

B.

B.abbr.BARON(3).

B2B

B2B.abbr. BUSINESS-TO-BUSINESS <a B2B transaction>.

B2C

B2C.abbr. BUSINESS-TO-CONSUMER <a B2C transaction>.

BA

BA.abbr.See banker's acceptance under ACCEPTANCE(4).

BABY ACT, PLEADING THE

baby act, pleading the.Slang. The act of asserting a person's infancy as a defense to a contract claim.

BABY-BARTERING

baby-bartering. See BABY-SELLING.

BABY BOND

baby bond.See BOND(3).

BABY-BROKERING

baby-brokering. See BABY-SELLING.

BABY DOE

Baby Doe.A generic pseudonym for a very young child involved in litigation, esp. in the context of being provided with medical care. • Today a gender designation is often added: Baby Girl Doe or Baby Boy Doe. The generic term is used to shield the child's identity.

BABY FTC ACT

Baby FTC Act.A state statute that, like the Federal Trade Commission Act, outlaws deceptive and unfair trade practices.

BABY MOSES LAW

Baby Moses law.See SAFE-HAVEN LAW.

BABY-SELLING

baby-selling. The exchange of money or something else of value for a child. • All states have prohibitions against baby-selling. It is not considered baby-selling for prospective adoptive parents

to pay money to a birth mother for pregnancy-related expenses. — Also termed baby-brokering; baby-bartering.

BABY-SNATCHING

baby-snatching. See child-kidnapping under KIDNAPPING.

BAC

BAC.abbr.BLOOD ALCOHOL CONTENT.

BACHELOR

bachelor. 1. An unmarried man. 2. The usual title of the first degree that is conferred on a university graduate. 3.English law. A member of one of the orders of chivalry, such as the Order of the Bath. — Also termed (in sense 3) knight bachelor.

BACHELOR OF LAWS

bachelor of laws.See LL.B.

BACK

back,vb.1. To indorse; to sign the back of an instrument. 2. To sign so as to show acceptance or approval. 3. To sign so as to indicate financial responsibility for. 4.Hist. (Of a magistrate) to sign a warrant issued in one county to permit its execution in the signing magistrate's county.

“[Although] the warrant of the judge of the Court of King's Bench extends over the whole realm, ... that of a justice of the peace cannot be executed out of his county, unless it be backed, that is, indorsed by a justice of the county, in which it is to be carried into execution. It is said, that formerly there ought in strictness to have been a fresh warrant in every fresh county, but the practice of backing warrants has long been observed, and was at last sanctioned by the statute 23 Geo. 2. c. 26. s. 2, and 24 Geo. 2. c. 55.” 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 45 (2d ed. 1826).

BACKADATION

backadation. See BACKWARDATION.

BACKBEREND

backberend (bak-ber-*<<schwa>>*nd). [Old English] Hist. 1.The bearing of stolen goods upon the back or about the person. • Backberend is sometimes modernized to backbearing. 2. A person caught carrying stolen goods. — Also spelled bacberende; backberinde. Cf. HANDHABEND.

“Backberinde signifieth bearing upon the Back, or about a Man. Bracton useth it for a Sign or Circumstance of Theft apparent, which the Civilians call Furtum manifestum....” Giles Jacob, *A New Law-Dictionary* (8th ed. 1762).

BACK CARRY

back-carry,n.Hist. The crime of carrying, on one's back, unlawfully killed game.

BACKDATE

backdate,vb.1. To put a date earlier than the actual date on (something, as an instrument). • Under UCC § 3-113(a), backdating does not affect an instrument's negotiability. Cf. POSTDATE.
2. To make (something) retroactively valid.

BACK DOOR TO BERNE

back door to Berne.Copyright. A U.S. copyright owner's simultaneous publication of the copyrighted work in both the U.S. and Berne Convention countries in order to obtain Berne Convention protection. • This backdoor method was used before 1989, when the U.S. became a member of the Berne Convention. [Cases: Copyrights and Intellectual Property 34. C.J.S. Copyrights and Intellectual Property §§ 21, 92.]

BACK-END LOAD

back-end load.See load fund under MUTUAL FUND.

BACKGROUND OF THE INVENTION

background of the invention.Patents. In a U.S. patent application and any resulting patent, the section that identifies the field of art to which the invention pertains, summarizes the state of the art, and describes the problem solved by the invention. • The Background of the Invention section usu. includes two subsections: "Field of the Invention" and "Description of the Related Art." A mistaken inclusion in this section of a reference that postdates the date of invention may be construed as an admission. [Cases: Patents 99. C.J.S. Patents § 139.]

BACKHAUL ALLOWANCE

backhaul allowance.See ALLOWANCE(1).

BACKING

backing. Endorsement, esp. of a warrant by a magistrate. See BACK(4).

BACK-IN RIGHT

back-in right.Oil & gas. A reversionary interest in an oil-and-gas lease entitling an assignor to a share of the working interest after the assignee has recovered specified costs from production.

BACK LANDS

back lands.Generally, lands lying away from — not next to — a highway or a watercourse.

BACKPAY AWARD

backpay award.A judicial or quasi-judicial body's decision that an employee or ex-employee is entitled to accrued but uncollected wages or benefits. — Sometimes shortened to backpay.

BACKSPREAD

backspread.Securities. In arbitrage, a less than normal price difference in the price of a

currency or commodity. See ARBITRAGE; SPREAD(3).

BACK TAXES

back taxes. Taxes that, though assessed for a previous year or years, remain due and unpaid.

BACK-TITLE LETTER

back-title letter. A letter from a title insurer advising an attorney of the condition of title to land as of a certain date. • With this information, the attorney can begin examining the title from that date forward.

BACK-TO-BACK LOAN

back-to-back loan. See LOAN.

BACK-TO-WORK AGREEMENT

back-to-work agreement. A contract between a union and an employer covering the terms under which the employees will return to work after a strike.

BACKWARDATION

backwardation. Securities. A fee paid by the seller of securities so that the buyer will allow delivery after their original delivery date. — Also termed backadation; inverted market.

BACKWARD INTEGRATION

backward integration. See INTEGRATION(5).

BACKWATER

backwater. See WATER.

BACULUS

baculus (bak-y<<schwa>>-l<<schwa>>s orbak-<<schwa>>-l<<schwa>>s). Hist. A rod or staff used to symbolize the conveyance of unimproved land. See LIVERY OF SEISIN . See FESTUCA.

BAD

bad, adj. Invalid or void; legally unsound <bad service of process> <bad law>.

BAD-BOY DISQUALIFICATION

bad-boy disqualification. Securities. An issuer's disqualification from certain SEC-registration exemptions as a result of the issuer's securities-law violations.

BAD-BOY PROVISION

bad-boy provision. Securities. A statutory or regulatory clause in a blue-sky law stating that certain persons, because of their past conduct, are not entitled to any type of exemption from registering their securities. • Such clauses typically prohibit issuers, officers, directors, control

persons, or broker-dealers from being involved in a limited offering if they have been the subject of an adverse proceeding concerning securities, commodities, or postal fraud.

BAD CHARACTER

bad character. A person's predilection toward evil. • In limited circumstances, proof of bad character may be introduced into evidence to discredit a witness. Fed. R. Evid. 608, 609. See character evidence under EVIDENCE.

BAD CHECK

bad check. See CHECK.

BAD-CONDUCT DISCHARGE

bad-conduct discharge. See DISCHARGE(8).

BAD DEBT

bad debt. See DEBT.

BAD-DEBT LOSS RATIO

bad-debt loss ratio. The ratio of uncollectible debt to a business's total receivables.

BAD-DEBT RESERVE

bad-debt reserve. See RESERVE.

BAD FAITH

bad faith, n. 1. Dishonesty of belief or purpose <the lawyer filed the pleading in bad faith>. — Also termed *mala fides* (mal-*<<schwa>>* fl-deez).

“A complete catalogue of types of bad faith is impossible, but the following types are among those which have been recognized in judicial decisions: evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.” Restatement (Second) of Contracts § 205 cmt. d (1979).

2. Insurance. An insurance company's unreasonable and unfounded (though not necessarily fraudulent) refusal to provide coverage in violation of the duties of good faith and fair dealing owed to an insured. • Bad faith often involves an insurer's failure to pay the insured's claim or a claim brought by a third party. 3. Insurance. An insured's claim against an insurance company for an unreasonable and unfounded refusal to provide coverage. Cf. GOOD FAITH. [Cases: Insurance 3335, 3379. C.J.S. Insurance §§ 1164, 1576–1577.] — bad-faith, adj.

BAD-FAITH ENFORCEMENT

bad-faith enforcement. Patents. 1. The filing of an infringement action by a patentee who knows that the accused product or process does not infringe or that the patent is invalid or unenforceable. 2. In an infringement action, a counterclaim alleging that at the time of filing suit,

the patentee knew that the accused product or process does not infringe or that the patent is invalid or unenforceable. • A counterclaim for bad-faith enforcement arises under § 2 of the Sherman Act and under the common law of unfair competition. Cf. PATENT-MISUSE DOCTRINE.

BAD-FAITH FILING

bad-faith filing, n. Bankruptcy. The act of submitting a bankruptcy petition that is inconsistent with the purposes of the Bankruptcy Code or is an abuse of the bankruptcy system (that is, by not being filed in good faith). • A court may dismiss a bankruptcy case if it finds that the petition was filed in bad faith.

BADGE OF FRAUD

badge of fraud. A circumstance generally considered by courts as an indicator that a party to a transaction intended to hinder or defraud the other party, such as a transfer in anticipation of litigation, a transaction outside the usual course of business, or a false statement. See FRAUD. [Cases: Fraud 3; Fraudulent Conveyances 13–16.]

BADGE OF SLAVERY

badge of slavery. 1. Strictly, a legal disability suffered by a slave, such as the inability to vote or to own property. 2. Broadly, any act of racial discrimination — public or private — that Congress can prohibit under the 13th Amendment. [Cases: Constitutional Law 83(2). C.J.S. Constitutional Law §§ 482–486.]

BADGER GAME

badger game. A scheme to extort money or some other benefit by arranging to catch someone in a compromising position and then threatening to make that person's behavior public.

“The ‘badger game’ is a blackmailing trick, usually in the form of enticing a man into a compromising position with a woman whose real or pretended husband comes upon the scene and demands payment under threat of prosecution or exposure.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 451 (3d ed. 1982).

BAD-MAN THEORY

bad-man theory. The jurisprudential doctrine or belief that a bad person's view of the law represents the best test of what the law actually is because that person will carefully calculate precisely what the rules allow and operate up to the rules' limits. • This theory was first espoused by Oliver Wendell Holmes in his essay *The Path of the Law*, 10 *Harv. L. Rev.* 457 (1897). In the essay, Holmes maintained that a society's legal system is defined by predicting how the law will affect a person, as opposed to considering the ethics or morals supposedly underlying the law. Under Holmes's theory, the prediction is best made by viewing the law as would a “bad man” who is unconcerned with morals. Such a person is not concerned with acting morally or in accord with a grand philosophical scheme. Rather, that person is concerned with whether and to what degree certain acts will incur punishment by the public force of the law. See LEGAL REALISM. — Also termed prediction theory.

BAD MOTIVE

bad motive. See MOTIVE.

BADS

bad_s, n. Slang. In economics, the counterpart of “goods,” characterized by a negative correlation between the amount consumed and the consumer's wealth; specif., the kinds of products that tend to be bought only by poor people.

“Some products are termed ‘bads’ because consumption of the product tends to decrease with increasing wealth. Spam is one example of a bad, while beef tenderloin is generally thought to be a good.” Donald S. Chisum et al., *Principles of Patent Law* 54 (1998).

BAD TITLE

bad title. See TITLE(2).

BAGA

baga (bag-*<<schwa>>*). [Law Latin] Hist. A bag or purse, esp. one in which original writs were kept by the Chancery.

BAGMAN

bagman. A person who collects and distributes illegally obtained money; esp., an intermediary who collects a bribe for a public official.

BAIL

bail, n. 1. A security such as cash or a bond; esp., security required by a court for the release of a prisoner who must appear at a future time <bail is set at \$500>. Cf. RECOGNIZANCE. [Cases: Bail 39. C.J.S. Bail; Release and Detention Pending Proceedings §§ 2, 4–7, 31–32.]

bail absolute. A type of fiduciary bond conditioning a surety's liability on the failure of an estate administrator, executor, or guardian to properly account for estate funds. See fiduciary bond under BOND(2).

cash bail. A sum of money (rather than a surety bond) posted to secure a prisoner's release from jail. — Also termed stationhouse bail. [Cases: Bail 73. C.J.S. Bail; Release and Detention Pending Proceedings §§ 88–92.]

civil bail. A bond or deposit of money given to secure the release of a person arrested for failing to pay a court-ordered civil debt. • The bail is conditioned on the payment of the debt. [Cases: Bail 1. C.J.S. Bail; Release and Detention Pending Proceedings §§ 2, 191.]

excessive bail. Bail that is unreasonably high considering both the offense with which the accused is charged and the risk that the accused will not appear for trial. • The Eighth Amendment prohibits excessive bail. [Cases: Bail 52. C.J.S. Bail; Release and Detention Pending Proceedings § 69.]

stationhouse bail. See cash bail.

2. The process by which a person is released from custody either on the undertaking of a surety or on his or her own recognizance. 3. Release of a prisoner on security for a future appearance; esp., the delivery of a person in custody to a surety <the court refused bail for the accused serial killer>. [Cases: Bail 39. C.J.S. Bail; Release and Detention Pending Proceedings §§ 2, 4–7, 31–32.] 4. One or more sureties for a criminal defendant <the attorney stood as bail for her client>. See BAILER(1). “As a noun, and in its strict sense, bail is the person in whose custody the defendant is placed when released from jail, and who acts as surety for defendant's later appearance in court.... The term is also used to refer to the undertaking by the surety, into whose custody defendant is placed, that he will produce defendant in court at a stated time and place.” 8 C.J.S. Bail § 2 (1988).

bail above. See bail to the action.

bail below. See bail to the sheriff.

bail common. Hist. A fictitious surety filed by a defendant in a (usu. minor) civil action. — Also termed common bail; straw bail.

“[T]he Common Pleas made a distinction between common and special bail, allowing the former, in cases where the defendant voluntarily appeared to the process, or where the damage expressed in it appeared to be but of a trifling amount, and requiring the latter only, when the plaintiff's demand or the damage he had sustained appeared to be something considerable. In time therefore, in common cases, every defendant took the liberty of offering John Doe and Richard Roe, for his bail....” 1 George Crompton, *Practice Common-Placed: Rules and Cases of Practice in the Courts of King's Bench and Common Pleas* lxi (3d ed. 1787).

bail to the action. Hist. A surety for a civil defendant arrested by a mesne process (i.e., a process issued during the lawsuit). • If the defendant lost the lawsuit, the bail to the action was bound either to pay the judgment or to surrender the defendant into custody. — Also termed bail above; special bail. Cf. bail to the sheriff.

bail to the sheriff. Hist. A person who pledged to the sheriff that a defendant served with process during a civil action would appear on the writ's return day. — Also termed bail below. Cf. bail to the action.

“This kind of bail is called bail to the sheriff, because given to that officer, and for his security; and bail below, because subordinate or preliminary to bail to the action or special bail, which is termed bail above.” 1 Alexander M. Burrill, *A Law Dictionary and Glossary* 174 (2d ed. 1867).

common bail. See bail common.

special bail. See bail to the action.

straw bail. See bail common.

5. Obs. Legal custody of a detainee or prisoner who obtains release by giving surety for a later

appearance. 6.Canadian law. A lease.

bail-à-rente. A lease in perpetuity.

bail emphytéotique.A renewable lease for a term of years that the lessee may prolong indefinitely.

bail,vb.1. To obtain the release of (oneself or another) by providing security for future appearance <his parents bailed him out of jail>. [Cases: Bail 39. C.J.S. Bail; Release and Detention Pending Proceedings§§ 2, 4-7, 31-32.] 2. To release (a person) after receiving such security <the court bailed the prisoner>. [Cases: Bail 39. C.J.S. Bail; Release and Detention Pending Proceedings§§ 2, 4-7, 31-32.] 3. To place (personal property) in someone else's charge or trust < bail the goods with the warehouse>.

BAILABLE

bailable,adj. (Of an offense or person) eligible for bail.

BAILABLE OFFENSE

bailable offense.See OFFENSE(1).

BAILABLE PROCESS

bailable process.See PROCESS.

BAIL ABOVE

bail above.See bail to the action under BAIL(4).

BAIL ABSOLUTE

bail absolute.See BAIL(1).

BAIL-À-RENTE

bail-à-rente. See BAIL(6).

BAIL BELOW

bail below.See bail to the sheriff under BAIL(4).

BAIL BOND

bail bond.See BOND(2).

BAIL BONDSMAN

bail bondsman.See BAILER(1).

BAIL CLAUSE

Bail Clause.The clause in the Eighth Amendment to the U.S. Constitution prohibiting excessive bail. • This clause was derived from similar language in England's Bill of Rights (1689).

BAIL COMMISSIONER

bail commissioner. 1. A judge empowered to hold an emergency hearing to set bail when a hearing cannot be held during regular court hours. • A bail commissioner does not review other judges' bail decisions. 2. An officer appointed to take bail bonds. — Also termed commissioner of bail. [Cases: Bail 48. C.J.S. Bail; Release and Detention Pending Proceedings § 39, 50–53.] 3.Hist. A court-appointed officer who took recognizance of bail in civil cases.

BAIL COMMON

bail common. See BAIL(4).

BAIL COURT

Bail Court.Hist. An ancillary court of Queen's Bench responsible for ensuring that bail sureties were worth the sums pledged (i.e., hearing justifications) and handling other procedural matters. • The court was established in 1830 and abolished in 1854. — Also termed Practice Court.

BAIL DOCK

bail dock. A small compartment in a courtroom used to hold a criminal defendant during trial. — Often shortened to dock. — Also spelled bale dock. See DOCK(3).

BAILEE

bailee. A person who receives personal property from another as a bailment. See BAILMENT. [Cases: Bailment 1. C.J.S. Bailments §§ 2–13, 15, 19, 22–24, 31.]

BAILEE POLICY

bailee policy. See INSURANCE POLICY.

BAIL EMPHYTÉOTIQUE

bail emphytéotique. See BAIL(6).

BAIL-ENFORCEMENT AGENT

bail-enforcement agent. See BOUNTY HUNTER.

BAILER

bailer. 1. One who provides bail as a surety for a criminal defendant's release. — Also spelled bailor. — Also termed bail bondsman; bailman. 2. BAILOR(1).

BAILIFF

bailiff. 1. A court officer who maintains order during court proceedings. • In many courts today, the bailiff also acts as crier, among other responsibilities. See CRIER. — Also termed (in England and Wales) usher; (in Scotland) macer. 2. A sheriff's officer who executes writs and serves processes. [Cases: Sheriffs and Constables 24. C.J.S. Sheriffs and Constables §§ 50–51.]

bailiff-errant.Hist. A bailiff appointed by the sheriff to deliver writs and other process within a county. Cf. bailiffs of franchises.

bailiffs of franchises.Hist. Bailiffs who execute writs and perform other duties in privileged districts that are outside the Crown's (and therefore the sheriff's) jurisdiction. Cf. bailiff-errant.

“Bailiffs of Franchises are those who are appointed by every Lord within his Liberty, to do such Offices therein, as the Bailiff Errant does at large in the County.” Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

bailiffs of hundreds.Hist. Bailiffs appointed by a sheriff to collect fines, summon juries, attend court sessions, and execute writs and process in the county district known as a hundred. See HUNDRED.

bailiffs of manors.Hist. Persons appointed to superintend the estates of the nobility. • These bailiffs collected fines and rents, inspected buildings, and took account of waste, spoils, and misdemeanors in the forests and demesne lands.

bound bailiff.Hist. A deputy sheriff placed under bond to ensure the faithful performance of assigned duties. — Also termed bumbailiff.

“The sheriff being answerable for the misdemesnors of these bailiffs, they are therefore usually bound in a bond for the due execution of their office, and thence are called bound-bailiffs; which the common people have corrupted into a much more homely appellation [i.e., bumbailiff].” 1 William Blackstone, *Commentaries on the Laws of England* 334 (1765).

bumbailiff. 1.BrE. Slang. A bailiff of the lowest rank who performs the most menial tasks, such as arresting debtors and serving writs. • In British English, “bum” is slang for a person's buttocks. Some sources suggest that bumbailiffs are so called because they often approached debtors from behind before arresting them. 2. See bound bailiff.

high bailiff.Hist. A bailiff attached to a county court, responsible for attending court sessions, serving summonses, and executing orders, warrants, and writs.

special bailiff.Hist. A deputy sheriff appointed at a litigant's request to serve or execute some writ or process related to the lawsuit.

BAIL IN ERROR

bail in error.Security given by a defendant who intends to bring a writ of error on a judgment and desires a stay of execution in the meantime. See appeal bond, supersedeas bond under BOND(2).

BAILIVIA

bailivia. See BAILIWICK.

BAILIWICK

bailiwick (bay-l<<schwa>>-wik). The office, jurisdiction, or district of a bailiff; esp., a

bailiff's territorial jurisdiction. — Also termed *bailivia*; *baliva*; *balliva*.

“In the early days a village was called a ‘wick.’ Each village had a bailiff who was its peace officer. His authority was limited to the territory of the wick. A bailiff was popularly referred to as a ‘bailie,’ and before long a bailie's wick was expressed as his ‘bailiwick.’ And in time this word came to be used to indicate the special territory over which a peace officer exercises his authority as such. Although it may be changed by statute, the normal situation is that the bailiwick of a policeman is his city, the bailiwick of a sheriff is his county and the bailiwick of a state officer, such as a member of the Highway Patrol, is the state.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 1096 (3d ed. 1982).

BAIL-JUMPING

bail-jumping, n. The criminal offense of defaulting on one's bail. See Model Penal Code § 242.8. See JUMP BAIL. [Cases: Bail 97. C.J.S. Bail; Release and Detention Pending Proceedings § 73.] — *jump bail*, vb. — *bail-jumper*, n.

BAILMENT

bailment. 1. A delivery of personal property by one person (the bailor) to another (the bailee) who holds the property for a certain purpose under an express or implied-in-fact contract. • Unlike a sale or gift of personal property, a bailment involves a change in possession but not in title. Cf. PAWN. [Cases: Bailment 1. C.J.S. Bailments §§ 2–13, 15, 19, 22–24, 31.]

“The customary definition of a bailment considers the transaction as arising out of contract. Thus Justice Story defines a bailment as ‘a delivery of a thing in trust for some special object or purpose, and upon a contract express or implied, to conform to the object or purpose of the trust’ [Joseph Story, *Bailments* 5 (9th ed. 1878)]. There has, however, been a vigorous dissent to this insistence on the contractual element in bailments. Professor Williston ... defines bailments broadly ‘as the rightful possession of goods by one who is not the owner’ [4 Samuel Williston, *Law of Contracts* 2888 (rev. ed. 1936)].... It is obvious that the restricted definition of a bailment as a delivery of goods on a contract cannot stand the test of the actual cases. The broader definition of Professor Williston is preferable.” Ray Andrews Brown, *The Law of Personal Property* § 73, at 252, 254 (2d ed. 1955).

“Although a bailment is ordinarily created by the agreement of the parties, resulting in a consensual delivery and acceptance of the property, such a relationship may also result from the actions and conduct of the parties in dealing with the property in question. A bailment relationship can be implied by law whenever the personal property of one person is acquired by another and held under circumstances in which principles of justice require the recipient to keep the property safely and return it to the owner.” 8A Am. Jur. 2d *Bailment* § 1 (1997).

actual bailment. A bailment that arises from an actual or constructive delivery of property to the bailee.

bailment for hire. A bailment for which the bailee is compensated, as when one leaves a car with a parking attendant. — Also termed *lucrative bailment*.

bailment for mutual benefit. A bailment for which the bailee is compensated and from which the bailor receives some additional benefit, as when one leaves a car with a parking attendant who will also wash the car while it is parked.

bailment for sale. A bailment in which the bailee agrees to sell the goods on behalf of the bailor; a consignment.

bailment for sole benefit of bailor. See gratuitous bailment.

constructive bailment. A bailment that arises when the law imposes an obligation on a possessor of personal property to return the property to its rightful owner, as with an involuntary bailment.

gratuitous bailment. A bailment for which the bailee receives no compensation, as when one borrows a friend's car. • A gratuitous bailee is liable for loss of the property only if the loss is caused by the bailee's gross negligence. — Also termed naked bailment; depositum; naked deposit; gratuitous deposit; deposit; bailment for sole benefit of bailor.

involuntary bailment. A bailment that arises when a person accidentally, but without any negligence, leaves personal property in another's possession. • An involuntary bailee who refuses to return the property to the owner can be liable for conversion. — Also termed involuntary deposit. See abandoned property, lost property, mislaid property under PROPERTY.

lucrative bailment. See bailment for hire.

naked bailment. See gratuitous bailment.

2. The personal property delivered by the bailor to the bailee. [Cases: Bailment 4. C.J.S. Bailments § 20.] 3. The contract or legal relation resulting from such a delivery. [Cases: Bailment 1. C.J.S. Bailments §§ 2–13, 15, 19, 22–24, 31.] 4. The act of posting bail for a criminal defendant. 5. The documentation for the posting of bail for a criminal defendant.

BAILOR

bailor (bay-lor or bay-l<<schwa>>r). 1. A person who delivers personal property to another as a bailment. — Also spelled bailer. 2. BAILER(1).

BAILOUT

bailout, n. 1. A rescue of an entity, usu. a corporation or an industry, from financial trouble. 2. An attempt by a business to receive favorable tax treatment of its profits, as by withdrawing profits at capital-gain rates rather than distributing stock dividends that would be taxed at higher ordinary-income rates. [Cases: Internal Revenue 3750. C.J.S. Internal Revenue § 395.]

BAILOUT STOCK

bailout stock. See STOCK.

BAILPIECE

bailpiece. 1. Hist. A document recording the nature of the bail granted to a defendant in a civil

action; specif., a surety issued to attest the act of offering bail 2. More modernly, a warrant issued to a surety upon which the surety may arrest the person bailed by him. • The bailpiece was filed with the court and usu. signed by the defendant's sureties. See BAIL(2); RECOGNIZANCE. — Sometimes written bailpiece.

BAIL-POINT SCALE

bail-point scale.A system for determining a criminal defendant's eligibility for bail, whereby the defendant either will be released on personal recognizance or will have a bail amount set according to the total number of points given, based on the defendant's background and behavior.

BAIL REVOCATION

bail revocation.The court's cancellation of bail granted previously to a criminal defendant.

BAILS MAN

bailsman. See BAILER(1).

BAIL TO THE ACTION

bail to the action.See BAIL(4).

BAIL TO THE SHERIFF

bail to the sheriff.See BAIL(4).

BAIRN'S PART

bairn's part.See LEGITIM.

BAIT ADVERTISING

bait advertising.See BAIT AND SWITCH.

BAIT AND SWITCH

bait and switch.A sales practice whereby a merchant advertises a low-priced product to lure customers into the store, only to induce them to buy a higher-priced product. • Most states prohibit the bait and switch when the original product is not actually available as advertised. — Also termed bait advertising. [Cases: Consumer Protection 7. C.J.S. Credit Reporting Agencies; Consumer Protection § 59.]

BAKER V. SELDEN DOCTRINE

Baker v. Selden doctrine.See MERGER DOCTRINE (1).

BALANCE

balance,vb.1. To compute the difference between the debits and credits of (an account) <the accountant balanced the company's books>.2. To equalize in number, force, or effect; to bring into proportion <the company tried to balance the ratio of mid-level managers to assembly-line workers>.3. To measure competing interests and offset them appropriately <the judge balanced the

equities before granting the motion>. — balance,n.

BALANCED ECONOMY

balanced economy.See **ECONOMY**.

BALANCED FUND

balanced fund.See **MUTUAL FUND**.

BALANCE OF CONVENIENCE

balance of convenience.A balancing test that courts use to decide whether to issue a preliminary injunction stopping the defendant's allegedly infringing or unfair practices, weighing the benefit to the plaintiff and the public against the burden on the defendant.

BALANCE OF POWER

balance of power.Int'l law.A relative equality of force between countries or groups of countries, as a result of which peace is encouraged because no country is in a position to predominate.

BALANCE OF PROBABILITY

balance of probability.See **PREPONDERANCE OF THE EVIDENCE**.

BALANCE OF SENTENCE SUSPENDED

balance of sentence suspended.A sentencing disposition in which a criminal defendant is sentenced to jail but credited with the time already served before trial, resulting in a suspension of the remaining sentence and release of the defendant from custody. Cf. **SENTENCED TO TIME SERVED**.

BALANCE SHEET

balance sheet.A statement of an entity's current financial position, disclosing the value of the entity's assets, liabilities, and owners' equity. — Also termed statement of financial condition; statement of condition; statement of financial position. Cf. **INCOME STATEMENT**.

BALANCE-SHEET INSOLVENCY

balance-sheet insolvency.See **INSOLVENCY**.

BALANCE-SHEET TEST

balance-sheet test.See balance-sheet insolvency under **INSOLVENCY**.

BALANCING TEST

balancing test.A judicial doctrine, used esp. in constitutional law, whereby a court measures competing interests — as between individual rights and governmental powers, or between state authority and federal supremacy — and decides which interest should prevail.

BALE

bale. A package of goods wrapped in cloth and marked so as to be identifiable on a bill of lading.

BALIVA

baliva. See BAILIWICK.

BALLISTICS

ballistics. 1. The science of the motion of projectiles, such as bullets. 2. The study of a weapon's firing characteristics, esp. as used in criminal cases to determine a gun's firing capacity and whether a particular gun fired a given bullet.

BALLIVA

balliva. See BAILIWICK.

BALLIVO AMOVENDO

ballivo amovendo (b<<schwa>>-II-voh ay-moh-ven-doh). [Latin "a bailiff to be removed"] Hist. A writ to remove from office a bailiff who does not have sufficient land in the bailiwick as required by the Statute of Westminster (1285).

BALLOON NOTE

balloon note. See NOTE(1).

BALLOON PAYMENT

balloon payment. See PAYMENT.

BALLOON-PAYMENT MORTGAGE

balloon-payment mortgage. See MORTGAGE.

BALLOT

ballot, n. 1. An instrument, usu. a paper or ball, used for casting a vote. [Cases: Elections 126(5), 215. C.J.S. Elections § 118(1).] 2. The system of choosing officers by a recorded vote, usu. by marking a paper.

absentee ballot. A ballot that a voter submits, sometimes by mail, before an election. — Also termed absentee vote. See absentee voting under VOTING. [Cases: Elections 126(6), 216.1. C.J.S. Elections §§ 114, 118(1).]

bullet ballot. See bullet vote under VOTE(1).

exhausted ballot. See exhausted vote under VOTE(1).

joint ballot. A vote by legislators of both houses sitting together as one body.

preferential ballot. See preferential vote under VOTE(1).

secret ballot.A vote cast in such a way that the person voting cannot be identified. Cf Australian ballot. [Cases: Elections 126(6), 215. C.J.S. Elections §§ 114, 118(1).]

“The secret ballot, when used to protect citizens when choosing their representatives, is a hallmark of a democratic system of government; but, when it is used to conceal a public official's vote, it violates the fundamental tenet of an elected or appointed official's ultimate accountability to the electorate.” Op. Tex. Att'y Gen. H-1163 (1978).

spoiled ballot.A ballot reflecting a vote that cannot be counted because it was cast in a form or manner that does not comply with the applicable rules. See illegal vote under VOTE(1).

3. A vote in a series of one or more votes that is not conclusive until one candidate attains the necessary majority or supermajority <the candidate was nominated on the 21st ballot>.4. A list of candidates running for office <four candidates are on the ballot>. — ballot,vb.

Australian ballot.A uniform ballot printed by the government, listing all eligible candidates, and marked in secret. • Before Australian ballots became standard, candidates often printed their own ballots with only their names, and watchers at polling places could see whose ballot a voter was casting. — Loosely termed secret ballot. [Cases: Elections 126(5), 164. C.J.S. Elections § 118(1).]

Massachusetts ballot.A ballot in which, under each office, the names of candidates and party designations are printed in alphabetical order. • This is a type of Australian ballot.

office-block ballot.A ballot that lists the candidates' names under the title of the office sought without mentioning the candidates' party affiliations. [Cases: Elections 126(5), 168(1), 173. C.J.S. Elections §§ 118(1), 158.]

party-column ballot.A ballot that lists the candidates' names in separate columns by political party regardless of the offices sought by the candidates. [Cases: Elections 126(5), 168(1), 173. C.J.S. Elections §§ 118(1), 158.]

Texas ballot.A ballot that the voter marks for the candidates that he or she does not want elected. • The Texas ballot is particularly useful when the number of candidates only slightly exceeds a large number of representatives being elected.

BALLOT BOX

ballot box.A locked box into which ballots are deposited.

BAMAKO CONVENTION

Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement of Hazardous Wastes Within Africa.A 1991 treaty prohibiting the importation of hazardous wastes into Africa and restricting the transfer of wastes among African nations. • The treaty's objectives are to protect human health and the environment from the dangers posed by hazardous wastes by banning their importation, banning the dumping of waste in seas and internal waters, and reducing waste generation. Only a nation that is a member of the Organization of African Unity (OAU) can become a party to the Bamako Convention. — Often shortened to

Bamako Convention.

BAN

ban, n. 1. Hist. A public proclamation or summons. • Bans dealt with a variety of matters, such as the calling to arms of a lord's vassals or the proclamation that an offender was henceforth to be considered an outlaw. 2. Eccles. law. An authoritative ecclesiastical prohibition; an interdict or excommunication. 3. BANNS OF MATRIMONY. — Also spelled bann.

ban, vb. To prohibit, esp. by legal means.

BANALITY

banality (b<<schwa>>-nal-i-tee), n. Hist. Fr. Can. law. A lord's right to make his vassals use his own winepress, oven, mill, etc.

BANC

banc (bangk or bongk). [French] A bench; esp., the bench on which one or more judges sit. — Also spelled bank. — Also termed bancus. See EN BANC.

BANCO

banco (bang-koh). 1. A seat or bench of justice. See EN BANC. 2. A tract of land cut off by the shifting of a river's course; esp., land that has become cut off in such a manner from the country it originally belonged to. See AVULSION(2).

BANCUS

bancus (bang-k<<schwa>>s). [Law Latin “bench”] Hist. English law. A court or tribunal.

bancus publicus. See bancus superior.

bancus reginae (bang-k<<schwa>>s r<<schwa>>-jI-nee). See QUEEN'S BENCH.

bancus regis (bang-k<<schwa>>s ree-j<<schwa>>s). See KING'S BENCH.

bancus superior (bang-k<<schwa>>s s<<schwa>>-peer-ee-<<schwa>>r). Upper bench. • The King's Bench was so called during the Protectorate (1653–1659). — Abbr. b.s. — Also termed bancus publicus (“public bench”).

B AND E

B and E. abbr. Breaking and entering. See BURGLARY(2).

BANE

bane. Hist. A malefactor or murderer; a person whose criminal act calls for the raising of the hue and cry.

BANISH

banish, vb. See EXILE.

BANK

bank. 1. A financial establishment for the deposit, loan, exchange, or issue of money and for the transmission of funds; esp., a member of the Federal Reserve System. • Under securities law, a bank includes any banking institution, whether or not incorporated, doing business under federal or state law, if a substantial portion of the institution's business consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks and if the institution is supervised and examined by a state or federal banking authority; or a receiver, conservator, or other liquidating agent of any of the above institutions. 15 USCA § 78c(a)(6). [Cases: Banks and Banking 1, 232, 289. C.J.S. Banks and Banking §§ 6, 482–483, 599–600.] 2. The office in which such an establishment conducts transactions.

“A bank is a quasi public institution, for the custody and loan of money, the exchange and transmission of the same by means of bills and drafts, and the issuance of its own promissory notes, payable to bearer, as currency, or for the exercise of one or more of these functions, not always necessarily chartered, but sometimes so, created to subserve public ends, or a financial institution regulated by law A bank is wholly a creature of statute doing business by legislative grace and the right to carry on a banking business through the agency of a corporation is a ‘franchise’ which is dependent on a grant of corporate powers by the state.” 1A Michie on Banks and Banking§ 2, at 5–6 (1993).

bank for cooperatives.A bank within a system of banks established to provide a permanent source of credit to farmers' cooperatives and supervised by the Farm Credit Administration. [Cases: Banks and Banking 401–409. C.J.S. Banks and Banking §§ 665–666.]

collecting bank.In the check-collection process, any bank handling an item for collection, except for the payor bank or the depository bank. UCC § 4-105(5). [Cases: Banks and Banking 156–163. C.J.S. Banks and Banking §§ 317, 319, 322, 327, 382–400, 402, 404, 407, 409–410, 414.]

commercial bank.A bank authorized to receive both demand and time deposits, to engage in trust services, to issue letters of credit, to rent time-deposit boxes, and to provide similar services.

correspondent bank.A bank that acts as an agent for another bank, or engages in an exchange of services with that bank, in a geographical area to which the other bank does not have direct access.

custodian bank.A bank or trust company that acts as custodian for a clearing corporation and that is supervised and examined by a state or federal authority.

depository bank.The first bank to which an item is transferred for collection. UCC § 4-105(2). [Cases: Banks and Banking 120, 121, 137, 158. C.J.S. Banks and Banking §§ 272–276, 322, 328, 330, 383, 395–397, 399, 402, 404.]

drawee bank.See payor bank.

Federal Home Loan Bank.See FEDERAL HOME LOAN BANK.

federal intermediate credit bank. One of a system of 12 regional banks created in 1923 to discount obligations of agricultural credit corporations and similar institutions making short-term loans to farmers and ranchers. • The system is now merged with federal land banks to create the federal farm-credit system. [Cases: United States 53(7). C.J.S. United States §§ 90, 92–93.]

federal land bank. See FEDERAL LAND BANK.

intermediary bank. A bank to which an item is transferred in the course of collection, even though the bank is not the depository or payor bank. UCC § 4-105(4).

investment bank. A bank whose primary purpose is to acquire financing for businesses, esp. through the sale of securities. • An investment bank does not accept deposits and, apart from selling securities, does not deal with the public at large. See INVESTMENT BANKER. [Cases: Brokers 2. C.J.S. Brokers §§ 2–5.]

member bank. A bank that is a member of the Federal Reserve System. — Also termed reserve bank. See FEDERAL RESERVE SYSTEM. [Cases: Banks and Banking 359. C.J.S. Banks and Banking §§ 661–662.]

mutual savings bank. A bank that has no capital stock and in which the depositors are the owners. See SAVINGS-AND-LOAN ASSOCIATION. [Cases: Banks and Banking 289; Building and Loan Associations 1. C.J.S. Banks and Banking §§ 599–600; Building and Loan Associations, Savings and Loan Associations, and Credit Unions §§ 2–4.]

national bank. A bank incorporated under federal law and governed by a charter approved by the Comptroller of the Currency. • A national bank is permitted to use the abbreviation N.A. (national association) as part of its name. [Cases: Banks and Banking 232, 238. C.J.S. Banks and Banking §§ 482–483, 496.]

negotiating bank. A financial institution that discounts or purchases drafts drawn under a letter of credit issued by another bank. [Cases: Banks and Banking 191. C.J.S. Bills and Notes; Letters of Credit §§ 341–366, 368–370, 372–376.]

nonbank bank. A financial institution that either accepts demand deposits or makes commercial loans, but, unlike banks, does not do both at the same time and therefore can avoid federal regulations on bank ownership. • Nonbank banks were esp. prolific in the 1980s, but amendments to the definition of a bank under federal law have essentially closed this loophole.

nonmember bank. A bank that is not a member of the Federal Reserve System. See FEDERAL RESERVE SYSTEM.

payor bank. A bank that is asked to pay the amount of a negotiable instrument and, on the bank's acceptance, is obliged to pay that amount; a bank by which an item is payable as drawn or accepted. • Because the bank is the drawee of a draft, it is also termed a drawee bank. UCC § 4-105(3). [Cases: Banks and Banking 137, 158. C.J.S. Banks and Banking §§ 322, 328, 330, 383, 395–397, 399, 402, 404.]

presenting bank. A nonpayor bank that presents a negotiable instrument for payment. UCC §

4-105(6). [Cases: Banks and Banking 158. C.J.S. Banks and Banking §§ 322, 383, 395–397, 399, 402, 404.]

private bank. An unincorporated banking institution owned by an individual or partnership and, depending on state statutes, subject to or free from state regulation.

remitting bank. A payor or intermediary bank that pays or transfers an item.

reserve bank. See member bank.

respondent bank. A bank, association, or other entity that exercises fiduciary powers, that holds securities on behalf of beneficial owners, and that deposits the securities for safekeeping with another bank, association, or other entity exercising fiduciary powers. SEC Rule 14a-1(k) (17 CFR § 240.14a-1(k)).

savings-and-loan bank. See SAVINGS-AND-LOAN ASSOCIATION.

savings bank. A bank that makes primarily home mortgage and some other consumer loans, receives deposits and pays interest on them, and may offer checking accounts. • Historically, savings banks did not provide any checking services. [Cases: Banks and Banking 289. C.J.S. Banks and Banking §§ 599–600.]

state bank. A bank chartered by a state and supervised by the state banking department. • For a state bank to have FDIC insurance on deposits, it must become a member of the Federal Reserve System. [Cases: Banks and Banking 2–6. C.J.S. Banks and Banking §§ 2–5, 7–9, 15–18.]

bank, vb. 1. To keep money at <he banks at the downtown branch>. 2. To deposit (funds) in a bank <she banked the prize money yesterday>. 3. Slang. To loan money to facilitate (a transaction) <who banked the deal?>. • The lender's consideration usu. consists of a fee or an interest in the property involved in the transaction.

BANKABLE PAPER

bankable paper. See PAPER.

BANK ACCEPTANCE

bank acceptance. See banker's acceptance under ACCEPTANCE(4).

BANK ACCOUNT

bank account. See ACCOUNT.

BANK-ACCOUNT TRUST

bank-account trust. See Totten trust under TRUST.

BANK BILL

bank bill. See BANKNOTE.

BANKBOOK

bankbook. See PASSBOOK.

BANK CHARTER

bank charter. See CHARTER(3).

BANK CREDIT

bank credit. See CREDIT(4).

BANK DISCOUNT

bank discount. The interest that a bank deducts in advance on a note. See DISCOUNT(2).

BANK DRAFT

bank draft. See DRAFT.

BANKER

banker. A person who engages in the business of banking.

BANKEROUT

bankerout, adj. Archaic. Indebted beyond the means of payment; bankrupt. — Also spelled bankrout.

BANKER'S ACCEPTANCE

banker's acceptance. See ACCEPTANCE(4).

BANKER'S BILL

banker's bill. See finance bill under BILL(6).

BANKER'S LIEN

banker's lien. See LIEN.

BANKER'S NOTE

banker's note. See NOTE (1).

BANK EXAMINER

bank examiner. A federal or state official who audits banks with respect to their financial condition, management, and policies. [Cases: Banks and Banking 17. C.J.S. Banks and Banking §§ 10–14.]

BANK FOR COOPERATIVES

bank for cooperatives. See BANK.

BANK FRAUD

bank fraud. See FRAUD.

BANK HOLDING COMPANY

bank holding company. A company that owns or controls one or more banks. • Ownership or control of 25 percent is usu. enough for this purpose. — Abbr. BHC. [Cases: Banks and Banking 521–528. C.J.S. Banks and Banking §§ 524, 661, 718–731, 746–747.]

BANKING

banking. The business carried on by or with a bank.

BANKING ACT OF 1933

Banking Act of 1933. See GLASS-STEAGALL ACT.

BANKING DAY

banking day. 1. Banking hours on a day when a bank is open to the public for carrying on substantially all its banking functions. • Typically, if the bookkeeping and loan departments are closed by a certain hour, the remainder of that day is not part of that bank's banking day. 2. A day on which banks are open for banking business.

“ ‘Banking day’ is defined in [UCC §] 4-104(1)(c) [now 4-104(a)(3)]. The definition was designed to exclude from the ‘banking day’ all bank holidays (although some states added specifics on holidays) as well as the portions of a day on which one or more of the substantial departments of the bank closed off their services to the public, even though it remained open for accepting deposits and withdrawing funds as well as continuously processing items for payment or for dispatch. Clearly, when night depositaries came into vogue, their existence did not extend the ‘banking day.’ The present existence and growing use of so-called 24-hour teller machines also does not extend the banking day. The nature of the banking day is sufficiently tenuous that banks would do well to fix a definite cutoff hour under subsection 4-107(1).” William D. Hawkland, Uniform Commercial Code Series § 4-104:01, at 4-43 (1984).

BANKING GAME

banking game. A gambling arrangement in which the house (i.e., the bank) accepts bets from all players and then pays out winning bets and takes other bettors' losses. [Cases: Gaming 68(.5).]

BANK NIGHT

bank night. A lottery in which a prize is awarded to a person (often a theater patron) whose name is drawn randomly from a hopper. [Cases: Lotteries 3. C.J.S. Lotteries §§ 2–7, 11.]

BANKNOTE

banknote. A bank-issued promissory note that is payable to bearer on demand and that may circulate as money. — Also written bank note. — Also termed bank bill. [Cases: Banks and Banking 196–212. C.J.S. Banks and Banking § 250.]

spurious banknote. 1. A banknote that is legitimately made from a genuine plate but that has

forged signatures of the issuing officers, or the names of fictitious officers. 2. A banknote that is not a legitimate impression from a genuine plate, or is made from a counterfeit plate, but that is signed by the persons shown on it as the issuing officers. — Also termed spurious bank bill.

BANK RATE

bank rate. See INTEREST RATE.

BANKR. REP.

Bankr. Rep. abbr. Bankruptcy Reporter. — Also abbreviated B.R.

BANKRUPT

bankrupt, adj. Indebted beyond the means of payment; insolvent. — Also spelled (archaically) bankerout; bankrout. — bankrupt, vb.

bankrupt, n. 1. A person who cannot meet current financial obligations; an insolvent person. • This term was used in bankruptcy statutes until 1979, and is still commonly used by nonbankruptcy courts. But the Bankruptcy Code uses debtor instead of bankrupt. 2. DEBTOR(2).

cessionary bankrupt. Archaic. A person who forfeits all property so that it may be divided among creditors. • For the modern near-equivalent, see CHAPTER 7. [Cases: Bankruptcy 2221. C.J.S. Bankruptcy § 45.]

BANKRUPTCY

bankruptcy. 1. A statutory procedure by which a (usu. insolvent) debtor obtains financial relief and undergoes a judicially supervised reorganization or liquidation of the debtor's assets for the benefit of creditors; a case under the Bankruptcy Code (Title 11 of the United States Code). • For various types of bankruptcy under federal law, see the entries at CHAPTER. — Also termed bankruptcy proceeding; bankruptcy case; insolvency proceeding. [Cases: Bankruptcy 2001. C.J.S. Bankruptcy § 2.]

“There are two general forms of bankruptcy: (1) liquidation and (2) rehabilitation. Chapter 7 of the Code is entitled ‘Liquidation.’ The terms ‘straight bankruptcy’ and ‘bankruptcy’ often are used to describe liquidation cases under the bankruptcy laws because the vast majority of bankruptcy cases are liquidation cases. In a typical Chapter 7 liquidation case, the trustee collects the nonexempt property of the debtor, converts that property to cash, and distributes the cash to the creditors. The debtor gives up all the nonexempt property she owns at the time of the filing of the bankruptcy petition and hopes to obtain a discharge. Chapters 11, 12, and 13 of the Bankruptcy Code contemplate debtor rehabilitation. In a rehabilitation case, creditors look to future earnings of the debtor, not to the property of the debtor at the time of the initiation of the bankruptcy proceeding, to satisfy their claims. The debtor generally retains its assets and makes payments to creditors, usually from postpetition earnings, pursuant to a court-approved plan.” David G. Epstein et al., Bankruptcy § 1-5, at 8–9 (1993).

family-farmer bankruptcy. See CHAPTER 12 (2).

farmer bankruptcy. See CHAPTER 12 (2).

involuntary bankruptcy. A bankruptcy case commenced by the debtor's creditors (usu. three or more), or, if the debtor is a partnership, by fewer than all the general partners. 11 USCA § 303(b). — Also termed involuntary proceeding. [Cases: Bankruptcy 2281. C.J.S. Bankruptcy § 56.]

liquidation bankruptcy. See CHAPTER 7 (2).

malicious bankruptcy. An abuse of process by which a person wrongfully petitions to have another person adjudicated a bankrupt or to have a company wound up as insolvent. [Cases: Bankruptcy 2187. C.J.S. Bankruptcy §§ 36, 64.]

straight bankruptcy. See CHAPTER 7 (2).

voluntary bankruptcy. A bankruptcy case commenced by the debtor. 11 USCA § 301. [Cases: Bankruptcy 2251. C.J.S. Bankruptcy § 50.]

2. The field of law dealing with the rights of debtors who are financially unable to pay their debts and the rights of their creditors. — Also termed bankruptcy law. 3. The status of a party who has declared bankruptcy under a bankruptcy statute. — Also termed statutory insolvency. 4. Informally, the fact of being financially unable to pay one's debts and obligations as they become due; insolvency. • The roots of bankruptcy are the Latin *bancus* (table) and *ruptus* (broken). The English word bankruptcy derives from the Italian *banca rotta*, referring to the medieval Italian custom of breaking the counter of a financially failed merchant. — Also termed (in sense 4) failure to meet obligations.

BANKRUPTCY ACT

Bankruptcy Act. The Bankruptcy Act of 1898, which governed bankruptcy cases filed before October 1, 1979.

BANKRUPTCY CASE

bankruptcy case. A proceeding commenced by filing a voluntary or involuntary petition under a bankruptcy statute. See BANKRUPTCY (1).

BANKRUPTCY CLAUSE

bankruptcy clause. See IPSO FACTO CLAUSE.

BANKRUPTCY CODE

Bankruptcy Code. Title I of the Bankruptcy Reform Act of 1978 (as amended and codified in 11 USCA), which governs bankruptcy cases filed on or after October 1, 1979. [Cases: Bankruptcy 2011. C.J.S. Bankruptcy § 2.]

BANKRUPTCY COURT

Bankruptcy Court. A U.S. district court subunit comprising the bankruptcy judges within the district and exclusively concerned with administering bankruptcy proceedings. [Cases: Bankruptcy 2121, 2123. C.J.S. Bankruptcy § 7.]

BANKRUPTCY CRIME

bankruptcy crime. A crime committed in connection with a bankruptcy case, such as a trustee's embezzling from the debtor's estate. 18 USCA §§ 152–157. See bankruptcy fraud under FRAUD.

BANKRUPTCY ESTATE

bankruptcy estate. A debtor's legal and equitable interests in property at the beginning of a bankruptcy case where the property is subject to administration. See 11 USCA § 541. [Cases: Bankruptcy 2491–2559. C.J.S. Bankruptcy §§ 105–109, 111, 113–120, 122–124, 126, 128.]

BANKRUPTCY FRAUD

bankruptcy fraud. See FRAUD.

BANKRUPTCY JUDGE

bankruptcy judge. See JUDGE.

BANKRUPTCY LAW

bankruptcy law. 1. INSOLVENCY LAW. 2. Traditionally, a statute that provides some relief and protection to an insolvent debtor or to the debtor's creditors. Cf. INSOLVENCY LAW. 3. BANKRUPTCY(2).

BANKRUPTCY PLAN

bankruptcy plan. A detailed program of action formulated by a debtor or its creditors to govern the debtor's rehabilitation, continued operation or liquidation, and payment of debts. • The bankruptcy court must approve the plan before it is implemented. — Often shortened to plan. — Also termed plan of reorganization (for Chapter 11); plan of rehabilitation (for Chapter 13). See ARRANGEMENT WITH CREDITORS. [Cases: Bankruptcy 3531–3570, 3704. C.J.S. Bankruptcy §§ 381–411, 438.]

BANKRUPTCY PROCEEDING

bankruptcy proceeding. 1. BANKRUPTCY(1). 2. Any judicial or procedural action (such as a hearing) related to a bankruptcy. [Cases: Bankruptcy 2156. C.J.S. Bankruptcy § 26.]

BANKRUPTCY-REMOTE ENTITY

bankruptcy-remote entity. A business entity formed in a manner designed to minimize the risk of becoming a debtor in a bankruptcy case. • The entity's organizational charter usu. requires at least one independent director to be appointed, as well as a unanimous vote by the entity's directors, before a bankruptcy petition may be filed. The business is usu. a special-purpose entity established to perform limited functions, such as to purchase and hold accounts receivable or other financial assets that generate revenue. It also has only one or a few primary creditors, to reduce the likelihood of an involuntary bankruptcy. A bankruptcy-remote entity will sometimes issue securities instead of receiving a loan from a financial institution. See SINGLE-PURPOSE

PROJECT; SPECIAL-PURPOSE ENTITY; project financing under FINANCING.

BANKRUPTCY TRUSTEE

bankruptcy trustee. See TRUSTEE(2).

BANK SECRECY ACT

Bank Secrecy Act. A federal statute that requires banks and other financial institutions to maintain records of customers' transactions and to report certain domestic and foreign transactions.

• This act, passed by Congress in 1970, is designed to help the federal government in criminal, tax, and other regulatory investigations. 12 USCA § 1829b; 31 USCA § 5311. [Cases: Banks and Banking 16; United States 34. C.J.S. Banks and Banking § 27; United States §§ 162–163.]

BANK STATEMENT

bank statement. See STATEMENT OF ACCOUNT(1).

BANK-STATEMENT RULE

bank-statement rule. Commercial law. The principle that if a bank customer fails to examine a bank statement and any items returned with it, and report to the bank within a reasonable time any unauthorized payments because of a material alteration or forgery, the customer may be precluded from complaining about the alteration or forgery. UCC § 4-406. [Cases: Banks and Banking 148(3, 4), 174. C.J.S. Banks and Banking §§ 416, 419, 421–428, 430–432, 434–438.]

BANN

bann, n. [Law Latin] Hist. 1. The power of a court to issue an edict, esp. one relating to the public peace. 2. The edict itself. — Also termed bannum.

“An essential attribute of judicial power in the later periods is the bann, the right to command and forbid. Etymologically, bann comes from a root signifying loud speech. It may have meant at first the order issued by the leader in war; later an administrative command or ordinance. Hence it covers the official proclamation of peace in the court, and then it comes to mean the peace itself. In the older Frank sources, bann appears in the Latin as sermo, and sermo regis is the king's peace. Extra sermonem regis ponere means to put out of the peace. Another Latin or rather Latinized German word is forisbannire, from which comes our word ‘banish.’ ” Munroe Smith, *The Development of European Law* 35 (1928).

BANNITIO

bannitio (b<<schwa>>-nish-ee-oh or ba-). [Law Latin] Hist. Expulsion by a ban or public proclamation; banishment. See EXILE; BAN(1).

BANNITUS

bannitus (ban-<<schwa>>-t<<schwa>>s). [Law Latin] Hist. A person under a ban; an outlaw. See BAN(1).

BANNS OF MATRIMONY

banns of matrimony.Family law. Public notice of an intended marriage. • The notice is given to ensure that objections to the marriage would be voiced before the wedding. Banns are still common in many churches. — Also spelled bans of matrimony. — Also termed banns of marriage. [Cases: Marriage 24.]

“A minister is not obliged to publish banns of matrimony unless the persons to be married deliver to him, at least seven days before the intended first publication, a notice in writing stating the Christian name and surname and the place of residence of each of them and the period during which each has resided there.... Banns are to be published in an audible manner and in the form of words prescribed by the rubric prefixed to the office of matrimony in the Book of Common Prayer on three Sundays preceding the solemnisation of marriage during morning service or, if there be no morning service on a Sunday on which they are to be published, during evening service.” Mark Hill, *Ecclesiastical Law* 136 (2d ed. 2001) (dealing with practice in the Church of England).

BANNUM

bannum. See BANN.

BAR

bar,n.1. In a courtroom, the railing that separates the front area, where court business is conducted, from the back area, which provides seats for observers; by extension, a similar railing in a legislative assembly <the spectator stood behind the bar>.2. The whole body of lawyers qualified to practice in a given court or jurisdiction; the legal profession, or an organized subset of it <the attorney's outrageous misconduct disgraced the bar>. See BAR ASSOCIATION. [Cases: Attorney and Client 31. C.J.S. Attorney and Client §§ 8–9.]

integrated bar.A bar association in which membership is a statutory requirement for practicing law; a usu. statewide organization of lawyers in which membership is compulsory in order for a lawyer to have a law license. — Also termed unified bar.

specialty bar.A voluntary bar association for lawyers with special interests, specific backgrounds, or common practices.

unified bar.See integrated bar.

voluntary bar.A bar association that lawyers need not join to practice law.

3. A particular court or system of courts <case at bar>. • Originally, case at bar referred to an important case tried “at bar” at the Royal Courts of Justice in London. 4.BAR EXAMINATION <Pendarvis passed the bar>.5. A barrier to or the destruction of a legal action or claim; the effect of a judgment for the defendant <a bar to any new lawsuit>. Cf. MERGER(6).6. A plea arresting a lawsuit or legal claim <the defendant filed a bar>. See PLEA IN BAR. [Cases: Pleading 108, 109. C.J.S. Pleading § 180.] 7.Patents. Statutory preclusion from patentability, based on publication, use, sale, or other anticipatory activity that occurred before an invention's critical date and thereby negated the invention's novelty. • Under § 102 of the Patent Act, a person is not entitled to a patent if (1) before the date of invention, the same invention was publicly known or used by others in this country or was patented or described in a printed publication anywhere in

the world; (2) more than one year before the U.S. filing date, the invention was patented or described in a printed publication anywhere in the world or was in public use, on sale, or offered for sale in the U.S.; (3) the invention has been abandoned by the applicant; (4) the invention was first patented by the applicant or its representatives in a foreign country before the U.S. filing date, and the foreign application was filed more than 12 months before the U.S. filing; (5) before the date of invention, the invention was described in a patent granted on an application filed by someone else in the U.S.; (6) the inventor did not invent the subject matter of the application; or (7) the invention was previously made in this country by someone else who has not abandoned, suppressed, or concealed it. — Also termed statutory bar. [Cases: Patents 80. C.J.S. Patents §§ 105–106, 108–111.]

8.Trademarks. Statutory preclusion of certain marks from listing on the Principal Register. • Under 15 USCA § 1052, a mark is not entitled to registration if: (1) it consists of immoral, deceptive, or scandalous matter; (2) it falsely suggests a connection with, or brings into contempt or disrepute, a living or dead person, an institution, a belief, or a nation's symbols; (3) it depicts or simulates the flag, coat of arms, or other insignia of the U.S., a state, a municipality, or a foreign nation; (4) it consists of a geographic designation that, when used on wines or spirits, designates a place other than the goods' actual origin; (5) it consists of the name, signature, or portrait of a living person who has not consented to registration; (6) it is likely to deceive or to cause confusion or mistake because when applied to specific goods and services it resembles someone else's unabandoned mark registered in the U.S. Patent and Trademark Office, or an unabandoned mark or tradename previously used in the U.S.; (7) it is descriptive or deceptively misdescriptive of the goods or services; (8) it is primarily geographically descriptive or primarily geographically misdescriptive of the goods or services; (9) it is primarily a surname; or (10) it comprises matter that, as a whole, is functional. [Cases: Trade Regulation 156–167. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 158–165, 167.]

bar,vb. To prevent, esp. by legal objection <the statute of limitations barred the plaintiff's wrongful-death claim>.

BAR ASSOCIATION

bar association.An organization of members of the legal profession <several state bar associations sponsor superb CLE programs>. See BAR(2). [Cases: Attorney and Client 31. C.J.S. Attorney and Client §§ 8–9.]

local bar association.A bar association organized on a local level, such as an association within a county or city. • Local bar associations are voluntary in membership.

state bar association.An association or group of attorneys that have been admitted to practice law in a given state; a bar association organized on a statewide level, often with compulsory membership. • State bar associations are usu. created by statute, and membership is often mandatory for those who practice law in the state. Unlike voluntary, professional-development bar associations such as the American Bar Association, state bar associations often have the authority to regulate the legal profession, by undertaking such matters as disciplining attorneys and bringing lawsuits against those who engage in the unauthorized practice of law.

BAR DATE

bar date. Patents. The date by which a U.S. patent application must be filed to avoid losing the right to receive a patent. • In the U.S., the bar date for a patent application is one year after the invention is disclosed in a publication or patented in another country, or put into public use, sold, or offered for sale in the U.S. <since the invention was offered for domestic sale on January 1, 2000, the bar date for the U.S. patent application is January 1, 2001>. Cf. absolute novelty under NOVELTY. [Cases: Patents 67.1. C.J.S. Patents § 52.]

BAREBOAT CHARTER

bareboat charter. See CHARTER(8).

BAREBONES INDICTMENT

barebones indictment. See INDICTMENT.

BARE LICENSE

bare license. See LICENSE.

BARE LICENSEE

bare licensee. See LICENSEE.

BARE OWNERSHIP

bare ownership. See trust ownership under OWNERSHIP.

BARE POSSIBILITY

bare possibility. See naked possibility under POSSIBILITY.

BARE PROMISE

bare promise. See gratuitous promise under PROMISE.

BARE STEERAGEWAY

bare steerageway. Maritime law. The lowest speed necessary for a vessel to maintain course.

BARE TRUSTEE

bare trustee. See TRUSTEE(1).

BAR EXAMINATION

bar examination. A written test that a person must pass before being licensed to practice law. • The exam varies from state to state. — Often shortened to bar. [Cases: Attorney and Client 6. C.J.S. Attorney and Client § 18.]

Multistate Bar Examination. A nationally standardized part of a state bar examination given as a multiple-choice test covering broad legal subjects, including constitutional law, contracts, criminal law, evidence, property, and torts. — Abbr. MBE.

BAR EXAMINER

bar examiner. One appointed by the state to test applicants (usu. law-school graduates) by preparing, administering, and grading the bar examination. [Cases: Attorney and Client 6. C.J.S. Attorney and Client § 18.]

BARGAIN

bargain, n. An agreement between parties for the exchange of promises or performances. • A bargain is not necessarily a contract because the consideration may be insufficient or the transaction may be illegal. See BARGAIN SALE; informal contract under CONTRACT. [Cases: Contracts 1. C.J.S. Contracts §§ 2–3, 9, 12.] — bargain, vb.

“A bargain is an agreement of two or more persons to exchange promises, or to exchange a promise for a performance. Thus defined, ‘bargain’ is at once narrower than ‘agreement’ in that it is not applicable to all agreements, and broader than ‘contract’ since it includes a promise given in exchange for insufficient consideration. It also covers transactions which the law refuses to recognize as contracts because of illegality.” Samuel Williston, *A Treatise on the Law of Contracts* § 2A, at 7 (Walter H.E. Jaeger ed., 3d ed. 1957).

catching bargain. An agreement on unconscionable terms to purchase real property from — or loan money secured by real property to — a person who has an expectant or reversionary interest in the property.

illegal bargain. A bargain whose formation or performance is criminal, tortious, or otherwise contrary to public policy.

plea bargain. See PLEA BARGAIN.

time-bargain. See FUTURES CONTRACT.

unconscionable bargain. See unconscionable agreement under AGREEMENT.

BARGAIN AND SALE

bargain and sale. 1. A negotiated transaction, usu. for goods, services, or real property. 2. Hist. A written agreement for the sale of land whereby the buyer would give valuable consideration (recited in the agreement) without having to enter the land and perform livery of seisin, so that the parties equitably “raised a use” in the buyer. • The result of the transaction was to leave the legal estate in fee simple in the seller and to create an equitable estate in fee simple in the buyer until legal title was transferred to the buyer by delivery of a deed. In most jurisdictions, the bargain and sale has been replaced by the statutory deed of grant. [Cases: Deeds 22. C.J.S. Deeds § 16.]

BARGAIN-AND-SALE DEED

bargain-and-sale deed. See DEED.

BARGAINED-FOR EXCHANGE

bargained-for exchange. Contracts. A benefit or detriment that the parties to a contract agree to as the price of performance in return for a promise. • The Restatement of Contracts (Second) defines consideration exclusively in terms of bargain, but it does not mention benefit or detriment.

BARGAINEE

bargainee. The buyer in a bargained-for exchange.

BARGAINING AGENT

bargaining agent. See AGENT(2).

BARGAINING UNIT

bargaining unit. A group of employees authorized to engage in collective bargaining on behalf of all the employees of a company or an industry sector. [Cases: Labor Relations 202. C.J.S. Labor Relations §§ 173–174, 176, 178, 180–181, 183–186.]

BARGAIN MONEY

bargain money. See EARNEST MONEY.

BARGAINOR

bargainor (bahr-g<<schwa>>n-or-orbahr-g<<schwa>>-n<<schwa>>r). The seller in a bargained-for exchange.

BARGAIN PURCHASE

bargain purchase. See BARGAIN SALE.

BARGAIN SALE

bargain sale. A sale of property for less than its fair market value. • For tax purposes, the difference between the sale price and the fair market value must be taken into account. And bargain sales between family members may lead to gift-tax consequences. — Also termed bargain purchase.

BARGAIN THEORY OF CONSIDERATION

bargain theory of consideration. The theory that a promise or performance that is bargained for in exchange for a promise is consideration for the promise. • This theory underlies all bilateral contracts. See bilateral contract under CONTRACT. [Cases: Contracts 50. C.J.S. Contracts § 87.]

“[C]lassical contract theory tended to associate the doctrine of consideration with the concept of bargain. The emphasis of classical law shifted away from actual benefits and detriments to the mutual promises which constitute a wholly executory contract. American lawyers developed from this trend a ‘bargain theory of consideration’ and similarly in English law a more modern basis for the doctrine of consideration was found by some lawyers in the notion that a contract is a bargain in which the consideration is the price of the bargain. Allied to this is the supposed rule that nothing can be treated as a consideration unless it is seen by the parties as the ‘price’ of the bargain.” P.S. Atiyah, *An Introduction to the Law of Contract* 119 (3d ed. 1981).

BAROMETER STOCK

barometer stock. See STOCK.

BARON

baron. 1.Hist. A man who held land directly from the Crown in exchange for military service. 2.Hist. A husband. See BARON ET FEME. 3. One of the judges of the former English or Scottish Courts of Exchequer. — Abbr. B. See BARONS OF THE EXCHEQUER . 4. A noble rank; specif., the lowest rank in the British peerage. 5. Generally, a lord or nobleman.

BARONES SCACCARII

barones scaccarii. See BARONS OF THE EXCHEQUER.

BARONET

baronet.Hist. A non-noble hereditary title that descends in the male line only. • Baronets originated in 1611 when James I began selling the title as a way to raise revenue.

BARON ET FEME

baron et feme (bar-<<schwa>>n ay fem). [Law French] Hist. Husband and wife. See COVERTURE; FEME COVERT.

BARONIAL COURT

baronial court. See COURT.

BARON PARKE'S RULE

Baron Parke's rule. See GOLDEN RULE.

BARONS OF THE EXCHEQUER

Barons of the Exchequer.Hist. The six judges of the Court of Exchequer. • After the 1873 transfer of the Court's jurisdiction to the High Court of Justice, the judges were known as justices of the High Court. — Also termed barones scaccarii. See COURT OF EXCHEQUER.

BARONY

barony (bar-<<schwa>>n-ee). 1.BARON(1). 2.TENURE(2).

BARRA

barra (bah-r<<schwa>>). [Law French “bar”] Hist. 1. See PLEA IN BAR. 2. A barrister. — Also spelled barre.

BARRATOR

barrator (bar-<<schwa>>-t<<schwa>>r), n. A fomenter of quarrels and lawsuits; one who stirs up dissension and litigation among people. — Also spelled barretor. Cf. CHAMPERTOR.

“Barrator or Barater (Fr. Barateur, a Deceiver) Is a common mover or maintainer of Suits, Quarrels, or Parts, either in Courts or elsewhere in the Country, and is himself never quiet, but at

variance with one or other.” Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

BARRATRY

barratry (bar-*<<schwa>>*-tree orbair-), n.1. Vexatious incitement to litigation, esp. by soliciting potential legal clients. • Barratry is a crime in most jurisdictions. A person who is hired by a lawyer to solicit business is called a capper. See CAPPER(1). [Cases: Champerty and Maintenance 4(.5), 5(.5), 9. C.J.S. Champerty and Maintenance, Barratry and Related Matters §§ 25–27.] 2. Maritime law. Fraudulent or grossly negligent conduct (by a master or crew) that is prejudicial to a shipowner. [Cases: Seamen 14; Shipping 61. C.J.S. Seamen §§ 30–32; Shipping § 159.]

“[S]ailing out of port in violation of an embargo, or without paying the port duties, or to go out of the regular course upon a smuggling expedition, or to be engaged in smuggling against the consent of the owner, are all of them acts of barratry, equally with more palpable and direct acts of violence and fraud, for they are wilful breaches of duty by the master. It makes no difference in the reason of the thing, whether the injury the owner suffers be owing to an act of the master, induced by motives of advantage to himself, or of malice to the owner, or a disregard of those laws which it was the master's duty to obey, and which the owner relied upon him to observe. It is, in either case, equally barratry.” 3 James Kent, *Commentaries on American Law* *305–06 (George Comstock ed., 11th ed. 1866).

3. The buying or selling of ecclesiastical or governmental positions. 4. The crime committed by a judge who accepts a bribe in exchange for a favorable decision. Cf. BRIBE. — barratrous (bar-*<<schwa>>*-tr*<<schwa>>*s), adj.

BARRIER TO ENTRY

barrier to entry. An economic factor that makes it difficult for a business to enter a market and compete with existing businesses.

“Strictly speaking, a barrier to entry is a condition that makes the long-run costs of a new entrant into a market higher than the long-run costs of the existing firms in the market; a good example is a regulatory limitation on entry. The term is also used, more questionably, as a synonym for heavy start-up costs.” Richard A. Posner, *Economic Analysis of Law* § 10.8, at 227 (2d ed. 1977).

BARRING OF ENTAIL

barring of entail. The freeing of an estate from the limitations imposed by an entail and permitting its free disposition. • This was anciently done by means of a fine or common recovery, but later by a deed in which the tenant and next heir join. — Also termed breaking of entail; disentailment. See ENTAIL. [Cases: Deeds 127; Estates in Property 12. C.J.S. Deeds § 247; Estates §§ 22–27.]

BARRISTER

barrister (bar-is-t*<<schwa>>*r), n. In England or Northern Ireland, a lawyer who is admitted

to plead at the bar and who may argue cases in superior courts. • In many other Commonwealth nations, the legal profession is similarly divided into barristers and solicitors. Cf. SOLICITOR(4). — barristerial (bar-*<<schwa>>*-steer-ee-*<<schwa>>*l), adj.

inner barrister. 1.QUEEN'S COUNSEL. 2. A student member of an Inn of Court.

outer barrister.A barrister called to the bar, but not called to plead from within it, as a Queen's Counsel or (formerly) serjeant-at-law is permitted to do; a barrister belonging to the outer bar. — Also termed utter barrister. See CALL TO THE BAR; OUTER BAR.

vacation barrister.A barrister who, being newly called to the bar, for at least three years must attend inn-of-court functions that are held during the long vacation.

BARTER

barter,n. The exchange of one commodity for another without the use of money. — barter,vb.

BASE

base,adj. Servile; (of a villein) holding land at the will of the lord. See base estate under ESTATE(1).

BASE COURT

base court.See COURT.

BASED ON

based on.Copyright. Derived from, and therefore similar to, an earlier work. • If one work is “based on” an earlier work, it infringes the copyright in the earlier work. To be based on an earlier work, a later work must embody substantially similar expression, not just substantially similar ideas. See derivative work under WORK(2).

BASE ESTATE

base estate.See ESTATE(1).

BASE FEE

base fee.1.FEE(2).2.fee simple determinable under FEE SIMPLE.

BASEL CONVENTION

Basel Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal.A 1992 treaty establishing formal rules and procedures for the transportation and disposal of hazardous waste across national borders. • The United States had not ratified the treaty as of 2003. — Often shortened to Basel Convention.

BASELINE

baseline.Int'l law.The line that divides the land from the sea, by which the extent of a state's coastal jurisdiction is measured. [Cases: International Law 7. C.J.S. International Law §§

23–24.]

BASEMENT COURT

basement court.Slang. A low-level court of limited jurisdiction, such as a police court, traffic court, municipal court, or small-claims court.

BASE-POINT PRICING

base-point pricing. 1. A pricing method that adds the price at the factory to the freight charges, which are calculated as the cost of shipping from a set location to the buyer's location. • The chosen shipping base point may be the same for all customers, or it may be a specific, established location, such as a manufacturing plant nearest to the buyer. 2. A uniform pricing policy in which the cost of transportation to all locations is presumed to be the same.

BASE SERVICE

base service.Hist. Agricultural work performed by a villein tenant in exchange for the lord's permission to hold the land. Cf. KNIGHT-SERVICE.

BASE TENURE

base tenure.See TENURE.

BASIC CROPS

basic crops.See CROPS.

BASIC-FORM POLICY

basic-form policy.See INSURANCE POLICY.

BASIC MISTAKE

basic mistake.See MISTAKE.

BASIC NORM

basic norm.See NORM.

BASIC PATENT

basic patent.See pioneer patent under PATENT(3).

BASILICA

basilica (b<<schwa>>-sil-i-k<<schwa>>). [Greek] Hist.1. (cap.) A 60-book Greek summary of Justinian's Corpus Juris Civilis, with comments (scholia). • The Basilica (“royal law”) was begun by the Byzantine emperor Basil I, and it served as a major source of the law of the Eastern Empire from the early 10th century until Constantinople's fall in 1453. 2. A colonnaded hall used as a law court or for trading; specif., in ancient Rome, a public building usu. used as a court of justice. • A basilica typically featured a nave with two aisles and an apse. Architects adopted the basilica's layout for the design of early Christian churches.

BASIS

basis. 1. A fundamental principle; an underlying condition. 2. Tax. The value assigned to a taxpayer's investment in property and used primarily for computing gain or loss from a transfer of the property. • When the assigned value represents the cost of acquiring the property, it is also called cost basis. — Also termed tax basis. [Cases: Internal Revenue 3195; Taxation 996.1–998. C.J.S. Internal Revenue §§ 114–115; Taxation §§ 1726, 1732–1734.] Pl. bases.

adjusted basis. Basis increased by capital improvements and decreased by depreciation deductions. [Cases: Internal Revenue 3197; Taxation 996.1–998. C.J.S. Internal Revenue § 119; Taxation §§ 1726, 1732–1734.]

“[I]t is well to consider the word ‘adjusted’ in the term ‘adjusted basis.’ Often, after property is acquired, certain adjustments (increases or decreases to the dollar amount of the original basis) must be made. After these adjustments, the property then has an ‘adjusted basis.’ ” Michael D. Rose & John C. Chommie, *Federal Income Taxation* § 6.04, at 300 (3d ed. 1988).

adjusted cost basis. Basis resulting from the original cost of an item plus capital additions minus depreciation deductions.

carryover basis. The basis of property transferred by gift or in trust, equaling the transferor's basis. — Also termed substituted basis. [Cases: Internal Revenue 3201.]

stepped-up basis. The basis of property transferred by inheritance. • Stepped-up basis equals the fair market value of property on the date of the decedent's death (or on the alternate valuation date). [Cases: Internal Revenue 3205. C.J.S. Internal Revenue § 116.]

substituted basis. 1. The basis of property transferred in a tax-free exchange or other specified transaction. [Cases: Internal Revenue 3184. C.J.S. Internal Revenue §§ 120–121, 124.] 2. See carryover basis.

BASIS POINT

basis point. One-hundredth of 1%; .01%. • Basis points are used in computing investment yields (esp. of bonds) and in apportioning costs and calculating interest rates in real-estate transactions.

BASKET CLAUSE

Basket Clause. See NECESSARY AND PROPER CLAUSE.

BASSE JUSTICE

basse justice (bahs zhoo-stees). [Law French “low justice”] Hist. A feudal lord's right to personally try a person charged with a minor offense.

BASTARD

bastard. 1. See illegitimate child under CHILD. 2. A child born to a married woman whose husband could not be or is otherwise proved not to be the father. • Because the word is most

commonly used as a slur, its use in family-law contexts is much in decline. [Cases: Children Out-of-Wedlock 1. C.J.S. Children Out-of-Wedlock §§ 2–11.]

adulterine bastard. A child born to a married woman whose husband is not the father of the child. • The rebuttable presumption is generally that a child born of the marriage is the husband's child. A child born to a woman by means of artificial insemination may be termed an adulterine bastard, but most jurisdictions prohibit a husband who has consented to the artificial insemination from denying paternity and responsibility for the child. Cf. ARTIFICIAL INSEMINATION.

BASTARD EISNE

bastard eisne. See EISNE.

BASTARDY

bastardy. See ILLEGITIMACY.

BASTARDY PROCEEDING

bastardy proceeding. See PATERNITY SUIT.

BASTARDY PROCESS

bastardy process. See PATERNITY SUIT.

BASTARDY STATUTE

bastardy statute. Archaic. A criminal statute that punishes an unwed father for failing to support his child. • These statutes have been found unconstitutional because they unfairly discriminate against fathers and do not punish unwed mothers. So they are unenforceable.

BATABLE GROUND

batable ground (bay-t<<schwa>>-b<<schwa>>l). Land of uncertain ownership. • Batable (or debatable) ground originally referred to certain lands on the border of England and Scotland before the 1603 union of the two kingdoms.

BATCH NUMBER

batch number. See SERIES CODE.

BATES NUMBER

Bates number. See BATES-STAMP NUMBER.

BATES STAMP

Bates stamp, n. 1. A self-advancing stamp machine used for affixing an identifying mark, usually a number, to a document or to the individual pages of a document. 2. BATES-STAMP NUMBER. — Sometimes (erroneously) written Bate stamp.

BATES-STAMP

Bates-stamp,vb. To affix a mark, usu. a number, to a document or to the individual pages of a document for the purpose of identifying and distinguishing it in a series of documents <the paralegal is Bates-stamping the records described in the request for discovery>. — Sometimes (erroneously) written Bate-stamp.

BATES-STAMP NUMBER

Bates-stamp number.The identifying number that is affixed to a document or to the individual pages of a document. • The term gets its name from a self-advancing stamp machine made by the Bates Manufacturing Company. The number is typically used to identify documents produced during discovery. — Often shortened to Bates number; Bates stamp.

BATHTUB CONSPIRACY

bathtub conspiracy.See intra-enterprise conspiracy under CONSPIRACY.

BATSON CHALLENGE

Batson challenge.See CHALLENGE(1).

BATTERED CHILD

battered child.See CHILD.

BATTERED-CHILD SYNDROME

battered-child syndrome.Family law. A constellation of medical and psychological conditions of a child who has suffered continuing injuries that could not be accidental and are therefore presumed to have been inflicted by someone close to the child, usu. a caregiver. • Diagnosis typically results from a radiological finding of distinct bone trauma and persistent tissue damage caused by intentional injury, such as twisting or hitting with violence. The phrase was first used by Dr. Henry Kempe and his colleagues in a 1962 article entitled “The Battered Child Syndrome,” which appeared in the Journal of the American Medical Association. As a result of research on battered-child syndrome, the Children's Bureau of the United States Department of Health, Education, and Welfare drafted a model statute requiring physicians to report serious cases of suspected child abuse. See CHILD-ABUSE AND -NEGLECT REPORTING STATUTE. [Cases: Criminal Law 474.4(4).]

BATTERED-PERSON SYNDROME

battered-person syndrome.See BATTERED-WOMAN SYNDROME.

BATTERED-SPOUSE SYNDROME

battered-spouse syndrome.See BATTERED-WOMAN SYNDROME.

BATTERED-WIFE SYNDROME

battered-wife syndrome.See BATTERED-WOMAN SYNDROME.

BATTERED WOMAN

battered woman.Family law. A woman who is the victim of domestic violence; a woman who has suffered physical, emotional, or sexual abuse at the hands of a spouse or partner. See domestic violence under VIOLENCE.

BATTERED-WOMAN SYNDROME

battered-woman syndrome.Family law. A constellation of medical and psychological conditions of a woman who has suffered physical, sexual, or emotional abuse at the hands of a spouse or lover. • Battered-woman syndrome was first described in the early 1970s by Dr. Lenore Walker. It consists of a three-stage cycle of violence: (1) the tension-building stage, which may include verbal and mild physical abuse; (2) the acute battering stage, which includes stronger verbal abuse, increased physical violence, and perhaps rape or other sexual abuse; and (3) the loving-contrition stage, which includes the abuser's apologies, attentiveness, kindness, and gift-giving. This syndrome is sometimes proposed as a defense to justify or mitigate a woman's killing of a man. — Sometimes (more specif.) termed battered-wife syndrome; (more broadly) battered-spouse syndrome; (broadly) battered-person syndrome. [Cases: Criminal Law 474.4(3).]

BATTERY

battery,n.1.Criminal law. The use of force against another, resulting in harmful or offensive contact. — Also termed criminal battery. [Cases: Assault and Battery 48. C.J.S. Assault and Battery §§ 2–3, 62, 64–66, 81.]

“Criminal battery, sometimes defined briefly as the unlawful application of force to the person of another, may be divided into its three basic elements: (1) the defendant's conduct (act or omission); (2) his ‘mental state,’ which may be an intent to kill or injure, or criminal negligence, or perhaps the doing of an unlawful act; and (3) the harmful result to the victim, which may be either a bodily injury or an offensive touching.” Wayne R. LaFave & Austin W. Scott Jr., *Criminal Law* § 7.15, at 685 (2d ed. 1986).

aggravated battery.A criminal battery accompanied by circumstances that make it more severe, such as the use of a deadly weapon or the fact that the battery resulted in serious bodily harm. • In most state statutes, aggravated battery is classified as both a misdemeanor and a felony. [Cases: Assault and Battery 54. C.J.S. Assault and Battery §§ 72–74, 80–81.]

sexual battery.The forced penetration of or contact with another's sexual organs or the perpetrator's sexual organs. Cf. RAPE. • In most state statutes, sexual battery is classified as both a misdemeanor and a felony. [Cases: Rape 1. C.J.S. Rape §§ 1–3, 15.]

simple battery.A criminal battery not accompanied by aggravating circumstances and not resulting in serious bodily harm. • Simple battery is usu. a misdemeanor but may rise to a felony if the victim is, for instance, a child or a senior citizen. [Cases: Assault and Battery 48. C.J.S. Assault and Battery §§ 2–3, 62, 64–66, 81.]

2.Torts. An intentional and offensive touching of another without lawful justification. — Also termed tortious battery. [Cases: Assault and Battery 2. C.J.S. Assault and Battery §§ 2–4, 6–8.]

Cf. ASSAULT. — batter,vb.“A battery is the actual application of force to the body of the prosecutor. It is, in other words, the assault brought to completion. Thus, if a man strikes at another with his cane and misses him, it is an assault; if he hits him, it is a battery. But the slightest degree of force is sufficient, provided that it be applied in a hostile manner; as by pushing a man or spitting in his face. Touching a man to attract his attention to some particular matter, or a friendly slap on the back is not battery, owing to the lack of hostile intention.” 4 Stephen's Commentaries on the Laws of England 62–63 (L. Crispin Warmington ed., 21st ed. 1950).

BATTLE OF THE FORMS

battle of the forms.The conflict between the terms of standard forms exchanged between a buyer and a seller during contract negotiations. • In its original version, UCC § 2-207 attempted to resolve battles of the forms by abandoning the common-law requirement of mirror-image acceptance and providing that a definite expression of acceptance may create a contract for the sale of goods even though it contains different or additional terms. — Also termed UCC battle of the forms. See MIRROR-IMAGE RULE. [Cases: Sales 22(4), 23(4). C.J.S. Sales §§ 38–40, 223.]

“The rules of offer and acceptance are difficult to apply in certain circumstances known as the ‘battle of the forms’ where parties want to enter into a contract, but jockey for position in an attempt to use the rules of law so as to ensure that the contract is on terms of their choosing.” P.S. Atiyah, *An Introduction to the Law of Contract* 54 (3d ed. 1981).

BATTURE

batture (b<<schwa>>-tyooror ba-toor). [French] Soil, stone, or other material that builds under water and may or may not break the surface. • If batture builds against a bank and breaks the surface, it becomes alluvion. See ALLUVION(2). [Cases: Navigable Waters 44(6); Waters and Water Courses 93. C.J.S. Waters §§ 177–182, 184–185.]

BAUMES LAW

Baumes Law.A statute that provides for stricter criminal prosecution and penalties up to life imprisonment for an offender who has four convictions for felonies or certain misdemeanors. • The first Baumes Law, named for New York state Senator Caleb H. Baumes, was passed by the New York legislature in 1926. Cf. THREE-STRIKES LAW.

BAWD

bawd.Archaic. A person, usu. a woman, who solicits customers for a prostitute; a madam. See DISORDERLY HOUSE(2). Cf. PIMP. [Cases: Prostitution 1.C.J.S. Prostitution and Related Offenses §§ 2–4, 8–13, 17, 21–24.]

BAWDY HOUSE

bawdy house.See DISORDERLY HOUSE(2).

BAY

bay.Int'l law. An inlet of the sea, over which the coastal country exercises jurisdiction to enforce its environmental, immigration, and customs laws. [Cases: International Law 5. C.J.S. International Law §§ 14–20.]

historic bay.A bay that, because of its shape, would not be considered a bay subject to the coastal country's jurisdiction, except for that country's long-standing unilateral claim over it; a bay over which the coastal country has traditionally asserted and maintained dominion.

BAYH–DOLE ACT

Bayh–Dole Act.Patents. A federal statute that permits the U.S. Government to take title to or require licensing of nongovernmental inventions made by small businesses and nonprofit organizations while participating in federally funded programs. • Under the Act, an entity funded by the federal government must timely disclose any invention made in the course of a federally funded program. The entity may elect to retain title and to file and prosecute a patent application covering the invention. If the entity retains title to the invention, the government may still “march in” to force the entity to grant exclusive or nonexclusive licenses in appropriate circumstances. The Act is codified in 35 USCA §§ 200–212. — Also termed Patent and Trademark Law Amendments Act. See MARCH-IN RIGHTS.

BCD

BCD. See bad-conduct discharge under DISCHARGE.

BCD SPECIAL COURT-MARTIAL

BCD special court-martial.See COURT-MARTIAL.

BCIA

BCIA.abbr. BERNE CONVENTION IMPLEMENTATION ACT.

BEA

BEA.abbr.BUREAU OF ECONOMIC ANALYSIS.

BEADLE

beadle (beed-⟨⟨schwa⟩⟩).1.Hist. A court crier with duties similar to those of a constable. See NUNTIUS(3).2.Hist. Eccles. law. A minor parish officer who serves the vestry's needs in various ways, including giving notice of the vestry's meetings, executing its orders, and attending its inquests. 3. A macebearer at Oxford University or Cambridge University. — Also spelled bedel.

BEAK

beak.BrE slang. A magistrate or justice of the peace.

BEAR

bear,vb.1. To support or carry <bear a heavy load>.2. To produce as yield < bear interest>.3. To give as testimony <bear witness>.

BEAR DRIVE

bear drive. See BEAR RAID.

BEARER

bearer. One who possesses a negotiable instrument marked "payable to bearer" or indorsed in blank. [Cases: Banks and Banking 137; Bills and Notes 118, 153. C.J.S. Banks and Banking §§ 328, 330; Bills and Notes; Letters of Credit §§ 80, 82, 128.]

BEARER BILL OF LADING

bearer bill of lading. See BILL OF LADING.

BEARER BOND

bearer bond. See BOND(3).

BEARER DOCUMENT

bearer document. See bearer paper under PAPER.

BEARER INSTRUMENT

bearer instrument. See bearer paper under PAPER.

BEARER PAPER

bearer paper. See PAPER.

BEARER SECURITY

bearer security. See SECURITY.

BEAR HUG

bear hug. Slang. A (usu. hostile) takeover strategy in which the acquiring entity offers the target firm a price per share that is significantly higher than market value, intending to squeeze the target into accepting.

reverse bear hug. A maneuver by which a takeover target responds to a bidder's offer by showing a willingness to negotiate but demanding a much higher price than that offered. • This is usu. an antitakeover tactic.

BEAR MARKET

bear market. See MARKET.

BEAR RAID

bear raid. Slang. High-volume stock selling by a large trader in an effort to drive down a stock price in a short time. • Bear raids are prohibited by federal law. — Also termed bear drive.

BEAT

beat,n.1. A law-enforcement officer's patrol territory. 2. A colloquial term for the principal county subdivision in some southern states, such as Alabama, Mississippi, and South Carolina. 3. A voting precinct.

BE AT THE HORN

be at the horn.Scots law. See PUT TO THE HORN.

BEAUPLEADER

beaupleader (boh-plee-d<<schwa>>r). [Law French "fair pleading"] Hist. 1.A fine imposed for bad or unfair pleading. 2. A writ of prohibition that prevented a sheriff from taking a fine for bad pleading. • The Statute of Marlbridge (1267) prohibited the taking of fines for this type of pleading. See PROHIBITION(2).

BEAUTY CONTEST

beauty contest.Slang. A meeting at which a major client interviews two or more law firms to decide which firm to hire.

BEDEREPRE

bederepre. See BEDRIP.

BEDRIP

bedrip.Hist. A copyhold tenant's service of reaping the landlord's grain. — Also spelled bederepre; biderepe.

BEFORE-AND-AFTER THEORY

before-and-after theory.Antitrust. A method of determining damages for lost profits (and sometimes overcharges), whereby the plaintiff's profits are examined before, during, and after the violation to estimate the reduction in profits due to the defendant's violation. — Also termed before-and-after method. Cf. YARDSTICK THEORY; MARKET-SHARE THEORY.

"In its simplest form, the [before-and-after] theory looks at the plaintiff's net profits before and after the injury period, discounts all dollars to their present value, and gives the plaintiff a sum that, before trebling, will bring its earnings during the injury period up to the same average level as its earnings during the noninjury periods." Herbert Hovenkamp, *Economics and Federal Antitrust Law* § 16.7, at 450 (1985).

BEFORE FIRST ACTION

before first action,adv. Patents. After the filing of a patent application but before the mailing of any office action by the U.S. Patent and Trademark Office examiner. • For example, an applicant typically files an information disclosure statement before first action, and often files preliminary amendments as well. [Cases: Patents 104. C.J.S. Patents §§ 145–147, 149–151, 173–175.]

BEFORE THE FACT

before the fact. In advance of an event of legal significance.

BEG

beg, vb. 1. To request earnestly; to beseech. 2. Hist. To request to be appointed as guardian for (a person). 3. Hist. To request that someone be appointed as guardian for. 4. To ask for charity, esp. habitually or pitifully.

BEGGAR-THY-NEIGHBOR POLICY

beggar-thy-neighbor policy. A government's protectionist course of action taken to discourage imports by raising tariffs and instituting nontariff barriers, usu. to reduce domestic unemployment and increase domestic output. • This term is sometimes applied to competitive currency devaluation.

BEHAVIORAL SCIENCE

behavioral science. The body of disciplines (psychology, sociology, anthropology) that study human behavior.

BEHOOF

behoof, n. Archaic. A use, profit, or advantage that is part of a conveyance < to his use and behoof >. — behoove, vb.

BEIGE BOOK

beige book. Slang. The popular name of the Federal Reserve's Summary of Commentary on Current Economic Conditions by Federal Reserve District, a publication that summarizes the economic conditions in each of the 12 Federal Reserve Bank regions. • Each Federal Reserve Bank gathers information from reports submitted by bank and branch directors; through interviews with economists, market experts, and key business contacts; and from other sources. The beige book is published eight times each year.

BEKANNTMACHUNG IM PATENTBLATT

Bekanntmachung im Patentblatt. [German] Patents. The date on which a Gebrauchsmuster (German petty patent) is published and made available to the public.

BELIEF

belief, n. A state of mind that regards the existence of something as likely or relatively certain.

BELIEF-ACTION DISTINCTION

belief-action distinction. Constitutional law. In First Amendment law, the Supreme Court's distinction between allowing a person to follow any chosen belief and allowing the state to intervene if necessary to protect others from the practices of that belief.

BELIEF-CLUSTER

belief-cluster. In critical legal studies, a group of unconnected ideas or opinions that appear to

be related when considered together in reference to a specific subject, such as racism, sexism, or religious intolerance.

BELIEVE

believe,vb.1. To feel certain about the truth of; to accept as true. Cf. SUSPECT.

reasonably believe.To believe (a given fact or combination of facts) under circumstances in which a reasonable person would believe.

2. To think or suppose.

BELLIGERENCY

belligerency.Int'l law. 1. The status assumed by a nation that wages war against another nation. [Cases: War and National Emergency 1.C.J.S. War and National Defense §§ 1, 5.] 2. The quality of being belligerent; the act or state of waging war.

BELLIGERENT

belligerent,n. A country involved in a war or other armed international conflict. Cf. NEUTRAL. — belligerent,adj.

BELLUM

bellum (bel-<<schwa>>m). [Latin] See WAR(1).

BELLUM INTER DUOS

bellum inter duos (bel-<<schwa>>m in-t<<schwa>>r d[y]oo-ahs). [Law Latin] Hist. War between two persons; a duel.

BELLUM JUSTUM

bellum justum (bel-<<schwa>>m j<<schwa>>s-t<<schwa>>m). [Latin] Int'l law. A just war; one that the proponent considers morally and legally justifiable, such as a war against an aggressive, totalitarian regime. • Under Roman law, before war could be declared, the fetiales (a group of priests who monitored international treaties) had to certify to the Senate that just cause for war existed. Thomas Aquinas and other medieval theologian-jurists debated the circumstances that justified war; some canonists supported the notion of a just war against non-Catholics. With the adoption of the U.N. Charter, the bellum justum concept has lost its legal significance. The Charter outlaws the use of force except in self-defense. U.N. Charter arts. 2(4), 51 (59 Stat. 1031). — Also termed just war; justifiable war.

BELLWETHER STOCK

bellwether stock.See barometer stock under STOCK.

BELONG

belong,vb.1. To be the property of a person or thing <this book belongs to the judge>. See OWNERSHIP. 2. To be connected with as a member <they belong to the state bar>.

BELONGINGS

belongings. 1. Personal property; EFFECTS. See personal property; under PROPERTY. 2. All property, including realty.

BELOW

below, prep., adv. & adj. 1. Beneath; under; underneath. 2. (Of a lower court) having heard or having the power to hear the case at issue in the first instance <court below>; at a lower level <the motion was heard below>. Cf. ABOVE.

BELOW-MARKET LOAN

below-market loan. See interest-free loan under LOAN.

BELOW-THE-LINE

below-the-line, adj. (Of a deduction) taken after calculating adjusted gross income and before calculating taxable income. • Examples of below-the-line deductions are medical payments and local taxes. Cf. ABOVE-THE-LINE.

BEN AVON DOCTRINE

Ben Avon Doctrine. The principle that due process entitles public utilities to judicial review of rates set by public-service commissions. *Ohio Valley Water Co. v. Borough of Ben Avon*, 253 U.S. 287, 40 S.Ct. 527 (1920). [Cases: Constitutional Law 298. C.J.S. Constitutional Law § 1345.]

BENCH

bench. 1. The raised area occupied by the judge in a courtroom <approach the bench>. 2. The court considered in its official capacity <remarks from the bench>. 3. Judges collectively <bench and bar>. 4. The judges of a particular court <the Fifth Circuit bench>.

BENCH BLOTTER

bench blotter. See ARREST RECORD(2).

BENCH CONFERENCE

bench conference. See SIDEBAR CONFERENCE(1).

BENCH DOCKET

bench docket. See DOCKET(1).

BENCHER

bencher. A governing officer of an English Inn of Court; one of the Masters of the Bench. See INN OF COURT(1).

BENCH LEGISLATION

bench legislation. See JUDGE-MADE LAW(2).

BENCHMARK

benchmark. A standard unit used as a basis for comparison.

BENCH MEMO

bench memo. 1. A short brief submitted by a lawyer to a trial judge, often at the judge's request. 2. A legal memorandum prepared by an appellate judge's law clerk to help the judge in preparing for oral argument and perhaps in drafting an opinion. • A trial-court judge may similarly assign a bench memo to a law clerk, for use in preparing for hearing or trial or in drafting an opinion.

BENCH PAROLE

bench parole. See bench probation under PROBATION.

BENCH PROBATION

bench probation. See PROBATION.

BENCH RULING

bench ruling. An oral ruling issued by a judge from the bench.

BENCH TRIAL

bench trial. See TRIAL.

BENCH WARRANT

bench warrant. A writ issued directly by a judge to a law-enforcement officer, esp. for the arrest of a person who has been held in contempt, has been indicted, has disobeyed a subpoena, or has failed to appear for a hearing or trial. • A bench warrant is often issued for the arrest of a child-support obligor who is found in contempt for not having paid the support obligation. [Cases: Criminal Law 263. C.J.S. Criminal Law § 355.]

BENE FACTUM

bene factum (ben-ay fak-t<<schwa>>m). See BONUM FACTUM.

BENEFICE

benefice (ben-<<schwa>>-fis). 1. Hist. A feudal estate in land, held during the life of the tenant. See BENEFICIUM(3).

“[T]he vassal no longer owns the land, but ‘holds’ it ‘of’ the lord — the vassal has become a ‘tenant’ (from the Latin, ‘tenere’, to hold). The vassal's interest in the land so held, first called a ‘benefice’, is now a ‘feudum’, anglicised in modern law as ‘fee.’” Peter Butt, *Land Law* 52 (3d ed. 1996).

2. Hist. Eccles. law. An estate held by the Catholic Church in feudal tenure. See

BENEFICIUM(1), (2).3. An ecclesiastical office such as a bishopric or parish; a preferment.
4.BENEFICIUM(3).

BÉNÉFICE

bénéfice (bay-nay-fees). [French “benefit”] French law. A benefit or advantage; esp., a privilege given by law rather than by agreement of the parties.

BÉNÉFICE DE DISCUSSION

bénéfice de discussion.[French] BENEFIT OF DISCUSSION.

BÉNÉFICE DE DIVISION

bénéfice de division.[French] BENEFIT OF DIVISION.

BÉNÉFICE D'INVENTAIRE

bénéfice d'inventaire.[French] BENEFIT OF INVENTORY.

BENEFICIAL

beneficial,adj.1. Favorable; producing benefits <beneficial ruling>.2. Consisting in a right that derives from something other than legal title < beneficial interest in a trust>.

BENEFICIAL ASSOCIATION

beneficial association.See benevolent association under ASSOCIATION.

BENEFICIAL ENJOYMENT

beneficial enjoyment.See ENJOYMENT.

BENEFICIAL HOLDER OF SECURITIES

beneficial holder of securities.A holder of equitable title to corporate stock. • The stock is not registered under the holder's name in the corporation's records.

BENEFICIAL IMPROVEMENT

beneficial improvement.See valuable improvement under IMPROVEMENT.

BENEFICIAL INTEREST

beneficial interest.See INTEREST(2).

BENEFICIAL OWNER

beneficial owner.See OWNER.

BENEFICIAL OWNERSHIP

beneficial ownership.See OWNERSHIP.

BENEFICIAL POWER

beneficial power. See POWER(5).

BENEFICIAL USE

beneficial use. See USE(1).

BENEFICIARY

beneficiary (ben-*<<schwa>>*-fish-ee-er-ee or ben-*<<schwa>>*-fish-*<<schwa>>*-ree), n.1. A person for whose benefit property is held in trust; esp., one designated to benefit from an appointment, disposition, or assignment (as in a will, insurance policy, etc.), or to receive something as a result of a legal arrangement or instrument. 2. A person to whom another is in a fiduciary relation, whether the relation is one of agency, guardianship, or trust. 3. A person who is initially entitled to enforce a promise, whether that person is the promisee or a third party. — beneficiary, adj.

contingent beneficiary. 1. A person designated by the testator to receive a gift if the primary beneficiary is unable or unwilling to take the gift. — Also termed contingency beneficiary. 2. A person designated in a life-insurance policy to receive the proceeds if the primary beneficiary is unable to do so. — Also termed secondary beneficiary. [Cases: Insurance 3483, 3485. C.J.S. Insurance § 1428.]

creditor beneficiary. A third-party beneficiary of a contract who is owed a debt that is to be satisfied by another party's performance under the contract. [Cases: Contracts 187(1). C.J.S. Contracts § 602.]

direct beneficiary. See intended beneficiary.

donee beneficiary. A third-party beneficiary who is intended to receive the benefit of the contract's performance as a gift from the promisee.

expectant beneficiary. See expectant distributee under DISTRIBUTE.

favored beneficiary. A beneficiary of a will who receives disproportionate amounts of the testator's property as compared with others having equal claims to the property, raising the specter of the beneficiary's undue influence over the testator. See UNDUE INFLUENCE. [Cases: Wills 164–166. C.J.S. Wills §§ 367–375.]

incidental beneficiary. 1. A third-party beneficiary who is not intended to benefit from a contract and thus does not acquire rights under the contract. Cf. intended beneficiary. [Cases: Contracts 187(1). C.J.S. Contracts § 602.] 2. A person to whom a settlor of a trust does not manifest an intention to give a beneficial interest but who may benefit from the trust's performance.

income beneficiary. A person entitled to income from property; esp., a person entitled to receive trust income. [Cases: Trusts 273. C.J.S. Trover and Conversion §§ 542–550.]

intended beneficiary. A third-party beneficiary who is intended to benefit from a contract and thus acquires rights under the contract as well as the ability to enforce the contract once those

rights have vested. — Also termed direct beneficiary. Cf. incidental beneficiary. [Cases: Contracts 187(1). C.J.S. Contracts § 602.]

life beneficiary. One who receives payments or other benefits from a trust for life. [Cases: Trusts 140. C.J.S. Trover and Conversion §§ 254–257.]

primary beneficiary. The person designated in a life-insurance policy to receive the proceeds when the insured dies.

secondary beneficiary. See contingent beneficiary (2).

third-party beneficiary. A person who, though not a party to a contract, stands to benefit from the contract's performance. • For example, if Ann and Bob agree to a contract under which Bob will render some performance to Chris, then Chris is a third-party beneficiary. [Cases: Contracts 187(1). C.J.S. Contracts § 602.]

unborn beneficiary. A person who, though not yet born, is named in a general way as sharing in an estate or gift. • An example might be a grandchild not yet born when a grandparent specifies, in a will, that Blackacre is to go to “my grandchildren.”

BENEFICIARY HEIR

beneficiary heir. See HEIR.

BENEFICIO PRIMO ECCLESIASTICO HABENDO

beneficio primo ecclesiastico habendo (ben-*<<schwa>>*-fish-ee-oh pry-moh *<<schwa>>*-klee-z[h]ee-as-t*<<schwa>>*-koh h*<<schwa>>*-ben-doh). [Latin “having the first ecclesiastical benefice”] Hist. A writ from the king to the lord chancellor ordering the appointment of a named person to the first vacant benefice.

BENEFICIUM

beneficium (ben-*<<schwa>>*-fish-ee-*<<schwa>>*m), n. [Latin “benefit”] 1. Roman law. A privilege, remedy, or benefit granted by law, such as the beneficium abstinenti (“privilege of abstaining”), by which an heir could refuse to accept an inheritance (and thereby avoid the accompanying debt). 2. Hist. A lease, generally for life, given by a ruler or lord to a freeman. • Beneficium in this sense arose on the continent among the German tribes after the collapse of the Roman Empire.

“All those to whom the Frankish king had given land and to whom the Frankish emperor had granted political authority had received it on certain conditions. They were the recipients of royal favor — a beneficium. Their holding came to be so styled.” Max Radin, *Handbook of Anglo-American Legal History* 126 (1936).

3. Hist. English law. An estate in land granted by the king or a lord in exchange for services. • Originally, a beneficium could not be passed to the holder's heirs, in contrast to feuds, which were heritable from an early date. Tenants, however, persisted in attempting to pass the property to their heirs, and over time the beneficium became a heritable estate. As this process occurred, the

meaning of beneficium narrowed to a holding of an ecclesiastical nature. See BENEFICE(1).“Beneficia were formerly Portions of Land, etc. given by Lords to their Followers for their Maintenance; but afterwards as these Tenures became Perpetual and Hereditary, they left their Name of Beneficia to the Livings of the Clergy, and retained to themselves the Name of Feuds. And Beneficium was an estate in land at first granted for Life only, so called, because it was held ex mero Beneficio of the Donor ... [b]ut at Length, by the Consent of the Donor, or his Heirs, they were continued for the Lives of the Sons of the Possessors, and by Degrees past into an Inheritance....” Giles Jacob, *A New Law-Dictionary* (8th ed. 1762).

“In England from almost, if not quite, the earliest moment of its appearance, the word feodum seems not merely to imply, but to denote, a heritable, though a dependent right. But if on the continent we trace back the use of this word, we find it becoming interchangeable with beneficium, and if we go back further we find beneficium interchangeable with precarium. A tenancy at will has, we may say, become a tenancy in fee.... The Norman conquest of England occurs at a particular moment in the history of this process. It has already gone far; the words feum, feudum, feodum are fast supplanting beneficium....” 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 67–68 (2d ed. 1898).

4.Hist. Eccles. law. A feudal tenure for life in church-owned land, esp. land held by a layperson. • Over time, this sense of beneficium faded, and it came to be restricted to that of an ecclesiastical living, i.e., a benefice.“The pope became a feudal lord; and all ordinary patrons were to hold their right of patronage under this universal superior. Estates held by feudal tenure, being originally gratuitous donations, were at that time denominated beneficia: their very name as well as constitution was borrowed, and the care of the souls of a parish thence came to be denominated a benefice.” 4 William Blackstone, *Commentaries on the Laws of England* 106 (1769).

5.Hist. A benefit or favor; any particular privilege, such as benefit of clergy (beneficium clericale).6.BENEFICE(3). — Also termed (in senses 3–6) benefice.

BENEFICIUM ABSTINENDI

beneficium abstinendi (ben-⟨schwa⟩-fish-ee-⟨schwa⟩m ab-sti-nen-dī). [Latin “privilege of abstaining”] Roman law. The right of an heir to refuse an inheritance and thus avoid liability for the testator's debts.

“[T]hese heirs came also to be protected by the praetor, viz. by the jus or beneficium abstinendi. Provided they took care not to act as heir in any kind of way, then, whether they formally demanded the privilege or not, their own property could not be made liable for their ancestor's debts.” R.W. Leage, *Roman Private Law* 220 (C.H. Ziegler ed., 2d ed. 1930).

BENEFICIUM CEDENDARUM ACTIONUM

beneficium cedendarum actionum (ben-⟨schwa⟩-fish-ee-⟨schwa⟩m see-den-day-r-⟨schwa⟩m ak-shee-oh-n-⟨schwa⟩m). [Latin “privilege of having actions made over”] Roman & Scots law. The right of a cosurety who might or might not have paid the debt to compel the creditor to give over the right of action against the debtor and the other cosuretities. • Under Scots law, a cosurety's (or cocautitioner's) right of action against the nonpaying cosurety

arises on payment, without the necessity of compelling the creditor to assign the action. But in Roman law, the right of action arose before the paying of the debt.

BENEFICIUM COMPETENTIAE

beneficium competentiae (ben-<<schwa>>-fish-ee-<<schwa>>m kom-p<<schwa>>-ten-shi-ee). [Latin “privilege of competency”] Roman & Scots law. A debtor's right to be ordered to pay only as much as the debtor reasonably could, so that after assigning his or her estate to creditors, the debtor kept enough to live on. See assignment for the benefit of creditors under ASSIGNMENT; SALVO BENEFICIO COMPETENTIAE.

BENEFICIUM DIVISIONIS

beneficium divisionis (ben-<<schwa>>-fish-ee-<<schwa>>m di-vizh-ee-oh-nis). See BENEFIT OF DIVISION.

BENEFICIUM INVENTARII

beneficium inventarii (ben-<<schwa>>-fish-ee-<<schwa>>m in-ven-tay-ree-I-or in-ven-tair-ee-I). [Latin “with the benefit of inventory”] Roman law. The right of an heir to take an inventory within a set time before deciding whether to accept an inheritance. • An heir could provisionally take the succession and disclaim responsibility for debts beyond the estate's value until the inventory was completed and the inheritance accepted or rejected. This right was introduced by Justinian. — Also termed cum beneficio inventarii (k<< schwa>>m ben-<<schwa>>-fish-ee-oh in-ven-tair-ee-I).

BENEFICIUM ORDINIS

beneficium ordinis (ben-<<schwa>>-fish-ee-<<schwa>>m or-d<<schwa>>-nis). [Latin “privilege of order”] Roman & Scots law. A surety's right to require a creditor to seek payment from the principal debtor before seeking payment from the surety. See BENEFIT OF DISCUSSION.

“Beneficium Ordinis... by the civil law and our own, a cautioner, simply bound as such, is entitled to insist that the principal be first discussed by extreme diligence.” Hugh Barclay, *A Digest of the Law of Scotland* 76 (3d ed. 1865).

BENEFICIUM SEPARATIONIS

beneficium separationis (ben-<<schwa>>-fish-ee-<<schwa>>m sep-<<schwa>>-ray-shee-oh-nis). [Latin “privilege of separation”] Roman law. The right of a creditor of the deceased to have the property of the deceased separated from an heir's property. • This separation protected the creditors by ensuring that the deceased's property was not used to pay the heir's creditors. — Also termed separatio bonorum.

BENEFIT

benefit, n. 1. Advantage; privilege <the benefit of owning a car>. 2. Profit or gain; esp., the consideration that moves to the promisee <a benefit received from the sale>. — Also termed legal

benefit; legal value. Cf. DETRIMENT(2).

death benefit.(usu. pl.) A sum or sums paid to a beneficiary from a life-insurance policy on the death of an insured.

fringe benefit.A benefit (other than direct salary or compensation) received by an employee from an employer, such as insurance, a company car, or a tuition allowance. — Often shortened (esp. in pl.) to benefit. [Cases: Master and Servant 72. C.J.S. Employer–Employee Relationship §§ 146–152, 155, 175.]

general benefit.Eminent domain. The whole community's benefit as a result of a taking. • It cannot be considered to reduce the compensation that is due the condemnee. [Cases: Eminent Domain 91. C.J.S. Eminent Domain § 85.]

peculiar benefit.See special benefit.

pecuniary benefit.A benefit capable of monetary valuation.

special benefit.Eminent domain. A benefit that accrues to the owner of the land in question and not to any others. • Any special benefits justify a reduction in the damages payable to the owner of land that is partially taken by the government during a public project. — Also termed peculiar benefit. [Cases: Eminent Domain 91. C.J.S. Eminent Domain § 85.]

3. Financial assistance that is received from an employer, insurance, or a public program (such as social security) in time of sickness, disability, or unemployment <a benefit from the welfare office>. [Cases: Social Security and Public Welfare 140.5, 251. C.J.S. Social Security and Public Welfare §§ 48–49, 58–59, 61, 146–150, 211.] — benefit,vb.

BENEFIT ASSOCIATION

benefit association.See benevolent association under ASSOCIATION.

BENEFIT CERTIFICATE

benefit certificate.A written obligation to pay a named person a specified amount upon stipulated conditions. • Benefit certificates are often issued by fraternal and beneficial societies. [Cases: Beneficial Associations 18(1). C.J.S. Beneficial Associations § 29.]

BENEFIT OF AN EARLIER FILING DATE

benefit of an earlier filing date.Patents & trademarks. For a patent or trademark applicant, the advantage of being assigned the filing date of a related, earlier-filed application. • Under 35 USCA § 119: (1) a U.S. patent application is given the filing date of an earlier foreign application filed in accordance with the Paris Convention as long as the U.S. filing occurs not more than one year after the foreign filing; and (2) a continuing application filed in accordance with 35 USCA § 120 is given the filing date of an earlier-filed U.S. application. Similarly, under 15 USCA § 1126(d), a U.S. trademark applicant receives the filing date of an earlier-filed foreign application if: (1) the foreign application was filed in a Paris Convention country; and (2) the U.S. application is filed within six months after the foreign application. — Also termed benefit of priority filing date;

claim of priority. [Cases: Patents 110. C.J.S. Patents § 156.]

BENEFIT-OF-BARGAIN RULE

benefit-of-bargain rule. See BENEFIT-OF-THE-BARGAIN RULE.

BENEFIT OF CESSION

benefit of cession. Civil law. A debtor's immunity from imprisonment for debt. • The immunity arises when the debtor's property is assigned to the debtor's creditors. See CESSIO BONORUM.

BENEFIT OF CLERGY

benefit of clergy. 1. At common law, the privilege of a cleric not to be tried for a felony in the King's Court <in the Middle Ages, any man who could recite the "neck verse" was granted the benefit of clergy>. • Although clergy includes monks and nuns as well as priests, there are no known cases of women claiming or being granted benefit of clergy. Congress outlawed benefit of clergy in federal courts in April 1790. It was abolished in England in 1827 but survived even longer in some American states, such as South Carolina, where it was successfully claimed in 1855. *State v. Bosse*, 42 S.C.L. (3 Rich.) 276 (1855). — Also termed clergy privilege; clericale privilegium. See NECK VERSE.

"Benefit of clergy was a remarkable privilege which, although now obsolete, was for centuries of great importance in criminal law. Some knowledge of it is even now essential for a proper understanding of common law crimes. After William the Conqueror separated the ecclesiastical from the secular courts, the clergy put forward the claim that all persons in holy orders should be exempt from secular jurisdiction in all proceedings, civil or criminal. Eventually the rule was established that 'clerks' of all kinds, who committed any of the serious crimes termed felonies, could be tried only in an ecclesiastical court, and therefore were only amenable to such punishments as that court could inflict. Any clerk accused of such crime was accordingly passed over to the bishop's court. He was there tried before a jury of clerks by the oaths of twelve compurgators; a mode of trial which usually ensured him an acquittal." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 75 (16th ed. 1952).

" 'Benefit of clergy,' in its origin, was the right of a clergyman not to be tried for felony in the King's Court. In ancient times, when the Church was at the peak point of its power, it preempted jurisdiction over felony charges against clergymen. It demanded that in any case in which a clergyman was charged with felony, the case be transferred to the Ecclesiastical Court for trial. The benefit was extreme because conviction of felony in the King's Court resulted in the sentence of death, whereas the Ecclesiastical Court did not make use of capital punishment." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 4 (3d ed. 1982).

2. Religious approval as solemnized by church ritual <the couple had several children without benefit of clergy>. • This common use of the phrase is premised on a misunderstanding of its original meaning (sense 1).

BENEFIT OF COUNSEL

benefit of counsel. See RIGHT TO COUNSEL(1).

BENEFIT OF DISCUSSION

benefit of discussion. Civil law. A guarantor's right to require a creditor to seek payment from the principal debtor before seeking payment from the guarantor. — Also termed (in French law) *bénéfice de discussion*; (in Scots law) right of discussion. [Cases: Guaranty 42(1), 45, 77(2).]

“Benefit of Discussion. By common law a cautioner, bound simply as such, had right to insist that the creditor should discuss the principal debtor, that is, exhaust his estate by diligence, before coming upon him for payment of the debt.” William K. Morton & Dale A. Whitman, *Manual of the Law of Scotland* 299 (1896).

BENEFIT OF DIVISION

benefit of division. Civil law. A surety's right to be sued only for a part of the debt proportionate to the number of solvent cosureties. — Also termed (in Roman law) *beneficium divisionis*; (in French law) *bénéfice de division*; (in Scots law) right of division. [Cases: Principal and Surety 66, 168, 169. C.J.S. Principal and Surety §§ 72, 218–219.]

BENEFIT OF INVENTORY

benefit of inventory. Civil law. The principle that an heir's liability for estate debts is limited to the value of what is inherited, if the heir so elects and files an inventory of the estate's assets. — Also termed *bénéfice d'inventaire*. [Cases: Descent and Distribution 119. C.J.S. Descent and Distribution §§ 112, 114, 123.]

BENEFIT OF PRIORITY FILING DATE

benefit of priority filing date. See BENEFIT OF AN EARLIER FILING DATE.

BENEFIT-OF-THE-BARGAIN DAMAGES

benefit-of-the-bargain damages. See DAMAGES.

BENEFIT-OF-THE-BARGAIN RULE

benefit-of-the-bargain rule. 1. The principle that a party who breaches a contract must pay the aggrieved party an amount that puts that person in the same financial position that would have resulted if the contract had been fully performed. [Cases: Damages 117.] 2. The principle that a defrauded buyer may recover from the seller as damages the difference between the value of the property as represented and the actual value received. — Also termed benefit-of-bargain rule. Cf. OUT-OF-POCKET RULE. [Cases: Fraud 59(2).]

BENEVOLENT ASSOCIATION

benevolent association. See ASSOCIATION.

BENEVOLENTIA REGIS HABENDA

benevolentia regis habenda (ben-*<<schwa>>*-v*<<schwa>>*-len-shee-*<<schwa>>* ree-jis)

h<<schwa>>-ben-d<<schwa>>). [Latin “the king's benevolence to be had”] Hist. A fine paid to receive the king's pardon and a restoration of place, title, or estate.

BENEVOLENT SOCIETY

benevolent society. See benevolent association under ASSOCIATION.

BENTHAMISM

Benthamism. See hedonistic utilitarianism under UTILITARIANISM.

BENTHAMITE

Benthamite, adj. Of or relating to the utilitarian theory of Jeremy Bentham. See hedonistic utilitarianism under UTILITARIANISM.

BEP

BEP. abbr. BUREAU OF ENGRAVING AND PRINTING.

BEQUEATH

bequeath (bi-kweeth), vb. 1. To give property (usu. personal property) by will. [Cases: Wills 1. C.J.S. Wills §§ 1, 3, 174.] 2. Hist. To assign or transfer real or personal property by formal declaration, either inter vivos or after death.

BEQUEATHAL

bequeathal. See BEQUEST.

BEQUEST

bequest (bi-kwest), n. 1. The act of giving property (usu. personal property) by will. [Cases: Wills 1. C.J.S. Wills §§ 1, 3, 174.] 2. Property (usu. personal property other than money) disposed of in a will. — Also termed bequeathal (bi-kwee-th<<schwa>>l). Cf. DEVISE; LEGACY.

charitable bequest. A bequest given to a philanthropic organization. See CHARITABLE ORGANIZATION. [Cases: Charities 4. C.J.S. Charities §§ 3–4.]

conditional bequest. A bequest whose effectiveness or continuation depends on the occurrence or nonoccurrence of a particular event. • An example might be a testator's gift of “the income from the farm to my daughter, Betty, until she remarries.” If a condition prohibits certain legal conduct, such as using tobacco or growing a beard, it is sometimes termed a reformation condition or character-improvement condition. [Cases: Wills 639–668. C.J.S. Wills §§ 1380–1424.]

demonstrative bequest. A bequest that, by its terms, must be paid out of a specific source, such as a stock fund. [Cases: Wills 755. C.J.S. Wills §§ 1664, 1667–1677, 1679–1683.]

executory bequest. A bequest of a future, deferred, or contingent interest in personal property. [Cases: Wills 625. C.J.S. Wills §§ 1314–1317, 1319.]

general bequest. 1. A bequest of a general benefit, rather than a particular asset, such as a gift of money or a gift of all the testator's stocks. 2. A bequest payable out of the general assets of the estate. [Cases: Wills 756. C.J.S. Wills §§ 1663, 1667–1677, 1679–1683.]

monetary bequest. See pecuniary bequest.

money bequest. See pecuniary bequest.

pecuniary bequest. A testamentary gift of money; a legacy. — Also termed monetary bequest; money bequest. [Cases: Wills 566, 567. C.J.S. Wills §§ 1141, 1143–1147.]

remainder bequest. See residuary bequest.

residuary bequest. A bequest of the remainder of the testator's estate, after the payment of the debts, legacies, and specific bequests. — Also termed remainder bequest. [Cases: Wills 586. C.J.S. Wills §§ 1176–1179, 1184.]

specific bequest. A bequest of a specific or unique item of property, such as any real estate or a particular piece of furniture. [Cases: Wills 753. C.J.S. Wills §§ 1662, 1667–1677, 1679–1683.]

BERLIN ACT

Berlin Act. Copyright. A 1908 revision of the Berne Convention prohibiting formalities as a requirement for copyright protection, recommending (but not requiring) a term of protection equal to the life of the author plus 50 years, and expanding the types of works eligible for copyright protection. • Motion pictures were included in copyright protection for the first time. — Also termed Berlin Act of 1908; 1908 Berlin Act.

BERNE ADDITIONAL PROTOCOL

Berne Additional Protocol. Copyright. A 1914 amendment to the Berne Convention providing for reprisals against a foreign national who publishes simultaneously in both a member nation and the author's own nonmember and nonreciprocating country. • The reprisal was aimed at the United States, which until 1989 refused to join the Berne Convention but whose citizens could enjoy Berne protection by first publishing in a member nation. See BACK DOOR TO BERNE .

BERNE CONVENTION

Berne Convention. Copyright. An international copyright treaty providing that works created by citizens of one signatory nation will be fully protected in other signatory nations, without the need for local formalities. • The treaty was drafted in Berne in 1886 and revised in Berlin in 1908. It is now administered by the World Intellectual Property Organization and prescribes minimum levels and terms of copyright protection. The United States ratified the Berne Convention in 1989 and changed several aspects of U.S. copyright law to comply with the treaty's terms. — Also termed Berne Copyright Convention; Berne Convention for the Protection of Literary and Artistic Property. [Cases: Copyrights and Intellectual Property 34. C.J.S. Copyrights and Intellectual Property §§ 21, 92.]

BERNE CONVENTION IMPLEMENTATION ACT

Berne Convention Implementation Act. Copyright. The 1988 federal law making the United States a signatory to the Berne Convention, 102 years after the convention was first opened for signatures. • The law ended rigid formalities for registration and marking, although registration is still required before U.S.-copyright owners can sue for infringement. Pub. L. No. 100-568, 102 Stat. 2853. — Abbr. BCIA.

BERNE COPYRIGHT CONVENTION

Berne Copyright Convention. See BERNE CONVENTION.

BERNE-MINUS

Berne-minus, adj. Copyright. Of or relating to the second sentence of Art. 9(1) of the TRIPs Agreement, which provides that intellectual-property rights and duties under the Berne Convention will not be expressly enforced on noncomplying signatories through the TRIPs Agreement. U.S. reluctance to expressly protect moral rights of authors and artists has been criticized as a “Berne-minus” attitude.

BERNE PARIS ACT

Berne Paris Act. Copyright. A 1971 revision of the Berne Convention reducing the obligations of nations that became members as colonies of signatories. — Also termed 1971 Paris Act of the Berne Convention.

BERNE-PLUS

Berne-plus, adj. Copyright. Of or relating to a copyright-treaty provision that affords greater intellectual-property protection than the minimum required by the Berne Convention, either by granting stronger rights or by extending protection to new forms of subject matter. • The term arose during negotiations over the TRIPs Agreement, reflecting the principle that the treaty should incorporate and build on existing international law. The WIPO treaties are said to be “Berne-plus” treaties because they incorporate Berne protections and add additional protections of their own.

BERNE SAFEGUARD CLAUSE

Berne Safeguard Clause. Copyright. A provision in the Universal Copyright Convention barring protection in Berne Union countries for the works of any country that withdraws from the Berne Union after January 1, 1951. • The purpose of the clause was to prevent countries from withdrawing from the Berne Union in favor of the more relaxed copyright-protection standards of the Convention. The clause was amended in 1971 to give developing countries the right to opt out of its mandate.

BERNE UNION

Berne Union. Copyright. The treaty alliance of Berne Convention member nations.

BERRY RULE

Berry rule. The doctrine that a defendant seeking a new trial on grounds of newly discovered evidence must show that (1) the evidence is newly discovered and was unknown to the defendant

at the time of trial; (2) the evidence is material rather than merely cumulative or impeaching; (3) the evidence will probably produce an acquittal; and (4) the failure to learn of the evidence was not due to the defendant's lack of diligence. *Berry v. State*, 10 Ga. 511 (1851). [Cases: Criminal Law 938(1). C.J.S. Criminal Law § 1447.]

BERTILLON SYSTEM

Bertillon system (b<<schwa>>r-t<<schwa>>-lon or bair-tee-yawn). A system of anthropometry once used to identify criminals by measuring and describing them. • The Bertillon system is named for Alphonse Bertillon, the French anthropologist who developed the technique early in the 20th century. It has been largely replaced by fingerprinting. Cf. ANTHROPOMETRY.

“The system of identification known as the Bertillon system is worked out on the assumption that an individual's physical measurements are constant after maturity is attained. Such measurements include height, span of arms, sitting height, length of head, width of right ear, length of left foot, length of left middle finger, length of left little finger, and length of left forearm. The Bertillon system also records photographs (front and profile), hair and eye color, complexion, scars, tattoo marks and any asymmetrical anomalies.” *Encyclopedia of Criminology* 81–82 (Vernon C. Branham & Samuel B. Kutash eds., 1949), s.v. “Criminalistics.”

BES

bes (bes), n. [Latin] 1.Roman law. Two-thirds of the Roman as, or pound, consisting of 8 unciae (ounces) out of 12. See AS; UNCIA. 2.Civil law. Two-thirds of an inheritance.

BESAYEL

besayel (bes-ay-<<schwa>>l). [Law French] Hist. 1.A writ of right used by a great-grandfather's heirs to recover property held by the great-grandfather. See assize of mort d'ancestor under ASSIZE(6).2. A great-grandfather. — Also spelled besaie; besaile; bisaile; besayle. Cf. AIEL; COSINAGE.

BESLUIT

besluit (bi-sloyt), n.[Dutch “decision”] Roman–Dutch law. A legislative resolution or decree.

BESPEAKS-CAUTION DOCTRINE

bespeaks-caution doctrine.Securities. The principle that if soft information in a prospectus is accompanied by cautionary language that adequately warns investors that actual results or events may affect performance, then the soft information may not be materially misleading to investors. • Soft information includes forecasts, estimates, opinions, and projections about future performance. The doctrine was codified in the Private Securities Litigation Reform Act of 1995.

BEST BID

best bid.See BID(1).

BEST EDITION

best edition. Copyright. A particular version of a copyrighted work that is published in the U.S. before the date of deposit and that is designated by the Library of Congress, in its discretion, as the most suitable for its purposes. • Two copies of a copyrighted work, in the selected best-edition form, must be deposited with the Library. [Cases: Copyrights and Intellectual Property 50.10. C.J.S. Copyrights and Intellectual Property §§ 38–39.]

BEST EFFORTS

best efforts. Diligent attempts to carry out an obligation <the contractor must use best efforts to complete its work within the stated time>. • As a standard, a best-efforts obligation is stronger than a good-faith obligation. Best efforts are measured by the measures that a reasonable person in the same circumstances and of the same nature as the acting party would take. — Also termed best endeavors. Cf. due diligence (1) under DILIGENCE; GOOD FAITH . [Cases: Contracts 189. C.J.S. Contracts §§ 341–342.]

BEST-EFFORTS CONTRACT

best-efforts contract. See CONTRACT.

BEST-EFFORTS UNDERWRITING

best-efforts underwriting. See UNDERWRITING.

BEST EMBODIMENT

best embodiment. See BEST MODE.

BEST ENDEAVORS

best endeavors. See BEST EFFORTS.

BEST EVIDENCE

best evidence. See EVIDENCE.

BEST-EVIDENCE RULE

best-evidence rule. The evidentiary rule providing that, to prove the contents of a writing (or a recording or photograph), a party must produce the original writing (or a mechanical, electronic, or other familiar duplicate, such as a photocopy) unless it is unavailable, in which case secondary evidence — the testimony of the drafter or a person who read the document — may be admitted. Fed. R. Evid. 1001–1004. — Also termed documentary-originals rule; original-writing rule; original-document rule. [Cases: Criminal Law 398–403; Evidence 157–187. C.J.S. Criminal Law §§ 833–845; Evidence §§ 1054–1131.]

“Down to a century or more ago, the term ‘best evidence’ was a good deal used; ‘the best evidence that the nature of the thing will afford’ was said to be required. But this loose expression never represented a concrete rule. The only positive and concrete rules of the kind are those above named. And today, though the cant phrase is sometimes invoked, and though an inference may be made against a party who fails to produce what might be better evidence, yet no court will in

general exclude relevant evidence because there might be better evidence available.” John H. Wigmore, *A Students' Textbook of the Law of Evidence* 219 (1935).

BESTIALITY

bestiality (bes-chee-al-<<schwa>>-tee). Sexual activity between a human and an animal. • Some authorities restrict the term to copulation between a human and an animal of the opposite sex. See SODOMY. [Cases: Sodomy 1.C.J.S. Sodomy §§ 2–6.]

BEST INTERESTS OF CREDITORS

best interests of creditors.Bankruptcy. A test for confirmation of a reorganization plan whereby the court inquires into whether the plan ensures that the value of property to be distributed to each creditor is at least the amount that the creditor would receive if the debtor's estate were liquidated in a Chapter 7 case. • A court may not confirm a plan in a Chapter 9, Chapter 12, or Chapter 13 case unless it is in the best interests of the creditors. In a Chapter 11 case, a court may confirm a plan even though some creditors do not vote to accept it if the court finds that the plan is in the creditors' best interest. 11 USCA §§ 944(7), 1129(a)(7), 1225(a)(4), 1325(a)(4). — Also written best interest of creditors.

BEST INTERESTS OF THE CHILD

best interests of the child.Family law. A standard by which a court determines what arrangements would be to a child's greatest benefit, often used in deciding child-custody and visitation matters and in deciding whether to approve an adoption or a guardianship. • A court may use many factors, including the emotional tie between the child and the parent or guardian, the ability of a parent or guardian to give the child love and guidance, the ability of a parent or guardian to provide necessities, the established living arrangement between a parent or guardian and the child, the child's preference if the child is old enough that the court will consider that preference in making a custody award, and a parent's ability to foster a healthy relationship between the child and the other parent. — Abbr. BIC. — Also termed best interest of the child. Cf. PARENTAL-PREFERENCE DOCTRINE.

BEST-INTERESTS-OF-THE-CHILD DOCTRINE

best-interests-of-the-child doctrine.Family law. The principle that courts should make custody decisions based on whatever best advances the child's welfare, regardless of a claimant's particular status or relationship with the child. • One important factor entering into these decisions is the general belief that the child's best interests normally favor custody by parents, as opposed to grandparents or others less closely related. The doctrine is quite old, having been stated, for example, in the early-19th-century case of *Commonwealth v. Briggs*, 33 Mass. 203 (1834). — Sometimes shortened to best-interests doctrine; best-interest doctrine. See PARENTAL-PREFERENCE DOCTRINE E.

BEST MODE

best mode.Patents. The best way that the inventor knows to work the invention described and claimed in a patent or patent application. • A patent application must disclose the best mode

known to the inventor at the time of the filing. Failure to disclose the best mode can render a patent invalid. 35 USCA § 112, ¶ 1. — Also termed best embodiment. Cf. ENABLEMENT REQUIREMENT. [Cases: Patents 98. C.J.S. Patents §§ 137–139.]

BEST-MODE REQUIREMENT

best-mode requirement.Patents. The requirement that a patent application show the best physical method known to the inventor for using the invention. Cf. ENABLEMENT REQUIREMENT. [Cases: Patents 98. C.J.S. Patents §§ 137–139.]

BESTOW

bestow,vb. To convey as a gift <bestow an honor on another>. — bestowal,n.

BEST USE

best use.See highest and best use under USE(1).

BET

bet,n. Something (esp. money) staked or pledged as a wager. [Cases: Gaming 1.] — bet,vb. — betting,n. — bettor,n.

layoff bet.A bet placed by a bookmaker to protect against excessive losses or to equalize the total amount placed on each side of the wager. See LAYOFF BETTOR. [Cases: Gaming 73.]

BETA-TEST AGREEMENT

beta-test agreement.Intellectual property. A software license agreement, usu. between a software developer and a customer, permitting the customer to use the software program in a “live” environment before its release to the general public. • Beta-test agreements differ from more conventional software licenses in that they typically (1) have more significant limitations on liability; (2) contain few, if any, warranties; and (3) require user evaluation and feedback. — Also termed software beta-test agreement.

BETA TESTING

beta testing.Intellectual property. The process of testing products and services, esp. software, under real-life conditions. • Consumers often engage in beta testing at no cost in exchange for reporting to the developer how satisfied they are, any problems they encounter, and any suggested improvements. To protect a trade secret or to avoid a statutory bar, the developer may require the user to sign a nondisclosure agreement. Cf. ALPHA TESTING .

BET DIN

bet din.Family law. A rabbinical tribunal empowered by Jewish law to decide and enforce matters of Jewish law and custom; esp., a tribunal consisting of three rabbis who decide questions of Jewish law.

BETROTHAL

betrothal. 1.Eccles. law. A religious ceremony confirming an agreement to marry. • Historically, a betrothal was performed months or years before the parties wedded. It was in theory as legally binding as a marriage and created an impediment to marriage with any other person, but not an insurmountable impediment. In modern form, the betrothal is usu. part of the marriage ceremony. — Also termed betrothment. See ENGAGEMENT(2). Cf. precontract under CONTRACT; ESPOUSALS. 2.Slang. A corporate merger agreement.

BETROTHMENT

betrothment. See BETROTHAL(1).

BETTERMENT

betterment. 1. An improvement that increases the value of real property; esp., an enhancement in the nature of an alteration or addition that goes beyond repair or restoration to a former condition. [Cases: Improvements 1.C.J.S. Improvements §§ 2, 4.] 2. An improvement of a highway, railroad, or building that goes beyond repair or restoration. 3. An increase in value, esp. real-estate value, attributable to improvements. See IMPROVEMENT.

BETTERMENT ACT

betterment act.A statute requiring a landowner to compensate an occupant who improves the land under a mistaken belief that the occupant is the real owner. • The compensation usu. equals the increase in the land's value generated by the improvements. — Also termed occupying-claimant act; occupant statute. [Cases: Improvements 4. C.J.S. Improvements § 5.]

BETTERMENT TAX

betterment tax.A tax for the improvement of highways.

BETTING

betting. See PARIMUTUEL BETTING.

BEYOND A REASONABLE DOUBT

beyond a reasonable doubt.See REASONABLE DOUBT.

BEYOND SEAS

beyond seas.Hist. 1.(Of a person) being absent from a jurisdiction or nation; out of the country, esp. across the ocean. • This term was used when a person could not be served with a summons, notice, etc. because the person was absent from the jurisdiction. Some jurisdictions toll the statute of limitations during a defendant's absence. 2. Out of state. • Although originally beyond seas meant “out of the country,” the U.S. Supreme Court declared that the term includes absence from a state. *Murray's Lessee v. Baker*, 16 U.S. 541, 545 (1818). — Also termed beyond sea; beyond the seas; ultra mare.

“[I]t has been provided that if any person or persons against whom there shall be any cause of

action shall at the time of its accrual be beyond seas, then the person or persons entitled to any such cause of action shall be at liberty to bring the same against such person or persons within such time as before limited, after his or their return from beyond seas." John Indermaur, Principles of the Common Law 240 (Edmund H. Bennett ed., 1st Am. ed. 1878).

B.F.

b.f. abbr.BONUM FACTUM.

BFOQ

BFOQ.abbr.BONA FIDE OCCUPATIONAL QUALIFICATION.

BFP

BFP. See bona fide purchaser under PURCHASER(1).

BHC

BHC.abbr.BANK HOLDING COMPANY.

BIA

BIA.abbr.BUREAU OF INDIAN AFFAIRS.

BIAS

bias,n. Inclination; prejudice; predilection <the juror's bias prompted a challenge for cause>. — bias,vb. — biased,adj.

actual bias.Genuine prejudice that a judge, juror, witness, or other person has against some person or relevant subject. Cf. implied bias.

implied bias.Prejudice that is inferred from the experiences or relationships of a judge, juror, witness, or other person. — Also termed presumed bias. Cf. actual bias.

judicial bias.A judge's bias toward one or more of the parties to a case over which the judge presides. • Judicial bias is usu. insufficient to justify disqualifying a judge from presiding over a case. To justify disqualification or recusal, the judge's bias usu. must be personal or based on some extrajudicial reason. [Cases: Judges 49. C.J.S. Judges § 108.]

BIC

BIC.abbr.BEST INTERESTS OF THE CHILD.

BICAMERAL

bicameral,adj. (Of a legislature) having two legislative houses (usu. called the House of Representatives, or the Assembly, and the Senate). • The federal government and all states except Nebraska have bicameral legislatures. [Cases: States 26. C.J.S. States § 40.] — bicameralism,n.

BICAMERAL CLAUSE

Bicameral Clause.The constitutional provision that creates the two legislative chambers of Congress. See U.S. Const. art. I, § 1.

BID

bid,n.1. A buyer's offer to pay a specified price for something that may or may not be for sale <a bid at an auction> <a takeover bid>.

best bid.The highest auction bid; in the letting of a contract, the lowest bid by a qualified bidder. [Cases: Auctions and Auctioneers 7. C.J.S. Auctions and Auctioneers §§ 2, 8–17.]

bid in.A bid made by the owner of auctioned property to ensure that the property is not sold below actual value. [Cases: Auctions and Auctioneers 7. C.J.S. Auctions and Auctioneers §§ 2, 8–17.]

bid off.To purchase by bid at auction or judicial sale. [Cases: Auctions and Auctioneers 7. C.J.S. Auctions and Auctioneers §§ 2, 8–17.]

upset bid.A bid in a judicial sale made for more than the purchaser's bid so that the sale will be set aside (i.e., upset). [Cases: Judicial Sales 19.]

2. A submitted price at which one will perform work or supply goods <the subcontractor's bid>. See BID-SHOPPING. — bid,vb. — bidder,n.

competitive bid.A bid submitted in response to public notice of an intended sale or purchase.

firm bid.A bid that, by its terms, remains open and binding until accepted or rejected. • A firm bid commonly contains no unusual conditions that might defeat acceptance.

open bid.A bid that the bidder may alter after submission so as to meet competing bids.

sealed bid.A bid that is not disclosed until all submitted bids are opened and considered simultaneously.

BID AND ASKED

bid and asked.Securities. A notation describing the range of prices quoted for securities in an over-the-counter stock exchange. • Bid denotes the buying price, and asked denotes the selling price. See SPREAD(2). [Cases: Exchanges 13. C.J.S. Exchanges §§ 2, 18.]

BID BOND

bid bond.See BOND(2).

BIDDING UP

bidding up.The act or practice of raising the price for an auction item by making a series of progressively higher bids. • Bidding up is unlawful if the bids are made collusively by persons with an interest in raising the bids. Cf. BY-BIDDING; SHILLING(1). [Cases: Auctions and Auctioneers 7.C.J.S. Auctions and Auctioneers §§ 2, 8–17.]

BIDEREPE

biderepe. See BEDRIP.

BID IN

bid in. See BID(1).

BID OFF

bid off. See BID(1).

BID PEDDLING

bid peddling. See BID-SHOPPING.

BID PRICE

bid price. See PRICE.

BID QUOTE

bid quote. Securities. The price a broker will pay for a security or commodity.

BID-SHOPPING

bid-shopping. A general contractor's effort — after being awarded a contract — to reduce its own costs by finding a subcontractor that will submit a lower bid than the one used in calculating the total contract price. • If a lower bid is obtained, the general contractor will receive a windfall profit because the savings are usu. not passed on to the property owner. The subcontractor whose bid is used in the initial proposal can seek to avoid bid-shopping by insisting that it be irrevocably named in the contract as the project's subcontractor.

BID WANTED

bid wanted. Securities. A dealer's notation that bids are being sought from anyone on a security for sale. • The notation appears in the pink sheets. — Abbr. BW. See PINK SHEET.

BIENNIAL SESSION

biennial session. See SESSION(1).

BIENNIUM

biennium (bI-en-ee-<<schwa>>m). 1. A two-year period. 2. The period for which many state legislatures make appropriations. [Cases: States 131.C.J.S. States §§ 234–239.]

BIENS

biens (beenz or byenz). [French] Hist. Goods; property. • Biens includes real property in most civil-law jurisdictions. Cf. BONA.

BIFACTORAL OBLIGATION

bifactoral obligation. See OBLIGATION.

BIFURCATED DIVORCE

bifurcated divorce. See divisible divorce under **DIVORCE**.

BIFURCATED TRIAL

bifurcated trial. See **TRIAL**.

BIGAMOUS

bigamous (big-*<<schwa>>-m<<schwa>>s*), adj. 1. (Of a person) guilty of bigamy. 2. (Of a marriage) involving bigamy.

BIGAMUS

bigamus (big-*<<schwa>>-m<<schwa>>s*), n. Hist. 1. One who commits bigamy; a bigamist. 2. A man who marries a widow, or who remarries. • Under ecclesiastical law, a bigamus could be denied benefit of clergy.

BIGAMY

bigamy, n. 1. The act of marrying one person while legally married to another. • Bigamy is distinct from adultery. It is a criminal offense if it is committed knowingly. In 1878, the U.S. Supreme Court held that the government was not constitutionally prohibited from banning Mormon polygamy. *Reynolds v. United States*, 98 U.S. (8 Otto) 145 (1878). [Cases: Bigamy 1. C.J.S. Bigamy §§ 2–6, 8.] 2. Eccles. law. The act of marrying a widow or widower, or a divorced person. • Sense 2 is valid even under modern ecclesiastical law, but it is not an offense, only a bar to entering holy orders. — Also termed sequential marriage. Cf. **POLYGAMY**; **MONOGAMY**; **ADULTERY**. — bigamist, n.

BIG BATH

big bath. Slang. A write-off of significant costs, taken to shed an unprofitable business line or to remove the necessity for future write-offs.

BIG BOARD

Big Board. 1. The New York Stock Exchange. • This sense of Big Board may have derived from the former name of the NYSE — New York Stock and Exchange Board. 2. A quotation display showing the current prices of securities listed on the New York Stock Exchange.

BIG POT

big pot. See **MAIN POT**.

BILAGINES

bilagines (bi-lay-j*<<schwa>>-nee*z). [Law Latin] Hist. Town bylaws; laws made by a town's inhabitants for their own government.

BILAN

bilan (bee-lahn). [French "balance sheet"] Civil law. A book used by bankers and merchants to record all that they owe and all that is owed to them; a balance sheet.

BILANCIIS DEFERENDIS

bilanciis deferendis (b<<schwa>>-lan-shee-is def-<<schwa>>r-en-dis).Hist. An obsolete writ ordering a corporation to carry weights to a given place to weigh wool licensed for transportation.

BILATERAL

bilateral,adj. Affecting or obligating both parties <a bilateral contract>.

BILATERAL ACT

bilateral act.See ACT.

BILATERAL ADVANCE PRICING AGREEMENT

bilateral advance pricing agreement.See ADVANCE PRICING AGREEMENT.

BILATERAL CONTRACT

bilateral contract.See CONTRACT.

BILATERAL MISTAKE

bilateral mistake.See mutual mistake (1) under MISTAKE.

BILATERAL MONOPOLY

bilateral monopoly.See MONOPOLY.

BILBOES

bilboes (bil-bohz).Hist. 1. A device for punishment at sea consisting of a board with holes that secure an offender's hands and feet. Cf. STOCKS. 2. An iron bar with sliding shackles for confining the ankles of prisoners, esp. on shipboard.

BILL

bill,n.1. A formal written complaint, such as a court paper requesting some specific action for reasons alleged. 2. An equitable pleading by which a claimant brings a claim in a court of equity. • Before the merger of law and equity, the bill in equity was analogous to a declaration in law. The nine parts of every equitable bill are (1) the address to the person holding the great seal, (2) the introduction, which identifies the parties, (3) the premises, which state the plaintiff's case, (4) the confederating part, in which the defendants are charged with combination, (5) the charging part, in which the plaintiff may try to overcome defenses that the defendants may allege, (6) the jurisdictional clause, showing that the court has jurisdiction, (7) the interrogating part, inserted to try to compel a full and complete answer, (8) the prayer for relief, and (9) the prayer for process to compel the defendants to appear and answer. — Also termed bill in equity. See DECLARATION(7). — Also termed bill in chancery; bill of chancery; bill of equity; bill for foreclosure. [Cases: Equity 128–153.]

“The statement of the plaintiff’s cause of action in equity is called the bill. To this bill the defendant (unless he could protect himself by a demurrer or a plea) was obliged to put in an answer under oath.” George Tucker Bispham, *The Principles of Equity: A Treatise on the System of Justice Administered in Courts of Chancery* § 9, at 12 (11th ed. 1931).

bill for a new trial. A bill in equity to enjoin a judgment and to obtain a new trial because of some fact that would render enforcement of the judgment inequitable. • The fact must have been either unavailable or unknown to the party at trial through fraud or accident. Cf. MOTION FOR NEW TRIAL. [Cases: Fraudulent Conveyances 258; New Trial 124(1). C.J.S. New Trial §§ 147, 170, 174–175, 177, 185–186.]

bill for redemption. See bill of redemption.

bill in aid of execution. A bill filed by a judgment creditor to set aside a fraudulent encumbrance or conveyance. [Cases: Fraudulent Conveyances 258.]

bill in perpetuam rei memoriam. See bill to perpetuate testimony.

bill in the nature of a bill of review. A postjudgment bill of review filed by someone who was neither a party to the original suit nor bound by the decree sought to be reversed. — Also termed supplemental bill in the nature of a bill of review. [Cases: Equity 442.]

bill in the nature of a bill of revivor. A bill filed when a litigant dies or becomes incapacitated before the litigant’s interest in property could be determined. • The purpose of the bill is to resolve who holds the right to revive the original litigation in the deceased’s stead. [Cases: Equity 116.]

bill in the nature of a supplemental bill. A bill bringing to court new parties and interests arising from events that occur after the suit is filed. • A supplemental bill, in contrast, involves parties or interests already before the court. [Cases: Equity 294.]

bill in the nature of interpleader. A bill of interpleader filed by a person claiming an interest in interpleaded property. [Cases: Interpleader 23. C.J.S. Interpleader §§ 33–34.]

bill of certiorari. A bill in equity seeking removal of an action to a higher court. See CERTIORARI. [Cases: Certiorari 42(.5).]

bill of complaint. An original bill that begins an action in a court of equity. See COMPLAINT(1). [Cases: Equity 128–153.]

“A suit in equity, under the procedure of the English Court of Chancery, which was generally adopted in the American States prior to the code, is instituted by the plaintiff filing a bill of complaint. The plaintiff is usually called the complainant, in the Federal courts the complainant or plaintiff indifferently. The bill is in substance a petition to the chancellor, or judge of the court of equity, setting forth at large the grounds of the suit, and praying the process of the court, its subpoena, to bring the defendant into court and compel him to answer the plaintiff’s bill, and, also, for such relief by decree or interlocutory remedy, by way of injunction, etc., as the plaintiff supposes himself entitled to.” Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 55 (2d ed. 1899).

bill of conformity. A bill filed by an executor or administrator who seeks the court's guidance in administering an estate. • The bill is usu. filed to adjust creditors' claims.

bill of costs. A certified, itemized statement of the amount of costs owed by one litigant to another, prepared so that the prevailing party may recover the costs from the losing party. — Also termed cost bill. [Cases: Costs 202. C.J.S. Costs § 148.]

bill of discovery. A bill in equity seeking disclosure of facts within the opposing party's knowledge. See DISCOVERY. [Cases: Equity 129.]

bill of evidence. A transcript of testimony heard at trial.

bill of exceptions. 1. A formal written statement — signed by the trial judge and presented to the appellate court — of a party's objections or exceptions taken during trial and the grounds on which they are founded. • These bills have largely been replaced by straight appeals under the Federal Rules of Civil Procedure. See EXCEPTION(1). [Cases: Exceptions, Bill of 1. C.J.S. Appeal and Error §§ 461–463.] 2. In some jurisdictions, a record made to preserve error after the judge has excluded evidence.

bill of foreclosure. A bill in equity filed by a lender to have mortgaged property sold to satisfy all or part of the secured, unpaid debt. [Cases: Mortgages 444. C.J.S. Mortgages § 739.]

bill of interpleader. An original bill filed by a party against two or more persons who claim from that party the same debt or duty. • The requesting party asks the court to compel the contenders to litigate and establish their rights to the debt or the duty. See INTERPLEADER. [Cases: Interpleader 23. C.J.S. Interpleader §§ 33–34.]

“The common law offered the stakeholder no relief, in that if he paid in good faith to one claimant, he might nevertheless be sued by and required to pay another claimant. And a judgment at law in favor of one claimant against the stakeholder was no defense to an action against the stakeholder by another claimant. However, in equity the bill or suit of interpleader offers him a remedy in that he may interplead (bring) into one action all of the claimants, turn the money or property over to the court, be himself dismissed from the proceeding, and have the court decide which of the claimants is entitled to the fund or property” William Q. de Funiak, *Handbook of Modern Equity* § 108, at 241–42 (2d ed. 1956).

bill of peace. An equitable bill filed by one who is threatened with multiple suits involving the same right, or with recurrent suits on the same right, asking the court to determine the question once and for all, and to enjoin the plaintiffs from proceeding with the threatened litigation. • One situation involves many persons having a common claim but threatening to bring separate suits; another involves one person bringing a second action on the same claim. [Cases: Equity 51(1). C.J.S. Equity §§ 38–41.]

“By a bill of peace we are to understand a bill brought by a person to establish and perpetuate a right which he claims, and which, from its nature, may be controverted by different persons, at different times, and by different actions; or, where separate attempts have already been unsuccessfully made to overthrow the same right, and justice requires that the party should be

quieted in the right, if it is already sufficiently established; or if it should be sufficiently established under the direction of the court. The obvious design of such a bill is to procure repose from perpetual litigation, and therefore, it is justly called a bill of peace.” Joseph Story, *Commentaries on Equity Jurisprudence* § 853, at 567 (W.E. Grigsby ed., 1st English ed. 1884).

“If there was a dispute as to some right involving a multiplicity of persons (e.g., as to a man's right to take tolls, or to a right of way traversing many estates), a bill of peace could be brought in equity to establish the right and so secure repose from the prospect of incessant or multifarious litigation. Bills of peace have now in practice been superseded by modern procedural provisions for the joinder of parties and for representative actions.” Robert E. Megarry & P.V. Baker, *Snell's Principles of Equity* 570 (27th ed. 1973).

bill of privilege.Hist. The formal process for suing an attorney or officer of the court.

“Attorneys and all other persons attending the courts of justice (for attorneys, being officers of the court, are always supposed to be there attending) are not liable to be arrested by the ordinary processes of the court, but must be sued by a bill, called usually a bill of privilege, as being personally present in court.” William Blackstone, *3 Commentaries on the Laws of England* 289 (1768).

bill of redemption.A bill in equity filed to enforce a right to redeem real property, usu. following a mortgage foreclosure or a delinquent-tax sale. — Also termed bill for redemption.

bill of review.A bill in equity requesting that a court reverse or revise a prior decree. [Cases: Equity 442.]

bill of revivor.A bill filed for the purpose of reviving and continuing a suit in equity when the suit has been abated before final consummation. • The most common cause of such an abatement is the death of either the plaintiff or the defendant. [Cases: Equity 303.]

bill of revivor and supplement.A compound of a supplemental bill and a bill of revivor, joined for convenience. • Its distinct parts must be framed and proceeded on separately. [Cases: Equity 294–309.]

bill quia timet.An equitable bill used to guard against possible or prospective injuries and to preserve the means by which existing rights are protected from future or contingent violations. • It differs from an injunction, which corrects past and present — or imminent and certain — injuries. One example is a bill to perpetuate testimony. See *QUIA TIMET*. [Cases: Equity 17. C.J.S. Equity § 55.]

bill to carry a decree into execution.A bill brought when a decree could not be enforced without further court order because of the parties' neglect or for some other reason. — Also termed bill to enforce a decree. [Cases: Equity 438.]

bill to perpetuate testimony.An original bill to preserve the testimony of a material witness who may die or leave the jurisdiction before a suit is commenced, or to prevent or avoid future litigation. — Also termed bill in perpetuam rei memoriam. [Cases: Federal Civil Procedure 1293; Pretrial Procedure 64. C.J.S. Pretrial Procedure §§ 13–17, 34.]

bill to suspend a decree. A bill brought to set aside a decree. [Cases: Equity 430.]

bill to take testimony de bene esse (dee or d<<schwa>> bee-nee es-ee also day ben-ay es-ay). A bill brought to take testimony pertinent to pending litigation from a witness who may be unavailable at the time of trial. [Cases: Federal Civil Procedure 1293; Pretrial Procedure 64. C.J.S. Pretrial Procedure §§ 13–17, 34.]

cost bill. See bill of costs.

cross-bill. A bill brought by the defendant against the plaintiff in the same suit, or against other defendants in the same suit, relating to the matters alleged in the original bill. [Cases: Equity 195–206.]

nonoriginal bill. A bill relating to some matter already litigated by the same parties. • It is an addition to or a continuation of an original bill.

original bill. A bill relating to some matter that has never before been litigated by the same parties with the same interests. [Cases: Equity 128–153.]

skeleton bill of exceptions. A bill of exceptions that, in addition to the formal parts, contains only the court's directions to the clerk to copy or insert necessary documents into the record for appellate review, but does not contain the actual evidence or trial-court rulings. • For example, the statement “the clerk will insert the official transcript here” is typically a skeleton bill. [Cases: Exceptions, Bill of 23. C.J.S. Appeal and Error § 468.]

supplemental bill. A bill filed for the purpose of adding something to an original bill. • This addition usu. results from the discovery of new facts or from a new understanding of facts after the defendant has put on a defense. [Cases: Equity 294–301.]

supplemental bill in the nature of a bill of review. See bill in the nature of a bill of review.

3. A legislative proposal offered for debate before its enactment. [Cases: Statutes 1–23. C.J.S. Statutes §§ 2–6, 9–18, 21–42.]

administration bill. A bill drafted and submitted by the executive branch.

appropriations bill. A bill that authorizes governmental expenditures. • The federal government cannot spend money unless Congress has appropriated the funds. U.S. Const. art. I, § 9, cl. 7. — Also termed spending bill. See APPROPRIATION(2), (3). [Cases: United States 85. C.J.S. United States §§ 156–158.]

budget bill. A bill designating how money will be allocated for the following fiscal year.

clean bill. A bill that has been changed so much by a legislative committee that it is better to introduce a new bill (a “clean” one) than to explain the changes made. — Also termed committee substitute.

companion bill. A bill introduced in the other house of a bicameral legislature in a substantially identical form.

deficiency bill. An appropriation bill covering expenses omitted from the general appropriation bills, or for which insufficient appropriations were made. • An urgent deficiency bill covers immediate expenses usu. for one item, and a general deficiency bill covers a variety of items.

engrossed bill. 1. A bill in a form ready for final passage by a legislative chamber. 2. A bill in the form passed by one house of the legislature. See ENGROSS(3); ENGROSSMENT(2).

“An engrossment is a proofreading and verification in order to be certain that the bill before the house is identical with the original bill as introduced with all amendments that have been adopted correctly inserted.” National Conference of State Legislatures, *Mason's Manual of Legislative Procedure* § 735-2, at 525 (2000).

enrolled bill. A bill passed by both houses of the legislature and signed by their presiding officers. See ENROLL(2); ENROLLED-BILL RULE. [Cases: Statutes 37. C.J.S. Statutes §§ 56–58.]

house bill. (often cap.) A legislative bill being considered by a house of representatives. — Abbr. H.; H.B.

money bill. See revenue bill.

must-pass bill. Legislation of vital importance, such as an appropriation without which the government will shut down. • A must-pass bill will often attract unrelated riders. See RIDER.

omnibus bill. 1. A single bill containing various distinct matters, usu. drafted in this way to force the executive either to accept all the unrelated minor provisions or to veto the major provision. 2. A bill that deals with all proposals relating to a particular subject, such as an “omnibus judgeship bill” covering all proposals for new judgeships or an “omnibus crime bill” dealing with different subjects such as new crimes and grants to states for crime control.

prefiled bill. A bill that has been drafted and submitted before a legislative session begins.

private bill. A bill relating to a matter of personal or local interest only. Cf. special law under LAW.

“A private Bill is a measure for the interest of some person or class of persons, whether an individual, a corporation, or the inhabitants of a county, town, parish, or other locality, and originates on the motion of some member of the [legislature] in which the Bill is introduced.” Courtenay P. Ilbert, *Legislative Methods and Forms* 28 (1901).

public bill. A bill relating to public policy in the whole community.

revenue bill. A bill that levies or raises taxes. • Federal revenue bills must originate in the House of Representatives. U.S. Const. art. I, § 7, cl. 1. — Also termed money bill.

senate bill. (often cap.) A legislative bill being considered by a senate. — Abbr. S.; S.B.

spending bill. See appropriations bill.

4. An enacted statute <the GI Bill>.5. An itemized list of charges; an invoice <hospital bill>. See FEE STATEMENT.

bill of parcels. 1. A seller's itemized list of goods and prices, intended to assist a buyer in detecting any mistakes or omissions in a shipment of goods. 2.INVOICE.

bill payable.See account payable under ACCOUNT.

bill receivable.See account receivable under ACCOUNT.

bill rendered.See account rendered under ACCOUNT.

6. A bill of exchange; a draft <the bank would not honor the unsigned bill>. See DRAFT(1). [Cases: Bills and Notes 1. C.J.S. Bills and Notes; Letters of Credit §§ 2–3, 5–6, 8–9, 17–18, 22.]

advance bill.A bill of exchange drawn before the shipment of the goods.

banker's bill.See finance bill.

blank bill.A bill with the payee's name left blank. Cf. DRAFT(1).

domestic bill. 1. A bill of exchange that is payable in the state or country where it is drawn. [Cases: Bills and Notes 128. C.J.S. Bills and Notes; Letters of Credit§ 85.] 2. A bill on which both the drawer and drawee reside within the same state or country. — Also termed (in sense 2) inland bill of exchange. Cf. foreign bill. [Cases: Bills and Notes 13. C.J.S. Bills and Notes; Letters of Credit § 5.]

finance bill.A bill of exchange drawn by a bank in one country on a bank in another country to raise short-term credit. • Finance bills are often issued in tight money periods, and usu. have maturity dates of more than 60 days. — Also termed banker's bill; working capital acceptance.

foreign bill.A bill of exchange drawn in one state or country and payable in another. Cf. domestic bill. [Cases: Bills and Notes 13, 128. C.J.S. Bills and Notes; Letters of Credit §§ 5, 85.]

inland bill of exchange.See domestic bill (2).

investment bill.A bill of exchange purchased at a discount and intended to be held to maturity as an investment.

7. A formal document or note; an instrument <bill of sale>.“The expression ‘bill of sale’ includes bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipts thereto attached, or receipts for purchase-monies of goods, and other assurances of personal chattels, and also powers of attorney, authorities, or licences to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred” Joshua Williams, Principles of the Law of Personal Property 60 (11th ed. 1881) (tracking the definition in the [U.K.] Bills of Sale Act of 1878).

“A transfer may be either an absolute assignment by way of gift or sale, or an assignment by way of mortgage or security only; but in either case when a written document of any sort is used to effect the transfer, the document is called technically a ‘bill of sale.’ ” Arthur Weldon & H. Gibson Rivington, *Gibson's Conveyancing* 302 (14th ed. 1933).

bill obligatory.A written promise to pay; a promissory note under seal. — Also termed single bond. See NOTE(1). [Cases: Bills and Notes 41. C.J.S. Bills and Notes; Letters of Credit § 5.]

bill of debt.A debt instrument, such as a bill obligatory or promissory note. [Cases: Bills and Notes 28. C.J.S. Bills and Notes; Letters of Credit §§ 2–3, 7–9, 12, 22, 75.]

bill of lading.See BILL OF LADING.

bill penal.A written promise to pay that carries a penalty in excess of the underlying debt for failure to pay. Cf. bill single.

bill single.A written promise to pay that is not under seal and has no penalty for failure to pay. — Also termed single bill. Cf. bill penal.

grand bill of sale. 1.Hist. An instrument used to transfer title to a ship that is at sea. 2. An instrument used to transfer title of a ship from the builder to the first purchaser.

single bill.See bill single.

skeleton bill.A bill drawn, indorsed, or accepted in blank.

8. A piece of paper money <a \$10 bill>.9. A promissory note <the debtor signed a bill for \$7,000>. [Cases: Bills and Notes 28. C.J.S. Bills and Notes; Letters of Credit §§ 2–3, 7–9, 12, 22, 75.]

BILLABLE HOUR

billable hour.A unit of time used by an attorney, law clerk, or paralegal to account for work performed and chargeable to a client. • Billable hours are usu. divided into quarters or tenths of an hour. [Cases: Attorney and Client 140. C.J.S. Attorney and Client §§ 324–326, 328–329.]

BILLABLE TIME

billable time.An attorney's, law clerk's, or paralegal's time that is chargeable to a client. Cf. NONBILLABLE TIME. [Cases: Attorney and Client 140. C.J.S. Attorney and Client §§ 324–326, 328–329.]

BILLA CASSETUR

billa cassetur (bil-<<schwa>> k<<schwa>>-see-t<<schwa>>r). See CASSETUR BILLA.

BILLA EXCAMBII

billa excambii (bil-<<schwa>> eks-kam-bee-I). [Latin] See BILL OF EXCHANGE.

BILLA EXONERATIONIS

billa exonerationis (bil-⟨⟨schwa⟩⟩ ig-zon-⟨⟨schwa⟩⟩-ray-shee-oh-nis). [Latin] See BILL OF LADING.

BILLA VERA

billa vera (bil-⟨⟨schwa⟩⟩ veer-⟨⟨schwa⟩⟩). [Latin] See TRUE BILL.

BILL BROKER

bill broker. A middleman who negotiates the purchase or sale of commercial paper.

BILL CHAMBER

Bill Chamber. Hist. Scots law. A division of the Court of Session in which some remedies could be granted. • The Lord Ordinary on the Bills presided over the court. It was abolished in 1933 and merged into the Court of Session.

BILLETA

billeta (bil-⟨⟨schwa⟩⟩-t⟨⟨schwa⟩⟩). Hist. A proposed statute or petition presented in Parliament.

BILLHEAD

billhead. A printed invoice containing a business's name and address.

BILL IN AID OF EXECUTION

bill in aid of execution. See BILL(2).

BILL IN EQUITY

bill in equity. See BILL(2).

BILLING CYCLE

billing cycle. The period between billings for goods sold or services rendered.

BILLIN PERPETUAM REI MEMORIAM

bill in perpetuam rei memoriam. See bill to perpetuate testimony under BILL (2).

BILL NUMBER

bill number. The number assigned to a proposed piece of legislation, typically designating the house in which it was introduced (S. for senate or H.R. for house of representatives) followed by a sequential number.

BILL OF ADVENTURE

bill of adventure. Maritime law. A shipper's written statement that the shipped property belongs to another and is conveyed at the owner's risk.

BILL OF ATTAINDER

bill of attainder. 1.Archaic. A special legislative act that imposes a death sentence on a person without a trial. 2. A special legislative act prescribing punishment, without a trial, for a specific person or group. • Bills of attainder are prohibited by the U.S. Constitution (art. I, § 9, cl. 3; art. I, § 10, cl. 1). — Also termed act of attainder. See **ATTAINDER**; **BILL OF PAINS AND PENALTIES** . [Cases: Constitutional Law 82.5. C.J.S. Constitutional Law §§ 429–431.]

BILL OF CREDIT

bill of credit. 1. Legal tender in the form of paper, issued by a state and involving the faith of the state, designed to circulate as money in the ordinary uses of business. U.S. Const. art. I, § 10. [Cases: States 145. C.J.S. States § 251.] 2.**LETTER OF CREDIT**.

BILL OF ENTRY

bill of entry.Maritime law. A written description of goods filed by an importer with customs officials to obtain permission to unload a ship's goods.

BILL OF EXCHANGE

bill of exchange.See **DRAFT**(1).

BILL OF HEALTH

bill of health.Maritime law. A statement certifying the healthy condition of a ship's cargo and crew. • The bill is issued by the port authority from which a vessel sails and is shown to the port authority at the ship's destination as proof that the ship's cargo and crew are disease-free. A “clean” bill states that no contagious or infectious diseases were present at the port; a “touched” or “foul” bill states that the named disease was suspected, anticipated, or actually present. [Cases: Shipping 15. C.J.S. Shipping § 11.]

BILL OF INDEMNITY

bill of indemnity. 1.Hist. An act of Parliament passed annually to protect officeholders who unwittingly fail to take a required oath from liability for acts done in an official capacity. • A more general statute, the Promissory Oaths Act, replaced the bill of indemnity in 1868. 2. A law protecting a public official from liability for official acts. [Cases: Officers and Public Employees 114. C.J.S. Officers and Public Employees §§ 247–248, 251–258.] 3. An initial pleading by which a plaintiff seeks to require another (often an insurance company) to discharge the plaintiff's liability to a third person.

BILL OF INDICTMENT

bill of indictment.An instrument presented to a grand jury and used by the jury to declare whether there is enough evidence to formally charge the accused with a crime. See **INDICTMENT**; **NO BILL**; **TRUE BILL**.

BILL OF INFORMATION

bill of information. 1.**INFORMATION**. 2.Hist. A civil suit begun by the Crown or by those under its protection, such as a charity.

BILL OF INTERPLEADER

bill of interpleader. See BILL(2).

BILL OF LADING

bill of lading (layd-ing). A document acknowledging the receipt of goods by a carrier or by the shipper's agent and the contract for the transportation of those goods; a document that indicates the receipt of goods for shipment and that is issued by a person engaged in the business of transporting or forwarding goods. UCC § 1-201(b)(6). • A negotiable bill of lading is a document of title. — Abbr. B/L. Cf. WAYBILL; AIRBILL. [Cases: Carriers 51; Shipping 106. C.J.S. Carriers § 390; Shipping §§ 256–257.]

“A bill of lading may be regarded in three several aspects. (1) It is a receipt given by the master of a ship acknowledging that the goods specified in the bill have been put on board; (2) it is the document [that] contains the terms of the contract for the carriage of the goods agreed upon between the shipper of the goods and the shipowner (whose agent the master of the ship is); and (3) it is a ‘document of title’ to the goods, of which it is the symbol. It is by means of this document of title that the goods themselves may be dealt with by the owner of them while they are still on board ship and upon the high seas.” William R. Anson, *Principles of the Law of Contract* 380 (Arthur L. Corbin ed., 3d Am. ed. 1919).

bearer bill of lading. A negotiable bill of lading that authorizes the carrier or holder of freight to deliver it to the bearer.

claused bill of lading. See unclean bill of lading.

clean bill of lading. A bill of lading containing no clause or notation qualifying the bill's terms. • Possible clauses or notations could include a provision for deck storage or a recording of cargo damage. Cf. unclean bill of lading. [Cases: Carriers 52(2). C.J.S. Carriers § 438.]

destination bill of lading. A bill procured to be issued at the destination point or any other place than the place of shipment. UCC § 7-305. [Cases: Shipping 106(3). C.J.S. Shipping §§ 260–263, 265.]

foul bill of lading. See unclean bill of lading.

long-form bill of lading. A bill of lading that expressly contains all the terms of the transportation contract. Cf. short-form bill of lading.

negotiable bill of lading. A bill of lading calling for the delivery of goods to the bearer or to a named person's order. UCC § 7-104. [Cases: Carriers 54; Shipping 106(5). C.J.S. Carriers § 398; Shipping § 259.]

nonnegotiable bill of lading. See straight bill of lading.

ocean bill of lading. A negotiable bill of lading used in shipment by water. — Often shortened to ocean bill. [Cases: Shipping 106. C.J.S. Shipping §§ 256–257.]

onboard bill of lading. A bill of lading reflecting that goods have been loaded onto a ship. • In

multimodal shipments, an onboard bill of lading may include goods loaded onto land vehicles also. — Often shortened to onboard bill.

order bill of lading.A negotiable bill of lading stating that the goods are consigned to the order of the person named in the bill. [Cases: Carriers 54. C.J.S. Carriers § 398.]

overseas bill of lading.A bill of lading used for overseas shipment by water or air. UCC § 2-323. • In air freight, an overseas bill of lading is called an air waybill. — Often shortened to overseas bill.

short-form bill of lading.A bill of lading that does not expressly contain all the terms of the transportation contract, but incorporates them by reference to another document, usu. one at the office of the carrier.

spent bill of lading.A negotiable bill of lading that is not produced, canceled, or surrendered after the carrier has delivered the goods. — Often shortened to spent bill.

straight bill of lading.A nonnegotiable bill of lading that specifies a consignee to whom the carrier is contractually obligated to deliver the goods. • In some countries, including England, a document is not a bill of lading unless it is negotiable. — Also termed nonnegotiable bill of lading. [Cases: Carriers 51. C.J.S. Carriers § 390.]

through bill of lading.A bill of lading by which a carrier agrees to transport goods to a designated destination, even though the carrier will have to use a connecting carrier for part of the passage. UCC § 7-302. — Often shortened to through bill. [Cases: Carriers 51. C.J.S. Carriers § 390.]

unclean bill of lading.A bill of lading that shows on its face that the goods were damaged or that there was a shortage of goods at the time of shipment. — Also termed claused bill of lading; foul bill of lading. Cf. clean bill of lading.

BILL OF MIDDLESEX

bill of Middlesex.Hist. A process by which the Court of the King's Bench in Middlesex obtains jurisdiction over a defendant who resides in a county outside the Court's jurisdiction, by alleging a fictitious trespass in a county over which the court has jurisdiction. • Once the sheriff returns the bill noting that the defendant is not in the county where the trespass occurred, a latitat is issued to the sheriff of the defendant's actual residence. See LATITAT.

“The bill of Middlesex is a kind of *capias*, directed to the sheriff of that county, and commanding him to take the defendant, and have him before our lord the king at Westminster on a day prefixed, to answer to the plaintiff of a plea of trespass. For this accusation of trespass it is, that gives the court of king's bench jurisdiction in other civil causes, as was formerly observed; since when once the defendant is taken into custody ... , he, being then a prisoner of this court, may here be prosecuted for any other species of injury.” 3 William Blackstone, *Commentaries on the Laws of England* 285 (1768).

BILL OF MORTALITY

bill of mortality.Hist. A record of the number of deaths occurring in a given district. • Bills of mortality were compiled — often week to week — in England from late in the 16th century to the 19th century as a way to keep track of the plague and other highly contagious diseases.

BILL OF PAINS AND PENALTIES

bill of pains and penalties.A legislative act that, though similar to a bill of attainder, prescribes punishment less severe than capital punishment. • Bills of pains and penalties are included within the U.S. Constitution's ban on bills of attainder. U.S. Const. art I, § 9. [Cases: Constitutional Law 82.5. C.J.S. Constitutional Law §§ 429–431.]

BILL OF PARCELS

bill of parcels.See BILL(5).

BILL OF PARTICULARS

bill of particulars.A formal, detailed statement of the claims or charges brought by a plaintiff or a prosecutor, usu. filed in response to the defendant's request for a more specific complaint. • The bill of particulars has been abolished in federal civil actions and replaced by the motion for a more definite statement. See Fed. R. Civ. P. 12(e). But it is still used in some states (such as California) and in federal criminal cases. See Fed. R. Crim. P. 7(f). — Also termed statement of particulars. See MOTION FOR MORE DEFINITE STATEMENT . [Cases: Indictment and Information 121; Pleading 313. C.J.S. Indictments and Informations § 137; Pleading § 531.]

“Although it has been said that the bill of particulars is not a discovery device, it seems plain that it is a means of discovery, though of a limited nature. It is the one method open to a defendant in a criminal case to secure the details of the charge against him.” 1 Charles Alan Wright, Federal Practice and Procedure § 129, at 646–47 (3d ed. 1999).

BILL OF PEACE

bill of peace.See BILL(2).

BILL OF PRIVILEGE

bill of privilege.See BILL(2).

BILL OF REDEMPTION

bill of redemption.See BILL(2).

BILL OF REVIEW

bill of review.See BILL(2).

BILL OF REVIVOR

bill of revivor.See BILL(2).

BILL OF REVIVOR AND SUPPLEMENT

bill of revivor and supplement. See BILL(2).

BILL OF RIGHTS

bill of rights. 1. (usu. cap.) A section or addendum, usu. in a constitution, defining the situations in which a politically organized society will permit free, spontaneous, and individual activity, and guaranteeing that governmental powers will not be used in certain ways; esp., the first ten amendments to the U.S. Constitution. [Cases: Constitutional Law 82(2). C.J.S. Constitutional Law §§ 445–446, 630.] 2. (cap.) One of the four great charters of English liberty (1 W. & M., 1689), embodying in statutory form all the principles of the other three charters, namely, Magna Carta, the Petition of Right (3 Car. 1 (1628)), and the Habeas Corpus Act (31 Car. 2 (1679)).

BILL OF SALE

bill of sale. An instrument for conveying title to personal property, absolutely or by way of security. Cf. DEED. [Cases: Sales 141, 215. C.J.S. Sales § 215.]

BILL OF SIGHT

bill of sight. Maritime law. A declaration made to a customs officer by an importer who is unsure about what is being shipped. • The bill of sight allows an importer to inspect the goods before paying duties.

BILL OF STORE

bill of store. Hist. A license authorizing a merchant to carry necessary stores and provisions free of duty.

BILL OF SUFFERANCE

bill of sufferance. Hist. A license authorizing a merchant to trade between English ports without paying customs duties.

BILL PAYABLE

BILL PENAL

bill penal. See BILL(7).

BILL QUIA TIMET

bill quia timet. See BILL(2).

BILL RECEIVABLE

BILL RENDERED

BILLS AND NOTES

bills and notes. 1. PAPER(1). 2. PAPER(2).

BILLS IN A SET

bills in a set. A bill of lading made up of a series of independent parts, each bearing a number and providing that goods delivered against any one part voids the other parts. • Traditionally, in overseas-goods shipments, the parts of this type of bill were sent under separate cover so that if one was lost, the buyer could take delivery of the goods with another one. UCC § 7-304.

BILL SINGLE

bill single. See BILL(7).

BILL STATUS

bill status. The current state of a proposed law in the legislative process, such as its assignment to a committee, its schedule for a hearing or a vote, and its passage or defeat by one or both houses.

BILL TAKEN PRO CONFESSO

bill taken pro confesso (proh k<<schwa>>n-fes-oh). [Latin “as if admitted”] Hist. An order issued by a court of equity when a defendant fails to file an answer.

BILL TO CARRY A DECREE INTO EXECUTION

bill to carry a decree into execution. See BILL(2).

BILL TO ENFORCE A DECREE

bill to enforce a decree. See bill to carry a decree into execution under BILL (2).

BILL TO PERPETUATE TESTIMONY

bill to perpetuate testimony. See BILL(2).

BILL TO SUSPEND A DECREE

bill to suspend a decree. See BILL(2).

BILL TO TAKE TESTIMONY DE BENE ESSE

bill to take testimony de bene esse. See BILL(2).

BIMETALLISM

bimetallism. A monetary system in which currency is defined in terms of two metals (usu. gold and silver), both being legal tender and with a fixed rate of exchange between them. • The American money system was based on a bimetallic standard from 1792 to 1873.

BIND

bind, vb. 1. To impose one or more legal duties on (a person or institution) < the contract binds the parties > < courts are bound by precedent >. 2. Hist. To indenture; to legally obligate to serve. — bindingness, n. — binding, adj.

BIND DAY

bind day.See BOON DAY.

BINDER

binder. 1. A document in which the buyer and the seller of real property declare their common intention to bring about a transfer of ownership, usu. accompanied by the buyer's initial payment. 2. Loosely, the buyer's initial payment in the sale of real property. Cf. EARNEST MONEY. 3. An insurer's memorandum giving the insured temporary coverage while the application for an insurance policy is being processed or while the formal policy is being prepared. [Cases: Insurance 1748.] — Also termed binding receipt; binding slip.

BINDING

binding,adj.1. (Of an agreement) that binds <a binding contract>.2. (Of an order) that requires obedience <the temporary injunction was binding on the parties>.

BINDING AGREEMENT

binding agreement.See AGREEMENT.

BINDING ARBITRATION

binding arbitration.See ARBITRATION.

BINDING AUTHORITY

binding authority.See binding precedent under PRECEDENT.

BINDING INSTRUCTION

binding instruction.See mandatory instruction under JURY INSTRUCTION.

BINDING PRECEDENT

binding precedent.See PRECEDENT.

BINDING RECEIPT

binding receipt.See BINDER.

BINDING SLIP

binding slip.See BINDER.

BIND OVER

bind over,vb.1. To put (a person) under a bond or other legal obligation to do something, esp. to appear in court. 2. To hold (a person) for trial; to turn (a defendant) over to a sheriff or warden for imprisonment pending further judicial action. • A court may bind over a defendant if it finds at a preliminary examination that there is enough evidence to require a trial on the charges against the defendant. [Cases: Criminal Law 240. C.J.S. Criminal Law § 353.] — binding over,n. — bindover,adj.

BINDOVER HEARING

bindover hearing. See PRELIMINARY HEARING.

BIOLOGICAL

biological, adj. 1. Of or relating to biology or life <biological study>. 2. Genetically related <biological parents>.

BIOLOGICAL CHILD

biological child. See natural child under CHILD.

BIOLOGICAL FATHER

biological father. See FATHER.

BIOLOGICAL MATERIAL

biological material. Patents. Patentable microorganisms — such as bacteria, fungi, algae, protozoa, and viruses — that are capable of self-replication. • To satisfy the Patent Act's enablement requirement, biological material that is the subject of a U.S. patent application must be deposited in an appropriate cell depository before the patent is granted. [Cases: Patents 14. C.J.S. Patents § 22.]

BIOLOGICAL MOTHER

biological mother. See MOTHER.

BIOLOGICAL PARENT

biological parent. See PARENT.

BIOLOGICAL WARFARE

biological warfare. See WARFARE.

BIOTECHNOLOGY

biotechnology. Patents. A branch of molecular biology dealing with the use of biological processes to produce useful medical and industrial materials. Cf. GENETIC ENGINEERING.

BIOTECHNOLOGY PATENT PROCESS PROTECTION ACT

Biotechnology Patent Process Protection Act. Patents. A 1995 federal statute that made biotechnological processes per se patentable if either the process or the resulting material is novel and nonobvious. 35 USCA § 103(b). — Also termed Biotechnology Act.

BIPARTITE

bipartite, adj. (Of an instrument) executed in two parts by both parties.

BIRPI

BIRPI. See INTERNATIONAL BUREAU FOR THE PROTECTION OF INTELLECTUAL PROPERTY.

BIRRETUM

birretum (b<<schwa>>-ret-<<schwa>>m). [Law Latin] A cap or coif formerly worn by British judges and serjeants-at-law.

BIRTH

birth. The complete extrusion of a newborn baby from the mother's body. • The quotation below states the traditional legal view of birth. In a few jurisdictions, the state of the law may be changing. In South Carolina, for example, a child does not have to be born alive to be a victim of murder; a woman can be convicted of fetal murder if her baby is stillborn because of the mother's prenatal drug abuse.

“For purposes of criminal law — and also for those of property law, e.g. to become a holder of property and so transmit it again to new heirs, or to enable the father to obtain curtesy of his wife's lands — birth consists in extrusion from the mother's body, i.e. in having ‘come into the world.’ If but a foot be unextricated, there can be no murder, the extrusion must be complete, the whole body of the infant must have been brought into the world. But it is not necessary that the umbilical cord should have been severed. And to be born alive the child must have been still in a living state after having wholly quitted the body of the mother.” J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 104 (16th ed. 1952).

BIRTH CERTIFICATE

birth certificate. A formal document that records a person's birthdate, birthplace, and parentage. • In all 50 states, an adopted child receives a second birth certificate reflecting his or her adoptive parents. In such a case, the original birth certificate is usu. sealed and can be opened only by court order. Some states allow limited access, depending on the year when an adoptee was born and (sometimes) on whether the birth parents consent. The trend today is to open records if (1) both the child and the biological parent consent — for example, through an adoption registry, or (2) the child requests and, upon notification, the biological parent does not veto the request. Oregon enacted the first statute to permit access to birth records upon the unilateral demand of the adopted child, once the child reaches the age of majority. See ADOPTION-REGISTRY STATUTE. [Cases: Health 397.]

BIRTH CONTROL

birth control. 1. Any means of preventing conception and pregnancy, usu. by mechanical or chemical means, but also by abstaining from intercourse. 2. More narrowly, contraception.

BIRTHDAY CLUB

birthday club. See GIFTING CLUB.

BIRTH FATHER

birth father. See biological father under FATHER.

BIRTH INJURY

birth injury. Harm that occurs to a fetus during the birth process, esp. during labor and delivery. Cf. PRENATAL INJURY.

BIRTH MOTHER

birth mother. See MOTHER.

BIRTH PARENT

birth parent. See PARENT.

BIRTH RECORDS

birth records. Statistical data kept by a governmental entity concerning people's birthdates, birthplaces, and parentage. [Cases: Health 397.]

BIS

BIS. abbr. BUREAU OF INDUSTRY AND SECURITY.

BI-SCOT

bi-scot. Hist. English law. A fine imposed for not repairing banks, ditches, and causeways.

BISHOP

bishop. The chief superintendent and highest-ranking member of the clergy within a diocese.
 • The bishop is subject to the archbishop of a province. [Cases: Religious Societies 27. C.J.S. Religious Societies § 43.]

“[A] bishop ... has several courts under him, and may visit at pleasure every part of his diocese. His chancellor is appointed to hold his courts for him, and to assist him in matters of ecclesiastical law” 1 William Blackstone, Commentaries on the Laws of England 370 (1765).

BISHOPRIC

bishopric (bish-<<schwa>>-prik). 1. DIOCESE. 2. The office of a bishop.

BISHOP'S COURT

bishop's court. 1. An ecclesiastical court usu. held in the diocese cathedral and presided over by the bishop's chancellor. 2. Hist. Eccles. law. (cap.) A court (usu.) held in the cathedral of a diocese, the judge being the bishop's chancellor, who applied civil canon law. • The jurisdiction included appeals from the Court of Archdeacon. In a large diocese, the bishop's chancellor would have commissaries in remote parts who held consistory courts. See CONSISTORY COURT.

BITING RULE

biting rule. A rule of construction that once a deed or will grants a fee simple, a later provision

attempting to cut down, modify, or qualify the grant will be held void. [Cases: Deeds 124; Wills 601(2).C.J.S. Deeds § 245.]

BIVENS<TT> ACTION

Bivens action. A lawsuit brought to redress a federal official's violation of a constitutional right. *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, 91 S.Ct. 1999 (1971). • A Bivens action allows federal officials to be sued in a manner similar to that set forth at 42 USCA § 1983 for state officials who violate a person's constitutional rights under color of state law. [Cases: United States 50.1.]

. BIZ

.biz.Trademarks. A top-level domain name assigned by ICANN for use by businesses as distinct from individual, personal, or noncommercial use. See DOMAIN NAME; INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS.

B/L

B/L.abbr.BILL OF LADING.

BLACKACRE

Blackacre. A fictitious tract of land used in legal discourse (esp. law-school hypotheticals) to discuss real-property issues. • When another tract of land is needed in a hypothetical, it is often termed “Whiteacre.”

“Blackacre is the most celebrated tract of land in the world of the law Blackacre is wholly mythical, yet totally real. It is a concept, living in the realm of the mind and doubly valuable since much of the law of property has the same type of reality.” John E. Cribbet, *Principles of the Law of Property* 2 (2d ed. 1975).

BLACK ACT

Black Act.Hist. An English statute (9 Geo. ch. 22) establishing the death penalty for the unlawful killing or maiming of animals. • The statute was passed in 1722 in the wake of crimes committed by persons with faces blackened or otherwise disguised. The statute was repealed in 1827. The classic study of this law is E.P. Thompson, *Whips and Hunters: The Origins of the Black Act* (1975).

BLACK ACTS

Black Acts.Scots law. Statutes of the Scottish Parliament passed from 1535 to 1594 and recorded in a book printed in black letter.

BLACK BOOK OF THE ADMIRALTY

Black Book of the Admiralty.English law. A medieval code of maritime law containing admiralty laws, ordinances, and proceedings, decisions, and acts of the monarch, the Lord High Admiral, and the Court of Admiralty. • The Black Book is considered a definitive source for

customary English maritime law. It also contains a copy of the Rules of Oleron, an 11th-century compilation of common maritime law.

BLACK BOOK OF THE EXCHEQUER

Black Book of the Exchequer.Hist. A record book containing treaties, conventions, charters, papal bulls, and other English state documents. • It dates from the 13th century. — Also termed *Liber Niger Parvus*.

BLACK CAP

black cap.A square cap worn by English judges on certain state or solemn occasions. • The black cap was formerly worn by judges when handing down a death sentence.

BLACK CODES

black codes.(usu. cap.) Hist. 1.Antebellum state laws enacted to regulate slavery. 2. Laws enacted shortly after the Civil War in the ex-Confederate states to restrict the liberties of the newly freed slaves to ensure a supply of inexpensive agricultural labor and to maintain white supremacy.

“Clearly, leaders of the old South who survived the war were in no mood for racial equality. It was a bitter enough pill that the slaves were legally free; there was no inclination to go beyond the formal status. The Black Codes of 1865, passed in almost all of the states of the old Confederacy, were meant to replace slavery with some kind of caste system and to preserve as much as possible of the prewar way of life.” Lawrence M. Friedman, *A History of American Law* 504 (2d ed. 1985).

BLACK ECONOMY

black economy.See *SHADOW ECONOMY*.

BLACK HAND

Black Hand.Hist. Any of several secret societies that were active in the late 19th and early 20th centuries. • Most of these organizations were composed of anarchists or separatists and engaged in terrorism. In the late 19th and early 20th centuries, a loosely knit Sicilian–Italian criminal organization called the Black Hand extorted money from Italian immigrants to the U.S. through threats and acts of violence. Chapters of the organization were established throughout the United States and Canada. The New York City Police Department created the nation's first bomb squad to deal with the bombs used by the Black Hand. A band of Spanish anarchists in the late 19th century and a group of Serbian anarchists in the early 20th century were also called the Black Hand. The organizations were not related. — blackhander,n.

BLACK-LEG LABOR

black-leg labor.See *SCAB*.

BLACKLETTER LAW

blackletter law.One or more legal principles that are old, fundamental, and well settled. • The

term refers to the law printed in books set in Gothic type, which is very bold and black. — Also termed hornbook law.

BLACKLIST

blacklist,vb. To put the name of (a person) on a list of those who are to be boycotted or punished <the firm blacklisted the former employee>. — blacklist,n.

BLACK-LUNG DISEASE

black-lung disease.See PNEUMOCONIOSIS.

BLACKMAIL

blackmail,n.1. A threatening demand made without justification; EXTORTION. Cf. FEEMAIL; GRAYMAIL; GREENMAIL(1), (2). [Cases: Extortion and Threats 25.1. C.J.S. Threats and Unlawful Communications §§ 2–20.] — blackmail,vb.

“[Blackmail is] a certain rate of Money, Corn, Cattle, or other consideration, paid to some inhabiting upon, or near the borders, being persons of name and power, allied with ... known Robbers ... to be thereby by them freed and protected from the danger of those Spoil-takers.” Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

“ ‘Black-mail’ (black rent) was anciently used to indicate ‘rents reserved in work, grain or baser money’ (i.e. baser than silver). It was also employed at one time to refer to ‘a tribute formerly exacted in the north of England and in Scotland by freebooting chiefs for protection from pillage.’ [Quoting *American College Dictionary* (1948).] Such practice was extortion, in the literal sense, and hence ‘blackmail’ is frequently used to indicate statutory extortion or sometimes an extorsive threat. And the federal statute forbidding the sending of an extorsive threat by mail has been referred to as the ‘blackmail statute.’ ” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 451 (3d ed. 1982).

2.BLACK RENT.

BLACKMAIL SUIT

blackmail suit.See SUIT.

BLACK MARIA

black maria.Slang. A locked van used by the police to transport prisoners to and from jail.

BLACK MARKET

black market.1.MARKET. 2.SHADOW ECONOMY.

BLACK-MARKET ADOPTION

black-market adoption.See ADOPTION.

BLACKOUT PERIOD

blackout period.Trademarks. The time between the examining attorney's approval of an intent-to-use application for publication in the Official Gazette and the issuance of a notice of allowance after publication, during which the applicant may not file a statement of use or make any other substantive amendment to the application. [Cases: Trade Regulation 214. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 180.]

BLACK-RAGE INSANITY DEFENSE

black-rage insanity defense.See INSANITY DEFENSE.

BLACK RENT

black rent.Hist. Feudal rents paid in work, grain, or money baser than silver. — Also termed blackmail. Cf. WHITE RENT.

BLACKSTONE LAWYER

Blackstone lawyer.Slang. 1. A lawyer with a broad knowledge of blackletter principles. 2. A self-educated lawyer (esp. in antebellum America) whose legal training consists primarily of reading Blackstone's Commentaries.

BLACK WARD

black ward.Hist. A subvassal; a vassal of the king's vassal.

BLAINE AMENDMENT

Blaine amendment.A provision in a state constitution for stricter separation of church and state than is required by the Establishment Clause. • In 1875, at the request of President Ulysses S. Grant, Senator James G. Blaine proposed an amendment to the U.S. Constitution, applying the Free Exercise and Establishment Clause to the states, and specifically prohibiting the use of any state funds to support any religious institutions, including private church-run schools (esp. Roman Catholic). The House of Representatives passed the amendment, but the Senate narrowly voted against it. Many states, however, amended their constitutions to include a “Blaine Amendment” strictly prohibiting the use of public money for the support of religious institutions.

BLAME

blame,n.1. An act of attributing fault; an expression of disapproval <the judge said all of the plaintiff's attorneys were to blame>.2. Responsibility for something wrong <blame rested with all the defendants>. — blame,vb. — blameworthy, blamable,adj.

BLANC SEIGN

blanc seign (blahnk sayn). [Law French] Civil law. A signed paper entrusted to someone with the power to bind the signer within the limits of the agreement between the signer and the grantee. See POWER OF ATTORNEY(1).

BLANK

blank.Parliamentary law. 1. A ballot cast without a vote, effectively an abstention. 2. A name,

number, time, or other term left open in a motion, to be filled in by vote after taking proposals from the floor. • An election is a common form of filling a blank: each nomination is effectively a proposal for filling the blank in the question, "Resolved, That _____ is elected." See CREATE A BLANK; FILL A BLANK.

BLANK ACCEPTANCE

blank acceptance.See ACCEPTANCE(4).

BLANK BAR

blank bar.Hist. A plea in bar interposed by a defendant in a trespass action. • This type of plea was filed to compel the plaintiff to state exactly where the alleged trespass occurred. — Also termed common bar.

BLANK BILL

blank bill.See BILL(6).

BLANK BOND

blank bond.See BOND(2).

BLANK CHECK

blank check.See CHECK.

BLANK CONSENT

blank consent.A general authorization from a natural parent who voluntarily relinquishes a child for private adoption and allows adoption proceedings without further consent. • Jurisdictions are divided over whether a blank consent is valid if the natural parents do not identify and approve the prospective adoptive parents. — Also termed blanket consent; general consent.

BLANKET AGREEMENT

blanket agreement.Labor law. A collective-bargaining agreement that applies to workers throughout an organization, industry, or geographical area. [Cases: Labor Relations 241. C.J.S. Labor Relations § 217.]

BLANKET BOND

blanket bond.See BOND(2).

BLANKET CONTRACT

blanket contract.See CONTRACT.

BLANKET LICENSE

blanket license.See LICENSE.

BLANKET LIEN

blanket lien. See LIEN.

BLANKET MORTGAGE

blanket mortgage. See MORTGAGE.

BLANKET POLICY

blanket policy. See INSURANCE POLICY.

BLANKET SEARCH WARRANT

blanket search warrant. See SEARCH WARRANT.

BLANK FORM

blank form. Copyright. A form, usu. one for record-keeping and business purposes, that does not convey information until it has been filled in. • Blank forms are not eligible for copyright protection. — Also termed business form. See BLANK-FORMS RULE.

BLANK-FORMS RULE

blank-forms rule. Copyright. The principle that forms are not protectable by copyright if they are designed for recording information but do not themselves convey any information. • The rule, first promulgated by the U.S. Supreme Court in *Baker v. Selden*, 101 U.S. 99 (1879), is now a U.S. Copyright Office regulation, 37CFR § 202.1(c). See MERGER DOCTRINE (1). [Cases: Copyrights and Intellectual Property 10.4. C.J.S. Copyrights and Intellectual Property §§ 11–12, 16, 92, 101.]

BLANK INDORSEMENT

blank indorsement. See INDORSEMENT.

BLANK STOCK

blank stock. See STOCK.

BLASPHEMY

blasphemy (blas-f<<schwa>>-mee), n. Irreverence toward God, religion, a religious icon, or something else considered sacred. • Blasphemy was a crime at common law and remains so in some U.S. jurisdictions, but it is rarely if ever enforced because of its questionable constitutionality under the First Amendment. Cf. PROFANITY. [Cases: Criminal Law 45.20. C.J.S. Criminal Law § 7.] — blaspheme (blas-feemorblas-feem), vb. — blasphemous (blas-f<<schwa>>-m<<schwa>>s), adj. — blasphemer (blas-fee-m<<schwa>>r), n.

“Blasphemy is the malicious revilement of God and religion. In England blasphemy was the malicious revilement of the Christian religion.... Blasphemy has been held to be a common-law crime [in the United States] because of its tendency to stir up breaches of the peace. It is expressly made punishable by some of the statutes.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 474, 475 (3d ed. 1982).

BLENDED FAMILY

blended family. See FAMILY.

BLENDED FUND

blended fund. See FUND(1).

BLENDED SENTENCE

blended sentence. See SENTENCE.

BLENDED TRUST

blended trust. See TRUST.

BLENDING CLAUSE

blending clause. A provision in a will disposing of both the testator's own property and the property over which the testator has a power of appointment, so that the two types of property are treated as a unit. [Cases: Wills 589.]

BLIND-BIDDING

blind-bidding. Copyright. In the licensing of movies for first-run engagements, the practice by film distributors of requiring theater owners to bid for and book movies without having seen them.

- By statute, some states prohibit blind-bidding.

BLIND ENTRY

blind entry. See ENTRY(2).

BLIND PIG

blind pig. See BLIND TIGER.

BLIND PLEA

blind plea. See PLEA(1).

BLIND SELLING

blind selling. The sale of goods without giving a buyer the opportunity to examine them.

BLIND TIGER

blind tiger. Slang. A place where intoxicants are illegally sold. • This term was commonly used during Prohibition. — Also termed blind pig. See PROHIBITION(3).

BLIND TRUST

blind trust. See TRUST.

BLOC

bloc. A group of persons or political units aligned with a common interest or purpose, even if only temporarily <voting bloc>.

BLOCK

block,n.1. A municipal area enclosed by streets <three blocks away>. See LOT (1).2. A quantity of things bought or sold as a unit <a block of preferred shares>.

BLOCKADE

blockade.Int'l law.A belligerent's prevention of access to or egress from an enemy's ports by stationing ships to intercept vessels trying to enter or leave those ports. • To be binding, a blockade must be effective — that is, it must be maintained by a force sufficient to prevent access to ports. — Also termed simple blockade; de facto blockade. [Cases: War and National Emergency 19. C.J.S. War and National Defense § 6.]

“A blockade must be existing in point of fact; and in order to constitute that existence, there must be a power present to enforce it. All decrees and orders, declaring extensive coasts and whole countries in a state of blockade, without the presence of an adequate naval force to support it, are manifestly illegal and void, and have no sanction in public law.” 1 James Kent, Commentaries on American Law *144 (George Comstock ed., 11th ed. 1866).

“The word blockade properly denotes obstructing the passage into or from a place on either element, but is more especially applied to naval forces preventing communication by water. Unlike siege it implies no intention to get possession of the blockaded place. With blockades by land or ordinary sieges neutrals have usually little to do.” Theodore D. Woolsey, Introduction to the Study of International Law § 202, at 351 (5th ed. 1878).

pacific blockade.Int'l law. A blockade that is established without a declaration of war.

public blockade.Int'l law. An established blockade of which the blockading nation gives formal notice to the governments of neutral nations.

BLOCKAGE RULE

blockage rule.Tax. The principle that a large block of stock shares may be valued at less than the total value of the individual shares because such a large block may be difficult to sell at full price. [Cases: Internal Revenue 4534; Taxation 1072. C.J.S. Internal Revenue §§ 523, 646.]

BLOCK-BOOKING

block-booking,n. Copyright. In the licensing or use of movies, the practice by film distributors of conditioning the license or use on the acceptance of an entire package or block of films, which typically includes unwanted or inferior films. • In *United States v. Loew's, Inc.*, 371 U.S. 38, 83 S.Ct. 97 (1962), the U.S. Supreme Court condemned block-booking as an illegal tying arrangement that violates the Sherman Act.

BLOCKBURGER<TT> TEST

Blockburger test.Criminal law. A test, for double-jeopardy purposes, of whether a defendant

can be punished separately for convictions on two charges or prosecuted later on a different charge after being convicted or acquitted on a charge involving the same incident; a comparison of two charges to see if each contains at least one element that the other does not. • Although the test is frequently called the same-evidence test, that term is misleading since the analysis involves the elements of the charged offenses rather than the facts of the incident. *Blockburger v. U.S.*, 284 U.S. 299, 304, 52 S.Ct. 180, 192 (1932). — Also termed same-elements test; actual-evidence test. Cf. SAME-CONDUCT TEST; SAME-TRANSACTION TEST. [Cases: Double Jeopardy 135, 136. C.J.S. Criminal Law § 246.]

BLOCKBUSTING

blockbusting. The act or practice, usu. by a real-estate broker, of persuading one or more property owners to sell their property quickly, and often at a loss, to avoid an imminent influx of minority groups. • Blockbusting is illegal in many states. [Cases: Brokers 1, 4; Civil Rights 1076. C.J.S. Brokers §§ 6–12; Civil Rights §§ 2–3, 14–17, 21.]

BLOCKED ACCOUNT

blocked account. See ACCOUNT.

BLOCKED CURRENCY

blocked currency. See CURRENCY.

BLOCKED INCOME

blocked income. See INCOME.

BLOCK GRANT

block grant. An unrestricted grant of federal funds. [Cases: United States 82. C.J.S. United States § 155.]

BLOCKING PATENT

blocking patent. See PATENT(3).

BLOCK INTEREST

block interest. See add-on interest under INTEREST(3).

BLOCK POLICY

block policy. See INSURANCE POLICY.

BLOCK VOTING

block voting. A shareholders' agreement to cast their votes in a single block. See voting trust under TRUST.

BLONDER-TONGUE DOCTRINE

Blonder-Tongue doctrine. Patents. The rule that a patentee is barred by collateral estoppel

from relitigating the validity of a patent that has been held invalid in an earlier proceeding in which the patentee had a full and fair opportunity to litigate the patent's validity. • The rule was adopted by the U.S. Supreme Court in *Blonder-Tongue Laboratories, Inc. v. University of Illinois*, 402 U.S. 313, 91 S.Ct. 1434 (1971). — Also termed *Blonder-Tongue rule*. [Cases: Patents 327(13).]

BLOOD

blood. A relationship between persons arising by descent from a common ancestor. See **RELATIVE**.

entire blood. See **full blood**.

full blood. The relationship existing between persons having the same two parents; unmixed ancestry. — Also termed **whole blood**; **entire blood**.

half blood. The relationship existing between persons having the same father or mother, but not both parents in common. — Sometimes written **half-blood**. See **relative of the half blood** under **RELATIVE**. [Cases: Descent and Distribution 35. C.J.S. Descent and Distribution §§ 29, 42.]

heritable blood. Hist. A relationship between an ancestor and an heir that the law recognizes for purposes of passing good title to property. — Also termed **inheritable blood**. [Cases: Descent and Distribution 21. C.J.S. Descent and Distribution § 24.]

mixed blood. Archaic. The relationship between persons whose ancestors are of different races or nationalities.

“The term ‘mixed bloods,’ as used in treaties and statutes, has been held to include persons of half, or more or less than half, Indian blood, derived either from the father or from the mother.” 42 C.J.S. **Indians** § 3 (1991).

whole blood. See **full blood**.

BLOOD, CORRUPTION OF THE

blood, corruption of the. See **CORRUPTION OF BLOOD**.

BLOOD ALCOHOL CONTENT

blood alcohol content. The concentration of alcohol in one's bloodstream, expressed as a percentage. • Blood alcohol content is used to determine whether a person is legally intoxicated, esp. under a driving-while-intoxicated law. In many states, a blood alcohol content of .08% is enough to charge a person with an offense. — Abbr. **BAC**. — Also termed **blood alcohol count**; **blood alcohol concentration**. See **DRIVING UNDER THE INFLUENCE**; **DRIVING WHILE INTOXICATED** . [Cases: Automobiles 332, 411. C.J.S. Motor Vehicles §§ 1382–1394, 1397–1411.]

BLOOD BORDER

blood border. Slang. The dividing line between adjoining states that have different minimum

drinking ages. • The term derives from the fact that juveniles from the state with the higher minimum age drive to the state with a lower minimum age, purchase and consume alcohol, and drive home intoxicated.

BLOOD FEUD

blood feud. See FEUD(4).

BLOOD-GROUPING TEST

blood-grouping test. A test used in paternity and illegitimacy cases to determine whether a particular man could be the father of a child, examples being the genetic-marker test and the human-leukocyte antigen test. • The test does not establish paternity; rather, it eliminates men who could not be the father. See PATERNITY TEST; GENETIC-MARKER TEST; HUMAN-LEUKOCYTE ANTIGEN TEST . [Cases: Children Out-of-Wedlock 58. C.J.S. Children Out-of-Wedlock §§ 75–76.]

BLOOD MONEY

blood money. 1. Hist. A payment given by a murderer's family to the next of kin of the murder victim. — Also termed *wer*. 2. A reward given for the apprehension of a person charged with a crime, esp. capital murder.

BLOOD RELATIVE

blood relative. See RELATIVE.

BLOOD TEST

blood test. The medical analysis of blood, esp. to establish paternity or (as required in some states) to test for sexually transmitted diseases in marriage-license applicants. See SEROLOGICAL TEST.

BLOODWITE

bloodwite. Hist. 1. EFFUSIO SANGUINIS(1). 2. EFFUSIO SANGUINIS(2). 3. The right to levy a fine involving the shedding of blood. 4. The exemption from the payment of a fine involving the shedding of blood. 5. Scots law. A penalty for a brawl or riot in which blood is shed.

BLOTTER

blotter. 1. ARREST RECORD. 2. WASTE BOOK.

BLS

BLS. abbr. BUREAU OF LABOR STATISTICS.

BLUE-BLUE-RIBBON JURY

blue-blue-ribbon jury. See blue-ribbon jury under JURY.

BLUE BOOK

Blue Book. 1. A compilation of session laws. See SESSION LAWS(2).2. A volume formerly published to give parallel citation tables for a volume in the National Reporter System. 3.English law. A government publication, such as a Royal Commission report, issued in a blue paper cover.

BLUEBOOK

Bluebook. The citation guide — formerly titled A Uniform System of Citation — that is generally considered the authoritative reference for American legal citations. • The book's complete title is The Bluebook: A Uniform System of Citation. Although it has been commonly called the Bluebook for decades, the editors officially included Bluebook in the title only in the mid-1990s. The book is compiled by the editors of the Columbia Law Review, the Harvard Law Review, the University of Pennsylvania Law Review, and The Yale Law Journal. Cf. ALWD CITATION MANUAL.

BLUE BOOKS

blue books.See SESSION LAWS.

BLUE CHIP

blue chip,n. A corporate stock that is considered a safe investment because the corporation has a history of stability, consistent growth, and reliable earnings. — Also termed blue-chip stock. — blue-chip,adj.

BLUE LAW

blue law.A statute regulating or prohibiting commercial activity on Sundays. • Although blue laws were formerly common, they have declined since the 1980s, when many courts held them invalid because of their origin in religion (i.e., Sunday being the Christian Sabbath). Blue laws usu. pass constitutional challenge if they are enacted to support a nonreligious purpose, such as a day of rest for workers. — Also termed Sunday law; Sunday-closing law; Sabbath law; Lord's Day Act. [Cases: Sunday 3–30(8). C.J.S. Sunday §§ 8–83.]

BLUE LIST

Blue List.Securities. A daily listing (on blue paper) of secondary-market offerings of municipal bonds.

“Municipal bonds available for resale in the secondary market are listed by state in The Blue List, along with such information as the number of bonds offered, issuer, maturity date, coupon rate, price, and dealer making the offering. Ratings are not included. But there are sections on settlement dates of recent new offerings, prerefunded bonds, and miscellaneous offerings (some U.S. government and agency obligations, railroad equipment trust certificates, corporate bonds, and even preferred stocks). The dollar value of listings, referred to as the floating supply, gives an indication of the size and liquidity of the secondary municipal market.” The New York Institute of Finance, *How the Bond Market Works* 185 (1988).

BLUE NOTE

blue note. See NOTE(1).

BLUE-PENCIL TEST

blue-pencil test. A judicial standard for deciding whether to invalidate the whole contract or only the offending words. • Under this standard, only the offending words are invalidated if it would be possible to delete them simply by running a blue pencil through them, as opposed to changing, adding, or rearranging words. [Cases: Contracts 137. C.J.S. Contracts § 297.]

BLUE-RIBBON JURY

blue-ribbon jury. See JURY.

BLUE-SKY

blue-sky, vb. To approve (the sale of securities) in accordance with blue-sky laws <the company's IPO has not yet been blue-skyed>.

blue-sky, adj. (Of a security) having little value.

BLUE-SKY LAW

blue-sky law. A state statute establishing standards for offering and selling securities, the purpose being to protect citizens from investing in fraudulent schemes or unsuitable companies. [Cases: Securities Regulation 248–273. C.J.S. Securities Regulation §§ 3, 374–376, 379–411, 414.]

“Although the public is probably more aware of the existence and operation of the several federal statutes administered by the Securities and Exchange Commission, most state legislation in this area is broader in scope. State securities laws, commonly referred to as ‘blue sky’ laws, were enacted long before the Securities Act of 1933, and Congress specifically preserved these laws instead of attempting to preempt the field for federal legislation.” Louis Loss & Edward M. Cowett, *Blue Sky Law* 3 (1958).

“The first legislative attempts to regulate securities transactions were effected on the state level, with the first general securities law being said to have been enacted by the State of Kansas in 1911, and with 48 jurisdictions having enacted such statutes by 1933. These statutes were said to be enacted to stop the sale of stock in fly-by-night concerns, visionary oil wells, distant gold mines, and other fraudulent exploitations. A similar description of the early legislative purpose is that such acts were aimed at ‘speculative schemes which have no more basis than so many feet of blue sky,’ and this description has had a lasting influence in that state securities acts are commonly referred to as ‘blue sky laws.’ ” 69A Am. Jur. 2d Securities Regulation — State § 1 (1993).

“The state legislatures entered the arena of securities regulation more than twenty years before Congress.... [T]he statutes, which vary widely in their terms and scope, are commonly referred to as ‘blue sky’ laws, an appellation with several suggested origins. It has been said, for example, that the Kansas legislature was spurred by the fear of fast-talking eastern industrialists selling everything including the blue sky.” 1 Thomas Lee Hazen, *Treatise on the Law of Securities Regulation* § 8.1, at 490–92 (3d ed. 1995).

BLUEWATER SEAMAN

bluewater seaman. See able-bodied seaman under SEAMAN.

BLURRING

blurring, n. Trademarks. A form of dilution in which goodwill in a famous mark is eroded through the mark's unauthorized use by others on or in connection with dissimilar products or services. • Blurring is one type of dilution that is actionable under the Federal Trademark Dilution Act, 15 USCA § 1125(c) <the court found that Nabisco's use of a fish shape in its animal crackers diluted Pepperidge Farm's famous Goldfish trademark>. — Also termed dilution by blurring; diminution. Cf. TARNISHMENT. [Cases: Trade Regulation 366. C.J.S. Trade-Mark, Trade-Names, and Unfair Competition § 79.]

“Blurring is a lessening of the fame possessed by a famous mark. One might begin to think about blurring by recalling ‘free association’ exercises or games, in which one player says a word and the other player must respond instantly with the first word that pops into his or her head. By definition, a strong or famous mark is likely to produce both a prompt and a uniform ‘free association’ response when mentioned to most consumers. Thus when I say ROLEX, you — and almost everyone else — will likely say ‘watches.’ ... On the other hand, a weak mark will produce no response at all, or a variety of responses from different consumers.... If the owners of the ROLEX mark had no way to prevent the use of that mark on pencils, or pianos, or pistachio nuts, because those products are so remote from watches that they could not prove any likelihood of confusion, eventually, the automatic free association of the ROLEX mark with watches, and watches alone, would be destroyed. The mark would be less famous than before. It would be blurred.” Roger E. Schechter & John R. Thomas, *Intellectual Property* § 30.3, at 710–11 (2003).

BMI

BMI. abbr. BROADCAST MUSIC, INC.

BOARD

board. 1. A group of persons having managerial, supervisory, or advisory powers <board of directors>. • In parliamentary law, a board is a form of deliberative assembly and is distinct from a committee — which is usu. subordinate to a board or other deliberative assembly — in having greater autonomy and authority. 2. Daily meals furnished to a guest at an inn, boardinghouse, or other lodging <room and board>. [Cases: Contracts 191. C.J.S. Contracts § 344.]

BOARD-CERTIFIED

board-certified, adj. (Of a professional) recognized by an official body as a specialist in a given field of law or medicine <board-certified in civil litigation>. See BOARD OF LEGAL SPECIALIZATION.

BOARD LOT

board lot. See round lot under LOT(3).

BOARD OF ADJUSTMENT

board of adjustment. See ADJUSTMENT BOARD.

BOARD OF ALDERMEN

board of aldermen. See CITY COUNCIL.

BOARD OF APPEALS

Board of Appeals. Patents & trademarks. Hist. A quasi-judicial body within the U.S. Patent and Trademark Office that was empowered to hear appeals by applicants whose patent applications had been wholly or partially rejected by patent examiners. • Its work is now done by the Board of Patent Appeals and Interferences. See BOARD OF PATENT APPEALS AND INTERFERENCES.

BOARD OF DIRECTORS

board of directors. 1. The governing body of a corporation, elected by the shareholders to establish corporate policy, appoint executive officers, and make major business and financial decisions. — Also termed (esp. in charitable organizations) board of trustees. See DIRECTOR. [Cases: Corporations 297. C.J.S. Corporations §§ 460–461.] 2. The governing body of a corporation, partnership, association, or other organization, elected by the shareholders or members to establish policy, elect or appoint officers and committees, and make other governing decisions. — Often shortened (informally) to board. — Also termed board of governors; board of managers; board of trustees (esp. in charitable organizations); executive board. See DIRECTOR.

staggered board of directors. A board of directors whose members' terms of service overlap so that only part of the board's makeup is voted on in any single election. • Typically, members serve terms of two or more years, with some members' terms expiring at each annual election. See Del. Code Ann. tit. 8, § 141 (1991) (authorizing classified boards with two or three classes having two- or three-year terms). — Also termed classified board of directors. [Cases: Corporations 291. C.J.S. Corporations §§ 450–451.]

BOARD OF EDUCATION

board of education. A state or local agency that governs and manages public schools within a state or local district. Cf. SCHOOL BOARD. [Cases: Schools 51. C.J.S. Schools and School Districts §§ 110–111.]

BOARD OF EQUALIZATION

board of equalization. See EQUALIZATION BOARD.

BOARD OF EXAMINERS

board of examiners. See EXAMINING BOARD.

BOARD OF FIRE UNDERWRITERS

board of fire underwriters. Insurance. An unincorporated voluntary association made up of

fire insurers. [Cases: Insurance 1218. C.J.S. Insurance § 1724.]

BOARD OF GOVERNORS

board of governors.1.BOARD OF DIRECTORS. 2. (cap.) FEDERAL RESERVE BOARD OF GOVERNORS .

BOARD OF GREEN CLOTH

Board of Green Cloth.Hist. A group of persons responsible for governing the royal-household staff, esp. in financial matters such as accounting for expenses and paying servants' wages. • The Board consisted of the Lord Steward and inferior officers, and its name derived from the green cloth that covered the table used by the Board to conduct its duties. In more ancient times, it kept the peace and maintained courts of justice within the area around the royal household (i.e., the verge). — Also termed Counting House of the King's Household; Green Cloth.

BOARD OF HEALTH

board of health.A municipal or state agency charged with protecting the public health. [Cases: Health 361.]

BOARD OF IMMIGRATION APPEALS

Board of Immigration Appeals.The highest administrative tribunal for matters arising under U.S. immigration law, charged with hearing appeals from the Immigration and Naturalization Service. • The Board is made up of five permanent members appointed by the Attorney General and two immigration judges who serve on a temporary basis. Most cases are heard by panels of two permanent judges and one temporary judge. — Also termed Immigration Appeals Board. [Cases: Aliens 54(5). C.J.S. Aliens §§ 120, 126, 187, 220–224.]

BOARD OF LEGAL SPECIALIZATION

board of legal specialization.A body, usu. an arm of a state bar association, that certifies qualified lawyers as specialists within a given field. • Typically, to qualify as a specialist, a lawyer must meet a specified level of experience, pass an examination, and provide favorable recommendations from peers. [Cases: Attorney and Client 3. C.J.S. Attorney and Client §§ 11–12.]

BOARD OF MANAGERS

board of managers.See BOARD OF DIRECTORS.

BOARD OF MEDICAL EXAMINERS

Board of Medical Examiners.See EXAMINING BOARD.

BOARD OF PARDONS

board of pardons.A state agency, of which the governor is usu. a member, authorized to pardon persons convicted of crimes. [Cases: Pardon and Parole 55.1.]

BOARD OF PAROLE

board of parole. See PAROLE BOARD.

BOARD OF PATENT APPEALS AND INTERFERENCES

Board of Patent Appeals and Interferences. Patents & trademarks. The quasi-judicial body in the U.S. Patent and Trademark Office that hears (1) appeals from patent applicants whose claims have been rejected by a patent examiner, and (2) interference contests between two or more applicants trying to patent the same invention. • This tribunal assumed the work previously handled by the Board of Appeals and the Board of Patent Interferences. The U.S. Court of Appeals for the Federal Circuit hears appeals from this tribunal. See INTERFERENCE(3). [Cases: Patents 111. C.J.S. Patents §§ 180–183.]

BOARD OF POLICE COMMISSIONERS

board of police commissioners. An administrative tribunal vested with disciplinary powers over law-enforcement personnel.

BOARD OF REGENTS

board of regents. A group of persons appointed to supervise an educational institution, esp. a university. [Cases: Colleges and Universities 7. C.J.S. Colleges and Universities §§ 15–18.]

BOARD OF REGISTRATION

board of registration. A state agency authorized to license and discipline members of a trade or profession. [Cases: Licenses 22, 38. C.J.S. Agriculture § 4.]

BOARD OF REVIEW

board of review. 1. A body that reviews administrative-agency decisions. [Cases: Administrative Law and Procedure 513. C.J.S. Public Administrative Law and Procedure §§ 166–171.] 2. A body that reviews property-tax assessments. [Cases: Taxation 464–492. C.J.S. Social Security and Public Welfare § 200; Taxation §§ 681, 686–726.] 3. In some cities, a board that reviews allegations of police misconduct. [Cases: Municipal Corporations 185(12). C.J.S. Municipal Corporations §§ 516, 520–521.]

BOARD OF TAX APPEALS

Board of Tax Appeals. See TAX COURT, U.S.

BOARD OF TRADE

board of trade. 1. A federation of business executives dedicated to advancing and protecting business interests. 2. An organization that runs a commodities exchange. See CHICAGO BOARD OF TRADE. [Cases: Commodity Futures Trading Regulation 6. C.J.S. Securities Regulation § 455.] 3. Hist. The Lords of the Committee of the Privy Council that had jurisdiction over trade and foreign plantations. • Today, the responsibilities once assigned to this committee are carried out by the ministry for trade and industry.

BOARD OF TRUSTEES

board of trustees. See BOARD OF DIRECTORS.

BOARD OF VETERANS' APPEALS

Board of Veterans' Appeals. The agency in the U.S. Department of Veterans Affairs responsible for reviewing decisions on entitlements to veterans' benefits. • The Board's decisions are subject to review by the U.S. Court of Appeals for Veterans Claims.

BOARD OF ZONING APPEALS

board of zoning appeals. See ADJUSTMENT BOARD.

BOATABLE

boatable, adj. See NAVIGABLE.

BOATABLE WATER

boatable water. See NAVIGABLE WATER(1).

BOC

boc (bok), n. Hist. A written document, esp. one that conveys land. — Also spelled bock.

BOCKLAND

bockland. See BOOKLAND.

BOCLAND

bocland. See BOOKLAND.

BODILY HARM

bodily harm. See HARM.

BODILY HEIR

bodily heir. See heir of the body under HEIR.

BODILY INJURY

bodily injury. See INJURY.

BODY

body. 1. The main part of a written instrument, such as the central part of a statute (after the title and preamble) or the middle part of a complainant's bill in equity. 2. A collection of laws. — Also termed body of laws. See CORPUS JURIS. 3. An artificial person created by a legal authority. See CORPORATION. 4. An aggregate of individuals or groups. See BODY POLITIC. 5. A deliberative assembly <legislative body>. See deliberative assembly under ASSEMBLY. 6. An

aggregate of individuals or groups <student body>.7.BODY OF A CLAIM .

BODY CORPORATE

body corporate.See CORPORATION.

BODY EXECUTION

body execution.1.CAPIAS. 2.EXECUTION.

BODY OF A CLAIM

body of a claim.Patents. The portion of a patent claim that defines the elements or steps of the invention. • The body of the claim follows the preamble and transition phrase. In a combination claim, the body of a claim sets forth the elements of a patentable combination. Cf. PREAMBLE(2); TRANSITION PHRASE.

BODY OF A COUNTY

body of a county.A county as a whole.

BODY OF LAWS

body of laws.See BODY(2).

BODY POLITIC

body politic.A group of people regarded in a political (rather than private) sense and organized under a common governmental authority.

BODY-SNATCHING

body-snatching,n. The unlawful removal of a corpse, esp. from a grave. — body-snatcher,n.

BOGUS

bogus (boh-g<<schwa>>s), adj. Not genuine; counterfeit; SPURIOUS(1). Cf. GENUINE.

BOGUS CHECK

bogus check.See bad check under CHECK.

BOGUS WILL

bogus will.See WILL.

BOILERPLATE

boilerplate,n.1. Ready-made or all-purpose language that will fit in a variety of documents. • The term, first recorded in 1893, may have referred to steel plates affixed to boilers. But the modern sense comes from the use of the term to refer to copy set on printing plates (or molds to make the plates) and distributed in that form to newspapers. The copy could not be edited. 2. Fixed or standardized contractual language that the proposing party views as relatively nonnegotiable. [Cases: Contracts 1.C.J.S. Contracts §§ 2–3, 9, 12.] — boilerplate,adj.

BOILER-ROOM TRANSACTION

boiler-room transaction.Slang. A high-pressure telephone sales pitch, often of a fraudulent nature.

BOLGER<TT> TEST

Bolger test. The judicial test for determining whether a statement is commercial speech, by examining (1) whether it is an advertisement; (2) whether it refers to a specific product or service; and (3) whether the speaker has an economic motivation for making the statement. *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66–67, 103 S.Ct. 2875, 2879–80 (1983). • An affirmative answer to all three questions is “strong support” that the speech is commercial, but it is not dispositive; rather, the decision should be based on common sense.

BOLSTER

bolster,vb. To enhance (unimpeached evidence) with additional evidence. • This practice is often considered improper when lawyers seek to enhance the credibility of their own witnesses. [Cases: Witnesses 318. C.J.S. Witnesses §§ 562–564.]

BOLTS

bolts.Hist. Student-argued cases in the Inns of Court. • These practice cases were held privately, in contrast to the more formal and public moots. — Also termed boltings.

BOMBARDMENT

bombardment.Int'l law. An attack from land, sea, or air with weapons that are capable of destroying enemy targets at a distance with bombs, missiles, or projectiles.

BONA

bona (boh-n<<schwa>>), n.[Latin “goods”] Chattels; personal property. Cf. BIENS.

bona adventitia (boh-n<<schwa>> ad-ven-tish-ee-<<schwa>>). [Latin] 1.Roman law. Goods acquired by free persons in some way other than through their paterfamilias, or by slaves in a way other than through their owner. 2.Civil law. Goods acquired fortuitously, but not by inheritance. — Also spelled bona adventicia. — Also termed adventitia bona.

bona confiscata (boh-n<<schwa>> kon-fi-skay-t<<schwa>>). Goods confiscated by — or forfeited to — the Crown.

bona felonum (boh-n<<schwa>> f<<schwa>>-loh-n<<schwa>>m). Personal property belonging to a convicted felon.

bona forisfacta (boh-n<<schwa>> for-is-fak-t<<schwa>>). Forfeited goods.

bona fugitivorum (boh-n<<schwa>> fyoo-j<<schwa>>-ti-vor-<<schwa>>m). Goods belonging to a fugitive. — Also termed bona utlagatorum.

bona immobilia (boh-n<<schwa>> i-moh-bil-ee-<<schwa>>). Immovable property.

bona mobilia (boh-n<<schwa>> moh-bil-ee-<<schwa>>). [Latin] Movable property. See MOVABLE.

bona notabilia (boh-n<<schwa>> noh-t<<schwa>>-bil-ee-<<schwa>>). Notable goods; property worth accounting for in a decedent's estate. [Cases: Executors and Administrators 11. C.J.S. Executors and Administrators § 13.]

bona paraphernalia (boh-n<<schwa>> par-<<schwa>>-f<<schwa>>r-nay-lee-<<schwa>>). Clothes, jewelry, and ornaments not included in a married woman's dowry.

bona peritura (boh-n<<schwa>> per-<<schwa>>-t[y]uur-<<schwa>>). Perishable goods; goods that an executor or trustee must diligently convert into money.

bona utlagatorum (boh-n<<schwa>> <<schwa>>t-lay-g<<schwa>>-tor-<<schwa>>m). See *bona fugitivorum*.

bona vacantia (boh-n<<schwa>> v<<schwa>>-kan-shee-<<schwa>>). [Latin “vacant goods”] 1. Property not disposed of by a decedent's will and to which no relative is entitled under intestacy laws. See ESCHEAT. 2. Ownerless property; goods without an owner. • *Bona vacantia* often resulted when a deceased person died without an heir willing and able to make a claim. The property either belonged to the finder or escheated to the Crown. — Sometimes shortened to *vacantia*. — Also termed *vacantia bona*.

bona waviata (boh-n<<schwa>> way-vee-ay-t<<schwa>>). Stolen goods thrown away in flight by a thief. • The goods escheated to the Crown as a penalty to the owner for failing to pursue the thief and recover the goods.

vacantia bona. See *bona vacantia*.

BONA ACTIVA

bona activa (boh-n<<schwa>> ak-tI-v<<schwa>>). [Latin “active goods”] 1. Assets. See ASSET(1). 2. The claims that a person has against others. Cf. BONA PASSIVA.

BONA CASTRENSIA ET QUASI CASTRENSIA

bona castrensia et quasi castrensia (boh-n<<schwa>> ka-stren-shee-<<schwa>> et kway-sI [orkway-zI] ka-stren-shee-<<schwa>>). [Latin “goods acquired for military or quasi-military (i.e., public) service”] Roman law. The property that a son could dispose of, by testament or otherwise, without his paterfamilias's consent. See PATERFAMILIAS.

BONA CONFISCATA

bona confiscata. See BONA.

BONAE FIDEI

bonae fidei (boh-nee fI-dee-I). [Latin] Of good faith; in good faith.

BONAE FIDEI POSSESSOR

bonae fidei possessor (boh-nee fl-dee-I p<<schwa>>-zes-<<schwa>>r). [Latin] Roman law. A good-faith possessor of property owned by another. • Unless the owner sued to recover the property, the possessor became the rightful owner after a specified time elapsed, unless the property had been stolen or taken by force. See USCAPIO.

BONA ET CATALLA

bona et catalla (boh-n<<schwa>> et k<<schwa>>-tal-<<schwa>>). [Law Latin] Goods and chattels.

BONA FELONUM

bona felonum. See BONA.

BONA FIDE

bona fide (boh-n<<schwa>> fld or boh-n<<schwa>> fl-dee), adj. [Latin “in good faith”] 1. Made in good faith; without fraud or deceit. 2. Sincere; genuine. See GOOD FAITH. — bona fide, adv.

BONA FIDE CONTRACT

bona fide contract. See CONTRACT.

BONA FIDE EMPTOR

bona fide emptor (boh-n<<schwa>> fld-ee emp-t<<schwa>>r). [Latin] Good-faith purchaser. See bona fide purchaser under PURCHASER(1).

BONA FIDE HOLDER FOR VALUE

bona fide holder for value. See HOLDER FOR VALUE.

BONA FIDE INTENT TO USE

bona fide intent to use. Trademarks. A specific, good-faith intention to use a mark in the ordinary course of trade in interstate commerce and not merely to reserve it for later use, as determined by objective circumstantial evidence. • A federal registration obtained under Lanham Act § 1(b) requires a bona fide intent to use the mark. If the required intent is later determined to be lacking, the registration may be invalidated.

BONA FIDE JUDGMENT CREDITOR

bona fide judgment creditor. See JUDGMENT CREDITOR.

BONA FIDE OCCUPATIONAL QUALIFICATION

bona fide occupational qualification. An employment qualification that, although it may discriminate against a protected class (such as sex, religion, or national origin), relates to an essential job duty and is considered reasonably necessary to the operation of the particular business. • Such a qualification is not illegal under federal employment-discrimination laws. — Abbr. BFOQ. [Cases: Civil Rights 1118, 1529. C.J.S. Civil Rights §§ 25, 161–162.]

“The bona fide occupational qualification is a complete defense. It is invoked when the defendant makes a distinction expressly forbidden by Title VII, such as the refusal to hire women or women with preschool-age children, the reassignment of pregnant employees, or the exclusion of particular ethnic groups from particular jobs.... The employer's motivation for excluding the protected class is not significant in evaluating the BFOQ defense. The inquiry focuses on the necessity of using an expressly forbidden classification. The fact that the employer adopted the exclusion for invidious reasons, rather than for the business consideration on which the defense is based, is not material. Thus, if the exclusion, in fact, is proved to be necessary it may be used, even if invidiously motivated.” Mack A. Player, *Employment Discrimination Law* § 5.29, at 282–83 (1988).

BONA FIDE OPERATION

bona fide operation. A real, ongoing business.

BONA FIDE PERCEPTIO ET CONSUMPTIO

bona fide perceptio et consumptio (boh-n<<schwa>> fl-dee p<<schwa>>r-sep-shee-oh et k<<schwa>>n-sump-shee-oh). [Latin] Hist. Gathering and consuming in good faith. • The phrase appeared in reference to the rights of a bona fide possessor to keep fruit that the possessor gathers in good faith and consumes in good faith.

BONA FIDE POSSESSION

bona fide possession. See POSSESSION.

BONA FIDE PURCHASER

bona fide purchaser. See PURCHASER(1).

BONA FIDE PURCHASER FOR VALUE

bona fide purchaser for value. See bona fide purchaser under PURCHASER(1).

BONA FIDES

bona fides (boh-n<<schwa>> fl-deez), n. [Latin] 1. GOOD FAITH. 2. Roman law. The standard of conduct expected of a reasonable person, esp. in making contracts and similar actions; acting without fraudulent intent or malice.

BONA FIDE SALE

bona fide sale. See SALE.

BONA FISCALIA

bona fiscalia (boh-n<<schwa>>fis-kay-lee-<<schwa>>), n. Public property.

BONA FORISFACTA

bona forisfacta. See BONA.

BONA FUGITIVORUM

bona fugitivorum. See BONA.

BONA GRATIA

bona gratia (boh-n<<schwa>> gray-shee-<<schwa>>). [Latin] Roman law. In goodwill; in a friendly way. • The phrase typically referred to a divorce by mutual consent.

BONA GRATIA MATRIMONIUM DISSOLVITUR

bona gratia matrimonium dissolvitur (boh-n<<schwa>> gray-shee-<<schwa>> ma-tr<<schwa>>-moh-nee-<<schwa>>m di-sol-v<<schwa>>-t<<schwa>>r). [Law Latin “the marriage is dissolved in a friendly way”] Hist. A consensual divorce.

BONA IMMOBILIA

bona immobilia. See BONA.

BONA MEMORIA

bona memoria (boh-n<<schwa>> m<<schwa>>-mor-ee-<<schwa>>). [Latin] Good memory. • Bona memoria, as used in the phrase sanae mentis et bonae memoria (of sound mind and good memory), refers to a testator's mental capacity. See MIND AND MEMORY.

BONA MOBILIA

bona mobilia. See BONA.

BONA NOTABILIA

bona notabilia. See BONA.

BONA PARAPHERNALIA

bona paraphernalia. See BONA.

BONA PASSIVA

bona passiva (boh-n<<schwa>> pa-sI-v<<schwa>>). Roman law. Liabilities. Cf. BONA ACTIVA.

BONA PERITURA

bona peritura. See BONA.

BONA UTLAGATORUM

bona utlagatorum. See bona fugitivorum under BONA.

BONA VACANTIA

bona vacantia. See BONA.

BONA WAVIATA

bona waviata.See BONA.

BOND

bond,n.1. An obligation; a promise.

“[A]n obligation, or in English a ‘bond,’ is a document written and sealed containing a confession of a debt; in later times ‘contract’ is the genus, ‘obligation’ the species.” 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law* 207 (2d ed. 1899).

2. A written promise to pay money or do some act if certain circumstances occur or a certain time elapses; a promise that is defeasible upon a condition subsequent; esp., an instrument under seal by which (1) a public officer undertakes to pay a sum of money if he or she does not faithfully discharge the responsibilities of office, or (2) a surety undertakes that if the public officer does not do so, the surety will be liable in a penal sum.“The fact that an instrument is called a ‘bond’ is not conclusive as to its character. It is necessary to disregard nomenclature and look to the substance of the bond itself. The distinguishing feature of a bond is that it is an obligation to pay a fixed sum of money, at a definite time, with a stated interest, and it makes no difference whether a bond is designated by that name or by some other, if it possesses the characteristics of a bond. There is no distinction between bonds and certificates of indebtedness which conform to all the characteristics of bonds.” 1 Silvester E. Quindry, *Bonds & Bondholders Rights & Remedies* § 2, at 3–4 (1934).

appeal bond.A bond that an appellate court may require from an appellant in a civil case to ensure payment of the costs of appeal; a bond required as a condition to bringing an appeal or staying execution of the judgment appealed from. Fed. R. App. P. 7. Cf. supersedeas bond. [Cases: Appeal and Error 373–395; Federal Courts 661, 687. C.J.S. Appeal and Error §§ 264, 288, 290–291, 295, 322–352.]

appearance bond.See bail bond.

arbitration bond.See ARBITRATION BOND.

attachment bond.A bond that a defendant gives to recover attached property. • The plaintiff then looks to the bond issuer to satisfy a judgment against the defendant. [Cases: Attachment 261; Federal Civil Procedure 585. C.J.S. Attachment §§ 247–251, 258.]

average bond.Marine insurance. A bond given to the captain of a ship by consignees of cargo subject to general average, guaranteeing payment of their contribution once it is ascertained, on condition that their goods be promptly delivered. [Cases: Shipping 198. C.J.S. Shipping § 470.]

bail bond.A bond given to a court by a criminal defendant's surety to guarantee that the defendant will duly appear in court in the future and, if the defendant is jailed, to obtain the defendant's release from confinement. • The effect of the release on bail bond is to transfer custody of the defendant from the officers of the law to the custody of the surety on the bail bond, whose undertaking is to redeliver the defendant to legal custody at the time and place appointed in the bond. — Also termed appearance bond; recognizance. See BAIL. [Cases: Bail 54.1.]

bid bond.A bond filed in public construction projects to ensure that the bidding contractor

will enter into the contract. • The bid bond is a type of performance bond. [Cases: Public Contracts 9. C.J.S. Public Administrative Law and Procedure § 12.]

blank bond.Archaic. A bond in which the space for the creditor's name is left blank.

blanket bond. 1. A bond covering several persons or projects that require performance bonds. 2. See fidelity bond.

bond for land.A bond given by the seller of land to a buyer, binding the seller to convey once the buyer tenders the agreed price. — Also termed bond for a deed. Cf. BINDER(1). [Cases: Vendor and Purchaser 27. C.J.S. Vendor and Purchaser § 22.]

bond of corroboration.An additional obligation undertaken to corroborate the debtor's original obligation.

bond to keep the peace.See peace bond.

bottomry bond.A contract for the loan of money on a ship, usu. at extraordinary interest, for maritime risks encountered during a certain period or for a certain voyage. • The loan can be enforced only if the vessel survives the voyage. — Also termed bottomage bond. Cf. respondentia bond. [Cases: Shipping 89–100. C.J.S. Shipping §§ 223–231.]

“A bottomry bond, strictly speaking, is a mortgage or pledge of a ship by the owner or agent, to secure the repayment of money lent for the use of the ship; and the conditions of it are, that if the ship is lost, the lender loses his money; but if it arrives, then, not only the ship itself is liable, but also the person of the borrower.” John Indermaur, *Principles of the Common Law* 169 (Edmund H. Bennett ed., 1st Am. ed. 1878).

“[T]he bottomry bond ... is a sort of mortgage on a ship, entered into for the purpose of raising money in case of necessity in a foreign port. The advance of communications has caused bottomry and respondentia bonds to pass virtually out of use.” Grant Gilmore & Charles L. Black Jr., *The Law of Admiralty* § 1-10, at 25 n.85 (2d ed. 1975).

claim-property bond.See replevin bond.

common-defeasance bond.See penal bond.

common-law bond.A performance bond given by a construction contractor. • A common-law bond exceeds the requirements of a statutory performance bond because it provides additional coverage for construction projects. Cf. PERFORMANCE BOND. [Cases: Principal and Surety 65, 66(1). C.J.S. Principal and Surety §§ 70, 72–73, 75.]

common money bond.A promise to pay money as a penalty for failing to perform a duty or obligation.

contract bond.See PERFORMANCE BOND.

cost bond.A bond given by a litigant to secure the payment of court costs. [Cases: Costs 120–124; Federal Civil Procedure 2732. C.J.S. Costs §§ 73–74.]

counterbond. A bond to indemnify a surety.

delivery bond. See forthcoming bond.

depository bond. A bond given by a bank to protect a public body's deposits should the bank become insolvent.

discharging bond. A bond that both permits a defendant to regain possession of attached property and releases the property from the attachment lien. — Also termed dissolution bond. See forthcoming bond. [Cases: Attachment 261. C.J.S. Attachment §§ 247–251, 258.]

executor's bond. A bond given to ensure the executor's faithful administration of the estate. See fiduciary bond. [Cases: Executors and Administrators 26. C.J.S. Executors and Administrators § 71.]

“The English law did not require an executor to give bond because he was appointed by the testator and his authority was derived from the will rather than court appointment. Some American jurisdictions do not require a bond of an executor. In the majority of our states a testator may by will dispense with the executor's bond, but in absence of such testamentary provision a bond will be required.” Thomas E. Atkinson, *Handbook of the Law of Wills* § 113, at 621 (2d ed. 1953).

fidelity bond. A bond to indemnify an employer or business for loss due to embezzlement, larceny, or gross negligence by an employee or other person holding a position of trust. — Also termed blanket bond. [Cases: Insurance 1014, 2400. C.J.S. Insurance §§ 8, 1075.]

fiduciary bond. A type of surety bond required of a trustee, administrator, executor, guardian, conservator, or other fiduciary to ensure the proper performance of duties. [Cases: Executors and Administrators 26; Trusts 161. C.J.S. Executors and Administrators § 71; Trover and Conversion § 302.]

forthcoming bond. 1. A bond guaranteeing that something will be produced or forthcoming at a particular time, or when called for. 2. A bond (usu. given to a sheriff) to permit a person to repossess attached property in exchange for that person's commitment to surrender the property in the event of an adverse judgment; specif., a bond required of a defendant as a condition of retaining or regaining possession of a chattel in an attachment or replevin action, whereby the surety agrees to surrender the chattel and to pay its value if the plaintiff wins the lawsuit. — Also termed delivery bond. Cf. replevin bond. [Cases: Attachment 261. C.J.S. Attachment §§ 247–251, 258.]

general-average bond. Maritime law. A cargo owner's bond exacted by a carrier to ensure that the owner will pay the general average contribution. • When the contribution amounts are disputed, the carrier requires this bond before agreeing to unload the ship. It may also be required when the amounts are undisputed, as security of payment. — Also termed average bond. See general average under AVERAGE(3). [Cases: Shipping 198. C.J.S. Shipping § 470.]

guaranty bond. A bond combining the features of a fidelity and a surety bond, securing both payment and performance.

heritable bond.Scots law. A bond secured by land.

hypothecation bond.A bond given in the contract of bottomry or respondentia. [Cases: Shipping 89–100. C.J.S. Shipping §§ 223–231.]

indemnity bond.A bond to reimburse the holder for any actual or claimed loss caused by the issuer's or some other person's conduct. [Cases: Indemnity 28.]

injunction bond.A bond required of an injunction applicant to cover the costs incurred by a wrongfully enjoined party; a bond required as a condition of the issuance or continuance of a bond. Fed. R. Civ. P. 65(c). [Cases: Injunction 148. C.J.S. Injunctions §§ 168–174.]

interim bond. 1. A bond set by a police officer when a person is arrested for a minor offense, such as a misdemeanor, without a warrant. • Although the bond allows the arrestee to be released, it requires that the person be available for arraignment. 2. A bond set by a judge or magistrate and attached to a misdemeanor warrant.

judicial bond.A bond to indemnify an adverse party in a lawsuit against loss occasioned by delay or by deprivation of property resulting from the lawsuit. • Judicial bonds are usu. classified according to the nature of the action in which they are required, as with appeal bonds, injunction bonds, attachment bonds, replevin bonds, forthcoming or redelivery bonds, and bail bonds. A bond of a fiduciary — such as a receiver, administrator, executor, or guardian — is often required as a condition to appointment.

liability bond.A bond intended to protect the assured from a loss arising from some event specified in the bond.

license bond.A bond required of a person seeking a license to engage in a specified business or to receive a certain privilege. — Also termed permit bond. [Cases: Licenses 26. C.J.S. Licenses § 42.]

maintenance bond.A bond guaranteeing against construction defects for a period after the completion of the contracted-for work. [Cases: Principal and Surety 82; Public Contracts 45. C.J.S. Principal and Surety §§ 72, 77, 111; Public Administrative Law and Procedure § 45.]

negotiable bond.A bond that can be transferred from the original holder to another. [Cases: Bonds 74.]

official bond. 1. A bond given by a public officer requiring the faithful performance of the duties of office. 2. A bond filed by an executor, guardian, trustee, or other fiduciary. See fiduciary bond. [Cases: Officers and Public Employees 37. C.J.S. Officers and Public Employees §§ 61–62.]

payment bond.A bond given by a surety to cover any amounts that, because of the general contractor's default, are not paid to a subcontractor or materialman. [Cases: Principal and Surety 82; Public Contracts 46. C.J.S. Principal and Surety §§ 72, 77, 111; Public Administrative Law and Procedure §§ 46–50.]

“[T]he bond serves two purposes: it assures the owner a lien-free project, and it induces

suppliers and subcontractors to accept work on the project, perhaps at a lower price, because of the assurance that they will be paid. Since no additional charge is generally made for a payment bond when a performance bond is being purchased, the two are usually issued simultaneously.” Grant S. Nelson, *Real Estate Finance Law* § 12.2, at 881 (3d ed. 1994).

peace bond. A bond required by a court from a person who has breached or threatened to breach the peace. — Also termed bond to keep the peace. See **BREACH OF THE PEACE**. [Cases: Breach of The Peace 15.1, 22. C.J.S. Breach of the Peace §§ 14, 18, 21, 23–25; Domestic Abuse and Violence §§ 2–3.]

penal bond. A bond requiring the obligor to pay a specified sum as a penalty if the underlying obligation is not performed. — Also termed penal bill; common-defeasance bond. [Cases: Bonds 1, 50. C.J.S. Bonds §§ 2–4, 7, 32, 34, 39.]

performance bond. See **PERFORMANCE BOND**.

permit bond. See license bond.

personal bond. 1. See bail bond; **BAIL**. 2. A written document in which an obligor formally recognizes an obligation to pay money or to do a specified act. 3. Scots law. A bond containing a promise without security.

probate bond. A bond, such as that filed by an executor, required by law to be given during a probate proceeding to ensure faithful performance by the person under bond. [Cases: Executors and Administrators 26. C.J.S. Executors and Administrators § 71.]

redelivery bond. See replevin bond.

refunding bond. A bond given to assure an executor that a legatee will return an estate distribution should the remaining estate assets be insufficient to pay the other legacies. [Cases: Executors and Administrators 299. C.J.S. Executors and Administrators § 541.]

registered bond. A governmental or corporate obligation to pay money, represented by a single certificate delivered to the creditor. • The obligation is registered in the holder's name on the books of the debtor. [Cases: Corporations 471; Municipal Corporations 936. C.J.S. Corporations § 667; Municipal Corporations § 1700.]

removal bond. 1. A bond to cover possible duties owed by a person who removes goods from a warehouse for export. 2. A bond required in some states when a litigant seeks to remove an action to another court. [Cases: Removal of Cases 89. C.J.S. Removal of Causes § 168.]

replevin bond (ri-plev-in). 1. A bond given by a plaintiff to replevy or attach property in the defendant's possession before judgment is rendered in a replevin action. • The bond protects the attaching officer and ensures the property's safekeeping until the court decides whether it should be returned to the defendant. — Also termed replevy bond. See **REPLEVIN**. [Cases: Replevin 33. C.J.S. Replevin § 54.] 2. A bond given by a defendant in a replevin action to regain attached property pending the outcome of litigation. • The bond does not discharge the attachment lien. [Cases: Replevin 49. C.J.S. Replevin §§ 76–77.] — Also termed replevy bond; claim-property

bond; redelivery bond. Cf. forthcoming bond.

respondentia bond (re-spon-den-shee-*<<schwa>>* or ree-). A contract containing the pledge of a ship's cargo; a mortgage of a ship's cargo. Cf. bottomry bond. [Cases: Shipping 89–100. C.J.S. Shipping §§ 223–231.]

“A respondentia bond is a loan upon the pledge of the cargo, though an hypothecation of both ship and cargo may be made in one instrument; and generally, it is only a personal obligation on the borrower, and is not a specific lien on the goods, unless there be an express stipulation to that effect in the bond; and it amounts, at most, to an equitable lien on the salvage in case of loss.” 3 James Kent, *Commentaries on American Law* *354–55 (George Comstock ed., 11th ed. 1866).

simple bond. 1. A bond without a penalty. 2. A bond payable to a named obligee on demand or on a certain date.

statutory bond. A bond that literally or substantially meets the requirements of a statute. [Cases: Bonds 31, 50. C.J.S. Bonds §§ 21–23, 28, 32, 34, 39.]

straw bond. A bond, usu. a bail bond, that carries either a fictitious name or the name of a person who is unable to pay the sum guaranteed; a worthless or inadequate bond.

submission bond. A bond given by a litigant who agrees to submit a lawsuit to arbitration and to be bound by an arbitrator's award. [Cases: Arbitration 14. C.J.S. Arbitration § 184.]

supersedeas bond (soo-p*<<schwa>>*r-see-dee-*<<schwa>>*s). An appellant's bond to stay execution on a judgment during the pendency of the appeal. Fed. R. Civ. P. 62(d); Fed. R. App. P. 8(b). — Often shortened to supersedeas. See SUPERSEDE(2). Cf. appeal bond. [Cases: Appeal and Error 460; Execution 158(2); Supersedeas 5. C.J.S. Appeal and Error §§ 408–410, 418; Executions §§ 155–156.]

surety bond. See PERFORMANCE BOND.

ten-percent bond. A bail bond in the amount of 10% of the bond otherwise required for a defendant's release. • This type of bond usu. allows a defendant to arrange a bond without the services of a bondsman or other surety.

unsecured bail bond. A bond that holds a defendant liable for a breach of the bond's conditions (such as failure to appear in court), but that is not secured by a deposit of or lien on property. See RECOGNIZANCE. [Cases: Bail 40, 55. C.J.S. Bail; Release and Detention Pending Proceedings §§ 8, 93–95.]

3. A long-term, interest-bearing debt instrument issued by a corporation or governmental entity, usu. to provide for a particular financial need; esp., such an instrument in which the debt is secured by a lien on the issuer's property. Cf. DEBENTURE. “Typically debt securities are notes, debentures, and bonds. Technically a ‘debenture’ is an unsecured corporate obligation while a ‘bond’ is secured by a lien or mortgage on corporate property. However, the word ‘bond’ is often used indiscriminately to cover both bonds and debentures A ‘bond’ is a long term debt security while a ‘note’ is usually a shorter term obligation. Bonds are historically bearer instruments,

negotiable by delivery, issued in multiples of \$1,000 with interest payments represented by coupons that are periodically clipped and submitted for payment.” Robert W. Hamilton, *The Law of Corporations in a Nutshell* 128 (3d ed. 1991).

accrual bond. A bond — usu. the last collateralized-mortgage-obligation issue — from which no principal or interest payment will be made until any bonds issued earlier have been fully paid. — Also termed Z-bond.

adjustment bond. A bond issued when a corporation is reorganized. — Also termed reorganization bond.

annuity bond. A bond that lacks a maturity date and that perpetually pays interest. — Also termed consol; perpetual bond; continued bond; irredeemable bond. [Cases: Annuities 1. C.J.S. Annuities §§ 2–4, 6–9, 21.]

arbitrage bond. A municipal bond, the proceeds of which are invested in bonds paying a higher yield than that paid by the municipality on its own bonds. • Under the Internal Revenue Code, the tax-free aspect of municipal-bond income may be lost if the bonds are classified as arbitrage bonds. See ARBITRAGE. [Cases: Internal Revenue 3132.10. C.J.S. Internal Revenue §§ 94, 98.]

assessment bond. A municipal bond repaid from property assessment taxes. [Cases: Municipal Corporations 950. C.J.S. Municipal Corporations §§ 1708–1709.]

assumed bond. See guaranteed bond (1).

baby bond. A bond usu. having a face value of \$1,000 or less.

bearer bond. A bond payable to the person holding it. • The transfer of possession transfers the bond's ownership. Cf. registered bond. [Cases: Bonds 74, 86.]

bond and mortgage. A bond that is backed by a mortgage on realty. — Also termed mortgage bond. Cf. DEBENTURE(3).

book-entry bond. A bond for which no written certificate is issued to reflect ownership.

callable bond. See redeemable bond.

chattel-mortgage bond. A bond secured by a mortgage on personal property.

closed-end mortgage bond. A mortgage bond with provisions prohibiting the debtor from issuing additional bonds against the bond's collateral.

collateral trust bond. 1. A bond representing a debt secured by the deposit of another security with a trustee. — Also termed collateral trust certificate. 2. A long-term corporate bond that is secured by other companies' mortgage bonds held by the corporation, which pledges and deposits the mortgage bonds in trust. • The interest on these collateral trust bonds is typically lower than that received on the bonds pledged; the surplus is used to form a sinking fund to redeem the collateral trust bonds. A holding company often issues these bonds by pledging the stock of a subsidiary.

commodity-backed bond. A bond with interest payments or principal repayment tied to the price of a specific commodity, such as gold. • This type of bond, which has a low interest rate but provides a hedge against inflation because the commodity price will usu. rise, is often issued by a firm with a stake in the commodity.

consolidated bond. 1. A railroad bond secured by a mortgage on the entire railroad line formed by several consolidated railroads. Cf. divisional bond. 2. A single bond that replaces two or more outstanding issues.

construction bond. A bond issued by a governmental entity for a building project. [Cases: Municipal Corporations 911. C.J.S. Municipal Corporations § 1649.]

continued bond. See annuity bond.

convertible bond. A bond that can be exchanged for stock shares in the corporation that issued the bond. [Cases: Corporations 470. C.J.S. Corporations §§ 664–665.]

corporate bond. 1. An interest-bearing instrument containing a corporation's promise to pay a fixed sum of money at some future time. • A corporate bond may be secured or unsecured. [Cases: Corporations 470. C.J.S. Corporations §§ 664–665.] 2. A bond issued by a corporation, usu. having a maturity of ten years or longer.

county bond. A county-issued bond paid through a levy on a special taxing district, whether or not the district is coextensive with the county. [Cases: Counties 187. C.J.S. Counties § 226.]

coupon bond. A bond with attached interest coupons that the holder may present to receive interest payments. See BOND COUPON.

cumulative income bond. See income bond.

cushion bond. A bond paying an uncommonly high interest rate.

debenture bond. See DEBENTURE(3).

deferred-interest bond. A bond whose interest payments are postponed for a time.

discount bond. A bond sold at its current market value, which is less than its face value. — Also termed non-interest-bearing bond.

divisional bond. A railroad bond secured by a mortgage on a specific segment of a consolidated railroad system. Cf. consolidated bond (1).

endorsed bond. See guaranteed bond (1).

equipment trust bond. A bond secured by tangible property, such as an airplane. • A trustee usu. holds title to the equipment, which is leased to the issuer. — Also termed equipment trust certificate.

first-mortgage bond. A long-term bond that has the first claim on specified assets.

flat bond. A bond that trades without accrued interest.

floating-interest bond.A bond with an interest rate that moves up and down with changing economic conditions.

flower bond.A Treasury bond redeemable before maturity if used to settle federal estate taxes. • Flower bonds were issued before April 1971 and reached final maturity in 1998. [Cases: Internal Revenue 4830. C.J.S. Internal Revenue §§ 548–549, 727.]

foreign bond.A bond issued in a currency different from that used where the issuer is located, such as a Canadian-government bond that is denominated in U.S. dollars and issued in the United States.

full-faith-and-credit bond.See general-obligation bond.

general-mortgage bond.A corporate bond secured by a blanket mortgage on property. • The general-mortgage bond, however, is often less valuable because it is subordinate to prior mortgages. [Cases: Corporations 470. C.J.S. Corporations §§ 664–665.]

general-obligation bond.A municipal bond payable from general revenue rather than from a special fund. • Such a bond has no collateral to back it other than the issuer's taxing power. — Often shortened to obligation bond. — Also termed full-faith-and-credit bond. [Cases: Municipal Corporations 953.]

“There are two main types of bonds issued by local governments: general obligation bonds and revenue bonds.... Bonds will be assumed to be general obligation unless they themselves contain a clear promise to pay only out of a special fund.” Osborne M. Reynolds Jr., *Handbook of Local Government Law* § 104, at 323 (1982).

gold bond. 1.Hist. A bond payable in gold coin or U.S. currency at the election of the bondholder. • This type of bond existed until 1933, when the U.S. monetary system abandoned the gold standard. 2. A commodity-backed bond that is secured by gold and issued by a gold-mining company.

government bond.See savings bond; government security under SECURITY(4).

guaranteed bond. 1. A bond issued by a corporation and guaranteed by a third party. • This type of bond is common among railroads. — Also termed endorsed bond; assumed bond; joint bond. 2. A bond issued by a subsidiary corporation whose parent corporation guarantees the principal and interest payments.

high-yield bond.A high-risk, high-yield subordinated bond issued by a company with a credit rating below investment grade. — Also termed junk bond; high-yield debt obligation.

improvement bond.See revenue bond.

income bond.A corporate bond secured by the corporation's net income, after the payment of interest on senior debt. • Sometimes this type of bond is a cumulative-income bond, in which case, if the income in any year is insufficient to pay the full interest, the deficit is carried forward as a lien on any future income. — Also termed cumulative income bond. [Cases: Corporations 470. C.J.S. Corporations §§ 664–665.]

indeterminate bond. A callable bond with no set maturity date.

industrial-development bond. 1. A type of revenue bond in which interest and principal payments are backed by a corporation rather than a municipality. • This type of bond usu. finances a private business facility. 2. A tax-exempt municipal bond that finances a usu. local industry. — Also termed industrial-revenue bond. [Cases: Municipal Corporations 912. C.J.S. Municipal Corporations § 1650.]

interchangeable bond. A bond that can be exchanged for a different type of bond, such as a coupon bond that may be exchanged for a registered bond.

interest bond. A bond paid in lieu of interest due on other bonds.

investment-grade bond. A bond with a rating of BBB or better by the leading bond rating services. See INVESTMENT-GRADE RATING.

irredeemable bond. See annuity bond.

joint and several bond. A bond in which the principal and interest are guaranteed by two or more obligors. [Cases: Bonds 51. C.J.S. Bonds §§ 40–43.]

joint bond. A bond signed by two or more obligors. • In contrast to a joint and several bond, all the obligors must be joined if an action is brought on the bond. [Cases: Bonds 51. C.J.S. Bonds §§ 40–43.]

junior bond. A bond subordinate in priority to another bond.

junk bond. See high-yield bond.

leasehold-mortgage bond. A bond issued by a lessee and secured by the lessee's leasehold interest.

Lloyd's bond. Hist. English law. A corporate bond issued on work done or goods delivered. • A bond issued in this manner avoids any restriction on indebtedness existing either in law or in corporate bylaws. The term supposedly derives from an English lawyer named Lloyd, who is credited with devising the method.

mortgage bond. A bond secured by the issuer's real property.

multimaturity bond. See put bond.

municipal bond. A bond issued by a nonfederal government or governmental unit, such as a state bond to finance local improvements. • The interest received from a municipal bond may be exempt from federal, state, and local taxes. — Often shortened (in plural) to municipals; munies. — Also termed municipal security. [Cases: Municipal Corporations 911. C.J.S. Municipal Corporations § 1649.]

noncallable bond. See noncallable security under SECURITY.

non-interest-bearing bond. See discount bond.

nonstatutory bond. See voluntary bond.

obligation bond. See general-obligation bond.

open-end mortgage bond. A mortgage bond that can be used as security for another bond issue.

optional bond. A bond that the holder may redeem before its maturity date if the issuer agrees.

option tender bond. See put bond.

participating bond. A bond that entitles the holder to a share of corporate profits but does not have a fixed interest rate.

passive bond. A bond bearing no interest. See passive debt under DEBT. [Cases: Bonds 63. C.J.S. Bonds § 52.]

perpetual bond. See annuity bond.

post-obit bond. An agreement by which a borrower promises to pay to the lender a lump sum (exceeding the amount advanced) upon the death of a person whose property the borrower expects to inherit. • Equity traditionally enforces such bonds only if the terms are just and reasonable. — Also termed post-obit agreement.

premium bond. A bond with a selling price above face or redemption value. See PREMIUM(3).

put bond. A bond that gives the holder the right to redeem it for full value at specified times before maturity. — Also termed multimaturity bond; option tender bond. Cf. put option under OPTION.

railroad-aid bond. A bond issued by a public body to fund railway construction.

redeemable bond. A bond that the issuer may call for payment. — Also termed callable bond.

re-funding bond. A bond that retires an outstanding bond. [Cases: Municipal Corporations 913. C.J.S. Municipal Corporations §§ 1651, 1653.]

registered bond. A bond that only the holder of record may redeem, enjoy benefits from, or transfer to another. Cf. bearer bond. [Cases: Bonds 74, 86.]

reorganization bond. See adjustment bond.

revenue bond. A government bond repayable from public funds. [Cases: Municipal Corporations 950(15).]

savings bond. A nontransferable bond issued by the U.S. government. [Cases: United States 91. C.J.S. United States §§ 164, 167.]

school bond. A bond issued by a city or school district to fund school construction.

secured bond. A bond backed by some type of security. Cf. DEBENTURE(2). [Cases: Schools

97. C.J.S. Schools and School Districts §§ 522–524, 527–529.]

serial bond.A bond issued concurrently with other bonds having different maturity dates.

series bonds.A group of bonds issued under the authority of the same indenture, but offered publicly at different times and with different maturity dates and interest rates.

single bond.See bill obligatory under BILL(7).

sinking-fund bond.A bond backed by a sinking fund for bond redemption. See sinking fund under FUND(1). [Cases: Municipal Corporations 951. C.J.S. Municipal Corporations §§ 1704–1705.]

special-tax bond.A municipal bond secured by taxes levied for a specific governmental purpose, usu. improvements. — Also termed special-assessment bond. [Cases: Municipal Corporations 950. C.J.S. Municipal Corporations §§ 1708–1709.]

state bond.A bond issued by a state. [Cases: States 147.]

statutory bond.A bond given in accordance with a statute. [Cases: Bonds 31, 50. C.J.S. Bonds §§ 21–23, 28, 32, 34, 39.]

subordinated bond.See junior bond.

tax-exempt bond.A bond that pays tax-free interest. [Cases: Internal Revenue 3132.10; Taxation 992. C.J.S. Internal Revenue §§ 94, 98; Taxation § 1723.]

term bond.A bond that matures concurrently with other bonds in that issue.

Treasury bond.See TREASURY BOND.

unsecured bond.See DEBENTURE(3).

voluntary bond.A bond not required by statute but given anyway. — Also termed nonstatutory bond.

Z-bond. See accrual bond.

zero-coupon bond.A bond paying no interest. • It is sold at a discount price and later redeemed at face value, the profit being the difference. — Also termed passive bond. See zero-coupon security under SECURITY.

bond,vb.1. To secure payment by providing a bond <at the creditor's insistence, Gabriel consolidated and bonded his various loans>.2. To provide a bond for (a person) <the company bonded its off-site workers>.

BOND AND MORTGAGE

bond and mortgage.See BOND(3).

BOND CONVERSION

bond conversion.The exchange of a convertible bond for another asset, usu. stock.

BOND COUPON

bond coupon. The part of a coupon bond that is clipped by the holder and surrendered to obtain an interest payment. See coupon bond under BOND(3).

BOND COVENANT

bond covenant. A bond-indenture provision that protects bondholders by specifying what the issuer may or may not do, as by prohibiting the issuer from issuing more debt. See BOND INDENTURE(1).

BOND CREDITOR

bond creditor. See CREDITOR.

BOND DISCOUNT

bond discount. See DISCOUNT(3).

BOND DIVIDEND

bond dividend. See DIVIDEND.

BONDED

bonded, adj. (Of a person or entity) acting under, or placed under, a bond <a bonded court official>.

BONDED DEBT

bonded debt. See DEBT.

BONDED WAREHOUSE

bonded warehouse. See WAREHOUSE.

BOND FOR A DEED

bond for a deed. See bond for land under BOND(2).

BOND FOR DEED

bond for deed. 1. CONVEYANCE(6). 2. BOND FOR TITLE.

BOND FOR LAND

bond for land. See BOND(2).

BOND FOR TITLE

bond for title. Real estate. The seller's retention of legal title until the buyer pays the purchase price. — Also termed bond for deed. Cf. contract for deed under CONTRACT. [Cases: Vendor and Purchaser 27. C.J.S. Vendor and Purchaser § 22.]

BOND FUND

bond fund. See MUTUAL FUND.

BONDHOLDER

bondholder. One who holds a government or business bond.

BOND INDENTURE

bond indenture. 1. A contract between a bond issuer and a bondholder outlining a bond's face value, interest rate, maturity date, and other features. 2. A mortgage held on specified corporate property to secure payment of the bond.

BONDING COMPANY

bonding company. See COMPANY.

BOND ISSUE

bond issue. See ISSUE(2).

BONDMAN

bondman. See BONDSMAN(2).

BOND OF CORROBORATION

bond of corroboration. See BOND(2).

BOND PREMIUM

bond premium. See PREMIUM(3).

BOND RATING

bond rating. A system of evaluating and appraising the investment value of a bond issue.

BOND RETIREMENT

bond retirement. The cancellation of a bond that has been called or paid.

BONDSMAN

bondsman. 1. One who guarantees a bond; a surety. 2. A serf or peasant; VILLEIN. — Also termed (in sense 2) bondman.

BOND TABLE

bond table. A schedule used in determining a bond's current value by its coupon rate, its time to maturity, and its effective yield if held to maturity.

BOND TRUST

bond trust. See TRUST.

BONES GENTS

bones gents (bohn jents). [Law French “good men”] Hist. Qualified or competent persons; esp., men qualified to serve on a jury.

BONIFICATION

bonification (bahn-*<<schwa>>*-fi-kay-sh*<<schwa>>*n). A tax remission, usu. on goods intended for export. • Bonification enables a commodity to be sold in a foreign market as if it had not been taxed.

BONI HOMINES

boni homines (boh-nIhom-*<<schwa>>*-neez). [Law Latin “good men”] Hist. Free tenants who judged each other in their lord's court.

“[W]e may find traces of juries in the laws of all those nations which adopted the feudal system, as in Germany, France, and Italy; who had all of them a tribunal composed of twelve good men and true, ‘boni homines’...” 3 William Blackstone, Commentaries on the Laws of England 349 (1768).

BONIS CEDERE

bonis cedere (boh-nis see-d*<<schwa>>*-ree). [Latin “to cede one's goods”] Civil law. A transfer or surrender of property, usu. from a debtor to a creditor.

BONIS NON AMOVENDIS

bonis non amovendis. See DE BONIS NON AMOVENDIS.

BONITARIAN

bonitarian (bahn-*<<schwa>>*-tair-ee-in), adj. Roman law. 1. Equitable or beneficial. — Also termed bonitary. Cf. QUIRITARIAN. 2. Hist. Pertaining to or designating a property interest governed by praetorian edict rather than civil law. See edictum praetoris under EDICTUM.

BONITARY

bonitary (bahn-*<<schwa>>*-tair-ee), adj. BONITARIAN(1).

BONITARY OWNERSHIP

bonitary ownership. See OWNERSHIP.

BONO ET MALO

bono et malo (boh-noh et mal-oh). See DE BONO ET MALO.

BONORUM POSSESSIO CONTRA TABULAS

bonorum possessio contra tabulas (b*<<schwa>>*-nor-*<<schwa>>*m p*<<schwa>>*-zes[h]-ee-oh kahn-tr*<<schwa>>* tab-y*<<schwa>>*-l*<<schwa>>*s). [Latin “possession of goods contrary to the terms of the will”] Roman law. An order authorizing the applicant to take possession of an estate contrary to the testament. • Magistrates made such orders in certain cases,

as where a testator passed over a daughter or an emancipated son who was not expressly disinherited. The legacies in the will remained valid, but if the testator passed over any male in the testator's power (*patria potestas*), the will was invalidated and intestacy resulted. — Also termed *contra tabulas*.

“The Praetor could not affect the civil validity of a will; he could not make or unmake a heres. He could, however, give *bonorum possessio* to a person, heres or not at civil law, which gave him power to take possession of the goods by appropriate steps, *bonorum possessio contra tabulas*...” W.W. Buckland, *A Text-Book of Roman Law from Augustus to Justinian* 324 (Peter Stein ed., 3d ed. 1963).

BONUM FACTUM

bonum factum (boh-n<<schwa>>m fak-t<<schwa>>m). [Latin] A good or proper act or deed. — Abbr. b.f. — Also termed *bene factum*.

BONUS

bonus. 1. A premium paid in addition to what is due or expected <year-end bonus>. • In the employment context, workers' bonuses are not a gift or gratuity; they are paid for services or on consideration in addition to or in excess of the compensation that would ordinarily be given. 2.BOUNTY(3).3.Oil & gas. A payment that is made in addition to royalties and rent as an incentive for a lessor to sign an oil-and-gas lease <the lessee received a large bonus at closing>. [Cases: *Mines and Minerals* 79.1(2). C.J.S. *Mines and Minerals* §§ 289, 291–293.]

“The amount of bonus paid, usually referred to as a per acre amount, may fluctuate widely between properties. The amount paid depends upon the nature of the development activity in the vicinity. If the land is located in a semi-proven area, or in a logical extension of a proven field, the bonus paid may be substantial.” Richard W. Hemingway, *The Law of Oil and Gas* § 2.5, at 57 (3d ed. 1991).

performance bonus. A bonus given as a reward for outstanding productivity.

BONUS SHARE

bonus share. See *bonus stock* under *STOCK*.

BONUS STOCK

bonus stock. See *STOCK*.

BONUS ZONING

bonus zoning. See *incentive zoning* under *ZONING*.

BOODLE

boodle. Slang. Money paid as a bribe, usu. to a public official.

BOODLING

boodling.Hist. Slang. Bribery. — boodle,vb.

BOOK

book,vb.1. To record in a book (as a sale or accounting item) <Jenkins booked three sales that day>.2. To record the name of (a person arrested) in a sequential list of police arrests, with details of the person's identity (usu. including a photograph and a fingerprint), particulars about the alleged offense, and the name of the arresting officer <the defendant was booked immediately after arrest>.3. To engage (someone) contractually as a performer or guest <although the group was booked for two full performances, the lead singer, Raven, canceled and this action ensued>. See BOOKING CONTRACT .

BOOK ACCOUNT

book account.See ACCOUNT.

BOOK ENTRY

book entry. 1. A notation made in an accounting journal. 2. The method of reflecting ownership of publicly traded securities whereby a customer of a brokerage firm receives confirmations of transactions and monthly statements, but not stock certificates. See CENTRAL CLEARING SYSTEM. [Cases: Brokers 23, 26. C.J.S. Brokers §§ 65, 67–69.]

BOOK-ENTRY BOND

book-entry bond.See BOND(3).

BOOK EQUITY

book equity.The percentage of a corporation's book value allocated to a particular class of stock. Cf. BOOK VALUE; MARKET EQUITY.

BOOKIE

bookie. See BOOKMAKER.

BOOKING CONTRACT

booking contract.An agreement by which an actor or other performer is engaged.

BOOKKEEPING

bookkeeping,n. The mechanical recording of debits and credits or the summarizing of financial information, usu. about a business enterprise. Cf. ACCOUNTING.

double-entry bookkeeping.A method of bookkeeping in which every transaction recorded by a business involves one or more “debit” entries and one or more “credit” entries. • The debit entries must equal the credit entries for each transaction recorded.

single-entry bookkeeping.A method of bookkeeping in which each transaction is recorded in a single record, such as a record of cash or credit accounts.

BOOKLAND

bookland (buuk-land).Hist. Land held under charter or deed; freehold land. • This was a privileged form of ownership (usu. free of the customary burdens on land) generally reserved for churches and leaders. — Also spelled bocland; bockland. — Also termed charter-land. Cf. LOANLAND; FOLKLAND.

“Charter-land is such as a man holds by charter, that is, by evidence in writing, which otherwise is called freehold.... [T]his land was held with more easy and commodious conditions, than folkland and copy-hold land held without writing; ... it is a free and absolute inheritance; whereas land without writing is charged with payment and bondage; so that for the most part noblemen and persons of quality possess the former, and rustics the other. The first we call freehold and by charter: the other, land at the will of the lord.” *Termes de la Ley* 80 (1st. Am. ed. 1812).

“From very early times it was common to make grants of land to religious bodies or to individuals. The grants were effected by the king as the chief of the community, with the consent of the great men, who in conjunction with the great ecclesiastics, after the introduction of Christianity, formed the Witenagemot, or Assembly of the Wise. The grant was made by means of a ‘book’ or charter. Land thus granted was said to be ‘booked’ to the grantee, and was called bocland or bookland. Thus bookland comes to mean land held under a written instrument by private persons or churches; who or whose predecessors are, or at least are supposed to have been, grantees of the community. The practice seems, after the introduction of Christianity, to have prevailed chiefly in favour of religious houses, and in this way the great ecclesiastical corporations acquired their property.... In process of time the conception of bookland seems to be coextensive with that of alodial land.” Kenelm E. Digby, *An Introduction to the History of the Law of Real Property* 11–12 (5th ed. 1897).

“Prior to the Conquest, property in land was divided into bocland, folcland, and laenland. The exact nature of these rights has been disputed, but probably bocland was held by owners of high station claiming under a charter of privileges originally granted by the King, while folcland was held by ordinary owners according to the custom of the district in which the land lay. Laenland, or loanland, appears to have represented something in the nature of a tenancy of a less enduring character. It derived its existence from the loan of land by one person to another, and hence emphasises the relation later known as that of feudal landlord and tenant. Furthermore, as bocland became more common, a tendency for laenland and bocland to coalesce appeared.” A.K.R. Kiralfy, *Potter's Outlines of English Legal History* 195 (5th ed. 1958).

BOOKMAKER

bookmaker. A person who determines odds and receives bets on the outcome of events, esp. sports events. See BOOKMAKING.

BOOKMAKING

bookmaking. Gambling that entails the taking and recording of bets on an event, such as a horse race. [Cases: Gaming 73.]

BOOK OF ORIGINAL ENTRY

book of original entry. A day-to-day record in which a business's transactions are first recorded.

BOOKS OF ACCOUNT

books of account. See SHOP BOOKS.

BOOKS OF ADJOURNAL

Books of Adjournal. Scots law. The records of the High Court of Justiciary.

BOOKS OF SEDERUNT

Books of Sederunt. Scots law. The records of the Court of Session.

BOOK VALUE

book value. The value at which an asset is carried on a balance sheet. Cf. BOOK EQUITY .
adjusted book value. Inventory value adjusted to reflect the inventory's current actual value.

BOOK-VALUE STOCK

book-value stock. See STOCK.

BOOMAGE

boomage. 1. A fee charged by a company for collecting and distributing logs that have accumulated in its boom (i.e., a line of sawed logs collected and stored on a stream's surface). [Cases: Logs and Logging 14.] 2. A right to enter on riparian lands to fasten booms. 3. An anchorage fee charged by a canal proprietor. [Cases: Canals 27. C.J.S. Canals § 33.]

BOON

boon, n. Hist. Unpaid services, rendered in kind or labor, without being fixed in amount or time, that some tenants owed to the landowner as a condition of tenancy.

BOON DAY

boon day. (usu. pl.) Hist. One of several days in the year when copyhold tenants were obliged to perform base services for the lord (such as reaping corn) without pay. — Also termed due day. — Sometimes (erroneously) termed bind day.

BOOT

boot, n. 1. Tax. Supplemental money or property subject to tax in an otherwise tax-free exchange. [Cases: Internal Revenue 3679. C.J.S. Internal Revenue §§ 406–407.] 2. Corporations. In a corporate reorganization, anything received other than the stock or securities of a controlled corporation. 3. Commercial law. Cash or other consideration used to balance an otherwise unequal exchange. 4. Hist. ESTOVERS(1).

BOOT CAMP

boot camp. 1. A camp for basic training of Navy or Marine Corps recruits. 2. A military-like facility esp. for juvenile offenders. • Boot camps are specialized programs for offenders who are generally nonviolent males from 17 to 25 years old. While proponents applaud the success of these programs, others find their long-term success limited at best. See shock incarceration under INCARCERATION.

BOOTHAGE

boothage (boo-thij). See BOTHAGIUM.

BOOTLEG

bootleg,vb. Copyright. To make, distribute, or traffic in unauthorized sound recordings or music videos of live, broadcast, or recorded performances that have not been commercially released by the copyright owner. • The term strictly applies only to unauthorized copies of commercially unreleased performances. *Dowling v. United States*, 473 U.S. 207, 209 n.2, 105 S.Ct. 3127, 3129 n.2 (1985) (Blackmun, J.). Cf. PIRACY(3). — bootleg, bootlegged,adj.

BOOTLEG COPY

bootleg copy. Copyright. See BOOTLEG RECORDING(1).

BOOTLEGGER

bootlegger,n. A person who manufactures, transports, or sells something illegally, esp. alcoholic beverages. See MOONSHINE. [Cases: Intoxicating Liquors 137, 138, 146. C.J.S. Intoxicating Liquors §§ 242–243, 248, 264–265, 268–270.]

BOOTLEG RECORDING

bootleg recording,n. Copyright. 1. An unauthorized fixation or copy of a live or broadcast performance in a tangible medium or digital duplication made available over the Internet. — Also termed bootleg copy; underground recording; import recording. [Cases: Copyrights and Intellectual Property 67.2. C.J.S. Copyrights and Intellectual Property § 58.] 2. See PIRATE RECORDING.3.COUNTERFEIT RECORDING.

BOOTSTRAP

bootstrap,vb.1. To succeed despite sparse resources. 2. To reach an unsupported conclusion from questionable premises.

BOOTSTRAP DOCTRINE

bootstrap doctrine.Conflict of laws. The doctrine that forecloses collateral attack on the jurisdiction of another state's court that has rendered final judgment. • The doctrine applies when a court in an earlier case has taken jurisdiction over a person, over status, or over land. It is based on the principle that under *res judicata*, the parties are bound by the judgment, whether the issue was the court's jurisdiction or something else. The bootstrap doctrine, however, cannot give

effectiveness to a judgment by a court that had no subject-matter jurisdiction. For example, parties cannot, by appearing before a state court, “bootstrap” that court into having jurisdiction over a federal matter. [Cases: Judgment 818. C.J.S. Judgments § 986.]

“If the court which rendered the judgment has, with the parties before it, expressly passed upon the jurisdictional question in the case, or had opportunity to do so because the parties could have raised the question, that question is *res judicata*, and is therefore not subject to collateral attack in the state in which the judgment is sued on. This has been called the ‘bootstrap doctrine,’ the idea being that a court which initially had no jurisdiction can when the issue is litigated lift itself into jurisdiction by its own incorrect but conclusive finding that it does have jurisdiction.” Robert A. Leflar, *American Conflicts Law* § 79, at 159 (3d ed. 1977).

BOOTSTRAP SALE

bootstrap sale. See SALE.

BOOTY

booty. 1. Int'l law. Movable taken from the enemy as spoils in the course of warlike operations. — Also termed spoils of war. 2. Property taken by force or piracy; prize or loot.

BOP

BOP. abbr. BUREAU OF PRISONS.

BORDAGE

bordage (bor-dij). Hist. A type of tenure in which a tenant holds a cottage and a few acres in exchange for providing customary services to the lord. — Also termed *bordagium*.

BORDAR

bordar (bor-d<<schwa>>r). Hist. A bordage tenant. • The status of such a tenant was less servile than that of a villein tenant. See BORDAGE; VILLEINAGE. — Also termed *bordarius* (pl. *bordarii*).

BORDER

border. A boundary between one nation (or a political subdivision) and another.

BORDER AND TRANSPORTATION SECURITY DIRECTORATE

Border and Transportation Security Directorate. The division of the U.S. Department of Homeland Security responsible for maintaining the safety of the nation's borders and transportation systems. • The Directorate includes the Transportation Security Administration, the U.S. Customs Service, the border security functions of the U.S. Citizenship and Immigration Service, the Animal & Plant Health Inspection Service, and the Federal Law Enforcement Training Center. It is the Department's largest division. — Abbr. BTS.

BORDER CONTROL

border control.Int'l law. A country's physical manifestation of its territorial sovereignty, by which it regulates which people and goods may enter and leave. • As a practical matter, border controls are often used to contain plant and animal diseases, fight terrorism, and detect the movement of criminals.

BORDEREAU

bordereau (bor-d<<schwa>>-roh), n.1. A description of reinsured risks; esp., a periodic report provided by a cedent to a treaty reinsurer, consisting of basic information affecting the reinsurance treaty, such as the underlying insureds, the types of risks covered, policies, and dates of loss. See REINSURANCE TREATY. 2. A detailed note of account. Pl. bordereaux. — bordereau,vb.

BORDER SEARCH

border search.See SEARCH.

BORDER WARRANT

border warrant.See WARRANT(1).

BORD-HALFPENNY

bord-halfpenny (bord-hay-p<<schwa>>-nee). See BOTHAGIUM.

BORLANDS

bordlands.Hist. Land used by the nobility to produce food. • Bordlands remained under the nobility's direct control or were given to tenants who produced provisions for the landowner. Cf. BORDAGE.

BORG

borg (borg), n. Hist. Scots law. 1. A thing deposited as a security, esp. for bail or a suretyship. 2. A surety. — Also spelled borgh; borh.

BORGH

borgh.1.BORG. 2.BORROW.

BORH

borh.1.BORG. 2.BORROW.

BORK

bork (bork), vb. Slang. 1. (Of the U.S. Senate) to reject a nominee, esp. for the U.S. Supreme Court, on grounds of the nominee's unorthodox political and legal philosophy. • The term derives from the name of Robert Bork, President Ronald Reagan's unsuccessful nominee for the Supreme Court in 1987. 2. (Of political and legal activists) to embark on a media campaign to pressure U.S. senators into rejecting a President's nominee. 3. Generally, to smear a political opponent.

BORN-ALIVE TEST

born-alive test. 1. Under the common law, a showing that an infant was completely expelled from the mother's womb and possessed a separate and independent existence from the mother. 2. A showing that an infant, at the time of birth, was capable of living a separate and independent existence (regardless of how long the infant actually lived).

BORN VALID

born valid.Patents. Presumed to be good; entitled to the legal presumption that a patent was justified when issued and that challengers bear the burden of proving by clear and convincing evidence that the patent should not have been granted. • Defenses against infringement claims take one of three tacks: denying that the product infringes on the plaintiff's rights, challenging the validity of the patent itself, or challenging its enforceability. — Also termed presumption of validity. [Cases: Patents 112.1. C.J.S. Patents §§ 194, 203–205, 207.]

“The patent statute is unambiguous: ‘A patent shall be presumed valid The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting such invalidity.’ A patent is born valid. It remains valid until a challenger proves it was stillborn or had birth defects, or is no longer viable as an enforceable right.” *Roper Corp. v. Litton Sys., Inc.*, 757 F.2d 1266, 1270 (Fed. Cir. 1985)(quoting 37 USCA § 282).

BOROUGH

borough (b<<schwa>>r-<<schwa>>), n.1. A town or township with a municipal charter, such as one of the five political divisions of New York City. [Cases: Municipal Corporations 6. C.J.S. Municipal Corporations § 12.] 2.English law. A chartered town that originally sent a member to Parliament. 3.Hist. A fortified or important town. — Also spelled burgh.

BOROUGH COURT

borough court.English law. An inferior civil court of record, usu. presided over by the municipal recorder. • Most borough courts were abolished by Parliament in 1972. Cf. BOROUGH SESSIONS; RECORDER(1).

BOROUGH ENGLISH

borough English.Hist. A common-law rule of descent whereby the youngest son (or sometimes the youngest daughter or collateral heir) inherited all his father's lands. • If the landowner had no issue, his youngest brother inherited the land. This practice applied to socage tenures in some parts of England. It was abolished by statute in 1925. — Also termed postremogeniture; ultimogeniture; burgh English; burgh Engloys. See PRIMOGENITURE.

BOROUGH FUND

borough fund.English law. The revenue generated by a municipal borough.

BOROUGH-HOLDER

borough-holder. See BORSHOLDER.

BOROUGH REEVE

borough reeve. See REEVE.

BOROUGH SESSIONS

borough sessions. Criminal court sessions held before a municipal recorder. Cf. BOROUGH COURTS; RECORDER(1).

BORROW

borrow, n. A frankpledge. — Also spelled borgh; borh. See DECENARY; FRANKPLEDGE.

borrow, vb. 1. To take something for temporary use. 2. To receive money with the understanding or agreement that it must be repaid, usu. with interest. See LOAN. [Cases: Contracts 194.]

BORROWED CAPITAL

borrowed capital. Funds lent to a corporation or other entity to finance its operations, such as cash dividends that are declared by a corporation but temporarily retained (with stockholder approval) to provide operating funds. [Cases: Internal Revenue 4133; Taxation 378. C.J.S. Taxation § 550.]

BORROWED EMPLOYEE

borrowed employee. See EMPLOYEE.

BORROWED SERVANT

borrowed servant. See borrowed employee under EMPLOYEE.

BORROWED-STATUTES DOCTRINE

borrowed-statutes doctrine. The principle that if one state adopts a statute identical to that of another state, any settled judicial construction of that statute by the courts of the other state is binding on the courts of the state that later enacts the statute. [Cases: Courts 95(2); Statutes 226. C.J.S. Courts § 157; Statutes §§ 358–361.]

BORROWER

borrower. A person or entity to whom money or something else is lent.

BORROWHEAD

borrowhead. See BORSHOLDER.

BORROWING STATUTE

borrowing statute. A legislative exception to the conflict-of-laws rule holding that a forum state must apply its own statute of limitations. • A borrowing statute specifies the circumstances in which a forum state will apply another state's statute of limitations. [Cases: Limitation of Actions 2. C.J.S. Limitations of Actions § 26.]

BORSHOLDER

borsholder (bors-hohl-d<<schwa>>r).Hist. 1. The chief of a tithing or frankpledge. 2. A petty constable. — Also termed borough-holder; borrowhead; headborough.

BOSTON INTEREST

Boston interest.See INTEREST(3).

BOTE

bote (boht).Hist. 1. A compensation or profit; esp., an allowance of wood; ESTOVER(1). — Also spelled bot; boot.

cartbote. See plowbote.

firebote. See housebote.

haybote. See HAYBOTE.

hedgebote. See HAYBOTE.

housebote. An allowance of wood from the estate used to repair a house or to burn in the fireplace. — Also termed firebote.

plowbote. An allowance of wood for the construction and repair of farm equipment. — Also termed cartbote.

wainbote. An allowance of wood for the repair of wagons.

2. A compensatory payment for causing an injury. Cf. BOTELESS.“Bot (relief, remedy, compensation) was set at a certain number of shillings in case of wounding, a higher number if the wound injured not only flesh but also bone; indemnity had to be higher if the bone was broken. And so it went with other injuries.” Charles Herman Kinnane, *A First Book on Anglo-American Law* 215 (2d ed. 1952).

Godbote. A church fine paid for offenses against God.

hadbote.Hist. Amends for an affront to or violence against a person in holy orders. — Also spelled had-bot.

kinbote. See manbote.

maegbote (mag-boht). Bote paid to the relatives of an injured person.

manbote. Compensation for killing someone. — Also termed kinbote.

theftbote. The acceptance of a payment from a thief in exchange for an agreement not to prosecute; COMPOUNDING A CRIME. • The payment might be either a bribe or a return of the stolen goods themselves. This was a form of compounding a felony.

“Another offence of this class is theftbote or composition with a thief by which the person robbed takes his goods again and by contract suppresses the robbery and defrauds justice. This crime is punishable by fine and imprisonment.” 1 Sir Robert Chambers, *A Course of Lectures on*

the English Law: 1767–1773 448 (Thomas M. Curley ed., 1986).

3. A tenant's right to use as much wood from the estate as necessary for fuel, fences, and other agricultural operations. • Bote in this sense is an earlier form of estovers. 4. The repair of bridges, highways, and public works. 5. An assessment levied to fund such repairs.

BOTELESS

boteless (boht-l<<schwa>>s), adj.1.Hist. Of or relating to an offense that cannot be expiated or otherwise remedied by the payment of a fine, the offender being required to suffer loss of liberty or life. • Boteless offenses appeared in Anglo-Saxon Britain about A.D. 700. They appear to have involved treason or violence against the king. 2.Hist. Without relief or remedy; without the privilege of making satisfaction for a crime by pecuniary payment. • The modern word bootless is derived from this term. Cf. BOTE(2).

“In the laws of Ine it appeared possible, in the discretion of the kind, to put certain offenders to death, rather than let them save themselves by paying a money fine. This involved a step in the modern direction, as far as criminal law is concerned. The ‘boteless’ offense, that is, the offense which can not be fully expiated by the payment of a money fine so that the guilty person must suffer loss of liberty or life is so familiar to us that we take it as a matter of course; it seems, however, to have first appeared in Anglo-Saxon Britain about the year A.D. 700. In general, these ‘boteless’ offenses seem to have appeared in connection with matter that we would say now involved treason or violence offered to the king.” Charles Herman Kinnane, *A First Book on Anglo-American Law* 216–17 (2d ed. 1952).

BOTHAGIUM

bothagium (bah-thay-jee-<<schwa>>m).Hist. Customary dues paid to a lord for placing a booth in a fair or market. — Also termed bord-halfpenny; boothage.

BOTILER OF THE KING

botiler of the king.Hist. An officer who provided the king's wines. • By virtue of office, the botiler could choose two casks from every wine-laden ship. The modern word butler is derived from botiler.

BOTTOMAGE BOND

bottomage bond.See bottomry bond under BOND(2).

BOTTOM-HOLE AGREEMENT

bottom-hole agreement.Oil & gas. A support agreement in which the contributing party agrees to make a cash contribution to the drilling party in exchange for geological or drilling information if the well is drilled to the agreed depth. See SUPPORT AGREEMENT. [Cases: Mines and Minerals 79.2. C.J.S. Mines and Minerals § 296.]

BOTTOMLAND

bottomland. Low-lying land, often located in a river's floodplain.

BOTTOMRY

bottomry.Maritime law. A contract by which a shipowner pledges the ship as security for a loan to finance a voyage (as to equip or repair the ship), the lender losing the money if the ship is lost during the voyage. • The term refers to the idea that the shipowner pledges the ship's bottom, or keel. Cf. RESPONDENTIA. [Cases: Shipping 88. C.J.S. Shipping § 221.]

BOTTOMRY BOND

bottomry bond.See BOND(2).

BOUGHT AND SOLD NOTES

bought and sold notes.Two memoranda prepared by a broker to record the sale of a note. • The broker sends the bought note to the purchaser, and sends the sold note to the seller.

BOUGHT NOTE

bought note.See NOTE(1).

BOULEVARD RULE

boulevard rule.The principle that the driver of a vehicle approaching a highway from a smaller road must stop and yield the right-of-way to all highway traffic. [Cases: Automobiles 171(5).]

BOULWARISM

boulwarism.Labor law. A bargaining tactic in which an employer researches the probable outcome of collective bargaining and uses the information to make a firm settlement offer to a union on a take-it-or-leave-it basis, so that there is no real negotiation. • Boulwarism is now considered to be an unfair labor practice by the National Labor Relations Board. The practice takes its name from Lemuel Boulware, vice president for employee relations at General Electric Company, who used the technique during the mid-20th century. [Cases: Labor Relations 389. C.J.S. Labor Relations §§ 153–154, 159–160, 391–395, 397.]

BOUNCED CHECK

bounced check.See bad check under CHECK.

BOUND

bound,adj.1. Constrained by a contractual or other obligation <they are bound to make the payments by the first of each month>.2. (Of a court) constrained to follow a precedent <bound by a Supreme Court decision>.

bound,n. (usu. pl.) 1.BOUNDARY <metes and bounds>.2. A limitation or restriction on action <within the bounds of the law>.

bound,vb. To delineate a property boundary <property bounded by the creek>. Cf. BIND.

BOUNDARY

boundary. 1. A natural or artificial separation that delineates the confines of real property <the creek serves as a boundary between the two properties>. See METES AND BOUNDS. [Cases: Boundaries 1–25. C.J.S. Boundaries §§ 2–63.]

“The object of all rules for the establishment of boundaries is to ascertain the actual location of the boundary as made at the time. The important and controlling consideration, where there is a conflict as to a boundary, is the parties' intention, whether express or shown by surrounding circumstances” 11 C.J.S. Boundaries § 3 (1995).

agreed boundary.A negotiated boundary by which adjacent landowners resolve uncertainties over the extent of their land. — Also termed boundary by agreement; boundary by acquiescence. See DOCTRINE OF PRACTICAL LOCATION.

land boundary.The limit of a landholding, usu. described by linear measurements of the borders, by points of the compass, or by stationary markers. See FORTY; LEGAL DESCRIPTION. [Cases: Boundaries 1–25. C.J.S. Boundaries §§ 2–63.]

lost boundary.A boundary whose markers have decayed, changed, or been removed or displaced in such a manner that the boundary's correct location can no longer be determined with confidence.

natural boundary.Any nonartificial thing (such as a river or ocean) that forms a boundary of a nation, a political subdivision, or a piece of property. — Also termed natural object. [Cases: Boundaries 4. C.J.S. Boundaries §§ 5–6.]

private boundary.An artificial boundary marker. [Cases: Boundaries 5. C.J.S. Boundaries §§ 3, 5, 7.]

public boundary.A natural formation that marks the beginning of a boundary line. — Also termed natural boundary. [Cases: Boundaries 4. C.J.S. Boundaries §§ 5–6.]

2.Int'l law. A line marking the limit of the territorial jurisdiction of a state or other entity having an international status. [Cases: International Law 5. C.J.S. International Law §§ 14–20.]

BOUNDARY BY ACQUIESCENCE

boundary by acquiescence.See agreed boundary under BOUNDARY.

BOUNDARY BY AGREEMENT

boundary by agreement.See agreed boundary under BOUNDARY.

BOUNDARY TRAFFIC

boundary traffic.The movement of persons or goods across an international boundary.

BOUND BAILIFF

bound bailiff.See BAILIFF.

BOUNDED TREE

bounded tree. A tree that marks a corner of a property's boundary.

BOUNDER

bounder. A visible mark that indicates a territorial limit in a land survey.

BOUNTY

bounty. 1. A premium or benefit offered or given, esp. by a government, to induce someone to take action or perform a service <a bounty for the killing of dangerous animals>. 2. A gift, esp. in a will; generosity in giving <the court will distribute the testator's bounty equally>. 3. The portion of a salvage award exceeding what the salvor would be entitled to on the basis of quantum meruit. — Also termed gratuity; bonus.

BOUNTY HUNTER

bounty hunter. A person who for a fee pursues someone charged with or suspected of a crime; esp., a person hired by a bail-bond company to find and arrest a criminal defendant who has breached the bond agreement by failing to appear in court as ordered. — Also termed bail-enforcement agent.

BOUNTY LAND

bounty land. See LAND.

BOUNTY-LAND WARRANT

bounty-land warrant. Hist. A state- or federal-government-issued certificate affirming a veteran's eligibility to apply for ownership of a certain amount of public land. • A veteran had to apply for a bounty-land warrant; it was not automatically granted. When the application was approved, the veteran received notice that the warrant had been issued in the veteran's name and was on file in the General Land Office. The veteran could then sell or otherwise transfer the bounty-land warrant to anyone, even a nonveteran. The warrant holder acquired the right to redeem the warrant and apply for a land patent. The last statute authorizing the issue of bounty-land warrants was enacted in 1894, and the last warrants were issued in 1906.

BOURSE

bourse (buurs). [French] French law. An exchange; a stock exchange. — Also termed bourse de commerce.

BOUTIQUE

boutique (boo-teek). A small specialty business; esp., a small law firm specializing in one particular aspect of law practice <a tax boutique>.

BOVATA TERRAE

bovata terrae (boh-vay-t<<schwa>> ter-ee). [Law Latin] Hist. See OXGANG.

BOW-BEARER

bow-bearer.Hist. An officer responsible for apprehending trespassers and poachers in the king's forest.

BOX

box,vb. Hist. Eng. & Scots law.To file a paper with a court of law.

BOX DAY

box day.Hist. Scots law. One of the vacation days formerly appointed for filing papers in the Court of Session.

BOX-TOP LICENSE

box-top license.See shrink-wrap license under LICENSE.

BOYCOTT

boycott,n.1. An action designed to achieve the social or economic isolation of an adversary. • The term derives from Captain Charles C. Boycott, an English landowner in famine-plagued Ireland of the 1870s; because of his ruthless treatment of Irish tenant farmers, the Irish Land League ostracized him. 2. A concerted refusal to do business with a party to express disapproval of that party's practices. 3. A refusal to deal in one transaction in an effort to obtain terms desired in a second transaction. • Under the Sherman Antitrust Act, even peaceful persuasion of a person to refrain from dealing with another can amount to a boycott. See 15 USCA §§ 1–7. Cf. PICKETING; STRIKE. — boycott,vb.

consumer boycott.A boycott by consumers of products or services to show displeasure with the manufacturer, seller, or provider.

group boycott.Antitrust. 1.CONCERTED REFUSAL TO DEAL. 2. A type of secondary boycott by two or more competitors who refuse to do business with one firm unless it refrains from doing business with an actual or potential competitor of the boycotters. • A group boycott can violate the Sherman Act and is analyzed under either the per se rule or the rule of reason, depending on the nature of the boycott. See PER SE RULE; RULE OF REASON.

“Since early in this century, courts have interpreted Section 1 [of the Sherman Act] to limit the ability of competing firms to agree not to deal with or to isolate another firm. Unlike many cartels, where all competitors voluntarily join to fix prices (and share monopoly rewards), concerted refusals to deal usually involve a subset of all market participants who band together to gain market power by destroying or coercing their rivals. Such organized refusals to deal with a particular firm are usually given the pejorative label of ‘group boycotts.’ ” Ernest Gellhorn & William E. Kovacic, *Antitrust Law and Economics in a Nutshell* 204 (4th ed. 1994).

primary boycott.A boycott by union members who stop dealing with a former employer.

secondary boycott.A boycott of the customers or suppliers of a business so that they will withhold their patronage from that business. • For example, a group might boycott a manufacturer who advertises on a radio station that broadcasts messages considered objectionable by the group.

BOYKIN ACT

Boykin Act.Patents. Hist. A statute, passed after World War II, that extended the U.S. patenting deadlines for citizens of former enemy nations. • A similar measure, the Nolan Act, was passed after World War I.

BOYLE DEFENSE

Boyle defense.See GOVERNMENT-CONTRACTOR DEFENSE.

B.R

B.R.abbr.1. Bankruptcy Reporter. — Also abbreviated Bankr. Rep.2.Bancus Regis [Latin “King's Bench”].3.Bancus Reginae [Latin “Queen's Bench”]. • This abbreviation has been replaced by the English initials of these courts, K.B. and Q.B.

BRACERY

bracery.Hist. 1. The offense of selling pretended rights or title to land. • This practice was outlawed by statute of 32 Hen. 8, ch. 9. 2.EMBRACERY.

BRACKET CREEP

bracket creep.The process by which inflation or increased income pushes individuals into higher tax brackets.

BRACKET SYSTEM

bracket system.Tax law. A system for collecting a sales tax based on an index providing for a graduated payment depending on the purchase price of the item, the purpose being fourfold: (1) to avoid having the seller collect a tax less than one cent; (2) to avoid requiring the state to figure the exact amount of tax on each sale; (3) to allow the seller to have a ready means for fixing the tax to be collected; and (4) to allow the state to collect about the right amount of tax. • This system may be provided for either by statute or by administrative regulation. [Cases: Taxation 1338.1. C.J.S. Taxation § 2062.]

BRACTON

Bracton. The common title of one of the earliest books of English law, *De Legibus et Consuetudinibus Angliae* (ca. 1250). • Henry of Bratton (also known as Bracton), a judge of the Court of King's Bench and of Assize, is credited with writing the work, though he may have merely revised an earlier version.

“Bracton's book is the crown and flower of English medieval jurisprudence.... Romanesque in form, English in substance — this perhaps is the best brief phrase that we can find for the outcome of his labours; but yet it is not very good. He had at his command and had diligently studied ... various parts of the *Corpus Iuris Civilis*, of the *Decretum*, and the *Decretals*, and he levied contributions from the canonist Tancred.... Bracton's debt — and therefore our debt — to the civilians is inestimably great. But for them, his book would have been impossible; but for them ... we should have missed not only the splendid plan, the orderly arrangement, the keen

dilemmas, but also the sacerdotal spirit of the work. On the other hand, the main matter of his treatise is genuine English law laboriously collected out of the plea rolls of the king's court.... [H]is endeavor is to state the practice, the best and most approved practice, of the king's court, and of any desire to romanize the law we must absolutely acquit him." 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 206–09 (2d ed. 1898).

BRADY ACT

Brady Act. A federal law establishing a national system for quickly checking the background of a prospective handgun purchaser. • The formal name of the law is the Brady Handgun Violence Prevention Act. The U.S. Supreme Court held unconstitutional the law's interim provision, which required chief state law-enforcement officers (usu. sheriffs) to conduct background checks until the national system was in place. The act is named for James Brady, who, as a member of President Ronald Reagan's staff, was wounded by gunfire during an attempted presidential assassination in 1981. 18 USCA §§ 921–930.

BRADY MATERIAL

Brady material. Information or evidence that is favorable to a criminal defendant's case and that the prosecution has a duty to disclose. • The prosecution's withholding of such information violates the defendant's due-process rights. *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963). See exculpatory evidence under EVIDENCE. Cf. JENCKS MATERIAL. [Cases: Constitutional Law 268(5); Criminal Law 700. C.J.S. Constitutional Law §§ 1053–1060; Criminal Law §§ 486, 490, 510, 1233, 1236.]

BRAIN DEATH

brain death. See DEATH.

BRAKE

brake. See DUKE OF EXETER'S DAUGHTER.

BRANCH

branch. 1. An offshoot, lateral extension, or division of an institution <the executive, legislative, and judicial branches of government>. 2. A line of familial descent stemming from a common ancestor <the Taylor branch of the Bradshaw family>. — Also termed stock.

BRAND

brand. Trademarks. A name or symbol used by a seller or manufacturer to identify goods or services and to distinguish them from competitors' goods or services; the term used colloquially in business and industry to refer to a corporate or product name, a business image, or a mark, regardless of whether it may legally qualify as a trademark. • Branding is an ancient practice, evidenced by individual names and marks found on bricks, pots, etc. In the Middle Ages, guilds granted their members the right to use a guild-identifying symbol as a mark of quality and for legal protection. — Also termed brand name.

private brand. An identification mark placed on goods made by someone else under license or other arrangement and marketed as one's own. • The seller of private-brand goods sponsors those goods in the market, becomes responsible for their quality, and has rights to prevent others from using the same mark.

BRAND ARCHITECTURE

brand architecture. Trademarks. The strategic analysis and development of optimal relationships among the multiple levels of a company and its brands, products, features, technology, or ingredient names. [Cases: Trade Regulation 5. C.J.S. Trade-Mark, Trade-Names, and Unfair Competition §§ 5, 16.]

BRANDEIS BRIEF

Brandeis brief (bran-dīz). A brief, usu. an appellate brief, that makes use of social and economic studies in addition to legal principles and citations. • The brief is named after Supreme Court Justice Louis D. Brandeis, who as an advocate filed the most famous such brief in *Muller v. Oregon*, 208 U.S. 412, 28 S.Ct. 324 (1908), in which he persuaded the Court to uphold a statute setting a maximum ten-hour workday for women.

BRANDEIS RULES

Brandeis rules. See ASHWANDER RULES.

BRANDING

branding. 1. The act of marking cattle with a hot iron to identify their owner. [Cases: Animals 5. C.J.S. Animals § 15.] 2. Formerly, the punishment of marking an offender with a hot iron.

BRAND NAME

brand name. 1. BRAND. 2. TRADENAME.

BRANKS

branks (brangks). Hist. An instrument used to punish scolds, consisting of an iron framework that surrounded the head and entered the mouth to keep the offender's tongue depressed. — Also termed scolding bridle. See SCOLD. Cf. CASTIGATORY.

BRASSAGE

brassage (bras-ij). Hist. A government charge for the actual cost of coining metals. • Any profit is termed seigniorage. See SEIGNIORAGE(2).

BRAWL

brawl, n. 1. A noisy quarrel or fight. 2. The offense of engaging in such a quarrel or fight. • In most jurisdictions, the offense is a statutory civil misdemeanor. 3. Hist. Eccles. law. The offense of disturbing the peace of a consecrated building or area; specif., a disturbance, such as arguing, within the churchyard or church. • Until 1860, offenders faced trial in ecclesiastical courts. — Also termed brawling. — brawl, vb.

BREACH

breach,n. A violation or infraction of a law or obligation <breach of warranty> <breach of duty>. — breach,vb.

BREACH OF ARREST

breach of arrest.A military offense committed by an officer who, being under arrest in quarters, leaves those quarters without a superior officer's authorization. See arrest in quarters under ARREST.

BREACH OF CLOSE

breach of close.The unlawful or unauthorized entry on another person's land; a common-law trespass. — Also termed breaking a close. See CLOSE(1). [Cases: Trespass 10. C.J.S. Trespass §§ 13–15.]

BREACH OF CONTRACT

breach of contract.Violation of a contractual obligation by failing to perform one's own promise, by repudiating it, or by interfering with another party's performance. [Cases: Contracts 312, 315. C.J.S. Contracts § 561.]

“A breach may be one by non-performance, or by repudiation, or by both. Every breach gives rise to a claim for damages, and may give rise to other remedies. Even if the injured party sustains no pecuniary loss or is unable to show such loss with sufficient certainty, he has at least a claim for nominal damages. If a court chooses to ignore a trifling departure, there is no breach and no claim arises.” Restatement (Second) of Contracts § 236 cmt. a (1979).

active breach of contract.Civil law. The negligent performance of a contractual obligation, to the point of acting outside the contract's terms. • Under Louisiana law before 1984, active breach of contract was contrasted with passive breach of contract, which was a failure to perform the obligations created by the contract. Unlike a passive breach, an active breach of contract could give rise to a claim in contract and in tort. The distinction was abolished in 1984. Cf. passive breach of contract. [Cases: Contracts 312. C.J.S. Contracts § 561.]

anticipatory breach.A breach of contract caused by a party's anticipatory repudiation, i.e., unequivocally indicating that the party will not perform when performance is due. • Under these circumstances, the nonbreaching party may elect to treat the repudiation as an immediate breach and sue for damages. — Also termed breach by anticipatory repudiation; constructive breach. See anticipatory repudiation under REPUDIATION. [Cases: Contracts 313. C.J.S. Contracts § 534.]

“A repudiation by one party may occur before the time for performance has arrived. Such a repudiation is called an anticipatory breach, and it gives the innocent party the option of treating the contract as terminated at once and suing for damages immediately if he chooses or, alternatively, of waiting until the time of performance has arrived, and then again calling on the other party to perform. Should he choose the latter course he runs the risk that the contract may possibly become frustrated in the interim, in which case he will have lost his right to damages.”

P.S. Atiyah, *An Introduction to the Law of Contract* 298 (3d ed. 1981).

constructive breach. See anticipatory breach.

continuing breach. A breach of contract that endures for a considerable time or is repeated at short intervals.

efficient breach. An intentional breach of contract and payment of damages by a party who would incur greater economic loss by performing under the contract. See EFFICIENT-BREACH THEORY.

immediate breach. A breach that entitles the nonbreaching party to sue for damages immediately.

material breach. A breach of contract that is significant enough to permit the aggrieved party to elect to treat the breach as total (rather than partial), thus excusing that party from further performance and affording it the right to sue for damages. [Cases: Contracts 317, 318. C.J.S. Contracts §§ 334, 450–455, 507, 541–544.]

“In determining whether a failure to render or to offer performance is material, the following circumstances are significant: (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.” Restatement (Second) of Contracts § 241 (1979).

partial breach. A breach of contract that is less significant than a material breach and that gives the aggrieved party a right to damages, but does not excuse that party from performance; specif., a breach for which the injured party may substitute the remedial rights provided by law for only part of the existing contract rights. [Cases: Contracts 319. C.J.S. Contracts § 593.]

passive breach of contract. Civil law. A failure to perform the requirements of a contract. • Under Louisiana law up to 1984, passive breach of contract was contrasted with active breach of contract, which was negligence in performing a contractual obligation. While an active breach of contract could give rise to claims in contract and in tort, a passive breach of contract usu. did not give rise to a tort claim. Cf. active breach of contract. [Cases: Contracts 315. C.J.S. Contracts § 561.]

total breach. A breach of contract for which the remedial rights provided by law are substituted for all the existing contractual rights, or can be so substituted by the injured party; esp., a material breach that gives rise to a claim for damages based on the aggrieved party's remaining rights to performance under the contract. [Cases: Contracts 317. C.J.S. Contracts § 507.]

BREACH OF COVENANT

breach of covenant. The violation of an express or implied promise, usu. in a contract, either to do or not to do an act. See COVENANT. [Cases: Contracts 312. C.J.S. Contracts § 561.]

BREACH OF DUTY

breach of duty. The violation of a legal or moral obligation; the failure to act as the law obligates one to act; esp., a fiduciary's violation of an obligation owed to another. See NEGLIGENCE. [Cases: Negligence 250. C.J.S. Negligence § 59.]

BREACH OF PEACE

breach of peace. See BREACH OF THE PEACE.

BREACH OF PRISON

breach of prison. See PRISON BREACH.

BREACH OF PROMISE

breach of promise. The violation of one's word or undertaking, esp. a promise to marry. • Under English common law, an engagement to marry had the nature of a commercial contract, so if one party broke the engagement without justification, the innocent party was entitled to damages. See HEARTBALM STATUTE . [Cases: Breach of Marriage Promise 1–36. C.J.S. Breach of Marriage Promise §§ 2–21.]

BREACH OF THE PEACE

breach of the peace. The criminal offense of creating a public disturbance or engaging in disorderly conduct, particularly by making an unnecessary or distracting noise. — Also termed breach of peace; disturbing the peace; disturbance of the peace; public disturbance. See disorderly conduct under CONDUCT. [Cases: Breach of the Peace 1–14. C.J.S. Breach of the Peace §§ 2–13; Domestic Abuse and Violence §§ 3, 6.]

“A breach of the peace takes place when either an assault is committed on an individual or public alarm and excitement is caused. Mere annoyance or insult is not enough: thus at common law a householder could not give a man into custody for violently and persistently ringing his door-bell. It is the particular duty of a magistrate or police officer to preserve the peace unbroken; hence if he has reasonable cause to believe that a breach of the peace is imminent he may be justified in committing an assault or effecting an arrest.” R.F.V. Heuston, *Salmond on the Law of Torts* 131 (17th ed. 1977).

“The beginning of our criminal justice ... was concerned very largely with the problem of keeping the peace. Because of this fact all early indictments included some such phrase as ‘against the peace of the King’; and until recently statutory provisions for simplification, indictments in this country were thought to be incomplete without some such conclusion as ‘against the peace and dignity of the state.’ As a result of this history all indictable offenses are sometimes regarded as deeds which violate the public peace, and hence in a loose sense the term ‘breach of the peace’ is regarded as a synonym for crime.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 477 (3d ed. 1982).

BREACH OF TRUST

breach of trust. A trustee's violation of either the trust's terms or the trustee's general fiduciary obligations; the violation of a duty that equity imposes on a trustee, whether the violation was willful, fraudulent, negligent, or inadvertent. • A breach of trust subjects the trustee to removal and creates personal liability.

BREACH OF WARRANTY

breach of warranty. 1. A breach of an express or implied warranty relating to the title, quality, content, or condition of goods sold. UCC § 2-312. [Cases: Sales 284. C.J.S. Sales § 251.] 2. Insurance. WARRANTY(3).

BREAD ACTS

bread acts. Hist. Laws providing for the sustenance of persons kept in prison for debt. • These laws were formerly on the books in both England and the United States.

BREAD-AND-CHEESE ORDEAL

bread-and-cheese ordeal. See ordeal of the morsel under ORDEAL.

BREADTH OF A CLAIM

breadth of a claim. Patents. The scope or extent to which a patent claim excludes others from infringing activity.

BREAK

break, vb. 1. To violate or disobey (a law) <to break the law>. 2. To nullify (a will) by court proceeding <Samson, the disinherited son, successfully broke the will>. 3. To escape from (a place of confinement) without permission <break out of prison>. 4. To open (a door, gate, etc.) and step through illegally <he broke the close>.

BREAKAGE

breakage. 1. An allowance given by a manufacturer to a buyer for goods damaged during transit or storage. 2. Insignificant amounts of money retained by racetrack promoters from bets. • The retention of these small sums avoids the inconvenience of counting and paying out inconsequential winnings. [Cases: Gaming 9.]

BREAK A HOUSE

break a house. To violently and feloniously remove or sever any part of a house or its locks.

BREAKDOWN OF THE MARRIAGE

breakdown of the marriage. See IRRETRIEVABLE BREAKDOWN OF THE MARRIAGE.

BREAKING

breaking, n. Criminal law. In the law of burglary, the act of entering a building without

permission. [Cases: Burglary 9(1). C.J.S. Burglary §§ 11–12, 14–16, 20.]

“[T]o constitute a breaking at common law, there had to be the creation of a breach or opening; a mere trespass at law was insufficient. If the occupant of the dwelling had created the opening, it was felt that he had not entitled himself to the protection of the law, as he had not properly secured his dwelling.... In the modern American criminal codes, only seldom is there a requirement of a breaking. This is not to suggest, however, that elimination of this requirement has left the ‘entry’ element unadorned, so that any type of entry will suffice. Rather, at least some of what was encompassed within the common law ‘breaking’ element is reflected by other terms describing what kind of entry is necessary. The most common statutory term is ‘unlawfully,’ but some jurisdictions use other language, such as ‘unauthorized,’ by ‘trespass,’ ‘without authority,’ ‘without consent,’ or ‘without privilege.’ ” Wayne R. LaFare & Austin W. Scott Jr., *Criminal Law* § 8.13, at 793–94 (2d ed. 1986).

BREAKING A CASE

breaking a case. 1. The voicing by one appellate judge to another judge on the same panel of a tentative view on how a case should be decided. • These informal expressions assist the judges in ascertaining how close they are to agreement. 2. The solving of a case by the police.

BREAKING A CLOSE

breaking a close. See BREACH OF CLOSE.

BREAKING AND ENTERING

breaking and entering. See BURGLARY(2).

BREAKING A PATENT

breaking a patent. The act of demonstrating that a patent is invalid or unenforceable because it was used unlawfully by the patentee (esp. in violation of antitrust laws), or improperly issued by the U.S. Patent and Trademark Office because of fraud, the existence of prior art, or any other barrier to proper issuance. • Defendants in patent-infringement actions may overcome the infringement allegations by showing that the patent should not have been allowed in the first place (so it is invalid), or that the patentee has misused the patent (so the patent is unenforceable). [Cases: Patents 97. C.J.S. Patents §§ 135–138, 145, 178.]

BREAKING BULK

breaking bulk, n. 1. The act of dividing a large shipment into smaller units. 2. Larceny by a bailee, esp. a carrier, who opens containers, removes items from them, and converts the items to personal use. — Also termed breaking bale. [Cases: Larceny 15. C.J.S. Larceny §§ 30–32, 45–48.] — break bulk, vb.

BREAKING-BULK DOCTRINE

breaking-bulk doctrine. Hist. The rule that a bailee who had lawful possession of property delivered in bulk and wrongfully took the property committed larceny only if the bailee broke the

container open and took part or all of the contents. • If the bailee wrongfully took the property without opening the container, the act was theft but not larceny. — Also termed breaking-bale doctrine.

BREAKING OF ENTAIL

breaking of entail. See BARRING OF ENTAIL.

BREAK-UP FEE

break-up fee. See TERMINATION FEE.

BREAST OF THE COURT

breast of the court. A judge's conscience, mind, or discretion. • This phrase is a loan translation (or calque) of the Latin phrase *in pectore judicis*. See *IN PECTORE JUDICIS*.

BREATHALYZER

Breathalyzer. A device used to measure the blood alcohol content of a person's breath, esp. when the police suspect that the person was driving while intoxicated. • Breathalyzer test results are admissible as evidence if the test was properly administered. — Also termed alcoholometer; drunkometer; intoxilyzer; intoximeter. See *BLOOD ALCOHOL CONTENT*. [Cases: Automobiles 411. C.J.S. Motor Vehicles §§ 1397–1411.] — *breathalyze*, vb.

BREATHING ROOM

breathing room. Slang. The postbankruptcy period during which a debtor may formulate a debt-repayment plan without harassment or interference by creditors. [Cases: Bankruptcy 3533.]

BREDWITE

bredwite (*bred-w* <<schwa>> t). Hist. A penalty for not complying with regulations relating to the weight or quantity of bread.

BREHON

brehon (*bre*-h <<schwa>> n). Hist. In Ireland, a judge.

BREHON LAW

Brehon law (*bre*-h <<schwa>> n law). Hist. The ancient system of law in Ireland at the time of its conquest by Henry II. • This law was formally abolished in 1366. — Sometimes spelled Brehon Law.

“[T]he Irish were governed by what they called the Brehon law, so stiled from the Irish name of judges, who were denominated Brehons. But king John in the twelfth year of his reign went into Ireland, and carried over with him many able sages of the law; and there by his letters patent, in right of the dominion of conquest, is said to have ordained and established that Ireland should be governed by the laws of England But to this ordinance many of the Irish were averse to conform, and still stuck to their Brehon law: so that both Henry the third and Edward the first

were obliged to renew the injunction And yet, even in the reign of queen Elizabeth, the wild natives still kept and preserved their Brehon law" 1 William Blackstone, Commentaries on the Laws of England 100–01 (1765).

B REORGANIZATION

B reorganization. See REORGANIZATION(2).

BREPHOTROPHUS

brephotrophus (bre-fah-tr<<schwa>>-f<<schwa>>s). [Greek] Civil law. A person who manages institutions that receive and care for poor or abandoned children. • The word is Greek in origin (lit. meaning "one who feeds an infant") and was used in late Roman law, but it first appeared in English in the 18th century. Pl. brephotrophi.

BRETHREN

brethren (breth-r<<schwa>>n), n. pl. Brothers, esp. those considered spiritual kin (such as male colleagues on a court) <my brethren argue in the dissent that my statutory interpretation is faulty>. • The use of this collegial term has naturally dwindled as more women have entered law and esp. into the judiciary. Cf. SISTREN.

BRETTS AND SCOTS, LAWS OF THE

Bretts and Scots, Laws of the. The customary laws used by the Celtic tribes of Scotland. • Edward I of England purported to abolish the laws in the early 14th century.

BREVE

breve (breev orbree-vee), n. [Law Latin] Hist. Writ. • The word brevis meant "short," and brevia were short writs, unlike charters. Pl. brevia (bree-vee-<<schwa>>).

album breve (al-b<<schwa>>m breev orbree-vee). A blank writ; a writ with a blank or omission in it.

apertum breve (<<schwa>>-p<<schwa>>r-t<<schwa>>m breev orbree-vee). [Latin "open writ"] An open, unsealed writ. See patent writ under WRIT. Cf. CLAUSUM.

breve de bono et malo (breev orbree-vee dee boh-noh et mal-oh). See DE ODIO ET ATIA.

breve de conventionne (breev orbree-vee dee k<<schwa>>n-ven-shee-oh-nee). See WRIT OF COVENANT.

breve de cursu. See WRIT OF COURSE.

breve de recto (breev orbree-vee dee rek-toh). See DE RECTO.

breve de transgressionne super casum (breev orbree-vee dee trans-gres[h]-ee-oh-nee s[y]oo-p<<schwa>>r kay-s<<schwa>>m). See TRESPASS ON THE CASE.

breve innominatum (breev orbree-vee i-nom-<<schwa>>-nay-t<<schwa>>m). [Latin "innominate writ"] A writ that recites a cause of action only in general terms.

breve magnum de recto (breev orbree-vee mag-n<<schwa>>m dee rek-toh). See DE RECTO PATENS.

breve nominatum. A writ in which the complaint particularly states the time, place, and demand.

breve perquirere (breev orbree-vee p<<schwa>>r-kwI-r<<schwa>>-ree). [Latin “to obtain a writ”] To purchase a writ or license of trial in the king's courts.

breve rebellionis. See COMMISSION OF REBELLION.

breve testatum (breev orbree-vee tes-tay-t<<schwa>>m). [Latin “a witnessed writ”] A written memorandum used to memorialize the terms of a conveyance and investiture of land. • Witnesses to the conveyance did not sign the document, but their names were recorded. Brevia testata were introduced to reduce disputes concerning the terms of oral grants.

brevia amabilia (bree-vee-<<schwa>> am-<<schwa>>-k<<schwa>>-bil-ee-<< schwa>>). [Latin “writs with agreement”] Writs obtained with the agreement or consent of the opposing party in an action.

brevia anticipantia (bree-vee-<<schwa>> an-tis-<<schwa>>-pan-shee-<< schwa>>). [Latin “anticipatory writs”] Anticipatory or preventive writs. • Six were included in this category: writs of mesne; warrantia chartae; monstraverunt; audita querela; curia claudenda; and ne injuste vexes. See QUIA TIMET.

brevia formata (bree-vee-<<schwa>> for-may-t<<schwa>>). [Latin “writs of approved form”] Writs of established and approved form, issued as a matter of course. Cf. brevia magistralia.

brevia judicialia (bree-vee-<<schwa>> joo-dish-ee-ay-lee-<<schwa>>). [Latin “judicial writs”] Writs that issue during an action or afterward in aid of judgment. • A court issued such a writ after an original writ had issued out of Chancery. Cf. brevia originale.

brevia magistralia (bree-vee-<<schwa>> maj-i-stray-lee-<<schwa>>). [Latin “masters' writs”] Writs issued by the masters or clerks of chancery according to the circumstances of particular cases. • These writs, unlike some others, might be varied in accordance with the complainant's particular situation. Cf. brevia formata.

brevia originale (bree-vee-<<schwa>> <<schwa>>-rij-i-nay-lee). [Latin] Original writ. • This writ began a judicial action. Cf. brevia judicialia.

brevia selecta (bree-vee-<<schwa>> s<<schwa>>-lek-t<<schwa>>). [Latin “selected writs”] Choice or selected writs or processes. — Abbr. brev. sel.

BREVET

brevet (br<<schwa>>-vetorbrev-it). [French] 1. Military law. A commission promoting an officer to a higher rank, esp. during wartime, but without a corresponding pay increase. [Cases: Armed Services 8, 13.1(5). C.J.S. Armed Services § 26.] 2. French law. A privilege or warrant granted by the government to a private person, authorizing a special benefit or the exercise of an

exclusive privilege. • For example, a brevet d'invention is a patent for an invention. 3.Patents. A patent. — Also termed (in sense 3) brevet d'invention.

BREVET OFFICER

brevet officer.See OFFICER(2).

BREVIA AMICABILIA

brevia amicabile.See BREVE.

BREVIA ANTICIPANTIA

brevia anticipantia.See BREVE.

BREVIA FORMATA

brevia formata.See BREVE.

BREVIA JUDICIALIA

brevia judicialia.See BREVE.

BREVIA MAGISTRALIA

brevia magistralia.See BREVE.

BREVIA ORIGINALE

brevia originale.See BREVE.

BREVIARIUM ALARICIANUM

Breviarium Alaricianum (bree-vee-air-ee-<<schwa>>m al-<<schwa>>-ri-kay-n-<<schwa>>m). [Latin] An abridgment (or breviary) of Roman law compiled by order of the Visigoth king Alaric II, published for the use of his Roman subjects in the year 506. • Revised versions were known as the Lex Romana Visigothorum. It was also termed the Breviarium Aniani after Alaric's chancellor, Anian, who edited and distributed the work. — Also termed Breviary of Alaric (bree-vee-er-ee <<schwa>>v al-<<schwa>>-rik).

“Though the Breviarium was later replaced by the Lex Visigothorum in the Visigothic kingdom, it continued in use in southern France and Lombardy, which had meantime passed under the dominion of the Franks. Its qualities made the Breviarium a book of high authority throughout the whole of western Europe during the Middle Ages and it was one of the main channels through which Roman law entered western European law prior to the Reception.” David M. Walker, *The Oxford Companion to Law* 151–52 (1980).

BREVIA SELECTA

brevia selecta.See BREVE.

BREVIATE

breviate (bree-vee-*<<schwa>>t*). [Latin] Hist. An abstract of a writing; esp., a short statement attached to a Parliamentary bill summarizing the contents of the bill.

BREVIA TESTATA

brevia testata (bree-vee-*<<schwa>> tes-tay-t<<schwa>>*). [Latin] Hist. See breve testatum under BREVE.

BREVIBUS ET ROTULIS LIBERANDIS

brevibus et rotulis liberandis (bree-v*<<schwa>>-b<<schwa>>s et roch-<<schwa>>-l<<schwa>>s lib-<<schwa>>r-an-dis*). [Latin “breves and rolls to be freed”] Hist. A writ ordering a sheriff to turn over to a successor all paraphernalia of office.

BREVI MANU

brevi manu (bree-vIman-yoo), adv. [Latin “with a short hand”] Roman & civil law. 1. Directly; by the shortest route. 2. Without a legal warrant; on one's own authority. • In Roman law, the term referred to the contractual transfer (traditio) of ownership of an item to one who already had physical control of the item. See TRADITIO BREVI MANU; CONSTITUTUM POSSESSORIUM. In Scotland, this phrase usu. signified the performance of an act without the necessity of resorting to the courts.

“Thus, for example, it was anciently the practice in Scotland for an heritable proprietor, on his own authority, to poind his tenant's moveables for payment of his rent, without applying to any other judgeBrevi manu in the Roman law is usually applied to a kind of constructive delivery. A thing is said to be transferred by brevi manu tradition, when it has been previously in the buyer's possession on some other title, as pledge or loan.” William Bell, *Bell's Dictionary and Digest of the Law of Scotland* 134 (George Watson ed., 7th ed. 1890).

BREVITATIS CAUSA

brevitatis causa (brev-i-tay-tis kaw-z*<<schwa>>*). [Latin] Scots law. For the sake of brevity. • The phrase was inserted in legal documents to show that another document had been incorporated by reference but not fully quoted.

BREV. SEL.

brev. sel. See brevia selecta under BREVE.

BRIBE

bribe, n. A price, reward, gift, or favor bestowed or promised with a view to pervert the judgment of or influence the action of a person in a position of trust. Cf. BARRATRY(4).

“The core concept of a bribe is an inducement improperly influencing the performance of a public function meant to be gratuitously exercised.” John T. Noonan Jr., *Bribes* xi (1984).

BRIBEE

bribee. One who receives a bribe. — Also termed bribe-taker.

BRIBE-GIVER

bribe-giver. See BRIBER.

BRIBER

briber. One who offers a bribe. — Also termed bribe-giver.

BRIBERY

bribery,n. The corrupt payment, receipt, or solicitation of a private favor for official action. • Bribery is a felony in most jurisdictions. See Model Penal Code § 240.1. Cf. KICKBACK. [Cases: Bribery 1. C.J.S. Bribery §§ 2–3, 5–8, 10–11.] — bribe,vb.

“If money has been corruptly paid and corruptly received, for the purpose of influencing official action, do we have one crime of which two are guilty, or two different crimes? No uniform answer is possible under existing statutes. Under some of the provisions bribery is one offense and references to (1) giving or offering a bribe, or (2) to receiving or soliciting a bribe, are merely factual statements in regard to the guilt of one party or the other. Under another plan ‘bribery’ is employed as a generic term to cover two different offenses: (1) giving or offering a bribe, and (2) receiving or soliciting a bribe. A third plan uses the word ‘bribery’ to indicate the offense of the briber and ‘receiving a bribe’ for the other side of the transaction.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 537 (3d ed. 1982).

commercial bribery. 1. The knowing solicitation or acceptance of a benefit in exchange for violating an oath of fidelity, such as that owed by an employee, partner, trustee, or attorney. Model Penal Code § 224.8(1).2. A supposedly disinterested appraiser's acceptance of a benefit that influences the appraisal of goods or services. Model Penal Code § 224.8(2).3. Corrupt dealing with the agents or employees of prospective buyers to secure an advantage over business competitors.

BRIBE-TAKER

bribe-taker. See BRIBEE.

BRIBOUR

bribour (brI-b<<schwa>>r). [fr. French *bribeur*] Hist. A thief.

BRIDGE BANK

bridge bank.A national bank chartered to operate an insolvent bank for up to three years or until the bank is sold. [Cases: Banks and Banking 285–287, 505. C.J.S. Banks and Banking §§ 576–578, 580–584, 586, 597–598, 673, 676–679, 682–687, 690–694, 696, 699–705, 708–717.]

BRIDGE LOAN

bridge loan.See LOAN.

BRIDGE THE GAP

bridge the gap. Trademarks. To capitalize on the goodwill associated with an existing trademark or tradename by using it or a similar mark on new lines of products or services, or on the same products or services in new marketing territories.

BRIEF

brief, n. 1. A written statement setting out the legal contentions of a party in litigation, esp. on appeal; a document prepared by counsel as the basis for arguing a case, consisting of legal and factual arguments and the authorities in support of them. — Also termed legal brief; brief of argument. [Cases: Appeal and Error 756; Criminal Law 1130; Federal Courts 712. C.J.S. Appeal and Error §§ 607–608, 616–618; Criminal Law § 1688.]

amicus brief. A brief, usu. at the appellate level, prepared and filed by an amicus curiae with the court's permission. — Sometimes shortened to amicus.

Anders brief. See ANDERS BRIEF.

appeal brief. 1. See appellate brief. 2. Patents. A patent applicant's brief to the Board of Patent Appeals and Interferences, arguing that the patent examiner was incorrect in rejecting the application. Cf. EXAMINER'S ANSWER.

appellate brief. A brief submitted to an appeals court; specif., a brief filed by a party to an appeal pending in a court exercising appellate jurisdiction. • The brief may be filed for an individual party or on behalf of two or more parties. — Also termed appeal brief.

“An appellate brief is a written argument in support of or in opposition to the order, decree, or judgment below.” Frederick Bernays Wiener, *Briefing and Arguing Federal Appeals* 37 (rev. ed. 1967).

Brandeis brief. See BRANDEIS BRIEF.

proof brief. A preliminary appellate brief to be reviewed by the clerk of the court for compliance with applicable rules. • Proof briefs are required by local rules of the U.S. Court of Appeals for the Sixth Circuit. A proof brief in full compliance will be accepted and filed. If not in compliance, it will be returned for corrections to be made, and a deadline will be set for refiling. After all proof briefs have been accepted in a case, a date is set for filing a final brief, which may be modified only to include joint-appendix references, repagination, or updated citations.

reply brief. A brief that responds to issues and arguments raised in the brief previously filed by one's opponent; esp., a movant's or appellant's brief filed to rebut a brief in opposition. See REBUTTAL(3). [Cases: Appeal and Error 762. C.J.S. Appeal and Error § 619.]

trial brief. Counsel's written submission, usu. just before trial, outlining the legal issues before the court and arguing one side's position. [Cases: Federal Civil Procedure 1951; Trial 18. C.J.S. Trial §§ 91–92.]

2. English law. A solicitor's document that abstracts the pleadings and facts to inform a barrister about the case. 3. ABSTRACT OF TITLE. 4. CASE NOTE. — brief, vb.

BRIEFING ATTORNEY

briefing attorney. See ATTORNEY.

BRIEF OF ARGUMENT

brief of argument. See BRIEF(1).

BRIEF OF TITLE

brief of title. See ABSTRACT OF TITLE.

BRIEF-WRITING

brief-writing. The art or practice of preparing legal briefs. — Also termed brief-making. — brief-writer, n.

BRIEVE

briefe. Hist. Scots law. A chancery writ ordering that a trial be held on the matters specified in the writ. • By the late 20th century, briefes were rarely used except in proceedings to appoint a curator for an incompetent person.

BRIEVE OF MORTANCESTRY

briefe of mortancestry. See MORT D'ANCESTOR.

BRIGANDAGE

brigandage (brig-<<schwa>>n-dij). Archaic. Plundering and banditry carried out by bands of robbers. • Piracy is sometimes called “maritime brigandage.”

BRIGBOTE

brigbote (brig-boht), n. Hist. An obligation, often extracted as a tax or a charge on land, to contribute to the cost of maintaining castles, walls, and bridges.

BRIGHT-LINE RULE

bright-line rule. A legal rule of decision that tends to resolve issues, esp. ambiguities, simply and straightforwardly, sometimes sacrificing equity for certainty.

BRING AN ACTION

bring an action. To sue; institute legal proceedings.

BRING TO BOOK

bring to book. To arrest and try (an offender) <the fugitives were brought to book and convicted>.

BRITISH SUBJECT

British subject. The status conferred on a citizen of the United Kingdom and the

Commonwealth countries such as Canada, Australia, New Zealand, and India by the British Nationality Act of 1981. • Although this is the current sense, the phrase British subject has had many different meanings over the years, under different statutes.

BROADCAST MUSIC, INC

Broadcast Music, Inc. Copyright. One of the U.S. performing-rights societies that, on behalf of copyright owners, license the public performance of nondramatic musical works. — Abbr. BMI.

BROADENED REISSUE PATENT

broadened reissue patent. See PATENT(3).

BROADENING OF A CLAIM

broadening of a claim. Patents. The enlargement of the scope of a patent claim to expand its coverage. • The broader a patent claim, the greater the scope of protection because more methods or devices may potentially infringe the claim. But drafting a claim broadly increases the risk that an accused infringer may successfully invalidate the claim through prior art. See prior art under ART.

BROADENING STATEMENT

broadening statement. Patents. Wording in a claim to the effect that the invention includes forms other than the details shown in the application. • A broadening statement is usu. taken as boilerplate and given little or no effect. — Also termed catch-all.

BROADER THAN THE INVENTION

broader than the invention, adj. (Of a patent claim) having a scope that exceeds the limits of the invention disclosed in the application or patent.

BROAD-FORM INSURANCE

broad-form insurance. See INSURANCE.

BROAD-FORM POLICY

broad-form policy. See INSURANCE POLICY.

BROAD INTERPRETATION

broad interpretation. See liberal construction under CONSTRUCTION.

BROADSIDE OBJECTION

broadside objection. See general objection under OBJECTION.

BROCARD

brocard (brahk-<<schwa>>rd or broh-k<<schwa>>rd). An elementary legal principle or

maxim, esp. one deriving from Roman law or ancient custom.

BROCARIUS

brocarius (broh-kair-ee-<<schwa>>s). [Law Latin] Hist. A broker; a middleman between buyer and seller.

BROKER

broker, n.1. An agent who acts as an intermediary or negotiator, esp. between prospective buyers and sellers; a person employed to make bargains and contracts between other persons in matters of trade, commerce, or navigation. • A broker differs from a factor because the broker usu. does not have possession of the property. Cf. FACTOR. [Cases: Brokers 2.C.J.S. Brokers §§ 2–5.] 2. Securities. A person engaged in the business of conducting securities transactions for the accounts of others. [Cases: Securities Regulation 11.20, 40.12, 60.32. C.J.S. Securities Regulation §§ 72, 157–158, 164–165, 195, 217.] — broker, vb.

“The most important determining factor of what constitutes a ‘broker’ is whether the party is dealing for itself or for another. A broker may, by contract, have title to property pass through it (though usually it does not), and it may, by contract, collect from the consumer, but a broker does not deal on its account. Two preliminary requirements must be met for a finding that an individual is acting as a broker: (1) the person is acting for compensation; and (2) the person is acting on behalf of someone else.” 12 Am. Jur. 2d Brokers § 1 (1997).

broker-agent. 1. A person who acts as an intermediary between parties to a transaction, and as a representative of one of them. [Cases: Brokers 2, 6. C.J.S. Brokers §§ 2–5, 25–26, 31–32.] 2. A person licensed both as a broker and as an agent. [Cases: Brokers 3. C.J.S. Brokers §§ 14–24.]

broker-dealer. A brokerage firm that engages in the business of trading securities for its own account (i.e., as a principal) before selling them to customers. • Such a firm is usu. registered with the SEC and with the state in which it does business. See DEALER(2). [Cases: Securities Regulation 11.20, 40.12, 60.32. C.J.S. Securities Regulation §§ 72, 157–158, 164–165, 195, 217.]

“Since many broker-dealers maintain custody of funds and securities belonging to their customers, safeguards are required to assure that the customers can recover those funds and securities in the event the broker-dealer becomes insolvent. The three principal techniques that have been utilized are (a) financial responsibility standards for broker-dealers, (b) requirements for segregation of customers' funds and securities, and (c) maintenance of an industry-wide fund to satisfy the claims of customers whose brokerage firms become insolvent.” David L. Ratner, Securities Regulation in a Nutshell 182–83 (4th ed. 1992).

broker for sale. A broker retained to sell something, but having neither possession of the goods nor any right of action in the broker's own name on contracts that the broker enters into. [Cases: Brokers 2, 6. C.J.S. Brokers §§ 2–5, 25–26, 31–32.]

broker's broker. A municipal securities broker or dealer who routinely effects transactions for the account of other brokers, dealers, and municipal securities dealers.

commercial broker. A broker who negotiates the sale of goods without having possession or control of the goods. Cf. FACTOR(2). [Cases: Brokers 2, 6. C.J.S. Brokers §§ 2–5, 25–26, 31–32.]

commission broker. A member of a stock or commodity exchange who executes buy and sell orders.

customhouse broker. A broker who prepares paperwork for the entry or clearance of ships, and for the import or export of goods. — Also termed customs broker. [Cases: Customs Duties 60.5. C.J.S. Customs Duties §§ 56, 66–70.]

discount broker. 1. A broker who discounts bills of exchange and promissory notes, and advances money on securities. 2. A broker who executes buy and sell orders at commission rates lower than those of full-service brokers. [Cases: Brokers 69. C.J.S. Brokers §§ 177–180.]

government-securities interdealer broker. A broker engaged exclusively in the business of transacting in government securities for parties who are themselves government brokers or dealers.

institutional broker. A broker who trades securities for institutional clients such as banks, mutual funds, pension funds, and insurance companies.

insurance broker. Insurance. A person who, for compensation, brings about or negotiates contracts of insurance as an agent for someone else, but not as an officer, salaried employee, or licensed agent of an insurance company. • The broker acts as an intermediary between the insured and the insurer. — Also termed producer. [Cases: Insurance 1609. C.J.S. Insurance §§ 179, 181.]

“The term ‘insurance broker’ is often used to characterize an individual who is thought to act primarily on behalf of a purchaser in an insurance transaction. This delineation ... is employed by some courts and writers even though almost all insurance brokers are actually compensated for their services through commissions that are paid by the insurers. Because brokers receive compensation from the insurer, it seems evident that a persuasive argument can be made for not treating a broker as an agent of the insurance purchaser.” Robert E. Keeton & Alan I. Widiss, *Insurance Law: A Guide to Fundamental Principles, Legal Doctrines, and Commercial Practices* § 2.5, at 83–84 (1988).

loan broker. A person who is in the business of lending money, usu. to an individual, and taking as security an assignment of wages or a security interest in the debtor's personal property.

merchandise broker. One who negotiates the sale of merchandise without possessing it. • A merchandise broker is an agent with very limited powers.

money broker. A broker who negotiates the lending or raising of money for others.

mortgage broker. An individual or organization that markets mortgage loans and brings lenders and borrowers together. • A mortgage broker does not originate or service mortgage loans. [Cases: Brokers 2. C.J.S. Brokers §§ 2–5.]

note broker. A broker who negotiates the discount or sale of commercial paper.

real-estate broker.A broker who negotiates contracts of sale and other agreements (such as mortgages or leases) between buyers and sellers of real property. • Real-estate brokers must be licensed in the states where they conduct business. [Cases: Brokers 2, 3. C.J.S. Brokers §§ 2–5, 14–24.]

registered broker.A broker registered or required to be registered under the Securities Exchange Act of 1934. [Cases: Securities Regulation 40.12. C.J.S. Securities Regulation §§ 157–158, 165.]

responsible broker-dealer.A broker-dealer who communicates bids or offers on the floor of a stock exchange at the designated location for trading in a reported security or who, in an off-exchange transaction, communicates the bid or offer as either a principal or an agent, for its own or another's account. SEC Rule 11Ac1-1(a)(21) (17 CFR § 240.11Ac1-1(a)(21)).

securities broker.A broker employed to buy or sell securities for a customer, as opposed to a securities dealer, who trades as a principal before selling the securities to a customer. See DEALER(2).

BROKERAGE

brokerage. 1. The business or office of a broker <a profitable stock brokerage>. [Cases: Brokers 2. C.J.S. Brokers §§ 2–5.] 2. A broker's fee <collect the brokerage after the house sells>. [Cases: Brokers 39. C.J.S. Brokers §§ 116–117, 143.]

BROKERAGE CONTRACT

brokerage contract.An agency agreement employing a broker to make contracts in the name of and on behalf of the principal and for which the broker receives a commission. [Cases: Brokers 7, 40. C.J.S. Brokers §§ 25, 27–32, 51, 117–120, 125, 143.]

BROKER-AGENT

broker-agent. See BROKER.

BROKERAGE-RUN DIVIDEND-REINVESTMENT PLAN

brokerage-run dividend-reinvestment plan.See DIVIDEND-REINVESTMENT PLAN.

BROKER CALL LOAN

broker call loan.See call loan under LOAN.

BROKER-DEALER

broker-dealer. See BROKER.

BROKER FOR SALE

broker for sale.See BROKER.

BROKER'S BROKER

broker's broker. See BROKER.

BROKER'S NOTE

broker's note. See NOTE(3).

BROTHEL

brothel. A building or business where prostitutes ply their trade; a whorehouse. — Also termed house of ill fame. See DISORDERLY HOUSE(2).

BROTHER

brother. A male who has one parent or both parents in common with another person.

brother-german. A full brother; the son of both of one's parents. See GERMAN.

consanguine brother (kahn-sang-gwin or k<<schwa>>n-san-gwin). Civil law. A brother who has the same father, but a different mother.

half brother. A brother who has the same father or the same mother, but not both.

stepbrother. The son of one's stepparent.

uterine brother (yoo-t<<schwa>>r-in). Civil law. A brother who has the same mother, but a different father.

BROTHER-IN-LAW

brother-in-law. The brother of one's spouse or the husband of one's sister. • The husband of one's spouse's sister is also sometimes considered a brother-in-law. Pl. brothers-in-law.

BROTHER-SISTER CORPORATION

brother-sister corporation. See sister corporation under CORPORATION.

BROWNFIELD SITE

brownfield site. An abandoned, idled, or underused industrial or commercial site that is difficult to expand or redevelop because of environmental contamination. Cf. GREENFIELD SITE(1).

BRUSSELS ACT

Brussels Act. Copyright. A 1948 revision of the Berne Convention mandating the life-plus-50-years copyright term as a minimum standard, extending the moral rights of attribution and integrity in most member countries to the full copyright term, extending the broadcast right to television, strengthening protection of several forms of copyright protection, and extending some protection to industrial designs.

BRUSSELS CONVENTION

Brussels Convention. See BRUSSELS SATELLITE CONVENTION.

BRUSSELS SATELLITE CONVENTION

Brussels Satellite Convention. Copyright. A 1974 treaty standardizing the regulation of broadcasting and cable retransmission using satellites. • Since the Convention addresses regulation of the signal rather than copyright or neighboring rights, what is transmitted is protected even if the content is not protected by any intellectual-property right. The U.S. ratified the Brussels Satellite Convention in 1984. — Also termed Brussels Convention; Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite.

BRUTON<TT> ERROR

Bruton error (broot-<<schwa>>n). The violation of a criminal defendant's constitutional right of confrontation by admitting into evidence a nontestifying codefendant's confession that implicates both of them, where the statement is not admissible against the defendant under any exception to the hearsay rule. • The error is not cured by a limiting instruction to the jury to consider the confession only against the one who made it, because of the high risk that the jury will disregard the instruction. *Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620 (1968). [Cases: Criminal Law 662.10, 662.11. C.J.S. Criminal Law §§ 1130–1131.]

BRUTUM FULMEN

brutum fulmen (broo-t<<schwa>>m f<<schwa>>l-men or -m<<schwa>>n). [Latin “inert thunder”] 1. An empty noise; an empty threat; something ineffectual. 2. A judgment void on its face; one that is, in legal effect, no judgment at all. [Cases: Judgment 27, 485, 486. C.J.S. Judgments §§ 499, 512, 546, 549.]

BRYAN TREATIES

Bryan treaties. Int'l law. Any of 48 treaties designed to avert war by requiring the signatories to submit disputes of any kind to standing peace commissions. • The first of these treaties, named after Secretary of State William Jennings Bryan, was signed between the United States and Great Britain in 1914.

B.S.

b.s.abbr. See bancus superior under BANCUS.

BSA

BSA.abbr. BUSINESS SOFTWARE ALLIANCE.

BSD LICENSE

BSD license. See LICENSE.

BSD-STYLE LICENSE

BSD-style license. See BSD license under LICENSE.

BTA

BTA.abbr.Board of Tax Appeals. See TAX COURT, U.S.

BTS

BTS.abbr.1.BORDER AND TRANSPORTATION SAFETY DIRECTORATE. 2.BUREAU OF TRANSPORTATION STATISTICS .

BUBBLE

bubble.Slang. A dishonest or insubstantial business project, generally founded on a fictitious or exaggerated prospectus, designed to ensnare unwary investors.

BUBBLE ACT

Bubble Act.An English statute passed in 1720 to prevent corporate fraud.

BUCKETING

bucketing.Securities. The illegal practice of receiving an order to buy or sell stock but not immediately performing the order. • The perpetrator profits by executing the order when the stock market goes down or up, respectively, but confirming the order to the customer at the original price.

BUCKET SHOP

bucket shop.Securities. An establishment that is nominally engaged in stock-exchange transactions or some similar business, but in fact engages in registering bets or wagers, usu. for small amounts, on the rise or fall of the prices of stocks and commodities. • A bucket shop uses the terms and outward forms of the exchanges, but differs from exchanges because there is no delivery of — and no expectation or intention to deliver or receive — the securities or commodities nominally exchanged.

BUCKLEY AMENDMENT

Buckley Amendment.See FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT.

BUDAPEST TREATY

Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purpose of Patent Procedures.Patents. An international treaty promulgating standards and procedures for depositing microorganisms and requiring member countries to recognize a deposit of biological material made in any depository approved by the World Intellectual Property Organization. • The purpose of the Budapest Treaty is to allow inventors to satisfy the enablement requirement of national patent laws by depositing in a convenient depository a sample of a microorganism to be patented. The U.S. is a signatory to the Budapest Treaty.

BUDGET

budget. 1. A statement of an organization's estimated revenues and expenses for a specified period, usu. a year. 2. A sum of money allocated to a particular purpose or project.

BUDGET BILL

budget bill. See BILL(3).

BUENOS AIRES CONVENTION

Buenos Aires Convention. Copyright. A 1910 treaty regulating copyright reciprocity among Latin American nations and the United States. • Under this agreement, the phrase “all rights reserved” guaranteed copyright protection in member nations. Since all the Convention's signatories are now signatories to more recent and broader international-copyright treaties, this Convention now has little if any practical effect.

BUFFER ZONE

buffer zone. Land-use planning. An area of land separating two different zones or areas to help each blend more easily with the other, such as a strip of land between industrial and residential areas. [Cases: Zoning and Planning 31, 272. C.J.S. Zoning and Land Planning §§ 40, 42, 122.]

BUG

bug. 1. A flaw or mistake in a computer program that results in an error or undesired result. 2. The printed mark of a labor union.

BUGGERY

buggery, n. Sodomy or bestiality. See SODOMY. [Cases: Sodomy 1. C.J.S. Sodomy §§ 2–6.] — bugger, vb. — bugger, n.

BUGGING

bugging, n. A form of electronic surveillance by which conversations may be electronically intercepted, overheard, or recorded, usu. covertly; eavesdropping by electronic means. See EAVESDROPPING; WIRETAPPING. [Cases: Telecommunications 494. C.J.S. Telegraphs, Telephones, Radio, and Television §§ 247–249, 254, 264–265.]

BUILDING

building. A structure with walls and a roof, esp. a permanent structure. • For purposes of some criminal statutes, such as burglary and arson, the term building may include such things as motor vehicles and watercraft.

accessory building. A building separate from but complementing the main structure on a lot, such as a garage. • The question whether a structure is an “accessory building” is often litigated in zoning disputes.

BUILDING-AND-LOAN ASSOCIATION

building-and-loan association. A quasi-public corporation that accumulates funds through member contributions and lends money to the members buying or building homes. Cf. SAVINGS-AND-LOAN ASSOCIATION. [Cases: Building and Loan Associations 1, 24–37.]

C.J.S. Building and Loan Associations, Savings and Loan Associations, and Credit Unions §§ 2–4, 11, 18–19, 66–67, 69, 71–74, 77–100, 109–113, 115.]

BUILDING CODE

building code.A law or regulation setting forth standards for the construction, maintenance, occupancy, use, or appearance of buildings and dwelling units. — Also termed (for dwelling units) housing code. [Cases: Health 392.]

BUILDING LEASE

building lease.See LEASE.

BUILDING LINE

building line.A boundary drawn along a curb or the edge of a municipality's sidewalks to establish how far a building must be set away from the street to maintain a uniform appearance. • This is often referred to as a setback requirement. [Cases: Zoning and Planning 64, 252. C.J.S. Zoning and Land Planning §§ 50, 117.]

BUILDING LOAN

building loan.See LOAN.

BUILDING PERMIT

building permit.A license granted by a government agency (esp. a municipality) for the construction of a new building or the substantial alteration of an existing structure. [Cases: Zoning and Planning 385.]

BUILDING RESTRICTIONS

building restrictions.Regulations governing the type of structures that can be constructed on certain property. • The restrictions are usu. listed in zoning ordinances or restrictive covenants in deeds. Cf. BUILDING CODE; restrictive covenant under COVENANT(4). [Cases: Zoning and Planning 62, 251.C.J.S. Zoning and Land Planning §§ 51, 53, 115.]

BUILD-TO-PRINT CONTRACT

build-to-print contract.See CONTRACT.

BUILT-IN OBSOLESCENCE

built-in obsolescence.See planned obsolescence under OBSOLESCENCE.

BULK

bulk,adj. (Of goods) not divided into parts <a bulk shipment of grain>.

BULK DISCOUNT

bulk discount.See volume discount under DISCOUNT.

BULK MORTGAGE

bulk mortgage.See MORTGAGE.

BULK SALE

bulk sale.A sale of a large quantity of inventory outside the ordinary course of the seller's business. • Bulk sales are regulated by Article 6 of the UCC, which is designed to prevent sellers from defrauding unsecured creditors by making these sales and then dissipating the sale proceeds. — Also termed bulk transfer. [Cases: Fraudulent Conveyances 47.]

BULK TRANSFER

bulk transfer.See BULK SALE.

BULKY GOODS

bulky goods.See GOODS.

BULL

bull.Eccles. law. 1. A document issued by a Pope, so called from the leaden seal attached to it. 2. A seal attached to an official document, esp. a papal edict.

BULLA

bulla (buul-⟨schwa⟩ or b⟨schwa⟩l-⟨schwa⟩). [Law Latin] A metal or wax papal seal or document.

BULLET BALLOT**BULLETIN DES LOIS**

bulletin des lois (buul-⟨schwa⟩-tan day lwah).French law. The publication that provides official notice of the text and effective date of a law or decree.

BULLET VOTE

bullet vote.See VOTE(1).

BULLION

bullion (buul-y⟨schwa⟩n). An uncoined solid mass of gold or silver.

BULLION FUND

bullion fund.Public money used by a mint to purchase precious metals for coinage and to pay bullion depositors.

BULL MARKET

bull market.See MARKET.

BULLPEN

bullpen.Slang. 1. An area in a prison where inmates are kept in close confinement. 2. A detention cell where prisoners are held until they are brought into court.

BUMBAILIFF

bumbailiff. See BAILIFF.

BUMBERSHOOT INSURANCE

bumbershoot insurance.See INSURANCE.

BUM-MARRIAGE DOCTRINE

bum-marriage doctrine.Evidence. The principle that the marital-witness privilege may not be asserted by a partner in a marriage that is in fact moribund, though legally valid. See marital privilege (2) under PRIVILEGE (3). [Cases: Witnesses 51. C.J.S. Witnesses §§ 147, 159, 163–164, 171, 173.]

BUMPING

bumping. 1. Displacement of a junior employee's position by a senior employee. 2. An airline-industry practice of denying seats to passengers because of overbooking. [Cases: Carriers 236(1.2). C.J.S. Carriers § 493.]

BUNCO

bunco. A swindling game or scheme; any trick or ploy calculated to win a person's confidence in an attempt to deceive that person. — Also spelled bunko. — Also termed bunco steering. Cf. CONFIDENCE GAME. [Cases: False Pretenses 16.]

BUNCO STEERER

bunco steerer. 1. One who uses tricks, schemes, or other illegal devices to obtain money or property from others; a swindler. 2. One who acts as a decoy in bunco. — Also termed bunco operator; bunco man. See CONFIDENCE MAN.

BUNDLE

bundle. See RECORD(4).

bundle,vb. To sell related products or services in one transaction at an all-inclusive price.

BUNDLED SOFTWARE

bundled software.Software that is sold together with hardware, other software, or services at a single price.

BUNDLE OF RIGHTS

bundle of rights.See PROPERTY(1).

BUNDLING

bundling,n. In the computer industry, the practice of charging a single price for a combination of hardware, software, or services. • Personal computers are typically sold with bundled software, such as an operating system and applications software that are preinstalled on the hardware.

BUNKHOUSE RULE

bunkhouse rule.The principle that an employee's injury suffered while living in an employer's housing is compensable even if the injury occurs during off-duty hours. [Cases: Workers' Compensation 709. C.J.S. Workmen's Compensation §§ 454–455.]

BURDEN

burden,n.1. A duty or responsibility <the seller's burden to insure the shipped goods>.2. Something that hinders or oppresses <a burden on interstate commerce>.3. A restriction on the use or value of land; an encumbrance <the easement created a burden on the estate>.4.Scots law. An encumbrance, restriction, or obligation imposed on a person or on property < the burden of curatorship> <a servitude is a burden on land>. • When the burden is on real property, it is called a real burden. — **burden**,vb. — **burdensome**,adj.

undue burden.A substantial and unjust obstacle to the performance of a duty or enjoyment of a right. • For example, excessive discovery requests place an undue burden on the person who must produce the data requested. And a state law requiring a particular kind of mud flap on trucks may place an undue burden on the flow of interstate commerce.

BURDEN OF ALLEGATION

burden of allegation.A party's duty to plead a matter in order for that matter to be heard in the lawsuit. — Also termed **burden of pleading**.

BURDEN OF GOING FORWARD WITH EVIDENCE

burden of going forward with evidence.See **BURDEN OF PRODUCTION**.

BURDEN OF PERSUASION

burden of persuasion.A party's duty to convince the fact-finder to view the facts in a way that favors that party. • In civil cases, the plaintiff's burden is usu. “by a preponderance of the evidence,” while in criminal cases the prosecution's burden is “beyond a reasonable doubt.” — Also termed **persuasion burden**; **risk of nonpersuasion**; **risk of jury doubt**. — Also loosely termed **burden of proof**. [Cases: Evidence 90–98. C.J.S. Evidence §§ 120–129.]

BURDEN OF PLEADING

burden of pleading.See **BURDEN OF ALLEGATION**.

BURDEN OF PRODUCTION

burden of production.A party's duty to introduce enough evidence on an issue to have the issue decided by the fact-finder, rather than decided against the party in a peremptory ruling such as a summary judgment or a directed verdict. — Also termed **burden of going forward with**

evidence; burden of producing evidence; production burden; degree of proof. [Cases: Evidence 90–98. C.J.S. Evidence §§ 120–129.]

BURDEN OF PROOF

burden of proof. 1. A party's duty to prove a disputed assertion or charge. • The burden of proof includes both the burden of persuasion and the burden of production. — Also termed *onus probandi*. See SHIFTING THE BURDEN OF PROOF. 2. Loosely, BURDEN OF PERSUASION. [Cases: Evidence 90. C.J.S. Evidence § 120–121, 126, 128.]

“In the past the term ‘burden of proof’ has been used in two different senses. (1) The burden of going forward with the evidence. The party having this burden must introduce some evidence if he wishes to get a certain issue into the case. If he introduces enough evidence to require consideration of this issue, this burden has been met. (2) Burden of proof in the sense of carrying the risk of nonpersuasion. The one who has this burden stands to lose if his evidence fails to convince the jury — or the judge in a nonjury trial. The present trend is to use the term ‘burden of proof’ only with this second meaning” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 78 (3d ed. 1982).

“The expression ‘burden of proof’ is tricky because it has been used by courts and writers to mean various things. Strictly speaking, burden of proof denotes the duty of establishing by a fair preponderance of the evidence the truth of the operative facts upon which the issue at hand is made to turn by substantive law. Burden of proof is sometimes used in a secondary sense to mean the burden of going forward with the evidence. In this sense it is sometimes said that a party has the burden of countering with evidence a *prima facie* case made against that party.” William D. Hawkland, *Uniform Commercial Code Series* § 2A-516:08 (1984).

middle burden of proof. A party's duty to prove a fact by clear and convincing evidence. • This standard lies between the preponderance-of-the-evidence standard and the beyond-a-reasonable-doubt standard. See clear and convincing evidence under EVIDENCE. [Cases: Evidence 596. C.J.S. Evidence §§ 1299, 1304–1306, 1308, 1310–1311, 1315–1317.]

BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS

Bureau of Alcohol, Tobacco, and Firearms. See ALCOHOL AND TOBACCO TAX AND TRADE BUREAU ; BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES.

BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES

Bureau of Alcohol, Tobacco, Firearms, and Explosives. A unit in the U.S. Department of Homeland Security responsible for enforcing laws relating to firearms and explosives and laws relating to the production, taxation, and distribution of alcohol and tobacco products. • Formerly called the Bureau of Alcohol, Tobacco, and Firearms and a part of the Department of the Treasury, its law-enforcement functions were transferred in the Homeland Security Act of 2002. Pub. L. No. 107-296, 116 Stat. 2135. — Abbr. ATF. Cf. ALCOHOL AND TOBACCO TAX AND TRADE BUREAU .

BUREAU OF ARMS CONTROL

Bureau of Arms Control. A unit in the U.S. Department of State responsible for directing U.S. participation in multilateral arms-control negotiations and in the Organization for the Prohibition of Chemical Weapons. • It also monitors developments relating to arms control and weapons development.

BUREAU OF CONSULAR AFFAIRS

Bureau of Consular Affairs. A unit in the U.S. Department of State responsible for protecting U.S. citizens and interests abroad. • Through its Office of Passport Services it issues over 7 million passports each year.

BUREAU OF CUSTOMS

Bureau of Customs. See UNITED STATES CUSTOMS SERVICE.

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

Bureau of Democracy, Human Rights, and Labor. A unit in the U.S. Department of State responsible for developing policy on human rights and freedoms and for preparing the annual Country Reports on Human Rights Practices. — Abbr. DRL.

BUREAU OF DIPLOMATIC SECURITY

Bureau of Diplomatic Security. A unit in the U.S. Department of State responsible for developing security programs for diplomats and American interests worldwide. • It also operates the Diplomatic Courier Service and supervises the transportation of classified documents and materials. — Abbr. DS.

BUREAU OF ECONOMIC ANALYSIS

Bureau of Economic Analysis. A unit in the U.S. Department of Commerce responsible for compiling and analyzing data about the U.S. economy. • It is a part of the Department's Economics and Statistics Administration. — Abbr. BEA.

BUREAU OF ECONOMIC AND BUSINESS AFFAIRS

Bureau of Economic and Business Affairs. A unit in the U.S. Department of State responsible for developing policy on international matters relating to food, communications, energy, air transportation, and maritime affairs. — Abbr. EB.

BUREAU OF ENGRAVING AND PRINTING

Bureau of Engraving and Printing. A unit in the U.S. Department of the Treasury responsible for designing and printing the nation's paper currency, postage stamps, Treasury securities, and other documents. — Abbr. BEP.

BUREAU OF EXPORT ADMINISTRATION

Bureau of Export Administration. The former name of a bureau in the U.S. Department of Commerce that issues export licenses and enforces export-control laws. • The unit's name was changed in 2002 to the Bureau of Industry and Security. — Abbr. BXA.

BUREAU OF INDIAN AFFAIRS

Bureau of Indian Affairs. A unit in the U.S. Department of the Interior responsible for helping Indian and Alaskan native people manage their affairs under the trust relationship with the U.S., and for promoting programs for their benefit. • Originally created as part of the War Department in 1824, the Bureau was transferred to the Interior Department in 1849. — Abbr. BIA.

BUREAU OF INDUSTRY AND SECURITY

Bureau of Industry and Security. A unit in the U.S. Department of Commerce responsible for issuing export licenses and enforcing export-control laws. • The Bureau is charged with furthering U.S. national-security, foreign-policy, and economic interests while furthering the growth of U.S. exports. It was named the Bureau of Export Administration until 2002. — Abbr. BIS.

BUREAU OF INTELLIGENCE AND RESEARCH

Bureau of Intelligence and Research. A unit in the U.S. Department of State responsible for coordinating activities of U.S. intelligence agencies to ensure consistency with U.S. foreign policy. • The Bureau also monitors foreign public and media opinions. — Abbr. INR.

BUREAU OF INTERNATIONAL LABOR AFFAIRS

Bureau of International Labor Affairs. A unit in the U.S. Department of Labor responsible for helping formulate policy on international matters that affect American workers. • For example, the Bureau compiles and publishes worldwide data on child-labor practices and on foreign labor markets and programs. It also studies the labor consequences of immigration proposals and legislation.

BUREAU OF INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT

Bureau of International Narcotics and Law Enforcement. A unit in the U.S. Department of State responsible for coordinating the narcotics and anticrime-assistance activities of the Department and for advising the President, the Secretary of State, and others on international narcotics matters. — Abbr. INL.

BUREAU OF INTERNATIONAL ORGANIZATION AFFAIRS

Bureau of International Organization Affairs. A unit in the U.S. Department of State responsible for coordinating U.S. diplomatic participation in the United Nations and other international organizations and conferences. — Abbr. IO.

BUREAU OF LABOR STATISTICS

Bureau of Labor Statistics. An independent agency in the U.S. Department of Labor responsible for compiling and analyzing statistical information on employment and the economy. • The Bureau reports on employment, unemployment, consumer and producer prices, consumer expenditures, import and export prices, wages and employee benefits, productivity and technological change, employment projections, and occupational illness and injury. — Abbr. BLS.

BUREAU OF LAND MANAGEMENT

Bureau of Land Management.The unit within the U.S. Department of the Interior responsible for managing the national-resource lands (some 450 million acres) and their resources and for administering the mineral resources connected with acquired lands and the submerged lands of the Outer Continental Shelf (OCS). • The bureau was established on July 16, 1946, by consolidating the General Land Office (established in 1812) and the Grazing Service (established in 1934). See 35 USCA §§ 1731 et seq.

BUREAU OF NONPROLIFERATION

Bureau of Nonproliferation.A unit in the U.S. Department of State responsible for leading efforts to prevent the proliferation of weapons of mass destruction, delivery systems, and advanced conventional arms. — Also termed Nonproliferation Bureau.

BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS

Bureau of Oceans and International Environmental and Scientific Affairs.A unit in the U.S. Department of State responsible for coordinating U.S. ocean, environment, and health policies. — Abbr. OES.

BUREAU OF POLITICAL–MILITARY AFFAIRS

Bureau of Political–Military Affairs.A unit in the U.S. Department of State responsible for analyzing defense-related policy issues, managing security-assistance funds, and coordinating peacekeeping and humanitarian operations. — Abbr. PM. — Also termed Political–Military Affairs Bureau.

BUREAU OF POPULATION, REFUGEES, AND MIGRATION

Bureau of Population, Refugees, and Migration.A unit in the U.S. Department of State responsible for formulating policy and administering U.S. assistance and admissions programs for refugees and others. — Abbr. PRM.

BUREAU OF PRISONS

Bureau of Prisons.The unit in the U.S. Department of Justice responsible for operating the federal prison system. • It oversees all federal penal and correctional facilities, assists states and local governments in improving their correctional facilities, and provides notice of prisoner releases. 18 USCA §§ 4041 et seq. See NATIONAL INSTITUTE OF CORRECTIONS. — Abbr. BOP.

BUREAU OF RECLAMATION

Bureau of Reclamation.A unit in the U.S. Department of the Interior that built dams in 17 western states and is now responsible for selling hydroelectric power from those dams and water from the reservoirs. • Among the 600 dams constructed are Hoover Dam and Grand Coulee Dam.

BUREAU OF THE BUDGET

Bureau of the Budget.See OFFICE OF MANAGEMENT AND BUDGET.

BUREAU OF THE CENSUS

Bureau of the Census. A unit in the U.S. Department of Commerce responsible for conducting and publishing the census required by the U.S. Constitution to be taken every ten years. • Established in 1902, the Bureau also conducts other population surveys and estimates as required by law. It is a part of the Department's Economics and Statistics Administration. — Also termed Census Bureau.

BUREAU OF THE MINT

Bureau of the Mint. See UNITED STATES MINT.

BUREAU OF THE PUBLIC DEBT

Bureau of the Public Debt. A unit in the U.S. Department of the Treasury responsible for issuing and redeeming Treasury bills, notes, and bonds, and for managing the U.S. Savings Bond Program.

BUREAU OF TRANSPORTATION STATISTICS

Bureau of Transportation Statistics. A unit in the U.S. Department of Transportation responsible for compiling and publishing transportation statistics. — Abbr. BTS.

BUREAU VERITAS

Bureau Veritas. See VERITAS.

BUREAUX INTERNATIONAUX REUNIS

Bureaux Internationaux Reunis pour la Protection de la Propriete Intellectuelle. See INTERNATIONAL BUREAU FOR THE PROTECTION OF INTELLECTUAL PROPERTY .

BURFORD ABSTENTION

Burford abstention. See ABSTENTION.

BURGAGE

burgage (b<<schwa>>r-gij). Hist. 1. A type of socage tenure in which tenants paid annual rents to the lord of the borough. See SOCAGE. 2. Scots law. The tenure by which a burgh held its land of the king, the service due being watching and warding. See WATCH AND WARD. — Also termed burgage tenure.

BURGATOR

burgator (b<<schwa>>r-gay-t<<schwa>>r). Hist. A burglar; a person who breaks into a house or an enclosed space.

BURGESS

burgess (b<<schwa>>r-jis). Hist. 1. An inhabitant or freeman of a borough or town. 2. A magistrate of a borough. 3. A person entitled to vote at elections. 4. A representative of a borough

or town in Parliament.

“[Burgesses] are properly Men of Trade, or the Inhabitants of a Borow or Walled Town; yet we usually apply this name to the Magistrates of such a Town, as the Bailiff and Burgesses of Leominster. But we do now usually call those Burgesses who serve in Parliament, for any such Borow or Corporation.” Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

BURGH ENGLISH

burgh English (b<<schwa>>rg ing-glish). See BOROUGH ENGLISH.

BURGH ENGLOYS

burgh Engloys (b<<schwa>>rg ing-gloiz). See BOROUGH ENGLISH.

BURGLAR

burglar,n. One who commits burglary.

BURGLARIOUS

burglarious (b<<schwa>>r-glair-ee-<<schwa>>s), adj. Of or relating to burglary <burglarious intent>. — burglariously,adv.

BURGLARIZE

burglarize,vb. To commit a burglary <the defendant burglarized three houses>. — Also termed (esp. in BrE) burgle.

BURGLARY

burglary,n.1. The common-law offense of breaking and entering another's dwelling at night with the intent to commit a felony. 2. The modern statutory offense of breaking and entering any building — not just a dwelling, and not only at night — with the intent to commit a felony. • Some statutes make petit larceny an alternative to a felony for purposes of proving burglarious intent. — Also termed (in sense 2) breaking and entering; statutory burglary. Cf. ROBBERY. [Cases: Burglary 1. C.J.S. Burglary §§ 2–5.]

BURGLARY TOOL

burglary tool.(often pl.) An implement designed to assist a person in committing a burglary. • In many jurisdictions, it is illegal to possess such a tool if the possessor intends to commit a burglary. [Cases: Burglary 12. C.J.S. Burglary §§ 44–48.]

BURGLE

burgle. See BURGLARIZE.

BURIAL INSURANCE

burial insurance.See INSURANCE.

BURIED-FACTS DOCTRINE

buried-facts doctrine.Securities. The rule that a proxy-statement disclosure is inadequate if a reasonable shareholder could fail to understand the risks presented by facts scattered throughout the proxy. • In applying this rule, a court will consider a securities disclosure to be false and misleading if its overall significance is obscured because material information is buried in footnotes, appendixes, and the like. [Cases: Securities Regulation 49.21.]

BURKING

burking,n. The crime of murdering someone, usu. by smothering, for the purpose of selling the corpse. • This term arose from the Scottish murder team of Burke and Hare, whose practice in 1828 of suffocating their victims while leaving few visible marks made the corpses more salable to medical schools. — burke,vb.

BURLAW

burlaw. See BYRLAW.

BURLAW COURT

burlaw court.See BYRLAW COURT.

BURNT-RECORDS ACT

burnt-records act.A statute that enables a property owner to quiet title if the public records for the property have been lost or destroyed in a disaster.

BURSTING-BUBBLE THEORY

bursting-bubble theory.Evidence. The principle that a presumption disappears once the presumed facts have been contradicted by credible evidence. [Cases: Evidence 85, 89. C.J.S. Evidence §§ 131, 135, 152–156, 160.]

BUSH DOCTRINE

Bush doctrine.The policy announced by President George W. Bush after the September 11, 2001 attacks on the World Trade Center and the Pentagon, to the effect that nations harboring terrorists will be treated as terrorists themselves and may be subject to a first-strike strategy. Cf. SOVEREIGN EQUALITY .

BUSINESS

business. 1. A commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain. 2. Commercial enterprises <business and academia often have congruent aims>.3. Commercial transactions <the company has never done business in Louisiana>. See DOING BUSINESS. 4. By extension, transactions or matters of a noncommercial nature <the courts' criminal business occasionally overshadows its civil business>.5.Parliamentary law. The matters that come before a deliberative assembly for its consideration and action, or for its information with a view to possible action in the future. • In senses 2, 3, and 4, the word is used in a collective meaning.

new business. An item of business introduced from the floor or taken from the table without having been scheduled for consideration. See TAKE FROM THE TABLE.

old business. See unfinished business.

unfinished business. A general order carried over from an earlier meeting in the same session because the meeting adjourned before or while considering it. • The term “unfinished business” is preferred to “old business,” which may incorrectly imply renewed consideration of business that has been finally disposed of. See general order under ORDER(4); SESSION(2).

unfinished business and general orders. A common category on an agenda. See unfinished business; general order under ORDER(4).

BUSINESS AGENT

business agent. 1. See managing agent under AGENT. 2. A labor-union representative selected to deal with employers.

BUSINESS ASSOCIATIONS

business associations. See BUSINESS ENTERPRISES.

BUSINESS COMBINATION

business combination. 1. The consolidation, for accounting purposes, of a corporation and one or more incorporated or unincorporated businesses. 2. The two entities considered as one entity for accounting purposes.

BUSINESS COMPULSION

business compulsion. See economic duress under DURESS.

BUSINESS CORPORATION

business corporation. See CORPORATION.

BUSINESS COURT

business court. See COURT.

BUSINESS CYCLE

business cycle. The recurrent expansion and contraction of economic activity.

BUSINESS DAY

business day. See DAY.

BUSINESS ENTERPRISES

business enterprises. The field of law dealing with various forms of business, such as corporations, limited-liability companies, and partnerships. — Also termed business entities; business associations; enterprise organizations.

BUSINESS ENTRY

business entry. A writing admissible under the business-records exception to the hearsay rule. See **BUSINESS-RECORDS EXCEPTION**. [Cases: Criminal Law 436; Evidence 351. C.J.S. Criminal Law §§ 1032, 1034–1037; Evidence §§ 904–915, 917–923, 928–931, 965–966, 1023, 1025.]

BUSINESS-ENTRY RULE

business-entry rule. See **BUSINESS-RECORDS EXCEPTION**.

BUSINESS EXPENSE

business expense. See **EXPENSE**.

BUSINESS FORM

business form. See **BLANK FORM**.

BUSINESS GAIN

business gain. 1. **GAIN**(2). 2. **GAIN**(3).

BUSINESS GUEST

business guest. See **BUSINESS VISITOR**(1).

BUSINESS HOMESTEAD

business homestead. See **HOMESTEAD**.

BUSINESS-INTERRUPTION INSURANCE

business-interruption insurance. See **INSURANCE**.

BUSINESS INVITEE

business invitee. 1. **INVITEE**. 2. **BUSINESS VISITOR**(1).

BUSINESS-JUDGMENT RULE

business-judgment rule. Corporations. The presumption that in making business decisions not involving direct self-interest or self-dealing, corporate directors act on an informed basis, in good faith, and in the honest belief that their actions are in the corporation's best interest. • The rule shields directors and officers from liability for unprofitable or harmful corporate transactions if the transactions were made in good faith, with due care, and within the directors' or officers' authority. [Cases: Corporations 310(1). C.J.S. Corporations §§ 475, 477–484, 487–489.]

“The business judgment rule is a presumption protecting conduct by directors that can be attributed to any rational business purpose. In order to plead and prove a claim, a plaintiff must plead and prove facts overcoming this presumption. Where the presumption is overcome, directors bear the burden of proving the fairness of the challenged conduct. The difference between these two levels of judicial scrutiny — a presumption in favor of directors that protects conduct that is

rational, versus a burden of proving fairness — frequently is outcome determinative.” 1 Dennis J. Block et al., *The Business Judgment Rule* 18–19 (5th ed. 1998).

BUSINESS LOSS

business loss. See ordinary loss under LOSS.

BUSINESS MEETING

business meeting. See MEETING.

BUSINESS METHOD

business method. Patents. A way or an aspect of a way in which a commercial enterprise is operated.

BUSINESS-METHOD EXCEPTION

business-method exception. Intellectual property. The traditional doctrine that business methods are not protected by intellectual-property laws. • Early caselaw established that “pure methods of doing business” were unpatentable. But in 1998, the Federal Circuit held in *State St. Bank & Trust Co. v. Signature Fin. Group* (149 F.3d 1368) that business methods are not per se unpatentable if they otherwise meet the requirements for a valid patent. The European Patent Convention expressly excludes business methods from patent protection. [Cases: Patents 7.14. C.J.S. Patents §§ 17–19, 27–28.]

BUSINESS-METHOD PATENT

business-method patent. See PATENT(3).

BUSINESS METHODS PATENT INITIATIVE

Business Methods Patent Initiative. A U.S. Patent and Trademark Office program that added a second level to business-method-patent reviews for the purpose of reducing the number of business-method patents issued. • The PTO created the initiative in response to complaints that examiners improperly approved many business-method patents. After an examiner approves the application and before a business-method patent is granted, a second examiner must completely review the application and either reject the application or affirm the issuance of the patent.

BUSINESS-PARTNER INSURANCE

business-partner insurance. See partnership insurance under INSURANCE.

BUSINESS PLAN

business plan. A written proposal explaining a new business or business idea and usu. covering financial, marketing, and operational plans.

BUSINESS-PURPOSE DOCTRINE

business-purpose doctrine. Tax. The principle that a transaction must serve a bona fide business purpose (i.e., not just for tax avoidance) to qualify for beneficial tax treatment. [Cases:

Internal Revenue 3071, 3315, 3396. C.J.S. Internal Revenue §§ 13–14, 151.]

BUSINESS RECORD

business record. A report, memorandum, or other record made usu. in the ordinary course of business. • It may be ordered produced as part of discovery in a lawsuit.

BUSINESS-RECORDS EXCEPTION

business-records exception. Evidence. A hearsay exception allowing business records (such as reports or memoranda) to be admitted into evidence if they were prepared in the ordinary course of business. • If there is good reason to doubt a record's reliability (e.g., the record was prepared in anticipation of litigation), the exception will not apply. Fed. R. Evid. 803(6). — Also termed business-entry rule. [Cases: Criminal Law 436; Evidence 351. C.J.S. Criminal Law §§ 1032, 1034–1037; Evidence §§ 904–915, 917–923, 928–931, 965–966, 1023, 1025.]

BUSINESS-RISK EXCLUSION

business-risk exclusion. See EXCLUSION(3).

BUSINESS SOFTWARE ALLIANCE

Business Software Alliance. Copyright. An international trade organization representing leading software and e-commerce developers, formed to educate governments and the public about software issues and to fight software piracy and Internet theft. — Abbr. BSA.

BUSINESS-TO-BUSINESS

business-to-business, adj. Of or relating to commerce between businesses, as distinguished from commerce between a business and consumers. — Abbr. B2B. Cf. BUSINESS-TO-CONSUMER.

BUSINESS-TO-BUSINESS E-COMMERCE

business-to-business e-commerce. Electronic commerce between businesses over the Internet.

BUSINESS-TO-CONSUMER

business-to-consumer, adj. Of or relating to commerce between a business and consumers, as distinguished from commerce between businesses. — Abbr. B2C. Cf. BUSINESS-TO-BUSINESS.

BUSINESS-TO-CONSUMER E-COMMERCE

business-to-consumer e-commerce. Electronic commerce between a business and consumers over the Internet.

BUSINESS TRANSACTION

business transaction. An action that affects the actor's financial or economic interests, including the making of a contract.

BUSINESS TRUST

business trust. See TRUST.

BUSINESS VISITOR

business visitor. 1. Torts. A person who is invited or permitted to enter or remain on another's land for a purpose directly or indirectly connected with the landowner's or possessor's business dealings. — Also termed business invitee; business guest. See INVITEE. 2. Immigration law. A non-U.S. citizen who has a B-1 visa, which allows the person to be employed while in the United States.

BUST-UP MERGER

bust-up merger. See MERGER.

BUT-FOR CAUSE

but-for cause. See CAUSE(1).

BUT-FOR MATERIALITY

but-for materiality. Patents. In an analysis of allegedly inequitable conduct, a test for determining the materiality of withheld information by assessing whether the withheld information, if disclosed, would have resulted in a finding of unpatentability. • Under this test — also called the objective but-for test — the issue is whether the patent would have issued if not for the misconduct of the applicant. By contrast, under the subjective but-for test, the issue is whether the misrepresentation caused the examiner to issue the patent. Although both tests have been applied by the courts, the Federal Circuit has rejected the but-for materiality test in favor of the materiality test codified in 37 CFR § 1.56. — Also termed objective but-for test. [Cases: Patents 97. C.J.S. Patents §§ 135–138, 145, 178.]

BUT-FOR TEST

but-for test. Tort & criminal law. The doctrine that causation exists only when the result would not have occurred without the party's conduct. — Also termed (in criminal law) had-not test. See but-for cause under CAUSE(1). [Cases: Criminal Law 26; Negligence 379. C.J.S. Criminal Law §§ 44–45, 1110.]

BUTLERAGE

butlerage. Hist. A duty on wine imported into England, payable to the royal butler. Cf. PRISAGE.

BUT SEE

but see. See SED VIDE.

BUT SO INSANE AS NOT TO BE RESPONSIBLE

but so insane as not to be responsible. See GUILTY BUT MENTALLY ILL.

BUTTALS

buttals (b<<schwa>>t-<<schwa>>lz). Archaic. See ABUTTALS.

BUTTS AND BOUNDS

butts and bounds. See METES AND BOUNDS.

BUY

buy. See PURCHASE(1).

BUY-AND-SELL AGREEMENT

buy-and-sell agreement. See BUY-SELL AGREEMENT.

BUY-BACK CLAUSE

buy-back clause. 1. Contracts. A provision that requires a manufacturer or franchiser to buy back inventory and equipment if the distributor or franchisee's contract is terminated prematurely. 2. Contracts. A clause allowing the seller of property the right or opportunity to repurchase the property under stated conditions. 3. Insurance. An insurance-policy clause that provides for the reinstatement of coverage that the insurer excludes or cancels if the insured meets certain conditions. • For instance, buy-back clauses are often used to reinstate some of the coverage taken away under pollution-exclusion clauses.

BUY-DOWN

buy-down, n. Money paid by the buyer of a house to reduce the mortgage-interest payments.

BUYER

buyer. One who makes a purchase. See PURCHASER.

buyer in ordinary course of business. A person who — in good faith and without knowledge that the sale violates a third party's ownership rights or security interest in the goods — buys from a person regularly engaged in the business of selling goods of that kind. • Pawnbrokers are excluded from the definition. UCC § 1-201(b)(9). [Cases: Sales 234. C.J.S. Sales §§ 232–233, 235.]

qualified institutional buyer. Securities. An institution with more than \$100 million in invested assets.

BUYER'S MARKET

buyer's market. See MARKET.

BUYING-IN

buying-in, n. The purchase of property by the original owner or an interested party at an auction or foreclosure sale. — buy in, vb.

BUYING ON MARGIN

buying on margin. See MARGIN TRANSACTION.

BUYING SYNDICATE

buying syndicate. See SYNDICATE.

BUY ORDER

buy order. See ORDER(8).

BUYOUT

buyout, n. The purchase of all or a controlling percentage of the assets or shares of a business. Cf. MERGER(8). — buy out, vb.

leveraged buyout. The purchase of a publicly held corporation's outstanding stock by its management or outside investors, financed mainly with funds borrowed from investment bankers or brokers and usu. secured by the corporation's assets. — Abbr. LBO. [Cases: Corporations 116. C.J.S. Corporations §§ 233–240, 242.]

management buyout. 1. A buyout of a corporation by its own directors and officers. 2. A leveraged buyout of a corporation by an outside entity in which the corporation's management has a material financial interest. — Abbr. MBO. See GOING PRIVATE.

BUY–SELL AGREEMENT

buy–sell agreement. 1. An arrangement between owners of a business by which the surviving owners agree to purchase the interest of a withdrawing or deceased owner. Cf. CONTINUATION AGREEMENT. 2. Corporations. A share-transfer restriction that commits the shareholder to sell, and the corporation or other shareholders to buy, the shareholder's shares at a fixed price when a specified event occurs. [Cases: Corporations 82, 116. C.J.S. Corporations §§ 180–181, 193–195, 233–240, 242.] — Also termed buy-and-sell agreement. Cf. OPTION AGREEMENT.

BW

BW.abbr. BID WANTED.

BXA

BXA.abbr. BUREAU OF EXPORT ADMINISTRATION.

BY-BIDDER

by-bidder. At an auction, a person employed by the seller to bid on property for the sole purpose of stimulating bidding by potential genuine buyers; SHILL(2). — Also termed puffer. [Cases: Auctions and Auctioneers 7. C.J.S. Auctions and Auctioneers §§ 2, 8–17.]

BY-BIDDING

by-bidding. The illegal practice of employing a person to bid at an auction for the sole purpose of stimulating bidding on the seller's property. — Also termed puffing. Cf. BIDDING UP; SHILLING(1). [Cases: Auctions and Auctioneers 7. C.J.S. Auctions and Auctioneers §§ 2,

8–17.]

BY-ELECTION

by-election. See **ELECTION**(3).

BY GOD AND MY COUNTRY

by God and my country.Hist. A customary reply for a criminal defendant when asked at arraignment, “Culprit, how wilt thou be tried?”

BYLAW

bylaw [fr. Danish bye, Old Norse byr, “town”] 1.Parliamentary law. (usu. pl.) A rule or administrative provision adopted by an organization for its internal governance and its external dealings. • Although the bylaws may be an organization's most authoritative governing document, they are subordinate to a charter or articles of incorporation or association or to a constitution. The “constitution and bylaws” are sometimes a single document. See governing document under **DOCUMENT**; **ARTICLES OF INCORPORATION**. Cf. **CONSTITUTION**. [Cases: Condominium 7; Corporations 54, 113, 116. C.J.S. Corporations §§ 111, 114, 116, 120, 220–225, 233–240, 242; Estates§ 202.] 2.**ORDINANCE**. — Sometimes spelled by-law; byelaw.

“By-law is now felt to be a compound of the preposition by and law, but originally by was the Danish by ‘town, village’ (found in Derby, Whitby, etc.), and the Danish genitive-ending is preserved in the other English form byr-law.” Otto Jespersen, *Growth and Structure of the English Language* 75 (9th ed. 1938).

BYLAW MAN

bylaw man.Hist. One of the chief men of a town, usu. appointed for some purpose under the town's corporate bylaws.

BY OPERATION OF LAW

by operation of law.See **OPERATION OF LAW**.

BYPASS TRUST

bypass trust.See **TRUST**.

BYRLAW

byrlaw (bir-lah), n. English & Scots law. Hist.1.The local custom of a township or district for resolving disputes over boundaries, trespasses, and the use of common lands, as well as farming issues. 2. A particular custom established by the common consent of landholders in a township or district. 3. The area over which a township or district court has jurisdiction. — Also spelled burlaw.

BYRLAW COURT

byrlaw court.Hist. Scots law. A community assembly that judged minor disputes arising in the

community. • The assembly members were called byrlawmen or birleymen. — Also spelled burlaw court.

BYRTHYNSAK

byrthynsak (b<<schwa>>r-th<<schwa>>n-sak), n.[Anglo-Saxon byrthen “burden” + sacu “lawsuit”] Hist. The theft of a calf or ram that is the most a man can carry on his back.

BYSTANDER

bystander. One who is present when an event takes place, but who does not become directly involved in it.