes effect only on happening of specified contingency which becomes a condition precedent to operation of will. *Methodist Church of Sturgis Inc. v. Templeton*, 254 Miss. 197, 181 So.2d 129.

**Conditiones quælibet odiosæ; maxime autem contra matrimonium et commercium** /kændishiyowniyz kwilylæbat ödwiýowsiy, máksmiy ódam kóntræ mætræmówniyæm èt kæmærs(h)iyæm/. Any conditions are odious, but especially those which are against [in restraint of] marriage and commerce.

**Condition of employment.** Qualification required for a particular job; circumstances under which employment may be secured and maintained. *See also* Probation.

**Conditions concurrent.** In contract law, conditions which must be performed by each party simultaneously; e.g. in a cash sale, payment for the goods and delivery are conditions concurrent. *See also* Concurrent conditions.

**Conditions of sale.** The terms upon which sales are made at auction; usually written or printed and exposed in the auction room at the time of sale.

**Conditio præcedens adimpleri debet prius quam sequatur effectus** /kændish(iy)ow præsiýdenz ædimpliray debæt præyæs kwæm sækwéytær æféktæs/. A condition precedent must be fulfilled before the effect can follow.

**Condominia** /kòndámíniyæ/. In the civil law, co-ownerships or limited ownerships, such as *emphyteusis*, *superficies*, *pignus*, *hypotheca*, *ususfructus*, *usus*, and *habita-*

*tio*. These were more than mere *jura in re aliena*, being portion of the *dominium* itself, although they are commonly distinguished from the *dominium* strictly so called.

**Condominium** /kòndámíniyæm/. System of separate ownership of individual units in multiple-unit building. A single real property parcel with all the unit owners having a right in common to use the common elements with separate ownership confined to the individual units which are serially designated. *Kaufman and Broad Homes of Long Island, Inc. v. Albertson*, 73 Misc.2d 84, 341 N.Y.S.2d 321, 322. An estate in real property consisting of an undivided interest in a portion of a parcel of real property together with a separate fee simple interest in another portion of the same parcel, in essence, condominium ownership is a merger of two estates in land into one: the fee simple ownership of apartment or unit in a condominium project and tenancy in common with other co-owners in the common elements. *Dutcher v. Owens, Tex.*, 647 S.W.2d 948, 949.

The condominium concept was not rooted in English common law and most condominiums in the United States are formed in accordance with specific state enabling statutes. As defined by Uniform Condominium Act (§ 1-103(7)), is: "Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common element are vested in the unit owners."

*See also* Common elements.

*Compare* Cooperative.

**Condonación** /kòndownas(iy)ówn/. In Spanish law, the remission of a debt, either expressly or tacitly.

**Condonation** /kòndənáyshən/. The conditional remission or forgiveness, by means of continuance or resumption of marital cohabitation, by one of the married parties, of a known matrimonial offense committed by the other, that would constitute a cause of divorce; the condition being that the offense shall not be repeated. Condonation to constitute valid defense in divorce action, must be free, voluntary, and not induced by duress or fraud. Condonation means pardon of offense, voluntary overlooking implied forgiveness by treating offender as if offense had not been committed. *Wilson v. Wilson*, 14 Ohio App.2d 148, 237 N.E.2d 421, 425. This defense has been abolished in those jurisdictions which recognize "no fault" divorce.

**Condone** /kændówn/. To make condonation of.

**Conduce.** To contribute to as a result.

**Conduct, v.** To manage; direct; lead; have direction; carry on; regulate; do business. *Scholz v. Leuer*, 7 Wash.2d 76, 109 P.2d 294, 301.

**Conduct, n.** Personal behavior; deportment; mode of action; any positive or negative act.

An action or omission and its accompanying state of mind, or, where relevant, a series of acts and omissions. Model Penal Code, § 1.13.

*See also* Disorderly conduct; Tortious.

**Conduct, estoppel by.** *See* Equitable estoppel.

**Conducti actio** /kəndáktay æksh(i)yow/. In the civil law, an action which the hirer (*conductor*) of a thing might have against the letter (*locator*).

**Conductio** /kəndáksh(i)yow/. In the civil law, a hiring. Used generally in connection with the term *locatio*, a letting. *Locatio et conductio* (sometimes united as a compound word "*locatio-conductio*"), a letting and hiring.

**Conduct money.** In English practice, money paid to a witness who has been subpoenaed on a trial, sufficient to defray the reasonable expenses of going to, staying at, and returning from the place of trial.

**Conductor.** In the civil law, a hirer.

**Conductor operarum** /kəndáktər òpərerəm/. In the civil law, a person who engages to perform a piece of work for another, at a stated price.

**Conductus** /kəndáktəs/. A thing hired.

**Conduit concept.** An approach the tax law assumes in the tax treatment of certain entities and their owners. The approach permits specified tax characteristics to pass through the entity without losing their identity. Under the conduit concept, for example, long-term capital losses realized by a partnership are passed through as such to the individual partners. The same result does not materialize if the entity is a corporation. Varying forms of the conduit concept are applicable in the case of partnerships, trusts, estates, and Subchapter S corporations.

**Cone.** Area built up by a stream, near the mouth of a canyon of boulders, small stones, gravel, sand and other detritus.

**Cone and key.** In old English law, a woman at fourteen or fifteen years of age could take charge of her house and receive *cone* and *key*; that is, keep the accounts and keys. Said by Lord Coke to be *cover* and *keye*, meaning that at that age a woman knew what in her house should be kept under lock and key.

**Confarreatio** /kənfəriyáysh(i)yow/. In Roman law, a sacrificial rite resorted to by marrying persons of high patrician or priestly degree, for the purpose of clothing the husband with the *manus* over his wife; the civil modes of effecting the same thing being *coemptio* (formal), and *usus mulieris* (informal).

**Confectio** /kənféksh(i)yow/. The making and completion of a written instrument.

**Confederacy.** The association or banding together of two or more persons for the purpose of committing an act or furthering an enterprise which is forbidden by law, or which, though lawful in itself, becomes unlawful when made the object of the confederacy. More commonly called a "conspiracy."

A league or agreement between two or more independent states whereby they unite for their mutual welfare and the furtherance of their common aims. The term may apply to a union so formed for a temporary or limited purpose, as in the case of an offensive and defensive alliance; but it is more commonly used to denote that species of political connection between two or more independent states by which a central government is created, invested with certain powers of sovereignty (mostly external), and acting upon the several component states as its units, which, however, retain their sovereign powers for domestic purposes and some others. *See* Compact; Confederate states; Federal government.

**Confederate states.** The band of eleven states formed in 1861 which waged war against the United States in the War Between the States or Civil War.

**Confederation.** A league or compact for mutual support, particularly of nations, or states. Such was the colonial government during the Revolution. *See* Confederacy.

**Confederation articles.** *See* Articles of Confederation.

**Conference.** A meeting of several persons for deliberation, for the interchange of opinion, or for the removal of differences or disputes.

In the practice of legislative bodies, when the two houses cannot agree upon a pending measure, each appoints a committee of "conference," and the committees meet and consult together for the purpose of removing differences, harmonizing conflicting views, and arranging a compromise which will be accepted by both houses.

Representative assembly of a denomination; association of athletic teams.

A personal meeting between the diplomatic agents of two or more nations for the purpose of making statements and explanations that will obviate the delay and difficulty attending the more formal conduct of negotiations.

**Confess.** To admit as true; to assent to; to concede. To admit the truth of a charge or accusation. Usually spoken of charges of tortious or criminal conduct. *See* Confession.

**Confessing error.** A plea to an assignment of error, admitting the same.

**Confessio** /kənfés(h)(i)yow/. Lat. A confession. *Confessio in judicio*, a confession made in or before a court.

**Confessio facta in judicio omni probatione major est** /kənfés(h)(i)yow fáktə in juwdísh(i)yow ómniy prəbèyshiyówniy méyjr èst/. A confession made in court is of greater effect than any proof.

**Confession.** A voluntary statement made by a person charged with the commission of a crime or misdemeanor, communicated to another person, wherein he acknowledges himself to be guilty of the offense charged, and discloses the circumstances of the act or the share and participation which he had in it. *See* 18 U.S.C.A. § 3501.

A statement made by a defendant disclosing his guilt of crime with which he is charged and excluding possibility of a reasonable inference to the contrary. *People v. Anderson*, 236 Cal.App.2d 419, 46 Cal.Rptr. 1, 7. Voluntary statement made by one who is defendant in criminal trial at time when he is not testifying in trial and by which he acknowledges certain conduct of his own constituting crime for which he is on trial; a statement which, if true, discloses his guilt of that crime. *People v. Beverly*, 233 Cal.App.2d 702, 43 Cal. Rptr. 743, 749.

Confessions are admissible in evidence if given voluntarily. 18 U.S.C.A. § 3501.

See also Interlocking confession; Involuntary confession; Interrogation; Oral confession.

*Constitutional protections.* See Escobedo Rule; Mallory Rule; Miranda Rule.

*Classification of confessions.* Confessions are divided into judicial and extrajudicial. The former are such as are made before a magistrate or court in the due course of legal proceedings; they include confessions made in preliminary examinations before magistrates. The latter is one made by the party out of court, or to any person, official or otherwise, when made not in the course of a judicial examination or investigation. See also Extrajudicial.

An *implied* confession is where the defendant does not plead guilty but indirectly admits his guilt by placing himself at the mercy of the court and asking for a light sentence. An *indirect* confession is one inferred from the conduct of the defendant. An *involuntary* confession is one induced by hope, promise, fear, violence, torture, or threat. *Lyons v. State*, 77 Okl.Cr. 197, 138 P.2d 142, 148; *Lyons v. State*, 140 P.2d 248. A *naked* confession is an admission of the guilt of the party, but which is not supported by any evidence of the commission of the crime. A *voluntary* confession is one made spontaneously by a person accused of crime, free from the influence of any extraneous disturbing cause, and in particular, not influenced, or extorted by violence, threats, or promises. It is the product of an essentially free and unconstrained choice by its maker, *Interest of Ruth*, 239 Pa.Super. 453, 360 A.2d 922, 923; and, is made with full knowledge of nature and consequences of the confession. *Martinez v. State*, Okl.Cr., 496 P.2d 416, 421. For criteria used in determining voluntariness, see 18 U.S.C.A. § 3501(b).

A *judicial confession* is a plea of guilty or some similar action or conduct in court or in a judicial proceeding. *People v. Telio*, 1 Ill.App.3d 526, 275 N.E.2d 222, 226.

*Distinguished from admission.* A confession is a statement admitting or acknowledging all facts necessary for conviction of the crime. An admission, on the other hand, is an acknowledgment of a fact or facts tending to prove guilt which falls short of an acknowledgment of all essential elements of the crime. *Gladden v. Unsworth*, 9th Cir., 396 F.2d 373, 375 n. 2; *People v. Fitzgerald*, 56 Cal.2d 855, 861, 17 Cal.Rptr. 129, 132, 366 P.2d 481, 484.

**Confession and avoidance.** A plea in confession and avoidance is one which avows and confesses the truth of

the averments of fact in the complaint or declaration, either expressly or by implication, but then proceeds to allege new matter which tends to deprive the facts admitted of their ordinary legal effect, or to obviate, neutralize, or *avoid* them. *Sievers v. Brown*, 216 Miss. 801, 63 So.2d 217, 219.

**Confession of defense.** In English practice, where defendant alleged a ground of defense arising since the commencement of the action, the plaintiff could deliver confession of such defense and sign judgment for his costs up to the time of such pleading, unless it be otherwise ordered. Such procedure is now obsolete.

**Confession of judgment.** See Cognovit judgment; Judgment.

**Confesso, bill taken pro.** In equity practice, an order which the court of chancery makes when the defendant does not file an answer, that the plaintiff may take such a decree as the case made by his bill warrants.

**Confessor.** A priest who receives auricular confessions of sins from persons under his spiritual charge, and pronounces absolution upon them. The secrets of the confessional were not privileged communications at common law, but are so classified by statute, court decision or court rule in most states. See Confidential communication.

**Confessoria actio /kɔ̃fəsɔ̃riyɔ̃ ɛ́ksh(iy)ow/. Lat.** In the civil law, an action for enforcing a servitude.

**Confessus in iudicio pro iudicato habetur, et quodammodo sua sententia damnatur /kɔ̃fəsəs in juw-dish(iy)ow prɔ̃w jüwdəkéytow hɔ̃biytɔ̃, èt kwowdɔ̃-madow s(y)úwɔ̃ senténsh(iy)ɔ̃ dæmnéytɔ̃/. A person confessing his guilt when arraigned is deemed to have been found guilty, and is, as it were, condemned by his own sentence.**

**Confide.** A synonym of the word "trust"; meaning to put into one's trust, keeping, or confidence.

**Confidence.** Trust; reliance; relation of trust. Reliance on discretion of another. In the construction of wills, this word is considered peculiarly appropriate to create a trust.

**Confidence game.** Obtaining of money or property by means of some trick, device, or swindling operation in which advantage is taken of the confidence which the victim reposes in the swindler. The elements of the crime of "confidence game" are: (1) an intentional false representation to the victim as to some present fact, (2) knowing it to be false, (3) with intent that the victim rely on the representation, (4) the representation being made to obtain the victim's confidence and thereafter his money and property, (5) which confidence is then abused by defendant. *U. S. v. Brown*, D.C.App., 309 A.2d 256, 257.

For distinction between false pretenses and confidence game, see False pretenses. See also Flim-flam.

**Confidential.** Intrusted with the confidence of another or with his secret affairs or purposes; intended to be held in confidence or kept secret; done in confidence.



**Confidential communication.** Privileged communications such as those between spouses, physician-patient, attorney-client, confessor-penitent, etc. Such are privileged at the option of the spouse-witness, client-witness and penitent-witness. Confidential communication is statement made under circumstances showing that speaker intended statement only for ears of person addressed; thus if communication is made in presence of third party whose presence is not reasonably necessary for the communication, it is not privileged. *Touma v. Touma*, 140 N.J.Super. 544, 357 A.2d 25, 28. State law is applied to such privileged communications in federal court proceedings. Fed.Evid.Rule 501. *See also* Communication; Privileged communications.

**Confidentiality.** State or quality of being confidential; treated as private and not for publication.

**Confidential relation.** A fiduciary relation. It is a peculiar relation which exists between client and attorney, principal and agent, principal and surety, landlord and tenant, parent and child, guardian and ward, ancestor and heir, husband and wife, trustee and *cestui que trust*, executors or administrators and creditors, legatees, or distributees, appointor and appointee under powers, and partners and part owners. In these and like cases, the law, in order to prevent undue advantage from the unlimited confidence or sense of duty which the relation naturally creates, requires the utmost degree of good faith in all transactions between the parties. It is not confined to any specific association of parties. It appears when the circumstances make it certain that the parties do not deal on equal terms, but on the one side there is an overmastering influence, or, on the other, weakness, dependence, or trust, justifiably reposed. The mere existence of kinship does not, of itself, give rise to such relation. It covers every form of relation between parties wherein confidence is reposed by one in another, and former relies and acts upon representations of the other and is guilty of no derelictions on his own part. *Peckham v. Johnson*, Tex.Civ. App., 98 S.W.2d 408, 416.

Confidential relations are deemed to arise whenever two persons have come into such a relation that confidence is necessarily reposed by one and the influence which naturally grows out of the confidence is possessed by the other, and this confidence is abused or the influence is exerted to obtain an advantage at expense of confiding party. *Ruebsamen v. Maddocks*, Me., 340 A.2d 31, 34.

*See also* Fiduciary or confidential relation.

**Confinement.** State of being confined; shut in; imprisoned; detention in penal institution. Confinement may be by either a moral or a physical restraint, by threats of violence with a present force, or by physical restraint of the person. *See also* Commitment; Solitary confinement.

**Confirm.** To complete or establish that which was imperfect or uncertain; to ratify what has been done without authority or insufficiently. To make firm or certain; to give new assurance of truth or certainty; to

put aside past doubt; to give approval to. *See also* Confirmation.

**Confirmare est id firmum facere quod prius infirmum fuit** /kɔ̃nfərməriy est id fərməm féysəriy kwòd práyəs ənfirməm fyúwət/. To confirm is to make firm that which was before infirm.

**Confirmare nemo potest prius quam jus ei acciderit** /kɔ̃nfərməriy níymow pówtəst práyəs kwəm jəs iyay æksədérət/. No one can confirm before the right accrues to him.

**Confirmatio** /kɔ̃nfərmeysh(iy)ow/. The conveyance of an estate, or the communication of a right that one hath in or unto lands or tenements, to another that hath the possession thereof, or some other estate therein, whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased or enlarged. 2 Bl.Comm. 325.

**Confirmatio chartarum** /kɔ̃nfərméysh(iy)ow kartáram/. Lat. Confirmation of the charters. A statute passed in the 25 Edw. I., whereby the Great Charter is declared to be allowed as the common law; all judgments contrary to it are declared void; copies of it are ordered to be sent to all cathedral churches and read twice a year to the people; and sentence of excommunication is directed to be as constantly denounced against all those that, by word or deed or counsel, act contrary thereto or in any degree infringe it. 1 Bl.Comm. 128.

**Confirmatio crescens** /kɔ̃nfərméysh(iy)ow krésənz/. An enlarging confirmation; one which enlarges a rightful estate.

**Confirmatio diminuens** /kɔ̃nfərméysh(iy)ow dəmínyuwenz/. A diminishing confirmation. A confirmation which tends and serves to diminish and abridge the services whereby a tenant doth hold, operating as a release of part of the services.

**Confirmatio est nulla ubi donum præcedens est invalidum** /kɔ̃nfərméysh(iy)ow èst nələ yúwbay dównəm prásyden(d)z èst invələdəm/. Confirmation is void where the preceding gift is invalid.

**Confirmation.** A contract, or written memorandum thereof, by which that which was infirm, difficult of proof, void, imperfect, or subject to be avoided is ratified, rendered valid and binding, made firm and unavoidable. To give formal approval. Act or process of confirming. *See also* Approval; Ratification; Verification.

A conveyance of an estate or right *in esse*, whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased.

The ratification or approval of executive acts by a legislature or one house. In order to be valid, Presidential appointments of important officers of the United States require approval by a majority of the Senate, and treaties must be approved by two-thirds of the Senate. Art. II, § 2, U.S.Const.

A formal memorandum delivered by the customers or suppliers of a company to its independent auditor verifying the amounts shown as receivable or payable. The

confirmation document is originally sent by the auditor to the customer.

In bankruptcy, refers to a judicial approval of a Bankruptcy Code Chapter 11, 12, or 13 plan.

**Confirmation of sale.** The confirmation of a judicial sale by the court which ordered it is a signification in some way (usually by the entry of an order) or the court's approval of the terms, price, and conditions of the sale.

**Confirmatio omnes supplet defectus, licet id quod actum est ab initio non valuit** /kɔnfərméyʃh(iy)ow ómniy sɔplət dəfɛktəs, lísət íd kwɔd ɛktəm ɛst əb ənɪʃh(iy)ow nɔn vɛlyuwət/. Confirmation supplies all defects, though that which had been done was not valid at the beginning.

**Confirmatio perficiens** /kɔnfərméyʃh(iy)ow pəfɪʃhɪyenz/. A confirmation which makes valid a wrongful and defeasible title, or makes a conditional estate absolute.

**Confirmat usum qui tollit abusum** /kɔnfərmət úwzəm kwàý tólət əbyúwzəm/. He confirms the use [of a thing] who removes the abuse [of it].

**Confirmavi** /kɔnfərméyvi/. Lat. I have confirmed. The emphatic word in the ancient deeds of confirmation.

**Confirmed credit.** In commercial law, means that the credit must carry the direct obligation of an agency which does business in the seller's financial market. U.C.C. § 2-325.

**Confirmee** /kɔnfərmíy/. The grantee in a deed of confirmation.

**Confirming bank.** A bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank. U.C.C. § 5-103.

**Confirmor** /kənfɪrmər/. The grantor in a deed of confirmation.

**Confiscable** /kɔnfɪskəbəl/kənfɪskəbəl/. Capable of being confiscated or suitable for confiscation; liable to forfeiture.

**Confiscare** /kɔnfəskéry/. In civil and old English law, to confiscate; to claim for or bring into the fisc, or treasury.

**Confiscate** /kɔnfəskeyt/. To appropriate property to the use of the government. To adjudge property to be forfeited to the public; to seize and condemn private forfeited property to public use. To take property from enemy in time of war. *See also* Confiscation; Forfeiture.

**Confiscation** /kɔnfəskéyʃən/. Act of confiscating. The seizure of private property by the government without compensation to the owner, often as a consequence of conviction for crime, or because possession or use of the property was contrary to law. The provisions of due process prohibit the confiscation of property without compensation except where the property is taken in the valid execution of the police power. *See also* Condemna-

tion; Confiscate; Eminent domain; Expropriation; Forfeiture; Seizure.

**Confiscation acts.** Certain acts of congress enacted during the process of the civil war (1861 and 1862) in the exercise of the war powers of the government and meant to strengthen its hands and aid in suppressing the rebellion, which authorized the seizure, condemnation, and forfeiture of "property used for insurrectionary purposes".

**Confiscation cases.** The name given to a group of fifteen cases decided by the United States supreme court in 1868, on the validity and construction of the confiscation acts of congress. Reported in 7 Wall. 454, 19 L.Ed. 196.

**Confiscatory rates.** With respect to utilities, are rates which do not afford a reasonable return on value of property at time it is used in public service; rates which do not afford net return sufficient to preserve utility's property and to attract capital necessary to enable utility to discharge its public duties.

**Confisk.** An old form of *confiscate*.

**Confitens reus** /kɔnfətenz ríyəs/. An accused person who admits his guilt.

**Conflicting evidence.** Evidence offered by plaintiff and defendant, or prosecutor and defendant which is inconsistent and cannot be reconciled.

**Conflict of authority.** A division between two or more courts (generally courts of last resort) on some legal principal or application of law. May also refer to disparity between authorities on a subject. *See also* Choice of law; Conflict of laws.

**Conflict of interest.** Term used in connection with public officials and fiduciaries and their relationship to matters of private interest or gain to them. Ethical problems connected therewith are covered by statutes in most jurisdictions and by federal statutes on the federal level. The Code of Professional Responsibility and Model Rules of Professional Conduct set forth standards for actual or potential conflicts of interest between attorney and client. Generally, when used to suggest disqualification of a public official from performing his sworn duty, term "conflict of interest" refers to a clash between public interest and the private pecuniary interest of the individual concerned. *Gardner v. Nashville Housing Authority of Metropolitan Government of Nashville and Davison County, Tenn., C.A.Tenn., 514 F.2d 38, 41.* A situation in which regard for one duty tends to lead to disregard of another. *U.S. v. Miller, C.A.Mass., 463 F.2d 600, 602.*

A conflict of interest arises when a government employee's personal or financial interest conflicts or appears to conflict with his official responsibility. 18 U.S.C.A. § 203 et seq.

**Conflict of laws.** Inconsistency or difference between the laws of different states or countries, arising in the case of persons who have acquired rights, incurred obligations, injuries or damages, or made contracts, within

the territory of two or more jurisdictions. Hence, that branch of jurisprudence, arising from the diversity of the laws of different nations, states or jurisdictions, in their application to rights and remedies, which reconciles the inconsistency, or decides which law or system is to govern in the particular case, or settles the degree of force to be accorded to the law of another jurisdiction, (the acts or rights in question having arisen under it) either where it varies from the domestic law, or where the domestic law is silent or not exclusively applicable to the case in point. Restatement, Second, Conflicts of Law, § 2. See also Center of gravity doctrine; Choice of law; Grouping of contacts; Kilberg doctrine; Lex celebrationis; Lex contractus; Lex fori; Lex loci; Lex loci celebrationis; Lex loci contractus; Lex situs; Lex solutionis; Lex validitatis; Renvoi doctrine.

**Conflict of personal laws.** Term used to describe conflicts within a particular state arising from application of general law to racial and religious groups which have their own laws, e.g. tribal laws of the Indians.

**Conformed copy.** An exact copy of a document on which has been written explanations of things that could not or were not copied; e.g. written signature might be replaced on conformed copy with notation that it was signed by the person whose signature appears on the original.

**Conforming.** In law of sales, goods or conduct including any part of a performance are conforming or conform to the contract when they are in accordance with the obligations under the contract. U.C.C. § 2-106(2).

**Conforming use.** In zoning and land use planning, a use of a structure which is in conformity with those uses permitted by the particular zoning classification of the area. Compare Nonconforming use.

**Conformity.** Correspondence in form, manner, or use; agreement; harmony; congruity.

**Conformity Act, or statute.** A term used to designate Act June 1, 1872, c. 255, § 5, 17 Stat. 197, providing that the practice, pleadings, and forms and modes of proceeding in civil causes, other than equity and admiralty causes, in the federal district courts shall conform, as near as may be, to those existing in like causes in the courts of the state within which such district courts are held. Since the adoption of the Federal Rules of Civil Procedure, 28 U.S.C.A., the Conformity Act is no longer effective. Hydraulic Press Mfg. Co. v. Williams, White & Co., C.C.A.Ill.1947, 165 F.2d 489.

**Conformity, Bill of.** See Bill (*Equity pleading and practice*).

**Conformity hearing.** Hearing ordered by court to determine whether judgment or decree directed to be prepared by the prevailing party conforms with decision of court. Commonly after court makes its findings it directs prevailing party to draw judgment or decree in conformity with such findings and decision.

**Confrairie** /kɔ̃frɛriy/kɔ̃frɛriy/. Fr. In old English law, a fraternity, brotherhood, or society.

**Confreres** /kɔ̃frɛrz/kɔ̃frɛrz/. Brethren in a religious house; fellows of one and the same society.

**Confrontation.** In criminal proceedings, the accused has a right to be "confronted with the witnesses against him." This Sixth Amendment right consists of the act of setting a witness face to face with the accused, in order that the latter may make any objection he has to the witness, or that the witness may identify the accused; and, does not mean merely that witnesses are to be made visible to the accused, but imports the constitutional privilege to cross-examine them. In fact, the essence of the right of confrontation is the right to cross-examination. Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347. A disruptive defendant may, however, lose his right to be present in the courtroom, and, as a result, lose his right to confront witnesses. Illinois v. Allen, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353.

**Confrontation clause.** See Confrontation.

**Confusio** /kɔ̃fjúwz(h)(i)yow/. In the civil law, the inseparable intermixture of property belonging to different owners; it is properly confined to the pouring together of fluids, but is sometimes also used of a melting together of metals or any compound formed by the irrecoverable commixture of different substances. It is distinguished from *commixtion* by the fact that in the latter case a separation may be made, while in a case of *confusio* there cannot be. 2 Bl.Comm. 405.

**Confusion.** This term, as used in the civil law and in compound terms derived from that source, means a blending or intermingling, and is equivalent to the term "merger" as used at common law. To mix or blend so that things cannot be distinguished. Spangler Candy Co. v. Crystal Pure Candy Co., D.C.Ill., 235 F.Supp. 18, 27. The mixing together of goods of two or more owners so that the independent goods cannot be identified. See also Commingle.

**Confusion of boundaries.** The title of that branch of equity jurisdiction which relates to the discovery and settlement of conflicting, disputed, or uncertain boundaries.

**Confusion of debts.** An obsolete term which refers to a mode of extinguishing a debt, by the concurrence in the same person of two qualities or adverse rights to the same thing which mutually destroy each other. This may occur in several ways, as where the creditor becomes the heir of the debtor, or the debtor the heir of the creditor, or either accedes to the title of the other by any other mode of transfer.

**Confusion of goods.** Results when goods belonging to two or more owners become intermixed to the point where the property of any of them no longer can be identified except as part of a mass of like goods. Johnson v. Covey, 1 Utah 2d 180, 264 P.2d 283. See also Commingle.

**Confusion of rights.** A union of the qualities of debtor and creditor in the same person. The effect of such a

union is, generally, to extinguish the debt. *Baylor University v. Bradshaw*, Tex.Civ.App., 52 S.W.2d 1094, 1101.

**Confusion of titles.** A civil-law expression, synonymous with "merger," as used in the common law, applying where two titles to the same property unite in the same person.

**Confute** /kɒnfjuːt/. To prove to be false, defective, or invalid.

**Con game.** A swindle or any arrangement in which a person is deliberately defrauded because of his trust in the one who is swindling. *See also* Confidence game; Flim-flam.

**Congé** /kɔ̃ʒe/ /kɔ̃zhe/. Fr. In French law, permission, leave, license; a passport or clearance to a vessel; a permission to arm, equip, or navigate a vessel.

**Congeable** /kɔ̃ʒjəbəl/. L. Fr. Lawful; permissible; allowable.

**Congé d'accorder** /kɔ̃zhe dɑ̃kɔ̃de/. Leave to accord. A permission granted by the court, in the old process of levying a fine, to the defendant to agree with the plaintiff.

**Congé d'emparler** /kɔ̃zhe dɔ̃paʁle/. Leave to imparl. The privilege of an imparlance (*licentia loquendi*). 3 Bl.Comm. 299.

**Congé d'eslire** /kɔ̃zhe deliʁ/. Also spelled congé d'élire, congé délire. A permission or license from the British sovereign to a dean and chapter to elect a bishop, in time of vacation; or to an abbey or priory which is of royal foundation, to elect an abbot or prior.

**Congenital.** A condition present at birth.

**Congildones** /kɔ̃gildɔ̃niyz/. In Saxon law, fellow-members of a guild.

**Congius** /kɔ̃ʒijəs/. An ancient measure containing about a gallon and a pint.

**Conglomerate** /kɔ̃glɔ̃mɛʁət/. A corporation that has diversified its operations usually by acquiring unrelated enterprises in widely varied industries. Such individual businesses are normally controlled by a single corporate entity.

**Conglomerate merger.** Merger among firms which operate in separate and distinct markets; *e.g.* merger of companies with different product lines. A merger in which there are no economic relationships between the acquiring and the acquired firm. *Kennecott Copper Corp. v. F. T. C.*, C.A.10, 467 F.2d 67, 75. A combination of two or more companies in which neither competes directly with the other and no buyer-seller relationship exists. A merger other than a horizontal or vertical merger. *U. S. v. International Tel. & Tel. Corp.*, D.C. Conn., 306 F.Supp. 766, 774. *See also* Conglomerate; Merger.

**Congregate.** To come together; to assemble; to meet.

**Congregation.** An assembly or gathering; specifically, an assembly or society of persons who together constitute the principal supporters of a particular parish, or

habitually meet at the same church for religious exercises.

**Congress** /kɔ̃grɛs/. Formal meeting of delegates or representatives. The Congress of the United States was created by Article I, Section 1, of the Constitution, adopted by the Constitutional Convention on September 17, 1787, providing that "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." The first Congress under the Constitution met on March 4, 1789, in the Federal Hall in New York City. The membership then consisted of 20 Senators and 59 Representatives. *See* House of Representatives; Senate.

**Congressional apportionment.** *See* Apportionment (*Representatives*).

**Congressional committee.** A committee of the House of Representatives or of the Senate or a joint committee formed for some particular public purpose.

**Congressional district.** A geographical unit of a State from which one member of the House of Representatives is elected.

**Congressional immunity.** *See* Legislative immunity.

**Congressional powers.** The authority vested in the Senate and House of Representatives to enact laws, etc. as provided in U.S.Const., Art. I.

**Congressional Record.** Proceedings of Congress are published in the *Congressional Record*, which is issued daily when Congress is in session. Publication of the *Record* began March 4, 1873; it was the first series officially reported, printed, and published directly by the Federal Government. The Daily Digest of the *Congressional Record*, printed in the back of each issue of the *Record*, summarizes the proceedings of that day in each House, and before each of their committees and subcommittees, respectively. The Digest also presents the legislative program for each day, and at the end of the week, gives the program for the following week. Its publication was begun March 17, 1947. Members of Congress are allowed to edit their speeches before printing and may insert material never actually spoken by securing from their respective houses leave to print or to extend their remarks.

**Congressman.** Strictly, a member of the Congress of the United States. But the common tendency is to apply this term only to a member of the House of Representatives, as distinguished from a senator.

**Congressus** /kɔ̃grɛsəs/. The extreme practical test of the truth of a charge of impotence brought against a husband by a wife. It is now disused.

**Conjectio** /kɔ̃ʒɛkʃ(i)yɔw/. In the civil law of evidence, a throwing together. Presumption; the putting of things together, with the inference drawn therefrom.

**Conjectio causæ** /kɔ̃ʒɛkʃ(i)yɔw kɔ̃ziy/. In the civil law, a statement of the case. A brief synopsis of the case given by the advocate to the judge in opening the trial.

**Conjectural choice, rule of** /rúwl əv kənjékchərəl chóys/. Where all theories of causation rest only on conjecture, no jury question is presented.

**Conjecture.** A slight degree of credence, arising from evidence too weak or too remote to cause belief. Supposition or surmise. The idea of a fact, suggested by another fact; as a possible cause, concomitant, or result. An idea or notion founded on a probability without any demonstration of its truth; an idea or surmise inducing a slight degree of belief founded upon some possible, or perhaps probable fact of which there is no positive evidence. *Oklahoma City v. Wilcoxson*, 173 Okl. 433, 48 P.2d 1039, 1043. An explanation consistent with but not deducible as a reasonable inference from known facts or conditions. In popular use, synonymous with "guess." Also, the bringing together of the circumstances, as well as the result obtained.

**Conjoint robbery.** Where the act is committed by two or more persons.

**Conjoints.** Persons married to each other.

**Conjux** /kənjúwdeks/. In old English law, an associate judge.

**Conjugal** /kənjəgəl/. Of or belonging to marriage or the married state; suitable or appropriate to the married state or to married persons; matrimonial; connubial.

**Conjugal rights.** Matrimonial rights; the right which husband and wife have to each other's society, comfort, and affection. See *Consortium*.

**Conjugium** /kənjúwjiəm/. One of the names of marriage, among the Romans.

**Conjuncta** /kənjəŋktə/. In the civil law, things joined together or united; as distinguished from *disjuncta*, things disjoined or separated.

**Conjunctim** /kənjəŋktəm/. Lat. In old English law, jointly.

**Conjunctim et divisim** /kənjəŋktəm et dəviziəm/. L. Lat. In old English law, jointly and severally.

**Conjunctio** /kənjəŋksh(iy)ow/. In the civil law, conjunction; connection of words in a sentence.

**Conjunctio mariti et feminae est de jure natura** /kənjəŋksh(iy)ow məráty ət féməniy èst diy júriy nətyúriy/. The union of husband and wife is of the law of nature.

**Conjunctive.** Connecting in a manner denoting union.

A grammatical term for particles which serve for joining or connecting together. Thus, the word "and" is called a "conjunctive," and "or" a "disjunctive," conjunction.

**Conjunctive denial.** Where several material facts are stated conjunctively in the complaint, an answer which undertakes to deny their averments as a whole, conjunctively stated, is called a "conjunctive denial."

**Conjunctive obligation** /kənjəŋktəv òbləgéyshən/. See *Obligation*.

**Conjuratio** /kənjərəysh(iy)ow/. In old English law, a swearing together; an oath administered to several together; a combination or confederacy under oath.

In old European law, a compact of the inhabitants of a commune, or municipality, confirmed by their oaths to each other and which was the basis of the commune.

**Conjuration** /kənjərəyshən/. In old English law, a plot or compact made by persons combining by oath to do any public harm.

The offense at common law of having conference or commerce with evil spirits, in order to discover some secret, or effect some purpose. The English Witchcraft Act of 1735, which made conjuration an offense, was repealed by the Fraudulent Mediums Act of 1951.

**Conjurator** /kənjərəytər/. In old English law, one who swears or is sworn with others; one bound by oath with others; a compurgator; a conspirator.

**Connect.** To join or fasten together as by something intervening; to associate as in occurrence or in idea; to combine; to unite or link together, as in an electrical circuit; to establish a bond or relation between; to meet or make connections for transference of passengers or change of means of communication.

**Connected.** Joined; united by junction, by an intervening substance or medium, by dependence or relation, or by order in a series.

**Connecting carrier.** One of several common carriers whose united lines or parts constitute the route over which shipment is to pass, and which participates in transportation of such shipment as a common carrier furnishing a necessary link in transportation. *Herman v. Railway Exp. Agency*, 17 N.J.Super. 10, 85 A.2d 284.

**Connecting factors.** In conflict of laws, legal categories such as the place of making a contract which serve to determine the choice of law in a particular case.

**Connecting up doctrine.** A thing may be put into evidence (including testimony) subject to its being connected up with later evidence that will show its relevance.

**Connection.** The state of being connected or joined; union by junction, by an intervening substance or medium, by dependence or relation, or by order in a series.

**Connections.** Relations by blood or marriage, but more commonly the relations of a person with whom one is connected by marriage. In this sense, the relations of a wife are "connections" of her husband. The term is vague and indefinite.

**Connexité** /konèksiyéy/. In French law, this exists when two actions are pending which, although not identical as in *lis pendens*, are so nearly similar in object that it is expedient to have them both adjudicated upon by the same judges.

**Connexity.** Nexus or connection; for purposes of acquiring personal jurisdiction over a foreign corporation, this refers to the requirement that the cause of action arise out of the transaction or operation connected with

or incidental to the activities of a foreign corporation in the state. *Kravitz v. Gebrueder Pletscher Druck-Guswaremfabrik*, Fla.App. 3 Dist., 442 So.2d 985, 987.

**Connivance** /kənáyvən(t)s/. The secret or indirect consent or permission of one person to the commission of an unlawful or criminal act by another. A winking at; voluntary blindness; an intentional failure to discover or prevent the wrong; forbearance or passive consent. *Pierce v. Crisp*, 260 Ky. 519, 86 S.W.2d 293, 296.

As constituting defense in divorce action, is plaintiff's corrupt consent, express or implied, to offense charged against defendant. *Muir v. Muir*, Del.Super., 7 Terry 578, 86 A.2d 857, 858. This defense has been abolished by many states with the enactment of no-fault divorce laws.

**Connive** /kənáyv/. To co-operate secretly with, or to have a secret or clandestine understanding with. To take part or co-operate privily with another, to aid or abet. To look upon with secret favor; it implies both knowledge and assent, either active or passive. See *Connivance*.

**Connoissement** /kòneysmón/. In French law, an instrument, signed by the master of a ship or his agent, containing a description of the goods loaded on a ship, the persons who have sent them, the persons to whom they were sent, and the undertaking to transport them; similar to the English and American bill of lading.

**Connubium** /kən(y)úwbíyəm/. In the civil law, marriage. Among the Romans, a lawful marriage as distinguished from "concubinage" (*q.v.*), an inferior marriage.

**Conocimiento** /konòsiym(i)yéntow/. In Spanish law, a bill of lading. In the Mediterranean ports it is called "*póliza de cargamento*."

In Spanish law, a recognizance.

**Conpossessio** /kòmpəzész(i)yow/. In civil law, a joint possession.

**Conquereur** /kòŋkərer/. In Norman and old English law, the same as "conqueror" (*q.v.*).

**Conqueror**. In old English and Scotch law, the first purchaser of an estate; he who first brought an estate into his family, or into the family owning it. 2 Bl. Comm. 242, 243.

**Conquest** /kòŋkwəst/. In feudal law, acquisition by purchase; any method of acquiring the ownership of an estate other than by descent. Also an estate acquired otherwise than by inheritance.

In international law, the acquisition of the sovereignty of a country by force of arms, exercised by an independent power which reduces the vanquished to the submission of its empire. To conquer a territory or nation by means of force.

**Conquestor** /kòŋkwəstər/konkwéstər/. Conqueror. The title given to William of Normandy.

**Conquêts** /kəŋkwéstə/kənkéts/. In French law, the name given to every acquisition which the husband and wife, jointly or severally, make during the conjugal

community. Thus, whatever is acquired by the husband and wife, either by his or her industry or good fortune, inures to the extent of one-half for the benefit of the other. In Louisiana, these gains are called *acquêts*.

**Conquisitio** /kòŋkwəzish(i)yow/. In feudal and old English law, acquisition. 2 Bl.Comm. 242.

**Conquisitor** /kəŋkwəzýtər/. In feudal law, a purchaser, acquirer, or conqueror. 2 Bl.Comm. 242, 243.

**Consanguineus** /kònsəŋgwíniyəs/. Lat. A person related by blood; a person descended from the same common stock.

**Consanguineus est quasi eodem sanguine natus** /kònsəŋgwíniyəs est kwéysay iyówdəm səŋgwániy néytəs/. A person related by consanguinity is, as it were, sprung from the same blood.

**Consanguineus frater** /kònsəŋgwíniyəs fréytər/. In civil and feudal law, a half-brother by the father's side, as distinguished from *frater uterinus*, a brother by the mother's side. 2 Bl.Comm. 231.

**Consanguinity** /kònsəŋgwíniyətí/. Kinship; blood relationship; the connection or relation of persons descended from the same stock or common ancestor. Consanguinity is distinguished from "affinity," which is the connection existing in consequence of a marriage, between each of the married persons and the kindred of the other.

*Lineal and collateral consanguinity.* Lineal consanguinity is that which subsists between persons of whom one is descended in a direct line from the other, as between son, father, grandfather, great-grandfather, and so upwards in the direct ascending line; or between son, grandson, great-grandson, and so downwards in the direct descending line. Collateral consanguinity is that which subsists between persons who have the same ancestors, but who do not descend (or ascend) one from the other. Thus, father and son are related by lineal consanguinity, uncle and nephew by collateral consanguinity.

**Conscience**. The moral sense; the faculty of judging the moral qualities of actions, or of discriminating between right and wrong; particularly applied to one's perception and judgment of the moral qualities of his own conduct, but in a wider sense, denoting a similar application of the standards of morality to the acts of others. The sense of right and wrong inherent in every person by virtue of his existence as a social entity; good conscience being a synonym of equity. In law, especially the moral rule which requires probity, justice, and honest dealing between man and man, as when we say that a bargain is "against conscience" or "unconscionable," or that the price paid for property at a forced sale was so inadequate as to "shock the conscience." This is also the meaning of the term as applied to the jurisdiction and principles of decision of courts of chancery, as in saying that such a court is a "court of conscience," that it proceeds "according to conscience," or that it has cognizance of "matters of conscience."

**Conscience, courts of.** In English law, courts, not of record, constituted by act of parliament in the city of London, and other towns, for the recovery of small debts; otherwise and more commonly called "Courts of Requests." Such courts have been superseded by county courts.

**Conscience of the court.** When an issue is sent out of chancery to be tried at law, to "inform the conscience of the court," the meaning is that the court is to be supplied with exact and dependable information as to the unsettled or disputed questions of fact in the case, in order that it may proceed to decide it in accordance with the principles of equity and good conscience in the light of the facts thus determined. *Watt v. Starke*, 101 U.S. 247, 25 L.Ed. 826. This procedure is now obsolete with the merger of law and equity into a single cause of action.

**Conscience, right of.** As used in some constitutional provisions, this phrase is equivalent to religious liberty or freedom of conscience.

**Conscientia dicitur a con et scio, quasi scire cum deo** /kòns(h)iyénsh(iy)ə dístər èy kón èt sáyow, kwéysay sáyriy kəm díyow/. Conscience is called from *con* and *scio*, to know, as it were, with God.

**Conscientious objector.** One who, by reason of religious training and belief, is conscientiously opposed to participation in war. Such person need not be a member of a religious sect whose creed forbids participation in war to be entitled to classification as a conscientious objector. *U. S. v. Bowles*, C.C.A.N.J., 131 F.2d 818. It is sufficient if such person has a conscientious scruple against war in any form. *U. S. ex rel. Phillips v. Downer*, C.C.A.N.Y., 135 F.2d 521, 524, 525. Such objection must however be shown to be sincere. *U. S. v. Miller*, D.C.N.D., 337 F.Supp. 1402, 1403. In lieu of active military service, such person is subject to civilian work contributing to the national health, safety or interest. 50 U.S.C.A. App. § 456(J).

**Conscientious parallelism.** Refers to the situation alleged to result in markets where there are few sellers and where, although lacking in an express agreement, the sellers appear to establish their prices in a "consciously parallel" fashion; also known as the "interdependence theory" of oligopoly pricing. *Shapiro v. General Motors Corp.*, D.C.Md., 472 F.Supp. 636, 647.

**Conscientious scruple.** A conscientious scruple against taking an oath, serving as a juror in a capital case, doing military duty, or the like, is an objection or repugnance growing out of the fact that the person believes the thing demanded of him to be morally wrong, his conscience being the sole guide to his decision; it is thus distinguished from an "objection on principle," which is dictated by the reason and judgment, rather than the moral sense, and may relate only to the propriety or expediency of the thing in question.

**Conscription.** Compulsory enrollment and induction into military service; drafted.

**Consecrate.** In ecclesiastical law, to dedicate to sacred purposes, as a bishop by imposition of hands, or a church or churchyard by prayers, etc. Consecration is performed by a bishop or archbishop.

**Consecratio est periodus electionis; electio est præambula consecrationis** /kònsəkréysh(iy)ow est pi-riyówdəs əlekshiyównəs; əléksh(iy)ow est priyámbyələ kònsəkréyshiyównəs/. Consecration is the termination of election; election is the preamble of consecration.

**Consecutive.** Successive; succeeding one another in regular order; to follow in uninterrupted succession.

**Consecutive sentences.** When one sentence of confinement is to follow another in point of time, the second sentence is deemed to be consecutive. May also be applied to suspended sentences. Also called "from and after" sentences. *See also* Sentence.

**Concedo** /kònséyðow/. Sp. A term used in conveyances under Mexican law, equivalent to the English word "grant."

**Conseil de famille** /kònséy də famíy/. In French law, a family council. Certain acts require the sanction of this body. For example, a guardian can neither accept nor reject an inheritance to which the minor has succeeded without its authority (Code Nap. 461); nor can he accept for the child a gift *inter vivos* without the like authority (Code Nap. 463).

**Conseil de prudhommes** /kònséy də pruwdóm/. In French law, one of a species of trade tribunals, charged with settling differences between masters and workmen. They endeavor, in the first instance, to conciliate the parties. In default, they adjudicate upon the questions in dispute. Their decisions are final up to 200*f*. Beyond that amount, appeals lie to the tribunals of commerce.

**Conseil d'état** /kònséy deytá/. Council of state. One of the oldest of French institutions, its origin dating back to 1302. It decides or advises upon state questions and measures proposed for legislation, submitted to it by the President of the Republic, by the members of the Cabinet, and by Parliament.

**Conseil judiciaire** /kònséy zhudis(i)yér/. In French law, when a person has been subjected to an interdiction on the ground of his insane extravagance, but the interdiction is not absolute, but limited only, the court of first instance, which grants the interdiction, appoints a council, called by this name, with whose assistance the party may bring or defend actions, or compromise the same, alienate his estate, make or incur loans, and the like.

**Consensual contract** /kònsénshuwəl kònrəkt/. A term derived from the civil law, denoting a contract founded upon and completed by the mere consent of the contracting parties, without any external formality or symbolic act to fix the obligation. *See also* Contract.

**Consensual marriage** /kònsénshuwəl mārəj/. Marriage resting simply on consent *per verba de præsentí*, between competent parties. *See also* Common-law marriage.

**Consensus ad idem** /kənsənsəs æd áytəm/. An agreement of parties to the same thing; a meeting of minds.

**Consensus est voluntas plurium ad quos res pertinet, simul juncta** /kənsənsəs ɛst vələntəs plúriyəm æd kwóws ríyz pərtənət, sáyml jəŋktə/. Consent is the conjoint will of several persons to whom the thing belongs.

**Consensus facit legem** /kənsənsəs féysət líjəm/. Consent makes the law. (A contract is law between the parties agreeing to be bound by it.)

**Consensus, non concubitus, facit nuptias vel matrimonium, et consentire non possunt ante annos nobiles** /kənsənsəs, nón kənkýwbətəs, féysət nɛpshiyəs vɛl mətrəmówn(i)yəm, ɛt kónsəntáyriy nón pósənt ɛntiy ənóws n(y)úwbəliyz/. Consent, and not cohabitation (or coition), constitutes nuptials or marriage, and persons cannot consent before marriageable years. 1 Bl.Comm. 434.

**Consensus tollit errorem** /kənsənsəs tóltət ɛrórəm/. Consent (acquiescence) removes mistake.

**Consensus voluntas multorum ad quos res pertinet, simul juncta** /kənsənsəs vələntəs məltórəm æd kwóws ríyz pərtənət sáyml jəŋktə/. Consent is the united will of several interested in one subject-matter.

**Consent.** A concurrence of wills. Voluntarily yielding the will to the proposition of another; acquiescence or compliance therewith. Agreement; approval; permission; the act or result of coming into harmony or accord. Consent is an act of reason, accompanied with deliberation, the mind weighing as in a balance the good or evil on each side. It means voluntary agreement by a person in the possession and exercise of sufficient mental capacity to make an intelligent choice to do something proposed by another. It supposes a physical power to act, a moral power of acting, and a serious, determined, and free use of these powers. Consent is implied in every agreement. It is an act unclouded by fraud, duress, or sometimes even mistake.

Willingness in fact that an act or an invasion of an interest shall take place. Restatement, Second, Torts, § 10A.

As used in the law of rape "consent" means consent of the will, and submission under the influence of fear or terror cannot amount to real consent. There must be an exercise of intelligence based on knowledge of its significance and moral quality and there must be a choice between resistance and assent. And if woman resists to the point where further resistance would be useless or until her resistance is overcome by force or violence, submission thereafter is not "consent".

*See also* Acquiescence; Age of consent; Assent; Connivance; Informed consent.

*Consent decree.* *See* Decree.

*Consent dividend.* *See* Dividend.

*Consent judgment.* *See* Judgment.

*Express consent.* That directly given, either *viva voce* or in writing. It is positive, direct, unequivocal consent,

requiring no inference or implication to supply its meaning. Pacific Nat. Agricultural Credit Corporation v. Hagerman, 40 N.M. 116, 55 P.2d 667, 670.

*Express or implied consent.* Under motor vehicle liability insurance law providing that policy should cover any person responsible for operation of insured vehicle with insured's express or implied consent, words "express or implied consent" primarily modify not the word "operation", but the word "responsible", and imply possession of vehicle with consent of owner and responsibility to him.

*Implied consent.* That manifested by signs, actions, or facts, or by inaction or silence, which raise a presumption or inference that the consent has been given. An inference arising from a course of conduct or relationship between the parties, in which there is mutual acquiescence or a lack of objection under circumstances signifying assent. Allstate Ins. Co. v. State Farm Mutual Automobile Ins. Co., 260 S.C. 350, 195 S.E.2d 711, 713 (use of motor vehicle). For example, when a corporation does business in a state it impliedly consents to be subject to the jurisdiction of that state's courts in the event of tortious conduct, even though it is not incorporated in that state.

Most every state has a statute implying the consent of one who drives upon its highways to submit to some type of scientific test or tests measuring the alcoholic content of the driver's blood. In addition to implying consent, these statutes usually provide that if the result of the test shows that the alcohol content exceeds a specified percentage, then a rebuttable presumption of intoxication arises.

**Consentible lines** /kənsəntəbəl láynz/. *See* Line.

**Consentientes et agentes pari poena plectentur** /kənsənsihyéntiyz ɛt əjéntiyz pári piynə plɛkténtər/. They who consent to an act, and they who do it, shall be visited with equal punishment.

**Consentire matrimonio non possunt infra [ante] annos nobiles** /kónsəntáyriy mətrəmówniyow nón pósənt ínrə [ɛntiy] ənóws nyúwbəliyz/. Parties cannot consent to marriage within the years of marriage [before the age of consent].

**Consent judgment.** *See* Judgment.

**Consent jurisdiction.** Parties may agree in advance to submit their controversy to a given forum, in which case the forum is the consent jurisdiction.

**Consent of victim.** The submission of a victim is generally no defense to a crime unless, as in the case of rape, the victim's consent negatives an element of the crime itself.

**Consent rule.** An entry of record by the defendant, confessing the lease, entry, and ouster by the plaintiff in an action of ejectment. A superseded instrument, in which a defendant in an action of ejectment specified for what purpose he intended to defend, and undertook to confess not only the fictitious lease, entry, and ouster, but that he was in possession.



**Consent search.** A search made by police after the subject of the search has consented; such consent, if freely and intelligently given, will validate a warrantless search. *Washington v. Chrisman*, 455 U.S. 1, 102 S.Ct. 812. Consent is not freely and voluntarily given in the face of colorably lawful coercion, *Bumper v. North Carolina*, 391 U.S. 543, 88 S.Ct. 1788, 20 L.Ed.2d 797; *Lo-Ji Sales, Inc. v. New York*, 442 U.S. 319, 99 S.Ct. 2319, 60 L.Ed.2d 920; and questions regarding duress or coercion in a consent search are determined by the totality of the circumstances. *United States v. Mendenhall*, 466 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497. See 18 U.S.C.A. § 2236.

**Consent to be sued.** Agreement in advance to be sued in a particular form. See *Cognovit judgment*; *Judgment (Confession of judgment)*.

**Consent to notice.** In documents which treat of the requirement of notice, (e.g. lease) a party may consent to notice beforehand or agree that notice to some other person will satisfy the requirement of notice to him.

**Consequence.** The result following in natural sequence from an event which is adapted to produce, or to aid in producing, such result; the correlative of "cause". *Board of Trustees of Firemen's Relief and Pension Fund for City of Tulsa v. Miller*, 186 Okl. 586, 99 P.2d 146, 147. See also *Natural and probable consequences*.

**Consequentia non est consequentia** /kònsəkwnshiyi nòn est kònsəkwnsh(iy)ə/. The consequence of a consequence exists not.

**Consequential contempt.** The ancient name for what is now known as "constructive" contempt of court. See *Contempt*.

**Consequential damages.** See *Damages*.

**Consequential loss.** Losses not directly caused by damage, but rather arising from results of such damage.

**Conservation.** The concern which people have that nature be kept in as pristine a state as possible. *Minnesota Public Research Group v. Butz*, D.C.Minn. 358 F.Supp. 584, 596.

**Conservator.** A guardian; protector; preserver. Appointed by court to manage affairs of incompetent or to liquidate business. Person appointed by a court to manage the estate of one who is unable to manage property and business affairs effectively. Uniform Probate Code § 1-201(6), 5-401(2). See also *Guardian*.

**Conservators of the peace.** Officers authorized to preserve and maintain the public peace. In England, these officers were locally elected by the people until the reign of Edward III, when their appointment was vested in the king. Their duties were to prevent and arrest for breaches of the peace, but they had no power to arraign and try the offender until about 1360, when this authority was given to them by act of parliament, and "then they acquired the more honorable appellation of justices of the peace". 1 Bl.Comm. 351.

**Conserve.** To save and protect from loss or damage.

**Consider.** To fix the mind on, with a view to careful examination; to examine; to inspect. To deliberate about and ponder over. To entertain or give heed to. See also *Considered*.

**Considerable.** Worthy of consideration; required to be observed. A "considerable" number, as of persons, does not necessarily mean a very great or any particular number of persons; the term "considerable" being merely relative.

**Consideratio curiæ** /kònsidareýsh(iy)ow kyúriyiy/. The judgment of the court.

**Consideration.** The inducement to a contract. The cause, motive, price, or impelling influence which induces a contracting party to enter into a contract. The reason or material cause of a contract. Some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other. Restatement, Second, Contracts, §§ 17(1), 71. *Richman v. Brookhaven Servicing Corp.*, 80 Misc.2d 563, 363 N.Y.S.2d 731, 733. It is a basic, necessary element for the existence of a valid contract that is legally binding on the parties.

See also *Adequate consideration*; *Failure of consideration*; *Fair and valuable consideration*; *Fair consideration*; *Good consideration*; *Inadequate consideration*; *Love and affection*; *Past consideration*; *Valuable consideration*; *Want of consideration*.

Considerations are either *executed* or *executory*; *express* or *implied*; *good* or *valuable*. See definitions below.

**Concurrent consideration.** One which arises at the same time or where the promises are simultaneous.

**Continuing consideration.** One consisting in acts or performances which must necessarily extend over a considerable period of time.

**Equitable or moral considerations.** Considerations which are devoid of efficacy in point of strict law, but are founded upon a moral duty, and may be made the basis of an express promise.

**Executed or executory considerations.** The former are acts done or values given before or at the time of making the contract; the latter are promises to give or do something in future.

**Express or implied considerations.** The former are those which are specifically stated in a deed, contract, or other instrument; the latter are those inferred or supposed by the law from the acts or situation of the parties. Express consideration is a consideration which is distinctly and specifically named in the written contract or in the oral agreement of the parties.

**Good consideration.** Such as is founded on natural duty and affection, or on a strong moral obligation. A consideration for love and affection entertained by and for one within degree recognized by law. Motives of natural duty, generosity, and prudence come under this class. The term is sometimes used in the sense of a consideration valid in point of law, and it then includes a valuable

or sufficient as well as a meritorious consideration. Generally, however, *good* is used in antithesis to *valuable consideration* (q.v.).

*Gratuitous consideration.* One which is not founded upon any such loss, injury, or inconvenience to the party to whom it moves as to make it valid in law.

*Illegal consideration.* An act which if done, or a promise which if enforced, would be prejudicial to the public interest or contrary to law.

*Implied considerations.* See *Express or implied considerations*, above.

*Impossible consideration.* One which cannot be performed.

*Legal consideration.* One recognized or permitted by the law as valid and lawful; as distinguished from such as are illegal or immoral. The term is also sometimes used as equivalent to "good" or "sufficient" consideration.

*Meritorious consideration.* See *Good consideration*, above.

*Moral considerations.* See *Equitable or moral considerations*, above.

*Nominal consideration.* One bearing no relation to the real value of the contract or article, as where a parcel of land is described in a deed as being sold for "one dollar," no actual consideration passing, or the real consideration being concealed. This term is also sometimes used as descriptive of an inflated or exaggerated value placed upon property for the purpose of an exchange.

*Past consideration.* An act done before the contract is made, which is ordinarily by itself no consideration for a promise. As to time, considerations may be of the past, present, or future. Those which are present or future will support a contract not void for other reasons.

*Pecuniary consideration.* A consideration for an act of forbearance which consists either in money presently passing or in money to be paid in the future, including a promise to pay a debt in full which otherwise would be released or diminished by bankruptcy or insolvency proceedings.

*Sufficient consideration.* One deemed by the law of sufficient value to support an ordinary contract between parties, or one sufficient to support the particular transaction.

**Consideratum est per curiam** /kənsidəreɪtəm ɛst pər kyúriyəm/. (It is considered by the court.) The formal and ordinary commencement of a judgment.

**Consideratur** /kənsidəreɪtər/. L. Lat. It is considered. Held to mean the same with *consideratum est*.

**Considered.** Deemed; determined; adjudged; reasonably regarded. For example, evidence may be said to have been "considered" when it has been reviewed by a court to determine whether any probative force should be given it.

**Consign** /kənsáyn/. To deliver goods to a carrier to be transmitted to a designated factor or agent. To deliver or transfer as a charge or trust. To commit, intrust, give in trust. To transfer from oneself to the care of another. To send or transmit goods to a merchant, factor, or agent for sale. To deposit with another to be sold, disposed of, or called for, whereby title does not pass until there is action of consignee indicating sale. See also *Consignment*.

**Consignee** /kənsàyníy/. One to whom a consignment is made. Person named in bill of lading to whom or to whose order the bill promises delivery. U.C.C. § 7-102(b).

In a commercial use, "consignee" means one to whom a consignment may be made, a person to whom goods are shipped for sale, or one to whom a carrier may lawfully make delivery in accordance with his contract of carriage, or one to whom goods are consigned, shipped, or otherwise transmitted. *Power Transmission Equipment Corp. v. Beloit Corp.*, 55 Wis.2d 540, 201 N.W.2d 13, 15, 16.

**Consignment.** The act or process of consigning goods; the transportation of goods consigned; an article or collection of goods sent to a factor; goods or property sent, by the aid of a common carrier, from one person in one place to another person in another place; something consigned and shipped. Entrusting of goods to another to sell for the consignor. A bailment for sale.

The term "consignment", used in a commercial sense, ordinarily implies an agency and denotes that property is committed to the consignee for care or sale. *Parks v. Atlanta News Agency, Inc.*, 115 Ga.App. 842, 156 S.E.2d 137, 140.

See also *Reconsignment*.

**Consignment contract.** Consignment of goods to another (consignee) for sale under agreement that consignee will pay consignor for any sold goods and will return any unsold goods. A bailment for sale.

**Consignment sale.** See *Consignment*.

**Consignor** /kənsáynər/. One who sends or makes a consignment; a shipper of goods. The person named in a bill of lading as the person from whom the goods have been received for shipment. U.C.C. § 7-102(c).

**Consilia multorum quæruntur in magnis** /kənsíliyə mältórəm kwírántər in mægnəs/. The counsels of many are required in great things.

**Consiliarius** /kənsíliyériyəs/. In the civil law, a counsellor, as distinguished from a pleader or advocate. An assistant judge. One who participates in the decisions.

**Consilium** /kənsíliyəm/. A day appointed to hear the counsel of both parties. A case set down for argument. It is commonly used for the day appointed for the argument of a demurrer, or errors assigned.

**Consimili casu** /kənsíməlay kéysyuw/. In old English law, a writ of entry, framed under the provisions of the statute Westminster 2, (13 Edw. I) c. 24, which lay for the benefit of the reversioneer, where a tenant by the

curtesy aliened in fee or for life. Many other new writs were framed under the provisions of this statute; but this particular writ was known emphatically by the title here defined. The writ is now practically obsolete. 3 Bl.Comm. 51.

**Consist.** To stand together, to be composed of or made up of. *See* Consisting.

**Consistent.** Having agreement with itself or something else; accordant; harmonious; congruous; compatible; compliable; not contradictory.

**Consisting.** Being composed or made up of. This word is not synonymous with "including", for the latter, when used in connection with a number of specified objects, always implies that there may be others which are not mentioned.

**Consistor.** A magistrate.

**Consistorium** /kɒnsəstɔːrɪəm/. The state council of the Roman emperors.

**Consistory.** An assembly of cardinals convoked by the pope.

A tribunal (*prætorium*).

**Consistory courts.** In England, the courts of diocesan bishops held in their several cathedrals (before the bishop's chancellor, or commissary, who is the judge) for the trial of all ecclesiastical causes arising within their respective dioceses, and also for granting probates and administrations. From the sentence of these courts an appeal lies to the Provincial Court of the archbishop of each province respectively.

**Consobrini** /kɒnsəbráynay/. In the civil law, cousin-german, in general; brothers' and sisters' children, considered in their relation to each other.

**Consociatio** /kənsòws(h)iyéysh(iy)ow/. Lat. An association, fellowship, or partnership. Applied by some of the older writers to a corporation, and even to a nation considered as a body politic.

**Consol.** A bond that never matures but is redeemable on call.

**Consolation** /kɒnsələyʃən/. Comfort, contentment, ease, enjoyment, happiness, pleasure, satisfaction.

**Consolato del mare** /kɒnsowlátow dèl márey/. The name of a code of sea-laws, said to have been compiled by order of the kings of Arragon (or, according to other authorities, at Pisa or Barcelona) in the fourteenth century, which comprised the maritime ordinances of the Roman emperors, of France and Spain, and of the Italian commercial powers. This compilation exercised a considerable influence in the formation of European maritime law.

**Consolidate.** In a general sense, to unite or unify into one mass or body, as to consolidate several small school districts into a large district, or to consolidate various funds. In legislative usage, to consolidate two bills is to unite them into one. The term means something more than to rearrange or redivide.

To make solid or firm; to unite, compress, or pack together and form into a more compact mass, body, or system. To cause to become united and extinguished in a superior right or estate by both becoming vested in the same person. *Swaim v. Smith*, 174 Tenn. 688, 130 S.W.2d 116, 120.

*See also* Commingle; Consolidation; Joinder; Merger.

**Consolidated appeal.** If two or more persons are entitled to appeal from a judgment or order of a district court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the court of appeals upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals. Fed.R.App.P. 3(b).

**Consolidated balance sheets.** *See* Consolidated financial statements.

**Consolidated bonds.** Bonds issued to replace two or more existing issues; thus, consolidating debt into single issue.

**Consolidated corporations.** *See* Consolidation of corporations.

**Consolidated financial statements.** The financial report of a parent corporation and its subsidiaries or affiliates which combines the assets, liabilities, revenues, and expenses of all of the entities. In preparing consolidated financial statements, all intercompany transactions are eliminated. *See also* Consolidated tax return.

**Consolidated laws.** A compilation of all the laws of a State in force arranged according to subject matter. *See* Code; Codification; Compilation.

**Consolidated mortgage.** Unification of several outstanding mortgages.

**Consolidated securities.** An issue of securities sufficiently large to provide the funds to retire two or more outstanding issues of debt securities.

**Consolidated tax returns.** A procedure whereby certain affiliated corporations may file a single return, combine the tax transactions of each corporation, and arrive at a single income tax liability for the group. The election to file a consolidated return is usually binding on future years. I.R.C. §§ 1501-1505. *See also* Consolidated financial statement.

**Consolidation.** Act of consolidating, or the status of being consolidated. Unification of two or more actions. *See* Consolidation of actions.

In the *civil law*, the union of the usufruct with the estate out of which it issues, in the same person; which happens when the usufructuary acquires the estate, or *vice versa*. In either case the usufruct is extinct.

In *ecclesiastical law*, the union of two or more benefices in one.

In *corporate law*, the combination of two or more corporations into a newly created corporation. Thus, A Corporation and B Corporation combine to form C Corporation. The Revised Model Business Corporation Act eliminates the consolidation as a distinct type of corporate amalgamation. A consolidation may qualify as a nontaxable reorganization if certain conditions are satisfied. *See also* Consolidation of corporations; Merger.

**Consolidation loan.** *See* Loan.

**Consolidation of actions.** The act or process of uniting several actions into one trial and judgment, by order of a court, where all the actions are between the same parties, pending in the same court, and involving substantially the same subject-matter, issues and defenses; or the court may order that one of the actions be tried, and the others decided without trial according to the judgment in the one selected.

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. Fed.R. Civil P. 42(a); New York C.P.L.R. § 602.

*See also* Joinder (*Joinder of claims*).

**Consolidation of cases.** *See* Consolidation of actions.

**Consolidation of corporations.** Occurs when two or more corporations are extinguished, and by the same process a new one is created, taking over the assets and assuming the liabilities of those passing out of existence. A unifying of two or more corporations into a single new corporation having the combined capital, franchises, and powers of all its constituents. *See also* Consolidation.

*Merger distinguished.* In a "merger", one corporation absorbs the other and remains in existence while the other is dissolved, and in a "consolidation" a new corporation is created and the consolidating corporations are extinguished. *See also* Merger.

**Consonant statement.** A prior declaration of a witness whose testimony has been attacked and whose credibility stands impeached, which the court will allow to be proved by the person to whom the declaration was made in order to support the credibility of the witness and which but for the existence of such impeachment would ordinarily be excluded as hearsay.

**Consortio malorum me quoque malum facit** /kən-sórsh(iy)ow málórəm miy kwówkwiy mæləm féysət/. The company of wicked men makes me also wicked.

**Consortium** /kənsórsh(iy)əm/. Conjugal fellowship of husband and wife, and the right of each to the company, society, co-operation, affection, and aid of the other in every conjugal relation. *Roseberry v. Starkovich*, 73 N.M. 211, 387 P.2d 321, 322. Loss of "consortium" consists of several elements, encompassing not only material services but such intangibles as society, guidance, companionship, and sexual relations. *Countryman v. Winnebago County*, 2 Dist., 135 Ill.App.3d 384, 90 Ill.

Dec. 344, 347, 481 N.E.2d 1255, 1258. Damages for loss of consortium are commonly sought in wrongful death actions, or when spouse has been seriously injured through negligence of another, or by spouse against third person alleging that he or she has caused breaking-up of marriage. Cause of action for "consortium" occasioned by injury to marriage partner, is a separate cause of action belonging to the spouse of the injured married partner and though derivative in the sense of being occasioned by injury to spouse, is a direct injury to the spouse who has lost the consortium. *Peeples v. Sargent*, 77 Wis.2d 612, 253 N.W.2d 459, 471. *See also* Alienation of affections.

In the civil law, a union of fortunes; a lawful Roman marriage. The joining of several persons as parties to one action.

In old English law, the term signified company or society, and in the language of pleading, as in the phrase *per quod consortium amisit*, it has substantially the same meaning, viz., the companionship or society of a wife. 3 Bl.Comm. 140.

**Consortship.** In maritime law, an agreement or stipulation between the owners of different vessels that they shall keep in company, mutually aid, instead of interfering with each other, in wrecking and salvage, whether earned by one vessel or both.

**Conspicuous place.** Within the meaning of a statute relating to the posting of notices, a "conspicuous place" means one which is reasonably calculated to impart the information in question.

**Conspicuous term or clause.** A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous. Rev. Model Bus.Corp. Act, § 1.40. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous."

Whether a term or clause is "conspicuous" or not is for decision by the court. Uniform Consumer Credit Code, § 1.301(6); U.C.C. § 1-201(10). Size of type face alone does not determine whether required disclosure is "conspicuous" for purpose of Truth in Lending Act; rather, location of disclosure, and manner in which it is set off from other information, are also determinative. *Robinson v. Olin Federal Credit Union*, D.C.Conn., 48 B.R. 732, 740.

**Conspiracy** /kənspirasiy/. A combination or confederacy between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or criminal act, or some act which is lawful in itself, but becomes unlawful when done by the concerted action of the conspirators, or for the purpose of using criminal or unlawful means to the commission of an act not in itself unlawful.

A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he: (a) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or (b) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime. Model Penal Code, § 5.03.

Crime of conspiracy is distinct from the crime contemplated by the conspiracy (target crime), *Com. v. Dyer*, 243 Mass. 472, 509, 138 N.E. 296, 314, cert. denied, 262 U.S. 751, 43 S.Ct. 700, 67 L.Ed. 1214. Some jurisdictions do not require an overt act as an element of the crime, e.g. *Com. v. Harris*, 232 Mass. 588, 122 N.E. 749.

A conspiracy may be a continuing one; actors may drop out, and others drop in; the details of operation may change from time to time; the members need not know each other or the part played by others; a member need not know all the details of the plan or the operations; he must, however, know the purpose of the conspiracy and agree to become a party to a plan to effectuate that purpose. *Craig v. U. S.*, C.C.A.Cal., 81 F.2d 816, 822.

There are a number of federal statutes prohibiting specific types of conspiracy. See, e.g., 18 U.S.C.A. § 371.

See also Chain conspiracy; Co-conspirator's rule; Combination in restraint of trade; Confederacy; Seditious conspiracy; Wharton Rule.

*Chain conspiracy.* Such conspiracy is characterized by different activities carried on with same subject of conspiracy in chain-like manner that each conspirator in chain-like manner performs a separate function which serves in the accomplishment of the overall conspiracy. *Bolden v. State*, 44 Md.App. 643, 410 A.2d 1085, 1091.

*Civil conspiracy.* The essence of a "civil conspiracy" is a concert or combination to defraud or cause other injury to person or property, which results in damage to the person or property of plaintiff. See also Civil conspiracy.

*Overthrow of government.* See Sedition.

*Seditious conspiracy.* See Sedition.

**Conspiracy in restraint of trade.** Term which describes all forms of illegal agreements such as boycotts, price fixing, etc., which have as their object interference with free flow of commerce and trade. See Antitrust acts; Clayton Act; Sherman Antitrust Act.

**Conspirators.** Persons partaking in conspiracy. See Conspiracy.

**Conspire.** To engage in conspiracy. Term carries with it the idea of agreement, concurrence and combination, and hence is inapplicable to a single person or thing, and one cannot agree or conspire with another who does not agree or conspire with him. See Conspiracy.

**Constable.** An officer of a municipal corporation (usually elected) whose duties are similar to those of the sheriff, though his powers are less and his jurisdiction

smaller. He is to preserve the public peace, execute the process of magistrates' courts, and of some other tribunals, serve writs, attend the sessions of the criminal courts, have the custody of juries, and discharge other functions sometimes assigned to him by the local law or by statute. Powers and duties of constables have generally been replaced by sheriffs.

In English law, public civil officer, whose proper and general duty is to keep the peace within his district, though he is frequently charged with additional duties. 1 Bl.Comm. 356. There were formerly "high," "petty," and "special" constables. In England, the functions of these special constables have been taken over by police forces.

In Medieval law, high functionary under the French and English kings, the dignity and importance of whose office was second only to that of the monarch. He was in general the leader of the royal armies, and had cognizance of all matters pertaining to war and arms, exercising both civil and military jurisdiction. He was also charged with the conservation of the peace of the nation. Thus there was a "Constable of France" and a "Lord High Constable of England." *Rich v. Industrial Commission*, 80 Utah 511, 15 P.2d 641, 644.

**Constablewick** /kɒnstəbəlwɪk/. In English law, the territorial jurisdiction of a constable; as bailiwick is of a bailiff or sheriff.

**Constabularius** /kɒnstəbʊləriəs/. An officer of horse; an officer having charge of foot or horse; a naval commander; an officer having charge of military affairs generally. In England his power was early diminished and restricted to those duties which related to the preservation of the king's peace. The office is now abolished except as a matter of ceremony.

**Constant.** Fixed or invariable; uniform. Continually recurring, regular, steady. *Pfisterer v. Key*, 218 Ind. 521, 33 N.E.2d 330, 335.

**Constantly.** In a constant manner; uniformly; continuously.

**Constat** /kɒnstət/ˈæt/. It is clear or evident; it appears; it is certain; there is no doubt. *Non constat*, it does not appear.

In England, a certificate which the clerk of the pipe and auditors of the exchequer made, at the request of any person who intended to plead or move in that court, for the discharge of anything. The effect of it was the certifying what appears (*constat*) upon record, touching the matter in question. An exemplification under the great seal of the enrolment of letters patent.

A certificate by an officer that certain matters therein stated appear of record.

**Constat d'huissier** /kɒnstɑ dwiysyɛy/. In French law, an affidavit made by a *huissier*, setting forth the appearance, form, quality, color, etc., of any article upon which a suit depends.

**Constate** /kɒnstéyt/. To establish, constitute, or ordain.

"*Constituting instruments*" of a corporation are its charter, organic law, or the grant of powers to it.

**Constituency.** The inhabitants of an electoral district.

**Constituent.** He who gives authority to another to act for him. The term is used as a correlative to "attorney," to denote one who constitutes another his agent or invests the other with authority to act for him.

It is also used in the language of politics as a correlative to "representative," the constituents of a legislator being those whom he represents and whose interests he is to care for in public affairs; usually the electors of his district.

**Constituent elements.** The elements of a crime, tort or other type of action. Those matters which must be proved to sustain a cause of action because they constitute the action or crime.

**Constituere** /kɒnstətɪwəri/. Lat. To appoint, constitute, establish, ordain, or undertake. Used principally in ancient powers of attorney, and now supplanted by the English word "constitute."

**Constituimus** /kɒnstətɪwəməs/. A Latin term, signifying *we constitute* or *appoint*.

**Constituted authorities.** Officers properly appointed under a constitution for the government of the people.

**Constitutio** /kɒnstət(y)úwsh(iy)ow/. In the civil law, an imperial ordinance, decree, or constitution, distinguished from *Lex*, *Senatus-Consultum*, and other kinds of law and having its effect from the sole will of the emperor. An establishment or settlement. Used of controversies settled by the parties without a trial. A sum paid according to agreement.

In old English law, an ordinance or statute. A provision of a statute.

**Constitutio dotis** /kɒnstət(y)úwsh(iy)ow dɔwtəs/. Establishment of dower.

**Constitution.** The organic and fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers. A charter of government deriving its whole authority from the governed. The written instrument agreed upon by the people of the Union (*e.g.* United States Constitution) or of a particular state, as the absolute rule of action and decision for all departments (*i.e.* branches) and officers of the government in respect to all the points covered by it, which must control until it shall be changed by the authority which established it (*i.e.* by amendment), and in opposition to which any act or ordinance of any such department or officer is null and void. The full text of the U.S. Constitution appears at the end of this dictionary.

In a more general sense, any fundamental or important law or edict; as the Novel Constitutions of Justinian; the Constitutions of Clarendon.

**Constitutional.** Consistent with the constitution; authorized by the constitution; not conflicting with any provision of the constitution or fundamental law of the state. Dependent upon a constitution, or secured or regulated by a constitution; as "constitutional monarchy," "constitutional rights."

**Constitutional alcalde.** A person of official status under Mexican law corresponding in many respects in dignity and authority to a justice of the peace under the American system of government. *Tietzel v. Southwestern Const. Co.*, 48 N.M. 567, 154 P.2d 238, 242.

**Constitutional convention.** A duly constituted assembly of delegates or representatives of the people of a state or nation for the purpose of framing, revising, or amending its constitution. Art. V of U.S. Const. provides that a Constitutional Convention may be called on application of the Legislatures of two-thirds of the states.

**Constitutional court.** A court named or described and expressly protected by Constitution, or recognized by name or definite description in Constitution (*e.g.* Supreme Court, as provided for in Art. III, Sec. 1 of U.S. Const.) in contrast to legislatively created courts. Commonly referred to as "Article III" courts in reference to U.S. Constitution.

**Constitutional freedom.** Generic term to describe the basic freedoms guaranteed by the Constitution such as the First Amendment freedoms of religion, speech, press and assembly together with protection under due process clause of the 14th Amendment. *See also* Bill of rights; Constitutional liberty or freedom.

**Constitutional homestead.** A special interest in real estate which protects it from attachment, created by constitution and available to the head of the family. *Ringer v. Bryne*, 183 Okl. 46, 80 P.2d 212, 214.

**Constitutional law.** (1) That branch of the public law of a nation or state which treats of the organization, powers and frame of government, the distribution of political and governmental authorities and functions, the fundamental principles which are to regulate the relations of government and citizen, and which prescribes generally the plan and method according to which the public affairs of the nation or state are to be administered. (2) That department of the science of law which treats of constitutions, their establishment, construction, and interpretation, and of the validity of legal enactments as tested by the criterion of conformity to the fundamental law. (3) A constitutional law is one which is consonant to, and agrees with, the constitution; one which is not in violation of any provision of the constitution of the particular state.

**Constitutional liberty or freedom.** Such freedom as is enjoyed by the citizens of a country or state under the protection of its constitution. The aggregate of those personal, civil, and political rights of the individual

which are guaranteed by the constitution and secured against invasion by the government or any of its agencies. *See also* Bill of rights; Constitutional freedom.

**Constitutional limitations.** Those provisions of a constitution which restrict the legislature in the types of laws which it may enact. *See e.g.* Art. I, Sec. 9, U.S. Constitution.

**Constitutional office.** A public position or office which is created by a constitution as distinguished from a statutory office which is created by an enactment of the legislature.

**Constitutional officer.** A governmental official whose office was created by a constitution; as contrasted with an officer whose position has been created by the legislature. One whose tenure and term of office are fixed and defined by the constitution, as distinguished from the incumbents of offices created by the legislature.

**Constitutional powers.** *See* Power.

**Constitutional protections.** Those basic protections guaranteed by the Constitution such as due process, equal protection and the fundamental protections of the First Amendment, such as those touching speech, press and religion. *See* Bill of rights; Constitutional freedom.

**Constitutional questions.** Those legal issues which require an interpretation of the Constitution for their resolution as distinguished from those of a statutory nature (*e.g.* Fourth Amend. search and seizure issues).

**Constitutional right.** A right guaranteed to the citizens by the United States Constitution and state constitutions and so guaranteed as to prevent legislative interference therewith. *See also* Constitutional freedom; Constitutional liberty or freedom; Constitutional protections.

**Constitutional tort.** *See* Tort.

**Constitutiones** /kɔ̃nstət(y)ũwshiyówniyz/. Laws promulgated, *i.e.*, enacted, by the Roman Emperor. They were of various kinds, namely, the following: (1) *Edicta*; (2) *decreta*; (3) *rescripta*, called also "*epistolæ*." Sometimes they were general, and intended to form a precedent for other like cases; at other times they were special, particular, or individual (*personales*), and not intended to form a precedent. The emperor had this power of irresponsible enactment by virtue of a certain *lex regia*, whereby he was made the fountain of justice and of mercy.

**Constitutiones tempore posteriores potiores sunt his quæ ipsas præcesserunt** /kɔ̃nstət(y)ũwshiyówniyz tɛmpəriy pɔ̃stiriyóriyz sɔ̃nt háys kwiy ipsəs prɛsɛsérant/. Later laws prevail over those which preceded them.

**Constitutions of Clarendon.** *See* Clarendon, constitutions of.

**Constitutions of the Forest.** *See* Charta (*Charta de foresta*).

**Constitutor** /kɔ̃nstətyúwtər/. In the civil law, one who, by a simple agreement, becomes responsible for the payment of another's debt.

**Constitutum** /kɔ̃nstət(y)úwtəm/. In the civil law, an agreement to pay a subsisting debt which exists without any stipulation, whether of the promisor or another party. It differs from a stipulation in that it must be for an existing debt.

A day appointed for any purpose. A form of appeal.

**Constitutum esse eam domum unicuique nostrum debere existimari, ubi quisque sedes et tabulas haberet, suarumque rerum constitutionem fecisset** /kɔ̃nst(y)úwtəm ésiy iyəm dówməm yúwnək(yuw)áykwiy nóstrəm dəbíriy əgzistəméray, yúwbay kwískwiy sydiyz èt tábyələs həbíɾət, syúwerámkwiy rirəm kɔ̃nstət(y)ũwshiyównəm fəsísət/. It is settled that that is to be considered the home of each one of us where he may have his habitation and account-books, and where he may have made an establishment of his business.

**Constraint.** Act of constraining, *i.e.* state of being restrained or restricted.

**Construct.** To build; erect; put together; make ready for use. To adjust and join materials, or parts of, so as to form a permanent whole. To put together constituent parts of something in their proper place and order. "Construct" is distinguishable from "maintain," which means to keep up, to keep from change, to preserve. *See also* Construction.

**Constructio legis non facit injuriam** /kɔ̃nstráks(h)iyow líyəs nɔ̃n féysət injúriyəm/. The construction of the law (a construction made by the law) works no injury. The law will make such a construction of an instrument as not to injure a party.

**Construction.** Interpretation of statute, regulation, court decision or other legal authority. The process, or the art, of determining the sense, real meaning, or proper explanation of obscure, complex or ambiguous terms or provisions in a statute, written instrument, or oral agreement, or the application of such subject to the case in question, by reasoning in the light derived from extraneous connected circumstances or laws or writings bearing upon the same or a connected matter, or by seeking and applying the probable aim and purpose of the provision. Drawing conclusions respecting subjects that lie beyond the direct expression of the term.

The process of bringing together and correlating a number of independent entities, so as to form a definite entity.

The creation of something new, as distinguished from the repair or improvement of something already existing. The act of fitting an object for use or occupation in the usual way, and for some distinct purpose. *See* Construct.

*See also* Broad interpretation; Comparative interpretation; Contemporaneous construction; Construe; Four corners rule; Interpretation; Last antecedent rule; Literal construction or interpretation; Statutory construction; Strict construction.

**Equitable construction.** A construction of a law, rule, or remedy which has regard more to the equities of the particular transaction or state of affairs involved than to the strict application of the rule or remedy; that is, a

liberal and extensive construction, as opposed to a literal and restrictive. *See also Strict and liberal construction, below.*

**Strict and liberal construction.** Strict (or literal) construction is construction of a statute or other instrument according to its letter, which recognizes nothing that is not expressed, takes the language used in its exact and technical meaning, and admits no equitable considerations or implications.

Liberal (or equitable) construction, on the other hand, expands the meaning of the statute to meet cases which are clearly within the spirit or reason of the law, or within the evil which it was designed to remedy, provided such an interpretation is not inconsistent with the language used. It resolves all reasonable doubts in favor of the applicability of the statute to the particular case. It means, not that the words should be forced out of their natural meaning, but simply that they should receive a fair and reasonable interpretation with respect to the objects and purposes of the instrument. *See also Equitable construction, above.*

**Construction contract.** Type of contract in which plans and specifications for construction are made a part of the contract itself and commonly it is secured by performance and payment bonds to protect both subcontractors and party for whom building is being constructed.

**Construction lien.** A lien that arises by law and attaches to real estate to secure payment of a person who improved the property through the rendering of labor or other services or the furnishing of materials or other supplies. Another name for this lien is mechanics' lien (*q.v.*).

**Construction loan.** *See* Loan.

**Construction of will.** Interpretation which is given to provisions of will and the law to be applied therein when there is conflict as to the meaning intended by the deceased. Such function is commonly performed by Probate Court.

**Constructive.** That which is established by the mind of the law in its act of *construing* facts, conduct, circumstances, or instruments. That which has not the character assigned to it in its own essential nature, but acquires such character in consequence of the way in which it is regarded by a rule or policy of law; hence, inferred, implied, or made out by legal interpretation; the word "legal" being sometimes used here in lieu of "constructive."

As to *constructive* Bailment; Breaking; Contempt; Conversion; Delivery; Escape; Fraud; Larceny; Seisen; and Treason, see those titles.

**Constructive adverse possession.** Type of adverse possession which, under certain statutes, is characterized by payment of taxes under color of right, as distinguished from actual adverse possession in which the adverse claimant is in actual possession.

**Constructive assent.** An assent or consent imputed to a party from a construction or interpretation of his conduct; as distinguished from one which he actually expresses.

**Constructive authority.** Authority inferred or assumed to have been given because of the grant of some other antecedent authority. *See also* Authority.

**Constructive breaking into a house.** A breaking made out by construction of law. As where a burglar gains an entry into a house by threats, fraud, or conspiracy.

**Constructive condition.** Conditions in contracts which are neither expressed nor implied by the words of the contract but are imposed by law to meet the ends of justice. Restatement, Second, Contracts, § 226. The cooperation of the parties to a contract is a constructive condition. In negotiable instruments, a promise or order otherwise unconditional is not made conditional by the fact that the instrument is subject to a constructive condition. U.C.C. § 3-105(1).

**Constructive contract.** A species of contracts which arise, not from the intent of the parties, but from the operation of law to avoid an injustice. These are sometimes referred to as quasi contracts or contracts implied in law as contrasted with contracts implied in fact which are real contracts expressing the intent of the parties by conduct rather than by words. An obligation created by law for reasons of justice without regard to expressions of assent by either words or acts. *Power-Matics, Inc. v. Ligotti*, 79 N.J.Super. 294, 191 A.2d 483, 489. *See also* Contract (*Quasi contract*).

**Constructive delivery.** The recognition of the act of intending that title to property be transferred to someone, even though the actual, physical delivery of the property is not made (because of difficulty, impossibility) (*e.g.*, the transfer of a key to a safe constructively delivers the contents of the safe). *See also* Delivery.

**Constructive desertion.** Occurs when one spouse, through misconduct, forces the other to abandon the marital abode. *Grollman v. Grollman*, D.C.App., 220 A.2d 330, 332. If a spouse is forced to leave the home because of the other's conduct, the former has been constructively deserted.

**Constructive dividend.** *See* Dividend.

**Constructive eviction.** Such arises when landlord, while not actually depriving tenant of possession, has done or suffered some act by which premises are rendered untenable. *Net Realty Holding Trust v. Nelson*, 33 Conn.Sup. 22, 358 A.2d 365, 367. Any disturbance of the tenant's possession by the landlord whereby the premises are rendered unfit or unsuitable for occupancy in whole or in substantial part for the purposes for which they were leased amounts to a constructive eviction, if the tenant so elects and surrenders his possession. For example, if a tenant vacates the rental property because of the absence of heat or water, he has been constructively evicted.

As the term is used with reference to breach of the covenants of warranty and of quiet enjoyment, it means the inability of the purchaser to obtain possession by reason of a paramount outstanding title.

**Constructive filing.** The filing of a document with a person who is the only one available to receive it,



though he is not the designated person to receive it, is a constructive filing. *People v. Spencer*, 193 Cal.App.2d 13, 13 Cal.Rptr. 881, 883.

**Constructive force.** As regards robbery, a taking by force is the gist of the crime, but the force may be either actual or constructive. Constructive force is anything which produces fear sufficient to suspend the power of resistance and prevent the free exercise of the will. Actual force is applied to the body; constructive is by threatening words or gestures and operates on the mind.

**Constructive fraud.** Exists where conduct, though not actually fraudulent, has all actual consequences and all legal effects of actual fraud. *Agair Inc. v. Shaeffer*, 232 Cal.App.2d 513, 42 Cal.Rptr. 883, 886. Breach of legal or equitable duty which, irrespective of moral guilt, is declared by law to be fraudulent because of its tendency to deceive others or violate confidence. *Daves v. Lawyers Sur. Corp.*, Tex.Civ.App., 459 S.W.2d 655, 657. See also *Fraud*.

**Constructive/implied conditions.** Conditions or qualifications to a promise which arise from the very nature of the promise and which the law recognizes as conditioning the promise even though not expressly stated.

**Constructive intent.** Exists where one should have reasonably expected or anticipated a particular result; *e.g.* when one does an act which is wilful and wanton resulting in injury to another, it can be said that he constructively intended the harm. *Ballew v. Asheville & E. T. R. Co.*, 186 N.C. 704, 120 S.E. 334.

**Constructive knowledge.** If one by exercise of reasonable care would have known a fact, he is deemed to have had constructive knowledge of such fact; *e.g.* matters of public record. *Attoe v. State Farm Mutual Auto. Ins. Co.*, 36 Wis.2d 539, 153 N.W.2d 575, 579. See also *Constructive notice*.

**Constructive loss.** One resulting from such injuries to the property, without its destruction, as render it valueless to the assured or prevent its restoration to the original condition except at a cost exceeding its value. See also *Constructive total loss*.

**Constructive malice.** That type of malice which the law infers from the doing of an evil act; sometimes known as implied malice.

**Constructive notice.** Such notice as is implied or imputed by law, usually on the basis that the information is a part of a public record or file, as in the case of notice of documents which have been recorded in the appropriate registry of deeds or probate. Notice with which a person is charged by reason of the notorious nature of the thing to be noticed, as contrasted with actual notice of such thing. That which the law regards as sufficient to give notice and is regarded as a substitute for actual notice. In *re Fahle's Estate*, 90 Ohio App. 195, 105 N.E.2d 429, 431.

**Constructive ownership.** See *Attribution*.

**Constructive payment.** If one charges himself with a payment and the payee has a right to demand it, it can

be considered a constructive as contrasted with an actual payment; *e.g.* a check which is mailed in payment though not yet cashed is a constructive payment.

**Constructive possession.** A person has constructive possession of property if he has power to control and intent to control such item. *Com. v. Stephens*, 231 Pa.Super. 481, 331 A.2d 719, 723. Exists where one does not have physical custody or possession, but is in a position to exercise dominion or control over a thing. *U. S. v. DiNovo*, C.A.Ind., 523 F.2d 197, 201.

**Constructive receipt of income.** As applied to tax laws, is taxable income which is unqualifiedly subject to the demand of taxpayer on cash receipts and disbursements method of accounting, whether or not such income has actually been received in cash. *Gounares Bros. & Co. v. U. S.*, D.C.Ala., 185 F.Supp. 794, 798. Under this doctrine, income which is subject to unfettered command of taxpayer and which the taxpayer is free to enjoy at his option is taxed to him, despite the fact that the taxpayer has exercised his own choice to turn his back on that income and the doctrine is one by which form of transaction is ignored in order to get to its substance. *Pittsburgh-Des Moines Steel Co. v. U. S.*, D.C.Pa., 360 F.Supp. 597, 599. An example would be accrued interest on a savings account. Under the constructive receipt of income concept, such interest will be taxed to a depositor in the year it is available rather than the year actually withdrawn. The fact that the depositor uses the cash basis of accounting for tax purposes makes no difference.

**Constructive service of process.** Form of service of process other than actual service; *e.g.* publication in newspaper is constructive service.

**Constructive taking.** A phrase used in the law to characterize an act not amounting to an actual appropriation of chattels, but which shows an intention to convert them to his use; as if a person intrusted with the possession of goods deals with them contrary to the orders of the owner. With respect to constructive condemnation, see *Condemnation (Inverse condemnation)*.

**Constructive total loss.** In insurance, exists whenever insured item of property has lost its total usefulness and insured is deprived of its benefit totally. See also *Constructive loss*.

**Constructive transfer.** A transfer of an item (*e.g.* a controlled substance), either belonging to an individual or under the individual's control, by some other person or agency at the instance or direction of the individual accused of such constructive transfer. *Henderson v. State*, Tex.App. 14 Dist., 681 S.W.2d 173, 174.

**Constructive trust.** Trust created by operation of law against one who by actual or constructive fraud, by duress or by abuse of confidence, or by commission of wrong, or by any form of unconscionable conduct, or other questionable means, has obtained or holds legal right to property which he should not, in equity and good conscience, hold and enjoy. *Davis v. Howard*, 19 Or.App. 310, 527 P.2d 422, 424.

A constructive trust is a relationship with respect to property subjecting the person by whom the title to the property is held to an equitable duty to convey it to another on the ground that his acquisition or retention of the property is wrongful and that he would be unjustly enriched if he were permitted to retain the property. Restatement, Second, Trusts § 1(e).

**Constructive trust ex delicto.** A constructive trust which is imposed on property which a fiduciary has claimed or received in violation of his duties.

**Constructive willfulness.** Intentional disregard of a known duty necessary to the safety of a person, and an entire absence of care for the life, the person, or the property of others, such as exhibits a conscious indifference to consequences.

**Construe.** To put together; to arrange or interpret the words of an instrument, statute, regulation, court decision or other legal authority. To ascertain the meaning of language by a process of arrangement, interpretation and inference. See Construction.

**Constuprate** /kónst(y)əpreyt/. To ravish, debauch, violate, rape.

**Consuetudinarius** /kónswətyúwdənəriyəs/. In ecclesiastical law, a ritual or book, containing the rites and forms of divine offices or the customs of abbeys and monasteries.

**Consuetudinary law** /kónswətyúwdən(ə)ry ló/. Customary law. Law derived by oral tradition from a remote antiquity.

**Consuetudines** /kónswətyúwdəniyz/. In old English law, customs. Thus, *consuetudines et assisa forestæ*, the customs and assise of the forest.

**Consuetudines feudorum** /kónswətyúwdəniyz fyw-dórəm/. (Lat. feudal customs.) A compilation of the law of feuds or fiefs in Lombardy, made A.D. 1170. It is of great authority.

**Consuetudinibus et serviciis** /kónswətyúwdínəbəs et sərvíshiyəs/. In old English law, a writ of right close, which lay against a tenant who deforced his lord of the rent or service due to him.

**Consuetudo** /kónswətyúwdow/. Lat. A custom; an established usage or practice; duties; taxes.

**Consuetudo anglicana** /kónswətyúwdow ænglækéynə/. The custom of England; the ancient common law, as distinguished from *lex*, the Roman or civil law.

**Consuetudo contra rationem introducta potius usurpatio quam consuetudo appellari debet** /kónswətyúwdow kóntrə rəshiyównəm intrədákta pówsh(iy)əs yúwsərpéysh(iy)ow kwəm kónswətyúwdow əpəléray débət/. A custom introduced against reason ought rather to be called a "usurpation" than a "custom."

**Consuetudo curiæ** /kónswətyúwdow kyúriiy/. The custom or practice of a court.

**Consuetudo debet esse certa; nam incerta pro nulla habetur** /kónswətyúwdow débət ésiy sárta, nām insértə

pròw náləs heybéntər/. A custom should be certain; for an uncertain custom is considered null.

**Consuetudo est altera lex** /kónswətyúwdow èst áltərə léks/. Custom is another law.

**Consuetudo est optimus interpres legum** /kónswətyúwdow èst óptəməs intərpriyz líygam/. Custom is the best expounder of the laws.

**Consuetudo et communis assuetudo vincit legem non scriptam, si sit specialis; et interpretatur legem scriptam, si lex sit generalis** /kónswətyúwdow èt kəmyúwnəs əswətyúwdow vínsət líyjam nòn skríptəm, sáy sit spèshiyéyləs; et intərpřətéytər líyjam skríptəm, sáy sit jènərəyləs/. Custom and common usage overcomes the unwritten law, if it be special; and interprets the written law, if the law be general.

**Consuetudo ex certa causa rationabili usitata privat communem legem** /kónswətyúwdow èt sárta kósa rəshənáybəlay yúwzətéytə práyvat kəmyúwnəm líyjam/. A custom, grounded on a certain and reasonable cause, supersedes the common law.

**Consuetudo licet sit magna auctoritatis, nunquam tamen, præjudicat manifestæ veritati** /kónswətyúwdow, lísat sit mægnyí oktòhrətéytəs, nánkwəm támen præjúwdəkət mənəféstiy vèhrətéytay/. A custom, though it be of great authority, should never prejudice manifest truth.

**Consuetudo loci observanda est** /kónswətyúwdow lów-say òbzərvəndə ést/. The custom of a place is to be observed.

**Consuetudo manerii et loci observanda est** /kónswətyúwdow mənəriyay èt lówsay òbzərvəndə ést/. A custom of a manor and place is to be observed.

**Consuetudo mercatorum** /kónswətyúwdow mər-kətóram/. Lat. The custom of merchants, the same with *lex mercatoria*.

**Consuetudo neque injuriâ oriri neque tolli potest** /kónswətyúwdow nəkwiý ənjúriyə əráyray nəkwiý tólay pówtəst/. Custom can neither arise from nor be taken away by injury.

**Consuetudo non trahitur in consequentiam** /kónswətyúwdow nòn tréy(h)ətər in kónsəkwénsh(iy)əm/. Custom is not drawn into consequence.

**Consuetudo præscripta et legitima vincit legem** /kónswətyúwdow præskríptə et ləjítamə vínsət líyjam/. A prescriptive and lawful custom overcomes the law.

**Consuetudo regni anglia est lex anglia** /kónswətyúwdow régnay əngliiy èst léks əngliiy/. The custom of the kingdom of England is the law of England. 2 Bl.Comm. 422.

**Consuetudo semel reprobata non potest amplius induci** /kónswətyúwdow séməl rəpřowbéytə nòn pówtəst əmpliýəs ind(y)úwsay/. A custom once disallowed cannot be again brought forward [or relied on].

**Consuetudo tollit communem legem** /kónswətyúwdow tólat kəmyúwnəm líyjam/. Custom takes away the common law.

**Consuetudo vincit communem legem** /kɔ̃nswətýúwd-  
ow vɪnsət kəmyúwnəm líjəm/. Custom overrules com-  
mon law.

**Consuetudo volentes ducit, lex nolentes trahit** /kɔ̃n-  
swətýúwdow vələntiýz d(y)úwsət, léks now-  
lěntiýz tréy(h)ət/. Custom leads the willing, law com-  
pels [drags] the unwilling.

**Consul** /kɔ̃nsəl/. An officer of a commercial character,  
appointed by the different nations to watch over the  
mercantile and tourist interests of the appointing nation  
and of its subjects in foreign countries. There are  
usually a number of consuls in every maritime country,  
and they are usually subject to a chief consul, who is  
called a "consul general." A public official residing in a  
foreign country responsible for developing and protect-  
ing the economic interests of his government and look-  
ing after the welfare of his government's citizens who  
may be traveling or residing within his jurisdiction.  
United States consuls form a part of the Foreign Service  
and are of various grades: consul general, consul, vice  
consul, and consular agent.

In old English law, a title of an earl.

In Roman law, during the republic, the name "consul"  
was given to the chief executive magistrate, two of  
whom were chosen annually. The office was continued  
under the empire, but its powers and prerogatives were  
greatly reduced. The name is supposed to have been  
derived from *consulo*, to consult, because these officers  
consulted with the senate on administrative measures.

**Consular courts** /kɔ̃ns(y)ələr kórts/. Courts held by the  
consuls of one country, within the territory of another,  
under authority given by treaty, for the settlement of  
civil cases. In some instances they had also a criminal  
jurisdiction, but in this respect were subject to review by  
the courts of the home government. The last of the  
United States consular courts (Morocco) was abolished  
in 1956.

**Consular invoice.** Invoice used in foreign trade signed  
by consul of the country for which the shipment is  
destined. Such facilitates entry through destination  
country in that quantity, value, etc. of shipment has  
been pre-verified.

**Consular marriage.** A marriage solemnized in a fore-  
ign country by a consul or diplomatic agent of the U.S.  
and held to be valid in some jurisdictions.

**Consulate.** The residence or headquarters of a foreign  
consul.

**Consul general.** Consular officer of highest grade.

**Consulta ecclesia** /kənsáltə əklíýziyə/. In ecclesiastical  
law, a church full or provided for.

**Consultary response** /kənsáltəriý rəspóns/kənsáltériý'/.  
The opinion of a court of law on a special case.

**Consultation.** Act of consulting or conferring; *e.g.* pa-  
tient with doctor; client with lawyer. Deliberation of  
persons on some subject. A conference between the  
counsel engaged in a case, to discuss its questions or  
arrange the method of conducting it.

An old writ whereby a cause which had been wrong-  
fully removed by prohibition out of an ecclesiastical  
court to a temporal court was returned to the ecclesiasti-  
cal court.

**Consulto** /kənsáltow/. Lat. In the civil law, designedly;  
intentionally.

**Consumer** /kəns(y)úwmər/. One who consumes. Indi-  
viduals who purchase, use, maintain, and dispose of  
products and services. Users of the final product. A  
member of that broad class of people who are affected by  
pricing policies, financing practices, quality of goods and  
services, credit reporting, debt collection, and other  
trade practices for which state and federal consumer  
protection laws are enacted. Consumers are to be dis-  
tinguished from manufacturers (who produce goods), and  
wholesalers or retailers (who sell goods). *See also* Pur-  
chaser.

A buyer (other than for purposes of resale) of any  
consumer product, any person to whom such product is  
transferred during the duration of an implied or written  
warranty (or service contract) applicable to the product,  
and any other person who is entitled by the terms of  
such warranty (or service contract) or under applicable  
State law to enforce against the warrantor (or service  
contractor) the obligations of the warranty (or service  
contract). 15 U.S.C.A. § 2301.

**Consumer advocate.** One who is given to presenting  
the position of the consumer or to representing him in  
judicial, administrative, or legislative proceedings. *See  
also* Ombudsman.

**Consumer credit.** Short term loans to individuals for  
purchase of consumer goods and services.

**Consumer Credit Code.** A uniform law, adopted by  
several states, with intent and purpose similar to that of  
the federal Consumer Credit Protection Act (*q.v.*).

**Consumer Credit Protection Act.** Federal and state  
acts (commonly referred to as Truth-in-Lending Acts)  
enacted to safeguard the consumer in connection with  
the utilization of credit by requiring full disclosure of  
the terms and conditions of finance charges in credit  
transactions or in offers to extend credit, by restricting  
the garnishment of wages, and by regulating the use of  
credit cards. 15 U.S.C.A. § 1601 et seq. In addition to  
federal and state Truth-in-Lending Acts, several states  
also require by statute that consumer-loan agreements  
be written in plain, simplified language. *See also* Annu-  
al percentage rate; Equal Credit Opportunity Act; Fair  
Credit Billing Act; Fair Credit Reporting Acts; Fair Debt  
Collection Practices Act; Truth-in-Lending Act; Uniform  
Consumer Credit Code.

**Consumer credit sale.** Any sale with respect to which  
consumer credit is extended or arranged by the seller.  
The term includes any contract in the form of a bail-  
ment or lease if the bailee or lessee contracts to pay as  
compensation for use a sum substantially equivalent to  
or in excess of the aggregate value of the property and  
services involved and it is agreed that the bailee or  
lessee will become, or for no other or for a nominal

consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

**Consumer credit transaction.** Credit offered or extended to a natural person, in which the money, property or service which is the subject of the transaction is primarily for personal, family, household or agricultural purposes and for which either a finance charge is or may be imposed or which, pursuant to an agreement, is or may be payable in more than four installments. "Consumer loan" is one type of "consumer credit".

**Consumer debt.** Debt incurred by an individual primarily for a personal, family, or household purpose. Bankruptcy Code § 101.

**Consumer goods.** Goods which are used or bought for use primarily for personal, family or household purposes. U.C.C. § 9-109(1). Such goods are not intended for resale or further use in the production of other products. Contrasted with capital goods. *See also* Consumer product.

**Consumer lease.** Lease of consumer goods; also may be applied to lease of dwelling as contrasted with commercial lease. Article 2A of the U.C.C. is concerned with the formation, construction, effect, and enforcement of the consumer lease contracts, as well as the rights and remedies of both lessor and lessee on default. As defined by U.C.C. § 2A-103 is "a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee, except an organization, who takes under the lease primarily for a personal, family, or household purpose."

Disclosure of terms in certain types of consumer leases is governed by Federal Consumer Leasing Act (which is fully integrated into the Federal Truth in Lending Act). 15 U.S.C.A. § 1667 et seq.

**Consumer Price Index.** A price index computed and issued monthly by the Bureau of Labor Statistics of the U.S. Department of Labor. The index attempts to track the price level of a group of goods and services purchased by the average consumer. Widely used to measure changes in cost of maintaining given standard of living. *See* Cost of living clause. *Compare* Producer Price Index.

**Consumer product.** Any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed). 15 U.S.C.A. § 2301. *See also* Consumer goods.

**Consumer Product Safety Commission.** An independent federal regulatory agency established by act of October 27, 1972 (86 Stat. 1207) to administer and implement the Consumer Product Safety Act. The Commission has primary responsibility for establishing mandatory product safety standards, where appropriate, to reduce the unreasonable risk of injury to consumers from consumer products. In addition it has authority to

ban hazardous consumer products. The Consumer Product Safety Act also authorizes the Commission to conduct extensive research on consumer product standards, engage in broad consumer and industry information and education programs, and establish a comprehensive Injury Information Clearinghouse.

**Consumer protection laws.** Federal and state statutes governing sales and credit practices involving consumer goods. Such statutes prohibit and regulate deceptive or unconscionable advertising and sales practices, product quality, credit financing and reporting, debt collection, leases, and other aspects of consumer transactions. For examples of such statutes, *see* Consumer Credit Protection Act; Consumer Product Safety Commission; Deceptive sales practices; Equal Credit Opportunity Act; Fair Debt Collection Practices Act; Fair Credit Billing Act; Fair Credit Reporting Acts; Magnuson-Moss Warranty Act; Truth-in-Lending Act; Uniform Commercial Code; Uniform Consumer Credit Code.

At the federal level, the major regulatory law is the Federal Trade Commission Act. More than half the states have in turn enacted "mini-FTC" laws which, like the federal, prohibit "unfair or deceptive acts or practices."

**Consumer report.** Document issued by private or governmental body relative to quality of certain products, their dangers and their attributes. Document issued as to certain companies and their practices. *See* Fair Credit Reporting Acts.

**Consumer reporting agency.** An agency which acts for monetary fees, dues or on a cooperative nonprofit basis, which regularly engages in whole or in part in gathering or evaluating information on consumers in order to distribute such information to third parties engaged in commerce and which uses a facility of interstate commerce to prepare or distribute the reports. *Porter v. Talbot Perkins Children's Services, D.C.N.Y., 355 F.Supp. 174, 176.* The activities of such agencies are regulated by federal and state laws. *See* Fair Credit Reporting Acts.

**Consumer's cooperative.** Group which purchases consumer goods for resale to its members, thus reducing costs by eliminating the middleman's profit.

**Consummate** /kənsəmət/, *adj.* Completed; as distinguished from *initiate*, or that which is merely begun. The husband of a woman seised of an estate of inheritance becomes, by the birth of a child, tenant by the curtesy *initiate*, and may do many acts to charge the lands, but his estate is not *consummate* till the death of the wife. 2 Bl.Comm. 126, 128.

**Consummate** /kənsəməyt/, *v.* To finish by completing what was intended; bring or carry to utmost point or degree; carry or bring to completion; finish; perfect; fulfill; achieve. *See also* Consummation.

**Consummate lien.** A term which may be used to describe the lien of a judgment when a motion for a new trial has been denied (the lien having theretofore been merely inchoate).

**Consummation** /kɒnsəméyʃən/. The completion of a thing; the completion of a marriage by cohabitation (*i.e.* sexual intercourse) between spouses.

**Consumption.** Act or process of consuming; waste; decay; destruction. Using up of anything, as food, natural resources, heat, or time.

**Contagious disease.** One capable of being transmitted by mediate or immediate contact.

**Contamination.** Condition of impurity resulting from mixture or contact with foreign substance. American Cas. Co. of Reading, Pa. v. Myrick, C.A.Tex., 304 F.2d 179, 183. *See also* Adulteration; Foreign substance.

**Contango** /kɒntæŋɡow/. A double bargain, consisting of a sale for cash of stock previously bought which the broker does not wish to carry, and a repurchase for the re-settlement several weeks ahead of the same stock at the same price as at the sale plus interest accrued up to the date of that settlement. The rate of interest is called a "contango" and contango days are the days during the settlement when these arrangements are in effect.

Charge by broker for carrying customer's account to next settlement day.

**Contek** /kɒnték/. L. Fr. A contest, dispute, disturbance, opposition. *Conteckours*; brawlers; disturbers of the peace.

**Contemnor** /kɒntémnr/. One who has committed contempt of court.

**Contemplate.** To view or consider with continued attention; to regard thoughtfully; to have in view as contingent or probable as an end or intention. To ponder, to study, to plan, to meditate, to reflect. *See* Consider; Premeditation.

**Contemplation.** The act of the mind in considering with attention. Continued attention of the mind to a particular subject. Consideration of an act or series of acts with the intention of doing or adopting them. The consideration of an event or state of facts with the expectation that it will transpire. *See* Consideration; Premeditation.

**Contemplation of bankruptcy.** Contemplation of the termination of one's business because of the financial inability to continue it. Knowledge of, and action with reference to, a condition of bankruptcy or ascertained insolvency, coupled with an intention to commit what the law formerly declared to be an "act of bankruptcy," or to make provision against the consequences of insolvency, or to defeat the general distribution of assets which would take place under a proceeding in bankruptcy. *See* Act of bankruptcy; Bankruptcy proceedings.

**Contemplation of death.** The apprehension or expectation of approaching dissolution; not that general expectation which every mortal entertains, but the apprehension which arises from some presently existing sickness or physical condition or from some impending danger. As applied to transfers of property, the phrase "in contemplation of death" means that thought of death is

the impelling cause of transfer and that motive which induces transfer is of sort which leads to testamentary disposition and is practically equivalent to "causa mortis." In *re* Cornell's Estate, 66 A.D. 162, 73 N.Y.S. 32; *Nicholas v. Martin*, 128 N.J.Eq. 344, 15 A.2d 235, 243; *Pate v. C. I. R.*, C.C.A.8, 149 F.2d 669, 670. It has been further held however, that in determining whether transfer by decedent within three years prior to date of death was made in contemplation of death, phrase "contemplation of death" is not restricted in meaning to apprehension that death is imminent; inquiry is whether the "life" as opposed to "death" motives were the dominant controlling or impelling reasons for the transfer. *Bel v. U. S.*, D.C.La., 310 F.Supp. 1189, 1194. *See also* In contemplation of death.

**Contemplation of insolvency.** Knowledge of, and action with reference to, an existing or contemplated state of insolvency, with a design to make provision against its results or to defeat the operation of the insolvency laws. *See* Act of bankruptcy; Contemplation of bankruptcy.

**Contemporanea expositio** /kɒntɛmpərəéniyə èks-pəzish(iy)ow/. Lat. Contemporaneous exposition, or construction; a construction drawn from the *time* when, and the circumstances under which, the subject-matter to be construed, as a statute or custom, originated.

**Contemporanea expositio est optima et fortissima in lege** /kɒntɛmpərəéniyə èks-pəzish(iy)ow èst óptəmə èt fortisəmə in liyjy/. Contemporaneous exposition is the best and strongest in the law. A statute is best explained by following the construction put upon it by judges who lived at the *time* it was made, or soon after.

**Contemporaneous construction.** A doctrine which holds that when an administrative body over a long period of time has placed an interpretation upon an ambiguous law, the interpretation of such body is entitled to great weight in the determination of the meaning of the law. *Bunch v. Town of St. Francisville, La.App. 1 Cir.*, 446 So.2d 1357, 1361.

**Contemporaneous objection rule.** Rule which requires that a specific and timely objection be made to the admission of evidence for the question of its admissibility to be considered on appeal. *Jensen v. Jensen*, 205 Kan. 465, 470 P.2d 829, 831.

**Contemporary community standards.** In deciding whether allegedly obscene material has any literary, political or scientific value, the proper inquiry is not whether an ordinary member of any given community would find serious literary, artistic, political or scientific value in the material, but whether a reasonable person would find such value in the material taken as a whole. *Pope v. Illinois*, 481 U.S. 497, 107 S.Ct. 1918, 95 L.Ed.2d 439, 445.

**Contempt.** A willful disregard or disobedience of a public authority. *See also* Civil contempt; Common-law contempt; Contempt of Congress; Contempt of court; Direct contempt.

**Contemptibiliter** /kəntəm(p)təbɪlətər/. Lat. Contemptuously. In old English law, contempt, contempts.

**Contempt of Congress.** Deliberate interference with duties and powers of Congress. Both houses of Congress may cite an individual for such contempt.

**Contempt of court.** Any act which is calculated to embarrass, hinder, or obstruct court in administration of justice, or which is calculated to lessen its authority or its dignity. Committed by a person who does any act in willful contravention of its authority or dignity, or tending to impede or frustrate the administration of justice, or by one who, being under the court's authority as a party to a proceeding therein, willfully disobeys its lawful orders or fails to comply with an undertaking which he has given.

#### Classification

Contempts are, generally, of two kinds, direct and constructive.

Direct contempts are those committed in the immediate view and presence of the court (such as insulting language or acts of violence) or so near the presence of the court as to obstruct or interrupt the due and orderly course of proceedings. These are punishable summarily. *People v. Edwards*, 69 Ill.App.3d 626, 26 Ill.Dec. 139, 387 N.E.2d 969. They are also called "criminal" contempts, but that term is better used in contrast with "civil" contempts (see below).

Constructive (or indirect) contempts are those which arise from matters not occurring in or near the presence of the court, but which tend to obstruct or defeat the administration of justice, and the term is chiefly used with reference to the failure or refusal of a party to obey a lawful order, injunction, or decree of the court laying upon him a duty of action or forbearance. *McGill v. McGill*, 3 Ohio App.3d 455, 445 N.E.2d 1163. Constructive contempts were formerly called "consequential," and this term is still in occasional use.

Contempts are also classed as civil or criminal. The former are those quasi contempts which consist in the failure to do something which the party is ordered by the court to do for the benefit or advantage of another party to the proceeding before the court, while criminal contempts are acts done in disrespect of the court or its process or which obstruct the administration of justice or tend to bring the court into disrespect. A civil contempt is not an offense against the dignity of the court, but against the party in whose behalf the mandate of the court was issued, and a fine is imposed for his indemnity. But criminal contempts are offenses upon the court such as wilful disobedience of a lawful writ, process, order, rule, or command of court, and a fine or imprisonment is imposed upon the contemnor for the purpose of punishment. Fed.R.Crim.Proc. 42; 18 U.S.C.A. § 402.

A court of the United States has power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as: (1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice; (2) misbehavior of any of its officers in their official transactions; (3) disobedience

or resistance to its lawful writ, process, order, rule, decree, or command. 18 U.S.C.A. § 401.

Contempt for failure to make discovery is governed by Fed.R. Civil P. 37(b), which provides for imposition of sanctions. See also Sanction.

**Contempt power.** Every court has inherent power to punish one for contempt of its judgments or decrees and for conduct within or proximate to the court which is contemptuous. See also Contempt of Congress; Contempt of court; Sanction.

**Contempt proceeding.** The judicial hearing or trial conducted to determine whether one has been in contempt of court and to make an appropriate disposition. Such proceedings are sui generis and not necessarily connected to or identified with the proceeding out of which the contempt arose.

**Contentementum** /kəntənəməntəm/. See Wainagium; Contentment.

**Contentious** /kəntəntʃəs/. Contested; adversary; litigated between adverse or contending parties. A judicial proceeding not merely *ex parte* in its character, but comprising attack and defense as between opposing parties, is so called. Character of being quarrelsome or belligerent.

**Contentious jurisdiction.** That part of jurisdiction of court that is concerned with contested matters, as opposed to voluntary, undisputed matters. In English ecclesiastical law, that branch of the jurisdiction of the ecclesiastical courts which is exercised upon adversary or *contentious* (opposed, litigated) proceedings.

**Contentious possession.** In stating the rule that the possession of land necessary to give rise to a title by prescription must be a "contentious" one, it is meant that it must be based on opposition to the title of the rival claimant (not in recognition thereof or subordination thereto) and that the opposition must be based on good grounds, or such as might be made the subject of litigation.

**Contentment, contentment.** A man's countenance or credit, which he has together with, and by reason of, his freehold; or that which is necessary for the support and maintenance of men, agreeably to their several qualities or states of life.

Comfort; consolation; ease; enjoyment; happiness; pleasure; satisfaction.

**Contents and not contents.** In English parliamentary law, the "contents" are those who, in the house of lords, express assent to a bill; the "not" or "non-contents" dissent.

**Contents unknown.** Words sometimes annexed to a bill of lading of goods in cases or other packaging. Their meaning is that the carrier only means to acknowledge that the shipment, as evidenced from the external condition of such, is in good order.

**Content validation.** Content validation of a test requires that an analysis of a job involved be undertaken to determine what characteristics are essential for ade-

quate performance of that job and the job analysis is then followed by formulation of a test which accurately reflects presence or absence of these necessary qualities. *Com. of Pa. v. Glickman, D.C.Pa., 370 F.Supp. 724, 737.*

**Conterminous** /kòntérmənəs/. Adjacent; adjoining; having a common boundary; coterminous.

**Contest, v.** To assert a defense to an adverse claim in a court proceeding. To oppose, resist, or dispute the case made by a plaintiff or prosecutor. To strive to win or hold. To controvert, litigate, call in question, challenge. To defend, as a suit or other proceeding. As used in a no-contest clause in a will, means any legal proceedings designed to thwart testator's wishes. *In re Holtermann's Estate, 206 C.A.2d 460, 23 Cal.Rptr. 685, 690. See Answer; Defense.*

**Contestable clause.** Provision in an insurance policy setting forth the conditions under which, or the period of time during which, the insurer may contest or void the policy.

**Contestatio litis** /kòntástéysh(iy)ow láytəs/. In Roman law, contestation of suit; the framing an issue; joinder in issue. The formal act of both the parties with which the proceedings *in jure* were closed when they led to a judicial investigation, and by which the neighbors whom the parties brought with them were called to testify.

In old English law, coming to an issue; the issue so produced.

**Contestatio litis eget terminos contradictorios** /kòntástéysh(iy)ow láytəs iyət tármenows kòntradiktéri-yows/. An issue requires terms of contradiction. To constitute an issue, there must be an affirmative on one side and a negative on the other.

**Contestation of suit.** In an ecclesiastical cause, that stage of the suit which is reached when the defendant has answered the libel by giving in an allegation. *See also Answer; Contest; Defense.*

**Contested case.** A court or administrative proceeding that is opposed by another party or interested person. Within the meaning of the Administrative Procedure Act this means a proceeding including but not restricted to rate making, price fixing, and licensing in which the legal rights, duties or privileges of a party are required by constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing. *Oliver v. Teleprompter Corp., Iowa, 299 N.W.2d 683, 686.*

**Contested election.** An election is contested whenever an objection is formally urged against it which, if found to be true in fact, would invalidate it. This is true both as to objections founded upon some constitutional provision and to such as are based on statutes.

**Contest of will.** *See Will contest.*

**Context.** The context of a particular sentence or clause in a statute, contract, will, etc., comprises those parts of the text which immediately precede and follow it. The context may sometimes be scrutinized, to aid in the interpretation of an obscure passage. *See Construction.*

**Contiguity.** Exists where tracts of land touch or adjoin in a reasonably substantial physical sense, but line of demarcation between reasonableness or unreasonableness of a "contiguity" must be determined on the facts of each case. *Belmont Fire Protection Dist. v. Village of Downers Grove, 92 Ill.App.3d 682, 48 Ill.Dec. 261, 264, 416 N.E.2d 292, 295.*

**Contiguous** /kəntígyuwəs/. In close proximity; neighboring; adjoining; near in succession; in actual close contact; touching at a point or along a boundary; bounded or traversed by. The term is not synonymous with "vicinal." *Ehle v. Tenney Trading Co., 56 Ariz. 241, 107 P.2d 210, 212.*

**Continencia** /kòntinénsiyə/. In Spanish law, continence or unity of the proceedings in a cause.

**Continens** /kòntánənz/. In the Roman law, continuing; holding together. Adjoining buildings were said to be *continentia*.

**Continental.** Pertaining or relating to a continent; characteristic of a continent; as broad in scope or purpose as a continent.

**Continental Congress.** The first national legislative assembly in the United States, which met in 1774, in pursuance of a recommendation made by Massachusetts and adopted by the other colonies. In this Congress all the colonies were represented except Georgia. The delegates were in some cases chosen by the legislative assemblies in the states; in others by the people directly. The powers of the Congress were undefined, but it proceeded to take measures and pass resolutions which concerned the general welfare and had regard to the inauguration and prosecution of the war for independence.

**Continental currency.** Paper money issued under the authority of the continental congress.

**Continentia** /kòntánénsh(iy)ə/. In old English practice, continuance or connection. Applied to the proceedings in a cause.

**Contingency** /kəntínjənsiy/. Something that may or may not happen. Quality of being contingent or casual; the possibility of coming to pass; an event which may occur; a possibility; a casualty. A fortuitous event, which comes without design, foresight, or expectation. *See also Contingent.*

**Contingency contract.** A contract, part of performance of which at least is dependent on the happening of a contingency. Sometimes used to refer to fee arrangement with attorney who agrees to accept his fee on the contingency of a successful outcome. *See Fee.*

**Contingency reserve (or fund).** In accounting, a reserve set up to cover possible or potential losses; e.g. possible judgment against company.

A fund created in anticipation of incidental or unforeseen expenditures.

**Contingency with double aspect.** A remainder is said to be "in a contingency with double aspect," when there is another remainder limited on the same estate, not in

derogation of the first, but as a substitute for it in case it should fail.

**Contingent** /kəntɪnjənt/. Possible, but not assured; doubtful or uncertain; conditioned upon the occurrence of some future event which is itself uncertain, or questionable. Synonymous with provisional. This term, when applied to a use, remainder, devise, bequest, or other legal right or interest, implies that no present interest exists, and that whether such interest or right ever will exist depends upon a future uncertain event.

As to *contingent* Damages; Fee; Legacy; Limitation; Remainder; Trust; Use, and Will, see those titles.

**Contingent beneficiary.** Person who may or will benefit if primary beneficiary dies or otherwise loses rights as beneficiary; *e.g.* person who will receive life insurance if primary beneficiary dies before insured.

**Contingent claim.** One which has not accrued and which is dependent on some future event that may never happen.

**Contingent debt.** One which is not presently fixed, but may become so in the future with the occurrence of some uncertain event. A debt in bankruptcy which may be proved and allowed and which arises out of contract. It does not encompass a tort claim on which no action or suit has been brought prior to adjudication. *Resolute Ins. Co. v. Underwood*, La.App., 230 So.2d 433, 435. Term may refer to debt incurred by state to which state pledges its credit and guarantees payment if revenues from funded project prove inadequate. *Rochlin v. State*, 112 Ariz. 171, 540 P.2d 643. *See also* Contingent claim; Contingent liability.

**Contingent estate, interest or right.** An estate, interest or right which depends for its effect upon an event which may or may not happen. A contingent estate is one which is conditioned upon the existence of persons who answer the description of takers but who cannot be ascertained until the termination of a precedent or particular estate because the right to take is contingent upon the fact of their being alive or having survived until that time or upon the happening of some other uncertain event. *Houston v. Harberger*, Tex.Civ.App., 377 S.W.2d 673, 678.

**Contingent fee.** *See* Fee.

**Contingent fund.** One set up by a municipality to pay expense items which will necessarily arise during the year but cannot appropriately be classified under any of the specific purposes for which other taxes are levied. *First Nat. Bank of Norman v. City of Norman*, 182 Okl. 7, 75 P.2d 1109, 1110. *See also* Contingency reserve.

**Contingent interest in personal property.** A future interest not transmissible to the representatives of the party entitled thereto, in case he dies before it vests in possession. Thus, if a testator leaves the income of a fund to his wife for life, and the capital of the fund to be distributed among such of his children as shall be living at her death, the interest of each child during the widow's life-time is *contingent*, and in case of his death is not transmissible to his representatives.

**Contingent liability.** One which is not now fixed and absolute, but which will become so in case of the occurrence of some future and uncertain event. *Warren Co. v. C. I. R.*, C.C.A.Ga., 135 F.2d 679, 684, 685. A potential liability; *e.g.* pending lawsuit, disputed claim, judgment being appealed, possible tax deficiency. *See also* Contingent claim; Contingent debt.

**Contingent remainder.** *See* Remainder.

**Continual claim.** In old English law, a formal claim made by a party entitled to enter upon any lands or tenements, but deterred from such entry by menaces, or bodily fear, for the purpose of preserving or keeping alive his right. It was called "continual", because it was required to be repeated once in the space of every year and day. It had to be made as near to the land as the party could approach with safety, and, when made in due form, had the same effect with, and in all respects amounted to, a legal entry. 3 Bl.Comm. 175.

**Continuance.** The adjournment or postponement of a session, hearing, trial, or other proceeding to a subsequent day or time; usually on the request or motion of one of the parties. Also the entry of a continuance made upon the record of the court, for the purpose of formally evidencing the postponement, or of connecting the parts of the record so as to make one continuous whole. *Compare* Recess.

**Continuance nisi** /kəntɪnyuwəns nəysay/. A postponement on a condition or for a specific period of time.

**Continuando** /kəntɪnyuwəndow/. In old pleading, a form of allegation in which the trespass, criminal offense, or other wrongful act complained of is charged to have been committed on a specified day and to have "continued" to the present time, or is averred to have been committed at divers days and times within a given period or on a specified day and on divers other days and times between that day and another. This is called "laying the time with a continuando."

**Continuing.** Enduring; not terminated by a single act or fact; subsisting for a definite period or intended to cover or apply to successive similar obligations or occurrences.

As to *continuing* Breach; Consideration; Conspiracy; Covenant; Damages; Guaranty; and Nuisance, see those titles. *See also* Perpetuity.

**Continuing contract.** A contract calling for periodic performances over a space of time.

**Continuing jurisdiction.** A doctrine invoked commonly in child custody or support cases by which a court which has once acquired jurisdiction continues to possess it for purposes of amending and modifying its orders therein. *Curtis v. Gibbs*, Tex., 511 S.W.2d 263.

**Continuing offense.** Type of crime which is committed over a span of time as, for example, a conspiracy. As to period of statute of limitation, the last act of the offense controls for commencement of the period. A "continuing offense," such that only the last act thereof within the period of the statute of limitations need be alleged in



the indictment or information, is one which may consist of separate acts or a course of conduct but which arises from that singleness of thought, purpose or action which may be deemed a single impulse. *U. S. v. Benton & Co., Inc.*, D.C.Fla., 345 F.Supp. 1101, 1103. *See also* Crime; Offense.

**Continuity of life or existence.** The death or other withdrawal of an owner of an entity does not terminate the existence of such entity. This is a characteristic of a corporation, since the death or withdrawal of a shareholder does not affect the corporation's existence.

**Continuous.** Uninterrupted; unbroken; not intermittent or occasional; so persistently repeated at short intervals as to constitute virtually an unbroken series. Connected, extended, or prolonged without cessation or interruption of sequence. *Sullivan v. John Hancock Mut. Life Ins. Co. of Boston*, Mo.App., 110 S.W.2d 870, 877. As to *continuous* Crime and Easement, see those titles.

**Continuous adverse use.** Term is interchangeable with the term "uninterrupted adverse use".

**Continuous injury.** One recurring at repeated intervals, so as to be of repeated occurrence; not necessarily an injury that never ceases.

**Continuous treatment doctrine.** Under this doctrine, the time in which to bring a medical malpractice action is stayed when the course of treatment which includes wrongful acts or omissions has run continuously and is related to the same original condition or complaint. *Lomber v. Farrow*, 91 A.D.2d 725, 457 N.Y.S.2d 638, 640.

**Continuously.** Uninterruptedly; in unbroken sequence; without intermission or cessation; without intervening time; with continuity or continuation.

**Contour map.** Map which shows the configuration and elevation of surface areas with curved lines.

**Contra.** Against, confronting, opposite to; on the other hand; on the contrary; the reverse of.

**Contra account.** *See* Account (*Contra*).

**Contraband.** In general, any property which is unlawful to produce or possess. Things and objects outlawed and subject to forfeiture and destruction upon seizure. *Com. v. One 1958 Plymouth Sedan*, 414 Pa. 540, 201 A.2d 427, 429. Goods exported from or imported into a country against its laws. Smuggled goods. Articles, the importation or exportation of which, is prohibited by law. *See e.g.* 49 U.S.C.A. § 781.

Trafficking in contraband cigarettes is a federal crime. 18 U.S.C.A. § 2341 et seq.

"Contraband per se" is property the mere possession of which is unlawful, while "derivative contraband" is property innocent by itself but used in perpetration of unlawful act. *Com. v. Fassnacht*, 246 Pa.Super. 42, 369 A.2d 800, 802.

*See also* Bootlegging; Counterfeit; Derivative contraband; Gray market goods; Smuggling.

**Contraband of war.** Certain classes of merchandise, such as arms and ammunition, which, by the rules of international law, cannot lawfully be furnished or car-

ried by a neutral nation to either of two belligerents. If found in transit in neutral vessels, such goods may be seized and condemned for violation of neutrality.

**Contra bonos mores** /kóntrə bównows móriyz/. Against good morals. Contracts *contra bonos mores* are void.

**Contra-causator** /kóntrəkozéytər/. A criminal; one prosecuted for a crime.

**Contraceptive.** Any device or substance which prevents fertilization of the female ovum.

**Contraceptivism.** The offense of distributing or prescribing contraceptives; the offense has little or no vitality today with respect to both married and unmarried persons. *Baird v. Eisenstadt*, 405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed.2d 349.

**Contract.** An agreement between two or more persons which creates an obligation to do or not to do a particular thing. As defined in Restatement, Second, Contracts § 3: "A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty." A legal relationship consisting of the rights and duties of the contracting parties; a promise or set of promises constituting an agreement between the parties that gives each a legal duty to the other and also the right to seek a remedy for the breach of those duties. Its essentials are competency parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation. *Lamoureux v. Burrillville Racing Ass'n*, 91 R.I. 94, 161 A.2d 213, 215.

Under U.C.C., term refers to total legal obligation which results from parties' agreement as affected by the Code. Section 1-201(11). As to sales, "contract" and "agreement" are limited to those relating to present or future sales of goods, and "contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. U.C.C. § 2-106(1).

The writing which contains the agreement of parties, with the terms and conditions, and which serves as a proof of the obligation.

Contracts may be classified on several different methods, according to the element in them which is brought into prominence. The usual classifications are as follows:

**Blanket contract.** Contract covering a number or group of products, goods, or services for fixed period of time.

**Certain and hazardous.** Certain contracts are those in which the thing to be done is supposed to depend on the will of the party, or when, in the usual course of events, it must happen in the manner stipulated. Hazardous contracts are those in which the performance of that which is one of its objects depends on an uncertain event.

**Commutative and independent.** Commutative contracts are those in which what is done, given, or promised by one party is considered as an equivalent to or in consideration of what is done, given, or promised by the other.

Independent contracts are those in which the mutual acts or promises have no relation to each other, either as equivalents or as considerations.

*Conditional contract.* A contract whose very existence and performance depends upon the happening of some contingency or condition expressly stated therein. It is not simply an executory contract, since the latter may be an absolute agreement to do or not to do something, but it is a contract whose very existence and performance depend upon a contingency.

*Consensual and real.* Consensual contracts are such as are founded upon and completed by the mere agreement of the contracting parties, without any external formality or symbolic act to fix the obligation. Real contracts are those in which it is necessary that there should be something more than mere consent, such as a loan of money, deposit or pledge, which, from their nature, require a delivery of the thing (*res*). In the common law a contract respecting real property (such as a lease of land for years) is called a "real" contract.

*Constructive contract.* See Constructive contract; also *Express and implied*; *Quasi contract*, below.

*Cost-plus contract.* See Costs.

*Divisible and indivisible.* The effect of the breach of a contract depends in a large degree upon whether it is to be regarded as indivisible or divisible; *i.e.* whether it forms a whole, the performance of every part of which is a condition precedent to bind the other party, or is composed of several independent parts, the performance of any one of which will bind the other party *pro tanto*. The only test is whether the whole quantity of the things concerned, or the sum of the acts to be done, is of the essence of the contract. It depends, therefore, in the last resort, simply upon the intention of the parties. *Integrity Flooring v. Zandon Corporation*, 130 N.J.L. 244, 32 A.2d 507, 509.

When a consideration is entire and indivisible, and it is against law, the contract is void *in toto*. When the consideration is divisible, and part of it is illegal, the contract is void only *pro tanto*. *Gelpcke v. Dubuque*, 68 U.S. (1 Wall.) 220, 17 L.Ed. 530.

*Entire and severable.* An *entire* contract is one the consideration of which is entire on both sides. The entire fulfillment of the promise by either is a condition precedent to the fulfillment of any part of the promise by the other. Whenever, therefore, there is a contract to pay the gross sum for a certain and definite consideration, the contract is entire. A *severable* contract is one the consideration of which is, by its terms, susceptible of apportionment on either side, so as to correspond to the unascertained consideration on the other side, as a contract to pay a person the worth of his services so long as he will do certain work; or to give a certain price for every bushel of so much corn as corresponds to a sample.

Where a contract consists of many parts, which may be considered as parts of one whole, the contract is entire. When the parts may be considered as so many

distinct contracts, entered into at one time, and expressed in the same instrument, but not thereby made one contract, the contract is a separable contract. But, if the consideration of the contract is single and entire, the contract must be held to be entire, although the subject of the contract may consist of several distinct and wholly independent items.

*Entire contract clause.* A provision in the insurance contract stating that the entire agreement between the insured and insurer is contained in the contract, including the application (if attached), declarations, insuring agreement, exclusions, conditions, and endorsements.

*Exclusive contract.* See *Requirements contract*; *Tying contract*, below.

*Executed and executory.* Contracts are also divided into executed and executory; *executed*, where nothing remains to be done by either party, and where the transaction is completed at the moment that the arrangement is made, as where an article is sold and delivered, and payment therefor is made on the spot; *executory*, where some future act is to be done, as where an agreement is made to build a house in six months, or to do an act on or before some future day, or to lend money upon a certain interest, payable at a future time.

*Express and implied.* An express contract is an actual agreement of the parties, the terms of which are openly uttered or declared at the time of making it, being stated in distinct and explicit language, either orally or in writing.

An implied contract is one not created or evidenced by the explicit agreement of the parties, but inferred by the law, as a matter of reason and justice from their acts or conduct, the circumstances surrounding the transaction making it a reasonable, or even a necessary, assumption that a contract existed between them by tacit understanding.

An implied contract is one inferred from conduct of parties and arises where plaintiff, without being requested to do so, renders services under circumstances indicating that he expects to be paid therefor, and defendant, knowing such circumstances, avails himself of benefit of those services. *Chem-Tronix Laboratories, Inc. v. Solocast Co.*, A.D., 5 Conn.Cir. 533, 258 A.2d 110, 113. It is an agreement which legitimately can be inferred from intention of parties as evidenced by circumstances and ordinary course of dealing and common understanding of men. *Martin v. Little, Brown & Co.*, 304 Pa.Super. 424, 450 A.2d 984, 987.

See also *Constructive contract*; and *Quasi contract*, below.

*Gratuitous and onerous.* Gratuitous contracts are those of which the object is the benefit of the person with whom it is made, without any profit or advantage received or promised as a consideration for it. It is not, however, the less gratuitous if it proceeds either from gratitude for a benefit before received or from the hope of receiving one thereafter, although such benefit be of a pecuniary nature. Onerous contracts are those in which something is given or promised as a consideration for

the engagement or gift, or some service, interest, or condition is imposed on what is given or promised, although unequal to it in value. A gratuitous contract is sometimes called a contract of beneficence.

*Investment contract.* A contract in which one party invests money or property expecting a return on his investment. *See also* Investment contract; Security.

*Joint and several.* A joint contract is one made by two or more promisors, who are jointly bound to fulfill its obligations, or made to two or more promisees, who are jointly entitled to require performance of the same. A contract may be "several" as to any one of several promisors or promisees, if person has a legal right (either from the terms of the agreement or the nature of the undertaking) to enforce his individual interest separately from the other parties. Generally all contracts are joint where the interest of the parties for whose benefit they are created is joint, and separate where that interest is separate.

*Mutual interest, mixed, etc.* Contracts of "mutual interest" are such as are entered into for the reciprocal interest and utility of each of the parties; as sales, exchange, partnership, and the like. "Mixed" contracts are those by which one of the parties confers a benefit on the other, receiving something of inferior value in return, such as a donation subject to a charge. Contracts "of beneficence" are those by which only one of the contracting parties is benefited; as loans, deposit and mandate.

*Open end contract.* Contract (normally sales contract) in which certain terms (e.g. order amount) are deliberately left open.

*Output contract.* A contract in which one party agrees to sell his entire output and the other agrees to buy it; it is not illusory, though it may be indefinite. Such agreements are governed by U.C.C. § 2-306. *See also* Requirements contract, below.

*Parol contract.* A contract not in writing, or partially in writing. At common law, a contract, though it may be in writing, not under seal. *See* Parol evidence rule.

*Personal contract.* A contract relating to personal property, or one which so far involves the element of personal knowledge or skill or personal confidence that it can be performed only by the person with whom made, and therefore is not binding on his executor.

*Pre-contract.* An obligation growing out of a contract or contractual relation, of such a nature that it debars the party from legally entering into a similar contract at a later time with any other person.

*Principal and accessory contract.* A contract is accessory when it is made to provide security for the performance of an obligation. Suretyship, mortgage, and pledge are examples of such a contract. When the secured obligation arises from a contract, either between the same or other parties, that contract is the principal contract. Civ.Code La. art. 1913.

*Quasi contract.* Legal fiction invented by common law courts to permit recovery by contractual remedy in cases where, in fact, there is no contract, but where circumstances are such that justice warrants a recovery as though there had been a promise. It is not based on intention or consent of the parties, but is founded on considerations of justice and equity, and on doctrine of unjust enrichment. It is not in fact a contract, but an obligation which the law creates in absence of any agreement, when and because the acts of the parties or others have placed in the possession of one person money, or its equivalent, under such circumstances that in equity and good conscience he ought not to retain it. It is what was formerly known as the contract implied in law; it has no reference to the intentions or expressions of the parties. The obligation is imposed despite, and frequently in frustration of their intention. *See also* Constructive contract.

In the civil law, a contractual relation arising out of transactions between the parties which give them mutual rights and obligations, but do not involve a specific and express convention or agreement between them. The lawful and purely voluntary acts of a man, from which there results any obligation whatever to a third person, and sometimes a reciprocal obligation between the parties. Civ.Code La. art. 2293.

*Record, specialty, simple.* Contracts of record are such as are declared and adjudicated by courts of competent jurisdiction, or entered on their records, including judgments, recognizances, and statutes staple. These are not properly speaking contracts at all, though they may be enforced by action like contracts. Specialties, or special contracts, are contracts under seal, such as deeds and bonds. All others are included in the description "simple" contracts; that is, a simple contract is one that is not a contract of record and not under seal; it may be either written or oral, in either case, it is called a "parol" contract, the distinguishing feature being the lack of a seal.

*Requirements contract.* A contract in which one party agrees to purchase his total requirements from the other party and hence it is binding and not illusory. *See also* Output contract, above.

*Shipment contract.* *See* that title.

*Special contract.* A contract under seal; a specialty; as distinguished from one merely oral or in writing not sealed. But in common usage this term is often used to denote an express or explicit contract, one which clearly defines and settles the reciprocal rights and obligations of the parties, as distinguished from one which must be made out, and its terms ascertained, by the inference of the law from the nature and circumstances of the transaction. A special contract may rest in parol, and does not mean a contract by specialty; it is defined as one with peculiar provisions not found in the ordinary contracts relating to the same subject-matter.

*Subcontract.* A contract subordinate to another contract, made or intended to be made between the contracting parties, on one part, or some of them, and a

third party (*i.e.* subcontractor). One made under a prior contract.

Where a person has contracted for the performance of certain work (*e.g.*, to build a house), and he in turn engages a third party to perform the whole or a part of that which is included in the original contract (*e.g.*, to do the carpenter work), his agreement with such third person is called a "subcontract," and such person is called a "subcontractor." The term "subcontractor" means one who has contracted with the original contractor for the performance of all or a part of the work or services which such contractor has himself contracted to perform.

*Tying contract.* See Tying arrangement.

*Unconscionable contract.* One which no sensible man not under delusion, duress, or in distress would make, and such as no honest and fair man would accept. *Franklin Fire Ins. Co. v. Noll*, 115 Ind.App. 289, 58 N.E.2d 947, 949, 950. A contract the terms of which are excessively unreasonable, overreaching and one-sided. See Adhesion contract; Unconscionability.

*Unenforceable contract.* An unenforceable contract is one for the breach of which neither the remedy of damages nor the remedy of specific performance is available, but which is recognized in some other way as creating a duty of performance, though there has been no ratification. Restatement, Second, Contracts § 8. When a contract has some legal consequences but may not be enforced in an action for damages or specific performance in the face of certain defenses, such as the Statute of Frauds or a statute of limitations, the contract is said to be "unenforceable."

*Unilateral and bilateral.* A unilateral contract is one in which one party makes an express engagement or undertakes a performance, without receiving in return any express engagement or promise of performance from the other. Bilateral (or reciprocal) contracts are those by which the parties expressly enter into mutual engagements, such as sale or hire. *Kling Bros. Engineering Works v. Whiting Corporation*, 320 Ill.App. 630, 51 N.E.2d 1004, 1007. When the party to whom an engagement is made makes no express agreement on his part, the contract is called unilateral, even in cases where the law attaches certain obligations to his acceptance. Essence of a "unilateral contract" is that neither party is bound until the promisee accepts the offer by performing the proposed act. *King v. Industrial Bank of Washington, D.C.App.*, 474 A.2d 151, 156. It consists of a promise for an act, the acceptance consisting of the performance of the act requested, rather than the promise to perform it. *Antonucci v. Stevens Dodge, Inc.*, 73 Misc.2d 173, 340 N.Y.S.2d 979, 982. Compare Bilateral contract.

*Usurious contract.* See Usurious contract.

*Voidable contract.* See Voidable contract.

*Void contract.* See Void contract.

*Written contract.* A "written contract" is one which in all its terms is in writing. Commonly referred to as a formal contract.

See also Adhesion contract; Agreement; Aleatory of contract; Alteration of contract; Bilateral contract; Bottom hole contract; Breach of contract; Collateral contract; Compact; Constructive contract; Contingency contract; Entire output contract; Executory contract; Formal contract; Futures contract; Impairing the obligation of contracts; Indemnity; Innominate contracts; Installment contract; Integrated contract; Investment contract; Letter contract; Letter of intent; Literal contract; Marketing contract; Novation; Oral contract; Parol evidence rule; Privity (*Privity of contract*); Procurement contract; Quasi contract; Requirement contract; Severable contract; Simulated contract; Specialty. For "liberty of contract", see Liberty.

**Contract carrier.** A carrier which furnishes transportation service to meet the special needs of shippers who cannot be adequately served by common carriers. *Sarmardick of Grand Island-Hastings, Inc. v. B. D. C. Corp.*, 183 Neb. 229, 159 N.W.2d 310, 315. A transportation company that carries, for pay, the goods of certain customers only as contrasted to a common carrier that carries the goods of the public in general.

**Contract clause.** Provision in U.S.Const., Art. I, Sec. 10, to the effect that no state shall pass a law impairing obligation of contract. *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 4 L.Ed. 629.

**Contract, estoppel by.** "Estoppel by contract" is intended to embrace all cases in which there is an actual or virtual undertaking to treat a fact as settled. It means party is bound by terms of own contract until set aside or annulled for fraud, accident, or mistake. *United Fidelity Life Ins. Co. v. Fowler*, Tex.Civ.App., 38 S.W.2d 128, 131. There are two sorts of "estoppel by contract," estoppel to deny truth of facts agreed on and settled by force of entering into contract, and estoppel arising from acts done under or in performance of contract. *Finch v. Smith*, 177 Okl. 307, 58 P.2d 850, 851.

**Contract for deed.** An agreement by a seller to deliver the deed to the property when certain conditions have been met, such as completion of payments by purchaser. Often such contracts for deed are in turn resold.

**Contract for sale of goods.** Includes both a contract for present sale of goods and a contract to sell goods at a future time. U.C.C. § 2-106(1).

**Contract for sale of land.** A contract which calls for conveyance of interest in real estate and requires a writing signed by party sought to be charged as being within Statute of Frauds. See also Contract for deed; Contract of sale.

**Contract implied in fact.** See Contract.

**Contract implied in law.** See Contract.

**Contraction.** Abbreviation; abridgment or shortening of a word by omitting a letter or letters or a syllable, with a mark over the place where the elision occurs.

This was customary in records written in the ancient "court hand," and is frequently found in the books printed in black letter.

**Contract not to compete.** An agreement by an employee that he will not for a stated period and within a specific geographical area compete with his employer after termination of his employment. These contracts are enforceable if the time span and area are reasonable.

**Contract of affreightment.** A contract for hiring a vessel. *Peterson v. S. S. Wahcondah*, D.C.La., 235 F.Supp. 698, 700. *See also* Affreightment.

**Contract of benevolence.** A contract made for the benefit of one of the contracting parties only, as a mandate or deposit.

**Contract of guaranty.** A promise to pay or an assumption of performance of some duty upon the failure of another who is primarily obligated in the first instance. *Ammerman v. Miller*, 488 F.2d 1285, 1293, 159 U.S.App. D.C. 385. *See also* Guaranty.

**Contract of insurance.** Any contract by which one of the parties for a valuable consideration, known as a premium, assumes a risk of loss or liability that rests upon the other, pursuant to a plan for the distribution of such risk, is a contract of insurance, whatever the form it takes or the name it bears. *See* Insurance; Policy of insurance.

**Contract of record.** A contract which has been declared and adjudicated by a court having jurisdiction, or which is entered of record in obedience to, or in carrying out, the judgments of a court.

**Contract of sale.** A contract by which one of the contracting parties, called the "seller," enters into an obligation to the other to cause him to have freely, by a title of proprietor, a thing, for the price of a certain sum of money, which the other contracting party, called the "buyer," on his part obliges himself to pay. Agreement under which seller agrees to convey title to property upon payment by buyer under terms of contract. *See also* Contract for deed; Contract for sale of land.

**Contractor.** One who contracts to do work for another. This term is strictly applicable to any person who enters into a contract, but is commonly reserved to designate one who, for a fixed price, undertakes to procure the performance of works or services on a large scale, or the furnishing of goods in large quantities, whether for the public or a company or individual. Such are generally classified as general contractors (responsible for entire job) and sub-contractors (responsible for only portion of job; *e.g.* plumber, carpenter).

A contractor is a person who, in the pursuit of any independent business, undertakes to do a specific piece of work for another or other persons, using his own means and methods without submitting himself to their control in respect to all its details, and who renders service in the course of an independent occupation representing the will of his employer only as to the result of

his work and not as to the means by which it is accomplished. *Setzer v. Whitehurst*, Ky., 339 S.W.2d 454, 456.

One who in pursuit of independent business undertakes to perform a job or piece of work, retaining in himself control of means, method and manner of accomplishing the desired result.

*See also* General contractor; Independent contractor; Prime contractor; Subcontractor.

**Contract system.** As applied to state prisons, this phrase signifies that the labor of the prisoners is utilized by private persons or contractors.

**Contractual obligation.** The obligation which arises from a contract or agreement.

**Contract under seal.** For centuries before the doctrine of consideration was developed, and long before informal contracts were enforced, contracts under seal were enforced. The sealed instrument required no consideration. The required formalities are: a sufficient writing, a seal, and delivery. The seal may be actual, or impressed on the paper, or merely recited by the word "seal" or "L.S."

**Contractus.** Lat. Contract; a contract; contracts.

**Contractus bonæ fidei** /kəntræktəs bówniy fáydíyày/. In Roman law, contracts of good faith. Those contracts which, when brought into litigation, were not determined by the rules of the strict law alone, but allowed the judge to examine into the *bona fides* of the transaction, and to hear equitable considerations against their enforcement. In this they were opposed to contracts *stricti juris*, against which equitable defenses could not be entertained.

**Contractus civiles** /kəntræktəs sívəliyz/. In Roman law, civil contracts. Those contracts which were recognized as actionable by the strict civil law of Rome, or as being founded upon a particular statute, as distinguished from those which could not be enforced in the courts except by the aid of the prætor, who, through his equitable powers, gave an action upon them. The latter were called "*contractus prætorii*."

**Contractus est quasi actus contra actum** /kəntræktəs èst kwéysay æktəs kóntrə æktəm/. A contract is, as it were, act against act.

**Contractus ex turpi causa, vel contra bonos mores, nullus est** /kəntræktəs èks túrpay kóza, vèl kóntrə bównows móriyz, náləs est/. A contract founded on a base consideration, or against good morals, is null.

**Contractus legem ex conventionione accipiunt** /kəntræktəs líjəm èks kənvənsíyówniy əksípíyənt/. Contracts receive legal sanction from the agreement of the parties.

**Contradict.** To disprove. To prove a fact contrary to what has been asserted by a witness.

**Contradiction in terms.** A phrase of which the parts are expressly inconsistent, as *e.g.*, "an innocent murderer"; "a fee-simple for life."

**Contraescriptura** /kòntɹæskritúrə/. In Spanish law, a counter-writing; counter-letter. A document executed at the same time with an act of sale or other instrument, and operating by way of defeasance or otherwise modifying the apparent effect and purport of the original instrument.

**Contrafactio** /kòntɹəfæksh(i)yow/. Counterfeiting; as *contrafactio sigilli regis*, counterfeiting the king's seal.

**Contra formam collationis** /kòntɹə fórməm kələshiyównəs/. In old English law, a writ that issued where lands given in perpetual alms to lay houses of religion, or to an abbot and convent, or to the warden or master of a hospital and his convent, to find certain poor men with necessaries, and do divine service, etc., were alienated, to the disherison of the house and church. By means of this writ the donor or his heirs could recover the lands.

**Contra formam doni** /kòntɹə fórməm dównày/. Against the form of the grant. *See* Formedon.

**Contra formam feoffamenti** /kòntɹə fórməm fiyféméntày/. In old English law, a writ that lay for the heir of a tenant, enfeoffed of certain lands or tenements, by charter of feoffment from a lord to make certain services and suits to his court, who was afterwards distrained for more services than were mentioned in the charter.

**Contra formam statuti** /kòntɹə fórməm stətyúwtay/. In criminal pleading. (Contrary to the form of the statute in such case made and provided.) The usual conclusion of every indictment, etc., brought for an offense created by statute.

**Contrainte par corps** /kòntɹéynt pàr kór/. In French law, the civil process of arrest of the person, which is imposed upon vendors falsely representing their property to be unincumbered, or upon persons mortgaging property which they are aware does not belong to them, and in other cases of moral heinousness.

**Contra jus belli** /kòntɹə jəs beláy/. Lat. Against the law of war.

**Contra jus commune** /kòntɹə jəs kəmyúwniy/. Against common right or law; contrary to the rule of the common law.

**Contra legem facit qui id facit quod lex prohibet; in fraudem vero qui, salvis verbis legis, sententiam ejus circumvenit** /kòntɹə líyjəm féysət kwày íd féysət kwòd léks pɹohíbət; in fródəm vírow kwày, sálvəs vərbəs líyjəs, senténsh(i)yəm íyjəs sərkmrýnət/. He does contrary to the law who does what the law prohibits; he acts in fraud of the law who, the letter of the law being inviolate, uses the law contrary to its intention.

**Contra legem terræ** /kòntɹə líyjəm téhriy/. Against the law of the land.

**Contraligatio** /kòntɹələgéysh(i)yow/. In old English law, counter-obligation. Literally, counter-binding. *Est enim obligatio quasi contraligatio*.

**Contramandatio** /kòntɹəmændéysh(i)yow/. A countermanding. *Contramandatio placiti*, in old English law, was the respiting of a defendant, or giving him further time to answer, by countermanding the day fixed for him to plead, and appointing a new day; a sort of imparlance.

**Contramandatum** /kòntɹəmændéytəm/. A lawful excuse, which a defendant in a suit by attorney alleges for himself to show that the plaintiff has no cause of complaint.

**Contra negantem principia non est disputandum** /kòntɹə nəgántəm prinsípiyə nón èst dispyúwtándəm/. There is no disputing against one who denies first principles.

**Contra non valentem agere nulla currit præscriptio** /kòntɹə nòn váléntəm éyjeriy nálə káhrət pɹəskription(i)yow/. No prescription runs against a person unable to bring an action.

**Contra omnes gentes** /kòntɹə ómniyz jéntiyyz/. Against all people. Formal words in old covenants of warranty.

**Contra pacem** /kòntɹə péysəm/. Against the peace. A phrase used in the Latin forms of indictments, and also of actions for trespass, to signify that the offense alleged was committed against the public peace, *i.e.*, involved a breach of the peace. The full formula was *contra pacem domini regis*, against the peace of the lord the king. In modern pleading, in this country, the phrase "against the peace of the commonwealth" or "of the people" is used.

**Contraplacitum** /kòntɹəplásətəm/. In old English law, a counter-plea.

**Contrapositio** /kòntɹəpəzish(i)yow/. In old English law, a plea or answer. A counter-position.

**Contra preferentem** /kòntɹə pɹéfərəntəm/. Against the party who proffers or puts forward a thing. As a rule of strict construction, "contra proferentem," requires that contract be construed against person preparing terms thereof. *Matter of City Stores Co., Bkrtcy.N.Y., 9 B.R. 717, 720.*

**Contra proferentem** /kòntɹə pɹófərəntəm/. Used in connection with the construction of written documents to the effect that an ambiguous provision is construed most strongly against the person who selected the language. *U. S. v. Seckinger, 397 U.S. 203, 216, 90 S.Ct. 880, 25 L.Ed.2d 224.*

**Contrarients** /kəntɹéiyənts/. This word was used in the time of Edw. II to signify those who were opposed to the government, but were neither rebels nor traitors.

**Contrariorum contraria est ratio** /kòntɹéiyórəm kəntɹéiyə èst réysh(i)yow/. The reason of contrary things is contrary.

**Contrarotulator** /kòntɹərówtýələytər/kòntɹərówtýələytər/. A controller. One whose business it was to observe

the money which the collectors had gathered for the use of the king or the people.

**Contrarotulator pipæ** /kõntrærõwtýélýtær páypiy/. An officer of the exchequer that writeth out summons twice every year, to the sheriffs, to levy the rents and debts of the pipe.

**Contrary.** Against; opposed or in opposition to; in conflict with.

**Contrary to law.** Illegal; in violation of statute or legal regulations at a given time. In respect of verdict, in conflict with the law contained in court's instructions.

**Contrary to the evidence.** Against the evidence; against the weight of the evidence.

**Contrat** /kõntrá/. In French law, contracts are of the following varieties: (1) *Bilateral*, or *synallagmatique*, where each party is bound to the other to do what is just and proper; or (2) *unilateral*, where the one side only is bound; or (3) *commutatif*, where one does to the other something which is supposed to be an equivalent for what the other does to him; or (4) *aléatoire*, where the consideration for the act of the one is a mere chance; or (5) *contrat de bienfaisance*, where the one party procures to the other a purely gratuitous benefit; or (6) *contrat à titre onereux*, where each party is bound under some duty to the other. See Contract.

**Contra tabulas** /kõntræ tábýælæs/. In the civil law, against the will (testament).

**Contratallia** /kõntrætáliýæ/. In old English law, a counter-tally. A term used in the exchequer.

**Contratatio rei alienæ animo furandi, est furtum** /kõntrætéysh(iy)ow riyay eyliyíyniy éñamow fyránday èst fórtæm/. The touching or removing of another's property, with an intention of stealing, is theft.

**Contratenere** /kõntræténiriy/. To hold against; to withhold.

**Contra vadium et plegium** /kõntræ vádiýæm èt pléjýæm/. In old English law, against gage and pledge.

**Contravening equity.** A right or equity, in another person, which is inconsistent with and opposed to the equity sought to be enforced or recognized.

**Contravention.** In French law, an act which violates the law, a treaty, or an agreement which the party has made. That infraction of the law punished by a fine which does not exceed fifteen francs and by an imprisonment not exceeding three days.

**Contra veritatem lex nunquam aliquid permittit** /kõntræ vèrétéýtæm léks nõnkwæm ælækwæd pèrmítæt/. The law never suffers anything contrary to truth.

**Contractare** /kõntræktéiriy/. Lat. In the civil law, to handle; to take hold of; to meddle with.

In old English law, to treat. *Vel malè contractet*; or shall ill treat.

**Contractatio** /kõntræktéysh(iy)ow/. In the civil and old English law, touching; handling; meddling. The act of

removing a thing from its place in such a manner that, if the thing be not restored, it will amount to theft.

**Contractatio rei alienæ, animo furandi, est furtum** /kõntræktéysh(iy)ow riyay èyliýíyniy, éñamow fyránday, èst fórtæm/. The touching or removing of another's property, with an intention of stealing, is theft.

**Contrefacon** /kõntréfáson/. In French law, the offense of printing or causing to be printed a book, the copyright of which is held by another, without authority from him.

**Contre-maitre** /kõntré-máýtr(è)/. In French marine law, the chief officer of a vessel, who, in case of the sickness or absence of the master, commanded in his place. Literally, the countermaster.

**Contribute.** To lend assistance or aid, or give something, to a common purpose; to have a share in any act or effect; to discharge a joint obligation. Christman v. Reichholdt, Mo.App., 150 S.W.2d 527, 532. As applied to negligence signifies causal connection between injury and negligence, which transcends and is distinguished from negligent acts or omissions which play so minor a part in producing injuries that law does not recognize them as legal causes. See Negligence (*Contributory negligence*).

**Contributing cause.** Generic term used to describe any factor which contributes to a result, though its causal nexus may not be immediate. See Cause; Negligence (*Contributory negligence*).

**Contributing to delinquency.** A criminal offense consisting of an act or omission which tends to make a child delinquent.

**Contribution.** Right of one who has discharged a common liability to recover of another also liable, the aliquot portion which he ought to pay or bear. Under principle of "contribution," a tort-feasor against whom a judgment is rendered is entitled to recover proportional shares of judgment from other joint tort-feasors whose negligence contributed to the injury and who were also liable to the plaintiff. Dawson v. Contractors Transport Corp., 151 U.S.App.D.C. 401, 467 F.2d 727, 729. The share of a loss payable by an insurer when contracts with two or more insurers cover the same loss. The insurer's share of a loss under a coinsurance or similar provision. The sharing of a loss or payment among several. The act of any one or several of a number of co-debtors, co-sureties, etc., in reimbursing one of their number who has paid the whole debt or suffered the whole liability, each to the extent of his proportionate share. A number of states have adopted the Uniform Contribution Among Tortfeasors Act.

In the civil law, a partition by which the creditors of an insolvent debtor divide among themselves the proceeds of his property proportionably to the amount of their respective credits. Division which is made among the heirs of the succession of the debts with which the succession is charged, according to the proportion which each is bound to bear.

In maritime law, where the property of one of several parties interested in a vessel and cargo has been voluntarily sacrificed for the common safety (as by throwing goods overboard to lighten the vessel), such loss must be made good by the contribution of the others, which is termed "general average".

*See also* General average contribution; Indemnity.

**Contribution clause.** Insurance clause providing that where more than one policy covers loss, insurers shall share such loss proportionally in accordance with their policy limits.

**Contributione facienda** /kònrəbyùwshiyówniy fəshiyéndə/. In old English law, a writ that lay where tenants in common were bound to do some act, and one of them was put to the whole burthen, to compel the rest to make contribution.

**Contribution to capital.** Funds or property contributed by shareholders as the financial basis for operation of the corporation's business, and signifies resources whose dedication to users of the corporation is made the foundation for issuance of capital stock and which became irrevocably devoted to satisfaction of all obligations of corporation. *See also* Capital.

**Contributory, n.** One who contributes or is required to contribute. A person liable to contribute to the assets of a company which is being wound up, as being a member or (in some cases) a past member thereof.

**Contributory, adj.** Joining in the promotion of a given purpose; lending assistance to the production of a given result. Said of a pension plan where employees, as well as employers, make payments to a pension fund.

As to *contributory* infringement and Negligence, see those titles.

**Contributory cause.** *See* Cause; Contributing cause; Negligence (*Contributory negligence*).

**Contributory infringement.** The intentional aiding of one person by another in the unlawful making, selling or using of a patented invention. *Stamicarbon, N.V. v. McNally-Pittsburg Mfg. Corp.*, D.C.Kan., 302 F.Supp. 525, 531.

**Contributory negligence.** *See* Negligence.

**Contrivance.** Any device which has been arranged generally to deceive. An instrument or article designed to accomplish a specific objective and made by use of measure of ingenuity.

**Contrive.** To devise; to plan; to plot; to scheme. *Ernst and Ernst v. Hochfelder*, 425 U.S. 185, 199, 96 S.Ct. 1375, 1384, 47 L.Ed.2d 668.

**Control, v.** To exercise restraining or directing influence over. To regulate; restrain; dominate; curb; to hold from action; overpower; counteract; govern.

**Control, n.** Power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. The ability to exercise a restraining or directing influence over something. *Martin v. State*, 175 Ind.App. 503, 372 N.E.2d 1194, 1197. The "control" involved in

determining whether principal and agent relationship or master and servant relationship is involved must be accompanied by power or right to order or direct. *Mid-Continent Petroleum Corporation v. Vicars*, 221 Ind. 387, 47 N.E.2d 972.

As used in statute making it unlawful for any person to possess or "control" any narcotic drug, is given its ordinary meaning, namely, to exercise restraining or directing influence over, and also has been defined to relate to authority over what is not in one's physical possession. *Speaks v. State*, 3 Md.App. 371, 239 A.2d 600, 604.

Rule that driver must at all times have automobile under control, means having it under such control that it can be stopped before doing injury to any person in any situation that is reasonably likely to arise under the circumstances. *Kindt v. Reading Co.*, 352 Pa. 419, 43 A.2d 145, 147.

*See also* Exclusive control; Immediate control.

**Control group.** With reference to those whose communications with an attorney on behalf of a corporation are within the attorney-client privilege, this group consists of those persons who have authority to control, or substantially participate in, decisions regarding action to be taken on the advice of a lawyer, or who are authorized members of a group that has such power. *Duplan Corp. v. Deering Milliken, Inc.*, D.C.S.C. 397 F.Supp. 1146, 1163.

**Controlled company.** A company, the majority of whose voting stock is held by an individual or corporation. For example, a subsidiary of a parent company. The level of control depends on the amount of stock owned. *See* Control person.

**Controlled foreign corporation.** Any foreign corporation in which more than 50 percent of the total combined voting power of all classes of stock entitled to vote or the total value of the stock of the corporation is owned by "U.S. shareholders" on any day during the taxable year of the foreign corporation. For purposes of this definition, a U.S. shareholder is any U.S. person who owns, or is considered as owning, 10 percent or more of the total combined voting power of all classes of voting stock of the foreign corporation. Stock owned directly, indirectly, and constructively is used in this measure.

**Controlled group.** A controlled group of corporations is required to share the lower-level corporate tax rates and various other tax benefits among the members of the group. A controlled group may be either a brother-sister or a parent-subsidiary group.

**Controlled substance.** Any drug so designated by law whose availability is restricted; *i.e.*, so designated by federal or state Controlled Substances Acts (*q.v.*). Included in such classification are narcotics, stimulants, depressants, hallucinogens, and marijuana.

**Controlled Substance Acts.** Federal and state acts (the latter modeled on the Uniform Controlled Substances Act) the purpose of which is to control the distribution,



classification, sale, and use of drugs. The majority of states have such acts. 21 U.S.C.A. § 801 et seq.

**Controller.** See Comptroller.

**Controlment** /kəntrólmənt/. In old English law, the controlling or checking of another officer's account; the keeping of a counter-roll.

**Control person.** In securities law, a person who has actual power or influence over an issuer. *Kersh v. General Council of Assemblies of God, C.A.Cal., 804 F.2d 546, 548.* One who formulates and directs corporate policy or who is deeply involved in the important business affairs of a corporation. *State ex rel. McLeod v. C & L Corp., Inc., App., 280 S.C. 519, 313 S.E.2d 334, 341.* Sales of securities by control persons are subject to many of the requirements applicable to the sale of securities directly by the issuer.

**Control premium.** Refers to the pricing phenomenon by which shares that carry the power to control a corporation are more valuable per share than the shares that do not carry a power of control. The control premium is often computed not on a per share basis but on the aggregate increase in value of the "control block" over the going market or other price of shares which are not part of the "control block".

**Controver** /kəntrórwəvər/. In old English law, an inventor or deviser of false news.

**Controversy.** A litigated question; adversary proceeding in a court of law; a civil action or suit, either at law or in equity; a justiciable dispute. To be a "controversy" under federal constitutional provision limiting exercise of judicial power of United States to cases and controversies there must be a concrete case admitting of an immediate and definitive determination of legal rights of parties in an adversary proceeding upon facts alleged, and claims based merely upon assumed potential invasions of rights are not enough to warrant judicial intervention. *Southern Ry. Co. v. Brotherhood of Locomotive Firemen and Enginemen, D.C.Ga., 223 F.Supp. 296, 303.* In the constitutional sense, it means more than disagreement and conflict; rather it means kind of controversy courts traditionally resolve. *U.S. v. Nixon, U.S. Dist.Col., 418 U.S. 683, 94 S.Ct. 3090, 3102, 41 L.Ed.2d 1039.* This term is important in that judicial power of the courts extends *only* to cases and "controversies." See Actual controversy; Case; Cause of action; Justiciable controversy.

**Controvert.** To dispute; to deny; to oppose or contest; to take issue on.

**Contubernium** /kóntəbérniyəm/. In Roman law, the marriage of slaves; a permitted cohabitation.

**Contumace capiendo** /kóntəméysiy kəpiyéndow/. In English law, excommunication in all cases of contempt in the spiritual courts is discontinued by 53 Geo. III, c. 127, § 2, and in lieu thereof, where a lawful citation or sentence has not been obeyed, the judge shall have power, after a certain period, to pronounce such person contumacious and in contempt, and to signify the same to the court of chancery, whereupon a writ *de contumace*

*capiendo* shall issue from that court, which shall have the same force and effect as formerly belonged, in case of contempt, to a writ *de excommunicato capiendo*. See Excommunication.

**Contumacious conduct.** Wilfully stubborn and disobedient conduct, commonly punishable as contempt of court. See Contempt.

**Contumacy** /kónt(y)əmásiy/. The refusal or intentional omission of a person who has been duly cited before a court to appear and defend the charge laid against him, or, if he is duly before the court, to obey some lawful order or direction made in the cause. In the former case it is called "presumed" contumacy; in the latter, "actual."

**Contumax** /kóntəmæks/. One accused of a crime who refuses to appear and answer to the charge. An outlaw.

**Contumely** /kóntyəməliy/. Rudeness compounded of haughtiness and contempt; scornful insolence; spiteful treatment; disdain, contemptuousness in act or speech; disgrace.

**Contuse.** To bruise; to injure or disorganize a part of without breaking the skin. *Ansley v. Travelers Ins. Co., 27 Tenn.App. 720, 173 S.W.2d 702, 704.*

**Contusion.** A bruise; an injury to any external part of the body by the impact of a fall or the blow of a blunt instrument, without laceration of the flesh, and either with or without a tearing of the skin, but in the former case it is more properly called a "contused wound."

**Contutor** /kəntýúwtər/. Lat. In the civil law, a co-tutor, or co-guardian.

**Conusance** /kónyézəns/. In English law, cognizance or jurisdiction. Conusance of pleas.

**Conusance, claim of** /kléym əv kónyézəns/. See Cognizance.

**Conusant** /kónyézənt/. Cognizant; acquainted with; having actual knowledge; as, if a party knowing of an agreement in which he has an interest makes no objection to it, he is said to be conusant.

**Conusee** /kónyézíy/. See Cognizee.

**Conusor** /kónyézər/. See Cognizor.

**Convalescence.** Gradual recovery of health or physical strength after illness.

**Convenable.** In old English law, suitable; agreeable; convenient; fitting.

**Convene.** To call together; to cause to assemble; to convoke. In the civil law, to bring an action.

**Convenience and necessity.** See Public convenience and necessity.

**Convenient.** Proper; just; suitable; fit; adapted; proper; becoming appropriate.

**Convenit** /kənvíynət/. Lat. In civil and old English law, it is agreed; it was agreed.

**Convent.** The fraternity of an abbey or priory, as *societas* is the number of fellows in a college. A religious

house, now regarded as a merely voluntary association, not importing civil death.

An association or community of recluses devoted to a religious life under a superior. A body of monks, friars, or nuns, constituting one local community; now usually restricted to a convent of nuns. *Sacred Heart Academy of Galveston v. Karsch*, 173 Tenn. 618, 122 S.W.2d 416, 417.

**Conventicle** /kənvéntəkəl/. A private assembly or meeting for the exercise of religion. The word was first an appellation of reproach to the religious assemblies of Wycliffe in the reigns of Edward III, and Richard II, and was afterwards applied to a meeting of dissenters from the established church. As this word in strict propriety denotes an unlawful assembly, it cannot be justly applied to the assembling of persons in places of worship licensed according to the requisitions of law.

**Conventio** /kənvénsh(iy)ow/. In Canon law, the act of summoning or calling together the parties by summoning the defendant.

In Civil law, a compact, agreement, or convention. An agreement between two or more persons respecting a legal relation between them. The term is one of very wide scope, and applies to all classes of subjects in which an engagement or business relation may be founded by agreement. It is to be distinguished from the negotiations or preliminary transactions on the object of the convention and fixing its extent, which are not binding so long as the convention is not concluded.

In contracts, an agreement; a covenant.

**Conventio in unum** /kənvénsh(iy)ow in yúwnəm/. In the civil law, the agreement between the two parties to a contract upon the sense of the contract proposed. It is an essential part of the contract, following the pollicitation or proposal emanating from the one, and followed by the consension or agreement of the other.

**Convention.** An agreement or compact; *esp.* international agreement, *e.g.* Geneva Convention. An assembly or meeting of members or representatives of political, legislative, fraternal, etc. organizations.

*Constitutional convention.* See Constitution.

*English law.* An extraordinary assembly of the houses of lords and commons, without the assent or summons of the sovereign. It can only be justified *ex necessitate rei*, as the Parliament which restored Charles II, and that which disposed of the crown and kingdom to William and Mary. Also the name of an old writ that lay for the breach of a covenant.

*Judicial convention.* See Judicial.

*Legislative and political.* An assembly of delegates or representatives chosen by the people for special and extraordinary legislative purposes, such as the framing or revision of a state constitution (*i.e.* constitutional convention). Also an assembly of delegates chosen by a political party, or by the party organization in a larger or smaller territory, to nominate candidates for an approaching election.

*Public and international law.* A pact or agreement between states or nations in the nature of a treaty; usually applied (a) to agreements or arrangements preliminary to a formal treaty or to serve as its basis, or (b) international agreements for the regulation of matters of common interest but not coming within the sphere of politics or commercial intercourse, such as international postage or the protection of submarine cables. An agreement between states relating to trade, finance, or other matters considered less important than those usually regulated by a treaty. See Compact; Treaty.

*Roman law.* An agreement between parties; a pact. A convention was a mutual engagement between two persons, possessing all the subjective requisites of a contract, but which did not give rise to an action, nor receive the sanction of the law, as bearing an "obligation," until the objective requisite of a solemn ceremonial, (such as *stipulatio*) was supplied. In other words, convention was the informal agreement of the parties, which formed the basis of a contract, and which became a contract when the external formalities were superimposed. The division of conventions into contracts and pacts was important in the Roman law. The former were such conventions as already, by the older civil law, founded an obligation and action; all the other conventions were termed "pacts." These generally did not produce an actionable obligation. Actionability was subsequently given to several pacts, whereby they received the same power and efficacy that contracts received.

**Conventional.** Depending on, or arising from, the mutual agreement of parties; as distinguished from *legal*, which means created by, or arising from, the act of the law.

As to *conventional* Estates; Interest; Mortgage; Subrogation; and Trustee, see those titles.

**Conventional lien.** A lien is conventional where the lien, general or particular, is raised by the express agreement and stipulation of the parties, in circumstances where the law alone would not create a lien from the mere relation of the parties or the details of their transaction.

**Conventional loan.** Real estate loan (usually from bank or savings and loan association) not involving government participation by way of insurance (FHA) or guarantee (VA).

**Conventione** /kənvénshiyówniy/. The name of a writ for the breach of any covenant in writing, whether real or personal.

**Conventions.** This name is sometimes given to compacts or treaties with foreign countries as to the apprehension and extradition of fugitive offenders. See Extradition.

**Conventio privatorum non potest publico juri derogare** /kənvénsh(iy)ow práyvətóram nòn pówtést pábləkow júray diyragéeriy/. The agreement of private persons cannot derogate from public right, *i.e.*, cannot

prevent the application of general rules of law, or render valid any contravention of law.

**Conventio vincit legem** /kənvénsh(iy)ow vínsət líyjam/. The express agreement of parties overcomes [prevails against] the law.

**Conventual church.** In ecclesiastical law, that which consists of regular clerks, professing some order or religion; or of dean and chapter; or other societies of spiritual men.

**Conventuals** /kənvénshuwəlz/. Religious men united in a convent or religious house.

**Conventus** /kənvéntəs/. Lat. A coming together; a convention or assembly. *Conventus magnatum vel procerum* (the assembly of chief men or peers) was one of the names of the English parliament. 1 Bl.Comm. 148.

In the civil law, the term meant a gathering together of people; a crowd assembled for any purpose; also a convention, pact, or bargain.

**Conventus juridicus** /kənvéntəs jərídəkəs/. In the Roman law, a court of sessions held in the Roman provinces, by the president of the province, assisted by a certain number of counsellors and assessors, at fixed periods, to hear and determine suits, and to provide for the civil administration of the province.

**Conversant.** One who is in the habit of being in a particular place is said to be conversant there. Acquainted; familiar.

**Conversantes** /kənvərséntiəz/. In old English law, conversant or dwelling; commorant.

**Conversation.** Manner of living; behavior habits of life; conduct; as in the phrase "chaste life and conversation." Criminal conversation means seduction of another man's wife, considered as an actionable injury to the husband. *See Criminal (Criminal conversation).*

**Converse.** To engage in conversation; social interaction. Reversed in order or relation. The transposition of the subject and predicate in a proposition, as: "Everything is good in its place." *Converse*, "Nothing is good which is not in its place."

**Converse instruction.** A negative of a positive statement of an essential element or elements of a cause of action as stated in a verdict-directing instruction. *State v. Collins, Mo.App., 587 S.W.2d 303, 306.*

**Conversion.** An unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of the owner's rights. Any unauthorized act which deprives an owner of his property permanently or for an indefinite time. Unauthorized and wrongful exercise of dominion and control over another's personal property, to exclusion of or inconsistent with rights of owner. *Catania v. Garage De Le Paix, Inc., Tex.Civ.App., 542 S.W.2d 239, 241. See also Embezzlement; Equitable conversion; Fraudulent conversion; Involuntary conversion.*

Act of exchanging a convertible security for another security. *See Convertible securities.*

**Commercial instruments.** An instrument is converted when: a drawee to whom it is delivered for acceptance refuses to return it on demand; or any person to whom it is delivered for payment refuses on demand either to pay or to return it; or it is paid on a forged indorsement. U.C.C. § 3-419(1).

**Constructive conversion.** An implied or virtual conversion, which takes place where a person does such acts in reference to the goods of another as amount in law to the appropriation of the property to himself.

**Direct conversion.** The act of actually appropriating the property of another to his own beneficial use and enjoyment, or to that of a third person, or destroying it, or altering its nature, or wrongfully assuming title in himself.

**Equitable conversion.** The exchange of property from real to personal or from personal to real, which takes place under some circumstances in the consideration of the law, such as, to give effect to directions in a will or settlement, or to stipulations in a contract, although no such change has actually taken place, and by which exchange the property so dealt with becomes invested with the properties and attributes of that into which it is supposed to have been converted. It is sometimes necessary however for certain purposes of devolution and transfer to regard the property in its changed condition as though the change has not absolutely taken place.

**Conversion or convertibility clause.** A provision in an adjustable-rate mortgage that allows the borrower to change from an ARM to a fixed-rate loan at some point during the term. A provision in convertible securities specifying conversion rights. *See Convertible securities.*

**Conversion, custodia legis.** Converting property in the custody of the court. One who has a lien against property and replevins the same to obtain possession and then sells the property to satisfy the lien before a judgment has entered in the replevin matter, commits conversion by this sale. *Brunswick Corp. v. J & P, Inc., D.C.Okl., 296 F.Supp. 544, 545.*

**Conversion hysteria.** A neurosis in which there is gross loss or impairment of some somatic or physical function caused by emotional conflicts, such as hysterical blindness, hysterical paralysis, hysterical tremors, hysterical limping. Used by sufferer to protect himself from anxiety.

**Conversion reaction.** The transformation of an emotion into physical manifestations. (*E.g.*, an injured person converts an emotional disturbance into physical symptoms.) *Kilarjian v. Horvath, C.A.N.Y., 379 F.2d 547, 548.*

**Conversion securities.** The securities into which convertible securities may be converted. *See Convertible securities.*

**Convert.** *See Conversion.*

**Convertible bond.** See Bond.

**Convertible debt.** A bond or debenture or note which under certain conditions and at certain times may be converted into stock by the holder. See Convertible securities.

**Convertible securities.** A bond, debenture or preferred share which may be exchanged by the owner for common stock or another security, usually of the same company, in accordance with the terms of the issue. The ratio between the convertible and conversion securities is fixed at the time the convertible securities are issued, and is usually protected against dilution.

*Forced conversion.* Refers to a conversion of a convertible security that follows a call for redemption at a time when the value of the conversion security into which it may be converted is greater than the amount that will be received if the holder permits the security to be redeemed. Normally, a holder of a convertible redeemable security has a period of time after the call for redemption to determine whether or not to exercise the conversion privilege.

**Convertible term insurance.** Type of term insurance which may be changed to permanent (whole life) insurance carrying loan values, built in values, etc.

**Convey.** To transfer or deliver to another. To pass or transmit the title to property from one to another. To transfer property or the title to property by deed, bill of sale, or instrument under seal. Used popularly in sense of "assign", "sale", or "transfer". See Conveyance.

**Conveyance** /kən'veyəns/. In its most common usage, transfer of title to land from one person, or class of persons, to another by deed. Term may also include assignment, lease, mortgage or encumbrance of land. Generally, every instrument in writing by which an estate or interest in the realty is created. *Smalley v. Juneau Clinic Bldg. Corp.*, Alaska, 493 P.2d 1296, 1299. See also Alienation; Demise; Fraudulent conveyance; Involuntary conveyance.

*Absolute or conditional conveyance.* An absolute conveyance is one by which the right or property in a thing is transferred, free of any condition or qualification, by which it might be defeated or changed, as an ordinary deed of lands, in contradistinction to a mortgage, which is a conditional conveyance. *Brown v. United States*, C.C.A.Pa., 95 F.2d 487, 489.

*Fraudulent conveyance.* See Fraudulent.

*Mesne conveyance.* An intermediate conveyance; one occupying an intermediate position in a chain of title between the first grantee and the present holder.

*Primary conveyances.* Those by means whereof the benefit or estate is created or first arises; as distinguished from those whereby it may be enlarged, restrained, transferred, or extinguished. The term includes feoffment, gift, grant, lease, exchange, and partition, and is opposed to *derivative* conveyances, such as release, surrender, confirmation, etc. 2 Bl.Comm. 309.

*Secondary conveyances.* The name given to that class of conveyances which presuppose some other conveyance precedent, and only serve to enlarge, confirm, alter, restrain, restore, or transfer the interest granted by such original conveyance. 2 Bl.Comm. 324. Otherwise termed "derivative conveyances" (*q.v.*).

*Voluntary conveyance.* A conveyance without valuable consideration; such as a deed or settlement in favor of a wife or children.

**Conveyancer.** One whose business it is to prepare deeds, mortgages, examine titles to real estate, and perform other functions relating to the transfer of real property.

In England, one who holds a license to conveyance. Administration of Justice Act, 1985, Part II.

**Conveyancing.** Act of performing the various functions relating to the transfer of real property such as examination of land titles, preparation of deeds, mortgages, closing agreements, etc.

**Conveyancing counsel to the court of chancery.** In English law, certain counsel, not fewer than six in number, appointed by the lord chancellor, for the purpose of assisting the court of chancery, or any judge thereof, with their opinion in matters of title and conveyancing.

**Conveyor's heirs.** Under common law rule, when a remainder was limited to heirs of grantor or testator, such heirs did not take a remainder; instead, the estate was considered a reversion in the grantor or testator, and hence, if heirs took at all, they would take by descent, not by purchase. This rule, known as rule of worthier title (*Braswell v. Braswell*, 195 Va. 971, 81 S.E.2d 560) has been abolished in many jurisdictions. See Worthier title doctrine.

**Convicia si irascaris tua divulgās; spreta exolescunt** /kən'vish(iy)ə sây âyræskérās tyúwə dævôlgās, spriytə êkskaléskânt/. If you be moved to anger by insults, you publish them; if despised, they are forgotten.

**Conviciūm** /kən'vish(iy)əm/. In the civil law, the name of a species of slander or injury uttered in public, and which charged some one with some act *contra bonos mores*.

**Convict, v.** To find a person guilty of a criminal charge, either upon a criminal trial, a plea of guilty, or a plea of nolo contendere. The word was formerly used also in the sense of finding against the defendant in a civil case.

**Convict, n.** One who has been adjudged guilty of a crime and is serving a sentence as a result of such conviction. A prisoner.

**Convicted.** See Conviction.

**Conviction.** In a general sense, the result of a criminal trial which ends in a judgment or sentence that the accused is guilty as charged. The final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere, but does not include a final judgment

which has been expunged by pardon, reversed, set aside, or otherwise rendered nugatory.

The final consummation of the prosecution including the judgment or sentence, or as is frequently the case, the judgment or sentence itself. *Ex parte White*, 75 Okl.Cr. 204, 130 P.2d 103, 104. The stage of a criminal proceeding where the issue of guilt is determined. *United States v. Locke*, 409 F.Supp. 600.

A record of the summary proceedings upon any penal statute before one or more justices of the peace or other persons duly authorized, in a case where the offender has been *convicted* and sentenced.

*Summary conviction.* The conviction of a person (usually for a minor misdemeanor), as the result of his trial before a magistrate or court, without a jury.

**Convincing proof.** Such as is sufficient to establish the proposition in question, beyond hesitation, ambiguity, or reasonable doubt, in an unprejudiced mind. *See* Beyond a reasonable doubt; Clear and convincing proof; Proof.

**Convivium** /kənviviyəm/. A tenure by which a tenant was bound to provide meat and drink for his lord at least once in the year.

**Convocation.** In ecclesiastical law, the general assembly of the clergy to consult upon ecclesiastical matters.

**Convoy.** An escort for protection, either by land or sea. A naval force for the protection of merchant-ships and others, during the whole voyage, or such part of it as is known to require such protection. An association for a hostile object. In undertaking it, a nation spreads over the merchant vessel an immunity from search which belongs only to a national ship. By joining a convoy every individual ship puts off her pacific character, and undertakes for the discharge of duties which belong only to the military marine, and adds to the numerical, if not to the real strength of the convoy. *The Atlanta*, 16 U.S. (3 Wheat.) 409, 423, 4 L.Ed. 422.

**Co-obligor.** A joint obligor; one bound jointly with another or others in a bond or obligation.

**Cool state of blood.** In the law of homicide, this term does not mean that the defendant must be calm or tranquil or display the absence of emotion, but rather that the defendant's anger or emotion must not have been such as to disturb defendant's faculties and reason. *State v. Russell Council Judge*, 308 N.C. 658, 303 S.E.2d 817, 820. *See also* Cold blood; Cooling time; Premeditation.

**Cooley doctrine.** Doctrine which holds that state is deprived of all regulatory power as to subjects which "are in their nature national, or admit only of one uniform system or plan of regulation." *Cooley v. Board of Wardens of Port of Philadelphia*, 53 U.S. (12 How.) 299, 13 L.Ed. 996. *See also* Preemption.

**Cooling off period.** A period of time in which no action of a particular sort may be taken by either side in a dispute. For example, a period of a month after a union or a company files a grievance against the other. Dur-

ing this period, the union may not strike and the company may not lock-out the employees. A period of time in which a buyer may cancel a purchase; *e.g.* many states by statute require a three-day cancellation period for door-to-door sales or home improvement contracts. An automatic delay in some states, in addition to ordinary court delays, between the filing of divorce papers and the divorce hearing.

**Cooling time.** Time to recover "cool blood" after severe excitement or provocation. Time for the mind to become so calm and sedate as that it is supposed to contemplate, comprehend, and coolly act with reference to the consequences likely to ensue.

**Cooperate.** To act jointly or concurrently toward a common end.

**Cooperation.** Action of co-operating or acting jointly with another or other. Association of persons for common benefit. In patent law, unity of action to a common end or a common result, not merely joint or simultaneous action.

**Cooperation clause.** That provision in insurance policies which requires the insured to cooperate with the insurer in defense of a claim. "Co-operation" by insured within a co-operation clause means that there shall be fair and frank disclosure of information reasonably demanded by insurer to enable it to determine whether there is genuine defense. *Prudence Mut. Cas. Co. v. Dunn*, 30 Ill.App.2d 469, 175 N.E.2d 286.

**Cooperative** /kəwɒp(ə)rətɪv/. A corporation or association organized for purpose of rendering economic services, without gain to itself, to shareholders or members who own and control it. *United Grocers, Limited v. U. S.*, D.C.Cal., 186 F.Supp. 724, 733. Type of business that is owned by its member-customers.

Cooperatives vary widely in character and in the manner in which they function. They have been classified along functional lines as follows: (a) consumer cooperatives (including consumer stores, housing cooperatives, utility cooperatives, and health cooperatives); (b) marketing cooperatives; (c) business purchasing cooperatives; (d) workers' productive cooperatives; (e) financial cooperatives (such as the credit union, mutual savings bank, savings and loan association, and production credit association); (f) insurance cooperatives; (g) labor unions; (h) trade associations; and (i) self-help cooperatives.

The required form for a cooperative may differ in different states; *e.g.* unincorporated association, cooperative association, nonprofit corporation.

*See also* Consumer's cooperative; Cooperative corporation.

*Cooperative apartment.* *See* that title.

*Farmer's cooperative.* Major function of such cooperative is to market the combined crops, produce or livestock of its farmer-owners. The cooperative attempts to sell crops and livestock at the optimum price. For example, it might store grain until the price of such rises.

**Cooperative apartment.** Dwelling units in a multi-dwelling complex in which each owner has an interest in the entire complex and a lease of his own apartment, though he does not own his apartment as in the case of a condominium. This is organized in corporate form and is generally treated as a corporation. However, it is somewhat of a legal hybrid in that the stockholder possesses both stock and a lease and the relationship between the tenant shareholder and the owner-cooperative is largely determined by reading together the certificate of incorporation, stock offering prospectus, stock subscription agreement, and proprietary lease. *Sanders v. Tropicana*, 31 N.C.App. 276, 229 S.E.2d 304, 308.

**Cooperative association.** *See* Cooperative.

**Cooperative corporation.** A "cooperative corporation", while having a corporate existence, is primarily an organization for purpose of providing services and profits to its members and not for corporate profit. *Linnton Plywood Ass'n v. State Tax Commission*, 241 Or. 1, 403 P.2d 708, 709. *See* Cooperative.

**Cooperative federalism.** The distribution of power between national and local or state governments while each recognizes the powers of the other.

**Cooperative housing.** *See* Cooperative apartment.

**Cooperative negligence.** *See* Negligence (*Contributory negligence*).

**Coopertio** /kòwəpə̀rsh(iy)ow/. In old English law, the head of branches of a tree cut down; though *coopertio arborum* is rather the bark of timber trees felled, and the chumps and broken wood.

**Coopertus** /kòwəpə̀rtəs/. Covert; covered.

**Co-optation** /kòwoptéyshən/. A concurring choice; the election, by the members of a close corporation, of a person to fill a vacancy.

**Coordinate.** Equal, of the same order, rank, degree or importance; not subordinate. *Empire Ins. Co. of Texas v. Cooper*, Tex.Civ.App., 138 S.W.2d 159, 164. Adjusted to, in harmony with. *Æolian-Skinner Organ Co. v. Shepard Broadcasting Service*, C.C.A.Mass., 81 F.2d 392, 395. As to courts of "coordinate jurisdiction," *see* this term, *infra*, and Jurisdiction.

**Coordinate jurisdiction.** That which is possessed by courts of equal rank, degree, or authority, equally competent to deal with the matter in question, whether belonging to the same or different systems; concurrent jurisdiction. *See* Jurisdiction.

**Coordinate system.** A method of land description. It uses a measurement based on an intersection of a defined north-south axis and a defined east-west axis.

**Co-owner.** Two or more persons who own property, real or personal. Tenants in common of property. Broad term which may describe joint tenants as well.

**Coparcenary** /kòwpə̀rsiynəriy/. Such estate arises where several take by descent from same ancestor as one heir, all coparceners constituting but one heir and having but one estate and being connected by unity of

interest and of title. *Winters Nat. Bank & Trust Co. v. Riffe*, Ohio Prob., 194 N.E.2d 921, 924. A species of estate, or tenancy, which exists where lands of inheritance descend from the ancestor to two or more persons. It arose in England either by common law or particular custom. By common law, as where a person, seised in fee-simple or fee-tail, dies, and his next heirs are two or more females, his daughters, sisters, aunts, cousins, or their representatives; in this case they all inherit, and these coheirs, are then called "coparceners," or, for brevity, "parceners" only. 2 Bl.Comm. 187. By particular custom, as where lands descend, as in gavelkind, to all the males in equal degree, as sons, brothers, uncles, etc. An estate which several persons hold as one heir, whether male or female. This estate has the three unities of time, title, and possession; but the interests of the coparceners may be unequal. 2 Bl.Comm. 188. Today, this type of tenancy is obsolete.

**Coparceners** /kòwpə̀rsiynə̀rz/. Persons to whom an estate of inheritance descends jointly, and by whom it is held as an entire estate. 2 Bl.Comm. 187.

**Coparticeps** /kòwpə̀rtəsèps/. In old English law, a coparcener.

**Coparties.** Parties having like status, such as, co-defendants. *Murray v. Haverford Hospital Corp.*, D.C.Pa., 278 F.Supp. 5, 7.

"Co-party," within rule (F.R.C.P. 13) providing that a pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter of the original action, does not mean merely equal party, such as one of several original defendants, but applies to a third-party defendant brought into the case by an original defendant on a theory of liability over. *Fogel v. United Gas Imp. Co.*, D.C.Pa., 32 F.R.D. 202, 204.

**Copartner.** One who is a partner with one or more other persons; a member of a partnership.

**Copartnership.** A partnership.

**Copeland Act.** Federal act prohibiting wage kickbacks or rebates being imposed on employees engaged in construction or repair of public buildings or works. *See* 18 U.S.C.A. § 874.

**Copeman, or copesman.** A chapman (*q.v.*).

**Copesmate** /kòwpsmeyt/. A merchant; a partner in merchandise.

**Copia** /kòpiyə/. Lat. In civil and old English law, opportunity or means of access.

In old English law, a copy. *Copia libelli*, the copy of a libel.

**Copia libelli deliberanda** /kòpiyə ləbéləy dəlibə̀rə̀ndə/. In old English law, the name of a writ that lay where a man could not get a copy of a libel at the hands of a spiritual judge, to have the same delivered to him.

**Coppa** /kòpə/. In English law, a crop or cock of grass, hay, or corn, divided into titheable portions, that it may be more fairly and justly tithed.

**Copper and scales.** *See* Mancipatio.

**Coprincipal.** One of two or more participants in crime who actually perpetrate crime or are present aiding and abetting person who commits crime. One of two or more persons who has appointed agents whom they have right to control.

**Copula** /kópyələ/. The corporal consummation of marriage. *Copula* (in logic), the link between subject and predicate contained in the verb.

**Copulatio verborum indicat acceptationem in eodem sensu** /kópyələysh(iy)ow vərbóram índəkət æksəp-tèyshiyównəm in iyówdəm séns(y)uw/. Coupling of words together shows that they are to be understood in the same sense.

**Copulative term.** One which is placed between two or more others to join them together.

**Copy; Copying.** A transcript, double, imitation, or reproduction of an original writing, painting, instrument, or the like.

Under best evidence rule, a copy may not be introduced until original is accounted for. Certified copies are admissible under statutes in most jurisdictions. Similarly, photographic copies and prints from photographic films are admissible by statute.

Copies of all pleadings, motions and other papers must be served on all parties to action under Fed.R. Civil P. 5(b). Admissions concerning the genuineness of copies of documents are governed by Fed.R. Civil P. 36(a).

A duplicate is admissible in evidence to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original. Fed.Evid.R. 1003.

In copyright law, "copying" of a literary work consists in exact or substantial reproduction of the original, using original as a model as distinguished from an independent production of same thing, and a "copy" is that which comes so near to original as to give every person seeing it the idea created by original and must be such that ordinary observation would cause it to be recognized as having been taken from the work of another. *Turner v. Century House Pub. Co.*, 56 Misc.2d 1071, 290 N.Y.S.2d 637, 642.

See also Authentication; Authentic copy; Conformed copy; Duplicate.

*Examined copies* are those which have been compared with the original or with an official record thereof.

**Copyhold.** In England a species of estate at will, or customary estate, the only visible title to which consisted of the copies of the court rolls, which were made out by the steward of the manor, on a tenant's being admitted to any parcel of land, or tenement belonging to the manor. It was an estate at the will of the lord, yet such a will as was agreeable to the custom of the manor, which customs were preserved and evidenced by the rolls of the several courts baron, in which they were entered. 2 Bl.Comm. 95. In a larger sense, copyhold was said to import every customary tenure (that is, every tenure pending on the particular custom of a

manor), as opposed to free socage, or freehold, which later (since the abolition of knight-service) was considered as the general or common-law tenure of the country. Under the English Law of Property Act of 1922 copyholds were enfranchised and became freehold (or in certain cases leasehold).

**Copyhold commissioners.** Commissioners appointed to carry into effect various acts of parliament, having for their principal objects the compulsory commutation of manorial burdens and restrictions (fines, heriots, rights to timber and minerals, etc.), and the compulsory enfranchisement of copyhold lands.

**Copyholder.** A tenant by copyhold tenure (by copy of court-roll). 2 Bl.Comm. 95.

**Privileged copyholds.** Those copyhold estates which are said to be held according to the custom of the manor, and not *at the will of the lord*, as common copyholds are. They include customary freeholds and ancient demesnes.

**Copyright.** The right of literary property as recognized and sanctioned by positive law. An intangible, incorporeal right granted by statute to the author or originator of certain literary or artistic productions, whereby he is invested, for a specified period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them.

Copyright protection subsists in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories: (1) literary works; (2) musical works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; and (7) sound recordings. In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work. Copyright Act, 17 U.S.C.A. § 102.

Prior to the 1976 Copyright Act there was a distinction between common law and statutory protection whereby, generally, common law copyright protected works prior to publication and the federal copyright laws protected works following publication. The 1976 Act attempted to abolish all significant aspects of common law copyright and create a unified protection system by beginning statutory protection as soon as the work was reduced to a concrete form. 17 U.S.C.A. § 102(a). Under the 1976 Act an author is protected as soon as a work is recorded in some concrete way, since the Act protects all expressions upon fixation in a tangible medium. 17 U.S.C.A. § 102(a). Protection under the 1976 Act is secure until fifty years after the death of the author. 17 U.S.C.A. § 302(a).

In addition to injunctive, impoundment, and civil damages relief, criminal penalties are also provided for copyright infringement. 17 U.S.C.A. § 502 et seq.; 18 U.S.C.A. § 2319.

*See also* Adaptation right; Collective work; Common-law copyright; Compilation; Compulsory license; Created; Derivative work; Descriptive mark; Display; Fair use doctrine; First sale rule; Infringement; Limited publication; Literary property; Literary work; Work made for hire.

**Copyright notice.** A necessary notice in the form required by law which is placed in each published copy of the work copyrighted. Copyright Act, 17 U.S.C.A. § 401.

**Copyright owner.** As term is used with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right. Copyright Act, 17 U.S.C.A. § 101.

**Coraagium, or coraage** /kòr(ə)éyjiyəm/. Measures of corn. An unusual and extraordinary tribute, arising only on special occasions. They are thus distinguished from services. Mentioned in connection with *hidage* and *carvage*.

**Coram** /kórəm/. Lat. Before; in presence of. Applied to persons only.

**Coram domino rege** /kórəm dómənow ríyji/. Before our lord the king. *Coram domino rege ubicumque tunc fuerit Anglice*, before our lord the king wherever he shall then be in England.

**Coram ipso rege** /kórəm ípsow ríyji/. Before the king himself. The old name of the court of king's bench, which was originally held before the king in person. 3 Bl.Comm. 41.

**Coram nobis** /kórəm nówbəs/. In our presence; before us. "Writ of error coram nobis" is procedural tool whose purpose is to correct errors of fact only, and its function is to bring before the court rendering the judgment matters of fact which, if known at time judgment was rendered, would have prevented its rendition. *Com. v. Mangini*, 478 Pa. 147, 386 A.2d 482, 490. Its function is to bring attention of court to, and obtain relief from, errors of fact, such as a valid defense existing in facts of case, but which, without negligence on defendant's part, was not made, either through duress or fraud or excusable mistake, where facts did not appear on face of record, and were such as, if known in season, would have prevented rendition of the judgment questioned. *People v. Tuthill*, 32 Cal.2d 819, 198 P.2d 505, 506. The essence of the common law remedy of coram nobis is that it is addressed to the very court which renders the judgment in which injustice is alleged to have been done, in contrast to appeals or review directed to another court; the words "coram nobis," meaning "our court," as compared to the common-law writ of "coram vobis," meaning "your court," clearly point this up. The writs of coram nobis and coram vobis have been abolished by Fed.R.Civil P. 60(b) and superseded by relief as provided by that rule. *See also* Coram vobis; Error coram nobis; Error coram vobis; Writ of error.

**Coram non judge** /kórəm nòn júwdəsiy/. In presence of a person not a judge. When a suit is brought and determined in a court which has no jurisdiction in the matter, then it is said to be *coram non judge*, and the judgment is void.

**Coram paribus** /kórəm pərabəs/. Before the peers or freeholders. The attestation of deeds, like all other solemn transactions, was originally done only *coram paribus*. 2 Bl.Comm. 307. *Coram paribus de vicineto*, before the peers or freeholders of the neighborhood. Id. 315.

**Coram sectatoribus** /kórəm sèktátórəbəs/. Before the suitors.

**Coram vobis** /kórəm vówbəs/. Before you. A writ of error directed by a court of review to the court which tried the cause, to correct an error in fact. *See* Coram nobis; Writ of error.

**Cord.** A measure of wood containing 128 cubic feet, otherwise expressed as a pile of wood 8 feet long, 4 feet high, and 4 feet wide.

**Core proceeding.** For purposes of bankruptcy court jurisdiction, the term "core proceedings" encompasses those proceedings that arise under the Bankruptcy Code (11 U.S.C.A.), including, but not limited to, those proceedings which are specifically defined in 28 U.S.C.A. § 157(b)(2). In *re American Energy, Inc., Bkrtcy.N.D.*, 50 B.R. 175, 178. Determining whether a proceeding is a core or non-core matter requires that a court analyze various causes of action raised by the parties and make findings that they sufficiently affect the debtor-creditor relationship so as to justify the issuance of final judgment. In *re Hinkley, Bkrtcy.Tex.*, 58 B.R. 339.

**Co-respondent.** A co-defendant. A person summoned to answer a bill, petition, or libel, together with another respondent. Used for example to designate the person charged with adultery with the respondent in a suit for divorce for that cause, and joined as a defendant with such party.

Ordinarily term "co-respondent" denotes one joined as party defendant in equity suit. *Blankenship v. Blankenship*, 239 Md. 498, 212 A.2d 294, 299.

**Corium forisfacere** /kóriyəm fòrəsféysəriy/. To forfeit one's skin, applied to a person condemned to be whipped; anciently the punishment of a servant. *Corium perdere*, the same. *Corium redimere*, to compound for a whipping.

**Cornage** /kórənəj/. A species of tenure in England, by which the tenant was bound to blow a horn for the sake of alarming the country on the approach of an enemy. It was a species of grand serjeanty.

**Corner.** A combination among the dealers in a specific commodity, or outside investors, for the purpose of buying up the greater portion of that commodity which is upon the market or may be brought to market, and holding the same back from sale, until the demand shall so far outrun the limited supply as to advance the price abnormally.



A "corner" is a condition arising when a much greater quantity of any given commodity is sold for future delivery within a given period than can be purchased in the market. The buyers, who are called in the slang of the exchanges, the "longs," then insist on delivery, and thus succeed in running up the prices to a fictitious point, at which the deals are "rung out" between the dealers by the payment of differences, or, where the buyers insist, by actual delivery.

*Lost corner.* One whose location as established by the government surveyors cannot be found. The mere fact that evidence of the physical location cannot now be seen, or that no one who saw the marked corner is produced, does not necessarily make the corner a lost one.

*Obliterated corner.* One where no visible evidence remains of the work of the original surveyor in establishing it.

*Surveying.* An angle made by two boundary lines; the common end of two boundary lines, which run at an angle with each other.

**Cornering the market.** See Corner.

**Cornet.** A commissioned officer of cavalry, abolished in England in 1871, and not existing in the United States army.

**Corn laws.** A species of protective tariff formerly in existence in England, imposing import-duties on various kinds of grain. The corn laws were abolished in 1846.

**Corn Products case.** Where corn products manufacturer, as an integral part of its manufacturing business and to protect itself against rises in price of raw corn, bought corn futures, accepting delivery in some cases and in other cases reselling futures upon spot purchase of corn, profits on resale of futures were taxable as ordinary income, rather than as capital gains, even though the transactions did not constitute true hedging in that there was no protection against fall in price. *Corn Products Refining Co. v. Commission of Internal Revenue*, 350 U.S. 46, 76 S.Ct. 20, 100 L.Ed. 29.

**Corn whisky.** An intoxicating whisky or liquor made from corn or containing a corn product, otherwise known as "moonshine," "white mule," "hootch," "corn liquor," "moonshine corn whisky."

**Corody** /kórædiy/. In old English law, a sum of money or allowance of meat, drink, and clothing due to the crown from the abbey or other religious house, whereof it was founder, towards the sustentation of such one of its servants as is thought fit to receive it. It differs from a pension, in that it was allowed towards the maintenance of any of the king's servants in an abbey; a pension being given to one of the king's chaplains, for his better maintenance, till he may be provided with a benefice. 1 Bl.Comm. 283.

**Corollary.** In logic, a collateral or secondary consequence, deduction, or inference.

**Corona** /kərównə/. The crown. *Placita coronæ*; pleas of the crown; criminal actions or proceedings, in which the crown was the prosecutor.

**Corona mala** /kərównə málə/. In old English law, the clergy who abuse their character were so called.

**Coronare** /kórénériy/. In old English law, to give the tonsure, which was done on the crown, or in the form of a crown; to make a man a priest.

**Coronare filium** /kórénériy fíliyəm/. In old English law, to make one's son a priest. *Homo coronatus* was one who had received the first tonsure, as preparatory to superior orders, and the tonsure was in form of a corona, or crown of thorns.

**Coronation oath.** The oath administered to a sovereign at the ceremony of crowning or investing him with the insignia of royalty, in acknowledgment of his right to govern the kingdom, in which he swears to observe the laws, customs, and privileges of the kingdom, and to act and do all things conformably thereto.

**Coronator** /kórəneytər/. A coroner.

**Coronatore eligendo** /kórənətóriy elájəndow/. In English law, the name of a writ issued to the sheriff, commanding him to proceed to the election of a coroner.

**Coronatore exonerando** /kórənətóriy ekzónərəndow/. In English law, the name of a writ for the removal of a coroner, for a cause which is to be therein assigned, as that he is engaged in other business, or incapacitated by years or sickness, or has not a sufficient estate in the county, or lives in an inconvenient part of it.

**Coroner** /kórənər/. Public official, of English origin, charged with duty to make inquiry into the causes and circumstances of any death which occurs through violence or suddenly and with marks of suspicion; *i.e.* unnatural death. The functions and duties of coroners have been diminished having been replaced by medical examiners. See *Coroner's inquest*; *Medical examiner*.

**Coroner's court.** In England, a tribunal of record, where a coroner holds his inquiries. In some cases a jury must be summoned for an inquest. See *Coroners' Act*, 1980, and *Coroners' Juries Act*, 1983.

**Coroner's inquest.** An inquisition or examination into the causes and circumstances of any death happening by violence or under suspicious conditions, held by the coroner with the assistance of a jury. See also *Inquest*.

**Corpnership.** Exists when a corporation is the sole general partner in a limited partnership with numerous public investors as limited partners.

**Corporale sacramentum** /korpəréyliy sækraméntəm/. In old English law, a corporal oath.

**Corporal imbecility.** Physical inability to perform completely the act of sexual intercourse; not necessarily congenital, and not invariably a permanent and incurable impotence.

**Corporalis injuria non recipit æstimationem de futuro** /korpəréyləs ənjúriyə nòn rəsəpat èstəməyshiýównəm diy fuwytyúrow/. A personal injury does not receive

satisfaction from a future course of proceeding [is not left for its satisfaction to a future course of proceeding].

**Corporal oath.** An oath, the external solemnity of which consists in laying one's hand upon the Holy Bible while the oath is administered to him. More generally, a solemn oath.

**Corporal punishment.** Physical punishment as distinguished from pecuniary punishment or a fine; any kind of punishment of or inflicted on the body. The term may or may not include imprisonment, according to the context. The Supreme Court has upheld the use of reasonable corporal punishment in schools, *Ingraham v. Wright*, 430 U.S. 651, 97 S.Ct. 1401, 51 L.Ed.2d 711; though, a number of states, by statute, prohibit paddling of students. Whipping of prisoners has been found to be a form of "cruel and unusual punishment" as prohibited by the 8th Amendment. *Jackson v. Bishop*, C.A.Ark., 404 F.2d 571. *See also* Punishment (*Cruel and unusual punishment*).

**Corporal touch.** Bodily touch; actual physical contact; manual apprehension.

**Corporate.** Belonging to a corporation; as a corporate name. Incorporated; as a corporate body.

**Corporate acquisition.** The takeover of one corporation by another if both parties retain their legal existence after the transaction. An acquisition can be effected via a stock purchase or through a tax-free exchange of stock. *See also* Leveraged buyout; Reorganization; Takeover bid; Merger.

**Corporate agent.** A natural person or a corporation who is authorized to act for a corporation as for example in the function of accepting service of process. Broadly, term includes all employees and officers of corporation who have power to bind the corporation.

**Corporate alter ego, doctrine of.** Means that courts, in ignoring form and looking to substance, will regard stockholders as owners of corporation's property, or as the real parties in interest whenever it is necessary to do so to prevent fraud which might otherwise be perpetrated, to redress a wrong which might otherwise go without redress, or to do justice which might otherwise fail. *See* Piercing the corporate veil.

**Corporate authorities.** The title given in statutes of several states to the aggregate body of officers of a municipal corporation, or to certain of those officers (excluding the others) who are vested with authority in regard to the particular matter spoken of in the statute, as, taxation, bonded debt, regulation of the sale of liquors, etc.

**Corporate body.** Term is equivalent to "body corporate"; *i.e.* a corporation.

**Corporate bonds.** Debt securities issued by corporations, typically having a maturity of ten years or longer. A written promise by a corporation to pay a fixed sum of money at some future time named, with stated interest payable at some fixed time or intervals, given in return

for money or its equivalent received by the corporation, sometimes secured, and sometimes not.

**Corporate charter.** Document issued by state agency or authority (commonly Secretary of State) granting corporation legal existence and right to function (*i.e.*, conduct business) as a corporation; or, may mean document filed with Secretary of State on incorporation of a business; *e.g.*, articles of incorporation. *See also* Charter; Corporate franchise.

**Corporate citizenship.** Corporate status in the state of incorporation, though a foreign corporation is not a citizen for purposes of the Privileges and Immunities Clause (U.S.Const., Art. IV, § 2). *Bank of Augusta v. Earle*, 38 U.S. (13 Pet.) 519, 10 L.Ed. 274.

**Corporate crime.** Any criminal offense committed by and hence chargeable to a corporation because of activities of its officers or employees (*e.g.*, price fixing, toxic waste dumping). Often referred to as "white-collar" crime.

**Corporate domicile.** The domicile of a corporation is the state of its incorporation.

**Corporate entity.** The distinct status of a corporation which sets its existence apart from the status of its shareholders; its capacity to have a name of its own, to sue and be sued in its own name as well as the right to buy, sell, lease and mortgage its property in its own name.

**Corporate excess.** Term used in connection with taxation of a corporation engaged in interstate commerce by a state and meaning the proportion of fair cash value of all the shares constituting the capital stock on a given date as the value of the assets, both real and personal, employed within the state bears to the total assets of the corporation on that date. *Alpha Portland Cement Co. v. Mass.*, 268 U.S. 203, 208, 45 S.Ct. 477, 69 L.Ed. 916.

**Corporate franchise.** The right to exist and do business as a corporation. The right or privilege granted by the state or government to the persons forming an aggregate corporation, and their successors, to exist and do business as a corporation and to exercise the rights and powers incidental to that form of organization or necessarily implied in the grant. *See also* Corporate charter.

**Corporate liability.** *See* Piercing the corporate veil.

**Corporate liquidation.** *See* Liquidation.

**Corporate mortgage trust.** Device for financing corporate activities which requires an indenture and an independent trustee for protection of holders of bonds and debentures. The trust holds security consisting of property in event of default.

**Corporate name.** When a corporation is formed, state statutes require that such be given a name and such name is kept on record with the proper state authority (*e.g.* Secretary of State's office). Only by and under such name may the corporation sue or be sued and do all legal acts.

**Corporate officers.** Those persons who fill the offices which are provided for in the corporate charter such as president, treasurer, etc., though in a broader sense the term includes vice presidents, general manager and other officials of the corporation.

**Corporate opportunity doctrine.** This doctrine precludes corporate fiduciaries from diverting to themselves business opportunities in which the corporation has an expectancy, property interest or right, or which in fairness should otherwise belong to corporation. *Klinicki v. Lundgren*, 298 Or. 662, 695 P.2d 906, 910.

**Corporate purpose.** In reference to municipal corporations, and especially to their powers of taxation, a "corporate purpose" is one which shall promote the general prosperity and the welfare of the municipality; or a purpose necessary or proper to carry into effect the object of the creation of the corporate body or one which is germane to the general scope of the objects for which the corporation was created or has a legitimate connection with those objects and a manifest relation thereto. State statutes commonly require that the articles of incorporation of business corporations state the purpose of the corporation.

**Corporate raider.** *See* Raider.

**Corporate reorganization.** *See* Reorganization.

**Corporate stock.** Term embraces all equity securities issued by a corporation, but not bonds and debentures because these represent debt rather than stock (equity). *See* Stock.

**Corporate trustees.** Those corporations which are empowered by their charter to act as trustee, such as banks and trust companies.

**Corporation.** An artificial person or legal entity created by or under the authority of the laws of a state. An association of persons created by statute as a legal entity. The law treats the corporation itself as a person which can sue and be sued. The corporation is distinct from the individuals who comprise it (shareholders). The corporation survives the death of its investors, as the shares can usually be transferred. Such entity subsists as a body politic under a special denomination, which is regarded in law as having a personality and existence distinct from that of its several members, and which is, by the same authority, vested with the capacity of continuous succession, irrespective of changes in its membership, either in perpetuity or for a limited term of years, and of acting as a unit or single individual in matters relating to the common purpose of the association, within the scope of the powers and authorities conferred upon such bodies by law. *Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 636, 657, 4 L.Ed. 629; *U. S. v. Trinidad Coal Co.*, 137 U.S. 160, 11 S.Ct. 57, 34 L.Ed. 640.

*See also* Affiliate company; Brother-sister corporation; Charitable corporation; Charitable organizations; Clearing corporation; Collapsible corporation; Cooperative corporation; Corporation (*S Corporation*); Domestic corporation; Dormant corporation; Foreign corporation; Municipal cor-

poration; Non-profit corporation; Non-stock corporation; Parent company or corporation; Person; Public corporations; Registered corporation; Thin corporation.

### Classification

According to the accepted definitions and rules, corporations are classified as follows:

**Public and private.** A public corporation is one created by the state for political purposes and to act as an agency in the administration of civil government, generally within a particular territory or subdivision of the state, and usually invested, for that purpose, with subordinate and local powers of legislation; such as a county, city, town, or school district. These are also sometimes called "political corporations." *See* Municipal corporation.

Private corporations are those founded by and composed of private individuals, for private purposes, as distinguished from governmental purposes, and having no political or governmental franchises or duties.

The true distinction between public and private corporations is that the former are organized for governmental purposes, the latter not. The term "public" has sometimes been applied to corporations of which the government owned the entire stock, as in the case of a state bank. But bearing in mind that "public" is here equivalent to "political," it will be apparent that this is a misnomer. Again the fact that the business or operations of a corporation may directly and very extensively affect the general public (as in the case of a railroad company or a bank or an insurance company) is no reason for calling it a public corporation. If organized by private persons for their own advantage,—or even if organized for the benefit of the public generally, as in the case of a free public hospital or other charitable institution,—it is none the less a private corporation if it does not possess governmental powers or functions. The uses may in a sense be called "public," but the corporation is "private," as much so as if the franchises were vested in a single person. *Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 562, 4 L.Ed. 629. It is to be observed, however, that those corporations which serve the public or contribute to the comfort and convenience of the general public, though owned and managed by private interests, are now denominated "public-service corporations." *See infra*. Another distinction between public and private corporations is that the former are not voluntary associations (as the latter are) and that there is no contractual relation between the government and a public corporation or between the individuals who compose it.

While the above are strict distinctions between "public" and "private" corporations, in common usage the term "public" corporation is frequently used to distinguish a business corporation whose shares are traded to and among the general public as opposed to a "private" (or "close" corporation) whose shares are not so traded.

**Ecclesiastical and lay.** In the English law, all corporations private are divided into ecclesiastical and lay, the

former being such corporations as are composed exclusively of ecclesiastics organized for spiritual purposes, or for administering property held for religious uses, such as bishops and certain other dignitaries of the church and (formerly) abbeys and monasteries. 1 Bl.Comm. 470. Lay corporations are those composed of laymen, and existing for secular or business purposes. This distinction is not recognized in American law. Corporations formed for the purpose of maintaining or propagating religion or of supporting public religious services, according to the rights of particular denominations, and incidentally owning and administering real and personal property for religious uses, are called "religious corporations," as distinguished from business corporations; but they are "lay" corporations, and not "ecclesiastical" in the sense of the English law.

*Aggregate and sole.* A corporation sole is one consisting of one person only, and his successors in some particular station, who are incorporated by law in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had. In this sense, the sovereign in England is a sole corporation, so is a bishop, so are some deans distinct from their several chapters, and so is every parson and vicar.

A corporation aggregate is one composed of a number of individuals vested with corporate powers; and a "corporation," as the word is used in general popular and legal speech, and as defined at the head of this title, means a "corporation aggregate."

*Domestic and foreign.* With reference to the laws and the courts of any given state, a "domestic" corporation is one created by, or organized under, the laws of that state; a "foreign" corporation is one created by or under the laws of another state, government, or country. See also Domestic corporation.

*Subsidiary and parent.* Subsidiary corporation is one in which another corporation (called parent corporation) owns at least a majority of the shares, and thus has control.

#### Other Compound and Descriptive Terms

*Acquired corporation.* The corporation which disappears as a result of a merger or acquisition.

*Acquiring corporation.* The offeror in a merger or acquisition.

*Aggressor corporation.* A corporation that attempts to obtain control of a publicly held corporation, either by a direct cash tender or public exchange offer to shareholders, or by way of merger, which requires the agreement or assent of the target's management. See Takeover bid.

*Business corporation.* One formed for the purpose of transacting business in the widest sense of that term, including not only trade and commerce, but manufacturing, mining, banking, insurance, transportation, and practically every form of commercial or industrial activity where the purpose of the organization is pecuniary profit; contrasted with religious, charitable, educational,

and other like organizations, which are sometimes grouped in the statutory law of a state under the general designation of "corporations not for profit."

*Brother-sister corporation.* See that title.

*Close corporation.* A corporation whose shares, or at least voting shares, are held by a single shareholder or closely-knit group of shareholders. Generally, there are no public investors and its shareholders are active in the conduct of the business. A close corporation is one which fills its own vacancies or in which power of voting is held through manipulation under fixed and virtually perpetual proxies. *Brooks v. Willcuts*, C.C.A.Minn., 78 F.2d 270, 273. A corporation, the stock ownership of which is not widely dispersed. Instead, a few shareholders are in control of corporate policy and are in a position to benefit personally from such policy.

*Closely held corporation.* See *Close corporation*, above.

*Collapsible corporation.* A corporation formed for one specific venture such as a motion picture, or construction of a building, and then collapsed, allowing tax advantages to the shareholders. I.R.C. § 341.

*C corporation.* A regular corporation governed by Subchapter C of the Internal Revenue Code. Distinguished from S corporations, which fall under Subchapter S of the Code. See also *S corporation*, below.

*Controlled corporation.* A corporation where the majority of stock outstanding is held by one individual or one firm. Where there is complete domination and control of a corporation so that it has no independent identity, a court may disregard the corporate form and extend liability for corporate obligations beyond the confines of a corporation's separate entity whenever it is necessary to prevent fraud or achieve equity. *Glenn v. Wagner*, 67 N.C.App. 563, 313 S.E.2d 832, 839.

*Corporation by estoppel.* A corporation by estoppel comes about when parties, by their agreements or conduct, estop themselves from denying the existence of the corporation. *Harris v. Stephens Wholesale Bldg. Supply Co., Inc.*, 54 Ala.App. 405, 309 So.2d 115, 117. It is a doctrine which prevents a third person from holding an officer, director, or shareholder of a nonexistent corporation personally liable on an obligation entered into in the name of the nonexistent corporation. The theory is that the third person relied on the existence as a corporation and is now "estopped" from denying that the corporation existed.

*Corporation de facto.* One existing under color of law and in pursuance of an effort made in good faith to organize a corporation under the statute; an association of men claiming to be a legally incorporated company, and exercising the powers and functions of a corporation, but without actual lawful authority to do so. Its elements are a law or charter authorizing such a corporation, an attempt in good faith to comply with law authorizing its incorporation, and unintentional omission of essential requirements of the law or charter, and exercise in good faith of corporate functions under the

law or charter. A corporation which has been defectively formed but which is not subject to collateral attack.

*Corporation de jure.* That which exists by reason of full compliance by incorporators with requirements of an existing law permitting organization of such corporation.

*Corporation sole.* Unusual type of corporation consisting of only one person whose successor becomes the corporation on his death or resignation; limited in the main today to bishops and heads of dioceses. *See also Aggregate and sole, above.*

*Eleemosynary corporation.* Corporation with charitable functions and purposes.

*Joint venture corporation.* A corporation which has joined with other individuals or corporations within the corporate framework in some specific undertaking commonly found in oil, chemical, electronic and atomic fields.

*Migratory corporation.* A corporation, organized under laws of another state than that of incorporators' residence for purpose of doing all or greater part of their business in state of their residence or in other state than that of incorporation. *Toklan Royalty Corporation v. Tiffany*, 193 Okl. 120, 141 P.2d 571, 573.

*Moneyed corporations* are, properly speaking, those dealing in money or in the business of receiving deposits, loaning money, and exchange; but in a wider sense the term is applied to all business corporations having a money capital and employing it in the conduct of their business.

*Municipal corporations.* *See that title.*

*Non-stock corporation.* Type of corporation where ownership is not recognized by stock; *e.g.* municipal corporation.

*Not-for-profit corporation.* A corporation formed for some charitable or benevolent purpose and not for profit making and generally organized under special statutes for this purpose. Such corporations are afforded special tax treatment. *See also Non-profit corporation.*

*Professional corporation.* In most states such may be organized by those rendering personal services to public of a type which requires a license or other legal authorization and which prior to such statutory authorization could not be performed by a corporation. Includes, but is not limited to, public accountants, certified public accountants, chiropractors, osteopaths, physicians, surgeons, dentists, podiatrists, chiroprodists, architects, veterinarians, optometrists, and attorneys at law. Tax benefits are one of several reasons for professional incorporation. Incorporation does not alter professional responsibility or privilege nor does it insulate principal from malpractice liability.

*Public-service corporations.* Those whose operations serve the needs of the general public or conduce to the comfort and convenience of an entire community, such as public transportation, gas, water, and electric light companies. The business of such companies is said to be

"affected with a public interest," and for that reason they are subject to legislative regulation and control to a greater extent than corporations not of this character. *See also Quasi public corporation, below.*

*Quasi corporation.* A term applied to those bodies, or municipal societies, which, though not vested with the general powers of corporations, are yet recognized, by statutes or immemorial usage, as persons, or aggregate corporations, with precise duties, which may be enforced, and privileges, which may be maintained, by suits at law. "Quasi corporation" is a phrase used to designate bodies which possess a limited number of corporate powers, and which are low down in the scale or grade of corporate existence, and is generally applied to a body which exercises certain functions of a corporate character, but which has not been created a corporation by any statute, general or special. There is a well-defined and marked distinction between municipal corporations proper and political or quasi corporations. Cities, towns, and villages are municipal corporations proper, while counties, townships, school districts, road districts, and the like are quasi corporations. *See Quasi public corporation, below.*

*Quasi public corporation.* This term is sometimes applied to corporations which are not strictly public, in the sense of being organized for governmental purposes, but whose operations contribute to the comfort, convenience, or welfare of the general public, such as telegraph and telephone companies, gas, water, and electric light companies, and irrigation companies. More commonly and more correctly styled "public-service corporations."

There is a large class of private corporations which on account of special franchises conferred on them owe a duty to the public which they may be compelled to perform. This class of corporations is known as public service corporations, and in legal phraseology as "quasi public corporations," or corporations affected with a public interest. A "quasi public corporation" may be said to be a private corporation which has given to it certain powers of a public nature, such, for instance, as the power of eminent domain, in order to enable it to discharge its duties for the public benefit, in which respect it differs from an ordinary private corporation, the powers of which are given and exercised for the exclusive advantage of its stockholders.

The term is also applied to corporations of that class sometimes called "quasi municipal corporations," such as school districts, irrigation districts, township, etc.

*S corporation.* A small business corporation with a statutorily limited number of shareholders, which, under certain conditions, has elected to have its taxable income taxed to its shareholders at regular income tax rates. I.R.C. § 1361 et seq. Its major significance is the fact that S corporation status usually avoids the corporate income tax, and corporate losses can be claimed by the shareholders. This election is for federal tax purposes only; in terms of legal characteristics under state law, the "S" status corporation is no different than any other regular corporation.

*Shell corporation.* A corporate frame, containing few, if any, assets, kept alive by required filings, generally for future use.

*Spiritual corporations.* Corporations, the members of which are entirely spiritual persons, and incorporated as such, for the furtherance of religion and perpetuating the rights of the church.

*Subchapter C corporation.* A regular corporation subject to the provisions of Subchapter C (§§ 301–386) of the Internal Revenue Code. Distinguished from an S corporation, which is governed by Subchapter S of the Code.

*Target corporation.* Corporation attempted to be taken over in a tender offer or other type of takeover bid. A corporation viewed as having a good potential for takeover by another corporation or individual.

*Trading corporations.* A commercial corporation engaged in buying and selling. The word “trading,” is much narrower in scope than “business,” as applied to corporations, and though a trading corporation is a business corporation, there are many business corporations which are not trading companies. *Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 669, 4 L.Ed. 629.

*Tramp corporations.* Companies chartered in one state without any intention of doing business therein, but which carry on their business and operations wholly in other states.

**Corporation Act.** In English law, the statute 13 Car. II, St. 2, c. 1; by which it was provided that no person should thereafter be elected to office in any corporate town that should not, within one year previously, have taken the sacrament of the Lord’s Supper, according to the rites of the Church of England; and every person so elected was also required to take the oaths of allegiance and supremacy. 4 Bl.Comm. 58. This statute is now repealed.

**Corporation courts.** Formerly, certain courts in Virginia described as follows: “For each city of the state, there shall be a court called a ‘corporation court,’ to be held by a judge, with like qualifications and elected in the same manner as judges of the county court.”

**Corporator.** A member of a corporation aggregate. *Seaborn v. Wingfield*, 56 Nev. 260, 48 P.2d 881, 883. See *Incorporator*.

**Corporeal** /kərpóriyəl/. A term descriptive of such things as have an objective, material existence; perceptible by the senses of sight and touch; possessing a real body. Opposed to incorporeal and spiritual. There is a distinction between “corporeal” and “corporal.” The former term means “possessing a body,” that is, tangible, physical, material; the latter means “relating to or affecting a body,” that is, bodily, external. Corporeal denotes the nature or physical existence of a body; corporal denotes its exterior or the co-ordination of it with some other body. Hence we speak of “corporeal hereditaments,” but of “corporal punishment,” “corporal touch,” “corporal oath,” etc.

**Corporeal hereditaments** /kərpóriyəl hərədətəmənts/. See *Hereditaments*.

**Corporeal property.** Such as affects the senses, and may be seen and handled, as opposed to incorporeal property, which cannot be seen or handled, and exists only in contemplation. Thus a house is corporeal, but the annual rent payable for its occupation is incorporeal. Corporeal property is, if movable, capable of manual transfer: if immovable, possession of it may be delivered up. But incorporeal property cannot be so transferred, but some other means must be adopted for its transfer, of which the most usual is an instrument in writing.

In Roman law, the distinction between things corporeal and incorporeal rested on the sense of touch; tangible objects only were considered corporeal. In modern law, all things which may be perceived by any of the bodily senses are termed corporeal, although a common definition of the word includes merely that which can be touched and seen.

**Corpore et animo** /kórpəriy et ánəməw/. Lat. By the body and by the mind; by the physical act and by the mental intent.

**Corps diplomatique** /kór dipləmatíyk/. In international law, ambassadors and diplomatic persons at any court or capital.

**Corpse** /kórps/. The dead body of a human being.

**Corpus** /kórps/. Lat. Body; an aggregate or mass (of men, laws, or articles); physical substance, as distinguished from intellectual conception; the principal sum or capital, as distinguished from interest or income. The main body or principal of a trust.

A substantial or positive fact, as distinguished from what is equivocal and ambiguous. The *corpus delicti* (body of an offense) is the fact of its having been actually committed.

A corporeal act of any kind (as distinguished from *animus* or mere intention), on the part of him who wishes to acquire a thing, whereby he obtains the physical ability to exercise his power over it whenever he pleases. The word occurs frequently in this sense in the civil law.

As proof, it consists of showing that there exists the object of the crime (dead body in homicide case), and that such resulted from criminal act of some person. In some jurisdictions, it cannot be proved by confession of defendant in the first instance but only after extrinsic evidence (of the elements) has been offered. *Downey v. People*, 121 Colo. 307, 215 P.2d 892. In other states, confessional evidence is admissible in the first instance. See *Corpus delicti*, below.

**Corpus comitatus** /kórps kómətéytəs/. The body of a county. The whole county, as distinguished from a part of it, or any particular place in it.

**Corpus corporatum** /kórps kórpərətyəm/. A corporation; a corporate body, other than municipal.

**Corpus cum causa** /kórps kəm kózá/. (The body with the cause.) An English writ which issued out of chan-

cery, to remove both the *body* and the record, touching the *cause* of any man lying in execution upon a judgment for debt, into the king's bench, there to remain until he satisfied the judgment.

*Corpus delicti* /kórpəs dəliktay/. The body of a crime. The body (material substance) upon which a crime has been committed, e.g., the corpse of a murdered man, the charred remains of a house burned down. In a derivative sense, the objective proof or substantial fact that a crime has been committed. The "corpus delicti" of a crime is the body, foundation or substance of the crime, which ordinarily includes two elements: the act and the criminal agency of the act. *State v. Edwards*, 49 Ohio St.2d 31, 358 N.E.2d 1051, 1055.

*Corpus pro corpore* /kórpəs prów kórpəriy/. In old records, body for body. A phrase expressing the liability of manucaptors.

**Corpus humanum non recipit æstimationem** /kórpəs hyəméynəm nòn réspət èstamèyshiýównəm/. The human body does not admit of valuation.

**Corpus juris** /kórpəs júras/. A body of law. A term used to signify a book comprehending several collections of law. There are two principal collections to which this name is given; the *Corpus Juris Civilis*, and the *Corpus Juris Canonici*. Also name of an encyclopædic statement of the principles of American law; e.g. *Corpus Juris Secundum*.

*Corpus juris canonici* /kórpəs júras kánónasay/. The body of the canon law. A compilation of the canon law, comprising the decrees and canons of the Roman Church, constituting the body of ecclesiastical law of that church.

*Corpus juris civilis* /kórpəs júras sívaləs/. The body of the civil law. The system of Roman jurisprudence compiled and codified under the direction of the emperor Justinian, in A.D. 528-534. This collection comprises the Institutes, Digest (or Pandects), Code, and Novels. The name is said to have been first applied to this collection early in the seventeenth century.

**Correct attest.** These words, used before the signatures of bank directors to reports made to the commissioner of banking, mean not alone to bear witness, but to affirm to be true or genuine, and such words are appropriately used for the affirmation of persons in their official capacity to attest the truth of a writing.

**Corrected policy.** Insurance policy issued after investigation of risk to correct misstatements in policy first issued.

**Correction.** Discipline, treatment and rehabilitation of offenders through confinement, parole, probation, counseling, etc. *See also* Correctional system.

**Correctional institutions.** A generic term describing prisons, jails, reformatories and other places of correction and detention.

**Correctional system.** Network of governmental agencies concerned with prisons, jails, houses of correction

and reformatories; may also refer to pardon and parole systems.

**Correction, house of.** A prison for the reformation of petty or juvenile offenders.

**Corrector of the staple.** In old English law, a clerk belonging to the staple, to write and record the bargains of merchants there made.

**Corregidor** /koréyhidòr/kàrégadòr/. In Spanish law, a magistrate who took cognizance of various misdemeanors, and of civil matters.

**Correi** /kòwriyay/. Lat. In the civil law, co-stipulators; joint stipulators.

**Correi credendi** /kòwriyay krédénday/. In the civil and Scotch law, joint creditors; creditors *in solido*.

**Correlative** /kàrelədiv/. Having a mutual or reciprocal relation, in such sense that the existence of one necessarily implies the existence of the other. *Father* and *son* are correlative terms, as are *claim* and *duty*.

**Correlative rights.** Refers to doctrine which is applied to owners of land and their rights to use of their land with respect to rights of adjoining or lower riparian landowners in water or oil. *Alameda County Water District v. Niles Sand & Gravel Co. Inc.*, 37 Cal.App.3d 924, 112 Cal.Rptr. 846.

**Correspondence.** Interchange of written communications. The letters written by a person and the answers written by the one to whom they are addressed. The agreement of things with one another.

**Correspondence audit.** An audit conducted by the Internal Revenue Service through the use of the mail. Typically, the I.R.S. writes to the taxpayer requesting the verification of a particular deduction or exemption. The completion of a special form or the remittance of copies of records or other support is all that is requested of the taxpayer. *See also* Audit.

**Correspondent.** A securities firm, bank or other financial organization which regularly performs services for another in a place or market to which the other does not have direct access. Securities firms may have correspondents in foreign countries or on exchanges of which they are not members. Bank which serves as agent for another bank in performing services; e.g. carrying deposit balance for bank in another city.

**Correspondent bank.** *See* Correspondent.

**Corroborate** /kərobəreyt/. To strengthen; to add weight or credibility to a thing by additional and confirming facts or evidence. The testimony of a witness is said to be corroborated when it is shown to correspond with the representation of some other witnesses, or to comport with some facts otherwise known or established. *See* Corroborating evidence.

**Corroborating evidence** /kərobəreytiŋ évədəns/. Evidence supplementary to that already given and tending to strengthen or confirm it. Additional evidence of a different character to the same point. *Edwards v. Edwards*, Tenn.App., 501 S.W.2d 283, 289. In some juris-

dictions, corroborating evidence of an accomplice to the crime is given much weight. *People v. Baker*, 16 Ill.2d 364, 158 N.E.2d 1.

**Corrupt.** Spoiled; tainted; vitiated; depraved; debased; morally degenerate. As used as a verb, to change ones morals and principles from good to bad.

**Corruption.** An act done with an intent to give some advantage inconsistent with official duty and the rights of others. The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. See Bribe; Extortion.

**Corruption of blood.** In English law, the consequence of *attainder*, being that the attainted person could neither inherit lands or other hereditaments from his ancestor, nor retain those he already had, nor transmit them by descent to any heir, because his blood was considered in law to be corrupted. *Avery v. Everett*, 110 N.Y. 317, 18 N.E. 148. This was abolished by St. 3 & 4, Wm. IV, c. 106, and 33 & 34 Vict., c. 23, and is unknown in America. Const.U.S., Art. III, § 3.

**Corruptly.** When used in a statute, this term, generally imports a wrongful design to acquire some pecuniary or other advantage.

**Corrupt motive doctrine.** Doctrine invoked in assessing crimes like bribery to determine motive of gift or payment.

**Corrupt practices acts.** Federal and state statutes regulating campaign contributions and expenditures, including disclosure requirements. 2 U.S.C.A. § 231 et seq.

**Corselet** /kórslət/. Ancient armor which covered the body.

**Corse-present** /kórs prèzənt/. In old English law, a mortuary, thus termed because, when a mortuary became due on the death of a man, the best or second-best beast was, according to custom, offered or presented to the priest, and carried with the corpse. In Wales a corse-present was due upon the death of a clergyman to the bishop of the diocese, till abolished by 12 Anne St. 2, c. 6. 2 Bl.Comm. 426.

**Corsned** /kórsnəd/. In Saxon law, the morsel of excretion. A species of ordeal in use among the Saxons, performed by eating a piece of bread over which the priest had pronounced a certain imprecation. If the accused ate it freely, he was pronounced innocent; but, if it stuck in his throat, it was considered as a proof of his guilt. 4 Bl.Comm. 345.

**Cortis** /kórtəs/. A court or yard before a house.

**Cortularium** /kórtýalériyəm/, or **cortarium** /kórtəriyəm/. In old records, a yard adjoining a country farm.

**Corvée** /korvéy/. In French law, gratuitous labor exacted from the villages or communities, especially for repairing roads, constructing bridges.

**Corvée seigneuriale** /korvéy seynýàriyál/. Services due the lord of the manor.

**Cosa juzgada** /kówsa huwsgáða/. In Spanish law, a cause or matter adjudged (*res judicata*).

**Cosas comunes** /kówsas komúwne(y)s/. In Spanish law, a term corresponding to the *res communes* of the Roman law, and descriptive of such things as are open to the equal and common enjoyment of all persons and not to be reduced to private ownership, such as the air, the sea, and the water of running streams.

**Cosbering** /kózbəriŋ/. See *Coshering*.

**Cosduna** /kózdunə/. In feudal law, a custom or tribute.

**Cosen, cozen** /kózən/. In old English law, to cheat.

**Cosenage** /kóz(ə)naj/. (Also spelled "Cosinage," "Cousinage.") In old English law, a writ that lay for the heir where the *tresail*, i.e., the father of the *besail*, or great-grandfather, was seized of lands in fee at his death, and a stranger entered upon the land and abated. 3 Bl.Comm. 186. Kindred; cousinship; relationship; affinity. 3 Bl.Comm. 186.

**Cosening** /kóz(ə)niŋ/. In old English law, an offense, mentioned in the old books, where anything was done deceitfully, whether belonging to contracts or not, which could not be properly termed by any special name. The same as the *stellionatus* of the civil law. 4 Bl.Comm. 158.

**Coshering** /kóshəriŋ/. In old English law, a feudal prerogative or custom for lords to lie and feast themselves at their tenants' houses.

**Cosigner.** Person who signs a document or instrument along with another, often assuming obligations and providing credit support to be shared with other obligor(s).

**Cosmopathic** /kòzməpáθək/. Open to the access of supernatural knowledge or emotion supposedly from a preternatural world; applied to methods of healing.

**Cost.** Expense; price. The sum or equivalent expended, paid or charged for something. See also Actual cost; Costs; Net cost; Rate.

**Cost accounting.** The area of accounting which focuses on the method and system used to compile and analyze the costs of selling and manufacturing products. It includes the method for classifying, summarizing, recording, reporting, and allocating the actual costs incurred and comparing them with the standard costs established. Areas of cost accounting include: job order, process, direct, and standard costing.

**Cost basis.** In accounting, the cost of an asset is the amount paid for the asset in cash or property. The value placed on an asset in a financial statement in terms of its cost; used in determining capital gains or losses.

**Cost bond.** See *Costs, infra*.

**Cost contract.** See *Cost-plus contract, infra*.



**Cost depletion.** In accounting and taxation, depletion computed in oil production without reference to discovery or percentage depletion. *Magale v. U. S.*, 118 Ct.Cl. 183, 93 F.Supp. 1004.

**Cost of completion.** Measure of damages in breach of contract claim or action.

**Imputed cost.** A value expressing cost which is derived from or based on factors other than actual cost records; estimated costs.

**Marginal cost.** The increase or decrease in total cost that materializes as a result of a variation in output.

**Replacement cost.** An appraisal method for determining value by substituting a like property. *See also* Replacement cost.

**Unit cost.** Cost of a single unit of product or service. Total cost divided by number of units.

**Variable costs.** Costs that change in total with changes in rate of production.

**Cost and freight (C.A.F.).** Quoted sales price includes cost of goods and freight but not insurance or other special charges.

**Co-stipulator.** A joint promisor.

**Cost of capital.** The annual percent that a utility must receive to maintain its credit, to pay a return to the owners of the enterprise and to insure the attraction of capital in amounts adequate to meet future needs. It involves a calculation of the interest a utility must pay on its borrowed capital (debt) and the cost of attracting and paying investors for its common or preferred stock (equity). *Millinocket Water Co. v. Maine Public Utilities Com'n, Me.*, 515 A.2d 749, 751.

**Cost of living clause.** A provision, commonly in labor agreements, and also in certain pension, retirement, and disability benefit programs, giving an automatic wage or benefit increase tied in some way to cost-of-living rises in the economy. Cost of living is usually measured by the Consumer Price Index (CPI) (*q.v.*).

May also exist in certain long term leases where, for example, rent increases are tied to Consumer Price Index.

**Cost-plus contract.** One which fixes the amount to be paid the contractor on a basis, generally, of the cost of the material and labor, plus an agreed percentage thereof as profits. Such contracts are used when costs of production or construction are unknown or difficult to ascertain in advance.

**Costs.** A pecuniary allowance, made to the successful party (and recoverable from the losing party), for his expenses in prosecuting or defending an action or a distinct proceeding within an action. In federal courts, costs are allowed as a matter of course to the prevailing party unless the court otherwise directs; also, specified fees and certain court expenses may be taxed as costs. Fed.R.Civil P. 54(d); Fed.R.App.P. 39; 28 U.S.C.A. § 1920. Generally, "costs" do not include attorney fees unless such fees are by a statute denominated costs or

are by statute allowed to be recovered as costs in the case.

Fees and charges required by law to be paid to the courts or some of their officers, the amount of which is fixed by statute or court rule; *e.g.* filing and service fees.

*See also* Closing costs; Fee; Security for costs; Service charge.

**Bill of costs.** A certified, itemized statement of the amount of costs in an action or suit.

**Cost bond, or bond for costs.** A bond given by a party to an action to secure the eventual payment of such costs as may be awarded against him. A bond which may be required of an appealing party in a civil case; *e.g.* Fed.R.App.P. 7. Purpose of bond is to cover appellee's costs in event of affirmance of judgment.

**Costs de incremento.** Increased costs, costs of increase. Costs adjudged by the court in addition to those assessed by the jury.

**Costs of collection.** Strictly, expenses involved in endeavoring to make collection, as of a promissory note; but as used in or with reference to such notes, the phrase is synonymous with attorney's fees. There is commonly a provision to this effect in such notes. It does not refer to costs of suit, which are recoverable by law.

**Costs of the day.** Costs which are incurred in preparing for the trial of a cause on a specified *day*, consisting of witnesses' fees, and other fees of attendance.

**Costs to abide event.** When an order is made by an appellate court reversing a judgment, with "costs to abide the event," the costs intended by the order include those of the appeal, so that, if the appellee is finally successful, he is entitled to tax the costs of the appeal.

**Final costs.** Such costs as are to be paid at the end of the suit. Costs, the liability for which depends upon the final result of the litigation.

**Indirect costs.** Costs not readily identifiable with production of specific goods or services, but rather applicable to production activity in general; *e.g.*, overhead allocations for general and administrative activities.

**Interlocutory costs.** Costs accruing upon proceedings in the intermediate stages of a cause, as distinguished from final costs; such as the costs of motions.

**Security for costs.** A security which a defendant in an action may require of a plaintiff who does not reside within the jurisdiction of the court, for the payment of such costs as may be awarded to the defendant. *See also* Cost bond, above.

**Statutory costs.** Amounts awarded for various phases of litigation that are fixed by statute. Word "costs" generally refers to statutory fees to which officers, witnesses, jurors and others are entitled for their services in an action and which statutes authorize to be taxed and included in the judgment. *Terry v. Burger*, 6 Ohio App.2d 53, 216 N.E.2d 383. *See e.g.* 28 U.S.C.A. § 1920.

*Taxation of litigation costs.* See Taxation; also Costs, generally, *above*.

*Variable costs.* Those costs which in the short run vary in close relationship with changes in output, including items such as raw materials, labor directly used in production, and per unit royalties. *Chillicothe Sand & Gravel Co. v. Martin Marietta Corp.*, C.A.Ill., 615 F.2d 427, 431.

**Costs, insurance and freight (C.I.F.).** Quoted sales price which includes cost of goods, freight and insurance.

**Costumbre** /kostúbrey/. In Spanish law, custom; an unwritten law established by usage, during a long space of time.

**Co-sureties** /kòwshúrətiyz/. Joint sureties; two or more sureties to the same obligation.

**Cotenancy.** A tenancy by several distinct titles but by unity of possession, or any joint ownership or common interest with its grantor. The term is broad enough to comprise both tenancy in common and joint tenancy.

**Coterelli** /kòtərélay/. Anciently, a kind of peasantry who were outlaws; robbers.

**Coterellus** /kòtəréləs/. In feudal law, a cottager; a servile tenant, who held in mere villenage; his person, issue, and goods were disposable at the lord's pleasure. A coterellus, therefore, occupied a less favorable position than a cotarius (*q.v.*), for the latter held by socage tenure.

**Coterie** /kòwtəriy/. A fashionable association, or a knot of persons forming a particular circle. The origin of the term was purely commercial, signifying an association, in which each member furnished his part, and bore his share in the profit and loss.

**Cotland.** In old English law, land held by a cottager, whether in socage or villenage.

**Cotsethla** /kòtséthlə/kòtsétlə/. In old English law, the little seat or mansion belonging to a small farm.

**Cotsethland** /kòtséthlənd/. The seat of a cottage with the land belonging to it.

**Cotsetus** /kòtsiytəs/. A cottager or cottage-holder who held by servile tenure and was bound to do the work of the lord.

**Cottage.** Dwelling of farm laborer or small farmer. Small vacation house. In English law, a small dwelling-house that has no land belonging to it.

**Cottier tenancy** /kòtiyər ténənsiy/. A species of tenancy in Ireland, constituted by an agreement in writing, and subject to the following terms: That the tenement consists of a dwelling-house with not more than half an acre of land; at a rental not exceeding a specified sum a year; the tenancy to be for not more than a month at a time; the landlord to keep the house in good repair.

**Cotton notes.** Receipts given for each bale of cotton received on storage by a public warehouse.

**Cotuchans.** A term used in Domesday for peasants, boors, husbandmen.

**Couchant** /káwchənt/. Lying down; squatting. *Couchant and levant* (lying down and rising up) is a term applied to animals trespassing on the land of one other than their owner, for one night or longer. 3 Bl.Comm. 9.

**Coucher, or courcher** /káwchər/. A factor who continues abroad for traffic; also the general book wherein any corporation, etc., register their acts.

**Coulisse** /kùliys/. The stockbrokers' curb market in Paris.

**Council.** An assembly of persons for the purpose of concerting measures of state or municipal policy. The legislative body in the government of cities or boroughs. An advisory body selected to aid the executive; *i.e.* a body appointed to advise and assist the governor in his executive or judicial capacities or both. See also City council; Legislative council; Metropolitan council.

*Common Council.* In American law, the lower or more numerous branch of the legislative assembly of a city. In English law, the councillors of the city of London. The parliament, also, was anciently called the "common council of the realm."

*Privy Council.* See that title.

*Select Council.* The name given, in some states, to the upper house or branch of the council of a city.

**Council of conciliation.** In England, by the Acts 30 & 31 Vict., c. 105, power was given for the crown to grant licenses for the formation of councils of conciliation and arbitration, consisting of a certain number of masters and workmen in any trade or employment, having power to hear and determine all questions between masters and workmen which may be submitted to them by both parties, arising out of or with respect to the particular trade or manufacture, and incapable of being otherwise settled. They have power to apply to a justice to enforce the performance of their award. The members are elected by persons engaged in the trade.

**Council of Legal Education.** A body composed of members of the English bar which governs the bar. It hears complaints against barristers and reports its findings with recommendations to the benchers of the Inn of Court of which the barrister is a member, who alone can act. Established in 1852.

**Council of the north.** In England, a court instituted by Henry VIII, in 1537, to administer justice in Yorkshire and the four other northern counties. Under the presidency of Stratford, the court showed great rigor, bordering, it is alleged, on harshness. It was abolished by 16 Car. I, the same act which abolished the Star Chamber.

**Counsel** /káwnsəl/. Attorney or counsellor (*q.v.*).

Advice and assistance given by one person to another in regard to a legal matter, proposed line of conduct, claim, or contention. See also Counsel, right to.

The words "counsel" and "advise" may be, and frequently are, used in criminal law to describe the offense of a person who, not actually doing the felonious act, by his will contributed to it or procured it to be done. *See* Accomplice; Aid and abet.

*See also* Legislative counsel; Of counsel.

**Junior counsel.** The younger of the counsel employed on the same side of a case, or the one lower in standing or rank, or who is intrusted with the less important parts of the preparation or trial of the cause.

**Counsellor.** An attorney; lawyer. Member of the legal profession who gives legal advice and handles the legal affairs of client, including, if necessary, appearing on his or her behalf in civil, criminal, or administrative actions and proceedings.

**Counsel of record.** Attorney whose appearance has been filed with court papers.

**Counsel, right to.** Constitutional right of criminal defendant to court appointed attorney if he is financially unable to retain private counsel; guaranteed by Sixth and Fourteenth Amendments to U.S. Constitution, and as well by court rule (Fed.R.Crim.P. 44), and statute (18 U.S.C.A. § 3006A). Such right to counsel exists with respect to felonies (*Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792); misdemeanors when the sentence is to a jail term (*Argersinger v. Hemlin*, 407 U.S. 25, 92 S.Ct. 2006), and to juvenile delinquency proceedings (*In re Gault*, 387 U.S. 1, 87 S.Ct. 1428). The extent of this right extends from the time that judicial proceedings have been initiated against the accused, whether by way of formal charge, preliminary hearing, indictment, information, or arraignment (*Brewer v. Williams*, 430 U.S. 387, 97 S.Ct. 1232), through to sentencing (*Mempa v. Rhay*, 389 U.S. 128, 88 S.Ct. 254) and appeal (*Douglas v. California*, 372 U.S. 353, 83 S.Ct. 814). There is no absolute right to appointed counsel in postconviction proceedings. *Pennsylvania v. Finley*, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539. "Counsel" however within Sixth Amendment does not include a lay person but refers only to person authorized to practice law. *U. S. v. Grismore*, C.A.Colo., 546 F.2d 844, 847. *See also* Assistance of counsel; Critical stage; Effective assistance of counsel; Escobedo Rule; Miranda Rule; Public defender.

**Count, v.** In pleading, to declare; to recite; to state a case; to narrate the facts constituting a plaintiff's cause of action. To plead orally; to plead or argue a case in court; to recite or read in court; to recite a count in court.

**Count, n.** In pleading, the plaintiff's statement of a cause of action; a separate and independent claim. Used also to signify the several parts of an indictment, each charging a distinct offense. Fed. R. Crim. P. 7(c)(1), 8. The usual organizational subunit of an indictment. *Sanabria v. United States*, 437 U.S. 54, 69 n. 23, 98 S.Ct. 2170, 2181 n. 23, 57 L.Ed.2d 43.

"Count" and "charge" when used relative to allegations in an indictment or information are synonymous. *State v. Puckett*, 39 N.M. 511, 50 P.2d 964, 965.

An earl.

**Common counts.** Certain general counts or forms inserted in a declaration in an action to recover a money debt, not founded on the circumstances of the individual case, but intended to guard against a possible variance, and to enable the plaintiff to take advantage of any ground of liability which the proof may disclose, within the general scope of the action.

The various forms of an action of *assumpsit*. In the action of *assumpsit*, these counts are as follows: For goods sold and delivered, or bargained and sold; for work done; for money lent; for money paid; for money received to the use of the plaintiff; for interest; or for money due on an account stated.

**General count.** One stating in a general way the plaintiff's claim.

**Money counts.** A species of common counts, so called from the subject-matter of them; embracing the *indebitatus assumpsit* count for money lent and advanced, for money paid and expended, and for money had and received, together with the *insimul computassent* count, or count for money due on an account stated.

**Omnibus count.** A count which combines in one all the money counts with one for goods sold and delivered, work and labor, and an account stated.

**Several counts.** Where a plaintiff has several distinct causes of action, he is allowed to pursue them cumulatively in the same action, subject to certain rules which the law prescribes. *See e.g.* Fed.R. Civil P. 8(e).

**Special count.** As opposed to the common counts, in pleading, a special count is a statement of the actual facts of the particular case, or a count in which the plaintiff's claim is set forth with all needed particularity.

**Countee.** In old English law, the most eminent dignity of a subject before the Conquest. He was *praefectus* or *proepositus comitatus*, and had the charge and custody of the county; but this authority is now vested in the sheriff.

**Countenance.** In old English law, credit; estimation. Also, encouragement; aiding and abetting.

**Counter, adj.** Adverse; antagonistic; opposing or contradicting; contrary.

**Counter-affidavit.** An affidavit made and presented in contradiction or opposition to an affidavit which is made the basis or support of a motion or application.

**Counter-bond.** Bond which indemnifies a surety. *See Counter-security below.*

**Counterclaim.** *See* that title.

**Counter-deed.** A secret writing, either before a notary or under a private seal, which destroys, invalidates, or alters a public one.

**Counter-letter.** A species of instrument of defeasance common in the civil law. It is executed by a party who has taken a deed of property, absolute on its face, but

intended as security for a loan of money, and by it he agrees to reconvey the property on payment of a specified sum. The two instruments, taken together, constitute what is known in Louisiana as an "*antichresis*" (*q.v.*).

**Counter-mark.** A sign put upon goods already marked; also the several marks put upon goods belonging to several persons, to show that they must not be opened, but in the presence of all the owners or their agents.

**Counter-plea.** *See* Plea.

**Counter-security.** A security given to one who has entered into a bond or become surety for another; a countervailing bond of indemnity.

**Counterclaim.** A claim presented by a defendant in opposition to or deduction from the claim of the plaintiff. Fed.R. Civil P. 13. If established, such will defeat or diminish the plaintiff's claim. Under federal rule practice, and also in most states, counterclaims are either compulsory (required to be made) or permissive (made at option of defendant).

A counterclaim may be any cause of action in favor of one or more defendants or a person whom a defendant represents against one or more plaintiffs, a person whom a plaintiff represents or a plaintiff and other persons alleged to be liable. New York C.P.L.R. § 3019(a).

For requisite content of counterclaim under Federal Rules of Civil Procedure, *see* Complaint. *Compare* Cross-claim. *See also* Offset; Recoupment; Set-off; Transaction or occurrence test.

**Compulsory counterclaim.** A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim. Fed.R. Civil P. 13(a).

For claim to constitute a compulsory counterclaim, it must be logically related to original claim and arise out of same subject matter on which original claim is based; many of same factual legal issues, or offshoots of same basic controversy between parties must be involved in a compulsory counterclaim. *Tasner v. Billera*, D.C.Ill., 379 F.Supp. 809, 813. *See also* Transaction or occurrence test.

**Permissive Counterclaim.** A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim. Fed.R. Civil P. 13(b).

**Counterfeit** /káwntərfit/. To forge; to copy or imitate, without authority or right, and with a view to deceive or defraud, by passing the copy or thing forged for that which is original or genuine. Most commonly applied to the fraudulent and criminal imitation of money or securities. 18 U.S.C.A. § 471 et seq. Counterfeit in common parlance signifies fabrication of false image or representation; counterfeiting an instrument means falsely making it; and in its broadest sense means making of copy without authority or right and with view to deceive or defraud by passing copy as original or genuine. *Smith v. State*, 7 Md.App. 457, 256 A.2d 357, 360, 361. *See also* Bootlegging; False making; Falsify; Forgery; Gray market goods; Imitation.

**Counterfeit coin.** Coin not genuine, but resembling or apparently intended to resemble or pass for genuine coin, including genuine coin prepared or altered so as to resemble or pass for coin of a higher denomination.

**Counterfeiter.** One who unlawfully makes base coin in imitation of the true metal, or forges false currency, or any instrument of writing, bearing a likeness and similitude to that which is lawful and genuine, with an intention of deceiving and imposing upon another.

**Counter-feisance.** The act of forging.

**Counter letter.** An agreement to reconvey where property has been passed by absolute deed with the intention that it shall serve as security only.

**Countermand.** A change or revocation of orders, authority, or instructions previously issued. It may be either express or implied; the former where the order or instruction already given is explicitly annulled or recalled; the latter where the party's conduct is incompatible with the further continuance of the order or instruction, as where a new order is given inconsistent with the former order.

**Counteroffer.** Statement made by the offeree to the offeror relating to the same matter as the original offer and proposing a substituted bargain differing from that proposed by the original offer. *Thurmond v. Wieser*, Tex.App. 10 Dist., 699 S.W.2d 680, 681. A statement by the offeree which has the legal effect of rejecting the offer and of proposing a new offer to the offeror. *Restatement, Second, Contracts*, § 59. However, the provisions of U.C.C. § 2-207(1)(2) modifies this principle of contract law as regards sales of goods by providing that the "additional terms are to be construed as proposals for addition to the contract."

**Counterpart.** In conveyancing, the corresponding part of an instrument; a duplicate or copy. Where an instrument of conveyance, as a lease, is executed in parts, that is, by having several copies or duplicates made and interchangeably executed, that which is executed by the grantor is usually called the "original," and the rest are "counterparts"; although, where all the parties execute every part, this renders them all originals. *See* Duplicate.

**Counterpart writ.** A copy of the original writ, authorized to be issued to another county when the court has

jurisdiction of the cause by reason of the fact that some of the defendants are residents of the county or found therein.

**Counter-rolls.** In English law, the rolls which sheriffs have with the coroners, containing particulars of their proceedings, as well of appeals as of inquests, etc.

**Countersign.** As a noun, the signature of a secretary or other subordinate officer to any writing signed by the principal or superior to vouch for the authenticity of it. *See also* Attestation.

As a verb, to sign in addition to the signature of another in order to attest the authenticity.

**Counter-signature.** *See* Countersign.

**Countervail.** To counterbalance; to avail against with equal force or virtue; to compensate for, or serve as an equivalent of or substitute for.

**Countervailing equity.** *See* Equity.

**Countervail livery.** At common law, a release was a form of transfer of real estate where some right to it existed in one person but the actual possession was in another; and the possession in such case was said to "countervail livery," that is, it supplied the place of and rendered unnecessary the open and notorious delivery of possession required in other cases.

**Counteur** /kàwntyúr/. In the time of Edward I, a pleader; also called a *Nurrator*, and *Serjeant-Counteur*. *See* Countours.

**Countez** /kàwntiyz/. L. Fr. Count, or reckon. In old practice, a direction formerly given by the clerk of a court to the crier, after a jury was sworn, to *number* them; and which Blackstone says was given in his time, in good English, "count these." 4 Bl.Comm. 340, note (u).

**Countors** /kàwntərz/. Advocates, or serjeants at law, whom a man retains to defend his cause and speak for him in court, for their fees.

**Country.** The territory occupied by an independent nation or people, or the inhabitants of such territory. In the primary meaning "country" denotes the population, the nation, the state, or the government, having possession and dominion over a territory.

Rural, as distinguished from urban areas.

**Country whence he came.** Within statute providing for deportation of aliens means country of alien's nativity, where domicile has not been acquired elsewhere. Immigration Act 1924, § 13; *Schenck ex rel. Capodilupo v. Ward*, C.C.A.Mass., 80 F.2d 422, 426. But deportation to "country whence alien came" would be complied with if the alien was returned to political dominion in exile and control of country from whence he came. *Delany v. Moraitis*, C.C.A.Md., 136 F.2d 129-133.

**County.** The largest territorial division for local government in state. Its powers and importance vary from state to state, and as well within the given state. In certain New England states, it exists mainly for judicial administration. In Louisiana, the equivalent unit is

called a parish. Counties are held in some jurisdictions to be municipal corporations, and are sometimes said to be involuntary municipal corporations. Other cases, seeking to distinguish between the two, hold that counties are agencies or political subdivisions of the state for governmental purposes, and not, like municipal corporations, incorporations of the inhabitants of specified regions for purposes of local government. Counties are also said to be merely quasi corporations. *Jefferson County ex rel. Grauman v. Jefferson County Fiscal Court*, 274 Ky. 91, 118 S.W.2d 181, 184.

**Body of the county.** The county at large, as distinguished from any particular place within it. A county considered as a territorial whole.

**County affairs.** Those relating to the county in its organic and corporate capacity and included within its governmental or corporate powers.

**County attorney.** Attorney employed by county to represent it in civil matters; also, the prosecuting attorney in many counties.

**County auditor.** County official whose responsibility is examination of accounts and financial records of the county.

**County board.** The administrative body which governs a county.

**County board of equalization.** A body created for the purpose of equalizing values of property subject to taxation.

**County board of supervisors.** A body of town and city officers acting for and on behalf of county in such matters as have been turned over to them by law.

**County bonds.** Broadly, any bonds issued by county officials to be paid for by a levy on a special taxing district, whether or not coextensive with the county.

**County business.** All business pertaining to the county as a corporate entity. All business of the county, and any other business of such county connected with or interrelated with the business of any other county properly within the jurisdiction of the county commissioners' court.

**County commissioners.** Officers of a county, charged with a variety of administrative and executive duties, but principally with the management of the financial affairs of the county, its police regulations, and its corporate business. Sometimes the local laws give them limited judicial powers. In some states they are called "supervisors".

**County courts.** The powers and jurisdiction of such courts are governed by state constitutions or statutes; some with strictly administrative, or strictly judicial functions, or a combination of both; some with only criminal jurisdiction, or only civil, or both; some have exclusive jurisdictions, others concurrent jurisdiction; such jurisdictional powers may, in addition, be either general or specific.

In England, such are the main civil courts. *See* the County Courts Act, 1984; Courts Act, 1971.

**County officers.** Those whose general authority and jurisdiction are confined within the limits of the county in which they are appointed, who are appointed in and for a particular county, and whose duties apply only to that county, and through whom the county performs its usual political functions. Public officers who fill a position usually provided for in the organization of counties and county governments, and are selected by the county to represent it continuously and as part of the regular and permanent administration of public power in carrying out certain acts with the performance of which it is charged in behalf of the public.

**County palatine.** A term bestowed upon certain counties in England, the lords of which in former times enjoyed especial privileges. They might pardon treasons, murders, and felonies. All writs and indictments ran in their names, as in other counties in the king's; and all offenses were said to be done against their peace, and not, as in other places, *contra pacem domini regis*. But these privileges have in modern times nearly disappeared after the Judicature Act of 1925, § 18 and the Courts Act of 1971.

**County powers.** Such only as are expressly provided by law or which are necessarily implied from those expressed.

**County property.** That which a county is authorized to acquire, hold, and sell.

**County purposes.** Those exercised by the county acting as a municipal corporation. As regards the rate of taxation, all purposes for which county taxation may be levied. Test whether a tax is levied for county purposes is whether it is for strictly county uses, for which county or its inhabitants alone would benefit, or is it for a purpose in which entire state is concerned and will profit.

**County road.** One which lies wholly within one county, and which is thereby distinguished from a state road, which is a road lying in two or more counties.

**County-seat.** A county-seat or county-town is the chief town of a county, where the county buildings and courts are located and the county business transacted.

**County supervisors.** See *County commissioners, above*.

**County tax.** Tax exclusively for county purposes, in which state has no sovereign interest or responsibility, and which has no connection with duties of county in its relation to state.

**County-town.** The county-seat; the town in which the seat of government of the county is located.

**County warrant.** An order or warrant drawn by some duly authorized officer of the county, directed to the county treasurer and directing him to pay out of the funds of the county a designated sum of money to a named individual, or to his order or to bearer.

**Foreign county.** Any county having a judicial and municipal organization separate from that of the county where matters arising in the former county are called in

question, though both may lie within the same state or country.

**Coup d'état /kūwdeytá/. Political move to overthrow existing government by force.**

**Coupled with an interest.** This phrase, in the law of agency, has reference to a writing creating, conveying to, or vesting in the agent an interest in the estate or property which is the subject of the agency, as distinguished from the proceeds or profits resulting from the exercise of the agency.

**Coupons.** Interest and dividend certificates; also those parts of a commercial instrument which are to be cut, and which are evidence of something connected with the contract mentioned in the instrument. They are generally attached to certificates of loan, where the interest is payable at particular periods, and, when the interest is paid, they are cut off and delivered to the payor. That portion of a bond redeemable at a specified date for interest payment.

Coupons are written contracts for the payment of a definite sum of money on a given day, and being drawn and executed in a form and mode for the purpose, that they may be separated from the bonds and other instruments to which they are usually attached, it is held that they are negotiable and that a suit may be maintained on them without the necessity of producing the bonds. Each matured coupon upon a negotiable bond is a separable promise, distinct from the promises to pay the bonds or the other coupons, and gives rise to a separate cause of action. *Thompson v. Perrine*, 106 U.S. 589, 1 S.Ct. 564, 27 L.Ed. 298.

**Coupon bonds.** Bonds to which are attached coupons for the several successive installments of interest to maturity.

**Coupon notes.** Promissory notes with coupons attached, the coupons being notes for interest written at the bottom of the principal note, and designed to be cut off severally and presented for payment as they mature.

**Coupon rate of interest.** The interest rate stated on a bond. The coupon rate of interest times the *par*, or principal, value of a bond determines the periodic dollar interest payments received by the bondholder.

**Coupon securities.** Such securities usually provide for the payment of principal to the bearer thereof, and for payment of an installment of interest to the bearer of the respective interest coupons upon presentation thereof upon their respective due dates. Coupon securities are usually in the denomination of \$1,000. Ownership of the security and/or coupons is transferred by delivery thereof. Such a security is negotiable under the Uniform Commercial Code. U.C.C. §§ 8-105, 8-302.

**Cour de cassation /kūr də kasasyówn/. The supreme judicial tribunal of France, having appellate jurisdiction only.**

**Course.** In surveying, the direction of a line with reference to a meridian.

**Course of business.** What is usually and normally done in the management of trade or business. *See also* Course of dealing; Regular course of business.

In worker's compensation acts, the usual course of business of the employer covers the normal operations which form part of the ordinary business carried on, and not including incidental and occasional operations having for their purpose the preservation of the premises or the appliances used in the business.

Commercial paper is said to be transferred, or sales alleged to have been fraudulent may be shown to have been made, "in the course of business," or "in the usual and ordinary course of business," when the circumstances of the transaction are such as usually and ordinarily attend dealings of the same kind and do not exhibit any signs of haste, secrecy, or fraudulent intention.

**Course of dealing.** A sequence of previous acts and conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct. U.C.C. § 1-205(1). *See also* Trade usage; Usage (*Usage of trade*).

**Course of employment.** These words as applied to compensation for injuries within the purview of worker's compensation acts, refer to the time, place, and circumstances under which the accident takes place. A worker is in course of employment when, within time covered by employment, he is doing something which he might reasonably do while so employed at proper place. Generally, in order that an injury may arise out of and in the course of employment, it must be received while the worker is doing the duty he is employed to perform and also as a natural incident of the work flowing therefrom as a natural consequence and directly connected therewith.

The expression "in the course of his employment," in the rule that an employer is liable for the torts of an employee done in the course of employment, means while engaged in the service of the employer while engaged generally in the employer's work, as distinguished from acts done when the employee steps outside of employment to do an act for himself or herself not connected with the employer's business. The test as to whether an injury has arisen out of the "course of employment" is whether there is a causal connection between the duties of employment and the injury suffered. *Tri-State Commodities, Inc. v. Stewart, Colo. App., 689 P.2d 712, 713.*

State statutes and decisions differ as to the types and scope of activities which fall within "course of employment".

*See also* Arising out of and in the course of employment; Deviation; Scope of employment.

**Course of performance.** The understandings of performance which develop by conduct without objection between two parties during the performance of an executory contract.

**Course of river.** The course of a river is a line parallel with its banks. The term is not synonymous with the "current" of the river.

**Course of the voyage.** By this term is understood the regular and customary track, if such there be, which a ship takes in going from one port to another, and the shortest way.

**Course of trade.** What is customarily or ordinarily done in the management of trade or business. *See also* Course of business.

**Course of vein.** In mining, the "course of the vein" appearing on the surface is the course of its apex, which is generally inclined and undulated and departs more or less materially from the strike.

**Course of vessel.** In navigation, the "course" of a vessel is her apparent course, and not her heading at any given moment. It is her actual course.

**Courses and distances.** A method or form for describing real estate in deeds and mortgages by setting forth the distances in one direction as a boundary, followed by other distances and the direction thereof until the entire parcel has been described. *See also* Metes and bounds.

**Court.** A space which is uncovered, but which may be partly or wholly inclosed by buildings or walls. When used in connection with a street, indicates a short street, blind alley, or open space like a short street inclosed by dwellings or other buildings facing thereon.

A legislative assembly. Parliament is called in the old books a court of the king, nobility, and commons assembled. This meaning of the word has also been retained in the titles of some deliberative bodies, such as the "General Court" of Massachusetts, *i.e.*, the legislature.

The person and suit of the sovereign; the place where the sovereign sojourns with his regal retinue, wherever that may be. The English government is spoken of in diplomacy as the court of St. James, because the palace of St. James is the official palace.

An organ of the government, belonging to the judicial department, whose function is the application of the laws to controversies brought before it and the public administration of justice. The presence of a sufficient number of the members of such a body regularly convened in an authorized place at an appointed time, engaged in the full and regular performance of its functions. A body in the government to which the administration of justice is delegated. A body organized to administer justice, and including both judge and jury. An incorporeal, political being, composed of one or more judges, who sit at fixed times and places, attended by proper officers, pursuant to lawful authority, for the administration of justice. An organized body with defined powers, meeting at certain times and places for the hearing and decision of causes and other matters brought before it, and aided in this, its proper business, by its proper officers, *viz.*, attorneys and counsel to present and manage the business, clerks to record and attest its acts and decisions, and ministerial officers to

execute its commands, and secure due order in its proceedings.

The words "court" and "judge," or "judges," are frequently used in statutes as synonymous. When used with reference to orders made by the court or judges, they are to be so understood.

### General Classification

Courts may be classified and divided according to several methods, the following being the more usual:

*Appellate courts.* Such courts review decisions of inferior courts, and may be either intermediate appellate courts (court of appeals) or supreme courts. *See* Court of Appeals; Supreme Court.

*Article III courts.* *See* Constitutional court.

*Civil and criminal courts.* The former being such as are established for the adjudication of controversies between individual parties, or the ascertainment, enforcement, and redress of private rights; the latter, such as are charged with the administration of the criminal laws, and the punishment of wrongs to the public. While in some states there are both civil and criminal courts, in most states the trial court is a *court of general jurisdiction (q.v.)*.

*Court above, court below.* In appellate practice, the "court above" is the one to which a cause is removed for review, whether by appeal, writ of error, or certiorari; while the "court below" is the one from which the case is removed (normally the trial court).

*Court in bank (en banc).* A meeting of all the judges of a court, usually for the purposes of hearing arguments on demurrers, motions for new trial, etc., as distinguished from sessions of the same court presided over by a single judge or panel of judges. *See* Full court, below.

*Court of competent jurisdiction.* One having power and authority of law at the time of acting to do the particular act. One recognized by law as possessing the right to adjudicate a controversy. One having jurisdiction under the Constitution and/or laws to determine the question in controversy.

*Court of general jurisdiction.* A court having unlimited trial jurisdiction, both civil and criminal, though its judgments and decrees are subject to appellate review. A superior court; a court having full jurisdiction within its own jurisdictional area.

*Court of limited jurisdiction.* Court with jurisdiction over only certain types of matters; e.g. probate or juvenile court. When a court of general jurisdiction proceeds under a special statute, it is a "court of limited jurisdiction" for the purpose of that proceeding, and its jurisdiction must affirmatively appear.

*Court of original jurisdiction.* Courts where actions are initiated and heard in first instance.

*Court of record.* A court that is required to keep a record of its proceedings, and that may fine or imprison. Such record imports verity and cannot be collaterally impeached.

*De facto court.* One established, organized, and exercising its judicial functions under authority of a statute apparently valid, though such statute may be in fact unconstitutional and may be afterwards so adjudged; or a court established and acting under the authority of a *de facto* government.

*Equity courts and law courts.* The former being such as possess the jurisdiction of a chancellor, apply the rules and principles of chancery (*i.e.* equity) law, and follow the procedure in equity; the latter, such as have no equitable powers, but administer justice according to the rules and practice of the common law. Under Rules of Civil Procedure, however, equity and law have been merged at the procedural level, and as such this distinction no longer exists in the federal courts nor in most state courts, though equity substantive jurisprudence remains viable. Fed.R.Civil P. 2. *See* Court of Chancery; Court of Equity.

*Full court.* A session of a court, which is attended by all the judges or justices composing it. *See* Court in bank, above.

*Spiritual courts.* In English law, the ecclesiastical courts, or courts Christian. 3 Bl.Comm. 61. *See* Ecclesiastical courts.

*Superior and inferior courts.* The former being courts of general original jurisdiction in the first instance, and which exercise a control or supervision over a system of lower courts, either by appeal, error, or *certiorari*; the latter being courts of small or restricted jurisdiction, and subject to the review or correction of higher courts. Sometimes the former term is used to denote a particular group or system of courts of high powers, and all others are called "inferior courts".

*Trial courts.* Generic term for courts where civil actions or criminal proceedings are first commenced at the state level such are variously called municipal, circuit, superior, district, or county courts. At the federal level, the U.S. district courts are the trial courts.

As to the division of courts according to their *jurisdiction*, *see* Jurisdiction.

As to several names or kinds of courts not specifically described in the titles immediately following, *see* Admiralty court; Appellate court; Arches Court; Bankruptcy proceedings (*Bankruptcy courts*); Circuit courts; City courts; Claims court; Commonwealth court; Consistory courts; Constitutional court; Consular courts; County (*County courts*); Court-baron; Court of High Commission; Customs Court; District (*District courts*); Ecclesiastical courts; Family court; Federal courts; Forest courts; Instance court; Insular courts; International Court of Justice; Justice's courts; Kangaroo court; Land court; Legislative courts; Maritime court; Mayor's court; Military courts; Moot court; Municipal courts; Orphan's courts; Police court; Prerogative court; Prize courts; Probate court; Superior (*Superior courts*); Supreme court; Surrogate court; Tax court; United States Courts.

**Court administrator.** Generally, a non-judicial officer whose responsibility is the administration of the courts



as to budgets, juries, judicial assignments, calendars and non-judicial personnel.

**Court-baron.** In English law, a court which, although not one of record, was incident to every manor, and could not be severed therefrom. It was ordained for the maintenance of the services and duties stipulated for by lords of manors, and for the purpose of determining actions of a personal nature, where the debt or damage was under forty shillings. *Customary court-baron* was one appertaining entirely to copyholders. 3 Bl.Comm. 33. *Freeholders' court-baron* was one held before the freeholders who owed suit and service to the manor. It was the court-baron proper.

**Court calendar.** A list of cases for trial or appellate argument prepared for a given period of time as a week, month or even a term of the sitting of the court. Such may include scheduling of motions and other pretrial matters. *See also* Docket.

**Court Christian.** The ecclesiastical courts in England often so called, as distinguished from the civil courts. 1 Bl.Comm. 83; 3 Bl.Comm. 64.

**Court commissioner.** A person appointed by a judge to take testimony and find facts or to carry out some specific function connected with a case, such as selling property which is the subject of a petition to partition. *See also* Commissioner; Court administrator; Magistrate; Master; Referee.

**Court en banc** /kùrt om bõnk/. *See* Court (*Court in bank*).

**Courtesy.** *See* Courtesy.

**Court for Consideration of Crown Cases Reserved.** In England, a court established by St. 11 & 12, Vict., c. 78, composed of such of the judges of the superior courts of Westminster as were able to attend, for the consideration of questions of law reserved by any judge in a court of oyer and terminer, gaol delivery, or quarter sessions, before which a prisoner had been found guilty by verdict. Such question is stated in the form of a special case. 4 Steph. The trial judge was empowered to "state a case" for the opinion of that court. He could not be compelled to do so, and only a question of law could be raised. If the court considered that the point had been wrongly decided at the trial, the conviction would be quashed. By Act of 1907, the Court of Criminal Appeal was created and the Court for Crown Cases Reserved was abolished.

**Court for Divorce and Matrimonial Causes.** This court was established by St. 20 & 21, Vict., c. 85, which transferred to it all jurisdiction then exercisable by any ecclesiastical court in England, in matters matrimonial, and also gave it new powers. The court consisted of the lord chancellor, the three chiefs, and three senior puisne judges of the common-law courts, and the judge ordinary, who together constituted, and still constitute, the "full court." The judge ordinary heard almost all matters in the first instance. By the judicature act, 1873, § 3, the jurisdiction of the court was transferred to the supreme court of judicature.

**Court for the Correction of Errors.** The name of a court having jurisdiction for review, by appeal or writ of error. The name was formerly used in New York and South Carolina.

**Court for the Relief of Insolvent Debtors.** In English law, a local court which had its sittings in London only, which received the petitions of insolvent debtors, and decided upon the question of granting a discharge. Abolished by the Bankruptcy Act of 1861.

**Court for the Trial of Impeachments.** A tribunal empowered to try any officer of government or other person brought to its bar by the process of impeachment. In England, the house of lords constitutes such a court; in the United States, the senate; and in the several states, usually the upper house of the legislative assembly. *See also* Impeachment.

**Court-hand.** In old English practice, the peculiar hand in which the records of courts were written from the earliest period down to the reign of George II. Its characteristics were great strength, compactness, and undeviating uniformity; and its use undoubtedly gave to the ancient record its acknowledged superiority over the modern, in the important quality of durability.

The writing of this hand, with its peculiar abbreviations and contractions, constituted, while it was in use, an art of no little importance, being an indispensable part of the profession of "clerkship," as it was called. Two sizes of it were employed, a large and a small hand; the former, called "great court-hand," being used for initial words or clauses, the *placita* of records, etc.

**Court-house.** The building occupied for the public sessions of a court, with its various offices. The building occupied and appropriated according to law for the holding of courts.

**Court, Hundred.** *See* Hundred Court.

**Court-Lands.** Domains or lands kept in the lord's hands to serve his family.

**Court-Leet.** The name of an English court of record held once in the year, and not oftener, within a particular hundred, lordship, or manor, before the steward of the leet; being the king's court granted by charter to the lords of those hundreds or manors. Its office was to view the frankpledges, that is, the freemen within the liberty; to present by jury crimes happening within the jurisdiction; and to punish trivial misdemeanors.

**Court-Martial.** An ad hoc military court, convened under authority of government and the Uniform Code of Military Justice, 10 U.S.C.A. § 801 et seq., for trying and punishing offenses in violation of the Uniform Code of Military Justice committed by persons subject to the Code, particularly members of the armed forces. Courts-martial are courts of law and courts of justice although they are not part of the federal judiciary established under Article III of the Constitution. They are legislative criminal courts established in the armed forces under the constitutional power of congress to regulate the armed forces. Their jurisdiction is entirely penal and disciplinary. They may be convened by the

president, secretaries of military departments and by senior commanders specifically empowered by law. The type (*e.g.* summary, special, or general) and composition of courts-martial varies according to the gravity of offenses. Generally they are designed to deal with the internal affairs of the military when summary command discipline is inadequate to achieve corrective results, but they have concurrent jurisdiction with civil courts over a wide range of civil offenses. *See* Courts of Military Review; Court of Military Appeals. *See also* Code of Military Justice.

**Court of Admiralty.** A court having jurisdiction of admiralty and maritime matters; such jurisdiction being possessed by federal district courts. *See* Admiralty Court.

*High Court of Admiralty.* In English law, this was a court which exercised jurisdiction in prize cases, and had general jurisdiction in maritime causes, on the instance side. Its proceedings were usually *in rem*, and its practice and principles derived in large measure from the civil law. The judicature acts of 1873 transferred all the powers and jurisdiction of this tribunal to the probate, divorce, and admiralty division of the high court of justice. The Justice Act of 1970 established a new Admiralty Court as part of the Queens Bench Division of the High Court. Now governed by Supreme Court Act, 1981, §§ 4, 5.

**Court of Ancient Demesne.** In English law, a court of peculiar constitution, held by a bailiff appointed by the king, in which alone the tenants of the king's demesne could be impleaded.

**Court of Appeal, His Majesty's.** Formerly, the chief appellate tribunal of England. It was established by the judicature acts of 1873 and 1875, and invested with the jurisdiction formerly exercised by the court of appeal in chancery, the exchequer chamber, the judicial committee of the privy council in admiralty and lunacy appeals, and with general appellate jurisdiction from the high court of justice. It consists of the Lord Chancellor, Lord Chief Justice, Master of the Rolls, President of the Family Division, former Lord Chancellors, Lords of Appeal in Ordinary and Lords Justices of Appeal. There are two divisions: (1) Criminal Division which hears appeals from the Crown Court. (2) Civil Division which hears appeals from various civil tribunals. Appeal lies from both divisions to the House of Lords.

**Court of Appeals.** In those states with courts of appeals, such courts are usually intermediate appellate courts (with the highest appellate court being the state Supreme Court). In New York, Maryland, and the District of Columbia, however, such are the highest appellate courts. In West Virginia the Supreme Court of Appeals is the court of last resort. Alabama, Oklahoma, Tennessee, and Texas have Courts of Criminal Appeals, with those in Oklahoma and Texas being the highest appellate courts for criminal matters. Alabama, Oklahoma, and Texas have Courts of Civil Appeals, which are intermediate appellate courts. *See also* Supreme Court.

The United States is divided into thirteen federal judicial circuits in each of which there is established a court of appeals known as the United States Court of Appeals for the circuit. Included in these thirteen judicial circuits is the Court of Appeals for the District of Columbia and the Court of Appeals for the Federal Circuit. 28 U.S.C.A. §§ 41, 43. *See* Courts of Appeals, U.S.

**Court of Appeals for the Federal Circuit.** *See* Courts of Appeals, U.S.

**Court of Appeals in Cases of Capture.** A court erected by act of congress under the articles of confederation which preceded the adoption of the Constitution. It had appellate jurisdiction in prize causes.

**Court of Archdeacon.** The most inferior of the English ecclesiastical courts, from which an appeal generally lies to that of the bishop (*i.e.*, to the Consistory Court). Such court is now virtually obsolete.

**Court of Assistants.** Formerly a court in Massachusetts organized in 1630, consisting of the governor, deputy governor and assistants. It exercised the whole power both legislative and judicial of the colony and an extensive chancery jurisdiction as well.

**Court of Attachments.** In old English law, the lowest of the three courts held in the forests. It has fallen into total disuse. It was held before the verderers of the forest once in every forty days, to view the attachments by the foresters for offences against the vert and the venison. It had cognizance only of small trespasses. Larger ones were enrolled and heard by the Justices in Eyre.

**Court of Audience.** An ecclesiastical court, in which the primates once exercised in person a considerable part of their jurisdiction. Such courts, which existed in England for both the Archbishop of Canterbury and York, have long since been disused.

**Court of Augmentation.** An English court created in the time of Henry VIII (27 Hen. VIII, c. 27), with jurisdiction over the property and revenue of certain religious foundations, which had been made over to the king by act of parliament, and over suits relating to the same. It was called "The Court of the Augmentations of the Revenues of the King's Crown" (from the *augmentation* of the revenues of the crown derived from the suppression of the monasteries), and was dissolved in the reign of Queen Mary, but the Office of Augmentation remained long after; the records of the court are now at the Public Record Office.

**Court of Bankruptcy.** Federal court established in each judicial district, as an adjunct to the U.S. district court for such district, with general jurisdiction over bankruptcy matters. 28 U.S.C.A. §§ 151, 1334. *See also* Bankruptcy proceedings.

**Court of Brotherhood.** In old English law, an assembly of the mayors or other chief officers of the principal towns of the Cinque Ports in England, originally administering the chief powers of those ports, now almost extinct.

**Court of Chancery.** A court administering equity and proceeding according to the forms and principles of equity. In England, prior to the Judicature Acts of 1925 (whereby the Court was superseded by the Chancery Division), the style of the court possessing the largest equitable powers and jurisdiction was the "High Court of Chancery." By the Supreme Court of Judicature Act, 1925, all three divisions of the High Court administer both law and equity. See now, Supreme Court Act, 1981, § 49.

In some of the United States, the title "court of chancery" is applied to a court possessing general equity powers, distinct from the courts of law. Courts of chancery (equity courts) have been abolished by all states that have adopted Rules of Civil Procedure. See also Court of Equity.

**Court of Chivalry.** In English law, the name of a court anciently held as a court of honor merely, before the earl-marshal, and as a criminal court before the lord high constable, jointly with the earl-marshal. But it is also said that this court was held by the constable, and after that office reverted to the crown in the time of Henry VIII, by the earl-marshal. It had jurisdiction as to contracts and other matters touching deeds of arms or war, as well as pleas of life or member. It also corrected encroachments in matters of coat-armor, precedency, and other distinctions of families. It is now grown entirely out of use (except for one case in 1955, after a lapse of 200 years) on account of the feebleness of its jurisdiction and want of power to enforce its judgments, as it could neither fine nor imprison, not being a court of record.

**Court of Civil Appeals.** Such exist as intermediate appellate courts in Alabama, Oklahoma, and Texas. The Texas Court of Civil Appeals has appellate jurisdiction of cases decided in district and county courts.

**Court of Claims.** The federal Court of Claims was established in 1855. The Federal Courts Improvement Act of 1982 abolished this Court and created a new United States Claims Court. Combined with the also abolished United States Court of Customs and Patent Appeals, the former Court of Claims became the new United States Court of Appeals for the Federal Circuit (C.A.F.C.). The "Trial Division" of the former Court of Claims became the newly created U.S. Claims Court. See Claims Court, U.S.; Tucker Act.

A number of states also have courts of claims (*e.g.*, Illinois, Michigan, New York, Ohio).

**Court of Common Pleas.** In English law, one of the four superior courts at Westminster, which existed up to the passing of the judicature acts. It was also styled the "Common Bench". It was one of the courts derived from the breaking up of the *aula regis*, and had exclusive jurisdiction of all real actions and of *communia placita*, or common pleas, *i.e.*, between subject and subject. It was presided over by a chief justice with four puisne judges (later five, by virtue of 31 & 32, Vict., c. 125, § 11, subsec. 8). Appeals lay anciently to the king's bench, but afterwards to the exchequer chamber. See 3

Bl.Comm. 37, *et seq.* Its jurisdiction was altogether confined to civil matters, having no cognizance in criminal cases, and was concurrent with that of the queen's bench and exchequer in personal actions and ejectment. In 1873 the court became the Common Pleas Division of the High Court of Justice. In 1880 by Order in Council that division was merged into the Queen's Bench Division.

In the United States, such courts exist in Pennsylvania wherein all civil and criminal actions are begun (except such as are brought before courts of inferior jurisdiction). Most such courts have been abolished, however, with their jurisdiction being transferred to district, circuit, or superior courts.

**Court of Conciliation.** A court which proposes terms of adjustment, so as to avoid litigation; *e.g.* conciliation between debtor and creditor over disputed debt. May also function to aid in resolving marital disputes. See also Small Claims Court.

**Court of Conscience.** The same as courts of request (*q.v.*). This name was also frequently applied to the courts of equity or of chancery, not as name but as a description. See also Conscience.

**Court of Convocation.** In English ecclesiastical law, a court, or assembly, comprising all the high officials of each province and representatives of the minor clergy. It was in the nature of an ecclesiastical parliament; and, so far as its judicial functions extend, it had jurisdiction of cases of heresy, schism, and other purely ecclesiastical matters. An appeal was to the king in council.

**Court of County Commissioners.** In some states, a court of record in each county.

**Court of Criminal Appeals.** See Court of Appeals.

**Court of Customs and Patent Appeals.** See Customs and Patent Appeals Court.

**Court of Delegates.** An English tribunal composed of delegates appointed by royal commission, and formerly the great court of appeal in all ecclesiastical causes. The powers of the court were, by 2 & 3 Wm. IV, c. 92, transferred to the privy council. 3 Bl.Comm. 66. A commission of review was formerly granted, in extraordinary cases, to revise a sentence of the court of delegates, when that court had apparently been led into material error.

**Court of Equity.** A court which has jurisdiction in equity, which administers justice and decides controversies in accordance with the rules, principles, and precedents of equity, and which follows the forms and procedure of chancery; as distinguished from a court having the jurisdiction, rules, principles, and practice of the common law. Equity courts have been abolished in all states that have adopted Rules of Civil Procedure; law and equity actions having been merged procedurally into a single form of "civil action". Fed.R. Civil P. 2. See also Court of Chancery.

**Court of Error.** An expression formerly applied especially in England to the court of exchequer chamber and the house of lords, as taking cognizance of *error* brought. It was formerly applied in some of the United States (e.g. Connecticut) to the court of last resort in the state; and in its most general sense denotes any court having power to review the decisions of lower courts on appeal, error, *certiorari*, or other process. See Court of Appeals.

**Court of Errors and Appeals.** Formerly, the court of last resort in the states of New Jersey and New York.

**Court of Exchequer** /kòrt əv ɛkschékər/. In English law, a very ancient court of record, set up by William the Conqueror as a part of the *aula regis*, and afterwards one of the four superior courts at Westminster. It was, however, inferior in rank to both the king's bench and the common pleas. It was presided over by a chief baron and four puisne barons. It was originally the king's treasury, and was charged with keeping the king's accounts and collecting the royal revenues. But pleas between subject and subject were anciently heard there, until this was forbidden by the *Articula super Chartas* (1290), after which its jurisdiction as a court only extended to revenue cases arising out of the non-payment or withholding of debts to the crown. But the privilege of suing and being sued in this court was extended to the king's accountants, and later, by the use of a convenient fiction to the effect that the plaintiff was the king's debtor or accountant, the court was thrown open to all suitors in personal actions. The exchequer had formerly both an equity side and a common-law side, but its equity jurisdiction was taken away by the statute 5, Vict., c. 5 (1842), and transferred to the court of chancery. The judicature act (1873) transferred the business and jurisdiction of this court to the "Exchequer Division" of the "High Court of Justice" and by Orders in Council under Sec. 32 of that Act the Exchequer Division was in turn merged in the Queen's Bench Division.

**Court of Exchequer Chamber** /kòrt əv ɛkschékər chéymbər/. The name of a former English court of appeal, intermediate between the superior courts of common law and the house of lords. When sitting as a court of appeal from any one of the three superior courts of common law, it was composed of judges of the other two courts. 3 Bl.Comm. 56, 57. By the judicature act (1873) the jurisdiction of this court was transferred to the court of appeal.

**Court of Faculties** /kòrt əv fákal'tiəz/. A tribunal of the archbishop in England. It does not hold pleas in any suits, but grants special dispensations, and creates rights to pews, monuments, and other mortuary matters. It has also various other powers as given by the Ecclesiastical Licenses Act of 1533.

**Court of First Instance.** A court of original or primary jurisdiction, e.g. trial court. Courts of this title may be found in the jurisprudence of the Philippine Islands.

**Court of General Quarter Sessions of the Peace.** Formerly, a court of criminal jurisdiction in New Jersey.

In English law, a court of criminal jurisdiction held in each county once in every quarter of a year, but in the county of Middlesex twice a month. When held at other times than quarterly, the sessions were called "general sessions of the peace." Quarter sessions were abolished by the Courts Act of 1971, with most jurisdiction transferred to the Crown Court (*q.v.*).

**Court of General Sessions.** The name given in some states to a court of general original jurisdiction in criminal cases.

**Court of Great Sessions in Wales.** A court formerly held in Wales; abolished by 11 Geo. IV, and 1 Wm. IV, c. 70 (1830) and the Welsh judicature incorporated with that of England.

**Court of Guestling.** In old English law, an assembly of the members of the Court of Brotherhood (*supra*) together with other representatives of the corporate members of the Cinque Ports, invited to sit with the mayors of the seven principal towns.

**Court of High Commission.** In English law, an ecclesiastical court of formidable jurisdiction, for the vindication of the peace and dignity of the church, by reforming, ordering, and correcting the ecclesiastical state and persons, and all manner of errors, heresies, schisms, abuses, offenses, contempts, and enormities. Under such jurisdiction the Court exercised enormous despotic power. 3 Bl.Comm. 67. It was erected by St. 1 Eliz., c. 1 (1588), and abolished in 1640. James II attempted to resurrect it. The Bill of Rights declared it illegal in 1688.

**Court of Honor.** In old English law, a court having jurisdiction to hear and redress injuries or affronts to a man's honor or personal dignity, of a nature not cognizable by the ordinary courts of law, or encroachments upon his rights in respect to heraldry, coat-armor, right of precedence, and the like. It was one of the functions of the Court of Chivalry (*q.v.*) in England to sit and act as a court of honor. 3 Bl.Comm. 104.

The name is also given in some European countries to a tribunal of army officers (more or less distinctly recognized by law as a "court") convened for the purpose of inquiring into complaints affecting the honor of brother officers and punishing derelictions from the code of honor and deciding on the causes and occasions for fighting duels, in which officers are concerned, and the manner of conducting them.

**Court of Hustings.** In English law, the county court of London, held before the mayor, recorder, and sheriff, but of which the recorder, is, in effect, the sole judge. No actions can be brought in this court that are merely personal. Since the abolition of all real and mixed actions except ejection, the jurisdiction of this court has fallen into comparative desuetude.

Formerly, a local court in some parts of Virginia.

**Court of Inquiry.** In English law, a court sometimes appointed by the crown to ascertain whether it be proper to resort to extreme measures against a person

charged before a court-martial. Also a court for hearing the complaints of private soldiers.

In American law, formerly, a court constituted by authority of the articles of war, invested with the power to examine into the nature of any transaction of, or accusation or imputation against, any officer or soldier, when demanded by him. Rev.St. § 1342, arts. 115, 116. Repealed by Act June 4, 1920, c. 227, § 4, 41 Stat. 812. They were not strictly courts, having no power to try and determine guilt or innocence. They were rather agencies created by statute to investigate facts and report thereon. They could not compel the attendance of witnesses nor require them to testify.

In Texas when a judge of any county or district court of this state, acting in his capacity as magistrate, has good cause to believe that an offense has been committed against the laws of this state, he may summon and examine any witness in relation thereto in accordance with the rules hereinafter provided, which procedure is defined as a "Court of Inquiry".

**Court of International Trade.** This federal court was originally established as the Board of United States General Appraisers in 1890, and in turn was superseded by the United States Customs Court in 1926. In 1956 the Customs Court was established as an Article III court. The Customs Court Act of 1980 constituted the court as the United States Court of International Trade and revised its jurisdiction. As so reconstituted, the court has jurisdiction over any civil action against the United States arising from federal laws governing import transactions and also jurisdiction to review determinations as to the eligibility of workers, firms, and communities for adjustment assistance under the Trade Act of 1974. Civil actions commenced by the United States to recover customs duties, to recover on a customs bond, or for certain civil penalties alleging fraud or negligence are also within its exclusive jurisdiction. The court is composed of a chief judge and eight judges, not more than five of whom may belong to any one political party.

**Court of Justice Seat.** In English law, the principal of the forest courts. Called also Court of the Chief Justice in Eyre (*q.v.*).

**Court of King's (or Queen's) Bench.** In English law, the supreme court of common law in the kingdom; merged in the Supreme Court by the Judicature Act, 1873, § 6. It was one of the successors of the *curia regis* and received its name, it is said, because the king formerly sat in it in person. During the reign of a queen it was called the Queen's Bench, and during Cromwell's Protectorate it was called the Upper Bench.

The Queen's Bench Division of the High Court is today one of three divisions of the High Court. The others are the Chancery Division and the Family Division. Its jurisdiction and composition are governed by the Supreme Court Act, 1981, §§ 4(4), 61(1).

**Court of last resort.** Court which handles the final appeal on a matter; *e.g.*, the U.S. Supreme Court for federal cases.

**Court of law.** In a wide sense, any duly constituted tribunal administering the laws of the state or nation; in a narrower sense, a court proceeding according to the course of the common law and governed by its rules and principles, as contrasted with a "court of equity (*q.v.*)."

**Court of Magistrates and Freeholders.** The name of a court formerly established in South Carolina for the trial of slaves and free persons of color for criminal offenses.

**Court of Marshalsea** /kòrt əv mårshålsiy/. In English law, the court or seat of the marshal. A court originally held before the steward and marshal of the king's house, instituted to administer justice between the king's domestic servants. It had jurisdiction of all trespasses committed within the verge of the king's court, where one of the parties was of the royal household; and of all debts and contracts, when both parties were of that establishment. It was abolished by 12 & 13, Vict., c. 101, § 13 (1849).

**Court of Military Appeals.** This court was established by Congress in 1950 (10 U.S.C.A. § 867). It is the primary civilian appellate tribunal responsible for reviewing court-martial convictions of all the services. It is exclusively an appellate criminal court. The court, consisting of three civilian judges appointed by the president, is called upon to exercise jurisdiction as to questions of law in all cases extending to death; questions certified to the court by the Judge Advocates General of the armed services, and by the general counsel of the Department of Transportation, acting for the Coast Guard; petitions by accused who have received a sentence of a year or more confinement, and/or a punitive discharge. Decisions of this court are subject to review by the Supreme Court by a writ of certiorari. The Supreme Court may not review by a writ of certiorari, however, any action of this court in refusing to grant a petition for review. 10 U.S.C.A. § 867(3)(h)(i). *See also* Courts of Military Review.

**Court of Nisi Prius** /kòrt əv náysay práyəs/. Though this term is frequently used as a general designation of any court exercising general, original jurisdiction in civil cases (being used interchangeably with "trial-court"), it belonged as a legal title only to a court which formerly existed in the city and county of Philadelphia, and which was presided over by one of the judges of the supreme court of Pennsylvania. This court was abolished by the constitution of 1874. *See* Assize; Courts of Assize and Nisi Prius; Nisi prius.

**Court of Ordinary.** In Georgia such courts formerly had exclusive and general jurisdiction over probate of wills; granting letters testamentary, or of administration, and revocation of same; management, disposition and distribution of estate of decedents, idiots, lunatics and insane persons and of all such other matters and things as appertain or relate to same; appointment and removal of guardians of minors and persons of unsound mind and all controversies as to right of guardianship; receiving and hearing applications for homestead and exemption and granting same; and concurrently with

judge of the county court, jurisdiction in binding out of orphans and apprentices, and all controversies between master and apprentice. The Probate Court now has jurisdiction over such matter.

**Court of Orphans** /kört əv órfənz/. In Maryland and Pennsylvania, a court, elsewhere known as a "Probate" or "Surrogates" court, with general jurisdiction over matters of probate and administration of estates, orphans, wards, and guardians.

**Court of Oyer and Terminer** /kört əv óyər ənd tərmanər/. In England, formerly, a court for the trial of cases of treason and felony. The commissioners of assise and *nisi prius* were judges selected by the king and appointed and authorized under the great seal, including usually two of the judges at Westminster, and sent out twice a year into most of the counties of England, for the trial (with a jury of the county) of causes then depending at Westminster, both civil and criminal. They sat by virtue of several commissions, each of which, in reality, constituted them a separate and distinct court. The commission of *oyer and terminer* gave them authority for the trial of treasons and felonies; that of *general gaol delivery* empowers them to try every prisoner then in gaol for whatever offense, so that, altogether, they possessed full criminal jurisdiction. The assize courts have since been abolished and replaced by the Crown Court.

In American law, this name was generally used (sometimes, with additions) as the title, or part of the title, of a state court of criminal jurisdiction, or of the criminal branch of a court of general jurisdiction, being commonly applied to such courts as may try *felonies*, or the higher grades of crime. Such courts existed in Delaware and Pennsylvania. They were abolished in New York and New Jersey in 1895.

**Court of Oyer and Terminer and General Gaol (or Jail) Delivery** /kört əv óyər ənd tərmanər ənd jénərəl jéyl dəlivəriy/. In American law, formerly, a court of criminal jurisdiction in the state of Pennsylvania. It was held at the same time with the court of quarter sessions, as a general rule, and by the same judges. Pa.Const. art. 5, § 1.

In English law, formerly a tribunal for the examination and trial of criminals. Such jurisdiction is now in the Crown Court.

**Court of Palace at Westminster.** In England, this court had jurisdiction of personal actions arising within twelve miles of the palace at Whitehall. Abolished by 12 & 13, Vict., c. 101. See Court of the Steward and Marshal.

**Court of Passage.** In England, an inferior court, possessing a very ancient jurisdiction over causes of action arising within the borough of Liverpool. It appears to have been also called the "Borough Court of Liverpool." It had the same jurisdiction in admiralty matters as the Lancashire county court. Such court was abolished by the Courts Act of 1971.

**Court of Peculiars** /kört əv pəkýúwlyərz/. A spiritual court in England, being a branch of, and annexed to, the Court of Arches. It has a jurisdiction over all those parishes dispersed through the province of Canterbury, in the midst of other dioceses, which are exempt from the ordinary's jurisdiction, and subject to the metropolitan only. All ecclesiastical causes arising within these *peculiar* or exempt jurisdictions are originally cognizable by this court, from which an appeal lies to the Court of Arches. Most of such courts have been abolished by legislation. See also Arches Court.

**Court of Piepoudre** /kört əv pâypowdər/. (Also spelled Pipowder, Pie Powder, Py-Powder, Piedpoudre, etc.) The lowest (and most expeditious) of the courts of justice known to the older law of England. It is supposed to have been so called from the dusty feet of the suitors. It was a court of record incident to every fair and market, was held by the steward, and had jurisdiction to administer justice for all commercial injuries and minor offenses done in that same fair or market (not a preceding one). An appeal lay to the courts at Westminster. This court long ago fell into disuse. 3 Bl.Comm. 32.

**Court of Pleas.** In England, a court of the county palatine of Durham, having a local common-law jurisdiction. It was abolished by the judicature act, which transferred its jurisdiction to the high court. 3 Bl. Comm. 79.

**Court of Policies of Assurance.** In England, a court established by statute 43 Eliz., c. 12 (1601), to determine in a summary way all causes between merchants, concerning policies of insurance. The court was formally abolished by Stat. 26 & 27, Vict., c. 125 (1863). 3 Bl.Comm. 74.

**Court of Private Land Claims.** A federal court created by act of Congress in 1891 (26 Stat. 854), to hear and determine claims by private parties to lands within the public domain, where such claims originated under Spanish or Mexican grants, and had not already been confirmed by Congress or otherwise adjudicated. The existence and authority of this court were to cease and determine at the end of the year 1895.

**Court of Probate.** A court existing in many states having jurisdiction over the probate of wills, the grant of administration, and the supervision of the management and settlement of the estates of decedents, including the collection of assets, the allowance of claims, and the distribution of the estate. In some states the probate courts also have jurisdiction over divorce, custody, adoption and change of name matters and of the estates of minors, including the appointment of guardians and the settlement of their accounts, and of the estates of lunatics, habitual drunkards, and spendthrifts. And in some states these courts possess a limited jurisdiction in civil and criminal cases. They are also called in some jurisdictions "Orphans' courts" (e.g. Maryland, Pennsylvania) and "Surrogate's courts" (e.g. N.Y.).

In England, the name of a court established in 1857, under the probate act of that year (20 & 21 Vict., c. 77), to be held in London, to which court was transferred the

testamentary jurisdiction of the ecclesiastical courts. The probate court was merged in the Supreme Court of Judicature in 1873, and its jurisdiction is now split between the Chancery and Family divisions.

**Court of Protection.** Court established in England to administer the property of mentally disabled persons, as defined in the Mental Health Act, 1983.

**Court of Pypowder, Py-Powder, or Py-Powders** /kòrt əv pàypáwdər(z)/. See Court of Piepoudre.

**Court of Quarter Sessions of the Peace.** Formerly, a court of criminal jurisdiction in the state of Pennsylvania, having power to try misdemeanors, and exercising certain functions of an administrative nature.

**Court of Queen's Bench.** See Court of King's Bench.

**Court of Record.** See Court, *supra*.

**Court of Regard.** One of the forest courts, in England, held every third year, for the lawing or expeditation of dogs, to prevent them from running after deer. It has long since been obsolete. 3 Bl.Comm. 71, 72.

**Court of Sessions.** Courts of criminal jurisdiction existing in only a few states.

**Court of Shepway.** In old English law, a court held before the lord warden of the Cinque Ports. A writ of error lay from the mayor and jurors of each port to the lord warden in this court, and thence to the queen's bench. The civil jurisdiction of the Cinque Ports was abolished by 18 & 19 Vict., c. 48.

**Court of Special Sessions.** A generic term, applicable to those courts which have no stated terms and are not continuous, but which are organized only for the trial of each particular case and become *functus officio* when judgment is rendered therein.

**Court of Stannaries** /kòrt əv stánəriyz/. In English law, a court established in Devonshire and Cornwall, for the administration of justice among the miners and tanners, that they might not be drawn away from their business to attend suits in distant courts. The stannary court was a court of record, with a special jurisdiction. By the Stannaries Court (Abolition) Act of 1896 their jurisdiction was transferred to country courts.

**Court of Star Chamber.** This was an English court of very ancient origin, but new-modeled by St. 3 Hen. VII, c. 1, and 21 Hen. VIII, c. 20, consisting of divers lords, spiritual and temporal, being privy councillors, together with two judges of the courts of common law, without the intervention of any jury. The jurisdiction extended legally over riots, perjury, misbehavior of sheriffs, and other misdemeanors contrary to the laws of the land; yet it was afterwards stretched to the asserting of all proclamations and orders of state, to the vindicating of illegal commissions and grants of monopolies; holding for honorable that which it pleased, and for just that which it profited, and becoming both a court of law to determine civil rights and a court of revenue to enrich the treasury. It was finally abolished by Car. I, c. 10, to

the general satisfaction of the Habeas Corpus Act of 1640.

**Court of Survey.** A court for the hearing of appeals by owners or masters of ships, from orders for the detention of unsafe ships, made by the English board of trade, under the Merchant Shipping Act, 1876, § 6.

**Court of Sweinmote** /kòrt əv swéynmowt/. (Spelled, also, *Swainmote*, *Swain-gemote*.) Saxon, *swang*, an attendant, a freeholder, and *mote* or *gemote*, a meeting. In England, one of the old forest courts, held before the verderers, as judges, by the steward, thrice in every year, the sweins or freeholders within the forest composing the jury. This court had jurisdiction to inquire into grievances and oppressions committed by the officers of the forest, and also to receive and try presentments certified from the court of attachments, certifying the cause, in turn, under the seals of the jury, in case of conviction, to the court of justice seat for the rendition of judgment.

**Court of the Chief Justice in Eyre.** In England, the highest of the courts of the forest, held every three years, by the chief justice, to inquire of purprestures or encroachments, assarts, or cultivation of forest land, claims to franchises, parks, warrens, and vineyards in the forest, as well as claims of the hundred, claims to the goods of felons found in the forest, and any other civil questions that might arise within the forest limits. But it had no criminal jurisdiction, except of offenses against the forest laws. It was called also the court of justice seat. After the Restoration, the forest laws fell into disuse. The office was abolished in 1817.

**Court of the Clerk of the Market.** An English court of inferior jurisdiction formerly held in every fair or market for the punishment of misdemeanors committed therein. The jurisdiction over weights and measures formerly exercised was taken away by Stat. 526 Will. IV, c. 63.

**Court of the Coroner.** In England, formerly a court of record to inquire, when any one died in prison, or came to a violent or sudden death, by what manner he came to his end. 4 Bl.Comm. 274. Such functions are now performed by the coroner or by a coroner's inquest. See Coroner.

**Court of the Counties Palatine.** In English law, a species of private court which formerly appertained to the counties palatine of Lancaster and Durham.

**Court of the Duchy of Lancaster.** In England, a court of special jurisdiction, held before the chancellor of the duchy or his deputy, concerning all matters of equity relating to lands holden of the king in right of the duchy of Lancaster. 3 Bl.Comm. 78. Though not formerly abolished, such court has not sat since 1835.

**Court of the Earl Marshal.** In the reign of William the Conqueror the marshal was next in rank to the constable, in command of the army. When the constable's office ceased, his duties devolved upon the earl marshal. The military Court of the Constable came to be known as the Marshal's Court, or, in its modern form, Court-

**Martial.** Aside from its criminal jurisdiction, it had much to do with questions relating to fiefs and military tenures, though not to property rights involved therein. *See* Constable; Court of Chivalry; Court-Martial.

**Court of the Lord High Admiral.** In the earlier part of the 14th century, the Admiral possessed a disciplinary jurisdiction over his fleet. After 1340 it is reasonable to suppose that the Admiral could hold an independent court and administer justice in piracy and other maritime cases. There were at first several admirals and several courts. From the early 15th century there was one Lord High Admiral and one Court of Admiralty.

**Court of the Lord High Steward.** In English law, a court formerly instituted for the trial, during the recess of parliament, of peers indicted for treason or felony, or for misprision of either. This court was not a permanent body, but was created when occasion required and for the time being, only; and the lord high steward, so constituted, with such of the temporal lords as may take the proper oath, and act, constituted the court. Privilege of peerage was abolished by Sec. 30 of the Criminal Justice Act of 1948.

**Court of the Lord High Steward of the Universities.** In English law, a court constituted for the trial of scholars or privileged persons connected with the university at Oxford or Cambridge who were indicted for treason, felony, or mayhem. 3 Bl.Comm. 83.

**Court of the Official Principal.** This court, the Court of the "Official Principal" of the Archbishop of Canterbury, is more commonly called the Arches Court, or Court of the Arches. *See* Arches Court.

**Court of the Steward and Marshal.** A high court, formerly held in England by the steward and marshal of the king's household, having jurisdiction of all actions against the king's peace within the bounds of the household for twelve miles, which circuit was called the "verge." It had also jurisdiction of actions of debt and covenant, where both the parties were of the household. This court was created by Charles I, and abolished in 1849. It was held in the borough of Southwark, and was called also the "palace court," having jurisdiction of all personal actions arising within twelve miles of the royal palace of Whitehall, exclusive of London.

**Court of the Steward of the King's Household.** In English law, a court which had jurisdiction of all cases of treason, misprision of treason, murder, manslaughter, bloodshed, and other malicious strikings whereby blood is shed, occurring in or within the limits of any of the palaces or houses of the king, or any other house where the royal person is abiding. It was created by statute 33 Hen. VIII, c. 12, but repealed by the Statute Law Revision Act of 1948. 4 Bl.Comm. 276, 277.

**Court of Veterans Appeals.** The U.S. Court of Veterans Appeals is an Article I court created in 1988 to review decisions of the Board of Veterans' Appeals. Appeals from this Court are to the U.S. Court of Appeals for the Federal Circuit. 38 U.S.C.A. § 4051 et seq.

**Court of Wards and Liveries.** A court of record, established in England in the reign of Henry VIII. For the survey and management of the valuable fruits of tenure, a court of record was created by St. 32 Hen. VIII, c. 46, called the "Court of the King's Wards." To this was annexed, by St. 33 Hen. VIII, c. 22, the "Court of Liveries;" so that it then became the "Court of Wards and Liveries." This court was not only for the management of "wards," properly so called, but also of idiots and natural fools in the king's custody, and for licenses to be granted to the king's widows to marry, and fines to be made for marrying without his license. It was abolished by St. 12 Car. II, c. 24.

**Court packing plan.** An attempt by President F. D. Roosevelt in 1937 to replace those justices of the U.S. Supreme Court who did not subscribe to his social philosophy with men whose views were consonant with his.

**Court record.** *See* Record.

**Court reporter.** A person who transcribes by shorthand, stenographically takes down, or electronically records testimony during court proceedings, or at trial related proceedings such as depositions. If an appeal is to be taken wherein an official record is required, the reporter prepares an official transcript from his or her record. A reporter may also constitute the person responsible for publication of the opinions of the court; sometimes called "Reporter of Decisions".

**Court rolls.** In England, the rolls of a manor, containing all acts relating thereto. While belonging to the lord of the manor, they are not in the nature of public books for the benefit of the tenant. Under the law of Property Act of 1922 copyholds became freeholds and manorial rights were extinguished subject to the provisions therein contained.

**Court room.** That portion of a courthouse in which the actual proceedings (*i.e.* trial, motions, etc.) take place. *Compare* Chamber.

**Court rule.** Regulations with the force of law governing practice and procedure in the various courts. They may cover all procedures in a trial court system (*e.g.* Federal Rules of Civil and Criminal Procedure), or govern only procedures before a specific court (*e.g.* U.S. Supreme Court Rules), or only certain aspects of procedure (*e.g.* Federal Rules of Evidence), or they may be so called housekeeping rules which govern internal court practices and procedures. Most states have adopted in whole, or substantially, rules patterned on the Federal Rules of Civil Procedure to govern civil cases. Also, a growing number of states have adopted Rules of Criminal Procedure and Rules of Appellate Procedure modeled after the Federal Rules of Criminal and Appellate Procedure. In addition, a number of states have adopted Rules of Evidence patterned on the Federal Rules of Evidence.

**Courts martial.** *See* Court-Martial.

**Courts of Appeals, U. S.** Intermediate appellate courts created by Congress in 1891 and known until 1948 as United States Circuit Courts of Appeals, sitting in eleven numbered circuits, the District of Columbia, and the



Court of Appeals for the Federal Circuit. Normally cases are heard by divisions of three judges sitting together, but on certain matters all the judges of a circuit may hear a case. Courts of Appeals have appellate jurisdiction over most cases decided by United States District Courts and review and enforce orders of many federal administrative bodies. The decisions of the courts of appeals are final except as they are subject to discretionary review on appeal by the Supreme Court. 28 U.S.C.A. §§ 41, 43, 1291. *See also* Temporary Emergency Court of Appeals.

*Court of Appeals for the Federal Circuit.* Federal court, established in 1982, with appellate jurisdiction over actions arising under the laws relating to patents, plant variety protection, copyrights, trademarks, contract and property claims against the United States, appeals from the United States Claims Court, Patent and Trademark Office, the United States Court of International Trade, the Merit Systems Protection Board, the Court of Veterans Appeals, as well as appeals under the Plant Variety Protection Act, the Contract Disputes Act, decisions by the United States International Trade Commission relating to unfair import practices, and decisions by the Secretary of Commerce relating to import tariffs. 28 U.S.C.A. § 1295.

**Courts of Assize and Nisi Prius** /kòrts əv əsáyz ənd náysay práyəs/. Courts in England composed of two or more commissioners, called "judges of assize" (or of "assize and *nisi prius*"), who were twice in every year sent by the king's special commission, on circuits all round the kingdom, to try, by a jury of the respective counties, the truth of such matters of fact as were there under dispute in the courts of Westminster Hall. With the establishment of the Crown Court (1971), these courts were abolished.

**Courts of Military Review.** These intermediate appellate criminal courts, formerly constituted as Boards of Review, were established by the Military Justice Act of 1968 (10 U.S.C.A. § 866) to review court-martial convictions of their respective services. These courts are operated by the Army, Air Force, Navy/Marine Corps and the Coast Guard. Each court has one or more panels and each panel is composed of at least three appellate military judges. The court may sit in panels or en banc. The courts possess independent fact-finding powers and may weigh evidence, judge witness credibility, and determine controverted questions of fact, giving due deference to the findings of the trial court. The court reviews cases in which the punishment imposed extends to death, dismissal or punitive discharge, or confinement for one year or more, except when the service member voluntarily waives the right to appeal. The court also possesses extraordinary writs power. Its opinions are subject to review by the United States Court of Military Appeals. *See* Court of Military Appeals.

**Courts of record.** Those courts whose proceedings are permanently recorded, and which have the power to fine or imprison for contempt.

**Courts of Request.** Inferior courts, in England, having local jurisdiction in claims for small debts, established in various parts of the kingdom by special acts of parliament. They were superseded in 1846 by the county courts.

**Courts of the Forest.** Courts held for the enforcement of the forest laws. *See* Forest courts.

**Courts of the Franchises.** Jurisdictions in the early Norman period which rested upon royal grants—often assumed. Edward I, in 1274, sent out commissioners to enquire by what warrant different landowners were exercising their *jura regalia*. There were many varieties of lesser franchises. Some of these franchises were recognized as existing by the County Courts Acts, 1846–1888.

**Courts of the United States.** "Court of the United States" includes the Supreme Court of the United States, courts of appeals, district courts, Court of International Trade, and any court created by Act of Congress the judges of which are entitled to hold office during good behavior. 28 U.S.C.A. § 451. Also, the senate sitting as a court of impeachment.

**Courts of Westminster Hall.** The superior courts, both of law and equity, were for centuries fixed at Westminster, an ancient palace of the monarchs of England. Formerly, all the superior courts were held before the king's capital justiciary of England, in the *aula regis*, or such of his palaces wherein his royal person resided, and removed with his household from one end of the kingdom to another. This was found to occasion great inconvenience to the suitors to remedy which it was made an article of the great charter of liberties, both of King John and King Henry III, that "common pleas should no longer follow the king's court, but be held in some certain place," in consequence of which they have ever since been held (a few necessary removals in times of the plague excepted) in the palace of Westminster only.

**Court system.** The network of courts in a particular jurisdiction; *e.g.* trial, appellate, juvenile, land, etc., courts.

**Courtyard.** A corrupted form of "curtilage", signifying a space of land about a dwelling house, which not only might be inclosed, but within which appurtenant buildings and structures might be erected.

**Cousin** /kázən/. Kindred in the fourth degree, being the issue (male or female) of the brother or sister of one's father or mother.

Those who descend from the brother or sister of the father of the person spoken of are called "paternal cousins", "maternal cousins" are those who are descended from the brothers or sisters of the mother. Cousins-german are first cousins.

*First cousins.* Cousins-german; the children of one's uncle or aunt.

*Quarter cousin.* Properly, a cousin in the fourth degree; but the term has come to express any remote degree of

relationship, and even to bear an ironical signification in which it denotes a very trifling degree of intimacy and regard. Often corrupted into "cater" cousin.

*Second cousins.* Persons who are related to each other by descending from the same great-grandfather or great-grandmother. The children of one's first cousins are his second cousins. These are sometimes called "first cousins once removed."

**Cousinage.** See Cosenage.

**Custom.** (Fr. Coutum.) Custom; duty; toll; tribute. See Custom and usage.

**Coustoumier** /kùwt(y)um(i)yéy/. (Otherwise spelled "Coustumier" or "Coutumier.") In old French law, a collection of customs, unwritten laws, and forms of procedure. Two such volumes are of especial importance in juridical history, viz., the *Grand Coustumier de Normandie*, and the *Coutumier de France* or *Grand Coutumier*.

**Couthutlaugh** /kúwθətlò/. A person who willingly and knowingly received an outlaw, and cherished or concealed him; for which offense he underwent the same punishment as the outlaw himself.

**Couverture** /kúwvertyúr/. In French law, the deposit ("margin") made by the client in the hands of the broker, either of a sum of money or of securities, in order to guaranty the broker for the payment of the securities which he purchases for the client.

**Covenable** /kávənəbəl/kónəbəl/. A French word signifying convenient or suitable; as convenably endowed. Anciently written "convenable."

**Covenant** /kávənənt/. An agreement, convention, or promise of two or more parties, by deed in writing, signed, and delivered, by which either of the parties pledges himself to the other that something is either done, or shall be done, or shall not be done, or stipulates for the truth of certain facts. At common law, such agreements were required to be under seal. The term is currently used primarily with respect to promises in conveyances or other instruments relating to real estate.

In its broadest usage, means any agreement or contract.

The name of a common-law form of action *ex contractu*, which lies for the recovery of damages for breach of a covenant, or contract under seal.

### General Classification

Covenants may be classified according to several distinct principles of division:

*Absolute or conditional.* An absolute covenant is one which is not qualified or limited by any condition.

*Affirmative or negative.* The former are those in which the party binds himself to the existence of a present state of facts as represented or to the future performance of some act; while the latter are those in which the covenantor obliges himself *not* to do or perform some act.

An "affirmative covenant" is an agreement whereby the covenantor undertakes that something shall be done. *City of New York v. Turnpike Development Corp.*, 36 Misc.2d 704, 233 N.Y.S.2d 887, 891, 892.

*Declaratory or obligatory.* The former are those which serve to limit or direct uses; while the latter are those which are binding on the party himself.

*Dependent, concurrent, and independent.* Covenants are either dependent, concurrent, or mutual and independent. The first depends on the prior performance of some act or condition, and, until the condition is performed, the other party is not liable to an action on his covenant. In the second, mutual acts are to be performed at the same time; and if one party is ready, and offers to perform his part, and the other neglects or refuses to perform his, he who is ready and offers has fulfilled his engagement, and may maintain an action for the default of the other, though it is not certain that either is obliged to do the first act. The third sort is where either party may recover damages from the other for the injuries he may have received by a breach of the covenants in his favor; and it is no excuse for the defendant to allege a breach of the covenants on the part of the plaintiff. Mutual and independent covenants are such as do not go to the whole consideration on both sides, but only to a part, and where separate actions lie for breaches on either side to recover damages for the injury sustained by breach.

Covenants are dependent where performance by one party is conditioned on and subject to performance by the other, and in such case the party who seeks performance must show performance or a tender or readiness to perform on his part; but covenants are independent when actual performance of one is not dependent on another, and where, in consequence, the remedy of both sides is by action.

*Disjunctive covenants.* Those which are for the performance of one or more of several things at the election of the covenantor or covenantee, as the case may be.

*Executed or executory.* The former being such as relate to an act already performed; while the latter are those whose performance is to be future.

*Express or implied.* The former being those which are created by the express words of the parties to the deed declaratory of their intention, while implied covenants are those which are inferred by the law from certain words in a deed which imply (though they do not express) them. An implied covenant is one which may reasonably be inferred from whole agreement and circumstances attending its execution. *Anderson v. Britt*, Ky., 375 S.W.2d 258, 260. Express covenants are also called covenants "in deed," as distinguished from covenants "in law."

*General or specific.* The former relate to land generally and place the covenantee in the position of a specialty creditor only; the latter relate to particular lands and give the covenantee a lien thereon.

*Inherent and collateral.* The former being such as immediately affect the particular property, while the latter affect some property collateral thereto or some matter collateral to the grant or lease. A covenant inherent is one which is conversant about the land, and knit to the estate in the land; as, that the thing demised shall be quietly enjoyed, shall be kept in repair, or shall not be aliened. A covenant collateral is one which is conversant about some collateral thing that doth nothing at all, or not so immediately, concern the thing granted; as to pay a sum of money in gross, etc.

*Joint or several.* The former bind both or all the covenantors together; the latter bind each of them separately. A covenant may be both joint and several at the same time, as regards the covenantors; but, as regards the covenantees, they cannot be joint and several for one and the same cause, but must be either joint or several only. Covenants are usually joint or several according as the interests of the covenantees are such; but the words of the covenant, where they are unambiguous, will decide, although, where they are ambiguous the nature of the interests as being joint or several is left to decide.

*Principal and auxiliary.* The former being those which relate directly to the principal matter of the contract entered into between the parties; while auxiliary covenants are those which do not relate directly to the principal matter of contract between the parties, but to something connected with it.

*Real.* A real covenant is one which binds the heirs of the covenantor and passes to assignees or purchasers; a covenant the obligation of which is so connected with the realty that he who has the latter is either entitled to the benefit of it or is liable to perform it; a covenant which has for its object something annexed to, or inherent in, or connected with, land or other real property, and runs with the land, so that the grantee of the land is invested with it and may sue upon it for a breach happening in his time.

*Transitive or intransitive.* The former being those personal covenants the duty of performing which passes over to the representatives of the covenantor; while the latter are those the duty of performing which is limited to the covenantor himself, and does not pass over to his representative.

#### Other Compound and Descriptive Terms

*Continuing covenant.* One which indicates or necessarily implies the doing of stipulated acts successively or as often as the occasion may require; as, a covenant to pay rent by installments, to keep the premises in repair or insured, to cultivate land, etc.

*Full covenants.* As this term is commonly used, it includes: covenants for seisin, for right to convey, against incumbrances, for quiet enjoyment, sometimes for further assurance, and almost always of warranty, this last often taking the place of the covenant for quiet enjoyment, and indeed in many states being the only covenant in practical use.

*Restrictive covenant.* See that title.

*Separate covenant.* A several covenant; one which binds the several covenantors each for himself, but not jointly.

*Usual covenants.* An agreement on the part of a seller of real property to give the usual covenants binds him to insert in the grant covenants of "seisin," "quiet enjoyment," "further assurance," "general warranty," "right to convey," and "against incumbrances." Collectively they are called covenants for title to distinguish them from restrictive covenants. See *Covenants for title, below*.

#### Specific Covenants

*Covenants against incumbrances.* A covenant that there are no incumbrances on the land conveyed. A stipulation against all rights to or interests in the land which may subsist in third persons to the diminution of the value of the estate granted.

*Covenant appurtenant.* A covenant which is connected with land of the grantor, and not in gross. A covenant running with the land and binding heirs, executors and assigns of the immediate parties.

*Covenant for further assurance.* An undertaking, in the form of a covenant, on the part of the vendor of real estate to do such further acts for the purpose of perfecting the purchaser's title as the latter may reasonably require. This covenant is deemed of great importance, since it relates both to the vendor's title of and to the instrument of conveyance to the vendee, and operates as well to secure the performance of all acts necessary for supplying any defect in the former as to remove all objections to the sufficiency and security of the latter.

*Covenant for possession.* A covenant by which the grantee or lessee is granted possession.

*Covenant for quiet enjoyment.* An assurance against the consequences of a defective title, and of any disturbances thereupon. A promise by the landlord or grantor that the tenant or grantee will not be evicted or disturbed by the grantor or a person having a lien or superior title.

*Covenants for title.* Covenants usually inserted in a conveyance of land, on the part of the grantor, and binding him for the completeness, security, and continuance of the title transferred to the grantee. They comprise covenants for seisin, for right to convey, against incumbrances, or quiet enjoyment, sometimes for further assurance, and almost always of warranty.

*Covenant in gross.* Such as do not run with the land.

*Covenant not to compete.* An agreement, generally part of a contract of employment or a contract to sell a business, in which the covenantor agrees for a specific period of time and within a particular area to refrain from competition with the covenantee. Such covenant restrictions must be reasonable in scope and duration or backed by adequate consideration.

*Covenant not to sue.* A covenant by one who has a right of action at the time of making it against another

person, by which he agrees not to sue to enforce such right of action. Such covenant does not extinguish a cause of action and does not release other joint tort-feasors even if it does not specifically reserve rights against them. *Van Cleave v. Gamboni Const. Co.*, 665 P.2d 250, 252, 99 Nev. 544.

**Covenant of non-claim.** A covenant formerly sometimes employed, particularly in the New England states, and in deeds of extinguishment of ground rents in Pennsylvania, that neither the vendor, nor his heirs, nor any other person, etc., shall claim any title in the premises conveyed.

**Covenant of right to convey.** An assurance by the covenantor that the grantor has sufficient capacity and title to convey the *estate* which he by his deed undertakes to convey.

**Covenant of seisin.** An assurance to the purchaser that the grantor has the very estate in quantity and quality which he purports to convey.

**Covenant of warranty.** An assurance by the grantor of an estate that the grantee shall enjoy the same without interruption by virtue of paramount title.

**Covenant running with land.** A covenant which goes with the land, as being annexed to the estate, and which cannot be separated from the land, and transferred without it. A covenant is said to run with the land, when not only the original parties or their representatives, but each successive owner of the land, will be entitled to its benefit, or be liable (as the case may be) to its obligation. Or, in other words, it is so called when either the liability to perform it or the right to take advantage of it passes to the assignee of the land. One which touches and concerns the land itself, so that its benefit or obligation passes with the ownership. *Local Federal Savings & Loan Ass'n of Oklahoma City v. Eckroat*, 186 Okl. 660, 100 P.2d 261, 262. Essentials of such a covenant are that the grantor and grantee must have intended that the covenant run with the land, the covenant must affect or concern the land with which it runs, and there must be privity of estate between party claiming the benefit and the party who rests under the burden. *Greenspan v. Rehberg*, 56 Mich.App. 310, 224 N.W.2d 67, 73.

**Covenant running with title.** A covenant which goes with the title. Stipulation in a lease granting to lessee the option of renewing it for another specified period is such a covenant. *See also Covenants for title, above.*

**Covenant to convey.** A covenant by which the covenantor agrees to convey to the covenantee a certain estate, under certain circumstances.

**Covenant to renew.** An executory contract, giving lessee the right to renew on compliance with the terms specified in the renewal clause, if any, or, if none, on giving notice, prior to termination of the lease, of his desire to renew, whereupon the contract becomes executed as to him.

**Covenant to stand seised.** A conveyance adapted to the case where a person seised of land in possession, rever-

sion, or vested remainder, proposes to convey it to his wife, child, or kinsman. In its terms it consists of a covenant by him, in consideration of his natural love and affection, to stand seised of the land to the use of the intended transferee. Before the statute of uses this would merely have raised a use in favor of the covenantee; but by that act this use is converted into the legal estate, and the covenant therefore operates as a conveyance of the land to the covenantee. It is now almost obsolete.

**Covenantee** /kāvənəntīy/. The party to whom a covenant is made.

**Covenantor** /kāvənəntər/. The party who makes a covenant.

**Covent.** A contraction, in the old books, of the word "convent."

**Coventry Act.** The name given to the statute 22 & 23 Car. II, c. 1, which provided for the punishment of assaults with intent to maim or disfigure a person. It was so named from its being occasioned by an assault on Sir John Coventry in the street as was supposed, for some obnoxious words uttered by him in parliament. 4 Bl.Comm. 207.

**Cover.** To protect by means of insurance; sometimes orally pending issuance of policy. *See also Binder; Cover note.*

The right of a buyer, after breach by a seller, to purchase goods in open market in substitution for those due from the seller if such purchase is made in good faith and without unreasonable delay. The buyer may then recover as damages the difference between the cost of cover and the contract price plus any incidental and consequential damages but less expenses saved in consequence of the seller's breach. U.C.C. § 2-712(1), (2).

**Coverage.** In insurance, amount and extent of risk contractually covered by insurer. The assumption of risk of occurrence of the event insured against before its occurrence. *Continental Ins. Co. v. Paccar, Inc.*, 26 Wash.App. 850, 614 P.2d 675, 684.

**Automatic coverage.** In insurance, coverage of additional property or for other perils by an existing contract without specific request by the insured.

**Cover-all clause.** A provision in a document which purportedly embraces all eventualities of which the parties are aware as possibilities.

**Cover into.** The phrase "covered into the treasury," as used in acts of Congress and the practice of the United States Treasury Department, means that money has actually been paid into the treasury in the regular manner, as distinguished from merely depositing it with the treasurer. *U. S. v. Johnston*, 124 U.S. 236, 8 S.Ct. 446, 31 L.Ed. 389.

**Cover note.** Written statement by insurance agent that coverage is in effect. Distinguished from binder which is prepared by company. *See Binder.*

**Covert** /kāvərt/. Covered, protected, sheltered. A covert act is a concealed, not apparent act.

**Covert baron, or covert de baron** /kəvərt (də) bærən/. Under the protection of a husband; married. *La femme que est covert de baron*, the woman which is covert of a husband.

**Coverture** /kəvərçər/. The condition or state of a married woman. Sometimes used elliptically to describe the legal disability which formerly existed at common law from a state of coverture whereby the wife could not own property free from the husband's claim or control. Such restrictions were removed by state Married Woman's Property Acts.

**Cover-up.** To conceal. As a crime, the act of concealing or hiding something wrong or criminal. *See also* Harbor; Misprision of felony.

**Covin** /kəvən/. A secret conspiracy or agreement between two or more persons to injure or defraud another.

**Covinous** /kəvənəs/. Deceitful; fraudulent; having the nature of, or tainted by covin.

**Cowardice.** Pusillanimity; fear; misbehavior through fear in relation to some duty to be performed.

**C.P.** An abbreviation for common pleas.

**C.P.A.** Certified Public Accountant.

**C.R.** An abbreviation for *curia regis*; also for chancery reports.

**Craft.** Generally, any boat, ship or vessel.

A trade or occupation of the sort requiring skill and training, particularly manual skill combined with a knowledge of the principles of the art. *Also* the body of persons pursuing such a calling; a guild.

Guile, artful cunning, trickiness. Not a legal term in this sense, though often used in connection with such terms as "fraud" and "artifice."

**Craft union.** A labor union all of whose members do the same kind of work (*i.e.* trade) such as plumbing or carpentry for different employers and industries.

**Cram down.** In bankruptcy, colloquial expression that describes court confirmation of a Bankruptcy Code Chapter 11, 12 or 13 plan, notwithstanding creditor opposition. *Matter of U.S. Truck Co., Inc., Bkrcty.Mich., 47 B.R. 932, 935.*

**Cranage.** A liberty to use a crane for drawing up goods and wares of burden from ships and vessels, at any creek of the sea, or wharf, unto the land, and to make a profit of doing so. It also signifies the money paid and taken for the service.

**Crank.** A term vulgarly applied to a person of eccentric, ill-regulated, and unpractical mental habits; an ill-tempered person.

**Crashworthiness.** Doctrine which imposes liability upon a manufacturer in a vehicular collision case for design defects which do not cause the initial accident but which cause additional or more severe injuries when the driver or passenger subsequently impacts with the defective interior or exterior of the vehicle. *Sumnicht v.*

*Toyota Motor Sales, U.S.A. Inc., 121 Wis.2d 338, 360 N.W.2d 2, 6.*

**Crassus** /kræsəs/. Large; gross; excessive; extreme. *Crassa ignorantia* /kræsə ignərənsh(iy)ə/ gross ignorance.

*Crassa negligentia* /kræsə nègləjəns(iy)ə/. Gross neglect; absence of ordinary care and diligence.

**Crastino** /kræstənow/. Lat. On the morrow, the day after. In old English law, the return-day of writs; because the first day of the term was always some saint's day, and writs were returnable on the day after.

**Crave.** To ask or demand; as to crave oyer. *See* Oyer.

**Craven** /kréyvən/. In old English law, a word of disgrace and obloquy, pronounced on either champion, in the ancient trial by battle, proving recreant, *i.e.*, yielding.

**Creamer.** A foreign merchant, but generally taken for one who has a stall in a fair or market.

**Creamus** /kriyéyməs/. Lat. We create. One of the words by which a corporation in England was formerly created by the king. 1 Bl.Comm. 473.

**Créance** /kreyóns/. In French law, a claim; a debt; also belief, credit, faith.

**Créancier** /kriyénsər/. In French law, one who trusts or gives credit; a creditor.

**Creansor** /kriyénsər/. A creditor.

**Create.** To bring into being; to cause to exist; to produce; as, to create a trust, to create a corporation.

**Created.** In copyright law, a work is "created" when it is fixed in a copy or phonorecord, for the first time; where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work. Copyright Act, 17 U.S.C.A. § 101.

**Credentials** /krədénshəlz/. Documentary evidence of a person's authority; commonly in the form of letters, licenses or certificates which on their face indicate the authority and capacity of the bearer.

**Credibility.** Worthiness of belief; that quality in a witness which renders his evidence worthy of belief. After the competence of a witness is allowed, the consideration of his *credibility* arises, and not before. As to the distinction between *competency* and *credibility*, *see* Competency. *See also* Character; Reputation.

**Credible.** Worthy of belief; entitled to credit. *See* Competency; Character; Reputation.

*Credible evidence.* Evidence to be worthy of credit must not only proceed from a credible source but must, in addition, be "credible" in itself, by which is meant that it shall be so natural, reasonable and probable in view of the transaction which it describes or to which it relates as to make it easy to believe it, and credible testimony is

that which meets the test of plausibility. *Indiana Metal Products v. N.L.R.B., C.A.Ind.*, 442 F.2d 46, 52.

**Credible person.** One who is trustworthy and entitled to be believed. In law and legal proceedings, one who is entitled to have his oath or affidavit accepted as reliable, not only on account of his good reputation for veracity, but also on account of his intelligence, knowledge of the circumstances, and disinterested relation to the matter in question. Also one who is competent to testify. *Burleson v. State*, 131 Tex.Cr.R. 576, 100 S.W.2d 1019, 1020.

**Credible witness.** One who is competent to give testimony in court; also one who is worthy of belief. *Burleson v. State*, 131 Tex.Cr.R. 576, 100 S.W.2d 1019, 1020. *See* Credibility.

**Credibly informed.** The statement in a pleading or affidavit, that one is "credibly informed and verily believes" such and such facts, means that, having no direct personal knowledge of the matter in question, he has derived his information in regard to it from authentic sources or from the statements of persons who are not only "credible," in the sense of being trustworthy, but also informed as to the particular matter or conversant with it.

**Credit.** The ability of a business or person to borrow money, or obtain goods on time, in consequence of the favorable opinion held by the particular lender as to solvency and past history of reliability. In *re Ford*, D.C.Wash., 14 F.2d 848, 849. Confidence in buyer's ability to meet financial obligations at some future time. Time allowed to the buyer of goods by the seller, in which to make payment for them. The correlative of a *debt*; that is, a debt considered from the creditor's standpoint, or that which is incoming or due to one. That which is due to a person, as distinguished from debt, that which is due by him. Claim or cause of action for specific sum of money.

Availability of funds from financial institution or from letter of credit.

"Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment. Uniform Consumer Credit Code, Section 1.301(7).

In accounting, a credit is a component of a journal entry which increases revenues, liabilities, and equity; and decreases assets and expenses.

In taxation, credits reduce the tax liability as computed, as opposed to deductions which reduce the taxable income. Examples of tax credits include; credit for child and dependent care expenses, credit for the elderly or permanently disabled, etc.

*See also* Confirmed credit; Credit line; Fair Credit Reporting Acts; Installment credit; Investment tax credit; Letter of credit; Notation credit; Open credit; Open-end credit; Revocable credit; Revolving credit; Tax credit. *Compare* Debit.

**Bank credit.** Money that bank owes or will lend individual or person.

**Bill of credit.** *See* Bill.

**Consumer credit.** *See* Consumer credit; Consumer Credit Code; Consumer Credit Protection Act; Consumer credit sale; Consumer credit transaction; Credit card; Equal Credit Opportunity Act; Fair Credit Billing Act; Fair Credit Reporting Acts; Truth-in-lending Act.

**Credit insurance.** *See* Credit insurance.

**Extortionate credit.** *See* Extortion; Loansharking.

**Line of credit.** *See* Credit line; Line.

**Open credit.** *See* Open credit; Open-end credit.

**Secured credit.** *See* Secured transaction.

**Credit advertising.** An advertisement which aids, promotes or assists directly or indirectly the extension of credit. Federal and state statutes regulate such advertising.

**Credit balance.** In accounting, the status of an account when the sum of the credit entries exceeds the sum of the debit entries.

**Credit bureau.** Establishments which make a business of collecting information relating to the credit, character, responsibility and reputation of individuals and businesses, for the purpose of furnishing the information (*i.e.* credit reports) to subscribers (*i.e.* merchants, banks, suppliers, etc.). Practices of credit bureaus are regulated by federal (*e.g.* Fair Credit Reporting Act) and often state statutes. *See also* Credit rating; Credit report.

**Credit card.** Any card, plate, or other like credit device existing for the purpose of obtaining money, property, labor or services on credit. The term does not include a note, check, draft, money order or other like negotiable instrument. Federal (*e.g.* Consumer Credit Protection Act) and often state statutes regulate the issuance and use of credit cards.

**Credit card crime.** A person commits an offense if he uses a credit card for the purpose of obtaining property or services with knowledge that: (1) the card is stolen or forged; or (2) the card has been revoked or cancelled; or (3) for any other reason his use of the card is unauthorized. Model Penal Code, § 224.6.

**Credit disclosure.** *See* Annual percentage rate; Consumer Credit Protection Act; Truth-in-Lending Act.

**Credited.** The alternative to paid. *Lynchburg Trust & Savings Bank v. Commissioner of Internal Revenue*, C.C.A.4, 68 F.2d 356, 358.

**Credit foncier /krèydíy fònsyéy/.** A company or corporation formed for the purpose of carrying out improvements, by means of loans and advances on real estate security.

**Credit insurance.** A contract whereby the insurer promises, in consideration of a premium paid, and subject to specified conditions as to the persons to whom credit is to be extended, to indemnify the insured, wholly or in part, against loss that may result from the death, disability, or insolvency of persons to whom he may extend credit within the term of the insurance.

The requirement of such, as well as the full disclosure of the terms and cost, is regulated by federal and state consumer protection statutes.

*Credit life, accident, and health insurance.* Term insurance on lives of debtors, with the creditors of the insured debtor as beneficiary. The amount payable on death of insured debtor is an amount at least sufficient to discharge debtor's indebtedness; and in event of total permanent disability an amount is payable which is at least sufficient to meet installment payments on debtor's indebtedness as they mature during the period of disability. *Superior Life Ins. Co. v. U. S., D.C.S.C., 322 F.Supp. 921, 924.*

*See also Insurance (Credit insurance).*

**Credit line.** In banking and commerce, that amount of money or merchandise which a banker, merchant, or supplier agrees to supply to a person on credit and generally agreed to in advance. *See also Line (Line of credit).*

In motion pictures, the preliminary statement which gives the names of the players, producer, director, etc. May also refer to similar acknowledgments of contributors or assistants in authorship of books, production of plays, or the like.

**Credit memorandum.** A document used by a seller to inform a buyer that the buyer's account receivable is being credited (reduced) because of errors, returns, or allowances.

**Credit mobilier** /krèydíy mòwbiylyéy/. A company or association formed for carrying on a banking business or for the construction of public works, building or railroads, operation of mines, or other such enterprises, by means of loans or advances on the security of personal property.

**Creditor.** A person to whom a debt is owing by another person who is the "debtor." *Rooney v. Inheritance Tax Commission of Kansas, 143 Kan. 143, 53 P.2d 500, 501.* One who has a right to require the fulfillment of an obligation or contract. *Murphy v. Jos. Hollander, Inc., 131 N.J.L. 165, 34 A.2d 780, 783.* One to whom money is due, and, in ordinary acceptance, has reference to financial or business transactions. The antonym of "debtor." *Erickson v. Grande Ronde Lumber Co., 162 Or. 556, 92 P.2d 170, 177.*

The word is susceptible of latitudinous construction. In its broad sense the word means one who has any legal liability upon a contract, express or implied, or in tort; in its narrow sense, the term is limited to one who holds a demand which is certain and liquidated. In statutes the term has various special meanings, dependent upon context, purpose of statute, etc.

The term "creditor," within the common-law and statutes that conveyances with intent to defraud creditors shall be void, includes every one having right to require the performance of any legal obligation, contract, or guaranty, or a legal right to damages growing out of contract or tort, and includes not merely the holder of a fixed and certain present debt, but every one having a

right to require the performance of any legal obligation, contract, or guaranty, or a legal right to damages growing out of contract or tort, and includes one entitled to damages for breach of contract to convey real estate, notwithstanding the abandonment of his action for specific performance.

Under U.C.C., term includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate. U.C.C. § 1-201(12).

Under Bankruptcy Code, term includes entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor. Bankruptcy Code, § 101.

"Creditors" subject to Federal Truth in Lending Act are those who regularly extend or arrange for extension to consumers of credit for which a finance charge is required. *Garza v. Chicago Health Clubs, Inc., D.C.Ill., 347 F.Supp. 955, 963.*

### Classification

A creditor may be called a "simple contract creditor," a "specialty creditor," a "bond creditor," or otherwise, according to the nature of the obligation giving rise to the debt.

*Attaching creditor.* One who has caused an attachment to be issued and levied on property of his debtor. *See Attachment.*

*Certificate creditor.* A creditor of a municipal corporation who receives a certificate of indebtedness for the amount of his claim, there being no funds on hand to pay him.

*Confidential creditor.* A term sometimes applied to creditors of a failing debtor who furnished him with the means of obtaining credit to which his real circumstances did not entitle him, thus involving loss to other creditors not in his confidence.

*Creditor at large.* One who has not established his debt by the recovery of a judgment or has not otherwise secured a lien on any of the debtor's property.

*Domestic creditor.* One who resides in the same state or country in which the debtor has his domicile or his property.

*Double creditor.* *See that title.*

*Execution creditor.* One who, having recovered a judgment against the debtor for his debt or claim, has also caused an execution to be issued thereon. *See Execution.*

*Foreign creditor.* One who resides in a state or country foreign to that where the debtor has his domicile or his property.

*General creditor.* A creditor at large (*supra*), or one who has no lien or security for the payment of his debt or claim.

**Joint creditors.** Persons jointly entitled to require satisfaction of the same debt or demand.

**Judgment creditor.** See that title.

**Junior creditor.** One whose claim or demand accrued at a date later than that of a claim or demand held by another creditor, who is called correlatively the "senior" creditor. Creditor whose claim ranks below other creditors in rights to the debtor's property. For example, a creditor with an unperfected security interest in a property is a junior creditor to one holding a perfected security interest.

**Lien creditor.** A creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment. U.C.C. § 9-301. See also Lien creditor.

**Preferred creditor.** See that title.

**Principal creditor.** One whose claim or demand very greatly exceeds the claims of all other creditors in amount is sometimes so called.

**Secondary creditors.** One whose claim is secondary to preferred creditor(s).

**Secured creditor.** See Secured creditor; also, *Lien creditor, above.*

**Single creditor.** See that title.

**Subsequent creditor.** One whose claim or demand accrued or came into existence after a given fact or transaction, such as the recording of a deed or mortgage or the execution of a voluntary conveyance. See also *Junior creditor, above.*

**Warrant creditor.** A creditor of a municipal corporation to whom is given a municipal warrant for the amount of his claim, because there are no funds in hand to pay it.

**Creditor beneficiary.** A third person to whom performance of promise comes in satisfaction of legal duty. A creditor who has rights in a contract made by the debtor and a third person, where the terms of the contract obligate the third person to pay the debt owed to the creditor. The creditor beneficiary can enforce the debt against either party.

Where performance of a promise in a contract will benefit a person other than the promisee, that person is a creditor beneficiary if no purpose to make a gift appears from the terms of the promise in view of the accompanying circumstances and performance of the promise will satisfy an actual or supposed or asserted duty of the promisee to the beneficiary, or a right of the beneficiary against the promisee which has been barred by the Statute of Limitations or by a discharge in bankruptcy, or which is unenforceable because of the Statute of Frauds. Restatement, Second, Contracts.

**Creditor's bill or suit.** Equitable proceeding brought to enforce payment of debt out of property or other interest of debtor which cannot be reached by ordinary legal

process. *Sackin v. Kersting*, 105 Ariz. 464, 466 P.2d 758. By use of the creditor's bill, a judgment creditor can reach any nonexempt property interest of the debtor that is alienable or assignable under state law. A suit by judgment creditor in equity for purpose of reaching property which cannot be reached by execution at law. A proceeding to enforce the security of a judgment creditor against the property or interests of his debtor. This action proceeds upon the theory that the judgment is in the nature of a lien, such as may be enforced in equity. Under rules of civil procedure, such action is simply a civil action in which demand is made for this type of equitable relief because of the merger of law and equity. Fed.R. Civil P. 2.

**Creditor's claim.** Generic term to describe any right which a creditor has against his debtor. For recovery in bankruptcy, such must be provable. See also Claim.

**Creditors' committee.** In bankruptcy, a committee of representative creditors elected (in Chapter 7) or appointed (in Chapter 11) to consult with the bankruptcy trustee or United States Trustee, and to perform other services in the interest of the represented creditors. Bankruptcy Code, §§ 705, 1102, 1103.

**Creditors' meeting.** In bankruptcy, first meeting of creditors and equity security holders, at which time a trustee may be elected and the debtor examined under oath. Bankruptcy Code, § 341. See also Meeting of creditors.

**Creditors' suit.** See Creditor's bill or suit.

**Creditorum appellatione non hi tantum accipiuntur qui pecuniam crediderunt, sed omnes quibus ex qualibet causa debetur** /krédətórám æpələyshiyówniy nòn háy tántəm æksipiyántər kwày pəkýúwniyəm krédadiránt, sèd ómniyz kwibás èks kwéylàbət kózá dóbýtər/. Under the head of "creditors" are included, not alone those who have lent money, but all to whom from any cause a debt is owing.

**Credit rating.** The evaluation of a person's or business' ability and past performance in paying debts. Generally established by a credit bureau and used by merchants, suppliers and bankers to determine whether a loan should be granted or a line of credit given. Credit reporting practices are regulated by the federal Fair Credit Reporting Act.

**Credit report.** A document from a credit bureau setting forth a credit rating and pertinent financial data concerning a person or a company and used by banks, merchants, suppliers and the like in evaluating a credit risk. Credit reporting practices are regulated by the federal Fair Credit Reporting Act.

**Creditrix** /krédətri:ks/. A female creditor.

**Credits.** A term of universal application to obligations due and to become due. *Colbert v. Superior Confection Co.*, 154 Okl. 28, 6 P.2d 791, 793. See also Credit; Tax credit.

**Credit sale.** A sale in which the buyer is permitted to pay for the goods at a later time, as contrasted with a



cash sale. Any sale with respect to which consumer credit is extended or arranged by the seller. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or for a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract. *See also* Installment sale.

**Credit slip.** A document generally given by stores and suppliers when a person returns merchandise and which permits the customer to purchase another item, or receive the equivalent in cash or open credit for future purchases, in return for the credit extended by the slip.

**Credit union.** Cooperative association that uses money deposited by a closed group of persons (*e.g.* fellow employees) and lends it out again to persons in the same group at favorable interest notes. Credit unions are commonly regulated by state banking boards or commissions.

**Creed.** The word "creed" has been defined as confession or articles of faith, formal declaration of religious belief, any formula or confession of religious faith, and a system of religious belief. *Cummings v. Weinfeld*, 177 Misc. 129, 30 N.Y.S.2d 36, 38.

**Creek.** A small stream less than a river. The term imports a recess, cove, bay, or inlet in the shore of a river, and not a separate or independent stream; though it is sometimes used in the latter meaning.

**Cremation.** The act or practice of reducing a corpse to ashes by means of extreme heat or fire. *See also* Dead body.

**Crementum comitatus** /krəməntəm komətétəs/. The increase of a county. The sheriffs of counties anciently answered in their accounts for the improvement of the king's rents, above the *viscontiel* rents, under this title.

**Crepere oculum** /krəpəriy ókyələm/. In Saxon law, to put out an eye; which had a pecuniary punishment of fifty shillings annexed to it.

**Crepusculum** /krəpəskyələm/. Twilight. In the common law of burglary, this term means the presence of sufficient light to discern the face of a man; such light as exists immediately before the rising of the sun or directly after its setting.

**Crescente malitia crescere debet et pœna** /krəséntiy məlish(iy)ə krəsəriy débət èt píynə/. Vice increasing, punishment ought also to increase.

**Crest.** A term used in heraldry; it signifies the devices set over a coat of arms. High point of an action or process. Highest or upper edge, prominence, level, or limit.

**Cretio** /kriysh(iy)ow/. Lat. In the civil law, a certain number of days allowed an heir to deliberate whether he would take the inheritance or not.

**Crew.** Usually referred to and is primarily thought of as those who are on board and aiding in the navigation; *e.g.* flight crew, ship's crew. The aggregate of seamen who man a ship or vessel, including the master and officers; or it may mean the ship's company, exclusive of the master, or exclusive of the master and all other officers.

Crew does not have an absolutely unvarying legal significance or any well-defined factual significance. *Schantz v. American Dredging Co.*, C.C.A.Pa., 138 F.2d 534, 537.

**Crew list.** A list of the crew of a vessel or aircraft; one of a ship's or aircraft's papers. This instrument is required by statute and sometimes by treaties. 46 U.S. C.A. §§ 322, 323.

**Crier** /kráyər/. An officer of a court, who makes proclamations. His principal duties are to announce the opening of the court and its adjournment and the fact that certain special matters are about to be transacted, to announce the admission of persons to the bar, to call the names of jurors, witnesses, and parties, to announce that a witness has been sworn, to proclaim silence when so directed, and generally to make such proclamations of a public nature as the judges order. An auctioneer (*crier*). *See also* Bailiff.

**Criez la pœez** /kráyiyz læ píys/. Rehearse the concord, or peace. A phrase used in the ancient proceedings for levying fines. It was the form of words by which the justice before whom the parties appeared directed the serjeant or countor in attendance to recite or *read aloud* the *concord* or agreement between the parties, as to the lands intended to be conveyed.

**Crim. Con.** An abbreviation for "criminal conversation," denoting adultery.

**Crime.** A positive or negative act in violation of penal law; an offense against the State or United States.

"Crime" and "misdemeanor", properly speaking, are synonymous terms; though in common usage "crime" is made to denote such offenses as are of a more serious nature. In general, violation of an ordinance is not a crime.

A crime may be defined to be any act done in violation of those duties which an individual owes to the community, and for the breach of which the law has provided that the offender shall make satisfaction to the public. A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either, or a combination, of the following punishments: (1) death; (2) imprisonment; (3) fine; (4) removal from office; or (5) disqualification to hold and enjoy any office of honor, trust, or profit. While many crimes have their origin at common law, most have been created by statute; and, in many states, such have been codified. In addition, there are both state and federal crimes (as to the latter, see Title 18, U.S.C.A.).

*See also* Classification of crimes; Compounding crime; Continuing offense; Criminal; Degrees of crime; Elements

of crime; Federal crimes; Felony; Inchoate crimes; Instantaneous crime; Lesser included offense; Misdemeanor; Offense; Petty offense; Political crime; Vehicular crimes.

### General Classification

Crimes are classified for various purposes, the principal classification being that which divides crimes into felonies and misdemeanors. Other classifications are: (a) crimes which are *mala in se* versus crimes *mala prohibita*; (b) infamous crimes versus crimes which are not infamous; (c) crimes involving moral turpitude versus those which do not involve moral turpitude; (d) major crimes versus petty crimes; and (e) common law crimes versus statutory crimes.

*Capital crime.* Crime punishable by death.

*Common law crimes.* Such crimes as are punishable by the force of the common law, as distinguished from crimes created by statute.

*Continuous crime.* One consisting of a continuous series of acts, which endures after the period of consummation, as, the offense of carrying concealed weapons. In the case of instantaneous crimes, the statute of limitations begins to run with the consummation, while in the case of continuous crimes it only begins with the cessation of the criminal conduct or act.

*Crime against law of nations.* Term which is understood to include crimes which all nations agree to punish such as murder and rape.

*Crime against nature.* Deviate sexual intercourse per os or per anum between human beings who are not husband and wife and any form of sexual intercourse with an animal. Model Penal Code, § 213.0. Crime ofbugery or sodomy.

*Crime against property.* Term used to describe a crime, the object of which is property as contrasted with person; e.g. larceny.

*Crime insurance.* See Insurance.

*Crime of omission.* Any offense, the gravamen of which is the failure to act when there is an obligation to act. May amount to manslaughter if the failure is wilful, wanton and reckless.

*Crime of passion.* A crime committed in the heat of passion. See Heat of passion.

*Crime of violence.* An offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. 18 U.S.C.A. § 16. Crimes of violence include voluntary manslaughter, murder, rape, mayhem, kidnaping, robbery, burglary or housebreaking in the nighttime, extortion accompanied by threats of violence, assault with a dangerous weapon or assault with intent to commit any offense punishable by imprisonment for more than one year, arson punisha-

ble as a felony, or an attempt or conspiracy to commit any of the foregoing offenses.

*Crimes mala in se.* Crimes mala in se embrace acts immoral or wrong in themselves, such as burglary, larceny, arson, rape, murder, and breaches of peace.

*Crimes mala prohibita.* Crimes mala prohibita embrace things prohibited by statute as infringing on others' rights, though no moral turpitude may attach, and constituting crimes only because they are so prohibited.

*Felony.* See Felony.

*Infamous crime.* A crime which entails infamy upon one who has committed it. The term "infamous"—i.e., without fame or good report—was applied at common law to certain crimes, upon the conviction of which a person became incompetent to testify as a witness, upon the theory that a person would not commit so heinous a crime unless he was so depraved as to be unworthy of credit. These crimes are treason, felony, and the *crimen falsi*. A crime punishable by imprisonment in the state prison or penitentiary, with or without hard labor, is an infamous crime, within the provision of the fifth amendment of the constitution that "no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury." *Mackin v. U. S.*, 117 U.S. 348, 6 S.Ct. 777, 29 L.Ed. 909; *Brede v. Powers*, 263 U.S. 4, 44 S.Ct. 8, 68 L.Ed. 132. It is not the character of the crime but the nature of the punishment which renders the crime "infamous." Whether an offense is infamous depends on the punishment which may be imposed therefor, not on the punishment which was imposed. *United States v. Moreland*, 258 U.S. 433, 42 S.Ct. 368, 370, 66 L.Ed. 700.

*Misdemeanor.* See Misdemeanor.

*Organized crime.* Term used to describe that form of crime which is the product of groups and organizations as contrasted with the crime planned and committed by individuals without organizational backing; gambling and narcotics are common subjects of organized crime.

*Quasi crimes.* This term embraces all offenses not crimes or misdemeanors, but that are in the nature of crimes. A class of offenses against the public which have not been declared crimes, but wrongs against the general or local public which it is proper should be repressed or punished by forfeitures and penalties. This would embrace all *qui tam* actions and forfeitures imposed for the neglect or violation of a public duty. A *quasi* crime would not embrace an indictable offense, whatever might be its grade, but simply forfeitures for a wrong done to the public, whether voluntary or involuntary, where a penalty is given, whether recoverable by criminal or civil process. Also, offenses for which some person other than the actual perpetrator is responsible, the perpetrator being presumed to act by command of the responsible party. Sometimes, injuries which have been unintentionally caused. D.W.I. (driving while intoxicated) offenses are sometimes classified as *quasi* crimes.

*Statutory crimes.* Those created by statutes, as distinguished from such as are known to, or cognizable by, the common law. See *e.g.* U.S.Code, Title 18.

*White-collar crime.* Generally included under this classification of crimes are antitrust violations, bribery, computer crime, criminal copyright infringement, environmental crimes, extortion, food and drug violations, government contract fraud, mail and wire fraud, RICO offenses, securities and tax fraud, theft of trade secrets.

**Crime Control Acts.** Multifaceted legislation designed to curb crime by *e.g.*, legislating new types of crimes, redefining existing crimes, increasing sentences, adding new prosecutors, judges, and prisons, etc. Examples are federal Comprehensive Crime Control Act of 1984; Drug Abuse Act of 1988 (as incorporated in U.S.Code Titles 18 and 21).

**Crimen** /kráymən/. Lat. Crime. Also an accusation or charge of crime.

*Crimen furti* /kráymən fártay/. The crime or offense of theft.

*Crimen incendii* /kráymən ənséndiyay/. The crime of burning, which included not only the modern crime of arson, but also the burning of a man, a beast, or other chattel.

*Crimen innominatum* /kráymən ənòmənétəm/. The nameless crime; the crime against nature; sodomy or buggery.

*Crimen raptus* /kráymən ráptəs/. The crime of rape.

*Crimen roberiae* /kráymən rəbəriiy/. The offense of robbery.

Flagrans crimen; Locus criminis; Particeps criminis. See those titles.

**Crimen falsi** /kráymən fól(t)say/. Term generally refers to crimes in the nature of perjury or subornation of perjury, false statement, criminal fraud, embezzlement, false pretense, or any other offense which involves some element of deceitfulness, untruthfulness, or falsification bearing on witness' propensity to testify truthfully. Government of Virgin Islands v. Toto, C.A. Virgin Islands, 529 F.2d 278, 282.

At *common law*, any crime which rendered the perpetrator incompetent to be a witness, such as forgery, perjury, subornation of perjury and other crimes affecting the administration of justice.

In the *civil law*, the crime of falsifying; which might be committed either by writing, as by the forgery of a will or other instrument; by words, as by bearing false witness, or perjury; and by acts, as by counterfeiting or adulterating the public money, dealing with false weights and measures, counterfeiting seals, and other fraudulent and deceitful practices.

**Crimen falsi dicitur, cum quis illicitus, cui non fuerit ad hæc data auctoritas, de sigillo regis, raptio vel invento, brevia, cartasve consignaverit** /kráymən fóltsay disətər, kəm kwis əlisətəs, k(yúw)ay nòn fyúwərət əd híyk déytə októhrətəs, diy səjilow riyjəs, ráptow vəl

invéntow, bríyviyə kartésviy kònsignévərət/. The crime of forgery is when any one illicitly, to whom power has not been given for such purposes, has signed writs or charters with the king's seal, either stolen or found.

**Crimen læsæ majestatis** /kráymən lízyiy məjəsətétəs/. The crime of *lese-majesty*, or injuring majesty or royalty; high treason. The term was used by the older English law writers to denote any crime affecting the king's person or dignity.

It is borrowed from the civil law, in which it signified the undertaking of any enterprise against the emperor or the republic.

**Crimen læsæ majestatis omnia alia crimina excedit quoad pœnam** /kráymən lízyiy məjéstétəs ómniyè éyliyè krimənə əksiydət kwówəd piynəm/. The crime of treason exceeds all other crimes in its punishment.

**Crimen omnia ex se nata vitiat** /kráymən ómniyè əks siy néytə vishiyət/. Crime vitiates everything which springs from it.

**Crimen trahit personam** /kráymən tréy(h)ət pərsównəm/. The crime carries the person (*i.e.*, the commission of a crime gives the courts of the place where it is committed jurisdiction over the person of the offender).

**Crime statistics.** Those figures compiled by federal and state agencies showing the incidence of various types of crime on a geographical basis.

**Criminal, n.** One who has committed a criminal offense; one who has been legally convicted of a crime; one adjudged guilty of crime. See also Dangerous criminal; Habitual criminal.

**Criminal, adj.** That which pertains to or is connected with the law of crimes, or the administration of penal justice, or which relates to or has the character of crime. Of the nature of or involving a crime.

*Criminal act.* Commission of a crime.

*Criminal action.* Proceeding by which person charged with a crime is brought to trial and either found not guilty or guilty and sentenced. An action, suit, or cause instituted to punish an infraction of the criminal laws. See also Indictment; Penal action; Prosecution.

*Criminal anarchy.* The doctrine that organized government should be overthrown by force and violence or other unlawful means. The advocacy of such doctrine has been made a felony. Whitney v. California, 274 U.S. 357, 47 S.Ct. 641, 71 L.Ed. 1095; 18 U.S.C.A. § 2384.

*Criminal Appeals Act.* Federal Act which allows the United States to appeal to a court of appeals from certain judgments, orders, or rulings of district courts. 18 U.S.C.A. § 3731.

*Criminal attempt.* Crime of a criminal attempt consists of an attempt to commit the crime and some step or overt act towards commission of the crime. State v. Harvill, 106 Ariz. 386, 476 P.2d 841. A substantial step towards a criminal offense with specific intent to com-

mit that particular crime. A criminal attempt is defined as an overt act done in pursuance of intent to do a specific thing, tending to the end but falling short of complete accomplishment of it; such overt act must be sufficiently proximate to intended crime to form one of natural series of acts which intent requires for its full execution. *Com. v. McCloskey*, 234 Pa.Super. 577, 341 A.2d 500, 503. *See also* Attempt.

*Criminal behavior.* Conduct which causes any social harm which is defined and made punishable by law.

*Criminal capacity.* Legal qualifications necessary to commit a crime such as voluntariness of the act, age and mental condition. *See also* Capacity; Insanity.

*Criminal charge.* An accusation of crime, formulated in a written complaint, information, or indictment, and taking shape in a prosecution.

*Criminal coercion.* *See* Coercion.

*Criminal conspiracy.* An agreement or confederacy of two or more persons to do a criminal or unlawful act or to do a lawful act in an unlawful or criminal manner. In many jurisdictions, an overt act in furtherance of the confederacy is required. *See also* Conspiracy.

*Criminal contempt.* A crime which consists in the obstruction of judicial duty generally resulting in an act done in the presence of the court; *e.g.* contumelious conduct directed to the judge or a refusal to answer questions after immunity has been granted. Conduct directed against the majesty of the law or the dignity and authority of the court or judge acting judiciously, whereas a "civil contempt" ordinarily consists in failing to do something ordered to be done by a court in a civil action for the benefit of an opposing party therein. *Sullivan v. Sullivan*, 16 Ill.App.3d 549, 306 N.E.2d 604, 605. *See also* Contempt.

*Criminal conversation.* Sexual intercourse of an outsider with husband or wife, or a breaking down of the covenant of fidelity. Tort action based on adultery, considered in its aspect of a civil injury to the husband or wife entitling him or her to damages; the tort of debauching or seducing of a wife or husband. Often abbreviated to *crim. con.* Statutes in several states prohibit actions for criminal conversation. *See* Adultery; Alienation of affections; Heart balm statutes.

*Criminal forfeiture.* The taking by the government of property because of its involvement in a crime; *e.g.* an automobile used to smuggle narcotics; gun used in hunting without license or out of season. *See e.g.* 18 U.S.C.A. § 982; 21 U.S.C.A. § 853. *See also* Confiscate; Forfeiture; Seizure.

*Criminal fraud.* In taxation, the attempt to evade the payment of lawfully due taxes by willfully filing a false or fraudulent tax return. I.R.S. §§ 7201, 7207. In other contexts, the crime of larceny by false pretenses or larceny by trick. *See also* Fraud.

*Criminal gross negligence.* Gross negligence is culpable or criminal when accompanied by acts of commission or omission of a wanton or willful nature, showing a reck-

less or indifferent disregard of the rights of others, under circumstances reasonably calculated to produce injury, or which make it not improbable that injury will be occasioned, and the offender knows or is charged with knowledge of the probable result of his acts; "culpable" meaning deserving of blame or censure. *See also* Criminal negligence, below.

*Criminal insanity.* *See* Insanity.

*Criminal instrumentality rule.* Where the wrong is accomplished by a crime, the crime and not the negligent act of the party which made it possible is the "proximate cause". *Foutch v. Alexandria Bank & Trust Co.*, 177 Tenn. 348, 149 S.W.2d 76, 85.

*Criminal intent.* The intent to commit a crime; malice, as evidenced by a criminal act; an intent to deprive or defraud the true owner of his property. Includes those consequences which represent the very purpose for which an act is done, regardless of the likelihood of occurrence, or are known to be substantially certain to result, regardless of desire. May be general or specific intent; mens rea. *See also* Knowingly; Mens rea; Pre-meditation; Specific intent.

*Criminal jurisdiction.* Power of tribunal to hear and dispose of criminal cases.

*Criminal laws.* *See* Penal code; Penal laws.

*Criminal libel.* Criminal libel is the malicious publication of durable defamation. The malicious defamation of a person made public by any printing or writing tending to provoke him to wrath and to deprive him of the benefits of public confidence and social intercourse. It is a misdemeanor at common law and also under modern statutes unless it has been made a felony which is not common. Four elements are included: (1) defamation, (2) durable, (3) publication and (4) malice. It should be noted however that criminal sanctions for defamation of public officials is subject to same constitutional limitations as for civil actions. *Garrison v. State of Louisiana*, 379 U.S. 64, 85 S.Ct. 209, 13 L.Ed.2d 125. *See also* Libel.

*Criminal malversation.* A broad category of corrupt official practices. *Jimenez v. Aristeguieta*, C.A.Fla., 311 F.2d 547, 562. *See e.g.* Bribery.

*Criminal mischief.* A species of wilful and malicious injury to property made punishable by statutes in most jurisdictions.

*Criminal motive.* Something in the mind or that condition of the mind which incites to action or induces action, or gives birth to a purpose. Distinguishable from intent which represents the immediate object in view while motive is the ulterior intent.

*Criminal negligence.* *See* Criminal gross negligence, above; also, Negligence.

*Criminal non-support.* The wilful and unreasonable failure to support one whom the law requires a person to support (*i.e.* spouse and children). *See* Non-support; Support.

**Criminal proceeding.** One instituted and conducted for the purpose either of preventing the commission of crime, or for fixing the guilt of a crime already committed and punishing the offender; as distinguished from a "civil" proceeding, which is for the redress of a private injury. Strictly, a "criminal proceeding" means some step taken before a court against some person or persons charged with some violation of the criminal law. *See also* Criminal procedure.

**Criminal process.** Process which issues to compel a person to answer for a crime or misdemeanor; *e.g.* arrest warrant. *See also* Indictment; Information; Process; Warrant.

**Criminal prosecution.** An action or proceeding instituted in a proper court on behalf of the public, for the purpose of securing the conviction and punishment of one accused of crime. A proceeding instituted by the state to obtain punishment against the person charged with and found guilty of a public offense; it embraces not only the accusation, whether by indictment or information, and the determination of guilt or innocence, but also, in case of a conviction, the imposition of sentence. *State v. Parker*, 194 Conn. 650, 485 A.2d 139, 142.

**Criminal syndicalism.** Any doctrine or precept advocating, teaching or aiding and abetting the commission of crime of sabotage or unlawful acts of force and violence or unlawful methods of terrorism as a means of accomplishing a change in industrial ownership or control or affecting any political change. *Gitlow v. New York*, 268 U.S. 652, 45 S.Ct. 625, 69 L.Ed. 1138. The advocacy of sabotage, violence, terrorism, or other unlawful methods for revolutionary purposes. *See also* Syndicalism.

**Criminal trespass.** The offense committed by one who, without license or privilege to do so, enters or surreptitiously remains in any building or occupied structure. Model Penal Code, § 221.2. Offense is committed when a person without effective consent enters or remains on property or in building of another knowingly or intentionally or recklessly when he had notice that entry was forbidden or received notice to depart but failed to do so. *Day v. State*, Tex.Cr.App., 532 S.W.2d 302, 306.

**Criminalist.** One versed in criminal law, one addicted to criminality, and, also, a psychiatrist dealing with criminality. *People v. Taylor*, 152 Cal.App.2d 29, 312 P.2d 731, 734; *Douglas v. State*, 42 Ala.App. 314, 163 So.2d 477, 486. *See* Recidivist.

**Criminalistics.** The science of crime detection, based upon the application of chemistry, physics, physiology, psychology, and other sciences. *See also* Criminology.

**Criminaliter** /krimənéylətər/. Lat. Criminally. This term is used, in distinction or opposition to the word "civiliter," civilly, to distinguish a criminal liability or prosecution from a civil one.

**Criminalization.** The rendering of an act criminal (*e.g.* by statutory enactment) and hence punishable by the government in a proceeding in its name.

**Criminal justice system.** The network of courts and tribunals which deal with criminal law and its enforcement.

**Criminal law.** The substantive criminal law is that law which for the purpose of preventing harm to society, (a) declares what conduct is criminal, and (b) prescribes the punishment to be imposed for such conduct. It includes the definition of specific offenses and general principles of liability. Substantive criminal laws are commonly codified into criminal or penal codes; *e.g.* U.S.C.A. Title 18, California Penal Code, Model Penal Code. *Compare* Criminal procedure.

**Criminal procedure.** The rules of law governing the procedures by which crimes are investigated, prosecuted, adjudicated, and punished. Generic term to describe the network of laws and rules which govern the procedural administration of criminal justice; *e.g.* laws and court rules (*e.g.* Rules of Criminal Procedure) governing arrest, search and seizure, bail, etc. *Compare* Criminal law. *See also* Code of criminal procedure.

**Criminal protector.** An accessory after the fact to a felony. *Skelly v. U. S.*, 10th Cir., 76 F.2d 483. One who aids or harbors a felon after the commission of a crime.

**Criminal registration.** Statutes in certain jurisdictions require that persons who are convicted felons register with the police so that their presence in the community will be known at all times. *Lambert v. California*, 355 U.S. 225, 78 S.Ct. 240, 2 L.Ed.2d 228. Subversive organizations are required to register under 18 U.S.C.A. § 2386.

**Criminal sanctions.** Punishments attached to conviction of crimes such as fines, restitution, probation and sentences. *See also* Civil death.

**Criminal statutes or codes.** Federal and state laws enacted by legislative bodies which define, classify, and set forth punishments for specific crimes; *e.g.* Title 18 of United States Code; Model Penal Code.

**Crimina morte extinguntur** /kriməmə mórtiy èktingwəntər/. Crimes are extinguished by death.

**Criminate.** To charge one with crime; to furnish ground for a criminal prosecution; to implicate, accuse, or expose a person to a criminal charge. A witness cannot be compelled to answer any question which has a tendency to *criminate* him. *See* Incriminate; Self-incrimination.

**Criminology.** The study of the nature of, causes of, and means of dealing with crime.

**Crimp.** One who decoys and plunders sailors under cover of harboring them.

**Crippling.** The word "crippling" is equivalent of words "physical disability" and is defined as to deprive of use of limbs, particularly of leg or foot; to deprive of strength, activity or capability for service or use and to disable.

**Crisis.** A crucial point or situation in the course of things; a turning point; a very tense moment; an unstable or crucial time.

**Critical evidence.** Material evidence of substantial probative force that could induce a reasonable doubt in the minds of enough jurors to avoid a conviction. *Gray v. Rowley, C.A.La., 604 F.2d 382, 383.*

**Critical stage.** Critical stage in a criminal proceeding at which accused is entitled to counsel is one in which a defendant's rights may be lost, defenses waived, privileges claimed or waived, or in which the outcome of the case is otherwise substantially affected. See *Mempa v. Rhay, 389 U.S. 128, 88 S.Ct. 254.* Test of "critical stage" of criminal proceeding as it relates to right to counsel is whether proceeding either requires or offers opportunity to take procedural step which will have prejudicial effects in later proceedings, or whether events transpire that are likely to prejudice ensuing trial. *Miller v. State of S. C., D.C.S.C., 309 F.Supp. 1287, 1290.* See also Counsel, right to; Custodial interrogation.

**Crocia** /króws(h)iyə/. The *crozier*, or pastoral staff.

**Crociarius** /krówsiyériyəs/. A cross-bearer, who went before the prelate.

**Croft.** A little close adjoining a dwelling-house, and inclosed for pasture and tillage or any particular use. A small place fenced off in which to keep farm-cattle. The word is now entirely obsolete.

**Croises** /króyzəz/krózyiyz/. Pilgrims; so called as wearing the sign of the *cross* on their upper garments. The knights of the order of St. John of Jerusalem, created for the defense of the pilgrims.

**Croiteir.** A crofter; one holding a croft.

**Crook.** A person given to crooked or fraudulent practices; a swindler, sharper, thief, forger, or the like. Term has been defined as a professional rogue; a criminal; or one consorting with criminals; a person recognized by the authorities as belonging to the criminal class.

**Crooked.** Deviating from rectitude or uprightness; not straightforward; dishonest; wrong; perverse. A "crook" is a dishonest person; one who is crooked in conduct; a tricky or underhand schemer; a thief or swindler.

**Crop.** Products of the soil, as are annually grown, raised, and harvested. Growing crops are considered "goods" under U.C.C. § 2-105(1). Term includes fruit grown on trees, and grass used for pasturage. See also Basic crops; Growing crop.

**Crop insurance.** See Insurance.

**Cropper.** See Sharecropper.

**Cross.** A mark made by persons who are unable to write, to stand instead of a signature. A mark usually in the form of an **X**, by which voters are commonly required to express their selection. There are four principal forms of the cross: The St. Andrew's cross, which is made in the form of an **X**; the Latin cross, †, as used in the crucifixion; St. Anthony's cross, which is made in the form of a **T**; and the Greek cross, +, which is made by the intersection at right angles of lines at their center point.

As an adjective, the word is applied to various demands and proceedings which are connected in subject-matter, but opposite or contradictory in purpose or object.

As a verb it means to pass or extend from one side to the other, as to cross a stream. *People v. Hawkins, 51 Cal.App.2d Supp. 781, 124 P.2d 691, 692.*

**Cross-action.** An action brought by one who is defendant in a suit against the party who is plaintiff in such suit, or against a co-defendant, upon a cause of action growing out of the same transaction which is there in controversy, whether it be a contract or tort. An independent suit brought by defendant against plaintiff or co-defendant. See also Counterclaim; Cross-claim; Cross-complaint.

**Cross appeal.** An appeal by the appellee. In the federal courts a cross appeal is argued with the initial appeal of the appellant. *Fed.R.App.P. 34(d).* See also Appeal.

**Cross-claim.** Cross-claims against co-parties are governed in the federal district courts and in most state trial courts by Rule of Civil Procedure 13(g): "A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant." See also New York C.P.L.R. § 3019(b).

For requisite content of cross-claim under Rules of Civil Procedure, see Complaint. See also Cross-complaint; Transaction or occurrence test.

*Counterclaim distinguished.* "Cross-claims" are litigated by parties on the same side of the main litigation, while "counterclaims" are litigated between opposing parties to the principal action. *Resource Engineering, Inc. v. Siler, 94 Idaho 935, 500 P.2d 836, 840.*

**Cross collateral.** Security given by both parties to a contract or undertaking for performance or payment.

**Cross-complaint.** A defendant or cross-defendant may file a cross-complaint setting forth either or both of the following: (a) Any cause of action he has against any of the parties who filed the complaint against him. (b) Any cause of action he has against a person alleged to be liable thereon, whether or not such person is already a party to the action, if the cause of action asserted in his cross-complaint, (1) arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause brought against him or (2) asserts a claim, right, or interest in the property or controversy which is the subject of the cause brought against him. *Calif. Code of Civil Proc. § 428.10.* See also Cross-claim.

**Cross-demand.** Where a person against whom a demand is made by another, in his turn makes a demand against that other, these mutual demands are called

"cross-demands." A *set-off* is a familiar example. See also Counterclaim; Cross-claim; Cross-complaint.

**Crossed check.** See Check.

**Cross-errors.** Errors being assigned by the respondent in a writ of error; the errors assigned on both sides are called "cross-errors."

**Cross-examination.** The examination of a witness upon a trial or hearing, or upon taking a deposition, by the party opposed to the one who produced him, upon his evidence given in chief, to test its truth, to further develop it, or for other purposes. The examination of a witness by a party other than the direct examiner upon a matter that is within the scope of the direct examination of the witness. Generally the scope of examination is limited to matters covered on direct examination and matters affecting the credibility of the witness; though the court may in its discretion permit inquiry into additional matters as if on direct examination. Fed.R. Civil P. 43(b); Fed.Evid.Rule 611. Compare Direct examination; Redirect examination.

**Crossing.** A portion of a street over which pedestrians may lawfully cross from one side to the other. With reference to railroads, that portion of the right of way covered by intersection with a street or highway. In a broader sense, the term includes embankments constructed as necessary approaches to a railroad track, and approaches or embankments reasonably necessary to enable crossings or bridges to be used. For Farm Crossing, see that title.

**Cross interrogatory.** A party to an action who has been interrogated may serve cross questions on all other parties. Fed.R. Civil P. 31(a).

**Cross-licensing.** Permission or right to use a thing or property given in exchange between two or more parties. Exchange of licenses by two or more patent holders in order that each may use or benefit from the patents of the other.

**Cross-purchase buy and sell agreement.** Under this type of arrangement, the surviving owners of a business agree to buy out the withdrawing owner. Assume, for example, R and S are equal shareholders in T Corporation. Under a cross-purchase buy and sell agreement, R and S would contract to purchase the other's interest should that person decide to withdraw from the business.

Partnership insurance plan wherein each partner individually purchases and maintains enough insurance on the life or lives of other partners to fund the purchase of the others' equity. See also Buy and sell agreement.

**Cross remainder.** Cross remainders are remainders which are so limited after particular estates to two or more persons in several parcels of land, or in several undivided shares in the same parcel of land, that, on the determination of the particular estates in any of the several parcels of undivided shares, they remain over to the other grantees, and the reversioner or ulterior remainderman is not let in until the determination of all

of the particular estates. *Hartford Nat. Bank & Trust Co. v. Harvey*, 143 Conn. 233, 121 A.2d 276.

**Crown.** The sovereign power and position of a monarch. An ornamental badge of regal power worn on the head by sovereign princes. The word is frequently used when speaking of the sovereign himself, or the rights, duties, and prerogatives belonging to him. Also a silver coin of the value of five shillings.

**Crown cases.** In English law, criminal prosecutions on behalf of the crown, as representing the public; causes in the criminal courts.

**Crown cases reserved.** In English law, questions of law arising in criminal trials at the assizes (otherwise than by way of demurrer), and not decided there, but reserved for the consideration of the court of criminal appeal. Superseded by criminal division of Court of Appeal.

**Crown court.** New court, created in 1971 in England and Wales to replace the criminal jurisdiction of the Assize Courts and all the jurisdiction of the Courts of Quarter Sessions, consisting in 90 separate centers. Appeal lies to it from magistrates' courts, Supreme Court Act, 1981, § 108. Appeal from it lies to the Court of Appeal, Criminal Appeal Act, 1968 § 45, 52.

**Crown debts.** In England, debts due the crown, which are put, by various statutes, upon a different footing from those due to a subject. Bankruptcy does not discharge such debts unless Commissioners of the Treasury certify in writing their consent to discharge.

**Crown lands.** The demesne lands of the crown. In England and Canada, lands belonging to the sovereign personally or to the government or nation, as distinguished from such as have passed into private ownership.

**Crown law.** Criminal law in England is sometimes so termed, the crown being always the prosecutor in criminal proceedings.

**Crown loan.** Name for an interest free demand loan, usually from a parent to a child. The borrowed funds are invested and the income from the investment is taxed at the child's rate. This type of loan got its name from Harry Crown of Chicago, who was the first to use it. In 1984, the Supreme Court ruled that the market rate of interest must be imputed on each loan, and treated as a gift subject to gift taxes. See Kiddie tax.

**Crown office.** In England, the criminal side of the former court of king's bench. The king's attorney in this court was called "master of the crown office". Now the Crown Office and Associates' Department of the Central Office of the Supreme Court.

**Crown office in chancery.** Formerly one of the offices of the English high court of chancery; later transferred to the high court of justice. The principal official, the clerk of the crown, was an officer of parliament, and of the lord chancellor, in his nonjudicial capacity, rather than an officer of the courts of law.

**Crown paper.** A paper containing the list of criminal cases, which await the hearing or decision on the Crown side of the Queen's Bench Division.

**Crown prosecutors.** Members of the Crown Prosecution Service whose duty it is to take over the conduct of all criminal proceedings on behalf of the police. Prosecution of Offenses Act, 1985, § 3(1).

**Crown side.** That jurisdiction of Queen's Bench Division by which it takes jurisdiction of criminal cases.

**Crown solicitor.** In England, the solicitor to the treasury acts, in state prosecutions, as solicitor for the crown in preparing the prosecution. Public prosecutions are now handled either by the Director of Public Prosecutions or by police or some other public authority.

**Cruce signati** /krúwsiy sàynétyi/. In old English law, signed or marked with a cross. Pilgrims to the holy land, or crusaders; so called because they wore the sign of the cross upon their garments.

**Crude.** A flexible term depending largely on context. In natural state; raw; unrefined; not artificially altered; unfinished. Vulgar.

**Cruel and inhuman treatment.** As ground for divorce, consists of unwarranted and unjustifiable conduct on part of defendant causing other spouse to endure suffering and distress, thereby destroying peace of mind and making living with such spouse unbearable, completely destroying real purpose and object of matrimony. *Welling v. Welling*, 144 Ind.App. 182, 245 N.E.2d 173, 176.

**Cruel and unusual punishment.** See Corporal punishment; Punishment.

**Cruelty.** The intentional and malicious infliction of physical or mental suffering upon living creatures, particularly human beings; or, as applied to the latter, the wanton, malicious, and unnecessary infliction of pain upon the body, or the feelings and emotions; abusive treatment; inhumanity; outrage.

Chiefly used in the law of divorce, in such phrases as "cruel and abusive treatment," "cruel and barbarous treatment," or "cruel and inhuman treatment" (*q.v.*). In domestic relations, term includes mental injury as well as physical. *Williams v. Williams*, 351 Mich. 210, 213, 88 N.W.2d 483, 484. Generally, single act of cruelty is not sufficient for divorce—there must be course of cruel conduct over period of time, *Richardson v. Richardson*, 258 S.C. 135, 187 S.E.2d 528. This ground for divorce is of limited importance with the enactment by most states of no-fault divorce laws.

See also Legal cruelty; Mental anguish; Mental cruelty.

**Cruelty to animals.** The infliction of physical pain, suffering, or death upon an animal, when not necessary for purposes of training or discipline or (in the case of death) to procure food or to release the animal from incurable suffering, but done wantonly, for mere sport, for the indulgence of a cruel and vindictive temper, or with reckless indifference to its pain.

A person commits a misdemeanor if he purposely or recklessly: (1) subjects any animal to cruel mistreat-

ment; or (2) subjects any animal in his custody to cruel neglect; or (3) kills or injures any animal belonging to another without legal privilege or consent of the owner. Model Penal Code, § 250.11.

**Cruelty to children.** Most jurisdictions have "battered child" statutes in which both emotional and physical injuries are embraced in the term "cruelty." See also Child abuse.

**Legal cruelty.** See Legal cruelty.

**Crush.** To break by means of pressure. To compress or bruise between two hard bodies. To squeeze or force by pressure so as to destroy the natural condition, shape, or integrity of the parts, or to force together into a mass. To defeat.

**Cry.** To call out aloud; to proclaim; to publish; to sell at auction. A clamor raised in the pursuit of an escaping felon. See Hue and cry.

**Cry de pais, or cri de pais** /kráy də péyz/. The hue and cry raised by the people in ancient times, where a felony had been committed and the constable was absent.

**Cryer** /kráyər/. An auctioneer. One who calls out aloud; one who publishes or proclaims. See Crier.

**Crypta** /kriptə/. A chapel or oratory underground, or under a church or cathedral.

**C.S.C.** Civil Service Commission.

**C.T.A.** An abbreviation for *cum testamento annexo*, in describing a species of administration.

**Cucking-stool.** An engine of correction for common scolds, which in the Saxon language is said to signify the scolding-stool, though now it is frequently corrupted into *ducking-stool*, because the judgment was that, when the woman was placed therein, she should be plunged in the water for her punishment. It was also variously called a "trebucket," "tumbrel," or "castigatory." 4 Bl.Comm. 169.

**Cuckold.** A man whose wife is unfaithful; the husband of an adulteress. It is explained that the word alludes to the habit of the female cuckoo, which lays her eggs in the nests of other birds to be hatched by them. To make a cuckold of a man is to seduce his wife.

**Cueillette.** A term of French maritime law. See A cueillette.

**Cui ante divortium** /kyúway éntiy dāvórhsh(iy)əm /k(w)áy/. (L. Lat. The full phrase was, *Cui ipsa ante divortium contradicere non potuit*, whom she before the divorce could not gainsay). A writ which anciently lay in favor of a woman who had been divorced from her husband, to recover lands and tenements which she had in fee-simple, fee-tail, or for life, from him to whom her husband had aliened them during marriage, when she could not gainsay it. 3 Bl.Comm. 183. Abolished in 1833.

**Cui bono** /kyúway bównow/k(w)áy°/k(w)áy°. For whose good; for whose use or benefit. "*Cui bono* is ever of great weight in all agreements." Sometimes translated, for what good, for what useful purpose.



**Cuicunque aliquis quid concedit concedere videtur et id, sine quo res ipsa esse non potuit** /k(yúw)aykákhwiy álakwæs kwíd kánsiydát kánsiydæriy vadiýtær èt id sáyniy kwòw riyz ipsæ ésiy nòn pótuwæt/. Whoever grants anything to another is supposed to grant that also without which the thing itself would be of no effect.

**Cui in vita** /kyúway ən váytæ/. (L. Lat. The full phrase was, *Cui in vita sua ipsa contradicere non potuit*, whom in his lifetime she could not gainsay). A writ of entry which lay for a widow against a person to whom her husband had in his lifetime aliened her lands. It was a method of establishing the fact of death, being a trial with witnesses, but without a jury. The object of the writ was to avoid a judgment obtained against the husband by confession or default. It was rendered obsolete in England by force of 32 Hen. VIII, c. 28, § 6.

**Cui jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potest** /k(yúw)ay júrsdíksh(iy)ow déytæ èst, iyæ kwòwkwiy kánsésæ ésiy vadéntær, sáyniy kwíbæs júrsdíksh(iy)ow éksplékéray nòn pówtæst/. To whomsoever a jurisdiction is given, those things also are supposed to be granted, without which the jurisdiction cannot be exercised. The grant of jurisdiction implies the grant of all powers necessary to its exercise.

**Cui jus est donandi, eidem et vendendi et concedendi jus est** /kyúway jæs èst danánday iyáydæm èt vandénday èt kónsádénday jæs èst/. He who has the right of giving has also the right of selling and granting.

**Cuilibet in arte sua perito est credendum** /kyuwáylibæt in ártiy syúwæ pæráytow èst krádéndæm/. Any person skilled in his peculiar art or profession is to be believed [*i.e.*, when he speaks of matters connected with such art]. Credence should be given to one skilled in his peculiar profession.

**Cuilibet licet juri pro se introducto renunciare** /kyuwáylibæt láysæt júriy pròw síy intrédáktow ranénsiyériy/. Any one may waive or renounce the benefit of a principle or rule of law that exists only for his protection.

**Cui licet quod majus, non debet quod minus est non licere** /kyúway láysæt kwòd méyjæs, nòn débæt kwòd máynæs èst nòn læsíriy/. He who is allowed to do the greater ought not to be prohibited from doing the less. He who has authority to do the more important act ought not to be debarred from doing what is of less importance.

**Cui pater est populus non habet ille patrem** /kyúway péytær æst pópylæs nòn héybæt iliy pætræm/. He to whom the people is father has not a father.

**Cuique in sua arte credendum est** /kyuwáykwiy in (s)yúwæ ártiy krádéndæm èst/. Everyone is to be believed in his own art.

**Cujus est commodum ejus debet esse incommodum** /kyúwjæs èst kómæwdæm iyjæs débæt ésiy in-kómædæm/. Whose is the advantage, his also should be the disadvantage.

**Cujus est dare, ejus est disponere** /kyúwjæs èst dériy, iyjæs èst dispównæriy/. Whose it is to give, his it is to dispose; or, "the bestower of a gift has a right to regulate its disposal."

**Cujus est divisio, alterius est electio** /kyúwjæs èst dævizh(iy)ow oltæriyis èst æléksh(iy)ow/. Whichever [of two parties] has the division [of an estate], the choice [of the shares] is the other's. In partition between coparceners, where the division is made by the eldest, the rule in English law is that she shall choose her share last. 2 Bl.Comm. 189.

**Cujus est dominium ejus est periculum** /kyúwjæs èst dæmíniyæm iyjæs èst pærikyælæm/. The risk lies upon the owner of the subject.

**Cujus est instituere, ejus est abrogare** /kyúwjæs èst instatýuwæriy iyjæs èst æbrægériy/. Whose right it is to institute, his right it is to abrogate.

**Cujus est solum, ejus est usque ad cælum** /kyúwjæs èst sów læm, iyjæs èst áskwiy æd siylæm/. Whose is the soil, his it is up to the sky. He who owns the soil, or surface of the ground, owns, or has an exclusive right to, everything which is upon or above it to an indefinite height. 2 Bl.Comm. 18; 3 Bl.Comm. 217.

**Cujus est solum, ejus est usque ad cælum et ad inferos** /kyúwjæs èst sów læm, iyjæs èst áskwiy æd siylæm æd æd infærows/. To whomsoever the soil belongs, he owns also to the sky and to the depths. The owner of a piece of land owns everything above and below it to an indefinite extent.

**Cujus juris (i.e., jurisdictionis) est principale, ejusdem juris erit accessorium** /kyúwjæs júræs est prinsépéyliy, iyjæsdæm júræs éhræt æksæsóriyæm/. An accessory matter is subject to the same jurisdiction as its principal.

**Cujus per errorem dati repetitio est, ejus consulto dati donatio est** /kyúwjæs pær æróræm déytay ræpæ-tish(iy)ow èst, iyjæs kánsáltow déytay danéy-sh(iy)ow èst/. He who gives a thing by mistake has a right to recover it back; but, if he gives designedly, it is a gift.

**Cujusque rei potissima pars est principium** /kyuwjæskwiy riýay pætísæmæ párz èst prinsipiyæm/. The chiefest part of everything is the beginning.

**Culagium** /kæléyjiyæm/. In old records, the laying up a ship in a dock, in order to be repaired.

**Cul de sac** /kál dæ sæk/. (Fr. the bottom of a sack.) A blind alley; a street which is open at one end only. A street closed at one end. *Beckham v. State*, 64 Cal. App.2d 487, 149 P.2d 296, 300.

**Culpa** /kólpæ/. Lat. A term of the civil law, meaning fault, neglect, or negligence. There are three degrees of *culpa*, *lata culpa*, gross fault or neglect; *levis culpa*, ordinary fault or neglect; *levissima culpa*, slight fault or neglect, and the definitions of these degrees are precisely the same as those in our law. This term is to be distinguished from *dolus*, which means fraud, guile, or deceit.

**Culpabilis** /kəlpəybələs/. Lat. In old English law, guilty. *Culpabilis de intrusione*, guilty of intrusion. *Non culpabilis* (abbreviated to *non cul.*), the plea of "not guilty." See *Culprit*.

**Culpability** /kəlpəbɪləti/. Blameworthiness. Except in cases of absolute liability, a person's criminal culpability requires a showing that he acted purposely, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense. Model Penal Code, § 2.02(1).

**Culpable conduct** /kəlpəbəl/. Blamable; censurable; criminal; at fault; involving the breach of a legal duty or the commission of a fault. That which is deserving of moral blame.

Such conduct normally involves something more than simple negligence and implies conduct which is blamable, censurable, involving the breach of a legal duty or the commission of a fault. It implies that the act or conduct spoken of is reprehensible or wrong, but not that it involves malice or a guilty purpose. *Werner v. Upjohn Co., Inc., C.A.Md., 628 F.2d 848, 856.*

As to *culpable* Homicide; Ignorance; Neglect; Negligence; and Wantonness, see those titles.

**Culpa caret qui scit sed prohibere non potest** /kəlpə kærət kwəy sɪt sɛd prəwɪhəbɪriy nɒn pɔwtəst/. He is clear of blame who knows, but cannot prevent.

**Culpa est immiscere se rei ad se non pertinenti** /kəlpə ɛst əmɪsəriy siy riyaɪ æd siy nɒn pɛrtənɛntay/. It is a fault for one to meddle in a matter not pertaining to him.

**Culpa in contrahendo** /kəlpə ɪn kɒntrəhɛndɔw/. Term used to describe the liability which attaches to breach of contract, especially a breach by the offeror after the offeree has begun performance in a unilateral contract and is stopped by the offeror before completion of the performance which is also the acceptance of the offer in a unilateral contract.

**Culpa lata dolo æquiparatur** /kəlpə léytə dɔwlow ɛkwəpərəytər/. Gross negligence is held equivalent to intentional wrong.

**Culpa tenet [teneat] suos auctores** /kəlpə tənət s(y)úwɔws ɔktóriyɪz/°téníyət°/. Misconduct binds [should bind] its own authors. It is a never-failing axiom that every one is accountable only for his own delicts.

**Culprit**. One accused or charged with commission of crime. Also, commonly used to mean one guilty of a crime or fault.

Blackstone believes this term to be an abbreviation of the old forms of arraignment, whereby, on the prisoner's pleading not guilty, the clerk would respond, "*culpabilis, prit*", i.e., he is guilty and the crown is ready. It was (he says) the *viva voce* replication by the clerk, on behalf of the crown, to the prisoner's plea of *non culpabilis; prit* being a technical word, anciently in use in the formula of joining issue. 4 Bl.Comm. 339. The ordinary derivation is from *culpa*.

**Cultivator**. A cropper. See *Sharecropper*.

**Cultura** /kəltjúra/. A parcel of arable land.

**Culvertage** /kəlvɛrtəj/. In old English law, a base kind of slavery. The confiscation or forfeiture which takes place when a lord seizes his tenant's estate.

**Cum actio fuerit mere criminalis, institui poterit ab initio criminaliter vel civiliter** /kəm æksh(i)yɔw fyúwəɾət míriy krimənéyləs, ɪnstítjuwey pótəɾət æb ənɪsh(i)yɔw krimənéylətər vɛl səvɪlətər/. When an action is merely criminal, it can be instituted from the beginning either criminally or civilly.

**Cum adsunt testimonia rerum, quid opus est verbis?** /kəm ədsənt tɛstəmówníyə rírəm, kwɪd ówpəs ɛst vɛrbəs/. When the proofs of facts are present, what need is there of words?

**Cum aliquis renunCIaverit societati, solvitur societas** /kəm ælɔkwɪs rənənsíyévəɾət səsáyətéytay, sólvətər səsáyətæs/. When any partner renounces the partnership, the partnership is dissolved.

**Cum confitente sponte mitius est agendum** /kəm kɒnfətɛntíy spóntíy mɪsh(i)yəs ɛst əjéndəm/. One confessing willingly should be dealt with more leniently.

**Cum copula** /kəm kópýlə/. Lat. With copulation, i.e., sexual intercourse. Used in speaking of the validity of a marriage contracted "per verba de futuro cum copula," that is, with words referring to the future (a future intention to have the marriage solemnized) and consummated by sexual connection.

**Cum de lucro duorum quæritur, melior est causa possidentis** /kəm díy l(y)úwkwɔw dyuwórəm kwírətər, míyílyər ɛst kózə pəsídíyéntəs/. When the question is as to the gain of two persons, the cause of him who is in possession is the better.

**Cum dividend** /kyúwm dívədɛnd/. Means that when a share of stock is sold after a dividend is declared, the buyer has the right to the dividend; *lit.*, with dividend. See also *Dividend (Cumulative dividend)*.

**Cum duo inter se pugnantia reperiuntur in testamento, ultimum ratum est** /kəm d(y)úwɔw ɪntər siy pəgnəns(i)yə rəpəriyántər ɪn tɛstəméntɔw, ɔltəməm réytəm ɛst/. Where two things repugnant to each other are found in a will, the last shall stand.

**Cum duo jura concurrunt in una persona æquum est ac si essent in duobus** /kəm d(y)úwɔw júɾə kənkáɾənt ɪn yúwnə pərsównə íykwəm ɛst æk sáy ɛsənt ɪn d(y)úwɔwbəs/. When two rights meet in one person, it is the same as if they were in two persons.

**Cum grano salis** /kəm gréynɔw séyləs/kúm gránɔw sɛləs/. (With a grain of salt.) With allowance for exaggeration.

**Cum in corpore dissentitur, apparet nullam esse acceptionem** /kəm ɪn kórparíy dəsɛntətər, əpəɾət náləm ɛsíy əksəpshíyównəm/. When there is a disagreement in the substance, it appears that there is no acceptance.

**Cum in testamento ambigue aut etiam perperam scriptum est benigne interpretari et secundum id**

**quod credible est cogitatum credendum est** /kám in tĕstáméntow æmbígyuwiy òt ésh(iy)əm párpəram skríptəm èst bənígniy intárprətéray èt səkándəm íd kwòd krədíbəliy èst kòjtéytəm krədéndəm èst/. Where an ambiguous, or even an erroneous, expression occurs in a will, it should be construed liberally, and in accordance with the testator's probable meaning.

**Cum legitimæ nuptiæ factæ sunt, patrem liberi sequuntur** /kám læjítəmiy nápshiyiy fæktyi sənt, pətrəm libəray səkwəntər/. Children born under a legitimate marriage follow the condition of the father.

**Cum onere** /kám ównəriy/. With the burden; subject to an incumbrance or charge. What is taken *cum onere* is taken subject to an existing burden or charge.

**Cum par delictum est duorum, semper oneratur petitor et melior habetur possessoris causa** /kám pár dəlíktəm èst d(y)uwórəm, sémpər ównəréytər pətətər èt míyl(i)yər həbiytər pòwzəsórəs kózə/. When both parties are in fault the plaintiff must always fail, and the cause of the person in possession be preferred.

**Cum pertinentiis** /kám pərtənénshiyəs/. With the appurtenances.

**Cum quod ago non valet ut ago, valeat quantum valere potest** /kám kwòd éygow nòn vələt àt éygow, vələiyət kwóntəm vəliriy pówtəst/. When that which I do is of no effect as I do it, it shall have as much effect as it can; *i.e.*, in some other way.

**Cum rights.** *Lit.* with rights; a share of stock sold under conditions which permit the buyer to buy new stock of the issuer in a stated amount.

**Cum testamento annexo** /kám tĕstáméntow ənĕksow/. *L. Lat.* With the will annexed. A term applied to administration granted where a testator makes an incomplete will, without naming any executors, or where he names incapable persons, or where the executors so named refuse to act. If the executor has died, an administrator *de bonis non cum testamento annexo* (of the goods not [already] administered upon with the will annexed) is appointed. Often abbreviated *d. b. n. c. t. a.*

**Cumulative** /kyúmyələtəv/. Additional; heaping up; increasing; forming an aggregate. The word signifies that two things are to be added together, instead of one being a repetition or in substitution of the other.

As to *cumulative* Dividend, Punishment, and Stock, see those titles.

**Cumulative evidence.** Additional or corroborative evidence to the same point. That which goes to prove what has already been established by other evidence. *See also* Corroborating evidence.

**Cumulative legacies.** Legacies given in addition to a prior legacy, as when one legacy is given in a will and another legacy is given to the same person in a codicil. *See also* Legacy.

**Cumulative offense.** One which can be committed only by a repetition of acts of the same kind but committed on different days or times.

**Cumulative preferred dividend.** Dividend on preferred stock which, if declared at the end of a particular year, must be paid before any common stock dividend is paid. *See also* Dividend.

**Cumulative preferred stock.** *See* Stock.

**Cumulative remedy.** A remedy created by statute in addition to one which still remains in force. *Wulff-Hansen & Co. v. Silvers, Cal.App., 120 P.2d 677, 680.*

**Cumulative sentence.** Any sentence which is to take effect after the expiration of a prior sentence; also known as "from and after" sentence. *See also* Sentence.

**Cumulative voting.** Type of voting in which a stockholder may cast as many votes for directors as he has shares of stock multiplied by the number of directors to be elected. The stockholder may cast all his votes for one or more but fewer than all the directors on the slate, and hence, minority representation is promoted. It is a method of voting that allows substantial minority shareholders to obtain representation on the board of directors. Cumulative voting is *required* under the corporate laws of some states, while in most states such voting can be included or expressly excluded at the option of the corporation in its articles of incorporation. *See, e.g., Rev. Model Bus. Corp. Act § 7.28. Compare* Noncumulative voting.

A system of minority representation which is used for the election of members of the lower house of the Illinois legislature. Each voter has three votes which he may lump together on one candidate or distribute among two or three candidates as he chooses.

**Cunades** /kuwnáðes/. In Spanish law, affinity; alliance; relation by marriage.

**Cuneator** /kyúwniyeydər/ *Lat.* /kyùwniyéytər/. A coiner. *Cuneare* /kyùwniyériy/, to coin. *Cuneus* /kyúwniyəs/, the die with which to coin. *Cuneata* /kyùwniyéytə/, coined.

**Cunnilingus** /kənəlɪŋgəs/. An act of sex committed with the mouth and the female sexual organ.

**Cur.** A common abbreviation of *curia*.

**Cura** /kyúrə/. *Lat.* Care; charge; oversight; guardianship. In the civil law a species of guardianship which commenced at the age of puberty (when the guardianship called "tutela" expired), and continued to the completion of the twenty-fifth year.

**Curagulos** /kyuréggyələs/. One who takes care of a thing.

**Curate** /kyúrət/. In ecclesiastical law, an incumbent who has the *cure* of souls, but now generally restricted to signify the spiritual assistant of a rector or vicar in his *cure*. An officiating temporary minister in the English church, who represents the proper incumbent; being regularly employed either to serve in his absence or as his assistant, as the case may be. He may be temporary or stipendiary or perpetual.

**Curateur** /kyüratyúr/. In French law, a person charged with supervising the administration of the affairs of an

emancipated minor, giving him advice, and assisting him in the important acts of such administration.

**Curatio** /kyərəýshow/. In the civil law, the power or duty of managing the property of him who, either on account of infancy or some defect of mind or body, cannot manage his own affairs. The duty of a curator or guardian.

**Curative** /kyúrətəv/. Intended to cure (that is, to obviate the ordinary legal effects or consequences of) defects, errors, omissions or irregularities. The word is defined as relating to, or employed in, the cure of diseases; tending to cure; a remedy.

*Curative admissibility of evidence.* The doctrine of "curative admissibility" allows evidence which is otherwise inadmissible to be presented because similar evidence has been introduced by the adverse party. *People v. Wilbert*, 15 Ill.App.3d 974, 305 N.E.2d 173, 179. In some jurisdictions, an opponent may counter or answer evidence which has been admitted without objection though otherwise inadmissible to cure the effect of such evidence. This rule is not of universal application or acceptance.

*Curative statute.* A law, retrospective in effect, which is designed to remedy some legal defect in previous transactions. A form of retrospective legislation which reaches back into the past to operate upon past events, acts or transactions in order to correct errors and irregularities and to render valid and effective many attempted acts which would otherwise be ineffective for the purpose intended. As applied to conveyances they supply one or more ingredients of a legal act which the parties intended to perform but which they failed to accomplish completely or which they executed only imperfectly.

**Curator** /kyrátər/kyərəýtər/. A temporary guardian or conservator appointed by the court to care for the property or person or both of an incompetent, spendthrift, or a minor. One in charge of museum, art gallery, or the like.

In Louisiana, a person appointed to take care of the estate of an absentee.

*Curator ad hoc* /kyərəýtər æd hók/. A guardian or other person appointed to take charge or care of a single matter or transaction; a special guardian.

*Curator ad litem* /kyərəýtər æd láydəm/. Guardian for the suit or action.

*Curator bonis* /kyərəýtər bównəs/. In the civil law, a guardian or trustee appointed to take care of *property* in certain cases; as for the benefit of creditors.

**Curatorship.** The office of a curator or guardian. *Compare* Tutorship.

**Curatrix** /kyərəýtrəks/. A woman who has been appointed to the office of curator; a female guardian.

**Curatus non habet titulum** /kyərəýtəs nòn héybət tityələm/. A curate has no title [to tithes].

**Cure.** The act of healing; restoration to health from disease, or to soundness after injury.

Under rule that a vessel and her owner must provide maintenance and "cure" for seaman injured or falling ill while in service, "cure" is care, including nursing and medical attention during such period as the duty continues. *Calmar S. S. Corporation v. Taylor*, 303 U.S. 525, 58 S.Ct. 651, 653, 82 L.Ed. 993. *See also* Maintenance and cure.

The right of a seller under U.C.C. to correct a non-conforming delivery of goods to buyer within the contract period. § 2-508.

Term as used in Chapter 13 bankruptcy proceedings (adjustment of debts of an individual) refers to provision in repayment plan for "curing" defaults in debt obligations. Bankruptcy Code § 1322(b)(3).

**Cure by verdict.** In common law pleading, the rectification or rendering nugatory of a defect in the pleadings by the rendition of a verdict; the court presuming after a verdict, that the particular thing omitted or defectively stated in the pleadings was duly proved at the trial. This function is served by Rule of Civil Procedure 15 which permits amendment of pleadings to conform to the evidence.

**Cure of souls.** In ecclesiastical law, the ecclesiastical or spiritual charge of a parish, including the usual and regular duties of a minister in charge.

**Curfew.** A law (commonly an ordinance) which imposes on people (particularly children) the obligation to remove themselves from the streets on or before a certain time of night.

An institution supposed to have been introduced into England by order of William the Conqueror, which consisted in the ringing of a bell or bells at eight o'clock at night, at which signal the people were required to extinguish all lights in their dwellings, and to put out or rake up their fires, and retire to rest, and all companies to disperse. The word is probably derived from the French *couvre feu*, to cover the fire. The curfew is spoken of in 1 Social England 373, as having been ordained by William I, in order to prevent nightly gatherings of the people of England. But the custom is evidently older than the Norman; for we find an order of King Alfred that the inhabitants of Oxford should at the ringing of that bell cover up their fires and go to bed. And there is evidence that the same practice prevailed at this period in France, Normandy, Spain, and probably in most of the other countries of Europe. It was doubtless intended as a precaution against fires, which were very frequent and destructive when most houses were built of wood. It appears to have met with so much opposition that in 1103 we find Henry I, repealing the enactment of his father on the subject; and Blackstone says that, though it is mentioned a century afterwards, it is rather spoken of as a time of night than as a still subsisting custom. Shakespeare frequently refers to it in the same sense.

**Curia** /kyúriyə/. In old European law, a court. The palace, household, or retinue of a sovereign. A judicial

tribunal or court held in the sovereign's palace. A court of justice. The civil power, as distinguished from the ecclesiastical. A manor; a nobleman's house; the hall of a manor. A piece of ground attached to a house; a yard or courtyard. A lord's court held in his manor. The tenants who did suit and service at the lord's court. A manse.

In Roman law, a division of the Roman people, said to have been made by Romulus. They were divided into three tribes, and each tribe into ten *curiæ*, making thirty *curiæ* in all. The place or building in which each *curia* assembled to offer sacred rites. The place of meeting of the Roman senate; the senate house. The senate house of a province; the place where the *decuriones* assembled. See Decurio.

**Curia admiralitatis** /kyúriyæ ædmərələtétýs/. The court of admiralty.

**Curia advisari vult** /kyúriyæ ædvəséray vált/. L. Lat. The court will advise; the court will consider. A phrase frequently found in the reports, signifying the resolution of the court to suspend judgment in a cause, after the argument, until they have deliberated upon the question, as where there is a new or difficult point involved. It is commonly abbreviated to *cur. adv. vult*, or *c. a. v.*

**Curia baronis, or baronum** /kyúriyæ bərównəs/"bərównəm/. In old English law, a court-baron.

**Curia cancellariæ officina justitiæ** /kyúriyæ kənsəlériyiy ofəsáynə jəstíshiyiy/. The court of chancery is the workshop of justice.

**Curia christianitatis** /kyúriyæ kristiyænətétýs/. The ecclesiastical court.

**Curia claudenda** /kyúriyæ klodéndə/. The name of a writ to compel another to make a fence or wall, which he was bound to make, between his land and the plaintiff's. Now obsolete.

**Curia comitatus** /kyúriyæ kòmətétýs/. The county court (*q.v.*).

**Curia domini** /kyúriyæ dóməny/. In old English law, the lord's court, house, or hall, where all the tenants met at the time of keeping court.

**Curia magna** /kyúriyæ məgnə/. In old English law, the great court; one of the ancient names of parliament.

**Curia majoris** /kyúriyæ məjórəs/. In old English law, the mayor's court.

**Curia militum** /kyúriyæ milətəm/. A court so called, anciently held at Carisbrook Castle, in the Isle of Wight.

**Curia palatii** /kyúriyæ pələyshiyay/. In old English law, the palace court. It was abolished by 12 & 13 Vict., c. 101.

**Curia parliamenti suis propriis legibus subsistit** /kyúriyæ pərl(y)əméntay syúwəs prówpriyəs liyjəbəs səbsístət/. The court of parliament is governed by its own laws.

**Curia pedis pulverizati** /kyúriyæ píydəs pəlvərəzétay/. In old English law, the court of *pedpoudre* or *pie-pouders*. See Court of Piepoudre.

**Curia personæ** /kyúriyæ pərsówniy/. In old records, a parsonage-house, or manse.

**Curia regis** /kyúriyæ ríjəs/. The king's court. A term applied to the *aula regis*, the *bancus*, or *communis bancus*, and the *iter* or *eyre*, as being courts of the king, but especially to the *aula regis* (which title see).

**Curing title**. Removal of defects from land title which render such unmarketable. "Clearing", "curing", "straightening out", or "removing cloud from" title denotes acts or proceedings necessary to render title marketable. See Action to quiet title.

**Curiosa et captiosa interpretatio in lege reprobatur** /kyúriyówsə èt kəpshiyówsə intərpətéysh(iy)ow in liyjiy rəpəbéytər/. A curious [overnice or subtle] and captious interpretation is reprobated in law.

**Curnock** /kərnək/. In old English law, a measure containing four bushels or half a quarter of corn.

**Currency**. Coined money and such banknotes or other paper money as are authorized by law and do in fact circulate from hand to hand as the medium of exchange. See also Blocked currency; Comptroller of Currency; Current money; Legal tender.

**Current**. Running; now in transit; present existence; now in progress; whatever is at present in course of passage, as "the current month." American Fruit Growers v. United States, C.C.A.Cal., 105 F.2d 722, 726. Most recent; up-to-date.

A continuous movement in the same direction, as a fluid stream. Buckeye Incubator Co. v. Blum, D.C.Ohio, 17 F.2d 456, 458.

Passing in time or belonging to the time actually passing. Now passing or present in its course, as the current month, and as applied to current obligations it denotes the obligations then passing or present in its progress, the service rendered and the compensation therefor measured by the time of the occurrence of the event.

The word "current", when used as an adjective, has many meanings, and definition depends largely on word which it modifies, or subject-matter with which it is associated. Commissioner of Internal Revenue v. Keller, C.C.A., 59 F.2d 499, 501. See *e.g.* usages that follow below.

**Current account**. An open, running, or unsettled account between two parties.

**Current assets**. Any property that will be or could be converted into cash in the normal operation of a business or at an earlier date, usually within one year. Short-term assets; *e.g.* cash, accounts receivable, inventory.

**Current expenses**. Ordinary, regular, recurring, and continuing expenditures for the maintenance of property, the carrying on of a business, an office, municipal government, etc.

**Current funds.** Cash and other assets readily convertible into cash. Money which circulates as legal tender. Formerly, this phrase meant gold or silver, or something equivalent thereto, and convertible at pleasure into coin money. *Bull v. First National Bank*, 123 U.S. 105, 8 S.Ct. 62, 31 L.Ed. 97. *See* Current money.

**Current income.** Income which is due within the present accounting period.

**Current liabilities.** An obligation that will be paid in the ordinary course of a business or within one year. A current liability is paid by expending a current asset. The phrase "current liability" carries with it the idea of a liability that is presently enforceable. *Warren Co. v. Commissioner of Internal Revenue*, C.A.Ga., 135 F.2d 679, 684, 685.

**Current maintenance.** The expense occasioned in keeping the physical property in the condition required for continued use during its service life. *Lindheimer v. Illinois Bell Telephone Co.*, 292 U.S. 151, 54 S.Ct. 658, 78 L.Ed. 1182.

**Current market value.** The value of an asset which may be realized by liquidation within the present accounting period. Present value which may be realized in an arms length transaction between a willing buyer and a willing seller. *See also* Fair market value.

**Current money.** The currency of the country; whatever is intended to and does actually circulate as currency; every species of coin or currency. In this phrase the adjective "current" is not synonymous with "convertible". It is employed to describe money which passes from hand to hand, from person to person, and circulates through the community, and is generally received. Money is current which is received as money in the common business transactions, and is the common medium in barter and trade. *See also* Currency; Legal tender.

**Current obligations.** Such as are presently enforceable and not past due. *Naylor v. Gutteridge*, Tex.Civ.App., 430 S.W.2d 726, 733. *See also* Current liabilities.

**Current price.** This term means the same as "market value", "market price", "going price", the price that runs or flows with the market. *See also* Current market value; Fair market value.

**Current revenues.** *See* Current income.

**Current value.** *See* Current market value; Fair market value.

**Current wages.** Such as are paid periodically, or from time to time as the services are rendered or the work is performed; more particularly, wages for the current period, hence not including such as are past-due or deferred. *See also* Minimum wage.

**Current year.** The year now running. Ordinarily, a calendar year in which the event under discussion took place; though the current fiscal year of a business may run from July 1st to June 30th, or some other twelve month period.

**Curriculum.** The set of studies or courses for a particular period, designated by a school or branch of a school.

**Currit quatuor pedibus** /kǎhrət kwótuwər pédábəs/. L. Lat. It runs upon four feet; or, as sometimes expressed, it runs upon all fours. A phrase used in arguments to signify the entire and exact application of a case quoted. "It does not follow that they run *quatuor pedibus*."

**Currit tempus contra desides et sui juris contemptores** /kǎrət témpəs kóntrə díysǎdiyǝ èt syúway júrəs kòntem(p)tóriyǝ/. Time runs against the slothful and those who neglect their rights.

**Cursing.** Malediction; imprecation; execration; profane words intended to convey hate and to invoke harm; swearing.

**Cursitor baron** /kǎrsətər bǎrən/. In old English law, an officer of the court of exchequer, who is appointed by patent under the great seal to be one of the barons of the exchequer. The office was abolished by St. 19 & 20 Vict., c. 86.

**Cursitors** /kǎrsətərz/. In old English law, clerks in the chancery office, whose duties consisted in drawing up those writs which were of course, *de cursu*, whence their name. They were abolished by St. 5 & 6 Wm. IV, c. 82.

**Cursor** /kǎrsər/. An inferior officer of the papal court.

**Cursory examination** /kǎrs(ə)riy əgzǎmənáyshən/. An inspection for defects visible or ascertainable by ordinary examination; contrasted from a thorough examination.

**Cursus curiæ est lex curiæ** /kǎrsəs kyúriyǝ èst léks kyúriyǝ/. The practice of the court is the law of the court.

**Curtail.** To cut off the end or any part of; hence to shorten, abridge, diminish, lessen, or reduce; and term has no such meaning as abolish. *State v. Edwards*, 207 La. 506, 21 So.2d 624, 625.

**Curtesy** /kǎrtəsiy/. The estate to which by common law a man is entitled, on the death of his wife, in the lands or tenements of which she was seised in possession in fee-simple or in tail during her coverture, provided they have had lawful issue born alive which might have been capable of inheriting the estate. It is a freehold estate for the term of his natural life.

In some jurisdictions, there is no requirement that issue be born of the union. This estate has gradually lost much of its former value and now in some jurisdictions it attaches only to the real estate which the wife owns at death, rather than to the real estate owned by the wife during the marriage, while in most states it has been abolished or otherwise materially altered.

*See also* Dower.

**Initiate and consummate.** Curtesy initiate is the interest which a husband has in his wife's estate after the birth of issue capable of inheriting, and before the death of the wife; after her death, it becomes an estate "by the

curtesy consummate." *Hopper v. Gurtman*, 126 N.J. 263, 18 A.2d 245, 246, 250.

**Curtilage** /kɜrtəlaj/. A word derived from the Latin *cohors* (a place enclosed around a yard) and the old French *cortillage* or *courtillage* which today has been corrupted into *court-yard*. Originally, it referred to the land and outbuildings immediately adjacent to a castle that were in turn surrounded by a high stone wall; today, its meaning has been extended to include any land or building immediately adjacent to a dwelling, and usually it is enclosed some way by a fence or shrubs. *U.S. v. Romano*, D.C.Pa., 388 F.Supp. 101, 104.

For search and seizure purposes, includes those outbuildings which are directly and intimately connected with the habitation and in proximity thereto and the land or grounds surrounding the dwelling which are necessary and convenient and habitually used for family purposes and carrying on domestic employment. *State v. Hanson*, 113 N.H. 689, 313 A.2d 730, 732.

**Curtilles terræ** /kɜrtɪljɪz tɛhriy/. In old English law, court lands. See Court lands.

**Curtillium** /kɜrtɪl(i)yəm/. A curtilage (*q.v.*); the area or space within the inclosure of a dwellinghouse.

**Curtis** /kɜrtɪs/. A garden; a space about a house; a house, or manor; a court, or palace; a court of justice; a nobleman's residence.

**Custa** /kɜstə/, **custagium** /kɜstɛj(i)yəm/, **custantia** /kɜstæns(i)yə/. Costs.

**Custode admittendo, custode amovendo** /kɜstɔdiy ædmətəndow, kɜstɔdiy əmɔvəndow/. Writs for the admitting and removing of guardians.

**Custodes** /kɜstɔwdiyz/. In Roman law, guardians; observers; inspectors. Persons who acted as inspectors of elections, and who counted the votes given.

In old English law, keepers; guardians; conservators.

**Custodes libertatis anglia auctoritate parlamenti** /kɜstɔwdiyz libɜrtɛytəs æŋglijɪy oktɔrətɛytiy pɜrl(i)yəmɛntay/. The style in which writs and all judicial processes were made out during the great revolution, from the execution of King Charles I, till Oliver Cromwell was declared protector.

**Custodes pacis** /kɜstɔwdiyz pɛysəs/. Guardians of the peace. 1 Bl.Comm. 349.

**Custodial account.** An account established on behalf of someone else. For example, when a parent opens an account for a minor child, or when a son or daughter opens and controls a bank account of an infirm parent.

**Custodial arrest.** Confinement or detention by police or government authorities during which a person is entitled to certain warnings as to his rights when questioned. *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694. See Custodial interrogation.

**Custodia legis** /kɜstɔwdiyə lijəs/. In the custody of the law. Doctrine of "custodia legis" provides that when personal property is repossessed under writ of replevin, property is considered to be in custody of the court,

though actual possession may be in either of the parties to the replevin action, and that property remains in custody of court until judgment in replevin action finally determines whether replevining party or prior holder is entitled to possession. *Brunswick Corp. v. J & P, Inc.*, C.A.Ok., 424 F.2d 100, 102. This doctrine is nothing more than a practical "first come, first serve" method of resolving jurisdictional disputes between two courts with concurrent jurisdiction, and, under such doctrine, court that first secures custody of property administers it. *Coastal Production Credit Ass'n v. Oil Screw "Santee"*, D.C.Ga., 51 B.R. 1018, 1020.

**Custodial interrogation.** Custodial interrogation, with-in *Miranda* rule requiring that defendant be advised of his constitutional rights, means questioning initiated by law enforcement officers after person has been taken into custody or otherwise deprived of his freedom in any significant way; custody can occur without formality of arrest and in areas other than in police station. *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694; *Brewer v. Williams*, 430 U.S. 387, 97 S.Ct. 1232. See Interrogation; *Miranda* Rule.

**Custodiam lease** /kɜstɔwdiyəm liys/. In old English law, a grant from the crown under the exchequer seal, by which the custody of lands, etc., seized in the king's hands, was demised or committed to some person as custodee or lessee thereof.

**Custodian.** General term to describe person or financial institution that has charge or custody of property, securities, papers, assets, etc.

In bankruptcy proceedings, refers to a third party (*e.g.* receiver or trustee) acting under mandatory authority who takes charge of debtor's assets for the benefit of debtor's creditors as a whole. In re *Cash Currency Exchange, Inc.*, D.C.Ill., 37 B.R. 617, 627. See Bankruptcy Code § 101 (11 U.S.C.A.).

**Custody.** The care and control of a thing or person. The keeping, guarding, care, watch, inspection, preservation or security of a thing, carrying with it the idea of the thing being within the immediate personal care and control of the person to whose custody it is subjected. Immediate charge and control, and not the final, absolute control of ownership, implying responsibility for the protection and preservation of the thing in custody. Also the detainer of a man's person by virtue of lawful process or authority.

The term is very elastic and may mean actual imprisonment or physical detention or mere power, legal or physical, of imprisoning or of taking manual possession. Within statute requiring that petitioner be "in custody" to be entitled to federal habeas corpus relief does not necessarily mean actual physical detention in jail or prison but rather is synonymous with restraint of liberty. *U. S. ex rel. Wirtz v. Sheehan*, D.C.Wis., 319 F.Supp. 146, 147. Accordingly, persons on probation or parole or released on bail or on own recognizance have been held to be "in custody" for purposes of habeas corpus proceedings.

See Chain of custody; Custodial interrogation; Custody of children; In custody; Parental Kidnapping Prevention Act; Protective custody.

**Custody account.** A type of agency account in which the custodian has the obligation to preserve and safe-keep the property entrusted to him for his principal.

**Custody of children.** The care, control and maintenance of a child which may be awarded by a court to one of the parents as in a divorce or separation proceeding. See also Guardianship; Parental Kidnapping Prevention Act.

*Divided custody.* Divided custody is where child lives with each parent part of the year with reciprocal visitation privileges; in divided custody, parent with whom child is living has complete control over child during that period. In re Marriage of Ginsberg, Ind.App., 425 N.E.2d 656, 658.

*Joint custody.* Joint custody involves both parents sharing responsibility and authority with respect to the children; it may involve joint "legal" custody and joint "physical" custody. In re Marriage of Ginsberg, Ind. App., 425 N.E.2d 656, 658. Such includes physical sharing of child in addition to both parents participating in decisions affecting child's life, e.g., education, medical problems, recreation, etc.; "joint custody" does not mean fifty-fifty sharing of time, since each case depends on child's age, parent's availability and desires, and other factors. Plemer v. Plemer, La.App. 4 Cir., 436 So.2d 1348, 1349.

*Temporary custody.* Awarding of custody of a child to a parent temporarily, pending the outcome of a separation or divorce action.

The care, control and maintenance of a child which may be awarded by a court to one of the parents as in a divorce or separation proceeding.

*Uniform Child Custody Jurisdiction Act.* A uniform law adopted in all states, cf. N.Y. McKinney's Domestic Relations Law, §§ 75-a to 75-z, to deal with multi-state child custody and visitation disputes. Enacted in part to deter parental kidnapping, it generally recognizes jurisdiction in a child's "home state."

**Custody of the law.** Property is in the custody of the law when it has been lawfully taken by authority of legal process, and remains in the possession of a public officer (as a sheriff) or an officer of a court (as a receiver) empowered by law to hold it. See Forfeiture; Seizure.

**Custom.** Term generally implies habitual practice or course of action that characteristically is repeated in like circumstances. Jones v. City of Chicago, C.A.7 Ill., 787 F.2d 200, 204. See also Custom and usage.

**Custom and usage.** A usage or practice of the people, which, by common adoption and acquiescence, and by long and unvarying habit, has become compulsory, and has acquired the force of a law with respect to the place or subject-matter to which it relates. It results from a long series of actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence,

acquired the force of a tacit and common consent. Louisville & N. R. Co. v. Reverman, 243 Ky. 702, 49 S.W.2d 558, 560. An habitual or customary practice, more or less widespread, which prevails within a geographical or sociological area; usage is a course of conduct based on a series of actual occurrences. Corbin-Dykes Elec. Co. v. Burr, 18 Ariz.App. 101, 500 P.2d 632, 634.

Parol evidence rule does not bar evidence of custom or usage to explain or supplement a contract or memorandum of the parties. U.C.C. § 2-203.

*Classification.* Customs are general, local or particular. *General* customs are such as prevail throughout a country and become the law of that country, and their existence is to be determined by the court. Or as applied to usages of trade and business, a general custom is one that is followed in all cases by all persons in the same business in the same territory, and which has been so long established that persons sought to be charged thereby, and all others living in the vicinity, may be presumed to have known of it and to have acted upon it as they had occasion. *Local* customs are such as prevail only in some particular district or locality, or in some city, county, or town. *Particular* customs are nearly the same, being such as affect only the inhabitants of some particular district.

*Usage distinguished.* "Usage" is a repetition of acts, and differs from "custom" in that the latter is the law or general rule which arises from such repetition; while there may be usage without custom, there cannot be a custom without a usage accompanying or preceding it. U. S. for Use of E & R Const. Co., Inc. v. Guy H. James Const. Co., D.C.Tenn., 390 F.Supp. 1193, 1209. See also Usage.

**Customarily.** Means usually, habitually, according to the customs; general practice or usual order of things; regularly. Fuller Brush Co. v. Industrial Commission of Utah, 99 Utah 97, 104 P.2d 201, 203.

**Customary.** According to custom or usage; founded on, or growing out of, or dependent on, a custom (*q.v.*); ordinary; usual; common.

**Customary court-baron.** See Court-baron.

**Customary dispatch.** Due diligence according to lawful, reasonable and well-known custom of port or ports involved. Context and conditions existing or contemplated will, of course, affect the meaning of the phrase. Taisho Kaiun Kabushiki Kaisha v. Gano Moore Co., D.C.Del., 14 F.2d 985, 986.

**Customary estates.** Estates which owe their origin and existence to the custom of the manor in which they are held. 2 Bl.Comm. 149.

**Customary freehold.** In old English law, a variety of copyhold estate, the evidences of the title to which are to be found upon the court rolls; the entries declaring the holding to be according to the custom of the manor, but it is not said to be at the will of the lord. The incidents are similar to those of common or pure copyhold.



**Customary interpretation.** See Interpretation.

**Customary services.** Such as are due by ancient custom or prescription only.

**Customary tenants.** Tenants holding by custom of the manor.

**Custom duties.** See Customs duties.

**Customer.** One who regularly or repeatedly makes purchases of, or has business dealings with, a tradesman or business. *Aiken Mills v. United States*, D.C.S.C., 53 F.Supp. 524, 526; *Arkwright Corporation v. United States*, D.C.Mass., 53 F.Supp. 359, 361. Ordinarily, one who has had repeated business dealings with another. A buyer, purchaser, consumer or patron.

In banking, any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank. U.C.C. § 4-104(e). As to letters of credit, a buyer or other person who causes an issuer to issue credit or a bank which procures issuance or confirmation on behalf of that bank's customer. U.C.C. § 5-103(g).

**Customers' goods.** This term as used in statement of claim on fire policy referring to merchandise destroyed as "customers' goods," in its ordinary sense, means goods belonging to insured's customers in his custody as a bailee for the purpose of his trade.

**Customers' man.** One who has duty to greet customers of broker, when they appear in office on business, to assist them in placing their orders, and generally to see that their wants are taken care of. *Fenner & Beane v. Lincoln*, Tex.Civ.App., 101 S.W.2d 305, 308. An employee of a brokerage house who solicits or processes orders from the investing public for the purchase and sale of commodities and securities to be executed upon various commodities and securities exchanges. Such persons also give investment advice to customers about the purchase and sale of securities. *Clothier v. Beane*, 187 Okl. 693, 105 P.2d 752, 756.

**Costume serra prise stricte** /kástə séhrə práyz(iy) strikt(iy)/. Custom shall be taken [is to be construed] strictly.

**Custom-house.** The house or office where commodities are entered for importation or exportation; where the duties, bounties, or drawbacks payable or receivable upon such importation or exportation are paid or received; and where ships are cleared out, etc. A public establishment for the inspection and assessment of duties on imported goods. See also Bureau of Customs; Customs broker; Customs Service.

**Custom-house broker.** One whose occupation it is, as an agent, to arrange entries and other custom-house papers, or transact business, at any port of entry, relating to the importation or exportation of goods, wares, or merchandise. A person authorized by the commissioners of customs to act for parties, at their option, in the entry or clearance of ships and the transaction of general business.

**Customs.** This term is usually applied to those taxes which are payable upon goods and merchandise imported or exported. *Pollock v. Farmer's Loan & Trust Co.*, 158 U.S. 601, 15 S.Ct. 912, 39 L.Ed. 1108. The duties, toll, tribute, or tariff payable upon merchandise exported or imported. Federal agency responsible for assessing imported goods collecting duties. See 19 U.S.C.A. See also Customs duties; Custom-house; Customs Service; Tariff.

**Customs and Patent Appeals Court.** This court was established in 1929 under Article III of the Constitution of the United States as successor to the United States Court of Customs Appeals. The Court was abolished by the Federal Courts Improvement Act of 1982. Matters formerly handled by this Court are now under the jurisdiction of the United States Court of Appeals for the Federal Circuit. See Courts of Appeals, U.S. See also Court of International Trade.

**Customs broker.** Licensed agent or broker whose function is to handle the process of clearing goods through customs.

**Customs Court.** A court created in 1890 as the Board of United States General Appraisers and given this name in 1926. The name of the Court was changed in 1980 to the Court of International Trade. See that Court.

**Customs duties.** Taxes on the importation and exportation of commodities, merchandise and other goods. The tariff or tax assessed upon merchandise, imported from, or exported to a foreign country. See 19 U.S.C.A.

Tax levied by federal government on goods shipped into U.S., though in other countries it may include export taxes as well. See also Customs; Tariff.

**Customs House.** See Custom-house; Customs Service.

**Customs Service.** The United States Customs Service collects the revenue from imports and enforces customs and related laws and also administers the Tariff Act of 1930, as amended, and other customs laws. Some of the responsibilities which the Customs Service is specifically charged with are as follows: properly assessing and collecting customs duties, excise taxes, fees, and penalties due on imported merchandise; interdicting and seizing contraband, including narcotics and illegal drugs; processing persons, carriers, cargo, and mail into and out of the United States; administering certain navigation laws; detecting and apprehending persons engaged in fraudulent practices designed to circumvent customs and related laws; protecting American business and labor by enforcing statutes and regulations such as the Anti-dumping Act; countervailing duty; copyright, patent, and trademark provisions; quotas; and marking requirements for imported merchandise. See also Bureau of Customs; Custom-house.

**Custos** /kástəs/. Lat. A custodian, guard, keeper, or warden; a magistrate.

**Custos brevium** /kástəs bríyviyəm/. In England, the keeper of the writs. A principal clerk belonging to the courts of queen's bench and common pleas, whose office

it was to keep the writs returnable into those courts. The office was abolished by 1 Wm. IV, c. 5.

**Custos ferarum** /kástəs fəréram/. A gamekeeper.

**Custos horrei regii** /kástəs hóhriyay riyjiyay/. In old English law, protector of the royal granary. 2 Bl.Comm. 394.

**Custos maris** /kástəs mǎrás/. In old English law, warden of the sea. The title of a high naval officer among the Saxons and after the Conquest, corresponding with *admiral*.

**Custos morum** /kástəs mórəm/. The guardian of morals. The court of queen's bench has been so styled.

**Custos placitorum coronæ** /kástəs plǎsətórəm kǎrówniy/. In old English law, keeper of the pleas of the crown. Cowell supposes this office to have been the same with the *custos rotulorum*. But it seems rather to have been another name for "coroner."

**Custos rotulorum** /kástəs ròtyəlórəm/. Keeper of the rolls. An officer in England who had the custody of the rolls or records of the sessions of the peace, and also of the commission of the peace itself. He was always a justice of the quorum in the county where appointed and was the principal civil officer in the county. 1 Bl.Comm. 349; 4 Bl.Comm. 272.

**Custos spiritualium** /kástəs spirǎtyuwéyliyam/. In English ecclesiastical law, keeper of the spiritualities. He who exercised the spiritual jurisdiction of a diocese during the vacancy of the see.

**Custos statum hæredis in custodia existentis meliorem, non deteriorem, facere potest** /kástəs stéytəm hǎriydəs in kástówdiyə ěgzǎsténtəs miyliyórəm, nǎn dǎtiriyórəm, féysǎriy pówtǎst/. A guardian can make the estate of an existing heir under his guardianship better, not worse.

**Custos temporalium** /kástəs tǎmpǎréyliyam/. In English ecclesiastical law, the person to whom a vacant see or abbey was given by the king, as supreme lord. His office was, as steward of the goods and profits, to give an account to the escheator, who did the like to the exchequer.

**Custos terræ** /kástəs téhriy/. In old English law, guardian, warden, or keeper of the land.

**Custuma antiqua sive magna** /kástyǎmə ǎntáykwǎ sáyviy mǎgnǎ/. (Lat. Ancient or great duties.) In old English law, the duties on wool, sheepskin, or wool-pelts and leather exported were so called, and were payable by every merchant, stranger as well as native, with the exception that merchant strangers paid one-half as much again as natives. 1 Bl.Comm. 314.

**Custuma parva et nova** /kástyǎmə párvǎ ět nówvǎ/. (Small and new customs.) Imposts of 3d. in the pound, due formerly in England from merchant strangers only, for all commodities, as well imported as exported. This was usually called the "aliens duty," and was first granted in 31 Edw. I. 1 Bl.Comm. 314.

**Cut**. To penetrate, separate or lacerate as with a sharp instrument. To shorten or reduce in content, time or amount. To divide into parts or segments. One's share of something.

**Cuth, couth** /kúwθ/. Sax. Known, knowing. *Uncuth*, unknown. See *Couthutlaugh*; *Uncuth*.

**Cuthred** /kǎθrǎd/. A knowing or skillful counsellor.

**Cut-over land**. Land which has been logged; from which desired timber has been removed.

**Cutpurse** /kǎtpǎrs/. One who steals by the method of cutting purses; a common practice in old England when men wore their purses at their girdles, as was once the custom.

**Cutter of the tallies** /kǎtǎr ǎv ðǎ tǎliyz/. In old English law, an officer in the exchequer, to whom it belonged to provide wood for the tallies, and to cut the sum paid upon them, etc.

**CWA**. See Clean Water Acts.

**CWAS**. Contractor Weighted Average Share In Cost Risk.

**Cwt**. A hundred-weight.

**Cy** /siy/. In law French, here. (*Cy-apres* /siyǎpréy/, hereafter; *cy-devant* /siy dǎvón/, heretofore.) Also as, so.

**Cycle**. A measure of time; a space in which the same revolutions begin again; a periodical space of time.

**Cyne-bot** /kinǎbòwt/, or **cyne-gild** /kinǎgild/. In feudal law, the portion belonging to the nation of the mulct for slaying the king, the other portion or *were* being due to his family.

**Cynebote** /kinǎbòwt/. A mulct anciently paid by one who killed another, to the kindred of the deceased.

**Cyphonism** /sáyfǎnizǎm/. That kind of punishment used by the ancients, and later by the Chinese, called by Staunton the "wooden collar," by which the neck of the malefactor is bent or weighed down.

**Cy-pres** /siypréy/. As near as (possible). The rule of *cy-pres* is a rule for the construction of instruments in equity, by which the intention of the party is carried out as near as may be, when it would be impossible or illegal to give it literal effect. Thus, where a testator attempts to create a perpetuity, the court will endeavor, instead of making the devise entirely void, to explain the will in such a way as to carry out the testator's general intention as far as the rule against perpetuities will allow. So in the case of bequests to charitable uses; and particularly where the language used is so vague or uncertain that the testator's design must be sought by construction.

Equitable power which makes it possible for court to carry out testamentary trust established for particular charitable purpose if testator has expressed general charitable intent, and for some reason his purpose cannot be accomplished in manner specified in the will. In re Gatlin's Estate, 16 C.A.3d 644, 94 Cal.Rptr. 295, 296.

**Cyricbryce** /chár(ə)chbriych/. A breaking into a church.

**Cyricsceat** /chár(ə)chshiyt/. (From *cyric*, church, and *sceat*, a tribute). In Saxon law, a tribute or payment due to the church.

**Cyrographarius** /sáyrəgrəfériyəs/. In old English law, a cyrographer; an officer of the *bancus*, or court of common bench.

**Cyrographum** /sayrógrəfəm/. A chirograph.

**Czar** /zár/(t)sár/. (Also written *zar*, *tsar*, *tzar*, etc.) The title of the former emperors of Russia, derived from the old Slavonic *cesar*, king or emperor, which, although long held to be derived from the Roman title *Caesar*, is almost certainly of Tartar origin. The Slavonic word ultimately represents the Latin *Caesar*, but came through the medium of a Germanic language in which the word had the general sense "emperor."

In the beginning of the 10th century the Bulgarian prince Symeon assumed this title, which remained attached to the Bulgarian crown. In 1346 it was adopted by Stephen Duschan, king of Serbia. Among the Russians the Byzantine emperors were so called, as were also the khans of the Mongols that ruled in Russia. Ivan III, grand prince of Moscow, held the title, and Ivan IV, the Terrible, in 1547, caused himself to be crowned as czar. In 1721 the Senate and clergy conferred on Peter I, in the name of the nation, the title Emperor of Russia, for which in Russia the Latin word *imperator* is used. Peter the Great introduced the title *imperator*, "emperor," and the official style then became "Emperor of all the Russias, Tsar of Poland, and Grand Duke of Finland"; but the Russian popular appellation continued to be *tsar* (the preferable modern spelling). The last tsar was Nicholas II, who abdicated on March 15, 1917, and was later executed.