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F. 1. abbr. The first series of the Federal Reporter, which includes federal decisions (trial and appellate) from 1880 to 1924. **2. Hist.** A letter branded on a felon who claimed benefit of clergy so that the felon could claim the benefit only once. • Additionally, those convicted for an affray (fray) or falsity were so branded.

“He that shall maliciously strike any person with a Weapon in Church or Churchyard, or draw any Weapon there with intent to strike, shall have one of his Ears cut off; and, if he have no Ears, then shall be marked on the Cheek with a hot Iron, having the Letter F, whereby he may be known for a *Fray-maker* or *Fighter*.” Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

“F, Is a Letter wherewith *Felons*, & c. are branded and marked with an hot Iron, on their being admitted to the Benefit of Clergy.” Giles Jacob, *A New Law-Dictionary* (8th ed. 1762).

F.2d. abbr. The second series of the Federal Reporter, which includes federal appellate decisions from 1924 to 1993.

F.3d. abbr. The third series of the Federal Reporter, which includes federal appellate decisions from 1993.

FAA. abbr. **1.** FEDERAL AVIATION ADMINISTRATION. **2.** The Federal Arbitration Act, 9 USCA §§ 1–16. **3.** FREE OF ALL AVERAGE.

fabricare (fab-rə-kair-ee), *vb.* [Law Latin “to make”] *Hist.* **1.** To make a coin lawfully or unlawfully. **2.** To forge, esp. a bill of lading. • The term sometimes appeared in indictments: *fabricavit et contrafecit* (“[he] forged and counterfeited”).

fabricate, *vb.* To invent, forge, or devise falsely. • To fabricate a story is to create a plausible version of events that is advantageous to the person relating those events. The term is softer than *lie*. See LIE (1).

fabricated evidence. See EVIDENCE.

fabric land. See LAND.

fabula (fab-yə-lə). [Law Latin] *Hist.* A contract or covenant, esp. a nuptial contract.

FAC. abbr. Failure to answer a (traffic) citation.

• In some jurisdictions, if someone fails to respond after receiving a ticket, the court notifies the relevant administrative agency, which records this information and suspends the defendant’s driver’s license until the FAC is vacated and any fines or fees are paid.

face, *n.* **1.** The surface of anything, esp. the front, upper, or outer part <the face of a clock>. **2.** By extension, the apparent or explicit part of a writing or record <the fraud must appear on the face of the record>. **3.** The inscribed side of a document, instrument, or judgment <although the contract appeared valid on its face, the buyer did not have the legal capacity to enter into it>.

face amount. **1.** PAR VALUE. **2. Insurance.** The amount payable under an insurance policy. — Also termed *face value*; *face amount insured by the policy*; *face of policy*.

face-amount certificate. See CERTIFICATE.

face-amount certificate of installment type. See *face-amount certificate* (1) under CERTIFICATE.

face amount insured by the policy. See FACE AMOUNT.

face of policy. See FACE AMOUNT.

face rate. See *nominal rate* under INTEREST RATE.

face value. See FACE AMOUNT.

facial, *adj.* Apparent; on the face of things; *prima facie* <a facial challenge to the statute>.

facial attack. A challenge to the sufficiency of a complaint, such as a motion to dismiss in federal practice.

facial challenge. See CHALLENGE (1).

facially sufficient, *adj.* (Of a document) appearing valid on its face. ● A search-warrant affidavit's facial sufficiency will not protect it from attack if the affidavit is based on false testimony by the officer making the affidavit. See FRANKS HEARING.

facially void. See VOID.

facias (*fay-shee-əs*). [Law Latin] That you cause. ● *Facias* is used in writs as an emphatic word. See FIERI FACIAS; LEVARI FACIAS; SCIRE FACIAS. It also appears in the phrase *ut facias* ("so that you do"). See DO UT FACIAS; FACIO UT DES; FACIO UT FACIAS.

facies (*fay-shee-ez*). [Latin] The outward appearance or surface (of a thing).

facilitate, *vb.* *Criminal law.* To make the commission of a crime easier. ● Property (such as a vehicle or home) that facilitates the commission of certain offenses may be forfeited. — **facilitator**, *n.*

facilitation, *n.* The act or an instance of aiding or helping; esp., in criminal law, the act of making it easier for another person to commit a crime.

facility-of-payment clause. An insurance-policy provision allowing the appointment of a person to receive payment from the insurer on the beneficiary's behalf.

facio ut des (*fay-shee-oh ət deez*). [Latin "I do so that you give"] *Civil law.* **1.** An innominate contract in which a person agrees to do something for recompense. See *innominate contract* under CONTRACT. **2.** The consideration in such a contract.

facio ut facias (*fay-shee-oh ət fay-shee-əs*). [Latin "I do that you may do"] *Civil law.* **1.** An innominate contract in which a person agrees to do something for another person who agrees to do something in return, such as an agreement to marry. **2.** The consideration in such a contract. See *innominate contract* under CONTRACT.

"These valuable considerations are divided by the civilians into four species. . . . The second species is, *facio, ut facias*: as when I agree with a man to do his work for him, if he will do mine for me; or if two persons agree to marry together; or to do any positive acts on both sides. Or, it may be to forbear on one side in consideration of something done on the other; as, that in consideration A, the tenant, will repair his house, B, the landlord, will not

sue him for waste." 2 William Blackstone, *Commentaries on the Laws of England* 444 (1766).

facsimile (*fak-sim-ə-lee*). **1.** An exact copy. **2.** FAX.

facsimile signature. See SIGNATURE.

facsimile transmission. See FAX.

fact. **1.** Something that actually exists; an aspect of reality <it is a fact that all people are mortal>. **2.** An actual or alleged event or circumstance, as distinguished from its legal effect, consequence, or interpretation <the jury made a finding of fact>. **3.** An evil deed; a crime <an accessory after the fact>.

"A *fact* is any act or condition of things, assumed (for the moment) as happening or existing." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 7 (1935).

ablative fact. See *divestitive fact*.

adjudicative fact (*ə-joo-di-kay-tiv or -kə-tiv*). A controlling or operative fact, rather than a background fact; a fact that concerns the parties to a judicial or administrative proceeding and that helps the court or agency determine how the law applies to those parties. ● For example, adjudicative facts include those that the jury weighs. Cf. *legislative fact*.

alienative fact (*ay-lee-ə-nay-tiv or ay-lee-ə-nə-tiv*). A fact that divests a person of a right by transferring it to another.

collateral fact. A fact not directly connected to the issue in dispute, esp. because it involves a different transaction from the one at issue.

collative fact. See *investitive fact*.

denotative fact (*dee-noh-tay-tiv or di-noh-tə-tiv*). A fact relevant to the use of a nonlegal term in a legal rule.

destitutive fact. See *divestitive fact*.

dispositive fact (*dis-poz-ə-tiv*). **1.** A fact that confers rights or causes the loss of rights. ● A dispositive fact may be either an investitive or a divestitive fact. — Also termed *vestitive fact* (*ves-tə-tiv*). **2.** A fact that is decisive of a legal matter; evidence that definitively resolves a legal issue or controversy. See DISPOSITION.

divestitive fact (*di-ves-tə-tiv or di-*). A fact that causes the loss of rights; an act or event modifying or extinguishing a legal relation. — Also termed *destitutive fact*; *ablative fact*.

elemental fact. See *ultimate fact*.

evaluative fact. A fact used to assess an action as being reasonable or negligent.

evidentiary fact (ev-i-den-shə-ree). **1.** A fact that is necessary for or leads to the determination of an ultimate fact. — Also termed *predicate fact*. **2.** A fact that furnishes evidence of the existence of some other fact. — Also termed *evidential fact*. **3.** See *fact in evidence*.

exonerative fact (eg-zon-ər-ə-tiv or -ay-tiv). A divestitive fact that extinguishes a duty.

extinctive fact. A fact that divests a right by destroying it. — Also termed *destitutive fact*; *ablative fact*.

fabricated fact. See *fabricated evidence* under EVIDENCE.

fact in evidence. A fact that a tribunal considers in reaching a conclusion; a fact that has been admitted into evidence in a trial or hearing. — Sometimes written *fact-in-evidence*. — Also termed *evidentiary fact*.

"A *fact-in-evidence*, or, briefly, *evidence*, signifies any facts considered by the tribunal as data to persuade them to reach a reasoned belief upon a probandum. This process of thought by which the tribunal reasons from fact to probandum is termed *inference*." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 7 (1935).

fact in issue. (*usu. pl.*) **1. Hist.** A fact that the plaintiff alleges and that the defendant controverts. **2.** A fact to be determined by a fact-trier; PROBANDUM. — Also written *fact-in-issue*. — Also termed *principal fact*.

"A *fact-in-issue* is a fact as to the correctness of which the tribunal, under the law of the case, must be persuaded; the term 'probandum' (thing to be proved) will here be used as the convenient single word." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 7 (1935).

fact material to risk. *Insurance.* A fact that may increase the risk and that, if disclosed, might induce the insurer either to decline to insure or to require a higher premium.

foundational fact. See *predicate fact*.

immaterial fact. A fact that is not essential to a matter in issue.

impositive fact. An investitive fact that imposes duties.

inferential fact. A fact established by conclusions drawn from other evidence rather than from direct testimony or evidence; a fact derived logically from other facts.

investitive fact (in-ves-tə-tiv). A fact that confers rights. — Also termed *collative fact* (kə-lay-tiv).

judicial fact. A fact that the court accepts as proved without hearing evidence. See JUDICIAL NOTICE.

jurisdictional fact. (*usu. pl.*) A fact that must exist for a court to properly exercise its jurisdiction over a case, party, or thing. See JURISDICTIONAL-FACT DOCTRINE.

legal fact. A fact that triggers a particular legal consequence.

legislative fact. A fact that explains a particular law's rationality and that helps a court or agency determine the law's content and application. • Legislative facts are not ordinarily specific to the parties in a proceeding. Cf. *adjudicative fact*.

material fact. A fact that is significant or essential to the issue or matter at hand.

minor fact. A subordinate fact or circumstance.

operative fact. A fact that affects an existing legal relation, esp. a legal claim.

physical fact. A fact having a physical existence, such as a fingerprint left at a crime scene.

predicate fact (pred-ə-kit). A fact from which a presumption or inference arises. — Also termed *foundational fact*; *evidentiary fact*.

primary fact. A fact that can be established by direct testimony and from which inferences are made leading to ultimate facts. See *ultimate fact*.

principal fact. **1.** A fact on which the plaintiff's right of recovery depends. **2.** See *fact in issue*.

private fact. A fact that has not been made public. • Whether a fact is private often arises in invasion-of-privacy claims. Cf. *public fact*.

probative fact (proh-bə-tiv). A fact in evidence used to prove an ultimate fact, such as skid marks used to show speed as a predicate to a finding of negligence.

public fact. For the purpose of an invasion-of-privacy claim, a fact that is in a public record or in the public domain. Cf. *private fact*.

relative fact. A fact incidental to another fact; a minor fact.

translative fact (trans- or tranz-lay-tiv). A fact by means of which a right is transferred from one person to another; a fact that fulfills the double function of terminating one per-

son's right to an object and of originating another's right to it.

ultimate fact. A fact essential to the claim or the defense. — Also termed *elemental fact*; *principal fact*.

undisputed fact. An uncontested or admitted fact, esp. one that a court has not deemed necessary to include in a finding of fact.

vestitive fact. See *dispositive fact* (1).

facta (fak-tə). [Latin] *pl.* FACTUM.

fact-finder. One or more persons — such as jurors in a trial or administrative-law judges in a hearing — who hear testimony and review evidence to rule on a factual issue. — Also termed *finder of fact*; *fact-trier* or *trier of fact* (in a judicial proceeding); *fact-finding board* (for a group or committee). See FINDING OF FACT.

fact-finding. **1.** The process of taking evidence to determine the truth about a disputed point. **2.** *Int'l law.* A method of gathering information for purposes of international relations, including legislative tours, the peaceful settlement of disputes, the supervision of international agreements, and the acquisition of information required for making decisions at an international level. — Also termed *inquiry*. **3.** A method of alternative dispute resolution in which an impartial third party determines and studies the facts and positions of disputing parties that have reached an impasse, with a view toward clarifying the issues and helping the parties work through their dispute.

fact-finding board. See FACT-FINDER.

fact in evidence. See FACT.

fact in issue. See FACT.

fact material to risk. See FACT.

facto. See DE FACTO; IPSO FACTO.

facto et animo (fak-toh et an-ə-moh). [Latin] In fact and intent <taking possession *facto et animo*>.

factor, n. **1.** An agent or cause that contributes to a particular result <punishment was a factor in the court's decision>. **2.** An agent who is employed to sell property for the principal and who possesses or controls the property; a person who receives and sells goods for a commis-

sion <a factor was employed to sell goods for the company>. • A factor differs from a broker because the factor possesses or controls the property. — Also termed *commission merchant*; *del credere bailiff*. Cf. BROKER.

"A factor by the rules of common law and of mercantile usage is an agent to whom goods are consigned for the purpose of sale, and he has possession of the goods, power to sell them in his own name, and a general discretion as to their sale. He may sell them on the usual terms of credit, may receive the price, and give a good discharge to the buyer." William R. Anson, *Principles of the Law of Contract* 523 (Arthur L. Corbin ed., 3d Am. ed. 1919).

3. One who buys accounts receivable at a discount <the company sold its receivables to a factor at only 5% of their stated value>. **4.** A garnishee <the factor held \$400 of the debtor's property when the writ of garnishment was served>.

factorage. **1.** The compensation paid to a factor for his or her services. **2.** The business of a factor.

factoring, n. The buying of accounts receivable at a discount. • The price is discounted because the factor (who buys them) assumes the risk of delay in collection and loss on the accounts receivable.

factorize, vb. See GARNISH.

factorizing process. A procedure or legal process by which a third party, rather than the creditor, attaches a debtor's property; GARNISHMENT. — Also termed *trustee process*; *process by foreign attachment*.

"In Vermont and Connecticut, the [garnishee] is also sometimes called the factor, and the process [of garnishing], factorizing process." Charles D. Drake, *A Treatise on the Law of Suits by Attachment in the United States* § 451, at 386 (7th ed. 1891).

factor's act. A statute protecting one who buys goods from a factor or agent by creating the presumption that the agent was acting on the owner's behalf and with the owner's approval.

factor's lien. See LIEN.

factory act. A statute that regulates workers' hours, health, and safety. See FAIR LABOR STANDARDS ACT.

fact pleading. See *code pleading* under PLEADING (2).

fact question. See QUESTION OF FACT.

fact-trier. See FACT-FINDER.

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

factual impossibility. See IMPOSSIBILITY.

factual presumption. See *presumption of fact* under PRESUMPTION.

factum (fak-təm), *n.* [Latin] **1.** A fact, such as a person's physical presence in a new domicile. **2.** An act or deed, such as the due execution of a will. • Over time, *factum* in this sense came to mean "charter" — that is, the act or deed of conveying land, reduced to written form. See *fraud in the factum* under FRAUD.

"[I]t is only a short step to holding as a matter of law that a 'deed' — and by a deed (*fet, factum*) men are beginning to mean a sealed piece of parchment — has an operative force of its own which intentions expressed, never so plainly, in other ways have not. The sealing and delivering of the parchment is the contractual act. Further, what is done by 'deed' can only be undone by 'deed.'" 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 220 (2d ed. 1899).

factum juridicum (fak-təm juu-rid-i-kəm). [Latin] A juridical fact.

factum probandum (fak-təm prə-ban-dəm). [Latin] A fact to be proved.

factum probans (fak-təm proh-banz). [Latin] A probative or evidentiary fact.

3. A statement of facts. **4.** BRIEF (1). Pl. **facta.**

facultative certificate (fak-əl-tay-tiv). *Reinsurance.* A contract of reinsurance separately negotiated to cover risks under a single insurance policy. • Facultative reinsurance allows the reinsurer the "faculty" of assessing and possibly rejecting a particular risk (esp. if underwriting information is inadequate).

facultative reinsurance. See REINSURANCE.

faculties. *Hist. Eccles. law.* **1.** An authorization granted to a person to do what otherwise would not be allowed. **2.** The extent of a husband's estate; esp., the ability to pay alimony. See ALLEGATION OF FACULTIES.

Faculties, Court of. See COURT OF FACULTIES.

Faculties, Master of the. See MASTER OF THE FACULTIES.

faderfium (fah-thər-fee-əm). *Hist.* A marriage gift to the bride from her father or brother.

faeder-feoh (fah-thər-fee). *Hist.* Property brought by a wife to her husband at marriage. • If the husband died, the property reverted to the widow if the heir of the deceased husband refused consent to her second marriage. The property reverted to the widow's family if she returned to them.

faggot. *Hist.* **1.** A piece of firewood used to burn a heretic alive. **2.** An embroidered figure of a faggot, required to be worn by heretics who had recanted.

fail, n. A transaction between securities brokers in which delivery and payment do not occur at the prescribed time, usu. on the settlement date. — Also termed *fail contract*.

fail to deliver. The nondelivery of securities from a selling broker to a buying broker by the settlement date.

fail to receive. The failure of a buying broker to receive delivery of securities from the selling broker by the settlement date.

fail, vb. **1.** To be deficient or unsuccessful; to fall short <they failed to settle the dispute>. **2.** To become insolvent or bankrupt <two banks failed last week>. **3.** To lapse <the bequest failed as a result of ademption>.

failing circumstances. See INSOLVENCY.

failing-company doctrine. *Antitrust.* The rule that allows an otherwise proscribed merger or acquisition between competitors when one is bankrupt or near failure. 15 USCA §§ 12–27. — Also termed *failing-firm defense*.

"The 1992 guidelines provide a limited defense for failing firms and failing divisions of firms. The defense is available if impending failure would cause the assets of one party to leave the market if the merger does not occur. Thus to establish a *failing firm* defense, the parties must show that the failing firm cannot (1) meet its financial obligations, (2) reorganize in bankruptcy, and (3) find another buyer whose purchase of the firm would pose lesser anticompetitive risks. The parties must further show that (4) without the merger, the failing firm's assets will exit the market." Ernest Gellhorn & William E. Kovacic, *Antitrust Law and Economics in a Nutshell* 398–99 (4th ed. 1994).

fail position. A situation existing when, after all transactions in a security have been netted out, a broker owes another broker more securities than it has coming in from other firms.

failure. **1.** Deficiency; lack; want. **2.** An omission of an expected action, occurrence, or performance. See LAPSE (2).

failure of a condition. A situation in which an event required in a contract is not satisfied, as a result of which the adversely affected party is discharged from performing. • This situation does not void the contract; the parties are still bound, but one party does not have to perform because of the failure of the condition.

failure of consideration. See FAILURE OF CONSIDERATION.

failure of good behavior. A civil servant's act that is ground for removal.

failure of issue. See FAILURE OF ISSUE.

failure of justice. See MISCARRIAGE OF JUSTICE.

failure of proof. A party's not having produced evidence establishing a fact essential to a claim or defense.

failure of title. A seller's inability to establish a good claim to the property contracted for sale. Cf. *clear title* under TITLE.

failure of trust. The lapse of a trust because the instrument creating it has a defect or because of its illegality or other legal impediment.

failure otherwise than on the merits. The defeat of a plaintiff's claim by a procedural device without a decision on the existence of the claim's elements.

failure to bargain collectively. An employer's refusal to discuss labor issues with a union.

failure to make delivery. Nondelivery or misdelivery.

failure to meet obligations. See BANKRUPTCY (2); INSOLVENCY.

failure to perform. A party's not meeting its obligations under a contract. See CONTRACT (4).

failure to state a cause of action. A plaintiff's not having alleged facts in the complaint sufficient to maintain a claim. • This failure warrants dismissal of the complaint.

failure to testify. A party's — esp. a criminal defendant's — decision not to testify. • Under the Fifth Amendment, the prosecutor and the judge cannot comment to the jury on a criminal defendant's failure to testify. But comments on the failure are usu. permissible in a civil case.

failure of consideration. A situation in which a contract's basis or inducement ceases to exist or becomes worthless. • This term, unlike *consideration* per se, relates not to the formation

of a contract but to its performance. See CONSIDERATION. Cf. WANT OF CONSIDERATION.

"An illustration will help indicate how the term is used. If C promises to build a structure for O and O promises to make payment when the work is completed, it is clear that there is consideration on both sides of this contract and that therefore a contract was formed upon the exchange of promises. If C fails to perform, the result is sometimes described as a 'failure of consideration.' 'Failure of consideration' simply means a failure to perform and as used covers both a material breach of constructive conditions and a failure to perform an express condition. The use of the term 'failure of consideration' in this sense appears to be an unnecessary invitation to confusion because the word consideration is being used in two different senses. Fortunately, the use of this phrase has gradually fallen into disuse. It is, however, still sufficiently widespread to be mentioned here. This volume nowhere utilizes 'failure of consideration' as an operative concept." John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 11-21, at 474-75 (3d ed. 1987).

partial failure of consideration. A situation in which the contract consists of separable items of consideration and separable parts of the agreement, so that if part of the consideration fails, the appropriate part of the agreement can be apportioned to it. • The several parts of the contract are in effect treated as separate contracts, and the contract is voided only to the extent that the consideration for one part fails.

total failure of consideration. A situation in which the contract is indivisible so that a complete lack of consideration voids the contract.

"The concept of total failure of consideration is a somewhat technical one. In particular there may be a total failure of consideration even though the defendant has actually done some work or expended some money in the performance of the contract, provided that what he has done has not enured to the benefit of the other party. For example, if a person orders machinery to be specially constructed for him, there will be a total failure of consideration if none of the machinery is delivered to him although work may have been commenced and money expended on it. On the other hand, if some benefit has been received under the contract, no matter how trifling, there is no total failure of consideration. In this case, just as there is generally no right to part payment for part performance, so also there is generally no right to part recovery for partial failure of consideration." P.S. Atiyah, *An Introduction to the Law of Contract* 306-07 (3d ed. 1981).

failure of good behavior. See FAILURE.

failure of issue. The fact of dying without children, esp. if they would have inherited the decedent's estate. — Also termed *dying without issue*. See ISSUE (3).

"There has been considerable litigation during the past several centuries over the meaning of a gift to 'A and his

heirs, but if A shall die without issue, to B and his heirs.' First of all, what does 'die without issue' mean? The answer appears simple — you look to the time of A's death to determine whether or not he has any children or grandchildren. But that is not the way the English courts originally construed this language. The English adopted the so-called 'indefinite failure of issue' construction — if at any time in the future A's line of descent should come to an end, then there was a gift over to B and his heirs. The effect of this was a fee tail in A and a remainder in B. This seems a distortion of the language, and particularly unsuited to American circumstances since the fee tail never found a real home here. Most of our jurisdictions, by judicial decision or statute, adopted the so-called 'definite failure of issue' construction — you look to the date of A's death to determine whether he has issue, and to that time alone. If A has issue at that time, then the gift over to B fails. This seems to be the literal meaning of the words, and it is the only sensible conclusion in a system where the fee tail is virtually a dead letter. The English also struck down the constructional preference for indefinite failure by statute in the nineteenth century." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 236-37 (2d ed. 1984).

indefinite failure of issue. A failure of issue whenever it happens, without any certain period within which it must happen.

failure of justice. See MISCARRIAGE OF JUSTICE.

failure of proof. See FAILURE.

failure of title. See FAILURE.

failure of trust. See FAILURE.

failure otherwise than on the merits. See FAILURE.

failure to bargain collectively. See FAILURE.

failure to make delivery. See FAILURE.

failure to meet obligations. See BANKRUPTCY (2); INSOLVENCY.

failure to perform. See FAILURE.

failure-to-perform exclusion. See EXCLUSION (3).

failure to state a cause of action. See FAILURE.

failure to testify. See FAILURE.

failure to thrive. A medical and psychological condition in which a child's height, weight, and motor development fall significantly below av-

fair and valuable consideration

erage growth rates. ● Failure to thrive is sometimes asserted as a ground for terminating parental rights.

faint action. See FEIGNED ACTION.

faint pleader. A false, fraudulent, or collusive manner of pleading.

fair, adj. 1. Impartial; just; equitable; disinterested <everyone thought that Judge Jones was fair>. 2. Free of bias or prejudice <in jury selection, the lawyers tried to select a fair and impartial jury>.

fair, n. Hist. A privileged market for the buying and selling of goods. ● A fair was an incorporeal hereditament granted to a town by royal patent or franchise or established by prescription. The franchise to hold a fair conferred important privileges, and a fair, as a legally recognized institution, possessed distinctive legal characteristics, most of which are now obsolete. Cf. *market overt* under MARKET.

fair-and-equitable requirement. Bankruptcy. A Bankruptcy Code standard requiring a forced, nonconsensual Chapter 11 plan (a "cramdown" plan) to provide adequately for each class of interests that has not accepted the plan. ● In determining whether a cramdown plan is fair and equitable and thus can be confirmed, a bankruptcy court must apply the Code's detailed statutory criteria, consider the plan as a whole, and weigh all the circumstances surrounding the treatment of each impaired class of interests. In addition to the fair-and-equitable requirement, the Chapter 11 cramdown plan must (1) be accepted by at least one impaired class of claims, and (2) not discriminate unfairly among impaired classes that have not accepted the plan. 11 USCA § 1129(b). See CRAMDOWN.

fair and impartial jury. See *impartial jury* under JURY.

fair and impartial trial. See FAIR TRIAL.

fair and proper legal assessment. See EQUALIZATION.

fair and reasonable value. See *fair market value* under VALUE.

fair and valuable consideration. See *fair consideration* under CONSIDERATION.

fair averaging. The process of assessing taxes by using the average of the amount and price of goods acquired over a 12-month period rather than the amount and price at a particular time of the year.

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

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

fair comment. A statement based on the writer's or speaker's honest opinion about a matter of public concern. • Fair comment is a defense to libel or slander.

fair competition. See COMPETITION.

fair consideration. See CONSIDERATION.

Fair Credit Billing Act. A federal law that facilitates the correction of billing errors by credit-card companies and makes those companies more responsible for the quality of goods purchased by cardholders. 15 USCA §§ 1666-1666j.

fair-credit-reporting act. A federal or state law that regulates the keeping of credit reports and ensures the right of consumers to get and correct their credit reports. • The federal Fair Credit Reporting Act was enacted in 1970. 15 USCA §§ 1681-1681u.

fair-cross-section requirement. *Constitutional law.* The principle that a person's right to an impartial jury, guaranteed by the Sixth Amendment, includes a requirement that the pool of potential jurors fairly represent the composition of the jurisdiction's population. • The pool of potential jurors need not precisely match the composition of the jurisdiction. But the representation of each group must be fair, and there must not be a systematic exclusion or underrepresentation of any group. A minimal disparity in a particular group's representation, such as an absolute disparity of 10%, will not ordinarily violate this principle unless some aggravating factor exists. See DUREN TEST; ABSOLUTE DISPARITY; COMPARATIVE DISPARITY; STATISTICAL-DECISION THEORY.

fair dealing, n. 1. The conduct of business with full disclosure, usu. by a corporate officer with the corporation. 2. A fiduciary's transacting of business so that, although the fiduciary might derive a personal benefit, all interested persons are fully apprised of that potential and of all

other material information about the transaction. Cf. SELF-DEALING.

fair hearing. See HEARING.

Fair Labor Standards Act. A federal law, enacted in 1938, that regulates minimum wages, overtime pay, and the employment of minors. 29 USCA §§ 201-219. — Abbr. FLSA.

fairly-debatable rule. 1. *Insurance.* In some states, a test that requires an insurer to have a plausible basis for denying a claim to avoid bad-faith liability. 2. *Zoning.* A doctrine that bars a court from interfering with a zoning decision that is supported by substantial evidence, although it is one on which reasonable minds can differ. • A court will not interfere with a decision supported by substantial evidence.

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

fair market value. See VALUE.

fairness doctrine. A federal law, based on an FCC rule, requiring the broadcast media to furnish a reasonable opportunity for the discussion of conflicting views on issues of public importance. • The FCC abandoned the fairness doctrine in 1987. — Also termed *equal-time doctrine*.

fair notice. See NOTICE.

fair on its face. (Of a document) having the appearance of being regular or legal and not capable of being shown to be defective without extraneous evidence.

fair play. Equity, candor, and fidelity in dealings with another.

fair play and substantial justice. The fairness requirement that a court must meet in its assertion of personal jurisdiction over a nonresident defendant to comport with due process. *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154 (1945). See MINIMUM CONTACTS.

fair preponderance of the evidence. See PREPONDERANCE OF THE EVIDENCE.

fair rate of return. See RATE OF RETURN.

fair-report privilege. A defense to liability for publishing defamatory matter from a report of

an official or judicial proceeding, when the report is a full, fair, and accurate account of the proceeding.

fair representation. *Labor law.* Union representation that adequately covers all union members in collective bargaining and in the lodging of grievances.

fair return on investment. See RETURN.

fair sale. See SALE.

fair trade, n. Commerce conducted under a fair-trade agreement.

fair-trade agreement. A commercial agreement that a seller will sell all of a producer's goods at or above a specified minimum price. ● Fair-trade agreements were valid until 1975, when the Consumer Goods Pricing Act made them illegal. 15 USCA §§ 1, 45.

fair trial. A trial by an impartial and disinterested tribunal in accordance with regular procedures; esp., a criminal trial in which the defendant's constitutional and legal rights are respected. — Also termed *fair and impartial trial*.

fair use. *Copyright.* A reasonable and limited use of a copyrighted work without the author's permission, such as quoting from a book in a book review or using parts of it in a parody. ● Fair use is a defense to an infringement claim, depending on the following statutory factors: (1) the purpose and character of the use, (2) the nature of the copyrighted work, (3) the amount of the work used, and (4) the economic impact of the use. 17 USCA § 107.

"[Fair use is] the most troublesome [problem] in the whole law of copyright." *Dellar v. Samuel Goldwyn, Inc.*, 104 F.2d 661, 662 (2d Cir. 1939) (per curiam).

"Fair use is a judicial safety valve, empowering courts to excuse certain quotations or copies of copyrighted material even though the literal terms of the Copyright Act prohibit them." Paul Goldstein, *Copyright's Highway* 84 (1994).

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

fair-value accounting method. See ACCOUNTING METHOD.

fair-value law. A statute allowing a credit against a deficiency for the amount that the fair market value of land exceeds the price at

foreclosure. — Also termed *fair-value legislation*.

fair warning. *Criminal law.* The requirement that a criminal statute define an offense with enough precision so that a reasonable person can know what conduct is prohibited and so that a reasonably skilled lawyer can predict what conduct falls within the statute's scope. — Also termed *fair notice*.

fair wear and tear. See WEAR AND TEAR.

fait (fay or fe). [Law French fr. Latin *factum*] Anything done; an act or deed. ● The term *fait accompli* (fay or fe tə-kom-plee), meaning "a deed accomplished," which is not merely legal, is related to this word.

fait enrolle (fay or fe ton-rohl). [Law French] *Hist.* An enrolled deed of a sale of a freehold estate.

faith and trust. See FLIM FLAM.

Faithfully Executed Clause. The clause of the U.S. Constitution providing that the President must take care that the laws are carried out faithfully. U.S. Const. art. II, § 3.

fake, n. Something that is not what it purports to be. See FORGERY (2); IMPOSTOR.

fake, vb. To make or construct falsely. See COUNTERFEIT.

Falcidian law (fal-sid-ee-ən). *Roman law.* A law prescribing that no one could give more than three-fourths of one's property in legacies and that the heirs should receive at least one-fourth (the Falcidian portion). ● If the testator violated this law, the heir had the right to deduct proportionally from each legatee as necessary. The law, proposed by the Roman tribune Falcidius, was enacted in 40 B.C. — Also termed *lex falcidia*. See LEGITIME.

"A large number of small legacies might [either] leave nothing for the heir . . . [or] make his part so small as to seem valueless in his eyes. But a Falcidian law, passed in the year 40 B.C., put an end to the whole difficulty. This law secured to the heir a quarter of the net value of the estate; the legatees could obtain only three-quarters: if the legatees named in the will amounted to more than this, they were diminished by proportional reductions. . . . Few measures have accomplished their purpose more satisfactorily than the Falcidian law, which remained in force through the history of the empire, and holds an important place in the system of Justinian." James Hadley, *Introduction to Roman Law* 321–22 (1881).

Falcidian portion. *Roman law.* The one-fourth part of an estate that one or more instituted heirs are entitled to retain. • The Falcidian portion has been abolished in Louisiana, but a legitimate heir is entitled to a portion by law. — Also termed *quarta falcidia*. See *forced heir* under HEIR; LEGITIME.

Falconer error. A trial court's failure to instruct the jury that a guilty finding on a manslaughter charge requires acquittal on a murder charge. *Falconer v. Lane*, 905 F.2d 1129 (7th Cir. 1990).

falsa causa. See CAUSA (2).

falsa demonstratio (fal-sə or fawl-sə dem-ən-stray-shee-oh). *Roman law.* A false designation; an erroneous description of a person or thing in a legal instrument. • Generally, a simple error in description, grammar, or spelling will not void an instrument or even a single provision in it (such as a bequest by will). — Also termed *false demonstration*.

falsa moneta (fal-sə or fawl-sə mə-nee-tə). *Roman law.* Counterfeit money.

falsare (fal-sair-ee or fawl-), *vb.* [Law Latin] *Hist.* To counterfeit; to falsify.

falsarius (fal-sair-ee-əs or fawl-). [Law Latin] *Hist.* A counterfeiter. — Also spelled *falcarius*. — Also termed *falsionarius*.

false, *adj.* **1.** Untrue <a false statement>. **2.** Deceitful; lying <a false witness>. **3.** Not genuine; inauthentic <false coinage>. • What is false can be so by intent, by accident, or by mistake.

false action. See FEIGNED ACTION.

false advertising, *n.* The tortious and sometimes criminal act of distributing an advertisement that is untrue, deceptive, or misleading. — Also termed *deceptive advertising*.

false answer. A sham answer in a pleading. See *sham pleading* under PLEADING.

false arrest. See ARREST.

false character. *Hist.* The crime of impersonating a servant's master or mistress. See IMPOSTOR.

false check. See *bad check* under CHECK.

false claim. An assertion or statement that is untrue; esp., overbilling.

False Claims Act. A federal statute establishing civil and criminal penalties against persons who bill the government falsely, deliver less to the government than represented, or use a fake record to decrease an obligation to the government. 18 USCA §§ 286–287; 31 USCA §§ 3729–3733. • The Act may be enforced either by the attorney general or by a private person in a qui tam action.

false conflict of laws. See CONFLICT OF LAWS.

false demonstration. See FALSA DEMONSTRATIO.

false evidence. See *false testimony* under TESTIMONY.

falsehood. A lie. See LIE; PERJURY.

false impersonation. See IMPERSONATION.

false-implication libel. See LIBEL.

false imprisonment. A restraint of a person in a bounded area without justification or consent. • False imprisonment is a common-law misdemeanor and a tort. It applies to private as well as governmental detention. Cf. *false arrest* under ARREST.

“[In the phrase *false imprisonment*,] false is . . . used not in the ordinary sense of mendacious or fallacious, but in the less common though well-established sense of erroneous or wrong; as in the phrases false quantity, false step, false taste, etc.” R.F.V. Heuston, *Salmond on the Law of Torts* 123 n.38 (17th ed. 1977).

“False imprisonment was a misdemeanor at common law and is recognized by some states today. It differs from kidnapping in that asportation is not required. If the imprisonment is secret, some jurisdictions treat it as kidnapping.” Arnold H. Loewy, *Criminal Law in a Nutshell* 65 (2d ed. 1987).

“Some courts have described false arrest and false imprisonment as causes of action which are distinguishable only in terminology. The two have been called virtually indistinguishable, and identical. However, the difference between them lies in the manner in which they arise. In order to commit false imprisonment, it is not necessary either to intend to make an arrest or actually to make an arrest. By contrast, a person who is falsely arrested is at the same time falsely imprisoned.” 32 Am. Jur. 2d *False Imprisonment* § 3 (1995).

false judgment. *Hist.* A writ filed to obtain review of a judgment of a court not of record.

“After judgment given, a writ also of *false judgment* lies to the courts at Westminster to rehear and review the

cause, and not a writ of error; for this is not a court of record...." 3 William Blackstone, *Commentaries on the Laws of England* 34 (1768).

false light. **1.** *Torts.* In an invasion-of-privacy action, a plaintiff's allegation that the defendant attributed to the plaintiff views that he or she does not hold and placed the plaintiff before the public in a highly offensive and untrue manner. • If the matter involves the public interest, the plaintiff must prove the defendant's malice. See INVASION OF PRIVACY. **2.** (*usu. pl.*) *Maritime law.* A signal displayed intentionally to lure a vessel into danger. 18 USCA § 1658(b). — Also termed *false light* or *signal*.

false making. See FORGERY.

false misrepresentation. See MISREPRESENTATION. • This phrase is redundant — *misrepresentation* includes the idea of falsity.

false news. *Hist.* The misdemeanor of spreading false information that causes discord between the monarch and the people or between important people in the realm. 3 Edw. I, ch. 34.

false oath. See PERJURY.

false personation. See *false impersonation* under IMPERSONATION.

false plea. See *sham pleading* under PLEADING (1).

false pretenses. The crime of knowingly obtaining title to another's personal property by misrepresenting a fact with the intent to defraud. • Although unknown to English common law, false pretenses became a misdemeanor under a statute old enough to make it common law in the United States. Modern American statutes make it either a felony or a misdemeanor, depending on how valuable the property is. — Also termed *obtaining property by false pretenses*; *fraudulent pretenses*. Cf. *larceny by trick* under LARCENY; EMBEZZLEMENT.

false promise. See PROMISE.

false report. The criminal offense of informing law enforcement about a crime that did not occur.

false representation. See MISREPRESENTATION.

false return. **1.** A process server's or other court official's recorded misrepresentation that

process was served, that some other action was taken, or that something is true. **2.** A tax return on which taxable income is incorrectly reported or the tax is incorrectly computed. See TAX RETURN.

false statement. **1.** An untrue statement knowingly made with the intent to mislead. See PERJURY. **2.** Any one of three distinct federal offenses: (1) falsifying or concealing a material fact by trick, scheme, or device; (2) making a false, fictitious, or fraudulent representation; and (3) making or using a false document or writing. 18 USCA § 1001.

false swearing. See PERJURY.

false testimony. See TESTIMONY.

false verdict. See VERDICT.

false weight. (*usu. pl.*) A weight or measure that does not comply with governmentally prescribed standards or with the prevailing custom in the place and business in which the weight or measure is used.

falsi crimen. See CRIMEN FALSI.

falsify, vb. **1.** To make something false; to counterfeit or forge <the chiropractor falsified his records to help the plaintiff>. See COUNTERFEIT; FORGERY. **2.** *Rare.* To prove something to be false or erroneous <their goal in the appeal was to falsify the jury's verdict>.

falsifying a record. The crime of making false entries or otherwise tampering with a public record with the intent to deceive or injure, or to conceal wrongdoing. 18 USCA §§ 1506, 2071, 2073; Model Penal Code § 224.4.

falsity, n. **1.** Something (such as a statement) that is false. See LIE. **2.** The quality of being false. See FALSE.

falsionarius. See FALSARIUS.

falso retorno brevium (fal-soh [or fawl-soh] ri-tor-noh bree-vee-əm). [Law Latin] *Hist.* A writ against a sheriff for falsely returning a writ.

falsum (fal-səm or fawl-səm), *n.* [Latin] *Roman law.* **1.** A false statement. **2.** A crime involving forgery or falsification.

falsus in uno doctrine (fal-səs [or fawl-səs] in yoo-noh). [fr. Latin *falsus in uno, falsus in omnibus* "false in one thing, false in all"] The principle that if the jury believes that a witness's testimony on a material issue is intentionally deceitful, the jury may disregard all of that witness's testimony.

"[T]here is an old maxim 'falsus in uno, falsus in omnibus' (false in one thing, false in all), which is often much overemphasized by counsel, though it is recognized by many courts in their charges to the jury. But this is only primitive psychology, and should be completely discarded." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 181 (1935).

fama publica (fay-mə pəb-li-kə). [Latin "public repute"] *Hist.* A person's reputation in the community. • A person's *fama publica* could be used against him or her in a criminal proceeding. Cf. ILL FAME.

"Now in the thirteenth century we find in the sheriff's turn a procedure by way of double presentment, and we may see it often, though not always, when a coroner is holding an inquest over the body of a dead man. The *fama publica* is twice distilled. The representatives of the vills make presentments to a jury of twelve freeholders which represents the hundred, and then such of these presentments as the twelve jurors are willing to 'avow,' or make their own, are presented by them to the sheriff. . . . From the very first the legal forefathers of our grand jurors are not in the majority of cases supposed to be reporting crimes that they have witnessed, or even to be the originators of the *fama publica*. We should be guilty of an anachronism if we spoke of them as 'endorsing a bill' that is 'preferred' to them; but still they are handing on and 'avowing' as their own a rumour that has been reported to them by others." 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 643 (2d ed. 1899).

familia (fə-mil-ee-ə). [Latin] *Roman law.* 1. All the persons in the power of the head of a family. See PATERFAMILIAS. 2. One's legal relations through and with one's family, including all property, ancestral privileges, and duties.

"The testator conveyed to him outright his whole 'familia,' that is, all the rights he enjoyed over and through the family; his property, his slaves, and all his ancestral privileges, together, on the other hand, with all his duties and obligations." Henry S. Maine, *Ancient Law* 170 (17th ed. 1901).

3. A family, including household servants.

"Familia. . . . A family or household, including servants, that is, hired persons (*mercenarii* or *conductitii*), as well as bondsmen, and all who were under the authority of one master, (*dominus*.) Bracton uses the word in the original sense, as denoting servants or domestics." 1 Alexander M. Burrill, *A Law Dictionary and Glossary* 603-04 (2d ed. 1867).

familiae emptor (fə-mil-ee-ee emp-tor). [Latin "estate purchaser"] *Roman law.* A trustee who

received an inheritance by a fictitious purchase and distributed it as the testator instructed. — Also termed *emptor familiae*. See HERES; TWELVE TABLES.

"At some date, probably long before the XII Tables, men on the point of death, unable to make a true will because there was no imminent sitting of the *Comitia*, adopted the practice of conveying all their property . . . to a person who is described as the *familiae emptor*, and who is said by Gaius to be *in loco heredis*. Instructions were no doubt given to him as to the disposal of the property or part of it, but it is not clear that these were enforceable. . . ." W.W. Buckland, *A Manual of Roman Private Law* 175 (2d ed. 1953).

familiae erciscundae (fə-mil-ee-ee ər-sis-kən-dee). See ACTIO FAMILIAE ERCISCUNDAE.

familiares regis (fə-mil-ee-air-eez ree-jis). [Law Latin] *Hist.* 1. Persons of the king's household. 2. The ancient title of the six clerks of chancery in England.

family, n. 1. A group consisting of parents and their children. — Also termed *immediate family*. 2. A group of persons connected by blood, by affinity, or by law. 3. A group of persons, usu. relatives, who live together. — **familial, adj.** See RELATIVE.

extended family. The immediate family together with the collateral relatives who make up a clan; GENS.

immediate family. A person's parents, spouse, children, and siblings.

family allowance. See ALLOWANCE (1).

family arrangement. An informal agreement among family members, usu. to distribute property in a manner other than what the law provides for. — Also termed *family settlement*.

family-automobile doctrine. See FAMILY-PURPOSE RULE.

family-car doctrine. See FAMILY-PURPOSE RULE.

family court. See COURT.

family disturbance. See DOMESTIC DISPUTE.

Family Division. *English law.* A section of the High Court that has jurisdiction over family matters such as divorce and custody and over uncontested probate matters.

family-expense statute. 1. A state law that permits a charge against the property of a

spouse for family debts such as rent, food, clothing, and tuition. **2.** A federal tax-code provision providing that a person may not deduct expenses incurred for family, living, or personal purposes. IRC (26 USCA) § 262.

family farmer. See FARMER.

family-farmer bankruptcy. See CHAPTER 12.

family-income insurance. See INSURANCE.

family law. The body of law dealing with marriage, divorce, adoption, child custody and support, and other domestic-relations issues. — Also termed *domestic relations*; *domestic-relations law*.

family leave. An unpaid leave of absence from work taken to have or care for a baby or to care for a sick family member.

family meeting. *Civil law.* **1.** An advisory jury called to aid the court in a family-law matter. **2.** A council of relatives of a minor assembled to advise the minor in his or her affairs and to help administer the minor's property.

family of nations. *Int'l law.* The community of countries to which international law applies. ● This term is now obsolescent. It is increasingly rejected as Eurocentric.

“The family of nations' is an aggregate of States which, as the result of their historical antecedents, have inherited a common civilisation, and are at a similar level of moral and political opinion.” Thomas E. Holland, *The Elements of Jurisprudence* 396 (13th ed. 1924).

family partnership. A partnership that includes family members. IRC (26 USCA) § 704(e). See FAMILY-PARTNERSHIP RULES.

family-partnership rules. Laws designed to prevent the shifting of income among partners, esp. family members, who may not be dealing at arm's length.

family-purpose rule. *Torts.* The principle that a vehicle's owner is liable for injuries or damage caused by a family member's negligent driving. ● Many states have abolished this rule. — Also termed *family-purpose doctrine*; *family-automobile doctrine*; *family-car doctrine*. Cf. GUEST STATUTE.

“A number of jurisdictions have adopted the so-called 'family purpose' doctrine, under which the owner of a motor vehicle purchased or maintained for the pleasure of his family is liable for injuries inflicted by the negligent operation of the vehicle while it is being used by

members of the family for their own pleasure, on the theory that the vehicle is being used for the purpose or business for which it was kept, and that the person operating it is therefore acting as the owner's agent or servant in using it.” 8 Am. Jur. 2d *Automobiles and Highway Traffic* § 715, at 296 (1997).

family settlement. See FAMILY ARRANGEMENT.

famosus (fə-moh-səs), *adj.* [Latin] *Hist.* **1.** (Of a statement) having a defamatory character. **2.** (Of an action) involving infamy if the defendant lost the case.

famosus libellus (fə-moh-səs li-bel-əs), *n.* [Latin] *Roman law.* **1.** A libelous writing, esp. a letter to the emperor that attacked someone's character. **2.** The species of injury that is caused by libel.

fanciful mark. See *fanciful trademark* under TRADEMARK.

fanciful term. See *fanciful trademark* under TRADEMARK.

fanciful trademark. See TRADEMARK.

Fannie Mae (fan-ee may). See FEDERAL NATIONAL MORTGAGE ASSOCIATION.

FAR. (*often pl.*) *abbr.* FEDERAL AVIATION REGULATION <the pilot violated several FARs before the crash>.

farley (fahr-lee). *Hist.* Money paid by a tenant in lieu of a chattel (or *heriot*). ● The term invariably referred to a tenant in the west of England. See HERIOT.

farm, n. **1.** Land and connected buildings used for agricultural purposes. **2.** *Hist. Rent.* ● By extension, the term came to mean the land for which the rent was paid. — Also termed and spelled *ferm*; *farm*; *firme*.

farm, vb. **1.** To cultivate land; to conduct the business of farming. **2.** To lease. See FARM OUT.

Farm Credit Administration. The federal agency responsible for supervising the federal farm-credit system. — *Abbr.* FCA. See FEDERAL FARM CREDIT SYSTEM.

farmee. See FARMOUTEE.

farmer. A person engaged in the business of farming.

family farmer. A person or entity whose income and debts primarily arise from a family-owned and-operated farm; esp., person who received more than 80% of gross income from a farm in the taxable year immediately preceding a Chapter 12 filing. • Only a family farmer can file for Chapter 12 bankruptcy. 11 USCA § 101(18). See CHAPTER 12.

farmer bankruptcy. See CHAPTER 12.

Farmers Home Administration. A division of the U.S. Department of Agriculture that makes mortgage loans to farmers, issues home-mortgage insurance, and funds public-works programs in rural areas and small towns. — Abbr. FmHA; FHA.

farminee. See FARMOUTEE.

farming operation. *Bankruptcy.* A business engaged in farming, tillage of soil, dairy farming, ranching, raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state. 11 USCA § 101(21). See CHAPTER 12.

farminor. See FARMOUTOR.

farm let, vb. Hist. To lease; to let land for rent. • *To farm let* is a phrasal verb that commonly appeared in real-property leases; it corresponds with its Latin root, *ad firmam tradidi*.

“A lease is properly a conveyance of any lands or tenements, (usually in consideration of rent or other annual recompense) made for life, for years, or at will, but always for a *less* time than the lessor hath in the premises: for if it be for the *whole* interest, it is more properly an assignment than a lease. The usual words of operation in it are, ‘demise, grant, and to farm let; *dimisi, concessi, et ad firmam tradidi.*’” 2 William Blackstone, *Commentaries on the Laws of England* 317–18 (1766).

farmor. See FARMOUTOR.

farm out, vb. 1. To turn over something (such as an oil-and-gas lease) for performance by another. • The term evolved from the Roman practice of transferring the right to collect taxes to a third party for a fee. It was later practiced in England, Scotland, and France but has been long abolished because the practice led to abuses. **2. Hist.** To lease for a term. **3.** To exhaust farmland, esp. by continuously raising a single crop.

farmout agreement, n. Oil & gas. A transaction in which the owner of an oil-and-gas lease

(the farmoutor) assigns the lease to another (the farmoutee), who agrees to drill a well on the lease. • The farmoutor usu. retains an overriding royalty interest in the lease. — Often shortened to *farmout*. — Also written *farm out agreement*; *farm-out agreement*. See ASSIGNMENT.

farmoutee (fahrm-ow-tee). An oil-and-gas sublessee to whom the lease is assigned for purposes of drilling a well. — Also termed *farmee*; *farminee*.

farmoutor (fahrm-ow-tor or -tər). An oil-and-gas lessee who assigns the lease to another, who agrees to drill a well. — Also spelled *farmouter*. — Also termed *farmor*; *farminor*.

farm products. Crops, livestock, and supplies used or produced in farming or products of crops or livestock in their unmanufactured states, if they are in the possession of a debtor engaged in farming. UCC § 9–109(3). Cf. *growing crops* under CROPS.

farthing of land (fahr-thing). *Hist.* An area of land measured as one-quarter of a larger area (much as a farthing was one-quarter of a penny). • A farthing of land ranged from a quarter of a hide to a quarter of an acre.

farvand (fahr-vənd). *Hist. Maritime law.* Voyage or passage by water under a charterparty.

F.A.S. abbr. FREE ALONGSIDE SHIP.

fas (fas), n. [Latin] Roman law. 1. Moral law of divine origin; divine law. • *Jus*, by contrast, is created by man. See *JUS*.

“The first element to be noted in the Roman composite existing in primitive times, when religion and law were not distinguished, is *fas* — the will of the gods, embodied in rules that regulated not only ceremonials but the conduct of all men as such.” Hannis Taylor, *The Science of Jurisprudence* 65 (1908).

“It is true that the two spheres of *ius* and *fas* overlapped. . . . All this, however, concerned merely the question of where to draw the line between *ius* and *fas*; it did not blur the distinction between the two. From the standpoint of the history of Roman law, this distinction, consciously made from very early times, was of great importance, since it enabled the Romans to delimit the scope and the contents of strictly legal rules. This attitude may occasionally have caused a certain cold aloofness from purely human problems, but it undoubtedly contributed to the clarity of the legal system.” Hans Julius Wolff, *Roman Law: An Historical Introduction* 51–52 (1951).

2. What is right, proper, lawful, and permitted.

FASB (faz-bee). *abbr.* FINANCIAL ACCOUNTING STANDARDS BOARD.

FASB statement. An official pronouncement from the Financial Accounting Standards Board establishing a given financial-accounting practice as acceptable.

fast estate. See *real property* under PROPERTY.

fasti (fas-ti). [Latin] *Roman law*. **1.** The days on which court can be held. • In this sense, *fasti* is a shortened form of *dies fasti*. **2.** A calendar of days on which court can be held. See *dies fasti* under DIES.

fast land. See LAND.

fast-tracking, *n.* A court's method of accelerating the disposition of cases in an effort to clear its docket. • For example, a judge might order that all discovery must be finished within 90 days, and that trial is set for 30 days later. — **fast-track**, *vb.* See ROCKET DOCKET.

fatal, *adj.* **1.** Of or relating to death <the decision had fatal consequences>. **2.** Providing grounds for legal invalidity <a fatal defect in the contract>.

fatal defect. See DEFECT.

fatal error. See ERROR.

fatal variance. See VARIANCE (1).

father. The male parent. See PARENT.

adoptive father. See *adoptive parent* under PARENT.

biological father. See *natural father*.

foster father. See *foster parent* under PARENT.

legal father. The man recognized by law as the male parent of a child. • A man is the legal father of a child if he was married to the child's natural mother when the child was born, if he has recognized or acknowledged the child, or if he has been declared the child's natural father in a paternity action.

natural father. The man who impregnated the child's natural mother. — Also termed *biological father*.

presumed father. The man presumed to be the father of a child for any of several reasons: (1) because he was married to the child's natural mother when the child was

conceived or born, (2) because the child was conceived or born during an invalid marriage, (3) because the man married the mother after the child's birth and agreed either to have his name on the birth certificate or to support the child, or (4) because the man welcomed the child into his home and held out the child as his own.

putative father (pyoo-tə-tiv). The alleged biological father of a child born out of wedlock.

stepfather. See STEPFATHER.

Fatico hearing (fat-ə-koh). *Criminal procedure.* A sentencing hearing at which the prosecution and the defense may present evidence about what the defendant's sentence should be. *United States v. Fatico*, 603 F.2d 1053 (2d Cir. 1979).

fatuum iudicium (fach-oo-əm joo-dish-ee-əm). [Latin] A foolish judgment or verdict.

fault. An error or defect of judgment or of conduct; any deviation from prudence or duty resulting from inattention, incapacity, perversity, bad faith, or mismanagement. See NEGLIGENCE. Cf. LIABILITY.

fault-first method. A means by which to apply a settlement credit to a jury verdict, by first reducing the amount of the verdict by the percentage of the plaintiff's comparative fault, then subtracting from the remainder the amount of any settlements the plaintiff has received on the claim. See SETTLEMENT CREDIT. Cf. SETTLEMENT-FIRST METHOD.

fault of omission. Negligence resulting from a negative act. See *negative act* under ACT (2).

Fauntleroy doctrine. The principle that a state must give full faith and credit to another state's judgment, if the other state had proper jurisdiction, even though the judgment is based on a claim that is illegal in the state in which enforcement is sought. *Fauntleroy v. Lum*, 210 U.S. 230, 28 S.Ct. 641 (1908).

fautor (faw-tər). *Hist.* **1.** An abettor or supporter; an active partisan. **2.** A person who encourages resistance to execution of process.

faux (foh), *adj.* [Law French] *Hist.* False or counterfeit.

faux (foh), *n.* [French “false”] *Civil law.* The fraudulent alteration of the truth. See CRIMEN FALSI.

faux action. A false action. See PLEADING.

faux money. Counterfeit money.

faux peys (foh pay). False weights. See FALSE WEIGHT.

faux serement (foh ser-mahn). A false oath.

favor, n. See BIAS.

favored beneficiary. *Wills & estates.* A beneficiary who receives more willed property than others having equal claims to the property, raising a presumption of the beneficiary’s undue influence over the testator. See UNDUE INFLUENCE.

favored nation. See MOST FAVORED NATION.

favored-nation clause. See MOST-FAVORED-NATION CLAUSE.

favorite of the law. A person or status entitled to generous and preferential treatment in legal doctrine.

“It has long been said that the surety is a favorite of the law and his contract strictissimi-juris.” Laurence P. Simpson, *Handbook on the Law of Suretyship* 94 (1950).

favoritism. Preference or selection, usu. invidious, based on factors other than merit. See NEPOTISM; PATRONAGE. Cf. DISCRIMINATION (2).

favor legitimacionis (fay-vər lə-jit-ə-may-shee-oh-nis). [Latin “(in) favor of legitimacy”] The principle that a court should attempt to uphold a child’s legitimacy.

favor matrimonii (fay-vər ma-trə-moh-nee-i). [Latin “(in) favor of marriage”] The principle that a court should attempt to uphold the validity of a marriage.

favor negotii (fay-vər ni-goh-shee-i). [Latin “(in) favor of business”] The principle that favors upholding a contract against a construction that would render the contract illegal or unenforceable.

favor paternitatis (fay-vər pə-tər-nə-tay-tis). [Latin “(in) favor of paternity”] The principle that facts will be interpreted so as to uphold the paternity of a child.

favor solutionis (fay-vər sə-loo-shee-oh-nis). [Latin “(in) favor of payment”] *Conflict of laws.* The principle that a contract should be interpreted according to the applicable law governing performance.

favor testamenti (fay-vər tes-tə-men-ti). [Latin “(in) favor of the testament”] The principle that a court should attempt to uphold a will’s validity.

fax, n. **1.** A method of transmitting over telephone lines an exact copy of a printing. **2.** A machine used for such transmission. — Also termed *telecopier*. **3.** The communication sent or received by such a machine. — Also termed *facsimile*; (in senses 1 & 3) *facsimile transmission*. — **fax, vb.**

FBI. abbr. FEDERAL BUREAU OF INVESTIGATION.

FCA. abbr. FARM CREDIT ADMINISTRATION.

F. Cas. abbr. Federal Cases, a series of reported decisions (1789–1880) predating the Federal Reporter.

FCC. abbr. FEDERAL COMMUNICATIONS COMMISSION.

FCJ. abbr. A failure to comply with a judgment imposed for a traffic violation. ● The defendant’s driver’s license is suspended until the FCJ is remedied and the fines and fees are paid.

FCPV. abbr. A failure to comply with parking-violation tickets. ● If a person has a certain number of unpaid parking tickets (often six) within a jurisdiction, the secretary of state will prohibit that person’s obtaining or renewing a driver’s license.

FDA. abbr. FOOD AND DRUG ADMINISTRATION.

f/d/b/a. abbr. Formerly doing business as.

FDIC. abbr. FEDERAL DEPOSIT INSURANCE CORPORATION.

feal (fee-əl), *adj.* *Archaic.* Faithful; truthful. — Also termed *fele*.

fealty (feel-tee or fee-əl-tee). *Hist.* In feudal law, the allegiance that a tenant or vassal owes to a lord. — Also termed *feodality*.

"*Fealty* was the oath by which he swore faithfully to perform the feudal obligations to his lord." Peter Butt, *Land Law* 47 (2d ed. 1988).

fearm. See FARM.

feasance (*fee-zənts*), *n.* The doing or execution of an act, condition, or obligation. — **feasor**, *n.* Cf. MALFEASANCE; MISFEASANCE; NONFEASANCE.

feasant (*fez-ənt or fee-zənt*). *Archaic.* Doing or causing. See DAMAGE FEASANT.

feasibility standard. *Bankruptcy.* The requirement that, to obtain bankruptcy-court approval, a Chapter 11 reorganization plan must be workable and have a reasonable likelihood of success.

feasor (*fee-zər*), *n.* An actor; a person who commits an act. See TORTFEASOR.

feast, *n.* **1. Roman law.** An established holiday or festival in the ecclesiastical calendar, used as the date of a legal instrument. **2. Hist.** One of four principal days (feasts) of the year: March 25, the annunciation of the Virgin Mary; June 24, the birth of John the Baptist; September 28, the feast of St. Michael the Archangel; and December 21, the feast of St. Thomas the Apostle. • The four feast days were used as fixed dates (called "quarter-days") for paying rent; before 1875, they were used as a reference point to set terms of courts. — Also termed *feast day*; *feast-day*.

featherbedding. A union practice designed to increase employment and guarantee job security by requiring employers to hire or retain more employees than are needed. • The practice stems from employees' desire for job security in the face of technological improvement. Featherbedding is restricted by federal law but is an unfair labor practice only if, for example, a union exacts pay from an employer for services not performed or not to be performed.

FECA. *abbr.* FEDERAL EMPLOYEES' COMPENSATION ACT.

feciales, *n.* See FETIALES.

facial law. See FETIAL LAW.

Fed. *abbr.* **1.** FEDERAL. **2.** FEDERAL RESERVE SYSTEM.

Fed. Cir. *abbr.* UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT.

federal, *adj.* Of or relating to a system of associated governments with a vertical division of governments into national and regional components having different responsibilities; esp., of or relating to the national government of the United States. — *Abbr.* Fed.

Federal Acquisition Regulation. (*usu. pl.*) A federal regulation that governs contracting methods, requirements, and procedures with the federal government. 48 CFR ch. 1. — Also termed *Federal Procurement Regulation*.

federal act. A statute enacted by the U.S. Congress. See FEDERAL LAW.

federal agency. See AGENCY (3).

Federal Aviation Act. A federal law establishing the Federal Aviation Agency (FAA) to be responsible for regulation of aircraft and air travel, including aircraft safety, certification of aircraft personnel, and airport development. 49 USCA §§ 44720 et seq.

Federal Aviation Administration. The federal agency charged with regulating air commerce, advancing aviation safety, promoting civil aviation and a national system of airports, achieving efficient use of navigable airspace, developing and operating a common system of air-traffic control and air navigation, and developing and implementing programs and regulations relating to environmental effects of civil aviation. • It became a part of the Department of Transportation in 1967. — *Abbr.* FAA. — Formerly also termed *Federal Aviation Agency*.

Federal Aviation Regulation. (*usu. pl.*) A federal regulation governing the safety, maintenance, and piloting of civil aircraft. 14 CFR ch. 1. — *Abbr.* FAR.

Federal Bureau of Investigation. A division of the U.S. Department of Justice charged with investigating all violations of federal laws except those specifically assigned to another federal agency. — *Abbr.* FBI.

federal census. See CENSUS.

Federal Circuit. See COURT OF APPEALS FOR THE FEDERAL CIRCUIT.

federal citizen. See CITIZEN.

Federal Claims, U.S. Court of. See UNITED STATES COURT OF FEDERAL CLAIMS.

federal-comity doctrine. The principle requiring federal district courts to refrain from interfering in each other's affairs.

federal common law. The body of decisional law derived from federal courts adjudicating federal questions and other matters of federal concern, such as the law applying to disputes between two states, as well as federal foreign-relations law.

"Notwithstanding *Erie*, the federal common law still lives in a number of areas. In some, such as admiralty . . . the power to create common law has been inferred from a constitutional or statutory grant of jurisdiction, where a federal common law has appeared necessary to accomplish the purposes of the grant. In other cases, on more or less persuasive evidence, the [Supreme] Court has inferred implicit damage remedies on behalf of injured parties from federal statutes imposing duties for their protection, or has found an implicit congressional delegation of authority to make common law, as in actions on collective-bargaining agreements affecting commerce under the Taft-Hartley Act, § 301." David P. Currie, *Federal Jurisdiction in a Nutshell* 226 (3d ed. 1990).

Federal Communications Commission. The federal agency that regulates interstate and foreign communications by radio, television, telephone, and telegraph, and oversees radio and television broadcasting standards, cable-television operations, two-way-radio operators, and satellite communications. — Abbr. FCC.

federal court. See COURT.

federal crime. A criminal offense under a federal statute. • Most federal crimes are codified in Title 18 of the U.S. Code.

Federal Deposit Insurance Corporation. An independent governmental agency that insures bank deposits up to a statutory amount per depositor at each participating bank. • The insurance fund is financed by a premium paid by the participating banks. — Abbr. FDIC.

Federal Employees' Compensation Act. A workers'-compensation law for federal employees. 5 USCA §§ 8101-8152 — Abbr. FECA. See WORKERS' COMPENSATION.

Federal Employers' Liability Act. A workers'-compensation law that provides death and disability benefits for employees of railroads engaged in interstate and foreign commerce. 45 USCA §§ 51-60 — Abbr. FELA.

federal enclave. Territory or land that a state has ceded to the United States. • Examples of federal enclaves are military bases, national parks, federally administered highways, and federal Indian reservations. The U.S. government has exclusive authority and jurisdiction over federal enclaves.

Federal Energy Regulatory Commission. The agency responsible for administering the Natural Gas Act and the Natural Gas Policy Act. • The commission regulates, among other things, interstate oil-and-gas pipelines and some intrastate oil-and-gas operations. — Abbr. FERC. — Also formerly termed *Federal Power Commission*.

federal farm credit bank. One of a system of federally chartered institutions created to provide credit to farm-related activities. • The banks resulted from a merger of federal land banks and federal intermediate credit banks and are supervised by the Farm Credit Administration.

Federal Farm Credit Banks Funding Corporation. A federal corporation that manages the sale of federal farm-credit-system securities in the money and capital markets and also provides advisory services to banks in the federal farm credit system.

federal farm credit system. The national cooperative system of banks and associations providing credit to farmers, agricultural concerns, and related businesses. • The system consists of the banks for cooperatives, the farm credit banks, and the Federal Farm Credit Banks Funding Corporation. It is supervised by the Farm Credit Administration and was originally capitalized by the federal government. The system is now self-funding and owned by its member-borrowers.

federal government. See GOVERNMENT.

federal grand jury. See GRAND JURY.

Federal Home Loan Bank. One of a system (the federal home loan bank system) of 11 regional banks created in 1932 to supply credit for home mortgage lending by savings-and-loan institutions and to provide funds for low- to moderate-income housing programs. • The banks are supervised by the Federal Housing Finance Board. — Abbr. FHLB. — Sometimes shortened to *home loan bank*.

Federal Home Loan Bank Board. A federal agency responsible for regulating federal savings-and-loan associations and the federal home loan bank system. • It was abolished in 1989, when the Office of Thrift Supervision and the Federal Housing Finance Board assumed its functions. — Abbr. FHLBB.

Federal Home Loan Mortgage Corporation. A corporation that purchases both conventional and federally insured first mortgages from members of the Federal Reserve System and other approved banks. — Abbr. FHLMC. — Also termed *Freddie Mac*.

Federal Housing Administration. The HUD division that encourages mortgage lending by insuring mortgage loans on homes meeting the agency's standards. — Abbr. FHA. See HUD.

Federal Housing Finance Board. An independent agency that supervises the federal home-loan-bank system. • It is the successor agency to the Federal Home Loan Bank Board.

federal instrumentality, n. 1. A means or agency used by the national government. 2. A national agency immune from state control.

Federal Insurance Contributions Act. The federal act imposing the social-security tax on employers and employees. IRC (26 USCA) §§ 3101–3127. — Abbr. FICA.

federal intermediate credit bank. One of a system of twelve 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.

federalism. The relationship and distribution of power between the national and regional governments within a federal system of government. See OUR FEDERALISM.

Federalist Papers. A series of 85 essays written by Alexander Hamilton, John Jay, and James Madison (under the pseudonym Publius) expounding on and advocating the adoption of the U.S. Constitution. • Most of the essays were published in 1787 and 1788. — Also termed *The Federalist*.

Federalist Society. A national association of lawyers, law students, and others committed to conservative and libertarian viewpoints on political and social matters. • The group is based

in Washington, D.C. Cf. NATIONAL LAWYERS GUILD.

Federal Judicial Code. The portion (Title 28) of the U.S. Code dealing with the organization, jurisdiction, venue, and procedures of the federal court system, as well as court officers, personnel, and the Department of Justice.

federal jurisdiction. See JURISDICTION.

Federal Kidnapping Act. A federal law punishing kidnapping for ransom or reward when the victim is transported interstate or internationally. • The law presumes that a victim has been transported in violation of the law if the victim is not released within 24 hours. 18 USCA § 1201. — Also termed *Lindbergh Act*.

“The Federal Kidnapping Act was passed in 1932 to close a dangerous loophole between state and federal law. At that time, marauding bands of kidnapers were preying upon the wealthy with ruthless abandon, seizing their victims for ransom while operating outside the reach of existing state laws. Knowing that authorities in the victim's home state were powerless once a hostage was transported across state lines, the criminals would kidnap their target in one state, then move quickly to the next. In response, Congress made kidnapping a federal crime when the victim was moved from one state to another, and comprehensive language was used to cover every possible variety of kidnapping followed by interstate transportation.” 1 Am. Jur. 2d *Abduction and Kidnapping* § 14, at 185 (1994).

federal labor union. See UNION.

federal land bank. One of a system of twelve regional banks created in 1916 to provide mortgage loans to farmers. • The system is now merged with federal intermediate credit banks to create the federal farm-credit system.

federal law. The body of law consisting of the U.S. Constitution, federal statutes and regulations, U.S. treaties, and federal common law. Cf. STATE LAW.

federal magistrate. See UNITED STATES MAGISTRATE JUDGE.

Federal Maritime Commission. A federal agency that regulates the waterborne foreign and domestic commerce of the United States. — Abbr. FMC.

Federal Mediation and Conciliation Service. *Labor law.* An independent agency whose purpose is to prevent disruptions in the flow of interstate commerce caused by labor disputes

through the use of mediation, conciliation, and voluntary arbitration. — Abbr. FMCS.

Federal National Mortgage Association. A corporation that is chartered by the U.S. government but privately owned and managed, and that provides a secondary mortgage market for the purchase and sale of mortgages guaranteed by the Veterans Administration and those insured under the Federal Housing Administration. — Abbr. FNMA. — Also termed *Fannie Mae*.

Federal Power Commission. See FEDERAL ENERGY REGULATORY COMMISSION.

federal preemption. See PREEMPTION (5).

Federal Procurement Regulation. See FEDERAL ACQUISITION REGULATION.

federal question. A legal issue involving the interpretation and application of the U.S. Constitution, an act of Congress, or a treaty. ● Jurisdiction over federal questions rests with the federal courts. 28 USCA § 1331.

federal-question jurisdiction. See JURISDICTION.

Federal Register. A daily publication in which U.S. administrative agencies publish their regulations, including proposed regulations for public comment. — Abbr. Fed. Reg.

federal regulations. See CODE OF FEDERAL REGULATIONS.

Federal Reporter. See F. (1).

Federal Reporter Second Series. See F.2D.

Federal Reporter Third Series. See F.3D.

Federal Reserve Board of Governors. The board that supervises the Federal Reserve System and sets national monetary and credit policy. ● The Board consists of seven members appointed by the President and confirmed by the Senate for 14-year terms. — Abbr. FRB.

federal reserve note. The paper currency in circulation in the United States. ● The notes are issued by the Federal Reserve Banks, are effectively non-interest-bearing promissory notes payable to bearer on demand, and are issued in denominations of \$1, \$5, \$10, \$20, \$50, \$100, \$500, \$1,000, \$5,000, and \$10,000.

Federal Reserve System. A network of 12 central banks supervised by the Board of Governors, who are appointed by the President and confirmed by the Senate and who set the reserve requirements for the member banks, review the discount-rate actions of the regional Federal Reserve banks, and set ceilings on the interest rates that member banks may pay. — Abbr. Fed.

“The Federal Reserve System of 1913 evolved out of a search for consensus among bankers, politicians, and some academic experts. It was a move toward ‘central bank’ regulation in the European sense . . . [The System] seemed to resolve the outstanding problems in money and banking. Federal Reserve banknotes could grow with expanding commercial paper and economic prosperity, and assure a more adequate, reliable monetary growth.” William A. Lovett, *Banking and Financial Institutions Law in a Nutshell* 14–15 (1997).

Federal Rules Act. A 1934 statute granting the U.S. Supreme Court the authority to adopt rules of civil procedure for federal courts. ● For the rulemaking power of federal courts today, see 28 USCA §§ 2071, 2072.

Federal Rules Decisions. See F.R.D.

Federal Rules of Appellate Procedure. The rules governing appeals to the U.S. courts of appeals from lower courts, some federal-agency proceedings, and applications for writs. — Abbr. Fed. R. App. P.; FRAP.

Federal Rules of Bankruptcy Procedure. The rules governing proceedings instituted under the Bankruptcy Code. — Abbr. Fed. R. Bankr. P.

Federal Rules of Civil Procedure. The rules governing civil actions in the U.S. district courts. — Abbr. Fed. R. Civ. P.; FRCP.

Federal Rules of Criminal Procedure. The rules governing criminal proceedings in the U.S. district courts. — Abbr. Fed. R. Crim. P.

Federal Rules of Evidence. The rules governing the admissibility of evidence at trials in federal courts. — Abbr. Fed. R. Evid.; FRE.

Federal Savings and Loan Insurance Corporation. A federal agency created in 1934 to insure deposits in savings-and-loan associations and savings banks. ● When this agency became insolvent in 1989, its assets and liabilities were transferred to an insurance fund managed by the FDIC. — Abbr. FSLIC. See RESOLUTION TRUST CORPORATION.

federal state. See STATE (1).

federal statute. See FEDERAL ACT.

Federal Supplement. See F.SUPP.

Federal Supplement 2d. See F.SUPP.2D.

Federal Tort Claims Act. A statute that limits federal sovereign immunity and allows recovery in federal court for tort damages caused by federal employees, but only if the law of the state where the injury occurred would hold a private person liable for the injury. 28 USCA §§ 2671–2680 — Abbr. FTCA. See *sovereign immunity* under IMMUNITY.

“Although it has been suggested that the maxim, ‘the King can do no wrong’ never had an existence in the United States, it has also been declared that in enacting the Federal Tort Claims Act, Congress recognized the manifold injustice that springs from the delimiting effect of the rule represented by that maxim. And it is said that in passing the Act, Congress intended to compensate the victims of negligence in the conduct of governmental activities in circumstances in which a private person would be liable, rather than leave just treatment to the caprice and legislative burden of individual private laws, and to eliminate the burden on Congress of investigating and passing on private bills seeking individual relief.” 35 Am. Jur. 2d *Federal Tort Claims Act* § 1, at 296 (1967).

Federal Trade Commission. The independent regulatory agency created in 1914 to enforce the antitrust laws and other prohibitions against false, deceptive, and unfair advertising or trade practices. — Abbr. FTC.

federal transfer. The federal district court’s right to move a civil action filed there to any other district or division where the plaintiff could have brought the action originally. 28 USCA § 1404(a). See CHANGE OF VENUE.

federation. A league or union of states, groups, or peoples arranged with a strong central authority and limited regional sovereignties — though the individual states, groups, or peoples may retain rights of varying degrees. Cf. CONFEDERATION.

Fed. R. App. P. abbr. FEDERAL RULES OF APPELLATE PROCEDURE.

Fed. R. Bankr. P. abbr. FEDERAL RULES OF BANKRUPTCY PROCEDURE.

Fed. R. Civ. P. abbr. FEDERAL RULES OF CIVIL PROCEDURE.

Fed. R. Crim. P. abbr. FEDERAL RULES OF CRIMINAL PROCEDURE.

Fed. Reg. abbr. FEDERAL REGISTER.

Fed. R. Evid. abbr. FEDERAL RULES OF EVIDENCE.

fee. 1. A charge for labor or services, esp. professional services.

attorney’s fees. See ATTORNEY’S FEES.

contingent fee. See CONTINGENT FEE.

docket fee. A fee charged by a court for filing a claim.

expert-witness fee. A fee paid for the professional services of an expert witness.

franchise fee. 1. A fee paid by a franchisee to a franchisor for franchise rights. ● Franchise fees are regulated by state laws. **2.** A fee paid to the government for a government grant of a franchise, such as the one required for operating a radio or television station.

jury fee. A fee, usu. a minimal one, that a party must pay the court clerk to be entitled to a jury trial.

maintenance fee. A fee to pay for the service of reinvesting earnings and dividends in mutual funds.

management fee. A fee charged by an investment manager for supervisory services.

origination fee. A fee charged by a lender for preparing and processing a loan.

witness fee. 1. A statutory fee that must be tendered with a subpoena for the subpoena to be binding. **2.** A fee paid by a party to a witness as reimbursement for reasonable expenses (such as travel, meals, lodging, and loss of time) incurred as a result of the witness’s having to attend trial and testify. ● Any other payment to a witness is considered unethical.

2. An inheritable interest in land, constituting maximal legal ownership; esp., a fee simple absolute. — Also termed *fee estate*; *feod*; *feodum*; *feud*; *feudum*; *fief*. See FEE SIMPLE.

“To *enfeoff* someone was to transfer to him an interest in land called a *fief* — or, if you prefer, a *feoff*, *feod*, or *feud*. Our modern word *fee*, a direct lineal descendant of *fief*, implies the characteristic of potentially infinite duration when used to describe an interest in land today; but in the earliest part of the feudal period, a *fief* might have been as small as a life interest. We shall see later that *feoffment* was *not* used to transfer interests ‘smaller’ than life interests — e.g., so-called *terms for years* — but for our purposes now we may simply note that transfers of interests for life or ‘larger’ were accomplished by livery of seisin.” Thomas F. Bergin & Paul G. Haskell,

Preface to Estates in Land and Future Interests 11 (2d ed. 1984).

arriere fee (ar-ee-air or ar-ee-er). *Hist.* A fee dependent on a superior one; a subfief. — Also termed *arriere fief*.

base fee. A fee that has some qualification connected to it and that terminates whenever the qualification terminates. • An example of the words creating a base fee are “to A and his heirs, tenants of the manor of Tinsleydale,” which would terminate when A or his heirs are no longer tenants of the manor of Tinsleydale. Among the base fees at common law are the fee simple subject to a condition subsequent and the conditional fee. — Also termed *determinable fee*; *qualified fee*; *limited fee*. See *fee simple determinable* under FEE SIMPLE.

fee expectant. *Rare.* A fee tail created when land is given to a man and wife and the heirs of their bodies. See FRANKMARRIAGE.

fee simple. See FEE SIMPLE.

fee tail. See FEE TAIL.

great fee. *Hist.* In feudal law, a fee held directly from the Crown.

knight's fee. See KNIGHT'S FEE.

lay fee. *Hist.* A fee estate in land held by ordinary feudal tenure, such as socage, rather than by ecclesiastical tenure through frankalmoin. See FRANKALMOIN; SOGAGE.

plowman's fee. *Hist.* A species of tenure for peasants or small farmers by which the land descended in equal shares to all the tenant's sons.

quasi-fee. *Hist.* An estate in fee acquired wrongfully.

fee damages. See DAMAGES.

feeder organization. *Tax.* An entity that conducts a business or trade for the benefit of a tax-exempt organization. • The feeder organization is not tax-exempt. IRC (26 USCA) § 502.

fee estate. See FEE (2).

fee farm. *Hist.* A species of tenure in which land is held in perpetuity at a yearly rent (fee-farm rent), without fealty, homage, or other services than those in the feoffment. — Also termed *feodi firma*; *firma feodi*. See EMPHYTEUSIS.

“Now to all appearance the term *socage*, a term not found in Normandy, has been extending itself upwards; a name appropriate to a class of cultivating peasants has begun to include the baron or prelate who holds land at a rent but is not burdened with military service. . . . He is

sometimes said to have *feodum censuale*; far more commonly he is said to hold ‘in fee farm.’ This term has difficulties of its own, for it appears in many different guises; a feoffee is to hold in *feofirma*, in *feufirmam*, in *fedfirmam*, in *feudo firmam*, in *feudo firma*, *ad firmam feodalem*, but most commonly, in *feodi firma*. The Old English language had both of the words of which this term is compounded, both *feoh* (property) and *feorm* (rent); but so had the language of France, and in Norman documents the term may be found in various shapes, *firmam fedium*, *feudifirmam*. But, whatever may be the precise history of the phrase, to hold in fee farm means to hold heritably, perpetually, at a rent; the fee, the inheritance, is let to farm.” 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 293 (2d ed. 1899).

fee-farm rent. **1.** The rent reserved, usu. one-fourth or one-third of the land's value, on granting a fee farm. **2.** A rent charge issuing out of a fee estate. **3.** A perpetual rent on a conveyance in fee simple.

fee interest. See FEE; FEE SIMPLE; FEE TAIL.

feemail (fee-mayl). *Slang.* **1.** An attorney's fee extorted by intimidation, threats, or pressure. **2.** The act or process of extorting such a fee. Cf. BLACKMAIL; GRAYMAIL; GREENMAIL.

fee sharing. See FEE SPLITTING.

fee simple. An interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs; esp., a fee simple absolute. — Often shortened to *fee*. — Also termed *estate in fee simple*; *fee-simple title*.

“[*Fee simple*] is a term not likely to be found in modern conversation between laymen, who would in all probability find it quite unintelligible. Yet to a layman of the 14th century the term would have been perfectly intelligible, for it refers to the elementary social relationship of feudalism with which he was fully familiar: the words ‘fee’ and ‘feudal’ are closely related. . . . The estate in fee simple is the largest estate known to the law, ownership of such an estate being the nearest approach to ownership of the land itself which is consonant with the feudal principle of tenure. It is ‘the most comprehensive estate in land which the law recognises’; it is the ‘most extensive in quantum, and the most absolute in respect to the rights which it confers, of all estates known to the law’. Traditionally, the fee simple has two distinguishing features: first, the owner (‘tenant’ in fee simple) has the power to dispose of the fee simple, either inter vivos or by will; second, on intestacy the fee simple descends, in the absence of lineal heirs, to collateral heirs — to a brother, for example, if there is no issue.” Peter Butt, *Land Law* 35 (2d ed. 1988).

fee simple absolute. An estate of indefinite or potentially infinite duration (e.g., “to Al-

bert and his heirs"). — Often shortened to *fee simple* or *fee*.

"Although it is probably good practice to use the word 'absolute' whenever one is referring to an estate in fee simple that is free of special limitation, condition subsequent, or executory limitation, lawyers frequently refer to such an estate as a 'fee simple' or even as a 'fee.'" Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 24 (2d ed. 1984).

fee simple conditional. An estate restricted to some specified heirs, exclusive of others (e.g., "to Albert and his female heirs"). • The fee simple conditional is obsolete except in Iowa, Oregon, and South Carolina. — Also termed *general fee conditional*.

"The reader should be careful not to confuse this estate with estates having similar labels, such as the 'estate in fee simple subject to a condition subsequent'" Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 29 n.19 (2d ed. 1984).

fee simple defeasible (di-fee-zə-bəl). An estate that ends either because there are no more heirs of the person to whom it is granted or because a special limitation, condition subsequent, or executory limitation takes effect before the line of heirs runs out. — Also termed *qualified fee*.

fee simple determinable. An estate that will automatically end and revert to the grantor if some specified event occurs (e.g., "to Albert and his heirs while the property is used for charitable purposes"). • The future interest retained by the grantor is called a *possibility of reverter*. — Also termed *determinable fee*; *qualified fee*; *fee simple subject to common-law limitation*; *fee simple subject to special limitation*; *fee simple subject to special interest*; *base fee*; *estate on limitation*.

fee simple subject to a condition subsequent. An estate subject to the grantor's power to end the estate if some specified event happens (e.g., "to Albert and his heirs, upon condition that no alcohol is sold on the premises"). • The future interest retained by the grantor is called a *power of termination* (or a *right of entry*). — Also termed *fee simple on a condition subsequent*; *fee simple subject to a power of termination*; *fee simple upon condition*.

fee simple subject to an executory limitation. A fee simple defeasible that is subject to divestment in favor of someone other than the grantor if a specified event happens (e.g., "to Albert and his heirs, but if the property is ever used as a parking lot, then to Bob"). — Also termed *fee simple subject to an executory interest*.

fee simple subject to a power of termination. See *fee simple subject to a condition subsequent*.

fee simple subject to common-law limitation. See *fee simple determinable*.

fee simple subject to special interest. See *fee simple determinable*.

fee simple subject to special limitation. See *fee simple determinable*.

fee simple upon condition. See *fee simple subject to a condition subsequent*.

fee-splitting. 1. The division of attorney's fees between the lawyer who handles a matter and the lawyer who referred the matter. • Some states consider this practice unethical. **2.** The division of attorney's fees between two or more lawyers who represent a client jointly but are not in the same firm. • An attorney is prohibited from splitting a fee with a nonlawyer. — Also termed *fee sharing*.

fee statement. A lawyer's bill for services either already rendered or to be rendered, usu. including itemized expenses.

fee tail. An estate that is inheritable only by specified descendants of the original grantee, and that endures until its current holder dies without issue (e.g., "to Albert and the heirs of his body"). • Most jurisdictions — except Delaware, Maine, Massachusetts, and Rhode Island — have abolished the fee tail. — Also termed *entailed estate*; *estate tail*; *tenancy in tail*; *entail*; *feodum talliatum*. See ENTAIL; TAIL.

"The name fee tail comes from the French *tailler* (to carve) and probably meant that the grantor was able to carve a fee to his exact prescription. This carving could be carried to great lengths and the land could be limited to male descendants generally — fee tail male general; to female issue — fee tail female; or to issue of a specific wife — fee tail special. In the latter case, if the specified wife died, the holder of the estate was said to have a fee tail with possibility of issue extinct — a type of life estate." John E. Cribbet, *Principles of the Law of Property* 47 (2d ed. 1975).

"If we cannot resist the temptation to say that *De Donis* permitted the creation of tailor-made estates, we can at least argue that it is not a pun. Our word 'tailor' and the word 'tail,' as used in 'fee tail,' come from the same source — the French *tailler*, to cut. The word 'tail' in 'fee tail' has nothing to do with that which wags the dog. The estate in fee tail was a *cut* estate — either cut in the sense that the collateral heirs were cut out, or cut in the sense that the estate was carved into a series of discrete life-possession periods to be enjoyed successively by A and his lineal heirs. . . . We know of no state in the United States that recognizes the estate in fee tail in its strict 1285-1472 form. Wherever it is recognized, the tenant in tail in possession may disentail it by simple

deed. In a number of states, the estate in fee tail has been abolished." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 30, 32 (2d ed. 1984).

feign (fayn), *vb.* To make up or fabricate; to make a false show of <he feigned an illness>.

feigned, *adj.* Pretended; simulated; fictitious.

feigned accomplice. See INFORMANT.

feigned action. *Hist.* An action brought for an illegal purpose on a pretended right. — Also termed *faint action*; *false action*.

feigned issue. *Hist.* A proceeding in which the parties, by consent, have an issue tried by a jury without actually bringing a formal action. • The proceeding was done when a court either lacked jurisdiction or was unwilling to decide the issue. — Also termed *fictitious issue*.

"The chancellor's decree is either *interlocutory* or *final*. It very seldom happens that the first decree can be final, or conclude the cause; for, if any matter of fact is strongly controverted, this court is so sensible of the deficiency of trial by written depositions, that it will not bind the parties thereby, but usually directs the matter to be tried by jury. . . . But, as no jury can be summoned to attend this court, the fact is usually directed to be tried at the bar of the court of king's bench or at the assises, upon a *feigned issue*. For, (in order to bring it there, and have the point in dispute, and that only, put in issue) an action is feigned to be brought, wherein the pretended plaintiff declares that he laid a wager of 5*l.* with the defendant that A was heir at law to B; and then avers that he is so; and therefore demands the 5*l.* The defendant allows the wager, but avers that A is not the heir to B; and thereupon the issue is joined. . . . These feigned issues seem borrowed from the *sponsio judicialis* of the Romans: and are also frequently used in the courts of law, by consent of the parties, to determine some disputed rights without the formality of pleading. . . ." 3 William Blackstone, *Commentaries on the Laws of England* 452 (1768).

feigned recovery. See COMMON RECOVERY.

FELA (fee-lə). *abbr.* FEDERAL EMPLOYERS' LIABILITY ACT.

fele (feel). [Law French] See FEAL.

fellow, *n.* **1.** One joined with another in some legal status or relation. **2.** A member of a college, board, corporate body, or other organization.

fellow-officer rule. *Criminal procedure.* The principle that an arrest is valid if the arresting law-enforcement officer lacks personal knowl-

edge to establish probable cause for the arrest but acts upon the knowledge of another officer and the collective knowledge of the law-enforcement office. • This knowledge, which may constitute probable cause, is imputed to the arresting officer. — Also termed *Whiteley rule*.

fellow servant. A coworker; a person who works for the same employer.

superior fellow servant. A worker that has the power of control or direction over a coworker.

fellow-servant rule. A common-law doctrine holding that an employer is not liable for an employee's injuries caused by a negligent coworker. • This doctrine has generally been abrogated by workers'-compensation statutes. In some jurisdictions, employees were considered fellow servants when they were working with one aim or result in view. In others, the relation of fellow servant was tested by the "doctrine of vice principal," meaning that an employer is liable for injuries to an employee if they result from the negligence of another employee who is given power of control or direction over the injured employee. — Also termed *common-employment doctrine*.

"[T]here are numerous orthodox instances in history of the judge making a legal principle; for the bulk of the common law was 'made' by them, and the fellow-servant rule in employer's liability is a typical modern instance." John Henry Wigmore, *Problems of Law* 66 (1920).

felo de se (fee-loh or fel-oh dee see), *n.* See SUICIDE (2).

"'Felo de se,' or felon of himself is freely spoken of by the early writers as self-murder. Hence one who killed himself before he arrived at the age of discretion or while he was *non compos mentis*, was not a *felo de se*, or suicide. . . . [B]y the early common law suicide was a felony and was punished by ignominious burial and forfeiture of goods and chattels to the king." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 120 (3d ed. 1982).

felon, *n.* A person who has been convicted of a felony.

felonia (fə-loh-nee-ə). [Latin "felony"] *Hist.* An offense that results in a vassal's forfeiting his fee.

"The attempt to derive *felonia* from *fel* 'poison' is merely a folk etymology which came into vogue when 'felony' meant a serious crime, and differed from treason. The word was well established in Feudal Law as the characteristic offense against the Feudal relationship. It will hardly do, therefore, to try to determine its meaning merely by reference to English usage. . . ." Max Radin,

Handbook of Anglo-American Legal History 148 n.7 (1936).

felonious (fə-lōh-nee-əs), *adj.* **1.** Of, relating to, or involving a felony. **2.** Constituting or having the character of a felony. **3.** Proceeding from an evil heart or purpose; malicious; villainous.

felonious assault. See ASSAULT.

felonious homicide. See HOMICIDE.

felony, *n.* A serious crime usu. punishable by imprisonment for more than one year or by death. • Examples include murder, rape, arson, and burglary. At common law, a felony was an offense for which conviction involved the forfeiture of the defendant's lands or goods, or both, to the Crown. Treason was traditionally included in the term *felony*. — Also termed *major crime*; *serious crime*. Cf. MISDEMEANOR.

"Felony, in the general acceptance of our English law, comprizes every species of crime, which occasioned at common law the forfeiture of lands or goods." 4 William Blackstone, *Commentaries on the Laws of England* 94 (1769).

"Amongst indictable crimes, the common law singled out some as being so conspicuously heinous that a man adjudged guilty of any of them incurred — not as any express part of his sentence but as a consequence that necessarily ensued upon it — a forfeiture of property, whether of his lands or of his goods or of both (in the case of treason). Such crimes came to be called 'felonies.' The other, and lesser, crimes were known as 'transgressions' or 'trespasses,' and did not obtain their present name of misdemeanours until a much later date. A felony is, therefore, a crime which either involved by common law such a forfeiture, or else has been placed by statute on the footing of those crimes which did involve it." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 93 (16th ed. 1952).

treason felony. See TREASON FELONY.

felony de se. See SUICIDE.

felony murder. See MURDER.

felony-murder rule. The doctrine holding that any death resulting from the commission or attempted commission of a felony is murder. • Most states restrict this rule to inherently dangerous felonies such as rape, arson, robbery, and burglary. Cf. MISDEMEANOR-MANSLAUGHTER RULE.

"[I]t seems fair to suggest that the future of felony murder is uncertain. England, where the doctrine originated, has abolished it. The Model Penal Code recommends its abolition except for the purpose of creating a rebuttable presumption of malice for killings perpetrated during the course of a felony. Although most states have

not yet adopted this position, many of the judicial limitations on felony murder discussed above seem to insure that in many states it will be an unusual case in which one is convicted of felony murder, who absent this doctrine, would not have been convicted of murder." Arnold H. Loewy, *Criminal Law in a Nutshell* 46 (2d ed. 1987).

fem-crit. See CRIT.

feme (fem). [Law French] *Archaic.* **1.** A woman. **2.** A wife. — Also spelled *femme*.

feme covert (fem kəv-ərt). [Law French] *Archaic.* A married woman. See COVERTURE.

feme sole (fem sohl). [Law French] *Archaic.* **1.** An unmarried woman. **2.** A married woman handling the affairs of her separate estate. — Also termed *feme sole trader*.

femicide (fem-ə-sid). **1.** The killing of a woman. **2.** One who kills a woman.

feminist jurisprudence. See JURISPRUDENCE.

fence, *n.* **1.** A person who receives stolen goods.

"The receivers of stolen goods almost never 'know' that they have been stolen, in the sense that they could testify to it in a courtroom. The business could not be so conducted, for those who sell the goods — the 'fences' — must keep up a more respectable front than is generally possible for the thieves." *United States v. Werner*, 160 F.2d 438, 441-42 (2d Cir. 1947).

"The typical 'fence' takes over the stolen property and pays the thief a price. He purports to 'buy' the goods from the thief." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 395 (3d ed. 1982).

2. A place where stolen goods are sold. See RECEIVING STOLEN PROPERTY. **3.** LAWFUL FENCE.

fence, vb. To sell stolen property to a fence.

fence-month. *Hist.* The summer fawning season when it was unlawful to hunt deer. — Also termed *defense-month*.

fencing patent. See PATENT (3).

feneration (fen-ə-ray-shən). *Hist.* **1.** The act or practice of lending money with interest. **2.** USURY.

feod (fyood). See FEE; FEUD.

feodal (fyoo-dəl). See FEUDAL.

feodal action. See FEUDAL ACTION.

feodality (fyoo-dal-ə-tee). See FEALTY.

feodal system. See FEUDALISM.

feodarum consuetudines (fee-ə-dair-əm [or fyoo-dair-əm] kon-swə-t[y]oo-də-nee-z). See FEUDARAM CONSUETUDINES.

feodary (fyoo-də-ree). *Hist.* An officer of the Court of Wards who traveled with the escheator from county to county in order to receive royal rents and estimate the value of land tenures for the Crown. See COURT OF WARDS AND LIVERIES.

feodatory (fyoo-də-tor-ee). See FEUDATORY.

feodi firma (fee-ə-di or fyoo-di fər-mə). See FEE FARM.

feodi firmarius (fee-ə-di or fyoo-di fər-mair-ee-əs). *Hist.* The tenant of a fee farm.

feodum (fee-ə-dəm or fyoo-dəm). [Law Latin] *Hist.* **1.** A fee; an inheritable estate.

"Feodum . . . A fee; the same as *feudum*. This is the word uniformly employed by Glanville and Bracton to denote an estate of inheritance, and an estate held of another by service, instead of *feudum*, which is invariably used by the continental feudists." 1 Alexander M. Burrill, *A Law Dictionary and Glossary* 615 (2d ed. 1867).

2. Part of a lord's estate held by a tenant (i.e., a seignior). See SEIGNIORY (2). **3.** A payment for services rendered.

feodum antiquum. See *feudum antiquum* under FEUDUM.

feodum apertum. See *feudum apertum* under FEUDUM.

feodum laicum. See *feudum laicum* under FEUDUM.

feodum militis (fee-ə-dəm or fyoo-dəm mil-ə-tis). *Hist.* A knight's fee. — Also termed *feodum militare*.

feodum nobile (fee-ə-dəm or fyoo-dəm noh-bə-lee). See *feudum nobile* under FEUDUM.

feodum novum (fee-ə-dəm or fyoo-dəm noh-vəm). See *feudum novum* under FEUDUM.

feodum simplex (fee-ə-dəm or fyoo-dəm simpleks). A fee simple.

feodum talliatum (fee-ə-dəm or fyoo-dəm tal-ee-ay-təm). A fee tail. — Also spelled *feudum talliatum*.

feoff (fef or feef), *vb.* See ENFEOFF.

feoffamentum (fee-[ə]-fə-men-təm). [Law Latin] *Hist.* See FEOFFMENT.

feoffare (fee-[ə]-fair-ee), *vb.* [Law Latin] *Hist.* See ENFEOFF.

feoffator (fee-[ə]-fay-tər). [Law Latin] *Hist.* See FEOFFOR.

feoffatus (fee-[ə]-fay-təs). [Law Latin] *Hist.* See FEOFFEE.

feoffee (fef-ee or feef-ee). The transferee of an estate in fee simple; the recipient of a fief.

feoffee to uses. *Hist.* A person to whom land is conveyed for the use of a third party (called a *cestui que use*); one who holds legal title to land for the benefit of another. Cf. TRUSTEE. See CESTUI QUE USE; GRANT TO USES.

feoffment (fef-mənt or feef-mənt). *Hist.* **1.** The act of conveying a freehold estate; a grant of land in fee simple. — Also termed *feoffment with livery of seisin*.

feoffment to uses. An enfeoffment of land to one person for the use of a third party. ● The feoffee was bound in conscience to hold the land according to the prescribed use and could derive no benefit from the holding.

"Conveyances of freehold land could originally be made only by a feoffment with livery of seisin. This was a solemn ceremony carried out by the parties entering on the land, and the feoffor, in the presence of witnesses, delivering the seisin to the feoffee either by some symbolic act, such as handing him a twig or sod of earth, or by uttering some words such as 'Enter into this land and God give you joy' and leaving him in possession of the land." Robert E. Megarry & H.W.R. Wade, *The Law of Real Property* 47 (5th ed. 1984).

2. The land so granted. **3.** The charter that transfers the land. — Also termed *deed of feoffment*.

feoffment with livery of seisin. See FEOFFMENT (1).

feoffor (fef- or feef-ər or -or). The transferor of an estate in fee simple. — Also spelled *feoffer*.

feorme (fərm). *Hist.* A portion of the land's produce owed by the grantee to the lord according to the terms of a charter.

ferae bestiae (feer-ee bes-tee-ee), *n. (pl.)* [Latin] Wild beasts. • Under Roman law, since a wild animal belonged to no one (*res nullius*), it was owned by its captor. See RULE OF CAPTURE (2).

ferae naturae (feer-ee nə-tyoor-ee). [Latin “of a wild nature”] 1. *adj.* (Of animals) wild; untamed; undomesticated. 2. *n.* Wild animals. See RULE OF CAPTURE (2).

FERC (fərk). *abbr.* FEDERAL ENERGY REGULATORY COMMISSION.

ferdella terrae (fər-del-ə ter-ee). [Latin] *Hist.* 1. Ten acres of land. 2. A yard-land (twenty acres).

ferdfare (fərd-fair), *n.* [fr. Saxon *fird* “military service” + *fare* “a going”] *Hist.* 1. A summons to military service. 2. An exemption from military service. — Also spelled *firdfare*; *fyrdfare*.

ferdingus (fər-ding-gəs). *Hist.* A freeman of the lowest class.

Feres doctrine (feer-is or feer-eez or fer-ez). *Torts.* The rule that a member of the military is barred from recovering damages from the United States on a claim brought under the Federal Tort Claims Act for injuries sustained in military service. *Feres v. United States*, 340 U.S. 135, 71 S.Ct. 153 (1950). — Also termed *Feres rule*. See ACTIVITY INCIDENT TO SERVICE.

feria (feer-ee-ə), *n.* [Law Latin] *Hist.* 1. A weekday. 2. A holiday. 3. See *ferial day* under DAY. 4. A fair. 5. A ferry.

feriae (feer-ee-ī), *n. pl.* [Latin] *Roman law.* Religious and public holidays on which Romans suspended politics and lawsuits, and on which slaves enjoyed a partial break from labor.

ferial day. See DAY.

ferlingum. See FURLONG.

ferlingus. See FURLONG.

ferm. See FARM.

fermer. [Law French] *Hist.* 1. A lessee, esp. one who holds lands for agricultural purposes. 2. One who holds something (such as land or an incorporeal right) by the term.

ferriage (fer-ee-ij). *Hist.* The toll or fare paid for the transportation of persons or property on a ferry.

ferry, n. 1. A boat or vessel used to carry persons or property across water, usu. with fixed terminals and short distances. 2. The commercial transportation of persons or property across water. 3. The place where a ferry passes across water, including the continuation of the highway on both sides of the water. 4. The right, usu. exclusive, given by government franchise, to carry persons or property across water for a fee. — Also termed *ferry franchise*.

ferry, vb. To carry persons or property, usu. across water, for a fee.

ferry franchise. See FERRY (4).

fertile-octogenarian rule. The legal fiction, assumed under the rule against perpetuities, that a woman can become pregnant as long as she is alive. • The case that gave rise to this fiction was *Jee v. Audley*, 1 Cox 324, 29 Eng. Rep. 1186 (ch. 1787). See W. Barton Leach, *Perpetuities: New Hampshire Defertilizes Octogenarians*, 77 Harv. L. Rev. 729 (1963). — Also termed *presumption-of-fertility rule*.

“Suppose testator bequeaths in trust to pay the income to A for her life, then to pay the income to the children of A for their lives, and upon the death of the survivor of such children, to pay the principal to the grandchildren of A. At the time of the testator’s death A is 79 years old, and she has two children. Believe it or not, it has been held that the remainder to the grandchildren of A is violative of the rule against perpetuities and invalid. The law adopted the conclusive presumption that every person is capable of having children until the day he or she dies, as far as the rule against perpetuities is concerned. Consequently, A could have an additional child who would not be a life in being at the testator’s death, and that child could have a child who would be born beyond the permissible period. The result of this hypothesis is to invalidate the remainder to the grandchildren. This situation is sometimes referred to as the case of the ‘fertile octogenarian.’ Remember that the class gift is invalid if it is possible that the interest of any one member of the class can violate the rule.” Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 188 (2d ed. 1984).

festing-man. *Hist.* A bondsman; a surety. See FRANKPLEDGE.

festing-penny. *Hist.* Earnest, or payment, given to a servant when hired.

festinum remedium (fes-ti-nəm ri-mee-dee-əm). [Latin] *Hist.* A speedy remedy. • It was used in cases, such as actions for dower or

assize, where the redress of injury was given without unnecessary delay.

festuca (fes-tyoo-kə). *Hist.* A rod, staff, or stick used as a pledge (or *gage*) of good faith by a party to a contract or as a token of conveyance of land. — Also termed *fistuca*. See LIVERY OF SEISIN.

“The *wed* or *gage*, however, was capable of becoming a symbol; an object which intrinsically was of trifling value might be given and might serve to bind a contract. Among the Franks, whom we must regard as being for many purposes our ancestors in law, it took the shape of the *festuca*. Whether this transition from the ‘real’ to the ‘formal’ can be accomplished without the intervention of sacral ceremonies seems doubtful. There are some who regard the *festuca* as a stout staff which has taken the place of a spear and is a symbol of physical power. Others see in it a little bit of stick on which imprecatory runes have been cut. It is hard to decide such questions, for, especially under the influence of a new religion, symbols lose their old meanings and are mixed up. Popular etymology confounds confusion.” 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 186 (2d ed. 1899).

festum (fes-təm). [Latin] A feast-day, holiday, or festival.

fetiales (fee-shee-ay-leez), *n.* *Roman law.* The order of priests whose duties concerned international relations and treaties, including the declaration of war and peace. — Also spelled *feciales*.

fetial law (fee-shəl). *Roman law.* A branch of law concerned with matters (such as treaties, embassies, and war declarations) affecting relations between peoples or nations. — Also spelled *fecial law*. — Also termed *jus fetiale*.

feticide (fee-tə-sīd). The act or an instance of killing a fetus, usu. by assaulting and battering the mother; an intentionally induced miscarriage. — Also termed *child destruction*. Cf. INFANTICIDE (1).

fetter, *n.* (*usu. pl.*) A chain or shackle for the feet. — **fetter**, *vb.*

feud, *n.* *Hist.* 1. An inheritable estate in land conveyed from a feudal superior to a grantee or tenant, held on the condition of rendering services to the superior.

“It is believed that the forms *feud* and *fief* appear in England but late in the day under the influence of foreign books; they never became terms of our law. It is noticeable also that *feodum* was constantly used in the sense that our *fee* has when we speak of a lawyer’s or doctor’s *fee*; payments due for services rendered, at least if they are permanent periodic payments, are *feoda*; the

judges, for example, receive *feoda*, not salaries. The etymological problem presented by the English *fe* seems no easy one, because at the Conquest the would-be Latin *feodum* or *feudum* (the *d* in which has puzzled philologists and does not always appear in Domesday Book) is introduced among a people which already has *feoh* as a word for property in general and cattle in particular.” 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 236 n.2 (2d ed. 1899).

impartible feud. An indivisible feud; a feud not subject to partition. See FEUDUM INDIVIDUUM.

improper feud. A nonmilitary feud; a feud that is base or servile in nature.

“These were the principal, and very simple, qualities of the genuine or original feuds; being then all of a military nature, and in the hands of military persons: though the feudatories, being under frequent incapacities of cultivating and manuring their own lands, soon found it necessary to commit part of them to inferior tenants. . . . But this at the same time demolished the ancient simplicity of feuds; and an inroad being once made upon their constitution, it subjected them, in a course of time, to great varieties and innovations. Feuds came to be bought and sold, and deviations were made from the old fundamental rules of tenure and succession; which were held no longer sacred, when the feuds themselves no longer continued to be purely military. Hence these tenures began now to be divided into *feoda propria et impropria*, proper and improper feuds. . . .” 2 William Blackstone, *Commentaries on the Laws of England* 57–58 (1766).

proper feud. A feud based on military service.

2. The interest of the tenant in the land conveyed. 3. The land itself conveyed. — Also termed (in senses 1, 2 & 3) *fee*; *fief*; *feod*; *feude*; *feudum*. 4. An enmity or private war existing between families or clans, esp. as a result of a murder.

feudal, *adj.* 1. Of, relating to, or growing out of feudalism <feudal law>. 2. Of or relating to a feud <feudal tenure>. Cf. ALLODIAL.

feudal action. *Hist.* A real action; an action that concerned only real property.

feudalism (fyood-əl-iz-əm). 1. A landholding system, particularly applying to medieval Europe, in which all are bound by their status in a hierarchy of reciprocal obligations of service and defense. ● The lord was obligated to give the vassal (1) some land, (2) protection, and (3) justice. The lord guaranteed the quiet occupation of the land by the vassal and guaranteed to do right if the vassal became involved in a dispute. In return, the vassal owed the lord some type of service, called “tenure” (literally “means of holding”), because the different

types of service were the methods by which the vassals held the property. **2.** The social, political, and economic system of medieval Europe. — Also termed *feudal system*; *feodal system*.

“Modern historical research has taught us that, while it is a mistake to speak of a feudal *system*, the word ‘feudalism’ is a convenient way of referring to certain fundamental similarities which, in spite of large local variations, can be discerned in the social development of all the peoples of western Europe from about the ninth to the thirteenth centuries.” J.L. Brierly, *The Law of Nations* 2 (5th ed. 1955).

feudal law. *Hist.* The real-property law of land tenures that prevailed in England, esp. after the Norman Conquest. See FEUDARUM CONSUE-TUDINES.

feudal system. See FEUDALISM.

feodarum consuetudines (fee-ə-dair-əm [or fyoo-dair-əm] kon-swə-t[y]oo-də-nee-z). [Latin] The customs of feuds. • This was the name of a compilation of feudal laws and customs made in 12th-century Milan. • It is regarded as an authoritative work in continental Europe. — Also spelled *feodarum consuetudines*.

feudary. See FEUDATORY.

feudatory, adj. *Hist.* (Of a vassal) owing feudal allegiance to a lord.

feudatory, n. *Hist.* The grantee of a feud; the vassal or tenant who held an estate by feudal service. — Also termed *feudary*; *feodatory*.

“Every receiver of lands, or feudatory, was therefore bound, when called upon by his benefactor, or immediate lord of his feud or fee, to do all in his power to defend him.” 2 William Blackstone, *Commentaries on the Laws of England* 46 (1766).

feude. See FEUD.

feudist. A writer on feuds (for example, Cujacius, Spelman, Craig).

Feudorum Libri (fyoo-dor-əm li-brī). [Latin “the books of the feuds”] *Hist.* The Books of Feuds, a five-book compilation of Lombardic feudal law published in Milan around 1152, during the reign of Henry III. • This unofficial compilation was the main source of tenure law among the nations in Europe. It was widely used in medieval law schools and courts in Italy, France, and Germany. The *Feudorum Libri* were probably known in England but had little effect other than influencing English law-

yers to study their own tenure system more critically. — Also termed *Consuetudines Feodorum*; *Usus Feodorum*.

feudum (fyoo-dəm). [Law Latin] A fief or feud; a feodum. — Also termed *feodum*; *feum*. Pl. **feuda** (fyoo-də). See FEUD (1); FIEF; FEE (2).

“The Latin equivalent of *feodum* or *feudum* is the root of the words ‘feudal’ and ‘subinfeudation’. The French form *fief* is favoured by some English historians, but it was not used in law-French.” J.H. Baker, *An Introduction to English Legal History* 256 n.4 (3d ed. 1990).

feudum antiquum (fyoo-dəm an-ti-kwəm), *n.* [Law Latin “ancient feud”] *Hist.* **1.** A feud that passed to a vassal from an intestate ancestor. **2.** A feud that ancestors had possessed for more than four generations. **3.** An ancient feud. Pl. **feuda antiqua** (fyoo-də an-ti-kwə). — Also termed *feodum antiquum* (fee-ə-dəm or fyoo-dəm). See FEUD (1).

feudum apertum (fyoo-dəm ə-pər-təm). *Hist.* A feud that reverted to the lord because of a tenant’s failure of issue, a crime by the tenant, or some other legal cause. — Also termed *feodum apertum*.

feudum francum (fyoo-dəm frangk-əm). *Hist.* A free feud; a feud or fee that was noble and free from talliage and subsidies that vulgar feuds (*plebeia feuda*) were subject to.

feudum hauberticum (fyoo-dəm haw-bər-tə-kəm). *Hist.* A feud that was held on the military service of appearing fully armed when summoned by the lord. See ARRIERBAN.

feudum improprium (fyoo-dəm im-proh-pree-əm). *Hist.* A feud that was improper or derivative.

feudum individuum (fyoo-dəm in-də-vij-oo-əm). *Hist.* A feud that was indivisible and descendible only to the eldest son.

feudum laicum (fyoo-dəm lay-ə-kəm). *Hist.* A lay feud. — Also termed *feodum laicum*.

feudum ligium (fyoo-dəm lij-ee-əm). *Hist.* **1.** A liege feud; a feud held immediately of the sovereign. **2.** A feud for which the vassal owed fealty to his lord against all other persons.

feudum maternum (fyoo-dəm mə-tər-nəm). *Hist.* A feud that descended to the feudatory from the maternal side.

feudum militare (fyoo-dəm mil-ə-tair-ee). *Hist.* A knight’s feud. • It was held by knight service and esteemed the most honorable species of tenure. — Also termed *feodum militis*; (in Norman law) *fief d’haubert* or *fief d’hau-berk*.

feudum nobile (fyoo-dəm noh-bə-lee). *Hist.* A feud for which the tenant did guard and owed fealty and homage. — Also termed *feodum nobile*.

feudum novum (fyoo-dəm noh-vəm). *Hist.* 1. A new feud. 2. A feud beginning in the person of the feudatory rather than by succession. — Also spelled *feodum novum*.

feudum novum ut antiquum (fyoo-dəm noh-vəm ət an-ti-kwəm). *Hist.* A new feud held with the qualities of an ancient feud.

feudum paternum (fyoo-dəm pə-tər-nəm). *Hist.* 1. A feud that the tenant's paternal ancestors had held for four generations. 2. A feud descendible only to the heirs on the paternal side. 3. A feud that could be held only by males.

feudum proprium (fyoo-dəm proh-pree-əm). *Hist.* An original feud that is military in nature and held by military service.

feudum talliatum (fyoo-dəm tal-ee-ay-təm). See FEE TAIL.

feu holding (fyoo). *Hist.* A tenancy held by rendering produce or money instead of military service.

feum. See FEUDUM.

ff. *abbr.* 1. And the pages following. 2. (*often cap.*) FRAGMENTA.

FGA. *abbr.* 1. Free from general average. 2. Foreign general average.

"F.G.A. means Foreign General Average, and implies that, if goods become liable to general average, the rules to be applied will be those of the port of destination or refuge, i.e., the law of the place where the adjustment is made." 2 E.W. Chance, *Principles of Mercantile Law* 128 (P.W. French ed., 10th ed. 1951).

FHA. *abbr.* 1. FARMERS HOME ADMINISTRATION. 2. FEDERAL HOUSING ADMINISTRATION.

FHA mortgage. See MORTGAGE.

FHLB. *abbr.* FEDERAL HOME LOAN BANK.

FHLBB. *abbr.* FEDERAL HOME LOAN BANK BOARD.

FHLMC. *abbr.* FEDERAL HOME LOAN MORTGAGE CORPORATION.

fiancer (fyahn-say), *vb.* [Law French] To pledge one's faith.

fiat (fee-aht or fee-at or fi-at or fi-ət), *n.* [Latin "let it be done"] 1. An order or decree, esp. an arbitrary one <judicial fiat>. 2. A court decree, esp. one relating to a routine matter such as scheduling <the court requires all motions to contain a fiat — to be filled in by the court — setting the hearing date>. — Also termed *fiant*.

fiat justitia (fi-at jəs-tish-ee-ə). [Latin] *Hist.* Let justice be done. • This phrase signaled the Crown's commission to the House of Lords to hear an appeal.

"*Fiat Justitia, ruat coelum*, says another maxim, as full of extravagance as it is of harmony: Go heaven to wreck — so justice be but done. — and what is the ruin of kingdoms, in comparison of the wreck of heaven?" Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* 13–14 n.1 (1823).

fiat money. See MONEY.

fiat ut petitur (fi-at ət pet-ə-tər). [Latin] Let it be done as it is asked. • An order granting a petition.

fiant. See FIAT.

FICA (fi-kə). *abbr.* FEDERAL INSURANCE CONTRIBUTIONS ACT.

factio (fik-shee-oh), *n.* [Latin fr. *fungare* "to feign"] *Roman law.* A legal assumption or supposition (such as that the plaintiff was a citizen) necessary to cause certain legal consequences that otherwise would not occur. • Legal fictions allowed Roman magistrates (*praetors*) to expand the law beyond what was strictly allowed by prior law. This practice also occurred in English law — for example, the action of *common recovery*, which allowed a landowner to convey land that by law could not be alienated (such as land held in fee tail). Pl. *fictiones*.

factio juris. See LEGAL FICTION.

fiction. See LEGAL FICTION.

fictional action. See *collusive action* under ACTION.

fiction of law. See LEGAL FICTION.

fictitious, adj. Of or relating to a fiction, esp. a legal fiction

fictitious action. See ACTION.

fictitious issue. See FEIGNED ISSUE.

fictitious name. See ASSUMED NAME; ALIAS.

fictitious-payee rule. *Commercial law.* The principle that if a drawer or maker issues commercial paper to a payee whom the drawer or maker does not actually intend to have any interest in the instrument, an ensuing forgery of the payee's name will be effective to pass good title to later transferees. — Also termed *padded-payroll rule*.

fictitious person. See *artificial person* under PERSON.

fictitious promise. See *implied promise* under PROMISE.

fide commissary (fi-dee kom-ə-ser-ee). See CESTUI QUE TRUST.

fide-committee. A beneficiary; CESTUI QUE TRUST. — Also termed *fidei-commissarius*.

"In a particular case, a *cestuy que trust* is called by the Roman law, *fidei-commissarius*. In imitation of this, I have seen him somewhere or other called in English a *fide-committee*. This term, however, seems not very expressive. A fide-committee, or, as it should have been, a *fidei-committee*, seems, literally speaking, to mean one who is committed to the good faith of another." Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* 226 n.1 (1823).

fidei-commissarius. See CESTUI QUE TRUST.

fideicommissary (fi-dee-I-kom-ə-ser-ee), *adj.* *Roman & civil law.* Of or relating to a fideicommissum.

fideicommissary substitution. 1. SUBSTITUTION (5). 2. SUBSTITUTION (6).

fideicommissum (fi-dee-I-kə-mis-əm), *n.* *Roman & civil law.* An arrangement similar to a trust by which a testator gave property to a person for the benefit of another who could not, by law, inherit property. • Over time, this device was used to tie up property for generations, and most civil jurisdictions now prohibit or limit it. — Sometimes spelled *fidei-commissum*. Pl. *fideicommissa*.

"The many formalities with regard to the institution of heirs and the bequest of legacies, coupled with the fact that many persons, *e.g. peregrini*, were incapable of being instituted heirs, or of being given a legacy, led, in the late Republic, to testators leaving directions to their heirs in favour of given individuals, which, though not binding at law, they hoped their heirs would, in honour,

feel bound to carry out. The beginning of *fideicommissa*, therefore, was very like the early practice with regard to trusts in English law, and, as in the case of trusts, a time came when trusts were made binding legally as well as morally. . . . For brevity, the *fideicommissum* will here be called 'the trust', the person upon whom it was imposed (*fiduciarius*) 'the trustee', and the person in whose favour it was imposed (*fideicommissarius*) 'the beneficiary'." R.W. Leage, *Roman Private Law* 252 (C.H. Ziegler ed., 2d ed. 1930).

fidejubere (fi-dee-yə-beer-ee). [Latin] *Roman law.* To become a surety. • Forms of this word were spoken by the parties to a *stipulatio* that bound one party to become a surety for the other; the first party asked, "Do you pledge yourself?" ("*fidejubesne?*"), and the second responded, "I do pledge myself" ("*fidejubeo*"). — Sometimes spelled *fideiubere*. See STIPULATIO.

fidejussion (fi-di-jəsh-ən). *Roman law.* An act by which a person becomes an additional security for another. • The act does not remove the principal's liability but only adds to the surety's security. Fidejussion was one of the five types of adpromission. — Also spelled *fidejussio*; *fideiussio*. See ADPROMISSION.

fidejussor (fi-di-jəs-or). 1. *Roman law.* A guarantor; a person who becomes bound to pay another's debt. 2. *Hist. Maritime law.* A person who acts as bail for a defendant in the Court of Admiralty. — Also spelled *fideiussor*.

"The proceedings of the court of admiralty bear much resemblance to those of the civil law, but are not entirely founded thereon; and they likewise adopt and make use of other laws, as occasion requires; such as the Rhodian law, and the laws of Oleron. For the law of England, as has frequently been observed, doth not acknowledge or pay any deference to the civil law considered as such; but merely permits its use in such cases where it judged its determinations equitable, and therefore blends it, in the present instance, with other marine laws. . . . The first process in these courts is frequently by arrest of the defendant's person; and they also take recognizances or stipulation of certain fidejussors in the nature of bail, and in case of default may imprison both them and their principal." 3 William Blackstone, *Commentaries on the Laws of England* 108–09 (1768).

fidELITAS (fi-del-ə-tas). [Latin "fidelity"] See FEALTY.

fidelity and guaranty insurance. See *fidelity insurance* under INSURANCE.

fidelity bond. See BOND (2).

fidelity guaranty insurance. See *fidelity insurance* under INSURANCE.

fidelity insurance. See INSURANCE.

fidem mentiri (fi-dəm men-ti-ri). [Latin] *Hist.* To betray faith or fealty. • The term refers to a feudal tenant who did not keep the fealty sworn to the lord.

fidepromission (fi-dee-proh-mish-ən), *n.* [Latin “faith-promise”] *Roman law.* A contract of guaranty by stipulation. • Fidepromission was one of the five types of adpromission. — **fidepromissor**, *n.* See ADPROMISSION; STIPULATION.

fides (fi-deez). [Latin] Faith.

fides facta (fi-deez fak-tə). [Latin] *Hist.* Faith-making; faith-pledging. • Among the Franks and Lombards, undertakings were guaranteed by symbolic, formal acts — making one’s faith — such as the giving of a rod when property was transferred. See FESTUCA.

fiducia (fi-d[y]oo-shee-ə). *Roman law.* An early form of mortgage or pledge in which the debtor passed the title to property to the creditor by a formal act of sale, yet with an express or implied agreement that the creditor would reconvey the property once the debt was paid. • The creditor’s ownership in the property was vested without foreclosure or right of redemption.

“The Roman mortgage (*fiducia*) fell wholly out of use before the time of Justinian, having been displaced by the superior simplicity and convenience of the *hypotheca*; and in this respect modern Continental law has followed the Roman.” John Salmond, *Jurisprudence* 443 (Glanville L. Williams ed., 10th ed. 1947).

fiduciarius heres (fi-d[y]oo-shee-air-ee-əs heer-eez). [Latin “fiduciary heir”] *Roman law.* A person formally named an heir in a testament, but in a fiduciary capacity, and charged to deliver the succession to the person designated by the testament.

fiduciarius tutor (fi-d[y]oo-shee-air-ee-əs t[y]oo-tər). *Roman law.* A fiduciary guardian; a person who by fulfilling a trust to free someone in power became his or her guardian.

fiduciary (fi-d[y]oo-shee-er-ee), *n.* 1. One who owes to another the duties of good faith, trust, confidence, and candor <the corporate officer is a fiduciary to the shareholders>. 2. One who must exercise a high standard of care in managing another’s money or property <the beneficiary sued the fiduciary for investing in speculative securities>. — **fiduciary**, *adj.*

“Fiduciary’ is a vague term, and it has been pressed into service for a number of ends. . . . My view is that the

term ‘fiduciary’ is so vague that plaintiffs have been able to claim that fiduciary obligations have been breached when in fact the particular defendant was not a fiduciary *stricto sensu* but simply had withheld property from the plaintiff in an unconscionable manner.” D.W.M. Waters, *The Constructive Trust* 4 (1964).

dilatory fiduciary (dil-ə-tor-ee). A trustee or other fiduciary who causes undue delays in administering an estate.

successor fiduciary. A fiduciary who is appointed to succeed or replace a prior one.

temporary fiduciary. An interim fiduciary appointed by the court until a regular fiduciary can be appointed.

fiduciary bond. See BOND (2).

fiduciary contract. *Hist.* An agreement by which one party delivers something to another on condition that the second party will return the thing to the first.

fiduciary debt. A debt founded on or arising from a fiduciary relationship, rather than from a contractual relationship.

fiduciary duty. See DUTY (2).

fiduciary relationship. A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. • Fiduciary relationships — such as trustee-beneficiary, guardian-ward, agent-principal, and attorney-client — require the highest duty of care. Fiduciary relationships *usu.* arise in one of four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer. — Also termed *fiduciary relation*; *confidential relationship*. Cf. SPECIAL RELATIONSHIP.

fiduciary-shield doctrine. *Corporations.* The principle that a corporate officer’s act cannot be the basis for jurisdiction over the officer in an individual capacity.

fief (feef), *n.* See FEE; FEUD. • Metaphorically, the term refers to an area of dominion, esp. in a corporate or governmental bureaucracy.

fief d'hauberk (feef doh-bairk). See *feudum militare* under FEUDUM.

fief d'haubert. See *feudum militare* under FEUDUM.

fief-tenant. *Hist.* The holder of a fief or fee; a feeholder or freeholder.

field audit. See AUDIT.

field book. A log or book containing a surveyor's notes that are made on-site and that describe by course and distance the running of the property lines and the establishment of the corners.

Field Code. The New York Code of Procedure of 1848, which was the first comprehensive Anglo-American code of civil procedure and served as a model for the Federal Rules of Civil Procedure. • It was drafted by David Dudley Field (1805–1894), a major law-reformer. See *code pleading* under PLEADING (2).

field notes. The notes in a surveyor's field book.

field sobriety test. See SOBRIETY TEST.

field-warehouse financing agreement. The loan agreement in a field-warehousing arrangement.

field warehousing. An inventory-financing method by which a merchant pledges its inventory, which is in the possession of a third person (a warehouse). • This is a method of financing an inventory that cannot economically be delivered to the creditor or third party. The borrower segregates part of the inventory and places it under the nominal control of a lender or third party, so that the lender has a possessory interest. Cf. *floor-plan financing* under FINANCING; PLEDGE.

"Field warehousing is a way of bringing about the security relationship of a pledge. It is an arrangement for allowing the pledgor a more convenient access to the pledged goods, while the goods are actually in the custody and control of a third person on the pledgor's premises." *Business Factors, Inc. v. Taylor-Edwards Warehouse & Transfer Co.*, 585 P.2d 825, 828 (Wash. Ct. App. 1978).

"Field warehousing is ... an arrangement whereby a wholesaler, manufacturer, or merchant finances his business through the pledge of goods remaining on his premises. The arrangement is valid and effective where there is an actual delivery to the warehouseman by the bailor who has hired the warehouseman and given him exclusive possession of the warehouse goods." *In re Covington Grain Co.*, 638 F.2d 1362, 1365 (5th Cir. 1981).

fierding court (fyər-ding or feer-ding). *Hist.* An ancient court of inferior jurisdiction. • Four courts were in each district or hundred.

fieri (fi-ə-ri). [Latin] To be made; to be done. • *Fieri usu.* appears as part of the phrase *in fieri*. See IN FIERI.

fieri facias (fi-ə-ri fay-shee-əs). [Latin "that you cause to be done"] A writ of execution that directs a marshal or sheriff to seize and sell a defendant's property to satisfy a money judgment. — Abbr. *fi. fa.*; *Fi. Fa.* Cf. LEVARI FACIAS.

"It receives its name from the Latin words in the writ (*quod fieri facias de bonis et catallis*, that you cause to be made of the goods and chattels). It is the form of execution in common use in levying upon the judgment-debtor's personal property." John Bouvier, *Bouvier's Law Dictionary* (8th ed. 1914).

"The writ of 'fieri facias' (commonly called a writ of 'fi fa'), which commanded literally 'that you cause to be made,' was an early common-law means of enforcing payment on a judgment; it was, in effect, an order to the sheriff of the court to enforce a judgment against the debtor by levy, seizure, and sale of his personalty to the extent needed to satisfy a judgment." 30 Am. Jur. 2d *Executions and Enforcement of Judgments* § 14, at 50–51 (1994).

fieri facias de bonis ecclesiasticis (fi-ə-ri fay-shee-əs dee boh-nis e-klee-z[h]ee-as-tə-sis). [Latin "that you cause to be made of the ecclesiastical goods"] *Hist.* A writ of execution — used when the defendant was a benefited clerk who had no lay fee — that commanded the bishop to satisfy the judgment from the ecclesiastical goods and chattels of the defendant within the diocese. • This was accomplished by issuing a sequestration to levy the debt out of the defendant's benefice. This writ was issued after a *fieri facias* had been returned *nulla bona*.

fieri facias de bonis propriis (fi-ə-ri fay-shee-əs dee boh-nis proh-pree-is). [Latin "that you cause to be made of his own goods"] *Hist.* A writ that executes on an executor's property when a writ *fieri facias de bonis testatoris* is returned by the sheriff *nulla bona* or *devastavit* (a wasting of the testator's goods by the executor).

fieri facias de bonis testatoris (fi-ə-ri fay-shee-əs dee boh-nis tes-tə-tor-is). [Latin "that you cause to be made of the testator's goods"] *Hist.* A writ of execution served on an executor for a debt incurred by the testator.

fieri feci (fi-ə-ri fee-si). [Latin "I have caused to be made"] *Hist.* A sheriff's return on a *fieri facias* where the sheriff has collected, in whole

or in part, the sum to be levied on. • The return is usu. expressed by the word “satisfied.”

fi. fa. (*sometimes cap.*) *abbr.* FIERI FACIAS.

FIFO (**fi-foh**). *abbr.* FIRST-IN, FIRST-OUT.

FIFRA. *abbr.* Federal Insecticide, Fungicide, and Rodenticide Act. 7 USCA §§ 136–136y.

fifteenth. *Hist.* A tax of one-fifteenth of all the personal property of every subject. • The tax was levied at intervals by act of Parliament. Under Edward III, the value of the fifteenth was assessed and fixed at a specific sum and did not increase as the wealth of the kingdom increased — thus the tax ceased to actually be one-fifteenth. See QUOD PERSONA NEC PREBENDARI.

Fifteenth Amendment. The constitutional amendment, ratified in 1870, guaranteeing all citizens the right to vote regardless of race, color, or prior condition of servitude.

Fifth Amendment. The constitutional amendment, ratified with the Bill of Rights in 1791, providing that a person cannot be (1) required to answer for a capital or otherwise infamous offense unless a grand jury issues an indictment or presentment, (2) subjected to double jeopardy, (3) compelled to engage in self-incrimination on a criminal matter, (4) deprived of life, liberty, or property without due process of law, and (5) deprived of private property for public use without just compensation.

Fifth Amendment, pleading the. See PLEADING THE FIFTH.

Fifty Decisions. Justinian’s rulings that settled controversies and eliminated obsolete rules in the law. • The decisions were made in preparation for *Justinian’s Digest*. — Also termed (in Latin) *Quinquaginta Decisiones*.

50-percent rule. The principle that liability for negligence is apportioned in accordance with the percentage of fault that the fact-finder assigns to each party, that the plaintiff’s recovery will be reduced by the percentage of negligence assigned to the plaintiff, and that the plaintiff’s recovery is barred if the plaintiff’s percentage of fault is 50% or more. — Also termed *modified-comparative-negligence doctrine*. Cf. PURE-COMPARATIVE-NEGLIGENCE DOCTRINE. See *comparative negligence* under NEGLIGENCE; APPORTIONMENT OF LIABILITY.

fighting age. See AGE.

fighting words. **1.** Inflammatory speech that might not be protected by the First Amendment’s free-speech guarantee because it might incite a violent response. **2.** Inflammatory speech that is pleadable in mitigation — but not in defense — of a suit for assault.

filacer (**fil-ə-sər**). *Hist.* An officer of the Westminster superior courts who filed the writs on which process was made. • The office was abolished in 1837.

filacium. See FILUM.

filare (**fi-lair-ee**), *vb.* [Law Latin] *Hist.* To file.

file, n. **1.** A court’s complete and official record of a case <the law clerk went to the courthouse to verify that the motion is in the file>. **2.** A lawyer’s complete record of a case <the paralegal stored the file in three drawers in her office>. **3.** A portion or section of a lawyer’s case record <the janitor found the correspondence file behind the copy machine>. **4.** A case <Jonah was assigned the Watson file after Amy left the firm>.

file, vb. **1.** To deliver a legal document to the court clerk or record custodian for placement into the official record <Tuesday is the deadline for filing a reply brief> <they perfected the security interest by filing>. **2.** To commence a lawsuit <the seller threatened to file against the buyer>. **3.** To record or deposit something in an organized retention system or container for preservation and future reference <please file my notes under the heading “research”>.

filed-rate doctrine. A common-law rule forbidding a regulated entity, usu. a common carrier, to charge a rate other than the one on file with the appropriate federal regulatory authority, such as (formerly) the Interstate Commerce Commission. — Also termed *filed-tariff doctrine*. See TARIFF (3).

file wrapper. See PROSECUTION HISTORY.

file-wrapper estoppel. See PROSECUTION-HISTORY ESTOPPEL.

filia (**fil-ee-ə**), *n.* [Latin] A daughter. Pl. *filiae*.

filial consortium. See CONSORTIUM.

filiation (fil-ee-ay-shən). **1.** The fact or condition of being a son or daughter; relationship of a child to a parent.

"In English we have no word that will serve to express with propriety the person who bears the relation opposed to that of parent. The word *child* is ambiguous, being employed in another sense, perhaps more frequently than in this: more frequently in opposition to a *person of full age*, an *adult*, than in correlation to a *parent*. For the condition itself we have no other word than *filiation*: an ill-contrived term, not analogous to *paternity* and *maternity*: the proper term would have been *filiality*: the word *filiation* is as frequently, perhaps, and more consistently, put for the act of establishing a person in the possession of the condition of filiality." Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* 276 n.2 (1823).

2. Judicial determination of paternity. See PATERNITY SUIT.

filibuster (fil-ə-bəs-tər), *n.* **1.** A dilatory tactic, esp. prolonged and often irrelevant speechmaking, employed in an attempt to obstruct legislative action. ● The filibuster is common in the U.S. Senate, where the right to debate is unlimited. **2.** In a deliberative body, a member in the minority who resorts to obstructive tactics to prevent the adoption of a measure or procedure that is favored by the majority. — Also termed *filibusterer*. **3.** *Hist.* A person who, together with others, works to invade and revolutionize a foreign state in disregard of international law. — **filibuster**, *vb.* See CLOTURE.

filing, *n.* A particular document (such as a pleading) in the file of a court clerk or record custodian <the lawyer argued that the plaintiff's most recent filing was not germane to the issue before the court>.

filing fee. A sum of money required to be paid to the court clerk before a proceeding can start.

filing status. *Tax.* One of the four categories under which a person files an income tax return. ● Under federal law, the four categories are: (1) single; (2) head of household; (3) married filing a joint return; and (4) married filing separate returns.

filioles (fil-ee-oh-ləs). [Latin] *Hist.* A godson. — Also spelled (in old records) *filious*.

filius (fil-ee-əs), *n.* [Latin] **1.** A son. **2.** (*pl.*) Descendants. *Pl. filii.* Cf. HERES.

filiusfamilias (fil-ee-əs-fə-mil-ee-əs). [Latin "the son of a family"] *Roman law.* An uneman-

ipated son or daughter, grandson or granddaughter. — Also termed *homo alieni juris*.

"Every Roman citizen is either a paterfamilias or a filiusfamilias, according as he is free from paternal power (*homo sui juris*) or not (*homo alieni juris*). Paterfamilias is the generic name for a *homo sui juris*, whether child or adult, married or unmarried. Filiusfamilias is the generic name for a *homo alieni juris*, whether son or daughter, grandson or granddaughter, and so on." Rudolph Sohm, *The Institutes: A Textbook of the History and System of Roman Private Law* 177 (James Crawford Ledlie trans., 3d ed. 1907).

filius mulieratus (fil-ee-əs myoo-lee-ə-ray-təs). [Law Latin] *Hist.* The eldest legitimate son of a woman who previously had an illegitimate son by the same father; a legitimate son, whose older brother is illegitimate; MULIER PUISNE. Cf. *bastard eisne* under EISNE.

filius nullius (fil-ee-əs nə-lī-əs). [Latin "son of nobody"] *Hist.* An illegitimate child. — Also termed *filius populi*.

"I proceed next to the rights and incapacities which appertain to a bastard. The rights are very few, being only such as he can *acquire*; for he can *inherit* nothing, being looked upon as the son of nobody; and sometimes called *filius nullius*, sometimes *filius populi*." 1 William Blackstone, *Commentaries on the Laws of England* 447 (1765).

filius populi (fil-ee-əs pop-yə-lī). [Latin "son of the people"] *Hist.* An illegitimate child.

fill-or-kill order. See ORDER (4).

filum (fī-ləm). [Latin "thread"] *Hist.* **1.** A thread or wire that holds (esp. legal) papers together to form a file. ● This was the ancient method of filing legal papers. **2.** An imaginary thread or line passing through the middle of a stream or road. — Also termed (in sense 1) *filacium*.

filum aquae (fī-ləm ay-kwee). [Latin "thread of water"] A line of water; the middle line of a stream of water, supposedly dividing it into two equal parts and usu. constituting the boundary between the riparian owners on each side. — Also termed *medium filum*.

filum forestae (fī-ləm for-ə-stee). [Latin] The border of a forest.

filum viae (fī-ləm vī-ee). [Latin] **1.** The middle line of a road. **2.** The boundary between landowners on each side of a road.

final appealable judgment. See *final judgment* under JUDGMENT.

final appealable order. See *final judgment* under JUDGMENT.

final argument. See CLOSING ARGUMENT.

final concord. See CONCORD.

final decision. See *final judgment* under JUDGMENT.

final-decision rule. See FINAL-JUDGMENT RULE.

final decree. See *final judgment* under JUDGMENT.

final injunction. See *permanent injunction* under INJUNCTION.

finalis concordia (fi-nay-lis kən-kor-dee-ə). [Latin] A final or conclusive agreement. See *final concord* under CONCORD; FINE (1).

finality doctrine. The rule that a court will not judicially review an administrative agency's action until it is final. — Also termed *final-order doctrine*; *doctrine of finality*; *principle of finality*. Cf. FINAL-JUDGMENT RULE.

finality rule. See FINAL-JUDGMENT RULE.

final judgment. See JUDGMENT.

final-judgment rule. The principle that a party may appeal only from a district court's final decision that ends the litigation on the merits. • Under this rule, a party must raise all claims of error in a single appeal. — Also termed *final-decision rule*; *finality rule*. 28 USCA § 1291. Cf. FINALITY DOCTRINE; INTERLOCUTORY APPEALS ACT.

final-offer arbitration. See ARBITRATION.

final order. See ORDER (2).

final-order doctrine. See FINALITY DOCTRINE.

final peace. See *final concord* under CONCORD.

final process. See PROCESS.

final receiver's receipt. The government's acknowledgment that it has received full payment from a person for public land, that it holds the legal title in trust for the person, and that it will in due course issue the person a land patent.

final settlement. See SETTLEMENT.

finance, n. **1.** The system in business concerned with the management of money, credit, banking, and investments <after a brief career in finance, Andrea decided to go to law school>. **2.** The science or study of the management of money, etc. <Bill sought a degree in finance because he wanted to be an investment banker>.

finance, vb. To raise or provide funds.

finance bill. See BILL (6).

finance charge. An additional payment, usu. in the form of interest, paid by a retail buyer for the privilege of purchasing goods or services in installments. • This phrase is increasingly used as a euphemism for *interest*. See INTEREST (3).

finance company. A nonbank company that deals in loans either by making them or by purchasing notes from another company that makes the loans directly to borrowers.

commercial finance company. A finance company that makes loans to manufacturers and wholesalers. — Also termed *commercial credit company*.

consumer finance company. A finance company that deals directly with consumers in extending credit. — Also termed *small-loan company*.

sales finance company. A finance company that does not deal directly with consumers but instead purchases consumer installment paper arising from the sale of consumer durables "on time." — Also termed *acceptance company*.

finance lease. See LEASE.

financial accounting. See ACCOUNTING (1).

Financial Accounting Standards Board. The independent body of accountants responsible for establishing, interpreting, and improving standards for financial accounting and reporting. — Abbr. FASB.

financial contract. See CONTRACT.

financial futures. See FUTURES (1).

financial institution. A business, organization, or other entity that manages money, credit, or capital, such as a bank, credit union, savings-

and-loan association, securities broker or dealer, pawnbroker, or investment company.

financial intermediary. A financial entity — usu. a commercial bank — that advances the transfer of funds between borrowers and lenders, buyers and sellers, and investors and savers.

financial planner. A person whose business is advising clients about personal finances and investments. • Upon completing a certification program, such a person is called a *certified financial planner*. — Abbr. CFP.

financial report. See FINANCIAL STATEMENT.

financial-responsibility act. A state statute conditioning license and registration of motor vehicles on proof of insurance or other financial accountability.

financial-responsibility clause. A provision in an automobile insurance policy stating that the insured has at least the minimum amount of liability insurance coverage required by a state's financial-responsibility law.

financial statement. A balance sheet, income statement, or annual report that summarizes an individual's or organization's financial condition on a specified date or for a specified period by reporting assets and liabilities. — Also termed *financial report*. Cf. FINANCING STATEMENT.

certified financial statement. A financial statement examined and reported by an independent public or certified public accountant. SEC Rule 12b-2 (17 CFR § 240.12b-2).

consolidated financial statement. The financial report of a company and all its subsidiaries combined as if they were a single entity.

financing, n. **1.** The act or process of raising or providing funds. **2.** Funds that are raised or provided. — **finance, vb.**

asset-based financing. A method of lending in which lenders and investors look principally to the cash flow from a particular asset for repayment.

construction financing. See *interim financing*.

debt financing. The raising of funds by issuing bonds or notes or by borrowing from a financial institution.

equity financing. **1.** The raising of funds by issuing capital securities (shares in the business) rather than making loans or selling bonds. **2.** The capital so raised.

floor-plan financing. A loan that is secured by merchandise and paid off as the goods are sold. • Usu. such a loan is given by a manufacturer to a retailer or other dealer (as a car dealer). — Also termed *floor planning*. Cf. FIELD WAREHOUSING.

gap financing. Interim financing used to fund the difference between a current loan and a loan to be received in the future, esp. between two long-term loans. See *bridge loan* under LOAN.

interim financing. A short-term loan secured to cover certain major expenditures, such as construction costs, until permanent financing is obtained. — Also termed *construction financing*.

internal financing. A funding method using funds generated through the company's operations rather than from stock issues or bank loans.

link financing. The obtaining of credit by depositing funds in another's bank account to aid the other in obtaining a loan.

outside financing. The raising of funds by selling stocks (equity financing) or bonds (debt financing).

permanent financing. A long-term loan obtained to repay an interim loan, such as a mortgage loan that is used to repay a construction loan.

project financing. A method of funding in which the lender looks primarily to the money generated by a single project as security for the loan. • This type of financing is usu. used for large, complex, and expensive single-purpose projects such as power plants, chemical-processing plants, mines, and toll roads. The lender is usu. paid solely or almost exclusively out of the money generated by the contracts for the facility's output (sometimes paid by customers directly into an account maintained by the lender), such as the electricity sold by a power plant. The lender usu. requires the facility to be developed and owned by a special-purpose entity (sometimes called a bankruptcy-remote entity), which can be a corporation, limited partnership, or other legal entity, that is permitted to perform no function other than developing, owning, and operating the facility. See SINGLE-PURPOSE PROJECT; SPECIAL-PURPOSE ENTITY; BANKRUPTCY-REMOTE ENTITY.

financing agency. See AGENCY (1).

financing statement. A document filed in the public records to notify third parties, usu. prospective buyers and lenders, of a secured party's security interest in goods. Cf. FINANCIAL STATEMENT.

finder. 1. An intermediary who brings together parties for a business opportunity, such as two companies for a merger, a borrower and a financial institution, or an issuer and an underwriter of securities. • A finder differs from a broker-dealer because the finder merely brings two parties together to make their own contract, while a broker-dealer usu. participates in the negotiations. See INTERMEDIARY. **2.** A person who discovers an object, often a lost or mislaid chattel.

finder of fact. See FACT-FINDER.

finder's fee. The amount charged by one who brings together parties for a business opportunity.

finder's-fee contract. An agreement between a finder and one of the parties to a business opportunity.

finding of fact. A determination by a judge, jury, or administrative agency of a fact supported by the evidence in the record, usu. presented at the trial or hearing <he agreed with the jury's finding of fact that the driver did not stop before proceeding into the intersection>. — Often shortened to *finding*. Cf. CONCLUSION OF FACT; CONCLUSION OF LAW.

concurrent finding. (*usu. pl.*) Identical factual findings by two different courts on a specific issue of fact.

essential finding. *Military law.* A military judge's determination of a collateral pretrial motion.

general finding. An undifferentiated finding in favor of one party.

special finding. 1. (*usu. pl.*) A finding of the necessary and ultimate facts to support a judgment in favor of one party. **2.** *Military law.* A military judge's finding that directly relates to the determination of guilt or innocence.

fine, n. 1. An amicable final agreement or compromise of a fictitious or actual suit to determine the true possessor of land. • The fine was formerly used as a form of conveyance to disen-

tail an estate. — Also termed *final concord*; *finalis concordia*. See FOOT OF THE FINE.

"A peculiar and persistent use of the writ [of covenant] was in levying a fine. A fine — *finalis concordia* — was the compromise of a suit, settled upon terms approved by the court. The dispute, while it might be a reality, was more often fictitious, and was chiefly used as a means of conveying land. . . . Soon after [Glanvill's] book was written, an innovation was made in the procedure which endured until 1833. The terms of the compromise, agreed by the parties and approved by the judges, were entered upon a threefold indenture, one of the parts being given to each of the litigants and the third — the 'foot' or bottom of the document — being kept among the records of the court. The parties thus obtained incontestable evidence and abundant security, and either could sue the other if the agreement were not implemented." C.H.S. Fifoot, *History and Sources of the Common Law: Tort and Contract* 256 (1949).

"The fine that survived into the nineteenth century was a conveyancing mechanism that had worked in much the same way at the end of the twelfth. It took the form of a compromised law-suit. . . . The terms of the agreement were written out three times on a single piece of parchment which was then cut into three, one part remaining with each party and one, across the bottom and known as the 'foot', with the court. . . . This power to do more than the parties could do by their own act is not a trick harnessing the force of a judicial decision, and it comes from a time when judicial decision was not seen as the only business of courts." S.F.C. Milsom, *Historical Foundations of the Common Law* 151 (1969).

"Unlike the recovery, which was a *real* action, the fine was a compromised fictitious *personal* action, originally designed as a method of ensuring security in conveyancing and only later being employed for the purpose of barring estates tail. In outline, it operated in the following manner. The intending purchaser brought an action, begun by writ of covenant, against the intending vendor. The parties then applied to the court to compromise the action; by the terms of the compromise (*finis*) the intending vendor admitted that the land belonged to the intending purchaser because he had given it to him, and the terms of the compromise were recorded in the court records. The fine owed its popularity as a means of conveyancing to two factors, neither of which was present in the standard method of conveyance by means of feoffment. First, the enrolling in the court records provided evidence of the transaction which was both permanent and free from the danger of forgery. Secondly, the effect of the fine was to set running a short period of limitation at the expiration of which all claims to the land were barred. It was this second aspect which made the device attractive as a means of 'barring' fees tail." Peter Butt, *Land Law* 102-03 (2d ed. 1988).

executed fine. Hist. A fine made on acknowledgment of the right of the grantee to land given to him as a gift from the grantor. • This was abolished in 1833. 3 & 4 Will. 4, ch. 74.

2. FINE FOR ALIENATION. 3. A fee paid by a tenant to the landlord at the commencement of the tenancy to reduce the rent payments. **4.**

Hist. A money payment from a tenant to the tenant's lord.

common fine. A sum of money due from a tenant to a lord to defray the cost of a court leet or to allow the litigants to try the action closer to home. — Also termed *head-silver*.

5. A pecuniary criminal punishment or civil penalty payable to the public treasury. — **fine, vb.**

excessive fine. 1. *Criminal law.* A fine that is unreasonably high and disproportionate to the offense committed. • The Eighth Amendment proscribes excessive fines. An example of an excessive fine is a civil forfeiture in which the property was not an instrumentality of the crime and the worth of the property was not proportional to the owner's culpability. 2. A fine or penalty that seriously impairs one's earning capacity, esp. from a business.

fresh fine. *Hist.* A fine levied within the past year.

Fine and Recovery Act. *Hist.* A statute, enacted in 1833, that abolished the use of fines as a method of conveying title to land. See FINE (1). 3 & 4 Will. 4, ch. 74.

fine annullando levato de tenemento quod fuit de antiquo dominico (fi-nee a-nə-lan-doh læ-vay-to dee ten-ə-men-toh kwod fyoo-it dee an-ti-kwoh də-min-ə-koh). [Latin "a fine to be annulled levied from a tenant which was of ancient demesne"] *Hist.* A writ for disannulling a conveyance of land in ancient demesne to the lord's prejudice.

fine capiendo pro terris (fi-nee kap-ee-en-doh proh ter-is). [Latin "a fine to be taken for lands"] *Hist.* A writ that an imprisoned felon could use in some circumstances to obtain release from jail and to recover lands and goods taken during imprisonment.

fine for alienation. *Hist.* A fee paid by a tenant to the lord upon the alienation of a feudal estate and substitution of a new tenant. • It was payable by all tenants holding by knight's service or tenants *in capite* by socage tenure. — Often shortened to *fine*.

fine for endowment. *Hist.* A fee paid by a widow of a tenant to the tenant's lord. • If not paid, the widow could not be endowed of her husband's land.

finem facere (fi-nəm fay-sə-ree). [Latin] *Hist.*

1. To make a composition or compromise; to

relinquish a claim in exchange for consideration.

"In the thirteenth century the king's justices wield a wide and a 'common law' power of ordering that an offender be kept in custody. They have an equally wide power of discharging him upon his 'making fine with the king.' We must observe the language of the time. In strictness they have no power to 'impose a fine.' No tribunal of this period, unless we are mistaken, is ever said to impose a fine. To order the offender to pay so much money to the king — this the judge may not do. If he did it, he would be breaking or evading the Great Charter, for an amercement should be affeered, not by royal justices, but by neighbours of the wrong-doer. What the judges can do is this: — they can pronounce a sentence of imprisonment and then allow the culprit to 'make fine,' that is to make an end (*finem facere*) of the matter by paying or finding security for a certain sum of money. In theory the fine is a bilateral transaction, a bargain; it is not 'imposed,' it is 'made.'" 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 517 (2d ed. 1899).

2. To make a settlement of a penalty. • Magna Carta (ch. 55) specifically limited "[a]ll fines which were made with us unjustly and contrary to the law of the land..." ([o]mnes fines qui injuste et contra legem terrae facti sunt nobiscum).

fine non capiendo pro pulchre placitando (fi-nee non kap-ee-en-doh proh pəl-kree plas-ə-tan-doh). [Latin "a fine not to be taken for pleading fairly"] *Hist.* A writ prohibiting court officers from taking fines for fair pleading (i.e., *beaupleader*).

fine print. The part of an agreement or document — usu. in small, light print that is not easily noticeable — referring to disclaimers, restrictions, or limitations.

fine pro redisseisina capiendo (fi-nee proh redis-see-zin-ə kap-ee-en-doh). [Law Latin "a fine to be taken for again disseising"] *Hist.* A writ that entitled a person imprisoned for twice dispossessing someone (*redisseisin*) to release upon payment of a reasonable fine.

fines le roy (fɪnz læ roy). [Law French] *Hist.* The king's fines. • A fine or fee that was paid to the monarch for an offense or contempt.

fine sur cognizance de droit, comme ceo que il ad de son done (fin sər kon-ə-zənts də droyt, kom say-oh kweel ad də sawn dawn). [Law French "a fine upon acknowledgment of the right, as that which he has of his gift"] *Hist.* The most common fine of conveyance, by which the defendant (also called the *deforciant*) acknowledged in court that he had already con-

veyed the property to the cognizee. • This form of conveyance took the place of an actual livery of seisin. See FINE (1).

"But, in general, the first species of fine, '*sur cognizance de droit come ceo, etc.*,' is the most used, as it conveys a clean and absolute freehold, and gives the cognizee a seisin in law, without an actual livery; and is therefore called a fine executed, whereas the others are but executory." 2 William Blackstone, *Commentaries on the Laws of England* 353 (1766).

fine sur cognizance de droit tantum (fɪn sər kɒn-ə-zənts də droyt tan-təm). [Law French "fine upon acknowledgment of the right merely"] *Hist.* A fine of conveyance that does not acknowledge a prior conveyance of land. • This type of fine was used to convey reversionary interests — that is, interests that did not require acknowledgment of an earlier livery of seisin. See FINE (1).

fine sur concessit (fɪn sər kən-ses-it). [Law French] *Hist.* A species of conveyance in which the cognizor does not acknowledge the cognizee's preceding right in land but grants the cognizee an estate de novo, usu. for life or years, by way of supposed composition. See FINE (1).

fine sur done, grant et render (fɪn sər dawn, grant əy ren-dər). [Law French "fine upon gift, grant and render"] *Hist.* A double conveyance, consisting of a *fine sur cognizance de droit come ceo que il ad de son done* and a *fine sur concessit*, used to convey particular limitations of estates. • For example, after acknowledgment of the cognizee's right in the land, the cognizee would grant back to the cognizor or a third party some other estate in the land. See FINE (1).

finger, *vb.* *Slang.* To identify (a person) as a perpetrator, usu. of a crime <in his grand-jury testimony, Vitale fingered Benson as the gunman>.

fingerprint, *n.* 1. The distinctive pattern of lines on a human fingertip <no two fingerprints are identical>. 2. The impression of a fingertip made on any surface <the detective found several fingerprints on the knife>. 3. An ink impression of the pattern of lines on a fingertip, usu. taken during the booking procedure after an arrest <after Dick had his fingerprints taken, he was put in the drunk tank>. — Also termed *print*; *thumbprint*. — **fingerprint**, *vb.* — **fingerprinting**, *n.* Cf. DNA IDENTIFICATION.

finire (fi-ni-ree), *vb.* [Law Latin] *Hist.* 1. To fine; to pay a fine. 2. To end or finish a matter.

finis (fi-nis or fin-is). [Latin] *Hist.* 1. Boundary or limit. 2. The compromise of a fine of conveyance. See FINE (1).

"The parties then applied to the court to compromise the action; by the terms of the compromise (*finis*) the intending vendor admitted that the land belonged to the intending purchaser because he had given it to him, and the terms of the compromise were recorded in the court records." Peter Butt, *Land Law* 102 (2d ed. 1988).

3. A fine, or payment of money made to satisfy a claim of criminal penalty.

finitio (fi-nish-ee-oh). [Law Latin] *Hist.* An ending; death.

finium regundorum actio (fi-nee-əm ri-gəndor-əm ak-shee-oh). [Latin "action for regulating boundaries"] *Roman law.* An action for settling a boundary dispute.

FI0. *abbr.* Free in and out. • This bill-of-lading term means that the shipper supervises and pays for loading and unloading of cargo.

FIOS. *abbr.* Free in and out stowage. • This shipping term means that the vessel does not pay for the costs of loading, unloading, or stowing.

firdfare. See FERDFARE.

fire, *vb.* To discharge or dismiss a person from employment; to terminate as an employee.

firearm. A weapon that expels a projectile (such as a bullet or pellets) by the combustion of gunpowder or other explosive.

fire-bote. See *housebote* under BOTE (1).

firebug. See INCENDIARY (1).

firefighter's rule. A doctrine holding that a fireman, police officer, or other emergency professional may not hold a person, usu. a property owner, liable for unintentional injuries suffered by the professional in responding to the situation created or caused by the person. — Also termed *fireman's rule*.

fire insurance. See INSURANCE.

fireman's rule. See FIREFIGHTER'S RULE.

fire ordeal. See ORDEAL.

fire sale. See SALE.

firing squad. **1.** A group of persons assembled to carry out a capital-punishment sentence by shooting the prisoner with high-powered rifles at the same time from a short distance. **2.** A military detachment that fires a salute, usu. at the burial of the person honored.

firm, n. **1.** The title under which one or more persons conduct business jointly. **2.** The association by which persons are united for business purposes. • Traditionally, this term referred to a partnership, as opposed to a company. But today it is frequently used in reference to a company. See LAW FIRM.

firma burgi (fər-mə bər-jī). [Law Latin] *Hist.* A person's right to take the profits of a borough. • The monarch or the borough's lord granted this right to a person upon payment of a fixed sum.

firma feodi. See FEE FARM.

firma noctis. See NOCTEM DE FIRMA.

firmaratio (fər-mə-ray-shee-oh). [Law Latin] *Hist.* A tenant's right to the lands and tenements leased to him.

firmarius (fər-mair-ee-əs). [Law Latin] A person entitled to take rent or profits. Cf. FERMER (2).

firm bid. See BID (2).

firm-commitment underwriting. See UNDERWRITING.

firmé. See FARM.

firmitas (fər-mə-tas). [Law Latin] *Hist.* An assurance of some privilege by deed or charter.

firm offer. See *irrevocable offer* under OFFER.

firm-opportunity doctrine. See CORPORATE-OPPORTUNITY DOCTRINE.

First Amendment. The constitutional amendment, ratified with the Bill of Rights in 1791, guaranteeing the freedoms of speech, religion, press, assembly, and petition.

first-blush rule. The principle that allows a court to set aside a verdict as excessive because the verdict causes the mind to immediately conclude that it resulted from passion or prejudice on the part of the jury.

first chair, n. *Slang.* The lead attorney in court for a given case <despite having worked at the firm for six years, the associate had yet to be first chair in a jury trial>. — **first-chair, vb.**

first cousin. see COUSIN (1).

first-degree, adj. See DEGREE (2).

first-degree murder. See MURDER.

first devisee. See DEVISEE.

first-filing rule. See FIRST-TO-FILE RULE.

first fruits. **1.** *Hist.* One year's profits from the land of a tenant *in capite*, payable to the Crown after the tenant's death. — Also termed *primer seisin*. **2.** *Hist. Eccles. law.* The first year's whole profits of a clergyman's benefice, paid by the incumbent to the Pope, or (after the break with Rome) to the Crown. • This revenue was later termed "Queen Anne's Bounty" when it was converted to a fund to benefit the poor. — Sometimes spelled *firstfruits*. — Also termed *primitiae*.

firsthand knowledge. See *personal knowledge* under KNOWLEDGE.

first impression, case of. See CASE.

first-in, first-out. An accounting method that assumes that goods are sold in the order in which they were purchased — that is, the oldest items are sold first. — Abbr. FIFO. Cf. LAST-IN, FIRST-OUT; NEXT-IN, FIRST-OUT.

first instance, court of. See *trial court* under COURT.

first lien. See LIEN.

First Lord of the Admiralty. *Hist.* In Britain, a minister and one of the lord commissioners who presided over the navy. • The First Lord was assisted by other lords, called Sea Lords, and various secretaries.

First Lord of the Treasury. *English law.* The chief officer in charge of the treasury. • Today, this position is held by the Prime Minister.

first magistrate. See MAGISTRATE (1).

first meeting. *Archaic. Criminal law.* The first contact between a killer and a victim after the killer has been informed of the victim's insulting words or conduct that provoked the killing. ● If the killing occurred during the first meeting, a murder charge could be reduced to manslaughter. See HEAT OF PASSION.

first mortgage. See MORTGAGE.

first-mortgage bond. See BOND (3).

first of exchange. *Archaic.* The first in a series of drafts (bills of exchange) drawn in duplicate or triplicate for safety in their delivery, the intention being that the acceptance and payment of any one of them, usu. the first to arrive, cancels the others in the set.

first offender. See OFFENDER.

first option to buy. See RIGHT OF PREEMPTION.

first-party insurance. See INSURANCE.

first policy year. *Insurance.* The first year of a life-insurance policy that is annually renewed. ● This statutory phrase prohibits an insurer from using the policy's suicide exclusion as a defense — and refusing payment on the policy — when an insured commits suicide after the first year of the policy. The insurer can invoke the suicide exclusion as a defense to payment only if the insured commits suicide in the first policy year.

first purchaser. See PURCHASER (2).

first refusal, right of. See RIGHT OF FIRST REFUSAL.

first-sale doctrine. *Copyright.* The rule that a copyright owner, after conveying the title to a particular copy of the protected work, loses the exclusive right to sell that copy and therefore cannot interfere with later sales or distributions by the new owner.

first taker. See TAKER.

first-to-file rule. *Civil procedure.* **1.** The principle that, when two suits are brought by the same parties, regarding the same issues, in two courts of proper jurisdiction, the court that first acquires jurisdiction usu. retains the suit, to the exclusion of the other court. ● The court

with the second-filed suit ordinarily stays proceedings or abstains. But an exception exists if the first-filed suit is brought merely in anticipation of the true plaintiff's suit — as an improper attempt at forum-shopping. See ANTICIPATORY FILING. **2.** The doctrine allowing a party to a previously filed lawsuit to enjoin another from pursuing a later-filed action. — Also termed *first-filing rule*; *priority-jurisdiction rule*.

fisc (fisk), *n.* [Latin *fiscus*] The public treasury.

fiscal (fis-kəl), *adj.* **1.** Of or relating to financial matters <fiscal year>. **2.** Of or relating to public finances or taxation <the city's sound fiscal policy>.

fiscal agent. See AGENT.

fiscal officer. **1.** The person (such as a state or county treasurer) charged with the collection and distribution of public money. **2.** The person (such as a chief financial officer) whose duties are to oversee the financial matters of a corporation or business.

fiscal year. An accounting period of 12 consecutive months <the company's fiscal year is October 1 to September 30>. ● A fiscal year is often different from the calendar year, esp. for tax purposes. — Also termed *fiscal period*.

fiscus (fis-kəs). [Latin "the basket" or "money-bag"] **1.** *Roman law.* The emperor's treasury. ● In later Roman times, the term also included the treasury of the state. See AERARIUM. **2.** *Hist.* The treasury of a monarch (as the repository of forfeited property), a noble, or any private person. **3.** The treasury or property of the state as distinguished from the private property of the monarch. Cf. HANAPER.

fishery. **1.** A right or liberty of taking fish. ● Fishery was an incorporeal hereditament under old English law. — Also termed *piscary*.

free fishery. An exclusive right of fishery, existing by grant or prescription from the monarch, to take fish in public water such as a river or an arm of the sea. — Also termed *libera piscaria*.

right of fishery. The right of persons to fish in public waters, subject to federal and state restrictions and regulations, such as fishing seasons, licensing, and catch limits.

several fishery. A right to fish in waters that are neither on one's own land nor on the

land of a person who granted the right to fish.

2. A fishing ground.

common fishery. A fishing ground where all persons have a right to take fish. Cf. *common of piscary* under COMMON.

fishing expedition. An attempt, through broad discovery requests or random questions, to elicit information from another party in the hope that something relevant might be found; esp., such an attempt that exceeds the scope of discovery allowed by procedural rules. — Also termed *fishing trip*.

“No longer can the time-honored cry of ‘fishing expedition’ serve to preclude a party from inquiring into the facts underlying his opponent’s case.” *Hickman v. Taylor*, 329 U.S. 495, 507, 67 S.Ct. 385, 392 (1947).

fish royal. *Hist.* Whales, sturgeon, and porpoises that, when thrown ashore or caught near the English coast, become Crown property.

fistuca. See FESTUCA.

fithwite. See FUTHWITE.

fitness for a particular purpose. See *implied warranty of fitness for a particular purpose* under WARRANTY (2).

Five Mile Act. *Hist.* A 1665 act prohibiting Puritan ministers from teaching or coming within five miles of any town where they had held office if they refused to pledge that they would not seek to overturn the Church of England. • The Act was repealed in 1689.

501(c)(3) organization. See CHARITABLE ORGANIZATION.

fix, n. 1. A dose of an illegal drug <the defendant testified that he robbed the store because he needed to buy a fix>. **2.** A navigational reading.

fix, vb. 1. To announce (an exchange price, interest rate, etc.) <interest was fixed at 6%>. **2.** To agree with another to establish (a price for goods or services), often illegally <representatives of Acme and Widget secretly met to fix prices for their companies’ products>. See PRICE-FIXING. **2.** To influence (an action or outcome, esp. a sports event) by improper or illegal means <after losing the election, the challenger claimed that the incumbent had fixed the election>.

fixation. *Copyright.* The process or result of recording a work of authorship in tangible form so that it can be copyrighted under federal law. • Fixation occurs, for instance, when a live television broadcast is transmitted and simultaneously recorded on videotape.

fix bail, vb. To set the amount and terms of bail <after hearing the officer’s testimony, the judge fixed bail for the defendant at \$100,000>. See BAIL.

fixed annuity. See ANNUITY.

fixed asset. See *capital asset* (1) under ASSET.

fixed-benefit plan. See *defined pension plan* under PENSION PLAN.

fixed capital. See CAPITAL.

fixed charge. See *fixed cost* under COST.

fixed cost. See COST (1).

fixed debt. See DEBT.

fixed-dollar investment. See INVESTMENT.

fixed expense. See *fixed cost* under COST.

fixed fee. 1. A fee that will not vary according to the amount of work done or other factor. **2.** In a construction contract, a predetermined amount that is added to costs for calculating payments due under the contract.

fixed income. See INCOME.

fixed-income investment. See INVESTMENT.

fixed-income security. See SECURITY.

fixed liability. See *fixed debt* under DEBT.

fixed opinion. A bias or prejudice that disqualifies a potential juror.

fixed price. See PRICE.

fixed-price contract. See CONTRACT.

fixed-rate mortgage. See MORTGAGE.

fixed-return dividend. See DIVIDEND.

fixed sentence. See SENTENCE.

fixed trust. See TRUST.

fixing a jury. See JURY-FIXING.

fixture. Personal property that is attached to land or a building and that is regarded as an irremovable part of the real property, such as a fireplace built into a home. — Also termed *permanent fixture*. Cf. IMPROVEMENT.

“A fixture can best be defined as a thing which, although originally a movable chattel, is by reason of its annexation to, or association in use with land, regarded as a part of the land. . . . The law of fixtures concerns those situations where the chattel annexed still retains a separate identity in spite of annexation, for example a furnace or a light fixture. Where the chattel annexed loses such identity, as in the case of nails, boards, etc., the problem becomes one of accession.” Ray Andrews Brown, *The Law of Personal Property* § 137, at 698 & n.1 (2d ed. 1955).

“Broadly, goods can be classified for the purposes of [UCC §] 9-313 into three categories: those that remain ‘pure goods,’ those so substantially integrated into real estate as to become real estate themselves, ‘pure realty,’ and those in the gray area that would pass in a deed to the real estate but that retain separate status as personal property. These last are fixtures.” 4 James J. White & Robert S. Summers, *Uniform Commercial Code* § 33-8, at 338 (4th ed. 1995).

tenant’s fixture. Removable personal property that a tenant affixes to the leased property but that the tenant can detach and take away.

trade fixture. Removable personal property that a tenant attaches to leased land for business purposes, such as a display counter. • Despite its name, a trade fixture is not usually treated as a fixture — that is, as irremovable.

fixture filing. The act or an instance of recording, in public real-estate records, a security interest in personal property that is intended to become a fixture. • The creditor files a financing statement in the real-property records of the county where a mortgage on the real estate would be filed. A fixture-filing financing statement must contain a description of the real estate.

FKA. *abbr.* Formerly known as. — Also spelled *F/K/A*; *fka*; *f/k/a*.

flag, n. 1. A usu. rectangular piece of cloth, bunting, or other material decorated with a distinctive design and used as a symbol or signal. 2. Something symbolized by the display of a flag, such as a ship or nationality. See DUTY OF THE FLAG; LAW OF THE FLAG.

flag of convenience. *Int’l law.* A national flag flown by a ship not because the ship or its crew has an affiliation with the nation, but because the lax controls and modest fees and taxes imposed by that nation have attracted the owner to register it there. • After World War II, shipowners began registering their ships in countries such as Panama, Liberia, and Honduras to avoid expensive and restrictive national regulation of labor, safety, and other matters. Since the late 1950s, there has been increasing international pressure to require a “genuine link” between a ship and its flag state, but this reform has been slow in coming. — *Abbr.* FOC.

flag of truce. *Int’l law.* A white flag used as a signal when one belligerent wishes to communicate with the other in the field. • The bearers of such a flag may not be fired on, injured, or taken prisoner, as long as they carry out their mission in good faith.

flag desecration. The act of mutilating, defacing, burning, or flagrantly misusing a flag. • Flag desecration is constitutionally protected as a form of free speech. *United States v. Eichman*, 496 U.S. 310, 110 S.Ct. 2404 (1990).

flagrans bellum (flay-granz bel-əm). [Latin “raging war”] A war currently being waged.

flagrans crimen (flay-granz cri-mən). [Latin] A crime in the very act of its commission or of recent occurrence; a fresh crime.

flagrante bello (flə-gran-tee bel-oh). [Latin] During an actual state of war.

flagrante delicto. See IN FLAGRANTE DELICTO.

flag state. The state under whose flag a ship sails. • A ship may fly the flag of one state only.

flash-of-genius rule. *Patents.* The now-defunct principle that a device is not patentable if it was invented as the result of trial and error rather than as a “flash of creative genius.” • The rule, which takes its name from language in *Cuno Engineering Corp. v. Automatic Devices Corp.*, 314 U.S. 84, 91, 62 S.Ct. 37, 41 (1941), was legislatively overturned in 1952. 35 USCA § 103.

flat, adv. Without an allowance or charge for accrued interest <the stock was sold flat>.

flat, n. A house in a larger block; an apartment.

flat bond. See BOND (3).

flat cancellation. See CANCELLATION.

flat money. See *fiat money* under MONEY.

flat reinsurance. See REINSURANCE.

flat sentence. See *determinate sentence* under SENTENCE.

flat tax. See TAX.

flat time. See TIME.

fledwite (fled-wīt). *Hist.* **1.** A discharge from an amercement (a fine) for a fugitive who turns himself or herself in to the monarch. **2.** The fine set on a fugitive as the price for obtaining freedom. **3.** The right to hold court and take an amercement for the offenses of beating and striking. — Also spelled *fleduite*. — Also termed *flighwite*.

flee from justice. See FLIGHT.

fleet insurance. See INSURANCE.

Fleet marriage. See MARRIAGE (1).

fleme (fleem). *Hist.* An outlaw; a fugitive bondman or villein. — Also spelled *flem*. — Also termed *flyma*.

flemene frit (flee-mən frit). *Hist.* The harboring or aiding of a fleme (a fugitive). — Also termed and spelled *flemenes frinthe*; *flemens-firth*; *flyman frynth*; *flymena frynthe*.

flemeswite (fleemz-wīt). *Hist.* The privilege to possess, or the actual possession of, the goods and fines of a fleme (a fugitive).

Fleta seu Commentarius Juris Anglicani (flee-tə syoo kom-ən-tair-ee-əs joor-is ang-glō-kay-nī). *Hist.* The title of an ancient treatise on English law, composed in the 13th century and first printed in 1647. • The work is largely derivative, being based on Bracton's *De Legibus et Consuetudinibus*. The unknown author may have been a judge or lawyer who wrote the treatise while in London's Fleet prison. — Often shortened to *Fleta*.

flexdollars. Money that an employer pays an employee, who can apply it to a choice of employee benefits.

flexible constitution. See CONSTITUTION.

flexible-rate mortgage. See *adjustable-rate mortgage* under MORTGAGE.

flextime. A work schedule that employees may change within their discretion, allowing them to work differing hours as long as they work their required number of hours over a specified period (usu. a week).

flexweek. A four-day workweek, usu. consisting of four 10-hour days.

flight. The act or an instance of fleeing, esp. to evade arrest or prosecution <the judge denied bail because the defendant is a flight risk>. — Also termed *flight from prosecution*; *flee from justice*.

flight easement. See *avigational easement* under EASEMENT.

flight from prosecution. See FLIGHT.

flighwite. See FLEDWITE.

flim flam. A scheme by which another is tricked for money; CONFIDENCE GAME. — Also termed *faith and trust*.

flip, vb. Slang. **1.** To buy and then immediately resell securities or real estate in an attempt to turn a profit. **2.** To refinance consumer loans. **3.** To turn state's evidence.

flip mortgage. See MORTGAGE.

float, n. **1.** The sum of money represented by outstanding or uncollected checks. **2.** The delay between a transaction and the withdrawal of funds to cover the transaction. **3.** The amount of a corporation's shares that are available for trading on the securities market.

float, vb. **1.** (Of a currency) to attain a value in the international exchange market solely on the basis of supply and demand <the IMF allowed the peso to float>. **2.** To issue (a security) for sale on the market <PDQ Corp. floated a new series of preferred shares>. **3.** To arrange or negotiate (a loan) <the bank floated a car loan to Alice despite her poor credit history>.

floatage. See FLOTSAM.

floater. See *floating-rate note* under NOTE (1).

floater insurance

floater insurance. See INSURANCE.

floating, *adj.* Not fixed or settled; fluctuating; variable.

floating capital. See CAPITAL.

floating charge. See *floating lien* under LIEN.

floating debt. See DEBT.

floating easement. See EASEMENT.

floating-interest bond. See BOND (3).

floating lien. See LIEN.

floating policy. See INSURANCE POLICY.

floating rate. See INTEREST RATE.

floating-rate note. See NOTE (1).

floating stock. See STOCK.

floating zoning. See ZONING.

floodgate. (*usu. pl.*) A restraint that prevents a release of a *usu. undesirable result* <the new law opened the floodgates of litigation>.

flood insurance. See INSURANCE.

floodplain. Land that is subject to floodwaters because of its level topography and proximity to a river or arroyo; esp., level land that, extending from a riverbank, is inundated when the flow of water exceeds the channel's capacity.

floodwater. See WATER.

floor. 1. A legislature's central meeting place where the members sit and conduct business, as distinguished from the galleries, corridors, or lobbies <the floor of the Texas Senate>. **2.** The trading area where stocks and commodities are bought and sold on an exchange <the broker placed his buy order with the trader on the floor of the NYSE>. **3.** The lowest limit <the floor for that position is \$25,000 per year>.

floor debate. The legislative process of debating a proposed bill before an entire chamber rather than before a committee.

floor-plan financing. See FINANCING.

floor planning. See *floor-plan financing* under FINANCING.

floor-plan rule. The principle by which a vehicle owner who has placed for sale a vehicle in a retail dealer's showroom is estopped to deny the title of an innocent purchaser from the dealer in the ordinary course of retail dealing.

floor price. See PRICE.

floor tax. See TAX.

flotage. See FLOTSAM.

flotation cost. See COST (1).

floterial district. See DISTRICT.

flotsam (flot-səm). Goods that float on the water's surface after being abandoned at sea. — Also termed *floatage*; *flotage*. Cf. JETSAM; LAGAN; WAVESON.

flowage. The natural movement of water from a dominant estate to a servient estate. • It is a privilege or easement of the owner of the upper estate and a servitude of the lower estate.

flowage easement. See EASEMENT.

flower bond. See BOND (3).

FLSA. *abbr.* FAIR LABOR STANDARDS ACT.

fluctuating clause. See ESCALATOR CLAUSE.

fly for it. *Hist.* To flee after allegedly committing a crime. • The ancient custom in criminal trials was to ask the jury after its verdict — even a not-guilty verdict — “Did he fly for it?” The purpose was to enable the jury to find whether the defendant had fled from justice. A defendant who had fled would forfeit personal property, even though found not guilty on the underlying charge.

flyma. See FLEME.

flyman frynth. See FLEMENE FRIT.

flymena frynth. See FLEMENE FRIT.

fly-power assignment. See ASSIGNMENT (2).

flyspeck, *n.* *Insurance.* A potential trivial defect in title to real property, as a result of which a

title-insurance company is likely to exclude any risk from that defect before issuing a policy. — **flyspeck**, *vb*.

FMC. *abbr.* FEDERAL MARITIME COMMISSION.

FMCS. *abbr.* FEDERAL MEDIATION AND CONCILIATION SERVICE.

FmHA. *abbr.* FARMERS HOME ADMINISTRATION.

FMV. See *fair market value* under VALUE.

FNMA. *abbr.* FEDERAL NATIONAL MORTGAGE ASSOCIATION.

FOB. *abbr.* FREE ON BOARD.

FOB destination. See FREE ON BOARD.

FOB shipping. See FREE ON BOARD.

FOC. See *flag of convenience* under FLAG.

foedus (**fee**-dəs). [Latin "league"] *Hist. Int'l law*. A treaty; league; compact.

foenus nauticum (**fee**-nəs **naw**-tə-kəm). [Latin] *Civil law*. Nautical or maritime interest; esp., an extraordinary rate of interest charged to underwrite a hazardous voyage. — Also termed *usura maritima*.

foesting-men. See HABENTES HOMINES.

FOIA (**foy**-ə). *abbr.* FREEDOM OF INFORMATION ACT.

foiable (**foy**-ə-bəl), *adj. Slang.* (Of documents) subject to disclosure under the Freedom of Information Act (FOIA).

folcland. See FOLKLAND.

folio (**foh**-lee-oh). [fr. Latin *folium* "leaf"] **1.** *Hist.* A leaf of a paper or parchment, numbered only on the front. • A folio includes both sides of the leaf, or two pages, with the letters "a" and "b" (or "r" and "v," signifying *recto* and *verso*) added to show which of the two pages was intended. **2.** *Hist.* A certain number of words in a legal document, used as a method of measurement. • In England, 72 or 90 words formed a folio; in the United States, 100 words.

"Folio . . . [a] certain number of words; in conveyances, etc., and proceedings in the High Court amounting to seventy-two, and in parliamentary proceedings to nine-

ty." Ivan Horniman, *Wharton's Law Lexicon* 368 (13th ed. 1925).

3. A page number on a printed book. **4.** A large book the pages of which are formed by folding a sheet of paper only once in the binding to form two leaves, making available four pages (both sides of each leaf).

folkland. *Hist.* Land held by customary law, without written title. — Also spelled *folcland*. Cf. BOOKLAND.

folk laws. See LEGES BARBARORUM.

follow, *vb*. To conform to or comply with; to accept as authority <the lawyer assumed that the Supreme Court would follow its own precedent>.

follow-the-fortunes doctrine. *Insurance.* The principle that a reinsurer must reimburse the reinsured for its payment of settled claims as long as the reinsured's payments were reasonable and in good faith. • This rule prevents a reinsurer from second-guessing a reinsured's good-faith decision to pay a claim arguably not covered under the original insurance policy. — Often shortened to *follow the fortunes*.

follow-the-settlements doctrine. *Insurance.* The principle that an indemnitor must accede to the actions of the indemnitee in adjusting and settling claims; esp., the principle that a reinsurer must follow the actions of the reinsured.

fons juris. See SOURCE OF LAW.

Food and Drug Administration. The federal agency within the Department of Health and Human Services established to determine safety and quality standards for foods, drugs, medical devices, cosmetics, and other household products. — Abbr. FDA.

Food, Drug, and Cosmetic Act. A 1938 federal law prohibiting the transportation in interstate commerce of adulterated or misbranded food, drugs, or cosmetics.

foot acre. A one-foot-deep layer of coal spread over one acre. • This measurement method is used to value coal land for tax purposes.

foot-frontage rule. *Tax.* In property-tax assessment, a principle that confines the lot boundary to the actual frontage on the line of improvement. • The depth of the lot and the

number and character of improvements or their value is immaterial if this formula is used.

footgeld (fuut-geld). *Hist.* In forest law, a fine imposed for not making a dog incapable of hunting by either cutting out the ball of its paw or cutting off its claws. • The cutting was known as “expeditating” the dog. To be “free” or “quit” of footgeld was to be relieved of the duty to expeditate one’s dog.

foot of the fine. *Hist.* At common law, the fifth and last part of a fine of conveyance. • This part included the entire matter, reciting the names of the parties and the date, place, and before whom it was acknowledged or levied. See FINE (1).

footprint. 1. *Evidence.* The impression made on a surface of soil, snow, etc., by a human foot or a shoe, boot, or any other foot covering. **2.** *Real estate.* The shape of a building’s base.

for account of. A form of indorsement on a note or draft introducing the name of the person entitled to receive the proceeds.

Foraker Act (for-ə-kər). The original (1900) federal law providing Puerto Rico with a civil government, but keeping it outside the U.S. customs area. See 48 USCA §§ 731-752.

foraneous (fə-ray-nee-əs), adj. [fr. Latin *forum* “marketplace”] Of or relating to a court or marketplace.

foraneus (fə-ray-nee-əs), n. [fr. Latin *foris* “without”] *Hist.* A foreigner; an alien; a stranger.

forathe (for-ayth). *Hist.* In forest law, one who can make an oath or bear witness for another.

forbannitus (for-ban-ə-təs). [Law Latin] *Hist.* **1.** A pirate; an outlaw. **2.** One who was banished. — Also termed *forisbanitus*.

forbarre (for-bahr), vb. [Law French] *Hist.* To preclude; to bar out; to estop.

forbatudus (for-bə-t[y]oo-dəs). [Law Latin] *Hist.* A person who provokes — and dies in — a fight.

forbearance, n. 1. The act of refraining from enforcing a right, obligation, or debt. • Strictly speaking, *forbearance* denotes an intentional negative act, while *omission* or *neglect* is an

unintentional negative act. **2.** The act of tolerating or abstaining. — **forbear, vb.**

forbidden degree. See *prohibited degree* under DEGREE (5).

forbidden departure. An impermissible deviation from the federal sentencing guidelines based on race, sex, national origin, creed, religion, or socioeconomic status.

for cause. For a legal reason or ground. • The phrase expresses a common standard governing the removal of a civil servant or an employee under contract. — **for-cause, adj.**

force, n. Power, violence, or pressure directed against a person or thing.

actual force. Force consisting in a physical act, esp. a violent act directed against a robbery victim. — Also termed *physical force*.

constructive force. Threats and intimidation to gain control or prevent resistance; esp., threatening words or gestures directed against a robbery victim.

deadly force. Violent action known to create a substantial risk of causing death or serious bodily harm. • A person may use deadly force in self-defense only if retaliating against another’s deadly force. — Also termed *extreme force*. Cf. *nondeadly force*.

“Under the common law the use of deadly force is never permitted for the sole purpose of stopping one fleeing from arrest on a misdemeanor charge . . .” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 1098 (3d ed. 1982).

excessive force. Unreasonable or unnecessary force under the circumstances.

irresistible force. Force that cannot be foreseen or controlled, esp. that which prevents the performance of a contractual obligation; FORCE MAJEURE.

legal force. See *reasonable force*.

nondeadly force. 1. Force that is neither intended nor likely to cause death or serious bodily harm; force intended to cause only minor bodily harm. **2.** A threat of deadly force, such as displaying a knife. — Also termed *moderate force*. Cf. *deadly force*.

physical force. See *actual force*.

reasonable force. Force that is not excessive and that is appropriate for protecting oneself or one’s property. • The use of reasonable force will not render a person criminally or tortiously liable. — Also termed *legal force*.

"One does not use jeweller's scales to measure reasonable force." *Reed v. Wastie*, [1972] Crim. L.R. 221 (per Lane, J.) (as quoted in Glanville Williams, *Textbook of Criminal Law* 451 (1978)).

unlawful force. Action constituting an offense or actionable tort directed against a person without that person's consent.

force, vb. To compel by physical means or by legal requirement <Barnes used a gun to force Ms. Jillson to use her ATM card> <under the malpractice policy, the insurance company was forced to defend the doctor>.

force and arms. *Hist.* Violence. • The phrase was used in common-law pleading in declarations of trespass and in indictments to denote that the offending act was committed violently. See VI ET ARMIS.

force and effect, n. Legal efficacy <mailing the brief had the force and effect of filing it with the clerk>. • The term is now generally regarded as a redundant legalism.

forced conversion. See CONVERSION (1).

forced exile. See EXILE.

forced heir. See HEIR.

forced labor. *Int'l law.* Work exacted from a person under threat of penalty; work for which a person has not offered himself or herself voluntarily. • Under the U.N. Convention on Civil and Political Rights (article 8), exemptions from this definition include (1) penalties imposed by a court, (2) compulsory military service, (3) action taken in an emergency, (4) normal civil obligations, and (5) minor communal services. — Also termed *compulsory labor*.

forced portion. See LEGITIME.

forced resettlement. *Int'l law.* The involuntary transfer of individuals or groups within the jurisdiction of a country whether inside its own territory or into or out of occupied territory.

forced respite. See RESPITE.

forced sale. See SALE.

forced share. See ELECTIVE SHARE.

force majeure (fors ma-zhør). [Law French "a superior force"] An event or effect that can be

neither anticipated nor controlled. • The term includes both acts of nature (e.g., floods and hurricanes) and acts of people (e.g., riots, strikes, and wars). — Also termed *force majeure; vis major; superior force*. Cf. ACT OF GOD; VIS MAJOR.

force-majeure clause. A contractual provision allocating the risk if performance becomes impossible or impracticable as a result of an event or effect that the parties could not have anticipated or controlled.

forcible, adj. Effected by force or threat of force against opposition or resistance.

"[In the law of trespass, the] term 'forcible' is used in a wide and somewhat unnatural sense to include any act of physical interference with the person or property of another. To lay one's finger on another person without lawful justification is as much a forcible injury in the eye of the law, and therefore a trespass, as to beat him with a stick. To walk peacefully across another man's land is a forcible injury and a trespass, no less than to break into his house *vi et armis*. So also it is probably a trespass deliberately to put matter where natural forces will take it on to the plaintiff's land." R.F.V. Heuston, *Salmond on the Law of Torts* 5 (17th ed. 1977).

forcible detainer. 1. The wrongful retention of possession of property by one originally in lawful possession, often with threats or actual use of violence. **2.** FORCIBLE ENTRY AND DETAINER.

forcible entry. At common law, the act or an instance of violently and unlawfully taking possession of lands and tenements against the will of those entitled to possession.

forcible entry and detainer. 1. The act of violently taking and keeping possession of lands and tenements without legal authority.

"To walk across another's land, or to enter his building, without privilege, is a trespass, but this in itself, while a civil wrong, is not a crime. However, if an entry upon real estate is accomplished by violence or intimidation, or if such methods are employed for detention after a peaceable entry, there is a crime according to English law, known as forcible entry and detainer. This was a common-law offense in England, although supplemented by English statutes that are old enough to be common law in this country. . . . It has sometimes been said that there are two separate offenses — (1) forcible entry and (2) forcible detainer. This may be true under the peculiar wording of some particular statute, but in general it seems to be one offense which may be committed in two different ways." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 487-88 (3d ed. 1982).

2. A quick and simple legal proceeding for regaining possession of real property from someone who has wrongfully taken, or refused

to surrender, possession. — Also termed *forcible detainer*. See EVICTION; EJECTMENT.

“Forcible entry and detainer is a remedy given by statute for the recovery of possession of land and of damages for its detention. It is entirely regulated by statute, and the statutes vary materially in the different states.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 74, at 188 (Henry Winthrop Ballantine ed., 3d ed. 1923).

foreclose, vb. To terminate a mortgagor’s interest in property; to subject (property) to foreclosure proceedings.

“Should the mortgagor default in his obligations under the mortgage, the mortgagee will seek to ‘foreclose’, — i.e., ‘end’ or ‘close’ the mortgagor’s rights in the security. After taking the appropriate statutory steps, the mortgagee will sell the mortgaged property. If the sale is to someone other than the mortgagor or the mortgagee (a ‘third party’ sale) the proceeds will go: first, to pay the costs of the foreclosure proceedings; second, to pay off the principal indebtedness and accrued interest; third, if there is anything left over (i.e., any ‘equity’ existed) this is paid to the mortgagor.” Edward H. Rabin, *Fundamentals of Modern Real Property Law* 1087 (1974).

foreclosure (for-kloh-zhər). A legal proceeding to terminate a mortgagor’s interest in property, instituted by the lender (the mortgagee) either to gain title or to force a sale in order to satisfy the unpaid debt secured by the property. Cf. REPOSSESSION.

equitable foreclosure. A foreclosure method in which the court orders the property sold, and the proceeds are applied first to pay the costs of the suit and sale and then to the mortgage debt. • Any surplus is paid to the mortgagor.

judicial foreclosure. A costly and time-consuming foreclosure method by which the mortgaged property is sold through a court proceeding requiring many standard legal steps such as the filing of a complaint, service of process, notice, and a hearing. • Judicial foreclosure is available in all jurisdictions and is the exclusive or most common method of foreclosure in at least 20 states.

mortgage foreclosure. A foreclosure of the mortgaged property upon the mortgagor’s default.

nonjudicial foreclosure. 1. See *power-of-sale foreclosure*. 2. A foreclosure method that does not require court involvement.

power-of-sale foreclosure. A foreclosure process by which, according to the mortgage instrument and a state statute, the mortgaged property is sold at a nonjudicial public sale by a public official, the mortgagee, or a trustee, without the stringent notice require-

ments, burdens, or delays of a judicial foreclosure. • Power-of-sale foreclosure is authorized and used in more than half the states. — Also termed *nonjudicial foreclosure*; *statutory foreclosure*.

strict foreclosure. A rare procedure that gives the mortgagee title to the mortgaged property — without first conducting a sale — after a defaulting mortgagor fails to pay the mortgage debt within a court-specified period. • The use of strict foreclosure is limited to special situations except in those few states that permit this remedy generally.

tax foreclosure. A public authority’s seizure and sale of property for nonpayment of taxes.

foreclosure decree. 1. Generally, a decree ordering a judicial foreclosure sale. 2. A decree ordering the strict foreclosure of a mortgage.

foreclosure sale. See SALE.

foregift. *Hist.* A premium paid for a lease in addition to rent; forehand rent. See FOREHAND RENT (1).

foregoer (for-goh-ər). *Hist.* A royal purveyor; a person who buys provisions for the Crown at an appraised (that is, reduced) price while the royal household travels about the country.

forehand rent. *Hist.* 1. A premium paid by the tenant on the making of a lease, esp. on the renewal of a lease by an ecclesiastical corporation. 2. Generally, rent payable before a lease begins.

foreign, adj. 1. Of or relating to another country <foreign affairs>. 2. Of or relating to another jurisdiction <the Arizona court gave full faith and credit to the foreign judgment from Mississippi>. — **foreigner, n.**

foreign administration. See *ancillary administration* under ADMINISTRATION.

foreign administrator. See ADMINISTRATOR (1).

foreign agent. See AGENT.

foreign apposer (ə-pohz-ər). *Hist.* An Exchequer officer responsible for examining the sheriff’s estreat (book of fines), comparing the entries with those in court records, and apposing (interrogating) the sheriff on each sum in the estreat. — Also termed *apposer*.

foreign assignment. See ASSIGNMENT (2).

foreign bill. See BILL (6).

foreign bill of exchange. See *foreign draft* under DRAFT.

foreign bond. See BOND (3).

foreign consulate. See CONSULATE.

foreign corporation. See CORPORATION.

foreign county. See COUNTY.

foreign court. See COURT.

foreign creditor. See CREDITOR.

foreign divorce. See DIVORCE.

foreign document. See DOCUMENT.

foreign domicile. See DOMICILE.

foreign dominion. *Hist.* A country that at one time was a foreign state but that by conquest or cession has come under the British Crown.

foreign draft. See DRAFT.

foreign-earned-income exclusion. The Internal Revenue Code provision that excludes from taxation a limited amount of income earned by nonresident taxpayers outside the United States. • The taxpayer must elect between this exclusion and the foreign tax credit. IRC (26 USCA) § 911(a), (b). See *foreign tax credit* under TAX CREDIT.

foreigner. **1.** *Hist.* A person not an inhabitant of a particular city under discussion. **2.** A citizen of another country.

foreign exchange. **1.** The process of making international monetary transactions; esp., the conversion of one currency to that of a different country. **2.** Foreign currency or negotiable instruments payable in foreign currency, such as traveler's checks.

foreign-exchange rate. The rate at which the currency of one country is exchanged for the currency of another country.

foreign guardian. See GUARDIAN.

Foreign Sovereign Immunities Act

foreign immunity. See IMMUNITY (1).

foreign judgment. See JUDGMENT.

foreign jurisdiction. See JURISDICTION.

foreign jury. See JURY.

foreign law. **1.** Generally, the law of another country. **2.** *Conflict of laws.* The law of another state or of a foreign country.

foreign minister. See MINISTER.

foreign object. An item that appears where it does not belong; esp., an item introduced into a living body, such as a sponge that is left in a patient's body during surgery. • The discovery rule usu. tolls the statute of limitations for a medical-malpractice claim based on a foreign object. — Also termed *foreign substance*. See FOREIGN SUBSTANCE.

foreign port. See PORT

foreign-relations law. See INTERNATIONAL LAW.

foreign service. **1.** United States Foreign Service. **2.** FORINSEC SERVICE. **3.** *Hist.* A feudal service performed by a tenant outside of the fee.

foreign situs trust. See TRUST.

Foreign Sovereign Immunities Act. A federal statute providing individuals with a right of action against foreign governments, under certain circumstances, to the extent the claim arises from the private, as opposed to the public, acts of the foreign state. 28 USCA §§ 1602–1611. — Abbr. FSIA. See RESTRICTIVE PRINCIPLE OF SOVEREIGN IMMUNITY.

“The Foreign Sovereign Immunities Act (FSIA) of 1976 was designed to provide a set of comprehensive regulations governing access to federal and state courts in this country for plaintiffs asserting claims against foreign states and instrumentalities thereof. The enactment of this legislation responded to the reality that increased contacts between American citizens and companies on the one hand, and foreign states and entities owned by foreign states on the other, as well as a constantly expanding range of government activities, had created the need for judicial fora in this country to resolve disputes arising out of these activities.” 14A Charles Alan Wright et al., *Federal Practice and Procedure* § 3662, at 160–61 (2d ed. 1998).

foreign state. **1.** A foreign country. **2.** An American state different from the one under discussion.

foreign substance. A substance found in a body, organism, or thing where it is not supposed to be found <the plaintiff sued because she thought she saw — and later confirmed that she had found — a foreign substance (namely, mercury) in her hamburger>.

foreign support order. See SUPPORT ORDER.

foreign tax credit. See TAX CREDIT.

foreign trade zone. See FREE-TRADE ZONE.

foreign trust. See TRUST.

foreign vessel. See VESSEL.

foreign voyage. See VOYAGE.

foreign water. See WATER.

forejudge, vb. **1.** To prejudge; to judge beforehand. **2.** Loosely, FORJUDGE.

foreman. **1.** See *presiding juror* under JUROR. **2.** A person who directs the work of employees; an overseer, crew chief, or superintendent.

forematron. *Archaic.* The presiding juror in an all-woman jury.

forensic (fə-ren-sik *also-zik*), *adj.* **1.** Used in or suitable to courts of law or public debate <forensic psychiatry>. **2.** Rhetorical; argumentative <Spence's considerable forensic skills>. **3.** *Hist.* Exterior; foreign.

forensic engineering. The use of engineering principles or analysis in a lawsuit, usu. through an expert witness's testimony.

forensic evidence. See EVIDENCE.

forensic linguistics. The science or technique that evaluates the linguistic characteristics of written or oral communications, usu. to determine identity or authorship.

forensic medicine. The branch of medicine that establishes or interprets evidence using scientific or technical facts, such as ballistics. — Also termed *medical jurisprudence*.

forensic pathology. The specific branch of medicine that establishes or interprets evidence dealing with diseases and disorders of the body, esp. those that cause death.

forensics (fə-ren-siks *also-ziks*). **1.** The art of argumentative discourse. **2.** The branch of law enforcement dealing with legal evidence relating to firearms and ballistics.

forensic services. *Hist.* In feudal law, the payment of extraordinary aids or the rendition of extraordinary military services.

forensis (fə-ren-sis), *adj.* [fr. Latin *forum* "court"] *Roman law.* Of or relating to a court of law. • An advocate, for example, was sometimes known as a *homo forensis*.

foreperson. See *presiding juror* under JUROR.

foreseeability, n. The quality of being reasonably anticipatable. • Foreseeability, along with actual causation, is an element of proximate cause in tort law. — **foreseeable, adj.**

foreseeable damages. See DAMAGES.

forest, n. *Hist.* A tract of land, not necessarily wooded, reserved to the king or a grantee, for hunting deer and other game.

forestall (for-stawl), *vb.* **1.** To prevent (an event, result, etc.). **2.** *Hist.* To intercept or obstruct (a person on a royal highway). **3.** *Hist.* To prevent (a tenant) from coming on the premises. **4.** *Hist.* To intercept (a deer reentering a forest). — Also spelled *forstall*.

forestaller, n. *Hist.* A person who forestalls; one guilty of the offense of forestalling.

forestalling the market. *Hist.* **1.** The taking possession of commodities on their way to the market. **2.** The purchase of goods on their way to the market, with the intention of reselling them at a higher price. **3.** The dissuasion of sellers from taking their goods to the market, or the persuasion of sellers to increase the price of their goods at the market. • At common law, forestalling the market was a criminal offense.

forestry right. A land interest under which a person has the right to enter the land, establish and maintain a crop of trees, harvest them, and construct works for that purpose.

forfeiture (for-fi-chər), *n.* **1.** The divestiture of property without compensation. **2.** The loss of a right, a privilege, or property because of a crime, breach of obligation, or neglect of duty. ● Title is simultaneously transferred to another, such as the government, a corporation, or a private person. **3.** Something (esp. money or property) lost or confiscated by this process; a penalty. — **forfeit**, *vb.* — **forfeitable**, *adj.*

civil forfeiture. An in rem proceeding brought by the government against property that either facilitated a crime or was acquired as a result of criminal activity.

criminal forfeiture. A governmental proceeding brought against a person as punishment for the person's criminal behavior.

forfeiture of marriage. *Hist.* A penalty exacted by a lord from a ward who married without the lord's consent. ● The penalty was a money payment double the value that the marriage would otherwise have been worth to the lord.

forfeiture of pay. *Military law.* A punishment depriving the guilty party of all or part of his or her military pay.

4. A destruction or deprivation of some estate or right because of the failure to perform some obligation or condition contained in a contract.

forfeiture clause. A contractual provision stating that, under certain circumstances, one party must forfeit something to the other. ● Forfeiture clauses are often held to be void, although they are similar to conditions and other qualifications of estates in land.

forgavel (for-gav-əl). *Hist.* A small reserved rent in money; quit-rent.

forgery, *n.* **1.** The act of fraudulently making a false document or altering a real one to be used as if genuine <the contract was void because of the seller's forgery>. — Also termed *false making*. ● Though forgery was a misdemeanor at common law, modern statutes typically make it a felony. **2.** A false or altered document made to look genuine by someone with the intent to deceive <he was not the true property owner because the deed of trust was a forgery>. — Also termed *fake*. — **forge**, *vb.* — **forger**, *n.*

"While it is true that there is a distinction between fraud and forgery, and forgery contains some elements that are not included in fraud, forgeries are a species of fraud. In essence, the crime of forgery involves the making, altering, or completing of an instrument by someone other than the ostensible maker or drawer or an agent of the ostensible maker or drawer." 37 C.J.S. *Forgery* § 2, at 66 (1997).

double forgery. A draft having a forged pay-or signature and a forged indorsement.

fori disputationes (for-I dis-pyoo-tay-shee-oh-nee-z). [Latin "arguments of the court"] *Roman law.* Arguments or discussions before a court.

forinsec service (fə-rin-sik). *Hist.* The feudal services owed by a mesne (i.e., intermediate) lord, esp. those of a military nature. — Also termed *foreign service*; *forinsecum servitium*. Cf. INTRINSEC SERVICE.

"The terminology of Bracton's day and of yet earlier times neatly expresses the distinction between the service which the tenant owes to his immediate lord by reason of the bargain which exists between them, and the service which was incumbent on the tenement whilst it was in the lord's hand. The former is intrinsec service, the latter forinsec service; the former is the service which is created by, which (as it were) arises within, the bargain between the two persons, A and B, whose rights and duties we are discussing; the latter arises outside that bargain, is 'foreign' to that bargain. . . . [T]he term is a relative one; what is 'intrinsec' between A and B is 'forinsec' as regards C." 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 238, 239 n.2 (2d ed. 1898).

forinsecus (fə-rin-sə-kəs), *adv.* [fr. Latin *foris* "without"] *Hist.* On the outside.

forinsecus (fə-rin-sə-kəs), *n.* [Latin] *Hist.* A foreigner; someone from another jurisdiction.

foris (for-is), *adj.* [Latin] Abroad; outdoors; without.

forisbanitus (for-is-ban-ə-təs). See FORBANNITUS.

forisfacere (for-is-fay-sə-ree), *vb.* [fr. Latin *foris* "without" + *facere* "to make"] *Hist.* **1.** To forfeit (an estate or other property). ● Literally, this means to make the property foreign to oneself. **2.** To violate the law; to do a thing against or without the law.

forisfactum (for-is-fak-təm), *adj.* [Law Latin] *Hist.* (Of property) forfeited.

forisfactus (for-is-fak-təs). [Law Latin] *Hist.* A criminal; esp., one who has forfeited his or her life by committing a capital offense.

forisfactus servus (for-is-fak-təs sər-vəs). [Law Latin] *Hist.* A freed slave who has forfeited his or her freedom by committing a crime.

forisfiliate (for-is-fə-mil-ee-ayt), *vb.* [fr. Lat. in *foris* "outside" + *familia* "family"] *Hist.* To emancipate (a son) from paternal authority by a gift of land. • This act usu. rendered the son ineligible to inherit more property. — Also termed (archaically) *forisfiliare*.

forisfiliated (for-is-fə-mil-ee-aytid), *adj.* *Hist.* (Of a son) emancipated from paternal authority and in possession of a portion of family land in lieu of inheritance.

"If our English law at any time knew an enduring *patria potestas* which could be likened to the Roman, that time had passed away long before the days of Bracton. . . . Bracton, it is true, has copied about this matter some sentences from the Institutes which he ought not to have copied; but he soon forgets them, and we easily see that they belong to an alien system. Our law knows no such thing as 'emancipation,' it merely knows an attainment of full age. . . . In old times a forisfiliated son, that is, one whom his father had enfeoffed, was excluded from the inheritance. This is already antiquated, yet Bracton can find nothing else to serve instead of an *emancipatio*." 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 438, 438 n.3 (2d ed. 1899).

forisfiliation (for-is-fə-mil-ee-ay-shən), *n.* [Law Latin] *Hist.* The act of forisfiliating a son.

forisjudicatio. See FOREJUDGER.

forisjudicatus. See FOREJUDGER.

forisjurare (for-is-jə-rair-ee), *vb.* [Law Latin] *Hist.* To forswear; to renounce under oath. — Also termed *forjurer*.

forisjurare parentilam (for-is-jə-rair-ee pə-ren-tə-ləm), *vb.* [Law Latin] *Hist.* To renounce parental authority. • One who did so lost all rights of heirship.

forisjurare provinciam (for-is-jə-rair-ee prə-vin-shee-əm), *vb.* [Law Latin] *Hist.* To renounce under oath one's allegiance to a country.

forjudge, *vb.* **1.** *Hist.* To expel a person, esp. an officer or attorney, from court for some offense or misconduct. **2.** To deprive (a person) of a thing by a judgment; to condemn (a person) to lose a thing. — Also spelled (loosely) *forejudge*.

forjudger (for-jəj-ər), *n.* *Hist.* **1.** A judgment that deprives a person of a thing. **2.** A judgment of expulsion or banishment. — Also termed *forisjudicatio*; *forisjudicatus*.

forjurer. See FORISJURARE.

forjurer royale (for-zhə-ray roy-ohm), *vb.* [Law French] *Hist.* To renounce the kingdom under oath; to abjure the realm.

form, *n.* **1.** The outer shape or structure of something, as distinguished from its substance or matter <courts are generally less concerned about defects in form than defects in substance>. **2.** Established behavior or procedure, usu. according to custom or rule <the prosecutor followed the established form in her closing argument>. **3.** A model; a sample; an example <attorneys often draft pleadings by using a form instead of starting from scratch>. **4.** The customary method of drafting legal documents, usu. with fixed words, phrases, and sentences <Jones prepared the contract merely by following the state bar's form>. **5.** A legal document with blank spaces to be filled in by the drafter <the divorce lawyer used printed forms that a secretary could fill in>.

Form 8-K. See 8-K.

Form 10-K. See 10-K.

Form 10-Q. See 10-Q.

forma (for-mə). [Latin "form"] *Hist.* The prescribed form of judicial proceedings.

forma et figura judicii (for-mə et fig-yər-ə joo-dish-ee-ī). [Latin] *Hist.* The form and shape of judgment. • A form prescribed by statute.

formal, *adj.* **1.** Pertaining to or following established procedural rules, customs, and practices. **2.** Ceremonial. — **formality**, *n.*

formal agreement. See AGREEMENT.

formal contract. See CONTRACT.

formalities. **1.** Small points of practice that, though seemingly unimportant, must be observed to achieve a particular legal result. **2.** *Hist.* Robes worn by magistrates on solemn occasions.

formal law. Procedural law.

"Procedure is by many German writers inappropriately called 'formal law.'" Thomas E. Holland, *The Elements of Jurisprudence* 358 n.2 (13th ed. 1924).

formal party. See *nominal party* under PARTY (2).

formal rulemaking. See RULEMAKING.

forma pauperis. See IN FORMA PAUPERIS.

formata (for-may-tə). [Law Latin] *Eccles. law.* Canonical letters.

formata brevia. See BREVIA FORMATA.

formbook. A book that contains sample legal documents, esp. transaction-related documents such as contracts, deeds, leases, wills, trusts, and securities disclosure documents.

formed design. See DESIGN.

formedon (for-mə-don). [fr. Latin *forma doni* "form of the gift"] *Hist.* A writ of right for claiming entailed property held by another. ● A writ of formedon was the highest remedy available to a tenant in tail. — Also termed *writ of formedon*.

"Called *formedon*, because the writ comprehended the *form of the gift*. It was of three kinds, in the *descender*, in the *remainder*, and in the *reverter*." 1 Alexander M. Burrill, *A Law Dictionary and Glossary* 650 (2d ed. 1867).

formedon in the descender. A writ of formedon brought by the issue in tail to recover possession of the land.

formedon in the remainder. A writ of formedon brought by a remainderman under a grant or gift in tail to recover possession of the land.

formedon in the reverter. A writ of formedon brought by a reversioner or donor of the grant or gift in tail to recover possession of the land.

former acquittal. See *autrefois acquit* under AUTREFOIS.

former adjudication. An adjudication in a prior action that resulted in a final determination of the rights of the parties or essential fact questions, the result of which bars relitigation. ● Collateral estoppel and *res judicata* are the two types of former adjudication. See COLLATERAL ESTOPPEL; RES JUDICATA.

former jeopardy. The fact of having previously been prosecuted for the same offense. ● A defendant enters a plea of former jeopardy to inform the court that he or she should not be prosecuted again. Cf. DOUBLE JEOPARDY.

former punishment. *Military law.* The rule that nonjudicial punishment for a minor offense may bar trial by court-martial for the same offense.

form of action. The common-law legal and procedural device associated with a particular writ, each of which had specific forms of process, pleading, trial, and judgment. ● The 11 common-law forms of action were trespass, trespass on the case, trover, ejectment, detinue, replevin, debt, covenant, account, special assumpsit, and general assumpsit.

"Forms of action are usually regarded as different methods of procedure adapted to cases of different kinds, but in fact the choice between forms of action is primarily a choice between different theories of substantive liability, and the scope of the actions measures the existence and extent of liability at common law. . . . The development and extension of the different forms of action is the history of the recognition of rights and liability in the law of torts, contracts, and property, and the essentials of rights of action." Benjamin J. Shipman, *Handbook of Common-Law Pleading* §§ 27, 30 at 54, 60 (Henry Winthrop Ballantine ed., 3d ed. 1923).

Form S-1. See S-1.

formula. 1. Roman law. A written document, prepared by a praetor and forwarded to a *judex*, identifying the issue to be tried and the judgment to be given by the *judex*. ● The four parts of a formula were (1) the *demonstratio*, in which the plaintiff stated the facts of the claim; (2) the *intentio*, in which the plaintiff specified the relief sought against the defendant; (3) in certain cases involving property disputes, the *adjudicatio*, in which the *judex* divided the property between the parties; and (4) the *condemnatio*, in which the *judex* condemned (*usu*) to pay the plaintiff a sum) or acquitted the defendant.

"The Roman judges were not, as with us, the presiding officers in the administration of law and justice. This was the position of the magistrate, the praetor. When a suit at law was commenced, the parties appeared before the praetor, who made a preliminary examination, not to ascertain the merits of the case, but to find the precise points in controversy. He heard the statements of the plaintiff and the counter-statements of the defendant, and from the two he constructed a *formula* (as it was called), a brief technical expression of the disputed issues. He then appointed a *judex* . . . instructing him to investigate the matter, and if he found the facts to be so and so, as recited in the formula, then to condemn the accused party, but, if he did not find them so, to acquit him." James Hadley, *Introduction to Roman Law* 59-60 (1881). [This quotation describes only the period of formula procedure, ca. 150 B.C.-A.D. 25. — Ed.]

2. Common-law pleading. A set form of words (such as those appearing in writs) used in judicial proceedings.

formula deal. An agreement between a movie distributor and an independent or affiliated circuit to exhibit a feature movie in all theaters at a specified percentage of the national gross receipts realized by the theaters.

formula instruction. See JURY INSTRUCTION.

formulary. *Hist.* A collection of the forms of proceedings (*formulae*) used in litigation, such as the writ forms kept by the Chancery. See WRIT SYSTEM.

formulary procedure. *Hist.* The common-law method of pleading and practice, which required formulaic compliance with the accepted forms of action even if through elaborate fictions. • In the 19th century, this type of procedure was replaced both in the United States and in England. See *code pleading* under PLEADING (2).

fornication, n. Voluntary sexual intercourse between two unmarried persons. • Fornication is a crime in some states, such as Virginia. — **fornicate, vb.** Cf. ADULTERY.

"Fornication was not a common-law crime but was made punishable by statute in a few states as a misdemeanor." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 455 (3d ed. 1982).

fornix (for-niks). [Latin] *Hist.* **1.** A brothel. **2.** Fornication.

forprise (for-priz). *Hist.* **1.** An exception or reservation. • The term was frequently used in leases and conveyances.

"Forprise . . . [a]n exception or reservation. . . . We still use it in Conveyances and Leases, wherein *Excepted* and *Forprised* is an usual expression." Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

2. An exaction.

for-profit corporation. See CORPORATION.

forschel (for-shəl). *Hist.* A strip of land next to a highway. — Also termed *forschet*.

forspeca (for-spee-kə). **1.** PROLOCUTOR. **2.** PARANYPHUS.

forswearing (for-swair-ing), n. **1.** The act of repudiating or renouncing under oath. **2.** PERJURY. — **forswear, vb.**

fortaxed (for-takst). *Hist.* Wrongly or extortionately taxed.

forthcoming bond. See BOND (2).

forthwith, adv. **1.** Immediately; without delay. **2.** Directly; promptly; within a reasonable time under the circumstances.

fortia (for-shə). [Law Latin] *Hist.* **1.** Force. • *Fortia* refers to force used by an accessory to allow the principal to commit the crime. **2.** Power, dominion, or jurisdiction.

fortia frisca (for-shə fris-kə). [Law Latin] *Hist.* See FRESH FORCE.

fortior (for-shee-ər or -or), adj. [Latin "stronger"] *Hist.* (Of evidence) involving a presumption that, because of the strength of a party's evidence, shifts the burden of proof to the opposing party.

fortuitous (for-t[y]oo-ə-təs), adj. Occurring by chance. • A fortuitous event may be highly unfortunate. Literally, the term is neutral, despite its common misuse as a synonym for *fortunate*.

fortuitous collision. See COLLISION.

fortuitous event. A happening that, because it occurs only by chance or accident, the parties could not have reasonably foreseen. See FORCE MAJEURE; UNAVOIDABLE-ACCIDENT DOCTRINE.

Fortune 500. An annual compilation of the 500 largest U.S. corporations. • It is published in, and gets its name from, *Fortune* magazine.

forty, n. *Archaic.* Forty acres of land in the form of a square <the south forty>. • To determine a forty, a section of land (640 acres) was quartered, and one of those quarters was again quartered.

forty-days court. See COURT OF ATTACHMENTS.

forum, n. **1.** A public place, esp. one devoted to assembly or debate. **2.** A court or other judicial body; a place of jurisdiction. Pl. **forums, fora.**

forum actus (for-əm ak-təs). [Latin "the forum of the act"] *Hist.* The place where an act was done.

forum conscientiae (for-əm kon-shee-en-shee-ee). [Latin "the forum of conscience"] *Hist.*

The tribunal or court of conscience. • This court was usu. a court of equity. See COURT OF CONSCIENCE.

forum contentiosum (for-əm kən-ten-shee-oh-səm). [Latin “the forum of contention”] *Hist.* A court of justice; a place for litigation.

forum contractus (for-əm kən-trak-təs). [Latin “the forum of the contract”] *Hist.* **1.** The place where a contract was made, and thus the place of jurisdiction. **2.** The court of the place where a contract was made.

forum conveniens (for-əm kən-vee-nee-enz). [Latin “a suitable forum”] The court in which an action is most appropriately brought, considering the best interests and convenience of the parties and witnesses. Cf. FORUM NON CONVENIENS.

forum domesticum (for-əm də-mes-ti-kəm). [Latin] *Hist.* A domestic court. • This type of court decides matters (such as professional discipline) arising within the organization that created it.

forum domicilii (for-əm dom-ə-sil-ee-i). [Latin] *Hist.* The forum or court of the domicile, usu. of the defendant.

forum ecclesiasticum (for-əm e-klee-z[h]ee-as-ti-kəm). [Latin] *Hist.* An ecclesiastical court. — Also termed *judicium ecclesiasticum*.

forum externum (for-əm ek-stər-nəm), *n.* [Latin “external tribunal”] *Eccles. law.* A court dealing with legal cases pertaining to or affecting the corporate life of the church.

forum inconveniens. See FORUM NON CONVENIENS.

forum internum (for-əm in-tər-nəm), *n.* [Latin “internal tribunal”] *Eccles. law.* A court of conscience; a court for matters of conscience.

forum ligeantiae rei (for-əm lij-ee-an-shee-ee-ree-i). [Latin] *Hist.* The forum of the defendant’s allegiance; the court or jurisdiction of the country to which the defendant owes allegiance.

forum non conveniens (for-əm non kən-vee-nee-enz). [Latin “an unsuitable court”] *Civil procedure.* The doctrine that an appropriate forum — even though competent under the law — may divest itself of jurisdiction if, for the

convenience of the litigants and the witnesses, it appears that the action should proceed in another forum in which the action might originally have been brought. — Also termed *forum inconveniens*.

“Forum non conveniens allows a court to exercise its discretion to avoid the oppression or vexation that might result from automatically honoring plaintiff’s forum choice. However, dismissal on the basis of forum non conveniens also requires that there be an alternative forum in which the suit can be prosecuted. It must appear that jurisdiction over all parties can be secured and that complete relief can be obtained in the supposedly more convenient court. Further, in at least some states, it has been held that the doctrine cannot be successfully invoked when the plaintiff is resident of the forum state since, effectively, one of the functions of the state courts is to provide a tribunal in which their residents can obtain an adjudication of their grievances. But in most instances a balancing of the convenience to all the parties will be considered and no one factor will preclude a forum non conveniens dismissal, as long as another forum is available.” Jack H. Friedenthal et al., *Civil Procedure* § 2.17, at 87–88 (2d ed. 1993).

forum originis (for-əm ə-rij-ə-nis). [Latin] *Hist.* The forum or place of a person’s birth, considered as a place of jurisdiction.

forum regium (for-əm ree-jee-əm). [Latin] *Hist.* The king’s court.

forum rei (for-əm ree-i). [Latin] *Hist.* **1.** The forum of the defendant, i.e., the place where the defendant is domiciled or resides. **2.** FORUM REI SITAE.

forum rei gestae (for-əm ree-i jes-tee). [Latin] *Hist.* The forum or court of a *res gesta* (thing done); the place where an act was done, considered as a place of jurisdiction.

forum rei sitae (for-əm ree-i si-tee). [Latin] *Hist.* The court where the thing or subject-matter in controversy is situated, considered as a place of jurisdiction. — Often shortened to *forum rei*.

forum seculare (for-əm sek-yə-lair-ee). [Latin] *Hist.* A secular court. — Also spelled *forum saeculare*.

forum-selection clause. A contractual provision in which the parties establish the place (such as the country, state, or type of court) for specified litigation between them. — Also termed *forum-shopping clause*. Cf. CHOICE-OF-LAW CLAUSE.

forum-shopping. The practice of choosing the most favorable jurisdiction or court in which a claim might be heard. ● A plaintiff might engage in forum-shopping, for example, by filing suit in a jurisdiction with a reputation for high jury awards or by filing several similar suits and keeping the one with the preferred judge. Cf. JUDGE-SHOPPING.

forum-shopping clause. See FORUM-SELECTION CLAUSE.

forum state. *Conflict of laws.* The state in which a suit is filed.

for use. For the benefit or advantage of another. See USE.

forward agreement. See FORWARD CONTRACT.

forward and backward at sea. *Marine insurance.* From port to port in the course of a voyage, and not merely from one terminus to the other and back.

forward contract. An agreement to buy or sell a particular nonstandardized asset (usu. currencies) at a fixed price on a future date. ● Unlike a futures contract, a forward contract is not traded on a formal exchange. — Also termed *forward agreement*. Cf. FUTURES CONTRACT.

forwarding agent. See AGENT.

forward market. See *futures market* under MARKET.

forward triangular merger. See *triangular merger* under MERGER.

fossa (fahs-ə). [Latin “a ditch”] *Hist.* A ditch or pit of water in which a woman who had committed a felony was drowned. See FURCA ET FOSA.

foster, adj. **1.** (Of a relationship) involving parental care given by someone not related by blood <foster home>. **2.** (Of a person) giving or receiving parental care to or from someone not related by blood <foster parent> <foster child>.

foster, vb. To give care to (something or someone); esp., to give parental care to (a child who is not one's natural child).

fosterage, n. **1.** The act of caring for another's child. **2.** The entrusting of a child to another. **3.** The condition of being in the care of another. **4.** The act of encouraging or promoting.

foster care. **1.** A program for parental care for children in lieu of the parental relationship with biological or adoptive parents. **2.** The area of social services concerned with meeting the needs of children who participate in these types of programs.

foster-care placement. The (usu. temporary) act of placing a child in a home with a person or persons who provide parental care for the child.

foster-care review board. A board that reviews the permanent plans of foster-care placement of neglected and abused children.

foster child. See CHILD.

foster home. A household in which foster care is provided to a child who has been removed from his or her natural parents, usu. for abuse or neglect. ● A foster home is usu. an individual home, but it can also be a group home.

fosterlean (fos-tər-leen). *Hist.* **1.** Remuneration for rearing a foster child. **2.** JOINTURE.

fosterling. See *foster child* under CHILD.

foster parent. See PARENT.

foul bill of lading. See BILL OF LADING.

foundation. **1.** The basis on which something is supported; esp., evidence or testimony that establishes the admissibility of other evidence <laying the foundation>. **2.** A fund established for charitable, educational, religious, research, or other benevolent purposes; an endowment <the Foundation for the Arts>.

private foundation. A foundation that is supported privately rather than publicly, and that exists to advance charitable or educational projects. ● A private foundation is generally exempt from taxation. IRC (26 USCA) § 509.

foundational fact. See *predicate fact* under FACT.

founded on, adj. Having as a basis <the suit was founded on the defendant's breach of contract>.

founder, *n.* A person who founds or establishes; esp., a person who supplies funds for an institution's future needs.

founder's share. (*usu. pl.*) In England, a share issued to the founder of a company as a part of the consideration for the business. • Now rare, a founder's share participates in profits only if the dividend on ordinary shares has been paid to a specified amount.

founding father. A prominent figure in the founding of an institution or esp. a country; specif., one who played a leading role in founding the United States of America, esp. in the Revolutionary War and the making of the U.S. Constitution.

foundling. A deserted or abandoned infant.

foundling hospital. A charitable institution, found esp. in Europe, the purpose of which is to care for abandoned children.

four, rule of. See RULE OF FOUR.

four corners. The face of a written instrument.

• The phrase derives from the ancient custom of putting all instruments (such as contracts) on a single sheet of parchment, as opposed to multiple pages, no matter how long the sheet might be. At common law, this custom prevented people from fraudulently inserting materials into a fully signed agreement. The requirement was that every contract could have only four corners.

four-corners rule. **1.** The principle that a document's meaning is to be gathered from the entire document and not from its isolated parts. **2.** The principle that no extraneous evidence should be used to interpret an unambiguous document. Cf. PAROL-EVIDENCE RULE.

401(k) plan. See EMPLOYEE BENEFIT PLAN.

403(b) plan. See EMPLOYEE BENEFIT PLAN.

Fourteenth Amendment. The constitutional amendment, ratified in 1868, whose primary provisions effectively apply the Bill of Rights to the states by forbidding states from denying due process and equal protection and from abridging the privileges and immunities of U.S. citizenship. • The amendment also gives Congress the power to enforce these provisions, leading to legislation such as the Civil Rights Acts.

Fourth Amendment. The constitutional amendment, ratified with the Bill of Rights in 1791, prohibiting unreasonable searches and seizures and the issuance of warrants without probable cause. See PROBABLE CAUSE.

fourth estate. The journalistic profession; the media. • The term comes from the British Parliament's reporters' gallery, whose influence was said to equal Parliament's three traditional estates: the Lords Spiritual, the Lords Temporal, and the Commons. (In France, the three estates were the clergy, the nobility, and the commons.)

fourth-sentence remand. See REMAND.

four unities. The four qualities needed to create a joint tenancy at common law — namely interest, possession, time, and title. See UNITY (2).

Fox's Libel Act. *Hist.* A 1792 statute that gave the jury in a libel prosecution the right of pronouncing a guilty or not-guilty verdict on the whole matter in issue. • The jury was no longer bound to find the defendant guilty if it found that the defendant had in fact published the allegedly libelous statement. The Act empowered juries to decide whether the defendant's statement conformed to the legal standard for libel.

foy (*foy or fwah*). [Law French] Faith; allegiance.

FPA. *abbr.* Free from particular average.

"F.P.A. means Free from Particular Average; that is to say, the insured can recover only where the loss is total or is due to a general average sacrifice. The claims under the Sue and Labour clause are not affected by this stipulation." 2 E.W. Chance, *Principles of Mercantile Law* 128 (P.W. French ed., 10th ed. 1951).

Fr. *abbr.* **1.** French. **2.** FRAGMENTA.

fractional, *adj.* (Of a tract of land) covering an area less than the acreage reflected on a survey; pertaining to any irregular division of land containing either more or less than the conventional amount of acreage.

fractional currency. See CURRENCY.

Fragmenta (*frag-men-tə*). [Latin "fragments"] *Roman law*. Passages drawn from the writings of Roman jurists and compiled in Justinian's *Digest*. — *Abbr.* Fr.; Ff.

fragmented literal similarity. See SUBSTANTIAL SIMILARITY.

frame, vb. 1. To plan, shape, or construct; esp., to draft or otherwise draw up (a document). 2. To incriminate (an innocent person) with false evidence, esp. fabricated. — **framable, frameable, adj.**

frame-up, n. A plot to make an innocent person appear guilty.

francbordus. See FREE-BORD.

franchise (fran-chiz), n. 1. The right to vote. — Also termed *elective franchise*. 2. The right conferred by the government to engage in a specific business or to exercise corporate powers. — Also termed *corporate franchise*; *general franchise*.

“When referring to government grants (other than patents, trademarks, and copyrights), the term ‘franchise’ is often used to connote more substantial rights, whereas the term ‘license’ connotes lesser rights. Thus, the rights necessary for public utility companies to carry on their operations are generally designated as franchise rights. On the other hand, the rights to construct or to repair, the rights to practice certain professions, and the rights to use or to operate automobiles are generally referred to as licenses.” 1 *Eckstrom’s Licensing in Foreign and Domestic Operations* § 1.02[3], at 1–10 to 1–11 (David M. Epstein ed., 1998).

“In a violent conceptual collision, some franchisors maintain that a franchise is merely an embellished license and therefore revocable at will. Franchisees contend that a franchise is a license coupled with an interest, not subject to unlimited control by franchisors. As a result of this disagreement, legislative draftsmen have had difficulty defining ‘franchise.’” 1 Harold Brown, *Franchising Realities and Remedies* § 1.03[1], at 1–17 (1998).

franchise appurtenant to land. *Rare.* A franchise that is used in connection with real property and thus is sometimes characterized as real property.

general franchise. A corporation’s charter.

special franchise. A right conferred by the government, esp. to a public utility, to use property for a public use but for private profit.

3. The sole right granted by the owner of a trademark or tradename to engage in business or to sell a good or service in a certain area. 4. The business or territory controlled by the person or entity that has been granted such a right.

commercial franchise. A franchise using local capital and management by contracting with third parties to operate a facility identi-

fied as offering a particular brand of goods or services.

sports franchise. A franchise granted by a professional sports league to field a team in that league; the team itself.

trial franchise. A franchise having an initial term of limited duration, such as one year.

franchise, vb. To grant (to another) the sole right of engaging in a certain business or in a business using a particular trademark in a certain area.

franchise agreement. The contract between a franchisor and franchisee establishing the terms and conditions of the franchise relationship. • State and federal laws regulate franchise agreements.

franchise appurtenant to land. See FRANCHISE (2).

franchise clause. *Insurance.* A provision in a casualty insurance policy stating that the insurer will pay a claim only if it is more than a stated amount, and that the insured is responsible for all damages if the claim is under that amount. • Unlike a deductible, which the insured always has to pay, with a franchise clause, once the claim exceeds the stated amount, the insurer pays the entire claim.

franchise court. *Hist.* A privately held court that (usu.) exists by virtue of a royal grant, with jurisdiction over a variety of matters, depending on the grant and whatever powers the court acquires over time. • In 1274, Edward I abolished many of these feudal courts by forcing the nobility to demonstrate by what authority (*quo warranto*) they held court. If a lord could not produce a charter reflecting the franchise, the court was abolished. — Also termed *courts of the franchise*.

“Dispensing justice was profitable. Much revenue could come from the fees and dues, fines and amercements. This explains the growth of the second class of feudal courts, the *Franchise Courts*. They too were private courts held by feudal lords. Sometimes their claim to jurisdiction was based on old pre-Conquest grants. . . . But many of them were, in reality, only wrongful usurpations of private jurisdiction by powerful lords. These were put down after the famous *Quo Warranto* enquiry in the reign of Edward I.” W.J.V. Windeyer, *Lectures on Legal History* 56–57 (2d ed. 1949).

franchisee. One who is granted a franchise.

franchise fee. See FEE (1).

franchiser. One who grants a franchise. — Also spelled *franchisor*.

franchise tax. See TAX.

francigena (fran-sə-jee-nə). [Law Latin *francus* “french” + Latin *genitus* “born”] *Hist.* **1.** A person born in France. **2.** Any alien in England; a foreigner. See FRENCHMAN.

francus (frangk-əs). [fr. French *franc* “free”] *Hist.* A freeman.

francus bancus. See FREE BENCH.

francus homo (frangk-əs hoh-moh). *Hist.* A free man.

francus tenens. See FRANK-TENANT.

frank, adj. [Law French] *Hist.* Free. — Also spelled *fraunc; fraunche; fraunke*.

frank, n. 1. (cap.) A member of the Germanic people who conquered Gaul in the 6th century. ● France received its name from the Franks. **2.** A signature, stamp, or mark affixed to mail as a substitute for postage. **3.** The privilege of sending certain mail free of charge, accorded to members of Congress. — Also termed (in sense 3) *franking privilege*. — **frank, vb.**

frankalmoin (frangk-al-moyn). [Law French “free alms”] *Hist.* A spiritual tenure by which a religious institution held land, usu. in return for a nonenforceable duty to pray for the donor. ● This tenure differed from the tenure by *divine service*, which required the performance of certain divine services. — Also spelled *frankalmoign; frankalmoigne*. — Also termed *almoign; almoin; free alms; libera eleemosyna*. See *spiritual tenure* under TENURE.

“Frankalmoin, or free alms, was a survival of Anglo-Saxon law, and implied simply an indefinite promise to pray for the soul of the donor; but since it was deemed a tenure by which the land was held, the general doctrine of ‘services’ was applied. On the other hand, in the case of Divine Service, which was much less frequently met with, the tenant promised a definite number of prayers, a duty which might be enforced in the King’s courts.” A.K.R. Kiralfy, *Potter’s Outlines of English Legal History* 210 (5th ed. 1958).

frank bank. See FREE BENCH.

frank-chase. *Hist.* Free chase; a person’s liberty or right to hunt or log within a certain area. ● Others holding land within the frank-chase

area were forbidden from hunting or logging in it. See CHASE.

frank-fee. *Hist.* Freehold land — land that one held to oneself and one’s heirs — exempted from all services except homage; land held other than by ancient demesne or copyhold.

frank ferm. *Hist.* An estate in land held in socage, the nature of the fee having been changed from knight’s service by enfeoffment for certain yearly services. — Also spelled *frank-ferme*.

franking privilege. See FRANK (3).

frank-law. *Hist.* The rights and privileges of a citizen or freeman; specif., the condition of being legally capable of giving an oath (esp. as a juror or witness). See LEGALIS HOMO.

“Frank law . . . may be understood from Bracton’s description of the consequences of losing it, among which the principal one was, that the parties incurred perpetual infamy, so that they were never afterwards to be admitted to oath, because they were not deemed to be *othsworth*, (that is, not worthy of making oath,) nor allowed to give testimony.” 1 Alexander M. Burrill, *A Law Dictionary and Glossary* 657–58 (2d ed. 1867).

franklin (frangk-lin). *Hist.* A freeman; a freeholder; a gentleman. — Also spelled *francling; frankleyn; frankleyn*.

frankmarriage. *Hist.* An entailed estate in which the donor retains control of the land by refusing to accept feudal services from the donee (usu. the donor’s daughter) for three generations. ● If the donee’s issue fail in that time, the land returns to the donor. A donor who accepted homage (and the corresponding services arising from it) from the donee risked losing control of the land to a collateral heir. After three generations — a time considered sufficient to demonstrate that the line was well established — the donee’s heir could insist on paying homage; doing so transformed the estate into a fee simple. — Also termed *liberum maritagium*. See MARITAGIUM.

“Only when homage has been done are we to apply the rule which excludes the lord from the inheritance. This is at the bottom of one of the peculiarities of the ‘estate in frankmarriage.’ When a father makes a provision for a daughter, he intends that if the daughter has no issue or if her issue fails — at all events if this failure occurs in the course of a few generations — the land shall come back to him or to his heir. Therefore no homage is done for the estate in frankmarriage until the daughter’s third heir has entered, for were homage once done, there would be a danger that the land would never come back to the father or to his heir.” 2 Frederick Pollock &

Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 291 (2d ed. 1899).

frankpledge. *Hist.* A promise given to the sovereign by a group of ten freeholders (a *tithing*) ensuring the group's good conduct. ● The frankpledge was of Saxon origin, but continued after the Norman Conquest. The members of the group were not liable for an injury caused by an offending member, but they did act as bail to ensure that the culprit would appear in court. They were bound to produce a wrongdoer for trial. — Also termed *laughe*. See VIEW OF FRANKPLEDGE. Cf. DECENARY.

"Since there was no elaborate group of royal officials, the policing of the country had to be arranged for in a special way. The commonest way was to hold each household responsible for the offenses of any member of it. A further step was taken when, in the time of Cnut, a group of ten men was formed who were responsible for each other, in the sense that every one was security, *borh*, for the good behavior of the others. This group was called *fri-borh*, frankpledge, and remained for a long time one of the chief police methods of England." Max Radin, *Handbook of Anglo-American Legal History* 33-34 (1936).

Franks hearing. A hearing to determine whether a police officer's affidavit used to obtain a search warrant that yields incriminating evidence was based on false statements by the police officer. *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674 (1978).

frank-tenant. *Hist.* A freeholder. — Also termed *francus tenens*.

frank-tenement. *Hist.* A free tenement; a freehold. ● This term described both the tenure and the estate.

FRAP (frap). *abbr.* FEDERAL RULES OF APPELLATE PROCEDURE.

frater (fray-tər). [Latin] *Roman law.* A brother.

frater consanguineus (fray-tər kon-sang-wīn-ee-əs). A brother or half-brother having the same father.

frater nutricius (fray-tər n[y]oo-trish-ee-θs). A bastard brother.

frater uterinus (fray-tər yoo-tə-rī-nəs). A brother or half-brother having the same mother.

fraternal, *adj.* **1.** Of or relating to the relationship of brothers. **2.** Of or relating to a fraternity or a fraternal benefit association.

fraternal benefit association. A voluntary organization or society created for its members' mutual aid and benefit rather than for profit, and whose members have a common and worthy cause, objective, or interest. ● These associations usu. have a lodge system, a governing body, rituals, and a benefits system for their members. — Also termed *fraternal benefit society*; *fraternity*; *fraternal lodge*; *fraternal order*. Cf. FRIENDLY SOCIETY.

fraternal insurance. See INSURANCE.

fraternal lodge. See FRATERNAL BENEFIT ASSOCIATION.

fraternal order. See FRATERNAL BENEFIT ASSOCIATION.

fraternal society. See *benevolent association* under ASSOCIATION.

fraternity. See FRATERNAL BENEFIT ASSOCIATION.

frater nutricius. See FRATER.

frater uterinus. See FRATER.

fratres conjurati (fray-treez kon-jə-ray-tī). [Latin "sworn brothers"] *Hist.* Sworn brothers or companions for the defense of their sovereign or for other purposes.

fratriage (fra-tree-ij or fray-). *Hist.* **1.** A younger brother's portion of his father's estate, received as an inheritance. ● Under feudal law, even though the land was from the father's estate, the younger brother was bound to pay homage to the older brother. **2.** A portion of an inheritance given to coheirs. — Also termed *fratriagium*.

fratricide (fra-trə-sīd or fray-). **1.** One who has killed one's brother or sister. **2.** The killing of one's brother or sister.

fraud, *n.* **1.** A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. ● Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime. **2.** A misrepresentation made recklessly without belief in its truth to induce another person to act. **3.** A tort arising from a knowing misrepresentation, concealment of material fact, or reckless misrepresentation made to induce another to act to his or her detriment. **4.** Unconscionable dealing; esp., in contract law, the

unconscientious use of the power arising out of the parties' relative positions and resulting in an unconscionable bargain. — **fraudulent**, *adj.*

"[T]he use of the term fraud has been wider and less precise in the chancery than in the common-law courts. This followed necessarily from the remedies which they respectively administered. Common law gave damages for a wrong, and was compelled to define with care the wrong which furnished a cause of action. Equity refused specific performance of a contract, or set aside a transaction, or gave compensation where one party had acted unfairly by the other. Thus 'fraud' at common law is a false statement . . . : fraud in equity has often been used as meaning unconscientious dealing — 'although, I think, unfortunately,' a great equity lawyer has said." William R. Anson, *Principles of the Law of Contract* 263 (Arthur L. Corbin ed., 3d Am. ed. 1919).

actual fraud. A concealment or false representation through a statement or conduct that injures another who relies on it in acting. — Also termed *fraud in fact*; *positive fraud*; *moral fraud*.

civil fraud. 1. FRAUD (3). 2. *Tax.* An intentional — but not willful — evasion of taxes. • The distinction between an intentional (i.e., *civil*) and willful (i.e., *criminal*) fraud is not always clear, but *civil fraud* carries only a monetary, noncriminal penalty. Cf. *criminal fraud*; TAX EVASION.

common-law fraud. See *promissory fraud*.

constructive fraud. 1. Unintentional deception or misrepresentation that causes injury to another. — Also termed *legal fraud*; *fraud in contemplation of law*; *equitable fraud*. 2. See *fraud in law*.

"The layman would probably rather be found guilty of fraud, for he can then say the court was wrong, than be found guilty of 'constructive fraud,' for he does not know what that means and he may doubt whether the court does either." Lon L. Fuller, *Anatomy of the Law* 12 (1968).

criminal fraud. 1. *Tax.* The willful evasion of taxes accomplished by filing a fraudulent tax return. • *Criminal fraud* subjects the offender to criminal penalties such as fines and imprisonment. Cf. *civil fraud*; TAX EVASION. 2. *Larceny by trick* under LARCENY.

election fraud. See ELECTION FRAUD.

extrinsic fraud. 1. Deception that is collateral to the issues being considered in the case; intentional misrepresentation or deceptive behavior outside the transaction itself (whether a contract or a lawsuit), depriving one party of informed consent or full participation. • For example, a person might engage in extrinsic fraud by convincing a litigant not to hire counsel or answer by dishonestly saying the matter will not be

pursued. — Also termed *collateral fraud*. 2. Deception that prevents a person from knowing about or asserting certain rights.

fraud in contemplation of law. See *constructive fraud*.

fraud in fact. See *actual fraud*.

fraud in law. Fraud that is presumed under the circumstances, as when a debtor transfers assets and thereby impairs creditors' efforts to collect sums due. — Also termed *constructive fraud*.

fraud in the factum. Fraud occurring when a legal instrument as actually executed differs from the one intended for execution by the person who executes it, or when the instrument may have had no legal existence. • Compared to fraud in the inducement, fraud in the factum occurs only rarely, as when a blind person signs a mortgage when misleadingly told that it's just a letter. — Also termed *fraud in the execution*; *fraud in the making*. Cf. *fraud in the inducement*.

fraud in the inducement. Fraud occurring when a misrepresentation leads another to enter into a transaction with a false impression of the risks, duties, or obligations involved; an intentional misrepresentation of a material risk or duty reasonably relied on, thereby injuring the other party without vitiating the contract itself, esp. about a fact relating to value. Cf. *fraud in the factum*.

fraud in the making. See *fraud in the factum*.

fraud on the court. A lawyer's or party's misconduct in a judicial proceeding so serious that it undermines or is intended to undermine the integrity of the proceeding. • Examples are bribery of a juror and introduction of fabricated evidence.

fraud on the market. 1. Fraud occurring when an issuer of securities gives out misinformation that affects the market price of stock, the result being that people who buy or sell are effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price. 2. The securities-law claim based on such fraud. See FRAUD-ON-THE-MARKET PRINCIPLE.

insurance fraud. Fraud committed against an insurer, as when an insured lies on a policy application or fabricates a claim.

intrinsic fraud. Deception that pertains to an issue involved in an original action. • Examples include the use of fabricated evidence, a false return of service, perjured testi-

mony, and false receipts or other commercial documents.

legal fraud. See *constructive fraud*.

mail fraud. An act of fraud using the U.S. Postal Service, as in making false representations through the mail to obtain an economic advantage. 18 USCA §§ 1341–1347.

moral fraud. See *actual fraud*.

positive fraud. See *actual fraud*.

promissory fraud. A promise to perform made when the promisor had no intention of performing the promise. — Also termed *common-law fraud*.

tax fraud. See TAX EVASION.

wire fraud. An act of fraud using electronic communications, as by making false representations on the telephone to obtain money. ● The federal Wire Fraud Act provides that any artifice to defraud by means of wire or other electronic communications (such as radio or television) in foreign or interstate commerce is a crime. 18 USCA § 1343.

fraud, badge of. See BADGE OF FRAUD.

fraudare (fraw-dair-ee), *vb.* [Latin] *Roman law.* To defraud.

fraude (frawd). [French] *Civil law.* Fraud committed in performing a contract. Cf. DOL.

fraudfeasor (frawd-fee-zər). A person who has committed fraud. — Also termed *defrauder*.

fraud in contemplation of law. See *constructive fraud* under FRAUD.

fraud in fact. See *actual fraud* under FRAUD.

fraud in law. See FRAUD.

fraud in the execution. See *fraud in the factum* under FRAUD.

fraud in the factum. See FRAUD.

fraud in the inducement. See FRAUD.

fraud in the making. See *fraud in the factum* under FRAUD.

fraud on creditors. See FRAUDULENT CONVEYANCE (1).

fraud on the court. See FRAUD.

fraud on the market. See FRAUD.

fraud-on-the-market principle. *Securities.* The doctrine that, in a claim under the anti-fraud provisions of the federal securities laws, a plaintiff may presumptively establish reliance on a misstatement about a security's value — without proving actual knowledge of the fraudulent statement — if the stock is purchased in an open and developed securities market. ● This doctrine recognizes that the market price of an issuer's stock reflects all available public information. The presumption is rebuttable. — Also termed *fraud-on-the-market theory*.

frauds, statute of. See STATUTE OF FRAUDS.

fraudulent act. Conduct involving bad faith, dishonesty, a lack of integrity, or moral turpitude. — Also termed *dishonest act; fraudulent or dishonest act*.

fraudulent alienation. **1.** The transfer of property with an intent to defraud others, esp. creditors and lienholders. **2.** The transfer of an estate asset by the estate's administrator for little or no consideration.

fraudulent alienee. See ALIENEED.

fraudulent banking. The receipt of a deposit by a banker who knew that the bank was insolvent at the time of the deposit.

fraudulent claim. A false insurance claim. See FRAUD.

fraudulent concealment. See CONCEALMENT.

fraudulent-concealment rule. See CONCEALMENT RULE.

fraudulent conversion. See CONVERSION (2).

fraudulent conveyance. **1.** A transfer of property for little or no consideration, made for the purpose of hindering or delaying a creditor by putting the property beyond the creditor's reach; a transaction by which the owner of real or personal property seeks to place the property beyond the reach of creditors. — Also termed *fraud on creditors*.

“With respect to the general power which is exercisable by deed, it seems that the principle that the donee's creditors can reach the property subject to the exercised general power will have application only to the so-called fraudulent conveyance. That is to say, if the owned assets of the donee after the donative inter vivos exercise

are sufficient to satisfy the creditors, then the exercise of the power will not subject the appointive property to the claims of the creditors; if, on the other hand, the owned assets of the donee are inadequate to satisfy creditors' claims after the exercise of the power, then the transfer resulting from the exercise is likely to fall into the category of the fraudulent conveyance and the creditors will be able to reach the appointive property in the hands of the appointee." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 173 (2d ed. 1984).

2. Bankruptcy. A prebankruptcy transfer or obligation made or incurred by a debtor for little or no consideration or with the actual intent to hinder, delay, or defraud a creditor. • A bankruptcy trustee may recover such a conveyance from the transferee if the requirements of 11 USCA § 548 are met. — Also termed *fraudulent transfer*. Cf. PREFERENTIAL TRANSFER.

fraudulent debt. See DEBT.

fraudulent joinder. See JOINDER.

fraudulent misrepresentation. See MISREPRESENTATION.

fraudulent or dishonest act. See FRAUDULENT ACT.

fraudulent pretenses. See FALSE PRETENSES.

fraudulent representation. See *fraudulent misrepresentation* under MISREPRESENTATION.

fraudulent sale. See SALE.

fraudulent transfer. See FRAUDULENT CONVEYANCE.

fraus (fraws). [Latin] Deceit; cheating. • For example, a debtor who conveyed property with the specific intent (*fraus*) of defrauding a creditor risked having the conveyance rescinded.

fraus legis (fraws lee-jis). [Latin "fraud on the law"] *Roman law*. Evasion of the law; specif., doing something that is not expressly forbidden by statute, but that the law does not want done.

fray. See AFFRAY.

FRB. *abbr.* FEDERAL RESERVE BOARD OF GOVERNORS.

FRCP. *abbr.* FEDERAL RULES OF CIVIL PROCEDURE.

free and common socage

F.R.D. *abbr.* Federal Rules Decisions; a series of reported federal court decisions (beginning in 1938) that construe or apply the Federal Rules of Civil, Criminal, or Appellate Procedure, or the Federal Rules of Evidence. • Also included are rule changes, ceremonial proceedings of federal courts, and articles on federal court practice and procedure. — Often written *FRD*.

FRE. *abbr.* FEDERAL RULES OF EVIDENCE.

Freddie Mac. See FEDERAL HOME LOAN MORTGAGE CORPORATION.

free, adj. **1.** Having legal and political rights; enjoying political and civil liberty <a free citizen> <a free populace>. **2.** Not subject to the constraint or domination of another; enjoying personal freedom; emancipated <a free person>. **3.** Characterized by choice, rather than by compulsion or constraint <free will>. **4.** Unburdened <the land was free of any encumbrances>. **5.** Not confined by force or restraint <free from prison>. **6.** Unrestricted and unregulated <free trade>. **7.** Costing nothing; gratuitous <free tickets to the game>. — **freely, adv.**

free, vb. **1.** To liberate. **2.** To remove (a person or animal) from a constraint or burden.

free agency, n. A professional athlete's ability to negotiate an employment contract with any team in the league, rather than being confined to the league's collective system. • Free agency is usu. granted to veteran players who have been in the league for a certain number of years. — **free agent, n.** Cf. RESERVE CLAUSE.

free alms. See FRANKALMOIN.

free alongside ship. A mercantile term designating that the seller is responsible for delivering the goods to the dock and for paying the costs of delivery there. • When the seller delivers the goods to the specified dock, the risk of loss passes to the buyer. The abbreviation F.A.S. is more common than the full phrase; it is sometimes erroneously thought to stand for *free along side* as opposed to *free alongside ship*. Cf. FREE ON BOARD; COST, INSURANCE, AND FREIGHT.

free and clear, adj. Unencumbered by any liens; marketable <free and clear title>.

free and common socage. See *free socage* under SOCAGE.

free and equal, *adj.* (Of an election) conducted so that the electorate has a reasonable opportunity to vote, with each vote given the same effect.

free bench. *Hist.* A widow's (and occasionally a widower's) interest in the deceased spouse's estate. • *Free bench* gave the surviving spouse a half interest in the estate until death or remarriage. — Also termed *francus bancus*; *frank bank*; *liber bancus*.

"The bench in question was, we may guess . . . a bench at the fireside. The surviving spouse has in time past been allowed to remain in the house along with the children. In the days when families kept together, the right of the widower or widow to remain at the fireside may have borne a somewhat indefinite character. . . . By way of 'free bench' the surviving spouse now has the enjoyment of one-half of the land until death or second marriage, whether there has ever been a child of the marriage or no." 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 419 (2d ed. 1899).

free-bord. *Hist.* 1. A small strip of land (usu. 2½ feet wide and lying just outside a fence) that the owner of the fenced property was allowed to claim and use. 2. The right of claiming that quantity of land. — Also spelled *freebord*; *free bord*; *free-board*. — Also termed *francbordus*.

free chapel. *Hist. Eccles. law.* A church founded by the Crown (or by a person under royal grant) and not subject to the bishop's jurisdiction.

"[T]hose onely are *Free-chappels*, which are of the King's Foundation, and by him exempted from the Jurisdiction of the Ordinary; but the King may licence a Subject to found such a Chappel, and by his Charter exempt it from the Ordinaries Visitation also. . . . [I]t is called *free*, in respect of its exemption from the Jurisdiction of the Diocesan. . . ." Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

free city. *Int'l law.* A country-like political and territorial entity that, although independent in principle, does not have the full capacity to act according to general international law but is nevertheless a subject of international law.

freedman (freed-mən). *Hist.* An emancipated slave.

freedom. 1. The state of being free or liberated. 2. A political right.

freedom of assembly. See RIGHT OF ASSEMBLY.

freedom of association. The right to join with others in a common undertaking that would be

lawful if pursued individually. • This right is protected by the First Amendment to the U.S. Constitution. The government may not prohibit outsiders from joining an association, but the insiders do not necessarily have a right to exclude others. Cf. RIGHT OF ASSEMBLY.

freedom of choice. 1. The liberty embodied in the exercise of one's rights. 2. The parents' opportunity to select a school for their child in a unitary, integrated school system that is devoid of de jure segregation. 3. The liberty to exercise one's right of privacy, esp. the right to have an abortion. — Also termed *right to choose*.

freedom of contract. The doctrine that people have the right to bind themselves legally; a judicial concept that contracts are based on mutual agreement and free choice, and thus should not be hampered by external control such as governmental interference. • This is the principle that people are able to fashion their relations by private agreements, esp. as opposed to the assigned roles of the feudal system. As Maine famously said, "[T]he movement of progressive societies has been a movement from *Status* to *Contract*." Henry Sumner Maine, *Ancient Law* 165 (1864). — Also termed *liberty of contract*.

"Like most shibboleths, that of 'freedom of contract' rarely, if ever, received the close examination which its importance deserved, and even today it is by no means easy to say what exactly the nineteenth-century judges meant when they used this phrase. At least it may be said that the idea of freedom of contract embraced two closely connected, but none the less distinct, concepts. In the first place it indicated that contracts were based on mutual agreement, while in the second place it emphasized that the creation of a contract was the result of a free choice unhampered by external control such as government or legislative interference." P.S. Atiyah, *An Introduction to the Law of Contract* 5 (3d ed. 1981).

freedom of expression. The freedom of speech, press, assembly, or religion as guaranteed by the First Amendment; the prohibition of governmental interference with those freedoms.

Freedom of Information Act. The federal statute that establishes guidelines for public disclosure of documents and materials created and held by federal agencies. 5 USCA § 552. — Abbr. FOIA.

freedom of petition. See RIGHT TO PETITION.

freedom of religion. The right to adhere to any form of religion or none, to practice or abstain from practicing religious beliefs, and to

be free from governmental interference with or promotion of religion, as guaranteed by the First Amendment and Article VI, § 3 of the U.S. Constitution.

freedom of speech. The right to express one's thoughts and opinions without governmental restriction, as guaranteed by the First Amendment. — Also termed *liberty of speech*.

freedom of the city. *Hist.* An immunity or privilege from some burden, esp. from county jurisdiction and its privilege of municipal taxation and self-government, held under a royal charter.

freedom of the press. The right to print and publish materials without governmental intervention, as guaranteed by the First Amendment. — Also termed *liberty of the press*.

freedom of the seas. *Int'l law.* The principle that the seas beyond territorial waters are not subject to any country's control. • Ships on the high seas are subject only to the jurisdiction of the country whose flag they fly, except in cases of piracy, hijacking, hot pursuit from territorial waters, slave trading, and certain rights of approach by warships. — Also termed *mare liberum*.

free election. See ELECTION.

free enterprise. A private and consensual system of production and distribution, usu. conducted for a profit in a competitive environment that is relatively free of governmental interference. See CAPITALISM.

free entry, egress, and regress (*ee-gres / ree-gres*). *Hist.* A person's right to go on land as often as reasonably necessary. • A tenant could go on land to gather crops still growing after the tenancy expired.

Free Exercise Clause. The constitutional provision (U.S. Const. amend. I) prohibiting the government from interfering in people's religious practices or forms of worship. — Also termed *Exercise Clause*. Cf. ESTABLISHMENT CLAUSE.

free fishery. See FISHERY (1).

freehold, n. 1. An estate in land held in fee simple, in fee tail, or for term of life. • At common law, these estates were all created by enfeoffment with livery of seisin. 2. The tenure

by which such an estate is held. — Also termed *freehold estate; freehold interest; franktenement; liberum tenementum*. Cf. LEASEHOLD.

perpetual freehold. An estate given to a grantee for life, and then successively to the grantee's heirs for life. • The effect of this type of freehold was to keep land within a family in perpetuity, much like a fee tail.

"It took the form of a grant 'to A for life, remainder to A's son for life, remainder to that son's son for life', and so on ad infinitum. Such a limitation, if valid, would have been an effective substitute for the fee tail. The courts, however, set their face against this 'perpetual freehold' (as it was sometimes termed), and in *Lovelace v. Lovelace* (1585) it was held that remainders which did not vest before the determination of the first life estate would fail ex post facto. Subsequently a number of other, not entirely convincing, reasons were found for invalidating perpetual freeholds, ultimately culminating in what is sometimes termed the 'old' rule against perpetuities, but, more commonly, the rule in *Whitby v. Mitchell*, taking its name from the case which marked its emphatic reiteration." Peter Butt, *Land Law* 136 (2d ed. 1988).

freeholder. *Hist.* One who possesses a freehold.

freeholder's court baron. See COURT BARON.

freehold estate. See FREEHOLD.

freehold interest. See FREEHOLD.

freehold land society. (*usu. pl.*) *Hist.* A society in England created to enable mechanics, artisans, and other workers to buy at the lowest possible price freehold land with a sufficient yearly value to entitle the owner to the right to vote in the county in which the land was located.

free ice. *Hist.* Ice in navigable streams that does not belong to the adjacent riparian owner or to another with the right to appropriate it, but that belongs to the person who first appropriates it.

free law. *Hist.* The civil rights enjoyed by a freeman (as opposed to a serf). • Free law could be forfeited if the freeman was convicted of treason or an infamous crime.

freeman. 1. A person who possesses and enjoys all the civil and political rights belonging to the people under a free government. 2. A person who is not a slave. 3. *Hist.* A member of a municipal corporation (a city or borough) who possesses full civic rights, esp. the right to vote. 4. *Hist.* A freeholder. Cf. VILLEIN. 5. *Hist.* An allodial landowner. Cf. VASSAL. — Also spelled *free man*.

free market. See *open market* under MARKET.

free of all average. *Maritime law.* Insurance that covers a total loss only. — Abbr. FAA.

free on board. A mercantile term denoting that the seller is responsible for delivering goods on board a ship or other conveyance for carriage to the consignee at a specified location <FOB Indianapolis plant>. • The seller must deliver the goods to the vessel named and has the risk of loss until the goods reach that location. — Abbr. FOB. Cf. FREE ALONGSIDE SHIP; COST, INSURANCE, AND FREIGHT.

"In an *F.O.B.* ('free on board') contract, the goods must be delivered on board by the seller, free of expense to the purchaser, and they are not at the latter's risk until actually delivered on board, when the property in them passes to him. The seller must also give the buyer sufficient notice to enable him to insure against loss during the sea transit. The buyer, on the other hand, must name a ship or authorize the seller to select one. The seller cannot sue for the price until the goods are loaded, and if his inability to load was caused by the buyer's failure to name an effective ship, his only remedy lies in damages. Similarly, *F.O.R.* means 'free on rail.'" 2 E.W. Chance, *Principles of Mercantile Law* 86-87 (P.W. French ed., 10th ed. 1951).

FOB destination. A mercantile term denoting that the seller is required to pay the freight charges as far as the buyer's named destination.

FOB shipping. A mercantile term denoting that the seller is required to bear the risk of placing the goods on a carrier.

free port. A port located outside a country's customs frontier, so that goods may be delivered usu. free of import duties or taxes, without being subjected to customs-control procedures; FREE-TRADE ZONE.

free rider. One who obtains an economic benefit at another's expense without contributing to it. — Also spelled *freerider*.

free socage. See SOCAGE.

free trade, n. The open and unrestricted import and export of goods without barriers, such as quotas or tariffs, other than those charged only as a revenue source, as opposed to those designed to protect domestic businesses. Cf. *protective tariff* under TARIFF (2).

free-trade zone. A duty-free area within a country to promote commerce, esp. transshipment and processing, without entering into the

country's market. — Also termed *foreign trade zone*; *free port*.

free warren. See WARREN.

freeze, n. 1. A period when the government restricts or immobilizes certain commercial activity.

credit freeze. A period when the government restricts bank-lending.

wage-and-price freeze. A period when the government forbids the increase of wages and prices.

2. A recapitalization of a closed corporation so that the value of its existing capital is concentrated primarily in preferred stock rather than in common stock. • By freezing capital, the owner can transfer the common stock to heirs without taxation while continuing to enjoy preferred-stock income during the owner's lifetime, while the common stock grows.

freeze, vb. 1. To cause to become fixed and unable to increase <to freeze interest rates> <to freeze prices>. **2.** To make immobile by government mandate or banking action <to freeze assets>. **3.** To cease physical movement, esp. when ordered by a law enforcement officer <the police officer shouted at the suspect to freeze>.

freeze, n. A person or entity subjected to a freeze-out.

freeze-out, n. Corporations. The process, usu. in a closely held corporation, by which the majority shareholders or the board of directors oppresses minority shareholders in an effort to compel them to liquidate their investment on terms favorable to the controlling shareholders. Cf. SQUEEZE-OUT.

"A 'freeze-out' is usually accomplished by the merger of a corporation into its parent corporation, where the parent corporation owns a large percentage of the shares of the subsidiary, and the minority shareholders are entitled to minimal distributions of cash or securities. A 'freeze-out' may also be used to connote the situation where so large a number of equity shares are issued to the acquiring corporation that the public shareholders own less than 10 percent of the outstanding equity securities and, therefore, have no control over the corporation or any of its decisions. In such event, a short-form merger could later be used to eliminate the minority shareholders." 69A Am. Jur. 2d *Securities Regulation* — State § 245, at 971 n.60 (1993).

freeze out, vb. 1. To subject one to a freeze-out. **2.** To exclude a business competitor <freezing out the competition>.

freeze-out merger. See *cash merger* under MERGER.

freight. 1. Goods transported by water, land, or air. 2. The compensation paid to a carrier for transporting goods.

dead freight. The amount paid by a shipper to a shipowner for the ship's unused cargo space.

freight absorption. See ABSORPTION (5).

freight forwarder. See *forwarding agent* under AGENT.

freighting voyage. See VOYAGE.

freight rate. See RATE.

frenchman. *Hist.* A stranger; a foreigner. • In early English law, this term was applied to all foreigners, even those not from France.

F reorganization. See REORGANIZATION (2).

fresh, *adj.* Recent; not stale; characterized by newness without any material interval.

fresh complaint. A reasonably prompt lodging of a grievance; esp., a victim's prompt report of a sexual assault to someone trustworthy.

fresh-complaint rule. The theory that the credibility of a sexual-assault victim is bolstered if the victim reports the assault soon after it occurs. • Most courts no longer recognize this theory.

fresh disseisin. See DISSEISIN.

fresh fine. See FINE (5).

fresh force. *Hist.* Force, such as disseisin or forcement, newly done. • This term refers to force used in a town, and for which a remedy (the Assize of Fresh Force) existed. See *assize of fresh force* under ASSIZE (8).

fresh pursuit. 1. The right of a police officer to make a warrantless search of a fleeing suspect or to cross jurisdictional lines to arrest a fleeing suspect. 2. The right of a person to use reasonable force to retake property that has just been taken. — Also termed *hot pursuit*.

fresh start. *Bankruptcy.* The favorable financial status obtained by a debtor who receives a

release from personal liability on prepetition debts or who reorganizes debt obligations through the confirmation and completion of a bankruptcy plan.

Friday market. See MARKET.

friendly fire. 1. A fire burning where it is intended to burn, yet capable of causing unintended damage. 2. Military or police gunfire that injures one's own side.

friendly society. In Britain, a voluntary association, supported by subscriptions or contributions, for the purpose of providing financial relief to ill members and to their widows and children upon death. • Friendly societies are regulated by statute. Cf. FRATERNAL BENEFIT ASSOCIATION.

friendly suit. A lawsuit in which all the parties have agreed beforehand to allow a court to resolve the issues. • Friendly suits are often filed by settling parties who wish to have a judgment entered.

friendly suitor. See WHITE KNIGHT.

friendly takeover. See TAKEOVER.

friend of the court. 1. AMICUS CURIAE. 2. In some jurisdictions, an official who investigates and advises the circuit court in domestic-relations cases involving minors. • The friend of the court may also help enforce court orders in those cases.

fringe benefit. See BENEFIT.

frisk, *n.* A pat-down search to discover a concealed weapon. See STOP AND FRISK. Cf. SEARCH. — Also termed *pat-down*.

frivolous, *adj.* Lacking a legal basis or legal merit; not serious; not reasonably purposeful <a frivolous claim>.

frivolous appeal. An appeal having no legal basis, usu. filed for delay to induce a judgment-creditor to settle or to avoid payment of a judgment. • Federal Rule of Appellate Procedure 38 provides for the award of damages and costs if the appellate court determines that an appeal is frivolous. Fed. R. App. P. 38.

frivolous defense. See DEFENSE (1).

frivolous suit. A lawsuit having no legal basis, often filed to harass or extort money from the defendant.

FRM. See *fixed-rate mortgage* under MORTGAGE.

frolic (frol-ik), n. Torts. An employee's significant deviation from the employer's business for personal reasons. • A frolic is outside the scope of employment, and thus the employer is not vicariously liable for the employee's actions. Cf. DETOUR.

front, n. 1. The side or part of a building or lot that is open to view, that is the principal entrance, or that faces out to the open (as to a lake or ocean); the foremost part of something <the property's front was its most valuable attribute>. **2.** A person or group that serves to conceal the true identity or activity of the person or group in control <the political party was a front for the terrorist group>. **3.** A political association similar to a party <popular front>.

frontage (frən-tij). 1. The part of land abutting a street or highway or lying between a building's front and a street or highway <the property's value was so low because of its narrow frontage>. **2.** The linear distance of a frontage <the lot's frontage was 90 feet>.

frontage assessment. A municipal fee charged to a property owner for local improvements that abut a street or highway, such as sidewalks, pavements, or sewage lines.

frontager (frən-tij-ər), n. A person owning or occupying land that abuts a highway, river, seashore, or the like.

front-end money. See SEED MONEY.

front foot. A measurement used to calculate a frontage assessment. — Also termed *abutting foot*.

front-foot rule. The principle that an improvement cost is to be apportioned among several properties in proportion to their frontage, without regard to the benefits conferred on each property. — Also termed *front-foot plan*.

front money. See SEED MONEY.

front wages. See WAGE.

frozen account. See *blocked account* under ACCOUNT.

frozen asset. See ASSET.

frozen deposit. See DEPOSIT (2).

fructuarius (frək-choo-air-ee-əs). [Latin "(one) entitled to fruits"] **1. Roman & civil law.** One having the usufruct of a thing (as of land and animals). **2. Hist.** A lessee.

fructus (frək-təs). [Latin "fruits"] **1. Roman & civil law.** The natural produce of land and animals; the profit or increase from land and animals. **2. USUFRUCT.**

fructus civiles (frək-təs sə-vi-leez). [Latin "civil fruits"] Income (such as rent or interest) that one receives from another for the use or enjoyment of a thing, esp. real property or loaned money.

fructus fundi (frək-təs fən-dī). [Latin "land fruits"] The fruits or produce of land.

fructus industriales (frək-təs in-dəs-tree-ay-leez). [Latin "industrial fruits"] See EMBLEMS.

fructus legis (frək-təs lee-jis). [Latin "fruits of the law"] The proceeds of judgment or execution.

fructus naturales (frək-təs nach-ə-ray-leez). [Latin "natural fruits"] The natural produce of land or plants and the offspring of animals. • *Fructus naturales* are considered part of the real property.

fructus pecudum (frək-təs pek-yə-dəm). [Latin "fruits of the herd"] The produce or increase of flocks or herds.

fructus pendentes (frək-təs pen-dən-teez). [Latin "hanging fruits"] Fruits not yet severed or gathered; fruits united with that which produces them.

fructus percepti (frək-təs pər-sep-ti). [Latin "gathered fruits"] *Roman & civil law.* Fruits that have been gathered.

fructus rei alienae (frək-təs ree-I ay-lee-ee-nee or al-ee-). [Latin "fruits of another's property"] The fruits of another's property; fruits taken from another's estate.

fructus separati (frək-təs sep-ə-ray-ti). [Latin "separated fruits"] *Roman & civil law.* The

produce of a thing after being separated from it, and so becoming in law "fruits."

fructus stantes (fræk-təs stan-teez). [Latin "standing fruits"] Fruits that have not yet been severed from the stalk or stem.

fructuum perceptio (fræk-choo-əm pər-səp-shee-oh). [Latin] *Roman & civil law*. The rightful taking of the produce of property by a person who does not own the property.

fruges (froo-jeez). [Latin "fruits" or "crops"] *Roman & civil law*. Edible produce or crops; esculents.

fruit. 1. The produce or product of something (as of land or property). 2. *Civil law*. Income or goods derived or produced from property without a diminution of the property's value.

civil fruit. *Civil law*. Revenue received from property, such as interest income or a lease payment. See FRUCTUS CIVILES.

natural fruit. *Civil law*. A product of the land or of animals, whether edible or otherwise useful. • Examples are crops and eggs. See FRUCTUS NATURALES.

3. Something (such as evidence) obtained during an activity or operation <the fruit of the officer's search>. See FRUIT-OF-THE-POISONOUS-TREE DOCTRINE.

fruit-and-the-tree doctrine. *Tax*. The rule that an individual who earns income cannot assign that income to another person to avoid taxation.

fruit-of-the-poisonous-tree doctrine. *Criminal procedure*. The rule that evidence derived from an illegal search, arrest, or interrogation is inadmissible because the evidence (the "fruit") was tainted by the illegality (the "poisonous tree"). • Under this doctrine, for example, a murder weapon is inadmissible if the map showing its location and used to find it was seized during an illegal search. — Also termed *fruits doctrine*. See EXCLUSIONARY RULE; ATTENUATION DOCTRINE; INDEPENDENT-SOURCE RULE; INEVITABLE-DISCOVERY RULE.

fruits of a crime. The proceeds acquired through criminal acts.

frustra (fræs-trə). [Latin] *Hist.* In vain; to no purpose.

frustration, *n.* 1. The prevention or hindering of the attainment of a goal, such as contractual performance.

commercial frustration. An excuse for a party's nonperformance because of some unforeseeable and uncontrollable circumstance. — Also termed *economic frustration*.

self-induced frustration. A breach of contract caused by one party's action that prevents the performance. • The phrase is something of a misnomer, since *self-induced frustration* is not really a type of frustration at all but is instead a breach of contract.

temporary frustration. An occurrence that prevents performance and legally suspends the duty to perform for the duration of the event. • If the burden or circumstance is substantially different after the event, then the duty may be discharged.

2. *Contracts*. The doctrine that, if the entire performance of a contract becomes fundamentally changed without any fault by either party, the contract is considered terminated. — Also termed *frustration of purpose*. — **frustrate**, *vb.* Cf. IMPOSSIBILITY (4); IMPRACTICABILITY; MISTAKE.

"Where the entire performance of a contract becomes substantially impossible without any fault on either side, the contract is prima facie dissolved by the doctrine of frustration. For instance, where a person contracted to let a hall to the plaintiff for use for some concerts, and the hall was accidentally destroyed by fire before the date of the first concert, it was held that the contract was dissolved." P.S. Atiyah, *An Introduction to the Law of Contract* 200–01 (3d ed. 1981).

frustrum terrae (fræs-trəm ter-ee). [Latin] *Hist.* A piece of land. • This usu. referred to a fragment of land remaining after a survey.

Frye test. The defunct federal common-law rule of evidence on the admissibility of scientific evidence. • It required that the tests or procedures must have gained general acceptance in their particular field. In *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579, 113 S.Ct. 2786 (1993), the Supreme Court held that scientific evidence must meet the requirements of the Federal Rules of Evidence, not the *Frye* test, to be admissible. *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).

FSIA. *abbr.* FOREIGN SOVEREIGN IMMUNITIES ACT.

FSLIC. *abbr.* FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION.

FST. See *field sobriety test* under SOBRIETY TEST.

F.Supp. *abbr.* Federal Supplement, a series of reported decisions of the federal district courts (from 1932 to 1998), the U.S. Court of Claims (1932 to 1960), and the U.S. Customs Court (from 1949 to 1998, but renamed the Court of International Trade in 1980). • It is the first of the Federal Supplement series.

F.Supp.2d. *abbr.* The second series of the Federal Supplement, which includes decisions of federal district courts and the Court of International Trade from 1997 to the present. • Some of the F.Supp. volumes contain cases from 1998 and some of the F.Supp.2d volumes contain cases decided in 1997.

FTC. *abbr.* FEDERAL TRADE COMMISSION.

FTCA. *abbr.* FEDERAL TORT CLAIMS ACT.

fuer (fyoo-ər). [Law French “to flee”] Flight from the law. — Also termed *fugere*.

fuer in fait (fyoo-ər in fay). [Law French “flight in fact”] Actual flight from the law. — Also termed *fugere in facta*.

fuer in ley (fyoo-ər in lay). [Law French “flight in law”] Legal flight from the law. • If the accused failed to appear, the law treated that failure as flight. — Also termed *fugere in lege*.

fugam fecit (fyoo-gəm fee-sit). [Law Latin] *Hist.* He fled; he has made flight. • When a jury made this finding in a felony or treason trial, the defendant’s property was subject to forfeiture.

fugere. See FUER.

fugere in facta. See *fuer in fait* under FUER.

fugere in lege. See *fuer in ley* under FUER.

fugitation (fyoo-jə-tay-shən). *Hist.* A sentence or declaration of fugitive status that was pronounced against an accused person for failing to answer a citation and appear. • The effect was that the person forfeited his or her goods and chattels.

fugitive. 1. A person who flees or escapes; a refugee. 2. A criminal suspect who flees, evades, or escapes arrest, prosecution, or imprisonment, esp. by fleeing the jurisdiction or by hiding. — Also termed (in sense 2) *fugitive from justice*.

fugitive-disentitlement doctrine. An equitable rule that allows a trial or appellate court to limit a fugitive’s access to civil and criminal courts in the United States.

fugitive-dismissal rule. The principle that an appellate court may dismiss a criminal defendant’s appeal if the defendant is a fugitive.

Fugitive Felon Act. A federal statute that makes it a felony to flee across state lines to avoid state-felony prosecution or confinement, or to avoid giving testimony in a state-felony case. 18 USCA § 1073.

fugitive from justice. See FUGITIVE.

fugitive’s goods. *Hist.* The goods that a person forfeited as a result of fleeing.

fugitive-slave laws. *Hist.* Federal statutes passed in 1793 and 1850 providing for the surrender and return of slaves who had escaped and fled to a free territory or a free state.

fugitive warrant. See WARRANT (1).

fugitivus (fyoo-jə-ti-vəs). [Latin] *Roman law.* A fugitive; a runaway slave.

fugue (fyooɡ). An abnormal state of consciousness in which one appears to function normally but on recovery has no memory of what one did while in that condition.

full age. The age of legal majority; legal age.

full bench. See *full court* under COURT.

full blood. See BLOOD.

full cash value. See VALUE.

full copy. *Equity practice.* A complete transcript of a bill or other pleading, with all indorsements and a copy of all exhibits.

full court. See COURT.

full cousin. See COUSIN (1).

full-covenant-and-warranty deed. See *warranty deed* under DEED.

full coverage. See COVERAGE.

full-crew law. A law that regulates the number of railroad employees required to operate a train.

full defense. See DEFENSE (1).

full disclosure. See DISCLOSURE.

full faith and credit. A state's enforcement of another jurisdiction's laws or judicial decisions.

full-faith-and-credit bond. See *general-obligation bond* under BOND (3).

Full Faith and Credit Clause. U.S. Const. art. IV, § 1, which requires states to give effect to the legislative acts, public records, and judicial decisions of other states.

full hearing. See HEARING.

full indorsement. See *irregular indorsement* under INDORSEMENT.

full interdiction. See INTERDICTION (2).

full name. See NAME.

full-paid stock. See STOCK.

full pardon. See *absolute pardon* under PARDON.

full partner. See *general partner* under PARTNER.

full payout lease. See *finance lease* under LEASE.

full performance. See PERFORMANCE.

full powers. *Int'l law.* An official document designating a person to represent a country for (1) negotiating, adopting, or authenticating the text of a treaty, (2) expressing the consent of the country to be bound by a treaty, or (3) accomplishing any act with respect to the treaty.

full proof. See PROOF.

full-reporting clause. **1.** An insurance-policy clause that requires the insured to reveal values and that penalizes the insured if the insured revealed less than required in the policy application. — Also termed *honesty clause*. **2.** An insurance-policy clause providing that the indemnity will not exceed the proportion of the

loss that the last reported value bears to the actual value.

full right. The union of good title with actual possession.

full-service lease. See LEASE.

full settlement. See SETTLEMENT.

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

full warranty. See WARRANTY (2).

fully administered. A plea by an executor or administrator that he or she has completely and legally disposed of all the assets of the estate and that the estate has no remaining assets from which a new claim could be satisfied.

fully diluted earnings per share. See EARNINGS PER SHARE.

fully funded, *adj.* **1.** Having sufficient financial resources to meet current payments, even upon bankruptcy <the company's pension plan was fully funded>. **2.** Having completely satisfied a funding requirement; paid <the construction loan was fully funded>. — Also termed *funded*.

fully managed fund. See MUTUAL FUND.

fully paid face-amount certificate. See *face-amount certificate* under CERTIFICATE.

function, *n.* **1.** Activity that is appropriate to a particular business or profession <a court's function is to administer justice>. **2.** Office; duty; the occupation of an office <presidential function>.

functional depreciation. See DEPRECIATION.

functional discount. See DISCOUNT.

functional disease. See DISEASE.

functional feature. *Trademarks.* A design element that, in an engineering sense, is necessary to construct an article, or that, in a commercial sense, is necessary to manufacture a salable product; a product's attribute that is essential to its use, is necessary for its proper and successful operation, and is utilitarian in every detail, without containing any ornamen-

tal features. • A functional feature is not eligible for trademark protection.

functionality. *Trademarks.* A shape, configuration, design, or color that is so superior to available alternatives that giving the first user exclusive trademark rights would hinder competition.

aesthetic functionality. A doctrine that denies protection to the design of a product or its container when the design is necessary to enable the product to function as intended.

functional obsolescence. See OBSOLESCENCE.

functionary. A public officer or employee.

functus officio (fəŋk-təs ə-fish-ee-oh). [Latin "having performed his or her office"] (Of an officer or official body) without further authority or legal competence because the duties and functions of the original commission have been fully accomplished. • The term is sometimes abbreviated to *functus* <the court was *functus*>.

fund, n. 1. A sum of money or other liquid assets established for a specific purpose <a fund reserved for unanticipated expenses>.

blended fund. A fund created by income from more than one source, usu. from the sale of a testator's real and personal property.

changing fund. A fund, esp. a trust fund, that changes its form periodically as it is invested and reinvested.

client-security fund. A fund established usu. by a state or a state bar association to compensate persons for losses that they suffered because of their attorneys' misappropriation of funds or other misconduct.

contingent fund. 1. A fund created by a municipality for expenses that will necessarily arise during the year but that cannot be appropriately classified under any of the specific purposes for which taxes are collected. 2. A fund segregated by a business to pay unknown costs that may arise in the future. — Also termed *contingency reserve*.

executor fund. A fund established for an executor to pay an estate's final expenses.

fund in court. 1. Contested money deposited with the court. See INTERPLEADER. 2. Money deposited to pay a contingent liability.

general fund. 1. A government's primary operating fund; a state's assets furnishing the means for the support of government and for

defraying the legislature's discretionary appropriations. • A general fund is distinguished from assets of a special character, such as trust, escrow, and special-purpose funds. 2. A nonprofit entity's assets that are not earmarked for a specific purpose.

general revenue fund. The fund out of which a municipality pays its ordinary and incidental expenses.

guaranty fund. A private deposit-insurance fund, raised primarily by assessments on banks, and used to pay the depositors of an insolvent bank. • Guaranty funds preceded the FDIC's federal-deposit insurance, which began in 1933, though many funds continued until the savings-and-loan crisis in the 1980s. Massachusetts has a guaranty fund for uninsured deposits (deposits above \$100,000) that are not covered by federal-deposit insurance.

imprest fund (im-prest). A fund used by a business for small, routine expenses.

joint-welfare fund. A fund that is established in collective bargaining to provide health and welfare benefits to union employees. • The fund is jointly managed by labor and management representatives. — Also termed *Taft-Hartley fund*.

paid-in fund. A reserve cash fund established by a mutual insurance company to pay unforeseen losses. • The fund is in lieu of a capital stock account.

public fund. (*usu. pl.*) 1. The revenue or money of a governmental body. 2. The securities of the national government or a state government.

revolving fund. A fund whose moneys are continually expended and then replenished, such as a petty-cash fund.

sinking fund. A fund consisting of regular deposits that are accumulated with interest to pay off a long-term corporate or public debt. — Abbr. SF.

strike fund. See STRIKE FUND.

Taft-Hartley fund. See *joint-welfare fund*.

trust fund. See TRUST FUND.

unsatisfied-judgment fund. A fund established by a state to compensate persons for losses stemming from an automobile accident caused by an uninsured or underinsured motorist.

2. (*usu. pl.*) Money or other assets, such as stocks, bonds, or working capital, available to pay debts, expenses, and the like <Sue invested her funds in her sister's business>.

current funds. Assets that can be readily converted into cash.

3. A pool of investments owned in common and managed for a fee; MUTUAL FUND <a diverse portfolio of funds>.

fund, vb. **1.** To furnish money to (an individual, entity, or venture), esp. to finance a particular project. **2.** To use resources in a manner that produces interest. **3.** To convert (a debt, esp. an open account) into a long-term debt that bears interest at a fixed rate.

fundamental error. See *plain error* under ERROR.

fundamental-fairness doctrine. The rule that applies the principles of due process to a judicial proceeding. • The term is commonly considered synonymous with *due process*.

fundamental interest. See FUNDAMENTAL RIGHT.

fundamental law. The organic law that establishes the governing principles of a nation or state; esp., CONSTITUTIONAL LAW. — Also termed *organic law*. Cf. NATURAL LAW.

fundamental-miscarriage-of-justice exception. The doctrine allowing a federal court in a habeas corpus proceeding to address a claim of constitutional error that, although ordinarily unreviewable, is subject to review because of a state-court procedural default that rendered the proceedings basically unfair. • For the exception to apply, among other things, the petitioner must show by a preponderance of the evidence that constitutional error resulted in the conviction of one who is probably innocent. If the defaulted claim applies only to sentencing, the exception permits review of the claim if the petitioner shows by clear and convincing evidence that, but for the constitutional error, no reasonable jury would have found the petitioner guilty eligible for the sentence received.

fundamental right. **1.** A right derived from natural or fundamental law. **2.** *Constitutional law.* A significant component of liberty, encroachments of which are rigorously tested by courts to ascertain the soundness of purported governmental justifications. • A fundamental right triggers strict scrutiny to determine whether the law violates the Due Process Clause or the Equal Protection Clause of the 14th Amendment. As enunciated by the Supreme Court, fundamental rights include vot-

ing, interstate travel, and various aspects of privacy (such as marriage and contraception rights). — Also termed *fundamental interest*. See STRICT SCRUTINY. Cf. SUSPECT CLASSIFICATION.

fundamental term. See TERM (2).

fundamental trend. See *major trend* under TREND.

fundatio (fən-day-shee-oh). [Latin “founding” or “foundation”] *Hist.* The founding of a corporation, particularly an eleemosynary corporation.

fundatio incipiens (fən-day-shee-oh in-sip-ee-enz). [Latin “incipient foundation”] The incorporation or grant of corporate powers.

fundatio perficiens (fən-day-shee-oh pər-fish-ee-enz). [Latin “perfecting foundation”] The endowment or gift of funds to a corporation.

funded. See FULLY FUNDED.

funded debt. See DEBT.

fund in court. See FUND (1).

funding, n. **1.** The process of financing capital expenditures by issuing long-term debt obligations or by converting short-term obligations into long-term obligations to finance current expenses; the process of creating a funded debt. **2.** The refinancing of a debt before its maturity. — Also termed *refunding*. **3.** The provision or allocation of money for a specific purpose, such as for a pension plan, by putting the money into a reserve fund or investments. **4.** The provision of financial resources to finance a particular activity or project, such as a research study.

fundi publici (fən-dī pəb-lə-sī). [Latin] *Hist.* Public lands.

funds transfer. A payment of money from one person or entity to another; esp., the process by which payment is made through a series of transactions between computerized banking systems, beginning with an originator’s payment order and ending when a final payment order is received by the beneficiary’s bank. • Commercial or wholesale funds transfers are governed by Article 4A of the UCC. Consumer funds transfers are regulated by the federal Electronic Funds Transfer Act (15 USCA

§§ 1693 et seq.). — Also termed (specif.) *electronic funds transfer* (EFT).

fundus (fən-dəs). [Latin “land”] *Hist.* **1.** Land or ground in general, without consideration of its specific use. **2.** A farm.

fundus patrimonialis (fən-dəs pa-trə-moh-nee-ay-lis). [Latin] *Roman law.* Land belonging to the *patrimonium principis* (that is, property belonging to the emperor as such).

funeral expense. See EXPENSE.

fungibiles res (fən-jib-ə-leez reez). [Latin] *Civil law.* Fungible things.

fungible (fən-jə-bəl), *adj.* Regarded as commercially interchangeable with other property of the same kind <corn and wheat are fungible goods, whereas land is not>. — **fungible**, *n.*

fungible goods. See GOODS.

fur (fər). [Latin] *Roman law.* A thief.

furandi animus (fyuu-ran-di an-ə-məs). See *animus furandi* under ANIMUS.

furca (fər-kə). [Latin “fork”] *Roman law.* An instrument of punishment with two prongs to which the arms are tied. • In England, *furca* became another name for *gallows*.

furca et flagellum (fər-kə et flə-jel-əm). [Law Latin] *Hist.* Gallows and whip. • This referred to the basest of servile tenures — the tenant was completely at the mercy of the lord.

furca et fossa (fər-kə et fahs-ə). [Law Latin] *Hist.* Gallows and pit. • This phrase was used in ancient grants of criminal jurisdiction for punishing felons: hanging for men and drowning for women.

Furian Caninian law. See LEX FURIA CANINIA.

furigeldum (fyər-ə-jel-dəm). [Law Latin *fur* “theft” + *geldum* “payment”] *Hist.* A fine paid for theft.

furlong (fər-lawng). One-eighth of a mile, or forty poles. — Also termed *ferlingus*; *ferlingum*.

furlough (fər-loh). **1.** A leave of absence from military or other employment duty. **2.** A brief release from prison. See STUDY RELEASE.

fur manifestus (fər man-ə-fes-təs). [Latin “manifest thief”] *Roman law.* A thief caught in the act of stealing.

furor brevis. See HEAT OF PASSION.

furta (fər-tə). *Hist.* A right or privilege from the monarch to try, condemn, and execute criminals within a jurisdiction.

further advance. **1.** A second or later loan to a mortgagor by a mortgagee, either on the same security as the original loan or on an additional security. **2.** *Equity practice.* The agreed conversion of arrear of interest on a mortgage security into principal.

further assurance. See ASSURANCE.

further instruction. See *additional instruction* under JURY INSTRUCTION.

furtum (fər-təm). [fr. Latin *furvus* “black”] *Hist.* **1.** A theft of movable property. • Under Roman law, *furtum* included not only the taking of another’s property, but any handling of the property done with the intent of profiting by it. *Furtum* was a private crime (*delictum*) prosecuted by the person suffering the loss.

“The word *furtum* is derived from *furvus*, a word which means black, because theft is committed secretly and stealthily and usually by night . . .” R.W. Lee, *The Elements of Roman Law* 385 (4th ed. 1956).

2. The thing stolen.

furtum conceptum (fər-təm kən-sep-təm). [Latin] *Roman law.* A theft in which the thief is discovered in possession of stolen property after a search with witnesses.

furtum grave (fər-təm gray-vee or grah-vay). *Hist.* *Scots law.* An aggravated degree of theft that, in ancient times, was punishable by death.

furtum manifestum (fər-təm man-ə-fes-təm). [Latin “open theft”] *Roman law.* A theft in which the thief is caught in the act of theft. See IN FLAGRANTE DELICTO.

furtum oblatum (fər-təm ə-blay-təm). [Latin “offered theft”] *Roman law.* A theft in which the thief offers stolen property to a person who

is then found with the goods; the planting of stolen goods.

Fusian Caninian law. See LEX FURIA CANINIA.

fustigation (fəs-ti-gay-shən), *n.* **1.** The beating of someone with a stick or club. **2.** Harsh criticism. — **fustigate**, *vb.*

fustis (fəs-tis). *Hist.* **1.** A staff used in making livery of seisin. **2.** A baton or club.

futhwite (footh-wit). *Hist.* A fine for fighting or breaking the peace. — Also termed *fithwite*.

future-acquired property. See AFTER-ACQUIRED PROPERTY (1).

future advance. Money secured by an original security agreement even though it is lent after the security interest has attached.

future-advance clause. A contractual term in a security agreement covering additional loaned amounts on present collateral or collateral to be acquired in the future, regardless of whether the secured party is obliged to make the advances; esp., a provision in an open-end mortgage or deed of trust allowing the borrower to borrow additional sums in the future, secured under the same instrument and by the same security. • This type of clause makes a new security agreement unnecessary when the secured creditor makes a future loan to the debtor.

future-advances mortgage. See MORTGAGE.

future consideration. See CONSIDERATION.

future covenant. See COVENANT (4).

future damages. See DAMAGES.

future earnings. See *lost earnings* under EARNINGS.

future estate. See FUTURE INTEREST.

future goods. See GOODS.

future interest. A property interest in which the privilege of possession or of other enjoyment is future and not present. • A future interest can exist in either the grantor (as with a reversion) or the grantee (as with a remainder or executory interest). Today, most future

interests are equitable interests in stocks and debt securities, with power of sale in a trustee. — Also termed *future estate*; *estate in expectancy*. Cf. *present interest* under INTEREST (2).

“[T]he interest is an existing interest from the time of its creation, and is looked upon as a part of the total ownership of the land or other thing [that] is its subject matter. In that sense, future interest is somewhat misleading, and it is applied only to indicate that the possession or enjoyment of the subject matter is to take place in the future.” Lewis M. Simes & Allan F. Smith, *The Law of Future Interests* § 1, at 2-3 (2d ed. 1956).

“When O transfers today ‘to A for five years,’ we can say *either* that O has a future interest *or* that he has a ‘present’ estate subject to a term for years in A. Similarly, when O transfers today his entire estate in fee simple absolute by a conveyance ‘to A for five years, then to B and his heirs,’ we can say *either* that B has a future interest *or* that he has a ‘present’ estate subject to a term for years in A. Unhappily, the fact that we have two locutions available to us can be a source of confusion To own a future interest *now* means not only to be entitled now to judicial protection of one’s possible future possession, but also (in most cases) to be able to make transfers now of that right of possible future possession.” Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 42, 56 (2d ed. 1984).

future performance. See PERFORMANCE.

futures, *n.* **1.** Standardized assets (such as commodities, stocks, or foreign currencies) bought or sold for future acceptance or delivery. — Also termed *financial futures*. **2.** FUTURES CONTRACT. **3.** Future claimants, esp. those who would become members of a class of persons injured by a defendant and thus included in a class action.

futures contract. An agreement to buy or sell a standardized asset (such as a commodity, stock, or foreign currency) at a fixed price at a future time, usu. during a particular time of a month. • Futures contracts are traded on exchanges such as the Chicago Board of Trade or the Chicago Mercantile Exchange. — Often shortened to *futures*. — Also termed *futures agreement*; *time-bargain*. Cf. FORWARD CONTRACT; LEVERAGE CONTRACT; OPTION.

futures market. See MARKET.

futures option. See OPTION.

futures trading. The buying and selling of futures contracts, usu. on formal exchanges.

future use. See *contingent use* under USE (4).

future value. See VALUE.

fyrdfare. See FERDFARE.