

# R

**R.** In the signatures of royal persons, "R." is an abbreviation for "*rex*" (king) or "*regina*" (queen). In descriptions of land, according to the divisions of the governmental survey, it stands for "range." *Simms v. Rolfe*, 177 Ark. 52, 5 S.W.2d 718, 719.

**Rabbinical divorce.** Divorce granted under authority of rabbis.

**Race.** An ethnical stock; a great division of mankind having in common certain distinguishing physical peculiarities constituting a comprehensive class appearing to be derived from a distinct primitive source. A tribal or national stock; a division or subdivision of one of the great racial stocks of mankind distinguished by minor peculiarities.

**Race-notice recording statutes.** State laws which provide that an unrecorded conveyance is invalid as against a subsequent purchaser for value who records without knowledge of the prior unrecorded instrument. The recording of the later instrument, however, must generally be in the chain of title. Such laws combine the features of both notice and race statute. *See also* Pure race statute; Recording acts.

**Race recording statutes.** In a state with a race recording statute, the party who records an instrument of conveyance has the better claim regardless of notice of prior unrecorded instruments. *See* Pure race statutes; Recording acts.

**Rachat** /ràshá/. In French law, the right of repurchase which, in English and American law, the vendor may reserve to himself. It is also called "*réméré*."

**Rachater** /ràshatáy/. L. Fr. To redeem; to repurchase, (or buy back).

**Rack.** An engine of torture anciently used in the inquisitorial method of examining persons charged with crime, the office of which was to break the limbs or dislocate the joints.

**Racket.** Engaging in an operation to make money illegitimately, implying continuity of behavior.

**Racketeer.** A person who makes money by violations of racketeering laws.

**Racketeer Influenced and Corrupt Organizations Act.** *See* RICO laws.

**Racketeering.** An organized conspiracy to commit the crimes of extortion or coercion, or attempts to commit extortion or coercion. From the standpoint of extortion, it is the obtaining of money or property from another,

without his consent, induced by the wrongful use of force or fear. The fear which constitutes the legally necessary element in extortion is induced by oral or written threats to do an unlawful injury to the property of the threatened person by means of explosives, fire, or otherwise; or to kill, kidnap, or injure him or a relative of his or some member of his family. *See* Extortion.

Activities of organized criminals who extort money from legitimate businesses by violence or other forms of threats or intimidation or conduct of illegal enterprises such as gambling, narcotics traffic, or prostitution. *See* 18 U.S.C.A. § 1961(1) ("racketeering activity" defined).

Racketeering is demanding, soliciting or receiving anything of value from the owner, proprietor, or other person having a financial interest in a business, by means of either a threat, express or implied, or a promise, express or implied, that the person so demanding, soliciting or receiving such thing of value will: (a) Cause the competition of the person from whom the payment is demanded, solicited or received to be diminished or eliminated; or (b) Cause the price of goods or services purchased or sold in the business to be increased, decreased or maintained at a stated level; or (c) Protect the property used in the business or the person or family of the owner, proprietor or other interested person from injury by violence or other unlawful means.

For federal racketeering offenses, *see* 18 U.S.C.A. §§ 1951 et seq; 1961 et seq.

*See also* Extortion; Hobbs Act; RICO laws.

**Rack-rent.** A rent of the full value of the tenement, or near it. Exorbitant rent which equals or exceeds the economic value of the property.

**Raffle.** A form of lottery in which each participant buys a ticket for an article put up as a prize with the winner being determined by random drawing. *Williams v. Weber Mesa Ditch Extension Co., Inc.*, Wyo., 572 P.2d 412, 414. *See also* Lottery.

**Raider.** An individual or corporation who attempts to take control of a target corporation by buying a controlling interest in its stock and installing new management. Raiders who accumulate 5% or more of the outstanding shares in the target company must publicly report their purchases under the *Williams Act*, § 14(e), 15 U.S.C.A. § 78n(e). *See also* Takeover.

**Raiding.** Practice whereby voters in sympathy with one party designate themselves as voters of another party so as to influence or determine results of other party's

**primary.** Republican Party of State of Conn. v. Tashjian, C.A.Conn., 770 F.2d 265, 284.

**Railroad.** With respect to the process of enacting laws, means to force through legislation with little debate over the objection of a minority.

**Railway Labor Act.** An act of Congress (1962) designed to secure the prompt settlement of disputes between interstate railroad companies and their employees. A 1934 amendment created the National Mediation Board. 45 U.S.C.A. § 151 et seq.

**Raise.** To create; to infer; to create or bring to light by construction or interpretation. To cause or procure to be produced, bred or propagated. To bring together; to get together or obtain for use or service; to gather; to collect; to levy, as to raise money by levying taxes; to increase income by increasing salary, wages, or commissions. To solicit, secure or otherwise obtain funds for a given purpose, organization, charity, etc.

To alter the amount of an instrument such as a negotiable instrument by changing the face value to a higher amount. *See also* Raised check; Rasure.

**Raise an issue.** To bring pleadings to an issue; to have the effect of producing an issue between the parties pleading in an action.

**Raise a presumption.** To give occasion or ground for a presumption; to be of such a character, or to be attended with such circumstances, as to justify an inference or presumption of law. Thus, a person's silence, in some instances, will "raise a presumption" of his consent to what is done. *See also* Presumption.

**Raised check.** A demand negotiable instrument, the face amount of which has been increased, generally without authority of the drawer and hence fraudulently. Such change constitutes a material alteration under U.C.C. § 3-407(1)(c). *See also* Rasure.

**Raise revenue.** To levy a tax, as a means of collecting revenue; to bring together, collect, or levy revenue.

**Raising a promise.** The act of the law in extracting from the facts and circumstances of a particular transaction a promise which was implicit therein, and postulating it as a ground of legal liability.

**Raising a use.** Creating, establishing, or calling into existence a use. Thus, if a man conveyed land to another in fee, without any consideration, equity would presume that he meant it to be to the use of himself, and would, therefore, raise an implied use for his benefit.

**Raising portions.** In old English law, when a landed estate was settled on an eldest son, it was generally burdened with the payment of specific sums of money in favor of his brothers and sisters. A direction to this effect was called a direction for "raising portions for younger children;" and, for this purpose, it was usual to demise or lease the estate to the required portions by a sale or mortgage of the same.

**Rake-off.** Share of profits of transaction or business, demanded, paid, or otherwise taken illegally. Illegal pay-off or bribe, or skimming of profits.

**Ran. Sax.** In Saxon and old English law, open theft, or robbery.

**Rancho /rānchow/. Sp.** A small collection of men or their dwellings; a hamlet. As used, however, in Mexico and in the Spanish law formerly prevailing in California, the term signifies a ranch or large tract of land suitable for grazing purposes where horses or cattle are raised, and is distinguished from *hacienda*, a cultivated farm or plantation.

**Range, v.** To have or extend in certain direction, to correspond in direction or line, or to trend or run.

**Range, n.** In the government survey of the United States, one of the divisions of a state, consisting of a row or tier of townships as they appear on the map. A division of a state in the government survey, being a six mile wide row of townships, running North and South, and used in legal descriptions.

A tract or district of land within which domestic animals in large numbers range for subsistence; an extensive grazing ground. The term is used on the great plains of the United States to designate a tract commonly of many square miles occupied by one or different proprietors and distinctively called a cattle range, stock range, or sheep range. The animals on a range are usually left to take care of themselves during the whole year without shelter, except when periodically gathered in a round-up for counting and selection, and for branding, when the herds of several proprietors run together.

**Ranger.** In old English law, a sworn officer of the forest, whose office chiefly consisted in three points: To walk daily through his charge to see, hear, and inquire as well of trespasses as trespassers in his bailiwick; to drive the beasts of the forest, both of venery and chase, out of the deafforested into the forested lands; and to present all trespassers of the forest at the next courts holden for the forest.

Person responsible for maintaining and patrolling forests. Member of police force in Texas.

**Rank, n.** Position in society. Grade of quality or value. Grade of official standing. The order or place in which certain officers are placed in the army and navy, in relation to others. *Rank* is often used to express something different from *office*. It then becomes a designation or title of honor, dignity, or distinction conferred upon an officer in order to fix his relative position in reference to other officers in matters of privilege, precedence, and sometimes of command, or by which to determine his pay and emoluments. This is the case with the staff officers of the army. Wood v. U. S., 15 Ct.Cl. 151, 159.

**Rank, adj.** Excessive; too large in amount. Indecent. Absolute; complete.

**Ranking of creditors.** *See* Preference; Priority.

**Ransom.** The money, price, or consideration paid or demanded for redemption of a kidnapped person or persons; a payment that releases from captivity. Whoever knowingly receives, possesses, or disposes of such commits a crime. 18 U.S.C.A. § 1202; Model Penal Code § 212.1(a). *See* Kidnapping.

In international law, the redemption of captured property from the hands of an enemy, particularly of property captured at sea. A sum paid or agreed to be paid for the redemption of captured property.

In old English law, a sum of money paid for the pardoning of some great offense. The distinction between ransom and amerciamento is said to be that ransom was the redemption of a corporal punishment, while amerciamento was a fine or penalty directly imposed, and not in lieu of another punishment. 4 Bl.Comm. 380. A sum of money paid for the redemption of a person from captivity or imprisonment. Thus one of the feudal "aids" was to ransom the lord's person if taken prisoner. 2 Bl.Comm. 63.

**Ransom bill.** A contract by which a captured vessel, in consideration of her release and of safe-conduct for a stipulated course and time, agrees to pay a certain sum as ransom.

**Rap.** Slang for criminal conviction.

**Rape.** Unlawful sexual intercourse with a female without her consent. The unlawful carnal knowledge of a woman by a man forcibly and against her will. The act of sexual intercourse committed by a man with a woman not his wife and without her consent, committed when the woman's resistance is overcome by force or fear, or under other prohibitive conditions. *State v. Lora*, 213 Kan. 184, 515 P.2d 1086, 1093.

A male who has sexual intercourse with a female not his wife is guilty of rape if: (a) he compels her to submit by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone; or (b) he has substantially impaired her power to appraise or control her conduct by administering or employing without her knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or (c) the female is unconscious; or (d) the female is less than 10 years old. Model Penal Code, § 213.1.

Under some statutes, crime embraces unnatural as well as natural sexual intercourse; *e.g.* M.G.L.A. (Mass.) c. 277, § 39; and, may include intercourse between two males.

*See also* Assault with intent to commit rape; Carnal abuse; Carnal knowledge; Fresh complaint rule.

**Statutory rape.** Modern statutes, which often materially change the common-law definition, create an offense commonly known as "statutory rape," where the offense consists in having sexual intercourse with a female or male under statutory age. The offense may be either with or without the victim's consent; and mistake as to the victim's age is usually no defense. *See also* Statutory rape.

In old English law, an intermediate division between a shire and a hundred; or a division of a county, containing several hundreds. Apparently peculiar to the county of Sussex.

**Rape of the forest.** In old English law, trespass committed in a forest by violence.

**Rape-reeve.** In old English law, the chief officer of a rape (*q.v.*).

**Rape shield law.** *See* Shield laws.

**Rapine** /réypayn/. The felonious taking of another man's personal property, openly and by violence, against his will.

In the civil law, *rapina* is defined as the forcible and violent taking of another man's movable property with the criminal intent to appropriate it to the robber's own use. A praetorian action lay for this offense, in which quadruple damages were recoverable.

**Rapport à succession.** In French law and in Louisiana, a proceeding similar to hotchpot; the restoration to the succession of such property as the heir may have received by way of advancement from the decedent, in order that an even division may be made among all the co-heirs.

**Raptor** /ræptər/. In old English law, a ravisher.

**Raptu hæredis** /ræpt(y)uw hæriydəs/. In old English law, a writ for taking away an heir holding in socage, of which there were two sorts: One when the heir was married; the other when he was not.

**Rapuit** /ræp(y)uwət/. Lat. In old English law, ravished. A technical word in old indictments.

**RAR.** A revenue agent's report which reflects any adjustments made by the agent as a result of an audit of the taxpayer. The RAR is mailed to the taxpayer along with the 30-day letter which outlines the appellate procedures available to the taxpayer.

**Rasure** /réyzhər/. The act of scraping, scratching, or shaving the surface of a written instrument, for the purpose of removing certain letters or words from it. It is to be distinguished from "obliteration," as the latter word properly denotes the crossing out of a word or letter by drawing a line through it with ink. But the two expressions are often used interchangeably. *See also* Raise; Raised check.

**Rasus** /réysəs/. In old English law, a rase; a measure of onions, containing twenty flones, and each flon is twenty-five heads.

**Ratable.** Proportional; proportionately rated upon a constant ratio adjusted to due relation. According to a measure which fixes proportions. It has no meaning unless referable to some rule or standard, and never means equality or equal division but implies unequal division as between different persons. *Chenoweth v. Nordan & Morris*, Tex.Civ.App., 171 S.W.2d 386, 387.

**Ratable estate or property.** Property in its quality and nature capable of being rated, *i.e.* appraised, assessed.

Taxable estate; the real and personal property which the legislature designates as "taxable."

**Ratam rem habere** /réytəm rém hóbíry/. Lat. In the civil law, to hold a thing ratified; to ratify or confirm it.

**Rate.** Proportional or relative value, measure, or degree. The proportion or standard by which quantity or value is adjusted. Thus, the *rate* of interest is the proportion or ratio between the principal and interest; the buildings in a town are *rated* for insurance purposes; *i.e.*, classified and individually estimated with reference to their insurable qualities. In this sense also we speak of articles as being in "first-rate" or "second-rate" condition.

Amount of charge or payment with reference to some basis of calculation. A certain quantity or amount of one thing considered in relation to another thing and used as standard or measure. *George A. Koteen Associates, Inc. v. Fulton Cotton Mills, Inc.*, D.C.N.Y., 307 F.Supp. 1396, 1399.

A fixed relation of quantity, amount or degree; also, a charge, valuation, payment or price fixed according to ratio, scale or standard; comparative price or amount of demands. *E. C. Miller Cedar Lumber Co. v. United States, Cust. & Pat.App.*, 86 F.2d 429, 434. Cost per unit of a commodity or service.

In connection with public utilities, a charge to the public for a service open to all and upon the same terms. The unit cost of a service supplied to the public by a utility. When used in connection with public utilities, such as a telephone company, generally means price stated or fixed for some commodity or service of general need or utility supplied to the public measured by specific unit or standard. *Bird v. Chesapeake & Potomac Tel. Co.*, D.C.Mun.App., 185 A.2d 917, 918.

As used in the interstate commerce law, it means the net cost to the shipper of the transportation of his property; that is to say, the net amount the carrier receives from the shipper and retains. *Great Northern Ry. Co. v. Armour & Co.*, D.C.Ill., 26 F.Supp. 964, 967.

*See also* Commodity rate; Confiscatory rates; Discount rate; Flat rate; Freight rate; Interest rate; Joint through rate; Meter rate; Prime interest rate.

**Class rate.** A single rate applying to the transportation of a number of articles of the same general character.

**Commodity rate.** A rate which applies to the transportation of a specific commodity alone.

**Joint rate.** A single rate applied jointly by two carriers to cover shipment in which one carrier operates over only part of route and other carrier serves remaining distance to destination. *U.S. v. Southern Motor Carriers Rate Conference, Inc.*, C.A.Ga., 672 F.2d 469, 475.

**Rate base.** The amount of investment on which a regulated public utility is entitled to an opportunity to earn a fair and reasonable return. It represents the total investment in or fair value of the used and useful property which it necessarily devotes to rendering the regulated services. *Southern Bell Tel. & Tel. Co. v.*

*Public Service Commission*, 270 S.C. 590, 244 S.E.2d 278, 283. *See also* Rate of return, below.

**Rate of exchange.** In commercial law, the actual price at which a bill, drawn in one country upon another country, can be bought or obtained in the former country at any given time. Also, the price at which the money of one country may be exchanged for money of another country (*e.g.* dollars for marks).

**Rate of interest.** The charge imposed by a lender of money for the use of the money; the borrowing charge.

**Discount rate.** Rate charged to member banks by Federal Reserve Board for borrowing money from Federal Reserve.

**Legal rate.** The statutory maximum rate of interest which may be charged for loans. *See also* Usury.

**Prime rate.** The rate of interest charged for high quality commercial loans (*i.e.* rate charged by bank to its most credit worthy customers) which is pegged to the discount rate established by the Federal Reserve Board. This rate tends to establish the rate of interest charged for various types of personal and commercial loans.

**Rate cap.** Provision in loan agreement restricting interest rate increases. For example, in an adjustable rate mortgage (ARM), a clause which limits interest rate increases, on either an annual or a lifetime basis.

**Rate of return.** The annual return on an investment, generally referred to in terms of a percentage of the investment. The percentage by which the rate base is multiplied to provide a figure that allows a utility to collect revenues sufficient to pay operating expenses and attract investment. *Providence Gas Co. v. Burman*, 119 R.I., 78, 376 A.2d 687, 695. In the case of common stock, is the annual dividend yield as a percentage of the purchase price. *See also* Dividend yield; Fair return on investment; Yield.

**Rate tariff.** Statement by carrier to possible shippers that it will furnish certain services under certain conditions for certain price. *Union Wire Rope Corporation v. Atchison T. & S. F. Ry. Co.*, C.C.A.Mo., 66 F.2d 965, 966. *See* Tariff.

**Ratification.** In a broad sense, the confirmation of a previous act done either by the party himself or by another; as, confirmation of a voidable act. The affirmation by a person of a prior act which did not bind him, but which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by him. *Askew v. Joachim Memorial Home*, N.D., 234 N.W.2d 226, 237. The adoption by one, as binding upon himself, of an act done in such relations that he may claim it as done for his benefit, although done under such circumstances as would not bind him except for his subsequent assent. It is equivalent to a previous authorization and relates back to time when act ratified was done, except where intervening rights of third persons are concerned.

In contract law, the act of adopting or confirming a previous act which without ratification would not be an

enforceable contractual obligation, or confirming an obligation by one without the authority to make or do (or who was incompetent at the time the contract was made). The act of ratification causes the obligation to be binding as if such was valid and enforceable in the first instance.

Approval, as by legislatures or conventions, of a constitutional amendment proposed by two-thirds of both houses of Congress. Approval by the electorate of a proposed State constitutional amendment.

In the law of principal and agent, the adoption and confirmation by one person with knowledge of all material facts, of an act or contract performed or entered into in his behalf by another who at the time assumed without authority to act as his agent. Essence of "ratification" by principal of act of agent is manifestation of mental determination by principal to affirm the act, and this may be manifested by written word or by spoken word or by conduct, or may be inferred from known circumstances and principal's acts in relation thereto.

*Express* ratifications are those made in express and direct terms of assent. *Implied* ratifications are such as the law presumes from the acts of the principal.

Estoppel and ratification distinguished, *see* Estoppel. *See also* Acknowledgment; Approval; Confirmation.

**Ratify.** To approve and sanction; to make valid; to confirm; to give sanction to. To authorize or otherwise approve, retroactively, an agreement or conduct either expressly or by implication. *See* Approval; Confirm; Ratification.

**Ratihabitio** /rætəhəbɪʃ(i)əw/. Lat. Confirmation, agreement, consent, approbation of a contract.

**Ratihabitio mandato æquiparatur** /rætəhəbɪʃ(i)əw mændéytəw ékwəpəréytər/. Ratification is equivalent to express command.

**Rating.** *See* Credit rating.

**Ratio.** Rate; proportion; degree. Reason, or understanding. Also a cause, or giving judgment therein. The number resulting when one number is divided by another.

**Ratio decidendi** /réysh(i)əw désédénday/. The ground or reason of decision. The point in a case which determines the judgment.

**Ratio est formalis causa consuetudinis** /réysh(i)əw ést forméyləs kózə kónswət(y)úwdənəs/. Reason is the formal cause of custom.

**Ratio est legis anima; mutata legis ratione mutatur et lex** /réysh(i)əw ést líjəs ənəmə; myuwtéytə líjəs rəshiyówniy myuwtéytə èt léks/. Reason is the soul of law; the reason of law being changed the law is also changed.

**Ratio est radius divini luminis** /réysh(i)əw ést réyd(i)yəs dəváyney l(y)úwmənəs/. Reason is a ray of the divine light.

**Ratio et auctoritas, duo clarissima mundi lumina** /réysh(i)əw èt októretəs, d(y)úwow klərisəmə ménday

l(y)úwmənəs/. Reason and authority, the two brightest lights of the world.

**Ratio in jure æquitas integra** /réysh(i)əw in júriy ékwətəs íntəgrə/. Reason in law is perfect equity.

**Ratio legis** /réysh(i)əw líjəs/. The reason or occasion of a law; the occasion of making a law.

**Ratio legis est anima legis** /réysh(i)əw líjəs ést ənəmə líjəs/. The reason of law is the soul of law.

**Rationabile estoverium** /rəshənéybəliy éstəvíriyəm/. A Latin phrase equivalent to "alimony."

**Rationabili parte bonorum** /rəshənéybəliy pártiy bənórəm/. A writ that lay for the wife against the executors of her husband, to have the third part of his goods after his just debts and funeral expenses had been paid.

**Rational basis test.** Under this test, an appellate court will not second-guess the legislature as to the wisdom or rationality of a particular statute if there is a rational basis for its enactment, and if the challenged law bears a reasonable relationship to the attainment of some legitimate governmental objective. The same test may be applied when a court is reviewing a decision of an administrative body because of the expertise of such body. It has been said that the protection of the public from unwise or improvident statutes is to be found at the voting polls or by referendum, not in court. *Munn v. Illinois*, 94 U.S. 113, 134, 24 L.Ed. 77. This test does not apply, of course, if the statute or decision is unconstitutional.

As a standard of review for statutory enactments challenged on equal protection grounds, this test requires that classifications created by a state must be reasonable, not arbitrary, and must rest on some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. *Aladdin's Castle, Inc. v. City of Mesquite, C.A.Tex.*, 630 F.2d 1029, 1039.

**Rational doubt.** A doubt based upon reasonable inferences such as are ordinarily drawn by ordinary men in the light of their experiences in ordinary life. *Hicks v. State*, 66 Ga.App. 577, 18 S.E.2d 637, 640. *See also* Reasonable doubt.

**Rationalibus divisio** /rəsh(i)ənéyləbəs dəváyzəs/. An abolished writ which lay where two lords, in divers towns, had seigniories adjoining for him who found his waste by little and little to have been encroached upon, against the other, who had encroached, thereby to rectify their bounds.

**Rational purpose test.** *See* Rational basis test.

**Ratione impotentia** /rəshiyówniy ímpəténshiyiy/. Lat. On account of inability. A ground of qualified property in some animals *feræ naturæ*; as in the young ones, while they are unable to fly or run.

**Ratione materia** /rəshiyówniy mətíriyiy/. Lat. By reason of the matter involved; in consequence of, or from the nature of, the subject-matter.

**Ratione personæ** /rəshiyówniy pərsówniy/. Lat. By reason of the person concerned; from the character of the person.

**Ratione privilegii** /rəshiyówniy privaliyjiyay/. Lat. This term describes a species of property in wild animals, which consists in the right which, by a peculiar franchise anciently granted by the English crown, by virtue of its prerogative, one man may have of killing and taking such animals on the land of another.

**Rationes** /rəshiyówniyz/. In old law, the pleadings in a suit. *Rationes exercere*, or *ad rationes stare*, to plead.

**Ratione soli** /rəshiyówniy sówlay/. Lat. On account of the soil; with reference to the soil. Said to be the ground of ownership in bees.

**Ratione tenuræ** /rəshiyówniy tényəriy/. L. Lat. By reason of tenure; as a consequence of tenure.

**Ratio non clauditur loco** /réysh(iy)ow nòn klódatər lówkow/. Reason is not confined to any place.

**Ratio potest allegari deficiente lege; sed ratio vera et legalis, et non apparens** /réysh(iy)ow pówtəst ələgéray dəfíshiyéntiy líyjiy, sèd réysh(iy)ow vírə èt ləgéyləs, èt nòn əpáranz/. Reason may be alleged when law is defective; but it must be true and legal reason, and not merely apparent.

**Rattening** /rát(ə)niŋ/. The offense on the part of members of a trade union, of causing the tools, clothes, or other property of a workman to be taken away or hidden, in order to compel him to join the union or cease working. It is, in England, an offense punishable by fine or imprisonment.

**Ravine**. A long, deep, and narrow hollow, worn by a stream or torrent of water; a long, deep, and narrow hollow or pass through the mountains.

**Ravish**. To have carnal knowledge of a woman by force and against her will; to rape. *State v. Harvey*, Mo. App., 544 S.W.2d 593, 595.

**Ravisher**. One who has carnal knowledge of a woman by force and against her consent. *Hart v. State*, 144 Tex.Cr.R. 161, 161 S.W.2d 791, 793.

**Ravishment**. See Rape; Ravish.

**Ravishment de gard** /rávəshmənt də gárd/. L. Fr. An abolished writ which lay for a guardian by knight's service or in socage, against a person who took from him the body of his ward.

**Ravishment of ward**. In old English law, the marriage of an infant ward without the consent of the guardian.

**Raw land**. Unimproved land.

**Raw materials**. Goods purchased for use in manufacturing a product; e.g. wood, steel.

**Raze** /réyz/. To erase.

**Razón** /raθówn/rasówn/. In Spanish law, cause (*causa*).

**RCRA**. Resource Conservation and Recovery Act. 42 U.S.C.A. § 6901 et seq.

**Re** /riy/. Lat. In the matter of; in the case of. A term of frequent use in designating judicial proceedings, in which there is only one party. Thus, "Re Vivian" signifies "In the matter of Vivian," or in "Vivian's Case."

**R.E.A.** Rural Electrification Administration.

**Reacquired stock**. See Treasury stock.

**Readjustment**. A voluntary reorganization of a corporation which is in financial difficulties by the stockholders themselves without the intervention of a receiver or a court appointed fiduciary.

**Ready**. Prepared for what one is about to do or experience; equipped or supplied with what is needed for some act or event; prepared for immediate movement or action. Fitted, arranged, or placed for immediate use; causing no delay for lack of being prepared or furnished.

**Ready and willing**. Implies capacity to act as well as disposition; e.g. ready, willing and able buyer.

**Reaffirmation**. In bankruptcy, refers to post-petition agreement to pay pre-petition obligations. Court approval is required.

**Reaffirmation agreement**. Agreement made prior to discharge in bankruptcy to pay certain debts that otherwise would be discharged through the bankruptcy proceeding. Such agreements are subject to certain requirements and limitations.

**Real**. In civil law, relating to a *thing* (whether movable or immovable), as distinguished from a person.

Relating to *land*, as distinguished from personal property. This term is applied to lands, tenements, and hereditaments.

As to *real* Action; Asset; Chattel; Contract; Covenant; Estate; Issue; Obligation; Party; Privilege; Property; Representative; Right; Security; Servitude; Statute, and Wrong, see those titles.

**Real authority**. Authority manifested by the principal to the agent either expressly or by implication.

**Real defenses**. Defenses to which a holder in due course is subject in enforcing an instrument, especially defenses listed in U.C.C. § 3-305(2).

**Real earnings**. Wages, salaries, and other earnings adjusted for inflation to determine actual changes in purchasing power over a given period.

**Real estate**. Land and anything permanently affixed to the land, such as buildings, fences, and those things attached to the buildings, such as light fixtures, plumbing and heating fixtures, or other such items which would be personal property if not attached. The term is generally synonymous with real property. See also Property (*Real property*).

**Real estate broker**. See Broker.

**Real estate investment trust (REIT)**. Financial device in which investors purchase shares in a trust the res of which is invested in real estate ventures. A company that invests in and manages a portfolio of real estate

with the majority of its income distributed to the shareholders. A closed-end mutual fund that invests in real estate or mortgages. *See also* Trust; Massachusetts trust.

**Real estate listing.** *See* Listing.

**Real Estate Settlement Procedures Act.** *See* RESPA.

**Real estate syndicate.** A loose aggregation of persons who invest in real estate for common profits and gains. *Kilbourn v. Thompson*, 103 U.S. 168, 26 L.Ed. 377.

**Real evidence.** Evidence furnished by things themselves, on view or inspection, as distinguished from a description of them by the mouth of a witness; *e.g.*, the physical appearance of a person when exhibited to the jury, marks, scars, wounds, fingerprints, etc.; also, the weapons or implements used in the commission of a crime, and other inanimate objects, and evidence of the physical appearance of a place (the scene of an accident or of the commission of a crime or of property to be taken under condemnation proceedings) as obtained by a jury when they are taken to view it. That type of evidence which is provided by producing for inspection at trial a particular item rather than having witnesses describe it. *State v. Barfield*, 298 N.C. 306, 259 S.E.2d 510, 533. *See also* Demonstrative evidence.

**Realignment.** The process by which the court, for determining diversity jurisdiction, realigns the parties as plaintiffs and defendants according to the ultimate interest of each.

**Real income.** A measure of the real purchasing power of nominal income; real income is nominal income adjusted for changes in the general price level, or income corrected for inflation or deflation. *See also* Real earnings.

**Real injury.** In the civil law, an injury arising from an unlawful act, as distinguished from a verbal injury, which was done by words. *See* Injury.

**Realize.** To convert any kind of property into money; but especially to receive the returns from an investment.

**Realized.** Term, in tax law, means received, paid, debted or incurred, in accordance with method of accounting authorized for use by taxpayer. *Altsuler v. Peters*, 190 Neb. 113, 206 N.W.2d 570, 577.

**Realized gain or loss.** Gain (or loss) resulting from an identifiable event, such as a sale or an exchange of property. The amount of realized gain from the sale or other disposition of property is the excess of the amount realized over the adjusted basis of the property; the amount of realized loss is the excess of the property's adjusted basis over the amount realized. I.R.C. § 1001. *See also* Recognized gain or loss.

**Real law.** Real estate law. The body of laws relating to real property. This use of the term is popular rather than technical.

In the civil law, a law which relates to specific property, whether movable or immovable.

**Realm /rélm/. A kingdom; a country.**

**Real money.** Money which has real metallic, intrinsic value as distinguished from paper currency, checks and drafts.

**Real party in interest.** Person who will be entitled to benefits of action if successful, that is, the one who is actually and substantially interested in subject matter as distinguished from one who has only a nominal, formal, or technical interest in or connection with it. *Maryland Cas. Co. v. King*, Okl., 381 P.2d 153, 156. Under the traditional test, a party is a "real party in interest" if it has the legal right under the applicable substantive law to enforce the claim in question. *White Hall Bldg. Corp. v. Profexray Division of Litton Industries, Inc.*, D.C.Pa., 387 F.Supp. 1202, 1204. Real party in interest within rule that every civil action in federal courts must be prosecuted in name of real party in interest is the one, who, under applicable substantive law, has legal right to bring suit, *Boeing Airplane Co. v. Perry*, C.A.Kan., 322 F.2d 589, 591; and not necessarily person who will ultimately benefit from the recovery. *First Nat. Bank of Chicago v. Mottola*, D.C.Ill., 302 F.Supp. 785, 791, 792. *See* Fed.R.Civil P. 17.

Under Fed.R.Civil P. 17(a), a guardian, executor, bailee, and the like, may sue in his own name without joining the party for whom the action is brought.

*See also* Parties.

**Real property.** *See* Property (*Real property*).

**Real things (or things real).** In common law, such things as are permanent, fixed, and immovable, which cannot be carried out of their place; as lands and tenements. Things substantial and immovable, and the rights and profits annexed to or issuing out of them. *See also* Real estate.

**Realtor.** "Realtor" is a federally registered collective membership mark owned by the National Association of Realtors and properly used only in reference to members of the association.

**Realty.** A brief term for real property or real estate; also for anything which partakes of the nature of real property. *See* Property (*Real property*).

**Reapportionment.** A realignment or change in legislative districts brought about by changes in population and mandated by the constitutional requirement of equality of representation (*i.e.* one person, one vote mandate). A new apportionment of seats in the House of Representatives among States "according to their respective numbers", is required by Art. 1, § 2 of the U.S. Constitution after every decennial census. *See* *Westberry v. Sanders*, 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481. A similar requirement as to State legislative seats is found in many State constitutions. *See* Census.

A state statute which violates the rights of persons to vote on a one man-one vote apportionment is contrary to the equal protection clause of the 14th Amend., U.S. Const. *Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663.

**Reappraiser.** A person who, in certain cases, is appointed to make a revaluation or second appraisal of imported goods at the customhouse.

**Reargument.** Purpose of reargument is to demonstrate to court that there is some decision or principle of law which would have a controlling effect and which has been overlooked, or that there has been a misapprehension of facts. In re Hooker's Estate, 173 Misc. 515, 18 N.Y.S.2d 107, 110. See also Rehearing; Retrial.

**Reason.** A faculty of the mind by which it distinguishes truth from falsehood, good from evil, and which enables the possessor to deduce inferences from facts or from propositions. Also an inducement, motive, or ground for action, as in the phrase "reasons for an appeal."

**Reasonable.** Fair, proper, just, moderate, suitable under the circumstances. Fit and appropriate to the end in view. Having the faculty of reason; rational; governed by reason; under the influence of reason; agreeable to reason. Thinking, speaking, or acting according to the dictates of reason. Not immoderate or excessive, being synonymous with rational, honest, equitable, fair, suitable, moderate, tolerable. Cass v. State, 124 Tex. Cr.R. 208, 61 S.W.2d 500.

As to *reasonable* Aids; Care; Diligence; Doubt; Notice, Skill, and Time, see those titles. See also Fair.

**Reasonable act.** Such as may fairly, justly, and reasonably be required of a party.

**Reasonable and probable cause.** Such grounds as justify any one in suspecting another of a crime, and placing him in custody thereon. It is a suspicion founded upon circumstances sufficiently strong to warrant reasonable man in belief that charge is true. Henry v. U. S., 361 U.S. 98, 80 S.Ct. 168, 4 L.Ed.2d 134; Com. v. Stewart, 358 Mass. 747, 267 N.E.2d 213. See also Probable cause.

**Reasonable belief.** "Reasonable belief" or "probable cause" to make an arrest without a warrant exists when facts and circumstances within arresting officer's knowledge, and of which he had reasonably trustworthy information, are sufficient in themselves to justify a man of average caution in belief that a felony has been or is being committed. State v. Johnson, 249 La. 950, 192 So.2d 135, 141. See also Probable cause; Reasonable and probable cause.

The words "reasonably believes" are used throughout the Restatement, Second, Torts to denote the fact that the actor believes that a given fact or combination of facts exists, and that the circumstances which he knows, or should know, are such as to cause a reasonable man so to believe. Sec. 11.

**Reasonable care.** That degree of care which a person of ordinary prudence would exercise in the same or similar circumstances. Pierce v. Horvath, 142 Ind.App. 278, 233 N.E.2d 811, 815. That degree of care which ordinarily prudent and competent person engaged in same line of business or endeavor should exercise under similar circumstances. Warner v. Kiowa County Hospital Authority, Okl.App., 551 P.2d 1179, 1188. Due care, or ordi-

nary care, under all the circumstances. Failure to exercise such care is ordinary negligence. See also Care.

**Reasonable cause.** As basis for arrest without warrant, is such state of facts as would lead man of ordinary care and prudence to believe and conscientiously entertain honest and strong suspicion that person sought to be arrested is guilty of committing a crime. People v. Knutson, 60 C.A.3d 856, 131 Cal.Rptr. 846, 850. See also Probable cause; Reasonable and probable cause; Reasonable belief.

**Reasonable certainty, rule of.** This rule permits recovery of damages only for such future pain and suffering as is reasonably certain to result from the injury received. Prettyman v. Topkis, Del., 3 A.2d 708, 710. To authorize recovery under such rule for permanent injury, permanency of injury must be shown with reasonable certainty, which is not mere conjecture or likelihood or ever a probability of such injury. State ex rel. Kansas City Public Service Co. v. Shain, 350 Mo. 316, 165 S.W.2d 428, 430.

To establish damages for lost profits due to breach of contract with "reasonable certainty" does not mean that such damages must be established in exact pecuniary amount; evidence must, however, lay some foundation enabling fact finder to make fair and reasonable estimate of amount of damage. Della Ratta, Inc. v. American Better Community Developers, Inc., 38 Md.App. 119, 380 A.2d 627, 641.

**Reasonable compensation.** Sum which would reasonably compensate person for injuries, for pain and suffering, for past, present and future expenses reasonably necessary or incidental to his efforts to alleviate his injuries and in all pecuniary losses suffered, or to be suffered, as result of inability to engage in his usual occupation. Kavanagh v. Butorac, 140 Ind.App., 139, 221 N.E.2d 824, 828.

**Reasonable doubt.** The standard used to determine the guilt or innocence of a person criminally charged. To be guilty of a crime, one must be proved guilty "beyond a reasonable doubt." Reasonable doubt which will justify acquittal is doubt based on reason and arising from evidence or lack of evidence, and it is doubt which reasonable man or woman might entertain, and it is not fanciful doubt, is not imagined doubt, and is not doubt that juror might conjure up to avoid performing unpleasant task or duty. U. S. v. Johnson, C.A.N.Y., 343 F.2d 5, 6. Reasonable doubt is such a doubt as would cause prudent men to hesitate before acting in matters of importance to themselves. U. S. v. Chas. Pfizer & Co., Inc., D.C.N.Y., 367 F.Supp. 91, 101. Doubt based on reason which arises from evidence or lack of evidence. Johnson v. Louisiana, 406 U.S. 356, 360, 92 S.Ct. 1620, 1624, 32 L.Ed.2d 152. See also Beyond a reasonable doubt; Doubt.

**Reasonable expectation doctrine.** Doctrine of "reasonable expectations" is that when ambiguities exist in insurance policy they are to be resolved in accordance with the reasonable expectations of the insured. Auto-Owners Ins. Co. v. Jensen, C.A.N.D., 667 F.2d 714, 721.



**Reasonable force.** That degree of force which is not excessive and is appropriate in protecting oneself or one's property. When such force is used, a person is justified and is not criminally liable, nor is he liable in tort.

**Reasonable grounds.** Reasonable grounds within statute authorizing arrest without warrant by officer who has reasonable grounds for believing that person to be arrested has committed criminal offense means substantially probable cause. *Beyer v. Young*, 32 Colo.App. 273, 513 P.2d 1086, 1088. *See also* Probable cause; Reasonable and probable cause; Reasonable cause.

**Reasonable inference rule.** Under this rule the trier of fact may consider as evidence not only the testimony and real evidence presented at trial but also all inferences which may be reasonably drawn, though they are not necessary inferences.

**Reasonable man doctrine or standard.** The standard which one must observe to avoid liability for negligence is the standard of the reasonable man under all the circumstances, including the foreseeability of harm to one such as the plaintiff.

**Reasonable needs of the business.** A term used in connection with the accumulated earnings tax. A corporation may avoid a penalty on the unreasonable accumulation of earnings if it can show that there is a reasonable business need, and a definite plan for the use of the funds. I.R.C. § 535.

**Reasonable notice.** While the term is relative, *State v. Boles*, 5 Conn.Cir. 22, 240 A.2d 920, it is notice which is plainly calculated to apprise the appropriate person of its contents. *See also* Notice.

**Reasonable part.** In old English law, that share of a man's goods which the law gave to his wife and children after his decease. 2 Bl.Comm. 492.

**Reasonable suspicion.** Such suspicion which will justify officer, for Fourth Amendment purposes, in stopping defendant in public place is quantum of knowledge sufficient to induce ordinarily prudent and cautious man under circumstances to believe criminal activity is at hand. *People v. Johnson*, 56 A.D.2d 766, 392 N.Y.S.2d 294, 295. It must be based on specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant intrusion. *Curry v. State*, Tex.App. 14 Dist., 699 S.W.2d 331, 333. *See also* Probable cause; Reasonable cause.

**Reasonable time.** Such time as is necessary conveniently to do what a contract requires to be done, and as soon as circumstances will permit. *Ridglea Interests, Inc. v. General Lumber Co.*, Tex.Civ.App., 343 S.W.2d 490, 493. In determining what is a "reasonable time" for performance, court should consider such factors as relationships between parties, subject matter of contract, and time that a person of ordinary diligence and prudence would use under similar circumstances. *Glen Cove Marina, Inc. v. Vessel Little Jennie*, D.C.N.Y., 269 F.Supp. 877, 879.

Any time which is not manifestly unreasonable may be fixed by agreement of the parties, and what is reasonable depends on the nature, purpose and circumstances of each case. U.C.C. § 1-204(1)(2). Acceptance of an offer must be made within a reasonable time if no time is specified. U.C.C. §§ 2-206(2), 207. *See also* U.C.C. § 2-513(1) (buyer's right to inspection of goods); § 2-610 (anticipatory repudiation); § 2-508(2) (substitution of conforming goods for rejected goods).

Where contract does not fix a time for performance, the law allows "reasonable time" for performance, defined as such time as is necessary, conveniently, to do what the contract requires to be done, as soon as circumstances will permit. *Houston County v. Leo L. Landauer & Associates, Inc.*, Tex.Civ.App., 424 S.W.2d 458, 463.

*See also* Time.

**Reasonable use theory.** A riparian owner may make reasonable use of his water for either natural or artificial wants. However, he may not so use his rights so as to affect the quantity or quality of water available to a lower riparian owner. *Tucker v. Bodoian*, 376 Mass. 907, 384 N.E.2d 1195. *See also* Common enemy doctrine.

**Reassessment.** Re-estimating the value of a specific property or all property in a given area for tax assessment purposes.

**Reassurance.** Exists where an insurer procures the whole or a part of the sum which he has insured (*i.e.*, contracted to pay in case of loss, death, etc.) to be insured again to him by another insurer. *See also* Reinsurance.

**Rebate.** Discount; deduction or refund of money in consideration of prompt payment. A deduction from a stipulated premium on a policy of insurance, in pursuance of an antecedent contract. A deduction or drawback from a stipulated payment, charge, or rate (as, a rate for the transportation of freight by a railroad), not taken out in advance of payment, but handed back to the payer after he has paid the full stipulated sum.

Refund of portion of purchase price made by manufacturer to consumer to induce purchase of product. Such is commonly obtained by sending proof of purchase to manufacturer.

Portion of a transportation charge refunded to a shipper. Rebates are forbidden by the Interstate Commerce Act.

Tax rebate is an amount returned (*i.e.* refunded) to the taxpayer after he has made full payment of the tax.

*See also* Discount; Elkins Act; Kickback; Refund.

**Rebellion.** Deliberate, organized resistance, by force and arms, to the laws or operations of the government, committed by a subject. *Crashley v. Press Pub. Co.*, 74 App.Div. 118, 77 N.Y.S. 711. It is a federal crime to incite, assist, or engage in any rebellion or insurrection against the authority of the United States or the laws thereof. 18 U.S.C.A. § 2383.

In old English law, also a contempt of a court manifested by disobedience to its process, particularly of the

court of chancery. If a defendant refused to appear, after attachment and proclamation, a "commission of rebellion" issued against him. 3 Bl.Comm. 444.

**Rebellious assembly.** In old English law, a gathering of twelve persons or more, intending, going about, or practicing unlawfully and of their own authority to change any laws of the realm; or to destroy the inclosure of any park or ground inclosed, banks of fish-ponds, pools, conduits, etc., to the intent the same shall remain void; or that they shall have way in any of the said grounds; or to destroy the deer in any park, fish in ponds, coney in any warren, dovehouses, etc.; or to burn sacks of corn; or to abate rents or prices of victuals, etc. *See also* Unlawful assembly.

**Rebus sic stantibus** /riybəs sik stántəbəs/. Lat. At this point of affairs; in these circumstances. A name given to a tacit condition, said to attach to all treaties, that they shall cease to be obligatory so soon as the state of facts and conditions upon which they were founded has substantially changed.

**Rebut.** In pleading and evidence, to defeat, refute, or take away the effect of something. When a plaintiff in an action produces evidence which raises a presumption of the defendant's liability, and the defendant adduces evidence which shows that the presumption is ill-founded, he is said to "rebut it." *See* Rebuttable presumption; Rebuttal evidence.

**Rebuttable presumption.** In the law of evidence, a presumption which may be rebutted by evidence. Otherwise called a "disputable" presumption. A species of legal presumption which holds good until evidence contrary to it is introduced. *Beck v. Kansas City Public Service Co.*, Mo.App., 48 S.W.2d 213, 215. It shifts burden of proof. *Heiner v. Donnan*, 285 U.S. 312, 52 S.Ct. 358, 362, 76 L.Ed. 772. It gives particular effect to certain group of facts in absence of further evidence, and presumption provides prima facie case which shifts to defendant the burden to go forward with evidence to contradict or rebut fact presumed. *Gulle v. Boggs*, Fla., 174 So.2d 26, 28. And which standing alone will support a finding against contradictory evidence. *Lieber v. Rigby*, 34 Cal.App.2d 582, 94 P.2d 49, 50. *See also* Presumption.

**Rebuttal evidence.** Evidence given to explain, repel, counteract, or disprove facts given in evidence by the opposing party. That which tends to explain or contradict or disprove evidence offered by the adverse party. *Layton v. State*, 261 Ind. 251, 301 N.E.2d 633, 636. Rebuttal occurs during the trial stage where evidence is given by one party to refute evidence introduced by the other party. Evidence which is offered by a party after he has rested his case and after the opponent has rested in order to contradict the opponent's evidence. *See also* Rejoinder.

Also evidence given in opposition to a presumption of fact or a *prima facie* case; in this sense, it may be not only counteracting evidence, but evidence sufficient to counteract, that is, conclusive. *See* Rebuttable presumption.

**Rebutter.** In common law pleading, a defendant's answer of fact to a plaintiff's surrejoinder; the third pleading in the series on the part of the defendant.

**Recall.** A method of removal of official in which power of removal is either granted to or reserved by the people. *Jones v. Harlan*, Tex.Civ.App., 109 S.W.2d 251, 254. Right or procedure by which a public official may be removed from office before the end of his term of office by a vote of the people to be taken on the filing of a petition signed by required number of qualified voters. *Wallace v. Tripp*, 358 Mich. 668, 101 N.W.2d 312, 314. Recall may also be applicable to judges.

Under federal Consumer Product Safety Act, government has power to require recall of unsafe products for repair, replacement or refund. *See* 15 U.S.C.A. § 2064(c)-(f).

To summon a diplomatic minister back to his home court, at the same time depriving him of his office and functions.

**Recall a judgment.** To revoke, cancel, vacate, or reverse a judgment for matters of fact. When it is annulled by reason of errors of law, it is said to be "reversed."

**Recant.** To withdraw or repudiate formally and publicly. *Pradlik v. State*, 131 Conn. 682, 41 A.2d 906, 907.

**Recapitalization.** A process whereby stock, bonds or other securities of a corporation are adjusted or restructured as to type, amount, income or priority. A restructuring of the capital of a corporation through amendment of the articles of incorporation or a merger with a subsidiary or parent corporation. Recasting of capital structure (e.g. exchange of bonds for stock) within framework of existing corporation. *Helvering v. Southwest Consol. Corporation, La.*, 315 U.S. 194, 203, 62 S.Ct. 546, 552, 86 L.Ed. 789. *See also* Reorganization.

**Recaption.** At common law, a retaking, or taking back. A species of remedy by the mere act of the party injured (otherwise termed "reprisal"), which happens when any one has deprived another of his property in goods or chattels personal, or wrongfully detains one's wife, child, or servant. In this case, the owner of the goods, and the husband, parent, or master may lawfully claim and retake them, wherever he happens to find them, so it be not in a riotous manner, or attended with a breach of the peace. *Prigg v. Pennsylvania*, 41 U.S. (16 Pet.) 539, 612, 10 L.Ed. 1060. It also signifies the taking a second distress of one formerly distrained during the plea grounded on the former distress. *See also* Distrain; Distress; Ejectment; Repossession.

Also, formerly, a writ to recover damages for him whose goods, being distrained for rent in service, etc., are distrained again for the same cause, pending the plea in the county court, or before the justice.

**Recapture.** To recover (by IRS) the tax benefit of a deduction or a credit previously taken by tax payer. *See, e.g.,* Recapture of depreciation.

The taking from an enemy, by a force friendly to the former owner, of a vessel previously taken for prize by such enemy.

**Recapture clause.** In contracts, a provision for determining rates in the event that the contract rate is more favorable than anticipated. Also, a provision in a contract for recovering possession of goods. As used in leases, a clause giving the lessor a percentage of profits above a fixed amount of rent; or, in a percentage lease, a clause granting landlord right to terminate lease if tenant fails to realize minimum sales.

**Recapture of depreciation.** Upon the sale or disposition of depreciable property, the portion of the gain which represents the accelerated depreciation previously taken is taxed as ordinary income. Since Tax Reform Act of 1986, there is no monetary difference because capital gains and ordinary income are taxed at the same rate. The recapture of depreciation rules do not apply when the property is disposed of at a loss.

**Recapture of investment tax credit.** When investment credit property is disposed of or ceases to be used in the trade or business of the taxpayer, some of the investment tax credit claimed on such property may be recaptured as additional tax liability. The amount of the recapture (by IRS) is the difference between the amount of the credit originally claimed and what should have been claimed in light of the length of time the property was actually held or used for qualifying purposes. See Investment tax credit.

**Receditur a placitis juris, potius quam injuriæ et delicta maneat impunita** /rɛsɪydətər ɛy plæsətəs jʊrəs pɔwsh(iy)əs kwæm injuriyiy ɛt dɛlɪktə mæniyɛnt impyúwnətə/. Positive rules of law (as distinguished from maxims or conclusions of reason) will be receded from (given up or dispensed with), rather than that crimes and wrongs should remain unpunished.

**Receipt.** Written acknowledgment of the receipt of money, or delivery of a thing of value, without containing any affirmative obligation upon either party to it; a mere admission of a fact, in writing. And, being a mere acknowledgment of payment, is subject to parol explanation or contradiction.

A writing which acknowledges taking or receiving either money or goods which have been paid or have been delivered. *Manley v. Nelson*, 50 Hawaii 484, 524, 443 P.2d 155, 158. Act of receiving; also, the fact of receiving or being received; that which is received. That which comes in, in distinction from what is expended, paid out, sent away, and the like. *State v. Texas Co.*, 173 Tenn. 154, 116 S.W.2d 583, 584.

It requires delivery or change of possession from seller to buyer, and can only be accomplished, in absence of tortious appropriation, by affirmative assent and conduct of seller. *Gerner v. Vasby*, 75 Wis.2d 660, 250 N.W.2d 319, 324, 97 A.L.R.3d 897.

**Receipt of goods.** Taking physical possession of goods. U.C.C. § 2-103(1)(c).

**Warehouse receipt.** See that title.

**Receptor.** A name formerly given in some of the states to a person who received from the sheriff goods which the latter had seized under process of garnishment, on giving to the sheriff a bond conditioned to have the property forthcoming when demanded, or when execution issues.

**Receivable.** That which is due and owing a person or company (e.g. account receivable). In bookkeeping, the name of an account which reflects a debt due.

**Receive.** To take into possession and control; accept custody of; collect.

To "receive" stolen property, means acquisition of control in sense of physical dominion or apparent legal power to dispose of property and envisages possession or control as an essential element. *U. S. v. Walker*, D.C. Tenn., 384 F.Supp. 262, 263. See also Receiving stolen goods or property.

**Receiver.** A person appointed by a court for the purpose of preserving property of a debtor pending an action against him, or applying the property in satisfaction of a creditor's claim, whenever there is danger that, in the absence of such an appointment, the property will be lost, removed or injured. An indifferent person between the parties to a cause, appointed by the court to receive and preserve the property or fund in litigation, and receive its rents, issues, and profits, and apply or dispose of them at the direction of the court when it does not seem reasonable that either party should hold them. A fiduciary of the court, appointed as an incident to other proceedings wherein certain ultimate relief is prayed. He is a trustee or ministerial officer representing court, and all parties in interest in litigation, and property or fund intrusted to him.

Formerly, in bankruptcy proceedings, a person empowered to take charge of the assets of an insolvent person or business and preserve them for sale and distribution to creditors. This function is now performed by a bankruptcy trustee.

A custodian of assets involved in litigation and title to assets remain in owner or owners who are parties in proceedings which lead to appointment of receiver who is managing agent of property for benefit of parties. *A. S. S. Wrecking Co. v. Guaranty Bank & Trust Co.*, 2 Ill.App.3d 66, 275 N.E.2d 724, 728.

As to receivers appointed by federal courts, see Fed.R. Civil P. 66.

See also Receivership; Trustee.

**Receiver pendente lite** /rɛsɪyvr pendentiy láyty/. A person appointed to take charge of the fund or property to which the receivership extends while the case remains undecided. The title to the property is not changed by the appointment. The receiver acquires no title, but only the right of possession as the officer of the court. The title remains in those in whom it was vested when the appointment was made. The object of the appointment is to secure the property pending the litigation, so that it may be appropriated in accordance with the rights of the parties, as they may be determined by the judgment in the action. Title Guarantee & Trust

Co. v. 457 Schenectady Ave., 235 App.Div. 509, 257 N.Y.S. 413, 417.

**Receiver's certificate.** A non-negotiable evidence of debt, or debenture, issued by authority of a court of chancery, as a first lien upon the property of a debtor corporation in the hands of a receiver.

**Receivership.** Legal or equitable proceeding in which a receiver is appointed for an insolvent corporation, partnership or individual to preserve its assets for benefit of affected parties. The state or condition of a corporation, partnership, financial institution, or individual over whom a receiver has been appointed for protection of its assets and for ultimate sale and distribution to creditors. *See also*, Receiver; Trustee. *Compare* Bankruptcy proceedings.

*Regulatory receivership.* Receivership by a governmental agency; *e.g.*, of an insolvent financial institution.

**Receiving stolen goods or property.** Criminal offense of receiving any property with the knowledge that it has been feloniously, or unlawfully stolen, taken, extorted, obtained, embezzled, or disposed of.

Receiving stolen property—a statutory crime separate from the crime involved in the stealing of the property—is defined in the typical statute as the receiving of stolen property knowing that it is stolen. Although most statutes do not specifically mention it, the receiver must, in addition to knowing the property is stolen, intend to deprive the owner of his property. Four elements are necessary to constitute crime of “receiving stolen goods”; (1) the property must be received; (2) it must, at time of its receipt, be stolen property; (3) the receiver must have guilty knowledge that it is stolen property; and (4) his intent in receiving it must be fraudulent. *Fletcher v. State*, 231 Md. 190, 189 A.2d 641, 643.

A person is guilty of theft if he purposely receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with purpose to restore it to the owner. “Receiving” means acquiring possession, control or title, or lending on the security of the property. Model Penal Code, § 223.6. For various federal offenses, see 18 U.S.C.A. § 2313 (receipt of stolen vehicles), § 2315 (receipt of stolen goods, money, etc.).

To “receive” stolen property, means acquisition of control in sense of physical dominion or apparent legal power to dispose of property and envisages possession or control as an essential element. *U.S. v. Walker*, D.C. Tenn., 384 F.Supp. 262, 263.

**Recens insecutio** /riysenz insækyúwsh(iy)ow/. In old English law, fresh suit; fresh pursuit. Pursuit of a thief immediately after the discovery of the robbery. *See* Fresh pursuit.

**Receptus** /ræséptəs/. Lat. In the civil law, the name sometimes given to an arbitrator, because he had been received or chosen to settle the differences between the parties.

**Recess.** In the practice of the courts, a short interval or period of time during which the court suspends business,

but without adjourning. The period between sessions of court. A temporary adjournment of a trial or a hearing that occurs after a trial or hearing has commenced. *State v. Charles, La.*, 350 So.2d 595, 598.

In legislative practice, the interval, occurring in consequence of an adjournment, between the sessions of the same continuous legislative body; not the interval between the final adjournment of one body and the convening of another at the next regular session.

*Compare* Continuance.

**Recession.** The act of ceding or falling back. Term is commonly used with reference to a temporary set-back or slow-down in the economic growth of a nation, but less severe than a depression.

**Recessus maris** /ræsésəs mérəs/. Lat. In old English law, a going back; reliction or retreat of the sea.

**Recht** /rékt/. Ger. Right; justice; equity; the whole body of law; unwritten law; law; also a right.

**Recidivist** /ræsídəvəst/. A habitual criminal; a criminal repeater. An incorrigible criminal. One who makes a trade of crime. *See also* Habitual criminal.

**Reciprocal.** Given or owed mutually as between two persons; interchanged. Reciprocal obligations are those due from one person to another and vice versa. *See also* Reciprocity.

**Reciprocal contract.** A contract, the parties to which enter into mutual engagements. A mutual or bilateral contract.

**Reciprocal dealing arrangement.** As included within prohibitions of Sherman Act and Clayton Act exists when two parties face each other as both buyer and seller and one party offers to buy other party's goods, but only if second party buys other goods from first party. *Spartan Grain & Mill Co. v. Ayers, C.A.Ga.*, 581 F.2d 419, 424. *See also* Tying arrangement.

**Reciprocal Enforcement of Support Act.** Uniform law, adopted in most all states, by which a court in the jurisdiction of a wife or mother can commence proceedings for support against the husband or father residing in another state. The court in the jurisdiction where he lives issues process for his appearance and an order of support is made. This is transmitted to the court of the initiating state.

**Reciprocal laws.** Laws of one state which extend rights and privileges to citizens of another state if such state grants similar privileges to citizens of the first state; *e.g.* Reciprocal Enforcement of Support Act. *See also* Comity.

**Reciprocal or interinsurance exchange.** Group or association of persons cooperating through an attorney in fact for purpose of insuring themselves and each other. In *re Minnesota Ins. Underwriters, D.C.Minn.*, 36 F.2d 371, 372.

**Reciprocal promises.** Mutual promises exchanged between two parties. *See also* Reciprocal contract.

**Reciprocal trade agreements.** Agreement between two countries providing for interchange of goods between them at lower tariffs and better terms than exist between one such country and other countries; e.g. U.S. Reciprocal Trade Agreements Act of 1934.

**Reciprocal trusts.** Mutual trusts in one of which A is beneficiary of trust established by B and B is beneficiary of trust settled by A. Commonly these trusts are established by husband and wife.

**Reciprocal wills.** Wills made by two or more persons in which they make reciprocal testamentary provisions in favor of each other, whether they unite in one will or each executes a separate one. This may be done by one will, in which case the will is both joint and reciprocal, or it may be done by separate wills. *Father Flanagan's Boys' Home v. Turpin*, 252 Iowa 603, 106 N.W.2d 637, 639.

**Reciprocity.** Mutuality. The term is used to denote the relation existing between two states when each of them gives the subjects of the other certain privileges, on condition that its own subjects shall enjoy similar privileges at the hands of the latter state. Term may also refer to practice, prohibited by Sherman Antitrust Act, whereby a company, overtly or tacitly, agrees to conduct one or more aspects of its business so as to confer a benefit on the other party to the agreement, the consideration being the return promise in kind by the other party, and it is basically a policy of favoring one's customers in purchasing commodities sold by them. The legality of reciprocity agreements under the anti-trust laws is analyzed in much the same way as the legality of tying arrangements. *Stavrides v. Mellon Nat. Bank & Trust Co.*, D.C.Pa., 353 F.Supp. 1072, 1077. See also Reciprocal; Tying arrangement.

**Rescision of contract.** See Rescission of contract.

**Recital.** The formal statement or setting forth of some matter of fact, in any deed or writing, in order to explain the reasons upon which the transaction is founded. The recitals are situated in the premises of a deed, that is, in that part of a deed between the date and the *habendum*, and they usually commence with the formal word "whereas."

In pleading, the statement of matter as introductory to some positive allegation, beginning in declarations with the words, "For that *whereas*."

**Recite.** To state in a written instrument facts connected with its inception, or reasons for its being made. Also to quote or set forth the words or the contents of some other instrument or document; as, to "recite" a statute.

**Reck.** To take heed; have a care, mind, heed.

**Reckless.** Not recking; careless, heedless, inattentive; indifferent to consequences. According to circumstances it may mean desperately heedless, wanton or willful, or it may mean only careless, inattentive, or negligent. For conduct to be "reckless" it must be such as to evince disregard of, or indifference to, consequences, under circumstances involving danger to life or safety to others, although no harm was intended. *Duckers v. Lynch*,

204 Kan. 649, 465 P.2d 945, 948. See also Recklessly; Recklessness; Wanton.

**Reckless disregard of rights of others.** As used in automobile guest law, means the voluntary doing by motorist of an improper or wrongful act, or with knowledge of existing conditions, the voluntary refraining from doing a proper or prudent act when such act or failure to act evinces an entire abandonment of any care, and heedless indifference to results which may follow and the reckless taking of chance of accident happening without intent that any occur. *Boswell v. State*, 250 Ind. 607, 238 N.E.2d 283, 286.

"Reckless disregard" so as to show actual malice in publication may be shown to exist where there exists sufficient evidence to permit conclusion that defendant in fact entertained serious doubts as to truth of his publication or where there are obvious reasons to doubt veracity of informant or accuracy of his reports. *Pape v. Time, Inc.*, D.C.Ill., 294 F.Supp. 1087, 1088.

**Reckless driving.** Operation of motor vehicle manifesting reckless disregard of possible consequences and indifference to others' rights. To establish statutory offense of reckless driving requires proof that defendant in management of motor vehicle intentionally did something with knowledge that injury to another was probable or acted with wanton and reckless disregard for safety of others and in reckless disregard of consequences of acts. *People v. Schumacher*, 194 C.A.2d 335, 14 Cal.Rptr. 924, 926. Within meaning of statutory prohibition is a conscious and intentional driving which driver knows, or should know, creates unreasonable risk of harm to others, even though he has no actual intent to harm. *State v. Saulnier*, 109 R.I. 115, 280 A.2d 85, 87.

**Reckless endangerment.** A statutory offense committed by creating a substantial risk of death or serious injury to another. *State v. O'Neal*, 23 Wash.App. 899, 600 P.2d 570.

**Reckless homicide.** A species of statutory homicide in some states characterized by a wilful and wanton disregard of consequences and resulting in death. In some states, it may amount to manslaughter. See Homicide (*Vehicular homicide*).

**Recklessly.** A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation. Model Penal Code, § 2.02(c).

Person acts "recklessly" within meaning of requirement for commission of involuntary manslaughter when he consciously disregards substantial and unjustifiable risk that his acts are such as are likely to cause death or great bodily harm to some individual and where such disregard constitutes gross deviation from standard of

care which reasonable person would exercise in such situation. *People v. Griffith*, 14 Ill.Dec. 393, 56 Ill. App.3d 747, 372 N.E.2d 404, 407.

*See also* Reckless.

**Reckless misconduct.** A person is guilty of reckless misconduct when he intentionally does an act, or fails to do an act in violation of his duty, with knowledge of serious danger to others involved in it or of facts which would disclose such danger to a reasonable man. *State v. Vertefeuille*, 3 Conn.Cir. 508, 217 A.2d 725, 726. Such misconduct means that the actor intentionally does an act or fails to do an act which it is his duty to another to do, knowing or having reason to know of facts which would lead a reasonable man to conclude that such conduct creates an unreasonable risk of bodily harm to the other. *Saaybe v. Penn Cent. Transp. Co.*, D.C.Pa., 438 F.Supp. 65, 69.

**Recklessness.** Rashness; heedlessness; wanton conduct. The state of mind accompanying an act, which either pays no regard to its probably or possibly injurious consequences, or which, though foreseeing such consequences, persists in spite of such knowledge. Recklessness is a stronger term than mere or ordinary negligence, and to be reckless, the conduct must be such as to evince disregard of or indifference to consequences, under circumstances involving danger to life or safety of others, although no harm was intended. *Blackburn v. Colvin*, 191 Kan. 239, 380 P.2d 432, 437.

**Reclaim.** To claim or demand back; to ask for the return or restoration of a thing; to insist upon one's right to recover that which was one's own, but was parted with conditionally or mistakenly; as, to *reclaim* goods which were obtained from one under false pretenses.

**Reclaimed animals.** Those that are made tame by art, industry, or education, whereby a qualified property may be acquired in them.

**Reclamation.** The process of bringing economically unusable land to a higher dollar value by physically changing it; e.g. draining a swamp, irrigating desert, replanting a forest.

A banking term used to describe a draft or check set aside because of an error in the listing of the check in clearing house balance.

**Reclamation Act.** The Reclamation Act of 1902 (43 U.S.C.A. § 391 et seq.), authorized the Secretary of the Interior to locate, construct, operate, and maintain works for the storage, diversion, and development of waters for the reclamation of arid and semiarid lands in the Western States. To perform these functions, the Secretary in July 1902 established a Reclamation Service in the Geological Survey. In March 1907 the Reclamation Service was separated from the Survey, and in June 1923 the name was changed to Bureau of Reclamation. The basic objectives of the Federal Reclamation program, as administered by the Bureau of Reclamation, are to assist the States, local governments, and other Federal agencies to stabilize and stimulate local and

regional economies, enhance and protect the environment, and improve the quality of life through development of water and related land resources throughout the 17 contiguous Western States and Hawaii.

**Reclamation Bureau.** *See* Reclamation Act.

**Reclamation district.** A subdivision of a state created by legislative authority, for the purpose of reclaiming swamp, marshy, or desert lands within its boundaries and rendering them fit for habitation or cultivation, generally with funds raised by local taxation or the issue of bonds, and sometimes with authority to make rules or ordinances for the regulation of the work in hand.

**Reclusion** /rəkl(y)úwzhən/. In French law and in Louisiana, incarceration as a punishment for crime; a temporary, afflictive, and infamous punishment, consisting in being confined at hard labor in a penal institution, and carrying civil degradation. Solitary confinement in prison.

**Recognition.** Ratification; confirmation; an acknowledgment that something done by another person in one's name had one's authority.

**Recognition of gain or loss.** *See* Recognized gain or loss.

**Recognitione adnullanda per vim et duritiem facta** /rəkəgnishiyówniy ədnələndə pər vim èt d(y)ərish(y)əm fəktə/. A writ to the justices of the common bench for sending a record touching a recognizance, which the recognizer suggests was acknowledged by force and duress; that if it so appears the recognizance may be annulled.

**Recognitors** /rəkógnətərz/. In English law, the name by which the jurors impaneled on an assize are known. *See* Recognition.

The word is sometimes used as meaning the person who enters into a recognizance, being thus another form of recognizer.

**Recognizance** /rəkógnəzəns/. An obligation entered into before a court or magistrate duly authorized for that purpose whereby the recognizer acknowledges that he will do some act required by law which is specified therein. The act of recognizing is performed by the recognizer's assenting to the words of the magistrate and acknowledging himself to be indebted to a certain party in a specific amount to be paid if he fails to perform the requisite act. *State v. Vinal*, 113 R.I. 426, 325 A.2d 81, 83.

An obligation undertaken by a person, generally a defendant in a criminal case, to appear in court on a particular day or to keep the peace. It runs to the court and may not require a bond. In this case it is called personal recognizance. 18 U.S.C.A. § 3142; Fed.R. Crim.P. 46. *See* Release on own recognizance.

**Recognize** /rəkəgnàyz/. To try; to examine in order to determine the truth of a matter. Also to enter into a recognizance.

**Recognized.** Actual and publicly known.

**Recognized gain or loss.** The portion of realized gain or loss that is subject to income taxation. *See also* Realized gain or loss.

**Recognized market.** Under Uniform Commercial Code provision allowing secured party to dispose of collateral without notification if collateral is type of property customarily sold in "recognized market," "recognized market" is one in which sales involve many items so similar that individual differences are nonexistent or immaterial, where haggling and competitive bidding are not primary factors in each sale, and where prices paid in actual sales of comparable property are currently available by quotation, for example, the New York Stock Exchange and bond and commodity markets. *First Nat. Bank of Minneapolis v. Kehn Ranch, Inc., S.D., 394 N.W.2d 709, 714.*

**Recognizee.** He to whom one is bound in a recognizance.

**Recognizor.** He who enters into a recognizance.

**Recollection.** The act of recalling something to mind. In evidence, a person may use almost anything to refresh his recollection of an event in order to testify and the evidence then is his testimony not the document which has refreshed his recollection.

A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly is not excluded by the hearsay rule. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party. *See Fed.Evid.Rules 612 and 803(5).*

*See also* Past recollection recorded; Recorded past recollection; Refreshing the memory.

**Recommend.** To advise or counsel. *Kirby v. Nolte, 351 Mo. 525, 173 S.W.2d 391. See Counsel.*

**Recommendation.** In feudal law, a method of converting allodial land into feudal property. The owner of the allod surrendered it to the king or a lord, doing homage, and received it back as a benefice or feud, to hold to himself and such of his heirs as he had previously nominated to the superior.

The act of one person in giving to another a favorable account of the character, responsibility, or skill of a third.

Recommendation refers to an action which is advisory in nature rather than one having any binding effect. *People v. Gates, 41 C.A.3d 590, 116 Cal.Rptr. 172, 178.*

*Letter of recommendation.* A writing whereby one person certifies concerning another that he is of good character, solvent, possessed of commercial credit, skilled in his trade or profession, or otherwise worthy of trust, aid, or employment. It may be addressed to an individual or to whom it may concern, and is designed to aid the person commended in obtaining credit, employment, etc. *See Letter of credit.*

**Recommendatory.** Precatory, advisory, or directory. Recommendatory words in a will are such as do not express the testator's command in a peremptory form, but advise, counsel, or suggest that a certain course be pursued or disposition made.

**Recompense** /rɛkɑmpɛns/. A reward or payment for services; remuneration paid for goods or other property.

**Recompense or recovery in value.** That part of the judgment in a "common recovery" by which the tenant is declared entitled to recover lands of equal value with those which were warranted to him and lost by the default of the vouchee. 2 Bl.Comm. 358-359.

**Reconciliation** /rɛkɑnsɪliɛʃən/. The renewal of amicable relations between two persons who had been at enmity or variance; usually implying forgiveness of injuries on one or both sides. In law of domestic relations, a voluntary resumption of marital relations in the fullest sense. *Keller v. Keller, 122 Cal.App. 712, 10 P.2d 541.* It means something more than mere resumption of cohabitation and observance of civility, and comprehends a fresh start and genuine effort by both parties to avoid pitfalls originally causing separation. *Gutmann v. Gutmann, 70 N.J.Super. 266, 175 A.2d 470, 474.*

In bookkeeping, it is the practice of adjusting the bank statement with the depositor's books. Also, a statement showing the consistency of two or more other financial statements. *See also* Reconciliation statement.

**Reconciliation statement.** In accounting, a statement prepared to bring two or more accounts which show a discrepancy into agreement.

**Reconduction.** In the civil law, a renewing of a former lease; relocation.

**Reconsideration.** As normally used in context of administrative adjudication "reconsideration" implies re-examination, and possibly a different decision by the entity which initially decided it. *Kerr-McGee Nuclear Corp. v. New Mexico Environmental Imp. Bd., App., 97 N.M. 88, 637 P.2d 38, 42.*

**Reconsignment.** A change in the terms of a consignment after the goods are in transit. Privilege extended by carriers to shippers under which goods may be forwarded to a point other than their original destination, without removal from the car and at the through rate from initial point to that of final delivery. *Southern Pac. Co. v. Brown, Alcantar & Brown, Inc., C.A.Tex., 409 F.2d 1331, 1332.*

**Reconstruct.** To construct again, to rebuild, either in fact or idea, or to remodel. To form again or anew as in the imagination or to restore again as an entity the thing which was lost or destroyed. *City of Seattle v. Northern Pac. Ry. Co., 12 Wash.2d 247, 121 P.2d 382, 386. See also* Recollection.

**Reconstruction.** Act of constructing again. It presupposes the nonexistence of the thing to be reconstructed, as an entity; that the thing before existing has lost its entity. *Miller Hatcheries v. Buckeye Incubator Co., C.C.A.Mo., 41 F.2d 619.*

Also the name commonly given to the process of reorganizing, by acts of congress and executive action, the governments of the states which had passed ordinances of secession, and of re-establishing their constitutional relations to the national government, restoring their representation in congress, and effecting the necessary changes in their internal government, after the close of the civil war.

**Recontinuance.** Used to signify that a person has recovered an incorporeal hereditament of which he had been wrongfully deprived.

**Reconvenire** /riykonvənáyriy/. Lat. In the canon and civil law, to make a cross-demand upon the actor, or plaintiff.

**Reconvention.** In the civil law, an action by a defendant against a plaintiff in a former action; a cross-bill or litigation.

The term is used in practice in the states of Louisiana and Texas, derived from the *reconventio* of the civil law. Reconvention is not identical with set-off, but more extensive. *Pacific Exp. Co. v. Malin*, 132 U.S. 531, 10 S.Ct. 166, 33 L.Ed. 450.

**Reconventional demand.** Any plea by a defendant which constitutes more than mere defense and amounts to counterclaim. *Alfonso v. Ruiz*, La.App., 2 So.2d 480, 483, 484.

**Reconversion.** That imaginary process by which a prior constructive conversion is annulled and the property restored in contemplation of equity to its original actual quality.

**Reconveyance.** The return of title and ownership in real estate to a party that previously held title to it.

**Record, v.** To commit to writing, to printing, to inscription, or the like. To make an official note of; to write, transcribe, or enter in a book, file, docket, register, computer tape or disc, or the like, for the purpose of preserving authentic evidence of. To transcribe a document, or enter the history of an act or series of acts, in an official volume, for the purpose of giving notice of the same, of furnishing authentic evidence, and for preservation. *Shimmel v. People*, 108 Colo. 592, 121 P.2d 491, 493.

**Record, n.** A written account of some act, court proceeding, transaction, or instrument, drawn up, under authority of law, by a proper officer, and designed to remain as a memorial or permanent evidence of the matters to which it relates. *People ex rel. Simons v. Dowling*, 84 Misc. 201, 146 N.Y.S. 919, 920. A memorandum public or private, of what has been done, ordinarily applied to public records, in which sense it is a written memorial made by a public officer. *Nogueira v. State*, 123 Tex. Cr.R. 449, 59 S.W.2d 831. A computer printout qualifies as a "record" within business records exception to hearsay rule. *American Oil Co. v. Valenti*, 179 Conn. 349, 426 A.2d 305, 309.

The act or fact of recording or being recorded; reduction to writing as evidence, also, the writing so made. A register, a family record, official contemporaneous writ-

ing; an authentic official copy of document entered in book or deposited in keeping of officer designated by law; an official contemporaneous memorandum stating the proceedings of a court or official copy of legal papers used in a case. *Shimmel v. People*, 108 Colo. 592, 121 P.2d 491, 493.

Records are generally admissible under Fed.Evid.R. 803. See also Rules 901 and 902 (authentication), and Rule 1005 (public records). See *Business* entry rule.

The term "records" means accounts, correspondence, memorandums, tapes, discs, papers, books, and other documents or transcribed information of any type, whether expressed in ordinary or machine language. Securities Exchange Act of 1934, § 3.

See also *Business (Business records)*; Congressional Record; Court (Court of record); Defective record; Docket; File; Freedom of Information Act; Judgment book; Making record; Minutes book; Official record; Official Records Act; Of record; Public record; Sealing of records; Shop-book rule; Whole record test.

*Arrest record.* See *Arrest record*.

*Complete record.* Such encompasses clerk's record, record of proceedings and all evidence. *Springfield Coal Co. v. Meade, Ky.*, 430 S.W.2d 652, 653.

*Court record of proceedings.* The official collection of all the trial pleadings, exhibits, orders and word-for-word testimony that took place during the trial. The "record" includes pleadings, the process, the verdict, the judgment and such other matters as by some statutory or other recognized method have been made a part of it. *C. J. Tower & Sons of Buffalo, Inc. v. U. S.*, Cust.Ct., 347 F.Supp. 1388, 1389.

A written memorial of all the acts and proceedings in an action or suit, in a court of record. The official and authentic history of the cause, consisting in entries of each successive step in the proceedings, chronicling the various acts of the parties and of the court, couched in the formal language established by usage, terminating with the judgment rendered in the cause, and intended to remain as a perpetual and unimpeachable memorial of the proceedings and judgment. Such record in civil cases consists primarily of the "civil docket" (Fed.R.Civil P. 79); and in criminal cases of the "criminal docket" (Fed.R.Crim.P. 55). See also *Docket*; *Transcript*, and *Record on appeal*, below.

*Courts of record.* A court whose proceedings are recorded. Also a court of general jurisdiction. States vary as to the requirements and strata of courts qualifying as courts of record. See also *Court (Court of record)*.

*Debts of record.* Those which appear to be due by the evidence of a court of record; such as a judgment, recognizance, etc.

*Diminution of record.* Incompleteness of the record sent up on appeal. See *Diminution*.

*Face of record.* See *Face of record*.

*Judicial record.* A precise history of civil or criminal proceeding from commencement to termination. See *Docket*.



*Matter of record.* See that title.

*Nul tiel record.* See Nul.

*Of record.* See that title.

*Public record.* A record, memorial of some act or transaction, written evidence of something done, or document, considered as either concerning or interesting the public, affording notice or information to the public, or open to public inspection. Any "writing" prepared, owned, used or retained by any agency in pursuance of law or in connection with the transaction of public business; and, "writings" means all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts or other documentary material, regardless of physical form or characteristics.

*Record commission.* The name of a board of commissioners appointed for the purpose of searching out, classifying, indexing, or publishing the public records of a state or county.

*Record date.* The date on which a person must be registered as a shareholder on the stock book of a company in order to receive a declared dividend or, among other things, to vote on company affairs. Dividends are paid on payment date to those who own the stock on the record date.

*Record of nisi prius.* In England, formerly an official copy or transcript of the proceedings in an action, entered on parchment and "sealed and passed" as it is termed, at the proper office. It served as a warrant to the judge to try the cause, and was the only document at which he could judicially look for information as to the nature of the proceedings and the issues joined.

*Record on appeal.* In the practice of appellate tribunals, refers to the history of the proceedings on the trial of the action below (with the pleadings, offers, objections to evidence, rulings of the court, exceptions, charge, etc.), in so far as the same appears in the record furnished to the appellate court in the paperbooks or other transcripts. Hence, derivatively, it means the aggregate of the various judicial steps taken on the trial below, in so far as they were taken, presented, or allowed in the formal and proper manner necessary to put them upon the record of the court. This is the meaning in such phrases as "no error in the record," "contents of the record," "outside the record," etc.

The official documentation of all the proceedings in court in a particular case, including the pleadings, exhibits and commonly the transcript of the examination of witnesses; may also include docket entries. Fed.R. App.P. 10(a).

*Record owner.* The person in whose name stock shares are registered on the records of the corporation. A record owner is treated as the owner of the shares by the corporation whether or not that person is the beneficial owner of the shares. As regards real property ownership, is person in whose name title appears on official records in contrast with one who claims title through unrecorded documents.

*Records of a corporation.* Such records include the transcript of its charter and by-laws, the minutes of its meetings—the books containing the accounts of its official doings and the written evidence of its contracts and business transactions. U. S. v. Louisville & N. R. Co., 236 U.S. 318, 35 S.Ct. 363, 368, 59 L.Ed. 598.

*Trial by record.* In old English law, a species of trial adopted for determining the existence or non-existence of a record. When a record was asserted by one party to exist, and the opposite party denied its existence under the form of a traverse that there was no such record remaining in court as alleged, and issue was joined thereon, this was called an "issue of *nul tiel record*," and in such case the court awarded a trial by inspection and examination of the record. Upon this the party affirming its existence was bound to produce it in court on a day given for the purpose, and, if he failed to do so, judgment was given for his adversary.

*Title of record.* A title to real estate, evidenced and provable by one or more conveyances or other instruments all of which are duly entered on the public land records. See also Abstract of title.

**Recordare** /riykordéry/. A writ to bring up judgments of justices of the peace.

**Recordari facias loquelam** /riykordéray féysh(iy)æs lækwiyləm/. In old English practice, a writ by which a suit or plaint in replevin could be removed from a county court to one of the courts of Westminster Hall. So termed from the emphatic words of the old writ, by which the sheriff was commanded to *cause the plaint to be recorded*, and to have the record before the superior court.

**Recorda sunt vestigia vetustatis et veritatis** /rəkórdə sənt vestij(iy)ə vétəstéytəs èt véhratéytəs/. Records are vestiges of antiquity and truth.

**Recordation.** The act or process of recording an instrument such as a deed or mortgage in a public registry. Also, the system of recording court proceedings by stenography, voice-writing or tapes.

**Recordatur** /riykordéytər/. In old English practice, an entry made upon a record, in order to prevent any alteration of it. An order or allowance that the verdict returned on the *nisi prius* roll be recorded.

**Recorded past recollection.** In evidence, a document which was prepared at a time when the events recorded were fresh in the mind and memory of the person preparing it may be admissible as an exception to the hearsay rule if, as a preliminary matter, the judge is satisfied that it is the work of the witness and that it is the original unless such is excused under the best evidence rule. See Fed.Evid.R. 612 and 803(5). See also Past recollection recorded; Recollection.

**Recorder, v.** L. Fr. In Norman law, to recite or testify on recollection what had previously passed in court. This was the duty of the judges and other principal persons who presided at the *placitum*; thence called "*recordeurs*."

**Recorder, n.** A magistrate, in the judicial systems of some of the states, who has a criminal jurisdiction analogous to that of a police judge or other committing magistrate, and usually a limited civil jurisdiction, and sometimes authority conferred by statute in special classes of proceedings. An officer appointed to make record or enrolment of deeds and other legal instruments authorized by law to be recorded. A local government officer in whose office deeds, mortgages, liens, and other instruments are registered.

**Record, estoppel by.** An "estoppel by record" is the preclusion to deny the truth of a matter set forth in a record, whether judicial or legislative, also to deny the facts adjudicated by a court of competent jurisdiction. An estoppel by record cannot be invoked where allegations or recitals did not conclude pleader in prior proceeding. *Blackburn v. Blackburn*, Tex.Civ.App., 163 S.W.2d 251, 255. It bars a second action between the same parties on an issue necessarily raised and decided in the first action. *Woods v. Duval*, 151 Kan. 472, 99 P.2d 804, 808. It exists only as between the same parties, or those in privity with them, in same case on same issues. *Smith v. Maine*, 145 Misc. 521, 260 N.Y.S. 425. The doctrine prevents a party not only from litigating again what was actually litigated in the former case, but litigating what might have been litigated therein.

**Recording acts.** Statutes enacted in the several states relative to the official recording of deeds, mortgages, security interests, etc. as notice to creditors, purchasers, encumbrancers, and others interested.

**Notice acts.** That type of recording statute provides that a person with notice of an unrecorded instrument is barred from claiming priority as of the date on which he received the instrument. *See also* Notice race statutes; Notice recording statutes.

**Race acts.** The first to record regardless of notice of an unrecorded deed earlier in time has the better rights under a race type recording statute. *See* Pure race statute.

**Race-notice acts.** The first to record in the chain of title without notice of a prior unrecorded deed or mortgage has the better rights under a race-notice type statute. *See* Race-notice recording statutes.

**Record notice.** When an instrument of conveyance or a mortgage is recorded in the appropriate public office, it is constructive notice of its contents to the whole world.

**Recordum** /rəkórdəm/. A record; a judicial record. It is used in the phrase *prout patet per recordum*, which is a formula employed, in pleading, for reference to a record, signifying as it appears from the record.

**Recoup, or recoupe** /rəkúwp/. To deduct, defalk, discount, set off, or keep back; to withhold part of a demand. *See* Recoupment.

**Recoupment** /rəkúwpmənt/. To recover a loss by a subsequent gain. In pleading, to set forth a claim against the plaintiff when an action is brought against one as a defendant. A keeping back something which is

due, because there is an equitable reason to withhold it. A right of the defendant to have a deduction from the amount of the plaintiff's damages, for the reason that the plaintiff has not complied with the cross-obligations or independent covenants arising under the same contract. It implies that plaintiff has cause of action, but asserts that defendant has counter cause of action growing out of breach of some other part of same contract on which plaintiff's action is founded, or for some cause connected with contract.

The right of the defendant to have the plaintiff's monetary claim reduced by reason of some claim the defendant has against the plaintiff arising out of the very contract giving rise to plaintiff's claim. *First Nat. Bank of Louisville v. Master Auto Service Corp.*, C.A. Va., 693 F.2d 308, 310. Unlike a counterclaim, recoupment only reduces plaintiff's claim; it does not allow recovery of affirmative money judgment for any excess over that claim. *Tuloka Affiliates, Inc. v. Moore*, 275 S.C. 199, 268 S.E.2d 293, 295.

Recoupment is a purely defensive matter growing out of transaction constituting plaintiff's cause of action and is available only to reduce or satisfy plaintiff's claim and permits of no affirmative judgment. *Schroeder v. Prince Charles, Inc., Mo.*, 427 S.W.2d 414, 419.

Recoupment is the equivalent of the old counterclaim in which a defendant sets up a claim owed to him by the plaintiff though it need not arise out of the same transaction as the plaintiff's claim and the defendant may not recover more than the amount claimed by the plaintiff against him. Under rules practice, recoupment has been replaced by the modern counterclaim. *See also* Counterclaim.

**Set-off distinguished.** A "set-off" is a demand which the defendant has against the plaintiff, arising out of a transaction extrinsic to the plaintiff's cause of action, whereas a "recoupment" is a reduction or rebate by the defendant of part of the plaintiff's claim because of a right in the defendant arising out of the same transaction. *Zweck v. D P Way Corp.*, 70 Wis.2d 426, 234 N.W.2d 921, 924. *See also* Set-off.

**Recourse.** To recur. The right of a holder of a negotiable instrument to recover against a party secondarily liable, e.g., prior endorser or guarantor. Therefore, if a prior endorser signs *without recourse*, he exempts himself from liability for payment, but not from all warranties. U.C.C. § 3-414(1). *See also* Nonrecourse; Nonrecourse loan; Recourse loan; Without recourse; With recourse.

**Recourse loan.** Loan on which an endorser or guarantor is liable in event of default of borrower. *See also* Recourse; With recourse. *Compare* Nonrecourse loan.

**Recover.** To get or obtain again, to collect, to get renewed possession of; to win back. To regain, as lost property, territory, appetite, health, courage. In a narrower sense, to be successful in a suit, to collect or obtain amount, to have judgment, to obtain a favorable or final judgment, to obtain in any legal manner in contrast to voluntary payment. *Olds v. General Acc.*

Fire and Life Assur. Corp., 67 Cal.App.2d 812, 155 P.2d 676, 680. *See also* Recovery.

**Recoveree.** In old conveyancing, the party who suffered a common recovery.

**Recoverer.** The demandant in a common recovery, after judgment has been given in his favor.

**Recovery.** In its most extensive sense, the restoration or vindication of a right existing in a person, by the formal judgment or decree of a competent court, at his instance and suit, or the obtaining, by such judgment, of some right or property which has been taken or withheld from him. *St. Paul Fire & Marine Ins. Co. v. Wood*, 242 Ark. 879, 416 S.W.2d 322, 327. This is also called a "true" recovery, to distinguish it from a "feigned" or "common" recovery.

The obtaining of a thing by the judgment of a court, as the result of an action brought for that purpose. The amount finally collected, or the amount of judgment. In *re Lahm*, 179 App.Div. 757, 167 N.Y.S. 217, 219. To be successful in a suit to obtain a judgment. *Garza v. Chicago Health Clubs, Inc.*, D.C.Ill., 347 F.Supp. 955, 962.

*See* Common recovery; Recoupment; Repossession; Restitution.

**Final recovery.** The final judgment or verdict in an action. *See* Judgment; Verdict.

**Recreant** /rɛkriyɔnt/. Coward or craven. The word pronounced by a combatant in the trial by battle, when he acknowledged himself beaten. 3 Bl.Comm. 340.

**Recrimination** /rɛkrimənɛyʃən/. A charge made by an accused person against the accuser; in particular a counter-charge of adultery or cruelty made by one charged with the same offense in a suit for divorce, against the person who has charged him or her. Under doctrine of "recrimination", if conduct of both husband and wife has been such as to furnish grounds for divorce neither is entitled to relief. *Mason v. Mason*, 276 Ala. 265, 160 So.2d 881, 882. A showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff's cause of divorce. And to bar divorce, complainant's misconduct need not be of equal degree with that of defendant, but must be of same general character. The defense of recrimination has been abolished in many states with the enactment of "no-fault" divorce statutes.

**Recross examination.** An examination of a witness by a cross-examiner subsequent to a redirect examination of the witness.

**Rectification.** The act or process by which something is made right or by which a wrong is adjusted. *See also* Restitution.

**Rectification of boundaries.** In old English law, the action to rectify or ascertain the boundaries of two adjoining pieces of land.

**Rectification of register.** In old English law, the process by which a person whose name is wrongly entered

on (or omitted from) a register may compel the keeper of the register to remove (or enter) his name.

**Rectify.** To correct or define something which is erroneous or doubtful. Thus, where the parties to an agreement have determined to embody its terms in the appropriate and conclusive form, but the instrument meant to effect this purpose (*e.g.*, a conveyance, settlement, etc.) is, by mutual mistake, so framed as not to express the real intention of the parties, an action may be brought to have it rectified.

**Rectitudo** /rɛktət(y)úwdow/. Lat. Right or justice; legal dues; tribute or payment.

**Recto, breve de** /bríyviy diy rɛktow/. A common law writ of right, which was of so high a nature that as other writs in real actions were only to recover the possession of the land, etc., in question, this aimed to recover the seisin and the property, and thereby both the rights of possession and property were tried together.

**Recto de advocacione ecclesie** /rɛktow diy ədvəkèy-shiyówniy əklízyiy/. A writ which lay at common law, where a man had right of advowson of a church, and, the parson dying, a stranger had presented.

**Recto de custodia terræ et hæredis** /rɛktow diy kəstówd(i)yə téhriy èt hæriyðəs/. A writ of right of ward of the land and heir. Abolished.

**Recto de dote** /rɛktow diy dówtiy/. A writ of right of dower, which lay for a widow who had received part of her dower, and demanded the residue, against the heir of the husband or his guardian. Abolished.

**Recto de dote unde nihil habet** /rɛktow diy dówtiy əndiy náy(h)əl héybət/. A writ of right of dower where of the widow had nothing, which lay where her deceased husband, having divers lands or tenements, had assured no dower to his wife, and she thereby was driven to sue for her thirds against the heirs or his guardian. Abolished.

**Recto de rationabili parte** /rɛktow diy rəshənybəláy pártiy/. A writ of right, of the reasonable part, which lay between privies in blood; as brothers in gavelkind, sisters, and other coparceners, for land in fee-simple.

**Recto quando (or quia) dominus remisit curiam** /rɛktow kwóndow dómənəs rəmáyzət kyúriyám/"kwáya"/. A writ of right, when or because the lord had remitted his court, which lay where lands or tenements in the seignory of any lord were in demand by a writ of right.

**Rector.** In ecclesiastical law, one who rules or governs. A name given to certain officers of the Roman Catholic Church.

The spiritual head and presiding officer of church. A clergyman elected by the members of the parish to have permanent charge of it. He is the official head of the parish and ex officio head of all parochial organizations.

In English law, he that has full possession of a parochial church. A rector (or parson) has, for the most part, the whole right to all the ecclesiastical dues in his parish; while a *vicar* has an appropriator over him, entitled to the best part of the profits, to whom the vicar

is, in effect, perpetual curate, with a standing salary. 1 Bl.Comm. 384, 388.

**Rectorial tithes** /rektóriyəl táyōz/. Great or predial tithes.

**Rector provinciae** /réktər prəvínshiy/. Lat. In Roman law, the governor of a province.

**Rector sinecure** /réktər sàyniykýuriy/. A rector of a parish who has not the cure of souls.

**Recto sur disclaimer** /réktow sər dəskléymər/. An abolished writ on disclaimer.

**Rectum** /réktəm/. Lat. Right; also a trial or accusation.

**Rectum esse** /réktəm ésiy/. To be right in court.

**Rectum rogare** /réktəm rəgəriy/. To ask for right; to petition the judge to do right.

**Rectum, stare ad** /stəriy æd réktəm/. To stand trial or abide by the sentence of the court.

**Rectus** /réktəs/. In the old law of descents, right; upright; the opposite of obliquus (*q.v.*).

**Rectus in curia** /réktəs in kýuriyə/. Lat. Right in court. The condition of one who stands at the bar, against whom no one objects any offense. When a person outlawed has reversed his outlawry, so that he can have the benefit of the law, he is said to be "*rectus in curia.*"

**Recuperatio** /rək(y)ùwpərəysh(iy)ow/. Lat. In old English law, recovery; restitution by the sentence of a judge of a thing that has been wrongfully taken or detained.

**Recuperatio, i.e., ad rem, per injuriam extortam sive detentam, per sententiam judicis restitutio** /rək(y)ùwpərəysh(iy)ow, id èst, pər ənjúriyəm èkstórtəm sáyviy dəténtəm pər senténsh(iy)əm júwdəsəs rəstət(y)úwsh(iy)ow/. Recovery, *i.e.*, restitution by sentence of a judge of a thing wrongfully extorted or detained.

**Recuperatio est alicujus rei in causam, alterius ad ducta per judicem acquisitio** /rək(y)ùwpərəysh(iy)ow èst èlak(y)úwjs riyay in kózəm, oltərəyəs èdèkti y pər júwdəsəm èkwəzish(iy)ow/. Recovery is the acquisition by sentence of a judge of anything brought into the cause of another.

**Recuperatores** /rək(y)ùwpərətóriyz/. In Roman law, a species of judges first appointed to decide controversies between Roman citizens and strangers concerning rights requiring speedy remedy, but whose jurisdiction was gradually extended to questions which might be brought before ordinary judges.

**Recurrendum est ad extraordinarium quando non valet ordinarium** /rèkəhréndəm èst èd èkstrəórdənér(i)yəm kwóndow nòn vèlèt òrdənér(i)yəm/. We must have recourse to what is extraordinary, when what is ordinary fails.

**Recusal.** The process by which a judge is disqualified on objection of either party (or disqualifies himself or herself) from hearing a lawsuit because of self interest, bias or prejudice. *See also* Recusation.

**Recusants** /rékyəzənts/rəkyúwzənts/. In old English law, persons who willfully absented themselves from their parish church, and on whom penalties were imposed by various statutes passed during the reigns of Elizabeth and James I. Those persons who separate from the church established by law. The term was practically restricted to Roman Catholics.

**Recusation** /rékyəzəyshən/. In the civil law, a species of exception or plea to the jurisdiction, to the effect that the particular judge is disqualified from hearing the cause by reason of interest or prejudice. The challenge of jurors. An act, of what nature soever it may be, by which a strange heir, by deeds or words, declares he will not be heir. *See also* Recusal.

**Recusatio testis** /rékyúwzəysh(iy)ow téstəs/. Lat. In the civil law, rejection of a witness, on the ground of incompetency.

**Red, raed, or rede** /réd/ríyd/. Sax. Advice; counsel.

**Redaction.** In broad sense, term refers to any revision or editing, but in a legal sense, it has come to indicate alteration of a confession to excise any reference by one joint defendant to any codefendant. *Com. v. Guess*, 266 Pa.Super. 359, 404 A.2d 1330, 1338.

**Red book of the exchequer.** An ancient record, wherein are registered the holders of lands *per baroniam* in the time of Henry II, the number of hides of land in certain counties before the Conquest, and the ceremonies on the coronation of Eleanor, wife of Henry III.

**Reddendo singula singulis** /rədéndow síngyələ síngyələs/. Lat. By referring each to each; referring each phrase or expression to its appropriate object. A rule of construction.

**Reddendum** /rədéndəm/. Lat. In old English conveyancing, rendering; yielding. The technical name of that clause in a conveyance by which the grantor creates or reserves some new thing to himself, out of what he had before granted; as "*rendering* therefor yearly the sum of ten shillings, or a pepper-corn," etc. That clause in a lease in which a rent is reserved to the lessor, and which commences with the word "*yielding.*" 2 Bl.Comm. 299.

**Reddens causam scientiæ** /rédən(d)z kózəm sayénshiy/. Lat. Giving the reason of his knowledge.

**Reddere, nil aliud est quam acceptum restituere; seu, reddere est quasi retro dare, et redditur dicitur a redeundo, quia retro it** /rédəriy níl àliyəd èst kwəm èkséptəm rəstət(y)úwəriy; syúw rədəriy èst kwéyaz rétrow dériy, èt rədətər disətər èy rədiyándow kwáyə rétrow ít/. To render is nothing more than to restore that which has been received; or, to render is as it were to give back, and it is called "*rendering*" from "*returning,*" because it goes back again.

**Reddidit se** /rédədət síy/. Lat. He has rendered himself.

In old English practice, a term applied to a principal who had rendered himself in discharge of his bail.

**Reddition** /rədishən/. A surrendering or restoring; also a judicial acknowledgment that the thing in demand

belongs to the demandant, and not to the person surrendering.

**Redeem** /rədiym/. To buy back. To free property or article from mortgage or pledge by paying the debt for which it stood as security. To repurchase in a literal sense; as, to redeem one's land from a tax-sale. It implies the existence of a debt and means to rid property of that incumbrance. *Talley v. Eastland*, 259 Ky. 241, 82 S.W.2d 368, 372. *See also* Redemption.

**Redeemable** /rədiyməbəl/. Subject to redemption; admitting of redemption or repurchase; given or held under conditions admitting of reacquisition by purchase; as, a "redeemable pledge."

**Redeemable bond.** A bond which the issuer may call for payment pursuant to the terms of the bond and indenture; a callable bond.

**Redeemable rights.** Rights which return to the conveyor or disposer of land, etc., upon payment of the sum for which such rights are granted.

**Redeemable stock.** Capital stock, generally preferred, which, by its terms, may be called by the issuing corporation and paid.

**Redelivery.** A yielding and delivering back of a thing.

**Redelivery bond.** A bond given to a sheriff or other officer, who has attached or levied on personal property, to obtain the release and repossession of the property, conditioned to redeliver the property to the officer or pay him its value in case the levy or attachment is adjudged good.

**Redemise** /riydəməyz/. A regranteeing of land demised or leased.

**Redemption.** The realization of a right to have the title of property restored free and clear of the mortgage; performance of the mortgage obligation being essential for that purpose.

The right of a debtor, and sometimes of a debtor's other creditors, to repurchase from a buyer at a forced sale property of the debtor that was seized and sold in satisfaction of a judgment or other claim against the debtor, which right usually is limited to forced sales of real property. Also, a bankruptcy term for extinguishing a lien on exempt property by making a cash payment equal to the value of the property.

The reacquisition of a security by the issuer pursuant to a provision in the security that specifies the terms on which the reacquisition may take place. A security is called for redemption when the issuer notifies the holder that the redemption privilege has been exercised. Typically, a holder of a security that has been called for redemption will have a limited period thereafter to decide whether or not to exercise a conversion right, if one exists.

A repurchase; a buying back. The act of a vendor of property in buying it back again from the purchaser at the same or an enhanced price. The process of annulling and revoking an abandoned conditional sale of property, by

performance of the conditions on which it was stipulated to be revocable.

The process of cancelling and annulling a defeasible title to land, such as is created by a mortgage or a tax-sale, by paying the debt or fulfilling the other conditions. The liberation of an estate from a mortgage. *Webb v. Williamson*, 202 Ark. 763, 152 S.W.2d 312, 314. The liberation of a chattel from pledge or pawn, by paying the debt for which it stood as security.

Repurchase of notes, bonds, stock, bills, or other evidences of debt, by paying their value to their holders. The payment of principal and unpaid interest on bonds or other debt obligations.

Repurchase by corporation of its shares at a price equal to the net asset value of the shares on date a redemption request is received by the corporation. *Kreis v. Mates Inv. Fund, Inc.*, D.C.Mo., 335 F.Supp. 1299, 1302. *See also* Stock (*Stock redemption*).

*See also* Certificate of redemption; Equitable redemption; Equity of redemption; Right of redemption; Tax redemption.

**Redemptiones** /rədèm(p)shiyówniyz/. In old English law, heavy fines. Distinguished from *miser cordia* (which see).

**Redemption period.** A time period during which a defaulted mortgage, land contract, deed of trust, etc., can be redeemed. Such period is commonly provided for by state statute.

**Redemption premium.** An additional price paid on the retirement of a security.

**Redemption price.** The price at which a bond may be redeemed before maturity, at the option of the issuing company. Such term also applies to the price the company must pay to call in certain types of preferred stock.

**Redemptio operis** /rədèm(p)sh(iy)ow ówpəras/. Lat. In Roman law, a contract for the hiring or letting of services, or for the performance of a certain work in consideration of the payment of a stipulated price. It is the same contract as "*locatio operis*," but regarded from the standpoint of the one who is to do the work, and who is called "*redemptor operis*," while the hirer is called "*locator operis*."

**Redeundo** /riydiyándow/. Lat. Returning; in returning; while returning.

**Redevance.** In old French and Canadian law, dues payable by a tenant to his lord, not necessarily in money.

**Red handed.** Expression used in reference to suspect caught with evidence of crime on him or in his possession.

**Red herring.** In securities law, a preliminary prospectus that has not yet been approved by the Securities Exchange Commission or state securities commissioners. It has a red border on its front to give notice to interested parties that the securities offering is not yet approved for final distribution. It is used as a type of advertising device to encourage securities sales. *See also* Prospectus.

**Redhibere** /réd(h)əbírɪy/. Lat. In the civil law, to have again; to have back; to cause a seller to have again what he had before.

**Redhibition** /réd(h)əbɪʃən/. Avoidance of sale on account of vice or defect in thing sold which renders it either absolutely useless or its use so inconvenient and imperfect that it may be presumed that buyer would not have purchased it had he known of defects. *LaFleur v. Boyce Machinery Corp.*, La.App., 282 So.2d 819, 821.

**Redhibitory action** /réd(h)ɪbət(ə)rɪy əkʃən/. In the civil law, an action for redhibition. An action to avoid a sale on account of some vice or defect in the thing sold, which renders its use impossible, or so inconvenient and imperfect that it must be supposed the buyer would not have purchased it had he known of the vice. Civ.Code La. art. 2520. An action in which buyer, alleging seller's breach of express or implied warranty, seeks to return thing sold or part thereof and to recover back all or part of price paid. *Hermanos v. Matos*, C.C.A.Puerto Rico, 81 F.2d 930, 931.

**Redhibitory defect or vice** /réd(h)ɪbət(ə)rɪy dəfekt/ ˈváys/. In the civil law, a defect in an article sold, for which the seller may be compelled to take it back; a defect against which the seller is bound to warrant. *Smith v. Max Thieme Chevrolet Co., Inc.*, La.App., 315 So.2d 82, 85. See Redhibition.

**Redimere** /rədímərɪy/. Lat. In Roman law, to buy back. *Talley v. Eastland*, 259 Ky. 241, 82 S.W.2d 368, 372.

**Redirect examination**. An examination of a witness by the direct examiner subsequent to the cross-examination of the witness. See also Rehabilitation.

**Rediscount**. The act of discounting an instrument which has already been discounted as in the case of a bank which has already discounted a note and then discounts or sells it again.

**Rediscount rate**. The rate, fixed by the Federal Reserve Board, at which a Federal Reserve Bank can make loans to member banks on the security of commercial paper already discounted by such banks.

**Redisseisin** /rɪdəsɪzən/. In old English law, a second disseisin of a person of the same tenements, and by the same disseisor, by whom he was before disseised. 3 Bl.Comm. 188.

**Redistribution** /rɪdɪstrəbɪwʃən/. In gambling, payoff to holders of winning tickets. *Delaware Steeplechase & Race Ass'n v. Wise*, 2 Terry (Del.) 587, 27 A.2d 357, 361.

**Reditus** /rédətəs/. Lat. A revenue or return; income or profit; specifically, rent.

**Reditus albi** /rédətəs əlbay/. White rent; blanche farm; rent payable in silver or other money.

**Reditus assisus** /rédətəs əsáyəs/. A set or standing rent.

**Reditus capitales** /rédətəs kəpətéylyz/. Chief rent paid by freeholders to go quit of all other services.

**Reditus nigri** /rédətəs nígray/. Black rent; black mail; rent payable in provisions, corn, labor, etc.; as distinguished from "money rent," called "*reditus albi*."

**Reditus quieti** /rédətəs kwayíytay/. Quitrents (*q.v.*).

**Reditus siccus** /rédətəs síkəs/. Rent seck (*q.v.*).

**Red lights ahead doctrine**. Under this doctrine, third party obtaining securities is required to investigate only under exceptional circumstances which arise when a party to a transaction has knowledge that some fact or facts exist with respect to transaction which would prevent action by commercially honest men for whom law is made. *Thomes v. Atkins*, D.C.Minn., 52 F.Supp. 405, 410.

**Redlining**. Term used to refer to a pattern of discrimination in which financial institutions refuse to make mortgage loans, regardless of credit record of the applicant, on properties in specified areas because of alleged deteriorating conditions. At one time, lenders actually outlined these areas with a red pencil. Such practice violates federal laws. 12 U.S.C. § 2801 et seq. Such practice also includes a discriminatory failure or refusal to provide property insurance on dwellings. *Dunn v. Midwestern Indem. Mid-American Fire and Cas. Co.*, D.C.Ohio, 472 F.Supp. 1106, 1110.

**Redmans**. In feudal law, men who, by the tenure or custom of their lands, were to ride with or for the lord of the manor, about his business.

**Redobatores** /rədòwbətórɪy/. In old English law, those that bought stolen cloth and turned it into some other color or fashion that it may not be recognized. See Redubbers.

**Redraft**. A second or cross bill drafted by the original drawer after the first draft has been dishonored and protested. The amount includes the additional costs as well as the original face amount.

**Redress**. Satisfaction for an injury or damages sustained. Damages or equitable relief. See Recovery; Restitution.

**Red tape**. In a derivative sense, order carried to fastidious excess; system run out into trivial extremes. Term commonly refers to excessive bureaucracy.

**Redubbers** /rɪydábərz/. In old English law, those who bought stolen cloth and dyed it of another color to prevent its being identified were anciently so called.

**Reduced to practice**. Invention which has been "reduced to practice" is an invention which has been sufficiently tested to demonstrate that it will work for its intended purpose. *General Elec. Co. v. U.S.*, 654 F.2d 55, 60, 228 Ct.Cl. 192.

**Reductio ad absurdum** /rədáksh(ɪ)ow æd əbsərdəm/. Lat. In logic, the method of disproving an argument by showing that it leads to an absurd consequence.

**Reduction into possession**. The act of exercising the right conferred by a chose in action, so as to convert it

into a chose in possession; thus, a debt is reduced into possession by payment.

**Reduction of capital.** Voluntary liquidation of retired corporate capital. *Jay Ronald Co. v. Marshall Mortg. Corporation*, 265 App.Div. 622, 40 N.Y.S.2d 391, 399.

**Reduction to possession.** Conversion of a right existing as a claim into actual custody and enjoyment. *Newell v. McLaughlin*, 126 Conn. 138, 9 A.2d 815, 819.

**Reduction to practice.** As respects priority of invention for purposes of patentability is accomplished when inventor's conception is embodied in such form as to render it capable of practical and successful use. *Pyrene-Minimax Corporation v. Palmer*, 67 App.D.C. 33, 89 F.2d 505, 510. But device need not be perfect or commercial success. *Pierson v. Beck*, Cust. & Pat.App., 40 F.2d 769, 770.

**Redundancy.** Introducing superfluous matter into a legal instrument; particularly the insertion in a pleading of matters foreign, extraneous, and irrelevant to that which it is intended to answer. In *re Wise's Estate*, 144 Neb. 273, 13 N.W.2d 146, 151. Redundant matter in pleadings may be ordered stricken on motion. Fed.R. Civil P. 12(f).

**Re-enact.** To enact again; to revive.

**Re-enactment rule.** If the legislature enacts again a statute which had long continued executive construction by an agency, it can be said that the legislature has adopted that construction.

**Re-entry.** The act of resuming the possession of lands or tenements in pursuance of a right which party exercising it reserved to himself when he quit his former possession. The right reserved by a grantor to enter the premises on breach of a condition of the conveyance. *See also* Repossession.

**Re-establish.** To restore to its former position. *Baron v. Prudence Life Ins. Co.*, 315 Ill.App. 129, 42 N.E.2d 137, 138.

**Reeve** /riyv/. An ancient English officer of justice inferior in rank to an alderman. He was a ministerial officer appointed to execute process, keep the King's peace, and put the laws in execution. He witnessed all contracts and bargains, brought offenders to justice and delivered them to punishment, took bail for such as were to appear at the county court, and presided at the court or folcmote. He was also called *gerefa*.

There were several kinds of reeves, as, the *shire-gerefa*, shire-reeve or sheriff; the *heh-gerefa*, or high-sheriff; *tithing-reeve*, burghor or borough-reeve.

*Land reeve.* *See* Land.

**Re-examination.** An examination of a witness after a cross-examination, upon matters arising out of such cross-examination.

**Re-exchange.** The damages or expenses caused by the dishonor and protest of a bill of exchange in a foreign country, where it was payable, and by its return to the

place where it was drawn or indorsed, and its being there taken up.

**Re-export.** The act of exporting a product which has been imported and left relatively unchanged in form before exporting again.

**Re-extent.** In old English practice, a second extent made upon lands or tenements, upon complaint made that the former extent was partially performed.

**Re. fa. lo.** /riy féy lów/. The abbreviation of "*recordari facias loquelam*," (*q.v.*)

**Refare** /rəfériy/. To bereave, take away, rob.

**Refection** /rəfékshən/. In the civil law, reparation; re-establishment of a building.

**Refer.** When a case or action involves matters of account or other intricate details which require minute examination, and for that reason are not fit to be brought before a jury, it is common to *refer* the whole case, or some part of it, to the decision of an auditor, master, or referee, and the case is then said to be referred. *See* Referee; Reference.

Taking this word in its strict, technical use, it relates to a mode of determining questions which is distinguished from "arbitration," in that the latter word imports submission of a controversy without any lawsuit having been brought, while "reference" imports a lawsuit pending, and an issue framed or question raised which (and not the controversy itself) is sent out. Thus, arbitration is resorted to instead of any judicial proceeding; while reference is one mode of decision employed in the course of a judicial proceeding.

To point, allude, direct, or make reference to. This is the use of the word in conveyancing and in literature, where a word or sign introduced for the purpose of directing the reader's attention to another place in the deed, book, document, etc., is said to "refer" him to such other connection.

**Referee.** A person to whom a cause pending in a court is referred by the court, to take testimony, hear the parties, and report thereon to the court. Person who is appointed by court to exercise certain judicial powers, to take testimony, to hear parties, and report his findings. *Department of Motor Vehicles v. Superior Court for Los Angeles County*, 271 Cal.App.2d 770, 76 Cal.Rptr. 804, 806. He is an officer exercising judicial powers, and is an arm of the court for a specific purpose. *Segal v. Jackson*, 183 Misc. 460, 48 N.Y.S.2d 877, 879. Similar functions are performed by auditors, assessors, or masters (*q.v.*). *See* Fed.R.Civil P. 53. *See also* Magistrate; Master; Reference.

**Referee in bankruptcy.** An officer appointed by the courts of bankruptcy under the Bankruptcy Act of 1898 (11 U.S.C.A. § 1) corresponding to the "registers in bankruptcy" under earlier statutes having administrative and quasi-judicial functions under the bankruptcy law, and whose functions and powers were to administer proceedings under the federal Bankruptcy Act (*q.v.*). Such referees (called "bankruptcy judges" after 1973) were abolished by the 1978 Bankruptcy Code; their

functions now being performed by Bankruptcy Court judges.

**Reference.** The act of referring a case to a referee, auditor, or master to find facts and submit report to the court. The document by which the reference is made. Fed.R.Civil P. 53. *See also* Master; Referee.

In contracts, an agreement to submit to arbitration; the act of parties in submitting their controversy to chosen referees or arbitrators.

A person who will provide information for you about your character, credit, etc. The act of sending or directing one person to another, for information or advice as to the character, solvency, standing, etc., of a third person, who desires to open business relations with the first, or to obtain credit with him.

**Reference in case of need.** When a person draws or indorses a bill of exchange, he sometimes adds the name of a person to whom it may be presented "in case of need;" *i.e.*, in case it is dishonored by the original drawee or acceptor.

**Reference statutes.** Statutes which refer to other statutes and make them applicable to the subject of legislation. Their object is to incorporate into the act of which they are a part the provisions of other statutes by reference and adoption. *State ex rel. School Dist. of Kansas City v. Lee*, 334 Mo. 513, 66 S.W.2d 521.

**Referendarius** /rĕfĕrĕndĕr(i)yĕs/. An officer by whom the order of causes was laid before the Roman emperor, the desires or petitioners made known, and answers returned to them.

**Referendary** /rĕfĕrĕnd(ə)riy/. In Saxon law, a master of requests; an officer to whom petitions to the king were referred.

**Referendo singula singulis** /rĕfĕrĕndow sĭng(y)ĕlə sĭng(y)ĕləs/. Lat. Referring individual or separate words to separate subjects; making a distributive reference of words in an instrument; a rule of construction.

**Referendum** /rĕfĕrĕndəm/. The process of referring to the electorate for approval a proposed new state constitution or amendment (constitutional referendum) or of a law passed by the legislature (statutory referendum). Right constitutionally reserved to people of state, or local subdivision thereof, to have submitted for their approval or rejection, under prescribed conditions, any law or part of law passed by lawmaking body. *Anne Arundel County v. McDonough*, 277 Md. 271, 354 A.2d 788, 796. Not all state constitutions make provision for referendum process. *See also* Initiative; Plebiscite; Proposition.

In international law, a communication sent by a diplomatic representative to his home government, in regard to matters presented to him which he is unable or unwilling to decide without further instructions.

**Refinance.** To finance again or anew; to pay off existing debts with funds secured from new debt; to extend the maturity date and/or increase the amount of an existing debt; to arrange for a new payment schedule.

The discharge of an obligation with funds acquired through the creation of a new debt, often at a different interest rate. *See also* Debt adjustment; Recapitalization.

**Reform.** To correct, rectify, amend, remodel. Instruments *inter partes* may be *reformed*, when defective, by a court. By this is meant that the court, after ascertaining the real and original intention of the parties to a deed or other instrument (which intention they failed to sufficiently express, through some error, mistake of fact, or inadvertence), will decree that the instrument be held and construed as if it fully and technically expressed that intention. *See also* Reformation.

**Reformation.** A court-ordered correction of a written instrument to cause it to reflect the true intentions of the parties. Equitable remedy used to reframe written contracts to reflect accurately real agreement between contracting parties when, either through mutual mistake or unilateral mistake coupled with actual or equitable fraud by other party, the writing does not embody contract as actually made. *Mutual of Omaha Ins. Co. v. Russell*, C.A.Kan., 402 F.2d 339, 344.

If by mistake of fact as to the contents of a written agreement or conveyance, or by mistake of law as to its legal effect, the writing does not conform to the agreement of the parties to it, the writing can be reformed to accord with the agreement. *Restatement, Second, Agency*, § 8D.

Reformation means doing over to bring about a better result, correction or rectification. *Tuel v. Gladden*, 234 Or. 1, 379 P.2d 553, 555.

*See also* Reform.

**Reformatory.** A penal institution for youthful offenders where the emphasis is on reformation of the juvenile's behavior.

**Refreshing recollection.** *See* Recollection; Recorded past recollection; Refreshing the memory.

**Refreshing the memory.** The act of a witness who consults his documents, memoranda, or books, to bring more distinctly to his recollection the details of past events or transactions, concerning which he is testifying. *See* Fed.Evid.R. 612. *See also* Past recollection recorded; Recollection; Recorded past recollection.

**Refund, n.** As generally referred to in connection with income taxes, is the amount a taxpayer or reporting entity would receive from the government due to an overpayment of taxes. *See also* Rebate.

**Refund, v.** To repay or restore; to return money in restitution or repayment; *e.g.* to refund overpaid taxes; to refund purchase price of returned goods. *See also* Rebate; Refund claim; Refunds.

To fund again or anew; specifically, finance, to borrow, usually by the sale of bonds, in order to pay off an existing loan with the proceeds. *Street Improvement Dist. No. 315 v. Arkansas Highway Commission*, 190 Ark. 1045, 83 S.W.2d 81, 82. *See also* Recapitalization; Refinance.



**Refund claim.** A request directed to the Internal Revenue Service for repayment (*i.e.* refund) of taxes overpaid.

**Refunding.** Type of refinancing (*q.v.*) in which the issuer of bonds replaces outstanding bonds with a new issue. In general, any act of repayment of a loan or money advanced. *See also* Recapitalization; Refinance.

**Refunding bond.** A bond which replaces or pays off outstanding bond which holder surrenders in exchange for new security. *Fore v. Alabama State Bridge Corporation*, 242 Ala. 455, 6 So.2d 508, 512. Also a bond given to an executor by a legatee, upon receiving payment of the legacy, conditioned to *refund* the same, or so much of it as may be necessary, if the assets prove deficient.

**Refunds.** Money received by the government or its officers which, for any cause, are to be refunded or restored to the parties paying them; such as excessive duties or taxes, duties paid on goods destroyed by accident, duties received on goods which are re-exported, etc. *See also* Rebate; Refund.

**Refusal.** The act of one who has, by law, a right and power of having or doing something of advantage, and declines it. Also, the declination of a request or demand, or the omission to comply with some requirement of law, as the result of a positive intention to disobey. In the latter sense, the word is often coupled with "neglect," as if a party shall "neglect or refuse" to pay a tax, file an official bond, obey an order of court, etc. But "neglect" signifies a mere omission of a duty, which may happen through inattention, dilatoriness, mistake, or inability to perform, while "refusal" implies the positive denial of an application or command, or at least a mental determination not to comply. A rejection, a denial of what is asked. *Board of Public Instruction of Palm Beach County, Fla. v. Cohen, C.A.Fla.*, 413 F.2d 1201, 1203. *See also* Rejection; Renunciation; Repudiation; Rescind.

As used in the context of the implied consent law simply means that an arrestee, after having been requested to take the breathalyzer test, declines to do so of his own volition. *Rogers v. King, Mo.App.*, 684 S.W.2d 390, 393.

**Refuse, v.** /rɛf'yúwz/. To deny, decline, reject. "Fail" is distinguished from "refuse" in that "refuse" involves an act of the will, while "fail" may be an act of inevitable necessity. *Maestas v. American Metal Co. of New Mexico*, 37 N.M. 203, 20 P.2d 924, 928.

**Refuse, n.** /rɛf'yúws/. That which is refused or rejected as useless or worthless. Worthless matter, rubbish, scum, leavings. In statute prohibiting discharge into navigable waters of refuse, "refuse" includes all foreign substances and pollutants other than liquid sewage. *U. S. v. Kennebec Log-Driving Co., D.C.Me.*, 399 F.Supp. 754, 757.

**Refutantia** /rɛf'yúwtɛnsh(iy)ə/. In old English law, an acquittance or acknowledgment of renouncing all future claim.

**Regale episcoporum** /rɛgɛyliy ɛpiskɔpɔrɛm/. The temporal rights and privileges of a bishop.

**Regalia** /rɛgɛyl(iy)ə/. An abbreviation of "*jura regalia*," royal rights, or those rights which a King or Queen has by virtue of his or her prerogative, comprising: power of judicature; power of life and death; power of war and peace; masterless goods; assessments; minting of money. Owners of counties palatine were formerly said to have "*jura regalia*" in their counties as fully as the king in his palace. 1 Bl.Comm. 117. The term is sometimes used in the same sense in the Spanish law.

Also, the crown, sceptre and jewels used at a coronation.

**Regalia facere** /rɛgɛyl(iy)ə fásɛriy/. To do homage or fealty to the sovereign by a bishop when he is invested with the regalia.

**Regard.** In old English law, inspection; supervision. Also a reward, fee, or perquisite.

**Regardant** /rɛgárdənt/. A term which was applied, in feudal law, to a villein annexed to a manor, and having charge to do all base services within the same, and to see the same freed from all things that might annoy his lord. Such a villein *regardant* was thus opposed to a villein *en gros*, who was transferable by deed from one owner to another.

**Regarder of a forest.** In old English law, an ancient officer of the forest, whose duty it was to take a view of the forest hunts, and to inquire concerning trespasses, offenses, etc.

**Regard of the forest.** In old English law, the oversight or inspection of it, or the office and province of the regarder, who is to go through the whole forest, and every bailiwick in it, before the holding of the sessions of the forest, or justice-seat, to see and inquire after trespassers, and for the survey of dogs.

**Rege inconsulto** /riyjiy inkɛnsáltow/. Lat. In old English law, a writ issued from the sovereign to the judges, not to proceed in a cause which may prejudice the crown, until advised.

**Regency.** Rule; government; kingship; office or government of regent, or body of regents, during rule of regent. The man or body of men intrusted with the vicarious government of a kingdom during the minority, absence, insanity, or other disability of the King.

**Regent.** A governor or ruler. One who vicariously administers the government of a kingdom, in the name of the king, during the latter's minority or other disability.

A master, governor, director, or superintendent of a public institution, particularly a college or university. Board of Regents is the governing body of a state university or college system.

In the canon law, it signifies a master or professor of a college.

**Reg. gen.** An abbreviation of "*Regula Generalis*," a general rule (of court).

**Regia dignitas est indivisibilis, et quælibet alia derivativa dignitas est similiter indivisibilis** /riyj(iy)ə dígnɛtæs ɛst indəvɛzibɛləs ɛt kwíyləbət éyl(iy)ə

*derivatívva dígnatàs èst sàmílatør indøvæzíbælas/*. The kingly power is indivisible, and every other derivative power is similarly indivisible.

**Regicide** /rèjəsàyd/ríy°. The murder of a sovereign; also the person who commits such murder.

**Regidor** /rèyhiydór/. In Spanish law, one of a body, never exceeding twelve, who formed a part of the *ayuntamiento*. The office of regidor was held for life; that is to say, during the pleasure of the supreme authority. In most places the office was purchased; in some cities, however, they were elected by persons of the district, called "*capitulares*."

**Régime** /reyzhíym/. In French law, a system of rules or regulations.

**Régime dotal** /reyzhíym dowlál/. The *dot*, being the property which the wife brings to the husband as her contribution to the support of the burdens of the marriage, and which may either extend as well to future as to present property, or be expressly confined to the present property of the wife, is subject to certain regulations which are summarized in the phrase "*régime dotal*." The husband has the entire administration during the marriage; but, as a rule, where the *dot* consists of immovables, neither the husband nor the wife, nor both of them together, can either sell or mortgage it. The *dot* is returnable upon the dissolution of the marriage, whether by death or otherwise.

**Régime en communauté** /reyzhíym on komyùwn-owtéy/. The community of interests between husband and wife which arises upon their marriage. It is either (1) legal or (2) conventional, the former existing in the absence of any "agreement" properly so called, and arising from a mere declaration of community; the latter arising from an "agreement," properly so called.

**Regimiento** /rèyhiymyéntow/. In Spanish law, the body of regidores, who never exceeded twelve, forming a part of the municipal council, or *ayuntamiento*, in every capital of a jurisdiction.

**Regina** /rèjáyna/. Lat. The Queen.

**Regio assensu** /ríj(i)yow éséns(y)uw/. A writ whereby the sovereign gives his assent to the election of a bishop.

**Register, v.** To record formally and exactly; to enroll; to enter precisely in a list or the like. *Los Angeles County v. Craig*, 38 Cal.App.2d 58, 100 P.2d 818, 820. To make correspond exactly one with another; to fit correctly in a relative position; to be in correct alignment one with another. *Cover v. Schwartz*, Cust. & Pat.App., 28 C.C.P.A. 831, 116 F.2d 512, 515. *See also* Record.

**Register, n.** An officer authorized by law to keep a record called a "register" or "registry."

A book of public facts such as births, deaths and marriages (also called a registry), or the public official who keeps such book. Other examples of public record books are the register of patents (a list of all patents granted) and the register of ships (kept by customs). Other examples of public record keeping officials are the

register of copyrights, register of deeds (land records) and the register of wills (clerk of probate court). They are often called "Recorder" or "Registrar."

*See also* Federal Register.

**Registered.** Entered or recorded in some official register or record or list.

**Registered bond.** A bond entered on the books of the issuing corporation or of its transfer agent in the name of the purchaser, whose name also appears on the face of the bonds. Either principal alone or both principal and interest may be registered.

A bond the number of which is recorded by the seller in the name of the purchaser and which only the latter, or one legally authorized to act for him, can redeem. Principal of such a bond and interest, if registered as to interest, is paid to the owner listed on the books of the issuer, as opposed to a bearer bond where the possessor of the bond is entitled to interest and principal.

The bonds of the United States government (and of many municipal and private corporations) are either registered or "coupon bonds." In the case of a registered bond, the name of the owner or lawful holder is entered in a register or record, and it is not negotiable or transferable except by an entry on the register, and checks or warrants are sent to the registered holder for the successive installments of interest as they fall due. A bond with interest coupons attached is transferable by mere delivery, and the coupons are payable, as due, to the person who shall present them for payment. But the bond issues of many private corporations now provide that the individual bonds "may be registered as to principal," leaving the interest coupons payable to bearer, or that they may be registered as to both principal and interest, at the option of the holder.

**Registered check.** A check purchased by a person at a bank and drawn on funds of the bank that have been specially set aside to cover the check, though not certified by the bank; loosely called a money order. *Compare* Money order.

**Registered corporation.** A publicly held corporation which has registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 781). *See also* Registration statement.

**Registered mail.** Type of special mailing privilege given by the U.S. Postal Service for an extra fee and which provides insurance of its delivery up to certain amount.

**Registered representative.** A person who has met the qualifications set by law or regulations (of *e.g.* SEC and New York Stock Exchange) to sell securities to the public.

**Registered securities.** *See* Registered bond; Registered stock; Registration of securities; Registration statement.

**Registered stock.** Stock issue that has been registered with Securities and Exchange Commission as a new issue or secondary offering. 15 U.S.C.A. § 77c et seq. *See also* Registration of securities; Registration statement.

**Registered tonnage.** The registered tonnage of a vessel is the capacity or cubical contents of the ship, or the amount of weight which she will carry, as ascertained in some proper manner and entered on an official register or record.

**Registered trademark.** A trademark filed in the United States Patent and Trademark office, with the necessary description and other statements required by the act of congress, and there duly recorded, securing its exclusive use to the person causing it to be registered. 18 U.S.C.A. § 1051. *See* Trademark.

**Registered voters.** Persons whose names are placed upon the registration books provided by law as the record or memorial of the duly qualified voters of the state or county. *See also* Qualified voter.

**Register in bankruptcy.** An officer of the courts of bankruptcy, under the earlier acts of congress having substantially the same powers and duties as the "referees in bankruptcy" under the Act of 1898 (11 U.S.C. A.). *See* Referee in bankruptcy.

**Register of deeds.** The name given in some states to the officer whose duty is to record deeds, mortgages, and other instruments affecting realty in the official books provided and kept for that purpose; also commonly called "registrar" or "recorder" of deeds.

**Register of land office.** Formerly, a federal officer appointed for each federal land district, to take charge of the local records and attend to the preliminary matters connected with the sale, preemption, or other disposal of the public lands within the district.

**Register of ships.** A register kept by the collectors of customs, in which the names, ownership, and other facts relative to merchant vessels are required by law to be entered. This register is evidence of the nationality and privileges of an American ship. The certificate of such registration, given by the collector to the owner or master of the ship, is also called the ship's register.

**Register of the Treasury.** An officer of the United States Treasury, whose duty is to keep all accounts of the receipt and expenditure of public money and of debts due to or from the United States, to preserve adjusted accounts with vouchers and certificates, to record warrants drawn upon the treasury, to sign and issue government securities, and take charge of the registry of vessels under United States laws. 31 U.S.C.A. § 161.

**Register of wills.** An officer in some of the states, whose function is to record and preserve all wills admitted to probate, to issue letters testamentary or of administration, to receive and file accounts of executors, etc., and generally to act as the clerk of the probate court.

**Register's court.** A court, formerly in the state of Pennsylvania which had jurisdiction in matters of probate. *See* Orphan's Courts.

**Registrant.** One who registers; particularly, one who registers anything (*e.g.*, a trademark) for the purpose of

securing a right or privilege granted by law on condition of such registration.

**Registrar /réjəstràr/. An officer who has the custody and charge of keeping of a registry or register. Person in educational institution in charge of registering students for enrollment, maintaining academic records, etc. Person in hospital responsible for admitting of patients.**

An agent, usually a bank or trust company, appointed by a corporation to keep records of the names of bond and stockholders and distributions of earnings. *See* Registration of securities.

**Registrarius /rèjəstrér(i)yəs/. In old English law, a notary; a registrar or register.**

**Registrar of deeds.** A term used in some states to describe the person in charge of recorded instruments affecting land title. Also commonly called a recorder or register (*q.v.*).

**Registration.** Recording; enrolling; inserting in an official register. Enrollment, as registration of voters, registration for school, etc. The act of making a list, catalogue, schedule, or register, particularly of an official character, or of making entries therein.

Any schedule containing a list of voters, the being upon which constitutes a prerequisite to vote.

**Land.** System by which owner of real property may petition court for certificate of title by which state certifies such title as being in the owner whose name appears on certificate of title. *See, e.g.*, Mass.G.L. c. 185, §§ 26 et seq. *See also* Torrens title system.

**Registration of securities.** Recording in the official books of the company of the name and address of the holder of each bond or certificate of stock, with the date of its issue, and, in the case of a transfer of stock from one holder to another, the names of both parties and such other details as will identify the transaction and preserve an official record of its essential facts. Such information is required for paying of dividends, mailing of proxies, annual reports, etc.

Statutory procedure requiring the filing with the S.E.C. of various documents including a prospectus in order for securities to be publicly offered. Clearance must be obtained from the S.E.C. before the securities may be sold. There is no ceiling relative to the number of shares or dollar amount that may be registered. 15 U.S.C. § 77f et seq. *See also* Registered stock; Registration statement; Regulation A; Shelf registration.

**Registration statement.** Document required by the Securities Act of 1933 of most companies wishing to issue securities to the public or by the Securities Exchange Act of 1934 of a company wishing to have its securities traded in public markets. The statement discloses financial data, purpose of securities offering, and other items of interest to potential investors. Such statements must be submitted to and approved by the SEC. 15 U.S.C.A. § 77f et seq. *See* Letter of comment; Prospectus; Registration of securities; Regulation A.

**Registrum brevium** /rəjɪstrəm bɹi:v(i)yəm/. The register of writs (*q.v.*).

**Registry.** A register, or book authorized or recognized by law, kept for the recording or registration of facts or documents.

The list or record of ships subject to the maritime regulations of a particular country. The listing of a vessel at a custom house under the name of the country whose flag it flies, though such flag is not necessarily indicative of the nationality of the owner. Generally, "registry" applies to vessels in foreign commerce, whereas "enrollment" refers to coastwise navigation. *R. C. Craig Limited v. Ships of Sea Inc.*, D.C.Ga., 345 F.Supp. 1066, 1070.

**Registry of deeds.** See Register of deeds; Registrar of deeds.

**Reg. Jud.** An abbreviation of "*Registrum Judiciale*," the register of judicial writs.

**Reg. Lib.** An abbreviation of "*Registrarii Liber*," the register's book in chancery, containing all decrees.

**Regnal years** /régnəl yírz/. Statutes of the British Parliament are usually cited by the name and year of the sovereign in whose reign they were enacted, and the successive years of the reign of any king or queen are denominated the "regnal years." Since 1963, acts of Parliament have been numbered by the calendar year without reference to the regnal year.

**Regnant** /régnənt/. One having authority as a king; one in the exercise of royal authority.

**Reg. Orig.** An abbreviation of "*Registrum Originale*," the register of original writs.

**Reg. Pl.** An abbreviation of "*Regula Placitandi*," rule of pleading.

**Regrant** /riygránt/. In the English law of real property, when, after a person has made a grant, the property granted comes back to him (*e.g.*, by escheat or forfeiture), and he grants it again, he is said to regrant it. The phrase is chiefly used in the law of copyholds.

**Regrating.** In old English law, the offense of buying or getting into one's hands at a fair or market any provisions, corn, or other dead victual, with the intention of selling the same again in the same fair or market, or in some other within four miles thereof, at a higher price. The offender was termed a "regrator."

**Regress.** To return, go back or re-enter. Used principally in the phrase "free entry, egress, and regress" but it is also used to signify the reentry of a person who has been disseised of land.

**Regressive tax.** A tax levied at rates which increase less rapidly than the increase of the tax base, thus bearing more heavily on poorer taxpayers. Tax for which the rate decreases as the taxed base, such as income, increases. Compare Progressive tax.

**Regs.** An abbreviation for U.S. Treasury Department Regulations. See Regulations.

**Regula** /régyələ/. Lat. A rule. *Regula generalis*, a general rule; a standing rule or order of a court. Frequently abbreviated "*Reg. Gen.*"

**Regulæ generales** /régyəli:y jènərəylyz/. Lat. General rules, which the courts promulgate from time to time for the regulation of their practice.

**Regula est, juris quidem ignorantiam cuique nocere, facti vero ignorantiam non nocere** /régyələ èst, jùrəs kwáyðəm ìgnərənshiyəm k(yuw)áykwiy nəsériy, fækta:y vírow ìgnərənsh(iy)əm nòn nəsériy/. It is a rule, that every one is prejudiced by his ignorance of law, but not by his ignorance of fact.

**Regula pro lege, si deficit lex** /régyələ pròw líjjiy, sà:y défəsət léks/. In default of the law, the maxim rules.

**Regular.** Conformable to law. Steady or uniform in course, practice, or occurrence; not subject to unexplained or irrational variation. Usual, customary, normal or general. *Gerald v. American Cas. Co. of Reading, Pa.*, D.C.N.C., 249 F.Supp. 355, 357. Made according to rule, duly authorized, formed after uniform type; built or arranged according to established plan, law, or principle. Antonym of "casual" or "occasional." *Palle v. Industrial Commission*, 79 Utah 47, 7 P.2d 284, 290.

As to *regular* Clergy; Deposit; Election; Indorsement; Meeting; Navigation; Process; Session, and Term, see those titles.

**Regular and established place of business.** Under federal Judicial Code, § 48 (28 U.S.C.A. §§ 1400, 1694), permitting patent infringement suits to be brought in the district in which defendant resides or where defendant committed acts of infringement and has a regular and established place of business, a "regular" place of business is one where business is carried on regularly, and not temporarily, or for some special work or particular transaction, while an "established" place of business must be a permanent place of business, and a "regular and established place of business" is one where the same business in kind, if not in degree, as that done at the home office or principal place of business, is carried on. A foreign corporation may have a "regular and established place of business" although business therein is merely securing orders and forwarding them to the home office. *Shelton v. Schwartz*, C.C.A.Ill., 131 F.2d 805, 808. See also Minimum contracts.

**Regular course of business.** This phrase within worker's compensation acts excluding from their benefits person whose employment is not in regular course of business of employer, refers to habitual or regular occupation that party is engaged in with view of winning livelihood or some gain, excluding incidental or occasional operations arising out of transaction of that business; to normal operations which constitute business.

Term used in connection with books and records kept by a business and which are admissible in evidence if the court finds as a preliminary matter that the entries therein were made in good faith, before the action was commenced, and that such records are part of the customary operation of the business.

A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, is not excluded by the hearsay rule, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. Fed.Evid.R. 803(6); 28 U.S.C.A. § 1732. *See* Business entry rule.

For purposes of the Uniform Business Records Act, "regular course of business" means in the inherent nature of the business in question, and in the method systematically employed for the conduct of the business as a business. *Missouri Valley Walnut Co. v. Snider*, Mo.App., 569 S.W.2d 324, 328.

In commercial law, a requirement for due negotiation of a document of title that limits U.C.C. Article 7's good-faith-purchase protection to normal and usual mercantile dealings in the trade.

Term is also descriptive of sales which are ordinarily made by a business in contrast to a bulk sale.

**Regular entries.** Entries made in books of account in regular course of business. *See also* Regular course of business.

**Regulariter non valet pactum de re mea non alienanda** /règyaléràtər nòn vèlèt pæktəm diy riy miyè nòn èyliyanændə/. It is a rule that a compact not to alienate my property is not binding.

**Regularly** /règyalərliy/. At fixed and certain intervals, regular in point of time. In accordance with some consistent or periodical rule or practice.

**Regular on its face.** Process is "regular on its face" when it proceeds from a court, officer, or body having authority of law to issue process of that nature, and is legal in form and contains nothing to notify or fairly apprise any one that it is issued without authority.

**Regular use.** Term, for purposes of exclusionary language of automobile liability policy excluding coverage where automobile was "furnished for regular use," is defined as continuous use, uninterrupted normal use for all purposes, without limitation as to use, and customary use as opposed to occasional use or special use. *Central Sec. Mut. Ins. Co. v. DePinto*, 9 Kan.App.2d 85, 673 P.2d 122, 124.

**Regulate.** To fix, establish, or control; to adjust by rule, method, or established mode; to direct by rule or restriction; to subject to governing principles or laws. The power of Congress to regulate commerce is the power to enact all appropriate legislation for its protection or advancement; to adopt measures to promote its growth and insure its safety; to foster, protect, control, and restrain. *Virginian Ry. Co. v. System Federation No. 40, Railway Employees Department of American Federation of Labor*, C.C.A.Va., 84 F.2d 641, 650. It is also

power to prescribe rule by which commerce is to be governed, and embraces prohibitory regulations. *United States v. Darby*, 312 U.S. 100, 657, 61 S.Ct. 451, 456, 85 L.Ed. 609. Regulate means to govern or direct according to rule or to bring under control of constituted authority, to limit and prohibit, to arrange in proper order, and to control that which already exists. *Farmington River Co. v. Town Plan and Zoning Commission of Town of Farmington*, 25 Conn.Sup. 125, 197 A.2d 653, 660.

**Regulation.** The act of regulating; a rule or order prescribed for management or government; a regulating principle; a precept. Rule of order prescribed by superior or competent authority relating to action of those under its control. Regulation is rule or order having force of law issued by executive authority of government (e.g. by federal administrative agency). *State ex rel. Villines v. Freeman*, Okl., 370 P.2d 307, 309. *See* Regulations.

**Regulation A.** This SEC regulation provides for simplified registration filing requirements for certain small issue securities offerings. Securities Act of 1933, 15 U.S.C.A. § 77c(b). *See* Registration of securities.

**Regulation J.** Administrative rules issued by the Board of Governors of the Federal Reserve System governing the collection of checks and transfer of funds, directly or indirectly, through federal Reserve Banks.

**Regulation T.** Securities and Exchange Commission regulation governing extension of credit by securities brokers to customers. *See* Margin account.

**Regulation Z.** Regulations of Federal Reserve Board which implement provisions of Federal Truth-in-Lending Act. *See* Truth-in-Lending Act.

**Regulation charge.** Charge exacted for privilege or as condition precedent to carrying on business. *See also* Privilege (*Privilege tax*).

**Regulation of an executive department.** The general rules relating to the subject on which a department acts, made by the head of the department under some act of Congress conferring power to make such regulations, and thereby give to them the force of law. *State ex rel. Kaser v. Leonard*, 164 Or. 579, 102 P.2d 197.

**Regulations.** Such are issued by various governmental departments to carry out the intent of the law. Agencies issue regulations to guide the activity of those regulated by the agency and of their own employees and to ensure uniform application of the law. Regulations are not the work of the legislature and do not have the effect of law in theory. In practice, however, because of the intricacies of judicial review of administrative action, regulations can have an important effect in determining the outcome of cases involving regulatory activity. United States Government regulations appear first in the *Federal Register*, published five days a week, and are subsequently arranged by subject in the *Code of Federal Regulations*.

**Treasury Regulations.** Treasury Department Regulations (abbr. "Treas. Regs.") represent the position of the

Internal Revenue Service as to how the Internal Revenue Code is to be interpreted. Their purpose is to provide taxpayers and I.R.S. personnel with rules of general and specific application to the various provisions of the tax law. Such regulations are published in the Federal Register and in tax services.

*Truth-in-Lending Act.* See Regulation Z.

**Regulatory agency.** See Administrative agency.

**Rehabilitation.** Investing or clothing again with some right, authority, or dignity. Restoring person or thing to a former capacity; reinstating; qualifying again. In re Coleman, D.C.Ky., 21 F.Supp. 923, 924, 925. Restoration of individual to his greatest potential, whether physically, mentally, socially, or vocationally. Jones v. Grinnel Corp., 117 R.I. 44, 362 A.2d 139, 143. For rehabilitation of debtor, see Bankruptcy proceedings; Wage earner's plan.

*Alimony.* Term "rehabilitative alimony" contemplates sums necessary to assist a divorced person in regaining a useful and constructive role in society through vocational or therapeutic training or retraining and for the further purpose of preventing financial hardship on society or individual during the rehabilitative process. Sever v. Sever, Fla.App., 467 So.2d 492, 494.

*Corporation.* Attempt to conserve and administer assets of insolvent corporation in hope of its eventual return from financial stress to solvency. In re Title & Mortgage Guarantee Co. of Buffalo, 152 Misc. 428, 274 N.Y.S. 270. Contemplates continuance of corporate life and activities, and its effort to restore and reinstate corporation to former condition of successful operation and solvency. New York Title & Mortgage Co. v. Friedman, 153 Misc. 697, 276 N.Y.S. 72. See Bankruptcy Code, Ch. 11 (11 U.S.C.A.). See also Bankruptcy proceedings; Receivership; Reorganization.

*Witness.* After cross examination, a witness whose credibility has suffered may be examined again (redirect examination) to improve his standing with the trier of fact in matters covered on cross examination. This process is called "rehabilitation" of the witness. See Fed.R.Evid. 608(a).

**Rehearing.** Second consideration of cause for purpose of calling to court's or administrative board's attention any error, omission, or oversight in first consideration. A retrial of issues which presumes notice to parties entitled thereto and opportunity for them to be heard. Yee v. State Board of Equalization of California, 16 Cal. App.2d 417, 60 P.2d 322, 323. Reconsideration of a case by the same court in which the original determination was made. Kerr-McGee Nuclear Corp. v. New Mexico Environmental Imp. Bd., App., 97 N.M. 88, 637 P.2d 38, 46. Administrative decisions and determinations in social security cases may be reopened for "good cause" and other specified grounds. See also Reargument; Retrial; Trial (*Trial de novo*).

**Rehypothecation** /riyhəypəθəkéyshən/. To pledge to another or to transfer to another a note, goods, or other collateral which have been already pledged; e.g. a broker may pledge securities pledged to him by a customer

(under e.g. a margin account) to finance his borrowings from a bank.

**Reif** /riyf/. A robbery.

**Reification.** The embodiment of a right to the payment of money in an instrument so that transfer of the instrument transfers also the right. The term can also refer generally to the embodiment of any other property in a writing, which writing represents the property.

**Rei interventus** /riyay intərvéntəs/. Lat. Things intervening; that is, things done by one of the parties to a contract, in the faith of its validity, and with the assent of the other party, and which have so affected his situation that the other will not be allowed to repudiate his obligation, although originally it was imperfect.

**Reimburse.** To pay back, to make restoration, to repay that expended; to indemnify, or make whole. Los Angeles County v. Frisbie, 19 Cal.2d 634, 122 P.2d 526. See also Restitution.

**Reimbursement.** With respect to a surety, the common-law right to get indemnity, or otherwise recoup, from the principal debtor the value of the surety's performance in satisfying the principal debtor's duty. Also refers to the right of an issuer of a letter of credit to recoup from its customer upon duly honoring the credit.

**Reincorporation.** A new incorporation of a business which had already been incorporated. Also, a new incorporation of a document by reference which had previously been incorporated by reference but subsequently disassociated.

**Reinstate.** To reinstall; to reestablish; to place again in a former state, condition, or office; to restore to a state or position from which the object or person had been removed. Lowry v. Aetna Life Ins. Co., Tex.Civ.App., 120 S.W.2d 505, 507.

**Reinstate a case.** To place case again in same position as before dismissal. United States v. Green, C.C.A. Mont., 107 F.2d 19, 22.

**Reinstatement.** In insurance, a restoration of the insured's rights under a policy which has lapsed or been cancelled. To reinstate a policy holder or one who has allowed his policy to lapse does not mean new insurance or taking out a new policy, but does mean that the insured has been restored to all the benefits accruing to him under the policy contract, the original policy. See also Reinstate.

**Reinsurance.** A contract by which an insurer procures a third person to insure him against loss or liability by reason of original insurance. A contract that one insurer makes with another to protect the latter from a risk already assumed. It binds the reinsurer to pay to the reinsured the whole loss sustained in respect to the subject of the insurance to the extent to which he is reinsured. Also the substitution, with the consent of the insured, of a second insurer for the first, so that the original insurer is released.

An agreement to indemnify the assured, partially or altogether, against a risk assumed by it in policy issued

to third party. *Great American Ins. Co. v. Fireman's Fund Ins. Co.*, C.A.N.Y., 481 F.2d 948, 950. A contract that one insurer makes with another to protect the first insurer from a risk he has already assumed. *McDonough Const. Corp. v. Pan Am. Sur. Co.*, Fla.App., 190 So.2d 617, 619.

**Reinsurance treaty.** A bilateral contract containing mutual covenants which codify the ongoing process of one insurance company's transfer of risk to another. *Fortress Re, Inc. v. Jefferson Ins. Co. of New York*, D.C.N.C., 465 F.Supp. 333, 336.

**Reinsured.** An insurer who is insured against loss under its policies.

**Reinsurer.** An insurance carrier which insures insurers.

**Reintegration.** The restoration of a part to the whole after separation. Term may be used in connection with documents to be read or understood together.

**Reipublicæ interest voluntates defunctorum effectum sortiri** /riyaypöblösiy întærest völäntéytiyz diyfånktöräm æféktäm sortáyray/. It concerns the state that the wills of the dead should have their effect.

**Reissuable notes.** Bank-notes which, after having been once paid, may again be put into circulation.

**REIT.** See Real estate investment trust.

**Rei turpis nullum mandatum est** /riyay túrpäs näläm mändéytäm ést/. The mandate of an immoral thing is void. A contract of mandate requiring an illegal or immoral act to be done has no legal obligation.

**Rejection.** An offeree's communication to an offeror that the offeree refuses to accept the terms of the proposal made by the offeror. See Counteroffer; Non-acceptance; Refusal; Repudiation; Rescission of contract.

**Rejoin.** In common-law pleading, to answer a plaintiff's replication in an action at law, by some matter of fact.

**Rejoinder.** In common-law pleading, the second pleading on the part of the defendant, being his answer to the plaintiff's replication. Rejoinder occurs during the trial stage where the defendant answers the plaintiff's rebuttal.

**Rejoining gratis** /ræjójyniñ gréytäs/. In common law pleading, rejoining voluntarily, or without being required to do so by a rule to rejoin. When a defendant was under terms to rejoin *gratis*, he had to deliver a rejoinder, without putting the plaintiff to the necessity and expense of obtaining a rule to rejoin.

**Relate.** To stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with; with "to."

**Related.** Standing in relation; connected; allied; akin. *Nowland Realty Co. v. Commissioner of Internal Revenue*, C.C.A.7, 47 F.2d 1018, 1021. Goods are "related" for trademark purposes if they are used in conjunction with one another or are associated together in some way in the minds of the consuming public. Alfred Dunhill of

London, Inc. v. Kasser Distillers Products Corp., D.C.Pa., 350 F.Supp. 1341, 1352. See also Relative.

**Related claim.** Related claims may be joined under Fed.R.Civil P. 18(a). Within statute permitting joinder of claim for unfair competition with substantial and related claim under patent laws is claim resting on substantially identical facts. *Lyon v. General Motors Corp.*, D.C.Ill., 200 F.Supp. 89, 91.

**Related goods.** Courts will find trademark infringement in cases where the goods sold by the defendant and the mark owner do not directly compete, if the goods are related. Goods are considered related if consumers would assume that, when marked with the same trademark, they come from a common source or are sponsored by the same party.

**Related party transactions.** The tax law places restrictions upon the recognition of gains and losses between related parties due to the potential for abuse. For example, restrictions are placed upon the deduction of losses from the sale or exchange of property between related parties. A related party includes a corporation which is controlled by the taxpayer. I.R.C. § 267.

**Related proceedings.** As used in bankruptcy context are those civil proceedings, that, in absence of petition in bankruptcy court, could have been brought in federal district court or state court. *Hotel Corp. of the South v. Rampart 920, Inc.*, D.C.La., 46 B.R. 758, 769. A "related proceeding" must in some way relate to the administration of the bankrupt estate; there must be some reason why adjudication of the claim is better placed with the bankruptcy court as opposed to a state court. In *re American Energy, Inc.*, Bkrcty.N.D., 50 B.R. 175, 179. See also Core proceeding.

**Relatio est fictio juris et intenta ad unum** /ræléysh(iy)ow ést fiksh(iy)ow júras èt înténtæ æd yúwnəm/. Relation is a fiction of law, and intended for one thing.

**Relation.** A relative or kinsman; a person connected by consanguinity. A person connected with another by blood or affinity. *Liprie v. Michigan Millers Mut. Ins. Co.*, La.App., 143 So.2d 597, 600.

The words "relatives" and "relations," in their primary sense, are broad enough to include any one connected by blood or affinity, even to the remotest degree, but where used in wills, as defining and determining legal succession, are construed to include only those persons who are entitled to share in the estate as next of kin under the statute of distributions.

The connection of two persons, or their situation with respect to each other, who are associated, whether by the law, by their own agreement, or by kinship, in some social *status* or union for the purposes of domestic life; as the relation of guardian and ward, husband and wife, master and servant, parent and child; so in the phrase "domestic relations."

The doctrine of "relation" is that principle by which an act done at one time is considered by a fiction of law to have been done at some antecedent period. It is usually applied where several proceedings are essential

to complete a particular transaction, such as a conveyance or deed. The last proceeding which consummates the conveyance is held for certain purposes to take effect by relation as of the day when the first proceeding was had. *Knapp v. Alexander-Edgar Lumber Co.*, 237 U.S. 162, 35 S.Ct. 515, 517, 59 L.Ed. 894; *U. S. v. Anderson*, 194 U.S. 394, 24 S.Ct. 716, 48 L.Ed. 1035. *See also* Relation back.

A recital, account, narrative of facts; information given. Thus, suits by *quo warranto* are entitled "on the relation of" a private person, who is called the "relator." But in this connection the word seems also to involve the idea of the suggestion, instigation, or instance of the relator.

*See also* Blood relations; Kin or kindred; Next of kin; Relative.

**Relation back.** General rule of "relation back" is that a pleading may not be amended to allege a new or different claim or defense unless it arose out of, or is based on or related to, claim, transaction or occurrence originally set forth or attempted to be set forth. *Harastej v. Reliable Car Rental, Inc.*, D.C.Puerto Rico, 58 F.R.D. 197, 198. *See also* Amended pleadings, below.

A principle that an act done today is considered to have been done at an earlier time. A document held in escrow and finally delivered is deemed to have been delivered as of the time at which it was escrowed.

*See* Ex post facto.

**Amended pleadings.** Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. Fed.R. Civil P. 15(c).

**Relations.** A term which, in its widest sense, includes all the kindred of the person spoken of.

**Relatio semper fiat ut valeat dispositio** /rəléysh(iy)ow sémpər fáyət èt vələiyət dispəzish(iy)ow/. Reference should always be had in such a manner that a disposition in a will may avail.

**Relative.** A kinsman; a person connected with another by blood or affinity. When used generically, includes persons connected by ties of affinity as well as consanguinity, and, when used with a restrictive meaning, refers to those only who are connected by blood.

Individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree. Bankruptcy Code, § 101.

A person or thing having relation or connection with some other person or thing; as, relative rights, relative powers, *infra*. *See also* Relation.

**Relative confession.** *See* Confession.

**Relative convenience doctrine.** Equity may refuse an injunction or other equitable relief if the inconvenience to one party is great while to the other party there is little or no inconvenience. *Duke v. Crossfield*, 241 Mo. App. 579, 240 S.W.2d 180.

**Relative fact.** In the law of evidence, a fact having relation to another fact; a minor fact; a circumstance.

**Relative powers.** Those which relate to land; so called to distinguish them from those which are collateral to it.

**Relative rights.** Those rights of persons which are incident to them as members of society, and standing in various relations to each other. Those rights of persons in private life which arise from the civil and domestic relations.

**Relativorum, cognito uno, cognoscitur et alterum** /rèlatəvórəm, kógnətow yúwnow, kəgnósstər èt óltərəm/. Of relatives, one being known, the other is also known.

**Relator.** An informer. The person upon whose complaint, or at whose instance certain writs are issued such as information or writ of *quo warranto*, and who is *quasi* the plaintiff in the proceeding. For example if John Smith is the relator and Jones is the defendant, the citation would read, State ex rel. John Smith v. Jones. A party in interest who is permitted to institute a proceeding in the name of the People or the Attorney General when the right to sue resides solely in that official. *Veterans' Industries, Inc.*, of Long Beach, Cal. v. Lynch, 8 Cal.App.3d 902, 88 Cal.Rptr. 303, 317. *See also* Ex relatione; Parens patriæ; Real party in interest.

**Relatrix** /rəléytrəks/. A female relator or petitioner.

**Relaxatio** /rèlækséysh(iy)ow/. In old conveyancing, a release; an instrument by which a person relinquishes to another his right in anything.

**Release, v.** To discharge a claim one has against another, as for example in a tort case the plaintiff may discharge the liability of the defendant in return for a cash settlement. To lease again or grant new lease. *See* Accord and satisfaction.

**Release, n.** A writing or an oral statement manifesting an intention to discharge another from an existing or asserted duty. The relinquishment, concession, or giving up of a right, claim, or privilege, by the person in whom it exists or to whom it accrues, to the person against whom it might have been demanded or enforced. Abandonment of claim to party against whom it exists, and is a surrender of a cause of action and may be gratuitous or for consideration. *Melo v. National Fuse & Powder Co.*, D.C.Colo., 267 F.Supp. 611, 612. Giving up or abandoning of claim or right to person against whom claim exists or against whom right is to be exercised. *Adder v. Holman & Moody, Inc.*, 288 N.C. 484, 219 S.E.2d 190, 195.

A discharge of a debt by act of party, as distinguished from an extinguishment which is a discharge by operation of law, and, in distinguishing release from receipt, "receipt" is evidence that an obligation has been discharged, but "release" is itself a discharge of it. *Glickman v. Weston*, 140 Or. 117, 11 P.2d 281, 284.

An *express* release is one directly made in terms by deed or other suitable means. An *implied* release is one which arises from acts of the creditor or owner, without any express agreement. A *release by operation of law* is one which, though not expressly made, the law pre-



sumes in consequence of some act of the releasor; for instance, when one of several joint obligors is expressly released, the others are also released by operation of law.

Liberation, discharge, or setting free from restraint or confinement. Thus, a man unlawfully imprisoned may obtain his *release* on *habeas corpus*. See also Bail.

The abandonment to (or by) a person called as a witness in a suit of his interest in the subject-matter of the controversy, in order to qualify him to testify, under the common-law rule.

A receipt or certificate given by a ward to the guardian, on the final settlement of the latter's accounts, or by any other beneficiary on the termination of the trust administration, relinquishing all and any further rights, claims, or demands, growing out of the trust or incident to it.

In admiralty actions, when a ship, cargo, or other property has been arrested, the owner may obtain its release by giving bail, or paying the value of the property into court.

The conveyance of a person's interest or right which he has in a thing to another that has the possession thereof or some estate therein. The relinquishment of some right or benefit to a person who has already some interest in the property, and such interest as qualifies him for receiving or availing himself of the right or benefit so relinquished.

*Conditional release.* See that title.

*Deed of release.* A deed operating by way of release; but more specifically, in those states where deeds of trust are in use instead of common-law mortgages, as a means of pledging real property as security for the payment of a debt, a "deed of release" is a conveyance in fee, executed by the trustee or trustees, to the grantor in the deed of trust, which conveys back to him the legal title to the estate, and which is to be given on satisfactory proof that he has paid the secured debt in full or otherwise complied with the terms of the deed of trust.

*Release by way of enlarging an estate.* A conveyance of the ulterior interest in lands to the particular tenant; as, if there be tenant for life or years, remainder to another in fee, and he in remainder releases all his right to the particular tenant and his heirs, this gives him the estate in fee. 2 Bl.Comm. 324.

*Release by way of entry and feoffment.* If there be two joint disseisors, and the disseisee releases to one of them, he shall be sole seised, and shall keep out his former companion; which is the same in effect as if the disseisee had entered and thereby put an end to the disseisin, and afterwards had enfeoffed one of the disseisors in fee. 2 Bl.Comm. 325.

*Release by way of extinguishment.* If my tenant for life makes a lease to A. for life, remainder to B. and his heirs, and I release to A., this extinguishes my right to the reversion, and shall inure to the advantage of B.'s remainder, as well as of A.'s particular estate. 2 Bl. Comm. 325.

*Release by way of passing an estate.* As, where one or two coparceners releases all her right to the other, this passes the fee-simple of the whole. 2 Bl.Comm. 324, 325.

*Release by way of passing a right.* If a man be disseised and releaseth to his disseisor all his right, hereby the disseisor acquires a new right, which changes the quality of his estate, and renders that lawful which before was tortious or wrongful. 2 Bl.Comm. 325.

*Release of dower.* The relinquishment by a married woman of her expectant dower interest or estate in a particular parcel of realty belonging to her husband, as, by joining with him in a conveyance of it to a third person.

*Release of mortgage.* A written document which discharges the obligation of a mortgage upon payment and which is given by mortgagee to mortgagor or holder of equity and recorded in the office where deeds and other instruments of conveyance are recorded.

*Release to uses.* The conveyance by a deed of release to one party to the use of another is so termed. Thus, when a conveyance of lands was effected, by those instruments of assurance termed a lease and release, from A. to B. and his heirs, to the use of C. and his heirs, in such case C. at once took the whole fee-simple in such lands; B. by the operation of the statute of uses, being made a mere conduit-pipe for conveying the estate to C.

**Releasee.** The person to whom a release is made.

**Release on own recognizance.** Pre-trial release based on the person's own promise that he will show up for trial (no bond required). A species of bail in which the defendant acknowledges personally without sureties his obligation to appear in court at the next hearing or trial date of his case. It is used in place of a bail bond when the judge or magistrate is satisfied that the defendant will appear without the need of a surety bond or other form of security. Also referred to as "release on own recognizance" or "ROR". See *e.g.* 18 U.S.C.A. § 3142; Fed.R.Crim.P. 46.

**Releaser, or releasor.** The maker of a release.

**Relegatio** /rèlègèysh(iy)ow/. Lat. A kind of banishment known to the civil law, which differed from "*deportatio*" in leaving to the person his rights of citizenship.

**Relegation.** In old English law, banishment for a time only.

**Relevancy** /rèlèvènsiy/. Applicability to the issue joined. That quality of evidence which renders it properly applicable in determining the truth and falsity of the matters in issue between the parties to a suit. Two facts are said to be relevant to each other when so related that according to the common course of events, one either taken by itself or in connection with other facts, proves or renders probable the past, present, or future existence or non-existence of the other.

Relevancy is that which conduces to the proof of a pertinent hypothesis; a pertinent hypothesis being one which, if sustained, would logically influence the issue. *Hampton v. State*, 126 Tex.Cr.R. 211, 70 S.W.2d 1001.

**Relevant evidence** is such evidence as relates to, or bears directly upon, the point or fact in issue, and proves or has a tendency to prove the proposition alleged; evidence which conduces to prove a pertinent theory in a case. It does not mean evidence addressed with positive directness to the point but that which according to the common course of events either taken by itself or in connection with other facts, proves or renders probable the past, present or future existence or nonexistence of the other.

Relevancy of evidence refers to its probative value in relation to the purpose for which it is offered. *Vine Street Corp. v. City of Council Bluffs, Iowa*, 220 N.W.2d 860, 863. Term describes the logical relationship between a proffered item of evidence and a proposition that is material or provable in a given case, *U. S. v. Allison, C.A.La.*, 474 F.2d 286, 289; and means a logical relation between evidence and fact to be established. *State v. Whalon*, 1 Wash.App. 785, 464 P.2d 730, 735. As used in connection with admission of evidence, means to tend to establish a material proposition. *State v. Thurman, App.*, 84 N.M. 5, 498 P.2d 697, 699.

See also Material evidence; Relevant evidence.

**Relevant.** See Material; Material evidence; Relevancy; Relevant evidence.

**Relevant evidence.** Evidence tending to prove or disprove an alleged fact. Evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. *Fed. Evid.R.* 401. Evidence is "relevant" if it tends to make existence of material fact more or less probable. *City of Seattle v. Boulanger*, 37 Wash.App. 357, 680 P.2d 67, 68.

Basic test for admissibility of evidence is relevancy, and testimony is "relevant" if reasonable inferences can be drawn therefrom regarding or if any light is shed upon, a contested matter. *State v. Smith*, 5 Wash.App. 237, 487 P.2d 227, 229. Evidence is "relevant" not only when it tends to prove or disprove precise fact in issue but when it tends to establish fact from which existence or nonexistence of fact in issue can be directly inferred. *People v. Warner, App.*, 270 C.A.2d 900, 76 Cal.Rptr. 160, 165.

See also Material; Material evidence; Relevancy; Unfair prejudice.

**Relevant market.** To establish claim of monopolization or of attempt to monopolize under the Sherman Act, plaintiff must define the "relevant market" within which defendant allegedly possesses monopoly power, and such "relevant market" is the geographic market composed of products that have reasonable interchangeability for purposes for which they are produced, considering their price, use and quality. *Tire Sales Corp. v. Cities Service Oil Co., D.C.Ill.*, 410 F.Supp. 1222, 1230; *U. S. v. E. I. DuPont De Nemours & Co.*, 353 U.S. 586, 77 S.Ct. 872, 1 L.Ed.2d 1057. Term, in relation to case involving alleged violation of Sherman Act, consists of both a product market and a geographic market. *U. S. v. Otter Tail Power Co., D.C.Minn.*, 331 F.Supp. 54, 58.

It is one in which product effectively competes with functionally equivalent products. *Central Chemical Corp. v. Agrico Chemical Co., D.C.,Md.*, 531 F.Supp. 533, 549. See also Market.

**Reliable.** Trustworthy, worthy of confidence.

**Reliance.** In tort for deceit, it is necessary for plaintiff to prove that he relied on misrepresentation though such misrepresentation need not be the sole or even dominant reason for acting if it was a substantial factor in the plaintiff's decision. For fraud purposes, "reliance" might be defined as a belief which motivates an act. *Berry v. Robotka*, 9 Ariz.App. 461, 453 P.2d 972, 979.

The test of "reliance" on misrepresentation in sale of stock as ground for recovery under Securities Exchange Act is whether the misrepresentation is a substantial factor in determining the course of conduct which results in the recipient's loss. Where case involves primarily a failure to disclose, positive proof of reliance is not a prerequisite for recovery; all that is necessary is that the facts withheld be material in sense that reasonable investor might have considered them important in making of such decision. *Gordon v. Burr, D.C.N.Y.*, 366 F.Supp. 156, 165.

Term "reliance" as used in rule imposing liability on one who volunteers to undertake action for the protection of another's person or things for failure to exercise reasonable care if harm is suffered because of the other's reliance upon the undertaking connotes dependence; it bespeaks a voluntary choice of conduct by the person harmed and infers that the person exercising it can decide between available alternatives. *Barnum v. Rural Fire Protection Co.*, 24 Ariz.App. 233, 537 P.2d 618, 622.

See also Estoppel; Fraud; Material fact; Misrepresentation.

**Reliance on promise.** In promissory estoppel, the plaintiff is required to prove that he relied on promise of defendant to his damage. See also Promissory estoppel.

**Relict** /réləkt/rəlīkt/. A widow or widower. The survivor of a pair of married people, whether the survivor is the husband or the wife; it means the relict of the united pair (or of the marriage union), not the relict of the deceased individual.

**Relicta verificatione** /rəlīktə vèhrəfəkèyshiyówniy/. (Lat. his pleading being abandoned.) A confession of judgment made after plea pleaded; viz., a *cognovit actionem* accompanied by a withdrawal of the plea.

**Reliction** /rəlīkshən/. An increase of the land by the permanent withdrawal or retrocession of the sea or a river. Process of gradual exposure of land by permanent recession of body of water. *State Engineer v. Cowles Bros., Inc.*, 86 Nev. 872, 478 P.2d 159, 161. The alteration of a boundary line due to the gradual removal of land by a stream serving as the boundary. See also Accretion; Aluvion; Dereliction.

**Relief.** The public or private assistance or support, pecuniary or otherwise, granted to indigent persons.

Deliverance from oppression, wrong, or injustice. In this sense it is used as a general designation of the assistance, redress, or benefit which a complainant seeks at the hands of a court, particularly in equity. It may be thus used of such remedies as specific performance, injunction, or the reformation or rescission of a contract. *Meir v. Walton*, 6 N.C.App. 415, 170 S.E.2d 166, 169.

*See also* Cause of action; Remedy.

**Relieve.** To give ease, comfort, or consolation to; to give aid, help, or succor to; alleviate, assuage, ease, mitigate; succor, assist, aid, help; support, sustain; lighten, diminish. *Brollier v. Van Alstine*, 236 Mo.App. 1233, 163 S.W.2d 109, 115.

To release from a post, station, or duty; to put another in place of, or to take the place of, in the bearing of any burden, or discharge of any duty. *Kemp v. Stanley*, 204 La. 110, 15 So.2d 1, 11.

**Religion.** Man's relation to Divinity, to reverence, worship, obedience, and submission to mandates and precepts of supernatural or superior beings. In its broadest sense includes all forms of belief in the existence of superior beings exercising power over human beings by volition, imposing rules of conduct, with future rewards and punishments. Bond uniting man to God, and a virtue whose purpose is to render God worship due him as source of all being and principle of all government of things. *Nikulnikoff v. Archbishop, etc., of Russian Orthodox Greek Catholic Church*, 142 Misc. 894, 255 N.Y.S. 653, 663.

As used in constitutional provisions of First Amendment forbidding the "establishment of religion," the term means a particular system of faith and worship recognized and practised by a particular church, sect, or denomination. *Reynolds v. U. S.*, 98 U.S. 145, 149, 25 L.Ed. 244; *Wolman v. Walter*, 433 U.S. 229, 97 S.Ct. 2593, 53 L.Ed.2d 714; *Roemer, et al. v. Board of Public Works of Md.*, 426 U.S. 736, 96 S.Ct. 2337, 49 L.Ed.2d 1.

**Religion, offenses against.** In old English law, they were enumerated by Blackstone as including: (1) Apostasy; (2) heresy; (3) reviling the ordinances of the church; (4) blasphemy; (5) profane swearing; (6) conjuration or witchcraft; (7) religious imposture; (8) simony; (9) profanation of the Lord's day; (10) drunkenness; (11) lewdness. 4 Bl.Comm. 43.

**Religio sequitur patrem** /rəlɪj(ɪ)ow sékwətər pætrəm/. The father's religion is prima facie the infant's religion. Lit. Religion will follow the father.

**Religious corporation.** *See* Corporation.

**Religious freedom.** Within Constitution (First Amendment) embraces not only the right to worship God according to the dictates of one's conscience, but also the right to do, or forbear to do, any act, for conscience sake, the doing or forbearing of which is not inimical to the peace, good order, and morals of society. *Barnette v. West Virginia State Board of Education*, D.C.W.Va., 47 F.Supp. 251, 253, 254. *See also* Establishment clause.

**Religious liberty.** *See* Liberty.

**Religious use.** *See* Charitable use.

**Relinquish.** To abandon, to give up, to surrender, to renounce some right or thing. *See* Abandonment; Release.

**Relinquishment.** A forsaking, abandoning, renouncing, or giving over a right. *See* Abandonment; Release.

**Reliqua** /rélɪkwə/. The remainder or debt which a person finds himself debtor in upon the balancing or liquidation of an account. Hence *reliquary*, the debtor of a *reliqua*; as also a person who only pays piece-meal.

**Relocatio** /riylowkéysh(ɪ)ow/. Lat. In the civil law, a renewal of a lease on its determination. It may be either express or tacit; the latter is when the tenant holds over with the knowledge and without objection of the landlord.

**Relocation.** In mining law, a new or fresh location of an abandoned or forfeited mining claim by a stranger, or by the original locator when he wishes to change the boundaries or to correct mistakes in the original location.

**Remainder.** The remnant of an estate in land, depending upon a particular prior estate created at the same time and by the same instrument, and limited to arise immediately on the determination of that estate, and not in abridgement of it. A future interest created in some person other than the grantor or transferor. *Folden v. Folden*, Ohio App., 188 N.E.2d 193, 194.

The property that passes to a beneficiary after the expiration of an intervening income interest. If, for example, G. places real estate in trust with income to A. for life and remainder to B. upon A.'s death, B. has a remainder interest.

An estate limited to take effect and be enjoyed after another estate is determined. As, if a man seised in fee-simple grants lands to A. for twenty years, and, after the determination of the said term, then to B. and his heirs forever, here A. is tenant for years, *remainder* to B. in fee. An estate in reversion is the residue of an estate, usually the fee left in the grantor and his heirs after the determination of a particular estate which he has granted out of it. The rights of the reversioner are the same as those of a vested remainderman in fee.

In will, the terms rest, residue, and remainder of estate are usually and ordinarily understood as meaning that part of the estate which is left after all of the other provisions of the will have been satisfied.

*See also* Cross remainder; Defeasibly vested remainder; Life estate; Reversionary interest. *Compare* Reversion or estate in reversion.

**Charitable remainder.** A gift over to a charity generally after a life estate. It may be vested or contingent.

**Contingent remainder.** One which is either limited to a person not in being or not certain or ascertained, or so limited to a certain person that his right to the estate depends upon some contingent event in the future. *Maryland Nat. Bank v. Comptroller of Treasury*, 264 Md. 536, 287 A.2d 291, 294.

An estate in remainder which is limited to take effect either to a dubious and uncertain person, or upon a dubious and uncertain event, by which no present or particular interest passes to the remainder-man, so that the particular estate may chance to be determined and the remainder never take effect. A remainder limited so as to depend upon an event or condition which may never happen or be performed, or which may not happen or be performed till after the determination of the preceding estate.

**Cross-remainder.** Where land is devised or conveyed to two or more persons as tenants in common, or where different parts of the same land are given to such persons in severalty, with such limitations that, upon the determination of the particular estate of either, his share is to pass to the other, to the entire exclusion of the ultimate remainderman or reversioner until all the particular estates shall be exhausted, the remainders so limited are called "cross-remainders." In wills, such remainders may arise by implication; but, in deeds, only by express limitation.

**Executed remainder.** A remainder which vests a present interest in the tenant, though the enjoyment is postponed to the future.

**Executory remainder.** A contingent remainder; one which exists where the estate is limited to take effect either to a dubious and uncertain person or upon a dubious and uncertain event.

**Vested remainder.** An estate by which a present interest passes to the party, though to be enjoyed *in futuro*, and by which the estate is invariably fixed to remain to a determinate person after the particular estate has been spent. One limited to a certain person at a certain time or upon the happening of a necessary event.

**Remainder interest.** The property that passes to a beneficiary after the expiration of an intervening income interest. If, for example, G places real estate in trust with income to A for life and remainder to B upon A's death, B has a remainder interest.

**Remainderman.** One who is entitled to the remainder of the estate after a particular estate carved out of it has expired. One who becomes entitled to estate after intervention of precedent estate or on termination by lapse of time of rights of precedent estate created at same time. In re Washburn's Will, 44 Misc.2d 56, 252 N.Y.S.2d 948, 952.

Under a will, the remainderman is the party who will receive what is left of the decedent's property after all specific bequests have been satisfied.

**Remainder vested subject to being divested.** A remainder given to one person, with proviso that it shall go to another under certain contingencies. In re Barnes' Estate, 155 Misc. 320, 279 N.Y.S. 117.

**Remand.** To send back. The act of an appellate court when it sends a case back to the trial court and orders the trial court to conduct limited new hearings or an entirely new trial, or to take some other further action. Amalgamated Workers Union of Virgin Islands v. Hess

Oil Virgin Islands Corp., C.A. Virgin Islands, 478 F.2d 540, 543. 28 U.S.C.A. § 2106. When a prisoner is brought before a judge on habeas corpus, for the purpose of obtaining liberty, the judge hears the case, and either discharges him or remands him. See also *Procedendo*.

**Remanentia** /rēmənēnsh(iy)ə/. In old English law, a remainder. A perpetuity, or perpetual estate.

**Remanent pro defectu emptorum** /rəmēnənt prōw dəfəkt(y)uw ɛm(p)tórəm/. The return made by the sheriff to a writ of execution when he has not been able to sell the property seized, that the same *remains unsold for want of buyers*.

**Remanet** /rēmənət/. A remnant; that which remains. Thus the causes of which the trial is deferred from one term to another, or from one sitting to another, are termed "*remanets*."

**Remargining.** The furnishing of additional security when securities which were originally purchased on margin decline in value below a certain percent of their market price at the time of purchase. See *Margin*.

**Remedial.** Affording a remedy; giving means of obtaining redress; of the nature of a remedy; intended to remedy wrongs and abuses, abate faults, or supply defects; pertaining to or affecting remedy, as distinguished from that which affects or modifies the right. *Schultz v. Gosselink*, 260 Iowa 115, 148 N.W.2d 434, 436. See *Remedy*.

**Remedial action.** One which is brought to obtain compensation or indemnity. *Cummings v. Board of Education of Oklahoma City*, 190 Okl. 533, 125 P.2d 989, 994.

**Remedial laws or statutes.** Legislation providing means or method whereby causes of action may be effectuated, wrongs redressed and relief obtained is "remedial". *Schmitt v. Jenkins Truck Lines, Inc.*, 260 Iowa 556, 149 N.W.2d 789, 792. Statutes which afford a remedy, or improve or facilitate remedies already existing for enforcement of rights and redress of injuries. *Chappy v. Labor and Industry Review Com'n*, App., 128 Wis.2d 318, 381 N.W.2d 552, 556. Those statutes which pertain to or affect a remedy, as distinguished from those which affect or modify a substantive right or duty. *Perkins v. Willamette Industries, Inc., Or.*, 542 P.2d 473, 475.

Those designed to correct imperfections in the prior law and to cure a wrong where an aggrieved party had an ineffective remedy under existing statutes. Application of *City of New York*, 71 Misc.2d 1019, 337 N.Y.S.2d 753, 756. One that intends to afford a private remedy to a person injured by the wrongful act. That which is designed to correct an existing law, redress an existing grievance, or introduce regulations conducive to the public good. A statute giving a party a mode of remedy for a wrong, where he had none, or a different one, before. One which furnishes new remedy to claimant who has suffered injustice due to technical requirements of general statute. In re *McCracken's Estate*, 9 Ohio Misc. 195, 224 N.E.2d 181, 182.

The underlying test to be applied in determining whether a statute is penal or remedial is whether it primarily seeks to impose an arbitrary, deterring punishment upon any who might commit a wrong against the public by a violation of the requirements of the statute, or whether the purpose is to measure and define the damages which may accrue to an individual or class of individuals, as just and reasonable compensation for a possible loss having a causal connection with the breach of the legal obligation owing under the statute to such individual or class.

*See also* Curative (*Curative statute*).

**Remedy.** The means by which a right is enforced or the violation of a right is prevented, redressed, or compensated. *Long Leaf Lumber, Inc. v. Svolos*, La.App., 258 So.2d 121, 124. The means employed to enforce a right or redress an injury, as distinguished from right, which is a well founded or acknowledged claim. *Chelentis v. Luckenbach S. S. Co.*, 247 U.S. 372, 38 S.Ct. 501, 503, 62 L.Ed. 1171.

The rights given to a party by law or by contract which that party may exercise upon a default by the other contracting party, or upon the commission of a wrong (a tort) by another party.

Remedy means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal. "Rights" includes remedies. U.C.C. § 1-201.

That which relieves or cures a disease, including a medicine or remedial treatment.

*See also* Adequate remedy; Administrative remedy; Alternative relief; Cause of action; Extraordinary remedies; Inadequate remedy at law; Mutuality of remedy; Provisional remedy.

**Civil remedy.** The remedy afforded by law to a private person in the civil courts in so far as his private and individual rights have been injured by a delict or crime; as distinguished from the remedy by criminal prosecution for the injury to the rights of the public.

**Cumulative remedy.** *See* Cumulative.

**Equitable remedy.** *See* Equity; Injunction; Performance (*Specific performance*); Reformation.

**Extraordinary remedy.** *See* Extraordinary.

**Joinder of remedies.** *See* Joinder.

**Legal remedy.** A remedy available, under the particular circumstances of the case, in a court of law, as distinguished from a remedy available only in equity. Procedurally, this distinction is no longer generally relevant, for under Rules of Civil Procedure there is only one form of action known as a "civil action." Rule 2. *Compare* Equity.

**Remedy over.** A person who is primarily liable or responsible, but who, in turn, can demand indemnification from another, who is responsible to him, is said to have a "remedy over." For example, a city, being compelled to pay for injuries caused by a defect in the highway, has a "remedy over" against the person whose act or

negligence caused the defect, and such person is said to be "liable over" to the city. *See* Subrogation.

**REMIC.** A Real Estate Mortgage Investment Conduit created by the 1986 Tax Reform Act for years beginning in 1987 providing a special tax vehicle for organizations that issue to investors different classes of interests which are backed by a pool of mortgages on real estate.

**Remise** /rə'máyz/. To remit or give up. A formal word in deeds of release and quitclaim; the usual phrase being "remise, release, and forever quitclaim."

**Remise de la dette** /rə'míyz də la dét/. In French law, the release of a debt.

**Remission.** A release or extinguishment of a debt. It is *conventional*, when it is expressly granted to the debtor by a creditor having a capacity to alienate; or *tacit*, when the creditor voluntarily surrenders to his debtor the original title, under private signature constituting the obligation.

A diminution or abatement of symptoms of a disease; also the period during which such diminution occurs. *In re Meyers*, 410 Pa. 455, 189 A.2d 852, 862.

Forgiveness or condonation of an offense or injury.

At common law, the act by which a forfeiture or penalty is forgiven. *United States v. Morris*, 23 U.S. (10 Wheat.) 246, 6 L.Ed. 314.

**Remissus imperanti melius paretur** /rə'mísəs ímpərántay míyl(i)yəs pəriytər/. A man commanding not too strictly is better obeyed.

**Remissness.** The doing of the act in question in a tardy, negligent, or careless manner; but term does not apply to the entire omission or forbearance of the act.

**Remit.** To send or transmit; as to *remit* money. To send back, as to remit a check or refer a case back to a lower court for further consideration. To give up; to pardon or forgive; to annul; to relinquish; as to *remit* a fine, sentence, or punishment.

**Remitment** /rə'mítmənt/. The act of sending back to custody; an annulment.

**Remittance** /rə'mítəns/. Money sent by one person to another, either in specie, bill of exchange, check, or otherwise.

**Remittee.** A person to whom a remittance is made.

**Remitter** /rə'mítər/. The relation back of a later defective title to an earlier valid title. *Remitter* occurs where he who has the true property or *ius proprietatis* in lands, but is out of possession thereof, and has no right to enter without recovering possession in an action, has afterwards the freehold cast upon him by some subsequent and of course defective title. In this case he is *remitted*, or sent back by operation of law, to his ancient and more certain title.

**Remitting bank.** Any payor or intermediary bank remitting for an item. U.C.C. § 4-105(f).

**Remittit damna** /rə'mítət dāmno/. Lat. An entry on the record, by which the plaintiff declares that he remits

a part of the damages which have been awarded him. *See Remittitur.*

**Remittitur** /rəmitətər/. The procedural process by which an excessive verdict of the jury is reduced. *Pippen v. Denison*, Division of Abex Corp., 66 Mich.App. 664, 239 N.W.2d 704, 710. If money damages awarded by a jury are grossly excessive as a matter of law, the judge may order the plaintiff to remit a portion of the award. In the alternative, the court may order a complete new trial or a trial limited to the issue of damages. The court may also condition a denial of a motion for new trial upon the filing by the plaintiff of a remittitur in a stated amount. Fed.R.Civil P. 59(a). *Compare Additur.*

**Remittitur of record** /rəmitətər əv rəkərd/. The returning or sending back by a court of appeal of the record and proceedings in a cause, after its decision thereon, to the court whence the appeal came, in order that the cause may be tried anew (where it is so ordered), or that judgment may be entered in accordance with the decision on appeal, or execution be issued, or any other necessary action be taken in the court below.

**Remittor** /rəmitər/. A person who makes a remittance to another.

**Remnant rule.** The rule that width of lot, frontage of which is not specified on plat specifying frontage of all other lots in same block, is length of block, minus total width of other lots.

**Remodel.** To model anew; reconstruct, recast, reform, reshape, reconstruct, to make over in a somewhat different way. *Board of Com'rs of Guadalupe County v. State*, 43 N.M. 409, 94 P.2d 515, 520.

**Remonitization.** Removal of one type of money from a country's legal tender list. Also, the reestablishment of a currency system which has not functioned for a time.

**Remonstrance** /rəmənstrens/. Expostulation; showing of reasons against something proposed; a representation made to a court or legislative body wherein certain persons unite in urging that a contemplated measure be not adopted or passed. A formal protest against the policy or conduct of the government or of certain officials drawn up and presented by aggrieved citizens.

**Remote.** At a distance; afar off; inconsiderable; slight.

**Remote cause.** In the law of negligence with respect to injury or accident, a cause which would not according to experience of mankind lead to the event which happened. *Riley v. Burgess*, Ky., 410 S.W.2d 712, 713. One where the effect is uncertain, vague, or indeterminate, and where the effect does not necessarily follow. *Jagers v. Southeastern Greyhound Lines*, D.C.Tenn., 34 F.Supp. 667, 669. A cause operating mediately through other causes to produce effect. *Improbable cause.* *Nashville, C. & St. L. Ry. v. Harrell*, 21 Tenn.App. 353, 110 S.W.2d 1032, 1038. *See also Cause.*

*Proximate cause distinguished.* "Proximate cause" is cause in which is involved idea of necessity, and one from which effect must follow, while "remote cause",

though necessary for existence of effect, is one not necessarily implying existence of effect. *Hebert v. United Gas Pipe Line Co.*, La.App., 210 So.2d 71, 74.

"Proximate cause" is a cause which would probably, according to the experience of mankind, lead to the event which happened, and "remote cause" is a cause which would not, according to such experience, lead to such an event. *Miller v. Watts*, Ky., 436 S.W.2d 515, 519.

To determine whether a given cause is a "proximate cause" or a "remote cause," it must be determined whether the facts constitute a succession of events, so linked together that they become a natural whole, or whether chain of events is so broken that they become independent, and final result cannot be said to be the natural and probable consequence of the primary cause, the negligence of defendants.

**Remote damage.** *See Damages.*

**Remoteness.** Want of close connection between a wrong and the injury which prevents the party injured from claiming compensation from the wrongdoer.

**Remoteness of evidence.** When the fact or facts proposed to be established as a foundation from which indirect evidence may be drawn, by way of inference, have not a visible, plain, or necessary connection with the proposition eventually to be proved, such evidence is rejected for "remoteness."

**Remote possibility.** In the law of estates, a double possibility, or a limitation dependent on two or more facts or events both or all of which are contingent and uncertain; as, for example, the limitation of an estate to a given man provided that he shall marry a certain woman and that she shall then die and he shall marry another.

**Remoto impedimento, emergit actio** /rəməwtow impədəməntow əməɾjət əksh(iy)ow/. The impediment being removed, the action rises. When a bar to an action is removed, the action rises up into its original efficacy.

**Removal.** In a broad sense, the transfer of a person, thing, or case from one place to another. *See also Asportation.*

As used in statutes relative to removal from state is often limited to such absence from state as amounts to a change of residence.

*See also Recall.*

**Removal bond.** In customs law, a bond furnished for possible duties by one who removes imported goods from a warehouse for export. Also, bond required in some states when a party to pending action in one court desires to remove action to another court.

**Removal from office.** Deprivation of office by act of competent superior officer acting within scope of authority. "Suspension" is the temporary forced removal from the exercise of office; "removal" is the dismissal from office. *See Election (Recall election); Impeachment.*

**Removal of causes.** The transfer of a case from one court to another; *e.g.* from one state court to another, or from state court to federal court. Commonly used of the transfer of the jurisdiction and cognizance of an action commenced but not finally determined, with all further proceedings therein, from one trial court to another trial court. More particularly, the transfer of a cause of action, before trial or final hearing thereof, from a state court to the United States District Court, under 28 U.S.C.A. § 1441 *et seq.*

**Removal to avoid tax.** Within a statute relating to forfeiture, some transfer of the thing involved from some definite place of manufacture, production, origin, or the like to some other place, whereat or wherefrom collection of tax on it might be less easily effected.

**Removing cloud from title.** Acts or proceedings necessary to render title marketable. *See* Action to quiet title.

**Remuneration** /rəmyūnwərəyʃhən/. Payment; reimbursement. Reward; recompense; salary; compensation.

**Renant, or reniant** /rənáyənt/. In old English law, denying.

**Rencounter** /renkáwntər/. A sudden hostile collision, as with an enemy; an unexpected encounter or meeting, as of travelers; a contest or debate; a sudden meeting as opposed to a duel which is deliberate.

**Render, v.** To give up; to yield; to return; to surrender. Also to pay or perform; used of rents, services, and the like.

**Render judgment.** To pronounce, state, declare, or announce the judgment of the court in a given case or on a given state of facts; not used with reference to judgments by confession, and not synonymous with "entering," "docketing," or "recording" the judgment. Judgment is "rendered" when decision is officially announced, either orally in open court or by memorandum filed with clerk. *Wooldridge v. Groos Nat. Bank, Tex. Civ.App., 603 S.W.2d 335, 344. See Rendition of judgment.*

**Render verdict.** To agree on and to report the verdict in due form. To return the written verdict into court and hand it to the trial judge who announces it in open court.

**Render, n.** In feudal law, used in connection with rents and heriots. Goods subject to rent or heriot-service were said to lie in *render*, when the lord might not only seize the identical goods, but might also distrain for them.

**Rendezvous** /rɔndeyvúv/°diy°. Fr. A place appointed for meeting. Especially used of places appointed for the assembling of troops, the coming together of the ships of a fleet, or the meeting of vessels and their convoy.

**Rendition.** The return of a fugitive to the State in which he is accused of having committed a crime, by the order of the governor of the State to which the fugitive has gone. *See also* Extradition; Interstate rendition.

**Rendition of judgment.** Rendition of a judgment is effected when trial court in open court declares the decision of the law upon the matters at issue, and it is distinguishable from "entry of judgment," which is a purely ministerial act by which the judgment is made of record and preserved. *Ex parte Gnesoulis, Tex.Civ.App., 525 S.W.2d 205, 209.* A judgment is rendered as of date on which trial judge declares in open court his decision on matters submitted to him for adjudication, and oral pronouncement by the court of its decision is sufficient for "rendition of judgment". *Farr v. McKinzie, Tex.Civ. App., 477 S.W.2d 672, 676.*

It is the pronouncement of the court of its conclusions and decision upon the matter submitted to it for adjudication; a judgment may be rendered either orally in open court or by memorandum filed with the clerk. *Travelers Express Co., Inc. v. Winters, Tex.Civ.App., 488 S.W.2d 890, 892.* "Rendition" of judgment is distinguishable from its "entry" in the records. *Rehm v. Fishman, Mo.App., 395 S.W.2d 251, 255. See* Entering judgment; Judgment.

**Rendition of verdict.** *See* Render.

**Renegotiation.** Lit. To negotiate again (*e.g.*, the terms of a contract or lease). As to government contracts, it consists of a review of a contract after its performance to determine whether excess profits have been made. If they were made, the government can recapture them.

**Renegotiation Act.** Federal law which provides for reexamination of government contracts to determine whether excess profits were made which can be recaptured by the government. 50 U.S.C.A.App. 1191 *et seq.* *See* Renegotiation Board.

**Renegotiation Board.** The Renegotiation Board was created as an independent establishment in the executive branch by the Renegotiation Act of 1951 (65 Stat. 7; 50 U.S.C.A.App. § 1211) and was organized on October 8, 1951. The Board's function was the elimination of excessive profits on defense and space contracts and related subcontracts. This federal agency was terminated and its property and records were transferred to General Services Administration in 1979 pursuant to Pub.L. 95-431, Title V, § 501.

**Renew.** To make new again; to restore to freshness; to make new spiritually; to regenerate; to begin again; to recommence; to resume; to restore to existence; to revive; to reestablish; to recreate; to replace; to grant or obtain an extension of. To "renew" a contract means to begin again or continue in force the old contract. *East Bay Union of Machinists, Local 1304, United Steelworkers of America, AFL-CIO v. Fibreboard Paper Products Corp., D.C.Cal., 285 F.Supp. 282, 287.*

**Renewal.** The act of renewing or reviving. A revival or rehabilitation of an expiring subject; that which is made anew or re-established. The substitution of a new right or obligation for another of the same nature. A change of something old to something new. To grant or obtain extension of; to continue in force for a fresh period, as commonly used with reference to notes and bonds importing a postponement of maturity of obligations dealt

with. An extension of time in which that obligation may be discharged; an obligation being "renewed" when the same obligation is carried forward by the new paper or undertaking, whatever it may be. *Campbell River Timber Co. v. Vierhus*, C.C.A.Wash., 86 F.2d 673, 675.

**Renounce.** To make an affirmative declaration of abandonment. To reject; cast off; repudiate; disclaim; forsake; abandon; divest one's self of a right, power, or privilege. Usually it implies an affirmative act of disclaimer or disavowal. *See also* Renunciation; Repudiation.

**Will.** Under law of many states, a widow may waive or relinquish her rights under the will of her husband and claim her statutory rights.

**Renovare** /rènòvériy/. Lat. In old English law, to renew. *Annuatim renovare*, to renew annually. A phrase applied to profits which are taken and the product renewed again.

**Rent.** Consideration paid for use or occupation of property. In a broader sense, it is the compensation or fee paid, usually periodically, for the use of any rental property, land, buildings, equipment, etc.

At common law, term referred to compensation or return of value given at stated times for the possession of lands and tenements corporeal. A sum of money or other consideration, issuing yearly out of lands and tenements corporeal; something which a tenant renders out of the profits of the land which he enjoys; a compensation or return, being in the nature of an acknowledgment or recompense given for the possession of some corporeal inheritance. 2 Bl.Comm. 41. In re *Perlmutter's Will*, 156 Misc. 571, 282 N.Y.S. 282.

The payment of royalty under a mineral lease. *Robinson v. Horton*, 197 La. 919, 2 So.2d 647, 649.

In Louisiana, the contract of *rent of lands* is a contract by which one of the parties conveys and cedes to the other a tract of land, or any other immovable property, and stipulates that the latter shall hold it as owner, but reserving to the former an annual rent of a certain sum of money, or of a certain quantity of fruits, which the other party binds himself to pay him. It is of the essence of this conveyance that it be made in perpetuity. If it be made for a limited time, it is a lease. Civ.Code La. arts. 2779, 2780.

**Base rent.** A specific amount used as a minimum rent in a lease which uses a percentage or overage for additional rent.

**Fee farm rent.** A rent charge issuing out of an estate in fee; a perpetual rent reserved on a conveyance of land in fee simple.

**Ground rent.** *See* that title.

**Net rent.** Rent after all expenses.

**Quit rent.** Certain established rents of the freeholders and ancient copyholders of manors were so called, because by their payment the tenant was free and "quit" of all other services.

**Rack rent.** A rent of the full annual value of the tenement or near it.

**Rental-rights.** In old English law, a species of lease usually granted at a low rent and for life. Tenants under such leases were called "rentalers" or "kindly tenants."

**Rent-charge.** This arises where the owner of the rent has no future interest or reversion in the land. It is usually created by deed or will, and is accompanied with powers of distress and entry.

**Rent-roll.** A list of rents payable to a particular person or public body.

**Rent seck.** Barren rent; a rent reserved by deed, but without any clause of distress.

**Rent-service.** This consisted at common law of fealty, together with a certain rent, and was the only kind of rent originally known to the common law. It was so called because it was given as a compensation for the services to which the land was originally liable.

**Rents of assize.** The certain and determined rents of the freeholders and ancient copyholders of manors. Apparently so called because they were assized or made certain, and so distinguished from a *redditus mobilis*, which was a variable or fluctuating rent.

**Rents resolute.** Rents anciently payable to the crown from the lands of abbeys and religious houses; and after their dissolution, notwithstanding that the lands were demised to others, yet the rents were still reserved and made payable again to the crown.

**Rentage.** Rent.

**Rental.** *See* Rent.

**Rent control.** A restriction or limitation imposed in certain cities upon the maximum rent that may be charged on rental property.

**Rente** /rònt/. In French law, the annual return which represents the revenue of a capital or of an immovable alienated. The constitution of *rente* is a contract by which one of the parties lends to the other a capital which he agrees not to recall, in consideration of the borrower's paying an annual interest. It is this interest which is called "*rente*." The word is therefore nearly synonymous with "annuity."

**Rente foncière** /rònt fonsyér/. A rent which issues out of land, and it is of its essence that it be perpetual, for, if it be made but for a limited time, it is a lease. It may, however, be extinguished.

**Rente viagère** /rònt v(i)yajér/. That species of *rente*, the duration of which depends upon the contingency of the death of one or more persons indicated in the contract. The uncertainty of the time at which such death may happen causes the *rente viagère* to be included in the number of aleatory contracts. Defines the contract of annuity as that by which one party delivers to another a sum of money, and agrees not to reclaim it so long as the receiver pays the rent agreed upon.



**Rentier** /rɒntyéy/. In French law, a fundholder, a person having an income from personal property.

**Rents, issues and profits.** The profits arising from property generally. Rents collected by party in possession; the net profits. Phrase does not apply to rental value or value of use and occupation. *People v. Gustafson*, 53 Cal.App.2d 230, 127 P.2d 627, 632.

**Rent strike.** An organized undertaking by tenants in which rent is withheld until grievances between landlord and tenants are settled.

**Renunciation.** The act by which a person abandons a right acquired without transferring it to another.

The Model Penal Code (§ 5.01(4)) recognizes renunciation of criminal purpose (e.g., abandonment of effort to commit crime) as an affirmative defense. See e.g. 18 U.S.C.A. § 373(b). See *Withdrawal from criminal activity*.

Under the Uniform Commercial Code the unilateral act of the holder, usually, without consideration, whereby he expresses the intention of abandoning his rights on the instrument or against one or more parties thereto. U.C.C. § 1-107. A means whereby a holder discharges a party's liability on an instrument by declaring an intention to discharge in a signed and delivered writing. U.C.C. § 3-605(1)(b). Within Uniform Commercial Code it is a gratuitous abandonment or giving up of right, and does not require a consideration. *Miller v. Gayman*, Mo., 482 S.W.2d 414 or 419.

In connection with wills, the act of waiving a will and claiming a statutory share as in the case of a spouse whose share under a will is less than her statutory share. See *Election (law of wills)*; *Election by spouse*.

See also *Disclaimer*; *Repudiation*.

**Renvoi doctrine.** /renvóy/. The "doctrine of renvoi" is a doctrine under which court in resorting to foreign law adopts rules of foreign law as to conflict of laws, which rules may in turn refer court back to law of forum. *Green v. Robertshaw-Fulton Controls Co.*, D.C.Ind., 29 F.R.D. 490, 500; *Cooper v. Cherokee Village Development Co.*, 236 Ark. 37, 364 S.W.2d 158, 162.

**Reo absente** /ríyow əbséntiy/. Lat. The defendant being absent; in the absence of the defendant.

**Reopening a case.** Is to permit the introduction of new evidence and, practically to permit a new trial.

**Reorganization.** Act or process of organizing again or anew. *People ex rel. Barrett v. Halsted Street State Bank*, 295 Ill.App. 193, 14 N.E.2d 872, 876.

General term describing corporate amalgamations or readjustments occurring, for example, when one corporation acquires another in a merger or acquisition, a single corporation divides into two or more entities, or a corporation makes a substantial change in its capital structure. The exchange of stock and other securities in a corporate reorganization can be effected favorably for tax purposes if certain statutory requirements are followed strictly.

The classification of the Internal Revenue Code (§ 368(a)(1)) is widely used in general corporate litera-

ture. A Class A reorganization is a statutory merger or consolidation (i.e., pursuant to the business corporation act of a specific state). A Class B reorganization is a transaction by which one corporation exchanges its voting shares for the voting shares of another corporation. A Class C reorganization is a transaction in which one corporation exchanges its voting shares for the property and assets of another corporation. A Class D reorganization is a "spin off" of assets by one corporation to a new corporation; a Class E reorganization is a recapitalization; a Class F reorganization is a "mere change of identity, form, or place of organization, however effected." A Class G reorganization is a "transfer by a corporation of all or part of its assets to another corporation in a title 11 [bankruptcy] or similar case".

Reorganization of a corporation under Bankruptcy Code Chapter 11 proceedings involves the preparation of a plan of reorganization by the bankruptcy trustee, the submission thereof to the court, and, after a hearing, the determination of the feasibility of such plan by the court, followed by the court's approval thereof if it finds such plan is feasible and proper. See also *Bankruptcy proceedings*.

**Tax free reorganization.** Under the Internal Revenue Code, a corporate reorganization wherein a corporation which is a party thereto exchanges property, pursuant to a plan of reorganization, solely for stock or securities of a second corporate party, without recognition of gain or loss. I.R.C. § 361.

**Repair.** To mend, remedy, restore, renovate. To restore to a sound or good state after decay, injury, dilapidation, or partial destruction. *Congress Bar and Restaurant Inc. v. Transamerica Ins. Co.*, 42 Wis.2d 56, 165 N.W.2d 409, 412. The word "repair" contemplates an existing structure or thing which has become imperfect, and means to supply in the original existing structure that which is lost or destroyed, and thereby restore it to the condition in which it originally existed, as near as may be. *Childers v. Speer*, 63 Ga.App. 848, 12 S.E.2d 439, 440.

In accounting, repairs are chargeable to current income whereas an improvement is a capital expenditure which requires depreciation over the life of the improvement. See also *Extraordinary repairs*.

Landlord has obligation to use reasonable care to keep premises in such repair as to meet local building and sanitary code requirements. *Boston Housing Authority v. Hemingway*, 363 Mass. 184, 293 N.E.2d 831. See *Habitability*; *Warranty (Warranty of habitability)*.

**Reparation** /rèpərəyʃən/. Payment for an injury or damage; redress for a wrong done. Several states have adopted the Uniform Crime Victims Reparation Act. Certain federal statutes also provide for reparations for violation of Act; e.g. persons suffering losses because of violations of Commodity Futures Trading Act may seek reparation under the Act against violator. 7 U.S.C.A. § 18. See also *Restitution*.

Payment made by one country to another for damages during war.

**Repatriamento** /reypàrtiyaméntow/. In Spanish law, a judicial proceeding for the partition of property held in common.

**Repatriation** /riyeytriyéyshàn/°pæt°. The return or restoration of a person or object to his or its country of origin. The return of profits from foreign investments to the investor's country. *Compare* Deportation. *See also* Expatriation.

**Repay.** To pay back; refund; restore; return.

**Repeal.** The abrogation or annulling of a previously existing law by the enactment of a subsequent statute which declares that the former law shall be revoked and abrogated (which is called "express" repeal), or which contains provisions so contrary to or irreconcilable with those of the earlier law that only one of the two statutes can stand in force (called "implied" repeal). To revoke, abolish, annul, to rescind or abrogate by authority. *Golconda Lead Mines v. Neill*, 82 Idaho 96, 350 P.2d 221, 223. *See also* Abrogation; Express repeal.

*Amendment distinguished.* "Repeal" of a law means its complete abrogation by the enactment of a subsequent statute, whereas the "amendment" of a statute means an alteration in the law already existing, leaving some part of the original still standing.

**Repeaters.** Persons who commit crime and are sentenced, and then commit another and are sentenced again. *See* Habitual criminal; Recidivist.

**Repellitur a sacramento infamis** /rəpélətər èy səkraméntow inféyməs/. An infamous person is repelled or prevented from taking an oath.

**Repellitur exceptione cedendarum actionum** /rəpélətər əksəpshiyówniy siydendérəm əkshiyównəm/. He is defeated by the plea that the actions have been assigned.

**Repertory** /rəpərt(ò)riy/. In French law, the inventory or minutes which notaries make of all contracts which take place before them.

**Repetition.** In the civil law, a demand or action for the restoration of money paid under mistake, or goods delivered by mistake or on an unperformed condition. *See* Solutio indebiti.

**Repetitum namium** /rəpétətəm néymiyəm/. A repeated, second, or reciprocal distress; withernam.

**Repetundæ, or pecuniæ repetundæ** /rəpétúwniyiy rəpétándiy/. In Roman law, the terms used to designate such sums of money as the *socii* of the Roman state, or individuals, claimed to recover from *magistratus, iudices, or publici curatores*, which they had improperly taken or received in the *provincia*, or in the *urbs Roma*, either in the discharge of their *jurisdictio*, or in their capacity of *iudices*, or in respect of any other public function. Sometimes the word "*repetundæ*" was used to express the illegal act for which compensation was sought.

**Repetundarum crimen** /rəpétándérəm kráymən/. In Roman law, the crime of bribery or extortion in a magistrate, or person in any public office.

**Replace.** To place again; to restore to a former condition. *Illinois Cent. R. Co. v. Franklin County*, 387 Ill. 301, 56 N.E.2d 775, 779. Term, given its plain, ordinary meaning, means to supplant with substitute or equivalent. *Olenick v. Government Employees Ins. Co.*, 42 A.D.2d 760, 346 N.Y.S.2d 320, 321. To take the place of.

**Replacement cost.** The present cost of replacing the improvement with one having the same utility. *State Highway Commission v. Demarest*, 263 Or. 590, 503 P.2d 682, 690. Cost of replacing lost, stolen or destroyed property to its former use and value.

**Replacement insurance.** Insurance coverage which provides that the loss will be measured by replacement of the property new. If the property is actually replaced, the measure is the difference between the depreciated value and the replacement cost.

**Replead.** To plead anew; to file new pleadings.

**Repleader.** In common law pleading, when, after issue has been joined in an action, and a verdict given thereon, the pleading is found (on examination) to have miscarried and failed to effect its proper object, viz., of raising an apt and material question between the parties, the court will, on motion of the unsuccessful party, award a *repleader*; that is, will order the parties to plead *de novo* for the purpose of obtaining a better issue. Under modern rules practice, amendments to pleadings are liberally allowed. *Fed.R.Civil P. 15*.

**Replegiare** /rəplējyériy/. To replevy; to redeem a thing detained or taken by another by putting in legal sureties.

**Repleviable, or replevisable** /rəpléviyəbəl/rəplévəzəbəl/. Property is said to be repleviable or replevisable when proceedings in replevin may be resorted to for the purpose of trying the right to such property.

**Replevin** /rəplévən/. An action whereby the owner or person entitled to repossession of goods or chattels may recover those goods or chattels from one who has wrongfully distrained or taken or who wrongfully detains such goods or chattels. *Jim's Furniture Mart, Inc. v. Harris*, 42 Ill.App.3d 488, 1 Ill.Dec. 175, 176, 356 N.E.2d 175, 176. Also refers to a provisional remedy that is an incident of a replevin action which allows the plaintiff at any time before judgment to take the disputed property from the defendant and hold the property pendente lite. Other names for replevin include Claim and delivery, Detinue, Revendication, and Sequestration (*q.v.*).

Under the following conditions a buyer of goods may have the right of replevin: "The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered." *See* U.C.C. § 2-711(2)(b); § 2-716(3).

*See also* Replevy; Self-help.

**Personal replevin.** At common law, a species of action to replevy a man out of prison or out of the custody of any

private person. It took the place of the old writ *de homine replegiando*; but, as a means of examining into the legality of an imprisonment, it is now superseded by the writ of *habeas corpus*.

**Replevin bond.** A bond executed to indemnify the officer who executed a writ of replevin and to indemnify the defendant or person from whose custody the property was taken for such damages as he may sustain. Such bond guarantees that the replevisor will have the property in the same condition to abide the decision of the court. *Kelso v. Hanson, Tex.Civ.App., 388 S.W.2d 396, 399.*

**Replevin cepit.** Replevin action in case where defendant has both wrongfully taken and wrongfully detained the property. *Compare Replevin in detinet, below.*

**Replevin in detinet.** Replevin action in case where defendant rightfully obtained possession of property but wrongfully detains it. *Compare Replevin in cepit, above.*

**Replevish** /rəplévəsh/. In old English law, to let one to mainprise upon surety.

**Replevisor** /rəplévəzər/. The plaintiff in an action of replevin.

**Replevy** /rəpléviy/. In reference to the action of replevin, to redeliver goods which have been distrained, to the original possessor of them, on his pledging or giving security to prosecute an action against the distrainer for the purpose of trying the legality of the distress. Also the bailing or liberating a man from prison on his finding bail to answer for his forthcoming at a future time. *See also* Replevin.

**Replevy bond.** Such bond guarantees that the replevisor will have the property in the same condition to abide the decision of the court. *Kelso v. Hanson, Tex., 388 S.W.2d 396, 399.*

**Repliant, or replicant** /rəpláyənt/répləkənt/. A litigant who replies or files or delivers a replication.

**Replicare** /rəpləkériy/. Lat. In the civil law and old English pleading, to reply; to answer a defendant's plea.

**Replicatio** /rəpləkéysh(iy)ow/. Lat. In the civil law and old English pleading, the plaintiff's answer to the defendant's exception or plea; corresponding with and giving name to the *replication* in modern pleading.

**Replication.** In common law pleading, a reply made by the plaintiff in an action to the defendant's plea, or in a suit in chancery to the defendant's answer. *See* Reply.

In equity practice (now obsolete in the federal and most state courts), a general replication is a general denial of the truth of defendant's plea or answer, and of the sufficiency of the matter alleged in it to bar the plaintiff's suit, and an assertion of the truth and sufficiency of the bill. A special replication is occasioned by the defendant's introducing new matter into his plea or answer, which makes it necessary for the plaintiff to put in issue some additional fact on his part in avoidance of such new matter.

**Reply.** In its general sense, the plaintiff's answer to the defendant's set-off or counterclaim. Under Fed.R.Civil P. 7(a), a reply is only allowed in two situations: to a counterclaim denominated as such, or, on order of court to an answer or a third-party answer. *Compare* Answer.

**Report.** An official or formal statement of facts or proceedings. To give an account of, to relate, to tell, to convey or disseminate information. *State v. Fenster, 2 Conn.Cir. 184, 199 A.2d 177, 181. See also* Annual report; Consumer report; Credit report.

The formal statement in writing made to a court by a master, clerk, or referee, as the result of his inquiries into some matter referred to him by the court. Fed.R. Civil P. 53. *See* Master's report.

A "report" of a public official is distinguished from a "return" of such official, in that "return" is typically concerned with something done or observed by officer, while "report" embodies result of officer's investigation not originally occurring within his personal knowledge. *E. K. Hardison Seed Co. v. Jones, C.C.A.6, 149 F.2d 252, 257.*

The name is also applied (usually in the plural) to the published volumes, appearing periodically, containing accounts of the various cases argued and determined in the various courts of record with the decisions and opinions thereon. *See* Reporter; Reports or reporters.

**Reporter.** A person who reports the decisions of a court of record; also, published volumes of decisions by a court or group of courts. The "court reporter" is the person who records court proceedings in court and later transcribes such. *See also* Court reporter; Reports or reporters.

**Report of legislative committee.** That communication which the chairman of the committee makes to the house at the close of the investigation upon which it has been engaged.

**Reports or reporters.** Published volumes of case decisions by a particular court or group of courts; e.g. Supreme Court Reporter, Federal Reporter, Federal Supplement.

Term includes: (1) (court reports) published judicial cases arranged according to some grouping, such as jurisdiction, court, period of time, subject matter or case significance, (2) (administrative reports or decisions) published decisions of an administrative agency, (3) annual statements of progress, activities or policy issued by an administrative agency or an association.

*See also* Law reporters or reports; Reporter; United States Reports.

**Reports, The.** The name given, *par excellence*, to Lord Coke's Reports, from 14 Eliz. to 13 Jac. I, which are cited as "Rep." or "Coke." They are divided into thirteen parts, and the modern editions are in six volumes, including the index.

**Repose statutes.** *See* Statute (*Statute of repose*).

**Repositorium** /rəpòzətór(i)yəm/. A storehouse or place wherein things are kept; a warehouse.

**Repossession.** To take back—as when a seller or bank or finance company repossesses or takes back an item if the buyer misses an installment payment. To recover goods sold on credit or in installments when the buyer fails to pay for them. U.C.C. § 9-503. The conditions for repossession are entirely statutory and due process standards must be met as to notice, manner, etc.

Self-help (*i.e.* without legal process) repossession of collateral is permitted under U.C.C. § 9-503. *See* Self-help.

**Represent.** To appear in the character of; personate; to exhibit; to expose before the eyes. To represent a thing is to produce it publicly. To represent a person is to stand in his place; to speak or act with authority on behalf of such person; to supply his place; to act as his substitute or agent. *See also* Agent; Power of appointment; Representative.

**Representation.** Any conduct capable of being turned into a statement of fact. *Scandrett v. Greenhouse*, 244 Wis. 108, 11 N.W.2d 510, 512. Statement of fact made to induce another to enter into contract. As element of actionable fraud includes deeds, acts or artifices calculated to mislead another, as well as words or positive assertions. *Kestner v. Jakobe*, Mo.App. 446 S.W.2d 188, 193. *See also* Material fact; Misrepresentation; Reliance.

Act of representing another. *See* Represent.

*Attorney, right to.* *See* Counsel, right to.

**Contracts.** A statement express or implied made by one of two contracting parties to the other, before or at the time of making the contract, in regard to some past or existing fact, circumstance, or state of facts pertinent to the contract, which is influential in bringing about the agreement.

**False representation.** *See* False representation; Fraud; Material fact; Misrepresentation.

**Insurance.** A collateral statement, either by writing not inserted in the policy or by parol, of such facts or circumstances, relative to the proposed adventure, as are necessary to be communicated to the underwriters, to enable them to form a just estimate of the risks. The allegation of any facts, by the applicant to the insurer, or *vice versa*, preliminary to making the contract, and directly bearing upon it, having a plain and evident tendency to induce the making of the policy. The statements may or may not be in writing, and may be either express or by obvious implication.

**Law of distribution and descent.** The principle upon which the issue of a deceased person take or inherit the share of an estate which their immediate ancestor would have taken or inherited, if living; the taking or inheriting *per stirpes*. *In re Paterson's Estate*, Cal.App., 76 P.2d 138, 143.

**Material representation.** One having been a real moving cause inducing the making of a contract. A representation is "material" if it relates directly to matter in controversy and is of such nature that ultimate result would not have followed if there had been no representation or if one who acted upon it had been aware of its

falsity. *Schoen v. Lange*, Mo.App., 256 S.W.2d 277, 281. To be "material", a representation must be of such character that if it had not been made, the contract or transaction would not have been entered into. *Zinn v. Ex-Cell-O Corp.*, Cal.App., 141 P.2d 948, 958.

In life insurance, one that would influence a prudent insurer in determining whether or not to accept the risk, or in fixing the amount of the premium in the event of such acceptance.

*See* Material fact; also, *Misrepresentation, below.*

**Misrepresentation.** An intentional false statement respecting a matter of fact, made by one of the parties to a contract, which is material to the contract and influential in producing it. *See* False representation; Material fact; Misrepresentation.

**Promissory representation.** A term used chiefly in insurance, and meaning a representation made by the assured concerning what is to happen during the term of the insurance, stated as a matter of expectation or even of contract, and amounting to a promise to be performed after the contract has come into existence.

**Representation, estoppel by.** It arises when one by acts, representations, admissions, or silence when he ought to speak out, intentionally or through culpable negligence induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts. *Carter v. Curlew Creamery Co.*, 16 Wash.2d 476, 134 P.2d 66, 73. It differs from estoppel by record, deed, or contract, in that it is not based on agreement of parties or finding of fact which may not be disputed, and is not mutual, but applies to only one party.

It is the effect of voluntary conduct of a party whereby he is absolutely precluded from asserting rights which might perhaps have otherwise existed. *Strand v. State*, 16 Wash.2d 107, 132 P.2d 1011, 1015. It is a species of "equitable estoppel" or estoppel by matter in pais. Elements or essentials of such estoppel include change of position for the worse, *Campbell v. Salyer*, 290 Ky. 493, 161 S.W.2d 596, 599; detriment or injury or prejudice to party claiming estoppel, *Abbott v. Bean*, 295 Mass. 268, 3 N.E.2d 762, 768; express or implied representations; false representation, *Chicago, R. I. & P. Ry. Co. v. Sawyer*, 176 Okl. 446, 56 P.2d 418, 420; ignorance of facts by party claiming estoppel, *United States v. Dickinson*, C.C.A.Mass., 95 F.2d 65, 68; inducement to action by party claiming estoppel; intent that other party should act on representation or gross and culpable negligence of party sought to be estopped; knowledge, actual or constructive, of facts by person estopped, *Rhoads v. Rhoads*, 342 Mo. 934, 119 S.W.2d 247, 252; misleading of person claiming estoppel, *Campbell v. Salyer*, 290 Ky. 493, 161 S.W.2d 596, 599; reliance of one party on conduct of other party, *Mosley v. Magnolia Petroleum Co.*, 45 N.M. 230, 114 P.2d 740, 751. The doctrine ordinarily applies only to representations as to past or

present facts. In re Watson's Estate, 177 Misc. 308, 30 N.Y.S.2d 577, 586.

See also Equitable estoppel; In pais, estoppel.

**Representation of persons.** A fiction of the law, the effect of which is to put the representative in the place, degree, or right of the person represented. Civ.Code La. art. 894.

**Representative.** A person or thing that represents, or stands for, a number or class of persons or things, or that in some way corresponds to, stands for, replaces, or is equivalent to, another person or thing. Gaffney v. Unit Crane & Shovel Corp., D.C.Pa., 117 F.Supp. 490, 491. One who represents others or another in a special capacity, as an agent, and term is interchangeable with "agent". Sunset Mill & Grain Co. v. Anderson, 39 Cal.2d 773, 249 P.2d 24, 27.

A person chosen by the people to represent their several interests in a legislative body; e.g. representative elected to serve in Congress from a state congressional district.

"Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another. U.C.C. § 1-201(35).

See also Agent; Class or representative action; Legal representative.

*Personal representative.* Person who manages affairs of another because of incapacity or death. Includes executor, administrator, successor, personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator. Uniform Probate Code, § 1-201(30).

Term as used within meaning of statute providing that every wrongful death action shall be brought in name of personal representative of deceased person, is used simply to designate person who may prosecute the action. Torrez v. Sierra, App., 89 N.M. 441, 553 P.2d 721, 724.

See Executor; Guardian; Legal representative; Power of attorney.

**Representative action.** An action is a "representative action" when it is based upon a primary or personal right belonging to the plaintiff stockholder and those in his class. Lehrman v. Godchaux Sugars, 207 Misc. 314, 138 N.Y.S.2d 163, 166. A stockholder's action against corporation is "representative," when based on primary or personal right of plaintiff and other stockholders of his class, and "derivative" when based on corporation's primary right, asserted on its behalf by plaintiff because of corporation's failure to act. Gordon v. Elliman, 202 Misc. 612, 115 N.Y.S.2d 567, 568, 571, 572. See also Class or representative action; Derivative action.

**Representative capacity.** The office or other position an agent holds in relation to his or her principal which, along with the principal's name, should be indicated on any instrument the agent signs for the principal so that

the agent herself avoids personal liability. See U.C.C. §§ 3-403(2) & (3).

**Reprieve.** Temporary relief from or postponement of execution of criminal punishment or sentence. It does no more than stay the execution of a sentence for a time, and it is ordinarily an act of clemency extended to a prisoner to afford him an opportunity to procure some amelioration of the sentence imposed. It differs from a commutation which is a reduction of a sentence and from a pardon which is a permanent cancellation of a sentence; Compare Clemency.

**Reprimand** /rēprēmænd/. To reprove severely; to censure formally, especially with authority. Federal Labor Union 23393, American Federation of Labor v. American Can Co., 28 N.J.Super. 306, 100 A.2d 693, 695. A public and formal censure or severe reproof, administered to a person in fault by his superior officer or by a body or organization to which he belongs. Thus, a member of a legislative body may be reprimanded by the presiding officer, in pursuance of a vote of censure, for improper conduct in the house; similarly, an attorney might be reprimanded by the Supreme Court or Bar Association of his State for unethical or improper conduct.

**Reprisal** /rəpráyzəl/. In general, any action taken by one person either in spite or as a retaliation for an assumed or real wrong by another. The forcible taking by one nation of a thing that belonged to another, in return or satisfaction for an injury committed by the latter on the former.

*General reprisals.* Take place by virtue of commissions delivered to officers and citizens of the aggrieved nation, directing them to take the persons and property belonging to the offending nation wherever found.

*Negative reprisals.* Take place when a nation refuses to fulfill a perfect obligation which it has contracted, or to permit another state to enjoy a right which it justly claims.

*Positive reprisals.* Consist in seizing the persons and effects belonging to the other nation, in order to obtain satisfaction.

*Special reprisals.* Such as are granted in times of peace to particular individuals who have suffered an injury from the citizens or subjects of the other nation.

**Reprobata pecunia liberat solventem** /rēprəbéytə pəkýúwn(i)yə libərət solvéntəm/. Money refused [the refusal of money tendered] releases him who pays [or tenders it].

**Reprobation** /rēprəbéyshən/. In ecclesiastical law, the interposition of objections or exceptions; as to the competency of witnesses, to the due execution of instruments offered in evidence and the like.

**Republic.** A commonwealth; that form of government in which the administration of affairs is open to all the citizens. In another sense, it signifies the state, independently of its form of government.

**Republican government.** A government in the republican form; a government of the people; a government by representatives chosen by the people. In re Duncan, 139 U.S. 449, 11 S.Ct. 573, 35 L.Ed. 219.

**Republication.** The re-execution or reestablishment by a testator of a will which he had once revoked. A second publication of a will, either expressly or by construction. A codicil duly executed is a republication of the will. For "Express republication," see that title.

**Repudiate.** To put away, reject, disclaim, or renounce a right, duty, obligation, or privilege.

**Repudiation.** A rejection, disclaimer, or renunciation of a contract before performance is due that does not operate as an anticipatory breach unless the promisee elects to treat the rejection as a breach and brings a suit for damages. The rejection or refusal of an offered or available right or privilege, or of a duty or relation. The act of a buyer or seller in rejecting a contract of sale either partially or totally. U.C.C. §§ 2-610, 2-703, 2-708, 2-711.

Repudiation of a contract means refusal to perform duty or obligation owed to other party. Pitcher v. Lauritzen, 18 Utah 2d 368, 423 P.2d 491, 493. Such consists in such words or actions by contracting party as indicate that he is not going to perform his contract in the future. Continental Cas. Co. v. Boerger, Tex.Civ. App., 389 S.W.2d 566, 568.

Repudiation of contract is in nature of anticipatory breach before performance is due, but does not operate as anticipatory breach unless promisee elects to treat repudiation as breach, and brings suit for damages. Such repudiation is but act or declaration in advance of any actual breach and consists usually of absolute and unequivocal declaration or act amounting to declaration on part of promisor to promisee that he will not make performance on future day at which contract calls for performance. Robinson v. Raquet, 1 Cal.App.2d 533, 36 P.2d 821, 825.

In the civil law, the casting off or putting away of a woman betrothed; also, but less usually, of a wife; divorcement.

In ecclesiastical law, the refusal to accept a benefice which has been conferred upon the party repudiating.

*See also* Refusal; Renunciation.

*Anticipatory repudiation.* *See* Anticipatory breach of contract.

**Repudium** /rəpyúwd(i)yəm/. Lat. In Roman law, a breaking off of the contract of espousals, or of a marriage intended to be solemnized. Sometimes translated "divorce;" but this was not the proper sense.

Inconsistency; a condition which occurs if one part of a document is true (or correct), so that another part cannot be true (or correct).

**Repugnancy.** An inconsistency, opposition, or contrariety between two or more clauses of the same deed, contract, or statute, or between two or more material allegations of the same pleading, or any two writings.

Within rule that repugnant counts cannot be joined in same declaration means affirmation of causes of action in one count the denial of that cause of action in another count. Necessary v. Gibson, 212 Tenn. 528, 370 S.W.2d 550, 556.

Inconsistent defenses or claims are permitted under Rule of Civil Proc. 8.

**Repugnant verdict.** *See* Verdict.

**Repurchase.** *See* Redemption.

**Reputable.** Worthy of repute or distinction, held in esteem, honorable, praiseworthy.

**Reputable citizen.** One who is well spoken of by his neighbors and hence presumably of good character. H. L. Shaffer & Co. v. Prosser, 99 Colo. 335, 62 P.2d 1161, 1163.

**Reputatio est vulgaris opinio ubi non est veritas. Et vulgaris opinio est duplex, scil.: opinio vulgaris orta inter graves et discretos homines, et quæ vulgum veritatis habet; et opinio tantum orta inter leves et vulgares homines, absque specie veritatis** /rèpyuwéysh(i)yow èst vèlgéràs əpín(i)yow yúwbay nón èst vèhrətæes. èt vèlgéràs əpín(i)yow èst d(y)úwpleks, sílæsət: əpín(i)yow vèlgéràs órətə întər gréyviyz èt dèskríytòws hóməniyz, èt kwíy vèltəm vèhrətéytəs héybət; èd əpín(i)yow tæntəm órətə întər líyviyz èt vèlgériyz hóməniyz əbskwíy spíyshíyíy vèhrətéytəs/. Reputation is common opinion where there is not truth. And common opinion is of two kinds, to-wit: Common reputation arising among grave and sensible men, and which has the appearance of truth; and mere opinion arising among foolish and ignorant men, without any appearance of truth.

**Reputation.** Estimation in which one is held; the character imputed to a person by those acquainted with him. That by which we are known and is the total sum of how we are seen by others. Taylor v. State, 28 Md.App. 560, 346 A.2d 718, 720. General opinion, good or bad, held of a person by those of the community in which he resides. Citizens Bank of Morehead v. Hunt, 287 Ky. 646, 154 S.W.2d 730, 731. It is necessarily based upon hearsay, Stewart v. State, 148 Tex.Cr.R. 480, 188 S.W.2d 167, 170, but may be admissible if falling within the established exceptions to the hearsay rule. *See e.g.* Fed.Evid.R. 803(19-21).

"Character" is made up of the things an individual actually is and does whereas "reputation" is what people think an individual is and what they say about him. James v. State ex rel. Loser, 24 Tenn.App. 453, 145 S.W.2d 1026, 1033.

*See also* Character; General reputation.

**Repute.** By "repute" essential to effect common-law marriage is meant reputation or the character and status commonly ascribed to one's actions by public. Miller v. Townsend Lumber Co., 152 Mont. 210, 448 P.2d 148, 152.

**Reputed.** Accepted by general, vulgar, or public opinion.

**Reputed owner.** See Owner.

**Request, v.** To ask for something or for permission or authority to do, see, hear, etc., something; to solicit. In its ordinary or natural meaning when used in a will, is precatory and not mandatory. *Byars v. Byars*, 143 Tex. 10, 182 S.W.2d 363, 364, 366.

**Request, n.** An asking or petition. The expression of a desire to some person for something to be granted or done, particularly for the payment of a debt or performance of a contract. Also, direction or command in law of wills. For Express request, see that title.

*Request for admission.* Written statements of facts concerning the case which are submitted to an adverse party and which that party is required to admit or deny; those statements which are admitted will be treated by the court as having been established and need not be proved at trial. Fed.R.Civil P. 36.

*Request for instructions.* At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. Fed.R.Civil P. 51.

**Require.** To direct, order, demand, instruct, command, claim, compel, request, need, exact. *State ex rel. Frohmler v. Hendrix*, 59 Ariz. 184, 124 P.2d 768, 773. To be in need of. To ask for authoritatively or imperatively. *State v. Community Distributors, Inc.*, 123 N.J.Super. 589, 304 A.2d 213, 217.

**Requirement contract.** One in which party promises to supply all specific goods or services which other party may need during a certain period at an agreed price, and in which other party expressly or implicitly promises he will obtain his goods or services from the first party exclusively. *Bank of America Nat. Trust & Sav. Ass'n v. Smith*, C.A.Cal., 336 F.2d 528, 529. While such contracts were at one time void for indefiniteness of amount, they are now universally valid. UCC 2-306(1). See also Exclusive dealing arrangements.

**Requisition.** A demand in writing, or formal request or requirement. The taking or seizure of property by government.

The formal demand by one government upon another, or by the governor of one of the United States upon the governor of a sister state, of the surrender of a fugitive criminal. See Extradition.

**Rerum ordo confunditur si unicuique jurisdictio non servetur** /rírəm órđow kənfəndətər sà yùwnək(yuw)áykwiy jùrsədiksh(iy)ow nòn sərviytər/. The order of things is confounded if every one preserve not his jurisdiction.

**Rerum progressus ostendunt multa, quæ in initio præcaveri seu prævideri non possunt** /rírəm prəgrəsəs əsténdənt málta, kwiy in ənìsh(iy)ow priykváiray s(y)ùw priyvədíray nòn pòsənt/. The progress of events shows many things which, at the beginning, could not be guarded against or foreseen.

**Rerum suarum quilibet est moderator et arbiter** /rírəm s(y)uwérəm kwáyłəbəd èst mòdərəytər ètərbətər/. Every one is the regulator and disposer of his own property.

**Res /riyz/. Lat.** The subject matter of a trust or will. In the civil law, a thing; an object. As a term of the law, this word has a very wide and extensive signification, including not only things which are objects of property, but also such as are not capable of individual ownership. And in old English law it is said to have a general import, comprehending both corporeal and incorporeal things of whatever kind, nature, or species. By "res," according to the modern civilians, is meant everything that may form an *object* of rights, in opposition to "*persona*," which is regarded as a *subject* of rights. "Res," therefore, in its general meaning, comprises *actions* of all kinds; while in its restricted sense it comprehends every object of right, except actions. This has reference to the fundamental division of the Institutes, that all law relates either to *persons*, to *things*, or to *actions*.

Res is everything that may form an object of rights and includes an object, subject-matter or status. In *re Riggle's Will*, 11 A.D.2d 51, 205 N.Y.S.2d 19, 21, 22. The term is particularly applied to an object, subject-matter, or *status*, considered as the defendant in an action, or as the object against which, directly, proceedings are taken. Thus, in a prize case, the captured vessel is "the *res*"; and proceedings of this character are said to be *in rem*. (See In Personam; In Rem.) "Res" may also denote the action or proceeding, as when a cause, which is not between adversary parties, is entitled "*In re* \_\_\_\_\_"

#### Classification

Things (res) have been variously divided and classified in law, e.g., in the following ways: (1) Corporeal and incorporeal things; (2) movables and immovables; (3) *res mancipi* and *res nec mancipi*; (4) things real and things personal; (5) things in possession and choses (i.e., things) in action; (6) fungible things and things not fungible (*fungibles vel non fungibiles*); and (7) *res singulæ* (i.e., individual objects) and *universitates rerum* (i.e., aggregates of things). Also persons are for some purposes and in certain respects regarded as things.

**Res accessoria** /riyz əksəsór(i)yə/. In the civil law, an accessory thing; that which belongs to a principal thing, or is in connection with it.

**Res adirata** /riyz ədərəytiy/. The gist of the old action for *res adirata* was the fact that the plaintiff had lost his goods, that they had come into the hands of the defendant, and that the defendant, on request, refused to give them up.

**Res adjudicata** /riyz əjùwdəkéyətə/. A less common spelling of *res judicata*. See *Res judicata*, below.

**Res caduca** /riyz kəd(y)úwkwə/. In the civil law, a fallen or escheated thing; an escheat.

**Res communes** /riyz kəmyúwniyz/. In the civil law, things common to all; that is, those things which are

used and enjoyed by every one, even in single parts, but can never be exclusively acquired as a whole, *e.g.*, light and air.

*Res controversa* /riyz kòntrovérsə/. In the civil law, a matter controverted; a matter in controversy; a point in question; a question for determination.

*Res coronæ* /riyz kərówni/. In old English law, things of the crown; such as ancient manors, homages of the king, liberties, etc.

*Res corporales* /riyz kòrpəréyliyz/. In the civil law, corporeal things; things which can be touched, or are perceptible to the senses.

*Res derelicta* /riyz dèhrèliktə/. Abandoned property; property thrown away or forsaken by the owner, so as to become open to the acquisition of the first taker or occupant.

*Res fungibiles* /riyz fənjibəliyz/°fənjəbliyz/. In the civil law, fungible things, things of such a nature that they can be replaced by equal quantities and qualities when returning a loan or delivering goods purchased, for example, so many bushels of wheat or so many dollars; but a particular horse or a particular jewel would not be of this character.

*Res gestæ* /riyz jéstiy/. Things done. *McClory v. Schneider*, Tex.Civ.App., 51 S.W.2d 738, 741. The "res gestæ" rule is that where a remark is made spontaneously and concurrently with an affray, collision or the like, it carries with it inherently a degree of credibility and will be admissible because of its spontaneous nature. *Carroll v. Guffey*, 20 Ill.App.2d 470, 156 N.E.2d 267, 270. "Res gestæ" means literally things or things happened and therefore, to be admissible as exception to hearsay rule, words spoken, thoughts expressed, and gestures made, must all be so closely connected to occurrence or event in both time and substance as to be a part of the happening. *McCandless v. Inland Northwest Film Service, Inc.*, 64 Wash.2d 523, 392 P.2d 613, 618. Those circumstances which are the automatic and undesigned incidents of a particular litigated act, which may be separated from act by lapse of time more or less appreciable, and which are admissible when illustrative of such act. The whole of the transaction under investigation and every part of it. *Res gestæ* is considered as an exception to the hearsay rule. In its operation it renders acts and declarations which constitute a part of the things done and said admissible in evidence, even though they would otherwise come within the rule excluding hearsay evidence or self-serving declarations. The rule is extended to include, not only declarations by the parties to the suit, but includes statements made by bystanders and strangers, under certain circumstances. See Fed.Evid.Rule 803(3).

A spontaneous declaration made by a person immediately after an event and before the mind has an opportunity to conjure a falsehood. It represents an exception to the hearsay rule and should be referred to as a spontaneous exclamation rather than *res gestæ*. See also Excited utterance; Verbal act doctrine.

*Res gestæ witness*. An eyewitness to some event in the continuum of the criminal transaction and one whose testimony will aid in developing a full disclosure of the facts surrounding the alleged commission of the charged offense. *People v. Baskin*, 145 Mich.App. 526, 378 N.W.2d 535, 537.

*Res habiles* /riyz hábəliyz/. In the civil law, things which are prescriptible; things to which a lawful title may be acquired by ordinary prescription.

*Res immobiles* /riyz imówbəliyz/. In the civil law, immovable things; including land and that which is connected therewith, either by nature or art, such as trees and buildings.

*Res incorporales* /riyz inkòrpəréyliyz/. In the civil law, incorporeal things; things which cannot be touched; such as those things which consist in right. Such things as the mind alone can perceive.

*Res integra* /riyz intégrə/°ántégrə/. A whole thing; a new or unopened thing. The term is applied to those points of law which have not been decided, which are untouched by *dictum* or decision.

*Res inter alios acta* /riyz intər éyl(i)yows áktə/. See *Res inter alios acta*.

*Res ipsa loquitur* /riyz ípsə lówkwətər/. The thing speaks for itself. Rebuttable presumption or inference that defendant was negligent, which arises upon proof that instrumentality causing injury was in defendant's exclusive control, and that the accident was one which ordinarily does not happen in absence of negligence. *Res ipsa loquitur* is rule of evidence whereby negligence of alleged wrongdoer may be inferred from mere fact that accident happened provided character of accident and circumstances attending it lead reasonably to belief that in absence of negligence it would not have occurred and that thing which caused injury is shown to have been under management and control of alleged wrongdoer. *Hillen v. Hooker Const. Co.*, Tex.Civ.App., 484 S.W.2d 113, 115. Under this doctrine, when a thing which causes injury, without fault of injured person, is shown to be under exclusive control of defendant, and injury is such as in ordinary course of things does not occur if the one having such control uses proper care, it affords reasonable evidence, in absence of an explanation, that injury arose from defendant's want of care. *Lux Art Van Service, Inc. v. Pollard*, C.A.Ariz., 344 F.2d 883, 886. See also Exclusive control.

*Res judicata* /riyz jüwdəkéytsə/. A matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action. *Matchett v. Rose*, 36 Ill.App.3d 638, 344 N.E.2d 770, 779. And to be applicable, requires identity in thing sued for as well as identity of cause of action, of persons and parties to action, and of quality in persons for or against whom claim is made. The sum and



substance of the whole rule is that a matter once judicially decided is finally decided. *Allen v. McCurry*, 449 U.S. 90, 101 S.Ct. 411, 415, 66 L.Ed.2d 308. *See also* Collateral estoppel doctrine; Final decision rule; Issue preclusion.

*Collateral estoppel compared.* "Res judicata" bars relitigation of the same cause of action between the same parties where there is a prior judgment, whereas "collateral estoppel" bars relitigation of a particular issue or determinative fact. *Roper v. Mabry*, 15 Wash.App. 819, 551 P.2d 1381, 1384.

Estoppel and res judicata distinguished, *see* Estoppel.

*Res litigiosæ* /riyz lətiʒiyoʊsə/. In Roman law, things which are in litigation; property or rights which constitute the subject-matter of a pending action.

*Res mancipi* /riyz mənsəpi/. *See* Mancipi res.

*Res mobiles* /riyz mɔwbəliyz/. In the civil law, movable things; things which may be transported from one place to another, without injury to their substance and form. Things corresponding with the chattels personal of the common law.

*Res nova* /riyz nɔwvə/. A new matter; a new case; a question not before decided.

*Res nullius* /riyz nəliʊs/. The property of nobody. A thing which has no owner, either because a former owner has finally abandoned it, or because it has never been appropriated by any person, or because (in the Roman law) it is not susceptible of private ownership.

*Res perit domino* /riyz pəhriyət dɔmənɔw/. A phrase used to express that, when a thing is lost or destroyed, it is lost to the person who was the owner of it at the time.

*Res privatae* /riyz prəvətyi/. In the civil law, things the property of one or more individuals.

*Res publicæ* /riyz pəbləsiy/. Things belonging to the public; public property; such as the sea, navigable rivers, highways, etc.

*Res quotidianæ* /riyz kwɔwtidiyɛniy/. Every-day matters; familiar points or questions.

*Res religiosæ* /riyz rəliʒiyoʊsiy/. Things pertaining to religion. In Roman law, especially, burial-places, which were regarded as sacred, and could not be the subjects of commerce.

*Res universitatis* /riyz yūnwəvərsətətyəs/. In the civil law, things belonging to a community (as, to a municipality), the use and enjoyment of which, according to their proper purpose, is free to every member of the community, but which cannot be appropriated to the exclusive use of any individual; such as the public buildings, streets, etc.

**Res accedent lumina rebus** /riyz əksəndənt l(y)ūwmənə riybəs/. One thing throws light upon others.

**Res accessoria sequitur rem principalem** /riyz əksəsəri(i)yə səkwtər prinsəpəyləm/. The accessory follows the principal.

**Resale.** Exists where a person who has sold goods or other property to a purchaser sells them again to someone else. Sometimes a vendor reserves the right of reselling if the purchaser commits default in payment of the purchase money, and in some cases (*e.g.*, on a sale of perishable articles) the vendor may do so without having reserved the right. U.C.C. § 2-706 provides the conditions under which a seller has a right of resale on breach by the buyer of the sales contract.

Term may also refer to act of retailer who purchases goods from manufacturer or wholesaler for purpose of selling such goods in normal course of business. *See also* Retail; Retailer.

**Resale price maintenance.** An agreement between a manufacturer and retailer that the latter should not resell below a specified minimum price. Such schemes operate to prevent price competition between the various dealers handling a given manufacturer's product with the manufacturer generally suggesting an appropriate resale price and enforcing dealer acquiescence through some form of coercive sanction. *Donahue v. Pendleton Woolen Mills, Inc.*, D.C.N.Y., 633 F.Supp. 1423, 1428. Until 1976, federal statutes exempted such state-permitted agreements from antitrust actions. *See also* Vertical price-fixing contract.

**Resceit** /rəsɪt/. In old English practice, an admission or receiving a third person to plead his right in a cause formerly commenced between two others; as, in an action by tenant for life or years, he in the reversion might come in and pray to be received to defend the land, and to plead with the demandant.

**Resceit of homage** /rəsɪt əv (h)ɔməj/. In old English law, the lord's receiving homage of his tenant at his admission to the land.

**Rescind.** *See* Rescission of contract.

**Rescissio** /rəsɪʃ(i)ɔw/. Lat. In the civil law, an annulling; avoiding, or making void; abrogation; rescission.

**Rescission of contract.** To abrogate, annul, avoid, or cancel a contract; particularly, nullifying a contract by the act of a party. The right of rescission is the right to cancel (rescind) a contract upon the occurrence of certain kinds of default by the other contracting party. To declare a contract void in its inception and to put an end to it as though it never were. *Russell v. Stephens*, 191 Wash. 314, 71 P.2d 30, 31. A "rescission" amounts to the unmaking of a contract, or an undoing of it from the beginning, and not merely a termination, and it may be effected by mutual agreement of parties, or by one of the parties declaring rescission of contract without consent of other if a legally sufficient ground therefor exists, or by applying to courts for a decree of rescission. *Abdallah, Inc. v. Martin*, 242 Minn. 416, 65 N.W.2d 641, 644. It necessarily involves a repudiation of the contract and a refusal of the moving party to be further bound by it. Nonetheless, not every default in a contract will give rise to a right of rescission. *See also* Cancellation; Renunciation; Repudiation; Revocation; Termination.

An action of an equitable nature in which a party seeks to be relieved of his obligations under a contract on the grounds of mutual mistake, fraud, impossibility, etc.

**Rescissory damages.** See Damages.

**Rescous** /réskyuw/. Rescue. The taking back by force goods which had been taken under a distress, or the violently taking away a man who is under arrest, and setting him at liberty, or otherwise procuring his escape, are both so denominated. This was also the name of a writ which lay in cases of rescue.

**Rescript** /riyskript/. A written order from the court to the clerk, giving directions concerning the further disposition of a case. The written statement by an appellate court of its decision in a case, with the reasons therefor, sent down to the trial court. A short appellate opinion which does not bear the name of any justice.

At common law, a counterpart, duplicate, or copy.

In the civil law, a species of imperial constitutions, being the answers of the prince in individual cases, chiefly given in response to inquiries by parties in relation to litigated suits, or to inquiries by the judges, and which became rules for future litigated or doubtful legal questions.

In canon law, a term including any form of apostolical letter emanating from the Pope. The answer of the Pope in writing.

**Rescriptum** /rəskriptəm/. Lat. In the civil law, a species of imperial constitution, in the form of an answer to some application or petition; a rescript.

**Rescue.** Act of saving or freeing. At common law, forcibly and knowingly freeing another from arrest, imprisonment or legal custody without any effort by prisoner to free himself. *Merrill v. State*, 42 Ariz. 341, 26 P.2d 110. The unlawfully or forcibly taking back goods which have been taken under a distress for rent, damage feasant, etc. See also Repossession.

In admiralty and maritime law, the deliverance of property taken as prize, out of the hands of the captors, either when the captured party retake it by their own efforts, or when, pending the pursuit or struggle, the party about to be overpowered receive reinforcements, and so escape capture.

**Rescue doctrine.** Under this doctrine, one who has, through his negligence, endangered safety of another may be held liable for injuries sustained by third person who attempts to save other from injury. *National Dairy Products Corp. v. Freschi*, Mo.App., 393 S.W.2d 48, 57. Dancer invites rescue.

"Rescue", "humanitarian" or "good samaritan" doctrine is that one who sees a person in imminent and serious peril through negligence of another cannot be charged with contributory negligence, as a matter of law, in risking his own life or serious injury in attempting to effect a rescue, provided the attempt is not recklessly or rashly made. *Jobst v. Butler Well Servicing, Inc.*, 190 Kan. 86, 372 P.2d 55, 59. See also Humanitarian doctrine.

**Rescye** /rəsiyt/. L. Fr. Resceit; receipt; the receiving or harboring a felon, after the commission of a crime.

**Res denominatur a principali parte** /riyz dənəmənétər èy prinsèpéyay pártiy/. The thing is named from its principal part.

**Resealing writ.** In English law, the second sealing of a writ by a master so as to continue it, or to cure it of an irregularity.

**Reservation.** A clause in a deed or other instrument of conveyance by which the grantor creates, and reserves to himself, some right, interest, or profit in the estate granted, which had no previous existence as such, but is first called into being by the instrument reserving it; such as rent, or an easement. Reservation occurs where granting clause of the deed operates to exclude a portion of that which would otherwise pass to the grantee by the description in the deed and "reserves" that portion unto the grantor. *Board of County Com'rs of Weld County v. Anderson*, 34 Colo.App. 37, 525 P.2d 478, 482.

A right created and retained by a grantor. The reservation may be temporary (such as a life estate) or permanent (such as an easement running with the land).

The reservation of a point of law is the act of the trial court in setting it aside for future consideration, allowing the trial to proceed meanwhile as if the question had been settled one way, but subject to alteration of the judgment in case the court *in banc* should decide it differently.

For exception and reservation distinguished, see and compare Exception.

A reservation is a tract of land, more or less considerable in extent, which is by public authority withdrawn from sale or settlement, and appropriated to specific public uses; such as parks, military posts, Indian lands, etc. A tract of land (under control of the Bureau of Indian Affairs) to which an American Indian tribe retains its original title to ownership or which has been set aside for its use out of the public domain.

**Reservation of claim.** A draft or demand presented under a letter of credit is non-complying if there is an explicit reservation of claim. U.C.C. § 5-110.

**Reservatio non debet esse de proficuis ipsis, quia ea conceduntur, sed de reditu novo extra proficua** /rèzərvéysh(iy)ow nòn débət ésiy diy prəfikyuwəs ípsəs, kwáyə iyə kònsədántər sèd diy rédat(y)uw nóvwow ékstrə prəfikyuwə/. A reservation ought not to be of the profits themselves, because they are granted, but from the new rent, apart from the profits.

**Reserve, v.** To keep back, to retain, to keep in store for future or special use, and to retain or hold over to a future time. *Commissioner of Internal Revenue v. Strong Mfg. Co.*, C.C.A.6, 124 F.2d 360, 363. To set aside funds, usually for indefinite contingencies, such as future maintenance of a structure, or to pay future claims.

**Reserve, n.** Funds set aside to cover future expenses, losses, claims, or liabilities. Sums of money an insurer is required to set aside as a fund for the liquidation of future unaccrued and contingent claims, and claims

accrued, but contingent and indefinite as to amount. *Arrow Trucking Co. v. Continental Ins. Co., La.*, 465 So.2d 691, 696. Reserves of insurance company are the amount treated as liability on the balance sheet which the company estimates will be sufficient to meet its policy obligations. *United Life & Acc. Ins. Co. v. U.S., D.C.N.H.*, 329 F.Supp. 765, 768.

"With reserve" in an auction means that the thing will not be sold if the highest bid is not high enough. To "reserve title" is to keep an ownership right as security that the thing will be fully paid for.

**Bad debt reserve.** In accounting, a reserve set aside for losses on uncollectible accounts and notes receivable. An account for bad debts is offset by a reserve for bad debts. When accounts become uncollectible they are written off against the reserve. For tax years beginning after 1986, the Internal Revenue Service repealed the use of the bad debt reserve method for tax purposes, requiring most taxpayers to use the specific charge-off method for receivables which become uncollectible after 1986.

**Contingency reserve (or fund).** See that title.

**Depletion reserve.** An account used in connection with diminishing assets such as mines, timber, etc. to reflect the depletion of the asset.

**Depreciation reserve.** An account used to recover the cost of an asset by writing off a portion of the cost over the life of the asset or by some other acceptable method. The depreciation reserve is listed on the balance sheet as a reduction in the cost of the related asset.

**Legal reserve.** A reserve account required by law for insurance companies and banks as protection against losses.

**Replacement reserve.** An account set up for the actual replacement of machinery and equipment.

**Required reserves.** The minimum amount of reserves that must be held by banks as required by the Federal Reserve Board. The Board requires banks and other financial institutions that accept deposits to hold specified minimum reserves in the form of vault cash or deposits with the nearest Federal Reserve District Bank.

**Sinking fund reserve.** An account set up for the redemption of long term debt. It is commonly required by a bond indenture.

**Reserve banks.** Member banks of Federal Reserve System.

**Reserve Board.** See Federal Reserve Board of Governors.

**Reserve clause.** A clause included in contracts of professional athletes whereby the athlete's service is reserved for the team holding his contract. It represents a hold on the player by the team which has contracted with him, and such team has the exclusive right to trade the player to another team without his consent. Such reserve clauses in professional baseball contracts have long since been held to be exempt from federal antitrust laws. *Toolson v. New York Yankees, Inc.*, 346 U.S. 356,

74 S.Ct. 78, 98 L.Ed. 64; *Flood v. Kuhn*, 407 U.S. 258, 92 S.Ct. 2099, 32 L.Ed.2d 728.

**Reserved.** Retained, kept or set apart, for a purpose or a person.

**Reserved land.** Public land that has been withheld or kept back from sale or disposition. See **Reservation**.

**Reserved power.** A power specifically withheld because not mentioned or reasonably implied in other powers conferred by a constitution or statute. See also **Power (Constitutional powers)**.

**Reserve fund.** See **Reserve**.

**Reserve ratio.** In banking, the primary reserve ratio is the ratio of the balance of Federal Reserve balance of the bank plus cash in vault to the demand deposits of the bank. The secondary ratio is the ratio between the government securities of the bank and its demand deposits. There is also a ratio between time deposits and Federal Reserve balances plus cash in vault.

**Res est misera ubi jus est vagum et incertum** /ríyz èst mìzərə yúwbay jús èst véygəm èt ànsórtəm/. It is a wretched state of things when law is vague and mutable.

**Reset.** In old English law, the receiving or harboring an outlawed person.

**Resettlement.** The reopening of an order or decree for the purpose of including therein some recital or provision which should have been included and was initially omitted through inadvertence. In *re Bartlett's Will*, 164 Misc. 524, 299 N.Y.S. 316, 317.

**Res generalem habet significationem quia tam corporea quam incorporea cujuscunque sunt generis, naturæ, sive speciei, comprehendit** /ríyz jènərəyləm héybət sígnəfəkèyshiyównəm kwáyə tàm korpóriyə kwəm ìnkorpóriyə k(y)úwjàskənkwiý sènt jènərəs, nətýuriý sáyviý spiyshiyay, kòmpréhéndət/. The word "thing" has a general signification, because it comprehends corporeal and incorporeal objects, of whatever nature, sort, or species.

**Res gestæ.** See **Res**.

**Resiance** /réziyàns/. Residence, abode, or continuance.

**Resiant** /réziyànt/. In old English law, continually dwelling or abiding in a place; resident; a resident.

**Reside.** Live, dwell, abide, sojourn, stay, remain, lodge. *Western-Knapp Engineering Co. v. Gilbank, C.C.A.Cal.*, 129 F.2d 135, 136. To settle oneself or a thing in a place, to be stationed, to remain or stay, to dwell permanently or continuously, to have a settled abode for a time, to have one's residence or domicile; specifically, to be in residence, to have an abiding place, to be present as an element, to inhere as a quality, to be vested as a right. *State ex rel. Bowden v. Jensen, Mo.*, 359 S.W.2d 343, 349. A foreign business corporation, for venue purposes, "resides" in county where its registered office and registered agent is located. *State ex rel. Bowden v. Jensen, Mo.*, 359 S.W.2d 343, 351.

**Residence.** Place where one actually lives or has his home; a person's dwelling place or place of habitation;

an abode; house where one's home is; a dwelling house. *Perez v. Health and Social Services*, 91 N.M. 334, 573 P.2d 689, 692. Personal presence at some place of abode with no present intention of definite and early removal and with purpose to remain for undetermined period, not infrequently, but not necessarily combined with design to stay permanently. *T.P. Laboratories, Inc. v. Huger, D.C.Md.*, 197 F.Supp. 860, 865.

Residence implies something more than mere physical presence and something less than domicile. *Petition of Castrinakis, D.C.Md.*, 179 F.Supp. 444, 445. The terms "resident" and "residence" have no precise legal meaning; sometimes they mean domicile plus physical presence; sometimes they mean domicile; and sometimes they mean something less than domicile. *Willenbrock v. Rogers, C.A.Pa.*, 255 F.2d 236, 237. *See also* Abode; Domicile; Legal residence; Principal residence.

*"Domicile" compared and distinguished.* As "domicile" and "residence" are usually in the same place, they are frequently used as if they had the same meaning, but they are not identical terms, for a person may have two places of residence, as in the city and country, but only one domicile. Residence means living in a particular locality, but domicile means living in that locality with intent to make it a fixed and permanent home. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one's domicile. *Fuller v. Hofferbert, C.A.Ohio*, 204 F.2d 592, 597. "Residence" is not synonymous with "domicile," though the two terms are closely related; a person may have only one legal domicile at one time, but he may have more than one residence. *Fielding v. Casualty Reciprocal Exchange, La.App.*, 331 So.2d 186, 188.

In certain contexts the courts consider "residence" and "domicile" to be synonymous (e.g. divorce action, *Cooper v. Cooper*, 269 Cal.App.2d 6, 74 Cal.Rptr. 439, 441); while in others the two terms are distinguished (e.g. venue, *Fromkin v. Loehmann's Hewlett, Inc.*, 16 Misc.2d 117, 184 N.Y.S.2d 63, 65).

*Immigration law.* The place of general abode; the place of general abode of a person means his or her principal, actual dwelling place in fact, without regard to intent. 8 U.S.C.A. § 1101.

*Legal residence.* *See* that title.

**Residency requirements.** Broad term to describe terms of residence required by states for such things as welfare benefits, admission to the bar, divorce, etc. As regards divorce and welfare prerequisites, the requirements must not be so stringent as to violate due process or equal protection. *See* Right to travel.

**Resident.** Any person who occupies a dwelling within the State, has a present intent to remain within the State for a period of time, and manifests the genuineness of that intent by establishing an ongoing physical presence within the State together with indicia that his presence within the State is something other than merely transitory in nature. The word "resident" when used as a noun, means a dweller, habitant or occupant; one

who resides or dwells in a place for a period of more, or less, duration; it signifies one having a residence, or one who resides or abides. *Hanson v. P. A. Peterson Home Ass'n*, 35 Ill.App.2d 134, 182 N.E.2d 237, 240. Word "resident" has many meanings in law, largely determined by statutory context in which it is used. *Kelm v. Carlson, C.A.Ohio*, 473 F.2d 1267, 1271. *See also* Residence.

**Resident agent.** Person in a jurisdiction authorized to accept service of process for another, especially a corporation.

**Resident alien.** One, not yet a citizen of this country, who has come into the country from another with the intent to abandon his former citizenship and to reside here.

**Resident freeholder.** A person who resides in the particular place (town, city, county, etc.) and who owns an estate in lands therein amounting at least to a freehold interest. *Brodie v. City of Missoula*, 155 Mont. 185, 468 P.2d 778, 782.

**Residential cluster.** An area to be developed as a single entity according to a plan containing residential housing units which have a common or public open space area as an appurtenance. *See also* Planned unit development.

**Residential density.** The number of dwelling units per gross acre of residential land area including streets, easements and open space portions of a development.

**Residual** /rəzɪduwəl/rəzɪj(uw)əl/. Relating to the residue; relating to the part remaining; that which is left over. Term may also refer to deferred commissions.

**Residual value.** Value of depreciable asset after depreciation charges have been deducted from original cost. *See also* Salvage (*salvage value*).

**Residuary** /rəzɪduwəri/. Pertaining to the residue; constituting the residue; giving or bequeathing the residue; receiving or entitled to the residue. *See* Residue.

**Residuary account.** In English practice, the account which every executor and administrator, after paying the debts and particular legacies of the deceased, and before paying over the residuum, must pass before the board of inland revenue.

**Residuary bequest.** A bequest of all of testator's estate not otherwise effectually disposed of.

**Residuary clause.** Clause in will by which that part of property is disposed of which remains after satisfying bequests and devises. Any part of the will which disposes of property not expressly disposed of by other provisions of the will. *Jackson v. Jackson*, 217 Kan. 448, 536 P.2d 1400, 1406. *See also* Residuary estate.

**Residuary devise and devisee.** *See* Devise.

**Residuary estate.** That which remains after debts and expenses of administration, legacies, and devises have been satisfied. That portion of person's estate which has not otherwise been particularly devised or bequeathed. It consists of all that has not been legally disposed of by will, other than by residuary clause.

Gross estate less all charges, debts, costs, and all other legacies. In *re Miller's Estate*, Fla.App., 301 So.2d 137, 139. See also Residuary clause.

**Residuary gift.** See Legacy.

**Residuary legacy.** See Legacy.

**Residuary legatee.** See Legatee.

**Residue.** The surplus of a testator's estate remaining after all the debts, taxes, costs of administration, and particular legacies have been discharged. See also Residuary estate.

**Residuum** /rɛzɪduwəm/. That which remains after any process of separation or deduction; a residue or balance. That which remains of a decedent's estate, after debts have been paid and legacies deducted. See also Residuary estate.

**Residuum rule.** While a decision of an administrative board may be based partly on hearsay evidence introduced at the hearing, it will be upheld on judicial review only if there is a residuum of competent evidence on which it is founded. The residuum rule has generally been rejected by the federal courts. See *Richardson v. Perales*, 402 U.S. 389, 91 S.Ct. 1420, 28 L.Ed.2d 842.

**Resignatio est juris proprii spontanea refutatio** /rɛzəgnɛyʃ(i)yow ɛst jʊrəs prɔwpriyay spontɛn(i)yə rɛfɪwɛtɛyʃ(i)yow/. Resignation is a spontaneous relinquishment of one's own right.

**Resignation.** Formal renouncement or relinquishment of an office. It must be made with intention of relinquishing the office accompanied by act of relinquishment.

**Resilire** /rɛzəlɪrɪy/. Lat. In old English law, to draw back from a contract before it is made binding.

**Res inter alios acta** /rɪz ɪntər ɛyliyows ɛktə/. The rule "res inter alios acta" forbids the introduction of collateral facts which by their nature are incapable of affording any reasonable presumption or inference as to the principal matter in dispute, and thus evidence as to acts, transactions or occurrences to which accused is not a party or is not connected is inadmissible. *State v. McCarty*, Iowa, 179 N.W.2d 548, 550.

In law of evidence, a thing or event which occurs at a time different from the time in issue is generally not admissible to prove what occurred at the time in issue. Also events which involve those not parties to an action are generally not admissible because they are immaterial and commonly not relevant.

**Res inter alios acta alteri nocere non debet** /rɪz ɪntər ɛyl(i)yows ɛktə ɔltərəy nəsiəri nɔn dəbət/. Things done between strangers ought not to injure those who are not parties to them.

**Res inter alios judicata nullum aliis præjudicium faciunt** /rɪz ɪntər ɛyl(i)yows jʊwdəkɛyti nələm ɛyliyəs prɛjʊwdɪʃ(i)yəm fəʃiɪjənt/. Matters adjudged in a cause do not prejudice those who were not parties to it.

**Res ipsa loquitur.** See Res.

**Resist.** To oppose. This word properly describes an opposition by direct action and *quasi* forcible means.

**Resistance.** The act of resisting opposition. The employment of forcible means to prevent the execution of an endeavor in which force is employed; standing against; obstructing. Withstanding the force or effect of or the exertion of oneself to counteract or defeat. *Landry v. Daley*, D.C.Ill., 280 F.Supp. 938, 959. See Self-defense.

**Resisting an officer.** In criminal law, the offense of obstructing, opposing, and endeavoring to prevent (with or without actual force) a peace officer in the execution of a writ or in the lawful discharge of his duty while making an arrest or otherwise enforcing the peace. See e.g. 18 U.S.C.A. § 111. See also Resisting arrest.

**Resisting arrest.** The crime of obstructing or opposing a police officer making an arrest. See, e.g., Model Penal Code, § 242.2; N.J.S.A. 2C:29-2.

**Res judicata.** See Res.

**Res judicata facit ex albo nigrum; ex nigro, album; ex curvo, rectum; ex recto, curvum** /rɪz jʊwdəkɛtə fɛysət ɛks ɛlbɔw nəygɾəm, ɛks nəygɾow ɛlbəm, ɛks kɔrvɔw rɛktəm, ɛks rɛktɔw kɔrvəm/. A thing adjudged [the solemn judgment of a court] makes white, black; black, white; the crooked, straight; the straight, crooked.

**Res judicata pro veritate accipitur** /rɪz jʊwdəkɛtə prɔw vɛhrətɛyti ɛksɪpɛtər/. A matter adjudged is taken for truth. A matter decided or passed upon by a court of competent jurisdiction is received as evidence of truth.

**Res nullius naturaliter fit primi occupantis** /rɪz nəlyəs nətyərəylɛtər fit prɪyməy ɔkyɔpɛntəs/. A thing which has no owner naturally belongs to the first finder.

**Resolution.** A formal expression of the opinion or will of an official body or a public assembly, adopted by vote; as a legislative resolution. Such may be either a simple, joint or concurrent resolution.

The term is usually employed to denote the adoption of a motion, the subject-matter of which would not properly constitute a statute, such as a mere expression of opinion; an alteration of the rules; a vote of thanks or of censure, etc. Such is not law but merely a form in which a legislative body expresses an opinion. *Baker v. City of Milwaukee*, 271 Or. 500, 533 P.2d 772, 775.

The chief distinction between a "resolution" and a "law" is that the former is used whenever the legislative body passing it wishes merely to express an opinion as to some given matter or thing and is only to have a temporary effect on such particular thing, while by a "law" it is intended to permanently direct and control matters applying to persons or things in general.

**Concurrent resolution.** An action of Congress passed in the form of a resolution of one house, the other concurring, which expresses the sense of Congress on a particular subject.

**Corporate resolution.** Formal documentation of action taken by board of directors of corporation (e.g. declaration of stock dividend).

**Joint resolution.** A resolution adopted by both houses of congress or a legislature. When such a resolution has been approved by the president or passed with his approval, it has the effect of a law.

The distinction between a joint resolution and a concurrent resolution of congress, is that the former requires the approval of the president while the latter does not.

**Ordinance distinguished.** "Resolution" denotes something less formal than "ordinance"; generally, it is mere expression of opinion or mind of council concerning some matter of administration, within its official cognizance, and provides for disposition of particular item of administrative business of a municipality; it is not a law, and in substance there is no difference between resolution, order and motion. *City of Salisbury v. Nagel, Mo.App., 420 S.W.2d 37, 43.*

**Resolution Trust Corporation.** A federal agency which succeeds the former Federal Savings and Loan Insurance Corporation (FSLIC) as conservator or receiver of federal savings and loan associations which became insolvent while insured by the FSLIC. One of agency's functions is to dispose of assets of insolvent S & L's. With the abolition of the FSLIC in 1989, such associations are now insured by the FDIC. *See also* Federal Deposit Insurance Corporation.

**Resoluto jure concedentis resolvitur jus concessum** /rèzəl(y)úwtow júriy kònsédéntəs rəzòlvətər jəs kònsésəm/. The right of the grantor being extinguished, the right granted is extinguished.

**Resolutive condition** /rəzòlyət(ə)riy kəndíshən/. *See* Condition.

**Resort, v.** To frequent; to go, especially to go frequently, customarily, or usually. To have recourse; to look to for relief or help.

**Resort, n.** Recourse; a person or thing that is looked to for help. A place of frequent assembly; a haunt. *U. S. ex rel. Dobra v. Lindsey, D.C.Tex., 51 F.2d 141, 142.*

**Court of last resort.** A court whose decision is final and without further appeal in reference to the particular case; e.g. Supreme Court of the United States.

**Resources.** Money or any property that can be converted to meet needs; means of raising money or supplies; capabilities of raising wealth or to supply necessary wants; available means or capability of any kind. *Cerenzia v. Department of Social Security of Washington, 18 Wash.2d 230, 138 P.2d 868, 871. See also* Natural resources.

**RESPA (Real Estate Settlement Procedures Act).** A federal statute governing disclosure of settlement costs in the sale of residential (one to four family) improved property which is to be financed by a federally insured lender. *12 U.S.C.A. § 2601 et seq. See also* Closing.

**Respective.** Relating to particular persons or things, each to each; particular; several; as, their respective homes.

**Respectu computi vicecomitis habendo** /rəspékt(y)uw kómpyətay vəisíykómətəs həbéndow/. A writ for respiting a sheriff's account addressed to the treasurer and barons of the exchequer.

**Res per pecuniam aestimatur, et non pecunia per rem** /ríyz pər pəkýúwn(i)yəm èstéméyrtər èt nòn pəkýúwn(i)yə pər rém/. The value of a thing is estimated according to its worth in money, but the value of money is not estimated by reference to a thing.

**Respicendum est judicanti ne quid aut durius aut remissius constituatur quam causa deprecit; nec enim aut severitatis aut clementia gloria affectanda est** /rəspíshiyéndəm èst júwdəkántay níy kwíd òt dyúriyəs òt rəmis(i)yəs kən(t)stít(y)uwéyrtər kwəm kózə dəpósət, nèk íynəm òt səvèhrétéyrtəs òt kləménshiyiy glóriyə əfektándə èst/. The judge must see that no order be made or judgment given or sentence passed either more harshly or more mildly than the case requires; he must not seek renown, either as a severe or as a tender-hearted judge.

**Respite** /réspət/rəspáyt/. The temporary suspension of the execution of a sentence; a reprieve; a delay, forbearance, or continuation of time.

In the civil law, an act by which a debtor, who is unable to satisfy his debts at the moment, transacts (compromises) with his creditors, and obtains from them time or delay for the payment of the sums which he owes to them. The respite is either voluntary or forced. It is *voluntary* when all the creditors consent to the proposal, which the debtor makes, to pay in a limited time the whole or a part of the debt. It is *forced* when a part of the creditors refuse to accept the debtor's proposal, and when the latter is obliged to compel them by judicial authority to consent to what the others have determined, in the cases directed by law.

**Respite of appeal.** Adjourning an appeal to some future time.

**Respite of homage.** To dispense with the performance of homage by tenants who held their lands in consideration of performing homage to their lords.

**Respondeat oster** /rəspóndiyət áwstər/. Upon an issue in law arising upon a dilatory plea, the form of judgment for the plaintiff is that the defendant answer over, which is thence called a judgment of "*respondeat oster*." This not being a final judgment, the pleading is resumed, and the action proceeds.

**Respondeat raptor, qui ignorare non potuit quod pupillum alienum abduxit** /rəspóndiyət rəptər kwáy ígnərériy nòn pótúwət kwód p(y)əpíləm əliyiynəm əbdáksət/. Let the ravisher answer, for he cannot be ignorant that he has taken away another's ward.

**Respondeat superior** /rəspóndiyət s(y)əpíriyər/. Let the master answer. This doctrine or maxim means that a master is liable in certain cases for the wrongful acts

of his servant, and a principal for those of his agent. *Burger Chef Systems, Inc. v. Govro, C.A.Mo., 407 F.2d 921, 925.* Under this doctrine master is responsible for want of care on servant's part toward those to whom master owes duty to use care, provided failure of servant to use such care occurred in course of his employment. *Shell Petroleum Corporation v. Magnolia Pipe Line Co., Tex.Civ.App., 85 S.W.2d 829, 832.* Under doctrine an employer is liable for injury to person or property of another proximately resulting from acts of employee done within scope of his employment in the employer's service. *Mid-Continent Pipeline Co. v. Crauthers, Okl., 267 P.2d 568, 571.* Doctrine applies only when relation of master and servant existed between defendant and wrongdoer at time of injury sued for, in respect to very transaction from which it arose. Hence, doctrine is inapplicable where injury occurs while employee is acting outside legitimate scope of authority. *Rogers v. Town of Black Mountain, 224 N.C. 119, 29 S.E.2d 203, 205.* But if deviation be only slight or incidental, employer may still be liable. *Klotsch v. P. F. Collier & Son Corporation, 349 Mo. 40, 159 S.W.2d 589, 593, 595.* See Scope of employment; Vicarious liability.

**Respondent** /rəspɒndənt/. In equity practice, the party who makes an answer to a bill or other proceeding in equity. In appellate practice, the party who contends against an appeal; the party against whom the appeal is taken, *i.e.* the appellee.

In the civil law, one who answers or is security for another; a fidejussor.

**Respondentia** /rɛspɒndɛnʃ(i)yə/. The hypothecation of the cargo or goods on board a ship as security for the repayment of a loan, the term "bottomry" being confined to hypothecations of the ship herself; but now the term "respondentia" is seldom used, and the expression "bottomry" is generally employed, whether the vessel or her cargo or both be the security.

A contract by which a cargo, or some part thereof, is hypothecated as security for a loan, the repayment of which is dependent on maritime risks.

**Respondera son souveraine** /rə(s)pɒndərə sɒn sɔv(ə)r-ən/ˈsɔvərən/. His superior or master shall answer.

**Respondere non debet** /rɛspɒndəriy nɒn dɛbət/. Lat. In common law pleading, the prayer of a plea where the defendant insists that he ought not to answer, as when he claims a privilege; for example, as being a member of congress or a foreign ambassador.

**Respondalis** /rɛspɒnsɛyls/. In old English law, one who appeared for another.

In ecclesiastical law, a proctor.

**Respondalis ad lucrandum vel petendum** /rɛspɒnsɛyls æd l(y)uwrkrændəm vɛl pɛtɛndəm/. He who appears and answers for another in court at a day assigned; a proctor, attorney, or deputy.

**Responsa prudentium** /rɛspɒnsə pruwðɛnʃ(i)yəm/. Lat. Answers of jurists; responses given upon cases or questions of law referred to them, by certain learned Roman jurists, who, though not magistrates, were autho-

rized to render such opinions. These *responsa* constituted one of the most important sources of the earlier Roman law, and were of great value in developing its scientific accuracy. They held much the same place of authority as our modern precedents and reports.

**Responsibility.** The state of being answerable for an obligation, and includes judgment, skill, ability and capacity. *McFarland v. George, Mo.App., 316 S.W.2d 662, 671.* The obligation to answer for an act done, and to repair or otherwise make restitution for any injury it may have caused. See also Liability; Responsible.

**Responsibility of eviction.** In a lease the burden of expelling by legal process those in possession, if they wrongfully withhold it.

**Responsible.** Liable; legally accountable or answerable. Able to pay a sum for which he is or may become liable, or to discharge an obligation which he may be under.

**Responsible bidder.** One who is capable financially and competent to complete the job for which he is bidding. A responsible bidder is one who is not only financially responsible, but who is possessed of a judgment, skill, ability, capacity and integrity requisite and necessary to perform a public contract according to its terms. *Federal Elec. Corp. v. Fasi, 56 Haw. 57, 527 P.2d 1284, 1291.*

**Responsible cause.** So as to relieve defendant from liability for injuries, a cause which is the culpable act of a human being who is legally responsible for such act. See Proximate cause.

**Responsible government.** This term generally designates that species of governmental system in which the responsibility for public measures or acts of state rests upon the ministry or executive council, who are under an obligation to resign when disapprobation of their course is expressed by a vote of want of confidence, in the legislative assembly, or by the defeat of an important measure advocated by them.

**Responsio unius non omnino audiatur** /rɛspɒnʃ(i)yow yuwnáyəs nɒn omnáynow odiyétər/. The answer of one witness shall not be heard at all. A maxim of the Roman law of evidence.

**Responsive.** Answering; constituting or comprising a complete answer. A "responsive allegation" is one which directly answers the allegation it is intended to meet.

**Responsive pleading.** A pleading which joins issue and replies to a prior pleading of an opponent in contrast to a dilatory plea or motion which seeks to dismiss on some ground other than the merits of the action. Though general denials are not commonly accepted today, an answer in which specific denials are set forth and an answer by way of confession and avoidance are examples of responsive pleadings. See Answer.

**Res propria est quæ communis non est** /ríyz prówpriyæ èst kwíy kamyúwnəs nɒn èst/. A thing is private which is not common.

**Res qua intra praesidia perducta nondum sunt, quam ab hostibus occupata, ideo postliminii non egent, quia dominium nondum mutarunt ex gentium jure** /riyz kwiy intrā prasīdiyā pardāktiy nōndam sánt, kwāḡkwam æb (h)óstabæs okyapētyiy, idiyow powstlīmānay nōn iyjant kwāyē dāmīniyām nōndam myuwtrānt èks jēnsh(iy)ām jūriy/. Things which have not yet been introduced within the enemy's lines, although held by the enemy, do not need the fiction of postliminy on this account, because their ownership by the law of nations has not yet changed.

**Res sacra non recipit aestimationem** /riyz sākra nōn rēsəpət èstāmēyshiyōwnəm/. A sacred thing does not admit of valuation.

**Resseiser** /rəsīyzer/. The taking of lands into the hands of the crown, where a general livery or *ouster le main* was formerly misused.

**Res sua nemini servit** /riyz s(y)ūwə nēmānay sərvt/. No one can have a servitude over his own property.

**Rest, v.** In the trial of an action, a party is said to "rest," or "rest his case," when he advises the court or intimates that he has produced all the evidence he intends to offer at that stage, and submits the case, either finally, or subject to his right to afterwards offer rebutting evidence.

**Rest, n.** Repose; cessation or intermission of motion, exertion or labor; freedom from activity; quiet. *Corrugating Machinery Corporation v. Progressive Corrugated Paper Machinery Co.*, D.C.N.Y., 47 F.2d 273, 275. *See also Residue.*

**Restatement of Law.** A series of volumes authored by the American Law Institute that tell what the law in a general area is, how it is changing, and what direction the authors (who are leading legal scholars in each field covered) think this change should take; for example, *Restatement of the Law of Contracts*; *Restatement of the Law of Torts*. The various Restatements have been a formidable force in shaping the disciplines of the law covered; they are frequently cited by courts and either followed or distinguished; they represent the fruit of the labor of the best legal minds in the diverse fields of law covered.

**Restaur, or restor** /rəstór/. In old English law, the remedy or recourse which marine underwriters have against each other, according to the date of their assurances, or against the master, if the loss arise through his default, as through ill loading, want of caulking, or want of having the vessel tight; also the remedy or recourse a person has against his guarantor or other person who is to indemnify him from any damage sustained.

**Resting a case.** *See Rest.*

**Restitutio in integrum** /rèstat(y)ūwsh(iy)ow in întəgrəm/ 'intéggrəm/. Lat. In the civil law, restoration or restitution to the previous condition. This was effected by the praetor on equitable grounds, at the prayer of an injured party, by rescinding or annulling a contract or transaction valid by the strict law, or annulling a change in the legal condition produced by an omission,

and restoring the parties to their previous situation or legal relations. The restoration of a cause to its first state, on petition of the party who was cast, in order to have a second hearing.

Maximum measure of damages awarded in event of a marine collision is "restitutio in integrum" which strictly construed limits damages to the difference in value of vessel before and after collision, but measure is equated with the cost of necessary repairs and loss of earnings while they are being made. *Delta Marine Drilling Co. v. M/V Baroid Ranger*, C.A.La., 454 F.2d 128, 129.

**Restitution.** An equitable remedy under which a person is restored to his or her original position prior to loss or injury, or placed in the position he or she would have been, had the breach not occurred. Act of restoring; restoration; restoration of anything to its rightful owner; the act of making good or giving equivalent for any loss, damage or injury; and indemnification. *State v. Barnett*, 110 Vt. 221, 3 A.2d 521, 525, 526. Act of making good or giving an equivalent for or restoring something to the rightful owner. *Antoine v. McCaffery*, Mo.App., 335 S.W.2d 474, 489. Compensation for the wrongful taking of property. *Com. v. Fuqua*, 267 Pa.Super. 504, 407 A.2d 24, 25. Restoration of status quo and is amount which would put plaintiff in as good a position as he would have been if no contract had been made and restores to plaintiff value of what he parted with in performing contract. *Explorers Motor Home Corp. v. Aldridge*, Tex.Civ.App., 541 S.W.2d 851, 852. *See Restatement, Second, Contracts, § 373.*

A person who has been unjustly enriched at the expense of another is required to make restitution to the other. *Restatement of the Law, Restitution, § 1.*

In torts, restitution is essentially the measure of damages, while in contracts a person aggrieved by a breach is entitled to be placed in the position in which he would have been if the defendant had not breached.

In the law of commercial sales, the buyer's rights to restitution are governed by U.C.C. §§ 2-711 and 2-718.

*See also* Unjust enrichment, doctrine of.

**Criminal law.** The federal courts and many states have restitution programs under which the criminal offender is required to repay, as a condition of his sentence, the victim or society in money or services. *See e.g.* 18 U.S.C.A. §§ 3663, 3664.

**Maritime law.** The placing back or restoring articles which have been lost by jettison: This is done, when remainder of the cargo has been saved, at the general charge of the owners of the cargo.

**Restitution of conjugal rights.** In English ecclesiastical law, a species of matrimonial cause or suit which was brought whenever either a husband or wife was guilty of the injury of subtraction, or lived separate from the other without any sufficient reason; in which case the ecclesiastical jurisdiction compelled them to come together again, if either be weak enough to desire it, contrary to the inclination of the other. 3 Bl.Comm. 94.

**Writ of restitution.** *See that title.*



**Restitutio extracti ab ecclesia** /rɛstət(y)ʊwshiyówniy ekstráktay əb əklíyz(i)yə/. In ecclesiastical law, a writ to restore a man to the church, which he had recovered for his sanctuary, being suspected of felony.

**Restitutio temporalium** /rɛstət(y)ʊwshiyówniy tɛmpərəyl(i)yəm/. In ecclesiastical law, a writ addressed to the sheriff, to restore the temporalities of a bishopric to the bishop elected and confirmed.

**Restrain.** To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion upon; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle; to repress or suppress; to curb. *N. L. R. B. v. Exchange Parts Co.*, C.A.5, 304 F.2d 368, 374. To restrict a person's movements in such manner as to interfere substantially with his liberty. *People v. Daniels*, 71 C.2d 1119, 80 Cal.Rptr. 897, 909, 459 P.2d 225.

To enjoin. See Injunction; Restraining order.

**Restraining order.** An order in the nature of an injunction which may issue upon filing of an application for an injunction forbidding the defendant from doing the threatened act until a hearing on the application can be had. It is distinguishable from an injunction, in that the former is intended only as a restraint until the propriety of granting an injunction can be determined and it does no more than restrain the proceeding until such determination. Such an order is limited in its operation, and extends only to such reasonable time as may be necessary to have a hearing on an order to show cause why an injunction should not issue. *Guardian Life Ins. Co. of America v. State Bd. of Equalization*, 134 Mont. 526, 335 P.2d 310, 311. See also Injunction; Order; Temporary restraining order.

**Restraining powers.** Restrictions or limitations imposed upon the exercise of a power by the donor thereof.

**Restraint.** Confinement, abridgment, or limitation. Prohibition of action; holding or pressing back from action. Hindrance, confinement, or restriction of liberty. Obstruction, hindrance or destruction of trade or commerce. See Restraint of trade; Stop.

**Unlawful restraint.** Unlawful restraint is knowingly and without legal authority restraining another so as to interfere substantially with his liberty.

A person is "restrained" or "imprisoned" for *false imprisonment* purposes when he is deprived of either liberty of movement or freedom to remain in place of his lawful choice, and such restraint or imprisonment may be accomplished by physical force alone, by threat of force, or by conduct reasonably implying that force will be used. *Kilcup v. McManus*, 64 Wash.2d 771, 394 P.2d 375, 379.

Person is guilty of "unlawful restraint" if he knowingly: (1) restrains another unlawfully in circumstances exposing him to risk of serious bodily injury; or (2) holds another in a condition of involuntary servitude. 18

Pa.C.S.A. § 2902. See also Imprisonment (*False imprisonment*); Kidnapping.

Term may also refer to restraint of person for search or seizure without lawful warrant or probable cause. See Search.

**Restraint of marriage.** The law will not enforce a general restraint of marriage which bars the donee or legatee from ever marrying as a condition of receiving the gift or legacy; but limitations on a gift which conditions it on the donee's or legatee's marrying within a certain religion or nationality have been upheld.

**Restraint of princes and rulers.** In marine and war risk policies, refers to operation of sovereign power by exercise of vis major, in its sovereign capacity, controlling and divesting for the time, the authority of owner over ship, and clause applies only to acts done in exercise of sovereign power. *Baker Castor Oil Co. v. Ins. Co. of North America*, 157 F.2d 13. Where the "restraint of princes" clause or similar language is found in the contract, a reasonable apprehension of capture or destruction of the ship or cargo will justify nonperformance of the agreement to carry. *The George J. Goulardris*, D.C.Me., 36 F.Supp. 827, 830, 834. A "restraint of princes" may be an act performed for purposes connected with the prosecution of war, or some other act, such as quarantines or prohibition of entry into port for sanitary reasons.

**Restraint of trade.** Contracts or combinations which tend or are designed to eliminate or stifle competition, effect a monopoly, artificially maintain prices, or otherwise hamper or obstruct the course of trade and commerce as it would be carried on if left to the control of natural economic forces. *U. S. v. Reading Co.*, 253 U.S. 26, 40 S.Ct. 425, 429, 64 L.Ed. 760; *U. S. v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 221, 60 S.Ct. 811, 84 L.Ed. 1129. Term as used in Sherman Act means "unreasonable restraints of trade" which are illegal per se restraints interfering with free competition in business and commercial transactions which tend to restrict production, affect prices, or otherwise control market to detriment of purchasers or consumers of goods and services, or those restraints of trade, ordinarily reasonable, but made unreasonable because accompanied with specific intent to accomplish equivalent of a forbidden restraint. *Klor's Inc. v. Broadway-Hale Stores, Inc.*, C.A.Cal., 255 F.2d 214, 230. To restrain interstate trade and commerce means to interfere unreasonably with the ordinary, usual and freely-competitive pricing or distribution system of the open market in interstate trade and commerce. A conspiracy may restrain interstate commerce even though some or all of the defendants are not engaged in interstate commerce, and even though some or all of the means employed may be acts wholly within a state, if there is a substantial and direct effect on interstate commerce. *Sherman Antitrust Act*, § 1. See also Rule (*Rule of reason*); *Sherman Antitrust Act*.

**Restraint on alienation.** A provision in an instrument of conveyance which prohibits the grantee from selling or transferring the property which is the subject of the conveyance. Most such restraints are unenforceable as against public policy and the law's policy of free alienability of land. See Restrictive covenant.

Any provision in a trust or other instrument which, either by express terms or by implication, purports to prohibit or penalize the use of the power of alienation; the trusts usually involved are spendthrift, discretionary and support trusts. *Philp v. Trainor*, Fla.App., 100 So.2d 181, 183. *See also* Perpetuity.

**Res transit cum suo onere** /riyz trɛnzət kəm s(y)úwɔw ównəri/. The thing passes with its burden. Where a thing has been incumbered by mortgage, the incumbrance follows it wherever it goes.

**Restrict.** To restrain within bounds; to limit; to confine. *See also* Restraint.

**Restricted securities.** Securities acquired directly or indirectly from an issuer, or from a person in a controlled relationship with the issuer (an "affiliate") in a transaction or chain of transactions not involving any public offering. *Bader v. Fleschner*, D.C.N.Y., 463 F.Supp. 976, 979. Those securities that either by contract or by law cannot be distributed to public; a "restricted security" is one that has no market. *Eastern Service Corp. v. C.I.R.*, C.A.2, 650 F.2d 379, 383.

**Restricted surplus.** The portion of retained earnings which cannot be distributed as dividends. The restrictions are generally due to preferred dividends in arrears, covenants in a loan agreement, or a decision by the Company's Board of Directors.

**Restriction.** A limitation, often imposed in a deed or lease respecting the use to which the property may be put. *See e.g.* Restrictive covenant.

**Restrictive covenant.** Provision in a deed limiting the use of the property and prohibiting certain uses. In context of property law, term describes contract between grantor and grantee which restricts grantee's use and occupancy of land; generally, purpose behind restrictive covenants is to maintain or enhance value of lands adjacent to one another by controlling nature and use of surrounding lands. *Cunningham v. Hiles*, 182 Ind.App. 511, 395 N.E.2d 851, 854. Covenants which restrict use of property on basis of race are unenforceable. *Barrows v. Jackson*, 346 U.S. 249, 73 S.Ct. 1031, 97 L.Ed. 1586; *Evans v. Newton*, 382 U.S. 296, 86 S.Ct. 486, 15 L.Ed.2d 373.

Also, clauses in contracts of partnership and employment which limit a contracting party after termination of the contract in performing similar work for a period of time and within a certain geographical area. If reasonable as to time and area, such clauses are enforceable.

**Restrictive indorsement.** An indorsement so worded as to restrict the further negotiability of the instrument. Thus, "Pay the contents to J. S. only," or "to J. S. for my use," are restrictive indorsements, and put an end to the negotiability of the paper.

An indorsement is restrictive which either (a) is conditional; or (b) purports to prohibit further transfer of the instrument; or (c) includes the words "for collection", "for deposit", "pay any bank", or like terms signifying a purpose of deposit or collection; or (d) otherwise states

that it is for the benefit or use of the indorser or of another person. U.C.C. § 3-205.

**Resulting powers.** Powers of the federal government derived from a combination of several grants or the aggregate of power granted to the federal government. *See* Power (*Constitutional powers*).

**Resulting trust.** Trust implied in law from intentions of parties to a given transaction. *Diel v. Beekman*, 1 Wash.App. 874, 465 P.2d 212, 214.

One in which a party, through no actual or constructive fraud, becomes invested with legal title, but holds that title for the benefit of another, although without expressed intent to do so, because of a presumption of such intent arising by operation of law. *First Nat. Bank of Denver v. Harry W. Rabb Foundation*, 29 Colo.App. 34, 479 P.2d 986, 988, 989. A "resulting trust" arises where a person makes or causes to be made a disposition of property under circumstances which raise an inference that he does not intend that person taking or holding the property should have the beneficial interest therein, unless inference is rebutted or the beneficial interest is otherwise effectively disposed of. *Lifemark Corp. v. Merritt*, Tex.App. 14 Dist., 655 S.W.2d 310, 316. *Restatement, Second, Trusts*, § 404.

**Resulting use.** *See* Use.

**Resummons.** A second summons. The calling a person a second time to answer an action, where the first summons is defeated upon any occasion; as the death of a party, or the like.

**Resumption.** In old English law, the taking again into the king's hands such lands or tenements as before, upon false suggestion, or other error, he had delivered to the heir, or granted by letters patent to any man.

**Resurrender.** Where copyhold land has been mortgaged by surrender, and the mortgagee has been admitted, then, on the mortgage debt being paid off, the mortgagor is entitled to have the land reconveyed to him, by the mortgagee surrendering it to the lord to his use. This is called a resurrender.

**Retail, v.** To sell by small quantities, in broken lots or parcels, not in bulk, directly to consumer. Sales made in minimal quantities to ultimate consumer to meet personal needs, rather than for commercial or industrial users. *Witco Chemical Corp. v. U.S.*, 2 Cl.Ct. 504, 507. In general, wholesalers sell to retailers who in turn sell to consumers.

**Retail, n.** A sale for final consumption in contrast to a sale for further sale or processing (*i.e.* wholesale). A sale to the ultimate consumer.

**Retailer.** A person engaged in making sales to ultimate consumers. One who sells personal or household goods for use or consumption.

The essential distinction between a "wholesaler" and "retailer" as respects application of the Fair Labor Standards Act is that the person buying from the retailer is the ultimate user or consumer of the article or commodity or does not sell it again whereas the one buying from

a wholesaler buys only for the purpose of selling the article again. *Haynie v. Hogue Lumber & Supply Co. of Gulfport*, 96 F.Supp. 214, 216.

**Retail installment account.** An account established by an agreement entered into pursuant to which the buyer promises to pay, in installments, to a retail seller his outstanding balance incurred in retail installment sales, whether or not a security interest in the goods sold is retained by the seller, and which provides for a finance charge which is expressed as a percent of the periodic balances to accrue thereafter providing such charge is not capitalized or stated as a dollar amount in such agreement. Calif.Civil Code, § 1802.7.

**Retail installment contract.** Any contract for a retail installment sale between a buyer and seller, entered into or performed which provides for (a) repayment in installments, whether or not such contract contains a title retention provision, and in which the buyer agrees to pay a finance charge, or in which the buyer does not agree to pay a finance charge but the goods or services are available at a lesser price if paid for by either cash or credit card, or in which the buyer would have received any additional goods or services or any higher quality goods or services at no added cost over the total amount payable in installments if the sale had been for cash, or (b) which provides for payment in more than four installments. Calif. Civil Code, § 1802.6.

**Retail sale.** A sale in small quantities or direct to consumer, as distinguished from sale at "wholesale" in large quantity to one who intends to resell. *Mitchell v. Sorvas, D.C.Pa.*, 182 F.Supp. 800, 802. The ordinary meaning of term "retail sale" within sales tax statutes is a sale to an ultimate consumer. *Standard Oil Co. of Cal. v. State*, 57 Wash.2d 56, 355 P.2d 349, 352. *See also* Retail.

**Retain.** To continue to hold, have, use, recognize, etc., and to keep.

To engage the services of an attorney or counsellor to manage a specific matter or action or all legal matters in general. *See* Retainer.

**Retained earnings.** An account on the balance sheet which represents the accumulated earnings of a corporation less any dividend distributions (including capitalization through stock dividends). It is usually a credit balance and a component of stockholder's equity. Retained earnings are also called "undistributed profits" or "earned surplus." *See* Accumulated earnings tax; Earned surplus; Surplus; Undistributed profits.

**Retainer.** The act of withholding what one has in one's own hands by virtue of some right. In the practice of law, when a client hires an attorney to represent him, the client is said to have retained the attorney. This act of employment is called the retainer. The retainer agreement between the client and attorney sets forth the nature of services to be performed, costs, expenses, and related matters. If the client employs the attorney for a specific case, that is called a *special retainer*. In contrast, if a client hires a lawyer for a specific length of time (e.g., a year) rather than for a specific project, that

is called a *general retainer*. The lawyer, during the period of the general retainer, may not accept any conflicting employment.

**Right to retainer.** The right which the executor or administrator of a deceased person has to retain out of the assets sufficient to pay any debt due to him from the deceased in priority to the other creditors whose debts are of equal degree. *In re Smith's Estate*, 179 Wash. 417, 38 P.2d 244, 245.

**Retainer pay.** Compensation paid to enlisted men retained in the service but not rendering active service. *French v. French, Cal.*, 105 P.2d 155, 157.

**Retaining fee.** A fee given to counsel on engaging his services. *See* Retainer.

**Retaining lien.** A possessory lien which attaches to client's papers, money and property which came into attorney's hands during course of his employment. Application of *Fox*, 22 Misc.2d 177, 198 N.Y.S.2d 789, 791. Attorney's right to retain possession of property belonging to his client which comes into his hands within the scope of his employment until his charges are paid. *Jovan v. Starr*, 87 Ill.App.2d 350, 231 N.E.2d 637, 639. *See also* Attorney's lien.

**Retaking.** The taking one's goods, from another, who without right has taken possession thereof. *See* Recap-tion.

**Retaliation.** *See* Lex talionis.

**Retaliatory eviction.** Act of landlord in commencing eviction proceedings against tenant because of tenant's complaints, participation in tenant's union, or like activities with which the landlord is not in agreement. In some states, such retaliation will bar the landlord from enforcing his normal remedies against tenant.

**Retaliatory law.** Restraints placed by state law on foreign companies equal to the restraints placed by such foreign jurisdictions on companies doing business in such states. Many states have such laws. For example, in Pennsylvania if by laws of any other state or foreign government any taxes, fines, penalties, license fees or other obligations or prohibitions additional to or in excess of those imposed by Pennsylvania laws on insurance companies, associations and exchanges of other states, are imposed on insurance companies, associations and exchanges of Pennsylvania doing business in such state, like obligations and prohibitions are imposed on insurance companies, associations and exchanges of such state doing business in Pennsylvania.

**Retallia** /rətæliyə/. In old English law, retail; the cutting up again, or division of a commodity into smaller parts.

**Retenementum** /rətənəməntəm/. In old English law, restraint; detainment; withholding.

**Retinentia** /rètənénsh(i)yə/. A retinue, or persons retained by a prince or nobleman.

**Retirement.** Termination of employment, service, trade or occupation upon reaching retirement age, or earlier

at election of employee, self-employed, or professional. Removal of fixed asset from service.

**Retirement annuity.** Type of pension plan paid through annuities to those who have retired. Plans differ as to the rights of survivors of the annuitant.

**Retirement of securities.** Cancellation of reacquired or redeemed stocks or bonds. *See also* Redemption; Stock (*Stock redemption*).

**Retirement plans.** General term referring to various types of retirement benefit plans provided by employers or established individually by self-employed. *See* Individual retirement account (I.R.A.); Keogh plan; Money-purchase plan, Pension plan; Retirement annuity. Most such plans are regulated by the federal Employee Retirement Income Security Act (ERISA).

**Retorna brevium** /rətórna bríyv(i)yəm/. The return of writs. The indorsement by a sheriff or other officer of his doings upon a writ.

**Retorno habendo** /rətórnow hábэндow/. A writ that layed for the distrainer of goods (when, on replevin brought, he had proved his distress to be a lawful one) against him who was so distrained, to have them returned to him according to law, together with damages and costs.

**Retorsion** /rətórshən/. In international law, a species of retaliation, which takes place where a government, whose citizens are subjected to severe and stringent regulation or harsh treatment by a foreign government, employs measures of equal severity and harshness upon the subjects of the latter government found within its dominions.

**Retraction.** To take back. To retract an offer is to withdraw it before acceptance. In law of defamation, a formal recanting of the defamatory material. Retraction is not a defense but, under certain circumstances, it is admissible in mitigation of damages.

In probate practice, a withdrawal of a renunciation, (*q.v.*)

**Retraxit** /rətráksət/. Lat. He has withdrawn.

A retraxit is a voluntary renunciation by plaintiff in open court of his suit and cause thereof, and by it plaintiff forever loses his action. *Virginia Concrete Co. v. Board of Sup'rs of Fairfax County*, 197 Va. 821, 91 S.E.2d 415, 419. It is equivalent to a verdict and judgment on the merits of the case and bars another suit for the same cause between the same parties. *Datta v. Staab*, 343 P.2d 977, 982, 173 C.A.2d 613. Under rules practice, this is accomplished by a voluntary dismissal. Fed.R.Civil P. 41(a). Dismissal with prejudice is the modern name for "retraxit". *Robinson v. Hiles*, 119 C.A.2d 666, 260 P.2d 194, 197.

**Retreat, n.** A place for contemplation especially of a religious nature. The totality of exercises in a religious house where a person may "take stock" of himself.

**Retreat, v.** To withdraw from the world or from an encounter.

Something the defendant must sometimes do before using deadly force in self-defense or defense of others. Model Penal Code §§ 3.04(2), 3.05(2).

**Retreat to the wall.** A common law requirement that an endangered person use all reasonable means to avoid the necessity of taking human life before resorting to deadly force in self-defense. *Soberon v. State*, Fla.App., 545 So.2d 490, 492. The requirement is abandoned now in the majority of jurisdictions, which hold that one assaulted in a place where he has a right to be is under no duty to retreat before using deadly force in self-defense. *People v. White*, 127 Misc.2d 219, 484 N.Y.S.2d 994, 995. *See* Model Penal Code §§ 3.04(2), 3.05(2).

**Retrial.** A new trial of an action which has already been once tried. *See also* Rehearing; Trial (*New trial*; *Trial de novo*). *Compare* Mistrial.

**Retribution.** Something given or demanded in payment. In criminal law, it is punishment based on the theory which bears its name and based strictly on the fact that every crime demands payment in the form of punishment. *See also* Restitution.

**Retro** /rétrow/. Lat. Back; backward; behind. *Ret-rofeodum*, a rerefief, or *arriere* fief.

**Retroactive.** Process of acting with reference to past occurrences. *Annacchino v. Annacchino*, 61 Misc.2d 636, 306 N.Y.S.2d 603, 605. *See also* Retrospective.

**Retroactive inference.** The inferring of a previous fact from present conditions by a trier of facts. *Gray v. Kurn*, 345 Mo. 1027, 137 S.W.2d 558, 568.

**Retroactive law.** "Retroactive" or "retrospective" laws are generally defined from a legal viewpoint as those which take away or impair vested rights acquired under existing laws, create new obligations, impose a new duty, or attach a new disability in respect to the transactions or considerations already past. *Barbieri v. Morris*, Mo., 315 S.W.2d 711, 714. One which is intended to act on things that are past. *Aetna Ins. Co. v. Richardelle*, Tex.Civ.App., 528 S.W.2d 280, 284. A statute which creates a new obligation on transactions or considerations already past or destroys or impairs vested rights. *London Guarantee & Accident Co. v. Pittman*, 69 Ga. App. 146, 25 S.E.2d 60, 65, 66. Such laws may be unenforceable because violative of the *ex post facto* clause of the U.S.Const., Art. I, Sec. 9, Cl. 3. *See also* Retrospective law.

**Retrocession** /rétrésəshən/. In the civil law, when the assignee of heritable rights conveys his rights back to the cedent.

**Retrospective.** Looking backward; contemplating what is past; having reference to a state of things existing before the act in question.

**Retrospective law.** A law which looks backward or contemplates the past; one which is made to affect acts or facts occurring, or rights accruing, before it came into force. Every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new dis-

ability in respect to transactions or considerations already past. One that relates back to a previous transaction and gives it a different legal effect from that which it had under the law when it occurred. *Bear Val. Mut. Water Co. v. San Bernardino County*, 242 Cal.App.2d 68, 51 Cal.Rptr. 53, 56. *See also* Ex post facto; Retroactive law.

**Return.** To bring, carry, or send back; to place in the custody of; to restore; to re-deliver. "Return" means that something which has had a prior existence will be brought or sent back. *Sims v. Western Steel Co., C.A. Utah*, 551 F.2d 811, 820.

The act of a sheriff, constable, marshall, or other ministerial officer, in delivering back to the court a writ, notice, process or other paper, which he was required to serve or execute, with a brief account of his doings under the mandate, the time and mode of service or execution, or his failure to accomplish it, as the case may be. Also the indorsement made by the officer upon the writ or other paper, stating what he has done under it, the time and mode of service, etc. Such return (proof of service) is required under Rule of Civil Procedure 4. *See False return; Return day, below.*

A schedule of information required by governmental bodies, such as the tax return required by the Internal Revenue Service. *See* Joint tax return; Tax return.

Merchandise which is brought back to the seller for credit or refund.

Profit on sale, or income from investments (usually expressed as annual percentage rate). *See* Income; Profit; Rate (*Rate of return*); Return on assets; Return on equity; Revenue.

The report made by the court, body of magistrates, returning board, or other authority charged with the official counting of the votes cast at an election.

In English practice, the election of a member of parliament.

*Fair return.* *See* Fair return on investment.

*False return.* A return of a writ or process in which the officer charged with it falsely reports that he served it, when he did not, or makes some other false or incorrect statement, whereby injury results to a person interested. In taxation, a return that is incorrect. To constitute civil or criminal fraud under the Internal Revenue laws, such falsity must have been intentional. *Mitchell v. C. I. R., C.C.A.Ga.*, 118 F.2d 308.

*Return day.* The day named in a writ or process, upon which the officer is required to return it. Under Fed.R. Civil P. 4 the person serving the process shall make proof of service (return) to the court promptly and in any event within the time during which the person served must respond to the process.

Day on which votes cast are counted and the official result is declared. *Landrum v. Centennial Rural High School Dist. No. 2, Tex.Civ.App.*, 134 S.W.2d 353, 354.

*Return of premium.* The repayment of the whole or a ratable part of the premium paid for a policy of insurance, upon the cancellation of the contract before the

time fixed for its expiration. *Equitable Life Assur. Soc. of United States v. Johnson*, 53 Cal.App.2d 49, 127 P.2d 95.

**Returnable.** To be returned; requiring a return. When a writ or process is said to be "returnable" on a certain day, it is meant that on that day the officer must return it.

**Return day.** *See* Return.

**Returning board.** This is the official title in some of the states of the board of canvassers of elections.

**Return of process.** *See* Return.

**Return on assets.** Ratio of net income to total assets. *See* Return on equity.

**Return on equity.** The relationship of the amount of annual earnings available after all expenses are paid to the total value of all the common shareholders investment. Return on equity is calculated by dividing common stock equity (net worth as shown on the books of the corporation) at the beginning of an accounting period into net income for the period after payment of preferred stock dividends but before payment of common stock dividends. Return on equity indicates the amount earned on each dollar of invested capital; it is expressed as a percentage and is a guide to common shareholders as to how effectively their money is being employed.

**Return on investment.** Amount earned per year on an investment, usually expressed as percentage. *See also* Rate (*Rate of return*); Return on assets; Return on equity.

**Reus** /riyəs/. Lat. In the civil and canon law, the defendant in an action or suit. A person judicially accused of a crime; a person criminally proceeded against.

A party to a suit, whether plaintiff or defendant; a litigant. This was the ancient sense of the word.

A party to a contract. *Reus stipulandi*, a party stipulating; the party who asked the question in the form prescribed for stipulations. *Reus promittendi*, a party promising; the party who answered the question.

**Revaluation.** The restoration of purchasing power to an inflated currency. Change in value by a government of its currency in relation to currencies of other countries. Also, the resetting of the tax base by recomputing the value of real estate subject to taxation. *See also* Devaluation.

**Reve** /riyv/. In old English law, the bailiff of a franchise or manor; an officer in parishes within forests, who marks the commonable cattle.

**Revel** /révəl/. To behave in a noisy, boisterous manner.

**Reve mote** /riyv mōwt/. In Saxon law, the court of the *reve*, *reeve*, or *shire reeve*.

**Revendication** /riyvendékéyshən/. In civil law, to reclaim or to demand the restoration of; to "reclaim" being to claim something back, which is in the possession of another, but which belongs to the claimant. The right of a vendor to reclaim goods sold out of the

possession of the purchaser, where the price was not paid. *Ellis v. Davis*, 109 U.S. 485, 3 S.Ct. 327, 27 L.Ed. 1006. The civil law equivalent to *replevin* (*q.v.*).

**Revendication action** /riyvendəkéyshan ékshən/. In civil law, one by which a man demands a restoration of a thing of which he claims to be the owner.

**Revenue.** The gross receipts of a business, individual, government, or other reporting entity. The receipts are usually the results of product sales, services rendered, interest earned, etc. *See also* Gross revenue.

As applied to the income of a government, a broad and general term, including all public moneys which the state collects and receives, from whatever source and in whatever manner. *See Public revenues, below.*

*Land revenues.* *See* Land revenues.

*Public revenues.* The income which a government collects and receives into its treasury, and is appropriated for the payment of its expenses. *Public Market Co. of Portland v. City of Portland*, 171 Or. 522, 130 P.2d 624, 644. Annual or periodical yield of taxes, excise, custom, dues, rents, etc., which a nation, state or a municipality collects and receives into treasury for public use; public income of whatever kind. *City of Phoenix v. Arizona Sash, Door & Glass Co.*, 80 Ariz. 100, 293 P.2d 438, 440. Current income of nation, state, or local government from whatever source derived which is subject to appropriation for public uses. *Spink v. Kemp*, 365 Mo. 368, 283 S.W.2d 502, 513.

**Revenue bills.** Legislative bills that levy or raise taxes. Bills for raising federal revenue must arise in the House of Representatives. Art. I, Sec. 7, U.S.Const. *See also* Revenue law or measure.

**Revenue bonds.** Type of bond issued by a state or local government repayable by the particular unit of government which issues it. Also, a bond issued for a specific public purpose such as the construction or maintenance of a bridge and repayable from income generated by such project. Term is a descriptive qualification which indicates that the instruments are payable solely from a revenue producing public project. *Dalton v. State Property and Buildings Commission, Ky.*, 304 S.W.2d 342, 352.

**Revenue law or measure.** Any law which provides for the assessment and collection of a tax to defray the expenses of the government. Such legislation is commonly referred to under the general term "revenue measures" or "revenue bills", and those measures include all the laws by which the government provides means for meeting its expenditures. *Western Heights Land Corp. v. City of Fort Collins*, 146 Colo. 464, 362 P.2d 155, 158. *See also* Revenue bills.

**Revenue neutral.** Changes in the tax law which result in the same amount of overall total revenue (i.e., no overall increase or decrease in general revenue) though received from different sources. For example, a tax act might require corporations to pay more in taxes, but such excess revenue is offset by individuals paying less.

**Revenue Procedure.** A matter of procedural importance to both taxpayers and the I.R.S. concerning the administration of the tax laws is issued as a Revenue Procedure (abbreviated as "Rev.Proc."). A Revenue Procedure is first published in an Internal Revenue Bulletin (I.R.B.) and later transferred to the appropriate Cumulative Bulletin (C.B.). Both the Internal Revenue Bulletins and the Cumulative Bulletins are published by the U.S. Government Printing Office and many commercial tax services.

**Revenue Ruling.** A Revenue Ruling (abbreviated "Rev. Rul.") is issued by the National Office of the I.R.S. to express an official interpretation of the tax law as applied to specific transactions. Unlike a Regulation, it is more limited in application. A Revenue Ruling is first published in an Internal Revenue Bulletin (I.R.B.) and later transferred to the appropriate Cumulative Bulletin (C.B.). Both the Internal Revenue Bulletins and the Cumulative Bulletins are published by the U.S. Government Printing Office and many commercial tax services. I.R.C. § 7805. *See also* Letter ruling; Private letter ruling.

**Revenue stamps.** Formerly, a federal tax on sale of real property; since replaced by state tax stamps. The stamps are affixed to the conveyancing instrument (deed), or a rubber stamp is used to show the amount of the tax.

**Re, verbis, scripto, consensu, traditione, junctura vestes sumere pacta solent** /riy, vérbəs, skriptow, kənséns(y)uw, trədishiyówniy, jəŋkt(y)úrə véstiyz s(y)úwməriy pəktə sówłənt/. Compacts usually take their clothing from the thing itself, from words, from writing, from consent, from delivery.

**Reversal.** The annulling or setting aside by an appellate court of a decision of a lower court. *See also* Overrule; Remand; Revise; Vacate.

**Reverse.** To overthrow, vacate, set aside, make void, annul, repeal, or revoke; as, to reverse a judgment, sentence or decree of a lower court by an appellate court, or to change to the contrary or to a former condition. *Department of Water and Power of City of Los Angeles v. Inyo Chemical Co.*, Cal.App., 100 P.2d 822, 826. To reverse a judgment means to overthrow it by contrary decision, make it void, undo or annul it for error. *Atlantic Coast Line R. Co. v. St. Joe Paper Co.*, C.A.Fla., 216 F.2d 832, 833. *See also* Reversal.

**Reversed (Rev'd.).** An indication that a decision of one court has been reversed by a higher court in the same case.

**Reverse discrimination.** Prejudice or bias exercised against a person or class for purpose of correcting a pattern of discrimination against another person or class. A type of discrimination in which majority groups are purportedly discriminated against in favor of minority groups, usually via affirmative action programs. *Regents of University of California v. Bakke*,

438 U.S. 265, 98 S.Ct. 2733, 57 L.Ed.2d 750. *See also* Affirmative action programs.

**Reverse stock split.** The reduction in the number of corporate shares outstanding by calling in all shares and issuing a smaller number, though the capital of the corporation remains the same. It is the opposite of a stock split. Its effect is to increase the value of each share. Reverse stock splits often create fractional shares and may be used as a device to go private. *See also* Stock (*Stock split*).

**Reversible error.** *See* Error.

**Reversing (Rev'g.).** An indication that the decision of a higher court is reversing the result reached by a lower court in the same case.

**Reversio /rəvə'zɦ(i)yow/. L. Lat.** In old English law, the returning of land to the donor.

**Reversion or estate in reversion /('əstəyt in) rəvə'zɦən/. A future interest under which a grantor retains a present right to a future interest in property that the grantor conveys to another; usually the residue of a life estate. The residue of an estate left by operation of law in the grantor or his heirs, or in the heirs of a testator, commencing in possession on the determination of a particular estate granted or devised. Any future interest left in a transferor or his successor. *Miller v. Dierken*, 153 Pa.Super. 389, 33 A.2d 804, 805. It is a vested interest or estate, in as much as person entitled to it has a fixed right to future enjoyment. Any reversionary interest which is not subject to condition precedent; it arises when the owner of real estate devises or conveys an interest in it less than his own. *Mayor and City Council of Ocean City v. Tabor*, 279 Md. 115, 367 A.2d 1233, 1240.**

The term reversion has two meanings, first, as designating the estate left in the grantor during the continuance of a particular estate and also the residue left in grantor or his heirs after termination of particular estate. *Davidson v. Davidson*, 350 Mo. 639, 167 S.W.2d 641, 642; *Miller v. C. I. R.*, C.C.A.6, 147 F.2d 189, 193. It differs from a remainder in that it arises by act of the law, whereas a remainder is by act of the parties. A reversion, moreover, is the remnant left in the grantor, while a remainder is the remnant of the whole estate disposed of, after a preceding part of the same has been given away.

*See also* Escheat; Possibility (*Possibility of reverter*); Reversionary interest. *Compare* Remainder.

**Reversionary /rəvə'zɦənehriy/. That which is to be enjoyed in reversion.**

**Reversionary interest.** The interest which a person has in the reversion of lands or other property. A right to the future enjoyment of property, at present in the possession or occupation of another. The property that reverts to the grantor after the expiration of an intervening income interest. Assume, for example, G places real estate in trust with income to A for eleven years and, upon the expiration of this term, the property returns to G. Under these circumstances, G has re-

tained a reversionary interest in the property. A reversionary interest is the same as a remainder interest except that in the latter case the property passes to someone other than the original owner (*e.g.*, the grantor of a trust) upon the expiration of the intervening interest. *See also* Clifford trust; Remainder; Reversion.

**Reversionary lease.** One to take effect *in futuro*. A second lease, to commence after the expiration of a former lease.

**Reversioner /rəvə'zɦənər/. A person who is entitled to an estate in reversion. By an extension of its meaning, one who is entitled to any future estate or any property in expectancy.**

**Reversio terræ est tanquam terra revertens in possessione donatori, sive hæredibus suis post donum finitum /rəvə'zɦ(i)yow téhriy èst tək'kwəm téhrə rəvə'rtenz in pəzəshiyówniy dównətóray, sáyviy hæredəbəs s(y)úwəs pówst dównəm fənáy'təm/. A reversion of land is, as it were, the return of the land to the possession of the donor or his heirs after the termination of the estate granted.**

**Revert /rəvə'rt/. To turn back, to return to. With respect to property to go back to and lodge in former owner, who parted with it by creating estate in another which has expired, or to his heirs. As used in a deed connotes an undisposed of residue and imports that property is to return to a person who formerly owned it, but who parted with the possession or title by creating an estate in another person which has terminated by his act or by operation of law. *Thurman v. Hudson, Ky.*, 280 S.W.2d 507, 508. *See also* Reversion; Reversionary interest.**

**Reverter /rəvə'rtər/. Reversion. A possibility of reverter is that species of reversionary interest which exists when the grant is so limited that it may possibly terminate. *See* Forfeiture in the reverter.**

**Revest.** To vest again. A seisin is said to *revest*, where it is acquired a second time by the party out of whom it has been divested. Opposed to "divest." The words "revest" and "divest" are also applicable to the mere right or title, as opposed to the possession.

**Revestire /riyvestáyriy/. In old European law, to return or resign an investiture, seisin, or possession that has been received; to reinvest; to re-entfeoff.**

**Review.** To re-examine judicially or administratively. A reconsideration; second view or examination; revision; consideration for purposes of correction. Used especially of the examination of a decision of a lower court or administrative body by an appellate court or appellate administrative body (*e.g.* Appeals Council in social security cases). *See* Appeal; Board of review; Rehearing; Retrial.

**Bill of review.** In equity practice, a bill, in the nature of a writ of error, filed to procure an examination and alteration or reversal of a decree made upon a former bill, which decree has been signed and enrolled. *See also* Bill.

**Revise.** To review and re-examine for correction. To go over a thing for the purpose of amending, correcting, rearranging, or otherwise improving it; as, to revise statutes, or a judgment. *State ex rel. Taylor v. Scofield*, 184 Wash. 250, 50 P.2d 896, 897.

**Revised statutes.** A body of statutes which have been revised, collected, arranged in order, and re-enacted as a whole. This is the legal title of the collections of compiled laws of several of the states, and also of the United States. Such a volume is usually cited as "Rev.Stat.," "Rev.St.," or "R.S." *See also* Code.

**Revision.** A re-examination or careful reading over for correction or improvement.

**Revision of statutes.** A "revision of law" on any subject is a restatement of the law on that subject in a correlated or improved form, which is intended as a substitute for the law as previously stated, and displaces and repeals former laws relating to same subject and within purview of revising statute. *State v. Pitet*, 69 Wyo. 478, 243 P.2d 177, 184. Such is more than a restatement of the substance thereof in different language, but implies a reexamination of them, and may constitute a restatement of the law in a corrected or improved form, in which case the statement may be with or without material change, and is substituted for and displaces and repeals the former law as it stood relating to the subjects within its purview. *Elite Laundry Co. v. Dunn*, 126 W.Va. 858, 30 S.E.2d 454, 458. *See also* Codification; Revised statutes.

**Revisor of statutes.** Person or body charged with revising statutes.

**Revival.** The process of renewing the operative force of a judgment which has remained dormant or unexecuted for so long a time that execution cannot be issued upon it without new process to reanimate it.

The act of renewing the legal force of a contract or obligation, which had ceased to be sufficient foundation for an action, on account of the running of the statute of limitations, by giving a new promise or acknowledgment of it.

A will may be revived under certain conditions if the testator revokes an instrument which purported to revoke his or her will. Many states require republication (*q.v.*) of the former will as a requisite to revival.

**Revival of action.** Under certain conditions, a cause of action barred by the statute of limitations may be brought to life again. *See e.g.* 28 U.S.C.A. § 2415.

The substitution of the personal representative of a deceased party will revive an action and make it prosecutable by the substituted party. *Fed.R.Civ.P.* 17(a). *Grant v. McAuliffe*, 41 Cal.2d 859, 264 P.2d 944. *See also e.g.* 28 U.S.C.A. § 2404.

**Revival of will.** *See* Revival.

**Revival statutes.** State and federal laws which provide for the renewal of actions, wills and the legal effect of documents.

**Revive.** To renew, revivify; to make one's self liable for a debt barred by the statute of limitations by acknowl-

edging it; or for a matrimonial offense, once condoned, by committing another.

**Revivor, bill of.** In equity practice, a bill filed for the purpose of reviving or calling into operation the proceedings in a suit when, from some circumstance (as the death of the plaintiff), the suit had abated.

**Revivor, writ of.** In English practice, where it became necessary to revive a judgment, by lapse of time, or change by death, etc., of the parties entitled or liable to execution, the party alleging himself to be entitled to execution might sue out a writ of revivor in the form given in the act, or apply to the court for leave to enter a suggestion upon the roll that it appeared that he was entitled to have and issue execution of the judgment, such leave to be granted by the court or a judge upon a rule to show cause, or a summons, to be served according to the then present practice.

**Revocable.** Susceptible of being revoked, withdrawn or cancelled; *e.g.* revocable letter of credit.

**Revocable credit.** A credit which can be withdrawn or cancelled before its expiration date and without the consent of the person in whose favor it was drawn. Used in foreign trade. U.C.C. § 5-103(a).

**Revocable letter of credit.** Letter of credit which can be cancelled or withdrawn at any time. U.C.C. § 5-103(a).

**Revocable transfer.** A transfer of property whereby the transferor retains the right to recover the property. The creation of a revocable trust is an example of a revocable transfer. *See* IRC § 2038. *See also* Incomplete transfer.

**Revocable trust.** A trust in which the settlor reserves the right to revoke. Such provision may have tax implications depending upon the time following its creation within which the settlor may revoke.

**Revocation** /revəkéyshən/. The withdrawal or recall of some power, authority, or thing granted, or a destroying or making void of some will, deed, or offer that had been valid until revoked. In contract law, the withdrawal by the offeree of an offer that had been valid until withdrawn. It may be either *general*, all acts and things done before; or *special*, revoking a particular thing.

Revocation by act of the party is an intentional or voluntary revocation. The principal instances occur in the case of authorities and powers of attorney and wills.

In contract law, the withdrawal of an offer by an offeror; unless the offer is irrevocable, it can be revoked at any time prior to acceptance without liability.

In criminal law, may refer to termination of a probation or parole order because of either a rule violation or a new offense, and forcing the offender to begin or continue serving his or her sentence.

A revocation in law, or constructive revocation, is produced by a rule of law, irrespectively of the intention of the parties. Thus, a power of attorney is in general revoked by the death of the principal.

*See also* Abrogation; Cancel; Cancellation; Rescind.



**Revocacione parlamenti** /rèvəkèyshiyówniy pàrl(iy)əméntay/. An ancient writ for recalling a parliament.

**Revocation of probate.** Exists where probate of a will, having been granted, is afterwards recalled by the court of probate, on proof of a subsequent will, or other sufficient cause.

**Revocation of will.** The recalling, annulling or rendering inoperative an existing will, by some subsequent act of the testator, which may be by the making of a new will inconsistent with the terms of the first, or by destroying the old will, or by disposing of the property to which it related, or otherwise.

**Revocatur** /riyvovkèytər/. Lat. It is recalled. This is the term, in English practice, appropriate to signify that a judgment is annulled or set aside for error in fact; if for error in law, it is then said to be *reversed*.

**Revoke.** To annul or make void by recalling or taking back. To cancel, rescind, repeal, or reverse, as to revoke a license or will. *See also* Revocation.

**Revolt.** A revolt goes beyond insurrection in aim, being an attempt actually to overthrow the government itself, whereas insurrection has as its objective some forcible change within the government. A large-scale revolt is called a rebellion and if it is successful it becomes a revolution. *See also* Insurrection; Rebellion.

The endeavor of the crew of a vessel, or any one or more of them, to overthrow the legitimate authority of her commander, with intent to remove him from his command, or against his will to take possession of the vessel by assuming the government and navigation of her, or by transferring their obedience from the lawful commander to some other person. *See* 18 U.S.C.A. §§ 2192, 2193. *See also* Mutiny.

**Revolution.** A complete overthrow of the established government in any country or state by those who were previously subject to it. *Gitlow v. Kiely*, D.C.N.Y., 44 F.2d 227, 232. The word in its broadest significance is generally used to designate a sweeping change as applied to political change, it denotes a change in a method or system of government, or of the power which controls the government. It is frequently accomplished by or accompanied by violent acts, but it need not be violent in its methods and it does not necessarily denote force or violence. *U.S. v. Foster*, D.C.N.Y., 9 F.R.D. 367, 394. *See* Insurrection; Rebellion.

**Revolutionary, adj.** Pertaining to or connected with, characterized by, or of nature of, revolution. *Gitlow v. Kiely*, D.C.N.Y., 44 F.2d 227, 233.

**Revolutionary, n.** One who instigates or favors revolution or one taking part therein.

**Revolving charge account.** *See* Revolving credit.

**Revolving credit.** Type of consumer credit arrangement which permits a buyer or a borrower to purchase goods or secure loans on a continuing basis so long as the outstanding balance of the account does not exceed a certain limit. Loans are repaid and new loans granted

in a cycle. *See also* Charge account; Open credit; Open-end credit.

In commercial financing, binding agreement that commits a bank to make loans to a company up to a predetermined credit limit. To obtain this type of commitment from a bank, a company usually pays a commitment fee based on the unused portion of the pledged funds.

**Revolving fund.** A fund from which withdrawals are made either as loans or as disbursements, with the obligation of repaying the fund (with or without interest) to keep the fund intact. A fund whose amounts are continually expended and then replenished; for example, a petty cash fund.

**Revolving letter of credit.** A self-renewing letter of credit. The unused portion of the credit is cumulative.

**Revolving loan.** A loan which is expected to be renewed (*i.e.* turned over) at maturity.

**Rev. Proc.** *See* Revenue Procedure.

**Rev. Rul.** *See* Revenue Ruling.

**Reward.** A recompense or premium offered or bestowed by government or an individual in return for special or extraordinary services to be performed, or for special attainments or achievements, or for some act resulting to the benefit of the public; as, a reward for useful inventions, for the discovery and apprehension of criminals, for the restoration of lost property. That which is offered or given for some service or attainment; sum of money paid or taken for doing, or forbearing to do, some act. *See also* Award; Prize.

**Rex** /réks/. Lat. The king. The king regarded as the party prosecuting in a criminal action; as in the form of entitling such actions, "Rex v. Doe."

**Rex debet esse sub lege quia lex facit regem** /réks débət ésiy sàb líjjiy kwàyə léks féysət ríyjəm/. The king ought to be under the law, because the law makes the king. 1 Bl.Comm. 239.

**Rex est legalis et politicus** /réks èst ləgéyləs èt pəlítəkəs/. The king is both a legal and political person.

**Rex est lex vivens** /réks èst léks váyvenz/. The king is the living law.

**Rex est major singulis, minor universis** /réks èst méyjør sɪng(y)ələs, máynər yüwnəvərsəs/. The king is greater than any single person, less than all.

**Rex hoc solum non potest facere quod non potest injuste agere** /réks hòk sówłəm nòn pówtəst fəsəriy kwód nòn pówtəst ínjustiy əjəriy/. The king can do everything but an injustice.

**Rex non debet esse sub homine, sed sub deo et sut lege, quia lex facit regem** /réks nòn débət ésiy sàb hòməniiy séd sàb díyo èt sàb líjjiy, kwàyə léks féysət ríyjəm/. The king ought to be under no man, but under God and the law, because the law makes a king.

**Rex non potest fallere nec falli** /réks nòn pówtást fáleriy nèk félay/. The king cannot deceive or be deceived.

**Rex non potest peccare** /réks nòn pówtást pækériy/. The king cannot do wrong; the king can do no wrong. An ancient and fundamental principle of the English constitution.

**Rex nunquam moritur** /réks nánkwám mórètər/. The king never dies.

**R.F.C.A.** Reconstruction Finance Corporation Act.

**R.F.D.** Rural Free Delivery.

**R.G.** An abbreviation for *Regula Generalis*, a general rule or order of court; or for the plural of the same.

**Rhandir.** A part in the division of Wales before the Conquest. Every township comprehended four gavels, and every gavel had four rhandirs, and four houses or tenements constituted every rhandir.

**Rhodian laws** /rówdiyən lóz/. The earliest code or collection of maritime laws. It was formulated by the people of the island of Rhodes, who, by their commercial prosperity and the superiority of their navies, had acquired the sovereignty of the seas. Its date is very uncertain, but is supposed (by Kent and others) to be about 900 B.C. Nothing of it is now extant except the article on jettison, which has been preserved in the Roman collections or Pandects (Dig. 14, 2; 3 Kent, Comm. 232, 233 "*Lex Rhodia de Jactu.*") The *Lex Rhodia de Jactu* provided that when the goods of an owner are thrown overboard for the safety of the ship or of the property of other owners, he becomes entitled to a ratable contribution. It has been adopted into the law of all civilized nations. Another code, under the same name, was published in more modern times, but is generally considered, by the best authorities, to be spurious.

**Rial** /riyál/. A piece of gold coin current for 10s., in the reign of Henry VI, at which time there were half-rials and quarter-rials or rial-farthings. In the beginning of Queen Elizabeth's reign, golden rials were coined at 15s. a piece; and in the time of James I there were rose-rials of gold at 30s. and spur-rials at 15s.

**Ribaud** /riybów/. A rogue; vagrant; whoremonger; a person given to all manner of wickedness.

**RICO laws.** Racketeer Influenced and Corrupt Organizations laws. Federal and state laws designed to investigate, control, and prosecute organized crime. 18 U.S.C.A. § 1961 et seq. Both criminal prosecution and civil actions may be brought under RICO statutes.

Federal RICO laws prohibit a person from engaging in activities which affect interstate or foreign commerce, including: (1) using income received from a pattern of racketeering to acquire an interest in an enterprise; (2) acquiring or maintaining an interest in an enterprise through a pattern of racketeering; (3) conducting or participating in the affairs of an enterprise through a pattern of racketeering; and, (4) conspiring to commit any of the above offenses. To establish a prima facie

RICO claim, a civil plaintiff or prosecutor must allege the existence of seven elements: "(1) that the defendant (2) through the commission of two or more acts (3) constituting a 'pattern' (4) of 'racketeering activity' (5) directly or indirectly invests in, or maintains an interest in, or participates in (6) an 'enterprise' (7) the activities of which affect interstate or foreign commerce." 18 U.S.C.A. § 1962. *Moss v. Morgan Stanley, Inc.*, C.A. N.Y., 719 F.2d 5, 17.

*See also* Pattern of racketeering activity.

**Rider.** A schedule or small piece of paper reflecting an amendment, addition or endorsement annexed to some part of a contract, document, insurance policy, or record. Any kind of a schedule or writing annexed to a document which cannot well be incorporated in the body of such document. Such are deemed to be incorporated into the terms of the document. Thus, in passing bills through a legislature, when a new clause or law is added after the bill has passed through committee, such new law or clause is termed a "rider." Another common example of a rider is an attachment to an insurance policy that modifies the conditions of the policy by expanding or restricting its benefits or excluding certain conditions from coverage. With the use of the rider the entire document does not have to be rewritten or re-drafted again.

**Rien culp.** In old pleading, not guilty.

**Rien dit.** In old pleading, says nothing (*nil dicit*).

**Rien luy doit.** In old pleading, owes him nothing. The plea of *nil debet*.

**Riens en arrière.** Nothing in arrear. A plea in an action of debt for arrearages of account.

**Riens passa per le fait.** Nothing passed by the deed. A plea by which a party might avoid the operation of a deed, which had been enrolled or acknowledged in court; the plea of *non est factum* not being allowed in such case.

**Riens per descent.** Nothing by descent. The plea of an heir, where he is sued for his ancestor's debt, and has no land from him by descent, or assets in his hands.

**Rier county** /rír káwntiy/. In old English law, after-county; *i.e.*, after the end of the county court. A time and place appointed by the sheriff for the receipt of the king's money after the end of his county, or county court.

**Riffiare** /riflériy/. To take away anything by force.

**Rigging the market.** A term of the stock-exchange, denoting the practice of inflating the price of given stocks, or enhancing their quoted value, by a system of pretended purchases, designed to give the air of an unusual demand for such stocks.

**Right.** As a noun, and taken in an *abstract* sense, means justice, ethical correctness, or consonance with the rules of law or the principles of morals. In this signification it answers to one meaning of the Latin "*jus*," and serves to indicate law in the abstract, considered as the foundation of all rights, or the complex of underlying moral

principles which impart the character of justice to all positive law, or give it an ethical content. As a noun, and taken in a *concrete* sense, a power, privilege, faculty, or demand, inherent in one person and incident upon another. Rights are defined generally as "powers of free action." And the primal rights pertaining to men are enjoyed by human beings purely as such, being grounded in personality, and existing antecedently to their recognition by positive law. But leaving the abstract moral sphere, and giving to the term a juristic content, a "right" is well defined as "a capacity residing in one man of controlling, with the assent and assistance of the state, the actions of others."

As an adjective, the term "right" means just, morally correct, consonant with ethical principles or rules of positive law. It is the opposite of wrong, unjust, illegal.

A power, privilege, or immunity guaranteed under a constitution, statutes or decisional laws, or claimed as a result of long usage. *See* Bill of rights; Civil liberties; Civil Rights Acts; Natural rights.

In a narrower signification, an interest or title in an object of property; a just and legal claim to hold, use, or enjoy it, or to convey or donate it, as he may please.

A legally enforceable claim of one person against another, that the other shall do a given act, or shall not do a given act. Restatement of the Law of Property, § 1.

That which one person ought to have or receive from another, it being withheld from him, or not in his possession. In this sense "right" has the force of "claim," and is properly expressed by the Latin "*jus*."

*See also* Conditional right; Correlative rights; Droit; Jus; Justice; Natural rights; Power; Recht; Vested rights.

### General Classification

Rights may be described as *perfect* or *imperfect*, according as their action or scope is clear, settled, and determinate, or is vague and unfixed.

Rights are also either *in personam* or *in rem*. A right *in personam* is one which imposes an obligation on a definite person. A right *in rem* is one which imposes an obligation on persons generally; *i.e.*, either on all the world or on all the world except certain determinate persons. Thus, if I am entitled to exclude all persons from a given piece of land, I have a right *in rem* in respect of that land; and, if there are one or more persons, A., B., and C., whom I am not entitled to exclude from it, my right is still a right *in rem*.

Rights may also be described as either *primary* or *secondary*. *Primary* rights are those which can be created without reference to rights already existing. *Secondary* rights can only arise for the purpose of protecting or enforcing primary rights. They are either preventive (protective) or remedial (reparative).

*Preventive* or *protective secondary* rights exist in order to prevent the infringement or loss of primary rights. They are judicial when they require the assistance of a court of law for their enforcement, and extrajudicial when they are capable of being exercised by the party himself. *Remedial* or *reparative secondary* rights are

also either judicial or extrajudicial. They may further be divided into (1) rights of restitution or restoration, which entitle the person injured to be replaced in his original position; (2) rights of enforcement, which entitle the person injured to the performance of an act by the person bound; and (3) rights of satisfaction or compensation.

With respect to the ownership of external objects of property, rights may be classed as *absolute* and *qualified*. An absolute right gives to the person in whom it inheres the uncontrolled dominion over the object at all times and for all purposes. A qualified right gives the possessor a right to the object for certain purposes or under certain circumstances only. Such is the right of a bailee to recover the article bailed when it has been unlawfully taken from him by a stranger.

Rights are also either *legal* or *equitable*. The former is the case where the person seeking to enforce the right for his own benefit has the legal title and a remedy at law. The latter are such as are enforceable only in equity; as, at the suit of *cestui que trust*. Procedurally, under Rules of Civil Procedure, both legal and equitable rights are enforced in the same court under a single cause of action.

### Constitutional Rights

There is also a classification of rights, with respect to the constitution of civil society. Thus, according to Blackstone, "the rights of persons, considered in their natural capacities, are of two sorts,—*absolute* and *relative*; absolute, which are such as appertain and belong to particular men, merely as individuals or single persons; relative, which are incident to them as members of society, and standing in various relations to each other." 1 Bl.Comm. 123.

Rights are also classified in constitutional law as natural, civil, and political, to which there is sometimes added the class of "personal rights."

*Natural* rights are those which grow out of the nature of man and depend upon personality, as distinguished from such as are created by law and depend upon civilized society; or they are those which are plainly assured by natural law; or those which, by fair deduction from the present physical, moral, social, and religious characteristics of man, he must be invested with, and which he ought to have realized for him in a jural society, in order to fulfill the ends to which his nature calls him. Such are the rights of life, liberty, privacy, and good reputation.

*Civil* rights are such as belong to every citizen of the state or country, or, in a wider sense, to all its inhabitants, and are not connected with the organization or administration of government. They include the rights of property, marriage, equal protection of the laws, freedom of contract, trial by jury, etc. Or, as otherwise defined, civil rights are rights appertaining to a person by virtue of his citizenship in a state or community. Such term may also refer, in its very general sense, to rights capable of being enforced or redressed in a civil action. Also, a term applied to certain rights secured to

citizens of the United States by the Thirteenth and Fourteenth amendments to the Constitution, and by various acts of Congress (e.g. Civil Rights Acts) made in pursuance thereof. See Bill of Rights; Civil liberties; Civil Rights Acts.

*Political rights* consist in the power to participate, directly or indirectly, in the establishment or administration of government, such as the right of citizenship, that of suffrage, the right to hold public office, and the right of petition.

*Personal rights* is a term of rather vague import, but generally it may be said to mean the right of personal security, comprising those of life, limb, body, health, reputation, and the right of personal liberty.

#### Other Compound and Descriptive Terms

*Bill of rights.* See that title.

*Common right.* See Common.

*Declaration of rights.* See Bill of Rights.

*Exclusive right.* See that title.

*Marital rights.* See Marital.

*Mere right.* In the law of real estate, the mere right of property in land; the right of a proprietor, but without possession or even the right of possession; the abstract right of property.

*Patent right.* See Patent.

*Petition of right.* See Petition.

*Private rights.* Those rights which appertain to a particular individual or individuals, and relate either to the person, or to personal or real property.

*Right heir.* See Heir.

*Riparian rights.* See Riparian.

*Stock rights.* See Stock.

*Vested rights.* See Vested.

**Right and wrong test.** Under this test of criminal responsibility, if, at the time of committing an act, the party was laboring under such a defect of reason from disease of the mind as not to know the nature and quality thereof, that he did not know that he was doing what was wrong, he should not be held criminally responsible for his act. *State v. Wallace*, 170 Or. 60, 131 P.2d 222, 229, 230. See Insanity with respect to other criminal responsibility defenses. See also M'Naghten Rule.

**Right in action.** This is a phrase frequently used in place of *chose in action*, and having an identical meaning.

**Right in court.** See *Rectus in curia*.

**Right of action.** The right to bring suit; a legal right to maintain an action, growing out of a given transaction or state of facts and based thereon. Right of action pertains to remedy and relief through judicial procedure. *Landry v. Acme Flour Mills Co.*, 202 Okl. 170, 211 P.2d 512, 515. Right of injured one to secure redress for

violation of his rights. *Fields v. Synthetic Ropes, Inc.*, 9 Storey 135, 215 A.2d 427, 432. A right presently to enforce a cause of action by suit. *McMahon v. U. S.*, C.A.Pa., 186 F.2d 227, 230. Operative facts giving rise to a right of action comprise a "cause of action." *Shiflet v. Eller*, 228 Va. 115, 319 S.E.2d 750, 754. Compare Cause of action.

**Right of contribution.** See Contribution.

**Right of entry.** The right of taking or resuming possession of land by entering on it in a peaceable manner.

**Right of first refusal.** Right to meet terms of proposed contract before it is executed; e.g. right to have first opportunity to purchase real estate when such becomes available, or right to meet any other offer. The holder of such a right has the option to purchase the grantor's real estate on the terms and conditions of sale contained in a bona fide offer by a third party to purchase such real estate, provided it is an offer that the grantor is otherwise willing to accept. See also Option.

**Right of local self-government.** Power of citizens to govern themselves, as to matters purely local in nature, through officers of their own selection. *City of Ardmore v. Excise Board of Carter County*, 155 Okl. 126, 8 P.2d 2, 11. See Home rule.

**Right of possession.** Right which may reside in one man while another has the actual possession, being the right to enter and turn out such actual occupant; e.g., the right of a disseisee; right of ejectment or eviction. An apparent right of possession is one which may be defeated by a better right; an actual right of possession is one which will stand the test against all opponents. See also Repossession.

**Right of privacy.** See Privacy, right of.

**Right of property.** The mere right of property in land; the abstract right which remains to the owner after he has lost the right of possession, and to recover which the writ of right was given. United with possession, and the right of possession, this right constitutes a complete title to lands, tenements, and hereditaments.

**Right of publicity.** The right of individual, especially public figure or celebrity, to control commercial value and exploitation of his name or picture or likeness or to prevent others from unfairly appropriating that value for their commercial benefit. *Presley's Estate v. Rusen*, D.C.N.J., 513 F.Supp. 1339, 1353.

**Right of redemption.** The right to disencumber property or to free it from a claim or lien; specifically, the right (granted by statute only) to free property from the encumbrance of a foreclosure or other judicial sale, or to recover the title passing thereby, by paying what is due, with interest, costs, etc. Not to be confounded with the "equity of redemption," which exists independently of statute but must be exercised before sale. See also Redemption.

**Right of subrogation.** The right of a person to substitute one person in the place of another, giving the

substituted party the same legal rights that the original party had.

**Right of survivorship.** The right of survivor of a deceased person to the property of said deceased. A distinguishing characteristic of a joint tenancy relationship. Upon the death of any joint tenant, the deceased tenant's interest passes, not to the tenant's lawfully designated beneficiaries or heirs, but to the surviving joint tenants. *See also* Tenancy (*Joint tenancy; Tenancy by the entirety*).

**Right of way.** Term used to describe a right belonging to a party to pass over land of another, but it is also used to describe that strip of land upon which railroad companies construct their road bed, and, when so used, the term refers to the land itself, not the right of passage over it. *Bouche v. Wagner*, 206 Or. 621, 293 P.2d 203, 209.

As used with reference to right to pass over another's land, it is only an easement; and grantee acquires only right to a reasonable and usual enjoyment thereof with owner of soil retaining rights and benefits of ownership consistent with the easement. *Minneapolis Athletic Club v. Cohler*, 287 Minn. 254, 177 N.W.2d 786, 789. *See also* Easement.

"Right of way" is also used to refer to a preference of one of two vehicles, or as between a vehicle and a pedestrian, asserting right of passage at the same place and time, but it is not an absolute right in the sense that possessor thereof is relieved from duty of exercising due care for his own safety and that of others. *Cheremie v. Scott*, Tex.Civ.App., 324 S.W.2d 87, 90. With respect to intersections, the term has been described as the right of one driver to cross before the other; and it has been defined by statute as the right of a vehicle to proceed uninterruptedly in a lawful manner in the direction in which it is moving in preference to another vehicle approaching from a different direction into its path. The "right-of-way rule" is simply a rule of precedence as to which of two users of intersecting highways shall have the immediate right of crossing first at an intersection where the users simultaneously approach the intersection on the intersecting streets so nearly at the same time and at such rates of speed that, if they proceed without regard to each other, a collision or interference between them is reasonably to be apprehended.

**Right patent.** An old English writ, which was brought for lands and tenements, and not for an advowson, or common, and lay only for an estate in fee-simple, and not for him who had a lesser estate; as tenant in tail, tenant in frank marriage, or tenant for life.

**Rights offering.** The sale of new shares of common stock by distributing stock purchase *rights* to a firm's existing shareholders. This is also termed a *privileged subscription*. *See also* Rights, stock.

**Rights, petition of.** *See* Petition.

**Rights, stock.** Short term options to purchase shares from an issuer at a fixed price. Rights are often issued as a substitute for a dividend or as a "sweetener" in

connection with the issuance of senior or debt securities. Rights are often publicly traded. *Compare* Warranty. *See also* Rights offering; Stock (*Stock rights*).

**Right to attorney.** *See* Counsel, right to.

**Right to die laws.** Cases and statutes which recognize in some instances the right of a dying person to decline extraordinary treatment to prolong life, or right of person's guardian to request such. Clear and convincing proof of patients' wishes is required. *See* *Cruzan v. Director, Missouri Dept. of Health*, 110 S.Ct. \_\_\_ (1990). *See also* Death (*Natural death acts*); Life sustaining procedures; Will (*Living will*).

**Right to know acts.** Federal and state legislation requiring disclosure by certain businesses (*e.g.*, chemical manufacturers) to the public and to workers of information about hazardous substances in order that such persons might learn the full range of risks they face concerning their employment and living conditions.

**Right to redeem.** *See* Right of redemption.

**Right to travel.** Basic constitutional right exemplified in case of persons applying for welfare assistance in a state in which they have not resided for a prescribed period of time. It is said that to deny such a right to such persons is to inhibit their right to travel and hence to deny them equal protection of the law. *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600.

**Right to work laws.** Such state laws (as permitted by Sec. 14(b) of the National Labor Relations Act) that provide in general that employees are not to be required to join a union as a condition of receiving or retaining a job. The wording of these state statutes (existing in about 20 states) vary, with some states generally barring discrimination in employment so as to encourage union membership, others more vaguely barring an employment "monopoly" by a labor union, but most expressly barring the requirement of union membership (or paying dues to a union) as a condition of employment. *See also* Open shop.

**Rigor juris** /*riɡər ʒʊrəs*/. Lat. Strictness of law. Distinguished from *gratia curiæ*, favor of the court.

**Rigor mortis** /*riɡər mɔrtəs*/. Cadaveric rigidity; a rigidity or stiffening of the muscular tissue and joints of the body, which sets in at a greater or less interval after death, but usually within a few hours, and which is one of the recognized tests of death.

**Ring.** A clique; an exclusive combination of persons for illegitimate or selfish purposes; as to control elections or political affairs, distribute offices, obtain contracts, control the market or the stock-exchange, engage in criminal acts, etc.

**Ringing the changes.** A larceny effected by tendering a large bill or coin in payment of a small purchase and after correct change has been given, asking for other change and repeating the request until in the confusion of mind created by so many operations, more money is obtained than the thief is entitled to.

**Ring up.** A custom among commission merchants and brokers (not unlike the clearing-house system) by which they exchange contracts for sale against contracts for purchase, or reciprocally cancel such contracts, adjust differences of price between themselves, and surrender margins. *U. S. v. New York Coffee & Sugar Exchange*, 263 U.S. 611, 44 S.Ct. 225, 226, 68 L.Ed. 475.

**Riot.** Unlawful assembly which has developed to stage of violence. *State v. Lustig*, 13 N.J.Super. 149, 80 A.2d 309, 310. The term "riot" means a public disturbance involving (1) an act or acts of violence by one or more persons part of an assemblage of three or more persons, which act or acts shall constitute a clear and present danger of, or shall result in, damage or injury to the property of any other person or to the person of any other individual or (2) a threat or threats of the commission of an act or acts of violence by one or more persons part of an assemblage of three or more persons having, individually or collectively, the ability of immediate execution of such threat or threats, where the performance of the threatened acts or acts of violence would constitute a clear and present danger of, or would result in, damage or injury to the property of any other person or to the person of any other individual. 18 U.S.C.A. § 2102(a).

A person is guilty of riot if he participates with two or more others in a course of disorderly conduct: (a) with purpose to commit or facilitate the commission of a felony or misdemeanor; (b) with purpose to prevent or coerce official action; or (c) when the actor or any other participant to the knowledge of the actor uses or plans to use a firearm or other deadly weapon. Model Penal Code, § 250.1.

**Incitement to riot.** Incitement to riot is by words or conduct urging others to commit acts of force or violence against persons or property or to resist the lawful authority of law enforcement officers under circumstances which produce a clear and present danger of injury to persons or property or a breach of the public peace.

The term "to incite a riot," or "to organize, promote, encourage, participate in, or carry on a riot", includes, but is not limited to urging or instigating other persons to riot, but shall not be deemed to mean the mere oral or written (1) advocacy of ideas or (2) expression of belief, not involving advocacy of any act or acts of violence or assertion of the rightness of, or the right to commit, any such act or acts. 18 U.S.C.A. § 2102(b).

See also Unlawful assembly.

**Rioter.** One who encourages, promotes, or takes part in riots. *Symonds v. State*, 66 Okl.Cr. 49, 89 P.2d 970, 974.

**Riotous assembly.** In old English criminal law, the unlawful assembling of twelve persons or more, to the disturbance of the peace, and not dispersing upon proclamation. 4 Bl.Comm. 142. See also Unlawful assembly.

**Riparian** /rəpəriyən/. Belonging or relating to the bank of a river or stream; of or on the bank. Land lying beyond the natural watershed of a stream is not "riparian." The term is sometimes used as relating to the shore of the sea or other tidal water, or of a lake or

other considerable body of water not having the character of a watercourse. But this is not accurate. The proper word to be employed in such connections is "littoral."

**Riparian land.** Land so situated with respect to a body of water that, because of such location, the possessor of the land is entitled to the benefits incident to the use of the water. *Mayer v. Grueber*, 29 Wis.2d 168, 138 N.W.2d 197, 202. Parcel of land which includes therein a part of or is bounded by a natural watercourse. *Thompson v. Enz*, 379 Mich. 667, 154 N.W.2d 473, 478. See Riparian; Riparian owner.

**Riparian lease.** The written instrument setting forth the terms, conditions, and the date of expiration of the rights to use lands lying between the high water mark and the low water mark.

**Riparian owner.** One who owns land on bank of river, or one who is owner of land along, bordering upon, bounded by, fronting upon, abutting or adjacent and contiguous to and in contact with river. *State ex rel. Buckson v. Pennsylvania R. Co.*, Del.Super., 228 A.2d 587, 594.

**Riparian proprietor.** An owner of land, bounded generally upon a stream or river of water, and as such having a qualified property in the soil to the thread of the stream or river with the privileges annexed thereto by law. *Potomac Steamboat Co. v. Upper Potomac Steamboat Co.*, 109 U.S. 672, 3 S.Ct. 445, 27 L.Ed. 1070.

**Riparian rights.** The rights of the owners of lands on the banks of watercourses, relating to the water, its use, ownership of soil under the stream, accretions, etc. Term is generally defined as the right which every person through whose land a natural watercourse runs has to benefit of stream as it passes through his land for all useful purposes to which it may be applied. *People ex rel. State Water Resources Control Bd. v. Forni*, 54 Cal.App.3d 743, 126 Cal.Rptr. 851, 857. Such rights include those such as hunting, fishing, boating, sailing, irrigating, and growing and harvesting wild rice, which rights extend over lakes and wetlands. Application of Cent. Baptist Theological Seminary, *Minn.App.*, 370 N.W.2d 642, 646. See also Water (*Water rights*).

**Riparian water.** Water which is below the highest line of normal flow of the river or stream, as distinguished from flood water. See also Water (*Water rights*).

**Riparum usus publicus est jure gentium, sicut ipsius fluminis** /rəpərəm yúwzəs póbłəkəs èst júriy jénsh(iy)əm, síkat ípsáyəs flúwmənas/. The use of river-banks is by the law of nations public, like that of the stream itself.

**Ripe for judgment.** An action that is so far advanced, by verdict, default, confession, the determination of all pending motions, or other disposition of preliminary or disputed matters, that nothing remains for the court but to render the appropriate judgment. A case is ripe for decision by an appellate court if the legal issues involved are clear enough and well enough evolved and presented so that a clear decision can come out of the case.

California Water & Tel. Co. v. Los Angeles County, 253 C.A.2d 16, 61 Cal.Rptr. 618, 623. *See also* Ripeness doctrine.

**Ripeness doctrine.** The principle that the federal courts require an actual, present controversy, and therefore will not act when the issue is only hypothetical or the existence of a controversy merely speculative. The constitutional mandate of case or controversy, U.S. Const. Art. III, requires an appellate court to consider whether a case has matured or ripened into a controversy worthy of adjudication before it will determine the same.

The question in each case is whether there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. *Lake Carriers' Ass'n v. MacMullan*, 406 U.S. 498, 92 S.Ct. 1749, 32 L.Ed.2d 257.

Basic rationale of "ripeness doctrine" arising out of courts' reluctance to apply declaratory judgment and injunctive remedies unless administrative determinations arise in context of a controversy ripe for judicial resolution, is to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties, and court is required to evaluate both fitness of issues for judicial decision and hardship to parties of withholding court consideration. *Abbott Laboratories v. Gardner*, 387 U.S. 136, 87 S.Ct. 1507, 1515, 18 L.Ed.2d 681.

*See Case (Cases and controversies);* Final decision rule; Justiciable controversy; Standing.

**Rising of court.** Properly the final adjournment of the court for the term, though the term is also sometimes used to express the cessation of judicial business for the day or for a recess; it is the opposite of "sitting" or "session." This term is generally obsolete.

**Risk.** In insurance law, the danger or hazard of a loss of the property insured; the casualty contemplated in a contract of insurance; the degree of hazard; a specified contingency or peril; and, colloquially, the specific house, factory, ship, etc., covered by the policy. Hazard, danger, peril, exposure to loss, injury, disadvantage or destruction, and comprises all elements of danger. *Knox Jewelry Co., Inc. v. Cincinnati Ins. Co.*, 130 Ga. App. 519, 203 S.E.2d 739, 740.

In general, the element of uncertainty in an undertaking; the possibility that actual future returns will deviate from expected returns. Risk may be moral, physical or economic.

Risk of loss in commercial sales contracts as between buyer and seller is governed by U.C.C. § 2-509 (e.g., financial responsibility for damage or destruction of property when transferred between seller and buyer).

*See also* Assumption of risk; Ex ship; Incurred risk.

*Obvious risk. See* Obvious.

*Ordinary risk. See* Ordinary.

**Risk arbitrage.** A strategy employed in takeover situations in which shares of a corporation that is about to be taken over are bought, while shares of the acquiring corporation that are to be exchanged are sold short or on a when-issued basis.

**Risk capital.** Money or property invested in a business venture, generally in exchange for common stock in a business, or capital in a partnership, as distinguished from loans or bonded indebtedness. *See also* Seed money; Venture capital.

**Risk capital test.** Under this test, for determination of whether an investment is a security in the form of an investment contract, requires consideration of whether funds are being raised for business venture or enterprise, whether transaction is offered indiscriminately to the public at large, whether investors are substantially powerless to affect success of enterprise, and whether investors' money is substantially at risk because it is inadequately secured. *Moreland v. Department of Corporations*, 5 Dist., 194 C.A.3d 506, 239 Cal.Rptr. 558, 566.

**Risk incident to employment.** Within worker's compensation acts, one growing out of or connected with what worker must do in fulfilling his or her contract of service, and may be either ordinary risk, directly connected with employment, or extraordinary risk indirectly connected with employment because of its special nature.

**Risk premium.** Extra compensation paid to an employee or extra interest paid to a lender, over amounts usually considered normal, in return for their undertaking to engage in activities more risky than normal.

**River.** A natural stream of water, of greater volume than a creek or rivulet, flowing in a more or less permanent bed or channel, between defined banks or walls, with a current which may either be continuous in one direction or affected by the ebb and flow of the tide.

*Public river.* A river capable in its natural state of some useful service to the public because of its existence as such, navigability being not the sole test. *St. Regis Paper Co. v. New Hampshire Water Resources Board*, 92 N.H. 164, 26 A.2d 832, 838.

**River banks.** The boundaries which confine the water to its channel throughout the entire width when stream is carrying its maximum quantity of water. *Mammoth Gold Dredging Co. v. Forbes*, 39 Cal.App.2d 739, 104 P.2d 131, 137.

**R.L.** This abbreviation may stand either for "Revised Laws" or "Roman law."

**Road.** A highway; an open way or public passage; a line of travel or communication extending from one town or place to another; a strip of land appropriated and used for purposes of travel and communication between different places. *See also* Highway.

In maritime law, an open passage of the sea that receives its denomination commonly from some part

adjacent, which, though it lie out at sea, yet, in respect of the situation of the land adjacent, and the depth and wideness of the place, is a safe place for the common riding or anchoring of ships.

**Law of the road.** Custom or practice which has become crystallized into accepted system of rules regulating travel on highways. *Short v. Robinson*, 280 Ky. 707, 134 S.W.2d 594, 596. It relates to safety of travel, and is adjustment of rights of travelers using highway at same time. For example, "law of the road" refers to the rule which requires that vehicles meeting shall keep to the right of the middle of the highway. *See also* Right of way.

**Public road.** A highway; a road or way established and adopted (or accepted as a dedication) by the proper authorities for the use of the general public, and over which every person has a right to pass and to use it for all purposes of travel or transportation to which it is adapted and devoted. The proper test in determining whether road is a "public" or "private road" is use to which such roadway is put, and fact that road has been constructed at public expense is not conclusive. *Kitchens v. Duffield*, 83 Ohio App. 41, 76 N.E.2d 101, 105, 38 O.O. 142.

**Road districts.** Public or *quasi* municipal corporations organized or authorized by statutory authority in many of the states for the special purpose of establishing, maintaining, and caring for public roads and highways within their limits, sometimes invested with powers of local taxation, and generally having elective officers styled "overseers" or "commissioners" of roads.

**Rob.** To take personalty in possession of another from his person or his presence, feloniously and against his will, by violence or by putting him in fear. *People v. Flohr*, 30 Cal.App.2d 576, 86 P.2d 862, 864. *See* Robbery.

**Robbery.** Felonious taking of money, personal property, or any other article of value, in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear. *People v. Eddy*, 123 Cal.App.2d 826, 268 P.2d 47, 51.

A person is guilty of robbery if, in the course of committing a theft, he: (a) inflicts serious bodily injury upon another; or (b) threatens another with or purposely puts him in fear of immediate serious bodily injury; or (c) commits or threatens immediately to commit any felony of the first or second degree. An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit theft or in flight after the attempt or commission. Model Penal Code, § 222.1.

Most jurisdictions today divide robbery, for purposes of punishment, into simple robbery and aggravated robbery, the principal example of the latter being "armed" robbery.

For various types of federal crimes involving robbery, see 18 U.S.C.A. § 2111 et seq.

*See also* Assault; Armed robbery; Hobbs Act. *Compare* Burglary; Theft.

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**Aggravated robbery.** A robbery committed by a person who is armed with a dangerous weapon or who inflicts bodily harm upon any person in the course of such robbery. *See also* Armed robbery.

**Highway robbery.** The crime of robbery committed upon or near a public highway. The felonious and forcible taking of property from the person of another on a highway. It differs from robbery in general only in the place where it is committed. Robbery by hold-up originally applied to the stopping and robbery of traveling parties, but the term has acquired a broader meaning. It has come to be applied to robbery in general, by the use of force or putting in fear. *See* Hijacking.

**Robinson-Patman Act.** Section 2(a) of the Clayton Act, as amended in 1936 by the Robinson-Patman Act (15 U.S.C.A. § 13) makes it unlawful for any seller engaged in commerce to directly or indirectly discriminate in the price charged purchasers on the sale of commodities of like grade and quality where the effect may be to injure, destroy or prevent competition with any person who grants or knowingly receives a discrimination, or the customer of either. *See also* Price discrimination.

**Rod.** A lineal measure of 5½ yards or 16½ feet; otherwise called a "perch." *See also* Land measure.

**Rogationes, quæstiones, et positiones debent esse simplices** /rəgəyʃiýówniyz kwèst(i)yówniyz èt pəziʃiýówniyz débənt èsiy simpləsiyz/. Demands, questions, and claims ought to be simple.

**Rogatio testium** /rəgəyʃh(iy)ow tést(i)yəm/. This in making a nuncupative will, is where the testator formally calls upon the persons present to bear witness that he has declared his will.

**Rogator** /rəgəytər/. Lat. In Roman law, the proposer of a law or rogation.

**Rogatory letters** /rógətoriy létərz/. A commission from one judge to another in a foreign country requesting him to examine a witness. *See* Fed.R.Civil P. 28(b); 28 U.S.C.A. § 1781. *See also* Letters rogatory.

**Rogo** /rówgow/. Lat. In Roman law, I ask; I request. A precatory expression often used in wills.

**Rogue** /rówg/. An idle and disorderly person; a trickster; a wandering beggar; a vagrant or vagabond; a scoundrel. 4 Bl.Comm. 169.

**Roll, n.** Record of the proceedings of a court or public office. *See* Judgment roll, below.

A register; list of persons belonging to particular group. *See also* Roster.

In taxation, the list or record of taxable persons and property, as compiled by assessors. *See* Tax roll, below.

**Judgment roll.** Such is required to be filed in certain states by the clerk when he enters judgment. It normally contains the summons, pleadings, admissions, and each judgment and each order involving the merits or necessarily affecting the final judgment. New York C.P.L.R. § 5017. In the federal and most state courts,



judgments are recorded in the "civil docket" (Fed.R.Civil P. 79) or "criminal docket" (Fed.R.Crim.P. 55).

In old English practice, a roll of parchment containing the entries of the proceedings in an action at law to the entry of judgment inclusive, and which was filed in the treasury of the court.

**Tax roll.** A schedule or list of the persons and property subject to the payment of a particular tax, with the amounts severally due, prepared and authenticated in proper form to warrant the collecting officers to proceed with the enforcement of the tax.

**Roll, v.** To rob by force.

**Rolling over.** Banking term for extension or renewal of short term loan from one loan period (e.g. 90 day) to another. *See also* Roll-over paper.

Term also refers to transfer or reinvestment of funds from one type of investment to another (e.g. from one type of IRA fund to another).

**Roll-over paper.** Short term notes which may be extended (rolled over) or converted to installment payments, after the initial due date.

**Roman Catholic Church.** The juristic personality of the Roman Catholic Church, with the right to sue and to take and hold property has been recognized by all systems of European law from the fourth century. It was formally recognized between Spain and the Papacy and by Spanish laws from the beginning of the settlements in the Indies, also by our treaty with Spain in 1898, whereby its property rights were solemnly safeguarded. *Municipality of Ponce v. Roman Catholic Church in Porto Rico*, 210 U.S. 296, 28 S.Ct. 737, 52 L.Ed. 1068; *Santos v. Roman Catholic Church*, 212 U.S. 463, 29 S.Ct. 338, 53 L.Ed. 599.

**Roman law.** In a general sense, comprehends all the laws which prevailed among the Romans, without regard to the time of their origin, including the collections of Justinian. In a more restricted sense, the Germans understand by this term merely the law of Justinian, as adopted by them.

In England and America, it appears to be customary to use the phrase, indifferently with "the civil law," to designate the whole system of Roman jurisprudence, including the *Corpus Juris Civilis*; or, if any distinction is drawn, the expression "civil law" denotes the system of jurisprudence obtaining in those countries of continental Europe which have derived their juridical notions and principles from the Justinian collection, while "Roman law" is reserved as the proper appellation of the body of law developed under the government of Rome from the earliest times to the fall of the empire. *See* Civil law.

**Rood of land** /rúwd əv lænd/. The fourth part of an acre in square measure, or one thousand two hundred and ten square yards.

**Roomer.** A lodger; one who rents a room or rooms.

**Root of descent.** The same as "stock of descent."

**Root of title.** The document with which an abstract of title properly commences.

**ROR.** *See* Release on own recognizance.

**Rorschach test** /rórshæk tèst/. Projective method of determining the structure of personality by noting the patient's reaction to a set of ten cards containing standardized ink blots; used in detecting neurotic and psychotic traits.

**Roster** /róstər/. A roll or list of persons. A list of persons who are to perform certain duties when called upon in their turn.

**Rota** /rówtə/. L. Lat. Succession; rotation; e.g. "Rota of presentations;" "rota of the terms."

**Rotten clause.** A clause sometimes inserted in policies of marine insurance to the effect that "if, on a regular survey, the ship shall be declared unseaworthy by reason of being *rotten* or unsound," the insurers shall be discharged.

**Round lot.** Standard unit of trading on N.Y. Stock Exchange. For stocks, it is 100 shares; for bonds, \$1000 or \$5000 par value. *Compare* Odd lot.

**Route.** Course, or line of travel from one place to another. Cities or towns between which (formerly) common carriers or airlines were permitted by I.C.C., C.A.B., etc. to carry goods or passengers.

In railroad parlance, a designated course over a way or right of way, irrespective of the singleness or multiplicity of operation thereon. *Regenhardt Const. Co. v. Southern Ry. in Kentucky*, 297 Ky. 840, 181 S.W.2d 441, 444.

**Routously.** In old pleading, a technical word in indictments, generally coupled with the word "riotously."

**Roy** /róy/réy/rwa/. L. Fr. The king.

**Royal.** Of or pertaining to or proceeding from the king or sovereign in a monarchical government.

**Royal prerogative.** Those rights and capacities which the king enjoys alone in contradistinction to others and not to those which he enjoys in common with any of his subjects. It is that special pre-eminence which the sovereign has over all other persons, and out of the course of the common law by right of regal dignity. *Ætna Casualty & Surety Co. v. Bramwell*, D.C.Or., 12 F.2d 307, 309.

**Royalty.** Compensation for the use of property, usually copyrighted material or natural resources, expressed as a percentage of receipts from using the property or as an account per unit produced. A payment which is made to an author or composer by an assignee, licensee or copyright holder in respect of each copy of his work which is sold, or to an inventor in respect of each article sold under the patent. Royalty is share of product or profit reserved by owner for permitting another to use the property. *Alamo Nat. Bank of San Antonio v. Hurd*, Tex.Civ.App., 485 S.W.2d 335, 338.

As used in instruments in connection with production of minerals (e.g., oil and gas leases) means in its popular

sense a share of products or proceeds therefrom, reserved to owner of land for permitting another to use the property. *Barry v. Frizzell*, Okl., 371 P.2d 460, 464.

In patent law, signifies sums paid to owner of a patent for its use or for the right to operate under it, and may also refer to obligation giving rise to the right to such sums. *Taylor v. Peck*, 160 Ohio St. 288, 116 N.E.2d 417, 418.

*See also* Minimum royalty clause; Overriding royalty; Shut-in royalty.

*Reasonable royalty.* Under patent law, a "reasonable royalty" is that amount which the trier of facts estimates a person desiring to use a patent right would be willing to pay for its use and a patent owner desiring to license the patent would be willing to accept. *University Computing Co. v. Lykes-Youngstown Corp.*, C.A.Ga., 504 F.2d 518, 538.

*Overriding royalty.* A retained royalty by a lessee when the property is subleased. Common in oil and gas leases.

**Royalty acres.** That part of the oil that goes to landowner, whether it be in place or after production. *Dickens v. Tisdale*, 204 Ark. 838, 164 S.W.2d 990, 992.

**Royalty bonus.** The consideration for oil and gas lease over and above the usual royalty. *Sheppard v. Stanolind Oil & Gas Co.*, Tex.Civ.App., 125 S.W.2d 643, 648.

**Roy est l'original de tous franchises.** The king is the origin of all franchises.

**Roy n'est lie per ascun statute si il ne soit expressment nosme.** The king is not bound by any statute, unless expressly named.

**Roy poet dispenser ove malum prohibitum, mais non malum per se.** The king can grant a dispensation for a *malum prohibitum*, but not for a *malum per se*.

**R.S.** An abbreviation for "Revised Statutes."

**Rubber check.** Slang for a check which has been returned by the drawee bank because of insufficient funds in the account of the drawer.

**Rudeness.** Roughness; incivility; violence. Touching another with rudeness may constitute a battery.

**Rule, v.** To command or require by a rule of court; as, to rule the sheriff to return the writ, to rule the defendant to plead, to rule against an objection to evidence. To settle or decide a point of law arising upon a trial, and, when it is said of a judge presiding at such a trial that he "ruled" so and so, it is meant that he laid down, settled, or decided such and such to be the law.

**Rule, n.** An established standard, guide, or regulation. Prescribed guide for conduct or action, regulation or principle. *State ex rel. Villines v. Freeman*, Okl., 370 P.2d 307, 309. A principle or regulation set up by authority, prescribing or directing action or forbearance; as, the rules of a legislative body, of a company, court, public office, of the law, of ethics. Precept attaching a definite detailed legal consequence to a definite detailed state of facts.

An order made by a court, at the instance of one of the parties to a suit, commanding a ministerial officer, or the opposite party, to do some act, or to show cause why some act should not be done. It is usually upon some interlocutory matter. *See also* Decree; Order.

For purposes of the Administrative Procedure Act, includes each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy. *Vega v. National Union Fire Ins. Co. of Pittsburgh, Pa., Inc.*, 67 Haw. 148, 682 P.2d 73, 78.

A rule of law. Thus, we speak of the rule against perpetuities; the Rule in *Shelley's Case*, etc. *See also* Rule of law, below.

*Rule absolute.* One which commands the subject-matter of the rule to be forthwith enforced. It is common, for example, when the party has failed to show sufficient cause against a rule *nisi*, to "make the rule absolute," *i.e.*, imperative and final.

*Rule against perpetuities.* Principle that no interest in property is good unless it must vest, if at all, not later than 21 years, plus period of gestation, after some life or lives in being at time of creation of interest. *Perkins v. Iglehart*, 183 Md. 520, 39 A.2d 672, 676; *St. Louis Union Trust Co. v. Bassett*, 337 Mo. 604, 85 S.W.2d 569, 575. The "rule against perpetuities" prohibits the granting of an estate which will not necessarily vest within a time limited by a life or lives then in being and 21 years thereafter together with the period of gestation necessary to cover cases of posthumous birth. *Nelson v. Mercantile Trust Co., Mo.*, 335 S.W.2d 167, 172.

This common law rule or principle has been modified by statute in certain states; *e.g.* under some statutes an inquiry may be made as to whether the gift *did* vest in fact within the period. If it actually vested, it will be upheld. Under original rule, the inquiry was whether it *must* vest by its terms. *See e.g.* M.G.L.A. c. 184A (Mass.).

*See also* Perpetuity.

*Rule in Shelley's Case.* *See* *Shelley's Case*, Rule in.

*Rule nisi.* A rule which will become imperative and final *unless* cause be shown against it. This rule commands the party to show cause why he should not be compelled to do the act required, or why the object of the rule should not be enforced. An *ex parte* order directing the other party to show cause why such a temporary order should not become permanent.

*Rule of apportionment.* Rule that, where subdivided tract contains more or less than aggregate amount called for, excess or deficiency is apportioned among several tracts.

*Rule of four.* Working rule devised by Supreme Court for determining if a case is deserving of review; the theory being that if four justices find that a legal question of general importance is raised, that is ample proof that the question has such importance. *Rogers v. Missouri Pac. R. Co.*, Ill., 352 U.S. 521, 77 S.Ct. 459, 478, 1 L.Ed.2d 515.

*Rule of law.* A legal principle, of general application, sanctioned by the recognition of authorities, and usually expressed in the form of a maxim or logical proposition. Called a "rule," because in doubtful or unforeseen cases it is a guide or norm for their decision. The rule of law, sometimes called "the supremacy of law", provides that decisions should be made by the application of known principles or laws without the intervention of discretion in their application. *See e.g. Rule against perpetuities, above;* also, *Shelley's Case*, Rule in. *See also* *Stare decisis*.

*Rule of lenity.* Where the intention of Congress is not clear from the act itself and reasonable minds might differ as to its intention, the court will adopt the less harsh meaning. *U. S. v. Callanan*, D.C.Mo., 173 F.Supp. 98, 100. The judicial doctrine by which courts decline to interpret criminal statutes so as to increase penalty imposed, absent clear evidence of legislative intent to do otherwise; in other words, where there is ambiguity in a criminal statute, doubts are resolved in favor of defendant. *State v. Stephens*, 22 Wash.App. 548, 591 P.2d 827, 832. Under "rule of lenity," statute establishing penalty which is susceptible of more than one meaning should be construed so as to provide most lenient penalty. *State v. Andrews*, Alaska App., 707 P.2d 900, 907.

*Rule of necessity.* While a judge should disqualify himself when called upon to decide a matter in which he has a direct interest, if he is the only judge with power to hear and determine the matter, the rule of necessity requires that he hear it. *Evans v. Gore*, 253 U.S. 245, 40 S.Ct. 550, 64 L.Ed. 887.

*Rule of presumption.* Rule changes one of burdens of proof, that is, it declares that main fact will be inferred or assumed from some other fact until evidence to contrary is introduced. *Barrett v. U. S.*, C.A.Ga., 322 F.2d 292, 294. *See* *Presumption*.

*Rule of reason.* Under "rule of reason" test for determining whether alleged acts violated § 1 of the Sherman Anti-Trust Act [15 U.S.C.A. § 1], which declares conspiracies in restraint of trade to be illegal, fact finder must weigh all circumstances of the case to decide whether practice unreasonably restrains competition, and the test requires that plaintiff show anticompetitive effects, or actual harm to competition, and not whether the practices were unfair or tortious. *Richard Hoffman Corp. v. Integrated Bldg. Systems*, D.C.Ill., 610 F.Supp. 19, 22. Under the "rule of reason" in antitrust law the legality of restraints on trade is determined by weighing all the factors of the case such as the history of the restraint, the evil believed to exist, the reason for adopting the particular remedy and the purpose or end sought to be attained. *U. S. v. National Soc. of Professional Engineers*, D.C.D.C., 404 F.Supp. 457, 463.

To constitute a crime under § 1 of the Sherman Antitrust Act, the defendant's conduct must result in an unreasonable restraint of interstate commerce. It is for the jury to determine from a consideration of all the facts and circumstances, including the economic conditions of the industry and the effect on competition,

whether defendants' conduct creates an unreasonable restraint on interstate commerce. *Standard Oil Co. v. United States*, 221 U.S. 1, 31 S.Ct. 502, 55 L.Ed. 619; *Best Advertising Corp. v. Illinois Bell Tel. Co.*, C.A.Ill., 339 F.2d 1009; *Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp.*, 382 U.S. 172, 86 S.Ct. 347, 15 L.Ed.2d 247. The "rule of reason" test is not however applied in instances of per se antitrust violations; e.g. price-fixing. *Compare* Per se doctrine; Per se violations.

*Rule of road.* *See* *Right of way*; *Road*.

*Rule to show cause.* A rule commanding the party to appear and show cause why he should not be compelled to do the act required, or why the object of the rule should not be enforced; a rule *nisi* (*q.v.*). *See* *Show cause order*.

**Rulemaking power.** Congress has from time to time conferred upon the Supreme Court power to prescribe rules of procedure to be followed by the lower trial and appellate courts of the United States. Pursuant to these statutes (28 U.S.C.A. §§ 2071–2075, re Civil, Criminal, Appellate, Bankruptcy, Evidence Rules) there are now in force rules promulgated by the Court to govern civil and criminal cases in the district courts, bankruptcy courts, courts of appeals, and proceedings before U.S. magistrates. Certain other federal courts are empowered to enact their own rules of court (e.g., Tax Court, 26 U.S.C.A. § 7453). *See also* *Rules Enabling Act of 1934*.

**Rule of 72.** Used to determine number of years it will take to double money when earning compound interest (interest rate paid on principal is divided into 72).

**Rule of 78.** Method of computing refunds of unearned finance charges on early payment of loan so that refund is proportional to the monthly unpaid balance. 78 is the sum of the digits of one to twelve, i.e., the number of months in a one-year installment contract.

**Rules Enabling Act of 1934.** A federal statute that delegated comprehensive procedural rulemaking power to the Supreme Court and resulted in the Federal Rules of Civil Procedure. The statute is now, with slight changes, 28 U.S.C.A. § 2072.

**Rules of Appellate Procedure.** Federal Rules of Appellate Procedure govern procedure in appeals from the U.S. district courts and Tax Court to the U.S. Courts of Appeal. Fed.R.App.P. 1(a). In states which have adopted similar rules, they govern appeal procedure from the trial court to appellate courts. *See* *Federal Rules of Appellate Procedure*.

**Rules of Civil Procedure.** Federal Rules of Civil Procedure govern procedure in the U.S. district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty with some exceptions. Fed.R.Civil P. 1. Such Rules also govern adversary proceedings in federal bankruptcy courts. Many states have adopted similar rules which track the Federal Rules. *See* *Federal Rules of Civil Procedure*; *Rules Enabling Act of 1934*.

**Rules of court.** Such regulate practice and procedure before the various courts; *e.g.* Rules of Civil, Criminal, or Appellate Procedure; Rules of Evidence. In most jurisdictions, these rules are issued by the court itself, or by the highest court in that jurisdiction, while in others, such are adopted or enacted by the legislature. *See also* Court rule; Rulemaking power.

**Rules of Criminal Procedure.** Federal Rules of Criminal Procedure govern the procedure in all criminal proceedings in the U.S. district courts of the United States, including preliminary, supplementary, and special proceedings before U.S. magistrates. Fed.R.Crim.P. 1. Many states have adopted similar rules which track the Federal Rules. *See* Federal Rules of Criminal Procedure.

**Rules of Decision Act.** Section 34 of the Judiciary Act of 1789—the famous Rules of Decision Act—provided that “the laws of the several states, except where the constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply.” The statute has remained substantially unchanged to this day. *See* 28 U.S.C.A. § 1652.

**Rules of Evidence.** Rules of court which govern the admissibility of evidence at trials and hearings; *e.g.* Federal Rules of Evidence (applicable in U.S. district courts and federal bankruptcy courts); Uniform Rules of Evidence; Maine Rules of Evidence; California Evidence Code. *See* Federal Rules of Evidence.

**Rules of navigation.** *See* Navigation.

**Rules of Professional Conduct.** The Model Rules of Professional Conduct of the American Bar Association set standards for such matters as client-lawyer relationships, fees, conflict of interest, role of lawyer as counselor and advocate, transactions with persons other than clients, responsibilities of law firms and associations, public service, and dissemination of information about legal services (including advertising). Such Rules replaced the former ABA Code of Professional Responsibility.

**Rule 10b-5.** This Rule of the Securities and Exchange Commission makes it unlawful, in connection with the purchase or sale of any security, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they were made, not misleading. *See also* Sec. 10(b) of the Securities Exchange Act, 15 U.S.C.A. § 78(j)(b). *See also* Insider; Material fact.

**Ruling.** A judicial or administrative interpretation of a provision of a statute, order, regulation, or ordinance; *e.g.* Revenue Rulings. May also refer to judicial determination of admissibility of evidence, allowance of motion, etc. *See also* Decree; Order; Rule.

**Rumor.** A current story passing from one person to another without any known authority for the truth of it. Such are not generally admissible in evidence.

**Run, v.** To have currency or legal validity in a prescribed territory; as, the writ *runs* throughout the county.

To have applicability or legal effect during a prescribed period of time; as, the statute of limitations has *run* against the claim.

To follow or accompany; to be attached to another thing in pursuing a prescribed course or direction; as, the covenant *runs* with the land.

To conduct, manage, carry on.

**Run, n.** A watercourse of small size. In business, a continuous round of manufacturing. In banking, a widespread and sudden withdrawal of deposits from a bank because of fear of the bank's collapse.

**Runaway shop.** An employer who moves his business to another location or temporarily closes his business for anti-union purposes.

**Runner.** Person who solicits business for attorney from accident victims. Also means a person employed by a bail bondsman for the purpose of assisting the bail bondsman in presenting the defendant in court when required, or to assist in apprehension and surrender of defendant to the court, or keeping defendant under necessary surveillance, or to execute bonds on behalf of the licensed bondsman when the power of attorney has been duly recorded. *See also* Ambulance chaser.

**Running account.** An open unsettled account, as distinguished from a stated and liquidated account. Running accounts mean mutual accounts and reciprocal demands between the parties, which accounts and demands remain open and unsettled. *See also* Charge account; Revolving credit.

**Running at large.** Refers to candidate for public office who seeks election from entire town or city and not just from one ward or district. Term is also applied to wandering or straying animals.

**Running days.** Days counted in their regular succession on the calendar, including Sundays and holidays.

**Running of the statute of limitations.** A metaphorical expression, by which is meant that the time specified in the statute of limitations is considered as having passed and hence the action is barred. United States v. Markowitz, D.C.Cal., 34 F.Supp. 827, 829.

**Running policy.** One which contemplates successive insurances, and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements.

**Running with the land.** Phrase referring generally to covenants that pass with transfer of the land. A covenant is said to run with the land when either the liability to perform it or the right to take advantage of it passes to the assignee of that land. Usually concerned with easements and covenants.

**Running with the reversion.** A covenant is said to run with the reversion when either the liability to perform it

or the right to take advantage of it passes to the assignee of that reversion.

**Rural.** Concerning the country, as opposed to urban (concerning the city).

**Rusticum iudicium** /rústəkəm juwdísh(iy)əm/. Lat. In maritime law, a rough or rude judgment or decision. A judgment in admiralty dividing the damages caused by a collision between the two ships.

**Rustler.** Cattle thief.

**Rustling.** Larceny of cattle.

**Ruta** /rúwtə/. Lat. In the civil law, things extracted from land; as sand, chalk, coal, and such other matters.

**Ruta et cæsa** /rúwtə èt síyzə/. In the civil law, things dug (as sand and lime), and things cut (as wood, coal, etc.).

**Rylands v. Fletcher case.** The early English case which is the progenitor of the doctrine of absolute liability for abnormally dangerous things and activities. 3 H.L. 330. *See* Strict liability.